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LIBERTIES

RULE OF LAW REPORT

2025



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FOREWORD

The Liberties Rule of Law Report 2025 is the sixth annual report on the state of rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties). Liberties is a non-governmental organisation (NGO) promoting the civil liberties of everyone in the EU, and it is built on a network of national civil liberties NGOs from across the EU. Currently, we have member organisations in Belgium, Bulgaria, the Czech Republic, Croatia, Estonia, France, Germany, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden, as well as a contributing partner organisation in Greece.

Liberties, together with its members and partner organisations, carries out advocacy, campaigning and public education activities to explain what the rule of law is, what the EU and national governments are doing to protect or harm it, and gathers public support to press leaders at EU and national level to fully respect, promote and protect our basic rights and values.

The 2025 report was drafted by Liberties and its member and partner organisations, and it covers the situation during 2024. It is a ‘shadow report’ to the European Commission’s annual rule of law audit. As such, its purpose is to provide the European Commission with reliable information and analysis from the ground to feed its own rule of law reports, and to provide an independent analysis of the state of the rule of law in the EU in its own right.

Liberties’ report represents the most in-depth reporting exercise carried out to date by an NGO network to map developments in a wide range of areas connected to the rule of law in the EU. The 2025 report includes 21 country reports that follow a common structure, mirroring and expanding on the priority areas and indicators identified by the European Commission for its annual rule of law monitoring cycle. Over forty member and local partner organisations contributed to the compilation of these country reports.

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EXECUTIVE SUMMARY

The Liberties Rule of Law Report 2025 is the sixth annual assessment of the state of the rule of law in the European Union (EU), conducted by the Civil Liberties Union for Europe (Liberties) in collaboration with 43 national member and partner organisations. As a ‘shadow report’ to the European Commission’s own annual audit, this document provides an independent, in-depth analysis of systemic challenges affecting the rule of law across EU Member States.

The Annual Rule of Law Cycle

The Annual Rule of Law Cycle was established in 2020 by the European Commission as a preventive tool, aiming to ‘promote the rule of law and prevent challenges from emerging or deteriorating’. While certainly promoting a dialogue around the rule of law, it is alarming that we do not see any long-lasting positive changes in countries systematically violating the fundamental values of the EU. Instead, a pattern of entrenchment is spreading across the region with a general deterioration in the respect for the rule of law and an overt disregard in several Member States.

Key Challenges to the Rule of Law

Rule of law infringements were reported in all areas from the justice system to anti-corruption,

media freedom, checks and balances, civic space, and human rights. The justice system still suffers from political manipulation, insufficient resources, and barriers to legal aid, which undermines its independence, quality and efficiency. In the realm of anti-corruption, there is a persistent lack of transparency, weak law enforcement, and inadequate protection of whistleblowers, leading to eroded trust in governmental integrity. Media freedom remains under threat, as political influence compromises the independence of regulatory bodies and concentrated ownership stifles pluralism, with journalists facing increasing harassment and legal challenges. Checks and balances are further weakened by the overuse of fast-track legislative processes, political interference in independent authorities, and compromised integrity of the electoral system, which erode the democratic and legal control over the government. Civic space continues to shrink, with widespread smear campaigns emboldening governments to adopt restrictive laws in particular on the right to peaceful protest and freedom of association. Finally, human rights are under increasing pressure, with stricter migration policies, inadequate protections for vulnerable groups, and rising discrimination and hate speech impacting minorities across the region.

Geopolitical Influences on the Rule of Law

These internal challenges are unfolding against a shifting geopolitical landscape, with the rise of far-right populism, democratic backsliding in the U.S., and global conflicts shaping Europe's political trajectory. The far-right's growing influence threatens EU unity, while Russia's war on Ukraine and declining transatlantic support for European security test the bloc's resilience. Migration policies are hardening, with states tightening borders and restricting asylum rights, often in violation of international law. Meanwhile, EU enforcement mechanisms remain weak, allowing illiberal trends to fester and rather than sending a clear message of the centrality of the rule of law and fundamental rights there are alarming signs of the EU degrading the rule of law from within. Without decisive action, the EU risks further democratic erosion, internal fragmentation, and weakened global standing.

Signs of Progress and Resilience

Despite significant challenges, we see some positive trends in certain countries. In Poland, the new government has attempted to restore judicial independence and media pluralism, while Estonia and the Czech Republic have developed in multiple dimensions of the rule of law, showing the signs of genuine and systemic efforts of improvement. We can also see that resilience remains strong, with civil society, independent media, and judicial bodies pushing back against democratic erosion. Courts have upheld key rulings protecting fundamental rights, and activists continue to challenge

restrictive protest laws. Meanwhile, the EU's anti-SLAPP directive and efforts to reinforce media freedom signal the role that the EU can play in setting new standards.

Our key findings on the horizontal dimensions are the following:

1. Justice System: Politicisation and Systemic Weaknesses

Several EU Member States grapple with political manipulation in the judicial appointment and removal processes as well as the operation of judicial self-governing bodies, including Bulgaria, Croatia, Greece, Hungary, Latvia, Lithuania, Malta, Slovakia, and Spain.

Political attacks against judges, most notably in France, Italy, Malta, Romania and Slovakia, and the non-execution of court judgments in Belgium, Bulgaria, Croatia, Germany, Hungary, Lithuania and Spain continue to be a deeply concerning trend.

The financial resources allocated to the judiciary are insufficient in an alarmingly large number of countries across the EU, leading to systemic problems such as overwhelming case-loads, inadequate salaries, and limited access to legal aid.

2. Anti-Corruption: Stagnation and Weak Enforcement

Many countries, like Bulgaria, Croatia, the Czech Republic, Germany, Greece, Malta, the Netherlands and Spain struggle with

regulating conflicts of interest and lobby transparency, resulting in inadequate oversight.

Whistleblower protections vary significantly across the EU, with several nations lacking effective compliance with the EU Whistleblower Directive, such as Estonia, Hungary, Italy, Latvia, Lithuania, the Netherlands, Slovakia and Spain.

The criminalisation, investigation, and prosecution of corruption is a general concern in most Member States. Serious problems with tackling high-level corruption due to institutional weaknesses and a lack of accountability were reported from Belgium, Croatia, the Czech Republic, France, Italy, Malta and the Netherlands.

3. Media Freedom: Rising Attacks & Government Control

Continued threats to the independence and functioning of public service media were reported from Bulgaria, Croatia, Greece, Hungary, Italy, Malta, Poland, Slovakia, Spain and Sweden.

Media ownership remains opaque, levels of market pluralism are low in many countries, and Member States where these problems are significant have not taken serious action to address the situation. This is especially true in Croatia, Hungary, Italy, Malta, and Romania.

Croatia, the Czech Republic, Germany, Greece, Italy, Malta, Romania, Slovakia and Sweden all witnessed verbal attacks, threats,

targeted smear campaigns or abusive lawsuits against journalists over the last year.

4. Checks and Balances: Fast-track legislation, politicised authorities and compromised electoral system

We can observe in almost all examined EU Member States an overuse of fast-track legislative procedures, a lack of adequate public consultation, and the normalisation of governance by executive decrees.

The Czech Republic and Italy still lack National Human Rights Institutions, while independent authorities struggle with political interference, resource shortages, and limited influence on government actions in many other countries, like Bulgaria, France, Germany, Greece, Hungary, Ireland, Lithuania, Malta, Romania, Slovakia and Sweden.

The electoral framework remains problematic because of the exclusion of people from the franchise based on their nationality or limited mental capacity in Belgium, the Czech Republic, Estonia, Hungary, Malta and Slovakia, and the manipulation of political advertising reported from Croatia, the Czech Republic, Greece, Hungary, the Netherlands, Romania, Slovakia and Spain.

5. Civic Space: Shrinking Freedoms for Activists and NGOs

Layers of reinforcing attacks ensured a continued closing of vibrant civic spaces and an increasing number of direct attacks against human rights defenders and civil society

organisations. In 2024, all countries reported one or more restrictions to civic freedoms with a noticeable deterioration in multiple Member States.

Smear campaigns and verbal harassment helped sew mistrust, which emboldened governments to embed restrictions in laws and funding policies. Several countries introduced laws that focus on ‘foreign agents’, ‘foreign interest representation services’ and lobbying restrictions including in Bulgaria, Hungary, France, Slovakia and the Netherlands. Hungary’s notorious ‘Sovereignty Law’ led to the launching of several investigations into NGOs and investigative journalists.

The right to peaceful protest has been under increasingly threat, particularly for climate activists and pro-Palestinian demonstrators. Protests were banned, locations restricted, and heavy penalties imposed. Many countries including France, Germany, Greece, Ireland, Italy, Hungary, Romania and the Netherlands, cited increased and disproportionate use of force by the police and several countries sought to cement restrictions through changes in the laws on the right to protest.

Online and media harassment also quite rapidly translated into funding restrictions and in several cases physical attacks.

6. Human Rights: Systemic violation of the rights of vulnerable groups

The governments of Croatia, Germany, Greece, the Netherlands, Slovenia and Sweden have

adopted stricter migration policies, threatening the rights of migrants and asylum seekers.

According to our country reports, in Italy, the Netherlands, Romania, Slovakia, Slovenia and Sweden, children’s rights remain an area with wide legislative gaps and insufficient protection, especially for unaccompanied minors, children belonging to minorities, and juveniles in the justice system.

CSOs across Europe have reported a rise in discrimination and hate speech toward ethnic and sexual minorities, especially in Bulgaria, Croatia, France, Hungary, Italy, Lithuania, Romania and Slovakia.

Prison overcrowding and poor detention conditions raise concerns in Ireland, France, Latvia, Slovenia and Latvia.

The persistence of significant infringements of the rule of law demonstrates that the EU’s muted reactions are inadequate to stop negative trends and achieve lasting positive improvements. Ensuring better adherence to the rule of law is in the best interest of the EU because it helps to increase public trust in EU institutions, foster economic stability, reinforce mutual trust among Member States which is the basis of judicial cooperation, and guarantee the effective implementation of EU law. To achieve these aims, it is essential for the European Commission to further improve its rule of law monitoring and enforcement activities and link them to other rule of law tools, most importantly the Article 7 procedure, the EU budgetary conditionality mechanisms, and infringement proceedings.

ABOUT THIS REPORT

This is the sixth edition of Liberties' coordinated report on the state of rule of law in the EU. The report lays out the most striking developments concerning the rule of law, democracy and related fundamental rights in 2024 in 21 countries across the EU, namely Belgium, Bulgaria, Croatia, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Malta, the Netherlands, Poland, Romania, Slovakia, Slovenia, Spain and Sweden. 43 civil society organisations from across the EU contributed to the research, which looked into a wide range of areas including the functioning of justice systems, the anti-corruption framework, media freedom, pluralism and safety of journalists, checks and balances, civic space and human rights defenders and systemic human rights violations affecting the rule of law.

Besides pulling together all the individual country reports drafted by member and partner organisations, the report includes an overview of general trends on the rule of law in the EU compiled by Liberties. It also formulates detailed recommendations addressed to both national governments and the EU institutions on how to address the shortcomings identified in each of the areas covered, and suggests how the European Commission could improve the impact of its monitoring exercise.

The country reports were compiled by national member and partner organisations on the basis of a common structure developed by Liberties. Insofar as the report is also meant as a contribution to the European Commission's public

consultation to feed its 2025 Annual Rule of Law Report, the common structure was developed by taking account of the priority areas and indicators identified by the European Commission for the purpose of its annual rule of law monitoring cycle. Each country report reflects the information collected, and the findings compiled by contributing organisations. In developing their country report, contributing organisations were requested to cover as many areas as possible. Due to their significant efforts, the obtained information is sufficiently representative to give an accurate indication of the trajectory for the rule of law and democracy inside the EU.

OVERVIEW: PERSISTENT STRUCTURAL DEFICIENCIES IN EU MEMBER STATES

The Liberties Rule of Law Report 2025 is the sixth annual report on the state of the rule of law in the European Union (EU) published by the Civil Liberties Union for Europe (Liberties) – the most in-depth reporting exercise to date on the rule of law in the EU by a civil society network. The report, jointly drafted by Liberties with 43 national member and partner organisations, is a ‘shadow report’ to the European Commission’s annual audit of the rule of law, aimed at providing the Commission with reliable information and analysis from the groups to use in its annual audit, as well as offering an independent analysis of the state of the rule of law in its own right.

One of the most striking conclusions drawn from Liberties’ six-year-long reporting endeavor is the persistence of reported violations and the overarching deterioration of the rule of law across the Union. While individual countries exhibit variations, a broader observation reveals that all fundamental aspects of the rule of law – namely, the justice system, anti-corruption measures, media freedom, checks and balances, civic space, and human rights – have encountered similar and deepening challenges over the past few years. This clearly highlights persistent and systemic deficiencies within the rule of law across EU Member States.

Justice system: politicisation, lack of resources, inefficiency

Previous reports on the rule of law by Liberties revealed several concerning trends in the justice system of EU Member States. Firstly, there has been a notable erosion of judicial independence driven by the politicisation of judicial selection and removal processes, and undue political interference in judicial self-governance. This trend has raised alarms about the impartiality of courts. Secondly, the justice systems have been severely underfunded, resulting in significant case backlogs and excessively lengthy court proceedings. Such resource constraints have compromised the efficient delivery of justice, leaving many cases unresolved for extended periods and diminishing public trust in legal institutions. Thirdly, inadequate legal aid systems have significantly hindered access to justice for the most vulnerable populations. Groups of economically disadvantaged people have faced substantial barriers, which marginalised them further within the judicial landscape. Lastly, many national governments have repeatedly failed to implement national and supranational court decisions, especially in politically sensitive cases. This non-compliance has had a negative impact on the authority of judicial rulings and posed risks to the fundamental rights of affected individuals.

This year's key findings

A well-functioning and fully independent justice system is indispensable for the enforcement of EU law, the protection of fundamental rights, judicial cooperation in the EU, maintaining trust in cross-border operations, as well as for the functioning of the single market and the EU's legal order.

Based on the reports, we see three trends in Member States. Firstly, the independence of the justice system remains vulnerable in a large number of Member States due to its politicisation affecting the selection and removal processes of judges and prosecutors, the composition of judicial councils, the judicial accountability systems, and the implementation of court judgments.

The (potential) political manipulation and lack of transparency in the selection and removal process of judges and prosecutors, including high-ranking officials in the justice system, remain significant issues across several EU Member States, including Croatia, Greece, Hungary, Latvia, Lithuania, Malta, Slovakia, and Spain. These problems compromise the independence and public trust in the justice system. Many of these countries failed to implement the necessary reforms despite the specific recommendations from the European Commission, the Venice Commission, and the OSCE/ODIHR. Some countries, like Germany, the Netherlands, Sweden, Ireland, and the Czech Republic, have implemented or at least initiated reforms to depoliticise the judicial appointment and removal process,

showing a willingness to better protect the justice system from undue political pressure.

Concerns have been raised regarding the composition and political influence within judicial councils, especially in Malta. In Bulgaria, due to the failed reform, the significant parliamentary influence over the judicial council persists. Meanwhile, a proposed constitutional reform in Italy poses a risk to the autonomy of the justice system. In contrast, the Netherlands and Estonia have taken steps to enhance the independence of their judicial self-governance.

The judicial accountability system shows serious defects due to instances of (potential) political interference and the restriction of judges' rights and freedoms in Hungary, Italy, Malta, and Romania. In contrast, the Netherlands, Slovakia, Belgium, and the Czech Republic have taken measures to improve the system.

Numerous examples from France, Italy, Malta, Romania, and Slovakia illustrate a troubling trend where political interference in the work of the justice system raises concerns about the separation of powers and the rule of law. This includes attempts to suppress judges' freedom of speech, intimidation from the executive branch, and public criticisms that undermine the judiciary's authority.

Poland is facing significant challenges in restoring judicial independence, primarily due to the heavily politicised National Council of the Judiciary (NCJ), elected under the previous government, and the unresolved status of irregularly appointed judges by the NCJ. The Venice Commission, judicial associations and

civil society organisations are assisting the government, but reforms are progressing slowly.

There is a noticeable lack of implementation and respect for court judgments in several European countries. Hungary maintains the highest rate of non-compliance of the Court of Human Rights (ECtHR) judgments, while Spain holds second place among countries that fail to comply with Court of Justice of the European Union (CJEU) decisions – without any sanctions from the European Commission. Members in Bulgaria have raised concerns about the lack of compliance with ECtHR judgments, emphasised by a lack of robust and binding legislative framework, as well as bodies monitoring effective implementation. Lithuania and Croatia have failed to cooperate and adopt the necessary amendments to comply with ECtHR rulings. CSOs in Germany have raised concerns about the introduction of border controls contrary to CJEU decisions, as well as the adoption of a resolution contrary to a recent ECtHR judgment. This irresponsible behavior by national governments undermines public confidence in the justice system and weakens the authority of the judiciary.

Secondly, several European countries including Belgium, Czech Republic, Estonia, France, Germany, Hungary, the Netherlands are not providing sufficient financial resources for their justice systems. This lack of funding has led to systemic issues such as overwhelming caseloads, inadequate salaries for judges and court staff, and concerns about the independence and effectiveness of the judiciary.

Finally, a large number of Member States fail to guarantee simultaneously the efficiency and the fairness of judicial proceedings, which causes significant problems for individuals seeking justice. Legal aid and justice across various Member States, including Croatia, the Czech Republic, Ireland, Italy, Lithuania, Malta, the Netherlands, Romania, and Sweden is fraught with significant problems. Issues include high costs of legal defence, low eligibility thresholds for legal aid, language barriers, and insufficient interpretation services. These barriers disproportionately affect marginalised groups, particularly those facing economic hardships or language difficulties.

Significant delays in judicial proceedings were reported from Malta, Belgium, Spain, Croatia, Ireland, Greece, and Germany. These delays affect various types of cases, particularly serious crimes and family matters, undermining the efficiency and effectiveness of the legal system. This situation has led to condemnations by the European Court of Human Rights in multiple cases.

Many European countries, including Croatia, Greece, France, Ireland, Italy, Malta, the Netherlands, Sweden face significant issues regarding the rights of individuals in the criminal justice system, particularly during pre-trial detention. These issues include systemic discrimination based on socio-economic factors and immigration status, inadequate conditions in prisons, and concerns over fair trial rights.

Anti-corruption: growing problems, stagnating reforms

The previous Liberties rule of law reports have highlighted several common trends across EU Member States regarding corruption. Firstly, many countries have constantly experienced high levels of corruption and scandals involving prominent political figures, with reports indicating a lack of significant progress in addressing this problem. The lack of transparency in public decision-making and public procurement procedures has remained a persistent problem. Secondly, there has been a general reluctance among national governments to revise their anti-corruption strategies and legal framework and take proactive legislative measures necessary to combat corruption effectively, leading to a stagnation in real reform. Several Member States have also faced challenges with implementing EU law, especially the EU Whistleblower Protection Directive. Thirdly, concerns have been repeatedly raised about the independence and effectiveness of national anti-corruption agencies and bodies offering protection to whistleblowers. Similarly, prosecuting corruption-related offenses has fallen short of the necessary level of effectiveness.

This year's key findings

Public authorities must effectively prevent and prosecute corruption to make sure that public funds and powers are used for the good of citizens, rather than for private gain by politicians and their allies. However, corruption remains a prevalent issue across several European countries, with significant challenges noted in Italy,

Romania, Malta, Greece, Hungary, Slovakia, the Czech Republic, Croatia, Bulgaria, France, the Netherlands, and Lithuania, impacting public trust and governance. Key concerns include lack of transparency in public funds management, weak whistleblower protections, and inadequate enforcement of anti-corruption laws, leading to a high risk of corruption in various sectors such as healthcare and public procurement.

Countries like Germany, the Netherlands, Greece, Malta and Spain face problems regulating conflicts of interest and revolving door practices, often lacking sufficient cooling-off periods and oversight for high-level officials. Recommendations from organisations like GRECO and the EU Commission for clearer rules and stricter enforcement remain largely unimplemented, leading to ongoing concerns about integrity and public trust.

Many European countries, including Bulgaria, Croatia, the Czech Republic, Spain and the Netherlands, struggle with effective lobbying regulations and transparency in public decision-making, often resulting in inadequate oversight and limited public trust. While some countries have made strides towards improved legislation, such as Germany's Lobby Register Law, loopholes and weak enforcement remain prevalent, highlighting the need for mandatory lobbying registers and enhanced accountability measures across the region.

Whistleblower protections across several European countries remain inadequate. In France, while the new framework improves reporting options, many entities lack proper

internal procedures. Italy's new law introduces drawbacks such as defamation sanctions and inconsistent protections. Slovakia, Estonia, Latvia, Lithuania, Hungary, the Netherlands, and Spain also show weaknesses in enforcement, clarity, and safeguarding whistleblower identities, necessitating stronger protections and reforms to comply with the EU Whistleblower Directive.

Many EU Member States exhibit gaps in the criminalisation of corruption, with specific examples including Bulgaria's narrow definition of corruption, Germany's limited application of new anti-corruption laws, Italy's recent decriminalisation of abuse of public office, Slovakia's amendments that reduce penalties for economic crimes, Latvia's failure to criminalise prohibited agreements in public procurement, and the Netherlands' gaps in criminal legislation.

Investigation and enforcement of sanctions for corruption offences face significant challenges in various European countries like the Czech Republic, Slovakia, Ireland, Malta, the Netherlands, Bulgaria and Greece. These challenges include inconsistent enforcement, lengthy judicial processes, and fragmented oversight bodies. Notably, high-level corruption cases often result in low conviction rates, undermining public trust and revealing weaknesses in the legal and institutional frameworks designed to combat corruption.

Investigating and prosecuting high-level corruption in several European countries, including Italy, Belgium, France, Croatia, Malta, the Netherlands, and the Czech Republic is

hampered by institutional weaknesses, legislative gaps, and political influences, leading to threats to investigative independence and inadequate protections for whistleblowers and journalists. Efforts to strengthen anti-corruption measures are hindered by issues such as low resources, lack of personal accountability for corporate executives, and insufficient legal frameworks, ultimately undermining public trust and the effectiveness of anti-corruption initiatives.

Media Freedom: Rising Attacks on Journalists, Government Manipulation, and Concentrated Ownership

The trends identified in the EU Member States over the recent Liberties' rule of law reports indicate a significant decline in media freedom and the safety of journalists. Firstly, reports have consistently highlighted a rise in verbal and physical attacks against journalists across various countries. Journalists have also often faced harassment in the form of strategic lawsuits against public participation (SLAPPs), designed to intimidate and silence them. Secondly, many governments have used public broadcasters for propaganda, blurred the lines between government communication and private advertising, and used political and economic pressure to harm independent media outlets. As a result, journalists have been increasingly practicing self-censorship to protect themselves in a hostile environment. Simultaneously, public trust in traditional media has decreased further, leading to concerns over the credibility and perceived bias of reporting. Thirdly, a high concentration of

media-ownership has been reported repeatedly from several Member States, allowing a small number of owners, often having ties to the political elite, to exert significant influence over public discourse.

This year's key findings

This year's report finds continuing threats to media freedom throughout the EU. Many governments maintain direct influence in choosing the leadership of national regulatory bodies, subverting their independence and impartiality. Continuing threats to the independence of national media regulatory authorities are observed in Croatia, Hungary, Greece, Slovenia, and Spain, Bulgaria and Malta also noted challenges in this area.

Public service media often shows even less separation from government influence – in some cases setting their editorial line to match the government's agenda. This year's report finds continued threats to the independence and functioning of public service media in Bulgaria, Croatia, Greece, Hungary, Italy, Malta, Poland, Slovakia, Spain and Sweden. These threats often include governments' continued use of state advertising money to support 'friendly' media outlets while neglecting those that guard their independence.

Few changes to either media ownership transparency or media pluralism were observed in 2024, and little proactive action has been taken ahead of the European Media Freedom Act's full enforcement later this year – a law that aims to address threats to both areas. Media ownership remains opaque, levels of

market pluralism are low in many countries, and Member States where these problems are significant have not taken serious action to address the situation. This is especially true in Croatia, Hungary, Italy, Malta, and Romania.

It is therefore unsurprising that the report finds low levels of public trust in media, although in many Member States public service media remains generally more trusted than other news sources. Croatia, the Czech Republic, Germany, Greece, Italy, Malta, Romania, Slovakia and Sweden all witnessed verbal attacks, threats and, in extreme cases, targeted smear campaigns against journalists over the last year. Journalists and independent media outlets also continue to face threats, harassment and attacks, including in the form of SLAPPs, across the EU.

Checks and balances: Lack of Inclusive law-making, political influence over independent authorities, and electoral manipulation

In the field of checks and balances, we can identify the following common trends based on Liberties' previous rule of law reports. Firstly, many governments have consistently bypassed transparent and inclusive law-making processes, often speeding up legislation without adequate public consultation. This trend was particularly notable during the COVID-19 pandemic but has persisted. Overall, there has been a concerning lack of accountability and inclusiveness in parliamentary law-making, undermining democratic principles. Secondly,

independent authorities, such as data protection and equality bodies, tasked with safeguarding rights and oversight have often faced significant challenges, including underfunding and political interference. In several countries, the appointment processes for these institutions have lacked transparency, raising doubts about their independence.

What is more, these bodies have often not been provided with sufficient financial resources and competencies to carry out their task efficiently and effectively. Thirdly, free and fair elections are the most important means for society to express its political will, yet numerous Member States have continued to exclude certain societal groups—such as third-country nationals, people with limited mental capacity and prisoners—from voting rights. Additionally, several countries have amended electoral laws in a manner that compromises the principles of transparency and democracy.

This year's key findings

The various actors of the system of checks and balances are supposed to exercise legal and democratic control over each other to prevent the growth of any power centre at the expense of others.

One requirement serving this aim is the enactment of laws in a transparent, accountable, democratic and pluralistic lawmaking process. However, the low quality of parliamentary law making and its lack of inclusiveness remains a particularly concerning trend. However, fast-track legislative procedures continue to be overused by Member States, such as Croatia,

Italy, Sweden, Hungary and Slovakia, often without the proper legal justifications. The lack of genuine public consultation and public engagement in political decision-making was reported from a large number of EU countries, including Romania, Ireland, Sweden, Estonia, Spain, Croatia, Hungary, Slovenia, Greece, Slovakia and Germany. In addition, executive decrees and emergency measures continue to be a normalised practice used to bypass the regular legislative procedure, for example in Italy, Sweden and Hungary. This process favours certain political agendas, especially with regards to criminal and migration laws, to the expense of the balance of powers.

Ombudspersons, national human rights institutions, equality bodies and other independent authorities that exercise non-judicial legal control over the political branches face significant challenges carrying out their constitutional function to defend the rule of law because they are often severely underfunded and exposed to undue political influence. Some Member States still lack National Human Rights Institutions (NHRIs), like the Czech Republic and Italy. The political interference in the selection of the heads of independent bodies and their operation has remained a concern in Slovakia, Romania, Bulgaria, Germany, Greece, Malta, Sweden, Ireland. This is explained by a lack of protective legislative framework guaranteeing their transparency and autonomy. The effective functioning of NHRIs has been critically hindered by a lack of financial, legal and human resources in several Member States. This challenge is reinforced by the minimal influence these institutions have on political authorities, most notably due to a lack of enforcement

powers and the national governments' reluctance to implement their recommendations. Such problems were reported from Ireland, Germany, Lithuania, Malta, France, Hungary.

Free and fair elections are the ultimate guarantees of democratic accountability. Nevertheless, in multiple Member States, voters continue to be excluded from effective electoral participation based on their nationality or limited capacity, such as in Belgium, Czech Republic, Hungary, Slovenia, Estonia and Malta. The poor quality of the enactment process of new electoral legislation was subject to strong criticism in Ireland and Hungary. The manipulation of political advertising during campaigns resulting in the (potential) distortion of the electorate's free will-formation was reported from a concerning large number of EU Member States, including Greece, Hungary, Romania, the Czech Republic, the Netherlands, Spain, Slovakia and Croatia.

Civic space: Restrictions on NGOs, threats to protests and attacks on activists

The Liberties rule of law reports have, over the years, highlighted several concerning trends regarding civic space in EU Member States. In 2024, all countries reported one or more restrictions to civic freedoms with a noticeable deterioration in multiple Member States.

This year's key findings

Looking at freedom of association, most governments introduced, maintained, or proposed laws that limit the operating space for NGOs,

with a particular emphasis on laws that focus on 'foreign agents', 'foreign interest representation services' and lobbying restrictions. This included draft or final laws in Bulgaria, Hungary, France, Slovakia and the Netherlands. In Hungary, following the adoption of the Sovereignty Protection Act in December 2023, in 2024 the Office of Sovereignty Protection launched several investigations into NGOs and investigative journalists.

The right to peaceful protest has been under increasingly threat, particularly for climate activists and pro-Palestinian demonstrators. Protests were banned, locations restricted, and heavy penalties imposed. Many countries cited increased and disproportionate use of force by the police, including in France, Germany, Greece, Ireland, Italy, Hungary, Romania and the Netherlands, and several countries sought to cement restrictions through changes in the laws on the right to protest.

Human rights NGOs and activists have faced rising verbal and physical attacks, as well as legal harassment and smear campaigns. These attacks were more often aimed at organisations working on issues pertinent to marginalised groups, climate change, and migration. It was also noticeable that varying forms of online and media harassment are increasingly and quite rapidly translating into funding restrictions and legal measures against individuals and organisations. Threats were reported in many countries including Belgium, Croatia, France, Germany, Ireland, Italy, Romania, Slovakia, Slovenia, Spain and the Netherlands.

Finally, information has become increasingly difficult to access. Several countries, including Croatia, France, Germany, Italy, Spain and Slovakia, imposed new restrictions or continued to utilise restrictive measures on access to information – thus hindering accountability and trust in public institutions.

In most countries, the combination of these restrictions resulted in a noticeable decline in civic freedoms, with many changes difficult to immediately reverse. Negative narratives embedded a suspicion of civil society organisations, and laws and policies entrenched the backsliding.

Human rights: Rights of asylum-seekers, children and LGBTQIA+ persons underprotected

The Liberties rule of law reports have highlighted several systemic human rights violations across EU Member States over the last few years. Key issues include discrimination against racial and ethnic minorities, migrants, and LGBTQIA+ persons, significant infringements of the rights of migrants and asylum-seekers, poor detention conditions and police ill-treatment, privacy rights and data protection violations, and a general reluctance of national governments to comply with human rights decisions delivered by national and supranational courts, especially in the field of asylum law.

This year's key findings

Some governments have adopted stricter migration policies, increasing the risk to the

rights of migrants and asylum seekers. Collective pushbacks to other countries, such as expulsions from Croatia to Bosnia-Herzegovina and Serbia, have been reported, and CSOs have raised concerns regarding forced returns from Slovenia and Greece to countries where migrants and asylum seekers face inhumane and degrading treatments. New migration policies and proposals have also been introduced in several Member States, such as the Netherlands, where the new right-wing cabinet drafted a proposal for a temporary asylum crisis law that would allow the government to circumvent the current immigration acts through emergency legislation. In Germany, Sweden and Slovenia, refugees have seen their protective status weakened by amendments affecting their social benefits and increased criminalisation of illegal crossings.

Children's rights remain an area with wide legislative gaps and insufficient protection, especially for minority children and those of same-sex couples. Slovenia, the Netherlands and Sweden's migration policies have particularly affected the increasing number of unaccompanied minors. Civil society organisations in Slovakia and Romania have additionally reported worrying trends concerning children belonging to minorities, especially with regards to access to education for Roma communities. The access to mental health services for children in Ireland has persisted this year. Sweden and Italy have adopted stricter legislations on juvenile delinquency and prisons, impeding children's rights.

Racism and discrimination of minorities was an EU-wide trend in 2024. Roma communities

continued to face discrimination in Croatia, Romania, Slovakia and Hungary. In Bulgaria, the government denied the registration of an ethnic Macedonian non-governmental organisation on arbitrary grounds and travellers in Ireland are most affected by homelessness. In France, racial profiling is still endorsed by law enforcement, and the state has failed to implement concrete measures to address the rise of hate speech, xenophobia, antisemitism and racism. LGBTQIA+ rights have been increasingly threatened this year both by the lack of legal protection and governments promulgating discriminatory laws. CSOs in Italy, Slovakia and Lithuania have reported the lack of protection of rights of LGBTQIA+ communities.

Race to the bottom: Member States' overall rule of law performance

The European Union and its Member States have long been at the forefront of efforts to promote the rule of law, democracy and the protection of human rights. But this situation has changed dramatically over the past decade. International rule of law indices, such as Rule of Law Index of the World Justice Project (WJP)¹ and the V-Dem Rule of Law Index,² reveal a concerning decline in adherence to the rule of law among EU Member States between 2015 and 2024. Based on these databases, the median rule of law score of all EU

Member States has steadily declined, from 0.73 to 0.72 according to WJP, and from 0.96 to 0.93 according to V-Dem. This is despite the European Union's efforts to tackle the rule of law crisis manifested in the use of a growing number of rule of law tools.

EU Member States, however, do not constitute a homogenous group. Certain European countries, such as Denmark, Finland, Sweden, Germany, Luxembourg, the Netherlands, Ireland, and Estonia, consistently maintain high rule of law scores. In contrast, the poorest performers include Malta, Cyprus, Italy, Poland, Slovakia, Romania, Croatia, Greece, Bulgaria, and Hungary. Almost all countries have shown both some regression and progress in the past decade, but the overall picture indicates a growing disparity between high-performing and low-performing Member States, and the continuous decline in the rule of law index in poorly performing countries. This concerning trend poses challenges for the integrity of the EU's foundational values.

As in past years, we invited the organisations and experts contributing to the Liberties Rule of Law Report 2025 to share their observations on whether they have noted progress, stagnation, or regression in the areas of the justice system, anti-corruption, media freedom, checks and balances, civic space, and human rights. Drawing from their valuable

1 World Justice Project, 2024 Rule of Law Index, available at: https://worldjusticeproject.org/rule-of-law-index/?gad_source=1&gclid=CjwKCAiAw5W-BhAhEiwApv4goKwPyJQJ5AUjVokM0-nimoVsBtQdEBZu_vCo6vbGbrsA21gEX77SmBoCXpcQAvD_BwE.

2 Varieties of Democracy, Country Graph, available at: https://v-dem.net/data_analysis/CountryGraph/.

insights and the detailed country reports, we can look at the trends, highlighting the positive advancements as well as troubling setbacks and entrenched deterioration observed in some Member States.

Firstly, Member States that have developed in multiple dimensions of the rule of law show signs of genuine and systemic efforts of improvement. This category includes the **Czech Republic**, which has made notable progress in the justice system with advancements in gender representation, prosecutorial reform, and salary increases for court staff. Additionally, there has been functional cooperation between the government and the civil sector. However, stagnation persists in combating corruption, ensuring media freedom, and improving the institutional framework of human rights protection.

Similarly, **Estonia** has made notable progress in strengthening its judicial transparency, particularly through clearer criteria for Supreme Court appointments and ongoing efforts to address court backlogs. The anti-corruption framework is also improving, with enhanced transparency in public procurement and more rigorous investigations into high-profile cases. However, challenges remain, particularly in whistleblower protection, where the law is underutilised. Additionally, while media freedom has advanced, there are still concerns about misinformation and political pressure on journalists. Concerning human rights, the government has not addressed the legal recognition of same-sex partnerships.

Poland shows similarly positive trends, as the new government that took office in 2023 has attempted to implement significant reforms in the justice system and media to enhance the country's overall respect for the rule of law. However, due to the unique challenges it faces, Poland has become a laboratory of rule of law restoration after a massive and rapid decline. Its situation is discussed in more detail in the section titled 'Rule of Law Monitoring: Why It Matters?.'

Secondly, several Member States exhibited stagnation or only minimal progress in their rule of law indicators. These countries include **Greece, Ireland, Malta, the Netherlands, and Spain**. It is important to note that there are significant differences among these countries regarding the overall state of the rule of law. Malta and Greece rank among the lowest performers in the EU in terms of their rule of law scores, while Ireland, Estonia, and the Netherlands are recognised as some of the highest performers. Spain falls somewhere in the middle. However, the rule of law necessitates ongoing progress, adaptation to new challenges, and improvement of existing standards. These Member States need to do more to fully realise their potential.

The **third category** includes countries that typically demonstrate strong adherence to the rule of law but have recently exhibited troubling negative trends. These trends suggest that they may be at risk of entering a phase of decline in their rule of law standards. In 2024, **Sweden** demonstrated stagnation in most areas related to the rule of law, with notable regression in checks and balances and human rights. The

government has imposed stricter measures on peaceful protests and restricted rights to freedom of assembly and expression, particularly targeting climate activists. Additionally, funding for ethnic organisations was cancelled, contradicting previous recommendations and further hampering civil society's participation in the legislative process. **Belgium** has experienced regression in key areas - for example, judicial decisions affecting the press indicate a decline in the protection of journalists, with public and private entities improperly suing journalists and courts overlooking censorship bans. **Germany** has seen little progress in the rule of law and regression in civic space and human rights. Extensive budget cuts are threatening civic space, while modest changes to tax exemption laws for civil society organisations are insufficient. In the wake of a terrorist attack in Solingen, new asylum and security measures represent systematic human rights violations without evidence of improving internal security.

France has witnessed a particularly troubling decline in the rule of law across four critical areas: media, checks and balances, civic space, and human rights. Media concentration has intensified, with major publishing houses primarily supporting a far-right political agenda, while the government has neglected the need for diverse media representation. Checks and balances have also weakened, exemplified by the government's disregard for the outcomes of the European Parliament elections and its stifling of legislative processes. In civic space, new security laws have curtailed freedoms of expression and assembly, leading to arbitrary sanctions against protesters. Finally, systemic

human rights violations, including racial profiling and neglect of prisoners' rights, have been exacerbated, with France facing sanctions from various courts without any significant follow-up on recommendations.

Fourthly, there are several countries whose governments have systematically disrespected the rule of law. This disrespect may stem from either deliberate actions taken to undermine this principle or a failure to implement necessary reforms to improve the situation. These countries include Italy, Bulgaria, Croatia, Romania, Slovakia, and Hungary. Our finding is corroborated by international rule of law indices which clearly show that these countries have in the past decade consistently ranked among the lowest performers in the EU.

In 2024, **Italy** experienced major problems in the rule of law, marked by reforms that compromised judicial independence and promoted a punitive approach to justice. Media freedom faced unprecedented attacks, with public officials targeting journalists and fostering an environment hostile to criticism, which eroded freedom of expression. Additionally, the right to protest and civic engagement was increasingly threatened, as the government moved to criminalise dissent and silence opposition voices.

Bulgaria's anti-corruption framework was further compromised as institutions were manipulated to target political and business opponents rather than effectively combat corruption. The system of checks and balances was weakened by political instability and delays in electing new members to key agencies, undermining

pluralism and effective governance. Additionally, civic space was threatened by new legislation that restricted the activities of NGOs and curtailed freedoms related to gender identity, creating barriers to their engagement in educational settings.

Croatia's judicial system faced significant challenges due to the controversial appointment of a State Attorney General associated with corruption suspects, which weakened anti-corruption efforts and raised concerns about integrity and independence. In the media landscape, amendments to the Criminal Code have risked sanctioning whistleblowers, and there has been a lack of progress in implementing protections against strategic lawsuits that threaten journalists. Additionally, efforts to ensure fair and transparent state advertising allocation and enhance legal frameworks for media freedom remain inadequate.

The rule of law in **Romania** has further declined due to the heavy influence of political advertising on media, compromising journalistic independence and fostering biased reporting. Additionally, rising threats against journalists have created a hostile environment that stifles free expression and investigative journalism. Lastly, the inadequate responses from institutions to misinformation and the lack of effective public consultations undermine the integrity of democratic processes and weaken checks and balances.

The rule of law in **Slovakia** continued to deteriorate due to significant legislative changes that have weakened anti-corruption mechanisms, such as the abolition of the Office of the Special Prosecutor and the National Criminal Agency. This erosion of accountability and oversight has further weakened the state's ability to effectively investigate and prosecute high-level corruption. Additionally, the government has frequently employed fast-track legislative procedures, bypassing public consultation and limiting democratic participation in the law-making process. Media freedom has also been compromised, with increased political influence and threats against journalists, hindering their ability to investigate and report without fear. Finally, restrictions on civil rights and the proposed legislation targeting non-governmental organisations further contribute to the decline of democratic norms and the rule of law in the country.

Finally, Hungary can be classified as a separate category because its rule of law score is markedly lower than the EU average. Already in its 2022 interim report, the European Parliament called Hungary a “hybrid regime of electoral autocracy”.³ Unfortunately, the situation has only deteriorated since then. In 2024, the rule of law experienced further significant regression across various domains. The justice system is struggling with inadequate funding and staff shortages, which has led to increased governmental pressure that threatens

3 European Parliament, Interim report on the proposal for a Council decision determining, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded, 2002, available at: https://www.europarl.europa.eu/doceo/document/A-9-2022-0217_EN.html.

judicial independence. The media environment remains constrained, with no legislative changes to enhance media freedom and the continued operation of state-controlled entities, showcasing further decline. Additionally, civic space is being undermined by restrictive laws targeting NGOs and public participation, while human rights violations have escalated, with new legislation adopted without public consultation and ongoing non-compliance with international court rulings. Given these systemic violations of the rule of law following the government's refusal to implement genuine reforms and tricks to avoid lasting improvement in problematic areas, Hungary would not be admitted to the European Union today.

The bleak future of democracy in Europe

The ongoing decline of the rule of law in EU Member States and the EU's inability to achieve lasting improvements in countries that violate this principle is particularly concerning in light of current political developments, most notably the rise of far-right populist parties in Europe, the outcome of the U.S. elections and the ongoing war in Ukraine.

The PopuList database,⁴ which covers the years 1989 to 2022, demonstrates a consistent growth in support for populist, far-right, and far-left parties since 1989, with a significant spike in 2015 that has continued to rise. By 2019, support for populist and radical political parties in European countries reached 30%, and this trend further increased in 2022. The data indicates that the majority of this support goes to populist and far-right parties.

A 2024 study by the European Center for Populism Studies (ECPS)⁵ highlights the rise of populist parties in Europe, which secured 263 out of 720 seats in the European Parliament, making up about 36% of the total. This includes 177 seats (approximately 24%) from right-wing populist parties, up from 168 seats in 2019. In June 2024, 60 populist parties from 26 EU Member States gained representation, an increase from 40 parties in 22 countries in the previous elections. The rise is particularly notable in countries like France, Italy, Poland, and Hungary. The new European Parliament composition indicates a shift to the right, with dominant right-wing parties including France's Rassemblement National (30 seats), Italy's Fratelli d'Italia (24), Poland's Law and Justice Party (PiS - 20), Germany's Alternative for

4 *The PopuList*, *The PopuList: A Database of Populist, Far-Left, and Far-Right Parties Using Expert-Informed Qualitative Comparative Classification (EiQCC)*, British Journal of Political Science, Cambridge University Press, 20 September 2023, available at: <https://www.cambridge.org/core/journals/british-journal-of-political-science/article/populist-a-database-of-populist-farleft-and-farright-parties-using-expertinformed-qualitative-comparative-classification-eiqcc/EBF60489A0E1E3D91A6FE066C7ABA2CA>.

5 ECPS Report, *2024 European Parliament Elections under the Shadow of Rising Populism*, 2 November 2024, available at: <https://www.populismstudies.org/ecps-report-2024-european-parliament-elections-under-the-shadow-of-rising-populism/>.

Germany (AfD - 15), and Hungary's Fidesz (11). Right-wing populists are divided among European Conservatives and Reformists Group (ECR), Patriots for Europe (PfE), and Europe of Sovereign Nations (ESN) groups. This trend shows the mainstreaming and normalisation of populist parties. According to the report, this is happening due to a dual process: on one side, populist politicians are modernising and moderating their approaches, while on the other side, mainstream parties are accommodating populist ideas and policies.

Recent research shows that populist parties pose a significant threat to liberal democracy in Europe.⁶ Their increasing involvement in government and the breakdown of barriers to their political power correlate with a deterioration in liberal democratic qualities. This suggests that governance by populist parties in general, but exclusionary populist parties in particular, is linked to a genuine risk to the foundational principles of liberal democracy. Prior studies have similarly indicated that when populism is in power, it often leans toward autocratic tendencies, which are rooted in the nature of populist governance.⁷ This might result merely in democratic backsliding or a decline in democratic quality, but it can also result in a shift toward autocracy.

The 2024 US election was a pivotal moment for the entire Trans-Atlantic region. The entry into office of the second Trump administration has had profound implications for the unity of NATO, support for Ukraine, and trade relations between the US and the EU. Equally importantly, this shift in American politics also signals a broader democratic backsliding in Washington and increasing polarisation in American society. What is more, President Trump's illiberal measures, such as the renewed hardline immigration policy, the systematic purge of federal agencies, and the negation of climate change may encourage European populists to adopt similar decisions.

2024 was also a turning point in how the Trans-Atlantic alliance manages its response to the ongoing war between Russia and Ukraine. Although European defence spending continues to rise, the new administration in the US clearly weakened its support to Ukraine and exacerbated internal tensions within NATO. Such conflicts could potentially undermine the Trans-Atlantic defence forces.

What ties these three developments together is the fate of a Europe traditionally characterised by a strong commitment to the rule of law, democracy, and human rights. The rightward shift in Europe, the start of a new Trump-era, and the weakening of NATO's unified

6 Centre d'Etude de la Vie Politique, *Threat or Corrective? Assessing the Impact of Populist Parties in Government on the Qualities of Democracy: A 19-Country Comparison*, Government and Opposition, Cambridge University Press, 6 July 2021, available at: <https://www.cambridge.org/core/journals/government-and-opposition/article/threat-or-corrective-assessing-the-impact-of-populist-parties-in-government-on-the-qualities-of-democracy-a-19country-comparison/BDCB69DB98745BC6CA5961586C76B010>.

7 Muno, W., & Pfeiffer, C. (2022). Populism in power—A comparative analysis of populist governance. *International Area Studies Review*, 25(4), 261-279, available at: <https://doi.org/10.1177/22338659221120067>.

support for Ukraine send very alarming signals of fragmentation caused by populism and polarisation, which weaken Europe's capacity to defend itself from internal and external authoritarian threats.

RULE OF LAW MONITORING: WHY IT MATTERS?

The rule of law has been regarded as a fundamental value of the EU and its Member States ever since the Court of Justice declared in the 1986 case of *Les Verts* that “the European Economic Community is a Community based on the rule of law”.⁸ This principle was later enshrined in Article 2 of the Treaty on the European Union and defined in more detail by the EU institutions.⁹ The case law of the Court of Justice and the Commission’s annual rule of law reports are the main sources that guide our interpretation of this principle.

The ‘rule of law’ can be defined as a set of rules and principles that ensure that the authorities use their powers and public resources for the good of citizens. This means that the public should be able to follow and participate in decisions taken by their elected representatives, by being able to receive accurate and balanced information from a free and plural media and be free to voice their opinions by, among other things, working through civil society organisations and using their right to protest. It also means that governments should facilitate input from citizens, for example, through transparent lawmaking procedures and meaningful public consultations. The rule of law also requires safeguards against corruption to ensure that the authorities use public resources legally, and to guarantee that laws adopted by governments

respect human rights. To make sure these standards are followed, the rule of law requires independent and impartial institutions that are easily accessible by citizens and have sufficient powers and resources to enforce the rules. While this primarily relates to a country’s judiciary, it also includes other bodies such as ombudspersons and national human rights institutions. When a government respects the rule of law, those who have power in society use it for the good of their citizens and all individuals can enjoy equal rights, freedoms and opportunities, participate actively and freely in social, economic and democratic life.

When a government erodes the rule of law, it is free to abuse its powers and serve the private interests of the ruling party at the expense of the public good. At its most serious, governments attack the rule of law to facilitate corruption and enrich themselves and their business allies, to remove rights and freedoms so citizens cannot hold their representatives to account, and to attack equality for marginalised groups as a way of mobilising their base. For example, judges who are not independent of politicians or businesses may be unwilling to hold powerful corporations to account for breaking laws that protect people or the environment. If a government creates laws that allow for exceptions or preferential treatment for their allies,

8 Case 294/83 Parti écologiste ‘Les Verts’ v. European Parliament, [EU:C:1986:166](#).

9 Commission Communication COM(2019) 163 - Further strengthening the Rule of Law within the Union; Article 2(a) of Regulation (EU, Euratom) 2020/2092 of the European Parliament and of the Council of 16 December 2020 on a general regime of conditionality for the protection of the Union budget.

corruption may become rampant and politicians may freely pocket our resources for themselves instead of funding the things our communities rely on, like schools and hospitals. If laws are adopted without transparent discussions that do not allow the public or those with expertise to contribute, the government may use the legislative process to arbitrarily take away the opportunity to find work, get healthcare, join associations, or receive an education from some people. Without a free and open public debate, and when the right to be informed and engage in critical thinking and expression is hampered by surveillance, censorship or retaliation in the form of, for example, administrative or legal harassment, citizens cannot speak up and shape the society we live in.

People are, therefore, the ultimate beneficiaries of governments' obligation to abide by the rule of law. It is important to monitor the state of the rule of law so that economic, political and legal tools to protect and restore the rule of law can be mobilised and directed appropriately by the EU and other entities that promote human rights and democracy.

As an independent organisation committed to safeguarding the rights of everyone in the EU, regularly monitoring and reporting on the health of the rule of law in the EU is one of Liberties' priorities.

The limited impact of the EU rule of law toolbox

Article 2 of the Treaty on the European Union reflects the commitment of the EU and its Member States to uphold core values such as

democracy, the rule of law, and human rights, which are foundational to modern democracies. In recent years, this dedication has led to the activation of existing legal mechanisms and the development of new tools designed to identify threats to the rule of law and to hold governments accountable for intentional attacks and systemic failures.

However, the ongoing deterioration of the rule of law in EU Member States, which is well documented in Liberties' annual reports as well as in international indices, is a reflection of the EU's muted responses to this crisis. Initially, the rule of law decline was viewed as primarily an issue in Hungary, but it spread to Poland and other countries, making it clear that this trend is broader, with populist governments in other countries adopting similar tactics. Moreover, many EU Member States continue to experience systemic deficiencies related to weak institutions and limited democratic traditions.

As a late response to this crisis, the EU has repurposed certain existing tools and created numerous new instruments to safeguard the rule of law. The EU's rule of law toolbox contains a large number of various instruments, including the Rule of Law Framework, the Annual Rule of Law Cycle (with the Commission's Annual Rule of Law Report), the EU Justice Scoreboard, the European Semester, infringement procedures initiated by the Commission, preliminary references referred to the CJEU by national judges, and the various EU budget protection mechanisms making EU funding conditional upon Member States' compliance with certain rule of law

requirements. Despite the diversity of these instruments, or maybe exactly because of this reason, their overall impact has been minimal.

There have been some partial successes attributed to these tools. For instance, the European Commission has initiated numerous infringement procedures and Polish judges have frequently sought guidance from the CJEU, yielding evidence of systemic deficiencies in judicial independence in Poland. Similarly, the conditionality of EU funds prompted Hungary's government to implement a judicial reform in 2023. However, these achievements have not proved to be comprehensive or sustainable solutions. The new Polish government faces significant challenges in restoring judicial independence, despite CJEU rulings, and Hungary continues to undermine the integrity of the justice system. Overall, the EU's tools have so far failed to effectively address systemic rule of law deficiencies in its Member States.

Alarming trends at EU level

Marking an alarming trend, some of the concerns reported in different Member States have increasingly been mirrored in the EU itself. This undermines the European Commission's role as the guardian of the treaties and, as described above, the ability of the EU to effectively deploy its own rule of law toolbox. Three concerning and interlinked challenges were observed.

Firstly, the EU has proposed the introduction of legislation that risks undermining fundamental rights and reflect laws that the EU has rightly criticised in other countries. Foremost

in this area is the proposed directive on the transparency of foreign interest representation services – which, despite including certain fundamental rights safeguards, bears too close a resemblance to the multiple 'foreign-agent laws' that the EU has warned against. In 2023, the proposal was delayed, partly due to significant concerns raised by civil society organisations and a lack of a fundamental rights impact assessment. However, the final proposal maintained problematic elements, including unclear definitions, a significant administrative burden and an implicit stigmatisation of foreign funding. The proposal will likely fail to tackle the purported issue of covert interference and risks misuse by malicious governments.

Secondly, in recent months there has been an alarming trend for parts of the EU to override the standard legislative process leading to legal uncertainty and a pre-eminence of the most powerful actors. A failure to ensure a robust fundamental rights impact assessment ahead of legislative proposals has become increasingly common, but further concerns can be exemplified by the actions around the Corporate Sustainability Due Diligence Directive (CSDDD). While political agreement was reached on the text at the end of 2023, certain Member States sought to re-open the text and, with no consultation and minimal space for dissent by the European Parliament, succeeded in watering down the text, which was then adopted before the end of the legislative term. Then, in an astounding move, towards the end of 2024 and well before the text was even been implemented, the Commission indicated a plan to propose new legislation that would re-open the agreed CSDDD. This

undermines five years of consultation, negotiation and compromise and wholly disregards the certainty of the legislative procedure.

Thirdly, reminiscent of the smear campaigns many CSOs face in Member States, civil society working at the EU level has faced similar attacks. At the end of 2024, several environmental NGOs received notification from the European Commission that they could no longer use funding received under the EU's 'Life Programme' for advocacy. This seemingly stemmed from unsubstantiated concerns raised by MEPs that civil society organisations were being directed in their advocacy by the European Commission. This led to a full fronted campaign, amplified by the media, casting civil society as a 'shadow lobby' whose funding should be redirected towards the security of the Union. The apparent aim, which is a major concern for civil society, is that the continued narrative sews mistrust in civil society and leads to reduced financial support in the next Multi-Annual Financial Framework – the negotiations for which these smear campaigns seem timed to influence.

While elements of these attacks have been documented over the past years – the combined application and the overarching global environment mean they are a significant cause for concern, undermining the respect for the rule of law at the heart of the EU.

The challenges of rule of law restoration: the case of Poland

Between 2015 and 2023, Poland's rule of law was systematically eroded, primarily due to the United Right coalition led by the PiS and supported by President Andrzej Duda. Their reforms sparked an ongoing conflict with the European Commission regarding the Polish government's adherence to EU law. As highlighted in various international indices, including the World Justice Project and V-Dem, and minutely documented in Liberties' annual rule of law reports, Poland's commitment to the rule of law significantly declined under PiS, with notable impacts on judicial independence, media freedom, civil society, and the rights of women and minorities.

Following the 2023 parliamentary elections, power shifted to a new government led by Donald Tusk, which aims to restore the rule of law. However, it faces the critical challenge of addressing the undemocratic reforms enacted by PiS through legitimate and democratic means. This situation has turned Poland into a real-time case study on the complexities of restoring rule of law, revealing the difficulties in reversing entrenched policies and practices.¹⁰ As the 2024 Liberties Rule of Law Report's country chapter on Poland shows, the two critical areas that need reform are the justice system and the media.

10 Maria Skóra, 'Restoring the Rule of Law', 18 December 2024, Verfassungsblog, available at: <https://verfassungsblog.de/restoring-the-rule-of-law>.

In 2024, efforts to promote the rule of law and restore judicial independence concentrated primarily on policy reforms. Key initiatives included halting smear campaigns against the judiciary, aiming to reinstate the independence of the prosecution service, and renewing court leadership in cooperation with the judicial community.

Despite these efforts, no significant legislative changes were enacted to enhance judicial independence. Although Parliament considered draft legislation related to the National Council of the Judiciary and the Constitutional Tribunal, these proposals have yet to be implemented. Issues outlined in the Action Plan on the Rule of Law, particularly concerning the status of the unlawfully appointed judges by the politically captured National Judicial Council under the PiS government, remain unresolved. In September 2024, the government proposed a draft framework to tackle this issue, but no specific legislative measures have emerged since then.

The government has expressed willingness to comply with key judgments from the ECtHR and the CJEU concerning judicial independence. Nevertheless, full implementation of these judgments has not been achieved, mainly due to ongoing political disagreements between the current ruling majority and the President, along with the lack of a definitive governmental strategy for restoring the rule of law.

The current government aims to reform Poland's media landscape as well, particularly focusing on public media regulation. A legislative draft outlines some major changes,

including restructuring the National Broadcasting Council. However, public consultations suggest the reforms may not effectively address critical issues, especially the National Broadcasting Council's (NBC) lack of political independence, influenced by the previous governing party. The proposal only suggests limited changes to members' terms and eligibility. Many NGOs and the Commissioner for Human Rights advocate for more systematic changes to ensure political pluralism and gender balance. Concerns persist about the Council's authority to fine broadcasters for unlawful content, yet the Ministry of Culture has shown no intention to amend these provisions.

Poland's media market is regulated by two bodies: the NBC and the National Media Council (NMC). The latter was controversially established by the previous government, stripping the NBC of key powers. The Polish Constitutional Tribunal declared the establishment of the NMC unconstitutional in 2016, but the ruling remains unimplemented. After the 2024 elections, the new government largely ignored the NMC. However, by the end of 2024, the ruling coalition changed its approach, dismissing the Council's chairman and appointing a new council member from the ruling coalition who subsequently assumed the role of chairman.

In December 2023, the Minister of Culture declared public broadcasting companies insolvent, initiating bankruptcy proceedings and appointing receivers to manage them. These appointments provide minimal safeguards for independence, as receivers can be dismissed by the Minister at any time. Although this

measure was reportedly intended to mitigate legal controversies surrounding the changes in public media, it has, in practice, placed these institutions in a legal framework with even fewer formal guarantees of independence than before.

The Polish experience illustrates that restoring independence of politically compromised institutions is an extremely challenging endeavor. Striking a balance among the interests of various professional groups, ensuring the neutrality of reestablished checks and balances, and promoting transparent decision-making processes present significant hurdles, while appointees of the previous regime complicate these efforts.

The current Polish government's endeavors have garnered attention from key European Union stakeholders. Donald Tusk's efforts in Brussels successfully unlocked Recovery and Resilience Facility funds for Poland. However, the EU should continue supporting Poland's quest to restore the rule of law while closely monitoring the situation to prevent violations in the restoration process.

Poland should serve as a cautionary tale for the EU, highlighting the need to address declines in the rule of law within Member States promptly, which necessitates swift action through the rule of law mechanisms at the disposal of EU institutions, particularly the Commission.

Recommendations to the EU

The decline in the rule of law within EU Member States presents several challenges that could have far-reaching implications for the entire European Union. Firstly, there has been a noticeable decrease in public trust towards core institutions, which is exacerbated by populist narratives that blame the EU for various issues, question the legitimacy of its governing bodies and suggest a collusion with independent civil society organisations. This erosion of trust can hinder cooperation and collaboration among Member States, affecting the Union's overall cohesion.

Additionally, poor economic performance tends to stem from a lack of legal certainty and high levels of corruption, undermining the principles that support the four fundamental freedoms: the free movement of goods, services, capital, and people. This economic instability can have a spillover effect, impacting trade and investment across the EU.

Moreover, the erosion of mutual trust between Member States, which is crucial for the effective functioning of EU law, can lead to increased complications in judicial cooperation, as seen for example in cases related to the European Arrest Warrant. Contestation of the primacy of EU law, especially by politically captured apex courts serving the interests of populist governments, is another significant concern, as it threatens the uniform application and enforcement of laws that underpin the Union's legal framework.

Given these challenges, it is essential for the European Commission to further improve its rule of law monitoring and enforcement activities. Ensuring adherence to the rule of law is in the best interest of the EU because it helps to restore public trust in EU institutions, foster economic stability, reinforce mutual trust among Member States, which is the basis of judicial cooperation and guarantees the primacy of EU law. By proactively defending the rule of law, the Commission can maintain the integrity of the legal system, promote accountability, and safeguard the fundamental values upon which the EU is built. This approach not only strengthens the Union but also enhances its capacity to address the concerns of its citizens effectively.

Liberties has followed especially closely the evolution and application of the Annual Rule of Law Cycle. Liberties welcomes the EU Commission's continued commitment to prioritising the rule of law. The Annual Rule of Law Report has been an essential tool for addressing challenges and promoting reforms. We particularly appreciate the inclusion of specific recommendations in 2022 and country chapters for enlargement countries in the 2024 Report.

However, as noted in our previous gap analyses, the rule of law report and its reporting cycle still have significant deficiencies, despite the Commission's optimistic rhetoric. In our **2024 Gap Analysis**, we identified three main deficiencies in the Annual Rule of Law Cycle.

1. Lack of sufficient transparency and accuracy in measuring progress

The Commission's 2024 Horizontal Communication claims that 68% of the 2023 Rule of Law Report recommendations were followed up by Member States. However, this figure includes cases with only partial progress. The problem with this assessment is that the Commission tends to focus on announced or ongoing reforms without fully evaluating their effectiveness, pace, and impact, attributing progress where there is little to none. As a result, this paints a rosier outlook than reality. A more accurate representation would show that only 19% of the 2023 recommendations were significantly progressed or fully implemented.

In order to improve the transparency and the accuracy in measuring progress, the Commission should:

- Work on formulating more specific and measurable recommendations that are targeted at the concerns identified in each country. This will enhance the recommendations' usefulness as accountability tools;
- Ensure that there is a clear link between the seriousness of the concerns identified in the Member States and the country-specific recommendations;
- Define clear criteria for categorising rule of law developments into the four-point rating scale – no progress, some (further) progress, significant (further) progress, full implementation

- To provide more transparency and accuracy in the assessment of implementations;
 - Provide a more accurate representation of the success rate of recommendations by considering only those showing significant progress or full implementation, rather than including cases with some progress;
 - Shift its focus from announced or ongoing reforms to thoroughly evaluating the effectiveness, pace, and impact of implemented recommendations to ensure meaningful progress.
2. Lack of effective enforcement of Commission recommendations

Different Member States have varying approaches when it comes to carrying out the recommendations made by the Commission, which presents a challenge. In countries where a continued decrease in the overall rule of law has been observed, like Bulgaria, Greece, Hungary, Malta, Poland, Romania, and Slovakia, the Commission's recommendations were either completely disregarded or only partially implemented in 2023. Regrettably, the behaviour of these countries may be supported by other Member States, such as Austria, France and Germany, that do not experience a decline in the overall rule of law but still refuse or make only minimal efforts to comply with the Commission's recommendations. This highlights the need for effective enforcement of the Commission's recommendations.

In order to enhance the effectiveness of the country-specific recommendations, the Commission should:

- Make more effort to monitor changes over time in order to identify both positive and negative trends in the Member States;
 - Develop strategies to force non-compliant Member States to implement its recommendations, primarily by linking the rule of law report to enforcement mechanisms, such as the infringement procedure and the budgetary conditionality measures.
3. Lack of a clear link between the Annual Rule of Law Report and other EU tools

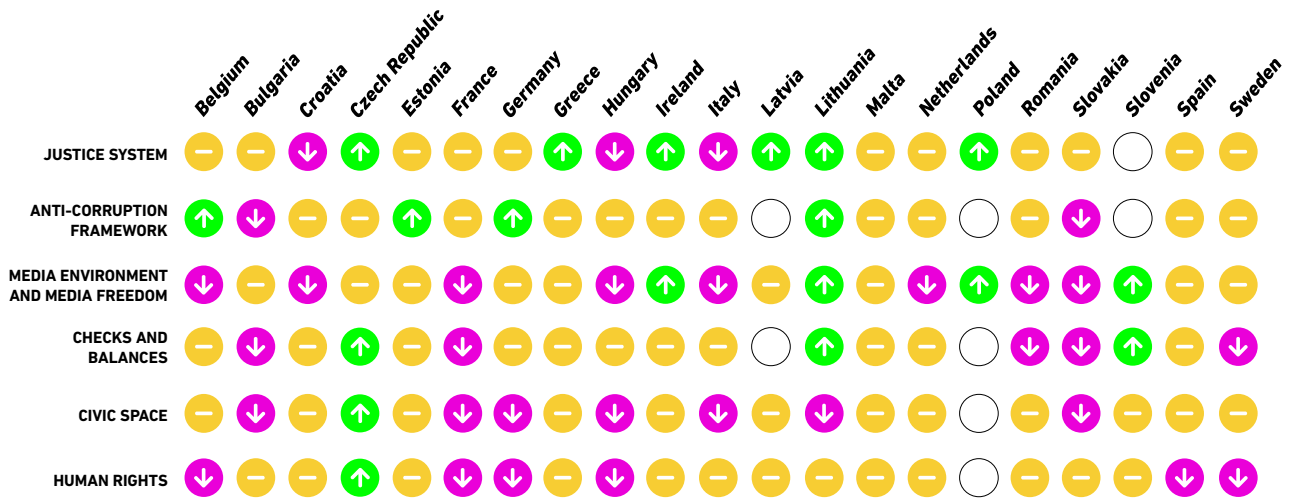
It is true that the Commission's rule of law report has been instrumental in identifying systemic rule of law issues in Member States and encouraging reforms. However, it should be acknowledged that this is a monitoring mechanism, not an enforcement tool. The annual rule of law report is not at all effective against countries whose governments deliberately and systematically undermine the rule of law. To enhance its effectiveness and make it consequential, the Commission must integrate the annual rule of law report into the broader EU rule of law toolkit, including the Article 7 procedure, infringement procedures, and budgetary conditionality. Non-compliance with or insufficient implementation of the Commission's recommendations should trigger these enforcement actions.

Some evolution in the rule of law report is foreseen, which is a promising development.

According to the 2024 Horizontal Communication and the Mission Letter of the new Justice Commissioner, the Commission plans to consolidate the rule of law report, build a more systemic relationship with civil society actors, and establish closer links between the rule of law report and enforcement mechanisms. How these will function in practice requires an understanding of the gaps and broad consultation on how these plans will address existing deficiencies. With the rapid deterioration of

the rule of law in several Member States and a foreboding global environment, it is imperative that the Commission takes swift and decisive action to address the deficiencies in the rule of law report and ensure that enforcement mechanisms are effectively utilised to uphold the rule of law in the European Union. This should include a mix of actions that can be imminently implemented, together with those that require a longer process and legal base.

COMMON CHALLENGES FACING OUR DEMOCRACIES



Legend

-  Regression
-  No progress
-  Progress

POLITICISED, UNDERFUNDED AND INEFFICIENT JUSTICE SYSTEM

Key findings

- The (potential) political manipulation and lack of transparency in the selection and removal process of judges and prosecutors, including high-ranking officials in the justice system, remain significant issues across several EU Member States, including Latvia, Lithuania, Malta, Croatia, Hungary, Slovakia, Greece, and Spain. These problems compromise the independence and public trust in the justice system. Many of these countries failed to implement the necessary reforms despite the specific recommendations from the European Commission, the Venice Commission, and the OSCE/ODIHR.
- Some countries, like Germany, the Netherlands, Sweden, Ireland, and the Czech Republic, have implemented or at least initiated reforms to depoliticise the judicial appointment and removal process, showing a willingness to better protect the justice system from undue political pressure.
- Concerns have been raised regarding the composition and political influence within judicial councils, especially in Malta. In Bulgaria, due to the failed reform, the significant parliamentary influence over the judicial council persists. Meanwhile, a proposed constitutional reform in Italy poses a risk to the autonomy of the justice system. In contrast, the Netherlands and Estonia have taken steps to enhance the independence of their judicial self-governance.
- The judicial accountability system shows serious defects due to instances of (potential) political interference and the restriction of judges' rights and freedoms in Hungary, Italy, Malta, and Romania. In contrast, the Netherlands, Slovakia, Belgium, and the Czech Republic have taken measures to improve the system.
- Numerous examples from France, Italy, Malta, Romania, and Slovakia illustrate a troubling trend where political interference in the work of the justice system raises concerns about the separation of powers and the rule of law. This includes attempts to suppress judges' freedom of speech, intimidation from the executive branch, and public criticisms that undermine the judiciary's authority.
- Poland is facing significant challenges in restoring judicial independence, primarily due to the heavily politicised National Council of the Judiciary (NCJ), elected under the previous

government, and the unresolved status of irregularly appointed judges by the NCJ. The Venice Commission, judicial associations and civil society organisations assist the government, but reforms are progressing slowly.

- There is a noticeable lack of implementation and respect for court judgments in several European countries, including Spain, Hungary, Bulgaria, Lithuania, Croatia, Germany, and Belgium. This irresponsible behaviour by national governments undermines public confidence in the justice system and weakens the authority of the judiciary.
- Several European countries, including Belgium, the Czech Republic, Hungary, Estonia, France, the Netherlands, and Germany, are not providing sufficient financial resources for their justice systems. This lack of funding has led to systemic issues such as overwhelming caseloads, inadequate salaries for judges and court staff, and concerns about the independence and effectiveness of the judiciary.
- Legal aid and justice across various Member States, including Malta, Italy, Lithuania, Croatia, the Netherlands, Romania, the Czech Republic, Sweden and Ireland, is fraught with significant problems. Issues include high costs of legal defence, low eligibility thresholds for legal aid, language barriers, and insufficient interpretation services. These barriers disproportionately affect marginalised groups, particularly those facing economic hardships or language difficulties.
- Significant delays in judicial proceedings were reported from Malta, Belgium, Spain, Croatia, Ireland, Greece, and Germany. These delays affect various types of cases, particularly serious crimes and family matters, undermining the efficiency and effectiveness of the legal system. This situation has led to condemnations by the European Court of Human Rights in multiple cases.
- Many European countries, including the Netherlands, Croatia, Ireland, France, Italy, Sweden, Greece, and Malta, face significant issues regarding the rights of individuals in the criminal justice system, particularly during pre-trial detention. These issues include systemic discrimination based on socio-economic factors and immigration status, inadequate conditions in prisons, and concerns over fair trial rights.

Last year's report identified three major concerning trends in the EU Member States. Firstly, in several areas of the justice system, including the selection of judges and

prosecutors, their promotion, and the accountability mechanisms, the undue influence of the political branches remained a non-negligible concern. In addition, certain national

governments openly attacked the judiciary and even refused to comply with court decisions. Secondly, the lack of sufficient financial resources was a general problem in many Member States, but the underfunding was so serious in certain countries that it threatened the independence of the judiciary and undermined the efficiency of the justice system. Finally, a large number of Member States failed to guarantee simultaneously the efficiency and fairness of judicial proceedings, which caused significant problems for individuals seeking justice and practising lawyers.

This year's report finds the same exact widespread problems across the Member States. Several EU Member States grapple with political manipulation in the judicial appointment and removal processes as well as the operation of judicial self-governing bodies, undermining the independence of their justice systems and public trust. Many countries show lack of reforms despite recommendations from international bodies, including the European Commission. Political attacks against judges and the non-execution of court judgments continue to be a deeply concerning trend. The financial resources allocated to the judiciary are insufficient in several countries, leading to systemic problems such as overwhelming case-loads and inadequate salaries. Access to legal aid remains problematic, with high costs and eligibility barriers disproportionately affecting marginalised groups. Additionally, significant delays in judicial proceedings and issues related to individual rights in the criminal justice system raise serious concerns about fairness and effectiveness.

Independence of the justice system

The politicisation of the justice system is a troubling trend observed in many Member States. It manifests in four ways: political manipulation of the composition of the justice system, interference in its self-government, political pressure on the judiciary, and the non-execution of court decisions. This politicisation undermines the independence and integrity of the justice system, negatively affecting society's trust in it. In response to these concerning trends, some countries have implemented reforms aimed at protecting the judiciary from undue political influence, particularly in light of the rise of far-right parties that may come to power.

Political manipulation of the composition of the justice system

The political manipulation of the selection and removal of judges and prosecutors impacts every level of the justice system. This includes superior court judges and court leaders, members of constitutional courts, judicial council members, ordinary judges, attorneys general, and lower-level prosecutors. Although we can see some progress in certain Member States, the risk of political interference remains very high.

Superior court judges and court leaders

Although the 2024 Rule of Law Report recommended **Latvia** to enhance safeguards against political influence in appointing Supreme Court judges, aligned with European standards, no progress has been made on this recommendation. However, the Judicial Council

revised the procedures for nominating and appointing court leaders. Judicial appointment transparency is a significant issue in **Lithuania**, particularly concerning the Supreme Court, as highlighted by the European Commission's concerns about a candidate with the 'lowest assessment' being appointed to the Supreme Court in March 2024. In **Malta**, the appointment of judges and magistrates, including the Chief Justice, is politicised, requiring the President's choice to be supported by two-thirds of the House of Representatives. Despite the European Commission's 2024 Rule of Law Report recommendations, no actions have been taken to depoliticise this process. In 2024, **Poland's** Minister of Justice continued replacing court presidents and vice-presidents, a process criticised for its lack of transparency since 2017. Although the appointment law remains unchanged, the Minister introduced a practice allowing judges to suggest candidates. By the end of 2023, 127 court leaders had been removed, and at least 111 new ones were appointed in 2024. The 2023 Rule of Law Report recommended that **Greece** increase judicial involvement in appointing the President and Vice-Presidents of its highest courts. In July 2024, Parliament approved a proposal for the administrative Plenaries to advise the Minister of Justice on candidates, though their opinions are non-binding. Critics pointed out the absence of prior consultation with the Plenaries.

Members of constitutional courts

The Constitutional Court of **Croatia** extended the mandates of ten constitutional judges beyond the legally allowed six months,

prompting criticism for potentially undermining judicial independence and the separation of powers, just before Parliament finally elected new judges. **Italy** is facing a political deadlock that is delaying the nomination of judges to the Constitutional Court. As of January 2025, the 15th judge to replace Silvana Sciarra, whose term ended in November 2023, has not been appointed, and three more judges' terms expired in December 2024. The Parliament was unable to agree on candidates during its last session. With only 11 functioning judges, any absence risks disrupting the Court's operations, as at least 11 are needed to function. In 2024, four new judges were appointed to the **Czech** Constitutional Court, increasing female representation to one-third, while concerns were raised about the transparency of the selection process and the challenges faced by potential judicial candidates. The public debate in **Germany** regarding the rise of right-wing populist parties centers on the vulnerability of the Federal Constitutional Court and the potential for its functions to be undermined by simple parliamentary majority, prompting some provisions, including the rules of selection, to be incorporated into the constitution for protection.

Members of judicial councils

In July 2024, the OSCE/ODIHR recommended reforms to enhance judicial independence in **Spain**, focusing on the appointment process for judges and restructuring the General Council of the Judiciary (CGPJ) to reduce political influence. Political pressure from the European Commission helped end a five-year deadlock on CGPJ renewal,

but internal challenges remain in achieving consensus on reforming member elections, as emphasised by the Commission and legal experts. After the elections in October 2023, the new **Slovak** government reshuffled the Judicial Council, replacing three members immediately in November 2023. In May 2024, parliament dismissed former chairperson J. Mazák and member A. Majerník, citing vague reasons, while a resignation left three positions vacant. Appeals to the Constitutional Court against these dismissals have been rejected. By July 2024, President Pellegrini appointed new members, completing the replacement of non-judicial members. Due to these changes, the Judicial Council, crucial for judge selection and disciplinary matters, is now suspected of pro-government bias.

In the **Netherlands**, concerns have been raised about the Council for the Judiciary, particularly regarding its composition and the influence of political dynamics, as all members are appointed by the Minister of Justice and Security, including non-judicial members who can be dismissed at any time.

In 2024, the National Council of the Judiciary (NCJ) of **Poland** faced criticism over its lack of independence due to the politicised appointment of its members under the previous government. The new government proposed a bill to change the appointment process and end the current NCJ's term, initially excluding irregularly appointed judges, NCJ appointed judges, from eligibility. After feedback from the Venice Commission, however, the draft was modified several times. The President of Poland referred the draft law to the Constitutional Tribunal

for review. Despite ongoing legal uncertainties, the NCJ promoted judges and recommended over 130 new appointments by the President in 2024 based on prior competitions.

Ordinary judges

The proposal to introduce psycho-attitude interviews for judicial appointments has sparked significant debate in **Italy**. The National Association of Judges and the Democratic Association of Magistrates raised concerns about the proposal's lack of clarity, warning it could undermine public trust in the judiciary. Judicial appointment transparency remains a significant issue in **Lithuania**. Challenges persist at lower court levels as well, including procedural inefficiencies and resource shortages, which have led to delays in filling vacancies and hindered the reform's effectiveness. In **Malta**, the appointment system for judges and magistrates continues to be politicised, as the President, appointed by Parliament, is responsible for these appointments. Despite calls from the European Commission, the Venice Commission, and civil society, no steps have been taken to depoliticise the appointment process, and therefore, key information about judicial candidates and the application process remains inaccessible to the public.

In **Poland**, the legislation governing the judiciary system allows the Minister of Justice to second judges to various courts and government bodies but lacks safeguards against sudden recalls. A draft amendment prepared in 2024 aims to address some delegation risks but has not yet been submitted to Parliament. Equally problematic is that the NCJ, which

lacks independence, plays a role in judges' transfers and retirements. A notable decision includes the retirement of Judge Piotr Borowiecki, who was recognised for his civic engagement after he missed a medical examination. The status of over 2,200 'new judges' appointed since the NCJ's political capture in 2018 is critical in restoring the rule of law in **Poland**. The government, as of September 2024, proposed a framework categorising these judges into three cohorts, each with different remedies for their status. The Venice Commission has advised that blanket annulment of NCJ appointments could interfere with judicial independence, suggesting a more nuanced approach to individual assessments. By the end of 2024, no draft legislation had been presented to implement the Commission's recommendations, but the Codification Commission expressed intentions to create mechanisms for reassessing judicial appointments.

The **Swedish** judiciary is facing criticism due to its court administration being a government agency. A Committee of Inquiry has proposed restructuring to enhance judicial independence, including a board of judges to appoint the National Courts Administration director. It aims to reinforce the independence of the Judges' Proposal Board and establish that permanent judges can only be removed at the statutory retirement age, protecting current judges from retroactive removals. In **Ireland**, the Judicial Appointments Commission Act was finalised by parliament in July 2023 and deemed constitutional by the Supreme Court in December. It will create an independent Judicial Appointments Commission to recommend individuals for judicial office.

Attorneys general and prosecutors

In January 2024, the selection process for **Croatia's** new State Attorney General began amid controversies over security check violations and GRECO recommendations. Ivan Turudić, a former High Criminal Court judge, was nominated despite questionable communications with accused officials and a meeting with fugitive Zdravko Mamić. The government elected Turudić on 7 February 2024 without an updated security check, sparking public criticism. In **Hungary**, concerns remain regarding the autonomy of the prosecution service, especially following a legislative proposal submitted on 19 November 2024, which seeks to amend the eligibility criteria for the Chief Prosecutor by removing the requirement for prior prosecutorial experience. This change further increases the risk of politicisation of the role, which holds significant control over the prosecution service. The appointment of the Attorney General in **Malta** remains largely under the control of the Prime Minister, despite reforms made in 2019. Appointment criteria are limited to qualifications for a superior court judge, and the Appointment Commission, chosen by the Minister for Justice, lacks clear standards for public trust and technical skills. Additionally, removing the Attorney General requires a two-thirds majority in Parliament, a process the Venice Commission recommends should involve an expert body or an appeal to the Constitutional Court. In 2024, **Slovakia** abolished the Special Prosecutor's Office (SPO), which specialised in high-profile corruption and financial crime cases. The reassignment of SPO prosecutors to the General Prosecutor's Office raises concerns about

political interference, especially in handling politically sensitive cases. Although the abolition was deemed lawful by the Constitutional Court, it has been criticised as a move by the government to serve its political interests and undermine public trust in the justice system.

In 2024, there were no major advancements in **Poland** regarding the independence of the prosecution service, with the Minister of Justice-Prosecutor General replacing the National Prosecutor on a temporary legal basis. The government worked on draft legislation aimed at separating the prosecution service from governmental control. In October 2024 the Venice Commission reviewed the draft and recommended improvements.

In the **Netherlands**, concerns about political influence exist within the Public Prosecution Service, particularly regarding the Attorney General's appointment by the Minister of Justice and Security without clear procedures, which raises transparency issues. The Venice Commission has criticised the minister's ability to issue special instructions to prosecutors and recommends stronger legal safeguards. In **Germany**, the minister of justice has the authority to intervene in public prosecution, which has raised concerns about potential political influence, particularly highlighted by a 2019 CJEU judgment regarding European arrest warrants. In May 2024, the Ministry of Justice proposed a draft law to formalise conditions for political instructions and enhance transparency. However, due to the snap elections, it is unlikely that this amendment will be passed soon, especially with the growing influence of right-wing authoritarian parties.

In the **Czech Republic**, a recent amendment to the Act on Public Prosecution enhances the independence of the prosecutorial service by introducing fixed seven-year terms for senior prosecutors and establishing clearer rules for their selection. Notably, it restricts the government's ability to dismiss the Prosecutor General without cause and legal remedy.

Political interference in judicial self-government

Judicial councils play a crucial role in preserving the independence of the justice system by guaranteeing the autonomous management of courts and supervision over judges, provided that they remain free from political influence. In **Malta**, the Commission for the Administration of Justice includes various members, such as judges, magistrates, and political appointees, which can lead to politicisation. Dr. Pawlu Lia, appointed as the government's representative by former Prime Minister Joseph Muscat, faces calls for removal due to conflicts of interest, as he continues to practice law and has close ties to figures within the judiciary. The identities of the elected judicial members are not public, leaving uncertainty about Dr. Lia's current status on the Commission.

In 2024, **Bulgaria** achieved initial results from a legislative reform package intended to implement the ECtHR's judgment in *Kolevi v. Bulgaria* and comply with recommendations from various supranational institutions, including amendments to the Criminal Procedure Code and the Justice System Act. However, on 26 July 2024, the Bulgarian Constitutional Court annulled key points of the reform, including

the proposed split of the Supreme Judicial Council into two separate councils (i.e. the Supreme Judicial Council and Supreme Prosecutor's Council) and the removal of the Chief Prosecutor's powers over prosecutors. Consequently, the structure of the Supreme Judicial Council remains unchanged, preserving parliamentary influence over judicial appointments. On 13 June 2024, **Italy's** Ministry of Justice introduced a draft constitutional reform to Parliament in response to the 2024 EU Commission Rule of Law Report. The proposal aims to create separate career paths for judges and prosecutors with distinct High Councils but has faced criticism from the National Association of Judges, which warns that it may undermine judicial independence and disrupt the balance of powers.

In the **Netherlands**, concerns have arisen regarding the minister's ability to annul decisions of the Council for the Judiciary and issue binding directives, which is seen as a threat to judicial independence. The Supreme Court and the Venice Commission have called for stricter guarantees against political influence. Two judges publicly expressed their worries about the erosion of the separation of powers, drawing parallels to the situations in Poland and Hungary. Legislative motions were passed last year to address these concerns. In October 2024, the **Estonian** Council for the Administration of Courts approved the Court Development Plan 2024-2030, focusing on justice organisation, court management, and digitisation. The main goal is to transfer court management responsibility from the Ministry of Justice to the judiciary. To support this change, a draft act proposes the creation of

a Judicial Administration and Development Council and a Court Administration Service.

Political pressure on the judiciary and attacks against judges

Accountability of judges

A council president judge at the Supreme Court of **Hungary**, András Kovács, has been temporarily suspended from his position and banned from serving as a council president for two years by the President of the Supreme Court. This action was reportedly taken due to his intention to publish a professional opinion on the Supreme Court's case allocation scheme in an academic study. In **Italy**, current government legislative proposals threaten judicial independence by imposing accountability measures on public prosecutors for cases of unjust detention, including potential financial penalties and disciplinary actions. Additionally, a vague clause would allow the Ministry of Justice to initiate disciplinary proceedings against judges or prosecutors for not abstaining from certain decisions, further compromising judicial autonomy. In **Malta**, disciplinary actions against members of the judiciary can only be initiated by the Chief Justice or the Minister for Justice, with the Committee for Judges and Magistrates conducting the proceedings. The limits of this initiating power were highlighted by the fact that despite pending criminal charges against Magistrate Nadine Lia and her former husband Alessandro Lia, a Commissioner for Justice, no disciplinary action has been taken, and she remains in her position. Recently, a magistrate ordered the police to pursue charges against Alessandro Lia for fraud, but there are

reports of police reluctance to act. In February 2024, the ECtHR ruled in the case of *Danilet v. Romania*, which involved a judge who faced disciplinary sanctions for two Facebook posts questioning the credibility of public institutions and suggesting military intervention for constitutional democracy. The ECtHR found a violation of Article 10 of the Convention, as the domestic courts failed to provide sufficient justification for interfering with the judge's right to freedom of expression, and the case was referred to the Grand Chamber.

The disciplinary system for judges in the **Netherlands** has two channels: one through the Attorney General at the Supreme Court which is public, and another through the court presidents which is not transparent, creating potential risks of ministerial influence despite a prevailing culture against such interference. The Venice Commission has recommended legislative reforms to strengthen the disciplinary framework and protect the rule of law, which is at risk from populist political pressures. The parliament in **Slovakia** introduced procedural safeguards for the offence of 'abuse of law' – a disciplinary offence for which judges can be prosecuted if they arbitrarily apply the law and thus harm or favour someone – allowing judges to challenge their prosecution within 60 days of receiving an indictment. Despite the EU Commission's concerns, some view it as a step towards better protection for judges accused of this offence. In its 2024 Rule of Law report on **Belgium**, the EU Commission noted with concern discussions on four legislative proposals concerning the evaluation and disciplinary systems of magistrates. Following the federal elections in June 2024,

all four legislative proposals were removed from the parliament's agenda. Lawmakers in the **Czech Republic** have amended the disciplinary procedure for judges, prosecutors, and executors, creating a two-tiered system where first-instance cases will be decided by the High Courts in Prague and Olomouc, with appeals handled by the Supreme Administrative Court or the Supreme Court. The new system allows for agreements on guilt and disciplinary measures, which for judges and prosecutors could include reprimands, salary reductions, or dismissals, while executors may face warnings, fines, or dismissal.

Personal attacks on judges

In **France**, recent attacks by politicians on judges' freedom of speech have raised concerns that the duty to speak out against threats to the rule of law is being suppressed, while impartiality is misinterpreted as neutrality. After the attempt of the Parliament to muzzle judges in 2023, some politicians and media outlets expressed their wish, in the context of national elections in June 2024, to ban judicial unionism because of a so-called abuse of speech of judges unionists. The judiciary in **Italy** faces significant pressure and intimidation from the executive branch, leading to incidents where judges require personal protection. A striking example is the Apostolico case, where Judge Iolanda Apostolico resigned after receiving attacks from government officials for her decision against validating a migrant's detention, which she argued contradicted EU law. Tensions escalated over the Italy-Albania migration protocol, with the Tribunal of Rome rejecting a detention order, prompting

harsh criticism from government leaders who accused the judiciary of politicising decisions. In addition, Matteo Salvini was acquitted on 20 December of charges related to the 2019 Open Arms incident, where he was accused of neglecting official duties and kidnapping migrants, amid statements from political figures that criticised the prosecution and raised concerns about judicial independence and threats against prosecutors involved in the case. In **Malta**, the Prime Minister's attacks on the judiciary raise concerns about the separation of powers. For example, he criticised a magisterial inquiry's findings that called for charges against former Prime Minister Joseph Muscat, prompting backlash from NGOs and student groups. The Superior Council of Magistrates of **Romania** condemned public pressure on judges, citing instances of political leaders making insulting comments about magistrates, including a case involving a businessman who criticised a judge's appearance and ethnicity following an unfavourable ruling. In 2024, the current government of **Slovakia** intensified its attacks on the judiciary, particularly against the Supreme Court, questioning the independence of judges handling cases involving political allies. Minister of Justice B. Susko and Deputy Prime Minister R. Kaliňák filed a disciplinary motion against Judge J. Kliment, alleging human rights violations, a move that Kliment claims is politically motivated. The Ministry of Justice's request for internal court data also raised concerns about interference with judicial independence. Following a Constitutional Court decision that suspended an amendment to criminal laws, Prime Minister Fico's call for the President of the Court to

resign further highlighted the government's attempts to undermine judicial authority.

Non-execution of court decisions

The lack of implementation or inadequate execution of judgments by national and supranational courts remained a widespread problem in 2024. In **Spain**, significant delays in the execution of sentences have eroded public confidence in the justice system. A notable case in 2024 involved a paedophile sentenced to 23 years in prison, who remained free and continued meeting his victims while his sentence was not enforced. This highlights a serious systemic failure in the administration of justice and the urgent need for reform. Spain also holds second place among countries that fail to comply with Court of Justice of the European Union (CJEU) decisions without any sanctions from the European Commission. **Hungary** still has the highest rate of non-compliance with ECtHR judgments. But members in **Bulgaria** have also raised concerns about the lack of compliance with ECtHR judgments, aggravated by a lack of robust and binding legislative framework, as well as bodies monitoring an effective implementation. **Lithuania** and **Croatia** have failed to adopt legislative amendments that would have been necessary to comply with ECtHR rulings. CSOs in **Germany** have raised concerns about the introduction of border controls contrary to CJEU decisions, as well as the adoption of a resolution contrary to a recent ECtHR judgment. In **Belgium**, there has been a growing issue of political authorities failing to respect court rulings, including those from the ECtHR. This non-compliance has reached unprecedented levels, prompting the

EU Commission to call for measures to ensure adherence to final court decisions. In July 2024, Belgium's three supreme courts issued a joint memorandum urging the government to prioritise enforcing judicial rulings to protect the rule of law.

Quality of justice

Member States continue to face the challenge of addressing the **shortage of human resources** within the judicial system, with the goal of **reducing the system's overload and the length of proceedings** while ensuring fair salaries for judges to protect their independence.

The budget of the judiciary

In **Belgium**, the press reported that, in 2024 again, the volume of work of the justice system is so great that some cases that are too complicated are closed without further action. The situation in Brussels is critical, as highlighted by the High Council of Justice. In 2024, the **Czech** Constitutional Court ruled on judges' salary freezes, finding the 2021 freeze constitutional due to the pandemic but declaring the 2022 freeze unconstitutional due to procedural issues. The Court stressed that salary restrictions must be justified and discussed with the judiciary. Meanwhile, judicial employees went on strike due to underfunding, affecting court operations. Although the Justice Minister promised a salary increase starting in 2025, dissatisfaction remains, especially after a reduction for administrative staff, leading to ongoing demands for better pay. In **Hungary**, the remuneration of judges and court administrators is inadequate. The Minister of Justice has

made any salary increases conditional upon the Judicial Council's agreement to the introduction of additional reforms, which could further undermine the independence of the judiciary, including changes to the eligibility criteria for judicial appointments. The Council for the Administration of Courts of **Estonia** expressed concerns regarding the executive branch's plan to cut the 2025 budget of courts by €2 million without a proportional reduction of the courts' workload. Furthermore, the generational shift among judges raises concerns, as it will leave several positions vacant. In **France**, although the judicial budget is increasing, it remains insufficient to enable courts to deliver justice in a timely manner. The Council for the Judiciary in the **Netherlands** stated that, in order to continue meeting society's demand for an independent, impartial, and professional judiciary in the future, the next government must increase the planned investment by at least €60 million. **Germany's** judiciary has been facing significant overload due to increasing criminal reports, especially in the digital realm, and a shortage of human resources. Public prosecutor's offices are short of 2,000 investigators, and courts also suffer from understaffing. This issue is exacerbated by demographic changes, high recruitment requirements, and relatively low salaries for judges compared to the private sector.

Access to justice

In terms of accessibility of courts, the cost of obtaining legal defence, access to free legal aid, interpretation services for migrants, and the ability to seek asylum remain significant challenges across Member States.

In **Malta**, civil society criticises the low eligibility threshold for legal aid in civil cases. To qualify for legal aid, an individual must not own property of any kind with a net value of €13,000 or more, and their annual income must not exceed the national minimum wage, currently set at approximately €11,100. Legal aid is unavailable to individuals without a residence card, and the role of court interpreters lacks specific regulation, despite criminal law guaranteeing interpretation rights. Certain languages are excluded from the official interpreter list, impacting various communities. Access to courts in **Italy** remains challenging due to high legal costs, including lawyers' fees, travel, and court expenses, which many cannot afford. While the state covers judicial costs for those in need, legal aid has significant shortcomings, such as delayed and insufficient payments. The income threshold for eligibility is also very low (€12,838.01 per family, with a €1,000 increase per additional member), excluding many with slightly higher incomes. Besides, language barriers further hinder access, as judicial documents often lack translations, and court hearings suffer from a shortage of language mediators, a critical issue given Italy's migration dynamics. In **Lithuania**, while state-guaranteed legal aid is available, migrants and asylum seekers face significant barriers to access, particularly during appeals. Legal aid is inconsistent, and there is insufficient funding for lawyers and interpreters. Many individuals, especially those from marginalised groups, are unaware of their rights to legal assistance. Additionally, victims of crimes outside the EU struggle to access aid, and the law lacks clear provisions for providing information in simple, understandable language. Proposed

reforms to improve these issues have not yet been implemented. In **Croatia**, hiring a lawyer can be considerably more expensive than paying a misdemeanour fine. Moreover, the threshold to qualify for free legal aid is set too low (€441.44 per household member), while the decree on the minimum wage for 2024 prescribes a net minimum wage that exceeds this threshold. In the **Netherlands**, the Council for the Judiciary stressed the importance of keeping court fees affordable and cautioned against implementing only minor reductions. While the short-term financial gains from smaller fee reductions might seem attractive, the Judiciary warns of significant long-term negative consequences for citizens if access to justice becomes restricted or more challenging. In **Romania**, a 2024 amendment restricts legal aid for non-profits to specific cases, potentially limiting access to justice. A proposed law would also reduce courts' discretion to lower lawyers' fees, which could lead to difficulties for those unable to afford legal services. The High Court has challenged this law for constitutional reasons. In the **Czech Republic**, a 2025 amendment to the Ministry of Justice's decree raises non-contractual lawyers' fees, but significant discrepancies persist, especially in cases with hard-to-assess values. While the fee increase is a step forward, it remains insufficient in some areas, such as child custody, adoption, or involuntary hospitalisation. In **Sweden**, financial obstacles make it extremely difficult for individuals to bring human rights cases to court. The high costs of litigation, coupled with the 'loser pays' rule, deter people from seeking justice. The income threshold for legal aid has not been updated in over 20 years, while disposable incomes have more than

doubled. The **Ireland** Civil Legal Aid Scheme remains inadequate. While the government is working on improving justice services, a legal needs survey is still pending. Disabled individuals face barriers to justice due to gaps in Irish law, lack of data, and discrimination against marginalised groups. Despite recommendations, no meaningful progress has been made on legal reforms. The review of equality legislation is also stalled, with no significant changes despite calls for improvement. Family justice continues to face long waiting times, high costs, and bureaucratic hurdles, though the Family Courts Act of November 2024 could improve access to justice for families.

Digitalisation

Digitalisation remains a challenge in some Member States, with varying levels of implementation and progress in adopting digital tools within the judicial system.

The lack of digitalisation in **Germany's** judicial system, particularly concerning criminal reports, has contributed to its increasing overload. Efforts to digitalise **Greece's** judicial system are progressing slowly. The Office for the Collection and Processing of Judicial Statistics remains non-functional and lacks tools to provide comprehensive data. Currently, only basic statistical data for civil, criminal, and administrative proceedings are available on the Ministry of Justice's website, but these figures are incomplete and inconsistent. **Malta** allocated €3.2 million in 2023 and €5.2 million in 2024 through EU funds for the digitisation of its justice system, but challenges remain. Legal practitioners lack the necessary tools, and some

cases cannot be filed online. The system also creates privacy issues and lacks key functionalities like online filing for absences. Documents sometimes get lost or require physical authentication. The Chamber of Advocates highlighted delays and called for better implementation and progress reporting by the Digital Justice Strategy Steering Committee. The digitalisation of the **Czech** judiciary is progressing but facing delays. Key projects like eISIR (insolvency) and eFILE (court files) have been delayed. There are issues with cooperation and project management, and the judiciary's digital tools are not fully integrated. AI integration is being considered, but ethical concerns and cybersecurity are key issues. The government must ensure digitalisation doesn't exclude vulnerable groups and must maintain offline alternatives. In **France**, additional efforts are necessary to finalise ongoing projects aimed at fully digitising both civil and criminal court proceedings.

Fairness and efficiency of the justice system

A significant number of Member States continue to struggle with ensuring a fair justice system. Key challenges include lengthy proceedings, human rights violations during pre-trial detention, limited accessibility to court decisions, and deficiencies in the execution of judgments.

Length of proceedings

Malta continues to record the longest court proceedings in the EU for cases against the state. For instance, a case concerning the violent death of a man in police custody has

been pending before the Constitutional Court since 2012. Magisterial inquiries, essential for gathering evidence in serious crimes, are often excessively lengthy, undermining the effectiveness of investigations. In 2023, 1,700 inquiries were reported as pending, with one dating back to 1979. As of September 2024, the number remained high, with 1,625 cases still unresolved. **Belgium** has been repeatedly condemned by the ECtHR for excessive trial delays. The situation is particularly critical in family cases. For example, the Brussels Family Court had to cancel half of its hearings due to a shortage of clerks, prioritising only urgent cases. High-priority matters, such as child accommodation and maintenance payments, now take 3–4 months to address, while appeals can drag on for years, causing significant hardship for those involved. Legal proceedings in **Spain** are excessively long, with trials in Cádiz scheduled as far as 2029. Even urgent cases, like gender violence or disability trials, face severe delays due to overburdened courts and staff shortages. In **Croatia**, the 2022 amendments to the Civil Procedure Act have had little impact on improving the speed or efficiency of judicial proceedings. Delays have worsened due to a ‘white strike’ by judges and state attorneys from 22 January to 2 February 2024, which led to the postponement of most first-instance and appellate court cases, except for urgent matters involving irreparable damage. Additionally, criminal complaints concerning violent push-backs of refugees and migrants frequently face excessive delays, often exceeding the six-month legal limit for the pre-investigation phase. **Ireland** was condemned by the European Court of Human Rights in the *Keaney v. Ireland* (2020) case for violating the right

to a fair trial due to an excessive 11-year delay between the initiation of proceedings and the final judgment in the Supreme Court. The Court also highlighted that there was no effective remedy available in Ireland to address such a lengthy delay. No progress has been reported from Ireland. **Greece’s** justice system remains extremely slow, with case resolution times significantly exceeding the EU average. Delays jeopardise the rule of law, and the country continues to face ECtHR rulings on excessive judicial proceedings. In **Germany**, on average, a criminal case takes over 21 months from the initial complaint to a final judgment. While these challenges are particularly noticeable in criminal law, civil courts are similarly grappling with prolonged trials.

Protection of fundamental rights

Many Member States sacrifice rights such as personal liberty and the presumption of innocence, particularly during the pre-trial detention phase, in the name of procedural efficiency. Decisions to impose detention are often based on prejudices or inconsistent elements.

In the **Netherlands**, data indicates that poorly educated suspects with a migration background are prosecuted more often, convicted more frequently, and receive prison sentences at higher rates. Additionally, 70% of surveyed defence lawyers believe their clients were disadvantaged due to socio-economic factors. In **Croatia**, concerns over fair trial rights have been raised regarding the Security Intelligence Agency (SOA) assessments, which have led to restrictions on individuals’ freedoms without disclosed evidence. A Chechen national was

deemed a security threat without the opportunity to challenge the claim, as the information was classified. A similar case involved the Russian activist and asylum seeker V. Arinichev who was detained after protesting against the SOA's influence on asylum decisions. Arrested for wearing an 'offensive' T-shirt, he was sentenced to prison and further detained on the grounds of 'protecting public order'. Pre-trial detention in **Ireland** has risen by 23% between 2019 and 2023, with 861 people held on remand in October 2024, including 72 for over a year. In November 2024, An Garda Síochána published photos of 99 'persons of interest' linked to the 2023 Dublin riots. The unprecedented scale of this publication raised concerns about necessity, proportionality, presumption of innocence, and data protection, as the Data Protection Commission was not consulted. The Gardaí website crashed due to public interest, heightening fears of doxxing and misuse of information. Although the ECtHR ruled in January 2020 that **France's** detention conditions constituted a systemic violation of Article 3 of the Convention, the situation remains unchanged. As of October 2024, prisons remain severely overcrowded, with 79,631 inmates confined to facilities designed for only 62,279, leaving thousands forced to sleep on the floor. In 2023, 1,120 wrongful imprisonment claims were decided in **Italy**, with 543 (48.5%) ruled in favour of the applicants. In 75% of cases, the decision was based on irrevocable rulings confirming the person's innocence, while 25% resulted from unlawful precautionary measures. Financially, 619 compensation orders were issued, totalling €27.8 million, with an average payout of €44,983 per case. The **Swedish** government has enacted a

law allowing police to create stop-and-search zones without reasonable suspicion, including for children under 15. The lack of clear guidelines on conducting these searches fairly raises significant concerns about the risk of increased discriminatory profiling. In the case of *Nsingi v. Greece*, the ECtHR found that **Greece** violated Article 5 ECHR after a man was wrongfully imprisoned due to mistaken identity and denied compensation. In January 2024, **Malta's** Parliament voted to extend the legal pre-trial detention period from a maximum of 48 to 96 hours in certain cases. The detention regime for migrants in Malta has faced repeated and harsh criticism from the ECtHR, particularly regarding the treatment of vulnerable children in detention, as seen in the case of *J.B. and Others v. Malta*.

Recommendations

Governments should

- Reform the selection and removal processes for judges and prosecutors to eliminate political influence and ensure that these processes are transparent and based on merit rather than political affiliation.
- Review the rules on the composition of judicial councils to minimise political influence and implement measures to ensure that these bodies can operate independently and effectively safeguard judicial autonomy.
- Take decisive actions to implement judicial reforms as recommended by international bodies such as the European Commission and the Venice Commission, focusing on depoliticisation and strengthening of judicial institutions.
- Guarantee that judicial accountability mechanisms do not allow for political interference and strengthen protections for judges' rights and freedoms.
- Commit to upholding and implementing court judgments to reinforce public trust in the justice system and develop action plans to address instances of persistent non-compliance with court decisions.
- Allocate sufficient financial resources to the judiciary to address systemic issues, including overwhelming caseloads and inadequate salaries and ensure that funding is directed towards improving the effectiveness and independence of the judiciary.
- Reform legal aid systems to address high costs and low eligibility thresholds and provide adequate support for marginalised groups to ensure equitable access to justice.
- Implement measures to reduce delays in judicial proceedings, especially by allocating resources to improve efficiency in the legal system.
- Ensure that the rights of individuals in the criminal justice system are upheld.

The EU should

- Closely monitor the implementation of the European Commission's recommendations and take action if progress is not made.

- Assist Poland in restoring the independence of the judiciary and facilitate the resolution of conflicts that hinder the implementation of necessary reforms.
- Consider launching systemic infringement proceedings against Member States showing similar challenges regarding judicial independence, especially related to the selection and removal of judges and prosecutors, and judicial self-government.
- Use EU funding to push for tangible and specific investments in the area of justice in order to make it more accessible, fairer and more efficient for the benefit of all people in society.
- Establish a system to effectively monitor the implementation of rights-based judgments from the CJEU, including through the creation of a dedicated unit focused on the implementation of judgments. Fast-track the process of referral back to the court in cases of non-implementation.

MEMBER STATES'S ONGOING STRUGGLE WITH CORRUPTION

Key findings

- Corruption remains a prevalent issue across several European countries, with significant challenges noted in Italy, Romania, Malta, Greece, Hungary, Slovakia, the Czech Republic, Croatia, Bulgaria, France, the Netherlands, and Lithuania, impacting public trust and governance. Key concerns include the lack of transparency in public funds management, weak whistleblower protections, and inadequate enforcement of anti-corruption laws, leading to a high risk of corruption in various sectors such as healthcare and public procurement.
- Countries like Germany, the Netherlands, Greece, Malta and Spain face problems in regulating conflicts of interest and revolving door practices, often lacking sufficient cooling-off periods and oversight for high-level officials. Recommendations from organisations like GRECO and the EU Commission for clearer rules and stricter enforcement remain largely unimplemented, leading to ongoing concerns about integrity and public trust.
- Many European countries, including Bulgaria, Croatia, the Czech Republic, Spain and the Netherlands, struggle with effective lobbying regulations and transparency in public decision-making, often resulting in inadequate oversight and limited public trust. While

some countries have made strides towards improved legislation, such as Germany's Lobby Register Law, loopholes and weak enforcement remain prevalent, highlighting the need for mandatory lobbying registers and enhanced accountability measures across the region.

- Whistleblower protections across several European countries remain inadequate. In France, while the new framework improves reporting options, many entities lack proper internal procedures. Italy's new law introduces drawbacks such as defamation sanctions and inconsistent protections, while Slovakia, Estonia, Latvia, Lithuania, Hungary, the Netherlands, and Spain also show weaknesses in enforcement, clarity, and safeguarding whistleblower identities, necessitating stronger protections and reforms to comply with the EU Whistleblower Directive.
- Many EU Member States exhibit gaps in the criminalisation of corruption, with specific examples including Bulgaria's narrow definition of corruption, Germany's limited application of new anti-corruption laws, Italy's recent decriminalisation of abuse of public office, Slovakia's amendments that reduce penalties for economic crimes, Latvia's failure to criminalise prohibited agreements in public procurement, and the Netherlands' gaps in criminal legislation.
- Investigation and enforcement of sanctions for corruption offences face significant challenges in various European countries such as the Czech Republic, Slovakia, Ireland, Malta, the Netherlands, Bulgaria, and Greece. These challenges include inconsistent enforcement, lengthy judicial processes, and fragmented oversight bodies. Notably, high-level corruption cases often result in low conviction rates, undermining public trust and revealing weaknesses in the legal and institutional frameworks designed to combat corruption.
- Investigating and prosecuting high-level corruption in several European countries, including Italy, Belgium, France, Croatia, Malta, the Netherlands, and the Czech Republic is hampered by institutional weaknesses, legislative gaps, and political influences, leading to threats to investigative independence and inadequate protections for whistleblowers and journalists. Efforts to strengthen anti-corruption measures are hindered by issues, such as low resources, lack of personal accountability for corporate executives, and insufficient legal frameworks, ultimately undermining public trust and the effectiveness of anti-corruption initiatives.

Last year's report showed that national governments were rather reluctant to revise their anti-corruption legislation to bring about

genuinely positive changes. Notwithstanding some improvements in a few Member States, most of our partner organisations reported that

domestic developments regarding the transparency of public decision-making, whistleblower protection, conflict of interest and incompatibility of positions, and the criminalisation and prosecution of corruption-related criminal offences happened very slowly and often produced unsatisfactory results, especially in respect to high-ranking public officials.

This year's report shows no significant progress in the field of anti-corruption in the EU Member States. Key concerns include a lack of transparency in public fund management, weak protections for whistleblowers, and insufficient enforcement of anti-corruption laws, particularly in sectors like healthcare and public procurement. Many countries struggle with regulating conflicts of interest and lobby transparency, resulting in inadequate oversight. Whistleblower protections vary significantly, with several nations lacking effective compliance with the EU Whistleblower Directive. Overall, the country reports indicate severe problems in investigating and prosecuting high-level corruption, compounded by institutional weaknesses and a lack of accountability, further eroding public confidence in governmental integrity.

Levels of Corruption

The level of corruption remains high in many States. **Italy** ranks among the more corrupt countries in Western Europe, facing significant corruption challenges; for example, regional political appointments of Local Health Authority directors can sometimes involve improper negotiations influenced by internal or external interests. In **Romania**, civil

society investigations reveal a lack of transparency in local public fund management, with authorities using direct procurement to bypass regulations, undermining trust and fairness. Despite recognising corruption as widespread, many Romanians hesitate to report it due to challenges in proving cases, fear of impunity, and weak whistleblower protection. In **Malta**, pervasive corruption affects public services and governance, with insufficient investigations and nepotism posing significant issues. Political finance transparency remains a major concern, as nearly all party funding is undisclosed, increasing the risk of corruption and abuse of power. **Greece** is perceived as the most corrupt country in the EU, with concerns particularly focused on the healthcare sector, political parties, and public tenders. Despite some improvement in the Rule of Law Index, governance challenges remain. In 2024, **Hungary** faced major corruption scandals, including concerns over prosecutorial independence. Whistleblowers in the cultural heritage sector faced retaliation, while some government dealings raised further suspicions of corruption. **Slovakia's** Public procurement system is seen as a high-risk area, especially after recent legislative changes. For procurements up to €200,000 (or €800,000 for construction), a market survey involving three companies is required. The risk increases for purchases under €50,000, where no formal market survey is necessary, allowing businesses to negotiate directly with their chosen company. In the **Czech Republic**, there is significant concern about corruption, particularly in political parties. Despite efforts to combat corruption, the country remains a hotspot for money laundering and criminal activity, including sanctions evasion. The **Croatian**

government has taken limited steps to address corruption, with ongoing scandal cases exposing issues related to procurement, conflicts of interest, and questionable practices. Recent corruption concerns in **Bulgaria** involve the acting interim Chief Prosecutor, a controversial waste management project, a long-running corruption scheme involving unregulated construction waste dumps, and a gas storage scandal now under investigation by the European Public Prosecutor's Office. The Transparency International Corruption Perception Index reveals stagnation in **France**, with corruption costing an estimated €120 billion annually. A GRECO report in April 2024 concluded that France does not adequately comply with its anti-corruption recommendations. The **Netherlands** faces significant corruption challenges, including inadequate laws on "trading in influence" and weak enforcement in high-risk sectors like healthcare, public procurement, and accounting. Issues include insufficient whistleblower protection, lack of transparency in lobbying and political party financing, and conflicts of interest in the Senate. The receipts scandal in **Lithuania** involved local politicians falsifying receipts to misuse public funds, damaging trust in political institutions.

Framework to prevent corruption

Although many Member States have made improvements, numerous challenges remain in preventing corruption.

Integrity framework and conflict of interest

Regarding conflicts of interest and the phenomenon of revolving doors, countries show

inadequate regulation and a lack of an appropriate 'cooling-off period'. In **Germany**, the rules on post-office employment for certain public officials have been amended, but they remain insufficient for high-level decision-makers in the executive branch. It is proposed to extend the cooling-off period for ministers and state secretaries from 18 to 36 months and to introduce sanctions for violations. Although revolving door regulations have been strengthened for some officials, oversight is inadequate and relies on self-compliance, with no penalties for non-compliance. Currently, the government decides on post-office employment only for ministers and parliamentary state secretaries, excluding other high-ranking officials. Decisions made within ministries are not monitored. GRECO recommended clearer post-employment rules for top executives in the **Netherlands**, including a cooling-off period, but these recommendations remain insufficiently implemented. The EU Commission also urged the Netherlands to introduce a two-year cooling-off period for former ministers and state secretaries. A legislative process began two years ago with the proposed Law on Post-Employment for Ministers and State Secretaries. However, the bill, submitted in March, has stalled in parliament and lacks alignment with international best practices. One key loophole is an exemption clause allowing ministers to bypass lobbying and revolving door restrictions. In **Greece**, the law provides that for those appointed as members of the government and deputy ministers, the exercise of any professional or business activity is automatically suspended. At the same time, it requires them to obtain a one-year licence from the Ethics Committee of the National

Transparency Authority for any post-office employment related to their former role where a conflict of interest may arise. However, GRECO and GovWatch find this framework inadequate, particularly for political consultants with existing public or private employment ties. A recent case involving a professor exposed this weakness, as he simultaneously served as a government advisor and a university executive, revealing conflicts of interest. In **Malta**, strong ties exist between the government and businesses, with former ministers and officials often taking senior roles in private companies linked to government contracts, especially in sectors like construction, energy, and finance. In 2020, a lawyer from the AG's office switched to the defence team in the Caruana Galizia murder case, prompting changes to the code of ethics. However, these changes did not include a "cooling-off period" and did not apply to current employees. In **Spain**, although regulations are in place to address issues like 'revolving doors', their enforcement is inconsistent. Prominent cases have revealed individuals transitioning between public roles and the private sector without sufficient cooling-off periods, eroding public trust. GRECO criticised the **Czech Republic** for inadequate regulation of conflicts of interest and the revolving doors phenomenon. It recommended introducing a cooling-off period to prevent conflicts of interest and misuse of sensitive information. GRECO also suggested implementing integrity tests before appointments to ensure clear recruitment rules, along with corrective measures for violations.

Transparency of public decision-making

On the side of general transparency of public decision-making, no lobbying regulations have been adopted in **Bulgaria** under the Recovery and Resilience Plan, raising concerns that future rules could be misused against civil society organisations. Asset disclosure rules for judges, prosecutors, and high-ranking public officials exist under the Judicial System Act and the Act on Preventing and Fighting Corruption, with declarations published by the Inspectorate to the Supreme Judicial Council and the Anti-Corruption Commission (ACC). However, inquiries are only triggered if there is a discrepancy between the declared assets and the actual assets, but not if there is a discrepancy between the actual assets and the person's income from the position held, leading to superficial verification. **Croatia's** Lobbying Act, enacted in October 2024, regulates lobbying but lacks transparency. Lobbyists must register and report annually, but these reports aren't public, and officials don't have to disclose lobbying interactions in real time. Critics say this limits accountability and public trust. The **Czech** government's draft law on lobbying aims to increase transparency but has been weakened by exemptions, including for MP assistants and local governments, raising concerns about its effectiveness. Proposed amendments would allow lobbyists to comment on government bills without registration. **Germany's** Lobby Register Law has improved transparency, and the legislative footprint was introduced in July 2024. However, its scope is limited, as ministries only need to disclose lobby influences they consider 'significant', leaving room for interpretation. Aligning the

lobby register with the legislative footprint and adopting EU-style disclosure practices would enhance transparency. In political party financing, while 2023 regulations improved transparency, enforcement remains weak. Setting limits on individual donations and sponsorships is recommended to reduce the risk of undue influence and corruption. **Spain** lacks a national framework to regulate lobbying, and the Transparency Law is weakly enforced. Regional initiatives exist, but they are insufficient. The European Commission recommends a mandatory lobbying register to improve transparency and prevent corruption. Political decision-making remains opaque. Civil society consultations in the country are limited, with minimal government reporting and a platform that rarely invites input on significant issues. Consultations are infrequent, poorly publicised, and have short response times. Freedom of Information requests are often needed to access basic public information. GRECO urged the **Netherlands** to improve transparency in lobbying, noting the lack of a lobbyist register, clear lobbying definition, and mandatory disclosure of meetings. The government chose to enhance public officials' agenda transparency instead of creating a register, citing challenges in defining 'lobbyist' and concerns about restricting citizen access. However, research showed poor compliance, with only 12-21% of meetings published, and inconsistencies in reporting. Public agendas were found inadequate for ensuring lobbying transparency, lacking detailed information on lobbying activities. There is growing pressure for a mandatory lobby register and a supervisory authority to enhance transparency and accountability in lobbying.

Whistleblower protection

On the side of whistleblower protection and encouraging reporting of corruption, these are the main challenges. In 2024, the Defender of Rights in **France** published a report on the protection of whistleblowers, praising the clarified framework introduced by the law of 21 March 2022, which allows whistleblowers to choose between internal or external reporting. However, it noted that many entities required to implement internal reporting procedures have not yet done so. The report further notes that many entities lack mandatory internal reporting procedures. Concerns were also raised about insufficient protections in defence and national security, which discourage whistleblowing and hinder journalistic coverage due to a lack of source confidentiality. Additionally, the Defender of Rights recommended aligning anti-corruption whistleblowing mechanisms with the general framework of the Sapin II Law, a law of 9 December 2016 on transparency, the fight against corruption and the modernisation of economic life. **Italy's** Legislative Decree No. 24/2023, implementing the EU Whistleblower Directive, replaced previous laws but has notable drawbacks. It introduces defamation sanctions, vague wording leading to interpretation issues, and inconsistent protections between public and private sectors. Unlike the EU Directive, it restricts external reporting and subjects whistleblowers' reasonable belief in their reports to discretionary evaluation. These changes risk weakening protections compared to previous Italian laws. The Whistleblower Protection Office in **Slovakia** plays a key role in prevention, education, and whistleblower protection but faces political

pressure and media attacks from government officials. In October 2024, Interior Minister Matúš Šutaj-Eštok announced a criminal complaint against the head of the Office, Z. Dluhošová, after the Office fined the Ministry for unlawfully placing protected whistleblowers off-duty. Although the Ministry paid the fine, it plans to challenge the decision in court. **Estonia** was one of the last two EU Member States that had not transposed the EU Whistleblower Directive. The law became effective on 1 September 2024, and Estonia now faces a financial penalty for the delayed transposition, which was due by December 2021. In **Latvia**, according to Delna (Transparency International), Latvia's Whistleblowing Law, effective since 1 May 2019, has not been uniformly understood and consistently applied in court rulings. Even after five years, there is still confusion about the law's application and whistleblower protection. In **Lithuania**, the exposure of a whistleblower's identity within the State Security Department (VSD) raised concerns about whistleblower protection. The whistleblower had reported alleged illegal activities involving the VSD and the Special Investigation Service (STT) related to presidential candidate Gitanas Nausėda's associates. Despite existing legal protections, this case highlights weaknesses in enforcing these safeguards, risking whistleblower safety and discouraging future reports. It underscores the need for stronger protections to prevent identity leaks and retaliation, as well as the importance of rebuilding trust in anti-corruption institutions. In January 2024, K-Monitor and Transparency International Hungary filed an infringement complaint with the European Commission, arguing that **Hungary's**

whistleblower protection law fails to provide adequate safeguards, particularly for whistleblowers who go to the media. The law's lack of protection for those who report through the press discourages public disclosures, contradicting the EU Whistleblower Protection Directive. Anti-corruption NGOs also criticised the omission of whistleblower protection from Hungary's anti-corruption strategy. The new Whistleblower Protection Act in the **Netherlands** requires a "public interest" for protection, causing uncertainty and inconsistent court rulings. Transparency International recommends removing this requirement, ensuring anonymity in reporting, and imposing stronger sanctions against employer retaliation. They also urge the empowerment of the Dutch Whistleblowers Authority to enforce penalties, aligning with EU and OECD standards. **Spain's** whistleblower law is criticised for limiting protection to serious crimes, excluding anonymous reports, and not safeguarding supporting organisations. The Independent Authority for the Protection of Whistleblowers' effectiveness and independence are also questioned. Expanding protections and supporting anonymous reporting are recommended.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

Some Member States show a lack of criminalisation of corruption and related offences. **Bulgaria's** Act on Preventing and Fighting Corruption defines corruption narrowly, excluding

key crimes like fraud, money laundering, important credit-related crimes, tax crimes, document crimes, and computer crimes. The European Public Prosecutor's Office's launch in Bulgaria highlighted gaps in protecting EU funds and prosecuting procurement violations. There's also a need to introduce criminal liability for legal entities. **Germany** has passed a new law, Section 108f of the Criminal Code, to prosecute Members of Parliament who exploit their influence in government for private gain, addressing gaps in corruption laws. This complements Section 108e, which targets corruption within the parliamentary sphere but was criticised as too narrow and was not revised. Section 108f applies only where paid lobbying is prohibited, covering the German Bundestag but not most Länder parliaments. In **Slovakia**, amendments to the criminal codes have significantly reduced penalties and the statute of limitations for corruption and economic offences, raising concerns about their impact on crime. In **Latvia**, the Saeima rejected amendments to criminalise prohibited agreements, including price-fixing, in public procurement, despite long-standing advocacy by the Competition Council and other anti-corruption bodies. The Prosecutor General asked the Prime Minister to reconsider the amendments. In the **Netherlands**, there is no clear definition of 'foreign bribery', and the law does not distinguish between bribery and facilitation of payments, which are rarely prosecuted. Despite ratifying the UN Anti-Corruption Convention, the Netherlands excluded trading in influence from its Criminal Code, arguing that existing bribery laws were sufficient, although, in practice, this has hindered prosecutions. In July 2024, **Italy** passed Law

No. 114/2024, decriminalising abuse of public office by abolishing Article 323 of the Penal Code. This aimed to reduce administrative litigation and investigations involving public officials, as the provision was seen as overly broad and misused. However, critics argue that the repeal creates accountability gaps and weakens anti-corruption measures, as no alternative civil or administrative penalties were introduced to address public misconduct or abuse of power.

Effectiveness of investigation and application of sanctions for corruption offences

With regard to the effectiveness of investigation and application of sanctions for corruption offences, the following common challenges can be observed. **Czech** law criminalises corruption, including bribery, abuse of power, and embezzlement, but enforcement is inconsistent, especially in high-level cases. The 2024 Rule of Law Report highlighted lengthy judicial procedures, with many cases still unresolved. In 2024, the effectiveness of the Czech Office for the Protection of Competition (ÚOHS) was questioned due to its limited resources, lack of independence, and weak enforcement mechanisms, which hindered its ability to combat unfair practices and corruption. In **Slovakia**, the dissolution of specialised anti-corruption bodies, including the Special Prosecutor's Office and the National Criminal Agency (NAKA), and the reassignment of experts to district departments, have weakened the fight against corruption. Moreover, the release of former Special Prosecutor D. Kováčik from prison in August 2024, despite his corruption conviction, undermined public trust in Slovakia's anti-corruption efforts. In **Ireland**,

the detection and prevention of corruption is divided among several bodies, including the Standards in Public Office Commission (SIPO), the Corporate Enforcement Authority, and an Garda Síochána. This fragmentation has led to criticisms of inefficiency and a lack of coordination. In 2023, the Council of Europe noted that **Malta** still lacks the tools to sanction its MPs and was urged to improve on transparency. The **Netherlands** faces criticism from the OECD and Transparency International for inadequate investigation and weak enforcement of corruption, especially foreign bribery, despite its economic size and international obligations. Prosecutions of Dutch companies involved in bribery abroad are rare. Due to weak domestic enforcement, companies like Philips and Frank International were prosecuted in the U.S. for bribery last year. In **Bulgaria**, the Anti-Corruption Fund's 2024 report on high-level corruption cases reveals low conviction rates: out of 57 national cases since 2014, only 4 resulted in final convictions, with just 1 prison sentence executed. In contrast, 15 ended in acquittals (13 due to unfounded charges), 17 were terminated at the pre-trial stage, and 21 are pending or their status is unknown. Local-level cases show similar trends. These figures contrast sharply with the Prosecutor's Office's 2023 data, which reports 226 convictions out of 2,857 corruption cases overall, suggesting high-level corruption is underreported. The report calls for greater transparency in corruption case proceedings. The OECD two-year follow-up report expressed ongoing concerns about **Greece's** poor enforcement of the Anti-Bribery Convention and the lack of convictions with sanctions for foreign bribery. Despite significantly

increasing fines for individuals involved in foreign bribery, concerns remain about the effectiveness, proportionality, and deterrent effect of these sanctions, exacerbated by the absence of convictions.

Potential obstacles to investigation and prosecution of high-level and complex corruption cases

In **Italy**, investigating and prosecuting high-level corruption is hindered by institutional weaknesses, legislative gaps, and enforcement challenges. Despite judicial independence, political influence often affects corruption cases. Additionally, politicians exploit strict defamation laws to intimidate journalists, as defending against defamation claims is costly and time-consuming, even if the accused ultimately wins. In **Belgium**, investigators at the Central Office for the Repression of Corruption (OCRC) fear increased control over their work following a memo requiring reports to be reviewed by superiors before being sent to the public prosecutor. They see this as a threat to investigative independence, while the federal police argue it's meant to improve work quality. The Ministry of Justice has not commented, viewing it as an internal police matter. In July 2024, **France** closed public access to its register of companies' beneficial owners (RBE), a key tool for financial transparency and anti-corruption investigations. The closure, mandated by a 2022 ruling from the Court of Justice of the EU citing privacy concerns, hinders efforts to trace financial crimes, allowing individuals to hide behind nominees or shell companies. In **Croatia**, the appointment of Ivan Turudić as Chief State Attorney has raised concerns about

conflicts of interest, political interference, and the erosion of judicial independence, given his ties to figures implicated in criminal investigations and the ruling HDZ party. This, along with legislative changes like Lex AP (Criminal law amendments), weakens anti-corruption efforts and public trust, highlighting systemic flaws in Croatia's anti-corruption framework. Reforms are needed to restore judicial impartiality and strengthen oversight. Furthermore, investigations revealed inefficiencies due to jurisdictional disputes between Croatian authorities and the EPPO. In **Malta**, inadequate training and resources hinder the investigation and prosecution of high-level corruption. Despite a salary increase for the police, it remains insufficient to attract skilled officers, leading to high resignation rates and reduced investigative effectiveness. Low pay compared to lawyers in the Attorney General's office exacerbates the issue. In the **Netherlands**, prosecuting bribery through intermediaries is challenging because it requires proving

intentional use of third parties. Current laws limit accountability to top management, and no CEOs or CFOs have been jailed for bribery. This lack of personal liability discourages companies from investing in effective compliance programs, hindering anti-corruption efforts. The Netherlands lacks robust anti-corruption laws like the US FCPA, UK Bribery Act, or France's Loi Sapin II, which require internal controls and global compliance programs. This gap led to US prosecutions of Dutch firms Philips and Frank International for foreign bribery, highlighting weaknesses in Dutch jurisdiction and enforcement. The GRECO 2024 report criticised the **Czech Republic** for weak mechanisms to address immunity-related delays in corruption cases and highlighted the limited independence and resources of investigative bodies, which face political pressure in high-level corruption investigations. Despite calls for stronger safeguards, no new measures have been implemented.

Recommendations

Governments should

- Establish clearer guidelines and practices for managing public funds to ensure accountability. Regular audits and public reporting should be mandated to increase visibility into how funds are allocated and spent.
- Implement robust legal frameworks to protect whistleblowers from retaliation. This includes providing clear procedures for reporting, ensuring anonymity, and safeguarding their identities. Compliance with the EU Whistleblower Directive must be prioritised.
- Create and enforce comprehensive regulations addressing conflicts of interest and revolving door practices, particularly among high-level officials. Introduce mandatory cooling-off periods and independent oversight to prevent undue influence and corruption.

- Develop and enforce mandatory lobbying registers that require transparency in lobbying activities, including the disclosure of identities of lobbyists, the issues they are advocating for, and the resources they are using.
- Review existing anti-corruption laws to address loopholes and ensure comprehensive coverage of corrupt practices. Harmonise definitions of corruption and strengthen penalties for violations.
- Allocate adequate resources to law enforcement and judicial bodies responsible for investigating and prosecuting corruption cases. This includes training personnel, streamlining processes, and ensuring independence from political influences.
- Encourage and support active participation from civil society organisations and the public in monitoring government actions, ensuring that decisions are made transparently and that citizens can hold officials accountable.
- Establish mechanisms for periodic reviews of anti-corruption strategies and legislation. This would involve assessing their effectiveness, identifying areas for improvement, and adapting to new challenges as they arise.
- Promote ethics and integrity within public institutions through training programs and by leading by example. High-level officials should actively demonstrate commitment to anti-corruption efforts to rebuild public trust.

The EU should

- Better enforce the European standards on legislative decision-making to guarantee that Member States show actual progress in the improvement of their anti-corruption legislation and that the rules are enacted in a transparent and inclusive process.
- Adopt the new directive on combating corruption as soon as possible.
- Closely monitor the transposition and implementation of the European Whistleblower Protection Directive, in close cooperation with non-state actors including civil society, and act decisively in case of non-compliance.
- Pay particular attention to high-level corruption, especially those committed by high-ranking public officials because it undermines the public trust in the institutions of the state.

MEDIA FREEDOM CONTINUES TO DETERIORATE AGAINST A BACKDROP OF GOVERNMENT INTERFERENCE

Key findings

- National media regulators continue to face threats to their independence in many Member States, most often in the form of political influence over their staffing and budget. This is a continuing trend from last year's report.
- Public service media face similar political pressure, if not direct control, over staffing decisions, and some governments continue to use state advertising money to support 'friendly' media outlets while neglecting those that guard their independence.
- Few changes to either media ownership transparency or media pluralism were observed in 2024, ahead of EMFA's full enforcement later this year, which aims to address both areas. Media ownership remains opaque, levels of market pluralism are low in many countries, and, with few exceptions, Member States have not taken serious action to address the situation.
- Public trust in media remains low, although public service media remain generally more trusted than other news sources.
- Journalists continue to face threats, harassment and attacks, including in the form of SLAPPs, across the EU.

Last year's report found a troubling overall situation for media markets across the EU. Media ownership concentration remained high while ownership transparency remained low, journalists were very often victims of verbal and physical attacks, and strategic lawsuits against public participation (SLAPPs) continued to be used to silence journalists and media outlets. In many countries, public service media (PSM) were in a constant state of struggle for true editorial and financial independence from the government, while in others, PSM

remained a partially or fully captured tool of the government.

This year's report finds that negative trends in the EU media landscape generally persist, with the overall situation changing very little in 2024. Media regulatory bodies are under varying levels of political influence across the bloc, weakening or even stamping out their independence. National media markets remain heavily concentrated, often in the hands of billionaire owners with myriad business interests in other sectors and close ties to politicians.

Transparency of media ownership remains low while media ownership concentration remains high, stifling pluralism and preventing citizens across the bloc from understanding which forces are behind the news they read and from being able to hear diverse opinions in their news.

Although the European Media Freedom Act aims to address many of these issues, and it will fully apply to Member States from August of this year, so far there is little observable proactive change to media landscapes. There were, however, some observed actions to improve transparency, including in the Czech Republic and Croatia. Across the EU, journalists continue to face threats, intimidation, and attacks simply for doing their job. The use of strategic lawsuits against public participation (SLAPPs) remains high despite the passage of new EU anti-SLAPP legislation.

Independence of national media authorities

Although a country's media landscape should be regulated impartially by an independent body that is not threatened even by the possibility of political influence, that is not the case in many EU countries. The independence of national media authorities continues to be at risk from political interference in multiple Member States, particularly with regard to the appointment of authorities' members and leadership. This year's report observed continuing threats to the independence of national media regulatory authorities in **Croatia, Greece, Hungary** and **Slovenia**, and it also reports the existence of threats in **Bulgaria, Malta** and

Spain. There is also an unsettled situation in relation to funding in **Ireland**, causing uncertainty within both the media regulator and public service media.

In **Bulgaria**, members of the Council for Electronic Media are appointed by Parliament and the President, compromising the body's independence, and the public service media outlets it oversees are entirely dependent on the ruling parliamentary majority and government for funding. A similar threat hangs over **Croatia's** media regulator, the Agency for Electronic Media, whose members are nominated by the government and approved by a simple majority in Parliament. The country's largest journalists' association has called for a new media law to address these threats and ensure the independence of the agency, but no legislative action has been taken. Political influence in the appointment of media authorities' staff also threatens the independence of regulators in **Greece, Malta** and **Slovenia**.

As also found in previous years' reports, this year's report finds that independence is still essentially non-existent for **Hungary's** media regulator. The National Media and Infocommunications Authority (NMHH), although formally established as an independent body, continues to be subject to extreme government influence. The NMHH's decisions align with the views of the governing Fidesz party, and the lack of meaningful audits of pro-government media further demonstrates its loyalty. The situation is unchanged in **Spain**, despite long-standing calls for reform. In 2021, the President of the National Commission for Markets and Competition, Cani Fernández,

highlighted the need for legislative reforms to ensure that the agency's budget and staffing decisions cannot be influenced by politicians. In **Ireland**, although the Coimisiún na Meán enjoys independence, funding uncertainty roils the entire public media ecosystem. The Future of Media Commission, established by the government in 2020 to examine the future of the media in Ireland, issued a report in July 2022 that recommends moving away from the television licence fee model of funding public broadcasting to one of direct exchequer funding. A long-term funding plan is yet to be agreed, causing the National Union of Journalists to express dissatisfaction with the continued uncertainty.

While it is too early to draw firm conclusions about the independence of **Slovakia's** national media regulator, given the relatively recent change in government, the activities of the Council for Media Services so far indicate that it operates with independence and impartiality. 2024 also saw positive developments in the **Netherlands**. The Council for Journalism, the main self-regulatory body for the media, has recently been criticised by several media outlets for 'juridification'. In November 2023, the Council announced that they will no longer handle complaints from parties that also go to court or have started other legal procedures. These rules were enforced in 2024, although there remains lingering concern over the issue, as there were still several instances in the last year where lawyers accompanied complainants to the Council.

Media pluralism

A pluralistic media market is essential for the proper functioning of democracy because it provides citizens – and, thus, voters – with a diverse range of media options, and through these a diverse range of opinions to become familiar with. Unfortunately, the situation in many Member States does not live up to this standard. Last year's report noted challenges to media pluralism in **Croatia, France, Greece, Hungary, Italy, the Netherlands, Slovakia, and Slovenia**. In all of these countries, threats persisted in 2024, in addition to threats observed in **Germany, Malta, Spain, and Sweden**. Even where progress in this area had been reported in last year's report, developments in 2024 weakened safeguards that had been put in place in 2023, as happened in the **Czech Republic**.

Despite the fact that the number of media outlets in **Greece** is large and the landscape is diverse, the ownership of major media groups is concentrated among a handful of influential business owners who also maintain business in other sectors of the economy. The situation in 2024 was therefore essentially unchanged from the year before: the landscape for private media ownership is characterised by a small number of wealthy and politically connected families with extensive cross-ownership interests in key sectors, often reliant on public contracts from the government. **France's** media landscape also features media ownership heavily concentrated in the hands of wealthy businessmen. At the end of 2023, Vincent Bolloré acquired the Hachette group, which includes major publishing houses such as Armand Colin,

Fayard, Grasset and Stock, as well as school and children's publishing. In 2024, the press magnate installed people who shared his conservative political views at the top of several publishing houses.

In September 2023, rumours emerged about the potential acquisition of Agenzia Giornalistica Italia (AGI), one of **Italy's** largest news agencies, by the Angelucci Group controlled by Antonio Angelucci, a Lega MP as well as the owner of several newspapers such as *Il Giornale*, *Libero*, and *Il Tempo*. The possibility of a sale to Angelucci sparked immediate concerns over media concentration, political influence, and conflicts of interest. The sale was still pending at the close of 2024. In an effort to prevent media ownership concentration, the **Czech Republic** passed legislation in 2023 to prevent high-ranking politicians from owning media outlets. However, in December 2024, the Constitutional Court ruled that significant parts of the law were unconstitutional and annulled these provisions, weakening the legislation's scope and impact on media ownership regulations.

In 2023, the Dutch Media Authority signalled that fewer media companies own increasing segments of the media market in the **Netherlands**, and this trend continued into 2024. Together with RTL Nederland and Talpa Network, the public broadcasting system controls more than 75% of the television market. The online news offering is highly concentrated among websites owned by DPG Media, Mediahuis and RTL Nederland. According to the Media Pluralism Monitor, media pluralism in **Croatia** is highly at risk due to the unclear

rules regulating the concentration of electronic media and large concentrations of ownership. According to the latest available data, from 2022, the four largest audio-visual media owners in the country accounted for 97% of the market (with a viewership concentration of 82%); the market share of the four leading radio owners stood at 69% (with a listenership concentration of 35%).

The situation in **Slovenia** is also characterised by a significant level of media concentration – the same situation as in previous years. The dominance of the Media24 group, owned by the Odlazek family, is particularly significant in the print and radio markets. According to research based on 2022 data, Media24 is a network of 20 interconnected companies; these 20 companies operate a total of 121 print or broadcast media outlets, although the Mass Media Act forbids the publisher of a daily newspaper from simultaneously being the publisher or co-founder of a radio or television programme. Similarly, the broadcasting spectrum in **Malta** is dominated by the two main political parties. Political-party-owned stations are still not subject to the Broadcasting Act's provisions on impartiality.

In **Hungary**, the extremely low level of media pluralism in the market did not change in 2024. The government continues to exert influence over public service media through the Media Service Support and Asset Management Fund (MTVA). In addition to public service media, since 2018 the Central European Press and Media Foundation (KESMA) has centralised pro-government media outlets,

creating a pro-government media environment which relies heavily on state advertisements.

Spain's media landscape is characterised by a high concentration of ownership by a small number of conglomerates, which negatively affects both plurality and editorial independence. Although there is a wide and seemingly diverse media offering, it is controlled by a limited number of economic actors who dominate both traditional media and digital platforms, television and radio. In **Sweden**, significant portions of media outlets are owned by a few large corporations, such as the Bonnier Group and Schibsted. Bonnier owns about 43% of all subscription-based multi-day newspapers in Sweden, making them the largest player in the market, while Schibsted directly owns 13 newspapers and has indirect influence over others.

Economic factors are straining pluralism and driving concentration in **Germany**. The local newspaper landscape is facing significant challenges due to digitalisation and changing consumption habits, leading to a decline in the diversity of outlets. Many local editorial offices are being closed or merged due to rising production costs, declining sales, and a shrinking advertising market, with most digital advertising revenue going to social media platforms rather than traditional media.

Transparency of media ownership and advertising

Despite the importance of transparency in media ownership as well as how public funds are spent on advertising, numerous Member

States fail to uphold basic standards in these areas. Although the European Media Freedom Act seeks to address these areas, only a few Member States took meaningful action in 2024 to ensure they are ready to comply with the law, which is fully in force from August 2025.

Transparent allocation of state advertising

Non-transparent investment in **Croatia's** media outlets risks engendering favouritism, and potentially influencing editorial policies. This risk can be mitigated by establishing clear criteria for funding allocation. However, research on public financing of media, conducted since early 2022 by Gong in partnership with the Croatian Journalists' Association and the Croatian Journalists' Union, revealed that both safeguards for media independence – transparent funding with clear criteria and a strict separation between advertisements and editorial content – have failed.

In 2024, the **Czech** government approved the National Public Procurement Strategy for 2024–2028, which represents the first comprehensive policy document in the field of public procurement in the Czech Republic. Its primary goal is to shift the focus from formal processes to a strategic approach that promotes transparency and efficiency in public spending. In nearby **Hungary**, however, the situation remained unchanged last year: there are no regulations in place that limit the scope or set the rules for the transparency of state advertising. The scale of state advertising expenditures is disproportionately large, benefiting only pro-government companies that loyally promote government propaganda.

The situation is similar in **Malta**, where the government has not made any attempt to create a more fair and transparent environment in the allocation of state advertising and continues to ignore relevant proposals made by the Commissioner of Standards in Public Life in 2021. Information about the allocation of indirect state subsidies for media outlets by the government, in the form of advertising or sponsorship, is not publicly available and no legislation regulates the process. The lack of transparency and due process according to pre-set criteria means that the government can allocate public funds preferentially to favoured media outlets when allocating funds for state advertising.

In **Italy**, state advertising in the media is regulated by the Consolidated Law on Audiovisual and Radio Media Services (TUSMAR), as amended by Legislative Decree No. 208 of 8 November 2021. Article 41 of TUSMAR stipulates that public institutions purchasing advertising on mass media must adhere to the following criteria: 50% of their advertising expenditures must be allocated to newspapers and periodicals, while 15% must go to local radio and TV stations. That said, this data is not easily accessible, which undermines transparency in the allocation of state advertising.

The issue of politically sponsored media content has been long-standing in **Romania** and considerable sums of money continue to be spent by political parties on media content. Civil society organisations have argued that substantial sums of public money were transferred into the accounts of some news television stations to promote candidates in the European

parliamentary elections, and the parties have consolidated their role as significant investors in the media market, becoming financiers, actors, regulators and direct beneficiaries of the media process all at once.

Although **Spain** does have regulations aimed at preventing the misuse of state advertising budgets, in practice, the allocation lacks transparency and is influenced by politics. Contracts and amounts awarded are rarely subject to public scrutiny. As of January 2025, Spain has announced plans to reform its institutional advertising law to improve transparency in the allocation of state advertising. However, these measures are still in the planning stage and have not yet been fully implemented.

The situation in the **Netherlands** is comparatively better. The Dutch Media Authority annually allocates broadcasting time to political parties represented in the House of Representatives or the Senate to ensure a fair and balanced distribution. An independent notary oversees the lottery process for scheduling, while the NPO (Dutch Public Broadcasting) provides time slots, technical support, and subtitles. This process supports media independence, diversity, and freedom of information. Another positive trend has been observed in **Slovenia**, where the newly proposed Mass Media Act adheres to the principles of the European Media Freedom Act in relation to greater transparency of state advertising. According to the draft law, state institutions shall be required to regularly report on all media expenditures, including advertising, campaigns, and other media leases.

Rules governing transparency of media ownership

There is still a lack of transparency in media ownership in **Croatia**, extending to non-transparent practices in data collection and supervision procedures. Even though the legal framework prohibits concealing the ownership structure, in practice, the ultimate owners can remain hidden because, among other things, data entered in the registers are not updated and checked. There is, however, some movement to change the situation. The National Plan for Culture and Media Development, adopted in December 2023, calls for the creation of an online platform containing information on media ownership. Furthermore, as part of the National Recovery and Resilience Plan 2021-2026, the Ministry of Culture and Media and the Agency for Electronic Media are developing a project to establish a fact-checking system and a public platform for media ownership and funding transparency.

Currently, the **Czech Republic** maintains the same rules for revealing media ownership as for any business owner. However, access to the register of ultimate beneficial media owners is limited. In October 2024, a roundtable discussion was held in the Senate to address the implementation of the EMFA. The discussion focused on transparency in media ownership, rules for allocating public advertising, and the role of media regulators. Participants emphasised the need to strengthen media independence and prepare for the new obligations under the EMFA, which will be fully effective from August 2025, and agreed with the proposal

to create a database of the ultimate beneficial media owners that would be fully accessible.

In **France**, however, there are no plans to fully transpose the EMFA into French law. Nevertheless, a bill aimed at reinforcing media independence and better-protecting journalists was being debated in the Senate in the autumn of 2024, and could incorporate some of the EMFA's specific measures for protecting the confidentiality of sources and journalists.

In **Malta**, there are no specific legal obligations for media companies to publish their ownership structures on their website or in documents that are easily accessible to the public. However, all companies in Malta are obliged to submit a Memorandum of Association with the Registrar of Companies, which will display the details of the company shareholders on the Malta Business Registry website. With regard to the cross-ownership of media, there are currently no rules in place to limit the extent of media ownership by one owner. It is pertinent to note that both of the largest cable TV providers in Malta are owned and controlled by non-Maltese interests.

Many elements of the EMFA are covered by **Greek** law, but they are not always followed. In accordance with the provisions set forth in the Greek Constitution, all Greek TV channels and radio stations are required to disclose their ownership status to the National Council for Radio and Television. One notable deficiency is that following an initial disclosure of ownership of a given media entity, the registry of ownership does not publish any updated information. In other related areas, Greek law must

change to ensure transparency and align with the EMFA, for instance, national law does not mandate that media market concentration assessments account for their potential impact on media pluralism. This includes considerations such as the influence on public opinion formation, the diversity of media services, and the editorial independence of media outlets. In the Greek media industry, evaluations of mergers and acquisitions are based solely on competition-related criteria.

The level of transparency in media ownership in **Italy** remains insufficient. While the legal framework regulating the financial transparency of the media sector is in place, the practical implementation of such rules continues to be a challenge, increasing the risk of media concentration. The Italian media market is characterised by a complex chain of ownership, with a pyramid-like structure where a holding company controls several companies and their related outlets. Such a structure often makes it difficult to trace back the ultimate media owner, further increasing the risk of media concentration and potential ties to political or other vested interests.

The new media legislation adopted in **Slovakia** in 2023 increased the transparency of the media and imposed obligations on online media as well. According to the Publications Act, publishers, including news websites, are required to disclose their ownership structure and publish a list of major financial contributors. In **Slovenia**, the current Mass Media Act requires media outlets to report ownership stakes exceeding 5% to the Media Register, which is administered by the Ministry of

Culture. Media companies are also required to annually publish data and updates on ownership changes in the Official Gazette. It has been quite common practice for the Media Register to be inaccurate and not to provide updated information on ownership shares in different media companies.

Existing laws in **Spain** establish certain requirements for transparency in media ownership, but the information available is not always accessible or structured for effective consultation by citizens. The European Media Freedom Act could bring significant improvements by harmonising European regulations, requiring centralised platforms that make it possible to know the ownership and financing sources of the media. Specific changes in national legislation that fully reflect the principles of European law have not yet been detailed.

Public service media

Public service media are intended to provide quality, unbiased and fact-driven content that is accessible to the public, but many Member State governments increasingly seek to influence PSM's editorial decisions and content. Moreover, PSM's reliance on public funding continues to create uncertainty over its future in multiple Member States. Last year's report noted public service media in **Croatia, Czech Republic, France, Hungary, Ireland, Italy, Poland, Romania, Slovakia, and Sweden** faced threats in one form or another; this year's report finds threats exist in **Bulgaria, Croatia, Greece, Hungary, Italy, Malta, Poland, Slovakia, Spain, and Sweden**, and a positive trend emerging in **Slovenia**.

Independence of public service media from governmental interference

The European Federation of Journalists (EFJ) denounced the actions of a **Belgian** minister who appeared to have publicly pressured a public service broadcaster over its content. At issue were tweets from Jacqueline Galant, Minister for the Media of the French-speaking community, following RTBF's broadcast of an interview on anti-racism. The minister expressed surprise that the medium was unilaterally broadcasting a guilt-inducing opinion, calling on it to guarantee pluralism and scrupulously respect its ethical and legal obligations. In **Croatia**, the independence of Croatian Radiotelevision (HRT) is repeatedly called into question due to the politicised election of the Programming Council and the Supervisory Board. As in previous years, there is no progress in this area. Journalists' groups and civil society organisations continue to warn of the lack of independence of HRT. The Media Pluralism Monitor of the Centre of Media Freedom and Media Pluralism at the EUI assessed the independence of public media services as medium risk (50%) precisely because of the high risk of politicisation of the management and editorial staff.

The situation in **Hungary** remains far worse. Public service media, run by MTVA and centralised by the Public Service Public Foundation, is heavily influenced by the government. State media broadcasts government propaganda without allowing space for criticism or questioning. The organisation and funding structure of public service media remains unchanged, maintaining its opacity

and complexity. The ruling party's reluctance to improve it is evident in their reaction to the European Media Freedom Act. Despite the act's goal to enhance the independence and transparency of public service media, the government shows no willingness to cooperate. A Fidesz delegate described the EMFA as a form of censorship and another attempt to undermine Member States' sovereignty, arguing that it seeks to establish total control over the media.

In December 2023, **Poland's** Minister of Culture and National Heritage declared public service broadcasting companies – both television and radio channels – insolvent, initiating legal bankruptcy proceedings against them. Under this process, the Minister appointed receivers to temporarily manage the companies, but according to the Commercial Companies Code, these appointments offer minimal safeguards for independence. Receivers may be dismissed at any time and for any reason by the majority shareholder – the Polish state – represented by the Minister himself. Although this measure was reportedly intended to mitigate legal controversies surrounding the changes in public media, it has, in practice, placed these institutions in a legal framework with even fewer formal guarantees of independence than before.

Bulgaria's public service media suffer from deep structural weaknesses that undermine independence and content quality. While public media entities meet some public service obligations, significant gaps exist, including a lack of in-depth investigative journalism, strong editorial positions, and quality public affairs

programming. Among the three public media outlets, Bulgarian National Radio (BNR) maintains higher editorial standards and more diverse programming compared to Bulgarian National Television (BNT). The structural setup of three separate entities – BNT, BNR, and the Bulgarian Telegraph Agency (BTA) – leads to overlapping functions, inefficient resource use, and duplicated administrative costs. This fragmented system lacks a unified content strategy and struggles to compete in the digital media landscape.

As of 1 July 2024, **Slovakia's** previous public television and radio outlet, Radio and Television of Slovakia (RTVS), ceased to exist after Parliament approved the government's proposal to abolish it and replace it with a new institution, Slovak Television and Radio (STVR). The Director General of the new STVR will be elected by the Board of STVR. The members of the Board of STVR will be elected by the Parliament and the Minister of Culture, which means that the entire leadership of the new STVR is completely under the influence of the current government. This move by the ruling coalition has sparked mass protests and opposition, strikes and staff walk-outs. A motion was filed with the Constitutional Court in July 2024 to assess the constitutionality of the law in question, but the court has not yet ruled on the motion.

The independence of public media in **Spain**, such as RTVE, has been a recurring topic of debate. Although reforms have been implemented, such as the change in the system of elections to the board of directors, concerns remain about the influence of political parties

in its management. The situation is even more worrying in some regional public channels, where political influence is more pronounced. In several autonomous communities, the level of degradation in the management of these media has reached extreme levels. In November 2024, over 60 **Czech** institutions, including cultural and humanitarian organisations, called on government leaders to ensure the independence and financial stability of public service media. They emphasised the crucial role of independent public service media in a democratic society and urged for the swift adoption of the proposed amendments.

The independence and effectiveness of **Greece's** public service media in providing reliable and pluralistic information have been subjects of significant concern over past years. A recent report underscores that Greece's PSM, particularly the Hellenic Broadcasting Corporation, is susceptible to political and economic pressures. The frequent replacement of executives with each governmental change undermines the stability and independence of public broadcasting. In **Malta**, there has been no action taken to implement the provisions of the European Media Freedom Act.

Italy's public service media has long faced political influence, although the past two years have seen unprecedented levels of political interference, heightening the risk of public service media being captured by political power. Key concerns regard RAI's governance and funding structures, which currently leave the public broadcaster vulnerable to political interference. Out of a total of seven members of RAI's board of directors, two are elected by the

government, two by the Chamber of Deputies, two by the Senate and one by RAI employees. Such a provision allows for significant influence by the ruling majority. These provisions contravene the EMFA, which is to be enforced by August 2025.

On a positive note, in **Slovenia**, the de-politicised governing model of RTV Slovenia, introduced in 2022 by the current government, allows the outlet to function independently from political influence. A 17-member governing council composed of representatives of civil society and RTV Slovenia employees appoints the top management and oversees the public broadcaster's programming and finances. The new governing body has replaced two separate governing councils, which had a combined 40 members, mostly appointed by the parliament and the government. Although PSM also operates from a strong position in **Sweden**, challenges do exist, particularly when it comes to funding and political pressure. Public service media are increasingly tasked with countering disinformation while dealing with growing security threats and strengthening their preparedness. Recently, they have also faced rising operational costs due to inflation.

2024 was mixed in this area in **France**, where the government's proposal to reform the public broadcasting sector by merging the various press services of the public media was withdrawn from the agenda against a backdrop of public service strikes and the unpopularity of the measure. The dissolution of the National Assembly and the fall of Elisabeth Borne's government helped to keep this reform off the political agenda, but the reform was

nevertheless put back on the agenda by Michel Barnier's government in September 2024.

Financing of public service media

The failure to provide adequate funding and reform the licence collection system has had an impact on **Ireland's** main public service broadcaster, RTÉ. As of January 2024, the government has not provided information on long-term proposals for funding public service broadcasting beyond the three-year agreement, as outlined previously. The NUJ views this action as an impediment to securing the future viability of public service broadcasting as it fails to address long-term funding concerns. Funding concerns also exist for **Italy's** PSM. The government holds nearly 100% of the shares of the public broadcaster, giving it substantial control over the broadcaster's operations, which are heavily influenced by government budget allocations. RAI currently relies on two main sources of financing: a citizens' fee and advertising revenues. However, a new regulation spearheaded by Matteo Salvini has increased the integration of the citizens' fees into general taxation, granting the government greater discretion to expand or reduce RAI's funding at will.

The financial situation of **Malta's** public service media appears alarming, in part because it underscores the threat of political influence. The public broadcaster has lost a total of €5 million over the last 10 years, despite being given €40 million in direct subsidies over the same period, excluding millions given in state advertising. A National Audit Office report found that PBS registered losses across the

board and suffers from maladministration, a lack of transparency, and a total lack of proper procedures. A freedom of information request has revealed that PBS is irregularly using millions of state subsidies to fund its newsroom, even though the National Broadcasting Authority prohibits this.

Public trust in media

Levels of public trust remain low in many Member States, continuing a trend observed in previous reports. Generally, public service media retain higher trust levels than other forms of media, although there are signs in several countries that citizens have serious concerns over the impartiality of PSM.

Trust in **Bulgaria's** media remains critically low and has deteriorated further in recent years. According to the 2023 Reuters Institute Digital News Report, only 28% of Bulgarians trust journalists, a significant drop from 35% in 2022. This places Bulgaria 41st out of 46 countries surveyed for media trust. With 64% of the population expressing deep scepticism toward journalists, Bulgaria now shares the highest media distrust rating in Eastern Europe with Slovakia. The public broadcasters, BNT and BNR, retain relatively higher trust levels, at 59%, compared to private outlets.

Public trust in media declined by 2% in **Croatia** in 2024 (32% in 2024 compared to 24% in 2023), according to a study by Reuters. The public trusts private television stations with a national frequency the most (Nova TV – 65% and RTL – 61%), while the national television station is trusted by as many as 10%

fewer citizens (52%). Citizens generally trust television stations more than print and online media. According to the same research, people get their information the least through print media (20%), with online information and information via television being the primary source of information.

In 2024, public trust in the media in the **Czech Republic** remained relatively low. According to the Digital News Report 2024 by the Reuters Institute, only 31% of Czechs expressed trust in the news, representing a slight increase from 30% in 2023. This places the Czech Republic below the global average in media trust. The report attributes this low trust to factors such as perceived political bias and sensationalism, particularly among commercial media outlets. According to a survey by the Czech Academy of Sciences' Center for Public Opinion Research, trust in public service media in the summer of 2024 was higher than trust in commercial outlets. The study also found that interpersonal trust among Czechs is significantly higher than institutional trust, reflecting broader societal dynamics.

In **Estonia**, according to the latest government data, 80% of citizens say they trust their native-language news sources, the highest number reported from the countries surveyed for this report. In **France**, meanwhile, the prevailing sentiment towards the media is one of caution, with 62% of people agreeing with the statement that “we should be cautious of what the media says about major current events”. In **Germany**, a slight decline in overall trust in the media has been observed. While 49% of respondents expressed confidence in the media

on important issues in 2022, this number fell to 44% in 2023. Conversely, the proportion of those who distrust the media increased from 20% to 25% in the same period. Despite this shift, public broadcasters (Öffentlich-rechtlicher Rundfunk, ÖRR) remain highly trusted by most Germans. When asked openly which media outlets they trust, respondents ranked ARD and ZDF the highest. Public-service television led the trust rankings, with 64% of respondents deeming it very or somewhat trustworthy.

Public trust in the media in **Greece** remains notably low across various platforms, including print, radio, television, and both public service and commercial media, with only 23% of Greeks expressing trust in news overall. Trust in **Hungary's** news media is heavily influenced by political affiliation, although there appears to be an observed erosion in media trust even among supporters of the ruling Fidesz party, with 33% of the party's voters expressing concern over the state of public service media, which are essentially propaganda outlets for the government, according to a survey on media trust conducted in the Visegrad countries.

In **Slovakia**, according to the Reuters Institute Digital News Report 2024, the overall trust in the media is only 25% and fell to its lowest level in the eight years it has been monitored. The trend for many political leaders – especially within the government – to spurn the traditional media in favour of partisan sites where they get uncritical publicity is one factor that undermines public trust in traditional brands.

According to the Reuters Institute's Digital News Report 2024, trust in news in **Spain** remains low, with only 33% of respondents regularly trusting it, while 39% express distrust. On the other hand, in **Slovenia**, the public opinion research conducted in October 2024 revealed positive trends regarding trust in the public service broadcaster RTV Slovenija. The last opinion poll shows that trust in the public service broadcaster increased by 3 points compared to the October 2023 poll and by 6 points compared to the March 2024 poll.

Although the situation in the **Netherlands** is positive overall, it shows signs of deterioration. According to research, Dutch citizens are strongly convinced of the importance of independent journalism: 76% of Dutch people believe that the Netherlands cannot do without independent, professional journalism. When asked about levels of trust in regular news media, 48% say they have a lot of confidence, while 17% do not have any confidence in regular news sources. Worryingly, however, the research shows a decline in trust: four in 10 people state their trust in the media has decreased.

Safety and protection of journalists and other actors

Verbal threats and physical attacks

Journalists in the European Union continue to face threats and instances of violence when performing their duties. Journalists tend to be involved in investigations surrounding corruption, politically sensitive issues and the public interest.

Verbal attacks and threats are particularly widespread. In **Croatia**, the **Czech Republic**, **Germany**, **Italy**, and **Sweden**, journalists faced instances of online harassment in 2024. Additionally, **Italy** and **Sweden** both note a disproportionate amount of harassment is aimed at women journalists. In comparison to **Germany**, where physical harassment has declined, the **Netherlands** recorded a high number of physical attacks in 2024.

Croatia, **Greece**, **Italy**, **Malta**, **Romania**, and **Slovakia** have witnessed (targeted) smear campaigns against journalists, often involving political figures, the public and media platforms. The situation in **Slovakia** is particularly concerning as the government is now refusing to answer questions from mainstream journalists entirely. The number of attacks and threats against journalists in Slovakia has increased, and they come most often from government politicians.

A noteworthy positive development towards the protection of journalists occurred in **Latvia**. The Latvian Association of Journalists created a platform for anyone, including journalists and other media workers themselves, to report hate speech, violence, harassment, and intimidation on social media or in everyday life.

Law enforcement, journalist safety and independence

Several Member States report a lack of sufficient enforcement and protection measures needed to ensure the safety and independence of journalists and other media activists. **Italy**, **Slovenia** and **Slovakia** all lack specific

legislation aiming to enhance the safety and independence of journalists. In **Slovakia**, this means journalists have to rely on general civil and criminal law instruments which are less effective. Civil proceedings are slow, and criminal charges on these matters are frequently dismissed. Similarly, **Malta** has not yet implemented the European Commission's 2021 Recommendation on the protection, safety and empowerment of journalists. There are increasing concerns, not just over this lack of progress in journalist protection but also over potential backsliding. A sitting magistrate and an outgoing governing party president called for the return of criminal libel and harsher penalties for libel cases, which could have severe implications for the freedom of journalists.

Similar concerns of press freedom and censorship are emerging in **Belgium** in the wake of controversial court decisions. A Court of First Instance prohibited a newspaper from publishing information about legal proceedings involving a mayoral candidate. Another Commercial Court ruled that a report by one press company about another could be considered an unfair commercial practice. Most worryingly, the Belgian Minister of the Interior, alongside an investigator, sued a newspaper and sought the deletion or anonymisation of content involving him – an alarming act of state-driven censorship that defied Belgian Constitutional law. In **Greece**, concerns regarding the safety of journalists continue to grow in light of a recent court decision. In July 2024, two brothers stood trial for the murder of a journalist but were acquitted due to lack of evidence, many perceived this to be a failure of the justice system and a setback for press freedom.

Spain reports a lack of specific training and sufficient resources to deal with threats against journalists.

Noteworthy positive developments came from the **Netherlands, Ireland** and **Slovenia**. In the **Netherlands**, the government continues to enhance the protection of journalists through the temporary €500,000 yearly subsidy to PersVeilig, a body monitoring journalist safety. A platform known as Schrijversveilig was introduced, which aims to strengthen the position of writers against violence, aggression, and intimidation.

Furthermore, even though cases of attacks against journalists and media activists still persist, perpetrators are being arrested, which demonstrates the willingness of law enforcement to address threats of violence against journalists. In **Ireland**, a non-statutory body, the Media Engagement Group aimed at improving the safety of media workers was established. The group monitors attacks and threats and provides training. The group has also established a reporting system for profession-related attacks against media workers. Despite **Slovenia's** difficulties, the Slovenian Association of Journalists has continued to carry out various initiatives to increase the safety of journalists. They maintain the online platform 'Report Attack' and provide, in cooperation with a law firm, free first legal advice in case of attacks.

SLAPPs

Almost every Member State surveyed reported a lack of progress when it comes to the

transposition of the Anti-SLAPP Directive. For the majority of Member States such as **Belgium, France, Germany, Romania, Croatia, Greece, Hungary, Italy**, and **Slovakia**, the directive was not transposed at all and when it will be is unclear. Some efforts were made in **Bulgaria**, where a working group led by the Deputy Minister of Justice has been established to align Bulgarian legislation with the Directive. Despite this positive development, no concrete results were achieved. In **Ireland**, the Defamation (Amendment) Bill 2024 is expected to address some forms of SLAPPs against journalists and others and Part 7 of the bill will transpose the EU's anti-SLAPP directive. **Slovenia** made steps towards transposing the Anti-SLAPP Directive when it approved the preliminary framework for drafting legislation on preventing SLAPP lawsuits, prepared by the Ministry of Justice.

In the **Netherlands**, the Ministry of Justice and Security published the draft law for implementing the European Anti-SLAPP Directive. The proposed implementation law does not provide sufficient protection for victims of SLAPPs in the Netherlands. In some respects, the minimum standards outlined in the Directive are not met. While **Malta** transposed the Anti-SLAPP Directive, the law came with a number of limitations which wouldn't protect most of the SLAPP targets Malta has had until now. These limitations include a lack of Parliamentary scrutiny in the transposition process, and that the legislation is limited to minimum standards and does not provide protection against domestic SLAPP cases etc.

Due to the widespread lack of protection against SLAPPs, their use has continued in almost all Member States surveyed. In **Croatia, Hungary and Italy** SLAPPs are regularly used by politicians and other powerful actors aiming to discourage journalist investigations and silence their critical views. Comparatively, **Sweden** shows promise as journalists are relatively well protected by law against being sued in so-called SLAPP cases. However, threats of lawsuits and actual lawsuits do occur, though to a lesser extent than in Southern European countries.

Confidentiality, protection of journalists resources and whistleblower protection

Across the board, several challenges surfaced threatening the confidentiality of journalist resources and the protection of whistleblowers. Increased surveillance is undermining journalistic practices in the **Netherlands** and **Spain**. Journalists in the **Netherlands** were wiretapped by the Public Prosecutor's Office (OM), sparking controversy. Journalists argued that the OM violated their journalistic source protection. The OM argued that the wiretapping was incidental and targeted the suspect rather than the journalists themselves. Still, in response to the incident, the OM adjusted their rules around the wiretapping of suspects in conversation with journalists to always require prior permission from an Examining Magistrate.

In **Spain**, the protection of sources was weakened and the legal framework has not adequately evolved to address the complexities introduced by digital technologies. This lack of updating creates significant gaps in the

effective protection of sources, exposing them to risks derived from digital monitoring, mass data collection and threats to online privacy. Both **Croatia** and **Sweden** reported new laws that can open the possibility of sanctioning whistleblowers and journalists. **Malta** has improved its legal framework but the government has ignored several key requirements of the Whistleblowing Directive, and the degree of the government's influence over whether a potential witness is granted whistleblower status, remains unaddressed. In **Ireland**, the national police and security service of Ireland have repeatedly sought court orders to force journalists to hand over documentary footage.

Access to information and public documents

The majority of Member States surveyed experienced restrictions on the right to access information and public documents. Belgium and Bulgaria include broad clauses in their legislation. **Belgium** broadened the definition of 'state secrets' in the Penal Code, extending the scope of the offences of disclosing and receiving state secrets and **Bulgaria** has overly broad grounds for refusal of requests for information in its Freedom of Information Act. **Germany** recorded a fragmented and lacking approach to the protection of the right of access to information. Germany has still not advanced the plan to create a legal basis for the right of information of the press in relation to federal authorities. Furthermore, exceptions in the access to information legislation are being interpreted broadly both by the authorities and the courts, severely diminishing the effect of this legislation. Another country with vague

exemption clauses is **Italy**, which highlighted gaps in the implementation of the Freedom of Information Act and the lack of effective enforcement mechanisms.

Journalists in **Malta** are also struggling to obtain information on beneficial owners of companies, as they are consistently denied access to such information, despite showing legitimate interest. **Croatia**, **Greece** and the **Netherlands** report issues with undue bureaucratic delays when requesting information. In

Croatia, the state administration often does not respond to requests for access to information, or they wait longer than the deadline prescribed by law. Similarly, in the Netherlands, the government usually exceeds the deadline for processing Freedom of Information (FOI) requests. Journalists believe that such delays may be politically motivated. In **Greece**, requests for information are often met with bureaucratic delays, refusals, or vague justifications for not disclosing information.

Recommendations

Governments should

- Improve transparency on media ownership through the creation of national-level, publicly accessible, and regularly updated databases on the beneficial ownership chains of media companies and their links to politicians.
- Support small and independent media outlets by ensuring a fair and transparent distribution of public funds, in particular state advertising.
- Properly enforce existing laws or, where necessary, introduce new ones to protect journalists from attacks and harassment, including in online spaces.
- Ensure accurate and timely transposition of the EU Anti-SLAPP Directive into national law to ensure its full enforcement, and go beyond it with rules for purely domestic SLAPP cases.
- Ensure that national legislation is in line with the EMFA and support it with robust enforcement efforts.
- Safeguard the editorial independence of public service media and the regulatory authority bodies that oversee them, in particular by depoliticising the hiring processes.
- Create proper safeguards for journalists and use GDPR Article 85 to provide a legal base for journalists to process personal data.

- Take steps to tackle disinformation and hate speech on social networks while respecting human rights standards on the right to freedom of expression.
- Revise unduly broad or vague laws that criminalise legitimate free speech.
- Strengthen the framework for access to public interest information and public documents.

The EU should

- Ensure accurate and timely transposition of the EU Anti-SLAPP Directive into national law, ensure its full enforcement, and make sure judges and prosecutors are adequately trained to deal with the threat of SLAPPs.
- Closely monitor the transposition and enforcement of the EMFA and ensure it is properly enforced in the Member States.
- The Commission should continue its media monitoring project in relation to beneficial ownership of media companies across the EU.
- Monitor and report on the implementation of the EU Recommendation on the Safety of Journalists and related EU legislation, such as the Whistleblowing Directive, in consultation with civil society and media representatives.
- Align the efforts of Digital Services Act enforcement to ensure that access to information and freedom of the media prevail on very large online platforms and very large online search engines.

THE EROSION OF CHECKS AND BALANCES AMID FAST-TRACK LEGISLATION, POLITICISED AUTHORITIES, AND INSUFFICIENT PUBLIC ENGAGEMENT

Key findings

Regarding the process for preparing and enacting laws

- Fast-track legislative procedures continue to be overused by Member States, such as Croatia, Italy, Sweden, Hungary and Slovakia, often without the proper legal justifications.
- The lack of genuine public consultation and public engagement in political decision-making was reported from a large number of EU countries, including Romania, Ireland, Sweden, Estonia, Spain, Croatia, Hungary, Slovenia, Greece, Slovakia and Germany.
- Executive decrees and emergency measures continue to be a normalised practice used to bypass the regular legislative procedure, for example in Italy, Sweden and Hungary. This process favours certain political agendas, especially with regard to criminal and migration laws, to the expense of the balance of powers.

Regarding independent authorities

- Some Member States still lack National Human Rights Institutions (INHRI), like the Czech Republic and Italy.
- The political interference in the selection of the heads of independent bodies and their operation has remained a concern in Slovakia, Romania, Bulgaria, Germany, Greece, Malta, Sweden, Ireland. This is explained by a lack of a protective legislative framework guaranteeing their transparency and autonomy.
- The effective functioning of NHRIs has been critically hindered by a lack of financial, legal and human resources in several Member States. This challenge is reinforced by the minimal influence these institutions have on political authorities, most notably due to a lack of enforcement powers the national governments' reluctance to implement their recommendations. Such problems were reported in Ireland, Germany, Lithuania, Malta, France, and Hungary.

Regarding the electoral framework

- In multiple Member States, voters continue to be excluded from effective electoral participation based on their nationality or limited capacity, such as in Belgium, the Czech Republic, Hungary, Slovenia, Estonia and Malta.
- The poor quality of the enactment process of new electoral legislation was subject to strong criticism in Ireland and Hungary.
- The manipulation of political advertising during campaigns resulting in the (potential) distortion of the electorate's free will formation was reported from a concerning large number of EU Member States, including Greece, Hungary, Romania, the Czech Republic, the Netherlands, Spain, Slovakia, Croatia.

Last year's report highlighted national governments' short form emergency measures related to COVID-19 to the misuse of exceptional constitutional powers. A concerning trend was the poor quality of parliamentary lawmaking, which lacked inclusiveness. Independent authorities encountered significant obstacles in fulfilling their constitutional role of upholding the rule of law, primarily due to being severely underfunded and vulnerable to political pressures. Several Member States continued to exclude certain segments of their society from voting rights, contrary to European standards and demonstrated a reluctance to reform their electoral legislation.

This year's report highlights several concerns regarding the legislative process in EU Member States, noting an overuse of fast-track procedures without proper justification, a lack of public consultation and engagement in political decision-making, and the normalisation of executive decrees to bypass regular legislative processes. Additionally, many Member States

face challenges with independent authorities, which struggle with political interference, resource shortages, and limited influence on government actions. Lastly, the electoral framework remains problematic, with voter exclusion and manipulation of political advertising reported in several countries, undermining the integrity of electoral participation.

Process for preparing and enacting laws

Fast-track procedures

The practice of accelerated legislative procedures continued in 2024, particularly in **Croatia, Italy, Sweden, Hungary** and **Slovakia**. In **Croatia**, 25 out of the 59 newly introduced laws were adopted through the urgent legislative procedure without clear reasoning or justification. In **Slovakia**, the government continues to overuse fast-track legislative procedures, with almost 60% of government-sponsored laws being adopted through this process. Notably,

the current coalition employs these procedures more frequently than its predecessor during the COVID-19 pandemic. Similarly to Croatia, the fast-track legislative procedure frequently does not fulfil the necessary legal conditions that would justify its use. Additionally, the procedure was used for the most significant legislative changes of 2024, such as the major amendment to the Slovak criminal laws. **Sweden's** legislative pace continues to be rapid, particularly within the area of criminal law, leaving little room for consultations which are an integral component of the Swedish legislative process. As a result, crucial input from various stakeholders and civil society organisations is bypassed.

Public consultations

Although the involvement of stakeholders in the assessment of draft laws is an integral part of most countries' legislative process, CSOs have reported that it is often overlooked entirely or not effectively conducted. This is notably the case in **Romania, Ireland, Sweden** and **Estonia**, where public consultations are often circumvented by the use of fast-track legislative procedures. In **Spain** and **Croatia**, the access to public consultations for citizens' inputs was compromised due to the choice of complex platforms. In **Hungary**, the consultations often do not involve all key stakeholders, and even in the parliamentary phase of the legislative process the opposition remains deprived of the opportunity to participate in genuine collaboration with the governing majority. A monitoring mechanism in **Slovenia** has reported that the government fails to respect the legislation on public consultations

in 63% of the cases. The use of short consultation periods has been reported in **Greece, Slovakia** and **Germany** to prevent CSOs from effectively reviewing draft laws. This challenge is further reinforced by the lack of implementation of recommendations and comments made during the consultation process, as reported in **Croatia** and **Romania**.

Executive decrees and emergency measures

Another observable trend was the use of extraordinary constitutional measures by executives to further their legislative agenda. **Italy** frequently uses decrees and this practice is becoming increasingly normalised. Decrees presumed emergency and necessity conditions allowing the executive to issue directly applicable legislative measures, bypassing the ordinary legislative procedure. This process raises concerns about the balance of powers between the government and parliament. In **Sweden**, the government is increasingly steering the legislative process by pre-determining the conclusions of government inquiries, particularly in criminal and migration law. This practice severely limits critical analysis of human rights and other implications of proposed legislation. In **Hungary**, although the number of emergency decrees has decreased, a draft bill extending the state of danger was introduced in Parliament, creating the possibility of their increase in the future.

Independent authorities

Creation of additional independent authorities

Although most EU countries have established independent authorities, some lack essential bodies. In the **Czech Republic** and **Italy**, no National Human Rights Institution (NHRI) was established in 2024. Despite the support of the government to establish NHRI, the proposals have not led to any successful legislative process. **Bulgaria** still lacks an Ombudsperson and the **Czech Republic** does not have an Ombudsperson for children. In **Germany**, a Police Ombudsperson has been created but presents with shortcomings due to its limited powers.

Selections of members and institutional autonomy

The autonomy of independent authorities remains challenged by the politicised selection of their heads in several EU Member States. Political interference was a major concern in 2024, in **Slovakia**, where the government still plays an influential role in the election of the heads of key regulatory bodies. In **Bulgaria** and **Germany**, the opaque election process of independent bodies is a concern. In **Bulgaria**, the election of the Ombudsperson lacks transparency and over 20 independent bodies have vacant positions or members with past terms of office. In June 2024, the mandate of the **Romanian** Ombudsperson expired, and the parliament failed to replace them. The **Greek** Hellenic Authority for Communication Security and Privacy (ADEA) was at the centre of a

scandal involving political influence. Similarly, in **Malta**, the Anti-corruption Commission lacks transparency and its powers are undermined by possible political influence. There are also concerns concerning the government's role in weakening the powers of these institutions. The **Swedish** government has not responded to CSOs' demand to include safeguards in the Constitution and the Belgian government has bypassed the federal Data Protection Authority to a regional-level body, which lacks transparency. In **Ireland**, the new oversight structure of independent authorities poses issues to their independence.

Conditions of effective functioning

Many countries fail to guarantee the conditions necessary for the effective functioning of National Human Rights Institutions. The lack of access to financial, human and legal resources remains one of the main concerns. This is further reinforced by the lack of binding powers of the institutions and the failure of the governments to implement their recommendations. In **Ireland**, the new oversight structure restricts access to information and the enforcement powers of the independent bodies. Similarly, in **Germany**, the commissioner for data protection and freedom of information has limited powers in the area of freedom of information and lacks the resources to enforce its legal opinions. The new police ombudsperson has limited resources and the Federal Anti-Discrimination Agency, **Germany's** equality body, lacks essential legal powers, making it one of the least powerful equality bodies in Europe. The insufficient resources and delays in budget allocations undermine

the independence and effectiveness of the **Lithuanian** ombudsman institutions. The lack of necessary enforcement powers has been reported by Members in **Malta, France** and **Spain**, revealed by the lack of influence these institutions have on political and administrative authorities. CSOs in **Hungary** reported that the Ombudsperson does not use its powers effectively.

Electoral Framework

Recent election monitoring from both Liberties and partner organisations revealed troubling patterns in the restriction of democratic rights and electoral freedoms of EU Member States' citizens, including the targeted disenfranchisement of specific voter strata, reinstatement of undemocratic electoral laws, and the manipulation of campaigns and political advertising. For more detailed assessments of challenges to elections in the EU, Liberties conducted a European Parliament Elections Monitoring Report in 2024, which examined online political advertising in the run-up to the 2024 European Parliament elections in six EU countries: Bulgaria, France, Germany, Hungary, Poland, and Spain.

Limits on the right to vote

In multiple Member States, voters are excluded from effective electoral participation based on nationality or claims of limited capacity due to disability status. In **Belgium**, courts are tasked with deciding on an individual basis whether a disabled person is fit to exercise their political rights, including the right to vote or run for elected office. This is performed using a

simple checklist, allowing judges to disproportionately deprive individuals of their right to vote without personalised assessment. Similar claims about mental capacity were used to restrict the voting rights of disabled people and those under legal guardianship in the **Czech Republic, Hungary**, and **Slovenia**.

In addition to disenfranchisement through disability and legal guardianship status, multiple Member States were found to restrict voters in similar ways based on their nationality or citizenship status. In **Estonia** and **Malta**, migrants, noncitizens, and dual nationals are not able to participate in elections or are heavily restricted. In the **Netherlands**, the largest political party has urged for years that people with dual nationality be deprived of their right to vote and should not be considered for political office.

Estonia presented a deposit system for political candidates, which uniquely disenfranchises candidates from participation in elections by forcing them to deposit a monetary amount equal to five minimum monthly wages for each person nominated to run. This has provoked resistance, especially from parties which did not pay their deposit and were, in turn, stricken from the ballot.

Regulatory framework

There have been several cases of Member States reinstating legislation to restrict electoral participation through non-democratic means. **Hungary** engaged in partisan lawmaking related to elections in 2024 by changing the date of municipal elections to coincide with

European Parliament elections. The law was enacted without meaningful consultation from key stakeholders and without opposition party support. This change led to municipal representatives remaining in office for almost four months even after losing their elections, which gave way to attempts to abuse their power. **Ireland** also passed legislation purportedly aimed at maintaining electoral integrity which was amended late in the legislative process. These changes were deemed to be incompatible with EU law.

Campaign and Communication

One major issue in European elections has been the manipulation of campaigns and political advertising, such as through distortion of the free expression of the voters' will. In **Greece**, there were major privacy concerns after voters were inundated by unsolicited political messages (often referred to as 'political spam') in the lead-up to EP elections. These included phone calls and text messages which left voters frustrated over these intrusions and sparked debates about the adequacy of existing regulations. **Hungarian** voters likewise experienced a flurry of emails containing campaign messaging from the governing party, which was possible because voter email addresses had been collected to allow strategic communication about the COVID-19 pandemic.

Social media likewise played a large role in communication manipulation schemes. In **Romania**, one political candidate benefitted from massive exposure on TikTok, which granted him preferential treatment and decreased the visibility of other candidates. The

Czech Republic also experienced difficulties that similarly derived from asymmetrical social media coverage, whereby misleading content aimed at influencing voters was disseminated on Facebook, undermining trust in democratic institutions. In the **Netherlands**, microtargeting on social media was used to target potential voters based on personal information such as their search history. The Personal Data Authority has criticised this practice, saying it could lead to unfair election results. In **Spain**, social media is used intensively during campaigns, including in ways which break rules on the timing constraints of campaigns and transparency. During the 2024 residential campaign in **Slovakia**, the Minister of the Interior was denounced for sponsoring paid posts on social media criticising an opposing presidential candidate as a "candidate of war", which, opposers argued, was a clear attempt to influence the election process. **Croatian** politicians engaged in a comparable practice by targeting a specific presidential candidate with disinformation including defamatory content. Investigations into this practice revealed that individuals associated with the ruling party were involved in these activities, underscoring the need for measures to combat disinformation.

In some instances, suppression of political advertising came through language restrictions, as in the case of **Latvia**, where candidates and political parties cannot communicate with voters in a minority language. This has been marked as a prohibition on diversity of opinion in political discourse and has been criticised as an infringement on the right to freedom of speech.

Recommendations

Governments should

Regarding the process for preparing and enacting laws

- Ensure that fast-tracked legislative procedures and extraordinary constitutional measures are only used when the necessary legal conditions are met and their use can be properly justified, thus preventing their misuse.
- Ensure that relevant stakeholders, including civil society organisations, have the opportunity to meaningfully participate in their country's legislative processes through public consultation.

Regarding independent authorities

- Take steps to establish essential independent authorities meant to investigate complaints and protect human rights if they lack them.
- Improve transparency surrounding the selection procedures of heads of independent authorities and ensure that such selections are not undermined by undue political interference.
- Guarantee the conditions necessary for the effective functioning of National Human Rights Institutions and other independent bodies by taking steps to improve financial support and allocation of resources and enhancing their influence.

Regarding the electoral framework

- Revise their rules limiting the voting rights of third-country nationals, and people having reduced mental capacity to bring their legislation in line with the European standards.
- Guarantee that amendments to the electoral legislation are adopted at least one year before the election in a transparent, inclusive, and democratic legislative process.
- Revise their legislative framework and strengthen their supervisory bodies to make sure that campaign communication, especially on social media does not have an undue influence on the free will-formation of the electorate.

The EU should

Regarding the process for preparing and enacting laws

- Closely monitor whether national legislation implementing EU law, especially legislative acts adopted to comply with decisions of EU rule of law mechanisms, is adopted in a transparent, accountable, democratic and pluralistic lawmaking process, and activate the rule of law mechanisms in case of non-compliance.
- Conduct an in-depth assessment of the use of emergency and accelerated procedures and extraordinary constitutional measures in lawmaking.

Regarding independent authorities

- Put stronger pressure on governments to set up or strengthen independent authorities, by enforcing relevant existing EU standards and adopting new ones, for example on the selection of their heads, their structural independence, their financial and human resources, their legal competencies, and the implementation of their decisions.
- Monitor the Member States' compliance with the Commission's Recommendation on standards for equality bodies¹¹ and make progress with the adoption of the Directive on standards for equality bodies.¹²
- Make funding or capacity-building or other measures of support directly available to national institutions set up under EU law to help mitigate the impact of funding shortfalls.

Regarding the electoral framework

- Monitor more closely the compliance of the Member States' electoral legislation with the international standards of national elections, especially those set by the Venice Commission, the ECtHR and the OSCE.

11 European Commission (2018), Commission Recommendation of 22.6.2018 on standards for equality bodies, C(2018) 3850, Brussels, 22 June 2018, https://commission.europa.eu/document/download/ee81e0ee-d0b5-4039-8081-aa0c072ed193_en?filename=commission_recommendation_on_standards_for_equality_bodies.pdf.

12 European Commission, Equality bodies – binding standards, https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13098-Equality-bodies-binding-standards_en.

- Monitor the Member States' compliance with the Regulation on transparency and targeting of political advertising once it is enacted and make sure, in particular, that Member States prepare and adopt all the necessary legislation in a timely manner.

ESCALATING THREATS TO CIVIC SPACE

Key findings

- Member States continue to use restrictive laws to undermine the work of civil society, in particular laws that focus on 'foreign agents', 'foreign interest representation services' and lobbying restrictions.
- Starving CSOs of funding sources was another widely used approach either through cutting budget lines, limiting how funding can be used and stigmatising foreign funding.
- Access to information was limited through new restrictions or continued use of existing hindering accountability and trust in public institutions.
- Again governments severely curtailed the right to protest in particular around pro-Palestine demonstrations. Protests were banned, heavy penalties imposed, particularly for environmental defenders and new restrictive laws passed.
- SLAPPs remain a powerful weapon to silence rights defenders, climate activists, journalists and others, necessitating urgent action from Member States in line with the new EU directive. Few Member States have indicated plans to go beyond the cross-border scope of the directive.
- Threats in the online space took a variety of forms from cyber attacks against NGOs, disinformation and online hate speech, to surveillance and infringements of privacy and data protection.

Last year's report reaffirmed the findings of previous years, namely that governments continue to deploy a range of tactics to silence, undermine and attack civil society

organisations (CSOs) and rights defenders. Instances of physical violence were reported alongside existential threats to organisations themselves, often through financial or

registration levers. Climate activists in particular faced harassment, arrest and the threat of abusive lawsuits.

This year's report confirms that these issues continue unabated and in many ways with renewed vigour. The combination of electoral results, bringing in more politicians who see a thriving civic space as a threat to their power and rapid replication of repressive laws creates a very unstable space for civil society. Bans and restrictions on the right to peaceful protest were seen across the region with pro-Palestinian demonstration singled out. The online civic space is still marked by cyber attacks, disinformation, surveillance and abuse of privacy rights.

Freedom of Association

Threats to the freedom of association in 2024 were reported in nearly all Member States reviewed namely **Bulgaria, Croatia, the Czech Republic, Estonia, France, Germany, Greece, Hungary, Italy, Ireland, Latvia, Lithuania, Malta, Romania, Slovakia, Slovenia, Sweden** and the **Netherlands**. Organisations working with minorities, LGBTQIA+ communities and on environmental protection, faced the most significant and numerous obstacles.

'Foreign agent' laws

Several countries introduced or maintained either draft or adopted, foreign agent or transparency laws including **Bulgaria, Hungary, France, Slovakia** and the **Netherlands**. The laws take varying forms from registers for

organisations receiving foreign funding, to specific labelling requirements and publication of detailed funding information. In **Hungary**, following the adoption of the Sovereignty Protection Act in December 2023, in 2024 the Office of Sovereignty Protection launched several investigations into NGOs and investigative journalists.

Lobbying laws

Another approach to limiting the operating space for CSOs has been to question the role of watchdog organisations by classifying different CSO activities and re-assessing the definition of lobbying. In **Bulgaria, Croatia, France, Ireland, Latvia** and **Slovakia** varying approaches were taken. For example, in the new Lobbying Act in **Croatia**, the definition lacks clarity and the distinction between public interest advocacy and professional lobbying is blurred. In **Ireland** CSOs are bound by the same procedures as private enterprises and in **Slovakia** while some of the more egregious elements were dropped from the law restricting NGOs, stricter lobbying regulations were introduced, such that any activity of NGOs could be considered lobbying. In **Bulgaria**, the Publicity of Lobbying Act imposed strict rules on NGOs while exempting powerful entities from the same scrutiny.

Funding

One of the most effective ways to target CSOs is to starve them of funding sources. In some cases a lack of funding may be due to a lack of prioritisation or recognition of the role of CSOs, whereas in others it is more of a

deliberate attempt to restrict funding - particularly for certain organisations. Organisations in the **Czech Republic, France, Lithuania** and **Malta** noted the very limited funding available, particularly for rural or minority organisations and in the **Netherlands** the new government announced a 70% cut in the development aid budget as well as a plan to reduce the tax benefits for individuals and companies who donate to non-profit organisations. More targeted challenges were faced in **Slovenia** and **Germany**. In **Slovenia**, the Ministry of Public Administration launched a funding programme for NGOs which was plagued by controversies, leading to the minister's resignation. The new minister subsequently cancelled the call for funding altogether, leading to NGOs taking legal action. In **Germany**, the funding environment became increasingly politicised with organisations working on the Middle East facing restrictions. In **Ireland**, an interesting study was published on the impact of state funding for NGOs concluding that many organisations felt the need to self-censor if they accessed state funding.

Administrative measures

In some countries funding or administrative obstacles led to the dissolution of organisations. In **Sweden**, discriminatory treatment and withdrawal of funding of minority organisations led to their dissolution, including for example Sweden's largest and oldest Muslim organisation. In **France**, there has been a long-term pattern of repeated use of administrative measures to dissolve organisations. In **Romania**, abusive banking practices, under the pretext of fighting money laundering, led to

organisations having their accounts arbitrarily closed. In **Ireland** and the **Netherlands**, organisations reported on laws that were adopted placing further obstacles on NGOs bringing collective class actions. Irish organisations noted that this stemmed from the way the Collective Redress Directive (2020/1828) was transposed, precluding bodies representing collective interests from bringing legal proceedings.

In a positive development in **Estonia**, the Amendment to the Auditing Activities Act significantly eased financial reporting obligations for foundations, reducing the financial stress for CSOs, especially smaller ones.

Targets on specific groups

As already noted, specific groups face particular threats including minority groups, LGBTQIA+ organisations and those providing legal and humanitarian support to migrants. In **Bulgaria** a new law bans any discussion or promotion of LGBTQIA+ topics in schools, mirroring in many aspects the **Hungarian** 'Propaganda Law' adopted in 2021. **Greece** and **Italy** continue to target organisations providing assistance to migrants. News laws or decrees were passed criminalising CSOs involved in search and rescue operations, more humanitarian workers are facing criminal charges and new laws have also made it more difficult to register organisations. In **Latvia**, a human rights activist is being prosecuted, accused of organising the illegal movement of people across the Belarussian-Latvian border. In **Hungary**, despite a judgment from the Court of Justice of the European Union,

the ‘Stop Soros’ law, designed to criminalise organisations providing assistance to migrants, has not been repealed.

Freedom of peaceful assembly

Threats to peaceful assembly multiplied in 2024 with most countries reporting widespread limits to pro-Palestine events and demonstrations. Environmental protesters faced particularly harsh penalties and organisations reported a variety of repressive measures from limits to the space for protest to excessive police violence and disproportionate penalties.

Protests on Solidarity with Palestine

Restrictions on the right to peaceful protest related to Palestine were reported in **Belgium, Croatia, the Czech Republic, Germany, Greece, Hungary, Ireland, Italy, Latvia, Romania, Slovakia, Sweden** and the **Netherlands**. Restrictions ranged from bans on pro-Palestine protests in **Estonia** and **Hungary** and a blanket ban in **Germany**, to stricter measures deployed in **Sweden**, fines for attending demonstrations in **Belgium** and in several countries suppression of pro-Palestine symbols such as the Palestinian flag or keffiyeh. In several countries court cases have been instigated: in **Croatia**, a group of activists were accused of disrupting public order when they projected a ‘Free Palestine’ message on the Israeli embassy. They were acquitted due to lack of evidence; in **Latvia**, authorities banned an unregistered ‘Free Palestine’ movement citing public safety risks, societal division and potential criminal offences. The organisers challenged the ban in court which was upheld but is now being

appealed to the Supreme Court; and in **Germany** the ban on the slogan ‘from the river to the sea’ has led to criminal convictions, restricting free speech at protests.

Environment

Environmental protesters were also frequently treated disproportionately as has been reported by the UN Special Rapporteur on Environmental Defenders. Specific cases were reported in **Germany, Italy, France, Hungary, Poland, Sweden** and the **Netherlands**. In **Sweden**, he noted the growing number of environmental defenders being fined for participating in peaceful protests with the fines increasing. In **France**, Nature Environment submitted two complaints to the Special Rapporteur regarding violent repression by police authorities during environmental demonstrations. In **Hungary**, a protester wore a gas mask at a demonstration and despite removing it when asked, was convicted for violating protest rules. In the **Netherlands**, several members of Extinction Rebellion were preventatively arrested before the start of a climate demonstration and eventually prosecuted for sedition.

Restrictions on locations

Another way to restrict protests is to limit the locations and times of protests. In **Croatia**, the government again closed off St. Mark’s Square blocking the public from access. The square, a traditional site of protest, remained closed throughout 2024. **Slovakia** extended the prohibition to hold an assembly within a 50 meter radius of state buildings and in **Ireland** there have been increasing restrictions on protests

outside the Oireachtas when parliament is sitting. In **France**, protests were banned during the Olympic Games.

Use of force

Many countries cited increased and disproportionate use of force by the police including **France, Greece, Ireland, Italy, Hungary, Romania** and the **Netherlands**. In Germany groups reported the normalisation of force such as through the use of pain grips, in the **Netherlands** water guns were used against individuals and small groups and in **Ireland** the police have access to increasingly enhanced equipment such as water canons. Reports from **Greece** pointed to violence by the police that led to serious injuries and even fatalities among protesters, as well as discriminatory practices targeting minority groups and a lack of mechanisms to report and investigate police conduct.

Other concerns related to police use of biometric data. In **Italy**, riot police can resort to biometric surveillance and filing to identify the demonstrators but protesters cannot identify police agents, in the **Netherlands** through unlawful ID checks, the police are able to process personal data from peaceful protesters and in **France**, during the Olympic Games, the government deployed, on an experimental basis and without an adequate legal framework, algorithmic video surveillance by the police.

More restrictive protest laws and access to justice

Several countries sought to cement restrictions through changes in the laws on the right

to protest. Laws were proposed, adopted or amended in **Estonia, Italy** and **Slovakia**. In **Italy**, a new bill on public security affects the right to protest in many ways including severe administrative sanctions of up to six years imprisonment. In **Slovakia**, following the assassination attempt on the Prime Minister, certain measures were adopted to improve security including laws that restrict the right to peaceful assembly and in **Estonia** the Ministry of the Interior has proposed amendments to the Law Enforcement Act, aiming to give the police greater authority to pre-emptively prohibit protests and lower the threshold for using water cannons. In some cases, practices were determined through case law. In **Hungary** the Supreme Court legitimised the police practise of banning protest during times of conflict, implying that protests are only allowed during times of peace in **Sweden** case law from District Courts as well as from the Courts of Appeal has been inconsistent, with some activists being convicted and some acquitted for very similar actions. In **Poland**, the government is yet to reform and repeal repressive measures enacted by the previous government.

Access to justice is a significant barrier in most countries primarily due to a lack of access to legal aid but exacerbated in some countries by additional measures. For example in **France** the existing legal framework restricts the right to take collective legal action to associations with approvals granted by the administration, administrative sanctions are increasingly used to discourage participation in protests.

Freedom of expression and information

Limits to freedom of expression ranged from restricting access to information to the criminalisation of hate speech in a way that disproportionately limits free expression and challenges in tackling disinformation. In **Poland**, the provision criminalising blasphemy continued to be used, restricting freedom of expression and artistic freedom.

Access to information

Several countries including **Croatia, France, Germany, Italy, Spain** and **Slovakia** imposed new restrictions or continued to utilise restrictive measures on access to information thus hindering accountability and trust in public institutions. Journalists faced difficulties accessing information particularly related to pro-Palestine demonstrations. **Slovakia** introduced two major restrictions on the right to information: one introduced a new category of ‘limited information’ which will be withheld from the public because of its sensitive nature and the other allows authorities to charge upfront fees for ‘extraordinary extensive searches’ without clearly defining the scope of this term. In **Spain** outdated secrecy laws and deficiencies in the Transparency law limit access to key information, the government refusing to publish key information.

Hate speech

Many governments faced challenges limiting hate speech, and while having a duty to prohibit hateful, insightful speech went further,

abusing their authority to criminalise free expression. **Estonia** proposed a new law penalising individuals who incite hatred in a manner that may threaten public order. **Spain** has long been criticised for criminalising hate speech through the application of vague laws that limit free expression. The Gag Law continues to restrict public expression and reforms presented have failed to remove controversial provisions relating to the disobedience to authority and the prohibition of sharing images of members of security forces when they exercise their duties. In **Italy** a new draft law has raised concerns from regional human rights bodies due to its provisions that criminalise collective forms of dissent and in **Ireland** prior to the introduction of the Criminal Justice (Hate Offences) Act the national police adopted their own working definition of ‘hate crime’ and ‘hate incidents’.

Attacks against HRDs and civil society

Human Rights Defenders (HRDs) and civil society organisations face increasing attacks across EU Member States with most countries reporting some form of attacks, harassment or smear campaigns against civil society organisations including **Belgium, Croatia, France, Germany, Ireland, Italy, Romania, Slovakia, Slovenia, Spain** and the **Netherlands**.

Smear campaigns

Smear campaigns and attempts to discredit civil society by politicians and in the media were the most common form of attack - but one that prepares the ground for further attacks by

seeding mistrust of civil society organisations. Increasingly politicians and government officials are themselves in campaigns to discredit civil society: in **Slovakia**, the ruling party uses public attacks and misinformation to discredit civil society, in the **Netherlands** the legitimacy of NGOs is frequently questioned by politicians including ministers, messages that are then fueled by the media initiating smear campaigns against NGOs and individual activists. In **Belgium**, the staff of human rights organisations are frequently subjected to online and offline verbal attacks and negative media campaigns. In **Romania**, CSOs criticised a TV programme for a debate in which the moderator argued that NGOs are controlled by the secret services.

In **Slovenia** and **Ireland**, politicians portray civil society as useless and a waste of money. The Slovenian Democratic Party uses smear campaigns to portray CSOs as useless and blame them for societal issues. In **Ireland**, public discourse from the media and some politicians focuses on ‘defunding NGOs’ seeing them as a waste of money particularly those working on migration and LGBTQIA+ issues.

In **Sweden** politicians have labelled climate activists as security threats, referring to them as criminals, security risks and saboteurs of democratic political processes. A correlation can be seen between this rhetoric and new legal provisions to hinder peaceful demonstrations.

Legal and administrative attacks

Smear campaigns often lead to new legal and administrative restrictions. In **France** an

organisation dedicated to the defence of forests faced an administrative procedure, in **Ireland**, organisations have raised concerns regarding the use of regulatory complaints mechanisms against organisations working on certain topics and in **Slovakia** several ministries as well as the Office of the Government have launched audits of subsidies provided to NGOs under the previous government. In **Sweden**, the UNSR on Environmental Defenders also raised a case where a woman was dismissed from her job at the Swedish Energy Agency because she participated in peaceful environmental protests and expressed views on social media. As noted above in **Hungary**, the newly created Office of Sovereignty Protection launched several investigations into NGOs and investigative journalists.

Despite the adoption of a new EU Directive on SLAPPs (Strategic Litigation against Public Participation), cases continued to be launched against journalists and HRDs. This could be due to the fact that the Directive is not yet in force and also only covers cross-border cases. In **Croatia** SLAPPs have been used to repress environment advocacy organisations, cases were also launched in **Italy**, **Bulgaria** and **Greece** (see further in the media chapter).

Physical attacks

Beyond smear campaigns and legal attacks, a number of organisations and individuals reported physical attacks against people and property – including in **France**, **Italy**, **Ireland** and **Romania**. In **France**, environmental activists were the target of both physical and verbal attacks against their persons or their

homes, in **Romania** a well-known activist was taken to the police station for questions as a result of a Facebook post where she experienced abusive behaviour and in **Ireland**, several gay men were widely reported to have been ‘hunted’ down in a park – yet their report was dismissed by the police.

Online civic space

Threats in the online space took a variety of forms from cyber-attacks against NGOs, reported in the **Czech Republic** and **Hungary**, and disinformation and online hate speech, reported in the **Czech Republic, Italy, France, Germany** and **Greece** to surveillance and infringements of privacy and data protection.

An increase in online hate speech was reported in **Italy** with 15.3% of online content found to be offensive, discriminatory or inciting hatred. Women from migrant backgrounds, followed by the LGBTQIA+ community were the main targets. Similarly in **France** between 2023 and 2024, SOS Homophobie denounced a worrying increase in LGBTQIA+ phobic speeches, particularly online.

Surveillance and infringements of privacy

Following the Pegasus scandal of 2022, further cases were revealed in **Spain** of politicians, activists and journalists that had been spied on using surveillance software, developed by the NSO Group. In **Greece**, the Ministry of Migration and Asylum was fined €175,000 in April 2024 by the Hellenic Data Protection

Authority (HDPA) for unlawful use of surveillance systems at asylum centres.

In **Germany** and **Romania**, organisations are taking legal action against authorities for breaches of privacy. In **Romania**, an LGBTQIA+ association lodged a criminal complaint after messages calling for the destruction of the association’s headquarters appeared online together with details of the organisation’s address. In **Germany**, organisations are taking legal action against Meta to prevent the company from conducting automated scans of messages.

Public participation

Overall, a variety of approaches are used in nearly all Member States to limit public participation from short deadlines to inaccessible or overwhelming information or a failure to set up systems that prioritise participation. A promising example was seen in **Latvia**, where a new regulation came into force which aimed to enhance opportunities for civil society representatives to participate in state and municipal development planning processes. The Local Government Referendum Law was introduced to enhance participation in municipal decision-making allowing referendums on key strategies and starting in 2025, municipalities will have to allocate part of their budget to fund citizen initiatives.

In some countries, more direct action was taken to restrict participation. In **Slovakia**, the Government dismissed five members of the Government Council for NGOs without explanation and appointed a new one without

consulting NGOs. Another significant change was made in the selection of representatives for the committees overseeing EU funds away from NGO participation to prioritise the government department for civil society. In

addition, an environmental act was amended to weaken environmental groups' legal standing, preventing them from appealing decisions, in violation of the Aarhus Convention.

Recommendations

Governments should

- Review laws to ensure they don't directly, or indirectly limit freedom of association, for example through discriminatory measures, restrictions on foreign funding, vague definitions, and disproportionate reporting requirements. Take steps to promote an enabling environment for civil society.
- Stand in solidarity with civil society organisations, publicly recognising that views may differ from government positions but contribute to vibrant debate. Desist from smear campaigns and actions that stigmatise CSOs.
- Establish clear funding opportunities for civil society both through public funds and initiatives that incentivise donations. Ensure calls for funding are clear, accessible and non-discriminatory.
- Uphold the right to peaceful assembly, both through enabling legislation, protection of protesters and fair and proportionate policing.
- Ensure that when human rights defenders and civil society organisations face threats they are taken seriously, investigated and action taken to prevent future attacks.
- Effectively transpose the EU anti-SLAPP directive and adopt national legislation covering domestic SLAPP cases.

The EU should

- Review and ensure that all EU laws comply with the Charter of Fundamental Rights and promote an enabling space for civil society. Ensure a fundamental rights impact assessment and automatic review from the EU Agency for Fundamental Rights on all legislative proposals that have a significant impact on fundamental rights.

- Where national laws threaten civic space and violate EU law, immediately review, initiate and expedite infringement proceedings.
- Ensure sufficient and flexible funding to ensure a strong and vibrant civil society that can monitor, report on and protect civic space.
- Stand up alongside civil society affirming the EU's commitment to civic space and to CSOs as an enabler of respect for the rule of law.
- Design and allocate funding to a rapid response mechanism to protect rights defenders and CSOs at risk, including an avenue to directly report such attacks.
- Within the planned civil society strategy, ensure that the core elements of an enabling civic space are set out and given meaning – including an enabling legislative framework, rapid response protection, an early warning system and effective pathways for litigation and redress.

GOVERNMENTS ENACT STRICTER MIGRATION POLICIES AS HATE SPEECH AND DISCRIMINATION CONTINUE TO RISE

Key findings

- Some governments have adopted stricter migration policies, increasing the risk to the rights of migrants and asylum seekers.
- Children's rights remain an area with wide legislative gaps and insufficient protection, especially for unaccompanied minors, children belonging to minorities, and juveniles in the justice system.
- Hate speech and discrimination, in particular against minorities, continues to rise across the EU.

Last year's report highlighted several trending concerns relating to human rights in the EU. These concerns include legislation threatening the rights and fundamental freedoms of refugees and migrants through pushbacks and stricter migration policies. The rights of children, especially from marginalised groups, were threatened due to a lack of legal safeguards. Discrimination against minorities was also a concerning trend across the EU, with governments failing to address the issue effectively, sometimes even proposing discriminatory policies. Unfortunately, these concerning trends re-emerged in 2024.

This year's report shows similar worrying trends. Firstly, several governments have adopted stricter migration policies, threatening the rights of migrants and asylum seekers. Secondly, the rights of children lack the adequate legislative framework, particularly affecting unaccompanied minors, ethnic minorities and children of same-sex couples. Thirdly, CSOs across Europe have reported a rise in discrimination and hate speech towards minorities. Fourthly, many countries face prison overcrowding and poor detention conditions.

Rights of refugees and migrants

In 2024, governments adopted some strict migration regimes threatening the rights and freedoms of refugees and migrants. Several members have reported collective pushbacks to other countries, such as expulsions from **Croatia** to Bosnia-Herzegovina and Serbia. Similarly, CSOs have raised concerns regarding forced returns from **Slovenia** and **Greece** to countries where migrants and asylum seekers

face inhumane and degrading treatment. These illegal pushbacks have been condemned by the European Court of Human Rights (ECtHR), not only for the risks of ill-treatment faced in these countries but for the lack of procedural safeguards and individual assessments underpinning these forced returns. Amendments and proposals on migration legislation have also raised concerns in several Member States. In the **Netherlands**, the new right-wing cabinet drafted a proposal for a temporary asylum crisis law, which would allow the government to circumvent the current immigration acts through emergency legislation. In **Germany**, **Sweden** and **Slovenia**, refugees have seen their protective status weakened by amendments affecting their social benefits and increased criminalisation of illegal crossings. This EU-wide decrease in protection is reinforced by lengthy asylum proceedings and a lack of access to remedies for migrants and asylum seekers, as well as partial denial by the government to address the issue.

Rights of children

2024 was also marked with concerning trends affecting children's rights. **Slovenia**, the **Netherlands** and **Sweden's** migration policies have particularly affected the increasing number of unaccompanied minors. The lack of government financial support has negatively impacted the structures welcoming undocumented minors. Facilities do not provide proper medical care, education or housing conditions and the number of minors per legal guardian is concerning, posing a threat to children's human rights. Members in **Slovakia** and **Romania** have additionally reported

worrying trends concerning children belonging to minorities, especially regarding access to education for Roma communities. The access to mental health services for children in Ireland has persisted this year. **Sweden** and **Italy** have adopted stricter legislation on juvenile delinquency and prisons, impeding children's rights.

Racism and discrimination

Racism and discrimination of minorities was an EU-wide trend in 2024. Roma communities continue to be discriminated against in **Croatia, Romania, Slovakia** and **Hungary**. Although human rights bodies such as the UN Committee on the Elimination of Racial Discrimination expressed concern in this regard, governments fail to address the issue. In **Bulgaria**, the government denied the registration of an ethnic Macedonian non-governmental organisation on arbitrary grounds and travellers in Ireland are most affected by homelessness. Political authorities have participated in this concerning trend through hate speech and the enforcement of racist and transphobic measures. In **France**, racial profiling is still

endorsed by law enforcement and the state has failed to implement concrete measures to address the rise of hate speech, xenophobia, antisemitism and racism. LGBTQIA+ rights have been increasingly threatened this year, both by the lack of legal protection and by governments promulgating discriminatory laws. CSOs in **Italy, Slovakia** and **Lithuania** have reported a lack of protection of rights of LGBTQIA+ communities.

Detention conditions

2024 was also marked by a continued trend toward poor detention conditions and overcrowding. CSOs in **Ireland** have denounced the issue for several years, without adequate response from the government. Members in **France, Latvia** and **Slovenia** have similarly flagged the issue of prisoners' complaints filed without proper response from the prison administration. **Latvia** was for instance condemned by the ECtHR for inhumane conditions due to the existence of a caste system, but the authorities failed to implement the decision.

Recommendations

Governments should

- Cease and further prevent the illegal and inhumane treatment of vulnerable groups such as migrants, refugees, and children.
- Repeal discriminatory laws against LGBTQIA+ persons and adopt new laws to guarantee that such persons can live their lives with sufficient dignity and protection.

The EU should

- Convey a consistent message of respect for the rights of refugees and migrants across its Member States by calling on them to fulfil their legal obligations under international and EU law.
- Consider the withdrawal of EU funds dedicated to subsidising the reception of refugees from those Member States that systematically violate their migration and asylum policy-related obligations under EU law.
- Consider launching systemic infringement procedures where multiple human rights violations have a significant impact on the rule of law, and utilise an expedited procedure and request for interim measures.



COUNTRY

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RULE OF LAW REPORT

2025



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League of Human Rights



For over a hundred years, the Ligue des Droits Humains (LDH) (League of Human Rights) has fought injustices and infringements of fundamental rights in Belgium. LDH educates the public on the importance of respect for basic human rights (including institutional violence, access to justice, respect for minorities, and women's rights), litigates and challenges the political powers on issues concerning human rights, trains adults in their awareness of human rights issues and the law, and brings issues regarding the development of educational tools and training to the attention of education stakeholders. Born in 1901, the League of Human Rights is a non-profit, independent, pluralistic and interdisciplinary organisation. It is a movement in which everyone feels concerned and acts with respect for the dignity of all. LDH works on subjects like youth, prisoners' rights, migrant and refugee situations and rights, access to justice, economic, social and cultural rights, police violence, equal opportunities, privacy and diversity. LDH is also a member of the International Federation of Human Rights (FIDH), a non-governmental organisation with 188 leagues worldwide.

KEY CONCERNS

Justice System

The Belgian State does not seem to realise the scale of the problem: the justice system is underfinanced, which causes serious human rights and democratic issues.

Although (small) steps have been taken to implement the Commission's recommendation to continue efforts to address the structural resource deficiencies in the justice system, taking into account European standards on resources for the justice system, the gap is too wide. The justice system is severely underfinanced and the effort to enhance society's trust in the good faith of the authorities should be much greater.

Anti-Corruption Framework

The fact that new legislation about the transparency of public documents has been adopted is progress. However, public authorities' attitudes and legal loopholes are seriously hindering this progress.

Even if some progress is being made and authorities seem to be paying close attention to this issue, the fact remains that not enough is being done to tackle the problem.

Media Environment and Media Freedom

Judicial decisions in several cases involving the press signal backsliding for the protection of journalists. This is part of an unfavorable climate in Belgium for the press – public and private actors unduly sue journalists and some courts ignore the constitutional ban on censorship.

In its 2024 ROL report, the EU Commission stated that “public service media maintain their independence through well-established safeguards”. This is no longer true.

Checks and Balances

Clear progress has been made by installing the Federal Human Rights Institute. However, previous criticisms remain regarding the lack of independence of certain national human rights institutions, such as the Data Protection Authority or the Standing Police Monitoring Committee. In addition, some worrying trends appear, such as the deepening of the fragmentation of the landscape for fundamental rights protections.







Civic Space

The fact that a considerable number of human rights defenders report being subject to some forms of attacks and intimidation is worrisome.




Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

The export and transit of arms from Wallonia to Israel, despite the serious violations of human rights and international humanitarian law in the region, is a serious regression.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

JUSTICE SYSTEM

Key recommendations

- *The length of proceedings is particularly long in Belgium, which is cause for concern and multiple condemnations by both international (ECtHR) and national courts. With the lack of resources allocated to the justice system being the main reason, it is necessary to provide for massive investment in the judicial sector and give the judiciary control over its budget. The Belgian State should also massively invest in judicial staff to cut down the dramatic backlog of cases in all jurisdictions, with special attention paid to the Brussels situation. There is also a need for complete, disaggregated and consistent data to be made available to allow an accurate assessment of the efficiency of the justice system and to identify the need for structural reform, particularly in jurisdictions where backlogs persist.*
- *The previous legislature has seen the accentuation of a particularly worrying trend in Belgium, that of the failure of the political authorities to respect court rulings, and even openly refuse to comply with them. Indeed, non-compliance with validly rendered judicial decisions has reached levels never before seen in the country. The field of asylum law is the main area of non-compliance, and there is growing concern about a risk of contagion into other areas of the law particularly problematic for the Executive (prison overcrowding, arms trade, etc.). The refusal to comply with court decisions is a very worrisome issue of non-respect for a fundamental element of the rule of law. The Belgian State should always respect court decisions, even (and most of all) ones that they find unfavorable.*
- *Making the allocation of funds to the judiciary conditionally based on the achievement of measurable objectives raises concerns. This approach does not consider the difficulty of measuring results, the risks to the quality of judicial work and the fact that there is a weakening of the separation of powers. The Belgian State should not engage in a system where the conditionality of resources threatens the quality of the judiciary's work, its independence and citizens' effective access to justice.*

Judicial independence

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

In its *2024 Rule of Law (ROL) Report*, the EU Commission noted that there are “no longer any government initiatives with regard to regular security checks on magistrates and judicial staff” but that “[f]our related proposals were discussed by the Parliament until early 2024 with regard to the evaluation and disciplinary systems of magistrates. It remains to be seen how they will be treated by the incoming legislature”.¹

Fortunately, all four legislative proposals have been taken off the agenda of the parliament after the federal elections in June 2024.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

Since 2002, the High Council of the Judiciary (HCJ), an independent oversight body of the judicial power, has been conducting an opinion poll to find out how the Belgian population perceives and views the justice system,² which

enables it to implement initiatives to improve its operation.

Among the main findings of the *2024 Barometer*, it is to be noted that Belgians’ confidence in the justice system has fallen steadily since 2010, from 66% in 2007 to 54% in 2024. Only 48% of Belgians are satisfied with the way the justice system works, a drop of almost 10% compared to 2014. The majority feel that the justice system does not communicate enough about how it works, and 90% feel that court cases last too long. What’s more, 60% of Belgians find access to justice unaffordable and feel that legal language is too complex. Six to seven out of ten Belgians evaluate positively the lawyers’, judges’ and prosecutors’ familiarity with their cases. However, confidence in the fairness, independence and equality of judicial decisions has fallen by 10% since 2007. Two-thirds of Belgians believe that trials are fair, but a significant proportion have doubts about the fairness of decisions and the equal treatment of citizens.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Access to justice is a fundamental principle of the rule of law. Yet, it remains complicated in

1 European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Belgium*, SWD(2024) 801 final, 24 July 2024, pp. 5-6.

2 High Council of the Judiciary (Belgium), *Fifth barometer of Justice 2024 – The citizen’s perspective (Cinquième baromètre de la Justice 2024 - Le regard du citoyen)*, April 2024, <https://csj.be/admin/storage/hrj/5e-barometre-justice-2024.pdf>.

Belgium, despite the fact that the Constitution expressly states that everyone has the right to legal aid and that the legislator cannot infringe on this right.

A worrying trend in this regard developed in Belgium over the past years: the increased use of unilateral applications.³ As already highlighted in the 2024 Liberties report, there is a growing tendency to use unilateral applications allowing legal action to be brought where there is no identified adversary or in urgent matters⁴. Unilateral applications are therefore possible for very specific and uncommon procedures and submitted in principle to strict conditions. They can only be authorised on an exceptional basis in cases of absolute necessity. It should consequently remain relatively rare. However, there was a generalisation in recent months of the use of unilateral applications particularly in housing matters, which can lead to the eviction of inhabitants, and in labour law related disputes.

In the *Delhaize* case, a private company's management filed unilateral applications with courts to obtain a ban on picketing during strikes in its shops and depots. Bans were then imposed by courts. In this context, trade unions and NGOs intervened in a procedure at

the Constitutional Court involving this company and reiterated the fundamental nature of the right to strike and the obstacles that these unilateral requests constitute for the exercise of this right.⁵

In its ruling handed down on 14 November 2024,⁶ the Constitutional Court pointed out that the restrictive interpretation of the conditions for recourse to a unilateral request is precisely intended to protect the exercise of the right to strike, even when this consists of the peaceful blocking of shop entrances. This decision is welcome. With this ruling, no judge will be able to accept a unilateral application against the peaceful exercise of the right to strike.

It is to be pointed out that abusive recourse to the unilateral procedure undermines several fundamental principles, such as the right of access to court, the right to defense and the right to a fair trial. Unilateral applications must remain the exception rather than the rule, and this requires a serious examination of their admissibility by the courts, especially when fundamental rights are at stake, such as the right to housing and the right to strike.

3 Art. 584 of the Judicial Code.

4 Liberties, *Rule of Law Report 2024 – Belgium*, 18 March 2024, p. 7, https://dq4n3btxm8c9.cloudfront.net/files/qv5knb/BELGIUM_Liberties_RuleOfLaw_Report_2024.pdf.

5 Ligue des droits humains, 'Delhaize ruling: the Constitutional Court proves us right!', 20 November 2024, <https://www.liguedh.be/arret-delhaize-la-cour-constitutionnelle-nous-donne-raison/>.

6 Constitutional Court (Belgium), 14 November 2024, n° 123/2024, <https://www.const-court.be/public/f/2024/2024-123f.pdf>.

On a different but related note, the Federal Public Service Justice, the central judicial administrative body, notes that it manages more than 225 judicial buildings, many of which no longer meet safety and welfare standards, due to inadequate maintenance and underfunding.⁷ This situation affects the quality of judicial services and undermines public confidence in the rule of law. In addition, the irregular maintenance of buildings leads to additional costs, and the lack of structural funding limits the administration's ability to maintain facilities. It advocates, consequently, to "reduce the number of buildings by around 100 over the next 5 to 15 years, in order to better maintain and modernise them".⁸

In its 2024 memorandum, the platform "Justice for all", a group of legal professionals and NGOs, highlights the fact that places of justice must be geographically accessible via the public transport network and that particular attention must be paid to the accessibility of the courts. It is therefore opposed to any abolition of existing court locations and campaigns for the restoration of court locations that have been suppressed, particularly in extended judicial districts.⁹

It also draws attention to the growing and deleterious tendency to reduce access to services. It is imperative that litigants be able to consult files, obtain copies of documents or carry out procedural acts during court office opening hours, without undue restrictions. It is also concerned with the physical accessibility of court premises for people with reduced mobility and/or disabilities and for those with limited access to IT tools.

Resources of the judiciary (human/financial/material)

As the lack of resources allocated to the justice system is one of the main reasons behind the excessive length of proceedings, it is necessary to provide for massive investment in the judicial sector, especially in judicial staff to cut down the dramatic backlog of cases in all courts, especially in Brussels. In its *2024 Rule of Law (ROL) Report*, the EU Commission recommended that Belgium "continue efforts to address the structural resource deficiencies in the justice system, taking into account European standards on resources for the justice system".¹⁰

This recommendation has not been met. Moreover, the latest numbers available in the

7 Federal Public Service Justice (Belgium), *2024 Memorandum*, 1 July 2024, p. 16, https://justice.belgium.be/sites/default/files/downloads/2024-07-02_Memorandum_FR.pdf

8 Ibidem, p. 17.

9 *Plateforme Justice pour tous (Belgium), Letter to political parties - 2024 elections (Courrier aux partis politiques - élections 2024)*, 17 July 2023, p. 3, https://pjpt-prvi.be/IMG/pdf/courrier_pjpt_elections_2024_-_fr.pdf.

10 European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Belgium*, SWD(2024) 801 final, 24 July 2024, p. 2.

2024 EU Justice Scoreboard show an important decrease between 2012 and 2022 in government total expenditure on courts as a percentage of GDP.¹¹ Numbers published in the *European Commission for the Efficiency of Justice (CEPEJ) Study for the EU Justice Scoreboard*¹² highlight that, regarding human resources, if the number of lawyers and non-prosecutor staff is above the median of Council of Europe member States, it is the opposite for professional judges (14.4 < 17.6), non-judge staff (48.8 < 57.9) and prosecutors (7.5 < 11.2). In its 20 February 2024 report, the College of Courts and Tribunals, the body responsible for the general operation of all courts and tribunals in Belgium, stated that the proportion of judges must be increased by 43% in order for the courts and tribunals to function normally, i.e. to ensure that cases are dealt with within a

reasonable time and without creating a backlog of cases.¹³

Furthermore, the problem of the lack of judicial staff does not lie solely in the number of posts available. The attractiveness of the profession also poses a problem. A motion for a resolution to make the job of magistrate more attractive has been introduced in the Federal Parliament in 2022.¹⁴ The proposal demonstrates the lack of interest in the role of magistrate by means of statistics relating to the decline in participation in the various examinations for access to the role of magistrate. It also suggests ways of making the job more attractive. However, no concrete measures have been taken and the motion was dropped following the June 2024 national elections. The Federal Institute for the Protection and Promotion of Human Rights

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- 11 European Commission, *The 2024 EU Justice scoreboard*, COM(2024) 950, June 2024, p. 30, fig. 34, https://commission.europa.eu/document/download/84aa3726-82d7-4401-98c1-fee04a7d2dd6_en?filename=2024%20EU%20Justice%20Scoreboard.pdf
 - 12 European Commission for the efficiency of justice, *Study on the functioning of judicial systems in the EU Member States – Country fiche on Belgium*, 2024 Evaluation cycle. September 2024.
 - 13 College of Courts and Tribunals (Belgium), *Allocation of human resources (based on workload measurement) – Second report (judges and court clerks – not judicial staff)*, (*L'allocation des ressources humaines (sur la base de la mesure de la charge de travail) – Deuxième rapport (magistrats du siège et greffiers – pas personnel judiciaire)*), 20 February 2024, <https://www.rechtbanken-tribunaux.be/sites/default/files/media/publications/varia/fr/rapport-final-mesure-de-charge-de-travail-20-02-2024.pdf>. French and German-speaking Bar Association (Belgium), *Communication from AVOCATS.BE – BELL Group v. Belgium concerning the excessive length of proceedings, in particular in the judicial district of Brussels (Communication d'AVOCATS.BE – Groupe BELL c. Belgique concernant la durée excessive des procédures, en particulier dans l'arrondissement judiciaire de Bruxelles)*, 22 April 2024, https://latribune.avocats.be/sites/latribune/files/2024.04.23.communication_avocats.be_groupe_bell.pdf.
 - 14 House of Representatives (Belgium), *Motion for a resolution to make the job of magistrate more attractive (Proposition de résolution visant à rendre plus attractive la fonction de magistrat)*, DOC 55 – 2488/001, 4 February 2022, <https://www.lachambre.be/FLWB/PDF/55/2488/55K2488001.pdf>.

(FIHR) therefore calls on the Belgian authorities to continue their efforts to make the judicial profession more attractive.¹⁵

In its audit report published on 26 June 2024, the HCJ recommended to the Brussels Court of Appeal that, pending the finalisation and results of the workload measurement tool, it should respect the staffing frameworks as laid down by law and ensure that they were filled. Although vacancies were published, the framework for the Court of Appeal has still not been filled. The recommendation has therefore been only partially implemented.¹⁶

It is to be noted that the lack of means of judicial actors can lead to dramatic situations. The press reported that, in 2024 again, the volume of work of the justice system is so great that some cases that are too complicated are closed

without further action.¹⁷ Even more worrying, the situation in Brussels is so intense that the prosecution cannot follow all the files it is assigned to, which led to the death of two Swedish citizens in October 2023. The investigation carried out by the HCJ into the malfunctions that led to this situation highlighted the fact that the sub-staffing of the Brussels public prosecutor's office could partly explain why no attention had been paid to the file of the perpetrator of the shooting that led to this incident.¹⁸

Therefore, the High Council calls for important measures, among others to “respect the frameworks for magistrates and judicial staff as laid down by law and ensure that they are fulfilled”.¹⁹ The FIHR also “encourage[s] the State to invest first and foremost in allocating resources to increase the number of judicial

15 Federal Institute for the protection and promotion of Human Rights (Belgium), *Communication to the Committee of Ministers of the Council of Europe concerning the Bell v. Belgium case* (*Communication au Comité des Ministres du Conseil de l'Europe concernant le groupe d'affaires Bell c. Belgique*), 30 April 2024, <https://institutfederaldroitshumains.be/sites/default/files/2024-06/Communication%20IFDH%20Durée%20procédures%20judiciaires%202024.pdf>.

16 High Council of the Judiciary (Belgium), *Audit of the Brussels Court of Appeal – follow-up report* (*Rapport de suivi, audit de la cour d'appel de Bruxelles*), 13 June 2024, <https://csj.be/admin/storage/hrj/24.06.13-rapport-suivi-audit-ca-bxl-def.pdf>.

17 Maryam Benayad, “Les dossiers d’escroquerie et de fraude financière en dessous de 10 000 euros ne sont pas traités. Résultat : il y a une forme de déni de justice”, *La Libre*, 11 December 2024, <https://www.lalibre.be/belgique/judiciaire/2024/12/11/les-dossiers-descroquerie-et-de-fraude-financiere-en-dessous-de-10-000-euros-ne-sont-pas-traites-resultat-il-y-a-une-forme-de-deni-de-justice-RUOCSIZPCZCIRA5XZCUGOHDLY/>

18 High Council of the Judiciary (Belgium), *Special investigation – “Abdesalem Lassoued” case* (*Enquête particulière – Affaire “Abdesalem Lassoued”*), 19 June 2024, <https://csj.be/admin/storage/hrj/ep-lassoued-rapport.pdf>. In another case, the Brussels Court of First Instance ruled on 19 December 2024 that the Belgian State was responsible for the rape and murder of a woman in 2019. It therefore ordered the Belgian State to pay the family one euro as a provisional indemnity. Jacques Laruelle, “L’État belge porte une responsabilité dans le viol et le meurtre de Julie Van Espen”, *Le Soir*, 19 December 2024, <https://www.lalibre.be/belgique/judiciaire/2024/12/19/letat-belge-porte-une-responsabilite-dans-la-mort-de-julie-van-espen-OOFKVHNSF5EO5II7BCBDMZI2MY/>.

19 High Council of the Judiciary (Belgium), *op. cit.*, p. 44.

staff, including judges, court clerks and support functions (...)” and “to continue to make the judicial profession more attractive”.²⁰

The FIHR additionally expressed concerns about the approach of the Minister of Justice which makes funds allocated to the judiciary conditional on the achievement of measurable objectives. This approach raises concerns about the difficulty of measuring results, the weakening of the separation of powers and the risks to the quality of judicial work. The FIHR recommends therefore that the Belgian State ensures that the conditionality of resources does not threaten the quality of the work of the judiciary, its independence and citizens’ effective access to justice.²¹ The European Network of National Human Rights Institutions also calls on the European Commission to ensure that this conditionality does not lead to sanctions for understaffed and underfunded courts.²²

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

The latest numbers available in the *2024 EU Justice Scoreboard* highlight the fact that Belgium lags behind and is among the worst Member States when it comes to digitalisation of the justice system in every single area monitored.²³ It is necessary to provide clerks and judges with up-to-date, high-performance IT resources to lighten their administrative workload and enable judges to hand down their decisions within a reasonable timeframe.

If a higher level of digitalisation is undeniably necessary for the Belgian Justice system, it cannot infringe on the right of access to a judge, which must be concrete and effective, not theoretical or illusory. It is therefore necessary to create conditions that enable all courts to dispense justice in a humane manner and within a reasonable time frame.

In that sense, it is worth mentioning the fact that the Minister of Justice’s draft law aiming to introduce a general legal framework for the use of video conferences in civil and criminal matters has been adopted by the Federal

20 Federal Institute for the protection and promotion of Human Rights (Belgium), op. cit., p. 26.

21 Ibidem, pp. 23-24.

22 European Network of National Human Rights Institutions, *Rule of Law Report 2024 (Rapport sur l’État de droit 2024)*, 2 May 2024, <https://institutfederaldroitshumains.be/sites/default/files/2024-08/Rapport%20Etat%20de%20droit%202024%20FR.pdf>

23 European Commission, *The 2024 EU Justice scoreboard*, COM(2024) 950, June 2024, pp. 34-40, fig. 42-50.

Parliament. This draft law was heavily criticised by the HCJ and the FIHR in 2023,²⁴ among others. It led nonetheless to the adoption of the 25 April 2024 law on the organisation of hearings by video conference in legal proceedings.²⁵ The use of video conferencing poses a number of difficulties and does not appear to be an acceptable alternative to holding hearings in person. Furthermore, the use of video conferencing does not guarantee the public nature of hearings, which is an essential democratic guarantee protected by the Constitution and ECtHR case law, especially in criminal cases, and raises a number of data protection issues.

In conclusion, because of the infringement of the right to a fair trial and the unresolved data protection issues, the use of video conferencing should be prohibited in courtrooms, except in strictly defined exceptional cases and never in contradiction with the right to a fair trial.

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

The Belgian State is well known for its lack of or inadequate statistics in the judicial field. In its 2024 ROL report, the EU Commission stated that “an overview of the efficiency of justice remains unavailable due to a persistent lack of data on court proceedings, while efforts are ongoing to map judicial backlogs” and that “statistical data on court proceedings and the workload measurements should provide a better understanding of the needs to address structural deficiencies”.²⁶

The issue persisted in 2024, and as such, the FIHR asks the State to provide adequate statistics on the functioning of the courts and tribunals. To this end, the State should in particular provide data on the length of judicial proceedings in civil and penal cases and these data should show disparities between judicial districts.²⁷

24 Liberties, *Rule of Law Report 2024 – Belgium*, 18 March 2024, pp. 9-10, https://dq4n3btxmr8c9.cloudfront.net/files/qv5knb/BELGIUM_Liberties_RuleOfLaw_Report_2024.pdf.

25 House of Representatives (Belgium), *25 April 2024 Law on the organisation of hearings by videoconference in legal proceedings (Loi du 25 avril 2024 portant organisation des audiences par vidéoconférence dans le cadre des procédures judiciaires)*, https://www.ejustice.just.fgov.be/cgi/article.pl?language=fr&sum_date=2025-01-13&cpd_search=2024-06-03&numac_search=2024003966&page=1&lgtxt=F&caller=list&2024003966=1&view_numac=&dt=Loi&dd=2024-04-25&choix1=et&choix2=et&fr=f&nl=n&du=d&trier=promulgation.

26 European Commission, *2024 Rule of Law Report – Country Chapter on the rule of law situation in Belgium*, SWD(2024) 801 final, 24 July 2024, pp. 11-12.

27 Federal Institute for the protection and promotion of Human Rights (Belgium), *op. cit.*, p. 26.

The above-mentioned *Lassoued* case²⁸ highlights the lack of a proper system for case management in the prosecution office. In its report, the HCJ lists a series of dysfunctions, such as the low level of internal control, the absence of internal control measures, the absence of a monitoring system and the lack of clarity at the management level – the roles, responsibilities and exercise of the different levels of management are ambiguously defined. Therefore, it calls for the promotion of “a culture of internal control within the Brussels Public Prosecutor’s Office” and the implementation of “internal control activities, monitoring and evaluating them”.²⁹

Fairness and efficiency of the justice system

Length of proceedings

The length of proceedings are particularly long in Belgium, which is cause for concern and multiple condemnations by both international (ECtHR) and national courts. In its *2024 Rule of Law Report*, the EU Commission recommended that Belgium “strengthen efforts to improve the efficiency of justice, particularly

to reduce the length of proceedings based on comprehensive statistical data”.³⁰

As highlighted by the Commission, this phenomenon is not recent. Belgium has already been condemned several times by the ECtHR for violation of the right to be tried within a reasonable time.³¹ In September 2023, the ECtHR once again severely condemned the Belgian authorities in its *Van den Kerkhof v. Belgium* decision.³² In this particular case, the legal proceeding was lodged in 2015 and is due to be decided on appeal in 2026.

In 2024, the French and German-speaking Bar Association noted that the situation is particularly critical in family cases.³³ In April, the Brussels Family Court announced that it would have to cancel half of its hearings due to a shortage of court clerks. Only urgent cases were dealt with, leaving aside cases involving inheritance or parentage. The time taken to deal with urgent matters, such as child accommodation arrangements or maintenance payments, is currently 3 to 4 months and appeals can take several years, with serious consequences for the parties concerned.

28 See footnote 18.

29 High Council of the Judiciary (Belgium), op. cit., p. 44.

30 European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Belgium*, SWD(2024) 801 final, 24 July 2024, p. 2.

31 Ibidem, pp. 10-11.

32 ECtHR, Judgment of 5 September 2023, *Van den Kerkhof vs. Belgium*, n° 13630/19.

33 French and German-speaking Bar Association (Belgium), op. cit., p. 2.

As far as the Family Court backlog is concerned, the FIHR criticises the inconsistent method applied by the Belgian State to ‘dormant cases’ in the family courts, which are falsely considered closed.³⁴ The FIHR recommends excluding these cases from the clearance rate statistics, as they are only really closed or omitted ex officio at the end of the process. After correction, the clearance rate for family courts appears to be less than 100%, indicating an ongoing backlog.

The FIHR also points out that the length of proceedings at the Brussels Court of Appeal remains excessively long, despite an improvement in the median length of cases in 2023.³⁵ This trend indicates that structural problems in Brussels remain, as confirmed by the ECtHR in the *Van den Kerckhof* case. Moreover, although the overall clearance rate for the appeal courts shows a moderate reduction in the backlog, the disaggregated statistics for 2023 reveal that backlogs persist in Brussels, with a much higher number of cases pending than in the other courts. This highlights the need for specific structural solutions to deal effectively with this backlog.

In conclusion, although progress has been made, the FIHR stresses the need for complete, disaggregated and consistent data to be made available to allow an accurate assessment

of the efficiency of the justice system and to identify the need for structural reform, particularly in jurisdictions where backlogs persist.

It is to be noted that the backlog of court cases is also due to the large number and sometimes sudden proceedings brought before the courts because the administration is malfunctioning or because the State fails to enforce court rulings. The State has a responsibility for organising administrations that are at the service of the citizen and it must respect the decisions rendered by the Courts.

Execution of judgments

The past legislature has seen the accentuation of a particularly worrying trend in Belgium – that of the failure of the political authorities to respect court rulings, and even assume the fact that it does not respect them. Indeed, non-compliance with validly rendered judicial decisions has reached levels never before seen in the country. This is a very worrying failure to respect a fundamental element of the rule of law. It led the EU Commission to state that Belgium has to “take measures to ensure compliance by public authorities with final rulings of national courts and the European Court of Human Rights”.³⁶

34 Federal Institute for the protection and promotion of Human Rights (Belgium), op. cit., pp. 6-8.

35 Ibidem, pp. 9-13.

36 European Commission, *2024 Rule of Law Report – Country Chapter on the rule of law situation in Belgium*, SWD(2024) 801 final, 24 July 2024, p. 2.

In July 2024, Belgium’s three supreme courts (the Constitutional Court, the Court of Cassation and the Council of State) issued a joint memorandum to the Legislative and Executive branches of power.³⁷ This joint memorandum reminded those powers that in a state governed by the rule of law, final judicial decisions must be enforced in all circumstances, especially by the authorities. In this respect, the large number of cases for which a standard or enhanced supervisory procedure is pending before the Committee of Ministers of the Council of Europe, after one or more convictions by the ECtHR, is particularly worrying. The memorandum therefore called for structural solutions that must be found to remedy the problem and that it must be the absolute priority of the future government. It stated “this is a serious attack on the rule of law, at a time when many citizens are increasingly questioning the legitimacy of our institutions. The three highest courts express their deep concern and therefore urge future political leaders to respect all court rulings and thus all those subject to the law”.³⁸

In November 2024, the FIHR launched an investigation into “the growing tendency of the Belgian authorities not to implement court rulings against them”.³⁹ The investigation will focus on decisions handed down by Belgian courts against the authorities from 2014 to 2024, which were not implemented by the Belgian authorities. The investigation report will then be sent to the federal parliament.

Quality and accessibility of court decisions

The 16 October 2022 law authorises the State to set up a computerised central register of judicial decisions, known as the Central Register for Judicial Decisions.⁴⁰ Under this law, judicial decisions will in principle be digitalised, i.e. drawn up in digital form. Since 30 September 2023, all judicial decisions must be recorded in digital form or as a certified digital copy, and accessible only to the judicial actors and parties concerned. However, although the law came into force on 30 September 2023, the Central Register is not yet operational. This delay is due to technical challenges, particularly the

37 Constitutional Court, Court of cassation and Council of State (Belgium), *Joint memorandum (Mémorandum commun)*, July 2024, <https://www.const-court.be/public/pbcp/f/pbcp-2024-002f.pdf>.

38 Ibidem, p. 8.

39 Federal Institute for the protection and promotion of Human Rights (Belgium), ‘Launch of a survey on the non-implementation of court rulings’ (‘Lancement d’une enquête sur la non-mise en œuvre des décisions de justice’), 19 November 2024, <https://federaalinstituutmensenrechten.be/fr/lancement-dune-enquete-sur-la-non-mise-en-oeuvre-des-decisions-de-justice>.

40 House of Representatives (Belgium), *16 October 2022 Law on the creation of the Central Register of Judicial Decisions and on the publication of judgments and amending the assize procedure relating to the challenge of jurors (Loi visant la création du Registre central pour les décisions de l’ordre judiciaire et relative à la publication des jugements et modifiant la procédure d’assises relative à la récusation des jurés)*.

development of the tool for pseudonymising personal data in decisions.⁴¹

Additionally, for some years now, libraries and legal documentation departments have been faced with a constant increase in the price of access to the main commercial legal databases. Their monopoly has become unaffordable, even though a large proportion of the content of

these databases results from the very activities of public institutions and courts. Moreover, the long-term future of commercial databases is not guaranteed.

For this reason, Belgian supreme courts state “it is urgent to improve and extend the accessibility of consolidated legislation, doctrine and relevant case law”.⁴²

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *Belgian authorities should grant to all state bodies responsible for the transparency of public administration the competence to issue binding decisions (at federal, regional and community levels). It should also eliminate restrictions already in place to administrative transparency.*
- *Belgian authorities should allocate the necessary resources (financial, human and legal) to allow an efficient fight against financial crime and corruption.*
- *Belgian authorities should implement all the GRECO recommendations.*

Levels of corruption

Belgium remains in 16th position in the rankings published by the NGO Transparency International. Every year, the NGO lists cases

of corruption in the public sector. Based on expert estimates, countries score between 0 (corrupt) and 100 (corruption-free). Belgium scored 73/100⁴³.

41 Eva Gillard, ‘Le Registre central pour les décisions judiciaires : prévu par la loi mais non encore créé !’, *Justice-en-ligne*, 10 May 2024, <https://www.justice-en-ligne.be/Le-Registre-central-pour-les>.

42 Constitutional Court, Court of cassation and Council of State (Belgium), op. cit., p. 10.

43 Transparency International, *Corruption Perception Index 2024*, 30 January 2024, <https://www.transparency.org/en/countries/belgium>.

The results of the two last reports about Belgium issued by the Council of Europe Group of States against Corruption (GRECO), published on 7 May 2024, are mixed.

The GRECO considers in the first report⁴⁴ focusing on members of parliament, judges and prosecutors that Belgium has taken measures to combat corruption within its judicial system: the organisation notes that the Justice administration has implemented several recommendations. It shows that ethical rules have been introduced for judges of administrative courts and that the disciplinary bodies responsible for judges and prosecutors have been strengthened, with regular publication of information about them. The GRECO recommends nevertheless better harmonisation of the allocation of cases between the different courts. By contrast, with regard to the prevention of corruption of parliamentarians, there has been no improvement since the previous report.

In the second report⁴⁵, focusing on the central government and law enforcement agencies, the GRECO notes that substantial efforts remain to be made: the report concludes that Belgium has satisfactorily implemented or dealt with satisfactorily only six of the twenty-two recommendations contained in the evaluation report

of the Fifth Round. Of the remaining recommendations, nine have been partially implemented and seven have not been implemented. With regard to persons in senior executive functions, little progress has been made. With regard to the police, few measures have been taken since the last report. As far as judges and prosecutors are concerned, the GRECO welcomes real progress, with only one recommendation remaining partially implemented.

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

Figures available in the *2024 EU Justice Scoreboard* show that Belgium scores high regarding the national framework for asset declarations on the material scope, but not so good on the personal scope and very poorly on the level of transparency, verification and sanctions in that field.⁴⁶ As highlighted by the EU ROL report, “elements relating to anti-corruption are included in various relevant strategies and action plans although there is no overall

44 Council of Europe, GRECO, *Corruption prevention in respect of members of parliament, judges and prosecutors – Addendum to the second compliance report of Belgium (4th evaluation round)*, GrecoRC4(2024)1, 7 May 2024.

45 Council of Europe, GRECO, *Preventing corruption and promoting integrity in central governments (top executive functions) and law enforcement agencies – Second compliance report of Belgium (5th evaluation round)*, GrecoRC5(2024)3, 7 May 2024.

46 European Commission, *The 2024 EU Justice scoreboard*, COM(2024) 950, June 2024, pp. 52-54, fig. 60-62.

anti-corruption strategy nor a body responsible for coordination of anti-corruption policy”.⁴⁷

More worrying is the situation regarding access to public documents. At present, various administrative authorities are excluded from the scope of application of certain provisions of the 11 April 1994 law on the publicity of the administration,⁴⁸ thereby exempting them from the obligations of transparency as well as from appropriate means of appeal.

The 12 May 2024 law was adopted to broaden the scope of application of the 11 April 1994 law, which is a very positive step.⁴⁹ However, this law adds two exceptions, allowing public bodies to reject a request for consultation, explanation or communication if it would undermine the confidentiality of documents relating to the implementation of a political strategy, which leaves a wide margin of manoeuvre for authorities to avoid their obligations.

In addition, the Commission for Access to Administrative Documents (CADA), an administrative authority charged with examining the authorities’ refusals to grant access

to documents, merely issues legal non-binding opinions which does not make it possible to ensure the effectiveness of the right of access to administrative documents conferred by Article 32 of the Constitution. At the federal level, as at other levels, the CADA should be able to issue binding decisions.

In 2024, the EU ROL report stated that “some further steps have been taken in strengthening access to official documents, though new proposals fail to grant the Commission for Access to Administrative Documents decision-making powers”.⁵⁰ Those steps have not been taken. Therefore, Belgian authorities should grant all competent bodies on administrative transparency the ability to issue binding decisions (at federal and non-federal levels). It should also not extend unduly the restrictions to administrative transparency.

47 European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Belgium*, SWD(2024) 801 final, 24 July 2024, p. 12.

48 House of Representatives (Belgium), *11 April 1994 Law relating to the publicity of the administration (Loi relative à la publicité de l’administration)*.

49 House of Representatives (Belgium), *12 May 2024 Law amending the 11 April 1994 law on the publicity of the administration and repealing the 12 November 1997 law on the publicity of the administration in the provinces and municipalities (Loi modifiant la loi du 11 avril 1994 relative à la publicité de l’administration et abrogeant la loi du 12 novembre 1997 relative à la publicité de l’administration dans les provinces et les communes)*.

50 European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Belgium*, SWD(2024) 801 final, 24 July 2024, p. 23.

Investigation and prosecution of corruption

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

The press revealed in September 2024 that investigators at the Central Office for the Repression of Corruption (OCRC), which is responsible for sensitive corruption investigations in Belgium, feel that they are being over-controlled by their superiors, particularly after the publication of a controversial memo.⁵¹ The memo, issued by the Directorate for the Suppression of Organised Crime, requires investigators to submit their reports to their superiors before sending them to the public prosecutor's office. Investigators see this as an attempt to control their work, which could hamper sensitive investigations. The federal police defend this measure, presenting it as a rationalisation of procedures to improve the quality of work, with no impact on the independence of investigations. The Ministry of Justice has not commented on the case, which is considered to be internal to the federal police.

Other

On 3 December 2023, Didier Reynders, former Belgian Minister and European Commissioner, and his wife, a former magistrate at the Liège Court of Appeal, were audited and their homes searched on suspicion by the Justice of having engaged in money-laundering activities through gambling purchases.⁵² This follows distinct reports from the National Lottery (in 2021) and the Information Processing Unit (2023), which tend to show that some of the safeguards against corruption are playing their role.

51 Belga, 'Les enquêteurs anti-corruption se disent trop contrôlés par leur hiérarchie', *Le Soir*, 26 September 2024, <https://www.lesoir.be/625295/article/2024-09-26/les-enqueteurs-anti-corruption-se-disent-trop-controles-par-leur-hierarchie>.

52 Belga, 'Soupçon de blanchiment: la Loterie nationale n'est pas la seule à avoir dénoncé Didier Reynders', *La Libre*, 16 December 2024, <https://www.lalibre.be/belgique/societe/2024/12/16/didier-reynders-soupconne-de-blanchiment-pas-un-mais-deux-signalements-de-blanchiment-dargent-aupres-du-parquet-CNBRNSYGIBDGXAEFCNJJASVUYQ/>.

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *Judicial decisions in cases involving the press are highly problematic and should lead the legislature to pass a law reaffirming the prohibition of censorship and that a news article cannot be censored a priori, but only be subject to a posteriori liability claims.*
- *Belgian law should provide for a mechanism allowing the dismissal of unmeritorious or SLAPP cases at an early procedural stage.*
- *Belgian legislators should amend the broad and ambiguous definition of 'state secrets' in the Penal Code, as it makes it difficult for journalists to distinguish between what is punishable and what is not. It could also threaten press freedom, as journalists risk prosecution for receiving or divulging information without knowing it was classified as a state secret.*

Public service media

Independence of public service media from governmental interference

The European Federation of Journalists (EFJ) denounced an instance of ministerial interference in the public service media to the Council of Europe Safety of Journalist Platform.⁵³ At issue were tweets from Jacqueline Galant, Minister for the Media of the French-speaking Community, following a Radio-télévision belge de la Communauté française (RTBF) broadcast of an interview on anti-racism. On X, the Minister expressed surprise that the medium was unilaterally broadcasting a guilt-inducing opinion, calling on it to

guarantee pluralism and scrupulously respect its ethical and legal obligations. A minister for the Media who publicly appears to be inviting a public service broadcaster, whose editorial independence is guaranteed both by decree and by its management contract, to broadcast one content rather than another, is cause for concern. In its alert, the EFJ calls on politicians to refrain from any interference in editorial content, stressing the competence of regulatory bodies (Higher Broadcasting Council) and self-regulatory bodies (Journalism Ethics Board) in these matters.

53 Council of Europe, Safety of Journalist Platform, *Public Broadcaster RTBF Subjected to Ministerial Interference*, N° 180/2024, 25 September 2024, <https://fom.coe.int/en/alerte/detail/107641508;globalSearch=false>.

Safety and protection of journalists and other media actors

Rules and practices guaranteeing journalist's independence and safety

A few days before the municipal elections, the newspaper *Le Soir* was preparing to publish information about legal proceedings involving a mayoral candidate in the town of Verviers. In keeping with its code of ethics, the newspaper contacted the person concerned. Its response was an order from the Court of First Instance, seized unilaterally as a matter of extreme urgency, prohibiting the newspaper from publishing the information, subject to a fine of €50,000. The court considered that the disclosure of the information, allegedly obtained in breach of the secrecy of the investigation, three days before the municipal elections, gave the appearance of a desire to damage the reputation and honour of the applicant, rather than to provide information.

It is an incomprehensible decision since it has all the hallmarks of full-blown censorship. In addition to the fact that journalists are not bound by the secrecy of the investigation, this decision, taken without any adversarial procedure (the newspaper was not heard; the judge did not read the article), is all the more disturbing as it comes during an election period, when the public has a particular right to be informed.

The newspaper in question, *Le Soir*, has denounced what it considers to be a gag order. The European Federation of Journalists (EFJ), the French-speaking and the Dutch-speaking associations of professional journalists have issued a statement expressing their concern at the return of preventive censorship and an unprecedented deterioration in press freedom in Belgium. The EFJ denounced this gag order to the Council of Europe Safety of Journalist Platform.⁵⁴

A month earlier, it was a commercial law court that considered itself competent to rule on the content of a report before it was broadcast, on the basis of commercial law. The reasoning was unprecedented: the broadcasting of a report by one press company (RTBF) about another (a bailiff's office) could be considered an unfair commercial practice. Under these conditions, if an imminent act of denigration were proven, the court would have jurisdiction to put a stop to it, in this case by ordering the deletion of any mention of the plaintiff in the report, before broadcast – a clear case of censorship.

The court ruled that the claims were unfounded but considered the application admissible, on the grounds that the legislation supporting it, derived from European law, takes precedence over the Constitution. This sleight of hand is terribly worrying for fundamental freedoms, which are being sidelined in favour of purely economic considerations. A creaky door therefore seems to be opening to new legal actions

54 Council of Europe, Safety of Journalist Platform, *Gag Orders and Proceedings Before Brussels, Liège and Namur Courts*, N° 225/2024, 13 November 2024, <https://fom.coe.int/en/alerte/detail/107641622;globalSearch=false>.

aimed at pre-emptively banning a publication from any media company. This was also reported by the FEJ to the Council of Europe Safety of Journalist Platform.⁵⁵

A third case is to be reported. But in this case, it was the Belgian State, via the Minister of the Interior, who, together with an investigator in charge of the QatarGate affair, sued a newspaper, asking the court, in summary proceedings, to order the deletion or anonymisation of content published on the affair that could identify him; but also to prohibit, in the future, any similar publication.

A request for censorship from the Belgian State itself, in defiance of its own Constitution, is cause for concern. The President of the Namur Court of First Instance categorically rejected both requests. With regard to the ban on future publications, she firmly reiterated the ban on censorship and emphasised that the request, radically contrary to the provisions of Article 25 of the Constitution, was manifestly unfounded, even reckless, to be so obviously contrary to the Constitution. This decision was more than welcome in the tense climate of late 2024. This case too was reported by the FEJ to the Council of Europe Safety of Journalist Platform.⁵⁶

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

Threats of legal action to prevent the publication of information are not uncommon and are sometimes followed by actual action once the content has been published. Examples include the proceedings brought by the former mayor of the town of Andenne against a journalist following a portrait published in a magazine and against an online media for a video published a few weeks earlier.⁵⁷

These actions are SLAPP proceedings, brought abusively against journalists active in the public debate, with the aim of intimidating them or silencing them. Belgian law does not provide for a mechanism allowing the dismissal of unmeritorious or SLAPP cases at an early procedural stage.

Confidentiality and protection of journalistic sources (including whistleblower protection)

In 2019, two directors of the Data Protection Authority denounced serious malfunctions, including illegal appointments and conflicts of interest within the structure responsible for protecting privacy in Belgium. With no

55 Ibidem.

56 Ibidem.

57 Belga, 'Une journaliste de Wilfried au tribunal après avoir brossé le portrait de Claude Eerdeken', *La Libre*, 21 October 2024, <https://www.lalibre.be/belgique/elections-belges/elections-communales/2024/10/21/une-journaliste-de-wilfried-au-tribunal-apres-avoir-brosse-le-portrait-de-claude-eerdeken-4ETXMG5BHRDNHLVZ-MGWK4ZYBB4/>.

support from the authorities, they were soon faced with an untenable situation: as they had pointed out shortcomings from this authority, they should have benefited from the protection due to whistleblowers, such as legal advice or psychological support and, above all, protection against dismissal and retaliation by their employer. It was never the case and one of them resigned, the other was dismissed. The latter brought an action for damages against this iniquitous decision. In a ruling handed down on 12 December 2024, the Brussels Court of First Instance ruled in her favour and condemned the Belgian State for the wrongdoing that led to her dismissal. The decision is scathing – the court recognised that they should have benefited from whistleblower status.⁵⁸

Access to information and public documents

The new Penal Code broadens the definition of ‘state secrets’, extending the scope of the offenses of disclosing and receiving state secrets. The FIHR has criticised this extension, arguing that the government has not adequately justified the need for it, relying instead on vague grounds. The broad and ambiguous

definition of these secrets poses practical problems, making it difficult to distinguish between what is punishable and what is not. It could also threaten press freedom, as journalists risk prosecution for receiving or divulging information without knowing it was classified as a state secret.⁵⁹

The Association of Professional Journalists (APJ) also denounces the considerable widening of the scope of offences relating to the disclosure and receipt of state secrets, without sufficient justification.⁶⁰ New situations are now included under the notion of ‘state secret’, which could prohibit the disclosure of information of public interest, such as institutional malfunctions, criticism of policies or international trade agreements. This wording could penalise the publication of information that is essential to the public. In addition, the terms used in the legislation are considered imprecise, which could lead to arbitrary prosecutions.

Furthermore, the penalties for disclosing or receiving state secrets are disproportionate, ranging from 5 to 10 years’ imprisonment for disclosure and 3 to 5 years for receipt. These penalties risk undermining the work of

58 Philippe Laloux, ‘L’Etat condamné pour le licenciement de Charlotte Dereppe, lanceuse d’alerte de l’APD’, *Le Soir*, 18 December 2024, <https://www.lesoir.be/643378/article/2024-12-18/letat-condamne-pour-le-licenciement-de-charlotte-dereppe-lanceuse-dalerte-de>.

59 European Network of National Human Rights Institutions, *Rule of Law Report 2024 (Rapport sur l’État de droit 2024)*, 2 May 2024, <https://institutfederaaldroitshumains.be/sites/default/files/2024-08/Rapport%20Etat%20de%20droit%202024%20FR.pdf>

60 Association of professional journalists (Belgium), ‘State secrecy: AJP, VVJ and Ligue des droits humains take case to Constitutional Court’, 14 October 2024, <https://www.ajp.be/secret-detat-lajp-la-vvj-et-la-ligue-des-droits-humains-saisissent-la-cour-constitutionnelle/>

journalists, whistle-blowers and NGOs who share public information of general interest, thus creating a climate of intimidation. Indeed, this legislation could have a direct impact on press freedom and the protection of sources, essential elements of investigative journalism. Disclosure of important state dysfunctions could become impossible, calling into question the crucial role of journalists in a democratic society. The European Court of Human Rights regularly stresses that freedom of the press also protects the dissemination of ideas and information that disrupts the established order, making it all the more essential to protect journalists, whistle-blowers and NGOs, particularly when state actions escape democratic or judicial control.

Other

The FIHR has argued in favour of introducing the ‘journalistic exception’ provided for by Art. 85 § 2 of the GDPR into national legislation in a way that would make it clear that non-professional journalists can avail themselves of certain data processing exceptions. The current provision of Belgian law indeed leaves uncertainty in this regard. Therefore, the FIHR

issued an opinion on a proposed law amending the Personal Data Protection Act of 2018, particularly with regard to data processing for journalistic purposes.⁶¹ The amendment aims to enable non-professional journalists (citizens, NGOs, bloggers, etc.) and other public actors to benefit from the exemptions provided for data processing for journalistic purposes, by extending the definition of ‘journalism’ to the general interest. Currently, Article 24 of the law imposes rules of journalistic ethics, but the proposal seeks to remove this reference and include non-professional actors, such as NGOs and citizen journalists, in this exception. The FIHR supports this development, believing that the legislation should guarantee enhanced protection for these actors playing a ‘public watchdog’ role, without restricting this possibility to professional journalists alone.

The FIHR also recommends the creation of a separate legal framework to specify the rules that apply when citizens film police officers and to anchor the basic principle that anyone has the right to film police officers in the performance of their duties, even if exceptions to this rule are possible.⁶²

61 Federal Institute for the protection and promotion of Human Rights (Belgium), *Proposal for an Act amending the Act of 30 July 2018 on the protection of individuals with regard to the processing of personal data, with regard to the processing of personal data carried out for journalistic purposes (Proposition de loi modifiant la loi du 30 juillet 2018 relative à la protection des personnes physiques à l’égard des traitements de données à caractère personnel, en ce qui concerne le traitement de données à caractère personnel effectué à des fins journalistiques)*, Notice n° 1/2024, 22 January 2024, <https://institut-federaldroitshumains.be/sites/default/files/2024-02/IFDH%20Avis%201-2024%20-%20Traitement%20de%20donn%C3%A9es%20personnelles%20%C3%A0%20des%20fins%20journalistiques.pdf>.

62 European Network of National Human Rights Institutions, *Rule of Law Report 2024 (Rapport sur l’État de droit 2024)*, 2 May 2024, <https://institutfederaldroitshumains.be/sites/default/files/2024-08/Rapport%20Etat%20de%20droit%202024%20FR.pdf>.

Any positive developments regarding the application of anti-SLAPP rules for domestic cases, such as transparency, procedural safeguards and remedies

On 11 April 2024, the European Parliament adopted a directive aimed at protecting journalists, media, researchers, artists and human rights defenders against abusive legal proceedings, known as SLAPP suits.⁶³ Belgium does not yet have any legislation explicitly aimed at protecting victims of SLAPPs. This directive is not transposed into Belgian law yet (knowing Belgium has two years to do so).

The prohibition of SLAPPs was also recently confirmed by the Ghent Court of Appeal in a decision of 28 March 2024 concerning a dispute between two media outlets and the chairman of a political party, Conner Rousseau.⁶⁴ In the first instance, Rousseau had obtained a ban on the publication of articles about him, which was a case for concern in the 2024 EU ROL report.⁶⁵ This decision is extremely welcome in the current situation, which is particularly problematic in Belgium (see above).

63 Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on the protection of persons taking part in the public debate against manifestly unfounded claims or abusive legal proceedings (“strategic lawsuits distorting the public debate”).

64 Association of professional journalists (Belgium), ‘Belgium: unprecedented return of preventive censorship’, 17 October 2024, <https://www.ajp.be/belgique-retour-sans-precedent-de-la-censure-preventive/>.

65 European Commission, *2024 Rule of Law Report - Country Chapter on the rule of law situation in Belgium*, SWD(2024) 801 final, 24 July 2024, p. 24.

CHECKS AND BALANCES

Key recommendations

- *Independent institutions should receive additional human and financial resources to help carry out their tasks effectively and Belgian authorities should put an end to the fragmentation of the landscape of fundamental rights protection.*
- *Belgian authorities should make sure that all human rights monitoring bodies comply with the Paris Principles, especially the more dysfunctional ones (Data Protection Authority, Standing Police Monitoring Committee, Police Information Monitoring Body).*
- *Belgian authorities should grant all state bodies responsible for the transparency of public administration the competence to issue binding decisions (at federal, regional and community levels). It should also suppress restrictions to administrative transparency already in place.*

Independent authorities

On 20 September 2024, a few days before stepping down, the Flemish Minister-President ordered his ministers to submit draft decrees and decisions not to the Data Protection Authority (DPA), but to the regional body, the Vlaamse Toezichtcommissie (VTC).⁶⁶ This decision is an attempt to regionalise the issue of privacy, bypassing the federal state. The federal Secretary of State for Privacy confirmed that the federal government had not taken any initiative to negotiate an agreement with the Flemish Region and stressed that it could not prevent this decision. He also said that the reaction of the European Commission was

awaited, in particular, to check whether the VTC complies with the requirements of the General Data Protection Regulation (GDPR), particularly in terms of independence. The source of concern is that the Flemish regional body doesn't enjoy the same means, legally and financially, as the federal DPA does and that its independence standards are more fragile at the regional level. The European Commission confirmed that it had received an official notification from the Belgian authorities and that it would examine the situation.

66 Belga, 'En force, la Flandre a décidé de régionaliser la vie privée', *RTL info*, 1 October 2024, <https://www.rtl.be/actu/belgique/politique/en-force-la-flandre-decide-de-regionaliser-la-vie-privee/2024-10-01/article/717073>.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

As already mentioned, currently the federal Commission for Access to Administrative Documents (CADA) is the only such commission (as opposed to its regional counterparts) to have solely an advisory role, issuing opinions which are often ignored by the federal authorities, without any capacity to enforce its decisions. The country's other CADAs operating at the regional level have had binding powers since 2004 in Flanders and 2019 in Brussels, Wallonia and the Wallonia-Brussels Federation. In its 2023 and 2024 reports on the rule of law, the European Commission recommended that Belgium give the federal CADA binding decision-making powers. A binding role for the federal CADA would be a real turning point in terms of transparency. In reality, a simple opinion from the CADA, although it should suffice, is not always respected by public authorities, who are often reluctant to be transparent. The current system does not guarantee effective transparency and requires reform to give the federal CADA binding powers.

Implementation by the public administration and State institutions of final court decisions

Since 1 October 2020, detainees have the right to lodge a formal appeal against individual decisions taken by their prison directors, or against the absence of a decision where one should have been taken. The Central Prison Supervisory Board (CPSB) handles complaints through independent and impartial complaints and appeals boards. In 2023, 4165 complaints were lodged, compared with 2394 in 2022, which highlights the need to adapt procedures and organisation to deal with these complaints effectively.⁶⁷ However, a review of case law reveals delays in implementing the Commissions' decisions, or even ignorance of them, which constitutes a violation of the rule of law, as these decisions must be implemented unless the president of the appeal commission decides otherwise. The failure to implement these decisions raises questions about the validity of complaints about non-compliance.

Electoral framework

Limitations on the right to vote

On 28 March 2023, a new law amending the law about disability schemes was passed, introducing changes concerning the political rights

67 European Network of National Human Rights Institutions, *Rule of Law Report 2024 (Rapport sur l'État de droit 2024)*, 2 May 2024, <https://institutfederaaldroitshumains.be/sites/default/files/2024-08/Rapport%20Etat%20de%20droit%202024%20FR.pdf>.

of disabled people.⁶⁸ As of 1 October 2023, a court must explicitly decide, on a case by case basis, whether a disabled person is fit to exercise his or her political rights, including the right to vote and stand for election, on the basis of a detailed checklist. The court may deprive the person of his or her right to vote without specific justification. This reform could make access to the right to vote more difficult for people with disabilities, due to the tendency of judges to strictly apply the checklist, which often disproportionately deprives individuals of their rights without personalised assessment. This law goes against previous government

commitments, notably in the Federal Disability Action Plan, and is seen by Unia as a violation of the constitutional rights of people with disabilities to be fully integrated into society.⁶⁹

As for the European Parliament elections, on June 1, 2022, the voting age for European elections in Belgium was lowered from 18 to 16, but was not made compulsory, unlike for other elections at national and regional levels. On March 21, 2024, the Constitutional Court ruled that the obligation to vote also applied to minors aged 16 and over for European elections, as it did for adults.

68 House of Representatives (Belgium), Law to make various amendments to electoral legislation (*Loi du 28 mars 2023 portant diverses modifications en matière électorale*), 28 March 2023.

69 UNIA (Belgium), 'The 28 March 2023 law makes it difficult for people with disabilities to exercise their right to vote' ('La loi du 28 mars 2023 met en difficulté l'exercice du droit de vote pour les personnes en situation de handicap'), 11 January 2024, <https://www.unia.be/fr/actua/loi-28-mars-2023-difficulte-droit-vote-personnes-handicap%C3%A9es>.

CIVIC SPACE

Key recommendations

- *Belgian authorities should guarantee that human rights defenders are not subject to any forms of attacks and intimidation and, when it is the case, make sure that such cases are investigated efficiently and the perpetrators are held to account.*

Freedom of peaceful assembly

Bans on the use of symbols/slogans in protests

NGOs expressed concern about the repressive measures targeting the pro-Palestinian movement in Belgium.⁷⁰ This repression takes various forms: attacks on freedom of expression, administrative fines for taking part in demonstrations and criminal investigations into the occupation of university buildings. Since August, people who supported the occupation of a university building have received summonses on serious charges, which is causing concern. In addition, several pro-Palestinian demonstrations have been suppressed, notably in Brussels, Ghent and Leuven, often on legal

pretexts disputed by NGOs. The authorities also justify putting pressure on people wearing signs of support for Palestine, such as the Palestinian flag or the keffiyeh, which constitutes a violation of freedom of expression. All these actions raise concerns about the right to protest in Belgium. The associations are calling on the authorities to protect this fundamental right.

Attacks and harassment

The FIHR carried out research into the quality of civic space, which enabled it to publish a report on the situation of human rights organisations in Belgium on 8 July 2024.⁷¹

What emerges from the report is that although the general conditions in which Belgian

70 League of Human Rights (Belgium), 'A dozen NGOs and trade unions are concerned about the repressive measures targeting the pro-Palestinian movement in Belgium' ('Une dizaine d'ONG et syndicats s'inquiètent des mesures répressives qui visent le mouvement propalestinien en Belgique'), 20 September 2024, <https://www.liguedh.be/une-dizaine-dong-et-syndicats-sinquiètent-des-mesures-repressives-qui-visent-le-mouvement-propalestinien-en-belgique/>.

71 Federal Institute for the protection and promotion of Human Rights (Belgium), *Space for human rights defenders in Belgium – The situation of human rights organisations (Espace pour les défenseur·e·s des droits humains en Belgique. La situation des organisations de défense des droits humains)*, 8 July 2024, <https://www.institutfederaldroitshumains.be/sites/default/files/2024-07/Rapport%20IFDH%20D%C3%A9fenseurs%20droits%20humains%202024.pdf>

organisations and public institutions defend human rights are judged to be relatively good, the majority of organisations face pressure and intimidation. In addition, a large number of these organisations are facing financial difficulties and obstacles to participating in the elaboration of public policy decisions. However, the pressure exerted on the way they operate remains moderate. Workers in human rights organisations are frequently subjected to online and offline verbal attacks and negative media campaigns. Sometimes they are even subjected to physical attacks and vandalism, as well as illegitimate acts of violence by members of the police.

Pressure and threats to human rights organisations come from two main sources: the general public and politicians. Employees and volunteers are sometimes targeted by the public, mainly online,⁷² with attacks focusing on

personal characteristics such as sex, gender, sexual orientation and physical appearance. On the other hand, the organisations themselves are mainly targeted by political actors, with criticism levelled at their activities, values, objectives and the human rights they defend.⁷³

Although these pressures have little impact on the organisations' ability to carry out their mission, they do influence their working methods, in particular their communication strategy on the human rights issue being defended, which becomes more moderate. On the other hand, attacks and intimidation against staff members have psychological and financial effects and increase their sense of insecurity. To deal with this, the organisations put in place internal support measures but emphasise that structural support mechanisms need to be strengthened to manage these incidents more effectively.

72 Particularly in the form of trolls on social networks.

73 Such as malicious phone calls, pressure related to the grant of public subsidies, threats of SLAPPs.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *There is a need for urgent reform of Walloon legislation on arms trading, in particular, to improve controls on the transit of arms and to ensure the transparency of exports.*
- *The Walloon government should stop issuing export licenses to countries where arms are likely to contribute to human rights violations.*
- *The Wallon Region should guarantee the independence of the Advisory Committee on Arms Exports and introduce stricter control mechanisms.*

Systemic human rights violations

Impunity and/or lack of accountability for human rights violations

NGOs have denounced the continued export and transit of arms from Wallonia to Israel, despite the serious violations of human rights and international humanitarian law in the region.⁷⁴ The organisations revealed that weapons, including components for the F-35 and F-16 fighter jets, are transiting through Liège airport, in violation of Belgium's international commitments. They also highlighted shortcomings in the regional regulatory framework, in particular, the weakness of controls on the

transit of weapons and the lax conditions that allow this type of practice.

The Walloon Arms Observatory's annual report for the period from July 2023 to July 2024 highlights that the Walloon authorities have not taken sufficient measures to prevent the export of arms that could fuel war crimes. Examples such as the supply of machine guns to the Nigerian army or the export of explosive powder to Israel, in the midst of the war in Gaza, are cited as striking illustrations of this negligence. What's more, the export of 16 tons of explosive powder to Israel in November 2023 was only temporarily suspended in February 2024, after several months of war, prompting

⁷⁴ League of Human Rights (Belgium), 'Evidence of arms transit to Israel via Liège airport' ('Des preuves de transit d'armes vers Israël par l'aéroport de Liège'), 23 May 2024, <https://www.liguedh.be/des-preuves-de-transit-darmes-vers-israel-par-laeroporto-de-liege/>.

disappointment among NGOs at the slow and temporary nature of this decision.

The organisations are calling for urgent reform of Walloon legislation to improve controls on the transit of arms and to ensure the transparency of exports. They demand that the Walloon government stop issuing export licenses to countries where arms are likely to contribute to human rights violations. They are also calling for greater independence for the Advisory Committee on Arms Exports and the introduction of stricter control mechanisms, along the lines of those in Flanders. Finally, they stress the need for the federal and regional authorities to assume their responsibilities, particularly with regard to the transit of arms, to avoid supporting violations of international humanitarian law and war crimes.

CONTACT

Ligue des Droits Humains (LDH) ***League of Human Rights***

For over a hundred years, the Ligue des Droits Humains (LDH, League of Human Rights) has combated injustices and infringements of fundamental rights in the French Community of Belgium. LDH works on subjects such as: youth, prisoners' rights, migrant and refugees situation and rights, access to justice, economic, social and cultural rights, psychiatric patient's rights, equal opportunities, privacy and diversity.

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Bulgarian Helsinki Committee



The Bulgarian Helsinki Committee (BHC) is an independent, non-governmental, not-for-profit civil society organisation for defending fundamental human rights in Bulgaria: political, civil, cultural, and social. It was established in 1992. Among other things, the organisation works in the field of rule of law and independence of the judiciary.

Anti-Corruption Fund



The Anti-Corruption Fund is an independent, expert-led non-governmental organisation that investigates cases of alleged corruption, misuse of public funds, and conflicts of interest among public officials in Bulgaria. The organisation aims to assist public authorities and journalists in investigating and prosecuting corruption-related violations. Its goal is to help address systemic factors leading to high corruption levels and to raise public awareness about existing mechanisms to counteract corruption.

Alexey Lazarov, independent expert

Alexey Lazarov is a Bulgarian media professional with over 25 years of experience in journalism, media management, and research. He led editorial teams at *Capital*, a leading business publication in Bulgaria. From 2018 to 2024, Alexei served as editor-in-chief of *Capital*. His career in media started as a reporter covering the media market.

KEY CONCERNS

Judicial System

Despite the myriads of amendments in the legislation, none of them brought neither truly independent mechanism for accountability of the Chief Prosecutor or their deputies, nor change in the composition of the Supreme Judicial Council.

Legislative amendments aiming at improving the functioning of the Inspectorate to the Supreme Judicial Council are still not adopted, the composition of the Council remains sub-optimal while none of the publicly discussed high-level corruption cases among politicians were brought to justice.

Anti-Corruption Framework

In a captured state, the anti-corruption framework is not aimed at combating corruption, but rather serves as a tool against political and business opponents of the *de facto* owners of state institutions. After a period of relative calm, there has been a significant increase in these types of institutional attacks.

The recommended successful investigations, prosecutions, and final judgments in high-level corruption cases, as well as the effective performance of the Anti-Corruption Commission, are not possible in the current situation. This is because the anti-corruption institutions are used as instruments for exerting pressure and gaining political and economic benefits.

Media Environment and Media Freedom

The ongoing political instability—lack of government or properly functioning parliament—has prevented any substantial regulatory changes, including in the media market. Combined with low market dynamics, this has resulted in stagnation in the media environment.

The Commission's sole recommendation from last year—to improve transparency in state advertising allocation, particularly regarding intermediary contracts—remains unimplemented due to political instability.

Checks and Balances

Most of 2024 passed under the sign of general political instability in all three branches of government. With 20 bodies or agencies whose members currently serve past their term of office, another two vacated preliminary and two to be elected for the first time, the system of checks and balances is deeply compromised.

Throughout most of 2024, partisan bargaining obstructed the election of new members to various bodies and agencies, thereby hindering proper political pluralism. However, at the beginning of 2025, a government was formed comprising both established and emerging populist political parties, which raises expectations of partisanship in governance.

Civic Space







The parliament quickly adopted a law against 'propaganda of non-traditional sexual

orientation’ or gender identity ‘different from the biological one’ which had an immediate chilling effect on access of NGOs to schools. Draft bills on registration of ‘foreign agents’ and on regulating lobbyism by NGOs were also progressed.




Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

Bulgaria failed to execute key judgments of the European Court of Human Rights (ECtHR), part of the problem being lack of robust legal framework binding various branches of government and independent bodies to the execution with specific negative consequences in case of non-execution.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

JUSTICE SYSTEM –

Key recommendations

- *In a timely manner the parliament should hold a transparent procedure for new members of the Supreme Judicial Council developed through intense dialogue and cooperation with the civil society.*
- *The parliament should hold a procedure for the election of new inspectors in the Inspectorate of the Supreme Judicial Council.*
- *The parliament should amend the procedure for the election of the Chief Prosecutor by the Supreme Judicial Council. This procedure should allow for nominations from non-governmental institutions like the National Bar Association as well as self-nomination from magistrates and should be developed through intense dialogue and cooperation with national and supranational professional organisations and the high-ranking university faculties of law.*
- *The parliament should continue the work of the temporary parliamentary committee on influence peddling in the judiciary.*

Judicial independence

In 2024, the first results of the legislative reform package aimed at implementing the ECtHR's judgment in *Kolevi v. Bulgaria* (1108/02), as well as numerous recommendations of the Venice Commission, the European Commission and other supranational institutions, were achieved. The reform, encompassing

amendments to the Criminal Procedure Code (CPC) and the Justice System Act (JSA) (passed in 2023), also included amendments to the Constitution of the Republic of Bulgaria (CRB), which affects changes in the judiciary among other developments.¹

On 8 January 2024, the president challenged several of these constitutional amendments.

1 National Assembly of the Republic of Bulgaria, Law on amending and substituting the Constitution of the Republic of Bulgaria (Закон за изменение и допълнение на Конституцията на Република България), State Gazette, Issue 106 of 22 December 2023, <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=202060>.

He also challenged the constitutional amendments on procedural grounds.²

On 26 July 2024, the Bulgarian Constitutional Court annulled part of the constitutional amendments with Decision No. 13 of 26 July 2024.³ With it, the court quashed the following key reforms:

- Splitting the Supreme Judicial Council (SJC) into two separate councils—the Supreme Judicial Council and Supreme Prosecutor’s Council (Articles 130–130a and other provisions of the Constitution)—according to which the former elects the presidents of the supreme courts, and the latter elects the Chief Prosecutor (CP);
- Removing CP’s powers of general oversight of the legality and methodological guidance of all prosecutors and investigating magistrates for an accurate and uniform application of the laws (Article 126(2) and (3) of the CRB).⁴

The court found that those constitutional provisions constitute fundamental amendments

to the constitution that exceed the mandate of the National Assembly and ought to be legislated by an extended assembly with constituent power (known as the Grand National Assembly; see Article 158(3) of the CRB).⁵ As a consequence, the plenary of the Supreme Judicial Council remains the one electing the Chief Prosecutor and the presidents of the two supreme courts, with prosecutors having a say in electing heads of the courts. Furthermore, the composition of both the chambers and the plenary of the Supreme Judicial Council is unfavourable to judicial independence. In the judicial chambers, there is a 6:6 ratio of judges elected by their peers to judges elected by the parliament. Similarly, in the plenary, the ratio of magistrates elected by their peers to those appointed by the parliament is 10:13. This structure gives the parliament a decisive vote in determining who will lead the Prosecutor’s Office or either of the supreme courts.

A notable change left intact by the Constitutional Court is the amendment whereby the constitution no longer defines the investigators, who are currently investigative magistrates, as part of the judicial system (Article 128 of the

2 *Президентът атакува в КС промените в Конституцията, без съдебната реформа, но с възражения за процедурата*, Lex.bg, 8 January 2024, <https://news.lex.bg/?p=93079>.

3 Constitutional Court of the Republic of Bulgaria, *Decision No. 13 of 26 July 2024 in constitutional case No. 1/2024*, <https://www.constcourt.bg/bg/act-9861>.

4 See Venice Commission, *Opinion No. 968/2019 (CDL-AD(2019)031)*, §56, 9 December 2019, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2019\)031-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2019)031-e); Venice Commission, *Opinion No. 855/2016 (CDL-AD(2017)018)*, § 42–43, 9 October 2017, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2017\)018-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2017)018-e).

5 Constitutional Court of the Republic of Bulgaria, *Decision No. 13 of 26 July 2024 in constitutional case No. 1/2024*, <https://www.constcourt.bg/bg/act-9861>.

CRB). While they remain magistrates under the Judicial System Act, this opens up the possibility of either transferring the National Investigation Service from the Prosecutor's Office to the Ministry of Interior or setting it up as an independent body outside of the three branches of government (legislative, executive, judicial) with a simple amendment to the Judicial System Act.

Three major scandals (among many) remain key issues casting shadows over the independence of the judiciary in Bulgaria. Firstly, the revelations about an organised crime group involved in influence peddling with the participation of acting magistrates, headed by the former investigative magistrate Petyo Petrov, nicknamed 'The Euro' and revolving around The Euro's restaurant, The Eight Dwarfs. Secondly, revelations about an organised crime group involved in influence peddling with the participation of acting magistrates, headed by the well-known criminal personality Martin Bojanov, nicknamed 'The Notary'. Finally, the revelation made public at the end of 2024 that the ex-wife and the son of the interim Chief Prosecutor, Borislav Sarafov received substantial monthly remuneration from several companies connected to persons from the

political party holding most seats in the past few parliaments—GERB (Citizens for European Development of Bulgaria), a European People's Party (EPP) member (for more on the latter matter, see the Anti-Corruption Framework section below).

In 2024 and the beginning of 2025, the Eight Dwarfs scandal developed in an unexpected direction.⁶ After charges were brought against Petyo Petrov, 'The Euro', *in absentia*, no public information was announced on whether the interim Chief Prosecutor, Borislav Sarafov, is under investigation for his ties with Petrov. The two men are famous for being photographed in a very friendly conversation in front of Petrov's restaurant. In June 2024, the media revealed that the husband of Daniela Taleva, the special prosecutor in charge of this case, had been indicted in 2012 and later declared innocent of misappropriated toll taxes.⁷ In October 2024, the Supreme Judicial Council nominated Sarafov as the sole candidate for the position of Chief Prosecutor⁸ despite calls from civil society and at least one member of the SJC that the procedure should not be held given the council's expired term of office. Following this, 25 of 27 regional bar associations issued statements and protested against the

6 For details on this controversy, see *Liberties Rule of Law Report 2023*, February 2023, pp. 89–90, <https://www.liberties.eu/en/stories/rolreport2023-main/44656>.

7 *Оправдаха мъжа на спецпрокурор Даниела Талева, прибирал рушвети на ГКПП „Кулата“*, Mignews.info, 1 June 2024, <https://www.mignews.info/opravdaha-mazha-na-spetsprokuror-daniela-taleva-pribiral-rushveti-na-gkpp-kulata/>.

8 *Борислав Сарафов е единственият кандидат за главен прокурор*, News.Lex.bg, 10 October 2024, <https://news.lex.bg/?p=101538>.

procedure's lack of legitimacy.⁹ Shortly afterwards, the SJC published a document issued by the special prosecutor Taleva, where it is revealed for the first time that none of the preliminary inquiries involving Sarafov contain data that he committed a crime.¹⁰

In early December 2024, the civil society organisation BOETS announced that they are in possession of documents revealing that the son and ex-wife of Sarafov received substantial monthly salaries from two companies connected with two persons of the political party GERB.¹¹ A few days later, special prosecutor Taleva gave an interview for the media where she specified that she worked on 30 casefiles for reports against Sarafov. Commenting on the revelations of BOETS, Taleva noted that receiving a salary is not a crime and should not be subject to investigations or checks.¹²

On 30 January 2025, BOETS, together with the investigative media Bird.bg and Bivol.bg, announced that they were in possession

of part of Petyo Petrov's personal archive, which had been provided to them by a former associate of the ex-investigative magistrate. Later, they stated that they had handed the documents over to MPs Boyko Rashkov and Ivaylo Mirchev, calling for the establishment of an interim parliamentary commission to investigate organised crime within the judiciary. The archive contains dozens of draft decrees issued by prosecutors, apparently sent to Petrov for coordination and approval, as well as documents from the National Agency for State Security (to which Petrov is not supposed to have access), letters to senior police officials, and other materials. Some documents related to the former Corporate Commercial Bank reveal that those containing the name of MP Delyan Peevski were separated with special notes instructing that they should not be processed or disclosed in the trial concerning the bank's bankruptcy.¹³ Some notes also suggest Petyo Petrov was a middleman for several Bulgarian oligarchs. In his notes, the names of Hristo Kovachki, Kiril Domuschiev, Krasimir

9 25 адвокатски колегии в страната излизат на протест срещу избора на нов главен прокурор, *bTVnovinite*.bg, 25 October 2024, <https://bTVnovinite.bg/bulgaria/25-advokatski-kolegii-v-stranata-izlizat-na-protest-sresh-tu-izbora-na-nov-glaven-prokuror.html>.

10 "Не са установени данни". Специалният прокурор Талева даде зелена светлина за избора на Сарафов, *svobodnaevropa*.bg, 24 October 2024, <https://www.svobodnaevropa.bg/a/specialen-prokuror-taleva-stanovishte-sarafov-konkurs/33171880.html>.

11 Сарафови са получили над ЕДИН МИЛИОН лева „заплати“ от две фирми за последните три години! (документи), *Boec*-bg.com, 5 December 2024, <https://www.boec-bg.com/archives/9002>.

12 Специалният прокурор Даниела Талева: Знам очакванията към мен – затова и лично, и с MBP проверихме около 30 сигнала за и.ф. главен прокурор, *24chasa*.bg, 13 December 2024, <https://www.24chasa.bg/mneniya/article/19514179>.

13 В един ден разделили делото "КТБ" – срещу Пеевски и Цв. Василев... И мигом приложихме CPC, *Clubz*.bg, 30 January 2025, <https://clubz.bg/158135>.

Dachev, and others appear next to substantial numbers like “100 000 000” without detailed explanations if these numbers refer to money or other figures.¹⁴ These revelations cast serious doubt on the integrity of both the justice system and the national security services, raising concerns about their potential compromise.

While the Eight Dwarfs scandal was slowly unfolding, another influence-peddling scandal unexpectedly emerged. On 31 January 2024, a man was publicly shot in Sofia in front of his apartment building. It was later revealed that the victim was Martin Bojanov, nicknamed ‘The Notary’, a figure in the criminal underworld, known primarily from an investigation by the Anti-Corruption Fund (ACF) when he was caught offering to intervene in a criminal case in exchange for a substantial sum of money. Shortly after Bojanov’s assassination, a judge from the Pleven District Court, Vladislava Tsarigradska, disclosed that she and her family had been subjected to death threats, initially by Bojanov (who was a party in a case heard by Tsarigradska) and later by another person.

It was also revealed that, like Petyo Petrov and his restaurant The Eight Dwarfs, Bojanov was running a private club called SS, where many judges and prosecutors held membership cards. As a result, the parliament created a temporary committee to investigate the involvement of judges in Bojanov’s group. After sixteen meetings, the committee issued a report requesting that its mandate be extended until the end

of September 2024. The work was prolonged until the end of October 2024. To date, there is no further information on its work.

Unfortunately, these parliamentary activities and the judge’s disclosure have not yielded any tangible results. Neither the National Assembly nor any of the numerous anti-corruption institutions have achieved any progress in unravelling the criminal networks and their ties with public officials. The report of the temporary parliamentary committee is a soft measure that did not result in any legislative initiatives. Lack of clarity remains on the links (or rivalry) between the two influence-peddling groups—circulating Petyo Petrov and Martin Bojanov respectively.

Meanwhile, a homeless person with a mental disability, nicknamed ‘The Red Pirate’, was apprehended by the police as the person who organised a sophisticated network of mobile devices to send further threats to Judge Tsarigradska throughout February 2024, following the assassination of The Notary.

On 31 January 2025, the Inspectorate to the SJC announced that a judicial inspector conducted a check and found no connections between Bojanov and any magistrates. The inquiry included connections to the interim CP Borislav Sarafov.¹⁵

14 See a Facebook post by Bird.bg at <https://www.facebook.com/share/p/1KRwQ4vwGd/>.

15 *Съдебните инспектори са проверили, но не са открили магистрати с връзки с Нотариуса*, mediapool.bg, 31 January 2025, <https://www.mediapool.bg/sadebnite-inspektori-sa-proverili-no-ne-sa-otkrili-magistrati-s-vrazki-s-notarius-a-news367599.html>.

At the end of the year, dozens of MPs from different political parties referred requests for interpretation of the constitution to the Constitutional Court to clarify whether an SJC with an expired term of office can lawfully hold a procedure for electing a CP and whether with regular legislative procedures, the parliament can bar the council from advancing such a procedure. The Constitutional Court found the request inadmissible and stated that there is no constitutional mechanism in place to tackle the continuous inaction of the parliament to elect a new SJC. Whether procedures enacted by a council with a long-expired term of office can be halted via regular legislation can only be subject to a subsequent constitutionality assessment.¹⁶

In November 2024, the judicial chamber of the SJC decided that despite its expired term of office, Georgi Cholakov, the current president of the Supreme Administrative Court (SAC) will act as an interim president until a new president is elected.¹⁷ Following this, the

SJC failed twice to elect a new president of the SAC by not selecting even a single nominee the second time.¹⁸ This move was criticised by the Bulgarian Judges Association, the main civil society organisation of judges in Bulgaria.¹⁹

In late December 2024, the Ministry of Justice published a draft law amending and supplementing the JSA for public consultations.²⁰ Shortly before that, the judges' association announced that it was suing the Ministry of Justice for refusing to provide them with public information about how the composition of the working group that drafted the legislative proposal was chosen. The amendments have been in preparation for about two years, and a draft law was ready at the beginning of 2024. Pointing to professional organisations' objections to the draft law, the new interim Minister of Justice Maria Pavlova, a former investigator and deputy attorney general to interim Chief Prosecutor Sarafov, decided to abandon the drafted law and create a new working group, which, however, did not admit the Bulgarian

16 Constitutional Court of the Republic of Bulgaria, *Decision on admissibility No. 16 of 19 December 2024 in constitutional case No. 41/2024*, <https://www.constcourt.bg/bg/act-10024>.

17 *Съдийската колегия реши: Георги Чолаков ще ръководи ВАС като и.ф. председател след края на мандата си*, News.lex.bg, 12 November 2024, <https://news.lex.bg/?p=102611>.

18 *ВСС бетонира Чолаков начело на ВАС за неясно колко време*, segabg.com, 19 December 2024, <https://www.segabg.com/hot/category-bulgaria/vss-betonira-cholakov-nachelo-na-vas-za-neyasno-kolko-vreme>.

19 *Относно назначаването на досегашия председател на ВАС за временно изпълняващ*, Bulgarian Judges Association, 15 November 2024, <https://judgesbg.org/?p=3114>.

20 Ministerial Council, *Draft law on amending and supplementing the Judicial System Act* (Проект на Закон за изменение и допълнение на Закона за съдебната власт), strategy.bg, 19 December 2024, <https://strategy.bg/PublicConsultations/View.aspx?lang=bg-BG&Id=8785>.

Judges Association even after their explicit request to do so.²¹

In January 2025, the parliament adopted amendments to the JSA, halting the procedure for electing a new Chief Prosecutor in which Borislav Sarafov was the sole candidate. The amended provisions allow for a proposal for the appointment of a new CP to be made to the president only by members of an SJC whose term of office has not yet expired. The same applies to opening a new procedure for a CP and the presidents of the two supreme courts.²² While this legislation has questionable constitutionality, the SJC complied and ceased the procedure for electing a new CP, leaving Borislav Sarafov as interim CP and Georgi Cholakov as interim president of the SAC. Amendments in the JSA allow for a person to hold the position as a caretaker for no more than 6 months (Article 173 (15)).

Quality of justice

In January 2025, the non-profit Institute for Market Economics published a report²³ on the influence of legal education on the formation of judicial elites in Bulgaria. It examines whether the presence of multiple law faculties

promotes competition and pluralism or leads to a concentration of power among graduates of a few prestigious universities. The study finds that a small number of universities dominate the judiciary, raising concerns about transparency and objectivity in appointments. The reputable Faculty of Law at Sofia University St. Kliment Ohridsky notably dominates, with its alumni representing the largest share among all examined groups of senior officials. However, in second and third place are the faculties of Burgas Free University and Southwestern University in Blagoevgrad—both not among the top institutions in accreditation and rating systems. Puzzlingly, the Academy of the Ministry of Interior, which has not offered legal education in the past three decades and whose initial students were educated when it was still preparing agents for the totalitarian communist secret service State Security Agency, is overrepresented among members of the SJC and the administrative heads of the prosecutors' offices.

Fairness and efficiency of the justice system

Issues with the new, supposedly independent mechanism for investigating the Chief

21 *Съюзът на съдиите съди Министерството на правосъдието*, Capital.bg, 16 December 2024, https://www.capital.bg/politika_i_ikonomika/pravo/2024/12/16/4719006_sujuzut_na_sudiite_sudi_ministerstvoto_na_pravosudieto/.

22 National Assembly of the Republic of Bulgaria, Law on amending and substituting the Constitution of the Republic of Bulgaria (Закон за изменение и допълнение на Конституцията на Република България), State Gazette, Issue 106 of 22 December 2023, <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=202060>.

23 Institute for Market Economics, *Юридическото образование и съдебната власт: един от начините за създаване на съдебна номенклатура*, 6 January 2024.

Prosecutor and their deputies adopted as an attempt to execute ECtHR's judgment in the Kolevi case became evident in 2024. This mechanism is neither independent nor effective. Daniela Taleva, the special prosecutor in charge, a judge as the law requires, is appointed as a prosecutor *within* the Prosecutor's Office, contrary to what the ECtHR suggests.²⁴

This prompted the Bulgarian Helsinki Committee to explore the technicalities around the special prosecutor's work. The organisation filed a freedom of information request to Daniela Taleva, asking:

- about the software used in the Prosecutor's Office as a case management system: who developed this software, who is the system administrator, and who employs the system administrator;
- information on the staff of the special prosecutor: number, procedure for selection and appointment, etc.;
- information about the inquiries where no crime was established but which reveal serious abuses of office;
- information on the budget allocated to the special prosecutor;

- information on how the special prosecutor can be officially contacted.²⁵

Instead of receiving a response from the special prosecutor, an answer was given by the person appointed by the interim Chief Prosecutor, Sarafov—a subject of 30 inquiries led by Taleva—to handle requests for access to public information. Sarafov's office denied access to the above information and the court quashed this response. In a second response, it was revealed that the special prosecutor uses software for case management that is developed by the CP's administration and is administered by subordinates of the CP; that the special prosecutor's staff is appointed under the general rules without any special selection by the special prosecutor herself; that her staff are in fact subordinates to the CP; that inquiries against the CP where no crime is established but which may hold information about other offences are not further administered, i.e. referred to other institutions; that the special prosecutor does not have a separate allocated budget and depends on the decisions of the CP in that regard; that her address is located in the building where the office of the CP is located; and that her email address is hosted on the domain and servers of the Prosecutor's Office.²⁶

Notably, in December 2023, Ms Taleva admitted in the media that her independence

24 ECtHR, Judgment of 5 November 2009, *Kolevi v. Bulgaria*, No. 1108/02, § 208.

25 *Проваленият механизъм: Главният прокурор контролира прокурора, който го разследва*, dnevnik.bg, 20 December 2024, https://www.dnevnik.bg/analizi/2024/12/20/4720912_provaleniat_mehanizum_glavnii-at_prokuror_kontrolira/.

26 Ibid.

depends on the CP, saying: “Everything that is within the capabilities of the Chief Prosecutor,

he has done, he has tried to create such conditions that I truly feel independent.”²⁷

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *Faculties of law and the National Institute for Justice (the institution for training judges and prosecutors) should foster a fundamental change through the evolution of professional ethos and political culture in the way that public authority is exercised in Bulgaria.*
- *The government should initiate a comprehensive reform of the criminal justice system regarding in particular the structure of the Supreme Judicial Council and introduce better selection criteria for its members; reform of the Prosecutor’s Office, including its leadership, structure and forms of external control; and reform the rules of criminal procedure and substantive criminal law.*
- *Encourage comprehensive reform of the Anti-Corruption Commission, including its leadership, powers and forms of external control.*

Levels of corruption

The most recent and disturbing information on corruption concerns the acting interim Chief Prosecutor, Borislav Sarafov, who is also the sole candidate for the next seven-year term of office as the head of the Prosecutor’s Office, the main anti-corruption institution in the country. A civic organisation, BOETS, revealed records

from the National Social Security Institute stating that members of his family received, for unknown reasons, payments for thousands of euros from one of the biggest private companies in the public transportation sector. One of the companies allegedly has connections to two major political parties—GERB and MRF (Movement for Rights and Freedoms, often abbreviated as DPS)²⁸. This could be a

27 *Разследващата главния прокурор би дала публичност, ако ѝ бъде оказван натиск*, dariknews.bg, 7 December 2023, <https://dariknews.bg/novini/bylgariia/razsledvashtata-glavniia-prokuror-bi-dala-publichnost-ako-byde-okazvan-natisk-2368861>.

28 *Как властите игнорират данни за зависимост на Сарафов от фирма, свързвана с ГЕРБ и ДПС*, Radio Free Europe Bulgaria, 2024.

potential scheme of money laundering and/or corruption. The CP has not yet commented on the allegations. No known action has been taken by the authorities to investigate further on the matter.

Sarafov was also linked to the notorious criminal network for influencing the judiciary called the ‘Eight Dwarfs’²⁹ as photos emerged showing him having a friendly interaction with the alleged leader of the network.³⁰

Three recent investigations carried out by the Anti-Corruption Fund (ACF) just in the past several months revealed information about high-level corruption in the public sector both at the national and local levels:

The Wolf of Varbovka case:³¹ The village of Varbovka is the most polluted place in Bulgaria, with dangerous levels of cancerogenic substances accumulating in its air, waters, and soil. It is located in Northern Bulgaria near the town of Pavlikeni where a company belonging to Rumen Gaytanski, nicknamed ‘The Wolf’, a key player in Bulgaria’s waste management business, is trying to build Bulgaria’s largest

waste incinerator. This could mean burning the waste generated from all towns and villages in the country in the heart of one of the most fertile agricultural areas of the Danube Plain. Despite the risk of serious pollution, which inspired large-scale civic protests, it is hard to explain why the project has managed to attract support from local and national authorities. The case reached the Supreme Administrative Court, which already ruled in Rumen Gaytanski’s favour.

The Lords of the Dust case:³² A long-running corruption scheme in Sofia Metropolitan Inspectorate has created a parallel system of dumping construction waste and construction spoils at more than 240 unregulated dumpsites in the territory of Sofia Municipality.

The state-owned gas transit company, Bulgartransgaz, gives up BGN 26 million in compensation for the failed expansion of Chiren Underground Gas Storage.³³ Without providing a justification, Bulgartransgaz EAD decided not to seek damages and contract-stipulated compensation of some BGN 26 million from the private consortium behind the failed

29 For further details on the ‘Eight Dwarfs’ criminal network, see *“The Eight Dwarfs” – The facts, a legal analysis, conclusions, and an appeal to the institutions*, ACF, 2020; *Yavor Zlatanov’s interview for ACF confirmed the “Eight Dwarfs” story*, ACF, 2021.

30 *“Частно външно наблюдение”. Борислав Сарафов обвини Гешев за Yavor Zlatanov’s interview for ACF confirmed the “Eight Dwarfs” story майни снимки с Петьо Евромю*, Radio Free Europe Bulgaria, 2023.

31 *The Wolf of Varbovka: How Rumen Gaitanski, with Support by the Authorities, is Getting Closer to Building Bulgaria’s Largest Waste Incinerator*, ACF, 14 May 2024.

32 *Lords of the Dust: Who are the Patrons of a Parallel Construction Waste Removal Scheme in Sofia*, ACF, 5 August 2024.

33 *State-owned gas transit company “Bulgartransgaz” Gives up BGN 26 Mln. in Compensation for the Failed Expansion of Chiren Underground Gas Storage*, ACF, 26 November 2024.

expansion of the Chiren Underground Gas Storage, a project of strategic significance for both Bulgaria and the European Union. This is the latest in a chain of scandals involving the ill-fated project, currently under investigation by the European Public Prosecutor's Office (EPPO). The proceedings were initiated following a tip-off alleging serious violations of public procurement legislation committed while Bulgartransgaz EAD, the state-owned company behind the expansion project, was headed by Vladimir Malinov, Minister of Energy in the current caretaker government. The reported violations could have caused financial damages worth almost BGN 400 million to the public (including European) budget.

Framework to prevent corruption

Laws and measures that exist solely as box-ticking exercises on a progress report cannot effectively prevent corruption. As a general principle, assessment of the quality of laws and measures could be possible if there is a willingness to implement them in their true meaning. Creating professional and independent anti-corruption institutions that strive to apply the law equally (instead of acting arbitrarily using their authority with regard to some targets and looking the other way when dealing with others) is the first necessary step that could help efforts to counteract corruption. Without meaningful change in how anti-corruption institutions exercise their authority, all the specific legal requirements or technical recommendations, even if they are formally adopted, will remain as words on paper.

Unfortunately, the variety of anti-corruption institutions in Bulgaria like the Prosecutor's Office, Anti-Corruption Commission, Commission for Illegal Assets Forfeiture, National Revenue Agency, Public Financial Inspection Agency, National Audit Office, Commission on Protection of Competition, Public Procurement Agency, State Agency for National Security, Inspectorate to the Supreme Judicial Council and various other inspectorates to the Council of Ministers and respective ministries, etc. cannot be labelled as professional and independent.

A significant reform of the anti-corruption framework was introduced in 2023 as the Commission for Counteracting Corruption and the Forfeiture of Illegally Acquired Property (CAFIAP) was divided into the Anti-Corruption Commission/Commission for the Counteracting of Corruption (ACC) and the Commission for Illegal Assets Forfeiture. This round of reforms of Bulgaria's anti-corruption legislation took place less than six years after the reforms in early 2018 when CAFIAP was created. Back then, the mega-structure CAFIAP took over the competencies of five different public anti-corruption bodies. Through the new measures, the exact opposite approach was adopted as this time around the CAFIAP was divided. This restructuring was carried out without any analysis of the reasons behind the lack of positive results in CAFIAP's activities. Thus, the new set of reforms seems like the latest round of a vicious cycle: radical revamp of the anti-corruption legislative framework; formalistic proclamations of the reform's success; lack of positive results; absence of analysis of errors and deficiencies which led to the lack of

positive results; calls for new sweeping changes (and back to the beginning).³⁴

According to Article 44 of the new Preventing and Fighting Corruption Act (adopted in 2023), the ACC implements the state policy on corruption prevention, which is the current main state actor in preventing corruption.

In 2024, the new leadership of the ACC should have been appointed by the Parliament in a transparent procedure involving an impartial nomination committee. This process was blocked due to political instability, leading to two early parliamentary elections in 2024 alone (seven since 2021). Thus, the former deputy head and interim head of CAFIAP since the beginning of 2022 Anton Slavchev (a person of questionable reputation)³⁵ is still in charge of both commissions after their separation.

Integrity framework including incompatibility rules (e.g.: revolving doors)

Incompatibility rules were allegedly used arbitrarily in a very high-profile case in 2024

regarding the removal of a vice-chairman of the Bulgarian National Bank—Andrey Gyurov. Gyurov was a prominent figure of the party PP (We Continue the Change), nominated for the position by the de facto coalition between PP-DB (We Continue the Change-Democratic Bulgaria) and GERB (Citizens for European Development of Bulgaria), supported by DPS (Movement for Rights and Freedoms), which was in power from June 2023 to March 2024. Soon after the government collapsed due to political tension between the former partners, a number of high-ranked officials nominated for different positions from PP-DB or linked with PP-DB were dismissed.³⁶

In July 2024, Gyurov was removed from the National Bank due to incompatibility, which was a very questionable matter after a decision by the ACC.³⁷ In December, Sofia City Administrative Court found no evidence of incompatibility and overturned ACC's decision.³⁸ The court ruling is not final.

34 For further details on the reform of the anti-corruption framework, see *“ACF Analyzes New Act on Preventing and Fighting Corruption: Creation of New Investigative Bodies Cannot Compensate Lack of Vision for Comprehensive Criminal Justice Reform”*, ACF, 23 October 2023; *„Новият закон за противодействие на корупцията: каква промяна да очакваме в дейностите по разкриване и разследване на корупционни престъпления“*, ACF, 2023.

35 Slavchev's name emerged in journalistic investigations back in 2019 concerning controversial real estate deals - *Терасата на Антон Славчев – ужилване с 300 000 лв. на Столична община?*, bivol.bg, 2019.

36 *ПП-ДБ вече няма представители в ръководството на МВР. Прокурорка е назначена в правосъдието*, Radio Free Europe Bulgaria, 2024.

37 *БНБ установи основания за освобождаването на Андрей Гюров като подуправител*, lex.bg, 2024.

38 *Съдът не откри несъвместимост при Андрей Гюров за поста му в БНБ*, 24 hours, 2024.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

No legislative measures aiming to regulate lobbying under the Recovery and Resilience Plan (RRP) framework have been adopted yet. Concerns remain that the future regulations on lobbying, if introduced, could potentially be used against civil society organisations.

The Judicial System Act provides the rules on asset disclosure for judges, prosecutors and investigators, and the Act on Preventing and Fighting Corruption—for other high-ranked public officials. The declarations are published regularly by the Inspectorate to the Supreme Judicial Council and the ACC. The main problem with the regulations on asset disclosure is that the respective laws provide possible inquiries into the assets of public officials only if there is a discrepancy between the declared assets and the actual assets, but not if there is a discrepancy between the actual assets and the person's income from the position held. For instance, if a judge declares that he bought real estate for BGN 2 million with his salary and he indeed owns this real estate, no inquiry should be made by the Inspectorate to the Supreme Judicial Council on how he could afford such an asset with his salary. This leads to a very formal approach to the verification of the declarations.

Rules on preventing conflicts of interest in the public sector

Even though a new Act on Preventing and Fighting Corruption that enacted an institutional reform of CAFIAP was passed in 2023, improvements in the established shortcomings of the commission's practices over the past several years were not observed.³⁹

The reform has not been carried out in its entirety and to a level of completion that would guarantee the expected results, including the fact that the section on conflicts of interest is identical to the already existing texts, which contain more than a few deficiencies.

The negligibly small number of cases where misconduct was prosecuted was additionally exacerbated by the fact that there is no judicial control over the decisions in which the ACC does not find wrongdoing after considering the merits. In such cases, the administrative act is favourable to the investigated individual, and it is not followed by an appeal from the defendant's side or the prosecution which is empowered to protest the non-ascertainment of a conflict, thus making the commission's decision final. This is precisely the type of situation that requires an effective system of checks and balances, as the present form represents the public interest poorly.

The ACC continues to apply a formalist approach to conflict of interest cases. The

39 ACF's annual monitoring report on high-level corruption has a detailed section on the conflicts of interest, see *Anti-Corruption Institutions 2023: a Freezing Point*, ACF, 2024.

proceedings do not reveal whether there was a threat to the public interest or if there were doubts surrounding the impartial and objective execution of official duties, which could clarify the connections and dependencies hidden behind the facts that placed certain individuals in a privileged position and potential private interests. All this appears to represent an absence of determination to identify corruption and sanction the perpetrators objectively.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

In November 2024, the Ministry of Justice published for public consultation a draft law for amendments in the Whistleblower Protection Act to respond to the criticism of the European Commission regarding the non-compliance of the existing regulations with the requirements of the EU Whistleblowers Directive, as well as the need to fulfil the commitments undertaken by Bulgaria under the RRP. The Ministry claims that the proposed amendments have been approved by the European Commission. Concerns remain on the designation of the Commission for Data Protection as the competent authority, noting that it lacks the capacity and expertise on the relevant legislation to serve as an efficient whistleblower authority, particularly in corruption cases.

Investigation and prosecution of corruption

According to the traditional interpretation of the provisions of the Bulgarian Constitution, the Prosecutor's Office has a complete monopoly over the prosecution function with very limited possibilities for external control over its key decisions (in particular, the decision not to prosecute) and oversees the criminal investigation.⁴⁰ After the reform of the anti-corruption framework in 2023, investigations for corruption and related crimes have been carried out since March 2024 by investigators at the ACC. The ACC is also responsible for the detection (gathering, through self-initiated preliminary inquiries and tipoffs, the initial information and verification that a crime has been committed) of corruption and related crimes. Detecting these crimes was also a task for the former CAFIAP since its formation in 2018.

CAFIAP/ACC has a longstanding tradition of complete opacity of its activities to detect corruption. No one outside of CAFIAP/ACC, nor, perhaps, even within it, can tell how many corruption-related crimes have been detected in the course of its work since 2018. It is not known in how many cases CAFIAP/ACC field operatives have been able to uncover or verify information that has led to charges of public officials for corruption-related crimes. Field operatives responsible for detecting corruption exercise serious powers, including, for example, the use of secret means for gathering

40 For further details, see *“Exercising control over the prosecution function – the necessary criminal justice reform”*, ACF, 2020; *„Какво трябва да се промени в наказателното правосъдие“*, ACF, 2023.

information like wiretapping, with very limited possibilities for external control of what happens with the collected data during their inquiries.⁴¹

The criminal proceedings targeting corruption, particularly against high-level public officials, have continuously failed to deliver, and little is done to address the low effectiveness of the Prosecutor's Office. This has been a long-standing issue, highlighted numerous times by reports of various international bodies, including the European Commission's Rule of Law Report, and Bulgarian civil society organisations. Since 2020, ACF has monitored the development and outcome of the most important criminal cases of high-level corruption in Bulgaria.⁴² These reports show there are no positive results whatsoever in the investigation and prosecution of high-level corruption. The results have not improved in 2024 and cannot improve in the foreseeable future because even if the anti-corruption institutions are about to drastically change their approach immediately (which is very unlikely), the first results of this

new approach would appear years later. This is due to the very nature of criminal proceedings for complex corruption and related crimes, which require time to develop and achieve an outcome.

However, reaching these results is not the aim of anti-corruption institutions currently. High-profile criminal investigations are simply used as a smokescreen for politically motivated attacks against political opponents of the *de facto* owners of institutions. The criminal investigation and/or information obtained during the investigation is used selectively and temporarily for political pressure and/or public shaming against the opponent who is labelled as corrupt because they are being investigated for corruption by the authorities. When these political goals are achieved, no one cares about the criminal investigation itself. This is evident from a serious number of investigations against high-profile public figures over the years and several that were started by the Prosecutor's Office in 2024 (more on the matter in the following sections).

41 For further details, see *“ACF Analyzes New Act on Preventing and Fighting Corruption: Creation of New Investigative Bodies Cannot Compensate Lack of Vision for Comprehensive Criminal Justice Reform”*, ACF, 2023; „Новият закон за противодействие на корупцията: каква промяна да очакваме в дейностите по разкриване и разследване на корупционни престъпления“, ACF, 2023.

42 A. Yankulov, A. Slavov, *Anti-Corruption Institutions: Activity without Visible Results*, ACF, 2020: https://acf.bg/wp-content/uploads/2020/06/ACF_ENG_2020-1.pdf; A. Yankulov, N. Kiselova, *Anti-Corruption Institutions: Escalating Problems*, Sofia: ACF, 2021: https://acf.bg/wp-content/uploads/2021/07/ACF_ENG_Online_Jul15-1.pdf; A. Yankulov, A. Kashumov, *Anti-Corruption Institutions: a Zero Year*, ACF, 2022: https://acf.bg/wp-content/uploads/2022/07/ACF_Report_ENG_2022_interactive2.pdf; A. Yankulov, D. Peneva, *Anti-Corruption Institutions: Eyes Wide-shut*. ACF, 2023: https://acf.bg/wp-content/uploads/2023/06/ACF_Report2023_EN_web.pdf; A. Yankulov, D. Peneva, *Anti-Corruption Institutions: A Freezing Point*. ACF, 2024: https://acf.bg/wp-content/uploads/2024/06/ACF_Report2024_EN_web.pdf.

Criminalisation of corruption and related offences

Article 3, paragraph 1 of the Preventing and Fighting Corruption Act defines corruption as committing the crimes listed under the Criminal Code from those specified in Article 6, paragraph 1 by persons in high public positions, as well as any other crimes committed in connection with any of the list under Article 3, paragraph 1. Chapter Nine of the Act regulates the counteraction against corruption through the detection and investigation of the corruption crimes in question. The list under the Preventing and Fighting Corruption Act is relatively limited; the absence of such crimes as the main bankruptcy-related crimes, as well as fraud, money laundering, important credit-related crimes, tax crimes, document crimes, computer crimes etc. is striking.⁴³

The establishment of the European Public Prosecutor's Office and its launch in Bulgaria again brought into focus the lack of adequacy of Bulgarian substantive criminal law protection of EU funds, which should be seriously rethought because of its practical relevance. Similarly, the more general problem of criminal liability for procurement violations should be addressed because these are prosecuted under articles

of the Criminal Code with questionable relevance given the nature of the violations. Also, the introduction of criminal liability for legal entities should be considered.⁴⁴

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds. Please provide data where available.

ACF monitors the development and outcome of the most important criminal cases of high-level corruption in Bulgaria. The last published report from 2024⁴⁵ covers a total of 57 criminal cases on the national level and 25 cases on the local level since 2014. Out of the 57 cases on the national level, there were four final convictions with just one executed prison sentence, two suspended prison sentences and one fine. There were 15 final acquittals, 13 of which are because the courts decided that the charges were initially unfounded (no crime has been committed at all) and not due to the lack of evidence, or because the judges evaluated the evidence differently than the prosecutor. 17 cases were terminated at the pre-trial phase by prosecutors. The remaining 21 proceedings are

43 For further details, see *“ACF Analyzes New Act on Preventing and Fighting Corruption: Creation of New Investigative Bodies Cannot Compensate Lack of Vision for Comprehensive Criminal Justice Reform”*, ACF, 2023; *„Новият закон за противодействие на корупцията: каква промяна да очакваме в дейността по разкриване и разследване на корупционни престъпления“*, ACF, 23 October 2023.

44 For further details, see *„Какво трябва да се промени в наказателното правосъдие“ Chapter 6*, ACF, 2023

45 A. Yamkulov, D. Peneva, *Anti-Corruption Institutions: A Freezing Point*, ACF, 2024, https://acf.bg/wp-content/uploads/2024/06/ACF_Report2024_EN_web.pdf.

pending or their outcome is unknown. On the local level, the situation is similar.

These figures diverge significantly from the data provided by the Prosecutor's Office about the ratio of convictions to acquittals (226 convictions to 40 acquittals) concerning all suspected corruption crimes in 2023,⁴⁶ regardless of the position held by the public official or even when no public officials are involved. The total number of criminal proceedings targeting suspected corruption crimes in 2023 is 2,857.

These figures demonstrate that the real picture of high-level corruption in the country is actually hidden. It is obvious that the criminal proceedings initiated by the Prosecutor's Office on grounds of suspected corruption crimes do not reflect the actual level of corrupt behaviour among high-ranking public officials because, based on these proceedings, it turns out that practically no corruption crimes were committed by high-level officials.

Transparency regarding the status of criminal proceedings on corruption cases of high public interest is virtually non-existent. The Prosecutor's Office should drastically increase the transparency of its actions in cases of high public interest while taking heed of the presumption of innocence and the confidentiality of pre-trial criminal proceedings. Once it has

been established that releasing information to the public would not impede the investigation of the case or disproportionately affect the rights of the investigated individuals, the Prosecutor's Office should publish regular updates regarding the course of the proceedings. This approach should apply to all cases and not be adopted selectively.

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

The main obstacle to proper investigation and prosecution of high-level corruption and related crimes continues to be the arbitrary and politically motivated action of anti-corruption institutions. The year 2024 was a good example of those improper activities—the most high-profile criminal investigations for corruption or related crimes which began in 2024 were targeted against political and other public figures, all of whom happen to be political opponents of the government or connected to political opponents of Delyan Peevski—political leader of the MRF (opposition) party. Peevski was sanctioned for corruption by the United States in 2021 under the Global Magnitsky Act⁴⁷ and by the United Kingdom in 2023 under the Global Anti-Corruption Regime⁴⁸ but was never investigated

46 See *Доклад за прилагането на закона и за дейността на прокуратурата и разследващите органи през 2023 г.*, Public Prosecutor's Office of the Republic of Bulgaria, 2024.

47 *Treasury Sanctions Influential Bulgarian Individuals and Their Expansive Networks for Engaging in Corruption*, US Department of the Treasury, 2021.

48 *UK sanctions high profile Bulgarian figures involved in corruption*, gov.uk, 2023.

for corruption by the Bulgarian authorities in an official criminal proceeding.

In April 2024, a criminal investigation started against the director of the National Customs Agency for alleged participation in various criminal activities related to smuggling.⁴⁹ The investigation started soon after the government of the de facto coalition PP-DB (We Continue the Change-Democratic Bulgaria)—GERB, supported by DPS, collapsed due to political tension between the former partners. This investigation was used as ammunition for political and media attacks against two prominent members of the political party PP (We Continue the Change) – former minister of finance Asen Vassilev (who appointed the investigated director of the Customs Agency) and former interior minister Boyko Rashkov (who was exposed in the media from leaked investigation material as being linked to the alleged smugglers). Neither of them has been charged by now.

In October 2024, a criminal investigation for alleged influence peddling was launched against MP Dzheyhan Ibryamov from a rival faction to Delyan Peevski's faction within the party DPS.⁵⁰ Ibryamov was investigated for over a week and arrested in a controversial manner despite having immunity as MP against criminal investigation, prosecution and detention. Ibryamov remained in custody until

the October parliamentary elections and was released to take an oath/pick up his mandate as an MP in the new parliament. The Prosecutor's Office no longer seeks his detention, and his renewed immunity has not been lifted yet. This investigation against Ibryamov is part of a series of other investigations against less prominent figures from the same faction in DPS – mainly local mayors. All these investigations began simultaneously with the tension between the factions in DPS.⁵¹

In December 2024, the Prosecutor General requested the Parliament to lift the immunity against the prosecution of MP Kiril Petkov from PP. Petkov has been charged with alleged abuse of power as prime minister in 2022 by ordering the arrest of the leader of GERB Boyko Borissov. The investigation was conducted for nearly three years without leading to sufficient evidence for charging Petkov, but this changed when, concurrent with the high political tension between PP and Peevski's faction of DPS in the current parliament, sufficient evidence was found.⁵²

The history of the huge percentage of investigations over the years that began with clear relevance to an event in politics shows that they usually collapse sooner or later.

49 Euractive, 'Bulgarian customs chief under investigation for money laundering', 2024.

50 'Court Leaves MP Dzheyhan Ibryamov in Custody', BTA, 2024.

51 *Прокуратурата остави в ареста близък до Доган кмет и сина му*, boulevardbulgaria.bg, 2024.

52 *Сарафов иска имунитета на Кирил Петков за ареста на Борисов*, DW, 2024.

MEDIA ENVIRONMENT AND MEDIA FREEDOM –

Key recommendations

- *The Commission for Protection of Competition (CPC) should strictly enforce antitrust legislation in the TV market and address media market over-concentration*
- *Parliament should reform the Radio and Television Act to guarantee the independence of Bulgaria's public service media. Depoliticised funding, governance reforms, and a unified structure would reduce inefficiencies, foster innovation, and better serve the public interest in a competitive digital environment.*
- *Parliament must restructure public media to consolidate resources, eliminate redundancies, and unify content strategy. Reforms should prioritise political independence, sustainable funding, and digital transformation to promote media pluralism and strengthen its democratic role.*

Media and telecommunications authorities and bodies

Media and telecommunications authorities in Bulgaria struggle to protect media pluralism due to structural weaknesses and persistent political interference. The Council for Electronic Media (CEM) exemplifies this institutional fragility. For over two years, it has failed to appoint a Director-General for the Bulgarian National Television (BNT), exposing its inability to ensure leadership stability. This failure stems from an outdated regulatory framework—the 25-year-old Radio and Television Act—which limits CEM's capacity to safeguard the independence of public media.

Political influence further undermines the regulatory system.⁵³ CEM members are directly appointed by Parliament and the President, compromising the council's independence. Simultaneously, funding for Bulgaria's three public media entities—BNT, Bulgarian National Radio (BNR), and the Bulgarian News Agency (BTA)—depends entirely on the ruling parliamentary majority and the government. This financial dependence creates clear risks of political control, reducing public broadcasters' ability to operate independently and serve the public interest.

The current framework also fails to address modern challenges, such as changing media consumption habits, efficient resource

53 Reporters Without Borders, *Press Freedom Index: Bulgaria*, <https://rsf.org/en/country/bulgaria>.

allocation, and coordination between the three separate public media institutions. These inefficiencies result in overlapping functions, wasted resources, and a fragmented strategy that weakens the role of public media.

Despite the adoption of the European Media Freedom Act, ongoing political instability has halted the reforms needed to transpose its provisions in Bulgaria. Legislative updates are urgently needed to strengthen CEM's independence, modernise the regulatory framework, and improve the enforcement capabilities of oversight bodies. Parliament must act to reform funding mechanisms, reduce political influence, and ensure public broadcasters operate as a unified, independent force capable of countering private media concentration and serving the public good.

Pluralism and concentration

Media pluralism in Bulgaria faces serious challenges driven by extreme market concentration and ineffective regulatory oversight. Two dominant media groups—bTV Media Group and Nova Broadcasting Group—control nearly 90% of the market regarding audience reach and advertising revenue. This dominance is further entrenched by cross-ownership with major telecom companies, creating risks for editorial independence and fair competition.

The Commission for Protection of Competition (CPC) has proven largely ineffective in addressing market concentration. Its failure stems from expired mandates of key members, political influence, and insufficient enforcement of existing antitrust laws. Despite its analysis identifying the risks of disproportionate market power, no meaningful measures have been taken.

Nova Broadcasting Group, which—according to GARB research agency—holds between 45% of the TV advertising market,⁵⁴ operates seven major TV channels, multiple radio stations, and leading news websites. It is being acquired by United Group, the owner of Bulgaria's largest telecom operator, Vivacom/BTC. Meanwhile, bTV Media Group, controlling 49% of the TV advertising market, is owned by PPF Group, which also controls a telecom company, Telenor Bulgaria.

This cross-ownership raises significant risks. Firstly, Telecom companies control both content creation and distribution networks. Secondly, their heavily regulated status makes them vulnerable to state pressure. Thirdly, their role as major advertisers distorts competition by channelling advertising budgets to their own media outlets. Finally, Vivacom/BTC, for instance, holds a 24.1% share in pay TV distribution, further consolidating their influence.⁵⁵

54 *Разпределение на телевизионния пазар в България*, Capital.bg, 19 December 2024, https://www.capital.bg/biznes/media_i_reklama/2024/12/19/4688812_razpredelenie_na_televizionniia_pazar_v_bulgariia/.

55 Commission for the Protection of Competition of the Republic of Bulgaria, Decision No. AKT-37, 14 January 2021, <https://reg.cpc.bg/Decision.aspx?DecID=300059170>.

Rules governing ownership in different segments of the media market, and their application (print, television, radio, online media)

Bulgaria's outdated regulatory framework, including ineffective antitrust legislation, remains ill-suited to address modern media realities. The CPC lacks the independence and capacity to enforce existing laws and tackle the consolidation of media ownership. Political influence over regulatory bodies and failure to appoint new CPC members further undermine its role.

Over the past year, no significant progress has been made to improve ownership transparency or strengthen media market pluralism. Instead, continued consolidation raises concerns about editorial independence, media diversity, and the concentration of power in the hands of a few dominant players.

Transparency of media ownership

Bulgaria has a relatively robust framework for media ownership transparency (except online media; see below), with mandatory disclosure requirements through the Commercial

Register and additional public registries maintained by the Council for Electronic Media (CEM). Information on ultimate beneficial ownership is generally accessible and verifiable. Despite this formal transparency, the system fails to address deeper concerns about political influence over editorial content.

State advertising, primarily limited to EU-funded communication campaigns, accounts for less than 5% of the overall advertising market.⁵⁶ While these budgets are distributed through formal public procurement procedures and include transparency requirements, their selective allocation remains a potential tool for influence.

The main challenges go beyond formal structures. Ownership transparency does not prevent informal political pressure on editorial decisions,⁵⁷ often leading to self-censorship. Indirect political control persists through business interests aligned with political actors, which the current regulatory framework does not address effectively. Even without direct state intervention, these dynamics erode media independence.

56 According to the latest available data from 2017–2021, a total of €5 million was distributed towards media from EU Funds. Just for a reference, the estimated volume of the Bulgarian advertising market in 2020, according to the Bulgarian Association of Communications Agencies, is approximately 230 mln. See Bulgarian Association of Communications Agencies, *Медийният пазар се възстановява след пандемията. Телевизията и дигиталните медии са най-предпочитаните от рекламодателите медийни канали*, 2023, https://www.baca.bg/wp-content/uploads/2023/01/2022_Media-Market_bg_update.pdf.

57 Amnesty International, *The State of the World's Human Rights: April 2024*, 23 April 2024, <https://www.amnesty.org/en/documents/pol10/7200/2024/en/>.

The European Media Freedom Act has yet to make an impact in Bulgaria, as political instability continues to delay necessary legislative reforms. Addressing these issues requires focusing not only on ownership transparency but also on strengthening safeguards for editorial independence. Reforms must target indirect forms of political influence, ensuring a regulatory environment that protects media from undue pressure and allows for genuine independence.

Public service media

The Bulgarian public service media system suffers from deep structural weaknesses that undermine its independence and ability to fulfil its public mission. As a result of issues with appointing a Director-General of Bulgarian National Television, content quality remains inconsistent. While public media entities meet some public service obligations, significant gaps exist, including a lack of in-depth investigative journalism, strong editorial positions, and quality public affairs programming. Among the three public media outlets, Bulgarian National Radio (BNR) maintains higher editorial standards and more diverse programming compared to BNT.

The structural setup of three separate entities—BNT, BNR, and the Bulgarian Telegraph Agency (BTA)—leads to overlapping functions, inefficient resource use, and duplicated administrative costs. This fragmented system lacks a unified content strategy and struggles to compete in the digital media landscape.

Financial dependency on direct state budget allocations exacerbates these problems. Political decisions influence funding levels, which remain insufficient for public media to produce quality content, attract talent, or invest in digital transformation. The absence of long-term financial planning further limits their ability to adapt and innovate.

Reforming the public media system requires urgent legislative action to modernise governance, establish sustainable and independent funding, and restructure operations for greater efficiency. Safeguards against political interference must be strengthened, while better coordination between public media entities is needed to optimise resources. Most critically, reforms should create conditions for the development of high-quality investigative and analytical journalism, ensuring that public service media fulfil their role as a cornerstone of a democratic society.

Online media

Bulgaria lacks a robust regulatory framework for its online media ecosystem, leading to significant gaps in oversight, accountability, and sustainability. Current general media laws fail to address the unique challenges of digital platforms, leaving critical areas unregulated.

Online content regulation remains insufficient. There are no specific rules governing online media content, liability for digital platforms, or content aggregators. Mechanisms for moderating and removing harmful content are weak, and self-regulation efforts have failed due to

the lack of industry-wide participation and accountability.

This leaves Bulgaria highly vulnerable to malicious information attacks from foreign states aiming to sow societal division or influence election outcomes.

Institutional oversight is fragmented, with unclear competencies split across multiple authorities. Bulgaria has yet to appoint a designated Digital Services Coordinator, as required by the European Digital Services Act (DSA). Existing supervisory bodies lack the technical expertise, resources, and enforcement powers to effectively oversee digital services.

In terms of financing and sustainability, Bulgaria's local online media struggle to compete against global platforms like Google and Facebook, which capture approximately 70% of the country's digital advertising revenue. Local media receive only 30%, leaving them increasingly dependent on global platforms for both distribution and monetisation. Copyright protections in the digital environment are weak, and alternative revenue models for sustaining quality online journalism remain underdeveloped.

Additional structural challenges exacerbate these issues. The lack of transparency in content recommendation algorithms makes it harder to identify and address systemic biases. Mechanisms to combat disinformation are

ineffective while fact-checking and content verification tools are limited. Anonymous channels and unregulated content aggregators further amplify the spread of unchecked and unreliable information.

The implementation of the Digital Services Act (DSA) and Digital Markets Act (DMA) in Bulgaria remains in its early stages, with no significant impact on the national regulatory framework so far.

Public trust in media

According to the 2023 Reuters Institute Digital News Report,⁵⁸ trust in Bulgarian media remains critically low and has deteriorated further in recent years. Only 28% of Bulgarians trust journalists, a significant drop from 35% in 2022. This places Bulgaria 41st out of 46 countries surveyed for media trust. With 64% of the population expressing deep scepticism toward journalists, Bulgaria now shares the highest media distrust rating in Eastern Europe with Slovakia.

Media consumption patterns reflect a shift toward digital platforms. 76% of Bulgarians get their news online, including from social media, while 63% rely on television and only 12% use print media. Public broadcasters, BNT and BNR, retain relatively higher trust levels at 59% compared to private outlets.

58 Reuters Institute & University of Oxford, *Digital News Report for 2024: Bulgaria*, 2024, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/bulgaria>.

Social media plays a dominant role in news distribution, with 64% of the population using Facebook as their primary news source, despite its gradual decline. Platforms like TikTok are rapidly gaining ground, with 12% of Bulgarians turning to it for news. The growing preference for video content has accelerated a shift toward visually driven platforms, and 61% now rely exclusively on social media for news consumption.

The implementation of the European Media Freedom Act has yet to influence these trends. Rebuilding trust in Bulgarian media requires comprehensive reforms that address editorial independence, strengthen public service journalism, and improve media literacy to counter the growing influence of unverified content on digital platforms.

Safety and protection of journalists and other media actors

Bulgaria lacks sufficient protections for journalists' safety and independence, leaving media professionals vulnerable to physical threats, legal harassment, and restricted access to information. These challenges highlight the urgent need for reforms to create a safer and more independent media environment.

Physical and legal protection remains inadequate. There is no centralised system for reporting violence against journalists, and institutional responses to attacks are insufficient. Police, prosecutors, and courts lack the independence to investigate these cases effectively, and sanctions for violence targeting journalists are weak. The absence of rapid alert mechanisms for reporting threats exacerbates the problem.

The legal framework further undermines journalists' independence. In their reports, both the Association of European Journalists – Bulgaria (AEJ-Bulgaria)⁵⁹ and Reporters Without Borders⁶⁰ point out that Strategic Lawsuits Against Public Participation (SLAPPs) are increasingly used to silence critical reporting, with higher fines for defamation involving public officials compared to standard cases. Victims of SLAPPs receive limited procedural safeguards, and there is little transparency in law enforcement actions targeting journalists. Most notorious among these is the lawsuit of former Minister of Interior (now MP) Kalin Stoyanov against the independent online media BIRD, specialising in anticorruption and independence of judiciary, for publications revealing his connections with the influence-peddling group of The Notary (see Judicial independence above);⁶¹ the lawsuit of the Lev Ins insurance company against the

59 AEJ – Bulgaria, *Журналистика под стрес. 2024 г. – годишно изследване на свободата на словото в България, 2024*, <https://aej-bulgaria.org/wp-content/uploads/2024/11/Jurnalistika-pod-stres-2024.pdf>.

60 Reporters Without Borders, *Press Freedom Index: Bulgaria*, <https://rsf.org/en/country/bulgaria>.

61 *Калин Стоянов съди журналисти за 65 хиляди лева. Защо?*, *Deutsche Welle Bulgaria*, 17 April 2024, <https://www.dw.com/bg/kalin-stoanov-sdi-zurnalisti-za-65-hiladi-leva-zaso/a-68843758>.

online media Mediapool for about €500,000;⁶² the lawsuit of the Kozloduy Nuclear Power Plant against the whistleblower nurse Natalia Stancheva for misconduct in the medical facility of the power plant⁶³. Bulgaria also lacks legislative measures to protect media professionals from judicial harassment.⁶⁴

Access to information remains restricted under the Freedom of Information Act with overly broad grounds for refusal of requests and a lack of effective implementation legal framework even when access to information is mandated by the court. Official registers and property declarations are not easily accessible, limiting journalists' ability to conduct effective investigations.

Safety concerns are compounded by political attacks, which expose journalists to both online and offline threats. The lack of public condemnation of such attacks and insufficient protection of journalistic sources worsens their vulnerability. Specific safeguards against surveillance and spyware remain absent, leaving journalists unprotected from invasive monitoring.

Despite the European Media Freedom Act's potential, its implementation has yet to bring meaningful change due to a lack of political will. To address these issues, Bulgaria must urgently adopt reforms, including the creation of a rapid alert system for reporting threats, defamation law reform, strengthened protections against SLAPPs, and improved access to public information. Ensuring equal treatment of all media by public institutions and safeguarding journalistic sources are critical steps toward enabling journalists to work safely and independently.

Do you consider the progress of the implementation of the Anti-SLAPP Directive in your country adequate? Have there been any positive developments you could attribute to the Anti-SLAPP Directive?

The progress of implementing the Anti-SLAPP Directive in Bulgaria remains inadequate. While the last elected government committed to addressing the issue, its collapse in 2024 and the ensuing political instability stalled tangible progress. Nevertheless, some efforts are underway. A working group led by the Deputy Minister of Justice has been

62 "Лев инс" продължава делото срещу Mediapool за 1 млн. лв. на втора инстанция, Mediapool.bg, 10 October 2024, <https://www.mediapool.bg/lev-ins-prodalzhava-deloto-sreshtu-mediapool-za-1-mln-lv-na-vtora-instantsiya-news363867.html>.

63 Дело шамар приключи с 15 000 лв. дълг за медсестрата, съдена от АЕЦ "Козлодуй", Mediapool.bg, 6 December, 2024, <https://www.mediapool.bg/delo-shamar-priklyuchi-s-15-000-lv-dalg-za-medsestrata-sadena-ot-aets-kozlodui-news365862.html>.

64 Държавата не бива да сключва рекламни договори с медии, които не са осветили собственика си, Capital.bg, 09 March 2024, https://www.capital.bg/politika_i_ikonomika/pravo/2024/05/09/4621345_durjavata_ne_biva_da_skljuchva_reklamni_dogovori_s/.

established to align Bulgarian legislation with the directive. The group includes representatives from the judiciary, academia, civil society, and the Ministry of Justice. Their initial focus is on amendments to the Civil Procedure Code (CPC), but discussions suggest changes may extend to the Judicial System Act and other relevant laws.

Despite these efforts, no concrete results have been achieved, and SLAPPs remain a serious threat. Procedural safeguards, transparency, and judicial protections are still insufficient,

while journalists and public watchdogs continue to face legal harassment. Support for SLAPP defendants primarily comes from civil society, media organisations, and legal experts rather than institutional mechanisms.

Although some steps are being taken, the lack of political will and ongoing instability prevent meaningful progress. The working group's efforts offer a foundation for future reforms, but until legislative changes are enacted and implemented, journalists and public participants remain vulnerable to judicial abuse.

CHECKS AND BALANCES

Key recommendations

- *The parliament should promptly initiate transparent parliamentary procedures for electing a new Ombudsperson.*
- *The parliament should introduce internal rules on compliance with provisions on public consultations of the Normative Instruments Act and mandate interim reports on impact assessment of amendments in legislation introduced between its readings.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of the judiciary on judicial reforms), and transparency and quality of the legislative process

Bulgarian legislation allows for two regimes for enacting legislation: one through the Council

of Ministries (when a bill is drafted and consulted preliminary by a working group often including various stakeholders) and another through the National Assembly (Parliament) itself. In both cases impact assessments and public consultations are mandatory under the Normative Instruments Act (Закон за нормативните актове).

For the consultations, the law sets a period of a minimum of 30 days in general cases and 14

days in exceptional cases but does not attach any negative consequences to potential violations of this provision. The law also mandates that the relevant institution publishes not only the position statements on the drafts but also the reasoning for rejecting proposed amendments to them (see Article 26 (5)). This is observed by the Ministerial Council but not by the Parliament.

The Parliament also does not strictly observe the requirement for impact assessments. While such an assessment is to be undertaken for every tabled bill (Normative Instruments Act, Article 20 (3)), and without it, such a bill should not be advanced (Normative Instruments Act, Article 28 (4)), this is not observed for amendments proposed between the readings. Furthermore, in cases where such an assessment is undertaken, it is usually formalistic and declarative. The law mandates that the Parliament and the Ministerial Council adopt separate methodologies for impact assessments, which opens the possibility of following requirements with different standards.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

Regime for constitutional review of laws

Bulgaria does provide the possibility for persons to apply directly to the constitutional court. The law allows this only to an exhaustive list of bodies: one-fifth of the MPs, the president, the Ministerial Council, the Supreme Court of Cassation, the Supreme Administrative Court, the chief prosecutor and, in some limited cases, the municipal councils, the ombudsperson, and the Supreme Bar Association. With the constitutional amendments of 2023 and 2024, the legislator allowed any court to refer a case to the Constitutional Court for a declaration of inconsistency between a law applicable to the particular case and the constitution (Constitution of the Republic of Bulgaria, Article 150 (2)). This sets a high limitation to challenging the legality of a law in a situation where there is no Ombudsperson.

Independent authorities

During a plenary session of the parliament on 10 December 2024, the President of the Parliament read a list of institutions—various bodies and agencies—whose members should be elected or re-elected. Those are 20 bodies whose members serve past their term of office (some of them for years), two members of bodies who vacated their positions preliminary, and two bodies that were just constituted and

in need of initial appointment of members.⁶⁵ Among those are the Ombudsperson, the national equality body, the SJC, the Inspectorate to the SJC, the Commission for Illegal Assets Forfeiture, the National Bureau of Means of Special Intelligence Control, the data protection commission (an independent public authority responsible for monitoring the application of the GDPR), and others. This picture reveals the vast ‘clogging’ of the governance due to the political instability of the past five years. It also raises concern, given the populist parties in the current parliament.

In April, Diana Kovatcheva, the Ombudswoman, was elected as a judge at the European Court of Human Rights. This brought attention to the Deputy Ombudsperson, who promptly resigned in light of the 2023 constitutional amendments, which provide that the Ombudsperson is among those from whom the President may select a caretaker Prime Minister in the event of a failure by political parties to form a government. As of now, the position of Ombudsperson remains vacant. Notably, the Ombudsperson is one of the few individuals authorised by the constitution to refer cases of human rights violations to the Constitutional Court.

CIVIC SPACE

Key recommendations

- *The parliament should vote against the Foreign Agents Registration Act and all Publicity of Lobbying Act drafts should be reviewed to balance transparency goals with safeguards against burdensome requirements that could stifle advocacy or disproportionately impact CSOs.*
- *The Ministry of Justice should instruct the Registry Agency on the execution of ECtHR’s judgments in relation to registering associations.*
- *The Ministry of Education should establish clear mechanisms to counteract smear campaigns against LGBTQIA+ organisations and other vulnerable groups, including enforcing anti-discrimination laws and promoting public awareness of the positive role of CSOs in education and societal development.*

65 National Assembly of the Republic of Bulgaria, Minutes from the plenary, 10 December 2024, <https://www.parliament.bg/bg/plenaryst/ns/55/ID/10951>.

Freedom of association

No advancements in respect to the freedom of association were achieved in Bulgaria in 2024. While the general situation remains good, some specific issues highlight possible worsening on the horizon.

In August 2024, a bill amending the Pre-School and School Education Act was adopted that forbids any “propaganda, promotion, or incitement in any way, directly or indirectly, of ideas and views related to non-traditional sexual orientation and/or determination of [gender]⁶⁶ identities other than the biological.”⁶⁷ The adoption occurred amid widespread defamation of civil society organisations in the LGBTQIA+ community, with two of them—Bilitis Foundation and Single Step—singled out in smear campaigns with allegations that they provide unauthorised sexual education to minors or ‘teaching’ them about ‘relativity of biological sex’ through ‘gender ideology’. This resulted in many schools denying access to LGBTQIA+ organisations or civil society organisations in general.

In 2024, a draft of the Foreign Agents Registration Act (FARA) made its way to the plenary of the parliament. After an unsuccessful vote, the bill was tabled again in the 51st Parliament and will be advanced through the legislative process again. Sponsors of the bill from the populist party Revival claimed the amendments are needed to prepare for the potential adoption of the Proposal for a Directive on Transparency of Interest Representation on behalf of Third Countries by the European Commission and the European Parliament.

In addition to FARA, another concerning piece of legislation is making advancements that potentially foster similar measures against civil society organisations: a draft of a Publicity of Lobbying Act.⁶⁸ The law defines lobbying as any advocacy before state or municipal institutions that was paid by and is undertaken on behalf of a third party. The bill explicitly exempts from regulation the activities of labour unions and business associations but only for specific topics; activities carried out under EU funding; the activities of political parties; activities of international organisations, the EU, foreign governments and foreign

66 The word ‘sex’ is used here. Unlike in English and some other languages, the direct translation of the word ‘gender’ in Bulgarian does not carry connotations related to inequalities between women and men, or issues of femininity and masculinity. The Bulgarian word, ‘род’, primarily relates to ancestry or family, and also to grammatical categories. For this reason, paradoxically, the word is often translated with the Bulgarian equivalent of ‘sex’, effectively erasing the sex/gender distinction known to English speakers.

67 National Assembly of the Republic of Bulgaria, Law on amending and substituting the Pre-School and School Education Act (Закон за изменение и допълнение на Закона за предучилищно и училищно образование), State Gazette, Issue 69 of 16 August 2024, <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp?idMat=224947>.

68 National Assembly of the Republic of Bulgaria, Bill on Publicity of Lobbyism (Законопроект за публичност на лобизма), 2015, <https://www.parliament.bg/bg/bills/ID/15283>.

political parties; journalist activities; proposals for improving laws but only if invited by the body leading the legislative procedure; public speech; and filing Freedom of Information requests. Activities branded as lobbying are forbidden to be carried out before, among others, the Constitutional Court and institutions of the judiciary (for example filing an *amicus curiae* statement without being invited by the institution). Any lobbying activity against the territorial integrity of the republic is forbidden (a concept known to be interpreted by Bulgarian authorities very extensively, especially in relation to the activities of organisations of self-identified ethnic Macedonians in Bulgaria). Similarly to the Foreign Agents Registration Act, this bill mandates lobbyists to self-identify in all correspondence with the authorities and register in a public registry. Sanctions for undertaking unauthorised lobbying activities are defined between €10,000 and €100,000 for the first-time violation and between €25,000 and €150,000 in case of subsequent violations.

The specific issues of the civil society organisations of people who self-identify as Macedonians remain. Despite repeated attempts by several organisations to register under the Non-Profit Legal Entities Act (NPLEA), none of them received registration by the end of 2024. The Registry Agency and the courts issued refusals on arbitrary grounds, in a gross distortion of the requirements of the law, with reasoning specifically used to reject

applications only from Macedonian associations. Many of the reasons were related to alleged formal non-compliance of the statutes with the requirements of the law, although there were also those based on non-acceptance of the objectives of the association.

Soon after the inauguration of Donald Trump as the 47th President of the United States, on 30 January 2025, Delyan Peevski, notorious Bulgarian MP, businessman, media mogul and a person sanctioned by USA and UK under the Magnitsky Act and similar legislation, announced he is proposing an *ad hoc* parliamentary commission for investigating the activities of George and Alexander Soros and their foundations in Bulgaria.⁶⁹ Peevski, who has been under the spotlight of many journalistic investigations by civil society organisations for high-level corruption, claimed that organisations funded by Open Society Foundations pose a threat to the rule of law in Bulgaria, capture media, compromise the fundamental principles of democracy, and thereby create conditions for dictatorship—a list of accusations against Peevski himself through the years. Later that day a draft decision for establishing the commission was tabled by the

69 Live video of his speech is recorded by Actualno.com, 2025, https://www.facebook.com/watch/live/?ref=watch_permalink&v=1140666413688455.

MP's of Peevski's party.⁷⁰ The BHC issued a public statement against establishing the commission, reminding who Peevski is and noting it is a threat to freedom of association

and the country's democratic framework.⁷¹ The proposal was not put to vote by the time this report was finalised.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *The government should take steps to introduce more robust legal measures for the execution of ECtHR judgments that bind all institutions and private actors.*
- *The government should take measures to repeal discriminatory amendments in the Pre-School and School Education Act ensuring access by civil society to schools.*
- *The parliament should not adopt amendments to the Religious Denominations Act 2002.*

70 National Assembly of the Republic of Bulgaria, Draft decision on the establishment of an Interim Commission to establish facts and circumstances regarding the activities of George Soros and Alexander Soros and their foundations on the territory of the Republic of Bulgaria, financing Bulgarian natural and legal persons and NGOs, as well as to establish their affiliation with political parties, magistrates, educational institutions, media, business structures and state authorities (*Проект на решение за създаване на Временна комисия за установяване на факти и обстоятелства относно дейността на Джордж Сорос и Александър Сорос и техните фондации на територията на Република България, финансиращи български физически и юридически лица и неправителствени организации, както и установяване на свързаността им с политически партии, магистрати, образователни институции, медии, бизнес структури и органи на държавна власт*), 2025, https://www.parliament.bg/bg/ns_acts/ID/166022.

71 Bulgarian Helsinki Committee, *Civil Society Under Threat: Resisting Peevski's Attempt to Undermine Democracy*, 30 January 2025, <https://bghelsinki.org/en/news/civil-society-under-threat-resisting-peevski-s-attempt-to-undermine-democracy>.

Systemic human rights violations

Execution of ECtHR judgments and recommendations of international organisations

Bulgaria is in the top 10 Council of Europe member states with judgments of the ECtHR pending execution (with total of 872 pending cases under supervision). Currently, 94 leading cases remain pending.

Bulgaria does not have a robust mechanism for implementing ECtHR judgments. In April 2024, the Ministry of Justice organised a round table to present a draft decree of the Council of Ministers introducing a national coordination mechanism for the execution of judgments of the European Court of Human Rights. While the introduction of such a mechanism is much needed, the proposed normative instrument—a decree of the Council of Ministers—does not provide a sufficient mechanism as it is standalone secondary legislation. This is evident from the draft's wording, explicitly stating that any institutions outside the executive branch participate on a voluntary basis. Thus, no institutions outside the executive branch, which might be competent to take measures for the execution of the judgments, are legally bound to act upon the violation. This includes, among others, municipalities, parliament, courts, the Constitutional Court, the Commission for Personal Data Protection, and the quasi-judicial equality body. The draft

decree was not advanced to adoption by the time this report was finalised.

In March 2024 the Bulgarian Council of Ministers adopted a decree introducing a National coordination mechanism on human rights.⁷² This mechanism will coordinate the position and adherence of national institutions (more specifically, those of the executive branch) on international human rights standards and recommendations from international bodies like the UN, the OSCE, the Council of Europe (but not the ECtHR judgments) and the European Union. Civil society organisations could participate only in meetings of the mechanism and only if invited *ad hoc* for a specific agenda.

Conditions in state psychiatric hospitals

In 2024, the BHC visited all state psychiatric hospitals. During its monitoring, the organisation found various violations of patients' rights. In some hospitals, patients were accommodated in overcrowded rooms with less than four square metres of space per person, where they spent all their time while in the hospital. In several acute wards, patients were not allowed to go outside for exercise at all.

The hygiene in many wards was very poor. In some wards, it was cold, prompting patients to gather in the warmer rooms and sleep two to a bed. In several hospitals, the monitoring team heard credible allegations of ill-treatment of

72 Council of Ministers of the Republic of Bulgaria, Decree no. 59 (Постановление № 59 от 21 март 2024 г. за създаване на Национален координационен механизъм по правата на човека), 21 March .2024, <https://dv.parliament.bg/DVWeb/showMaterialDV.jsp;jsessionid=06D34069FC4F17949566106C8544558A?idMat=210444>.

patients by orderlies. In one hospital, the team witnessed such an assault.

Inter-patient violence, including sexual violence, was also prevalent in some hospitals. Treatment usually involved pharmacotherapy, with very little, and in some cases no, psycho-social rehabilitation.

Seclusion and restraint of patients were practised in some hospitals in very small rooms. The procedure lacked safeguards against abuse, and there were credible allegations that the actual use of seclusion and restraint was much more frequent than officially documented. Most state psychiatric hospitals in Bulgaria are located in remote towns and villages, with difficult access and limited services. This also poses difficulties for visitors. In most hospitals, there were patients who did not need any active treatment but lived in the hospital, in some cases for many years, simply because they had no home or place to go.

First litigation on transphobic hate speech against a member of the parliament

In September 2024, the Commission for Protection from Discrimination (CPD) delivered a decision⁷³ on a case brought by a non-binary trans person and an intersex person against a member of parliament from the ultra-nationalist and populist political party Revival ('Vazrajdane'). The

case concerns a Facebook post from an account with the name and pictures of the MP, including pictures from his private life and posts calling for votes. The impugned post concerned the 2023 decision of the Supreme Court of Cassation to stop allowing changes to personal data records about the 'sex' of trans citizens in the civil registration and identity management registries.⁷⁴ The post refers to the decision and states that it is "a key victory of common sense over the neo-Trotskyist attempts of the Soros-aided grant-mongers working to destroy the Bulgarian family, the Holy Bulgarian Orthodox Church, the Bulgarian school, and our nation itself." It furthermore notes that once Revival wins the election and forms a government, "the long road backwards will begin, which will be harder than the road of Napoleon's army fleeing Moscow."

Before the equality body, the complainants alleged that the conduct constituted harassment. The MP denied being the author of the post or connected in any way to the account, despite the post being deleted shortly after the case was communicated to him as a responding party. The CPD found that pictures from the MP's private life on the Facebook account were not enough to prove he was the author of the post and that the burden of proof could not be reversed. It dismissed the complaint, which was upheld by the administrative court.⁷⁵ In January 2025, the complainants appealed on points of law, and the case is pending.

73 Commission for Protection from Discrimination, *Decision No. 257 of 18 September 2024 in case No. 292/2023*.

74 For details about the Supreme Court of Cassation's decision see *Liberties Rule of Law Report for 2023*, p. 101, <https://www.liberties.eu/en/stories/rolreport2023-main/44656>.

75 Sofia City Administrative Court, Judgment No. 26850 of 12 December 2024 in case No. 10522/2024.

However, this case reveals serious underlying issues when dealing with hate speech pertaining to discriminatory harassment when evidence is electronic and subject to cross-border evidence gathering outside the territory of the EU. Unlike GDPR or the consumer protection field, the anti-discrimination directives do not provide for international cooperation or a mutual assistance mechanism for gathering evidence by administrative bodies.

Denial of registration of non-governmental organisations of ethnic Macedonians

The Bulgarian government has not taken sufficient steps to comply with the ECtHR's judgments requiring Bulgaria to register associations of Bulgarian citizens who self-identify as ethnically Macedonian. In February 2024, a new set of 20 applications to the Court concerning freedom of association of Macedonians were communicated to the Bulgarian government. Throughout the year another set of such associations were denied registration on the domestic level on seemingly arbitrary grounds. The current trend in those rejections by the Bulgarian court is the use of the doctrine of 'full review' (ПЪЛЕН ВЪЗЗИВ) upon appeal before the second instance court. The courts can and do review the reasoning of the Registry Agency or the lower court and often find the grounds for the refusal unsubstantiated. However, the full review doctrine allows them to look at the case as a whole and justify refusals with different reasons not presented by the Registration Agency or lower courts. This is especially problematic when such reasons appear

in the decisions of a court of last instance, since no other judicial control is available over them. Another new trend is the requirement to indicate in the name of the association itself that it is registered in the public interest—something that is neither required under the law, nor it is required from other associations (the BHC being such an example). For these reasons, in a statement to the Committee of Ministers of the Council of Europe, the BHC has proposed initiating infringement proceedings against Bulgaria.

Denial of registration of Bulgarian Orthodox churches different from the Bulgarian Orthodox Church – Bulgarian Patriarchy

To execute the 2013 ECtHR judgment in the case *Bulgarian Orthodox Old Calendar Church and Others v. Bulgaria* (No. 56751/13), in 2024 the Bulgarian court granted registration of the Bulgarian Orthodox Old Calendar Church—an Orthodox denomination differing from the mainstream Bulgarian Orthodox Church on purely doctrinal grounds. This news was widely publicised and led to a wave of media articles calling the ECtHR 'the court of Soros' and accusing the former Bulgarian judge in that court, Yonko Grozev, of exerting undue influence to allow for the registration.

In December 2024 and January 2025, three bills for amendments to the Religious Denominations Act 2002 were tabled in parliament. They were later merged.⁷⁶ The proposed bill prohibits any legal entity other than the Bulgarian Orthodox Church – Bulgarian Patriarchy from using not

76 National Assembly of the Republic of Bulgaria, Combined draft law on amending and substituting Religious Denominations Act (Общ законопроект за изменение и допълнение на закона за вероизповеданията), 224 January 2025, <https://www.parliament.bg/bg/bills/ID/165951>.

only the word ‘Orthodox’ but also any “similar” word in its name, as well as the simultaneous use of the words ‘Bulgarian’, ‘Orthodox’ and ‘church’ in the name of any religious community other than the Bulgarian Orthodox Church – Bulgarian Patriarchy. It is proclaimed that freedom of religion may not be directed against “the structure and organisation of traditional religion under Article 13 (3) of the Constitution”; that the only Orthodox Church is the Bulgarian Orthodox Church – Bulgarian Patriarchy, which is the sole expression of Eastern Orthodoxy; and that already registered religious denominations which contradict the above should be deregistered, and the pending registration proceedings terminated. The law passed on first reading but did not reach a plenary vote on second reading by the time this report was finalised.

CONTACT

Bulgarian Helsinki Committee

The Bulgarian Helsinki Committee (BHC) is an independent non-governmental organisation for the protection of human rights, established in Sofia, Bulgaria in 1992. The objectives of the BHC are to promote respect for the human rights of every individual; to stimulate legislative reform to bring Bulgarian legislation in line with international human rights standards; to trigger public debate on human rights issues; to carry out advocacy for the protection of human rights; and to popularise and make widely available human rights instruments.

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Centre for Peace Studies (Croatian abbreviation: CMS; English abbreviation: CPS) is a civil society organisation that protects human rights and pursues social change based on the values of democracy, anti-fascism, nonviolence, peacebuilding, solidarity and equality using activism, education, research, advocacy and direct support.

KEY CONCERNS

Judicial System

The integrity and independence of the justice system were significantly undermined by controversies surrounding the selection of the State Attorney General, particularly in light of his conflict with the European Public Prosecutor's Office (EPPO).

The state improved judicial remuneration per European standards. Still, it appointed a State Attorney General linked to corruption suspects and in conflict with the EPPO, undermining anti-corruption efforts and rendering this recommendation's implementation unsatisfactory.

Anti-Corruption Framework

The overall picture regarding the anti-corruption framework compared to last year, shows no progress in the assessed areas.

Some progress has been made regarding the adoption of e-legislation in the area of lobbying.

No progress has been made in revising the Criminal Procedure Code and the Law on the Office for the Suppression of Corruption and Organised Crime.

Media Environment and Media Freedom

Amendments to the Criminal code have been introduced that open the possibility of sanctioning whistleblowers. There has been no progress in the implementation of the Anti-SLAPP Directive.

There has been no significant progress in stepping up efforts to strengthen the legal framework and oversight mechanisms to ensure a fair and transparent allocation of state advertising at a national, regional and local level, including the public tender procedure. There has been no significant progress in addressing the issue of strategic lawsuits against public participation targeted at journalists, including by reviewing the legal provisions on defamation and encouraging wider use of procedural rules that allow dismissing groundless lawsuits, taking into account the European standards on the protection of journalists.

Checks and Balances

The stagnation continues in 2024 as the position of the independent institutions, such as the ombuds offices continues to be worrisome, as their reports for 2022 and 2023 are not yet discussed in the Parliament and the recommendations are still insufficiently implemented by the government and other competent actors.

There was no progress made in relation to the percentage of Ombudsperson's general recommendations that were fully or partially implemented. The Ombudsperson's reports for 2022 and 2023 have still not been discussed by the Croatian Parliament.

Civic Space

The situation of the civil society organisations remained the same in 2024. The National Plan for Creating an Enabling Environment for the Development of the Civil Society has still not been developed, and the financing framework







for CSOs hasn't been implemented. There were instances of intimidation, SLAPPs and attacks against civil society organisations. Public consultations were made less accessible for the CSOs, and St. Mark's Square is still not open to the public.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment




The persisting lack of efficient investigations into human rights violations continues to undermine the rule of law and the functioning of the legal state.

There has been no significant progress in revising the Criminal Procedure Code and the Law on the Office for the Suppression of Corruption and Organized Crime in line with the Anti-Corruption Strategy, keeping the efficiency of investigations and prosecution of corruption offences unchanged. The Commission's country-specific recommendations also continued to overlook the disregard for human rights and other systemic issues.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

JUSTICE SYSTEM

Key recommendations

- *Take all necessary measures to enhance the efficiency of the justice system and reduce the duration of proceedings in Croatian courts, with particular emphasis on first-instance cases.*
- *Amend Croatia's Law on the Implementation of the Council Regulation on the Establishment of the EPPO in line with the analysis commissioned by the European Commission, which concluded that jurisdictional disputes should be resolved by an independent court rather than a national prosecutor, whose impartiality may be compromised.*
- *Align the financial eligibility criteria for accessing secondary legal aid with the rising costs of legal services and the minimum wage, thereby making free legal aid more accessible to a greater number of citizens.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

In January 2024, the process of selecting a new State Attorney General commenced, marked by controversies and breaches of the security

check requirements mandated by the Law on the State Attorney's Office¹ as well as GRECO's recommendations² made in 2018 and European standards.³

Following legal procedures, the State Attorney's Council submitted four candidates to the government, including Ivan Turudić, a

1 The Law on the State Attorney's Office (Official gazette, No. 67/2018, 21/2022), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2018_07_67_1358.html

2 GRECO in its 2018 Evaluation Report stressed that despite the 2018 legislative amendments "further transparency and objectivity assurances are to be infused in the system of selection and appointment of the Prosecutor General". GRECO stated that it "specifically called for decisive involvement of the State Prosecutorial Council. With the new law, the State Prosecutorial Council is merely given a depositary role." GRECO also encouraged the authorities to "further advance in their efforts to increase the transparency and minimise risks of improper political influence in the appointment of the Prosecutor General."

3 Turudić's appointment violated European standards, which emphasize the need for a Public Prosecutor General to inspire public confidence and respect within the judiciary and legal professions.

former High Criminal Court judge. Shortly after his candidacy was announced, leaked media reports⁴ revealed hundreds of messages exchanged between Turudić and Josipa Rimac, a former HDZ (leading party) state secretary accused of influence peddling, bribery, and abuse of authority. The leaked messages cast doubt on Turudić's independence and professional integrity. Compounding the controversy, Rimac, in her messages to other high-ranking politicians, also referred to large projects now under indictment and mentioned a figure identified by the initials "A.P."—corresponding to Prime Minister Andrej Plenković.⁵ Moreover, leaked information (and a video) uncovered that Turudić, while he was an acting President of the County Court) met fugitive criminal

Zdravko Mamić when he came out of the pre-trial detention.⁶

Under Article 22 of the Law on the State Attorney's Office, candidates for the position of State Attorney General must meet specific criteria, including passing a detailed security check.⁷ Despite the emergence of compromising information raising questions about Turudić's eligibility, the government did not request an updated security check, falsely claiming it was not authorised to do so.

On 7 February 2024, Turudić was elected as State Attorney General with 78 votes in favor, 60 against, and two abstentions. This decision was met with widespread criticism. On 13 February, President Zoran Milanović condemned

4 Media reports available at: <https://www.zakon.hr/z/1051/Zakon-o-Dr%C5%BEavnoodvjetni%C4%8Dkom-vije%C4%87u>; <https://vijesti.hrt.hr/hrvatska/objavljene-poruke-koje-je-turudic-razmjenivao-s-rimac-nizu-se-reakcije-11336350>; <https://www.jutarnji.hr/vijesti/hrvatska/imamo-stotine-poruka-turudica-i-josipe-rimac-kandidat-za-sefa-dorh-a-presutio-sastanke-napravi-mi-ono-15422917> and various other media.

5 See: <https://www.telegram.hr/politika-kriminal/telegram-otkriva-sve-poruke-u-kojima-su-rimac-i-zalacspominjale-dogovore-s-ap-i-zasto-je-nesporno-da-je-to-andrej-plenkovic/>.

6 <https://www.nacional.hr/mamic-se-tijekom-tajne-nocne-voznje-zalio-turudicu-na-nesretnu-sudbinu-a-on-ga-je-pitao-zasto-se-bojis/>

7 Article 58 of the Law on the State Attorney's Council (Official Gazette, No. 67/18, 126/19, 80/22, 155/23); specifies that such checks are mandatory for candidates who have not previously served as Deputy State Attorney General. Turudić, who did not hold this position at the time of his candidacy, was last vetted in 2019 when he became a judge of the High Criminal Court. Even so, the law prescribes different levels of security checks for State attorneys and judges. According to the Law on the State Attorney's Office (Official gazette, No. 67/2018, 21/2022), the Law on the State Attorney's Council (Official Gazette, No 67/18, 126/19, 80/22, 155/23), and the Law on Security Checks (Official Gazette, No. 85/08, 86/12), security checks are mandatory for individuals employed in specialized bodies combating organized crime and corruption. State Attorneys undergo first-level security checks, while judges undergo basic checks. This distinction arises because state attorneys access classified information, including Special Security Agencies (SIA) data, during criminal investigations. Additionally, the State Attorney General is also the head of the Office for the Suppression of Corruption and Organized Crime (USKOK)

Turudić in a public statement, calling him “a man devoid of morals, a proven liar, politically dependent to the HDZ, and a favourite of the criminal underworld, chosen specifically for his willingness to block any future accusations involving A.P.”⁸

On 14 February 2024, the President of the High Criminal Court, with the approval of the Supreme Court President, filed a complaint against the elected candidate for breaching the Code of Judicial Ethics.⁹ The Council of Judges at the High Criminal Court rejected it on 22 May 2024.

The controversy culminated in a major protest on 17 February 2024, organised by 11 opposition parliamentary parties. According to estimates from the Public Assemblies Archive,¹⁰ the demonstration drew approximately 7,000 participants, reflecting widespread public dissatisfaction with Turudić’s appointment and broader concerns over judicial independence. Despite these objections and the significant public outcry, Turudić officially assumed office on 27 May 2024.

Allocation of cases in courts

In 2024, the Ministry of Justice and Public Administration introduced amendments to the by-law on e-files (The Regulation on Operations in the e-File System),¹¹ which governs court case allocation. The changes expand the use of circular case allocation—based on judges’ alphabetical order—at the expense of random allocation. Introduced initially through the by-law rather than the Law on Judiciary, the circular allocation would now apply to additional case categories and all cases older than five years, including criminal ones.

At the Ombudsman’s proposal, an obligation was adopted to classify whistleblower protection as a specified type of case in the e-Spis system.

Remuneration/bonuses for judges and prosecutors

The legislation regulating the salaries and compensations of judicial staff in Croatia does not establish a basis for implementing financial measures that would reward their work on more complex cases.

8 See: <https://www.predsjednik.hr/vijesti/sto-skriva-andrej-plenkovic-kada-je-u-dorh-doveo-turudica-koji-je-spreman-zaustaviti-bilo-kakvu-mogucnost-istrage-koja-se-tice-ap/>

9 See: <https://www.vsrh.hr/predsjednik-visokog-kaznenog-suda-uz-suglasnost-predsjednika-vrhovnog-suda-podnio-prituzbu-zbog-povrede-kodeksa-sudacke-etike-protiv-suca-ivana-turudica.aspx>

10 See: <https://javniskupovi.org/index.php/2024/02/17/protest-dosta-je-odmah-na-izbore/>

11 Regulation on Operations in the e-File System (Official Gazette No. 35/2015, 123/2015, 45/2016, 29/2017, 112/2017, 119/2018, 39/2020, 138/2020, 147/2020, 70/2021, 99/2021, 145/2021, 23/2022, 12/2023, 9/2024, 136/2024)

Independence/autonomy of the prosecution service

Croatia's prosecution service's independence from political interference came under severe scrutiny following a jurisdictional conflict with the European Public Prosecutor's Office (EPPO) in November 2024. The EPPO was investigating a criminal association involving eight Croatian citizens, including the Minister of Health, and two companies. The association involved suspected corruption, abuse of authority, and money laundering linked to procurements funded by EU resources, particularly the "NextGenerationEU" fund and the national budget.

The EPPO planned arrests and searches for 19 November 2024. However, on 15 November, it was discovered that the Office for the Suppression of Corruption and Organized Crime (USKOK) had independently obtained court orders for searches involving some of the same suspects. In response, the EPPO invoked its authority under the EPPO Regulation, requesting to take over USKOK's

case. As prescribed by Croatian law, USKOK referred the case to the State Attorney General to resolve the conflict, and he decided that USKOK had jurisdiction.

The European Chief Prosecutor subsequently sent a formal letter to the European Commission, citing systemic rule-of-law violations in Croatia. Key concerns included the designation of the State Attorney General as the authority to resolve jurisdictional conflicts, contrary to EU law; that the State Attorney General's decision was based solely on USKOK's interpretation, excluding the EPPO's input, thus undermining impartiality; USKOK's failure to report an investigation into EU-funded projects, breaching its obligations under the EPPO Regulation.¹²

Additional doubts were raised on whether Croatia's Law on Implementing Council Regulation on the Establishment of the EPPO¹³ complies with EU law. An analysis¹⁴ commissioned by the European Commission concluded that allowing the State Attorney General—who belongs to the same administrative

12 The independent public prosecution office of the EU's press release is available here: <https://www.eppo.europa.eu/en/media/news/eppo-raises-concerns-over-rule-law-violations-croatia-following-conflict-competence>

13 Law on the Implementation of Council Regulation (EU) 2017/1939 on the Establishment of the EPPO (Official Gazette No. 146/20) available at: <https://www.zakon.hr/z/2734/Zakon-o-provedbi-Uredbe-Vije%C4%87a-%28EU%29-2017-1939-od-12.-listopada-2017.-o-provedbi-poja%C4%8Dane-suradnje-u-vezi-s-osnivanjem-ureda-Europskog-javnog-tu%C5%BEitelja-%28C2%BBEppo%C2%AB%29>

14 Compliance assessment of measures adopted by the Member States to adapt their systems to Council Regulation (EU) 2017/1939 of 12 October 2017 implementing enhanced cooperation on the establishment of the European Public Prosecutor's Office ('the EPPO') from September 2023; available at this link: https://www.europarl.europa.eu/cmsdata/280160/Final%20Report%20-%20DG%20JUST%20Study%20on%20the%20EPPO%20-%2029.09.2023_en.pdf

structure as national investigative bodies—to resolve such conflicts is inconsistent with the EPPO Regulation. The study stressed that jurisdictional disputes should be decided by an independent court, not a national prosecutor, whose impartiality may be compromised. Furthermore, there is no way to challenge the State Attorney General’s decisions.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

The Report on the Rule of Law¹⁵ issued by the Miko Tripalo Centre for Democracy and Law in June revealed alarmingly low public trust in judicial independence. 68% of respondents distrusted the judiciary, with only 23% believing judges were impartial and based decisions solely on the law. Over 70% saw judges as influenced by political or economic elites, and an equal proportion believed politicians significantly impacted judicial decisions, eroding trust further.

Perceptions of corruption were high, with 70% viewing judges as prone to corruption and only 12% trusting disciplinary measures against judges. Transparency concerns were also significant, with 36.4% considering courts entirely closed to the public, 19.5% partially closed, and just 7.8% seeing courts as open to any extent.

Public trust may have been further weakened by the Constitutional Court’s controversial role in the parliamentary elections.¹⁶ The Court’s warnings raised concerns about its political neutrality and independence, as it asserted the power to annul elections depending on the Prime Ministerial candidate.

Other

Despite the eight-year terms of ten constitutional judges ending in June, their mandates were extended by six months under a provision of the Croatian Constitution. This was done to avoid overlapping the selection of new judges with parliamentary elections. However, the first session of Parliament was held in May, allowing the selection process to begin at that time. Despite this, voting for the new judges was delayed until 6 December—only one day before the six-month extension expired, after which no further extension was legally permitted. This date was further postponed to 7 December at the request of the Social Democratic Party to avoid coinciding with a no-confidence vote against the government.

Citing the risk of serious consequences from Parliament’s inaction and the need to ensure the legitimacy of presidential elections in late 2024, on 6 December, the Constitutional Court extended the judges’ terms beyond the legally prescribed six months. This decision drew criticism from President Zoran

15 The Report on the Rule of Law available at: <https://tripalo.hr/skup-stanje-u-hrvatskom-pravosudu-izvjestaj-o-vladavini-prava-kako-dalje/>

16 See the chapter: “Checks and balances” under the section Electoral framework

Milanović¹⁷ and constitutional experts. Three judges dissented,¹⁸ arguing the move violated the principle of separation of powers and the system of checks and balances. They stated the decision could not be justified by a Venice Commission report concerning Bosnia and Herzegovina, as the Croatian Constitution explicitly limits extensions to six months under Article 122.

The dissenting judges emphasised that this constitutional limit protects the Court's independence and impartiality from political influence. They argued that the extension failed the proportionality test, as the same result could have been achieved through timely, less invasive measures, such as a preliminary ruling request to the EU Court of Justice. They further noted that the Court failed to act on time, as it could have reported the issue to Parliament earlier, allowing Parliament to seek opinions from the Venice Commission.

The extended mandate was neither limited to the election period nor restricted to essential actions.

The day after the Court's controversial decision, Parliament elected ten constitutional judges (four judges from the previous term and six newly appointed ones).

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Under the Law on Advocacy,¹⁹ lawyers have the right to pay, as regulated in "The Tariff on rewards and reimbursement of expenses for the work of lawyers".²⁰ The new tariff²¹ introduced in November 2023 is still in place, so the situation where hiring a lawyer could be far more expensive than paying a misdemeanour fine is still ongoing.

Persons with fewer financial possibilities are entitled to free legal aid under the Law on

17 See: <https://dnevnik.hr/vijesti/hrvatska/zoran-milanovic-ovo-je-nezapamceni-udar-na-ustavnopravni-poredak---884582.html>

18 Written statement regarding the actions of the Constitutional Court of the Republic of Croatia concerning the report on the non-appointment of ten judges of the Constitutional Court of the Republic of Croatia, number: U-X-5162/2024, dated December 6, 2024. available at: https://www.usud.hr/sites/default/files/dokumenti/Pisano_oci-tovanje_ustavnih_sudaca_Abramovica_Kusan_i_Selaneca.pdf

19 Law on Advocacy (Official Gazette No. 9/94, 117/08, 50/09, 75/09, 18/11, 126/21) available at: <https://www.zakon.hr/z/176/Zakon-o-odvjetni%C5%A1tvu>.

20 Tariff on rewards and reimbursement of expenses for the work of lawyers (Official Gazette No. 138/2023, available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2023_11_138_1888.html).

21 Tariff on rewards and reimbursement of expenses for the work of lawyers (Official Gazette No: 138/2023), available at: https://narodne-novine.nn.hr/clanci/sluzbeni/2023_11_138_1888.html.

Free Legal Aid.²² The free legal aid transpires in two degrees: primary and secondary legal aid. Primary legal aid is provided by authorised associations, legal clinics and administrative departments in counties. It includes legal advice, drafting submissions and representation before public law bodies, the ECtHR and international organisations, as well as legal aid in out-of-court dispute resolution. Secondary legal aid, in addition to legal representation of attorneys in legal areas defined by law, also includes exemption from payment of the costs of court proceedings and expert testimony and payment of court fees.

The main challenge in offering primary legal aid is project-based financing, which is insufficient and unsustainable. While the Ministry of Administration and Justice initiated a 3-year project in 2023 for free primary legal aid, the geographical distribution of associations in Croatia often leaves citizens in rural areas without access to free legal aid offered by nongovernmental organisations. Moreover, the delays in transfers of funds based on approved projects from the Ministry to the primary legal aid providers also continued in 2024. In the first half of the year, funding was not transferred, and contracts for the second year of the projects remained unsigned, putting the entire system's sustainability at risk. Specifically,

although this was a three-year project, the contracts for the second year were only finalised in June. The first instalment of funds for 2024 was transferred in July, with the second instalment following as late as December.

This situation threatens the availability of free legal aid, with some providers possibly having to reduce services or cease operations. Additionally, the Commission for Free Legal Aid, responsible for monitoring the system, has not held any meetings in 2024, further hindering its effectiveness. In June, the collective of free primary legal aid providers sent a letter to the Ministry of Justice urging immediate action to resolve these issues and ensure continued access to justice for all citizens.

The financial requirements for being granted secondary legal aid are that the total monthly income of the applicant and his household members does not exceed the amount, which currently amounts to €441,44 per household member and that the total value of the applicant's property does not exceed the amount of 60 budget bases (which presently amounts to €26.486,40). Moreover, free legal aid can be granted only in specified legal cases.

This limit is relatively low, considering that the Decree on the minimum wage for 2023²³

22 Law on Free Legal Aid (Official Gazette No. 143/13, 98/19) available at: <https://www.zakon.hr/z/286/Zakon-o-besplatnoj-pravnoj-pomo%C4%87i>.

23 Government of the Republic of Croatia, Decree on the minimum wage for 2023 (Official Gazette No. 122/2022-1874), available at https://narodne-novine.nn.hr/clanci/sluzbeni/2022_10_122_1874.html.

prescribed a net minimum wage of €560,00, and the Decree on the minimum wage for 2024²⁴ prescribed a net minimum wage of €677,00. Therefore, even a single person working for a minimum wage won't be eligible for free secondary legal aid. Despite significant increases in lawyers' fees and the expected 20% rise in the minimum wage, the threshold for granting secondary free legal aid remains unchanged.

In April 2023, amendments to the Law on International and Temporary Protection²⁵ entered into force, allowing applicants for international protection to work after the expiry of 3 months from applying for international protection. However, due to the monthly limitation of €441,44, this otherwise favourable amendment has a practical implication – individuals who find employment while waiting for their international protection request to be resolved will be precluded from retaining their right to secondary free legal aid.

Resources of the judiciary (human/financial/material)

One of the challenges in the judiciary is the loss of personnel. According to data from the State Judicial Council's Report,²⁶ 49 judges were relieved of duty in 2023 (31 at their request, 14 upon age 70, and 4 sadly passed away), while 47 new judges were appointed. The 2023 Judicial Vacancy Filling Plan aimed to fill 80 judicial positions, but this target was unmet. Similar staffing challenges are also present in the State Attorney's Office.

The 2023 State Attorney's Office Report²⁷ indicates that at the end of the year, 1,902 people were employed across all State Attorney's Offices—31 more than in 2022. As of 31 December 2023, 650 state attorneys and their deputies were in office, with all 43 positions for state attorneys filled following current regulations. However, out of the 778 deputy state attorney positions allocated, only 607 were filled (78%), leaving 171 positions (22%) vacant.

The offices also employed 1,252 administrative staff, including 211 legal advisors and

24 Government of the Republic of Croatia, Decree on the minimum wage for 2024 (Official Gazette No. 125/2023-1740), available at https://narodne-novine.nn.hr/clanci/sluzbeni/2023_10_125_1740.html

25 Law on international and temporary protection (Official Gazette No. 70/15, 127/17, 33/23) available at: <https://www.zakon.hr/z/798/Zakon-o-me%C4%91unarodnoj-i-privremenoj-za%C5%A1titi>.

26 Report on the work of the State Judicial Council for 2023 published on January 17 2024, available at: <https://drzavno-sudbenovijece.hr/sites/default/files/2024-01/Izvje%C5%A1%C4%87e%20o%20radu%20Dr%C5%BEavnog%20sudbenog%20vije%C4%87a%20za%202023.%20godinu.pdf>

27 Report of the Chief State Attorney of the Republic of Croatia on the Work of State Attorney's Offices in 2023 published on April 2024, available at: https://dorh.hr/sites/default/files/dokumenti/2024-04/DORH_Izvjesce_za_2023.pdf

associates, an increase of 21 employees from the previous year. While 18 new trainees were hired in 2023—compared to none the previous year—this remains insufficient, particularly given the age structure of personnel across all State Attorney’s Office levels.

In her 2023 report, published in March 2024, the Ombudsman highlighted that in addition to addressing staffing issues, it is crucial to focus on acquiring computers and other equipment essential for the judiciary’s regular functioning, ensuring the progress of digitalisation, securing additional workspaces, and maintaining court buildings.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

When analysing case law in discrimination cases, there is a noticeable increase in the number of decisions where the claims are upheld. However, according to the Ombudspersons Annual Report for 2023,²⁸ there is still a significant lack of understanding of anti-discrimination legislation, highlighting the need for continued education. Misdemeanour proceedings are still most commonly initiated under the Anti-Discrimination Act (ZSD), often motivated by the citizenship of the affected party. At the same time, the number of criminal cases related to discrimination remains relatively low.

Fairness and efficiency of the justice system

Length of proceedings

Amendments to the Civil Procedure Act in 2022 introduced maximum time limits for court proceedings: three years for first-instance cases, one year for second-instance cases, and two years for revision cases. However, these changes have had little impact on improving the speed or efficiency of judicial proceedings. Such lengthy time frames would only be justified if exceeding them automatically triggered an inquiry into the causes and accountability. The amendments also included no provisions for enforcement or follow-up actions.

In 2023, strikes by judges and judicial staff aimed at pressuring the government to increase salaries paralysed the judiciary for 3 months. This is expected to worsen delays, increase backlogs, and fuel public dissatisfaction. Additionally, the so-called “white strike”—a strike by judges and state attorneys that lasted from January 22 to February 2, 2024—led to the postponement of all actions in first-instance and appellate court proceedings during that period, except in urgent cases where irreparable damage could occur, further exacerbating the backlog. Further on, criminal complaints related to violent pushbacks of refugees and migrants often face unreasonably prolonged proceedings, exceeding the six-month legal

28 The Ombudspersons Annual Report for 2023, published on March 2024, page 160, available on: https://www.ombudsman.hr/hr/download/izvjesce_pucke_pravobraniteljice_za_2023_godinu/?wpdmdl=18399&refresh=-67601f8ac8b811734352778

deadline for the pre-investigation phase. This lack of due diligence fails to meet the standards for effective investigations under both national and international law. Expedited procedures are crucial for cases involving refugees and migrants due to their frequent relocation. Access to legal remedies remains challenging, and criminal cases involving violence, theft, or property damage rarely lead to effective investigations. Despite numerous allegations of violence against refugees and migrants over the past eight years, no indictments or prosecutions have been made.

Finally, according to the Ombudsperson's 2023 Annual Report,²⁹ the prolonged resolution of appeals concerning free legal aid decisions remains a significant issue. Cases still take an average of three years to conclude. This undermines the effectiveness of the free legal aid system, particularly in cases with strict deadlines, where delays can result in the loss of rights. As the Law on Free Legal Aid stipulates that appeals must be resolved within eight days of submission, it is imperative to expedite the appeals process.

Respect for fair trial standards including in the context of pre-trial detention

Concerns over fair trial rights have been raised regarding the opinions of the Security Intelligence Agency (SOA).³⁰

One example is the case of a Chechen national who states his freedom of movement was restricted based on SOA's assessment, which deemed him a national security threat due to his alleged links to Islamic radicalism. No evidence supporting this claim was disclosed, and the individual, who denies any such connection, could not challenge the assessment as the information was classified as "confidential."³¹ Another notable case involved a Russian activist and asylum seeker, V. Arinichev. Arinichev protested on 4 July 2024 in Zagreb, highlighting how unfounded SOA opinions result in asylum seekers being denied protection and exposed to danger. During the protest, he wore a T-shirt deemed offensive, leading to his arrest, a misdemeanour charge, and a 15-day prison sentence. Upon completing his sentence during pre-trial detention, Arinichev

29 The Ombudsperson's Annual Report for 2023, published on March 2024, available at: https://www.ombudsman.hr/hr/download/izvjesce_pucke_pravobraniteljice_za_2023_godinu/?wpdmdl=18399&refresh=-67601f8ac8b811734352778

30 Under the Croatian Law on Foreigners, when a person is deemed a security threat, the decision must cite the legal provision and disclose only data whose release would not jeopardise national security. However, in practice, this provision is interpreted broadly, often denying accused individuals the right to equal defence. Similarly, under the Law on Administrative Disputes, courts must handle classified data in line with specific laws but are prohibited from disclosing such data to the party involved.

31 "Pobjegao sam iz Rusije od mobilizacije i rata, a Hrvatska me proglasila radikalnim islamistom i zatvorila!" published on June 9 2024, available at: <https://www.jutarnji.hr/vijesti/hrvatska/pobjegao-sam-iz-rusije-od-mobilizacije-i-rata-a-hrvatska-me-proglasila-radikalnim-islamistom-i-zatvorila-15469641>

was transferred to a detention centre for three months on grounds of “protecting public order” due to his alleged insult to a state body.

The Administrative Court upheld this decision despite a final ruling on the misdemeanour case. Additionally, it accepted an argument subsequently and additionally presented by the Ministry of the Interior, stating that “it could not be determined that the plaintiff would limit his protest against the SOA to verbal actions only” and that such an assessment was sufficient to justify depriving the applicant of liberty for three months. The decision to impose the most severe restriction without exploring alternative measures, linked to his peaceful activism and criticism of SOA, raises additional concerns. The measure also breaches fundamental principles under Article 6(1) of the European Convention on Human Rights, including the presumption of innocence and the right to a fair trial.

His asylum application, rejected on 25 June 2024, acknowledged the risk in his home country but was denied protection based on SOA’s assessment that he posed a security threat.

These actions prompted serious concern from multiple UN bodies – the Special Rapporteur on Human Rights Defenders, the Working

Group on Arbitrary Detention, the Special Rapporteur on the Promotion and Protection of the Right to Freedom of Opinion and Expression and the Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association which expressed serious concern to the government of the Republic of Croatia regarding the alleged rejection of Mr. Vladislav Arinichev’s asylum application and his detention because “both appear to be a consequence of his advocacy for the rights of asylum-seekers in Croatia and the exercise of his freedom of expression”; and “of his potential deportation to Russia, where he allegedly faces prosecution for his peaceful anti-war activism”.³²

Quality and accessibility of court decisions

Under the Decision on the Publication and Anonymisation of Court Decisions,³³ full judicial decisions of the Supreme Court and related higher courts are published and accessible via the Supreme Court’s search engine.³⁴ This includes decisions from the High Administrative, Misdemeanour, Criminal, Commercial Courts, County Courts, and the Constitutional Court.

However, delays in publishing Supreme Court decisions, sometimes extending from weeks to years, remain an issue. Lower court decisions,

32 Croatia: rejection of asylum application, detention and potential deportation to Russia of HRD Vladislav Arinichev (joint communication) available at: <https://srdefenders.org/croatia-rejection-of-asylum-application-detention-and-potential-deportation-to-russia-of-hrd-vladislav-arinichev-joint-communication/>

33 Decision of the Constitutional Court No. U-I-1007/12 of 24 June 2020; available at: <https://sljeme.usud.hr/usud/praksaw.nsf/fOdluka.xsp?action=openDocument&documentId=C12570D30061CE54C1258598002CCD12>.

34 The Supreme Court of the Republic of Croatia search engine, available at: <https://sudskapraksa.csp.vsrh.hr/home>

particularly from county and municipal courts, are often not published, making it difficult to contextualise higher court rulings. Municipal court decisions are rarely available online, limiting public access.

After the Croatian Parliament approved the Draft Amendments to the Law on Courts³⁵ in late 2023, the law was adopted on 14 March 2024. It mandates the publication of court decisions concluding cases from 1 January 2025 onwards, following prior anonymisation. This measure aims to enhance judicial transparency and legal certainty. Decisions should be published on a dedicated website in compliance with data protection rules. The public release of court decisions should ensure more transparency, provide continuous access to court information, and strengthen public trust in the judiciary. However, how it will function in practice remains to be seen.

The Method of Anonymisation, Publication, and Search of Court Decisions regulates the Ordinance of anonymisation, publication, and search of decisions. The Minister of Justice adopted it in November 2024, and it became effective on 1 January 2025.

However, according to some legal experts, the provisions of the law are insufficient to ensure genuine transparency of judicial practice. They see general anonymisation of all decisions as problematic for several reasons. The publication requirement excludes important procedural decisions and lacks standards for timely publication, advanced search functions, indexing, links, and other tools that would enhance transparency (e.g., the HUDOC system of the ECtHR). The anonymisation system remains opaque, with unclear scope and methods for distinguishing personal data. This raises concerns that anonymisation disproportionately limits the publicity, clarity, and transparency of judicial decisions.³⁶

Court practice review services require high subscription fees, making them inaccessible to scholars and independent researchers.

Other

In July 2024, the Court of Justice of the European Union (CJEU) issued a judgment in the joined cases *Financijska Agencija v. Hann-Invest d.o.o.* (C-554/21), *Mineral-Sekuline d.o.o.* (C-622/21), and *Udruga KHL Medveščak Zagreb* (C-727/21).³⁷ The Court found that the role of the evidentiary judge and the

35 The law on Courts (Official Gazette No. 28/13., 33/15., 82/15., 82/16., 67/18., 126/19., 130/20., 21/22., 60/22., 16/23., 155/23., 36/24.) available at: <https://www.zakon.hr/z/122/Zakon-o-sudovima>

36 See: <https://tripalo.hr/komentar-profesora-alana-uzelca-na-izvjestaj-o-vladavini-prava-za-2024-poglavlje-pravo-sude-za-skup-stanje-u-hrvatskom-pravosu-izvjestaj-o-vladavini-prava-kako-dalje/>

37 CJEU [GC], Judgment of 11 July 2024. *Financijska agencija v Hann-Invest d.o.o. and Others.* (Joined Cases C-554/21, C-622/21 and C-727/21) available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A62021CJ0554>

mechanism of binding legal opinions issued by court divisions are incompatible with judicial independence as required by EU law.

In second-instance proceedings, decisions were generally made by a judicial panel (or a single judge in specific cases). Once case files reach the second-instance court, a reporting judge would prepare a draft decision, ensuring all key issues are discussed in panel sessions where a final decision is reached. However, an additional step occurs before the decision is formally delivered: recording the ruling in the court's case law register. This process, regulated by the Court Rules adopted by the Minister of Justice, assigned significant weight to the evidentiary judge, a role not foreseen in procedural laws. While intended to ensure uniform legal application, the evidentiary judge's authority to return decisions for reconsideration or refer disagreements to a court division raised concerns from various legal experts even before it was finally raised as a preliminary question before the CJEU.

Regarding the evidentiary judge, the CJEU concluded that their role exceeds the procedural recording of decisions, as defined in Croatia's Court Rules. In practice, this judge can interfere in specific cases and influence the outcome. The Court identified several concerns: (i) Croatian law does not provide for such participation, (ii) interventions occur after the judicial panel has reached a decision, and (iii) objective criteria do not clearly define powers to prevent arbitrary discretion.

The CJEU emphasised that such oversight, which effectively prevents the delivery of decisions, exceeds the judge's procedural role. The practice enables interference in judicial proceedings, ultimately undermining the independence of judges applying EU law.

It remains to be seen how the CJEU's opinion will be implemented in the Croatian legal system.

ANTI-CORRUPTION FRAMEWORK -

Key recommendations

- *Ensure judicial independence and transparency in high-level corruption cases by empowering the Ministry of Justice and Public Administration, the State Attorney's Office, and the Supreme Court to implement reforms, uphold integrity, and prosecute corruption effectively.*
- *Strengthen transparency and real-time reporting in lobbying by mandating the Croatian Parliament and the Ministry of Public Administration to regulate lobbying and ensure public access to lobbying data.*
- *Enhance the accountability of public officials by enabling the Commission for the Prevention of Conflict of Interest to monitor and enforce ethical standards across state institutions.*

Levels of corruption

In the 2023 Corruption Perceptions Index, Croatia's score remained the same as the year before (50 out of 100, ranking 57th among 180 countries), ranking 23rd among 27 EU member states.³⁸

2024, the aftermath of the corruption scandals uncovered in 2023 continued to unfold. The INA scandal led to further investigations,

revealing additional gas pricing and procurement irregularities. Legal proceedings against the main suspects, including Damir Škugor and Marija Ratkić, began, with prosecutors seeking significant sentences for defrauding the company.³⁹ Opposition pressure⁴⁰ mounted on the government to enforce stricter oversight of INA and to renegotiate its relationship with MOL, though no concrete changes were finalised.

38 Transparency International, 2023 Corruption Perceptions Index, 2024, available at: <https://www.transparency.org/en/cpi/2023>

39 IUS info, Uskok optužio Škugora i ostale - u 'aferi plin' INA oštećena za 160 mil. eura, 22 August 2024, available at: <https://www.iusinfo.hr/aktualno/dnevne-novosti/uskok-optuzio-skugora-i-ostale-u-aferi-plin-ina-ostecena-za-160-mil-eura-61416>

40 Nacional, SABOR O POVJERENJU VLADI 'Dok u Saboru traje rasprava, sigurno negdje neki HDZ-ovac krade Hrvatsku', 3 December 2024, available at <https://www.nacional.hr/sabor-o-povjerenju-vladi-danas-je-dan-licemjerja-ljevica-pregovara-s-vladajucima-a-ovdje-poziva-na-opoziv/>

In the HEP (state-owned electricity and gas company) case, inquiries into gas sales to Prvo Plinarsko Društvo (PPD) intensified,⁴¹ focusing on Pavao Vujnovac's involvement and connections to state-owned enterprises. Despite growing criticism, Vujnovac acquired a controlling stake in the Fortenova Group, solidifying his influence in Croatia's economy.⁴² Opposition parties called for transparency in the acquisition process, citing concerns over conflict of interest and a lack of regulatory oversight.

The fallout from Minister Davor Filipović's dismissal continued to ripple through the government. New revelations about other questionable practices within the Ministry of Economy and Sustainable Development emerged, further undermining public trust. Jurica Lovrinčević, Filipović's former adviser, faced criminal charges for his role in the advertising scheme while investigations into related financial dealings expanded.⁴³

Concrete actions in these cases remained limited, leaving many sceptical about the government's commitment to addressing systemic corruption.

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

The effectiveness of Croatia's existing laws, measures, and practices in preventing corruption is a subject of ongoing debate. On 1 October 2024, the Lobbying Act⁴⁴ was enacted, marking a significant step in formalising lobbying as a legal and regulated activity. While it aims to align with international standards and recommendations from organisations like GRECO and the OECD, the legislation has been criticised for not ensuring sufficient transparency in lobbying practices.

41 Dnevnik.hr, USKOK u sjedištu Vujnovčeva PPD-a, izuzima se dokumentacija! Oglasili su se iz tvrtke, 14 March 2024, available at <https://dnevnik.hr/vijesti/hrvatska/uskok-u-sjedistu-vujnovceva-ppd-a-zbog-afere-izuzimaju-dokumentaciju---837924.html>

42 HRT, Pavao Vujnovac većinski vlasnik Fortenova grupe, 9 July 2024, available at <https://vijesti.hrt.hr/gospodarstvo/fortenova-bez-ijednog-sankcioniranog-ruskog-ili-bjeloruskog-dionicara-11651795>

43 Večernji.hr, Nakon ekspresne istrage zbog trgovine utjecajem optužen Jurica Lovrinčević, bivši posebni savjetnik bivšeg ministra Filipovića, 8 July 2024, available at <https://www.vecernji.hr/vijesti/zbog-trgovanja-utjecajem-optuzen-bivsi-savjetnik-ministra-1783170>

44 Lobbying Act, Official Gazette 36/24, available at https://narodne-novine.nn.hr/clanci/sluzbeni/2024_03_36_567.html

The Lobbying Act defines⁴⁵ lobbying activities and creates a framework for registering lobbyists. It mandates lobbyists to submit annual reports to the Commission for Conflict of Interest, which oversees the electronic Register of Lobbyists. However, reports are not publicly accessible, and the Act does not impose reciprocal obligations on public officials to disclose lobbying activities in real-time. Critics, including civil society organisations like Gong,⁴⁶ argue that this limits transparency and undermines public trust. Gong highlights that without timely and detailed disclosure, such as who lobbies whom and about what, the Act fails to ensure public oversight and prevent undue influence on decision-makers.

Despite its intent, the Lobbying Act falls short of delivering the transparency it promises, raising questions about its effectiveness⁴⁷ in addressing corruption risks. While it establishes a legal framework for lobbying and includes mechanisms for penalising unethical practices, these measures are undermined by significant flaws in implementation. The lack of real-time reporting and limited public access to lobbying activities leave substantial room for

opacity and potential abuse. The Commission for Conflict of Interest's role in managing the Register of Lobbyists is a step toward enhancing integrity, but the Act's shortcomings constrain its impact. Delayed reporting requirements and the absence of obligations for public officials to disclose lobbying interactions create an accountability gap that undermines public trust. Instead of fostering meaningful oversight, the framework appears to prioritise procedural formalities over substantive transparency.

While the Lobbying Act marks progress in principle, its execution reveals a disconnect between legislative intent and practical outcomes. Without urgent reforms to mandate real-time reporting, ensure comprehensive public access to lobbying data, and impose reciprocal disclosure requirements on public officials, the Act risks becoming a symbolic gesture rather than an effective tool for combating corruption.

45 Ministry of Justice, Public Administration and Digital Transformation, Na snagu stupio Zakon o lobiranju kojim se prvi put u Republici Hrvatskoj uređuje lobiranje, 1 October 2024, available at <https://mpudt.gov.hr/vijesti/na-snagu-stupio-zakon-o-lobiranju-kojim-se-prvi-put-u-republici-hrvatskoj-uredjuje-lobiranje/29386> ; IUS Info, Primjena Zakona o lobiranju, 9 October 2024, available at <https://www.iusinfo.hr/aktualno/u-sredistu/primjena-zakona-o-lobiranju-62044>

46 Gong, Zakon o lobiranju stupio na snagu: Gong ponovno upozorava na netransparentnost regulacije, 1 October 2024, available at <https://gong.hr/2024/10/01/zakon-o-lobiranju-stupio-na-snagu-gong-ponovno-upozorava-na-netransparentnost-regulacije/>

47 Al Jazeera, Novi hrvatski Zakon o lobiranju uvodi red u sivu zonu, 8 October, available at <https://balkans.aljazeera.net teme/2024/10/8/novi-hrvatski-zakon-o-lobiranju-uvodi-red-u-sivu-zonu>

Rules on preventing conflicts of interest in the public sector

In Croatia, the prevention of conflicts of interest in the public sector is regulated by the Law on the Prevention of Conflicts of Interest, overseen by the Commission for the Resolution of Conflicts of Interest. Public officials are required to disclose assets, avoid private interests that conflict with their roles, and adhere to incompatibility and revolving door provisions. While these rules aim to promote transparency and integrity, enforcement remains a challenge. In 2024, several situations caught particular public interest.

Dubravka Šuica, Croatia's European Commissioner for Democracy and Demography, with oversight of Mediterranean affairs, faced scrutiny over potential conflicts of interest due to her ownership of shares in two companies, Atlantska Plovidba and Hrvatski Telecom, valued at approximately €5,700. The European Parliament's Legal Affairs Committee (JURI) raised concerns about her financial holdings, which could present a perceived conflict between her public duties and private interests. Šuica pledged to divest her shares in an attempt

to address these concerns. Still, the incident highlights broader issues related to transparency and potential conflicts within European Union officials' financial disclosures. Although JURI did not oppose her participation in the confirmation hearings⁴⁸ following her pledge to divest, the issue highlights ongoing challenges in ensuring public trust and accountability within EU governance. In addition, it is noteworthy that during Commissioner Šuica's hearing, no questions were raised⁴⁹ regarding her business travel, despite the ongoing concerns⁵⁰ surrounding her failure to report meetings with lobbyists and the potential conflicts of interest linked to her official activities.

In the 2024 Croatian presidential campaign, Dragan Primorac (HDZ candidate) faced scrutiny over three significant controversies.⁵¹ First, regarding an apartment in Split, Primorac's mother purchased it at a discount through a public tender, benefiting from his status as the tenant. Two days later, she sold it for nearly double the price, raising ethical concerns. Second, questions arose about his claimed volunteer military service during Croatia's war for independence, with contradictory timelines and allegations of participation in paramilitary

48 European Parliament, Committee of Foreign Affairs, Hearing of Dubravka Šuica Commissioner-Designate, 5 November 2024, available at https://hearings.elections.europa.eu/documents/suica/suica_verbatimreporthearing-original.pdf?utm_source=chatgpt.com

49 Politico, Croatia's commissioner hearing: Dubravka Šuica quizzed for trade and migration job — live updates, 5 November, available at <https://www.politico.eu/article/european-commissioner-hearings-dubravka-suica-mediterranean/>

50 Politico, https://www.politico.eu/wp-content/uploads/2024/10/23/Suica-UvdL-letter_clean.pdf

51 Faktograf, Dragan Primorac nije "čovjek bez afera", 15 November 2024, available at <https://faktograf.hr/2024/11/15/dragan-primorac-nije-covjek-bez-afera/>

actions targeting Serb-owned properties in Split. Lastly, during his tenure as Minister of Science and Education, he authorised costly office renovations without proper contracts, resulting in a €3.6 million court-mandated payout years later. Additionally, as the owner of the private clinic St. Katarina, Dragan Primorac has secured lucrative contracts with the Ministry of Health (of the same party, HDZ). Critics, like counter-candidate Ivana Kekin (Možemo), allege that due to the struggling public healthcare system, over €500,000 of taxpayer money this year will go to Primorac's clinic for services like 2,000 MRI scans that the public system cannot accommodate due to resource shortages.⁵²

Measures in place to ensure whistleblower protection and encourage reporting of corruption

On 20 September 2024, Ombudswoman Tena Šimonović Einwalter introduced a Whistleblower's Guide⁵³ to enhance understanding of legal protections, encourage reporting irregularities, and safeguard whistleblowers. Emphasising the public interest and human rights, she noted that whistleblowers are key to combating

corruption. The guide aims to provide clear, accessible information for whistleblowers, employers, legal professionals, and other stakeholders, supporting the proper application of the Whistleblower Protection Act.

Investigation and prosecution of corruption

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds. Please provide data where available.

According to the most recent publicly available annual report by the State Attorney's Office,⁵⁴ in 2023, the Bureau for Combating Corruption and Organized Crime (USKOK) had an increase in the number of resolved cases (3466 compared to 3306 in 2022), a reduction in unresolved cases (750 compared to 872 in 2022), and a significant improvement in the efficiency rate, now reaching 104%. While the reported increase in resolved cases and a reduction in unresolved cases reflect procedural

52 Jutarnji list, Kekin: Evo tri primjera kako Primorac cijedi Hrvatsku kroz cijelu svoju karijeru, 26 October 2024, available at <https://www.jutarnji.hr/vijesti/hrvatska/kekin-evo-tri-primjera-kako-primorac-cijedi-hrvatsku-kroz-cijelu-svoju-karijeru-15516162>

53 Ombudsperon of the Republic of Croatia, Predstavljen Vodič za prijavitelje nepravilnosti, 20 September 2024, available at <https://www.ombudsman.hr/hr/predstavljen-vodi-za-prijavitelje-nepravilnosti/>

54 State Attorney's Office, Izvješće o radu državnih odvjetništava u 2023. godini, 26 April 2024, available at <https://dorh.hr/hr/izvjesca-o-radu/izvjesce-o-radu-drzavnih-odvjetnistava-u-2023-godini>

progress, these metrics alone do not guarantee substantive justice.⁵⁵

In May 2024, the EPPO in Zagreb arrested⁵⁶ a former Deputy Minister of Culture and Media, along with the former dean and a former professor from the Faculty of Geodesy at the University of Zagreb, on charges of corruption following the 2020 Zagreb earthquake. The suspects are accused of inflating prices for a project documenting damaged cultural heritage buildings, resulting in over €2.5 million in payments to the Faculty, including €800,000 charged to the EU Solidarity Fund. The investigation revealed that the suspects falsified reports, overcharged for services, and misappropriated funds, causing significant financial losses to the Croatian State Budget and EU funds.

In October 2024, the EPPO in Zagreb indicted four individuals, including three public officials and one company, for inflating prices in a waste-sorting plant construction project in Mihačeva Draga.⁵⁷ Two officials from the City

of Rijeka and the manager of a municipal company allegedly manipulated public tenders to favour a pre-selected company, inflating costs by at least €300,000. The €3.6 million project, co-funded by the EU's Cohesion Fund, financially damaged the EU and national budgets.

The same month, the EPPO initiated an investigation into nine Croatian citizens and one legal entity for defrauding over €9 million in EU subsidies under Croatia's Rural Development Programme.⁵⁸ The suspects, including former and current members of a company's management, allegedly submitted falsified applications for funding intended to improve animal welfare in pig farming. The company fraudulently received over €4.7 million in EU subsidies despite not meeting the required conditions. Authorities later recovered approximately €1.5 million after uncovering the fraud.

In November 2024, the EPPO launched an investigation involving eight individuals, including the Croatian Minister of Health Vili Beroš and several hospital directors, along with

55 EPPO Annual Report 2023, Croatia, 1 March 2024, available at https://eppo.europa.eu/sites/default/files/2024-03/EPPO_Annual_Report_2023.pdf; https://www.eppo.europa.eu/sites/default/files/2024-02/EPPO%20Annual%20Report%202023%20WEB%20EN%20300p_HR.pdf

56 EPPO, Croatia: Former Deputy Minister arrested in investigation involving University of Zagreb, 2 May 2024, available at <https://www.eppo.europa.eu/en/media/news/croatia-former-deputy-minister-arrested-investigation-involving-university-zagreb>

57 EPPO, Croatia: Four individuals and one company indicted for abuse of office and power, 21 October 2024, available at <https://www.eppo.europa.eu/en/media/news/croatia-four-individuals-and-one-company-indicted-abuse-of-office-and-power>

58 EPPO, Croatia: Nine arrested in probe into multi-million subsidy fraud in pig farming, 24 October 2024, available at: <https://www.eppo.europa.eu/en/media/news/croatia-nine-arrested-probe-multi-million-subsidy-fraud-pig-farming>

two companies, on charges of bribery, abuse of power, and money laundering.⁵⁹ The suspects are accused of manipulating public procurement processes to secure inflated contracts for medical robotic devices and operating microscopes. Bribes were allegedly exchanged to tailor procurement documentation to a specific company's products, resulting in overpayments that harmed both the Croatian national budget and EU funds.

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

The appointment of Ivan Turudić as Chief State Attorney⁶⁰ underscores significant barriers to tackling high-level corruption in Croatia and highlights systemic flaws that undermine anti-corruption efforts. Turudić's associations with individuals implicated in criminal investigations, such as Josipa Rimac⁶¹ and Zdravko Mamić,⁶² raise concerns about conflicts of interest and bias, particularly given his pivotal role as Chief State Attorney.

Despite evidence of ethical breaches,⁶³ his appointment reflects the erosion of judicial independence and public trust under Prime Minister Plenković's leadership. The centralisation of prosecutorial authority, coupled with Turudić's ties to the ruling HDZ party, amplifies the risk of political interference in corruption investigations. Legislative moves like the Lex AP (Criminal Law amendments) further weaken oversight by stifling transparency and dissent.

These developments expose structural weaknesses in Croatia's anti-corruption framework, deterring whistleblowers and complicating efforts to investigate complex corruption networks. Reforms to safeguard judicial independence and ensure impartiality are critical to restoring trust and strengthening anti-corruption mechanisms.

59 EPPU, Croatia: EPPU starts investigation against Minister of Health and seven others over medical robotics procurement, 15 November 2024, available at <https://www.eppo.europa.eu/en/media/news/croatia-eppo-starts-investigation-against-minister-health-and-seven-others-over-medical>

60 See the chapter on Justice system, under Judicial independence.

61 N1, Otkrivene stotine poruka Ivana Turudića i Josipe Rimac: "Di si, radosti...", 3 February 2024, available at <https://n1info.hr/vijesti/otkrivene-stotine-poruka-ivana-turudica-i-josipe-rimac-di-si-radosti/>

62 N1, N1 doznaje: Turudić upao u tajne mjere SOA-e zbog Mamića, sastali su se tri puta, 3 February 2024, available at <https://n1info.hr/vijesti/n1-doznaje-turudic-upao-u-tajne-mjere-soa-e-zbog-mamica-sastali-su-se-tri-puta/>

63 N1, Đurđević o Turudiću: Takva bi osoba trebala biti bez mrlje, a ne povezana s kriminalnim miljeom, 7 February 2024, available at <https://n1info.hr/vijesti/durdevic-o-turudicu-takva-bi-osoba-trebala-biti-bez-mrlje-a-ne-povezana-s-kriminalnim-miljeom/>

Other

The investigations into former Croatian Health Minister Vili Beroš⁶⁴ highlight significant inefficiencies in conducting corruption probes, particularly when jurisdictional disputes arise between national and European authorities.

The jurisdictional dispute⁶⁵ involving the Croatian State Attorney and the European Public Prosecutor's Office (EPPO) underscores significant concerns about impartiality, political influence, and systemic inefficiencies in Croatia's corruption investigations. Questions about the impartiality of State Attorney-General Ivan Turudić, given his prior role as a defence attorney for individuals linked to the case, highlight potential conflicts of interest that erode public trust and compromise the

integrity of prosecutorial decisions. The centralised discretionary power to resolve such jurisdictional conflicts has also been criticised as incompatible with EU standards, increasing the risk of politically motivated decisions, particularly in cases involving high-level officials. Furthermore, prioritising national jurisdiction over the EPPO's mandate to safeguard EU financial interests undermines the EU's oversight mechanisms and raises broader rule-of-law concerns, as noted by the EPPO in its communication⁶⁶ with the European Commission. This situation has deepened public scepticism about Croatia's ability to conduct impartial and effective corruption investigations, exacerbating perceptions of institutional dysfunction and deterring whistleblowers from coming forward.

64 see chapter Justice System

65 See the chapter on Justice system, under Judicial independence.

66 EPPO, EPPO raises concerns over rule of law violations in Croatia following conflict of competence decision, 21 November 2024, available at: <https://www.eppo.europa.eu/en/media/news/eppo-raises-concerns-over-rule-law-violations-croatia-following-conflict-competence>

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *The parliament should repeal the Criminal Code provisions concerning unauthorised disclosure of the contents of an investigative or evidentiary action concerning a participant in the proceedings (Art. 307a).*
- *The parliament should decriminalise insult and defamation.*
- *The parliament should strengthen the legal framework and oversight mechanisms to ensure a fair and transparent allocation of state advertising at national, regional and local levels, including the public tender procedure with clear selection criteria.*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The media regulator in Croatia is the Agency for Electronic Media (AEM). It was established by the provisions of the Electronic Media Act (EMA) and performs administrative, professional, and technical tasks for the Council for Electronic Media, the governing body of the Agency and regulatory body in the field of electronic media. There's no regulatory body for the print media. The Croatian Regulatory Authority for Network Industries (HAKOM) is an independent regulator of the Republic of Croatia's electronic communications market, postal services market, and railway services

market. Still, it has no responsibilities for freedom of expression and media pluralism. HAKOM is an independent, autonomous and non-profit legal entity with public authority.

The primary professional organisation is the Croatian Journalists' Association (CJA), and the biggest media labour union is the Trade Union of Croatian Journalists and Media Professionals (TUCJ).

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media and telecommunication authorities and bodies

The current procedure for appointing members of the Agency for Electronic Media risks politicisation since the candidates are chosen by the government and approved by the parliament

with a simple majority.⁶⁷ That is why the CJA requested that the new government enact a new Media Act and amend the Electronic Media Act ahead of the parliamentary elections in April to depoliticise the Electronic Media Council and ensure that the members of this independent regulatory body are truly politically independent media experts. These legislative measures, however, have not been put in place.

Existence and functions of media councils or other co- and self-regulatory bodies

The Croatian Journalists' Association (CJA) Ethical Council is the only self-regulatory body operating within the CJA since its founding in 1910. The council has 11 members elected by the CJA assembly among its members. The Rulebook regulates the work of the Ethical Council on the work of the Ethical Council of Journalists.

Other

The Council for Electronic Media has been criticised for narrowly understanding its powers – it does not see its jurisdiction in cases of

hate speech in the media and, therefore, does not act on numerous complaints.⁶⁸

Pluralism and concentration

Other

According to the Media Pluralism Monitor, the indicator of pluralism of media providers has a high risk (73%) due to the unclear rules regulating the concentration of electronic media and large concentrations of ownership. According to the latest available data presented in the Monitor (2022), the four largest audiovisual media owners in the country accounted for 97% of the market (with a viewership concentration of 82%), the market share of the four leading radio owners was 69% (with a listenership concentration of 35%)⁶⁹.

Ownership concentration is monitored by the Croatian Chamber of Economy (HGK), which tracks ownership structures for print and print distribution companies, and the Council for Electronic Media (VEM), which monitors electronic media. If there is cross-media concentration, companies must also report to the Agency for Market Competition Protection (AZTN).

67 European Federation of Journalists, *Croatia: Major challenges ahead to improve media freedom*, 25 September 2024, <https://europeanjournalists.org/blog/2024/09/25/croatia-major-challenges-ahead-to-improve-media-freedom/>.

68 Paško Bilić; Antonija Petričušić, *Monitoring media pluralism in the digital era : application of the media pluralism monitor in the European member states and in candidate countries in 2023. Country report : Croatia*, Centre for Media Pluralism and Media Freedom (CMPF), 2024, <https://cadmus.eui.eu/handle/1814/76996>.

69 Paško Bilić; Antonija Petričušić, *Monitoring media pluralism in the digital era : application of the media pluralism monitor in the European member states and in candidate countries in 2023. Country report : Croatia*, Centre for Media Pluralism and Media Freedom (CMPF), 2024, <https://cadmus.eui.eu/handle/1814/76996>.

Transparency in media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

The independence of local media is significantly threatened by political influence. This is also visible in the significant increase in risk in regulating state resources and support to the media sector, which is 54% compared to last year's 38%, according to Media Pluralism Monitor.⁷⁰ The Electronic Media Act stipulates the obligation of state bodies and legal entities owned by the Republic of Croatia to allocate 15% of their annual budget to promote their services or activities for advertising in the regional and local community. However, due to insufficient regulation, the distribution of funds is non-transparent and opens the door to influence peddling.

Non-transparent investment in media content risks favouring certain outlets, potentially influencing their editorial policies. This risk can be mitigated by establishing clear criteria for funding allocation. However, research on public financing of media, conducted since early 2022 by Gong in partnership with the

Croatian Journalists' Association and the Croatian Journalists' Union, revealed that both safeguards for media independence—transparent funding with clear criteria and a strict separation between advertisements and editorial content—have failed.⁷¹

The European Federation of Journalists (EFJ) and the Croatian Journalists' Association identified a case exposed in December 2023 as an example of “state capture of the media.” Lovrinčević, advisor to the former Minister of Economy Filipović, according to the Office for Corruption and Organised Crime, used his position to promise Mreža TV collaborator Marin Vlahović €90,000 in funding from the Environmental Protection and Energy Efficiency Fund for advertising a campaign. Lovrinčević reportedly requested that Vlahović arrange for part of the funds to be redirected to him. According to USKOK, Lovrinčević influenced the Fund to hire Mreža TV for the campaign, and Fund leaders complied due to his authority. This scandal led to Filipović's dismissal and charges being brought against his advisor. However, no adequate system of oversight for public spending on media, based on professional and public-interest criteria, has since been introduced.⁷²

70 Paško Bilić; Antonija Petričušić, *Monitoring media pluralism in the digital era : application of the media pluralism monitor in the European member states and in candidate countries in 2023. Country report : Croatia*, Centre for Media Pluralism and Media Freedom (CMPF), 2024, <https://cadmus.eui.eu/handle/1814/76996>.

71 See: <https://gong.hr/2022/08/31/baza-podataka-ulaganja-u-medije-iz-drzavnog-i-lokalnih-proracuna-u-2020-i-2021/>

72 See: <https://dnevnik.hr/vijesti/hrvatska/efj-i-hnd-afera-mreza-primjer-je-drzavnog-zarobljavanja-medija--817635.html> and <https://www.hnd.hr/efj-i-hnd-afera-mreza-primjer-je-drzavnog-zarobljavanja-medija>

Rules governing transparency of media ownership and public availability of media ownership information, and their application

The National Plan for Culture and Media Development,⁷³ adopted in December 2023, envisages the creation of an online platform containing information on media ownership.

In their analysis, the Fact-checking platform Faktograf identified 11 separate records, including five databases in the Agency for Electronic Media (AEM), three types of announcements in the Official Gazette, the Register of Beneficial Owners, and two records in the Croatian Chamber of Commerce. Despite these, a complete picture of media ownership remains elusive due to hidden ownership structures or outdated declarations by publishers. Faktograf's analysis revealed that media ownership databases maintained by AEM are incomplete and partially inconsistent with guidelines issued by the Electronic Media Council (VEM), which oversees the agency.⁷⁴ Other records related to

media ownership are also incomplete or inaccessible to the public.

As part of the National Recovery and Resilience Plan 2021-2026, the Ministry of Culture and Media and AEM are developing a project to establish a fact-checking system and a public platform for media ownership and funding transparency. €600,000 is allocated to create a new platform to monitor real-time ownership changes. In September 2024, VEM selected Omega Software (previously linked to allegations of undue influence on state contracts) to develop the system within 12 months.⁷⁵ The Minister of Culture and Media, Nina Obuljen Koržinek, announced in October 2024 that a platform would be presented by the end of the year that would provide insight into the ownership structure of all media outlets and their sources of financing.⁷⁶

However, to achieve full transparency, it is necessary to review the existence of secretive companies whose establishment is enabled by the Companies Act,⁷⁷ effectively preventing

73 The National Plan for Culture and Media Development, available at: https://min-kulture.gov.hr/UserDocsImages/dokumenti/Nacionalni%20plan%20razvoja%20kulture%20i%20medija/Nacionalni%20plan_objava.pdf

74 Veronika Rešković, *As many as 11 records, and media ownership is still non-transparent (Čak 11 evidencija, a vlasništvo medija i dalje netransparentno)*, 28 December 2023, <https://faktograf.hr/2023/12/28/cak-11-evidencija-a-vlasnistvo-medija-i-dalje-netransparentno/>

75 See: <https://faktograf.hr/2023/12/28/cak-11-evidencija-a-vlasnistvo-medija-i-dalje-netransparentno/>

76 Croatian Journalists' Association, *Obuljen Koržinek: A platform with insight into the ownership structure of all media will be presented by the end of the year (Obuljen Koržinek: Do kraja godine bit će predstavljena platforma s uvidom u vlasničku strukturu svih medija)*, 18 October 2024, <https://www.hnd.hr/obuljen-korzinek-do-kraja-godine-bit-ce-predstavljena-platforma-s-uidom-u-vlasnicku-strukturu-svih-medija>.

77 Companies Act (Official Gazette, No. 111/1993, 34/1999, 121/1999, 52/2000, 118/2003, 107/2007, 146/2008, 137/2009, 111/2012, 125/2011, 68/2013, 110/2015, 40/2019, 34/2022, 114/2022, 18/2023, 130/2023, 136/2024) available at: <https://www.zakon.hr/z/546/Zakon-o-trgova%C4%8Dkim-dru%C5%A1tvima>

the actual owners of certain media outlets from being known.

Other

There is still a lack of transparency in media ownership, as well as in data collection and supervision procedures.

Even though the legal framework prohibits concealing the ownership structure, in practice, the ultimate owners can remain hidden because, among other things, the data entered in the registers are not updated and checked.⁷⁸ For example, in September 2024, Gong requested the Ministry of Culture and Media, the Agency for Electronic Media and the Parliamentary Committee for Information, Informatization and Media to verify the actual ownership of Z1 television due to suspicions that politician Mario Radić is the hidden owner of that media outlet. However, they were told that no one in Croatia is responsible for verifying potential hidden ownership but that what media owners enter in the register of actual owners represents the unquestionable truth for the regulator, even if there are

indications that the information provided to public bodies is false.⁷⁹

Public service media

Independence of public service media from governmental interference

The public broadcaster is Croatian Radiotelevision (HRT), and the public news agency is Croatian Reporting News Agency (HINA).

The independence of HRT is repeatedly called into question due to the politicised election of the Programming Council and the Supervisory Board, as in previous years, and there is no progress in this area.⁸⁰ The international Media Freedom Rapid Response (MFRR) mission, which in September 2024 met with representatives of the Ministry of Culture and Media, the Ministry of Justice, the Ministry of the Interior, representatives of the Agency for Electronic Media, the European Union Representation in Croatia, several publishers' associations, representatives of the Croatian Journalists' Association (CJA), the Trade Union of Croatian Journalists and Media professionals (TUCJ), editors-in-chief and journalists from

78 Paško Bilić; Antonija Petričušić, *Monitoring media pluralism in the digital era : application of the media pluralism monitor in the European member states and in candidate countries in 2023. Country report : Croatia*, Centre for Media Pluralism and Media Freedom (CMPF), 2024, <https://cadmus.eui.eu/handle/1814/76996>.

79 GONG, *AEM: If secret media owners wanted to be transparent, they would be public (AEM: Da su tajni vlasnici medija htjeli biti transparentni, onda bi bili javni)*, 14 October 2024, <https://gong.hr/2024/10/14/aem-da-su-tajni-vlasnici-medija-h tjeli-biti-transparentni-onda-bi-bili-javni/>.

80 Reporters Without Borders, *Croatia*, 2024, <https://rsf.org/en/country/croatia>

prominent media outlets, as well as members of the academic community, lawyers, and civil society actors, warned of the lack of independence of HRT.⁸¹ The Media Pluralism Monitor assessed the independence of public media services as medium risk (50%) precisely because of the high risk of politicisation of the management and editorial staff.⁸²

The independence of the editorial policy at HRT was once again called into question around the presidential elections campaign. Namely, Gong warned the Program Council of HRT that the candidate of the ruling party for president, Dragan Primorac, was being promoted in the HRT program and that, in this way, he was given priority over other candidates.⁸³ Gong demanded that HRT adopt new rules for reporting on candidates as soon as possible. Even though the official campaign had not yet begun at that point, the candidates had already gone public with their candidacies

and started an unofficial campaign. The HRT Programming Council acknowledged the existence of the problem.⁸⁴

Online media

Other

The financing framework is one of the primary sources of problems with media independence in Croatia. There has been no change in enhancing the financial stability of non-profit (community) media since last year. The primary funding source is the Fund for Promoting Pluralism and Diversity of Electronic Media, managed by the Agency for Electronic Media but finances both for-profit and non-profit media. Also, most of the projects submitted receive less than 50% of the requested funds.⁸⁵ Although the practice so far has been for the public call for the allocation of the Fund's funds to be announced at the end of

81 European Federation of Journalists, *Croatia: Major challenges ahead to improve media freedom*, 25 September 2024, <https://europeanjournalists.org/blog/2024/09/25/croatia-major-challenges-ahead-to-improve-media-freedom/>.

82 Paško Bilić; Antonija Petričušić, *Monitoring media pluralism in the digital era : application of the media pluralism monitor in the European member states and in candidate countries in 2023. Country report : Croatia*, Centre for Media Pluralism and Media Freedom (CMPF), 2024, <https://cadmus.eui.eu/handle/1814/76996>.

83 Gong : *Gong to HRT: Primorac is a candidate both when diving and when traveling to India (Gong HRT-u: Primorac je kandidat i kad roni i kad putuje u Indiju)*, 17 September 2024, <https://gong.hr/2024/09/17/gong-hrt-u-primorac-je-kandidat-i-kad-roni-i-kad-putuje-u-indiju/>.

84 Gong : *The program council of HRT agreed with Gong, and warned the editors to monitor the elections more responsibly (Programsko vijeće HRT-a se složilo s Gongom, upozorilo uredništvo na odgovornije praćenje izbora)*, 5 October 2024, <https://gong.hr/2024/10/05/programsko-vijece-hrt-a-se-slozilo-s-gongom-upozorilo-urednistvo-na-odgovornije-pracenje-izbora/>.

85 Paško Bilić; Antonija Petričušić, *Monitoring media pluralism in the digital era : application of the media pluralism monitor in the European member states and in candidate countries in 2023. Country report : Croatia*, Centre for Media Pluralism and Media Freedom (CMPF), 2024, <https://cadmus.eui.eu/handle/1814/76996>.

the year for the following calendar year (and the results are received in March), the public call was announced with a two-month delay. The results were published in mid-May, which affected the liquidity of numerous media outlets that depend on the Fund's funds. The call for 2025 is still not open.

The CJA, therefore, before the parliamentary elections, demanded fair and transparent media financing from the new government by establishing a joint Media Fund that would be funded from multiple sources. They also require the establishment of an independent and expert commission for the distribution of the Fund according to precise criteria and the introduction of a media register.⁸⁶

Public trust in media

Public trust in media declined by 2% in 2024 (32% in 2024 compared to 24% in 2023). The public trusts private television stations with a national frequency the most (Nova TV – 65% and RTL – 61%), while the national television station is trusted by as many as 10% fewer citizens (52%). Citizens generally trust television stations more than print and online

media. According to the same research, people get their information the least through print media (20%), with online information and information via television being the primary source of information.⁸⁷

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

Croatia fell from 42nd to 48th place on the Press Freedom Index of the Reporters Without Borders organisation in 2024.⁸⁸ Journalistic professions, standards, and protection indicators score a high risk (68%) in the Media Pluralism Monitor because of numerous SLAPP cases, verbal and physical attacks and poor working conditions of freelance journalists in Croatia.⁸⁹

Verbal political attacks that put political pressure on the media intensified in 2024, especially considering that 2024 was the year of parliamentary, Euro-parliamentary and presidential elections in Croatia. The Media Freedom Rapid Response monitoring report for the first half of the year expresses concern that out of 7 monitored verbal attacks on journalists or

86 Croatian Journalists' Association, *CJA's five requests to the new government (HND-ovih pet zahtjeva novoj vlasti)*, 9 April 2024, <https://www.hnd.hr/hnd-ovih-pet-zahtjeva-novoj-vlasti>.

87 Zrinjka Peruško, *Croatia*, Reuters Institute Digital News Report 2024, Reuters Institute for the Study of Journalism, 17 June 2024, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/croatia>.

88 Reporters Without Borders, *Croatia*, 2024, <https://rsf.org/en/country/croatia>.

89 Paško Bilić; Antonija Petričušić, *Monitoring media pluralism in the digital era : application of the media pluralism monitor in the European member states and in candidate countries in 2023. Country report : Croatia*, Centre for Media Pluralism and Media Freedom (CMPF), 2024, <https://cadmus.eui.eu/handle/1814/76996>.

the media, five were committed by a member of the government or a public official.⁹⁰

It is particularly worrying that Prime Minister Andrej Plenković repeatedly attacked verbally the media or journalists in 2024. In January, he accused N1 Television of operating semi-legally and not having a broadcasting concession. The CJA and TUCJ reacted by stating that “Prime Minister Plenković has been lecturing and insulting journalists for years and has a constant need to be the editor-in-chief of all Croatian media.”⁹¹ The Prime Minister also attacked journalists when they wrote about the new State Attorney General and the Minister of Culture and Media scandals, accusing them of leaking classified information, being corrupted, and emphasising that investigative journalism that uncovers scandals is not in the public interest⁹². During the parliamentary election campaign, a recording was leaked

from a party rally in which Prime Minister Plenković can be heard calling out specific media outlets that published investigative articles about scandals related to the ruling party (Telegram.hr, N1, Nacional, 24 SATA and Index.hr) as a “left clique” that was destroying the ruling party.⁹³ In May, the Prime Minister verbally attacked Telegram investigative journalist Dora Kršul, who revealed a corruption case in the Ministry of Culture and Media and Faculty of Geodesy. The Prime Minister attacked her by saying that her discoveries were politically motivated and that they do not represent investigative journalism but rather a deal with someone in the system, which he called illegal.⁹⁴

In October 2024, the Minister of Demography and Immigration, Ivan Šipić, attacked the media and journalist Ante Tomić. In a Facebook post, he called journalists “semi-literate”

90 Media Freedom Rapid Response, *Mapping Media Freedom Monitoring Report January - June 2024*, 2024, <https://www.mappingmediafreedom.org/analysis/>.

91 Croatian Journalists' Association, *CJA: The Prime Minister's attack on N1 is unacceptable pressure on the media (HND: Premijerov napad na N1 nedopustivo je pritisak na medije)*, 11 January 2024, <https://www.hnd.hr/hnd-premijerov-napad-na-n1-nedopustivo-je-pritisak-na-medije>.

92 Croatian Journalists' Association, *CJA calls on Prime Minister Plenković to stop attacking journalists (HND poziva premijera Plenkovića da prestane napadati novinare)*, 28 February 2024, <https://www.hnd.hr/hnd-poziva-premijera-plenkovica-da-prestane-napadati-novinare>.

93 Berislav Jelinić, *We are exclusively publishing a portion of the recording in which Plenković accuses Milanović, Nacional and four other media outlets of conspiracy (Ekskluzivno objavljujemo dio snimke u kojoj Plenković optužuje Milanovića, Nacional i još četiri medija za urotu)*, 14 April 2024, <https://www.nacional.hr/prizvuci-raszma-ekskluzivno-objavljujemo-dio-snimke-u-kojoj-plenkovic-optuzuje-milanovica-nacional-i-jos-cetiri-medija-za-urotu/>.

94 Telegram, Telegram announcement: The Prime Minister's attack on Dora Kršul is scandalous and democratically shameful (Priopćenje Telegrama: Premijerov napad na Doru Kršul skandalozan je i demokratski sramotan), 2 May 2024, <https://www.telegram.hr/politika-kriminal/priopcenje-telegrama-premijerov-napad-na-doru-krsul-skandalozan-je-i-demokratski-sramotan/>.

and “paid journalists” after the journalists reported critically on his ministry’s appointment of four highly paid advisors. The HND and the Committee condemned the attack to Protect Journalists.⁹⁵

In May 2024, Nacional’s editorial staff received an SMS threat that alluded to a repeat of the 2008 assassination attempt on the weekly’s editor and owner, Ivo Pukanić, and his associate, Niko Franjić. In its condemnation, the HND pointed out that such threats are the product of irresponsible and dangerous statements by Prime Minister Plenković and the leader of the Homeland Movement, in which the media are practically labelled as enemies of the state.⁹⁶

Melita Vrsaljko, a journalist for Faktograf and Klimatski portal, was physically attacked twice in July, on the street and in her home. The European Federation of Journalists (EFJ), the International Federation of Journalists (IFJ), the International Press Institute (IPI) OBC Transeuropa (OBCT), the European Centre

for Press and Media Freedom (ECPMF) and Free Press Unlimited (FPU) have called on the Croatian authorities to treat this case with the seriousness it deserves.⁹⁷

After Jurica Gašpar, a journalist for the Morski.hr portal, uncovered potential influence peddling by PR expert Ankica Mamić, who offered members of the Croatian Association of Private Shipowners services to improve the public image of shipowners, among other things, by using her connections with high-ranking public officials, messages were leaked in September calling for the kidnapping of journalist Gašpar. The European Federation of Journalists (EFJ) and the SafeJournalists network have strongly condemned the threats against the journalist and editor-in-chief of the Morski.hr portal, Jurica Gašpar, and called on the authorities to ensure justice by identifying and prosecuting the perpetrators.⁹⁸

In December, journalist Dario Topić was beaten by Damir Taslidžić, co-owner and

95 Committee to Protect Journalists, *Croatian government minister Ivan Šipić targets journalist Ante Tomić in online attacks*, 9 October 2024, <https://cpj.org/2024/10/croatian-government-minister-ivan-sipic-targets-journalist-ante-tomic-in-online-attacks/>

96 Croatian Journalists’ Association, *CJA: The chilling threats to Nacional newspaper show that dangerous days have come for journalists in Croatia (HND: jezive prijetnje Nacionalu pokazuju da su za novinare u hrvatskoj došli opasni dani)*, 23 May 2024, <https://www.hnd.hr/hnd-jezive-prijetnje-nacionalu-pokazuju-da-su-za-novinare-u-hrvatskoj-dosli-opasni-dani1>.

97 European Federation of Journalists, *Croatia: Faktograf journalist Melita Vrsaljko assaulted twice in a week*, 22 July 2024, <https://europeanjournalists.org/blog/2024/07/22/croatia-faktograf-journalist-melita-vrsaljko-assaulted-twice-in-a-week/>.

98 SafeJournalists, *SafeJournalists and EFJ: Kidnapping Threats of Journalist Jurica Gašpar in Croatia Must be Prosecuted*, 5 September 2024, <https://safejournalists.net/alert/safejournalists-and-efj-kidnapping-threats-of-journalist-jurica-gaspar-in-croatia-must-be-prosecuted/>.

representative of the Elektromodul company. Namely, after the portal Komarilos.com wrote about the case of the City of Osijek's refusal to extend the parking concession to the company Elektromodul at the end of the year, Taslidžić, whose company is still the current concessionaire, invited Topić to his business premises under the pretext of providing him with information about fraud in connection with the granting of the concession, and physically attacked him.⁹⁹ The attacker was arrested a few days later.

Smear campaigns

During and after the campaign for the parliamentary elections, especially in post-election coalition negotiations, the right-wing party Homeland Movement repeatedly called for the abolition of financing for the weekly Novosti, published by the Serbian National Council, the national coordination of the council of the Serbian national minority. The European Federation of Journalists (EFJ), the Croatian

Journalists' Association (CJA) and the Union of Croatian Journalists (TUCJ) condemned this call,¹⁰⁰ and Politico also reported on the case.¹⁰¹ In its case study on this case, Faktograf points out that "the fact that the issue of public financing of one specific media outlet has been turned into a key topic in the negotiations on forming a ruling coalition poses a significant threat to the future development of the independent media sector in the Republic of Croatia, the survival of which can only be guaranteed by the availability of adequate public financing. The extremist right is aware that the easiest way to silence critics is by accusing them of being 'enemies of the people,' and it is logical to conclude that Serbs are only the first on the 'kill list'. If they succeed in their intention to deny budget funds to Novosti, it will be much easier for them to apply the same tactic to other critical voices in the future."¹⁰² Following the public statements of the Homeland Movement, journalists of the weekly Novosti received numerous threats.

99 SafeJournalists, *SafeJournalists and MFRR: Brutal assault on Dario Topić must be punished, swift activation of police safety protocols a positive step forward*, 11 December 2024, <https://safejournalists.net/alert/safejournalists-and-mfrr-brutal-assault-on-dario-topic-must-be-punished-swift-activation-of-police-safety-protocols-a-positive-step-forward/>.

100 European Federation of Journalists, *Croatia: EFJ condemns far-right calls for an end to funding for Novosti weekly*, 10 May 2024, <https://europeanjournalists.org/blog/2024/05/10/croatia-efj-condemns-far-right-calls-for-an-end-to-funding-for-novosti-weekly/>.

101 Una Hajdari, *Free media face crackdown from Croatia's new leaders*, 14 May 2024, <https://www.politico.eu/article/novoski-croatia-homeland-movement-party-free-media-crackdown/>.

102 Tajana Broz, "Novosti are either burned or turned off": A case study of the attack on the weekly Novosti after the Croatian parliamentary elections in 2024. ("Novosti se ili pali ili gasi": studija slučaja napada na tjednik Novosti nakon hrvatskih parlamentarnih izbora 2024. godine), Faktograf, July 2024, <https://faktograf.hr/wp-content/uploads/2024/07/studija-slucaja-napada-na-novosti.pdf>.

A recent example of a defamatory campaign targeted the presidential candidate Ivana Kekin, representing the political party Možemo! On 4 December 2024, the TikTok account “Ne Možemo” (@nemozemo1), a prominent anti-Možemo platform, published a video alleging that Kekin owned a hidden villa, previously undisclosed to the public. Kekin promptly refuted the claim, emphasising that the property has been listed in her asset declaration since she became an MP in 2021. Despite this clarification, “Ne Možemo” continued to accuse her of dishonesty, further claiming the villa was acquired through theft. Although TikTok prohibits paid political advertisements, such content, based on false information, spreads virally easily. The initial video amassed over 130,000 views and was shared more than 600 times. This type of material violates the Digital Services Act (DSA) and undermines democratic discourse but may also involve unreported campaign funds, a clear breach of legal regulations.

Further analysis by the Civil society organisation Gong revealed that the disputed content, removed from TikTok at their request, continues circulating on Instagram via the “Ne Možemo Platform” (@nemozemo_platforme). The suspicion that political parties may

be behind this smear campaign arises from the identities of collaborators (via Instagram’s collaboration feature) on the contentious posts. A key co-author has ties to the ruling HDZ party.¹⁰³

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

Politicians and business people regularly use SLAPP procedures to discourage journalists’ questions about their activities.¹⁰⁴ According to the annual survey by the CJA and the Center for Democracy and Law Miko Tripalo, at least 752 lawsuits against journalists and media outlets were still pending in May 2024. However, it should be noted that the sample consisted of 21 media outlets - in 2023, there were 945 lawsuits active, but 30 media outlets were surveyed. Politically exposed persons initiated 128 proceedings. In addition, 1,333 verdicts against media outlets and journalists issued between 2016 and 2023 were analysed. It was found that more than 40% of all cases carry at least one SLAPP indicator; among these cases, more than half contain several, or more than one, indicators. Civil proceedings prevail in which compensation for damages is sought, reports the CJA.¹⁰⁵ The Media Freedom Rapid

103 See: <https://gong.hr/2024/12/13/gong-pozvao-dip-istrazite-tko-stoji-iza-dezinformacijske-kampanje-protiv-ivane-kekin/>

104 Reporters Without Borders, *Croatia*, 2024, <https://rsf.org/en/country/croatia>

105 Croatian Journalists’ Association: *CJA: At least 752 lawsuits worth €4.1 million are active, and in 1333 adjudicated cases - 40% were pure SLAPP (HND: Aktivne najmanje 752 tužbe teške 4,1 milijun eura, a u 1333 presuđena predmeta - 40 posto je bio čisti SLAPP)*, 24 May 2024, <https://www.hnd.hr/hnd-aktivne-najmanje-752-tuzbe-teske-4-1-milijun-eura-a-u-1333-presudena-predmeta-40-posto-je-bio-cisti-slapp>

Response (MFRR) mission to Croatia stated, “Lack of a unified methodology for case registration of SLAPPs in government bodies and civil society remains a challenge”¹⁰⁶ because strategic lawsuits against public participation are still not defined in Croatian law.

Before the 2024 parliamentary elections, the CJA requested that the new government introduce a mechanism for early rejection of SLAPPs to prevent the obvious intent of frivolous litigation. They also called for a clear definition of SLAPPs as intimidation and silencing of journalists and the media, stifling freedom of speech and the right to public participation.¹⁰⁷

The Criminal Code penalises “insult” (Article 147) and “intentional defamation” (Article 149).¹⁰⁸ The criminal offence of defamation is defined as disseminating “an untrue factual statement (about another person) which is likely to harm his honour or reputation, knowing that it is untrue”. It is punishable by a fine. In addition, disseminating a defamatory statement to a large audience, particularly “through the press, radio, television, computer system

or network, or at a public gathering”, entails enhanced criminal liability. The law does not recognise the possibility to exclude false statements where the circumstances justify publication in case of public interest, which is an international standard, Article 19 claims.¹⁰⁹ They also note that criminal proceedings are often initiated in parallel with civil lawsuits, so the double burden of criminal prosecution and civil proceedings involves journalists in lengthy and expensive proceedings. They conclude that the criminalisation of defamation is a disproportionate and ineffective measure to protect the reputation of others and that it represents an unjustified restriction of the right to freedom of expression. It is evident from court practice that private plaintiffs who consider themselves injured due to the publication of texts initiate lawsuits against journalists, so it is clear that the goal of these types of lawsuits is to intimidate and financially exhaust journalists. That is why, in August, the CJA demanded the decriminalisation of acts against reputation and honour.¹¹⁰

106 European Federation of Journalists’, Croatia: *Major challenges ahead to improve media freedom*, 25 September 2024, <https://europeanjournalists.org/blog/2024/09/25/croatia-major-challenges-ahead-to-improve-media-freedom/>

107 Croatian Journalists’ Association, *CJA’s five requests to the new government (HND-ovih pet zahtjeva novoj vlasti)*, 9 April 2024, <https://www.hnd.hr/hnd-ovih-pet-zahtjeva-novoj-vlasti>.

108 Croatian Parliament, Criminal Code (Kazneni zakon).

109 Article 19, *Croatia: Decriminalise insult and defamation*, 5 August 2024, <https://www.article19.org/resources/croatia-decriminalise-insult-and-defamation/>

110 Croatian Journalists’ Association, *CJA: We are asking the Government to decriminalize all acts against honor and reputation (HND: Tražimo od Vlade dekriminalizaciju svih djela protiv časti i ugleda)*, 21 August 2024, <https://www.hnd.hr/hnd-trazimo-od-vlade-dekriminalizaciju-svih-djela-protiv-casti-i-ugleda>

Confidentiality and protection of journalistic sources (including whistleblower protection)

In March 2024, amendments to the Criminal Code¹¹¹ were voted on. A new criminal offence was introduced, which refers to the unauthorised disclosure of the contents of an investigative or evidentiary action concerning a participant in the proceedings (Art. 307a). The CJA and TUCJ have repeatedly pointed out the harmfulness of these new provisions because they will restrict the public's right to be informed about high-level corruption cases. They call the provisions "Lex AP" because the changes to the law occurred after messages from a corruption scandal were leaked to the media, in which AP, the initials of Prime Minister Andrej Plenković, was mentioned. After submitting a petition with more than 2,000 signatures to the government at the end of 2023 against the introduction of this criminal offence, in January 2024, the CJA organised protests against the changes to the law in the two largest Croatian cities. Although journalists are exempt from criminal liability, the law opens the possibility of sanctioning whistleblowers, i.e. anyone who would provide information. Article 19, an

international organisation promoting freedom of expression that is a part of the Media Freedom Rapid Response (MFRR), assessed that the introduction of Article 307a constitutes a disproportionate interference with freedom of speech and restricts the ability of journalists and other actors to publish information of exceptional public importance. In addition, Article 19 considers such changes to be contrary to international standards of freedom of expression and assesses that they would not pass the three-part test of the European Court of Human Rights, which examines the necessity of restrictions on freedom of speech.¹¹² After the arrest of Health Minister Vili Beroš in November 2024, the State Attorney's Office launched the first investigations for leaking information from the investigation to the media based on Article 307a.

Access to information and public documents

Although the Law on the Right to Access to Information regulates the right to access information, the state administration often does not respond to requests for access to information, or they wait longer than the deadline prescribed by law.¹¹³

111 Croatian Parliament, Criminal Code (Official Gazette No. 125/2011, 144/2012, 56/2015, 61/2015, 101/2017, 118/2018, 126/2019, 84/2021, 114/2022, 114/2023, 36/2024)

112 Article 9, *Croatia: Amendments to the Criminal Code – prohibition of 'unauthorized disclosure of information on criminal investigations'* (Hrvatska: Izmjene Kaznenog zakona – zabrana 'neovlaštenog otkrivanja podataka o kaznenim istragama'), June 2024

113 Paško Bilić; Antonija Petričušić, *Monitoring media pluralism in the digital era : application of the media pluralism monitor in the European member states and in candidate countries in 2023. Country report : Croatia*, Centre for Media Pluralism and Media Freedom (CMPF), 2024, <https://cadmus.eui.eu/handle/1814/76996>.

Other

Do you consider the progress of the implementation of the Anti-SLAPP Directive in your country adequate? Have there been any positive developments you could attribute to the Anti-SLAPP Directive? Please elaborate on any of the following aspects you consider relevant for your country.

Support of the defendant by associations, organisations, trade unions or other entities also interested in the protection of public participation

The CJA provides legal and any other necessary assistance for journalists affected by the “Lex AP”.¹¹⁴

Any positive developments regarding the application of anti-SLAPP rules for domestic cases, such as transparency, procedural safeguards and remedies

No progress was made in 2024. The Anti-SLAPP Directive is expected to be transposed into Croatian legislation only after adopting a new Media Act by May 2026.

CHECKS AND BALANCES



Key recommendations

- *The government needs to develop a systematic approach to implementing the recommendations of the Ombudsperson and other ombuds institutions.*
- *The Parliament needs to discuss and adopt the Ombudspersons reports in the year's second quarter.*

Process for preparing and enacting laws

The process of enacting laws continued to have the same issues as in the previous years.

During the beginning of the 11th convocation of the Croatian Parliament, from 16 May to 13 December 2024, 59 new laws were adopted, out of which 25 were adopted in an urgent procedure, and 34 were adopted through regular

114 SafeJournalists, *CJA: To all colleagues facing the impact of “Lex AP,” we offer legal assistance*, 20 November 2024, <https://safejournalists.net/cja-to-all-colleagues-facing-the-impact-of-lex-ap-we-offer-legal-assistance/>.

procedure.¹¹⁵ It is not clear why so many laws were brought in urgent procedure. The process of public consultations about the new legislation or policies also has many deficiencies, as the proposals made by the public and CSOs are rarely considered and accepted by the authorities. During the year, the e-consultation system became less accessible for civil society organisations, as the e-consultations portal (esavjetovanja.gov.hr) made technical changes.¹¹⁶ Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of the judiciary on judicial reforms), and transparency and quality of the legislative process

Independent authorities

In the 2024 Rule of Law report, the European Commission recommended to “further improve the follow-up to recommendations and ensure a more systematic response to information requests of the Ombudsperson.” Unfortunately, the attitude of some of the most relevant state institutions, such as the Parliament and some ministries, is still unsatisfactory. Firstly, the Ombudsperson’s report for the years 2022 and 2023 has still not been discussed in the Parliament. Furthermore, according to the Ombudsperson’s report for

2023, which was published and delivered to the Parliament in March 2024, the competent authorities have implemented or are acting on 44.12% of their general recommendations from the year 2022. The competent authorities have not implemented 27.06% of the recommendations, and for 28.82%, the Ombudsperson has no information on their implementation by the bodies to which they were addressed.¹¹⁷ The same report stated that the government Office for Human Rights and Rights of National Minorities committed to preparing a report on implementing the Ombudsperson’s recommendations and developed its data collection methodology in consultation with the Ombudsperson. According to initial information, the Office collected data from the competent authorities and was supposed to provide it to the Ombudsperson by the end of January 2024, but the Ombudsperson was informed in March 2024 that data was being analysed and that the report would be published later. However, only a summary of the self-assessment by the authorities was provided without explanations. According to this self-assessment, 24.7% of recommendations were implemented, 36.5% were in progress, and 11.2% were planned. For 7.6%, the authorities stated that they were not implemented or planned, and 20% lacked status or explanations.¹¹⁸ The Ombudsperson also

115 Croatian Parliament, Overview of the Parliament Work in 11th Convocation (16 May 2024 - 13 December 2024), https://www.sabor.hr/sites/default/files/XI_saziv_pregled_rada.pdf

116 See more in the Civic Space chapter, under Public participation.

117 The Ombudswoman (Croatia), Report of the Ombudswoman for 2023 (Izvješće pučke pravobraniteljice za 2023), March 2024, <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#>.

118 The Ombudswoman (Croatia), Report of the Ombudswoman for 2023 (Izvješće pučke pravobraniteljice za 2023), March 2024, <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#>.

stated that in 2023, the cooperation with the public bodies related to their procedures related to individual complaints was largely satisfactory, with some exceptions related to prolonged time or lack of delivery of information from some bodies, out of which the Ombudsperson specifically emphasised the issues with the Ministry of Health in that regard.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

The Draft Proposal of the Act on Data Exchange Between Law Enforcement Authorities of European Union Member States,¹¹⁹ published for public consultation in August 2024. This initiative by the Croatian government aligns with the European Commission's emphasis on enhancing cross-border cooperation to combat crime and effectively ensure public security within the EU. By facilitating streamlined data sharing, the proposed legislation seeks to bolster Croatia's capacity to prevent, detect, and investigate criminal activities in collaboration with other member states. It, therefore, is consistent with the European Commission's recommendations for improving judicial cooperation and upholding the rule of law across the Union.

However, there are several potential imminent risks to the draft proposal that must be addressed to align with EU rule of law principles. Key concerns include privacy and data protection risks, as cross-border data exchanges may violate the GDPR and the Law Enforcement Directive if safeguards are insufficient. The lack of judicial oversight could undermine individuals' right to challenge data-sharing decisions, while limited transparency in administrative processes risks arbitrary decision-making. Political interference is also dangerous if independent oversight is not guaranteed. The absence of clear definitions for key terms may create legal uncertainty and enable overly broad interpretations.

Additionally, non-compliance with EU law could lead to infringement proceedings from the European Commission. Croatia's Personal Data Protection Agency (AZOP)'s role must be clearly established to ensure independent oversight. Challenges related to technical interoperability with other EU systems may create operational and financial burdens. Addressing these risks requires stronger safeguards, independent oversight, and alignment with EU legal standards to ensure the law promotes accountability, transparency, and effective judicial protection.

119 Draft Proposal of the Act on Data Exchange Between Law Enforcement Authorities of European Union Member States (*Nacrt prijedloga Zakona o razmjeni podataka između tijela za provedbu zakona država članica Europske unije*), available at <https://esavjetovanja.gov.hr/Econ/MainScreen?EntityId=28154>

Electoral Framework

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

During the 2024 parliamentary elections in Croatia, several issues emerged that impacted the enabling environment for exercising the right to vote. A significant problem involved discrepancies in the voter registration system, where approximately 2,500 citizens with valid identification documents discovered they were inexplicably omitted from voter lists, preventing them from casting their ballots. This issue was attributed to a systemic error, but the authorities inadequately communicated details regarding its nature and scope, leading to confusion and disenfranchisement among voters. Additionally, scheduling the elections on a non-working Sunday was intended to facilitate voter participation; however, it inadvertently caused challenges for certain groups, such as those employed in essential services, who faced difficulties in accessing polling stations. These challenges highlight the need for improvements in voter registration accuracy and the consideration of diverse voter circumstances to ensure equitable access to the electoral process.¹²⁰

These issues directly relate to the principles outlined in the European Commission's Rule of Law Report, particularly in the area of checks and balances. The unexplained removal of voters from the electoral roll reflects a lack of transparency and accountability in the voter registration system, raising concerns about legal certainty and the effectiveness of administrative oversight. The absence of timely remedies for disenfranchised voters points to a gap in judicial review and access to justice, as affected citizens were left without a mechanism to challenge their exclusion. Furthermore, the limited accommodation for workers in essential services highlights the need for equal access to polling stations, a key element in safeguarding the right to vote. These deficiencies emphasise the importance of ensuring independent oversight by Croatia's State Election Commission (DIP) and underscore the need for strengthened safeguards to uphold electoral integrity and protect fundamental rights.

According to Gong's report, the European elections "were conducted without major irregularities and in accordance with legal regulations, largely respecting international standards of good electoral practices."¹²¹ However, the voters' turnout was very low, 21,35% and the campaign was largely overshadowed by the political processes at the national level, namely the formation of the new government after the parliamentary elections held in April 2024.

120 Gong, *Parlamentarni izbori 2024. - od problema s izbrisanima do (ne)radne nedjelje*, 9 May 2024, available at <https://gong.hr/2024/05/09/parlamentarni-izbori-2024-od-problema-s-izbrisanima-do-neradne-nedjelje/>

121 Gong, *Izveštaj o izborima za Europski parlament*, 22 July 2024, available at: <https://gong.hr/wp-content/uploads/2024/07/Izvjestaj-o-izborima-za-Europski-parlament-2024.pdf>

Eligibility criteria and restrictions to be a candidate

When parliamentary elections were announced for 17 April 2024, President Zoran Milanović declared his candidacy for Prime Minister without resigning as Head of State, raising serious constitutional concerns about his duty to safeguard the stability of state power.

On 18 March 2024, the Constitutional Court of Croatia, acting on its initiative, issued a formal warning.¹²² It held that the President's candidacy for Parliament or promotion as a Prime Ministerial candidate was incompatible with his constitutional role and the principle of separation of powers. The Court urged the President to immediately resign if he sought election or publicly presented himself as a candidate and to cease activities contrary to the Constitution.

Two judges dissented, asserting that the matter required a formal decision, not a mere warning. They argued that the lack of a ruling deprived the involved parties of procedural safeguards and violated the right to a fair trial under Article 29 of the Croatian Constitution

and Article 6 of the European Convention on Human Rights. The dissenting judges also criticised the warning for failing to specify which actions constituted constitutional violations or breached provisions.

Immediately after the elections, the Constitutional Court issued a second warning, declaring that Milanović's conduct rendered him ineligible to serve as Prime Minister-designate or Prime Minister. It threatened to annul any parliamentary decision appointing him. This action, issued with three dissenting opinions,¹²³ provoked criticism from constitutional experts and the public, who argued it unconstitutionally interfered with electoral results and the rights of Members of Parliament to support candidates freely.¹²⁴

Access to balanced and reliable information online and offline during electoral campaign: campaigning, media coverage, disinformation and misinformation

In December 2024, the Croatian NGO Gong reported a covert disinformation campaign targeting presidential candidate Ivana Kekin. Anonymous accounts on platforms like TikTok

122 Warning regarding the statement by the President of the Republic of Croatia, Mr Zoran Milanović, announcing his candidacy in the parliamentary elections scheduled by the decision of the President of the Republic of Croatia on 15 March 2024, available at <https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258AE400450E70/%24FILE/U-VII-1263-2024.pdf>

123 Constitutional legal position in case no. U-VII-1263/2024-II of 19 April 2024 regarding the statement and warning to participants in the elections held on 17 April 2024, available at https://www.usud.hr/sites/default/files/dokumenti/Ocitovanje_sudaca_Abramovica_Kusan_i_Selanece_nazvano_Ustavnopravno_stajaliste_u_predmetu_broj_U-VII-1263-2024-II.pdf

124 See: <https://faktograf.hr/2024/03/20/izdvojeno-misljenje-ustavni-sud-milanovic/>

and Instagram disseminated defamatory content, undermining electoral integrity. Gong's investigation revealed that individuals linked to political entities, including those associated with the ruling party, were involved in these activities. "Not only is such content contrary to the DSA and undermines democratic discourse, but it may also be backed by black, undeclared money in the campaign, which is strictly prohibited by law," Gong states.¹²⁵

Despite Gong's appeals, the State Electoral Commission (DIP) stated it lacked the mandate and tools to address such disinformation. This situation underscores Croatia's challenges in ensuring access to balanced and reliable information during electoral campaigns, as highlighted in the EC's 2024 Rule of Law Report that emphasised the need for robust measures to combat disinformation and enhance transparency in political campaigning to uphold democratic processes.

CIVIC SPACE

Key recommendations

- *Ensure effective access and participation in decision-making processes for Croatia's citizens and civil society and make the e-Citizens portal accessible to CSOs.*
- *The government needs to adopt the National Plan for Creating an Enabling Environment for Civil Society Development that will systematically tackle the issues faced by civil society, such as financing framework, access and participation in decision-making processes and institutional framework for civil society.*
- *Open St. Mark's Square for the public protests.*

Freedom of association

There were no significant changes related to the freedom of association in 2024. The key

policy document for civil society has still not been elaborated/prepared. As reported previously, the new National Plan for Creating an Enabling Environment for the Development

125 "Ne samo da ovakav sadržaj je protivian DSA-u i urušava demokratski diskurs, već i iza ovakve hajke može stajati crni, neprijavljeni novac u kampanji, što je strogo zakonom zabranjeno". See: <https://gong.hr/2024/12/12/gong-prijavio-anti-mozemo-difamacijske-sadrzaje-tiktoku-dip-u-i-hakom-u/> and <https://gong.hr/2024/12/13/gong-pozvao-dip-istrazite-tko-stoji-iza-dezinformacijske-kampanje-protiv-ivane-kekin/>.

of the Civil Society has still not been adopted, and there is no progress in the matter, although the previous National Strategy for Creating an Enabling Environment for the Development of the Civil Society expired in 2016. While there were numerous events and developments in the process, and the latest Working Group for drafting was established in 2021, it is unclear why the process is still being halted by the Government Office for Cooperation with the NGOs, the body responsible for drafting it.

In October 2024, Zelena Akcija - Friends of the Earth Croatia published the analysis “Repression against environmental initiatives and civil society organisations in Croatia”. The analysis, conducted through desk research and semi-structured interviews with 15 representatives of environmental CSOs and initiatives, found evidence of repression and closing space for their activities in three key areas: deprivation and channelling of financial resources; closing the decision-making process and targeted repression of individual organisations and initiatives.¹²⁶

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens’ allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)

Civil society organisations continued to face numerous issues with accessing funding through European Social Fund Plus (ESF+) funds, such as excessive administrative demands and inadequate planning of the calls. Until May 2024, only 10 calls have been published.¹²⁷ In addition, in the new financial period 2021-2027, the focus of using the ESF+ primarily supports civil society organisations providing social services. There are no calls designed to support advocacy organisations that contribute to good governance of public policies and monitoring policies in human rights, rule of law, combating corruption and transparency of public administration. There is still a lack of national funding for human rights programs, particularly for watchdog, research, and advocacy activities. Short-term projects that are inadequate for long-term programs and create unnecessary burdens for CSOs are still prevalent. Insufficient national funding for the organisational development of smaller

126 Friends of the Earth Croatia (Zelena akcija), Kruno Kardov, REPRESIJA NAD OKOLIŠNIM INICIJATIVAMA I ORGANIZACIJAMA CIVILNOG DRUŠTVA U HRVATSKOJ, September 2024, available at https://www.zelena-akcija.hr/system/document/1355/doc_files/original/ZA_AnalizaFIN-3.pdf

127 H-alter, Hunger games 2021 – 2027 (Igre gladi 2021.-2027.), 14 May 2024, available at <https://h-alter.org/hrvatska/plasman-esf-na-polovini-programskog-razdoblja-2021-2027/>

and newer civil society organisations remains a significant barrier, especially for those outside larger cities.

Rules on lobbying

In October 2024, the Lobbying Act¹²⁸ came into force, which puts civil society organisations in a position of legal uncertainty because the law is unclear about whether it applies to advocacy activities of non-governmental organisations - and different NGOs have different views on whether they are obliged by the norms of this Act. This is because Article 2 of the Lobbying Act identifies, among others, non-governmental organisations and civil society organisations as lobbyists. However, it defines lobbying as: “any form of oral or written communication directed at the lobbied person as part of a structured and organised promotion, advocacy, or representation of specific interests or the sharing of information related to public decision-making to achieve the interests of the lobbying client”. Human rights non-governmental organisations, through their advocacy activities directed at decision-makers, do not “represent specific interests” but advocate for the effective protection of the human rights of individuals residing in the Republic of Croatia. Such advocacy aims to promote the public interest, offering solutions (policy or legislative) that those in power and the opposition may or may not choose to adopt. On the other hand, Article 4 of the Lobbying Act stipulates that activities such as the democratic expression of opinions, which include the right of

individuals or groups to publicly voice their views through consultations, referendums, petitions, or civic initiatives, as well as advocating for political or legislative changes, are not considered lobbying. Furthermore, attending public gatherings, meetings, discussions, or events open to the public and publicly expressing opinions, views, and information about laws, regulations, or strategic documents, including their drafts and proposals in the media, are also not considered lobbying. Therefore, this area is confusing and dangerous for NGO advocacy, which is necessary in a democratic society. Although it was necessary to regulate this area, which is crucial for the transparency of decision-making that affects all citizens of Croatia - it was done inadequately because it effectively erases the distinction between public advocacy for the common good and lobbying for particular interests while equating civil society with professional lobbyists. Moreover, it is also noted that this Law provides for self-initiated registration in the Lobbyist Register, which allows many actual lobbyists to “fly under the radar”.

Freedom of peaceful assembly

Rules on organisation, authorisation of and participation in assemblies

After the armed attack on 12 October 2020 directed at the staff and the building of the government, the executive branch used its position of power and closed off St. Mark’s Square with metal barriers - excluding the

128 Lobbying Act (Zakon o lobiranju), Official Gazette 36/24, in force since 01.10.2024.

public space from free enjoyment by the citizens of the Republic of Croatia. The closure of the square has sparked criticism, as it is perceived as a restriction of civil liberties and the right to public assembly, as St. Mark's Square in Zagreb is crucial for protests as it houses the most important government institutions, such as the Parliament and the government. Since November 2020,¹²⁹ St. Mark's Square has been designated as a first-category protected area. Although the authorities assured that the right to public assembly and peaceful protest will not be restricted, in 2023 the non-governmental organisation Gong found that the police had cleared only 200 square meters for a protest.¹³⁰

The closure was contested by the NGO Gong in the Constitutional Court,¹³¹ but in 2023 the Court rejected the request for review declaring itself not competent to decide on the matter, with five (out of thirteen) dissenting judges,¹³²

leading Gong to criticise the decision as an approval of government overreach and a threat to citizens' rights.¹³³ In 2024, the campaign calling for the opening of the square continued, and Gong also urged the MPs to initiate a constitutional review process, as one-fifth of the Members of Parliament have the right to do so.¹³⁴ Although civil society organisations have been calling on the government to open the Square for years, throughout 2024 it remained closed to the public.

Criminalisation of protesters

At the beginning of 2024, on 5 January, activists projected the message "Free Palestine" on the eastern side of the Chromos Tower in Zagreb, where the Israeli embassy is located. Trnje Police Station filed a misdemeanour complaint against them, alleging that they violated Article 13 of the Misdemeanour Act

129 Regulation on the Designation of Protected Persons, Facilities, and Spaces and the Implementation of Their Security and Protection (Uredba o dopuni Uredbe o određivanju šticećenih osoba, objekata i prostora te provođenju njihove zaštite i osiguranja), Official Gazette, 131/2020, 27.11.2020.

130 Dnevnik.hr, Zašto je Markov trg i dalje zatvoren za građane? "Javnost ima puno pravo znati sve činjenice o razini opasnosti", 15 March, available at <https://dnevnik.hr/vijesti/hrvatska/zasto-je-markov-trg-i-dalje-zatvoren-za-gradjane-javnost-ima-puno-pravo-znati-sve-cinjenice-o-razini-opasnosti---771382.html>

131 Gong, Gong zastupnicima: Vratite Saboru moć, otvorite Markov trg građanima, 2 July 2024, available at <https://gong.hr/2024/07/02/gong-zastupnicima-vratite-saboru-moc-otvorite-markov-trg-gradanima/>

132 Croatian Constitutional Court, U-II-3503/2023, 19 December 2023, available at <https://sljeme.usud.hr/Usud/Praksaw.nsf/C12570D30061CE54C1258A8B0045C1E4/%24FILE/U-II-3503-2023.pdf>

133 See: <https://gong.hr/2024/01/03/ako-ustavni-sud-nije-nadlezan-nitko-ne-stoji-na-putu-vladi-koja-krsi-prava-gradana/>

134 Gong, Gong zastupnicima: Vratite Saboru moć, otvorite Markov trg građanima, 2 July 2024, available at <https://gong.hr/2024/07/02/gong-zastupnicima-vratite-saboru-moc-otvorite-markov-trg-gradanima/>

Against Public Order and Peace,¹³⁵ which states: “Anyone who fights, argues, shouts, or otherwise disturbs public order and peace in a public place shall be fined between €300 and €2,000 or sentenced to up to 30 days in prison.” The activists were accused of setting up a portable generator that generated noise during operation and projecting the light message “Free Palestine,” which, according to the charges, disrupted public order, caused unrest and anxiety, and distracted passers-by and drivers, all without prior approval from the relevant Zagreb City authority. The defence demonstrated that the generator noise at a distance of seven meters measured 62 decibels, significantly less than a regular car’s average noise. According to the defence, it is evident that the proceedings were initiated due to the defendants’ message, which “did not sit well with the security staff and employees of the State of Israel’s embassy,” and that, at their request, the Misdemeanour Act Against Public Order and Peace was misused.¹³⁶ The activists were ultimately acquitted of the charges in November due to a lack of evidence.¹³⁷

Freedom of expression and information

Criminalisation of speech

Human rights defender Vladislav Arinichev fled Russia due to political persecution for his anti-Putin and peace activism, and, among other things, he has actively and publicly supported Navalny and spoken out publicly against the war in Ukraine. Therefore, he has been labelled a terrorist and extremist by the Russian authorities and faces severe persecution in Russia, as already recognised in a previous judgment of the European Court of Human Rights.¹³⁸

His asylum request in Croatia was rejected at the first instance, though the decision acknowledges that he meets the criteria for asylum. Based on the negative Security and Intelligence Agency’s (SOA) opinion, it was denied that he poses a national security threat. This opinion was based on two concerns: firstly, that Arinichev is flagged as a terrorist/extremist in Russia and secondly, that he continued to fight for justice and human rights in Croatia because while staying at the Reception Centre for International Protection Seekers in Zagreb, on 10 September 2023, he recorded

135 Public Order and Peace Offences Act (Zakon o prekršajima protiv javnog reda i mira), Official Gazette, No. 41/77, 52/87, 55/89, 5/90, 30/90, 47/90, 29/94, 114/22, 47/23

136 Novosti, Oslobodeni za projiciranje natpisa “Free Palestine”, 21 September 2024, available at <https://www.portalnovosti.com/oslobodeni-za-projiciranje-natpisa-free-palestine>

137 Novosti, Sloboda za “Palestince”, 15 November 2024, available at <https://www.portalnovosti.com/sloboda-za-palestince>

138 ECtHR, Zhukovets and Others v. Russia (Applications nos. 21782/21 and 18 others), 28 March 2024

and published a video¹³⁹ in which he highlighted the inadequate conditions in the centre.

After witnessing similar situations in which his compatriots found themselves, Arinichev continued speaking out about the SOA's injustices and life-threatening and worrying actions. The latest in a series was a peaceful protest in Zagreb on 4 July 2024 to warn that asylum seekers are being denied protection due to the unfounded opinions of the SOA, thereby exposing them to potential danger, torture and/or inhuman treatment. Before starting the protest itself, the applicant allowed himself to be searched by police officers, answered all their questions and agreed to have all demonstration materials photographed, including his T-shirt with the provocative handwritten inscription 'FUCK SOA', after which the police officers did not mention that his T-shirt potentially violated the regulations of the Republic of Croatia and allowed the protest to proceed. He wore the aforementioned T-shirt during the protest, for which he was arrested, and a misdemeanour charge was filed against him for insulting a state body.

He was sentenced to 15 days in prison, ignoring that he had not intended to insult the SOA but rather to warn about irregularities in the work of the state body on which his life depends.

Although the appeal proceedings are ongoing, Arinichev, instead of being released, was placed in a detention centre on the border with Bosnia and Herzegovina, with the explanation that his freedom of movement needed to be restricted for three months "to protect public order in the Republic of Croatia, given that the person insulted a state body in connection with the performance of its duties" - that is, the Ministry of the Interior decided on the most severe measure and for the maximum duration, claiming that other measures could not achieve the purpose of imposing the measure. He spent three months detained in the Transit Reception Centre for Foreigners Trilj.

Restrictions on access to information

Access to information has also been deteriorating in the last few years. There have been several examples of highly problematic practices by the government, various ministries, and other relevant institutions. For example, Gong was denied information about the names of the special advisors to the minister of Croatian veteran's affairs for five months, citing the protection of personal data, but the Ministry was finally forced to disclose the names in April 2024, after Gong filed a complaint to the Information Commissioner.¹⁴⁰

139 Vlad Arinichev, Footage of the asylum centre in Zagreb on 10 Spetember 2023, available at https://www.youtube.com/watch?v=mZh1Mz9MkLk&ab_channel=ArinichevVladislav

140 Gong, Special advisors under special treatment despite their influence, They are not held accountable for conflict of interest, 21 January 2024, available at <https://gong.hr/en/2024/01/29/special-advisors-under-special-treatment-despite-their-influence-they-are-not-held-accountable-for-conflict-of-interest/>

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

In 2024, attacks of Prime Minister Plenković and the ruling party, the Croatian Democratic Union, against Gong and other CSOs continued. The prime minister first accused Gong of being politically manipulated by other political parties against the ruling party. This narrative then evolved, and he accused Gong of crafting the political opposition's talking points and organising protests against the ruling party. Croatian Democratic Party's official Facebook page began tagging Gong in its posts, labelling it para-political and a hypocritical organisation that influences left-wing parties and politicians. These posts used Gong as a figurehead for the political opposition to undermine any criticism of the ruling party. In less than 20 days in January, a total of eight posts explicitly naming and attacking Gong were published.

In December 2024, the Prime Minister questioned the independence of Gong at a press conference and said that they are a leftist organisation, always advocating for leftist political options. He implied that he has control over access to funding for CSOs: "Let's

say the state says there's no money, no money. Let's say there's a call for proposals from the Foundation for Civil Society Development or the Government's Office for NGOs. Ah, you admitted you're only for one option: no money. Then they'll accuse us of being dictators, pharaohs who don't nurture pluralism."¹⁴¹ Gong reacted to this and stated that "it is disheartening for democracy that the Prime Minister suggests he influences the allocation of grants, which should be evaluated by independent reviewers and awarded to organisations that meet the highest standards and submit the best project proposals."¹⁴²

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

According to the analysis published by Zelena Akcija – Friends of the Earth Croatia, in October 2024, SLAPPs are one of the methods of repression of environmental advocacy organisations and initiatives. According to the analysis, "currently, lawsuits remain active in the case of two organisations and two informal initiatives, while in two other cases (one organisation and one informal initiative), the lawsuits against their leaders have been withdrawn."¹⁴³

141 Gong, Is the Prime Minister signaling a willingness to penalise organisations that insists on free and fair elections?, 19 December, available at <https://gong.hr/en/2024/12/19/is-the-prime-minister-signaling-a-willingness-to-penalise-organisations-that-insists-on-free-and-fair-elections/>

142 Ibid

143 Friends of the Earth Croatia (Zelena akcija), Kruno Kardov, REPRESIJA NAD OKOLIŠNIM INICIJATIVAMA I ORGANIZACIJAMA CIVILNOG DRUŠTVA U HRVATSKOJ, September 2024, available at https://www.zelena-akcija.hr/system/document/1355/doc_files/original/ZA_AnalizaFIN-3.pdf

Public participation

Rules and practices on dialogue with civil society

The continuous deterioration of the previously well-established framework continued in 2024. The 8th convocation of the Council for Civil Society Development, the key advisory body to the government acting towards developing cooperation between the government and the civil society organisations in Croatia, held three sessions in 2024, out of which one was a constitutive session, the other two were extraordinary sessions.¹⁴⁴ The Council's Rules of Procedure that were brought in the first session of the 8th convocation still enable public bodies in the Council to outvote the representatives of civil society and the rule that the session of the Council will be held at the request of at least 1/3 of the Council remained for the Rules of Procedure of the 7th convocation. However, the civil society representatives proposed on multiple occasions that it should be changed to 1/5 of the members, which was the case in previous convocations of the Council.¹⁴⁵

Rules on access to and participation in consultations and decision-making processes

Although Croatia officially has a system set for participation in consultations, proposals made by the public and CSOs are rarely considered and accepted by the authorities. The data published in 2024 showed that the number of public e-consultations was smaller in 2023 (822) than in 2022 (when 1028 e-consultations were carried out).¹⁴⁶ Of those 822 consultations, 716 (87%) lasted less than 30 days, the length of consultations prescribed by the Right to the Access to Consultations Act. Associations submitted 2314 out of 19991 comments in the consultations, which makes them the second most common type of commenters, while the most comments were made by individuals (13704). Only 9% of all comments were accepted, 7% were partially accepted, 40% were not accepted, 23% were only noted, and even 21% were not replied to.

During the year, the e-consultation system became less accessible for civil society organisations. In May 2024, the e-consultations portal (esavjetovanja.gov.hr) made technical

144 Government of the Republic of Croatia Office for Cooperation with NGOs, Minutes of the meetings of the Council for the Development of Civil Society, available at <https://udruga.gov.hr/istaknute-teme/savjet-za-razvoj-civilnoga-drustva/zapisnici-sa-sjednica-savjeta/144>

145 Council for the Development of Civil Society of the Government of the Republic of Croatia, ZAPISNIK S 1. (KONSTITUIRAJUĆE) SJEDNICE 8. SAZIVA SAVJETA ZA RAZVOJ CIVILNOGA DRUŠTVA, 23 January 2024, available at https://udruga.gov.hr/UserDocsImages/dokumenti/arhiv/Novi%20direktorij/Savjet/Zapisnik_fin_2.pdf

146 Government of the Republic of Croatia, Godišnje izvješće o provedbi savjetovanja 2023, available at <https://savjetovanja.gov.hr/UserDocsImages//dokumenti//Godi%C5%A1nje%20izvje%C5%A1%C4%87e%20o%20provedbi%20savjetovanja%202023.pdf>

changes, which made e-consultations less accessible for civil society organisations and other actors. 42 civil society organisations signed a press release stating that this “represents the feigning of democracy and further erosion of democratic standards and the rule of law in Croatia.”¹⁴⁷ Access to the portal previously functioned through a simple registration system, but now it has to be accessed through the e-Citizens system. While the individuals could access the portal using some form of identification, for civil society organisations and other legal entities, a high-level security credential was required, which meant that the person authorised to represent the organisation had to activate their ID card at the Ministry of the Interior, install and use a unique

application on their mobile phone, and use a reader for their ID or a crypto device to access the e-Citizens system at all. The CSOs argued that “such a level of security is unjustified, unnecessarily complicates and administratively burdens, and narrows the space for civil society organisations to participate in decision-making processes, which will harm civic participation.” The organisations also complained that numerous technical issues prevented CSOs from participating in the consultations. In June 2024, the high-level security credentials were abolished, but only the legal representatives of the CSOs and not all the employees could participate in the consultations, which was too burdensome for most of the CSOs.¹⁴⁸

147 Gong, Digitalnim barijerama protiv sudjelovanja javnosti: Više od 40 udruga traži od Ministarstva uprave da im omogući komentiranje zakona, 7 June 2024, available at <https://gong.hr/2024/06/07/digitalnim-barijerama-protiv-sudjelovanja-javnosti-vise-od-40-udruga-trazi-od-ministarstva-uprave-da-im-omoguci-komentiranje-zakona/>

148 Gong, Javne rasprave u Hrvatskoj: Tko izdrži, sudjelovat će, 17 September 2024, available at <https://gong.hr/2024/09/17/javne-rasprave-u-hrvatskoj-tko-izdrzi-sudjelovat-ce/>

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT



Key recommendations

- *The State Attorney's Office and Ministry of Justice and Administration should ensure efficient investigations of human rights violations and timely implementation of supranational court decisions.*
- *The Ministry of Justice and Administration and the Ministry of the Interior should ensure accountability for officials involved in systematic human rights violations.*
- *The Ministry of the Interior should ensure independent and efficient monitoring of police work.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

Recipients of minimum income in Croatia who are capable of work are obligated to perform unpaid community service or face termination of their social assistance. This constitutes forced labour, violating international conventions such as the ILO Conventions on Forced Labour, the European Convention on Human Rights, and the Croatian Constitution. It also breaches the International Covenant on Economic, Social and Cultural Rights, the

European Social Charter, and the EU Charter of Fundamental Rights. In December 2023, the Centre for Peace Studies and the Centre for Peace, Nonviolence and Human Rights – Osijek petitioned¹⁴⁹ Croatia's Constitutional Court to assess the Social Welfare Act's compliance with the Constitution. However, no ruling has been made, leaving violations of social security, free choice of work, and prohibitions on forced labour and discrimination unaddressed in 2024.

Collective expulsions from Croatia continued. In 2024, the Danish Refugee Council recorded 384 cases of pushbacks in January and February

149 Centre for Peace Studies, *Konferencija za medije: Zakon o socijalnoj skrbi grubo krši Ustav RH i međunarodne ugovore*, 20 December 2023, <https://www.cms.hr/hr/prekarni-rad-i-nezaposlenost/konferencija-za-medije-zakon-o-socijalnoj-skrbi-grubo-krsi-ustav-rh-i-medunarodne-ugovore>.

before ending their protection activities in the Una-Sana Canton.¹⁵⁰ During the first eight months of 2024, Save the Children outreach teams working in Una-Sana Canton, in Bosnia and Herzegovina (BiH) near the border with Croatia, identified 1,504 refugees and migrants who were pushed back from Croatia, including 291 children out of whom 186 were unaccompanied.¹⁵¹ In October 2024, No Name Kitchen published *Burned Borders: A No Name Kitchen Investigation on Illegal Croatian Police Practices*.¹⁵² The report presents evidence of police practices alongside testimonies from survivors, who recount the systematic and brutal actions of officers burning essential items such as clothing and documents in an effort to push people back.

Denial of access to asylum and pushbacks have led to the fact that several national courts of the EU Member States had previously suspended Dublin transfers of asylum seekers to Croatia in the light of the risk of violation of Article 3 of the ECHR.¹⁵³ In 2024, the

Munich Administrative Court ruled against a Dublin transfer to Croatia, arguing that asylum seekers who are to be returned to Croatia under the Dublin III Regulation and against whom a final and enforceable return decision has been issued face a severe risk of being deported to Bosnia-Herzegovina or Serbia as part of a chain deportation process. Furthermore, the Court concluded that there are no effective legal protection mechanisms in Croatia for asylum seekers who have experienced degrading or inhuman treatment by the Croatian police.¹⁵⁴

Impunity and/or lack of accountability for human rights violations

Victims of illegal expulsions in Croatia continue to face systemic barriers to justice, including lack of access to effective remedies as required by European Court of Human Rights standards. The State Attorney's Office routinely dismisses complaints despite substantial evidence, while the Ministry of Interior

150 Danish Refugee Council, Border Monitoring Factsheet, available at <https://pro.drc.ngo/resources/documents/border-monitoring-factsheet/>

151 Save the Children in North West Balkans, Balkans Migration and Displacement Hub, Refugees and Migrants at the Balkans Route: Regional Overview January - August 2024

152 No Name Kitchen, *Burned Borders: A No Name Kitchen Investigation on Illegal Croatian Police Practices*, published on 10 October 2024; The Guardian, *Croatian police accused of burning asylum seekers' phones and passports*, published on 10 October 2024

153 CoE, European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), Report to the Croatian Government on the visit to Croatia carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 10 to 14 August 2020, p. 16, para 21, link available at: <https://rm.coe.int/1680a4c199>.

154 Munich Administrative Court, M 10 K 23.50597, 22 February 2024, decision in German attached to this submission as an annex.

denies wrongdoing without transparency or independent oversight. Internal investigations lack impartiality, remain inaccessible to the public and Ombudsperson, and reflect the government's failure to address police violence or uphold the rule of law, further eroding the integrity of the legal system.

In October 2024, after *The Guardian*¹⁵⁵ published the findings of the *Burned Borders* report, the Ministry of the Interior issued a press release¹⁵⁶ denying all accusations of police misconduct, including violence and the destruction of migrants' belongings during pushbacks. In the press release, the Ministry commented on the *M.H. and Others v. Croatia* ruling,¹⁵⁷ claiming that neither this nor any other judgment has established that the Croatian police conducted collective expulsions, contrary to the ECtHR's ruling that established a violation of Article 4 Protocol 4.

Follow-up to recommendations of international and regional human rights monitoring bodies

The UN Committee on the Elimination of Racial Discrimination (CERD) expressed concerns about continued discrimination

against Roma and ethnic Serb communities, particularly in employment and education. CERD recommended that Croatia enforce the Anti-Discrimination Act more robustly, particularly in these sectors, and conduct awareness campaigns targeting discrimination. Croatia has implemented programs like the Operational Programmes for National Minorities, which focus on cultural tolerance and the rule of law. However, the impact of these efforts remains limited due to implementation gaps and inadequate resources for local actions.

Furthermore, Croatia's follow-up to human rights obligations revealed critical gaps in addressing systemic issues such as corruption, war-era crimes, and hate crimes. Despite recommendations from the Human Rights Committee,¹⁵⁸ the country has struggled with ineffective investigations, lack of transparency, and insufficient protection for marginalised communities. The follow-up efforts appear inadequate, with enforcement mechanisms remaining weak and accountability measures insufficient to resolve the deep-rooted problems within the legal system.

Significant challenges persist in realising human rights, including access to education,

155 *The Guardian*, [Croatian police accused of burning asylum seekers' phones and passports](#), published on 10 October 2024

156 Croatia, Ministry of the Interior, [Reagiranje na optužbe iz članka portala The Guardian](#) (Response to the Allegations in The Guardian Article), published on 10 October 2024

157 *M.H. and Others v. Croatia* (applications nos. 15670/18 and 43115/18): <https://hudoc.echr.coe.int/?i=001-213213>

158 United Nations Office of the High Commissioner for Human Rights, [In Dialogue with Croatia, Experts of the Human Rights Committee Commend Measures to Investigate War-Era Enforced Disappearances, Raise Issues Concerning Historic Hate Crimes and Corruption](#), 3 July 2024

media freedom, justice, and protections for whistleblowers. Roma and migrant children face particular difficulties alongside broader issues related to gender equality, combating hate speech, and addressing hate crimes.¹⁵⁹ This reflects a wider disregard for human rights obligations, undermining the rule of law in Croatia.

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

The European Implementation Network's (EIN) map of Europe shows the 46 signatory states of the European Convention on Human Rights and the number of unexecuted ECtHR judgments that have not yet been implemented. According to the map, in 2024, Croatia had 27 leading judgments pending implementation; the average time leading cases have been pending in Croatia was 3 years and 4 months; and the percentage of leading cases from the last 10 years still pending was 28%.¹⁶⁰

As previously reported, in April 2022, the ECtHR ruling in *M.H. and Others v. Croatia* became final. In September 2022, the Committee of Ministers classified the case

under enhanced supervision. The government has submitted four action plans so far, and communications from the Ombudsperson of the Republic of Croatia and NGOs have followed.¹⁶¹ More than two and a half years after the ECtHR ruled against Croatia, law enforcement has again dismissed the criminal complaint filed by Madina's family. Over seven years after her tragic death, authorities have failed to effectively investigate the unlawful expulsion that led to the six-year-old's death. The dismissal cited insufficient evidence of police misconduct, contradicting the ECtHR's judgment, which identified the family as victims of Croatia's illegal expulsion practices. Family's lawyers, with the support of the Centre for Peace Studies, therefore lodged a new Constitutional Complaint in June 2024.¹⁶²

Other systemic issues

The Croatian government has failed to amend the Law on Compulsory Health Insurance, which requires certain citizens to visit the Croatian Institute for Health Insurance (CIHI) every three months to maintain their health-care coverage. In July 2023, over 106,000 individuals were removed from insurance rolls for non-compliance, disproportionately affecting people with disabilities, those in poor

159 Human Rights House Zagreb, *Konferencija o ljudskim pravima – implementacija međunarodnih preporuka upućenih RH*, 27 November 2024

160 European Implementation Network, *Country Map*, available at: <https://www.einnetwork.org/countries-overview>, and *Data for Croatia*, available at: <https://www.einnetwork.org/croatia-echr>.

161 All communication available under Case Documents, *HUDOC*

162 Centre for Peace Studies, *Despite the ECHR Judgment, Criminal Complaint by Madina's Family Dismissed Again; Family Submits New Constitutional Appeal*, 25 June 2024

health, and individuals living far from CIHI offices.¹⁶³ This policy violates constitutional guarantees, including the right to healthcare, disability rights, and equal access to education. Although exceptions for serious health conditions are informally acknowledged, they remain unenforced by law, leading to arbitrary enforcement. The Ombudswoman¹⁶⁴ requested a constitutional review in 2023, but as of 2024, no decision has been issued, continuing to violate citizens' rights to healthcare.

One year after Mihaela Berak's tragic murder, legal and institutional responses to her case have continued to raise concerns about the rule of law in Croatia. Police officer Marko Šmazil initially claimed her death was a suicide, but the case was later reclassified as murder. Despite this, there have been delays and conflicting narratives surrounding the investigation. The State Attorney's Office (DORH) has been criticised for not investigating potential misconduct by the Osijek police, despite evidence suggesting Šmazil's possessiveness, revealed through messages. The lack of thorough investigation by authorities and the continued public outcry, including protests by women's organisations,¹⁶⁵ highlight systemic failures

and demand justice for Berak and reform of the justice system.

From 2012 to 2014, three men, including a police officer, repeatedly raped a mentally impaired girl in Našice, Croatia. Despite the severity of the crime, they received only two-year sentences, with the court citing their roles in the Homeland War and family obligations as mitigating factors. This lenient sentencing raises serious concerns about impunity for law enforcement officers and judicial bias in handling cases of gender-based violence. These issues point to broader systemic problems within the justice system, where those in positions of power are not held accountable, undermining public trust in the rule of law.¹⁶⁶

In 2024, protests erupted on National Day Against Violence Towards Women following revelations that a doctor in Osijek, convicted of raping a patient, continued to work at the hospital while facing trial.¹⁶⁷ He was only removed after public outrage and a second assault allegation, highlighting the systemic failure to protect women within institutions. Women's organisations condemned the ongoing institutional violence, pointing to the weak

163 Croatian Institute for Health Insurance (Croatia), Report on the operations of CIHI for the year 2023 (Izvešće o poslovanju HZZO-a za 2023.), February 2024, https://hzzo.hr/sites/default/files/inline-files/Izve%C5%A1%C4%87e%20o%20poslovanju%20HZZO-a%20za%202023.%20godinu_1.pdf.

164 The Ombudswoman (Croatia), Report of the Ombudswoman for 2023 (Izvešće pučke pravobraniteljice za 2023), March 2024, <https://www.ombudsman.hr/hr/izvjesca-puckog-pravobranitelja/#>.

165 Dnevnik.hr, Solidarnost sa ženama: "Mihaelin ubojica mora biti primjereno kažnjen, a svi odgovorni u slučaju ginekologa trebaju podnijeti ostavke", 20 September 2024

166 Index.hr, Silovali susjedovu kćer s teškoćama u razvoju, dobili 2 godine. Sud: Bili su u ratu, 21 September 2024

167 Novosti, U 14 gradova u petak prosvjed "Prestanite štititi silovatelje!", 18 September 2024

enforcement of laws, the lack of a national strategy to combat gender-based violence, and the institutional bias that often shields perpetrators. Protesters demanded accountability, including resignations of hospital officials and government ministers, and legal reforms to ensure that professionals facing charges for serious crimes against women are suspended until the legal process concludes.¹⁶⁸

FOSTERING A RULE OF LAW CULTURE

Contribution of civil society and other non-governmental actors

In 2024, the Human Rights House Zagreb and the Miko Tripalo Center implemented activities under the Impact4Values programme and the project “Strengthening the Capacity of Civil Society to Protect and Promote the Rule of Law in Croatia.”¹⁶⁹

On 27 May 2024, a panel, “Civil Society Organizations and the Rule of Law Report – Best Practices in Collaboration and Advocacy”, was held. European NGOs discussed challenges

with the Rule of Law Report, including deadlines, rigid questionnaires, inconvenient release timings, low visibility, and limited funding. Concerns were raised about the EC’s technical approach, which often overlooks fundamental rights. The need for CSO collaboration, resource sharing, and ongoing advocacy was emphasised, with effective communication with EC authors and national authorities seen as crucial for change.¹⁷⁰

The policy document “Engaging with the Rule of Law Report: Best Practices from Civil Society in EU Member States” was presented at the same event. It outlines strategies for CSOs engaging with the Rule of Law Report. Key recommendations include starting preparations by September to meet January deadlines, using clear methodologies, and forming working groups for each chapter. The document highlights the importance of collaboration among CSOs and regular communication with the EC and national authorities. It also emphasises disseminating report findings through public events, media, and social platforms to promote dialogue on rule of law issues.¹⁷¹

On 9 September 2024, both organisations, in collaboration with the EC Representation,

168 Dnevnik.hr, [Solidarnost sa ženama: “Mihaelin ubojica mora biti primjereno kažnjen, a svi odgovorni u slučaju ginekologa trebaju podnijeti ostavke”](#), 20 September 2024; Index.hr, [Žene diljem Hrvatske prosvjedovale zbog ginekologa iz Osijeka: “Naša krv stvara buku”](#), 20 September 2024

169 See: <https://tripalo.hr/jacanje-kapaciteta-civilnog-drustva-za-zastitu-i-unapredivanje-vladavine-prava-u-hrvatskoj/>.

170 See: <https://www.kucaljudskihprava.hr/panel-rasprava-organizacije-civilnog-drustva-i-izvjesce-o-vladavini-prava-dobre-prakse-u-suradnji-i-zagovaranju/>.

171 See: https://www.kucaljudskihprava.hr/wp-content/uploads/2024/05/Best_practices_RoLR_final-2.pdf.

hosted the event “State of the Croatian Judiciary: Rule of Law Report – What Next?” It featured two segments: a presentation of public opinion research conducted by Ipsos for the Miko Tripalo Center on public perceptions of the judiciary, followed by an expert panel discussion analysing the Rule of Law Report’s findings and exploring opportunities to strengthen Croatia’s rule of law.¹⁷²

On 30 September 2024, organisations and the Croatian Journalists’ Association hosted the “SLAPP and Media Freedoms: Rule of Law Report” event focused on media freedoms, specifically SLAPPs. It explored media pluralism and freedoms, as the EC’s Rule of Law Report highlighted. The event had two segments: the presentation of findings from the “Combating SLAPP in Croatia” project, conducted by the Miko Tripalo Center and the Croatian Journalists’ Association with support from the Justice for Journalists Foundation, and a panel discussion on the Rule of Law Report’s findings and recommendations, identifying ways to strengthen media freedoms in Croatia.¹⁷³

On 21 November 2024, both organisations, in collaboration with the EC Representation, hosted the event “The Future of Anti-Corruption Efforts in Croatia: Rule of Law Report.” The event opened with a presentation of survey results on youth attitudes toward corruption,

conducted as part of the “Empowering Future Generations to Fight Corruption” project, supported by the Netherlands Helsinki Committee. This was followed by a panel discussion where experts examined the EC’s Rule of Law Report findings and recommendations, focusing on ways to strengthen anti-corruption efforts in Croatia.¹⁷⁴

172 See: <https://www.kucaljudskihprava.hr/odrzan-skup-stanje-u-hrvatskom-pravosudu-izvjestaj-o-vladavini-prava-kako-dalje/>.

173 See: <https://www.kucaljudskihprava.hr/odrzan-skup-slapp-i-medijske-slobode-izvjestaj-o-vladavini-prava/>.

174 See: <https://www.kucaljudskihprava.hr/odrzan-skup-buducnost-borbe-protiv-korupcije-u-rh-izvjestaj-o-vladavini-prava/>.

CONTACT

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The Centre for Peace Studies is a non-profit association of citizens whose mission is promoting non-violence, human rights and social change through education, research and activism. CMS operates through three complementary programs: combating racism, xenophobia, and ethnic exclusivism; conflict transformation and non-violence affirmation; strengthening of social solidarity, human security and development cooperation.

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LIGA LIDSKÝCH PRÁV

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RULE OF LAW REPORT

2025



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ABOUT THE AUTHORS

The League of Human Rights



LIGA LIDSKÝCH PRÁV

The League of Human Rights (LLP) is a non-governmental non-profit human rights organization that monitors the state of respect for fundamental rights in the Czech Republic and points out their violations. LLP has long advocated systemic changes in the area of violations of fundamental rights in the Czech Republic through various instruments. At present, we focus on the protection of the rights of vulnerable people, including patients, mothers, people with psychosocial disabilities, children and involuntarily sterilised women.

KEY CONCERNS

Justice System

The Czech judiciary has made progress this year, with more women in top positions at the Constitutional Court, advancements in prosecutorial reform, a two-tier disciplinary system, and slight pay increases for court staff. Trust in the judiciary remains solid, but challenges like incomplete digitalisation and criticism of the expert law persist.

In 2024, progress was made in addressing judicial employee remuneration. Salaries will increase by CZK 5,000 from January 2025, though administrative staff at district courts face a reduction of CZK 1,200. Nevertheless, unions demand systemic reforms, including a special salary table for judicial staff.

Anti-Corruption Framework

The first law regulating lobbying and the phenomenon of revolving doors is in the legislative process and it is a big step forward. Nevertheless, it contains multiple exceptions which could weaken the impact of the law.

The Act on lobbying regulation is in the legislative process. Yet, it is not satisfactory as it contains many exceptions which may weaken its impact. Insufficient steps have been taken to shorten proceedings in high-level corruption

cases. The Parliamentary Code of Ethics has not been adopted.

Media Environment and Media Freedom

The Czech Republic ranked 17th in the World Press Freedom Index, published annually by Reporters Without Borders (RSF). This marks a decline of three positions compared to the previous year. RSF noted challenges such as the high concentration of private media ownership and increasing online hostility toward journalists. However, some legislative initiatives seem positive.¹

The implementation of both recommendations is in progress: the implementation of European Media Freedom Act (not implemented yet) and the planned increase of licence fees.

Checks and Balances

The National Human Rights Institution has not been established, nor has the Office of Ombudsperson for Children, but the legislation for both is in the process.

Civic Space







Cooperation between the government and the civil sector is functional. We do not agree with the unbalanced distribution of funds for the civil sector.

1 Lupa.cz, 'A New Global Media Freedom Ranking Released, Czechia Ranks 17th' ('Vyšel nový žebříček svobody médií ve světě, Česko je na 17. místě'), 3 May 2024, <https://www.lupa.cz/aktuality/vysel-novy-zebricek-svobody-medii-ve-svete-cesko-je-na-17-miste>.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

Several important legislative changes were passed in 2024.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression



No progress



Progress



JUSTICE SYSTEM



Key recommendations

- Accelerate the process of justice digitisation, avoid further delays, and ensure that the planned projects are functional by the end of 2026.
- Enhance access to justice for vulnerable people by ensuring accessible legal aid and providing regular training for judges in areas such as proceedings on involuntary hospitalisation, measures supporting individuals with impaired legal capacity, and proceedings on the limitation of legal capacity. Additionally, ensure training in effective communication with vulnerable individuals through clear written and oral information provided by courts, with all these measures implemented by the end of 2026.
- Identify and implement fixed, systemic solutions to ensure more adequate and dignified remuneration for court administrative staff, based on an assessment of the current situation, with these measures firmly established by the end of 2025.

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

In the Czech judiciary, women have long been in the majority, although their representation in high judicial positions remains lower. In

2023, women made up 65% of judges in general courts,² a trend that continued in 2024 with new appointments by President Petr Pavel. At the beginning of the year, he appointed 57 judges, 45 of whom were women.³ By the end of the year, he appointed an additional 60 judges, 40 of whom were women.⁴ A more balanced gender ratio is evident in the leadership

2 Ministry of Justice (Czech Republic), *Czech Judiciary 2023: Annual Statistical Report (České soudnictví 2023: Výroční statistická zpráva)*, Prague: Ministry of Justice, 2024, p. 19, https://msp.gov.cz/documents/d/msp/ceske_soudnictvi_2023-1.

3 'President appointed 57 new judges, including former lawyers' ('Prezident jmenoval 57 nových soudců, jsou mezi nimi i dosavadní advokáti'), *Advokátní deník*, 2024, <https://advokatnidenik.cz/2024/02/23/prezident-pavel-jmenoval-57-novych-soudcu-jsou-mezi-nimi-i-dosavadni-advokati/>.

4 Ministry of Justice (Czech Republic), 'Press release: President appointed sixty judges of general courts' ('Tisková zpráva: Prezident jmenoval šedesát soudkyň a soudců obecných soudů'), Prague: Ministry of Justice, 18 December 2024, <https://msp.gov.cz/web/msp/rozcestnik/-/clanek/prezident-republiky-jmenoval-%C5%A1edes%C3%A1t-soudky%C5%88-a-soudc%C5%AF-obecn%C3%BDch-soud%C5%AF>.

of regional courts, where 52% of chairpersons and 60% of deputy chairpersons are women.⁵ However, no woman leads any of the top courts. Women hold only deputy chairperson positions at the High Court in Olomouc,⁶ the Supreme Administrative Court,⁷ and the Constitutional Court.⁸

In 2024, the president appointed four new Constitutional Court judges: Milan Hulmák (academic, lawyer, and arbitrator),⁹ Tomáš Langášek (judge), Jiří Přibán (academic),¹⁰ and Dita Řepková (academic). These appointments were not accompanied by any

significant challenges. Additionally, the president appointed Daniela Zemanová as Deputy Chairperson of the Constitutional Court, alongside Kateřina Ronovská as another Deputy Chairperson. Women now constitute one-third of the Constitutional Court, the highest proportion in its history.

The process for selecting new judges is governed by relatively new legislation, which, while functional, is not without flaws.¹¹ According to researchers from the international project *The Portrait of a Judge*,¹² the selection process could be more transparent. Issues such as the

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- 5 Ministry of Justice (Czech Republic), *Czech Judiciary 2023: Annual Statistical Report* (České soudnictví 2023: Výroční statistická zpráva), Prague: Ministry of Justice, 2024, p. 20, https://msp.gov.cz/documents/d/msp/ceske_soudnictvi_2023-1.
- 6 Ministry of Justice (Czech Republic), *Leadership of the High Court in Olomouc* (Vedení Vrchního soudu v Olomouci), Prague: Ministry of Justice, 2024, <https://msp.gov.cz/web/vrchni-soud-v-olomouci/zakladni-informace/-/clanek/vedeni-vrchniho-soudu-v-olomou-1>.
- 7 Supreme Administrative Court (Czech Republic), *Officials of the Supreme Administrative Court* (Funkcionáři Nejvyššího správního soudu), Brno: Supreme Administrative Court, 2025, <https://www.nssoud.cz/o-soudu/organizace-soudu/funkcionari-nejvyssiho-spravniho-soudu>.
- 8 Constitutional Court (Czech Republic), *Current Officials and Judges* (Současní funkcionáři a soudci), Brno: Constitutional Court, 2025, <https://www.usoud.cz/soucasni-funkcionari-a-soudci>.
- 9 Office of the President of the Republic (Czech Republic), 'The President of the Republic Appointed Judges to the Constitutional Court', 1 February 2024, <https://www.hrad.cz/cs/pro-media/tiskove-zpravy/aktualni-tiskove-zpravy/prezident-republiky-jmenuje-soudce-ustavniho-soudu-17591#from-list>.
- 10 Office of the President of the Republic (Czech Republic), 'Press Release: President Petr Pavel Appointed the Vice-President and Judges of the Constitutional Court' ('Tisková zpráva: Prezident republiky Petr Pavel jmenoval místopředsedkyni a soudce Ústavního soudu'), 25 June 2024, <https://www.hrad.cz/cs/pro-media/tiskove-zpravy/aktualni-tiskove-zpravy/prezident-republiky-petr-pavel-jmenuje-soudce-a-mistopredsedkyni-ustavniho-soudu-17966#from-list>.
- 11 European Commission, *Rule of Law Report 2024: Chapter on the State of Rule of Law in the Czech Republic*, Brussels: European Commission, 2024, p. 5, https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_cs.
- 12 *JudgePortrait: Project Description*, <https://judgeportrait.eu/project-description/>.

low remuneration for judicial assistants and the demanding judicial examination may deter potential candidates from pursuing a judicial career. The judicial examination places significant emphasis on legal knowledge but pays insufficient attention to other qualities and skills, such as analytical and logical thinking, stress management, or communication skills.¹³

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

The legislature has adopted an amendment to the Act on Public Prosecution aimed at addressing previously unregulated or contentious issues and significantly strengthening the independence of the judiciary. A key aspect of the reform is the introduction of fixed seven-year terms for senior prosecutors, along with more transparent rules for their selection.¹⁴

One of the most debated provisions defines the conditions under which the government can

dismiss the Prosecutor General. Previously, the government could dismiss the Prosecutor General without providing reasons. Under the new legislation, dismissal is allowed only under specific legal conditions, and such decisions are now subject to review by the Supreme Administrative Court.¹⁵ This reform has been broadly well-received, and further details were included in last year's European Commission rule of law report on the Czech Republic.¹⁶

In 2024, President Pavel exercised his veto power for the first time, rejecting an amendment to the Act on Courts and Judges. This amendment stipulated that lay judges would no longer participate in certain court proceedings alongside professional judges, as had been the case until now. Exceptions include first-instance criminal proceedings for particularly serious crimes, excluding property and economic offenses. Lay judges would also participate in first-instance cases involving the murder of a newborn child by its mother.¹⁷

13 Echo24.cz, 'Czechia Aims to Improve the Selection of Judges' ('Česko chce zlepšit výběr soudců'), <https://www.echo24.cz/a/HXpAC/cesko-chce-zlepsit-vyber-soudcu>.

14 Reconstruction of the State (Czech Republic), 'Senators Approved a Key Law for Independent Judiciary. It Took Almost 25 Years' ('Senátoři schválili klíčový zákon pro nezávislou justici. Trvalo to takřka 25 let'), 2024, <https://www.rekonstrukcestatu.cz/archiv-novinek/senatori-schvalili-klicovy-zakon-pro-nezavislou-justici-trvalo-to-takrka-25-let>.

15 Ibid.

16 European Commission, *Rule of Law Report 2024: Chapter on the State of Rule of Law in the Czech Republic*, Brussels: European Commission, 2024, pp. 3–4, https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_cs.

17 Advokátní deník, 'Limitation of Lay Judges Confirmed, Deputies Overrode the President's Veto' ('Omezení přísedících u soudu potvrzeno, poslanci přehlasovali prezidentovo veto'), 2024, <https://advokatnidenik.cz/2024/10/23/omezeni-prisedicich-u-soudu-potvrzeno-poslanci-prehlasovali-prezidentovo-veto/>.

The President criticised the amendment, stating that such a significant reduction in the use of lay judges should have been preceded by a more thorough analysis.¹⁸ However, Parliament overrode the President's veto, and the amendment took effect in January 2025.¹⁹

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

Lawmakers have recently amended the disciplinary procedure for judges, prosecutors, and executors, which is now becoming two-tiered. Until now, these proceedings were handled exclusively by the Supreme Administrative Court. Following the Court's decision, the only other options were to request a retrial or file a constitutional complaint. Under the new system, first-instance cases will be decided by the High Courts in Prague and Olomouc, while appeals will be heard by the Supreme Administrative Court or the Supreme Court.²⁰

The amendment also introduces the possibility of reaching an agreement on guilt and disciplinary measures. Disciplinary measures for judges and prosecutors include a reprimand,

salary reduction, dismissal from office, or removal from the position of presiding judge (in the case of judges). For executors, measures may include a warning, a fine, or dismissal from office.²¹

Remuneration/bonuses for judges and prosecutors

In 2024, the Constitutional Court dealt with three cases concerning the freezing of judges' salaries in 2021, 2022, and 2024. It assessed the constitutionality of legislative measures restricting the growth of judges' salaries and examined whether these measures endangered the independence of the judiciary.

In the case of salary freezes in 2021, the legislature maintained judges' salaries at the 2020 level. The Constitutional Court found this measure constitutional, given the exceptional circumstances caused by the COVID-19 pandemic. Judges were required to show solidarity with society, but the intervention did not compromise their financial security or independence.

18 Office of the President of the Republic (Czech Republic), 'Press Release: The President of the Republic Vetoed the Law' ('Tisková zpráva: Prezident republiky vetoval zákon'), Prague: Prague Castle, 2024, <https://www.hrad.cz/cs/pro-media/tiskove-zpravy/aktualni-tiskove-zpravy/prezident-republiky-vetoval-zakon-18090>.

19 Chamber of Deputies of the Parliament of the Czech Republic, *House Document 598: Amendment to the Act on Courts and Judges - EU*, 2025, <https://www.psp.cz/sqw/historie.sqw?o=9&t=598>.

20 Deník N, 'Pavel Signed the Introduction of Two-Tier Disciplinary Proceedings with Judges and Prosecutors' ('Pavel podepsal zavedení dvoustupňových kárných řízení se soudci a žalobci'), 2024, <https://denikn.cz/minuta/1607204/>.

21 Ibid.

The salary freeze in 2022 was deemed unconstitutional on procedural grounds by the Constitutional Court because the restrictive measure was neither properly justified nor discussed with representatives of the judiciary. Furthermore, the law was passed under a state of legislative emergency, which was not warranted. Nevertheless, the Court ruled that the salary differences would not be reimbursed to the judges. The Court considered extraordinary circumstances, including the deteriorating economic situation, the energy crisis, and the war in Ukraine. According to the Constitutional Court, reimbursing salaries would not contribute to public trust in the judiciary.

The Constitutional Court emphasised that interventions in judges' salaries must be properly justified and discussed with the judiciary to avoid undermining the independence of the

judiciary. Salary restrictions are permissible only in exceptional circumstances, provided they are proportionate and respect constitutional principles. The material security of judges is essential not only for their independence but also for maintaining public trust in the judiciary.²²

In previous years, our rule of law report for the Czech Republic highlighted the lack of resources for the remuneration of judicial employees, particularly assistants and administrative staff. The situation escalated further in 2024. Employees of courts,^{23,24} as well as those of public prosecution offices,²⁵ the Probation and Mediation Service, and the Prison Service,²⁶ staged mass strikes throughout the year, which significantly disrupted court operations (e.g., hearings were postponed, and court filing offices were closed).

22 Constitutional Court (Czech Republic), 'Press Release: Judicial Salaries for 2021, 2022, and 2024 Back on the Constitutional Court's Table: Three Times the Same but Each Time Slightly Different' ('Tisková zpráva: Soudcovské platy 2021, 2022 a 2024 po čase opět na stole Ústavního soudu: třikrát stejně, ale pokaždé trochu jinak'), 28 May 2024, <https://www.usoud.cz/aktualne/soudcovske-platy-2021-2022-a-2024-po-case-opet-na-stole-ustavniho-soudu-trikrat-stejne-ale-pokazde-trochu-jinak>.

23 iRozhlas, 'Court Officials Strike Over Salaries: Thousands Stay Home for a Day' ('Soudní úředníci stávkují kvůli platům. Tisíce lidí zůstávají jeden den doma'), 2024, https://www.irozhlas.cz/zpravy-domov/soud-soudy-stavka-cesko-justice-platy-pavel-blazek_2405290715_ako.

24 ČTK, 'Ministers of Justice and Finance Plan Another Meeting with Judicial Unions' ('Ministři spravedlnosti a financí počítají s další schůzkou s justičními odbory'), České noviny, <https://www.ceskenoviny.cz/zpravy/dnesnim-dnem-skonci-tridenni-stavka-pracovniku-soudu/2580000>.

25 Czech Television (Česká televize), 'Employees of the Prague Public Prosecutor's Office to Go on a Three-Day Strike' ('Zaměstnanci státních zastupitelství v Praze půjdou do třídní stávký'), 2024, <https://ct24.ceskatelevize.cz/clanek/domaci/zamestnanci-statnich-zastupitelstvi-v-praze-pujdou-do-tridenni-stavky-353793>.

26 Czech Justice, 'Because of the Low Salaries, Even Probation Officers Have Turned to Blažek' ('Kvůli nízkým platům se na Blažka obrátili i probační úředníci'), 2024, <https://www.ceska-justice.cz/2024/06/kvuli-nizkym-platum-se-na-blazka-obratili-i-probacni-urednici/>.

According to the Deputy President of the Supreme Court, Petr Šuk, one of the main causes of underfunding in court budgets is that the judiciary has no direct influence in the adoption of its budget. This issue is compounded by high turnover among underpaid employees, which jeopardises the efficiency of the courts. Judicial proceedings may slow down as a result. Ultimately, insufficient funding for judicial employees could threaten the democratic rule of law by paralysing the judiciary.²⁷

The striking employees received support not only from Deputy President Šuk but also from other judges. For instance, judges from the High Court in Prague organised an informal fundraiser to compensate employees for the wages they lost when they had to take unpaid leave to join the strike.²⁸

After discussions with representatives of the Supreme, High, and Regional Courts, Justice Minister Pavel Blažek promised that the average budgeted salary for judicial employees would increase from the original CZK 37,370 by CZK 5,000 to CZK 42,370 starting in January 2025.²⁹ However, the Collegium of Regional Court Presidents decided to reduce this amount by CZK 1,200 for administrative staff at district courts, a decision that has understandably angered court employees.³⁰

The Judicial Trade Union remains dissatisfied with the measures and continues to demand the creation of a special salary table for judicial employees.³¹

27 Czech Justice, ‘Šuk: The Current Situation Is Already Jeopardizing the Functioning of Courts’ (‘Šuk: Současný stav již ohrožuje samotné fungování soudů’), 2024, <https://www.ceska-justice.cz/2024/07/suk-soucasny-stav-jiz-ohrozuje-samotne-fungovani-soudu/>.

28 Czech Justice, ‘Judges of the High Court in Prague Financially Supported Striking Employees’ (‘Soudci z Vrchního soudu v Praze finančně podpořili stávkující zaměstnanci’), 2024, <https://www.ceska-justice.cz/2024/08/soudci-z-vrchniho-soudu-v-praze-financne-podporili-stavkujici-zamestnanci/>.

29 Ministry of Justice (Czech Republic), ‘Press Release of 16 December 2024: Meeting of the Ministry of Justice Leadership with Representatives of the Supreme, High, and Regional Courts’, 2025, <https://msp.gov.cz/web/msp/rozcestnik/-/clanek/jedn%C3%A1n%C3%AD-veden%C3%AD-ministerstva-spravedlnosti-s-p%C5%99edstaviteli-nejvy%C5%A1%C5%A1%C3%ADch-vrchn%C3%ADch-a-krajsk%C3%BDch-soud%C5%AF-1>.

30 Czech Justice, ‘Employees of the District Courts Will Receive CZK 1,200 Less Than in the Regional Courts’ (‘Zaměstnanci okresních soudů dostanou o 1 200 Kč méně než u krajských soudů’), 2024, <https://www.ceska-justice.cz/2024/12/zamestnanci-okresnich-soudu-dostanou-o-1200-kc-mene-nez-u-krajskych-soudu/>.

31 iDnes.cz, MAFRA, ‘The Salary of Court Employees Will Increase by CZK 5,000. Blažek Agreed with the Unions’ (‘Zaměstnanci soudů si polepší o 5 000 Kč. Blažek se dohodl s odbory’), 2024, https://www.idnes.cz/zpravy/domaci/zamestnanci-soudy-prumerny-plat-narust.A241212_162847_domaci_misl.

Independence of the Bar (chamber/association of lawyers) and of lawyers

The draft amendment to the Advocacy Act is heading to its third reading and introduces a number of changes.^{32,33} Among its key goals is to strengthen the confidentiality of communication between clients and lawyers, ensuring that all information exchanged in the context of legal services is protected. The amendment also allows for the General Assembly and elections to the bodies of the Czech Bar Association to be conducted online.

Another change involves removing certain barriers to the practice of trainee lawyers. This will support trainees who, for example, cannot work full-time due to caring for a family member or other serious reasons.

The amendment also introduces new rules to prevent the misappropriation of funds held in lawyers' escrow accounts. Escrow accounts will be specially designated, transactions will be restricted, and banks will be required to inform clients about account movements. The Czech Bar Association will gain broader supervisory powers in this area. Additionally, a compensation fund will be established to provide clients with reimbursements in cases of misappropriation.

The amendment further clarifies rules regarding the provision of legal services by unauthorised individuals. It also establishes procedures for lawyers in the official verification of a client's electronic signature.

The proposed changes to the Advocacy Act are mostly positive and help strengthen the professionalism, trust, and efficiency of the legal profession. Measures like stricter rules for escrow accounts or protecting confidentiality have a direct impact on the rule of law because they safeguard clients' rights, ensure legal certainty, and support the integrity of the profession. On the other hand, changes aimed at digitalisation or making the profession more accessible have an indirect effect – they make processes more efficient and inclusive, which helps the justice system function better overall. Importantly, none of the proposed measures seem to negatively affect the independence of lawyers.

In the third reading, lawmakers will also debate several proposed amendments.

32 Advokátní deník, 'Amendment to the Advocacy Act Passed Its Second Reading in the Chamber of Deputies' ('Novela zákona o advokacii prošla ve sněmovně druhým čtením'), 2025, <https://advokatnidenik.cz/2024/10/29/novela-zakona-o-advokacii-prosla-ve-snemovne-druhym-ctenim/>.

33 Chamber of Deputies of the Parliament of the Czech Republic, *House Document No. 623*, <https://www.psp.cz/sqw/historie.sqw?o=9&t=623&csnzp=1>.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

According to the European Commission, in 2024, nearly half of respondents in Czechia (46%) view judicial independence as “fairly good”, with 9% rating it “very good”. However, 25% see it as “fairly bad”, and 13% as “very bad”.³⁴ Interestingly, the percentage of respondents rating judicial independence positively decreased by 11 percentage points compared to 2023, reflecting a notable decline in public trust.³⁵

Despite this, Czech courts enjoy the trust of 61% of the population.³⁶ Trust decreases with increasing age but grows with higher educational attainment.³⁷ Over the long term, trust in the judiciary among Czechs has increased.³⁸

Factors influencing the perception of justice include the previously mentioned issue of insufficient funding for court employees and, from

a different perspective, the newly introduced two-tier disciplinary proceedings for judges.

Another significant factor affecting the perception of justice is the length of court proceedings, which is also related to the aforementioned issues. According to the most recent annual report on the state of the judiciary (2023), the Czech judicial system is stable. Some areas, such as administrative cases handled by regional courts, have seen reductions in processing times. First-instance civil and criminal proceedings were 18 days shorter than in 2022. However, disparities remain significant across judicial regions and individual district courts.³⁹

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Access to justice can be significantly supported by the amendment to the Ministry of Justice’s decree on lawyers’ fees, effective as of January 2025, which increases non-contractual fees

34 European Commission, *Perceived Independence of the National Justice Systems in the EU Among the General Public: Czechia*, 2024, <https://europa.eu/eurobarometer/surveys/detail/3193>.

35 European Union, *Flash Eurobarometer 540 – Perceived Independence of the National Justice Systems in the EU Among the General Public: Report*, 2024, pp. 3, 5, <https://europa.eu/eurobarometer/surveys/detail/3193>.

36 Center for Public Opinion Research, ‘Press Release of 19 September 2024: Trust in Selected Institutions of Public Life and Interpersonal Trust - Summer 2024’, 2024, pp. 1–2, <https://cvvm.soc.cas.cz/images/articles/files/5870/po240919.pdf>.

37 Ibid, p. 2.

38 Ibid, p. 3.

39 Czech Justice, ‘The Length of Proceedings in District Courts Decreased Last Year, by an Average of 18 Days’ (‘Délka řízení u okresních soudů se vloni zkrátila v průměru o 18 dní’), 2024, <https://www.ceska-justice.cz/2024/09/delka-řízení-u-okresnich-soudu-se-vloni-zkrátila-v-prumeru-o-18-dni/>.

for lawyers. These fees were last increased in 2006. The proposal initially included an ‘inflation clause’ that would allow fees to adjust according to inflation, but this was ultimately not adopted. The amendment is the result of extensive discussion and represents a compromise solution.⁴⁰

Despite this, the decree still contains discrepancies in proceedings where it is difficult to determine the value of the matter or the right being protected. While the fee for such cases has generally increased from CZK 10,000 to CZK 30,000, proceedings concerning the care of minors, adoption, support measures, legal capacity, interventions in personal integrity, or detention proceedings in cases of involuntary hospitalisation have seen their fees increase only from CZK 5,000 to CZK 10,000. For example, when a lawyer acts as a guardian in a detention proceeding related to involuntary hospitalisation, the fee remains only CZK 5,000.⁴¹ This represents a significant disparity compared to other cases where the value of the matter is difficult to assess, but the fee is higher.

The proceedings mentioned above are often highly demanding in terms of legal

argumentation, effective communication with the client, and the time the lawyer must dedicate to the case.

While the overall increase in lawyers’ fees is a positive step forward, it has not been adequately addressed in some areas.

The European Court of Human Rights (ECtHR) ruled that the Czech Constitutional Court violated the right to a fair trial (Article 6 of the Convention) by failing to review the complaint of two U.S. citizens, Alice Crites and Michael Rabinovitz. The Constitutional Court dismissed their complaint, citing the failure to exhaust all available remedies, specifically an appeal to the Supreme Court. However, under the Czech Civil Procedure Code, such an appeal was inadmissible in their case due to the low monetary value of the dispute (CZK 42,000). The ECtHR concluded that the Constitutional Court’s procedural misjudgment effectively deprived the applicants of access to a court. As a result, the applicants’ rights were found to be violated, and they were awarded €1,300 in compensation for expenses.⁴²

40 Czech Justice, ‘Blažek Signed an Increase in the Lawyer’s Tariff. It Is a Maximum Compromise, Says the Head of the CBA Němec’ (‘Blažek podepsal zvýšení advokátního tarifu. Jde o maximální kompromis, říká šéf ČAK Němec’), 2024, <https://www.ceska-justice.cz/2024/08/blazek-podepsal-zvyseni-advokatniho-tarifu-jde-o-maximalni-kompromis-rika-sef-cak-nemec/>.

41 Ministry of Justice (Czech Republic), *Decree No. 177/1996 Coll., on Lawyers’ Fees and Attorneys’ Fees for the Provision of Legal Services (Advocates’ Tariff)*, § 9, <https://www.zakonyprolidi.cz/cs/1996-177?citace=1>.

42 Czech Justice, ‘The Constitutional Court Has Deprived Two People of Their Right of Access to the Courts, Strasbourg Has Ruled’ (‘Ústavní soud připravil dvě osoby o právo na přístup k soudu, rozhodl Štrasburk’), 2024, <https://www.ceska-justice.cz/2024/06/ustavni-soud-pripravil-dve-osoby-o-pravo-na-pristup-k-soudu-rozhodl-strasburk/>.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

The Chamber of Deputies has passed the first reading of a proposal by a group of MPs to amend the Courts and Judges Act, focusing on improving ongoing judicial education, particularly in dealing with victims of crimes and other vulnerable individuals.⁴³ The amendment is called ‘Lex Anička’ as it responds to widespread criticism of the judiciary in cases where judges failed to adequately consider the needs of victims of sexual violence, including a widely publicised case of the sexual abuse of a minor by her stepfather.⁴⁴

The aim of the amendment is to introduce individualised education plans for judges to increase their participation in training programs focused on sensitive areas, such as interviewing children and working with victims of sexual violence or other traumatised individuals.

The proposal also includes increasing compensation for victims of crimes, which has not been adjusted since 2013. The amendment foresees regular indexation of these amounts based on the average wage.

Additionally, the amendment introduces the possibility of replacing expert opinions and expert testimony in legal capacity limitation proceedings with a written report from the attending physician, combined with an assessment of the individual’s need for support in legal acts, prepared by a court social worker. This approach is inspired by Austria, where similar assessments have proven effective. However, the government has criticised this part of the amendment, arguing that it requires more comprehensive development.⁴⁵

The President of the Judges’ Union, Libor Vávra, supports the proposal but highlights the long-standing issue of underfunding in the judiciary and the fact that the preparation of the amendment did not involve consultation with representatives of the judiciary.⁴⁶

43 Chamber of Deputies of the Parliament of the Czech Republic, *House Document No. 747: Amendment to the Act on Courts and Judges*, 2024, <https://www.psp.cz/sqw/historie.sqw?o=9&t=747>.

44 Czech Radio (iRozhlas), ‘Lex Anička: The Justice Department Wants More Training for Judges on How to Deal with Rape Victims’ (‘Lex Anička: Ministerstvo spravedlnosti chce více školit soudce, jak jednat s oběťmi znásilnění’), 2025, https://www.irozhlas.cz/zpravy-domov/lex-anicka-ministerstvo-spravedlnosti-chce-vice-skolit-soudce-jak-jednat-s_2407080700_job.

45 Government of the Czech Republic, *Opinion on the Proposal of the MPs Pavel Blažek, Marie Jílková, Klára Kocmanová, Taťána Malá, Barbora Urbanová, and Michal Zuna to Issue an Act Amending Act No. 6/2002 Coll., on Courts, Judges, and the State Administration of Courts and on Amendments to Certain Other Acts (Act on Courts and Judges), as Amended, and Other Related Acts (Parliamentary Document No. 747)*, <https://www.psp.cz/sqw/text/orig2.sqw?idd=244115>.

46 Czech Radio (iRozhlas), ‘Lex Anička: The Justice Department Wants More Training for Judges on How to Deal with Rape Victims’ (‘Lex Anička: Ministerstvo spravedlnosti chce více školit soudce, jak jednat s oběťmi znásilnění’), 2025, https://www.irozhlas.cz/zpravy-domov/lex-anicka-ministerstvo-spravedlnosti-chce-vice-skolit-soudce-jak-jednat-s_2407080700_job.

If the amendment is approved, it could come into effect in 2025. However, its successful implementation will depend on securing sufficient financial resources and support from the judicial community.

The proposed change to replace expert opinions in legal capacity limitation proceedings with reports from attending physicians and court social workers has potential but requires further development. The Czech Republic faces a chronic shortage of qualified experts, particularly in psychiatry, and courts often misuse expert opinions, adopting conclusions without proper scrutiny.⁴⁷ While systemic reform to improve evidence processes could enhance judicial efficiency and fairness, the proposed amendment needs refinement to ensure adequate assessments. Adequate funding for the judiciary is also crucial—not just for evidence processes but for the effective functioning of courts overall. These are relevant issues for the rule of law in the Czech Republic.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

The Czech government is overall failing to manage the topic of digitalisation. In autumn, Deputy Prime Minister for Digitalisation and Minister for Regional Development Ivan Bartoš was removed from office.⁴⁸ No one has replaced him as Deputy Prime Minister for Digitalisation. Shortly before the Christmas holidays, the government coalition pushed through a two-year postponement of the digitalisation of state services in the Chamber of Deputies by attaching a legislative rider, i.e. amendment loosely related to the original subject of the bill, to the Act on Electronic Communications.⁴⁹ The completion of digitalisation in the judiciary is also being delayed, although some digitalisation programs are already operational or will be soon (e.g., e-Collection and e-Legislation).⁵⁰

The digitalisation of the judiciary in the Czech Republic is progressing, but it is far from

47 Crossroads of Autonomy, *Court Practices in Deciding on Support Measures*, Research by the Public Defender of Rights, 2020, p. 27-29, https://www.ochrance.cz/uploads-import/ESO/Krizovatky_autonomie.pdf.

48 Czech Television (Česká televize), 'Pavel Dismissed Bartoš, Fiala Says There Will Be No Deputy Prime Minister for Digitalisation' ('Pavel odvolal Bartoše, Fiala říká, že nebude vicepremiér pro digitalizaci'), 2024, <https://ct24.ceskatelevize.cz/clanek/domaci/zive-spicky-petikoalice-jednaji-s-prezidentem-o-vladni-krizi-353493>.

49 iDnes.cz, 'Bartoš Asks Fiala How He Will Intervene with Ministers Where Digitisation Is Slowed Down' ('Bartoš interpelace: premiér Fiala, jak zakročíte tam, kde je zpomalena digitalizace'), 2024, https://www.idnes.cz/zpravy/domaci/bartos-interpelace-premier-fiala-jak-zakrocite-tam-kde-je-zpomalena-digitalizace.A250103_104425_domaci_kop.

50 zakony.gov.cz, <https://zakony.gov.cz/>.

complete. Some projects are already operational, such as e-Collection, which provides electronic access to current legal regulations, and e-Legislation, a tool streamlining the preparation and publication of legislation. These systems significantly facilitate access to law and legislative processes. However, significant shortcomings remain.⁵¹

The eISIR project, aimed at digitising the insolvency agenda in the Czech judiciary, faces significant delays. Initially scheduled for completion in autumn 2023, the current timeline indicates that full-scale operations will not begin until May 2025, with gradual implementation in other insolvency courts by November 2025.⁵² The Ministry of Justice attributes the delays to the previous administration, which struggled with preparations and the selection of a supplier. Current Minister of Justice Pavel

Blažek (ODS) emphasises that digitalisation is a priority for him and that intensive efforts are underway to complete the project.⁵³

On the other hand, the supplier, IBM, criticises the Ministry for insufficient cooperation and a lax approach, which it claims contributes to the delays.

Additionally, the eFILE project, focused on digitising court files, is also behind schedule. The Ministry of Justice has been working on this project since 2008.⁵⁴ According to the Ministry, the project is still in the preparation phase, with gradual implementation planned, though no specific details about the delays or their causes have been provided. The system is expected to be fully operational in the coming years.⁵⁵

51 Czech Radio (iRozhlas.cz), 'The Electronic Drafting of Regulations Is Gradually Starting; Laws Will Be Drafted with Its Help Next Year at the Earliest' ('Elektronická tvorba předpisů se postupně rozbíhá; zákony se s její pomocí budou psát nejdříve příští rok'), 2024, https://www.irozhlas.cz/zpravy-domov/esbirka-elegislativa-pravo-zakon-ministerstvo-vnitra_2412092030_cib.

52 Seznam Zprávy, 'Digital Justice Is Delayed Again. This Time to May 2025' ('Digitální spravedlnost se zase odkládá. Tentokrát na květen 2025'), 2024, <https://www.seznamzpravy.cz/clanek/domaci-politika-digitalni-spravedlnost-se-zase-odklada-264898>.

53 Ministry of Justice (Czech Republic), Press Release of 24 November 2024: 'The Ministry of Justice Sets the Record Straight on the Digitalisation of Justice', 2024, <https://msp.gov.cz/en/web/msp/rozcestnik/-/clanek/ministerstvo-spravedlnosti-uvadi-na-pravou-miru-informace-k-digitalizaci-justice-kopirovat->.

54 Seznam Zprávy, 'Digital Justice Is Delayed Again. This Time to May 2025' ('Digitální spravedlnost se zase odkládá. Tentokrát na květen 2025'), 2024, <https://www.seznamzpravy.cz/clanek/domaci-politika-digitalni-spravedlnost-se-zase-odklada-264898>.

55 Ministry of Justice (Czech Republic), Press Release of 24 November 2024: 'The Ministry of Justice Sets the Record Straight on the Digitalisation of Justice' (Tisková zpráva: 'Ministerstvo spravedlnosti uvádí na pravou míru informace k digitalizaci justice'), 2024, <https://msp.gov.cz/en/web/msp/rozcestnik/-/clanek/ministerstvo-spravedlnosti-uvadi-na-pravou-miru-informace-k-digitalizaci-justice-kopirovat->.

Full integration of all digital tools into a unified system has not yet been achieved, limiting their efficiency. While some areas of digitalisation are already delivering results, the judicial system is still awaiting comprehensive implementation to ensure greater efficiency and modernisation across the entire judiciary.⁵⁶

Overall, the digitalisation of the judiciary, which is intended to streamline and accelerate the work of courts and lawyers, is now expected to be completed no earlier than 2025, representing a delay of at least two years from the original plans.⁵⁷ This remains a fact despite the Ministry of Justice's objections.⁵⁸

Another aspect of digitalisation is the potential introduction of AI into the judiciary,⁵⁹ which is one of the topics the Ministry of Justice is

exploring as part of its digitalisation efforts.⁶⁰ Key discussions include ethical and moral considerations, with experts emphasising the need for clearly defined rules for AI integration. There is also debate over the automation of routine tasks, such as anonymising court rulings or analysing legal documents, which could significantly improve the efficiency of the judicial system. AI could also assist lawyers with text processing, finding connections, and conducting deeper analysis of larger datasets.

Cybersecurity is another critical area of discussion, as it is essential to protect sensitive data from potential threats. Lastly, Government Commissioner for Human Rights Klára Šimáčková Laurenčíková has urged the government to ensure that digitalisation efforts do

56 Czech Radio (iRozhlas.cz), 'The Electronic Drafting of Regulations Is Gradually Starting; Laws Will Be Drafted with Its Help Next Year at the Earliest' ('Elektronická tvorba předpisů se postupně rozbíhá; zákony se s její pomocí budou psát nejdříve příští rok'), 2024, https://www.irozhlas.cz/zpravy-domov/esbirka-elegislativa-pravo-zakon-ministerstvo-vnitro_2412092030_cib.

57 Seznam Zprávy, 'Digital Justice Is Delayed Again. This Time to May 2025' ('Digitální spravedlnost se zase odkládá. Tentokrát na květen 2025'), 2024, <https://www.seznamzpravy.cz/clanek/domaci-politika-digitalni-spravedlnost-se-zase-odklada-264898>.

58 Ministry of Justice (Czech Republic), Press Release of 24 November 2024: 'The Ministry of Justice Sets the Record Straight on the Digitalisation of Justice' ('Tisková zpráva: 'Ministerstvo spravedlnosti uvádí na pravou míru informace k digitalizaci justice'), 2024, <https://msp.gov.cz/en/web/msp/rozcestnik/-/clanek/ministerstvo-spravedlnosti-uvadi-na-pravou-miru-informace-k-digitalizaci-justice-kopirovat->.

59 Advokátní deník, 'Experts Discussed the Advantages and Pitfalls of Using AI Not Only in the Czech Justice System' ('O výhodách i úskalích využití AI nejen v české justici diskutovali odborníci'), 2024, <https://advokatnid-enik.cz/2024/10/21/o-vyhodach-i-uskalich-vyuziti-ai-nejen-v-ceske-justici-diskutovali-odbornici/>.

60 Czech Justice, 'Artificial Intelligence Is Changing the World of Law. The Association Is Addressing How to Work with It Ethically' ('Umělá inteligence mění i svět práva. Asociace řeší, jak s ní pracovat eticky'), 2024, <https://www.ceska-justice.cz/2024/10/umela-inteligence-meni-i-svet-prava-asociace-resi-jak-s-ni-pracovat-eticky/>.

not overlook vulnerable groups and to retain offline alternatives alongside online systems.⁶¹

Other

The proposed amendment to the Act on Experts, which has passed its first reading in the Chamber of Deputies,⁶² aims to stabilise the situation and prevent further decreases in their numbers, which have dropped by one-fifth since 2021. The amendment eliminates mandatory relicensing and insurance for individual experts, extends deadlines for entering data into the records, and allows experts to continue their activities without a new license beyond 2025.⁶³

However, the Public Defender of Rights (and other stakeholders) warns that the amendment addresses issues only superficially and may lead to greater confusion. The Ombudsman

criticises the abolition of relicensing and mandatory insurance, highlights unclear entry conditions and lengthy licensing processes, and proposes better privacy protection for experts. The Ombudsman also opposes the principle of collective liability for the misconduct of expert offices.⁶⁴

Fairness and efficiency of the justice system

Length of proceedings

As mentioned earlier, courts have slightly improved their efficiency year-over-year, and statistically, they now handle cases relatively quickly. However, there are notable differences between individual courts, as previously highlighted. Additionally, shorter case durations do not necessarily mean that all matters are reviewed thoroughly.⁶⁵

61 CzechJustice, 'Digitisation Without Alternative May Lead to Violation of Right to Fair Trial, Writes Commissioner' ('Digitalizace bez alternativy může vést k porušení práva na spravedlivý proces, píše komisař'), 2024, <https://www.seznamzpravy.cz/clanek/domaci-politika-digitalni-spravedlnost-se-zase-odklada-264898>.

62 House Print 750, Amendment to the Act on experts, expert offices. and expert institutes, Chamber of Deputies of the Parliament of the Czech Republic, 2024, <https://www.psp.cz/sqw/historie.sqw?o=9&t=750>.

63 Advokátní deník, 'The House Could Approve the Relaxation of the Conditions for Expert Witnesses Without Changes' ('Zmírnění podmínek pro soudní znalce by mohla sněmovna schválit beze změn'), 2024, <https://advokatnidenik.cz/2024/10/09/zmirneni-podminek-pro-soudni-znalce-by-mohla-snemovna-schvalit-beze-zmen/>.

64 Office of the Public Defender of Rights (Czech Republic), *Comments on the Draft Law Amending Act No. 254/2019 Coll., on Experts, Expert Offices, and Expert Institutes, and Other Related Acts*, ODOk Portal, Office of the Government of the Czech Republic, 2025, <https://www.odok.cz/portal/veklep/material/pripominky/KORNCXKG9LQO/>.

65 Czech Radio (iRozhlas.cz), 'Czech Courts Have Accelerated Year-on-Year. Judgments Are Announced in Record Time, Yet Some Disputes Drag On for Years' ('České soudy meziročně zrychlily. Rozsudky vyhláší v rekordním čase, některé spory se ale vlečou roky'), 2024, https://www.irozhlas.cz/zpravy-domov/ceske-soudy-mezirocne-zrychlily-rozsudky-vyhlasuji-v-rekordnim-case-nektere_2407311012_tko.

Regarding legislative measures, a proposal for a comprehensive amendment to the Code of Administrative Procedure is currently under consideration in the Chamber of Deputies. However, it has not yet progressed to its first

reading. This raises concerns about whether the amendment will complete the legislative process before the end of the electoral term in autumn 2024.⁶⁶

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *The Parliament should enact the Act on lobbying regulation (including parliamentary and senatorial assistants in the scope of the proposed law)*
- *The Legislature and the government should ensure more efficient investigation of corruption cases*
- *The Legislature should adopt a Code of Ethics for both Houses of Parliament*

Levels of corruption

Public perception studies reflected concerns about corruption. A survey by the Public Opinion Research Center (CVVM) in the summer of 2024 revealed that citizens perceive corruption as widespread among public officials and institutions, indicating a significant impact on public trust and the perceived integrity of services. Only 7% of respondents believe that very few public officials are corrupt. 14% of respondents believe that almost

all these officials are involved in corruption. In an overall comparison of different institutions and areas of public life, citizens are most sceptical about corruption within political parties, with just under a third (30%) describing it as almost the highest and two-fifths (34%) of respondents describing it as the highest. The public perceives banks, financial institutions and education as the areas least affected by corruption. At the same time, the level of beliefs about corruption is decreasing compared to previous periods.⁶⁷

66 Chamber of Deputies of the Parliament of the Czech Republic, *House Print 777: Amendment to the Administrative Procedure Act (Novela správního řádu)*, 2024, <https://www.psp.cz/sqw/historie.sqw?o=9&t=777>.

67 Centrum pro výzkum veřejného mínění (CVVM), *Opinion on the Prevalence and Degree of Corruption Among Public Officials and Institutions – Summer 2024 (Názor na rozšířenost a míru korupce u veřejných činitelů a institucí – léto 2024)*, 2024, <https://cvvm.soc.cas.cz/cz/tiskove-zpravy/politicke/politicke-ostatni/5887-nazor-na-rozsi-renost-a-miru-korupce-u-verejnych-cinitelu-a-instituci-leto-2024>.

In 2024, the National Centre for Combating Organised Crime (NCOZ) released its annual report detailing activities of the previous year. The report highlighted that in 2023, NCOZ obtained judicial authorisation for wiretapping and surveillance in 94 cases (more than in previous years), reflecting the agency's ongoing efforts to combat organised crime and corruption within the Czech Republic.⁶⁸

The Czech Republic is still one of the most attractive countries to launder the proceeds of crime. One of the tools used to conceal the illegal origin of money is so-called 'flow-through' or 'transit' accounts.

In July 2024, the National Centre against Organised Crime (NCOZ) released its annual report for 2023, which shows, among other things, the deteriorating security situation in the Czech Republic. According to the report, there have been significant movements of post-Soviet criminal organisations into the Czech Republic and an increase in efforts to circumvent national and international sanctions. These are accompanied by the transfer of criminal capital, with attempts to invest and

subsequently legalise it in the country. Moreover, according to the report, criminal groups will continue to try to move their people, influence and assets to the EU, including the Czech Republic.⁶⁹ Recent data from the Ministry of Industry and Trade of the Czech Republic and the Czech National Bank (CNB) investigation show that since the beginning of the Russian invasion of Ukraine, so-called 'grey exports' (sending key goods - often intended for warfare - to Russia via third countries) have increased by hundreds of percent. The total value of Czech exports to Turkey has risen from less than CZK 11 billion to CZK 20 billion in the last two years, with the increase more than doubling in the case of Kazakhstan and tenfold in the case of Kyrgyzstan. According to the Security Information Service (BIS), sanctions evasion in the Czech Republic is mostly committed by domestic companies, often backed by hidden Czech and foreign entities.⁷⁰

The amendment to the anti-money laundering law has still not been adopted and the strengthening of the Czech Republic's resilience is not sufficient, according to security analysts. The platform *Odolnější Česko* has therefore called

68 Czech Justice (Česká justice), 'NCOZ Had Authorization for Wiretapping in Less Than a Hundred Cases Last Year, Anti-Drug Unit in Sixty' ('NCOZ mělo loni povolení na odposlech necelé stovky případů, protidrogovka na šedesát'), 2024, <https://www.ceska-justice.cz/2024/12/ncoz-melo-loni-povoleni-na-odposlech-necele-stovky-pripadu-protidrogovka-na-sedesat/>.

69 Police of the Czech Republic, *Annual Report of the National Centre Against Organized Crime 2023* (Výroční zpráva NCOZ 2023), 2024, <https://policie.gov.cz/clanek/vyrocní-zpráva-ncoz-2023.aspx>.

70 Reconstruction of the State (Czech Republic), *Call to the Government to Accelerate the Adoption of Measures to Support the Security and Resilience of Czechia* (Výzva vládě k urychlení přijetí opatření na podporu bezpečnosti a odolnosti Česka), 2024, <https://www.rekonstrukcestatu.cz/download/RCgfoA/vyzva-vlade-k-urychleni-prijeti-opatreni-na-podporu-bezpecnosti-a-odolnosti-ceska.pdf>.

on Prime Minister Petr Fiala and members of the government to focus on accelerating the approval of legislative and other measures to strengthen the Czech Republic's resilience to undemocratic regimes and organised crime towards the end of their term in office. In addition to the aforementioned amendment to the Anti-Money Laundering Act, they also call for an amendment to the Criminal Code to criminalise certain sanctions violations committed negligently. They also draw the government's attention to the European anti-money laundering package, which has not yet been implemented in the Czech Republic.⁷¹

Framework to prevent corruption

Although the Group of States against Corruption (GRECO) finds the Czech legislation on the prevention of corruption among top executive public officials in good condition, it points to several serious problems. These include slow progress in the passing of the Lobbying Act and reforming the Civil Service Act and the Public Prosecutor's Act. It points out that the whole system is based on the principle of trust, which is that people in office know the rules and will abide by them. They also point to the absence of a strategic objective on integrity,

even at the highest political levels. Another major criticism is the fragmented and ineffective regulation of incompatibility of functions, where there is no general comprehensive regulation of this issue, which leads to the creation of a list of incompatibilities for each public institution. Last but not least, one of the main criticisms is directed at the absence of common and sufficiently clear rules for the engagement of advisers to ministers. There are no similar rules for those who are employed, for example, based on task contracts, as they are not covered by the Civil Service Act. At the same time, advisers to ministers are not subject to disclosure requirements on assets, interests and activities, which should, moreover, be subject to a control mechanism.⁷²

In response, the government approved the Action Plan for Combating Corruption for 2025 and 2026. This plan aims to implement measures to reduce corruption and enhance transparency in public administration, focusing on improving the management of public resources and promoting accountability.⁷³

71 Resilient Czechia (Odolnější Česko), *Text of the Call to the Government, Members of Parliament, and Senators for a More Resilient Czechia* (Text výzvy vládě, poslancům a senátorům za Odolnější Česko), 2022, <https://odolnejsicesko.cz/wp-content/uploads/2022/11/Text-vyzvy-vlade-poslancum-a-senatorum-za-Odolnejsi-Cesko.pdf>.

72 Transparency International (Czech Republic), *Fifth GRECO Report: Czechia Underestimates Nepotism and Integrity Control* (Pátá zpráva GRECO: Česko podceňuje nepotismus a kontrolu integrity), 2024, <https://www.transparency.cz/pata-zprava-greco-cesko-podcenuje-nepotismus-a-kontrolu-integrity/>.

73 Korupce.cz, *Action Plan for the Fight Against Corruption for 2025 and 2026* (Akční plán boje proti korupci na roky 2025 a 2026), 2024, <https://korupce.cz/vlada-schvalila-akcni-plan-boje-proti-korupci-na-roky-2025-a-2026/>.

Integrity framework including incompatibility rules (e.g.: revolving doors)

In 2024, the phenomenon of ‘revolving doors’ (the movement of individuals between public and private sectors) remained an area of concern in the Czech Republic. The Group of States Against Corruption (GRECO) criticised the Czech Republic in its fifth evaluation report for inadequate regulation of conflicts of interest and the revolving doors phenomenon. GRECO emphasised the lack of comprehensive rules governing incompatibilities, recommending the introduction of a ‘cooling-off period’ to prevent conflicts of interest and misuse of sensitive information. It also recommends the introduction of ‘integrity tests’, which would take place before appointment to a post, so that there are clear rules for recruitment and employment. There should also be corrective measures if such rules are broken.⁷⁴

The Ministry of Justice, as part of the Anti-Corruption Action Plan for 2025–2026, announced plans to commission a qualitative analysis of this

issue. The study aims to assess the frequency, motivations, and impacts of such transitions, with recommendations for preventive measures. Based on the findings, amendments to the Conflict of Interest Act are being considered.⁷⁵

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

The Czech government introduced in Parliament a draft law on lobbying that aims to regulate lobbying activities and increase transparency in public decision-making processes. It is currently in its second reading. However, significant exemptions have been added to the proposed regulation, weakening its impact.⁷⁶ For example, the Constitutional Law Committee supported exemptions for assistants to MPs and senators, allowing lobbyists to bypass registration requirements. In practice, assistants are involved in consulting on the substance of comments on legislation. Experts

74 Transparency International (Czech Republic), *Fifth GRECO Report: Czechia Underestimates Nepotism and Integrity Control (Pátá zpráva GRECO: Česko podceňuje nepotismus a kontrolu integrity)*, Transparency.cz, 2024, <https://www.transparency.cz/pata-zprava-greco-cesko-podcenuje-nepotismus-a-kontrolu-integrity/>.

75 Korupce.cz, *Action Plan for the Fight Against Corruption for 2025 and 2026 (Akční plán boje proti korupci na roky 2025 a 2026)*, 2024, <https://korupce.cz/vlada-schvalila-akcni-plan-boje-proti-korupci-na-roky-2025-a-2026/>.

76 Czech Radio (iRozhlas.cz), ‘The Government Passed a Law on Lobbying, Mayors Negotiated an Exception for ČEZ’ (‘Vládou prošel zákon o lobbingu, starostové si vyjednali výjimku pro ČEZ’), 6 March 2024, https://www.irozhlas.cz/zpravy-domov/vladou-prosel-zakon-o-lobbingu-starostove-si-vyjednali-vyjimku-pro-cez_2403062101_dno; and Ministry of Justice (Czech Republic), ‘The Government Approved the Draft Lobbying Act and the Related Amending Act’ (‘Vláda schválila návrh zákona o lobbování a související změnový zákon’), *Justice.cz*, 2024, <https://justice.cz/web/msp/tiskove-zpravy/-/clanek/vlada-schvalila-navrh-zakona-o-lobbovani-a-souvisejici-zmenovy-zakon>.

point to the risk that has emerged from the amendments. Lobbyists would, in future, not have to be transparent about their lobbying on government bills. MP Marek Benda from the Civic Democratic Party (ODS) submitted an amendment to allow lobbyists to comment on government proposals in the inter-ministerial process. A related amendment by MPs from the ruling coalition states that those who comment within the inter-ministerial framework do not have to report on their further lobbying on the same issue. The Constitutional Law Committee gave a neutral position to the proposal by MP Mark Benda. A blanket exemption from the law would also apply to municipalities and counties. This has raised concerns about the effectiveness of the law in its current form. On the other hand, according to the recommendation of the House Constitutional Law Committee, lobbyists should include representatives of professional associations as well as representatives of local government associations in the future.⁷⁷

A group of MPs has submitted an amendment to the Public Support Act proposing

transparency improvements for small public contracts. This responds by increasing the limits for small-scale contracts from CZK 2 million (€82,000) to CZK 3 million (€123,000) for supplies of goods and services and from CZK 6 million (€246,000) to CZK 9 million (€369,000). The proposal by a group of MPs introduces the principle that the contracting authority for contracts worth more than CZK 1 million (€41,000) will make public how the winner was selected. It will also disclose whether an unlimited number of suppliers were approached for the contract, whether the contracting authority narrowed down the number of suppliers, or whether it dealt with only one supplier. This would allow a higher degree of public scrutiny.⁷⁸ While the Economic Committee approved an increase in the limits for small contracts, it rejected an increase in transparency. The results of the third reading in the Chamber of Deputies are now awaited. There is still a risk that small contracts worth up to CZK 23 billion a year will not be controlled, which poses a major risk of corruption.⁷⁹

77 Reconstruction of the State, ‘Will the Lobbyist Register Be Completely Empty? MPs Step by Step Undermine the Functionality of the Lobbying Regulation Act’ (‘Bude registr lobbyistů úplně prázdný? Poslanci krok za krokem boří funkčnost zákona o regulaci lobbování’), 2024, <https://www.rekonstrukcestatu.cz/archiv-novinek/bude-registr-lobbistu-uplne-prazdny-poslanci-krok-za-krokem-bori-funkcnost-zakona-o-regulaci-lobbovani>.

78 Reconstruction of the State (Czech Republic), ‘Two in One: Small Public Contracts Will Be Larger but More Transparent, and Future Contracts Will Not Be Awarded to Ministers’ Companies’ (‘Dva v jednom: malé veřejné zakázky budou větší, ale transparentnější, a zakázky v budoucnu nezískají firmy ministrů’), 2024, <https://www.rekonstrukcestatu.cz/archiv-novinek/dva-v-jednom-male-verejne-zakazky-budou-vetsi-ale-transparentnej-si-a-zakazky-v-budoucnu-neziskaji-firmy-ministru>.

79 Transparency International (Czech Republic), ‘Some Government MPs Actively Vote Against Addressing Conflicts of Interest in Public Contracts’ (‘Část vládních poslanců aktivně hlasuje proti tomu, aby se řešil střet zájmů ve veřejných zakázkách’), *Transparency.cz*, 2024, <https://www.transparency.cz/cast-vladnich-poslancu-aktivne-hlasuje-proti-tomu-aby-se-resil-stret-zajmu-ve-verejnych-zakazkach/>.

Rules on preventing conflicts of interest in the public sector

In 2024, the issue of conflicts of interest in the Czech Republic's public sector remained a significant challenge. Although existing laws regulate this area, their enforcement has faced criticism. Notably, some government MPs actively opposed measures aimed at addressing conflicts of interest in public procurement. This resistance has undermined efforts to establish a transparent and accountable framework for managing public resources.⁸⁰

Specifically, it was a draft law on public support, which added conditions for the exclusion of the selected supplier with regard to the requirements of the Conflict of Interest Act. Even though the Conflict of Interest Act already states that the Prime Minister and ministers cannot receive public contracts, in the past, the Office of Public Procurement insisted that it could only exclude a supplier on the basis of the Public Procurement Act. This proposal corresponds with a Constitutional Court

ruling which has previously concluded that the Conflict of Interest Act takes precedence over the Public Procurement Act in application.⁸¹ Despite the promise of the five ruling political parties to tighten the conditions for preventing conflicts of interest of members of the government in public procurement, three ruling political parties voted against this proposal. Thus, companies controlled by government members can still receive public money after 3 years of parliamentary debate.

The European Commission, in its *2024 Rule of Law Report*, highlighted the need for further reforms to strengthen the legal framework addressing conflicts of interest in the Czech Republic. The report emphasised the importance of stricter enforcement mechanisms and greater transparency in decision-making processes.⁸²

Despite international pressure and recommendations, progress in implementing robust mechanisms to prevent conflicts of interest remains slow. Advocacy groups and

80 Transparency International (Czech Republic), 'Some Government MPs Actively Vote Against Addressing Conflicts of Interest in Public Contracts' ('Část vládních poslanců aktivně hlasuje proti tomu, aby se řešil střet zájmů ve veřejných zakázkách'), *Transparency.cz*, 2024, <https://www.transparency.cz/cast-vladnich-poslancu-aktivne-hlasuje-proti-tomu-aby-se-resil-stret-zajmu-ve-verejnych-zakazkach/>.

81 Reconstruction of the State (Czech Republic), 'Two in One: Small Public Contracts Will Be Larger but More Transparent, and Future Contracts Will Not Be Awarded to Ministers' Companies' ('Dva v jednom: malé veřejné zakázky budou větší, ale transparentnější, a zakázky v budoucnu nezískají firmy ministrů'), 2024, <https://www.rekonstrukcestatu.cz/archiv-novinek/dva-v-jednom-male-verejne-zakazky-budou-vetsi-ale-transparentnej-si-a-zakazky-v-budoucnu-neziskaji-firmy-ministru>.

82 European Commission, *2024 Rule of Law Report*, https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_en.

international organisations continue to call for urgent legislative and practical improvements.⁸³

Measures in place to ensure whistleblower protection and encourage reporting of corruption

In 2024, the Czech Republic marked one year since the Whistleblower Protection Act came into force. During its first year, the Ministry of Justice, which manages the external reporting system, received 166 reports. Some of the reports contained suspected violations of the Whistleblower Protection Act itself, with the most common being suspected retaliation. These include loss of employment, bullying, or threats to the whistleblower's safety or their loved ones in connection with the report. More than a third of the reports received were assessed as potentially substantiated and were subsequently referred to the relevant public authorities for further investigation.⁸⁴

While the law represents a significant step forward, its implementation has revealed several strengths and weaknesses. Key strengths include clear mechanisms for submitting

reports and legal protections for whistleblowers. However, critics highlight issues such as the absence of protection for anonymous whistleblowers, the complicated definition of the categories of violations in which whistleblowers are protected by the law, and the lack of tools to assist whistleblowers in resolving their cases. Civil servants are in a weaker position. Unlike in the private sector, civil servants cannot seek preventive judicial protection and ask the court to issue interim measures.⁸⁵

The first few cases have shown that it is possible to seek protection. The court has twice ruled in favour of Pavel Kodym, the former director of the Office for Access to Transport Infrastructure, who was not reappointed to his post after drawing attention to suspicious transactions of the state with the railway operator Czech Railways. During the same period, his post was abolished.⁸⁶ Thanks to the new legislation, Jan Benýšek, the director of the Ministry of Justice's insolvency department, has returned to the ministry after his position was terminated the day after he filed a report against Deputy Minister Antonín Stanislav

83 Tvoříme Evropu, 'Rule of Law Report: What Is Czechia Planning in the Area of Recommendations?' ('Zpráva o právním státu: Co Česko plánuje v oblasti doporučení?'), 2024, <https://tvorimeevropu.cz/2024/08/05/zprava-o-pravnim-statu-co-cesko-planuje-v-oblasti-doporuceni/>.

84 Ministry of Justice (Czech Republic), 'One Year of the Whistleblower Protection Act' ('Rok fungování zákona o ochraně oznamovatelů'), *MSP.gov.cz*, 2024, <https://msp.gov.cz/web/msp/tiskove-zpravy/-/clanek/rok-fungov%C3%A1n%C3%AD-z%C3%A1kona-o-ochran%C4%9B-oznamovatel%C5%AF>.

85 Transparency International ČR, 'Zákon o ochraně oznamovatelů platí v Česku jeden rok. Jaké jsou jeho silné a slabé stránky?', *Transparency.cz*, 2024. Dostupné z: <https://www.transparency.cz/zakon-o-ochrane-oznamovatelu-plati-v-cesku-jeden-rok-jake-jsou-jeho-silne-a-slabe-stranky/>

86 Seznam Zprávy, 'Fiala's Government Lost a Court Case with a Whistleblower Whose Office Was Abolished' ('Fialova vláda prohrála soud s whistleblowerem, jemuž zrušila úřad'), 2024, <https://www.seznamzpravy.cz/clanek/domaci-kauzu-fialova-vlada-prohrala-soudu-s-whistleblowerem-jemu-z-zrusila-urad-253058>.

regarding the manipulation of insolvency trustee examinations.⁸⁷

The Ministry of Justice has also conducted training sessions for representatives of obligated entities to improve the understanding and implementation of whistleblower protection measures. In November, it organised a conference titled ‘Experience with the Application of the Whistleblower Protection Act in the Private and Public Sector’. These efforts aim to enhance the law’s practical application and encourage reporting of misconduct.⁸⁸

Advocacy organisations continue to monitor the law’s impact and advocate for its refinement, aiming to create a more supportive environment for whistleblowers and enhance their contributions to anti-corruption efforts.

List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflicts of interest in these sectors. (e.g. public procurement, health-care, other)

In February 2024, the European Public Prosecutor’s Office (EPPO) in Prague led an investigation into a corruption ring involving public contracts for medical supplies to hospitals. The operation resulted in ten arrests and included 36 searches, highlighting systemic vulnerabilities in the sector. The government has emphasised the need for stricter oversight and transparent procurement processes in response.⁸⁹

In 2024, the Czech government attempted to freeze the salaries of judges and other high-ranking officials by lowering the coefficient used to calculate their base salaries. The reduction brought the multiplier down from three times the average gross monthly wage to 2.822 times. This legislative change was part of broader efforts to address economic challenges but faced significant legal scrutiny.⁹⁰

87 Czech Television (Česká televize), ‘168 Hours: Whistleblower Benýšek Returns to the Ministry of Justice. Deputy Stanislav Resigns After a Series of Scandals’ (‘168 hodin: Whistleblower Benýšek se vrací na resort spravedlnosti. Náměstek Stanislav po sérii afér rezignuje’), 2024, <https://ct24.ceskatelevize.cz/clanek/domaci/168-hodin-whistleblower-benysek-se-vraci-na-resort-spravedlnosti-namestek-stanislav-po-serii-afér-346713>.

88 *Training for Representatives of Obligated Entities on the Whistleblower Protection Act* (Školení pro zástupce povinných subjektů k zákonu o ochraně oznamovatelů), *Oznamovatel.justice.cz*, 2024, <https://oznamovatel.justice.cz/>.

89 European Public Prosecutor’s Office (EPPO), ‘Czechia: Ten Arrested in Probe into Corruption Ring Involving Medical Supplies to Hospitals’, 15 February 2024, <https://www.eppo.europa.eu/en/media/news/czechia-ten-arrested-probe-corruption-ring-involving-medical-supplies-to-hospitals>.

90 Novinky.cz, ‘The Constitutional Court Overturned the Freezing of Judges’ Salaries’ (‘Ústavní soud zrušil zmrazení soudcovských platů’), 15 May 2024, <https://www.novinky.cz/clanek/domaci-ustavni-soud-zrusil-zmrazeni-soudcovskych-platu-40473709>.

Any other relevant measures to prevent corruption in public and private sector

The Ministry of Regional Development has introduced a draft reform to change the lengthy and unclear review of public procurement. Instead of a chairman, reviews would now be decided by specialised panels in a single instance. Currently, the Czech Republic reviews public procurement in up to five instances. Other proposals include shortening the time limit for filing a lawsuit against a decision of the Office of Public Procurement Review from two months to 14 days. The amendment is intended to ensure faster and more transparent decision-making that is resistant to political and business pressures.⁹¹

This reform has long faced criticism and obstruction from the chairman of Úřad pro ochranu hospodářské soutěže (ÚOHS), Petr Mlsna, who would lose some of his extensive powers because of it.⁹² Mlsna's decision to

dismiss several anti-corruption experts has raised concerns about the institution's ability to address corruption effectively. Observers fear that the loss of these experts weakens ÚOHS's capacity to monitor and investigate complex cases of corruption, which are critical to ensuring the integrity of public procurement processes.⁹³ In response to growing concerns, the Czech government has proposed reforms limiting the extensive powers of the ÚOHS chairman. These changes include transferring some of the chairman's authority to other institutional bodies and implementing stricter oversight mechanisms to ensure balanced decision-making. This reform is expected to reduce delays in public procurement reviews and increase accountability.⁹⁴

The Anti-Corruption Action Plan for 2025–2026, approved in late 2024, outlined strategic goals such as enhancing whistleblower protection mechanisms, strengthening oversight of lobbying activities, and increasing public

91 Reconstruction of the State (Czech Republic), 'Public Investments Without Unnecessary Delays: The Government Decided to Reform the Office for the Protection of Competition' ('Veřejné investice bez zbytečných průtahů: vláda se rozhodla k reformě ÚOHS'), 2024, <https://www.rekonstrukcestatu.cz/archiv-novinek/verejne-investice-bez-zbytecnych-prutahu-vlada-se-rozhoupala-k-reforme-uohs>.

92 Transparency International (Czech Republic), 'Czech Television Reporters Provide Evidence of Sabotaging the Reform of the Office for the Protection of Competition by Its Chairman Petr Mlsna' ('Reportéři ČT přinášejí důkazy o sabotování reformy ÚOHS ze strany jeho předsedy Petra Mlsny'), *Transparency.cz*, 2024, <https://www.transparency.cz/reporteri-ct-prinaseji-dukazy-o-sabotovani-reformy-uohs-ze-strany-jeho-predsedy-petra-mlsny/>.

93 Seznam Zprávy, 'Zeman's Favourite Got Rid of Corruption Experts in the Antimonopoly Office' ('Zemanův favorit se v antimonopolním úřadu zbavil expertů na korupci'), 28 February 2024, <https://www.seznamzpravy.cz/clanek/domaci-kauzy-zemanuv-favorit-se-v-antimonopolnim-uradu-zbavil-expertu-na-korupci-244542>.

94 Deník N, 'The Change in the Review of Public Contracts Should Reduce the Powers of the Chairman of the Office for the Protection of Competition' ('Změna přezkumu veřejných zakázek by měla zmenšit pravomoci předsedy ÚOHS'), 18 June 2024, <https://denikn.cz/minuta/1375728>.

awareness of anti-corruption laws. The plan also highlighted the need to promote integrity in the private sector by encouraging ethical business practices and compliance programs.⁹⁵

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

Corruption and related offences are criminalised under Czech law, with the Penal Code covering a broad range of corrupt practices, including bribery, abuse of power, and embezzlement. However, enforcement remains inconsistent, particularly in complex or high-level cases. The latest GRECO evaluation report emphasised the need for stricter enforcement and clearer definitions of some corruption-related offences to enhance legal certainty and application.⁹⁶

In its *Rule of Law Report 2024*, the European Commission drew attention to the lengthy judicial procedures for high-level corruption at all stages of the process, including investigation, prosecution and adjudication. Even in 2024, many cases did not reach a final verdict, and new cases emerged. The case of subsidy fraud allegedly committed by former Prime Minister Andrej Babiš in 2008 (the *Čapí hnízdo* case) is now before the Supreme Court in Prague. The public prosecutor has appealed to the Supreme Court against the decision of the Municipal Court in Prague, which ruled this February that the act was not a criminal offence.⁹⁷ The decision of the European Parliament Committee on the waiver of the immunity of the newly elected MEP Jana Nagyová, who is an accused in the case, is currently pending.⁹⁸

The *Dozimeter* case in Prague uncovered a large-scale corruption network involving municipal politicians. The case revealed extensive fraud and abuse of public procurement

95 Korupce.cz, *Action Plan for the Fight Against Corruption for 2025 and 2026 (Akční plán boje proti korupci na roky 2025 a 2026)*, 2024, <https://korupce.cz/wp-content/uploads/2024/12/Akcni-plan-boje-proti-korupci-na-roky-2025-a-2026.pdf>.

96 LINHART, Tomáš, 'Progress Has Been Very Slow Recently. How Does the Council of Europe Evaluate the Fight Against Corruption in Czechia?' ('Pokrok je poslední dobou velmi pomalý. Jak Rada Evropy hodnotí boj s korupcí v Česku?'), *Deník N*, 2024, <https://denikn.cz/1368027/pokrok-je-posledni-dobou-velmi-pomaly-jak-rada-evropy-hodnoti-boj-s-korupci-v-cesku/?ref=list>.

97 KUBANT, Vít, 'The judges of the Supreme Court will hear the case of the Čapí hnízdo case behind closed doors. They will not yet rule on the appeal' ('Soudci vrchního soudu projednají kauzu Čapí hnízdo za zavřenými dveřmi. O odvolání zatím nerozhodnou'), *iROZHLAS*, 30 September 2024, https://www.irozhlas.cz/zpravy-domov/soudci-vrchniho-soudu-projednaji-kauzu-capi-hnizdo-za-zavrenymi-dvermi-o_2409300612_vtk

98 ČTK, 'EP Committee to discuss lifting Nagy's immunity in the Čapí hnízdo case' ('Výbor EP projedná zbavení imunity Nagyové v kauze Čapí hnízdo'), 29 November 2024, <https://www.ceskenoviny.cz/zpravy/2602201>

processes, which remain a high-risk area for corruption in the Czech Republic.⁹⁹ The perpetrators were first charged in 2022. In 2024, the case gained renewed attention due to judicial complications. A Prague judge publicly stated that he could not proceed with one of the trials because the alleged bribe amounts exceeded the court's jurisdiction. This revelation underscored the systemic issues in handling large-scale corruption cases effectively.¹⁰⁰

In August, the police postponed a case involving hospital contracts at the Institute of Clinical and Experimental Medicine (IKEM) in Prague.¹⁰¹ The second branch, which concerns the extortion of doctors by IKEM management, is where the police have submitted a proposal to the prosecutor's office to file charges.¹⁰²

Bakery Zelená Louka is facing new charges of subsidy fraud and damage to EU financial

interests. The bakery is owned by the company Penam from the Agrofert Group, which belongs to the trust fund of former Prime Minister Andrej Babiš. The company applied for a CZK 100 million subsidy for an innovative production line and received it in 2018. According to European auditors, the project focused on a product that was already being produced within the Agrofert holding.¹⁰³

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds. Please provide data where available.

In 2024, concerns were raised about the effectiveness of the Office for the Protection of Competition (ÚOHS) in addressing unfair

99 Bertelsmann Stiftung, *Czech Republic: Challenges in Public Procurement*, 10 March 2024, <https://bti-project.org/en/reports/country-report/CZE>.

100 Seznam Zprávy, 'The Judge Explained Why He Cannot Handle the Dozimetr Case: It's About the Amount of the Bribe' ('Soudce napsal, proč nemůže řešit kauzu Dozimetr: Jde o výši úplatku'), 15 November 2024, <https://www.seznamzpravy.cz/clanek/domaci-kauzu-soudce-napsal-proc-nemuze-resit-kauzu-dozimetr-jde-o-vysi-uplatku-264808>.

101 Seznam zprávy and ČTK, 'Police postponed the case of possible manipulation of public contracts in IKEM' ('Policie odložila kauzu možné manipulace s veřejnými zakázkami v IKEM'), 16 August 2024, <https://www.seznamzpravy.cz/clanek/domaci-policie-odložila-kauzu-mozne-manipulace-s-verejnymi-zakazkami-v-ikem-257845>

102 BLAŽEK, Vojtěch and VALÁŠEK, Lukáš, 'Investigators have proposed to indict former IKEM bosses for extortion of doctors' ('Vyšetřovatelé navrhli obžalovat bývalé šéfy IKEM za vydírání lékařů'), *Seznam zprávy*, 30 October 2024, <https://www.seznamzpravy.cz/clanek/domaci-kauzu-vysetrovatele-navrhli-obzalovat-byvale-sefy-ikem-za-vydirani-lekaru-263454>

103 DOSTÁLOVÁ, Kateřina, 'Police seized 100 million worth of assets of the Zelená louka Bakery' ('Policie zajistila majetek Pekárny Zelená louka za sto milionů'), ČT24, 29 October 2024, <https://ct24.ceskatelevize.cz/clanek/domaci/policie-zajistila-majetek-pekarny-zelena-louka-za-sto-milionu-354821>

practices and market distortions. Political efforts to reform ÚOHS were launched in response to rising food prices. However, experts criticised the proposed reforms for failing to tackle systemic issues undermining the Office's effectiveness. These issues include a lack of resources, insufficient independence, and inadequate enforcement mechanisms, which hinder the Office's ability to investigate and sanction corrupt practices effectively.

Such weaknesses in the ÚOHS reflect broader challenges in ensuring transparency and accountability in market regulation and combating corruption. Strengthening oversight mechanisms and providing the Office with adequate resources and independence are critical to improving its role in addressing market manipulation and corruption.¹⁰⁴

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

The GRECO 2024 evaluation report criticised the Czech Republic for the lack of robust mechanisms to address immunity-related barriers. The report highlighted cases where immunity was used to delay legal proceedings, particularly in corruption investigations involving public officials.¹⁰⁵

Another significant barrier is the limited independence and resources of investigative bodies. In cases involving high-ranking officials or complex corruption schemes, investigators often face pressure from political or institutional actors. Advocacy organisations have called for stronger safeguards to protect investigators and ensure their ability to pursue cases without undue influence.¹⁰⁶ However, no new measures have been adopted.

104 ÚŠELA, Jan, 'Politicians Want to Revitalize the Antimonopoly Office Due to Food Prices, but Experts Say the Reform Misses the Main Issues' ('Politici chtějí kvůli cenám potravin rozhybat antimonopolní úřad. Reforma ale podle expertů má hlavní problémy'), *Deník N*, 12 March 2024, <https://denikn.cz/1370396/politici-chteji-kvuli-cenam-potravin-rozhybat-antimonopolni-urad-reforma-ale-podle-expertu-miji-hlavni-problemy/>.

105 Reconstruction of the State (Czech Republic), 'Czechia Underestimates the Risk of Abuse of Power, Warns GRECO' ('Česko podceňuje riziko zneužití moci, upozorňuje GRECO'), 2024, <https://www.rekonstrukcestatu.cz/archiv-novinek/cesko-podcenuje-riziko-zneuziti-moci-upozorňuje-greco>.

106 Transparency International (Czech Republic), 'Anti-Corruption Priorities of the Czech Office of Transparency International 2024–2025' ('Protikorupční priority české kanceláře Transparency International 2024–2025'), *Transparency.cz*, 2024, <https://www.transparency.cz/protikorupcni-priority-ceske-kancelare-transparency-international-2024-2025/>.

Other

The Customs Administration updated its Internal Anti-Corruption Program in June 2024. This program identifies and mitigates key corruption risks in its operations.¹⁰⁷

The Ministry of Justice also updated its Internal Anti-Corruption Program, emphasising leadership's role in promoting anti-corruption

attitudes, adherence to ethical standards, and staff training.¹⁰⁸

The Czech Republic's ranking in the *Corruption Perceptions Index* (CPI) highlights ongoing challenges in combating corruption effectively. The 2023 CPI report, published in early 2024, placed the country below the EU average, pointing to insufficient prevention measures and regulatory gaps, including in lobbying.¹⁰⁹

MEDIA ENVIRONMENT AND MEDIA FREEDOM —

Key recommendations

- Parliament should enact legislation to enhance transparency in media ownership, ensuring clear and accessible information about media proprietors.
- Parliament should enact legislation to increase public media license fees to ensure their independence and sustainability.
- Parliament should enact legislation to establish specialised procedures for media mergers to ensure fair competition and audience-focused oversight.
- Parliament should adopt legal regulation of online media.

107 Customs Administration of the Czech Republic, *Internal Anti-Corruption Program of the Customs Administration of the Czech Republic (Interní protikorupční program Celní správy ČR)*, *Celnisprava.gov.cz*, 2024, https://celnisprava.gov.cz/cz/o-nas/spolecne-proti-korupci/Documents/24_26346_IPP%20CS%20%C4%8CR_%20aktualizace%2010%20%C4%8Dervna%202024.pdf.

108 Ministry of Justice (Czech Republic), *Departmental Internal Anti-Corruption Program of the Ministry of Justice (Resortní interní protikorupční program Ministerstva spravedlnosti)*, *Msp.gov.cz*, 2024, <https://msp.gov.cz/documents/d/msp/resortni-interni-protikorupcni-program-msp-pdf>.

109 Transparency International (Czech Republic), 'Czechia Still Lags Behind the EU Average, Corruption Perceptions Index Shows' ('Česko stále zaostává za průměrem EU, ukazuje Index vnímání korupce'), *Transparency.cz*, 2024, <https://www.transparency.cz/cpi2023/>.

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and tele- communication authorities and bodies

In June 2024, Karel Novák was re-elected as the Czech Television Council (ČT Council) Chairman, with Ivan Tesař appointed as the Vice-Chairman. The Council also approved the appointment of new members to the Ethical Panel, reinforcing its commitment to ethical standards in broadcasting.¹¹⁰

A legislative amendment was proposed to establish a more sustainable financing model for public service media in the Czech Republic. The amendment addresses the financial instability faced by Czech Television and Czech Radio by revising the mechanism for calculating and collecting license fees. Additionally, it includes provisions to ensure better oversight of public media's financial activities, which has been a longstanding issue in the Czech media

landscape. The proposal aims to safeguard the independence of public service media by reducing their reliance on state subsidies, which are often subject to political influence.¹¹¹

The proposed changes sought to modernise the framework for public broadcasting fees, which had remained unchanged for nearly two decades.

- The fees for Czech Radio (CZK 45 per month) and Czech Television (CZK 135 per month) have not been adjusted since 2005 and 2008, respectively. According to the Minister of Culture, Martin Baxa, these amounts no longer cover the rising costs of public service broadcasting, putting the quality and independence of these institutions at risk.
- The amendment proposes raising the fees to CZK 55 for Czech Radio and CZK 150 for Czech Television. The enactment of the amendment is crucial for public media independence.¹¹²

110 Mediaguru.cz, 'Novák Remains at the Head of the Czech Television Council, New Czech Television Ethics Panel Introduced' ('V čele Rady ČT je dál Novák, nový je etický panel ČT'), June 2024, <https://www.mediaguru.cz/clanky/2024/06/v-cele-rady-ct-je-dal-novak-novy-je-eticky-panel-ct/>.

111 Nezávislá média, 'The Amendment Aims to Provide More Sustainable Financing for Public Service Media' ('Novela má přinést udržitelnější financování médií veřejné služby'), November 2024, <https://nezavisla.media/novela-ma-prinest-udrzitelnejsi-financovani-medii-verejne-sluzby/>.

112 Ministry of Culture (Czech Republic), 'The Chamber of Deputies Approved the So-Called Large Media Amendment in the First Reading: Amendment to the Act on Czech Television, Czech Radio, and Television and Radio Fees' ('Poslanecká sněmovna schválila v prvním čtení tzv. velkou mediální novelu: novelu zákona o České televizi, Českém rozhlase a televizních a rozhlasových poplatcích'), 2024, <https://www.mk.gov.cz/novinky-a-media-cs-4/5806cs-poslanecka-snemovna-schvalila-v-prvnim-cteni-tzv-velkou-medialni-novelu-novelu-zakona-o-ceske-televizi-ceskem-rozhlase-a-televiznich-a-rozhlasovych-poplaticich>.

- The definition of a ‘broadcast receiver’ would expand to include devices such as smartphones, computers, and tablets that can access content via the internet. This means households with internet access or smart devices would be obligated to pay the fees, a measure criticised by opposition parties like ANO.
- Martin Baxa emphasised that the amendment aims to ensure independent financing of public service media, removing their reliance on the state budget and preserving their quality. The law also addresses the growing trend of consuming broadcast content via the Internet and mobile devices.¹¹³

The ČT Council postponed its decision on the 2025 budget until January 2025 due to uncertainties over potential increases in television license fees. If the fees are not increased, they will have to dismiss employees. This delay underscores the financial instability faced by public broadcasters.¹¹⁴

Other

According to other experts from platform *Nezávislá média (Independent media)*, the biggest challenges of the Czech media law are as follows:¹¹⁵

- political influence over public media
- absence of control over the financial activities of public media
- absence of a legal framework against media owner censorship
- absence of a legal framework for online media
- decline of regional media
- digital magnates may suppress the existence of smaller media
- absence of self-regulatory activities
- boom of disinformation servers with no respect for journalist ethics¹¹⁶

113 Media Guru, ‘It Won’t Be Armageddon, but We Must Start Thinking About the Budget Differently, Says Czech Television Head Souček’ (‘Armagedon to nebude, ale musíme začít o rozpočtu uvažovat jinak, říká šéf ČT Souček’), October 2024, <https://www.mediary.cz/armagedon-to-nebude-ale-musime-zacit-o-rozpocet-uvažovat-jinak-rika-sef-ct-soucek>.

114 Seznam Zprávy, ‘The Czech Television Council Postponed the Approval of the Television Budget to January’ (‘Rada ČT odložila schvalování rozpočtu televize na leden’), December 2024, <https://www.seznamzpravy.cz/clanek/domaci-zivot-v-cesku-rada-ct-odložila-schvalovani-rozpocet-televize-na-leden-266215>.

115 Nezávislá média, <https://nezavisla.media/>.

116 Ibid.

The list aligns with our perspective on Czech media law and journalism.

Pluralism and concentration

Rules governing ownership in different segments of the media market, and their application (print, television, radio, online media)

In December 2024, the Constitutional Court of the Czech Republic ruled that significant parts of the ‘Lex Babiš II’ amendment to the conflict of interest law were unconstitutional. The court determined that the law, which aimed to prevent high-ranking politicians from owning media outlets, included provisions introduced as an ‘unconstitutional rider’, meaning they were added during the legislative process without proper discussion or relevance to the original law. Consequently, the court annulled these provisions, weakening the amendment’s scope and impact on media ownership regulations. The ruling reignited debates about legislative practices and media independence in the Czech Republic.¹¹⁷

Fairness and transparency of licencing procedures (including allocation of licences, fines and penalties)

In 2024, the Czech media regulatory authority, the Council for Radio and Television Broadcasting (RRTV), granted several new broadcasting licenses. Notably, in December 2024, licenses were awarded to channels such as CS Film, TV Roma, TV Noe, and Sporty TV. This demonstrates ongoing efforts to diversify the media landscape.¹¹⁸

RRTV actively monitored compliance with broadcasting standards, issuing fines for violations where necessary. For instance, in February 2024, proceedings were initiated against a broadcaster for non-compliance with content regulations, showcasing the authority’s commitment to enforcing legal standards.¹¹⁹

Other

In July 2024, Czech Television announced the cancellation of its investigative journalism program *168 hodin*, which had been on air since 2006. The program was known for its critical reporting and had garnered both praise and criticism over the years. The official reasons cited for its cancellation included internal

117 Czech Radio (iRozhlas.cz), ‘The Constitutional Court Overturned Significant Parts of Lex Babiš II as an Unconstitutional Add-On’ (‘Ústavní soud zrušil podstatné části Lex Babiš II jako neústavní přílepek’), December 2024, https://www.irozhlas.cz/zpravy-domov/lex-babis-ii-zakon-verdikt-rozhodnuti-ustavni-soud_2412100914_hof.

118 Parabola.cz, ‘New Licenses for CS Film, TV Roma, TV Noe, and Sporty TV’ (‘Nové licence pro CS Film, TV Roma, TV Noe či Sporty TV’), December 2024, <https://www.parabola.cz/clanky/7879/nove-licence-pro-cs-film-tv-roma-tv-noe-ci-sporty-tv>.

119 Council for Radio and Television Broadcasting (RRTV), *Decision (Rozhodnutí)*, February 2024, <https://rrtv.gov.cz/files/Pokuty/d1850afb-fc52-4ee0-8cc0-24ec008c1dd4.pdf>.

editorial disputes, criticisms from the Council of Czech Television regarding alleged breaches of the broadcaster's code, and recent controversies involving key personnel. Nora Fridrichová, the long-standing presenter of the program, remained with Czech Television, with discussions about her involvement in future projects. The decision to terminate the program sparked debates about the state of investigative journalism and media freedom in the country.¹²⁰

In October 2024, Czech Television ended its collaboration with Slovak public broadcaster RTVS (Slovenský telerozhlas). The decision followed concerns raised by Czech Television over RTVS's independence and perceived political interference in its operations. This marked the end of a long-standing partnership and highlighted ongoing challenges in safeguarding media independence across Central Europe.¹²¹

Transparency in media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

In 2024, the Czech government approved the National Public Procurement Strategy for 2024–2028. This strategy represents the first comprehensive policy document in the field of public procurement in the Czech Republic. Its primary goal is to shift the focus from formal processes to a strategic approach that emphasises value for money, thereby promoting transparency and efficiency in public spending.¹²²

Rules governing transparency of media ownership and public availability of media ownership information, and their application

Currently, the rules for the evidence of media owners are the same as for any business owner. However, access to the register of ultimate beneficial owners is limited. In October 2024, a roundtable discussion was held in the Senate of the Czech Republic to address the implementation of the European Media Freedom

120 iDNES.cz, '168 Hours Ends, Nora Fridrichová Remains at Czech Television' ('168 hodin končí, Nora Fridrichová v ČT zůstává'), July 2024, https://www.idnes.cz/zpravy/mediahub/168-hodin-ceska-televize-konec-nora-fridrichova-marek-wollner.A240729_193531_mediahub_pari.

121 HlídacíPes.org, 'Slovak Public Broadcaster Loses Czech Ally Due to Concerns About Independence' ('Slovenský telerozhlas přichází o spojence z Česka kvůli pochybám o nezávislosti'), October 2024, <https://hlidacipes.org/slovensky-telerozhlas-prichazi-o-spojence-z-ceska-kvuli-pochybam-o-nezavislosti>.

122 Ministry of Regional Development (Czech Republic), *National Strategy for Public Procurement in Czechia for the Period 2024–2028 (Národní strategie veřejného zadávání v ČR pro období 2024–2028)*, January 2024, <https://mmr.gov.cz/cs/ministerstvo/verejne-zakazky-a-elektronizace/narodni-strategie-verejneho-zadavani-v-cr>.

Act (EMFA). The discussion focused on transparency in media ownership, rules for allocating public advertising, and the role of media regulators. Participants emphasised the need to strengthen media independence and prepare for the new obligations under the EMFA, which will be fully effective from August 8 2025. They agreed with the proposal to create a database of the ultimate beneficial media owners that would be fully accessible.¹²³

Other

Surveys in 2024 indicate declining public concern over the political independence of the media in the Czech Republic. This trend may reflect persistent media ownership concentration and public skepticism regarding the influence of political and economic elites on media content.¹²⁴

Public concern over media independence in the Czech Republic remained significant. A survey conducted in March 2024 revealed that 51% of Czech respondents were worried about

the state of media freedom in their country, indicating a growing apprehension compared to previous years.¹²⁵

Public service media outlets such as Czech Television and Czech Radio continued to be among the most trusted news sources. Trust in these individual news brands increased in 2024, with public broadcasters maintaining their reputation for credibility.¹²⁶

Public service media

Independence of public service media from economic interference

In November 2024, over 60 Czech institutions, including cultural and humanitarian organisations, called on government leaders to ensure the independence and financial stability of public media. They emphasised the crucial role of independent public service media in a democratic society and urged for the swift adoption of the proposed amendments.¹²⁷

123 ČTK, 'Live: Round Table "Media Freedom Act in Czechia"' (Živě: Kulatý stůl „Media Freedom Act v ČR“), České noviny, October 2024, <https://www.ceskenoviny.cz/pr/zpravy/zive-kulaty-stul-media-freedom-act-v-cr/2579621>.

124 Mediaguru.cz, 'Perception of the Importance of Political Independence of Media Is Declining in Czechia' (Vnímání důležitosti politické nezávislosti médií se v Česku snižuje), April 2024, <https://www.mediaguru.cz/clanky/2024/04/vnimani-dulezitosti-politicke-nezavislosti-medii-se-v-cesku-snizuje>.

125 VSquare.org, 'Public Concern Over Media Independence in V4 Region Is Growing', March 2024, <https://vsquare.org/public-concern-over-media-independence-in-v4-region-is-growing>.

126 ŠTĚTKA, Václav, *Digital News Report 2024: Czech Republic*, Reuters Institute, June 2024, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/czech-republic>.

127 Brno Daily, 'Over 60 Institutions Call on Government to Support Public Media', November 2024, <https://brno-daily.com/2024/11/19/news/politics/over-60-institutions-call-on-government-to-support-public-media>.

Editorial standards (including diversity and non-discrimination)

Editorial standards are enshrined in Czech legislation, specifically in the Act on Czech Television and the Act on Czech Radio. However, certain analyses suggest that the content of Czech Television news may lack objectivity and balance. One cited reason is the alignment of coverage with values perceived as inherent to Czech society. For instance, critics argue that Czech Television allocates disproportionately more airtime to topics related to Israel while allegedly censoring certain content concerning Palestine.¹²⁸

Online media

In 2024, the Czech Republic reaffirmed its commitment to digital transformation and online media ecosystem regulation by publishing the *Czech Priorities for European Digital Policy 2024–2029*. This document outlines strategies to safeguard internet freedom, promote transparency, and foster innovation in the digital space. The roadmap emphasises

sustainable digital transformation aligned with human rights and democratic values.¹²⁹

Impact on media of online content regulation rules (including content removal obligations, liability rules)

There is still no legal definition or comprehensive legal framework for online media in the Czech Republic.

In 2024, the Czech Ministry of Industry and Trade approved a draft law on the digital economy to complement EU regulations. The law introduced content moderation rules designed to protect users from illegal content while safeguarding freedom of expression. It also established mechanisms for appeals and resolving out-of-court disputes to ensure fairness and transparency. The law is not in effect yet.¹³⁰

In November 2024, RRTV announced that internet content creators, such as YouTubers and influencers who publish videos for profit, must register with the Council. The measure aims to align with the European Audiovisual Media Services Directive, focusing on

128 LINHART, Tomáš, ‘Czech Television Published Analyses of Broadcasts on Israel and Gaza, One Suggests It Created the Impression That Palestinians Are to Blame for Their Suffering’ (‘ČT zveřejnila analýzy vysílání o Izraeli a Gaze, podle jedné vytvářela dojem, že Palestinci si za utrpení mohou sami’), *Deník N*, October 2024, <https://denikn.cz/1411224/ct-zverejnila-analyzy-vysilani-o-izraeli-a-gaze-podle-jedne-vytvarela-dojem-ze-pal-estinci-si-za-utrpeni-mohou-sami>.

129 Digital Czechia (Digitální Česko), *Czech Priorities for European Digital Policy 2024–2029 (Priority České republiky pro evropskou digitální politiku 2024–2029)*, January 2024, https://digitalnicesko.gov.cz/media/files/FIN_Priorities-of-the-Czech-Republic-for-European-Digital-Policy_2page.pdf.

130 Ministry of Industry and Trade (Czech Republic), ‘Safer Online Environment: Government Approves the Draft Law on the Digital Economy’ (‘Bezpečnější online prostředí: Vláda schvaluje návrh zákona o digitální ekonomice’), *MPO*, June 2024, <https://www.mpo.gov.cz/en/guidepost/for-the-media/press-releases/a-safer-online-environment-government-approves-the-draft-law-on-the-digital-economy---282797>.

protecting minors and regulating commercial communications. However, the announcement was criticised by experts and also by Minister of Culture, Martin Baxa, who questioned its utility and called for revisions.¹³¹

Competence and powers of bodies or authorities supervising the online ecosystem, including the digital services coordinators role

The Czech Telecommunication Office (ČTÚ) has been designated as the Digital Services Coordinator, responsible for overseeing compliance with the DSA within the country. However, ČTÚ can actively exercise its competencies under the DSA only after the relevant adaptation law, currently still in the legislative process, is approved and comes into effect.¹³²

Public trust in media

In 2024, public trust in media in the Czech Republic remained relatively low. According to the *Digital News Report 2024* by the Reuters Institute, only 31% of Czechs expressed trust in the news, representing a slight increase from 30% in 2023. This places the Czech

Republic below the global average in media trust. The report attributes this low trust to factors such as perceived political bias and sensationalism, particularly among commercial media outlets.¹³³

According to a survey by the Czech Academy of Sciences' Center for Public Opinion Research (CVVM), trust in public service media in the summer of 2024 was higher than trust in commercial outlets. The study also found that interpersonal trust among Czechs is significantly higher than institutional trust, reflecting broader societal dynamics.¹³⁴

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

In 2024, incidents of online harassment and threats against Russian journalists in the Czech Republic were reported. Exiled Russian journalists residing in the country faced intimidation, raising concerns about their safety and the broader need for protection for media professionals. The Association of European Journalists has joined nine other European media

131 Mediaguru.cz, 'YouTubers and Influencers Must Register with RRTV, Baxa Opposes' ('Youtuberi a influenceři se musí registrovat u RRTV, Baxa je proti'), November 2024, <https://www.mediaguru.cz/clanky/2024/11/youtuberi-a-influenceri-se-musi-registrovat-u-rrtv-baxa-je-proti/>.

132 Czech Telecommunication Office (Český telekomunikační úřad), *European Digital Services Act (DSA)*, February 2024, <https://ctu.gov.cz/en/european-digital-services-act-dsa>.

133 Reuters Institute, *Digital News Report 2024: Czech Republic*, June 2024, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/czech-republic>.

134 Centrum pro výzkum veřejného mínění (CVVM), 'Trust in Selected Institutions of Public Life and Interpersonal Trust – Summer 2024' ('Důvěra k vybraným institucím veřejného života a mezilidská důvěra – léto 2024'), September 2024, <https://cvvm.soc.cas.cz/tiskove-zpravy/politicke/politicke-ostatni/5870-duvera-k-vybranim-institucim-verejneho-zivota-a-mezilidska-duvera--leto-2024>.

freedom organisations in a letter to the Czech government expressing deep concern about the security of exiled Russian journalist Irina Dolinina and others.¹³⁵

In December 2024, the Director General of Czech Television (Česká televize), Jan Souček, and the Head of News, Petr Mrzena, publicly called on parliamentarians to cease personal attacks against journalists during debates on the media law amendment. They emphasised that journalists cannot adequately defend themselves in such situations, highlighting the vulnerability of media professionals to verbal abuse.¹³⁶

Amending existing national laws or drafting and adopting new laws, which regulate the use of spyware, including safeguards and remedies

The draft of the new Cybersecurity Act is based on the provisions of the existing Cybersecurity Act and fulfills the minimum requirements set by the European Security Directive (a.k.a. NIS2). The Directive's changes are thus being integrated into Czech legislation. Additionally, the draft reflects the experiences and

insights gathered by the Czech National Cyber and Information Security Agency (NÚKIB) since its inception.

The primary purpose of this regulation is to establish at least a basic level of security for organisations providing services in economically, socially, or security-critical sectors, meeting other criteria of significance. The scope of regulated sectors and specific services within these sectors has been expanded under the Directive, meaning the new law will apply to a significantly broader range of organisations.

The changes introduced by the NIS2 Directive are so substantial that NÚKIB approached this task by preparing an entirely new Cybersecurity Act and its implementing decrees.

The draft law was approved by the government on 17 July 2024.¹³⁷

Access to information and public documents

A critical issue in 2024 is the **malfunctioning e-Legislation portal**, a platform intended to provide public access to legislative processes.

135 Association of European Journalists (AEJ), 'AEJ Warns of Threats to Exiled Russian Journalists in the Czech Republic', March 2024, <https://aej-uk.org/2024/03/21/aej-warns-of-threat-to-exiled-russian-journalists-in-czech-republic>.

136 Novinky.cz, 'Stop Attacking Journalists, Czech Television Head Stands Up Against MPs' ('Přestaňte útočit na novináře, postavil se šéf ČT proti poslancům'), December 2024, <https://www.novinky.cz/clanek/domaci-prestan-te-utocit-na-novinare-postavil-se-sef-ct-proti-poslancum-40500913>.

137 National Cyber and Information Security Agency (NÚKIB), *Cybersecurity Act (Zákon o kybernetické bezpečnosti)*, July 2024, <https://portal.nukib.gov.cz/informace/legislativa/zakon-o-kyberneticke-bezpecnosti>.

The portal remains largely inoperative, undermining transparency efforts.¹³⁸

Other

A 2024 survey conducted by Czech Radio highlighted significant issues faced by journalists in the Czech Republic. Key findings

revealed that a large number of journalists struggle with balancing work and family life, experience workplace harassment or violence, and feel undervalued due to low salaries. Despite these challenges, the survey underscored the resilience of media professionals and their commitment to the profession, even under difficult conditions.¹³⁹

138 *Lupa.cz*, “‘There Is Nothing to Display,’ Interior Ministry Responds to the Non-Functional Public e-Legislation Portal’ (‘Není co zobrazovat, reaguje vnitro na nefungující veřejný portál e-Legislative’), January 4 2024. Available online: <https://www.lupa.cz/clanky/neni-co-zobrazovat-reaguje-vnitro-na-nefungujici-verejny-portal-e-legislative/>.

139 Czech Radio (iRozhlas.cz), ‘Research: Journalists Face Low Salaries, Violence, and Harassment’ (‘Výzkum: Žurnalisté se potýkají s nízkými platy, násilím i obtěžováním’), February 2024, https://www.irozhlas.cz/zpravy-domov/vyzkum-zurnalistika-rodina-prace-obtezovani-nasili-platove-ohodnoceni_2402271107_fil.

CHECKS AND BALANCES

Key recommendations

- *The Ministry of Justice should speed up the implementation of European Court of Human Rights rulings.*
- *The Senate should approve the establishment of a National Human Rights Institution in accordance with the Paris Principles and ensure adequate funding.*
- *The Senate should approve the establishment of the Office of Ombudsperson for Children.*

Process for preparing and enacting laws

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

In September 2024, the Speaker of the Chamber of Deputies, Markéta Pekarová Adamová, declared a state of legislative emergency, facilitating the expedited approval of a proposed amendment to the 2024 state budget. This fast-track procedure enabled the Chamber of Deputies to deliberate and approve the amendment promptly, addressing urgent fiscal requirements.¹⁴⁰

Regime for constitutional review of laws

In 2024, the Constitutional Court of the Czech Republic actively engaged in the review of laws, resulting in the annulment of several provisions that were deemed unconstitutional. Below are key rulings:

Judgment No. Pl. ÚS 52/23, 24 April 2024

The Constitutional Court annulled Section 29(1) (first sentence) of the Civil Code, which required gender reassignment to be conditioned on surgical procedures. The Court found this provision unconstitutional, with annulment effective 30 June 2025.¹⁴¹

140 Ministry of Finance (Czech Republic), 'MPs Approved the Amendment to the 2024 Budget' ('Poslanci schválili novelu rozpočtu 2024'), 20 September 2024, <https://www.mfcr.cz/cs/ministerstvo/media/tiskove-zpravy/2024/poslanci-schvalili-novelu-rozpocetu-2024-57211>.

141 Constitutional Court (Czech Republic), *Judgment Pl. ÚS 52/23* (Nález Ústavního soudu: Pl. ÚS 52/23), *Zákony pro lidi*, 24 April 2024, <https://www.zakonyprolidi.cz/cs/2024-144>.

Judgment No. Pl. ÚS 39/21, 31 July 2024

The Court annulled Sections 50(2–6), 51a, and part of Section 75(e) of the Act on Assistance in Financial Need. These provisions allowed for deductions from financial need benefits as a sanction for minor offenses, which the Court ruled unconstitutional.¹⁴²

Judgment No. Pl. ÚS 41/23, 4 December 2024

The Court annulled provisions of Act No. 253/2023 Coll., which amended the Act on Political Parties and Movements. These provisions were found to be adopted in violation of constitutional principles.¹⁴³

Independent authorities

In 2024, the Czech Republic faced continued criticism for lacking a National Human Rights Institution (NHRI) and a dedicated children’s ombudsman.¹⁴⁴ The Czech Republic remains one of the few EU countries without an NHRI

despite repeated recommendations from international organisations. Discussions in 2024 focused on expanding the mandate of the Public Defender of Rights (Ombudsman) to serve as an NHRI. While the government supported this approach, the legislative process remains incomplete.¹⁴⁵ Criticism for the absence of a children’s ombudsman has been mounting. In April 2024, the Czech government approved a draft amendment to establish this role within the Public Defender of Rights Office. The position is proposed to function independently but within the broader structure of the ombudsman’s institution. However, concerns about funding and staffing remain unresolved. Public Defender of Rights Stanislav Křeček raised concerns about the feasibility of the children’s ombudsman role without sufficient resources. Critics argue that underfunding could render the position symbolic rather than impactful.¹⁴⁶

142 Constitutional Court (Czech Republic), *Judgment Pl. ÚS 39/21* (Nález Ústavního soudu: Pl. ÚS 39/21), *Zákony pro lidi*, 31 July 2024, <https://www.zakonyprolidi.cz/cs/2024-289>.

143 Constitutional Court (Czech Republic), *Judgment Pl. ÚS 41/23* (Nález Ústavního soudu: Pl. ÚS 41/23), *Zákony pro lidi*, 4 December 2024, <https://www.zakonyprolidi.cz/cs/2024-427>.

144 As of today (22. 1. 2025) both Children’s Ombudsman and NHRI were approved by the Chamber of Deputies, now it has to be approved by the Senate and signed by the president.

145 Ombudsman (Czech Republic), ‘The Government Approved the Establishment of a Children’s Ombudsman and a National Human Rights Institution (NHRI)’ (‘Vláda schválila vznik dětského ombudsmana i národní lidskoprávní instituce (NHRI)’), 10 April 2024, https://www.ochrance.cz/aktualne/vlada_schvalila_vznik_detskeho_ombudsmana_i_narodni_lidskopravni_instituce_nhri/.

146 Advokátní deník, ‘If the State Does Not Provide Resources, the Children’s Ombudsman Will Not Operate Fully’ (‘Pokud stát nezajistí zdroje, nebude dětský ombudsman naplno fungovat’), 26 April 2024, <https://advokatnidenik.cz/2024/04/26/pokud-stat-nezajisti-zdroje-nebude-detsky-ombudsman-naplno-fungovat/>.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

The proposal to amend the Code of Administrative Procedure in 2024 reflects a proactive approach by the Czech government to address long-standing inefficiencies in the judicial review of administrative decisions. The amendment seeks to create a more effective and transparent system by streamlining procedural rules and clarifying judicial powers. Additionally, the government's commitment to publishing comprehensive data on administrative decisions and sanctions enhances public awareness and ensures that individuals and organisations can hold administrative bodies accountable. If adopted, these measures could significantly strengthen the administrative justice system in the Czech Republic, fostering greater public confidence in the fairness and efficiency of administrative processes.¹⁴⁷

Electoral framework

Limitations on the right to vote

In the Czech Republic, it is common for people to be restricted in their voting rights, both active and passive, as part of a proceeding to restrict their legal capacity. This problem persists.¹⁴⁸

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

In 2024, the Czech Republic made strides in facilitating postal voting for citizens living abroad. The Chamber of Deputies approved an amendment to the electoral law that would allow Czech citizens to vote by post in elections for the Chamber of Deputies, the European Parliament, and the presidency. This proposal awaits final approval by the Senate and the President, with implementation anticipated for the 2025 parliamentary elections.¹⁴⁹

147 Advokátní deník, 'The Draft Comprehensive Amendment to the Code of Administrative Justice Heads to Parliament' ('Návrh komplexní novely soudního řádu správního míří do parlamentu'), August 22 2024, <https://advokatnidenik.cz/2024/08/22/navrh-komplexni-novely-soudniho-radu-spravniho-miri-do-parlamentu/>.

148 Ombudsman (Czech Republic), 'What Are the Pitfalls of Election Accessibility? People with Disabilities and Those Deprived of Liberty May Face Challenges' ('Jaká jsou úskalí přístupnosti voleb? S naplněním volebního práva mohou mít problém nejen lidé s postižením, ale například i ti omezení na svobodě'), 2024, https://www.ochrance.cz/aktualne/jaka_jsou_uskali_pristupnosti_voleb_s_naplnenim_volebniho_prava_mohou_mit_problem_nejen_lide_s_postizenim_ale_naprıklad_i_ti_omezeni_na_svobode/.

149 Tvoříme Evropu, 'The Chamber of Deputies Approved the Introduction of Postal Voting for Czechs Living Abroad' ('Sněmovna schválila zavedení korespondenční volby pro Čechy žijící v cizině'), 21 June 2024, <https://tvorimevropu.cz/2024/06/21/snemovna-schvalila-zavedeni-korespondencni-volby-pro-cechy-zijici-v-cizine/>.

Rules on political advertising and their enforcement

Disinformation played a significant role in campaigns leading up to the European Parliament elections, with Facebook identified as a key platform for spreading misleading content. According to Transparency International Czech Republic, several actors actively disseminated narratives aimed at influencing voter behavior and undermining trust in democratic institutions. The report highlights the urgent need for stricter regulation of online platforms and greater transparency in political advertising to counter the spread of disinformation during election periods.¹⁵⁰

Access to balanced and reliable information online and offline during electoral campaign: campaigning, media coverage, disinformation and misinformation

While media coverage of the electoral campaigns was largely balanced, the dissemination of disinformation online posed a challenge. According to the Center for Democracy and Media Studies (CEDMO), the Czech public remained highly influenced by disinformation, with debates often polarised by manipulative narratives during the campaign period.¹⁵¹

150 Transparency International ČR, 'Disinformation in European Parliament Election Campaigns: Actors on Facebook' ('Dezinformace v kampaních do Evropského parlamentu: Akteři na Facebooku'), 2024, <https://www.transparency.cz/dezinformace-v-kampanich-do-evropskeho-parlamentu-akteri-na-facebooku/>.

151 CEDMO, 'What Are the Trends in the Development of Disinformation Narratives in Czechia and Slovakia in the First Quarter of 2024?' ('Jaké jsou trendy ve vývoji dezinformačních narativů v Česku a na Slovensku za první čtvrtletí roku 2024?'), 2024, <https://cedmohub.eu/cs/jake-jsou-trendy-ve-vyvoji-dezinformacnich-narativu-v-cesku-a-na-slovensku-za-prvni-ctvrtleti-roku-2024/>.

CIVIC SPACE

Key recommendations

- *The Legislature should effectively address the issue of so-called flow-through accounts*
- *The Government should ensure sustainable funding of NGOs from the state budget by increasing funding programmes for underfunded topics*

Freedom of association

Equal treatment among CSOs, including by reference to CSOs' focus of activities, type of activities, and geographical location of activities

There are significant differences in support for different types of CSOs (e.g. sports organisations versus human rights organisations). Human rights and social inclusion organisations often face limited funding, whereas sports or cultural organisations have access to more public funding. There is also a geographical inequality, with organisations operating in rural areas having more limited access to funding and support programmes than those in large cities.¹⁵²

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)

According to the European Civic Forum's *Civic Space Report*, systemic problems persist in public funding, such as the absence of multi-year funding, a long and bureaucratic grant process, strict co-financing requirements, and different award methodologies across calls for proposals.¹⁵³

State financial support to the state's nonprofit space did not change significantly in 2024 compared to 2023; however, subsidies lost real value due to inflation. At the same time, it was noted that some organisations, particularly

152 European Civic Forum, *Civic Space Report 2024*, May 2024, https://civic-forum.eu/wp-content/uploads/2024/05/Civic-Space-Report-2024_ECF.pdf.

153 Ibid.

those that promote citizens' rights, such as gender equality, saw a decrease in financial support. In contrast, other areas, such as sports associations, received more funding.¹⁵⁴ In the middle of the year, the government approved the main areas of state grant policy towards non-governmental non-profit organisations for 2025. According to the policy document, the overall financial support will be increased, however, a large part will be dedicated to organisations that are dedicated to culture and sport. Organisations dedicated to the fight against corruption, equal opportunities for women and men, the environment, health and education will receive less financial support than in 2024. On the positive side, organisations dedicated to national minorities will receive more support.¹⁵⁵

The process of obtaining grants is lengthy and bureaucratic, with strict co-financing requirements. This places a significant burden on NGOs, which have to spend considerable effort on administrative tasks instead of their core activities. There is also a lack of multi-year funding, which leads to uncertainty and limits the ability of NGOs to plan and implement

long-term projects. This situation negatively affects the stability and sustainability of organisations.

Another problem is the lack of funding for digitalisation, which puts NGOs at a disadvantage compared to other sectors. The lack of funding for modern technologies limits the effectiveness and reach of their activities. These factors combine to create an environment that complicates the functioning of civil society in the Czech Republic and limits its ability to fulfill its mission effectively.

Travel restrictions/visa bans

In February 2024, the Czech government decided to extend its ban on issuing visas and residence permits to citizens of Russia and Belarus. This measure, originally introduced in 2022 following Russia's invasion of Ukraine, has been declared 'indefinite' due to pressing national security interests. The ban aims to align with broader European Union sanctions and reflects the Czech Republic's stance on maintaining pressure against these nations in response to the ongoing conflict.¹⁵⁶

154 Glopolis, *Civic Space Report 2024: Czech Republic*, 2024, <https://glopolis.org/site/assets/files/1439/civic-space-report-2024-czech-republic.pdf>.

155 Government of the Czech Republic, 'Main Areas of State Grant Policy Towards Non-Governmental Non-Profit Organizations for 2025' ('Hlavní oblasti státní dotační politiky vůči nestátním neziskovým organizacím pro rok 2025'), 2024, <https://vlada.gov.cz/cz/ppov/rnno/dokumenty/hlavni-oblasti-statni-dotacni-politiky-vuci-nestatnim-neziskovym-organizacim-pro-rok-2025-214054/>.

156 Czech Justice (Česká justice), 'The Ban on Issuing Visas to Russians and Belarusians for Entry to the Czech Republic Will Remain in Place as an Urgent Interest' ('Zákaz vydávání víz Rusům a Bělorusům do ČR bude v naléhavém zájmu setrvalý'), February 2024, <https://www.ceska-justice.cz/2024/02/zakaz-vydavani-viz-rusum-a-belorusum-do-cr-bude-v-nalehavem-zajmu-setrvaly/>

Freedom of peaceful assembly

Bans on protests

The Czech Republic respects the right to protest, and all demonstrations this year have been peaceful. However, it is worth paying attention to anti-government demonstrations. In March, farmers spread manure in protest outside the Government Office. They demanded that the government support rural employment, refrain from cutting support for animal welfare, and return land taxation to pre-consolidation package levels or not tax European operating subsidies.¹⁵⁷

An anti-government demonstration was held that same month, with an estimated 1000 people attending. It was organised by the non-parliamentary party PRO (Pravo Respekt Odbornost) and the allied association Czech Republic Against Poverty. They criticised President Petr Pavel and the European Union's green policies,

such as the emission allowance system and the planned ban on internal combustion engines. They also spoke out against the war in Ukraine and the alleged dragging of the Czech Republic into it. They called for an end to aid to Ukrainian refugees.¹⁵⁸ The speakers spread misinformation about Ukrainians coming to the Czech Republic for economic reasons, not because of the war. This year's relatively peaceful demonstration was a follow-up to last year's protests, during which participants attempted to storm the National Museum to remove the Ukrainian flag.¹⁵⁹ Anti-government protesters demanded the removal of the Ukrainian flag from the National Museum building again on 17 November (the day of the fight for freedom and democracy).¹⁶⁰ The rally was called for by Ladislav Vrabel, who has been fined in the past for spreading false news.¹⁶¹

The demonstrations were also about the war in Gaza. In May, a demonstration was held in front of Czech Television against how

157 Deník.cz, 'Farmers Protest in Front of the Government Office with Manure' ('Zemědělci protestují před Úřadem vlády s hnojem'), 7 March 2024, <https://www.denik.cz/regiony/zemedelci-hnuj-urad-vlady-vyborny-20240307.html>.

158 ČTK, 'Anti-Government Protest of Thousands Lasted About 2.5 Hours in the Center of Prague' ('Protivládní protest tisíců lidí trval v centru Prahy zhruba 2,5 hodiny'), České noviny, 2024, <https://www.ceskenoviny.cz/zpravy/2495985>.

159 Novinky.cz, 'Anti-Government Protest on Wenceslas Square' ('Protivládní protest na Václavském náměstí'), 2024, <https://www.novinky.cz/clanek/domaci-protivladni-protest-na-vaclavskem-namesti-40465185>.

160 Pražský deník, 'Opponents of Aid to Ukraine Protest in Front of the National Museum' ('Odpůrci pomoci Ukrajině protestují před Národním muzeem'), 2024, https://prazsky.denik.cz/zpravy_region/odpurci-pomoc-ukrajina-narodni-muzeum.html.

161 ČTK, 'Vrabel Filed a Constitutional Complaint Against a Fine for Spreading a False Alarm' ('Vrabel podal ústavní stížnost proti peněžitému trestu za šíření poplašné zprávy'), České noviny, 2024, <https://www.ceskenoviny.cz/zpravy/2543891>.

television broadcasting, as a public institution, has long reported on events in Palestine and Israel. According to the protesters, broadcasters normalises the Israeli genocide. A study by Masaryk University also drew attention to the bias of the television broadcasting.¹⁶² In October, the protesters demanded a reassessment of the Czech government's stance towards Israel, which they consider uncritical.¹⁶³

Freedom of expression and information

Criminalisation of speech

For the first time, a man was convicted for approving of a mass shooting at a university in December 2023. The convicted man claimed in a bar that he intended to shoot his co-workers at the bank where he worked at the time while praising the act of the university killer. The court gave him a sentence of 250 hours of community service. This was not an isolated case of approval of a shooting. By mid-2024,

there were 327 cases in which people either approved of the shooter's act or threatened to shoot others.¹⁶⁴

Spread of and responses to disinformation

The Czech Republic continues to face disinformation campaigns, particularly in connection with the war in Ukraine and Ukrainian refugees on Czech territory, but also with the war in Gaza. Among other things, disinformation spread about the floods in the autumn, causing distrust in experts, politicians, institutions and the system itself. First, the existence of the floods was questioned, and then whether those affected were being helped.¹⁶⁵ According to the current advisor to the Prime Minister on disinformation, disinformation is still being spread by politicians, both opposition and government. The most common topics warped by these disinformation campaigns include the impact of the adoption of the Istanbul Convention, the war in Ukraine, the payment of

162 Deník Referendum, 'A Demonstration Took Place in Prague Against the Way Czech Television Reports on the War in Gaza' ('V Praze se demonstrovalo proti způsobu, jímž ČT informuje o válce v Gaze'), 2024, <https://denikreferendum.cz/clanek/36353-v-praze-se-demonstrovalo-proti-zpusobu-jimz-ct-informuje-o-valce-v-gaze>.

163 iDNES.cz, 'Protests Across Europe on the Anniversary of the War in Gaza, Including in Prague' ('Protesty po celé Evropě k výročí války v Gaze, včetně Prahy'), 2024, https://www.idnes.cz/zpravy/zahranicni/izrael-gaza-valka-protesty-evropa-vyroci-praha.A241005_181610_zahranicni_ikro.

164 Czech Television (ČT24), 'The First Sentence for Approving the Shooting at the Faculty Has Been Handed Down' ('Padl první trest za schvalování střelby na fakultě'), 2024, <https://ct24.ceskatelevize.cz/clanek/regiony/hn-padl-prvni-trest-za-schvalovani-strelby-na-fakulte-352596>.

165 iDNES.cz, 'Advisor to the Prime Minister on Disinformation: Miloš Gregor Talks About Floods and Fundraising' ('Poradce premiéra o dezinformacích: Miloš Gregor hovoří o povodních a vybírání peněz'), 2024, https://www.idnes.cz/zpravy/domaci/poradce-premiera-dezinformace-milos-gregor-rozhovor-povodne-vybirani-penez.A241010_105327_domaci_vank.

social benefits, and the implementation of marriage for all.¹⁶⁶

At the beginning of the year, President Petr Pavel also expressed concern that the fight against disinformation in the Czech Republic is slow.¹⁶⁷ Despite the government's previous declarations, even in 2024, a law was not passed that was supposed to, among other things, establish the conditions under which the State can shut down so-called disinformation websites.¹⁶⁸

A step forward in this area is the mid-year creation of the position of 'strategic communications coordinator' at the Office of the

Government, which was taken over by veteran and former military police director Otakar Foltýn. His task is to get the State's strategic communications moving and combat disinformation. In his words, the Czech Republic has a big deficit in this area.¹⁶⁹ The post would only run on a temporary basis for six months. However, this period can be extended.¹⁷⁰ Foltýn is assisted by the Department of Strategic State Communication at the Government Office.¹⁷¹

The Czech Republic has prepared several information campaigns. These included a campaign by the Ministry of the Interior to inform the public that Ukrainian refugees in the Czech Republic are working in places where

166 Novinky.cz, 'Even Politicians Spread Disinformation, Including Those in Government, Say Experts' ('I politici šíří dezinformace, a to i ti vládní, říkají experti'), 2024, <https://www.novinky.cz/clanek/domaci-i-politici-siri-dezinformace-a-to-i-ti-vladni-rikaji-experti-40459669>.

167 Český rozhlas (Radiožurnál), 'The Government Is Not Doing Even the Minimum in the Fight Against Disinformation, Says President Petr Pavel' ('Vláda nedělá v boji s dezinformacemi ani minimum, myslí si prezident Petr Pavel'), 2024, <https://radiozurnal.rozhlas.cz/vlada-nedela-v-boji-s-dezinformacemi-ani-minimum-mysli-si-prezident-petr-pavel-9163315>.

168 Czech Radio (iRozhlas.cz), 'Otakar Foltýn Joins the Government Office to Address Strategic Communication and Disinformation' ('Otakar Foltýn nastupuje na Úřad vlády k řešení strategické komunikace a dezinformací'), 2024, https://www.irozhlas.cz/zpravy-domov/otakar-foltyn-urad-vlady-strategicka-komunikace-dezinformace_2405211708_gut.

169 Deník N, 'Foltýn: We Are Not Threatened by Russian Tanks, but by Propaganda. Social Networks Are Our Vulnerable Spot' ('Foltýn: Nejsme ohroženi ruskými tanky, ale propagandou. Sociální sítě jsou naše zranitelné místo'), 2024, <https://denikn.cz/1444029/foltyn-nejsme-ohrozeni-ruskymi-tanky-ale-propagandou-socialni-site-jsou-nase-zranitelne-misto/>.

170 Czech Radio (iRozhlas.cz), 'Otakar Foltýn Joins the Government Office to Address Strategic Communication and Disinformation' ('Otakar Foltýn nastupuje na Úřad vlády k řešení strategické komunikace a dezinformací'), 2024, https://www.irozhlas.cz/zpravy-domov/otakar-foltyn-urad-vlady-strategicka-komunikace-dezinformace_2405211708_gut.

171 Seznam Zprávy, 'Podcast: How Effective Is the State's Strategic Communication?' ('Podcast: Daří se strategická komunikace státu?'), 2024, <https://www.seznamzpravy.cz/clanek/audio-podcast-ptam-se-ja-dari-se-strategicka-komunikace-statu-266587>.

they are needed. The second information campaign prepared by the Ministry together with the Human Rights Commissioner Klara Šimáčková Laurenčíková raised awareness on what to do when witnessing verbal violence in public space.¹⁷²

Public service media play a critical role in combating disinformation by providing reliable and objective information to the public. According to the report by the Prague Security Studies Institute (PSSI), these media outlets should serve as a counterbalance to disinformation by adhering to high journalistic standards and actively promoting media literacy among citizens. Strengthening public trust in these institutions is essential to ensuring their effectiveness in addressing the challenges posed by disinformation in the digital age.¹⁷³

Online civil space

Digital attacks to IT infrastructure

In 2024, the Czech Republic continued to face challenges related to disinformation,

particularly from foreign actors. Russian hybrid operations targeted the Czech population through cyber-attacks and disinformation campaigns, aiming to destabilise democratic processes. Although some efforts to counter disinformation were made, experts noted stagnation in the systematic approach to addressing fake news and incitement to hatred.¹⁷⁴

Attacks, threats and hate speech online

Young Romani activists in the Czech Republic led initiatives to combat online hate speech targeting the Roma community. Their efforts included documenting instances of racism and advocating for policy changes. These actions led to several criminal filings against perpetrators, highlighting the persistence of discrimination based on Roma origin in the Czech online space.¹⁷⁵

On November 4, 2024, the Czech Government's Commissioner for Human Rights, Klára Šimáčková Laurenčíková, hosted a conference titled 'Disinformation and Hate Speech in the Online World: Challenges of

172 iDNES.cz, 'Advisor to the Prime Minister on Disinformation: Miloš Gregor Talks About Floods and Fundraising' ('Poradce premiéra o dezinformacích: Miloš Gregor hovoří o povodních a vybírání peněz'), 2024, https://www.idnes.cz/zpravy/domaci/poradce-premiera-dezinformace-milos-gregor-rozhovor-povodne-vybirani-penez-A241010_105327_domaci_vank.

173 Prague Security Studies Institute (PSSI), *The Role of Public Service Media in Combating Disinformation* (Role médií veřejné služby v postupu proti dezinformaci), 2024, https://www.pssi.cz/download//docs/11417_role-me-dii-verejne-sluz-by-v-postupu-proti-dezinformaci-m.pdf.

174 Prague Forum, 'Czech Republic Faces Russian Hybrid Operations in 2024', July 20, 2024, <https://www.pragueforum.cz/czech-republic-faces-russian-hybrid-operations-in-2024-interior-ministry-reports/>.

175 European Roma Rights Centre (ERRC), 'New Czech Volunteer-Led Research & Legal Action Shows How Roma Can Combat Online Hate', 2024, <https://www.errc.org/press-releases/new-czech-volunteer-led-research--legal-action-shows-how-roma-can-combat-online-hate>.

the Current Information Environment' at the Hrzánský Palace in Prague. The event brought together experts from various fields to address

the growing threats of disinformation and hate speech in the Czech Republic and beyond.¹⁷⁶

176 Institute of Philosophy of the Czech Academy of Sciences, *Disinformation and Hate Speech in the Online World* (Dezinformace a hate speech v online světě), 2024, <https://www.flu.cas.cz/cz/akce-filosofickeho-ustavu-av-cr/21-konference-a-workshopy/4767-dezinformace-a-hate-speech-v-online-svete>.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- Parliament should pass the ratification of the Istanbul Convention.
- The Ministry of Health should ensure that compensation for unlawful sterilisations is an effective mechanism.
- The Ministry of School, Youth and Education should take action to end systemic discrimination against Romani children in education and ensure equal access to quality schooling for all.

Systemic human rights violations

Victims of unlawful sterilisations conducted between 1966 and 2012 have been eligible since 2022 to apply for a one-time compensation of CZK 300,000. However, the Ministry of Health has faced criticism for delays in processing these claims. The Ombudsman reported significant administrative delays and

improper evidence assessment by the Ministry, urging governmental intervention.¹⁷⁷

As the original application deadline approached, there was a push to extend it. Justice Minister Pavel Blažek and MP Eva Decroix proposed a two-year extension to ensure all eligible victims have the opportunity to apply.¹⁷⁸

177 Ombudsman (Czech Republic), 'The Ombudsman Summarized for the Government the Offenses of the Ministry of Health in Compensation for Unlawful Sterilizations: Extreme Delays, Poor Evaluation of Evidence, Decisions Contrary to Court Opinions, and Ignoring the Content of Repeated Requests' ('Ombudsman shrnul vládě prohršky Ministerstva zdravotnictví při odškodňování za protiprávní sterilizace: extrémní průtahy, špatné hodnocení důkazů, rozhodování v rozporu s názorem soudu i ignorování obsahu opakovaných žádostí'), 2024, https://www.ochrance.cz/aktualne/ombudsman_shrnul_vlade_prohresky_ministerstva_zdravotnictvi_pri_odskodnovani_za_protipravni_sterilizace_extremni_prutahy_spatne_hodnoceni_dukazu_rozhodovani_v_rozporu_s_nazorem_soudu_i_ignorovani_obsahu_opakovanych_zadosti/.

178 Česká televize (ČT), 'Události: Segment from December 13, 2024' ('Události: Část z 13. prosince 2024'), 2024, <https://www.ceskatelevize.cz/porady/1097181328-udalosti/224411000101213/cast/1085242/>.

The Czech Parliament has been unable to pass legislation granting equal marriage rights to same-sex couples. However, an amendment to the Registered Partnership Act was approved, effective 1 January 2025. This amendment grants same-sex couples rights similar to those of married couples, with certain exceptions, particularly concerning adoption. While this represents progress toward equality, full parity has yet to be achieved.¹⁷⁹

A significant legislative change redefined the crime of rape, emphasising consent as the key element. This shift moves away from the previous requirement of proving the use of violence, aligning Czech law with modern standards and strengthening protections for sexual violence victims.¹⁸⁰

The amendment to the Criminal Code introduced stricter penalties for sexual acts involving children under 12. Such acts will now be classified as rape or sexual assault rather than

the lesser offence of sexual abuse, thereby providing greater protection for the youngest and most vulnerable members of society.¹⁸¹

The Czech government has introduced a new requirement, referred to as the ‘Child Certificate’, aimed at preventing individuals with a history of child-related offences from working with children. Starting in 2025, all professionals and volunteers in child-related roles will be required to provide proof of a clean criminal record, ensuring they have no convictions for crimes involving children. This measure is part of broader efforts to enhance child protection and strengthen safeguards within educational and social care settings.¹⁸²

As part of child welfare reforms, it was decided that children under the age of three will no longer be placed in institutional care. This change promotes family-based care and foster parenting, which are considered more conducive environments for healthy child development.¹⁸³

179 Jsme Fér, ‘Questions and Answers: Amendment to the Registered Partnership Act’ (‘Otázky a odpovědi: Novela zákona o registrovaném partnerství’), 10 November 2024, https://www.jsmefer.cz/otazky_odpovedi_partnerstvi_prijato.

180 Czech Radio (Radio Prague International), ‘Senate Approves “No Means No” Definition of Rape’, 2024, <https://english.radio.cz/senate-approves-no-means-no-definition-rape-8818495>.

181 Ministry of Justice of the Czech Republic, ‘MPs Unanimously Approved the Redefinition of Rape’ (‘Poslanci jednomyslně schválili redefinici znásilnění’), 2024, <https://msp.gov.cz/en/web/msp/rozcestnik/-/clanek/poslan-ci-jednomysl%C4%9B-schv%C3%A1lili-redefinici-zn%C3%A1siln%C4%9Bn%C3%AD>.

182 Czech Television (ČT24), ‘Child Certificate Aims to Prevent Abusers from Working with Children’ (‘Dětský certifikát má zabránit násilníkům v práci s dětmi’), 2024, <https://ct24.ceskatelevize.cz/clanek/domaci/detsky-certifikat-ma-zabranit-nasilnikum-v-praci-s-detmi-355540>.

183 Zdravotnický deník, ‘Infant Institutions to Close in Two Weeks: Care Secured for the Last Hundred Children Remaining’ (‘Za dva týdny skončí kojenecké ústavy: Péče je zajištěna i o poslední stovku dětí, kteří v nich ještě jsou’), December 2024, <https://www.zdravotnickydenik.cz/2024/12/za-dva-tydny-skonci-kojenecke-ustavy-pece-je-zajistena-i-o-posledni-stovku-deti-kteri-v-nich-jeste-jsou/>.

The Czech Ministry of Education, Youth, and Sports (MŠMT) launched measures aimed at addressing ethnic segregation in schools. The goal was to ensure inclusive education for children of various ethnic backgrounds, particularly focusing on the integration of Romani pupils. These initiatives are seen as crucial steps toward resolving the longstanding issue of segregated education.¹⁸⁴

Widespread human rights violations and/or persistent protection failures

In response to the increasing number of Ukrainian students, the Czech Parliament passed an amendment in December 2024, granting school principals the authority to organise separate enrollment processes for Ukrainian children. This separate enrollment is scheduled to occur one month after the standard enrolment period for Czech children. Proponents of the amendment argue that this approach will help distribute Ukrainian students more evenly across classes, facilitating better integration and language acquisition. However, some critics view this measure as discriminatory.¹⁸⁵

Other systemic issues

In January 2024, the Czech Senate narrowly failed to ratify the Istanbul Convention, a Council of Europe treaty aimed at preventing and combating violence against women and domestic violence. The ratification fell short by two votes, with only 34 out of 71 senators in favour. This decision means that the Czech Republic remains among the minority of European countries that have signed but not ratified the Convention.¹⁸⁶

FOSTERING A RULE OF LAW CULTURE

Contribution of civil society and other non-governmental actors

The Czech NGO Síť k ochraně demokracie (Network for Protection of Democracy) initiated a critical dialogue with the government by publishing an open letter to the Prime Minister, emphasising the urgent need to strengthen democratic safeguards ahead of the upcoming elections. The letter outlined concerns about the potential risks to democratic institutions

184 Seznam Zprávy, ‘Breakthrough in School Segregation of Roma: Schools Could Be Closed’ (‘Průlom v segregaci Romů na školách: Můžou se rušit i školy’), 5 March 2024, <https://www.seznamzpravy.cz/clanek/domaci-zivot-v-cesku-prulom-v-segregaci-romu-na-skolach-muzou-se-rusit-i-skoly-247080>.

185 Czech Radio (Radio Prague International), ‘MPs Approve Bill Opening the Way for Separate Enrolment of Ukrainian Children in Czech Schools’, 2024, <https://english.radio.cz/mps-approve-bill-opening-way-separate-enrolment-ukrainian-children-czech-schools-8837994>.

186 Expats.cz, ‘An International Disgrace: Czech Senate Does Not Pass Istanbul Convention’, January 25 2024, <https://www.expats.cz/czech-news/article/an-international-disgrace-czech-senate-doesn-t-pass-istanbul-convention>.

and urged the government to take proactive steps to enhance transparency, accountability, and public trust.

In response, the Prime Minister acknowledged the importance of these issues, highlighting ongoing efforts by the government to reinforce democratic processes. However, Sít k ochraně demokracie followed up with a statement reiterating the need for more concrete actions. The organisation proposed that a parliamentary debate and active communication by government members could raise awareness about the necessity of democratic safeguards, fostering public understanding and support for reforms aimed at protecting democracy.¹⁸⁷

187 Sít k ochraně demokracie, ‘Response to the Prime Minister: Strengthening Democratic Safeguards Before the Elections Is Key’ (‘Odpověď premiérovi: Klíčové je posílit demokratické pojistky do voleb’), 2024, <https://www.ochranademokracie.cz/aktuality/odpoved-premierovi-klicove-je-posilit-demokraticke-pojistky-do-voleb-povedomi-o-jejich-potrebnosti-by-mohla-zlepsit-debata-v-parlamentu-a-aktivni-komunikace-clenu-vlady>

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Liga lidských Práv (LIGA) ***The League of Human Rights***

The League of Human Rights (LIGA) is a Czech human rights non-governmental organisation that advances the rights and freedoms of all people of the Czech Republic. In our work, we mainly focus on the rights of especially vulnerable persons or those facing social exclusion, such as children, people with disabilities, or victims of police violence.

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RULE OF LAW REPORT

2025



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Estonian Human Rights Centre



ESTONIAN HUMAN
RIGHTS CENTRE

Estonian Human Rights Centre (EHRC) is an independent public interest foundation dedicated to the advancement of the protection of human rights in Estonia. EHRC is engaged in research, monitoring, advocacy and awareness-raising activities to advance the protection of human rights. The mission of EHRC is to work collaboratively for Estonia to become a country that respects the human rights of each person in the country. EHRC develops its activities according to the needs of the society. EHRC's focus is currently on the advancement of equal treatment of minority groups, diversity and inclusion, the human rights of asylum seekers and refugees, hate speech and hate crime, and data and privacy. EHRC coordinates the Estonian Diversity Charter. EHRC also monitors the overall human rights situation in Estonia and publishes independent human rights reports about the situation in Estonia. As a whole, EHRC carries out broad-based, effective, and sustainable advocacy in the field of human rights.

KEY CONCERNS

Judicial System

While important steps were taken to reform the administration of courts and make court proceedings more efficient, the legal amendments are still in the draft stage, and real progress is threatened by looming budget cuts. The 2024 EU Commission report recommended Estonia “continue the efforts to reform the Council for the Administration of Courts, taking into account European Standards on councils for the judiciary”. The draft legislative amendment for the reform has been sent for a consultation round.

Anti-Corruption Framework

The Protection of Whistleblowers Reporting Violations of European Union law in the Workplace Act was passed by the Parliament on 5 May and came into force on 1 September 2024, thereby transposing the EU Directive on Whistleblowing. No specific recommendations were made in this regard.

Media Environment and Media Freedom

Although Estonia has risen in the Press Freedom Index and slightly fallen in the Freedom on the Net index, it has neither enacted laws restricting media freedom nor implemented any new measures to support it. There has been no progress in advancing efforts to ensure consistent and effective implementation of the right of access to information, considering European standards on access to official documents.

Checks and Balances

Plans to establish voting restrictions for Russian and Belarusian citizens are still in progress, and all prisoners are still excluded from voting. Unresolved issues with judicial review of visa decisions have escalated, leading to Estonia being referred to the CJEU.







Civic Space

There were no major developments in the Estonian civic space. No specific recommendations were made in this regard.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

Violation of privacy rights resulting from the indiscriminate retention of communication data of all residents is still unaddressed. No specific recommendations were made in this regard.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression



No progress



Progress



JUSTICE SYSTEM -

Key recommendations

- *The Government should avoid excessive budget cuts targeting the judiciary to prevent compromising the quality of justice.*
- *The Council for the Administration of Courts should introduce clear priorities and resource allocations for the court development plan to ensure effective implementation aligned with current financial constraints.*
- *The generational turnover of judges should be addressed by moving forward with legal amendments in the Parliament and implementing policies in courts that take into account the expectations of the new generation of judges.*

Judicial independence

In October 2024, the Council for the Administration of Courts approved the Court Development Plan 2024-2030¹, which describes the vision and main development goals of the court system until 2030.² It covers areas such as organisation of justice, court management and administration, efficient judicial proceedings, personnel policy, digitisation, and communication.

One of the sub-goals outlined in the development plan is that the judiciary itself should be responsible for the management and administration of the courts. The current model of court administration is based on the Courts Act adopted in 2002, according to which the courts of the first and second instance are administered jointly by the Council for the Administration of Courts and the Ministry of Justice. The Minister of Justice acts as the main decision-making body in the administration of courts, and the Council for the

1 Council for the Administration of Courts, *Court Development Plan 2024-2030 (Kohtu arengukava 2024-2030)*, https://www.riigikohus.ee/sites/default/files/Õigusalaseld%20materjalid/Kohtu_arengukava_2024-2030_seisuga_20.09.2024_toim.pdf

2 Supreme Court of Estonia (Riigikohus), *Arengukava keskendub inimesekeskele ja tehnoloogiliselt edumeelsele kohtule*, 16 October 2024, <https://www.riigikohus.ee/et/uudiste-arhiiv/arengukava-keskendub-inimesekeskele-ja-tehnoloogiliselt-edumeelsele-kohtule>

Administration of Courts has a coordinating and consultative role.³

On 22 July 2024, a draft Act on Amendments to the Courts Act and Related Amendments to Other Acts (Court Administration Model) was sent for consultation. The draft act transfers the majority of court administration tasks from the Ministry of Justice to the new Judicial Administration and Development Council, which will be established by reforming the current Council for the Administration of Courts. The current advisory and coordinating body will become a strategic decision-making body for court administration. In addition, a Court Administration Service will be established, which will provide support services to the courts and support the Judicial Administration and Development Council.⁴

Quality of justice

Resources of the judiciary (human/financial/material)

On 6 December 2024, the Council for the Administration of Courts granted the Minister of Justice approval to merge the Võru and Põlva courthouses of the Tartu County Court starting from 1 January 2025, resulting in the closure of the Põlva courthouse. Additionally, starting from 30 June 2025, the two courthouses of the Pärnu County Court in Pärnu will be merged, resulting in the closure of the Rüütli Street courthouse.⁵

The Council for the Administration of Courts also sent an appeal to the Government and the Finance Committee of the Parliament, emphasising that the executive branch's expectation to cut the 2025 budget of the county, administrative, and circuit courts by €2 million should be abandoned unless supported by legislative amendments that reduce the courts' workload by an equivalent amount. In the Council's view, the planned budget cuts for the courts should take into account the savings achieved from unfilled judicial positions and the reduced salary growth introduced through amendments to the Salaries of Higher State Servants Act.⁶

3 Heiki Loot, Mait Laaring, *Yearbook of Estonian Courts 2023 – 15 years later: another attempt to change the administration of courts*, <https://aastaraamat.riigikohus.ee/en/15-years-later-another-attempt-to-change-the-administration-of-courts/>

4 Draft Legislation Information System (Eelnõude infosüsteem), *Kohtute seaduse muutmise ja sellega seonduvalt teiste seaduste muutmise seadus (kohtuhaldusmudel)*, initiated 22 July 2024, <https://eelvoud.valitsus.ee/main/mount/docList/ef505412-9612-4bd0-b430-df13ccd74a5c>.

5 Supreme Court of Estonia (Riigikohus), *Kohtute haldamise nõukoda pöördus kärpeplaani osas valitsuse poole*, 6 December 2024, <https://www.riigikohus.ee/et/uudiste-arhiiv/kohtute-haldamise-noukoda-poordus-karpeplaani-osas-valitsuse-poole>.

6 Supreme Court of Estonia (Riigikohus), *Kohtute haldamise nõukoda pöördus kärpeplaani osas valitsuse poole*, 6 December 2024, <https://www.riigikohus.ee/et/uudiste-arhiiv/kohtute-haldamise-noukoda-poordus-karpeplaani-osas-valitsuse-poole>.

Generational change among the judges still causes concerns. There are a total of 261 judicial positions in the judicial system, and as of 30 May 2024, 251 of them had been filled. 53 judges will be eligible to retire within the next five years and there is concern about recruiting new highly qualified judges and court officials into the system.⁷ To address this issue, in July 2024, the Ministry of Justice sent a draft law to amend the Courts Act for a consultation round. The draft law eases the restrictions preventing judges from working outside the judicial office, allowing judges to engage in business, legislative work, legal work in an international organisation, in addition to teaching and research, provided there are no conflicts. The draft law also creates a system for providing feedback to judges, the purpose of which is to support judges in improving their professional knowledge and skills.⁸

Fairness and efficiency of the justice system

Length of proceedings

The Chief Justice of the Supreme Court, Villu Kõve, stated in his speech to the Parliament in June 2024 that the pace and efficiency of the court proceedings are gradually deteriorating. In general, judges feel that this is due to matters becoming increasingly complex and voluminous.⁹

To address the issue of efficiency and pace of court proceedings, several legal amendments are underway. Amendments to the Code of Administrative Court Procedure aim to streamline administrative court processes by introducing mechanisms such as error correction for procedural flaws, prioritisation of precedent-setting cases, accelerated proceedings for manifestly unlawful cases, and abolishing the requirement to seek court approval for suspending certain rights and permits.¹⁰ The

7 Villu Kõve, *Ülevaade kohtukorralduse, õigusemõistmise ja seaduste ühetaolise kohaldamise kohta: Ettekanne Riigikogu 2024. aasta kevadistungjärgul*, 12 June 2024, https://www.riigikohus.ee/sites/default/files/1.%20Uudised/2024/Riigikohtu_esimehe_ulevaade_kohtukorralduse_oigusemõistmise_ja_seaduste_uhetaolise_kohaldamise_kohta_2024.pdf.

8 Draft Legislation Information System (Eelnõude Infosüsteem), *Kohtute seaduse muutmise seadus*, initiated 22 July 2024, <https://eelnoud.valitsus.ee/main/mount/docList/2f49c291-d4d1-4bca-a636-8168c8a8bf35>.

9 Villu Kõve, *Ülevaade kohtukorralduse, õigusemõistmise ja seaduste ühetaolise kohaldamise kohta: Ettekanne Riigikogu 2024. aasta kevadistungjärgul*, 12 June 2024, https://www.riigikohus.ee/sites/default/files/1.%20Uudised/2024/Riigikohtu_esimehe_ulevaade_kohtukorralduse_oigusemõistmise_ja_seaduste_uhetaolise_kohaldamise_kohta_2024.pdf.

10 Draft Legislation Information System (Eelnõude Infosüsteem), *Halduskohtumenetluse seadustiku muutmise ja sellega seonduvalt teiste seaduste muutmise seadus (kohtumenetluse töhustamine)*, initiated at 22 October 2024, available at: <https://eelnoud.valitsus.ee/main/mount/docList/6d4258ac-f45a-4f96-8133-acef12af9a91>.

Code of Civil Procedure amendments focus on optimising court workloads, for example, by expanding the use of simplified proceedings.¹¹ Amendments to the Code of Criminal Procedure and related acts aim to enhance flexibility in handling complex cases. The amendments include, for example, limiting the possibility

of filing appeals against rulings in certain situations where the ruling can also be effectively disputed by appealing the final decision, clarification of provisions on changing defence counsel, bringing disputes over the admissibility of evidence into preliminary proceedings, and other measures.¹²

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *The Parliament should adopt the necessary legal amendments to ensure that Members of Parliament make their lobbying meetings public.*
- *The Ministry of Justice should strengthen the draft law amending the Political Parties Act by explicitly defining affiliated organisations based on their connection to political parties to ensure accountability in political party financing.*

Levels of corruption

In the 2023 Corruption Perception Index published by Transparency International in January 2024, Estonia achieved its highest score, improving by two places compared to the previous year, sharing 12th place with Canada

with a score of 76.¹³ Transparency International Estonia commented on the results, noting that while Estonia's score has risen by a strong 12 points since 2012, there have been no substantial changes in measures to prevent and combat corruption, and since 2019, progress has

11 Draft Legislation Information System (Eelnõude Infosüsteem), *Tsiviilkohtumenetluse seadustiku muutmise seadus*, initiated 20 November 2024, <https://eelroud.valitsus.ee/main/mount/docList/783502ab-8013-403b-9a4f-983ecd8b7831>.

12 Draft Legislation Information System (Eelnõude Infosüsteem), *Kriminaalmenetluse seadustiku, riigilõivuseaduse ja riigi õigusabi seaduse muutmise seadus (kohtumenetluse otstarbekamaks muutmise)*, initiated 3 July 2024, <https://eelroud.valitsus.ee/main/mount/docList/383a4f56-297c-44f8-a666-8b938de33f26>.

13 Transparency International, *Corruption Perception Index 2023*, 30 January 2024, <https://www.transparency.org/en/cpi/2023>.

largely stalled with legislative reforms remaining unimplemented.¹⁴

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

In June 2024, the Ministry of Justice sent the draft law amending the Political Parties Act and other legislation for consultation. Most of the amendments proposed in the draft are aimed at strengthening the oversight of political party financing. The current law does not, for example, ensure the accountability of organisations directly associated with a political party in practice. Under the draft law, an affiliated organisation will be defined based on the connection of a foundation or non-profit organisation to a political party. The investigative powers of the Political Party Funding Supervision Committee will also be expanded, including the establishment of authority provisions allowing the committee to require

political parties, individuals who ran on party lists, electoral alliances, individuals who ran on electoral alliance lists, independent candidates, affiliated organisations of political parties, and third parties to submit documents, information, and explanations. Additionally, the Political Party Funding Supervision Committee will be authorised to require these individuals or their representatives to appear in its offices to provide explanations.¹⁵ Transparency International Estonia provided positive feedback on the changes, confirming that they had been long anticipated. However, they emphasised the importance of ensuring that the new definition of affiliated organisations does not allow for the inclusion of organisations that promote certain topics or fields but are not directly involved in party politics.¹⁶ In December, the Political Party Funding Supervision Committee expressed frustration that the draft legislation had been stalled at the Ministry of Justice. According to the ministry, the overwhelming workload with other bills has prevented further progress on this matter.¹⁷

In the context of the European Parliament election campaign, questions have arisen regarding

14 Transparency International Estonia (Korruptsioonivaba Eesti), *Eesti saavutab korruptsioonitaju indeksi kõrgeima tulemuse alates 2012. aastast, ent pole viimase viie aastaga olulisi edusamme teinud*, 30 January 2024, <https://transparency.ee/uudised/eesti-saavutab-korruptsioonitaju-indeksi-korgeima-tulemuse-alates-2012-aastast-ent-pole-0>.

15 Draft Legislation Information System (Eelnõude Infosüsteem), *Erakonnaseaduse, kohaliku omavalitsuse volikogu valimise seaduse ja krediitiasutuse seaduse muutmise seadus*, 7 June 2024, <https://eelvoud.valitsus.ee/main/mount/docList/266dbe27-05d0-41c7-83f4-28436254cb36#z4NdFgDe>.

16 Transparency International Estonia (Korruptsioonivaba Eesti), *Ühingu arvamus erakonnaseaduse muudatustele*, 12 July 2024, <https://transparency.ee/uudised/uhingu-arvamus-erakonnaseaduse-muudatustele>.

17 Estonian Public Broadcasting (ERR), *‘ERJK-d nõrritab erakonnaseaduse muutmise toppamine’*, 2 December 2024, <https://www.err.ee/1609538521/erjk-d-norritab-erakonnaseaduse-muutmise-topppamine>.

the campaign financing of candidates, including EP members Jana Toom, Sven Mikser, Jaak Madison, Marina Kaljurand, Urmas Paet, and Riho Terras. These candidates have used funds from European Parliament political party groups and European-level political parties for their campaigns, which is allowed conditionally and must comply with local regulations. According to Estonia's Political Parties Act, donations from legal entities are prohibited, and the Political Party Funding Supervision Committee has recommended that the candidates cover these expenses themselves. The committee commissioned monitoring to assess the candidates' advertisements, enabling a comparison with submitted reports; however, it remains unclear whether the candidates paid for these expenses.¹⁸

Rules on preventing conflicts of interest in the public sector

There has been no progress on regulating meetings between Members of the Parliament and lobbyists since the last report. After MP Liisa-Ly Pakosta appealed to the Board of the Parliament and the Anti-Corruption Select Committee to establish a platform for registering and disclosing MPs' meetings with

lobbyists, the Board of the Parliament discussed the topic, with Speaker Lauri Hussar emphasising that regulating lobbying activities is crucial for transparency in parliamentary work. However, the Board of the Parliament agreed it is essential to avoid unnecessary bureaucracy. Hussar noted that implementing lobby meeting disclosures would require consensus among all parliamentary party groups. The board has tasked the Anti-Corruption Select Committee with further handling of the matter and suggested consulting the Constitutional Committee to ensure transparency aligns with MPs' free mandate principle.¹⁹ The Anti-Corruption Select Committee decided in November to propose an update to the Code of Conduct of the Parliament, focusing on expense reimbursements, lobbying meetings, and member conduct in the chamber. The committee plans to establish guidelines for recording meetings with lobbyists and interest groups, and expects factions to submit proposals by early December.²⁰

An amendment to the Anti-Corruption Act, currently in its second reading in the Parliament, clarifies the obligation of public officials to remove themselves from cases where a personal conflict of interest exists and defines the

18 Parliament Document Register (Riigikogu Dokumendiregister), *Protokoll nr 44, 19.09.2024, 27 September 2024*, <https://www.riigikogu.ee/tegevus/dokumendiregister/dokument/656f6461-564a-41b9-97c5-0ae4983f2fa0/>.

19 Estonian Public Broadcasting (ERR), *'Pakosta soovib avalikustada riigikogu liikmete kohtumised lobistidega'*, 7 February 2024, <https://www.err.ee/1609245831/pakosta-soovib-avalikustada-riigikogu-liikmete-kohtumised-lobistidega>.

20 Estonian Public Broadcasting (ERR), *'Riigikogu liikme hea tava uuenduskuuri fookuses on kuluhüvitised ja lobistid'*, 5 November 2024, <https://www.err.ee/1609511794/riigikogu-liikme-hea-tava-uuenduskuuri-fookuses-on-kuluhuvitised-ja-lobistid>.

concepts of ‘procedural restriction’ and ‘connected person’.²¹

Measures in place to ensure whistleblower protection and encourage reporting of corruption

Estonia was one of the last two EU Member States that had not transposed the EU Whistleblower Directive. On 15 May 2024, the Parliament adopted the Law on the Protection of Whistleblowers Reporting Violations of European Union Law in the Workplace, which came into effect on 1 September 2024.²² The law mandates that public authorities, companies with at least 50 employees, and municipal offices establish reporting channels. Knowingly submitting false reports will be punishable, as will any attempts to obstruct or pressure whistleblowers at work.²³ EU Member States were required to implement the directive by December 2021, and Estonia now faces a financial penalty for the delayed transposition.²⁴

Investigation and prosecution of corruption

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high-level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds.

Throughout the year, multiple first-instance court rulings have been issued against politicians for fraud and embezzlement. The Harju County Court found the Minister of Education and Research Mailis Reps guilty of arranging for personal expenses unrelated to ministry work to be funded from ministry resources.²⁵ The Harju County Court also found Member of Parliament Kert Kingo guilty of fraud. According to the charges, Kert Kingo submitted invoices from a law firm to the Parliament for reimbursement, listing various consulting services related to her work as an MP, which, in reality, the law firm did not provide in

21 Parliament (Riigikogu), ‘Korruptsioonivastase seaduse muutmise seadus 442 SE’, <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/766f7c9b-8932-40de-8a6a-20fae2aac3af/korruptsioonivastase-seaduse-muutmise-seadus/>.

22 Riigi Teataja, ‘Töölasest Euroopa Liidu õiguse rikkumisest teavitaja kaitse seadus’, <https://www.riigiteataja.ee/akt/130052024001>.

23 Ministry of Justice, ‘Töölasest Euroopa Liidu õiguse rikkumisest teavitajad saavad parema kaitse’, 24 May 2024, <https://www.justdigi.ee/toolasest-rikkumisest-teavitaja-kaitse>.

24 Estonian Public Broadcasting (ERR), ‘Eestil on Euroopa Komisjoniga pidevalt pooleli paarkümmend sisulist vaidlust’, 24 March 2024, <https://www.err.ee/1609292985/eestil-on-euroopa-komisjoniga-pidevalt-pooleli-paarkum-mend-sisulist-vaidlust>.

25 Estonian Courts (Eesti Kohtud), *Harju Maakohus mõistis Mailis Repsi omastamises ja kelmuses süüdi*, 27 September 2024, <https://www.kohus.ee/ajakirjanikule/uudised/harju-maakohus-moistis-mailis-repsi-omastamises-ja-ke-l-muses-suudi>.

connection with her parliamentary duties.²⁶ Both court decisions have not yet entered into force. Former Minister of Justice Kalle Laanet also faced embezzlement allegations. According to the charges, he rented an apartment in Tallinn from his spouse's son while serving

as the Minister of Justice and previously as the Minister of Defence, with the expenses reimbursed by the state. The minister resigned after the information was made public in the media.²⁷

MEDIA ENVIRONMENT AND MEDIA FREEDOM



Key recommendations

- *Authorities should refrain from classifying documents without proper justification.*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

In the 2024 Reporters Without Borders (RSF) World Press Freedom Index, Estonia rose to sixth place out of 180 countries,²⁸ improving from eighth place in 2023. Meanwhile, in the Freedom House's Internet Freedom assessment, Estonia scored 92 out of 100, a slight decline from 93 in 2023. This decrease

is attributed to concerns over transparency in the government's procurement and use of commercial surveillance products that allow for intrusive monitoring.²⁹

Public trust in media

According to the latest public opinion survey commissioned by the Government Office, Estonians trust Estonian-language television and radio channels the most, with 80% expressing trust, followed by national Estonian-language newspapers and news portals, trusted by 75%. Among other ethnic groups, there is

26 Estonian Courts (Eesti Kohtud), *Harju Maakohus mõistis Kert Kingo kelmuses ja Martin Traadi sellele kaasa aitamises osaliselt süüdi*, 23 September 2024, <https://www.kohus.ee/ajakirjanikule/uudised/harju-maakohus-moistis-kert-kingo-keelmuses-ja-martin-traadi-sellele-kaasa>

27 Estonian Public Broadcasting (ERR), *Endine justiitsminister Kalle Laanet sai kahtlustuse kelmuses*, 9 September 2024, <https://www.err.ee/1609448549/endine-justiitsminister-kalle-laanet-sai-kahtlustuse-keelmuses>

28 Reporters Without Borders, *Press Freedom Index 2024*, <https://rsf.org/en/index>.

29 Freedom House, *Freedom on the Net 2024*, <https://freedomhouse.org/country/estonia/freedom-net/2024>

no high overall trust in any single information channel, as different groups trust different information sources. Trust in Western media is significantly higher among Estonians than among residents of other ethnic backgrounds, at 47% and 26%, respectively.

For Estonians, the most important sources of news and information remain Estonian-language television channels, cited by 62% as being among their top three sources, and Estonian news portals, cited by 54%. For residents of other ethnic backgrounds, the most important information sources are social media, cited by 41%, and Estonian news portals, cited by 37%. Meanwhile, 82% of residents have encountered information in the media and/or social media that they suspect to be misinformation, and 63% feel the need for more knowledge to distinguish misinformation from truthful information in the media.³⁰

A monitoring survey reveals a long-term trend showing that since the Russia-Ukraine war, trust in Estonian-language publications has risen by 8% among Estonians and 4% among other nationalities. Trust in Russian news outlets has remained consistent at 3% among Estonians, both in February 2022 and in December of last year. However, among other

nationalities, trust in Russian news outlets has dropped from 40% to 20%.³¹

Safety and protection of journalists and other media actors

Access to information and public documents

The years-long debate and media's public criticism regarding public authorities classifying documents as 'for internal use only' merely for reasons of convenience continued in 2024. The Ministry of Finance received criticism at the editorial level of the newspaper regarding a public information request from Siim Kiisler, a member of the leadership board of the political party Parempoolsed. Kiisler had asked for the calculations behind the tax increases outlined in the coalition agreement. The ministry responded by saying the information was intended 'for internal use only'. It then classified both Kiisler's question and its response as confidential for 75 years.³² Additionally, the national broadcaster noticed over the summer that the Ministry of Social Affairs had mistakenly classified a draft on healthcare reforms as confidential. The broadcaster also pointed out that it has repeatedly reported on a tendency among government agencies to classify

30 Government Office (Riigikantselei), *Avaliku arvamus seireuring*, June 2024, https://www.riigikantselei.ee/uuringud?view_instance=0¤t_page=1.

31 Eesti Päevaleht, 'Usaldus Eesti ajakirjanduse vastu kasvab, ent tasapisi hiilib ligi meediaväsimus', 23 February 2024, <https://epl.delfi.ee/artikkel/120272475/usaldus-est-ajakirjanduse-vastu-kasvab-ent-tasapisi-hiilib-ligi-meediavasimus>.

32 Postimees, 'Juhtkiri: Salajased maksuaimdused', 15 September 2024, <https://arvamus.postimees.ee/8096461/juhtkiri-salajased-maksuaimdused>.

documents excessively, even though, by law, information meant for public use should be accessible to everyone.³³

On 16 July 2024, the Council of Europe published a report assessing the alignment of Estonia's Public Information Act with the

requirements of the Council of Europe Convention on Access to Official Documents. Among the key recommendations, the expert group advises a better balancing of various interests when establishing restrictions on access to information and addressing information requests.³⁴

CHECKS AND BALANCES

Key recommendations

- *The Ministry of the Interior should initiate amendments to the Aliens Act to provide a possibility of judicial appeal against visa refusals, annulments, or revocations, aligning with constitutional requirements and EU law.*
- *The Parliament should refrain from depriving third-country nationals of their right to vote in local elections.*
- *The Parliament should amend voting laws to lift the blanket ban on prisoners voting in elections.*

Process for preparing and enacting laws

One recent incident, involving the preparation of the draft law to merge the Gender Equality Act and the Equal Treatment Act, has raised

concerns about the transparency and inclusiveness of the legislative process. In May 2024, the Equality Policy Department of the Ministry of Economic Affairs and Communications finished a draft of the Gender Equality and Equal Opportunities Act³⁵ and sent it for a

33 Estonian Public Broadcasting (ERR), 'Sotsiaalministeerium salastas ekslikult tervishoiumuudatuste eelnõu', 15 August 2024, <https://www.err.ee/1609424398/sotsiaalministeerium-salastas-ekslikult-tervishoiumuudatuste-eelnou>.

34 Council of Europe, *Implementation of the Council of Europe Convention on Access to Official Documents (CETS No.205 - Tromsø Convention)*, 16 July 2024, <https://rm.coe.int/baseline-evaluation-report-estonia/1680b0f634>.

35 Draft Legislation Information System (Eelnõude Infosüsteem), *Soolise võrdsuse ja võrdsete võimaluste seadus*, initiated 23 May 2024, <https://eelnoud.valitsus.ee/main/mount/docList/389a2753-fc8e-4e10-9912-469b6fc2acf8>.

consultation round with relevant state institutions and civil society. After this, the Ministry of Justice commissioned a new draft law from the private law firm Sorainen. The decision to outsource this task, at a cost of €16,000 plus VAT, came as a surprise to the Gender Equality and Equal Treatment Commissioner and the NGOs who participated in the consultation process. The Ministry of Justice justified this step by citing critical legal feedback on the initial draft, the need to ensure alignment with constitutional principles while avoiding excessive administrative burdens, and the ministry's overall workload. The ministry also promised to resubmit the draft for consultation with all stakeholders.³⁶

Accessibility and judicial review of administrative decisions

On 3 October 2024, the European Commission referred Estonia to the Court of Justice of the European Union (CJEU) for failing to provide an effective judicial remedy against a visa refusal, annulment or revocation. The Visa Code requires Member States to provide for a right of appeal against a visa refusal, annulment or revocation, however, the Estonian law

only provides for a right of appeal before two non-judicial administrative bodies.³⁷

On 6 November 2024, the Chancellor of Justice issued an opinion on the same matter, as part of the ongoing constitutional review proceedings in the Supreme Court. Tartu Administrative Court declared § 100¹(11), § 100¹⁰(1), § 100¹³(2) and § 100¹⁸ of the Aliens Act to be incompatible with the Constitution as these provisions do not allow for challenges to decisions refusing the issuance of a long-term visa in an administrative court. The court noted that the case is similar to the case No. 5-20-10³⁸ in which the Supreme Court declared § 100¹⁰ (1), § 100¹³ (2) and § 100¹⁸ of the Aliens Act to be unconstitutional and invalid insofar as these provisions preclude judicial review of premature termination of visa-free stay in Estonia. The Chancellor of Justice agreed that the provisions are also inconsistent with the Constitution insofar as they do not allow for judicial appeal against decisions refusing the issuance of long-term visas.³⁹

36 Estonian Public Broadcasting (ERR), 'Riik tellis uue soolise võrdsuse seaduse eelnõu advokaadibüroolt', 20 November 2024, <https://www.err.ee/1609525471/riik-tellis-uee-soolise-vordsuse-seaduse-eelnou-advokaadiburoolt>.

37 European Commission, *The Commission decides to refer ESTONIA to the Court of Justice of the European Union for failing to provide effective judicial remedy against a visa refusal*, 3 October 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_4866.

38 Supreme Court of Estonia (Riigikohus), *Case No. 5-20-10*, 20 April 2021, <https://www.riigikohus.ee/et/lahendid?asjaNr=5-20-10/13>.

39 Chancellor of Justice (Õiguskantsler), *Arvamus põhiseaduslikkuse järelevalve asjas 5-24-28*, 6 November 2024, https://www.riigikohus.ee/sites/default/files/Arvamus_õiguskantsler_5-24-28.pdf.

Electoral framework

The Estonian government aims to amend the Constitution within a year to prevent Russian and Belarusian citizens living in Estonia from voting in local elections. Currently, the Constitution provides that all persons who reside permanently in the territory of the municipality and have attained sixteen years of age have the right to vote in elections of municipal councils.⁴⁰ On 7 November 2024, 61 Members of the Parliament initiated an amendment to the Constitution that restricts the right to vote in local elections to “Estonian citizens, stateless persons, citizens of the European Union and citizens of a member state of NATO”. The amendment further provides that the conditions and procedure for registering stateless persons and foreigners with the right to vote are provided for by law. According to the sponsors of the bill, the amendment grants the right to vote to citizens of countries that share democratic values and have overlapping security interests with the Estonian state, as well as stateless people living in Estonia who have no loyalty or other obligations to any other country.⁴¹ In its opinion on the amendment,

the Estonian Lawyers’ Union criticised the fact that there has been no impact analysis that would assess the long-term impact of the change on society and governance.⁴²

All prisoners in Estonia are still excluded from voting in any elections. This has been widely criticised, including by the Supreme Court, which has found that the blanket ban on prisoners’ right to vote is contrary to the Constitution interpreted in the light of the case law of the European Court of Human Rights.⁴³

Rules on political advertising and their enforcement

See section on campaign financing of candidates in the context of European Parliament elections under the chapters on Anti-Corruption Framework and Framework to prevent corruption.

Eligibility criteria and restrictions to be a candidate

According to the European Parliament Election Act, before nominating candidates, a

40 Riigi Teataja, The Constitution of the Republic of Estonia (*Eesti Vabariigi põhiseadus*), § 156 (2), <https://www.riigiteataja.ee/en/eli/530122020003/consolide>.

41 Parliament (*Riigikogu*), *Eesti Vabariigi põhiseaduse muutmise seadus 536 SE*, 7 November 2024, <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/08e7338e-6684-4af8-bf2d-faa95a01c954/eesti-vabariigi-pohiseaduse-muutmise-seadus/>.

42 Estonian Lawyers’ Union (*Eesti Juristide Liit*), ‘*Eesti Juristide Liidu arvamus põhiseaduse muutmise eelnõu kohta seoses kolmandate riikide kodanike valimisõigusega*’, 4 December 2024, <https://www.riigikogu.ee/tegevus/eelnoud/eelnou/arvamusd/08e7338e-6684-4af8-bf2d-faa95a01c954/eesti-vabariigi-pohiseaduse-muutmise-seadus/>.

43 Supreme Court of Estonia (*Riigikohus*), *Judgment in case no. 3-4-1-2-15*, 1 July 2015, <https://www.riigiteataja.ee/kohtulahendid/fail.html?fid=206104838>.

political party or an independent candidate must deposit an amount equal to five minimum monthly wages for each person nominated, in the current account of the Ministry of Finance as a deposit.⁴⁴ In advance of the 2024 European Parliament elections in Estonia, representatives of the Estonian Greens nominated nine candidates as party candidates, but deposits were only paid for two candidates. The National Electoral Committee therefore left seven candidates unregistered. Estonian Greens filed a complaint, challenging the constitutionality of the deposit requirement. On 14 May 2024, the Supreme Court adopted a

court ruling, indicating the need to assess the compliance of the deposit requirement with EU law and decided to refer the matter to the CJEU for a preliminary ruling. The Supreme Court noted that the deposit applied in the European Parliament elections in Estonia is one of the highest in Europe. Since the CJEU ruling would not have entered into force before the European Parliament elections, the Supreme Court decided to apply interim protection to the Estonian Greens and obliged the National Electoral Committee to also register those Estonian Greens candidates for whom the deposit had not been paid.⁴⁵

44 Riigi Teataja, *European Parliament Election Act (Euroopa Parlamendi valimise seadus)*, RT I 2003, 4, 22, <https://www.riigiteataja.ee/en/eli/501102024005/consolide>.

45 Supreme Court of Estonia (Riigikohus), *Case No. 5-24-5*, 14 May 2024, <https://www.riigikohus.ee/et/lahendid?asjaNr=5-24-5/13>.

CIVIC SPACE

Key recommendations

- *The Police and Border Guard Board should not impose bans on public meetings. Additionally, the government should avoid enacting laws that make it easier to impose such restrictions, ensuring that any measures taken are a last resort and strongly justified*
- *The Parliament should amend the Penal Code to criminalise hate speech in accordance with EU law.*

Freedom of association

Formation, establishment and registration of associations, including rules on membership

In January 2025, an amendment to the Auditing Activities Act came into force, significantly easing the reporting obligations for foundations by raising the threshold for annual financial statement review requirements from the previous €15,000 to €1 million.⁴⁶ According to the draft's explanatory memorandum, this change would address the current situation where the disproportionality of the threshold has restricted the work of NGOs. For instance, the low threshold has led smaller foundations

to accept funding only up to the amount that avoids mandatory auditing of the annual financial statement, as such an audit would result in a disproportionately large portion of funds being spent on auditing costs.⁴⁷ Additionally, the Network of Estonian Nonprofit Organizations noted in its comments on the proposal that it is often very challenging for smaller foundations to find an auditor willing to take on the work.⁴⁸

46 Riigi Teataja, *Audiitortegevuse seadus*, § 91 (4), <https://www.riigiteataja.ee/akt/13275292?leiaKehtiv>

47 Draft Legislation Information System (*Eelnõude Infosüsteem*), *Raamatupidamise seaduse, audiitortegevuse seaduse ja väärtpäberituru seaduse muutmise seadus*, 23 February 2024, <https://eelvoud.valitsus.ee/main/mount/docList/b18b9f20-5d12-48bc-8867-438ce40b3033?activity=1#e5clGHSQ>.

48 Network of Estonian Nonprofit Organizations (*Vabäühenduste Liit*), *Vabäühenduste Liidu arvamus raamatupidamise seaduse, audiitortegevuse seaduse ja väärtpäberituru seaduse muutmise seaduse kohta*, https://ngoee.sharepoint.com/:w:/g/Ebuh1AdbiipPso5SRKSJaxcBGWOgQvK_xJnO7OBYuf7guQ?rtime=YZbj1ZX83Eg.

Freedom of peaceful assembly

Rules on organisation, authorisation of and participation in assemblies

The Ministry of the Interior has proposed amendments to the Law Enforcement Act, aiming to give police greater authority to pre-emptively prohibit protests and lower the threshold for using water cannons. The proposal suggests that a police prefect could prohibit a public meeting if there is reason to believe based on preliminary information that the meeting will be unlawful under § 62 of the Law Enforcement Act (e.g. will incite hatred, violence or discrimination). Under current law, water cannons can only be used in cases of ‘serious threat’, meaning a threat to a person’s life, physical inviolability, physical liberty or proprietary benefit of great value, threat of serious environmental damage or threat of a criminal offence in the first degree or an offence dangerous to the public. The amendments would lower the threat level required for the use of water cannons to ‘significant threat’, meaning a threat to a person’s health, proprietary benefit of significant value, the environment, or a threat of any criminal offence.⁴⁹

Bans on protests

The Southern Prefecture of the Police and Border Guard Board banned the event ‘In support of the human rights of Palestinians’ scheduled for 18 November 2023, in Tartu Town Hall Square, citing § 62 section 3 of the Law Enforcement Act, which prohibits events inciting hatred, violence, or discrimination.⁵⁰ In July 2024, the Tartu Administrative Court ruled that the ban imposed by Tartu police on the pro-Palestinian demonstration was unlawful.⁵¹

Freedom of expression and information

Rules on hate speech and their enforcement

On 12 June 2023, the government introduced the Act Amending the Penal Code, the Code of Criminal Procedure, and the Code of Misdemeanour Procedure (incitement to hatred and offences with a hate motive), which passed its first reading in Parliament on 27 September 2023. The new draft law proposes penalising individuals who incite hatred in a manner that may threaten public order. However, the

49 Draft Legislation Information System (Eelnõude Infosüsteem), *Korralduseseaduse muutmise seaduse väljatöötamiskavatsus*, 25 June 2024, <https://eelnoud.valitsus.ee/main/mount/docList/699319ce-7c2a-4bf4-8c6e-86f5002f4f43?activity=1#SrbTMNgQ>.

50 Estonian Public Broadcasting (ERR), ‘PPA banned November Tartu demonstration planned in support of Palestinians’, 6 December 2023, <https://news.err.ee/1609186429/ppa-banned-november-tartu-demonstration-planned-in-support-of-palestinians>.

51 Estonian Public Broadcasting (ERR), ‘Tartu halduskobus: Palestiina meeleavalduse keelamine ei olnud õiguspärase’, 11 July 2024, <https://www.err.ee/1609394194/tartu-halduskobus-palestiina-meeleavalduse-keelamine-ei-olnud-oigusparane>.

bill has not progressed in the Parliament, as coalition parties remain divided on the list of characteristics based on which to classify incitement to hatred as a crime.⁵²

Censorship and self-censorship, including the use of symbols and slogans

In August, the police faced criticism for confiscating a replica of a monument that was being transported to Lihula. The police stated that they received information that a monument was planned to be erected in Lihula, which may display prohibited symbols. The police sent the replica for expert analysis to confirm that it did not display symbols prohibited by § 151¹ of the Penal Code, which pertains to the support

or justification of international crimes.⁵³ Legal experts argued that transporting a monument cannot reasonably be considered as using a symbol to support aggression.⁵⁴ Later, the analysis confirmed that no Nazi symbols were present on the confiscated replica of the Lihula monument.⁵⁵ The police maintained that even if no prohibited symbols were found, the monument could still lead to misinterpretations by those unfamiliar with history, potentially resulting in malicious manipulation. Attorney-at-law Carri Ginter emphasised that the Republic of Estonia is founded on freedoms, and the rule of law faces a significant threat if the Law Enforcement Act is used to pre-emptively address potential misdemeanours.⁵⁶

52 Johannes Voltri, 'Võimuliit ei suuda leppida kokku avaliku vaenamise kriminaliseerimises', Estonian Public Broadcasting (ERR), 19 August 2024, <https://www.err.ee/1609428382/voimuliit-ei-suuda-leppida-kokku-avaliku-vaenamise-kriminaliseerimises>.

53 Estonian Public Broadcasting (ERR), 'Politsei konfiskeeris Lihula monumendi koopia', 1 September 2024, <https://www.err.ee/1609440749/politsei-konfiskeeris-lihula-monumendi-koopia>.

54 Estonian Public Broadcasting (ERR), 'Ginter: seadus ei keela Lihula samba transportimist', 3 September 2024, <https://www.err.ee/1609442177/ginter-seadus-ei-keela-lihula-samba-transportimist>.

55 Estonian Public Broadcasting (ERR), 'Läänemets: ekspertiisid ei tuvastanud Lihula sambalt keelatud sümbolikat', 21 October 2024, <https://www.err.ee/1609498666/laanemets-ekspertiisid-ei-tuvastanud-lihula-sambalt-keelatud-sumboolikat>.

56 Estonian Public Broadcasting (ERR), 'PPA leiab, et Lihula sammas võib tekitada inimestes valesid järeldusi', 22 October 2024, <https://www.err.ee/1609499326/ppa-leiab-et-lihula-sammas-voib-tekitada-inimestes-valesid-jareldusi>.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *The Parliament should amend the Electronic Communications Act to stop indiscriminate retention of communications data, thereby bringing Estonian law in line with EU law.*

Systemic human rights violations

The Estonian state has still not addressed the violation of privacy rights resulting from the indiscriminate retention of communications data of all residents. The Electronic Communications Act § 111¹ requires general and indiscriminate retention of metadata by providers of electronic communications services for one year from the date of the communication, which can be forwarded to the state authorities listed in the act based on relevant laws.⁵⁷ Both the Estonian Supreme Court⁵⁸ and the CJEU⁵⁹ have ruled this requirement incompatible with EU law.

In September 2024, the Tartu Circuit Court declared communications data inadmissible as evidence in criminal proceedings, after which the Office of the Prosecutor General ordered all prosecutors to stop the use of communications data in criminal proceedings.⁶⁰ The Ministry of the Interior is proposing to amend the law so that only communications data collected for commercial purposes can be used in criminal proceedings. However, the proposal would not abolish the obligation imposed under the Electronic Communications Act to retain a larger amount of data, as the Internal Security Service and the Foreign Intelligence Service also use these communications data outside of criminal proceedings.⁶¹

57 Riigi Teataja, Electronic Communications Act (*Elektroonilise side seadus*), § 111¹, 8 December 2004, <https://www.riigiteataja.ee/en/eli/515102024005/consolide>.

58 Supreme Court of Estonia (Riigikohus), *Case No 1-16-6179*, 18 June 2021, <https://www.riigikohus.ee/et/lahendid?asjaNr=1-16-6179/111>.

59 Court of Justice of the European Union, *Case C 746/18*, 2 March 2021, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62018CJ0746>.

60 Estonian Public Broadcasting (ERR), *'Ministeerium plaanib sideandmete kogumise seadusemuudatust'*, 9 October 2024, <https://www.err.ee/1609485895/ministeerium-plaanib-sideandmete-kogumise-seadusemuudatust>.

61 Estonian Public Broadcasting (ERR), *'Ettevõtete kohustus sideandmeid koguda veel niipea ei kao'*, 16 December 2024, <https://www.err.ee/1609552291/ettevotete-kohustus-sideandmeid-koguda-veel-niipea-ei-ka>.

The Ministry of Justice has acknowledged that the general obligation to retain communications data cannot continue, and is considering alternatives, such as retention based on categories of individuals or by geographical areas. However, no concrete action has been taken.⁶²

FOSTERING A RULE OF LAW CULTURE

Contribution of civil society and other non-governmental actors

The Estonian Human Rights Centre (EHRC) contributes to fostering a rule of law culture through strategic litigation, by offering legal aid to people whose cases are of strategic significance, with the aim of influencing the quality of law and its implementation.⁶³ For example, in October 2024, as a result of a strategic court case, a decision by the Police and Border Guard Board (PBGB) to reject the application for a residence permit of a Ukrainian citizen was declared unlawful. The application was originally rejected by the PBGB because the applicant did not submit a military ID card or a certificate of exemption from service, due to which the PBGB argued that they were unable

to assess whether the applicant posed a threat to public order or the security of the Estonian state. The EHRC lawyers appealed the decision, pointing out that the applicant was unable to submit the requested documents and the PBGB had not considered other options for processing his application, as required by the principle of investigation, and the exercise of discretion. Tallinn Administrative Court upheld the appeal, highlighting the importance of the application of legal principles in administrative proceedings.⁶⁴

62 Estonian Public Broadcasting (ERR), 'Estonia may limit data retention obligation to specific areas', *groups*, 14 October 2024, <https://news.err.ee/1609490488/estonia-may-limit-data-retention-obligation-to-specific-areas-groups>.

63 Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*), 'Strategic litigation', <https://humanrights.ee/en/topics-main/strateegiline-hagelemine/>.

64 Estonian Human Rights Centre (*Eesti Inimõiguste Keskus*), '*Kohus: puuduv sõjaväepilet ei takista elamisloa andmist*', 15 October 2024, <https://humanrights.ee/2024/10/kohus-puuduv-sojavaepilet-ei-takista-elamisloa-andmist/>.

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Estonian Human Rights Centre (Eesti Inimõiguste Keskus)

The Estonian Human Rights Centre is an independent non-governmental human rights advocacy organisation. EHRC develops its activities according to the needs of the society. Our focus is currently on the advancement of equal treatment of minority groups and diversity & inclusion and the human rights of asylum seekers and refugees.

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ABOUT THE AUTHORS

VoxPublic



VoxPublic is a non-profit organisation composed of a permanent team of four advocacy specialists based in Paris. It is governed by a seven-member executive board and receives support from an active community of volunteers, the 'VoxPublic Agora' members. The association was created in 2016 and ever since has been working on empowering French civil society organisations and citizen initiatives in their advocacy actions. VoxPublic thereby provides support and capacity-building to victims of discrimination and social injustices wishing to challenge decision-makers. VoxPublic also works with issues regarding the rule of law, respect for fundamental freedoms, and the protection of the democratic space, which are essential for civil society actors to defend their causes. VoxPublic provides partners with operational support in terms of campaign building, networking, strategic document writing, as well as strategic use of social media and media.

KEY CONCERNS

Justice System

The issues raised last year regarding the lack of independence of the judiciary (especially public prosecutors) and the insufficiency of the judicial national budget haven't been solved.

Continue efforts are needed to complete ongoing projects aimed at the full digitalisation of civil and criminal court proceedings.

Anti-Corruption Framework

Despite the recommendations of international bodies, independent administrations, or MPs, the French government has not adopted an anti-corruption policy or increased the resources of the justice system in this area. Anticorruption NGOs continue to be hindered in their work.

The transparency of interactions between senior civil servants and lobbyists is unsatisfactory according to GRECO. Verification of the declarations of assets and interests of elected candidates remains another area for improvement, particularly in a context of electoral instability and rapid turnover at the top of government.

Media Environment and Media Freedom

The early elections in June 2024 provided an opportunity to observe the mechanisms of influence, and the lack of pluralism on some media channels, put in place by media groups to support a political agenda favouring the far

right. Media concentration continues, reinforcing the previous dynamic.

In 2024, the French authorities took no steps to restrict media concentration. On the contrary, it continued, for example, through the acquisition of financial control over major publishing houses. No full transposition of the EMFA is currently planned by the French parliament.

Checks and Balances

The President of the Republic did not respect the result of the European Parliament election and concerns were raised over the resignation of the government in summer 2024. Despite the fact that no coalition was able to build a majority in the National Assembly, the government did not use the legislative procedure known as '49.3' until December and was toppled right after.

Civic Space

A series of new security laws, justified by the Olympic Games or the prevention of foreign interference, have restricted freedoms of expression and association. Arbitrary administrative sanctions against demonstrators have continued and public funding has decreased.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

Several systemic human rights violations were observed during 2024: racial profiling, 'social cleansing' and violations of prisoners' rights.

France was sanctioned by several national and international courts.

The recommendations have not been followed up, and the opinions and decisions of the independent authorities (e.g. Defender of Rights) have not been acted upon.

State of play (versus 2024)

- Justice system
- Anti-corruption framework
- ↓ Media Environment and Media Freedom
- ↓ Checks and balances
- ↓ Civic Space
- ↓ Human Rights

Legend

Regression



No progress



Progress



JUSTICE SYSTEM

Key recommendations

- *Raise the judicial budget to the level of similar States (Germany, Netherlands).*
- *Improve the independence of judges and courts.*
- *Give public prosecutors real independence.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

Public prosecutors are appointed exclusively by the Ministry of Justice.

French prosecutors are entirely subordinate to the executive power: only the Ministry of Justice is responsible for their appointment and disciplinary proceedings.

Allocation of cases in courts

The principle of a natural judge (i.e. a judge assigned to the case based on preestablished criteria) is not fully recognised under French law; except in some positions (investigating judge, juvenile judge, sentence enforcement judge, pretrial detention judge), in which litigations and cases are allocated by court presidents on a discretionary basis.

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

The majority of the members of the Superior Council of the Judiciary (8/15) are appointed by the government and the Parliament, they are not judges or prosecutors elected by their peers.

Except for the administrative branch of the judiciary, courts do not enjoy any financial autonomy.

The members of the State Council (i.e. the Supreme Administrative Court) worked half of their careers as directors of central administration in ministries.

Independence/autonomy of the prosecution service

French prosecutors are entirely subordinate to the executive power: only the Ministry of Justice is responsible for their appointment and disciplinary proceedings.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

The majority of politicians and members of ruling classes are still reluctant to accept full independence of the judiciary – especially when they are involved in legal cases;

Recently, attacks have been observed from politicians and media outlets against judges' freedom of speech. The duty to discretion is mistaken for a duty of silence if not allegiance to the government. The duty to speak publicly when the rule of law is at stake (which is granted by the ECHR¹) is denied. The duty to impartiality is mistaken for a duty of neutrality. After the attempt of the Parliament to muzzle judges² in 2023, some politicians and media outlets expressed their wish, in the context of the national election in June 2024, to ban judicial unionism because of a so-called abuse of speech of judges unionists.³ The Magistrates' Union, which has a left-wing reputation and is often caricatured by the far right as the 'Red Judges Union', expressed fears of a purge of the French judicial system had the Rassemblement National been victorious in the June 2024 elections.

Quality of justice**Resources of the judiciary (human/financial/material)**

Although increasing, the judicial budget remains too low to allow courts to deliver justice within a reasonable time. For instance, in some places, one has to wait more than three years to get a sentence in unfair termination of employment cases, two years to get divorced, etc.

Further efforts are needed to complete ongoing projects aimed at the full digitalisation of civil and criminal court proceedings.

Fairness and efficiency of the justice system**Length of proceedings**

Due to the lack of financial resources, courts can't deliver justice and execute sentences within a reasonable time.

1 ECtHR, Judgement of the 16 June 2022, *Żurek v. Poland*, No. 39650/18, 16 June 2022, n°222.

2 MEDEL, *After Poland and Hungary, France?*, 13 June 2023, <https://medelnet.eu/after-poland-and-hungary-france/>.

3 Syndicat de la Magistrature, *Communiqué de Presse: Justice bouche cousue ?*, 2 July 2024, <https://www.syndicat-magistrature.fr/notre-action/defense-des-libertes/droits-des-etrangers/2681-communique-la-justice-bouche-cousue/>.

Execution of judgments

Although the ECtHR ruled in January 2020 that French detention conditions generated systemic violation of Article 3 of the ECHR,

nothing has changed, the prisons are still overpopulated, with 79,631 inmates for 62,279 cells and thousands sleeping on the floor in October 2024.

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *The legislative power should award anti-corruption approval to associations through a high-level administrative authority independent of political influence.*
- *The executive power should establish an ambitious public anti-corruption policy, taking into account the recommendations of civil society actors and specialised magistrates.*
- *The legislative power should establish status and procedures for whistleblowers in the field of defense and national security in order to protect them.*

Levels of corruption

The Transparency International Corruption Perception Index highlights France's stagnation. The cost of corruption in France is estimated at €120 billion a year, according to the association Anticor. In an evaluation report published in April 2024,⁴ the Group of States against Corruption (GRECO) concluded that "France does not sufficiently comply with the recommendations made".⁵

Ten years after the creation of the High Authority for Transparency in Public Life (HATPL), the French Anti-Corruption Agency (AFA) and the National Financial Prosecutor's Office (PNF), France still lacks a public anti-corruption policy. Moreover, this lack of political commitment is compounded by a desire to obstruct the action of anti-corruption associations, as illustrated by the series of events surrounding the non-renewal of Anticor's accreditation. It was finally returned to the association in September 2024 after

4 GRECO, Second conformity report (Deuxième rapport de conformité), 10 April 2024, <https://rm.coe.int/cinquieme-cycle-d-evaluation-prevention-de-la-corruption-et-promotion-/1680af36e9>.

5 Ibid.

more than a year of legal and administrative proceedings that diverted its resources and energies. The withdrawal of Anticor’s anti-corruption approval for 2021-2023 was due to a drafting error in the granting decree by former Prime Minister Jean Castex. This government approval allowed the association to take legal action and act as a civil party in corruption cases, particularly in the absence of action by the public prosecutor.

Framework to prevent corruption

Rules on preventing conflicts of interest in the public sector

In its 2024 report, the GRECO welcomes the introduction of:

“a self-diagnosis questionnaire on the risks of conflicts of interest, which was given to members of the Government when they took office for the first time in July 2023. The prior control carried out by the HATVP on proposed nominations of members of ministerial cabinets and collaborators of the President of the Republic from the private sector has proved its effectiveness, but should be extended to all advisors”.⁶

The GRECO report also highlights the need for further measures, such as improving the transparency of interactions between senior officials and lobbies. The verification of elected candidates’ declarations of assets and interests also remains an area for improvement.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

On 25 September 2024 the Defender of Rights, an independent administrative authority empowered to receive whistleblowers’ reports, published its biannual report titled *The Protection of Whistleblowers in France*.⁷ The authority welcomes “a clarified and unified framework” and points out that since the law of 21 March of 2022 “whistleblowers can freely choose the path most appropriate to their situation by allowing them to have recourse, in the first instance, to internal reporting or external reporting”. Nevertheless, the Defender of Rights is regularly contacted by complainants who “denounce the absence of internal whistleblowing procedures within entities required to put them in place”.⁸

In its reservations and recommendations, the Defender of Rights expresses concern about

6 GRECO, Second conformity report (Deuxième rapport de conformité), 10 April 2024, <https://rm.coe.int/cinquieme-cycle-d-evaluation-prevention-de-la-corruption-et-promotion-/1680af36e9>.

7 Défenseur des droits, Biannual report whistleblower protection in France 2022-2023 (Rapport Bisannuel La protection des lanceurs d’alerte en France), 25 September 2024, https://www.defenseurdesdroits.fr/sites/default/files/2024-09/ddd-rapport-LA_2022-23_20240610.pdf.

8 Défenseur des droits, Biannual report whistleblower protection in France 2022-2023 (Rapport Bisannuel La protection des lanceurs d’alerte en France), 25 September 2024, https://www.defenseurdesdroits.fr/sites/default/files/2024-09/ddd-rapport-LA_2022-23_20240610.pdf.

the “lack of protection mechanisms in the field of defense and national security”, which results in “discouraging whistleblowing efforts in this area where the stakes, particularly financial, are especially high”. Similarly, these provisions may discourage journalists from covering these topics, as their sources are neither protected by ‘source confidentiality’ nor by whistleblower protection, thus exposing them to sanctions for revealing information classified as ‘defense secret’ (as exemplified in the 2023 Disclose-Lavrilleux case).⁹

Regarding corruption, the Defender of Rights highlights “the confusion of whistleblowing mechanisms” and recommends “initiating a reflection, in coordination with the French Anti-Corruption Agency (AFA), on the alignment of rules concerning anti-corruption whistleblowing with the general framework of the Sapin II Law”, a law of 9 December 2016 on “transparency, the fight against corruption and the modernisation of economic life”.

List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflicts of interest in these sectors. (e.g. public procurement, health-care, other)

The High Authority for Transparency in Public Life (HATPL) prior control over the appointment of ministerial or presidential collaborators recruited from the private sector has proved its effectiveness, according to legal experts.¹⁰ In the context of political instability and rapid turnover of members of the government, the independent authority reiterated that “within two months of their appointment, members of the Government must submit a declaration of assets and interests to the HATPL”. Issuing this statement in December 2024, they go on to state “once they have been thoroughly examined, the declarations of interest and assets of the members of the Government will be published on the HATPL’s website until the end of their functions”.¹¹

9 Since 2019, the French government has increased intimidation against journalists investigating military secrets. In late 2022, four members of the investigative media outlet Disclose were subjected to investigations led by French domestic intelligence services. On September 19, 2023, one of the journalists, Ariane Lavrilleux, was arrested at her home, which was searched, and her professional equipment was seized. In 2025, the journalist is still threatened with prosecution for ‘appropriation and disclosure of a national defence secret’.

10 Arnaud Dumourier, *Preventing corruption in France: Insufficient efforts according to GRECO*, (*Prévention de la corruption en France: des efforts insuffisants selon le GRECO*), *Le Monde du Droit*, 11 April 2024, <https://www.lemondedudroit.fr/institutions/92332-prevention-corruption-france-efforts-insuffisants-greco.html>.

11 Haute Autorité pour la Transparence de la Vie Publique, *The High Authority alerts members on the needs to prevent conflicts of interest*, (*La Haute Autorité alerte les membres sur la prévention des conflits d’intérêts*), 30 December 2024, <https://www.hatvp.fr/presse/la-haute-autorite-alerte-les-membres-du-gouvernement-sur-la-prevention-des-conflits-dinterets-3/>.

The GRECO points out that in France there is no overall strategy dedicated to the prevention of corruption risks within the National Police's law enforcement services, nor "a specific rotation system for sectors mapped as being more exposed to corruption risks".¹²

Any other relevant measures to prevent corruption in public and private sector

International organisations like GRECO and civil society like Transparency international or Sherpa have been calling on France for many years to make the fight against corruption a matter of public policy – a government responsibility in its own right. According to its author, former deputy and lawyer Raphael Gauvin "One of the first measures to be taken is to set up an inter-ministerial committee dedicated to the fight against corruption, as proposed in the 2021 parliamentary report on the evaluation of the Sapin 2 law"¹³ It should be chaired by the Prime Minister, and bring together the various ministers, directors of administration and administrative authorities concerned, to enable better administrative coordination and regular

sharing of information between the main public stakeholders.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

After ten years of existence, the National Financial Prosecutor's Office has recorded more than 3,200 proceedings initiated, resulting in 532 convictions. A total of €12.217 billion in fines, confiscations, damages and tax reassessments were handed down to the French Treasury.¹⁴

Of the proceedings currently in progress, 40% are the result of referrals from public authorities. Associations, particularly those with anti-corruption accreditation, and whistleblowers play a significant role in the proceedings investigated by the PNF. The resources allocated to the PNF remain clearly insufficient, and are lower than those envisaged in the impact study carried out at the time of its creation in 2014.

12 Arnaud Dumourier, *Preventing corruption in France: Insufficient efforts according to GRECO*, (*Prévention de la corruption en France: des efforts insuffisants selon le GRECO*), *Le Monde du Droit*, 11 April 2024, <https://www.lemondedudroit.fr/institutions/92332-prevention-corruption-france-efforts-insuffisants-greco.html>.

13 Raphael Gauvain and Vincent Filhol, *The need for a political impulse in the fight against corruption* ("Il faut enfin donner une véritable impulsion politique dans la lutte contre la corruption") *Le Monde*, 1 May 2024, https://www.lemonde.fr/idees/article/2024/05/01/il-faut-enfin-donner-une-veritable-impulsion-politique-a-la-lutte-contre-la-corruption_6230937_3232.html.

14 Transparency international France, *2014-2024 marque la première décennie du Parquet National Financier (PNF) : quel bilan pour la lutte contre la grande délinquance économique et financière en France?*, <https://transparency-france.org/wp-content/uploads/2024/10/ARTICLE-les-10-ans-du-PNF-LF-1.pdf>.

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds. Please provide data where available.

In April 2024, a collective of more than 120 magistrates called for structural reforms to strengthen the resources of the judicial police and the implementation of new traceability tools for financial flows, believing that this is crucial to winning the battle against narco-trafficking and money laundering, which fuel much of the corruption witnessed in the country.¹⁵

Other

“In July 2024, France suffered a significant setback in terms of financial transparency, with the closure to the public of its register of companies’ beneficial owners (RBE)”, points out the newspaper *Le Monde*.¹⁶ The RBE was considered a major step forward in terms of financial transparency and the fight against fraud and money laundering. The RBE was also widely used by the media in investigating corruption and financial crimes. In the absence of information on beneficial owners, accused and convicted persons can easily – and legally – hide behind nominees or shell companies acting as managers or shareholders.

The closure of the RBE was made mandatory by the 22 November 2022 ruling¹⁷ of the Court of Justice of the European Union, which declared public access to European registers of beneficial owners illegal, in the name of respect for privacy.

15 *Le Monde*, *Faced with the rising of organised crime, the French justice system suffers from a long-term lack of resources* (« Face à la montée en puissance du crime organisé, la justice française souffre d’un manque durable de moyens »), 8 April 2024, https://www.lemonde.fr/idees/article/2024/04/08/face-a-la-montee-en-puissance-du-crime-organise-la-justice-francaise-souffre-d-un-manque-durable-de-moyens_6226629_3232.html.

16 Maxime Vaudano, *How financial transparency in France is taking a step back after the closure of the effective beneficiaries registree* (*Pourquoi la transparence financière va reculer en France, avec la fermeture du registre des bénéficiaires effectifs*), *Le Monde*, 16 June 2024, https://www.lemonde.fr/les-decodeurs/article/2024/06/16/pourquoi-la-transparence-financiere-va-reculer-en-france-avec-la-fermeture-du-registre-des-beneficiaires-effectifs_6240503_4355770.html.

17 Judgment of the Court (Grand Chamber) of 22 November 2022. *WM and Sovim SA v. Luxembourg Business Registers*, <https://eur-lex.europa.eu/legal-content/en/TXT/?uri=CELEX:62020CJ0037>.

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- Both the executive power and the Parliament should prioritise a prompt transposition of the European Media Freedom Act (EMFA) into French law.
- Lawmakers should grant legal personality to the editorial team of a media outlet. The purpose of this is to give the right to oppose editorial decisions and the appointment of management positions when the media's independence is challenged by a shareholder, management, or an advertiser.
- Lawmakers should strengthen the control and sanction mechanisms available to the Audiovisual and Digital Communication Regulatory Authority (ARCOM).

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

In August 2024, ARCOM's directors received death threats. "Although no reason was given in the letter, the threats could be linked to the decision not to renew the DTT (digital terrestrial television - TNT) frequency of the C8 channel announced a week before receiving this letter," reports the newspaper *Libération*.¹⁸ The C8 channel, which belongs to the Canal + group owned by Vincent Bolloré, has

repeatedly failed to meet its obligations over the years, largely due to the outrageous behaviour of Cyril Hanouna on his flagship programme *Touche pas à mon poste*. As Arcom pointed out at the hearing of Canal+ group executives in early July, the channel has been fined up to €7.6 million over the past eight years.¹⁹

Pluralism and concentration

Levels of market concentration

The appetite of major media owners is now turning to renowned publishing houses. At the end of 2023, Vincent Bolloré acquired the Hachette group, which includes major

18 *Libération*, *Arcom directors faced with death threats*, (*Les dirigeants de l'Arcom visés par des menaces de mort*), 7 August 2024, https://www.liberation.fr/economie/medias/les-dirigeants-de-larcom-vises-par-des-menaces-de-mort-20240807_OPLZBNRJXJCM3MY2EXMSW76CUA/.

19 *Ibid.*

publishing houses such as Armand Colin, Fayard, Grasset and Stock, as well as school and children’s publishing. In 2024, this press magnate placed personalities who shared his conservative political views at the head of several publishing houses.

Following the takeover of Hachette, Vincent Bolloré had to sell Editis, which is now owned by Daniel Kretinsky. Editis is considered France’s second-largest publishing group, just behind Hachette. These two publishing champions now find themselves linked to large hegemonic groups in the media sector.

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

In 2024, a parliamentary commission of investigation, composed of thirty deputies, examined the allocation, content and control of authorisations for national television services on digital terrestrial television (TNT). In particular, it set out to examine the means of control implemented by Arcom to ensure pluralism, and its ability to sanction broadcasters who fail to comply with the law (incitement to hatred, fake news). In its conclusions, the commission points out that:

“private TNT remains a low-cost form of television, combining advertising and propaganda. Today, it is the battleground of a few private industrial groups, for whom ownership of a mass medium is part of an economic strategy, but also one of influence, defense of private interests and personal convictions. Above all, the regulator does not appear to be in a position either to enforce the obligations applicable to channels, or to guarantee the pluralism of expression of all the currents of thought and opinion in French society, necessary for the proper conduct of democratic debate.”²⁰

Transparency and media ownership

In its 2024 report on global press freedom, Reporter Without Borders notes that:

“the concentration of private press groups in the hands of a few businessmen is becoming a major concern in France. The expansion of the Bolloré group (CNews, Paris Match, Europe 1, Le Journal du Dimanche), which absorbed the Lagardère group in 2023, is worrying the sector because of the shareholder’s brutal, interventionist methods and lack of internal pluralism, raising fears of the triumph of opinion over facts.”²¹

Several recent cases have highlighted a shareholder’s ability to significantly change a title’s editorial line following a takeover. At the same time, some journalists have expressed the wish

20 Commission d’enquête sur l’attribution, le contenu et le contrôle des autorisations de services de télévision à caractère national sur la télévision numérique terrestre, May 2024, <https://www.assemblee-nationale.fr/dyn/16/organes/autres-commissions/commissions-enquete/ce-autorisations-services-television>.

21 Reporters sans Frontières, <https://rsf.org/fr/pays/france>.

for more direct involvement of editorial teams in the management of titles, promoting the idea of a ‘right of approval’ of journalists for the editorial director.

To this day, there are no plans to fully transpose the EMFA into French law. Nevertheless, a bill aimed at “reinforcing media independence and better protecting journalists”²² was debated in the Senate in autumn 2024, and could incorporate some of EMFA’s specific measures for protecting the confidentiality of sources and journalists.

Public service media

Independence of public service media from governmental interference

Scheduled to go before the National Assembly on 23 May 2024, the government’s proposal to reform the public broadcasting sector by merging the various press services of the public media was withdrawn from the agenda against a backdrop of public service strikes and the unpopularity of the measure in an election period (European Parliament elections 2024). The dissolution of the National Assembly

and the fall of Elisabeth Borne’s government helped to keep this reform off the political agenda. Supported by Minister of Culture Rachida Dati, the reform was nevertheless reinstated in Michel Barnier’s government in September 2024. An article by all the journalists’ associations denounced the reform as they feared “an impoverishment of the information on offer”, and the risk of “being more susceptible to pressure, particularly political pressure, once united under a single management”.²³

Online media

Impact on media of online content regulation rules (including content removal obligations, liability rules)

In September 2024, the *Etats généraux de l’information*,²⁴ a consultation process organised by the government, proposed in its conclusions to combat misinformation by promoting quality information on French networks through a reliability label, to which the media would subscribe, and could be favored in algorithms, both with the public and advertisers (Source RFI). This is in line with the Journalism Trust Initiative, promoted by Reporters Without

22 Sénat, Law proposal on strengthening media independence and better protect journalists (proposition de loi visant à renforcer l’indépendance des médias et mieux protéger les journalistes), 24 July 2024, <https://www.senat.fr/dossier-legislatif/ppl23-741.html>.

23 Le Monde, *Draft reform on public broadcasting: No, public broadcasting media will not be stronger together (Projet de réforme de l’audiovisuel public : « Non, les médias audiovisuels publics ne seront pas plus forts ensemble »)*, 22 May 2024, https://www.lemonde.fr/idees/article/2024/05/22/projet-de-reforme-de-l-audiovisuel-public-non-les-medias-audiovisuels-publics-ne-seront-pas-plus-forts-ensemble_6234864_3232.html.

24 Vie Publique, *Report on the General Status of Information (Rapport des États Généraux de l’information)*, 12 September 2024, <https://www.vie-publique.fr/files/rapport/pdf/295405.pdf>.

Borders (RSF), co-initiator of this major consultation.

Public trust in media

The La Croix-Kantar barometer on French people's confidence in the media shows that 62% of French people believe 'that we should be cautious of what the media says about major current affairs' (+5% since 2022).²⁵ Despite a trending 'information overload syndrome', 74% of 18-24 year-olds show a great interest in news, compared to just 61% in November 2023, an increase of 14 points!

Safety and protection of journalists and other media actors

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

The European directive on the fight against gagging procedures (SLAPPs Directive) has not yet been transposed into French law. The association La Maison des Lanceurs d'Alerte (House of Whistleblowers) has noted an increasingly worrying and diversified number of gagging procedures implemented in France,

by companies and public authorities against whistleblowers, journalists and NGOs.²⁶

In their conclusions, the Etats généraux de l'information stated that, with regard to SLAPP (strategic lawsuit against public participation) procedures:

*"it is proposed to introduce into the law a precise definition of these procedures, valid also for internal cases, as well as provisions enabling the rapid dismissal of unfounded procedures and dissuasive sanctions in the event of abuse, covering the legal costs and moral prejudice suffered by the journalist or the editorial staff, as is already the case in certain European Union countries."*²⁷

25 Maude Guilbeault, (*Media Barometer 2025: misinformation, fatigue, confidence... Our survey in 8 key figures*), *Baromètre des médias 2025 : désinformation, fatigue, confiance... Notre sondage en 8 chiffres clés*, La Croix, 14 January 2025, <https://www.la-croix.com/culture/barometre-des-medias-2025-desinformation-fatigue-confiance-notre-sondage-en-8-chiffres-cles-20250114>.

26 La Maison des Lanceurs d'Alerte, *Total censorship: we will not be silenced by SLAPPs!*, 26 June 2023, <https://mlalerte.org/total-censorship-we-will-not-be-silenced-by-slapps/>.

27 Rapport des états généraux de l'information - Protéger et développer, le droit à l'information : une urgence démocratique, September 2024.

CHECKS AND BALANCES

Key recommendations

- *Abolish Article 49-3 of the Constitution.*
- *Create a set of rules to establish a precise timeframe for resigning governments.*
- *Increase state funding to strengthen more human and financial resources for independent bodies and institutions tasked with human rights monitoring.*

Process for preparing and enacting laws

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

Between January and September 2024, the Attal government did not use Article 49-3 of the Constitution, which allows a bill to be passed without a vote. However, its use by Michel Barnier's government in December 2024 to force through a controversial budget bill resulted in a vote of no confidence. Among the criticisms levelled at the existence and use of Article 49-3 are, first and foremost, the bypassing of parliamentarianism and the impossibility of calm, constructive debate.

Michel Barnier's government chose to use Article 49-3 on 2 December 2024 to force through the Social Security Financing Bill. As a result, deputies tabled motions of censure,

which received 331 votes, exceeding the absolute majority set at 289 votes. This is only the second time under the Fifth Republic that the National Assembly has rejected a government in this way; the previous occurrence dates back to 5 October 1962, with the fall of Georges Pompidou's government.

Independent authorities

Opinions coming from independent authorities such as the Defender of Rights or the National Consultative Commission on Human Rights are not legally binding. Although their recommendations are intended to influence the development of public policies, they appear to be barely taken into account in the decision-making process under Emmanuel Macron's presidency (since 2017). It was notable that in 2024, several critical opinions from these organisations gave rise to no response from administrative and political authorities. For example, the Defender of Rights issued a critical opinion on the rights of prisoners and

called for urgent responses, which remains unfollowed.²⁸

Electoral framework

Limitations on the right to vote

Following the result of the European elections on 9 June 2024, in which the far right came out on top, French President Emmanuel Macron announced the dissolution of the National Assembly. He justified this decision by the poor scores “for parties that defend Europe, including that of the presidential majority”.²⁹ The dissolution put an end to the term of office of sitting deputies and called for new legislative elections.

Legislative elections were therefore held on 30 June and 7 July, barely three weeks after the announcement of the dissolution. Holding the polls within such a short timeframe was lawful, as confirmed by the Constitutional Council in

a decision dated 20 June 2024, rejecting 10 appeals.³⁰ However, Emmanuel Macron also “froze the electorate” in his decree, preventing, with a few exceptions, the registration of those not or incorrectly registered (around 11 million people) on the electoral rolls.³¹

Rules on political advertising and their enforcement

In France, political advertisements are strictly regulated. Since 2018, the law aimed at combating the manipulation of information has prohibited political ads on social media during election campaigns, and until the end of general election periods. This legal framework was not challenged during the 2024 European or legislative elections.

28 Défenseur des droits, Communication de la défenseure des droits, *Prisoners' rights: an alarming situation requiring urgent responses* (*Les droits des personnes détenues : Un constat alarmant nécessitant des réponses urgentes*), 6 November 2024, https://www.defenseurdesdroits.fr/sites/default/files/2024-11/Defenseur_des_droits_Communication_Lesdroitsdespersonnesdetenues.pdf.

29 Vie publique, President Emmanuel Macron's Declaration on the European election results and the dissolution of the National Assembly (Déclaration de M. Emmanuel Macron, président de la République, sur le résultat des élections européennes et la dissolution de l'Assemblée nationale, à Paris le 9 juin 2024), 9 June 2024, <https://www.vie-publique.fr/discours/294547-emmanuel-macron-09062024-dissolution-de-lassemblee-nationale>.

30 Constitutional court (France), Judgment of 20th of June 2024, No 2024-32/33/34/35/36/37/38/39/40/41, <https://www.conseil-constitutionnel.fr/actualites/communiquede/decision-n-2024-32333435363738394041-elec-du-20-juin-2024-communique-de-presse>.

31 Simon Barbarit, 2024 Legislative elections: Is it too late to register? (Législatives 2024: peut-on encore s'inscrire sur les listes électorales?), Public Sénat, 13 June 2024, <https://www.publicsenat.fr/actualites/politique/legislatives-2024-peut-on-encore-sinscrire-sur-les-listes-electorales>.

Eligibility criteria and restrictions to be a candidate

In France, in case of conviction for violations of the duty of integrity, active corruption, or influence peddling, ineligibility can be imposed as an additional penalty on a person holding a government position or an elected public mandate at the time of the offense. Right-wing and far-right political figures (Balkany,³² Le Pen³³) challenge this ‘power of the judges’ and have attempted to spark a debate on the existence of this penalty, claiming that it constitutes targeted/tailor-made political sanctions that go against the principle of ‘popular sovereignty’.

Transition of power

Following the legislative elections in July 2024, far-right parties secured more than 33% of the vote, followed by the coalition of left-wing parties (the Nouveau Front Populaire) with 27%, and Emmanuel Macron’s party with 20%. The President did not immediately appoint a new Prime Minister, leading to an

unprecedented period of ‘non-transition’ lasting 51 days, during which a caretaker government managed current affairs while the Olympic Games were held in France. He ultimately appointed Michel Barnier on 5 September 2024, from the ranks of the Les Républicains party, which had only secured 47 seats in the legislative elections. Journalists and civil society actors labeled this appointment as a “denial of democracy”.³⁴ After three months in office, Mr. Barnier became the Prime Minister with the shortest tenure in the history of the Fifth Republic when his government was outvoted by the National Assembly.

Access to balanced and reliable information online and offline during electoral campaign: campaigning, media coverage, disinformation and misinformation

ARCOM, the French audiovisual regulatory authority, had to intervene during the European election campaign. It responded to complaints from smaller parties that felt disadvantaged compared to the major ones. ARCOM

32 Aurélien Thirard, Patrick Balkany requests a remission for his ineligibility penalty to stand for the Levallois-Perret Mayor elections of 2026 (Patrick Balkany demande une remise de sa peine d’inéligibilité pour pouvoir se représenter aux municipales à Levallois-Perret en 2026), *Franceinfo*, 28 November 2024, https://www.francetvinfo.fr/faits-divers/justice-proces/patrick-balkany-demande-une-remise-de-sa-peine-d-ineligibilite-pour-pouvoir-se-representer-aux-municipales-a-levallois-perret-en-2026_6924530.html.

33 Pauline Godart, RN trial : Marine Le Pen could face an ineligibility sentence, her fate is to be determined on March 31st. (Procès du RN : Marine Le Pen, qui risque une peine d’inéligibilité, fixée sur son sort le 31 mars), *France 24*, 27 November 2024, <https://www.france24.com/fr/info-en-continu/20241127-proc%C3%A8s-rn-la-parole-%C3%A0-la-d%C3%A9fense-de-marine-le-pen-pour-lui-%C3%A9viter-la-mort-politique>.

34 Amélie Quentel, *Barnier Government : a profound denial of democracy* (Gouvernement Barnier : « Il y a un profond déni démocratique »), *Reporterre*, 23 September 2024, <https://reporterre.net/Gouvernement-Barnier-Il-y-a-un-profond-deni-democratique>.

decided to count the President’s interview time as part of the speaking time allocated to the candidate from his party in the European elections.³⁵ It had already done the same for interventions by Prime Minister Gabriel Attal. While ARCOM sanctioned the presidential party’s attempts to violate the principle of equal speaking time, this tendency to manipulate a European election remains concerning.

During the legislative elections, ARCOM issued a warning to the national radio station Europe 1, owned by Vincent Bolloré, and its star host Cyril Hanouna, instructing them to “treat election-related news with moderation and honesty” and to “strictly ensure a diversity of viewpoints in debate programs”. The host was criticised for favoring far-right guests on his shows.

35 Adel Miliani, European elections 2024 : understanding the controversy over the executive’s speaking time during the campaign (Européennes 2024 : comprendre la polémique sur le temps de parole de l’exécutif durant la campagne), *Le Monde*, 4 June 2024, https://www.lemonde.fr/les-decodeurs/article/2024/06/04/europeennes-2024-comprendre-la-polemique-sur-le-temps-de-parole-de-l-executif-durant-la-campagne_6237294_4355770.html.

CIVIC SPACE

Key recommendations

- *Increase public authorities' financial support to associations and prioritise grants while protecting them from competition rules.*
- *Executive or legislative powers should abolish the Republican Commitment Contract and replace it with a charter of mutual commitments between the state, local authorities, and the association sector.*
- *The Ministry of Interior should revise law enforcement doctrines to ensure the safety and physical integrity of demonstrators.*

Freedom of association

Involuntary dissolution

The freedom of association in France remains characterised in 2024 by the repeated use of administrative dissolutions of associations. In June 2024, a series of far-right associations and groups were dissolved by a decision of the Council of Ministers.³⁶ Few of these organisations, many of which were informal, appealed the dissolution decisions, preferring

to reappear under a new identity. Rarely used until now, legal proceedings for 'reconstitution of a dissolved league' were initiated in March 2024 against far-right identitarian militants.³⁷

Freedom to determine objectives and activities, including the scope of operations

The Mouvement associatif states that in 2024 "one in two associations was forced to stop certain projects due to a decrease in public funding".³⁸ According to the report by the Economic,

36 Public Sénat, 26 June 2024, <https://www.publicsenat.fr/actualites/politique/le-gud-et-trois-autres-groupuscules-dissous-par-le-gouvernement>.

37 Libération, *Prosecuted for 'reconstituting a disbanded league', the identitaires launch a fund-raising campaign, (Poursuivis pour «reconstitution de ligue dissoute», les identitaires lancent une cagnotte)*, 21 March 2024, https://www.liberation.fr/politique/poursuivis-pour-reconstitution-de-ligue-dissoute-les-identitaires-lancent-une-cagnotte-20240321_RI7EDOY3GZAO7GVJGKAEQQ3VEQ/.

38 CESE (Conseil Économique Social et Environnemental), *Strengthening the funding of associations : à democratic emergency: an opinion adopted by the CESE (Renforcer le financement des associations : une urgence démocratique : le CESE a adopté l'avis)*, 3 June 2024, <https://www.lecese.fr/actualites/renforcer-le-financement-des-associations-une-urgence-democratique-le-cese-adopte-lavis>.

Social, and Environmental Council (CESE) published in May 2024, titled *Strengthening the Funding of Associations: A Democratic Urgency*,³⁹ in a context of diminishing public funding, many associations have modified their projects to align with the priorities of private funders, sometimes at the expense of their original mission. For example, cultural associations have shifted their programs toward topics more attractive to corporate sponsors, such as digital innovation or sustainable development, in order to secure funding. While this adaptation is strategic, it can limit the operational freedom of associations by moving them away from their primary objectives.

Equal treatment among CSOs, including by reference to CSOs' focus of activities, type of activities, and geographical location of activities.

According to a report published in August 2024 by the French National Agency for Territorial Cohesion (ANCT), rural CSOs have limited access to public and private funding, as well as to appropriate support services.⁴⁰ A study entitled *A Comparative Look at European Funds and the French Rural Agenda* published on the Europe is committed in France portal highlights the fact that European funds, although available, are often under-utilised by rural associations due to the complexity of the procedures and the lack of information.⁴¹

39 CESE (Conseil Économique Social et Environnemental), *Strengthening the funding of associations : à democratic emergency : an opinion adopted by the CESE (Renforcer le financement des associations : une urgence démocratique : le CESE a adopté l'avis)*, 3 June 2024.

40 Agence Nationale de la Cohésion des Territoires (ANCT), *A cross-section of European funds and the French rural agenda*, ("Regards croisés sur les fonds européens et l'Agenda rural français"), October 2023, <https://agence-cohesion-territoires.gouv.fr/sites/default/files/2024-12/Regards%20crois%C3%A9s%20fonds%20europ%C3%A9ens%20et%20agenda%20rural.pdf>.

41 Ibid.

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)

In 2024, CSOs underwent further administrative controls and restrictions, particularly in connection with the application of the Republican Commitment Contract (RCC), making public funding conditional on the signing. The Coordination Sud and Le Mouvement associatif networks indicate “its entry into force has greatly contributed to degrading and instrumentalising relations between associations and public authorities at all levels (local, regional, national)”.⁴²

At the end of France's review process in November 2024, the UN Human Rights Committee expressed concern that under the RCC “associations can have public subsidies

withdrawn for failing to comply with a legally vague definition of ‘republican commitment, and that legal remedies can only be filed after funding has been withdrawn’.⁴³ It called on France to review the law of 24 August 2021, and ensure that the Republican Commitment Contract “cannot be applied arbitrarily to withdraw public subsidies from associations considered non-compliant with ‘republican commitment’, including by guaranteeing access to effective remedies for organizations on which such measures may be imposed”.⁴⁴

Good administration and redress mechanisms in relation to decisions by public authorities affecting CSOs

The Republican Commitment Contract puts associations at financial and administrative risk. If administrative sanctions are imposed, it is difficult for them to challenge the charges brought against them in court, especially as many do not have the financial means to pay legal fees.

42 Coordination SUD, Report : the impacts of the Republican Engagement Contract (CER) on associative freedoms (Rapport : Les impacts du Contrat d'Engagement Républicain (CER) sur les libertés associatives), 8 November 2024, <https://www.coordinationsud.org/document-ressource/les-impacts-du-contrat-dengagement-republicain-cer-sur-les-libertes-associatives/>.

43 United Nations (UN), Human Rights Committee, Concluding observations on the 6th periodic report of France, CCPR/C/FRA/CO/6, 3 December 2024, https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CCPR%2FC%2FFRA%2FCO%2F6&Lang=en.

44 Coordination SUD, Report : the impacts of the Republican Engagement Contract (CER) on associative freedoms (Rapport : Les impacts du Contrat d'Engagement Républicain (CER) sur les libertés associatives), 8 November 2024, <https://www.coordinationsud.org/document-ressource/les-impacts-du-contrat-dengagement-republicain-cer-sur-les-libertes-associatives/>.

In addition, CSOs report delays in obtaining funding or refusal of subsidies based on criteria perceived as non-transparent.

Freedom of peaceful assembly

Criminalisation of activities, including humanitarian or human rights work

In 2024, several humanitarian associations in France faced restrictive measures and legal proceedings due to their activities in favor of migrant people. Utopia 56, active in helping migrants in Calais, reported an increase in police checks and obstructions to its humanitarian actions. Three legal proceedings⁴⁵ have been launched against the organisation.

Faced with the violent repression to which environmental defenders are regularly subjected during demonstrations or peaceful occupations of land threatened by ecocidal projects (megabassin project, A69 motorway project...), France Nature Environnement submitted two

complaints, in March 2024, to the United Nations Special Rapporteur on Environmental Defenders, Michel Forst.⁴⁶

Faced with opposition to the A69 freeway project in the Toulouse region, the Ligue des droits de l'Homme (Human Rights League) claims that the French government has implemented a strategy described as “a strategy of attrition and siege”.⁴⁷ This war of attrition has resulted in numerous arrests, several hundred in police custody, prosecutions, 60 court cases, 44 judicial reviews, 27 people banned from entering France, four sentenced to six-month-long house arrest with electronic bracelets, two sentenced to four and six-month-long imprisonments respectively, and dozens of people injured, some seriously.⁴⁸

45 Utopia 56, *Utopia 56 faced with three legal proceedings (Utopia 56 visée par trois procédures judiciaires)*, 3 December 2024, <https://utopia56.org/utopia-56-visee-par-trois-procedures-judiciaires/>.

46 United Nations Regional Centre for Western Europe, *Repression of environmental activists: a threat to democracy, (Répression des militants écologistes : une menace pour la démocratie)*, <https://unric.org/fr/repression-des-militants-ecologistes-une-menace-pour-la-democratie/>.

47 Ligue des Droits de l'Homme, Summary of the Report on the inquiry commission on violation of rights during police operations against opponents of the A69 between February and September 2024 (Synthèse du Rapport de la commission d'enquête sur les atteintes aux droits lors des opérations de police et de gendarmerie contre les opposant·es à l'A69 entre février et septembre 2024), September 2024, <https://ldh-midi-pyrenees.org/wp-content/2024/09/Synthese-A-69-4-pages-.pdf>.

48 United Nations Regional Centre for Western Europe, *Repression of environmental activists: a threat to democracy, (Répression des militants écologistes : une menace pour la démocratie)*, <https://unric.org/fr/repression-des-militants-ecologistes-une-menace-pour-la-democratie/>.

Access to justice, including rules on legal standing, capacity to represent collective interest at court, and access to legal aid

Access to justice for associations in France remains problematic. The existing legal framework, particularly the increasing restriction of the right to take legal action to associations with approvals granted by the administration, does not always facilitate the representation of collective interests before the courts. These approvals, particularly in the areas of anti-corruption or environmental protection, have become tools of pressure or censorship by the public administration against associations (e.g. the Anticor case⁴⁹). The high cost of legal proceedings is another major barrier. Lawsuits can last for several years, incurring considerable expenses that associations often cannot bear without financial support.

In terms of access to legal aid, the public resources allocated remain very limited. As a result, associations often have to rely on private funding or fundraising campaigns to cover the costs associated with legal actions.

Impact of rules on foreign funding, accounting and auditing rules, anti-money laundering regulations

In 2024, France adopted law No. 2024-850 of 25 July 2024 aimed at preventing foreign interference. This law has drawn criticism from associations and foundations who see it as a potential threat to public freedoms and democratic life. These criticisms were relayed to the National Assembly by New Popular Front MPs.⁵⁰ This legislation requires civil society organisations (CSOs) receiving foreign funding to declare their activities to the French High Authority for Transparency in Public Life (HATPL). Although aimed at enhancing transparency, this measure has raised concerns among CSOs, particularly those operating across borders, who see it as a stigmatisation of legitimate foreign funding. However, the law also provides for control and appeal mechanisms, notably through the HATPL, offering CSOs avenues to challenge decisions affecting their operations.

Surveillance of protests

As part of the Olympic Games, France deployed ‘on an experimental basis’, meaning without a

49 Anticor, *Fight against corruption: the government refuses to accredit Anticor (Lutte contre la corruption : le gouvernement refuse de nouveau d'agréer Anticor)*, 26 July 2024, <https://observatoire.anticor.org/2024/07/26/lutte-contre-la-corruption-le-gouvernement-refuse-de-nouveau-dagreer-anticor/>.

50 Le Monde, *Law against foreign interference adopted by Parliament (Une loi contre les ingérences étrangères définitivement adoptée au Parlement)*, 5 June 2024, https://www.lemonde.fr/politique/article/2024/06/05/une-loi-contre-les-ingerences-etrangeres-definitivement-adoptee-au-parlement_6237539_823448.html.

legislative framework, algorithmic video surveillance systems (VSAs)⁵¹ and used drones to monitor crowds at public gatherings. Human Rights Watch, in its 2024 World Report on France,⁵² and Amnesty International⁵³ highlighted that these ‘intrusive technologies’ create an atmosphere of distrust and discourage citizens from exercising their right to peacefully assemble. The issue of permanently deploying VSA on a large scale for public safety concerns remains unresolved, pending the passage of a law and the evaluation of the experimental system by French lawmakers, whose conclusions are expected in the spring of 2025.

Furthermore, administrative decisions suspended the right to protest during the Olympic and Paralympic Games in areas near venues hosting sports events.⁵⁴ Territorial bans⁵⁵ and preventive arrests also took place.⁵⁶

Imposition of fines and other administrative sanctions

In 2024, French authorities intensified the use of administrative sanctions to discourage participation in protests. According to the 2024 World Report by Human Rights Watch,⁵⁷ fines were frequently imposed for minor offenses, such as obstructing public roads or

51 Franceinfo, *Paris 2024: 5 questions on the first algorithmic video surveillance tests in the capital (Paris 2024 : cinq questions sur les premiers tests de vidéosurveillance algorithmique dans la capitale)*, 3 March 2024, https://www.francetvinfo.fr/les-jeux-olympiques/paris-2024-cinq-questions-sur-les-premiers-tests-de-videosurveillance-algorithmique-dans-la-capitale_6401653.html.

52 Human Rights Watch, *World Report 2024 country chapters France*, <https://www.hrw.org/fr/world-report/2024/country-chapters/france>.

53 Amnesty International, *Olympic Games 2024: Why algorithmic video surveillance is an issue? (JO 2024: Pourquoi la vidéosurveillance algorithmique pose un problème)*, 15 April 2024, <https://www.amnesty.fr/liberte-d-expression/actualites/pourquoi-la-videosurveillance-algorithmique-pose-probleme-cameras-technologies>.

54 Ouest France, *2024 Olympics: The ban on demonstrations upsets the unions in Loire-Atlantique, (JO 2024. L'interdiction de manifester fâche les syndicats en Loire-Atlantique)*, 1 August 2024, <https://www.ouest-france.fr/jeux-olympiques/linterdiction-de-manifester-fache-les-syndicats-7a648094-5011-11ef-b169-5a3a31fb9518>.

55 Christophe Ayad, *Paris 2024: individual traffic restrictions annulled by the administrative courts, (Paris 2024 : des mesures de restrictions individuelles de circulation annulées par la justice administrative)*, *Le Monde*, 1 August 2024, https://www.lemonde.fr/societe/article/2024/08/01/paris-2024-des-mesures-de-restrictions-individuelles-de-circulation-annulees-par-la-justice-administrative_6263890_3224.html.

56 Franceinfo, *Paris 2024 Olympics: 45 activists arrested prior to an action organised by the Extinction Rebellion movement, (JO de Paris 2024 : 45 militants interpellés avant l'organisation d'une action du mouvement Extinction Rebellion)*, 27 July 2024, https://www.francetvinfo.fr/les-jeux-olympiques/jo-de-paris-2024-45-militants-interpelles-avant-l-organisation-d-une-action-du-mouvement-extinction-rebellion_6690138.html.

57 Human Rights Watch, *World Report 2024, Country Chapters : France*, <https://www.hrw.org/fr/world-report/2024/country-chapters/france>.

participating in an undeclared demonstration, even when protesters were peacefully exercising their right to assembly. In 2024, abusive administrative sanctions, including fines, kettling, or arrests, were observed during protests in support of the Palestinian people and against the far-right after the European elections.

Freedom of expression and of information

In 2024, France experienced tensions between regulation and freedom of expression. Several laws and practices impact this balance. A few examples below illustrate a persistent tension between the protection of fundamental rights and security or regulatory imperatives. Efforts are still needed to ensure a fair balance between these issues.

Rules on hate speech and their enforcement

The law on freedom of the press was amended in February 2024 to extend the period to initiate criminal proceedings for insults and defamation when an elected person or candidate is targeted. This reform has drawn criticism from press rights organisations,⁵⁸ who believe it weakens the founding principles of the 1881

law, designed to prioritise freedom of the press and expression.

Criminalisation of speech

The criminalisation of certain speech focuses notably on cases of incitement to hatred and denialism, regulated by strict laws in France. While these laws align with international standards on combating hate, some prosecutions against activists for acts of civil disobedience raise concerns. For instance, members of environmental organisations have been prosecuted and sentenced for symbolic actions, highlighting the risk of criminalising legitimate forms of political expression. In February 2024, a criminal court fined nine Greenpeace activists for trespassing on the tarmac at Roissy airport and partially repainting a plane green in March 2021.⁵⁹

Censorship and self-censorship, including on the use of symbols and slogans

The Paris 2024 Olympic Games Bill introduced the use of algorithm-powered smart cameras to detect behavior deemed suspicious. Amnesty International and other civil society actors have denounced this measure as a

58 Le Monde, *Freedom of the press: journalists' associations denounce the undermining of the 1881 law*, (*Liberté de la presse : des sociétés de journalistes dénoncent la remise en cause de la loi de 1881*), 13 February 2024, https://www.lemonde.fr/actualite-medias/article/2024/02/13/liberte-de-la-presse-des-societes-de-journalistes-denoncent-la-remise-en-cause-de-la-loi-de-1881_6216330_3236.html.

59 Greenpeace, *Green plane trial : Bobigny's criminal court convicts activists... against the climate and the law*, (*Procès de l'avion vert : condamnations des militants par le tribunal correctionnel de Bobigny, à rebours des enjeux climatiques... et judiciaires*), 22 February 2024, <https://www.greenpeace.fr/espace-presse/proces-de-lavion-vert-condamnations-des-militants-par-le-tribunal-correctionnel-de-bobigny-a-rebours-des-enjeux-climatiques-et-judiciaires/>.

disproportionate infringement of privacy and freedom of expression, incompatible with the principles of the General Data Protection Regulation.⁶⁰ In parallel, restrictions on the use of certain symbols or slogans during demonstrations have been observed, fuelling a climate of self-censorship among activists and citizens.

Restrictions on access to information

Access to information remains a key issue in France, particularly for journalists and whistleblowers. Criticism of excessive secrecy has emerged surrounding certain state decisions, notably those relating to the management of demonstrations and the use of algorithmic surveillance technologies. These restrictions complicate journalists' work on sensitive subjects, potentially limiting the public's right to be informed.

Journalists have reported increasing difficulties in covering demonstrations, citing police pressure, restrictions on access to certain locations, and even confiscation of equipment. These incidents, already observed during protests against pension reform in 2023, highlight targeted practices hindering press freedom. Although not systematic, these obstacles raise questions about the state of freedom of information in the context of ongoing social tensions.

Spread of and responses to disinformation

The fight against disinformation is being strengthened in France thanks to the 2018 law against information manipulation and the application of the European Union's Digital Services Act (DSA). At the same time, the lack of transparency in the moderation algorithms of the major digital platforms continues to be a major issue.

Online content regulation

The law No. 2024-449 of 21 May 2024, aimed at securing and regulating the digital space (SREN), introduces significant measures to combat online disinformation, particularly with regard to deepfakes. The law provides for penalties of up to €75,000 in fines and three years' imprisonment for online dissemination.

In addition, the European regulation on artificial intelligence (AI Act), which came into force in France on 1 August 2024, imposes obligations on AI system providers, particularly in terms of transparency. It is now required to clearly indicate when content is generated by AI, in order to avoid the dissemination of deepfakes and strengthen public trust. The fight against disinformation is being strengthened in France thanks to the 2018 law against information manipulation and the application of the European Union's Digital Services Act

60 Amnesty International, *Olympic Games 2024 Bill: 'France would become the first European Union country to legalise algorithmic video surveillance'*, (Projet de loi JO 2024 : « La France deviendrait le premier État de l'Union européenne à légaliser la vidéosurveillance algorithmique »), 7 March 2023, <https://www.amnesty.fr/liberte-d-expression/actualites/tribune-projet-de-loi-jo-2024-alerte-sur-l-utilisation-videosurveillance-algorithmique>.

(DSA). However, the recent Fondation Jean Jaurès study reveals a trending perception among the French that the fight against disinformation can be used to limit public debate and censor dissident ideas.⁶¹ This trend is part of an overall context of political polarisation and growing mistrust of the media.

At the same time, the lack of transparency in the moderation algorithms of the major digital platforms continues to be a major issue.

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

The law No. 2024-449 of 21 May 2024, aimed at securing and regulating the digital space (SREN), introduces significant measures to combat online disinformation.⁶² In addition to the criminal penalties provided for by law, this new legislative measure enables individuals to be temporarily banned from social networks for certain serious offenses, such as cyber harassment and the dissemination of hate speech.

This additional penalty of suspension or banishment from social networks, for up to a year in the event of a repeat offence, is designed to put an end to the feeling of impunity online and prevent repeat offences.

Physical attacks on people and property

In 2024, representatives of environmental associations affiliated with the national federation France Nature Environnement (FNE) were the target of attacks, both verbal and physical, against their persons or their homes, in the context of a social movement in the agricultural world. In November 2024, the President of FNE denounced “reactionary agricultural unions” who “have decided to use violence and hate speech to try to silence any public debate on agricultural models, and to prevent any dissemination of information or action proposing an evolution of the industrial agricultural model”.⁶³

61 Fondation Jean Jaurès, *French look on the fight against disinformation*, (*Regard des Français sur la lutte contre la désinformation*), 5 November 2024, <https://www.jean-jaures.org/publication/regard-des-francais-sur-la-lutte-contre-la-desinformation/>.

62 Florian Reynaud and Aurélien Defer, *SREN law: the constitutional council declares valid the essential of the law but censors the offence of online contempt (Loi SREN: le Conseil constitutionnel valide l'essentiel, mais censure le délit d'outrage en ligne)*, *Le Monde*, 17 May 2024, https://www.lemonde.fr/pixels/article/2024/05/17/loi-sren-le-conseil-constitutionnel-valide-l-essentiel-mais-censure-le-delit-d-outrage-en-ligne_6233904_4408996.html.

63 Antoine Gatet, *Stop the attacks on France Nature Environnement by farmers' union (Stop aux agressions des syndicats d'agriculteurs contre France Nature Environnement)*, *Libération*, 1 November 2024, https://www.liberation.fr/idees-et-debats/tribunes/stop-aux-agressions-des-syndicats-dagriculteurs-contre-france-nature-environnement-20241101_AY7N3KB3JBH73MHBIQMF6IXVEM/?redirected=1.

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

The Canopée association, dedicated to the defense of forests, has faced an administrative procedure filed by France Bois Forêt and twelve other forestry sector organisations belonging to the timber lobby. The aim of this SLAPP procedure⁶⁴ is to cancel Canopée's environmental approval, granted by the authorities in December 2023. The contested approval allows the association to sit on certain consultative bodies and to benefit from enhanced prerogatives to take legal action on behalf of the general interest.

Online civic space

Online campaigning, including rules and practices on illegal content, disinformation, online content moderation and regulation

The French law No. 2024-449 of 21 May 2024, entitled Law to Secure and Regulate the Digital Space (SREN), has introduced measures to protect citizens, particularly minors, in

the digital environment.⁶⁵ It strengthens the governance of digital regulation and adapts national law to European regulations in this area. Among other important provisions, the law provides for penalties for illegal online content and the introduction of stricter regulatory mechanisms, notably by reinforcing the obligations of digital platforms with regard to minors' access to certain content.

Digital surveillance

The No. 2024-850 Law to Prevent Foreign Interference enacted in July 2024 includes an experimental algorithmic surveillance scheme, initially limited to anti-terrorist activities, to detect foreign influences on the internet. The expansion of algorithmic surveillance is considered particularly problematic, as it could restrict freedom of expression. In addition, critics fear that this surveillance tool could be misused to unduly monitor legitimate activities and extend the scope of state surveillance beyond the fight against foreign or anti-terrorist interference.

64 Perrine Mouterde, Canopée, the association upstets foresters, in the sector's visor (Canopée, l'association qui dérange les forestiers, dans le viseur du secteur), *Le Monde*, 30 September 2024, https://www.lemonde.fr/planete/article/2024/09/30/l-association-de-defense-des-forets-canopee-dans-le-viseur-des-entreprises-du-secteur-du-bois_6339841_3244.html.

65 Ministère de l'Économie, des Finances et de l'Industrie, Ministère chargé du Budget et des comptes publics, The judicial affairs direction's letter – the Digital Security and Regulation Act partially validated by the Constitutional Council (Lettre de la DAJ - La loi pour la sécurité et la régulation numérique partiellement validée par le Conseil constitutionnel), 30 May 2024, <https://www.economie.gouv.fr/daj/loi-securite-regulation-numerique-partiellement-validee->.

Attacks, threats and hate speech online

Between 2023 and 2024, SOS Homophobic denounced a worrying increase in LGBTIA+phobic speeches, particularly online.⁶⁶ The association insists “the practice of targeted harassment is steadily increasing on social networks, making these spaces vehicles for the escalation of violence, especially directed against young LGBTI people”.⁶⁷

Public participation

Rules and practices on dialogue with civil society

In 2024, the Interministerial Center for Citizen Participation published a detailed guide⁶⁸ to design effective participatory approaches. In addition, *The 2024–2026 National Action Plan for Open Government* focuses on improving citizen participation practices and democratic innovation, aimed at bringing citizens closer to public decision-making.⁶⁹ Nevertheless, the dissolution of the National Assembly halted the parliamentary consideration of the bill,

which had been the subject of an ambitious citizens’ conference.

Rules on access to and participation in consultations and decision-making processes

France has set up several mechanisms to facilitate citizens’ access to consultation processes. An official website for citizen participation provides information on current consultations and the follow-up to completed consultations.⁷⁰ One example in 2024 is the France in Europe: what future, what priorities? consultation, which asked French citizens about their relationship with Europe and the priorities that France should defend within the European Union.

Public participation of underrepresented groups

Specific initiatives have been launched to include under-represented groups. For instance, in April 2024, the General Inspectorate of Social Affairs published a report on citizen participation⁷¹ in solidarity policies,

66 SOSHomophobic, Report on the 2024 LGBTIPHOBIA, (Rapport sur les LGBTIPHOBIES 2024), https://ressource.sos-homophobic.org/Rapports_annuels/Rapport_LGBTIphobies_2024_dossier_presse.pdf.

67 Ibid.

68 Direction Interministérielle de la transformation publique, Designing a citizen participation initiative (Concevoir une démarche de participation citoyenne), 18 December 2024, <https://www.modernisation.gouv.fr/campus-de-la-transformation-publique/catalogue-de-ressources/outil/concevoir-une-demarche-de>.

69 Direction Interministérielle de la transformation publique, The national action plan 2024-2026 for an open government, (Le plan d’action national 2024-2026 pour un gouvernement ouvert), 29 November 2024, <https://www.modernisation.gouv.fr/publications/le-plan-daction-national-2024-2026-pour-un-gouvernement-ouvert>.

70 <https://www.participation-citoyenne.gouv.fr/>.

71 General Inspectorate of Social Affairs, Citizen participation in solidarity policies: current situation and prospects (La participation citoyenne dans les politiques de solidarité : Etat des lieux et perspectives), November 2023, <https://www.vie-publique.fr/files/rapport/pdf/293713.pdf>.

highlighting approaches aimed at integrating vulnerable populations into decision-making processes.

Other

In October 2024, the Economic, Social and Environmental Council published its annual report⁷² on the state of France, highlighting the links between inequality and democracy. The report highlights the need to strengthen citizen participation to reinforce social cohesion and confidence in institutions.

Impact on civic space of emergency and crisis situations

The number of antisemitic offences in France is at an all-time high, jumping 192% in the first half of 2024 compared to the same period in 2023, according to a report from the French National Directorate of Territorial Intelligence. According to the territorial intelligence analysis, “This upward trend, following the attacks carried out by Hamas on October 7, 2023, appears to be long-lasting, in parallel with the ongoing conflict in the Middle East.”⁷³ Some high-profile antisemitic actions, such as the vandalism of a Holocaust memorial in Paris, have been identified by French investigators as acts of destabilisation orchestrated by Russian services.⁷⁴

72 CESE (Conseil Économique, Social et Environnemental), Annual Report on the state of France in 2024: emerging from the democratic crisis, (Sortir de la crise démocratique Rapport annuel sur l'état de la France en 2024), October 2024, <https://www.vie-publique.fr/files/rapport/pdf/295926.pdf>.

73 Gaële Joly, *Antisemitic incidents in France up 192% in the first half of 2024 compared to 2023 (Les faits antisémites en France en hausse de 192% au premier semestre 2024, par rapport au premier semestre 2023)*, Franceinfo, 7 October 2024, https://www.francetvinfo.fr/societe/antisemitisme/7-octobre-les-faits-antisemites-en-france-en-hausse-de-192-a-u-premier-semestre-2024-par-rapport-au-premier-semestre-2023_6821975.html.

74 Rfi, *France: Russia behind antisemitic tags at the Shoah Memorial? (France: la Russie derrière les tags antisémites au Mémorial de la Shoah ?)*, 22 May 2024, <https://www.rfi.fr/fr/france/20240522-france-la-russie-derriere-les-tags-antisemites-au-memorial-de-la-shoah>.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- The government should implement measures recommended by independent agencies such as the Defender of Rights and the National Consultative Commission on Human Rights (CNCDH).
- The French State should respect the positive obligations of France in terms of non-discrimination and human dignity.

Systemic human rights violations

The existence of 'social cleansing' in France

In France, according to the latest available data, the collective Les Morts de la Rue recorded at least 735 deaths⁷⁵ of homeless individuals or those in temporary housing in 2024. In October 2024, the Court of Auditors criticised

the French state for its homelessness policy.⁷⁶ The administration was accused of failing to implement sustainable, long-term, and reusable solutions. While the government claims to deploy “significant resources to combat homelessness”,⁷⁷ the reality on the ground reveals a concerning phenomenon: a strategy of “social cleansing”⁷⁸ aimed at making the homeless invisible and destroying survival habitats

75 L'Insoumission, 'It has never been this high': at least 735 death of homeless people in the streets in 2023, Macron's political inaction kills (« Ça n'a jamais été aussi élevé » : au moins 735 sans-abris morts dans la rue en 2023, l'inaction politique de Macron tue), 30 October 2024, <https://linsoumission.fr/2024/10/30/735-sans-abris-morts-rue-2023/#:~:text=624%20sans-abris%20morts%20dans,Les%20Morts%20de%20la%20rue%20%C2%BB>.

76 Fédérations des acteurs de solidarité, *The Auditors' Court criticizes the State's management of emergency accommodation (La Cour des comptes épingle la gestion de l'hébergement d'urgence par l'État)*, 10 October 2024, <https://www.federationsolidarite.org/actualites/la-cour-des-comptes-epingle-la-gestion-de-lhebergement-durgence-par-letat/>.

77 Sénat, Written questions: the homelessness situation in France (Question écrite: situation des sans-abris en France), 18 January 2024, <https://www.senat.fr/questions/base/2024/qSEQ240109735.html>.

78 Le revers de la médaille, Inter-association report 'Move along, nothing to see here': 1 year of social cleansing before the 2024 Olympic Games (Rapport Inter-associatif “Circulez, y'a rien à voir”: 1 an de nettoyage social avant les JO 2024), June 2024, <https://lereversdelamedaille.fr/wp-content/uploads/2024/06/Rapport-1-an-de-nettoyage-social-le-revers-de-la-medaille.pdf>.

(shantytowns, camps) through expulsions from public spaces. This practice notably intensified during the Paris 2024 Olympic Games.

The Collective Revers de la Médaille highlighted⁷⁹ that these surprise evictions not only prevent residents from defending their rights but also prepare themselves materially for expulsion. This frequently leads to the loss or destruction of their property as well as administrative and medical documents.

The cleaning of the surroundings of the Olympic and Paralympic sites, besides being flagrant, was accompanied by the multiplication of anti-homeless urban furniture, sometimes sophisticated or simply rocks and peaks, to avoid any relocation.

The persistence of systemic racial profiling in France

In October 2024, France was reviewed by the Human Rights Committee in the context of the implementation of the International Covenant on Civil and Political Rights. In its concluding observations, the committee expressed its concerns regarding reports from civil society about racial profiling. These organisations denounce the “disproportionate use of powers of arrest and search [by law enforcement] against individuals belonging to racial or ethnic minority

groups”.⁸⁰ The committee highlighted the persistent gap between on-the-ground practices and legal provisions. Indeed, although the Council of State recognised the existence of discriminatory checks in 2023, no legislative or regulatory measures have been taken, and France continues to fail to meet its non-discrimination obligations.

Post-colonial violence

Amid months of tension, New Caledonia experienced violent riots and clashes between part of its population and law enforcement. These riots erupted as the National Assembly was about to vote on a constitutional amendment proposing an electoral reform strongly contested by the island’s independence movement. The reform would result in the Kanak indigenous population being reduced to a minority.

A state of emergency was declared on 15 May 2024, across the archipelago: a curfew was imposed, hundreds of mobile gendarmes were sent to the area, army units were also deployed to secure ports and airports, and the social media platform TikTok was suspended. Between 13 May and 24 May 2024, seven people were killed, including two gendarmes. Although the state of emergency was lifted on 28 May, tensions remained high on the island, and clashes continued sporadically. Two men

79 Le Revers de la Médaille, Final Report (Rapport Final), 4 November 2024, https://lereversdelamedaille.fr/wp-content/uploads/2024/11/Rapport-final-Le-revers-de-la-medaille-4_11_24_compressed-1.pdf.

80 #MaRueMesDroits, *Facial recognition control : associations appeal to the UN and denounce France’s inaction (Contrôles au faciès : des associations interpellent l’ONU et dénoncent l’immobilisme de la France)*, <https://maruemesdroits.org/cp-controles-au-facies-des-associations-interpellent-lonu-et-denoncent-limmobilisme-de-la-france/>.

were shot dead by gendarmes in Saint-Louis following gunfire exchanges on the night of 18 and 19 September, raising the death toll to 13 since the violence began.⁸¹

Accused of having incited or participated in the violence, the political and indigenous leaders of the Field Action Coordination Cell, an independent Kanak organisation created on 18 November 2023 to oppose the electoral reform, were arrested and deported to prisons in France for ‘preventive detention’.⁸²

The rise of violence and hate speech

In a political context favorable to the far right, France is facing the rise of hate speech and acts of racism, antisemitism, and xenophobia. However, the French state has failed to provide concrete responses to these issues. On the contrary, its actions contribute to the invisibility of these acts. For example, on 11 April 2024, in

the case of *Allouche v. France*⁸³, the European Court ruled that France violated Articles 8 and 14 of the ECHR by failing to address the antisemitic nature of the threats and insults suffered by Mrs. Allouche. The legal issue centered on the obligation of authorities to provide effective criminal protection against discriminatory speech. The court concluded that the French authorities had not provided adequate protection, thereby compromising their ability to respond appropriately to Antisemitic acts.

The alarming situation of prison living conditions

The situation of incarcerated individuals in France is increasingly concerning, as highlighted by the Defender of Rights in a report⁸⁴ from November 2024. Prison overcrowding, which has reached alarming levels, is an aggravating factor for detention conditions. As of 1 October 2024, France recorded a record

81 Charlotte Mannevy, *New Caledonia: two men shot dead in Saint-Louis during a special gendarmerie operation*, (*Nouvelle-Calédonie : à Saint-Louis, deux hommes tués par balle lors d'une opération spéciale de la gendarmerie*), *Le Monde*, 19 September 2024, https://www.lemonde.fr/politique/article/2024/09/19/nouvelle-caledonie-deux-morts-tues-par-balle-a-la-tribu-de-saint-louis-fief-independantiste-de-l-archipel_6323884_823448.html.

82 *Le Monde*, *New Caledonia: Kanak independence leader Christian Tein to remain in prison in mainland France* (*Nouvelle-Calédonie : le leader indépendantiste kanak Christian Tein restera incarcéré en métropole*), 29 November 2024, https://www.lemonde.fr/politique/article/2024/11/29/nouvelle-caledonie-le-leader-independantiste-kanak-christian-tein-restera-incarcere-en-metropole_6420650_823448.html.

83 ECtHR, judgment of 11 April 2024, *Allouche v. France*, no. 81249/17, 2024, <https://hudoc.echr.coe.int/fr/?i=001-232010>.

84 Défenseur des droits, Communication from the Human Rights Defender, *Inmates rights: an alarming conclusion requiring urgent solutions* (Communication de la défenseur des droits, les droits des personnes détenues: un constat alarmant nécessitant des réponses urgentes), 6 November 2024, https://www.defenseurdesdroits.fr/sites/default/files/2024-11/Defenseur_des_droits_Communication_Lesdroitsdespersonnesdetenues.pdf.

number of prisoners: 79,631.⁸⁵ This growing overcrowding contributes to the degradation of living conditions in correctional facilities,⁸⁶ where issues like rodent and bedbug infestations are common in cells, and prisoners often sleep directly on the floor. The fundamental rights of incarcerated individuals are not always effectively respected, placing them in a situation of increased vulnerability, far from any effective access to their rights.

To denounce their living conditions, some prisoners decided to protest.⁸⁷ On 28 September 2024, in Nîmes, around 100 inmates refused to return to their cells for more than four hours. On the same day, in Mayotte, a riot broke out, involving hostages being taken. These events, although geographically distant, highlight a

shared sense of distress among the incarcerated. Furthermore, on 24 October 2024, the French State was condemned by the Administrative Court of New Caledonia.⁸⁸ The International Observatory of Prisons (OIP) brought the case before the court to hold the state accountable for the delays in executing urgent orders issued in 2020.⁸⁹ These orders concerned improvements to detention conditions at the Nouméa Correctional Center, such as providing inmates with the opportunity to wash their laundry and bringing electrical installations up to code. The court ruled in favor of the OIP, noting that the delay had “harmed the collective interests defended by the requesting association”.⁹⁰

85 Ministère de la Justice, inmates mensural statistics (Statistiques mensuelles de la population détenue et écrouée), 31 January 2024, <https://www.justice.gouv.fr/documentation/etudes-et-statistiques/statistiques-mensuelles-population-detenu-ecrouee-0>.

86 Observatoire International des Prisons, *Inhumane conditions ignored for years at the Limoges prison: the case referred to the administrative court (Des conditions inhumaines à la prison de Limoges ignorées depuis des années : le tribunal administratif saisi)*, 4 December 2024, <https://oip.org/communiquedeconditionsinhumainesala-prison-de-limoges-ignorees-depuis-des-annees-le-tribunal-administratif-saisi/>.

87 Jean-Claude Mas, *Prison overcrowding: the politics of the worst (Surpopulation carcérale : la politique du pire)*, Observatoire International des Prisons, 3 December 2024, <https://oip.org/analyse/surpopulation-carcerale-la-politique-du-pire/>.

88 Administrative Court of New-Caledonia (France), Judgement of 24 October 2024, No. 2400028, SFIOP c. Ministère de la Justice, <https://oip.org/wp-content/uploads/2024/10/20241024-oip-decision.pdf>.

89 Observatoire International des Prisons, Detention conditions in Nouméa: The State is condemned after failing to comply with court’s rulings for 3 years (Conditions de détention à la prison de Nouméa : l’État condamné, après 3 années d’inexécution de décisions de justice), 29 October 2024, https://oip.org/communiquedeconditionsdetentionala-prison-de-noumea-letat-condamne-apres-3-annees-dinexecution-de-decisions-de-justice/#_ftn2.

90 Observatoire International des Prisons, Detention conditions in Nouméa: The State is condemned after failing to comply with court’s rulings for 3 years (Conditions de détention à la prison de Nouméa : l’État condamné, après 3 années d’inexécution de décisions de justice), 29 October 2024, https://oip.org/communiquedeconditionsdetentionala-prison-de-noumea-letat-condamne-apres-3-annees-dinexecution-de-decisions-de-justice/#_ftn2.

Other systemic issues

During the 2024 Olympic Games, France's ban on wearing sports headscarves by French athletes faced international criticism, particularly from the United Nations,⁹¹ which condemned its discriminatory nature. This measure primarily affects Muslim women who wear the hijab and highlights a systematic form of discrimination in an area where other countries have chosen the path of inclusion.

According to a study by Amnesty International France,⁹² when looking at the sports regulations of 38 European countries in disciplines such as basketball, football, and volleyball, France stands out as the only country to ban religious headscarves. While international sports bodies like FIBA (basketball), FIFA (football), and FIVB (volleyball) allow these headscarves in their competitions, France persists in prohibiting them.

Although French law does not explicitly ban wearing hijab in sports competitions, there is an obligation of religious neutrality in the legal texts, but this generally only applies to public servants. As sports federations are private organisations, they are free to set their own regulations. Due to this lack of clear legislation, each federation adopts a different position, leading to inconsistent and potentially discriminatory regulations. Thus, France continues to adopt a policy of restricting religious freedoms.

91 Reuters, UN body questions French move to bar its athlete from wearing hijab at Paris 2024, 27 September 2024, <https://www.reuters.com/sports/un-body-questions-french-move-bar-its-athletes-wearing-hijab-paris-2024-2023-09-27/>.

92 Amnesty International, France, *The ban on the wearing of headscarves in French sport highlights the existence of a discriminatory double standard on the eve of the Olympic and Paralympic Games*, (*L'interdiction du port du foulard dans le sport en France met au jour l'existence d'une politique du « deux poids, deux mesures » discriminatoire à la veille des Jeux olympiques et paralympiques*), 16 July 2024, <https://www.amnesty.org/fr/latest/news/2024/07/france-hijab-bans-olympic-and-paralympic/>.

CONTACT

VoxPublic

VoxPublic is a non-profit organisation composed of a permanent team of four advocacy specialists based in Paris. It is governed by a seven-member executive board and receives support from an active community of volunteers and ‘VoxPublic Agora’ members. The association works on empowering French civil society organisations and citizen initiatives in their advocacy actions.

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ABOUT THE AUTHORS

Society for Civil Rights (Gesellschaft für Freiheitsrechte, GFF)



GFF (Gesellschaft für Freiheitsrechte/Society for Civil Rights) is a donor-funded organisation that defends fundamental and human rights by legal means. The organisation promotes democracy and civil society, protects against disproportionate surveillance and advocates for equal rights and social participation for everyone. To that end, the organisation conducts strategic litigation, lodges constitutional complaints against laws that violate fundamental rights and contributes its legal expertise to social debates. The Berlin-based non-profit organisation was founded in 2015 and is funded primarily through individual donations and the contributions of its supporting members.

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LobbyControl: LobbyControl is a non-profit association that educates about power structures and influence strategies in Germany and the EU. LobbyControl advocate for transparency, democratic control and clear limits on influencing politics and the public.



FragDenStaat: FragdenStaat is a project established by the Open Knowledge Foundation e.V. and is the central contact point for freedom of information in Germany. FragDenStaat brings information to the public that was previously gathering dust in filing cabinets. Whether it's an email by a lobbyist, an environmental report, meeting minutes or a calendar entry – FragDenStaat helps liberate and publish it by using the Freedom of Information Law (Informationsfreiheitsgesetz, IFG).

KEY CONCERNS

Judicial System

Whilst minor progress has been made, e.g., in the efforts to ensure the loyalty of lay judges to the constitution, larger issues remain unaddressed. Germany's judiciary is overwhelmed with its workload and major reforms will not be adopted before the end of the current parliamentary mandate.

To date, Germany has not taken measures to ensure an adequate level of remuneration for judges and prosecutors. This is especially concerning as a significant number of individuals within the judiciary are approaching retirement age, creating an urgent need to fill numerous vacancies.

Anti-Corruption Framework

The federal government introduced a regulation promoting documentation and tracking of external influences on the legislative process (legislative footprint), although with a limited scope. A new criminal law on corruption of Members of Parliament was introduced.

The new legislative footprint rules do not include the disclosure of all lobby meetings with high-ranking public officials including ministers and state secretaries.

The length of the cooling-off period for ministers and state secretaries has not been increased.

Media Environment and Media Freedom

The situation in Germany has not changed significantly compared to last year. The number of physical attacks on journalists has decreased, yet it is still almost three times higher than in 2019. Germany's rise in the Reporters Without Borders ranking is due to deteriorating conditions in other countries.

Due to the dissolution of the government, the planned transparency law will not be introduced.

Checks and Balances

Introduction of the synopsis requirement, an illustration through which specific amendments to legislation can be traced, has little practical effects so far. Transparency and opportunities for civil society to participate in the legislative process have not been improved.

No laws have been adopted to disclose all lobbyists' input into legislation and the scope of the relevant legislation has been extended to the parliamentary phase.

Civic Space

Extensive budget cuts are threatening civic space. The laws governing tax exemptions for CSOs have not been reviewed extensively. Financial and political risks have increased for organisations working in highly politicised fields.

Modest changes to the law on tax exemptions for non-profit organisations are not enough to







foster a vivid civic space. Extensive public budget cuts make robust tax exemptions for CSOs even more crucial.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment




Measures adopted in asylum and security law following a terrorist attack in Solingen constitute systematic human rights violations. There is little to no evidence that the measures adopted will contribute to an increase in internal security.

No specific recommendations were made in this regard.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

JUSTICE SYSTEM

Key recommendations

- *The legislative branch needs to grant more funding for the judiciary branch and lower the entry requirements for judges in order to hire more employees who can tackle the ever-growing backlog of cases.*
- *Digitalisation should be driven forward by the judiciary itself, and special training should be given to the prosecutors and judges in question, including on electronic filing systems and publication of judgements.*
- *Women who wear headscarves should be granted equal opportunity to serve in lay judge positions.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

Lay judges (*Schöff*innen*) in Germany often participate in criminal proceedings and have the same voting rights as professional judges. Lay judges are meant to represent society within the courtroom and bring diverse perspectives to judicial decisions. However, women who wear headscarves are often excluded from serving as lay judges. A recent case highlights this issue, where a Muslim woman was removed from the list of lay judges for wearing a headscarf. The decision was based on the North Rhine-Westphalian Judicial Neutrality Act (*Nordrhein-westfälisches*

Gesetz zur Wahrung der Neutralität der Justiz), which bans religious symbols in courtrooms.¹ The Society for Civil Rights (*Gesellschaft für Freiheitsrechte, GFF*) has challenged this law as unconstitutional before the Federal Constitutional Court (*Bundesverfassungsgericht*). The blanket ban on religious symbols is not only an attack on personal freedoms but also perpetuates discrimination against Muslim women.

Because the lists for lay judges rely on volunteers, communities sometimes struggle to find enough people to fill vacant positions, making them even more vulnerable to far-right actors calling upon their members and supporters to become lay judges so that their views may shape courtroom decisions. This problem has been tackled by a reform of the German

1 GFF, *Neutralität statt Vielfalt?*, 5 July 2024, available at: <https://freiheitsrechte.org/ueber-die-gff/presse/pressemitteilungen-der-gesellschaft-fur-freiheitsrechte/pm-vb-schoeffin>

Judiciary Act (*Deutsches Richtergesetz*, DRiG) which aims to prevent extremists from serving as lay judges and codifies pre-existing rulings by the Federal Constitutional Court. Section 44a DRiG now provides that “the office of a lay judge shall not be conferred on anyone who has violated the principles of humanity or the rule of law”.²

Independence/autonomy of the prosecution service

In Germany, the Minister of Justice has the right to intervene in the work of the public prosecution. Critics call for the abolition of this right, referencing the ruling of the CJEU from 2019 which held that German prosecution is too susceptible to influence from the ministry to issue European arrest warrants.³

The Ministry of Justice presented a draft law in May 2024 amending Section 146 of the Court Constitution Act (*Gerichtsverfassungsgesetz*, GVG), in which prerequisites for interventions

by the Ministry are codified. Such orders may only be issued to prevent unlawful decisions by the prosecution. Additional measures were introduced to heighten transparency in cases of instruction, such as a text form requirement.⁴

However, due to the dissolution of the current government and the consequent new elections scheduled for 23 February 2025, it is unlikely that the draft amendment will be passed in this legislative period. This is cause for worry, as the rise of right-wing authoritarian parties in Germany make the issue of political interference in prosecutorial work ever more pressing.

Other

Regarding the growing influence of right-wing nationalist-authoritarian parties in Germany, public debate has focused on the resilience of democratic structures. At the core of the debate is the vulnerability of Germany’s highest court, the Federal Constitutional Court.⁵ Main provisions concerning powers, allocation

2 Deutscher Bundestag, BGBl. 2024 Nr. 320, Law Amending the German Judiciary Act (Gesetz zur Änderung des Deutschen Richtergesetzes), 25 October 2024, available at: <https://www.recht.bund.de/bgbl/1/2024/320/VO.html>

3 CJEU [GC], Judgement of 27 May 2019, OG and PI, Joined Cases C-508/18 and C-82/19 PPU

4 Ministry of Justice, Draft Act to Increase Transparency of Instructions to the Public Prosecutor’s Office,, (Entwurf eines Gesetzes zur Erhöhung der Transparenz von Weisungen gegenüber der Staatsanwaltschaft), 26 March 2024, available at: https://www.bmj.de/SharedDocs/Downloads/DE/Gesetzgebung/RefE/RefE_Transparenz_Weisungen.pdf?__blob=publicationFile&xv=2; https://www.bmj.de/SharedDocs/Pressemitteilungen/DE/2024/0502_Transparenz_Weisungsrecht.html

5 Bund-Länder-Arbeitsgruppe, Report on the Resilient Constitutional State, (Bericht der Bund-Länder-Arbeitsgruppe „Wehrhafter Rechtsstaat“), 18 April 2024, available at: https://www.mj.niedersachsen.de/download/208073/zu_TOP_I.2._-_Bericht_BLAG_Wehrhafter_Rechtsstaat_nicht_barrierefrei_.pdf&ved=2ahUKE-wiMmp2MlviKAxVgQPEDHdtYDsQQFnoECBcQAO&cusg=AOvVaw0HxnLJTvzb-hPCOmqqMGeZ

of courts or new judgeship appointments were only codified in the Federal Constitutional Court Act (*Bundesverfassungsgerichtsgesetz*, BVerfGG). This is a federal law which can easily be amended by a simple majority in Parliament. To safeguard the function of the Constitutional Court against this simple parliamentary majority, key elements of this act were incorporated into the constitution (*Grundgesetz*).⁶

Quality of justice

Resources of the judiciary (human/financial/material)

The judiciary in Germany has been struggling with an overload for years.⁷ This stems from multiple factors, the ever-increasing number of criminal reports, especially in the digital realm, for which the judiciary was not prepared, being one of them.⁸ Paired with a lack of human resources, this translates to an ever-growing backlog of cases and increasingly lengthy trials.

The public prosecutor's offices alone now lack around 2,000 investigators, but courts also complain about a lack of staff. On average, a criminal case takes more than 21 months from the receipt of a criminal complaint by the public prosecution to a ruling. Civil courts are also struggling with similar challenges.⁹

This lack of human resources is partially due to demographic change, high recruitment requirements, and comparatively low income for judges in contrast to possibilities in the private sector.

Fairness and efficiency of the justice system

Execution of judgments

The execution of judgements is seriously hampered by the denial of interim relief measures for access to information claims, even those of journalists and public watchdogs. This remains a problem, impairing the efficiency of the justice system, and undermining the right to access information.

6 Deutscher Bundestag, BGBl. I 2024 Nr. 439, Act to Amend the Basic Law (Articles 93 and 94), (Gesetz zur Änderung des Grundgesetzes (Artikel 93 und 94), 27 December 2024, available at: <https://www.recht.bund.de/bgbl/1/2024/439/VO.html>

7 David Bieber, *Staatsanwaltschaften unterbesetzt und überlastet*, nd, 28 April 2024, available at: <https://www.nd-aktuell.de/artikel/1181834.nordrhein-westfalen-staatsanwaltschaften-unterbesetzt-und-ueberlastet.html>

8 Alexander Eydlin, *Richterbund beklagt steigende Zahl von Anzeigen*, ZEIT ONLINE, 20 November 2024, available at: <https://www.zeit.de/gesellschaft/zeitgeschehen/2024-11/justiz-richterbund-anzeigen-ueberlastung-hass-internet>

9 LTO-Redaktion, *Richterbund warnt vor Überlastung der Justiz*, lto, 20 November 2024, available at: <https://www.lto.de/recht/nachrichten/n/drj-richterbund-ueberlastung-justiz-fallzahlen>

In addition to the problem that journalists and the public are being denied access to information when it is most relevant, courts are also facing increased risk that relevant information is being deleted or goes missing during the proceedings. This risk is especially high when it comes to digital communication, such as SMS, e-mails or messenger communication. There have been numerous cases in which SMS or messenger communications of politicians and public officials relevant for ongoing parliamentary investigation or, in one case, the subject of a legal dispute were deleted.¹⁰

Quality and accessibility of court decisions

Public access to published court rulings remains inadequate. Court decisions are not generally and centrally published. It is highly likely that the current rates of public reading access to court decisions will be similar to the statistics

summarised in 2021, which showed less than 1% of court decisions were being published.¹¹

Only individual high courts, such as the Federal Constitutional Court or the Federal Court of Justice, publish their judgements. However, even for the highest courts, an obligation to publish only arises if the decisions are deemed worthy of publication by the courts. This criterion is only assessed by the judges themselves without any possibility of legal review. Many courts lack systematic procedures for publication, so judges lack knowledge of initiation processes required to publish their decisions.

The few decisions published by the federal states (*Länder*) in state databases are published under the license of the state itself, meaning any reproduction or commercial use is prohibited. Only copying or printing for personal use is permitted.

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *The federal government should follow the EU Commission in its recent decision to disclose all meetings that officials with management roles have with lobbyists. Moreover, it should further strengthen the 'legislative footprint' by disclosing all lobbyists' inputs to legislation and extending the scope to the parliamentary phase of the legislative procedure.*

10 Vivian Kube, Hannah Vos, *Oops, we löscht it again!*, lto 13 November 2023, available at: <https://www.lto.de/recht/meinung/m/fragdenstaat-akteneinsicht-behoerden-loeschen-sms/>

11 Hanjo Hamann, *Der blinde Fleck der deutschen Rechtswissenschaft – Zur digitalen Verfügbarkeit instanzgerichtlicher Rechtsprechung*, JZ, 2021

- *There should be a limit for how much political parties can receive in the form of donations or sponsoring income from a single source, e.g., a ceiling of € 50.000 per year, party, and donor/sponsor.*
- *The cooling-off period for members of the federal government and parliamentary state secretaries should be doubled, and enforcement of these regulations improved.*

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

Although the rules governing post-office employment for certain public officials have been amended, the regulations for top-level decision-makers in the executive branch remain insufficient. The cooling-off period for government ministers and state secretaries should be extended beyond the current maximum of 18 months and doubled to constitute a maximum of 36 months. Additionally, sanctions should be introduced for violations of these rules. While the regulations concerning revolving doors have been strengthened for federal state secretaries, department heads, and civil servants with access to classified information, oversight remains inadequate. The system relies heavily on self-compliance. No sanctions are possible in cases of non-compliance or non-disclosure of relevant new activities.

The decision to approve or deny post-office employment during the cooling-off period should be based on an independent evaluation of each individual case. Currently, the government decides cases of post-office employment after an expert recommendation is published. This, however, only applies to the employment

of ministers and parliamentary state secretaries and does not include other high-ranking officials, such as heads of departments and permanent state secretaries (*Abteilungsleiter, verbeamtete Staatssekretäre*). Decisions regarding their employment are reached within the ministry itself and are therefore not monitored.

In general, the rules and mechanisms to address conflicts of interest for ministers and all politically appointed public officials should be updated and more closely aligned.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

Lobby transparency

The reform of the lobby register law (*Gesetz zur Einführung eines Lobbyregisters für die Interessenvertretung gegenüber dem Deutschen Bundestag und der Bundesregierung/ Lobbyregistergesetz*) has been implemented and has already contributed to greater transparency. The 'legislative footprint', initially intended to complement the lobby register, was introduced in July 2024 as an amendment to the rules of

procedure of the federal government (*Gemeinsame Geschäftsordnung der Bundesministerien*).

However, the scope of the regulation is much narrower than proposed during the last legislative period. There is no obligation for ministries to disclose all lobby meetings, nor must written statements by lobbyists be made public. Instead, ministries are only required to provide information on those interest representations they deem to have had a significant impact on the legislation in question. This leaves considerable room for interpretation. It would certainly be more effective to better align and integrate the lobby register and the legislative footprint. The German government should follow the example of the EU Commission and disclose all meetings with registered lobbyists.

Political party financing

The enhanced transparency regulations from 2023, as described in the previous report, are a positive development.¹² On the other hand, the practical application and enforcement of the law is still unsatisfactory. To further minimise the risk of undue influence or even corruption, a limit for individual donations and sponsoring funding per donor/sponsor should be established as outlined in the key recommendations.

Rules on preventing conflicts of interest in the public sector

The mechanisms for preventing and managing conflicts of interest within the federal administration require a comprehensive re-regulation. Currently, there are no mandatory asset disclosure requirements for senior public officials, making it challenging to address potential conflicts of interest effectively. Ministers, state secretaries, and all politically appointed officials should be required to submit a declaration of financial interests.

Additionally, the regulations governing secondary employment for public officials should be revised to ensure that all paid side activities are subject to approval, which is not currently the case. Side jobs for companies or organisations with specific political or financial interests related to public officials' duties should be prohibited completely.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

The plans to address shortcomings in the criminal law on corruption and bribery of Members of Parliament, as reported last year, have moved forward. Parliament has passed a new criminal law that should make it possible to prosecute Members of Parliament who use

12 Civil Liberties Union for Europe, Rule of Law Report 2024, available at: <https://www.liberties.eu/en/stories/rolreport2024-main/45014>

their influence in government institutions for private gain.

The new law against ‘undue interest representation’, Section 108f of the German Criminal Code (*Strafgesetzbuch*, StGB), complements the existing Section 108e, which criminalises corruption only in the parliamentary sphere. Parliament did not use the opportunity to also change the existing Section 108e German

Criminal Code, although many critics see it as too narrow.

Additionally, the new Section 108f German Criminal Code is only applicable if paid lobbying is already prohibited by the rules of the respective parliament. This is the case for the German Bundestag but not for most of the parliaments of the *Länder*.

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *Newly implemented EU laws, such as the Media Freedom Act and the DSA, must be consistently implemented in Germany.*
- *Journalism with no profit motive must be recognised as non-profit under the German Fiscal Code (Abgabenordnung) and benefit from tax exemptions.*
- *After the failed adoption of the law against digital violence, the incoming coalition government needs to adopt measures to protect journalists online.*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The German Federal Network Agency (*Bundesnetzagentur*, BNetzA) has been designated as the German Digital Services Coordinator (DSC) under the Digital Services Act (DSA). The BNetzA itself already had

some degree of independence, and the rules have largely been strengthened regarding the responsibilities under the DSA (see Section 15 of the German Digital Services Act, *Digitale Dienste Gesetz*, DDG).

However, we see some practical issues as the funding for this new role is still lacking. This means that only a third of the staff could be hired. In addition, the new department is still headed by the president of the BNetzA itself. While the president has some guarantees of

independence, there are certain situations in which they can be relieved of office (Section 4, subsection 5 of the relevant law, the Gesetz über die Bundesnetzagentur für Elektrizität, Gas, Telekommunikation, Post und Eisenbahnen). These possibilities are not envisaged for the head of the DSC (Section 16 DDG).

This situation may worsen as the *BNetzA* will likely also become the main authority overseeing the coming Act on Artificial Intelligence, thus making the available resources even thinner.

Pluralism and concentration

The local newspaper landscape in Germany is facing significant challenges due to digitalisation and changing consumption habits, leading to a decline in diversity, particularly in rural areas. This trend is expected to continue, posing a growing threat to press freedom.¹³ For example, the Funke media group stopped delivering the *Ostthüringer Zeitung* to 300 subscribers in the Greiz district of Thuringia as high costs, including rising wages, made distribution unprofitable. Such developments will likely affect broader rural areas in Germany in the coming years.

Many local editorial offices are being closed or merged due to rising production costs, declining sales, and a shrinking advertising market, with most digital advertising revenue going to social media platforms rather than traditional media. A 2022 study commissioned by the government highlighted these issues, revealing that nearly half of newspaper publishers reduced their editorial staff between 2017 and 2022, with 62% expecting further reductions.¹⁴ The study also noted an increase in cross-publisher cooperation and article reuse, which diminishes content diversity, especially at local and regional levels. Drawing parallels with the U.S., the study warns of the creeping decay and disappearance of local journalism, which leads to less democratic participation in local politics.

Public trust in media

The 2023 Mainz Longitudinal Study on Media Trust published in 2024 reveals a slight decline in overall trust in the media compared to 2022.¹⁵ While 49% of respondents expressed confidence in the media on important issues in 2022, this number fell to 44% in 2023. Conversely, the proportion of those who distrust the media increased from 20% to 25%.

13 Reporters Without Borders, *Nahaufnahme Deutschland*, 2024, available at: https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/RSF_Nahaufnahme_Deutschland_2024.pdf

14 DIW ECON, *Die Situation der lokalen Presse in Deutschland und ihre Herausforderungen im Zeitalter der Digitalisierung*, 8 September 2022, available at: https://www.kulturstaatsministerin.de/SharedDocs/Downloads/DE/2023/2023-03-31-gutachten-zur-situation-der-lokalen-presse-data.pdf?__blob=publicationFile&v=1

15 Kai Remen, Michaela Waldow, *Wie sich das Vertrauen in Medien verändert*, zdf, 17 April 2024, available at: <https://www.zdf.de/nachrichten/panorama/medien-vertrauen-studie-universitaet-mainz-100.html>

Despite this shift, public broadcasters (Öffentlich-rechtlicher Rundfunk, ÖRR) remain highly trusted by most Germans. When asked openly which media outlets they trust, respondents ranked *ARD* and *ZDF* the highest. Public-service television led the trust rankings, with 64% of respondents deeming it very or somewhat trustworthy.

However, the study also highlights concerning trends, particularly the growing prevalence of media cynicism since 2020. Notably, 23% of respondents agreed to some extent with the statement that “established media and politics work hand in hand to manipulate public opinion.”¹⁶

These results underscore challenges for media creators in maintaining public trust.

Public Service Media

Editorial standards (including diversity and non-discrimination)

At the Conference of Prime Ministers of the *Länder* (*Ministerpräsidentenkonferenz*) in October 2024, the *Länder* agreed on major public broadcasting reform. The reforms aim to enhance efficiency and reduce costs by cutting smaller TV channels, reducing radio programs,

limiting expenditure on sports rights, and limiting online activities of major German public broadcasters *ARD* and *ZDF*.

The reforms require approval from all state parliaments to take effect. If any parliament rejects the proposal, the changes cannot be implemented. The reforms could begin by summer 2025 if approved.¹⁷

Financing (including transparency of financing)

Public broadcasters in Germany are financed by adaptable fees paid by citizens. The current monthly broadcasting fee for *ARD*, *ZDF* and *Deutschlandradio* is €18.36. A new fee period begins on 1 January 2025. The independent commission assessing broadcasters’ financial needs recommended an increase of €0.58 to €18.94, a process based on constitutional law. While the *Länder* are generally expected to follow this recommendation, resistance in the past, such as from Saxony-Anhalt, resulted in a Federal Constitutional Court ruling against the state. If *Länder* fail to agree again, the issue could return to the court.¹⁸

16 Oliver Quiring et al., *Mainzer Langzeitstudie Medienvertrauen 2023*, September 2024, available at: https://medienvertrauen.uni-mainz.de/files/2024/04/Mainzer_Langzeitstudie_Medienvertrauen_2023.pdf

17 SZ, dpa and saul, *Rundfunkbeitrag wird nicht erhöht*, 25 October 2024, available at: <https://www.sueddeutsche.de/medien/rundfunkbeitrag-ard-zdf-erhoehung-reform-lux.YScziMT5PdgqxZA839o9Kh>

18 Tagesschau, *Länder einig bei Reform – Entscheidung zu Beitrag vertagt*, 25 October 2024, available at: <https://www.tagesschau.de/inland/laender-oerr-100.html>

Online media

The Federal Administrative Court (*Bundesverwaltungsgericht*) has decided that the constitutional rights of freedom of the press also apply to online media outlets.¹⁹

Frequency of verbal and physical attacks

Compared to the previous year, the press freedom situation in Germany has not fundamentally changed. However, as a result of the sharp decline in demonstrations about the COVID pandemic and right-wing extremist demonstrations, the number of physical assaults against media professionals has declined, dropping from a record-high number of 103 in the previous year to 41 recorded and reported attacks. Nevertheless, the number is still almost three times as high as in 2019.²⁰

Physical attacks against journalists are often prepared, coordinated and spun out online. Examples include cyberstalking, so-called

doxxing, hate speech, shitstorms, etc.²¹ Regardless of the urgency of the issue, the key points presented by the Federal Ministry of Justice in 2023 for a law against digital violence have still not led to a draft approved by the cabinet.²²

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

Germany has yet to implement the EU Anti-SLAPP Directive. As a result, there are still no significant legal protections against SLAPPs for journalists. Over the past year, far-right actors have particularly sought to suppress critical reporting through SLAPPs. Following the publication of an article by the investigative platform Correctiv about a meeting of far-right extremists in Potsdam²³, some participants systematically targeted media coverage of the event. One of the participants, Ulrich Vosgerau, has initiated over 40 legal proceedings,²⁴ giving the impression that he aims to systematically suppress reporting. At the

19 Arne Semsrott, “Pegasus“ – BND-Spionagesoftware vor Gericht, *fragdenstaat*, 4 November 2024, available at: <https://fragdenstaat.de/artikel/klagen/2024/11/bnd-klage-pegasus/>

20 Reporters Without Borders, *Nahaufnahme Deutschland*, 2024, available at: https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/RSF_Nahaufnahme_Deutschland_2024.pdf.

21 Westdeutscher Rundfunk, *Deutsche Welle-Reporter nach Interview in Düsseldorf angegriffen*, 15 October 2024, available at: <https://www1.wdr.de/kultur/kulturnachrichten/pressefreiheit-deutsche-welle-al-shami-100.html>

22 Reporters Without Borders, *Nahaufnahme Deutschland*, 2024, available at: https://www.reporter-ohne-grenzen.de/fileadmin/Redaktion/Downloads/RSF_Nahaufnahme_Deutschland_2024.pdf

23 Marcus Bensmann et al., *Neue Rechte - Geheimplan gegen Deutschland*, *correctiv*, 10 January 2024, available at: <https://correctiv.org/aktuelles/neue-rechte/2024/01/10/geheimplan-remigration-vertreibung-afd-rechtsextreme-november-treffen/>

24 Junge Freiheit, *Spendenaufruf - “Correctiv“-Rebell Vosgerau bittet um Unterstützung*, 17 October 2024, available at: <https://jungefreiheit.de/kultur/medien/2024/correctiv-rebell-vosgerau-bittet-um-unterstuetzung/>

same time, Vosgerau launched a fundraising campaign that raised over €180,000 to cover his legal costs,²⁵ thereby creating a significant financial power imbalance, particularly against private individuals or blogs he has targeted.

Amending existing national laws or drafting and adopting new laws, which regulate the use of spyware, including safeguards and remedies

Under German law, there are certain legal provisions for the use of spyware by intelligence services and police authorities. Last year, the legal provision to use spyware for law enforcement purposes under the German Code of Criminal Procedure (*Strafprozessordnung*, StPO) was expanded despite several pending constitutional complaints. Most problematically, spyware can now be used to surveil humanitarian workers in the refugee aid field.²⁶ Additionally, the legal provision to use spyware in cases of domestic burglary has been extended for another five years, as an evaluation

was deemed impossible due to the COVID-19 pandemic.²⁷ Moreover, an additional preparatory offence under the German Explosives Act (*Sprengstoffgesetz*, SprengG) has been added as a trigger for deploying spyware, along with other minor changes.²⁸ In the federal state of Mecklenburg-Western Pomerania, a provision allowing the police to use spyware for preventive purposes was amended to comply with the requirements of the Federal Constitutional Court, which had declared parts of the legal provisions unconstitutional.²⁹

Access to information and public documents

In contrast to the recommendation of the EU Commission in its 2024 Rule of Law Report, Germany has still not advanced the plan to create a legal basis for the right to information of the press in relation to federal authorities. Some areas are being completely excluded from the right to information by the press. The courts deny any rights of the press to receive

25 GoFundMe, Prozesskostenhilfe nach dem Potsdam-Treffen, available at: <https://www.gofundme.com/f/Prozesskostenhilfe-nach-dem-Potsdam-Treffen>

26 Anna Biselli, *Eingeschleuste Staatstrojaner*, netzpolitik.org, 17 January 2024, available at: <https://netzpolitik.org/2024/rueckfuehrungsverbesserungsgesetz-eingeschleuste-staatstrojaner/>

27 Stefan Krempf, *Überwachung: Bundestag lässt Polizei länger mit Staatstrojanern Einbrecher jagen*, heise, 14 November 2024, available at: <https://www.heise.de/news/Ueberwachung-Bundestag-laesst-Polizei-laenger-mit-Staatstrojanern-Einbrecher-jagen-10035163.html>

28 Martin Schwarzbeck, *Mit Staatstrojanern gegen Geldautomatensprengungen*, netzpolitik.org, 22 July 2024, available at: <https://netzpolitik.org/2024/gesetzentwurf-mit-staatstrojanern-gegen-geldautomatensprengungen/>

29 Federal Constitutional Court (Germany), Order of 9 December 2022, No. 1 BvL 1345/21, available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2022/12/rs20221209_1bvr134521.html?nn=148438

any information about pardon decisions made by the President.³⁰

At the level of the *Länder*, journalists still do not have the right to access documents, solely the right to have their questions answered. To gain access to public documents, they need to base their claims on the freedom of information acts of the *Länder*, which still do not exist in Bavaria and Lower-Saxony. Furthermore, there are considerable differences amongst the *Länder* as some include broad exceptions such as the transparency legislation of Saxony.³¹ Many *Länder*, such as Berlin, have not updated their legislation even though this has been on the agenda and in the coalition contracts for many years.³²

The lack of systematic digitalisation and any law regulating proper filing and archiving of information continue to undermine access to information. State authorities regularly refuse

to grant access to digital communication. They argue that digital communication is not official communication and, therefore, freedom of information legislation does not apply.³³

Furthermore, exceptions in the access to information legislation are being interpreted broadly both by the authorities and the courts, severely diminishing the effect of this legislation. That is, for example, the case with regard to confidentiality. Authorities can easily declare documents as “for official use only”, which make such documents fall under the exception clause. Judicial review, however, regards the need for such confidentiality as limited.³⁴

This is also the case for financial and tax authorities. Broad exception clauses apply, which exclude ministerial decision-making in financial and tax matters in its entirety. Investigations into the *cum ex* scandals, a tax fraud scheme where investors claimed multiple

30 Vivian Kube, Hannah Vos (2024), ‘Begnadigung von Gefolgsleuten – und keiner merkt’s’, *Verfassungsblog*, 15 April 2024, available at: <https://verfassungsblog.de/begnadigung-von-gefolgsleuten-und-keiner-merkts/>

31 Ingo Dachwitz (2022), ‘Neues Transparenzgesetz für Sachsen’, *netzpolitik.org*, 31 December 2022, available at: <https://netzpolitik.org/2022/neues-transparenzgesetz-fuer-sachsen-wir-hinken-teilweise-weit-hinterher/>

32 Ingo Dachwitz (2022), ‘Sachverständiger heimgeschickt’, *netzpolitik.org*, 14 December 2022, available at: <https://netzpolitik.org/2022/sachverstaendiger-heimgeschickt-spd-blockiert-erneut-berliner-transparenzgesetz/>

33 Hannah Vos, Arne Semsrott (2024), ‘Wie Ministerien Informationen verschweigen’, *FragDenStaat*, 21 November 2024, available at: <https://fragdenstaat.de/anfrage/kommunikation-zu-oeffentlichem-brief-ueber-wire/>; Arne Semsrott (2024), ‘Hängeabschluss nach unserem Eilantrag’, *FragDenStaat*, 3 July 2024, available at: <https://fragdenstaat.de/artikel/policy/2024/11/massnahmen-revolution-der-akten-informationen-verschweigen/>; Arne Semsrott (2024), ‘Gericht verbietet Bildungsministerium vorerst Löschung von Nachrichten’, *FragDenStaat*, 3 Juli 2024, available at: <https://fragdenstaat.de/artikel/klagen/2024/07/gericht-verbietet-bildungsministerium-vorerst-loschung-von-nachrichten/>

34 Vivian Kube et al. (2023), ‘Missbrauch von „Verschlussachen“ zur Informationsblockade’, *lto*, 22 July 2023, available at: <https://www.lto.de/recht/meinung/m/frag-den-staat-verschlussache-nur-fuer-den-dienstgebrauch>

refunds on a single dividend tax payment, costing billions in public funds, are severely hampered by this.³⁵

Any positive developments regarding the application of anti-SLAPP rules for domestic cases, such as transparency, procedural safeguards and remedies

The EU Anti-SLAPP Directive has not been implemented in Germany. Following

the collapse of the governing coalition at the federal level in November, implementing the directive within the directives' implementation deadline appears almost impossible. Without implementation, there is still a lack of statutory legal protection as well as state support mechanisms. In the absence of state-provided assistance, several civil society initiatives offering advice and support have emerged, including a contact point established in April 2024 for journalists affected by SLAPPs.³⁶

CHECKS AND BALANCES

Key recommendations

- *Federal ministries need to establish minimum time frames for stakeholder comment periods and consultations in legislative processes.*
- *The government must ensure that the Commissioner for Data Protection and Freedom of Information has sufficient powers to act on both data protection and freedom of information issues effectively.*
- *Germany's federal equality body needs to meet the requirements set out in the Race and Ethnicity Equality Directive in order to enable it to perform its mandate effectively.*

35 Semsrott, A. ‚Hintertür in Finanzgesetz‘, [netzpolitik.org](https://netzpolitik.org/2021/hintertuer-in-finanzgesetz-gesetzesanderung-verhindert-aufklaerung-des-cum-ex-skandals/), 25 February 2021, available at: <https://netzpolitik.org/2021/hintertuer-in-finanzgesetz-gesetzesanderung-verhindert-aufklaerung-des-cum-ex-skandals/>

36 [NOSLAPP.DE](https://www.noslapp.de/), 2024, available at: <https://www.noslapp.de/>

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

Ministries are still setting very short comment periods for stakeholder consultations in legislative processes, sometimes a few days or even hours. Reasons that could justify such short deadlines are not apparent.

A quantitative study published in May 2024 by *Mehr Demokratie e.V.*, *FragDenStaat* and *Green Legal Impact e.V.* highlights the limited involvement of civil society organisations in Germany's legislative process.³⁷ Although the ministries claim to strive for adequate involvement, the data suggests otherwise. The study examined data from federal ministries over the past two legislative periods. It reveals that in almost two-thirds of cases, these organisations had less than 20 working days to submit their statements, and in about one-third of cases, they had just 10 days or less. In nearly 20%

of cases, the time given was even shorter—five days or less.

For environmental laws, the situation is particularly problematic. Despite the Aarhus Convention's requirement for public participation in environmental matters, civil society groups often face very short comment period—sometimes only a few days to respond to laws related to environmental or climate issues. Tight deadlines not only make it difficult for organisations to provide meaningful feedback but can also lead to serious consequences, such as missed opportunities for important legal revisions. The rushed nature of the process, particularly in areas with significant human rights implications, often results in superficial laws that do not address the root causes of the issues at hand.

Examples of this in 2024 include:

- National implementation of the Common European Asylum System reform with a comment period of less than 6 days.³⁸
- Law on the Amendment of Energy Industry Law with less than 3 days.³⁹

37 Deleja-Hotko et al., *FragDenStaat Keine Zeit für Zivilgesellschaft*, 15 May 2024, available at: <https://fragdenstaat.de/artikel/exklusiv/2024/05/stellungnahmefristen-interessensverbände-zu-wenig-zeit/>

38 BAfF (2024), 'Stellungnahme der Bundesweiten Arbeitsgemeinschaft der psychosozialen Zentren für Flüchtlinge und Folteropfer (BAfF) zum Referent*innenentwurf des Bundesministeriums des Innern und für Heimat zur Reform des Europäischen Asylsystems', 21 October 2024, available at: https://www.baff-zentren.org/wp-content/uploads/2024/10/Stellungnahme_GEAS_Verbaende_BAaF_20241021.pdf

39 Bitkom (2024), 'Ergänzende Stellungnahme zum Entwurf eines Gesetzes zur Änderung des Energiewirtschaftsrechts', available at: <https://www.bitkom.org/Bitkom/Publikationen/Ergaenzende-Stellungnahme-Entwurf-Aenderungsgesetz-Energiewirtschaftsrecht>

- Law on the Modernization of Unemployment Insurance and Employment Promotion, with a comment period of 3 days, including the weekend.⁴⁰

While the introduction of the “synopsis requirement” in the Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung*, GGO) is a step towards greater transparency, the ministries have so far not fully met this obligation. From 1 June 2024 onward, all legislative proposals must include a synopsis outlining changes compared to existing law. However, implementation of this requirement has been inconsistent. While the intention is to help both experts and the public easily understand proposed amendments, the lack of adequate compliance with this rule undermines its effectiveness in enhancing transparency.

Independent authorities

In 2024, Germany established a Commissioner for Data Protection and Freedom of Information at the federal level, and the 14 *Länder* have adopted freedom of information legislation. While these institutions have, in some cases, made a significant contribution to strengthening the right to access information and supporting individuals and civil society, several shortcomings remain. First, the election of such commissioners is highly opaque

and, therefore, not in line with the EU General Data Protection Regulation. Second, while these commissioners have far-reaching powers in the area of data protection, including the right to issue orders, their abilities regarding freedom of information are limited to the function of an ombudsperson. They advise citizens who make requests under freedom of information laws, mediate between the person making the request and the authority in the event of a dispute and can draw attention to shortcomings and call for legal reforms through activity reports to parliaments and recommendations. In addition, they can also visit authorities and file complaints if they disregard the provisions of freedom of information legislation. However, they lack any means to enforce their legal opinion against the authorities. In addition, the Commissions have fewer financial resources and personnel at their disposal when it comes to freedom of information.

In 2024, the *Bundestag* created the position of an independent Police Ombudsman at the federal level. The position is equipped with significant powers, including the ability to investigate individual cases and structural issues within the federal police forces. However, the jurisdiction is limited to federal police officers, and the majority of police officers in Germany are employed by state-level police forces. On the federal level many states lack dedicated

40 Tacheles e.V. (2024), BMAS legt Gesetzesentwurf mit massiven Verschärfung des SGB II vor, 29 September 2024, available at: <https://tacheles-sozialhilfe.de/aktuelles/archiv/bmas-legt-referentenentwurf-zur-massiven-verschaerfung-des-sgb-ii-vor-gesetzes-zur-modernisierung-der-arbeitslosenversicherung-und-arbeitsfoerderung-dummy-fuer-aktuelle-artikel-kopie.html>

police commissioners, or the existing ones have little authority.

Germany's equality body, the Federal Anti-Discrimination Agency (FADA), may seek a voluntary, out-of-court settlement between parties. However, it cannot investigate complaints, lodge proceedings before the courts, or support claimants in their proceedings, nor can it bring parties into a binding arbitration process, making it one of the least powerful equality bodies in Europe.⁴¹ The FADA, therefore, does not meet EU Law requirements for the establishment of equality bodies. These include the establishment of procedures for fact-finding, effective rights of access to information and documents, and suitable procedures for cooperation with relevant public authorities. Anti-discrimination bodies must be empowered to issue non-binding opinions or binding decisions and, where necessary, propose concrete measures to address and prevent discrimination. Current law and even the draft law for the implementation of the EU directive do not meet these requirements on anti-discrimination bodies.

Accessibility and judicial review of administrative decisions

In Germany, there are considerable restrictions on legal protection regarding decisions on symbol bans in connection with association bans.⁴² It is not possible to lodge an appeal against the prohibition of a symbol. Legal remedies must be sought by the affected associations themselves.⁴³ Individuals who do use the same symbols but not in relation to banned associations cannot claim legal protection. In the context of pro-Palestinian protests, this has meant that last year, the exclamation 'from the river to the sea, Palestine will be free' was not only included as an alleged 'symbol' of Hamas but also that individuals cannot challenge this decision of the Federal Ministry.⁴⁴

Electoral framework

Transition of power

In 2023, the electoral law in Germany was comprehensively amended.⁴⁵ The aim of the electoral reform was to reduce the size of the Parliament. A positive political process preceded the reform, in which the opposition

41 Commissioner for Human Rights of the Council of Europe, Report following her visit to Germany from 27 November to 1 December 2023, CommHR(2024)13, 23 February 2024

42 Deutscher Bundestag, Sec. 9 of the Associations Act, BGBl. I S. 593, 1964 (Vereinsgesetz).

43 Federal Constitutional Court (Germany), Order of 13 July 2018, No. 1 BvR 1474/12, available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/EN/2018/07/rs20180713_1bvr147412en.html?nn=68654).

44 Federal Ministry for Home Affairs, Federal Gazette, 2 November 2023, available at: <https://www.bundesanzeiger.de/pub/de/amtliche-veroeffentlichung?3>.

45 Bundestag, Wahlrechtsreform, 2023, available at: <https://www.bundestag.de/services/glossar/glossar/W/wahlrechtsreform2023-974280>

was also extensively involved. The changes to the electoral law did not result in the governing parties gaining any special advantages. In 2024, two opposition parties challenged

the reform before the Federal Constitutional Court. The Constitutional Court ruled that the reform was largely compatible with the principle of democracy.⁴⁶

CIVIC SPACE

Key recommendations

- *Extensive review of the laws governing tax exemptions for CSOs is needed to allow them to engage in political participation with legal certainty.*
- *Sec. 129 of the German Criminal Code must be reformed to ensure that it is not used to criminalise political movements.*
- *In the fight against antisemitism, state actors must uphold the rule of law and civil rights. Controversial pro-Palestinian activities in art, culture, academia, and on the streets should not be met with repressive and disproportionate measures.*

Freedom of association

Involuntary dissolution

In July 2024, the Federal Ministry of the Interior issued a ban order against the far-right magazine *Compact*. The legal basis of the decision was a ban of the publishing association. The Federal Administrative Court has confirmed the procedure of banning the press

through the ‘back door’ of association law. As a result, although German law does not provide for the dissolution of press publishers, associations that distribute press publications can be rightfully dissolved. However, the Ministry of the Interior has not considered the special requirements of proportionality. Due to freedom of expression and freedom of the press, the extent to which problematic publications constitute an overall character worthy

46 Federal Constitutional Court (Germany), Judgement of 30 July 2024, No. 2 BvF 1/23, available at: https://www.bundesverfassungsgericht.de/SharedDocs/Entscheidungen/DE/2024/07/fs20240730_2bvf000123.html?nn=68080

of prohibition must be carefully examined.⁴⁷ The Ministry also did not thoroughly examine whether banning individual publications based on press law is a less intrusive measure. Even if state action against right-wing structures is to be welcomed, the principles of the rule of law must be taken into account.⁴⁸

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations

In Germany, access to public funding and resources for civil society organisations (CSOs) has become increasingly politicised, particularly for those involved in sensitive political causes.

Culture, art and science projects are confronted with new funding challenges at federal and state levels if they want to work on topics related to the conflict in the Middle East. Various regulatory instruments have been passed by Parliament or are being developed by governments at *Länder* and local level, which threaten to sanction work critical of Israel due

to accusations of antisemitism. Even if funding has not yet been withdrawn in individual cases, cultural and academic institutions are experiencing financial uncertainty and are in danger of losing external funding support.

Examples of these challenges include the closure of the cultural centre Oyoun in Berlin. Funding for the centre was withdrawn after the project lent use of its space to the organisation Jewish Voice for Just Peace in the Middle East.⁴⁹ Despite initial confirmation of funding until 2025, the Berlin authorities cited antisemitism concerns, leading to the termination of the contract. This decision, widely seen as politically motivated, has resulted in the centre being forced to vacate its premises, with public resources being reallocated. Similarly, the Frieda Women's Centre faced closure threats due to its staff's participation in pro-Palestinian events, highlighting how political controversies can directly impact access to public funding and public spaces.⁵⁰ These examples show the growing challenges faced by CSOs working on contentious issues, as they risk losing public support and resources due to political pressures.

47 Federal Administrative Court (Germany), 6 VR 1.24, Order of 14 August 2024, available at: <https://www.bverwg.de/de/140824B6VR1.24.0>

48 Paula Rhein-Fischer (2024), 'Zeitungsverbot durch die Hintertür', *Verfassungsblog*, 19 July 2024, available at: <https://verfassungsblog.de/compact-verbot/>

49 The Berliner (2023), 'Oyoun cultural centre to close after Berlin cuts funding', *The Berliner*, 22 November 2023, available at: <https://www.the-berliner.com/english-news-berlin/oyoun-cultural-centre-to-close-after-senate-cuts-funding-jewish-voice-israel/>

50 Elmar Schütze (2024), 'Frauzentrum Frieda in Kreuzberg: Judenfeindlich und schlampig', *Berliner Zeitung*, 24 June 2024, available at: <https://www.berliner-zeitung.de/mensch-metropole/berlin-antisemitisch-und-schlampig-li.2228053>

Publicly funded projects that are active in the areas of gender equality, climate justice, anti-racism and asylum are also facing increasing pressure. On the one hand, this is due to extensive cost-cutting measures, particularly at the federal level.⁵¹ Furthermore, private right-wing actors, as well as public institutions, are accusing these organisations and public donors of not distributing funding in a politically neutral manner.⁵² In the federal state of Saxony, this accusation, among others, has led to small CSOs having to answer to parliamentary committees of enquiry.⁵³ The CSOs have neither the financial nor the human resources to undergo such proceedings. In another case in Saxony, an association came under financial scrutiny following increasing political pressure, which resulted in the reclaiming of funds and the subsequent insolvency of the association.⁵⁴

Other

The legal uncertainties concerning public participation and political activity of civil society organisations with tax-exempt status (public benefit organisations) have not been resolved. An open letter from almost 200 CSOs calling on the German government to change the law on non-profit organisations has also not led to any changes.⁵⁵ On 5 June 2024, the federal government introduced a modest reform proposal through the Taxation Development Law (*Steuerfortentwicklungsgesetz*). This proposal aimed to slightly expand the scope of political engagement for CSOs. It included provisions allowing CSOs to address current political topics beyond their original tax-exemption purposes. However, the proposed changes offered little to no substantial improvement to the overall framework governing the political engagement of CSOs.

51 Anna Biselli (2024), ‚Zivilgesellschaftliche Projekte sorgen sich um Finanzierung‘, netzpolitik.org, 13 November 2024, available at: <https://netzpolitik.org/2024/bundeshaushalt-zivilgesellschaftliche-projekte-sorgen-sich-um-finanzierung/>; Nina Apin et al. (2024), ‚Berliner Kultur von Kürzungen bedroht‘, *taz*, 13 December 2024, available at: <https://taz.de/Berliner-Kultur-von-Kuerzungen-bedroht/!6054078/> see also <https://ljrberlin.de/7-millionen-euro-weniger-berlin-kuerzt-massiv-bei-jungen-menschen>

52 Jonas Deyda (2023), ‚Weaponized Neutrality‘, *Verfassungsblog*, 14 December 2023, available at: <https://verfassungsblog.de/weaponized-neutrality/>

53 Mdr Sachsen (2024), ‚Nur AfD sieht Korruption beim Sozialministerium‘, *mdr*, 26 September 2024, available at: <https://www.mdr.de/nachrichten/sachsen/dresden/dresden-radebeul/untersuchungsausschuss-verdacht-korruption-sozialministerium-afd-100.html>.

54 Mdr Sachsen (2024), ‚Migranten-Verband sieht sich als Bauernopfer der sächsischen Politik‘, *mdr*, 9 May 2024, available at: <https://www.mdr.de/nachrichten/sachsen/insolvenz-dachverband-migranten-fluechtlinge-foerderungsmittel-100.html>

55 Die Allianz ‚Rechtssicherheit für politische Willensbildung‘, available at: <https://www.zivilgesellschaft-ist-gemeinnuetzig.de/die-allianz/>.

Despite the limited scope of the reform, negotiations in Parliament reached their final stages. However, the process came to a halt when the governing coalition collapsed. As a result, no reform was enacted during this legislative period. Consequently, it appears unlikely that the systemic challenges surrounding the political engagement of CSOs in Germany will see meaningful change within the following year.

Criminalisation of activities, including humanitarian or human rights work

Associations that organise peaceful civil disobedience continue to be criminalised. Section 129 of the German Criminal Code - formation of a criminal organisation - is being misused for this purpose. Climate activists from the Last Generation (*Letzte Generation*) are being especially affected by this practice. Even an early suspicion allows the investigating authorities to take far-reaching measures such as house searches or surveillance measures. This practice not only has extreme consequences for those directly affected but also has a deterrent effect on entire movements.

The first regional public prosecutor's offices have now brought charges against members of the Last Generation for the first time for forming a criminal organisation.⁵⁶ Convictions levelled against the group have, therefore, become more likely. CSOs are hence calling for a reform of Section 129 of the German Criminal Code.⁵⁷

Freedom of peaceful assembly

Rules on organisation, authorisation of and participation to assemblies

The Palestine Congress in Berlin faced significant interference from local authorities, raising concerns about the right to peaceful assembly.⁵⁸ The actions of the security authorities against the Palestine Congress and certain individuals have been criticised as excessive and disproportionate.⁵⁹ Considering the organisers' cooperation with the authorities and the extremely vague threat assessment by the police, there is reason to believe that the dissolution was unjustified. Among other measures, former Greek finance minister Yanis Varoufakis and Ghassan Abu-Sittah, a British-Palestinian

56 Dpa/jb/LTO-Redaktion, *Erste Anklage wegen Bildung einer kriminellen Vereinigung*, Ito, 21 May 2024, available at: <https://www.ito.de/recht/nachrichten/n/staatsanwaltschaft-neuruppin-letzte-generation-klimaschutz-bildung-einer-kriminelle-vereinigung>

57 Amnesty International (2024), *Deutschland: Amnesty Fordert Reform von § 129 Strafgesetzbuch*, 11 April 2024, available at: <https://www.amnesty.de/pressemitteilung/deutschland-paragraf-129-amnesty-fordert-reform-friedlichen-protest-schuetzen>

58 Dpa, AFP, Reuters (2024), *'German police shut down pro-palestinian conference'*, Deutsche Welle, 13 April 2024, available at: <https://www.dw.com/en/german-police-shut-down-pro-palestinian-conference/a-68810306>

59 Ralf Michaels (2024), *'Welche Regeln in Berlin gelten'*, Berlin Review, 2 May 2024, available at: <https://blnreview.de/ausgaben/2024-05/ralf-michaels-palaestina-kongress-rechtsstaat-repression>

surgeon, were denied entry to Germany to prevent them from giving speeches at the Congress. These bans violated EU law. Hence, Abu-Shittah's ban was lifted by the administrative court in Potsdam.⁶⁰ It is likely that the dissolution of the assembly will be overturned by the courts.⁶¹ No criminal offences were committed at the Congress and the organisers were not informed in advance of a ban on the opening speaker. Although the organisers agreed to comply with the ban on their opening speaker, the Congress was still dissolved. More lenient measures were not considered. It can be assumed that the regional government exerted considerable political pressure on the police officers on site. This approach shows in a worrying way that the authorities are prepared to violate assembly laws if they can achieve their political goals in the short term.

Bans on protests

In Berlin, following 7 October 2023, blanket demonstration bans were issued, targeting assemblies of pro-Palestine groups in Berlin.⁶² The way in which the pro-Palestinian protests are dealt with has changed over time. Over time, the Assembly Authorities (*Versammlungsbehörde*) have turned to imposing restrictions on demonstrations, banning certain slogans instead of blanket bans.⁶³ Moreover, the media reported on unnecessary and excessive use of force by police, hundreds of arrests and increased racial profiling of people perceived as Arab or Muslim in the context of these protests.⁶⁴

The Assembly Authorities (*Versammlungsbehörde*) in Berlin pre-emptively issued blanket bans on protests in solidarity with Palestinians around the Nakba Remembrance Day. The reasoning laid out in the ban orders was

60 Matthias Monroy (2024), 'Einreiseverweigerung für Ghassan Abu-Sittah war rechtswidrig', nd, 16 May 2024, available at: <https://www.nd-aktuell.de/artikel/1182225.verwaltungsgericht-potsdam-einreiseverweigerung-fuer-ghassan-abu-sittah-war-rechtswidrig.html>

61 Hanno Fleckenstein (2024), 'A lawsuit against the dissolution of the congress is pending before the Berlin Administrative Court', *Gewaltenteilung in Gefahr*, taz, 27 May 2024, available at: <https://taz.de/Aufloesung-von-Palaestina-Kongress!/6010191/>

62 Nora Noll (2024), 'Demoverbote in Berlin: Versammlungsfreiheit gilt nicht mehr', nd, 23 October 2023, available at: <https://www.nd-aktuell.de/artikel/1177223.nahost-konflikt-demoverbote-in-berlin-versammlungsfreiheit-gilt-nicht-mehr.html>

63 So far the regional administrative courts assessed the legality of bans and restrictions differently, see for example Administrative Court Muenster (Germany), order from the 17.11.2023, 1 L 1011/231 or Appellate Administrative Court Kassel (Germany), order from the 02.12.2023, 2 B 1715/23. Decisions by federal courts, including the Federal Constitutional Court, are still pending.

64 Amnesty International (2023), 'Germany', 2023, available at: <https://www.amnesty.org/en/location/europe-and-central-asia/western-central-and-south-eastern-europe/germany/report-germany/>

based on stigmatising and racist stereotypes of people perceived as Arab or Muslim. Despite significant concerns about the compatibility of these blanket bans with the right to peaceful assembly and the right to non-discrimination, the courts upheld the bans.

Bans on the use of symbols/slogans in protests

Prohibitions of slogans and symbols in the context of Palestinian solidarity lead to restrictions on freedom of assembly. The ban on the phrase ‘from the river to the sea’ has already led to criminal convictions since it was issued by the Federal Ministry of the Interior in 2023.⁶⁵ Even if rulings in individual cases refer to the phrase’s propagation in social networks, it is to be expected that these convictions will also impact and deter its use at assemblies.

Policing practices, including dispersion of protests, use of force

So-called pain grips are part of police practice in many federal states - and have become alarmingly normalised. Those affected by racist police operations have long experienced this practice, and climate protesters are also

increasingly affected by pain grips. From a human rights perspective, the use of pain grips in the context of peaceful assembly is highly problematic and likely to violate fundamental and human rights obligations. This conclusion is reached in a report by Michel Forst, UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, criticising the use of pain grips by German police authorities.⁶⁶

Freedom of expression and information

Restrictions on access to information

The editor-in-chief, Arne Semsrott of the CSO *FragDenStaat*, reported on an ongoing criminal case against members of the Last Generation regarding accusations of forming a criminal organisation. The editor published court decisions from the case, which is illegal under Section 353d No. 3 of the German Criminal Code. Consequently, the Berlin Regional Court (*Landgericht Berlin*) ordered the editor-in-chief after his publications to pay fine.⁶⁷ This complete ban on publishing court documents severely interferes with the freedom of the press and is incompatible with recent

65 Regional Court Berlin (Germany), Decision of 8 November 2024, 502 KLS 21/24, available at: <https://www.berlin.de/gerichte/presse/pressemitteilungen-der-ordentlichen-gerichtsbarkeit/2024/pressemitteilung.1501343.php>

66 UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, State repression of environmental protest and civil disobedience, February 2024, available at: https://unece.org/sites/default/files/2024-02/UNSR_EnvDefenders_Aarhus_Position_Paper_Civil_Disobedience_EN.pdf

67 Michelle Trimborn (2024), ‘Press freedom at risk’, *fragdenstaat*, 14 October 2024, available at: <https://fragdenstaat.de/en/articles/lawsuits/2024/10/press-freedom-arne-semsrott-in-court/>

ECtHR case law.⁶⁸ Journalists must be able to report on ongoing criminal cases without becoming targets of prosecution themselves. These punishments also result in not only a violation of press freedom but also a restriction on public access to information. Access to primary sources is particularly important for civil society, especially at a time when short snippets of text dominate social media.

Online civic space

There are regulations, such as content removal obligations and liability rules, that aim to counter the spread of misinformation, hate speech, and other harmful content in the online media ecosystem. However, in the aftermath of the Hamas attack on 7 October 2023, allegations have been made that Palestinian voices and media were censored on social media while, at the same time, online spaces have been flooded with disinformation. Antisemitic and racist hate speech surged on various digital platforms, making digital spaces unsafe for Jewish and Muslim communities. Balancing the need for a safer online space with the preservation of diverse viewpoints remains a complex challenge in the evolving digital era.

The Society for Civil Rights (*Gesellschaft für Freiheitsrechte, GFF*), together with a Facebook user, are taking legal action against Meta to prevent the company from conducting

automated scans of messenger messages. Through this lawsuit, they aim to establish the illegality of broad chat controls. Meta justifies its actions by citing a temporary exemption for scans related to child abuse material.⁶⁹

The number of officers in the Federal Police Office (*Bundeskriminalamt, BKA*) is set to increase in 2024 as part of the implementation of the DSA in Germany. However, the necessity to educate law enforcement on digital threats and violence has not been recognised. The needed training for law enforcement is also not touched upon in the key points of the planned law against digital violence.

Measures to facilitate access to law enforcement or to file legal proceedings against digital violence are put on the back burner; neither the planned law against digital violence nor the law implementing the DSA in Germany address this issue.

Attacks, threats and hate speech online

German law currently does not provide for effective legal redress against violations of personal rights in the digital sphere. Victims of online violence often face difficulties in asserting their rights. Often, identifying the perpetrator is already hindered by a lack of information or the factor of time. The planned digital violence protection law (*Gesetz gegen*

68 ECtHR [GC], Judgement of 28 June 2012, *Ressiot et al v. France*, no. 15054/07, 15066/07; ECtHR [GC], Judgement of 28 June 2011, *Pinto Coelho v. Portugal*, no. 28439/0

69 GFF, *Chatkontrolle bei Facebook*, 2024, available at: https://freiheitsrechte.org/themen/freiheit-im-digitalen/chatkontrolle_facebook

digitale Gewalt)⁷⁰, designed to address these issues, will not be adopted due to the collapse of the governing coalition.

Public participation

Rules and practices on dialogue with civil society

In Germany, there is little regulated citizen participation, and it is practised mainly at the municipal level (in the area of building and planning law). It is used less frequently at the state and federal levels, where participation takes place via written statements. Individuals can submit their comments directly to the authority, which must also respond in writing. These procedures tend to have a very low deliberative quality, as there can be little real exchange of ideas with mutual influence on the point of view. Therefore, the current forms of legally regulated citizen participation are often perceived as inflexible and outdated, and proposals to modernise the procedures have not yet been legally implemented.

Impact on civic space of emergency and crisis situations

The crisis situations are having a negative impact on civic space. There are major budget issues due to constitutional limits on government debt, and at the same time, spending has increased because of the war in Ukraine. Germany is witnessing a shift to the right in politics, even though far-right parties are not yet in power. The political mood is pushing even liberal groups to adopt more restrictive policies. This has an impact, for example, on how people who campaign for climate protection are treated. The conflict in the Middle East is also impacting the situation in Germany. Differences between the views of a diverse public space and a government that has made Israel's security a cornerstone of its policy continue to lead to increasing conflicts at various points.

70 Federal Ministry of Justice, *Digitale Gewalt: Stärkung der privaten Rechtsverfolgung im Internet*, 9 December 2024, available at: https://www.bmj.de/DE/themen/digitales/digitale_kommunikation/digitale_gewalt/digitale_gewalt_artikel.html

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *National or international crises make it no less necessary for governments to abide by the rule of law. Transgressions in social and asylum law, such as those following the terrorist attacks in Solingen, must be reversed. Proposals to tighten surveillance and security laws should not be implemented.*
- *Following the example of Hesse and Rhineland-Palatinate, other states should issue rules ensuring that people waiting for their deportation remain eligible for social benefits.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

The German state not only failed to adequately protect refugees but significantly weakened their position and violated international and European law by amending sections of the Asylum Act (*Asylgesetz*, AsylG), as well as the Asylum Seekers Benefits Act (*Asylbewerberleistungsgesetz*, AsylbLG), causing refugees to lose their protected status if they travel to their country of origin, unduly excluding them from social benefits as well as introducing prepaid cards instead of assisting with cash.

Section 73 of the Asylum Act came into effect on 31 October 2024. Under the new regulations, refugees lose their protected status if they travel to their country of origin for reasons deemed not “morally compelling.” Refugees from Ukraine are exempt from this rule. Critics argue that revoking protection status due to such travel constitutes inhumane harassment and violates the UN Refugee Convention and the EU Qualification Directive. The Geneva Refugee Convention (Article 1, Section C, No. 1) allows for revocation on the same grounds, but it makes clear that revocation should not happen in cases of short stays.⁷¹

The exemption for “morally compelling” trips offers little relief, as the Federal Office for

71 GFF, Stellungnahme zum Leistungsausschluss für Dublin-Fälle nach § 1 Abs. 4 AsylbLG und dem Widerruf des Schutzstatus nach § 73 Abs. 1 AsylG, 16 October 2024, available at: <https://freiheitsrechte.org/uploads/publications/GFF-Stellungnahme-Aenderungsantrag-Sicherheitspaket.pdf>.

Migration and Refugees determines the validity of such reasons only after the individual's return. In practice, this discourages refugees who have lived in Germany for years from travelling home, even in urgent cases such as illness or the death of a family member.

The new section 1 of the Asylum Seekers Benefits Act provides that people present in Germany, but whose asylum procedure falls under the jurisdiction of another EU country, will no longer receive social benefits once their deportation has been ordered (so-called Dublin cases). This violates the EU Directive on standards for the reception of applicants for international protection,⁷² the fundamental right to ensure a dignified minimum standard of living and has serious potential consequences for the individuals affected. Since there is no possibility of voluntary travel by the affected individual to the responsible country under the Dublin directive and the state-coordinated deportations are often delayed by several months, the exclusion from social benefits after only two weeks as envisaged by the newly

amended Section 1 Subsection 4 Asylum Seekers Benefits Act will lead to destitution and homelessness.⁷³

The federal states of Hesse and Rhineland-Palatinate have even issued letters ordering the authorities not to apply the law due to its obvious violations of European law.⁷⁴

Prepaid debit cards

Since 16 May 2024, German authorities have had the option to provide basic benefits under the Asylum Seekers' Benefits Act through a prepaid debit card. These cards, which are not linked to a bank account, allow recipients to withdraw small amounts of cash—up to €50 per month for adults - or make purchases at specific retailers. However, they come with significant restrictions, such as limited acceptance in stores, no support for online shopping or bank transfers and additional fees for some transactions. These limitations make it difficult for recipients to meet basic needs affordably, excluding them from common economic activities like buying used goods online or paying

72 Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection.

73 GFF (2024), Stellungnahme der Gesellschaft für Freiheitsrechte zum Leistungsausschluss für Dublin-Fälle nach § 1 Abs. 4 AsylbLG und dem Widerruf des Schutzstatus nach § 73 Abs. 1 AsylG, 16 October 2024, available at: <https://freiheitsrechte.org/uploads/publications/GFF-Stellungnahme-Aenderungsantrag-Sicherheitspaket.pdf>

74 RheinlandPflaz (2024), Gesetz zur Verbesserung der inneren Sicherheit und des Asylsystems / Reform des Leistungsausschlusses und der Überbrückungsleistungen nach § 1 Abs. 4 Asylbewerberleistungsgesetz (AsylbLG) n.F., 05 December 2024, available at: https://mfki.rlp.de/fileadmin/07/Dokumente/Themen/Integration/Rundschreiben_zur_Fluechtlingspolitik/Rundschreiben_zum_Thema_AsyblLG/RS_des_MFFKI_vom_05.12.2024_zum_Gesetz_zur_Verbesserung_der_innenen_Sicherheit_und_des_Asylsystems___Reform_der_Ueberbrueckungslei.pdf

for school activities, sports club memberships, or medical expenses.

The debit card system not only risks falling below the legally defined minimum standard for a dignified existence but also creates unjust inequalities. In contrast to recipients of special non-contributory cash benefits (such as social welfare), who receive funds directly into their bank accounts, cardholders face heightened barriers solely due to their residency status despite often living in Germany for several years. This restricted access undermines their ability to participate fully in society and exacerbates economic and social disparities, which is why the Society for Civil Rights (*Gesellschaft für Freiheitsrechte, GFF*) has started legal action in particular cases to prevent the restrictive card system from being implemented in all *Länder*.⁷⁵

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

Increasing numbers of pushbacks at the reintroduced internal German border controls violate decisions of the CJEU. On the one hand, the CJEU has set strict standards for the introduction of inner European border controls.⁷⁶ It stated that reintroducing internal border controls should remain an exception and only be carried out as a last resort. The court requires an actual threat to inner security; a mere risk is insufficient. In any case, the public's sense of security is not sufficient.⁷⁷

Germany's notification letter to the European Commission on the introduction of border controls at the Western German borders does not take these rulings into account. The notification is not based on any security analysis, let alone a comprehensive one, which would prove that the reintroduction of internal border controls would benefit Germany's security interests. The increasing number of pushbacks at German borders since introducing internal border controls is also incompatible with CJEU

75 GFF (2024), FAQ zur Bezahlkarte, 4 December 2024, available at: <https://freiheitsrechte.org/themen/gleiche-rechte-und-soziale-teilhabe/faq-bezahlkarte>

76 European Court of Human Rights (ECtHR), *Austria Denmark Germany France Sweden*, ECLI:EU:C:2022:298, 26 April 2022, available at: <https://curia.europa.eu/juris/document/document.jsf?text=&docid=258262&pageIndex=0&doclang=EN&mode=lst&dir=&occ=first&part=1&cid=3176745>

77 CJEU [GC], 26 April 2022, *NW v. Landespolizeidirektion Steiermark, Bezirkshauptmannschaft Leibnitz*, Joined Cases C-368/20 and C-369/20

rulings.⁷⁸ Officially, no person seeking asylum is being pushed back. However, accounts from CSOs working in this area indicate a different practice.⁷⁹ *Only recently, the ECtHR ruled that pushbacks of asylum seekers regularly violate the ECHR.*⁸⁰ German courts had previously ruled that the procedural provisions of the Dublin Agreement must be considered. This is not possible in the case of pushbacks at the borders.⁸¹

The adoption of a resolution in November 2024 on the fight against antisemitism by the Parliament's largest groups has triggered rule of law and ECtHR ruling adherence concerns among CSOs.⁸² Regardless of the controversial content of the resolution, the Parliament reaffirmed its Boycott, Divest and Sanction (BDS) resolution from 2019 and called on the federal states and municipalities to take comparable measures. This happened even

though there are already numerous court decisions in Germany (including from the Federal Administrative Court) that consider measures based on the BDS resolutions to be unlawful.⁸³ According to these, the exclusion from public resources of people with close ties to BDS is not compatible with the freedom of expression. The resolution also takes insufficient account of the ECtHR decision in the case *Baldassi and Others v. France*. In its ruling, the ECtHR held that calling for boycotts is protected by the right to freedom of expression and cannot be considered incitement to discrimination.⁸⁴

It can be assumed that the drafters of the resolution were aware of this ruling and nevertheless adhered to the text of the resolution. Such blatant disregard for the court's judgement cast considerable doubt on the participant's understanding of the rule of law.⁸⁵

78 Jan Bielicki (2024), 'Neue Zahlen in der Asylpolitik', SZ, 6 September 2024, available at: <https://www.sueddeutsche.de/politik/migration-grenzen-deutschland-zurueckweisungen-fluechtlinge-lux.TsxQvvpQcEiXHmHNXDLpA>

79 ECCHR, 'Kontrollen und Zurückweisungen an den deutschen Grenzen Fragen und Antworten', available at: <https://www.ecchr.eu/fall/kontrollen-und-zurueckweisungen-an-den-deutschen-grenzen/>

80 ECtHR, Judgement of 15 October 2024, H.T. v. Germany and Greece, no. 13337/19

81 Anna Lübke (2019), *Administrative Court of Munich on Seehofer Push Backs: No Protection of Interim Legal Protection?*, Verfassungsblog, 11 May 2019, available at: <https://verfassungsblog.de/administrative-court-of-munich-on-seehofer-push-backs-no-protection-of-interim-legal-protection/>

82 David Issacharoff (2024), 'Absurdist: Jewish Artists Warn Against Germany's New Antisemitism Resolution', Haaretz, 12 November 2024, <https://www.haaretz.com/jewish/2024-11-12/ty-article-magazine/.premium/jewish-artists-warn-against-germanys-new-absurdist-antisemitism-resolution/00000193-1ff2-d707-a9d3-7ffb787f0000>

83 Federal Administrative Court (Germany), 8 C 35.20, Judgement of 20.01.2022, available at: <https://www.bverwg.de/pm/2022/6>

84 ECtHR, Judgement of 11 June 2020, *Baldassi and Others v. France*, no. 15271/16, 15280/16, 15282/16 et al.

85 Ali Ighreiz et al. (2024), 'Resolution auf Kosten der Grundrechte', Verfassungsblog, 13 November 2024, available at: <https://verfassungsblog.de/antisemitismus-resolution-grundrechte/>

FOSTERING A RULE OF LAW CULTURE

The Forum Law Foundation (*Stiftung Forum Recht*) was founded by law (*Forum-Recht-Gesetz*, ForumRG) in 2019 as a federal foundation under German public law (*Bundesunmittelbare Stiftung des öffentlichen Rechts*).⁸⁶ The purpose of the foundation is to address current issues of law and the rule of law in the Federal Republic of Germany as a basic prerequisite for a functioning and vibrant democracy in a communication, information and documentation forum designed for citizen participation.

Its efforts include the production of two podcasts, quizzes, film festivals, and city tours that focus on the rule of law free of charge.

Contribution of civil society and other non-governmental actors

To mark the 75th anniversary of the German constitution, the Basic Law, the Society for Civil Rights (*Gesellschaft für Freiheitsrechte*, GFF) organised a series of university lectures spanning two semesters, starting in 2024. This initiative aims to familiarise particularly law students but also interested students of other faculties with the relevance of the rule of law and the fundamental principles of our Basic Law.

At a time when democratic values and the rule of law are increasingly being challenged, it is

crucial to raise awareness of these issues. The university tour offers a platform for discussions, workshops and lectures that not only shed light on legal aspects but also address social issues. A central component of these events covers how suitable cases are found and which individuals are eligible as plaintiffs, as well as discussions on the possibilities and limitations of strategic litigation.

The project met a wide range of responses and feedback. Noticeably, students showed great interest not only in the organisation's legal work but also in the policy work. Events met great demand, and the participant's engagement and genuine interest were valuable starting points for shared discussions. The project thus entered the current legal discourse in Germany, emphasising the importance of human rights-based legal work and inspiring future generations of lawyers to engage in human rights and civil rights work.

86 Deutscher Bundestag, BGBl. I 2019, Nr. 19, Law for the Establishment of the 'Forum Recht Foundation' (Gesetz zur Errichtung der "Stiftung Forum Recht")

CONTACT

Gesellschaft für Freiheitsrechte (GFF)

Society for Civil Rights

The GFF is a Berlin-based not-for-profit-NGO founded in 2015. Its goal is to establish a sustainable structure for successful Strategic Litigation for Human and Civil Rights (HCR) in Germany, bringing together plaintiffs with excellent litigators in order to challenge infringements of HCR in court.

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ABOUT THE AUTHORS

Inter Alia



Inter Alia is a civic non-profit organisation based in Athens and working transnationally since 2013. Inter Alia brings together concerned citizens, civil society actors, activists, social scientists, artists and community organisers in activities in the fields of political education, research, activism, advocacy and arts. The organisation aims to promote transformative civic action across borders, community empowerment and personal emancipation and development.

KEY CONCERNS

Justice System

The justice system in Greece in general faces longstanding challenges with its overall effectiveness, efficiency and quality. The level of perceived judicial independence in Greece continues to decline among the general public. A legislative provision was adopted, partially implementing the recommendation to address the need for involvement of the judiciary in appointments to the highest positions in the judiciary.

A legislative provision was adopted, partially implementing the recommendation to address the need for involvement of the judiciary in appointments to the highest positions in the judiciary.

Anti-Corruption Framework

Law 5090/2024 constitutes an attempt of the Greek legislature to comply with international standards and particularly with the Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery, and Greece has generally been commended for promoting legislation against corruption. However, the lack of enforcement and the lack of actual convictions in criminal cases corroborate what is still widely perceived as a pretextual policy, and Greece ranks first in the EU in corruption perception.

Law 5090/2024 constitutes an attempt of the Greek legislature to comply with international standards and particularly with the

Organisation for Economic Co-operation and Development (OECD) Convention on Combating Bribery, and Greece has generally been commended for promoting legislation against corruption. However, no further progress was made on stepping up efforts to establish a robust track record of prosecutions and final judgments in corruption cases, including high-level corruption.

Media Environment and Media Freedom

Greece faces significant challenges in media and telecommunications regulation, ownership transparency, press freedom, and journalist safety. Political influence, resource constraints, and concentrated ownership hinder media pluralism and independence. Despite modest gains, transparency, anti-SLAPP progress, and reforms under EU frameworks remain limited.

Checks and Balances

Independent authorities in Greece face challenges to their autonomy, notably political pressures and reduced powers, as seen in conflicts with the Hellenic Authority for Communication Security and Privacy after the wiretapping scandal. Legislative processes lack transparency, and access to public information is hindered by complexity, despite fair electoral practices.

Civic Space







The shrinking of civic space has become a worrying trend in the country in recent years, including restrictive CSO regulations, SLAPPs targeting activists, police violence

against peaceful assembly, and legal harassment of human rights defenders. Persistent surveillance and data privacy violations compound these challenges, despite some positive judicial rulings. On a positive note, Greece legalised same-sex marriage, marking a significant advancement for LGBTQ rights and inclusion.




Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

In a landmark decision, the European Court of Human Rights (ECtHR) condemned Greece for the first time for a pushback incident at the Evros River border. The case concerned the forcible return of asylum seekers to Turkey without due process, violating their fundamental rights. This decision sets a significant precedent, shedding light on the persistent issue of pushbacks at European borders.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

JUSTICE SYSTEM

Key recommendations

- *The Ministry of Justice should conclude the operation of the Office for the Collection and Processing of Judicial Statistics, and provide statistics accordingly.*
- *The Ministry of Justice should adopt practical measures (staffing, digitalisation etc.) in order to speed up the length of proceedings before courts, especially civil courts.*

Judicial independence

The level of perceived judicial independence in Greece continues to decline among the general public. Overall, 40% of the general population perceive the level of independence of courts and judges to be ‘fairly or very good’ in 2024, while 56% of the general population perceive it as being ‘fairly or very bad’. The perceived judicial independence among the general public has significantly decreased in comparison with 2023 (46%), as well as in comparison with 2020 (53%).¹

The 2023 Rule of Law Report had recommended that Greece “take steps to address the need for involvement of the judiciary in the appointment of President and Vice President of the Council of State, the Supreme Court and the Court of Audit taking into account European standards on judicial appointments”. In July 2024, Parliament voted on a legislative proposal to involve the administrative plenaries of the three highest courts in the procedure leading to the appointment of their Presidents and Vice Presidents. According to the adopted provision, the Minister of Justice requests the opinion of the plenary of the relevant highest court, which in turn, votes by secret ballot for up to five candidates for the position of the President. It has to be noted that the opinion is not binding and that the Council of Ministers can select any candidates it wishes, after consulting the Conference of Presidents of Parliament and upon a proposal from the Minister for Justice. This legislative amendment has also

1 European Commission, EU Justice Scoreboard 2024 shows that perception of judicial independence has improved, Press Release, 11 June 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3164.

been criticised for lack of prior consultation with the Plenaries of these Courts.²

The Supreme Court formally reacted to a resolution of the European Parliament (EP) on the rule of law and media freedom in Greece. The Court, sitting in Administrative Plenary (Διοικητική Ολομέλεια) format, recalled that judicial officials are bound by the rule of law and perform their functions in line with the Constitution. The decision, adopted by a majority, criticised the EP resolution, among others, for making sweeping statements without putting forward evidence and for engaging in impermissible interference in the work of the Member State's prosecution service and courts.³ The decision has been described as “unprecedented” by the President of the Plenary of Greek Bar Associations.⁴ A minority of 13 judges opposed the issuance of the decision

on the grounds that the Administrative Plenary of the Court has no competence to conduct an assessment of the European Parliament resolution, since the resolution does not constitute a legal issue falling within its competence.

Quality of justice

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

Efforts to increase the level of digitalisation continue at a slow pace. The Office for the Collection and Processing of Judicial Statistics is not yet functional and lacks the necessary tools to produce better qualitative and quantitative statistics. The only statistical data currently

2 Union of Judges and Prosecutors, “Yes, but...” in the selection of the leadership of the Judiciary and with the participation of judges - Positions, comments and proposals, Nomiki Vivliothiki, 6 July 2024, <https://daily.nb.org/nomika-nea/enosi-dikaston-kai-eisangeleon-nai-men-alla-stin-epilogi-igesias-tis-dikaiosynis-kai-me-ti-symmetochi-dikaston-theseis-scholia-kai-protaseis-epi-tis-rythmisis-tou-ypourgeiou-dikai/>; Antonis Karampatzos, *Provision for the appointment of highest court judges*, TA NEA, 18 July 2024, <https://www.antoniskarampatzos.com/arthrografia-ston-typo/%CF%81%CF%8D%CE%B8%CE%BC%CE%B9%CF%83%CE%B7-%CE%B3%CE%B9%CE%B1-%CF%84%CE%B7%CE%BD-%CE%B5%CF%80%CE%B9%CE%BB%CE%BF%CE%B3%CE%AE-%CF%84%CF%89%CE%BD-%CE%B1%CE%BD%CF%89%CF%84%CE%AC%CF%84%CF%89%CE%BD-%CE%B4/>.

3 Supreme Court, Administrative Plenary Decision 2/2024, 15 February 2024.

4 Bar Association of Athens, *Δικαστική ανεξαρτησία – Τα όρια της κριτικής στη Δικαιοσύνη*, 23 February 2024, <https://www.dsa.gr/%CE%BD%CE%AD%CE%B1/%CE%B1%CE%BD%CE%B1%CE%BA%CE%BF%CE%B9%CE%BD%CF%8E%CF%83%CE%B5%CE%B9%CF%82/%CE%B4%CE%B9%CE%BA%CE%B1%CF%83%CF%84%CE%B9%CE%BA%CE%AE-%CE%B1%CE%BD%CE%B5%CE%BE%CE%B1%CF%81%CF%84%CE%B7%CF%83%CE%AF%CE%B1-%E2%80%93%CF%84%CE%B1-%CF%8C%CF%81%CE%B9%CE%B1-%CF%84%CE%B7%CF%82-%CE%BA%CF%81%CE%B9%CF%84%CE%B9%CE%BA%CE%AE%CF%82-%CF%83%CF%84%CE%B7-%CE%B4%CE%B9%CE%BA%CE%B1%CE%B9%CE%BF%CF%83%CF%8D%CE%BD%CE%B7>.

accessible on the website of the Ministry of Justice are “statistics by jurisdiction” for civil, criminal and administrative proceedings; yet the data available appear to be patchy, inconsistent and incomplete.⁵

Geographical distribution and number of courts/jurisdictions (“judicial map”) and their specialisation

In May 2024, Parliament adopted the law reforming the judicial map in civil and criminal justice,⁶ in the face of the Plenary of Bar Associations’ objections⁷ to the reform’s scope and efficiency. According to CSOs, the “rushed” and “haphazard” manner in which the “reform” took place seems to be corroborated by the actions of the legislature, which proceeded to issue a series of amendments to its provisions within a short period of time after the adoption of the law.⁸

Other

In February 2024, the bill titled Acceleration and Qualitative Upgrading of Criminal Trials

- Modernisation of the Legislative Framework for the Prevention and Combat of Domestic Violence was adopted in the Parliament by members of the governing party, New Democracy, while all opposition parties voted against it. Civil society organisations, such as the Hellenic League for Human Rights, had strongly criticised the reform of the penal code highlighting that it would lead to the systematic tightening of sentences and the framework for serving and suspending sentences, resulting in increased imprisonment, the reduction of the rights of defendants and the arbitrary reduction in the quality of justice, which will cause a significant blow to the principle of a fair trial.⁹

Fairness and efficiency of the justice system

Greece has a very slow justice system, as delays in the judicial system continue to be a systemic problem; there are huge delays in the adjudication of cases, with new cases constantly piling up. According to the latest *CEPEJ Study on judicial systems - Greece country profile*,¹⁰ it takes 746 days to conclude a civil or commercial

5 Ministry of Justice, Statistical data, https://ministryofjustice.gr/?page_id=1603.

6 Law 5108/2024.

7 Civil Liberties Union for Europe, Rule of Law Report 2024 Country Chapter on Greece.

8 Joint CSO Report, Struggle for Accountability: the state of Rule of Law in Greece, January 2025, <https://vouli-watch.gr/resources/file/2025/2/4/724827b4-407c-419b-bed3-8913ded146d2.pdf>.

9 Hellenic League for Human Rights, *Written Memorandum on the draft law on the Criminal Code and the Code of Criminal Procedure*, 16 February 2024, <https://www.hlhr.gr/%cf%85%cf%80%cf%8c%ce%bc%ce%bd%ce%b7%ce%bc%ce%b1-%cf%80%ce%bf%ce%b9%ce%bd%ce%b9%ce%ba%cf%8c%cf%82-%ce%ba%cf%8e%ce%b4%ce%b9%ce%ba%ce%b1%cf%82/>.

10 CEPEJ Study on the judicial systems in the EU Member States - Country fiche Greece, <https://rm.coe.int/greece-eu-scoreboard-country-fiches-2022-data/1680b065f6>.

case issue in the first instance and 422 days in the second instance; 464 days to conclude an administrative issue in the first instance and 661 in the second instance; 223 days to conclude a criminal case issue in the first instance and 294 in the second instance. All disposition times are way higher than the EU average. The disparity between Greek judicial processing times and European median values is particularly stark in civil proceedings where cases take over three times longer to resolve compared to the European median, potentially undermining citizens' fundamental right to timely judicial protection.

CSOs also note that long waiting times are observed throughout all stages of judicial proceedings at the administrative courts, ie. delayed schedule of hearings, repeated postponement of hearings, and delayed delivery of decisions.

In general, and notwithstanding efforts made, the country has a very lengthy justice system with delays significant enough to jeopardise the rule of law. On a relevant note, for another

year, Greece faced several ECtHR judgments concerning the length of judicial proceedings.¹¹

In what has been considered an important decision showcasing the poor quality of judicial rulings,¹² in the Chamber's judgment dated 15.10.2024 in the case of *Nsingi v. Greece* (application No. 27985/19) the European Court of Human Rights held, unanimously, that there had been a violation of Article 5 §§ 1 and 5 (right to liberty and security/right to compensation) of the European Convention on Human Rights. The case concerned the rejection of the applicant's claim for compensation for having been imprisoned pursuant to a sentence that had been handed down in respect of a different person, for whom he had been mistaken at the time of his arrest.¹³

The Union of Greek Bar Associations expressed serious concerns about the Supreme Court Prosecutor's instructions/circular addressed to prosecution and interrogation services investigating the Tempe case, the deadliest train crash in Greece's history. A statement issued on 1 March 2024 highlighted that the issuance of such instructions is impermissible and

11 European Court of Human Rights, Statistical data, <https://www.echr.coe.int/statistical-reports>.

12 Vassilis Chirdaris & Panagiotis Tsimpoukis, *Greece, in addition to the delays, is also condemned for the lack of complete justification in its decisions*, Dikastiko, 25 November 2024, https://www.dikastiko.gr/articles/vasilis-cheirdaris-panagiotis-tsimpoykis-strasvoyrgo-i-ellada-pleon-ton-kathysteriseon-katadikazetai-kai-gia-elleipseis-panteloys-aitiologias-stis-apofaseis-tis/?fbclid=IwY2xjawHq48NleHRuA2F1bQIxMAABHds_6VS6d6bbm4b6r9Hs-Fj6JC7p0B3ZlurCtDhpWDyYLPm3XnGmXe4FgBg_aem_HhgKsyD5kr5E6x4XritHEw.

13 European Court of Human Rights, *Judgement concerning Greece*, 15 October 2024, <https://www.echr.coe.int/w/judgment-concerning-greece-5>.

problematic.¹⁴ Opposition parties participating in the parliamentary inquiry committee set up concerning the Tempe train crash have denounced the ineffectiveness of investigations, including failure to summon key witnesses to testify.¹⁵

In November 2024, reports noted that the audiovisual material that had been submitted to the Forensic Science Division (Διεύθυνση

Εγκληματολογικών Ερευνών, ΔΕΕ) of the Hellenic Police did not include footage of the loading and departure of the commercial train at the Thessaloniki train station. The Supreme Court Prosecutor ordered an urgent investigation into the reasons for this omission.¹⁶

Similar concerns had been raised in the parliamentary inquiry into the surveillance scandal.¹⁷

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *The Ministry of Justice should ensure actual enforcement of legislation and step up efforts to establish a robust track record of prosecutions and final judgments in corruption cases.*
- *The Hellenic Parliament should reform the appointment process for the National Transparency Authority (NTA) to ensure political neutrality, such as requiring cross-party approval for key positions and adherence to stricter constitutional safeguards for independence.*
- *The National Transparency Authority should expand the functionality and public accessibility of platforms for asset declarations, lobbying records, and gift registries.*

14 Joint Civil Society report, *Greece in Institutional Decline: 60-day update - Addendum to the Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report*, 11 March 2024, https://www.hlhr.gr/wp-content/uploads/2024/04/RoL2024_JointSubmission_CSO_Greece_Update-2.pdf.

15 Kathimerini, *Opposition walks out of parliamentary probe on Tempe train tragedy*, 20 February 2024, <https://www.ekathimerini.com/news/1232156/opposition-walks-out-of-parliamentary-committee-probing-tempe-train-tragedy/>.

16 Kathimerini, *Urgent investigation ordered into missing CCTV footage from Thessaloniki station*, November 2024, https://www.ekathimerini.com/news/1253812/urgent-investigation-ordered-into-missing-cctv-footage-from-thessaloniki-station/?utm_source=chatgpt.com.

17 Joint CSO Report, *Struggle for Accountability: the state of Rule of Law in Greece*, January 2025, <https://vouli-watch.gr/resources/file/2025/2/4/724827b4-407c-419b-bed3-8913ded146d2.pdf>.

Levels of corruption

According to the Special Eurobarometer,¹⁸ Greece ranks first in the EU in corruption perception, with 98% of the respondents considering corruption to be widespread in the country (EU average: 68%). The same report underlines that, “in Greece, perceptions of widespread corruption have been consistently high and above 95% since 2013”.¹⁹ Respondents believe that the giving and taking of bribes and the abuse of power for personal gain are widespread among: a. the healthcare system (89%), political parties (71%), politicians at national, regional or local level (68%), officials awarding public tenders (67%), officials issuing building permits (63%), inspectors (health and safety, construction, labour, food quality, sanitary control and licensing – 59%), tax authorities (57%), police, and customs (56%).

WJP *Rule of Law Index* measures the absence of corruption in government. The 2024 data places Greece on the 52th place in global rank, with a score of 0.57 (ie. a slight increase of +1

since the previous year). However, since forms of corruption are examined with respect to government officers in the executive branch, the judiciary, the military, police, and the legislature, it has to be noted that Greece scores fairly high in the judicial branch and military, but very low in the executive and legislative branch.²⁰

This widespread perception is generally corroborated by investigative reporting.

Indicatively, on September 2024, the authorities discovered the illegal use of 3,516 AMKA (i.e. social security) numbers, which resulted in 90,186 fake prescriptions being issued, with financial damage to the Greek insurance system being estimated at €3.5 million. A total of 17 people were arrested, including doctors, pharmacists, and a medical representative. Among the falsely prescribed medications were narcotics and other psychotropic substances, some of which are in shortage both in Greece and internationally.²¹

18 European Union, *Citizens' attitudes towards corruption in the EU in 2024 - Special Eurobarometer 548*, February-March 2024, https://europa.eu/eurobarometer/surveys/detail/3217?fbclid=IwY2xjawHQzvpleHRuA2FlbQIx-MAABHYdu1cnQ5IgtTJCLvGO-Pm-8B-FrzkyYlhDP-R147L_fLvocmuCvYO7Dk7g_aem_knBhk4U-JyNoMWqsF5Nk3KA.

19 European Union, *Citizens' attitudes towards corruption in the EU in 2024 - Special Eurobarometer 548*, February-March 2024, https://europa.eu/eurobarometer/surveys/detail/3217?fbclid=IwY2xjawHQzvpleHRuA2FlbQIx-MAABHYdu1cnQ5IgtTJCLvGO-Pm-8B-FrzkyYlhDP-R147L_fLvocmuCvYO7Dk7g_aem_knBhk4U-JyNoMWqsF5Nk3KA.

20 World Justice Project, *Country Profile - Greece*, <https://worldjusticeproject.org/rule-of-law-index/country/2024/Greece/Absence%20of%20Corruption/>.

21 Capital.gr, *Major fraud against EOPYY: Handcuffs to doctors and pharmacists for false prescriptions*, 16 September 2024, <https://www.capital.gr/epikairota/3867692/megali-apat-se-baros-tou-copuu-xeiropedes-se-giatrous-kai-farmakopoiious-gia-pseutikes-suntagografiseis/>.

Serious questions arise regarding the implementation of the Ministry of Environment and Energy's programme for electrical appliance recycling. The project, worth almost €300 million, was awarded to the company Appliance Recycling SA. According to the reporting, Appliance Recycling SA claimed more money than it was entitled to under the contract, even for costs of hundreds of thousands of euros incurred before it was awarded the project, and costs of hundreds of thousands of euros that were not foreseen. Also, Appliance Recycling SA directed, through direct awards or closed tenders, several million euros to third companies and individuals related to members of its Board of Directors.²²

The article from Reporters United exposes a coordinated effort by Greece's Ministry of Transport to absolve a consortium – comprising construction giants AKTOR, AVAX, and TERNA – and their insurers from a €13 million liability for damages caused by Storm Daniel in September 2023. Despite an active contract covering the affected Domokos Station, insured against natural disasters, the consortium ceased repairs in May 2024 and sought formal project completion acknowledgment. Internal documents reveal that OSE's CEO requested the removal of the damaged section

from the consortium's contractual obligations, paving the way for a new contract, potentially awarded directly to the same consortium, devoid of prior insurance responsibilities.²³

According to a report from Inside Story, a once-strong company on the Greek Stock Exchange, Lavrentis Lavrentiadis' Neochemicals, had accumulated debts of more than half a billion euros to banks, tax authorities, social security funds and companies before it was placed in special liquidation in 2012. The company was freed from debt burdens and seizures imposed by the Independent Public Revenue Authority, and in 2024 the new shareholder, linked to the old one, again acquired assets that have an objective value many times greater than the paltry price he paid, in this case just €4.14 million, and is setting up new business ventures.²⁴

Doubts have been raised about the "Digitalization of the Economic Diplomacy Network" project, which aims to "digitize the national economic diplomacy network" and "strengthen the digital capacity of Enterprise Greece", as stated in the tender announcement. The project is valued at €9.721 million, including VAT, and will be funded by the Public Investment Program. The contracting authority was identified as Information Society SA, with Enterprise

22 Danai Maragoudaki, Eliza Triantafyllou, *Ministry of Environment: the "big trick" with appliance recycling*, Solomon, 12 November 2024, <https://wearesolomon.com/el/mag/thematikh/logodosia-diafaneia/ypoyrgeio-perivallontos-to-megalo-kolpo/>.

23 Evridiki Bersi, *Tithorea-Domokos Consortium: the great escape of insurance companies and contractors*, Reporters United, 21 November 2024, <https://www.reportersunited.gr/14685/tempi-etaireies-apodراسi/>.

24 Eliza Triantafyllou, *Second life for Lavrentiadis' Neochemicals: banks and the State lose out*, Inside Story, 23 December 2024, <https://insidestory.gr/article/deyteri-zoi-gia-ti-neohimiki-toy-layrentiadi-hamanoi-trapezes-kai-dimosio>.

Greece as the project owner. However, according to a complaint submitted to Data Journalists, the new project involves implementing several components already in place at Enterprise Greece. In fact, Data Journalists' investigation, supported by official Enterprise Greece decisions published on the Diavgeia platform, shows that some of the components outlined in the tender have, in fact, already been completed. This raises questions about the total cost of the project and whether additional public funds are being spent unnecessarily.²⁵

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

The National Transparency Authority (NTA) oversees the implementation of the National Anti-Corruption Action Plan (NACAP) for 2022-2025. The legal basis of the National Transparency Authority in the Executive State Act foresees that candidates for the positions of Director and Management Board Members of NTA are proposed by the Council of Ministers and are approved by a simple majority vote of the Institutions and Transparency Committee of the Parliament. This means that a party holding a majority of seats in Parliament may approve a candidate solely through its own votes in the Committee. Accordingly, the selection procedure not only falls short of

the institutional requirements set by the Constitution for independent authorities but also raises risks of political dependency of the NTA on the government.

On incompatibility rules, Law No. 4622/2019 provides that for those persons appointed as members of the government and deputy ministers the exercise of any professional or business activity is automatically suspended. At the same time, it provides that members of the government must obtain for one year after their departure a licence from the Ethics Committee of the National Transparency Authority for any professional activity related to the activity of the body to which they were appointed, where a conflict of interest may arise.

However, the relevant legislative framework is not considered sufficient. According to GovWatch, GRECO's recommendation shows that the Council of Europe's leading anti-corruption body has considered that a more comprehensive legislative framework is needed for political consultants who already have a dependent employment relationship (either public or private) with the State, which highlights the need to adopt transparency, ethics and conflict of interest measures for private individuals. GovWatch has recently analysed the case of Professor Antonis Manitakis: "The Ministry of Education requested the scientific opinion of Mr. Antonis Manitakis on the constitutionality

25 Vangelis Triantis, *Enterprise Greece: Distributing millions for projects... Already completed in the past. Shadows and questions surround the "Digitalization of the Economic Diplomacy Network" project, with a budget of 9.721 million euros*, Data Journalists, 24 November 2024, <https://www.datajournalists.co.uk/2024/11/24/enterprise-greece-distributing-millions-for-projects-already-completed-in-the-past/>.

of the private universities bill. However, the constitutional expert is also an executive of the University of Nicosia who aspires to establish a medical school precisely thanks to the provisions of the same bill. The facts raise a conflict of interest issue in the absence of an effective legislative framework to combat conflicts of interest and revolving doors.”²⁶

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

The obligation to submit asset declarations (Πρόθεν Έσχες) aims to enhance transparency and democracy and is a key tool in preventing corruption. Submission of these declarations by those obliged (governments, MPs, MEPs and other public officials) and their scrutiny by the appropriate bodies allows for determining the assets held by those in positions of power and their origins. In 2024, the new platform for the submission of asset declarations, which was developed in the framework of Law 5026/2023, started operating. The platform automates the process by using data from financial institutions, allows for separate filing of returns by spouses and enhances

transparency by facilitating pre-populated data for those obliged to submit.

Lobbying legislation obliges high-level officials with executive and legislative functions to declare their contacts with lobbyists and also mandates the setting up of a lobby register, which has been operational since December 2022. However, the actual registrations are negligible (currently 34 registrations vs 20 registrations cited by the EC report), while the report with statistical data concerning the operation of the Registry for the calendar year 2023 has not yet been published by the NTA.²⁷

CSOs have raised a number of issues with regard to the scarce data that exist in the Transparency Register, such as a) the existence of several interest representatives that have not submitted an annual declaration, b) general/incomplete reporting of the intended result, c) incomplete records, d) inconsistencies between declarations by interest representatives and declarations by institutional actors, and e) sections without content on the Registry website.²⁸

26 Thodoris Chondrogiannos, *Conflict of interest: The case of the constitutional expert Antonis Manitakis*, GovWatch, 18 May 2024, <https://govwatch.gr/en/finds/zitima-sygroysis-symferontos-i-periptosi-toy-syntagmatologoy-antoni-manitaki/>.

27 National Transparency Authority, Statistical data, <https://lobbying.aead.gr/?p=91>.

28 VouliWatch, *National Transparency Authority's "Response" on the Implementation of the Lobbying Law*, 18 December 2024, <https://vouliwatch.gr/actions/article/lobbying-apantisi-ead>.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

In June 2024, Greece presented its Phase 4 written follow-up report to the OECD Working Group on Bribery (Working Group). The report outlined Greece's efforts to implement the 49 recommendations and to address the follow-up issues identified during its Phase 4 evaluation in March 2022. In light of the information provided, the Working Group concluded that Greece has fully implemented 23 recommendations, partially implemented 15 recommendations, and not implemented 11 recommendations.

More specifically, regarding detection, Law 5095/2024 amended the Whistleblower Protection Law to include bribery offences under its material scope, extending its protections to whistleblowers reporting all forms of foreign bribery. On enforcement, Law 5090/2024 addressed longstanding issues regarding the foreign bribery offence. The aforementioned laws also amended the Code of Criminal Procedure to ensure that the new Economic Crimes Prosecutor possesses the authority to both investigate and prosecute foreign bribery cases. This helps protect prosecutors' ability to specialise and avoids delays and redundant efforts in handling foreign bribery cases.

Greece has also taken several measures to raise awareness among prosecutors and investigative judges to ensure that foreign bribery investigations and prosecutions are not influenced by considerations forbidden under Article 5 of the Convention.

While acknowledging these positive developments, the Working Group expressed its regret that Greece has not fully addressed concerns expressed in previous evaluation phases. These include clarifying what amounts to adequate supervision and control to prevent foreign bribery.²⁹

An October 2024 decision by the Financial Prosecutor's Office to revoke the protection status of two key whistleblowers in a case involving government officials, politicians and the pharmaceutical industry represents a significant setback for whistleblower protection in Greece. This decision was made following requests by political figures implicated in the case. The decision raises profound concerns about the future of whistleblowing in Greece.³⁰

On a relevant note, VouliWatch has submitted to the National Transparency Authority a Request for Information requesting how many public and private sector entities have complied by November 2024 with the obligations to establish internal reporting channels and what

29 OECD, *Implementing the OECD Anti-Bribery Convention Phase 4 Report Two-Year Written Follow-Up Report: Greece*, OECD Publishing, Paris, 2024, <https://doi.org/10.1787/a3c117d5-en>.

30 Kathimerini, 'Novartis: Στο εδώλιο οι πρώην προστατευόμενοι μάρτυρες – Δίωξη για δύο πλημμελήματα', 20 January 2025, <https://www.kathimerini.gr/politics/563425975/novartis-sto-edolio-oi-proin-prostateyomenoi-martyres-dioxi-gia-dyo-plimmelimata/>.

the percentage of entities is that have not yet complied.³¹ No reply has been received yet.

Any other relevant measures to prevent corruption in public and private sector

The National Transparency Authority decided to accept an appeal filed by Vouliwatch and grant the requested lists of gifts to the members of the Government and the Deputy Ministers under Law 4829/2021, by publishing and posting them on the website of the Presidency of the Government, in a place extremely difficult to locate.³² The published list is patchy and far from complete.³³ The relatively small number of entries in the list may raise doubts as to the sound implementation of the relevant law. In particular, as analysed by VouliWatch, the recipients of a total of 25 gifts are only four individuals: the Prime Minister, two Ministers of Foreign Affairs, and the Minister of Tourism, with the majority of the gifts being given to the Prime Minister. The number of declared and published gifts to members of the Government and Deputy Ministers – just 25 – seems disproportionately small considering

that the government is currently comprised of the Prime Minister along with 60 ministers, alternate ministers and deputy ministers. Furthermore, this registry covers a two year period (2022 and 2023). Notably, during the same timeframe, the President of the Republic alone declared a total of 85 gifts, more than three times the number declared by the 61 members of the government combined.³⁴

Investigation and prosecution of corruption

The OECD two-year follow-up report expressed, once more, concerns about Greece's poor track record of the enforcement of the Anti-Bribery Convention and the lack of convictions with sanctions for foreign bribery, underlining that “despite significantly increasing fines against natural persons for the main foreign bribery offence, longstanding concerns over their effectiveness, proportionality, and dissuasiveness remain. Such concerns are aggravated by the absence of foreign bribery convictions against natural and legal persons, which makes it impossible for the Working

31 VouliWatch, *2 years of the Whistleblowers Law: where is its implementation?*, 22 November 2024, <https://vouliwatch.gr/actions/article/whistleblowers-ead>.

32 VouliWatch, *Gifts for politicians*, 11 April 2024, <https://vouliwatch.gr/actions/article/dora-kyvernisis-prosfygi-ead>.

33 Presidency of the Government of Greece, *Online Gift Catalogue*, <https://govpresidency.gov.gr/%CE%B4%CF%81%CE%B1%CF%83%CF%84%CE%B7%CF%81%CE%B9%CF%8C%CF%84%CE%B7%CF%84%CE%B5%CF%82-2/%CE%B7%CE%BB%CE%B5%CE%BA%CF%84%CF%81%CE%BF%CE%BD%CE%B9%-CE%BA%CF%8C%CF%82-%CE%BA%CE%B1%CF%84%CE%AC%CE%BB%CE%BF%CE%B3%CE%BF%CF%82-%CE%B4%CF%8E%CF%81%CF%89%CE%BD/>.

34 Joint CSO Report, *Struggle for Accountability: the state of Rule of Law in Greece*, January 2025, <https://vouliwatch.gr/resources/file/2025/2/4/724827b4-407c-419b-bed3-8913ded146d2.pdf>.

Group to assess whether sanctions are effective, proportionate, and dissuasive in practice.”³⁵

The OECD Working Group remains seriously concerned about this lack of enforcement, while recognising that the benefits of the new changes to the legal framework will take time to be evident. The OECD Working Group also underlines that “ongoing investigations and prosecutions have stalled since the adoption of the Phase 4 report. Furthermore, Phase 4 concerns regarding resources available for prosecutors and investigative judges remain.

Since Phase 4, the status of foreign bribery enforcement as reported by Greece is the following:

- Of the five cases that were ongoing at the time of the adoption of the Phase 4 report, three have been terminated without charges [Cypriot PEP case, Greek intermediary case, and Water and sewage consortium case].

- One case has been terminated without charges due to the expiry of the limitations period. This case was affected by the downgrade of the foreign bribery offence from felony to misdemeanour in 2019 [Greek intermediary case].
- Two cases have shown little or no progress [Highway construction case and Greek shipping companies case]. The Highway construction case has been in the prosecution stage for over five years with barely any progress. The Greek shipping companies case has been stalled for over two years pending the translation of documents received through MLA requests.
- On a positive note, Greece has launched three new foreign bribery investigations since the adoption of the Phase 4 report. One has been terminated and the other two are at the preliminary examination stage.”³⁶

35 OECD, *Implementing the OECD Anti-Bribery Convention Phase 4 Report Two-Year Written Follow-Up Report: Greece*, OECD Publishing, Paris, 2004, <https://doi.org/10.1787/a3c117d5-en>.

36 Ibid.

MEDIA ENVIRONMENT AND MEDIA FREEDOM -

Key recommendations

- *The implementation of the European Media Freedom Act offers a framework for potential improvements, but tangible progress will require substantial reforms from competent ministries and a commitment to upholding media independence.*
- *The Greek parliament should amend national legislation to incorporate assessments of media pluralism when evaluating mergers and acquisitions in the media sector. It should also establish stricter disclosure requirements for beneficial ownership of media outlets and enforce timely updates to ownership registries.*
- *The Greek parliament should expedite the transposition of the EU Anti-SLAPP Directive into national law, providing clear procedural safeguards and remedies for journalists. The Ministry of Justice should strengthen protections for journalistic sources and enforce stricter penalties for attacks on journalists.*
- *The Ministry of Digital Governance and the General Secretariat for Information and Communication should strengthen independent oversight bodies to monitor the distribution of state funds to media outlets, ensuring compliance with transparency standards.*

Media and telecommunications authorities and bodies

The National Council for Radio and Television (NCRTV) and the Hellenic Authority for Communication Security and Privacy (ADAE) are pivotal in regulating Greece's media landscape. However, their independence has been questioned due to political influences in member appointments. Also, both NCRTV and ADAE reportedly face resource constraints,

hindering their ability to effectively oversee and enforce media regulations.³⁷

Despite the National Council for Radio and Television (NCRTV) status as an independent authority, its members are selected by a parliamentary committee where the ruling party holds a majority. This makes the selection of NCRTV members susceptible to political influence. Furthermore, the Council's limited financial resources and understaffing present significant challenges for its members and

37 Freedom House, Country Overview – Greece, <https://freedomhouse.org/country/greece/freedom-world/2024>.

management in carrying out their duties and achieving their objectives.³⁸

The procedure followed for the appointment of the new members of the NCRTV in September 2023 had raised concerns among civil society, journalists, and legal experts and was perceived as an attempt to interfere with its independence; consequently, in July 2024, the hearing of the related petitions of annulment submitted by the Athens Bar Association took place in the Plenary Session of the Council of State.

In November, the Council of State ruled that the Athens Bar Association lacked the legal interest to stand as a party of litigation in the annulment of the decisions regarding the appointment of the President, the Vice President and six members of the National Broadcasting Council. The Athens Bar Association protested the decision and underlined that the Court has avoided ruling on the substance of the cases.³⁹

The EMFA, effective from May 2024, aims to enhance media freedom and pluralism across the EU. In Greece, it has prompted discussions on reforming national media laws to align with EU standards. However, tangible changes in the regulatory framework and improvements in media freedom are yet to materialise.⁴⁰

Pluralism and concentration

The number of media outlets in Greece is large and the landscape is diverse. However, the ownership of major media groups is concentrated among a handful of influential business owners with interests also in other sectors of the economy. Thus, the landscape for private media ownership is characterised by a small number of wealthy and politically connected families with extensive cross-ownership interests in key sectors, often reliant on public contracts from the government. The dominant force of media ownership in Greece is now composed of shipowners and major investors in the industry.⁴¹

38 Danai Maragoudaki, Media Capture Monitoring Report: Greece measuring compliance with the European Media Freedom Act, International Press Institute, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Greece-Media-Capture-Monitoring-Report-1.pdf>.

39 Athens Bar Association Press Release, *Decisions of the Plenary Session of the CoE: Historically important legal regression. Announcement of the Coordinating Committee of the Plenary of the Presidents of the Greek Bar Associations*, *Lawpost*, 12 November 2024, <https://www.lawspot.gr/nomika-nea/apofaseis-olomeleias-ste-istorikis-simantikotitas-dikaiokratiki-opisthodromisi>.

40 Danai Maragoudaki, Media Capture Monitoring Report: Greece measuring compliance with the European Media Freedom Act, International Press Institute, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Greece-Media-Capture-Monitoring-Report-1.pdf>.

41 Ibid.

The Greece-based media organisation Solomon's landmark investigation *Who Owns the Media*⁴² reveals the intricate ownership structures behind Greek media, linking 762 companies to 12 major owners, many involved in sectors like shipping, finance, and energy. With ties to tax havens, these owners wield media as a tool of influence. Solomon's journalist and data editor Corina Petridi underlines that "94 out of these entities are media companies operating mostly in Greece, controlling TV channels, radio stations, newspapers and online media among other things. Apart from that, our research showed that their business activity expands in several business sectors. More specifically, we grouped their companies into 14 business sectors – the most frequent ones being maritime (164), finance (153) and energy (114). An interesting pattern we stumbled upon was the shipping-sports team-media triptych; 6 out of the 10 groups we examined fall into this pattern."⁴³

The findings of the research corroborate previous reports examining media capture and the entanglement of the fourth estate in Greece and its impact on media freedom and independent journalism.⁴⁴

The allocation of state advertising in Greece has faced criticism for its lack of transparency

and potential bias. Historically, state advertising has been distributed in ways that appear to favor media outlets with government-aligned editorial stances, raising concerns about indirect influence over media content. The European Parliament, in its 2024 resolution, emphasised the need for Greece to ensure fair and transparent allocation of state resources to media outlets to prevent undue influence.

Transparency of media ownership

Many elements of Articles 6 and 22 of EMFA are covered by Greek law, but they are not always followed. In accordance with the provisions set forth in the Greek Constitution, all Greek TV channels and radio stations are required to disclose their ownership status to the National Council for Radio and Television (NCRTV).

There are instances wherein, despite the passage of time and the disclosure of control by companies and owners over a given media entity, the registry of ownership has not published the updated information. According to a new report by IPI & MJRC, one such example is that of Alpha TV, where a company based in Luxembourg exercises 50% control over the TV channel, and the owners are a lawyer and an administration services company.

42 Solomon, *Who Owns the Media* project, <https://whoownsthemedia.gr/>.

43 International Press Institute, *Who owns Greece's media? Inside Solomon's investigation*, 15 October 2024, <https://ipi.media/greece-media-ownership-solomon-investigation/>.

44 International Press Institute, *Greece: New report examines media capture in EU member state*, 29 January 2024, <https://ipi.media/greece-new-report-examines-media-capture-in-eu-member-state/>.

Consequently, there is no information available regarding the beneficial owner.⁴⁵

According to the same report, the NCRTV has released reports on its activities and decisions, as well as on major developments in the audiovisual sector, at a slower pace than might be expected. Additionally, the Council has a Department of Transparency that handles all ownership changes in TV channels, but the public data it releases is not readily usable due to the significant delays in publication. Consequently, alterations in media ownership will become apparent to the public either through journalists specialising in media and financial news or with a significant delay (potentially years) from the NCRTV. One of the reasons for this is the lack of personnel at the authority.

Certain provisions of the EMFA are not reflected in Greek legislation. For instance, national law does not mandate that media market concentration assessments account for their potential impact on media pluralism. This includes considerations such as the influence on public opinion formation, the diversity of media services, and the editorial independence of media outlets. In the Greek media industry, evaluations of mergers and acquisitions are based solely on competition-related criteria.

In a further expansion of his media empire, Evangelos Marinakis, a shipping magnate who already owns a number of major outlets in Greece (To Vima, Ta Nea, in.gr, Mega TV broadcaster and One TV broadcaster), bought the rights to use the domain of the historic left-wing newspaper *Eleftherotypia* and its Sunday edition *Kyriakatiki Eleftherotypia* for €8.1m. The newspaper closed in 2014 after going bankrupt. The Hellenic Competition Commission declared that this acquisition did not create a dominant market position or concentration of control that could harm competition. Subsequently, in March 2024, Marinakis's media group, Alter Ego Media, also acquired the commercial rights to the newspaper *Eleftherotypia* and the website enet.gr.⁴⁶

In addition, pod.gr, a successful website for podcast production, was bought by the media group belonging to the Vardinogiannis family.⁴⁷

Public service media

In accordance with the legislation of the Hellenic Republic, the share capital of ERT is vested exclusively in the Greek State. It is endowed with administrative and financial autonomy.⁴⁹ The broadcaster's principal source of revenue is a contributory tax of €3 per

45 IMED, *Media Capture in Greece: A new report by IPI & MJRC*, 19 November 2024, <https://www.imedd.org/media-capture-in-greece-a-new-report-by-ipi-mjrc/>.

46 Danai Maragoudaki, *Media Capture Monitoring Report: Greece measuring compliance with the European Media Freedom Act*, International Press Institute, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Greece-Media-Capture-Monitoring-Report-1.pdf>.

47 Reuters Institute, *Country Profile – Greece*, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/greece>.

month levied on the electricity bills of Greek citizens. ERT also generates commercial revenue through advertising.

The independence and effectiveness of Greece's public service media (PSM) in providing reliable and pluralistic information have been subjects of significant concern over the past years. In 2024, the International Press Institute (IPI) and the Media and Journalism Research Center (MJRC) released the *Media Capture Monitoring Report: Greece* highlighting significant concerns regarding the independence of Greece's public service media. The report underscores that Greece's PSM, particularly the Hellenic Broadcasting Corporation (ERT), is susceptible to political and economic pressures. The frequent replacement of executives with each governmental change undermines the stability and independence of public broadcasting. Additionally, the lack of transparency in state advertising allocation further exacerbates these challenges, leading to a media landscape where genuine pluralism and diverse perspectives are notably lacking.⁴⁸

Online media

Social media continue to be used by most Greeks online to get news (61%), however, the platforms they use are changing. Facebook is now only used for news by 44% of Greeks who are online, down from 68% in 2016. Meanwhile, Instagram and TikTok are now increasingly used for news, 20% and 14% respectively, particularly among younger audiences. However, Greek publishers are still struggling to attract large audiences on these platforms which are dominated by social media personalities or smaller digital-born brands.⁴⁹

In February 2024, Greece enacted Law No. 5099/2024 to align with the EU Digital Services Act (DSA), introducing obligations for online platforms to manage content responsibly.⁵⁰ While these measures aim to curb illegal content and misinformation, concerns have been raised about the potential for overreach and censorship, with critics arguing that vague criteria for content moderation could lead to arbitrary takedowns, stifling legitimate speech.⁵¹

48 Danai Maragoudaki, *Media Capture Monitoring Report: Greece measuring compliance with the European Media Freedom Act*, International Press Institute, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Greece-Media-Capture-Monitoring-Report-1.pdf>.

49 Reuters Institute, *Country Profile – Greece*, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/greece>.

50 Lambadarios Law Firm, *Digital Services Act in Greece*, 26 April 2024, <https://www.lambadarioslaw.gr/2024/04/digital-services-act-in-greece/>.

51 The Institute of International and European Affairs, *The Digital Services Act: Censorship Risks for Europe*, 18 December 2024, <https://www.iiea.com/publications/the-digital-services-act-censorship-risks-for-europe>.

In December 2024, Greece announced a national strategy to protect minors from internet addiction and social media misuse.⁵² While the national strategy announced in December 2024 to protect minors from internet addiction and social media misuse was widely welcomed, critics argue that it falls short in addressing systemic issues. The strategy, which includes a dedicated website for parental control guidance, primarily focuses on individual user behavior and parental responsibility. Critics, however, highlight that such measures fail to tackle root causes, such as exploitative algorithms and the lack of platform accountability.⁵³ A broader, systemic approach is needed to address the underlying practices of digital platforms, such as algorithmic designs that prioritise engagement at the expense of user well-being.

Public trust in media

Greece's press freedom index improved, rising 19 places in 2024, but remains last among EU countries. The country has risen to 88th place from 107th last year out of 180 countries, in Reporters Without Borders' (RSF) *2024 World Press Freedom Index*.⁵⁴ This progress is reflected

in Greece's press freedom index score, which increased from 55.2 in 2023 to 57.15 in 2024.⁵⁵ Despite these advancements, Greece continues to rank last among European Union countries in terms of press freedom. "The rise is largely explained by the deterioration of press freedom in other countries, given the meagre improvement in the score," said Pavol Szalai, the head of RSF's EU and Balkans desk, adding that previous years were marked with grave press freedom violations, such as the murder of a journalist in 2021 or the outbreak of a surveillance scandal in 2022.⁵⁶

This persistent position underscores ongoing challenges within the Greek media environment, including issues related to media independence, transparency, and the safety of journalists.

Public trust in the media in Greece remains notably low across various platforms, including print, radio, television, and both public service and commercial media. The *2024 Digital News Report* by the Reuters Institute indicates that only 23% of Greeks express trust in news overall, positioning Greece at the bottom among

52 Ministry of Digital Governance, *Presentation of the National Strategy for the Protection of Minors from Internet Addiction*, 30 December 2024, <https://mindigital.gr/archives/7076>.

53 Nomiki Vivliothiki, *Presentation of the National Strategy for the Protection of Minors from Internet Addiction*, 30 December 2024, <https://daily.nb.org/nomika-nea/i-ethniki-stratigiki-gia-tin-prostasia-ton-anilikon-apo-ton-ethismo-sto-diadiktyo/>.

54 Reporters Without Borders, *Index*, <https://rsf.org/en/index>.

55 Statista, *Press freedom index in Greece from 2013 to 2024*, <https://www.statista.com/statistics/1026423/greece-press-freedom-index/>.

56 Kathimerini, *Greece's press freedom index improves, still ranks last in EU*, 3 May 2024, <https://www.ekathimerini.com/news/1237976/greeces-press-freedom-index-improves-still-ranks-last-in-eu>.

47 surveyed markets. This pervasive distrust spans all demographic groups but is particularly pronounced among younger individuals and those with left-wing political affiliations. Interestingly, local and regional news outlets tend to garner more trust compared to national media brands, underscoring the perceived credibility challenges faced by both traditional and digital-born national outlets.⁵⁷

A survey conducted by Kapa Research in 2024 further highlights this sentiment, revealing that only 12% of respondents have confidence in the media's contribution to the country's progress and prosperity.

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

In 2024, journalists in Greece faced several incidents of verbal and physical attacks, underscoring ongoing concerns about press freedom and the safety of media professionals in the country.

Indicatively:

June 19, 2024: Journalist Frixos Drakontidis was assaulted while reporting live from a fire in Varis-Koropiou, a suburb of Athens. An unidentified man approached him during the broadcast and asked him to leave the spot, leading to a physical confrontation. Drakontidis was punched multiple times and pushed to the ground. He filed a criminal complaint, identifying his attackers as employees of the company affected by the fire.⁵⁸

October 31, 2024: Journalist Giorgos Androutsos, working for *Rizospastis*, was violently detained by police while covering a demonstration by seasonal firefighters in Athens. Despite identifying himself as a journalist, Androutsos was thrown down, beaten, and handcuffed by police officers. He was taken to Evangelismos Hospital for treatment and later released from custody, though he still faces charges.⁵⁹

These incidents underscore the urgent need for Greek authorities to implement effective measures to protect journalists and uphold press

57 Reuters Institute, Country Profile – Greece, <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/greece>.

58 Committee to Protect Journalists, *Greek journalist beaten on air while reporting from Athens fire*, 10 July 2024, <https://cpj.org/2024/07/greek-journalist-beaten-on-air-while-reporting-from-athens-fire/>.

59 South East Europe Media Organization, *Police Violence Against Journalist Sparks Outcry in Athens, Greece*, 8 November 2024, <https://seemo.org/ressources/08-11-2024-police-violence-against-journalist-sparks-outcry-in-athens-greece/>.

freedom. Several other incidents are mentioned in CSO reporting.⁶⁰

Smear campaigns

The Liberties Rule of Law Report 2024 and its country chapter on Greece gained particular attention as it coincided with the resolution of the European Parliament on the rule of law and media freedom in Greece (February 2024). This led to the personal targeting of its author within government-related media (Manifesto, Political etc). Legal action has been taken against the smearing process and retractions have been published.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

In April 2021, veteran Greek crime journalist Giorgos Karaivaz was fatally shot near his home in Athens, a murder that drew significant attention to press freedom concerns in Greece. In July 2024, two brothers, aged 49 and 41, stood trial for his assassination but were acquitted due to insufficient evidence. The court's decision has been met with criticism from international press freedom organisations, who view it as a setback in the fight against impunity for crimes against journalists. Reporters Without Borders (RSF) expressed

deep concern over the verdict, emphasizing the need for thorough investigations to bring both the perpetrators and those who ordered the crime to justice.⁶¹

This acquittal has intensified calls for Greek authorities to strengthen protections for journalists and ensure that attacks against media professionals are met with accountability. The unresolved nature of Karaivaz's murder continues to cast a shadow over press freedom in Greece, highlighting the challenges journalists face in carrying out their work safely.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

In Greece, journalists have increasingly faced lawsuits and prosecutions, including Strategic Lawsuits Against Public Participation (SLAPPs), aimed at silencing investigative reporting and critical journalism.

Reporters United and EfSyn: In August 2022, Grigoris Dimitriadis, the nephew of Prime Minister Kyriakos Mitsotakis and former Secretary General of the Prime Minister's Office, filed defamation lawsuits against the investigative platform Reporters United, the newspaper *Efimerida ton Syntakton (EfSyn)*, and journalist Thanasis Koukakis. These legal

60 Joint CSO Report, *Struggle for Accountability: the state of Rule of Law in Greece*, January 2025, page 46-48, <https://vouliwatch.gr/resources/file/2025/2/4/724827b4-407c-419b-bed3-8913ded146d2.pdf>.

61 Reporters Without Borders, *Acquittal in the trial over the killing of Greek journalist Giorgos Karaivaz: RSF is saddened by a "week of impunity"*, 31 July 2024, <https://rsf.org/en/acquittal-trial-over-killing-greek-journalist-giorgos-karaivaz-rsf-saddened-week-impunity>.

actions were in response to their reporting on Greece's Predator spyware scandal, which implicated Dimitriadis in the surveillance of journalists and political opponents.⁶²

Press freedom organisations condemned these lawsuits as SLAPPs, designed to intimidate and silence journalists by burdening them with legal defense costs and potential damages. In October 2024, an Athens court dismissed Dimitriadis's lawsuit against Reporters United and *EfSyn*, ruling that the journalists' reporting was in the public interest and protected under freedom of expression. This decision was hailed as a victory for press freedom, reinforcing the right of journalists to investigate and report on matters of significant public concern without fear of legal retaliation.⁶³

Alterthess: In 2024, the independent media outlet Alterthess faced a SLAPP lawsuit after publishing a report on the conviction of two men for human trafficking. The lawsuit demanded damages, aiming to intimidate the outlet and its journalist, Stavroula Poulimeni. Press freedom organisations supported

Alterthess's appeal, emphasizing the need to protect journalists from legal harassment.⁶⁴

Amending existing national laws or drafting and adopting new laws, which regulate the use of spyware, including safeguards and remedies

An Inside Story article delves into the ongoing controversy surrounding the Predator spyware scandal in Greece, referred to as 'Predatorgate'. It highlights allegations of cover-ups and significant gaps in the investigation, focusing particularly on the absence of a key witness who was never called to testify despite their crucial knowledge of the case.⁶⁵ This report underscores ongoing issues with spyware misuse in Greece and the broader challenges of addressing state-led surveillance within a framework of transparency, accountability, and respect for fundamental rights.

Access to information and public documents

In a recent policy report, Vouliwatch examines the state of access to information and public

62 European Centre for Press and Media Freedom, *Press freedom organisations support Reporters United and EfSyn*, 22 November 2024, <https://www.ecpmf.eu/press-freedom-organizations-support-reporters-united-and-efsyn/>.

63 Eleni Stamatoukou, *Greek Court Dismisses Lawsuit Against Journalists Reporting Surveillance Scandal*, Balkan Insight, 11 October 2024, <https://balkaninsight.com/2024/10/11/greek-court-rejects-slapp-against-journalists-reporting-on-surveillance-scandal/>.

64 European Centre for Press and Media Freedom, *Press freedom on trial in Greece: support Alterthess' appeal*, 19 September 2024, <https://www.ecpmf.eu/press-freedom-on-trial-in-greece-support-alterthess-appeal/>.

65 Eliza Triantafyllou, Tasos Teloglou, *Predatorgate cover-up: the crucial witness who was never called to testify*, Inside Story, 31 October 2024, <https://insidestory.gr/article/syggkalypsi-predatorgate-o-krisimos-martyras-poy-den-klithike-pote-na-katathesei>.

documents in Greece, with a focus on the implementation of law on the freedom of information (FOI) and the challenges that journalists and citizens face in exercising their right to access public data. It highlights that despite the existence of law of freedom of information, the report highlights significant obstacles in obtaining public documents and information and that requests for information are often met with bureaucratic delays, refusals, or vague justifications for not disclosing information, making it difficult for the public and media to hold the government accountable.⁶⁶

According to the same organisation, the amendment of the Code of Administrative Procedure on access to public documents was not sufficient to amount to an incorporation of the Tromsø Convention into Greek law; thus, a holistic revision of the existing legal framework is needed in order to ensure both the effective exercise of the right of access and the application of fundamental democratic principles such as transparency and accountability.⁶⁷

Other

SLAPPs have become more prevalent in Greece in recent years, with individual journalists and media outlets as the main SLAPP targets. Anti-SLAPP advocates in Greece are calling for the country to urgently pass anti-SLAPP legislation.⁶⁸

Although European countries are moving forward with the implementation of the EU Anti-SLAPP Directive, Greece has yet to transpose the Directive into national law. The country has also not fully aligned with the Council of Europe's recommendations on countering Strategic Lawsuits Against Public Participation (SLAPPs). This delay leaves important gaps in the protection of press freedom and journalist safety. In the absence of national anti-SLAPP legislation, various associations and organisations have actively supported defendants facing SLAPPs. For instance, the International Press Institute (IPI) coordinated a joint statement urging Greek authorities to swiftly transpose the EU Anti-SLAPP Directive, highlighting the importance of protecting journalists and public participation.⁶⁹

66 VouliWatch, *Policy Paper – Recommendations for the reform of the legal framework of the right of access to public information*, November 2024, <https://vouliwatch.gr/resources/file/2024/10/8/aac847e9-1e89-4a1b-95a6-1e89ea87940d.pdf>.

67 Joint CSO Report, *Struggle for Accountability: the state of Rule of Law in Greece*, January 2025, page 46-48: <https://vouliwatch.gr/resources/file/2025/2/4/724827b4-407c-419b-bed3-8913ded146d2.pdf>.

68 The Case, *SLAPPs*, <https://www.the-case.eu/slapps/>.

69 International Press Institute, *Press freedom organizations support Reporters United & EfSyn*, 22 November 2024, <https://ipi.media/greece-press-freedom-organizations-support-reporters-united-efsyn/>.

While Greece has not yet implemented specific anti-SLAPP rules, there have been instances where courts have dismissed cases that could be considered SLAPPs. For example, in April

2024, the Three-Member Misdemeanours Court of Athens acquitted Panayote Dimitras, a migrants' rights defender, after five years of judicial harassment.⁷⁰

CHECKS AND BALANCES

Key recommendations

- *The Hellenic Parliament and the General Secretariat for Legal and Parliamentary Affairs should step up the efforts to ensure effective and timely consultation of stakeholders on draft legislation, including by observing the statutory timeframe for public consultation and reducing unrelated, last-minute amendments.*
- *The Greek government should refrain from any interference with the operation of Independent Authorities.*
- *The Ministry of Digital Governance should modernise the Diavgeia platform to improve usability and data accuracy, making administrative decisions accessible to all citizens.*

Process for preparing and enacting laws

Despite efforts to improve the quality of the legislative process in practice, challenges remain.

While draft bills are consistently subject to public consultation and follow-up reports address the comments submitted, concerns regarding

the lack of effective and timely consultation of stakeholders persist. Civil society organisations and other stakeholders have frequently criticised the practice of adopting omnibus legislation and last-minute amendments.

On 23 February 2024, Law 5090/2024 was passed, amending once again the Criminal Code and the Code of Criminal Procedure.

⁷⁰ International Federation for Human Rights, *Greece: Acquittal of migrants' rights defender Panayote Dimitras*, 6 May 2024, <https://www.fidh.org/en/issues/human-rights-defenders/greece-acquittal-of-migrants-rights-defender-panayote-dimitras>.

According to a CSO's report,⁷¹ the content of the draft under discussion had already been subject to extensive criticism during the public consultation process and during the entire legislative passage of the law. The failure to establish a legislative/drafting committee (νομοπαρασκευαστική επιτροπή), the incompatibility of the provisions of the law with the Constitution, the ECHR, supra-legislative rules, fundamental principles of criminal law and modern scientific/research data, as well as the fact that these changes serve purposes other than those announced in the bill, were some of the grounds of this criticism.

According to the Centre for Liberal Studies (KeFiM), in 2024 we witnessed a continuation of the tendency of problematic legislation that includes provisions that are unrelated to each other and unrelated to the law they are attached to, a practice that is clearly contrary to the provisions of the Constitution. According to data from KeFiM, 11 amendments with a total of 65 articles were passed in December 2024 and only one of them was relevant to the law to which it was annexed.⁷²

Similarly, a joint CSO report highlights that, contrary to the rules set on public consultation,

in 2024: 20 bills (41.67%) were subject to a consultation period shorter than the legally prescribed 14 days; in the vast majority of the cases examined (44 out of 48 cases), the bill introduced for voting had more articles than the corresponding bill submitted to public consultation; in 46 out of 48 cases (95.83%), ministerial amendments were tabled after the bill had been submitted to Parliament.⁷³

Independent authorities

Independent authorities are administrative bodies that are part of the state but enjoy intra-administrative independence and have financial and administrative autonomy. In Greece, independent authorities may be enshrined in the Constitution (the Hellenic Data Protection Authority, the National Council for Radio and Television, the Hellenic Authority for Communication Security and Privacy, the Supreme Council for Civil Personnel Selection and the Ombudsman) or provided for by ordinary law (e.g. the Competition Commission, the Greek National Commission for Human Rights, etc.).

Last year, the Hellenic Authority for Communication Security and Privacy (ADAE) was

71 Joint Civil Society report, *Greece in Institutional Decline: 60-day update - Addendum to the Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report*, 11 March 2024, https://www.hlhr.gr/wp-content/uploads/2024/04/RoL2024_JointSubmission_CSOGreece_Update-2.pdf.

72 Centre for Liberal Studies, *The last legislation of the year - What the Parliament passed in December 2024 and what it passes every December*, 23 December 2024, <https://kefim.org/i-teleftaia-nomothetisi-tou-etous-ti-psifise-i-vouli-ton-dekemvrio-tou-2024-kai-ti-psifizei-kathe-dekemvrio/>.

73 Vouliwatch, *Struggle for Accountability: the state of Rule of Law in Greece*, January 2025, page 46-48, <https://vouliwatch.gr/resources/file/2025/2/4/724827b4-407c-419b-bed3-8913ded146d2.pdf>.

heavily targeted by government members, in the context of the investigation of the wire-tapping scandal. High-ranking state officials (Prime Minister, Speaker of the Parliament, government representatives) turned against the President and the members of the constitutionally enshrined ADAE, raising potential issues around obstructing the exercise of the independent authority's powers. This year, in the context of the transposition of NIS 2 Directive (Directive (EU) 2022/2555) to enhance cybersecurity across the EU, the government has included provisions that undermine the powers of the constitutionally established independent authority, i.e. ADAE, in order to transfer them to the National Cyber Security Authority, which is a public body under the Ministry, supervised by the Minister of Digital Governance. This development is generally seen as part of the conflict of the government with ADAE since the wiretapping scandal,⁷⁴ causing independent authorities to feel that they operate under pressure, affecting their independent status.

On 20 February 2024, media reported that the Public Prosecutor of Athens archived the case against two members of ADAE who had been summoned in October 2023 as suspects for the offence of leaking sensitive state secrets to journalist Thanasis Koukakis.⁷⁵

The National Transparency Authority (NTA) has faced significant criticism regarding its transparency and effectiveness. A notable instance involves the NTA's investigation into allegations of illegal pushbacks of asylum seekers by Greek authorities. In March 2022, the NTA concluded a three-month investigation, asserting that there was no evidence to substantiate claims of such pushbacks, despite extensive reporting by CSOs and international bodies; NTA's assessment comes in stark contradiction with recent ECtHR jurisprudence (see below, Systemic Human Rights Violations).

Accessibility and judicial review of administrative decisions

Diavgeia is the official transparency portal of the government. All government institutions are obliged to upload their acts and decisions on the Internet with special attention to issues of national security and sensitive personal data. Each document is digitally signed and assigned a unique Internet Uploading Number (IUN) certifying that the decision has been uploaded at the 'Transparency Portal'. Following the latest legislative initiative (Law 4210/2013) of the Ministry of Administrative Reform and e-Governance, administrative acts and decisions are not valid unless published online.

74 Ethnos, *ADAE: Stripped of critical responsibilities - Replaced by the National Cyber Security Authority*, 16 November 2024, <https://www.ethnos.gr/greece/article/341894/adaeapogymnonetaiapokrisimesarmodiothtesantikathistataiapothnethnikharxhkybernoasfaleias>.

75 Yannis Souliotis, *Prosecutor shelves probe into ADAE members over alleged leaks to the press*, *Kathimerini*, 20 February 2024, <https://www.ekathimerini.com/news/1232152/prosecutor-shelves-probe-into-adae-members-over-alleged-leaks/>.

Although constituting a very important tool for the accessibility of administrative decisions, there is mounting criticism that Diavgeia has not been updated to incorporate new tools and parameters, and is not always easily understandable or useful for the average citizen without specialised knowledge, so it needs reform in order to serve its purpose. For example, an investigation by Data Journalists (see above, ‘Corruption’) raises questions about the accuracy and redundancy of information published on the Diavgeia platform, citing instances where funds were allocated for projects that had already been completed.⁷⁶

Vouliwatch, a non-profit organisation focused on access to public information, describes the existing legislative framework in Greece as “fragmented” and “labyrinthine” in a recent policy document titled *Recommendations for Reforming the Legal Framework of the Right of Access to Public Information*.⁷⁷ The organisation notes that this complexity poses a significant barrier to exercising these rights effectively and that, despite the existence of a legislative framework, its practical implementation faces significant challenges, such as delays, poor

compliance by public authorities, and limited public awareness.

Electoral framework

Voting is compulsory for citizens who are at least 17 years of age in an election year, although penalties for abstention are not enforced. The 2024 EU elections were the first in the country in which people could vote by postal ballot. Of the 202,515 who registered to receive a postal ballot, about 177,800 returned them.⁷⁸

The elections were generally held in a competitive and pluralistic environment, and fundamental freedoms were respected. While public discourse was generally open, instances of heated rhetoric and polarised discussions were noted, reflecting broader societal divisions.

In April 2024, Greece faced a public outcry over the widespread use of unsolicited political messages, commonly referred to as ‘political spam’, in the lead-up to the European Parliament elections. Citizens reported receiving an overwhelming number of text messages and phone calls promoting various political parties and candidates, leading to frustrations over

76 Vangelis Triantis, *Enterprise Greece: Distributing millions for projects... Already completed in the past. Shadows and questions surround the “Digitalization of the Economic Diplomacy Network” project, with a budget of 9.721 million euros*, Data Journalists, 24 November 2024, <https://www.datajournalists.co.uk/2024/11/24/enterprise-greece-distributing-millions-for-projects-already-completed-in-the-past/?lang=en>.

77 VouliWatch, *Policy Paper – Recommendations for the reform of the legal framework of the right of access to public information*, November 2024, <https://vouliwatch.gr/resources/file/2024/10/8/aac847e9-1e89-4a1b-95a6-1e89ea87940d.pdf>.

78 Kathimerini, *The election in Greece, in a nutshell*, 8 June 2024, <https://www.ekathimerini.com/in-depth/1240927/the-election-in-greece-in-a-nutshell/>.

privacy violations and intrusive campaign tactics. The controversy sparked debates about the adequacy of existing regulations on political advertising and the need for stricter enforcement mechanisms.⁷⁹

Just a few weeks later, Greece's Interior Ministry was fined €50,000 by the Hellenic Data Protection Authority (HDPA) for a significant data breach involving the personal information of expatriate voters. The breach occurred when a list of these voters, who had registered for the upcoming European Parliament elections, was leaked to a ruling New Democracy party member.⁸⁰

Finally, according to the Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) mission report, ODIHR Special Election Assessment Mission (SEAM) interlocutors in Greece noted the high deposit amount requested as a hindrance for candidate participation. The same report underlines that the media provided contestants with free time, as per their legal requirements, however, in some cases, it was offered between 1:00 and 3:00 at night.

CIVIC SPACE

Key recommendations

- *The Ministry of Migration and Asylum should assess and amend existing laws that may disproportionately hinder CSO operations, ensuring they align with EU standards and fundamental rights.*
- *The Ministry of Migration Policy should ensure independent investigation for police violence and misconduct.*
- *The judiciary should ensure full accountability for the mass surveillance scandal, commonly known as 'Predatorgate'.*

79 France 24, *Political spam sparks uproar in Greece ahead of EU vote*, 5 April 2024, <https://www.france24.com/en/live-news/20240405-political-spam-sparks-uproar-in-greece-ahead-of-eu-vote>.

80 Nektaria Stamouli, *Greece rocked by voter privacy scandal ahead of EU election*, Politico, 28 May 2024, <https://www.politico.eu/article/fine-imposed-greek-interior-ministry-voters-data-breach-eu-elections/>.

Freedom of association

The shrinking of civic space has become a worrying trend in the country in recent years.

While no new laws were passed on freedom of association in 2024, the Joint Ministerial Decision No. 3063/2020, which in 2020 introduced strict requirements for the operation of CSOs working on migration in Greece, is still in place. The law makes it difficult for these organisations to register, consequently hindering their operations.

Various domestic and international bodies, including the European Commission, have raised concerns about the compatibility of the legislation with the country's legal obligations; nevertheless, Greece insists on implementing it.

Public information regarding how many CSOs were accepted or rejected to be registered is not available and the selection criteria remain unclear.⁸¹

The Ministry of Migration and Asylum refrained from providing data in its 8 February 2024 response to the RSA request of 6 November 2023 for statistics on the operation of its NGO Registry, including the number of pending and rejected applications for registration of

organisations and natural persons, as well as the number of suspensions from the registries of said Ministry. The absence of such statistics was flagged at a 12 February 2024 meeting of civil society organisations and the Ministry's General Secretariat for Reception, attended by the DG HOME Task Force Migration Management. In a March 2024 meeting with civil society organisations, DG HOME confirmed that it has no access to these figures either.⁸²

Following pressure, the Ministry of Migration and Asylum unofficially communicated that the registration requirements would be reviewed and amended, but no such actions have been taken to date.⁸³

Other

There have been significant instances in Greece where human rights defenders and humanitarian workers have faced criminal charges for their activities, particularly in the context of migration and asylum support. Human rights defenders have reported instances of prolonged legal battles, including baseless accusations, which are seen as attempts to intimidate or silence them.

For example, in August 2024, the Greek Supreme Court dropped misdemeanour

81 European Civic Forum, *Civic Space Report 2024*, May 2024, https://civic-forum.eu/wp-content/uploads/2024/05/Civic-Space-Report-2024_ECF.pdf.

82 HLHR, *Greece in Institutional Decline: 60-day update - Addendum to the Joint Civil Society Submission to the European Commission on the 2024 Rule of Law Report*, 11 March 2024, https://www.hlhr.gr/wp-content/uploads/2024/04/RoL2024_JointSubmission_CSOGreece_Update-2.pdf.

83 Ibid.

charges against Sarah Mardini and Seán Binder, who were involved in search and rescue operations for migrants.⁸⁴ Felony charges remain in place, while no hearing has been scheduled yet.

Another example is that, in April 2024, the Three-Member Misdemeanours Court of Athens acquitted Panayote Dimitras, a migrants' rights defender, after five years of judicial harassment. He was prosecuted under criminal charges of 'false accusation' and 'aggravated defamation' (Articles 229 and 363 of the Criminal Code of Greece, respectively) for having denounced racist comments from a public official.⁸⁵

Freedom of peaceful assembly

Incidents of police violence and arbitrariness are not isolated cases but rather a frequent and increasingly common phenomenon in Greece. The Hellenic League for Human Rights (HLHR) has published a comprehensive report titled *Police, Violence, and Rights: An Overview of Police Arbitrary Actions in Greece*, shedding light on the persistent issues of police violence and misconduct in the country. The report documents numerous instances where

law enforcement officers have employed disproportionate violence, often during public demonstrations and routine patrols. Such actions have led to serious injuries and, in some cases, fatalities among civilians.

There is a concerning pattern of aggressive police tactics aimed at dispersing peaceful protests. The use of tear gas, arbitrary detentions, and physical assaults on demonstrators undermine the constitutional right to peaceful assembly. The report also highlights discriminatory practices targeting minority groups, including Roma communities and migrants. These groups are disproportionately subjected to police checks, violence, and unjust treatment.

According to the report, the systemic failure to hold officers accountable for misconduct perpetuates a culture of impunity. Investigations into allegations of police brutality are often inadequate, and disciplinary actions are rare. Finally, the findings point to insufficient training in human rights and crowd management for police personnel. Additionally, there is a lack of effective oversight mechanisms to monitor and regulate police conduct.⁸⁶

84 Lesvos News, *Great victory of solidarity in Mytilene! The 16 volunteers of the NGO ERCI were acquitted*, 30 January 2024, <https://www.lesvosnews.net/articles/news-categories/astynomiko-reportaz/megali-niki-tis-alliggyis-sti-mytilini-athooi-oi-16>.

85 International Federation for Human Rights, *Greece: Acquittal of migrants' rights defender Panayote Dimitras*, 6 May 2024, <https://www.fidh.org/en/issues/human-rights-defenders/greece-acquittal-of-migrants-rights-defender-panayote-dimitras>.

86 Hellenic League for Human Rights, *Police, violence and rights: An overview of police arbitrariness in Greece*, September 2024, https://www.hlhr.gr/wp-content/uploads/2024/09/PB_EL_e-book_F.pdf.

Online civic space

Digital surveillance

In April 2024, the Hellenic Council of State (Συμβούλιο της Επικρατείας) issued a landmark decision⁸⁷ regarding the surveillance of Nikos Androulakis, leader of the political party PASOK, by the National Intelligence Service (EYΠ). The court declared unconstitutional a 2021 law that prohibited informing individuals about the lifting of their communication privacy by the EYΠ, even after the surveillance had ended. The Council of State emphasised that such a complete ban constitutes an excessive restriction on the inviolability of communications, unjustifiable within a rule of law framework, and therefore contravenes Article 19, paragraph 1 of the Greek Constitution. Consequently, the court mandated the Hellenic Authority for Communication Security and Privacy (ΑΔΑΕ) to promptly inform Mr. Androulakis about the prosecutorial order and the collected material related to the interception of his communications.

Data protection and privacy issues

The Greek Ministry of Migration and Asylum was fined⁸⁸ €175,000 in April 2024 by the Hellenic Data Protection Authority (HDPA) for unlawful use of surveillance systems at

asylum centers. The fine relates to the Centaur system, installed in reception centers and migrant camps, which lacked compliance with data protection regulations.

The HDPA found that the Ministry had processed personal data, including biometric information, without adequate safeguards or transparency. The system, intended to enhance security, was criticised for violating individuals' privacy rights and operating without appropriate legal justification or data protection impact assessments.

This decision underscores concerns over the balance between security measures and fundamental rights, particularly regarding vulnerable populations such as asylum seekers. The ruling has been seen as a significant step in holding public authorities accountable for adhering to data protection laws and safeguarding privacy rights in Greece.⁸⁹

Public participation

In February 2024, Greece legalised same-sex marriage, marking a significant advancement for LGBTQIA+ rights and inclusion. The legislation was introduced to the Hellenic Parliament on 1 February 2024, and passed on 15 February with a vote of 176 in favor, 76 against, two abstentions, and 46 absentees. The bill

87 Decision 465/2024 of the Plenary of the Council of State.

88 Decision 13/2024 of the Hellenic Data Protection Authority, <https://www.dpa.gr/el/enimerwtiko/prakseisArxis/aytepaggelti-ereyna-gia-tin-anaptyxi-kai-egkatastasi-ton-programmaton>.

89 Eleni Stamatoukou, *Greek Ministry Fined Over Surveillance Systems at Asylum Centres*, Balkan Insight, 3 April 2024, <https://balkaninsight.com/2024/04/03/greek-ministry-fined-over-surveillance-systems-at-asylum-centres/>.

received support from multiple political parties, including the opposition SYRIZA, PASOK, Course of Freedom, and New Left, reflecting a broad consensus across the political spectrum.

The new law grants same-sex couples the right to marry and adopt children, providing them with legal recognition and rights equivalent to those of opposite-sex couples.⁹⁰

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT —

Key recommendations

- *The Ministry of Migration and Asylum and the other competent ministries should create an independent authority to investigate pushbacks of refugees and migrants.*

Systemic human rights violations

Impunity and/or lack of accountability for human rights violations

In a landmark decision, the European Court of Human Rights (ECtHR)⁹¹ condemned Greece for the first time for a pushback incident at the Evros River border. The case concerned the forcible return of asylum seekers to Turkey without due process, violating their fundamental rights. The court ruled that Greece had breached the European Convention on Human Rights, specifically Articles 3 (prohibition of

inhuman or degrading treatment), 13 (right to an effective remedy), and Protocol 4, Article 4 (prohibition of collective expulsions). The ruling highlighted the lack of procedural safeguards, including the absence of an individual assessment of the asylum seekers' cases. It also emphasised the risk of ill-treatment faced by the individuals upon their return to Turkey. This decision sets a significant precedent, shedding light on the persistent issue of pushbacks at European borders and calling for Greece to ensure compliance with international and European human rights standards in managing migration and border policies.⁹²

90 BBC, *Greece legalizes same-sex marriage*, 16 February 2024, <https://www.bbc.com/news/world-europe-68310126>.

91 ECtHR, Judgment of 7 January 2025, *A.R.E. v. Greece*, no. 15783/21 (2025).

92 Greek Council for Refugees, *Greece condemned for the first time for pushback in Evros by the European Court of Human Rights*, 7 January 2025, <https://gcr.gr/el/news/press-releases/item/katadiki-tis-elladas-gia-proti-fora-gia-push-back-ston-evro-apo-to-eyropaiko-dikastirio-dikaionaton-toy-anthropoy/>.

The Ombudsman's inquiry into the Pylos shipwreck,⁹³ Europe's deadliest migrant shipwreck in recent history, reveals a series of serious and reprehensible omissions in the search and rescue duties on the part of senior officers of the Hellenic Coast Guard. The report finds that the actions and omissions of the implicated officers during the handling of the incident on 13 and 14 June 2023 constitute the offences of deadly exposure to danger, as well as exposure to endangering the life, health and physical integrity of those on board the Adriana fishing vessel, punishable under Article 306 of the Criminal Code.⁹⁴

Rights (HLHR), HIAS Greece, Homo Digitalis, Refugee Support Aegean (RSA), Reporters United, Solomon, and Vouliwatch – has joint forces to raise awareness on the rule of law in Greece.

FOSTERING A RULE OF LAW CULTURE

Contribution of civil society and other non-governmental actors

Govwatch is an independent, not-for-profit initiative by Vouliwatch. It collects, records and reports violations or suspected violations of the rule of law in Greece, by theme. Govwatch aims to provide a source of information for citizens and institutions, to enable civil society to highlight wrongdoing, and to increase accountability in the political system.⁹⁵

A CSO coalition – Greek Council for Refugees (GCR), Hellenic League for Human

93 Greek Ombudsman, *The Ombudsman's Report on the Pylos Shipwreck*, January 2025, <https://www.synigoros.gr/en/category/default/post/press-release-or-the-ombudsman's-report-on-the-pylos-shipwreck>.

94 Ibid.

95 Govwatch, About, <https://govwatch.gr/about/>.

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Hungarian Civil Liberties Union



The Hungarian Civil Liberties Union (HCLU) is a non-profit human rights watchdog NGO established in Budapest, Hungary in 1994. The HCLU works independently of political parties, the state or any of its institutions. The HCLU's aim is to promote fundamental rights and principles laid down by the Fundamental Law of Hungary and by international conventions. Its goal is to build and strengthen civil society and the rule of law in Hungary and in the CEE region. Since the HCLU is an independent non-profit organisation, its financial resources are mostly provided by foundations and by an increasing number of private persons. The HCLU strives to educate citizens about their basic human rights and freedoms, and takes a stand against undue interference and misuse of power by those in positions of authority.

KEY CONCERNS

Justice System

The judiciary suffers greatly from the gravely inadequate financial conditions and the lack of staff. The government has put pressure on the judiciary by making salary increases for judges and court administrators contingent upon the implementation of additional judicial reforms. This is likely to have further negative impact on judicial independence. The suspension of a judge from his leadership position at the Supreme Court (Kúria) raised serious concerns.

A ‘judicial reform’ was proposed by the ministry of justice but without the genuine involvement of relevant stakeholders. The agreement does not propose to raise the salaries of judges and court administrators sufficiently, and presents new threats to the independence of the justice system.

Anti-Corruption Framework

Changes have been made in the area of corruption to comply with the conditionality mechanism, but these changes are not satisfactory.

The rules on asset declarations have changed, but only their personal scope has been extended, not their substantive one. The Criminal Procedure Act has been amended, but this has not brought satisfactory changes to the practice of investigation and prosecution in corruption cases.

Media Environment and Media Freedom

The state of the media environment and media freedom has not improved over the past year. There have been no relevant legislative changes to address the root of problems; the media is still not independent, and the KESMA is still operating. Moreover, there has been some regression, such as the establishment of the Office of Sovereignty Protection.

Previous recommendations have not been implemented.

Checks and Balances

The state of checks and balances has been at an all-time low for years, because the most important underlying cause (the extremely undivided power of Fidesz-KDNP and the Prime Minister) has not been mitigated. The overlap between state institutions, the governing party, and the government remains extreme. The quality of lawmaking remains poor, especially in politically sensitive cases. Independent institutions remain partisan and/or ineffective. Problems regarding elections are also persistent.







Civic Space

The Sovereignty Protection Act and the proceedings launched by the Office of Sovereignty Protection against NGOs and investigative portals further deepen the government’s activities to undermine the democratic establishment and the involvement of citizens in public affairs.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

In 2024, new human rights violations involving new groups of people occurred. Meanwhile, previous infringements have not been remedied by the state. In 2024, several laws were still adopted without public consultation or debate. Hungary continues to avoid implementing a number of international court judgments, and the government claims that the non-implementation of a CJEU judgment is a political decision.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression

No progress

Progress



JUSTICE SYSTEM

Key recommendations

- *Ensure adequate funding for the judiciary without any conditions (especially those undermining judicial independence).*
- *Involve judges and their associations in the process of the judiciary budget reform.*
- *Restore the guarantee of freedom of expression for the judiciary at the Supreme Court so that judges will not be suspended from positions based on their expressed professional views.*

Judicial independence

A judge was deemed “unsuitable” for judicial office¹ after referring a politically sensitive question—the Hungarian regulation of asylum seekers—to the Court of Justice of the European Union (CJEU) for a preliminary ruling. The CJEU ultimately found that the Hungarian regulation violated EU law. On appeal, the judge was again found “inadequate”.²

A council president judge at the Supreme Court was temporarily suspended from his position and banned from becoming a council president for two years by the President of the Supreme Court because of his professional opinion on the Supreme Court’s case allocation scheme, which he had wished to publish in an academic study.³

The Ministry of Justice proposed a judicial reform that presents a further threat to judicial independence. The Ministry forced the

1 Hungarian Helsinki Committee: *Another scandal at the judiciary: no effective remedy for judges dismissed from the bench*, 12 September 2022, <https://helsinki.hu/en/another-scandal-at-the-judiciary-no-effective-remedy-for-judges-dismissed-from-the-bench/>

2 L. Murányi László: *Judge harassed by government media leaves the country*, Jelen Media, 28 March 2024. <https://jelen.media/kozelet/elhagyja-az-oroszgot-a-kormanymedia-altal-meghurcolt-birono/>

3 Hungarian Helsinki Committee: *Presidential retaliation against critical opinions at the Kúria*, 20 December 2024, <https://helsinki.hu/en/presidential-retaliation-critical-opinions-kuria-supreme-court-hungary/>

National Judicial Council (OBT) into signing an agreement⁴ to legitimise the reform.⁵ The agreement tied salary increases for judges and court administrators to the OBT's approval of certain reforms. (In spite of that, when the government presented the actual legislation, the OBT was excluded⁶.) These reforms include allowing the transfer of district court judges within their appellate court's jurisdiction, raising the minimum eligibility age for judges from 30 to 35, and highlighting that "the assessment of life and professional experience should be given greater emphasis." This shift means that external experience could carry more weight in judicial appointments, potentially opening the door to political influence.

The current members of the OBT were elected in January 2024 under circumstances that raised concerns from Amnesty International⁷. Following objections from judicial associations

and hundreds of judges regarding the signing of the agreement, the president of the OBT resigned on 3 December, 2024, thereby preventing the members of the OBT to vote on a motion of confidence⁸. As the newly elected president of the OBT confirmed, the government clarified that the increase in remuneration depended on the signing of the agreement (which he had not supported as a member of the OBT). This was based on his opinion that its objectives could potentially lead to a breach in the independence of the judiciary, especially arguing that the transfer of judges could have a chilling effect⁹.

Following the signing of the agreement, the president of the Metropolitan Court of Appeal's criminal division resigned as a judge. She emphasised the "systematic destruction" of the judiciary and that expressed her hope to "have a chance to see when the justice

4 *Agreement entered into by and between Ministry of Justice and the Curia, National Office for the Judiciary, National Judicial Council, Hungarian Judiciary Council, 22 November 2024, https://obt-jud.hu/sites/default/files/sajtoko-zlemanyek-mellekletek/Agreement_Nov-22-2024.pdf*

5 Hungarian Helsinki Committee: *Black Friday at Hungarian Courts*, 6 December 2024, [Black Friday at Hungarian courts - Hungarian Helsinki Committee](#)

6 Hacsí Gábor: *The government screwed the judges*, 444.hu, 16 December 2024. <https://amnesty.444.hu/2024/12/16/atverte-a-kormany-a-birakat>

7 Amnesty International: *Election of the new National Judicial Council of Hungary*, 19 January 2024, <https://www.amnesty.hu/election-of-the-new-national-judicial-council-of-hungary/>

8 HVG: *The NJC convened an extraordinary meeting after we wrote what the President said about judicial independence*, 28 November 2024. https://hvg.hu/itthon/20241128_Rendkivuli-ulest-hivott-ossze-az-OBT-miutan-megirtuk-mit-mondott-az-elnok-a-biroi-fuggetlensegrol#rss

9 Mizsur András: *A bad decision is not the same as giving up judicial independence*, Telex, 11 December 2024. <https://telex.hu/belfold/2024/12/11/orszagos-biroi-tanacs-pecsenye-csaba-igazsagszolgalatas-biroi-fuggetlenseg-megalapodas>

system gains back its independence, professional standard, and quality”¹⁰.

Allocation of cases in courts

Case allocation at the Supreme Court is still a major concern. According to Amnesty International Hungary, “although the system is more transparent to the public than before the reform, the allocation of cases at the Kúria still raises many questions and concerns”. While case allocation should be based on the arrival time of the cases, in 22% of cases, this rule was not observed, “and in many cases they deviated from the case allocation system without providing an explanation thereto”¹¹.

According to a joint assessment from Amnesty International, K-Monitor, the Hungarian Helsinki Committee, Transparency International, and HCLU, the legislative changes adopted in May 2023 do,

“not provide tangible guarantees that the allocation of cases will be carried out without human intervention, as it does not define objective criteria on the basis of which automatic case allocation should be carried out (e.g. the application of first-come, first-served as an objective criterion). No objective criteria regulate the composition of the chamber hearing the case (which is not the same as the concept of the adjudicating chamber hearing the case), and therefore it remains the possibility of manipulating the composition of the chamber hearing the case.”¹²

HCLU has no specific information about the allocation of cases in lower courts.

Independence/autonomy of the prosecution service

There are still unaddressed concerns for the autonomy of the prosecution service.

10 Serdült Viktória: “This is no longer compatible with my values” – the President of the Criminal Chamber of the Metropolitan Court resigned from his position as a judge, HVG, 29 November 2024, https://hvg.hu/itthon/20241129_lemondott-biro-laczo-adrienn.

11 Amnesty International: *Briefing paper: Anomalies in the allocation of cases by the Kúria*, 7 November 2024, https://www.amnesty.hu/wp-content/uploads/2024/11/241107_Briefing-paper_case-allocation-practice-at-the-Hungarian-Kuria.pdf

12 Hungarian Helsinki Committee: *Meeting the conditions for access to EU funding in Hungary, Overview table*, 12 December 2024, https://helsinki.hu/wp-content/uploads/2024/12/HU_EU_funds_assessment_Q3_2024_table_HU.pdf

A legislative proposal¹³ amending the Constitution was submitted¹⁴ on 19 November 2024, affecting the autonomy of the prosecution service. According to the proposal, experience as a prosecutor would no longer be required in the eligibility criteria for Chief Prosecutor. Since the Chief Prosecutor has significant control over the prosecution service, this proposal would render this position even more susceptible to politicisation. The deputy prime minister submitted a request for an extraordinary session of Parliament between 16-20 December to adopt this proposal “as soon as possible”¹⁵. This motion resembles the appointment of the President of the Supreme Court, who became eligible for that position due to a tailor-made legislative amendment which made it possible to be elected President of the Supreme Court without judicial experience.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

In most administrative matters, there is no option to appeal decisions before an administrative body. As a result, individuals must seek judicial review, making access to justice more difficult. Legal representation is mandatory in proceedings adjudicated by the Supreme Court. This provision makes exercising the right to appeal difficult, especially in cases where the Supreme Court acts as a second instance forum. However, this rule makes access to justice especially difficult in cases where the Supreme Court has the exclusive duty to decide as a first and last instance court, including election and referendum-related matters as well as in case of decisions made on the ban of demonstrations – which concern the exercise of fundamental rights. Moreover, only 3 days are available for judicial remedy in these matters. People face the difficult burden of finding lawyers who have expertise in these affairs, and must complete the process in a very narrow timeframe.

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- 13 Hungarian Parliament: *Proposal T/9997 on Fourteenth Amendment to the Fundamental Law of Hungary*, 22 January 2025, https://www.parlament.hu/web/guest/folyamatban-levo-torvenyjavaslatok?p_p_id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=MPIJHNz0&_hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_irom.irom_adat%3Fp_ckl%3D42%26p_izon%3D9997
- 14 Lengyel Tibor: *The Fundamental Law would be rewritten again, and the most important NER cadre, Péter Polt, is being groomed to succeed him*, HVG, 19 November 2024. https://hvg.hu/itthon/20241119_Megint-atirnak-az-Alaptorvenyt-a-NER-legfontosabb-kadere-Polt-Peter-utodlasara-keszulnek-ebx
- 15 Hungarian Parliament: *Motion to convene an extraordinary session of Parliament*, 20 November 2024, <https://www.parlament.hu/documents/d/guest/rendkivuli-ules-december-16-es-20-kozotti-idoszakra>

The ‘judicial reform’

The remuneration of judges and court administrators is severely inadequate¹⁶. Many of these officials even have to rely on blood plasma donation to make ends meet¹⁷. The inadequate financial conditions create a massive lack of administrative staff, which causes cases to be protracted¹⁸. According to one judge, “the functioning of the courts has become virtually impossible”¹⁹.

The government addressed the issue in its annual budgetary proposal on 11 November 2024²⁰. However, the Minister of Justice made any raise in the salaries of judges and court administrators conditional upon the implementation of certain reforms that present a further threat to the independence of the

judiciary, such as the changes in the eligibility criteria for a judicial position (see above).²¹

On 20 November 2024, the Ministry of Justice, the Supreme Court, the National Office for the Judiciary and the National Judicial Council (OBT) signed an agreement²² “to cooperate in order to improve the efficiency of the administration of justice, in particular to ensure adequate financial remuneration, the efficiency of the organisational system and the quality of justice”. It entailed a three-step salary increase for judges and judicial staff from January 2025 to January 2027 with a dedicated budget of HUF 212 billion. However, this planned increase falls short of what the proposal that the Hungarian Judicial Association (MABIE), the National Office for the Judiciary, the Supreme

16 European Networks of Councils for the Judiciary: *Letter from the President of the OBT (Council for the Judiciary of Hungary) on the situation regarding judicial remuneration*, <https://www.encj.eu/index.php/node/669>

17 Kozák Dániel: *Some judges are forced to sell their blood plasma because of low pay*, 24.hu, 26 June 2024. <https://24.hu/belfold/2024/06/26/biro-fizetes-jarasbirosag-megelhetes-verplazama/>

18 Dezső András: *There is a huge shortage of transcribers in the courts, which makes it impossible to work on a day-to-day basis*, Telex, 5 December 2024. <https://telex.hu/belfold/2024/12/05/elszivarogtak-a-birok-alol-az-adminisztrativ-dolgozok>

19 Kozák Dániel: *If I want to hire a security guard for the court, I have to pay a higher hourly rate than a junior judge*, 24.hu, 24 April 2024. <https://24.hu/belfold/2024/04/24/birosagok-obh-kuria-illetmenyrendszer-fizetesemeles-repassy-robert-im/>

20 Serdült Viktória: *The government’s new draft budget does not promise a penny to judges struggling for their salaries*, HVG, 12 November 2024. https://hvg.hu/itthon/20241112_biroi-fizetes-a-kormany-uj-koltsegvetesi-tervezete-ebx

21 Serdült Viktória: *Reform linked to money – we find out what’s in the Ministry of Justice’s deal for judges*, HVG, 20 November 2024. https://hvg.hu/itthon/20241120_igazsagugyi-miniszterium-obt-megallapodas-fizetesemeles-igazsagugyi-reform-ebx

22 *Agreement entered into by and between Ministry of Justice and the Curia, National Office for the Judiciary, National Judicial Council*, Hungarian Judiciary Council, 22 November 2024, https://obt-jud.hu/sites/default/files/sajtokozlemenyek-mellekletek/Agreement_Nov-22-2024.pdf

Court and the Hungarian Judicial Association (MABIE) proposed earlier²³.

Hundreds of judges expressed public disapproval of the agreement, in the form of letters published on the website of the²⁴ Hungarian Judicial Association (MABIE).

On December 12 2024, the Hungarian Judicial Association (MABIE) expressed its objection to the legislative proposals affecting the judicial system that were introduced in parliament without appropriate preliminary consultation, contrary to the rule of law²⁵. On December 14, the National Judicial Council (OBT) sent an open letter²⁶ over the same matter, rejecting the arbitrary amending of the proposal on the budget and the age limit of judges, and

expressing that the National Judicial Council was left out from the procedure.

The National Judicial Council held a consultation with the Minister of Justice on 16 December 2024 regarding the agreement²⁷. The OBT held a vote on its session on 15 January 2025 in which they declared that “for its part, [the organisation] considers the agreement to be invalid”.²⁸

It was revealed in January 2025 that earlier in November 2024, the President of the Supreme Court made a separate agreement with the government in secrecy which ensured a significantly higher increase of remuneration for judges at the Supreme Court²⁹. The President of the Supreme Court declared in his New Year’s greeting that the increase was “not given

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- 23 Mizers András: *They would receive a salary of two million Forints, yet the judges do not want to sell their independence*, Telex, 3 December 2024. <https://telex.hu/belfold/2024/12/03/orszagos-biroi-tanacs-biroi-fuggetlenseg-ig-azsagszolgalatas-fizetesemeles-tuzson-bence>; Hungarian Judiciary Council (OBT): Minutes, 27 March 2024, https://obt-jud.hu/sites/default/files/ulessek/Jegyzokonyv_2024.03.27.pdf
- 24 Hungarian Association of Judges: *Call for Comments: for the submission of related statements*, MABIE, 21 November 2024. <https://www.mabie.hu/berjavaslat/felhivas-velemenynilvanitasra-csatlakozo-nyilatkozatok-megkueldeserehttps://www.mabie.hu/berjavaslat/felhivas-velemenynilvanitasra-csatlakozo-nyilatkozatok-megkueldesere>
- 25 Hungarian Association of Judges: *Objection against bills T-9997 and T-10012*, MABIE, 14 December 2024. <https://mabie.hu/hirek/tiltakozas-a-t-9997-es-t-10012-toervenynjavaslat-kapcsanhttps://mabie.hu/hirek/tiltakozas-a-t-9997-es-t-10012-toervenynjavaslat-kapcsan>
- 26 Hungarian Judiciary Council: *Letter to the Ministry of Justice on court salaries*, 2024, https://obt-jud.hu/sites/default/files/sajtokozlemenyek-mellekletek/2024.OBT_K.VII_90-2.-Letter-to-MoJ.pdf
- 27 Hungarian Judiciary Council: *Official Communication*, 16 December 2024, <https://obt-jud.hu/en/node/580>
- 28 Hungarian Judiciary Council: *Summary of the NJC meeting*, 15 January 2025, https://obt-jud.hu/sites/default/files/ulessek/Osszefoglalo_2025.01.15.pdf
- 29 Kozák Dániel: *“In better places it’s called treason”: the Curia secretly colluded with the government*, 24.hu, 16 January 2025. <https://24.hu/belfold/2025/01/16/jobb-helyeken-ezt-arulasnak-hivjak-a-kuria-titokban-lepaktalt-a-kormanyal/>

for free”³⁰ which raises concerns about the judicial independence of the Supreme Court.

Fairness and efficiency of the justice system

Length of proceedings

There is a protraction in a number of cases due to the current crisis of the judicial system as explained above.

Execution of judgments

Freedom of information decisions still lack enforcement power, and thus public data still remains hidden from the public in numerous cases.

Other

There are a growing number of lawsuits initiated by civil society against the permits of battery factories, which are forcefully built by the government in spite of resistance from the people. In these lawsuits, courts tend to make access to justice more difficult for the affected public. In one instance, in the protracted trial of the biggest battery factory investment in Debrecen, the court ordered an expensive expert inquiry³¹ to verify if local citizens fall under the area of influence of the country’s “largest ever investment”³². In another case of another battery factory’s permitting procedure, the court of first instance rejected the civil society’s application, reasoning that they cannot turn to the court if they have not expressed the same concerns in the permitting procedure.

30 Halász Nikolett: „A kiemelt bánásmódot nem ingyen kaptuk” – a kúriai bírók nagyobb fizetésemelést kapnak, mint a többiek, Telex, 6 January 2025. <https://telex.hu/belfold/2025/01/06/varga-zs-andras-kuria-elnoke-orszaggyules-level>

31 Polgár Tóth Tamás: *The Metropolitan Court of Appeal partially overturned the decision of the court of first instance in the Debrecen battery factory case*, Debreciner, 29 November 2024, <https://debreciner.hu/cikk/birosag-fovarosi-itelotabla-debrecen-akkumulatorgyar-catl-debreciner>

32 About Hungary: *CATL to launch Hungary’s largest ever investment project*, 16 August 2022. <https://abouthungary.hu/news-in-brief/catl-to-launch-hungary-s-largest-ever-investment-project>

ANTI-CORRUPTION FRAMEWORK —

Key recommendations

- Strengthen the powers of the Integrity Authority to be able to take effective actions against corruption, implement the Authority's recommendations regarding asset declarations.
- Provide adequate and expressive protection for whistleblowers who express their activity through the press.

Levels of corruption

In 2024, there were again several major corruption scandals in Hungary.

The independence of the prosecution service

Péter Magyar (currently president and MEP of the Tisza Party), the ex-husband of former Minister of Justice, Judit Varga, has released a secret audio recording raising serious concerns about the independence of the prosecution service. The audio recording contained a conversation in which the former Minister of Justice indicated that investigative documents in a major corruption case had been falsified. According to the recordings, Antal Rogán (or his colleagues), prominent leader of the Prime Minister's Cabinet Office – responsible for government communication and supervising

the secret services – manipulated the documents by deleting, removing or falsifying certain parts of them.

The corruption case mentioned in the recording was the *Völner-Schadl* case started in 2021, in which György Schadl, the President of the Hungarian Association of Judicial Officers (MBVK), was arrested and remanded in custody in November 2021 on suspicion of corruption. On 24 October 2022, the prosecutor's office issued a press release announcing that the Central Investigative Prosecutor's Office had filed an indictment against György Schadl and 21 of his associates, including Pál Völner, former state secretary of the Ministry of Justice.³³ The proceedings allege that Völner and Schadl established a corrupt relationship and that the president of the MBVK paid out a total of HUF 83 million in cash to the state secretary.

33 Központi Nyomozó Főügyészség: *Vádemelés a Magyar Bírósági Végrehajtói Kar elnöke és 21 társa ellen – a Központi Nyomozó Főügyészség sajtóközleménye*, Központi Nyomozó Főügyészség, 2025. január 22. <https://ugyeszseg.hu/vademeles-a-magyar-birosagi-vegrehajtoi-kar-elnoke-es-21-tarsa-ellen-a-kozponti-nyomozo-fougyeszseg-sajtokozlemenye/>

The Prosecutor's Office rejected the complaint following the audio recording and closed the investigation. The Central Public Prosecutor's Office responded to the release of the audio recording in a press release denying the allegations.³⁴

Cultural heritage protection

Péter Bátonyi has worked in the state heritage protection system since 2013. For years, he has been watching the unlawful developments in the field of heritage protection, has spoken out on countless occasions against the breaches dictated by the real estate market or the interests of the government. Having felt that there was no other option, he went public on Partizán, one of the largest YouTube channels of Hungary. He exposed the violations, backed up by documents, and revealed the underlying processes that had allowed monuments to be downgraded and, in many cases, demolished. After the preview of the episode, the expert was immediately removed from his job, and a few days after the episode aired, the Ministry of Construction and Transport led by János Lázár announced that it would file a criminal

case against Bátonyi for abuse of office and false accusations. The Hungarian Civil Liberties Union provides legal representation in the criminal case for Bátonyi.³⁵

Chinese respirators

During the COVID-19 pandemic, the Hungarian state purchased a large number of Chinese respirators, which at the time was the subject of a major corruption scandal.³⁶ This year, these respirators were sold at a much cheaper price than the purchase price. The respirators have been put up for auction, in which in the last round they were sold HUF 13,000 each, compared to the original purchase price of more than HUF 10 million.³⁷

The real estate property of the Hungarian Academy of Sciences

Another event potentially indicating corruption in 2024 was the government's intention to buy the real estate assets of the Hungarian Academy of Sciences. The state is buying up this real estate, arguing that the separation of the research network has put the research

34 Központi Nyomozó Főügyészség: *Sajtóközlemény a volt igazságügyi miniszter magánbeszélgetését tartalmazó hangfelvétellel kapcsolatos nyomozásról*, Központi Nyomozó Főügyészség, 2025. január 22. <https://ugyeszseg.hu/sajtokozlemeny-a-volt-igazsagugyi-miniszter-maganbeszelgetes-tartalmazo-hangfelvetellel-kapcsolatos-nyomozasrol/>

35 TASZ: *Ő a műemlékeket védi, mi őt: Bíróságon képviseljük a műemlékvédelmi szabályok felrúgásáról kitaláló volt minisztériumi dolgozót*, TASZ, 2025. január 22. <https://tasz.hu/cikkek/o-a-muemlekeket-vedi-mi-ot-birosagon-kepviseljuk-a-muemlekvedelmi-szabalyok-felrugasarol-kitalalo-volt-miniszteriumi-dolgozot/>

36 Segesvári Csaba: *Eddig 390 millió forintot emésztett fel a 300 milliárdért beszerzett lélegeztetőgépek parkoltatása*, Átlátszó, 2022. november 28. <https://atlatszo.hu/kozadat/2022/11/28/eddig-390-millio-forintot-emesztett-fel-a-300-milliardert-beszerzett-lelegeztetogep-parkoltatasa/>

37 168 Óra: *Lélegeztetőgép eladó: mutyi a liciten*, 168 Óra, 2025. január 22. <https://168.hu/itthon/lelegeztetogep-elado-mutyi-licit-275426>

institutes under the control of the Academy, and that their budget is provided by the state in a separate budget chapter, similar to that of the Hungarian Academy of Sciences (HAS). Previously, real estate and movable property remained the property of the HAS after a significant reform of the academic system. The extraordinary general assembly of the HAS voted to sell the Academy's research network properties, worth an estimated HUF 130 billion, to the state for HUF 80 billion offered by the government.³⁸

Framework to prevent corruption

Although some steps have been taken to comply with the conditionality mechanism in the area of corruption, no significant change is visible.

The new National Anti-Corruption Strategy

The new National Anti-Corruption Strategy was adopted in February 2024.³⁹ The previous strategy expired in 2022, so the new strategy was long overdue.⁴⁰ The action plan covers a wide range of areas, such as transparency, legislative integrity, judicial integrity, the integrity of public bodies, fairness of public procurement and economic competition, social integrity and action against foreign bribery.⁴¹ However, according to K-Monitor's opinion the new strategy only contains few innovative, ambitious elements and largely pays off old debts already expressed in other documents. It also lacks adequate legal solutions to guarantee transparency or genuine measures to introduce comprehensive reforms of party funding, whistleblower protection or disclosure.⁴²

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- 38 Kolozsi Ádám: *Alig szavazta meg az MTA a kormány indítványát, de végül rábólintottak, hogy eladják nyomott áron az ingatlanvagyonot*, 444.hu, 2024. december 11. https://444.hu/2024/12/11/alig-szavazta-meg-az-mta-a-kormany-inditvanyat-de-vegul-rabolintottak-hogy-eladjak-nyomott-aron-az-ingatlanvagyonot?utm_source=rss_feed&utm_medium=rss&utm_campaign=rss_syndication Nagy Nikolett: *Megmagyarázta az MTA, miért ajánl csak 80 milliárdot a kormány az akadémia ingatlanvagyonáért*, Telex, 2024. november 29. <https://telex.hu/tech-tud/2024/11/29/magyar-tudomanyos-akademia-ingatlanvagyon-eladas-allam-hun-ren-magyar-kutatasi-halozat>
- 39 A 2024-2025 közötti időszakra szóló középtávú Nemzeti Korrupcióellenes Stratégia, 2024. január 22. <https://cdn.kormany.hu/uploads/document/a/a6/a68/a68658c9b404f40e1c4a0a4bb0f8891f972ad773.pdf>
- 40 Transparency International Hungary: *Assessment of Hungary's compliance with conditions to access European Union Funds (Az EU-s források értékelése Magyarországon, 2024. harmadik negyedév)*, December 2024, https://transparency.hu/wp-content/uploads/2024/12/HU_EU_funds_assessment_Q3_2024_table.pdf
- 41 1025/2024. (II. 14.) Korm. határozat a 2024–2025 közötti időszakra szóló középtávú Nemzeti Korrupcióellenes Stratégia, valamint az annak végrehajtására vonatkozó intézkedési terv elfogadásáról, Government of Hungary, 2024. február 14. <https://njt.hu/jogszabaly/2024-1025-30-22>
- 42 K-monitor: *Nehezen született: elfogadta a kormány a 2024–2025 közötti korrupcióellenes stratégiát*, K-monitor, 2024. február 15. https://k.blog.hu/2024/02/15/nehez_szules_elfogadta_a_kormany_a_2024-2025_kozotti_korrupcioellenes_strategiat

Asset declarations

The government has amended relevant legislation to expand the category of individuals required to submit asset declarations, such as board members and supervisory board members of Public Interest Asset Management Foundations. Under the amendment, the Integrity Authority will monitor the asset declarations of trustees of university trusts.⁴³ However, the Integrity Authority does not have direct access to any public databases that would allow it to verify the accuracy of asset declarations.⁴⁴

Corruption watchdog NGOs point out the fact that the legislative amendment has failed to similarly broaden the material scope of those declarations. They also highlight that different regimes apply to MPs, government leaders and other high-level public decision-makers, mayors and municipal representatives, and to other categories of public officials and employees of

publicly funded enterprises.⁴⁵ The Integrity Authority has proposed the extension of the asset declaration scheme to the entire public sector and to all persons with decision-making or authorisation powers in relation to public funds, subsidies, public procurement or the allocation and management of public property.⁴⁶ The material scope of the asset declarations are still limited as individuals are no longer required to declare all real estate properties, and instead of providing exact income figures, they may now use an income scale.⁴⁷

Whistleblower protection

In January 2024, K-Monitor and Transparency International Hungary sent an infringement complaint to the Commission because the Hungarian government's whistleblower protection legislation still does not provide meaningful protection for whistleblowers.⁴⁸ The whistleblower protection law does not

43 Pupli Anna Sára: *Az Integritás Hatóság fogja ellenőrizni az egyetemi alapítványok kuratóriumai tagjainak vagyonynyilatkozatait*, Telex, 5 November 2024 <https://telex.hu/belfold/2024/11/05/integritas-hatosag-vagyonkezelo-alapitvanyok-kuratorium-vagyonnyilatkozat-egyetem>

44 K-monitor: *Sosem lesznek már átlátható vagyonynyilatkozatok Magyarországon?*, K-monitor, 30 January 2024 https://k.blog.hu/2024/01/30/sosem_lesznek_mar_atlathato_vagyonnyilatkozatok_magyarorszagon

45 Transparency International Hungary: *Assessment of Hungary's compliance with conditions to access European Union Funds (Az EU-s források értékelése Magyarországon, 2024. harmadik negyedév)*, December 2024, https://transparency.hu/wp-content/uploads/2024/12/HU_EU_funds_assessment_Q3_2024_table.pdf

46 K-monitor: *Sosem lesznek már átlátható vagyonynyilatkozatok Magyarországon?*, K-monitor, 30 January 2024 https://k.blog.hu/2024/01/30/sosem_lesznek_mar_atlathato_vagyonnyilatkozatok_magyarorszagon

47 Transparency International Hungary: *Assessment of Hungary's compliance with conditions to access European Union Funds (Az EU-s források értékelése Magyarországon, 2024. harmadik negyedév)*, December 2024, https://transparency.hu/wp-content/uploads/2024/12/HU_EU_funds_assessment_Q3_2024_table.pdf

48 K-monitor: *Uniót sért az új bejelentővédelmi törvény*, Kormány.hu, 10 January 2024 https://k.blog.hu/2024/01/10/unios_jogot_sert_az_uj_bejelentovedelmi_torveny K-Monitor: *Letter to the European Commission on the transposition of the Whistleblower Directive*, K-Monitor, 21 December 2023 https://m.blog.hu/k/k/file/k-monitor_transparency-int-hu_letter_to_com_on_transposition_of_whistleblower_directive_21122023_1.pdf

offer any protection to the whistleblower who turns to the media. This will obviously not encourage any citizen to contact the press if they find that the competent authorities remain inactive. Under the Whistleblower Protection Directive, it is inappropriate for a Member State to deprive citizens who make a whistleblowing report through the press of adequate protection.⁴⁹ According to domestic corruption watchdog NGOs, the protection of whistleblowers should have been included in the anti-corruption strategy, but it was not.⁵⁰

Public Interest Asset Management Foundations (KEKVAs)

The Parliament adopted an amendment to Act IX of 2021 on Public Interest Asset Management Foundations (KEKVA) in November 2024. The amendment concerns only those public interest asset management foundations that are maintaining universities and receive EU funds, and the legal entities established by them.

The amendment limits the maximum term of the Board of Trustees to six years and their

reappointment is also restricted to only one term. Conflict of interest rules apply to Board of Trustees and supervisory board members. However, as Hungarian corruption watchdog organisations point out, government commissioners assigned by the Prime Minister, political advisors serving in the Government and political appointees overseeing government offices with county jurisdiction are not excluded.⁵¹ There is a compliance check by the State Audit Office, but it is not mandatory for the Board of Trustees. As Transparency International Hungary points out, the fundamental problem was that public assets were outsourced to these foundations, so the only real solution would have been their abolition, not the amendment to the regulation. There is no real control over the foundations, because the courts of registration do not have supervisory powers and the State Audit Office's control is also limited to prudency checks.⁵²

49 K-monitor: *Uniósjogot sért az új bejelentővédelmi törvény*, Kormány.hu, 10 January 2024 https://k.blog.hu/2024/01/10/unios_jogot_sert_az_uj_bejelentovedelmi_torveny

50 Transparency International Hungary: *Assessment of Hungary's compliance with conditions to access European Union Funds (Az EU-s források értékelése Magyarországon, 2024. harmadik negyedév)*, December 2024, https://transparency.hu/wp-content/uploads/2024/12/HU_EU_funds_assessment_Q3_2024_table.pdf

51 Transparency International Hungary: *Assessment of Hungary's compliance with conditions to access European Union Funds (Az EU-s források értékelése Magyarországon, 2024. harmadik negyedév)*, December 2024, https://transparency.hu/wp-content/uploads/2024/12/HU_EU_funds_assessment_Q3_2024_table.pdf

52 Transparency International Magyarország: *A KEKVA-kat eltörölni kell*, Transparency International Magyarország, 22 January 2024 <https://transparency.hu/hirek/a-kekvakat-eltorolni-kell/>

Investigation and prosecution of corruption

Integrity Authority

The Integrity Authority was established in November 2022. The establishment of the authority was a decision taken under the conditionality mechanism. Corruption watchdog NGOs claim that as of now the Integrity Authority has the necessary independence, an adequate budget, and a competent staff of around 100 people, but lacks, in multiple areas, the adequate legal mandate to carry out its tasks.⁵³ Only a small percentage of the Integrity Authority's proposals have been accepted by the government, and only 23% of the Authority's proposals were accepted in 2024.⁵⁴

It is worth mentioning that in April 2024, the Integrity Authority launched a public procurement call for professional partners to fight corruption and promote integrity values in public discourse. In July, a result was announced, but it was contested by Gyula Balássy's company, New Land Media, which has been the market leader in recent years in winning public communication contracts. The Public Tenders Committee, following an appeal by New

Land Media, annulled the Authority's public procurement procedure for communications, which the Authority challenges before court.⁵⁵

Anti-Corruption Task Force

The Anti-Corruption Task Force was set up in December 2022 as an independent body alongside the Integrity Authority. The Task Force is said to operate for an indefinite period, during which it will carry out analytical, proposal, opinion-forming and decision-preparation tasks. The Task Force is composed of 21 members, ten members representing designated public authorities, ten NGO members representing non-governmental actors and the President of the Integrity Authority, who is also the President of the Task Force. Átlátszó, K-Monitor and Transparency International voted against the adoption of the 2023 Report of the Anti-Corruption Task Force of the Integrity Authority. The three NGOs argue that the report does not give a realistic picture of the corruption problems in Hungary and does not contain sufficiently ambitious commitments, and lacks a real confrontation with the corruption situation in Hungary. At the same time, the presentation of specific cases and the risks of corruption highlighted were

53 Transparency International Hungary: *Assessment of Hungary's compliance with conditions to access European Union Funds (Az EU-s források értékelése Magyarországon, 2024. harmadik negyedév)*, December 2024, https://transparency.hu/wp-content/uploads/2024/12/HU_EU_funds_assessment_Q3_2024_table.pdf

54 Transparency International Hungary: *Assessment of Hungary's compliance with conditions to access European Union Funds (Az EU-s források értékelése Magyarországon, 2024. harmadik negyedév)*, December 2024, https://transparency.hu/wp-content/uploads/2024/12/HU_EU_funds_assessment_Q3_2024_table.pdf

55 Nagy Bálint: *Az Integritás Hatóság beleállt a kormány egyik kedvenc reklámcégébe*, Telex, 1 October 2024 <https://telex.hu/belfold/2024/10/01/integritas-hatosag-new-land-media-kozbeszerzesi-dontobizottsag-birosag>

missing: party financing, campaign spending, asset declarations or the issue of whistleblowers.⁵⁶ Last year, the Anti-Corruption Task Force also attempted to develop a system of indicators to detect corruption risks, or at least to understand the data needed to develop one. In most cases, however, this data was not available to the Task Force until mid to late February 2024. As a result, the possibility to draw conclusions and make recommendations was limited, as the law requires the report to be ready by 15 March.⁵⁷

Sovereignty Protection Office

Since the establishment of the Sovereignty Protection Office, there have been a total of

three investigations against NGOs. One of the NGOs concerned is Transparency International Hungary, which monitors corruption in Hungary. The Office has also opened an investigation against the investigative online newspaper (Átlátszó), which has also uncovered a number of corruption cases in recent years. The third investigation was launched against a small local organisation that raised its voice against the battery factory opened in the town of Göd. The Office's investigations against Transparency International Hungary and Átlátszó have already been completed, and in both cases the Authority found that the organisations posed a risk to national sovereignty.⁵⁸

56 Átlátszó: *Az Átlátszó, a K-Monitor és a Transparency idén sem fogadta el a Korrupcióellenes Munkacsoport éves jelentését*, Átlátszó, 15 March 2024 <https://atlatszo.hu/kozugy/2024/03/15/az-atlatszo-a-k-monitor-es-a-transparency-iden-sem-fogadta-el-a-korrupcioellenes-munkacsacsoport-eves-jelenteset/>

57 Átlátszó: *Az Átlátszó, a K-Monitor és a Transparency idén sem fogadta el a Korrupcióellenes Munkacsoport éves jelentését*, Átlátszó, 15 March 2024 <https://atlatszo.hu/kozugy/2024/03/15/az-atlatszo-a-k-monitor-es-a-transparency-iden-sem-fogadta-el-a-korrupcioellenes-munkacsacsoport-eves-jelenteset/>

58 Szuverenitásvédelmi Hivatal: *A Transparency International Magyarország káros tevékenységet fejt ki és dezinformációt terjeszt*, Szuverenitásvédelmi Hivatal, 18 June 2024 <https://szuverenitasvedelmihivatal.hu/hirek/a-transparency-international-magyarorszag-karos-tevekenyseget-fejt-ki-es-dezinformaciott-terjeszt> Szuverenitásvédelmi Hivatal: *Az Átlátszó tevékenysége szuverenitási kockázatot jelent Magyarország számára*, Szuverenitásvédelmi Hivatal, 25 June 2024 <https://szuverenitasvedelmihivatal.hu/hirek/az-atlatszo-tevekenysege-szuverenitasi-kockazatot-jelent-magyarorszag-szamara>

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *Restore the public service nature of public media: Public media should serve the public interest on public channels, not be used for propaganda.*
- *Dissolve KESMA: The Central European Press and Media Foundation, with its vast network of media outlets, functions as a tool for disinformation and hate-mongering, rather than as a free press. A free press should critique the government, not serve it.*
- *Create a free media environment based on market principles: Move away from media dependent on state advertising funds, fostering a truly independent media landscape.*
- *The government should radically change the attitude toward the press: citizens should be able to hold public authorities accountable through the press. A critical press with effective access to public data and information on government actions is a fundamental democratic requirement. Journalists who ask tough questions serve the people, not foreign interests. The editorial independence of the public service media must be restored.*
- *Strengthen civil rights protection for reputation and honor: Utilise additional legal tools to ensure human dignity is safeguarded through civil law and other protections. Reconsider press vindication conditions, automate existing procedures, and provide effective guarantees for the enforcement of final court judgments.*

Media and telecommunications authorities and bodies

There has been no significant improvement in terms of the existing media and telecommunications environment. The European Media Freedom Act did not induce new legislation, in fact, Hungary was the only country to veto

the regulation. The International Press Institute released an extensive report on Hungary's adherence to the European Media Freedom Act. Although in theory the legal framework guarantees the independence of public service media, the reality shows governmental interference.⁵⁹

59 International Press Institute (IPI): *Hungary Media Capture Monitoring Report*, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Hungary-Media-Capture-Monitoring-Report-Final-1.pdf>

Although the National Media and Infocommunications Authority (NMHH) is formally regulated as an independent body, government influence is significant. The decisions of the authority often align with the views of the governing party, and the lack of meaningful audits regarding pro-government media further demonstrates their loyalty.

The process for appointing the president of the NMHH and the Media Council, the Authority's regulatory body, remains unchanged. The President of Hungary appoints the president of the NMHH for a nine-year term based on the Prime Minister's recommendation, with dismissal also within the President's authority. Upon appointment, the president automatically becomes the nominee for the Media Council presidency and is elected by Parliament with a two-thirds qualified majority for a nine-year term. Parliament's role is limited to the option of rejecting the nominee. All members of the Media Council are elected by the two-thirds majority. This structure lacks transparency and suggests political control over media freedom.⁶⁰

Under the Media Law, Parliament determines the NMHH's annual budget based on the proposal of its president, which also encompasses the Media Council's budget. Apart from that, the NMHH earns its own revenue as well.⁶¹ In 2024, the Authority's budget was HUF 57.75 billion (ca. € 141 million). The Media Council's operating budget in 2024 was HUF 554 million (ca. € 1,35 million).⁶² These amounts are theoretically suitable to guarantee high-level professional work, however, in the case of the Authority and the Media Council these serve as the price of loyalty, which is proved by its inactivity.⁶³

The Council, among others, oversees the lawfulness of public service media, as well as the authorisation or prohibition of media mergers.⁶⁴ Despite state-owned media functioning as a tool of government propaganda, the Media Council avoids exercising its authority over it, showing lack of independence.

Although the media law establishes a co-regulatory system to involve journalist organisations in media-related decisions, these organisations have not been given a meaningful role.

60 International Press Institute (IPI): *Hungary Media Capture Monitoring Report*, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Hungary-Media-Capture-Monitoring-Report-Final-1.pdf>

61 International Press Institute (IPI): *Hungary Media Capture Monitoring Report*, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Hungary-Media-Capture-Monitoring-Report-Final-1.pdf>

62 Act LXXXI of 2022 on the Consolidated Budget of the National Media and Infocommunications Authority for 2023

63 *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, 2024, January 2024, https://transparency.hu/wp-content/uploads/2024/01/HUN_CS0_contribution_EC_RoL_Report_2024-1.pdf

64 International Press Institute (IPI): *Hungary Media Capture Monitoring Report*, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Hungary-Media-Capture-Monitoring-Report-Final-1.pdf>

Self-regulatory bodies in Hungarian media remain weak and lack influence,⁶⁵ while most journalist associations remain largely inactive throughout the year.

Pluralism and concentration

Media pluralism has not improved since the last rule of law report. The government continues to exert predominant influence over public interest media through the Media Service Support and Asset Management Fund (MTVA). In addition to public service media, since 2018 the Central European Press and Media Foundation (KESMA) has centralised pro-government media outlets, creating a pro-government media environment which relies heavily on state advertisements in terms of funding.

The rise of influencer-based propaganda noted in last year's report persists, leading to a phenomenon less regulated by media law. Its impact became evident during the 2024 campaign period, when Megafon-backed influencers achieved a reach comparable to major politicians.⁶⁶ Megafon's funding suggests ties to the government. This leads to more media

coverage, including online platforms, serving government interests.

Recently, RTL Hungary, one of the largest independent media outlets in the country, announced a strategic partnership with 4iG, an international group of infocommunications companies that has become a major market player with the help of the state.⁶⁷ RTL's CEO described the partnership as strategically important between two key market players. However, this partnership raises concerns about the increasing state capture of the media, and the risk of RTL losing its independence.⁶⁸

Since Hungarian media regulation does not impose restrictions on media company ownership, large media conglomerates can emerge. From a competition law perspective, the Hungarian Competition Authority (HCA) has the authority to approve or prohibit company mergers, including those involving media companies. However, while the HCA must obtain a position statement from the Media Council, it is bound by that statement. Since the Media Council approves mergers without thoroughly examining their potential impact

65 Civil Liberties Union Europe: *Liberties Rule Of Law Report 2024, Hungary* https://dq4n3btxmr8c9.cloudfront.net/files/_bc87u/HUNGARY_Liberties_RuleOfLaw_Report_2024.pdf

66 Civil Liberties Union for Europe: *Elections Monitoring Report 2024, Hungary*, https://dq4n3btxmr8c9.cloudfront.net/files/wyxo01/Elections_monitoring_2024_Hungary_FIN.pdf

67 K-Monitor Database: *4iG Nyrt*, <https://adatbazis.k-monitor.hu/adatbazis/cimkek/4ig-nyrt>

68 Media1: *Az RTL a 4iG stratégiai partnere lett*, Media1, 13 August 2024. <https://media1.hu/2024/08/13/az-rtl-a-4ig-strategiai-partnere-lett/>

on media plurality, its function becomes effectively obsolete.⁶⁹

In a speech in September, Prime Minister Viktor Orbán expressed dissatisfaction with pro-government media and influencers. This was followed by allegations of a plan for restructuring Mediaworks, Hungary's largest publisher under KESMA, by decentralizing it for better manageability, thus executing ownership changes. Some parts of the company were supposed to be placed under the authority of government-linked individuals. These changes further highlight the government's influence over major media publishers and the decline of media pluralism.⁷⁰

Transparency of media ownership

Compared to the previous rule of law report, no improvement can be observed.

Generally, the public has access to details of ownership through the company register, which includes media companies as well. The NMHH operates a register for the list of press products.⁷¹ However, according to the Hungarian media law, Media service providers should

make some key information publicly available (such as legal name or corporate name, address or registered office, postal address and other means of contact), but this does not include other key information such as ownership, or the amount of public funds used for state advertising.⁷²

However, new media-like platforms and actors are emerging that fall outside the scope of existing media regulations. One example is Holy Crown Radio (Szent Korona Rádió), which claims to convey “the sound of tradition” and operates as a blog. It publishes articles that could be interpreted as smear campaigns. Although it resembles official media websites, it is not listed as a press product by the NMHH, meaning its founders and ownership details are not accessible. Because it is not registered, no rectification or personality right procedures can be initiated against its content, leaving it outside the law with no regulations to limit its activities. To date, the NMHH has not taken any action to regulate the blog. Another example is Megafon, founded by the director of the Centre for Fundamental Rights, with the aim of “amplifying national voices” against what it describes as “left-liberal content” flooding

69 International Press Institute (IPI): *Hungary Media Capture Monitoring Report*, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Hungary-Media-Capture-Monitoring-Report-Final-1.pdf>

70 Lits Benedek: *Feldarabolhatják a Mediaworksöt, Orbán Balázs alá kerülhet a Mandiner*, Forbes, 24 October 2024. <https://forbes.hu/uzlet/orban-balazs-mandiner-mediaworks-kormany-sajto/>

71 NMHH Sajtóközlemény: https://sajtopub.nmhh.hu/sajto_kozzetetel/app/index.jsp?lang=1

72 International Press Institute (IPI): *Hungary Media Capture Monitoring Report*, November 2024, <https://ipi.media/wp-content/uploads/2024/11/Hungary-Media-Capture-Monitoring-Report-Final-1.pdf> p. 27.

social media.⁷³ The company funds influencers who promote government propaganda, and its partners include pro-government figures like Philip Rákay and Dániel Deák. Although the financial background is not transparent, the Centre for Fundamental Rights is indirectly funded by the government according to investigative journalists.⁷⁴ This suggests strong ties to the government, but the uncertainty and lack of transparency highlights the ineffectiveness of media regulation in addressing such entities.

There are no regulations in place that limit the scope or set the rules for the transparency of state advertising. It is widely recognised that state advertisers prioritise pro-government companies and exclude independent media. This practice disrupts fair competition and distorts the market.⁷⁵ The scale of state advertising expenditures is disproportionately large, benefiting only pro-government companies,⁷⁶ that loyally promote government propaganda.

The state advertising spending is built on public procurement.

There are no rules limiting government ads. Between 31 December 2023 and 15 June 2024, a total of HUF 4.151 billion were spent on political ads on Facebook and Google in Hungary. On Facebook alone, the governing party (Fidesz) and government-related organisations (Megafon and CÖF) spent HUF 2.136 billion—with a significant portion of this funding coming from public funds—four times the amount spent by all opposition parties combined.⁷⁷

Public service media

Public service media, run by MTVA and centralised by the Public Service Public Foundation, is heavily influenced by the government. State media broadcasts government propaganda without allowing space for criticism or questioning. According to next year's budget,

73 Megafon Digital Incubator Nonprofit Ltd: <https://megafon.hu/>; K-Monitor Database: *Megafon Digitális Inkubátor Központ Nonprofit Kft.*, <https://adatbazis.k-monitor.hu/adatbazis/cimkek/megafon-digitalis-inkubator-kozpont-nonprofit-kft>

74 Sarkadi Nagy Márton: *Egy alapítványon keresztül önti a pénzt a kabinetiroda az Alapjogokért Központba*, *Átlátszó*, 4 March 2021, <https://atlatszo.hu/kozpenz/2021/03/04/egy-alapitvanyon-keresztul-onti-a-penzet-a-kabinetiroda-az-alapjogokert-kozpontba/>

75 *Contributions of Hungarian CSOs to the European Commission's Rule of Law Report*, 2024, January 2024, https://transparency.hu/wp-content/uploads/2024/01/HUN_CSO_contribution_EC_RoL_Report_2024-1.pdf

76 Mérték Media Monitor, *Government Advertising Database (Állami hirdetések adatbázisa)*, <https://mertek.atlatszo.hu/allamihirdetesek/>

77 Világi Máté, *The government side spent record amounts on online advertising during the election campaign, even at European level (Európai szinten is rekordsokat költött netes reklámokra a kormányoldal a választási kampány során)*, *Telex*, 21 June 2024, <https://telex.hu/belfold/2024/06/21/internet-kampany-koltes-fidesz-valasztas-political-capital>

the MTVA will have more than HUF 165 billion to spend, 25 billion more than the amount foreseen for this year.⁷⁸

This election year brought unprecedented events not seen in the past decade and a half regarding the public service media captured by the governing majority. With changes in the political landscape, for the first time since 2006, Hungary's EP list leaders were invited to have a relatively meaningful public debate.⁷⁹ Some list leaders were hesitant to attend,⁸⁰ as the MTVA—the state body that organised the event—set unrealistic boundaries for the debate.⁸¹ As a result, instead of a real debate, the politicians simply delivered brief

monologues while standing side by side.⁸² One of the speakers was Balázs Németh, formerly known as a controversial presenter on M1, state media. As a loyal individual to Fidesz, his central role in the debate seemed like a provocation to some.⁸³

The organisation and funding structure of public interest media remain unchanged, maintaining its opacity and complexity. The ruling party's reluctance to improve is evident in their reaction to the European Media Freedom Act. Despite the act's goal to enhance the independence and transparency of public interest media, the government shows no willingness to cooperate.

78 Kovács Pál, *452 million forints a day to be spent on public media next year (Jövőre napi 452 millió forintot költhetnek a közmédiák működésére)*, Telex, 21 October 2024, <https://telex.hu/gazdasag/2024/10/21/160-milliard-forint-koltsegvetes-2025-kozmedia-mtva>

79 *The EP list leaders debated on public TV, while outside the Tisza party supporters gathered (A köztévében vitáztak az EP-listavezetők, miközben kint a Tisza-párt szimpatizánsai gyülekeztek)*, 444.hu, 30 May 2024, <https://444.hu/2024/05/30/magyar-peter-mar-az-ep-listavezetok-vitaja-elott-felszolal-a-varkert-bazarnal>

80 Botos Tamás: *“The propaganda TV is not organizing a debate, but has brought forward the New Year's Eve cabaret and expects us to serve as props for it” („A propagandatévé nem vitát szervez, hanem előrehozta a szilveszteri kabarét, és elvárja, hogy biodíszletként szolgáljunk ehhez”)*, 444.hu, 22 May 2024, <https://444.hu/2024/05/22/a-propagandat-ve-nem-vitat-szervez-hanem-elorehozta-a-szilveszteri-kabaret-es-elvarja-hogy-biodiszletkent-szolgajunk-ehhez>

81 Urfi Péter: *Public Media's Invitation to the Lead Candidates' Debate Includes Gross Distortion (A közmédiák már a listavezetői vita meghívójában is óriásit csúsztat)*, 444.hu, 21 May 2024, <https://444.hu/2024/05/21/a-kozmedia-mar-a-listavezetoi-vita-meghivojaban-is-oriasit-csusztat>

82 Sarkadi Zsolt: *This was not a debate (Ez nem vita volt)*, Telex, 31 May 2024, <https://telex.hu/belfold/2024/05/31/valasztasi-vita-kozteve-dk-deutsch-tamas-magyar-peter-dobrev-klara>

83 Szalay Dániel: *MTVA confirmed that it is indeed Németh Balázs and Volf-Nagy Tünde who will host the 100-minute live election debate (Megerősítette az MTVA, tényleg Németh Balázs és Volf-Nagy Tünde vezeti a 100 perces élő választási vitát)*, Media1, 21 May 2024, <https://media1.hu/2024/05/21/ep-listavezetok-vitaja-nemeth-balazs-volf-nagy-tunde-mtva-megerosites/>

A Fidesz delegate described the EMFA as a “censorship law”, another attempt to undermine Member States’ sovereignty, arguing that it seeks to establish total control over the media.⁸⁴

Online media

Only a few regulations exist that target the online sphere. Independent press does not face major regulatory restrictions in the online media ecosystem.

Alongside independent media, government propaganda thrives through the rise of influencers promoting messages that align with the ruling Fidesz party’s narrative.⁸⁵ As previously mentioned, Megafon, the company behind these influencers, was founded to counter the so-called “left-liberal content” flooding social media, according to its founder. These influencers have a massive reach, as their ads are supported by significant funding. Between 31 December 2023 and 15 June 2024, political ad spending in Hungary totaled HUF 4.151 billion on Facebook and Google, with HUF

2.136 billion spent on Facebook by the government side (Fidesz, Megafon, and CÖF).⁸⁶

Regarding copyright rules, the MTVA imposes excessive fees for using materials from their archives, regardless of whether the content is intended for journalistic purposes or to serve the public, as highlighted in the clash between Fortepan and the MTVA.⁸⁷

This was the first full year that followed the amendment of the Penal Law decriminalisation the conduct of journalists publishing on matters of public debate. According to the new legislation, communications related to public affairs cannot lead to criminal liability for defamation or libel if they are made in the media and are not intended to “manifestly and seriously harm the dignity of the victim.”⁸⁸

84 Márton Balázs: *The European Parliament voted on a law declaring the independence of public media, and Fidesz fears censorship. (A közmédia függetlenségét kimondó jogszabályt szavazott meg az EP, a Fidesz cenzúráról tart)*, Telex, 13 March 2024, <https://telex.hu/kulfold/2024/03/13/eu-europai-parlament-media-kozmedia-szabadsag-fuggetlenseg>

85 Civil Liberties Union for Europe: *Elections Monitoring Report 2024, Hungary*, https://dq4n3btxmr8c9.cloudfront.net/files/wyxo01/Elections_monitoring_2024_Hungary_FIN.pdf

86 Világi Máté: *At the European level, the government side spent record amounts on online advertisements during the election campaign (Európai szinten is rekordokat költött netes reklámokra a kormányoldal a választási kampány során)*, Telex, 21 June 2024, <https://telex.hu/belfold/2024/06/21/internet-kampany-koltes-fidesz-valasztas-political-capital>

87 Zsuppán András: *Public media has won, every Hungarian loses – an in-depth interview with the founder of Fortepan (A közmédia győzött, minden magyar veszít – nagyinterjú a Fortepan alapítójával)*, Válasz Online, 2 May 2023, <https://www.valaszonline.hu/2023/05/02/tamasi-miklos-fortepan-mtva-interju-fenykep-digitalizacio-muzeumok-jozsef-attila/>

88 Article 226, paragraph 3 of the Criminal Code

The change came as a surprise as the governing party has, since coming to power, deliberately worked to systematically block channels of free public debate.⁸⁹ Although the reasons for which it was implemented do not reflect the public interest, it should have a positive impact on public life. According to some experts, the decriminalisation is also favorable for pro-government propaganda media as their journalists frequently published potentially unlawful contents in the previous years. This could be an additional reason for adopting such a law.

Alongside the improvement comes the projection of a regulation criminalising hateful comments.⁹⁰ The draft law was theoretically aimed at countering online aggression. In practice, it could potentially undermine freedom of expression, as it allows for very broad applications. Under the law, legislators do not seek to punish actions or even the preparation of actions, but merely the expression of intentions or wishes.⁹¹

Public trust in media

As noted in our previous reports, trust in various media platforms and channels is heavily influenced by the audience's political views. However, a survey conducted by the Committee for Editorial Independence, published earlier this year, examined the opinions of the Visegrad Four countries on media freedom. The results revealed that of the countries observed, Hungarians expressed the least trust in their media, with an increasing number of Fidesz voters (33%) expressing concern about the state of public service media.⁹²

The Law on the Protection of National Sovereignty, adopted in 2023, imposed additional indirect restrictions on media freedom, and its consequences have the potential to undermine public trust in the media. The Sovereignty Protection Office, created under this law, can investigate, among other things, media outlets for serving foreign interests as these outlets are not exempt from possible investigations. The President of the Sovereignty Protection Office

89 Hungarian Civil Liberties Union (TASZ): *TASZ welcomes the decriminalization of the free discussion of public affairs and calls attention to the government's further actions needed (A TASZ üdvözli a közügyek szabad megvitatásának dekriminalizációját és felhívja a figyelmet a kormány további teendőire)*, 26 April 2023, <https://tasz.hu/cikkek/a-tasz-udvozli-a-kozugyek-szabad-megvitasanak-kozelgo-dekriminalizaciojat-es-felhivja-a-figyelmet-a-kormany-tovabbi-teendoire/>.

90 Dévai László: *This is truly about the possibility of ending up at the police station because of a harsh comment (Itt tényleg arról van szó, hogy egy durva komment miatt a rendőrségen köthetsz ki)*, Telex, 18 December 2024, <https://telex.hu/belfold/2024/12/18/online-agresszio-visszaszoritas-magyar-kormany-fidesz-torveny-komment-borton>

91 Joób Sándor: *A new draft law proposes a one-year prison sentence for aggressive commenting (Egy év börtönnel büntetné az agresszív kommentelést egy új törvényjavaslat)*, Telex, 19 November 2024, <https://telex.hu/belfold/2024/11/19/internet-kommenteles-szabalyzat-nmhh-torvenyjavaslat-agresszio-halal>.

92 Bugyinszki György: *Visegrad Survey on Media Freedom and Trust in Public Media (Visegrádi felmérés a médiaszabadságról és a közmédiára iránti bizalomról)*, Media1, 26 April 2024, <https://media1.hu/2024/04/26/visegradi-felmeres-mediaszabadsag-kozmedia-bizalom/>

clearly stated in an interview with journalists at 444 that he did not consider the media dangerous, but that he did consider the activities of 444 dangerous.⁹³ This year, the Sovereignty Protection Office launched investigations against multiple editorial offices and civil society organisations, such as Transparency International Hungary (TI),⁹⁴ the investigative news portal Átlátszó, and Göd-ÉRT Egyesület (“For Göd Association”, an environmental and urban protection organisation stepping up against battery factories) and the Átlátszónet Foundation. According to Átlátszó, the investigation into the For Göd Association is warranted because the association, as a recipient of EU funding in partnership with the Átlátszónet Foundation and other NGOs, secured support for civil advocacy activities in 2023. Additionally, it participated in the 2024 election campaign, leading to the election of two of its candidates to the Göd council.⁹⁵

These investigations do not just intimidate the investigated parties, but are intended

to undermine their credibility in the public eye. Years ago, Átlátszó created a platform to enhance and ease public access to public interest information, allowing citizens to submit FOI requests for data from government and public institutions. When submitted, these requests are sent through a generated, random email address ending in “kimittud.hu,” previously “atlatszo.hu.” At a recent local council meeting in the town of Tata, the mayor whose office had received an FOI request from such an email about a week earlier read out loud from the Sovereignty Protection Office’s report on Átlátszó. Neither the report nor Átlátszó were relevant to the discussion; the report was brought up solely because of the email address’s domain.⁹⁶ The intent seemed to be to discredit the media outlet, underscoring the potent impact of the Sovereignty Protection Office’s stigmatisation and its influence on discrediting independent media.

93 Plankó Gergő, Jelinek Anna, Kovács Bendegúz, Czinkóczi Sándor: *Tamás Láncki to 444: I do not consider the media dangerous, but I do consider your activities dangerous (Láncki Tamás a 444-nek: A médiát nem tartom veszélyesnek, az önök tevékenységét igen)*, 26 July 2024, <https://444.hu/2024/07/26/lanczi-tamas-a-444-nek-a-mediát-nem-tartom-veszelyesnek-az-onok-tevekenyseget-igen>.

94 Transparency International Hungary: *The Sovereignty Protection Office has initiated proceedings against Transparency International Hungary (A Szuverenitásvédelmi Hivatal eljárást indított a Transparency International Magyarország ellen)*, 25 June 2024, <https://transparency.hu/hirek/szuverenitasvedelmi-hivatal-eljaras-ti-magyarorszag/>.

95 Bodnár Zsuzsa, Bodoky Tamás: *The Sovereignty Protection Office has also targeted the Göd-ÉRT Association (A Göd-ÉRT Egyesületet is kipécézte a Szuverenitásvédelmi Hivatal)*, Átlátszó, 12 September 2024, <https://atlatszo.hu/orszagszerte/2024/09/12/a-god-ert-egyesuletet-is-kipecezte-a-szuverenitasvedelmi-hivatal/>.

96 Erdélyi Katalin, Katus Eszter: *The mayor read aloud from the report written by the Sovereignty Protection Office about Átlátszó (Felolvasott a Szuverenitásvédelmi Hivatal Átlátszóról írt jelentéséből a polgármester)*, Átlátszó, 6 December 2024, <https://atlatszo.hu/orszagszerte/2024/12/06/felolvasott-a-szuverenitasvedelmi-hivatal-atlatszorol-irt-jelentesebol-a-polgarmester/>.

Safety and protection of journalists and other media actors

Physical attacks on journalists are rare, and instances of unjustified abuse by the police or other authorities are infrequent, but there were two notable cases in 2024 which fall into the latter category. However, the impact of legal obstacles and financial constraints is much more significant.

There are instances of journalists being intimidated, such as when investigations by the Sovereignty Protection Office result in stigmatisation⁹⁷, or when journalists have to defend themselves against state institutions that initiate criminal or civil proceedings based on articles describing the institution's actions.

There are multiple instances where the work of the press is obstructed in nonviolent ways. For example, the police and the Counter-Terrorism Centre repeatedly asked Telex whether their camera in use had been a stolen camera and attempted to inspect it.⁹⁸ It is a recurring issue that the press is denied access to certain public events, such as speeches by the Prime Minister, other Fidesz-linked gatherings,⁹⁹ or public-interest events like evictions. This prevents journalists from performing their duties and hinders the facilitation of public debate.¹⁰⁰

The issue of spyware remains unresolved. A recent ruling by the European Court of Human Rights in the case *Csikós v. Hungary* found that there are no adequate protections in Hungary to prevent the use of spyware against

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- 97 Erdélyi Katalin, Katus Eszter: *The mayor read aloud from the report written by the Sovereignty Protection Office about Átlátszó (Felolvasott a Szuverenitásvédelmi Hivatal Átlátszóról írt jelentéséből a polgármester)*, Átlátszó, 6 December 2024, <https://atlatszo.hu/orszagszerte/2024/12/06/felolvasott-a-szuverenitasvedelmi-hivatal-atlatszorol-irt-jelentesebol-a-polgarmester/>
- 98 HVG.hu: *“We’re checking the camera’s serial number to see if it’s wanted” – Telex has filed a complaint after police obstructed them from questioning Szijjártó („Kamerának ellenőrizzük a számát, nem-e körözzik” – feljelentést tett a Telex, amiért rendőrök akadályozták, hogy Szijjártót kérdezzék)*, hvg.hu, 25 June 2024, https://hvg.hu/itthon/20240625_tel-ex-szijjarto-tek-rendorseg-feljelentes
- 99 Mészáros Juli: *Police were called on Telex reporters at Szijjártó’s public forum in Kalocsa (Rendőröket hívtak a Telex munkatársaira Szijjártó kalocsai lakossági fórumán)*, 444.hu, 24 May 2024, <https://444.hu/2024/05/24/rendoroket-hivtak-a-telex-munkatarsaira-szijjarto-kalocsai-lakossagi-foruman>
- 100 Fazekas Lázár Benjámin: *The police are obstructing us from reporting on evictions – Who benefits from this? (A rendőrség akadályozza, hogy tudósítsunk a kilakoltatásokról – Kinek jó ez?)*, Mércse, 30 July 2024, <https://merce.hu/2024/07/30/sajtoszabadsag-ha-haborus-zonaban-csak-sebesulteket-az-olimpian-pedig-csak-dobogot-lathatunk/>, Bankó Gábor: *An entire apartment building was cordoned off, and the press was excluded to ensure the undisturbed eviction of a retired man in Csepel (Lezártak egy egész lépcsőházat és kizárták a sajtót, hogy zavartalanul rakhassanak utcára egy nyugdíjas férfit Csepelen)*, 444.hu, 19 July 2024, <https://444.hu/kepek/2024/07/19/lezartak-egy-egesz-lepcsohaz-at-es-kizartak-a-sajtot-hogy-zavartalanul-rakhassanak-utcara-egy-nyugdijas-ferfit-csepelen>

journalists.¹⁰¹ Despite this, Hungarian authorities have not considered these practices illegal. In cases where the Hungarian Civil Liberties Union (HCLU) represented journalists targeted by the Pegasus spyware, the National Authority for Data Protection and Freedom of Information (NAIH) stated that it could not confirm whether wiretapping had occurred, but if it did, it was deemed lawful. HCLU challenged this decision, and while the first-instance court ruled that the NAIH failed in its constitutional duty by not recognizing the targeted individuals as journalists,¹⁰² the Supreme Court upheld the NAIH's ruling as lawful.

The regulation of access to public information presents additional obstacles to journalistic freedom. The HCLU has encountered several instances where lawmakers altered the law specifically after a journalist began inquiring about a particular topic.¹⁰³ Inquiries from the press generally go unanswered. Regarding

press informants, it is important to note that many individuals choose to remain anonymous out of fear of retaliation. This year, in one of the Hungarian Civil Liberties Union (HCLU) cases, a municipal official was dismissed for speaking to the press about the local government's failure to fulfill its duties.

The emergence of GDPR-based SLAPPs poses a significant threat to independent journalism, obstructing their work and imposing substantial administrative, financial, and legal burdens on both publishers and journalists. In Hungary, wealthy individuals with political connections exploit the provisions of the European Union's General Data Protection Regulation (GDPR) to prevent the press from reporting on their significant business enrichment, which are often backed by public funds.¹⁰⁴ Despite these articles addressing matters of public interest, the GDPR is exploited as a means to shield these individuals from media scrutiny.

101 Márton Balázs: *Hungarian authorities violated human rights by wiretapping a journalist and are now required to pay a penalty (A magyar hatóságok emberi jogokat sértettek egy újságíró lehallgatásánál, büntetést kell fizetniük)*, Telex, 29 November 2024, <https://telex.hu/kulfold/2024/11/29/europa-tanacs-ejeb-jogallamisag-lehallgatas-ujsgiro-buntetes>

102 Hungarian Civil Liberties Union: *A court has ruled that the data protection authority failed to protect citizens in the Pegasus case (Bíróság mondta ki, hogy az adatvédelmi hatóság nem védte meg az állampolgárokat a Pegasus-ügyben)*, 21 March 2024. <https://tasz.hu/cikkek/birosag-mondta-ki-hogy-az-adatvedelmi-hatosag-nem-vedte-meg-az-allampolgarokat-a-pegasus-ugyben/>

103 K-Monitor: *Government Curtails Transparency by Overriding Court Decisions (A bíróságok döntéseit felülírva szűkíti az átláthatóságot a kormány)*, K-blog, 18 January 2024, https://k.blog.hu/2024/01/18/a_birosagok_donteseit_felulirva_szukiti_az_atlathatosagot_a_kormany

104 Hungarian Civil Liberties Union: *'SLAPPed by GDPR' - How the General Data Protection Regulation can restrict press freedom (Adatvédelmi alapú sajtó elleni perek Magyarországon)*, 11 March 2024, <https://tasz.hu/cikkek/adatvedelmi-alapu-sajto-elleni-perek-magyarorszagon-elkeszult-a-tasz-jelentese/>, Zsiborás Gergő: *Hell Seeks Recall of Newly Released Forbes Magazine Issue (A Hell újra visszahívna az éppen megjelent Forbes magazint)*, Forbes, 5 Sept 2024, <https://forbes.hu/uzlet/a-hell-ujra-visszahivna-az-eppen-megjelent-forbes-magazint/>

Since Hungary did not adopt a journalistic exemption when implementing the GDPR, the balance between the right to privacy and freedom of the press is left to the discretion of the authorities. This has led to controversial and inconsistent jurisprudence, with opposing views that largely overlook the press's constitutional duty. However, in 2024, amidst several decisions following the previous narrative, some progressive rulings were issued by both the National Authority for Data Protection and Freedom of Information (NAIH) and the Supreme Court, offering some hope for a more balanced approach.¹⁰⁵

To conclude, Hungary is still left with no dedicated law enforcement capacity to prevent

or investigate attacks on journalists. Furthermore, neither criminal law nor law enforcement practices recognise journalists as a group requiring enhanced protection, often legal remedies remain ineffective.

No progress has been made in Hungary regarding the implementation of the Anti-SLAPP Directive. The rise in SLAPP lawsuits highlights the urgent need to address this issue. However, given the slow and very formal adoption of the GDPR within the Hungarian legal framework, it is unlikely that the government will adopt a progressive, more protective Anti-SLAPP Directive.

105 Hungarian Civil Liberties Union: *Success in the Bige László Case: Curia Rules Billionaire Cannot Remain Anonymous (TASZ siker: a Bige László ügyben a Kúria is megerősítette, hogy nem rejtozkodhet a milliárdos)*, 6 November 2024, <https://tasz.hu/cikkek/tasz-siker-bige-laszlo-ugyeben-a-kuria-is-megerositette-hogy-nem-rejtozkodhet-a-milliardos/>, HVG, *Curia's Decision: Bige László Cannot Remain Anonymous (Döntött a Kúria: nem rejtozkodhet Bige László)*, hvg.hu, 6 November 2024, https://hvg.hu/kkv/20241106_Dontott-a-Kuria-nem-rejtozkodhet-Bige-Laszlo

CHECKS AND BALANCES –

Key recommendations

- *The legislator should ensure the transparency and democratic nature of adopting laws by inducing meaningful debate, providing meaningful reasoning and involving key stakeholders in the process.*
- *The legislator should refrain from changing electoral law in a partisan manner, especially shortly before the elections.*
- *The government should refrain from regulating with state of emergency decrees issues that are not linked directly to the war in Ukraine, which is the constitutional reason for declaring a state of emergency.*

Process for preparing and enacting laws

Generally it can be said that there was no observable progress in the procedural quality of legislation. According to the statistics provided by Wolters Kluwer, there is a decreasing trend in the number of emergency decrees (202 in 2023, whereas 96 in 2024), however, governing by emergency decrees still remains a constitutional concern. The end of the year was characterised by an influx of new laws (1040 pieces of law were amended in the last days of the year). This development works against transparency.¹⁰⁶

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

Politically sensitive subjects are regulated in a fashion that lacks the involvement of key stakeholders, especially political parties from the opposition. A recent example is the proposal for redrawing the electoral districts of the parliamentary elections. The new boundaries are poorly reasoned. For example, it is not clear why the boundaries in Somogy and Tolna County remained unaltered, although there are significant differences in terms of the number of voters there as well. An analysis of electoral

106 Ferenc Mátyás: *Mérsékelt év, de erős zárás*, 6 January 2025, *Jogászvilág*, <https://jogaszvilag.hu/szakma/mersekelt-ev-de-eros-evzaras/>

geographer Tamás Kovalcsik suggests that an explanation is that in that county Fidesz-KDNP has been strong.¹⁰⁷ Also, the draft law was introduced by the Justice Committee of the Parliament, therefore the statutory obligation of public consultation was not applicable. Indeed, the draft was not consulted with any stakeholders and it is opposed by the parliamentary opposition, therefore it is expected that it will be enacted without the support of the opposition parties. Another example is the modification of the electoral system of the General Assembly of Budapest, entering into force on 5 January 2024. The proposal was introduced as a private member's bill by MPs of the far-right party, Mi Hazánk, therefore it was not published for public consultation, and it was adopted without the votes of the opposition parties.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

A lot of topics are still regulated through emergency decrees, even if the subject does not relate to the war in Ukraine, that is, the reason for declaring the state of emergency. The government regularly uses its emergency power to intervene with individual procedures or political debates by issuing a government decree.

In October the draft bill extending the state of danger was introduced in Parliament, although its reasoning was only one sentence. The same sentence was used half a year earlier.¹⁰⁸ The state of danger has therefore been prolonged without any genuine justification. Also, the government regularly issues decrees on matters unrelated to the war. Watchdog NGOs, among them HCLU, made a list of all the decrees that are not linked to the war: so far there are 24 decrees, in which six are from 2024.¹⁰⁹ An example is an emergency decree related to transaction fees¹¹⁰. An emergency decree

107 Tamás Kovalcsik: *The shuffle in constituencies favours Fidesz, not Tisza - changes presented on the map*, 19 November 2024, Telex, <https://telex.hu/valasztasi-foldrajz/2024/11/19/uj-orszaggyulesi-valasztokerulet-terkep>

108 Amnesty International Hungary - Hungarian Helsinki Committee - Hungarian Civil Liberties Union: *Az Amnesty International Magyarország, a Magyar Helsinki Bizottság és a Társaság a Szabadságjogokért véleménye a szomszédos országban fennálló fegyveres konfliktus, illetve humanitárius katasztrófa magyarországi következményeinek elhárításáról és kezeléséről szóló 2022. évi XLII. törvény módosításáról szóló törvény tervezetéről*, 10 October 2024, https://helsinki.hu/wp-content/uploads/2024/10/AI-MHB-TASZ_velemeney-veszelyhelyzet_20241010.pdf

109 Ibid at p.7-8.

110 Government Decree No 187/2024 (VII. 8.) on emergency regulation of certain consumer protection issues in the financial sector, <https://net.jogtar.hu/jogszabaly?docid=A2400187.KOR&dbnum=1>

was adopted that prohibited the banks from burdening their clients. It can be argued that this policy change does not link in any direct way to the war in the neighbouring country. Enacting regulations in this way bypasses the safeguards of parliamentary law-making, most importantly its public character.

Also, the above mentioned redraw of electoral boundaries took place on an extraordinary seating of the parliament on the week starting on 16 December and the bill was passed by the parliament on 17 December¹¹¹, again, without the votes of the opposition parties.

Regime for constitutional review of laws

The regime for constitutional review of laws did not change in 2024; both the regulatory background and the attitude of the court remained the same. Most notably, the court, even though it examined the case on the merits, did not annul the Act LXXXVIII of 2023 on the Protection of National Sovereignty mentioned several times in this report.

Other

Finally, an unconstitutional governmental practice was observable when the government blackmailed the judiciary.¹¹² The salary of judges has been criticised for a long time, and by autumn 2024 it became evident that the government used the subject to force judicial self-governing organs to support its judicial reform plans.¹¹³

Independent authorities

There is no observable progress in the work of independent authorities. Although these authorities have many statutory guarantees (e.g. long terms and immunity of their leaders), they are filled with persons not willing to step up effectively since the governing party has the two-thirds majority in the Parliament. The Ombudsman still does not use his powers effectively: for example, he did not refer the ‘Sovereignty Act’¹¹⁴ to the Constitutional Court, nor did he challenge the constitutionality of any ultra vires pieces of emergency decrees. The Ombudsman equally refrained from using public communication to promote human rights. Also, since the Equal Treatment Authority (Egyenlő Bánásmód Hatóság) was integrated into the Ombudsman’s Office

111 Balázs Cseke: *Fidesz is preparing for 2026: the electoral map has been redrawn and the rules have been modified*, 17 December 2024, Telex, <https://telex.hu/belfold/2024/12/17/parlament-valasztasi-torveny-modositasa-valasztokeruleti-beosztas>

112 See “Quality of justice part” above.

113 Viktória Serdült: *“This is vile blackmail” – government demands judicial reforms in exchange for a salary rise for judges*, 18 November 2024, HVG.hu, https://hvg.hu/itthon/20241118_birosagi-reform-fizetesemeles

114 Hungarian Parliamentary Act LXXXVIII of 2023 on the protection of national sovereignty, <https://net.jogtar.hu/jogszabaly?docid=a2300088.tv>

in 2021, the intensity of anti-discrimination protection dropped significantly.¹¹⁵ This trend remained in 2024 as well.

The Integrity Authority was viewed by many as an exception to the general attitude of state institutions. Gyula Balásy is an influential businessman with close ties to the government, and his company did not win a public procurement announced by the authority because some professional concerns arose on behalf of the authority. When the authority's decision was overturned by the Arbitration Committee, the president of the authority gave unusually harsh criticism of Balásy's company, calling it a "company fattened up with taxpayer's money."¹¹⁶ Such criticism, even indirect, of the political regime is very rare from leaders of state authorities. Indeed, as referred to in other parts of this report, the Authority at least tries to investigate corruption cases.

Accessibility and judicial review of administrative decisions

Since 1 March 2020 there is no appeal against administrative decisions within the public administration system. Instead, individuals affected by the decisions need to request a judicial review. The trend since then is that there are less and less administrative court cases. Based on HCLU's experience the number of

administrative cases before the courts dropped dramatically.

Electoral framework

One of the most important issues is the partisan lawmaking related to elections. It can be generally said that electoral law is adopted without meaningful consultation and the involvement of key stakeholders, especially the parliamentary and extra-parliamentary opposition. With a two-thirds majority, the governing parties can amend any electoral laws. One example is changing the date of the municipal elections in 2024. Elections were to be held in the autumn, but the governing parties amended the Fundamental Law, i.e. constitution, to make the municipal elections coincide with the EP elections. The constitutional amendment was adopted in the summer, with very low publicity and it was adopted without the supporting votes of opposition MPs. Although the government invoked budgetary reasons, the modification most probably served partisan purposes. That is, under the original schedule, the EP elections held in a PR system would have preceded the municipal elections that, in turn, has a more majoritarian character. This way the splintered opposition would not have been forced to cooperate and would have had clear feedback on the EP elections, which would have helped to sort out parties with

115 HCLU: Az egyenlő bánásmód védelmére hivatott hatóság működésének kritikája, 24 March, 2024, <https://tasz.hu/cikkek/az-egyenlo-banasmod-vedelmere-hivatott-hatosag-mukodesenek-kritikaja/>

116 Balázs Kaufmann: *Az Integritás Hatóság elnöke szerint Balásy cége adófizetők pénzén, mesterségesen lett felhízlalva*, 1 October 2024, 444.hu, <https://444.hu/2024/10/01/az-integritas-hatosag-elnoke-szerint-balasy-cege-adofizetok-penzen-mestersegesen-lett-felhizlalva>

virtually no voters.¹¹⁷ Another example is the change of the electoral system of the General Assembly of Budapest - this modification is described above as the “process for preparing and enacting laws”. Political analysts argued that the motive behind the amendment could have been to splinter the General Assembly (by enacting a PR system) and make it less likely that there would be a majority behind the mayor, Gergely Karácsony.¹¹⁸ These changes preceded the landslide changes starting in February, and therefore their political background changed dramatically. This, however, does not change the manipulative nature of these changes.

A related issue was that although the municipal elections took place on 9 June, the mandate of the acting municipal representatives was terminated on 1 October. This meant that voted-out mayors and representatives were in power for almost four months even though they knew that they would no longer hold the position. This led to the (attempt of) abuse of power on several occasions. Another problem with the change of date was that many voters who turned 18 after 9 June were not allowed

to vote, even though they could have done so if the elections had been held in the autumn.

A persisting problem is the overlap of the government’s and governing parties’ political campaign and communication. An example was a case where the government sent out emails to addresses collected to disseminate information on COVID-19. The email addressed the subject of the war in Ukraine and clearly amplified the government’s narrative. The Supreme Court rejected the complaint, prepared by the HCLU and the Hungarian Helsinki Committee on the grounds that an ordinary citizen does not have standing in the case. In addition, the Supreme Court did not initiate a preliminary ruling procedure before the CJEU - despite the petitioner’s request to do so - in the case, arguing that this would make the three-day decision period in electoral cases impossible. This interpretation of the law by the Supreme Court effectively creates a situation where the primacy of EU law in electoral matters cannot be guaranteed.¹¹⁹

Moreover, as a result of the ‘sovereignty protection’ law package, doubts arose in many civil society organisations as to whether they could

117 Zoltán Pozsár-Szentmiklósy, János Mécs, Bernadette Somody: Hungary, in: Luís Roberto Barroso, Richard Albert (eds.) *The 2022 International Review of Constitutional Reform*, Program on Constitutional Studies at the University of Texas at Austin, 2023, 165-166, https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4623844&download=yes

118 Political Capital: *Aránytalan arányosítás*, 22 November, 2023, https://politicalcapital.hu/hireink.php?article_read=1&article_id=3293&fbclid=IwAR0zoidEXmh50eUuS57xgXNvyW3bVx3b8q4do6hefhLjXNAUYvmgCgG0fCM

119 Zsuzsanna Kunos: Amivel a kormány se számolt, mikor újra a vakcinaregisztrációs trükkel kampányolt, 26 September 2024, *ataszjelenti*, <https://ataszjelenti.444.hu/2024/09/26/amivel-a-kormany-se-szamolt-mikor-ujra-a-vakcinaregisztracios-trukkel-kampanyolt>; and decision Kvk.VII.39.089/2024/4. of the Curia.

continue their basic activities, especially their public activities which fundamentally belong to the freedom of expression and association, during the election campaign. The basis of the doubt is the element of the ‘sovereignty protection’ legal package, according to which a legal entity cannot provide support to nominating organisations. This had a chilling effect on many organisations that take a position on public issues, formulate opinions, develop and publish policy proposals, etc., which may be more favorable for some political actors and less favorable for others.

The 2024 electoral (EP and municipal) campaign¹²⁰ was distorted because of the influence of third-party campaigning. As an analysis pointed out “[w]hile the pro-Fidesz camp spent €5.4 million on Meta and Google ads from the beginning of the year until 15 June, all 15 opposition parties and their associated media spent a quarter of that, €1.4 million”.¹²¹

Also, it is to be mentioned that the ECtHR case *Bakirdzi and EC v Hungary*¹²² still remains unimplemented by the legislator, thus the scheme allowing national minorities preferential mandates still remains contrary to the ECtHR.

Limitations on the right to vote

During the EP elections, Hungarian residents staying abroad on the election day could vote at Hungarian foreign representations abroad, while voters not residing in Hungary or in another EU country could vote by mail. Hungarian residents staying abroad on election day are therefore still not guaranteed a uniform way of exercising their right to vote which constitutes unlawful discrimination. Hungarian residents staying abroad on election day are not allowed to vote in municipal elections.

Hungary continues to violate its international legal commitments by disenfranchising persons under guardianship. The UN CRPD Committee has found that any restriction of the right to vote based on disability is incompatible with the UN Convention on the Rights of Persons with Disabilities Despite Hungary’s international commitments, persons with disabilities may be excluded from the right to vote by way of judicial decision.

120 Since the two elections were held on the same day, the 50-day campaign period preceding elections completely overlapped.

121 Political Capital, Mérték, Lakmusz, European Media and Information Fund: Fidesz & Co. flooded social media with anti-Western hostile disinformation in Hungary’s election campaign, reaching EU spending records, June 2024, https://politicalcapital.hu/pc-admin/source/documents/Uncovering_analyzing_debunking_and_researching_sponsored_disinfo_project_summary_2024.pdf p.5.

122 ECtHR [GC], Judgment of 16 December 2024, *Bakirdzi and E. C. v. Hungary*, no. 49636/14 and 65678/14, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Bakirdzi%22%2C%22documentcollectionid%22:%5B%22GRAND-CHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-220672%22%5D%7D>

Irregularities, fraud and related safeguards, including independence and effectiveness of electoral bodies

Electoral and polling station committees have members elected in a non-transparent manner,

with unclear selection criteria determined by a political body¹²³ (in the case of the National Election Committee, this political body is the Parliament with a two-third majority of government representatives).

CIVIC SPACE

Key recommendations

- *The laws on Stop Soros, the special immigration tax, the acts on the transparency of NGOs that influence public life and the act on the protection of national sovereignty, which are designed solely to attack independent and critical voices, should be repealed.*
- *The government must stop the practice of not debating with dissenters and questioning the legitimacy of dissent, such as on the grounds that it is against the interests of the nation.*

Freedom of association

Equal treatment among CSOs, including by reference to CSOs' focus of activities, type of activities, and geographical location of activities

On 12 September 2024, the Office of Sovereignty Protection launched an investigation against the Göd-ÉRT Association for the Protection of the Environment and Towns to

check whether the Association used foreign funds that violated Hungary's sovereignty during the municipal election campaign. The association, which has achieved significant results in exposing the illegal and environmentally damaging operation of the Samsung battery factory in Göd, participated in the 2024 municipal election campaign, and two of its candidates were elected to the Göd municipality. The Association has indicated to the

123 20K - Hungarian Helsinki Committee - Mertek Media Monitor - Political Capital - Hungarian Civil Liberties Union - Unhack Democracy - *Civil Election Report, European Parliamentary and Municipal Elections, Hungary, 2024*, <https://www.20k.hu/letoltesek/civil-valasztasi-jelentes.pdf>

Office that it has not used foreign funding to influence the outcome of the elections.¹²⁴

On 28 September, Amnesty International Hungary and the Association of Alternative Communities would have held the Common City - Debrecen Civil Festival. Although an agreement was reached in April with the Water Tower, owned by the University of Debrecen, which provided the venue, a week before the event the organisations were informed that the space had been promised to football fans on the same day, and that the organisations would have to reschedule the festival, which had been going on for months and had involved hundreds of people. They then signed a contract with the *Roncsbár* (popular club and event venue in Debrecen), but two days before the festival it was discovered that their building and courtyard had been turned into a building site (although they still held a concert that evening). The case illustrates the impact of ten years of anti-civil society government policy. The organisers wrote an open letter asking the Debrecen municipality to ensure that all NGOs can operate freely and without fear.¹²⁵

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations

The amendment to the Act on Electoral Procedure extended the provisions on party funding to associations and their candidates. The § 124 (1b) of the Act generally prohibits any candidate from using foreign funds or assets derived therefrom for the purpose of influencing or attempting to influence the will of the electorate in relation to the election in question. When registering, the association and its candidate must also declare that it will not use foreign funding and funding from domestic legal entities, organisations without legal personality, anonymous donations or assets derived from these in relation to the election in question for the purpose of influencing or attempting to influence the will of the electorate [§ 129 (1) and § 307/D (3)].¹²⁶

Good administration and redress mechanisms in relation to decisions by public authorities affecting CSOs

On 27 August 2024, the Government Office of the Capital City of Budapest removed the

124 Zsuzsa Bodnár, Tamás Bodoky, *NGO that revealed Samsung's pollution targeted by Sovereignty Protection Office*, *Atlatszo*, 14 September 2024, <https://english.atlatszo.hu/2024/09/14/ngo-that-revealed-samsungs-pollution-targeted-by-sovereignty-protection-office/>

125 Amnesty International Hungary and other NOs, *Communication, Why is the Debrecen municipality afraid of people with disabilities? (Miért fél Debrecen vezetése a fogyatékossggal élő emberektől?)*, 27 September 2024, <https://www.amnesty.hu/miert-fel-debrecen-vezetese-a-menhelyi-kutyaktol/>

126 National Assembly of Hungary, Act no. XXXVI of 2013 on the electoral procedure (A választási eljárásról szóló 2013. évi XXXVI. törvény), <https://net.jogtar.hu/jogszabaly?docid=a1300036.tv>

Wesley Kincsei Primary School and High School, operated by the Hungarian Evangelical Brotherhood as a registered church since 2007, from the register of public educational institutions, five days before the start of the school year on 2 September 2024. On 30 August the Government Office of Csongrád-Csanád County also closed the HEB-school in Szeged. The two schools were attended by hundreds of pupils, many of whom had special educational needs. The reason given for the closure was that, due to the financial and taxation difficulties of the schools and their maintainers, the legal conditions for the operation of the institutions were not met, jeopardising the continuous and safe education of pupils. However, the reasons cited in the decisions are based on the unlawful deprivation of the church status of the Hungarian Evangelical Brotherhood in 2012, the related litigation and the financial compensation for not having been granted the church status again.¹²⁷ The decisions were taken in the context of a procedure which had been initiated following an application for the amendment of the operating licence, in which the offices had no authority to decide on the

closure. Furthermore, the decisions were not formally communicated to the maintainer or to the parents of the pupils; instead, the Government Office staff personally delivered an information letter to the parents concerned. The information letter stated that the removal of the institution from the register would be accompanied by the termination of the legal status of the pupils in the institution.¹²⁸ The decisions were challenged by the institution and the parents before the administrative courts (which granted the application for immediate legal protection).¹²⁹

Criminalisation of activities, including humanitarian or human rights work

At the end of 2023, the Criminal Code was amended to include a new provision on “illegal influence on the electorate” (Article 350/A), which stipulates that a member, responsible person or senior official of a nominating organisation, as well as a candidate who uses illegal foreign funding or, in order to bypass this prohibition, a financial advantage derived from an agreement disguising the origin of

127 ECtHR, Judgment of 25 April 2017, Magyarországi Evangéliumi Testvérközösség v. Hungary, no. 54977/12 (2017), <https://hudoc.echr.coe.int/eng?i=001-173104>

128 Ádám Kertész, *The Government Office closed the nurseries and schools of Gábor Iványi in the capital* (A kormányhivatal bezáratta Iványi Gáborék fővárosi óvodáit és iskoláit), 28 August 2024, <https://www.szabadeuropa.hu/a/a-kormanyhivatal-bezaratta-ivanyi-gaborek-fovarosi-ovodait-es-iskolait/33096556.html>

129 Ádám Kertész, *The Government Office closed the schools of Gábor Iványi in an illegal manner* (Jogsértő módon záratta be a kormányhivatal Iványi Gáborék iskoláit), 18 September 2024, <https://www.szabadeuropa.hu/a/jogserto-modon-zaratta-be-a-kormanyhivatal-ivanyi-gaborek-iskolait/33124854.html>; Ádám Kertész, *Another court rules that children's rights were not taken into account when Gábor Iványi's schools were closed* (Újabb bíróság mondta ki, hogy nem vették figyelembe a gyerekek jogait Iványi Gábor iskoláinak bezáratásakor), 2 October 2024, <https://www.szabadeuropa.hu/a/ujabb-birosag-mondta-ki-nem-vettek-figyelembe-a-gyerekek-jogait-ivanyi-gabor-iskolainak-bezaratasakor/33143622.html>

the illegal foreign funding, is punishable by up to three years of imprisonment. According to Article 52(5) of the Criminal Code, the perpetrator of the offense of illegal influence on the electorate shall be prohibited from holding positions of responsibility in any civil organisation and from holding a leading position in a political party. This legislation has a deterrent effect on NGOs that carry out advocacy and awareness-raising activities in relation to the right to vote and the electoral process.¹³⁰

Rules on transparency

Act XLIX 2021 on the transparency of NGOs carrying out activities suitable to influence public life is still in force,¹³¹ which gives the State Audit Office of Hungary extensive audit rights over such foundations and associations, whose balance sheet total for the year under review reaches HUF 20 million. This law is unconstitutional because it interferes with the autonomy of associations established under the right of association, the private sphere of citizens who are involved in public affairs, and it has a detrimental effect on freedom of

expression and thus on the democratic public sphere as a whole.¹³²

Rules on political campaigning

Legal uncertainty arises from the fact that it is not clear under the law on the protection of sovereignty what is meant by unlawful influence on the will of the electorate in the campaign context.

Freedom of peaceful assembly

Bans on protests

Bans on pro-Palestinian demonstrations

Since October 2023, several attempts have been made to hold pro-Palestinian demonstrations in public venues and the police handled these cases differently depending on the political position of the protesters. The fifteen protests to this day that were planned to express solidarity with Palestinian victims were banned by the police despite the diversity of the organisers, the lack of their explicit support

130 National Assembly of Hungary, Act no. C of 2012 on the Criminal Code (A Büntető Törvénykönyvről szóló 2012. évi C. törvény), <https://net.jogtar.hu/jogszabaly?docid=a1200100.tv>

131 National Assembly of Hungary, Act no. XLIX of 2021 on the transparency of NGOs carrying out activities suitable to influence public life (A közélet befolyásolására alkalmas tevékenységet végző civil szervezetek átláthatóságáról szóló 2021. évi XLIX. törvény), <https://net.jogtar.hu/jogszabaly?docid=a2100049.tv>

132 Hungarian Civil Liberties Union, *Position on the law on the transparency of civil society organisations engaged in activities capable of influencing public life and on the amendment of certain related laws* (Álláspont a közélet befolyásolására alkalmas tevékenységet végző civil szervezetek átláthatóságáról és az ezzel összefüggő egyes törvények módosításáról szóló törvényről), 21 February 2024, <https://tasz.hu/cikkek/allaspoint-a-kozelet-befolyasolasara-alkalmas-tevekenyseget-vegzo-civil-szervezetek-atlathatosagarol-es-az-ezzel-osszefuggo-egy-es-torvenyek-modositasarol-szolo-torvenyrol/>

for Hamas, and their strong opposition to such inhumane acts and plans to explicitly demonstrate for peace, in solidarity with the civilian victims of the Gaza war. The reasoning behind the successive bans was the same in each case. All the bans were based mainly on the single concern that violent individuals might join the rally, despite the peaceful purpose and security measures offered by the organisers. The series of bans started right after Prime Minister Viktor Orbán publicly associated solidarity with the Palestinian people with support for terrorism, and declared a blanket ban for all future “sympathy demonstrations”.¹³³ In November 2023, the Supreme Court upheld one of the police decisions to ban solidarity demonstrations in support of the victims of the Gaza conflict. The Supreme Court found that based on the available evidence there was the potential breach of public order and public security was a realistic threat.¹³⁴ In May 2024 the Constitutional Court of Hungary rejected the complaint lodged against the ruling of the Supreme Court, without considering the merits.¹³⁵ Court rulings have legitimised a police

practice that effectively bans protests during times of conflict, deeming them inherently too dangerous. This logic implies that protests are only allowed once conflicts have subsided and peace has been restored—a reasoning that fundamentally undermines the essence of the right to protest. The rulings essentially mean that only one opinion – one that is in line with the Prime Minister’s – can now be expressed during a demonstration, undermining democracy by limiting the opportunity for a real dialogue on public issues. An application to the European Court of Human Rights against the Hungarian ruling is pending.

Bans on far-right extremist events

As in previous years, the February neo-nazi rally called the “Outbreak Day” commemoration was banned by the police,¹³⁶ but extremist groups were still allowed to gather in Buda Castle. This is the starting point of the so-called “breakout day” tour, which is not formally a public meeting but a leisure event, and is therefore not reported to the police. The

133 Brigitta Barnóczki, *Hungarian PM took action to ban pro-Palestinian demonstration in Budapest as soon as he found out about it*, Telex, 13 October 2023, <https://telex.hu/english/2023/10/13/hungarian-pm-took-action-to-ban-pro-palestinian-demonstration-in-budapest-as-soon-as-he-found-out-about-it>

134 Hungarian Civil Liberties Union, *According to the Supreme Court of Hungary, it is not illegal to prohibit peaceful demonstrations therefore, HCLU appeals to the Constitutional Court*, 24 November 2023, <https://hclu.hu/en/articles/according-to-the-supreme-court-of-hungary-it-is-not-illegal-to-prohibit-peaceful-demonstrations-therefore-hclu-appeals-to-the-constitutional-court>

135 Constitutional Court (Hungary), Order of 31 May 2024, No. 3191/2024., <https://alkotmanybirosag.hu/ugyadatlap/?id=3B65DDE102A4E897C1258AAF006187B3>

136 The Budapest Police Headquarters (Hungary), Decision of 17 December 2023, No. 01000-160/1715-3/2023. rendb., https://www.police.hu/sites/default/files/2024.02.10._Budapest%20I.%20ker%C3%BClet_tilt%C3%B3%20hat%C3%A1rozat.pdf

Outbreak Day commemoration is therefore carried out in a different legal framework, but in the same way, and the ban does not prevent the event from taking place, nor does it make nazis and nazi ideas disappear. As the police ban the neo-nazi rally, the intention and meaning of counter-demonstrations are also called into question. The ban means, in legal terms, that there is no public gathering, and while it is still possible to hold a counter-demonstration, only a handful of committed, well-informed anti-fascists are able to voice their dissent, instead of a crowd of democrats, beyond sight and sound of the neo-nazi's leisure event.¹³⁷

Limitation of the freedom of expression regarding China

The Chinese President visited Hungary in early May, but protests against him were blocked. Márton Tompos, MP, was prevented by Chinese volunteers from placing an EU flag at the Elisabeth Bridge. The same happened to the President of the Tibet Society, whose Tibetan flag on Gellért Hill was also blocked by the Chinese people. And Tímea Szabó, MP, who also put a Tibetan flag in the window of her office, was warned by the President of the

Parliament that the action was “known to the secret service”.¹³⁸

Policing practices, including dispersion of protests, use of force

On 23 October 2024, at a state event in Millenáris Park, where the Prime Minister was giving a speech, a citizen was about to protest with a sign in his hand, but was immediately surrounded by three plainclothes police officers, who wrestled the sign out of his hand, led him out of Millenáris Park and searched him. During the search they found a snicker in his pocket, which he had used to prepare the sign. The person was arrested by police officers wearing uniforms and was brought to the police station, where he was held for 6 hours and a misdemeanour case was opened against him. Based on footage of the incident, it is clear that the action was based solely on the holding up of a sign critical of the Prime Minister.¹³⁹

Criminalisation of protesters

On 12 August 2022, a demonstrator took part in an environmental demonstration in Budapest, wearing a gas mask as a symbol to protest

137 Hegyi Szabolcs, *Neo-Nazi demonstrations should not be swept under the carpet* (Nem lenne szabad a neonáci demonstrációkat a szőnyeg alá söpörni), A TASZ jelenti, 10 February 2024, <https://ataszjelenti.444.hu/2024/02/10/nem-lenne-szabad-a-neonaci-demonstraciokat-a-szonyeg-ala-soporni>

138 Viktor Mucsi, *Chinese activists hunted Tibetan flag bearers in Budapest* (Tibeti zászlókitűzőkre vadásztak Budapesten a kínai aktivisták), Index, 9 May 2024, <https://index.hu/belfold/2024/05/09/szabo-timea-tompos-marton-parbeszed-momentum-tiltakozas-kinai-elnok-hszi-csin-ping/>

139 Dóra Patakfalvi, *Video of a demonstrator holding a sign being led out of Viktor Orbán's 23 October rally* (Videón, ahogy Orbán Viktor október 23-i rendezvényéről kivezetnek egy táblát tartó tüntetőt), Telex, 20 November 2024, <https://telex.hu/belfold/2024/11/20/csogor-zoltan-orban-beszed-oktober-23-millenaris-tek-letartoztat-feljelentes>

against deforestation. Although it is forbidden to cover the face during a demonstration, the demonstrator removed the mask immediately when asked to do so by the police officers who were confronting him. Nevertheless, criminal proceedings were brought against him for violating the restrictions on the peaceful nature of the assembly. The case is at the court of second instance after the first-instance court found the demonstrator guilty.¹⁴⁰

Freedom of expression and of information

Rules on hate speech and their enforcement

In 2024, a bill on combating aggression on the Internet was introduced in Parliament. The proposal aims to criminalise comments published on social media platforms as of 1 January 2025: it would punish anyone who uses or publishes in public with imprisonment of up to one year, via an electronic communications network, an expression, representation or recording that expresses an intention or wish to commit a criminal offence with intent to cause death by violence or with particular cruelty.¹⁴¹

Attacks and harassment

Online civic space

There are no such laws, regulations or practices specifically targeting NGOs, but in a broader context there are a number of worrying developments and shortcomings, which are outlined below.

Online fundraising

Online fundraising is not directly prohibited, but the broad wording of the Sovereignty Protection Act may have a deterrent effect in cases where online fundraising is performed through the use of server(s) located in a foreign country.

Digital surveillance

The judgments of the European Court of Human Rights in the cases of *Szabó and Vissy v. Hungary*¹⁴² and of *Hüttl v. Hungary*¹⁴³ have not been implemented yet, therefore there is still no authorisation process in terms of secret surveillance for national security purposes (the Minister of Justice grants the surveillance instead of the court) and there is still no

140 Zsuzsanna Kunos, *Protested in a gas mask, treated like a criminal* (Gázmaszokban tüntetett, bűnözőként kezelik), A TASZ jelenti, 9 July 2024, <https://ataszjelenti.444.hu/2024/07/09/gazmaszokban-tuntetett-bunozokent-kezelik>

141 National Assembly of Hungary, Act no. LXXVIII of 2024 on combating aggression on the Internet (Az internetes agresszió visszaszorításáról szóló 2024. évi LXXVIII törvény), <https://njt.hu/jogszabaly/2024-78-00-00.0#SZ2>

142 ECtHR, Judgment of 12 January 2016, Szabó and Vissy v. Hungary, no. 37138/14 (2016) <https://hudoc.echr.coe.int/eng?i=001-160020>

143 ECtHR, Judgment of 29 September 2022, Hüttl v. Hungary, no. 58032/16 (2022) <https://hudoc.echr.coe.int/eng?i=001-219501>

effective remedy against such surveillance (due to a lack of judicial control) in Hungary.¹⁴⁴

Digital attacks to IT infrastructure

The Telex.hu news portal was hit by an overload (DDoS) attack a few hours after the publication of historian Krisztián Ungváry's latest article about the maternal grandfather of Zsolt Bayer, founder of Fidesz and right-wing media personality, who became a communist informer. Almost immediately after reporting the attack against Telex.hu, a cyber attack was launched against Media1, too. The cyber attacks are currently under investigation by the National Bureau of Investigation (NNI) Cyber Defence Department following a complaint by Media1.¹⁴⁵

Public participation

Rules on access to and participation in consultations and decision-making processes

This year, opportunities for public participation in priority investments (matters of major importance for the national economy due to individual government decisions) have been further reduced. In Debrecen, the municipality only offered an online public hearing for the planned battery factory.¹⁴⁶ The government decided on the enlargement of the National University of Public Service without any prior consultation with the district government and residents concerned, and stuck to its decision despite their objections.¹⁴⁷

144 Communication from an NGO (Hungarian Civil Liberty Union) (19/04/2024) concerning the case of Szabo and Vissy v. Hungary (Application No. 37138/14) [https://hudoc.exec.coe.int/eng?i=DH-DD\(2024\)541E](https://hudoc.exec.coe.int/eng?i=DH-DD(2024)541E)

145 Dániel Szalay, *Telex was hacked after the new part of the series of articles about Zsolt Bayer's body molesting informer relative* (Hackertámadással lőtték le a Telexet a Bayer Zsolt testüregmotozó besúgó rokonáról szóló cikksorozat új része után), Media1, 29 January 2024, <https://media1.hu/2024/01/29/hackertamadas-telex-ddos/>

146 Zsolt Porcsin, *Municipality and government office should stop the practice of public hearings without "public"* (Szüntesse be a "köz" nélküli közmeghallgatás gyakorlatát az önkormányzat és a kormányhivatal), Debreciner, 4 December 2024, <https://debreciner.hu/cikk/szuntesse-be-a-koz-nelkuli-kozmeghallgatas-gyakorlatat-az-onkormanyzat-es-a-kormanyhivatal>

147 *Residents of Diószegi Sámuel Street get a moratorium on moving out, but the expansion of the NKE will start next year* (Megkapják a kiköltözési haladékot a Diószegi Sámuel utcai lakók, de jövőre kezdődik az NKE bővítése), Népszava, 25 April 2024, https://nepszava.hu/3233301_jozsefvaros-dioszegi-samuel-utcai-hazak-kisajatitas-torvenymodositas-nke-hatarido-parlament-bizottsag

The Minister of Construction is also unwilling to cancel the enlargement of the Pázmány Péter Catholic University, which will involve the demolition of the former Hungarian Radio building, despite professional and civil protests.¹⁴⁸

Impact on civic space of emergency and crisis situations

The state of danger, which has been in force since March 2020 – with a short interruption for a few months – is a special form of legal order. It allows the government to override the content of all legislation by decree. Regulations

are prepared in complete secrecy and citizens can only get to know their content when published. The time between publication and entry into force is sometimes only a few hours. The government regularly issues decrees on subjects which have no causal link with the reason for the emergency. Although the state of emergency was declared because of the armed conflict and humanitarian disaster on the territory of Ukraine and in order to avert their consequences in Hungary, the decrees often decide individual administrative matters or political disputes, raising serious questions about the rule of law.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *The legislator should refrain from adopting laws that restrict fundamental rights without a legitimate purpose. In their activities, executive bodies should fully implement human rights standards required by domestic legislation and international legal instruments.*
- *The legislator should refrain from enacting or amending any legislation, in particular legislation governing elections, without social consultation and in an opaque procedure.*
- *The Hungarian State should fully implement all judgments of the ECtHR and CJEU.*

148 Bálint Nagy, *Who consulted us? – the resistance was in vain, Lázár could have already decided that the new Pázmány Campus will be built in the Palace Quarter* (Velünk ki egyeztetett? – hiába az ellenállás, Lázárék már eldönthették, hogy a Palotanegyedben lesz az új Pázmány Campus), Telex, 18 April 2024, <https://telex.hu/belfold/2024/04/18/pazmany-campus-budapest-palotanegyed-epitkezes-lakossagi-forum-lazar-janos-civilek-lakok>

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

Situation of people fleeing Ukraine

Since Russia's full-scale offensive against Ukraine, tens of thousands of refugees have been arriving in Hungary, several of them with a dual Ukrainian-Hungarian citizenship, rendering them ineligible for refugee status under Hungarian law. However, this did not exclude them from being granted residence on other grounds and from receiving aid (mostly housing) from the Hungarian state. There are hundreds of Roma refugees of Hungarian identity in Hungary who have come from the region of Transcarpathia, known as Zakarpatska Oblast. They were denied aid from the state due to the government decree of July 2024, which stipulates that only refugees from Ukraine who are fleeing from Ukrainian territories "affected by war operations" can receive state aid. The legislation ignores the fact that the entire territory of Ukraine, especially the energy infrastructure, is regularly hit by Russian air strikes and as a result the country currently has

no safe area. The same decree monopolised the participation in the assistance network by designating the Maltese Relief Service for these tasks. Under the decree, hundreds of people were forced to leave state-provided temporary accommodation at the end of August.¹⁴⁹

Voting rights of people with disabilities

Hungary continues to illegally deprive some people under guardianship of their right to vote, contrary to its international legal obligations: the UN CRPD Committee has found that any restriction on the right to vote based on disability is incompatible with the UN Convention on the Rights of Persons with Disabilities. Despite Hungary's international commitment, certain groups of people with disabilities continue to be excluded from the right to vote.

In the guardianship proceedings in *Kiss Alajos v. Hungary*,¹⁵⁰ since 2012, exclusion from the right to vote is not automatic. However, this practice and the legal provisions behind it remain contrary to international human rights standards in the view of the CRPD Committee.¹⁵¹ According to the latest data,

149 Gergely Nyilas: *Thousands may be excluded from refugee support starting from 20 August*, Telex, 20 August 2024, <https://telex.hu/belfold/2024/08/20/ezrek-szorulhatnak-ki-a-menekultellatasbol-augusztus-20-tol-kormanyrendelet-karpatalja-nyugat-ukrajna>

150 ECtHR [GC], Judgment of 20 October 2024, *Alajos Kiss v. Hungary* [GC], no. 98800/01, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22alajos%20kiss%22%2C%22documentcollectionid%22:%5B%22GRANDCHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-98800%22%5D%7D>

151 Dr. Nóra Ilona Aujeszky - Dr. Dániel Döbrentey - Dr. Szabolcs Hegyi - Dr. Zsuzsanna Kunos - Dr. Attila Mráz - Dr. Emese Pásztor - Dr. Attila Szabó, *Report on the 2022 Parliamentary General Election and the National Referendum Held Concurrently*, Budapest, Társaság a Szabadságjogokért, 2023, pg. 43, https://tasz.hu/wp-content/uploads/2024/01/tasz_valasztasi_jelentes_2022-2.pdf

57,250 persons were under guardianship on 31 December 2023.¹⁵² Even though disenfranchisement is not mandatory, it is still used in more than 80% of those placed under guardianship. Although the primary purpose of a restriction of legal capacity is to protect the persons concerned, it often has the effect of diminishing their interests.¹⁵³ Disenfranchisement means banishment from the political community,¹⁵⁴ which leads not to a restriction of rights, but to a deprivation of rights. The case law analysis group of the Supreme Court has also confirmed that “people with psychosocial disabilities should not be excluded from participation in matters affecting the life of the community, but should be ‘barred’ from exercising their rights in public life.”¹⁵⁵

Residential care homes - supported housing

HCLU represents several parents caring for their children with severe cumulative disabilities – mostly alone -- who have filed a lawsuit against the responsible ministry to ensure that they are provided with the supported housing required by Hungarian law in Budapest, where the families live. The lives of the parents caring for their children have been completely

negatively affected, as many have had to give up their jobs and thus their dignified livelihoods altogether.

Supported housing is a form of care under Act III of 1993 (Social Act), which is the Hungarian equivalent of “community housing” provided by the Convention on the Rights of Persons with Disabilities (CRPD). Ratified by Hungary in July 2007, the CRPD states that people with disabilities have the right to live in community housing and to choose their place of residence. According to Article 17 (1) of Act XXVI of 1998, a person with a disability has the right to choose their preferred type of housing. According to Article 57 of the Social Act, one type of housing is supported housing. Since 2015, according to Article 66/A (1) of the Social Act, supported housing is the only type of housing that can be developed for the purposes of disabled people. According to Article 88 (1) b) and d), effective since 1 January 2013, the Hungarian State is obliged to provide supported housing for disabled persons living in its territory in all counties. The Directorate General for Social Affairs and Child Protection (DGSSCP) did not provide supported housing on the territory of Budapest, even after

152 Hungarian Central Statistical Office: *Number of people under guardianship*, https://www.ksh.hu/stadat_files/szo/hu/szo0058.html

153 János Fiala, *Guardianship Reform in Practice – The Impact of the Civil Code Adopted in 2013 on the Operation of the Guardianship System*, Disability and Society, Thematic Issue, ELTE Bárczi Gusztáv Faculty of Special Education, 2019/2. pg. 10., http://real-j.mtak.hu/13819/7/FT_2019_2_vtematikus_szam.pdf

154 János Fiala, *Issues Concerning the Right to Vote of Persons with Disabilities in the Light of the Judgment in Alajos Kiss v. Hungary*, FUNDAMENTUM, 2010, 3, p. 116.

155 Supreme Court, *Summary of the findings of the practice-analysis groups – Findings of the practice-analysis group established in the field of guardianship proceedings*, pg. 1, https://kuria-birosag.hu/sites/default/files/joggyak/2019.el_ii_jgy_.p.1._kivonat.pdf

a call to do so, in public institutions far from the families' homes. But even these institutions have decades-long waiting lists and these are the very same institutions that the CRPD explicitly prohibits on the grounds that they violate peoples' rights. In 2017, plaintiffs filed a lawsuit against the public maintenance bodies (DGSSCP and the responsible ministry). They argued that the State's failure to provide care had violated the disabled plaintiffs' rights to autonomy, privacy and self-fulfillment. After winning the case both in the first and second instance, the Supreme Court, in its judgment in 2023, overturned the judgment and dismissed the action. The plaintiffs turned to the Constitutional Court (CC) arguing that the Supreme Court's judgment violated their fundamental rights to human dignity, equal treatment, and legal remedy. The CC rejected the complaint in its decision of 26 March 2024. It argued that the complaint "did not raise any question of fundamental constitutional significance, nor did it raise any issue of an infringement of fundamental law which would have had a substantial impact on the judicial decision".

Good conduct vetting of childcare protection workers

At the beginning of 2024, the state of the child protection system¹⁵⁶ caused an unprecedented public outrage, stemming from the so-called "clemency scandal": former President

of Hungary Katalin Novák pardoned the former deputy director of a children's home who was convicted of helping to cover up the pedophilic crimes of his superior by forcing one of the victims to withdraw their statement. The case caused a major public outcry, and led to Novák's resignation. Afterwards, Judit Varga also resigned, both from her parliamentary seat and from her role as leader of the Fidesz list for the European Parliament election as she, as Justice Minister, countersigned Katalin Novák's pardon decision.

As a response, the government has introduced new rules for the screening of staff in child protection institutions: the so-called "good conduct" check. According to HCLU's opinion, the vetting is completely inadequate to help select and retain the right child protection professionals in the system. It shows nothing about the actual professionals who are involved and how they treat the children in their care. Moreover, in the context of this investigation, the state is intruding to an unacceptable extent into the private lives of child protection professionals and their close relatives. The HCLU represents several child protection workers in labour lawsuits, where the intention is to take the legislation to the Constitutional Court.¹⁵⁷ In the course of the investigations, many workers' private lives were reportedly intruded upon in highly intrusive ways, such as examinations into their cabinets during on-site inspections,

156 Stefánia Kapronczay - Ilona Boros: *Child Protection Begins When the Government Takes Children's Interests Seriously and Listens to Them*, Telex, 22 February 2024, <https://telex.hu/velemeny/2024/02/22/gyermekvedelem-tasz-alapel-latas-intezet-bantalmazas>

157 Hungarian Civil Liberties Union (HCLU), *We help child protection professionals in labor court cases who refuse to let the state meddle in their private lives*, [tasz.hu](https://tasz.hu/cikkek/munkaugyi-perben-segit-juk-azokat-a-gyermekvedelmi-szakembereket-akik-nem-vallaltak-hogy-az-allam-a-maganeletukben-vajkaljon/), 12 September 2024, <https://tasz.hu/cikkek/munkaugyi-perben-segit-juk-azokat-a-gyermekvedelmi-szakembereket-akik-nem-vallaltak-hogy-az-allam-a-maganeletukben-vajkaljon/>

comments on their smoking habits at home, and asking questions about people in family photographs.¹⁵⁸ The National Defence Service has denied that any such acts were carried out by them.¹⁵⁹

Follow-up to recommendations of international and regional human rights monitoring bodies

Implementation of OSCE recommendations in the context of elections

In 2024, the election of members of the European Parliament, the election of municipal representatives and mayors, and the election of national minority representatives coincided. Therefore, in this section, we present the implementation of the country-specific recommendations of the final report of the OSCE 2022 mission.

In 2022, the OSCE made 11 priority recommendations and 19 other recommendations on the Hungarian electoral system.¹⁶⁰ Of the eleven priority recommendations, in ten cases, progress was not made and in one case partial progress can be identified. It should be noted that in the case of the first priority recommendation, a step was taken explicitly against the recommendation when, in November 2024, the Parliamentary Committee on Justice submitted¹⁶¹ a bill to amend the boundaries of parliamentary single-member constituencies, bypassing the public consultation¹⁶², which amends other rules governing the election. The fulfilment of priority recommendation number eight can be considered partial in that it corrects the boundaries of parliamentary single-member constituencies by eliminating existing disproportionalities. However, it does not do so in the way recommended, i.e. through transparent preparation by an independent body.

158 Judit Muhari: *Child protection workers' good conduct checks – a questionnaire from the Ministry of Interior*, Népszava, 29 August 2024, https://nepszava.hu/3248196_gyermekvedelem-dolgozok-eletvitel-ellenorzes-rendvedelmi-szervek-kerdoiv-belugyminiszterium

159 László Szily: *The police claim they do not check the child protection workers' drawers during the good conduct check*, 444.hu, 29 August 2024, <https://444.hu/2024/08/29/a-rendorok-azt-allitjak-hogy-nem-neznek-be-a-gyermekvedelmi-dolgozok-fiokjaba-azok-eletvitelenek-ellenorzese-kozben>

160 OSCE/ODIHR, *Hungary, Parliamentary Elections and Referendum, 3 April 2022: Election Observation Mission Final Report*, 29 July 2022, Pg. 39-42, <https://www.osce.org/odihr/elections/523568>

161 *T/10000 Bill on amendments to certain election-related laws* https://www.parlament.hu/web/guest/folyamatban-levo-torvenyjavaslatok?p_p_id=hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=dn096Vwb&_hu_parlament cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_irom_irom_adat%3Fp_ckl%3D42%26p_izon%3D10000

162 Balázs Cseke: *Budapest will have two fewer representatives, the electoral map will be completely redrawn*, 19 November 2024, <https://telex.hu/belfold/2024/11/19/valasztasi-torveny-modositasa-igazsagugyi-bizottsag>

Of the nineteen other recommendations, there has been no progress in 16 cases, partial progress in two cases and one recommendation is considered to have been implemented. Recommendations 15 and 29 have been partially implemented. In the case of Recommendation 15, the minutes-amending possibilities of members of the polling station committees will be extended following the adoption of the above-mentioned bill¹⁶³. Beyond this, however, the participation opportunities of election committee members will not be extended in terms of meaningful deliberation and dispute.

Recommendation 29 extends the scope of those present during the counting of votes to promote transparency.¹⁶⁴ Recommendation 28 can be considered fulfilled, as the number of accessible polling stations has increased compared to 2022¹⁶⁵ and there is a clear intention on the part of the electoral authorities to increase this number.

Overall, it can be concluded that the most important recommendations, regarding

- the amendment of electoral legislation,
- the creation of a framework for equal campaign opportunities and a level playing field,
- the independence of public bodies and public media in the campaign,
- equality of voting rights for voters staying abroad on election day,
- and possible reform of legal remedies

were not implemented.

163 *T/10000 Bill on amendments to certain election-related laws* § 40. https://www.parlament.hu/web/guest/folyamatban-levo-torvenyjavaslatok?p_p_id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=dn096Vwb&hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_irom.irom_adat%3Fp_ckl%3D42%26p_izon%3D10000

164 *T/10000 Bill on amendments to certain election-related laws* § 18. https://www.parlament.hu/web/guest/folyamatban-levo-torvenyjavaslatok?p_p_id=hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8&p_p_lifecycle=1&p_p_state=normal&p_p_mode=view&p_auth=dn096Vwb&hu_parlament_cms_pair_portlet_PairProxy_INSTANCE_9xd2Wc9jP4z8_pairAction=%2Finternet%2Fcplsql%2Fogy_irom.irom_adat%3Fp_ckl%3D42%26p_izon%3D10000

165 National Election Office (Hungary), *Report by the President of the National Election Office, 2024*, <https://www.valasztas.hu/documents/d/guest/nvi-elnok-beszamolo> pg. 9.

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Right

Democracy Reporting International and the European Implementation Network issued their joint report¹⁶⁶ in September 2024, assessing the implementation of rulings of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) by EU Member States. In the words of Radio Free Europe, “The Hungarian government is at the forefront of sabotaging European court rulings”.¹⁶⁷

The report states that Hungary has had the highest rate of non-compliance with ECtHR judgments in the last ten years among EU Member States, at 76%. This amounts to a total of 45 judgments. The report highlights four areas where Hungary has failed to execute a leading judgement:

- systemic threats to judicial independence,
- ill-treatment by police authorities and a lack of effective investigations therein,
- laws enabling secret surveillance of “virtually anyone” by the state and
- discriminatory assignment of Roma children to schools for children with mental disabilities.¹⁶⁸

Although not mentioned in the report, it is of particular significance in the context of the elections that the government has not yet implemented the ruling¹⁶⁹ of the ECtHR on the conflict of nationality voting rights with the ECHR despite the recent re-regulation of the electoral legislation.

As for the CJEU rulings, the two worst performing countries are Romania and Hungary. Romania has 83.3% of its rule of law cases partially implemented, Hungary 52.6%, two

166 Democracy Reporting International - European Implementation Network, *Justice Delayed and Justice Denied: Report on the Non-Implementation of European Judgments and the Rule of Law, 2024 Edition*, <https://democracyreporting.s3.eu-central-1.amazonaws.com/images/66ebdc6ca7643.pdf>

167 György Kerényi: *The Hungarian Government Leads in Overruling European Court Judgments*, Szabad Európa, 2024, <https://www.szabadeuropa.hu/a/a-magyar-kormany-elen-jar-az-europai-birosagok-iteleteinek-elszabotalasaban/33128063.html>

168 Democracy Reporting International - European Implementation Network, *Justice Delayed and Justice Denied: Report on the Non-Implementation of European Judgments and the Rule of Law, 2024 Edition*, pg. 108, <https://democracyreporting.s3.eu-central-1.amazonaws.com/images/66ebdc6ca7643.pdf>

169 ECtHR [GC], Judgment of 16 December 2024, Bakirdizi and E. C. v. Hungary, no. 49636/14 and 65678/14, <https://hudoc.echr.coe.int/eng#%7B%22fulltext%22:%5B%22Bakirdizi%22%2C%22documentcollectionid%22:%5B%22GRAND-CHAMBER%22%2C%22CHAMBER%22%2C%22itemid%22:%5B%22001-220672%22%5D%7D>

thirds of which have been pending for more than two years.¹⁷⁰ Failure to comply can be identified in 10.5% of the cases.¹⁷¹

FOSTERING A RULE OF LAW CULTURE

Efforts by state authorities

The Hungarian government's attitude to the rule of law

There are no initiatives by state authorities to promote or foster a rule of law culture in Hungary - quite the opposite can be observed. For years, the term “rule of law” has been demonised¹⁷², or relativised¹⁷³ by government politicians. Previously, Judit Varga, Minister

of Justice, has repeatedly stated that there is no universal definition of the rule of law.¹⁷⁴ Her successor, Minister of Justice Bence Tuzson, said that “the rule of law issue is just a political tool”, referring to the ongoing rule of law procedure against Hungary, in which he regularly referred to “double standards” in public.¹⁷⁵

The non-implementation of a specific CJEU decision and the government's communication on it illustrate the Hungarian government's attitude to the requirements of the rule of law.

According to Democracy Reporting International,

“Hungary's failure to comply with the CJEU's ruling in case C808/18 of 17 December 2020 prompted the European Commission to bring a new action before the CJEU, which resulted,

170 György Kerényi, *The Hungarian Government Leads in Overruling European Court Judgments*, Szabad Európa, 2024, <https://www.szabadeuropa.hu/a/a-magyar-kormany-elen-jar-az-europai-birosagok-iteleteinek-elszabotalasaban/33128063.html>

171 Democracy Reporting International - European Implementation Network, *Justice Delayed and Justice Denied: Report on the Non-Implementation of European Judgments and the Rule of Law, 2024 Edition*, pg. 109, <https://democracyreporting.s3.eu-central-1.amazonaws.com/images/66ebdc6ca7643.pdf>

172 Author(s) unknown, *The term of the rule of law is an arbitrary political tool*, Kormany.hu, 13 March 2021, <https://kormany.hu/hirek/varga-judit-a-jogallamisag-fogalma-onkenyes-politikai-eszkoz>

173 Author(s) unknown, *Government: The rule of law has no universally accepted definition*, HVG, 13 November 2019, https://hvg.hu/itthon/20191113_Kormany_A_jogallamisagnak_nincs_altalanosan_elfogadott_definicioja

174 Author(s) unknown, *Judit Varga: The rule of law must not become a tool for political blackmail*, ATV.hu, 21 September 2020, <https://www.atv.hu/belfold/20200921/varga-judit-a-jogallamisag-nem-valhat-politikai-zsaroloeszkozze>

175 Author(s) unknown, *Bence Tuzson: The issue of the rule of law is merely a political tool*, Magyar Nemzet, 2024, 1 January, <https://magyarnemzet.hu/belfold/2024/01/tuzson-bence-a-jogallamisag-kerdes-csupan-egy-politikai-eszkoz-video> and Conversation with Minister of Justice Bence Tuzson, Tranzit Festival, August 2024, <https://www.youtube.com/watch?v=bYDBYzbqa8g>

in June 2024, in the imposition of significant financial penalties”.¹⁷⁶ The ruling has not been implemented and Hungary has to pay a daily fine. The government does not comply with the merits of the final ruling or with its obligation to pay the resulting fines, ignoring the CJEU decision. Government officials have also repeatedly stated that Hungary will not pay the fine.¹⁷⁷ Publicly ignoring a final ruling of a court by a government clearly does not foster a rule of law culture.

Contribution of civil society and other non-governmental actors

The HCLU does not carry out campaigns or activities specifically aimed at fostering a rule of law culture. However, the promotion of rule of law values is, of course, a recurring element in the organisation’s advocacy activities and communication. The Hungarian Helsinki Committee deals with the rule of law in a comprehensive manner, Amnesty International Hungary focuses on the issue of judicial independence, and K-Monitor and Transparency International Hungary are among the better known Hungarian NGOs dealing with the unveiling and prevention of corruption. These and many other NGOs have been repeatedly attacked by the government in communication campaigns in recent years, and several laws have been passed that restrict their activities.

The most recent of these is the Act LXXXVIII of 2023 on the Protection of National Sovereignty, already mentioned several times in this report, which established the Office for the Protection of Sovereignty, which, as explained above, steps up against organisations that are acting in the interests of transparency, a value that is important for the rule of law.

176 Democracy Reporting International - European Implementation Network, *Justice Delayed and Justice Denied: Report on the Non-Implementation of European Judgments and the Rule of Law, 2024 Edition*, pg. 39, <https://democracyreporting.s3.eu-central-1.amazonaws.com/images/66ebdc6ca7643.pdf>

177 Tamás Rugli, *EU Fine of 200 million Euros, Hungarian government refuses to pay*, 24.hu, 3 September 2024, <https://24.hu/kulfold/2024/09/03/unios-birsag-200-millio-euro-magyar-kormany-nem-fizet/>

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The HCLU is a Hungarian human rights watchdog working independently of political parties, the state or any of its institutions. The HCLU's aim is to promote the case of fundamental rights and principles laid down by the Constitution of the Republic of Hungary and by international conventions.

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CIVIL LIBERTIES UNION FOR EUROPE



Irish Council for Civil Liberties



Inclusion Ireland
The National Association for People with an Intellectual Disability.



Mercy Law Resource Centre



Community Law & Mediation



JUSTICE for SHANE



JUSTICE for SHANE



Irish Penal Reform Trust



Outhouse
LGBT+ Community Resource Centre



STRONGER TOGETHER
CONGRESS
Irish Congress of Trade Unions



itm Irish Traveller movement



INDEX ON CENSORSHIP

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LIBERTIES

RULE OF LAW REPORT

2025



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ABOUT THE AUTHORS

While each of these organisations are experts in their areas of concern, no one of the organisations possesses the expertise sufficient to complete this submission in isolation. This submission represents a compilation of a wide array of material and expertise from the a forementioned organisations, co-ordinated by the Irish Council for Civil Liberties. Inclusion as a contributor does not equate to an endorsement of the submission as a whole.

The Irish Council for Civil Liberties



The Irish Council for Civil Liberties (ICCL) is Ireland’s oldest independent human rights body. It has been at the forefront of all major rights advance in Irish society for over 40 years. ICCL helped legalise homosexuality, divorce, and contraception. We drove police reform, defending suspects’ rights during dark times. In recent years, we led successful campaigns for marriage equality and reproductive rights

Inclusion Ireland



Established in 1961, Inclusion Ireland is a national, rights-based advocacy organisation that works to promote the rights of people with an intellectual disability. The vision of Inclusion Ireland is that of people with an intellectual disability living and participating in the community with equal rights. Inclusion Ireland’s work is underpinned by the values of dignity, inclusion, social justice, democracy and autonomy and we use the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD) to guide our work.

Mercy Law Resource Centre



Mercy Law Resource Centre (MLRC) is an independent law centre, registered charity and company limited by guarantee which provides free legal advice and representation to people who are homeless or at risk of becoming homeless in the areas of social housing and related social welfare law. The Centre also seeks to advocate change in laws, policies and attitudes which unduly and adversely impact its client group.

Community Law and Mediation



Community Law & Mediation is an independent community law centre and charity working since 1975 in communities impacted by social exclusion, disadvantage and inequality, through the provision of free legal, mediation and community education services. In 2021, it expanded its services to focus on environmental justice and established the Centre for Environmental Justice which provides free legal advice and training and advocates for a rights-based approach to policy and law reform in the area of environmental justice.

Irish Congress of Trade Unions



Congress is the largest civil society organisation on the island of Ireland, representing and campaigning on behalf of some 800,000-working people. There are currently 44 unions affiliated to Congress, north and south of the border. Congress seeks to achieve a just society - one which recognises the rights of all workers and citizens to enjoy the prosperity and fulfilment which leads to a good quality of life. Quality of life embraces not just material well-being, but freedom of choice to engage in the arts, culture and all aspects of civic life. This vision applies in the context of Ireland, Europe and the wider world and challenges the existing economic order.

Justice for Shane



Justice for Shane was founded following the unlawful killing of Shane O’Farrell in 2011. The errors and failings leading to the death of Shane are such that they undermine public confidence in Government and the administration of justice to an extent that it is imperative that public confidence be restored. This must be done in a manner that the whole public can be assured that the full facts can be established, the failings addressed, appropriate action taken, people held to account, and to ensure that lessons are learned that so that similar failings don’t happen again.

Irish Penal Reform Trust



Established in 1994, the Irish Penal Reform Trust (IPRT) is Ireland’s leading non-governmental organisation campaigning for rights in the penal system and the progressive reform of Irish penal policy. IPRT publishes a wide range of policy positions and research documents; we campaign vigorously across a wide range of penal policy issues; and we have established IPRT as the leading independent voice in public debate on the Irish penal system.

Outhouse



Outhouse is a community and resource centre for LGBT+ people, their families, and friends. Our vision is of a vibrant and safe space for LGBT people, groups & organisations that is inclusive of the diversity within our communities. Our mission is to provide a safe space which facilitates & encourages the growth of services and supports to the LGBT communities. In all of our work, we are guided by principles of community, equality & partnership.

Irish Traveller Movement



Established in 1991, The Irish Traveller Movement (ITM) is the national advocacy and membership platform which brings together Travellers and representative organisations to develop collective solutions on issues faced by the community to achieve greater equality for Travellers. ITM represents Traveller interests in national governmental, international, and human rights settings. ITM challenges racism - individual, cultural and structural – which Travellers face and promotes integration and equality.

Index on Censorship



Index on Censorship is a nonprofit that campaigns for, reports on and defends free expression worldwide. We publish work by censored writers and artists, promote debate, and monitor threats to free speech. We believe that everyone should be free to express themselves without fear of harm or persecution – no matter what their views. Index’s aim is to raise awareness about threats to free expression and the value of free speech as the first step to tackling censorship.

KEY CONCERNS

Justice System

The passage of the Court Proceedings (Delays) Act 2024, the commencement of the Judicial Appointments Commission Act 2023 and the formal establishment of the Commission on 1 January 2025 are to be welcomed. Despite this, however, progress on the civil legal aid scheme has stalled and access to justice issues persist. While ongoing reforms of defamation law should reduce costs, no progress on the long-promised reforms of the civil legal aid scheme has taken place.

Anti-Corruption Framework

In spite of government assurances, no draft legislation on public ethics has been published.

In the state submission to the 2024 reporting cycle, the state confirmed its intention to publish a legislative scheme for reform and consolidation of the statutory framework in Q1 2024.¹ This did not happen. The report on reform of the ethics regime has now been with the government for over two years with no concrete action taken.

Media Environment and Media Freedom

While the Defamation (Amendment) Bill has progressed, it seeks to remove juries from

High Court defamation procedures which is in direct opposition to a Parliamentary Committee's recommendations.

The Defamation (Amendment) Bill had not completed the legislative process before the November 2024 Election. It is expected to be re-tabled when parliament reconvenes. There are serious concerns with respect to the proposals to remove juries from High Court defamation proceedings from the perspective of the role of the general public in the administration of justice.

Checks and Balances

Progress has stalled in a number of areas related to checks and balances. There have been no updates on legislation to address online mis/disinformation and despite some reforms, restrictions on the right to vote for the upper house of parliament remain. Pre-legislative scrutiny processes are in danger of becoming pro-forma exercises.

Civic Space

While the enactment of the Charities (Amendment) Act (2024) is welcome, significant work is needed before the section of the act which allows for the advancement of human rights to be considered a charitable purpose can be commenced. There has been no progress on

1 Ireland, Member State Contribution European Commission Annual Rule of Law Report 2024 https://commission.europa.eu/document/download/0123a8f4-05e6-4021-8240-ae39a5d1fb65_en?filename=76_1_58157_input_mem_ireland_en.pdf







addressing funding restrictions on civil society, as imposed by the Electoral Act (1997).

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

In 2024, there has been no progress on systemic human rights issues. The Minister of Justice is still considering a petition to open a public inquiry into the case of the Sallins men. Victims and families of the Dublin/Monaghan bombings have not received any truth, justice or accountability. There has also been no progress on holding a public inquiry into the case of Shane O’Farrell.

The long-promised review of the Electoral Act (1997), aimed to address funding restrictions on civil society, which was due to commence in 2024 as per strand B of *An Coimisiún Toghcháin’s* research plan² has not happened.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression **No progress** **Progress**



2 An Coimisiún Toghcháin, The Electoral Commission Research Programme 2024-2026 July 2024 https://cdn.electoralcommission.ie/app/uploads/2024/07/08123719/EC_RESEARCH_PROGRAMME_ENG_ACCESSIBLE.pdf

JUSTICE SYSTEM



Key recommendations

- *The Department of Justice should prioritise and enact the findings of the review of the civil legal aid scheme to enhance access to justice and reduce costs.*
- *The Department of Justice should take steps to enhance access to justice for marginalised groups such as people with disabilities, Travellers and migrants.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

The Judicial Appointments Commission Act was finalised by parliament in July 2023³ and was found to be constitutional following a referral to the Supreme Court by the President in December.⁴ The act will establish a new, independent Judicial Appointments Commission (JAC) to select and recommend persons for judicial office in Ireland, including EU and international courts. In October 2024 it

was announced that the JAC will be formally established on 1 January 2025.⁵

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

In December 2023 a sitting Circuit Court judge was found guilty of a number of sexual offences dating back to the 1990s.⁶ Under Article 35.4 of the Constitution, a judge of the Supreme Court, Court of Appeal or the High Court cannot be removed from office except for stated misbehaviour or incapacity and then

3 Department of Justice (Ireland) Minister McEntee welcomes the passage of Bill giving effect to major reforms in how judges are appointed 4 July 2023 <https://www.gov.ie/en/press-release/62282-minister-mcentee-welcomes-the-passage-of-bill-giving-effect-to-major-reforms-in-how-judges-are-appointed/>

4 High Court Reporters, *Judicial Appointments Bill constitutional, Supreme Court rules*, [BreakingNews.ie](https://www.breakingnews.ie/ireland/judicial-appointments-bill-constitutional-supreme-court-rules-1562017.html), December 8th 2023 <https://www.breakingnews.ie/ireland/judicial-appointments-bill-constitutional-supreme-court-rules-1562017.html>

5 Department of Justice (Ireland) Judicial Appointments Commission established 17 October 2024 <https://www.gov.ie/ga/nuacht/e9a93-judicial-appointments-commission-established/>

6 Eimear Dodd and Claire Henry, *Long Read: The trial of the judge convicted of sex assaults on young men when working as a teacher*, [Breakingnews.ie](https://www.breakingnews.ie/ireland/long-read-the-trial-of-the-circuit-court-judge-found-guilty-of-assaulting-young-men-as-a-teacher-1568161.html), 22 December 2023 <https://www.breakingnews.ie/ireland/long-read-the-trial-of-the-circuit-court-judge-found-guilty-of-assaulting-young-men-as-a-teacher-1568161.html>

only upon resolutions passed by *Dáil Éireann* and by *Seanad Éireann* (the lower and upper houses of parliament, respectively) calling for their removal. This provision has also been interpreted as applying to Circuit Court judges.⁷ Following the verdict, the Minister for Justice issued a statement outlining that she had written to the Attorney General to examine options for the judge's removal.⁸ An opposition justice spokesperson also wrote to the Judicial Council asking the body to clarify its role in the judge's removal.⁹ The judge resigned in January 2024, avoiding the need for a parliamentary vote on his removal.¹⁰ Advice from the Attorney General on the options to remove the judge was never published.

Promotion of judges and prosecutors

The Judicial Appointments Commission Act (2023)¹¹ provides for a revised and consolidated

process by which sitting judges can apply for appointment to higher courts. This will be done through application to the Commission which will produce a shortlist of candidates for selection for posts. The government can reject all names on the shortlist if it so chooses, as per Section 51 of the act. This process will enter into force in 2025.

Allocation of cases in courts

The Court Proceedings (Delays) Act 2024¹² provides for statutory compensation for breach of the right to a hearing within a reasonable time in both civil and criminal matters. The act provides for the appointment of a Chief Court Delays Assessor and Court Delays Assessors to assess such applications. It also provides for the making of an application to the Circuit Court, in certain circumstances, for such a declaration and compensation, and

7 Association of Judges of Ireland Removal from Judicial Office 27 October 2022 <https://aji.ie/the-judiciary/removal-from-judicial-office/#:~:text=Article%2035.4%20of%20the%20Constitution,%C3%89ireann%20calling%20for%20his%20removal>

8 Gerard O'Brien, *Justice Minister to consult with AG on removal of judge following conviction for sexual assault*, *TheJournal.ie*, 4 January 2024 <https://www.thejournal.ie/justice-minister-attorney-general-gerard-obrien-6264424-Jan2024/#:~:text=In%20a%20statement%20following%20O,the%20Attorney%20General%20to%20advise%E2%80%9D>

9 Jack Horgan Jones and Pat Leahy, *Sinn Féin pushes for removal of judge convicted of sexual assaults*, *The Irish Times*, January 4 2024 <https://www.irishtimes.com/crime-law/2024/01/04/political-pressure-builds-for-judge-convicted-of-sexual-assaults-to-be-removed-if-he-does-not-resign/>

10 David MacRedmond, *McEntee confirms resignation of judge Gerard O'Brien following sexual assault conviction*, *TheJournal.ie* 6 January 2024

11 Houses of the Oireachtas (Ireland) No. 33 of 2023 Judicial Appointments Commission Act 2023 <https://www.irishstatutebook.ie/eli/2023/act/33/enacted/en/pdf>

12 Houses of the Oireachtas (Ireland) No. 12 of 2024 Court Proceedings (Delays) Act 2024 <https://data.oireachtas.ie/ie/oireachtas/act/2024/12/eng/enacted/a1224.pdf>

for related matters. It is expected that the act will become operational, and the scheme will open for applications in 2025.¹³

Independence/autonomy of the prosecution service

One of the key recommendations of the report of the Commission on the Future of Policing was that *An Garda Síochána (the Gardaí)*, the state police of Ireland should not be involved in the prosecution of cases.¹⁴ The legislation introduced to implement the Commission's recommendations, the Policing, Security and Community Safety Act 2024, retained this role for the Gardaí and commissioned a High-Level Review Group to review the practice.¹⁵ The report of the High-Level Review Group on the Role of *An Garda Síochána* in the Public Prosecution System ultimately recommended that their role be retained with enhanced oversight.¹⁶ This decision has been criticised

by ICCL and others as being directly opposed to the recommendations of the Commission on the Future of Policing's report, noting that it violates core principles of the separation of policing and prosecutorial powers.

Other

In June 2023 the long-awaited review of the Offences Against the State Acts (OASA) was completed. The majority report recommended replacing the court with a new non-jury arrangement with enhanced safeguards and transparency. The minority report recommended that no non-jury courts should be provided for. Both the majority and minority reports agreed that the OASA should be repealed.¹⁷ As of now, there has been no official timeframe or plan announced by the government to implement the recommendations.¹⁸ The Minister for Justice stated in July 2024 that she was still "considering" the reports in

13 Gazette Desk, *Bill on court delays passes all stages*, Law Society Gazette 24 April 2024 <https://www.lawsociety.ie/gazette/top-stories/2024/april/bill-on-court-delays-passes-all-stages/>

14 The Commission on the Future of Policing in Ireland Final Report 18 September 2018 <https://policereform.ie/en/polref/pages/pb18000006>

15 Houses of the Oireachtas (Ireland) No.1 of 2024 Policing, Security and Community Safety Act (2024) Section 10 <https://www.irishstatutebook.ie/eli/2024/act/1/enacted/en/html>

16 Department of Justice (Ireland) Government approves publication of final report of Review Group on role of An Garda Síochána in public prosecutions 7 February 2024 <https://www.gov.ie/en/press-release/e7d8a-government-approves-publication-of-final-report-of-review-group-on-role-of-an-garda-siochana-in-public-prosecutions/>

17 Department of Justice (Ireland) Minister Helen McEntee publishes independent review of State's primary counter-terrorism legislation 21 June 2023 <https://www.gov.ie/en/press-release/ef280-minister-helen-mcentee-publishes-independent-review-of-states-primary-counter-terrorism-legislation/#:~:text=Commenting%20on%20the%20majority's%20recommendation,subversives%20and%20organised%20criminal%20groups.>

18 Irish Council for Civil Liberties (ICCL), *Minister must implement Review Group's recommendation and repeal the Offences Against the State Acts*, 27 June 2023 <https://www.iccl.ie/news/minister-must-implement-review-groups-recommendation-and-repeal-the-offences-against-the-state-acts/>

the Oireachtas¹⁹ renewal debate for the OASA as is required annually.²⁰

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

A public consultation on the review of the existing civil legal aid scheme was concluded in February 2023. As of December 2024, no further updates have been made public.²¹ Following a general election in November 2024, and with the process of forming a new government underway, there is currently no commitment that the report on the review of civil legal aid will be published, or that reform of the Civil Legal Aid Scheme will be progressed. It is essential that reforms are prioritised to avoid public money continuing to fund a wholly unfair and inadequate scheme.

In 2024 The Department of Justice commenced a technical support instrument (TSI) project²² with the European Commission, the OECD,

Malta, Italy and the Netherlands to develop people-centred justice services, which necessitate the development and administration of a national-level legal needs survey. Ireland has not yet administered such a legal needs survey, an essential legal support for planning and delivering services. There is also no clarity on whether this will be covered in the review of Civil Legal Aid.

Access to Justice — A recently released report found that disabled people often have the greatest legal needs while also encountering the most significant obstacles when attempting to access the Irish justice system.²³ Despite the introduction of legislation and public policy aimed at improving access to justice for disabled people, significant challenges persist. The research highlights many challenges, including the critical issue of misalignment between Irish law and international human rights standards, particularly the Convention on the Rights of Persons with Disabilities. Additionally, the interplay between different legal frameworks within the Irish Justice System was found to

19 Oireachtas refers to the Irish Parliament which consists of two chambers. The lower chamber (the Dáil) and the upper chamber (The Seanad)

20 Dáil Éireann Debate Tuesday, 25 Jun 2024 Vol. 1056 No. 3 Offences against the State (Amendment) Act 1998 and Criminal Justice (Amendment) Act 2009: Motions <https://www.oireachtas.ie/en/debates/debate/dail/2024-06-25/15/>

21 Dáil Éireann Debate Tuesday 30 April 2024: Legal Aid-Parliamentary questions Claire Kerrane TD <https://www.oireachtas.ie/en/debates/question/2024-04-30/496/>

22 European Commission Technical Support Instrument (TSI)- About the TSI https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/technical-support-instrument/technical-support-instrument-tsi_en

23 Irish Human Rights and Equality Commission, *Commission Study finds Significant Barriers to Justice for Disabled People in Ireland*, 3 December 2024 <https://www.ihrec.ie/commission-study-finds-significant-barriers-to-justice-for-disabled-people-in-ireland/>

be complex. There is fragmented research and a lack of comprehensive data collection on access to justice for disabled people in Ireland and their experiences. This deficiency inhibits understanding of the full scope of barriers faced by them and hinders evidence-based policymaking.

A 2022 Irish Human Rights and Equality Commission (IHREC) review²⁴ of Section 19 of the Intoxicating Liquor Act 2003 (2022) concluded that the enforcement of the legislation was disproportionately used to deny services to Travellers, Roma and disabled people, and called for a Ministerial review. No progress has been made to date, although the call was reiterated by IHREC in 2024.

Despite the recommendation of the Expert Review Report on Traveller Accommodation

2019,²⁵ no progress has been made in reviewing Criminal Trespass legislation; as introduced in Section 10 of the Housing (Miscellaneous Provisions) Act, 1992²⁶ and Section 69 of the Roads Act, 1993.²⁷ In January 2022 the Supreme Court upheld a family's appeal against their eviction (*McDonagh v Clare County Council*²⁸) The case focused on their unauthorised presence on a Clare Council-owned site, having not been provided with appropriate accommodation by the Council elsewhere. The Supreme Court considered the constitutional protection afforded to the home and under Article 8 of the European Convention on Human Rights.²⁹ The repeal of this legislation has not progressed as of October 2024 with the *Gardaí* on record as opposing the repeal.³⁰ The negative cultural and human impact of the legislation, which curtails cultural expression and freedom of Travellers to

24 Irish Human Rights and Equality Commission, *Urgent Change Needed to Laws on Discriminatory Access to Licenced Premises*, 14 February 2022 <https://www.ihrec.ie/urgent-change-needed-to-laws-on-discriminatory-access-to-licenced-premises/#:~:text=The%20Irish%20Human%20Rights%20and,line%20with%20other%20discrimination%20complaints>.

25 The Housing Agency Traveller Accommodation Expert Review July 30 2019 <https://www.housingagency.ie/publications/traveller-accommodation-expert-review-2019>

26 Houses of the Oireachtas No. 18 of 1992 Housing (Miscellaneous Provisions) Act, (1992) <https://www.irishstatutebook.ie/eli/1992/act/18/enacted/en/print>

27 Houses of the Oireachtas No. 14 of 1993 Roads Act (1993) <https://www.irishstatutebook.ie/eli/1993/act/14/enacted/en/print>

28 Supreme Court (Ireland) Judgment of 31 January 2022 *Clare County Council v McDonagh & Anor [2022] IESC 2* <https://www.ucc.ie/en/tejp/traveller-law-database/clare-county-council-v-mcdonagh--anor-2022-iesc-2-.html>

29 Free Legal Advice Centres (FLAC), *FLAC welcomes landmark Supreme Court decision concerning the summary eviction of Travellers and seeks urgent legislative reform*, 31 January 2022 <https://www.flac.ie/news/2022/01/31/flac-welcomes-landmark-supreme-court-decision-conc/>

30 Department of Housing, Local Government and Heritage (Ireland), *Traveller Accommodation Expert Review Programme Board Update*, October 2024 <https://assets.gov.ie/297444/73b5b5d0-b82c-4d73-810c-40126cadf6da.pdf>

conduct their traditional nomadic way of life³¹ is not being addressed.

Ireland's equality legislation — Following a public consultation on a review of Ireland's Equality Acts in 2021, the Department of Children, Equality, Disability, Integration and Youth published a report in July 2023 summarising the issues raised in the submissions to the public consultation.³² The report noted several submissions on the difficulty of taking a case before the Workplace Relations Commission, restrictive time limits, lack of reasonable accommodation to support people to access justice and the need for procedural accommodation and supports (such as interpreters, captioned videos, ISL interpretation and audio description of all processes and forms), the need for civil legal aid, the need for dedicated legal services for marginalised groups and the need for all discrimination complaints under the Equality

Acts to be heard by the Workplace Relations Commission in the first instance. Despite the inclusion of the heads of the Equality Acts Amendment Bill in the summer 2024 legislative programme - aimed at providing for legislative amendments arising from the review of the Equality Acts - there has been no substantive progress to date.³³ The most recent review by a UN treaty monitoring body, the UN Committee on Economic, Social and Cultural Rights (CESCR) expressed concern in relation to the “continued absence of comprehensive anti-discrimination legislation in the State party,” making a series of recommendations on legislative changes, as well as calling on the State to take all necessary measures to prevent and combat the persistent discrimination, racism and inequality faced by marginalised groups, in particular in the areas of decent work, social security, health care and services, adequate housing and education.³⁴ The ongoing delays

31 Pavee Point Travellers Centre and The Irish Human Rights and Equality Commission *Travellers Cultural Rights: The Right to Respect for Traveller Culture and Way of Life* November 2008 <https://www.paveepoint.ie/wp-content/uploads/2023/12/Travellers-Cultural-Rights.pdf>

32 Department of Children, Equality, Disability, Integration and Youth (Ireland): Minister O’Gorman publishes report on the submissions to the public consultation on the Review of the Equality Acts, 12 July 2023 <https://www.gov.ie/en/press-release/cafb4-minister-ogorman-publishes-report-on-the-submissions-to-the-public-consultation-on-the-review-of-the-equality-acts/>

33 Department of the Taoiseach: Government Chief Whip, Minister Naughton, Publishes Summer Legislative Programme with 53 priority bills due for progression April 16 2024 <https://www.gov.ie/en/press-release/8d6b7-government-chief-whip-minister-naughton-publishes-summer-legislative-programme-with-53-priority-bills-due-for-progression/>

34 United Nations (UN), CESCR, Concluding observations on the fourth periodic report of Ireland E/C.12/IRL/CO/4, para 23, 20 March 2024 https://tbinternet.ohchr.org/_layouts/15/TreatyBodyExternal/TBSearch.aspx?Lang=En&CountryID=83

in bringing legislation forward have also been highlighted by IHREC.³⁵

Family justice — Long waiting times, overly bureaucratic processes, and at times high legal costs continue to pose barriers for those going through family court proceedings. A Family Courts Bill to provide for the establishment of a Family High Court, Family Circuit Court and Family District Court was published in November 2022 and was enacted as the Family Courts Act in November 2024.³⁶ It is hoped that the passage of this act alongside the construction of a new dedicated family court facility in Dublin³⁷ will enhance access to justice for families.

Resources of the judiciary (human/financial/material)

The Judicial Panel Working Group published its delayed report in February 2023. The group made 54 recommendations³⁸ on the future

resourcing needs of the judicial system, including the need to appoint new judges. Over the course of 2023-2024 a total of 44 new judges have been appointed. Additional resources to reduce waiting times have also been introduced. Long delays for hearings continue, however. Delays in trials for the Central Criminal Court now stand at 52 weeks for persons on bail and 50³⁹ weeks for those in custody.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

The Sentencing Guidelines and Information Committee, established under the Judicial Council Act 2019, is tasked with preparing sentencing guidelines and monitoring their operation, as well as collating information on sentences imposed by the courts and disseminating the information to judges and others. It comprises 13 members, including eight judges nominated by the Chief Justice and five lay members appointed by the government. It

35 Irish Human Rights and Equality Commission, *Ireland and the 6th Monitoring Cycle of the European Commission against Racism and Intolerance* June 2024 <https://www.ihrec.ie/app/uploads/2024/06/Ireland-and-the-6th-Monitoring-Cycle-of-the-European-Commission-against-Racism-and-Intolerance-Final.pdf>

36 Houses of the Oireachtas, No. 48 of 2024 Family Courts Act (2024) <https://data.oireachtas.ie/ie/oireachtas/act/2024/48/eng/enacted/a4824.pdf>

37 Courts Desk, *Go-ahead for new family-courts complex*, Law Society Gazette, 11 April 2024 <https://www.lawsociety.ie/gazette/top-stories/2024/april/go-ahead-for-new-family-courts-complex/>

38 Department of Justice (Ireland): Judicial Planning Working Group Report 24 February 2023 <https://www.gov.ie/en/collection/af6ff-judicial-planning-working-group-report/>

39 Department of Justice (Ireland): Minister McEntee secures government approval for 20 additional Judges 22 October 2024 <https://www.gov.ie/en/press-release/b50ba-minister-mcentee-secures-government-approval-for-20-additional-judges/>

has not yet published specific guidelines on sentencing but has undertaken and published a number of pieces of research to inform its work including most recently ‘A Study of District Court Judges Views on Sentencing and the Sentencing of Relationship Violence’⁴⁰ which will inform new sentencing guidelines due to be published in early 2025. The research found that most district court judges would welcome guidance on a variety of issues but were concerned about guidelines interfering with their sentencing discretion. They also requested “more continuing professional development training delivered via innovative teaching and learning methods be employed to address the challenges presented by court sitting times”.

Other

In November 2024, the Department of Justice launched research, authored by Dr Niamh Maguire (South East Technological University) and Professor Nicola Carr (University of Nottingham) on sentencers’ perspectives on community service orders (CSOs) and

short-term prison sentences.⁴¹ Through surveys with members of the judiciary, it examines the impact of the Criminal Justice (Community Service) (Amendment) Act 2011 which imposed a new duty on judges to consider imposing a CSO as an alternative to a prison sentence of 12 months or less. At the same time, recourse to imprisonment in Ireland continues to rise to record levels. As of December 2024, there are over 5000 people in prison.⁴² The research provides insights into the reasons for the continued over-use of short prison sentences of less than 12 months and the underutilisation of CSOs, in addition to shedding light on the barriers – both real and perceived – to the increased use of CSOs and potential options for increasing their uptake. It concludes that there are gaps in sentencing data particularly around the “experiences and longer-term outcomes of people subject to community service orders, exploring areas such as impacts on social inclusion, employability etc”.⁴³ The research found that the judiciary is positively disposed to receiving this information and would also

40 Dr Niamh Maguire, *A Study of District Court Judges Views on Sentencing and the Sentencing of Relationship Violence* Southeast Technological University, 12 December 2024 <https://judicialcouncil.ie/assets/uploads/documents/SETU%20Report.pdf>

41 Dr Niamh Maguire & Prof Nicola Carr, *Community or Custody? A Review of Evidence and Sentencers’ Perspectives on Community Service orders and Short-Term Prison Sentences*, Department of Justice (Ireland) November 2024 <https://www.gov.ie/pdf/?file=https://assets.gov.ie/311051/2f038ca5-68f5-4b08-a770-0a856aa1c482.pdf#page=null>

42 Irish Prison Service, Prisoner Population Report, 12 December 2024 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/12-December-2024.pdf

43 Irish Prison Service, Prisoner Population Report, 12 December 2024 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/12-December-2024.pdf

welcome more information on the substantive operations of CSOs.

Fairness and efficiency of the justice system

Length of proceedings

In April 2020, the European Court of Human Rights (ECtHR) delivered its decision in the case of *Keaney v Ireland*. In that case, the Applicant claimed that a delay of over 11 years between the initiation of proceedings and the date of judgement of final appeal in the Supreme Court was excessive. The court found that this delay was excessive and a violation of Article 6 of the ECHR. The court further found that there was no effective remedy for a delay of this nature in the Irish courts. The court noted that Ireland has persistently not met its obligations in this regard and that lengthy delays in litigation were systemic.⁴⁴ The Keaney case is one of many to come before the ECtHR on the length of proceedings in Ireland and Keaney was chosen by the court as a lead case on the issue. The forthcoming

Court Proceedings (Delays) Act is expected to address this judgment.⁴⁵

Respect for fair trial standards including in the context of pre-trial detention

In recent years there has been a growth in the number of people being held on remand (pre-trial detention). Between 2019 and 2023 there has been a 23% increase in the average number of people held on remand.⁴⁶ It is concerning that in October 2024, the number of people in custody on remand was 861 with 72 of those held on remand for more than a year.

In November 2024 the Irish national police force (*an Garda Síochána*) published photos of 99 people whom they described as “persons of interest” in connection with riots that took place in Dublin in November 2023. While issuing photos to request information from the public is common practice, the scale of this publication was unprecedented. ICCL raised concerns that this action did not meet the thresholds of necessity and proportionality.⁴⁷ It also raises questions and concerns about potential misidentification and people’s

44 ECtHR [Fifth Section] Judgment of 30 April 2020, *Keaney v. Ireland*, no. 72060/17 (2017) <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-202411%22%5D%7D>

45 Rebecca Halpin, *Court Proceedings (Delays) Bill 2023 Bill No. 17 of 2023*, Oireachtas Library and Research Service: Bills Digest May 23 2023 https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2023/2023-06-13_bill-digest-court-proceedings-delays-bill-2023_en.pdf

46 Irish Prison Service, *Monthly Information Note*, Accessed 16 January 2025 <https://www.irishprisons.ie/information-centre/statistics-information/monthly-information-note/>

47 Vivienne Clarke, *ICCL raises concerns over sharing of images from Dublin riots*, [Breakingnews.ie](https://www.breakingnews.ie/ireland/iccl-raises-concerns-over-sharing-of-images-from-riots-1697820.html), 20 November 2024 <https://www.breakingnews.ie/ireland/iccl-raises-concerns-over-sharing-of-images-from-riots-1697820.html>

rights to presumption of innocence and to a fair trial, if charged with a crime.⁴⁸ It was later revealed that the *Gardaí* did not consult with the Data Protection Commission on the possible data protection concerns before publishing the images.⁴⁹

Following the publication, the *Gardaí* website crashed, indicating that many people were curious to see the photos. ICCL is concerned that there is scope for the photos to be disseminated widely through social media and other channels. Questions regarding how the *Gardaí* will protect the safety of people in the photos and prevent against the risk of doxxing and malicious information being provided to the *Gardaí* remain unanswered. The appropriate safeguards were not put in place to ensure people's rights were respected.

Rules on withdrawal and recusal of judges and their application in practice

In February 2022⁵⁰ the Judicial Council adopted 'Guidelines for the Judiciary on Conduct and Ethics', outlining the standard of

conduct of the judiciary and rules surrounding withdrawal and recusal. These guidelines are based on the constitutional principles of independence and impartiality, the Bangalore Principles of Judicial Conduct⁵¹ and the Judicial Council Act 2019. S. 43 (3) of the 2019 Act outlines the procedure for the recusal of a judge and the role of the Judicial Council.

Other

Absence of an alternative forum for resolution of housing disputes — Mercy Law Resource Centre (MLRC) frequently engages with local authorities on housing matters and pursues informal appeals against refusals of housing entitlements through those authorities. There is wide variation in how such appeals are processed and a general lack of transparency as part of the formalised process to be followed should an applicant wish to appeal a negative decision. Clients who are refused a service or an entitlement are frequently not informed that they have any right of appeal, a right that arises by virtue of fair procedure. Appeals can be lengthy to determine and there are, in some

48 Sarah Burns, *Dublin riots: 90 persons of interest identified after Garda photo appeal*, Irish Times 27 November 2024 <https://www.irishtimes.com/crime-law/2024/11/27/dublin-riots-90-persons-of-interest-identified-after-garda-photo-appeal/>

49 Conor Lally, *Garda did not tell Data Protection Commission it was releasing 99 Dublin riot images*, Irish Times, 9 December 2024 <https://www.irishtimes.com/crime-law/2024/12/09/garda-didnt-tell-data-protection-commission-it-was-releasing-99-dublin-riot-images/>

50 Chief Justice Donal O'Donnell, *Guidelines for the Judiciary on Conduct and Ethics*, The Judicial Council (Ireland), 4 February 2022 <https://judicialcouncil.ie/assets/uploads/documents/Guidelines%20for%20Judicial%20Conduct%20and%20Ethics.pdf>

51 The United Nations (UN), United Nations Office on Drugs and Crime(UNDOC), *The Bangalore Principles of Judicial Conduct* 2002, <https://www.unodc.org/documents/ji/training/bangaloreprinciples.pdf>

instances, a failure to apply independent mechanisms to these procedures.

2023 saw a continued increase in the number of queries received relating to refusal of access to emergency accommodation, rising by more than 100 as against 2022. These cases reflect an ongoing, increasing difficulty in accessing basic temporary homeless supports for growing numbers of individuals and families such as temporary emergency housing. Many of these cases involved a failure to carry out a homeless assessment in line with the responsibilities of Local Authorities under Section 2 of the Housing Act 1988,⁵² or a failure to give reasons for a decision to refuse to provide emergency accommodation, in line with the requirements of fair procedures. The vast majority of these initial decisions were reversed following the engagement of MLRC, though the need to have recourse to solicitors to access basic, emergency homeless support is concerning. The continuing rise in cases reflects a trend of increasingly formal barriers for people experiencing homelessness to access basic services

such as emergency accommodation. Given this, it is deeply concerning that the provision of legal support is only available through a small number of charities such as MLRC and Community Law and Mediation (CLM).

MLRC has long called for the development of less formal and community-based initiatives designed to protect the right to housing. In 2024, the government signalled its intention to change the eligibility criteria for access to social housing supports through proposals contained in the General Scheme of the Housing (Miscellaneous Provisions) Bill 2024. These proposals included the introduction of 'right to reside' and 'habitual residence' conditions into the framework. There was broad consensus among the independent law centres and other organisations (FLAC, Mercy Law Resource Centre, CLM and Crosscare) that the proposals, which were brought forward without any structured or formal consultation, were unworkable, unclear and unduly complex, and would potentially give rise to violations of EU law.^{53,54} The proposed changes were not

52 Houses of the Oireachtas, No. 28 of 1988, Housing Act (1988) <https://www.irishstatutebook.ie/eli/1988/act/28/enacted/en/html>

53 Joint Committee on Housing, Local Government and Heritage (Ireland), *Opening Statement by Community Law & Mediation*, 23 April 2024 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/submissions/2024/2024-04-23_opening-statement-rose-wall-ceo-community-law-and-mediation_en.pdf

54 Joint Committee on Housing, Local Government and Heritage (Ireland), *Report on the Pre-Legislative Scrutiny of the General Scheme of the Housing (Miscellaneous Provisions) Bill, (2024)* May 2024 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2024/2024-05-29_report-on-the-pre-legislative-scrutiny-of-the-general-scheme-of-the-housing-miscellaneous-provisions-bill-2024_en.pdf

incorporated into the final version⁵⁵ but are still under consideration.

The Committee's pre-legislative report also asked that a "robust and independent appeals mechanism be included in the legislation" operated via central government.⁵⁶ Amended legislation on this point has not returned to the Oireachtas. Such a mechanism, where it results in a more accessible and formalised mechanism for disputing such refusals, reducing the inconsistencies and related unfairness of the current procedures, would be welcome.

Similarly, in 2023 the Department of Housing, in a closed consultation,⁵⁷ proposed amendments to Sections 2 and 10 of the Housing Act 1988. These proposed amendments, which sought to apply local connection criteria, introduce a residency condition, link access to emergency accommodation with social housing supports and establish a humanitarian

assistance programme on a non-statutory basis for those who will no longer be entitled to Section 10 supports. These amendments will limit access to vital supports for many households facing homelessness, rather than meaningfully protecting their housing needs. They will create significant barriers and delays that will impact the most vulnerable and marginalised in society, including victims of domestic violence, victims of trafficking, members of the Roma and Traveller communities, migrants and the undocumented. These proposals were brought forward without any formal public consultation process.⁵⁸ Any review should consider the social housing and emergency accommodation legal landscape in its entirety and involve extensive and participatory public consultation to ensure meaningful protection for the most vulnerable and marginalised in society.

Restrictions on access to judicial review in planning and environmental matters — The

55 Houses of the Oireachtas, No.39 of 2024, Housing (Miscellaneous Provisions) Act (2024) <https://data.oireachtas.ie/ie/oireachtas/act/2024/39/eng/enacted/a3924.pdf>

56 Joint Committee on Housing, Local Government and Heritage (Ireland), *Report on the Pre-Legislative Scrutiny of the General Scheme of the Housing (Miscellaneous Provisions) Bill, (2024)* May 2024 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2024/2024-05-29_report-on-the-pre-legislative-scrutiny-of-the-general-scheme-of-the-housing-miscellaneous-provisions-bill-2024_en.pdf

57 Jack Horgan Jones, *Homeless groups warn against tightening access to emergency accommodation*, Irish Times 11 January 2024 <https://www.irishtimes.com/ireland/social-affairs/2024/01/11/homeless-groups-warn-against-tightening-of-access-to-emergency-accommodation/>

58 Laoise Neylon, *Government looks to cut off access to homeless hostels for some immigrants*, Dublin Inquirer, 29 November 2023 <https://dublininquirer.com/2023/11/29/government-looks-to-cut-off-access-to-homeless-hostels-for-some-immigrants/>

Planning and Development Bill was enacted on 17 October 2024,⁵⁹ Part 9 of which restricts access to judicial review in planning matters, undermining the significant progress Ireland has made to standing and cost rules in recent years as a result of its adoption of the Aarhus Convention. New requirements include unincorporated bodies such as residents' associations having their standing subject to several conditions regarding their form and nature. For example, they must now provide a list of names and addresses of the members who have voted to take judicial review proceedings, a measure that can only be designed to produce a chilling effect and intimidate local groups from potential challenges.

In addition to other conditions, environmental NGOs must have existed for not less than one year prior to the proceedings and are required to have no fewer than 10 members at the time the proceedings are brought. The ability of ordinary members of the public to bring questions about the legality of administrative decisions to the High Court is a vital aspect of our legal system and not one which should be curtailed in any way. The new restrictions undermine the rights that members of the public and NGOs are entitled to under the Aarhus Convention, ratified by Ireland in 2012.

59 Houses of the Oireachtas, No. 34 of 2024, Planning and Development Act (2024) <https://data.oireachtas.ie/ie/oireachtas/act/2024/34/eng/enacted/a3424.pdf>

ANTI-CORRUPTION FRAMEWORK -

Key recommendations

- *The Department of Public Expenditure and Reform should publish and swiftly enact legislation to reform and consolidate the statutory framework for public ethics which has been outstanding now for four years.*
- *Ensure that the Standards in Public Office Commission (SIPO) is equipped to deliver on its remit to detect, prevent and punish corruption.*

Levels of corruption

Perceptions of corruption in Ireland have remained stable and at a low level. Ireland is ranked 11th out of 180 jurisdictions, according to Transparency International's 2023 Corruption Perception index.⁶⁰ Issues which were highlighted in previous country submissions remain unaddressed. These include the resignation of two government ministers in 2022⁶¹

as a result of failures to declare interests in properties.

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

In 2021, the Government announced a review of Ireland's existing statutory framework for Ethics in Public Life.⁶² The Review of Ethics

60 Transparency International: *Corruption Perceptions Index: Ireland 2023* <https://www.transparency.org/en/countries/ireland>

61 For details, see *Ireland Country Chapter, Liberties Rule of Law Submission 2023* <https://www.iccl.ie/wp-content/uploads/2023/02/230220-Liberties-Rule-of-Law-Report-2023-Ireland-Chapter.pdf>

62 Department of Public Expenditure, NDP Delivery and Reform (Ireland), Minister McGrath launches Public Consultation on Review of Ethics Legislation, 25 November 2021 <https://www.gov.ie/en/press-release/aec32-minister-mcgrath-launches-public-consultation-on-review-of-ethics-legislation/>

Legislation sought a review of the statutory framework covering^{63,64} corrupt payments to politicians. The review was published in February⁶⁵ but no updates have been provided on plans for reform. This is despite the government's stated commitments on reforms, as included in the state's contribution to the 2024 rule of law reporting cycle (see section on implementation of 2024 recommendations).

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

The Regulation of Lobbying (Amendment) Act 2023 was signed into law in July 2023 and came into force on a staggered basis in January and June 2024. This act enhances certain

aspects of the principal act by increasing the categories of groups which are subject to its provisions. It also improves the operation and enforcement of Section 22 of the act, which deals with restrictions on post-term employment for former ministers as lobbyists for areas in which they previously had responsibility.⁶⁶

Rules on preventing conflicts of interest in the public sector

In June 2024, concerns were raised regarding the ability of former members of parliament to have unrestricted access to parliamentary buildings to conduct lobbying activities.⁶⁷ This matter had previously been highlighted by the Joint Committee on Finance, Public Expenditure and Reform and Taoiseach in its report on the Pre-Legislative Scrutiny of the General Scheme of the Regulation of Lobbying

63 Government of Ireland, *Report of the Tribunal of Inquiry into Payments to Politicians and Related Matters (Moriarty Tribunal Report)*, December 2006 https://moriarty-tribunal.ie/wp-content/uploads/2016/09/SITECONTENT_26.pdf

64 Government of Ireland, *Report of the Tribunal of Inquiry into Certain Planning Matters and Payments (Mahon Tribunal Report)* 22 March 2012 https://pt-cdn-prod.s3.eu-west-1.amazonaws.com/wp-content/uploads/2019/04/02115105/sitecontent_1257.pdf

65 Department of Public Expenditure, NDP Delivery and Reform (Ireland): Review of Ireland's Statutory Framework for Ethics in Public Office, 3 February 2023 <https://www.gov.ie/en/publication/bc390-review-of-irelands-statutory-framework-for-ethics-in-public-office/>

66 Arthur Cox, *Modifications to the Regulation of Lobbying in Ireland*, 18 August 2023 <https://www.arthurcox.com/knowledge/modifications-to-the-regulation-of-lobbying-in-ireland/>

67 Fionnán Sheahan, *Lobbying in Leinster House: How Dáil chair's private dining room was used by big business*, Irish Independent 23 April 2024 <https://www.independent.ie/opinion/analysis/lobbying-in-leinster-house-how-dail-chairs-private-dining-room-was-used-by-big-business/a1081832731.html?errorCode=0>

(Amendment) Bill (2022).⁶⁸ The committee recommended that the automatic granting of access to the parliamentary complex for ex-members should be discontinued. However, the Regulation of Lobbying (Amendment) Act does not comply with this recommendation.

Investigation and prosecution of corruption

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds. Please provide data where available.

Responsibility for the detection and prevention of corruption is fragmented and spread across several bodies including SIPO, the Corporate Enforcement Authority and *an Garda Síochána*.

The fragmentation of responsibilities has led to accusations of inefficiency and incoherence.⁶⁹

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

SIPO has repeatedly claimed that it has insufficient powers⁷⁰ to execute its remit to address corruption and malfeasance in the political system. In December 2024 it came to light that SIPO lobbied the government to not be given the responsibility to take on the enforcement of “cooling off periods”, as legislated for in the Regulation of Lobbying (Amendment) Bill (2022). It claimed it had insufficient resources to carry out this function and that the proposals were “completely unworkable”⁷¹ and should be left to the courts.

68 Joint Committee on Finance, Public Expenditure and Reform and Taoiseach (Ireland), *Report on the Pre-Legislative Scrutiny of the General Scheme of the Regulation of Lobbying (Amendment) Bill 2022* 14 July 2022 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_finance_public_expenditure_and_reform_and_taoiseach/reports/2022/2022-07-22_report-on-the-pre-legislative-scrutiny-of-the-general-scheme-of-the-regulation-of-lobbying-amendment-bill-2022_en.pdf

69 Gary Murphy, Robert Gillanders and Michael Breen, *A question of political will: Corruption and Public Administration in Ireland*, Vol. 38 No. 1 (2019): DPCE Online 1-2019 <https://www.dpceonline.it/index.php/dpceonline/article/view/681>

70 Regulatory Desk, *More public bodies are beyond SIPO scope*, Law Society Gazette, 26 July 2024 <https://www.lawsociety.ie/gazette/top-stories/2024/july/more-public-bodies-remain-outside-sipo-scope/>
Ken Foxe, *Public ethics watchdog SIPO could not probe undeclared donations to Paschal Donohoe last year*, TheJournal.ie, 24 October 2024 <https://www.thejournal.ie/sipo-could-not-probe-paschal-donohoe-complaint-6524016-Oct2024/>
Ellen O’Riordan, *SIPO says complaint about Varadkar not part of its remit*, Irish Times, 14 February 2024 <https://www.irishtimes.com/crime-law/courts/2024/02/13/sipo-says-complaint-about-varadkar-not-part-of-its-remit/>

71 Ken Foxe, *‘Completely unworkable’: Plans for Sipo to enforce lobbyists’ cooling-off periods criticised*, Irish Times, 11 December 2024 <https://www.irishtimes.com/crime-law/courts/2024/12/11/completely-unworkable-plans-for-sipo-to-enforce-lobbyists-cooling-off-periods-criticised/>

MEDIA ENVIRONMENT AND MEDIA FREEDOM



Key recommendations

- Complete the Passage of the Defamation (Amendment) Bill 2024 in the Oireachtas but the Department of Justice should abandon plans to remove juries from the process.
- The Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media should agree on a long-term funding plan for public sector broadcasting.

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The Future of Media Commission was established by the Government in 2020 to examine the future of the media in Ireland, including Ireland's public service broadcasters, commercial broadcasters, print and online media platforms. The Commission's final report was published in July 2022.⁷² It contains over 50 recommendations on the structure and

financing of media in Ireland. The report recommends moving away from the "television licence fee" model of funding public broadcasting to one of direct exchequer funding. In July 2024 an interim three-year funding agreement was reached⁷³ which provides for additional exchequer funding, however a long-term funding plan is yet to be agreed on. The National Union of Journalists (NUJ) has expressed dissatisfaction with this arrangement as the decision on the abolition of the licence fee funding model for public service broadcasting has again been delayed.⁷⁴

72 The Future of Media Commission (Ireland): *Final Report of the Future of Media Commission*, 12 July 2022 <https://www.gov.ie/en/publication/ccae8-report-of-the-future-of-media-commission/>

73 Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (Ireland) Minister Martin announces Government agreement on funding of RTÉ and Public Service Media 24 July 2024 <https://www.gov.ie/en/press-release/8b877-minister-martin-announces-government-agreement-on-funding-of-rte-and-public-service-media/>

74 News Desk, 'Kicking can down the road' - NUJ disappointed with RTÉ funding model, RTÉ News, 24 July 2024, <https://www.rte.ie/news/ireland/2024/0724/1461597-rte-funding-reaction/>

Coimisiún na Meán (The Media Commission) was established in 2023 and has responsibility for the regulation of online and broadcast media.⁷⁵ ICCL recommended that the Commission act to switch off algorithms on online platforms which promote extremism.⁷⁶ However, this safeguard was not included in the Online Safety Codes as published in October 2024.⁷⁷

Public service media

Editorial standards (including diversity and non-discrimination)

The NUJ has indicated that it will write to the main opposition party, Sinn Féin, to express concerns regarding a call from the party for a review of RTÉ's coverage of Gaza for "bias".⁷⁸

Financing (including transparency of financing)

The failure to provide adequate funding and to reform the licence collection system has had an impact on the main public service broadcaster, RTÉ.⁷⁹ As of January 2024, the government has not provided information on long-term proposals for funding of public service broadcasting beyond the three-year agreement, as outlined previously. The NUJ views this action as an impediment to securing the future viability of public service broadcasting as it fails to address long-term funding concerns.⁸⁰

75 Coimisiún na Meán (Ireland), Accessed 16 January 2025 <https://www.cnam.ie/>

76 Irish Council for Civil Liberties (ICCL), *A binding Code against toxic algorithms Submission to the Media Commission of Ireland*, 4 September 2023 <https://www.iccl.ie/digital-data/media-commission-urged-to-switch-off-big-tech-toxic-algorithms/>

77 Coimisiún na Meán (Ireland), *Online Safety Code*, 21 October 2024 https://www.cnam.ie/app/uploads/2024/10/Coimisiun-na-Mean_Online-Safety-Code.pdf

78 Diarmuid Pepper, *Taoiseach says Sinn Féin pledge to review RTÉ's Gaza coverage is a 'dog whistle to conspiracy theorists'* *TheJournal.ie*, 20 November 2024 <https://www.thejournal.ie/taoiseach-says-sinn-fein-pledge-a-dog-whistle-to-conspiracy-theorists-6547589-Nov2024/>

79 Jane Moore, *TV licence fee in place for RTÉ 'utterly broken', Dee Forbes tells committee*, *TheJournal.ie* 20 January 2022 <https://www.thejournal.ie/licence-fee-rte-utterly-broken-dee-forbes-oireachtas-committee-5659707-Jan2022/>

80 National Union of Journalists, *Funding plan fails to address core issue, says NUJ*, 24 July 2024 <https://www.nuj.org.uk/resource/broadcasting-funding-plan-fails-to-address-core-issue-says-nuj.html>

Online media

Impact on media of online content regulation rules (including content removal obligations, liability rules)

Following its establishment,⁸¹ *Coimisiún na Meán* began developing a binding Online Safety Code for content regulation. The Online Safety Code for video sharing platforms was published in October 2024.⁸²

Public trust in media

According to research carried out by the Institute for Future Media Democracy and Society and *Coimisiún na Meán* those reporting a “strong agreement” or “tend to agree” with the statement “I think you can trust most news most of the time” declined slightly in 2024 46%

but remains relatively high. The most trusted news sources are RTÉ and *The Irish Times*.⁸³

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

Reporters covering violent protests around sites earmarked for accommodation for people seeking international protection have been subject to threats,⁸⁴ as have journalists covering legal cases related to these protests.⁸⁵

Rules and practices guaranteeing journalist's independence and safety

A draft bill to amend defamation laws was published in 2023⁸⁶ but had not completed the legislative process when parliament was

81 Leigh Mc Gowran, *Irish regulator seeks public feedback for Online Safety Code*, Silicon Republic, 11 July 2023 <https://www.siliconrepublic.com/business/online-safety-code-ireland-comisiun-na-mean-cnam>

82 Coimisiún na Meán (Ireland), *Coimisiún na Meán adopts final Online Safety Code*, 21 October 2024 <https://www.cnam.ie/coimisiun-na-mean-adopts-final-online-safety-code/>

83 Colleen Murrell, Claire English, David Robbins, Dawn Wheatley, *Digital News Report Ireland 2024/Tuarascáil ar Nuacht Dhigiteach na hÉireann 2024*, Coimisiún na Meán & Dublin City University FuJo: The Institute for Future Media Democracy and Society <https://fujomedia.eu/publications/reuters-digital-news-report-2024/>

84 Róna Maguire, *'Horrid' Gardai probe threats made to journalist covering Coolock disturbances as attempts made to find home address & car*, The Irish Sun, 19 July 2024 Mapping Media Freedom, *RTÉ journalist Barry O'Kelly constantly prevented from filming protest against asylum seekers' plans*, 31 May 2024 <https://www.mapmf.org/explorer>

85 National Union of Journalists, *NUJ condemns vile abuse of reporter*, 19 July 2024 <https://www.nuj.org.uk/resource/nuj-condemns-vile-abuse-of-reporter.html>

86 Department of Justice (Ireland) *Draft General Scheme of the Defamation (Amendment) Bill*, 28 March 2023 <https://www.gov.ie/en/publication/e9604-draft-general-scheme-of-the-defamation-amendment-bill/>

dissolved in November 2024.⁸⁷ It is expected the bill will be re-tabled when the next government is formed in 2025.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

2023 saw the establishment of a non-statutory body by *An Garda Síochána*, the Media Engagement Group, aimed at improving the safety of media workers. This is a joint initiative of the Gardaí, the NUJ, representatives of media organisations and state agencies. Chaired by an Assistant Commissioner, it meets quarterly, monitors attacks and threats, and provides training. The group has also established a reporting system for profession-related attacks against media workers. In 2023, 32 complaints were logged, of which six led to criminal investigations.⁸⁸

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

The Defamation (Amendment) Bill 2024 is expected to address some forms of Strategic Lawsuits Against Public Participation (SLAPP) against journalists and others. Part 7 of the bill will transpose the EU's anti-SLAPP directive⁸⁹ but campaigners say that more robust protections are needed.⁹⁰ The Ireland Anti-SLAPP Network, a coalition of stakeholders including ICCL and Index on Censorship, has put forward three main recommendations to strengthen the bill. Firstly, the current test risks excluding some SLAPPs from the scope of the legislation. This is because Section 34A of the bill requires the main purpose of the claimant to be determined subjectively. The Ireland Anti-SLAPP Network has suggested changes to the language to add an objective test to the bill. Second, the Network has suggested the addition of a clause which would require the litigant to demonstrate that their

87 Department of Justice (Ireland), 67 of 2024, Defamation (Amendment) Bill (2024) <https://www.oireachtas.ie/en/bills/bill/2024/67/>

88 National Union of Journalists, *Don't let your blower make you a sucker*, 10 April 2024 <https://www.nuj.org.uk/resource/don-t-let-your-blower-make-you-a-sucker.html>

89 Directive (EU) 2024/1069 of the European Parliament and of the Council of 11 April 2024 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation') https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:L_202401069

90 Joint Committee on Justice (Ireland), *Opening Statement on behalf of the Ireland Anti-SLAPPs Network Ireland*, Pre-legislative hearings- Defamation (Amendment) Bill (2023), 4 July 2023 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_justice/submissions/2023/2023-07-04_opening-statement-jessica-nimhainin-index-on-censorship-et-al-iccl-anti-slapps-network_en.pdf

case is not unfounded as part of an early dismissal mechanism. An example of this can be found in clause 2(2) of the UK Anti-SLAPP Coalition's Model Anti-SLAPP Law.⁹¹ Third and finally, the Ireland Anti-SLAPP Network has advised on the addition of a provision which would require the court to stay proceedings once an application has been made for the early dismissal of a SLAPP claim. This would allow the court to make a timely assessment as to whether a claim should be struck out and would prevent legal fees accruing.

Confidentiality and protection of journalistic sources (including whistleblower protection)

Head 16 of the General Scheme of the *Garda Síochána* (Powers) Bill⁹² provides for a general search warrant provision including access to electronic devices, as recommended by the

Law Reform Commission. As of December 2024, the revised version of the bill remains unpublished.

In March 2024, the *Gardaí* successfully sought court orders⁹³ to compel journalists to hand over photos of the November 2023 riot in Dublin city centre. Media agencies and the NUJ⁹⁴ expressed their objections but the *Gardaí* again sought them after further disturbances in July 2024.⁹⁵ In August 2024, *gardaí* attempted to seize footage from an RTÉ journalist ahead of its broadcast as part of a documentary.⁹⁶

Access to information and public documents

A review of Freedom of Information Act (2014), which was commenced by the Department of Public Expenditure and Reform in 2021 remains ongoing as of December 2024.

91 UK Anti-SLAPP Coalition: *Model Anti-SLAPP Law Advancing robust protection against SLAPPs within the parameters of the MOJ's proposed legislative framework*, May 2023 <https://antislapp.uk/wp-content/uploads/2023/05/Model-UK-Anti-SLAPP-Law-Final-Version.docx.pdf>

92 Department of Justice (Ireland), *Garda powers to be modernised and updated under new Bill from Minister Humphreys* Published 14 June 2021 <https://www.gov.ie/en/press-release/6ed9f-garda-powers-to-be-modernised-and-updated-under-new-bill-from-minister-humphreys/>

93 PA Reporter, *Concerns raised over Garda efforts to obtain media images of Dublin riots*, Irish Independent, 27 March 2024 <https://www.independent.ie/irish-news/concerns-raised-over-garda-efforts-to-obtain-media-images-of-dublin-riots/a887494887.html>

94 National Union of Journalists, *gardaí demand access to media far-right photos*, 7 March 2024

95 Emma Hickey, *NUJ hits out at gardaí for requesting press photos of Coolock violence*, *TheJournal.ie*, 26 July 2024 <https://www.thejournal.ie/nuj-images-garda-commissioner-coolock-6446873-Jul2024/>

96 Debbie McCann, *gardaí tried to seize RTÉ riot footage as detectives went to reporter's home* - *Extra.ie*, 22 September 2024 <https://extra.ie/2024/09/22/news/gardai-seize-rte-riot-footage>

A report on the initial stakeholder consultation was published in December 2022.⁹⁷ In the state contribution to the rule of law reporting process it was noted that the final review report would be presented to the government in 2024.⁹⁸ As of December 2024, it was unclear whether this had happened.⁹⁹

The Commission on the Future of Policing in Ireland recommended that there be a review

of *An Garda Síochána's* current status under the Freedom of Information Act 2014,¹⁰⁰ as the law currently only provides access to police records relating to human resources, finances, and procurement.¹⁰¹ Freedom of information requests submitted to the Department of Justice and the Department of An Taoiseach by ICCL have revealed no record of such a review taking place.¹⁰²

CHECKS AND BALANCES

Key recommendations

- *The Oireachtas should enhance the transparency of the decision-making process by making it a requirement that reasoning is given for the rejection of recommendations of pre-legislative reports.*
- *The Department of Housing, Local Government and Heritage should publish legislation to address electoral mis/information.*

97 Department of Public Expenditure, NDP Delivery and Reform (Ireland), Review of the Freedom of Information Act Progress Update, December 2022 <https://assets.gov.ie/242358/05191c81-a99c-4c6d-8d0d-776166bcd464.pdf>

98 Ireland, Member State Contribution European Commission Annual Rule of Law Report 2024 https://commission.europa.eu/document/download/0123a8f4-05e6-4021-8240-ae39a5d1fb65_en?filename=76_1_58157_input_mem_ireland_en.pdf

99 Dáil Éireann Debate Monday 9 September 2024: Freedom of Information-Parliamentary question Ged Nash TD https://www.oireachtas.ie/en/debates/question/2024-09-09/446/#spk_372

100 The Commission on the Future of Policing in Ireland, *Final Report*, 18 September 2018 <https://policereform.ie/en/polref/pages/pb18000006>

101 Houses of the Oireachtas, No. 30 of 2014, Freedom of Information Act (2014) <https://www.irishstatutebook.ie/eli/2014/act/30/enacted/en/html>

102 Emily Williams, *Human Rights in Irish Policing: Analysing the Implementation of the Recommendations from the Commission on the Future of Policing in Ireland*, ICCL, May 2024 <https://www.iccl.ie/wp-content/uploads/2024/05/CoFPI-report-WEB.pdf>

- *The Department of Housing, Local Government and Heritage should expand the Seanad franchise to mirror that of Dáil elections.*

Process for preparing and enacting laws

While the practice of pre-legislative scrutiny of legislation has now become embedded into the parliamentary system, the recommendations produced are often ignored without explanation by the responsible department when re-drafting the final versions of legislation.¹⁰³

Independent authorities

The Policing, Security and Community Safety Act 2024 commenced on 16 December 2024 and created a new oversight structure for *An Garda Síochána*. Since the drafting of the act, ICCL has consistently raised issues regarding the new offices of the Independent Examiner of Security Legislation, the Policing and Community Safety Authority and the Office of the

Police Ombudsman.¹⁰⁴ Concerns include the proposed governance and structures of these bodies which may limit their independence and impede their ability to operate effectively. For example, the Independent Examiner of Security Legislation does not have unfettered access to the information it needs to perform its role.¹⁰⁵ The Office of the Police Ombudsman has restrictions on its independence that are not found in other national Ombudsman institutions, such as the Ombudsman for Children and the Office of the Ombudsman.¹⁰⁶

SIPO's existing governance is weak and 'standards of conduct for public officials, both elected and appointed, is devoid of any mechanism to address racism and discrimination where it is perpetuated online, in person and in electioneering, with numerous examples of offence caused to Travellers over many decades.'¹⁰⁷ The

103 Govt's plan for industrial school survivors 'ignores every recommendation' made by committee- [TheJournal.ie May 2024](https://www.thejournal.ie/may-2024)

104 Patrice McDonnell, *Policing, Security and Community Safety Bill 2023: Community Safety* Oireachtas Library and Research Service: Bills Digest, 20 February 2023 https://data.oireachtas.ie/ie/oireachtas/libraryResearch/2023/2023-04-11_l-rs-note-policing-security-and-community-safety-bill-2023-community-safety_en.pdf

105 Emily Williams, *Human Rights in Irish Policing: Analysing the Implementation of the Recommendations from the Commission on the Future of Policing in Ireland*, ICCL, May 2024 p.29 <https://www.iccl.ie/wp-content/uploads/2024/05/CoFPI-report-WEB.pdf>

106 Emily Williams, *Human Rights in Irish Policing: Analysing the Implementation of the Recommendations from the Commission on the Future of Policing in Ireland*, ICCL, May 2024 p.11 <https://www.iccl.ie/wp-content/uploads/2024/05/CoFPI-report-WEB.pdf>

107 Irish Traveller Movement: *Submission to the Task Force on Safe Participation in Political Life* 15 May 2024 https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/other/2024-05-15_submission-irish-traveller-movement-itm_en.pdf

key underpinning legislation, the Ethics Acts, focus on anti-corruption and compliance under finance rules, elections and conflicts of interest, with little content on matters related to conduct in public office, values – such as equality and anti-discrimination – while in or running for office, and public discourse. A review of the current complaints procedure, which is onerous for users, is also needed.

IHREC is still without enforcement powers to underpin the Public Sector Equality and Human Rights Duty – the statutory obligation for public bodies (Section 42 of the Irish Human Rights and Equality Commission Act 2014)¹⁰⁸ “to have regard to the need to eliminate discrimination, promote equality and protect human rights of staff and people availing of their services”. The absence of enforceability undermines the role of the national human rights institution as a watchdog of human rights breaches by public bodies as duty bearers as its powers are limited to ‘inviting’ the body to address relevant issues.¹⁰⁹

The Office of the Inspector of Prisons,¹¹⁰ established by the Prisons Act (2007), conducts regular prison inspections and unannounced visits but currently does not have the power to publish its own reports. All reports have to be submitted to the Minister for Justice for approval and under section 31(4) of the Prisons Act,¹¹¹ the Minister has powers to redact all, or part of any report submitted to them.

The proposed legislation to allow the State to ratify the Optional Protocol to the Convention Against Torture (OPCAT) (the Inspection of Places of Detention Bill)¹¹² would allow the new Inspectorate to present reports to the Houses of the *Oireachtas*, free of ministerial control. Under this legislation, IHREC will become the National Preventative Mechanism coordinator once OPCAT is ratified. This is particularly important from a transparency and accountability perspective as in January 2024, a redacted version of the inspection report¹¹³ of the *Dóchas Centre*, the women’s prison in Dublin, conducted by the Office of the Inspector of Prisons in 2020 during the COVID-19

108 Houses of the Oireachtas, No. 25 of 2014, Irish Human Rights and Equality Commission Act (2014) <https://www.irishstatutebook.ie/eli/2014/act/25/enacted/en/print>

109 Irish Human Rights and Equality Commission, *Public Sector Equality and Human Rights Duty – FAQ* Accessed 17 January 2025 <https://www.ihrec.ie/our-work/public-sector-equality-and-human-rights-duty-faq/>

110 Office of the Inspector of Prisons, Accessed 17 January 2025 <https://www.oip.ie/>

111 Houses of the Oireachtas, No.10 of 2007, Prisons Act (2007) <https://www.irishstatutebook.ie/eli/2007/act/10/enacted/en/print>

112 Department of Justice (Ireland) Draft General Scheme Inspection of Places of Detention Bill June 2022 <https://assets.gov.ie/228123/94b395af-c07c-4233-969f-ae838db02569.pdf>

113 Office of the Inspector of Prisons, *Inspection Report Oversight Monitoring Visit During Covid-19 Pandemic Mountjoy Female Prison (Dóchas Centre) (Redacted Version)* 5 August 2020 <https://www.gov.ie/pdf/?file=https://assets.gov.ie/281788/66945768-5c5a-4f99-a875-b65a8d6074b5.pdf#page=null>

pandemic, was published after being withheld for a number of years, on the basis of advice from the Attorney General.¹¹⁴ The findings in the initial report led to the Minister requesting a further investigation report and a supplementary report, both of which were submitted to the Minister in 2022. Both have been withheld to date following legal advice from the Attorney General.¹¹⁵

Electoral framework

Limitations on the right to vote

Members of the upper chamber of parliament (the *Seanad*) are not elected through universal suffrage.¹¹⁶ Forty-nine of the *Seanad*'s 60 members are elected through closed lists and 11 are nominated by the *Taoiseach* (Prime Minister). 43 senators are elected from panels

of candidates representing specific vocational interests. The remaining 6 members are elected by university graduates of certain universities. Every citizen of Ireland who is at least 18 years old and who has been awarded a degree, other than an honorary degree, from the university concerned is entitled to be registered as an elector. The electorate of the National University of Ireland numbers 110,000 approximately and that of the University of Dublin 50,000 approximately.¹¹⁷ The electoral roll is maintained and updated by the university concerned. Even within this limited pool of eligible electors, registration and turnout is very low.¹¹⁸ The exclusion of those with degrees from other third level institutions was ruled to be unconstitutional in 2023¹¹⁹ and the government has announced plans to extend the franchise by 2025.¹²⁰ The recently passed *Seanad Electoral (University Members)*

114 Irish Penal Reform Trust (IPRT), *IPRT welcomes the publication of withheld Dóchas Prison Inspection Report* 26 January 2024 <https://www.iprt.ie/latest-news/iprt-welcomes-the-publication-of-withheld-dochas-prison-inspection-report/>

115 Dáil Éireann Debate Thursday 1 February 2024: Prison Service-Parliamentary question Patrick Costello TD <https://www.oireachtas.ie/en/debates/question/2024-02-01/314/>

116 Citizens Information (Ireland): *The Seanad* January 17 2025 <https://www.citizensinformation.ie/en/government-in-ireland/houses-of-the-oireachtas/the-seanad/>

117 Houses of the Oireachtas: *How the Seanad is Elected (Upper House of Parliament)* Accessed 17 January 2025 <https://assets.gov.ie/130328/7319b9fa-9e70-4874-b58d-004918685654.pdf>

118 John Coakley, *The Final Seanad Election?* p. 240–263 *How Ireland Voted 2011, 2011* https://www.nui.ie/elections/referendum/docs/ck1y_arCl3.pdf

119 Free Legal Advice Centres (FLAC), *Laws limiting electorate for Seanad University Panels are unconstitutional; Oireachtas must legislate to expand franchise* FLAC 31 March 2023 <https://www.flac.ie/news/2023/03/31/landmark-supreme-court-judgment-laws-limiting-elec/>

120 Katie O'Donovan, *Expanding Seanad franchise must be done by 2025 following case by UL graduate*, Limerick Post, 7 August 2023 <https://www.flac.ie/news/2023/03/31/landmark-supreme-court-judgment-laws-limiting-elec/>

(Amendment) Act 2024¹²¹ will address this anomaly by extending the franchise to all Irish citizens who hold a degree from a designated institution of higher education in Ireland, but will still exclude those from other institutions or who do not have a third level education from voting to elect these senators.

Enabling environment for the exercise of the right to vote voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

An Coimisiún Toghcháin (The Electoral Commission) has published its research programme for 2024-2026 which sets out the priorities for the period. This includes research on electronic voting, advance voting and other enabling enhancements.¹²²

Rules on political advertising and their enforcement

An Coimisiún Toghcháin is in theory responsible for the enforcement of Part IV of the Electoral Act (2024) with respect to online

political advertising. This section of the act remains uncommented however as it is incompatible with the EU e-Commerce directive. In November 2024, *Coimisiún na Meán* removed the existing moratorium on election coverage in the 24 hours before polling stations open. This moratorium had been in place since 1997. Instead, broadcasters are required to adhere to an “additional care requirement” when reporting on matters which could impact the electoral event.¹²³

Eligibility criteria and restrictions to be a candidate

The need for ethnic minority representation in political decision-making has been recognised by the UN’s Committee on the Elimination of Racial Discrimination multiple times, most recently in 2019, when it called for the “State party (to) take effective measures, including special measures, to improve the representation of ethnic minority groups in political and public life”.¹²⁴ Travellers encounter many obstacles to contesting elections such as countering anti-Traveller racism and overcoming bias to nominations by political parties and

121 Houses of the Oireachtas, No. 40 of 2024, Seanad Electoral (University Members) (Amendment) Act 2024 <https://www.oireachtas.ie/en/bills/bill/2024/74/>

122 An Coimisiún Toghcháin, The Electoral Commission Research Programme 2024-2026 July 2024 https://cdn.electoralcommission.ie/app/uploads/2024/07/08123719/EC_RESEARCH_PROGRAMME_ENG_ACCESSIBLE.pdf

123 Coimisiún na Meán, *Coimisiún na Meán removes traditional broadcast moratorium for election coverage*, 1 November 2024 <https://www.cnam.ie/coimisiun-na-mean-removes-traditional-broadcast-moratorium-for-election-coverage/>

124 United Nations (UN) Committee on the Elimination of Racial Discrimination, Concluding observations on the combined fifth to ninth reports of Ireland 12 December 2019 <https://inar.ie/wp-content/uploads/2019/12/CERD-2019-Concluding-remarks.pdf>

groups. The system which determines election to the *Seanad* also disadvantages Travellers and other minority groups as candidates must be endorsed by a political representative or designated bodies and universities. Reforms, as included a minority panel and a Report of a Parliamentary Forum,¹²⁵ have not been advanced, and *an Coimisiún Toghcháin* does not currently have designated function for the *Seanad*.

Irregularities, fraud and related safeguards, including independence and effectiveness of electoral bodies

An Coimisiún Toghcháin is independent of the government. Its budget is included in the expenditure envelope of the Department of Housing and Local Government. The budget allocation for 2025 remains the same as in 2024 at €12m.¹²⁶ Additional funding has been

provided to SIPO for 2025 to commence a digitalisation process for spending returns.¹²⁷

Access to balanced and reliable information online and offline during electoral campaign: campaigning, media coverage, disinformation and misinformation

In January 2021, the government published the general scheme of the Electoral Reform Bill (2020).¹²⁸ The draft Bill went through an extensive period of pre-legislative scrutiny ending in July 2021. As part of the pre-legislative scrutiny process, a number of academics and members of civil society called on the government to equip *an Coimisiún Toghcháin* with powers to address and counter dis/misinformation.¹²⁹ While the subsequent committee report recommended that “the proposed Bill provides for the maintenance of electoral integrity and the protection against election interference as an explicit function of *an Coimisiún Toghcháin*”,¹³⁰

125 Houses of the Oireachtas, *Forum on a Family Friendly and Inclusive Parliament Report as presented to the Ceann Comhairle, Mr Seán Ó Fearghail TD*, 2 November 2021 https://data.oireachtas.ie/ie/oireachtas/parliamentaryBusiness/other/2021-11-02_report-of-the-forum-on-a-family-friendly-and-inclusive-parliament_en.pdf

126 [Whereyourmoneygoes.ie](https://whereyourmoneygoes.ie/): Housing Expenditure 2025, Accessed 20 January 2025 <https://whereyourmoneygoes.gov.ie/en/housing/2025/>

127 Government of Ireland (Prepared by the Department of Public Expenditure, NDP Delivery and Reform)-*Budget Expenditure Report*, 1 October 2024 <https://www.gov.ie/en/publication/3ab46-budget-2025-expenditure-reports/>

128 Department of Housing, Local Government and Heritage (Ireland), General Scheme of the Electoral Reform Bill (2020) 8 January 2021 <https://www.gov.ie/en/publication/34cf6-general-scheme-of-the-electoral-reform-bill-2020/>

129 Joint Committee on Housing, Local Government and Heritage(Ireland) General Scheme of Electoral Reform Bill (2020): Discussion (Resumed), 2 Feb 2021 https://www.oireachtas.ie/en/debates/debate/joint_committee_on_housing_local_government_and_heritage/2021-02-02/2/

130 Joint Committee on Housing, Local Government & Heritage (Ireland) *Report on Pre-Legislative Scrutiny of the General Scheme of the Electoral Reform Bill (2020)*, 4 August 2021 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_housing_local_government_and_heritage/reports/2021/2021-08-19_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-electoral-reform-bill-2020_en.pdf

the revised bill contained no reference to mis/disinformation until an entirely new section was added as an amendment by the Minister late in the legislative process.¹³¹ These last-minute additions were subject to infringement procedures by the European Commission as they were deemed to be incompatible with EU law.¹³² The rushed and unsatisfactory manner in which the legislation was passed was also subject to public commentary¹³³ and objections from parliamentarians.¹³⁴ The infringement procedures mean that while the act has been passed, sections addressing mis/disinformation and political advertising have yet to be.¹³⁵ As of December 2024 no proposals have been brought forward to address the incompatibility of the act with EU law.¹³⁶

Free and open civic discourse online and offline during electoral campaign

Coimisiún na Meán's Guidelines in Respect of Broadcast Coverage of Elections and Code of Fairness, Objectivity and Impartiality¹³⁷ in News and Current Affairs were published in November 2024.¹³⁸ These replace guidelines from the Broadcasting Authority of Ireland as *Coimisiún na Meán* has taken on their regulatory functions.

Other

The Electoral Commission published two post electoral event reviews (PEERs) in 2024. One on the March 8th “family and care” referenda¹³⁹ and one on the June 7th Local and European

131 Daniel McConnell, *Government's Electoral Reform Bill 'incompatible' with EU directives on online advertising*, Irish Examiner 21 July 2022, <https://www.irishexaminer.com/news/politics/arid-40922930.html>

132 Department of Housing, Local Government and Heritage (Ireland) Statement on the Electoral Reform Bill, 22 July 2022 <https://www.gov.ie/en/press-release/44555-statement-on-the-electoral-reform-bill/>

133 Liam Herrick, *Approach to Electoral Reform Bill raises serious questions over Government's respect for rule of law*, Irish Examiner, 1 August 2022, <https://www.irishexaminer.com/opinion/commentanalysis/arid-40927832.html>

134 Dáil Éireann debate -Electoral Reform Bill (2022) Amendments from the Seanad 13 Jul 2022 <https://www.oireachtas.ie/en/debates/debate/dail/2022-07-13/16/>

135 An Coimisiún Toghcháin (Ireland) Electoral Integrity Regulation of Online Electoral Information Accessed 20 January 2025 <https://www.electoralcommission.ie/electoral-integrity/>

136 *Electoral Commission to be empowered to counter online misinformation under draft law to be considered by Cabinet Irish Times June 2024*

137 Broadcasting Authority of Ireland-Code of Fairness, Objectivity & Impartiality in News and Current Affairs August 2024 https://www.cnam.ie/app/uploads/2025/01/20130408_BAICOFOI_OnlineVer_bf.pdf

138 Coimisiún na Meán (Ireland) *Read our updated guidelines for broadcast coverage of elections-* 11 November 2024 <https://www.cnam.ie/coimisiun-na-mean-publishes-updated-guidelines-for-broadcast-coverage-of-elections-2/>

139 An Coimisiún Toghcháin (Ireland) Post Electoral Event Review, *Family and Care Referendums | 8 March 2024*, 9 September 2024 <https://cdn.electoralcommission.ie/app/uploads/2024/09/03150406/Post-Electoral-Event-Review.pdf>

Elections.¹⁴⁰ These reviews are complimented with the National Election and Democracy Study (NEDS) which carries out wider scale surveys on attitudes to democracy.¹⁴¹ These reviews show that while there are some issues with respect to the accessibility of polling stations and ballot papers, trust in the electoral system is consistently high across parties and demographics. For example, 94% of

respondents in the European Election NEDS agreed with the statement “I was confident that I understood the ballot papers and how to cast my vote” and 86% agreed with the statement “I am confident my ballot papers are secret once I have put them in the ballot box.”¹⁴² Reports on the November 29th General Election are yet to be published.

CIVIC SPACE

Key recommendations

- *The Department of Housing, Local Government and Heritage should amend the Electoral Act (1997) to remove funding restrictions placed on civil society.*
- *The Department of Rural and Community Development and state funders should address and remove threats to public funding for NGOs that criticise government policy.*
- *The Charities Regulator should remove the excessive restrictions placed on charities seeking to advance their work through political advocacy*

140 An Coimisiún Toghcháin (Ireland) Post Electoral Event Review, *European Parliament, Local and Limerick Mayoral Elections 7 June 2024*, 6 December 2024 https://cdn.electoralcommission.ie/app/uploads/2024/12/06153929/Post-Electoral-Event-Review_7-June_English_Tagged.pdf

141 An Coimisiún Toghcháin (Ireland) & RedC, *Post Local & European Elections Study – Data Report 2024* 31 July 2024 <https://neds.ie/reports/NEDS-2024-local-european-elections-report.pdf>

142 An Coimisiún Toghcháin (Ireland) & RedC, *Post Local & European Elections Study – Data Report 2024* 31 July 2024 <https://neds.ie/reports/NEDS-2024-local-european-elections-report.pdf>

Freedom of association

Formation, establishment and registration of associations, including rules on membership

Most NGOs/CSOs are given legal form through company law.¹⁴³ If they meet the “charity test” they are obliged to register as such. It should be noted that in 2021 roughly 50% of NGOs/CSOs were not charities.¹⁴⁴ The state’s submission to the 2024 rule of law reporting cycle only addresses the regulatory requirements of registered charities¹⁴⁵ which does not offer a comprehensive overview of the regulatory environment.

Involuntary dissolution

Concerns were expressed by charities regarding new powers which would have been granted to the Charities Regulator in the draft bill to amend charities legislation.¹⁴⁶ These powers would have significantly lowered the threshold for “deregistration” of charities. While the act¹⁴⁷ was amended to increase the threshold¹⁴⁸ as it progressed through the legislative process, concerns still remain regarding the enhanced need to inform the Regulator on amendments to charities’ constitutions.

Freedom to determine objectives and activities, including the scope of operations

Concerns remain that the Charities Regulator has gone beyond its remit in determining what work can be considered “a charitable purpose” and/or “political” in nature¹⁴⁹ as per the definition of “excluded bodies” as contained in

143 Council on Foundations *Nonprofit Law in Ireland, Country Notes* February 2021 <https://cof.org/country-notes/nonprofit-law-ireland>

144 Benefacts (Ireland), *Nonprofit Sector Analysis- 2021*, 24 June 2021 <https://benefactslegacy.ie/wp-content/uploads/2022/03/benefacts-nonprofit-sector-analysis-2021.pdf>

145 Ireland, Member State Contribution European Commission Annual Rule of Law Report 2024 https://commission.europa.eu/document/download/0123a8f4-05e6-4021-8240-ae39a5d1fb65_en?filename=76_1_58157_input_mem_ireland_en.pdf

146 Department of Rural and Community Development (Ireland), General Scheme Charities Amendment Bill (2022), 29 April 2022 <https://assets.gov.ie/222446/0c2c7a9d-5cd6-4fb9-99da-28d4d286cb3b.pdf>

147 Houses of the Oireachtas, No. 21 of 2024, Charities (Amendment) Act (2024) <https://www.oireachtas.ie/en/bills/bill/2023/98/>

148 Mayson, Hayes & Curran, *The Charities (Amendment) Act (2024) Has Been Enacted-* 11 July 2024 <https://www.mhc.ie/latest/insights/the-charities-amendment-act-2024-has-been-enacted#:~:text=Deregistration%20of%20charities,and%20employees%20of%20that%20charity.>

149 Unpublished ICCL research.

Part 1 Section 2 of the Charities Act (2009).¹⁵⁰ The Regulator published updated advice on “political activity” in late 2021 which further narrowed the permitted scope of activities of charities.¹⁵¹ In its pre-legislative scrutiny report on the Charities (Amendment) Bill (2022), the parliamentary committee examining the legislation requested that this advice be amended.¹⁵² It is hoped that this matter can be addressed as part of the development of forthcoming guidelines that will allow for the commencement of the amended Section 3(a) “the advancement of human rights” be considered a charitable purpose.¹⁵³

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations

In 2024 ICCL published a significant report¹⁵⁴ on the impact of the acceptance of state funding on NGOs. The report found that 37% of all respondents had limited or otherwise self-censored themselves for fear of the impact that advocacy on certain issues or themes could have on their funding. This rises to 50% of respondents when organisations working on homelessness and addiction are isolated. The restrictions are both explicit (as part of contracts) and communicated informally. Survey respondents reported being told by civil servants that the restrictions are effectively a ‘trade off’ for the acceptance of state funding.

150 Houses of the Oireachtas, No. 6 of 2009, Charities Act (2009) <https://www.irishstatutebook.ie/eli/2009/act/6/enacted/en/print.html>

151 Charities Regulator (Ireland), *Guidance on Charities and the Promotion of Political Causes*- January 2021 <https://www.charitiesregulator.ie/media/inkn3uy5/guidance-on-charities-and-the-promotion-of-political-causes.pdf>

152 Joint Committee on Social Protection, Community and Rural Development and the Islands (Ireland), *Report on the Pre-Legislative scrutiny of the General Scheme of the Charities (Amendment) Bill, (2022)* 9 September 2022 https://data.oireachtas.ie/ie/oireachtas/committee/dail/33/joint_committee_on_social_protection_community_and_rural_development_and_the_islands/reports/2022/2022-11-14_report-on-pre-legislative-scrutiny-of-the-general-scheme-of-the-charities-amendment-bill-2022_en.pdf

153 Charities Regulator (Ireland), Charities (Amendment) Act (2024)- Public Notice 12 July 2024 <https://www.charitiesregulator.ie/en/information-for-the-public/press-releases-and-public-notices/2024/july/charities-amendment-act-2024#:~:text=The%20Act%20includes%20a%20series,and%20defining%20charity%20trustee%20duties.>

154 Irish Council for Civil Liberties (ICCL) *Community and voluntary organisations afraid to criticise the State for fear of financial implications*, 1 May 2024 <https://www.iccl.ie/news/thats-not-your-role/#:~:text=The%20report%2C%20titled%20%22That's%20Not, stakeholder%20engagements%20for%20policy%20formation.>

Access to justice, including rules on legal standing, capacity to represent collective interest at court, and access to legal aid

The State has transposed the Collective Redress Directive (Directive (EU) 2020/1828) in a way that precludes bodies representing collective interests from taking legal proceedings. The transposing legislation, The Representative Actions for the Protection of the Collective Interests of Consumers Act (2023),¹⁵⁵ includes a fatal contradiction: it establishes the right of qualified (non-profit) entities to bring collective redress litigation in Ireland, but it also preserves the prohibition (maintenance and champerty) against their raising funds to do so. Ireland therefore appears to be in breach of the directive and the right to litigate under the directive is abrogated.

The long-awaited review of the legal aid scheme has not progressed in a substantive manner.¹⁵⁶

Impact of rules on foreign funding, accounting and auditing rules, anti-money laundering regulations

The definition of “political purposes” as contained in the Electoral Act (1997) prohibits any person or organisation based in Ireland from accepting sizable domestic or any international donations to assist them in campaigning or seeking to change public policy. The act also places onerous tracking and reporting requirements on small domestic donations.

According to the wording of the Electoral Act, these donation restrictions apply to civil society advocacy work at all times, not just when engaging in advocacy in an election or referendum. The basic freedom of individuals and organisations in Ireland to raise funds and campaign on issues that affect them is constrained by the Electoral Act in ways that violate their constitutional rights, EU law and freedom of assembly and association.¹⁵⁷ This situation has a considerable chilling impact on funders who fear that donations may breach electoral law.¹⁵⁸ The government has committed to reviewing the act and this task has fallen to *An Coimisiún Toghcháin* to complete. There is no public information on the status of this

155 Houses of the Oireachtas, No. 22 of 2023, Representative Actions for the Protection of the Collective Interests of Consumers Act (2023) <https://www.irishstatutebook.ie/eli/2023/act/22/enacted/en/html#:~:text=An%20Act%20to%20give%20effect,to%20provide%20for%20related%20matters.>

156 Dáil Éireann Debate Thursday 8 October 2024: Legal Aid-Parliamentary question Pa Daly TD <https://www.oireachtas.ie/en/debates/question/2024-10-08/351/>

157 Coalition for Civil Society Freedom, *Submission on the Definition of “Political Purposes” as included in the Electoral Reform Bill (2022)*, 18 May 2022 <https://www.iccl.ie/wp-content/uploads/2022/08/Coalition-for-Civil-Society-Freedom-Submission-on-the-Electoral-Refrom-Bill-2022.pdf>

158 Coalition For Civil Society Freedom, *Statement on the Electoral Act* December 2018 <https://www.iccl.ie/wp-content/uploads/2018/12/COALITION-STATEMENT-ELECTORAL-ACT.pdf>

review, which was due to commence in 2024 as per strand B of *An Coimisiún Toghcháin's* research plan.¹⁵⁹

Rules on lobbying

CSOs are bound by the same lobbying rules as private enterprises as set out in the Regulation of Lobbying Act (2015).¹⁶⁰

Rules on political campaigning

The rules around political campaigning for CSOs are complex and tied to charitable status and funding sources. As set out above, organisations using donations to fund advocacy work are subject to strict rules regarding permitted sources, amounts and accounting. Charities can engage in political campaigning, but it must be a secondary activity in furtherance of their primary charitable purpose and not be their “primary” activity.¹⁶¹ The use of state

funding for political campaigning in referenda is banned as a result of the 1996 McKenna Judgement.¹⁶² NGOs and CSOs wishing to campaign in an electoral event must register as a “third party” and disclose their spending and funding sources.¹⁶³ The rules on campaigning are complex and have led to confusion, most recently in the March 2024 referenda where a number of civil society organisations wrote to the Department of Rural and Community Affairs requesting clarification on advice which seemed to imply that organisations in receipt of state funding should not campaign for a particular outcome and rather focus on providing objective information.¹⁶⁴ Following the referenda, SIPO clarified that it had “no role” to examine the spending of state-funded groups or organisations.¹⁶⁵

159 An Coimisiún Toghcháin, *The Electoral Commission Research Programme 2024-2026*, July 2024 https://cdn.electoralcommission.ie/app/uploads/2024/07/08123719/EC_RESEARCH_PROGRAMME_ENG_ACCESSIBLE.pdf

160 [Lobbying.ie](https://www.lobbying.ie), *Summary of the main provisions of the 2015 Regulation of Lobbying Act*, Accessed 20 January 2025 <https://www.lobbying.ie/help-resources/information-for-lobbyists/quick-guide-to-the-act/>

161 Charities Regulator (Ireland), *Guidance on Charities and the Promotion of Political Causes*– January 2021 <https://www.charitiesregulator.ie/media/inkn3uy5/guidance-on-charities-and-the-promotion-of-political-causes.pdf>

162 Supreme Court (Ireland) Judgement of January 1, 1996, *McKenna v an Taoiseach (No. 2)* <https://ie.vlex.com/vid/mckenna-v-an-taoiseach-802330637>

163 SIPO (Ireland), *Information for third parties*, 2 November 2023 <https://sipo.ie/en/publication/95157-information-for-third-parties/>

164 Jennifer Bray, *Groups getting public funding warned it would be ‘preferable’ to avoid giving referendums information*–Irish Times 6 March 2024 <https://www.irishtimes.com/politics/2024/03/06/government-says-organisations-with-public-funding-would-best-avoid-publishing-information-about-referendums/>

165 Arthur Beesley, *Ethics watchdog had ‘no role’ to query State-funded NGO referendum spending*, Irish Times March 2024 <https://www.irishtimes.com/politics/2024/03/14/public-ethics-watchdog-had-no-role-in-examining-ngo-referendum-spending/>

Freedom of peaceful assembly

Rules on organisation, authorisation of and participation to assemblies

There have been increasing restrictions on protest outside the *Oireachtas*. While Irish law permits protests to be banned within a half mile when the *Oireachtas* is sitting, ICCL has raised concerns that this power is being exercised in an overly broad and disproportionate manner, including through the erection of physical barriers and street closures.¹⁶⁶

Bans on the use of symbols/slogans in protests

In November 2024, Justice Minister Helen McEntee had requested new laws governing the wearing of face masks at protests. These laws were not enacted prior to the election but two political parties (*Fiánna Fail* and *Fine Gael*) included proposals to regulate the

wearing of face masks at protests (including a ban on masks at protests and giving the *Gardaí* powers to remove face masks at protests) in their general election manifestos.¹⁶⁷ ICCL believes that laws governing the wearing of face masks at protests are unnecessary and a disproportionate interference with the right to peaceful protest under the constitution and human rights law. There are many reasons why an individual may wish to cover their face at a protest (e.g., for protection of health, to protect privacy, as a form of expression) and wearing a face covering is neither inherently criminal, nor does it suggest an intent to engage in criminality or violence. Furthermore, existing criminal law is sufficient to address a wide range of criminal acts at protests.¹⁶⁸

Policing practices, including dispersion of protests, use of force

ICCL published a report in September 2024 exploring differential *Garda* responses to

166 Conor Gallagher, *Gardaí prepare 'mini sterile zone' around Leinster House for budget day*, Irish Times, 10 October 2023 <https://www.irishtimes.com/crime-law/2023/10/10/gardai-prepare-mini-sterile-zone-around-leinster-house-for-budget-day/>

167 Fianna Fáil, *Election Manifesto 2024* November 2024 https://7358484.fs1.hubspotusercontent-na1.net/hubfs/7358484/FF%20Manifesto%202024_V4_Screen%5B45%5D.pdf Fine Gael, *Election Manifesto 2024*, November 2024 <https://www.finegael.ie/app/uploads/2024/11/Fine-Gael-General-Election-2024-Manifesto.pdf>

168 Houses of the Oireachtas, No. 2 of 1994 Criminal Justice (Public Order) Act, (1994), s. 6. <https://www.irishstatutebook.ie/eli/1994/act/2/enacted/en/html>

protest.¹⁶⁹ Following protests¹⁷⁰ and riots¹⁷¹ in Dublin in September and November 2023, the government sought to enhance the equipment available to *gardai*.¹⁷² There were also calls for greater clarity on the levels of acceptable force¹⁷³ which could be used to restore order. Since the riots in November 2023, *An Garda Síochána* has spent over €3 million to provide increased equipment to the Public Order Unit, including body armour, riot shields, batons and incapacitant spray.¹⁷⁴ The Policing Authority also approved *An Garda Síochána*'s purchase

of two water cannons to use in serious public order events.¹⁷⁵

The Minister for Justice requested that the Policing Authority, one of Ireland's police oversight bodies, should examine the *Garda* response to the riots. This report has yet to be published.¹⁷⁶ A concerning narrative regarding "excessive" oversight of policing has appeared in some reporting.¹⁷⁷ ICCL has consistently sought to oppose this narrative and promote the need for transparent and accountable

169 ICCL& CAJ, *Seminar Discussion Summary the Policing of Protest: A Shifting Landscape?* 14 March 2024 <https://www.iccl.ie/wp-content/uploads/2024/09/Policing-for-Peace-Dublin-protest-report-WEB.pdf>

170 Stephen McDermott, *Far-right posts featuring mock gallows outside Dáil remain online despite Garda investigations* *TheJournal.ie*, 28 September 2023 <https://www.thejournal.ie/irish-social-media-posts-dail-protests-mock-gallows-6181353-Sep2023/>

171 Mark Coughlan & Kate McDonald, *'Unfolding chaos': Watch how Dublin's riots developed*, RTÉ, 3 May 2024 <https://www.rte.ie/news/primetime/2023/1207/1420746-how-dublins-riots-developed/>

172 News Desk, *Irish riot police to be armed with Tasers* BBC 29 November 2023 <https://www.bbc.com/news/articles/czq27dn9d55o>

173 Paul Reynolds, *GSOC rejects claim it may have role hindering policing*, RTÉ, 28 November 2023

174 Gordon Deegan, *Gardai to spend estimated €12m on body armour for Public Order Unit*, *Breakingnews.ie*, 9 September 2024 <https://www.breakingnews.ie/ireland/gardai-to-spend-estimated-e12m-on-body-armour-for-public-order-unit-1668551.html#:~:text=An%20Garda%20S%C3%ADoch%C3%A1na%20is%20set,as%20attacks%20with%20flammable%20materials.>

175 Tessa Ndjonkou, *Policing Authority approve two anti-riot water cannons for Gardai in aftermath of Dublin city and Coolock unrest*, *Irish Independent*, 26 September 2024 <https://www.independent.ie/irish-news/policing-authority-approve-two-anti-riot-water-cannons-for-gardai-in-aftermath-of-dublin-city-and-coolock-unrest/a64962959.html>

176 Maeve Sheehan, *Justice Minister Helen McEntee urged to publish policing review of Dublin riots*, *Irish Independent*, 23 November 2024 <https://www.independent.ie/irish-news/justice-minister-helen-mcentee-urged-to-publish-policing-review-of-dublin-riots/a264170016.html?errorCode=0>

177 Olivie Kelleher, *Gardai 'reluctant' to use powers in case of GSOC investigation*, *Irish Examiner*, 3 December 2023 <https://www.irishexaminer.com/news/arid-41282452.html>

oversight bodies, as historically Ireland has had weak policing oversight.¹⁷⁸

Criminalisation of protesters

Protestors arrested under the Public Order Act (1994) and released on bail have been subjected to restrictive bail conditions, including not being permitted to attend protests.¹⁷⁹

Surveillance of protests

Following the riots in Dublin in November 2023, calls were made to expedite the roll-out of facial recognition technology (FRT) for Irish policing.¹⁸⁰ Previous plans to legislate on the use of live and retrospective FRT via a last-minute amendment to a bill were halted in 2023 when the Minister for Justice announced

that a separate standalone FRT bill would be introduced and that plans to introduce live FRT would be abandoned.¹⁸¹ ICCL has opposed the use of this dangerous and discriminatory technology in Ireland, either live or retrospective.¹⁸² In December 2023¹⁸³ the Department of Justice published a draft bill for police use of FRT. In January 2024, ICCL and a range of other civil society organisations and academic experts briefed a parliamentary committee (the Justice Committee) about the technology and raised significant concerns about the draft bill. The committee subsequently published a report based on these hearings outlining serious deficiencies with the draft bill.¹⁸⁴ As of December 2024, the revised bill remains unpublished.

178 Liam Herrick, *Dublin riots must not be an excuse to magic away legal and human rights*, Irish Times, 29 November 2023 <https://www.irishtimes.com/opinion/2023/11/29/liam-herrick-dublin-riots-must-not-be-an-excuse-to-magic-away-legal-and-human-rights/>

179 Paul Reynolds, *Man charged with assaulting two gardai during Dublin riots*, RTÉ 6 December 2024 <https://www.rte.ie/news/courts/2024/1205/1484945-dublin-riots-court/>

180 Niall O'Connor, *McEntee has ordered officials to beef up facial recognition laws in response to Dublin riot*, TheJournal.ie 26 November 2023 <https://www.thejournal.ie/facial-recognition-6232757-Nov2023/>

181 News Desk, *Government to introduce standalone bill on facial recognition technology*, Irish Legal News, 20 June 2023 <https://www.irishlegal.com/articles/government-to-introduce-standalone-bill-on-facial-recognition-technology>

182 Irish Council for Civil Liberties, *Criticism of FRT plans by Government TDs welcomed by ICCL*, 6 April 2023 <https://www.iccl.ie/news/criticism-of-frt-plans-by-government-tds-welcomed-by-iccl/>

183 Department of Justice (Ireland), *Minister McEntee receives Cabinet approval for draft Facial Recognition Technology Bill*, 14 December 2023 [https://www.gov.ie/en/press-release/797e2-minister-mcentee-receives-cabinet-approval-for-draft-facial-recognition-technology-bill/#:~:text=Minister%20for%20Justice%20Helen%20McEntee,\(FRT\)%20in%20specific%20circumstances](https://www.gov.ie/en/press-release/797e2-minister-mcentee-receives-cabinet-approval-for-draft-facial-recognition-technology-bill/#:~:text=Minister%20for%20Justice%20Helen%20McEntee,(FRT)%20in%20specific%20circumstances)

184 *Justice Committee highlights serious deficiencies with Facial Recognition Technology bill*, ICCL, February 2024, <https://www.iccl.ie/digital-data/justice-committee-highlights-serious-deficiencies-with-facial-recognition-technology-bill/>

Other

In 2024, *An Garda Síochána* changed its policing response to far-right protests and is now more proactive and has made multiple arrests.¹⁸⁵

Freedom of expression and of information

Rules on hate speech and their enforcement

A public consultation on the review of existing provisions on incitement to hatred – the Prohibition of Incitement to Hatred Act (1989) – was launched in 2019¹⁸⁶ but did not culminate in any legislative changes. The Criminal Justice (Hate Offences) Act (2024)¹⁸⁷ – previously known as the Criminal Justice (Incitement to Violence or Hatred and Hate Offences) Bill 2022 – was signed into law in October 2024, introducing the first-ever provisions on hate crime in Ireland. The act has yet to be commenced. Provisions aimed at repealing the Prohibition of Incitement to Hatred Act and updating legislation on criminal hate speech

were removed from the legislation at the final stages.

In October 2024, the European Commission sent Ireland a letter of formal notice for failure to fully transpose the 2008 Council Framework decision on combating racism and xenophobia. The Commission considers that “Ireland has not fully transposed the provisions related to incitement to hatred or violence, including the condoning, denial or gross trivialisation of international crimes and the Holocaust.”¹⁸⁸ Welcoming the passage of the hate crime legislation, the Minister for Justice acknowledged the EU law requirements, outlining that:

*“The Prohibition of Incitement to Hatred Act 1989 will remain in force and incitement to hatred is not dealt with in the Criminal Justice (Hate Offences) Bill. Necessary amendments to the 1989 Act that are required under EU law are under consideration and will be progressed separately in due course.”*¹⁸⁹

Prior to the introduction of the Criminal Justice (Hate Offences) Act and in the absence of legislation, *An Garda Síochána* adopted and

185 ICCL& CAJ, *Seminar Discussion Summary the Policing of Protest: A Shifting Landscape?* p.8 14 March 2024 <https://www.iccl.ie/wp-content/uploads/2024/09/Policing-for-Peace-Dublin-protest-report-WEB.pdf>

186 Department of Justice (Ireland), *Review of the Prohibition of Incitement to Hatred Act (1989), Public Consultation*, October 2019 <https://assets.gov.ie/237923/e8314384-5f81-47ea-b3c7-128eb23a6e23.pdf>

187 Houses of the Oireachtas, No. 41 of 2024 Criminal Justice (Hate Offences) Act (2024) <https://www.irishstatutebook.ie/eli/1994/act/2/enacted/en/html>

188 European Commission, October infringements package: Key Decisions, 3 October 2024 https://ec.europa.eu/commission/presscorner/detail/en/inf_24_4561

189 Department of Justice (Ireland), *Minister McEntee welcomes passing of hate crime legislation by Oireachtas* 23 October 2024 <https://www.gov.ie/en/press-release/a597e-minister-mcentee-welcomes-passing-of-hate-crime-legislation-by-oireachtas/>

operated its own working definition of ‘hate crime’ and ‘hate incidents’.¹⁹⁰ This approach to the recording of hate-related discriminatory motives was introduced in late 2020 and annual data have been available from the *Gardaí* since 2021. In the latest data from 2023, ‘prohibition/incitement to hatred’ is recorded as the 5th most frequently recorded crime incident type.¹⁹¹

Criminalisation of speech

See section ‘Rules on hate speech and their enforcement’ for information on criminal provisions on certain forms of hate speech.

Censorship and self-censorship, including on the use of symbols and slogans

See previous section on Financing framework for CSOs.

Restrictions on access to information

A review of freedom of information legislation was commenced in 2021 but has not progressed.¹⁹²

Spread of and responses to disinformation

In June 2024, ICCL withdrew from the Government’s National Counter Disinformation Strategy working group,¹⁹³ because the Department of Justice blocked two essential actions: enforcement of GDPR Article 9 to switch off by default the toxic recommender algorithms on digital platforms that rely on unlawful processing of intimate personal data, and enforcement of GDPR Article 5(1)(f) against the data free-for-all in the online advertising system, which is undermining the business of journalism while subsidising conspiracy media.¹⁹⁴

190 An Garda Síochána, *Policy Document: Responding to Hate Crimes and Non-Crime Hate Incidents 2021* <https://www.garda.ie/en/about-us/publications/policy-documents/responding-to-hate-crimes-and-non-crime-hate-incidents-policy-document-2021.pdf>

191 Garda Síochána: *Hate Crime Online Reporting Statistics 2023*, 8 May 2024 <https://www.garda.ie/en/about-us/our-departments/office-of-corporate-communications/news-media/2023-hate-crime-data-and-related-discriminatory-motives.html>

192 Department of Public Expenditure, NDP Delivery and Reform (Ireland), *Review of the Freedom of Information Act Progress Update*, December 2022 <https://assets.gov.ie/267951/e4cd6930-3de5-44e9-a6ec-684a5d8caf4d.pdf>

193 Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (Ireland), *Multi-stakeholder Working Group established to develop a National Counter Disinformation Strategy*- 21 February 2023 <https://www.gov.ie/en/press-release/6ece9-unpublished-multi-stakeholder-working-group-established-to-develop-a-national-counter-disinformation-strategy/?app=true>

194 Johnny Ryan, ICCL, *The Six Horsemen of the Digital Apocalypse*, Presentation to the European Data Summit 2024, at the Konrad Adenauer Foundation, 24 April 2024 <https://www.iccl.ie/news/six-horsemen-of-the-digital-apocalypse/>

Online content regulation

The Online Safety and Media Regulation Act was signed into law on 10 December 2022¹⁹⁵ leading to the establishment of *Coimisiún na Meán* in March 2023.¹⁹⁶ The Commission published a binding Online Safety Code for video sharing platforms in October 2024.¹⁹⁷ ICCL argued, unsuccessfully, that as part of this code, the Commission must address algorithmic amplification¹⁹⁸ and switch off recommender systems by default.¹⁹⁹

A requirement of both the EU's Audiovisual and Media Services Directive²⁰⁰ and the Online Safety and Media Regulation Act (2022)²⁰¹ is:

“a video-sharing platform service provider shall take appropriate measures to protect the general public from programmes, user-generated videos and audio-visual commercial communications containing incitement to violence or hatred directed against a group of persons or a member of a group based on any of the grounds referred to in Article 21 of the Charter of Fundamental Rights of the European Union.”

Travellers are covered as members of a protected group where incitement might occur, however they are not protected from widespread hatred. The Online Safety and Media Regulation Act (2022) did not name Travellers as a protected group, therefore for every new code developed. Traveller organisations will

195 Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (Ireland), *President Higgins signs Online Safety and Media legislation into law*, 12 December 2022 <https://www.gov.ie/en/press-release/120ff-president-higgins-signs-crucial-online-safety-and-media-legislation-into-law/#:~:text=%E2%80%9CThe%20Online%20Safety%20and%20Media,importance%20to%20protecting%20children%20online>

196 Department of Tourism, Culture, Arts, Gaeltacht, Sport and Media (Ireland), *New media regulator, Coimisiún na Meán, formally established*, 15 March 2023 <https://www.gov.ie/en/press-release/83829-unpublished-new-media-regulator-coimisiun-na-mean-formally-established-today/>

197 Coimisiún na Meán, *Coimisiún na Meán adopts final Online Safety Code*, 21 October 2024 <https://www.gov.ie/en/press-release/83829-unpublished-new-media-regulator-coimisiun-na-mean-formally-established-today/>

198 Irish Council for Civil Liberties, *Media Commission urged to switch off Big Tech's toxic algorithms*, 4 September 2023 <https://www.iccl.ie/digital-data/media-commission-urged-to-switch-off-big-techs-toxic-algorithms/>

199 Irish Council for Civil Liberties, *ICCL disappointed at removal of recommender system measures from Online Safety Code*, 27 May 2024 <https://www.iccl.ie/digital-data/iccl-disappointed-at-removal-of-recommender-system-measures-from-online-safety-code/>

200 Directive (EU) 2018/1808 of the European Parliament and of the Council of 14 November 2018 amending Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services (Audiovisual Media Services Directive) in view of changing market realities <https://eur-lex.europa.eu/eli/dir/2018/1808/oj/eng>

201 Houses of the Oireachtas, No. 41 of 2022, Online Safety and Media Regulation Act (2022) <https://www.irishstatutebook.ie/eli/2022/act/41/enacted/en/html>

have to continue to reassert the further need for an adequate standard of protection.²⁰² A broadened legal safeguard in conjunction with the Charter of Fundamental Rights is needed to ensure in particular, a safeguard from identity and race-based harm on aggregate experienced by minority groups.

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

Attempts to discredit and call into question the role of civil society continue in public discourse, in both media and commentary from some politicians. This has mostly focused on arguments about “defunding NGOs” and them being a “waste of money”, often targeting organisations working on migration and LGBT issues.²⁰³ This narrative intensified

during the March 2024 referenda, centred on the role that state-funded NGOs played in the campaigning,²⁰⁴ and has continued in right-wing alternative media.²⁰⁵

Physical attacks on people and property

It was widely reported in June 2024 that several gay men were “hunted” with weapons in the Phoenix Park in Dublin City.²⁰⁶ The victims of the alleged crime claimed that their report was dismissed when they reported it to two separate *Garda* stations. They subsequently approached a government Senator who raised the matter in *Seanad Éireann*. Following the incident the *Garda* National Community Engagement Bureau connected with LGBTQ+ support and advocacy organisations.²⁰⁷ A man was subsequently charged and has appeared twice in court in relation to the attack. The file remains

202 Traveller organisations successfully lobbied on the Code for video sharing platforms, and Travellers are now explicitly identified as an at risk protected group in areas of in dissociable user-generated content’ and ‘restricted video content’ and ‘restricted in dissociable user-generated content’.

203 Shane Raymond, *Major analysis shows how Irish disinformation ecosystem has been ‘co-opted by far-right actors’*, The Journal.ie 20 November 2023 <https://www.thejournal.ie/how-misinformation-spreads-in-ireland-isd-analysis-social-media-news-fringe-groups-6226354-Nov2023/>

204 Kitty Holland, *NGOs must ‘listen hard’ to those they represent after crushing defeat of care referendum they backed*–Irish Times 15 March 2024 <https://www.irishtimes.com/politics/2024/03/15/ngos-must-listen-hard-to-those-they-represent-after-crushing-defeat-of-care-referendum-they-backed/>

205 Ben Scallan, *Fine Gael Minister asks if NGOs are representative of society* GRIPT 10 March 2024 <https://gript.ie/fine-gael-minister-asks-if-ngos-are-representative-of-society/>

206 Marie O’Halloran & Conor Lally *Three gay men ‘hunted’ in Phoenix Park by six men with knives in ‘shocking’ incident*, Irish Times 19 June 2024 <https://www.irishtimes.com/politics/2024/06/19/three-gay-men-hunted-in-phoenix-park-by-six-men-with-knives-in-shocking-incident/>

207 Elaine Loughlin & Martin Mongan, *Three gay men ‘hunted down’ by gang of six armed with knives in Phoenix Park*, Irish Examiner 19 June 2024 <https://www.irishtimes.com/news/arid-41419933.html>

with the prosecutorial service which is considering the evidence.²⁰⁸

Administrative harassment

Concerns have been raised regarding the use of regulatory complaints mechanisms and the rapid growth of internally launched investigations against NGOs working on certain topics by regulatory bodies. Organisations working on Palestine, asylum/international protection, and LGBTI+ rights, in particular, report unusual and repeated requests for information and regulatory barriers being introduced that are hindering their work.²⁰⁹

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

See previous section on SLAPPs and defamation.

Control and surveillance

In 2024, *An Garda Síochána* announced its intent to expand its social-media monitoring to combat far-right extremism. The expansion will see the *Gardaí* open four open-source intelligence units, one for each *Garda* region.²¹⁰

Law enforcement capacity to ensure the safety of civil society actors and to investigate attacks and harassment

In the state's contribution to the 2024 reporting cycle, it was noted that "*An Garda Síochána* has no evidence that there is a problem with [the] safety of civil society."²¹¹ ICCL disputes this claim. Libraries,²¹² NGOs,²¹³ unions,²¹⁴ and

208 Tom Tuite, *Teen who insists alleged Phoenix Park violent disorder was 'not homophobic' has bail relaxed*, Sunday World 17 September 2024 <https://www.sundayworld.com/crime/courts/teen-who-insists-alleged-phoenix-park-violent-disorder-was-not-homophobic-has-bail-relaxed/a374899073.html>

209 Unpublished ICCL research.

210 Conor Gallagher, *Gardaí expand social-media monitoring to combat far-right extremism and serious offending*, Irish Times 11 November 2024 <https://www.irishtimes.com/crime-law/2024/11/11/gardai-expand-social-media-monitoring-to-combat-far-right-extremism-and-serious-offending/>

211 Ireland, Member State Contribution European Commission Annual Rule of Law Report 2023 https://commission.europa.eu/document/download/f008fc7f-b464-4817-9e3c-b3884a4334ea_en?filename=76_1_52868_input_mem_ireland_en.pdf

212 Cormac O'Keeffe, *Far right should not be able to disrupt 'sanctuary' of libraries, says union*, Irish Examiner, 29 August 2024 <https://www.irishexaminer.com/news/arid-41465698.html>

213 Unpublished ICCL research

214 Irish Congress of Trade Unions, *Action plan to tackle the far right*- 1 May 2023 <https://www.ictu.ie/news/action-plan-tackle-far-right>

schools²¹⁵ have all faced threats and many of these have been reported to *An Garda Síochána*, including during 2023.²¹⁶

Online civic space

Online smear and disinformation campaigns

Several NGOs have chosen to remove accounts from social media sites or restrict use, primarily X, owing to ongoing trolling and abuse, including threats to staff.²¹⁷

Public participation

Rules and practices on dialogue with civil society

ICCL research²¹⁸ has shown that organisations struggle to keep track of stakeholder engagements of relevance to their work, that the resources needed to partake in these engagements are not considered worth the outcome, and that they are increasingly ambivalent about the processes. For example, 70% of survey respondents said that they missed contributing inputs into policy or legislation as they found out about it too late in the process. Engagements are often viewed as a “box ticking” exercise with decisions not based on data or evidence.

215 Institute for Strategic Dialogue, *Anti-LGBTQ+ protests in Ireland shift focus from libraries to schools, curriculums and educators*, 12 September 2023 <https://www.isdglobal.org/isd-in-the-news/anti-lgbtq-protests-in-ireland-shift-focus-from-libraries-to-schools-curriculum-and-educators/>

216 Cormac Fitzgerald Explainer, *Why are protesters targeting Ireland's libraries?* *TheJournal.ie* 8 August 2023 <https://www.thejournal.ie/library-protests-ireland-6135746-Aug2023/>

217 Charities Institute Ireland, *Why Now is the Time for Charities to Rethink Their Presence on X (Twitter)*-21 November 2024 <https://charitiesinstitute.ie/news/blogs/757/757-Why-Now-is-the-Time-for-Charities-to-Rethink-Their-Presence-on-X-Twitter-BelongTo>, *Why we decided to leave Twitter/X*, 26 October 2023 <https://www.belongto.org/why-we-decided-to-leave-twitter-x/>

218 ICCL, *“That’s Not Your Role” State Funding and Advocacy in The Irish Community Voluntary and Non-Profit Sector*-ICCL 1 May 2024 <https://www.iccl.ie/wp-content/uploads/2024/04/Thats-Not-Your-Role-WEB.pdf>

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT —

Key recommendations

- *The incoming government should establish a standing mechanism for the investigation of historical rights violations.*
- *The Department of Justice and the Department of Children, Equality, Disability, Integration and Youth should conduct a review of existing schemes for survivors of historical rights violations to ensure that redress meets adequate thresholds.*
- *The Department of Health should proceed with reform of the Mental Health Act (2001) to ensure the rights of those in involuntary detention are vindicated.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

Mental Health Services — The Assisted Decision-Making (Capacity) Amendment Bill (2022)²¹⁹ which amended the Assisted Decision-Making (Capacity) Act (2015) was commenced in April 2023. As stated in the 2023 submission, this is a very welcome piece

of legislation that abolishes wardship in Ireland. However, those involuntarily detained under section 3(1)(a) of the Mental Health Act (2001)²²⁰ remain the only cohort of people deprived of the rights extended under this new legislation. This includes the Advance Healthcare Directives, which set out instructions outlining the healthcare treatments individuals wish to refuse or request, in the future when they no longer have the capacity to make those decisions themselves.²²¹ The Government has

219 Houses of the Oireachtas. No. 46 of 2022, Assisted Decision-Making (Capacity) (Amendment) Act (2022) <https://data.oireachtas.ie/ie/oireachtas/act/2022/46/eng/enacted/a4622.pdf>

220 Houses of the Oireachtas. No. 25 of 2001, Mental Health Act (2001) <https://www.irishstatutebook.ie/eli/2001/act/25/enacted/en/html>

221 Health Service Executive (Ireland), Advance Healthcare Directives, Accessed 20 January 2025 [https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/advance-healthcare-directive/#:~:text=An%20Advance%20Healthcare%20Directive%20\(AHD,the%20capacity%20to%20do%20so.](https://www.hse.ie/eng/about/who/national-office-human-rights-equality-policy/assisted-decision-making-capacity-act/advance-healthcare-directive/#:~:text=An%20Advance%20Healthcare%20Directive%20(AHD,the%20capacity%20to%20do%20so.)

stated its intention to remedy this discriminatory omission in the reform of the Mental Health Act.

In February 2023 the United Nations Committee on the Rights of the Child published its concluding observations²²² on Ireland's compliance with the Convention on the Rights of the Child. The Committee raised concerns about insufficient and inadequate mental health services for children and urged the State to "ensure that the revisions of the Mental Health Act and the Assisted Decision-Making (Capacity) Act include:

- *An explicit prohibition of the practice of placing children with mental health issues in adult psychiatric units.*
- *A recognition of children's right to be heard in decisions regarding their mental health care and assistance from an independent advocate."*

In July 2023, the Mental Health Commission published an *Independent Review of the provision of Child and Adolescent Mental Health*

*Services (CAMHS) in the State Inspector of Mental Health Services.*²²³ The Commission's report shows there are serious deficits in the provision of mental health services, for children and young people. Poor clinical governance, failure to manage risk and inadequate oversight have severely compromised the safety and quality of care. The Mental Health Commission has outlined 49 recommendations in its report including the immediate and independent regulation of services through the legislative reform of the Mental Health Act.

In July 2024, the Mental Health Bill (2024) was published.²²⁴ If passed, this bill will repeal the Mental Health Act (2001)²²⁵ in full, replacing it with a new statutory framework for regulating mental health services in Ireland. ICCL has two primary concerns with the current draft of the bill. Firstly, S.70 of the Bill allows for the continued detention of a person who is refusing treatment for 72 hours to build a 'therapeutic relationship', even where that person has capacity to refuse treatment. This an extraordinary measure which may amount to coercive practices.

222 United Nations (UN) Committee on the Rights of the Child Concluding observations on the combined fifth and sixth periodic reports of Ireland CRC/C/IRL/CO/5-6 <https://digitallibrary.un.org/record/4004401?ln=en&cv=pdf>

223 Mental Health Commission (Ireland), *Independent Review of the provision of Child and Adolescent Mental Health Services (CAMHS) in the State Inspector of Mental Health Services*, July 2023 <https://www.mhcirl.ie/sites/default/files/2023-07/Mental%20Health%20Commission%20Independent%20Reviews%20of%20CAMHS%20services%20in%20the%20State.pdf>

224 Department of Health, Ireland, Mental Health Bill (2024) <https://data.oireachtas.ie/ie/oireachtas/bill/2024/66/eng/initiated/b6624d.pdf>

225 Houses of the Oireachtas, No. 25 of 2001, Mental Health Act (2001) <https://www.irishstatutebook.ie/eli/2001/act/25/enacted/en/html>

Secondly, there is no provision in the Bill regulating the use of chemical restraint (the administration of sedatives to ensure a patient is compliant or incapable of resistance). Currently, there is no guidance or codes of practice relating to the use of chemical restraint. The Mental Health Commission has stated this is due to there being no need to do so under the Mental Health Act (2001). The Mental Health Commission has stated that “once the 2001 Act has been updated, the MHC will address this area”.²²⁶ ICCL is gravely concerned that unless it is included in the revised bill, the use of chemical restraint will continue to be an unregulated practice.

Travellers — Travellers continue to be severely impacted by homelessness, arising from policy and infrastructural obstacles to accessing housing and accommodation, insecure tenure in private rented accommodation, and eviction from accommodation due to overcrowding, among other issues.

In March 2024 the European Committee on Social Rights found that;

*“Travellers in Ireland continue to experience violations of their rights to social, legal and economic protection, due to the State’s failure to provide sufficient accommodation for Travellers, the inadequate conditions of existing Traveller sites, and due to State practices relating to the eviction of Travellers.”*²²⁷

Following IHREC’s Equality Reviews of local authorities in 2021,²²⁸ seven local authorities were asked to develop Equality Action Plans. Local Authorities are duty bound²²⁹ to provide accommodation to Travellers which, as per the judgment in *Clare County Council v McDonagh & Anor* (2022),²³⁰ includes Traveller-specific halting sites. IHREC identified shortcomings in the implementation and oversight mechanisms included in all, but two existing local authority plans²³¹ and general shortcomings and blockages in the delivery

226 Mental Health Commission (Ireland), *FAQ received during the launch of ‘Restrictive Practices in Mental Health Settings – Revised Rules’ event*, October 2022 https://www.mhcirl.ie/sites/default/files/2022-10/FAQ%20for%20website_0.pdf

227 Council of Europe, European Committee of Social Rights-Comité Européen des Droits Sociaux, *Follow-Up to Decisions on The Merits of Collective Complaints*, March 2024 <https://rm.coe.int/findings-2023-en/1680aef57f>

228 Irish Human Rights and Equality Commission, *Equality Reviews Provision of Traveller accommodation by local authorities*, 2021 <https://www.ihrec.ie/our-work/equality-review?topic=traveller-accommodation&location=meath-county-council>

229 Houses of the Oireachtas, No. 33 of 1998, Housing (Traveller Accommodation) Act, (1998) <https://www.irishstatutebook.ie/eli/1998/act/33/enacted/en/html>

230 Supreme Court (Ireland), Judgment of 31 January 2022, *Clare County Council v McDonagh & Anor* (2022) <https://www.ucc.ie/en/tejp/traveller-law-database/clare-county-council-v-mcdonagh--anor-2022-iesc-2-.html>

231 Irish Human Rights and Equality Commission, *Commission publish Equality Action Plans from seven local authorities on Traveller accommodation-26* June 2024 <https://www.ihrec.ie/commission-publish-equality-action-plans-from-seven-local-authorities-on-traveller-accommodation/>

of Traveller-specific accommodation. The absence of regulatory enforcement powers for IHREC undermines the requirement for local authorities to take action.

A total of 94% of the Traveller community lives in accommodation provided by local authorities; 4000 live in inadequate, unsafe and insecure accommodation, according to the Department of Housing, Local Government and Heritage.²³² Halting sites are often in poor condition, overcrowded, and poorly maintained by local authorities. The Housing (Standards for Rented Houses) Regulations Act (2019)²³³ does not cover transient, temporary and permanent halting sites. From 2019 to 2022 local authorities delivered 6,499 new housing builds nationally, versus 44 units of Traveller-specific accommodation.²³⁴ Under their mandatory 5-year Traveller Accommodation Programmes

2019-2024 local authorities supplied only 725 of the 3,060 units planned for nationally.²³⁵ In 2023, a total of 8,110 new-build social homes were delivered nationally with 32,695 new homes overall, under the Housing for All Plan, contrasted with just 162 'outputs' related to Traveller-specific accommodation.²³⁶

Impunity and/or lack of accountability for human rights violations

In December 2023 an investigation uncovered that 62 children seeking international protection in Ireland had disappeared from state care since 2017, raising serious concerns regarding trafficking and exploitation of vulnerable children.²³⁷ Three-quarters of those missing have not been the subject of missing person appeals. The issue of children disappearing from state care has persisted into 2024.²³⁸

232 Department of Housing, Local Government and Heritage (Ireland), Traveller accommodation statistics, Accessed 20 January 2025 <https://www.gov.ie/en/collection/29c76-traveller-accommodation-statistics/>

233 Department of Housing, Local Government and Heritage (Ireland), S.I. No. 137/2019 - Housing (Standards for Rented Houses) Regulations 2019 <https://www.irishstatutebook.ie/eli/2019/si/137/made/en/print>

234 Hayley Halpin, *Local authorities provided just 44 units of Traveller housing in three years, Committee to hear*, TheJournal.ie, 30 November 2023 <https://www.thejournal.ie/traveller-housing-oireachtas-committee-6236771-Nov2023/>

235 Department of Housing, Local Government and Heritage (Ireland), *Minister O'Brien publishes social and affordable housing delivery statistics for Quarter 4 2023*, 28 March 2024 <https://www.gov.ie/en/press-release/6d982-minister-obrien-publishes-social-and-affordable-housing-delivery-statistics-for-quarter-4-2023/#:~:text=In%202023%2C%2011%2C939%20new%20social,10%2C263%20social%20homes%20were%20delivered.>

236 Unpublished Parliamentary Question Written Response November 2024

237 Patricia Devlin, *Over 60 migrant children missing after disappearing from State care* The Journal.ie 14 December 2023 <https://www.thejournal.ie/kids-in-care-missing-migrants-6247208-Dec2023/>

238 Kitty Holland, *Thirty-seven children reported as missing from Tusla care so far this year*, Irish Times October 2024 <https://www.irishtimes.com/ireland/social-affairs/2024/10/28/thirty-seven-children-reported-as-missing-from-tusla-care-so-far-this-year/>

In January 2024, Ireland initiated an inter-state case against the United Kingdom at the European Court of Human Rights regarding the UK's Northern Ireland Troubles (Legacy and Reconciliation) Act (2023).²³⁹ The case alleges violations of Articles 2 (right to life), 3 (prohibition of torture and inhuman or degrading treatment), 6 (right to a fair trial), 13 (right to an effective remedy) and 14 (prohibition of discrimination), given the Legacy Act's halting of inquests, civil cases and criminal prosecutions for crimes during the Troubles.²⁴⁰ At the same time Ireland has not established any mechanism to investigate legacy cases involving alleged human rights violations in the Republic, despite legal obligations to do so.²⁴¹ There has been no response to an ICCL petition submitted to the Minister of Justice in September 2023 calling for a public inquiry into the Sallins train robbery (1976)²⁴² and families of the victims of the Dublin and

Monaghan bombings in 1974²⁴³ are still awaiting accountability.

Other systemic issues

Shane O'Farrell—In 2011, Shane O'Farrell was killed in a hit-and-run incident in Monaghan. The individual responsible for his death had broken numerous bail conditions and should not have been free at the time of the killing.²⁴⁴ The former prime minister said that the case “reveals shocking malpractice and dysfunction in the criminal justice system”.²⁴⁵

Despite both houses of the Irish parliament²⁴⁶ voting to hold a public inquiry into the circumstances surrounding the death in 2018 and 2019, this has not taken place. In its place, the government commissioned a retired district court Judge to carry out a scoping exercise, conducting a preliminary review to ascertain

239 Houses of Parliament (United Kingdom), Northern Ireland Troubles (Legacy and Reconciliation) Act (2023) <https://www.legislation.gov.uk/ukpga/2023/41>

240 European Court of Human Rights, *New inter-State application brought by Ireland against the United Kingdom*, 19 January 2024 <https://hudoc.echr.coe.int/fre-press#%7B%22itemid%22:%5B%22003-7854820-10910604%22%5D%7D>

241 European Convention on Human Rights, arts. 2, 3. https://www.echr.coe.int/documents/d/echr/convention_ENG

242 The Irish Council for Civil Liberties, *ICCL urges Minister for Justice to respond to Sallins Case petition*, 25 November 2024 <https://www.iccl.ie/news/iccl-letter-minister-sallins-case-petition/>

243 Justice for the Forgotten-Campaign Group, Accessed 20 January 2025 <http://www.dublinmonaghanbombings.org/home/>

244 Justice for Shane-Campaign Group, Accessed 20 January 2025 <http://www.justiceforshane.ie/>

245 Dáil Éireann debate -Leaders' Questions, 3 May 2017 <https://www.oireachtas.ie/en/debates/debate/dail/2017-05-03/2/>

246 Dáil Éireann debate -Death of Shane O'Farrell: Motion (Resumed) [Private Members], 14 Jun 2018 <https://www.oireachtas.ie/en/debates/debate/dail/2018-06-14/21/>
Seanad Éireann debate - Death of Shane O'Farrell: Motion 13 Feb 2019 <https://www.oireachtas.ie/en/debates/debate/seanad/2019-02-13/10/>

whether there were any circumstances surrounding the death of Mr. O'Farrell which required further inquiry, beyond those already carried out.²⁴⁷

The scoping exercise report was published in 2023.²⁴⁸ The terms of reference asked the District Court judge to consider the outcome or reports of investigations or inquiries that had already taken place, with a particular emphasis on the reports of the investigations carried out by *Garda Síochána* Ombudsman Commission (GSOC) and the Independent Review Mechanism. It appears that the Judge was not provided with the statutory GSOC reports.²⁴⁹ The family considers the scoping exercise to be incomplete and deeply flawed, a sentiment that is shared across the political spectrum²⁵⁰

as evidenced by responses in parliament to the publication of the review.²⁵¹

In July 2024 the Dáil again voted for a public enquiry into the killing,²⁵² a call echoed by the family. The family is seeking a GSOC public interest report into the killing and a public enquiry, in line with Ireland's obligations under Article 2 of the ECHR.

Unlawful Garda surveillance dossiers — In December 2024 it came to light²⁵³ that *An Garda Síochána* had created thousands of unlawful intelligence files on children under the age of 12 – some for infants as young as 42 days old – between 1999 and 2023.

247 Dáil Éireann debate -Final Report of the Independent Scoping Exercise into the Circumstances surrounding the Death of Mr. Shane O'Farrell: Statements, 17 Oct 2023 <https://www.oireachtas.ie/en/debates/debate/dail/2023-10-17/25/>

248 Department of Justice (Ireland), *Report of Scoping Exercise in relation to the death of Shane O'Farrell*, 3 July 2023 <https://www.gov.ie/en/publication/d4410-report-of-scoping-exercise-in-relation-to-the-death-of-shane-ofarrell/>

249 Justice For Shane, *Response of The O'Farrell Family to Scoping Exercise Report-* 27 September 2023 <https://justicefor-shane.ie/wp-content/uploads/2023/09/27.09.23-Press-Release-from-OFarrell-family-1.pdf>

250 Hugh O'Connell, *Helen McEntee under pressure after 'whitewash' report into hit-and-run death of Shane O'Farrell*, Irish Independent, 22 October 2023 <https://www.independent.ie/irish-news/helen-mcentee-under-pressure-after-whitewash-report-into-hit-and-run-death-of-shane-ofarrell/a18206872.html>

251 Seanad Éireann Debate, Final Report of the Independent Scoping Exercise into the Circumstances Surrounding the Death of Mr. Shane O'Farrell: Statements, 17 October 2023 <https://www.oireachtas.ie/en/debates/debate/seanad/2023-10-17/11/>

252 Dáil Éireann Debate, Tuesday, Death of Shane O'Farrell: Motion [Private Members], 9 Jul 2024 <https://www.oireachtas.ie/en/debates/debate/dail/2018-06-14/21/>

253 [Thousands of unlawful Garda surveillance dossiers created about children including infants-ICCL December 2024](#)

This was revealed in a Garda Inspectorate report,²⁵⁴ ten years after concerns about Traveller children – some as young as 16 days old – being placed on the PULSE system were first raised in the *Dáil*²⁵⁵ and media²⁵⁶ in 2014. The aforementioned Garda Inspectorate report details that *gardai* created intelligence files on children from 1 January 2015 to 31 March 2023 including:

- 587 intelligence records of children under the age of 3
- 517 intelligence records of children between the age of 4 and 7
- 1,100 intelligence records of children aged between 8 and 11

These records included:

- Recording a 10-month-old infant as “involved in crime”

- “Inappropriately” recording a mother and her one-year-old infant sitting in a car “waiting for their laundry”
- “Inappropriately” recording a mother, father and a two-year-old child “who were seen walking” in another intelligence file.

The Garda Inspectorate also published figures for 1999-2015, from a Garda internal review:

- 7,408 intelligence records linked to children under 12 were created between 1999 and 2015.
- 3,668 of which were non-compliant with data protection legislation.
- 2,244 had incorrect dates of birth. An unknown number of this smaller set of records that were marked as children were in fact adults.

While thousands of these unlawful records have since been removed, the Garda Inspectorate has told *An Garda Síochána* to audit all

254 Garda Inspectorate, *Post Implementation Review Crime Investigation Report 2014 Recommendation 8.17 Recording details of children under 12 on PULSE intelligence records*, 3 December 2024 <https://www.gsinsp.ie/publication-of-post-implementation-review-crime-investigation-report-2014-recommendation-8-17/#:~:text=Today%20the%20Garda%20Inspectorate%20has,an%20intelligence%20record%20on%20PULSE%E2%80%9D>.

255 Dáil Éireann debate Garda Inspectorate Report on the Fixed Charge Processing System: Statements [John McGuinness TD] 26 March 2014 <https://www.kildarestreet.com/debates/?id=2014-03-26a.619&cs=Traveler+children+speaker%3A188#g642>

256 Gemma O'Doherty, *Gardai, stop spying on my toddlers*, *The Times*, 23 March 2014 <https://www.thetimes.com/article/bf70120c-8f32-49c5-99e0-94d1feb023db>

of its intelligence records created on children under 12, since 2015.²⁵⁷ *An Garda Síochána* must identify any intelligence records created in breach of its policy and delete all records not associated with very serious offences or where there are no other compelling reasons for retaining them.

ICCL is extremely concerned that, ten years after concerns about Traveller child surveillance were first raised, many questions remain unanswered. These include the exact number of children that have been affected and how many of the children are Travellers. There is also no information on how many of these files are still being maintained and whether any of these children, or their families, have suffered adverse legal consequences because of the dossiers.

Prisoners' Rights — The Irish Prison Service Annual Report 2023,²⁵⁸ published in December 2024, shows a significant increase of people committed to prison in Ireland, including an increase in short sentences of less than 12

months. Furthermore, more women are being imprisoned and official statistics document a tripling of the number of people being imprisoned for non-payment of fines. While efforts made to include detailed data on prison education and access to mental health services and progress in the continued rollout of in-cell telephones, are welcome, serious problems persist.

Since the end of 2023 Ireland has continued to break new prison overcrowding records - with safe capacity levels breached daily.²⁵⁹ Tangible short-term solutions are provided in the Prison Overcrowding Response Group's final report,²⁶⁰ which sets out practical measures that could quickly take the pressure off the prison service. The rights of many people in prison remain unmet, including hundreds of people sleeping on floors, thousands of people sharing cells. There is also limited access to recreational space and significant waiting lists to access nearly all vital services.

The Irish Penal Reform Trust has expressed concern²⁶¹ at the continued growth of short

257 Garda Inspectorate, Post Implementation Review Crime Investigation Report 2014 Recommendation 8.17 Recording details of children under 12 on PULSE intelligence records, 3 December 2024 <https://www.gsinsp.ie/publication-of-post-implementation-review-crime-investigation-report-2014-recommendation-8-17/#:~:text=Today%20the%20Garda%20Inspectorate%20has,an%20intelligence%20record%20on%20PULSE%E2%80%9D>

258 Irish Prison Service, *Annual Report 2023*, 13 December 2024 <https://www.irishprisons.ie/irish-prison-service-publishes-its-2023-annual-report/>

259 Irish Prison Service, *Annual Report 2023*, 13 December 2024 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2023-1.pdf

260 Irish Prison Service, *Prison Overcrowding Response Group Report*- 19 March 2024 https://www.iprt.ie/site/assets/files/7498/prison_overcrowding_response_group_report_web.pdf

261 *Overcrowded Prisons Demand Urgent Shift to Alternative Solutions in New Programme for Government*, IPRT, December 2024, <https://www.iprt.ie/latest-news/overcrowded-prisons-demand-urgent-shift-to-alternative-solutions-in-new-programme-for-government-iprt/>

sentences with a 10 per cent year-on-year increase in 2023 of sentences between three and six months.²⁶² There is particular alarm at the number of people experiencing homelessness immediately before imprisonment. On 31 December 2023, almost 800 people (16.4 %) reported being of “no fixed abode” upon committal to prison.²⁶³ This particularly impacts women with 28.6 % of the female prison population reporting that they were homeless before committal.²⁶⁴

262 Irish Prison Service, *Annual Report 2023*, 13 December 2024 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2023-1.pdf

263 Irish Prison Service, *Annual Report 2023*, 13 December 2024 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2023-1.pdf

264 Irish Prison Service, *Annual Report 2023*, 13 December 2024 https://www.irishprisons.ie/wp-content/uploads/documents_pdf/IPS-Annual-Report-2023-1.pdf

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Irish Council for Civil Liberties (ICCL)

The Irish Council for Civil Liberties (ICCL) is Ireland's leading independent human rights watchdog. The Irish Council for Civil Liberties monitors, educates and campaigns in order to secure full enjoyment of human rights for everyone.

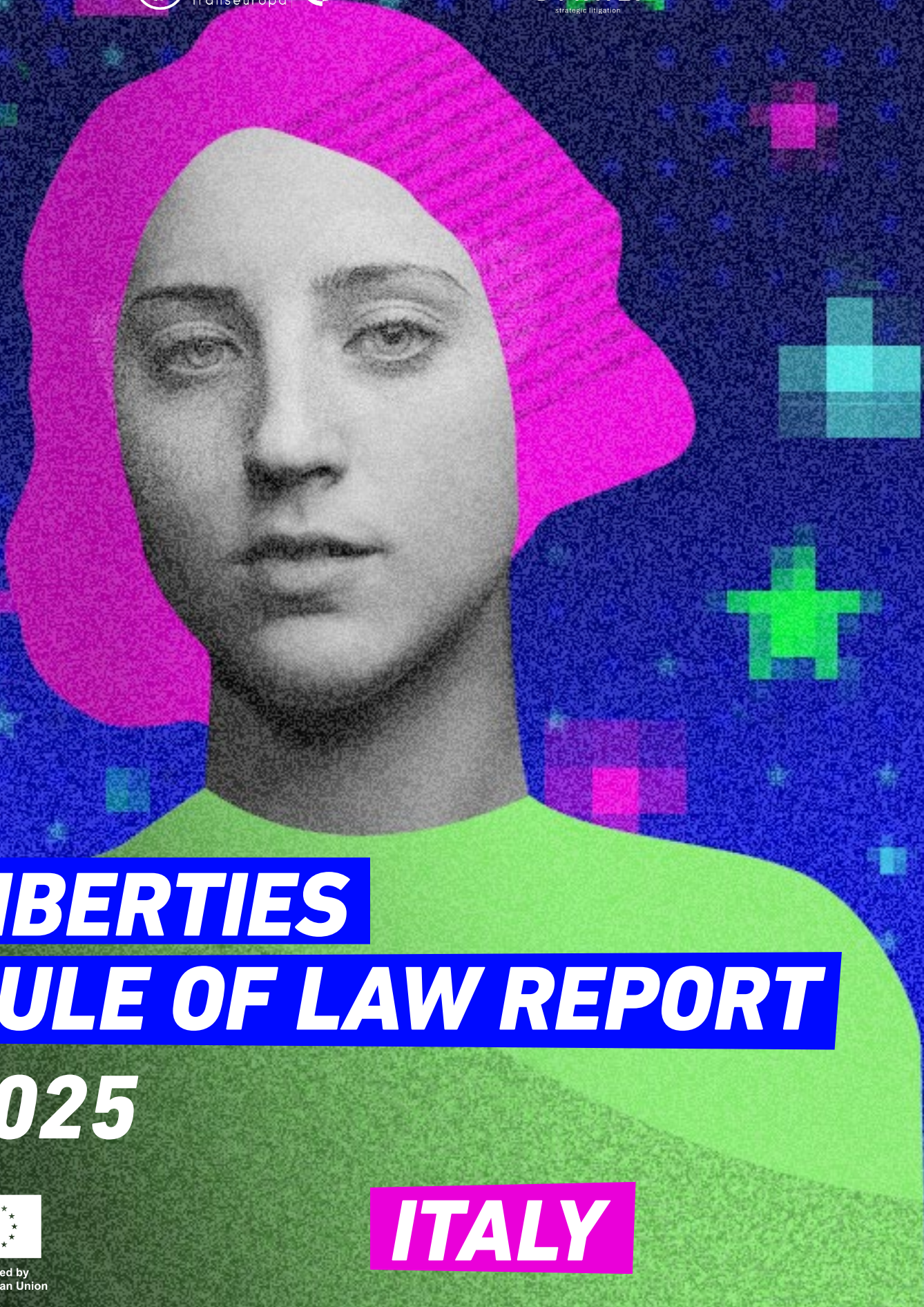
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RULE OF LAW REPORT

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ABOUT THE AUTHORS

Italian Coalition for Civil Liberties and Rights (CILD)



Founded in 2014, the Italian Coalition for Civil Liberties and Rights (CILD) is a network of civil society organisations that protect and expand the rights and liberties of all, through a combination of advocacy, public education and legal action.

Antigone



Antigone is an Italian NGO founded in 1991, that deals with human rights protection in the penal and penitentiary system. Antigone carries out cultural work on public opinion through campaigns, education, media and publications. It conducts studies and research and cooperates in writing normative texts. Thanks to its Observatory on Italian prisons for adults and minors, it monitors conditions in all prisons in Italy and publishes a report on the Italian penitentiary system. Antigone also has an ombudsman and legal clinics around Italy that collect complaints from prisoners. Antigone also carries out investigations about ill-treatment and is at times formally involved in the related trials.

A Buon Diritto Onlus



A Buon Diritto Onlus, since its establishment, has been carrying out activities of rights promotion, legal assistance, social guidance, monitoring, research and advocacy, with a focus on migration. The organisation works to safeguard fundamental rights, offering qualified assistance to those who are

deprived of their liberty, those who are trying to integrate into Italy, those who are victims of discrimination or racist episodes, and those who have suffered abuse and torture.

Osservatorio Balcani e Caucaso Transeuropa



Established in 2000, OBCT is a think tank focused on Southeast Europe, Turkey, and the Caucasus that explores and reports on the socio-political and cultural developments of Italy and six other EU Member States, namely those taking part in the EU enlargement process and those included in the European Neighbourhood Policy. As an operational unit of the Center for International Cooperation, OBCT is committed to strengthening the European project by supporting transnational relations and raising public awareness on areas at the heart of many European challenges, thanks to a participatory and multi-sectoral approach that weaves together online journalism, research, training, outreach, and policy advice.

StraLi



StraLi (STRAtegic LItigation) is a non-profit organisation of legal professionals dedicated to safeguarding rights through strategic litigation. It is a non-partisan, non-denominational, democratic association recognised as an ETS - ODV (Third Sector Entity - Voluntary Organisation). Guided by principles of civic engagement, solidarity, and social benefit, StraLi focuses on protecting fundamental rights and freedoms by utilising both national and international judicial systems.

KEY CONCERNS

Justice System

The reforms discussed or approved during 2024 profoundly undermine the rule of law, promoting an authoritarian and extremely punitive approach that will distort the face of the Italian justice system.

Some progress has been made with regard to the digitisation of justice in Italy. In particular, investments were made for the implementation of telematic civil and criminal proceedings and the creation of a database of civil judgments thanks to the National Recovery and Resilience Plan (PNRR) funds.

Anti-Corruption Framework

Italy's Anti-Corruption Authority is said to be preparing a single transparent platform in Italy,¹ but there has been no progress on adopting new lobbying regulations or establishing an operational lobbying register. In practice, new whistleblowing regulations have in some respects been said to be a regression in protection for whistleblowers.

Italy did not adopt the pending bill on conflicts of interest, nor did it adopt comprehensive rules on lobbying, establish an operational lobbying register, address channelling of donations via political entities or introduce a single

electronic register for party/campaign finance information, as recommended.

Media Environment and Media Freedom

Media freedom has been under increased pressure, with unprecedented attacks and threats often initiated by public officials and members of the ruling coalition, which signal a heavy intolerance to any form of media criticism. This results in a broad contraction of freedom of expression and the democratic quality of the country.

Until the law on public service media (PSM) is amended to align with the European Media Freedom Act (EMFA), PSM will remain vulnerable to undue political control. Additionally, the reform process of the defamation legal apparatus still does not foresee full decriminalisation, which remains a concern for freedom of expression.

Checks and Balances

Compared to 2023, no progress has been made in establishing a sustainable, functional, and independent institutional body for the protection of human rights, in line with UN Resolution No. 48/134 of 1993.

Compared to the European Commission's recommendations for Italy, there is no significant progress in establishing a National Human

1 ANAC (2024), Busia (ANAC): *Italy must support the European anti-corruption directive*, 10 October 2024, available at: <https://www.anticorruzione.it/en/-/busia-anac-italy-must-support-the-european-anti-corruption-directive->.

Rights Institution taking into account the UN Paris Principles.







Civic Space

Since the right-wing majority government led by Giorgia Meloni took office in October 2022, concerns have been raised about the gradual erosion of civic space. This worrying process has been called out by many civil society organisations committed to monitoring and reporting the shortcomings and implications of legislative measures impacting civil rights — in particular, the right to protest, freedom of expression and the media, and right of assembly. This trend is driven by a strong commitment to criminalising activists and minorities, intended as a deterrent to silence dissent.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

According to ILGA Europe’s Rainbow report,² Italy continues to remain at the bottom of the ranking, losing two positions and finding itself in 35th place out of 49 monitored EU countries. The EU Commission’s country-specific recommendations of 2024 for Italy didn’t provide any suggestions or steps to be taken by authorities on LGBTQIA+ people and rights.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression **No progress** **Progress**



2 ILGA Europe (2024), *Annual Review of the Human Rights Situation of Lesbian, Gay, Bisexual, Trans and Intersex People Covering the Period of January to December 2023, 2024*, available at: https://www.ilga-europe.org/files/uploads/2024/02/2024_italy.pdf.

JUSTICE SYSTEM

Key recommendations

- *Guarantee the independence of the judiciary by avoiding any form of interference by the executive in the decisions of magistrates, in particular any form of direct attack on individual judges.*
- *Stop introducing new criminal offences aimed at criminalising dissent and the most vulnerable groups in Italian society. Do not pass the Security Bill. Instead, promote measures aimed at ensuring social security.*
- *Guarantee the rights of detainees and avoid further condemnation by the European Court of Human Rights for violations of Article 3 of the European Convention on Human Rights by reducing overcrowding in Italian prisons.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

A political deadlock is currently affecting the composition of the Constitutional Court. At the time of writing, the nomination of the 15th judge, to replace Silvana Sciarra, whose 9-year mandate expired in November 2023, has not happened yet.³ Moreover, in December

2024 the mandate of three other members of the Constitutional Court expired. The Parliament last convened on 14 January 2025 for its 13th session to nominate the missing Constitutional Court judges – yet it was again unsuccessful due to the lack of compromise on suitable candidates.⁴ The reduced number of judges of the Constitutional Court represents a constitutional default which impacts the democratic balance. In the short term, operating with fewer judges reduces the available

3 Pagella Politica (2024), 'Parliament again late in electing a Constitutional Court judge' (Il Parlamento è di nuovo in ritardo nell'elezione di un giudice della Corte Costituzionale), 28 June 2024, available at: <https://pagellapolitica.it/articoli/ritardo-parlamento-elezione-giudice-corte-costituzionale>; Pagella Politica (2024), 'Constitutional judges know how to deal with politics' (*I giudici costituzionali ci sanno fare con la politica*), 15 October 2024, available at: <https://pagellapolitica.it/articoli/giudici-corte-costituzionale-esperienza-politica>.

4 Il Post (2025), 'Where the parliament's mess on the Constitutional Court comes from' (*Dove nasce l'inghippo del parlamento sulla Corte costituzionale*), 14 January 2025, available at: <https://www.ilpost.it/2025/01/14/corte-costituzionale-elezione-parlamento-referendum-forza-italia/>.

expertise and sensitivity, increases decision times (although delays are not currently the Court's main challenge), and creates a bench with an even number of members, complicating the majority-rule decision-making process. In the long term, having only 11 judges out of 15 poses a clear threat to the Court's ability to function – Article 16 of Law No. 87 of 1953 states that “the Court functions with the presence of eleven judges”. While a fully staffed bench allows up to four absences without disrupting operations, a reduction to exactly 11 judges leaves no margin for unforeseen circumstances. Any personal issue could compromise the Court's functioning entirely. Even more concerning, this configuration grants a single judge disproportionate influence, as their mere absence could paralyse the Court, contravening the constitutional principles designed to ensure its effective operations.⁵

Nevertheless, the nomination of the missing members depends on a political compromise which needs to be reached in the Parliament. In response to the situation, President of the Republic Sergio Mattarella urged the nomination to be carried out as soon as possible, in respect of democratic principles at the heart of which lies the Parliament.⁶

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

On 13 June 2024, the Ministry of Justice submitted to Parliament a draft constitutional reform, currently under parliamentary review, which incorporates changes highlighted in the 2024 EU Commission rule of law report.⁷

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- 5 Justice Together (2024), ‘The Constitutional Court with reduced ranks: inefficiencies and risks arising from the continuing failure to elect the fifteenth constitutional judge’ (*La Corte costituzionale a ranghi ridotti: inefficienze e rischi derivanti dalla perdurante mancata elezione del quindicesimo giudice costituzionale*), 29 July 2024, available at: <https://www.giustiziainsieme.it/it/costituzione-e-carta-dei-diritti-fondamentali/3222-la-corte-costituzionale-a-ranghi-ridotti-inefficienze-e-rischi-derivanti-dalla-perdurante-mancata-elezione-del-quindicesimo-giudice-costituzionale-corrado-caruso-pietro-faraguna>.
- 6 Presidenza della Repubblica (2024), *Intervento del Presidente della Repubblica Sergio Mattarella in occasione dell'incontro con i componenti dell'Associazione Stampa Parlamentare, i Direttori dei quotidiani e delle agenzie giornalistiche e i giornalisti accreditati presso il Quirinale per la consegna del Ventaglio da parte dell'Associazione Stampa Parlamentare*, 24 July 2024, available at: <https://www.quirinale.it/elementi/118752>.
- 7 Parliament (Italy), Constitutional Bill - Rules on the judicial system and the establishment of the Disciplinary Court (*Disegno di legge costituzionale - Norme in materia di ordinamento giurisdizionale e di istituzione della Corte disciplinare*), 13 June 2024, https://www.camera.it/leg19/995?sezione=documenti&tipoDoc=lavori_testo_pdl&idLegislatura=19&codice=leg.19.pdl.camera.1917.19PDL0095000&back_to=; European Commission (2024), Rule of Law Report Country Chapter on the rule of law situation in Italy, 24 July 2024, available at: https://commission.europa.eu/document/download/60d79a4f-49cd-4061-a18f-d3a4495d6485_en?filename=29_1_58066_coun_chap_italy_en.pdf.

However, criticism was raised regarding the proposed separation of career paths for judges and prosecutors, which would entail the establishment of two distinct High Councils of the Judiciary. The National Association of Judges (ANM) has repeatedly voiced concerns that these changes could jeopardise the independence of both judges and prosecutors, undermining the balance of powers.⁸

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

Several legislative proposals currently promoted by the government pose significant risks to the independence of the judiciary. Among these, one proposal seeks to hold public prosecutors accountable – both financially and through disciplinary actions – for cases of unjust detention.⁹ Any decision under Articles 314 and 315 of the Code of Criminal Procedure (concerning financial reparation for unjust detention)

must be notified to the General Prosecutor of the Court of Auditors, which would evaluate whether to initiate a disciplinary proceeding against the judge who applied the unjust detention. Another would initiate disciplinary proceedings against judges or prosecutors who fail to abstain from decisions in situations involving “serious reasons of convenience” in addition to the circumstances already provided for by law.¹⁰ Particularly concerning is a vague and open-ended clause granting the Ministry of Justice discretionary power to determine such cases, which could undermine judicial independence.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

The judiciary has been suffering great pressure from the executive, including intimidation – resulting in situations where the use of bodyguards is needed for the personal protection of judges – and disciplinary proceedings as a

8 Associazione Nazionale Magistrati (2024), ‘Casciaro: Career separation is a dangerous path traced by the government’ (*Casciaro: separazione carriere è un sentiero pericoloso tracciato dal governo*), 19 October 2024, available at: <https://www.associazionemagistrati.it/doc/4420/casciaro-separazione-carriere-sentiero-pericoloso-tracciato-da-governo.htm>.

9 R. Carlino (2024), ‘Il magistrato che sbaglia dovrà pagare. Ecco la nuova proposta di Costa’, *Il Foglio*, 22 October 2024, available at: <https://www.ilfoglio.it/giustizia/2024/10/22/news/il-magistrato-che-sbaglia-dovra-pagare-eco-la-nuova-proposta-di-costa-7076630/>

10 The proposal will be discussed at the next meeting of the Council of Ministers, so no official text is available yet. See: Il Fatto Quotidiano (2024), ‘Arriva l’obbligo di astenersi anche solo per “ragioni di convenienza”: la mossa del governo per togliere i processi ai magistrati sgraditi’, 19 November 2024, available at: <https://www.ilfattoquotidiano.it/2024/11/19/magistrati-sgraditi-governo-sanzioni-decreto-legge-astensione-convenienza/7771978/>; Sole24Ore (2024), Arriva un nuovo bavaglio contro i magistrati, 20 November 2024, available at: <https://www.ilssole24ore.com/art/arriva-nuovo-bavaglio-contro-magistrati-AG5151GB>.

consequence of judges' decisions which contrast with the government's political line. Here are three recent, particularly concerning examples of government representatives continuing to undermine the judiciary through preposterous attacks, fostering an adversarial narrative that erodes public trust in judicial independence.¹¹

- As regards the Apostolico case, mentioned in the 2024 Liberties rule of law report, the Ministry of the Interior withdrew the appeal against judge Iolanda Apostolico's decision, who refused to validate the detention of a migrant person held in a immigration detention centre (*Centro di Permanenza per il Rimapatrio - CPR*) due to an unpaid €5,000 deposit. Her decision challenged the applicable legal framework (Law Decree No. 1/2023, 2 January 2023, and the Ministry of Interior Decree of 14 September 2023), with Judge Apostolico arguing that the regulations conflicted with EU directives. Nonetheless, Judge Apostolico announced her resignation one year after the attacks received on social media from Prime Minister Meloni and Minister Salvini, who asked for her resignation.¹²
- The implementation of the Italy-Albania protocol, which established the externalisation of migration management, brought about a tug-of-war between the government and the judiciary. Indeed, only two missions were carried out within the protocol. The protocol provided for migrant people coming from 'safe countries of origin' and without conditions of vulnerability to undergo an accelerated border procedure in the centres built on Albanian territory. As for the first mission, on 18 October 2024, the Tribunal of Rome refused to validate a detention order issued by the Rome Police Authority against individuals from Egypt and Bangladesh, citing a ruling of the European Court of Justice (ECJ) – issued on 4 October 2024 – which challenged the concept of 'safe country of origin'. Faced with this clear failure, the top figures in Meloni's administration have responded by attacking the judiciary, accusing it of politicising the decision regarding the migrant people involved.¹³ First among them was the Minister of Justice, Carlo Nordio, who described the ruling by the Rome Court as "abnormal", and other government members echoed these criticisms,¹⁴ with Prime

11 Il Manifesto (2024), "Aria pesante intorno ai magistrati". Ora per l'Anm è allerta massima, 2 November 2024, available at: <https://ilmanifesto.it/aria-pesante-intorno-ai-magistrati-ora-per-lanm-e-allerta-massima>.

12 Redazione Ansa (2023), League calls for resignation of migrant-ruling judge, 6 October 2023, available at: https://ansabrasil.com.br/english/news/politics/2023/10/06/league-calls-for-resignation-of-migrant-ruling-judge_9e93b8b6-eb14-4f74-8b25-5341dbdfdc7d.html.

13 CILD (2024), *The Meloni-Rama Project goes up in smoke, an attack on the judiciary*, 23 October 2024, available at: <https://cild.eu/en/2024/10/23/the-meloni-rama-project-goes-up-in-smoke-an-attack-on-the-judiciary/>.

14 Il Fatto Quotidiano (2024), 'Caso migranti in Albania, Nordio attacca la magistratura: "Se esonda dobbiamo intervenire". Ma il tribunale ha solo applicato la sentenza Ue', 19 October 2024, available at: <https://www.ilfattoquotidiano.it/2024/10/19/caso-migranti-in-albania-nordio-attacca-la-magistratura-se-esonda-dobbiamo-intervenire-ma-il-tribunale-ha-solo-applicato-la-sentenza-ue/7736488/>.

Minister Giorgia Meloni accusing the judiciary of political bias and obstructionism.¹⁵ In reaction, the Council of Ministers approved Law Decree No. 158/2024, which gives primary legislative force to the measure establishing the ‘safe country of origin list’, aiming to alter the dynamics between domestic and EU jurisdiction. Nevertheless, this Law Decree was brought before the ECJ for clarification in the context of the second mission. This way, the judges managed once again to suspend the detention orders. The National Association of Magistrates and CSOs condemned the government’s rhetoric as a direct attack on democracy and the constitutional separation of powers.¹⁶ These government-led attacks had serious consequences on the

perception of the general public. Silvia Albano, the judge in charge of the non-validation of detention in the first mission, received death threats and was compelled to file a formal complaint with the Rome Police Authority to initiate legal proceedings.¹⁷ Government representatives continue to undermine the judiciary through preposterous attacks, fostering an adversarial narrative that erodes public trust in judicial independence.¹⁸

- In the so-called Open Arms case, Matteo Salvini, Italy’s Deputy Prime Minister and former Minister of the Interior, was acquitted on 20 December 2024, of charges related to a 2019 incident involving the NGO Open Arms.¹⁹ Salvini was

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- 15 Politico (2024), ‘Giorgia Meloni’s vendetta against Italy’s judges’, 13 November 2024, available at: <https://www.politico.eu/article/giorgia-melonis-italy-judges-viktor-orban-hungary-albania-rome-court-russia-war-ukraine/>; il Fatto Quotidiano (2024), ‘Albania, Landini: “Gravissimi gli attacchi di Meloni alla magistratura, i soldi spesi per il centro sono uno schiaffo a tutti noi”’, 19 October 2024, available at: <https://www.ilfattoquotidiano.it/2024/10/19/albania-landini-attacco-meloni-magistratura-schiaffo-video/7736540/>.
- 16 Associazione Nazionale Magistrati (2024), Rispetto per la giurisdizione è una necessità democratica, 22 October 2024, available at: <https://www.associazionemagistrati.it/doc/4424/rispetto-per-la-giurisdizione-una-necessit-democratica.htm>; Associazione per gli studi giuridici sull’immigrazione (2024), ‘Cosa è sfuggito al governo che si ostina a gridare all’usurpazione di poteri?’, 21 October 2024, available at: <https://www.asgi.it/allontamento-es-pulsione/cosa-e-sfuggito-al-governo-che-si-ostina-a-gridare-allusurpazione-di-poteri/>; Associazione per gli studi giuridici sull’immigrazione (2024), ‘Sotto attacco l’indipendenza della Magistratura e la nostra Costituzione’, 6 November 2024, available at: <https://www.asgi.it/asilo-e-protezione-internazionale/magistratura-costituzione/>.
- 17 Euronews (2024), ‘Minacce di morte alla giudice Albano, non aveva convalidato il trattenimento dei migranti in Albania’, 24 October 2024, available at: <https://it.euronews.com/my-europe/2024/10/24/minacce-di-morte-alla-giudice-albano-non-aveva-convalidato-il-trattenimento-dei-migranti-i>.
- 18 Il Manifesto, “Aria pesante intorno ai magistrati”. Ora per l’Anm è allerta massima’, 2 November 2024, available at: <https://ilmanifesto.it/aria-pesante-intorno-ai-magistrati-ora-per-lanm-e-allerta-massima>.
- 19 Euronews (2024), ‘Italy’s Deputy PM Matteo Salvini found not guilty in Open Arms migrants case’, 20 December 2024, available at: <https://www.euronews.com/my-europe/2024/12/20/italys-deputy-pm-matteo-salvini-found-not-guilty-in-open-arms-migrants-case>.

accused of refusal to perform official duties and the kidnapping of 157 people, for events that occurred in August 2019, when he was Minister of the Interior. At the hearings in September 2024, the prosecutors requested a six-year sentence to be imposed and compensation of €1,000,000 to be paid to the migrant people involved. Salvini claimed that “protecting borders is not a crime” to prove his innocence, and Meloni supported his view, claiming that “[t]urning the duty to protect Italy’s borders from illegal immigration into a crime sets a very serious precedent”.²⁰ Such statements risk undermining judicial independence, intimidating officials involved, and violating the constitutional principle of separation of powers. A Palermo newspaper reported that prosecutors handling the case and their families have received repeated threats, both online and via anonymous letters, prompting a security warning.²¹

Other

The proposal to introduce psycho-attitude interviews for judicial appointments has sparked considerable debate. As highlighted in the *2024 Rule of Law Report*,²² the ANM emphasised the proposal’s current lack of clarity, warning that it could undermine public trust in the judiciary.²³ Additionally, the Associazione Magistratura Democratica (Democratic Association of Magistrates) noted that concerns were previously raised by members of the Società Psicoanalitica Italiana during a similar legislative proposal in 2004, arguing that such tests could jeopardise judicial independence by allowing subjective assessments in the selection and evaluation process.²⁴

20 CILD (2024), *Democracy at the Crossroads – Mapping rights and freedoms in Italy 2024*, available at: https://cild.eu/wp-content/uploads/2024/12/Democracy_Crossroads_FINAL.pdf.

21 PalermoToday (2024), ‘Insulti e minacce ai pm del processo Open Arms, scatta l’allarme sicurezza a Palermo’, 20 September 2024, available at: <https://www.palermotoday.it/cronaca/minacce-pm-processo-open-arms-salvini-allarme.html>.

22 European Commission (2024), *2024 Rule of Law Report*, pages 4-5, 2024, available at: https://commission.europa.eu/document/download/60d79a4f-49cd-4061-a18f-d3a4495d6485_en?filename=29_1_58066_coun_chap_italy_en.pdf.

23 ANM (2024), ‘L’ANM sui test psicoattitudinali di ingresso in Magistratura’, 3 March 2024, available at: <https://www.associazionemagistrati.it/doc/4132/lanm-sui-test-psicoattitudinali-di-ingresso-in-magistratura.htm>.

24 Questione Giustizia (2024), ‘Test psicoattitudinali per i magistrati’, 24 March 2024, available at: <https://www.questionegiustizia.it/articolo/test-psicoattitudinali-per-i-magistrati>.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Shortcomings persist in regards to the accessibility of courts. Indeed, individuals face high costs to defend their rights in court – among which are lawyers’ fees, travel costs and court fees – which are out of reach for many people. For this reason, the state assumes the judicial costs for the indigent. Nonetheless, this legal aid has several drawbacks, as the payment is usually insufficient and it arrives only after a year. Also, the income requirements for applying for legal aid are very low. The income limits are indicated annually by the Italian Minister of Justice. For this year the limit is €12,838.01 for a family unit (the sum can be increased by €1,000 for each additional family member), excluding people with income even slightly above that amount.²⁵ Additionally, accessibility of courts is often hindered by language barriers: the lack of translation of judicial documentations²⁶ and the insufficiency of language mediators in court hearings is alarming

considering how Italy is concerned about migration processes.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

The proper functioning of justice presumes a good training system for justice professionals. However, the path to becoming a justice professional is tortuous. To become a judge, prosecutor or court staff, it is necessary to pass a difficult public competition, and then one can wait at least nine months or more for appointment. On the other hand, to become a lawyer, candidates have to do a legal internship within a law office for 18 months, usually without pay and with exhausting working hours. Also, from 2022, trainee lawyers have to attend (and pay for) private, mandatory classes before taking the exam. Difficulties related to this professional career lead to a decrease in candidates in the last years, creating alarmism about a future with insufficiency of lawyers.²⁷

25 Ministero della Giustizia (2024), ‘Patrocinio a spese dello Stato nei giudizi civili e amministrativi’, 31 October 2024, available at: https://www.giustizia.it/giustizia/page/it/patrocinio_a_spese_dello_stato_nei_giudizi_civili_e_amministrativi#.

26 Giurisprudenza Penale (2024), ‘Depositata la sentenza delle Sezioni Unite sulla mancata traduzione dell’ordinanza di custodia cautelare personale emessa nei confronti di imputato o indagato alloglotta’, 15 April 2024, available at: <https://www.giurisprudenzapenale.com/2024/04/15/depositata-la-sentenza-delle-sezioni-unite-sulla-mancata-traduzione-dellordinanza-di-custodia-cautelare-personale-emessa-nei-confronti-di-imputato-o-indagato-alloglotta/>.

27 Corriere della Sera (2024), ‘Nel Paese degli avvocati mancheranno gli avvocati’, 20 November 2024, available at: https://www.corriere.it/frammenti-ferruccio-de-bortoli/24_novembre_20/nel-paese-degli-avvocati-mancheranno-gli-avvocati-6a367b62-fe7a-49a1-a4e3-fa2270602x1k.shtml.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

Management of the justice system was influenced by a recent step forward in the digitisation process. Indeed, the COVID-19 pandemic emergency led to a digitalisation of criminal procedures, whereas the civil process had already been digitised by Law No. 111/2014. Nonetheless, the use of digital technology, particularly of electronic communication tools is often problematic. As a matter of fact, due to continuous problems with digital platforms and complaints from court users and lawyers, the complete telematic filing of criminal acts was recently postponed for another year.²⁸

Regarding the digitisation of justice, the National Recovery and Resilience Plan (PNRR) provided for an investment of €133,476,440.91. These were invested in the implementation of telematic civil and criminal process and a database of civil decisions.

Compared to these goals, an additional element was introduced in 2024: the digitisation of first-instance criminal proceedings and interoperability between computer platforms of the Telematic Criminal Process. At the same time, an increase in resources allocated to the Ministry of Justice to the amount of €36,000,000 was established. With respect to the total investment of the digitisation sector, as of June 2024, €19,082,970.63 has been spent, used in particular for the digitisation of 7,750,000 dossiers and the creation of a system of aggregation and interchange of data at various levels called ‘Data Lake’.²⁹

Fairness and efficiency of the justice system

Length of proceedings

Regarding the length of proceedings, the most recent data available, from a report by the Ministry of Justice, refer to the first half of 2024.³⁰ While there have been substantial improvements in the duration of proceedings in both civil and criminal sectors, the clearance

28 Such critical issues were denounced by the justice professionals for many months before this decision. See: Corriere della Sera (2024), ‘Il processo penale telematico slitta di un altro anno: rinvio a gennaio 2026. L’allarme dei procuratori: «Troppe criticità»’, 23 November 2024, available at: https://milano.corriere.it/notizie/cronaca/24_novembre_23/il-processo-penale-telematico-slitta-di-un-altro-anno-rinvio-a-gennaio-2026-l-allarme-dei-procuratori-troppe-criticita-f4e75547-2969-4fb9-979a-6264a21e7x1k.shtml.

29 Ministero della giustizia (2024), Digitalizzazione (M1C1-I1.6.2), giustizia.it, 6 September 2024, available at: https://www.giustizia.it/giustizia/it/mg_2_11_2.wp#.

30 Ministry of Justice (Italy) (2024), Report On Statistical Monitoring of PNRR Indicators - I Semester 2024 (*RELAZIONE SUL MONITORAGGIO STATISTICO DEGLI INDICATORI PNRR – I SEMESTRE 2024*), 22 October 2024, available at: https://www.giustizia.it/cmsresources/cms/documents/pnrr_relazione_indicatori_statistici_ott24.pdf.

rates suggest a need for continued efforts to sustain and enhance backlog reduction across the judiciary system. In the civil sector, there was a reduction in disposition time³¹ of 22.9%, while pendency was reduced by 23.3%.

The clearance rate³² for the first half of 2024 decreased to 1.08, signaling reduced efficiency in clearing backlogs compared to 2023, when it stood at 1.14. Nevertheless, the report highlights that the national backlog reduction target set for 2024 is almost achieved. In addition, the report presents data on cases exceeding the reasonable duration limit: in the first six months of 2024, backlogs in first-instance courts decreased by 31.8%, while in courts of appeal, the reduction was even steeper at 43.2%.

In the first half of 2024, the disposition time in the criminal sector saw a 32% reduction, improving upon the 25% reduction achieved in 2023. The number of pending criminal cases dropped by 26.5%. The clearance rate for this sector reached 1.05, representing a decline compared to 2023, when it stood at 1.12. As with the civil sector, this indicates a slight decrease in the ability to clear the backlog.³³

Execution of judgments

Regarding the enforcement phase of judgments, it is important to highlight the enactment into law of Law Decree No. 92/2024, known as the ‘Prisons Decree’, on 10 August 2024.³⁴ It was expected to introduce measures which would enhance respect with human dignity and encourage access to alternative measures to detention, in order to counter growing overcrowding. However, it failed to achieve its aims. Instead, the Prison Decree provided new recruitment of prison police staff and directors, although a reduction in training for officers is planned, as well as the complete revision of the procedure for granting early release. Regarding the latter, the substantial change pertains to the time limits for granting the measure, no longer at the interested party’s request after the first six months of detention, but already upon sentencing. Verifications of the existence of the requirements for accessing the measure are conducted when applying for prison benefits or alternative measures or near the end of the sentence. However, this new provision on early release appears to be ineffective: it risks making the modalities of access to early release

31 The disposition time is the ratio of pending cases to cases resolved within a year, which indicates the average time required to resolve cases.

32 The figure is calculated as the ratio of resolved cases to new cases registered in a given period. This measures a court’s ability to reduce its backlog. A value above 1 means the court has resolved more cases than it registered, demonstrating its ability to reduce pending workloads.

33 Ministero della Giustizia (2024), ‘Monitoraggi della giustizia civile e penale’, 18 December 2024, available at: https://www.giustizia.it/giustizia/page/it/monitoraggi_giustizia_civile_e_penale.

34 Antigone (2024), *Commento al decreto-legge 4 luglio 2024, n. 92 recante “Misure urgenti in materia penitenziaria, di giustizia civile e penale e di personale del Ministero della giustizia”*, available at: <https://www.antigone.it/upload2/uploads/docs/CommentoDLCarceri.pdf>.

more confusing and complicating the work of the Surveillance Courts. Moreover, the provision only addresses the procedure for those who will be sentenced after the decree's entry into force. It provides no guidance regarding proceedings already underway or individuals already in the execution phase of their sentence. Consequently, the new procedure for cumulative recognition of periods of early release accrued by inmates does not affect the duration of the sentence to be served, and thus does not impact prison overcrowding.

A further rule within the 'Prison Decree' that has fallen short of expectations is the provision concerning the increase in telephone interviews with family members. In fact, previous circulars – issued during the COVID-19 Pandemic and subsequently confirmed – already introduced the possibility of increased phone calls. In essence, the new rule merely confirms an existing practice without intervening decisively, for example, on the duration of the phone call itself, which remains limited to only 10 minutes. Within the decree, there is also provision for the establishment of a registry containing a list of communities, useful for facilitating access to alternative measures to detention for all those who – although they meet the necessary requirements – lack external support to facilitate their reception. In this sense, it is a measure to be welcomed, but one that raises concerns related to the modalities of economic support, the availability of

specialised personnel, as well as the concern that a privatisation of the sentence execution phase may occur.

Lastly, the exclusion of persons placed in the 41-bis regime from access to restorative justice programmes is foreseen.³⁵ The 41-bis special detention regime is a strict form of imprisonment for individuals involved in organised crime, designed to sever their connections with criminal organisations. Introduced after the Capaci and Via D'Amelio massacres, it limits prisoners' contact with the outside world to neutralise their influence. The regime is applied by motivated decree of the Ministry of Justice and has an initial duration of four years. Any renewals have a duration of 2 years. Persons who can be subjected to 41-bis are individuals convicted or accused of the crimes indicated in the first sentence of paragraph 1 of Art. 4-bis of the Prison Law (e.g., crimes committed for the purpose of terrorism, including international terrorism) or crimes committed for the purpose of aiding and abetting mafia-type associations.

Respect for fair trial standards including in the context of pre-trial detention

In order to assess the effectiveness of the judicial system in Italy, it is also necessary to examine the cases of miscarriages of justice leading to wrongful imprisonment. The most recent data available refer to 2023 and are contained

35 Giustizia Insieme (2024), 'Il decreto-legge 4 luglio 2024 n. 92 "Carcere sicuro" e le attese del mondo penitenziario', 10 July 2024, available at: <https://www.giustiziainsieme.it/it/giustizia-pene/3201-d-1-92-2024-carcere-sicuro-at-tese-mondo-penitenziario-fabio-gianfilipp>.

in the Ministry of Justice's *Report on Precautionary Measures and Judicial Errors* published in April 2024.³⁶ The report shows that in 2023, 1,120 applications for wrongful imprisonment reached a final decision; of these, 543 ended with a favourable decision (48.5%). The reasons behind the final acceptances derive in about 75% of the cases from irrevocable measures declaring the person's extraneousness to the facts, and in the remaining 25% from the unlawful application of the precautionary measure. Looking at the economic aspect, there were 619 payment orders issued for a total of €27,844,794 (with an average amount per order of €44,983).

Quality and accessibility of court decisions

In April 2024, the criminal section of the Court of First Instance of Florence referred to the Constitutional Court a question of legitimacy with respect to the amount of fees provided for interpreters and translators following requests from judicial authorities.³⁷ The order, in particular, contests how the provision of paltry

fees is closely linked to the difficulty of finding professionals to take on the assignment. The problem is obvious: defendants do not understand the Italian language and, therefore, what is happening to them. The issue, again according to the order, mainly concerns the validation hearings of arrests, which are characterised by tight deadlines and consequently by the need to quickly receive feedback from professionals. This close correlation led the court to highlight the unconstitutionality of the legislation in light of the fact that the fee amount can lead to a violation of Articles 3 and 111 of the Constitution (respectively, the right to equality and the right to a fair trial). Also, this is not in line with Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings.³⁸

Other

In the last two years, the process of criminalisation of vulnerable minorities was enhanced through legislative developments amending

36 V. Giglio, R. Radi, *Ingiuste detenzioni, errori giudiziari e misure cautelari emesse: finalmente pubblicata la Relazione ministeriale per l'anno 2023*, *Terzultima Fermata*, 16 April 2024, <https://terzultimafermata.blog/2024/04/16/ingiuste-detenzioni-errori-giudiziari-e-misure-cautelari-emesse-finalmente-pubblicata-la-relazione-ministeriale-per-lanno-2023-di-vincenzo-giglio-e-riccardo-radi/>; V. Stella, *Ingiusta detenzione, in 30 anni quasi un miliardo in risarcimenti*, *Il Dubbio*, 17 April 2024, <https://www.ildubbio.news/giustizia/ingiusta-detenzione-in-30-anni-quasi-un-miliardo-in-risarcimenti-iwcalc1r>.

37 *Giurisprudenza Penale*, *Compensi «irrisori» di interpreti e traduttori a richiesta dell'autorità giudiziaria: il Tribunale di Firenze ha sollevato questione di legittimità costituzionale*, GP, 6 June 2024, <https://www.giurisprudenzapenale.com/2024/06/06/compensi-irrisori-di-interpreti-e-traduttori-a-richiesta-dellautorita-giudiziaria-il-tribunale-di-firenze-ha-sollevato-questione-di-legittimita-costituzionale/>.

38 Directive 2010/64/EU of 20 October 2010 on the right to interpretation and translation in criminal proceedings, OJ 2010 L 280, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32010L0064>.

administrative and criminal law, increasing penalties and introducing new offences.

The so-called Caivano Decree,³⁹ as already flagged in the 2024 report, has disrupted the Italian juvenile justice system, contributing to overcrowding in the juvenile prisons (IPM).⁴⁰ Specifically, the Caivano Decree has increased the maximum sentence from four to five years for minor offences under the fifth paragraph of Article 73 of the Law on Drugs. By increasing the maximum sentence to five years, minor offences are included among the offences for which compulsory arrest in *flagrante delicto* and the possibility of pre-trial detention in prison are also envisaged for minors. Moreover, the possibility for the judge to order precautionary measures towards minors is enhanced. Although the Italian juvenile justice system provides that a person who has committed a crime as a minor can serve his sentence at an IPM until the age of 25, the Caivano Decree gives the director of the IPM the possibility to transfer the adult

offender to an adult prison with ease.⁴¹ As a consequence, as of 7 December 2024, there were 590 boys and girls detained at juvenile prisons occupying 550 places, resulting in a crowding rate of 107.27%.⁴² Such high numbers had never been recorded before. Since the decree came into effect, admissions have increased by 16.4%.

Moreover, Bill No. 1660 – the so-called Security Decree – is currently at the core of the debate in the Italian Parliament. Its amended version under scrutiny by the Senate (Bill No. 1236) introduces 11 new offences and 18 aggravating circumstances or increased penalties. In many of its provisions, it clearly conflicts with a number of constitutional principles that govern the Italian legal system, specifically in the field of criminal law, immigration law and prison law. The law was denounced by the Organisation for Security and Cooperation in Europe (OSCE), which stated: “The majority of the provisions carry the potential to undermine the fundamental tenets of criminal justice and the

39 Parliament (Italy) (2023), DECREE-LAW No. 123 Urgent measures to combat youth distress, educational poverty and juvenile crime, as well as for the safety of minors in the digital sphere (*DECRETO-LEGGE n. 123 Misure urgenti di contrasto al disagio giovanile, alla povertà educativa e alla criminalità minorile, nonché per la sicurezza dei minori in ambito digitale*), 15 September 2023, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2023-09-15;123>.

40 Antigone (2024), *A un anno dal decreto Caivano, Il dossier di Antigone sull'emergenza negli Istituti Penali per Minorenni*, available at: <https://www.antigone.it/upload2/uploads/docs/A%20UN%20ANNO%20DAL%20DL%20CAIVANO%20-%20Documenti%20Google.pdf>.

41 Antigone (2023), *Il nostro documento sul decreto legge Caivano*, 29 September 2023, available at: <https://www.antigone.it/news/3500-il-nostro-documento-sul-decreto-legge-caivano>.

42 GNL (2024), *Osservatorio penitenziario adulti e minori*, GNL, 9 December 2024, available at: <https://www.garantenzionaleprivatiliberta.it/gnpl/resources/cms/documents/af4e43d8267a38bdefc8c8f05c31f7cb.pdf>.

rule of law”.⁴³ The legislation pushes towards a criminalisation of dissent and social struggles, turning behaviours that have to do with protest, discontent and social marginality into crimes. Below are some of the most relevant changes.⁴⁴

‘Arbitrary occupation of property intended as someone else’s domicile’ is introduced as a new crime in Article 634-bis of the Criminal Code. The current punishment for the unauthorised occupation of real estate had already been amended with Law Decree No. 113/2018 (so-called Salvini Decree). The government intends not only to introduce the new offence under analysis, but to further increase the penalty from two to seven years’ imprisonment, also for those who cooperate in the occupation, thus excluding the possibility of applying the substitute penalties for the latter (only possible if not exceeding four years, pursuant to Legislative Decree No. 150/2022).

Moreover, blocking a road is made a criminal offence, providing for the alternative punishment of imprisonment of up to one month and a fine of up to €300 (at present, such conduct constitutes an administrative offence punishable by a fine of €1,000 to €4,000). In addition, a special aggravating circumstance is introduced where such conduct is carried out by several persons together, which entails the application of a penalty of six months to

two years imprisonment. It is clear that the phenomenon intended to be sanctioned is that of collective protest mobilisations, so much so that the public has dubbed the norm the ‘Anti-Gandhi norm’.

With the approval of the security bill, the mandatory deferral of imprisonment in the case of a pregnant woman or mother of a child under one year of age (Article 146 of the Criminal Code) would be eliminated, thus disregarding the best interest of the child.

The bill also provides for the prohibition of selling SIM cards to people with no permit of stay, for identification purposes. In case of non-compliance, the closure of the business or activity of the company from five to 30 days is ordered as an accessory administrative sanction. This provision particularly targets migrants, depriving them of communicating with their country of origin and getting in touch with associations and lawyers.

Lastly, the most notable provision of this bill aims to introduce the offence of prison riot to the Criminal Code. Acts of violence or threat or resistance to the execution of orders given, committed by three or more detainees in a prison, in a detention centre for repatriation or in an extraordinary reception centre, would be punished with imprisonment from one to five

43 Antigone e ASGI, The new security law is an attack on the rule of law, available at: <https://www.antigone.it/upload2/uploads/docs/traduzione%20inglese.docx.pdf>.

44 The Guardian (2024), Demonstrations being held in Italy against ‘repressive’ security bill, 25 September 2024, available at: <https://www.theguardian.com/world/2024/sep/25/demonstrations-being-held-in-italy-against-repressive-security-bill>.

years. Thus, disobedience and passive resistance are subject to harsh criminal punishment under this provision. Moreover, the crime of prison riot is equated with mafia and terrorism

crimes for the purposes of access to prison benefits, as it would also be recalled by Article 4-bis of the Prison Law.

ANTI-CORRUPTION FRAMEWORK -

Key recommendations

- *As recommended the Council of Europe's Group of States against Corruption's (GRECO) Evaluation Report for its Fifth Evaluation Round, Italy should bolster anti-corruption measures, particularly targeting top executive functions (PTEFs) and law enforcement agencies.⁴⁵ GRECO recommended 19 recommendations in this respect, further elaborated below, all of which should be adopted. These included the introduction of rules on how top executives engage with lobbyists and other third parties, rules requiring that "sufficient information about the purpose of these contacts be disclosed" and that top executives be formally required to declare all their financial interests.⁴⁶*
- *As the new law, Legislative Decree No. 24/2023, which implements European Directive No. 1937/2019 on whistleblowing, is in some ways weaker compared to Italy's pre-existing whistleblower protection law,⁴⁷ the level of protection granted to whistleblowers should be bolstered such that the protection in all ways is at least as high as within the pre-existing Italian whistleblowing legislation, and the additional sanction that has been provided for whistleblowers who are responsible for the crime of defamation should be removed.*
- *Italy should implement the prior recommendations for Italy included in the EU Commission's 2024 report in this area, including adopting the pending bill on conflicts of interest, adopting comprehensive rules on lobbying, establishing an operational lobbying register, addressing the channelling of donations via political entities and introducing a single electronic register for party/campaign finance information.*

45 GRECO (2024), *Evaluation Report Italy*, 28 August 2024, available at: <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680b16315>.

46 Ibidem.

47 Transparency International Italia (2023), Decreto Legislativo 24 / 2023 TRASPOSIZIONE DELLA DIRETTIVA EUROPEA SUL WHISTLEBLOWING 1937/2019, 2023, available at: https://transparency.it/images/pdf_publicazioni/2023_Primo_Commento_dlgs_242023_Whistleblowing.pdf.

Levels of corruption

Transparency International consistently ranks Italy among the more corrupt countries in Western Europe. In the *2022 Corruption Perceptions Index*,⁴⁸ Italy scored 56/100, indicating a significant corruption problem.

In the Italian healthcare system, regional political appointments of general directors of Local Health Authorities can “sometimes result from improper negotiations involving internal or external interests to the system”.⁴⁹ In the south of Italy, corruption has contributed to rising healthcare costs.

Pharmaceutical and medical device companies have been indicted in recent years for using corrupt practices to ensure the utilisation of their pharmaceutical or medical products in hospitals.⁵⁰ While some companies settled with the authorities, those who did face criminal trials had verdicts that “significantly diverged from one another, with a number of verdicts

overruled by the Court of Appeals (this has happened not just in the healthcare sector but also in the oil and gas sector)”.⁵¹

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

In the 2024 *Liberties Rule of Law Report*, we discussed the judicial reforms introduced by Minister Cartabia, including changes to the Supreme Council of Magistrates (CSM), which were enacted in June 2022.⁵² While these reforms represent a significant step forward, it is still too early to fully evaluate their impact on issues such as revolving doors or the judicial system as a whole. Broader systemic challenges persist, including uneven reform implementation and inefficiencies in Italy’s legal processes. Nonetheless, these measures are widely regarded as positive strides towards fostering a more transparent and impartial judicial framework.

48 Transparency International (2022), *Corruption Perceptions Index*, available at: <https://www.transparency.org/en/cpi/2022>.

49 RUSI (2024), *Catch Me If You Can: Mafia’s Infiltration into Italy’s Healthcare System*, 8 February 2024, available at: <https://www.rusi.org/networks/shoc/informer/catch-me-if-you-can-mafias-infiltration-italys-healthcare-system#:~:text=This%20blog%20joint%20second%20place,identities%20of%20Italy’s%20most%20wanted>.

50 International Bar Association (2024), ‘New decisions in the Italian legal system regarding corruption in the healthcare sector’, 11 June 2024, available at: <https://www.ibanet.org/new-decisions-in-Italy-corruption-in-health-care-sector#:~:text=The%20fight%20against%20corruption%20in,or%20medical%20products%20in%20hospitals>.

51 Ibidem.

52 Redazione Ansa (2022), *Justice reform passed*, 16 June 2022, available at: https://www.ansa.it/english/news/2022/06/16/justice-reform-passed_cdf96094-6159-4b74-921f-330171c886c1.html.

In the broader context of corruption, the Council of Europe’s Group of States against Corruption (GRECO) has recently urged Italy to strengthen its anti-corruption efforts, with a particular focus on persons entrusted with top executive functions (PTEFs) and law enforcement agencies. On 28 August 2024, GRECO published a new evaluation report⁵³ highlighting significant shortcomings in Italy’s legal framework for combating corruption. The report criticised its excessive complexity and the absence of a unified integrity framework applicable to all PTEFs. It outlined 19 recommendations aimed at addressing these deficiencies, emphasising the prevention of conflicts of interest, greater transparency, and the establishment of robust ethical standards. These recommendations included the introduction of rules on how persons “with top executive functions engage in contacts with lobbyists and other third parties who seek to influence the government’s legislative and other activities” and rules requiring that “sufficient information about the purpose of these contacts be disclosed, such as the identity of the person(s) with whom (or on whose behalf) the meeting(s) took place and the specific subject matter(s) of the discussion”, that those with top executive functions be formally required to declare all their financial interests

and ensuring that this information is published in a timely manner, and that audits of corruption and integrity-related risks covering those with top executive functions be carried out regularly, and that whatever remedial measures are suggested/implemented should be made public.⁵⁴ For law enforcement agencies, the recommendations focus on enhancing internal controls, promoting diversity, and cultivating a culture of integrity. Italy has been required to submit a follow-up report by 30 September 2025, detailing its progress in implementing these recommendations.

Additionally, a notable weakness in Italy’s anti-corruption framework is the absence of a dedicated regulatory authority with exclusive jurisdiction to prosecute corruption cases.⁵⁵ While any public prosecutor may initiate a corruption investigation, this lack of centralised oversight could hinder the effectiveness of anti-corruption efforts.

53 International Bar Association (2024), ‘New decisions in the Italian legal system regarding corruption in the health-care sector’, 11 June 2024, available at: <https://www.ibanet.org/new-decisions-in-Italy-corruption-in-health-care-sector#:~:text=The%20fight%20against%20corruption%20in,or%20medical%20products%20in%20hospitals>.

54 Ibidem.

55 Global Compliance News, ‘Anti-Corruption in Italy’, available at: <https://www.globalcompliancencnews.com/anti-corruption/anti-corruption-in-italy/>.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

There is no information on accessible reporting for the government (if conducted) on civil society consultations. While a platform exists,⁵⁶ it has invited consultation on around 37 non-contentious items over the last five years, typically with short timeframes for response and limited publicity or active efforts to seek civil society input. The freedom of information (FOI) process remains necessary to gain access to pieces of information that should be freely and openly accessible.

Rules on preventing conflicts of interest in the public sector

Legislation addressing conflicts of interest comprehensively is yet to be enacted and needs immediate adoption. While a parliamentary inquiry on the necessity of establishing comprehensive rules for lobbying is in progress, it should be replaced by an amendment of the legislation as originally planned before the change in government.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

Legislative Decree No. 24/2023,⁵⁷ which implements European Directive No. 1937/2019 on whistleblowing, replaced Law No. 179/2017 for the public sector and Legislative Decree No. 231/2001 for the private sector. While initially celebrated, it is arguable that the new legislation, in certain respects, weakens the protections previously afforded under Italy's whistleblower laws.

On the positive side, the decree broadens the definition of whistleblowers, extends the scope of reportable misconduct to cover a wider range of unlawful activities, and significantly increases the pool of individuals who can report. It also enhances whistleblowing protections in the private sector and strengthens the role of ANAC (Italy's Anti-Corruption Authority) as the national authority overseeing whistleblowing, including within the private sector. A whistleblower is also now able to report to ANAC and directly to the media.

However, the law introduces notable drawbacks. It adds a sanction against whistleblowers found guilty of defamation, and some provisions are ambiguously worded, leaving room

56 ParteciPa, Processi, [https://partecipa.gov.it/processes?filter\[area_id\]=&&filter\[date\]=all&&filter\[scope_id\]=](https://partecipa.gov.it/processes?filter[area_id]=&&filter[date]=all&&filter[scope_id]=).

57 Gazzetta Ufficiale della Repubblica Italiana (2023), Decreto Legislativo 10 Marzo 2023, n. 24, Gazzetta Ufficiale della Repubblica Italiana, 10 March 2023, available at: <https://www.gazzettaufficiale.it/eli/id/2023/03/15/23G00032/sg>.

for varying interpretations.⁵⁸ The protections are inconsistently applied across the public and private sectors, leading to disparities. Furthermore, while the EU directive safeguards whistleblowers who opt for external reporting channels from the outset, the Italian transposition imposes restrictive conditions on their use, limiting whistleblowers' options and diverging from EU standards.

In some ways, the new legislation offers a less favourable framework for whistleblowers compared to its predecessor. For instance, while the directive protects whistleblowers who report based on a reasonable belief in the accuracy of the information, the Italian law subjects this to a discretionary evaluation, a provision absent in previous legislation. These changes risk undermining the level of protection and support previously granted under Italy's earlier whistleblowing regime.

List the sectors with high risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflicts of interest in these sectors. (e.g. public procurement, health-care, other)

- Public Procurement
- Construction and Infrastructure
- Law Enforcement and Judiciary

A public procurement code was put into place in July 2023 (Legislative Decree No. 36 of March 31, 2023)⁵⁹ and applies to public tenders for work, services, and supplies. Elements therein allowing for subcontracting without percentage limits and 'cascade subcontracting' still require additional reform in our view, as many argue that limiting subcontracting to a maximum of one or two sub-layers and limiting the permitted percentage of employed workers, the number of tasks, and the percentage of the turnover generated down the subcontracting chain, is necessary for the code to have real substantive force.⁶⁰

58 Transparency International Italia (2023), *Decreto Legislativo 24 / 2023 TRASPOSIZIONE DELLA DIRETTIVA EUROPEA SUL WHISTLEBLOWING 1937/2019*, 2023, available at: https://transparency.it/images/pdf_pubblicazioni/2023_Primo_Commento_dlgs_242023_Whistleblowing.pdf.

59 International Association of Young Lawyers (2023), 'The new Public Procurement Code: New items, application, and transitional regime', Lexology, 18 September 2023, available at: <https://www.lexology.com/library/detail.aspx?g=51b8f2d6-e57c-4a42-9887-f15de31cf4e3>.

60 European Federation of Building and Woodworkers, 'Better European Laws for Subcontracting in the construction sector', available at: <https://www.limitsubcontracting.eu/materials/rules/Better%20subcontracting%20rules%20GB.pdf>.

Criminal offences exist for the practices of bid rigging (those who obstruct or displace a tenderer with violence or threats, or with gifts, promises, collusion or other fraudulent means, or those who prevent or disrupt tendering procedures) and obstruction in the selection of contractors (those who attempt to frustrate a public authority's selection procedure and criteria when going to tender).⁶¹

We hope to see a respective increase in investigations with regard to the procurement and tender processes associated with public funds.

There are also several cases pointing to a lack of integrity and judicial corruption, including cases where bribes have been paid to release members of criminal organisations from pre-trial detention, cases of petty corruption like the exchange of judicial influence through sexual favours, and judges routinely not paying for bills at restaurants.⁶²

There is also still rampant political bargaining for court and prosecutor appointments, and several corruption cases involving magistrates. For example, there was in recent years 'discovery of clandestine meetings among current and former members of the Council and of the Parliament to influence the appointment of the

chief prosecutor of Rome, along with thousands of WhatsApp messages showing intentions and negotiations to assign top positions.⁶³

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

In June 2023, the Council of Ministers presented a draft law that would decriminalise abuse of public office and limit the scope of trading in influence. Law No. 114/2024 (the so-called Nordio law) was approved in July 2024 and brought noteworthy modifications to the Italian Penal Code, including the abolition of the criminal offence of abuse of office, previously governed by Article 323. This offence had been used to sanction public officials who engaged in actions or decisions that contravened laws or regulations, leading to unlawful benefits or damages. Its elimination was justified as a means to alleviate the burden of administrative litigation and investigations involving public officials. Critics had long contended that the offence was overly broad and prone to misuse, creating procedural difficulties and discouraging effective public administration. However, the repeal has raised

61 A&O Shearman (2024), 'Recent and future trends in Italian white collar crime and investigations', 10 January 2024, available at: <https://www.aoshearman.com/en/insights/cross-border-white-collar-crime-and-investigations-review-2024/recent-and-future-trends-in-italian-white-collar-crime-and-investigations>.

62 Law, Technology and Humans, 'The Never-Ending Crisis of Italian Justice: Role and Responsibility of Its Governance System, Law, Technology and Humans', 2023, available at: <https://classic.austlii.edu.au/au/journals/LawTechHum/2023/12.html>.

63 Ibidem.

concerns among legal experts and anti-corruption advocates, who warn of potential accountability gaps. Without this provision, there may be fewer mechanisms to address public misconduct and inadequate recourse against unfair administrative acts. Additionally, critics point out that no replacement measures, such as civil or administrative penalties, have been implemented, potentially undermining safeguards against abuse of power and weakening systemic efforts to combat corruption effectively.⁶⁴

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

The investigation and prosecution of high-level and complex corruption cases in Italy face several significant obstacles including institutional weaknesses, legislative gaps including those already identified in this report, and gaps in enforcement. Italy's judiciary, while independent, often faces undue political influence in corruption cases. Politicians accused of wrongdoing also are able to use Italy's defamation laws, which still criminalise defamation, to discourage journalists from having the courage to report on their actions, as defending a defamation case is extremely expensive and time-consuming, even if journalists or academics would prevail ultimately.

64 *Questione Giustizia* (2024), *Abuso d'ufficio: una partita ancora aperta*, 5 November 2024, available at: <https://www.questionegiustizia.it/articolo/abuso-d-ufficio>.

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *In line with the provisions of the European Media Freedom Act (EMFA), Italy should initiate a comprehensive reform of the legislation regulating the Italian public broadcaster RAI (Radiotelevisione italiana) to ensure its independence from political meddling and provide for adequate and predictable funding to guarantee its financial sustainability.*
- *Italy should introduce adequate regulations to ensure stronger safeguards to prevent excessive media concentration. In line with Article 6 of the EMFA, Italian authorities should ensure full disclosure of ownership and potential conflicts of interest in the media sector. The Italian Authority for Communications Guarantees (AGCOM) should also ensure full transparency of the distribution of state advertising funds to avoid undue market distortion.*
- *Italy must fully decriminalise defamation to align with its international human rights obligations. In addition to decriminalisation, reforming civil defamation laws is crucial to provide the judiciary with procedural safeguards that protect public watchdogs from repression of media freedom and freedom of expression. The effective transposition of EU Directive 2024/1069 against SLAPPs must uphold the highest standards outlined in the EU Anti-SLAPP Recommendation and the principles of the Council of Europe.*

Pluralism and concentration

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

In September 2023, rumours emerged about the potential acquisition of AGI (Agenzia Giornalistica Italia), one of Italy's largest news agencies, by the Angelucci Group. Since 1965,

AGI has been owned by ENI, a multinational energy company in which the Italian government holds a 35% stake. The possibility of a sale to Antonio Angelucci – a Lega Member of Parliament, media mogul, and owner of several newspapers such as *Il Giornale*, *Libero*, and *Il Tempo* – sparked immediate concerns over media concentration, political influence, and conflicts of interest.⁶⁵

65 Media Freedom Rapid Response (2024), *Silencing the fourth estate: Italy's democratic drift – mission report*, July 2024, available at: <https://www.mfr.eu/mission-report-silencing-the-fourth-estate-italys-democratic-drift/>.

AGI's editorial staff strongly opposed the sale, arguing it would undermine the agency's independence and impartiality. Throughout 2024, they mobilised in protest, including a two-day strike in March. The staff repeatedly expressed dissatisfaction with the lack of transparency, particularly after the management's vague acknowledgement of receiving an "unsolicited expression of interest" in April 2024. Tensions escalated in May 2024, when the editorial committee voted to express a lack of confidence in director Rita Lofano, citing fears of conflicts of interest due to Lofano's close working relationship with former director Mario Sechi, now editor-in-chief of *Libero* (which is one of Angelucci's newspapers) and former spokesman for Prime Minister Giorgia Meloni.

Opposition parties, including the Partito Democratico (PD) and Movimento 5 Stelle (M5S), also condemned the potential sale. Raising concerns about its compatibility with the newly adopted EMFA, the PD brought the issue to the attention of EU institutions, sending a formal letter to European Commission Vice President Věra Jourová.⁶⁶

In addition to the inconvenience caused by the possible sale, the agency also faced internal restructuring, which resulted in staff reductions and ultimately in the closure of its Milan headquarters. According to AGI's journalists, this latter decision will have detrimental consequences for the agency, sparking concern about its capacity to continue producing independent and high-quality information.

By October 2024, AGI's editorial staff continued to demand clarity on the agency's future, warning that the sale could set a dangerous precedent, threatening the independence of other news outlets in Italy.⁶⁷ Indeed, such a possibility becomes even more alarming if it is considered in light of the broader trend of media capture that also affects public service media.

Transparency of media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

State advertising in the media is regulated by the Consolidated Law on Audiovisual and Radio Media Services (TUSMAR), as

66 European Parliament (2024), Parliamentary question - E-000890/2024, European Parliament, 21 March 2024, https://www.europarl.europa.eu/doceo/document/E-9-2024-000890_EN.html; Euronews (2024), 'Agi, PD to EU Commissioner Jourová: "Takeover a risk to journalists' independence"', 1 April 2024, available at: <https://www.eunews.it/en/2024/04/02/agi-pd-to-eu-commissioner-jourova-takeover-a-risk-to-journalists-independence/>.

67 FNSI, AGi (2024), *i giornalisti tornano a chiedere chiarezza sul futuro: «Forte preoccupazione»*, FNSI, 5 December 2024, available at: <https://www.fnsi.it/agi-i-giornalisti-tornano-a-chiedere-chiarezza-sul-futuro-forte-preoccupazione>.

amended by Legislative Decree No. 208 of 8 November 2021.⁶⁸ Article 41 of TUSMAR stipulates that public institutions purchasing advertising on mass media must adhere to the following criteria: 50% of their advertising expenditures must be allocated to newspapers and periodicals, while 15% must go to local radio and TV stations.

Additionally, the same article requires that all advertising expenditures be reported to Autorità per le Garanzie nelle Comunicazioni (AGCOM), the regulatory authority responsible for supervising state advertising distribution and ensuring compliance with these criteria. Under the current procedure, state administrations are required to submit data on their advertising expenses through an electronic module each September.⁶⁹

However, despite the regulation, this data is not easily accessible, which undermines transparency in the allocation of state advertising. Furthermore, as noted by the Media Pluralism Monitor 2024, Article 41 of TUSMAR currently applies only to public administration

expenditures, excluding those of state-owned companies.⁷⁰ This exclusion indirectly affects the transparency of state advertising distribution even more.

Rules governing transparency of media ownership and public availability of media ownership information, and their application

According to the Media Pluralism Monitor 2024 (MPM 2024), the level of transparency in media ownership remains insufficient. While the legal framework regulating the financial transparency of the media sector is in place,⁷¹ the practical implementation of such rules continues to be a challenge, increasing the risk of media concentration.

The Italian media market is characterised by a complex chain of ownership, with a pyramid-like structure where a holding company controls several companies and their related outlets. Such a structure often makes it difficult to trace back the ultimate media owner, further increasing the risk of media

68 Legislative Decree No. 177/2005 (2005), Testo Unico della Radiotelevisione, 31 July 2005, available at: <https://www.altalex.com/documents/codici-altalex/2011/02/18/testo-unico-della-radiotelevisione>.

69 AGCOM (2024), State Advertising, 10 July 2024, available at: <https://www.agcom.it/entipubblici>.

70 EUI (2024), *Media Pluralism Monitor 2024 - Italy*, June 2024, available at: https://cadmus.eui.eu/bitstream/handle/1814/77006/Italy_EN_mpm_2024_cmpf%20%282%29.pdf?sequence=1&isAllowed=y.

71 The value of financial transparency of the media sector is enshrined in Article 21(5) of the Italian Constitution (Art. 21, co. 5) and regulated by a set of norms, such as the Law on the Press (no. 47/1948, Art. 5); the new Consolidated Act on Audiovisual Media Services (TUSMA), Legislative Decree no. 208/2021 (Art. 29); and Law 249/1997 (Art. 1 § 6), instituting the AGCOM and the ROC (the Register of Communications Operators). Source: Media Pluralism Monitor 2024.

concentration and potential ties to political or other vested interests.⁷²

In 2023, AGCOM prepared a set of guidelines on the methodology and criteria to be followed for the assessment of positions of significant market power harmful to media pluralism. After opening it to public consultations in April 2023, AGCOM adopted the guidelines in March 2024 by resolution No. 66/24/CONS.⁷³ Based on the guidelines, AGCOM determines whether a position of significant market power that harms pluralism exists and, if confirmed, defines the measures for its swift resolution.

Public service media

Independence of public service media from governmental interference

Italy's public service media has long faced political influence, a phenomenon known as *lottizzazione*. However, the past two years have seen unprecedented levels of political interference, heightening the risk of public media being captured by political power.

Key concerns regard RAI's governance and funding structures, which currently leave the public broadcaster vulnerable to political interference. RAI's governance is currently regulated by Law No. 220/2015,⁷⁴ better known as the Renzi Bill. This law regulates the appointment of RAI's board of directors: out of a total of seven members, two are elected by the government, two by the Chamber of Deputies, two by the Senate and one by RAI employees. Such a provision allows for significant influence by the ruling majority, exposing the public broadcaster to the risk of undue political interference. The Renzi Bill also grants enhanced powers to the RAI's CEO, who is selected by the government and can enjoy considerable expenditure freedom.

These provisions contravene the EMFA, which is to be enforced by August 2025. In light of this, in May 2024 two appeals were filed with the Regional Administrative Court of Lazio with the aim of halting the procedure for the renewal of RAI's board of directors.⁷⁵ The first appeal dealt with the selection criteria for the RAI board, arguing that the current procedure does not comply with the requirements of transparency and non-discrimination provided

72 Media Freedom Rapid Response (2024), *Silencing the fourth estate: Italy's democratic drift – mission report*, July 2024, available at: <https://www.mfr.eu/mission-report-silencing-the-fourth-estate-italys-democratic-drift/>.

73 Adoption of guidelines aimed at verifying the existence of positions of significant market power detrimental to pluralism, pursuant to Art. 51, paragraph 5, of Legislative Decree 8 November 2021, n. 208, AGCOM 2024, available at: <https://www.agcom.it/provvedimenti/delibera-66-24-cons>.

74 Legge N. 220/2015, *Gazzetta Ufficiale della Repubblica Italiana*, 15 January 2016, available at: <https://www.gazzettaufficiale.it/eli/gu/2016/01/15/11/sg/pdf>.

75 These legal actions were supported by several civil society organisations and unions, such as Articolo 21, Slc-Cgil, Usigrai, Rete No Bavaglio, Infocivica, and TvMediaWeb.

by the EMFA, while the second appeal raised concerns about the candidates' independence from the executive powers and requested a referral to the EU court to assess the Italian norm's legitimacy in light of the EMFA regulation.⁷⁶ Despite these legal actions, RAI's new board of directors was installed on 1 October.

As a result of the continuous political meddling, journalists at RAI face unprecedented pressure and self-censorship. Among the most significant examples is the cancellation of Italian intellectual Antonio Scurati's antifascist monologue in April 2024,⁷⁷ and the subsequent disciplinary case initiated against journalist Serena Bortone, host of the show during which the speech was to be performed.⁷⁸ In response to the increasing pressure, RAI's journalists' union, Usigrai, organised a 24-hour strike on 6 May 2024, and a large majority of Usigrai members (75%) joined the strike to denounce attempts to turn RAI into a government mouthpiece.⁷⁹

At the beginning of November, the RAI Parliamentary Oversight Committee organised the Stati Generali del Servizio Pubblico to discuss the challenges and future development of the Italian public service broadcaster RAI.⁸⁰ The event brought together political, institutional, and media representatives, including RAI executives and representatives from journalistic and media unions, communication experts and European media regulation stakeholders. Such an event was presented as a sign of commitment to reforming RAI to align with the provisions of the EMFA.

Financing (including transparency of financing)

The Italian government holds nearly 100% of RAI's shares through the Ministry of Economy, giving it substantial control over the broadcaster's operations, which are heavily influenced by government budget allocations. RAI currently relies on two main sources of financing: a citizens' fee (*canone RAI*) and advertising revenues. However, a new

76 Media Freedom Rapid Response (2024), *Silencing the fourth estate: Italy's democratic drift – mission report*, July 2024, available at: <https://www.mfr.eu/mission-report-silencing-the-fourth-estate-italys-democratic-drift/>.

77 European Centre for Press and Media Freedom (2024), *Rai's editorial independence questioned after censorship allegations*, 20 April 2024, Mapping Media Freedom, available at: <https://www.mapmf.org/alert/31460>.

78 Ordine dei Giornalisti (2024), 'RAI: procedimento disciplinare per Serena Bortone. La solidarietà delle cpo e di GiULiA giornaliste', 9 May 2024, available at: <https://www.odg.it/procedimento-disciplinare-per-serena-bortone-la-solidarieta-delle-cpo-e-di-giulia-giornaliste/56779>.

79 FNSI (2024), 'Rai, Usigrai proclama sciopero dei giornalisti il 6 maggio', FNSI, 25 April 2024, available at: <https://www.fnsi.it/rai-usigrai-proclama-sciopero-dei-giornalisti-il-6-maggio>.

80 FNSI (2024), 'Stati generali del servizio pubblico, Costante: «Sì a una legge per Rai, ma serve la riforma del settore»', 6 November 2024, available at: <https://www.fnsi.it/stati-general-del-servizio-pubblico-costante-si-a-una-legge-per-rai-ma-serve-la-riforma-del-settore>.

regulation spearheaded by Matteo Salvini has increased the integration of the *canone RAI* into general taxation, granting the government greater discretion to expand or reduce RAI's funding at will.⁸¹ This change further amplifies the broadcaster's vulnerability to political influence. Indeed, the 2024 Budget Law established that the citizens' fee is to be reduced from €90 to €70, hence RAI's independent revenue suffered a 22% cut.⁸² Despite the strong will of the Lega party, this provision was not passed in the 2025 Budget Law, therefore the fee will be set back to €90.⁸³

Other

In 2024, the amendment of the Italian media coverage rules under the *par condicio* law, designed to ensure equal treatment and balanced representation of political forces during election campaigns, became the centre of controversy.

The so-called 'Fazzolari decree' passed in April by the ruling Brothers of Italy and Lega parties allowed the full broadcast of speeches by government officials, including the Prime

Minister, on public channels, framing these communications as 'institutional' rather than political and thus exempting them from the strict time constraints of *par condicio*. Such provision disproportionately widened the communication opportunities of the ruling coalition while limiting the access to opposition forces.⁸⁴

Soon after the introduction of such amendments to the *par condicio* rule for the public broadcaster, the Italian Authority for Communications Guarantees (AGCOM) approved a resolution on private broadcasters that did not include the modifications introduced by the Fazzolari decree. The direct result was that the rules on *par condicio* for public broadcaster RAI differed from those for private broadcasters, thus creating a dangerous double standard on political communication which sparked heavy criticism from opposition parties, media organisations and journalists unions, who also coined the term "TeleMeloni" to warn about the attempts at capturing the public service media and turning it into a propaganda tool for the government.

81 P. Remer (2024), 'Come si sovvenziona la Rai', 9 February 2024, *La legge per tutti*, available at: https://www.laleggepertutti.it/673273_come-si-sovvenziona-la-rai.

82 European Federation of Journalists (2023), 'Italy: EFJ joins FNSI in warning about the independence of PSM', EFJ, 24 October 2023, available at: <https://europeanjournalists.org/blog/2023/10/24/italy-efj-joins-fnsi-in-warning-about-the-independence-of-psm/>.

83 Openpolis (2024), 'I precari equilibri della maggioranza nelle commissioni parlamentari', 5 December 2024, available at: https://www.openpolis.it/i-precari-equilibri-della-maggioranza-nelle-commissioni-parlamentari/?utm_source=Newsletter&utm_medium=email&utm_campaign=governo-e-parlamento.

84 Media Freedom Rapid Response (2024), *Silencing the fourth estate: Italy's democratic drift - mission report*, July 2024, available at: <https://www.mfr.eu/mission-report-silencing-the-fourth-estate-italys-democratic-drift/>.

Online media

Competence and powers of bodies or authorities supervising the online ecosystem, including the digital services coordinators role

In compliance with the Digital Services Act (DSA, EU Regulation 2022/2065), AGCOM was designated the country's Digital Service Coordinator (DSC) with Law Decree No. 123/2023 (Art 15, 15 September 2023, adopted with amendments with Law No. 159/2023, 13 November 2023). Therefore, the DSC in Italy is an ad hoc office established within the independent authority AGCOM for the purpose of implementing the DSA. Law Decree No. 123/2023 established its staff composition, providing for the increase by 23 positions in the staff composition of AGCOM. Giulio Votano was nominated as its Director on 30 September 2024. The budget of the DSC Office derives from contributions from the revenues of digital services providers, as defined in detail under Article 15.5 Law No. 159/2023. In September, the modalities for the recognition of the title of trusted reporter flaggers were set out on the basis of Art 22 DSA,⁸⁵ as well as modalities for the certification of bodies for the out-of-court resolution of disputes between service

recipients and online platforms under Article 21 of the DSA.⁸⁶ Nevertheless, at present the DSC Office within AGCOM is still very much in its early stages of implementation.

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks + Smear campaigns

One hundred thirty incidents of attacks on media freedom were recorded in Italy on the Mapping Media Freedom Platform from January to November 2024.⁸⁷ The most common forms of attacks included physical attacks, legal intimidation through defamation lawsuits, online harassment, property damage and editorial interference by state run media.

The situation for journalists who report on organised crime and sensitive issues is particularly grim. For them, the main sources of threats are politicians, public institutions and unknown perpetrators.

Women journalists suffer the most from incidents of online harassment and bullying where they become targets of sexist and ageist smear campaigns. Another serious concern is legal

85 AGCOM (2024), Decision No. 283/24/CONS of 24/07/2024 - Procedural regulation for recognizing the status of "Trusted Reporter" pursuant to Art. 22 of the DSA, available at: https://www.agcom.it/sites/default/files/media/allegato/2024/Allegato%20A%20Regolamento%20di%20procedura%20%281%29_0.pdf.

86 AGCOM (2024), Decision No. 282/24/CONS - Regulation on the certification procedure for bodies handling out-of-court dispute resolution between online platform providers and service recipients pursuant to Art. 21 of the Digital Services Act, available at: https://www.agcom.it/sites/default/files/media/allegato/2024/delibera%20282_24_%20cons.pdf.

87 European Centre for Press and Media Freedom (2024), Mapping Media Freedom, available at: <https://www.mapmf.org/explorer?f.from=2024-01-01&f.to=2024-11-18&cf.country=Italy>.

intimidation through defamation lawsuits, known as strategic lawsuits against public participation (SLAPPs), which are mostly used by politicians and public figures to silence critics. They are a tool to suppress dissent and criticism.

Rules and practices guaranteeing journalist's independence and safety

During the first half of 2024, the Council of Europe documented 75 alerts concerning press freedom violations in Italy, including 47 direct attacks on journalists.⁸⁸ In 2024, Italy has not enacted new legislation specifically aimed at enhancing the independence and safety of journalists. However, significant developments at the European Union level have introduced measures that impact Member States, including Italy.

On 7 May 2024, the European Media Freedom Act came into force, establishing unprecedented safeguards to protect media independence and pluralism across the EU.⁸⁹ This regulation

introduces, among others, measures to prevent political interference in editorial decisions and ensure transparency in media ownership. On 6 May 2024, the European Union introduced a directive to tackle strategic lawsuits against public participation (SLAPPs)⁹⁰ and abusive lawsuits designed to intimidate and silence journalists and activists. In Italy, the misuse of defamation laws remains a widespread practice to suppress critical voices. Despite this EU initiative, Italy has yet to fully align its national legislation with the directive.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

Since January 2024, the Mapping Media Freedom platform has registered 44 legal incidents in Italy.⁹¹ In 33.3% of these incidents, the MMF registered a defamation alert and in 26.7% of such cases, legal warnings. Out of 44 legal incidents, in 17 cases government

88 Platform to Promote the Protection of Journalism and Safety of Journalists (2024), *Press Freedom in Europe: Time to Turn the Tide*, Council of Europe, 2024, available at: <https://rm.coe.int/annual-report-2024-platform-for-the-safety-of-journalists-web-pdf/1680aeb373?>

89 Rappresentanza in Italia (2024), 'Entra in vigore il primo regolamento dell'UE per proteggere l'indipendenza e il pluralismo dei media', European Commission, 7 May 2024, available at: <https://italy.representation.ec.europa.eu/notizie-ed-eventi/notizie/entra-vigore-il-primo-regolamento-dellue-proteggere-lindipendenza-e-il-pluralismo-dei-media-2024-05-07>.

90 European Parliamentary Research Service, Strategic Lawsuits Against Public participation (SLAPPs), EPRS, February 2024, available at: [https://www.europarl.europa.eu/RegData/etud\(2024\)es/BRIE/2022/733668/EPRS_BRI%282022%29733668_EN.pdf](https://www.europarl.europa.eu/RegData/etud(2024)es/BRIE/2022/733668/EPRS_BRI%282022%29733668_EN.pdf).

91 MFRR legal incidents' category comprise a range of alerts ranging from legal warnings, complaints, defamation, criminal charges grounded in different provisions, civil lawsuits, convictions, to detention. Most fall under legal warnings and defamation. However, the legal files related to these alerts have not been scrutinised, so they have not been labelled as vexatious.

and public officials constituted the source of the incident.⁹²

The use of lawsuits to intimidate and silence investigative journalism and critical views constitutes an unsettling trend.⁹³ In the 2024 annual report published by CASE, Italy emerges as the country with the highest number of SLAPPs, at 26.⁹⁴

To be sure, SLAPPs are challenging to identify for several reasons: there is no legally binding definition, leading to varied databases with distinct methodologies; a national or EU SLAPP registry is still lacking (despite being prioritised in the EU anti-SLAPP Recommendation); and many SLAPP targets remain silent, with pre-litigation settlements often unseen by the public. While the CASE data only scratches the surface, it offers a strong starting point for understanding SLAPPs' impact across Europe.

Legal harassment is a frequent tactic employed by prominent members of the Cabinet and political parties within the governing coalition, targeting critical journalists, media outlets, and writers.⁹⁵ For instance:

- In September 2024, the ruling Fratelli d'Italia (Fdi) party threatened to file a civil lawsuit seeking €30,000 in damages from the *Domani* newspaper over an article investigating the party's donation to the fascist association Acca Larenzia. Fdi demanded compensation for "damaging the party's image and reputation".⁹⁶
- In June 2024, Italian Minister of Enterprises and Made in Italy, Adolfo Urso, filed a lawsuit asking compensation ranging from €250,000 to €500,000 against journalists from newspapers *Il Foglio* and *Il Riformista*.⁹⁷

92 European Centre for Press and Media Freedom (2024), Mapping Media Freedom, available at: https://www.mapmf.org/explorer?f.from=2024-01-01&f.to=2024-12-04&f.country=Italy&f.type_of_incident=Legal+incident.

93 Media Freedom Rapid Response (2024), *Silencing the fourth estate: Italy's democratic drift - mission report*, July 2024, available at: <https://www.mfr.eu/mission-report-silencing-the-fourth-estate-italys-democratic-drift/>.

94 Coalition against SLAPPs in Europe (2024), *A 2024 Report on SLAPPs in Europe: Mapping Trends and Cases*, CASE, 9 December 2024, available at: <https://www.the-case.eu/resources/a-2024-report-on-slapps-in-europe-mapping-trends-and-cases/>.

95 OBC Transeuropa (2024), *Press freedom in Italy: those in power are not to be criticised*, 3 May 2024, available at: <https://www.balcanicaucaso.org/eng/Areas/Italy/Press-freedom-in-Italy-those-in-power-are-not-to-be-criticised-231217>.

96 European Centre for Press and Media Freedom (2024), 'Fratelli d'Italia threatens legal action against Domani', Mapping Media Freedom, 30 September 2024, available at: <https://www.mapmf.org/alert/32193>.

97 European Centre for Press and Media Freedom (2024), 'Minister Adolfo Urso sues Il Foglio and Il Riformista journalists for defamation', 7 June 2024, Mapping Media Freedom, 30 September 2024, available at: <https://www.mapmf.org/alert/31863>.

- In June 2024, Fratelli d'Italia (FdI) filed a civil lawsuit against Rai TV show 'Report' journalist Giorgio Mottola and author Sigfrido Ranucci. The lawsuit demanded over €50,000 in damages for a Report episode titled 'La mafia a tre teste', which linked Meloni's father to a mafia boss.⁹⁸
 - In March 2024, Daniela Santanchè, Italy's Minister of Tourism and a member of the Fratelli d'Italia party, sued the weekly magazine L'Espresso over an article examining Santanchè's business history. A request of €5 million in damages has been advanced.⁹⁹
 - In February 2024, Undersecretary of State Giovanbattista Fazzolari announced legal action against the newspaper *Domani* due to an article regarding his connections with the general manager of 3-I spa.¹⁰⁰
 - In January 2024, Minister of Defence and member of Fratelli d'Italia (FdI) Guido Crosetto threatened legal action against the newspaper *Il Fatto Quotidiano* following an article about a secret dinner event organised by the Italian branch of the U.S. consulting firm Ernst & Young.¹⁰¹
- This trend sets a troubling example for lower-level public officials and publicly owned companies attempting to silence criticism on matters of public interest. The most prominent case is that of serial SLAPP offender ENI (Ente nazionale idrocarburi). Over the past few years, ENI has threatened news outlets *Il Fatto Quotidiano*, Rai and Report, as well as *Domani*.¹⁰² Most recently, in October 2024,

98 European Centre for Press and Media Freedom (2024), 'Government party Fratelli d'Italia sues journalists Mottola and Ranucci for defamation', Mapping Media Freedom, 4 June 2024, available at: <https://www.mapmf.org/alert/31920>.

99 European Centre for Press and Media Freedom (2024), 'Minister Santanchè sues L'Espresso for defamation, Mapping Media Freedom', 26 March 2024, available at: <https://www.mapmf.org/alert/31870>.

100 European Centre for Press and Media Freedom (2024), 'Undersecretary of State Fazzolari announces lawsuit against Domani', Mapping Media Freedom, 12 February 2024, available at: <https://www.mapmf.org/alert/31286>; European Centre for Press and Media Freedom, 'Undersecretary of State Giovanbattista Fazzolari announces complaint against Domani', Mapping Media Freedom, 22 September 2024, available at: <https://www.mapmf.org/alert/32145>.

101 European Centre for Press and Media Freedom (2024), 'Minister of Defence threatens legal action against Il Fatto Quotidiano', Mapping Media Freedom, 27 January 2024, available at: <https://www.mapmf.org/alert/31224>.

102 OBC Transeuropa (2023), 'The CASE Italia network expresses solidarity with Greenpeace Italy and ReCommon, targets of legal intimidation by the Italian oil industry Eni', 21 December 2023, available at: <https://www.balkanicaucaso.org/eng/Areas/Italy/The-CASE-Italia-network-expresses-solidarity-with-Greenpeace-Italy-and-ReCommon-targets-of-legal-intimidation-by-the-Italian-oil-industry-Eni>.

ENI sued Italian NGOs ReCommon and Greenpeace Italia, accusing them of conducting a “hate campaign” against the company.¹⁰³ In November 2024, ENI filed a criminal defamation lawsuit against ReCommon’s Program Director Antonio Tricarico over an interview given to Italian public media Report.¹⁰⁴

Amending existing national laws or drafting and adopting new laws, which regulate the use of spyware, including safeguards and remedies

Italy has not yet introduced specific legislation to regulate the use of spyware comprehensively, despite the growing concerns about its potential misuse. The European Media Freedom Act, which prohibits surveillance of journalists without judicial oversight, offers a crucial framework for Member States, including Italy, to address these concerns.

In recent years, spyware scandals such as Pegasus have highlighted the urgent need for laws to safeguard against unauthorised surveillance. Investigative reports, including

findings by advocacy groups like Article 19, reveal that Italy lacks clear legal protections for whistleblowers and journalists, leaving them particularly vulnerable to invasive surveillance practices.¹⁰⁵

Advocacy groups have emphasised the necessity for Italy to align its legislation with international standards to effectively address the misuse of spyware against journalists. The International Press Institute (IPI) has called for robust safeguards to prevent the exploitation of surveillance technologies, highlighting the critical need for legal reforms that provide remedies for individuals targeted by such intrusive measures.¹⁰⁶

The Council of Europe has also expressed serious concerns regarding the deployment of spyware against journalists, underscoring the importance of implementing comprehensive legal frameworks that protect media professionals from unauthorised surveillance. Their 2024 report emphasises the need for Member States, including Italy, to adopt measures that

103 OBC Transeuropa (2024), ‘ENI sues a representative of ReCommon over an interview given to Italian public media’, 21 November 2024, available at: <https://www.balcanicaucaso.org/eng/Areas/Italy/ENI-sues-a-representative-of-ReCommon-over-an-interview-given-to-Italian-public-media>.

104 European Centre for Press and Media Freedom (2024), ‘Oil company Eni threatens Rai program Petrolio, Mapping Media Freedom’, 27 February 2024, available at: <https://www.mapmf.org/alert/31370>.

105 Article 19 (2024), ‘Italy: Urgent appeal for defamation reform’, 8 October 2024, available at: <https://www.article19.org/resources/italy-urgent-appeal-for-defamation-reform/>.

106 International Press Institute (2024), ‘IPI calls for stronger safe guards to prevent misuse of spyware against journalists’, ifex, 5 June 2024, available at: <https://ifex.org/ipi-calls-for-stronger-safeguards-to-prevent-misuse-of-spyware-against-journalists>.

align with international human rights standards to safeguard press freedom.¹⁰⁷

Access to information and public documents

Access to public information in Italy remains a significant challenge for journalists and civil society organisations. While the legal framework, including Law No. 241/1990 on Administrative Procedure, provides a foundation for transparency, its application has often been criticised for bureaucratic inefficiencies and inconsistent enforcement.

Journalists report frequent delays or outright refusals when requesting public documents, particularly in sensitive areas such as government spending and corruption investigations. Reports from legal and administrative experts in 2024 highlight that these obstacles not only impede the media's ability to inform the public but also weaken transparency and accountability within the administration.¹⁰⁸

The Freedom of Information Act (FOIA), introduced in Italy in 2016, aimed to improve transparency and accountability by granting broader access to public records. However, a 2024 report by the Council of Europe and concerns outlined by CSOs highlighted gaps in its implementation, including vague exemptions and the lack of effective enforcement mechanisms.¹⁰⁹ Advocacy groups, including Transparency International Italy, have consistently highlighted the deficiencies in Italy's whistleblower protection framework.¹¹⁰ Further, the new Code of Public Contracts, effective January 2024, mandates the digitalisation and transparency of procurement processes to facilitate access to information on public tenders. However, analyses from governance specialists indicate that the practical implementation of these measures has been slowed by technological and organisational barriers, which risk perpetuating the existing inefficiencies.¹¹¹

107 Council of Europe (2024), 'Safety of Journalists platform 2024 report: serious concern about the use of spyware against journalists, abusive lawsuits and journalists in exile', 5 March 2024, available at: <https://www.coe.int/en/web/portal/-/safety-of-journalists-platform-2024-report-serious-concern-about-the-use-of-spyware-against-journalists-abusive-lawsuits-and-journalists-in-exile>.

108 M. Candore (2024), 'L'accesso difficile dei giornalisti a fonti e documenti della pubblica amministrazione', 29 July 2024, *Diritto.net*, available at: <https://www.diritto.net/accesso-del-giornalismo-ai-dati-pubblici>.

109 A. Del Freo (2024), 'Libertà di informazione. Nei primi sei mesi del 2024 ben 75 gli alert sull'Italia nella piattaforma del Consiglio d'Europa', 25 July 2024, *Articolo 21*, available at: <https://www.articolo21.org/2024/07/liberta-di-informazione-nei-primi-sei-mesi-del-2024-ben-75-gli-alert-sullitalia-nella-piattaforma-del-consiglio-deuropa>.

110 Transparency International Italia, Whistleblowing, <https://www.transparency.it/whistleblowing/>

111 *lentepubblica.it* (2024), 'Digitalizzazione appalti e obblighi di trasparenza: le novità per il 2024', 5 January 2024, available at: <https://lentepubblica.it/pa-digitale/digitalizzazione-appalti-obblighi-trasparenza-2024>.

Other

Do you consider the progress of the implementation of the Anti-SLAPP Directive in your country adequate? Have there been any positive developments you could attribute to the Anti-SLAPP Directive?

So far, the Italian Ministry of Justice has not introduced specific legislation aimed at transposing the EU anti-SLAPP Directive. Efforts of the Italian and European civil society organisations to establish a dialogue upon this transposition have been unsuccessful.¹¹² In 2024, CASE Italia, the Italian anti-SLAPP working group, issued a call for the effective transposition of the anti-SLAPP Directive, accompanied by the decriminalisation of defamation and reforms to civil defamation laws.¹¹³

In Italy, most vexatious lawsuits are related to defamation laws. A proposed reform to defamation legislation, introduced by Senator Alberto Balboni in 2022 (DDL S 466), aims to remove prison sentences for criminal defamation. Critics argue that the draft law, while an important step forward, does not go far enough in ensuring robust protections for journalists. Indeed, it would increase pecuniary

penalties for defamation – up to €10,000 – and it would establish a penalty of suspension from performing journalistic activities for a period of one to six months. Prioritising the right to reputation over the right of freedom of expression has a deterrent effect which would intimidate journalists into silence.¹¹⁴

The bill does not fully decriminalise defamation, which remains a concern for freedom of expression. The proposal also increases fines for criminal defamation significantly, which could disproportionately affect people with limited resources and discourage media freedom. Additionally, the bill introduces new penalties, such as suspending journalists from their profession, requiring journalists to correct their work, or preventing them from adding a title, comment, or reply — a provision which could undermine press independence.

The reform fails to fully protect journalists from vexatious lawsuits, instead prioritising the protection of plaintiffs' reputations. This shift in focus suggests an approach that views the journalistic community as acting in bad faith, placing more emphasis on the right to reputation than freedom of expression, which many see as an unbalanced stance.

112 Media Freedom Rapid Response (2024), *Silencing the fourth estate: Italy's democratic drift – mission report*, July 2024, available at: <https://www.mfr.eu/mission-report-silencing-the-fourth-estate-italys-democratic-drift/>.

113 OBC Transeuropa (2024), 'Libertà di espressione e SLAPP: nuovi dati e strumenti in Italia', 9 December 2024, available at: <https://www.balcanicaucaso.org/aree/Italia/Liberta-di-espressione-e-SLAPP-nuovi-dati-e-strumenti-in-Italia-234966>.

114 Italian Coalition for Civil Liberties and Rights (2024), *Democracy at the Crossroads – Mapping rights and freedoms in Italy 2024*, CILD, available at: https://cild.eu/wp-content/uploads/2024/12/Democracy_Crossroads_FINAL.pdf.

CHECKS AND BALANCES

Key recommendations

- *Thirty-one years after the approval of UN Resolution 48 of 1993, the Italian government should urgently step up its efforts to create a sustainable, functional, and independent institutional body for the protection of human rights.*
- *The 'Premierato reform' introduced by the Meloni government proposes the direct election of the Prime Minister and simultaneous parliamentary elections, aiming to secure a majority through an electoral law. Critics argue it undermines constitutional balance by centralising power in the Prime Minister, reducing Parliament's role, and threatening the independence of other state powers.*

Process for preparing and enacting laws

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

As highlighted by the EU Commission in its *2024 Rule of Law Report*, the frequent use of law decrees by the government raises concerns about the balance of powers between the government and the Parliament. As for official data, during the current legislature, the government issued 79 law decrees, of which only 67 were converted into law by the Parliament.¹¹⁵ Law decrees presume circumstances

of emergency and necessity which allow the executive to overturn the ordinary legislative process and issue legislative measures with direct application. The Parliament then has 60 days to discuss the content of the law decree in the chambers and adopt it. To this regard, a reform bill (Bill No. 574) was presented by a Forza Italia Senator, aiming to extend this timeframe to 90 days.¹¹⁶ This aim of this bill appears to be the normalisation of the use of emergency decrees, by facilitating the process of conversion into law by the Parliament, hence depriving this legal instrument of its (intentional) circumscribed application circumstances. Overall, this trend concerning the great use of law decrees continues, while this bill is currently under discussion within specialised committees in the Senate, with a

115 Camera dei deputati (2024), *La produzione normativa: cifre e caratteristiche*, 13 December 2024, available at: https://temi.camera.it/leg19/temi/19_t118_la_produzione_normativa_nella_xvii_legislatra.html.

116 Atto Senato N. 574, 7 March 2023, <https://www.senato.it/leg/19/BGT/Schede/Ddliter/56729.htm>.

potential negative impact on the democratic balance of powers.

Independent authorities

Thirty-one years after the adoption of UN Resolution 48/134,¹¹⁷ which underscores the importance of establishing National Human Rights Institutions (NHRIs) in accordance with the Paris Principles, Italy remains one of the few European Union countries without such a body. The Paris Principles, endorsed by the United Nations General Assembly in 1993, provide a comprehensive framework for the creation and operation of NHRIs, emphasising independence, pluralism, and a broad mandate to promote and protect human rights. Despite repeated recommendations from international organisations, including the United Nations, the Council of Europe,¹¹⁸ and the European Union Agency for Fundamental Rights (FRA),¹¹⁹ Italy has yet to meet these

standards. In 2024, the absence of meaningful legislative progress highlighted the country's ongoing delays.¹²⁰

A bill introduced at the end of 2022¹²¹ by a member of the Italian Senate proposed the creation of an Authority for the Protection of Data and Human Rights. This authority, as outlined in the proposal, is an expanded version of the existing Data Protection Authority (DPA), with an extended mandate to include the supervision of broader human rights issues, particularly in the digital sphere. In any case, the legislative proposal remains stalled in the Senate Constitutional Affairs Committee. However, the proposal does not provide clear details on how the authority should address the complexities of human rights that extend beyond the digital sphere, such as discrimination, freedom of expression, migrants' rights, or gender-based violence in the real-world context. Several experts, including academics and

117 UN General Assembly, Resolution No. 48/134, National institutions for the promotion and protection of human rights, 20 December 1993 (A/RES/48/134).

118 European Network of National Human Rights Institutions (2023), *Implementing the Council of Europe Recommendation on National Human Rights Institutions: The State of Play - The situation in Italy*, ENNHRI, 2023, available at: <https://ennhri.org/wp-content/uploads/2023/05/Italy-Country-Report-CoE-NHRI-Rec-ENNHRI-Baseline.pdf>.

119 European Union Agency for Fundamental Rights (2021), *Istituzioni nazionali per i diritti umani forti ed efficaci*, FRA, 2021, available at: https://fra.europa.eu/sites/default/files/fra_uploads/fra-2020-strong-effective-nhris-summary_it.pdf.

120 For a more in-depth reconstruction of the (as yet unapproved) proposals in Italy, see: F. Savastano (2023), 'L'AUTORITÀ NAZIONALE PER I DIRITTI UMANI: VECCHI PERCORSI E NUOVE IPOTESI PER UN ORGANISMO CHE NON RIESCE A VEDERE LA LUCE.', NOMOS, 2023, available at: <https://www.nomos-leattualitaneldiritto.it/wp-content/uploads/2023/06/savastano1.2023.pdf>.

121 Atto Senato N. 303, 9 November 2022, available at: <https://www.senato.it/service/PDF/PDFServer/BGT/01361649.pdf>.

representatives of civil society, have emphasised that a fully independent NHRI, created from scratch and in compliance with international standards, would be a preferable solution to ensure an integrated, pluralistic, and genuinely effective approach to the protection of human rights in Italy. Advocacy groups and human rights organisations have expressed concerns over the lack of urgency in establishing such a body, arguing that the proposed authority could fill a critical gap in Italy's institutional framework. Most recently, in Geneva, during the 48th session of the United Nations Universal Periodic Review (UPR), Amnesty International and the Italian Coalition for Civil Liberties and Rights (CILD)¹²² reiterated that the absence of a dedicated National Human Rights Institution (NHRI) undermines Italy's ability to address systemic human rights violations and fulfil its international obligations.

Electoral framework

The Meloni government promoted an amendment to the Italian Constitution through Bill No. 935,¹²³ which introduced the so-called "Premierato Reform".¹²⁴ On 18 June 2024, it was approved in the first reading by the Senate; for the reform to be finally adopted, it must be approved in two readings in each chamber of

Parliament. The core of the reform is the direct election of the Prime Minister and the simultaneous election of the members of both chambers. In order to enable the Prime Minister to obtain and maintain a majority in Parliament, an electoral law will be delegated to guarantee a majority to lists and candidates linked to the elected President.

The first aspect to highlight is how the reform undermines the current constitutional balance by decentralising the role of Parliament in favour of the Prime Minister. In the case that, for any personal reason, the Prime Minister needs to step down, the President of the Republic must entrust the formation of the government to a parliamentarian elected 'in connection' with the Prime Minister. The nature of this connection is not clear, nor is it made explicit whether this parliamentarian must belong to those directly elected by the people or also to those who are in Parliament as a result of the majority awarded to lists and candidates linked to the elected President. Lastly, there is the worrying question of the powers conferred on the Parliament, which, in the hypothesis envisaged by the reform, will also be made up of people who are not directly elected, but – precisely – by virtue of the majority prize. In fact, Parliament elects

122 S. Gherardi (2024), 'CILD in Geneva for the UPR Pre-Session', CILD, 6 December 2024, available at: <https://cild.eu/en/2024/12/06/cild-in-geneva-for-the-upr-pre-session/>.

123 Atto Senato N. 935, 15 November 2023, available at: <https://www.senato.it/service/PDF/PDFServer/BGT/01394479.pdf>.

124 F. Sorrentino (2024), La riforma costituzionale della forma di governo, Associazione Italiana dei Costituzionalisti, July 2024, available at: <https://www.associazionedeicostituzionalisti.it/it/la-lettera/07-2024-la-riforma-costituzionale-della-forma-di-governo/i-rischi-del-premierato>.

the President of the Republic, some members of the Superior Council of the Magistracy and even a third of the judges of the Constitutional Court. This undermines the independence

and tertiary nature of the other powers of the state¹²⁵ to the benefit of centralisation in the hands of the Prime Minister.¹²⁶

125 Italian Coalition for Civil Liberties and Rights (2024), 'At CILD, we are concerned about the premiership reform', CILD, 1 August 2024, available at: <https://cild.eu/en/2024/08/01/at-cild-we-are-concerned-about-the-premier-ship-reform/>.

126 A.Mastropaolo, L. Revelli (2024), *Le parole sono importanti: osservazioni sul testo della proposta di riforma costituzionale per l'introduzione del premierato in Italia*, Costituzionalismo.it, 2024, available at: <https://www.costituzionalismo.it/wp-content/uploads/2-2024-3.-Mastropaolo-revelli.pdf>.

CIVIC SPACE

Key recommendations

- *The government, especially the Ministry of the Interior, should stop criminalising NGOs' activity at sea by imposing fines and administrative detention orders against vessels and aircraft engaged in search and rescue (SAR) operations in the Mediterranean.*
- *Effectively protect the right to protest, by stopping the criminalisation of dissenting opinions through the increase of penalties, the introduction of new offences and the strengthening of administrative measures of repression against activists, minorities and human rights defenders.*
- *Promptly and decisively condemn all instances of hate speech, particularly those expressed by politicians or individuals holding public office. A parliamentary regulation should be established to counter hate speech and misleading information spread by politicians with a discriminatory effect on minorities.*

Freedom of association

Criminalisation of activities, including humanitarian or human rights work

As noted in the Liberties 2024 rule of law report, the so-called 'Piantedosi Decree' (Law Decree No. 1/2023) aims at hindering search and rescue (SAR) operations, setting out

administrative fees against NGOs and detainment of their vessels. Since its introduction, 25 vessels have been detained under this law.¹²⁷ In October 2024, a judge from the Court of Brindisi brought the case before the Constitutional Court, challenging the lawfulness of such a provision.¹²⁸

127 M. Di Vito (2024), "Una legge ingiusta". I dubbi costituzionali sul Decreto Piantedosi, *Il Manifesto*, 12 October 2024, available at: <https://ilmanifesto.it/una-legge-ingiusta-i-dubbi-costituzionali-sul-decreto-piantedosi>.

128 Associazione per gli studi giuridici sull'immigrazione (2024), 'Decreto Piantedosi contro le ONG: finalmente al vaglio della Corte costituzionale la scelta del governo di punire chi svolge attività umanitaria', ASGI, 11 October 2024, available at: <https://www.asgi.it/asilo-e-protezione-internazionale/decreto-piantedosi-contro-le-ong-finalmente-al-vaglio-della-corte-costituzionale-la-scelta-del-governo-di-punire-chi-svolge-attivita-umanitaria/>.

Law Decree No. 145/2024¹²⁹ further criminalises NGOs involved in sea rescue operations in the Mediterranean, by increasing fees and detention. Indeed, this decree establishes that navigation of NGO vessels is suspended until a prefectural order on its administrative detention period is issued – this way the effective suspension of the vessel is longer, without the possibility of appeal. Furthermore, repeated violations within the previous five years trigger stricter penalties, applying not only to the same captain but also to the ship’s owner or operator. The time frame to challenge an administrative detention order for a ship has been reduced from 60 days to 10 days. Nevertheless, punitive measures also target aircraft engaged in monitoring missions over the Mediterranean route. Sanctions include administrative detentions, fines of up to €10,000, and even the possibility of confiscation. The affected aircraft have been instrumental in identifying vessels in distress and exposing severe human rights abuses, such as failures to render aid, unwarranted delays in rescue operations, and forced returns following violent interceptions. NGOs argue that these regulations are designed to weaken the legal obligation to report maritime emergencies.¹³⁰

Counterterrorism regulations, including on terrorist financing

Bill No. 1660 is currently under discussion in the Senate in its amended version (Bill

No. 1236). Article 1 of the bill envisions an increase in offences and punishable conduct in the matter of terrorism. This new provision would punish with imprisonment from 2 to 6 years anyone who “knowingly procures or possesses material containing instructions on the preparation or use of deadly war devices, firearms or other weapons or harmful or dangerous chemical or bacteriological substances, as well as on any other technique or method for the perpetration of acts of violence or sabotage of essential public services, for the purpose of terrorism”. Moreover, the bill introduces a new paragraph to Article 435 of the Criminal Code, which would punish with imprisonment from six months to four years the distribution by any means or the advertising of material containing instructions on how to manufacture such material.

Freedom of peaceful assembly

Freedom of peaceful assembly is strictly related to the guarantee of expression of thoughts and pluralism, core values of any democratic society. However, this same principle has been dangerously compromised. Indeed, freedom of peaceful assembly is enshrined in Article 17 of the Italian Constitution and it is limited only in cases of public security and safety. Nevertheless, repression of peaceful assemblies and protests by armed police and new threatening legislation is a day-to-day issue in

129 Law Decree No. 145/2024, *Gazzetta Ufficiale della Repubblica italiana*, 11 October 2024, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legge:2024-10-11;145>.

130 SeaWatch (2024), ‘Decreto Flussi approvato al Senato: approccio punitivo contro naufraghi e ONG’, SeaWatch, October 2024, available at: <https://sea-watch.org/it/decreto-flussi-approvato/>.

Italy. Peaceful protests, often led by students, are disrupted by acts of force and violence by the police: this has been the case in Pisa¹³¹ and in Rome,¹³² where pro-Palestine students were brutally beaten by the riot police, and in Bologna,¹³³ where armed police intervened against left-wing protesters. To counter those movements in support of Palestinian people, the Lega party even proposed a bill aimed

to ‘oppose antisemitism’, which would in fact criminalise pro-Palestinian demonstrations under antisemitic allegations.¹³⁴

With the introduction of Law No. 6/2024,¹³⁵ protests by eco-activists are also restricted as punishments have increased.¹³⁶ This new legislation is extremely worrisome, as pointed out by the UN Special Rapporteur Michel Forst.¹³⁷

131 This episode is particularly alarming as not only students were beaten by the police, but also the distribution of the riot police hindered any chance of escaping or sheltering from the brawling. See: O. Sacchelli (2024), ‘Pisa, scontri tra studenti pro Palestina e Polizia per un corteo non autorizzato’, *Il Giornale*, 23 February 2024, available at: <https://www.ilgiornale.it/news/nazionale/pisa-scontri-studenti-pro-palestina-e-polizia-sinistra-2287830.html>.

132 In particular, concerns for this protest were raised as initially this manifestation was prohibited by the Italian authorities. See: Amnesty International Italia 2024, ‘Dichiarazione sul divieto di manifestare il 5 ottobre a Roma per la Palestina’, 2 October 2024, available at: <https://www.amnesty.it/dichiarazione-sul-divieto-di-manifestare-il-5-ottobre-a-roma-per-la-palestina/>.

133 Bologna Today 2024, ‘Manifestazioni a Bologna: scontri tra antifascisti e Polizia. Tre agenti feriti’, 9 November 2024, available at: <https://www.bolognatoday.it/cronaca/manifestazione-antifascisti-bologna-scontri-polizia.html>.

134 Redazione Ansa 2024, ‘DDL Lega, stop a manifestazioni se si usano simboli e slogan antisemiti’, ANSA, 27 January 2024, available at: https://www.ansa.it/sito/notizie/politica/2024/01/27/ddl-lega-stop-a-manifestazioni-se-si-usano-simboli-e-slogan-antisemiti_443a3d6f-2244-4a50-a7bb-d2f35cb73363.html.

135 The eco-activism question was also a matter of criticism by the United Nations expertise. See: S. Bauducco (2024), “La criminalizzazione degli ecoattivisti minaccia la democrazia”: l’Onu accusa Ue e Italia. “Applicato il Codice antimafia contro chi manifesta”, *Il Fatto Quotidiano*, 17 March 2024, available at: <https://www.ilfattoquotidiano.it/2024/03/17/la-criminalizzazione-degli-ecoattivisti-minaccia-la-democrazia-lonu-accusa-ue-e-italia-applicato-il-codice-antimafia-contro-chi-manifesta/7479881/>.

136 Amnesty International Italia (2024), ‘Manifesta oggi per i diritti di domani: una campagna condivisa’, 5 July 2024, available at: <https://www.amnesty.it/manifesta-oggi-per-i-diritti-di-domani-una-campagna-condivisa/>; H. Roberts, F. Di Sario (2024), ‘Meloni’s street protest crackdown prompts concerns of growing repression in Italy’, *Politico*, 1 October 2024, available at: <https://www.politico.eu/article/giorgia-meloni-street-protest-crackdown-concerns-growing-repression-italy-security-bill-climate-activists/>.

137 For the reference to Michel Forst’s position paper as UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, ‘State repression of environmental protest and civil disobedience: a major threat to human rights and democracy’, available at: https://unece.org/sites/default/files/2024-02/UNSR_EnvDefenders_Aarhus_Position_Paper_Civil_Disobedience_EN.pdf.

Nonetheless, the most evident attack on freedom of peaceful assembly is constituted by the new Bill No. 1660, on public security.¹³⁸ As previously discussed, this bill deeply affects the right to protest in many ways¹³⁹ — from road blockades to passive resistance in prisons. Hence, protesters would also envisage severe administrative sanctions, as urban bans and *fogli di via*,¹⁴⁰ and up to six years imprisonment only for exercising their constitutional right.

Furthermore, in case of a fight between the armed police and the protesters, the latter would not have any tutelage: while the riot police can resort to biometric surveillance and filing to identify the demonstrators, the

protesters have great difficulty in identifying any police agent.¹⁴¹

Freedom of expression and of information

Rules on hate speech and their enforcement

Problematic online content and hate speech reveal an increasing trend, as highlighted by Amnesty International Italy's 2024 Barometro dell'Odi¹⁴² and widely examined in the sixth ECRI (European Commission Against Racism and Intolerance) report on Italy.¹⁴³ Social rights activists, migrants, marginalised and racialised people, LGBTQIA+ people, student unions, feminist groups, climate protesters,

138 A. Giuffrida (2024), 'Demonstrations being held in Italy against 'repressive' security bill', *The Guardian*, 25 September 2024, available at: <https://www.theguardian.com/world/2024/sep/25/demonstrations-being-held-in-italy-against-repressive-security-bill>.

139 Amnesty International Italia (2024), 'Pacchetto sicurezza: le nostre preoccupazioni sul progetto di legge', 17 May 2024, available at: <https://www.amnesty.it/pacchetto-sicurezza-le-nostre-preoccupazioni-sul-progetto-di-legge/>.

140 This administrative measure, initially meant to avoid violent participation in sports events, leads to an interdiction on accessing public space for a period of time plus a pecuniary sanction. See: Legislative Decree No. 159/2011, *Gazzetta Ufficiale della Repubblica Italiana*, 6 September 2011, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:decreto.legislativo:2011-09-06;159>.

141 Indeed, the riot police intervene with the riot uniform, equipped and covered by a shield and without any identification code. See: L. Rapini (2024), 'Numeri identificativi per poliziotti e carabinieri: in Europa 20 Paesi li utilizzano. Non ci sono in Italia e altri quattro', *La Stampa*, 14 March 2024, available at: https://www.lastampa.it/cronaca/2024/03/14/news/polizia_codici_identificativi_mancano_italia-14145162/; The need to identify armed policemen is a sensitive topic in Italy, leading to different NGOs' campaigns, for example: Amnesty International (2024), 'Manifesta oggi per i diritti di domani: nuovo appello e campagna', 20 May 2024, available at: <https://www.amnesty.it/manifesta-oggi-per-i-diritti-di-domani-nuovo-appello-e-campagna/>.

142 Amnesty International Italia, *Barometro dell'odio - delegittimare il dissenso*, 2024, available at: <https://www.amnesty.it/barometro-dellodio-delegittimare-il-dissenso/>.

143 Council of Europe, *European Commission against Racism and Intolerance (2024), ECRI Report on Italy (sixth monitoring cycle)*, Strasbourg, 22 October 2024, available at: <https://rm.coe.int/sixth-ecri-report-on-italy/1680b205f5>.

and sea rescue NGOs are the main targets of online and offline attacks, including by leading exponents of the government team for propaganda purposes. Expert civil society organisations note a worrying normalisation of hate speech amid growing political polarisation¹⁴⁴. Italy's legal landscape on the topic is characterised by legislative limitations and implementation gaps.¹⁴⁵ The Mancino Law¹⁴⁶ (1993) and Article 604-bis of the Criminal Code address prejudices rooted in racial, ethnic, national, or religious grounds. Critically, that law lacks targeted criminal protections against discrimination based on sex, gender, gender identity, and/or sexual orientation.¹⁴⁷ This statutory gap has long prompted advocacy for legal reforms, highlighting the need to expand anti-discrimination frameworks to encompass these unprotected categories. A draft law addressing these gaps has nevertheless been stalled in the Justice Commission in Referral Seat since January 2023.¹⁴⁸

Criminalisation of speech

Government Bill No. 1660, currently under consideration by the Senate as Act No. 1236, has been sparking major concerns among CSOs, activists, human rights experts and institutional human rights bodies. The Organization for Security and Co-operation in Europe's (OSCE) Office for Democratic Institutions and Human Rights (ODIHR) has warned that the draft law "exhibits several shortcomings that are likely to impede the exercise of human rights and fundamental freedoms",¹⁴⁹ including that of expression. According to activists and HRDs, the bill results in the criminalisation of collective forms of dissent, thus simultaneously determining a worrisome chilling effect.¹⁵⁰

Strategic lawsuits against public participation (SLAPPs) in Italy increasingly threaten freedom of expression, with politicians, interest groups and public figures using legal actions to

144 Redazione (2024), Una spaventosa normalità, 'Rete Nazionale per il contrasto ai discorsi e ai fenomeni d'odio', 14 November 2024, available at: <https://www.retecontrolodio.org/2024/11/14/una-spaventosa-normalita/>.

145 On implementation gaps, to date not yet filled, please refer to the ECRI Report on Italy 2024.

146 Law No. 205/1993, Gazzetta Ufficiale della Repubblica Italiana, 25 June 1993, available at: <https://www.gazzettaufficiale.it/eli/id/1993/06/26/093G0275/sg>.

147 Arcigay, Report omolesbobitransfobia 2024, available at: <https://www.arcigay.it/wp-content/uploads/2024/05/Report-omolesbobitransfobia-2024-Foglio1.pdf>.

148 Atto Camera No. 401, 19 October 2022, available at: <https://www.camera.it/leg19/126?tab=&leg=19&idDocumento=401>.

149 OSCE (2024), ODIHR Opinion on Certain Articles of the Bill No. 1660 Relating to Countering Terrorism, Public Security, Protection of Personnel in Service and Prison Regulations in Italy (2024), 27 May 2024, available at: https://legislationline.org/sites/default/files/2024-05/2024-05-27%20-%20Opinion_Italy_Draft%20Law%20on%20Public%20Security%20-%20final.pdf.

150 F. Yaku (2024), Il Decreto Sicurezza 1660 non rispetta i diritti e la Costituzione: dal convegno al Senato si salda la critica fra organizzazioni, giuristi e moviment, In Difesa Di, 25 October 2024, available at: <https://www.in-difesadi.org/2024/10/25/il-decreto-sicurezza-1660-non-rispetta-i-diritti-e-la-costituzione-dal-convegno-al-senato-si-consolida-la-critica-di-giuristi-e-movimenti/>.

silence critical voices of civil society and undermine public debate, with recent cases targeting pro-Palestinian activists.¹⁵¹ The new school evaluation system (Law No. 150/2024)¹⁵² intensifies internal sanctions and mainly penalises protesting students. The lowering of conduct grades particularly targets politically engaged students' activities, such as unauthorised assemblies or sit-ins, despite Article 4 of the Student Statute guarantees freedom of expression and peaceful demonstration.

Restrictions on access to information

As pointed out in the 2024 rule of law report, a much disputed legislative measure was poised to impose restrictions on media reporting, mandating that journalists withhold publication of judicial pre-trial orders, in any format, until the preliminary hearing reaches its conclusion. Following the publication of Law No. 15/2024,¹⁵³ critically labelled as a 'gag law', empowering the government to amend Article

114 of the Criminal Procedure Code, in September the Council of Ministers approved a draft legislative decree to this end (Act of government No. 196).¹⁵⁴ The Chamber and the Senate expressed their favourable opinions on the text, inviting the executive to consider extending the publication ban "to all personal precautionary measures" and to provide for a tightening of sanctions in case of violations.¹⁵⁵ On 9 December 2024, the Council of Ministers, partially accepting the indications of parliamentary commissions, approved the decree, expanding the scope of the regulation but without the feared intensification of the sanctions apparatus. Therefore, the verbatim publication of orders applying personal precautionary measures, even non-custodial ones, will be prohibited until preliminary investigations are concluded or until the preliminary hearing is completed.¹⁵⁶ Although no increase in sanctions was provided, journalists emphasise that this legislative measure marks a negative

151 A. B. (2024), 'L'Associazione Italia-Israele porta in tribunale i sanitari per Gaza', *Firenze Today*, 8 August 2024, available at: <https://www.firenzetoday.it/cronaca/denuncia-diffamazione-sanitari-gaza.html>.

152 Law No 150/2024, *Gazzetta Ufficiale della Repubblica Italiana*, 1 October 2024, available at: <https://www.gazzettaufficiale.it/eli/id/2024/10/16/24G00168/sg>.

153 See: Liberties (2024), *Liberties Rule of Law Report 2024*, p. 30 available at: https://dq4n3btxmr8c9.cloudfront.net/files/sk0vsd/ITALY_Liberties_RuleOfLaw_Report_2024.pdf.

154 Atto Governo No. 196, 9 September 2024, available at: <https://www.camera.it/leg19/682?atto=196&tipoAtto=atto&cidLegislatura=19&tab=>.

155 Redazione Roma (2024), 'Verso una nuova stretta sui cronisti, stop alla pubblicazione di atti', *Sole24Ore*, 5 December 2024, available at: <https://www.ilsole24ore.com/art/verso-nuova-stretta-cronisti-stop-pubblicazione-atti-AGE-h6yYB>.

156 P. Frosina, 'Il "bavaglio Costa" è legge: il governo approva il divieto di pubblicare le ordinanze di arresto. E lo estende a interdittive e misure meno gravi', *Il Fatto Quotidiano*, 9 December 2024, available at: <https://www.ilfattoquotidiano.it/2024/12/09/bavaglio-costa-legge-governo-ordinanze-arresto-divieto-misure-interdittive/7798049/>.

turning point in judicial reporting, jeopardising the public's right to be informed.¹⁵⁷

Other

Universities have become critical sites of freedom of expression concerns. Student organisations report increasing difficulties organising events on politically sensitive topics, such as the Middle-Eastern situation. External pressures have aimed to cancel or modify conferences addressing controversial issues, exemplified by recent incidents limiting open academic discourse, as seen at the University of Milan in March.¹⁵⁸ In a broader context, recent developments reveal a troubling pattern of restricting freedom of expression and assembly through pre-emptive bans and preventive administrative measures.¹⁵⁹

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

In the past year, Italian ministries often commented on news items to instrumentalise stories in order to further stigmatise and strengthen discrimination against migrant people and other minorities. For instance, on the occasion of the International Day for the Elimination of Violence against Women, Minister of Education Giuseppe Valditara stated that the increase in sexual violence is somehow linked to irregular migration¹⁶⁰ - this statement was supported by Prime Minister Meloni as well.¹⁶¹ With the aim of spreading negative and misleading narratives against migrant people, Minister of Transports and Infrastructure Salvini created a whole campaign in reaction to the pending Open Arms case, for which he is accused of

157 FNSI (2024), 'Vietato pubblicare le ordinanze di misure cautelari, ok al decreto. Costante: «Un bavaglio ancora più ampio»', FNSI, 9 December 2024, available at: <https://www.fnsi.it/vietato-pubblicare-le-ordinanze-di-misure-cautelari-ok-al-decreto-costante-un-bavaglio-ancora-piu-ampio>.

158 M. Di Lucchio (2024), 'Le polemiche sul convegno all'Università Statale sul conflitto israelo-palestinese', rainews.it, 5 March 2024, available at: <https://www.rainews.it/tgr/lombardia/video/2024/03/polemiche-convegno-universita-statale-conflitto-israelo-palestinese-0d3ddae9-817d-4df9-b584-c02b1c07abd7.html>.

159 Amnesty International (2024), 'Statement expressing concern about law enforcement officials violating human rights, including the rights to freedom of expression and to peaceful assembly, on 5 October in Rome preceding and during the "National demonstration for Palestine"', 28 November 2024, available at: <https://www.amnesty.org/en/documents/eur30/8713/2024/en/>.

160 D. Preziosi (2024), 'La dottrina di Meloni sulla violenza di genere "la colpa è dei migranti"', *Domani*, 25 November 2024, available at: <https://www.editorialedomani.it/politica/italia/meloni-patriarcato-violenza-di-genere-immigrati-iwfduurj>.

161 Ansa English Desk (2024), 'Illegal migration has impact on violence against women - PM', *ANSA*, 19 November 2024, available at: https://www.ansa.it/english/news/2024/11/19/illegal-migration-has-impact-on-violence-against-women-pm_d5809adf-e523-42ce-b959-094145474e8a.html.

kidnapping and refusal to perform official duties, risking six years imprisonment. The campaign is marked #20dicembre (20 December), the date foreseen for the sentencing. In all posts within this communication campaign, the Minister addressed news items involving cases where non-Italian persons were found guilty to justify the crimes he has been accused of by the NGO Open Arms under legitimate security reasons.

Physical attacks on people and property

Journalists in Italy suffer from increasing physical attacks, in addition to legal threats and SLAPPs. For instance, in Turin, a journalist from *La Stampa* was physically assaulted. On the evening of 20 July 2024, Andrea Joly was passing by a place where a gathering of Casa Pound (a hard-right-wing movement) was happening. He was documenting the lively gathering he had come across with his phone camera, when a group of two to four extremist right-wing militants attacked him, pushing and punching him on the ground.

A hostile environment is also perpetrated by police forces, increasingly using violence against human rights defenders and young activists. For instance, since the exacerbation of the Israeli-Palestinian conflict after 7 October 2023, students' movements have been engaging in continuous peaceful demonstrations in the streets and the prolonged occupation of Italian universities with tents, in the so-called

'student-intifada'. In the academic context, they demand the end of partnerships with Israeli universities. Through pro-Palestinian demonstrations in the streets, they demand that the government stop sending military equipment to Israel and condemn the genocide by the Israeli government in the occupied Palestinian territories and against the Palestinian people. In Pisa and Florence, the police rushed the crowd, which included many under-age students, with batons.

Online civic space

Attacks, threats and hate speech online

In 2024, an increase in online hate speech was recorded. Amnesty International - Italy conducted a study¹⁶² to investigate online hate speech, with a particular focus on the right to protest. The study revealed that 15.3% of the analysed online content is offensive, discriminatory, or incites hatred, marking a significant increase compared to previous years. Hate speech, in particular, has tripled, exceeding 3% of the total content analysed. Immigration (2.3%) and women's rights (2.2%) attract a significant share of problematic comments. Indeed, women and individuals with migrant backgrounds are the primary targets of online hate, followed by the LGBTQIA+ community and those living in poverty. Linked to the right to protest, problematic comments on social media particularly target climate justice and economic and social rights. These

162 Amnesty International Italia (2024), Barometro dell'odio - delegittimare il dissenso, 2024, available at: <https://www.amnesty.it/barometro-dellodio-delegittimare-il-dissenso/>.

groups face a range of attacks, from offensive comments to direct incitement of hatred and violence. Among the case studies observed within the study, those that recorded the highest levels of hate speech all revolved around actions promoting climate justice. Notably, two instances were linked to an initiative by Extinction Rebellion (XR) in Venice, where activists used a harmless, reversible dye to turn the Grand Canal green, aiming to spotlight COP 28. One case involved a politician's post labeling the activists as 'eco-vandals', while the other was a neutral news piece by *Corriere della Sera*. However, the article highlighted the penalties and legal actions faced by the participants, including fines, expulsion orders, and urban bans.¹⁶³

Concerns over the growing prevalence of xenophobia in the public discourse have been raised by the European Commission against Racism

and Intolerance (ECRI).¹⁶⁴ The report notes how political rhetoric has become increasingly divisive and hostile, particularly towards refugees, asylum seekers, migrants, Italian citizens with migrant backgrounds, Roma communities, and LGBTQIA+ individuals. Alarming, many offensive and hate-filled remarks have been made by prominent politicians and public officials, especially during election periods, both online and offline. This trend has contributed to the 'normalisation' of hate speech in public life, deepening feelings of marginalisation and exclusion within various vulnerable groups in society. For instance, on the podcast *La Zanzara* Vittorio Feltri, a journalist from right-wing newspaper *Libero*, delivered a harsh xenophobic comment against Muslim people, stating he considers them to be an "inferior race" and would rather "shoot them in the mouth", a clear statement that incites violence.¹⁶⁵

163 Amnesty International Italia (2024), *Barometro dell'odio - delegittimare il dissenso, 2024*, available at: <https://www.amnesty.it/barometro-dellodio-delegittimare-il-dissenso/>.

164 European Commission Against Racism and Discrimination (2024), *Rapporto dell'ECRI sull'Italia*, council of europe, October 2024, available at: <https://rm.coe.int/sixth-report-on-italy-translation-in-italian-/1680b205f7>.

165 Fatto Quotidiano (2024), 'Vittorio Feltri choc: "Ai musulmani sparerei in bocca, non mi vergogno di considerarli razza inferiore". Lite con Parenzo a La Zanzara', 20 November 2024, <https://www.ilfattoquotidiano.it/2024/11/29/zanzara-feltri-choc-sparerei-musulmani-razza-inferiore-scontro-parenzo-corvetto/7785632/>.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *Grant the status of marriage to civil unions between same-sex and trans couples, allowing the automatic recognition of children regardless of the sexual orientation and/or gender identity of the parents and allowing adoptions, also through the approval of the step-child adoption.*
- *Resume the discussion on a law that can protect LGBTQIA+ people from all forms of discrimination and hate crime; depathologise the issues concerning the transgender and intersex experience.*

As recommended in the 2024 report:

- *Do not amend the crime of torture in any way. The proposal to amend the torture offence unequivocally represents a major step backwards in a constitutional state, especially for the rights of detainees. In general, the most recent reforms go in the direction of limiting the rights of the prison population, thereby promoting a closed prison model.*
- *Ensure the implementation and full compliance with recommendations by international bodies regarding the need to prevent torture in all its forms, as well as ensuring cooperation and fruitful dialogue with these bodies.*
- *To ensure effective prosecution of crimes of alleged torture committed in prisons, each prison should be equipped with a video surveillance system that covers every room in the building and has long-term archiving arrangements, so that facts can be established even if reported after a certain period of time. Another necessary measure is to ensure the identification of the officers, at the very least when engaged in activities to restore law and order within prisons. Furthermore, in order to prevent torture in prison, the elimination of solitary confinement is urgently needed.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

The data collected by the Italian Gay Help Line relating to 2023 reveal that incidents of discrimination and hatred rise by 34%¹⁶⁶ and are mainly perpetrated by acquaintances of the victim, despite remaining the outcome of a systemic prejudice present in the public discourse and social organisation of our country.

Italy has not yet promulgated any law against homophobia and transphobia. Regarding the gender affirmation process, the law that regulates it is (unfortunately) over 30 years old, but there was an important innovation as the Court of Trapani¹⁶⁷ in July 2023, and the Court of Cuneo¹⁶⁸ in February 2024 recognised the right to change name and gender identity at the registry office without having to undergo any surgery and without any hormone therapy. These decisions are based on a previous ruling of the Constitutional Court, No. 221 of 2015.

On the state of rights for intersex people, nothing has changed. No law has been promulgated on the matter and no rights have been protected. In fact, the scientific protocols remain mainly anchored to an interventionist model, created in the 1950s, that provides for the shape of children's genitals to be surgically modified with the informed consent from their parents, and not to avoid or postpone it until the person can provide informed consent for themselves.

Impunity and/or lack of accountability for human rights violations

Since the rejection in the Senate of the so-called 'Zan bill' on homophobia and transphobia, occurred in October 2021, the debate has been totally absent on the political stage. Indeed, on the occasion of the International Day Against Homophobia, Biphobia and Transphobia on 17 May 2024, the Italian government did not sign either the Declaration on the continuous progress of the human rights of LGBTQIA+ people in Europe or the Joint Ministerial Declaration on the occasion of the

166 Gay Centre (2024), *Il livello della Gay Helpline*, 17 May 2024, available at: https://gayhelpline.it/wp-content/uploads/sites/5/2024/05/Report-II-livello-Gay-Help-Line_2024_finale.pdf.

167 F. Q. (2024), 'Sentenza storica del Tribunale di Trapani: ok a cambio nome e identità di genere anche senza operazione. Primo caso in Italia', *Il Fatto Quotidiano*, 16 July 2023, available at: <https://www.ilfattoquotidiano.it/2023/07/16/sentenza-storica-del-tribunale-di-trapani-ok-a-cambio-nome-e-identita-di-genere-anche-senza-operazione-primo-caso-in-italia/7230954/>.

168 V. Da Ros (2024), Tribunale di Cuneo – sent. 203/2024: rettifica degli atti di stato civile, autorizzazione agli interventi e non obbligatorietà del previo adeguamento chirurgico del sesso, *BioDiritto*, 23 February 2024, available at: <https://www.biodiritto.org/Biolaw-pedia/Giurisprudenza/Tribunale-di-Cuneo-sent.-203-2024-rettifica-degli-atti-di-stato-civile-autorizzazione-agli-interventi-e-non-obbligatorieta-del-previo-adequamento-chirurgico-del-sesso>.

international day against homophobia, biphobia, transphobia and intersexuality, signed by 32 Member States of the Council of Europe.¹⁶⁹

In the absence of a codification within hate crimes, the identification of the crimes against LGBTQIA+ people for their sexual orientation and/or gender identity is complex, creating the phenomenon of under-recording, also due to the unpreparedness of the justice bodies and authorities to identify homotransphobic violence and provide adequate remedies.

Additionally, the right to create a family for LGBTQIA+ people received a major setback when the Ministry of the Interior sent a circular (No. 3/2023) to the Prefects urging them to transcribe only the biological parent in the birth certificates of children with same-sex parents, pursuant to the sentence of the Court of Cassation, SS. UU. Civilians, No. 38162/2022. The sentence states that the foreign provision certifying the filiation relationship, both with the biological parent and with the intended parent, of a child born from surrogacy must be considered contrary to the public order. Therefore, the transcription of the act is not automatic. The Court of Cassation maintains the provision of legal recognition of the emotional

bond through adoption pursuant to Article 44, co. 1, l. d), Law No. 184/1983 ('adoption in particular cases').

There has also been a serious backlash on the legislation that guarantees filiation relationships in same-sex couples. An amendment was presented in July 2023 by a member of the ruling far-right Fratelli d'Italia party to the law regarding medically assisted procreation, with the introduction of the prosecution of the crime of surrogacy committed by an Italian citizen even abroad, and it was approved by the Senate in October 2024.¹⁷⁰ Therefore, with the approval of the amendment to Law No. 40/2004, Italian citizens, who are parents of children born abroad through surrogacy, will not be able to register the birth certificate in Italy as it constitutes a self-declaration.

Follow-up to recommendations of international and regional human rights monitoring bodies

As reported in the previous report, the crime of torture continues to prove its importance, which is why it should neither be amended nor repealed.¹⁷¹ In fact, there are many ongoing torture prosecutions. Among them, the case

169 ILGA Europe (2024), Hate and violence against LGBTI people in Italy. Letter to political leaders, 4 June 2024, available at: <https://www.ilga-europe.org/files/uploads/2024/06/open-letter-political-leaders-italy.pdf>.

170 R. Cuboni (2024), Italian Senate passes law making surrogacy a universal crime, *Il Messaggero*, 17 October 2024, available at: https://www.ilmessaggero.it/en/italian_senate_passes_law_making_surrogacy_a_universal_crime-8421250.html.

171 Y. Hassan Holgado, M. Ikonomu (2024), 'I tentativi di abolire il reato di tortura in Italia: cosa prevede la legge e le proposte in campo', *Domani*, 26 June 2024, available at: <https://www.editorialedomani.it/fatti/reato-tortura-italia-cosa-prevede-articoli-legge-modifiche-abolizione-cestaro-cedu-codici-identificativi-ra6vp2hm>.

that took place at the Milan juvenile prison, Cesare Beccaria, deserves to be mentioned. This is the first case of alleged torture inside an Italian juvenile prison. In May 2024, precautionary measures were ordered against 13 officers on duty at this juvenile prison. The serious episodes allegedly took place between November 2022 and March 2024 against eight minors, who were serving their sentence inside the juvenile prison.¹⁷² Another trial that is still ongoing is that for the violence perpetrated against a Tunisian detainee held in the solitary confinement unit of the prison of Reggio Emilia in April 2023. The detainee was brutally assaulted by at least 10 prison officers who are currently on trial for torture.¹⁷³

On 14 November, the Undersecretary for Justice Andrea Delmastro, at an event to present the new cars used by the prison police to transport prisoners subject to the 41-bis regime of the Prison Law or placed in the high-security circuit, publicly stated: “It is a great joy for me to see this powerful vehicle parading

around, with the Mobile Operational Group of the prison police on it, and to let the citizens know how we know how to deal with and pursue those behind that glass and do not let them breathe”.¹⁷⁴ This is a statement that shows disregard for the rights of detainees and the meaning of punishment.

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

In 2013, in the case *Torreggiani and others v. Italy*,¹⁷⁵ the European Court of Human Rights condemned Italy for violating Article 3 of the European Convention on Human Rights. This judgement was the result of a lawsuit brought by seven inmates who accused Italy of living in less than three square metres each, with limited access to hot water and poor lighting in their cells. This decision had a profound impact on Italian prisons, leading to a series of reforms. It is in this context that in 2014 Italy introduced

172 RaiNews (2024), ‘Violenze e torture nel carcere Beccaria, scene cruente nei video: il pestaggio di un 15enne’, Rainews.it, 30 April 2024, available at: <https://www.rainews.it/articoli/2024/04/violenze-e-torture-nel-carcere-beccaria-scene-cruente-nei-video-il-pestaggio-di-un-15enne-iniziati-gli-interrogatori-a-milano-20282032-8a3c-4fef-87dd-86457f9982b0.html>.

173 Repubblica (2024), ‘Detenuto incappucciato e picchiato: il video del pestaggio nel carcere di Reggio Emilia’, *Repubblica*, 9 February 2024, available at: <https://video.repubblica.it/cronaca/reggio-emilia-detenuto-picchiato-in-carcere/462512/463476>.

174 Ansa (2024), ‘Polemica su Delmastro: “Gioia nel non far respirare detenuti su auto polizia”. VIDEO’, SkyTG24, 15 November 2024, available at: <https://tg24.sky.it/politica/2024/11/15/andrea-delmastro-sottosegretario-polemica-auto-41-bis>.

175 ECtHR, *Torreggiani and Others v. Italy*, January 2013, available at: <https://hudoc.echr.coe.int/eng?i=002-7400>.

a compensatory remedy with Article 35 of the Prison Law¹⁷⁶ which provides that prisoners who have been subjected to non-compliant treatment and have been detained for at least 15 days in conditions that violate Article 3 are entitled to have their residual prison sentence reduced, equivalent to one day for every 10 days of violation. Those who have served a sentence of less than 15 days or are no longer detained or whose residual sentence does not allow for the full deduction of the sentence reduction are entitled to receive compensation of €8 for each day spent in detention under the unlawful conditions. The claim can be filed within six months after the end of the detention or pre-trial detention.

According to the latest available data, during 2023 the surveillance judges decided 8,234 complaints; of these, 4,731 (57.4%) were granted. As can be seen from the graph, the number of sentence reductions has been increasing since 2021.¹⁷⁷

FOSTERING A RULE OF LAW CULTURE

Efforts by state authorities

State authorities in Italy do not seem to engage in initiatives to foster a rule of law culture, as Prime Minister Giorgia Meloni herself seems to deny any shortcomings concerning the state of the Rule of Law in the country. Indeed, in light of the findings of the EU Commission rule of law report published in July 2024, Meloni reacted with a defensive letter¹⁷⁸ addressed to EU Commission President Von der Leyen. In particular, the Italian PM presented some justifications against three criticisms allegedly pointed out by the EU Commission: the threatened independence of the public service media (PSM) through political interference; the causality between the new editorial line and the resignation of many TV hosts; and the alleged lack of respect of the *par condicio* rule during the European Parliament 2024 election. Moreover, Meloni stated: “The content of this document has been distorted for political purposes by some in an attempt to attack the Italian Government. Some have even gone so far as to claim that the rule of law is at risk in Italy, particularly about freedom of information and

176 Law No 354/1975, *Gazzetta Ufficiale della Repubblica Italiana*, 26 July 1975, available at: <https://www.normattiva.it/uri-res/N2Ls?urn:nir:stato:legge:1975-07-26;354~art35ter>.

177 Associazione Antigone (2024), *Nodo alla gola - XX Rapporto di Antigone sulle condizioni di detenzione*, 2024, p. 16, available at: <https://www.antigone.it/upload2/uploads/docs/CSNodoallagola.pdf>.

178 Redazione Ansa (2024), *La lettera di meloni a Von der Leyen*, ANSA, 28 July 2024, available at: https://www.ansa.it/sito/notizie/politica/2024/07/28/la-lettera-di-meloni-a-von-der-leyen_f9f81f69-9224-4ec8-9740-0370785f6cd5.html.

the public broadcasting service”. In this way, Meloni denounced the report for instrumentalising information and creating ‘fake news’ about the respect of the rule of law in Italy to undermine the government, challenging the reliability and legitimacy of the remarks and recommendations presented by the EU Commission.

Contribution of civil society and other non-governmental actors

Civil society organisations are actively engaged in grassroots networks participating in demonstrations to express their severe concern regarding the current situation in Italy. Nonetheless, advocacy efforts remain insufficient, due to the lack of proper resources to advance advocacy campaigns and disseminate information on the shrinking democratic space in the country. Moreover, the rampant authoritative drift happening in Italy and affecting the rule of law seems not to reach European decision-makers and international authorities, also affecting foreign funds allocated to CSOs.

In October 2024, CILD was invited to give its contribution to a consultation with CSOs organised in Rome by the European Economic and Social Committee (EESC) within the Fundamental Rights and Rule of Law Working Group. On this occasion, CILD expressed its concerns on the progressive erosion of the civic space driven by recent political evolutions,

focusing in particular on the risks deriving from the potential passing of Bill No. 1660. Moreover, CILD is participating in the 4th Universal Periodic Review cycle investigating human rights in Italy. Indeed, in July CILD submitted a written document drafted with some of its member organisations, highlighting some pressing issues regarding human rights in Italy.¹⁷⁹ On the occasion of the UPR pre-session organised in Geneva in November, CILD had the chance to speak before the permanent delegations on key human rights concerns in Italy, evaluating the lack of progression in the implementation of recommendations received in 2019 on the occasion of the last UPR cycle. Its statement focused on three main points: migration and administrative detention; the criminalisation of civil society and shrinking civic space; and freedom of expression and media. Participating in the UPR is of utmost importance for CILD in order to bring its voice before international delegations within a proper review process on human rights. CILD’s commitment constitutes an attempt to make international actors understand the gravity of the erosion of rights and freedoms occurring within the Italian formally democratic political setting.

179 Italian Coalition for Civil Liberties and Rights (2024), *Joint Submission to the Universal Periodic Review of Italy*, CILD, July 2024, available at: <https://cild.eu/wp-content/uploads/2024/12/CILD-Joint-Submission-UPR-2024-final.pdf>.

CONTACT

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The Italian Coalition for Civil Liberties and Rights (CILD) supports and empowers civil society groups working to address some of the most pressing human rights issues faced by the country today, through a combination of capacity building on policy analysis, advocacy, media strategy and public education.

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Latvian Centre for Human Rights



The Latvian Centre for Human Rights (LCHR) was established in 1993 as an independent non-governmental organisation. Over three decades LCHR has worked with integration (minority rights and promotion of tolerance) issues, elimination of discrimination and hate crimes/speech, asylum, migration and fundamental rights issues, as well as human rights observation in closed institutions (prisons, immigration detention facilities).

LCHR conducts human rights monitoring, research and policy analysis, trains different target groups, and provides legal aid to victims of human rights violations, including their representation before domestic and international courts. The LCHR provides expert opinions both locally (to government, parliament, media, educational institutions, courts, and lawyers), as well as internationally. The LCHR is involved in advocacy for change, ranging from raising public awareness to specific policy or legislative change.

KEY CONCERNS

Justice System

Perceived judicial independence among the general public in Latvia continues to be average, although it is higher among younger people and lower among national minorities.

There remain difficulties in attracting assistant judges due to uncompetitive salaries and low motivation, resulting in a high turnover rate, especially in Riga, where it reaches up to 41% annually. A 6% raise has been planned for 2025.

The Law on Judicial Academy came into force on 1 November 2024, and the Judicial Academy will start operating on 1 January 2025. The Judicial Academy will be responsible for the training of judges, prosecutors, and court staff.

The level of digitalisation of the judiciary remains high.

There has been no progress in taking measures to ensure adequate safeguards against undue political influence in the appointment of Supreme Court judges, taking into account European standards on judicial appointments.

Anti-Corruption Framework

On 5 September 2024, the Saeima rejected proposed amendments¹ to the Criminal Law, which aimed to establish criminal liability for illegal agreements, including price-fixing, in public procurement.

On 12 December 2024, the Saeima amended the ‘Law on Prevention of Conflict of Interest in the Activities of Public Officials’.² These amendments introduce strict limitations on holding multiple positions by senior public officials in state and municipal-owned enterprises, companies controlled by public entities and special economic zones and freeports. The amendments have been lauded as a significant milestone in promoting good governance and transparency in Latvia and reducing the potential for political influence.

Some work has continued on the implementation of the legislation on lobbying, however, no special lobby register has been set up yet.

Media Environment and Media Freedom

On 4 December, the Latvian Association of Journalists (LŽA) announced it has created a platform for anyone, including journalists themselves, to report hate speech, violence, harassment, and intimidation against journalists and other media workers on social media or in everyday life.

1 The amendments were proposed by an MP.

2 Saeima (2024), Law on Prevention of Conflict of Interest in the Activities of Public Officials, (*Grozījumi likumā “Par interešu konfliktu novēršanu valsts amatpersonu darbībā”*).

Checks and Balances

The Parliament criminalised influencing the election process using deep-fake technology and approved amendments to the Pre-Election Campaign Law,³ allowing the use of AI in political campaigns and extending the powers of the Corruption Prevention and Combating Bureau.





Civic Space

Latvian Civic Alliance has noted a significant deterioration in access to funding for CSOs compared to the previous year. It criticised attempts by authorities to legislate that the CSOs engaged in economic activities would be required to pay corporate income tax.⁴

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

In a European Court of Human Rights (ECtHR) case against Latvia, Article 46 has been invoked for the first time, requiring Latvia to address the systemic issue of informal prison hierarchies, including inter-prisoner violence.

State of play (versus 2024)

-  Justice system
Anti-corruption framework
-  Media Environment and Media Freedom
Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression

No progress

Progress



3 Likumi.lv (2024), Amendments to the Pre-Election Campaign Law (*Grozījumi Priekšvēlēšanu aģitācijas likumā*), 6 November 2024.

4 Latvian Civic Alliance (2025), *Report on Monitoring and Civic Space of the Latvian Civil Society (Latvijas pilsoniskās sabiedrības monitoringa un pilsoniskās telpas ziņojums)*, p.9.

JUSTICE SYSTEM



Key recommendations

- *National authorities should take measures to ensure adequate safeguards against undue political influence in the appointment of Supreme Court judges, taking into account European standards on judicial appointments; for the government and parliament to take legislative steps to protect the objectivity of future Supreme Court judge appointments, such as the obligation to state reasons and judicial review of appointment decisions.*
- *Revise the standard of the post of an assistant judge and clearly define the career development model of an assistant judge.*

Judicial independence

The level of perceived judicial independence in Latvia continues to be average among the general public, although it is higher among younger people and lower among national minorities. According to the survey⁵ on Media Literacy of the Latvian Population⁶ commissioned by the National Electronic Mass Media Council (Nacionālo elektronisko plašsaziņas līdzekļu padome), among all respondents 40.3% fully or tend to trust Latvia's judicial system; 35.1% neither trust nor distrust it, and 24.5% respondents tend to distrust or completely distrust it. Among national minority respondents, 30.1% fully or tend to trust Latvia's judicial system, 46.4% neither trust nor distrust it, and 21.4%

tend to distrust or completely distrust the judicial system. Trust in the judicial system is highest among young people (15-25 years of age) – 48.5% fully or tend to trust, 38.8% neither trust nor distrust, and 13.7% tend to distrust or completely distrust it. Among senior citizens (over 65) 38% fully or tend to trust it, 37.6% neither trust nor distrust, and 24.4% tend to distrust or completely distrust it.

The 2024 Rule of Law Report, in addition to the 2023 report, recommended Latvia “take measures to ensure adequate safeguards against due political influence in the appointment of Supreme Court judges, taking into account European standards on judicial

5 Quantitative (1559 respondents over 15, direct (personal) interviews) and qualitative survey (70 respondents, 9 and older).

6 Civitta (2024), [Pētījums par Latvijas iedzīvotāju medijpratību](#).

appointments”.⁷ There has been no progress in implementing the recommendation.

Appointment and selection of judges, prosecutors and court presidents

In March and July 2024,⁸ the Judicial Council amended and further specified the procedures for the nomination and appointment of court chairpersons, deputy chairpersons, and courthouse chairpersons. The amendments concern the composition of the commission and the criteria for evaluating candidates. There will be three main criteria for evaluating candidates: reputation and authority within the judicial system, professional competence and understanding of the judicial system, and vision for the future development of the court. There are also five additional criteria for which additional points can be awarded: additional education and foreign language skills, involvement in court work organisation, participation in judicial self-government institutions and judiciary associations, internships in other institutions, and activities outside of court work related to enhancing understanding of court operations.

Judges and prosecutors

Assistant judges

On 6 July 2024, the Judicial Council (Tieslietu padome)⁹ supported the Ministry of Justice’s proposed budget priorities for district (city) courts and regional courts for 2025 to 2028, which include a 6% salary increase for court employees. However, they noted that the proposed salary increases for first- and second-instance court employees are insufficient. Additional funding for priority measures over the next four years only provides for a 2.6% monthly salary increase for court employees.

The State Audit Control (Valsts kontrole) report on the ‘Availability and development of human resources in the courts of Latvia’¹⁰ published on 2 October 2024 concludes that the judicial system has been attempting to reform and develop the role of assistant judges for the past 20 years, but significant progress has yet to be made. There are no set educational requirements for the position, and the responsibilities and competences of assistant judges have not been expanded. This has led to uncompetitive salaries, low motivation among

7 2024 Rule of Law Report, *Country Chapter on the rule of law situation in Latvia*, p. 2; 2023 Rule of Law Report, *Country Chapter on the rule of law situation in Latvia*, p. 2.

8 Tieslietu Padome (2024), *Grozījumi tiesas priekšsēdētāja, vietnieka un tiesu nama priekšsēdētāja iecelšanas kārtībā*, 26 March 2024.

9 Latvijas Vēstnesis (2024), ‘Aigars Strupiņš: Tiesu sistēmas efektīva darbība nav iespējama bez kvalitatīva un noturīga atbalsta personāla’ 19 September 2024; Latvijas Vēstnesis (2024), *Paredzētais mēnešalgu palielinājums tiesu darbiniekiem 6 % apmērā nenodrošinās konkurētspējīgu atbildību juridisko profesiju tirgū*, 6 July 2024.

10 The State Audit Office of the Republic of Latvia (2024), *Availability and development of human resources in the courts of Latvia*, 2 October 2024.

current employees, and difficulty in attracting new qualified staff, resulting in a high turnover rate, especially in Riga, where turnover reaches up to 41% annually. The audit found that the judicial system has not effectively developed the post of assistant judge.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

To promote understanding among Latvian residents about the necessity of early resolution of legal issues, their rights, and the available legal assistance support mechanisms provided by the state, municipalities, and non-governmental organisations, the Ministry of Justice, in cooperation with the Court Administration, is implementing the project 'Access to Justice'.¹¹ On 28 November 2024, the project launch event took place to introduce the planned activities and discuss the currently available legal assistance in Latvia and the challenges to strengthening it.

The study 'Access to Justice in Latvia' published in 2020 concluded that Latvia needs to develop a state-provided legal assistance system by undertaking reforms and making it more efficient, as well as actively informing and educating the public about the available options and solutions. Almost one-third of

respondents (32.6%) in the study indicated that they would prefer to use state-provided legal assistance for resolving their legal problems. However, in reality, only 3% of respondents actually sought it. Among those surveyed who had not sought state-provided legal assistance, 70% were unaware of such an option. The general public remains largely uninformed about mediation and how it can be used to resolve legal issues. Only 13% of survey participants knew what mediation is, while 63% had not heard of it at all.

The project will be implemented over three years until 30 June 2027 and will include:

- Reforming and improving the state-provided legal assistance system by developing a mixed model for initial legal assistance and integrating mediation.
- Developing digital solutions, such as guides for initial legal assistance and state-provided legal assistance in various case categories.
- Informing and educating the public, especially vulnerable groups, about state-provided legal assistance services and the importance of early detection and resolution of legal issues.

11 The Ministry of Justice utilises funds allocated for the implementation of the European Union cohesion policy program. The total project cost is €1,099,104, of which the European Social Fund Plus provides €934,238, and the state budget funding is €164,866. See Latvijas Vēstnesis (2024), [Stiprinās iedzīvotāju pieejamību juridiskajai palīdzībai un atbalsta mehānismiem](#), 29 November 2024.

- Enhancing the skills and competencies of those within the state-provided legal assistance system through training programs.

The project has already begun, with training for legal aid providers on communication with vulnerable groups. Experts from the Court Administration have studied Finland and Iceland's experiences providing state legal aid, organising mediation, and supporting crime victims.

Resources of the judiciary (human/financial/material)

On 2 October, the State Audit Office published the report 'Availability and Development of Human Resources in the Courts of Latvia'.¹² The report concludes that while prerequisites for professional and competent human resources in district and regional courts have been established, the pace of development is too slow, potentially leading to a crisis. Key issues include a lack of long-term strategic vision, increasing judicial vacancies, and the potential retirement of over 28% of current judges in the next few years. The situation is particularly critical for judges specialising in

land register cases, and court employees face high turnover.

The audit also highlights that training attendance among judges is insufficient, with every tenth judge attending training less than once a year, despite ongoing legal changes. The assistant judge post has not been effectively developed, resulting in high turnover, especially in Riga, where it reaches up to 41% annually. The audit provides several recommendations to the Ministry of Justice. As a result of their implementation, the improvement of human resource management and development is expected in the courts of Latvia, including: improved planning of the number of judges;¹³ increased competence and responsibility of assistant judges; increased motivation of assistant judges to work in court and decreased employee turnover; facilitated and increased motivation of judges to attend training.

In September 2024 the Chairperson of the Supreme Court¹⁴ spoke of 67 vacant judge positions in Latvian courts, and the number of vacancies could increase to 150 in the coming years. According to him, this will arise as many judges are due to retire in the coming years,

12 The State Audit Office of the Republic of Latvia (2024), *Availability and development of human resources in the courts of Latvia*, 2 October 2024.

13 According to the State Audit Report, the last time the parliament determined the number of judges of district (city) courts and regional courts was on 2 June 2016. The budget is planned according to the determined number of judges instead of the actual one. The courts with the correct number of judges (492 judges) are able to consider the received cases effectively, and the backlog of pending cases is decreasing in general.

14 Jurista Vārds (2024), Aigars Strupiņš: The effective functioning of the judicial system is not possible without a quality and stable support staff (*Aigars Strupiņš: Tiesu sistēmas efektīva darbība nav iespējama bez kvalitatīva un noturīga atbalsta personāla*), 20 September 2024.

and the best assistant judges are leaving for the private sector. According to the State Audit Control, in 2023, 17% of judges were over 61, while in 2027 the share will rise to 28%.

At the same time, the representatives of the Judicial Council have, in turn, emphasised that not all judges retire at the age of 65, as they have the option to continue working until the age of 70. The number of criminal cases in courts has nearly halved in recent years, significantly easing the workload for judges, therefore making it unnecessary to fill all vacant positions. The Council emphasised that it will propose a reduction in the number of judges in Latvia, as the previously established number of judges no longer corresponds to the current situation.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

The Law on Judicial Academy came into force on 1 November 2024¹⁵ as did the related amendments to the law ‘On Judiciary’.¹⁶ These amendments aim to encourage judges to lead training events and motivate judges to take on mentoring roles. The Judicial Academy plans to start its work on 1 January 2025.

The Judicial Academy will be managed and represented by its director, who will be appointed by the Cabinet of Ministers (institutional oversight) for a term of five years. The candidate

for the position of director of the Judicial Academy will be nominated by the Minister of Justice (content oversight) after the proposal of the Judicial Council. It will provide training for judges, prosecutors, and investigators. The Judicial Academy is the priority project of the Ministry of Justice within the EU Resilience and Recovery Facility. See also the conclusions of the State Audit Report in the previous section concerning training.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

In Latvia, the level of digitalisation of the judiciary remains high. Significant improvements have been made to the technical infrastructure of the courts.¹⁷ Monitors have been replaced in all courtrooms, and computers have been replaced in half. Overall, more than 300 laptops, 400 monitors, 23 video conferencing devices, and 70 wireless internet access points have been installed. A pilot project has also been launched to improve the audio equipment in courtrooms, to ensure higher quality audio recordings and make it easier to convert them into written text.

15 Law on Judicial Academy (*Tieslietu akadēmijas likums*), 1 November 2024.

16 Amendments to the Law on Judiciary (*Grozījumi likumā “Par tiesu varu”*), 24 October 2024.

17 Court Administration (2024), ‘Judicial Council discusses the development of e-case and draft court communication guidelines’ (*Tieslietu padomē apspriež e-lietas attīstību un tiesu komunikācijas vadlīnijas*), 13 December 2024.

Other

There are no updates in 2024 concerning the work of the Ministry of Justice on amendments pertaining to the Economic Court's competence and resources, and no longer having judges hear both criminal and civil cases.

Fairness and efficiency of the justice system

Length of proceedings

The Administrative Cases Department¹⁸ has worked to reduce the backlog of old cases, particularly those pending for an extended period. At the end of 2021, there were 167 cases pending for more than two years. By 31 December 2024, this number had reduced to 31 cases. In 2023, the average length of a case heard in cassation procedure and ending with a judgment was 32 months. In 2024, this average decreased to 23.9 months. Refusal to review a case in the cassation procedure was decided within 4.3 months on average. In 2024, the department referred four cases to the European Court of Justice for a preliminary ruling, compared to three cases in 2023.

Despite predictions of a decrease in incoming cases, the Senate's Criminal Cases Department¹⁹ received 51 more cases in 2024 compared with 2023. The average case processing time was reduced by 20 days, with decisions on initiating cassation proceedings made in an average of 2.3 months, and cases reviewed in cassation within 9 months. By the end of 2024, only one case from 2023 remained unresolved. Among other cases, the so-called 'Zolitūde case'²⁰ was reviewed in 2024, which included a cassation protest and 32 cassation complaints.

18 Supreme Court of the Republic of Latvia (2025), 'In the Administrative Affairs Department, all resources are concentrated on clearing the backlog of old cases' (*Administratīvo lietu departamentā visi resursi koncentrēti seno lietu atlikuma samazināšanai*), 20 January 2025.

19 Supreme Court of the Republic of Latvia (2025), 'The Criminal Cases Department has improved the method for handling complex cases' (*Krimināllietu departaments pilnveidojis apjomīgu lietu izskatīšanas metodi*), 20 January 2025.

20 The Zolitūde case refers to the tragic collapse of the roof of the Maxima supermarket in Zolitūde, Latvia, on 21 November 2013, which resulted in the deaths of 54 people. The case involved multiple defendants, including construction engineers, architects, and officials, and it has been one of the most complex and high-profile criminal cases in Latvia's history.

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *To take concrete steps to set up a special lobby register*
- *To establish criminal liability for prohibited agreements, including price-fixing, in public procurement*
- *To provide reasonable compensation if the information provided by a whistleblower brings significant benefits to society*

Framework to prevent corruption

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

On 26 September 2024, the Saeima (parliament) approved amendments to the Law on Financing of Political Organisations (Parties) in the final reading, keeping the amount of state funding for political parties at the 2024²¹ level for the year 2025. According to Section 7.4, Part 1 of the law, political parties may use the allocated state budget funding for three main purposes: maintaining the party's office and staff; supporting the party's activities (e.g., seminars, congresses, conferences, research, surveys, youth organisation events, consultations); communicating with the public, including political campaigning. Thirteen political

parties and associations are entitled to receive state funding during 2023-2026.

On 11 June 2024, the Office of Combatting and Preventing Corruption (KNAB) adopted a decision to suspend state budget funding for the political party National Alliance 'All for Latvia!' – 'For Fatherland and Freedom/LNNK' for one year. KNAB found that the political party exceeded the allowable state budget funding limit for communication with the public and political campaigning by €210,673.59 in 2022. The political party 'Latvian Russian Union' did not receive state budget funding in either 2023 or 2024 because it did not comply with the requirement set out in Section 7.2, Part 1 of the law, which mandates that the party must have an open bank account in a credit institution registered in Latvia.

21 Minimum monthly salary in 2024 is €700, while in 2025 it will be raised to €740.

Rules on preventing conflicts of interest in the public sector

To reduce the risks of conflicts of interest and corruption, and to improve the efficiency of public administration, on 12 December 2024, the Saeima adopted amendments to the ‘Law on Prevention of Conflict of Interest in the Activities of Public Officials’.²² These amendments introduce strict limitations on holding multiple positions by senior public officials in state and municipal-owned enterprises, companies controlled by public entities and special economic zones and freeports. The Foreign Investors’ Council in Latvia (FICIL) lauded the amendments as a significant milestone in promoting good governance and transparency in Latvia and reducing the potential for political influence.²³

Public officials will only be allowed to hold board member positions, which involve strategic decision-making and overseeing the work of the board, in exceptional cases where it is necessary to ensure the operational capacity of the capital company. In such cases, the appointment can be made for a limited period of up to one year, with reappointment possible only after a one-year break. It is estimated that

the time required to perform the duties of a board member, considering the specific nature of the role, is approximately 30% of full-time working hours.

The amendments to the law also reduce the number of additional positions allowed for senior officials.²⁴ Previously, heads of state institutions and their deputies could combine their main job with two additional paid or otherwise compensated positions in public institutions. They will now be allowed to hold only one additional paid or compensated position in public institutions.

Stricter requirements will be applied to the evaluation of additional positions for senior state and municipal officials, as well as board and council members of capital companies. In these cases, permissions will no longer be granted based solely on resolutions; each request for combining positions will be evaluated, and the permission will be justified. The amendments came into force on 11 January 2025. Officials who currently hold positions that do not comply with the new conditions will need to terminate such arrangements by 31 August 2025. These reforms were initiated based on findings from a State Audit Office

22 Saeima (2024), Law on Prevention of Conflict of Interest in the Activities of Public Officials (Grozījumi likumā “Par interešu konflikta novēršanu valsts amatpersonu darbībā”).

23 FICIL (2024), FICIL welcomes the amendments adopted by the Saeima to prevent conflicts of interest in the activities of public officials., 12 December 2024.

24 These rules apply to: head of the Presidential Chancellery and their deputy, Secretary General of the Saeima Administration, heads of direct administrative institutions and their deputies, municipal council chairpersons and their deputies, who hold paid positions in the municipality, municipal executive directors and their deputies, board members of state and municipal capital companies.

review, which highlighted the challenges and risks posed by holding multiple positions simultaneously.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

According to a report by the State Chancellery²⁵ approved by the government on 21 January 2025, since the implementation of the Whistleblower Law in Latvia on 1 May 2019, a total of 652 whistleblower reports were received by the end of 2023. The main issues reported include tax evasion, corruption, misconduct by officials, and the misuse of public funds. Despite heightened awareness, a significant number of reports remain improperly filed, often pertaining to personal disputes or being unrelated to a professional setting. Of 2,314 submitted reports, only 652 conformed to the criteria for whistleblower reports.

From 1 May 2019 to 31 December 2023, whistleblowers approached various institutions, e.g. the Corruption Prevention and Combating

Bureau (KNAB), the State Revenue Service, the State Labour Inspectorate, the State Police, the State Language Centre, the Health Inspectorate, the Prosecutor's Office, the State Audit Office, the Riga City Municipality, the Ministry of Smart Administration and Regional Development, the Ministry of Education and Science, and the Ministry of Welfare. The report recommends that the KNAB assume responsibility for whistleblowing matters from 1 January 2026, due to its extensive experience and independence. The report also suggests reinforcing the whistleblower contact point, focusing on public education, and considering enhanced support and compensation for whistleblowers. Until now the whistleblower contact point has been the State Chancellery, which is not an independent institution. According to Delna (Transparency International), Latvia's Whistleblowing Law, effective since 1 May 2019, has not been uniformly understood and consistently applied in court rulings.²⁶ Even after five years, there is still confusion about the law's application and whistleblower protection. Delna analysed several whistleblowing court cases²⁷ and concluded that court decisions

25 Cabinet of Ministers (2025), 'During the first five years of the law, 652 whistleblower reports were received' (*Likuma pirmo piecu gadu laikā saņemti 652 trauksmes cēlēju ziņojumi*), 21 January 2025, <https://www.mk.gov.lv/lv/jaunums/likuma-pirmo-piecu-gadu-laika-sanemti-652-trauksmes-celeju-zinojumi>.

26 Latvijas Vēstnesis (2024), "'Delna": There is a lack of unified understanding of whistleblower protection in judicial practice' (*"Delna": Tiesu praksē trūkst vienotas izpratnes par trauksmes cēlēju aizsardzību*), 6 November 2024.

27 Public Whistleblowing Case: A municipal council deputy publicly disclosed a colleague's violation, leading to a defamation lawsuit. The court did not recognise him as a whistleblower because he did not follow the formal procedure - because he did not approach the competent authority with a request to recognise him as a whistleblower. Board Member Whistleblower Case: A board member raised concerns publicly about a possible violation. He was pressured to resign, and the court did not recognise his whistleblower rights, interpreting the case under commercial law. Temporary Protection Case: A dismissed employee sued for being fired due to whistleblowing. The court granted temporary protection, and both initial and appellate courts upheld this decision, recognising the importance of protecting whistleblowers.

show inconsistent understanding among judges about the whistleblowing system, which creates uncertainty for whistleblowers.

List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflicts of interest in these sectors. (e.g. public procurement, health-care, other)

In an online discussion on 11 October 2024 about parliament's refusal to criminalise prohibited agreements by public companies, including cartels, especially in public procurement, the Prosecutor General²⁸ indicated "that foreign construction [companies] do not enter Latvia because, as a result of the cartel, everything has already been divided among local companies. Five construction companies and the beneficiary – one family, two surnames – also appear in the road transport business".²⁹

Any other relevant measures to prevent corruption in public and private sector

Events in Latvian municipalities involving unethical behaviour by municipal leaders, deputies, and other council employees have drawn the attention of the Delna to municipal ethics codes. In 2024, Delna developed a nine-step approach – a handbook for creating ethical regulations.³⁰ Prior to the publication of the handbook, Delna undertook an evaluation of the ethics codes of 38 municipalities.³¹ A previous evaluation of the municipal ethics codes took place in 2012 under the guidance of KNAB.

In 2023, Delna sent a list of 36 tasks related to anti-corruption and good governance to Saeima deputies, developed in collaboration with experts. By September 2024, Delna concluded that none of the 36 recommendations had been fully implemented, only five had been partially implemented, and no action had been taken on 31 proposals. Therefore, Delna assesses the 14th Saeima's progress in anti-corruption work as 'deliberate stagnation'.³²

According to Delna, it is essential to publish sub-threshold procurement contracts and

28 Delna (2024), 'Personal liability for participation in cartels – ensuring fair business practices' (*Personīga atbildība par dalību kartelos – lai nodrošinātu godīgu uzņēmējdarbību*), 16 October 2024, online discussion.

29 Delna (2024), 'Personal liability for participation in cartels – ensuring fair business practices' (*Personīga atbildība par dalību kartelos – lai nodrošinātu godīgu uzņēmējdarbību*), 16 October 2024, online discussion.

30 Delna (2024), *Evaluation of ethics regulations in municipalities (Izvērtējums: ētikas regulējums pašvaldībās)*, 2024.

31 Delna (2024), *Ethics code in 9 steps: a handbook for developing ethics regulation (Ētikas kodekss 9 soļos: rokasgrāmata ētika regulējuma izstrādei)*, 2024.

32 Latvijas Vēstnesis (2024), "'Delna': Latvia's fight against corruption is hindered by a lack of political will' (*"Delna": Latvijas cīņu pret korupciju kavē politiskās gribas trūkums*), 30 October 2024.

standardise their procedures in the Public Procurement Law. Anti-corruption organisations have called for expanding the competence of the Procurement Monitoring Bureau to review third-party submissions regarding possible misconduct in public procurements. Establishing criminal liability for prohibited agreements in public procurement would help prevent corrupt activities in both the public and private sectors. Currently, under KNAB law, bribery only applies to illegal actions by public officials, but this problem also exists in the private sector. An underutilised tool in fighting corruption is the systematic review of state officials' annual income declarations. It is proposed to ensure an annual review of the Corruption Prevention and Combating Measures Plan for 2023–2025, informing the public about both achievements and shortcomings. One recommendation is to provide reasonable compensation if the information provided by a whistleblower brings significant benefits to society.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

On 5 September 2024, the Saeima rejected proposed amendments³³ to the Criminal Law, which aimed to establish criminal liability for prohibited agreements, including price-fixing in public procurement. The Competition Council has long drawn attention to the fact that individuals who organise cartels face no legal consequences, even though their actions hinder competition and lead to inefficient use of public funds. Administrative fines are not enough to deter violations that undermine fair competition. Despite extensive discussions about criminalising cartels since at least 2020, the proposal submitted by the Office of the Prosecutor General to the Cabinet of Ministers in May 2023, which envisages criminal liability for individuals for forming cartels,³⁴ has not been addressed by the government. Such amendments would help prevent corrupt activities in both the public and private sectors and facilitate the investigation of fraudulent criminal offences in public procurements. Regret about the rejection was voiced by the Office of the Prosecutor General,³⁵ Competition Council, KNAB, Foreign Investors' Council and anti-corruption NGOs.

33 The amendments were proposed by an MP.

34 A new Article 211.1, which would establish criminal liability for implementing prohibited agreements in public procurement.

35 Prokuratūra (2024), *Saeima noraida priekšlikumu noteikt kriminālatbildību par aizliegtu vienošanos īstenošanu publiskajos iepirkumos*, 5 September 2024.

On 11 October 2024, the Prosecutor General announced he had submitted a request to the

Prime Minister to address the amendments by the government.³⁶

MEDIA ENVIRONMENT AND MEDIA FREEDOM



Key recommendations

- *To take measures to improve public trust in media, specifically among minority groups*

Media and telecommunications authorities and bodies

On 1 October, the government approved the media policy guidelines for 2024-2027.³⁷ These guidelines focus on promoting media literacy, strengthening local media, and improving journalists' safety and skills. The guidelines, developed after Russia's full-scale invasion of Ukraine, link media policy to information space security and outline four key action areas: 1) Strong Media Environment: Ensuring public media reach diverse groups with quality content and promoting the financial independence of media; 2) Secure Media Environment: Enhancing journalists' safety and media preparedness for crises, improving media literacy among the population, 3) Independent Media Environment: Strengthening media freedom, transparency of media ownership,

and improving Latvia's World Press Freedom Index ranking, 4) Quality Media Environment: Promoting high professional standards and lifelong learning for media professionals, ensuring access to quality content. The planned funding is €55.306 million in 2024, €77.679 million in 2025, €67.665 million in 2026, and €66.695 million in 2027.

Public service media

Independence of public service media from governmental interference

In early April 2024, the merger of Latvian Radio and Latvian Television was launched, with the two state-owned companies merging to form LSM (Latvijas Sabiedriskais Medijs; Latvian Public Service Media), which is due to start operations on 1 January 2025.

36 Delna (2024), Personal liability for participation in cartels – to ensure fair competition (Personīga atbildība par dalību kartēļos – lai nodrošinātu godīgu uzņēmējdarbību), 16 October 2024.

37 LETA, New media policy guidelines commit to strengthening local media and promoting media literacy, 1 October 2024.

On 13 November, the Public Electronic Mass Media Council (SEPLP) approved the five-year term of office of the Board of the merged Latvian Public Service Media (LSM). The LSM Board has been elected for a five-year term and will start its work at the beginning of January 2025, when the new State JSC ‘Latvijas Sabiedriskais medijs’ will be registered.³⁸

In the beginning of 2025, the Latvian Public Service Media has 865 staff and has been assigned €51.339 million.³⁹

Public trust in media

According to the survey⁴⁰ on Media Literacy of the Latvian Population⁴¹ commissioned by the National Electronic Mass Media Council concerning trust in public service media (Latvian TV, Latvia Radio, public media platform lsm.lv) when asked, “To what extent do you believe that all the information you see/read is reliable”, 31.7% of the respondents find it fully or predominantly credible, 47.8% believe it to be partially credible, and 20.5% believe public media to be predominantly not credible or not credible at all. Trust in public media is low among respondents from a minority background: 14.1% believe public service media to be fully or predominantly credible, 47.9% say it is partially credible, and 36.4% find it

predominantly not credible or not credible at all. Among youth (15-25 years of age), 29.3% say it is fully or predominantly credible, 52.3% partially credible, and 18% find public service media predominantly not credible or not credible at all. Among senior citizens, trust in public service media stands at 33.8% fully or predominantly credible, 45.5% partially credible, and 20.5% predominantly not credible or not credible at all. Compared to the 2023 survey, public trust in media has slightly increased.

At the same time, the lack of trust in the media is reinforced by the widespread stereotype that the government controls media content, a belief held by 60% of the public. This perception is further fuelled by the similarity in news content across different media outlets, creating the impression that the media is subject to state influence and provides one-sided information. Consequently, the media is perceived as an instrument of the system.

In 2024, the issue of Russian-language media, particularly the place of Russian in public media, in Latvia remained a topic of intense debate and concern. According to the National Security Concept, the Latvian public media should completely transition to the Latvian language by 2026. The risks remain that Russian speakers will be deprived of a reliable

38 LSM (2024), ‘New Latvian Public Media Board Confirmed’, 13 November 2024.

39 TVNET (2024), ‘865 employees will work in the unified public media’ (*Vienotajā Latvijas Sabiedriskajā Medijā nākamā gada sākumā strādās 865 darbinieki*), 28 December 2024.

40 Quantitative (1559 respondents over 15, direct (personal) interviews) and qualitative survey (70 respondents, 9 and older).

41 Civitta (2024), *Pētījums par Latvijas iedzīvotāju medijpratību*.

source of news and information in their language, exposing them to the dangers of misinformation. In 2023, Reporters without Borders and their partners expressed their concern that this change risks depriving Russian speakers in Latvia of access to credible and fact-checked information, leaving them exposed to disinformation and propaganda, which is especially critical in light of the Russian war of aggression in Ukraine.

Since the Russian invasion of Ukraine, in an attempt to stem the Russian state propaganda, the National Electronic Mass Media Council (NEPLP) has also banned a total of 163, predominantly Russian Federation television channels in Latvia, and blocked access to more than 1,000 websites.⁴²

According to the 2024 Public Media Public Benefit Survey⁴³ public media reach at least 60% of all minorities in Latvia at least once a week. Meanwhile, 22% of Latvia's minority residents consume public media exclusively in Russian. According to the survey, the support for the decision to create public media content in Russian is higher among minority representatives than among Latvians. This issue is highly polarised in Latvian society depending on the respondent's ethnicity: among Latvians,

a minority or 29% express support for it, while among minorities, there is overwhelming support – 72%. The support is higher among the minority population reached by the public media in Russian – 85%, and slightly lower amongst those also reached by Latvian public media in Latvian – 70%, and lowest amongst the minority population not reached by public media – 63%.

On 26 November 2024, the Constitutional Court initiated a case⁴⁴ regarding the conformity of Section 3, Part 7 of the Public Electronic Media and its Management Law, and Section 6 of the 18 January 2024 law Amendments to the Public Electronic Media and its Management Law, which amends Section 8, Part 4 of the same law, with the preamble and Article 4 of the Constitution. The law mandates that public electronic media create programmes, fragments, and other services in minority languages to foster a sense of belonging to Latvia among all its residents, integrate society in Latvia as a nation-state, and deepen understanding of public, social, and cultural processes. The 18 January 2024 amendment allows public media to allocate broadcast time for programs in foreign languages, including subtitled films or theatre performances in the national language, if they produce multiple

42 LSM+ (2024), 'LTV: Blocking Russian propaganda is difficult in the digital age, 17 September 2024.

43 See Public Media Public Benefit Survey (*Latvijas sabiedrisko mediju sabiedriskais labums. 2024.gada aptaujas rezultāti*, 2024; Saulītis, A (2024), *Consumption Habits and Needs of Public Media by Latvia's Minority Residents (Latvijas mazākumtautību iedzīvotāju sabiedrisko mediju lietojuma paradumi un vajadzības)*.

44 Constitutional Court (2024), 'A case has been initiated regarding the use of minority languages in public electronic media' (*Ierosināta lieta par mazākumtautību valodu lietošanu sabiedriskajos elektroniskajos plašsaziņas līdzekļos*), 26 November 2024.

programmes. This amendment took effect on 1 January 2025.

Twenty MPs submitted an application to the Constitutional Court. They argue that the contested norms, which obligate public electronic media to produce a certain amount of radio and TV programs in minority languages, diminish the value of the Latvian language as the sole state language in a democratic society and endanger national security. Therefore, they claim these norms are incompatible with the Constitution's preamble and Article 4, which states that Latvian is the only state language.

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

On 4 December, the Latvian Association of Journalists (LŽA) announced it has created a platform for anyone, including journalists themselves, to report hate speech, violence, harassment, and intimidation against journalists and other media workers on social media or in everyday life.⁴⁵ The platform features a special 'Alert Button'⁴⁶ to submit reports of violence, hate speech or harassment. Reporting can also be done anonymously. Journalists themselves and other people who have noticed

an incident can report it. The compilation of reports will, for the first time, create a factual basis that will provide evidence to the public, policymakers, law enforcement and international organisations. This will help to improve the protection of journalists. The move was taken following attacks on the Latvian Radio.

Smear campaigns

On 2 December, the Latvian Radio issued a statement denouncing attacks against journalists due to their ethnic background or citizenship as unacceptable.⁴⁷ It stated that "there have been deliberate and massive attacks on Latvian Radio, discrediting the journalists of the minority language broadcasting programs of Latvian Radio 4 (LR4) and questioning the compliance of the content created by colleagues with the editorial standards of the public media". The case concerned a radio programme hosted by a Russian journalist where an out-of-context phrase concerning the Latvian language was attributed by the listener to the program host and then published on the platform YouTube.

45 Latvian Journalists Association (2024), 'Calls to report hate speech and harassment against journalists and media workers' (*Aicina ziņot par naida runu un vajāšanu pret žurnālistiem un mediju darbiniekiem*), 4 December 2024.

46 Latvian Journalists Association (2024), Report about a threat to a journalist (*Ziņo par apdraudējumu žurnālistam*).

47 Latvijas Radio (2024), 'Latvian Radio: attacks against journalists due to their ethnic background or nationality, are unacceptable' (*Latvijas Radio: uzbrukumi žurnālistiem, kas balstīti piederībā tautībai vai valstspiederībai, ir nepienemami*), 2 December 2024.

Confidentiality and protection of journalistic sources (including whistleblower protection)

There have been two cases in 2024 in which the police went to court to demand that the journalists reveal their sources of information. Journalist Ilmārs Randers from *Latvijas Avīze* learned from his sources that the Riga Central Railway Station reconstruction project

had indeed been changed 100 times since its inception. His article on the financial deadlock of the Rail Baltic project appeared a few days before the State Audit Office published its report, which until then had limited access. The police acknowledge this as a violation of the law and demanded that the journalist reveal the source of the leak. The journalist has refused to disclose it.

CHECKS AND BALANCES

Independent authorities

The Ombudsman's Office reinstated the Anti-Discrimination Department, which began operations on 1 January 2024. Previously, this department operated from 2007 to 2009, but was dissolved in 2010 due to internal reorganisation. The aim of the new Anti-Discrimination Department is to prevent discrimination, promote public awareness of discrimination, provide legal assistance to victims of discrimination, and oversee the implementation of international and national anti-discrimination laws binding on Latvia.⁴⁸ The establishment of the new department is related to the adoption of two EU directives to strengthen the role of equality bodies across the European Union. For this purpose, the

Ombudsman was allocated additional funding of €330,803 from the state budget for 2024.⁴⁹

Electoral framework

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

On 7 November, the Central Election Commission (CVK) approved the new ballot papers,⁵⁰ which will be used starting with the 2025 municipal elections. The visual appearance of the ballot papers and the filling conditions are changed. The main changes will affect voters who want to highlight a particular candidate or express a negative attitude towards

48 [Republic of Latvia Ombudsman](#).

49 [Ministry of Finance, Ombudsman's Office 2024](#).

50 [CVK \(2024\), 'Samples of new ballot papers approved'](#), 7 November 2024.

a candidate in the chosen list. Previously, voters could mark candidates they particularly supported with a '+' sign and simply cross out unwanted candidates. According to the new ballot paper model, there will be two different coloured boxes next to each candidate's name, and the voter can colour one – the green box if they particularly support a candidate, or the red box if they find the candidate unacceptable. The instructions for filling out the new ballot papers will be available at each polling station and in each voting booth. This change in the ballot paper model is necessary to ensure automatic vote counting in future elections and referendums. The same type of ballot papers will be used in the 2025 municipal elections, the 2026 Saeima elections, and the 2029 European Parliament elections.

Rules on political advertising and their enforcement

On 4 April 2024, the Constitutional Court opened a case⁵¹ brought by the political party 'Harmony' Social Democratic Party regarding the compliance of Article 5.1 of the Pre-election Campaign Law with Article 100 of the Constitution of the Republic of Latvia.

The contested norm regulates the use of language in pre-election campaigns. The application states that according to the contested norm, pre-election campaigning can only be

conducted in the state [Latvian] language (including the Latgalian written language) or the Livonian language with a translation into the official languages of the European Union Member States. For this reason, the candidates and members of the political party who submitted the application cannot communicate with voters in a minority language that is more understandable to them but is not an official language of any European Union Member State. Such a prohibition negatively affects the diversity of opinions in political discourse. Therefore, the applicant believes that the contested norm infringes on the right to freedom of speech included in Article 100 of the Constitution.

On 9 May 2024, shortly before the elections to the European Parliament, the Saeima criminalised influencing the election process using deep-fake technology (Article 90.1).⁵² Creating or spreading false defamatory information about political parties or candidates to the Parliament, Municipal Council, or European Parliament, using deepfake technology during the pre-election campaign or on election day is punishable by imprisonment for up to five years, short-term imprisonment, probation supervision, or community service. The amendments came into force on 21 May.

On 26 September, the Saeima supplemented the Criminal Law with a new Article 90.2,

51 Constitutional Court of the Republic of Latvia (2024), 'A case has been initiated regarding the use of language in pre-election campaigning' (*Ierosināta lieta par valodas lietojumu priekšvēlēšanu aģitācijā*), Press release, 12 April 2024.

52 Likumi.lv (2024), Amendments to the Criminal Law (*Grozījumi Krimināllikumā*), 21 May 2024.

‘Influencing the process of electing, appointing, or confirming a state official in the Saeima using deepfake technology’.⁵³ It is punishable by imprisonment for up to five years, short-term imprisonment, probation supervision or community service. The amendments came into effect on 22 October.

On 24 October 2024, the Saeima approved amendments to the Pre-election Campaign Law,⁵⁴ allowing the use of AI in political campaigns and extending the powers of the Corruption Prevention and Combating Bureau (KNAB). Campaigners must now inform the public about AI-created campaign materials, which must be clearly labelled. Non-compliance can result in fines up to €700 for individuals and €7,100 for legal entities. The use of fake or anonymous social network accounts for campaign activities is also prohibited.

The changes also stipulate that the use of fake or anonymous social network accounts created by automated systems for any pre-election campaign activities in social networks or elsewhere on the internet will henceforth be prohibited. KNAB will cooperate with other responsible institutions, primarily the State Police, in identifying them. In the event KNAB detects the use of fake or anonymous social network accounts in pre-election campaigning, the affected person or KNAB will be able to apply to the operator of the social media platform in question with a demand to suspend the specific pre-election campaign activities. If it fails to cooperate, KNAB will be entitled to inform the Consumer Rights Protection Centre, which is empowered to refer such matters to the European Commission.

53 Likumi.lv (2024), Amendments to the Criminal Law (Grozījumi Krimināllikumā), 8 October 2024.

54 Likumi.lv (2024), Amendments to the Pre-Election Campaign Law (Grozījumi Priekšvēlēšanu aģitācijas likumā), 6 November 2024.

CIVIC SPACE

Key recommendations

- *Abandon the attempts to impose corporate income tax on civil society organisations (CSOs) that engage in economic activities.*
- *The Ministry of Justice should conduct an analysis of legal entities in the CSO sector, identifying organisations whose activities do not align with the essence of CSOs and who use the legal form for alternative reasons, including for tax optimisation. Consequently, these organisations should be required to change their legal form.⁵⁵*
- *Terminate criminal proceedings against Ieva Raubiško.*

Freedom of association

Freedom to determine objectives and activities, including the scope of operations

On 25 June, the government approved the Regulation on the Classification of Associations and Foundations.⁵⁶ The regulation mandates that starting from 1 July 2024, CSOs must indicate their area of activity according to the classification of the Register of Associations and Foundations. CSOs can choose up to five areas of activity from the 22 available options and can change these areas at any time by notifying the Register. Newly established CSOs will indicate their area of activity during

the registration process, while existing CSOs will do so upon submitting their 2024 annual report to the State Revenue Service (Valsts ieņēmumu dienests).

The purpose of the classifier is to provide a comprehensive overview of the CSO sector to analyse trends, areas of activity, financial, and other indicators. The Latvian Civic Alliance, an umbrella organisation for CSOs, previously highlighted the need for such a classifier, noting that the lack of a unified system hindered comprehensive data collection about CSO activities. This gap increased risk assessments for CSOs in their relations with financial institutions and limited targeted support when

55 Latvian Civic Alliance (2025), *Report on Monitoring and Civic Space of the Latvian Civil Society (Latvijas pilsoniskās sabiedrības monitoringa un pilsoniskās telpas ziņojums)*, 2025, p.44.

56 Ministru kabinets, noteikumi Nr. 398, *Biedrību un nodibinājumu klasificēšanas noteikumi*, adopted on 25 June 2024.

necessary, such as identifying potential recipients of support.⁵⁷ Previously, it was not mandatory for CSOs to indicate their area of activity according to a classifier, and many CSOs were unable to categorise themselves because the relevant category did not exist.

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc.)

In August 2024, Civic Alliance Latvia (Latvijas Pilsoniskā alianse) and over 120 other civil society organisations (CSOs) raised concerns about a draft law proposed by the Ministry of Finance (Finanšu Ministrija). The draft stipulated that CSOs engaged in economic activities would be required to pay corporate income tax (CIT). Civic Alliance Latvia (LPA) argued that CSOs do not operate for profit but rely on economic activities as an additional source of funding for their core missions. LPA emphasised that imposing CIT on CSOs would create financial and administrative burdens, hinder their ability to achieve their goals, and place

them at a disadvantage compared to businesses. On 28 November, the government suspended further work on the draft law in response to objections from CSOs and the need for more discussions on appropriate measures.⁵⁸

CSOs are allowed to conduct economic activities if they are carried out to achieve the purposes specified in the statutes. However, for many years, government institutions have regularly proposed new initiatives to restrict CSOs' ability to conduct economic activities, fearing hidden commercial motives. CSOs do not engage in economic activities for profit but for various other reasons: to achieve the organisation's goal, maintain and develop the organisation, due to insufficient public funding — projects, subsidies, grants, difficulty in attracting membership fees, donations, and other types of funding, or the amount is not sufficient for the organisation's core activities. Additionally, EU funds and other foreign fund project conditions require co-financing (which can reach up to 50%) and pre-financing (which can reach up to 70%), and to ensure this, income is necessary.⁵⁹

Other

In 2024, Latvian civil society organisations raised the alarm and criticised the European

57 Latvijas pilsoniskā alianse (2021), *Pētījums par pilsoniskās sabiedrības organizāciju sektoru Latvijā 2020–2024: Latvijas biedrību un nodibinājumu klasifikācijas problēmas un risinājumi*, 2021, p.7.

58 Latvijas pilsoniskā alianse, 'Memoranda padomes sēdē lemj pagarināt termiņu SLO likumprojekta grozījumiem, jo NVO neatbalsta šī brīža grozījumus', 28 November 2024.

59 Latvian Civic Alliance (2024), *Report on Monitoring and Civic Space of the Latvian Civil Society (Latvijas pilsoniskās sabiedrības monitoringa un pilsoniskās telpas ziņojums)*, 2024.

Commission's proposal for a directive,⁶⁰ which aims to regulate the representation of interests 'on behalf of third countries' and which NGOs consider equivalent to the so-called 'foreign agents' regulation. CSO pointed to concerns about threats to fundamental rights, potential discrimination and stigmatisation of civil society organisations, and emphasised the need for a comprehensive evaluation of the directive's impact.

Criminalisation of activities, including humanitarian or human rights work

Criminal proceedings against human rights defender Ieva Raubiško from the NGO I Want to Help Refugees (Gribu palīdzēt bēgļiem) continued in 2024. The trial began in February 2024,⁶¹ with Raubiško facing charges of organising the illegal movement of a group of people across the Belarus-Latvia border. The charges stem from assistance she provided to five asylum seekers who had been granted an interim measure by the ECtHR, instructing the Latvian government to refrain from pushing them back to Belarus and to provide basic humanitarian aid. Raubiško and her colleague Egils Grasmanis were detained by border guards while visiting the border area to ensure compliance with the ECtHR ruling. The trial is scheduled to continue in March 2025. Proceedings have been dropped against Grasmanis.

Freedom of peaceful assembly

Bans on protests

On 5 January 2024, the Riga municipality banned a planned picket in solidarity with Palestinians, organised by the unregistered group Movement for Free Palestine. The decision to ban the event was based on an assessment by the State Security Service (Valsts drošības dienests), which identified potential threats to public safety. The security service cited several risks, including the aggravation of international relations and harm to the country's international interests; increased societal division and polarisation of opinions regarding the ongoing military conflict in the Middle East; the possibility of criminal offences; and threats to general security and public order due to potential conflicts at the event, which could escalate from verbal disputes to physical violence.

Additional concerns included the organiser's inability to estimate the number of participants, provide details on how security would be managed, or specify the slogans to be used during the event. The municipality also noted that the slogan "From the River to the Sea, Palestine Will Be Free!" used by the organisers on social media had provoked negative and aggressive reactions online and could incite similar responses during the picket. The organiser appealed the ban in court, but the court of first instance upheld

60 Ibid.

61 ENG.LSM.LV (2024), ['Human rights activist accused of organising illegal border crossing in Latvia'](#), 3 October 2024.

the municipality's decision.⁶² The case is currently under appeal in the Supreme Court. Meanwhile, three other pickets in support of Palestinians were allowed and held on 17 February, 27 April, and 5 October 2024, each gathering approximately 100 participants.

Public participation

Rules on access to and participation in consultations and decision-making processes

The new Cabinet of Ministers Regulation No. 639, Procedures for Public Participation in the Development Planning Process drafted by the State Chancellery (Valsts Kanceleja), came into force on 17 October 2024.⁶³ This regulation aims to enhance opportunities for civil society representatives to participate in state and municipal development planning processes. The regulation designates the unified portal for drafting and coordinating legislative projects (TAP portal) as the central tool for implementing public participation. It mandates that participation must be ensured not only in development planning and legislative drafting but also in other initiatives of public significance, particularly in designing and implementing reforms and planning the use of public funds. The regulation emphasises making the participatory process more inclusive. For example, public administration institutions must consider the specific needs

of society by adhering to plain language principles, providing opportunities for remote participation, and organising consultations closer to the target groups. Additionally, the regulation encourages the use of modern public engagement methods, such as think tanks, the deliberative method, dialogue circles, and other innovative approaches to foster meaningful public involvement.

On 1 September 2024, the Local Government Referendum Law⁶⁴ came into effect, aiming to promote the participation of municipal residents in decision-making on local issues. It defines the matters on which a local government referendum can be initiated and held, the sources of funding for the referendum, and the procedure for initiating, conducting, and announcing its results. The law specifies that a local government referendum can be held on: the municipality's sustainable development strategy or its amendments; a council decision to initiate the construction of a new public building or object requiring an environmental impact assessment; and the dismissal of the council. The preparation and management of the local government referendum are handled by the relevant municipal election commission. Starting in 2025, municipalities in Latvia must allocate a portion of their budget to participatory budgeting — funding citizen initiatives. Residents in each municipality can submit and vote on ideas, and the most

62 Administrative district court, Judgement of 30 May 2024, case No. A420108224.

63 Ministru kabinets, noteikumi Nr. 639 *Sabiedrības līdzdalības kārtība attīstības plānošanas procesā*.

64 *Local Government Referendum Law*, 1 September 2024.

supported proposals must be implemented by the municipality.⁶⁵ According to the Municipal Law, from 2025, municipalities must allocate at least 0.5% of their average annual income from personal income tax and real estate tax to participatory budgeting. However, the Saeima, when reviewing the state budget for the next year, decided to allow municipalities to allocate less funding⁶⁶ to participatory budgeting until 2029. Thus, in 2025, municipalities must allocate at least 0.1% of these revenues, in 2026 at least 0.2%, in 2027 at least 0.3%, and in 2028 at least 0.4%.⁶⁷

According to the Ministry of Environmental Protection and Regional Development (VARAM), out of 43 municipalities, 16 have already implemented participatory budgeting, including the cities of Riga and Jelgava, and 14 other municipalities. According to the Latvian Association of Local and Regional Governments (LPS), 30 municipalities are currently either implementing participatory budgeting or have completed all the necessary steps to start it.

65 lvportals.lv. From 2025 – participatory budgeting in municipalities – mandatory (No 2025. gada līdzdalības budžets pašvaldībās – obligāts), 20 December 2024.

66 This is due to financial circumstances.

67 Likuma, 'Par valsts budžetu 2025. gadam un budžeta ietvaru 2025., 2026. un 2027. gadam'.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT -

Key recommendations

- Undertake far-reaching measures to prevent inter-prisoner violence in the Latvian prison system, including pre-trial detention.
- Enact legislation by raising the prison service admission age to 50⁶⁸ for certain posts (e.g. guards, supervisors, etc.) to address the high number of vacancies in the prison system.
- Improve and enhance the competence of medical personnel in preventing ill-treatment.

Systemic human rights violations

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

On 11 January 2024, in the case *D. v. Latvia*,⁶⁹ the ECtHR found a violation of Article 3 of the Convention on Human Rights (prohibition of torture, inhuman and degrading treatment or punishment) due to state authorities' failure to protect the applicant from prohibited treatment. Between 2008 and 2017, the applicant served time in various prisons and complained of inhuman treatment because of his position at the lowest level of an informal prisoner

hierarchy. This hierarchy divided inmates into three castes: the '*blatnie*' (highest), the '*mužiki*' (middle), and the '*kreisie*' (lowest). The applicant was placed in the lowest caste due to the nature of his offence. His complaints were dismissed by the Prison Administration and domestic courts.

This is the first ECtHR case concerning Latvia where Article 46 has been applied, requiring Latvia to address the systemic issue of informal prison hierarchies, including the social segregation of 'lower caste' prisoners, their subservience to criminal authorities, and inter-prisoner violence. The ECtHR has outlined specific measures for Latvia's judicial system to comply with the judgment.

68 Currently, the service admission age is from 18 to 40.

69 ECtHR, *D. v. Latvia* ((Application no. 76680/17), 11 January 2024).

In October 2024, Ministry of Justice (Tieslietu ministrija) prepared a report,⁷⁰ which also highlights potential measures to address prison hierarchies. Those include prison staff capacity building measures, including four new staff training programmes in the new training centre; starting a pilot project – installing a prisoner contact person in one prison in 2025, with gradual expansion to all prisons, prison infrastructure improvement, including the accommodation of prisoners in the new Liepāja prison starting from spring 2026. On 1 September 2024, the law Amendments to the Latvian Penal Enforcement Code came into force, which led to the transition of the Latvian prison system into open and closed prisons.

On 22 January 2025, the Prison Administration Training Centre in Olaine was officially opened.⁷¹ The Centre includes classrooms, a conference hall, a library, a reading room, a dormitory with 40 double rooms for 80 trainees, sports facilities, and practical training rooms. Specific infrastructure has been created for prison staff to acquire practical skills, including a specially equipped close combat hall and a future gym. The Centre can train 150 employees simultaneously. Trainees will experience a prison-like environment, practising various scenarios that may arise during their duties. Training includes handling emergencies, crisis situations and entering and

exiting cells, ensuring that staff can perform confidently and safely. The first group of 30 trainees will start in February. The hope is to fill the current vacancies, which number 450. The construction of the new training centre began on 9 March 2023, and was completed by 3 December 2024. The project cost €9,097,052.66, with 85% funded by the Norwegian government and 15% by the Latvian state budget.

70 Ministry of Justice (2024), *Informative Report “On Action to Reduce Informal Prisoner Hierarchies Informatīvais ziņojums (“Par rīcību ieslodzīto neformālās hierarhijas mazināšanai ieslodzījuma vietās”)*.

71 Ministry of Justice (2025), ‘The new Prison Administration Training Center in Olaine has been opened – a significant step in improving the resocialization system’ (*Atklāts jaunais Ieslodzījuma vietu pārvaldes mācību centrs Olainē – nozīmīgs solis resocializācijas sistēmas pilnveidē*), 22 January 2025.

CONTACT

Latvian Centre for Human Rights

The Latvian Centre for Human Rights (LCHR) was established in 1993 as an independent non-governmental organisation. Over three decades LCHR has worked with integration (minority rights and promotion of tolerance) issues, elimination of discrimination and hate crimes/speech, asylum, migration and fundamental rights issues, as well as human rights observation in closed institutions (prisons, immigration detention facilities).

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ABOUT THE AUTHORS

Human Rights Monitoring Institute



The Human Rights Monitoring Institute (HRMI) is a non-governmental, non-profit human rights organisation. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations and working to ensure that rights are real and effective in practice.

The team of HRMI lawyers and social and political sciences experts conduct research, drafts legal and policy briefings, compiles reports to international human rights bodies, undertakes strategic cases before domestic and international courts, provides expert consultations, engages in various national and international projects, delivers conventional and online trainings to law enforcement officers, other professionals and members of vulnerable groups.

KEY CONCERNS

Judicial System

Lithuania has made progress in improving judicial transparency, particularly in Supreme Court appointments, with clearer criteria and more structured processes. Efforts to reduce court backlogs and allocate resources to the National Courts Administration are also underway. However, challenges persist in funding, staff shortages, and delays, especially in rural areas. Legal aid reforms have been introduced, but administrative burdens still hinder both providers and recipients. The planned court reforms starting in 2025 aim to address these issues and increase system efficiency.

Lithuania has made partial progress in some areas, particularly in improving the transparency of judicial appointments and preparing to start reforms in the justice system. However, there remain critical challenges, particularly in the adequacy of resources for the justice system and the administrative burden faced by legal aid providers. Further action is needed to meet the EU Commission's recommendations fully, with particular focus on securing sufficient funding, reducing bureaucracy, and ensuring that legal aid is accessible to all people, particularly in underserved areas.

Anti-Corruption Framework

Lithuania has made partial progress in strengthening its anti-corruption framework. The State Special Investigation Service (STT) has intensified efforts, especially in high-profile cases like

the 'receipts scandal', leading to reforms in public procurement transparency. Judicial appointments have also become more transparent, with clearer criteria set by the Seimas and oversight from the Constitutional Court. However, challenges remain in whistleblower protection, with the law underutilised and resource limitations continuing to hinder the STT and National Audit Office. Issues like political patronage, conflicts of interest, and bureaucratic inefficiencies persist, especially at the local level.

There were no recommendations in this area provided in the 2024 EU Commission's report.

Media Environment and Media Freedom

Lithuania has made progress in improving media freedom, with efforts to enhance transparency in media ownership and ensure editorial independence, especially for public service media. Legal protections for journalists have strengthened, and measures to combat misinformation on social media have been introduced. However, challenges remain, including the spread of misinformation, low trust in influencers, and sensationalism in commercial media. Political pressure on journalists persists, particularly in sensitive areas like corruption, with instances of intimidation and legal challenges still hindering free reporting.

There were no recommendations in this area provided in the 2024 EU Commission's report.

Checks and Balances

Lithuania has made progress in strengthening checks and balances, particularly concerning

the involvement of NGOs in the legislative process, with more structured consultations on key reforms. The Ombudsman institutions have been working to address human rights violations, though they still face resource constraints. Additionally, the Constitutional Court has played a crucial role in ensuring the legality of key laws. However, challenges remain in ensuring sufficient resources for these institutions to operate effectively and to ensure that consultations with all stakeholders, particularly marginalised groups, are more inclusive and timelier.

There were no recommendations in this area provided in the 2024 EU Commission’s report.

Civic Space

Increasing administrative accountability requirements and eligibility requirements for government funding puts stress on the already minimal resources of CSOs, especially regional CSOs with smaller staff and legal expertise. Without additional financial support from the government, financial sustainability is a major challenge.

There were no recommendations in this area provided in the 2024 EU Commission’s report.







Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

The Seimas of the Republic of Lithuania failed to pass a law legalising same-sex partnership and to cancel a provision from the Law on the Protection of Minors from Negative Effects

of Public Information that bans information on LGBTQIA+ on the basis it is harmful to minors. With this inaction, the Seimas of the Republic of Lithuania failed to enshrine LGBTQIA+ rights into Lithuanian law.

There were no recommendations in this area provided in the 2024 EU Commission’s report.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression

No progress

Progress



JUSTICE SYSTEM



Key recommendations

- **Ensure comprehensive and inclusive consultations on judicial reform.** The Ministry of Justice and the Seimas of the Republic of Lithuania should initiate meaningful consultations with judicial representatives, legal experts, and stakeholders before adopting any judicial reforms. This includes formalising feedback mechanisms and ensuring transparency on how judicial input is incorporated into reform proposals.
- **Improve access to state-guaranteed legal aid.** The Ministry of Justice should allocate additional funding to expand the availability and quality of state-guaranteed legal aid, particularly for vulnerable groups such as migrants, asylum seekers, and low-income individuals. Measures should include providing more qualified interpreters, increasing lawyer capacity, and simplifying the application process for legal aid.
- **Strengthen public awareness of Constitutional Court decisions.** The Constitutional Court should enhance public communication of its rulings through plain-language summaries and outreach campaigns.

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

Judicial appointment transparency remains an issue in Lithuania, particularly with regard to appointments to the Supreme Court. In its July 2024 Rule of Law Report discussing the rule of law situation in Lithuania, the European

Commission¹ drew attention to the concerns about the appointment of a candidate with the ‘lowest assessment’ to the Supreme Court in March 2024. This sparked an investigation into the motivation behind the decision, raising questions about the transparency and criteria used in judicial appointments.

While some progress has been noted in enhancing appointment procedures, such as

1 European Commission (2024), Country Chapter on the rule of law situation in Lithuania accompanying the document Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. 2024 Rule of Law Report. The rule of law situation in the European Union, 24 July 2024, available at: https://commission.europa.eu/document/download/5ad49699-6372-4989-80c7-c0b89d6f99d6_en?filename=35_1_58069_coun_chap_lithuania_en.pdf

the introduction of clearer selection criteria and greater oversight, the Supreme Court case underscores the need for further improvements. Stakeholders have called for more rigorous documentation of appointment motivations and the inclusion of independent observers in the selection process to ensure decisions are based on merit rather than other considerations.

Due to the above-mentioned reasons, it is pivotal to finalise the investigation into the March 2024 appointment and ensure its findings are made public to promote accountability and trust in the judiciary. The implementation of mandatory publication of the rationale behind judicial appointments, especially for the Supreme Court, might contribute to enhanced transparency. Also, it is necessary to strengthen oversight mechanisms by including independent legal experts and civil society representatives on appointment panels.

Furthermore, the European Commission has also highlighted amendments to the Law on Courts intended to streamline the judicial appointment process across all court levels. While these amendments have led to some improvements in higher court appointments, their impact at the level of lower courts has been less effective than anticipated. Reports indicate that delays in the appointment process persist, particularly in filling vacancies at regional and district courts.

The main challenges appear to stem from procedural inefficiencies and a lack of administrative resources to handle the volume of appointments required. Additionally, concerns have been raised about the consistency

of assessment criteria, which may contribute to delays in finalising decisions. These issues undermine the intended goals of the reform, which seek to improve the overall efficiency and responsiveness of the judiciary.

It could prove highly useful to conduct an independent review of the amendments to the Law on Courts to identify procedural bottlenecks in lower court appointments, as well as to allocate additional resources to administrative bodies responsible for managing judicial appointments to ensure timely processing. In addition, introducing standardised assessment criteria and additional training provided for appointment committees could contribute to enhanced consistency and transparency.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

State-guaranteed legal aid is theoretically available to all individuals at all stages of proceedings, including appeals. However, practical barriers significantly hinder access, particularly for migrants and asylum seekers. Legal aid is inconsistently provided and often unavailable during appeals, which leaves these individuals vulnerable at critical stages of their cases. Additionally, insufficient funding for legal aid programs limits resources for lawyers, while a shortage of qualified interpreters further complicates communication and the understanding of proceedings. Moreover, a lack of outreach to marginalised groups about their eligibility for legal aid exacerbates the issue. Many migrants and asylum seekers are unaware of their right

to state-funded legal assistance, especially during appeals, which leads to inequalities in access to justice. Administrative hurdles, such as the documentation required to qualify for aid, disproportionately affect vulnerable populations. For example, migrants in detention centres also face information gaps regarding legal aid services. Despite available information on bulletin boards, many asylum seekers, particularly those speaking minority languages (e.g., Hindi, Farsi, Turkish, Azerbaijani, and Sinhala), are unaware of the legal consultations offered by the Lithuanian Red Cross or how to access state-guaranteed legal aid.²

Although there have been some positive developments, such as expanding legal aid eligibility to include more low-income groups, these changes have not yet addressed the systemic issues facing marginalised communities. Furthermore, proposed plans to increase funding for translation services and simplify application processes remain unimplemented.

Additionally, the right to state-guaranteed legal assistance for victims of criminal offences is recognised regardless of whether the person has contacted law enforcement. However,

challenges arise for victims of crimes committed outside the European Union. Under Lithuanian law, assistance is granted only to those victimised within the EU, with help available for non-EU victims only if a criminal case is ongoing in Lithuania.³ This discretion given to law enforcement to decide whether the victim of a specific crime has the right to state-guaranteed assistance has led to difficulties, particularly for refugees from Ukraine, who have faced challenges in being recognised as victims of war crimes.⁴

Another issue is the need for assistance to be made available in simple and understandable language. While the law acknowledges the right to information in a language the victim understands, it lacks clear requirements for using comprehensible language. For instance, a 2020 update to the Victim's Rights Explanation Protocol appendix still uses legal language, without providing a simpler format.⁵

Use of assessment tools and standards (e.g. ICT systems for case management, court statistics and their transparency, monitoring, evaluation, surveys among court users or legal professionals)

2 Lithuanian Red Cross (2024), *Lithuanian Red Cross Monitoring Report 2023*, February 2024, available at: <https://redcross.lt/veiklos/prieglobscio-ir-migracijos-programa/tebesena-2/>.

3 Seimas of the Republic of Lithuania, Law No. XIV-169 of 2021 on Assistance to Victims of Criminal Offences (*Lietuvos Respublikos pagalbos nuo nusikalstamos veikos nukentėjusiems asmenims įstatymas*), available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/ce7d8910571711eba1f8b445a2cb2bc7>.

4 Algimantas Čepas, 'Rights of victims of crime' (Nusikaltimų aukų teisės), Human rights Lithuania 2022-2023: Overview, Human Rights Monitoring Institute, 2024, available at: <https://hrmi.lt/wp-content/uploads/2024/12/2022-2023-Zmogaus-teises-Lietuvoje-apzvalga.pdf>

5 *Ibid.*

Public understanding of Constitutional Court decisions in Lithuania remains limited, with many rulings perceived as complex and inaccessible to the general population. Currently, the Court primarily communicates its decisions through formal legal language and official publications, which are not easily understood by non-experts. Media coverage is often sparse or overly simplified, leaving significant gaps in public awareness about the judiciary's role and its impact on society.

To improve public understanding of Constitutional Court decisions and foster trust in its impartiality, the Court could adopt innovative communication strategies. These could include user-friendly online platforms that host plain-language summaries of rulings, partnerships with media outlets to disseminate key decisions widely, and educational initiatives aimed at explaining the broader implications of rulings.

Additionally, integrating these communication efforts with assessment tools, such as ICT systems for case management and public surveys, can enhance the transparency of judicial processes. By integrating user feedback mechanisms and conducting regular surveys among court users and legal professionals, the judiciary can monitor the effectiveness of these communication strategies and adapt them to better meet public needs. Such measures would not only demystify judicial processes but also bridge the gap between the judiciary and the public, fostering greater transparency and accessibility. Clear communication tools and proactive outreach campaigns, combined with robust assessment frameworks, could serve as

vital mechanisms for enhancing trust in the judiciary and ensuring that citizens understand the Constitutional Court's role in safeguarding democracy.

Fairness and efficiency of the justice system

Respect for fair trial standards including in the context of pre-trial detention

Concerns about the confidentiality of communications between lawyers and their clients in Lithuania have been repeatedly highlighted in successive European Commission reports. These issues have raised significant questions regarding fair trial standards and the right to a defence.

More recently, new concerns have emerged regarding video surveillance in police and detention facilities. Reports suggest there are no robust guarantees to prevent the recording of private exchanges between lawyers and their clients. This has led to fears that such practices could compromise the confidentiality of legal consultations and undermine the trust necessary for effective legal representation.

Despite these persistent concerns, there have been limited actions to address these issues comprehensively. While some measures to improve detention conditions and monitoring practices have been discussed, there is no evidence of substantial reforms to ensure the inviolability of lawyer-client communications. Legal professionals continue to advocate for stronger safeguards, including the installation of communication rooms free from surveillance

and the implementation of independent oversight mechanisms to ensure compliance with confidentiality standards.

It is necessary to establish clear and enforceable guarantees to protect the confidentiality of lawyer-client communications in police and detention facilities, including the prohibition

of video or audio recording in consultation spaces, and to introduce independent monitoring of police and detention facilities to ensure adherence to these guarantees. Existing cases and complaints need to be addressed promptly, with a commitment to implementing ECtHR rulings on these matters.

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- **Strengthen measures to prevent misuse of public funds in municipalities and Seimas of the Republic of Lithuania.** *The Seimas of the Republic of Lithuania should adopt stricter legal provisions requiring greater transparency and accountability in the use of public funds by local governments and members of Seimas. This includes mandatory real-time reporting of expenses, enhanced auditing mechanisms, and clear sanctions for misuse of funds. The National Audit Office and the Special Investigation Service (STT) should be tasked with overseeing compliance and conducting regular audits.*
- **Enhance whistleblower protection mechanisms.** *The Ministry of Justice and the Seimas should strengthen the implementation of the existing Whistleblower Protection Law by introducing stricter confidentiality safeguards, ensuring whistleblower anonymity, and increasing awareness campaigns about reporting mechanisms. Additional funding should be allocated to the STT to improve whistleblower support systems.*
- **Improve transparency in the legislative process to prevent conflicts of interest.** *The government and Seimas should introduce mandatory impact assessments and conflict-of-interest declarations for all major legislative proposals, particularly those involving public procurement, funding allocation, or regulatory changes. These measures should include clear procedures for public consultations and independent reviews.*

Levels of corruption

The so-called ‘receipts scandal’ in Lithuania, which involved the misuse of public funds by local politicians, has highlighted the persistence of corruption in certain segments of governance. It has raised concerns over the broader impact of such malfeasance on the availability, quality, and accessibility of essential human rights-related services, particularly justice, healthcare, and social services. In the scandal, several local politicians were found to have falsified receipts to cover personal expenses with taxpayer money, undermining public trust in the political system. This issue concerned not only financial mismanagement but also the erosion of accountability and transparency within local governments.⁶

The consequences of this scandal are significant in terms of societal trust, particularly in political institutions. Research has shown that corruption scandals, such as the one in question, can severely reduce public confidence in political leaders and institutions, leading to a lack of trust in the integrity of government

actions and policies. The scandal has left a negative imprint on Lithuania’s political landscape, exacerbating already existing disillusionment with politicians: an independent survey demonstrated that 47% of respondents indicated that their view of local government had changed negatively after this scandal.⁷ This loss of trust is detrimental to the broader human rights landscape, as it can lead to disengagement from civic processes and a diminished demand for reforms that could improve public services like healthcare, education, and social security.

Furthermore, the scandal has raised concerns about the effective allocation of public resources. Corruption often diverts funds that could otherwise be used to enhance the quality of essential services. For instance, funds intended for social services or public healthcare may be siphoned off for personal gain, diminishing the resources available for the most vulnerable. This directly impacts citizens’ access to basic rights, such as access to justice, security, and education, as resources are misallocated or squandered.

6 BNS (2024), ‘In the “Receipts” cases, local government politicians are being asked to pay over one million euros in damages’ (*„Čekiukų“ bylose iš savivaldos politikų prašoma priteisti per milijoną eurų*), Lithuanian Radio and Television, 16 December 2024, available at: <https://www.lrt.lt/naujienos/lietuvoje/2/2439899/cekiuku-bylose-is-savivaldos-politiku-prasoma-priteisti-per-milijona-euru>.

7 Modesta Gaučaitė-Znutienė (2024), “It showed the immorality of politicians, but it will have no impact”: trust in local government has decreased, but some people haven’t even heard of the “Receipts” scandal’ (*„Parodė politikų amoralumą, bet įtakos neturės“: pasitikėjimas savivalda krito, bet dalis žmonių „čekiukų“ skandalo net negirdėjo*), Lithuanian Radio and Television, 25 September 2023, available at: <https://www.lrt.lt/naujienos/lietuvoje/2/2079576/parode-politiku-amoraluma-bet-itakos-netures-pasitikejimas-savivalda-krito-bet-dalis-zmoniu-cekiuku-skandalo-net-negirdejo>.

Framework to prevent corruption

Rules on preventing conflicts of interest in the public sector

Currently, legislative processes in Lithuania lack sufficient safeguards to ensure transparency and accountability, particularly in high-risk areas such as public procurement, funding allocation, and regulatory changes. While some public consultation mechanisms exist, they are often implemented inconsistently or fail to include meaningful input from independent experts and civil society. This creates vulnerabilities where conflicts of interest may go unnoticed, and corruption risks remain unaddressed.

Ensuring transparency in legislative processes is critical to identifying and mitigating conflicts of interest early. High-risk areas like public procurement and local governance are particularly prone to abuse due to insufficient oversight and accountability. A transparent and consultative process, incorporating mandatory conflict-of-interest declarations, public consultations, and independent reviews, would significantly reduce opportunities for abuse. Such measures should also include clear procedures for publishing impact assessments and maintaining public records of legislative consultations.

Strengthening these mechanisms would enhance legislative integrity, reduce corruption risks, and foster public trust in government decision-making. Implementing these reforms would send a strong message that legislative processes are conducted with accountability and fairness at their core.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

In the context of Lithuania's efforts to encourage whistleblowing and protect those who expose corruption, there have been notable concerns. One example that raises issues about whistleblower protection occurred when the identity of a whistleblower within the State Security Department (VSD) was exposed.⁸ This individual had provided critical information about potential illegal actions involving the VSD and the Special Investigation Service (STT), allegedly sharing sensitive data about then-front-running presidential candidate Gitanas Nausėda's associates. The revelation of this whistleblower's identity contradicts efforts to protect individuals who come forward with allegations of corruption or misconduct within government institutions.

While Lithuania does have legal frameworks in place to protect whistleblowers—such as the

8 Jurga Bakaitė (2023), 'The Whistleblower and the President: new book sends ripples through Lithuania's politics, Lithuanian Radio and Television', 7 March 2023, available at: <https://www.lrt.lt/en/news-in-english/19/1929853/the-whistleblower-and-the-president-new-book-sends-ripples-through-lithuania-s-politics>.

Law on the Protection of Whistleblowers⁹—the case involving the VSD raises serious concerns about the practical enforcement of these protections. The public disclosure of the whistleblower’s identity not only puts the individual at risk but also discourages others from reporting similar issues. This situation highlights the need for stronger safeguards to ensure whistleblowers can report misconduct without fear of retaliation, including protection from identity leaks and professional or personal harm.

The case demonstrates ongoing challenges to building trust in institutions intended to protect citizens’ rights, particularly when those tasked with ensuring transparency and integrity may be complicit in undermining such efforts. These issues, if left unresolved, contribute to an overall climate of distrust and could deter future whistleblowing, ultimately limiting the effectiveness of anti-corruption measures in the country.

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- **Strengthen safeguards against SLAPPs.** *The Ministry of Justice and the Seimas should introduce legal reforms to prevent the abuse of defamation and civil lawsuits against journalists.*
- **Enhance funding and capacity for public service media.** *The government should prioritise long-term, independent funding for the Lithuanian National Radio and Television (LRT) to ensure its financial stability and operational independence. Additionally, investments in capacity-building programs, such as investigative journalism and digital transformation, should be supported.*
- **Promote media literacy to combat misinformation.** *The Ministry of Education, Science, and Sport, in collaboration with media regulators and NGOs, should implement mandatory media literacy programs in schools and adult education. These programs should focus on identifying misinformation, understanding media bias, and promoting critical thinking skills.*

9 Seimas of the Republic of Lithuania, Law No. XIII-804 of 2017 on the Protection of Whistleblowers (Lietuvos Respublikos pranešėjų apsaugos įstatymas), available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/3832a702d8ea11e782d4fd2c44cc67af/asr>.

Public trust in media

Lithuania exhibits mixed levels of trust in media, with significant variation across different types of outlets. The latest representative survey performed in October 2024¹⁰ indicates a stronger preference for national public service media over commercial outlets, yet scepticism remains prevalent due to concerns over political bias, sensationalism, and misinformation.

Public Service Media Public service media, such as Lithuanian National Radio and Television (LRT), enjoy relatively high levels of trust (29% of citizens express trust in them) compared to commercial outlets. LRT is generally viewed as a reliable source for impartial news, supported by its public funding and mandate to uphold journalistic integrity. However, LRT's financial stability and operational independence remain vulnerable due to fluctuating government support and limited long-term funding mechanisms. Ensuring independent, long-term funding would allow LRT to maintain its impartiality, improve content quality, and adapt to technological advancements, such as digital transformation. Additionally, investments in capacity-building programs, including investigative journalism training, would strengthen LRT's ability to deliver high-quality, independent reporting that enhances public confidence in reliable journalism.

Commercial Media. Commercial outlets, such as online news portals and private television channels, tend to face greater criticism for perceived sensationalism and alignment with specific political or business interests. Such platforms often dominate the online news landscape but are criticised for click-bait-style headlines.

Print Media and Radio. While print media has experienced declining readership, it retains a niche audience that values in-depth reporting. Radio remains a trusted medium for local and community-based news, although its influence has diminished with the rise of digital platforms.

Social Media and Influencers. Trust in influencers is particularly low, with only 3% - 8% of citizens expressing confidence in these platforms, largely due to concerns about biased or promotional content.

Challenges Affecting Media Trust:

- **Perceived Political Bias:** the survey suggests that both public and commercial media outlets occasionally face allegations of political influence, reducing trust among audiences.

10 Delfi (2024), 'Trust in information sources: Lithuanians trust "Google" and national media the most, meanwhile influencers are trust the least' (*Pasitikėjimas informacijos šaltiniais: lietuviai labiausiai pasitiki „Google“ ir nacionaline žiniasklaida, mažiausiai – nuomonės formuotojais*), Delfi, 24 October 2024, available at: <https://www.delfi.lt/m360/naujausi-straipsniai/pasitikejimas-informacijos-saltiniais-lietuviai-labiausiai-pasitiki-google-ir-nacionaline-ziniasklaida-maziausiai-nuomones-formuotojais-120059686>.

- **Sensationalism in Commercial Media:** The competition for clicks and viewership has led to a proliferation of sensationalist reporting, particularly in online portals.
- **Misinformation on social media:** Social media is a significant source of news for younger audiences but is often associated with misinformation and a lack of accountability.

Overall, while trust in public service media remains relatively high (as per the data of September 2024, 48% of people trust media¹¹), media trust in Lithuania is hindered by concerns over political bias, sensationalism, and the growing influence of unregulated digital content. Strengthening editorial independence and promoting media literacy could help address these challenges and improve public confidence in the media ecosystem.

Moreover, the rise of misinformation, particularly on social media platforms, erodes public trust in all forms of media, including both commercial and public service outlets. To combat this, mandatory media literacy programs should be implemented in schools and adult education systems, focusing on identifying misinformation, understanding media bias, and fostering critical thinking skills. Collaborative efforts between the Ministry of Education, Science, and Sport, media regulators, and

NGOs are essential to develop effective curricula. These programs could empower citizens to critically assess information sources and distinguish reliable journalism from false or sensational content, thereby fostering resilience to misinformation and rebuilding trust in media.

Safety and protection of journalists and other media actors

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

SLAPPs remain a significant challenge in Lithuania, particularly for journalists investigating corruption or exposing sensitive topics. These lawsuits are often used by powerful individuals or entities to intimidate and silence journalists through prolonged and costly legal battles, deterring them from pursuing investigative reporting.

Currently, Lithuania lacks specific legal mechanisms to address SLAPPs effectively. Courts are not equipped with clear criteria for identifying and dismissing these cases early in proceedings, leaving journalists vulnerable to undue legal harassment. Additionally, there are no provisions to impose penalties on those who file such lawsuits in bad faith, which would act as a deterrent against the misuse of legal processes.

11 ELTA (2024), *Latest survey: public trust in courts, the military, and the media has declined* (Naujausia apklausa: smuko visuomenės pasitikėjimas teismais, kariuomene ir žiniasklaida), Lietuvos Rytas, 8 September 2024, available at: <https://www.lrytas.lt/lietuvosdiena/aktualijos/2024/09/08/news/naujusia-apklausa-smuko-visuomenes-pasitikejimas-teismais-kariuomene-ir-ziniasklaida-34101143>.

Recognising the importance of tackling SLAPPs, the European Commission recently emphasised the need for stronger safeguards across EU member states, including Lithuania. Introducing reforms that include early dismissal mechanisms, penalties for bad-faith lawsuits, and legal aid for journalists facing SLAPPs would significantly enhance protections for media freedom. Such measures would ensure that journalists can work without fear

of legal intimidation, fostering transparency and accountability in society.

To build public and political support for these reforms, awareness campaigns highlighting the impact of SLAPPs on media freedom and democratic accountability are crucial. Engaging with civil society organisations, media professionals, and international bodies would further strengthen efforts to introduce comprehensive legal safeguards against SLAPPs.

CHECKS AND BALANCES

Key recommendations

- **Ensure adequate funding and resources for the Ombudsman institutions.** *Seimas of the Republic of Lithuania should increase the financial and human resources allocated to the Parliamentary Ombudsmen's Office and the Equal Opportunities Ombudsman. This could be achieved through amendments to the annual state budget to prioritise funding for these institutions*
- **Improve stakeholder consultations in the legislative process.** *The government and Ministry of Justice should institutionalise meaningful and consistent stakeholder consultations, particularly with NGOs, independent experts, and the judiciary, during the preparation of laws and amendments. This can be achieved by introducing mandatory consultation timelines, clear feedback mechanisms, and impact assessments for all major legal reforms.*
- **Enhance transparency and public communication of Constitutional Court decisions.** *The Constitutional Court should implement measures to improve the accessibility and transparency of its decisions, such as providing plain-language summaries of rulings and proactively communicating their broader implications to the public.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

Recent cases, such as the review of the Law on the Protection of Minors from Negative Information and debates on the Istanbul Convention, highlight the importance of broader and more inclusive consultations during legislative processes. Ensuring meaningful stakeholder involvement early in the legislative process promotes clarity, constitutionality, and alignment with international human rights obligations. It also reduces the risk of laws facing opposition or legal challenges due to inadequate input during the drafting stages.

Regime for constitutional review of laws

In Lithuania, the regime for constitutional review of laws is overseen by the Constitutional Court, which ensures the compatibility of legislation with the Constitution. The Court plays a key role in upholding the legality and transparency of the legislative process. In 2024, several significant cases were brought before the Constitutional Court, reflecting

ongoing debates about human rights, government structure, and freedom of information.

Istanbul Convention. A constitutional review was initiated regarding Lithuania's potential ratification of the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (the Istanbul Convention). Opponents argued that certain provisions of the Convention might conflict with the Lithuanian Constitution, particularly regarding gender definitions and traditional family values. This case underscores the tensions between international human rights commitments and domestic constitutional principles. In mid-March 2024, the Constitutional Court ruled¹² that the Istanbul Convention does not conflict with the Lithuanian Constitution, thereby clearing a significant obstacle to its potential ratification.

Law on the Protection of Minors from Negative Information. After the ECtHR delivered its judgement in the case *Macate v. Lithuania*,¹³ the Constitutional Court was asked¹⁴ to review amendments to the Law on the Protection of Minors from Negative Information, which has been criticised for restricting access to certain information, particularly content related to LGBTQIA+ issues. Human rights organisations argue that the law disproportionately limits freedom of expression and access to information, raising concerns about

12 Constitutional Court (Lithuania), Judgment of 14 March 2024, No. KT24-I1/2024 (Istanbul Convention case), available at: <https://lrkt.lt/lt/teismo-aktai/paieska/135/ta2975/content>.

13 ECtHR [GC], Judgment of 23 January 2023, *Macate v. Lithuania* [GC], no. 61435/19 (2023).

14 Government of the Republic of Lithuania, Resolution on the Appeal to the Constitutional Court of the Republic of Lithuania No. 121 of 2024 (Nutarimas dėl kreipimosi į Lietuvos Respublikos Konstitucinį teismą), available at: https://lrkt.lt/-prasymai/2_2024.htm.

compliance with constitutional and international obligations. In December 2024, the Constitutional Court ruled that the provisions in question are unconstitutional. The Court highlighted that the restriction of information about family models other than those based on the marriage of a man and a woman for minors is not necessary to protect constitutional values and, moreover, hinders the development of children into mature individuals as well as violates democratic values such as equality, pluralism, and tolerance.

Number of ministers in government. The appeal case¹⁵ brought to the Constitutional Court by TS-LKD focuses on the legality of ministerial appointments when approving the composition of the government. The dispute centres on whether constitutional norms were breached after the release of the presidential decree approving an incomplete government without two ministers, whereas the Constitution provides for the approval of a full-fledged government. This case highlights the importance of constitutional safeguards in ensuring a transparent and lawful governmental formation process. There is no decision by the Constitutional Court as yet.

These cases illustrate the continued relevance and accessibility of constitutional review mechanisms in Lithuania. The Constitutional

Court remains an essential institution for upholding constitutional principles, protecting human rights, and ensuring that legislative processes comply with the highest legal standards. Furthermore, public and stakeholder engagement in these cases reflects growing awareness of constitutional norms and democratic accountability.

However, challenges remain, particularly regarding the politicisation of constitutional issues, as seen in the debates surrounding the Istanbul Convention and the Law on the Protection of Minors from Negative Information. Addressing these matters requires a balanced approach that respects both constitutional values and international commitments.

Independent authorities

Existing independent authorities in Lithuania, such as the Parliamentary Ombudspersons' Office, the Equal Opportunities Ombudsperson, and the State Data Protection Inspectorate play a pivotal role in ensuring good governance, protecting human rights, and promoting equality. However, these institutions face significant challenges that limit their effectiveness.

One of the primary issues is the lack of sufficient financial and human resources, limiting

15 Gailė Jaruševičiūtė-Mockuvienė, 'Martyna Pikelytė, TS-LKD will appeal to the Constitutional Court regarding Nausėda: the approval of the government composition is the issue' (*TS-LKD dėl Nausėdos kreipsis į Konstitucinį Teismą: užkliuvo Vyriausybės tvirtinimas*), Lithuanian Radio and Television, 12 December 2024, available at: <https://www.lrt.lt/naujienos/lietuvoje/2/2434418/ts-lkd-del-nausedos-kreipsis-i-konstitucini-teisma-uzkliuvo-vyriausybes-tvirtinimas>.

the ability of the Ombudsperson institutions to conduct proactive investigations, address systemic issues, and fulfil their mandates effectively. Adequate funding would enable these institutions to hire more specialists, expand outreach activities, and address a larger number of complaints. Strengthening these institutions enhances public trust and institutional accountability, ensuring better governance and stronger protection of rights.

Another concern is the technical capacity and independence of these bodies. While their mandates grant them autonomy, their ability to operate independently can be undermined by insufficient resources or delays in receiving budget allocations. Furthermore, the

increasing complexity of issues, such as data protection and AI regulation, require these institutions to enhance their technical expertise, which is challenging without additional investments in capacity-building programs.

Despite these challenges, there have been some encouraging developments. The Equal Opportunities Ombudsperson has launched successful awareness campaigns on gender equality and discrimination, reaching a wide audience through digital platforms. The State Data Protection Inspectorate has also made progress in educating businesses and individuals about GDPR compliance, reflecting its growing role in navigating digital rights.

CIVIC SPACE



Key recommendations

- **For the government of Lithuania to allocate more funding to CSOs.** CSOs serve an important function as experts in their fields and mediators between state institutions and members of various groups. Raising the levels of financial support to CSOs will ensure that they can continue to work for the benefit of social inclusion and equality.
- **For managing institutions to ensure that funding programmes are transparent and foster a healthy CSOs environment.** CSO funding programmes and project calls need to foster healthy CSO competition and ensure that project funding is adequate for project delivery requirements.
- **For the government of Lithuania to control the 'NGO marker' designation in the Registry of Legal Persons.** Government oversight of the 'NGO marker' will ensure that only not-for-profit CSOs may receive this marker and benefit from state programmes designed for CSOs.

Freedom of association

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)

Funding to CSOs by various foundations managed by the government of Lithuania remains limited and financial sustainability remains a difficult challenge for many CSOs. This shows a lack of interest on the government of Lithuania's behalf to strengthen the civil society sector and support CSOs' function as independent experts and mediators between vulnerable groups and governmental institutions. Several funding competitions are announced every year, however, the funding provided is often insufficient to significantly contribute to CSOs' annual budget and the requirements for project deliverables are sometimes so high, that implementation of the project may become more costly than that provided by the funding.¹⁶ Other times we observe project calls that seem tailored to a particular CSO given the

inclusion of complex eligibility requirements that only one or a couple of large CSOs may possess. The limited funding made available discourages other CSOs from engaging in complex and costly-to-manage consortiums to meet the requirements. While we appreciate that certain initiatives require very specific expertise, extremely tailored requirements negatively affect healthy competition between CSOs and may foster government favouritism.

Additionally, the requirements for funding eligibility and administrative accountability keep rising. Starting in 2025, amendments to the Charity and Support Act regulate that only CSOs that have an 'NGO' marker in the Registry of Legal Persons (RLP) will be eligible to receive donations of 1.2% from the yearly personal income tax donation.¹⁷ The same requirement is applied in some government funding competitions for CSOs. This marker is received by self-declaration and is not supervised by state authorities, meaning that for-profit organisations (e.g. countryside tourism organisations) can receive the 'NGO' marker and present themselves as non-profit CSOs, which is misleading to the public. An example of rising accountability requirements is the government's intention to issue personal fines to directors of CSOs who fail to present their

16 Order of the Minister of Social Protection and Labour of the Republic of Lithuania On the Approval of the Provisions for the Organization of the Selection Competition of the Non-Governmental Organizations Project, Intended for the Implementation of Measures to Promote Equal Opportunities and Non-Discrimination in 2025, Art. 17, available at: <https://www.e-tar.lt/portal/lt/legalAct/f6e58e80690f11efafbb8694c098bac5>.

17 National NGO Coalition (2024), 'Important changes regarding 1.2% GPM support: what do non-governmental organizations need to know?', December 2024, available at: <https://www.ngo.lt/svarbus-pokyciai-del-12-gpm-par-amos-ka-privalo-zinoti-nevyriausybinės-organizacijų/>.

annual activity reports to the RLP. While we support transparency and accountability, such requirements disproportionately affect smaller grassroots CSOs, especially those established in the provinces that function to address local issues and do not have sufficient human resources or administrative know-how to keep up with government regulations.

June 2024 saw amendments to the Sports Law create a requirement for non-governmental sports organisations (e.g. non-governmental organisations leading Olympic, Paralympic, sports for people with visual, hearing, mobility or intellectual disabilities, and student sports movements in Lithuania) to fulfil the criteria requiring the rotation of members in the organisation's governing bodies in order to receive governmental funding. A group of MPs filed a request to the Constitutional Court of the Republic of Lithuania to provide a ruling on the requirement, as they argued

this is a direct and unjustified interference in the internal governance of these organisations and a violation of the principle of freedom of association.¹⁸

On 1 November 2024, additional requirements came into force for people working with minors. Now it is required to take out an official QR code which will ensure that people with a history of serious and very serious offences, including sexual offences against minors, won't have the right to work with minors. This is an important positive development in the protection of minors, however, it constitutes another example of the rising administrative burdens on CSOs, which particularly affect small organisations that do not have sufficient resources to fulfil administrative burdens.¹⁹ In such a context, the government's financial support to CSOs becomes increasingly important.

18 Lietuvos Rytas (2024), *The Constitutional Court will assess whether the requirements imposed on sports organizations regarding the rotation of members of their governing bodies are in conflict with the Constitution*, 17 November 2024, available at: <https://www.lrytas.lt/sportas/startai/2024/11/17/news/konstitucinis-teismas-vertins-ar-sporto-organizacijoms-keliامي-reikalavimai-del-valdymo-organu-nariu-rotacijos-nepriestarau-35197251>.

19 Artscape (2024), 'New child protection requirements for organizations', available at: <https://artscape.lt/naujienos/nauji-vaiko-apsaugos-reikalavimai-organizacijoms/>.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT -

Key recommendations

- **The Seimas of the Republic of Lithuania should legalise same-sex partnerships.** Giving legal status to same-sex couples would not only ensure the protection of their rights, but also contribute to reducing hate speech and hate crimes.
- **The Seimas of the Republic of Lithuania should cancel the provision in the Law on the Protection of Minors from Negative Effects of Public Information banning information on LGBTQIA+ to minors.** Lack of education on LGBTQIA+ topics contributes to social exclusion and hate crime. Normalising LGBTQIA+ topics would be an important step towards ensuring equality for all groups within the society and a strong indicator of willingness to protect the rights of members of LGBTQIA+ communities.
- **The Seimas of the Republic of Lithuania should implement the rulings of the European Court of Human Rights.** Lithuania, being a member of the European Convention on Human Rights, needs to abide by the rulings of the European Court of Human Rights and implement its decisions.

Systemic human rights violations

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

On 23 January 2023, the European Court of Human Rights (ECtHR) ruled against Lithuania in the case of *Macate v. Lithuania*²⁰ and found that Lithuania had violated an article of

the European Convention on Human Rights that defines freedom of expression. The case was related to a book named 'Amber Heart', which contained stories of various groups experiencing social exclusion and discrimination (the disabled, migrants, homosexuals, Roma people), authored by Neringa Macatė-Dangvydė and published in 2013 by the Lithuanian Educational University. Since two of the six stories describe romantic relationships between same-sex characters, the book's distribution

20 ECtHR [GC], Judgement of 23 January 2023, *Macate v. Lithuania* [GC], no. 61435/19 (2023).

was suspended and only continued after it was marked as harmful to children under the age of 14. The decisions were based on the ‘Law of the Republic of Lithuania on the Protection of Minors from Negative Effects of Public Information’,²¹ passed in 2009, which states that information depicting same-sex romantic relationships that describe other forms of families than established in the Constitution of the Republic of Lithuania is harmful to minors. N. Macatė appealed to the Lithuanian courts over discrimination in 2014 and, after losing her appeal, to the ECtHR in 2019.²²

The ECtHR rejected the Lithuanian government’s arguments that certain passages in the book were sexually explicit and degraded heterosexual families, stating that “the tales promoted respect for and acceptance of all members of society in a fundamental aspect

of their lives [...]. The Court therefore concludes that restricting children’s access to such information did not pursue any aim which it could recognise as legitimate”.²³ Following the ECtHR ruling, the Minister of Justice of the Republic of Lithuania presented a draft amendment to the aforementioned law to the Seimas of Lithuania seeking to scrap the existing ban on information to minors about LGBTQIA+ relationships. However, the Seimas of the Republic of Lithuania rejected the draft amendment and failed to implement the ECtHR ruling.^{24,25} As a result, in February 2024, the government cabinet filed a request to the Constitutional Court of the Republic of Lithuania to rule on the Law on the Protection of Minors from Negative Effects of Public Information and whether its provision banning depiction of same-sex relationships is

21 Law of the Republic of Lithuania on the Protection of Minors from Negative Effects of Public Information, Seimas of the Republic of Lithuania, Document no. IX-1067, available at: <https://e-seimas.lrs.lt/portal/legalAct/lt/TAD/TAIS.183129/asr>.

22 Saulius Jakučionis, BNS, *Lithuania loses ECHR case over children’s book about same-sex relationships*, Lithuanian Radio and Television, 23 January 2023, available at: <https://www.lrt.lt/en/news-in-english/19/1873262/lithuania-loses-echr-case-over-children-s-book-about-same-sex-relationships>.

23 *Ibid.*

24 Lithuanian Radio and Television (2023), ‘The Seimas went against the will of the ECtHR – it did not allow the lifting of the ban on talking about LGBTQI to minors’, 7 November 2023, available at: <https://www.lrt.lt/naujienos/lietuvoje/2/2118293/seimas-stojo-pries-eztt-valia-neleido-panaikinti-draudimo-nepilnameciams-pasakoti-apie-lgbtqi>.

25 Lithuanian Radio and Television (2023), ‘Lithuania looking for ways to react to ECHR ruling after Seimas rejects LGBTQ information law change’, 8 November 2023, available at: <https://www.lrt.lt/en/news-in-english/19/2120543/lithuania-looking-for-ways-to-react-to-echr-ruling-after-seimas-rejects-lgbtq-information-law-change>.

constitutional.²⁶ A decision by the Constitutional Court is expected in January 2025.

FOSTERING A RULE OF LAW CULTURE

Efforts by state authorities

Contribution of civil society and other non-governmental actors

Every year on International Human Rights Day, a National Human Rights Forum is organised.²⁷ This Forum is organised by a group of representatives from CSOs, academia and state institutions, namely: Vytautas Magnus University, Lithuanian Disability Forum, Ministry of Foreign Affairs of the Republic of Lithuania, the Parliament (Seimas of the Republic of Lithuania) of the Republic of Lithuania, Coalition of Human Rights Organisations, Office of the Equal Opportunities Ombudsperson, Office of Parliamentary Ombudspersons of Lithuania, Office of the Ombudsperson for Child's rights of Lithuania. This year the seventh annual National Human

Rights Forum was held, and it covered a broad range of topics for discussion, e.g. political human rights agenda in the new Seimas of the Republic of Lithuania, gender equality, rights of people with disabilities, children's rights, LGBTQIA+ rights, integration of migrants, institutional development of equal opportunities, and the weaponising of disinformation.²⁸ This forum is important not only because it marks International Human Rights Day and raises awareness of human rights issues in Lithuania, but also owing to the creation of an environment for constructive discussions between members of the national government, academia, CSOs and vulnerable groups. Speakers share their perspectives, opinions, research findings and personal experiences, contributing to normalising discussion on human rights-related issues in the public sphere. This year's Forum was attended by 216 people and aired online, with discussion recordings available on the Forum's YouTube channel.²⁹

26 Lithuanian Radio and Television (2024), 'Lithuanian government to turn to Constitutional Court to invalidate anti-LGBTQ law, Lithuanian Radio and Television', 14 February 2024, available at: <https://www.lrt.lt/en/news-in-english/19/2195979/lithuanian-government-to-turn-to-constitutional-court-to-invalidate-anti-lgbtq-law>.

27 Lithuanian Radio and Television (2024), 'National Human Rights Forum took place', 10 December 2024, available at: <https://www.lrt.lt/naujienos/lietuvoje/2/2434884/vyko-nacionalinis-zmogaus-teisiu-forumas>.

28 National Human Rights Forum, available at: <https://nztf.lt/en/>.

29 National Human Rights Forum channel, available at: <https://www.youtube.com/@nacionaliniszmogaus-teisi-uf5850>.

CONTACT

Human Rights Monitoring Institute

Human Rights Monitoring Institute (HRMI) is a non-governmental, not-for-profit human rights organisation. Since its establishment in 2003, HRMI has been advocating for full compliance of national laws and policies with international human rights obligations, and working to ensure that rights can be exercised in practice.

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ABOUT THE AUTHORS

The Daphne Caruana Galizia Foundation



The Daphne Caruana Galizia Foundation was established in Malta following the tragic assassination of investigative journalist Daphne Caruana Galizia in 2017. The Foundation is dedicated to seeking justice for Daphne, ensuring her investigative work continues, and advocating for press freedom and accountability.

KEY CONCERNS

Justice System

The justice system in Malta remains heavily burdened with inefficiencies resulting in severe delays. Key roles remain politicised. Increased transparency in key processes is required. Regulation of certain key players within the justice system is needed. Access to justice stands to be improved.

There has been no progress in involving the judiciary in appointing a Chief Justice. Lack of resources remains a problem.¹ Investigations into corruption remain inefficient with limited success.² There have been no formal steps toward establishing a National Human Rights Institution (NHRI),³ nor have there been steps toward a framework for public participation in the legislative process.

Anti-Corruption Framework

Throughout 2024, the government continued to delay the implementation of the Public Inquiry recommendations into Daphne Caruana Galizia's assassination, as well as recommendations from the European Commission's Rule of Law Report, the Venice Commission, and GRECO related to fighting corruption in Malta.

No effective measures have been introduced to address the length of high-level corruption investigations nor to prosecute the individuals involved. There are no prosecutions of high-level, large-scale corruption and therefore no robust track record of final judgments.

- 1 As at 1 October 2024 150 trials by jury were awaiting a start date & 1700 magisterial inquiries were currently pending; Matthew Agius, *Chief Justice expresses concern at lack of specialised court staff*, Malta Today, 1 October 2024, https://www.maltatoday.com.mt/news/national/131493/chief_justice_expresses_concern_at_lack_of_specialised_court_staff.
- 2 Sean Montebello, *Anti-corruption commission investigations 'under-resourced' raising questions on effectiveness*, *The Shift News*, 25 November 2023, <https://theshiftnews.com/2023/11/25/anti-corruption-commission-investigations-under-resourced-raising-questions-on-effectiveness/>; Judge Emeritus Lawrence Quintano reappointed as Chair of Permanent Commission Against Corruption, *The Malta Independent*, 15 July 2024, <https://www.independent.com.mt/articles/2024-07-15/local-news/Judge-Emeritus-Lawrence-Quintano-reappointed-as-Chair-of-Permanent-Commission-Against-Corruption-6736262746>; Statistics published in September 2024 show 1625 pending magisterial inquiries & 62 pending money laundering cases, Court Services Agency, Criminal Courts and Tribunals Directorate, <https://courts.gov.mt/wp-content/uploads/2024/10/09.-Statistika-Settembru-2024-Qrati-Kriminali.pdf>.
- 3 ENNHRI, *The state of the rule of law in the European Union, Reports from National Human Rights Institutions Malta*, 2024 https://ennhri.org/wp-content/uploads/2024/04/Malta_Country-Report_Rule-of-Law-2024.pdf.

Media Environment and Media Freedom

In practice, there has been little progress in the area of media freedom. There are a number of shortcomings in Malta's transposition of the Anti-SLAPP Directive. The recommendations of the public inquiry into Daphne Caruana Galizia's death continue to be ignored. A lack of access to information continues to be an obstacle for journalists.

There has been no adoption of safeguards to improve the working environment of journalists, apart from the inadequate transposition of the EU Anti-SLAPP Directive. Access to information and documents is still difficult for journalists, who are often denied access to information by government entities.

Checks and Balances

While, on paper, Malta has some checks and balances in place, many do not enable real action against or accountability for instances of wrongdoing. The government has ignored a number of recommendations made in this regard.

There has been no progress concerning the establishment of an NRHI in line with the Paris Principles. Despite the commitments declared in Malta's 2023 Rule of Law Submissions, no laws have been tabled in Parliament. There have been no developments since our previous Rule of Law Submission, and no laws have been enacted in this regard in the 10 years since the launch of the reform in 2014.

Civic Space

Civic space in Malta has become more vibrant and proactive on environmental issues, social justice, media freedom, corruption, and women's rights following the assassination of Daphne Caruana Galizia. The strength of numerous grassroots activist groups led to several resignations in government in 2019 and after that.

There is very little information available regarding the success of recommendation implementations. What we do know is that government officials continue to label anti-corruption journalists and activists as enemies of the state. This, in turn, negatively impacts public trust in independent media and civil society.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

There have been no initiatives to foster a culture of rule of law by the government or its agencies. A number of CSOs have rule-of-law projects relating to access to justice, independence of the judiciary, safeguarding the media and access to fundamental rights, yet implementation continues to be a problem.

While the Ministry of Justice set up a 'Justice Form' through the Open Government Partnership action plan aimed at improving dialogue with civil society, this turned out to be a waste for civil society organisations involved. Dialogue and consultation with

the government on actions to strengthen the rule of law continue to be weak.

State of play (versus 2024)

- Justice system
- Anti-corruption framework
- Media Environment and Media Freedom
- Checks and balances
- Civic Space
- Human Rights

Legend

Regression



No progress



Progress



JUSTICE SYSTEM

Key recommendations

It is essential that the systemic state failures identified by the public inquiry into the assassination of Daphne Caruana Galizia and all the recommendations, including those concerning the rule of law and organised crime, are effectively addressed. In the interests of transparency and effectiveness, independent technical studies and a transparent process of structured public consultation need to precede the drafting of legislation based on the recommendations of the public inquiry, and the legislation itself needs to be submitted to parliamentary scrutiny before its enactment. For this reason, we cannot limit the issues around justice in Malta to three key recommendations. Listed below are examples of how justice can be strengthened in Malta:

- *Introduce or amend legislation to ensure that key offices, such as that of the Chief Justice, the Police Commissioner, the Attorney General, and the judiciary, are fully depoliticised.*
- *Introduce legislation for the better regulation of members of the legal profession, court experts and interpreters.*
- *The Ministry for Justice should take concrete steps to ensure the comprehensive and timely digitisation of the court system.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

Judges and magistrates are appointed by the President of Malta acting on the advice of the Judicial Appointments Committee,⁴ which is

composed of: the Chief Justice presiding over the Committee, two members elected for four years from among judges, a member elected for four years by the magistrates, the Auditor General, the Ombudsman, and the President of the Chamber of Advocates. The Committee also has a secretary who is appointed by the Minister for Justice.⁵

4 Judiciary Malta, The Judiciary, <https://judiciary.mt/en/the-judiciary/#:~:text=Members%20of%20the%20Judiciary%20are%20appointed%20by%20the%20President%20of,of%20the%20Constitution%20of%20Malta.>

5 Judiciary Malta, The Judicial Appointments Committee <https://judiciary.mt/en/the-judicial-appointments-committee/>.

The appointment system for judges and magistrates remains politicised in that the President (who is in turn appointed by Parliament) continues to be responsible for appointments.

Despite calls by the Venice Commission⁶ and civil society⁷ for increased transparency within the judicial appointment system, information relating to candidates applying for judicial positions, the number of applications received, shortlisted candidates, appointment criteria, ranking systems, etc. remains unavailable to the public.

The Chief Justice is appointed by the President of the Republic acting in accordance with a resolution of the House of Representatives supported by the votes of not less than two-thirds of all the members of the House.⁸ Despite a specific recommendation to this effect from the European Commission in its 2024 Rule of Law Report,⁹ there has still been no move to depoliticise the appointment of the Chief Justice.

The Attorney General (public prosecutor) is appointed by the President on the advice of the Prime Minister,¹⁰ and this role is thus highly politicised.

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

Judges enjoy security of tenure, meaning that a judge may be removed from office only by a decision made by the Commission for the Administration of Justice, which may be appealed by the judge before the Constitutional Court. The Constitution provides for a compulsory retirement age for judges (including the Chief Justice). This age is currently set at 65 years but can be extended to 68 years.¹¹

Disciplinary procedures in relation to members of the judiciary can only be initiated by the Chief Justice or the Minister for Justice. They are carried out by the Committee for Judges and Magistrates (composed of selected

6 Council of Europe, Venice Commission, Malta, Opinion On Ten Acts And Bills Implementing Legislative Proposals Subject Of Opinion CDL-AD(2020)006, 8 October 2020, [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)019](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)019).

7 aditus & Daphne Caruana Galizia Foundation, Submission to UN Special Rapporteur on independence of judges & lawyers, 29 January 2024, <https://aditus.org.mt/aditus-the-daphne-caruana-galizia-foundation-submission-to-the-un-special-rapporteur-on-the-independence-of-judges-and-lawyers-2024/>; aditus foundation & The Daphne Caruana Galizia Foundation, 2023 Rule of Law Report, Joint Submission, <https://aditus.org.mt/Publications/2023ruleoflawreportsubmission.pdf>.

8 Judiciary Malta, Chief Justice, <https://judiciary.mt/en/the-chief-justice/>.

9 European Commission, 2024 Rule of Law Report, 24 July 2024, https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_en.

10 Cap 90 Laws of Malta, Attorney General Ordinance, <https://legislation.mt/eli/cap/90/eng>.

11 Judiciary Malta, Judges, <https://judiciary.mt/en/the-judges/>.

members of the judiciary).¹² Disciplinary procedures concerning the Chief Justice can only be initiated by the Minister for Justice, not judicial peers.

The limitations posed by the fact that only the Chief Justice or Minister for Justice may initiate disciplinary procedures against members of the judiciary are apparent in the case of a magistrate who breached procedure by reportedly taking case files home, causing undue delays in court proceedings. The Minister did not ask the Commission for the Administration of Justice to investigate this misbehavior and consequently, no disciplinary action was taken.¹³

The Attorney General can only be removed from office by the President supported by the votes of at least two-thirds of all the members of the House of Representatives on the grounds of proven inability to perform the functions of office or proven misbehavior.¹⁴

Removal of members of tribunals or quasi-judicial bodies is usually the prerogative of the President acting on the advice of the Prime

Minister. There is no right of appeal from removal nor oversight from the Chief Justice or the Committee for Judges and Magistrates. These board members are not bound by any code of ethics or disciplinary proceedings.

We strongly urge the Commission to recommend:

- depoliticising the appointment system for judges and magistrates, including for the Chief Justice,
- increasing transparency within the judicial appointment system,
- depoliticising the appointment of the Attorney General,
- a change in procedure before the Committee for Judges and Magistrates which allows any member of the judiciary to initiate disciplinary procedures,
- the strengthening of the removal procedure for members of tribunals,

12 Judiciary Malta, Disciplinary Procedures of the Judiciary, <https://judiciary.mt/en/disciplinary-proceedings-of-the-judiciary/>.

13 Kurt Sansone, *Justice Minister miffed but does not use power to request probe into 'irresponsible' magistrate*, 20 October 2024, https://www.maltatoday.com.mt/news/national/131835/justice_minister_miffed_but_does_not_use_power_to_request_probe_into_irresponsible_magistrate.

14 ACT No. XLV of 2020, 7 August 2020, <https://legislation.mt/eli/act/2020/45/eng/pdf>; Kyle Patrick Camilleri, *PN does not exclude filing impeachment motion against Attorney General*, 8 October 2023, <https://www.independent.com.mt/articles/2023-10-08/local-news/PN-does-not-exclude-filing-impeachment-motion-against-Attorney-General-6736255438>.

- that members of tribunals are made subject to the judicial code of ethics.¹⁵

Promotion of judges and prosecutors

There is no publicly available information on the promotion of judges and prosecutors. Consequently, judicial or administrative review of any decision in this regard is not possible.

Article 101A(13) of the Constitution grants the President, on advice of the Chief Justice, the power to decide on the subrogation of judges and magistrates and to the assignment of duties of judges and magistrates.¹⁶

The Judiciary Malta website states that the President of Malta assigns to each of the judges and magistrates the court or the section of the court in which he shall ordinarily reside, acting on the recommendation of the Chief Justice. Where more than one judge or magistrate is assigned to a court or a section of the court, the Chief Justice shall assign the duties to the judges and magistrates as he deems most appropriate. If the Chief Justice fails to make such a recommendation, the President of the Republic shall act on the advice of the Minister for Justice.¹⁷ The exact procedure adopted is unclear.

Prosecutors are regulated by a collective agreement which is not in the public domain, and therefore we cannot comment on procedures for promotion. The Internal Guidelines for Prosecutors are not public.¹⁸

We strongly urge the Commission to recommend:

- transparency as to the procedures adopted for the promotion of both judges and prosecutors,
- transparency as to the procedures adopted concerning prosecutors.

Allocation of cases in courts

The Chief Justice decides on the distribution of duties in general between judges, and the Court registrar assigns cases to the judges as directed by the Chief Justice.¹⁹

If any dispute arises as to whether a case or other judicial act is to be assigned to one judge or to another judge sitting in the same court or in the same chamber or section of a court, or when a dispute arises as to which chamber or section of a court is to deal with a particular case or a particular judicial act, the matter is referred to the Chief Justice who shall, in camera, determine the judge or chamber or

15 JudiciaryMalta, Code of Ethics for the Judiciary, <https://judiciary.mt/en/code-of-ethics-for-the-judiciary/>.

16 Constitution of Malta, <https://legislation.mt/eli/const/eng>.

17 Judiciary Malta, Chief Justice, <https://judiciary.mt/en/the-chief-justice/>.

18 Office of the Attorney General, Guidelines, <https://attorneygeneral.mt/guidelines/>.

19 Cap 12 Laws of Malta, Code of Organisation and Civil Procedure, article 11(3).

section to which the case or judicial act shall be assigned.²⁰

With regard to tribunals and quasi-judicial tribunals, there is no standard procedure, and generally, the boards regulate the procedure to be adopted themselves, including the allocation of cases. In most cases, these rules and procedures are not public.

We strongly urge the Commission to recommend:

- transparency regarding rules and procedures applicable to tribunals and quasi-judicial tribunals

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

The Commission for the Administration of Justice (CAJ) is composed of the President, the Chief Justice who shall be Deputy Chairman and (b) two members elected for four years by the judges from among themselves; (c) two members elected for four years by the magistrates from among themselves; (d) two members appointed for four years: one by the

Prime Minister and the other by the Leader of the Opposition; and (e) the President of the Chamber of Advocates.²¹ It is not clear why there are two representatives appointed by the Prime Minister and the opposition, respectively, as this leads to unnecessary politicisation of the CAJ.

The CAJ has jurisdiction over the workings of the courts and the behaviour of judges, magistrates, lawyers and legal procurators. It has no jurisdiction over adjudicators who sit on tribunals, commissioners for justice, mediators, and arbitrators.²²

Dr. Pawlu Lia was appointed by disgraced former Prime Minister Joseph Muscat as the government's representative on the CAJ. There have been calls from civil society to remove him from this position, which is beset with conflicts of interest. Most notably, Dr. Pawlu Lia continues to practice law (appearing before the same magistrates and judges which the CAJ is supposed to discipline). Moreover, he is Muscat's long-standing legal counsel, as well as the former father-in-law of practicing magistrate, Nadia Lia.²³

The names of the elected members of the judiciary who sit on the Commission are not public, therefore it is unclear whether Dr. Lia

20 Cap 12 Laws of Malta, Code of Organisation and Civil Procedure, article 11(9).

21 JudiciaryMalta, Commission for the Administration of Justice, <https://judiciary.mt/en/the-commission-for-the-administration-of-justice/>.

22 Constitution of Malta, Article 101A(11), <https://legislation.mt/eli/const/eng>.

23 Matthew Vella, *No room for Muscat lawyer on judicial watchdog, Repubblika tells PM*, *Malta Today*, 21 September 2022, https://www.maltatoday.com.mt/news/national/118865/no_room_for_muscat_lawyer_on_judicial_watchdog_repubblika_tells_pm.

continues to sit on the Commission, although it is highly likely and has been reported as such in the press in 2024.²⁴

The Committee for Judges and Magistrates is a sub-committee of the CAJ tasked with judicial discipline. It consists of three members of the judiciary who are not members of the CAJ and who shall be elected from amongst judges and magistrates. In disciplinary proceedings against a magistrate two of the three members shall be magistrates and in the case of disciplinary proceedings against a judge two of the three members shall be judges.²⁵

Disciplinary proceedings against a judge or a magistrate shall be commenced upon a complaint made to the Committee by the Chief Justice or by the Minister responsible for justice, for breach of the provisions of the Code of Ethics for Members of the Judiciary or of similarly promulgated code or disciplinary rules for members of the judiciary.²⁶

Therefore, proceedings can only start with the Chief Justice or the Minister's action. This is problematic as the initiation of proceedings rests solely on the discretion of two persons – one an elected politician and the other appointed by an elected politician.

The judiciary website provides limited information about the possibility of a complaint to the CAJ being filed by a member of the public.²⁷

No public information exists regarding the number of complaints received by the CAJ, the number of complaints investigated, or the number of complaints referred to the Committee for Judges and Magistrates by the Chief Justice and/or the Minister for Justice.

We strongly urge the Commission to recommend:

- a change in the composition of the CAJ in order for this body to become fully depoliticised,
- that the method for the public to file complaints to the CAJ be modernised, better publicised and made more accessible,
- to ensure the publication of annual reports by the CAJ including statistical data about complaints received and action.

24 The Shift, *Justice Minister silent on fraud charges faced by Commissioner Alessandro Lia*, <https://theshiftnews.com/2024/09/18/justice-minister-silent-on-fraud-charges-faced-by-commissioner-alessandro-lia/>.

25 Constitution of Malta, Article 101B(1), <https://legislation.mt/eli/const/eng>.

26 Constitution of Malta, Article 101B(5), <https://legislation.mt/eli/const/eng>.

27 Judiciary Malta, FAQs, <https://judiciary.mt/en/frequently-asked-questions/>.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

There is no publicly available information about any disciplinary procedures the CAJ or the Committee for Judges and Magistrates have carried out regarding members of the judiciary.

Despite several calls for action to be taken against Magistrate Nadine Lia and her former husband Alessandro Lia (a lawyer and Commissioner for Justice) due to pending criminal charges against both,²⁸ Magistrate Lia retains her position within the judiciary. It is to be noted that Alessandro Lia's father likely still sits on the CAJ. There is no publicly available information of any disciplinary action having been carried out in relation to Magistrate Lia.

In September 2024, a magistrate ordered the Police Commissioner to initiate criminal

proceedings against the Commissioner for Justice Alessandro Lia after declaring that there is enough evidence to suggest that he is complicit in fraud and the making of false declarations.²⁹ There are reports of a reluctance on the part of the police to charge Mr. Lia.³⁰ To date, Lia retains his post and the Minister for Justice has not made public mention of any planned disciplinary action.³¹

During a case before the Constitutional Court, a lawyer accused a sitting magistrate of exerting undue pressure on his client outside the court.³² There is no publicly available information of any disciplinary investigations having been carried out.

There have been several instances of prosecutors moving from the Attorney General's office to the private defence of the accused, as reported by the Aditus Foundation in their 2024 submission.³³ The proposals, resulting from an independent inquiry into the case

28 The Shift, *Pressure mounts as Justice Commissioner faces charges of aggravated grievous bodily harm*, 18 July 2023, <https://theshiftnews.com/2023/07/18/pressure-mounts-as-justice-commissioner-faces-charges-of-aggravated-grievous-bodily-harm/>.

29 Miguel Azzopardi, *Magistrate orders criminal proceedings against Justice Commissioner*, *Newsbook*, 16 September 2024, <https://newsbook.com.mt/en/magistrate-orders-criminal-proceedings-against-justice-commissioner>.

30 Mark Camilleri, *A reluctance by the Police to charge Alessandro Lia: Pawlu Lia's son*, *The Maltese Herald*, 14 October 2024, <https://themalteseherald.com/2024/10/14/a-reluctance-by-the-police-to-charge-alessandro-lia-pawlu-liason/>.

31 The Shift, *Justice Minister silent on fraud charges faced by Commissioner Alessandro Lia*, 18 September 2024, <https://theshiftnews.com/2024/09/18/justice-minister-silent-on-fraud-charges-faced-by-commissioner-alessandro-lia/>.

32 Matthew Xuereb, *Lawyer recounts how magistrate exerted 'pressure' on client*, *Times of Malta*, 23 November 2013, <https://timesofmalta.com/article/lawyer-recounts-magistrate-exerted-pressure-client.1068945>.

33 aditus, *2024 Rule of Law Submission Malta*, January 2024, <https://aditus.org.mt/wp-content/uploads/2024/01/2024-Rule-of-Law-Submission.pdf>.

of Charles Mercieca (who had resigned from the AG's office and appeared in court as the defence counsel of a suspected murderer the next day),³⁴ suggest that public prosecutors should be barred from appearing for persons or companies against whom proceedings were instituted during their period of employment.³⁵ They have not been taken up. It should be noted that this same lawyer was later charged with attempted bribery of a journalist, but was acquitted on a technicality.³⁶ There is no publicly available information of any disciplinary measures having been taken against the lawyer involved and he continues to practise law at the time of writing.³⁷

We urge the Commission to recommend to the Maltese government:

- to make public the number of proceedings or investigations carried out annually in relation to members of the judiciary,
- to take heed of the findings and recommendations of the independent inquiry in

relation to all prosecution lawyers, current and future, moving to criminal defence – including by imposing a cooling-off period – in order to avoid conflict of interest.

Remuneration/bonuses for judges and prosecutors

Salaries for the Chief Justice, the judiciary, the Attorney General and the State Advocate are prescribed by law.

Independence/autonomy of the prosecution service

We underscore the importance of an independent prosecution service, which is a key element for the maintenance of judicial independence.

Despite some reforms being made in 2019, in practice the appointment of the Attorney General still remains under the control of the Prime Minister.³⁸ The appointment criterion for the Attorney General remains only that of being qualified for appointment as a judge of

34 Ivan Martin, *Lawyer with state prosecutor joins Yorgen Fenech defence team*, *Malta Independent*, 6 May 2020, <https://timesofmalta.com/article/state-prosecutor-joins-yorgen-fenech-defence-team.790394>.

35 Kevin Schembri Orland, *Inquiry into Charles Mercieca recommends new safeguards; 'does not appear he accessed Fenech's file*, *Malta Independent*, 11 June 2020, <https://www.independent.com.mt/articles/2020-06-11/local-news/Issue-whether-Mercieca-broke-criminal-code-or-code-of-ethics-beyond-scope-of-inquiry-6736224099>.

36 Matthew Agius, *Yorgen Fenech lawyers' acquittal over bribery charges confirmed on appeal*, *Malta Today*, 23 March 2023, https://www.maltatoday.com.mt/news/court_and_police/121955/yorgen_fenech_lawyers_acquittal_over_bribery_charges_confirmed_on_appeal.

37 Malta Independent, *Yorgen Fenech renews bail request, citing legal time limits*, 6 December 2024, <https://www.independent.com.mt/articles/2024-12-06/local-news/Yorgen-Fenech-renews-bail-request-citing-legal-time-limits-6736266340>.

38 Cap 90 Laws of Malta, Attorney General Ordinance, Article 2(2)(a), <https://legislation.mt/eli/cap/90/eng>.

the Superior Courts.³⁹ Whilst the new procedures for the appointment of the Attorney General see the setting up of the Appointment Commission, the members of the Commission are handpicked by the Minister for Justice as persons who “in his opinion are respected and trusted by the public and are technically qualified to examine whether candidates for the office of Attorney General have the appropriate qualifications and other merit and suitability”.⁴⁰ The law provides no definition of ‘technically qualified’ or any guidance or criteria for someone to be considered ‘respected and trusted by the public’, leaving much to the Minister’s discretion.

The removal of the Attorney General by a two-thirds majority in Parliament,⁴¹ as with the State Advocate, is inadequate. In fact, the Venice Commission recommends that there be

established an expert body or an appeal to the Constitutional Court against the decision for removal before Parliament takes a final decision by a two-thirds majority.⁴²

The method of appointment of the Police Commissioner remains highly politicised, with the Prime Minister selecting a Police Commissioner from a shortlist prepared by the Public Service Commission, the members of which are in turn appointed by the Prime Minister.⁴³ There remains considerable room for improvement,⁴⁴ as shown by the public outcry following the repeat appointment of Angelo Gafa’ for a second four-year term as Malta’s Police Commissioner.⁴⁵ Gafa’ faced several calls for resignation during his previous term for failure to investigate serious crime. Notably, he had refused to investigate the government’s fraudulent hospitals’ deal with Steward⁴⁶ which has

39 Constitution of Malta, Article 91(2), <https://legislation.mt/eli/const/eng>.

40 Cap 90 Laws of Malta, Attorney General Ordinance, Article 2(2)(a), <https://legislation.mt/eli/cap/90/eng>.

41 Constitution of Malta, Article 91(5) Constitution, <https://legislation.mt/eli/const/eng>.

42 aditus, *Venice Commission: regrets that 6 Bills adopted before opinion could be finalised, before it could engage with the national stakeholders*, 30 August 2021, <https://aditus.org.mt/venice-commission-regrets-that-6-bills-adopted-before-opinion-could-be-finalised-before-it-could-engage-with-the-national-stakeholders/>.

43 Public Services Commission, *About the Commission*, <https://psc.gov.mt/en/about-the-commission/#:~:text=The%20Commission%20consists%20of%20a,the%20Leader%20of%20the%20Opposition>.

44 Mario Xuereb, *PN wants police chief appointed by two-thirds, with constitutional protections*, *Time of Malta*, 8 July 2024, <https://timesofmalta.com/article/pn-police-commissioner-appointment-two-thirds-constitution-proposal.1095050>.

45 Malta Independent, *Gafa’ appointment as police commissioner extended for four more years*, 30 June 2024, <https://www.independent.com.mt/articles/2024-06-30/local-news/Gafa-appointment-as-police-commissioner-extended-for-four-more-years-6736262365>; The Shift, *Angelo Gafa’ doubles his income as allowances surpass his salary*, 16 October 2024, <https://theshiftnews.com/2024/10/16/angelo-gafa-doubles-his-income-as-allowances-surpass-his-salary/>.

46 Matthew Vella, *Grech: Gafa’ refusing to carry out independent criminal investigation into Vitals collusion*, 28 October 2023, https://www.maltatoday.com.mt/news/national/125722/grech_gaf_refusing_to_carry_out_independent_criminal_investigation_into_vitals_collusion.

now, thanks to the conclusion of a magisterial inquiry commenced by NGO Repubblika, seen former Prime Minister Joseph Muscat and several members of his cabinet charged with serious crimes.⁴⁷ The opposition has presented a draft law in Parliament seeking to ensure police commissioners are appointed by the President with a two-thirds majority of votes within the House of Representatives, thereby guaranteeing the office holder's security of tenure. It also seeks to entrench this revised method of appointment into the Constitution, to prevent any current or future government from reverting to the existing selection process through a simple majority vote.⁴⁸

We urge the Commission to recommend:

- the introduction of an appointments procedure for the Attorney General that is depoliticised and includes cooperation between various state organs and in which advice on the professional qualification of candidates should be taken from relevant experts including the legal community and civil society, as suggested by the Venice Commission,

- bringing the removal procedure for the Attorney General in line with the recommendations of the Venice Commission,
- the depoliticisation of the appointment procedure for the role of police commissioner.

Independence of the Bar (chamber/association of lawyers) and of lawyers

The Chamber of Advocates is run by private lawyers on a voluntary basis. It is funded through annual membership fees and remuneration from activities and seminars.⁴⁹ No public funding is assigned to the Bar and consequently it lacks fulltime board members and sufficient employees to be able to function sustainably.

To date Maltese legal professionals remain generally unregulated, bar a few haphazard provisions in the law⁵⁰ and the Code of Ethics published by the Chamber of Advocates.⁵¹

The Chamber of Advocates has lobbied for an adequate law governing the legal profession for several years. An act amending existing

47 Malta Independent, *Leaked documents reveal Steward Health Care's alleged €1 million bribery fund linked to government*, 1 December 2024, <https://www.independent.com.mt/articles/2024-12-01/local-news/Leaked-documents-reveal-Steward-Health-Care-s-alleged-1-million-bribery-fund-linked-to-government-6736266199>.

48 Mario Xuereb, *PN wants police chief appointed by two-thirds, with constitutional protections*, *Times of Malta*, 8 July 2024, <https://timesofmalta.com/article/pn-police-commissioner-appointment-two-thirds-constitution-proposal.1095050>.

49 Chamber of Advocates Malta, *About Us*, <https://www.avukati.org/about-us/>.

50 Cap 369 Laws of Malta, *Commission for the Administration of Justice*, <https://legislation.mt/eli/cap/369/eng>; Cap 12 Laws of Malta, *Code of Organisation and Civil Procedure*, <https://legislation.mt/eli/cap/12/eng/pdf>.

51 Chamber of Advocates, *Code of Ethics*, <https://www.avukati.org/download/code-of-ethics/>.

legislation relating to the profession came into force in 2021,⁵² however an amendment bill was presented just weeks later. This bill was met with disdain from the Chamber of Advocates which declared that the fact that the bill “proposes to amend and even delete a number of provisions introduced... only a few weeks ago... is ample evidence of the absence of any well thought-out and considered strategy to regulate the profession”.⁵³ The bill was consequently scrapped.⁵⁴

In October 2023 the Chamber of Advocates presented its ‘Justice 2030’ proposals aimed at improving the justice system. A year later, no progress has been registered to that end.⁵⁵

We urge the Commission to recommend:

- the enactment of a comprehensive Lawyers Act regulating the legal profession,

taking heed of the Chamber’s Justice 2030 proposals,

- access to funds and/or HR support (such as seconded public servants) to the Chamber of Advocates in order to increase capacity.

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

The most concerning developments are repeated attempts on the part of the Prime Minister to violate the principle of separation of powers through his attacks on the judiciary. For instance, in a press conference, the Prime Minister heavily criticised the conclusions of a magisterial inquiry calling for charges to be issued against former Prime Minister and Labour leader Joseph Muscat, drawing condemnation from NGOs and student bodies.⁵⁶

52 ACT No. XIX of 2021, AN ACT to amend legislation regulating the legal profession, 20 April 2021, <https://legislation.mt/eli/act/2021/19/eng>.

53 Chamber of Advocates, *Communication to all members of the legal profession*, 10 June 2021, <https://www.avukati.org/2021/06/10/communication-by-the-chamber-of-advocates-to-all-members-of-the-legal-profession/>.

54 Sabrina Zammit, *Bill amending legal profession scrapped*, as government and Chamber discuss changes, 20 February 2022, <https://www.independent.com.mt/articles/2022-02-20/local-news/Bill-amending-legal-profession-scrapped-as-government-and-Chamber-discuss-changes-6736240764>.

55 Isaac Saliba, *Malta needs to regulate Lawyers and introduce Lawyers Act, Chamber of Advocates President says*, Malta Independent, 1 October 2024, <https://www.independent.com.mt/articles/2024-10-01/local-news/Malta-needs-to-regulate-Lawyers-and-introduce-Lawyers-Act-Chamber-of-Advocates-President-says-6736264547>.

56 Jurgen Balzan, *Chamber of Advocates president reiterates that attacks on judiciary are ‘unacceptable’*, Newsbook, 10 May 2024, <https://newsbook.com.mt/en/chamber-of-advocates-president-reiterates-that-attacks-on-judiciary-are-unacceptable/>; The Shift, *Aditus ‘strongly condemns’ PM’s ‘blatant attack’ on judiciary, journalists*, 7 May 2024 <https://theshiftnews.com/2024/05/07/aditus-strongly-condemns-pms-blatant-attack-on-judiciary-journalists/>; The Malta Independent, *Law Students’ Society condemns Prime Minister’s ‘unwarranted attacks on the judiciary’*, 30 May 2024, <https://www.independent.com.mt/articles/2024-04-30/local-news/Law-Students-Society-condemns-Prime-Minister-s-unwarranted-attacks-on-the-judiciary-6736260673>.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Legal aid

At the end of 2023 a new system of legal aid panels was set up whereby lawyers appointed as legal aid lawyers are placed on panels depending on legal expertise,⁵⁷ which is a positive development, however much remains to be done to make the system more accessible and improve the quality of service.

Legal aid access in civil cases is subject to a means and merits test. In order to qualify for legal aid a person must not possess property of any sort with a net value of €13,000 or more, and one's yearly income must not be more than the national minimum wage, which is currently set at approximately €11,100.⁵⁸ This threshold has been consistently criticised by civil society organisations as being too low, thereby potentially excluding persons who, despite exceeding these criteria, still do not

have the means to retain a lawyer. The minimum threshold should be increased to take into account the increased market value of property and increased cost of living, especially in relation to individuals with families and older people who, although they may own property, do not have sufficient disposable income to be able to retain a lawyer.⁵⁹

It is also noteworthy that the Legal Aid Malta website⁶⁰ does not provide information on the thresholds mentioned above on any of its publicly accessible pages, including on the Legal Aid Malta Brochure.⁶¹ Furthermore, at the time of writing, the legal aid application feature on the website is not functioning.

The merits test requires individuals to show that they have a *probalis causa litigandi* – 'probable cause to litigate', that is, a plausible legal basis for the case. The criteria adopted in this assessment are not found in the law or in any guidelines. In many cases, this means that individuals who are otherwise eligible are often denied access to pre-litigation advice or assistance.⁶²

57 Government Gazette, No. 1784 Code Of Organization And Civil Procedure (CAP. 12), Appointment of Legal Aid Lawyers and Procurators, 22 December 2023, <https://www.parlament.mt/media/127471/03468.pdf>.

58 Cap 12 Laws of Malta, Article 912, Code of Organisation and Civil Procedure, <https://legislation.mt/eli/cap/12/eng/pdf>.

59 aditus, Input Paper on Access to Justice, 5 December 2023, <https://aditus.org.mt/published-input-paper-on-access-to-justice/#:~:text=The%20strengthening%20Access%20to%20Justice,that%20they%20have%20been%20violated.>

60 Legal Aid Malta, Home, <https://legalaidmalta.gov.mt/en/>.

61 Legal Aid Malta, Resources, <https://legalaidmalta.gov.mt/en/resources/#LegalAidBrochures>.

62 aditus, Input paper on Access to Justice, 5 December 2023, <https://aditus.org.mt/published-input-paper-on-access-to-justice/#:~:text=The%20strengthening%20Access%20to%20Justice,that%20they%20have%20been%20violated.>

It should be noted that legal aid should in principle be available to any person irrespective of nationality or residence status, however application for legal aid via the website requires a Maltese or EU e-ID. This results in an obstruction to access by persons who do not possess a residence card.⁶³

Furthermore, although social workers and lawyers can refer clients via the online system, this also must be done with the professional's personal E-ID since legal entities (such as NGOs, law firms etc.) do not possess an E-ID. This can give rise to problems in terms of continuity and data protection.

A recent news report relating to a specific criminal case highlighted the relatively common occurrence of legal aid lawyers failing to appear for court sittings without due notice.⁶⁴ We are not aware of any disciplinary action being taken against the lawyer in the aforementioned particular case, and, contrary to the principles of a fair trial, the sitting was allowed to continue. See also the case of *Feilazoo v*

Malta regarding access to legal aid in prison and in detention.⁶⁵

As noted by the Commission in its 2024 EU Justice Scoreboard, Malta is one of only six Member States in which legal aid beneficiaries are not automatically exempt from paying court fees.⁶⁶

Interpreting

Interpreters are assigned by the Court through a list of court interpreters.⁶⁷ There is no official designation of 'court interpreter' and most carry out ad hoc interpreting work if and when needed. Furthermore, the actual function of court interpreters is not regulated by legal norms, although references to the right to interpreters are provided for in criminal legislation. Some languages such as Bengali, Urdu, Hindi, Tagalog and Tigrinya are not listed. This is concerning as a high number of Indians, Pakistanis and Filipinos reside in Malta. There is no automatic right of the defendant to object to any particular interpreter if they have

63 Legal Aid Malta, Civil Legal Aid Cases, <https://legalaidmalta.gov.mt/en/services/civil-legal-aid-cases/>.

64 Edwina Brincat, *Marsa murder: Accused complains about absence of his lawyer*, *Times of Malta*, 8 January 2024, <https://timesofmalta.com/article/marsa-murder-accused-complains-absence-lawyer.1077003>.

65 ECHR, March 2021, *Feilazoo v Malta*, Para 58 & 128-130, <https://hudoc.echr.coe.int/fre#%7B%22itemid%22:%5B%22001-208447%22>.

66 European Commission, the 2024 EU Justice Scoreboard, https://commission.europa.eu/document/download/84aa3726-82d7-4401-98c1-fee04a7d2dd6_en?filename=2024%20EU%20Justice%20Scoreboard.pdf.

67 Malta Law Courts, List of Court Interpreters, <https://courts.gov.mt/wp-content/uploads/2022/07/translatorList.pdf>.

reservations. This has caused some problems during criminal proceedings.⁶⁸

Legal fees

In January 2023, the Minister for Home Affairs introduced fees, through a legal notice, for the filing of appeals from decisions on the issuance of residence permits (€45), visa (€120) and for matters of carrier liability (€120) for the first time.⁶⁹ This can be obstructive for people with low income.

Procedural Obligation under Article 460 Code of Organisation and Civil Procedure (COCP)

Art 460 of the COCP⁷⁰ obliges any person filing a suit against the government, on pain of nullity, to serve a judicial letter to the government

10 days before in which the party's claims are defined. There are a few exceptions in the law to this general rule, such as in cases relating to breaches of fundamental rights in the Constitution. This rule had been applied rigorously in favour of the government, which had the effect of limiting individual use of all remedies available under the law. A Constitutional Court judgement in 2020 held that this provision was unconstitutional due to the nullification of the suit if the procedure is not followed.⁷¹ In spite of this, Article 460 is still being utilised as a preliminary mechanism to quash cases instituted against the state before they even begin. There have been calls to amend this Article.⁷² In October 2024 the Chief Justice himself declared that when the Constitutional Court orders that a law be changed, this must happen without prevarication by the legislature.⁷³

68 Nicole Meilak, *Interpretation muddles leaves Paceville murder hearing postponed*, *MaltaToday*, 19 January 2023, https://www.maltatoday.com.mt/news/court_and_police/120820/interpretation_muddle_leaves_paceville_murder_hearing_postponed; Monique Agius, *El Hiblu: Defence seeks change in interpreter saying translation is not loyal to what is being said*, *Newsbook*, 25 May 2021, <https://newsbook.com.mt/en/el-hiblu-defence-seeks-change-in-interpreter-saying-translation-is-not-loyal-to-what-is-being-said/>; Matthew Agius, *Lawyer slams justice system after bail request filed two days ago only reaches court*, *MaltaToday*, 22 June 2023, https://www.maltatoday.com.mt/news/court_and_police/123597/lawyer_slams_justice_system_after_bail_request_filed_two_days_ago_only_reaches_court_on_thursday.

69 Legal Notice 1 of 2023, Immigration (Amendment) Regulations, 2023, <https://legislation.mt/eli/ln/2023/1/eng>.

70 Cap 12 Laws of Malta, Code of Organisation and Civil Procedure, <https://legislation.mt/eli/cap/12/eng/pdf>.

71 Clement Mifsud-Bonnici, Nigel Vella Micallef, *Malta Court removes Government litigation privilege in judicial review cases*, *Ganado Advocates*, <https://ganado.com/insights/publications/malta-court-removes-government-litigation-privilege-in-judicial-review-cases/>.

72 Andrew Drago, *Appell lil-Le iżlatur L-artikolu 460 tal-Kapitolu 12 tal-Li ijjiet ta' Malta*, *GHSL*, 17 October 2022, <https://www.ghsl.org/wp-content/uploads/2022/10/article-460-appell-lil-legislatur.pdf>.

73 Matthew Agius, *Chief Justice expresses concern at lack of specialised court staff*, *Malta Today*, 1 October 2024, https://www.maltatoday.com.mt/news/national/131493/chief_justice_expresses_concern_at_lack_of_specialised_court_staff.

Rightful defendant

Delays in cases relating to actions against the government have been blamed on unclear provisions and case-law on who is the rightful defendant under Maltese law. The Court of Appeal has suggested that only one entity should be sued in all actions against the government.⁷⁴

With respect to legal aid we urge the Commission to recommend:

- making legal aid accessible to all, irrespective of residence status or the possession of an identity document,
- increase in the financial thresholds for eligibility for legal aid & widen the merit test for eligibility for legal aid to include pre-litigation advice,
- ensure continuous training for legal aid lawyers,
- ensure a quick and effective method of filing complaints and starting disciplinary proceedings against legal aid lawyers who fail to appear for hearings,
- ensure that court sittings are suspended if legal aid lawyers do not show,

- ensure that the Legal Aid Agency publishes the list of legal aid lawyers and their contact details, statistics and an annual report on its activities.

With respect to interpreting we urge the Commission to recommend:

- introducing legislation on the regulation and function of interpreters in Court, including provisions allowing for the replacement of an interpreter at the reasonable request of the client,
- offering mandatory training to interpreters on interpreting in a court setting.

We also urge the Commission to recommend the following:

- an amendment to be made to article 460 of the COCP to reflect the decision of the constitutional court decision of 2020,
- an amendment to the law to establish that only one entity be sued in all actions against the government.

⁷⁴ Malcolm Mifsud, *Court of Appeal wants a one stop shop for when people sue the government*, *Malta Today*, 2 November 2023, https://www.maltatoday.com.mt/comment/law_report/125761/court_of_appeal_wants_a_one_stop_shop_for_when_people_sue_the_government.

Resources of the judiciary (human/financial/material)

In the Chief Justice's speech to mark the beginning of the forensic year – 1 October 2024, the day when the work of the courts officially begins – he expressed deep concern at the current lack of specialised court staff and repeated his plea for a dedicated building for inquiring magistrates. He called for stronger administrative and professional support systems in every area, in particular the Gozo courts. He also stressed the importance of having highly trained specialised clerks, messengers, court assistants, transcribers and deputy registrars. He furthermore recommended that a cohort of judges be appointed solely to preside over trials by jury, as well as a reclassification of the crimes that can be decided by juries and those which can be heard by a judge alone, in order to meet today's needs. While inviting the Minister to appoint two more magistrates to handle non-criminal cases, The Chief Justice also pointed out that this would create problems as to where to fit them in the already crowded court building.⁷⁵

Therefore there is a dissonance between high expenditure and the further deterioration of the efficiency of the justice system and the concerning lack of resources.⁷⁶ It cannot be said that the latter two issues have been addressed over the course of 2024.

We urge the Commission to recommend proper and effective assignment of resources to the judicial system.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

The annual budget allocated to the Judicial Studies Committee remains unchanged at €50,000.⁷⁷

There are no legal requirements for judges (or lawyers) to carry out professional development training in order to retain their position or license. Lawyers and other legal professionals are not required to carry out any continuing professional development training, a direct result of the lack of a comprehensive law governing the legal profession.

75 Matthew Agius, *Chief Justice expresses concern at lack of specialised court staff*, *Malta Today*, 1 October 2024, https://www.maltatoday.com.mt/news/national/131493/chief_justice_expresses_concern_at_lack_of_specialised_court_staff.

76 Malta Independent, *Government says there has been continuous and unprecedented investment in the courts*, 5 September 2024, <https://www.independent.com.mt/articles/2024-09-05/local-news/Government-says-there-has-been-continuous-and-unprecedented-investment-in-the-courts-6736263953>; Times of Malta, *PN demands government action to address huge caseload before the courts*, 1 October 2024, <https://timesofmalta.com/article/pn-demands-government-action-address-huge-caseload-courts.1098840>.

77 Ministry for Justice, *Financial Abstract*, <https://finance.gov.mt/wp-content/uploads/2024/02/fe24-24-Justice.pdf>.

We strongly urge the Commission to recommend:

- the introduction of mandatory training hours for all legal professionals as a condition for retaining their professional licenses,
- the introduction of mandatory training for all members of the judiciary, including members of tribunals.

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

The government allocated €3,227,000 in 2023 and a further €5,200,000 in 2024,⁷⁸ through EU funds, towards the digitisation of the justice system. Yet legal practitioners in Malta still lack the digital tools necessary to ensure efficiency.

General civil cases and constitutional cases cannot be filed online.⁷⁹ In order to file a case online, the legal practitioner must use their personal E-ID with their personal (not professional) information, such as home address, date and place of birth. This creates privacy issues

and issues of continuity in cases of a change of legal representative.

From the information available, the new court information management system has not yet been opened nor has the introduction of e-signatures for court documents begun. There is no possibility for a lawyer, client, or other involved party to file a notice online that they are unable to attend a sitting. Some documents, such as magisterial inquiry reports, need to be physically authenticated page by page by the inquiring magistrate. Documents filed online should become immediately effective as any delays could prejudice the outcome of a case, however, lawyers have reported that their online filings have sometimes still gotten lost.

The Chamber of Advocates President Peter Fenech stated that Malta is behind in terms of the digitisation of the court system and noted that the committee responsible for leading this process has yet to meet. He complained that there is no information on what progress, if any, has been made by this committee.⁸⁰

78 Ministry of Finance, The Budget 2024, <https://finance.gov.mt/budget24/>; European Commission, Digitalisation of civil proceedings and criminal judicial acts, https://commission.europa.eu/projects/digitalisation-civil-proceedings-and-criminal-judicial-acts_en.

79 eCourts, Submission of Acts, <https://ecourts.gov.mt/onlineservices/JForms/Index?;FormJurisdictionId=1>.

80 Matthew Farrugia, 'It's time to regulate lawyers' – Chamber of Advocates president tells lawmakers, *Malta Today*, 1 October 2024, https://www.maltatoday.com.mt/news/national/131494/its_time_to_regulate_lawyers_chamber_of_advocates_president_tells_lawmakers.

We therefore urge the Commission to recommend:

- timely and comprehensive implementation of Malta's justice system digitisation strategy including meaningful stakeholder engagement,
- the timely publication of reports of the Digital Justice Strategy Steering Committee on the progress of implementation.⁸¹

Other

The system through which the court appoints experts to give opinions on particular aspects of proceedings requires reform. There currently exists no college from which experts may be appointed, and no regulations establishing the necessary qualifications for such experts or disciplinary measures to which they may be subject in the event of misconduct. This often results in a perceived lack of independence and/or competence of court experts, further eroding public trust in the judicial system. In October

the Chief Justice noted that the absence of guidance in the law on the capping of experts' remuneration was being used unfairly to attack evidence in court.⁸²

Fairness and efficiency of the justice system

Length of proceedings

There has been no progress in reducing the length of court proceedings. These continue to be inordinately lengthy, which seriously threatens the rights of the most vulnerable to access the courts and right wrongs that they may have suffered. Malta has remained anchored at the bottom of an EU leaderboard showing the average time that a court takes to decide a case instituted against the government.⁸³

For example, one case we are assisting with relating to the violent death of a man in police custody⁸⁴ has been pending before the Constitutional Court since 2012.⁸⁵

81 Digital Justice Strategy Malta 2022 - 2027, The Digital Justice Strategy Committee, <https://digitaljustice.gov.mt/the-digital-justice-strategy-committee/>.

82 Matthew Agius, *Chief Justice expresses concern at lack of specialised court staff*, *Malta Today*, 1 October 2024, https://www.maltatoday.com.mt/news/national/131493/chief_justice_expresses_concern_at_lack_of_specialised_court_staff.

83 Daniel Ellul, *Justice delayed...Malta still at the bottom of EU scoreboard*, *Times of Malta*, 11 June 2024, <https://timesofmalta.com/article/justice-delayedmalta-still-bottom-eu-scoreboard.1093818>.

84 Matthew Agius, *Mamadou Kamara's murder: migrant repeatedly kicked as he tried to stand up*, *Malta Today*, 14 March 2017, https://www.maltatoday.com.mt/news/court_and_police/75315/mamadou_kamaras_murder_migrant_repeatedly_kicked_as_he_tried_to_stand_up.

85 Case 290 / 2012 - AGIUS MARY NOE vs ID-DIRETTUR TAR-REGISTRU PUBBLIKU ET., <https://ecourts.gov.mt/onlineservices/CivilCases/Detail/285217#>.

Magisterial inquiries, intended to gather evidence relating to serious crime, are also often extremely lengthy. This is detrimental to the results of the inquiry since evidence and witness testimony can be lost along the way. In 2023 it was reported that 1,700 magisterial inquiries are pending, one since 1979.⁸⁶ Statistics show that as of September 2024, 1625 magisterial inquiries were pending.⁸⁷

Malta failed to provide responses to questions relating to the length of proceedings in the questionnaire presented by the European Commission for the Efficiency of Justice, stating that “[i]t is presently not possible to derive this data from the case management system, and despite the fact that data is available, one has to go through the cases on a case-by-case basis”.⁸⁸

In the last examination by the Committee of Ministers of three cases decided by the ECtHR regarding the length of judicial proceedings in Malta, it was noted that “[i]n the *Spiteri* case, it is a matter of concern that the criminal proceedings against the applicant, which had been initiated more than 16 years ago (in May 2008)

are still pending to date... no information has been provided about procedural acts ordered or undertaken in the last seven years from the moment of the applicant’s extradition to Malta in 2017. No measures foreseen were reported with a view to accelerating or finalising these proceedings”.⁸⁹ Moreover, it was reported that “[i]nformation is also awaited in the *Tonna and Others* case on the status of the compensation proceedings resulting from land expropriation initiated more than 18 years ago (i.e., the proceedings started in 2006 and the European Court found a violation of the reasonable time requirement starting as of 2011)”.⁹⁰

The Committee of Ministers went on to state that “[t]he statistical data provided by the authorities show a mixed picture...[f]or other courts, such as the Court of Magistrates and the Constitutional Court, the situation... seems to have worsened in recent years, as acknowledged by the authorities. This is a matter of concern and shows that... the problem of length of criminal proceedings persists in the Maltese system as a whole and therefore there is a need for further measures... to ensure a more efficient adjudication of cases”.⁹¹

86 Matthew Xuereb, *Nearly 1,700 magisterial inquiries are pending, one since 1979*, *Times of Malta*, 27 April 2023, <https://timesofmalta.com/article/nearly-1700-magisterial-inquiries-pending-one-since-1979.1027874>.

87 Court Services Agency, Criminal Courts and Tribunals Directorate, <https://courts.gov.mt/wp-content/uploads/2024/10/09.-Statistika-Settembru-2024-Qrati-Kriminali.pdf>.

88 Council of Europe, European Commission for the Efficiency of Justice, Evaluation of the judicial systems 2024 (data 2022) <https://rm.coe.int/malta-2024-2022-/1680b1f6dc>.

89 Department for the Execution of Judgments of the UHCR, HUDOC EXEC Search, <https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22004-55613%22%7D>.

90 Ibid.

91 Ibid.

Execution of judgments

In his yearly address, the Chief Justice stated that public authorities should “clearly and unequivocally” respect and support the courts by ensuring that court decisions and orders are not hampered, defied, or ignored.⁹² “I need not speak more clearly about this,” said the Chief Justice, making specific reference to “orders by the Constitutional Court to effect changes to the laws”.⁹³

There are several judgments of the ECtHR in relation to the execution of which Malta is under ongoing supervision by the Committee of Ministers. The main issues reported are degrading treatment, length of proceedings, protection of private and family life, and protection of property.⁹⁴ Concerning the issue of the length of proceedings, the Committee “noted with concern that the criminal proceedings are still pending in the *Spiteri* case;

noted further the absence of information as concerns the *Tonna and Others* case; called on the Maltese authorities to swiftly finalise the proceedings in the *Spiteri* case and to submit information on the current stage of the proceedings in the *Tonna and Others* case”.⁹⁵

Respect for fair trial standards including in the context of pre-trial detention

In January 2024, Parliament voted to extend the legal pre-trial detention period from a maximum of 48 hours to a maximum of 96 hours in certain cases.⁹⁶

It is to be noted that the detention regime of migrants in Malta has been repeatedly and harshly criticised by the European Court of Human Rights, most recently in the case of *J.B. and Others v. Malta* relating to the treatment of vulnerable children in detention.⁹⁷

92 Edwina Brincat, *Chief justice urges public authorities to unequivocally respect court orders*, 1 October 2024, <https://timesofmalta.com/article/chief-justice-urges-public-authorities-respect-court-orders.1098844>.

93 Edwina Brincat, *Chief justice urges public authorities to unequivocally respect court orders*, 1 October 2024, <https://timesofmalta.com/article/chief-justice-urges-public-authorities-respect-court-orders.1098844>.

94 Council of Europe, Department for the Execution of Judgements of the European Court of Human Rights, Pending Cases, Main Cases under Supervision, <https://www.coe.int/en/web/execution/malta>.

95 Department for the Execution of Judgments of the UHCR, HUDOC EXEC Search, <https://hudoc.exec.coe.int/eng#%7B%22execidentifier%22:%5B%22004-55613%22%7D>.

96 Malta Independent, *Parliament votes to extend pre-trial arrest period for serious crime by 48 hours*, 30 January 2024, <https://www.independent.com.mt/articles/2024-01-30/local/Parliament-votes-to-extend-pre-trial-arrest-period-for-serious-crime-by-48-hours-6736258211>.

97 Neil Falzon, aditus, *The European Court of Human Rights blasts Malta's detention regime (again)*, 22 October 2024, <https://aditus.org.mt/the-european-court-of-human-rights-blasts-maltas-detention-regime-again/>; Mark Said, *An indictment of the Maltese government*, *Malta Today*, 21 November 2024, https://www.maltatoday.com.mt/comment/blogs/132373/an_indictment_of_the_maltese_government.

Rules on withdrawal and recusal of judges and their application in practice

The Code of Civil Procedure lists the circumstances under which a member of the judiciary should not preside over a civil or criminal case, including in all instances of presumed bias, partiality or lack of independence.

Article 734(1)(d) of the Code of Organization and Civil Procedure provides that a judge may be challenged or abstain from sitting in a cause (1) if he had given advice, pleaded or written on the cause or on any other matter connected therewith or dependant thereon; or (2) when he has previously taken cognizance of and expressed himself on the same merits of that cause when sitting as a judge in the court of voluntary jurisdiction.

This has at times been interpreted by the court strictly, as in the case of *Mary Grace D'Amato v Luqa D' Amato et*,⁹⁸ however, eminent jurist Giovanni Bonello opined that “[o]verriding that list is the constitutional imperative that all people in Malta must receive a fair hearing by an independent and

impartial tribunal. Any circumstance that puts their independence or impartiality in doubt, whether listed or not, compels the judge to drop the case ...”⁹⁹

In 2022, civil society group *Repubblika* filed an application calling on the courts to order the Police Commissioner to prosecute *Pilatus Bank* following the conclusion of a magisterial inquiry that found evidence of money laundering and criminal association, among other crimes. The NGO insisted the presiding magistrate recuse herself from the case because of her familial ties to Dr. Pawlu Lia, legal counsel for former Prime Minister Joseph Muscat, and previously, for the latter’s former Chief of Staff, Keith Schembri.¹⁰⁰ Schembri was reportedly implicated in the conclusions of the magisterial inquiry, which has not been made public.

In addition, *Repubblika* claimed that during her time as a practicing lawyer, the magistrate had publicly defended former Prime Minister Joseph Muscat and his administration, shedding doubt on her impartiality in a case involving the same.¹⁰¹ The Magistrate

98 Malcolm Mifsud, *Strict interpretation of the law when challenging a judge*, *Malta Today*, 6 April 2023, https://www.maltatoday.com/mt/comment/law_report/122155/strict_interpretation_of_the_law_when_challenging_a_judge.

99 Times of Malta, *Editorial: Recusal in the spirit of the law*, 15 September 2022 <https://timesofmalta.com/article/recusal-spirit-law.980840>.

100 Edwina Brincat, *Repubblika to take recusal case to ECHR after losing appeal*, *Times of Malta*, 31 May 2023, <https://timesofmalta.com/article/magistrate-nadine-lia-hear-repubblika-pilatus-case-ngo-loses-appeal.1034972>.

101 Times of Malta, *Recusal in the spirit of the law*, 15 September 2022, <https://timesofmalta.com/article/recusal-spirit-law.980840>.

however refused to recuse herself and went on to hear the case.¹⁰²

In a ruling given on 13 May 2024, the judge presiding over the civil court (family section) recognised “that it is particularly odious that the question of a judge’s recusal is left to the judgment of the same judge whose recusal is being sought. Such a determination ought to be made by a different judge, however, the current legal system in Malta does not permit this. The Court notes furthermore that the law does not even permit an appeal from a decision regarding recusal, albeit there are other remedies at the disposal of the parties”.¹⁰³

Quality and accessibility of court decisions

There have been reports that the principle of the right to be forgotten is being abused in

such a way that judgments are being removed from the online court system, unlawfully restricting access to information relating to court proceedings.¹⁰⁴

Magisterial inquiry reports are often treated with utmost secrecy, so that even the person(s) filing the initial complaint leading to the inquiry, or victims or family members of victims of crime, are not provided with a copy. This makes it difficult for interested persons to access important information about investigations into serious crime.¹⁰⁵

Other

In the *Global Rule of Law Index* published by the World Justice Project, Malta’s score decreased in the categories of absence of corruption, constraints on government powers, regulatory enforcement, and criminal justice.¹⁰⁶

102 Edwina Brincat, *Repubblika to take recusal case to ECHR after losing appeal*, *Times of Malta*, 31 May 2023, <https://timesofmalta.com/article/magistrate-nadine-lia-hear-repubblika-pilatus-case-ngo-loses-appeal.1034972>.

103 CIVIL COURT (FAMILY SECTION) THE HON. MADAM JUSTICE JACQUELINE PADOVANI GRIMA LL.D., LL.M. (IMLI) Today, 13th May 2024 Sworn Application no. : 161/2023 JPG; see also Matthew Xuereb, *Group of lawyers demand changes to judiciary recusal system*, *Times of Malta*, 9 July 2023, <https://timesofmalta.com/article/group-lawyers-demand-changes-judiciary-recusal-system.1042394>.

104 Maria Pace, *IT lawyers are concerned over arbitrary way online judgments are being removed*, *Malta Today*, 16 March 2018, https://www.maltatoday.com.mt/news/national/85352/it_lawyers_are_concerned_over_arbitrary_way_online_judgments_are_being_removed.

105 Matthew Vella, Nicole Meilak, *Updated | Attorney General denies Repubblika access to Vitals magisterial inquiry*, 6 May 2024, https://www.maltatoday.com.mt/news/court_and_police/129024/repubblika_demands_access_to_vitals_magisterial_inquiry_in_letter_to_courts1.

106 World Justice Project, WPJ Rule of Law Index, <https://worldjusticeproject.org/rule-of-law-index/global>; Jessica Arena, *Malta ranks 30th on global rule of law index*, 30 October 2024, <https://timesofmalta.com/article/malta-ranks-30th-global-rule-law-index.1100279>.

Recently, a failure by the Attorney General to quantify assets in an asset freezing order, as required by recently introduced legislation, resulted in the complete cancellation of that freezing order over the assets of the suspected murder mastermind in the assassination of Daphne Caruana Galizia. The changes to the legislation introducing this requirement to quantify assets were criticised by the opposition as being rushed and likely to weaken institutions, benefitting only criminals.¹⁰⁷

There have been instances of evidence in criminal cases suspiciously disappearing. For instance, in the case of a former parish priest charged with fraud, misappropriation and money laundering, among the items confiscated by the police was his laptop. However, a court expert informed Magistrate Rachel Montebello that it could not be found in the room where exhibits are kept.¹⁰⁸ A phone

owned by Keith Schembri, disgraced former Prime Minister Joseph Muscat's Chief of Staff who is currently facing criminal charges, went missing for weeks only to be found in a separate file.¹⁰⁹

In a recent Facebook post, the Prime Minister stated that he has “asked the Justice Minister to finalise a reform of magisterial inquiries without delay” to curb what he considers to be “abuse”.¹¹⁰ The magisterial inquiry system could benefit from reform in certain aspects (refer to ‘Key Recommendations’ in Checks and Balances section), however, it is concerning that, following this statement by the Prime Minister, Minister Owen Bonnici suggested that private citizens should be restricted from directly requesting magisterial inquiries. Such a measure would effectively strip citizens of a crucial legal recourse for investigating potential criminal activities, especially in

107 Malta Independent, *Freezing order on Yorgen Fenech assets lifted; PN says minister, AG should resign*, 28 October 2024, <https://www.independent.com.mt/articles/2024-10-28/local-news/Freezing-order-on-Yorgen-Fenech-assets-lifted-PN-says-minister-AG-should-resign-6736265280>.

108 Matthew Xueren, *Fr Luke Seguna claims court has breached his rights by losing his laptop*, 23 February 2024, <https://timesofmalta.com/article/fr-luke-seguna-claims-court-breached-rights-losing-laptop.1085548>.

109 Edwina Brincat, *Schembri's phone found in evidence bag as last sealed by expert, court confirms*, *Times of Malta*, 23 February 2024, <https://timesofmalta.com/article/schembri-phone-found-evidence-bag-last-sealed-expert-court-confirms.1081770>.

110 Daniel Ellul, *PM reacts to Jason Azzopardi claims by ordering reform of magisterial inquiries*, *Times of Malta*, 15 December 2024, <https://timesofmalta.com/article/robert-abela-jason-azzopardi-reform-magisterial-inquiries.1102507>; Jurgen Balzan, *Owen Bonnici suggests limiting citizens' right to initiate magisterial inquiries*, *Newsbook*, 16 December 2024, https://newsbook.com.mt/en/owen-bonnici-suggests-limiting-citizens-right-to-initiate-magisterial-inquiries/?_gl=1*1n7xl56*_up*MQ.

cases where official investigations appear compromised or delayed.¹¹¹ In recent years, this legal recourse has led to the investigation of major corruption scandals in Malta

where the police have failed to act, as in the case of Eletrogas¹¹² and the Vitals/Steward Health Care hospitals case.¹¹³

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- 111 Daniel Ellul, *PM reacts to Jason Azzopardi claims by ordering reform of magisterial inquiries*, *Times of Malta*, 15 December 2024, <https://timesofmalta.com/article/robert-abela-jason-azzopardi-reform-magisterial-inquiries.1102507>; Jurgen Balzan, *Owen Bonnici suggests limiting citizens' right to initiate magisterial inquiries*, *Newsbook*, 16 December 2024, https://newsbook.com.mt/en/owen-bonnici-suggests-limiting-citizens-right-to-initiate-magisterial-inquiries/?_gl=1*1n7xl56*_up*MQ.
- 112 Jennifer Rankin, *Criminal charges recommended in Malta government corruption inquiry*, *The Guardian*, 5 June 2024, <https://www.theguardian.com/world/article/2024/jun/05/criminal-charges-recommended-in-malta-government-corruption-inquiry>.
- 113 Edwina Brincat, *Repubblika head explains calls for hospitals inquiry, suspicion cast on Muscat*, *Times of Malta*, 27 September 2023, <https://timesofmalta.com/article/repubblika-head-explains-calls-hospitals-inquiry.1057525>.

ANTI-CORRUPTION FRAMEWORK -

Key recommendations

- *Revise the Attorney General law to fully implement the recommendations of the Venice Commission regarding the full control of the investigation of serious crimes together with the police as well as to initiate an investigation directly. This has only been partially implemented. Full implementation is vital.*
- *Introduce the crime of obstruction of justice in criminal law to include appropriate sentences which also cover attempted perversion of justice. This recommendation has not yet been implemented.*
- *Legislative provisions, including in the Code of Ethics, are required to safeguard against improper conduct of public officials in the execution of their duties. This has not yet been implemented. OECD reports¹¹⁴ on the lobbying framework and standards in public life have not been acted upon, despite a formal recommendation made by the Commissioner for Standards in Public Life under Article 13(1)(f) of the Standards in Public Life Act (letter¹¹⁵ to the PM, 11 July 2022).*

Levels of corruption

Malta's Corrupt Hospitals Deal

There has been a long list of criminal charges brought against individuals and companies¹¹⁶ for money laundering, corruption, bribery and fraud related to the deal that former Prime

Minister Joseph Muscat and his government sealed with Vitals Global Healthcare to run three public hospitals. During the case, it emerged that the police did not investigate evidence before prosecutors filed charges. The court heard that the Attorney General and Commissioner of Police instructed the Police Inspector not to carry out any investigations of

114 Commissioner for Standards in Public Life, OECD presents recommendations on integrity standards in Malta, 11 June 2022, <https://standardscommissioner.mt/oecd-presents-recommendations-on-integrity-standards-in-malta/>.

115 Commissioner for Standards in Public Life, Letter to the Speaker of the House of Representatives, 19 September 2024, <https://standardscommissioner.mt/other-documents/>.

116 Mark Lawrence Zammit, James Cummings, *Who's who, The people and businesses facing charges linked to hospitals deal*, *Times of Malta*, 8 May 2024, <https://timesofmalta.com/article/who-who-the-people-businesses-facing-charges-linked-hospitals-deal.1092082>.

his own. The Inspector had, in fact, done the bare minimum, risking the sabotage of Malta's biggest corruption case yet. Such charges were only possible because the civil society organisation Repubblika filed a second request¹¹⁷ for an inquiry in 2019 after the police did not investigate.

The State Advocate said he did not¹¹⁸ have the power to recoup funds that were lost in the Vitals deal, however following an appeal¹¹⁹ by the opposition, the court ruled that the State Advocate was empowered to act independently and recover the €400 million of public money that was lost.

Daphne Caruana Galizia's murder criminal case

A top prison officer, Svetlana Muscat,¹²⁰ who had the position as Head of Strategy at Corradino Correctional Facility (Malta's main prison), allegedly facilitated illicit meetings in her prison office for the alleged mastermind in Daphne Caruana Galizia's murder, an inmate of the facility. Although she has been put on

forced leave, she was cleared of any criminal charges. According to prison regulations, all visits to prisoners must take place in approved visiting areas. Visits must also be monitored by CCTV cameras, save for conjugal visits. Muscat's appointment appeared to violate Council of Europe prison rules,¹²¹ particularly Rules 76 and 77 on the need for prison staff to be carefully selected, properly trained, and have the professional capacity and personal suitability for their role. Muscat's LinkedIn profile showed that her longest professional experience was as a producer and presenter at ONE Productions Ltd (the Labour Party's broadcasting media) and as a ministerial aide. Her appointment highlights the lack of meritocracy in the public service, which is eroding good governance and enabling corruption.

117 Caroline Muscat, *Repubblika files new request for an inquiry into Vitals Global Healthcare deal*, *The Shift News*, 4 October 2019, <https://theshiftnews.com/2019/10/04/repubblika-files-new-request-for-an-inquiry-into-vitals-global-healthcare-deal/>.

118 Edwina Brincat, *State Advocate says he's not empowered to act to recoup Vitals funds*, *Times of Malta*, 4 November 2024, <https://timesofmalta.com/article/state-advocate-says-empowered-act-recoup-vitals-funds.1100550>.

119 Edwina Brincat, *State Advocate can act independently to recover hospital funds, court declares*, *Times of Malta*, 2 December 2024, <https://timesofmalta.com/article/state-advocate-act-independently-recover-hospital-funds.1101861>.

120 Mark Lawrence Zammit, *Top prison official suspended over alleged Yorgen Fenech meeting*, *Times of Malta*, 25 June 2024, <https://timesofmalta.com/article/top-prison-official-suspended-alleged-yorgen-fenech-meeting.1094456>.

121 Council of Europe, *Guidance Document on European prison Rules*, 2023, <https://edoc.coe.int/en/european-prison-reform/11595-guidance-document-on-the-european-prison-rules.html>.

Nepotism and Abuse of Power

Last month, Parliament's Standards Commissioner concluded¹²² that Minister Clayton Bartolo and Minister Clint Camilleri abused their power by giving Bartolo's then-girlfriend, Amanda Muscat, who he later married, a job as a ministry policy consultant. She was Bartolo's secretary at the time. In 2021, she was transferred to Minister Camilleri's ministry and given a pay rise of €68,000 a year – yet she continued to work as Bartolo's secretary throughout. Her salary included a €20,000 'expertise allowance'. The Standards Commissioner found no evidence of Muscat doing consultancy work for either ministry. Prime Minister Robert Abela asked both ministers to issue an apology but continued to reiterate that they would keep their ministerial positions. Minister Bartolo's resignation¹²³ only came after pressure from civil society and University of Malta student organisations.

Political Finance

Malta has a significant transparency deficit when it comes to political finance, increasing the risks of money laundering and corruption, as well as abuse of power and political favors. The Daphne Caruana Galizia Foundation, together with Transparency International, conducted a study¹²⁴ on political finance in Malta from 2016 until 2019, where we found¹²⁵ that the source of 99% of the finances of Malta's two largest political parties remains undisclosed to the public and known only to the political parties themselves. A second investigation by Follow the Money¹²⁶ was done to cover the years 2020 until 2022, which led to the same statistic, making it impossible for journalists to trace the funding and identify the biggest donors to the parties. Political financing in Malta comes only from the private sector since the state does not provide financial support to political parties. This increases the risk that politicians disproportionately favor wealthy individuals or corporate entities. Without public knowledge of a donor's identity, the interested parties

122 Sarah Carabott, *Watch: PM says Clayton Bartolo's apology over girlfriend scandal is sufficient*, *Times of Malta*, 7 November 2024, <https://timesofmalta.com/article/pm-says-clayton-bartolo-apology-girlfriend-scandal-sufficient.1100703>.

123 Bertrand Borg, *Clayton Bartolo resigns as Tourism Minister as second scandal emerges*, *Times of Malta*, 26 November 2024, <https://timesofmalta.com/article/clayton-bartolo-resigns-tourism-minister-following-jobs-scandal.1101565>.

124 The Daphne Caruana Galizia Foundation and Transparency International, *Integrity Watch Malta: Political donations*, December 2023, <https://iw.daphne.foundation/>.

125 Ana Tortell, *Millions in unattributed donations: New database of Malta's political party funds launched*, 21 December 2023, <https://lovinmalta.com/malta/millions-in-unattributed-donations-new-database-of-maltas-political-party-funds-launched/>.

126 Nicole Meilak, *We don't know where 99% of political party donations come from*, *Malta Today*, 2 June 2024, https://www.maltatoday.com.mt/news/ewropej/129501/we_dont_know_where_99_of_political_party_donations_come_from.

could gain significant influence over political decisions without any oversight or public scrutiny, weakening the integrity of the democratic process.

This is all the more alarming when, regardless of Malta's seemingly adequate legislation on political parties' audited accounts, both of Malta's largest political parties, year after year, fail to submit their audited accounts to the Commission. The last submitted¹²⁷ audited accounts of Partit Nazzjonalista¹²⁸ was in 2019. The last submitted audited accounts of Partit Laburista was in 2022.

While the Electoral Commission is empowered to act on wrongdoing by political parties, it chooses not to do anything to ensure transparency and the rule of law in political party financing.

Golden Passports Scandal

Questions continued to be raised on the 'due diligence' process conducted by the Community Malta Agency prior to the acquisition of a Maltese and European passport.

A 24-year-old Russian, Semen Kuksov, who became a Maltese citizen, ran a "professional banking service for criminals across the world"

as part of a billion-dollar money laundering network, the National Crime Agency in the UK has said.¹²⁹ He was jailed in the UK this year for five years. Semen Kuksov's father also bought a Maltese passport. Following an investigation by The Daphne Caruana Galizia Foundation, Semen Kuksov's Maltese passport was revoked.

Alleged fraud at Identity Malta

This year, a magisterial inquiry was launched into Malta's identity data regulator filed by a former opposition MP over allegedly fraudulently issuing identity cards for foreign nationals.

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

There are close ties between the government and businesses, across the board: in Malta, many businesses that deal with government contracts or regulations are often led by individuals who have close ties to political parties. For example, former ministers, top officials, or political advisers may take up senior roles in private companies once they leave public office, particularly in sectors such as construction,

127 Daniel Ellul, *Labour doubled election spend, PN still to file its accounts and donations list*, *Times of Malta*, 15 October 2023, <https://timesofmalta.com/article/labour-doubled-election-spend-pn-still-file-accounts-donations-list.1061244>.

128 Daniel Ellul, Mark Lawrence Zammit, *PN financial reports for 2021 and 2022 remain unpublished*, *Times of Malta*, 13 January 2024, <https://timesofmalta.com/article/pn-financial-reports-2021-2022-remain-unpublished.1077771>.

129 Joanna Demarco, Jacob Borg, *'Maltese' Russian jailed in UK over scheme to launder 14 million*, *Times of Malta*, 22 April 2024, <https://timesofmalta.com/article/maltese-russian-jailed-uk-scheme-launder-14-million.1091337>.

energy, or finance — sectors that are often the focus of government policy decisions.

In 2020 a lawyer working with the AG whilst that office was prosecuting the Caruana Galizia Murder case, left his position and went directly to work with the defense team on this case.¹³⁰ Consequently, some changes were made to the code of ethics for lawyers working at the AG office, however, the changes did not include a ‘cooling-off period’, and did not apply to current employees.

As previously mentioned, there is a deficit in transparency in all public sectors, with many FOI requests dragging on for 12 months or more. There is very little transparency in political finance, as explained above.

Rules on conflict of interest in the public sector remain weak, and so is enforcement. In December, an independent candidate asked the Auditor General to investigate how a thirty-year-old lawyer close to the Prime Minister has been awarded eleven separate jobs in the public sector.¹³¹

In 2021, the NGO Repubblika published¹³² a report on recommendations to ensure safety and whistleblower protections for individuals

and NGOs, however, none of these recommendations were implemented.

List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflicts of interest in these sectors. (e.g. public procurement, healthcare, other)

The sectors with the high risk of corruption are:

- Public healthcare
- Land administration
- Construction
- Public procurement
- Financial services
- Online gambling
- Energy

130 Ivan Martin, *Lawyer with state prosecutor joins Yorgen Fenech defense team*, *Times of Malta*, 6 May 2020, <https://timesofmalta.com/article/state-prosecutor-joins-yorgen-fenech-defence-team.790394>.

131 *Times of Malta*, *Investigation requested into government’s granting of 11 jobs to Abela lawyer*, 11 December 2024, <https://timesofmalta.com/article/investigation-requested-government-granting-11-jobs-abela-lawyer.1102285>.

132 Repubblika, *Protecting Whistleblowers in Malta*, 15 November 2022, <https://whistleblowingnetwork.org/WIN/media/pdfs/WB-ram-final-with-WIN-addition.pdf>.

We encourage the Commission to make the following recommendations to the Government of Malta:

- Criminalise abuse of office by public officials or by those in charge of a public service to ensure accountability for those in power who do not work for the good of the country. This will strengthen integrity and increase public trust.
- Improve the system of verification and collection of data of asset and interest declarations of MPs, by establishing a system of electronic submission and extending it to persons of trust – an OECD¹³³ recommendation from 2022 that was never implemented.
- The Freedom of Information Act (Chapter 496) needs to be updated to limit the instances where public administration may arbitrarily refuse to provide information that is of public interest and to which the public has a right. This is another recommendation from the public inquiry board yet to be implemented.
- Introduce ‘Unexplained Wealth Orders’ to fight financial crime, including bribery and corruption. This should be implemented

through public consultation and recommendations from experts.

- Increase training and resources (human and financial) to the Police and Attorney General’s office to ensure they are well equipped to investigate high-level corruption and can confidently defend such cases in court against the top criminal lawyers defending criminals.
- Reduce the threshold of anonymous donations to political parties to ensure a well-informed public and increase public trust in political parties. This will also reduce the risk of political favors and influence from the private sector.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

Legislation requiring the quantification of assets in the case of asset freezing orders has been introduced by legal notice,¹³⁴ by-passing Parliament. It has been met with criticism by the legal community on the grounds that such a requirement only serves to favor the accused.¹³⁵

133 OECD, Improving the Integrity and Transparency Framework for Elected and Appointed Officials, 27 October 2023, https://www.oecd-ilibrary.org/governance/public-integrity-in-malta_c39511b6-en.

134 Government Gazette of Malta, VI of 2024 – Various Laws relating to Proceeds of Crime (Amendment) Act, 9 February 2024, <https://legislation.mt/eli/act/2024/6/eng>.

135 Sean Montebello, *PN calls for reining-in of government’s proposed asset freeze law changes*, *The Shift*, 16 January 2024, <https://theshiftnews.com/2024/01/16/pn-calls-for-reigning-in-of-governments-proposed-asset-freeze-law-changes/>.

In 2023, the Council of Europe said that Malta still lacks the tools to sanction its MPs and was urged to improve on transparency. There have been no developments in this regard.¹³⁶

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

Lack of training and resources represent one of the biggest obstacles in investigating and prosecuting high-level corruption.

While salaries of the Malta Police Force have increased this year, the increase is not close enough to attract the quality police officers the country needs to investigate high-level corruption. The Prime Minister's unwillingness to invest in the police force has drastically increased resignations in the force, consequently reducing the effectiveness of investigating high-level corruption cases. The current salary of a police officer is advertised as €20,439,¹³⁷ while that of a lawyer in the Attorney General's office is advertised as €27,178.77.¹³⁸

136 Times of Malta, *Malta still lacking the tools to sanction its MPs, Council of Europe says*, 6 June 2023, <https://timesofmalta.com/article/malta-still-lacking-tools-sanction-mps-council-europe-says.1035962>.

137 Government Gazette, *Vacancy Details Police Constable* 22 November 2024, <https://recruitment.gov.mt/en/job/25b100a9734>.

138 Government Gazette, *Vacancy Details, Junior Legal Officer*, 14 April 2023, <https://recruitment.gov.mt/en/job/9e-6f08a6787>.

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

Rule of law is essential to creating an healthy environment for public interest journalism, as the public inquiry into Daphne Caruana Galizia's assassination has shown. It is essential that the systemic state failures identified by the inquiry and all the recommendations, including those concerning the rule of law and organised crime, are effectively addressed to ensure journalists can do their work safely. In the interests of transparency and effectiveness, independent technical studies and a transparent process of structured public consultation need to precede the drafting of legislation based on the recommendations of the public inquiry, and the legislation itself needs to be submitted to parliamentary scrutiny before its enactment. For this reason, we cannot limit the issues around media freedom in Malta to three key recommendations. What is listed below are examples of how media freedom can be strengthened in Malta.

- **Repeal the provision in the current Media and Defamation Act that obliges a defendant's heirs to pay damages in inherited cases that are still active.** This can be done with immediate effect through a Parliamentary motion supported by a majority vote.
- **Reform Malta's Freedom of Information Act** to ensure the right of access to information of public interest held by public authorities, so that government entities cannot simply reject requests for information on arbitrary grounds and so that the process is not so protracted that timely reporting and journalists' ability to do their work are constantly undermined. Amend the law to include the media (and civil society) as bearers of a legitimate interest when it comes to access to the Ultimate Beneficial Owners register, as the current legislative framework, under which many requests for access have already been refused, are contrary to the currently applicable EU law and the ECJ ruling *WM (C-37/20)* and *Sovim SA (C-601/20) v Luxembourg Business Registers*.
- Introduce or contemplate the formulation of **proper engagement and coordination mechanisms with civil society and media organisations regarding the operation of early-warning and rapid-response mechanisms** (hotlines, online platforms or 24-hour emergency contact points) to ensure that journalists and other media actors have immediate access to and are aware of protective measures when they are threatened.¹³⁹

139 OSCE Representative on the Freedom of the Media, *Legal analysis on the draft laws of Malta to implement various measures for the protection of the media and of journalists*, OSCE, February 2022, <https://www.osce.org/files/f/documents/f/e/518019.pdf>.

- As systemic risk needs to be addressed by systemic solutions, **create and maintain an ad hoc structure within the Malta Police Force that identifies points of failure within the force that place journalists at risk**, e.g. a lack of swift action after a journalist exposes high-level corruption and other serious crimes increases that journalist's risk.¹⁴⁰ The formal structure within the police (VIP protection unit) tasked with identifying persons – not just journalists – who are exposed to real and imminent risks to life needs to be strengthened along the lines recommended by the office of the OSCE Representative on the Freedom of the Media:

*Introduce or contemplate the formulation of proper engagement and coordination mechanisms with civil society and media organizations regarding the operation of early-warning and rapid-response mechanisms (hotlines, online platforms or 24-hour emergency contact points) to ensure that journalists and other media actors have immediate access to and are aware of protective measures when they are threatened.*¹⁴¹

In the same vein, it is recommended that the proposal calls for the set up of protocols and training programmes for State authorities responsible for the protection of journalists and other media actors.

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The public broadcaster, PBS, has lost a total of €5 million over the last ten years despite being given €40 million in direct subsidies over

the same period, excluding millions given in state advertising. An analysis of PBS's audited financial statements by *The Shift News* that was published in 2024 shows that the state entity registered massive losses in seven out of the ten audited years, despite the Labour Party government doubling its annual subsidies from €3 million in 2013 to €6 million in 2022.¹⁴² A National Audit Office report found that PBS registered losses across the board and suffers

140 OSCE Representative on the Freedom of the Media, *Legal analysis on the draft laws of Malta to implement various measures for the protection of the media and of journalists*, OSCE, February 2022, <https://www.osce.org/files/f/documents/f/e/518019.pdf>.

141 Ibid.

142 The Shift Team, *State broadcaster loses €5 million in 10 years despite €40 million in subsidies*, 29 February 2024, <https://theshiftnews.com/2024/02/29/state-broadcaster-loses-e5-million-in-10-years-despite-e40-million-in-subsidies/>.

from maladministration, a lack of transparency, and a total lack of proper procedures.¹⁴³ The audit found that, despite an annual government subsidy of €6 million and registering a revenue of €7.5 million from commercial ads, the broadcaster is losing money in every division except radio. There are no published audited accounts on PBS's website beyond 2020.

The independence of PBS is questionable, as it often acts as a propaganda machine for the government, frequently omitting news stories that do not suit the government's agenda. In May 2024, the Civil Court, in its constitutional jurisdiction, ordered the Broadcasting Authority and PBS to pay a €2,000 fine each, after it found them guilty of violating the fundamental rights of the Nationalist Party. In October 2024, the audio from the broadcast of the Finance Minister's speech on the national budget broadcast was muted for a full 10 minutes before the stream was suspended altogether after activists stormed parliament

and interrupted the Finance Minister in the first few minutes of his *Budget 2025* speech.¹⁴⁴ In November 2024, a member of PBS's board of directors, in his other government-paid job as Communications Director at the Water Services Corporation (WSC), instructed his team to remove an opposition MP from an image posted on the public entity's social media channels.¹⁴⁵

In November 2024, PBS was fined twice by the Broadcasting Authority after airing budget-related spots on consecutive days without the necessary regulatory approval, to the favor of the party in government.¹⁴⁶

A possible case of conflict of interest was quickly brushed off by the Broadcasting Authority (BA) in January 2024, after the BA fined a radio station that had declared it would censor a right-wing politician, Normal Lowell. The BA's secretary was involved in the political party that the politician forms part of.¹⁴⁷

143 The Shift Team, *NAO: State broadcaster loses money across the board, despite €6 million in annual subsidies*, 19 December 2023, <https://theshiftnews.com/2023/12/19/nao-state-broadcaster-loses-money-across-the-board-despite-e6-million-in-annual-subsidies/>.

144 Karl Azzopardi, *[WATCH] Graffiti stage protest in Strangers' Gallery as Budget is interrupted*, *MaltaToday*, 28 October 2024, https://www.maltatoday.com.mt/news/budget-2025/132011/watch_graffitti_stage_protest_in_strangers_gallery_as_budget_is_interrupted.

145 The Shift Team, *PBS director behind censorship of Opposition MP*, 27 November 2024, <https://theshiftnews.com/2024/11/27/pbs-director-behind-censorship-of-opposition-mp/>.

146 Times of Malta, *PBS fined €9,320 for airing of 'political' budget spots*, 8 November 2024, <https://timesofmalta.com/article/pbs-fined-9320-airing-political-budget-spots.1100711>.

147 Tim Diacono, *Broadcasting Authority Dismisses Secretary Conflict Of Interest Concerns Amid Imperium Europa Link*, 26 January 2024, <https://lovinmalta.com/news/broadcasting-authority-dismisses-secretary-conflict-of-interest-concerns-amid-imperium-europa-link/>.

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media and telecommunication authorities and bodies

The Public Broadcasting Services (PBS), Malta's public broadcaster, is a government-owned company. The Board of Directors of PBS is appointed by the government and is mainly answerable to the relevant minister. The appointment of the editorial board and board of directors of PBS is detailed in the National Broadcasting Policy that has not been updated since April 2004.¹⁴⁸ The role of PBS's editorial board has been called into question on a number of occasions for its lack of intervention on important issues and the need for its existence has been questioned.¹⁴⁹

Appointment procedures of PBS are opaque, with no public calls being issued for three new high-ranking appointments in September 2024, namely the roles of CEO, non-executive chairperson, and chairperson of the editorial board. It is difficult to get any information about the running of PBS, and there seems to be no clear process on how officials are appointed or dismissed.

In September 2024, the CEO and, simultaneously, Executive Chairman of PBS, Mark Sammut, was dismissed, with no information given by the authorities. Sammut's dual role had been criticised for providing him with two separate salaries, totaling more than €130,000 per year, including €8,666 per board meeting, and for having other ties to and roles within state entities. Those ties include the chairmanship of a state-owned 'phantom' airline company registered in 2018 to give a false impression that the national airline, Air Malta, was turning a profit, as well as multiple direct orders from the Ministry of Health for services from his IT business, worth tens of thousands of euros annually. On the contrary, calls for lower-ranking jobs are issued on PBS's website.¹⁵⁰

According to the Constitution, members are appointed by the President following their nomination by the Prime Minister. The BA, although it is the broadcasting regulator, fails to comply with its own constitutional and legal obligations. Two members are nominated by the government and another two by the opposition. The Chair is appointed by the President on the advice of the Prime Minister after consulting the opposition. Appointees are

148 Parliament (Malta), Document tabled in the House of Parliament during Sitting Number 192 of the 28th of October 2014 by the Minister for Home Affairs and National Security (Dokument imqiegħed fuq il-Mejda tal-Kamra tad-Deputati fis-Seduta Numru 192 tat-28 ta' Ottubru 2014 mill-Ministru għall-Intern u s-Sigurtà Nazzjonali), P.L. 3470, 28 October 2014, <https://parlament.mt/media/77214/03470.pdf>.

149 Neville Borg, *Changes to media impartiality laws 'could impact Church stations'*, 7 March 2023, <https://timesofmalta.com/articles/view/changes-media-impartiality-laws-could-impact-church-stations.1017714>.

150 Matthew Farrugia, *Government announces three appointments within PBS*, 18 September 2024, https://www.malta-today.com.mt/news/national/131270/government_announces_three_appointments_within_pbs.

affiliated with the party appointing them and are perceived as being loyal to that party. There is no consultation with civil society. The two main parties own their own broadcast, print, and online media channels to promote their messages. The BA interprets the concept of impartiality as the political party media balancing out each other. This reasoning is flawed. A civil court case challenging the imbalance is still underway. Meanwhile, the BA fails to act as an impartial balance between the two main parties, as confirmed by a court judgment that found the BA failed to maintain impartiality.¹⁵¹

Existence and functions of media councils or other co- and self-regulatory bodies

The Institute of Maltese Journalists (IGM), founded in 1989, is the only nationwide association of journalists. It does not function as a union and not all practicing journalists are members. Members of the Malta Sports Journalists Association are automatically members of the IGM. The Executive Council of the IGM takes up their positions on a voluntary basis and includes journalists who are politically affiliated, often leading to criticism that their work can be viewed more as propaganda rather than journalism.

The IGM is a member of the European Federation of Journalists and the International Federation of Journalists. The IGM is open

to state-affiliated, independent and freelance journalists across the country.

The declared objectives are to:

- encourage journalists to work jointly,
- provide professional services to journalists,
- implement measures for self-regulation,
- raise professional and educational standards,
- protect the freedom of expression.

According to the organisation's website, its greatest achievement is its contribution to the Malta Press Act, ensuring the inclusion of 'confidentiality of the source', 'qualified privilege', 'the right for information' and 'the right of reply'. The IGM contributed towards the Prime Minister freezing the draft media reform legislation initiated without public consultation by threatening to pull out of the reform process.¹⁵²

The Prime Minister appointed the IGM president and Secretary to the Committee of Experts on Media Reform tasked with providing recommendations on improving the government's three proposed bills on media reform. The Committee disbanded after 18 months and submitting the report to the

151 Edwina Brincat, *Court upholds PN cases against PBS, Broadcasting Authority*, 27 February 2023, <https://timesofmalta.com/articles/view/court-confirms-judgement-pn-case-pbs-broadcasting-authority.1016157>.

152 Times of Malta, *PM agrees to freeze media reform for consultation*, 13 October 2022, <https://timesofmalta.com/article/pm-agrees-freeze-media-reform-consultation.987416>.

government in June 2023. The members of the Committee, including four IGM members, refused to publish the report. The claim that they were bound by non-disclosure agreements is false, as no such agreements existed. In any case, any NDAs would not be enforceable after the Committee was disbanded.¹⁵³ The Media Reform Initiative criticised the Committee of Experts' attempt at protecting people's right to freedom of expression.¹⁵⁴

Members of the IGM questioned the lack of transparency of the journalistic body in its contribution to the Committee of Experts report, refusing to share information with stakeholders on its recommendations to the government on anti-SLAPP legislation, the timeframe for the legislation to be passed or opened up for consultation, and any significant developments along the way. The IGM delayed its threat to withdraw its support for the government's proposed legislation in 2022. It was only after uproar from more than 100 journalists and media freedom organisations that the IGM threatened to pull support for the media reform bills.

The under-resourced IGM has increased its public support for journalists, recently

calling out the Prime Minister's hostile remarks towards journalists for being unacceptable in a democratic society. The PM accused some journalists of working for the so-called 'establishment' and implied they are enemies of the state.¹⁵⁵

The IGM is moving towards the creation of a media council, with the guidance of the European Federation of Journalists and support from the Media Councils in the Digital Age (MCDA) project. We do not have any information on the model and financing structure of the proposed media council, which, we understand, has reached an advanced stage.

Pluralism and concentration

None of the provisions from the European Media Freedom Act was included in Malta's Media Freedom Act, which is concerning given that the deadline for implementation is August 2025.

153 Monique Agius, *Government unveils media reform proposals but rules out public consultation*, *Newsbook*, 28 September 2022, <https://newsbook.com.mt/en/government-unveils-media-reform-proposals-but-rules-out-public-consultation/>.

154 Matthew Vella, *Press reform critics say Committee proposals weak on PBS and SLAPP*, *Malta Today*, 28 October 2023, https://www.maltatoday.com.mt/news/national/125715/press_reform_critics_say_committee_proposals_weak_on_pbs_and_slapp.

155 Mapping Media Freedom, *PM Abela accuses reporters of acting for 'the establishment'*, 6 May 2024, <https://www.mapmf.org/alert/31502>.

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

The public broadcaster, PBS, is not impartial. Outside of regular news bulletins, which are heavily slanted towards the party in government, current affairs coverage is limited. Minority political voices have little access to what is meant to be a pluralist channel. In the lead-up to the MEP elections, Malta's most popular independent candidate, Arnold Cassola, was excluded from key broadcast debates ahead of the elections, as scheduled by the Broadcasting Authority board, which is made up of nominees from the major political factions, the Nationalist Party (PN) and the Labour Party (PL). While PL and PN are slated to participate in five debates, Cassola, alongside other independent candidates, was only offered the opportunity to engage with fellow independents. Despite being granted five minutes to speak independently, Cassola was not allocated any TV spots.¹⁵⁶

The broadcasting spectrum is largely dominated by the two main political parties. Political-party-owned stations are still not subject to the Broadcasting Act's provisions on impartiality. Local newsroom *Lovin Malta* filed a court case to make the Broadcasting Act

cover party-owned stations and to determine whether propaganda on political party TV stations should be declared unconstitutional.¹⁵⁷ The Constitution obliges the Broadcasting Authority to ensure that TV stations preserve due impartiality in matters of political or industrial controversy "as much as possible". It also obliges the BA to ensure that broadcasting facilities and time are fairly apportioned between people belonging to different political parties. However, the Broadcasting Act of 1991 includes a loophole that allows the BA to circumvent this requirement when regulating political party media, allowing the authority to monitor impartiality among private TV stations "by looking at the general output of current affairs programmes across all licensees as a whole". The case is still pending.

Fairness and transparency of licencing procedures (including allocation of licences, fines and penalties)

The BA regulates all content on radio and TV that originates from Malta and is tasked with issuing broadcasting licencing under conditions the BA deems fit.

156 Jurgen Balzan, *Arnold Cassola excluded from TV political debates*, *Newsbook*, 16 April 2024, <https://newsbook.com.mt/en/arnold-cassola-excluded-from-tv-political-debates/>.

157 Julian Bonnici, *Lovin Malta Files Historic Case To Declare Propaganda By Political Party Stations Unconstitutional*, *Lovin Malta*, 1 February 2021, <https://lovinmalta.com/news/lovin-malta-files-historic-case-to-declare-propaganda-by-political-party-stations-unconstitutional/>.

The BA is authorised to issue the following licences:

- For nationwide radio and TV broadcasting services, a prospective broadcaster must first be assigned a channel by one of two commercial service providers, Melita or GO plc, and then apply to the BA for a licence. Applications for a nationwide sound broadcasting licence must be accompanied by a non-refundable fee of €5,823. The annual licence fee payable to the BA is €11,646.
 - For digital radio broadcasting service, a prospective applicant must first be assigned a new channel by the licensed digital radio broadcasting service provider Digi B Network Limited, and then apply to the BA for a broadcast licence and pay a fee of €1,160. An annual licence fee is also applicable. Unless a licence is lawfully terminated or abridged, it is valid for up to four years and is renewable every four years for a fee of €3,000.
 - For community radio stations, the prospective licensee must first obtain a frequency allocation from the Malta Communications Authority (MCA). Applications for a community sound broadcasting licence (including for one-off events) must be accompanied by a non-refundable application fee of €116. The annual fee payable to the BA for a community sound broadcasting licence is €349; for community sound broadcasting services for one-off events, it is €116 per event.
- For a nationwide teleshopping broadcasting service, a prospective applicant must first make arrangements with Melita or GO, the two incumbent cable TV distribution networks, for the provision of a new teleshopping channel.
 - For a satellite television broadcasting service, a prospective applicant must first submit an application for a Satellite Earth Station Licence with the MCA. The applicable licence fees are:
 - for each station, for the transmission of communications, depending on the radio frequency bandwidth:
 - a) stations using up to 10MHz radio frequency bandwidth, per 1MHz radio frequency bandwidth, the fee is €650 p.a.,
 - b) stations using more than 10MHz radio frequency bandwidth, annual fee is €6,500.
 - and each station, for the transmission of communications, used for any event:
 - a) of 30 days or part thereof, per 1MHz radio frequency bandwidth, the fee is €110,
 - b) exceeding 30 days or part thereof, the monthly fee, per 1MHz radio frequency bandwidth, is €110.

As soon as the uplink services are approved by the MCA, an application for a licence for

a satellite television broadcasting service may then be submitted.¹⁵⁸

Other

Taxpayer-funded subsidies are distributed through an opaque process involving media owners and the central government. A new lobby group, the Association of Media Owners (AMO), was announced right at the end of 2023, set up to “protect and promote” the interests of its members.¹⁵⁹ The purpose of the association, it says, is to ensure that any legislation enacted, or regulations issued by the government or authorities, will not endanger the prosperity or impair the welfare of its members. However, this has created a situation where, through its media platform, the government can influence decisions before it has to deal with any demands. Its primary aim is to seek

funding and financial assistance for the local print and digital media industry, including via national and European institutions. Other independent media houses were excluded from joining this association due to its exclusionary criteria. The criteria for membership of the association is “full-time newsroom of at least seven journalists and three media workers”.¹⁶⁰ That excludes smaller outlets like *The Shift News* and *Critical Angle Project*.¹⁶¹ Other independent media houses were not even consulted in the setting-up process of the association.¹⁶² The Institute of Maltese Journalists said the newly formed association should not exclude other newsrooms and journalists.¹⁶³ Additionally, this association includes the media branches of the two major political parties in Malta. This puts the government on both sides of the negotiating table and puts non-party-owned media

158 GVZH Advocates, *In brief: media law and regulation in Malta*, Lexology, 13 June 2023, <https://www.lexology.com/library/detail.aspx?g=0803daea-1beb-461a-8641-c5ea879208ec>.

159 Times of Malta, *Media owners join forces to set up association*, 30 December 2023, <https://timesofmalta.com/article/media-owners-join-forces-set-association.1075536>.

160 The Malta Independent, *Media owners join forces to set up Association of Media Owners*, 29 December 2023, <https://www.independent.com.mt/articles/2023-12-29/local-news/Media-owners-join-forces-to-set-up-Association-of-Media-Owners-6736257435>.

161 The Malta Independent, *Media owners join forces to set up Association of Media Owners*, 29 December 2023, <https://www.independent.com.mt/articles/2023-12-29/local-news/Media-owners-join-forces-to-set-up-Association-of-Media-Owners-6736257435>.

162 The Shift Team, *Print newspapers given €150,000 in fresh public funds*, 2 February 2024, <https://theshiftnews.com/2024/02/02/print-newspapers-given-e150000-in-fresh-public-funds/>.

163 Sean Montebello, *Journalists' institute calls for 'wider membership' in media owner's lobby group*, *The Shift*, 20 January 2024, <https://theshiftnews.com/2024/01/20/journalists-institute-calls-for-wider-membership-in-media-owners-lobby-group/>.

in competition with political decision-takers who may be the subject of their reporting.¹⁶⁴

Furthermore, in February 2024, the government handed out €150,000 of public funds to Maltese print newspapers, including those owned by political parties, to help with their financial struggles. While beneficial, digital newsroom *The Shift* noted the government's failure to acknowledge the plight of independent digital newsrooms, including *The Shift News*, *Lovin Malta*, and *Newsbook*, shutting them out of every funding scheme despite having larger audiences than print newspapers.¹⁶⁵

Furthermore, publicly funded advertising is distributed through an opaque process. There are no measures in place to ensure that the distribution is fair, equitable, non-discriminatory, transparent, and independent of the central government.

Non-party-owned media have said that the business and editorial decision-making processes are separate. For example, the *Times of Malta* insists that its newsroom and its commercial arm are separate.¹⁶⁶ Allied Newspapers Ltd, which publishes *Times of Malta*, said:

“Allied Newspapers Limited is the only media company in Malta that boasts a unique structure where its editorial platform and the content it produces operate independently and without interference from the company’s management... The company’s participation in this association will, therefore, have absolutely no impact on Times of Malta’s journalism. Furthermore, editorial is free to scrutinise the operations of the new association, as is the case with all other local organisations.”¹⁶⁷

However, reliance on public funding and the lack of transparency in the process of allocating such funding raises questions about the viability of independent voices in the long run.

164 Arnold Cassola, *Opinion: The worries about the new Association of Media Owners, The Shift*, 13 January 2024, <https://theshiftnews.com/2024/01/13/opinion-the-worries-about-the-new-association-of-media-owners/>.

165 The Shift Team, *Print newspapers given €150,000 in fresh public funds*, 2 February 2024, <https://theshiftnews.com/2024/02/02/print-newspapers-given-e150000-in-fresh-public-funds/>.

166 Julian Delia, *Times of Malta’s editor-in-chief responds to this website’s questions about the media owners’ association*, Critical Angle Project, 17 January 2024, <https://cap.mt/2024/01/17/times-of-maltas-editor-in-chief-responds-to-this-websites-questions-about-the-media-owners-association/>.

167 Times of Malta, *Media owners join forces to set up association*, 30 December 2023, <https://timesofmalta.com/article/media-owners-join-forces-set-association.1075536>.

Transparency of media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

The government has not made any attempt to create a more fair and transparent environment in the allocation of state advertising and continues to ignore the proposals made by the Commissioner of Standards in Public Life in 2021.¹⁶⁸ Information about the allocation of indirect state subsidies for media outlets by the government, in the form of advertising or sponsorship, is not publicly available and no legislation regulates the process.

During October and November 2022, the government budgeted and spent €115,000 in advertisements over a period of three weeks but did not provide any additional information about how the money was spent or which newsrooms it was allocated to, despite requests from journalists.¹⁶⁹

The lack of transparency and due process according to pre-set criteria means that the

government can allocate public funds preferentially to favored media outlets, such as media that are owned by the governing party, when allocating funds for state advertising. For example, 18 ministers and parliamentary secretaries were paid €16,700 in public funds for advertisements in a single edition of governing-party-owned Sunday newspaper *Kulhadd* in January 2022.¹⁷⁰

Independent newsrooms, like *The Shift News*, *Times of Malta*, *MaltaToday*, *The Malta Independent*, operate in a financially precarious environment and rely heavily on advertising. As public authorities, including the government, are among the main advertising clients for nationwide media organisations, the government could apply pressure directly by withholding campaign budgets that are integral to keeping the newsrooms afloat.

This financial hold on media organisations through advertising can be seen as an ‘iron fist in a velvet glove’ and can lead to journalists and their newsrooms being subjected to commercial or political influence.¹⁷¹

168 Commissioner for Standards in Public Life, *Guidelines on Government Advertising and Promotional Material*, 2 August 2021, <https://standardscommissioner.mt/wp-content/uploads/guidelines-government-advertising-promotional-material.pdf>.

169 Sarah Carabott, *Government spent at least €115,000 in 3 weeks to promote budget measures*, 1 December 2022, <https://timesofmalta.com/article/government-spent-least-115000-promote-budget-measures.998361>.

170 Tim Diacono, *Transparent State Advertising A Step Closer For Malta As European Commission Adopts ‘Media Freedom Act’*, *Lovin Malta*, 17 September 2022, <https://lovinmalta.com/media/transparent-state-advertising-a-step-closer-for-malta-as-european-commission-adopts-media-freedom-act/>.

171 Louiselle Vassallo, *Monitoring Media Pluralism in the Digital Era*, Centre for Media Pluralism and Media Freedom, June 2023, <https://theshiftnews.com/wp-content/uploads/2023/06/Monitoring-Media-Pluralism-in-the-Digital-Era-Malta-2023-Report.pdf>.

Rules governing transparency of media ownership and public availability of media ownership information, and their application

There are no specific legal obligations for media companies to publish their ownership structures on their website or in documents that are easily accessible to the public. However, all companies in Malta are obliged to submit a Memorandum of Association with the Registrar of Companies which will display the details of the company shareholders on the Malta Business Registry website.¹⁷²

Concerning the cross-ownership of media, there are currently no rules in place to limit the extent of media ownership by one owner. Nevertheless, the Broadcasting Act imposes some restrictions on the private industry with regard to media concentration, only for radio and television services and not for other media such as the press and the new media. It is pertinent to note that both of the largest cable TV providers in Malta are owned and controlled by non-Maltese interests.¹⁷³

Other

The structure and control of the media in Malta is bound to the socio-political situation in the country, according to the country report on Media Ownership Monitor. Seven out of 15

registered printed news outlets are politically controlled or controlled by political affiliations such as labour unions (In-Nazzjon, L-Orizzont, Kullhadd, Il-Mument, It-Torċa and Illum) or to the Catholic Church (Il-Leġen). In the case of broadcast media, each party has its own channel (television and radio), namely the Labour Party controls One Radio and One TV, while the Nationalist Party has Net Radio and Net TV. The Catholic Church does not own a television station, but it does own a radio station (103 Malta's Heart) and an electronic media outlet (*Newsbook*). A large proportion of independent media is privately owned and the largest among these (and the largest overall in terms of market shares) are legacy outlets, including *Times of Malta* and *the Malta Independent*.

Public service media

As mentioned previously, the provisions of the European Media Freedom Act have not yet been implemented.

Independence of public service media from governmental interference

The different categories of media are as follows:

Broadcasting (Radio, TV) which can be categorised into 3 types:

172 Euromedia Ownership Monitor, *Malta: News media outlets and owners*, September 2023, <https://media-ownership.eu/findings/countries/malta/>.

173 GVZH Advocates, *In brief: media law and regulation in Malta*, Lexology, <https://www.lexology.com/library/detail.aspx?g=0803daea-1beb-461a-8641-c5ea879208ec>.

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- Public service media:

Members of editorial and directorial boards are all politically appointed, creating an absolute lack of editorial independence.
 - Private and owned by political parties:

Closer to propaganda editorial and operational decisions are taken depending on what works for the party.
 - Private and owned by private companies/foundations:

Owned and managed by persons whose income is derived from government consultancies. Saviour Balzan, who owns the *MaltaToday* news platform, also dabbles in public relations consultancies for government ministries and agencies.¹⁷⁴ He also does marketing consultancies for businessmen and companies that his own newsrooms investigate.¹⁷⁵ This is the result of a lack of regulation in the area of media financing and state advertising. In September 2024, Balzan and Gozo Minister Clint Camilleri renewed a contract relating to the publication of the online newspaper *Gozo Today*. According to this contract, a copy of which has been obtained by the media, Saviour Balzan “must conform with whatever instruction is issued by the minister”.¹⁷⁶ This opens doors for government and private influence in editorial decisions.
- Non-broadcast news media can be categorised into 3 types:
- Public service media:

Members of editorial and directorial boards are all politically appointed, creating an absolute lack of editorial and operational independence.
 - Party-owned media:

Closer to propaganda editorial and operational decisions are taken depending on what works for the party. The party agenda has a strong influence on its news content and discussion programmes.
 - Privately owned media:

Government-affiliated private owners: The owner of *MaltaToday*, Saviour Balzan, was a consultant to the Justice Minister while serving as a member of the media experts

174 Elizabeth De Gaetano, *IDPC tribunal rules in favour of the Shift, throws out remaining FOI appeals*, *The Shift*, 12 December 2023, <https://theshiftnews.com/2023/12/12/idpc-tribunal-rules-in-favour-of-the-shift-throws-out-remaining-foi-appeals/>.

175 The Shift Team, *Saviour Balzan got direct order to market Film Commissioner Johann Grech*, 21 February 2024, <https://theshiftnews.com/2024/02/21/saviour-balzan-got-direct-order-to-market-film-commissioner-johann-grech/>.

176 Caroline Muscat, *Saviour Balzan obliged to promote Gozo Minister in new deal*, 15 December 2024, <https://theshiftnews.com/2024/12/15/saviour-balzan-obliged-to-promote-gozo-minister-in-new-deal/>.

committee and a media campaign consultant and communications strategy adviser to the same minister.¹⁷⁷

There has been lack of progress in enhancing independent governance and editorial independence of public service media (PBS).

Editorial standards (including diversity and non-discrimination)

The editorial line of PBS is not free of political interference, with much of the reporting done being tinged with a bias towards the party in government. The reporting frequently lacks depth, with articles sometimes being one or two sentences long. Important news stories are sometimes pushed to the bottom of the news website, and headlines are often chosen in a way that does not put the government in a bad light.

Financing (including transparency of financing)

As noted in the above section ‘Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies’, PBS has lost a total of €5 million over the last ten years despite being given €40 million in direct subsidies over the same period, excluding millions given in state advertising.

An analysis of PBS’s audited financial statements between 2013 and 2022 shows that the state entity registered massive losses in seven out of the last ten audited years, despite the Labour Party government doubling its annual subsidies from €3 million in 2013 to €6 million in 2022.¹⁷⁸ A National Audit Office report found that PBS registered losses across the board and suffers from maladministration, a lack of transparency, and a total lack of proper procedures. The audit found that, despite an annual government subsidy of €6 million and despite registering a revenue of €7.5 million from commercial ads, the broadcaster is losing money in every division except radio.

A Freedom of Information (FOI) request has revealed that PBS is irregularly using millions of state subsidies to fund its newsroom, even though the National Broadcasting Authority prohibits this. For two years, the independent outlet *The Shift News* has been asking how PBS has been using the €6.5 million in annual funding it receives. The FOI request revealed that PBS has been abusing millions of public funds, irregularly using state subsidies. PBS management allocated some €1.1 million to the TVM newsroom to produce its daily news bulletins, which is clearly prohibited, according to the National Broadcasting Policy. The law states, “government will not be directly subsidising these (news) transmissions, and

177 The Shift Team, *Balzan was justice ministry paid adviser while on media experts committee*, 7 March 2023, <https://theshiftnews.com/2023/03/07/balzan-was-justice-ministry-paid-adviser-while-on-media-experts-committee/>.

178 The Shift Team, *State broadcaster loses €5 million in 10 years despite €40 million in subsidies*, 29 February 2024, <https://theshiftnews.com/2024/02/29/state-broadcaster-loses-e5-million-in-10-years-despite-e40-million-in-subsidies/>.

PBS is expected to cover related costs from advertising revenue”.¹⁷⁹ The National Broadcasting Policy, which dictates how PBS should use some €6.5 million in annual subsidies, (better known as a Public Service Obligation (PSO)), dictates that news bulletins should be free from government subsidies to be as independent as possible from government interventions to control the agenda.

Other

A radio station was fined for not giving a platform to a far-right party member. The member has been convicted of inciting racial hatred by the local courts.¹⁸⁰

Online media

Impact on media of online content regulation rules (including content removal obligations, liability rules)

Copyright laws are being used maliciously to take down articles that put individuals in a bad light. In May 2024, *Times of Malta* reported that many articles about alleged fraudster and former Vitals Healthcare CEO Ram Tumuluri

on websites of Maltese news outlets had been de-indexed from Google with bogus copyright claims.¹⁸¹ This means that when searching for a name or word on Google, the articles mentioning that name or word do not show up. This effectively constitutes censorship, as Google is the primary way in which such articles are discovered in the long term. Some articles are being de-indexed based on false copyright claims. The person(s) reporting the articles appear to be copying and pasting articles on blogs, backdating them, and then making the claim of copyright violation against the news media. Google does not verify the claim properly and as a result, the articles are de-indexed in the majority of cases, which has a chilling effect on press freedom. Reportedly, Google did not contact the affected Maltese news outlets in any way to challenge the claims. Since March 2024, at least 42 complaints have been submitted to Google requesting articles about Tumuluri to be removed from the search engine results.

Take-down requests based on false defamation claims have also become more common. For example, five of 28 take-down requests filed in connection with Daphne Caruana Galizia’s

179 The Shift Team, *PBS using millions of public funds irregularly, two-year FOI battle reveals*, 28 April 2024, <https://theshiftnews.com/2024/04/28/pbs-using-millions-of-public-funds-irregularly-two-year-foi-battle-reveals/>.

180 Sarah Carobot, *RTK fined for refusing to give platform to far-right party in electoral campaign*, *Times of Malta*, 22 August 2024, <https://timesofmalta.com/article/rtk-fined-refusing-give-platform-farright-party-electoral-campaign.1097033>.

181 James Cummings, *Who is trying to bury articles about former Vitals boss Ram Tumuluri?*, *Times of Malta*, 13 May 2024, <https://timesofmalta.com/article/who-trying-bury-articles-former-vitals-boss-ram-tumuluri.1092342>.

blog, Running Commentary, are based on defamation claims.¹⁸²

The right to be forgotten, enshrined in EU law in 2014, is being hijacked by people who want their past buried. If requested, this law dictates that search engines and other directories (such as court judgments) must delete any links to information on an individual, as long as it is ‘inaccurate, inadequate, irrelevant or excessive.’ This ‘delisting’ prevents material from being found through search engines like Google. This is also being applied in the Maltese law courts’ search engine, which is resulting in the state becoming an accomplice *in omerta*, through its censoring of public findings of the criminal court, according to former European Court of Human Rights judge Giovanni Bonello.¹⁸³ Maltese media organisations and NGOs have protested against this legal notice, urging the PM to revoke it.¹⁸⁴ Nothing has since then been done by the authorities.

Google (& other VLOPs TikTok, LinkedIn) will stop serving political advertising on their platforms to users in the EU because of the new regulatory regime on transparency and targeting of political advertising, which will come into force in autumn 2025.¹⁸⁵ According to the *EU Observer*, “the decision could prove deeply consequential for people’s ability to access information online or engage in political discussion”.¹⁸⁶ Several civil society organisations expressed their concern at this development, as according to them it will significantly restrict the access of citizens to diverse political discourse online with consequences on election integrity, freedom of information and freedom of expression.¹⁸⁷ Furthermore, CSO campaigns will be regulated in the same way as those of political parties, impacting the CSOs’ fundraising, advocacy, and audience reach.

Regulation of the online ecosystem is not sufficient, as online newsrooms have become victims of multiple attacks. In June 2024, *MaltaToday*

182 Harvard University, Berkman Klein Center for Internet & Society, Lumen project, https://lumendatabase.org/notices/search?term=daphnecaruanagalizia.com&sort_by=.

183 Yannick Pace, *State An Accomplice In Omerta’ By Applying Right To Be Forgotten To Court Judgments, Former Human Rights Judge Says, Lovin Malta*, 18 July 2021, <https://lovinmalta.com/news/state-an-accomplice-in-omerta-by-applying-right-to-be-forgotten-to-court-judgments-former-human-rights-judge-says/>.

184 Jessica Arena, *Removing online court judgments breaches people’s right to know, media tell PM, Times of Malta*, 2 December 2021, <https://timesofmalta.com/article/removing-online-court-judgements-breaches-peoples-right-to-know-media.918811>.

185 Annette Kroeber-Riel, *An update on political advertising in the European Union*, Google, <https://blog.google/around-the-globe/google-europe/political-advertising-in-eu/>.

186 Eva Simon, *Why we should worry about Google’s stopping serving political advertising in EU*, *EU Observer*, 25 November 2024, <https://euobserver.com/digital/araa195ecc>.

187 LibertiesEU, *Google’s Political Advertising Ban in Europe Will Restrict Political Discourse Online*, Liberties, 11 December 2024, <https://www.liberties.eu/en/stories/google-ad-ban-open-letter/45235>.

and *The Malta Independent* reported that they had become victims of a scam website posing as them in an attempt to deceive individuals with a get-rich-quick scheme.¹⁸⁸ On 6 February 2024, the website of the *Times of Malta* was targeted with a Distributed Denial-of-Service (DDoS) attack, which slowed down the website and made it temporarily inaccessible to readers. According to the newspaper, the motive of the attack was unclear, and no ransom request, data breach, or other threats were reported. Although the newspaper's website has been targeted in the past, this was the largest attack it had experienced so far. *Times of Malta* filed a complaint with the police.¹⁸⁹

Competence and powers of bodies or authorities supervising the online ecosystem, including the digital services coordinators role

Malta has not introduced any new measures to supervise the online ecosystem. In particular, Malta has not taken action on online safety of journalists or protecting female journalists in line with the European Commission's 2021 Journalist Safety Recommendation.

Financing framework (including allocation of advertising revenues, copyright rules)

The allocation of publicly funded advertising is problematic. There is no system in place to ensure that the allocation is fair, equitable, non-discriminatory, transparent and independent of the central government.

Public trust in media

Trust in the media differs from person to person, often depending on one's political affiliation. Independent newsrooms often face comments criticising them for their bias towards a certain political party, normally the party in government, simply when reporting factually on things that put that political party in a negative light.

According to the latest Eurobarometer study, trust in Malta's written press remains the lowest in Europe, 20 percentage points lower than the EU average.¹⁹⁰ The number of people who trust the written press has risen by 12 percentage points since the spring, to 40%. Trust in radio and TV fare better, at 46% and 50%, respectively. The EU counterparts are significantly

188 Karl Azzopardi, *Scam websites posing as MaltaToday, Malta Today*, 26 June 2024, https://www.maltatoday.com.mt/announcements/announcements/129932/scam_websites_posing_as_maltatoday. The Malta Independent, *TMI website spoofed*, 26 June 2024, <https://www.independent.com.mt/articles/2024-06-26/local-news/TMI-website-spoofed-6736262256>.

189 Times of Malta, *Times of Malta targeted in major DDoS cyberattack*, 6 February 2024, <https://timesofmalta.com/article/times-malta-targeted-major-ddos-cyberattack.1082274>.

190 Neville Borg, *Most people don't trust political parties or the government: Eurobarometer*, *Times of Malta*, 30 November 2024, <https://timesofmalta.com/article/most-people-don-t-trust-political-parties-government-eurobarometer.1101777>.

higher, at 69% and 62%, respectively. Trust in websites is quite low, at 38%, compared to the European average of 43%. Trust in social networks is significantly lower, at 21%, as opposed to the European average of 31%.

Safety and protection of journalists and other media actors

The Daphne Caruana Galizia Foundation believes that no journalist in Malta is truly protected until all the recommendations of the public inquiry into Daphne's murder are properly addressed. (See 'Recommendations of the Public Inquiry into the Assassination of Daphne Caruana Galizia - the Foundation's position' annexed below). This was also highlighted in the *2024 World Press Freedom Index*, in which Malta ranked quite low – second-to-last in the EU – partially attributable to the failure to implement the recommendations of the public inquiry.¹⁹¹

Frequency of verbal and physical attacks

The Media Freedom Rapid Response (MFRR) monitor, by mid-December 2024, logged 15 alerts from Malta in the current year.¹⁹²

A hostile environment towards journalists continues to be fostered by the party in government, with the Prime Minister and other PL officials attacking journalists simply for doing their job and asking the right questions. In May 2024, Prime Minister Abela accused some journalists and their outlets of working for the so-called 'establishment'. During this period, the Institute of Maltese Journalists felt the need to twice issue a statement to defend the profession, as he was "clearly implying they are enemies of the State and the people".¹⁹³ The IGM urged the Prime Minister not to "imply" that journalists are "enemies of the State" and that Abela should lead by example and "should not instigate hate towards journalists and the media".¹⁹⁴

Abela's words and behaviour quite likely incited others to follow in his footsteps, as former Labour Party Secretary General Jason Micallef targeted an individual journalist in

191 Jessica Arena, *Malta rises up press freedom index, but there's a catch*, *Times of Malta*, 3 May 2024, <https://timesofmalta.com/article/malta-climbs-press-freedom-index-countries-got-worse.1091851>.

192 Media Freedom Rapid Response, <https://www.mfrr.eu/monitor/>.

193 The Malta Independent, *IGM condemns PM's comments implying journalists 'are enemies of the State and of the people'*, 7 May 2024, <https://www.independent.com.mt/articles/2024-05-07/local-news/IGM-condemns-PM-s-comments-implying-journalists-are-enemies-of-the-State-and-of-the-people-6736260868>.

194 The Malta Independent, *TMID Editorial: Instigating hatred against journalists*, 15 May 2024, <https://www.independent.com.mt/articles/2024-05-15/newspaper-leader/TMID-Editorial-Instigating-hatred-against-journalists-6736261112>.

the following days, taking pictures of her personal chats on her open laptop while she was following a press conference, and publishing the image on social media.¹⁹⁵ Micallef claimed that she was given questions to ask by former Nationalist MP Jason Azzopardi and members of NGO Repubblica. The claims were then amplified in the Labour Party's media outlets, which labeled independent media "sabotage groups".¹⁹⁶

In August 2024, former minister Chris Cardona claimed his testimony during a court hearing had been misrepresented.¹⁹⁷ The Institute of Maltese Journalists slammed his "irresponsible comments" saying that "[t]he news reports reflected his testimony and as a former politician, he should know better than sounding the dog whistle to instigate hate against journalists".¹⁹⁸

In May 2024, reporters covering the historic arraignment of former Prime Minister Joseph Muscat and his former associates in connection

with the huge hospital scandal discussed earlier in this report, received insults from hecklers who gathered in support of those charged outside the courthouse. The IGM, while noting the lack of physical incidents involving members of the media, condemned the name-calling of journalists by members of the public.¹⁹⁹ The IGM thanked the Malta Police Force for ensuring that members of the media covering the cases worked in a safe environment and were afforded the utmost protection during their duties.

Smear campaigns

ONE News, the media branch of the party in government, PL, recently singled out a *Times of Malta* journalist by publishing his face in their news bulletin. ONE News was reporting on an article by French news outlet Mediapart about the OCCRP. Mediapart strongly condemned the way ONE News "manipulated" their article, and used its investigation to focus on the investigative journalist.²⁰⁰

195 Jurgen Balzan, *Jason Micallef targets Newsbook journalist in fresh attack on media*, *Newsbook*, 11 May 2024, <https://newsbook.com.mt/en/jason-micallef-targets-newsbook-journalist-in-fresh-attack-on-media/>.

196 Elizabeth De Gaetano, *Attacks on independent media continue despite condemnations*, *The Shift*, 14 May 2024, <https://theshiftnews.com/2024/05/14/attacks-on-independent-media-continue-despite-condemnations/>.

197 Times of Malta, *IGM condemns Chris Cardona's 'irresponsible' criticism of court journalists*, *Times of Malta*, 23 August 2024, <https://timesofmalta.com/article/igm-condemns-chris-cardona-irresponsible-criticism-court-journalists.1097116>.

198 Times of Malta, *IGM condemns Chris Cardona's 'irresponsible' criticism of court journalists*, 23 August 2024, <https://timesofmalta.com/article/igm-condemns-chris-cardona-irresponsible-criticism-court-journalists.1097116>.

199 Times of Malta, *Journalists thank police, condemn name-calling during Vitals case coverage*, 30 May 2024, <https://timesofmalta.com/article/journalists-thank-police-condemn-namecalling-vitals-case-coverage.1093214>.

200 Times of Malta, *French organisation condemns ONE News 'manipulation' to attack Times journalist*, 12 December 2024, <https://timesofmalta.com/article/french-organisation-condemns-one-news-manipulation.1102346>.

Rules and practices guaranteeing journalist's independence and safety

For recommendations on journalists' safety in Malta, see the 'Recommendations of the Public Inquiry into the Assassination of Daphne Caruana Galizia - the Foundation's position', annexed at the end of this report.

Malta has not implemented the European Commission's 2021 Recommendation on the protection, safety and empowerment of journalists.²⁰¹

The government has been promising a media law reform for a number of years. In May 2024, journalists called on the government "to wake up from its slumber" and implement laws that protect the press.²⁰² The government, the IGM said, has sat on the promised media law reform for almost a year.²⁰³ In October of last year, the government said it would issue a White Paper

after the Prime Minister tabled the final report drawn up by a committee of media experts.²⁰⁴ However, there are no indications of the existence of this White Paper.

There is also fear of backsliding in this area after a sitting magistrate and an outgoing governing party (PL) president called for the return of criminal libel and harsher penalties for libel cases.²⁰⁵ While Prime Minister Abela has refused to say whether the removal of criminal libel was a mistake, he called on society to "stand up to" what he called "a small clique of people who pretend to be journalists but aren't", who are abusing the decriminalisation of criminal libel.²⁰⁶ Criminal libel was removed by the Labour government in 2018 as part of a media law reform in the wake of the assassination of Daphne Caruana Galizia. The Institute of Maltese Journalists has urged the government not to turn back the clock,

201 European Commission, *Recommendation on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union*, European Commission, 16 September 2021, <https://digital-strategy.ec.europa.eu/en/library/recommendation-protection-safety-and-empowerment-journalists>.

202 Times of Malta, *'Wake up and protect journalists': Maltese media urges PM on Press Freedom Day*, 3 May 2024, <https://timesofmalta.com/article/wake-protect-journalists-maltese-media-urges-pm-press-freedom-day.1091856>.

203 Ibid.

204 Times of Malta, *Media reform plan to be opened to consultation as Abela agrees to White Paper*, 2 October 2023, <https://timesofmalta.com/article/media-reform-plan-opened-consultation-abela-agrees-white-paper.1058751>.

205 Matthew Farrugia, *[WATCH] Abela defends libel law reform but warns of abuse by a 'small clique'*, MaltaToday, 17 September 2024, https://www.maltatoday.com.mt/news/national/131251/abela_defends_libel_law_reform_but_warns_of_abuse_by_a_small_clique.

206 Matthew Farrugia, *[WATCH] Abela defends libel law reform but warns of abuse by a 'small clique'*, 17 September 2024, https://www.maltatoday.com.mt/news/national/131251/abela_defends_libel_law_reform_but_warns_of_abuse_by_a_small_clique.

due to its chilling effect on free speech and journalists.²⁰⁷

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

The report of the public inquiry into Daphne Caruana Galizia's assassination recommends the timely and effective investigation by an ad hoc structure within the police force of the cause of risks to journalists, which has not been implemented, as explained in the 'Recommendations of the Public Inquiry into the Assassination of Daphne Caruana Galizia - the Foundation's position', annexed below. The public inquiry report also recommends that the police should investigate serious allegations reported by journalistic investigations (open source) in a timely manner, however, this recommendation has not been fully implemented. The report also recommends the proper training of the police corps. The abovementioned Foundation's position paper recommends more effective and well-resourced investigative units within the police.

As systemic risk needs to be addressed by systemic solutions, an ad hoc structure within the Malta Police Force should identify points of failure within the force which place journalists

at risk, e.g. a lack of swift action after a journalist exposes high-level corruption and other serious crimes increases that journalist's risk. Currently, a formal structure within the police (VIP protection unit) is tasked with identifying persons – not just journalists – who are exposed to real and imminent risk to life; however, the office of the OSCE Representative on the Freedom of the Media has identified shortcomings.²⁰⁸ The unit needs to include an element tasked with identifying and focusing on journalists who may be at serious risk. It should be able to assess the risk by virtue of the quality of the journalist's investigation, what they are publishing, the effect on the subjects of their reporting, and the potential risks a reaction could generate. Effort needs to be made to build awareness of and trust in the unit among journalists. The unit may serve as a liaison between the police and the journalist, who therefore will feel safe and protected to exercise their duty freely.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

Nearly 1 in 10 SLAPP cases filed in European courts in 14 years targeted people in Malta, most of whom were journalists, a report by the Coalition Against SLAPPs in Europe (CASE)

207 Times of Malta, *Don't turn the clock on criminal libel, journalists' institute says*, 18 September 2024, <https://timesofmalta.com/article/dont-turn-clock-criminal-libel-journalists-institute-says.1098252>.

208 OSCE Representative on the Freedom of the Media, *Legal analysis on the draft laws of Malta to implement various measures for the protection of the media and of journalists*, OSCE, February 2022, <https://www.osce.org/files/f/documents/f/e/518019.pdf>.

revealed this year.²⁰⁹ Of the 1,049 SLAPP cases filed in the years spanning from 2010 and 2023, a total of 91 (9%) targeted defendants in Malta. Most of these were filed against slain journalist Daphne Caruana Galizia.

Confidentiality and protection of journalistic sources (including whistleblower protection)

Civil society organisation Repubblika issued a report on whistleblower protection in Malta.²¹⁰ In its report, Repubblika notes that since adopting amendments to the Protection of the Whistleblower Act in November 2021, Malta has improved its legal framework. However, the government has ignored several key requirements of the directive and, most seriously, made no attempt to address the core issue and fundamental flaw at the heart of both the original legislation and the law now as it has been amended, the extent of the influence of government on whether a potential witness is granted whistleblower status. According to Repubblika, the failure of Malta to address this fundamental flaw in the legal framework

has led to whistleblower protection experts labeling the transposition law a ‘trojan horse’. Furthermore, it seems clear that any whistleblowers who are perceived as hostile to the government’s interests will not be able to rely on this new law to protect them.

Access to information and public documents

There has been no effort to improve Malta’s Freedom of Information Act, which has long been considered deficient. Government entities frequently limit access to information to journalists with the excuse that they had no such information, which in many cases was found to be untrue by the Data Protection Commissioner. Over 40 legal challenges were initiated by government entities against FOI requests by the newsroom *The Shift*.²¹¹ After two years, *The Shift* won all 40 cases at the Information and Data Protection Commissioner Appeals Tribunal, and 18 cases in court, but ministries and government agencies have yet to provide the information.²¹² UNESCO was the latest in a string of international calls on Malta to

209 Coalition Against SLAPPs in Europe and The Daphne Caruana Galizia Foundation, *A 2024 Report on SLAPPs in Europe: Mapping Trends and Cases*, Coalition Against SLAPPs in Europe, November 2024, https://www.the-case.eu/wp-content/uploads/2024/12/CASE-2024-report-vf_compressed-1.pdf.

210 Repubblika, *Protecting Whistleblowers in Malta: A call for reform to protect truth-sayers and capture wrong-doers*, 15 November 2022, <https://whistleblowingnetwork.org/WIN/media/pdfs/WB-ram-final-with-WIN-addition.pdf>.

211 David Lindsay, *Government launches new attempt to cripple The Shift with FOI appeals*, *The Shift*, 3 August 2022, <https://theshiftnews.com/2022/08/03/government-launches-new-attempt-to-cripple-the-shift-with-foi-appeals/>.

212 Elizabeth De Gaetano, *Government still refusing to detail payments to Saviour Balzan despite The Shift winning all cases*, *The Shift*, 21 January 2024, <https://theshiftnews.com/2024/01/21/government-still-refusing-to-detail-payments-to-saviour-balzan-despite-the-shift-winning-all-cases/>.

reform its FOI law, all of which the government has ignored.²¹³

Journalists are also struggling to obtain information on beneficial owners of companies, as they are consistently denied access to such information, despite showing legitimate interest. This follows a judgment by the European Court of Justice, which ruled that “both the press and civil society organisations that are connected with the prevention and combating of money laundering and terrorist financing have a legitimate interest in accessing information on beneficial ownership”.²¹⁴ In November 2023, one year after this ruling, Transparency International carried out research on how the ruling had affected access to beneficial ownership registers by journalists. Malta is mentioned as having “consistently denied access, even if journalists and civil society demonstrate their legitimate interest”.²¹⁵ This is in clear contravention of the ECJ judgement and of EU law. Changes to the law are urgently needed to include the media and civil society as bearers of legitimate interest with access to the UBO register. The current legislative

framework, under which several requests for access have already been refused, is contrary to the currently applicable EU law and the ECJ judgment. No progress has yet been made in this regard.

Other

There is an ongoing trend of public officials delegitimising media’s democratic role by ignoring media questions and not acting on media reports. In April 2024, Social Policy Minister Michael Falzon refused to reply to a *Times of Malta* journalist’s request for a comment following the revelation that a social benefits fraud racket involved a “person of trust” in his ministry.²¹⁶ On 12 April 2024, Edward Montebello, the Maltese government’s head of communications, reportedly refused to answer *MaltaToday* journalist Matthew Agius’s questions related to the case filed to remove the lead investigator in the murder of Daphne Caruana Galizia from the case. In his email exchange with the journalist and *MaltaToday*’s editor Kurt Sansone, Montebello reportedly dismissed Agius’s questions, ultimately

213 Elizabeth De Gaetano, *UNESCO joins growing list of international organisations calling on Malta to reform its FOI Act*, *The Shift*, 16 March 2024, <https://theshiftnews.com/2024/03/16/unesco-joins-growing-list-of-international-organisations-calling-on-malta-to-reform-its-foi-act/>.

214 CJEU [GC], Judgment of 22 November 2022, WM (C-37/20) and Sovim SA (C-601/20) v Luxembourg Business Registers (Joined Cases C-37/20 and C-601/20), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:62020CJ0037>.

215 Maira Martini, *EU court ruling on beneficial ownership registers: One year on, need for harmonised approach is clear*, Transparency International, 22 November 2023, <https://www.transparency.org/en/blog/eu-court-ruling-on-beneficial-ownership-registers-legitimate-access>.

216 Mapping Media Freedom, *Social Policy Minister refuses to answer questions about benefits scandal*, 23 April 2024, <https://www.mapmf.org/alert/31462>.

accusing the journalist of “attacking and lying” about him.²¹⁷ Montebello has been criticised several times in the past for his reluctance to answer journalists’ questions and obstructing their work.²¹⁸

In September 2024, the court, citing Article 517 of the Criminal Code, decreed that until the trial of the alleged mastermind of Daphne Caruana’s assassination is concluded, any declaration or public discussion in favor or against the accused is prohibited. The ban does not extend to reports on hearings in open court where media presence is allowed. During a pre-trial hearing on 5 September, the judge had voiced concern about the possible prejudice such comments could cause to Fenech’s trial.²¹⁹

Do you consider the progress of the implementation of the Anti-SLAPP Directive in your country adequate? Have there been any positive developments you could attribute to the Anti-SLAPP Directive?

While Malta transposed the Anti-SLAPP Directive, the law came with a number of limitations that wouldn’t protect most of the SLAPP targets Malta has had until now. These shortcomings include:

- The transposition was by Legal Notice, bypassing Parliamentary scrutiny.
- The published legislation is limited to the minimum standards outlined in the Directive.
- It does not provide protection against domestic SLAPP cases, overlooking the EU Recommendation of 27th April 2022 and the Council of Europe Recommendation of 5th April 2024, setting a negative precedent for other Member States.
- Article 2 of Malta’s anti-SLAPP legislation repurposes the indicative qualities stated in paragraph 4(3) of the EU anti-SLAPP Directive (i.e. the indications of purpose) as being examples of claims which may be unfounded. This could be interpreted by the court as stating the preconditions of early dismissal, rather than the features that enable the court to infer the purpose of the plaintiff.
- The maximum penalty that may be imposed on a plaintiff is capped at €10,000, which would not dissuade a large corporation or wealthy individual, whereas Article 15 of the EU anti-SLAPP Directive requires

217 Mapping Media Freedom, *Government spokesperson refuses to answer questions of MaltaToday journalist*, 12 April 2024, <https://www.mapmf.org/alert/31415>.

218 Mapping Media Freedom, *Government spokesperson refuses to answer questions of MaltaToday journalist*, 12 April 2024, <https://www.mapmf.org/alert/31415>.

219 E. Brincat, *Comments about murder suspect Yorgen Fenech outside court hearings banned*, *Times of Malta*, 20 September 2024, <https://timesofmalta.com/article/comments-murder-suspect-yorgen-fenech-outside-court-hearings-banned.1098303>.

penalties for plaintiffs to be effective, proportionate, and dissuasive.

- No measures have been announced to raise awareness and develop expertise, nor to ensure support is available for targets or to support enhanced monitoring, as provided for in the EU Recommendation.
- No measures have been announced to strengthen anti-SLAPP policy frameworks, as envisaged by the Council of Europe Recommendation.

In August 2024, The Daphne Caruana Galizia Foundation together with a number of civil society organisations wrote to the Prime Minister and Ministry of Justice highlighting these shortcomings, however, we received no response nor were we consulted prior or after transposition.²²⁰ Therefore we feel no progress has been made in terms of protecting journalists and activists in Malta against SLAPPs.

The Institute for Journalists in Malta welcomed the government's transposition of the EU's anti-SLAPP Directive, however, it warned the measure was only part of a much-needed wider reform.²²¹

Any positive developments regarding the application of anti-SLAPP rules for domestic cases, such as transparency, procedural safeguards and remedies

There haven't been any positive developments in this regard.

Malta needs to revise its anti-SLAPP legislation to meet or exceed the human rights standards set by the Council of Europe anti-SLAPP Recommendation, broaden the legislation's scope to cover domestic cases too, and implement the non-legislative measures outlined in the EU anti-SLAPP Recommendation. The process of reforming Malta's anti-SLAPP law could be led by the Ministry of Justice, which was originally tasked with transposing the anti-SLAPP law.

220 The Daphne Caruana Galizia Foundation, *Letter Re: Legal Notice 177 of 2024 Strategic Lawsuits Against Public Participation Order*, 2 August 2024, <https://www.daphne.foundation/documents/letters/letter-on-anti-SLAPP-Directive-transposition.pdf>.

221 Times of Malta, *Anti-SLAPP measures only part of needed reform: journalists' institute*, *Times of Malta*, 1 August 2024, <https://timesofmalta.com/article/antislapp-measures-part-needed-reform-journalists-institute.1096190>.

CHECKS AND BALANCES

Key recommendations

- *Immediately suspend the secretive law reforms on magisterial inquiries and open the process of reform to public consultation to ensure the rights of civil society and private individuals to initiate magisterial inquiries.²²² Implement the repeated recommendations of the European Commission to engage civil society in the legislative process,²²³ including by publishing a white paper outlining the proposed changes and engaging in open dialogue to hear public opinion, prior to parliamentary involvement.*
- *Establish an independent body empowered to initiate a public inquiry in cases of systemic problems affecting public interest.*
- *Extend the Ombudsman's office to include a National Human Rights Institution taking into account the UN Paris Principles.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

The Daphne Caruana Galizia Foundation joined the stakeholders meeting with government agencies to join the Justice Forum, a forum that was set up by the Ministry of

Justice. We joined because we believed in the importance of dialogue and implementation of a number of recommendations that continue to go ignored. This forum was set up as part of the Open Government Partnership Action Plan for 2024. Following a four-hour meeting between civil society organisations and government agencies involved in the forum, it became clear that the government had no intention of committing to the implementation of any recommendation that was put forward. These were the same recommendations that were made by the European Commission, GRECO, Venice

222 *Repubblika condemns government's secrecy in amending law on magisterial inquiries*, *The Malta Independent*, 20 January 2025, <https://www.independent.com.mt/articles/2025-01-20/local-news/Repubblika-condemns-government-s-secrecy-in-amending-law-on-magisterial-inquiries-6736267268>.

223 European Commission, *2024 Rule of Law Report*, 24 July 2024, https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_en.

Commission and the board from the public inquiry into Daphne Caruana Galizia's assassination. The Foundation therefore decided to remove itself from the forum when it became clear that the forum was set up to simply create a space for dialogue between civil society and government agencies. This was all the more shocking to civil society organisations when our emails to the Permanent Secretary via this forum were being ignored. Unfortunately, such a forum cannot be successfully set up when it is clear that implementation of recommendations is not on the table.

Legislative processes continue to lack any public consultation. In February of this year, the EU adopted the Anti-SLAPP Directive, and Malta was the first country to transpose that law. However, the draft falls short of securing effective protection for journalists and activists in Malta. It's good to point out that with this new law, Daphne would not have been protected against 90% of the cases she faced because the law only protects journalists in cross-border cases. Prior to the law coming into force, the Foundation was not consulted nor was there any public consultation on the matter.

Currently public consultation and participation is not enshrined in law and is carried out on an ad hoc basis with no guidelines and little transparency. Government has repeatedly and

deliberately excluded any form of public participation from all recent significant legislative amendments. This happens despite the fact that the European Commission has repeatedly recommended the involvement of civil society in the legislative process.²²⁴ The 2024 OSCE Parallel Civil Society Conference, recently held in Malta, also underscored the important role of civil society in promoting peace, security and democratic resilience across the OSCE region.²²⁵

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

Following the EU's adoption of the Anti-SLAPP Directive, the government of Malta quietly and quickly transposed the directive into law in the form of a legal notice without debate in Parliament or any public consultation. The Daphne Caruana Galizia Foundation together with other civil society organisations wrote to the Prime Minister and Minister of Justice, however we got no response.

In a shocking announcement²²⁶ on Facebook, the Prime Minister said that he ordered the Minister of Justice to reform magisterial inquiries to avoid people 'abusing the system'. This

224 European Commission, *2024 Rule of Law Report*, 24 July 2024, https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_en.

225 OSCE, *Civil society's role in strengthening resilience highlighted at OSCE Civil Society Conference*, 4 December 2024, <https://www.osce.org/chairpersonship/582166>.

226 Daniel Ellul, *PM reacts to Jason Azzopardi claims by ordering reform of magisterial inquiries*, *Times of Malta*, 15 December 2024, <https://timesofmalta.com/article/robert-abela-jason-azzopardi-reform-magisterial-inquiries.1102507>.

came after a former opposition MP filed²²⁷ an urgent request for a magisterial inquiry into a criminal racket involving the Minister of Gozo and his wife. This is an extremely worrying development since, had it not been for civil society organisations, none of the prosecutions that happened this year into the sale of the three hospitals would have been possible since the police do not always act on complaints they receive due to the lack of experience and resources (this is explained in more detail in the anti-corruption section). Removing another avenue to access justice will further weaken the rule of law in Malta. This is especially true when magistrates can always reject an inquiry if it is believed to lack evidence. This move by the Prime Minister was also criticised by former Labour MEP Cyrus Engerer, who said “dismantling checks and balances is a fast track to unchecked power, corruption, and the erosion of transparency and public trust”.²²⁸

Regime for constitutional review of laws

The Constitution, in Section 116, provides for the possibility of constitutional review of legislation.²²⁹ Malta does have a Law Commissioner,²³⁰ however the remit of this

Commission remit is unclear, and it is not possible to determine the work carried out by it as no annual reports are published.

Independent authorities

While the Commissioner for Standards in Public Life does enjoy independence and neutrality, it is not empowered to act beyond requesting an apology. The result of this shows that even when the Commissioner finds that MPs have behaved unethically, the case gets ‘resolved’ by the Commissioner requesting an apology from the guilty party. This is not a deterrent that strengthens the rule of law. Secondly, the Standards in Public Life Act²³¹ takes a very narrow view of those who fall under the definition of a ‘person of trust’, excluding political appointees and politically exposed persons.

The Information and Data Protection Commissioner also enjoys independence and the resources to do its job, however lacks the power to act when government agencies continue to refuse Freedom of Information requests, even when the IDPC rules that they are duty bound to. The board of the Public Inquiry into Daphne Caruana Galizia’s assassination had

227 Edwina Brincat, *Jason Azzopardi asks magistrate to probe racket in Gozo*, *Times of Malta*, 15 December 2024, <https://timesofmalta.com/article/an-essential-lead-corrupt-end-azzopardi-files-inquiry-gozo-racket.1102488>.

228 Ana Tortell, *A fast track to unchecked power: Reactions to Prime Minister’s vow to reform magisterial inquiry process*, *Lovin Malta*, 15 December 2024, <https://lovinmalta.com/court/a-fast-track-to-unchecked-power-reactions-to-prime-ministers-vow-to-reform-magisterial-inquiry-process/>.

229 The Constitution, Laws of Malta, <https://legislation.mt/eli/const/eng>.

230 Ministry of Justice in Malta, Law Commission, <https://justice.gov.mt/public-bodies/law-commission/>.

231 Commissioner for Standards in Public Life, Annual Report 2023, 5 July 2024, <https://standardscommissioner.mt/wp-content/uploads/annual-report-2023.pdf>.

included a recommendation for the Freedom of Information Act to be updated, yet this is still not done.

The Permanent Commission Against Corruption (PCAC), Judge Lawrence Quintano, was this year approved for a third term, a position he's held since 2014. According to the news reports,²³² since 1988, there has only been one investigation by this office that has seen a prosecution in court, which raises alarms about the effectiveness of this office. Earlier this year, the Minister of Justice announced that the Commissioner's office had received EU funds as part of Malta's Recovery and Resilience Funds to create a digital register of corruption cases for public access, a platform he said would be launched at the end of 2024. This has not yet been launched. Following an FOI request the Daphne Caruana Galizia Foundation sent to the office of the PCAC²³³ to find out how many investigations were initiated and concluded by the office in 2024, and were directed by the FOI officer to the Ministry of Justice. Following this alarming development the Foundation sought clarification as to whether the office of

PCAC is separate from the Ministry of Justice since the law of the PCAC specifically states that information on investigations into corruption should be kept confidential, however, the PCAC confirmed that the office is under the remit of the Ministry of Justice. This weakens the office's position to conduct investigations into government ministers and other public officials.

A report published by the Auditor General²³⁴ found that "improvements to good governance are being hindered by serious issues across certain local and regional councils". At least 11²³⁵ local councils were named and shamed in the report for failing to submit their audited accounts, some for excessive spending and some for insufficient funds to cover their financial deficits.

The appointment of the Police Commissioner should be revised to have a two-thirds majority in parliament because the current process of appointment²³⁶ is riddled with political interference.

232 Jurgen Balzan, *Judge Quintano reappointed to helm anti-corruption commission for the third term*, *Newsbook*, 15 July 2024, <https://newsbook.com.mt/en/judge-quintano-reappointed-to-helm-anti-corruption-commission-for-third-term/>.

233 Office of the Permanent Commission Against Corruption, Freedom of Information contact email, <https://pcac.gov.mt/freedom-of-information/?lang=en>.

234 Jacob Borg, 'Serious issues' hindering good governance improvements- Auditor General, *Times of Malta*, 16 December 2024, <https://timesofmalta.com/article/serious-issues-hindering-good-governance-improvements-auditor-general.1102538>.

235 National Statistics Office (NAO), *Report by the Auditor General of Public Accounts 202*, December 2024, <https://nao.gov.mt/2024/12/11/report-by-the-auditor-general-on-the-public-accounts-2023/>.

236 Mario Xuereb, *PN wants police chief appointed by two thirds, with constitutional protections*, *Times of Malta*, 8 July 2024, <https://timesofmalta.com/article/pn-police-commissioner-appointment-two-thirds-constitution-proposal.1095050>.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

We have encountered situations in which administrative decisions have been taken without being made public. For example, children whose residence status in Malta is unclear are now being denied access to education in public schools. This is reflective of a policy change. However, no notice of this change was made public.

With regards to sanctions, the measures taken by the Commission for the Administration of Justice, and of the committees set up thereunder for the discipline of judges, magistrates and lawyers, for example, are not made public.

Powers accorded to the courts to carry out judicial review (including the scope and suspensive effect of review powers)

The judicial review process as it stands is somewhat restrictive in that it is available only to persons who have a sufficient interest. To date, this has not been interpreted by the courts to include non-governmental organisations.²³⁷ The opposition tabled a bill on Judicial Review

in November 2023 but there have been no developments on this.²³⁸

Implementation by the public administration and State institutions of final court decisions

There is no publicly available information on this and no developments on recommendations in this regard. The Constitutional Court is obliged to deliver a copy of any judgment that declares any law or provision that runs counter to the Constitution or any human right to the Speaker of the House of Representatives. The Prime Minister may, within six months from the date that the judgment becomes *res judicata* and to the extent necessary in his opinion, remove any inconsistency (Article 242(1)).

Electoral framework

Limitations on the right to vote

Migrants in Malta do not have the right to vote or stand as candidates in Maltese elections. Only EU nationals residing in Malta can vote and run for EU parliamentary elections and local council elections. Malta is one of 13 EU Member States that does not grant any electoral rights to migrants residing in the country. A majority of 14 of the 27 EU Member States grant some sort of electoral rights to certain migrants. In the last general election in 2022,

237 Public Interest Litigation Network, Judicial Review, https://www.piln.mt/wp-content/uploads/sites/2/2024/07/24_04_18_Judicial-Review_Final-Letter.pdf.

238 Daniel Ellul, *Opposition bill to make it easier to challenge government decisions in court*, 20 November 2023, <https://timesofmalta.com/article/opposition-bill-make-easier-challenge-government-decisions-court.1068474>.

20%²³⁹ of Malta's residents who did not have citizenship were unable to vote. While attempts to involve migrants in political participation have been made by civil society organisations, they have been repeatedly ignored.

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

Malta does not have an e-voting system. Eligible voters need to vote, in person at the polling station closest to where they live. While the government has, in some elections, organised support for eligible voters living abroad to obtain discounted rates on flights during the election weekend. Political parties also keep details of registers on record, such as addresses and phone numbers that send numerous messages and letters asking people to go vote. On some occasions, they also offered transport and assistance with voting for the elderly.

Rules on political advertising and their enforcement

In 2021, the Standards Commissioner issued nine guidelines²⁴⁰ on political advertising which the Prime Minister had vowed²⁴¹ to implement. However, these are yet to be implemented.

Irregularities, fraud and related safeguards, including independence and effectiveness of electoral bodies

The Electoral Commission board is appointed²⁴² by the President by recommendation from the governing party and the opposition. Since recommendations for appointments come from the two biggest political parties, the board is not empowered to act on wrongdoing. Whilst both political parties fail to submit their audited accounts and refuse to make their received donations public, the Electoral Commission refuses to do anything, which boils down to the way the board is appointed.

239 Monique Agius, *Should migrants be given a right to vote*, *Newsbook*, 24 March 2024, <https://newsbook.com.mt/en/should-migrants-be-given-a-right-to-vote/>.

240 Commissioner for Standards in Public Life, Standards Commissioner issues guidelines on government advertising for public consultation purposes, 22 June 2021, <https://standardscommissioner.mt/standards-commissioner-issues-guidelines-on-government-advertising-for-public-consultation-purposes/>.

241 Chris Peregin, *PM Pledges 'Clear Guidelines' On Political Advertising After Damning Standards Commissioner Report*, *Lovin Malta*, 15 April 2021, <https://lovinmalta.com/news/pm-pledges-clear-guidelines-on-political-advertising-after-damning-standards-commissioner-report/>.

242 The Electoral Commission Malta, 'About Us', <https://electoral.gov.mt/electoralcommission>.

Access to balanced and reliable information online and offline during electoral campaign

While there is access to reliable and balanced information during electoral campaigns, political parties counteract that by using their political party TV stations as well as social media platforms to directly communicate with the public, shaping their narratives without

journalistic framing. Individuals frequently inhabit echo chambers, and precision targeting of individuals, based on algorithms that shape users' experiences, may have eroded our critical competencies. There is some hope with the European Media Freedom Act for the situation to change, but implementation at the national level or even a public consultation is yet to be seen.

CIVIC SPACE

Key recommendations

- *The Standards Commissioner's remit to investigate breaches of ethical conduct of members of the House of Representatives and persons of trust should also extend to political appointees. Political appointee Jason Micallef continues to attack anti-corruption activists and journalists with complete impunity.*²⁴³
- *Attacks of any kind on journalists and activists should be appropriately penalised, including through the imposition of disciplinary measures (if carried out by persons holding public office) and criminal punishment (fines and/or imprisonment), depending on the severity of the attack.*

Freedom of association

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations (e.g. tax advantages for organisations with charitable or public benefit status, eligibility to receive donations via citizens' allocation of income tax to charitable causes, eligibility to use public amenities at low or no cost, etc)

Civil society organisations have very little access to public funding in Malta. A Civil Society Fund was set up for voluntary organisations to make use of. The budget of the fund is €150,000, limiting each organisation to apply for a maximum of €6,000, which is also very limited in scope and activities.²⁴⁴

243 Times of Malta, *Jason Micallef accused of instigating hate towards journalists*, 11 May 2024, <https://timesofmalta.com/article/jason-micallef-accuses-journalist-colluding-establishment.1092308>.

244 Ministry for Inclusion and the Voluntary Sector, Malta Council for the Voluntary Sector, *Civil Society Fund 2024*, <https://vofunding.org.mt/funds/164>.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *Government should commit to the implementation in full of recommendations to strengthen rule of law.*
- *More funding should be made available to civil society organisations.*
- *Journalists should be allowed access to prisons and detention centres.*

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

The European Court of Human Rights had harsh words for Malta's treatment of vulnerable children and expressed grave concern at the lack of justice for victims of human rights violations. There has been no implementation to improve the situation at the detention centres.²⁴⁵

245 Noel Grima, *European Court of Human Rights blasts Malta's detention regime, again*, *The Shift News*, 22 October 2024, <https://theshiftnews.com/2024/10/22/european-court-of-human-rights-blasts-maltas-detention-regime-again/>.

FOSTERING A RULE OF LAW CULTURE

Contribution of civil society and other non-governmental actors

The Daphne Caruana Galizia Foundation

- Contributed to TI's global standards on political finance.²⁴⁶
- Set up a legal clinic, which has been running successfully for the past three years. This involves a lawyer providing legal support and legal representation to journalists from independent newsrooms in Malta. From May 2022 to May 2023, the Legal Clinic provided support to at least 31 journalists and editors on more than 95 occasions, while from June 2023 to March 2024, it provided support to at least 24 journalists and editors on 151 occasions.
- Provides training to local journalists by collaborating with international organisations, such as OCCRP, Faktabaari, and others.

- Assists and participates in collaborative investigations, supported by grant partnerships with organisations like OCCRP.²⁴⁷
- Set up the Public Interest Litigation Network – a network of lawyers in Malta who offer pro bono legal services to victims in cases of public interest, and to deliver broader access to justice in a country where it is lacking. The PILN pushed for and achieved a public inquiry into the death of construction victim Jean Paul Sofia, which found the state responsible for his death.²⁴⁸ PILN lawyers also recently won a freedom of expression case after a comedian was criminally charged for something he said during a comedy show, among other cases.²⁴⁹
- Co-authored the 2024 SLAPPs report with the Coalition Against SLAPPs in Europe (CASE)

246 Transparency International, *Standards for Integrity in Political Finance: A Global Policy Position*, 2024, https://images.transparencycdn.org/images/Integrity-Standards_English.pdf.

247 The Daphne Caruana Galizia Foundation, *Foundation-OCCRP partnership supports investigative journalism in Malta*, 17 May 2023, <https://www.daphne.foundation/en/2023/05/17/hospitals-investigation>.

248 The Daphne Caruana Galizia Foundation, *Maltese state found responsible for preventable death*, 2 March 2024, <https://www.daphne.foundation/en/2024/03/02/jean-paul-sofia>.

249 PILN, Cases, <https://www.piln.mt/cases-and-campaigns/>.

CONTACT

The Daphne Caruana Galizia Foundation

The Daphne Caruana Galizia Foundation was established in Malta following the tragic assassination of investigative journalist Daphne Caruana Galizia in 2017. The Foundation is dedicated to seeking justice for Daphne, ensuring her investigative work continues, and advocating for press freedom and accountability.

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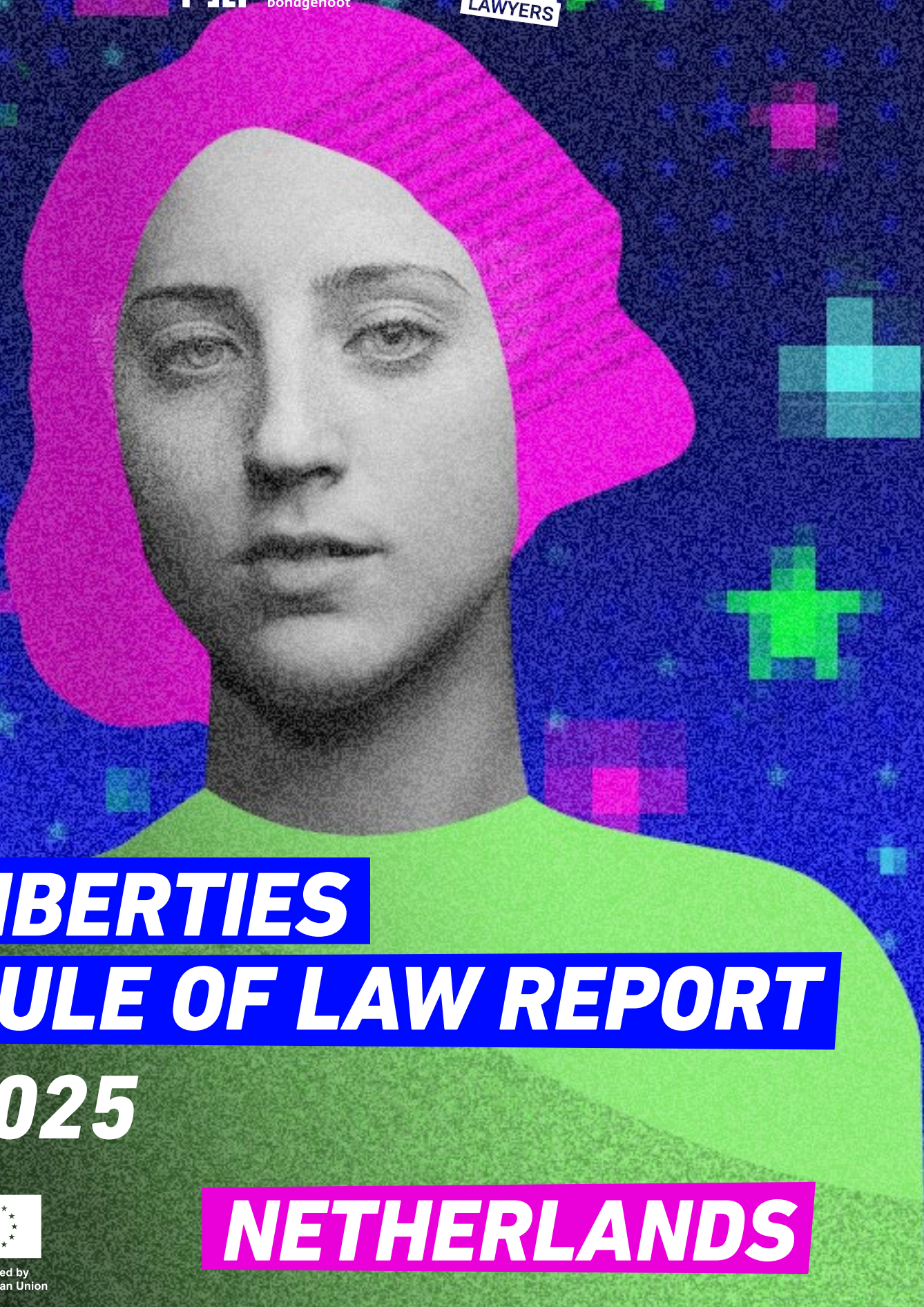
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ABOUT THE AUTHORS

Dutch section of the International Commission of Jurists (NJCM, Nederlands Juristen Comité voor de Mensenrechten)



NJCM is the abbreviation for Nederlands Juristen Comité voor de Mensenrechten (Netherlands Committee of Jurists for Human Rights). The organisation works to promote and protect human rights in the Netherlands. NJCM is the Dutch section of the International Commission of Jurists (ICJ) and was founded in Leiden in 1974, where it is still based.

Netherlands Helsinki Committee (NHC)



The Netherlands Helsinki Committee (NHC) is a non-governmental organisation that promotes human rights and strengthens the rule of law and democracy in all countries of Europe, including the Central Asian countries participating in the OSCE.

Free Press Unlimited (FPU)



Free Press Unlimited (FPU) is committed to promoting and defending press freedom and access to reliable information, particularly in countries with limited (press) freedom. Together with over 40 local media partner organisations, Free Press Unlimited strives to give people the information needed to help them survive, develop themselves, and monitor their government.

Transparency International Netherlands (TINL)



Transparency International Nederland (TINL) strives for a world in which government services, the political world, business, civil society and citizens are free from corruption. The emphasis is on improving integrity, transparency and accountability in Dutch society.

PILP



PILP stands up for the protection of human rights and the rule of law in the Netherlands and in the Dutch legal sphere. PILP does this by advising on, supporting and conducting strategic litigation and legal proceedings.

Lawyers 4 Lawyers



Lawyers for Lawyers (L4L) is an independent and non-political foundation which aims to promote the independence of the legal profession worldwide by supporting lawyers at risk. L4L was granted Special Consultative status with the UN Economic and Social Council in 2013.

KEY CONCERNS

Justice System

Little to no progress has been made in addressing judicial independence, financial autonomy of the judiciary and protection of lawyers and fair access to justice.

Some progress has been made on transparency rules and addressing systemic justice issues, like the childcare affair. Limited progress is noted in reducing political influence on judicial appointments and safeguarding judicial autonomy, as highlighted by the persistent concerns regarding the Council for the Judiciary and ministerial authority over the judiciary. Challenges remain in addressing financial shortages, protecting judicial independence, and ensuring access to justice.

Anti-Corruption Framework

The current government (Kabinet Schoof) promised to create a national anti-corruption strategy, increase the protection of whistleblowers, and create a rule of law agenda. It also committed to ongoing legislative procedures in the field of anti-corruption. However, at the moment of writing, there has been little to no progress on all dossiers mentioned below.

Transparency rules on lobbying of public officials are not satisfactory, as the publishing of public agendas is not consistently done and does not constitute an effective substitute for a lobby register. The government has still not implemented the revolving door legislation.

Media Environment and Media Freedom

With an increase in incidents of violence against journalists, the normalisation of harmful political rhetoric on the independence of media and journalists, large cuts to the public broadcaster's budget, the governing coalition's plans to increase the VAT rate for print and online media, and the inadequate draft legislation to implement the European Anti-SLAPP Directive, the media environment in the Netherlands is regressing.

Concerningly, in 2024, prominent politicians and (government) parties increasingly use their positions to question the independence of (public service) media. In addition, the current government has announced large cuts to the budget allocated to the public broadcasting network, which could have a serious impact on the public's access to information.

Checks and Balances

First, there has been concern over the misuse of emergency powers, prompting a call for enhanced parliamentary and judicial oversight. It's crucial to ensure that any emergency or fast-track legislation is both proportional and necessary, preventing overreach and safeguarding democratic processes. Second, there remain insufficient safeguards in administrative law regarding algorithmic transparency. This leaves gaps in providing effective legal remedies and adequate human intervention, which are vital for compliance with GDPR standards. Lastly, political microtargeting has raised alarms about the integrity of elections. Efforts are needed to combat disinformation and protect

voters' rights by ensuring they have access to balanced and reliable information, especially during campaign periods. These challenges highlight the need for comprehensive reforms to protect democratic values and individual rights in an increasingly complex landscape.

There has been limited progress on improving parliamentary oversight and safeguarding legislative processes. Some progress towards increasing accessibility for voters with disabilities has been observed. There has been no progress on addressing algorithmic transparency and strengthening legal protection against its misuse.






Civic Space

The Act on Collective Damages in Class Actions (WAMCA) has introduced significant practical and procedural obstacles, limiting the effectiveness of collective redress. Public interest cases face increasing barriers to justice, restricting their role in holding power to account. The Law on Transparency of Civil Society Organisations (WTMO) imposes undue scrutiny, undermining civic space. Compliance with national and international standards on freedom of assembly remains inadequate, while restrictive measures increasingly limit the right to protest.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

First, the Netherlands risks failing its international obligations by not taking sufficient measures to prevent genocide in Gaza. The government's stance on UNRWA funding and potential support for its dismantling could undermine global genocide prevention efforts. Second, repealing the Spreidingswet threatens a fair distribution of asylum seekers, worsening the asylum reception crisis and endangering refugee rights. Third, weak enforcement of the Spreidingswet leads to poor conditions in emergency shelters, harming vulnerable children. Lastly, inadequate youth care, protection, and education policies hinder children's development, necessitating urgent reform for sustainable and progressive improvements.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression

No progress

Progress



JUSTICE SYSTEM

Key recommendations

- *Strengthen judicial independence: amend the Judiciary Organisation Act to reduce the influence of the Minister of Justice and Security in appointing council for the judiciary members and eliminate the minister's power to annul decisions or issue binding directives.*
- *Ensure financial autonomy: establish an independent budget for the judiciary, separate from the broader justice budget, to safeguard operational independence and prevent undue financial constraints.*
- *Protect lawyers and fair access to justice: enhance safeguards for lawyers, particularly against intimidation and harmful rhetoric, and ensure affordable court fees and sufficient funding for legal aid systems.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

Over the past year, an increasing number of concerns have been raised regarding the Council for the Judiciary. The Council represents the collective interests of the courts externally, ensures the provision of services transcending individual courts, oversees operational management and financial administration, and issues general instructions regarding operational matters as necessary.¹

In the current framework, members of the Council are appointed directly by the Minister of Justice and Security. The composition of the Council includes three judicial members alongside two non-judicial members, with the latter being subject to dismissal by the minister at any time. This arrangement underscores the substantial influence of political dynamics on the Council's operations.² Additionally, the appointment term for members of the Council is set at six years, with the possibility of a single reappointment for an additional three-year term.

1 Council for the judiciary (Raad voor de rechtspraak), 'What does the Council for the judiciary do?' (*Wat doet de Raad van de rechtspraak?*), <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/>.

2 Margreet Fogteloo & Caspar Thomas, *We have too few guarantees (We hebben te weinig waarborgen)*, De Groene Amsterdammer, 24 January 2024, <https://www.groene.nl/artikel/we-hebben-te-weinig-waarborgen>.

The minister holds the authority to appoint the board of the courts, which comprises three members, including the president, commonly referred to as the court president. Like the Judicial Council, board members do not enjoy lifetime appointments. Instead, they are appointed for a six-year term, with the option of a single reappointment for an additional three years.³

Allocation of cases in courts

A legislative proposal aimed at providing a formal legal basis for the Code of Case Allocation, as recommended by the European Court of Human Rights (ECtHR), is currently under consideration.⁴

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

A significant concern arises from the minister's authority to annul decisions of the Council and, indirectly, the court administration, as provided under Sections 37 and 106 of the Judiciary Organisation Act (Wet RO). Furthermore, Section 93 of the Act grants the minister the power to issue binding directives to the Council.⁵ The minister's claim of 'systemic responsibility' for the judiciary's proper functioning has sparked significant debate. The Supreme Court has firmly contested this stance, asserting that it compromises the judiciary's constitutionally guaranteed independence, a cornerstone of the rule of law.⁶ Similarly, the Venice Commission, in a joint

3 Ibid.

4 Mr. Online, 'Professor of constitutional law: 'case allocation in the Netherlands is poorly regulated' (*Hoogleraar staatsrecht: 'zaakstoedeling in Nederland gebrekkig geregeld'*), Mr. Online, 13 June 2022, [Hoogleraar staatsrecht: 'zaakstoedeling in Nederland gebrekkig geregeld' - Mr. Online \(mr-online.nl\)](#); Parliamentary Paper No. 36243 of the Second Chamber (Tweede Kamer der Staten Generaal) of 8 November 2022 to amend the Judiciary Organisation Act, the Legal Status of Judicial Officers Act, the Council of State Act and some other laws (*Wetsvoorstel tot wijziging van de Wet op de rechterlijke organisatie, de Wet rechtspositie rechterlijke ambtenaren, de Wet op de Raad van State en enige andere wetten* (Kamerstuk 36243)).

5 NRC Next, 'Politics can exert too much influence on the judiciary, say scientists: 'A malicious minister has all the buttons to turn' (*Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien'*), NRC Next, 24 October 2024, [Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien' - NRC](#).

6 Nederland Rechtstaat, 'Constitutional Law Conference #6: The Independence of the Judge. Adequately guaranteed in parts, but there are also certain risks' (*Staatsrechtconferentie #6: De onafhankelijkheid van de rechter. Op onderdelen afdoende gewaarborgd, maar er zijn ook zekere risico's*), 6 November 2023, <https://www.nederlandrechtsstaat.nl/staatsrechtconferentie-6-de-onafhankelijkheid-van-de-rechter-op-onderdelen-afdoende-gewaarborgd-maar-er-zijn-ook-zekere-risicos/>.

opinion addressing judicial independence in the Netherlands, criticised this concept of systemic responsibility as being incompatible with the judiciary's role as an independent branch of government.⁷ Beyond this critique, the Venice Commission has called for a re-evaluation of the composition of the Council for the Judiciary. It also advocates legislative reforms concerning the procedures for suspension and dismissal applicable to the Council for the Judiciary and court boards.⁸

On 6 March 2024, a motion was passed that the appointment of members of the Council for the Judiciary on the Minister's nomination is undesirable from the perspective of the separation of powers. The motion requested that the government propose an amendment to the Judiciary Organisation Act that would reduce the role of the Minister in the appointment procedure for members of the Council for the Judiciary. Subsequently, in November 2024, another motion was adopted, advocating for the Judiciary Council to be empowered to make enforceable agreements with courts

concerning financial and operational matters. However, it has been noted that granting the Council greater authority in this area is contingent upon first, or at least concurrently, strengthening its independent position to safeguard judicial autonomy and impartiality.⁹

On 2 December 2024, two judges took the rare step of publicly voicing their concerns regarding the erosion of the separation of powers. They highlighted the fragility of protections against political interference, warning, "What happens in Poland and Hungary can also happen here. It threatens the freedom of all citizens".¹⁰

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

Another vulnerable area highlighted in the ongoing debate is the disciplinary system for judges. In the Netherlands, the disciplinary process for judges operates through two

7 Paul Bovend'Eert, *Strengthening the Rule of Law. Better guarantees for judicial independence (Versterking van de Rechtsstaat. Betere waarborgen voor rechterlijke onafhankelijkheid)*, Nederlands Juristenblad, 22 January 2024, https://www.inview.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst.

8 Ibid.

9 Mr. Online, 'The president of the Amsterdam court also wants the RvdR to be more independent' (*Ook president van Amsterdamse rechtbank wil de RvdR onafhankelijker*), 25 November 2024, <https://www.mr-online.nl/ook-president-amsterdamse-rechtbank-wil-rvdr-onafhankelijker/>.

10 BNNVARA, 'Judges warn: Far-right government could undermine judiciary faster than happened in Hungary' (*Rechters waarschuwen: Ultrarechts kabinet kan rechtspraak sneller uithollen dan in Hongarije gebeurde*), 2 December 2024, <https://www.bnnvara.nl/joop/artikelen/rechters-waarschuwen-ultrarechts-kabinet-kan-rechtspraak-snel-er-uithollen-dan-in-hongarije-gebeurde>.

channels: first, via the Attorney General at the Supreme Court, with a judgment that is publicly accessible, and second, via the president of the court, whose decisions are not made public. Through the latter route, the minister could exert influence, as he appoints and reappoints the president. While the prevailing culture in the Netherlands suggests that this influence does not occur, it remains a possibility.¹¹ The Venice Commission has called for legislative reforms concerning the disciplinary framework.¹² It also pointed out that the rule of law can quickly come under pressure from populist political developments. Constitutional and legal safeguards, therefore, provide more certainty in maintaining the rule of law.¹³

Independence/autonomy of the prosecution service

Concerns about political influence are also present within the Public Prosecution Service. The appointment of the Attorney General, made by the Minister of Justice and Security, is conducted without clear procedures, raising questions about transparency and accountability.¹⁴ Furthermore, the Venice Commission has criticised the Minister's ability to issue special instructions to members of the Public Prosecution Service. In this context, the Commission calls for stronger legal safeguards, particularly suggesting that the Minister's power to issue instructions for non-prosecution should either be abolished or restricted to exceptional circumstances by law.¹⁵

11 NRC Next, 'Politics can exert too much influence on the judiciary, say scientists: 'A malicious minister has all the buttons to turn' (*Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien'*), 24 October 2024, [Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien' - NRC](#).

12 PaulBovend'Eert, *Strengthening the Rule of Law. Better guarantees for judicial independence (Versterking van de Rechtsstaat. Betere waarborgen voor rechterlijke onafhankelijkheid)*, Nederlands Juristenblad, 22 January 2024, https://www.inview.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst.

13 Ibid.

14 De Groene Amsterdammer, 'We have too few guarantees' (*We hebben te weinig waarborgen*), 24 January 2024, <https://www.groene.nl/artikel/we-hebben-te-weinig-waarborgen>.

15 PaulBovend'Eert, *Strengthening the Rule of Law. Better guarantees for judicial independence (Versterking van de Rechtsstaat. Betere waarborgen voor rechterlijke onafhankelijkheid)*, Nederlands Juristenblad, 22 January 2024, https://www.inview.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst.

Independence of the Bar (chamber/association of lawyers) and of lawyers

In 2024, concerns over the extent to which lawyers in the Netherlands can operate freely and independently from external interference or pressure persisted. Research commissioned by the Dutch Bar Association revealed that 55% of lawyers faced aggression, threats and/or intimidation at least once in 2024.¹⁶ Lawyers working in certain areas of law, such as criminal law, family law and immigration law were particularly affected, reporting that they are increasingly the subject of different forms of harassment from third parties in connection to the nature of the cases or type of clients they represent. For instance, on 14 December 2024, a lawyer faced a cyberattack and received threatening emails reportedly for representing a suspect in a high-profile criminal case.¹⁷ In

two isolated incidents in October 2024, law firms in Amsterdam and The Hague were targeted with explosives after office hours, seemingly to intimidate staff.¹⁸

Public officials, politicians, and media increasingly use harmful rhetoric against lawyers working on politically sensitive cases, discrediting their professional activities. In parliamentary debates, politicians referred to lawyers representing environmental NGOs in strategic litigation against the state as “activistic lawyers”¹⁹ and sought to restrict access to Immigration and Naturalisation Service (IND) work instructions to prevent asylum lawyers from being able to “use them *again*”.²⁰ Immigration lawyers are often viewed as profiting from the ‘asylum industry’ rather than simply acting in their client’s best interest. In one case, the Dutch Prosecutor’s Office unlawfully

16 Advocate Nord, Ipsos I&O: *Aggression, threats and intimidation aimed at lawyers – survey 2024 (Agressie, bedreiging en intimidatie bij advocaten – meting 2024)*, July 2024, www.advocatenorde.nl/document/rapport-agressie-bedreiging-intimidatie-advocaten-definitief.

17 NOS, ‘Lawyer Spong: Cyber-attack linked to supporting Tarwekamp-suspect’ (*Advocaat Spong: Cyberaanval vanwege bijstand aan Tarwekamp-verdachte*), 14 December 2024, <https://nos.nl/artikel/2548276-advocaat-spong-cyberaanval-vanwege-bijstand-aan-tarwekamp-verdachte>.

18 Het Parool, ‘Explosion at law firm Spuistraat: ‘Extremely loud bang’ (*Explosie bij advocatenkantoor Spuistraat: Niet normaal harde knal*)’, Het Parool, 14 October 2024, www.parool.nl/amsterdam/explosie-bij-advocatenkantoor-in-spuistraat-niet-normaal-harde-knal-b6e405d9/; NOS: *Explosion at law firm in The Hague (Explosie bij advocatenkantoor in Den Haag)*, NOS, 22 October 2024, <https://nos.nl/artikel/2541762-explosie-bij-advocatenkantoor-in-den-haag>.

19 House of Representatives (The Netherlands), *Plenary report 41st meeting* (Plenaire Verslag 41e vergadering), 13 February 2024, contribution to the debate by Mr. De Rooy, Member of the Dutch Parliament (PVV; *Party for Freedom*), www.tweedekamer.nl/kamerstukken/plenaire_verslagen/detail/2023-2024/41.

20 House of Representatives (The Netherlands), *Plenary report 66th meeting* (Plenaire verslag 66e vergadering), 17 April 2024, contribution to the debate by Mr. Brekelmans, Member of the Parliament (VVD; *Party for Freedom and Democracy*), www.tweedekamer.nl/kamerstukken/plenaire_verslagen/detail/2023-2024/66.

prosecuted two immigration lawyers for fraud and human trafficking based on their legitimate legal assistance to Turkish migrants and asylum seekers.²¹ Media coverage characterised the lawyers' activities as "legal tricks"²² and falsely accused the lawyers of "unethical behaviour",²³ as later rebutted by the President of the Dutch Bar Association.²⁴

Lawyer-client confidentiality also faces increasing pressure. The 2023 amended bill to the Penitentiary Principles Act, aimed at combatting organised crime, proposed

visual supervision of lawyer-client meetings in high-security prisons and limits the number of lawyers per client to two.²⁵ While the Council of State deemed a proposed Parliamentary amendment to the bill that would allow for auditory monitoring unconstitutional and incompatible with European standards,²⁶ a revised proposal excluding auditory monitoring remains under government consideration.²⁷ When answering prejudicial questions in March 2024, the Dutch Supreme Court addressed gaps in statutory provisions for lawyer-client confidentiality during large-scale

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- 21 Court Amsterdam (The Netherlands), Judgment of 7 June 2022, ECLI:NL:RBAMS:2022:3127, (Seizure of physical files and data carriers under lawyer as suspect), <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBAMS:2022:3127&showbutton=true&keyword=mensenhandel,immigratie,IND,Turks&idx=3>.
- 22 NRC, 'Suddenly two lawyers are suspects. 'I could only think of one thing: what in god's name has the Public Prosecutor started?'' (*Ineens zijn twee advocaten verdachten. 'Ik dacht maar één ding: waar is het OM in godsnaam aan begonnen?'*), 26 April 2024, www.nrc.nl/nieuws/2024/05/20/een-advocaat-is-partijdig-en-onafhankelijk-a4199369.
- 23 NRC, 'Litigation as a cover-up is unethical behaviour' (*Procederen als dekmantel is onethisch gedrag*), 1 May 2024, www.nrc.nl/nieuws/2024/05/01/procederen-als-dekmantel-is-onethisch-gedrag-a4197562.
- 24 NRC, 'A lawyer is subjective and objective' (*Een advocaat is partijdig én onafhankelijk*), 20 May 2024, www.nrc.nl/nieuws/2024/05/20/een-advocaat-is-partijdig-en-onafhankelijk-a4199369.
- 25 Minister for Legal Protection (the Netherlands), Bill amending the Penitentiary Principles Act in connection with additional measures against organised crime during detention (*Wijziging van de Penitentiaire beginselenwet in verband met aanvullende maatregelen tegen georganiseerde criminaliteit tijdens detentie*), 3 June 2023, www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A36372#wetgevingsproces.
- 26 Council of State (The Netherlands), Advice on amended bill to amend the Penitentiary Principles Act (*Advies over geamendeerde wetsvoorstel om de Penitentiaire beginselenwet te wijzigen*), 24 April 2024, www.raadvanstate.nl/actueel/nieuws/april/advies-penitentiaire-beginselenwet.
- 27 Minister for Legal Protection (The Netherlands), Response to amendments to the Bill to amend the Penitentiary Institutions Act in connection with additional measures against organised crime during detention (Parliamentary doc. 363721) (*Reactie op de amendementen bij het Voorstel van wet tot wijziging van de Penitentiaire beginselenwet in verband met aanvullende maatregelen tegen georganiseerde criminaliteit tijdens detentie*) (Kamerstuk 36372), 24 May 2024, www.tweedekamer.nl/kamerstukken/brieven_regering/detail?id=2024Z08975&did=2024D21089.

data requisition, such as from email inboxes, and introduced new guidelines.²⁸

Other

A critical issue concerning judicial independence is the need for a separate budget for the judiciary, distinct from the broader justice budget.²⁹ Under the current arrangement, the judiciary's financial dependence on the justice budget raises practical concerns, such as whether cases should be adjudicated by a single judge or a panel of three. This financial dependency undermines the judiciary's autonomy, restricting judges' independence in determining how to manage cases.³⁰

Another noteworthy issue is that certain elements of the legal status framework for members of the Administrative Jurisdiction Division of the Council of State—such as appointment procedures, disciplinary measures, and dismissal—do not fully meet the requirements for judicial independence. Additionally, the relationship between the Administrative Jurisdiction Division and the Advisory Division remains a point of concern. According to the Venice Commission, separating the Administrative Jurisdiction Division from the Council of State is recommended.³¹

28 Supreme Court (The Netherlands), Judgement of 12 March 2024, ECLI:NL:PHR:2023:112 (Prejudicial decision on question posed in ECLI:NL:GHSHE:2023:2816), <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:HR:2024:375>.

29 NRC Next, 'Politics can exert too much influence on the judiciary, say scientists: 'A malicious minister has all the buttons to turn' (*Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien'*), NRC Next, 24 October 2024, [Politiek kan te veel invloed op rechterlijke macht uitoefenen, zeggen wetenschappers: 'Een kwaadwillende minister heeft alle knoppen om aan te draaien' - NRC](https://www.nrc.nl/nieuws/2024/10/24/politiek-kan-te-veel-invloed-op-rechterlijke-macht-uitoefenen-zeggen-wetenschappers-een-kwaadwillende-minister-heeft-alle-knoppen-om-aan-te-draaien).

30 KRO-NCRV, 'Is our judicial independence at risk?' (*Staat onze rechterlijke onafhankelijkheid op de tocht?*), 27 January 2024, <https://pointer.kro-ncrv.nl/staat-onze-rechterlijke-onafhankelijkheid-op-de-tocht>.

31 Paul Bovend'Eert, *Strengthening the Rule of Law. Better guarantees for judicial independence (Versterking van de Rechtsstaat. Betere waarborgen voor rechterlijke onafhankelijkheid)*, Nederlands Juristenblad, 22 January 2024, https://www.inview.nl/document/ide48536d91a144e6c9892f6ec8df20b50/nederlands-juristenblad-versterking-van-de-rechtsstaat-betere-waarborgen-voor-rechterlijke-onafhankelijkheid?ctx=WKNL_CSL_85&tab=tekst; Nederland Rechtstaat, 'Constitutional Law Conference #6: The Independence of the Judge. Adequately guaranteed in parts, but there are also certain risks' (*Staatsrechtconferentie #6: De onafhankelijkheid van de rechter. Op onderdelen afdoende gewaarborgd, maar er zijn ook zekere risico's*), Nederland Rechtstaat, <https://www.nederlandrechtsstaat.nl/staatsrechtconferentie-6-de-onafhankelijkheid-van-de-rechter-op-onderdelen-afdoende-gewaarborgd-maar-er-zijn-ook-zekere-risicos/>.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Court fees: The introduction of the Court Fees in Civil Matters Act (Wgbz) in 2010 created obstacles to accessing the courts. Research indicated that the associated increase in court fees led to approximately 20% fewer commercial cases being brought before the courts between 2009 and 2012.

The relatively high fees, particularly for lower claims, led applicants to either not pursue their claims or opt for cheaper, out-of-court online debt collection procedures. In response to widespread complaints about the high court fees, court fees for low-value claims (categories between €0–€12,500) were reduced as of 1 January 2022.³² However, despite this reduction, current court fees remain significantly higher than they were before the implementation of the Wgbz in 2010.

In their recommendation letter on new government policy addressed to the House of Representatives, the Council for the Judiciary

emphasised the need for affordable court fees and cautioned against implementing only minor reductions. While the short-term financial gains from smaller fee reductions might seem attractive, the Judiciary warns of significant long-term negative consequences for citizens if access to justice becomes restricted or more challenging.³³

Subsidised legal aid: The Netherlands Bar Association (Nederlandse Orde van Advocaten, NOvA) highlights the growing need for additional funding for subsidised legal aid in a letter addressed to the party spokespeople of the House of Representatives concerning the budget debate of the Ministry of Justice and Security. The NOvA urges the government to allocate funds in the short term to address this need and advocates for a new budgeting framework that ensures the ongoing funding of the subsidised legal aid system as a standard practice without requiring repeated political decisions. Last year, the House of Representatives passed a motion on this matter.³⁴

32 M.J. ter Voert and M.J. Dubelaar, *Access to the courts in a resilient democratic constitutional state (Toegang tot de rechter in een weerbare democratische rechtsstaat)*, Nederlands Juristenblad, 2023 afl. 39, p. 3400, https://www.njb.nl/media/eafb5nml/njb39_toegang-tot-de-rechter-in-een-weerbare-democratische-rechtsstaat.pdf.

33 Raad voor de Rechtspraak (Netherlands), *Recommendations for Government Policy – The Judiciary (Aanbevelingen kabinetsbeleid – De Rechtspraak)*, 28 March 2024, pp. 2-3, <https://www.rechtspraak.nl/SiteCollectionDocuments/Brief%20Rvdr%20aan%20informatie%202024.pdf>.

34 Nederlandse Orde van Advocaten (Netherlands), 'NOvA Input for the Budget Debate on Justice and Security' (Inbreng NOvA voor begrotingsbehandeling Justitie en Veiligheid), 14 November 2024, <https://www.advocaten-orde.nl/nieuws/inbreng-nova-begrotingsbehandeling-justitie-en-veiligheid>.

Resources of the judiciary (human/financial/material)

Over the past years, the government has substantially cut financial resources for the judiciary.³⁵ This resulted in increased backlogs and a higher workload for the judges and staff.

The new government plans to invest an additional €22.8 million in family and juvenile law, aiming at enabling the juvenile court judges to make fair and proper decisions in child protection cases and ensuring justice for children and parents.³⁶

While this investment is welcomed, it is considered insufficient to cover the estimated costs for the judiciary to properly function. In their recommendation letter on new government policy addressed to the House of Representatives, the Council for the Judiciary stated that, in order to continue meeting society's demand for an independent, impartial, and professional

judiciary in the future, the next government must increase the planned investment by at least €60 million. This amount includes the previously mentioned investments in family and juvenile law. Additionally, funds are needed to reduce the high workload within the judiciary (€30 million) and to address cascading effects resulting from a financial claim made by the police (€10 million), should it be granted.³⁷

Almost every court in the Netherlands is facing a shortage of legal staff, particularly judges. This also applies, to a lesser extent, to other staff groups (administrative and operational personnel). The shortage of judges primarily results from a lack of funding, which has led to insufficient hiring and training of new judges to replace those retiring. In recent years, additional funding has become available to address this shortage, allowing courts to significantly expand their training efforts for new judges. However, this has placed additional pressure on the available capacity to handle cases, as

35 See for example De Rechtspraak (Netherlands), 'Inconsistent Financial Policies Risky for Police, Prosecution Service and Judiciary' (*Wisselend financieel beleid risicovol voor politie, OM en rechtspraak*), 4 May 2021, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Nieuws/Paginas/Wisselend-financieel-beleid-risicovol-voor-politie-OM-en-Rechtspraak.aspx>; and Der Groene Amsterdammer, 'Judging Under Political Pressure: €35.21 Per Decision' (*Rechtspreken onder politieke druk: € 35,21 per uitspraak*), 1 February 2023, <https://www.groene.nl/artikel/35-21-per-uitspraak>.

36 Governing Cabinet (Netherlands), *Implementation of the Outline Agreement by the Government (Uitwerking van het hoofdlijnenakkoord door het kabinet)*, 13 September 2024, p. 84, <https://open.overheid.nl/documenten/ronl-f525d4046079b0beabc6f897f79045ccf2246e08/pdf>.

37 Raad voor de Rechtspraak (Netherlands), *Recommendations for Government Policy – The Judiciary (Aanbevelingen kabinetsbeleid – De Rechtspraak)*, 28 March 2024, p. 4, <https://www.rechtspraak.nl/SiteCollectionDocuments/Brief%20Rvdr%20aan%20informatie%202024.pdf>.

experienced judges are also needed to serve as trainers.³⁸

The shortage of human resources within the judiciary results in cases not being concluded in a timely manner. Currently, it is estimated that the judiciary is unable to conclude about half of the cases within the prescribed time frame.³⁹

Another concerning development is the increase in numbers of ‘appeals against delayed decisions’ (*beroepen tegen niet tijdig beslissen*) – a legal challenge available to applicants when governmental institutions fail to make a decision on an application or request within the prescribed time. Over the past years, the volume of these appeals has grown to the point where it is consuming court resources and hindering the processing of substantive cases.⁴⁰

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

Following the failure of the digitalisation program ‘Quality and Innovation of the Judiciary’ (*Kwaliteit En Innovatie rechterlijke macht*), which aimed at enabling digital litigation by 2018 but ended up exceeding costs by over €200 million,⁴¹ the judiciary has in recent years made significant progress in digitalisation.

The COVID-19 pandemic has accelerated the adoption of digital tools, such as the possibility to hold online court hearings.⁴² Moreover, in 2023, an increasing number of parties in legal proceedings were given the opportunity to litigate through the judiciary’s web portal.⁴³ The judiciary’s website has a dedicated section that provides updates on digitalisation for each area of law.⁴⁴

38 Visitatiecommissie (Netherlands), *Quality of the Judiciary: Strengthening Through Collaboration (Kwaliteit van rechtspraak: versterking door samenwerken)*, *Visitatierapport 2022–2023*, p. 35.

39 *Idem*, p. 36.

40 De Rechtspraak (Netherlands), *Annual Report 2023 (Jaarverslag 2023)*, pp. 13 and 37.

41 NOS: *Digitalisation of the Judiciary a Failure: “Minister Must Intervene” (Digitalisering rechtspraak uitgelopen op drama: “Minister moet ingrijpen”)*, NOS, 17 July 2018, <https://nos.nl/nieuwsuur/artikel/2241989-digitalisering-rechtspraak-uitgelopen-op-drama-minister-moet-ingrijpen>.

42 Visitatiecommissie (Netherlands), *Quality of the Judiciary: Strengthening Through Collaboration (Kwaliteit van rechtspraak: versterking door samenwerken)*, *Visitatierapport 2022–2023*, p. 33.

43 De Rechtspraak, *Annual Report 2023 (Jaarverslag 2023)*, p. 29.

44 De Rechtspraak, ‘Digitalisation by Legal Area’ (*Digitalisering per rechtsgebied*), <https://www.rechtspraak.nl/Organisatie-en-contact/Rechtspraak-in-Nederland/digitalisering-rechtspraak#:~:text=Digitalisering%20per%20rechtsgebied&text=Sinds%2017%20juni%202024%20is,en%20voor%20advocaten%20en%20gemachtigden>.

In 2022, the Council for the Judiciary and the Minister for Legal Protection agreed on the judiciary's budget for the period 2023–2025, which includes investments to enhance digital accessibility and to improve its online services. The aim is to ensure that the judiciary can meet future societal demands. The funds are intended for innovation as well as to ensure proper ICT security.⁴⁵

Moreover, the recent government's coalition program announced plans to encourage institutional renewal within the judiciary. This includes measures to promote innovation in working methods, personnel policy, and the use of innovative technology. These measures will focus on increasing the use of experienced legal professionals and legal support, as well as deploying innovative technology to help alleviate the judiciary's workload.⁴⁶

Finally, the judiciary also appears open to exploring the potential of Artificial Intelligence (AI) and other technological advancements. For example, the Council for the Judiciary dedicated one of their periodical scientific

publications to technology, featuring articles on topics such as the impact of AI on the judiciary and the use of algorithms to assess the risk of recidivism.⁴⁷

The NJCM welcomes the judiciary's openness to exploring the use of digital technologies but also notes that the integration of AI into legal processes should be approached with caution as AI poses several risks and dilemmas. There are concerns about biases in AI algorithms, the potential for decision-making to become less accountable, and the need for clear regulatory frameworks to govern its use. These challenges should be considered before embracing AI in legal proceedings.

Other

The new government's coalition agreement includes plans to restrict appeal options in certain legal cases, such as asylum procedures, specifically by eliminating the second, higher appeal. The president of the Council for the Judiciary expressed his concerns about this plan, stating that limiting access to the courts

45 De Rechtspraak, 'Over €155 Million for Additional Judges, Organised Crime Cases and Digitalisation' (*Ruim 155 miljoen voor extra rechters, behandeling ondermijningszaken en digitalisering*), 11 July 2022, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Nieuws/Paginas/Ruim-155-miljoen-voor-extra-rechters-behandeling-ondermijningszaken-en-digitalisering.aspx#:~:text=De%20Rechtspraak%20krijgt%20jaarlijks%20ruim,voor%20de%20periode%202023-2025>.

46 Governing Cabinet (Netherlands), *Implementation of the Outline Agreement by the Government (Uitwerking van het hoofdlijnenakkoord door het kabinet)*, 13 September 2024, p. 84, <https://open.overheid.nl/documenten/ronl-f525d4046079b0beabc6f897f79045ccf2246e08/pdf>.

47 Raad voor de Rechtspraak (Netherlands), *Law and Technology (Recht en tech)*, Rechtstreeks, 27 February 2024.

does not align with the rule of law.⁴⁸ The NJCM shares these concerns, as eliminating a second appeal removes an important safeguarding function that ensures lower court rulings are subject to additional scrutiny and reduces the risk of unjust outcomes.

Fairness and efficiency of the justice system

Freedom-restricting measures can only be applied in the context of closed youth care and open youth care with conditional authorisation. According to the Youth Care Act, measures included in a personal care plan (*hulpverleningsplan*) may be used. It is only possible to deviate from them in an emergency situation. The Compulsory Mental Health Care Act (Wvggz) and the Care and Coercion Act for Psychogeriatric and Mentally Disabled Clients (Wzd) also offer options for applying measures that affect a person's health against the will of a child, young person or the person who exercises authority over him or her. This is also possible if the child or young person receives

youth care in an open group or home. The Wvggz mentions compulsory care, while the Wzd addresses involuntary care.

Closed youth care: The Legal Status of Closed Youth Care Act has been in effect since 1 January 2024.⁴⁹ This law clearly establishes the rights of children staying in an institution for closed youth care. To reduce the use of freedom-restricting measures, strict conditions are attached. The starting point is 'no, unless'. The Inspectorate for Health and Youth concluded that insufficient appropriate help is provided in closed youth care (JeugdzorgPlus).⁵⁰ The Inspectorate also noted that freedom-restricting measures are sometimes used because preconditions are lacking.

In 2024, the policy towards placement in closed youth care centres fundamentally changed. The Ministries of Health, Welfare, Education, Justice, and Youth Care Netherlands and the Council of Municipalities (VNG) have made concrete agreements about the dismantling and conversion of closed youth care. The

48 Mr. Online, 'Restricting Access to the Courts Does Not Align With the Rule of Law' (*Toegang tot rechter beperken past niet binnen een rechtsstaat*), 18 September 2024, <https://www.mr-online.nl/toegang-tot-rechter-beperken-past-niet-binnen-een-rechtsstaat/>.

49 Ministry of Health, Welfare and Sport (the Netherlands), *Stb.* 2023, 182), Act of 17 May 2023 amending the Youth Act in connection with strengthening the legal position of young people who are admitted to closed accommodation (Legal Status of Closed Youth Care Act) (*Wet van 17 mei 2023 tot wijziging van de Jeugdwet in verband met het versterken van de rechtspositie van jeugdigen die worden opgenomen in een gesloten accommodatie (Wet rechtspositie gesloten jeugdhulp)*).

50 Inspectie Gezondheidszorg en Jeugd (IGJ) (the Netherlands): *Insufficient proper support in Youth Care (Onvoldoende passende hulp in de JeugdzorgPlus)*, February 2024.

intention is to complete the process by 2030 at the latest.⁵¹ Instead, youth care providers are developing small-scale alternatives with a different pedagogical approach. The Inspectorate for Health and Youth has concerns, concluding that it is not possible to provide appropriate help in a timely manner. The Inspectorate emphasised that freedom-restricting measures should never be used because there are no options for an alternative approach, but notes that this is nonetheless happening.

Open youth care: As a consequence of the new approach, more children will be placed in open facilities in 2025. The Youth Act does not yet provide a legal basis for the application of freedom-restricting measures in open youth care. For this reason, the Dutch Youth Institute published a guide on dilemmas concerning freedom restrictions for professionals working in open youth care.⁵²

The Council for the Administration of Criminal Justice and Youth Protection (RSJ) also concluded that there are currently no necessary

preconditions or legal guarantees for the use of freedom-restricting measures within open youth care. Based on current legislation and regulations, the use of freedom-restricting measures is not permitted there. When a child is placed in an institution where deprivation of liberty is applied, a court order is needed. The RSJ advises combining all legislation for care and support for children and young people in residential youth care into one law and strengthening their legal position.

In October 2024, the State Secretary clarified his decision not to follow up on the RSJ recommendations. Although legal guarantees and legal protection for young people subject to freedom-restricting measures are important, preference is given to an amendment to the Youth Act to enable the application of freedom-restricting measures in open youth care.⁵³

The NJCM concludes that a transforming change of culture towards closed facilities is taking place. However, legal safeguards and a child-oriented approach are not fully

51 Nji, 'Agreements about phasing out closed youth care' (*Afspraken over afbouw gesloten jeugdhulp*), 26 June 2024, <https://www.nji.nl/nieuws/afspraken-over-afbouw-gesloten-jeugdhulp>; VNG, 'A major step has been taken in phasing out closed youth care' (*Grote stap gezet in afbouwen gesloten jeugdhulp*), 19 June 2024, <https://vng.nl/nieuws/grote-stap-gezet-in-afbouwen-gesloten-jeugdhulp>.

52 A. Addink, C. van 't Spijker, E. Mourits, H. Bergenhenegouwen, *Dealing with dilemmas surrounding restrictions on freedom in open youth care with residence. A guide for youth professionals (Omgaan met dilemma's rond vrijheidsbeperking in open jeugdhulp met verblijf)*, Nederlands Jeugdinstituut en Kenniscentrum Kinder- en Jeugdpsychiatrie, 2024, [nji.nl/uploads/2024-05/Omgaan-met-dilemmas-rond-vrijheidsbeperking-in-open-jeugdhulp-met-verblijf.pdf](https://www.nji.nl/uploads/2024-05/Omgaan-met-dilemmas-rond-vrijheidsbeperking-in-open-jeugdhulp-met-verblijf.pdf).

53 Raad voor de Strafrechtstoepassing en Jeugdbescherming (RSJ) (Netherlands), *Policy Response to RSJ Advice on "Freedom-Restricting Measures in Open Residential Youth Care"* (*Beleidsreactie RSJ-advies "Vrijheidsbeperkende maatregelen in de open residentiële jeugdhulp"*), 16 October 2024, <https://www.rsj.nl/documenten/beleidsreactie/2024/10/16/beleidsreactie-rsj-advies-vrijheidsbeperkendemaatregelen-in-de-open-residentiele-jeugdhulp>.

implemented in policy or practice. This means children in open youth care institutions still risk deprivation of liberty and freedom restrictions, lacking sufficient legal safeguards.

The NJCM reiterates that policymakers and institutions should endeavour to use freedom-restricted measures as a last resort, ensuring sufficient well-trained staff and aiming to close isolation.

To address issues in this field, national authorities should implement policy reforms and institutional changes in youth care to minimise the misuse of freedom-restricting measures and standardise legislation.

Respect for fair trial standards including in the context of pre-trial detention

Inequality in juvenile justice and criminal law:⁵⁴ Investico, NOSop3 and De Groene Amsterdammer have analysed the differences in sentencing between suspects with a high and a low social status based on data from the Central Bureau for Statistics (CBS). The research platforms investigated 1.2 million decisions taken by the Public Prosecution Service, more than 500,000 court rulings and more than 200,000 prison sentences imposed between 2013 and 2022. To map unequal treatment in criminal law, the researchers asked for two characteristics of suspects: educational level and migration background. The researchers

compared the extremes of this: how do highly educated suspects without a migration background fare compared to poorly educated suspects with a migration background? This combination has never been investigated in this way before.

According to the research of these three journalistic research platforms, these are some of the findings:

- For the same crime, a poorly educated suspect with a migration background is worse off in criminal law than highly educated persons without a migration background: the Public Prosecution Service prosecutes the former more often, and the judge finds them guilty more often and sends them to prison more often.
- The research shows the chance that a poorly educated suspect with a migration background will end up in prison is one in four. If the suspect of a crime is highly educated without a migration background, the chance that this suspect will end up in jail is one in twelve.
- Another finding is that a pre-vocational secondary education suspect with a migration background is three and a half times more likely to be sentenced to prison if this suspect is suspected of assault, than if the suspect has a higher vocational education

54 De Groene Amsterdammer, 'Low-educated people with a migration background are almost three times more likely to be sentenced to prison' (*Laagopgeleiden met migratieachtergrond bijna drie keer vaker celstraf*), 9 October 2024, <https://www.groene.nl/artikel/laagopgeleiden-met-migratieachtergrond-bijna-drie-keer-vaker-celstraf>.

or university education and does not have a migration background.

- The risk is more than three times greater for driving under the influence. And if the suspect is suspected of ‘simple theft’, such as shoplifting or pickpocketing, the risk is more than two and a half times greater. Even if murder or manslaughter is suspected, the chance of ending up in prison is almost one and a half times greater.
- If the suspect is poorly educated with a migration background, the Public Prosecution Service is more than one and a half times more likely to prosecute. If the suspect has to appear in court, this suspect is more often found guilty. And if convicted, the suspect ends up in prison almost twice as often.
- All these decisions add up. At the end of the day, a poorly educated suspect with a migration background is almost three times as likely to receive a prison sentence as someone without a migration background who has completed a higher vocational or university education.

This same pattern is visible in fifteen separate crimes the research platforms investigated.

The figures provide insight into the outcomes of decisions by the Public Prosecution Service and judges, but they do not show the reasons why people with a low status are punished more severely. The cause of the large differences cannot be deduced from the figures. For example, it is not known whether some suspects have previously been convicted of the same crime, which is one of the aggravating factors that judges look at.

Lawyers immediately recognise the differences in treatment in the courtroom. Investico surveyed 2,500 Dutch criminal lawyers and received 247 responses. More than 70% of the lawyers who responded indicated that they suspected that a client was disadvantaged in court as a result of his low education level, migration background or low socio-economic position.

Interviews with prosecutors and judges show how it is possible that suspects from a ‘good background’ fare better in criminal cases. For example, some judges have the explicit belief that if you are ‘higher’ on the social ladder, you have more to lose and, therefore, deserve a lower sentence. And that imprisonment for people at the bottom of the ladder is less drastic, and they can, thus, receive a higher sentence.⁵⁵ Education, in particular, appears to be important: the lower the education, the greater the chance of imprisonment.

55 De Groene Amsterdammer, ‘Higher on the ladder means a lower sentence’ (*Hoger op de ladder, lagere straf*), 9 October 2024, <https://www.groene.nl/artikel/hoger-op-de-ladder-lagere-straf>.

Other

The advisory division of the Council of State has given a consultation of two legislative proposals: the Asylum Emergency Measures Act and the Two-Status System Act. The Council of State only had one week to review the proposals, which is insufficient for a full review and differs from the regular law-making proceedings.

The Council of State expresses significant concerns about the potential impact of these proposals on the judiciary. It highlights that changes, such as reducing the validity period of asylum permits, abolishing indefinite permits, and introducing a two-status system, will lead to a substantial increase in the workload of the Immigration and Naturalisation Service (IND) and the judiciary. These measures are expected to result in more appeals, legal challenges, and inefficiencies in court procedures,

particularly regarding decisions on asylum applications and family reunification. The letter emphasises that the increased workload comes at a time when the judiciary is already facing staffing shortages, further straining its capacity to handle cases. Additionally, the implementation of the European Migration Pact, required by 2026, may exacerbate these challenges, as it could lead to overlapping legal issues and procedural delays.

The Council of State strongly advises against the introduction of the legislative proposals prior to the implementation of the Migration Pact. It recommends that the opportunity, feasibility, and cost of these proposals be evaluated in conjunction with the implementation of the Pact. Such an approach would facilitate a more comprehensive assessment of the collective impact of the proposals on the protection and legal safeguards of the individuals concerned.

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- **Integrity in politics:**

Continue the improvement of the revolving door rules by requiring a mandatory cooling-off period instead of a non-binding one.

Implement a mandatory lobby register instead of publishing public officials' agendas.

Set up an independent authority for the Dutch Senate (Eerste Kamer) responsible for the oversight of integrity standards of Senators and sanctioning.

- **Whistleblower protection:**

Comply with all requirements of the EU Whistleblower Directive and give the Dutch Whistleblowers Authority (Huis voor Klokkenuiders) the sanctioning power to impose administrative sanctions on those who break or fail to comply with the Whistleblower Protection Act (Wet bescherming klokkenluiders).

Broaden the legal definition of wrongdoing by removing the restrictive requirement that the public interest must be at stake.

- **Prevention and enforcement of corruption:**

Rather than weakening anti-corruption measures, the Dutch government should choose to further strengthen the European anti-corruption package so that the EU, as the world's second-largest economy, can act as a single bloc against corruption with one set of clear and effective rules.

The Dutch government should fully implement the strengthened EU rules on anti-money laundering without further delay and specifically grant generalised access to information about real estate ownership (Beneficial Ownership (BO) register) to journalists and activists.

Levels of corruption

It is wrongly assumed that the Netherlands has little corruption. We have a blind spot for influence trading and conflicts of interest. Although the Netherlands has been a party to the UN Convention against Corruption (UNCAC) since 2006, we still do not comply with several provisions of that convention, including Article 18. That article states that countries must criminalise ‘trading in influence’. This is not explicitly illegal in the Netherlands, with the argument that it can be prosecuted under the bribery article. In practice, no one is ever prosecuted in the Netherlands for influence trading under this article. According to the European Commission, of the 25 EU member states investigated, only two do not criminalise influence trading: the Netherlands and Germany. And even in Germany, this will soon be criminalised with a new law to combat bribery in the public sector, which has just been approved by the German Parliament.

It is well past time for ‘trading in influence’ to be criminalised in the Netherlands, as agreed upon in the UNCAC treaty. The lack of compliance with the UNCAC has real world

consequences. Experts note that it would probably have been possible to successfully prosecute Richard de Mos, a former alderman for Heart for the Hague (Hart voor Den Haag) in the city of the Hague. The Public Prosecution Service stated that the political party Heart for the Hague eventually became the largest party in The Hague, partly due to donations from entrepreneurs in the Hague.⁵⁶ Thanks to those donations and a good relationship, they influenced the policy of the municipality of The Hague and were favoured in new projects. That is trading in influence in its purest form. Another good example of where no action was taken against this form of corruption is the Sywert van Lienden face mask deal. Minister Hugo de Jonge and former minister Martin van Rijn granted van Lienden a lucrative deal to provide the government with face masks during the Covid-19 crisis.⁵⁷ The deal was granted partly to silence him as a critic of the cabinet. According to Transparency International Nederland and other anti-corruption experts, the actions of the former ministers fall under the definition of ‘trading in influence’.⁵⁸

56 Public Prosecution Service (Openbaar Ministerie), ‘Prosecutor demands prison sentence against former alderman in The Hague because of bribery and corruption’ (*OM eist gevangenisstraf tegen Haagse oud wethouders vanwege omkoping en corruptie*), 01 February 2024, <https://www.om.nl/actueel/nieuws/2023/02/01/om-eist-gevangenisstraffen-tegen-haagse-oud-wethouders-en-ondernemers-vanwege-omkoping-en-corruptie>.

57 NOS, Van Lienden en de mondkapjesdeal: een Tijdlijn, 16 September 2022, <https://nos.nl/artikel/2444786-van-lienden-en-de-mondkapjesaffaire-een-tijdlijn>.

58 Follow the Money, ‘Hugo de Jonge, Sywert and the face maskdeal: in any other country this would be called corruption’ (*Hugo de Jonge, Sywert en de mondkapjesdeal: in het buitenland zou dit corruptie heten*), 15 April 2022, https://www.ftm.nl/artikelen/hugo-de-jonge-integriteit?utm_campaign=LukasKotkamp&utm_source=article&utm_medium=link&share=VVC0KZvfpZOjyiuUZx6ceus0eNLQXBI%2BIEAk6n%2BD3zXOSogRDgl-2r25xnqrcl4%3D.

Framework to prevent corruption

There are several reasons for the Netherlands' weakness in fighting financial crimes such as corruption and money laundering. First, the Netherlands has a fairly repressed anti-corruption culture. People often turn a blind eye to suspicious situations, especially when they take place abroad. In international corruption cases, the Public Prosecutor's Office is often reluctant to prosecute and waits to see what other countries do.

Another weakness is the Dutch tendency to settle corruption cases instead of prosecuting the individuals responsible for the corruption. In the Netherlands, people are almost never individually prosecuted for their role in corruption. Throughout Dutch history, only one person has been individually prosecuted for corruption: a director of Ballast Nedam received a suspended sentence of 6 months for accepting bribes in Saudi Arabia.

When the public prosecutor settles corruption cases with companies, the punishment is usually lower than in other countries. Also, the settlement agreements are opaque, and there are no clear rules for returning forfeited

amounts of corruption proceeds to the country of origin of the victims of corruption.⁵⁹

Integrity framework including incompatibility rules (e.g.: revolving doors).

In the Fifth Round Evaluation, GRECO recommended introducing clear rules on post-employment after a top-executive function, as the limited measures in place in the Netherlands were insufficient. It mentioned: a cooling-off period or restriction on certain types of activity over a period of time; a dedicated mechanism through which top executives must gain approval with respect to new activities following government service; and regulation providing transparency, oversight and enforcement. Six years later, this recommendation still has not been implemented sufficiently. The EU Commission also recommended the Netherlands should "complete the revision of rules on revolving doors involving former ministers and state secretaries, including a two-year cooling-off period and restrictions on paid activities".⁶⁰

Two years ago, the government started the legislative process for this cooling-off period, called the Law on Post-Employment for Ministers and State Secretaries (*Wet regels*

59 Transparency International Nederland, 'Foreign bribery by Dutch companies remains unsanctioned' (*Buitenlandse omkoping door Nederlandse bedrijven blijft onbestraft*, 19 February 2024, <https://www.transparency.nl/nieuws/2024/02/buitenlandse-omkoping-door-nederlandse-bedrijven-blijft-onbestraft/>).

60 European Commission, *Rule of Law Report 2024*, 24 July 2024, https://commission.europa.eu/publications/2024-rule-law-report-communication-and-country-chapters_en.

vervolgfuncties bewindspersonen), previously known as *Wet regels gewezen bewindspersonen*.⁶¹ This February, the Council of State published its opinion⁶² on the bill, after which it was submitted to the House of Representatives (Tweede Kamer) in March. However, the bill has since been disregarded and is not on the parliamentary agenda either. There have been no revisions to the bill that was issued, and it does not follow international best practices. The current proposal includes advice on post-term employment that is non-binding and based on ‘naming and shaming’. This mechanism is dependent on individual responsibility and outsources sanctioning to the public. We argue, therefore, that the bill should include a mandatory cooling-off period with adequate sanctions to deter undue influence and prevent conflict of interest through the revolving door. Binding rules set a clear standard and also reduce ambiguity. Furthermore, the body of oversight, the Commission on the Rules for Political Officials (Commissie Rechtsregels Politieke Ambtsdragers or CPRA), is dependent on the information public officials provide. This one-sided information position should be addressed by giving the advisory board sufficient investigative capacities. GRECO’s second compliance report has underlined

that the proposed legislation fails to meet their requests and is not up to par with international best practices.

One important loophole deserves emphasis. The *Wet gewezen bewindspersonen* contains an exemption clause that enables ministers to provide lenience with regard to the lobby prohibition (*het lobbyverbod*) and the revolving door rules (*draaideur*). However, if the minister deems it necessary to provide this leniency, we think that the advice from CPRA should be binding. It should not be possible for a minister to make this decision unilaterally. Currently, involving the CPRA is optional.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

In the fifth round of evaluation,⁶³ GRECO recommended that the government take further steps in regulating the contact between ministers/state secretaries and lobbyists. GRECO concluded that there is no definition of lobbying, no register of lobbyists targeting

61 Ministry of Interior, Parliamentary Papers II, 2023/24, 36549, no. 1., Law on post-employment for ministers and state secretaries (*Wetsvoorstel regels vervolgfuncties*), <https://wetgevingskalender.overheid.nl/Regeling/WGK013683>.

62 Council of State, Opinion on the Law on post-employment for ministers and state secretaries (Advies wetsvoorstel regels gewezen bewindspersonen), Parliamentary Papers II, 2023/24, 36549, nr. 4, 26 February 2024, <https://www.raadvanstate.nl/adviezen/@138505/w04-23-00208/>.

63 Group of States against Corruption (Council of Europe), *Fifth Evaluation Report*, 20 March 2017, <https://www.coe.int/en/web/greco/evaluations/netherlands>.

top executives, no requirement to declare contacts with lobbyists and no supervision of lobbyists' contacts with officeholders or civil servants. In the second compliance report,⁶⁴ GRECO concluded the recommendation to be only partially implemented, as measures by the government were insufficient. The European Commission came to a similar conclusion in the 2023 Rule of Law Report. The Dutch government concluded, based on a research report⁶⁵ — which they commissioned — that instead of introducing a lobbying register, it was better to further improve the publication of public officials' agendas and include a lobbying paragraph in each bill.⁶⁶ The government wrongfully⁶⁷ argued that it was not able to effectively define the term 'lobbyist' and that

a mandatory lobbying register would lead to an unwanted restriction of access for normal citizens to public officials. Therefore, a stricter implementing directive was introduced to improve the registration of public officials.

However, in practice, the government does not adhere to the current transparency rules. Research by the Open State Foundation (OSF) revealed that only 12% of registered meetings from the previous administration were published⁶⁸ in compliance with existing regulations (Uitvoeringsrichtlijn openbare agenda's),⁶⁹ while this was the case for only 13% of meetings for the newly elected cabinet (Cabinet Schoof). After OSF notified the administration, this number barely improved

64 Group of States against Corruption (Council of Europe): *Second Compliance Report (Fifth Evaluation Round)*, 17 October 2023, <https://rm.coe.int/fifth-evaluation-round-preventing-corruption-and-promoting-integrity-i/1680acf3dc>.

65 Celesta Braun & Bert Fraussen: *Framework for Weighing Legitimate Representation of Interests (Afwegingskader Legitieme Belangenvertegenwoordiging)*, Institute for Public Administration, Leiden University, December 2022, <https://open.overheid.nl/documenten/ronl-6e3c979866c0dd78b1d27d4c5805dafab73e490a/pdf>.

66 Minister of Interior, 'Letter on improving public agendas of top-executives', 7 July 2023, <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/07/07/kamerbrief-verbetering-openbare-agenda-s-bewindspersonen-en-paragrafen-in-memories-van-toelichting>.

67 Transparency International Nederland: 'Ten questions about the lobby register answered' (*Tien vragen over het lobbyregister beantwoord*), 9 May 2024, <https://www.transparency.nl/nieuws/2024/05/we-moeten-het-hebben-over-een-verplicht-lobbyregister/>.

68 Open State Foundation, *OSF reveals: agendas of ministers have become less transparent (OSF wijst uit: agenda's van ministers zijn minder transparant geworden)*, 15 November 2023, <https://openstate.eu/nl/2023/11/onderzoek-openstate-wijst-uit-agendas-van-ministers-zijn-minder-transparant-geworden/>.

69 Counsel of Secretary-Generals, 'Implementation guideline: Public agendas top-executives' (*Uitvoeringsrichtlijn Openbare agenda bewindslieden*), 28 June 2023, <https://www.communicatierijk.nl/vakkennis/openbare-agenda-bewindslieden/uitvoeringsrichtlijn-openbare-agenda-bewindslieden>.

to 21% of meetings being published.⁷⁰ This method remains unsatisfactory in achieving its purpose: transparency of third parties and the detection of undue influence. In addition, OSF found that 11 cabinet members had mentioned meetings on X that were not registered in their public agendas. Ministers and state secretaries are individually responsible for adherence, as no sanctioning mechanism exists.

The Ministry of Interior has commissioned a new report assessing the effectiveness of public agendas and the lobby paragraph, the outcome of which will determine if a lobby paragraph is necessary after all. The report is finished but is yet to be published by the ministry.

Besides their malfunctioning, public agendas are not an adequate alternative to a lobby register. According to GRECO,⁷¹ any alternative mechanism should guarantee public access to information on lobbying activities and ensure equivalent levels of accessibility and transparency. This is not the case for the public agendas. The purpose of a lobby register is to warrant a transparent administrative decision-making

process with equal accessibility for all stakeholders. A lobby register offers background information about organisations,⁷² such that it becomes clear what organisations are involved in the policy-making process. Registration should be mandatory for meetings with public officials.⁷³ The public agendas do not mention any information except the interlocutor and subject of the meeting, which is not enough to ensure accessibility and transparency. Public agendas can be a useful control mechanism. It allows third parties to compare the registered meetings of public officials with that of lobbyists and detect any inconsistencies. Therefore, we emphasise the urgent need for a lobby register and dedicated supervisory authority.

Rules on preventing conflicts of interest in the public sector

There is an urgent need for additional integrity standards in the Senate (Eerste Kamer). The absence of an adequate sanctioning mechanism for integrity violations in the Senate is worrying, especially in light of recent events. Membership to the Senate is a part-time

70 Open State Foundation, 'Follow-up research: Despite improvement cabinet-Schoof scores insufficiently on transparency' (*Vervolgonderzoek Open State Foundation: Ondanks verbetering scoort kabinet-Schoof nog steeds onvoldoende op transparantie*), 14 November 2024, <https://openstate.eu/nl/2024/11/english-vervolgonderzoek-open-state-ondanks-verbetering-scoort-kabinet-schoof-nog-steeds-onvoldoende-op-transparantie/>.

71 Council of Europe, CM/Rec(2017)2, 22 March 2017, <https://search.coe.int/cm?i=0900001680700a40>.

72 Transparency International Nederland, 'Ten questions about the lobby register answered' (*Tien vragen over het lobbyregister beantwoord*), 9 May 2024, <https://www.transparency.nl/nieuws/2024/05/we-moeten-het-hebben-over-een-verplicht-lobbyregister/> and Transparency International Nederland, *Lifting the lid on Lobbying*, 1 February 2023, <https://www.transparency.nl/wp-content/uploads/2023/02/Lifting-the-Lid-on-Lobbying-Formatted-31-01-2023.pdf>.

73 Ibid.

occupation, so ancillary functions of its members are inherent to its character. Based on the code of conduct (*Gedragcode integriteit*), senators must report their ancillary functions and personal interests. The process of reporting is, however, the responsibility of the senators themselves. Currently, 40% of senators (29 of 75) have incomplete declarations of ancillary functions according to research on the resemblance between the register of ancillary functions of senators and the register of the Dutch Chamber of Commerce.⁷⁴ The oversight is currently in the hands of the Presidium of the Senate, which is too small and has too little investigative capacity to investigate violations of the integrity standards.

We also recommend making public affairs and lobbying positions incompatible in the Senate. In 2024, a pressing example came to light. Senator Gert-Jan Oplaat is the chairman of the agricultural committee in the Senate for the party Farmer Citizens Movement (*Boer Burger Beweging* or BBB). Yet, at the same time, he is chairman of *Nepluvi*, an interest

group of Dutch poultry butchers, and chairman of AVEC (Association of Poultry Processors and Poultry Trade in the EU countries), the European umbrella organisation of the poultry industry. Other senators have warned that this raises a conflict of interest and questioned this dual role — even officials of the Ministry of Agriculture have raised their concerns.⁷⁵ The code of conduct⁷⁶ prescribes that members should refrain from activities that create the appearance of a conflict of interest, which is the case for Oplaat. Therefore, we recommend rules that make a lobbying position incompatible with being a senator, instituting an independent oversight body at an appropriate distance from day-to-day politics. This body should be able to administer sanctions and investigate breaches provided by citizens.

The Law for Political Parties (*Wet op de politieke partijen*, or WPP) is a bill containing rules on the financing of political parties and transparency rules regarding their internal organisation, finances and political advertisements, which is currently waiting

74 Volkskrant, ‘Senators struggle with registering their ancillary functions: ‘Do I have to report something like that?’ (*Senatoren worstelen met het opgeven van hun nevenfuncties: Moet ik zoiets ook melden?*), 30 April 2024, <https://www.volkskrant.nl/politiek/senatoren-worstelen-met-het-opgeven-van-hun-nevenfuncties-moet-ik-zoiets-ook-melden~bc30124e/>.

75 Follow the Money, ‘Public officials on dual function of BBB-senator and poultry lobbyist Oplaat: ‘Don’t feel free to discuss things with him’ (*Ambtenaren over dubbele pet van BBB-senator en pluimveelobbyist Oplaat: Voel me niet vrij om dingen met hem te bespreken*), 12 January, 2024, <https://www.ftm.nl/artikelen/onrust-onder-ambtenaren-over-dubbelrol-bbb-senator-en-pluimveelobbyist-oplaat?share=T2geOyvGt2Md3EPKQIXcDux5O3yjrHPxb9D7BcJkeCktRUPbeD2G1Sb6Gy0a7g%3D%3D>.

76 First Chamber (Eerste Kamer der Staten-Generaal), Code of Conduct (*Gedragcode Integriteit*), 11 June 2019, https://www.eerstekamer.nl/id/vkz9gbzhm5wp/document_extern/gedragcode_integriteit_geldend/f=/vkz9gc-g6q4oi.pdf.

to be submitted to the Parliament after the Council of State recently issued their opinion on the bill.⁷⁷ This is especially important in light of Russia's recent operation to influence European politics, which was discovered by the Czech Intelligence Service. Payments to Dutch Parliament members were made by the Czech website Voice of Europe.⁷⁸ Measures that prevent these types of bribes are needed, and we therefore consider the WPP a mark of good progress.

We argue that the Authority on the Law for Political Parties (Autoriteit Wet op de politieke partijen) that is to be installed with the adoption of the WPP should proactively seek ways to disclose all information in formats readable by computers. The government already publishes donations to political parties in Excel Format, and this should also apply to other information on political parties. An Application Programming Interface (API) should be connected to the information to make political finances easily accessible to the public. Furthermore, the government should involve relevant actors in the area of open data, investigation and the fight against corruption from civil society and academics in the implementation of the law. A drawback of the current law

is that the Ultimate Beneficial Owner (UBO) registers have been closed following a ruling by the ECJ.⁷⁹ This will likely mean, in practice, that the UBO cannot be traced. It remains to be seen in practice to what extent donations from legal entities will be prohibited.

Measures in place to ensure whistleblower protection and encourage reporting of corruption

There is a loophole in the new Whistleblower Protection Act (Wet bescherming klokkenluiders), namely the requirement that there must be a 'public interest' at stake before someone has the right to receive whistleblower protection. This completely unnecessary provision creates uncertainty and undermines the law in various ways. For example, how does a whistleblower know in advance whether something will be labelled as a 'wrongdoing with public interest'? Isn't every case of corruption or abuse a wrongdoing? It is precisely on this point that the court now also seems to agree. In October, the court of appeal in Den Bosch ruled that a whistleblower in a nursing home had been wrongfully dismissed on the spot. Previously, the subdistrict court judge had found this to be correct because there was no 'patron', ergo, no

77 Council of State (Raad van State), 'Advise on the Law of political parties' (*Advisering Wet op de politieke partijen*), 18 October 2024, <https://www.raadvanstate.nl/adviezen/@143141/w04-24-00070/>.

78 NRC, 'What can the House of Representatives do against bribery of Dutch parliamentarians?' (*Wat kan de Tweede Kamer doen tegen omkoping van Nederlandse parlementariërs?*), 1 April 2024, <https://www.nrc.nl/nieuws/2024/04/01/ongeruste-kamer-staat-met-lege-handen-in-debat-over-russische-omkoping-a4194788>.

79 Transparency International, 'EU court ruling on beneficial ownership registers: One year on, need for harmonised approach is clear', 22 November 2023, <https://www.transparency.org/en/blog/eu-court-ruling-on-beneficial-ownership-registers-legitimate-access>.

‘public interest’, so no whistleblower case and protection. The court of appeal in Den Bosch has now confirmed that the whistleblower was wrongfully dismissed. The whistleblower suspected a homicidal offence, and the court of appeal found that this is, by definition, a public interest, even if it is not structural.⁸⁰ While the purpose of the Whistleblower Protection Act (Wet bescherming klokkenluiders) is to give whistleblowers certainty, the public interest requirement does exactly the opposite and creates uncertainty for (potential) whistleblowers and, therefore, an unnecessary burden on courts. In order to provide much-needed certainty to potential whistleblowers and to not miss out on any opportunity to prevent or solve issues at an early stage, Transparency International Nederland recommends broadening the legal definition of wrongdoing by removing the restrictive requirement that the public interest must be at stake.

Following an adopted amendment by Dutch Parliamentarian Pieter Omtzigt to enable anonymous reporting of suspicions of wrongdoing, the government published a proposal

in the spring of 2024. However, that proposal does not fully implement the amendment. Transparency International Nederland believes that the government must provide safeguards so that those who report wrongdoing have more guarantees that their report can truly remain anonymous and respond critically to the government’s proposal. This enables people to actually stand up against wrongdoing without fear of negative consequences. This significantly increases the chance that wrongdoing will be addressed, which will benefit everyone.⁸¹

Under the current law, an employer cannot be sanctioned for harming a whistleblower, while the whistleblower can be sanctioned by the employer for breach of confidentiality or libel or slander when spreading incorrect information. We emphasise the importance of dissuasive sanctions for organisations that harm whistleblowers and for organisations that have failed to establish an internal reporting procedure or have set up incomplete procedures to be in breach of the law. After all, if there are no dissuasive sanctions, the law is pointless.⁸²

80 Court of Appeal ‘s-Hertogenbosch (Gerechtshof ‘s-Hertogenbosch), ‘Whistleblowers nursing home unfairly fired’ (*Klokkenluiders verpleegtehuis onterecht ontslagen*), 10 October 2024, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Gerechthoven/Gerechtshof-s-Hertogenbosch/Nieuws/Paginas/Klokkenluiders-verpleegtehuis-onterecht-ontslagen.aspx>.

81 Transparency International Nederland, ‘TI-NL calls on government to enable truly anonymous reporting of wrongdoing’ (*TI-NL roept regering op écht anonieme melding van misstand mogelijk te maken*), 15 July 2024, <https://www.transparency.nl/nieuws/2024/07/ti-nl-roept-regering-op-echt-anonieme-melding-van-misstand-mogelijk-te-maken/>.

82 Transparency International Nederland, ‘How well does the Netherlands protect its whistleblowers in comparison to other EU countries?’ (*Hoe goed beschermt Nederland haar klokkenluiders tegenover andere EU-landen?*), 8 November 2023, <https://www.transparency.nl/nieuws/2023/11/hoe-goed-beschermt-nederland-haar-klokkenluiders-tegenover-andere-eu-landen/>.

In line with the EU Whistleblower Directive (in Art. 23), which calls on Member States to take effective sanctions, competent authorities should be given the power to impose sanctions. This is also in line with the new OECD guidelines, which recommend “providing effective, proportionate and dissuasive sanctions for those who retaliate against whistleblowers”. The Dutch government should comply with all requirements of the EU Whistleblower Directive and give the Dutch Whistleblowers Authority, without further delay, the sanctioning power to impose administrative sanctions on those who break or fail to comply with the Whistleblower Protection Act.⁸³

List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflicts of interest in these sectors. (e.g. public procurement, health-care, other)

All Dutch branches of the Big Four accounting firms — EY, Deloitte, KPMG, and

PwC — have been implicated in exam fraud. This type of fraud is particularly problematic because these firms, among other things, check whether large companies and institutions have their accounts in order to uncover carelessness, corruption and fraud. The fraud case involved employees in the Netherlands who shared answers to mandatory tests amongst themselves. In response, these firms have introduced measures to prevent such malpractice, including eliminating the reuse of identical exam questions. Beyond the Big Four, two additional accounting firms operating in the Netherlands, BDO and Mazars, are also under investigation for potential exam fraud.⁸⁴

Corruption and fraud in the Dutch healthcare sector remain pressing issues. In a recent interview, the Public Prosecution Service (PPS) said it is unable to combat the increasing crime in healthcare. According to the PPS, €10 billion is defrauded annually.⁸⁵ Last year, we drew the Commission’s attention to a whistleblower case in the Dutch healthcare sector.⁸⁶ A recent report uncovered that the hospital in question

83 Ibid.

84 Volkskrant, ‘Cheating at tests at all major accounting firms: EY also discloses exam fraud’ (*Gesjoemel met toetsen bij alle grote accountantskantoren: ook EY maakt examenfraude bekend*), 1 November 2024, <https://www.volkskrant.nl/economie/gesjoemel-met-toetsen-bij-alle-grote-accountantskantoren-ook-ey-maakt-examenfraude-bekend~bb-f6e00e/>.

85 Pointer, ‘20% profit, hours in health sector falsely billed and yet healthcare fraud remains difficult to prove’ (*20 procent winst, zorguren vals in rekening brengen en toch blijft fraude in zorgsector moeilijk te bewijzen*), 12 November 2024, <https://pointer.kro-ncrv.nl/zorgverzekeraars-fraude-zorgsector-moeilijk-opsporen-bewijzen>.

86 Omroep West, ‘Research: top LUMC knew about fraud for years but did nothing’ (*Onderzoek: top LUMC wist al jaren van fraude maar deed niks*), 11 November 2024, <https://www.omroepwest.nl/nieuws/4775713/onderzoek-top-lumc-wist-al-jaren-van-fraude-maar-deed-niks>.

has still not taken sufficient action to prevent this type of fraud in the future.⁸⁷ In addition, at the beginning of 2024, a case involving a cardiologist who supposedly received bribes also gained widespread attention.⁸⁸ It shows that the healthcare sector remains prone to fraud and corruption.

Any other relevant measures to prevent corruption in public and private sector

As a result of a European Court of Justice ruling⁸⁹ in November 2022, the Dutch Beneficial Ownership (BO) registers closed. Since September 2024, these registers have only been partially accessible to financial institutions. Access to supervised institutions is being restored in stages, but many are still unable to consult the BO register as part of their customer due diligence obligations under the Money Laundering and Terrorist Financing (Prevention) Act (Wet witwassen en terrorismefinanciering). This poses significant challenges, as financial institutions play a critical

gatekeeping role in combating money laundering and adhering to the Sanctions Act through BO investigations.⁹⁰

Together with Malta and Cyprus, the Netherlands is the only country within Europe whose BO register is still not fully accessible two years after the European Court of Justice ruling. The register is now entirely off-limits to journalists and civil society organisations, despite the court's explicit recognition that these groups have a legitimate interest in accessing BO information. Such access is deemed essential for investigations into money laundering and terrorist financing. However, the Dutch government has consistently denied access to these groups, even when they demonstrate their legitimate interest. This refusal severely hampers their ability to conduct thorough investigations into issues such as money laundering or tax evasion. In this context, the Dutch government should fully implement the strengthened EU rules on anti-money laundering without further delay and specifically grant journalists

87 National Broadcaster (NOS), 'LUMC does too little against fraud, academic status at risk' (*LUMC doet te weinig tegen fraude, academische status in gevaar*), 26 January 2024, <https://nos.nl/artikel/2506299-lumc-doet-te-weinig-tegen-fraude-academische-status-in-gevaar>.

88 NRC, 'Corruption research on cardiologists and German cardiac equipment expands' (*Corruptieonderzoek naar cardiologen en Duitse hartapparatuur breidt zich uit*), 24 January 2024, <https://www.nrc.nl/nieuws/2024/01/24/corruptieonderzoek-naar-cardiologen-en-duitse-hartapparatuur-breidt-zich-uit-a4188052#/krant/2024/01/25/%23102>.

89 Transparency International, 'EU court ruling on beneficial ownership registers: One year on, need for harmonised approach is clear', 22 November 2023, <https://www.transparency.org/en/blog/eu-court-ruling-on-beneficial-ownership-registers-legitimate-access>.

90 Transparency International Nederland, 'TI-NL calls for improved access Ultimate Beneficial Owner-register' (*TI-NL roept op tot verbeterde toegang UBO-register*), 16 May 2024, <https://www.transparency.nl/nieuws/2024/05/ontwikkelingen-omtrent-wetgeving-ubo-register/>.

and activists generalised access to information about real estate ownership (BO register).⁹¹

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

There is no clear definition of ‘foreign bribery’; strictly speaking, the law makes no distinction between bribery and facilitation payments. Although both are punishable, the Public Prosecution Service does not consider it necessary to focus its investigation and prosecution policy, in addition to bribery, on tackling facilitation payments. Companies are generally not prosecuted for this. Furthermore, when ratifying the UN Anti-Corruption Convention, in which influence peddling is punishable, the Netherlands negotiated an exception for trading in influence. As a result, this was never included in the Criminal Code, with the argument that the existing definition of bribery is sufficient to prosecute influence trading. However, the opposite is true. Although it occurs very regularly in the Netherlands, where there is a strong lobby culture, it has never

been criminally prosecuted. Influence trading should be criminalised; it is now almost impossible to prosecute.⁹²

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high-level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds. Please provide data where available.

The Netherlands has been criticised by the OECD Working Group on Bribery and several others for an inadequate level of investigative activity and a low level of enforcement concerning corruption, particularly given the size and risk profile of the Dutch economy.⁹³ Exporting Corruption, a bi-annual report of Transparency International that looks into the levels of enforcement against foreign bribery, confirms this: the Netherlands has a notoriously poor track record when it comes to prosecuting Dutch companies involved in bribery abroad.⁹⁴ Prosecutions rarely or never take place, despite international treaties to which our country has committed itself. The Netherlands has committed itself to the OECD

91 Idem.

92 Transparency International Nederland, *Position Paper: European Anti-Corruption Package (Position Paper: Europees anti-corruptiepakket)*, 25 January 2024, <https://www.transparency.nl/wp-content/uploads/2024/01/Position-paper-Reactie-TI-NL-op-NL-standpunt-m.b.t.-EU-anti-corruptiepakket.pdf>.

93 OECD Anti-Bribery Convention, *The Netherlands Phase 4 Monitoring Report*, 19 October 2022, https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-4-follow-up-report-netherlands-phase-4-two-year-follow-up-report_8035e87a-en.html.

94 Transparency International Nederland, ‘Historic low in fight against foreign bribery’, *Netherlands stagnates (Historisch dieptepunt in strijd tegen buitenlandse omkoping, Nederland stagneert)*, 11 October 2022, <https://www.transparency.nl/nieuws/2022/10/historisch-dieptepunt-in-strijd-tegen-buitenlandse-omkoping-nederland-stagneert/>.

obligation to actively combat bribery abroad, but does so only to a very limited extent. Last year, two Dutch companies (Philips and Frank International) were prosecuted in the United States for bribery, partly because enforcement in the Netherlands is too weak.

Potential obstacles to investigation and prosecution of high-level and complex corruption cases (e.g. political immunity regulation)

Between 75% and 90% of all bribery and corruption occurs via intermediaries.^{95,96} However, this appears to be quite difficult to prosecute in the Netherlands because the Public Prosecution Service must demonstrate that a third party is deliberately used to facilitate a bribe, which is not easy to prove. This transpired in cases such as Damen Shipyards and IHC.⁹⁷ Improvement is needed in this area in the Netherlands.

Prosecution shouldn't be limited to bribery by management or employees who are allowed to represent the company, and should be broadened to include any employee. A real

game-changer for combating corruption is the personal liability of managers. Making top management liable would lead to more anti-corruption action as the CEO or CFO risks going to jail or receiving a large personal fine. For example, the previous CEO of the Dutch SBM Offshore was sent to jail in the United States, not in the Netherlands, because our country had no jurisdiction due to the foreign nationality of the CEO and the fact that the bribery took place abroad. In the Netherlands, not a single CEO or CFO has gone to jail. Tackling individuals is important because someone is less likely to consciously engage in a corrupting act if there is a serious chance of individual prosecution. Moreover, the fact that there are virtually no personal consequences in the Netherlands for involvement in bribery demotivates companies to invest in an effective compliance program and, therefore, has an inhibiting effect on the prevention and combating of corruption.⁹⁸

This could be counteracted through an obligation to have an 'accurate system of internal (accounting) controls' similar to the Foreign Corrupt Practices Act (FCPA) of the United

95 OECD, *OECD Foreign Bribery Report*, 2 December 2014, <https://www.oecd.org/corruption/oecd-foreign-bribery-report-9789264226616-en.htm>.

96 White & Case LLP, 'Global compliance risk benchmarking survey: Third-party management', 13 June 2023, <https://www.whitecase.com/insight-our-thinking/2023-global-compliance-third-party-management>.

97 Transparency International Nederland, 'Research focusses on suspicion corruption intermediaries Damen Shipyards' (Onderzoek richt zich op verdenking corruptie tussenpersonen Damen Shipyards), 24 October 2018, <https://www.transparency.nl/nieuws/2018/10/onderzoek-mogelijke-corruptie-tussenpersonen-damen-shipyards/>.

98 For a full review see: Transparency International Nederland: *Position Paper: European Anti-Corruptionpackage (Position Paper: Europees anti-corruptiepakket)*, 25 January 2024, <https://www.transparency.nl/wp-content/uploads/2024/01/Position-paper-Reactie-TI-NL-op-NL-standpunt-m.b.t.-EU-anti-corruptiepakket.pdf>.

States, the ‘failure to prevent bribery/adequate procedures’ from the UK Bribery Act of the United Kingdom, or implementing an anti-corruption program such as the Loi Sapin II in France.^{99 100 101} This would make it a lot easier to tackle companies that pay suspiciously high commissions in high-risk countries and cannot explain why they do so and what measures they have taken to prevent corruption. In such a case, it is easier to argue and prove that their control measures/compliance program are/is inadequate.

Having such a program should not only apply to a legal entity established in the Netherlands; the Dutch head office should also roll it out globally and be held accountable if the compliance program (especially in certain high-risk countries) does not work. In 2023, for example, Philips NV (for bribery in China) and Frank International NV — two Dutch companies — were prosecuted by the US authorities for bribery abroad rather than the Netherlands because Dutch anti-corruption legislation is inadequate. If the Dutch head office is

unaware of the bribery, has not been involved, and no Dutch people are involved, then the Netherlands has no jurisdiction. The Netherlands believes this should be prosecuted in the relevant foreign country, but this often does not happen. In the United States, the United Kingdom and France, however, one can argue that the control measures/compliance program from the head office did not work well enough or that there is an error in the consolidated annual accounts.¹⁰²

Other

The European Anti-Corruption Package offers the ultimate opportunity to take a major step forward in the fight against corruption, as it can provide a better legal basis for combating corruption, stronger enforcement with dissuasive sanctions, more effective cooperation of anti-corruption activists in Europe through harmonised rules and encouragement for governments to take an active and leading role. Instead of watering down anti-corruption

99 U.S. Department of Justice, *The FCPA Resource Guide*, consulted on 12 December 2024, p. 38: <https://www.justice.gov/criminal/criminal-fraud/fcpa-resource-guide>.

100 Government of France, *Notice on the French Anti-Corruption Agency Guidelines to help Public and Private Sector Entities to Prevent and Detect Bribery, Influence Peddling, Extortion by Public Officials, Illegal Taking of Interest, Misappropriation of Public Funds and Favouritism*, consulted on 12 December 2024: <https://www.agence-francaise-anticorruption.gouv.fr/files/files/French%20AC%20Agency%20Guidelines%20.pdf>.

101 U.K. government, *Guidance on UK Bribery Act*, consulted on 12 December 2024, p. 15: <https://assets.publishing.service.gov.uk/media/5d80cfc3ed915d51e9aff85a/bribery-act-2010-guidance.pdf>.

102 Transparency International Nederland, *Position Paper: European Anti-Corruption Package (Position Paper: Europees anti-corruptiepakket)*, 25 January 2024, <https://www.transparency.nl/wp-content/uploads/2024/01/Position-paper-Reactie-TI-NL-op-NL-standpunt-m.b.t.-EU-anti-corruptiepakket.pdf>.

measures, we call on the government to work hard for, among other things.¹⁰³

- Strengthening the legal basis for combating corruption, including appropriate instruments;
- Strong enforcement of corruption with dissuasive sanctions;
- Harmonisation of rules and definitions within the EU and effective international cooperation;
- Sound whistleblower protection for effective combating of corruption;
- A leading role for governments in combating corruption through the establishment of a central anti-corruption authority.

MEDIA ENVIRONMENT AND MEDIA FREEDOM



Key recommendations

- *Ensure adequate implementation of the Anti-SLAPP Directive:*

Include the definition and indicators to assess a SLAPP case from the Directive into Dutch legislation;

Provide for legislative changes regarding early dismissal and full compensation for costs as outlined in the Directive so that the minimum standards of the Directive are met;

Extend the application of the safeguards from the Directive to domestic SLAPP cases.

- *Safeguard access to information by maintaining adequate funding for the public broadcasting network and annulling the VAT increase on media.*
- *We call upon Members of Cabinet and politicians to recognise the harmful effects of political rhetorics that target media and journalists. We urge politicians and parties not only to take their own responsibility in perpetuating rhetoric that undermines trust in the media, but also to keep each other accountable for the harmful effects this has.*

103 For full list of recommendations see: Transparency International Nederland: *Position Paper: European Anti-Corruption Package (Position Paper: Europees anti-corruptiepakket)*, 25 January 2024, <https://www.transparency.nl/wp-content/uploads/2024/01/Position-paper-Reactie-TI-NL-op-NL-standpunt-m.b.t.-EU-anti-corruptiepakket.pdf>.

Media and telecommunications authorities and bodies

Existence and functions of media councils or other co- and self-regulatory bodies

The main self-regulatory body for the media is the Council for Journalism (Raad voor de Journalistiek). This is an independent body to which interested parties can submit complaints about journalistic activities. The Council assesses whether a journalist has done his work carefully and whether a publication has exceeded the boundaries of journalistic ethics. The Council can only provide an opinion; they do not have the ability to impose rectifications or sanctions.

The council was criticised by several media outlets for ‘juridification’ and being abused by some complainants as a ‘gateway’ for a real trial.¹⁰⁴ To address these concerns, in November 2023, the Council announced that they will no longer handle complaints from parties that also go to court or have started other legal procedures. These rules were enforced in 2024. For example, in October 2024, a complaint against GooiTV and its editor-in-chief was not reviewed by the Council as the complainant also filed a police complaint and sent a demand letter.¹⁰⁵ Nonetheless, some concerns about

‘juridification’ remain. In 2024, there are still several instances where lawyers accompany complainants to the Council.

Pluralism and concentration

Levels of market concentration

On a yearly basis, the Dutch Media Authority publishes a Media Monitor. In 2023, the Dutch Media Authority already signalled that there is an increasing market share with fewer media companies, a trend which continued into 2024. Together with RTL Nederland and Talpa Network, the public broadcasting system holds over three-quarters of the television market.¹⁰⁶ The online news offering is highly concentrated among websites owned by DPG Media, Mediahuis and RTL Nederland.¹⁰⁷ According to the Media Monitor, media companies see consolidation as a solution that offers resistance to large international players such as Google and Meta.

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

At the end of 2023, DPG Media announced its intention to acquire RTL Group. RTL

104 Council for Journalism (Raad voor de Journalistiek), ‘Raad voor de Journalistiek wordt minder ‘juridisch’’, 21 November 2023, <https://www.rvdj.nl/over-de-raad/berichten/raad-voor-de-journalistiek-wordt-minder-juridisch>.

105 Council for Journalism (Raad voor de Journalistiek), ‘Ruling 2024/29’ (*Uitspraak 2024/29*), <https://www.rvdj.nl/2024/29>.

106 Dutch Media Regulator, *Mediamonitor 2024*, p. 8.

107 Dutch Media Regulator, *Mediamonitor 2024*, pp. 8-9.

Nederland is still the largest private broadcasting company, with a market share of 25.1%.¹⁰⁸ This raises concern about the highly concentrated media landscape in the Netherlands, as this acquisition would lead to even further media concentration. On 17 May 2024, the Dutch Authority for Consumers and Markets (Autoriteit Consument & Markt) decided to further investigate the acquisition of RTL Nederland by DPG Media, indicating that based on market research, the size, quality and pluriformity of media outlets to consumers could be negatively affected. The acquisition could lead DPG Media to reduce the quality and accessibility of news outlets, for example by spreading the same news across several channels or reducing unpaid news. Also, it would render it more cumbersome for other media companies to compete with DPG Media when it comes to advertising. Furthermore, DPG Media's position vis-a-vis the General Dutch Press Agency (Algemeen Nederlands Persbureau) could be such that it could effectively influence the press agency's media range and, henceforth, the news supply generally.

Finally, the acquisition could negatively influence their journalists' position versus their employer.¹⁰⁹ The Dutch Journalist Association (Nederlandse Vereniging van Journalisten) has repeated its concerns, particularly for journalists' job security and bargaining power.¹¹⁰

Fairness and transparency of licensing procedures (including allocation of licences, fines and penalties)

Following the public broadcasting system's request to revoke Ongehoord Nederland's license, which the Ministry of Culture declined in December 2023, two fines imposed for insufficient collaboration and lack of adherence to journalistic standards were withdrawn in March 2024. A prior fine for lack of adherence to journalistic standards was not withdrawn.¹¹¹

Other

The president of the board of Ongehoord Nederland, Arnold Karskens, was forced to resign in October 2024 following an internal

108 Dutch Media Regulator, *Mediamonitor 2024*, p. 8.

109 Autoriteit Consument & Markt, 'Further Research Needed on RTL Takeover by DPG' (*Meer onderzoek nodig naar overname RTL door DPG*), 17 May 2024, Authority Consumer & Market, <https://www.acm.nl/nl/publicaties/acm-meer-onderzoek-nodig-naar-overname-rtl-door-dpg>.

110 Nederlandse Vereniging van Journalisten (NVJ), 'NVJ Warns About Media Concentration Consequences in RTL Takeover by DPG Media' (*NVJ waarschuwt voor gevolgen mediaconcentratie bij overname RTL Nederland door DPG Media*), 2024, <https://nvj.nl/actueel/nvj-waarschuwt-gevolgen-mediaconcentratie-overname-rtl-nederland-dpg-media>.

111 NOS, 'NPO Withdraws Two Fines for Ongehoord Nederland' (*NPO trekt twee boetes voor Ongehoord Nederland in*), NOS Nieuws, 28 March 2024, <https://nos.nl/artikel/2514588-npo-trekt-twee-boetes-voor-ongehoord-nederland-in>.

investigation carried out by the media outlet itself.¹¹² This investigation concluded, inter alia, that Karskens had expressly ordered the outlet to refrain from any critical reporting vis-a-vis the four political parties in the process of forming a government (e.g. political interference). Furthermore, Karskens intervened in the editorial process by removing critical references to Geert Wilders and Prime Minister Dick Schoof.¹¹³

Furthermore, in May 2024, the Coalition government published their policy agreement announcing a VAT increase from 9% to 21% on print and online media, which would make news a lot more expensive. Independent research into the effect of this measure showed that it would have serious consequences for access to independent information, as turnover from subscriptions and single-copy sales would shrink by 10%, meaning that 270,000 households would end their news subscriptions. Declining subscriber numbers will also have an impact on employment, which means that, collectively, news organisation would have to reduce by approximately 377 full-time employees. Moreover, this VAT increase would be at odds with developments in the broader

European region, as in most countries, there is a zero VAT rate in order to stimulate journalism. Bulgaria is the only country in the EU where a high VAT rate is applicable to print and online media.

The Council of State (De Raad van State) strongly criticised the proposed VAT increase, noting that the consequences of the VAT measure for citizens are hardly substantiated. The Council of State stated that the cabinet did not pay sufficient attention to the negative side effects of this measure, such as on the plurality of the press. The Council of State explicitly mentions the risks to freedom of expression and information, as laid down in the Constitution and the European Convention of Human Rights (ECHR).¹¹⁴

Opposition parties filed a motion asking the government to reverse the decision, which was accepted by a majority of Parliament. In the coming months, the cabinet, in consultation with Parliament, will have to find an alternative to the VAT increase. If that process were to fail for whatever reason, the VAT increase would still go ahead.

112 Algemeen Dagblad, ‘Dismissed Broadcaster Boss Karskens Also Accused of Sexual Misconduct: “Nice Bum, Right?”’ (*Ontslagen omroepbaas Karskens ook beschuldigd van seksueel wangedrag: ‘Lekker kontje hè?’*), Algemeen Dagblad (AD), 11 October 2024, <https://www.ad.nl/show/ontslagen-omroepbaas-karskens-ook-beschuldigd-van-seksueel-wangedrag-lekker-kontje-he~afdc70285/>.

113 SVISION B.V. (External Investigation Report), “Unheard: Silence Around Unwanted Workplace Behaviour” at ON! (*‘Ongehoord: Het Zwijgen Rond Ongewenst Gedrag op de Werkvloer’ bij ON!*), pp. 121, 125, <https://ongehoordnederland.tv/wp-content/uploads/2024/10/Rapport-en-bevindingen-ON-extern-onderzoek-final.pdf>.

114 Raad van State, ‘Further Report on Tax Plan 2025’ (*Nader rapport wetsvoorstel Belastingplan 2025*), 17 September 2024, <https://www.rijksoverheid.nl>.

Transparency and media ownership

There has been no update since the previous rule of law reporting cycle. A large portion of the objectives in the European Media Freedom Act (EMFA) have been identified to be compatible with existing Dutch media law, but some articles still require further implementation in Dutch policy and legislation. In March 2024, the state secretary of Education, Culture and Science identified the following provisions as requiring further implementation:¹¹⁵

- The establishment of an assessment mechanism for media pluralism and editorial independence in certain media market concentrations;
- The establishment of a database on ownership in the media sector;
- The right for users to easily adjust default settings on devices and interfaces according to their interests or preferences;
- Governmental transparency on spending on state advertising and the allocation of public contracts to media service providers.

The transparent allocation of state advertising (including any rules regulating the matter)

The Dutch Media Authority (Commissariaat voor de Media) annually allocates broadcasting time to political parties represented in the House of Representatives (Tweede Kamer) or the Senate (Eerste Kamer) to ensure a fair and balanced distribution. An independent notary oversees the lottery process for scheduling, while the NPO (Dutch Public Broadcasting) provides time slots, technical support, and subtitles. There are two types of broadcasting time: regular airtime for parties with seats in Parliament, and election airtime for parties participating in at least 19 electoral districts during national or European elections. This process supports media independence, diversity, and freedom of information.¹¹⁶

115 Senate of the Netherlands, Proposal for a Regulation of the European Parliament and of the Council establishing a common framework for media services in the internal market ('Media Freedom Regulation') and amending Directive 2010/13/EU (*Voorstel voor een Verordening van het Europees parlement en de Raad tot vaststelling van een gemeenschappelijk kader voor mediadiensten op de interne markt («verordening mediavrijheid») en tot wijziging van Richtlijn 2010/13/EU*), 36249 nr. K, 19 March 2024, <https://zoek.officielebekendmakingen.nl/kst-36249-K.html>.

116 Commissariaat voor de Media, 'Broadcasting time for political parties' (*Zendtijd politieke partijen*), <https://www.cvdm.nl/voor-mediamaakers/regelgeving/mediawet/zendtijd-politieke-partijen/>.

Public service media

Independence of public service media from governmental interference

In October 2024, Coalition party BBB (Boer Burger Beweging) submitted Parliamentary questions about the journalistic integrity and impartiality of ‘government-funded media’. These questions inquired how the government monitored whether media content conflicted with the Constitution and asked the Minister of Education, Culture and Science if he was willing to request the Dutch Media Authority to assess the journalistic standards and independence of the reporting of the public broadcaster NOS. BBB also asked the Minister to request the Dutch Media Authority to investigate the objectivity of public broadcasters and possible violations of the Media Act regarding reporting on Israel. On 2 December of 2024, BBB representative Claudia van Zantem emphasised she considers a “one sided view” to prevail within the public news media, and that the current system does not “reflect society”.¹¹⁷

In response to these parliamentary questions, the Minister stated that the government should not interfere in any way with the content of the reporting by the NOS, or other media, and underlined the independence of the Dutch Media Authority. Furthermore, the Minister referred to Freedom of Expression and Freedom of Speech as fundamental pillars of media independence, stating that censorship and prior supervision of the content of media expression are not permitted in the Netherlands.¹¹⁸

Although the Minister’s response to these questions is adequate and underlines the principles of the rule of law, this incident is indicative of a broader trend in the Netherlands, where prominent politicians and (government) parties use their positions to question the independence of media and to curtail Freedom of Expression.

For example, in July 2024, the PVV (Partij voor de Vrijheid) and FvD (Forum voor Democratie) attempted to condemn the contents of a newspaper article on behalf of the Provincial Council of Overijssel by submitting a motion claiming the article contained disinformation.¹¹⁹ The

117 Dutch House of Representatives, *Uncorrected Stenogram Media (Ongecorrigeerd Stenogram Media)*, 2024D47377, 2 December 2024, <https://www.tweedekamer.nl/kamerstukken/verslagen/detail?id=2024D47377&-did=2024D47377>.

118 House of Representatives (Netherlands), *Parliamentary Questions Regarding Media Matters (Kamervragen inzake mediakwesties)*, 2024, <https://www.tweedekamer.nl/kamerstukken/kamervragen/detail?id=2024Z15183&-did=2024D41932>.

119 Trouw, ‘Overijssel PVV Labels Article on Wind Energy as “Disinformation” and Submits Motion’ (*Overijsselse PVV noemt krantenartikel over windenergie ‘desinformatie’ en dient een motie in*), 17 July 2024, <https://www.trouw.nl/politiek/overijsselse-pvv-noemt-krantenartikel-over-windenergie-desinformatie-en-dient-een-motie-in~bfe-6ba9f/>.

article in the local newspaper *Tubantia* refuted the position of these parties on the wind energy policy of the province. Moreover, in November, BBB stated that the account of CestMocro, a popular Dutch Instagram account with over a million followers, should be prohibited because the account “incites anti-Semitism”.¹²⁰ Experts pointed out that such a blanket prohibition is a very far-reaching measure that would curtail freedom of expression, and could pave the way for the prohibition of newspapers. NSC (Nieuw Social Contract) questioned the “proportionality” of a report by PowNed. In response to these events, the Dutch Media Authority stated that parliamentarians and cabinet members should not “try to influence the content of the media through the government, [...] Media services must always be able to operate independently of politics, in light of the constitutional prohibition of censorship”.¹²¹

Editorial standards (including diversity and non-discrimination)

Editorial standards in the Netherlands are generally robust and adequate. However, two instances where these standards faltered highlight the challenges of maintaining these values in fast-moving and politically or emotionally charged situations.

In November 2024, riots broke out after the Ajax-Maccabi Tel Aviv football match in Amsterdam. The media storm following the riots shows that not all media were equally diligent in their reporting. The news spread rapidly, and many major news media immediately embraced the frame that Jewish supporters were the victims of Muslim youth and antisemitism. Only after more journalists published their eyewitness accounts did it become clear that the context of the riots was more complex. Photographer Annet De Graaf published photos of Maccabi supporters molesting passers-by in Amsterdam, but several media sources suggested that the photos showed the opposite. This was rectified only after she refuted this framing. This framing was reinforced by Prime Minister Schoof during a press conference, even before the Amsterdam triad (Mayor Femke Halsema, the Public Prosecution Service and the police) had presented a factual overview. In times when emotions run high and framing can have a powerful impact, it is essential that the media rely on facts and show all sides of a story. Independent and unbiased journalism is possible, even in tense situations. In cases where multiple groups are involved in a conflict, it is crucial to prioritise facts over interpretation. Media must take their societal responsibility very seriously in this regard.

120 BBB, ‘Caroline van der Plas calls for tough approach to growing anti-Semitism in the Netherlands’ (Caroline van der Plas roept op tot harde aanpak van groeiend antisemitisme in Nederland), 13 November 2024, <https://boerbuerbeweging.nl/fractienieuws/caroline-van-der-plas-roept-op-tot-harde-aanpak-van-groeiend-antisemitisme-in-nederland/>.

121 Villamedia, Media watchdog: politicians should not influence media (Mediawaakhond: politici moeten geen invloed uitoefenen op media), 6 December 2024, <https://www.villamedia.nl/artikel/mediawaakhond-politici-moeten-geen-invloed-uitoefenen-op-media>.

Another example where the media followed dominant framing without diligently checking the facts is the recent reporting on the peace organisation PAX. An article in the *Jerusalem Post*, drawing on a report from Israel's Ministry of Diaspora Affairs and Combating Antisemitism, levelled false accusations against a Dutch staff member of PAX, insinuating that the organisation, as well as other Dutch organisations and human rights defenders, are part of an antisemitic and pro-Hamas network. Without investigation or consultation, Dutch newspapers *De Telegraaf* and *De Limburger* echoed these false accusations.

Financing (including transparency of financing)

The current government has announced cuts to the budget allocated to the public broadcasting network, totalling €116.6 million per year, starting in 2027. Similarly, regional broadcasters will receive less financial support.¹²² Further cuts of €50 million were approved in December of 2024.¹²³ Extra cuts have

been announced since then (going up to €1.1 billion).¹²⁴ The budget cuts on public service media are highly concerning for the public's access to information, and the pluriformity and independence of the media sector in the Netherlands.

When it comes to the regulation of advertising on public news channels, the media regulator (Commissariaat voor de Media) has passed a new policy, replacing the one dating from 2019, in 2024.¹²⁵ The new policy contains the following:

- Social media posts are also part of the public media assortment
- Max 15% of posts on the social media of a public media institution are allowed to consist of advertising and teleshopping messages
- No advertising and teleshopping messages may be included around national public media offerings

122 Villamedia, Media watchdog: politicians should not influence media (Mediawaakhond: politici moeten geen invloed uitoefenen op media), 6 December 2024, <https://www.villamedia.nl/artikel/mediawaakhond-politici-moeten-geen-invloed-uitoefenen-op-media>.

123 Villamedia, 'NPO-cuts possibly not able to be paid out of commercials' (NPO-bezuiniging mogelijk niet te betalen uit reclame), Villamedia, 13 December 2024, <https://www.villamedia.nl/artikel/npo-bezuiniging-mogelijk-niet-te-betalen-uit-reclame>.

124 AOb, 'AOb political deal on cuts unacceptable, prepare for strike' (AOb: politieke deal over bezuinigingen onacceptabel, voorbereiden op staking), 12 December 2024, <https://www.aob.nl/actueel/artikelen/aob-politieke-deal-over-bezuinigingen-onacceptabel-voorbereiden-op-staking/>.

125 Dutch Media Authority, 'Consultation Policy Rule Advertising Public Media Institutions 2024' (Consultatie Beleidsregel reclame publieke media-instellingen 2024), 2024, <https://www.cvdm.nl/voor-medi makers/regelgeving/beleidsregels/consultatie-beleidsregel-reclame-publieke-media-instellingen-2024/>.

Furthermore, the Minister of Education, Culture and Science has expressed his intention to present a draft bill that should support local and regional news media, as he acknowledges the societal importance of local and regional news (and as a crucial force to uphold the rule of law). Many local and regional news providers suffer financial issues. The bill should reinforce such media by assuring central funding (instead of regional), an additional annual investment of €16 million, scaling-up, better coordination by the NLPO, and clearer allocation rules per geographical area.¹²⁶

Online media

Competence and powers of bodies or authorities supervising the online ecosystem, including the digital services coordinators role

The Dutch government has appointed the Dutch Consumers & Market Authority (ACM, Autoriteit Consument & Markt) as Digital Services Coordinator under the Digital Service Act. The Dutch Data Protection Authority (Autoriteit Persoonsgegevens) will also be responsible for a small part of the supervision related to personalised advertisements. However, until the Dutch Parliament

has approved the bill to transpose the Digital Services Act, the ACM cannot yet exercise all its powers as the Digital Services Coordinator. For example, the ACM is not yet authorised to appoint ‘trusted flaggers’, which are entities under the DSA with expertise in the detection of harmful content and are trusted to report such content.¹²⁷ Although the ACM is not yet authorised to enact all its powers as the Digital Services Coordinator, they have already started working on some duties (for which they do not need authorisation by law); for instance, they published a DSA guideline for providers of online services.

Public trust in media

According to research conducted by Closer News (Dichterbij Nieuws),¹²⁸ Dutch citizens are strongly convinced of the importance of independent journalism. 76% of Dutch people believe that the Netherlands cannot do without independent, professional journalism. The same research found that 36% of Dutch people believe that regular news media outlets are influenced or controlled from outside the country, for example, by companies or the government, 44% think that most news from regular media is independent, and 40% have a ‘neutral’ stance. When asked for the levels of

126 Minister Bruins, *Letter to the House of Representatives (Brief aan de Tweede Kamer)*, 25 October 2024, <https://open.overheid.nl/documenten/dpc-fc98724b27ef30be9829c9570f0a9eb58d6a0e80/pdf>.

127 European Commission, *Trusted flaggers under the Digital Services Act (DSA)*, 14 January 2025, <https://digital-strategy.ec.europa.eu/en/policies/trusted-flaggers-under-dsa#:~:text=Trusted%20flaggers%20are%20special%20entities,it%20to%20the%20online%20platforms>.

128 Dichterbij Nieuws, *News Literacy Research Report (Nieuwswijsheid Onderzoeksrapportage)*, April 2024, <https://netwerkmediawijsheid.nl/wp-content/uploads/2024/04/DBN-onderzoeksrapport-4.pdf>.

trust in regular news media, 48% say they have a lot of confidence, while 17% do not have any confidence in regular news sources.

Worryingly, the research shows a decline in trust: 4 in 10 people state their trust in the media has decreased. According to *Dichterbij Nieuws*, these are largely the same people who think the media are not independent and find it much less important to follow the news. Research by the Dutch Media Authority shows a similar trend: although trust in media is, in principle, quite high — 54% of Dutch people trust the news they receive via television, social media, newspapers or radio — this trust is slightly dropping, and the general interest in news is decreasing.¹²⁹ According to this research, since 2018, the share of people who do not trust the news has increased from 11% to 19%. Moreover, the vast majority of Dutch people are at least a little concerned about mis- and disinformation and what it means for appraising whether the news they consume is actually true.

The Dutch Media Authority also conducted research focused specifically on news consumption by young people and found that 94% of Dutch young people trust the news (albeit in

varying degrees), although most consume their news via social media (78%).¹³⁰

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

In 2020-2023, a total of 722 reports were received by *PersVeilig*. The majority of these concerned ‘threats’ (58%), followed by ‘physical violence’ (19%) and ‘stalking/harassment/intimidation’ (10%). Almost two-thirds of the reports were made by freelance journalists. *PersVeilig* reported 439 incidents in 2024, a marked increase compared to 2022 and 2023.¹³¹ The incidents consisted of 99 threats, 72 incidents of discrimination or intimidation, and 56 of physical violence.¹³² Photojournalists, in particular, were especially vulnerable in 2024, with a high number of physical attacks recorded.

2024 was marked by a large number of protests, especially due to the war in Gaza. This led to several incidents threatening the safety of journalists. For example, during the protests at the University of Amsterdam in May 2024, several journalists were threatened, attacked,

129 Commissariaat voor de Media (Netherlands), ‘Young People, News and Social Media: A Glimpse into the Future of News’ (*Jongeren, nieuws en sociale media: Een blik op de toekomst van het nieuws*), 1 October 2024, <https://www.cvdm.nl/nieuws/onderzoeksrapport-jongeren-nieuws-en-sociale-media-een-blik-op-de-toekomst-van-het-nieuws/>.

130 Ibid.

131 Persveilig, ‘249 incidenten gemeld bij PersVeilig in 2024’, Pers Veilig, 5 January 2025, <https://persveilig.nl/artikelen/249-incidenten-gemeld-bij-persveilig-in-2024>.

132 Ibid.

and intimidated.¹³³ In addition, on 10 November 2024, the police arrested a photographer during the banned pro-Palestinian demonstration on Dam Square in Amsterdam. The woman photographer was making film recordings for her work at the School of Journalism when she was arrested and detained for nine hours despite presenting a valid press card. On 14 November 2024, the Dutch Association of Journalists (NVJ) announced it would file a complaint with the police.¹³⁴

Rules and practices guaranteeing journalist's independence and safety

The Ministry of Education, Culture and Science decided to turn the temporary €500,000 yearly subsidy to PersVeilig into a permanent subsidy. Persveilig monitors and surveils journalists' safety. Furthermore, in 2025, the Ministry will grant a one-off subsidy of €300,000 to PersVeilig's initiative Balie Persvrijheid, which offers legal support to journalists.¹³⁵ Balie Persvrijheid offers free legal advice to

journalists whose (future) publications are legally challenged.¹³⁶ More than half of the advice and support provided between 2021-2023 by De Balie Persvrijheid related to freedom of press issues (53%), followed by unlawful publication (28%), criminal law, WOB-procedures and image rights.

The project PersVeilig (set up in 2019) has been evaluated in 2024. The evaluation concluded that PersVeilig has achieved a number of its key objectives: journalists have confirmed that they value the existence of PersVeilig's hotline, knowledge and skills sharing (as accommodated by PersVeilig) have reinforced journalists' position, journalists' are now granted preferential treatment by law enforcement in case of aggression, prosecutors now apply heavier sentence guidelines in case of aggression and violence against journalists, clearer process for each type of aggression against journalists, and finally the general awareness of aggression against journalists has been improved.¹³⁷ The evaluation report also contains a number of

133 Nederlandse Vereniging van Journalisten, 'Protestors Must Leave Journalists Alone, UvA Demonstration' (*Demonstranten UvA blijf van journalisten af*), 8 May 2024, <https://www.nvj.nl/nieuws/nvj-%E2%80%98demonstranten-uva-blijf-journalisten-af%E2%80%99>.

134 Het Parool, 'Journalist Arrested at Dam Demonstration, Police Claims She Was Protesting' (*Journalist zondag aangehouden bij demonstratie op de Dam, politie zegt dat ze aan het demonstreren was*), 13 November 2024, <https://www.parool.nl/amsterdam/journalist-zondag-aangehouden-bij-demonstratie-op-de-dam-politie-zegt-dat-ze-aan-het-demonstreren-was~b41ff1e3/>.

135 Rijksoverheid, 'Additional Investments in Press Safety' (*Extra investeringen in persveiligheid*), 27 November 2024, <https://www.rijksoverheid.nl/actueel/nieuws/2024/11/27/extra-investeringen-in-persveiligheid>.

136 Nederlandse Vereniging van Journalisten, 'Free Legal Advice for Journalists' (*Gratis juridisch advies voor of na je publicatie*), <https://nvj.nl/diensten/persvrijheid>.

137 PersVeilig, *Evaluation Report: Towards a Sustainable Organisation (Evaluatie PersVeilig: naar een toekomstbestendige organisatie en financiering)*, 28 May 2024, <https://open.overheid.nl/documenten/dpc-77dfd2e3e1df16d8bfc76caf-8354c8b737d8ca31/pdf>.

recommendations to improve PersVeilig further going forward.¹³⁸

In June 2024, initiated by the Authors Union and the General Publishers Group and hosted by PersVeilig, the new platform SchrijversVeilig was launched. This platform aims to strengthen the position of writers against violence, aggression, and intimidation.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

Law enforcement's capacity to ensure journalists' safety and investigate attacks on journalists and media activists has seen some progress but remains inconsistent. A notable example occurred on 5 December 2023, when three journalists from the media platform *PowNed* were assaulted while covering the celebration of Sunneklaas on Ameland. Following this incident, legal action was taken, and the journalists involved are now being prosecuted, raising

concerns about the prioritisation of protecting journalists versus prosecuting them.¹³⁹

Furthermore, in December 2024, Jan Roos was arrested after publicly inciting violence against journalists who were set to cover the 2024 Sunneklaas celebrations. This arrest demonstrates the willingness of law enforcement to address threats of violence against journalists.¹⁴⁰ However, these incidents highlight a broader challenge: while authorities are taking steps to investigate and, in some cases, prevent violence, the overall safety of journalists and the ability to report freely without fear of intimidation, assault, or legal repercussions remains a point of concern.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

In April 2024, Free Press Unlimited published a research report investigating the impact of legal pressure on Dutch journalism.¹⁴¹ The research shows that increasing legal pressure

138 Ibid., p. 5.

139 NOS, 'PP prosecutes two people from Ameland for harrassing journalists during Sunneklaas' (*OM vervolgt twee Amelanders voor belagen journalisten tijdens Sunneklaas*), 11 July 2024, <https://nos.nl/artikel/2528438-om-vervolgt-twee-amelanders-voor-belagen-journalisten-tijdens-sunneklaas>.

140 JOOP BNNVARA, 'Bully vlogger Jan Roos arrested for call to violence regarding Sunneklaas at Ameland' (*Treitervlogger Jan Roos aangehouden om oproep tot geweld rond Sunneklaas op Ameland*), 29 November 2024, <https://www.bnnvara.nl/joop/artikelen/treitervlogger-jan-roos-aangehouden-om-oproep-tot-geweld-rond-sunneklaas-op-ameland>.

141 Free Press Unlimited: *An Underestimated Problem: Legal Pressure on Dutch Journalism (Een onderschat probleem: disproportionele juridische druk op de Nederlandse journalistiek)*, 10 April 2024, <https://www.freepressunlimited.org/sites/default/files/documents/Een%20onderschat%20probleem%2C%20disproportionele%20juridische%20druk%20op%20de%20Nederlandse%20journalistiek.pdf>.

on media and individual journalists in the Netherlands leads to self-censorship, and psychological and financial pressure on freelance journalists and smaller media outlets. The legal pressure was, in some cases, severe: penalty payments of tens of thousands of euros and threats to seize a journalist's house.

The research shows that the impact of legal pressure is strongest among freelancers, local media and small titles. These groups are most vulnerable to the possible effects and are, therefore, more likely to resort to self-censorship. Journalists and titles of large publishers also experience the consequences of legal pressure. Despite the protection that larger titles offer, journalists experience many unspoken concerns about the coverage of legal costs if, for example, they retire or end up on sick leave.

In addition to the financial implications and the time investment, the research shows that the psychological impact on the individual journalist is underestimated. Journalists indicated that legal pressure can cause severe stress, anxiety and psychological burden. Journalists also indicate that they often feel like they are on their own and that they experience little solidarity from colleagues.

The report concludes that current Dutch legislation does not provide sufficient protection against SLAPP cases and recommends

creating special provisions in Dutch law to protect targets of SLAPPs.

Confidentiality and protection of journalistic sources (including whistleblower protection)

In August 2024, a journalist was summoned to be questioned as a witness in a criminal case against one of his sources. The case involved a journalist from the media outlet *Zembla*. The examining magistrate summoned *Zembla* investigative journalist Roelof Bosma to be heard as a witness in the criminal case against former Dordrecht municipal councillor Ruben Schilt. Bosma refused, citing the importance of source protection.¹⁴²

In general, regardless of this specific case, legally and publicly addressing sources and/or experts will always entail the risk of a chilling effect, making it more difficult for the media to find experts willing to speak out publicly about cases where legal action is threatened or expected. Journalists cannot effectively execute their role as the watchdogs of power when they cannot credibly protect the confidentiality of their sources. Sources and whistleblowers should be confident that journalists will treat the identity of the source and background information they share with journalists with care and, where necessary, confidentiality.

142 VillaMedia, 'Zembla Journalist Refuses Testimony to Protect Sources' (*Zembla-journalist weigert getuigenverhoor om bronnen te beschermen*), VillaMedia, 20 August 2024, <https://www.villamedia.nl/artikel/zembla-journalist-roelof-bosma-wil-bronnen-beschermen-en-weigert-getuigenverhoor>.

In October 2023, it was revealed that journalists from *De Correspondent* were wiretapped in 2022 by the Public Prosecution Office (OM) during a conversation with Sywert van Lienden and his business partners, who were being investigated by the OM. As a result of the scandal, the Public Prosecution office (OM) adjusted their rules around the wiretapping of suspects in conversation with journalists to always require prior permission from an Examining Magistrate.¹⁴³ In the case at hand, the examining magistrate had only approved the wiretapping of the location, and was uninformed that journalists would be present. The new rule became effective on 1 May 2024.

De Correspondent started a case against the Public Prosecution office (OM), which embarked on 9 December 2024. They argue that the OM's actions violated their journalistic source protection.¹⁴⁴ Although the OM argues that the wiretapping was incidental and targeted the suspect rather than journalists themselves, *De Correspondent* argues that the OM's actions contribute to a broader chilling effect by discouraging sources from coming forward, therefore hindering investigative reporting.

Access to information and public documents

Freedom of information is mentioned in Article 110 of the Dutch Constitution, but not guaranteed. The Open Government Act (Wet open overheid - WOO), which came into effect in 2022, provides the legal basis for the release of government information. The law recognises that all citizens have a right to government information without cause. In practice, however, access to information is obstructed by several factors. The government usually exceeds the deadline for processing Freedom of Information (FOI) requests. Investigations by NGOs show that the average response time by authorities at the level of the central government is 172 days, where the legal maximum is 42 days, including a 14-day extension from the initial period of 28 days.¹⁴⁵ The reasons for the delay are varied. The government points to outdated information management, but multiple NGOs also point to a culture within ministries. Civil servants are hesitant to share information, and FOI requests often go through multiple legal and political checks before release. Departments are afraid that

143 NU Nieuwsredactie, 'OM adjusts policy after wire-tapping Sywert van Lienden and Journalists' (OM pas beleid aan na af luisteren Sywert van Lienden en journalisten), Nu.nl, 29 April 2024, <https://www.nu.nl/binnenland/6310967/om-past-beleid-aan-na-af-luisteren-sywert-van-lienden-en-journalisten.html>.

144 De Correspondent, 'We were wiretapped. This is on the line in our case against the Public Prosecutor' (*Wij zijn afgeluisterd. Dit staat er op het spel in onze rechtszaak tegen het Openbaar Ministerie*) De Correspondent, 2 December 2024, <https://decorrespondent.nl/15735/wij-zijn-afgeluisterd-dit-staat-er-op-het-spel-in-onze-rechtszaak-tegen-het-openbaar-ministerie/1490c6c3-ab74-088f-0de7-c08360a3233b>.

145 Instituut Maatschappelijke Innovatie (Open State Foundation and the University of Amsterdam), *Leaves on the Track – Analysis of the Handling of Woo Requests 2023* (Blaadjes op het Spoor – Analyse afhandeling Woo-verzoeken 2023), February 2023, <https://www.imi.nu/userfiles/imi.nu/files/Blaadjes-op-het-spoor-rapport.pdf>.

releasing information might lead to difficult political questions for the leadership.¹⁴⁶

Concerns raised in a 2023 study to evaluate the functioning of The Open Government Act have not yet been adequately addressed. The results highlight some important concerns of journalists. They have indicated that active disclosure has not yet improved and that government cooperation is not satisfactory when it comes to WOO requests. Furthermore, journalists expect deliberate, politically motivated delays when the legal deadline to process a WOO request is not met and believe that the government does not always apply grounds for exception correctly.

We believe that independent entities within ministries should review the FOI requests and that political considerations should be taken out of the process. This would not only speed up the process, but would also make for a more objective application of the grounds for refusal. Recent years saw various attempts by government authorities to keep internal advice given by government officials out of the public's reach. For instance, the documents are classified as

drafts, unripe, personal opinions or a threat to the unity of the cabinet.¹⁴⁷ Governments should stop playing these legal and semantic games and give insight into the objective information on which political decisions are based.

Other

In February 2024, the Commission of Inquiry into Behaviour and Culture of Broadcasters (Onderzoekscommissie Gedrag en Cultuur Omroepen – OGCO), also known as the Van Rijn Committee, released its report on misconduct at public broadcasters.¹⁴⁸ The main conclusion of the report is that misconduct is widespread in the national public broadcasting system, contributing to an unsafe working environment. More than 1,484 employees (three out of four) indicated that they have been confronted with misconduct in the past year as either a target or a witness. Furthermore, the report concludes that broadcasters and the Dutch Public Broadcaster (NPO) did not respond effectively when receiving worrying signals about this. In March, the NPO launched a plan of action to address misconduct.¹⁴⁹ The Dutch Journalist Union (NVJ)

146 Ibid.

147 Expertisecentrum, 'Uitspraak conceptenprocedure: i-grond zonder betekenis bij concepten', 24 July 2024, <https://expertisecentrumspoon.nl/blog/uitspraak-conceptenprocedure-i-grond-zonder-betekenis-bij-concepten/>.

148 Onderzoekscommissie Gedrag en Cultuur Omroepen, 'Nothing Seen, Nothing Heard, Nothing Done – The Disappearing Responsibility' (*Niets gezien, niets gehoord en niets gedaan – De zoekgemaakte verantwoordelijkheid*), January 2024, <https://ogco.nl/actueel/niets-gezien-niets-gehoord-niets-gedaan-de-zoekgemaakte-verantwoordelijkheid>.

149 NPO, *Comprehensive Action Plan on Social Safety in Public Broadcasting – Towards a Different Workplace Culture (Overkoepelend plan van aanpak sociale veiligheid publieke omroep, naar een andere omgangscultuur)*, 28 March 2024, https://media.prod.cc.bijnpo.nl/Plan_van_Aanpak_2024_3b406b71e2.pdf.

welcomed the swift action by the NPO but argued that more is needed to ensure a safer working environment and formulated several recommendations.¹⁵⁰ The Minister of Education sought to allocate €3.6 million to support the efforts of the NPO to address the issues, but the funding was blocked by the House of Representatives following a resolution by the BBB.¹⁵¹

Furthermore, we see that the political rhetoric towards journalists and media is hardening, with politicians verbally attacking (individual) journalists or questioning their integrity. The most well-known example is that PVV leader Geert Wilders called journalists “scum of the earth” via X (former Twitter) in 2021. During the formation period in early 2024, when Wilders was one of the potential candidates to become Prime Minister, he refused to retract this statement. The normalisation of this rhetoric is worrying, and journalists indicate that they feel less safe to carry out their work.

Another example occurred when the Dutch Minister of Justice and Security, Dilan Yeşilgöz, posted critical tweets in response to journalist Tim Hofman’s call on X for evidence of police brutality. Hofman, in the context of widespread Pro-Palestinian protests at Dutch universities, had asked his followers to provide accounts and evidence of police brutality and mistreatment during demonstrations. The Minister responded scathingly, questioning Hofman’s journalistic integrity. Her comments prompted a flurry of online hate and intimidation towards Hofman, who had been subjected to a murder attempt months earlier.¹⁵² The incident drew criticism from various opposition party members, who pointed out that as Minister of Justice and Security, Yeşilgöz is responsible for the safety of journalists like Tim Hofman.¹⁵³ State Secretary of Culture and Media, Fleur Gräper, responded to the affair, saying, “Journalists should be able to freely do their work and ask all the questions they want.”¹⁵⁴ The incident prompted questioning

150 Nederlandse Vereniging van Journalisten, ‘NVJ: NPO Action Plan is a Start’ (*NVJ: plan van aanpak NPO is een begin*), 28 March 2024, <https://www.nvj.nl/nieuws/nvj-plan-aanpak-npo-begin>.

151 BoerBurgerBeweging, ‘Chamber supports BBB motion and blocks extra millions for NPO: “Do not reward bad behavior”’ (*Kamer steunt BBB-motie en blokkeert extra miljoenen NPO: “Slecht gedrag niet belonen”*), 9 December 2024, <https://boerbürgerbeweging.nl/fractienieuws/kamer-steunt-bbb-motie-en-blokkeert-extra-miljoenen-npo-slecht-gedrag-niet-belonen/>.

152 RTL, ‘Tim Hofman receives many hate responses after criticism Yesilgöz on X’ (*Tim Hofman ontvangt veel haatreacties na kritiek op X*), 15 May 2024, <https://www.rtl.nl/nieuws/artikel/5450526/tim-hofman-ontvangt-veel-haatreacties-na-kritiek-yesilgoz-op-x>.

153 Metro 25, ‘Dilan Yesilgöz lashes out fiercely to Tim Hofman and is reprimanded by colleagues’ (*Dilan Yesilgöz haalt fel uit naar Tim Hofman en wordt op haar vingers getikt door collega’s*), 14 May 2024, <https://www.metronieuws.nl/in-het-nieuws/binnenland/2024/05/dilan-yesilgoz-tim-hofman/>.

154 Trouw, ‘Criticism from Yeşilgöz on journalist Tim Hofman does not sit well with colleague Gräper’ (*Kritiek van Yeşilgöz op journalist Tim Hofman valt niet goed bij collega Gräper*), 15 May 2024, <https://www.trouw.nl/politiek/kritiek-van-yesilgoz-op-journalist-tim-hofman-valt-niet-goed-bij-collega-graper-b2fdc2bb7/?referrer=https://www.google.com/>.

of the minister in the Dutch House of Representatives, to which Yeşilgöz responded that she was in agreement with Gräper's statement and that she disapproves of violence towards journalists.¹⁵⁵

Do you consider the progress of the implementation of the Anti-SLAPP Directive in your country adequate? Have there been any positive developments you could attribute to the Anti-SLAPP Directive?

In early October 2024, the Ministry of Justice and Security published the draft law for implementing the European Anti-SLAPP Directive. The proposed implementation law does not provide sufficient protection for victims of SLAPPs in the Netherlands.

In some respects, the minimum standards outlined in the Directive are not met, let alone the best practices recommended by the Council of Europe. This is concerning, as research by Free Press Unlimited earlier this year highlighted that legal pressure and SLAPPs also affect journalists in the Netherlands, leading to self-censorship.¹⁵⁶

The most pressing concerns with the Draft Implementation Act are the following:

- The definition and indicators to assess a SLAPP have not been included in the draft Act. By not including SLAPP indicators in the law, Dutch judges are given little guidance when assessing potential SLAPP cases - a significant issue given the limited case law on this topic. In the interest of legal certainty, this guidance is crucial. The criteria from the Directive introduce indicators of a SLAPP that do not align with current Dutch jurisprudence on abuse of procedural law (Article 3:13 BW), further underscoring the need to enshrine them in law.
- With the exception of the provision on securities, the Explanatory Memorandum states that the safeguards for early dismissal and full compensation for costs as outlined in the Directive are already provided for in Dutch law. However, by not making specific safeguards available for SLAPP targets, the Draft Act does not offer effective access and hereby does not meet the minimum standards of the Directive.

155 Dutch House of Representatives, Responses parliamentary questions about the message “Yeşilgöz haalt uit naar Tim Hofman na X-bericht over ME” (Antwoorden Kamervragen over het bericht “Yeşilgöz haalt uit naar Tim Hofman na X-bericht over ME”) Doc nr. 2 0 24Z08238, 25 June 2024, <https://open.overheid.nl/documenten/dpc-436dba7b10c243769e5d37475f5d059d1205493a/pdf>.

156 Free Press Unlimited, *FPU Research: Increasing Legal Pressure on Dutch Media Underestimated (Onderzoek FPU: toenemende juridische druk op Nederlandse media wordt onderschat)*, 10 April 2024, <https://www.freepressunlimited.org/nl/actueel/onderzoek-fpu-toenemende-juridische-druk-op-nederlandse-media-wordt-onderschat>.

Regarding early dismissal, the Draft Act creates a barrier to effective access to this remedy. The Explanatory Memorandum states that no legal change is needed in Dutch law because SLAPP targets can start separate summary proceedings to request the dismissal of the case. This does not align with the Directive's mandate, as this would increase the costs for SLAPP targets. A specific legal provision for (an expedited handling of) a request for early dismissal in the same procedure in cases of SLAPPs would better reflect the Directive.

Secondly, the effective access to the full compensation for costs is concerning as the Explanatory Memorandum states that it is already possible to recover the full costs of legal representation. However, this remedy is rarely awarded, even when courts do find abuse of process. Only statutory fees are awarded in the vast majority of cases, which is problematic as the gap between the actual costs and the awarded costs can be very large. Without a specific remedy for full compensation in SLAPP cases, there are strong concerns about the effective access to this safeguard and, therefore, compliance with the Directive.

- The draft Act focuses solely on cross-border cases. While the European Directive targets cross-border SLAPPs, the EU encourages member states to extend these safeguards to domestic SLAPP cases as well (in line with the Council of Europe's anti-SLAPP recommendations). The fact that the draft Act does include domestic cases is highly concerning, as many SLAPP cases in the Netherlands lack a cross-border element, meaning these safeguards will not apply to such cases.¹⁵⁷

Support of the defendant by associations, organisations, trade unions or other entities also interested in the protection of public participation

In June 2024, the supervisory authority for the legal profession opened a reporting point for journalists who are victims of legal intimidation and SLAPPs. The reporting point is seated with the local bar president of Amsterdam. The reporting point is available to both lawyers and directly affected parties who suspect they are targeted with a SLAPP. The purpose of the reporting point is to provide information and to document reports. Where necessary, further investigation into a report can be conducted. If the report concerns a lawyer from another district, this will be done in consultation with the relevant bar president.¹⁵⁸

157 Free Press Unlimited, *FPU Research: Increasing Legal Pressure on Dutch Media Underestimated (Onderzoek FPU: toenemende juridische druk op Nederlandse media wordt onderschat)*, 10 April 2024, <https://www.freepressunlimited.org/nl/actueel/onderzoek-fpu-toenemende-juridische-druk-op-nederlandse-media-wordt-onderschat>.

158 *Advocatenblad*, 'Dekens openen meldpunt voor juridische intimidatie journalisten', 20 June 2024, <https://www.advocatenblad.nl/2024/06/20/dekens-openen-meldpunt-voor-juridische-intimidatie-journalisten/>.

CHECKS AND BALANCES —

Key recommendations

- *Safeguard legislative transparency: Avoid misuse of emergency powers by enhancing parliamentary and judicial oversight, ensuring proportionality and necessity in emergency or fast-track legislation.*
- *Strengthen oversight of algorithmic decision-making: Establish legal safeguards in administrative law for algorithmic transparency, effective legal remedies, and human intervention in line with GDPR standards.*
- *Ensure electoral integrity: Regulate political microtargeting, combat disinformation, and protect voters' rights to balanced, reliable information, particularly during campaigns.*

Process for preparing and enacting laws

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

In September 2024, the Minister of Asylum and Migration proposed declaring an asylum crisis to activate emergency powers under the Dutch Aliens Act, which would allow her to limit family reunification and end indefinite asylum grants. Such emergency measures can lead to misuse, as seen historically with authoritarian regimes. State emergency law should only be invoked when a vital interest is threatened, and normal legal powers are insufficient. The Dutch parliament and judiciary must rigorously scrutinise the necessity and proportionality of the proposed measures

to ensure that they align with constitutional principles and do not undermine the rule of law. The parliament's oversight and the potential judicial review are crucial to prevent the misuse of emergency powers.

After much public push-back, the Minister has changed proceedings from invoking state emergency law towards fast-track proceedings. In the beginning of December 2024, the Council of State had one week to review the fast-tracked Asylum Emergency Measures Act and the Two-Status System Act.

Regime for constitutional review of laws

The government is preparing a constitutional amendment proposal to establish a constitutional court that can review laws, regulations, and decisions against the Constitution by partially lifting the prohibition in Article 120 of the Dutch Constitution, allowing for

the constitutional review of laws against fundamental rights provisions. The framework for this court will be outlined in 2024, with the legislative proposal expected in 2025. The government is also considering whether inter-institutional provisions will be subject to review. The previous cabinet had excluded inter-institutional provisions from its plans.¹⁵⁹

Independent authorities

In the coalition program, the Cabinet announced ‘de Wet op de rijksinspecties’ (the Framework Law on State Inspections). This bill went into consultation in January 2025. As part of the improvement of governance within the national government, this bill aims to legally guarantee the independent performance of the tasks of the national inspectorates. The bill also contributes to further strengthening the social orientation and responsiveness of the inspectorates, reflecting more effectively on the effects of policy in practice and, more generally, connecting policy with implementation practice. In addition, it will examine how the supervisory tasks of other authorities and supervisors can be improved.

The idea behind this law is understandable. However, the enforceability of the law is questioned. The Netherlands has many different regulators, which are increasing in number. The need for supervision is stressed by the government but capacity is lacking. Organisations

are underfunded, and there is too little staff. Therefore, the Cabinet has to properly examine the feasibility of this law.

Accessibility and judicial review of administrative decisions

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

NJCM has responded in a letter to the government regarding an online consultation about the increasing use of algorithms by the government. The letter addresses whether it is necessary and desirable to legally establish certain standards for algorithmic decision-making in the Dutch General Administrative Law Act (Awb). In the letter, NJCM advocates for a fundamental reconsideration of the Awb in light of the impact of algorithmic decision-making and artificial intelligence on administrative law and emphasises the importance of effective legal protection and transparency in government actions, highlighting that the general principles of proper administration are currently not guaranteed when algorithms are applied in administrative decision-making. NJCM advises equipping citizens, judges, and lawmakers with (technological) tools and resources to challenge or limit algorithmic decision-making early on, thereby enhancing effective legal protection. Furthermore, the

159 Ministry of Internal Affairs and Ministry of Justice (The Netherlands), Letter to the Second Chamber of Parliament on the Framework for Constitutional Review (Brief toetsingskader constitutionele toetsing), number 2024-0000194928, 2 April 2024.

group asserts the necessity of a right to human intervention in algorithmic decision-making by administrative bodies, in line with Recital 71 of the General Data Protection Regulation (GDPR). The NJCM considers the protection of human rights in the context of increasing algorithmic decision-making to be of paramount importance and calls for ensuring that the legal framework provides sufficient safeguards for legal protection and transparency.¹⁶⁰

Electoral framework

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

Currently, only voters who cannot vote independently due to a physical disability can receive assistance in the voting booth. In a positive development, the Minister of Internal Affairs wants assistance to be possible for everyone who asks for it, including people with a mental disability or people with low literacy. A polling station member will offer help to these voters. The premise of the bill is that voters who wish to receive assistance in the voting booth will be

assisted by a poll worker. People with physical disabilities will additionally retain the right to bring someone of their choice for assistance in the voting booth. This may be a polling station member, but it may also be a family member or acquaintance. However, this law proposal has not yet been sent to the parliament.¹⁶¹

Rules on political advertising and their enforcement

Dutch political parties are doing extensive microtargeting on social media in election campaigns in the Netherlands. This means sending targeted ads to potential voters based on personal information, such as their search history. The Personal Data Authority (AP) speaks of effects that could lead to unfair election results. “Secretly manipulating voters on the basis of prohibited profiles is very dangerous in a democracy,” said chairman Aleid Wolfsen. “You should not want this as a political party, it is an unlawful violation of fundamental rights.”¹⁶²

160 NJCM, Algorithmic decision making and the Awb (*Algoritmische besluitvorming en de Awb*), 30 April 2024, <https://njcm.nl/wp-content/uploads/2024/05/Internetconsultatie-Algoritmische-besluitvorming-en-de-Awb-Reactie-Nederlands-Juristen-Comite-voor-de-Mensenrechten-NJCM-30-april-2024-1.pdf>.

161 Overheid, Bill for support while voting (*Wet bijstand in het stembokje*), WGK010153, <https://wetgevingskalender.overheid.nl/Regeling/WGK010153>.

162 NOS, (Political microtargeting in advertising: ‘dangerous for democracy (Politieke microtargeting in advertenties: ‘gevaarlijk voor democratie’), 5 November 2023, <https://nos.nl/artikel/2496760-politieke-microtargeting-in-advertenties-gevaarlijk-voor-democratie>.

Eligibility criteria and restrictions to be a candidate:

People with dual nationality should not be considered for political office, according to the Party for Freedom (Partij voor de Vrijheid - PVV), the biggest party in the Netherlands.¹⁶³ For years, this party has also urged that people with dual nationality be deprived of their right to vote. The 'Afdeling advisering' concludes that excluding persons from the right to vote and from certain offices because of dual nationality violates the prohibition of discrimination. Despite the fact that the largest party in the Netherlands wants this plan to be introduced, so far, there is no support for this initiative proposal.

Access to balanced and reliable information online and offline during electoral campaign: campaigning, media coverage, disinformation and misinformation:

Many thousands of fake accounts influenced public opinion on X during the European election campaign. Organised networks were active in France and Germany, but voters in the Netherlands, Italy, and the English-speaking public were also played by the troll network. The networks probably originated in Russia. This is the result of an independent investigation commissioned by the Group of European Socialists in the European Parliament (S&D) and Green Left-PvdA. The Public Prosecutor's Office in Belgium has launched a criminal investigation into Russia's influence on the elections. However, this is not only a national problem, voters in the Netherlands were also affected by disinformation.

163 Parlementaire Monitor, Initiative proposal Expansion of exclusion from voting rights and ban on multiple nationality for certain office holders (Constitution, 1st reading) (*Initiatiefvoorstel Uitbreiding kiesrechtuitsluiting en verbod op meervoudige nationaliteit bij bepaalde ambtsdragers (Grondwet, 1e lezing)*), 18 February 2019, 35144, <https://www.parlementairemonitor.nl/9353000/1/j9vvij5epmj1ey0/vkw4kwyo5gx5>.

CIVIC SPACE

Key recommendations

- *Look into the practical and procedural difficulties that the Act on Collective Damages in Class Actions (Wet afwikkeling massaschade collectieve actie, or WAMCA) has introduced and try to take these away through different guidelines (in accordance with the PILP/BCW report recommendations).*
- *Do not limit the access to justice of public interest cases any further.*
- *Actively defend the benefits public interest litigation brings to democracy.*
- *Repeal the law on transparency of civil society organisations (WTMO).*
- *Ensure better compliance with national and international norms and standards on freedom of assembly and refrain from measures that can further restrict the right to protest.*

Freedom of association

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations

WTMO: As reported previously, the draft law on transparency of civil society organisations (Wet Transparantie en tegengaan ondermijning door Maatschappelijke Organisaties, or WTMO)¹⁶⁴ is still on the parliamentary agenda. Despite widespread criticism, including from the Council of State, the law was

included in the new government's coalition agreement. While the law has been revised based on earlier criticism and the debate on the law has been rescheduled multiple times, the criticism and concerns raised both by civil society as well as the Council of State remain.

The law can oblige organisations to publish information on funding coming from third countries when there is a suspicion that a CSO implements activities that undermine the rule of law. However, the necessity of the law in addition to already existing legislation in place related to countering money laundering,

164 Tweede Kamer, Transparency and Countering Undermining by Civil Society Organisations Act (*Wet transparantie en tegengaan ondermijning door maatschappelijke organisaties*), 20 November 2020, 35646, <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?cfg=wetsvoorsteldetails&qry=wetsvoorstel%3A35646>.

terrorism financing and malign influence is not sufficiently justified and the law could disproportionately infringe on freedom of association and right to privacy.

The draft law does not offer sufficient safeguards against the risk of selective implementation and stigmatisation of CSOs due to vague and unclear definitions. For example, it is not clear when a CSO is deemed to have undermined the rule of law. If organisations do not comply, far-reaching sanctions can be imposed, such as fines, or the public prosecutor can even request the suspension of activities for up to two years. For many CSOs, this would jeopardise the existence of the whole organisation, and it is unclear how CSOs can appeal against these decisions. The law also increases the administrative burden on CSOs as they are required to save a lot of additional information about donations, which can also include volunteering, for up to seven years. This also includes personal data, raising concerns around privacy and cybersecurity. This can also have a chilling effect on the willingness of people to donate or volunteer.

Budget cuts and additional restrictions on state funding affecting funding for civil society

The new government has announced plans to significantly cut the budgets for civil society in different sectors. A massive cut of 70% of the development aid budget will have a significant effect on the civil society sector in the Netherlands. Even more so, this will be combined with a new requirement that NGOs can only apply for funding from these budgets if at least

50% of their income comes from sources other than state funding. In an already shrinking funding landscape, this is posing immense pressure on many organisations.

The Minister is arguing that the 50% restriction is necessary to make CSOs less dependent on the government and push them towards raising other income, such as direct donations from citizens.

However, at the same time, the government has tried to reduce the tax benefits on corporate and individual donations in their new tax plan and is trying to introduce new rules around funding from third countries through a transparency act. Different parties in parliament have also been attacking the National Postcode Lottery, an important funder of CSOs in the Netherlands because of some of the organisations they supported, putting pressure on them to stop funding relations with certain CSOs.

Although the Parliament voted against the reduction in tax benefits for donations, all of these actions put together can lead to a dangerous cocktail that could significantly restrict access to funding for CSOs in the Netherlands. At the same time, we see a shift in the political narrative on the role of CSOs. Where traditionally these were seen as partners, often playing a significant role in the execution of the foreign policy of the Netherlands, they are now often presented as a source of concern to the Netherlands' interests.

Moreover, it's not just the cuts for internationally operating NGOs. Cuts in the education, cultural and health care budgets will also

affect the funding of CSOs that are providing important services, especially those providing services and advocating for the rights of certain underrepresented groups such as undocumented migrants, people without housing and people who use drugs.

Other

The current cabinet wants to investigate whether there are further options to prevent ideational litigation in the public interest. The coalition programme of 13 September 2024 states that the cabinet will investigate whether and how further requirements should be imposed on the representativeness of public interest organisations with a non-commercial objective that can litigate under Article 3:305a of the Civil Code.¹⁶⁵

Criminalisation of activities, including humanitarian or human rights work

The authorities are criminalising the activities of a specific smaller, radical NGO. This NGO speaks out against the state of Israel and calls for the release of all Palestinian prisoners. The authorities want to ban this organisation.¹⁶⁶ Seeing as this group has not been prosecuted or convicted of any criminal activities and

organisations that celebrate Israeli violence are not targeted by the government, this criminalisation appears politically motivated, and therefore a risk to the rule of law.

Access to justice, including rules on legal standing, capacity to represent collective interest at court, and access to legal aid

WAMCA: As reported in previous years, the adoption of the Act on Collective Damages in Class Actions (Wet afwikkeling massaschade collectieve actie, or WAMCA) in January 2020 has introduced the possibility to instigate class actions. The provisions regarding collective actions have been amended, which has led to more obstacles for non-governmental organisations and public interest initiatives. More specifically, a more stringent admissibility regime is sometimes used with respect to public interest proceedings; the introduction of the requirement of representation for public interest proceedings has created an extra obstacle to public interest litigation; and the final authority of a judgement extends to individuals that were involved in the collective action.¹⁶⁷ Although inadvertent, these restrictions place a heavier burden on non-governmental organisations to launch a collective action, as these proceedings have become more complex, costlier,

165 Regeerprogramma, Uitwerking van het hoofdlijnenakkoord door het kabinet, 13 September 2024, page 85.

166 NOS, 'Cabinet Hopes for Quick Decision by Public Prosecutor on Ban of Pro-Palestinian Samidoun' (*Kabinet hoopt op snel besluit van het OM over verbod van pro-Palestijns Samidoun*), 11 October 2024, <https://nos.nl/artikel/2540442-kabinet-hoopt-op-snel-besluit-van-het-om-over-verbod-van-pro-palestijns-samidoun>.

167 P. Veerman, L. Bryk, M.B. Hendrickx, *The obstacles of the WAMCO for idealistic actions (De obstakels van de WAMCA voor ideële acties)*, Bureau Clara Wichmann/Stichting PILP: Amsterdam, 2024, https://pilp.nu/wp-content/uploads/2024/10/De-Obstakels-van-de-WAMCA-voor-Ideele-Acties-_BCW_PILP_Rapport_2024.pdf.

and lengthier.¹⁶⁸ In our written submission on 27 March 2024, we voiced our concern with the parliamentary motion to introduce even stricter criteria.

In the country chapter of the 2024 Rule of Law Report, the following is mentioned on page 30 regarding the concern of civil society organisations: “They also expressed fear that their access to the court system will be made more difficult in the future due to the imposition of stricter admissibility require.” In our view, this does not do justice to the significance of the problem posed by introducing more stringent criteria in the WAMCA.

With a national government ready to use emergency legislation in certain areas, local governments relying more on algorithms and profiling in combating ‘fraud’ and the right to demonstrate being curtailed, civil society organisations play a crucial role in upholding the rule of law through collective legal action. In turn, this is exactly why the government seeks to introduce obstacles to those (successfully) challenging the legality of state action.

The plan to introduce new obstacles to public interest proceedings in the WAMCA would cause more than a mere nuisance to civil society organisations. It is a key indicator of the government’s attitude towards checks and balances and the rule of law.

Hence, we call upon the drafters of the Rule of Law Report 2025 and the EU to recommend that the Netherlands not introduce any additional obstacles to those challenging the legality of its actions individually or collectively via WAMCA proceedings.

Legal Aid: In the 2024 country chapter on the Netherlands, the persistent calls to make the Dutch system of legal aid viable and sustainable are recognised. As the Bar Association has pointed out many times, the fee structure, as well as the age of most lawyers providing legal aid, result in more and more lawyers quitting the legal assistance system. As of now, the system is barely working. In a fact sheet published in November 2024, the Bar Association stresses that the number of lawyers providing legal aid continues to decrease and that there is a real shortage of lawyers in a number of provinces, leading to citizens being unable to find a lawyer that will take their case.¹⁶⁹ In fact, this means that the measures taken by the government are insufficient and that the government must structurally and substantially increase funding to keep the system from collapsing.

168 Ibid.

169 Dutch Bar Association, *Fact Sheet on Shortage of Social Lawyers: Access to Justice at Risk (Fact Sheet Tekort Aantal Sociaal Advocaten, Toegang tot het Recht in Gevaar)*.

Freedom of peaceful assembly

Rules on organisation, authorisation of and participation to assemblies

The freedom of peaceful assembly in the Netherlands is generally well-regulated in accordance with human rights treaties. But in practice, numerous mayors (the competent authorities) seem to violate this right, as voiced by the National Ombudsman in 2018.¹⁷⁰

In April 2024, the Dutch Ministers of Internal Affairs and of Justice and Security announced an investigation into the right to freedom of peaceful assembly, more specifically asking whether the legal framework concerning the right to demonstrate still corresponds with current developments.¹⁷¹ Especially disruptive demonstrations and demonstrations which endanger national security or the rights of others are the main subjects of this investigation. Explicit references are made to the roadblocks of Extinction Rebellion and farmers' protests, as well as protests "in the context of the

Israel-Palestine conflict".¹⁷² The motive behind this study is to investigate "the possibilities of strengthening the action perspective of all parties involved and the durability of the legal framework" to strengthen and maintain the right to demonstrate.¹⁷³

Amnesty International reports that this security-oriented focus on the right to demonstrate endangers compliance with international human rights standards. Shocking expressions and non-criminal protest signs are often banned, which constitutes a form of censorship; restrictive measures are imposed on the organisation of protests to avoid traffic disruptions, which is not a lawful restriction of the right to demonstrate; notification procedures before the municipality can be unnecessarily complicated and differ per municipality.¹⁷⁴ Furthermore, emergency legislation (*noodwetgeving*) is sometimes used to prohibit or disband protests, while this is not the object and purpose of this legislation; participants in a demonstration are often asked to identify themselves without an actual need to do so, and protesters are

170 Nationale Ombudsman, 'Research Demonstrating a Frictional Fundamental Right' (*Demonstreren: een schurend grondrecht*), 14 March 2018, <https://www.nationaleombudsman.nl/publicaties/onderzoeken/2018015-demonstreren-een-schurend-grondrecht>.

171 Rijksoverheid, 'Cabinet Orders Independent Investigation into Right to Protest' (*Kabinet laat onafhankelijk onderzoek doen naar demonstratierecht*), 19 April 2024, <https://www.rijksoverheid.nl/actueel/nieuws/2024/04/19/kabinet-laat-onafhankelijk-onderzoek-doen-naar-demonstratierecht>.

172 Ministry of Internal Affairs, Consolidated Letter on the Right to Protest (*Verzamelbrief demonstratierecht*), 19 April 2024, <https://open.overheid.nl/documenten/14d4c321-0294-430a-bcd6-0ab0bc0fdb06/file>.

173 Ibid., p. 19.

174 Amnesty International, *Right to Protest Under Pressure: Rules and Practices in the Netherlands Need Improvement* (*Demonstratierecht onder druk: regels en praktijk in Nederland moeten beter*), 2022, https://www.amnesty.nl/content/uploads/2022/11/AMN_22_33_demonstratierecht-onder-druk.pdf?x84346.

arrested or subjected to unlawful and excessive violence.¹⁷⁵

Bans on protests

The municipality of Amsterdam effected a week-long general ban on protests: after the riots that took place in Amsterdam on 7 November 2024, the municipality instituted a week-long ban on all demonstrations in the city. Legal experts agree that this measure interferes with relevant provisions of the Dutch Constitution and the European Convention on Human Rights.¹⁷⁶

Similarly, the organisers of a university protest in Utrecht cancelled their demonstration after the municipality of Utrecht informed them that there were indications that the protest would be overshadowed by (violent) pro-Palestine protesters. According to some organisers, it was unclear what precise risks were predicted and which (groups of) people would come to disrupt their manifestation.¹⁷⁷

Bans on the use of symbols/slogans in protests

There have been examples of bans on symbols and slogans in the past. The most recent example was a very small Extinction Rebellion protest in the city of Hengelo, where the restriction was that no mention should be made of the developments in the Middle East. The restriction was withdrawn by the mayor after it came to light in the media.¹⁷⁸

Policing practices, including dispersion of protests, use of force

Excessive use of force after a pro-Palestine demonstration in Amsterdam occurred on 17 November 2024. Protesters who participated in a pro-Palestine demonstration reported excessive violence used by police task forces, both in the city centre as well as at a remote dock area after having been administratively displaced. An investigation into this incident

175 Ibid.

176 De Volkskrant, 'Extension of Amsterdam Protest Ban Likely to be Overturned', *Experts Say (Verlenging Amsterdams demonstratieverbod houdt waarschijnlijk geen stand, denken experts)*, 11 November 2024.

177 Landelijke Studenten Vakbond (Netherlands), Statement on Cancellation of Protest on 14 November: An Alternative for Students to Protest (*Statement Landelijke Studenten Vakbond Afbazen Protest 14 Nov: Er Komt Voor Studenten Een Alternatief Om Alsnog Te Protesteren*), 13 November 2024, <https://lsvb.nl/2024/11/13/statement-landelijke-studentenvakbond-afblazen-protest-14-nov-er-komt-voor-studenten-een-alternatief-om-alsnog-te-protesteren/>.

178 1Twente, 'Ban on Discussing Gaza During Climate Activists' Flyer Action in Hengelo Found to Be an Error in Municipality's Letter' (*Verbod om over Gaza te praten bij flyeractie klimaactivisten XR Twente in Hengelo blijkt fout in brief van de gemeente*), 27 June 2024, <https://www.1twente.nl/artikel/4486764/verbod-om-over-gaza-te-praten-bij-flyeractie-klimaactivisten-xr-twente-in-hengelo-blijkt-fout-in-brief-van-de-gemeente>.

was launched after online footage circulated on social media.¹⁷⁹

Excessive use of water guns (*waterkanonnen*) to break up demonstrations can constitute excessive violence. Water guns are only to be used to break up a group and are not to be used against individuals. Furthermore, they are only to be used if there are no other suitable means to disperse a crowd of protesters.¹⁸⁰

Criminalisation of protesters

Among many other European countries, the Netherlands has used criminal measures against protesters. Several members of Extinction Rebellion have been preventively arrested before the start of a climate demonstration and were eventually prosecuted for sedition.¹⁸¹

Surveillance of protests

Amnesty has written a report on the surveillance of protests.¹⁸² Amnesty reports “on the

use of ID checks by the Dutch police as a surveillance tool. Through unlawful ID checks, the police process personal data from peaceful protesters in police databanks. This practice violates the right to privacy, has a chilling effect on the right to peaceful assembly and may have a discriminatory effect.”¹⁸³ There has also been surveillance of Extinction Rebellion protesters: the Dutch police infiltrated group chats of Extinction Rebellion in order to prosecute these activists for sedition (see above).¹⁸⁴

Imposition of fines and other administrative sanctions

‘*Bestuurlijk verplaatsen*’ (so-called ‘administrative moving’) could be seen as a potential violation of the right to freedom and security. The mayor of Haarlem tried to use a specific fine system to keep climate justice activists from further peaceful civil disobedience actions. The activists were fined thousands of euros. The district court decided these fines violated

179 Steven Ramdharie, *Investigation into Police Violence Against Protesters in Amsterdam: “These Images Look Serious”* (*Onderzoek naar politiegeweld tegen betogers in Amsterdam: ‘Deze beelden zien er ernstig uit’*), *De Volkskrant*, 14 November 2024.

180 Amnesty International (Netherlands), ‘Police Violence in the Netherlands’ (*Politiegeweld in Nederland*), <https://www.amnesty.nl/politiegeweld-in-nederland>.

181 NRC, ‘Is Climate Activism Being Criminalised in Europe?’ (*Wordt klimaatactivisme in Europa gecriminaliseerd?*), 1 August 2023.

182 Amnesty International, *Unchecked Power: ID Checks and Collection of Data from Peaceful Protesters in the Netherlands* (*Unchecked Power: ID Checks and Collection of Data from Peaceful Protesters in the Netherlands*), 31 March 2023, <https://www.amnesty.org/en/documents/eur35/6650/2023/en/>.

183 Ibid.

184 Investico, ‘Police Secretly Monitored Chat Groups of Extinction Rebellion’ (*Politie keek heimelijk mee in chatgroepen van Extinction Rebellion*), 22 March 2023, <https://www.platform-investico.nl/onderzoeken/onderzoek-demonstratierecht-in-de-knel/politie-keek-heimelijk-mee-in-chatgroepen-van-extinction-rebellion>.

the right to protest and the Public Demonstrations Act.¹⁸⁵

Freedom of expression and information

Rules on hate speech and their enforcement

On 12 November 2024, the bill *Wet toezicht informeel onderwijs* (Law on Supervision of Informal Education) went under consultation. With the law, the government wants to protect children from 4 to 17 years old from lessons that incite them to hatred, discrimination or violence. The government wants the power to intervene if harmful teaching practices occur at institutions of informal education. Examples of informal education include: tutoring institutes, Chinese weekend schools, Koranic schools, youth clubs and Sunday schools.

The bill allows suspected abuses to be reported to the Onderwijs Inspectie (Education Inspectorate) and the Inspectorate can eventually visit the institution and observe. If there are legitimate concerns and an institution violates the law, the Minister can impose a designation

and, for example, ban specific teaching materials or close the organisation in question.

The positive development of this bill is that the law is intended to curb the proliferation of distorted material, which benefits the fight against hate speech and disinformation. The downside is that the broad scope of the bill can open the door to unwanted surveillance of ordinary activities of these institutions, which seriously infringes on the freedom of religion, education and association. It is therefore logical that there is great concern that this law sets a dangerous precedent, with institutions of informal education losing the freedom to inform children of their beliefs without reservation.

The bill fits within the thinking of several governing parties that religion should be practised behind closed doors and does not belong in public life. This is worrisome and goes against the human right of freedom of religion.

Criminalisation of speech

Some speakers have been refused entry into the Netherlands because the authorities believed they would spread messages of hate. This

185 Rechtbank Noord-Holland, Judgment of 12 August 2024, No Fine or Penalty for Extinction Rebellion Protesters in Haarlem (*Geen last onder dwangsom voor demonstranten Extinction Rebellion in Haarlem*), <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Noord-Holland/Nieuws/Paginas/Geen-last-onder-dwangsom-voor-demonstranten-Extinction-Rebellion-in-Haarlem.aspx#:~:text=Geen%20last%20onder%20dwangsom%20voor%20demonstranten%20Extinction%20Rebellion%20in%20Haarlem,-Haarlem%2C%2015%20augustus&text=De%20burgemeester%20van%20de%20gemeente,oordeelt%20de%20rechtbank%20Noord%2DHolland>.

happened to an Islamic preacher from Australia,¹⁸⁶ a famous conspiracy theorist,¹⁸⁷ and a Palestinian radical activist.¹⁸⁸ All speakers were able to speak to crowds through digital means, so the question can be raised about what effect the banning of these people had.

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

The political discourse surrounding watchdog organisations, NGOs, civic activists, and protest groups is becoming increasingly negative. Instead of being recognised as essential contributors to a healthy democracy, critical NGOs are often portrayed as adversaries advancing foreign or political agendas. Their legitimacy is frequently questioned by politicians, including ministers and Members of Parliament.

The Minister of Development Aid, for instance, has repeatedly raised doubts about NGOs engaging in strategic litigation and advocacy. Geert Wilders, leader of the PVV party, has called for halting state funding to NGOs in response to specific actions, such as a lawsuit opposing the delivery of F-35 jet parts to Israel. Despite their longstanding partnership with the Dutch Ministry of Foreign Affairs and their valuable expertise, these organisations face growing challenges to their credibility.

Some politicians and media outlets exacerbate these issues by fuelling or initiating smear campaigns against NGOs and individual activists. For example, misinformation spread by Forum for Democracy MPs about a sexual education week in primary schools led to intimidation against Rutger Institute staff.¹⁸⁹ Similarly, baseless accusations against a PAX staff member, stemming from an Israeli state report, were uncritically echoed by Dutch political parties

186 NOS, 'Controversial Islamic preacher denied entry to the Netherlands' (Omstreden islamitische prediker toegang tot Nederland geweigerd), 18 January 2024, <https://nos.nl/artikel/2505407-omstreden-islamitische-prediker-toegang-tot-nederland-geweigerd>.

187 Rechtspraak, 'David Icke's entry ban remains in force' (*Inreisverbod David Icke blijft van kracht*), 26 September 2023, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Rechtbanken/Rechtbank-Noord-Holland/Nieuws/Paginas/Inreisverbod-David-Icke-blijft-van-kracht.aspx#:~:text=De%20staatssecretaris%20van%20Justitie%20en,vormt%20van%20de%20openbare%20orde>.

188 NOS, 'Banned pro-Palestinian activist Khatib speaks via video connection in Wageningen' (*Geweerde pro-Palestijnse activist Khatib spreekt via video in Wageningen*), 25 November 2024, <https://nos.nl/artikel/2545940-geweerde-pro-palestijnse-activist-khatib-spreekt-via-video-in-wageningen>.

189 KRO-NCRV, 'How misinformation fuelled the online hate machine against the Week of Lentekriebels' (*Hoe misinformatie de online haatmachine tegen de Week van de Lentekriebels op gang trok*), 23 March 2023, <https://pointer.kro-ncrv.nl/ho-misinformatie-de-online-haatmachine-tegen-de-week-van-de-lentekriebels-op-gang-trok>.

and media, enabling an unprecedented attack on local NGOs by a foreign state.¹⁹⁰

These developments coincide with the increasing criminalisation of peaceful protests, signalling a shift toward suppressing dissent and narrowing the space for independent and critical civil society voices. Instead of supporting civic activism, the narrative now favours selective approval of certain perspectives while undermining others.

On 7 October 2023, the mayor of Amsterdam received a death threat after facilitating a pro-Israeli commemoration and a pro-Palestinian counter-demonstration escalated. Following the death threat, the mayor filed a police report.

Legal harassment, including Strategic Lawsuits Against Public Participation (SLAPPs), prosecutions and convictions of civil society actors

The Coalition against SLAPPs in Europe published a report in November 2024 that mentioned 12 SLAPP cases in the Netherlands

in previous years.¹⁹¹ See also the FPU report mentioned in the media chapter.

Online civic space

Doxing: Since 1 January 2024, doxing—the online sharing of someone’s personal information for intimidation purposes—has been punishable by law in the Netherlands. Offenders can face fines, community service, or prison sentences, depending on the severity and recurrence of the offence. Harsher penalties will apply when targeting politicians, journalists, or police officers.

While the new law sends a clear signal about the seriousness of doxing, the Public Prosecution Service emphasised that this societal problem cannot be solved through criminal law alone. They highlight the role of social media companies in preventing such offences by better monitoring their platforms.¹⁹²

The two-year maximum prison sentence for doxing offences can be increased by a third¹⁹³ if the target of the offence is a journalist or part of another specified vulnerable profession. The

190 PAX, ‘Criticism on Israel should be allowed’, 12 November 2024, <https://paxforpeace.nl/news/criticism-on-israel-should-be-allowed/>.

191 ¹⁴⁵ CASE - Coalitions against SLAPPs in Europe, *2024 Report on SLAPPs in Europe: Mapping Trends and Cases*, November 2024, https://www.the-case.eu/wp-content/uploads/2024/12/CASE-2024-report-vf_compressed-1.pdf.

192 Openbaar Ministerie, ‘Doxing punishable by law from 1 January 2024 onwards’ (*Doxing vanaf 1 januari 2024 strafbaar*), 19 December 2023, <https://www.om.nl/actueel/nieuws/2023/12/19/doxing-vanaf-1-januari-2024-strafbaar>.

193 Rijksoverheid, ‘Doxing’, <https://www.rijksoverheid.nl/onderwerpen/privacy-en-persoonsgegevens/doxing#:~:text=Een%20adres%20of%20telefoonnummer%20delen,persoonsgegevens%20om%20iemand%20te%20intimideren>.

first doxing case in the Netherlands was adjudicated in April of 2024,¹⁹⁴ which clarified that the new law is only applicable to cases in which

the act itself (e.g. posting on social media) took place after the 1st of January 2024.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *The Netherlands should take active measures to prevent genocide in Gaza, in line with its international obligations under the Genocide Convention and Article 90 of the Dutch Constitution. This includes promoting the development of international legal order and utilising all means available to influence states, such as Israel, to comply with international human rights and humanitarian laws. Specifically, the Netherlands should reconsider its stance on funding the United Nations Relief and Works Agency for Palestine Refugees in the Near East (UNRWA) and avoid actions that could undermine efforts to prevent genocide, such as endorsing the dismantling of UNRWA or cutting its funding.*
- *Reconsider the repeal of the Spreidingswet (Municipal Duty Act): The Dutch government should reconsider its intention to repeal the Spreidingswet, which ensures a more balanced distribution of asylum seekers across municipalities. Maintaining this law is critical to addressing the current asylum reception crisis and safeguarding the fundamental rights of refugees, particularly children.*
- *Prioritise the enforcement of the Spreidingswet: The Dutch government should prioritise the enforcement of the Spreidingswet to prevent further deterioration of conditions in emergency shelters. This would help ensure that refugees, especially vulnerable children, are provided with adequate living conditions, access to education, and appropriate medical and psychological care in line with international human rights obligations.*

194 Rotterdam District Court, Acquittal of the charge of doxing, 4 December 2024, <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:RBROT:2024:12023>.

- *The Dutch government should prioritise an in-depth, critical reflection on the current patterns in youth care, youth protection, and educational legislation. This reflection should lead to progressive and sustainable changes to ensure that children, young people, and students receive adequate care, education and support, enabling them to fully develop into healthy and well-rounded adults.*

Systemic human rights violations

In 2023, one in seven (13%)¹⁹⁵ of Dutch children (up to 18 years old) received one or more forms of youth care services support. Such services include child and family assistance, child protection, and youth probation.¹⁹⁶ Recently, a governmental ambition was announced to decrease the number of children in youth care to 10% by 2028.¹⁹⁷ Although there are many ongoing projects to improve youth care and legal (protection) procedures, the results show

counterproductive effects.¹⁹⁸ Responsible ministers have not fulfilled their role sufficiently for their responsibility within the system, which leads to an unworkable situation for many involved.¹⁹⁹ Through research, it appears that policy has operated for the last 40 years as a ‘boomerang policy’,²⁰⁰ where thinking and action patterns responsible for the origin of the policy problems are repeated to fix those problems. As a result, both policy fields evolve, but underlying social issues persist and worsen.

195 Central bureau for Statistics, ‘More young people with youth aid, especially more teen girls’ (*Meer jongeren met jeugdhulp, vooral meer tienermeiden*), 30 April 2024, https://www.cbs.nl/item?sc_itemid=0983a7fc-863f-42f8-a5b8-537001b3b5f1&sc_lang=nlnl.

196 R. de Boer and Mariëlle R. Bruning, *Administrative Vulnerability of Families with Youth Assistance Needs in the Netherlands* (*Kwetsbaarheid tegenover de overheid van gezinnen met een jeugdhulpvraag*), *Tilburg Law Review* (2024) 29(1), pp. 35–55.

197 Jeugdzorg Nederland, ‘Youth debate: cabinet wants to return to 1 in 10 children in youth care by 2028’ (*Jeugddebate: kabinet wil terug naar 1 op de 10 kinderen in jeugdzorg in 2028*), 12 November 2024, <https://www.jeugdzorgnederland.nl/actueel/jeugddebate-kabinet-wil-terug-naar-1-op-10-kinderen-in-de-jeugdzorg-in-2028/>.

198 Ibid.

199 Algemene Rekenkamer, ‘Organised powerlessness: about the role of the central government in youth protection’ (*Georganiseerde onmacht: over de rol van de Rijksoverheid bij de jeugdbescherming*), 13 April 2023, <https://www.rekenkamer.nl/publicaties/rapporten/2023/04/13/georganiseerde-onmacht>.

200 S.D. Rodriguez Rivas-Stellaard, *Boomerangpolicy: about ongoing tragic in appropriate education- and youth care policy* (*Boemerangbeleid: over aanhoudende tragiek in passend onderwijs- en jeugdzorgbeleid*), 9 March 2023, <https://research.vu.nl/en/publications/boemerangbeleid-over-aanhoudende-tragiek-in-passend-onderwijs-en->.

The focus on immediate concerns in youth care should shift to a long-term analysis.²⁰¹

This occurs regarding the Youth Act legislation, where district-oriented and preventive care is combined with budgetary cuts.²⁰² Additionally, the the central government shifted most of its responsibilities to the municipalities. Since 2015, municipalities have been responsible for all forms of youth care, providing children and young people with necessary support and (in)voluntary care.²⁰³ However, according to various reports, the state unchangingly fails to protect children with youth care or youth protection measures.²⁰⁴ There are major concerns about incorrect and incomplete reports²⁰⁵ from

the Dutch Child Protection Counsel and certified institutions (authorised to carry out youth protection measures), while courts decide on those invasive measures on the grounds of these reports. In addition, in practice, voluntary or preventive youth protection measures are often imposed without legal basis, which exacerbates the administrative vulnerability of parents and children and young individuals when they interact with Dutch government agencies seeking youth care assistance within the youth care framework.²⁰⁶

Children in youth protection care face long waiting lists, inadequate care, and a lack of specialised workers. They are at high risk of

201 Vrije Universiteit Amsterdam, 'Reforms of appropriate education and youth care are counterproductive' (Hervormingen passend onderwijs en jeugdzorg werken averechts), Vrije Universiteit Amsterdam, 6 March 2023, <https://vu.nl/nl/nieuws/2023/hervormingen-passend-onderwijs-en-jeugdzorg-werken-averechts>.

202 Regelhulp.nl, 'What is youth aid?' (*Wat is jeugdhulp?*), <https://www.regelhulp.nl/onderwerpen/jeugdwet/wat-is>.

203 Ibid.

204 J. Bhugwandass, *Solitary confinement: investigation ZIKOS by Jason* (*Eenzaam gesloten: onderzoek ZIKOS van Jason*), 11 March 2024, https://www.expex.nl/wp-content/uploads/2024/03/06032024_Jason_Gesloten-jeugdzorg-drukker2.pdf; also A. de Jong, A. Sabahoglu & M. Hopman, *In front of me: Children about how the conflict between their parents and the government influences their own lives and their trust in the government* (*Waar ik bij ben: Kinderen over hoe het conflict tussen hun ouders en de overheid hun eigen leven en vertrouwen in de overheid beïnvloedt*), Kinder Ombudsman, 12 September 2023, <https://www.kinderombudsman.nl/system/files/publications/2024-/Rapport%20Waar%20ik%20bij%20ben%20Kinderombudsman.pdf>.

205 Advisory committee on Legal Protection and the Rule of Law, *Children and parents rightly well protected* (*Kinderen en ouders met recht goed beschermd*), January 2024, <https://open.overheid.nl/documenten/f2c28101-c5aa-4928-be3d-56c3bf3bd7bc/file>; See also: Scientific Research- and DataCenter, *Actionplan made little contribution to improve fact-finding research through youth protection* (*Actieplan droeg nauwelijks bij aan verbetering kwaliteit feitenonderzoek door jeugdbescherming*), June 2023, <https://repository.wodc.nl/handle/20.500.12832/3289>; Inspection Youth and Healthcare, *Vulnerable children insufficiently protected* (*Kwetsbare Kinderen onvoldoende beschermd*), 5 July 2021, <https://www.igj.nl/binaries/igj/documenten/rapporten/2019/11/08/kwetsbare-kinderen-onvoldoende-beschermd/Kwetsbare+kinderen+onvoldoende+beschermd.pdf>.

206 See footnote 196.

abuse and often placed far from home institutionalised wherever there is capacity instead of nearby to preserve continuity, disrupting family life. According to a report from a formerly out-of-home-placed youngster, children are structurally unsafe in ZIKOS closed care facilities, which are more similar to a detention-regime than a care facility.²⁰⁷ The facilities are euphemistically named ‘JeugdzorgPlus’. After the aforementioned report, the government decided to accelerate the reduction of out-of-home-placement of children and youngsters in JeugdzorgPlus facilities. However, reduction of these facilities is stagnating, due to financial funding and a lack of (development of) alternatives for these closed care facilities.²⁰⁸ Recently, seven locations with JeugdzorgPlus-facilities

were placed under increased supervision, as the quality of the care does not comply with the standards for good and safe youthcare.²⁰⁹ Additionally, children lack knowledge of their rights, remedies and effective complaint mechanisms. Existing complaint mechanisms do not provide sufficient corrective action,²¹⁰ and children face insufficient involvement in their care decisions.²¹¹

This occurs additionally with the outcomes of the Appropriate Education Act (*passend onderwijs*) in 2013,²¹² where appropriate education should be available for each child in each district, and schools should offer additional help and aid for children with special educational needs, for example children with

207 J. Bhugwandass, 2024. See footnote 204.

208 Jeugdzorg Nederland, ‘National management is inadequate: reduction JeugdzorgPlus is stagnating’, (*Landelijke regie schiet tekort: afbouw JeugdzorgPlus stagneert*), 29 February 2024, <https://www.jeugdzorgnederland.nl/actueel/landelijke-regie-schiet-tekort-afbouw-jeugdzorgplus-stagneert/>.

209 IGJ, ‘Follow-up supervision JeugdzorgPlus: 7 locations under enhanced supervision’, (*Vervolgtoezicht JeugdzorgPlus: 7 locaties onder verscherpt toezicht*), 13 January 2025, <https://www.igj.nl/actueel/nieuws/2025/01/13/vervolgtoezicht-jeugdzorgplus-7-locaties-onder-verscherpt-toezicht>.

210 JeugdStem, *Research report “Solitary Confinement” (Onderzoeksrapport Eenzaam gesloten)*, 12 March 2024, <https://jeugdstem.nl/over-jeugdstem/nieuws/onderzoeksrapport-eenzaam-gesloten-onderzoek-naar-de-ervaringen-van-jongeren-met-zikos>.

211 Dutch section of the International Commission of Jurists, ‘NJCM Youth law working group contributes to Draft General Comment no. 27 of the Child’s Rights Committee’ (*NJCM-werkgroep Jeugdrecht levert bijdrage aan conceptversie van General Comment 27 van het VN-Kinderrechtencomité*), p.4-5, 28 August 2024, <https://njcm.nl/actueel/njcm-werkgroep-jeugdrecht-levert-bijdrage-aan-conceptversie-van-general-comment-27-van-het-vn-kinderrechtencomite/>; Nationale Ombudsman and Children’s Ombudsman, *Participation from sideline (Participatie vanaf de zijlijn)*, 6 November 2024, <https://www.kinderombudsman.nl/publicaties/participatie-vanaf-de-zijlijn#:~:text=Kinderen%20en%20ouders%20aan%20de%20zijlijn&text=Dat%20voorkomt%20dat%20de%20problemen,steeds%20complexere%20en%20duurdere%20jeugdhulpverlening>.

212 Central government website, ‘Goals appropriate education’ (*Doelen passend onderwijs*), <https://www.rijksoverheid.nl/onderwerpen/passend-onderwijs/doelen-passend-onderwijs>.

learning disabilities or behavioural problems. This legislation aims to guarantee that each student should receive an education that is as appropriate as possible at the school of their registration and choice (this is called ‘*zorgplicht*’ and is translated as the duty of care).²¹³ If a school cannot provide this, it must offer parents and students an alternative within their educational partnership. However, in practice, the outcome contradicts this goal. A recent report showed that at least 70.000 children dropped out of school (*thuiszitters*)²¹⁴ and 280.000 children are deprived of fully-fledged education.²¹⁵ The Kinderombudsman Rotterdam reported that the rights of dropped-out children/students are insufficiently respected. Many of them did not receive any education at all, and they were not involved in the solution or were insufficiently involved.²¹⁶

The current educational system is based on ‘compulsory education’ (*leerplicht*) rather than the ‘right to learn’ (*leerrecht*), leading to

different approaches in policies and enforcement, focusing on obligations instead of rights.

Stellaard argues that minor adjustments and short-term policy focus will only pass on problems, as seen in the past 40 years. She concludes that youth care, youth protection, and education require critical reflection to address the unintended consequences of previous reforms.²¹⁷

Widespread human rights violations and/or persistent protection failures

There is a persistent frame regarding highly conflictive divorces, which are referred to as ‘fighting divorces’ (*vechtscheidingen*). The starting point for professionals is that both parents continue to argue fiercely, that they keep fighting each other equally and that they have no contact whatsoever with each other, which may lead to (emotional) neglect and possibly to maltreatment or abuse of

213 Netherlands Youth Institute, ‘Education and youth help connection’ (*Verbinding onderwijs en jeugdhulp*), <https://www.nji.nl/verbinding-onderwijs-en-jeugdhulp/wet-passend-onderwijs>.

214 Children/students are considered dropped-out of school, when they do not attend school for a period longer than 4 weeks and/or are not registered at a school/institution for education. Netherlands Youth Institute, ‘Call to next cabinet to improve the position of children’ (*Oproep aan volgend kabinet tot het verbeteren van de positie van kinderen*), 8 February 2024, <https://njcm.nl/actueel/njcm-werkgroep-jeugdrecht-roept-op-tot-het-verbeteren-van-de-positie-van-kinderen-in-nederland/>.

215 Parental Association Balans, *Report: Counting school drop-outs, another light at appropriate education Rapport: Thuiszitters tellen 2024, een ander licht op passend onderwijs*, 9 December 2024, <https://balansdigitaal.nl/thuiszitters-tellen>.

216 Children’s Ombudsman Rotterdam, ‘School drop-outs, who cares?’ (*Thuiszitters, wie zit ermee?*), October 2024, <https://orr.nl/thuiszitters-wie-zit-ermee/>.

217 Social Issues, ‘Youth care policy does not have to be boomerang policy’ (*Jeugdzorgbeleid hoeft geen boemerangbeleid te zijn*), 28 March 2023, <https://www.socialevraagstukken.nl/jeugdzorgbeleid-hoeft-geen-boemerangbeleid-te-zijn/>.

their children.²¹⁸ Many misconceptions seem to exist, which might have consequences for professional actions regarding decisions that have to be made in conflictive divorces.²¹⁹ In 2022, a senior judge from an administrative court published in her individual capacity an opinionated contribution about ‘vechtscheidingen’ on LinkedIn, in which she wrote that the government and family court perpetuate and maintain a serious form of one-sided violence against women and children, for which a reprimand was imposed and upheld by her president of the court.²²⁰ Earlier, in 2021 a professor of juvenile law recognised that fact-finding in youth care and family court remains a persistent problem, as well as the way the system responds to these conflictive divorces.²²¹

Although the government holds a different position, there are more and more reports that parents and children cannot always count on a fair trial in family courts - for example, these courts decide upon documents and reports that parents and their lawyers cannot view in advance of the sitting — especially regarding custody and visitation rights and youth protection measures.²²² There are concerns about the parallels in youth care and family courts with the Child Benefits Affaire.²²³

According to the latest data,²²⁴ 40,087 parents and 101,639 children have been recognised as victims of the Child Benefits Affaire, and there have been at least 3,104 out-of-home-placed children.²²⁵ In 2023, a reflection commission

218 Huiselijk geweld, ‘Domestic violence/theme/conflictive divorces’ (*Huiselijk geweld/thema/vechtscheidingen*), <https://www.huiselijkgeweld.nl/themas/vechtscheidingen>.

219 Bjtijdschriften, Prof. C. de Ruiter & B. van Pol, *Myths about conflictive-divorces: the knowledge of judicial and social professionals* (*Mythes over conflictscheidingen: de kennis van juridische en sociale professionals*), Family & Law, May 2017, <https://www.bjtijdschriften.nl/tijdschrift/fenr/2017/05/fenr-d-16-00007>.

220 Mr Online, ‘Reprimand judge upheld after advice’ (*Berisping rechter blijft in stand na advies*), 28 August 2023, <https://www.mr-online.nl/berisping-van-rechter-blijft-in-stand-na-advies/>.

221 Mr Online, ‘Professor: story judge Van Waterschoot very recognisable’, (*Hoogleraar: ‘verhaal rechter Van Waterschoot heel herkenbaar’*), 12 May 2021, <https://www.mr-online.nl/hoogleraar-verhaal-rechter-van-waterschoot-aangrijpend-en-herkenbaar/>.

222 FTM, ‘Parents cannot count on a fair trial at the juvenile court’ (*Ouders kunnen bij de kinderrechter niet rekenen op een eerlijk proces*), 9 January 2025, <https://www.ftm.nl/artikelen/geen-eerlijk-proces-kinderrechter>.

223 Mr Online, ‘Youth protection and family law: parallels with Child Benefits Affaire’ (*Jeugdbescherming en familierecht: parallellen met de Toeslagenaffaire*), 25 January 2021, <https://www.mr-online.nl/jeugdbescherming-en-familierecht-parallellen-met-de-toeslagenaffaire/>.

224 Herstel Toeslagen, ‘Facts and Figures’ (*Feiten en cijfers*), 3 January 2025, <https://herstel.toeslagen.nl/dashboard-kinderopvangtoeslag/>.

225 Rijksoverheid, ‘Progress letter out-of-home-placements Child benefits affair UHT KOT december 2023’, (*Voortgangsbrief uithuisplaatsingen kinderopvangtoeslagaffaire UHT KOT december 2023*), 18 December 2023, <https://open.overheid.nl/documenten/dpc-5ab8cd46e014a9008d20e870e7e5a25697a20415/pdf>.

investigated the working methods of family- and juvenile courts and came to the conclusion that parents didn't feel sufficiently heard by these courts.²²⁶ Research has shown that fact-finding prior to out-of-home-placements of children is not careful enough in all aspects, as professionals in youth protection do not provide sufficient oral or written substantiation.²²⁷ According to a different report, 17 out of 20 families have been affected by wrongful accusations of misappropriating child benefit payments which led to a child protection measure, although these families had more problems than these wrongful accusations and chargebacks.²²⁸ The possibility that families had youth protections imposed was not equal for every family and certain socio-economic conditions increased this chance, however, it cannot be

excluded that affected families faced problems to such an extent that youth protection measures had to be deployed.²²⁹ However, there is no research or data available about the exact number of children with 'voluntary and involuntary' youth protection measures.²³⁰ Although there is some data about out-of-home-placements, it remains uninvestigated how many children were placed under State care, how many parents lost (permanent or temporarily) custody over their children. The death of 482 children still remains unclarified.²³¹

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- 226 Rechtspraak, 'Research in response to Child Benefits Affaire', (*Onderzoek naar aanleiding van Kinderopvangtoeslagaffaire*), February 2023, <https://www.rechtspraak.nl/Organisatie-en-contact/Organisatie/Raad-voor-de-rechtspraak/Kwaliteit-van-de-rechtspraak/Paginas/Onderzoek-naar-aanleiding-van-toeslagenaffaire.aspx>.
- 227 IGJ, 'Fact-finding prior to out-of-home-placements', (*Feitenonderzoek voorafgaand aan uithuisplaatsing van kinderen*), 27 June 2022, <https://www.igj.nl/publicaties/rapporten/2022/06/27/feitenonderzoek-voorafgaand-aan-uithuisplaatsingen-van-kinderen>.
- 228 Kinderbescherming, 'Inspection report benefits affair and youth protection appeared' (*Inspectierapport toeslagenaffaire en jeugdbescherming verschenen*), 19 September 2023, <https://www.kinderbescherming.nl/actueel/nieuws/2023/09/13/inspectierapport-toeslagenaffaire-en-jeugdbescherming-verschenen>.
- 229 InspectieVenJ, 'Child to foot the bill', (*Kind van de rekening*), September 2023, <https://www.rijksoverheid.nl/documenten/rapporten/2023/09/13/tk-bijlage-inspectierapport-het-kind-van-de-rekening>.
- 230 Dutch Section of the International Commission of Jurists, 'NJCM Youth law working group makes 9 recommendations for the Advisory committee Progress Recovery operation Benefits', (*NJCM Werkgroep Jeugdrecht doet 9 aanbevelingen voor de Adviescommissie Voortgang Hersteloperatie Toeslagen*), p. 5-6, 16 December 2024, <https://njcm.nl/actueel/njcm-werkgroep-jeugdrecht-doet-aanbevelingen-voor-de-adviescommissie-voortgang-hersteloperatie-toeslagen/>.
- 231 Rijksoverheid, 'Numer of deceased children of affected parents' (*Aantal overleden kinderen van gedupeerde ouders*), 13 June 2023, <https://www.rijksoverheid.nl/documenten/kamerstukken/2023/06/13/kamerbrief-aantal-overleden-kinderen-van-gedupeerde-ouders>.

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

The International Court of Justice (ICJ) has issued several orders, namely on 26 January 2024, 28 March 2024 and 24 May 2024, on the war in Gaza, stressing that a real risk exists of genocide being committed. The measures ordered by the ICJ seek to mitigate the risk of genocide being committed. The State of Israel has not obeyed the orders of the ICJ thus far. In its opinion of 19 July 2024, the ICJ called upon Israel to obey its obligations under international Human rights and humanitarian law. Furthermore, the International Criminal Court issued arrest warrants for Benjamin Netanyahu, the prime minister of Israel, Yoav Gallant, the former defence minister of Israel and Mohamad Deif, military leader of Hamas, for violations of international humanitarian law.

According to international law, it is the duty of the signatories of the Genocide Convention to take measures to prevent genocide from happening. The ICJ specified that states have the responsibility “to employ all means reasonably available to them, so as to prevent genocide so far as possible” (*Bosnia v Serbia*, para. 430), particularly those states with “the capacity to influence effectively the action of persons likely

to commit, or already committing, genocide” (para. 431). Moreover, Article 90 of the Dutch Constitution states that “[T]he Government shall promote the development of the international legal order”.

It is in this respect highly troubling that the head of the largest faction of parliament seems to openly endorse the dismantling of UNRWA and pays visits to Benjamin Netanyahu. It is further not in line with the international obligations of the Netherlands that the government intends to cut funding to UNRWA and that it does not take any kind of steps or measures at its disposal to prevent genocide in Gaza from happening.

Other systemic issues

On 2 July 2024, the Schoof cabinet was sworn in. This new cabinet consists of right-wing (and partly extremist) parties.²³² The cabinet’s coalition agreement includes a proposal for a temporary asylum crisis law to address the influx of asylum seekers and the reception crisis for a maximum duration of two years.²³³ With this law, the cabinet aimed to tackle overcrowding in asylum shelters and regain control over the situation. This proposal would result in the strictest asylum regime the Netherlands has ever known. For example, the law would allow the government to deviate from

232 Parties including the Party for Freedom (PVV), the People’s Party for Freedom and Democracy (VVD), New Social Contract (NSC), and the Farmer–Citizen Movement (BBB).

233 Rijksoverheid, ‘Ruleproblem cabinet-Schoof’ (*Regeerprogramma kabinet-Schoof*), 2024, <https://www.rijksoverheid.nl/regering/regeerprogramma/2-grip-op-asiel-en-migratie>.

the Immigration Act through emergency legislation.²³⁴

In October 2024, UNICEF warned that emergency legislation could harm children in asylum shelters, recalling how children's interests were neglected during the COVID-19 pandemic. This risk could resurface, further destabilising vulnerable refugee children.²³⁵ Ultimately, the initiative did not proceed, as the Senate refused to approve using state emergency law to tighten asylum policy.²³⁶ These developments, however, illustrate that the current cabinet intends to implement strict measures which appear to come at the expense of vulnerable groups such as refugee children.

The Netherlands is also currently facing significant challenges in providing adequate shelter for refugee children, both with and without families. An October 2024 report

by the Kinderrechtencollectief revealed that the number of children in emergency shelters increased by 65% within a year, reaching a total of 5,566 children.²³⁷ Despite warnings from government inspections and children's rights organisations, including the Working Group Kind in AZC, children continue to suffer in emergency shelters. Overcrowded reception centres, long waiting times, and budget cuts have forced thousands of asylum seekers, including children, into substandard emergency shelters.

Children in emergency shelters face violations of their rights, including multiple relocations, lack of education, and insufficient privacy and safety. These shelters often fail to meet basic needs, such as rest, space, and adequate medical and psychological care, hindering children's development.²³⁸

234 Rijksoverheid, 'Minister Faber: The Netherlands will receive the strictest asylum policy ever' (*Minister Faber: Nederland krijgt strengste asieregime ooit*), 13 September 2024, <https://www.rijksoverheid.nl/actueel/nieuws/2024/09/13/minister-faber-nederland-krijgt-strengste-asieregime-ooit#:~:text=De%20minister%20van%20Asiel%20en,herhaalde%20asielaanvragen%20worden%20strenger%20getoetst>.

235 UNICEF, 'UNICEF warns: emergency legislation poses a major risk for children' (*UNICEF waarschuwt: noodwetgeving asiel vormt groot risico voor kinderen*), 22 October 2024, <https://www.unicef.nl/nieuws/2024-10-22-unicef-waarschuwt-noodwetgeving-asiel-vormt-groot-risico-voor-kinderen>

236 NOS, 'First Chamber against the use of emergency law for asylum measures' (*Eerste Kamer tegen gebruik van noodrecht voor asielmaatregelen*), 9 October 2024, <https://nos.nl/artikel/2540112-eerste-kamer-tegen-gebruik-van-noodrecht-voor-asielmaatregelen>.

237 Kinderrechtencollectief, *Children's Rights Collective: 65% more children in emergency care is unacceptable* (*Kinderrechtencollectief: 65% meer kinderen in noodopvang is onacceptabel*), 22 October 2024, <https://www.kinderrechten.nl/kinderrechtencollectief-65-meer-kinderen-in-noodopvang-is-onacceptabel/#:~:text=Ondanks%20alle%20onderzoeken%20en%20oproepen,twee%20jaar%20meer%20dan%20verdubbeld>.

238 NjI, 'More children in asylum emergency shelters' (*Meer kinderen in asielnoodopvang*), 23 October 2024, <https://www.nji.nl/nieuws/meer-kinderen-in-asielnoodopvang#:~:text=Kinderen%20krijgen%20in%20de%20noodopvang,voor%20kinderen%20in%20de%20noodopvang>.

The Hague Court of Appeal previously criticised the government for insufficient reception conditions for unaccompanied minors in emergency shelters in Ter Apel. The ruling, based on reports from the Health and Youth Care Inspectorate and the Justice and Security Inspectorate, highlighted inadequate care due to the high influx of minors, overburdening the Centraal Orgaan opvang asielzoekers (COA - the Central Agency for the Reception of Asylum Seekers) and Nidos. The living conditions in the reception facilities at the registration centre in Ter Apel were found to be substandard.²³⁹ This was made clear during a visit to the decentralised reception facility in Ter Apel by the Health and Youth Care Inspectorate and the Justice and Security Inspectorate on 8 September 2022.²⁴⁰

A solution seems to lie in the Spreidingswet (also known as the Municipal Duty Act) that has come into effect since 1 February 2024. The goal of this law is to create sufficient reception places and ensure a more balanced distribution of asylum reception across provinces and municipalities.²⁴¹ The previous government sought to reduce COA's reliance on voluntary municipal cooperation for reception centres, while municipalities called for more opportunities to implement small-scale reception facilities.²⁴² However, the current government announced in its coalition agreement that it intends to repeal the Distribution Act as part of its strategy to address the reception crisis differently.²⁴³

239 The Hague (the Netherlands), Judgment of 20 December 2022, ECLI:NL:GHDHA:2022:2429, <https://uitspraken.rechtspraak.nl/details?id=ECLI:NL:GHDHA:2022:2429>.

240 Inspectorate Justice and Safety, Letter: 'Children in emergency shelter and crisis shelter' (*Brief Kinderen in de noodopvang en crisisnoodopvang*), 19 April 2024, <https://www.inspectie-jenv.nl/binaries/inspectie-venj/documenten/brieven/2023/05/03/brief-kinderen-in-de-noodopvang-en-crisisnoodopvang/Brief+Kinderen+in+de+noodopvang+en+crisisnoodopvang.pdf>.

241 Rijksoverheid, 'Spreidingswet to Come into Effect on 1 February' (*Spreidingswet treedt per 1 februari in werking*), 31 January 2024, <https://www.rijksoverheid.nl/actueel/nieuws/2024/01/31/spreidingswet-treedt-per-1-februari-in-werking>.

242 House of Representatives (Netherlands), Distribution Law (Spreidingswet), 2023, <https://www.tweedekamer.nl/kamerstukken/wetsvoorstellen/detail?qry=wetsvoorstel%3A36333&cfg=wetsvoorsteldetails>.

243 House of Representatives (Netherlands), Coalition Agreement, Elaboration of the Outline Agreement by the Cabinet, 13 September 2024, Chapter 2, Point 2. Asylum Crisis Act (*Regeerprogramma, Uitwerking van het hoofdlijnenakkoord door het kabinet*, 13 September 2024, *Hoofdstuk 2, punt 2. Asielcrisiswet*), p. 20, *Tweede Kamer der Staten-Generaal*, [tweedekamer.nl](https://www.tweedekamer.nl).

FOSTERING A RULE OF LAW CULTURE

Efforts by state authorities

There are several initiatives by state authorities aimed at fostering a rule of law culture in the Netherlands. However, there appears to be a contradiction in some of these efforts. On the one hand, certain political parties are promoting plans that conflict with fundamental principles of the rule of law, such as proposals that undermine judicial independence or weaken democratic checks and balances. On the other hand, the Ministry of the Interior and Kingdom Relations (BZK) is actively supporting initiatives like the Democracy Monitor, which monitors and assesses the health of democracy in the Netherlands and conducts research on vulnerabilities within the system.

Additionally, various reports, such as those by the State Commission on the Rule of Law and the Advisory Committee on the Management of Public Administration, address these challenges and offer recommendations for strengthening the rule of law.²⁴⁴ However, there is limited progress in implementing these recommendations, which indicates a gap between recognition of the issues and concrete action.

Furthermore, initiatives like the Exploration of Democratic Erosion and Response in the Netherlands (a study commissioned by BZK) highlight the importance of addressing these issues, but the underlying problems persist, requiring more effective action.

While there are positive initiatives underway, it is crucial that the government addresses the critical challenges identified in these reports to ensure a strong and sustainable rule of law culture.

244 See for this and the above the websites of these organisations: <https://www.staatscommissierechtsstaat.nl/> and <https://adviescommissie-vwdr.nl/>; Ministry of the Interior and Kingdom Relations (the Netherlands), *Exploration and deepening democracy, erosion and response in the Netherlands (Verkenning en verdieping democratische erosie en respons in Nederland)*, 12 April 2024, <https://www.kennisopenbaarbestuur.nl/documenten/rapporten/2024/04/12/verkenning-en-verdieping-democratische-erosie-en-respons-in-nederland>.

CONTACT

Dutch section of the International Commission of Jurists (NJCM, Nederlands Juristen Comité voor de Mensenrechten)

NJCM is the abbreviation for Nederlands Juristen Comité voor de Mensenrechten (Netherlands Committee of Jurists for Human Rights). The organisation works to promote and protect human rights in the Netherlands. NJCM is the Dutch section of the International Commission of Jurists (ICJ) and was founded in Leiden in 1974, where it is still based.

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ABOUT THE AUTHORS

Helsinki Foundation for Human Rights



The Helsinki Foundation for Human Rights (HFHR) is a non-governmental organisation established in 1989 and based in Warsaw, Poland. The HFHR is one of the largest and most experienced non-governmental organisations operating in the field of human rights in Eastern and Central Europe. Since 2007, the HFHR has had a consultative status with the United Nations Economic and Social Council (ECOSOC). The HFHR's objective is the protection and promotion of human rights.

KEY CONCERNS

Justice System



In 2024, efforts to restore the rule of law and judicial independence primarily focused on policy changes. These included, among others, ceasing smear campaigns against the judiciary, efforts to reinstate the independence of the prosecution service, and replacing court leadership in consultation with the judicial community.

However, no legislative changes have been introduced to restore the independence of the judiciary. Although the Parliament worked on draft legislation concerning the National Council of the Judiciary and the Constitutional Tribunal, these proposals have not come into force.

Significant issues highlighted in the Action Plan on the rule of law, such as the status of the so-called new judges, remain unresolved. In September 2024, the government presented a draft framework to address this issue, but no concrete legislative proposals have been presented to date. Further work on draft proposals concerning judicial independence and court system reforms requires an in-depth analysis of international and constitutional standards, as well as a pragmatic assessment of how the proposed changes may affect the judiciary's ongoing functioning. However, very little progress appears to have been made in this regard in 2024. The absence of thorough analytical and comparative studies is likely to delay the introduction of reforms when political opportunities arise.

The government has declared its readiness to implement key judgments of the European Court of Human Rights (ECtHR) and the Court of Justice of the European Union (CJEU) concerning judicial independence. However, none of these judgments have been fully implemented, largely due to a lack of political consensus between the governing majority and the President, as well as the absence of a clear government strategy for the rule of law restoration.

State of play (versus 2024)

	Justice system
<i>N/A</i>	Anti-corruption framework
	Media Environment and Media Freedom
	Checks and balances
<i>N/A</i>	Civic Space
	Human Rights

Legend

Regression



No progress



Progress



JUSTICE SYSTEM

Key recommendations

- *Address the problem of the status of the so-called new judges in line with the constitutional and international standards.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

National Council of Judiciary

The lack of independence of the National Council of the Judiciary (NCJ), stemming from the politicised manner in which its members are appointed, remained a key issue affecting judicial independence in 2024.

To address this, the government proposed draft legislation amending the process for appointing judge-members of the NCJ and terminating the term of the current NCJ. One of the most contentious aspects of the draft legislation was the provision granting the so-called ‘new judges’ (see section below) the right to vote and stand for election as judicial members of the NCJ.

Initially, the proposal excluded new judges from eligibility for NCJ membership. However, following an opinion by the Venice Commission in May 2024, the draft was amended to allow all judges, including new judges, to

stand for election. During parliamentary proceedings, this provision was revised again, ultimately excluding new judges from the right to stand for election.

In the end, the President of Poland referred the draft law to the Constitutional Tribunal for review prior to signing it into force.

Despite growing concerns regarding the legality of its operations, the NCJ continues to adopt resolutions promoting judges. In 2024, the Minister of Justice ceased announcing competitions for vacant judicial positions in common courts. However, the NCJ nominated judges based on competitions announced by the previous Minister of Justice and the President of Poland. In 2024, over 130 new judges were appointed by the President upon the NCJ’s recommendation.

Status of the new judges

The status of the so-called ‘new judges’ appointed upon the NCJ’s recommendation since its political capture in 2018 remains a critical issue in the process of restoring the rule of law. According to HFHR, in 2023, there

were over 2,200 new judges adjudicating in the Polish courts.¹

To date, the government has not introduced any draft legislation to address the issue of the new judges' status. In September 2024, the government presented an initial framework for addressing the issue. This framework proposed dividing new judges into three cohorts based on their prior careers:

- **First Cohort:** Judges who were judge-trainees and had no alternative but to apply to the NCJ for permanent judicial positions after completing their training. Their status would be remedied through legislative action.
- **Second Cohort:** Judges who were already serving but chose to apply to the NCJ despite legal concerns about its lack of independence. For this group, the NCJ resolutions appointing them would be annulled by law, and they would return to their previous positions—even if this effectively meant their dismissal from judicial roles.

- **Third Cohort:** Judges who not only obtained or were promoted to their positions based on NCJ resolutions but also actively participated in undermining the rule of law (e.g. serving as disciplinary commissioners). For these judges, the NCJ resolutions would be annulled by law, they would be returned to their previous roles, and disciplinary proceedings would be initiated against them.

This proposal is expected to evolve in response to the Venice Commission's opinion issued in October 2024.² The opinion addressed abstract questions raised by ongoing legal debates regarding the resolution of new judges' status. Judicial associations have proposed automatically returning new judges to their previously held positions by annulling the NCJ resolutions *ex lege*. In contrast, NGOs such as the Helsinki Foundation for Human Rights have advocated for a re-authorisation process to assess each nomination individually.³

The Venice Commission stated in its opinion that “it cannot be declared through a law that all the relevant appointments made by the NCJ in a particular timeframe are null and void, as

1 Helsinki Foundation for Human Rights, *Nowa KRS: krajobraz po reformie – opracowanie HFPC*, 2023, <https://hfhr.pl/publikacje/nowa-krs-krajobraz-po-reformie>.

2 Venice Commission, Poland – *Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law on European standards regulating the status of judges*, adopted by the Venice Commission at its 140th Plenary Session, Venice, 11-12 October 2024, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2024\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)029-e).

3 Helsinki Foundation for Human Rights, *A judge or a non-judge? The manner of regulating the status of persons appointed to judicial positions with the participation of the “new” National Council of the Judiciary*, June 2024, <https://hfhr.pl/en/publications/report-a-judge-or-a-non-judge-the-manner-of-regulating-the-status-of-persons-appointed-to>.

this would represent an undue interference with the competence of the judiciary”.⁴

By the end of 2024, neither the Ministry of Justice nor its advisory body, the Codification Committee on the System of Courts and Prosecution, had presented draft legislation to implement the Venice Commission’s recommendations.

Public statements by members of the Codification Commission suggest the body aims to address the status of judges appointed with the involvement of the improperly constituted NCJ by introducing mechanisms to repeat competitions for judicial positions. According to these statements, the proposed solution would, by law, lead to the demotion or removal from office of all individuals appointed through the new NCJ, except for those specifically excluded by legislative decision (e.g. former judicial assessors).⁵

This proposal raises concerns in light of an abstract opinion issued by the Venice Commission.⁶

Prosecution service

In 2024, there were no significant developments concerning the independence of the prosecution service. In January 2024, the Minister of Justice-Prosecutor General replaced the National Prosecutor using the legal basis that the appointment of the previous National Prosecutor was done on a temporary legal basis and had expired before his return from retirement.

In 2024, the government worked on the draft legislation concerning the separation of the prosecution service from the government. At the request of the Minister of Justice, the European Commission for Democracy through Law (Venice Commission) reviewed the draft law in October 2024. The Commission criticised the proposed mechanism for appointing the Prosecutor General and recommended significant changes to the selection process, eligibility criteria, grounds for dismissal, and the appointment procedures for regular prosecutors. Additionally, the Commission underscored the need for stronger safeguards

4 Venice Commission, *Poland – Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law on European standards regulating the status of judges*, adopted by the Venice Commission at its 140th Plenary Session, Venice, 11-12 October 2024, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2024\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)029-e).

5 Money.pl, ‘Weryfikacja neosędziów. Wiemy, jakie propozycje ma dostać na biurko Adam Bodnar’, 17 January 2025, <https://www.money.pl/gospodarka/weryfikacja-neosedziow-wiemy-jakie-propozycje-ma-dostac-na-biurko-adam-bodnar-7115243923786528a.html>.

6 Venice Commission, *Poland – Joint Opinion of the Venice Commission and the Directorate General Human Rights and Rule of Law on European standards regulating the status of judges*, adopted by the Venice Commission at its 140th Plenary Session, Venice, 11-12 October 2024, [https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2024\)029-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2024)029-e).

to protect prosecutorial independence. The law has not been adopted yet.⁷

Irremovability of judges, including transfers

Court presidents

In 2024, the Minister of Justice continued the process of replacing court presidents and vice-presidents. Since the introduction of legal changes in 2017, the procedure for appointing candidates to these positions has faced significant criticism for its lack of transparency and inadequate consultation with the judiciary.

Although the law governing the appointment of court presidents remains unchanged—granting the Minister of Justice authority to appoint candidates—the new Minister of Justice introduced a practice of requesting judges from each court to propose at least two candidates for the position of court president.

According to information published by the Ministry of Justice, since the end of 2023, the Minister of Justice has initiated procedures to remove 127 court presidents and vice-presidents. In 2024, the Minister of Justice also appointed at least 111 new court presidents and vice-presidents.

Judicial secondment (transfer)

A fundamental issue persists in the legislation governing the judiciary system, which grants the Minister of Justice the authority to second judges to other courts, the NCJ office, the National School of Judiciary and Prosecution, and selected government administrative bodies, including the Ministry of Justice, the Ministry of Foreign Affairs, and the President of Poland's Chancellery. These laws, however, lack adequate safeguards to protect seconded judges from unexpected recalls. Such recalls can be made for any reason and, except in cases of indefinite delegation, require no prior notice—an issue particularly relevant for judges seconded to other courts. These provisions have raised concerns about judicial independence, as highlighted by the judgment of the Court of Justice of the European Union (CJEU).⁸

The 2024 draft amendments to the Law on Common Courts and the Law on Military Courts partially address risks associated with the delegation of judges. However, as of the preparation of this response, that draft has not yet been submitted to the Sejm (lower house of Parliament).

7 Venice Commission, *Poland - Opinion on the draft amendments to the Law on the Public Prosecutor's Office, adopted by the Venice Commission at its 140th Plenary Session*, Venice, 11-12 October 2024, [https://www.venice.coe.int/web-forms/documents/?pdf=CDL-AD\(2024\)034-e](https://www.venice.coe.int/web-forms/documents/?pdf=CDL-AD(2024)034-e).

8 Court of Justice of the European Union (CJEU), *Joined Cases C-748/19 and C-754/19, Prokuratura Rejonowa e Minsku Mazowieckim v WB and others*, 20 May 2021.

Additionally, the current mechanisms for safeguarding judicial independence rely on the NCJ, which fails to meet the criteria of independence, impartiality, and reliability in proceedings involving the transfer of judges to another court, changes in their duties, retirement, or mandatory retirement due to permanent incapacity. In such cases, the NCJ either reviews appeals decisions made by court presidents (e.g. departmental transfers or changes in duties) or issues decisions on whether a judge may continue in office after reaching retirement age or must retire. A troubling example of the NCJ's actions in this area is its decision to retire Judge Piotr Borowiecki of the Provincial Administrative Court in Warsaw due to his absence from a scheduled medical examination. Judge Borowiecki is known for his civic engagement and criticism of the current NCJ's functioning.⁹

In a related development, in July 2024, Judge Piotr Gąciarek returned to adjudicating in his original criminal division after being suspended from official duties and reassigned to another criminal division following his reinstatement.¹⁰ This change was enabled by a shift in the leadership of the Warsaw District Court.

Quality of justice

Accessibility of courts

In May 2024, the Minister of Justice repealed the regulation requiring the State Treasury to pay the fees for unpaid legal aid provided by court-appointed attorneys. The updated regulation aligned the fee rates for legal aid provided by court-appointed attorneys with those established under the regulation on fees for legal services. The latter regulation sets the rates for attorneys' activities before judicial bodies, which serve as the basis for courts to award legal representation costs and attorneys' fees.

This change ended the discriminatory treatment of cases involving court-appointed legal aid, potentially improving the quality of legal aid provided under the scheme.

In 2024, two additional amendments were introduced to the regulation on fees for legal services, raising the minimum fees for legal aid in specific categories of cases. These included:

- An increase in the minimum fee for cases related to employment contracts, such as challenging dismissals, seeking reinstatement, or determining termination terms. The fee rose from PLN 180 (€42.26)

9 Bartek Star (2024), The kangaroo court in the neoKRS over the judge of the Provincial Administrative Court Piotr Borowiecki, X, 23 October 2024, https://x.com/Bartek_Star/status/1848989204665012590.

10 Wyborcza.pl, Zwycięstwo sędziego Piotra Gąciarka. Wraca do orzekania w wydziale karnym', 9 July 2024, <https://warszawa.wyborcza.pl/warszawa/7,54420,31127739,zwyciestwo-sedziego-piotra-gaciarka-wroci-do-orzekania-w-wydziale.html>.

to PLN 360 (€84.52) for first-instance proceedings.

- A similar increase for representing minors in juvenile cases, where the minimum fee doubled from PLN 112 (€28.17) to PLN 225 (€56.34).

Under provisions of the regulation, court-awarded costs of legal proceedings can exceed the minimum rate. However, it may not be higher than six times the minimum rate or the value of the subject matter of the dispute. Awarding legal representation costs above the minimum rate must be justified by specific criteria, such as the necessary effort of the attorney, the value of the case, the attorney's contribution to clarifying the case, and the nature and complexity of the matter.

The broad scope of these criteria means that, in practice, the amount awarded to a party for legal representation costs is subject to the court's discretion and is subject to limited appellate review. Consequently, in some categories of cases, the party may receive only the minimum rate for legal representation, which can be very low. This situation appears to constitute a significant financial barrier to the fair pursuit of rights in court.

Resources of the judiciary

The latest data on judicial staffing resources, from 2023, indicates several changes compared

to the previous year. The number of appellate judges increased from 469 to 483. In contrast, a slight decrease was recorded in the number of district court judges, which declined from 2,766 to 2,756, and regional court judges, which fell from 6,106 to 6,071.¹¹

A notable development was the significant rise in the number of judicial assessors, which grew from 467 to 608.

Across all judicial categories, salaries saw a substantial increase.

In 2023, the number of court support staff increased by 8%, with judicial assistants rising by 9% and judicial clerks by 10.5%. Additionally, salaries across all categories of court staff saw a general increase, ranging from 10% to 21%.

Despite these salary adjustments, the average remuneration for court administrative staff in 2023 amounted to PLN 7,365 (€1,730), which has posed challenges in attracting new employees and has contributed to high turnover among clerical staff. Consequently, the workload for the remaining administrative personnel in courts has increased significantly.

In the 2024 budget, the Ministry of Justice allocated funds for a 20% salary increase for court staff. The minimum and maximum salary thresholds for judicial assistants were also raised.

11 Central Statistical Office, Mały Rocznik Statystyczny Polski, <https://stat.gov.pl/obszary-tematyczne/roczniki-statystyczne/roczniki-statystyczne/maly-rocznik-statystyczny-polski-2024,1,26.html>.

In November 2024, the Ministry of Justice introduced 10 proposed reforms aimed at enhancing the efficiency of the judiciary. Among the key measures is the creation of 1,159 new assistant judge positions. However, the proposal also lowers the eligibility requirements for judicial assistants, permitting fourth- and fifth-year law students to assume these roles. This change has raised concerns regarding the quality and effectiveness of their work.

The proposed reforms also include:

- restructuring the expert witness system,
- digitising court registries and records,
- promoting mediation,
- facilitating the submission of legal documents through the Common Courts' Information Portal, and
- implementing management training for court presidents.

These measures have the potential to alleviate some of the workload currently borne by court administrative staff.

Training of justice professionals

In 2024, the Ministry of Justice appointed a new director for the National School of Judiciary and Prosecution. An open competition preceded the selection process, establishing minimum criteria for the position, such as at least three years of experience leading a public institution, university, or NGO, along with experience in organising training activities.

Initially, the selection committee chose Wojciech Postulski for the position. However, according to a Ministry of Justice press release,¹² he did not accept the financial offer and withdrew from the competition. Meanwhile, media reports¹³ revealed that members of the judicial community contested his candidacy, citing his alleged lack of sufficient experience as a judge. In a press interview, Mr. Postulski stated that he did not resign voluntarily but was asked to do so. Ultimately, the Ministry of Justice appointed Piotr Girdwoyń, who ranked as the second-best candidate for the role.¹⁴

Upon taking office, the new director of the School introduced an internal regulation that excluded so-called 'new judges'—those

12 Ministry of Justice, Wojciech Postulski wygrał konkurs na stanowisko dyrektora KSSiP, 24 March 2024, <https://www.gov.pl/web/sprawiedliwosc/wojciech-postulski-wygral-konkurs-na-stanowisko-dyrektora-kssip#:~:text=Wojciech%20Postulski%20jest%20s%C4%99dzi%C4%85%20w,Wymiaru%20Sprawiedliwo%C5%9Bci%20EJTN%20w%20Brukseli>.

13 Oko.press, 'Pułapka konkursów ministra Bodnara. Czy bohaterowie walki o sądy mają teraz odejść?', 14 April 2024, <https://oko.press/konkursy-w-sadownictwie-bohaterowie-walki-o-sady-pominieci>.

14 Rzeczpospolita, Postulski: Nigdy nie zrezygnowałem z bycia dyrektorem KSSiP, 25 April 2024, <https://www.rp.pl/aplikacje-i-egzaminy/art40239721-postulski-nigdy-nie-zrezygnowalem-z-bycia-dyrektorem-ks-sip#:~:text=Profesor%20Girdwoy%C5%84%20zadeklarowa%C5%82%20ju%C5%BC%20gotowo%C5%9B%C4%87,podtrzymuj%C4%99%20ch%C4%99%C4%87%20obj%C4%99cia%20tego%20stanowiska>.

appointed upon the motion of the NCJ since 2018—from teaching classes at the School.¹⁵

Additionally, in 2024, the School increased stipends for students, raising them from PLN 4,100 to 4,300 for first-year students and from PLN 4,500 to 5,100 (approximately

€1,070–€1,215) for second-year students. However, students and the Association of Prosecutors criticised the increase as insufficient, arguing that the stipends still hover around the minimum salary threshold despite rising living and accommodation costs in recent years.

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *To fully implement the anti-SLAPP Directive and review the provisions of the Criminal Code that were used to launch SLAPP proceedings.*

Media and telecommunications authorities and bodies

On 21 June 2024, the Ministry of Culture and National Heritage published for public consultation the draft outline of a bill on public media reform, which aims to implement the European Media Freedom Act.¹⁶ The regulation establishes a common framework for media services within the internal market and amends Directive 2010/13/EU (European Media Freedom Act).

The government's ambition is to reform Poland's media landscape, with a particular focus on public media regulation. The draft

outline proposes several major changes, including restructuring the National Broadcasting Council, revising the management of public television and radio channels, introducing competition rules for media market mergers through a media pluralism test, regulating the advertising practices of state-owned entities, enhancing transparency in media ownership structures, proscribing publishing by local authorities, and strengthening the protection of journalistic sources.

Despite the bill's broad scope, the public consultation report indicates the proposed reform is unlikely to address some of the most pressing and long-standing issues within Poland's

15 Informacja w zakresie wyznaczania osób do prowadzenia zajęć w KSSiP, 2024, <https://www.kSSIP.gov.pl/node/9523>.

16 Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024.

media regulatory framework. In recent years, these challenges have stemmed from the lack of political independence of the National Broadcasting Council—the national media market regulator—whose operations have been heavily influenced by the ruling party.

Due to anticipated controversies surrounding any substantial overhaul of the Council, the draft outline proposes only limited changes, focusing on the terms of its members and their eligibility criteria. However, numerous NGOs and public institutions, including the Commissioner for Human Rights, have repeatedly called for a more comprehensive overhaul of the appointment procedure, advocating for stronger guarantees of political pluralism and gender balance.¹⁷

Criticism also extends to the lack of transparency in the appointment process, which notably excludes meaningful participation from civil society, media market stakeholders, and journalists' representatives.

The lack of independence within the National Broadcasting Council is particularly concerning given its authority to impose fines on broadcasters for content deemed unlawful. The legal basis for this power—Article 18 of the Law on Public Media—is excessively broad. Past Council decisions have demonstrated

how this authority has been used to suppress political opponents of the ruling majority and censor media content that contradicts the government's agenda.¹⁸

Despite these concerns, the Ministry of Culture and National Heritage has indicated no intention to amend these provisions. It maintains that the planned reforms—focused on ensuring greater plurality within the Council and introducing stricter eligibility criteria for its members—will be sufficient to prevent potential censorship through fines.

A potential mitigating measure could come from the proposed amendment requiring majority voting within the Council when imposing fines. However, this change fails to address the core issue, which lies in the overly broad and vague wording of the existing legal provisions governing the Council's competencies.

It is important to note that Poland's media market continues to have two regulatory bodies: the National Broadcasting Council and the National Media Council. The latter, established amid considerable controversy, was created alongside the National Broadcasting Council, stripping it of key powers related to appointing management board members of

17 See e.g. *Apel organizacji społecznych do koncepcji wdrożenia EMFA*, 2 December 2024, <https://siecobywatelska.pl/emfa-apel/>.

18 *Batory Foundation, Upolitycznienie Krajowej Rady Radiofonii i Telewizji: nowy front w konflikcie Polski z Unią Europejską o praworządność?*, July 2021, https://www.batory.org.pl/wp-content/uploads/2021/07/S.Ananicz_Upolitycznienie-KRRiT.nowy_front_w.konflikcie.Polski.z.UE_.pdf.

publicly owned broadcasters, which in Poland operate as private commercial companies.

The introduction of the National Media Council through an amendment to the Law on Public Media was declared unconstitutional by the Polish Constitutional Tribunal in its judgment of 13 December 2016.¹⁹ However, the ruling has yet to be implemented. Following the 2024 parliamentary elections, the government largely acted as if the National Media Council did not exist, allegedly in an effort to enforce the Constitutional Tribunal's ruling. Nonetheless, there remains a pressing need to clarify the legal framework governing the oversight exercised by political institutions and the government over public media companies.

By the end of 2024, the ruling coalition appeared to have shifted its stance on the National Media Council. In October, Parliament dismissed the Council's chairman and in December, a new member—an MP from the ruling coalition—was appointed to the

Council and subsequently assumed the role of chairman.

Significantly, on 27 December 2023, the Minister of Culture and National Heritage declared public broadcasting companies—both television and radio channels—insolvent, initiating legal bankruptcy proceedings against them. Under this process, the Minister appointed receivers to temporarily manage the companies, but according to the Commercial Companies Code, these appointments offer minimal safeguards for independence. Receivers may be dismissed at any time and for any reason by the majority shareholder—the Polish State—represented by the Minister himself.

Although this measure was reportedly intended to mitigate legal controversies surrounding the changes in public media, it has, in practice, placed these institutions in a legal framework with even fewer formal guarantees of independence than before.

19 Constitutional Tribunal, judgment of 13 December 2016 in case K 13/16.

CHECKS AND BALANCES

Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs')

No new major threats to NHRIs, equality bodies, or the Supreme Audit Office arose in 2024.

Moreover, the budgets of these institutions saw a substantial increase compared to 2023, both in overall financial resources and current expenditures, including staff salaries. The budget for the current expenditures of the Office of the Commissioner for Human Rights rose from PLN 57.7 million (€13.7 million) to PLN 70.7 million (€16.8 million). The Office of the Commissioner for Children's Rights experienced an even greater increase of over 40%, from PLN 21.6 million (€5.1 million) to PLN 30.5 million (€7.3 million). Budget increases also benefited the Patient Rights Ombudsman, which received an additional PLN 9 million (€2.1 million), and the Supreme Audit Office, with a rise of nearly PLN 70 million (€16.7 million).

Further increases in funding for the operation of independent institutions have already been approved in the 2025 budget bill.

Statistics/reports concerning the follow-up to recommendations by National Human Rights Institutions, ombudsman institutions, equality bodies and supreme audit institutions in the past two years

According to the report of the Commissioner for Human Rights in 2023,²⁰ the Commissioner issued 519 general submissions, including:

- 117 problem-focused submissions,
- 89 submissions indicating the need for legislative initiatives,
- 48 extraordinary complaints,
- 89 cassation appeals in criminal cases,
- 18 complaints to administrative courts, and
- 54 cassation appeals in administrative court cases.

Additionally, this data includes decisions to join constitutional complaints reviewed by the Constitutional Tribunal (15 cases) and 46 court proceedings conducted before common courts.

20 Ombudsman Office, Informacja o działalności Rzecznika Praw Obywatelskich oraz o stanie przestrzegania wolności i praw człowieka i obywatela w roku 2023, 2024, <https://bip.brpo.gov.pl/pl/content/rpo-informacja-roczna-2023#:~:text=W%202023%20r.,wpnC5%82yn%C4%99%C5%82o%2059%20524%20wnioski>).

Data provided by the Commissioner's Office indicates the issues raised by the Commissioner primarily concern:

- Administrative and economic law (27.4%),
- Criminal law (22.3%), and
- Constitutional, international, and European law (15.8%).

In 11% of cases, the Commissioner's actions addressed compliance with the principle of equal treatment. Actions related to civil law were at the same level.

The Commissioner's report indicates that in 2023, 863 cases involving general submissions resulted in outcomes aligned with the expectations of both the applicants and the Commissioner for Human Rights. In contrast, during the same period, the Commissioner's position was disregarded in 1,054 cases initiated by general submissions.

Notably, the success rate of motions challenging the constitutionality of provisions—as well as proceedings initiated through legal questions or constitutional complaints—in which the Commissioner participated remained very low. According to the report, in 2023, the Constitutional Tribunal upheld only one such case, while proceedings in 24 others were discontinued.

Between 2018 and 2023, the Constitutional Tribunal upheld only nine cases involving the Commissioner for Human Rights. By comparison, in 2017 alone—prior to the change in the Tribunal's leadership—eight such cases were upheld. This stark contrast raises legitimate concerns about the Tribunal's reliability and impartiality in reviewing the constitutionality of legal acts, which in turn has a negative impact on the national human rights protection system.

In 2024, the Supreme Audit Office (SAO) conducted 1,873 audits across 1,507 entities, addressing a total of 191 issues. As a result of these audits, the SAO issued over 5,000 post-audit recommendations, of which 83.6% were accepted for implementation. Additionally, the SAO prepared 83 proposals for legislative changes and submitted 118 notifications to law enforcement authorities regarding potential crimes or fiscal offences. However, no information is available on the outcomes of the criminal proceedings initiated following the SAO's notifications.

According to the 2023 annual report²¹ of the Commissioner for Children's Rights, the Commissioner issued 25 general interventions throughout the year. However, the report does not include any information regarding the effectiveness or outcomes of these interventions.

21 Ombudsman Office, Informacja o działalności Rzecznika Praw Obywatelskich oraz o stanie przestrzegania wolności i praw człowieka i obywatela w roku 2023, 2024, <https://bip.brpo.gov.pl/pl/content/rpo-informacja-roczna-2023#:~:text=W%202023%20r.,wp%C5%82yn%C4%99%C5%82o%2059%20524%20wnioski>).

CONTACT

Helsinki Foundation for Human Rights

The Helsinki Foundation for Human Rights (HFHR) is a non-governmental organisation established in 1989 and based in Warsaw, Poland. The HFHR is one of the largest and most experienced non-governmental organisations operating in the field of human rights in Eastern and Central Europe. Since 2007, the HFHR has had a consultative status with the United Nations Economic and Social Council (ECOSOC). The HFHR's objective is the protection and promotion of human rights.

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Cristinel Buzatu is a Romanian human rights lawyer, registered in the Bucharest Bar. He has an LLB and an LLM in Human Rights law and has extensive civil society experience, gained in the USA, Hungary and Romania. As a lawyer, he collaborates with several national and international organisations on a wide array of issues, including discrimination, domestic violence, sexual violence, refugees, freedom of expression and association. He is part of the team of human rights experts supporting from Romania the FRANET network of the European Union Agency for Fundamental Rights, a Board member of APADOR-CH and a member of the Legal Experts Advisory Panel (LEAP) network.

KEY CONCERNS

Justice System

The Romanian justice system has continued to implement several projects, particularly through the National Resilience and Recovery Plan, especially in improving the existing justice system and the IT infrastructure. Developments of IT infrastructure were, however, affected by some controversy. There has been significant criticism of the efficiency and fairness of the justice system, about a series of high-profile cases and a lack of high-profile convictions.

Romanian courts are still understaffed and they have a very high workload which may affect the quality of the justice system. However, there are several ongoing recruiting processes which may help alleviate the workload on judges. There have been no significant developments to ensure efficient investigation and prosecution of criminal offences in the judiciary. However, recent legal amendments allowed for more prosecutors to be appointed to the section charged with investigating such crimes.

Anti-Corruption Framework

No significant progress was made in the fights against corruption. There has been no progress to increase transparency over campaign contributions and spending and this has been seen as a leading factor in a series of controversies that arose around the four electoral cycles from 2024. Romania adopted a law implementing the Convention on Combating Bribery of

Foreign Public Officials in International Business Transactions.

There has been no progress yet to introduce rules on lobbying for Members of Parliament.

Media Environment and Media Freedom

The Romanian media landscape continues to face multiple challenges and falling levels of trust. It is also heavily funded through political advertising, which raises questions about its impartiality. In 2024 there were also a worrying number of threats made towards journalists.

There has been no progress on strengthening the rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.

Checks and Balances

The Romanian checks and balances system showed it is very vulnerable to misinformation and interference in electoral campaigns. Institutions have shown they were not able to foresee and prevent a rise in extremism and polarisation of Romanian society.

There was no further progress on ensuring effective public consultations before the adoption of legislation or on obtaining the accreditation of a National Human Rights Institution taking the UN Paris Principles into account.







Civic Space

No progress was made in terms of civic space. NGOs function under a limiting environment, with little access to funding and significant bureaucratic constraints. Activists and NGOs still face attacks and harassment.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

No significant progress was made in addressing human rights violations.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression

No progress

Progress



JUSTICE SYSTEM -

Key recommendations

- *Identify and develop means to decrease the workload of judges and prosecutors, including identifying and applying a filter mechanism to dispense groundless legal claims, ensuring sufficient human resources, and alleviating administrative tasks from judicial professionals.*
- *Address the issues of the high frequency of legislative amendments; lack of coherence of the legislation in tax, litigation, civil, and criminal matters and inconsistency of legal provisions with the case law of national and international courts.*
- *Ensure adequate funding of the justice system, in particular, to address backlogs in paying legal aid lawyers, maintaining buildings and offices of the justice system, and paying salaries and benefits of judicial professionals, including those recognised by final court decisions.*
- *Further develop the current system of assessing caseload and collecting data on the justice system and use this data to develop coherent policies and ensure adequate human resources.*

Judicial independence

An association representing Romanian judges criticised the lack of reform in the justice system and it criticised how magistrates are promoted, in particular at the High Court of Cassation and Justice, where the promotion methods are based exclusively on an evaluation of the judgments delivered by the candidates

throughout their entire activity and interview, and this procedure is deemed to lack a truly meritocratic character.¹ The association also criticised the fact that the recommendations of the Venice Commission on the Justice Laws, in its last Urgent Opinion, issued at the end of 2022, were not introduced in the legislation. This was to extend the terms of office of senior prosecutors from the current three

1 Judges' Forum Association (2024) "The lack of structural reforms requested by relevant European and international bodies, as well as by Romanian magistrates, threatens Romania's accession to the Organization for Economic Cooperation and Development" press-release, 29 April 2024, available in Romanian at <https://www.forumuljudecatorilor.ro/index.php/archives/6803>.

years, eliminate the possibility of renewing the terms of office, and strengthen the guarantees in case the Prosecutor General of the High Court of Cassation and Justice overturns, with reasons, all measures and solutions adopted by other prosecutors except for the National Anticorruption Directorate (DNA) and the Directorate for Investigating Organised Crime and Terrorism (DIICOT). Other proposed changes include a competitive selection process for vice-presidents of courts and deputy chief prosecutors of prosecutor's offices, clarification that judicial police officers seconded to prosecutor's offices are not accountable to the Ministry of Interior. Other issues raised concern the fact that the legislator has not re-established DNA's powers to investigate and prosecute crimes committed by judges and prosecutors. In addition, they raised the need to amend the legislation on the functioning of the Judicial Inspection in light of the binding judgment of the Court of Justice of the European Union of 11 May 2023 (Case C-817/21, Judicial Inspection).²

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

In February 2024 the European Court of Human Rights (ECtHR) issued its decision

in *Danilet v. Romania* (ECtHR, Judgment of 20 February 2024, *Danilet v. Romania*, No. 16915/21 (2024)), which concerned disciplinary sanction imposed by High Council of the Judiciary on a judge for posting two messages on his Facebook page. In January 2019 he posted two messages on his publicly accessible Facebook account, for which in May of that same year he received a disciplinary sanction from the disciplinary board of the National Judicial and Legal Service Commission (Consiliul Superior al Magistraturii). The board found that, by posting the first message, the applicant had cast doubt on the credibility of public institutions, insinuating that they were controlled by the political class and proposing the army intervention as a solution to ensure constitutional democracy. Concerning the second message, which contained a hyperlink to an interview with a prosecutor and a comment by the applicant, the board found that the language used by the applicant had overstepped the limits of decency and had been unworthy of a judge. The High Court upheld those findings following an appeal by the applicant. The ECtHR found that there had been a violation of Article 10 of the Convention because the domestic courts had not provided relevant and sufficient reasons to justify the alleged interference with the applicant's right to freedom of expression.³ The case was referred to the Grand Chamber.

2 Judges' Forum Association (2024) "The lack of structural reforms requested by relevant European and international bodies, as well as by Romanian magistrates, threatens Romania's accession to the Organization for Economic Cooperation and Development" press-release, 29 April 2024, available in Romanian at <https://www.forumuljudicatorilor.ro/index.php/archives/6803>.

3 ECtHR, Judgment of 20 February 2024, *Danilet v. Romania*, no. 16915/21 (2024).

In 2024, the Judicial Inspectorate applied disciplinary sanctions against nine judges and one prosecutor.⁴ Most of the sanctions were applied because the magistrates did not fulfil their duties, acted improperly in court or with their colleagues, were absent from work, or did not motivate their decisions in a timely fashion, or, as is the case for the prosecutor, did not finalise the criminal investigation before the statute of limitation for the respective crime was reached.

Independence of the Bar (chamber/association of lawyers) and of lawyers

The National Union of Romanian Bar Associations (UNBR) criticised a law proposal initiated by the National Office for Preventing and Combating Money Laundering which would provide that the Office would not be bound by the principle of professional secrecy enshrined for lawyers.⁵ The UNBR argued that these modifications would seriously prejudice the

professional secrecy of lawyers, which is a fundamental principle of the profession. They also argued that the law was contrary to paragraph 9 of Directive (EU) 2015/849 of the European Parliament, according to which members of the independent professions should be exempt from any obligation to report information obtained either before, during or after judicial proceedings or in the course of ascertaining the legal position of a client.⁶

In 2024 legal aid fees were increased by 5.9% as an adjustment according to the inflation rate.⁷

Significant developments capable of affecting the perception that the general public has of the independence of the judiciary

There were several instances in which the Superior Council of Magistrates criticised public pressure towards judges, particularly in instances of high-profile politicians criticising

4 A list of disciplinary actions carried out by the Judicial Inspection per year is available on the Judicial Inspection website available at <https://www.inspectiajudiciara.ro/page/Actiuni-disciplinare/Actiuni-disciplinare-2024> consulted on 17 December 2024.

5 The proposed law was published on 13 June 2024 on the website of the National Office for Preventing and Combating Money Laundering, <https://www.onpcsb.ro/en/a/104/proiecte-acte-normative-aflata-in-dezbatere-publica>.

6 National Union of Romanian Bar Associations (2024) “UNBR opposes the proposals on professional secrecy in the draft amendment and supplement to Law 129/2019”, press-release, 20 June 2024, available in Romanian at: <https://www.unbr.ro/unbr-se-opune-propunerilor-care-vizeaza-secretul-profesional-din-proiectul-de-modificare-si-completare-a-legii-129-2019/>.

7 National Union of Romanian Bar Associations (2024) “As from June 1, 2024, as a result of the indexation to the inflation rate (total consumer price index (CPI) minus 100) communicated by the National Institute of Statistics for the period April 2023 - April 2024, the fees provided for in the Tripartite Protocol shall be increased by 5.9%”, press-release, 31 May 2024, available in Romanian at: <https://www.unbr.ro/incepand-cu-data-de-1-iunie-2024-ca-urmare-a-indexarii-cu-rata-inflatiei-indicele-preturilor-de-consum-total-ipc-minus-100-comunicata-de-institutul-national-de-statistica-pentru-perioada-aprilie/>.

magistrates in the public domain. One such case related to insulting and misleading statements made about the Prosecutor General by a leader of a political party.⁸ Another instance involved a well-known businessman and politician who was unhappy with a judicial decision and publicly criticised the judge by referring to her ethnicity, looks and other unsubstantiated claims.⁹

Quality of justice

The Romanian Superior Council of Magistracy (Consiliul Superior al Magistraturii) publishes a yearly report on the state of the

justice system.¹⁰ At the time of writing, the 2024 report is not public; the most recent one available is for 2023, published on 19 June 2024.¹¹ The report shows that the total case-load at the national level in 2023 was 3,214,079 cases, (2,972,754 cases in 2022), which corresponds to an increase of 8.12%. Of these cases, 2,288,157 were new cases, showing an increase of 7.43%, and reaching the highest figure in recent years. Of these, 2,077,809 cases were resolved in 2023.¹² This led to a high average number of cases allocated per judge, at all levels of jurisdiction; a court of appeal (*curte de apel*) judge had an average of 651 cases in 2023, a tribunal (*tribunal*) judge 951 cases and

8 Superior Council of Magistracy (2024) "Press Release concerning the admission of the request for defense of professional reputation made by the Prosecutor General of the High Court of Cassation and Justice in relation to statements made by a public person", press-release, 3 June 2024, available in Romanian at: <https://www.csm1909.ro/PageDetails.aspx?FolderId=11304> The statements can be found in a news article in Romanian published on the 3 June 2024, <https://www.agerpres.ro/justitie/2024/06/03/csm-afirmatiile-lui-ghinea-despre-procurorul-general-formulate-in-scopul-discreditarii-onoarei-si-reputatiei-profesionale--1305635>.

9 Superior Council of Magistracy (2024) "Press Release on the position of the Section for Judges in relation to a public person's allegations against a judge", press-release, 30 May 2024, available in Romanian at: <https://www.csm1909.ro/PageDetails.aspx?FolderId=11297>; Ionela Stanila, 'Gigi Becali, in the sights of the Supreme Administrative Court after the slip-up against a judge: "It was about ethnicity, not that I denigrate ethnicity, but I want to say that she gave a decision..." Citește întreaga știre: Gigi Becali, în vizorul CSM după derapajul la adresa unei judecătore: „Era de etnie, nu că denigrez etnia, dar vreau să zic că a dat o hotărâre..."', Libertatea, 31 May 2024, <https://www.libertatea.ro/stiri/gigi-becali-in-vizorul-csm-dupa-derapajul-la-adresa-unei-judecatoare-era-de-etnie-nu-ca-denigrez-etnia-dar-vreau-sa-zic-ca-a-dat-o-hotarare-4906178>.

10 Romanian Superior Council of Magistracy, Reports on the activity of the Superior Council of Magistracy, <https://www.csm1909.ro/PageDetails.aspx?PageId=267&&FolderId=3571&&FolderTitle=Rapoarte-privind-activitatea-Consiliului-Superior-al-Magistraturii>.

11 Romanian Superior Council of Magistracy (*Consiliul Superior al Magistraturii*) Report on the justice system for 2023 (*Raport privind starea justiției pentru anul 2023*), 19 June 2024, available in Romanian at: <https://www.csm1909.ro/ViewFile.ashx?guid=ab8ae9f9-cb62-4a9c-8b56-9932fa016648-InfoCSM>.

12 Romanian Superior Council of Magistracy (*Consiliul Superior al Magistraturii*) Report on the justice system for 2023 (*Raport privind starea justiției pentru anul 2023*), 19 June 2024, page 1, available in Romanian at: <https://www.csm1909.ro/ViewFile.ashx?guid=ab8ae9f9-cb62-4a9c-8b56-9932fa016648-InfoCSM>.

a district court (*judecătorie*) judge 1,455 cases.¹³ In terms of human resources, in 2023, of the total of 5,075 prescribed positions for judges 4,057 were covered and 1,018 posts were vacant; similarly, for prosecutors of the 3,051 positions, 2,210 were covered 854 were vacant.¹⁴ These figures suggest that Romanian courts are still understaffed and that they have a very high workload, which may affect the quality of the justice system.

The issue of adequate human resources for the justice system has been a recurring issue for Romania, including in the *2024 Rule of Law Report*.

In 2024 Romania announced several recruiting campaigns for magistrates:

- On 6 February 2024, it announced a recruiting campaign for 75 judges and 42 prosecutors, opened for legal professionals with at least five years of experience.¹⁵ This process is still ongoing but was marred by controversy as less than 16% of candidates passed the initial psychological test, and had to retake it with approximately 50% of them managing to pass after a second attempt. The Superior Council of Magistrates explained that these tests were developed based on standards drawn from practising magistrates.¹⁶
- On 24 July 2024, it announced a recruiting campaign for 118 judges and 28 prosecutors, opened for legal professionals with at least five years of experience.¹⁷

13 Romanian Superior Council of Magistracy (*Consiliul Superior al Magistraturii*) Report on the justice system for 2023 (*Raport privind starea justiției pentru anul 2023*), 19 June 2024, pages 137 - 142 available in Romanian at: <https://www.csm1909.ro/ViewFile.ashx?guid=ab8ae9f9-cb62-4a9c-8b56-9932fa016648-InfoCSM>.

14 Romanian Superior Council of Magistracy (*Consiliul Superior al Magistraturii*) Report on the justice system for 2023 (*Raport privind starea justiției pentru anul 2023*), 19 June 2024, pages 69, 80, available in Romanian at: <https://www.csm1909.ro/ViewFile.ashx?guid=ab8ae9f9-cb62-4a9c-8b56-9932fa016648-InfoCSM>.

15 The recruiting process can be followed on the National Institute for Magistrates (*Institutul National al Magistraturii*) website at <https://inm-lex.ro/concurs-de-admitere-in-magistratura-organizat-in-perioada-9-februarie-9-iulie-2024-data-publicarii-09-02-2024/>.

16 Superior Council of Magistracy (2024) "Press Release on the results of the psychological test in the February-July 2024 session of the competition for admission to the judiciary", press-release, 28 May 2024, available in Romanian at: <https://www.csm1909.ro/PageDetails.aspx?FolderId=11291>.

17 The recruiting process can be followed on the National Institute for Magistrates (*Institutul National al Magistraturii*) website at <https://inm-lex.ro/concurs-de-admitere-in-magistratura-organizat-in-perioada-25-iulie-2024-27-martie-2025-data-publicarii-25-07-2024/>.

- On 24 July 2024, it announced a recruiting campaign for 250 trainee magistrates to be admitted to the National Institute for Magistrates.¹⁸

Several candidates who participated in the recruiting process for trainee magistrates criticised the psychological test, claiming it was superficial, subjective and unprofessional, some claiming they were asked questions about their sexual life and other questions which seemingly do not have anything to do with the judicial profession.¹⁹ This prompted professional associations of magistrates to ask the SCM to intervene and respond to these allegations and stress that the recruiting process should follow a predictable procedure, the assessment must be qualitative and focus on the professional,

personal and social skills of the future magistrate.²⁰ The SCM rejected these claims and said that there is a negative media campaign against these tests, arguing that the psychological tests were done by specialised psychologists through a uniform procedure approved by the Romanian College of Psychologists.²¹

In 2024 a new law was adopted reshaping the role of legal clerks and other specialised legal support staff, which brings changes to the way clerks are selected and trained, compensated, and it establishes four categories of clerks: court clerks, hearing clerks, court registrars and IT specialists.²² Heads of Romanian courts issued joint statements in which they criticised this law, asking for it to be amended and its entry into force postponed because they argue the

18 National Institute for Magistrates, Magistracy admission competition, organized between July 25, 2024-March 27, 2025, <https://inm-lex.ro/concurs-de-admitere-in-magistratura-organizat-in-perioada-25-iulie-2024-27-martie-2025-data-publicarii-25-07-2024/>.

19 Alexandra Coșlea, “I like unusual sexual practices”. *Future magistrates accuse abusive behavior in admission to INM / CSM: Negative media campaign*, HotNews.ro, 22 February 2024, available in Romanian at: <https://hotnews.ro/mi-plac-practicile-sexuale-neobisnuite-viitori-magistrati-acuza-comportament-abuziv-la-admiterea-la-inm-csm-campanie-mediatica-negativa-15745>.

20 Romanian Judge’s Forum association (2024) “The lack of transparency regarding the way the entrance exam to the National Institute of Magistracy is conducted may irreparably damage the image of justice”, press-release, 20 February 2024, available at <https://www.forumuljudecatorilor.ro/index.php/archives/6787>.

21 Superior Council of Magistracy (2024) “Press Release on the position of the Superior Council of Magistracy in relation to the negative media campaign regarding the psychological testing in the admission competitions to the INM and to the judiciary”, press-release, 22 February 2024, available in Romanian at: <https://www.csm1909.ro/PageDetails.aspx?FolderId=11076>.

22 Romania, Law No. 11 of 8 January 2024 on the status of court clerks and other categories of staff holding specialized positions within the courts of justice, prosecutor’s offices and the National Institute of Forensic Expertise (*Lege nr. 11 din 8 ianuarie 2024 privind statutul grefierilor și al altor categorii de personal care ocupă funcții de specialitate în cadrul instanțelor judecătorești, al parchetelor de pe lângă acestea și al Institutului Național de Expertize Criminalistice*).

law is imprecise, vague, not correlated with other laws, and several provisions cannot be practically applied.²³

As a result of these recruiting processes in 2024, there have been improvements in ensuring human resources in the judicial system, at the beginning of 2025, the occupancy rate of judges' posts at the national level is 83%, 5% more than the previous year and the occupancy rate of judges and prosecutors' posts as of January 2025 is:

- out of 5,071 posts of judges, 4,251 posts are occupied, representing 83.82%;
- out of 3,071 prosecutor posts, 2,266 posts are filled, representing 73.79%.²⁴

Accessibility of courts (e.g. court fees, legal aid, language)

A legislative amendment from November 2024 allows courts to grant legal aid to non-profit legal persons established in Romania, only when they act in defence of the legitimate rights or interests of persons in special situations or when they to protect a group or general interest.²⁵ These new amendments also reduce court fees for some cases and provide that courts should inform applicants at the first hearing on the possibility of seeking legal aid and how to apply for it.

Parliament approved a draft law which would modify existing legislation that allows judges to reduce the lawyer's fees of their motion, the proposed modification would only allow courts to reduce fees if a party specifically asks for this.²⁶ The High Court of Cassation and Justice contested the constitutionality of these provisions before the Constitutional

23 Superior Council of Magistracy (2024) "Press Release on the open letters adopted by the presidents of the courts, tribunals and courts of appeal to postpone the entry into force of Law 11/2024", press-release, 31 May 2024, available in Romanian at: <https://www.csm1909.ro/PageDetails.aspx?FolderId=11298>.

24 Superior Council of Magistracy (2024), Facebook post, from 14 January 2025, <https://www.facebook.com/photo?fbid=1036310408537733&set=a.256994069802708>.

25 Romania, Law no. 268 of 30 October 2024 amending and supplementing Government Emergency Ordinance no. 80/2013 on judicial stamp duties and Government Emergency Ordinance no. 51/2008 on public legal aid in civil matters (*Lege nr. 268 din 30 octombrie 2024 pentru modificarea și completarea Ordonanței de urgență a Guvernului nr. 80/2013 privind taxele judiciare de timbru și a Ordonanței de urgență a Guvernului nr. 51/2008 privind ajutorul public judiciar în materie civilă*).

26 The proposed law can be followed on the website of the Chamber of Deputies: https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=21426.

Court.²⁷ The National Union of Romanian Bar Associations defendant the law and argues it is necessary as it adds clarity and affords protection for lawyers against abusive reductions of their fees.²⁸

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

The Ministry of Justice announced it is working on a new digital system, ECRIS V, that would have a centralised architecture allowing digital interaction with both the citizens and any other IT system of interest for the judicial activity.²⁹ This has been a topic of controversy and conflict between the Superior Council of Magistracy and the Ministry of Justice, particularly over who manages the IT infrastructure.

The Superior Council of Magistracy (SCM) argued that the Ministry of Justice is seeking to centralise the courts' IT infrastructure under the domain just.ro, which is managed by the Ministry of Justice and that this creates serious constitutional vulnerabilities, with the risk of affecting the independence of justice and the separation of powers in the state, under the conditions of the management of the courts' IT system by the executive power. Because of this, the SCM asked the courts to stop the transfer of data to the just.ro domain until the Ministry of Justice will transfer all of its IT attributions over the judiciary to the SCM.³⁰ The Ministry of Justice denies these claims and states that there are no concrete vulnerabilities identified and that if there were, they should be dealt with individually, arguing for how important a centralised IT system would be for the justice system and its beneficiaries.³¹ One solution proposed by the Ministry of Justice would

27 High Court of Cassation and Justice (2024) "Press release", 18 April 2024, https://www.iccj.ro/media-3/comunicate-de-presa/?_page=3.

28 National Union of Romanian Bar Associations (2024) "UNBR considers that the draft law on the rearrangement of the rules on the reduction of the court fees representing lawyers' fees (PL-x no. 788/2023) is fair, necessary and appropriate to the interests of justice", press-release, 20 April 2024, available in Romanian at: <https://www.unbr.ro/comunicat-20-04-2024-unbr-considera-ca-proiectul-de-lege-referitor-la-reasezarea-regulilor-privind-reducerea-cheltuielilor-de-judecata-reprezentand-onorariile-avocatilor-pl-x-nr-788-2023-este-just/>.

29 Romanian Ministry of Justice (2024) "Press release on the meeting of institutional partners involved in the digitization of the judiciary", press-release, 18 September 2024, available in Romanian at: <https://www.just.ro/comunicat-de-presa-privind-reuniunea-partenerilor-institutionali-implicati-in-procesul-de-digitalizare-a-sistemului-judiciar/>

30 Superior Council of Magistracy Judges' Section Decision no. 1519/2024 from 5 September 2024, available in Romanian at <https://tinyurl.com/hks2ja3f>

31 Romanian Ministry of Justice (2024) "Press release. In relation to the Circular of the Superior Council of Magistracy no. 2/13760/2024/28.08.2024, the Ministry of Justice makes the following technical and administrative clarifications", press-release, 30 August 2024, available in Romanian at: <https://www.just.ro/comunicat-de-presa-30082024/>

be to transfer the just.ro domain to the High Court of Cassation and Justice.³² The SCM said it would analyse this option and that it is one of several working scenarios that require a thorough technical analysis. The SCM also stressed that any reforms made should also address issues related to the National Electronic File, the proposal of enrolling computers in a network created within the Ministry of Justice, the legal situation of IT specialists in the courts, and the need to transfer IT governance to the judiciary.³³

The Ministry of Justice is also working on a centralised system for the electronic case file where parties and their legal representatives can access, in consolidated form (from a single place) all pending cases.³⁴ The platform is

called den.just.ro and it already has the majority of Romanian courts enrolled on it.

Fairness and efficiency of the justice system

According to a 2024 analysis by the World Bank, the efficiency of the Romanian justice system is affected by staffing shortages in judicial institutions, increasing workloads, growing backlogs, declining case dispositions, persistent inefficiencies in caseload distribution among judges, and limited availability of case processing data.³⁵

There has been some further progress as regards the system for investigating and prosecuting corruption offences in the judiciary. Existing legislation was modified to establish that the

32 Romanian Ministry of Justice (2024) “Press release on the meeting of institutional partners involved in the digitization of the judiciary”, press-release, 18 September 2024, available in Romanian at: <https://www.just.ro/comunicat-de-presa-privind-reuniunea-partenerilor-institutionali-implicati-in-procesul-de-digitalizare-a-sistemului-judiciar/>

33 Superior Council of Magistracy (2024) “Press Release on the position of the Section for Judges of the SCM on the solution presented publicly by the Ministry of Justice regarding the centralization of IT infrastructure”, press-release, 18 September 2024, available in Romanian at: [https://www.csm1909.ro/PageDetails.aspx?PageId=299&-FolderId=11498&FolderTitle=COMUNICAT%20DE%20PRES%C4%82%20privind%20pozi%C8%9Bia%20Sec%C8%9Biei%20pentru%20judec%C4%83tori%20a%20CSM%20fa%C8%9B%C4%83%20de%20solu%C8%9Bia%20prezentat%C4%83%20public%20de%20c%C4%83tre%20Ministerul%20Justi%C8%9Biei%20cu%20privire%20la%20centralizarea%20infrastructurii%20IT-\(2024-09-18\)](https://www.csm1909.ro/PageDetails.aspx?PageId=299&-FolderId=11498&FolderTitle=COMUNICAT%20DE%20PRES%C4%82%20privind%20pozi%C8%9Bia%20Sec%C8%9Biei%20pentru%20judec%C4%83tori%20a%20CSM%20fa%C8%9B%C4%83%20de%20solu%C8%9Bia%20prezentat%C4%83%20public%20de%20c%C4%83tre%20Ministerul%20Justi%C8%9Biei%20cu%20privire%20la%20centralizarea%20infrastructurii%20IT-(2024-09-18))

34 Romanian Ministry of Justice (2024) “Press release on the closure of the project “Virtualization and centralization of applications specific to the judiciary”, press-release, 29 February 2024, available in Romanian at: <https://www.just.ro/comunicat-de-presa-privind-inchiderea-proiectului-virtualizarea-si-centralizarea-aplicatiilor-specifice-sistemului-judiciar/>

35 Burduja, Emmaline Holland Gayk; Said, Agnes Cristiana; Guanlao, Luisita I. (2024) *Reflections on the Functional Review of the Romanian Justice Sector*, World Bank Group, page 14, available in English at <http://documents.worldbank.org/curated/en/099556408052437462/IDU18f75663e160eb147991b847116e0f59952eb>

section investigating magistrates would have a minimum of 14 prosecutors after the text previously provided that this section would have a maximum of 14 prosecutors.³⁶ The *2024 Rule of Law Report* shows that in February 2024, there were four prosecutors appointed out of the 14 posts available at the ‘central’ level. However, experts suggest that this modification does little to improve the situation and that when judicial corruption was investigated by the National Anticorruption Directorate there were about 10-15 cases every year of judges and prosecutors prosecuted for corruption in the judiciary. Furthermore, since the Special Section was set up and then replaced with the current system of prosecutors, there have been zero cases of judicial corruption sent to trial.³⁷

Several Romanian professional associations of magistrates (Asociația ‘Forumul Judecătorilor din România’, Asociația ‘Mișcarea pentru Apărarea Statutului Procurorilor’) criticised the fact that Romanian legislation does not allow them to contest the appointment of certain prosecutors responsible for conducting investigations concerning cases of corruption in Romania. Their complaint was analysed by the CJEU through a preliminary ruling in which it found that there is no obligation of a Member State to grant such professional association powers to act before the court to contest the appointment of prosecutors, in lack of a private interest.³⁸

The Romanian press has been very critical of what is perceived to be an inefficient justice system, pointing to several high-profile cases which were mismanaged by prosecutors, leading to acquittals of delayed trials, as well as a lack of tangible results in prosecuting and convicting high-profile corruption cases or organised crime cases.³⁹ Another issue the press has

36 Romania, Law no. 213 of July 5, 2024 amending Law no. 49/2022 on the abolition of the Section for the Investigation of Crimes in the Justice System, as well as amending Law no. 135/2010 on the Code of Criminal Procedure (*Lege nr. 213 din 5 iulie 2024 pentru modificarea Legii nr. 49/2022 privind desființarea Secției pentru investigarea infracțiunilor din justiție, precum și pentru modificarea Legii nr. 135/2010 privind Codul de procedură penală*)

37 Liliana Nicolae, Laura Ștefan, *anti-corruption expert: Cases in which magistrates are investigated for corruption should return to DNA and DIICOT. The current system has sent zero cases to court*, Europafm, 16 May 2024, available in Romanian at <https://www.europafm.ro/laura-stefan-expert-anticuoptie-dosare-magistrati-cercetati-coruptie-sa-vina-dna-diicot-sistem-actual-zero-dosare/>

38 CJEU, Judgment of 8 May 2024, Request for a preliminary ruling under Article 267 TFEU from the Curtea de Apel Pitești (Court of Appeal, Pitești, Romania) (Case C-53/23)

39 Dan Tapalaga, ‘Big problems in Justice. The situation has worsened. An essential topic for Romanian society that no one discusses anymore’, G4media, 13 September 2024, <https://www.g4media.ro/mari-probleme-in-justitie-situatia-s-a-agravat-o-tema-esentiala-pentru-societatea-romaneasca-despre-care-nu-mai-discuta-nimeni.html>.

been very critical of is the rising financial gains in the judicial system, with several ongoing court proceedings initiated by judges through

which they seek to gain further financial benefits for judicial professionals, benefits which are seen as excessive and unjustified.⁴⁰

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *Increase transparency over campaign contributions and spending by introducing requirements to disclose the identity of donors who lend an electoral contestant for election campaigns, similar to the procedures for political party funding.*
- *Improve transparency over public expenditures by publishing all data relating to public procurement by limiting the use of direct procurement and promoting public tendering to ensure the competitiveness and transparency of public procurement.*
- *Introduce rules on lobbying for Members of Parliament.*

Levels of corruption

Investigations carried out by civil society groups show there is a lack of transparency of local authorities in managing public funds and that they rely on direct procurement to avoid public procurement procedures. Such practices can undermine citizens' trust in public administration and raise serious questions about the efficiency and fair use of public funds.⁴¹

In 2024 the National Anticorruption Agency published its report for 2023 which showed that it initiated 2,790 new cases, it had an acquittal rate of 26% of all cases and the total damages in crimes it investigates amounts to more than €18.7 million (RON 93.24 million).⁴²

According to the Special Eurobarometer No. 548 of 2024 on citizens' attitudes towards corruption in the European Union, 75% of

40 Andreea Pora, 'Magistrates, unstoppable. The list of privileges they granted themselves', Europa Libera Romania, 13 August 2024, <https://romania.europalibera.org/a/magistratii-de-neoprit-lista-privilegiilor-/33072535.html>.

41 Funky Citizens (2024), *Assessing the Transparency and Integrity of Local Public Investment*, available in Romanian at <https://funky.org/evaluarea-transparentei-si-integritatii-investitiilor-publice-locale/>

42 National Anticorruption Agency Annual report for 2023, published in February 2024, available at https://www.pna.ro/bilant_activitate.xhtml?id=58

Romanians consider corruption to be a widespread problem in the country. However, the data show that many citizens choose not to report corruption cases for various reasons, such as the difficulty of proving the facts (29%), the fear that the persons involved will not be punished (23%) or the lack of protection for whistleblowers (23%).⁴³

A criminological study conducted by the Ministry of Justice together with the General Anticorruption Directorate (DGA) indicates that moral values and education are the main factors that can prevent involvement in corruption. Almost 68% of respondents consider that education plays an essential role in discouraging these practices. DGA initiated a campaign which aims to contribute to changing public perception and reinforce the idea that honest behaviour is not only possible but necessary.⁴⁴

The 2023 Corruption Perceptions Index published by Transparency International shows that Romania has a score of 46 in 2023, with a change of 0 since the previous year, meaning it ranks 63 out of 180 countries.⁴⁵

Framework to prevent corruption

There has been no progress yet to introduce rules on lobbying for Members of Parliament.

The adoption of legislation to improve the transparency of political party financing remains pending as legislation drafted by the Permanent Electoral Authority (PEA) was approved without changes by the Senate in September 2023 and presented to the Chamber of Deputies in October 2023, without any follow-up up so far.⁴⁶

In 2024 Romania organised elections four rounds of elections: at four levels: local, parliamentary, presidential and European Parliament. As already stressed in previous reports, rules on public funding for elections tend to favour bigger parties and there is little transparency over campaign contributions and spending. Civil society has been very critical of the fact that, particularly during presidential elections, the Permanent Electoral Authority refused to publish timely data on the income and expenses of electoral candidates, although

43 Special Eurobarometer 548, Citizens' attitudes towards corruption in the EU in 2024, available at <https://europa.eu/eurobarometer/surveys/detail/3217>

44 General Anticorruption Directorate (2024), "Launch of the national corruption prevention campaign: 'TIME TO STOP GIVING SOMETHING AWAY'", press-release, 13 December 2024, available at <https://www.mai-dga.ro/arhive/64574>

45 Transparency International, 2023 Corruption Perceptions Index, available at <https://www.transparency.org/en/countries/romania>

46 Romanian Chamber of Deputies, PL-x nr. 516/2023 Draft Law on amending and supplementing Law 334/2006 on the financing of political parties and electoral campaigns (*Proiect de Lege pentru modificarea și completarea Legii nr.334/2006 privind finanțarea activității partidelor politice și a campaniilor electorale*) Available in Romanian at https://www.cdep.ro/pls/proiecte/upl_pck.proiect?cam=2&idp=21125

it promised to do so on a weekly basis.⁴⁷ The lack of transparency over expenditures led to the situation in which the Romanian Constitutional Court annulled the first round of the presidential elections, finding that, among other issues, a candidate had violated the electoral legislation on campaign financing for the presidential elections as he reported expenditures of RON0 whilst it seems that he in fact benefitted from substantial campaign support, acting in violation of the principle of transparency and raising suspicions as to the fairness of the elections.⁴⁸

The Organisation for Economic Co-operation and Development (OECD) Working Group on Bribery published a report on Romania in which it evaluates and makes recommendations on Romania's implementation of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions and the 2021 Recommendation of the Council for Further Combating Bribery of Foreign Public Officials in International Business Transactions.⁴⁹ The report argues that Romania should develop a strategy to ensure

that relevant government authorities can recognise potential foreign bribery cases so that they can promptly report them to law enforcement. Romania should also raise awareness within the private sector, in particular for gatekeepers such as accountants, to recognise and report foreign bribery violations. Other recommendations are to introduce deferred prosecution agreements or similar non-trial resolution mechanisms to facilitate self-reporting, to enhance protections for whistleblowers and to ensure that DNA prosecutors responsible for combatting foreign bribery have adequate resources and that sufficient safeguards are in place to further insulate DNA leadership from the risk of political pressure through future appointment and removal decisions.

Romania adopted a law implementing the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions (OECD Anti-Bribery Convention) and related instruments, which criminalises a new crime of corruption, namely the act of a person who, directly or indirectly, promises, offers or gives to a foreign public

47 Septimius Pârnu, Expert Forum, Policy brief EFOR #191 from 25 Novembre 2024 on Campaign financing for the presidential elections, available in Romanian at https://expertforum.ro/wp-content/uploads/2024/11/PB-191-campanie_prezidentiale_26nov.pdf

48 Romanian Constitutional Court Decision No. 32 of December 6, 2024 on the annulment of the electoral process regarding the election of the President of Romania in 2024 (*Hotărârea nr. 32 din 6 decembrie 2024 privind anularea procesului electoral cu privire la alegerea Președintelui României din anul 2024*), available in Romanian at <https://legislatie.just.ro/Public/DetaliiDocument/292099>

49 The Organization for Economic Co-operation and Development (2024), *Implementing the OECD Anti-Bribery Convention Phase 2 Report: Romania, Implementing the OECD Anti-Bribery Convention*, OECD Publishing, Paris, 24 October 2024, https://www.oecd.org/en/publications/implementing-the-oecd-anti-bribery-convention-phase-2-report-romania_37adcf9a-en.html

official, for him or another person, money or other benefits not due to him, in connection with the performance, non-performance, expediting or delaying the performance of an act falling within the foreign public official's official duties or in connection with the performance of an act contrary to those duties, if the act is such as to procure for him or any other person money or other benefits or to maintain such benefits in connection with the conduct of international business transactions.⁵⁰

Civil society organisations have criticised the fact that the Romanian police do not have clear internal procedures to handle possible whistleblowing, even though existing legislation makes it mandatory for them to have such clear procedures, brought to the attention of employees and posted on their websites. Every employee should know, in the workplace, how to report internally possible violations of the law, even by colleagues or bosses, and must have a secure reporting channel, or several (phone, email, chat, etc.) that can be used anonymously. Romanian police did not provide information

on any such procedures despite several requests from civil society.⁵¹

Investigation and prosecution of corruption

The delayed legislative response to the statute of limitations continues to result in the closing of many corruption cases and the annulment of convictions. This is an ongoing problem and the main development in this is that the High Court of Cassation and Justice was asked to clarify how national courts are to apply legislation in this field, if they are to follow a previously rendered decision by the High Court of Cassation and Justice⁵² or the one of the Court of Justice of the European Union, which established that the courts of a Member State of the Union “are required to disapply a national standard of protection relating to the principle of the retroactive application of the more lenient criminal law (*lex mitior*) which makes it possible, including in the context of appeals brought against final judgments, to call into question the interruption of the limitation period for criminal liability in such cases by

50 Draft law no. 501/2024 laying down measures for the implementation of the Convention on Combating Bribery of Foreign Public Officials in International Economic Transactions, adopted by the Parliament on 11 December 2024, awaiting to be signed into law by the president, available at: https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?cam=2&idp=21967

51 APADOR-CH (2024) “The principle of vertical projection of contempt for law and public in the Romanian Police” report, 10 June 2024, available in Romanian at <https://apador.org/principiul-proiectiei-pe-verticala-a-dispretului-fata-de-lege-si-public-in-politia-romana/>

52 Romania, Decision no. 67/2022 of the High Court of Cassation and Justice, Panel on points of law in criminal matters, published in the Official Gazette of Romania, Part I, no. 1141 of 28 November 2022 (*Decizia nr. 67/2022 a Înaltei Curți de Casație și Justiție Completul pentru dezlegarea unor chestiuni de drept în materie penală publicată în Monitorul Oficial al României, Partea I, nr. 1141 din 28 noiembrie 2022*)

procedural acts which took place before the finding of invalidity”.⁵³

The High Court of Cassation and Justice found that Romanian legislation offers a higher level of protection than the one offered by the Court of Justice of the European Union in Case C-107/23, and therefore national courts should apply Decision No. 67/2022⁵⁴ of the

High Court of Cassation and Justice, giving effect to the principle of *lex mitior*, even when the financial interests of the European Union might be affected.⁵⁵ An association of judges criticised this decision and what they call the lack of reactions from the European Commission on this decision and other offers from national judges to ensure the application of EU legislation.⁵⁶

53 CJEU (GC), Judgement of 24 July 2023, Case C-107/23 PPU, Court of Justice of the European Union, Judgment of the Court (Grand Chamber) of 24 July 2023. Case C-107/23 PPU.

54 Romania, Decision no. 67/2022 of the High Court of Cassation and Justice, Panel on points of law in criminal matters, published in the Official Gazette of Romania, Part I, no. 1141 of 28 November 2022 (*Decizia nr. 67/2022 a Înaltei Curți de Casație și Justiție Completul pentru dezlegarea unor chestiuni de drept în materie penală publicată în Monitorul Oficial al României, Partea I, nr. 1141 din 28 noiembrie 2022*)

55 Romania, High Court of Cassation and Justice, Decision no. 37/2024 from 17 June 2024, available in Romanian at <http://www.scj.ro/1093/Detalii-jurisprudenta?customQuery%5B0%5D.Key=id&customQuery%5B0%5D.Value=214649#highlight=##>

56 Romanian Judge’s Forum association (2024) “The Rule of Law Report 2024 does not objectively reflect the situation of judiciary in Romania”, press-release, 24 July 2024, available in English at <https://www.forumuljudecatorilor.ro/index.php/archives/6829>

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *Protect journalists against threats and harassment by applying existing legislation and swiftly investigating and prosecuting any such acts whenever they occur.*
- *Increase transparency over political campaigning in the media by publishing all contracts with service providers, introducing frequent reporting and marking all promotional materials, continue parliamentary debate on the draft PL-x No. 516/2023 (blocked in the Chamber of Deputies since October 2023), which would introduce obligations for marking all political advertising materials also outside the election campaign period and would oblige parties to report regularly how this money is spent.*
- *Strengthen rules and mechanisms to enhance the independent governance and editorial independence of public service media taking into account European standards on public service media.*

Media and telecommunications authorities and bodies

There has been no progress in enhancing the independent governance and editorial independence of public service media. A bill from June 2021 to reform the law on public broadcasting and radio companies is still under discussion in Parliament and no further mechanisms to ensure the independence of public service media have been adopted.⁵⁷

The National Audiovisual Authority continued to apply sanctions to media outlets which did not comply with existing media regulations; in one such case, it applied two fines to the same TV program, totalling RON150,000 (approx. €30,000) to a TV channel and host for disinformation and making derogatory remarks.⁵⁸ These sanctions do not seem to have discouraged the person they were targeting, as the same TV host continued making similar

57 Legislative proposal to amend Law no. 41/1994 of 17 June 1994, on the organisation and functioning of the Romanian Broadcasting Company and the Romanian Television Company, PL-x. nr. 262/2021, available at https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?idp=19380

58 G4Media, *CNA: Realitatea TV - fines of 150,000 lei. Disinformation and homophobic statements in the program 'Behind the Scenes of the Parallel State'*, 1 December 2024, available at <https://www.g4media.ro/cna-realitatea-tv-amenzi-de-150-000-de-lei-dezinformatie-si-afirmatii-homofobe-in-emisiunea-culisele-statului-paralel.html>

comments and even made threats towards those who criticised her.⁵⁹

A law proposal was submitted before the Romanian Parliament which would replace the existing Audiovisual Law.⁶⁰ Civil society organisations requested that the draft law remove ordinary users (such as individuals or legal persons, without editorial responsibility) of video-sharing platforms from the list of subjects of the Audiovisual Law, because they are not audiovisual media service providers.⁶¹ They also requested the removal of the licensing obligation for audiovisual media service providers that broadcast exclusively via the Internet, arguing that concerning those that broadcast only via the Internet, this obligation is excessive.⁶²

Transparency and media ownership

An analysis of the Romanian press in the context of elections shows that the media landscape exhibits signs of fatigue, lack of financial resources independent of political or economic constraints, is affected by the blocking of information of public interest, by public money that enters the press from parties and public institutions in a non-transparent manner, the capture of the mainstream press by political or commercial forces, the dependence on social networks, harassment, lawsuits and contempt for protecting journalists. The same analysis shows that in 2023, parties spent €24.5 million of the public subsidy granted to parliamentary parties for the press and propaganda category, double the budget spent in 2021 for the same time.⁶³

The issue of politically sponsored media content has been long-standing in Romania and

59 Alexandru Mihăesc, *Anca Alexandrescu, threats live on Realitatea PLUS: I will personally deal with Iulian Fota / Those who accuse me of being a Russophile and with the legionaries, the day will come when you will be on your knees and you will ask to be on the side of the people*, G4Media, 8 December 2024, available at <https://www.g4media.ro/anca-alexandrescu-amenintari-in-direct-la-realitatea-plus-ma-voi-ocupa-personal-de-iulian-fota-cei-care-ma-acuzati-ca-sunt-rusofila-si-cu-legionarii-va-veni-ziua-cand-in-genunchi-veti-cere-sa-fit.html>

60 Pl-x nr. 3/2024 Legislative proposal on the audiovisual law, available at https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?nr=3&an=2024

61 ApTI (2024) “Proposed amendments - draft audiovisual law”, press-release, 10 June 2024, available at <https://www.apti.ro/propuneri-amendamente-proiect-legea-audiovizualului>

62 ApTI (2024) “Proposed amendments - draft audiovisual law”, press-release, 10 June 2024, available at <https://www.apti.ro/propuneri-amendamente-proiect-legea-audiovizualului>

63 Center for Independent Journalism, *The State of the Mass Media in Romania on the Threshold of the Super-Election Year 2024*”, Repor, 4 April 2024, available at <https://cji.ro/raport-starea-mass-media-din-romania-in-pragul-anului-super-electoral-2024/>

considerable sums of money continue to be spent by political parties on media content. Civil society organisations have argued that substantial sums of public money were infused into the accounts of some news television stations to promote candidates in the European parliamentary elections and the parties have consolidated their role as significant investors in the media market, becoming, at the same time, financiers, actors, regulators and direct beneficiaries of the media process. In the campaign for the European parliamentary elections, the main political forces in Romania (PSD-PNL Alliance, AUR Alliance and United Right Alliance) spent approximately €9 million on the production and dissemination of electoral propaganda materials on radio, television and in the written press.⁶⁴

Online media

The presidential elections exposed a significant vulnerability concerning media content posted

on social platforms, particularly on TikTok, where politicians exploited the lack of initiative on the part of the platform to impose its own standards when it comes to monitoring political content, verifying the identity of accounts and political advertisements and to stop the dissemination of information through manipulative means.⁶⁵ Civil society organisations have asked all responsible authorities to investigate any possible misuse of the platform and take actions to prevent such abuses from occurring.⁶⁶ They have also argued against blocking TikTok in Romania, as several politicians have suggested.⁶⁷ The European Commission declared it opened formal proceedings against TikTok on election risks under the Digital Services Act.⁶⁸

Romanian adopted a law implementing the EU Digital Services Act (DSA) Regulation in March 2024 and the National Authority for Communications Administration and Regulation (ANCOM) was designated as the

64 Active Watch, *Time is money. Editorial space on news channels, bought by parties in the campaign*, report, 7 October 2024, available at <https://activewatch.ro/articole/timpul-%C3%AEnseamn%C4%83-bani-spa%C8%9Biul-editorial-al-televiziunilor-de-%C8%99tiri-cump%C4%83rat-de-partide-%C3%AEn-campanie/>

65 Expert Forum, *Tik Tok in Times of crisis*, Analysis Report 1 December 2024, available at <https://expertforum.ro/tiktok-in-timp-de-criza-episodul-ii/>

66 ApTI (2024) *The TikTok network - a catalyst for extremist views and electoral malpractice. Do we have a democratic process through the DSA?*, press-release signed by 20 NGOs, 26 November 2024, available at <https://www.apti.ro/content/re%C8%9Beaua-tiktok-catalizator-al-opiniilor-extremiste-%C8%99i-al-nerespect%C4%83rii-regulilor-electorale>

67 ApTI (2024) *ANCOM does not and cannot block TikTok!*, press-release signed by 20 NGOs, 28 November 2024, available at <https://www.apti.ro/content/ancom-nu-blocheaza-si-nu-poate-bloca-tiktok>

68 European Commission, *Commission opens formal proceedings against TikTok on election risks under the Digital Services Act*, press-release, 17 December 2024, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_24_6487

coordinator of digital services.⁶⁹ Civil society organisations have argued that ANCOM formulated several draft decisions, in its capacity as coordinator of digital services, which were criticised for having a very technical approach and lacking a human rights impact assessment, as well as adequate consultation of industry, civil society and national institutions for the protection of human rights, which leads to developing proposals that have every chance of limiting fundamental rights, in particular freedom of expression.⁷⁰

The Romanian Ministry of Research, Innovation and Digitalisation (MCID) issued a new order, on 16 May 2024, which provides citizens with an online form through which they can report deepfake materials to the Ministry and establishes that the Ministry, within one hour of receiving a report, would confirm that the material exists and forward a notification

to one of the five major social media platforms it targets: Facebook, Instagram, TikTok, YouTube and Google.⁷¹ Civil society organisations criticised the fact that this order was adopted without any public consultation and that this procedure does not seem like it would be efficient, that it deals with malicious deepfakes just as a disinformation problem, as a purely political and media weapon, not taking into account that 98% of deepfake material on the Internet is pornographic and targets women.⁷² The MCID reported that until November 2024 it received over 3,300 reports from Romanians, which it has forwarded both directly to the platforms and to the responsible institutions, and half of the notifications received represented inappropriate content, and of these, around 70% were deepfakes about investments or miracle drugs intended to defraud the population; also from 24 to 28 October 2024, MCID has received

69 Romania, Law No. 50 of 18 March 2024 on establishing measures for the application of Regulation (EU) 2022/2.065 of the European Parliament and of the Council of 19 October 2022 on a single market for digital services and amending Directive 2000/31/EC (Digital Services Regulation), as well as amending and supplementing Law No. 365/2002 on electronic commerce (*Lege nr. 50 din 18 martie 2024 privind stabilirea unor măsuri pentru aplicarea Regulamentului (UE) 2022/2.065 al Parlamentului European și al Consiliului din 19 octombrie 2022 privind o piață unică pentru serviciile digitale și de modificare a Directivei 2000/31/CE (Regulamentul privind serviciile digitale), precum și pentru modificarea și completarea Legii nr. 365/2002 privind comerțul electronic*)

70 ApTI, *What ANCOM is doing with the DSA: Internet police or a safe and reliable online environment by respecting fundamental rights?*, press-release, 3 April 2024, available at <https://www.apti.ro/ce-face-ancomul-cu-dsaul-politia-internetului-sau-un-mediu-online-sigur-si-fiabil>

71 Romania, Order No. 20,721 of May 9, 2024 for the establishment of the single point of contact regarding the receipt of notifications regarding “deepfake” content (*Ordin nr. 20.721 din 9 mai 2024 pentru constituirea punctului unic de contact privind preluarea sesizărilor referitoare la conținutul “deepfake”*) <https://legislatie.just.ro/Public/DetaliiDocument/282985><https://legislatie.just.ro/Public/DetaliiDocument/282985>

72 ApTI, *MCID order #deepfake: Electoral dust*, press-release, 23 May 2024, available at <https://www.apti.ro/ordinul-mcid-deepfake-praf-cu-iz-electoral>

475 requests, most of which were about electoral materials.⁷³

Public trust in media

A survey from March 2024 shows that 51.6% of Romanians usually get their news from TV stations, 28.3% from social networks, 12.7% from news websites, 4.8% from radio stations and 1.3% from newspapers and magazines. On the other hand, 43% of respondents consider that the sources of information most exposed to disinformation and the propagation of fake news are social networks, 37.9% TV stations, 5.2% newspapers and magazines and 1.2% radio stations. When asked to what extent they believe they have been exposed to fake news or disinformation on various channels in recent months, 17.4% of respondents say that to a very large extent, 28.3% to a large extent, 28.6% to a small extent, and 22.7% to a very small extent/not at all. According to 45.6% of Romanians, Russia is the main source of propaganda, disinformation and fake news in Romania. Other perceived sources of propaganda were far behind: the European Union, with 13.9% (17% in January 2022), the USA, with 10.8% (4.9% in 2022), Hungary, with 5.5% (5.4% in 2022), China, with 4.2% (17.7% in January 2022, amid the impact of

the COVID 19 pandemic) and Germany, with 2.1% (3.8% in January 2022).⁷⁴

Research suggests that Romanian newsrooms face high levels of distrust and significant concerns about press freedom. The same research shows that the total advertising market has grown from €601 million in 2021 to €657 million in 2022 and €683 million in 2023. However, most of this growth has been fuelled by increased spending on digital advertising (which now accounts for 37% of the total), where it is estimated that €9 out of every €10 spent on digital advertising goes to search and social platforms. Meanwhile, traditional media's share is also declining offline: TV, for example, had 51% of total advertising spend in 2023, down from 64% in 2019.⁷⁵

73 Ministry of Research, Innovation and Digitalization, Press release, 28 November 2024, available at <https://www.mcid.gov.ro/precizari-de-presa-mecanismul-de-raportare-nofake-al-mcid-22330/>

74 INSCOP Research - *Opinion poll commissioned by News.ro, Part VIII: Disinformation, fake news, trust in information sources*, 18 March 2024, available in Romanian at <https://www.inscop.ro/martie-2024-sondaj-de-opinie-inscop-research-realizat-la-comanda-news-ro-partea-a-viii-a-dezinformare-stiri-false-increderea-in-surse-de-informatii/>

75 Raluca-Nicoleta Radu, *Digital News Report*, Reuters Institute for the Study of Journalism, Romania, 17 June 2024, available at <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2024/romania>

Safety and protection of journalists and other media actors

The head of the National Library was accused by a well-known Romanian journalist of publicly exposing the fact that she was in the library which he runs and accessed information on a specific public figure, exposing the content of her ongoing investigation.⁷⁶ As a result, several organisations asked for his dismissal.⁷⁷ He was charged with disclosing secret data and data which was not meant to be made public.⁷⁸

A group of organisations promoting press freedom and good governance and representative media outlets protested against the decision of the Directorate for Investigating Organised Crime and Terrorism (DIICOT) prosecutors to ask investigative journalists to reveal their sources, a request which was eventually

withdrawn by the prosecutors in what seems to be the result of public pressure.⁷⁹

Several journalists were insulted and threatened during a town hall meeting in Ploiești, in front of the then-mayor of Ploiești, who did not react or condemn the aggression carried out by an individual perceived to be close to him.⁸⁰

In a smear campaign against an investigative journalist, referred to in the 2023 and 2024 rule of law reports, the Prosecutor's Office closed two of the investigations in November 2023, and these decisions were appealed by the journalist. In 2024 the Bucharest Court of Appeal and High Court of Cassation and Justice ordered for the investigations to be continued, which was seen as a positive development by civil society organisations which, however, have asked the prosecutors to further investigate the case and finalise the investigations

76 Emilia Sercan, Facebook post made by journalist on 1 March 2024, available at <https://www.facebook.com/emilia.sercan/posts/pfbid0tLAViUjFfpTYbx5uEKbyxfg4KKeSKvdNizjNtR6rbkGn5ojifqmX2RzZa4arB5Xrl>

77 ActiveWatch, *We call for the dismissal of Adrian Cioroianu as Director of the National Library of Romania*, press-release, 1 March 2024, available at <https://activewatch.ro/articole/solicitam-demiterea-lui-adrian-cioroianu-din-functia-de-director-al-bibliotecii-nationale-a-romaniei/>

78 Alexandra Nistor, *Adrian Cioroianu, defendant in the case opened after he publicly revealed that Emilia Șercan is analyzing Mircea Geoană's doctorate*, Hotnews, 23 October 2024, available at <https://hotnews.ro/adrian-cioroianu-in-culpat-in-dosarul-deschis-dupa-ce-a-dezvaluit-public-ca-emilia-sercan-analizeaza-doctoratul-lui-mircea-geoana-1819342>

79 ActiveWatch, *DIICOT continues to harass journalists*, press-release issued by 23 organizations, 18 July 2024, available at <https://activewatch.ro/articole/diicot-continuu%C4%83-h%C4%83r%C8%9Buirea-jurnali%C8%99tilor/>

80 ActiveWatch, *Journalists cursed at and threatened at Ploiești City Hall under the eyes of Mayor Volosevici. Open letter to PSD and PNL leaders*, press-release issued by 4 organizations, 7 March 2024, available at <https://activewatch.ro/articole/jurnalisti-injurati-si-amenintati-la-primaria-ploiesti-sub-ochii-ingaduitori-ai-primarului-volosevici-scrisoare-deschisa-catre-conducerile-psd-si-pnl/>

which have been ongoing for over two years with no tangible results.⁸¹

Supporters of a presidential candidate have launched threats against investigative journalists who published an investigation about Russian influence in the Romanian elections. They claimed to have a database of journalists' personal information, that their activities are being monitored and journalists should stop "while they still have the chance".⁸² The threats are being investigated by the police.⁸³ Also, a TV host received death threats against his children⁸⁴ and an online influencer made degrading remarks towards the wife of a well-known TV host.⁸⁵

Do you consider the progress of the implementation of the Anti-SLAPP Directive in your country adequate? Have there been any positive developments you could attribute to the Anti-SLAPP Directive?

In Romania, NGOs have shown that there are three main ways in which public interest activists and journalists are intimidated: through SLAPP lawsuits, by being ordered to pay very high court costs, and by criminal proceedings. Over 90% of SLAPPs are used in national cases, not in cross-border cases. Because of this, several organisations have been asking that, when implementing the Anti-SLAPP Directive, Romania extend the guarantees of the directive to also cover these cases, including national cases and criminal proceedings.⁸⁶ Following this petition, the representatives of NGOs were invited for discussions at the Ministry of Justice, which expressed doubt on whether it is possible to extend the guarantees

81 ActiveWatch, *We call for an independent inquiry into the Emilia Șercan case*, press-release issued by 41 organizations, 16 September 2024, available at <https://activewatch.ro/articole/solicit%C4%83m-anchet%C4%83-independent%C4%83-%C3%AEn-cazul-emilia-%C8%99ercan/>

82 ActiveWatch, *Supporters of candidate Călin Georgescu, mafia threats against SNOOP journalists*, press-release, 4 December 2024 available at <https://activewatch.ro/articole/sus%C8%9Bin%C4%83tori-ai-candidatului-c%C4%83lin-georgescu-amenin%C8%9B%C4%83ri-mafiotela-adresa-jurnali%C8%99tilor-snoop/>

83 Ibid.

84 Dragoș Patraru, *Dragoș Pătraru threatened with death*, Starea Natiei YouTube channel, 3 December 2024, available at https://www.youtube.com/watch?v=0ojvauds3TQ&ab_channel=StareaNatieiOfficial

85 Otilia Cristea, *Attacks on journalists are on the rise. Makaveli, the influencer who supported Georgescu, suburban language against Mihai Gâdea's wife*, Hotnews, 16 December 2024, available in at <https://hotnews.ro/se-inmultesc-atacurile-la-adresa-jurnalistilor-makaveli-influencerul-care-l-a-sustinut-pe-georgescu-limbaj-suburban-la-adresa-sotiei-lui-mihai-gadea-1862529>

86 APADORCH, *Open letter against intimidation tactics used against free speech*, press-release signed by 30 NGOs, 5 November 2024 available in Romanian at <https://apador.org/scrisoare-deschisa-impotriva-actiunilor-de-intimidare-privind-libertatea-de-exprimare/>

provided for in the directive and stated they will analyse these demands.⁸⁷

Civil society has also asked for existing legislation to be changed so that, in cases concerning the environment, town planning or free access to information of public interest, each party shall bear its own legal expenses, so that a party cannot be obliged to cover high legal costs if it loses the case. The Ministry of Justice stated that although the issue is indeed valid, there is no need for such a modification.⁸⁸ However, a similar proposal was submitted before Parliament by several Members of Parliament. The proposed legal amendment,

which was rejected by the Senate and is currently before the Chamber of Deputies, would establish that in proceedings in which non-governmental organisations or natural persons have legal standing, the judge shall determine whether the action is brought to promote causes of public interest, in which case the parties shall bear their own costs. In all cases, the courts shall ensure that non-governmental organisations or individuals do not bear disproportionate costs likely to affect their activities.⁸⁹ This proposal was praised by civil society which also asked for it to include provisions for individuals who initiate legal action for the public interest.⁹⁰

CHECKS AND BALANCES



Key recommendations

- *Adopt an electoral code, uniformise electoral legislation, increase transparency over financing of political campaigns, make Central Electoral Bureau meetings public and publish the minutes and these meetings.*
- *Ensure a transparent and effective mechanism for appointing a new Ombudsperson.*

87 APADOR-CH, Facebook post, 16 December 2024, <https://www.facebook.com/APADOR.CH/posts/pfbid02NTvmLXTU9WwiiQtq2oyqe6XUzM9g59YRaocKNdMx3NrVh8riGeKBVzRqmd7jYPGNI>

88 APADOR-CH, *Justice Ministry refuses to save NGOs from death*, press release, 7 February 2024, available in Romanian at <https://apador.org/ministerul-justitiei-refuza-sa-salveze-ong-urile-de-la-moarte/>

89 Pl-x nr. 528/2024 Legislative proposal for the completion of Article 453 of Law no.134/2010 on the Code of Civil Procedure (Propunere legislativă pentru completarea articolului 453 din Legea nr.134/2010 privind Codul de procedură civilă), available at https://www.cdep.ro/pls/proiecte/upl_pck2015.proiect?nr=528&can=2024

90 APADOR-CH, *A solution to protect citizens who sue the state*, press-release, 16 May 2024, available in Romanian at <https://apador.org/o-solutie-pentru-protejarea-cetatenilor-care-dau-statul-in-judecata/>

Process for preparing and enacting laws

In Romania, by law, it is mandatory to have a preliminary impact assessment of draft laws, legislative proposals and other draft legislation, before the legislation is adopted. The assessment involves identifying and analysing the economic, social, environmental, legislative and budgetary effects of proposed regulations as well the impact of the new regulations on fundamental human rights and freedoms.⁹¹

In March 2024 the Romanian government published the ‘Guide on the Assessment of the Impact of Regulations on Human Rights’ drafted by members of the Technical Secretariat of the Advisory Council for the Assessment of the Impact of Regulatory Acts (Secretariatului tehnic al Consiliului Consultativ pentru Evaluarea Impactului Actelor Normative), representatives of the NGOs and experts from the Romanian Institute for Human Rights (IRDO).⁹² The guide presents types of human rights impact assessments, the main

legal instruments for conducting human rights impact assessments, human rights indicators and proposes a questionnaire to determine the impact on fundamental rights. While drafting the guide, the experts involved also found that although it is mandatory to have an impact assessment for human rights, in some cases, this section was not filled in or the initiator considered that “the normative act does not refer to this subject”, although some of the normative acts in question had a clear component relating to fundamental rights and freedoms.⁹³

Independent authorities

The mandate of the Ombudsperson expired on 26 June 2024, but the parliament failed to appoint a new one. Civil society representatives have asked the parliament to carry out a transparent appointment procedure to identify a new ombudsperson who is not a member of any political party and is independent, qualified and has high moral and professional standing.⁹⁴ A media investigation into the functioning of the National Institute for Human Rights (IRDO)

91 Romania, Law no. 24 of 27 March 2000 on the rules of legislative technique for the drafting of normative acts (*Lege nr. 24 din 27 martie 2000 privind normele de tehnică legislativă pentru elaborarea actelor normative*), available at <https://legislatie.just.ro/Public/DetaliiDocument/21698>.

92 Romanian government, *Human rights impact assessment (Evaluarea impactului asupra drepturilor omului)*, 2024, p. 4, <https://sgg.gov.ro/1/wp-content/uploads/2024/03/Ghid-privind-evaluarea-impactului-reglementarilor-asupra-drepturilor-omului-8.pdf>.

93 Romanian government, *Human rights impact assessment (Evaluarea impactului asupra drepturilor omului)*, 2024, p. 4, <https://sgg.gov.ro/1/wp-content/uploads/2024/03/Ghid-privind-evaluarea-impactului-reglementarilor-asupra-drepturilor-omului-8.pdf>.

94 NGOs for citizens coalition, *Future Ombudsman must be a real guarantor of fundamental rights*, press-release, 11 December 2024, available in Romanian at <https://www.stareademocratiei.ro/2024/12/11/viitorul-avocat-al-poporului-trebuie-sa-fie-un-garant-real-al-protejarii-drepturilor-fundamentale/>

argues that the institution is led by politicians and without the necessary credentials and qualifications, and it criticised the fact that it has been designated as a SLAPP contact point but did not do anything in this capacity to assist journalists or other victims of SLAPPs.⁹⁵

In 2024 an OECD expert published an evaluation report of the Romanian National Contact Point for Responsible Business Conduct. The report shows that the structure of this institution is based on a government decision from 2005 which no longer reflects the current composition of the national contact point, being composed of 14 members, of which 11 are state institutions, and two representatives of the business environment and the Romanian Academy, without any representative of civil

society, and that the national contact point is not fully functional and does not have sufficient employees. From 2005 to 2024 it did not analyse any concrete complaint and does not have a clear procedure through which it can analyse and resolve received complaints.⁹⁶ After the publication of this report, in November 2024, the government updated the national legislation on the National contact point in an effort to respect the OECD recommendations.⁹⁷

Electoral framework

Several organisations asked the Central Electoral Bureau to make its meetings public and publish the minutes of these meetings, as recommended by OSCE guidelines, but the bureau refused to do so.⁹⁸

95 Marionela Toma *Wolves guarding the sheep. Who are the ones who must defend journalists from abusive trials: Friends of Barons Băluță and Bădălău and a deputy who staged his own kidnapping*, Context.ro, 9 October 2024, available at <https://context.ro/lupii-paznici-la-oi-cine-sunt-cei-care-trebuie-sa-apere-jurnalistii-de-procese-abuzive-prietenii-baronilor-baluta-si-badalau-si-un-deputat-care-si-a-inscenat-rapea/>

96 OECD (2024), National Contact Point for Responsible Business Conduct Peer Reviews: Romania 2024, OECD Publishing, Paris, <https://doi.org/10.1787/74594718-en>.

97 Romanian Government Decision No. 1,430 of 14 November 2024 to amend and supplement Government Decision No. 420/2005 on the establishment and operation of the National Contact Point for the application of the recommendations proposed by the Organization for Economic Cooperation and Development (OECD) in the Guidelines for Multinational Enterprises (*Hotărâre nr. 1.430 din 14 noiembrie 2024 pentru modificarea și completarea Hotărârii Guvernului nr. 420/2005 privind înființarea și funcționarea Punctului Național de Contact pentru aplicarea recomandărilor propuse de Organizația pentru Cooperare și Dezvoltare Economică (OCDE) în Ghidul pentru Întreprinderi Multinaționale*) available at *Hotărâre nr. 1.430 din 14 noiembrie 2024 pentru modificarea și completarea Hotărârii Guvernului nr. 420/2005 privind înființarea și funcționarea Punctului Național de Contact pentru aplicarea recomandărilor propuse de Organizația pentru Cooperare și Dezvoltare Economică (OCDE) în Ghidul pentru Întreprinderi Multinaționale*

98 ExpertForum, *We asked the Central Electoral Bureau to make the meetings of the institution public and to publish the minutes*, press-release, 17 March 2024, available in Romanian at <https://expertforum.ro/solicitare-privind-transparenta-sedintelor-biroului-electoral-central/>

On 9 June 2024, Romania organised local elections and elections for the EU Parliament. Reports argue that changes in electoral legislation, such as the manner in which electoral collages are made and who appoints representatives, made very shortly before the elections should be avoided as they tend to disadvantage some of the contestants and reduce the transparency of the process. The authorities organised the process largely efficiently, but the complex and contested procedures related to vote counting and the centralisation of results undermined public confidence in the process. A non-uniform legislative framework has created confusion among both voters and those involved in organising the elections, showcasing the need for an electoral code.⁹⁹

On 1 December 2024, Romania held parliamentary elections, and they were perceived as efficiently organised and voters' fundamental rights were generally respected. However, the electoral contest was fundamentally affected by the results of the first round of the presidential elections. The process took place in the context of numerous disinformation and negative campaigns, which hurt the outcome of the parliamentary elections. The transparency of the electoral process was reduced by the fact that the meetings of the Central Electoral Bureau were not public. More than 50 lists

were rejected by different constituency offices because candidates did not follow administrative procedures or did not ensure a fair presence of both genders on the candidate lists.¹⁰⁰

An analysis of expenditures made by candidates for the 2024 parliamentary elections shows several irregularities, including multiple candidates who declared expenditures that exceed their income or constitute approximately all of their declared income, raising questions in relation to the sources of the funds. There were also several candidates who declared no expenditures and some who declared no sources of income. Experts argue that there is no effective mechanism for systematic verification of the source of funds.¹⁰¹

On 27 November 2027, Romania held the first round of presidential elections. This election was however subject to numerous criticism and controversy. One of the controversies relates to the fact that the Constitutional Court of Romania decided to invalidate the presidential candidacy of one candidate through a decision taken by a narrow 5-4 majority. The court analysed the candidate's "public statements, positions or participation in certain events" and considered that they represent "sufficient grounds to indicate that Mrs. Diana Iovanovici-Șoșoacă, as a candidate for the

99 Votcorect, *Final observation report on the June 9, 2024 elections*, 17 July 2024, available at <https://votcorect.ro/euro-locale-2024/2024/07/15/votcorect-raportul-final-de-observare-a-alegerilor-din-9-iunie-2024/>

100 Expert Forum, *Preliminary observation report on the December 1, 2024 parliamentary elections*, 4 December 2024, available in Romanian at <https://expertforum.ro/raport-preliminar-parlamentare-2024/>

101 ExpertForum, *Analysis Report on Electoral campaign financing for parliamentary elections: source of revenues*, 16 December 2024, available in Romanian at <https://expertforum.ro/sursa-veniturilor-parlamentare/>

office of President of Romania, questions and disregards the obligation to respect the Constitution through her public speech regarding the removal of essential guarantees of the fundamental values and fundamental options of the state, namely the membership of the EU and NATO”.¹⁰² This decision was criticised by several NGOs, which call it arbitrary and condemn the fact that a candidate was barred from running for elections.¹⁰³

The first round of presidential elections was held, with the two candidates who had the most votes qualifying for a second round of elections. However, this first round of the election had a series of irregularities and unprecedented events that unfolded:

- 26 November 2024 - The results of the first round of the presidential elections were contested before the Constitutional Court, which on 28 November 2024 asked for a recounting of the votes.¹⁰⁴
- 28 November 2024 - There was a meeting of the Supreme Council for National Defence, which stated that it has reports that show that one candidate, by violating electoral law, benefitted from massive exposure due to the preferential treatment that the TikTok platform granted to him, whilst exponentially decreasing the visibility of other candidates.¹⁰⁵
- 2 December 2024 - The Constitutional Court decided on 2 December 2024 to reject the request made on 26 November to annul this round of elections.¹⁰⁶

102 Romanian Constitutional Court, Decision No 2 of October 5, 2024 on contesting the registration of Diana Iovanovici-Șoșoacă as a candidate in the 2024 elections for President of Romania (*Hotărârea nr. 2 din 5 octombrie 2024 privind contestarea înregistrării candidaturii doamnei Diana Iovanovici-Șoșoacă la alegerile pentru Președintele României din anul 2024*) available at <https://legislatie.just.ro/Public/DetaliiDocument/289202>

103 ActiveWatch, *The arbitrary elimination of an opposition candidate from the electoral competition is unacceptable in a democracy*, press-release issued by 21 NGOs, 8 October 2024, available in Romanian at <https://activewatch.ro/articole/eliminarea-arbitrar%C4%83-din-competi%C8%9Bia-electoral%C4%83-a-unui-candidat-al-opozi%C8%9Biei-este-inacceptabil%C4%83-%C3%AEntr-o-democra%C8%9Bie/>

104 Romanian Constitutional Court, press-release from 28 November 2024, available at <https://www.ccr.ro/comunicat-de-presa-28-noiembrie-2024/>

105 Supreme Council for National Defense, Press-release from 28 November 2024, available at <https://csat.presidency.ro/ro/comuni/sedinta-consiliului-suprem-de-aparare-a-tarii1732806302>

106 Romanian Constitutional Court Decision No 30 of December 2, 2024 on the request for annulment of the elections for the office of President of Romania of November 24, 2024, submitted by Mr. Cristian-Vasile Terheș (*Hotărârea nr. 30 din 2 decembrie 2024 privind cererea de anulare a alegerilor pentru funcția de Președinte al României din data de 24 noiembrie 2024, formulată de domnul Cristian-Vasile Terheș*) available at <https://legislatie.just.ro/public/DetaliiDocument/292331>

- 4 December 2024 – Several civil society organisations ask the President to declassify and publish the reports on the presidential elections, which were discussed in the Supreme Council for National Defense.¹⁰⁷
- 4 December 2024 – the President publishes the reports made by the Supreme Council for National Défense (CSAT), which suggest that one of the candidates benefited from substantial support, through a coordinated and complex communication campaign carried out mainly online in an untransparent manner.¹⁰⁸
- 5 December 2024 - There are several requests made to annul the first round of elections in light of the CSAT reports and the Constitutional Court issued a press release in which it clarified that at this stage of the elections, it can analyse only complaints made by the two candidates who qualified for the second round of elections.¹⁰⁹
- 6 December 2024 – Hours after the second round of elections had begun abroad, the Constitutional Court annulled the entire electoral process regarding the election of the President of Romania, finding that the newly disclosed CSAT reports show that one candidate was unduly favoured and did not respect electoral law, and it established that the whole elections should start again, and until a new president is elected, the current one will remain in office. This decision was made without a formal complaint, but the court found that it is within its mandate of monitoring the constitutionality of elections.¹¹⁰
- There were several attempts to challenge this decision, some of which are still ongoing and some of which have already been rejected by the courts.

These decisions have been criticised by civil society organisations, which argue that they severely impair the right to vote, that measures such as banning people from the electoral race, asking for a recount of the vote without

107 ActiveWatch, *We call for urgent declassification of the information discussed at the CSAT meeting*, press-release issued by 13 NGOs, 4 December 2024, available at: <https://activewatch.ro/articole/solicit%C4%83m-desecretizarea-de-urgen%C8%9B%C4%83-a-informa%C8%9Biilor-discutate-%C3%AEen-%C8%99edin%C8%9Ba-csat/>

108 Romanian Presidency, press-release from 4 December 2024, available at <https://www.presidency.ro/ro/media/comunicate-de-presa/comunicat-de-presa1733327193>

109 Romanian Constitutional Court, press-release from 5 December 2024, available at <https://www.ccr.ro/comunicat-de-presa-5-decembrie-2024/>

110 Constitutional Court Decision No. 32 of December 6, 2024 on the annulment of the electoral process regarding the election of the President of Romania in 2024 (*Hotărârea nr. 32 din 6 decembrie 2024 privind anularea procesului electoral cu privire la alegerea Președintelui României din anul 2024*), available at <https://legislatie.just.ro/Public/DetaliiDocument/292099>

substantive indications of any fraud and then annulling the elections are all measures that put into question the right to vote.¹¹¹ They were also critical of the fact that it is unclear when the new elections will be held and that the court prolonged the mandate of the president for an indefinite period until a new president is sworn into office.¹¹²

The decision to annul the elections was also analysed by the Venice Commission, which in March 2025 is expected to adopt report 1218/2024 on the cancellation of election results by Constitutional Courts, prepared at the request of the Council of Europe, Parliamentary Assembly.¹¹³

Several organisations have also asked for the resignation of the head of the Electoral Authority,

accusing him of impartially and improper management of the electoral process.¹¹⁴

In January 2025 the government established the new date for presidential elections for 4 May 2025 and introduced a series of modifications, including reducing the time limit for when people can vote outside of Romania and introducing stricter rules on political advertising and transparency around political campaigning.¹¹⁵ Civil society organisations have been critical of these modifications, they criticised first of all the fact that these modifications were done in a non-transparent manner and without consulting key stakeholders, the drafts have neither been put to public debate nor have they reached the Economic and Social Council.¹¹⁶

111 APADOR-CH, *Can electoral rights seriously harm society?* press-release, 10 December 2024, available in Romanian at <https://apador.org/drepturile-electorale-pot-dauna-grav-societatii/>

112 APADOR-CH, *Is Romania's president trying to prevent people from voting?* press-release, 9 December 2024, available in Romanian at <https://apador.org/presedintele-romaniei-incearca-sa-impiedice-dreptul-la-vot/>

113 Council of Europe Venice Commission, Documents by opinions and studies, https://www.venice.coe.int/WebForms/documents/by_opinion.aspx?v=ongoing&&lang=EN&&fbclid=IwZXh0bgNhZW0CMTEAAR0-DfukG2kY-3B6ek_WJJvudIaSaRodELrZLjnzfdRDheFrottilbU3yE18_aem_DmeJLnR8YmtgKyepxqvBfQ.

114 NGOs for citizens coalition, *We call for the resignation of Mr. Toni Greblă, president of the Permanent Electoral Authority*, press-release issued by 23 NGOs and activists, on 6 December 2024, available at <https://www.stareademocratiei.ro/2024/12/06/solicitam-demisia-domnului-toni-grebla-presedintele-autoritatii-electorale-permanente/>

115 Romanian government, Press-release, 16 January 2025, <https://gov.ro/ro/guvernul/sedinte-guvern/briefing-de-pressa-la-finalul-edintei-de-guvern-sustinut-de-mihai-constantin-purtatorul-de-cuvant-al-guvernului1737030989>

116 NGOs for citizens coalition, *Changes to the electoral law must be made transparently and without affecting the fundamental rights of citizens*, press-release, 16 January 2025, <https://www.stareademocratiei.ro/2025/01/16/modificarea-legii-electorale-trebuie-facuta-transparent-si-fara-a-afecta-drepturile-fundamentale-ale-cetatenilor/>

CIVIC SPACE –

Key recommendations

- *Actively condemn and prosecute attacks and harassment of NGOs and activists.*
- *Use Votong.ro platform for all elections of civil society representatives.*
- *Actively engage and consult with civil society in developing policies and legislation.*

Freedom of association

A report on civil society in Romania in 2024 shows that:¹¹⁷

- In Romania there are about 127,000 non-governmental organisations, which in 2022 had around 127,000 employees and total revenues of RON 21 billion (about 1.51% of GDP);
- 24% of the population has made at least one donation to NGOs (up from 21% in 2016);
- The level of trust in NGOs has remained steady over the years, at around 50%;
- Members, employees and volunteers believe that the main difficulties for organisations in implementing projects are insufficient budget (69%) and insufficient human resources (61%), followed by legal barriers (32%), excessive demands from funders (28%), fiscal and administrative difficulties (24%), difficulties in working with beneficiaries (19%) and lack of trust from the public (17%);
- 85% of employees said they experience burnout to some degree (moderate to very high);
- fundraising is the main challenge for leaders (94% of respondents), followed by getting useful information from the non-governmental sector with 86% of respondents. Another significant challenge is related to identifying, recruiting and Mobilising volunteers: 58% of respondents. Organisational leaders also consider that they need support in terms of public communication (76% very much or very much), organisational assessment or digitalisation (over 70%).

117 Foundation for Civil Society Development (FDSC) “Romania 2024. The non-governmental sector. Profile, trends, challenges”, April 2024, available in Romanian at <https://www.fdsc.ro/cum-arata-sectorul-ong-din-romania/>

NGOs have complained about abusive banking practices, under the pretext of fighting money laundering. Banks have been accused of abusing their power over customers by closing accounts arbitrarily, seizing money, demanding documents and data that are absurd or impossible to provide.¹¹⁸

The Romanian government collaborated with civil society on the organisation of elections for the designation of civil society representatives in the Economic and Social Council, which allowed civil society to use a specially designed platform called *Votong.ro* where NGOs can submit their candidacy and other civil society organisations can vote on their representatives on the Economic and Social Council.¹¹⁹ Civil society has successfully used this platform and this can be considered as a good practice example for how civil society can elect their representatives in the various bodies whether they have such representation.

Similarly to 2023 in December 2024 NGOs again expressed concern about a renewed proposed modification to the Fiscal Code which would totally or partially eliminate the legal possibility for companies to redirect part of their corporate income tax to NGOs through sponsorship. Civil society groups warned that this would irremediably destroy the way in which sponsorship for civil society is done in Romania and around 50,000 people signed a petition against such measures.¹²⁰ This proposed modification did not pass.

According to press reports, DIICOT prosecutors have opened a criminal case against Greenpeace and other environmental organisations and activists, after the Minister of Energy allegedly filed a complaint against several environmental organisations that oppose energy projects with a high level of risk for the environment and public health, accusing them of working under Russian influence, against Romanian national interest.¹²¹ Several

118 APADOR-CH, *Who protects us from self-styled tax prosecutors - the banks?*, press release, 24 September 2024, available at <https://apador.org/cine-ne-apara-de-autointitulatii-procurori-fiscali-bancile/>

119 Romanian government, *Civil society nominates its representatives to the Economic and Social Council through the *VotONG* platform*, press-releasee, 11 October 2024, available at <https://sgg.gov.ro/1/societatea-civila-isi-de-semneaza-reprezentantii-in-consiliul-economic-si-social-prin-platforma-votong/>

120 The Community Relations Association, *Do NOT steal Christmas from millions of Romanians!*, petition, December 2024, available in Romanian at https://campaniamea.declic.ro/petitions/nu-furati-craciunul-a-milioane-de-romani-1?fbclid=IwZXh0bgNhZW0CMTEAAAR2nDGvI4IRRVZQYvw1ItMi1pFZ5LS_JWPzkoAeSyf0Y4o9WI4OCLAu1QTw_aem_2JhCHU8ihmKsXMPNi8Aj3Q

121 Damian Matei, Alin Ionescu, *Criminal case at the DIICOT after a complaint by the Minister of Energy against organisations opposing energy projects. The complaint targets several environmental activists, including Greenpeace*, G4Media, 4 October 2024, available at <https://www.g4media.ro/surse-dosar-penal-la-diicot-dupa-o-plangere-a-ministrului-energiei-fata-de-organizatii-care-se-opun-unor-proiecte-energetice-plangerea-vizeaza-mai-multi-activisti-de-mediul-inclusiv-greenpeace-upda.html>

organisations reacted and accused the Minister of trying to scapegoat NGOs and trying to silence and threaten them.¹²²

As presented in the 2023 and 2024 rule of law reports, there is a worrying trend in which NGOs are targeted by real estate developers in a series of SLAPP cases by which the plaintiffs seek the closure of the organisations. These cases are still ongoing. One of them was decided on appeal in December 2024 and the court rejected the request of the real estate developer, who claimed damages amounting to €1 million from several NGOs.¹²³ In March 2024 a real estate developer initiated a new case in which it is asking for the closure of the Salvati Bucureștiul Association.¹²⁴

Freedom of peaceful assembly

Civil society groups have argued that persons who participated or expressed their intention to participate in the protests against the war in Gaza were intimidated or pressured by police to discourage them from exercising their fundamental right to freedom of peaceful assembly, by prohibiting them from displaying certain messages, being subjected to excessive

body control measures, summoned to police headquarters, receiving house visits by police officers accompanied by ‘friendly’ recommendations not to post messages on social networks about the protests or the Middle East conflict and not to discuss them with others. The organisations claimed that although these protests were attended by a limited number of people, no incidents were recorded and no discriminatory, violent or hate messages were displayed or expressed, excessively restrictive and intimidating measures by law enforcement continued to be applied.¹²⁵

Freedom of expression and of information

Several human rights organisations criticised the jurisprudence of the National Council for Combating Discrimination (Consiliul Național pentru Combaterea Discriminării) in two cases. In one of the cases, it found that a publishing house did not discriminate against an LGBTQIA+ organisation when refusing to publish material on forms of aggression against members of the LGBTQIA+ community; in another case, it sanctioned discriminatory artworks reinterpreting scenes from Christian

122 Greenpeace Romania, *Energy Minister Sebastian Burduja attacks environmental organisations and justice in Romania*, press-release published by 32 NGOs, 10 December 2024, available at <https://www.greenpeace.org/romania/comunicat-presa/10120/ministrul-energiei-sebastian-burduja-ataca-organizatiile-de-mediu-si-justitia-din-romania/>

123 Bucharest Court of Appeal, Case 17119/3/2022, 10 December 2024, https://portal.just.ro/2/SitePages/Dosar.aspx?id_dosar=300000001024226&cid_inst=2

124 Bucharest Tribunal, Case no 8144/3/2024, still ongoing on 16 January 2024, https://portal.just.ro/3/SitePages/Dosar.aspx?id_dosar=300000001116991&cid_inst=3

125 ActiveWatch, *Militia and security ghosts haunt the police and gendarmerie*, press-release, 22 May 2024, available at <https://activewatch.ro/articole/fantomele-militiei-si-securitatii-bantuie-politia-si-jandarmeria/>

iconography, which were considered to be defamatory towards Christians.¹²⁶ These decisions were seen as discrediting efforts to combat discrimination and the institution itself, as it increasingly deviates from its mission as a guarantor of respect for and enforcement of the principle of non-discrimination.

In the context of the elections organised in 2024, Romanian authorities have been criticised for applying in an abusive manner legislation which does not allow electoral propaganda after the end of the campaign, punishing violations with fines ranging from RON1,500 to 4,500 (approximately €300 to €900). The police applied 58 fines for the European parliamentary elections and 33 for the presidential elections, and they have been accused of being overzealous, not only fining people who post-electoral messages on the Internet but also asking them through house visits or phone calls, under various threats and intimidation, to delete them.¹²⁷

Attacks and harassment

In January 2024 a known activist was taken to a police station for questioning and a body search as a result of a post she made on Facebook. She argues that she was taken from an address which is not her official address and could not have been known to the authorities unless she was previously placed under surveillance. She also claimed that the police acted in an abusive manner and that her questioning was just a means of silencing and threatening her.¹²⁸ Several human rights organisations criticised the action and also flagged that it seems she was questioned without a warrant from prosecutors, contrary to previous police statements, and that there are indications she was placed under surveillance by the secret services.¹²⁹

Civil society organisations have criticised a TV program for a debate in which the guests and moderator argued, without providing any evidence, that NGOs are controlled by the Romanian secret services, that NGOs are controlled/manipulated from outside the country, that state institutions and politicians do not take action because they are afraid of them,

126 ActiveWatch, *CNCD condones discrimination but sanctions art*, press-release, 30 January 2024, available in Romanian at <https://activewatch.ro/articole/cncd-cautioneaza-acte-de-discriminare-dar-sanctioneaza-arta/>

127 APADOR-CH, *How election advertising was fined in the European elections compared to the presidential elections*, press-release, 12 December 2024, available in Romanian at <https://apador.org/cum-a-fost-amendata-propaganda-electoralala-la-europarlamentare-comparativ-cu-prezidentialele/>

128 ActiveWatch, *Police abuse: body search at police station for Facebook post*, press-release, 15 January 2024, available at <https://activewatch.ro/articole/abuz-al-politiei-perchezitie-corporala-la-sectie-pentru-o-postare-pe-facebook/>

129 ActiveWatch, *Serious attack on a civic activist's freedom of expression. Angi Serban case*, press-release signed by 70 civil society groups and activists, 30 January 2024, available at <https://activewatch.ro/articole/grav-atentat-la-adresa-libertatii-de-exprimare-a-unui-activist-civic-cazul-angi-serban/>

and that their funding is opaque and violates legal obligations on fiscal reporting to state authorities.¹³⁰

In the wake of a decision on an arbitration case involving the Romanian state and a Canadian corporation over the Rosia Montana gold mine,¹³¹ Romanian news outlets and politicians carried out a campaign consisting of statements in which they said they expected Romania to lose the case and were already blaming civil society activists and NGOs for the loss, and argued Romania would have to pay huge fines because of their activity.¹³² The case was decided in favour of Romania.

Roma rights activists received online death threats on their personal accounts from various sympathisers of fascist ideology, including: “Heil Hitler. Jews and Gypsies must be eliminated. And all impure races” and “Bullets in your jaw!”¹³³

A legislative initiative tabled in the Romanian Parliament wants to ban any discussion about the LGBTQIA+ community in public spaces and schools, in the media and any public gathering of the LGBTQIA+ community, including LGBTQIA+ protests and Pride Marches.¹³⁴ The same member of Parliament submitted another similar law proposal on 25 November 2024, this time aiming to amend multiple laws that, among other things, seek to limit the visibility of the LGBTQIA+ community in public spaces, by prohibiting content related to the community “in environments accessible to minors”.¹³⁵

Following a news article criticising the fact that a Bucharest local public institution had some unauthorised work done on its building, the head of that institution threatened the journalists involved and the NGO which supported the journalists, claiming that it would come to the NGO’s office with the police and

130 ActiveWatch, *CNA Complaint - Anti-NGOs abuse on Realitatea TV*, press-release, 3 December 2024, available at <https://activewatch.ro/articole/sesizare-cna-derapaje-anti-ong-uri-la-realitatea-tv/>

131 ICSID (International Centre for Settlement of Investment Disputes), Decision on Award, Gabriel Resources Ltd. and Gabriel Resources (Jersey) Ltd VS. Romania, (No. ARB/15/31) https://icsidfiles.worldbank.org/icsid/ICSIDBLOBS/OnlineAwards/C4706/DS19558_En.pdf

132 Active Watch, *The strange Roşia Montană case. The Romanian press and painted black swans*, FreeEx Digest no. 8, 20 June 2024, available in Romanian at <https://activewatch.ro/publicatii/ciudatul-caz-ro%C8%99ia-montan%C4%83-presa-rom%C3%A2neasc%C4%83-%C8%99i-lebedele-negre-vopsite-freeex-digest-nr-8/>

133 Roma for Democracy Romania, Facebook post, 5 December 2024, available at https://www.facebook.com/story.php?story_fbid=1022959396510838&id=100063903606828&rdid=f4rIOimRXhu4OqNi

134 Mozaiq association, *Another anti LGBT legislative initiative in Romania*, a press-release, 19 September 2024, available at <https://www.mozaiqlgbt.ro/2024/09/inca-o-initiativa-legislativa-anti-lgbt-in-romania/>

135 Center for Legal Resources, *A new attack on fundamental rights*, press-release, 28 November 2024, available at <https://www.crj.ro/un-nou-atac-asupra-drepturilor-fundamentale/>

prosecutors and that they will inspect their office and will surely find something illegal.¹³⁶

Online civic space

An LGBTQIA+ association has lodged a criminal complaint after messages calling for the destruction of the association's headquarters appeared online and its address was made public.¹³⁷

Parliament is considering a law proposal designed to combat the deepfake phenomenon in Romania, but recent amendments would introduce jail sentences for creators of deepfake content and those who disseminate that content, including content that normally falls under satire, pamphleteering or sci-fi art.¹³⁸

Public participation

On 21 December 2023, the Ministry of Energy published the revised National Integrated Energy and Climate Change Plan and invited all interested parties to send their opinions by 21 January 2024.¹³⁹ Several environmental organisations criticised the Ministry of Energy and claimed this is not a proper consultation. They criticised the fact that it was not properly advertised, and the short deadline set, because of which they asked for an extension of the public consultations.¹⁴⁰ Following these accusations, the Ministry of Energy decided to extend the consultation period and to organise three rounds of public debates between February and March 2024 on the revised National Integrated Energy and Climate Change Plan.¹⁴¹

136 Buletin de Bucuresti, *Dragoș Frăsineanu, the head of the Capital's Directorate for Culture, to Buletin de București reporter: "Tomorrow I'll be at your doorstep, with the police and the prosecutor's office. It is not the time to ruin your life"*, news article, 10 January 2025, <https://buletin.de/bucuresti/seful-directiei-pentru-cultura-din-capitala-dragos-frasineanu-care-reporterul-buletin-de-bucuresti-maine-sunt-la-voi-la-usa-cu-politie-si-procuratura-nu-e-cazul-sa-ti-distru-gi-viata/>

137 G4Media, *According to a an association representing sexual minorities, it has filed a criminal complaint after messages calling for the destruction of the association's headquarters appeared online and its address was made public*, press article, 26 November 2024, available at <https://www.g4media.ro/o-asociatie-care-reprezinta-minoritatile-sexuale-a-depus-plangere-penala-dupa-ce-in-mediul-online-au-aparut-mesaje-care-indeamna-la-distrugerea-sediului-asociatiei-iar-adresa-acesteia-a-fost-facuta-p.html>

138 APADOR-CH, *Romania 2024 - 6 months to 2 years in jail for pamphleteering and other deepfakes*, press-release, 8 February 2024, available in Romanian at <https://apador.org/romania-2024-intre-6-luni-si-2-ani-puscarie-pentru-pamflet-si-alte-deepfake-uri/>

139 Ministry of Energy, *press-release*, 22 December 2023. <https://energie.gov.ro/pniesc/>.

140 2Celsius, Bankwatch, Declic, Greenpeace and WWF-Romania, *Environmental organisations: Energy Ministry, false public consultations on PNIESC*, press-release, 19 January 2024, <https://www.greenpeace.org/romania/articol/9414/organizatii-de-mediu-ministerul-energiei-false-consultari-publice-in-legatura-cu-pniesc/>

141 Ministry of Energy, *press-release*, 16 February 2024, https://energie.gov.ro/wp-content/uploads/2024/02/Anunt_dezbateri-publice-proiect-PNIESC-revizuit_prelungire-termen-inscriere-si-date-de-conectare_16.02.2024.pdf.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- Ensure effective implementation of ECtHR decisions, by adapting existing policies and practices to be in line with recommendations formulated in ECtHR decisions and Committee of Ministers' Recommendations.
- Develop comprehensive policies to prevent and combat sexual harassment, including in public institutions and in the university environment, which would allow easier reporting of sexual misconduct and termination of working contracts for people accused of sexual misconduct.

Systemic human rights violations

Implementation of decisions by supranational courts, such as the Court of Justice of the EU and the European Court of Human Rights

On 23 January 2024, the Ombudsman (*Avocatul Poporului*) published a special report on the monitoring of the implementation of ECtHR decisions on involuntary admissions to psychiatric hospitals. The report draws on existing ECtHR jurisprudence, observations made

during monitoring visits to mental health institutions and information received from competent authorities, such as mental health institutions, police, and courts, which are interpreted and contextualised.¹⁴² The main conclusions of the report are that many psychiatric institutions are overcrowded, with monitoring visits finding units with two and even three patients in one bed and many of the visited institutions were understaffed, whilst existing bureaucratic and legal procedures are unclear and lengthy and they do not offer sufficient guarantees that

142 Romanian Ombuds (*Avocatul Poporului*) Special report on the monitoring of the implementation of ECtHR decisions on involuntary admissions to psychiatric hospitals (*Raport special privind monitorizarea implementării deciziilor CEDO în cazul internărilor nevoluntare în spitalele de psihiatrie*), 23 January 2024, pages 3, 4 available at <https://avp.ro/wp-content/uploads/2024/01/Raport-special-monitorizarea-implementarii-deciziilor-CEDO.pdf>

patients can have an informed and active participation in these procedures.¹⁴³

On 12 March 2024, the Ombudsman published a special report on the difficulties encountered by people with disabilities, who are patients and whose social-economic status warrant prolonged hospitalisation. The report looks specifically at adults with mental health problems or psychosocial disabilities who are hospitalised in general hospitals for various health conditions and who cannot be discharged because they either do not have a home to go to, or their home has inappropriate living conditions, or do not have any caregivers to assist them in the recuperation process and there is no place in specialised institutions for them. Because of this they are kept in the hospital for prolonged periods until a suitable option is identified for them or until they are completely recovered.¹⁴⁴

School segregation of Roma children continues to be an issue in Romania. Roma continue to be the most discriminated minority and young Roma people's access to education is drastically restricted by the authorities' passivity to remedy segregation in the school environment, according to civil society reports.¹⁴⁵

Sexual violence against women is highly prevalent in Romanian society, as in the first six months of 2024 alone, the police reported 648 cases of rape and 1,983 cases of rape of a minor. In addition, hundreds of cases of sexual assault, sexual corruption of minors, solicitation of minors for sexual purposes, and sexual harassment were recorded. Because of this civil society has been asking for concrete measures to fight sexual violence.¹⁴⁶

Sexual abuse is also prevalent in Romanian universities. An analysis shows that at least 22 out of 76 Romanian universities (52 state and 24 private) had cases of sexual harassment and

143 Romanian Ombuds (*Avocatul Poporului*) Special report on the monitoring of the implementation of ECtHR decisions on involuntary admissions to psychiatric hospitals (*Raport special privind monitorizarea implementării deciziilor CEDO în cazul internărilor nevoluntare în spitalele de psihiatrie*), 23 January 2024, pages 33-36 available at <https://avp.ro/wp-content/uploads/2024/01/Raport-special-monitorizarea-implementarii-deciziilor-CEDO.pdf>.

144 Romanian Ombuds (*Avocatul Poporului*) Special report on the difficulties encountered by people with disabilities, who are patients and whose social-economic status warrant prolonged hospitalization (*Raport special privind dificultățile pe care le întâmpină persoanele cu dizabilități, respectiv pacienții a căror situație socială determină prelungirea spitalizării*), 12 March 2024, page 8, available at <https://avp.ro/wp-content/uploads/2024/03/Raport-special-cazuri-sociale-dezinstitutionalizare.pdf>.

145 Center for Legal Resources, *Roma school segregation in Romania*, report, 3 July 2024, available at <https://www.crlj.ro/segregarea-scolara-a-romilor-in-romania/>

146 ANAIS, *Petition for the safety of girls and women*, press-release issued by 40 organisations, 14 October 2024, available at <https://asociatia-anais.ro/petitie-pentru-siguranta-fetelor-si-femeilor/>

the victims were predominantly female, both students and teaching staff,¹⁴⁷ as reported by the representatives of the Council for University Ethics and Management.

Other systemic issues

Political representation of women continues to be very low. Following the local elections from 9 June 2024, only 9% of elected mayors are women.¹⁴⁸ Also, only 21% of elected Members of Parliament are women and some parties had their lists with candidates invalidated because there were no women included.¹⁴⁹ Interviews with female politicians revealed that they are often subjected to harassment and discrimination, to insults, mostly relating to their sexuality: references to rape, promiscuity, the use of sex to obtain a position, or infidelity. There are signs of institutionalised sexism that is a major obstacle to increasing political representation of women.¹⁵⁰

147 Council for University Ethics and Management, Report on sexual harassment in universities, December 2024, https://www.edu.ro/sites/default/files/Raport_CEMU_2024_cazuri_hartuire_sexuala_mediu_universitar.pdf

148 Centrul Filia, *Following the June 9 elections, only 7%* of mayors are women*, analysis, 11 June 2024, available at <https://centrulfilia.ro/in-urma-alegerilor-de-pe-9-iunie-doar-7-dintre-primari-sunt-femei/>

149 Iulia Roșu (Snoop.ro), David Leonard Bularca, *Politics for men only. PNL has 9 women out of 71 senators and deputies in the new Parliament. The other parties?*, Hotnews, 10 December 2024, available at <https://hotnews.ro/politica-doar-pentru-barbati-pnl-are-in-noul-parlament-9-femei-din-71-de-senatori-si-deputati-celelalte-partide-1857881>

150 Diana Meseșan, *Violence against women in politics has become national doctrine: 'You are reduced to your function of having children and producing pleasure'*, Recorder, 22 October 2024, available at <https://recorder.ro/violenta-impotriva-femeilor-din-politica-a-devenit-doctrina-nationala-esti-redusa-la-functia-ta-de-a-face-copii-si-de-a-produce-placere/>

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APADOR-CH is a non-governmental organisation working to raise awareness on human rights issues and promote human rights standards and the rule of law in Romania and the region.

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ABOUT THE AUTHORS

VIA IURIS



VIA IURIS is a non-partisan, not-for-profit organisation, officially registered in Slovakia as a civic association since 1993. Its main office is situated in Banská Bystrica (Central Slovakia), and a regional office is located in the capital city Bratislava (Western Slovakia). We operate on a national level. Our mission is to use the law as an instrument of justice, bring systematic solutions and promote the equal application of law for all. Our activities may be arranged into three pillars:

Citizen: Our aim is to promote effective public participation in decision and policy making. Citizens have to be able to participate effectively in various impact assessments and permission procedures on decisions and policies affecting their lives, such as the building of public and private infrastructures. They ought to have access to information and access to justice in matters of public interest, such as environmental protection and accountability of state institutions and municipalities. We support and provide assistance to people who are threatened while advocating on behalf of the public interest.

Civil society: Authentic civil society, as one of the cornerstones of freedom and democracy, is jeopardised by non-systemic legislative proposals, populist statements of politicians and disinformation campaigns spearheaded by conspiracy media. Our role is to defeat myths about NGOs, critically analyse civil society and protect the legislative environment so that, in the future, Slovak citizens have the right to freely express, associate and actively participate in and control the administration of public affairs.

Rule of law: VIA IURIS aims to promote systematic measures to strengthen the political independence of courts, public prosecution and the police. These institutions are fundamental elements of the rule of law and are crucial in securing equality before the law and enforcing justice. They ought to guarantee the exercise of public power via elected officials in compliance with the public interest, not the private interests of oligarchs. They have to guarantee that everyone is held accountable for overstepping the law, even politicians.

KEY CONCERNS

Judicial System

The legal framework for dismissing non-judge members of the Judicial Council of the Slovak Republic remains unchanged.

The criminal offense of ‘abuse of law’ hasn’t been amended but guarantees for the protection of judges have been introduced by tightening procedural conditions for its application.

The judiciary and judges have regularly been targeted (mostly verbally through the media) by the government, and it seems that the Judicial Council of the Slovak Republic responds selectively to such attacks. Non-judge members of the Judicial Council have been gradually replaced after the change in government.

The government has abolished the Special Prosecutor’s Office, the status and powers of the General Prosecutor remain unchanged. There is a proposal to establish a special department under the General Prosecutor’s Office to deal with the protection of the EU funds in criminal proceedings.

The status and powers of the General Prosecutor under § 363 of the Criminal Procedure Code remain unchanged.

Anti-Corruption Framework

The government has implemented numerous legislative and institutional changes that have weakened the prevention and fight against corruption.

The most significant ones include amendments to the Criminal Code and Criminal Procedure Code, changes to the Public Procurement Act, the abolition of the Office of the Special Prosecutor, and the dissolution of the National Criminal Agency.

We have not observed any steps toward implementing the European Commission’s (EC) recommendations in this area.

The government has acted contrary to many of the recommendations. The recommendations on lobbying have been misused by the government as an argument against civil society organizations. Instead of strengthening the efficiency and independence of the investigation and prosecution of high-level corruption, these efforts have been jeopardized by the abolition of the Special Prosecutor’s Office and the National Criminal Agency.

Media Environment and Media Freedom

In 2024, Slovakia’s media environment and media freedom faced more challenges. While the country is still generally considered to have a relatively free press, it still faces challenges related to media ownership, political influence, and threats to journalists.

Journalists in Slovakia have faced threats and attacks especially from politicians, often tied to investigative reporting. There have been legislative efforts to restrict media freedom as well. The spread of disinformation and fake news by alternative media is also a concerning issue.

Slovakia was recommended to enhance rules for independent public service media but made no progress, even abolishing public service television and radio. This raises concerns about future political influence. Additionally, recommendations to improve journalist safety and reform defamation law remain unaddressed, with no new protective legislation adopted.

Checks and Balances

The current government consistently overuses (or abuses) the fast-track legislative procedure, thereby bypassing public consultation and the possibility of commenting on government bills. Most of the government's major legislative changes in 2024 were adopted without consultation and in the fast-track legislative procedure.

Parliament overruled the President's veto on the amendment to the Competence Act, the constitutionality of which will be reviewed by the Constitutional Court.

The ruling coalition took control of the Slovak Information Service through an initial circumvention of the law.

The EC recommends ensuring effective public participation and stakeholder involvement in the law-making process and avoiding excessive use of the fast-track procedure. The ruling government does the exact opposite.

Civic Space

The government has adopted a number of legislative changes that have had negative impacts on civil rights and civil society - the right to assembly has been restricted under the so-called 'Lex Assassination' and the right to information has been limited by the introduction of 'limited information' and the charging of a fee for information requests in the case of so-called 'extraordinary extensive search for information'.

There is a draft Foreign Agents Act in Parliament, along with an amendment to regulate lobbying, which targets NGOs and threatens them with sanctions.

There is an overuse and abuse of the fast-track legislative process, as a result of which the public is not able to introduce amendments during legislative procedure.

The EC recommends ensuring effective public participation and stakeholder involvement in the law-making process and avoiding excessive use of the fast-track procedure. The ruling government does the exact opposite.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

There has been no strengthening of the rights of minorities and vulnerable groups. Attacks on the LGBTQIA+ community have continued in the form of harmful bills being introduced and actions conducted by state authorities.

The Slovak Republic is still facing an infringement procedure brought by the Commission to the Court of Justice regarding the problem of segregation of Roma children in primary schools.

State of play (versus 2024)

- Justice system
- ↓ Anti-corruption framework
- ↓ Media Environment and Media Freedom
- ↓ Checks and balances
- ↓ Civic Space
- Human Rights

Legend

Regression



No progress



Progress



JUSTICE SYSTEM –

Judicial independence

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

Since the new government took office after elections in October 2023 and throughout 2024, there has been a reshuffling of members of the Judicial Council of the Slovak Republic. The government replaced three members with its appointees in November 2023 immediately after taking power, even before receiving a vote of confidence in parliament, raising questions about the legitimacy of such actions.

In May 2024, the parliament dismissed the former chairperson of the Judicial Council, J. Mazák (who had already been removed as chairperson by the council in April 2024), along with another parliament-elected member, A. Majerník. This step caused controversy, particularly because parliament cited arbitrary and vague reasons for these dismissals, even though current legislation allows the dismissal of Judicial Council members without stating reasons. Following the earlier resignation of a parliament-nominated member, all three positions remained vacant. Parliament has so far managed to elect only one new member (the election happened in April 2024). Since then, as a result, the Judicial Council has been partially incomplete.

In July 2024, the new President of the Slovak Republic, Peter Pellegrini, formerly the leader of the Voice – Social Democracy (HLAS-SD) party, which is part of the current ruling coalition, dismissed three members of the Judicial Council who had been appointed by the former President and replaced them with new appointees.

The above-mentioned appointment of the new members of the Judicial Council by the new President in July 2024 completed the process of replacement of the non-judicial members of the Judicial Council (while two seats of parliamentary nominees remain still vacant). Since the non-judicial members constitute the half of total membership of the Judicial Council (9 out of total 18), the council is now significantly influenced by the current government. The Judicial Council is a fundamental body of the judiciary, with broad powers over the selection of judges and disciplinary matters. Such significant influence by Prime Minister Fico's coalition raises concerns about the council's future direction and the exercise of its powers, which, during its new composition, have shown a pro-government bias.

There has been no change in the legal regulation on the dismissal and appointment/election of members of the Judicial Council - the ability to dismiss a member of the Judicial Council without giving a reason remains. The above-mentioned changes in the Council's composition also took place in the same way, and some dismissed members of the Judicial

Council decided to appeal to the Constitutional Court, which, however, rejected their constitutional complaint as manifestly unfounded.¹ Former President of the Judicial Council J. Mazák announced that he would appeal to the ECtHR regarding his dismissal from the position of the President of the Judicial Council.²

The regulation of the status and powers of the Judicial Council, and the appointment and dismissal of its members is part of the Constitution of the Slovak Republic and the current ruling coalition does not have a constitutional majority. Therefore, no change in the legislation is expected in the near future.

Accountability of judges and prosecutors, including disciplinary regime and bodies and ethical rules, judicial immunity and criminal liability of judges

Attacks on judges and interference in the independence of the judiciary

The current government, led by Prime Minister R. Fico, has intimidated the judiciary through attacks on specific judges. These

attacks, threats of disciplinary proceedings, and intimidation began immediately after the new government assumed power. In November 2023, the Minister of the Interior, M. Šutaj-Eštok, publicly threatened a judge with disciplinary prosecution by the Ministry of Justice over decisions in a case in which the minister himself had a legal interest (as the Ministry of the Interior was a party to the dispute).³

The government intensified its attacks against judges during 2024, targeting in particular the Supreme Court of the Slovak Republic and the judges of the chamber that ruled on criminal cases involving persons close to the current ruling coalition politicians. The Prime Minister has publicly spread the narrative of the existence of a criminal group composed of some NAKA investigators, i.e. prosecutors of the (abolished) Special Prosecutor's Office, and some judges of the Supreme Court and the Specialised Criminal Court, while questioning the independence of the panel of the Supreme Court that ruled on the detention of his advisor, lawyer M. Para, which the Constitutional Court considered illegal.

1 Constitutional Court (Slovak Republic), Resolution of 30 May 2024, No. III. ÚS 298/2024. https://www.ustavny-sud.sk/rozhodovacia_cinnost/rozhodnutia

2 *Ján Mazák will appeal to the European Court of Human Rights*, Dennik N, 14 May 2024, <https://dennikn.sk/minuta/3989498/>

3 ČTK, *Šutaj-Eštok questioned the court's jurisdiction and said the judge is a classmate of Kubina, Threatening, attorney responds*, HNOnline.sk, 10 November 2023, <https://hnonline.sk/slovensko/96114666-sutaj-estok-spochybnil-pravomoc-sudu-a-povedal-ze-sudca-je-spoluziakom-kubinu-vyhrazanie-reaguje-advokat>; Pravda, 'Unacceptable and gross intimidation. Colleagues of judge threatened by Interior Minister respond', 13 November 2023, <https://spravy.pravda.sk/domace/clanok/688323-neprijatelne-a-hrube-zastrasovanie-reaguju-kolegovia-sudcu-ktoremu-hrozil-minister-vnutra//>

In June 2024, Minister of Justice B. Susko together with Deputy Prime Minister R. Kaliňák announced the filing of a disciplinary motion against the judge of the Supreme Court of the Slovak Republic, J. Kliment, on the grounds of alleged human rights violations.⁴ The ECtHR had ruled on the violation of the rights of detained former judge D. Cviková (accused in a major corruption case), whose detention was decided by the panel of the Supreme Court of the Slovak Republic, of which judge Kliment was a part. Susko and Kaliňák view the decision as proving systemic violations by Kliment's judicial panel. Kliment argues the government's actions are politically motivated attacks on judicial independence. The disciplinary motion filed by the Minister of Justice was ultimately based on grounds of breach of judicial duties, impartiality principles and judicial ethics, with consequences such as undermining public confidence in the judiciary, disrupting fair trials, and infringing on the personal freedom of the accused, specifically PM Fico's advisor, Mr. Para. Disciplinary proceedings against judge Kliment are ongoing, with the next hearing due to take place in January 2025.

The hunt for 'inconvenient' judges on the Supreme Court continued in Autumn 2024, when the Ministry of Justice asked the Supreme Court to submit the entire database of court proceedings conducted at this court, due to alleged manipulation of the random

assignment of cases at the court. The Supreme Court considered the above request of the Ministry as an interference with the independence of the judiciary and as exceeding the competences of the Ministry, refused to provide the Ministry with assistance in this matter and requested the opinion of the Judicial Council of the Slovak Republic as well. Subsequently, the Ministry modified its request to the issue of review of the random assignment of cases to the panel 5T of the Supreme Court (of which the aforementioned Judge J. Kliment is a member), and after the repeated refusal of the Supreme Court to provide assistance, the Ministry only requested a review of the functionality of the information system 'Court Management', to which the Supreme Court finally agreed as it did not consider such a review to be a review of the performance of the judiciary. The Judicial Council sided with the Ministry of Justice on the above issue, stating that the Ministry is the operator and administrator of the Central Information System, it is its duty to supervise its operation and to ensure that the random assignment of cases is not disturbed and for this purpose it is entitled to obtain, collect and

4 Veronika Prušová, *In April, the prime minister threw judge Kliment off the bench. In June, Susko filed a disciplinary motion against him*, Denník N, 18 June 2024, <https://dennikn.sk/4053778/v-aprili-premier-vyhanal-sudcu-klimenta-z-talara-v-juni-na-neho-podava-susko-disciplinarny-navrh/>

store data from this information system within the scope of its statutory powers.⁵

An important factor in this situation was the fact that the Ministry based the above request on alleged complaints raising suspicions of manipulation in the assignment of files to the Supreme Court, whereas the Court claims that it does not have any similar complaints in its possession. Thus, in the context of previous events related to the same court, the 5T panel and the particular judge, this step can also be seen as part of a systematic and threatening effort by the government to interfere with the independent administration of justice.

In March 2024, the Constitutional Court became the target of political attacks as well. Following the Constitutional Court's decision to suspend the amendment to the criminal laws, Prime Minister Fico publicly called on the President of the Constitutional Court to resign from the position of president because of the premature leak of part of the Court's decision to the media. Together with earlier statements by government politicians about

'court-packing' of the Constitutional Court, these are worrying statements undermining the independence and legitimacy of the Court, raising concerns about possible political interference in its functioning and status. For the time being, however, the government does not have the constitutional majority that would be required for a change in the composition, status or powers of the Constitutional Court.

The Judicial Council, as a legitimate representative body of the judiciary, out of all the above-mentioned attacks and actions towards judges and the judiciary, reacted only to one press conference of Prime Minister R. Fico, in connection with which it adopted an opinion in which it condemned the attacks.⁶ In view of the volume and regularity of the attacks and intimidating steps taken by the current government in power towards the judiciary, we consider the above-mentioned approach of the Judicial Council to be insufficient. From monitoring the activities of the Judicial Council, it is clear that the Judicial Council takes a selective approach to condemning attacks on judges and the judiciary - it often leaves the attacks of

5 Judicial Council of the Slovak Republic, Resolution on the authorisation of the Ministry of Justice of the Slovak Republic to control the information system which is to ensure the random allocation of cases to individual chambers or judges at the Supreme Court of the Slovak Republic (Uznesenie Súdnej rady Slovenskej Republiky z 15. októbra 2024 k oprávneniu Ministerstva spravodlivosti Slovenskej republiky kontrolovať informačný systém, ktorý má na Najvyššom súde Slovenskej republiky zabezpečovať náhodné pridelovanie vecí jednotlivým senátom alebo sudcom), No. 354/2024, 15 October 2024, <https://zasadnutia.sudnarada.sk/data/att/16931.pdf>

6 Judicial Council of the Slovak Republic, Opinion of the Judicial Council of the Slovak Republic on the press conference of the Prime Minister of the Slovak Republic and the Minister of Justice of the Slovak Republic held on 4 April 2024 (Uznesenie Súdnej rady Slovenskej Republiky zo 17. apríla 2024 k stanovisku Súdnej rady Slovenskej republiky k tlačovej besede predsedu vlády Slovenskej republiky a ministra spravodlivosti Slovenskej republiky konanej 4. apríla 2024), NO. 136/2024, 17 April 2024, <https://zasadnutia.sudnarada.sk/data/att/15592.pdf>

the current government politicians unnoticed, while speaking out strongly against statements made by the media or former politicians.

‘Abuse of Law’ offence

The amendment to the criminal codes effective as of 15th March 2024 added procedural safeguards for the offence of ‘Abuse of law’, for which judges can be prosecuted if they arbitrarily apply the law and thus harm or favour someone. If a judge is accused of this offence, he or she may, within 60 days of receiving the order of indictment or the notification of the change of the legal qualification of an offence to this offence, submit a motion to the Judicial Council of the Slovak Republic for disapproval of his or her prosecution.⁷ According to the previous regulation, the judge had the right to file such a motion only after the order of indictment had become final. The new legislation also specifies that if the Judicial Council disapproves of the prosecution in the case of this offence, the prosecution shall be discontinued if the offence cannot be prosecuted as another criminal offence or if the offence cannot be referred for disciplinary proceedings.⁸

In this context, it is worth referring to the Rule of Law Report 2024 of the European Commission, in which the Commission argues that the above changes cannot be considered as new safeguards and sees the changes as

raising additional concerns. The Commission criticises the introduction of a 60-day time limit for the submission of a motion for discontinuance of prosecution, while omitting the fact that the time limit is counted, after the amendment, from the delivery of the order of indictment and not from the moment of the entry into force of such an order. Unlike the Commission, we consider the above change to be at least a partial safeguard in relation to the offence of ‘Abuse of law’.

Independence/autonomy of the prosecution service

Abolition of the Special Prosecutor’s Office

Developments in the prosecution in Slovakia in 2024 were marked in particular by the abolition of the Special Prosecutor’s Office (SPO) effective as of 20 March 2024. The Special Prosecutor’s Office specialized (among others) in high-profile corruption cases and financial crimes that fall within the competence of the Specialised Criminal Court. Following the abolition of the Special Prosecutor’s Office, the prosecutors working within this office were assigned to the General Prosecutor’s Office (GP), but the problem was that these assignments in many cases didn’t reflect the previous experience and expertise of the individual prosecutors. The abolition of the SPO was implemented without replacement, which,

7 National Council of the Slovak Republic, Act. No 301/2005 Coll. Criminal Procedure Code (Trestný poriadok), Section 207a art. 3

8 National Council of the Slovak Republic, Act. No 301/2005 Coll. Criminal Procedure Code (Trestný poriadok), Section 9 art. 2

together with the reassignment of individual prosecutors to the GP, regardless of their specialisation and the reallocation of files from the SPO, resulted in a reduction of specialisation in fighting corruption and serious crimes. The abolition of the SPO, which was led by a relatively autonomous Special Prosecutor, has increased the potential for political interference due to increased centralisation of power in the person of a Prosecutor General and as a consequence the reassignment of politically sensitive cases to less experienced or compliant prosecutors, potentially leading to lenient handling or dismissal. The impact on ongoing cases became apparent shortly after the abolition of the SPO, with some prosecutors reporting missed deadlines due to limited access to files after the transition.

The abolition of the SPO under the current legislation was not unlawful – that is also reflected in the settled case law of the Constitutional Court, in which the Court repeatedly states that the principles determining the organizational structure of the prosecutor's office and the functional relations in the exercise of its competence are of statutory, not constitutional nature. This means that the legislature has a relatively wide margin of discretion when considering changes in the structure, organisation or performance of the prosecutor's office's competences, while at the same time being obliged to respect the basic constitutional regulation of the prosecutor's office.

However, despite its legality, the above-mentioned change must be seen in the overall social and political context. The abolition of the SPO was accompanied by a major amendment

of the criminal codes, the main purpose of which was to reduce the disproportionately high penalties for certain groups of offences, to shorten the limitation periods and to prioritise alternative forms of punishment, all under the guise of strengthening the elements of restorative justice. However, the abolition of the SPO is in fact perceived as a political tool of the current government led by Prime Minister R. Fico, to achieve its own interests in view of the prosecution of some representatives of the government or persons close to ruling political parties. The abolition of the SPO could undermine public trust because it dismantles one of the key institutions designed to uphold justice independently and effectively. By appearing to prioritize political interests over the fight against corruption, the move signals a weakening of impartiality in the justice system and reinforces public perceptions of selective accountability and political interference.

The abolition of the SPO as part of a major amendment of the criminal laws was conducted without any public debate in a fast-track legislative procedure. In July 2024, the Constitutional Court ruled that the abolition of the SPO was not unconstitutional, confirming its previous jurisprudence, and also ruled that although the legislator had violated the Act no. 350/1996 Coll. the Rules of Procedure of the National Council of the Slovak Republic, this violation didn't reach an intensity that would constitute an interference with the constitutional principles of democracy and the rule of law (see 'Checks and Balances' for more details).

§ 363 of the Criminal Procedure Code

With regard to the power of the Prosecutor General under Section 363 of the Criminal Procedure Code (CPC) to annul final decisions of prosecutors and police officers in pre-trial proceedings, despite extensive amendments to the Criminal Codes, there have been no amendments, i.e. no safeguards against its overuse or abuse.

In relation to section 363 of the CPC, in November 2024, the Constitutional Court ruled on the former President's motion for an interpretation of *Article* 101(1) of the Constitution, which imposes on the President the duty to ensure the proper functioning of the constitutional bodies. President Z. Čaputová still in September 2023 filed a motion to the Constitutional Court for an interpretation of this article after she asked the Prosecutor General M. Žilinka to submit all the decisions under Article 363 of the Constitution that he had made since he took office. Former president Čaputová based her request on this article and in connection with Article 150 of the Constitution, according to which the Prosecutor General is appointed and dismissed by the President on the proposal of the National Council of Slovak Republic. The President argued that in view of the doubts about the

GP's exercise of power under the disputed section 363 of the CPC, the President's constitutional duty to ensure the proper functioning of the constitutional bodies and the fact that the President appoints and dismisses the GP, the GP is obliged to provide the President with assistance in ensuring the proper functioning of the constitutional bodies and is therefore obliged to comply with the President's request for the submission of the decisions in question. The Prosecutor General refused to provide assistance.

The Constitutional Court ruled that the President's power under Article 101(1) of the Constitution is not a separate competence, but has normative effect only in connection with Article 102(1) of the Constitution, i.e. the article which regulates the President's powers. According to the Constitutional Court, in the light of the articles of the Constitution in question, it is not possible to draw a conclusion from their separate or combined application that the President of the Slovak Republic is authorised to request from the Prosecutor General or from other prosecution authorities the necessary factual documents and data for the purpose of filing a motion to initiate disciplinary proceedings against the Prosecutor General.⁹

⁹ Constitutional Court (Slovak Republic), 20 November 2024, No. PL. ÚS 16/2023

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *Given the changes that have taken place in Slovakia in 2024, which have weakened rather than strengthened the rule of law, an all-encompassing recommendation would be to restore the legislative and institutional framework to its original state one year ago. However, it is likely that the current government will be unwilling to reverse the changes it has itself imposed.*
- *In this area, we recommend that the Government adopt a regulation on the property declarations of public officials. The aim of the regulation should be to:*

increase transparency so that year-to-year changes can be monitored,

introduce an obligation to disclose information on the assets of immediate family members,

establish an independent body to scrutinise these declarations of assets.

Levels of corruption

We perceive public procurement as a risk area, especially after the changes in the relevant legislation. Currently, for public procurements up to €200,000 (in the case of constructions up to €800,000), a market survey in the form of approaching any three companies is sufficient. Even riskier is the space in connection with purchases up to €50,000 – in these cases the State won't even have to do a formal market survey, and the business will simply negotiate with the company it chooses.

Framework to prevent corruption

Integrity framework including incompatibility rules (e.g.: revolving doors)

This area is poorly regulated - there is a lack of effective mechanisms to limit conflicts of interest in cases where public officials move to the private sector and vice versa.

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

This area is poorly regulated. Act No. 211/2000 Coll. on free access to information

has been restricted by the current government as a result of the adopted amendment (extension of deadlines and charging for access to more extensive information – see more in the section ‘Civic space’). The standard legislative procedure is becoming less and less applied by the ruling coalition, making transparent and effective public participation impossible. Effective lobbying legislation is absent, and the government is trying to use the recommendations in this area to restrict NGOs, where new obligations would only apply to them. There are also widespread shortcomings in the area of transparency in the financing of political parties and campaigns, as has been also pointed out by other NGOs.¹⁰

Measures in place to ensure whistleblower protection and encourage reporting of corruption

The Whistleblower Protection Office fulfills its role of prevention, education and whistleblower protection. However, it has had to repeatedly face political pressure and media attacks from government officials. In October 2024, the Minister of the Interior, Matúš

Šutaj-Eštok, announced that he would file a criminal complaint against the head of the office Z. Dluhošová, in connection with a fine received from the Office for the fact that police officers granted whistleblower protection (i.e. with the status of protected whistleblowers) had been placed off-duty contrary to the law through a decision of the Ministry of the Interior.¹¹ The Ministry has reportedly paid the fine, but plans to take the case to the Administrative Court.

Investigation and prosecution of corruption

Criminalisation of corruption and related offences

The penalties for corruption and economic offences, as well as the statute of limitations, have been radically reduced as a result of the amendment to the criminal codes. Currently, we do not see any positive developments in this area and the impact of the amendment on corruption and related offences will have to be monitored in the coming months and years. However, shortly after the criminal codes’

10 In the context of the 2024 EP elections, for example, Transparency International Slovakia reports that the campaign in Slovakia was generally rather non-transparent. Transparency International Slovakia, *Only three parties lead a transparent Eurocampaign*, 3 June 2024, <https://volby.transparency.sk/euro2024/aktuality/transparentnu-eurokampan-vedu-len-tri-strany>. Transparency International Slovakia also reports that the presidential campaign was also non-transparent - in particular the campaign of the elected president P. Pellegrini. Transparency International Slovakia, *Will non-transparent and unfair presidential campaigning be the new normal?*, 19 May 2024, <https://transparency.sk/sk/bude-netransparentna-a-neferova-prezidentska-kampan-novym-normalom/>

11 Peter Kováč, *Dluhošová, head of the Whistleblower Protection Office: I perceive Kaliňák’s words as a threat*. SME, 30 October 2024, <https://domov.sme.sk/c/23404967/zuzana-dlugosova-urad-na-ochranu-oznamovatelov-rozhovor.html>

amendments came into force, several media reported an increase in crime, so far especially in minor offences such as theft.¹²

Effectiveness of investigation and application of sanctions for corruption offences (including for legal persons and high level and complex corruption cases) and their transparency, including as regards to the implementation of EU funds. Please provide data where available.

The specialised institutions for the fight against corruption and related offences - the Special Prosecutor's Office and the National Criminal Agency (NAKA) - have been dissolved. Prosecutors and police officers specialising in sophisticated crimes have been placed out of service or transferred to district departments. There have been no positive developments in this area.

Other

The perception of the state's effectiveness in fighting against corruption was undermined in August 2024 by the release of former Special Prosecutor D. Kováčik, convicted of corruption offences and serving an 8-year prison sentence, from prison.¹³ The release of Kováčik was based on an extraordinary appeal by the Minister of Justice B. Susko, who filed an extraordinary appeal to the Supreme Court and then decided on temporary suspension of the execution of the decision (to which the appeal is related) until the Supreme Court decides on the appeal. Minister Susko justified the extraordinary appeal on the grounds of doubts as to the legality of the decision and the respect of the principles of a fair trial.

The dismissal of Kováčik has aroused a wave of resentment, as this is one of the most outstanding cases of a public official being convicted of a corruption offence, ironically against a man who was the head of the (now abolished) institution specialised in combating the most serious crimes, including corruption.

12 Martin Odkladal, *Theft, police disinterest, the desperation of the security service and threats of physical violence are on the rise. This is the reality of the amendment to the Criminal*, Aktuality.sk, 18 December 2024, <https://www.aktuality.sk/clanok/KJwZ9I6/mnoziace-sa-kradeze-nezaujeme-policie-zufalost-esbeeskarov-a-vyhrazky-fyzickym-nasilim-to-je-realita-novely-trestneho-zakona/>

13 Peter Dlhopelec, *Former chief prosecutor convicted of corruption is free, thanks to justice minister*, The Slovak Spectator, 7 August 2024, <https://spectator.sme.sk/politics-and-society/c/former-chief-prosecutor-convicted-of-corruption-is-free-thanks-to-justice-minister>

Moreover, a few weeks after his release, Kováčik was convicted a second time (not yet a final judgment), also for another corruption offence.¹⁴

Some media, as well as NGOs, refer to Kováčik's release as the "corruption event of the year".¹⁵

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *The Ministry of Justice shall bring into force the laws to comply with the EU Anti-SLAPP Directive. However, legal instruments should also apply to cases without cross-border implications.*
- *The Ministry of Culture should withdraw a proposal to change the Publications Act, which introduced a right to a correction when false or incomplete information is presented in the media or on news websites.*
- *The Government should introduce a legislative proposal to combat disinformation and hybrid threats that are spread mainly by the alternative media.*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

The Council for Media Services, as a new administration office, supervises the compliance of television, radio and internet media with the law. The decisions of the Council indicate that it plays an important role in monitoring the compliance with media legislation. The Council was important during the election period (in relation to presidential elections in

14 Peter Kováč, *Former top anti-corruption prosecutor convicted in second corruption case*, The Slovak Spectator, 3 September 2024, <https://spectator.sme.sk/politics-and-society/c/former-special-prosecutor-convicted-in-second-corruption-case>

15 Monika Tódová, *Corruption Newsfilter: The corruption event of the year is the release of Kováčik*, Denník N, 30 December 2024, <https://dennikn.sk/4359379/korupcny-newsfilter-korupcnou-udalostou-roka-je-prepustenie-kovacika-na-slobodu/>

March (1st round) and April 2024 (2nd round) and the European Parliament elections in June 2024) and for example informed broadcasters about the legislation and their obligations. The activities of the Council so far provide guarantees of independence and impartiality.

Transparency and media ownership

Rules governing transparency of media ownership and public availability of media ownership information, and their application

The new media legislation adopted in 2023 increased the transparency of the media and imposed obligations on online media as well. According to the Publications Act, publishers, including news websites, are required to disclose their ownership structure and publish a list of major financial contributors.

TV Markíza, the leading commercial TV station, owned since 2020 by Czech financial group PPF Group, has altered the style of its political coverage since the appointment of a new head of news, Michal Kratochvíl, in December 2023. In February 2024 the ‘vast majority’ of Markíza’s reporters signed a

protest letter alleging that Kratochvíl has tried to steer political coverage away from criticism of the government and favour its presidential candidate.¹⁶ PPF has several large government contracts in transport and telecommunications and, like other stations, Markíza benefits from government advertising.

Penta – the Slovak financial group with a chequered history of political influence trading, currently perceived as close to the ruling party Direction – Social Democracy (SMER-SD) – acquired *Nový Čas* and *cas.sk* in 2023. This means it owns both leading tabloids and their online versions (with *Plus Jeden Deň* and *pluska.sk*).¹⁷

The biggest media influence in Slovakia is exerted by large financial groups that own some of the media. Independent media are in the minority, depend mainly on supporters and play an important role in the media environment (except for alternative disinformation media).

16 Matúš Burčík, *Slovakia’s popular TV channel comes under pressure after new news director’s takeover*, The Slovak Spectator, 14 May 2024, <https://spectator.sme.sk/politics-and-society/c/slovakias-popular-tv-channel-comes-under-pressure-after-new-news-directors-takeover> Ben Pascoe, *Portion of TV Markiza journalists on strike alert*, RTVS, 31 May 2024, <https://enrsi.rtvs.sk/articles/topical-issue/365210/portion-of-tv-markiza-journalists-on-strike-alert>

17 Filip Struhárik, *Penta Publishing buys the daily newspaper Nový Čas and the website cas.sk*, Dennik E, 10 October 2023, <https://e.dennikn.sk/3617959/vydavatelstvo-penty-kupuje-dennik-novy-cas/>

Public service media

Independence of public service media from governmental interference

Public service media in Slovakia, like in many other countries, plays a crucial role in providing reliable and pluralistic information to the public.

As of 1 July 2024, the previous public television and radio – Radio and Television of Slovakia (RTVS) – ceased to exist after the parliament approved the government’s proposal to abolish RTVS and replace it with a new institution, Slovak Television and Radio (STVR).

According to the newly adopted Law on Public Television and Radio, the Director General of the new STVR will be elected by the Board of STVR. The members of the Board of STVR will be elected by the Parliament and the Minister of Culture, which means that the entire

leadership of the new STVR is completely under the influence of the current government coalition, which creates room for politicisation of the entire new public broadcaster. Thus, public television has become an instrument of influence for the current government.¹⁸

This move by the ruling coalition has sparked mass protests and opposition,¹⁹ strikes and staff walkouts,²⁰ and public concern about the independence and objectivity of public television and radio information.²¹

In connection with the abolition of RTVS, a motion was filed with the Constitutional Court in July 2024 to assess the constitutionality of the law in question – the applicants challenge not only the unconstitutionality of the substance of the law, but also the legislative process in which the law on the abolition of RTVS was adopted. The Constitutional Court has not yet ruled on the motion.²²

18 The European Broadcasting Union, *Slovak government proposals threaten media independence*, 13 March 2024, <https://www.ebu.ch/news/2024/03/slovak-government-proposals-threaten-media-independence>

19 *People took to the streets to express their opposition to the bill on the abolition of RTVS*, RTVS, 27 March 2024, available at: <https://spravy.rtv.s.sk/2024/03/ziva-retaz-okolo-rozhlasu-ludia-vysli-do-ulic-vyjadrit-nesuhlas-s-navrhom-zakona-o-zruseni-rtvs/>

20 *RTVS employees protested against the STVR law: at the moment it may be the last thing we can do*, RTVS, 20 June 2024, available at: <https://spravy.rtv.s.sk/2024/06/zamestnanci-rtvs-protestovali-proti-zakonu-o-stvr-v-tejto-chvili-je-to-mozno-to-posledne-co-mozeme-urobit/>

21 NGOs, including VIA IURIS, also reacted to the move by sending a letter to the EC and EP MPs expressing their concerns about the restriction of freedom of the press and the risk of political control of the new public broadcaster. The letter was accompanied by a public appeal, which reached up to 80 thousand signatures of citizens. *Zastavme únos RTVS*, 2024, <https://www.mojapeticia.sk/campaign/zastavme-unos-rtvs/1122f862-62d8-461b-b368-f1a5c-4c3d026>

22 Constitutional Court (Slovak Republic), Resolution of 9 October 2024, No. PL. ÚS 10/2024

Independence of public service media from economic interference

The new STVR is primarily funded through a combination of public funds (license fees) and state subsidies. STVR remains vulnerable to economic and political pressures. The structure of public service media funding, combined with political involvement in key decisions, poses risks to its full independence.

Other

As anticipated, there is less criticism of the government in the public service media,²³ but overall it maintains the required level of objectivity and independence. The impact of the abolition of the previous RTVS and the creation of the new STVR under the current government will have to be assessed in time.

In addition to the abolition of the previous RTVS and the creation of the new STVR, the government in 2024 introduced other proposals to change media legislation and restrict media freedom. A group of coalition MPs submitted a draft amendment to Act no. 262/2022 Z.z. on publications (the Publications Act),²⁴

which introduces a ‘right to a correction’ (as a replacement for the current ‘right to a statement’) when false or incomplete information is presented in the media or on news websites. The proposed law had several shortcomings, such as shortening the deadlines for publishing corrections or fining a publisher in a court proceeding for failing to publish a correction. The proposal has not yet been approved.

Online media

Impact on media of online content regulation rules (including content removal obligations, liability rules)

The new media legislation introduced the same rules for news websites, which were previously not properly regulated and controlled. The above rules do not apply to all online media, but only to news media.

23 Jaroslav Barborák, *There is pressure to balance criticism of the government in STVR, independent public affairs has no place here, says former foreign affairs chief Soňa Weissová*, Aktuality.sk, 22 October 2024, <https://www.aktuality.sk/clanok/ZKKWzWR/v-stvr-je-tlak-na-vyvozovanie-kritiky-vlady-nezavisla-verejnopravnost-tu-nema-miesto-tvrdi-byvala-sefka-zahranicia-sona-weissova-podcast/>

24 National Council of the Slovak Republic, *Proposal of the members of the National Council of the Slovak Republic, Roman MICHELEK, Rudolf HULLAK, Andrej DANK and Adam LUČANSKÝ, for the issuance of an act amending and supplementing Act No. 265/2022 Coll. on publishers of publications and on the register in the field of media and audiovisual and on amendments and supplements to certain acts (Publications Act)*, 24 May 2024, <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=9&CPT=344>

Competence and powers of bodies or authorities supervising the online ecosystem, including the digital services coordinators role

The online news media are under the control of the Council for Media Services, which can impose penalties for breaching the law.

Other

We consider alternative media and social networks a major societal problem, because they provide a platform for the spread of hate speech and disinformation. The Council for Media Services as the media regulator currently has no statutory power to supervise breaches of the Digital Service Act by online platform providers.

It is especially concerning that the representatives of the current government use alternative media and the disinformation scene as a space to give interviews and present their statements.

There is still a lot of independent media, offering platforms for journalism, however, the spread of disinformation and fake news by alternative media which are for free and without paywalls is a concern and independent media outlets have been working to combat these issues.

Public trust in media

There are several studies and surveys providing insight into the level of trust in the media in Slovakia. According to the Reuters Institute Digital News Report 2024,²⁵ overall trust in the media in Slovakia is only 25% and fell to its lowest level yet in the eight years that have been monitored thus far. The trend for many political leaders – especially within the government – to spurn the traditional media in favour of partisan sites where they get uncritical publicity is one factor that undermines public trust in traditional brands.

Safety and protection of journalists and other media actors

Frequency of verbal and physical attacks

In 2024, the number of attacks and threats against journalists increased, and they most often came from government politicians. These threats are often linked to investigative journalism, particularly reporting on corruption, organized crime and politics.

25 Reuters Institute Digital News Report 2024, pg. 102-103, https://reutersinstitute.politics.ox.ac.uk/sites/default/files/2024-06/RISJ_DNR_2024_Digital_v10%20lr.pdf

The Prime Minister frequently calls mainstream journalists liars at press conferences or calls them derogatory names.²⁶ The attacks continue to be a significant concern for media freedom.

Smear campaigns

As a part of a continual smear campaign against the ‘mainstream’ media, government politicians have long refused to answer questions from mainstream journalists and have declined to participate in television discussions during presidential elections and European Parliament elections.

Rules and practices guaranteeing journalist's independence and safety

Slovakia does not have specific legislation to protect journalists from attacks and intimidation. Journalists can use the general legal instruments of civil or criminal law.

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activists

The police or the prosecutor's office usually dismiss criminal charges in such cases and civil court proceedings take a very long time. Law enforcement capacity to ensure journalists' safety is not at the required level.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

Over the past year we have noticed a number of cases that could be labeled as SLAPPs.

Prime Minister Robert Fico had filed a lawsuit against the publisher and editor-in-chief of the *Aktuality.sk* portal (one of the most popular and read media), Peter Bárdy, in connection with the publication of his book titled: *Fico – Obsessed With Power*. The Prime Minister is suing Bárdy for the unauthorized use of his photograph on the title page of the book and is claiming damages from the publisher and the journalist for non-pecuniary damage €200,000.²⁷

26 For example, on the press conference of the ruling coalition parties held on 3 December 2024, the prime minister Fico accused the mainstream journalists of lying and called on the public to stop believing the media. Peter Dlhopolec, *Primitive premier blows up at media*, The Slovak Spectator, 3 December 2024, <https://spectator.sme.sk/politics-and-society/c/robert-fico-meltdown-media-slovakia>. Another example, in October 2024, Fico called reporters “bloodthirsty bastards” and said they are “possessed by the devil”. The Committee to Protect Journalists, *Slovak PM Fico attacks journalists as “possessed by the devil”*, 11 October 2024, <https://cpj.org/2024/10/slovak-pm-fico-attacks-journalists-as-possessed-by-the-devil/>

27 The European Centre for Press and Media Freedom, *Slovakia's Prime Minister launches SLAPP case against leading investigative journalist*, <https://www.ecpmf.eu/slovakias-prime-minister-launches-slapp-case-against-leading-investigative-journalist/>

Another case of a SLAPP concerns a criminal complaint filed by the Minister of Culture M. Šimkovičová against the writer and journalist Michal Hvorecký.²⁸ In his commentary on the *Denník N* website, he described the Minister of Culture as a “neo-fascist”.²⁹ The journalist Hvorecký is also one of the initiators of the petition for Šimkovičová’s resignation as the Minister, which was one of the most massive petitions and was signed by 187-thousand people.³⁰

In relation to this petition, Minister of Culture Šimkovičová has filed a criminal complaint, suspecting unauthorized access to a computer system. This complaint is connected to the alleged manipulation of signatures in the electronic petition calling for her dismissal from the position of minister. The police, who dealt with the criminal complaint, stated several

times that no criminal offence had been committed in this case. The Minister’s action must therefore be viewed as an attempt to intimidate an openly critical part of the public.

Overall, there has been no progress in the implementation of the Anti-SLAPP Directive so far. According to the Government’s Legislative Task Plan, approved on 15 January 2025, the current government plans to transpose the Anti-SLAPP directive in October 2025.³¹

Access to information and public documents

In December 2024, Parliament amended the Access to Information Act and introduced a fee for access to more extensive information. See the ‘Civic Space’ section.

28 *Minister of Culture Šimkovičová filed a criminal complaint against the writer Hvorecký*, Aktuality.sk, 25 September 2024, <https://www.aktuality.sk/clanok/vzVnIVk/ministerka-kultury-simkovicova-podala-trestne-oznamenie-na-spisovateľa-hvoreckeho/>

29 Hvorecký, M., *They entrusted nature and culture to the neo-fascists*, Denník N, 26 October 2024, <https://dennikn.sk/3644355/nedakujeme-robert-a-peter/>

30 The petition “On The Defence of Culture”, https://www.peticie.com/na_obranu_kultury.

31 Minister of Justice and Chairman of the Legislative Council of the Government of the Slovak Republic, *Plan of legislative tasks of the Government of the Slovak Republic for 2025 - draft*, 14 January 2025, <https://rokovania.gov.sk/RVL/Material/30366/1>

CHECKS AND BALANCES

Key recommendations

- *The Government of the Slovak Republic should respect procedures within the legislative process that allow for public participation, for example, to conduct comment procedures on government bills while maintaining the full comment period (not shortening the comment period beyond necessary extent).*
- *In this context, we strongly recommend the Government and the National Council of the Slovak Republic, in particular, to refrain from abusing the fast-track legislative procedure and to submit and discuss draft laws in the standard legislative process.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders'/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

The government consistently overuses or abuses fast-track legislative procedures, as a result of which participation and public consultations in law-making processes are limited. The negotiation of government bills in the standard legislative mode of the process is preceded by an inter-ministerial comment procedure, in which both mandatory commenters (i.e. state organs and public officials required by law to comment on draft bills) and the public are entitled to submit their comments on draft laws, while in the case of public comments, if they are submitted with a certain qualified number of signatures, the sponsor of the bill is obliged to organize a dialogue with the affected public

representatives. In the fast-track legislative procedure, there is no obligation to carry out a comment procedure, thus bypassing the public discussion and the possibility of affecting the content of the proposed changes.

The circumvention of the comment procedure and the exclusion of a general discussion with the professional and lay public also often happens in a situation where a government draft law is submitted in the standard legislative process but with a fast-track comment procedure. The comment periods are so short that commenters or the public are de facto substantially restricted in their right to comment on the proposals submitted. While the requirement to conduct a comment procedure within a standard legislative process is thus formally fulfilled, in practice the discussion is limited.

Rules and use of fast-track procedures and emergency procedures (for example, the percentage of decisions adopted through emergency/urgent procedure compared to the total number of adopted decisions)

In June 2024, we published a short analysis in VIA IURIS,³² in which we assessed that the current ruling coalition has been using (or in this case abusing) the institute of the fast-track legislative procedure more than the government that was in power at the time of the COVID-19 pandemic. At the time of publishing our analysis, almost 60% of government-sponsored laws were discussed and adopted in the fast-track legislative procedure.

According to statistics published by the National Council of the Slovak Republic, in 2024 (up to 12 December 2024), out of a total of 141 bills (both government and parliamentary), as many as 29 bills were passed in the fast-track legislative procedure, all of which were government-sponsored bills.³³

The fast-track legislative procedure is regularly used without meeting the legal conditions for it, in particular the existence of extraordinary

circumstances where fundamental human rights and freedoms or security may be at risk or where there is a threat of significant economic damage to the state. During 2024, the current government coalition adopted several major proposals in the fast-track legislative procedure,³⁴ where the existence of one of the grounds for the procedure was at best declared in the proposal, although factually questionable. The fast-track legislative procedure has also been used for the biggest and most significant legislative changes of 2024 - for example, the major amendment to the criminal laws (mentioned in the sections above).

In the case of the amendment of the criminal laws, given the gravity of the changes and the process by which they were adopted, a motion for review of compliance was filed with the Constitutional Court, not only in relation to the substance of the changes, but also the legislative process, which took the form of a fast-track legislative procedure. In February 2024, the Constitutional Court adopted a 'landmark ruling' PL. ÚS 3/2024³⁵ in which it stated that, although the National Council violated Act no. 350/1996 Coll. the Rules of Procedure of the National Council of the

32 VIA IURIS, *Laws are passed without debate, even worse than during the pandemic*, 14 July 2024, <https://viaiuris.sk/aktuality/zakony-sa-schvaluju-bez-diskusie-este-horsie-ako-pocas-pandemie/>

33 National Council of the Slovak Republic, Brief overview of the legislative activity of the National Council of the Slovak Republic in the IX. electoral period (as of 12 December 2024) (Stručný prehľad legislatívnej činnosti NR SR (k 12. 12. 2024)), <https://www.nrsr.sk/web/Dynamic/DocumentPreview.aspx?DocID=557911>

34 Overview of laws passed in the fast-track legislative procedure available at: <https://www.nrsr.sk/web/?sid=zakony/prehľad/slk>

35 Constitutional Court (Slovak Republic), Decision of 28 February 2024, No. PL. ÚS 3/2024, https://www.ustavnysud.sk/documents/d/portal/pl_us_3_2024_112

Slovak Republic several times in the process of adopting the amendment in question and the fast-track legislative procedure was not sufficiently justified, these violations did not acquire constitutional intensity and therefore did not amount to an incompatibility with the Constitution. The Court's decision implies that laws can bypass professional discussions as long as a parliamentary debate is allowed. This formalistic view poses a danger to democracy, potentially reducing violations to rare extreme cases, like obstructing opposition debate entirely. The Court's decision, which did not deem frequent shortcuts in legislative processes unconstitutional, could have severe consequences for future legislative practices. It raises concerns about adherence to the principles of a rule of law state, mainly when evident legal breaches occur during significant policy changes. Notably, the Court acknowledged that the parliament did not meet the criteria for an urgent process as required by law, with the government's reasons insufficient for expedited changes.³⁶

Independent authorities

The parliament passed an amendment to the Competence Act, first in December 2023 and again in January 2024 following a presidential veto. This change allows the government to directly appoint the heads of key regulatory bodies, including the Health Care Surveillance Authority, the Statistical Office, and

the Antimonopoly Office. Previously, these appointments involved the president, who acted on government recommendations approved by parliament. Under the new amendment, the government will appoint these leaders based on proposals from individual ministers. The reform increases the appointees' accountability to the executive branch, reduces the independence of these institutions, and heightens political influence. Members of the ruling party have already taken these positions. In January 2024 the former president challenged the amendment's constitutionality, and the matter is still pending before the Constitutional Court of the Slovak Republic.³⁷

Events in Slovak Information Service

Although not independent, but important, an institution of state security - Slovak Information Service (SIS) - has been taken over by the ruling coalition. The SIS has been without a director since August 2023, after its former director M. Aláč was dismissed due to suspicion of committing the offence of setting up a criminal group, abuse of public authority and obstruction of justice. After his dismissal, the SIS director's seat remained vacant until August 2024, when a new SIS director, P. Gašpar, was appointed - by the newly elected President P. Pellegrini.

However, until his appointment, Gašpar had been the de facto head of the SIS since March

36 Zeitgeist no. 6 "Another day, another amendment of the Penal Code" available at: <https://viaiuris.sk/aktuality/another-day-another-amendment-of-the-penal-code-zeitgeist-6/>

37 Constitutional Court (Slovak Republic), No. PL. ÚS 4/2024

2024. Already in February 2024, the current government had proposed to appoint him as director, but the then President Z. Čaputová rejected this nomination, saying that she would leave it to the newly elected president. Čaputová refused to appoint Gašpar on the grounds of being charged with giving a false statement and lying under oath. He was also suspected of providing a €60,000 bribe to police officers. As the president refused to appoint Gašpar as the director proposed by the government (the SIS director shall be appointed by the president on the proposal of the government), the government decided to circumvent this step by amending the SIS Statute (thus circumventing not only the law but also the Constitution)³⁸, according to which all management competences were entrusted to the SIS Deputy - and the government subsequently appointed P. Gašpar as SIS Deputy.³⁹ The SIS Statute is a secret document, so it has not been possible to ascertain the extent of the powers actually conferred on Gašpar. Following the presidential

elections and the election of Mr. Pellegrini (as the then chairman of the coalition party HLAS-SD), Gašpar was duly appointed Director of the SIS by President Pellegrini in August 2024.⁴⁰

Electoral framework

Regarding the European Parliament elections held in 2024, the organization Election Watch in its final report on observing elections in EU countries⁴¹ states that the lack of remote voting options, such as postal voting, limits accessibility for citizens abroad and those unable to reach polling stations, which could be considered as an impairment to the fair nature of elections. The report also reflects on concerns about civic space restrictions, including barriers to election observation and intimidation of civil society groups, seeing them as challenging the inclusivity and transparency of the electoral process.⁴² However, an obligation to make scans of polling station result protocols

38 According to Article 102(1)(h) of the Constitution, the President appoints and dismisses the heads of the central organs, senior state officials and other officials in such cases as may be prescribed by law. The Law on the Slovak Information Service provides that the Director of the Slovak Information Service is appointed by the President on the proposal of the Government. Therefore, this is a circumvention not only of the law, but also of the Constitution.

39 Peter Dlhopolec, *News Digest: Slovakia's top spy agency run by a "bad guy" now*, The Slovak Spectator, 7 March 2024, <https://spectator.sme.sk/politics-and-society/c/news-digest-slovakias-top-spy-agency-run-by-a-bad-guy-now>

40 TASR, President Pellegrini appointed Pavol Gašpar as the director of the Slovak Information Service, SME, 26 August 2024, <https://domov.sme.sk/c/23375320/pavol-gaspar-sis-riaditel-vymenovanie.html>

41 The Election Watch.EU, Election Assessment Mission, Final Report, European Parliament Elections 6 - 9 June 2024, September 2024, <https://www.wahlbeobachtung.org/wp-content/uploads/2024/09/election-watch.eu-eam-ep-elections-2024-final-report-300924.pdf>

42 "Multiple civic space infringements have been reported for a number of MS including BG, HR, and FR, with the most concerning trends in HU and SK." Ibid., pg. 43.

and to make them available online can be seen as a positive development.⁴³ According to the report, uneven enforcement of campaign finance rules have weakened safeguards against undue influence.⁴⁴

Rules on political advertising and their enforcement

In the 2024 Slovak presidential campaign, Minister of the Interior Matúš Šutaj Eštok engaged in activities that raised legal concerns. He sponsored paid posts on social media platforms, notably Facebook, criticizing presidential candidate Ivan Korčok and labelling him as a ‘candidate of war’. The posts were disseminated widely, potentially reaching up to a million voters.

In response, organizations MEMO 98, the Stop Corruption Foundation, and Transparency International Slovakia took action. In October 2024, they filed complaints with the State Commission for Elections and the Ministry of the Interior, asserting that the minister’s actions violated electoral laws prohibiting third-party campaigning for or against a

candidate. They emphasized that such conduct is considered an offense, with potential fines up to €30,000 for individuals.⁴⁵

The initial response from state authorities was dismissive. The District Office Bratislava, under the Ministry of the Interior, halted proceedings against Minister Eštok, stating that his actions did not breach the law. The office contended that the minister was merely expressing personal opinions, not attempting to influence voters’ decisions. This rationale was criticized by the NGOs as flawed and indicative of systemic failure, given the office’s direct subordination to the minister in question.

Subsequently, in December 2024, the District Prosecutor’s Office Bratislava reviewed the case and found the district office’s decision unlawful, recommending its annulment. The prosecutor’s office highlighted that the minister’s posts were clearly intended to influence the ongoing political campaign against Ivan Korčok. They criticized the district office for uncritically adopting the minister’s defense without proper legal assessment. This development underscored the necessity for independent

43 MEMO98, *The Election Watch.EU: PRELIMINARY STATEMENT - Higher political stakes for European elections demonstrate clear need to further harmonise and safeguard democratic practices.*, pg. 2, 10 June 2024, <https://memo98.sk/uploads/2024/sk-ep-volby-2024/election-watch/eam-election-watch.eu-preliminary-statement-2024.06.10.pdf>

44 *The Report by the Election Watch.EU* (see footnote no. 37), pg. 32.

45 MEMO98, *The State Elections Commission is being asked for its opinion on the Minister’s presidential Meta (non) campaign*, 17 October 2024 <https://memo98.sk/article/Statnu-komisiu-pre-volby-ziadame-o-stanovisko-k-prezidentskej-Meta-nekampani-ministra>

and professional oversight to maintain public trust in electoral fairness.⁴⁶

These events highlight the challenges in ensuring impartial enforcement of electoral laws in Slovakia, especially when high-ranking

officials are involved. The active role of civil society organizations and the prosecutorial review were pivotal in addressing potential breaches and upholding the integrity of the electoral process.

CIVIC SPACE

Freedom of association

The biggest threat in 2024 for the non-governmental and non-profit sector in Slovakia is the proposed amendment to Act No. 213/1997 Coll. on non-profit organisations providing services of general interest, which was submitted to the Parliament in March 2024 and is currently still in the legislative process.⁴⁷

The proposed law against NGOs is a means of the current government to intimidate and

restrict the NGO sector and is a part of the fight against ‘enemy’ and ‘harmful’ NGOs,⁴⁸ foundations, non-profit organizations or civil associations.

The law as originally proposed was initially equivalent to a Russian-style ‘foreign agents law,’ in which the government proposed mandatory labelling of NGOs with the term ‘foreign-supported organisation’ if the organisation receives a minimum of €5,000 in funding

46 MEMO98, *The prosecutor’s office considers the District Office’s decision in the case of the “(non)campaign” of M. Šutaj Eštok to be illegal. It proposes to annul it*, 19 December 2024, https://memo98.sk/article/Prokuratura-nam-dala-za-pravdu-Rozhodnutie-OU-vo-veci-nekampane-ministra-Sutaja-Estoka-povazuje-za-nezakonne-Navrhuje-ho-zrusit_Peter_Dlhopolec_Minister_of_Interior_appears_to_be_untouchable_his_smear_campaign_goes_unpunished, *The Slovak Spectator*, 12 November 2024, <https://spectator.sme.sk/politics-and-society/c/news-digest-interior-minister-appears-to-be-untouchable-his-smear-campaign-goes-unpunished>

47 Members of the National Council of the Slovak Republic (M. Garaj, R. Huliak, D. Kramplová, A. Lučanský), *Proposal of the members of the National Council of the Slovak Republic Rudolf HULIAK, Dagmar KRAMPLOVA, Milan GARAJ and Adam LUČANSKÝ for the issuance of an act amending and supplementing Act No. 213/1997 Coll. on non-profit organizations providing generally beneficial services, as amended, and amending and supplementing certain acts*, 27 March 2024 <https://www.nrsr.sk/web/Default.aspx?sid=zakony/zakon&ZakZborID=13&CisObdobia=9&CPT=245>

48 These labels are mainly used by politicians of the ruling coalition of SMER-SD, HLAS-SD and SNS and are part of a long-term smear campaign against the civic sector.

from abroad. In parallel with the mandatory labelling, the bill:

- imposed an obligation to publish a list of all contributors who have provided the organisation with funds above €5,000 (not only foreign, but also domestic),
- imposed an obligation to publish annual reports, which the Ministry of the Interior has the power to review, and if it finds ‘irregularities’, the Ministry could dissolve the organisation - the Ministry of the Interior would thus gain the power to dissolve a civil association that violates the law by failing to correct irregularities in the annual report or to pay a fine for failure to use the label,
- in the event of failure to comply with these obligations, organisations would face a fine or a proposal for dissolution.⁴⁹

In November 2024, however, the content of the proposed law changed when the governing coalition dropped the NGO labelling requirement and instead introduced stricter regulation of lobbying through an amendment

to the draft law, which has not been approved yet.⁵⁰ According to the latest version of the draft amendment of the original legislative proposal, any NGO that in any way comments on laws or undertakes activities to improve any public policy in Slovakia would be considered a lobbyist. Under the bill, any organization that directly or indirectly lobbies public officials would be required to register and publish a quarterly list of all its ‘lobbying’ activities, i.e., activities by which public officials could be influenced. In this wording, this could be basically any activity of NGOs that could be considered lobbying - e.g. writing a petition, collecting signatures for a public appeal, a post on social networks, commenting on draft laws. The draft law does not contain a further definition or specification of what would be considered lobbying. As a consequence of not complying with the law, there will be fines up to €10 000 for a breach or even abolition of the organization by directly the Ministry of Interior or a court decision (depending on the legal form of the NGO).

This bill is even more damaging and threatening than the proposal to label NGOs as ‘foreign agents’ and is a bullying and discriminatory

49 VIA IURIS, *Slovak Anti-NGO bill analysis*, 25 April 2024, <https://viaiuris.sk/aktuality/analyza-zakona-proti-mimovladkam-slovak-anti-ngo-bill-analysis/> Platforma pre Demokraciu, *The mostly asked questions on the Anti-NGO bill*, 29 April 2024, <https://www.predemokraciu.sk/2024/04/29/casto-kladene-otazky-o-zakone-proti-mimovladkam/>

50 Iryna Uias, *News digest: SNS switches from ‘foreign-funded’ label for NGOs to lobbying regulation*, *The Slovak Spectator*, 22 November 2024, available at: <https://spectator.sme.sk/politics-and-society/c/news-digest-sns-switches-from-foreign-funded-label-for-ngos-to-lobbying-regulation>

tool intended to be used against the active civil sector in order to silence it.⁵¹

Freedom of peaceful assembly

The Act No. 166/2024 Coll. on certain measures to improve the security situation in Slovakia, which was adopted in response to the assassination attempt against Prime Minister R. Fico in May 2024, went into effect 15 July 2024. The act in question, also known as the 'Lex Assassination', amends, inter alia, Act No 84/1990 Coll. on the right of assembly, which constitutes the basic legal regulation of the right of assembly in Slovakia. The amendment introduced a number of restrictions on the right to assemble:

1. The law extended the prohibition to hold an assembly within a 50m radius of the buildings and objects of certain state bodies and institutions. Before the amendment, it was prohibited to hold an assembly within 50m of the Parliament building; under the new legislation, this prohibition also applies to buildings and premises in which the Government deliberates or exercises its functions, the seat of the President, the seat of the Constitutional Court, and

also to premises which are designated by law for the housing of the President, the Chairman of Parliament and the Prime Minister.

2. The law has expanded both mandatory and optional grounds for the prohibition of assembly by a municipality - these grounds are defined relatively broadly and may constitute a disproportionate interference with the right to assembly. The amendment prohibits assemblies to be held in the vicinity of the dwelling of the person to whom the purpose of the assembly is related (typically politicians) or assemblies that would restrict the right to privacy or peaceful enjoyment of the dwelling of a large number of persons (i.e. assemblies held, for example, in residential areas). Under the amendment, the municipality will also be able to prohibit assemblies where the related restrictions on the right to privacy, peaceful enjoyment of the home or transport would be seriously contrary to the interests of the population.

3. An amendment to the law imposed an obligation on the police to inform the municipality of the reasons for the prohibition of the assembly. In the original wording of the government proposal, this information obligation

51 The Public Defender of Rights R. Dobrovodský also opposed the above-mentioned draft law on lobbying of NGOs, pointing out its unconstitutional nature. Róbert Dobrovodský, *NGOs do not deserve to be pilloried*, The Public Defender of Rights, 11 December 2024, <https://vop.gov.sk/mimovladne-organizacie-si-nezasluzia-byt-vystavene-na-pranier/> VIA IURIS (2024), *NÁHUBKOVÝ ZÁKON*, Facebook, 27 November 2024, https://www.facebook.com/viaiuris/posts/pfbid0qYGWYuZhsy64Cai6PsT3Rbi3Btc2ppnm9wKUhhhhM9kfgQnF-CzMfddLd3ZSnBYDcl?locale=sk_SK Lucia Osvaldová, *No foreign agents, but lobbyists: the coalition tightens the law on NGOs, wants to know who is informed by them*, Denník N, 25 November 2024, <https://dennikn.sk/4324888/ziadni-zahranicni-agenti-ale-lobisti-koalicia-sprisuje-zakon-o-mimovladkach-chce-vediet-kto-si-k-nim-chodi-po-rozumy/>

of the police was coupled with the obligation of the municipality to prohibit an assembly in relation to which it had been informed of the reasons for its prohibition – if the municipality did not prohibit such an assembly and the reasons for the prohibition got fulfilled, the Ministry of the Interior was entitled to impose a fine of up to €16,500 on that municipality. This regulation posed a significant risk of creating a ‘chilling effect’ on the conduct of assemblies due to the potential risk of more frequent bans on assemblies by municipalities wishing to avoid liability and penalties. However, that proposal did not ultimately become part of the final law.

4. The law expanded the list of offences against the right of assembly and increased the sanctions in case of their commission.

The ‘Lex assassination’ was adopted in the fast-track legislative procedure, i.e. without discussion.

In connection with its content and the legislative procedure, a motion was submitted to the Constitutional Court to review its compatibility with the Constitution.⁵²

Freedom of expression and of information

Restrictions on access to information

In 2024, there were two major restrictions on the right to information.

1. Limited information

In November 2024, Act No. 367/2024 on Critical Infrastructure was adopted, which indirectly amended Act No. 215/2004 Z.z. on the protection of classified information, and introduced a new concept of ‘limited information’ into the legal order.

According to the wording of the Act, any information concerning a) classified information, b) an organisation or activity of a public authority or an entity performing tasks in the field of ensuring public order, security or defence of the Slovak Republic, which is capable of endangering, limiting or preventing the performance of these tasks, c) information on critical infrastructure, the disclosure of which would jeopardise the provision of an essential service to critical entities, may be limited information.

The essence of the regulation of limited information is that public authorities may themselves decide that certain (any) information will be classified as limited due to its sensitivity, as a result of which public access to such

52 The motion to the Constitutional Court was filed by the opposition MPs and was received by the Constitutional Court on 12 December 2024 and registered under reference no. 3295/2024.

information will be denied. The limited information regime will not be subject to Act No 211/2000 Coll. on free access to information, but to the Classified Information Protection Act, whereas the Classified Information Protection Act does not contain any procedural safeguards or remedies against the designation of information as limited. This legal regime benefits in particular the representatives of the public authorities concerned, who do not need to have a security clearance (as is the case with classified information) to access such information.

The legislation in question therefore effectively restricts the public's right to information.

The originally published draft of the Critical Infrastructure Act contained a much more vague definition of limited information and, together with other proposed changes, represented a much more serious interference with the right to information. VIA IURIS, together with other organizations, managed to submit a mass comment against the legislation in question,⁵³ collect almost 15,000 signatures and participate in the dialogue with the

drafters (Ministry of Interior, National Security Office) and, as a result, managed to negotiate the modification of limited information in a form that affects the right to information in a slightly less invasive way.⁵⁴ Nevertheless, the legislation as such continues to pose a significant risk of abuse and undue restriction of access to information.

2. Extraordinary extensive search for information and charging for information requests

On 10 December 2024, the Parliament approved an amendment to Act No. 211/2000 Coll. on free access to information, vetoed by the President,⁵⁵ which introduces the concept of “extraordinary extensive search for information” and the related possibility for obliged persons⁵⁶ to ask for payment in advance for such searches. The amended law does not contain any definition of the term ‘extraordinary extensive search for information,’ nor does it contain any criteria for defining this term, nor does it contain any criteria according to which the amount of the requested payment for the cost of providing the information should be calculated. Moreover, the amended law does

53 VIA IURIS, *Hromadná pripomienka k návrhu Zákona o kritickej infraštruktúre*, <https://www.mojapeticia.sk/campaign/hromadna-pripomienka-k-navrhu-zakona-o-kritickej-infrastruktúre/b63b34d3-9e83-4536-9284-2ba7ce04a724>

54 VIA IURIS, *OCHRÁNILI SME PRÁVO NA INFORMÁCIE. AJ VĎAKA VÁM*, Facebook, 20 August 2024, <https://www.facebook.com/viaiuris/posts/pfbid0qt9LDnvgqwPhvWSPHv2TAWs9ugDvEm3ooaD9wBH-v2Sxxn1zx1krmCXa3qK9ovuC5l>

55 *Justification of the President's veto on the amendment to Act No. 211/2000 Coll. on free access to information*, 26 November 2024, <https://www.prezident.sk/upload-files/19117.pdf>

56 State organs and institutions, municipalities, natural and legal persons with a decision-making powers and other subjects prescribed by law.

not contain any appeal mechanism against the calculation of the amount of the fee - currently the law only foresees the possibility to appeal against the decision to (not) disclose information.

The amended law creates an imbalance between the parties, favours the obliged person through the vagueness of the regulation by allowing the obliged person to arbitrarily determine what it considers to be information that is particularly extensive to search and at the same time, without any set criteria for calculation and reasons, gives the obliged person the possibility to claim payment for the costs reasonably incurred in accessing it. Restricting access to information by making payment conditional in advance, even without the possibility of lodging an appeal against such a notification, is inadmissible and contrary to the Constitution of the Slovak Republic, the Aarhus Convention and settled case-law.⁵⁷

Attacks and harassment

Intimidation / negative narratives / smear campaigns / disinformation campaigns

A continuous smear campaign by government politicians (especially the ruling parties SMER-SD and Slovak National Party/SNS) against NGOs and the media continues. Part of this campaign includes the aforementioned legislative proposals to restrict, narrow and intimidate civic space – in particular the aforementioned pending ‘anti-NGO’ draft law.

The campaign against NGOs and the media includes in particular the dissemination of narratives about their hostile activities against the current government and against Slovakia as such, using various labels such as political NGOs, foreign agents, etc.

In October 2024, investigative journalist X. Makarová, working at the Stop Corruption Foundation (Nadácia Zastavme Korupciu), became the target of an attack by government politicians. The day after the Foundation reported on its findings about the tender for the reconstruction of the premises of the Government Office of the Slovak Republic, which was

57 The Public Defender of Rights R. Dobrovodský also spoke out against the amendment to the Act on Free Access to Information, which introduced an ‘extraordinary extensive search for information’ and the associated charging of fees for such requests for information, and announced the filing of a motion to the Constitutional Court to review the compatibility of this amendment with the Constitution. More at: Public Defender of Rights, *I am submitting a motion to assess the constitutionality of the amendment to the Freedom of Information Act. This is a step towards maintaining a high level of access to information for citizens*, 10 December 2024, <https://vop.gov.sk/podam-navrh-na-posudenie-ustavnosti-novely-zakona-o-slobode-informacii-je-to-krok-k-zachovaniu-vysokej-urovne-pristupu-obyvatelov-k-informaciam/>

won by the company of a businessman associated with the oligarch N. Bödör, the Chairman of the Government Office of the Slovak Republic, J. Gedra, together with the current MEP for the SMER-SD party, E. Kaliňák, came to the headquarters of the Foundation to confront X. Makarová personally.⁵⁸ E. Kaliňák recorded the entire encounter on his phone without permission, so that they could disseminate this material on their personal social networks and those of the SMER-SD party,⁵⁹ which had also paid for advertising on the post. Hundreds of supporters of the SMER-SD party reportedly subsequently praised the politicians' attacks and the incident.⁶⁰

Administrative harassment

Several ministries as well as the Office of the Government have launched audits of subsidies provided to NGOs under the previous government. A number of organisations are facing extensive or repeated audits in relation to money received from the state. Also, one of

the main donation portals (fundraising platforms) Donio.sk is currently facing an ongoing tax audit.

In August 2024, the government accused the Milan Šimečka Foundation of benefiting from an 'atypical' contract with the Slovak Arts Council. The Foundation, which aims to promote a tolerant Slovakia and has run multicultural projects for 19 years, disputed claims of irregularities, noting ten other organizations secured similar contracts.⁶¹ Opposition leader Michal Šimečka, whose late grandfather inspired the foundation, dismissed the connections drawn by the government stressing his family has no ties to it. The Foundation's director, Veronika Fishbone-Vlčková, called for an apology,⁶² asserting the public benefit of their activities and refuting claims of misuse of funds. In response, Prime Minister Robert Fico accused the Šimečka family of misusing public funds,⁶³ targeting opposition leader Michal Šimečka and non-governmental organizations linked to his family.

58 Stop Corruption Foundation, *CITIZENS ARE COLLECTING THEM ON THOUSANDS OF SALARIES*, Facebook, 3 October 2024, <https://www.facebook.com/NadaciaZastavmeKorupciu/posts/pfbid0YvpPkgDFKd-1mhfaZxsxmRYRWYZ2ZHHvLE83b8HhYnQdeao7CbRdo13tetEYcNeU1>

59 Ibid.

60 The Investigative Centre of Jan Kuciak, *Na začiatku októbra sa investigatívna novinárka Xénia Makarová stala terčom útoku vládných politikov.*, Facebook, 7 November 2024, <https://www.facebook.com/icjk.sk/posts/pfbid02Ld8Rf27tzYxvFbLusfHJcY8UFhJEAjCjVKpud1sYuypm3nFqd7LZ5gtADNzQygYAl>

61 Peter Dlhopelec, *Culture minister fabricates claims to discredit NGO*, The Slovak Spectator, 15 August 2024, <https://spectator.sme.sk/politics-and-society/c/news-digest-culture-minister-fabricates-claims-to-discredit-ngo>

62 Lucia Osvaldová, *Director of the Milan Šimečka Foundation: they are threatening to drown us in the Danube*. Interview, Dennik N, 26 August 2024, <https://dennikn.sk/4162757/riaditelka-nadacie-milana-simecku-vyhrazaju-sa-nam-utopenim-v-dunaji/>

63 Henrieta Mihalková, *Fico wants to dismiss Šimečka, he brings his family and money from the funds on him. Your wife also got a grant, the PS leader says. He is filing a lawsuit*, Pravda, 23 August 2024, <https://spravy.pravda.sk/domace/clanok/721553-fico-chce-odvolat-simecku-navrh-predlozi-na-koalicnej-rade-podporu-sns-ma-caka-co-povie-hlas/>

Public participation

Rules and practices on dialogue with civil society

Earlier this year, in April 2024, the Minister of the Interior of the Slovak Republic, Matúš Šutaj Eštok, dismissed five members of the Government Council for Non-Governmental Non-Profit Organizations without providing a reason. These experts had the status of ‘personality of the civil sector’ in this government advisory body. This step happened after the unjustified removal of Filip Vagač from the post of Plenipotentiary⁶⁴ for the Development of the Civil Society, in March 2024. Despite the tradition of the dialogue between the government and civil society, Minister Šutaj-Eštok appointed a new plenipotentiary, Simona Zacharová, without any discussion with the representatives of the Chamber of the NGOs. The ruling government does not approve of open governance. Hence, it aims to eliminate citizen participation at all levels, limit financial resources for the non-governmental sector, and indiscriminately and systematically attack civil society.⁶⁵

In July 2024, the government approved a significant change regarding selecting representatives for committees overseeing EU funds,⁶⁶ shifting this responsibility away from NGOs to the government’s plenipotentiary for civil society development. This decision surprised and angered NGO representatives, who argued it undermines the partnership principle outlined in Slovakia’s Partnership Agreement with the European Commission. Marcel Zajac, Vice-Chair of the Council for NGOs, condemned the government’s rationale, claiming it was based on false pretenses that the NGOs could not agree on nominations. The government’s commissioner, Simona Zacharová, defended the move, citing challenges in finding qualified representatives knowledgeable about EU fund operations in the NGO sector. Slovakia has nearly €13 billion available in this new programming period, but the disbursement process has been slow. Historically, selecting NGO representatives was a collaborative process, ensuring diverse input, but the recent changes mark a radical shift in this practice. The new process excludes the NGO chamber. Zajac argues that this change diminishes the role of NGOs as partners in the process and suggests a potential bias toward selecting

64 The plenipotentiary is a government commissioner who acts as a link between the government, including the public administration and the civil society sector.

65 VIA IURIS, Zeitgeist no. 3 “Slovak Anti-NGO bill passed the first reading” 8 May 2024, <https://viaiuris.sk/aktuality/slovak-anti-ngo-bill-passed-the-first-reading-zeitgeist-3/>

66 Minister of Investments, Regional Development and Informatization; Minister of the Interior, *Application of the partnership principle in the area of European Union cohesion policy in the conditions of the Slovak Republic and the system of managing cooperation and partnership with civil society representatives in the preparation, implementation and monitoring of European Union funds in the programming period 2021–2027*, 09 July 2024, <https://rokovania.gov.sk/RVL/Material/29774/1>

favoured organizations.⁶⁷ After the engagement of the EU Commission representation in Slovakia and advocacy campaign done by the NGO representatives in the monitoring committees, the government declared that the original process of nomination of the representatives under the principle of partnership with civil society will remain the same.

These steps are part of a broader and systematic restriction of civil society space and rights by the current government, which is openly hostile against the civic space and the NGOs sector.

Rules on access to and participation in consultations and decision-making processes

In September 2024, the Parliament adopted an amendment to Act No. 24/2006 Coll. on Environmental Impact Assessment (EIA), which significantly restricted public participation in construction approval. Despite potential effects on local traffic and air quality, municipalities will no longer be informed about potentially impactful projects in neighbouring areas, such as quarries or incinerators. The law has removed the mandatory assessment requirement for specific

investments, raising concerns about the increased negative impact of construction projects on communities. These changes severely limit the rights of citizens and municipalities to comment on and influence development plans.⁶⁸ There are also concerns about the involvement of developer representatives in drafting the new legislation, potentially compromising its impartiality.⁶⁹

In November 2024, the Parliament adopted an amendment to Act No. 543/2002 Coll. on Nature and Landscape Protection, which changed the position of the public and environmental organisations in proceedings relating to the issuance of exemptions or consents for construction or logging in protected areas, felling of trees in towns and villages, or the killing of protected animals. Until the amendment came into force, the public and organisations were parties to the proceedings; after the amendment, they will be only interested parties – an interested party has a narrower range of rights compared to a party to the proceedings, for example, it cannot lodge an appeal. This change is contrary at least to the Aarhus Convention, which requires effective public participation in environmental decision-making processes.⁷⁰

67 VIA IURIS, Zeitgeist no. 6 “*Another day, another amendment of the Penal Code*”, 4 September 2024, <https://viaiuris.sk/aktuality/another-day-another-amendment-of-the-penal-code-zeitgeist-6/>

68 Soňa Makká, *The EIA Act is tailor-made for investors, their representatives at the negotiations spoke for the ministry. The public and municipalities will not know about many projects*, Denník N, 3 October 2024, <https://dennikn.sk/4225323/zakon-o-eia-je-sity-na-mieru-investorom-ich-zastupca-na-rokovaniach-hovoril-za-ministerstvo-verejnost-a-obce-sa-o-mnohych-projektoch-nedozevia/>

69 VIA IURIS, Zeitgeist no. 7 “*Fico IV cover their failures with attacks on the opposition*”, 17 October 2024, <https://viaiuris.sk/aktuality/fico-iv-cover-their-failures-with-attacks-on-the-opposition-zeitgeist-7-2/>

70 Denník N, SNS proposes to abolish public participation in proceedings concerning the protection of nature, 30 October 2024, <https://dennikn.sk/minuta/4278903/>

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT —

Systemic human rights violations

Lawsuit for ongoing violations of Roma people

In April 2023, the European Commission (EC) referred Slovakia to the Court of Justice of the European Union for failing to effectively tackle the issue of segregation of Roma children in education.⁷¹ The case has not been resolved yet.⁷²

As informed by the EC, in Slovakia, Roma children are often placed in special schools for pupils with mild mental disabilities and many Roma children who attend mainstream education are also segregated, in separate schools or classes. Amnesty International talks about the ‘two-shift operation’ in which, due to a lack of classroom capacity in some schools, Roma children study only in the afternoons. The ‘two-shift operation’ is a manifestation of systemic

racial discrimination of the Roma community. According to Amnesty International, around 48 schools in Slovakia operating the system are predominantly or exclusively attended by Roma children.⁷³ This is an infringement on EU rules on racial equality (Directive 2000/43/EC) which strictly prohibit discrimination on grounds of ethnic origin in key areas of life, including education.

The Commission started the infringement procedure against Slovakia in 2015. Since then, Slovakia has undertaken a series of legislative reforms and adopted several strategies and action plans to foster Roma inclusion in education, however, the Commission concludes that after careful assessment of those measures, the reforms undertaken are insufficient. The discrimination of Roma children in education persists and Slovakia is, among all the EU member states, the one with the highest Roma segregation in education.⁷⁴

71 The European Commissions, The European Commission decides to refer SLOVAKIA to the Court of Justice of the European Union for not sufficiently addressing discrimination against Roma children at school, 19 April 2024, https://ec.europa.eu/commission/presscorner/detail/en/ip_23_2249

72 CJEU, action brought on 22 December 2023, *Commission v Slovakia* (Case C-799/23)

73 Amnesty International: EU must fight root causes of racial discrimination against Roma children in Slovak education, 8 April 2024, <https://www.amnesty.eu/news/eu-must-fight-root-causes-of-racial-discrimination-against-roma-children-in-slovak-education/>

74 The EC press release (see the footnote no. 65).

By the end of 2026, the ‘two-shift operation’ should be abolished in most of these schools, with funding provided from the Recovery and Resilience Plan, which is funded by the EU.

LGBTQIA+ rights endangered

In August 2024, a draft amendment to Act no. 245/2008 Coll. on education (the Education Act) was submitted to Parliament, which aimed to prohibit “the promotion, dissemination or support of ideas and views relating to non-traditional sexual orientations or gender identities that are inconsistent with an individual’s biological identity”.⁷⁵ The bill provided for the imposition of a fine for violation of the above prohibition.⁷⁶

Although the bill was not approved in Parliament, it is yet another attempt to intimidate the LGBTQIA+ community and restrict their rights.

In April 2024, the Ministry of Health abolished the Standard Procedure for the Diagnosis and Comprehensive Management of

Medical Transition,⁷⁷ which, according to Saplinq, an organization protecting the rights of the LGBTI+ people, the ministry violated the right to bodily integrity of transgender people and gambled with their lives.⁷⁸ The Ministry justified the abolition of these standards on the grounds of application problems in the form of arbitrary actions of some registry offices in the administrative change of gender.

According to Saplinq, the Ministry of Health should have addressed the application problems with the Ministry of the Interior, under whose jurisdiction the registry offices fall, and not abolish a professional document intended for health care providers. Saplinq warns that the abolition of medical standards may in practice encourage registry offices to refuse requests for administrative transcription of gender, jeopardize the availability and quality of health care associated with transition and undermine the uniformity of procedures in the process of providing it, and may also threaten to re-enforce castration and sterilization as a condition for legal transition.

75 National Council of the Slovak Republic, *Proposal of the members of the National Council of the Slovak Republic Rudolf HULIAK, Dagmar KRAMPLOVA, Andrej DANK and Adam LUČANSKÝ for the issuance of an act amending Act No. 245/2008 Coll. on Education (School Act) and on Amendments and Supplements to Certain Acts, as amended*, 23 August 2024, <https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=9&ID=454>

76 The bill and the related documents available at: <https://www.nrsr.sk/web/Default.aspx?sid=zakony/cpt&ZakZborID=13&CisObdobia=9&ID=454>

77 Ministry of Health of the Slovak Republic, *Changes in the care of people with transsexualism*, press release from 2 April 2024, <https://www.health.gov.sk/Clanok?zrusenie-standard-transsexualizmus>

78 Saplinq, *The Department of Health is once again gambling with the lives of transgender people: As of April 3, it is lifting medical standards for trans people*, 5 April 2024, <https://www.saplinq.org/ministerstvo-zdravotnictva-rusi-medicinske-standardy.html>

FOSTERING A RULE OF LAW CULTURE

Contribution of civil society and other non-governmental actors

In 2024, the Slovak National Centre for Human Rights, as a national institution for the protection of human rights and an anti-discrimination institution, again organised the Rule of Law Festival, during which the Centre held a series of discussions on the rule of law and human rights topics and issues. The aim of the festival is “to present and discuss important selected topics related to the rule of law and its observance in Slovakia,” with each of the discussions and events within the festival “dedicated to specific topics related to the rule of law and based on the Slovak National Centre for Human Rights’ Rule of Law 2024 Report and the European Commission’s Rule of Law Report”.⁷⁹ Representatives of NGOs, including VIA IURIS, were also part of the discussions.⁸⁰

In July 2024, we were the only organization invited to discuss the Rule of Law report with the head of the representation of the EU Commission in Slovakia.⁸¹

79 The Slovak National Centre for Human Rights, *We are inviting to the Rule of Law Festival 2024*, <https://www.snslp.sk/aktuality/pozyvame-vas-na-festival-pravneho-stat-2024/>

80 On 15 November 2024, the director of VIA IURIS K. Batková discussed on the topics of legal certainty and protection of human rights. More on the Slovak National Centre for Human Rights Facebook page: <https://www.facebook.com/Strediskopreludskeprava/posts/pfbid026Gx5J6sqr3vyy1KpjHt8Jdb7oHpQKp8693b6wW1vBeDAXJzSDXvLmU7FM9yqLLXl>. On 8 October 2024 our colleague, attorney E. Kováčechová discussed also on the topics of legal certainty and human rights. Available at the Facebook page: <https://www.facebook.com/Strediskopreludskeprava/posts/pfbid02yNFtKHraEbkjMKdH1AbEYCQPk4orpHpgPqA6DLku5rYtn8kfnrtkaPdS5mAroM8W1>

81 E. Mihočková, Š. Bako, *We are at home in the EU: The fight against corruption and media freedom – the rule of law in Slovakia in a tight spot*, SME, 30 July 2024, <https://video.sme.sk/c/23363864/v-eu-sme-doma-boj-proti-korupcii-i-sloboda-medii-pravny-stat-na-slovensku-v-uzkych.html>

CONTACT

VIA IURIS

VIA IURIS is one of the oldest civil society organizations in Slovakia. Since its foundation in 1993, Via Iuris's mission is to make Slovakia a country where people are not powerless against the powerful and before the law, we are equal. Within its mission, Via Iuris promotes rule of law, supports civil society and defends civic rights.

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ABOUT THE AUTHORS

Peace Institute



The Peace Institute is an independent, non-profit research institution founded in 1991 in Ljubljana, Slovenia, by individuals who believed in peaceful conflict resolution, equality and respect for human rights standards.

The Peace Institute (PI) uses scientific research and activism aimed at creating and preserving a society capable of critical thought and based on the principles of equality, responsibility, solidarity, human rights and the rule of law.

The Institute develops interdisciplinary research, educational, advocacy and awareness-raising activities in four thematic fields: human rights and minorities, politics, media, and gender. Acting as a research and civil society organisation, it focuses mainly on Slovenia, but it is also participating in numerous cross-border collaborative actions and comparative research on EU level and in the region of Southeast Europe. The PI acts against discrimination, as an ally of vulnerable groups and in partnership with them. It has carried out projects in support and advancement of the rights of children, women, victims of crimes, defendants in criminal proceedings, Roma communities, “erased people”, refugees and migrants, stateless people, LGBTQIA+ communities, journalists and others.

KEY CONCERNS

Media Environment and Media Freedom

In 2024, progress was made regarding the regulatory framework for safeguarding media pluralism and freedom. Additionally, RTV Slovenia's licence fee increase was approved. However, remaining challenges include media concentration, the public broadcaster's financial crisis, inadequate protection of journalists, and sustainability risks for quality news media.

In 2024, progress was made in developing legislative safeguards for journalists' protection, including a ban on intrusive surveillance software on devices used by journalists (in the media bill) and protection against SLAPP lawsuits (in the anti-SLAPP bill outline). However, no other safeguards were provided. The government increased the RTV Slovenia licence fee. Slovenian Press Agency financing was overhauled in the new media bill. However, no legislative safeguards were adopted to secure long-term independent and de-politicised funding for public service media.

Checks and Balances

The year 2024 was marked by the National Assembly adopting an amendment to the election law granting both active and passive voting rights in elections to persons deprived of legal capacity. On the negative side, like in the past, the government often failed to respect the relevant national provisions governing the duration of public consultations in the process of adopting laws and regulations.

Civic Space


A major 2023 public call for funding the NGO sector was marred by controversy and was annulled in 2024. As a result, successful applicants have been left without awarded funds, so some of them sued the state. Although less frequently, compared to 2023, participants in the 2024 Ljubljana Pride Parade again faced violence. The largest opposition party, winner of the 2024 EP election, and its media ecosystem continued to portray CSOs as being without value for society or blamed them for societal problems.

Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

No major changes have been identified in the field of migration and asylum (procedures, accommodation, reception conditions, integration). Overcrowding of prisons remains a problem, and there is an extremely high percentage of foreigners imprisoned based on Art. 308 of the Criminal Code. Issues persist related to the erased and other long-term tolerated

foreigners residing in Slovenia for years or decades (regarding the acquisition of permanent residency permits), statelessness, and the Roma minority.

State of play (versus 2024)

- N/A* Justice system
- Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

Regression

No progress

Progress



MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *Further strengthen the public media outlets RTV Slovenia and the Slovenian Press Agency: institutional autonomy should be provided, particularly through the de-politicisation of both public media financing models (in the case of RTV Slovenia, for example, the amount of the licence fee is not conditioned on the decision of the government or the parliament but is automatically attached to inflation or other economic indicators).*
- *Comprehensive reform of media legislation to protect public interest in the media sector should be adopted, particularly focusing on the protection of journalists, financial support to quality journalism, protection of media pluralism, transparency of media ownership and finances, strengthening independence and capacities of media regulatory authorities, etc.*
- *A substantial reform of the institutional framework for enforcing media regulation should be introduced either by establishing a separate regulatory authority or by increasing safeguards for the independence of the existing authority (Agency for Communication Networks and Services - AKOS) and by securing sufficient resources to the authority to play an active and efficient role.*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

In 2024, new regulatory powers for Digital Services Coordinators were assigned to the Agency for Communication Networks and Services (AKOS). Accordingly, digital services have been added to a range of sectors already overseen by AKOS – telecommunications, radio frequency spectrum, radio, television and VOD, postal services and railway services.

AKOS serves as an independent regulatory authority functionally separate from the government. However, the appointment of the agency's director as the highest decision-making body remains under the direct control of the government. The current director has been appointed, in 2023, by the current government to a five-year term. Such powers given to the government remain one of the main threats to the independence of the authority in charge of media regulation enforcement. The agency's council is also appointed by the government as a body supervising the work of the agency. It considers the agency's annual plans and reports and can propose the dismissal of the director.

The agency lacks adequate resources to actively and efficiently enforce media regulation. AKOS's human resources in the department tasked with enforcement of media regulation, overseeing radio, television and VOD, remain highly disproportionate compared to the resources of similar media authorities in the EU. Despite additional job positions approved for the department to perform the tasks of promoting media and information literacy in 2024, the size of the department, with 12 employees, remains insufficient.

The concerns regarding inadequate independence, limited resources and the low profile of AKOS as a media authority, continuing for many years because of the agency's leadership, are now growing with the additional tasks of conducting media concentration assessments and enforcing anti-concentration measures assigned to AKOS in the new Mass Media Act drafted by the government on 31 December 2024 and submitted to the parliament for adoption,¹ expected in 2025. After experiencing a

weak and inefficient media anti-concentration regulatory framework in Slovenia for several decades, adding this demanding media regulatory area to AKOS's portfolio has generated sharp criticism from independent experts. They see this merger of powers (of digital services coordinator and media anti-concentration regulator) as a "concentration of regulatory powers never seen in Slovenia".² Moreover, the newly proposed media act provides that the costs of monitoring media concentration carried out by AKOS will be met by the state budget,³ but the financial statement with budgetary consequences attached to the bill does not spell out the size of the funding allocated for the new task, or the number of new staff allocated to the regulatory authority for this purpose. Considering that AKOS's sources of operating revenue for performing other regulatory tasks are independent of the state budget and earned directly by charging different fees to service providers, the state budget as a source of funding for AKOS's new regulatory tasks related to digital services and media

- 1 Government of the Republic of Slovenia, 1884-IX Media Act, 31 December 2024, https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran/!ut/p/z1/04_Sj9CPyKssy0xPLMnMz0vMAfIjo8zivSy9Hb283Q0N3E3dLQwCQ7z9g7w8nAwsnMz1w9EUGAWZGgS6GDn5BhsYGwQHG-pHEaPFAAdwNCBOPx4FUfiNL8gNDQ11VFQEAAAXcoa4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=F866B25D56483727C1258C040045EDDF&db=pre_zak&mandat=IX&ctip=doc.
- 2 M. K., *Priporobe na predlog zakona o medijih: ministrstvo za kulturo naj pripravi bolj dodelano besedilo*, rtvlo.si, 15 October 2024, <https://www.rtvlo.si/kultura/drugo/priporobe-na-predlog-zakona-o-medijih-ministrstvo-za-kulturo-naj-pripravi-bolj-dodelano-besedilo/724413>.
- 3 Government of the Republic of Slovenia, 1884-IX Media Act, 31 December 2024, https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran/!ut/p/z1/04_Sj9CPyKssy0xPLMnMz0vMAfIjo8zivSy9Hb283Q0N3E3dLQwCQ7z9g7w8nAwsnMz1w9EUGAWZGgS6GDn5BhsYGwQHG-pHEaPFAAdwNCBOPx4FUfiNL8gNDQ11VFQEAAAXcoa4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=F866B25D56483727C1258C040045EDDF&db=pre_zak&mandat=IX&ctip=doc.

concentration can be considered a further risk to independence and political interference. In the provisions of the draft Mass Media Act allocating media anti-concentration regulatory powers to AKOS, the government referred to the requirements of the European Media Freedom Act. The concerns mentioned above confirm challenges regarding the implementation of the EU media regulation in the context of national regulatory authorities lacking adequate independence and capacities.

Insufficient resources for the enforcement of media regulations and a lack of activity have been recurrent issues with the Inspectorate for Culture and Media for many years. The draft Mass Media Act only provides for one additional staff with the inspectorate for overseeing the implementation of the requirements laid down in the new law.

There is a functional self-regulatory framework for journalists in Slovenia, with the Journalists' Court of Honour playing a major role. It is a self-regulatory body on a national level operating within the Slovenian Association of Journalists. It is composed of representatives of journalists and the public. A reputed body, it continues a long tradition of setting ethical

standards and handling complaints. The body was co-founded by the Slovenian Association of Journalists and the Slovenian Union of Journalists, and its members are appointed by the founding organisations' representative bodies. It regularly handles complaints based on the Code of Ethics and publicly announces adopted decisions. In 2024, it published decisions relating to 28 complaints (as compared to 24 complaints in 2023 and 16 complaints in 2022). It is funded by both founding organisations.

Resulting from participation in the network of independent Press and Media Councils in Europe,⁴ there have been new initiatives by the Journalists' Court of Honour's founders relating to the possibilities for transforming the Journalists' Court of Honour to a media council that would further involve media publishers in the founding and operations of the self-regulatory body.

The draft Mass Media Act provides, for the first time, that financial support from the state budget is available for the promotion of media self-regulation in the provisions governing public interest in the field of media.⁵ The Slovenian Association of Journalists, however, expressed concerns that the provision in

4 Press Councils.eu, 'Journalists' associations in Greece, Malta and Slovenia to receive consultancy on setting up a press or media council', <https://www.presscouncils.eu/journalists-associations-in-greece-malta-and-slovenia-to-receive-consultancy-on-setting-up-a-press-or-media-council/>.

5 Government of the Republic of Slovenia, 1884-IX Media Act, 31 December 2024, https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zivSy9Hb283Q0N3E3dLQwCQ7z9g7w8nAwsnMz1w9EUGAWZGgS6GDn5BhsYGwQHG-pHEaPFAAdwNCBOPx4FUfNL8gNDQ11VFQEAAAXcoa4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=F866B25D56483727C1258C040045EDDF&db=pre_zak&mandat=IX&tip=doc.

question would only allow for financial support to media outlets, excluding the association effectively implementing media and journalists' self-regulation.⁶

The Ombudsman of the public broadcaster RTV Slovenia handles complaints based on professional standards and other self-regulatory documents of RTV Slovenia. It is an active and responsive self-regulatory body, handling thousands of complaints every year, most of them related to TV Slovenia programmes and its news programmes. The Ombudsman is appointed by the governing body of RTV Slovenia for five years, and its independence is guaranteed by internal acts. In 2023, as per the last available annual report, the RTV Ombudsman handled 3,473 submissions, including complaints, questions and opinions. In 2022, the number was higher – 4,757 – due to specific circumstances of the parliamentary, presidential and local elections, all taking place in a single year. In 2021, there were 2,317 submissions handled by the Ombudsman. Annual statistics covering the year 2024 are not available at the time of writing. According to the

Ombudsman's monthly reports, there were around 200 average monthly submissions.⁷

Pluralism and concentration

As highlighted in the past, the situation in Slovenia is characterised by a significant level of media concentration. The dominance of the media group Media24,⁸ owned by the Odlazek family,⁹ is particularly significant in the print and radio market. According to recent research based on the 2022 data, Media24 consist of a network of 20 interconnected companies that are horizontally, cross-sectorally, and vertically concentrated. These 20 companies operate a total of 121 print or broadcast media outlets (34 print editions – dailies, weeklies and lifestyle magazines), 73 radio stations, 12 online portals, and two television stations).¹⁰ Based on data from several research projects,¹¹ the media outlets taken over by this beneficiary owner routinely experience downsizing both in terms of finance and staffing. Even though the current Mass Media Act stipulates that the publisher of a daily newspaper cannot simultaneously be the publisher or co-founder of a radio or television programme,¹² such practices

6 The information provided by Špela Stare, Secretary General of the Slovenian Association of Journalists, 6 January 2025.

7 RTV Slovenia, About the Ombudsman Institute <https://www.rtv slo.si/varuh/o-varuhinji>.

8 Media24 group, <https://media24.si>.

9 Lenart J. Kučić, *Mediji Martina Odlazka (1. del): nepregledna mreža radiev, tiskovin, televizije*, Pod črto, 19 November 2020, <https://podcrto.si/mediji-martina-odlazka-1-del-nepregledna-mreza-radiev-tiskovin-televizije/>.

10 Ribač et al., 2025 (forthcoming).

11 Popback Project, <https://www.popback.org>; Affective Media, <https://www.mirovni-institut.si/en/affective-media/>; MeDeMAP, at <https://www.medemap.eu>.

12 National Assembly of Slovenia, Mass media act (Zakon o medijih), 25 April 2001, and subsequent modifications.

have persisted. This is largely due to the ease of circumventing media law, stemming from inadequate regulation and oversight. Despite a small media market, a large number of media outlets and a high level of concentration, new news media outlets continue to emerge. In late 2024, the new online news media outlet Info360 was launched, for example.¹³

Dozens of media outlets, owned by or affiliated with the Slovenian Democratic Party (SDS), the largest opposition party, operate at both national and local levels, including the seemingly unconnected network of regional online media.¹⁴ These outlets predominantly function as propaganda tools rather than genuine media entities. In most cases, identical content is disseminated through these media outlets and platforms.

Recently, there has been a change in the media group Pro Plus,¹⁵ which dominates the television, video-on-demand, and online media markets. The long-term news programme director (in charge of producing news programmes at both POP TV and Kanal A channels) was replaced. The media group explained the

decision to be a result of a “strategic reorganisation”.¹⁶ There are concerns that this change can negatively impact the editorial standards and policy of the most watched TV news programme in the country.¹⁷

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

The implementation of provisions restricting media concentration has been deficient for many years, as the existing media law fails to effectively prevent media concentration and does not ensure adequate disclosure of media ownership. However, the new draft Mass Media Act introduces new safeguards regarding media concentration, and there are high expectations for the new media law to effectively address and restrict media concentration.

The proposed regulation, which aligns with the principles of the European Media Freedom Act (EMFA),¹⁸ includes a specific media concentration assessment procedure. According to the draft Mass Media Act, the following

13 Info360, <https://www.info360.si>.

14 Lenart J. Kučič, *Infografika: internetni mediji SDS*, 10 December 2019, <https://podcrto.si/infografika-internetni-mediji-sds/>.

15 Pro Plus, <https://pro-plus.si/eng.html>.

16 Patricija Maličev, *Tjaša Slokar Kos, sedma sila v času strateške reorganizacije*, delo.si, 27 December 2024, <https://www.delo.si/sobotna-priloga/tjasa-slokar-kos-sedma-sila-v-casu-strateske-reorganizacije>.

17 Stanka Prodnik, *Zakaj so jo zamenjali?*, mladina.si, 27 December 2024, <https://www.mladina.si/237490/tv-komentar-zakaj-so-jo-zamenjali/>.

18 European Parliament and the Council, Regulation (EU) 2024/1083 of the European Parliament and of the Council of 11 April 2024 establishing a common framework for media services in the internal market and amending Directive 2010/13/EU (European Media Freedom Act), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32024R1083>.

criteria shall be considered in the assessment procedure: the fulfilment of public interest in the field of media, the expected impact of media concentration on media pluralism considering the principle of freedom of expression, the formation of public opinion, and the diversity of programme content and media offerings in the market. Additionally, the online environment and the interests of the parties to the procedure, their connections, or activities in other media companies or related companies whose main activity is not media-related shall be considered. Finally, the expected impact of media concentration on editorial autonomy and the possibilities for expressing different opinions or beliefs and incorporating diverse programme content is evaluated.¹⁹

The state financial support aimed at protecting media and pluralism has continued in 2024. The Ministry of Culture distributes the funds on an annual basis, providing co-financing of programme content production and dissemination important for the pursuit of public interest in the field of media, per Article 4 of the Mass Media Act.²⁰

In 2024, €2.9 million were allocated to the media, with 2025 funds expected to increase to €4.1 million.²¹ Additional increase in financial aid to the media is expected in the coming years.²²

In the draft Mass Media Act,²³ two additional state aid schemes are set out, one supporting the digital transition of print media, and the

19 Government of the Republic of Slovenia, 1884-IX Media Act, 31 December 2024, https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zivSy9Hb283Q0N3E3dLQwCQ7z9g7w8nAwsnMz1w9EUGAWZGgS6GDn5BhsYGwQHG-pHEaPFAAdwNCBOPx4FUfiNL8gNDQ11VFOEAAAXcoa4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=F866B25D56483727C1258C040045EDDF&db=pre_zak&mandat=IX&tip=doc.

20 National Assembly of Slovenia, Mass media act (Zakon o medijih), 25 April 2001, and subsequent modifications.

21 For more information see the government website with the information on 2025 Public call at <https://www.gov.si/zbirke/javne-objave/redni-letni-javni-projektne-razpis-za-sofinanciranje-programskih-vsebin-medijev-v-letu-2025/>.

22 Government of the Republic of Slovenia, 1884-IX Media Act, 31 December 2024, https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zivSy9Hb283Q0N3E3dLQwCQ7z9g7w8nAwsnMz1w9EUGAWZGgS6GDn5BhsYGwQHG-pHEaPFAAdwNCBOPx4FUfiNL8gNDQ11VFOEAAAXcoa4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=F866B25D56483727C1258C040045EDDF&db=pre_zak&mandat=IX&tip=doc.

23 Government of the Republic of Slovenia, 1884-IX Media Act, 31 December 2024, https://www.dz-rs.si/wps/portal/Home/zakonodaja/izbran!/ut/p/z1/04_Sj9CPykssy0xPLMnMz0vMAfIjo8zivSy9Hb283Q0N3E3dLQwCQ7z9g7w8nAwsnMz1w9EUGAWZGgS6GDn5BhsYGwQHG-pHEaPFAAdwNCBOPx4FUfiNL8gNDQ11VFOEAAAXcoa4!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?uid=F866B25D56483727C1258C040045EDDF&db=pre_zak&mandat=IX&tip=doc.

other providing assistance to digital media.²⁴ The draft law lays down the eligibility criteria for all types of state financial support to the media, including respecting the transparency requirements regarding the ownership data, data on state advertising, and the disclosure of conflicts of interest. Furthermore, the schemes exclude the media that are public entities or are under the predominant influence of public entities. The media directly or indirectly owned or founded by political parties are also excluded from funding. Additionally, media outlets whose responsible editors or their substitutes have been convicted in the last two years of the criminal offence of public incitement to hatred, violence, and intolerance under Article 297 of the Penal Code are also excluded.²⁵ The measure follows the policy of demonetising hate speech in the media.

Transparency and media ownership

The newly proposed Mass Media Act adheres to the principles of the European Media Freedom Act (EMFA) in the part aimed at greater transparency of state advertising. According to Article 21 of the draft law, state institutions shall be required to regularly report on all media expenditures, including advertising, campaigns, and other media leases.²⁶ As

stipulated in this Article, public entities and those under their predominant influence are required to submit annual data to the Ministry of Culture by the end of February. The data shall capture the amount of funds or other contributions allocated to media activities in the preceding year, including those for advertising, sponsorship, product placement in media, payments for commissioned content, and donations to publishers. Furthermore, they must report the final recipients (publishers) of these funds or contributions. The ministry is responsible for publicly disclosing this data on its official website. Media outlets are also mandated to report these data in the new Media Register, as detailed in the subsequent section.

The current Mass Media Act includes provisions requiring media outlets to report ownership stakes exceeding 5% in the Media Register,²⁷ which is administered by the Ministry of Culture. Media companies are also required to annually publish data and updates on ownership changes in the Official Gazette. It has been quite common practice for the Media Register to be inaccurate and not to provide updated information on ownership shares in different media companies.

Under the newly proposed Mass Media Act, these issues will be addressed by establishing

24 Republic of Slovenia, 'The Media Act was approved by the government today.', 31 December 2024, <https://www.gov.si/novice/2024-12-31-zakon-o-medijih-danes-potrjen-na-vladi/>.

25 National Assembly of Slovenia, Penal code (Kazenski zakonik), 20 May 2008, and subsequent modifications.

26 Republic of Slovenia, 'The Media Act was approved by the government today.', 31 December 2024, <https://www.gov.si/novice/2024-12-31-zakon-o-medijih-danes-potrjen-na-vladi/>.

27 National Assembly of Slovenia, Mass media act (Zakon o medijih), 25 April 2001, and subsequent modifications.

a new Media Register, as stipulated in Article 20.²⁸ The media will be obliged to submit to the new Media Register the following data: the amount of funds received by the publisher from public entities or entities under their predominant influence, including the total annual amount of funds received from state advertising and the total annual advertising revenue received from public entities of third countries or entities under their predominant influence. Additionally, the data on direct or indirect owners of the publisher, as well as the name of the beneficial owner(s) of the publisher must be submitted by the media to the Media Register.

The proposed legislation thus integrates critical data on state advertising and actual ownership shares for the first time, expecting to enhance media transparency to a large degree.

Public service media

The de-politicised governing model of RTV Slovenia, introduced in 2022 by the current government,²⁹ has enabled the composition of RTV Slovenia's governing body that function independently from the government

influence or influence of other political actors. A 17-member governing council composed of representatives of civil society and RTV Slovenia employees appoints the top management and oversees the public broadcaster's programming and finances. The new governing body has replaced two separate governing councils, which had a combined 40 members, mostly appointed by the parliament and the government. Under the reformed system, the management structure includes a four-member management board, headed by a president.

In May 2024, the president of the management board Zvezdan Martić resigned,³⁰ after disagreements with and resignations of several members of the management board, and after failing to secure the support of the RTV Slovenia governing body for his work plan and the candidates he nominated for the board. The management crisis has been largely influenced by the financial difficulties of the public service broadcaster which further results in cutbacks in production and programming. The new president of the management board, Natalija Gorščak was appointed, in September 2024, with the large support of the RTV Slovenia

28 Republic of Slovenia, 'The Media Act was approved by the government today.', 31 December 2024, <https://www.gov.si/novice/2024-12-31-zakon-o-medijih-danes-potrjen-na-vladi/>.

29 This governing model has been established by amendments to the Act on RTV Slovenia, and were implemented after the Constitutional Court had lifted, in May 2023, the temporary suspension of the amendments. The amendments to the Act on RTV Slovenija were adopted by the current government coalition in 2022 and were endorsed by majority of voters at a related referendum. Aiming at de-politicising the public service broadcaster's governing and management, the amendments mandated various independent institutions and organisations to appoint the governing body of RTV Slovenia.

30 Barbara Eržen, *Zvezdan Martić odstopil: Med večino svetnikov nimam več zaupanja*, delo.si, 28 and 29 May 2024, <https://www.delo.si/novice/slovenija/svetniki-kriticni-do-kurirskega-ravnanja-predsednika-uprave-rtv-slovenija>.

governing body.³¹ The new president of the managing board has been employed at RTV Slovenia since 1996, in recent years holding leading editorial and management positions on TV Slovenia but unlawfully dismissed from the position of TV Slovenia director by the RTV Slovenia director general during the previous government term. The management of RTV Slovenia in the given financial situation, however, is no more than crisis management. For example, the 2025 annual programming and production plan drafted by the RTV Slovenia management in December 2024 has not yet reached the governing body for approval due to difficulties in reconciling the programming and production plan with the financial plan, as required by the regulation.³² The RTV Slovenia is thus subject to temporary funding in proportion to last year's expenditures until the financial deficit is addressed and the annual programming and production plan is approved by the governing body.

In 2024, steps were made towards the preparation of systemic solutions that would protect the Slovenian Press Agency (STA) in the long term from risks to the independence and financial sustainability of the public service media. The proposal for the new law on STA was in public debate until July 2024, after which the draft law was further discussed by the

coordination of various government departments. Although the government representatives claim that the main purpose of the draft law is to strengthen the independence of the governing and management of the STA and to ensure adequate public financing, it remains to be seen which systemic solutions apply to the status, governing and financing of the STA will be included in the bill, as well as when the government will adopt them and send to the parliamentary procedure.

31 T. K. B., T. L. Š., B. R., *Nova predsednica Uprave RTV Slovenija je Natalija Gorščak*, rtvlo.si, 4 September 2024, <https://www.rtvlo.si/slovenija/nova-predsednica-uprave-rtv-slovenija-je-natalija-gorscak/719963>.

32 T. K. B., *Financiranje RTV-ja bo zaradi nesprejetja programsko-poslovnega načrta začasno*, rtvlo.si, 30 December 2024, <https://www.rtvlo.si/slovenija/financiranje-rtv-ja-bo-zaradi-nesprejetja-programsko-poslovnega-nacrta-zacasno/731965>; Barbara Eržen, *RTV Slovenija v novo leto z začasnim financiranjem*, delo.si, 28 December 2024, <https://www.delo.si/novice/slovenija/rtv-slovenija-v-novo-leto-z-zacasnim-financiranjem>.

Editorial standards (including diversity and non-discrimination)

The TV Slovenia news programme editor-in-chief's decision not to green-light an interview with the leading organiser of the 'March for Life' in Slovenia, a campaign opposing abortion, and its airing in the weekly TV show 'Interview' on 20 October 2024, prompted numerous complaints to the RTV Slovenia Ombudsman and an initiative by the opposition MPs for a special session of the parliamentary committee for culture.³³ The editor-in-chief, Polona Fijavž, briefly explained the decision in correspondence with a complaining viewer by saying that the show is devoted to engaging, in 50-minute interviews, those individuals who have made extraordinary achievements in their fields of work, while other news programmes such as late evening news shows allow shorter conversations. The editor-in-chief added that the interviewee in question did not meet the criteria for a 50-minute interview, adding also that the topic polarises the public and the interview format was not adequate for discussion on such polarising topics. The journalist who

proposed the interview further explained that the editor-in-chief referred to the fact that the right to abortion is protected in the Constitution when rejecting his proposal. The Ombudsman, Marica Uršič Zupan, recommended to the RTV Slovenia news programme editorial board to conduct a thorough discussion about the show guests, providing that journalistic autonomy and editorial responsibility are protected, as well as programming and professional standards of RTV Slovenia and constitutionally protected rights. The Ombudsman also called on the news programme editorial board to ensure that decisions and arguments are adequately communicated with the public.³⁴

The implementation of the editorial standards of RTV Slovenia requiring non-discriminatory presentation of the views of the government and the opposition, specified in the RTV Slovenia code of conduct 'Professional Standards',³⁵ was compromised by the decision of the biggest opposition party SDS leader, former Prime Minister Janez Janša, not to take part in the regular interview with the opposition leaders following the interview with the current Prime

33 For more information on this session see the National Assembly website at https://www.dz-rs.si/wps/portal/Home/seje/evidenca/!ut/p/z1/jY_BC0JAFEW_xYVb30sxrN1IYI1FqIk2m-9CYRkEdGS2hr09oVZT4dvdyzoUHDFJgTfYoRdaXssmqMZ_Z8kJPqG-t0DP9hwMTv4xpFsXnZ0NyRdghjYGG9M9RGhhFJnA5vj45wjO8ycANj1PgY1K5u9XSZNbjgCm-I0rroy7Guui79turaOOwzAYQkpRceMqax1_KYXsekg_SWjrOE6fe54QTXsB7VS2Pw!!/dz/d5/L2dBISEvZ0FBIS9nQSEh/?mandat=IX&type=magdt&uid=B856F997CE3B0CA6C1258BE2004DCBD4.

34 RTV Slovenia Ombudsman, Monthly report on the reaction by the public: October 2024 (Mesečno poročilo o odzivih občinstva: Oktober 2024), https://img.rtv slo.si/_files/2024/11/13/46_540182050481635340_mesecno-porocilo-oktober-2024.pdf.

35 For more information see Article 4.2 of the RTV Slovenia Professional Standards at <https://www.rtv slo.si/rtv/kdo-smo/zakoni-predpisi-in-dokumenti/pravilnik-o-poklicnih-standardih/475078>.

Minister, on 16 December 2024, claiming that RTV Slovenia is “a subsidiary of the radical Left and Golob’s government, and thus lost all credibility”,³⁶ so he took part in an interview with a local TV instead.³⁷

The de-politicised governing model of RTV Slovenia was not followed by the introduction of a sustainable, de-politicised RTV Slovenia funding model, as the amount of the monthly licence fee paid remains dependent on the government’s decision. Such a solution continues to represent a possible lever for political pressure.

Although it did not take any action regarding the introduction of systemic solutions for the financial sustainability and independence of RTV Slovenia in 2024, the government took several measures to improve the financial situation of RTV Slovenia in the short term. The previous governments had not approved any increase in the licence fee (paid by households to RTV Slovenia on a monthly basis) for twelve

years, refusing to take into account the significant increase in the labour costs and material costs of RTV Slovenia programming and services, the current government made a decision, in August 2024, to increase the licence fee from €12.75 to €14.02 per month, starting from January 2025.³⁸ This is the highest possible annual increase, as the law stipulates that the government can change the amount of the licence fee by a maximum of 10% if there are valid economic reasons for doing so.³⁹

This increase in the licence fee will increase RTV Slovenia’s income by approximately €10 million per year. In 2024, the government earmarked an additional €10 million for the production of programmes targeting national minorities.⁴⁰ At the time of writing, there are no guarantees that additional support for minority programmes will again be granted in 2025, so a bigger RTV budget might not necessarily materialise in 2025 despite the increased licence fee. Additionally, the wage

36 C. Š., *SDS ni potrdila sodelovanja na RTV, namesto tega Janša gostuje drugje*, nova24tv.si, 16 December 2024, <https://nova24tv.si/sds-ni-potrdila-sodelovanja-na-rtv-namesto-tega-jansa-gostuje-drugje/>.

37 M. M., *Janša ignoriral Rosvito Pesek in Igorja E. Berganta, raje je na VTV solil pamet Velenjčanom*, reporter.si, 17 December 2024, <https://reporter.si/clanek/slovenija/janez-jansa-vtv-intervju-ksenija-rozman-1389197>.

38 Republic of Slovenia, "117th regular session of the Government of the Republic of Slovenia", 28 August 2024, <https://www.gov.si/novice/2024-08-28-117-redna-seja-vlade-republike-slovenije/>; T. L. Š., *Vlada podprla zvišanje RTV-prispevka za 1,27 evra. S prvim januarjem bo ta znašal 14,02 evra.*, rtvslo.si, 28 August 2024, <https://www.rtv-slovenija/vlada-podprla-zvisanje-rtv-prispevka-za-1-27-evra-s-prvim-januarjem-bo-ta-znasal-14-02-evra/719282>.

39 National Assembly of the Republic of Slovenia, Act on Radio and Television Slovenia (ZRTVS-1), 15 July 2005, <https://pisrs.si/pregledPredpisa?id=ZAKO4461>.

40 B. R., *Vlada za RTV Slovenija zagotovila 10 milijonov evrov*, rtvslo.si, 24 April 2024, <https://www.rtv-slovenija/vlada-za-rtv-slovenija-zagotovila-10-milijonov-evrov/706208>; for more information see also the government website at <https://www.gov.si/novice/2024-08-28-117-redna-seja-vlade-republike-slovenije/>.

system reform in the public sector introduced by the government in agreement with trade unions⁴¹ will increase the 2025 labour costs of RTV Slovenia and put the financial sustainability of RTV Slovenia further at risk. Such a financial situation has a detrimental effect on programming, employment policy and management, affecting also audience share, public trust and support. The government's promise of a new law introducing more substantial reform of RTV Slovenia, including reform of the funding model, remains unfulfilled.

In 2024, the government continued the policy of stable financing of the Slovenian Press Agency (STA), introduced already in 2022 when the current government started its term. Then, the government abolished the controversial regulation on the performance of public service by the STA, based on which the previous government carried out the financial depletion of the press agency. The annual agreements on STA funding for the years 2023 and 2024 have provided a slight increase in the contractual amount of funding, and at the same time, the Government Communications Office settled the financial obligations towards

STA that remained open from the previous period.⁴² However, there is a need for systemic solutions that would provide the independence and financial sustainability of STA in the long term. The adoption of the new law with such provisions has been expected, but the procedure of drafting the law, conducting the public consultations⁴³ and finalising the proposal for the government endorsement was not completed in 2024.

Online media

Online media (i.e. “electronic publications”, as per the current Mass Media Act) in Slovenia have been subject to the requirement of registering in the media register administered by the Ministry of Culture ever since the current Mass Media Act was adopted in 2001.⁴⁴ The registration has been a condition for starting dissemination of programming content by any media outlet in Slovenia. The requirement has not been misused for exerting pressure or restrictions by the government so far. Online media are also subject to content regulation and to ‘the right to reply’ provisions. The current Mass Media Act also requires online

41 M. Z., T. L. Š., T. K. B., *Kolektivne pogodbe za uveljavitev plačne reforme v javnem sektorju podpisalo 32 od 45 sindikatov*, rtv slo.si, 15 November 2024, <https://www.rtv slo.si/slovenija/kolektivne-pogodbe-za-uveljavitev-placne-reforme-v-javnem-sektorju-podpisalo-32-od-45-sindikato v/727499>.

42 Data provided by the government to the People's Voice, a coalition of civil society organisations, for the purpose of annual monitoring of the pre-election promises made by the parties involved in the government coalition, October 2024.

43 Republic of Slovenia, 'The proposal for a new Act on the Slovenian News Agency is in public discussion from today', 20 June 2024, <https://www.gov.si/novice/2024-06-20-predlog-novega-zakona-o-slovenski-tiskovni-agenciji-od-danes-v-javni-obravnavi/>.

44 National Assembly of Slovenia, Mass media act (Zakon o medijih), 25 April 2001, and subsequent modifications.

media to adopt rules and make them available to the public in case they publish sections with comments by readers/visitors. “A comment that does not comply with the published rules must be withdrawn as soon as possible after the complaint or not later than one working day after the application”, specifies Article 9, para 3 of the Mass Media Act as amended in 2016.⁴⁵

The Act on the Implementation of the Regulation (EU) on the Single Market for Digital Services (ZIUETDS) came into force in April 2024.⁴⁶ The Agency for Communication Networks and Services of the Republic of Slovenia (AKOS) has been assigned the role of Digital Services Coordinator. In the same year, a newly established department at the agency started performing the tasks laid down in the regulation in question.

Reacting to the draft Mass Media Act, produced by the government in late December 2024, activists with links to the Slovenian Democratic Party, the largest opposition party, launched a campaign against draft provisions relating to the content regulation and

transparency rules (e.g. disclosure of conflicts of interest, the prohibition of inciting violence and hatred, the protection of children, and rules regarding advertising, sponsorship, and product placement) for their application including to influencers on online social platforms. A prominent member of the opposition party’s youth division launched a petition arguing that the proposed law infringes on freedom of speech on social media and that influencers failing to register with the Media Register shall be liable for minor offences,⁴⁷ mobilising thousands of supporters in the process. The Minister of Culture called the petition a textbook example of disinformation, explaining that the draft law does not regard influencers as media outlets and imposes no registration obligations whatsoever on them. According to the minister, only some limited provisions governing content regulation and transparency shall also apply to influencers.⁴⁸

Public trust in media

In Slovenia, the public opinion research on trust in institutions and professions, conducted

45 National Assembly of Slovenia, Mass media act (Zakon o medijih), 25 April 2001, and subsequent modifications.

46 National assembly of Slovenia, Act on the Implementation of the Regulation (EU) on the Single Market for Digital Services (Zakon o izvajanju Uredbe (EU) o enotnem trgu digitalnih storitev), 26 March 2024, and subsequent modifications.

47 For more information see the relevant petition-dedicated website at https://www.peticija.online/proti_vmeavanju_politike_v_medije_in_socialna_omreja.

48 Denis Malačič, Tadej Grešovnik, *Vplivneži zaradi novega zakona na nogah, ministrica: Gre za politično peticijo*, 24ur.si, 6 January 2025, <https://www.24ur.com/novice/slovenija/vplivnezi-zaradi-novega-zakona-na-nogah-ministrica-gre-za-politico-peticijo.html>; T. L. Š., *11.000 podpisov pod peticijo za umik predloga zakona o medijih. Vrečko: Skrajni primer lažnih novic*, rtvslo.si, 6 January 2025, <https://www.rtvsl.si/slovenija/11-000-podpisov-pod-peticijo-za-umik-predloga-zakona-o-medijih-vrecko-skrajni-primer-laznih-novic/732515>.

by Valicon in October 2024, once again revealed positive trends regarding trust in the public service broadcaster RTV Slovenia. The last opinion poll shows that trust in the public service broadcaster increased by three points compared to the October 2023 poll and by six points compared to the March 2024 poll. Despite this improvement, the media sector remains among the least trusted institutions overall.⁴⁹

According to ‘Standard Barometer 102 – Autumn 2024’ research,⁵⁰ a majority of 55% of respondents in Slovenia, seven percentage points up from last year’s poll, believe that Slovenian media provide trustworthy information, while 44% expressed distrust. Additionally, the Organisation for Economic Co-operation and Development (OECD) published the results of the Survey on Drivers of Trust in Public Institutions, in which Slovenia participated for the first time in 2024. According to the survey data, trust in the media is second to last, with only 26% of respondents expressing trust in media. The data show that overall trust in institutions in Slovenia is slightly below the average when countries which participated in the survey are considered.⁵¹

Safety and protection of journalists and other media actors

In 2024, the online platform ‘Report Attack’, coordinated by the Slovenian Association of Journalists and providing a reporting avenue in the event of attacks on journalists, recorded 10 such attacks, including physical attacks, threats of physical attacks, insults, including attacks on personal or professional integrity, and pressures through superiors. The victims included journalists with the national public broadcaster RTV Slovenia, local media, non-profit investigative media, as well as student media. The number of reported attacks was lower in comparison with the recent past, as 15 attacks were reported in 2023, 20 in 2022, while 33 attacks were reported in 2021.⁵²

In 2024, protests organised by opposition parties were the sites of physical attacks against journalists. In December, the car of an RTV Slovenia crew was attacked by supporters of the opposition leader Janez Janša, president of the Social Democratic Party, in front of the Celje court where Janša is standing trial. The supporters gathered to protest what they and the party president called an “injustice system”.⁵³ RTV Slovenia said in a public statement that

49 For more information see Valicon website with poll results at <https://www.valicon.net/sl/2024/11/valicon-ogledalo-slovenije-jesen-2024/>.

50 European Union, Standard Eurobarometer 102 - Autumn 2024, 2024, <https://europa.eu/eurobarometer/surveys/detail/3215>

51 Evropska komisija, Standardni Eurobarometer 102: Oktober 2024 - Nacionalno poročilo: Slovenija, 2024.

52 Journalists' Association of Slovenia, Report an Attack, <https://novinar.com/prijavi-napad/>.

53 The Slovenia Times, *Janša supporters rally against “injustice system”*, The Slovenia times, 12 December 2024, <https://sloveniatimes.com/41906/jansa-supporters-rally-against-injustice-system>.

the attack was an unacceptable behaviour that jeopardises the safety of the public broadcaster's staff. The public broadcaster also called on the authorities to protect journalists: "The physical assault on media workers is an unacceptable and grave attack on media freedom and democratic values. Such acts have no place in our society and the competent authorities must act swiftly and decisively."⁵⁴ The police dealt with the alleged offender at the site and issued a statement afterwards.⁵⁵

Another physical attack took place in December 2024 when a photographer of the weekly magazine *Mladina*, Gašper Lešnik, was attacked by the supporters of the Pensioners' Voice party at one of their protests against the current government. It is a non-parliamentary party established in early 2024 after organising, in 2023, a series of protests, firstly acting as an informal group and then as a formal association. It is led by a former MP of the Slovenian Democratic Party, Pavle Rupar. The participants of the protests under his leadership had already attacked journalists in May 2023. A participant in the December 2024 protest grabbed the photographer's camera strap,

urging him to delete the pictures and refusing to let him go until the police intervened. "I was lucky that the police intervened quickly,"⁵⁶ said the photographer. The Slovenian Association of Journalists condemned both attacks, and their photographers' section wrote: "Photojournalists play a key role in society by documenting events such as protests and thus contributing to public information. Any attack on photojournalists, cameramen or journalists is unacceptable and in complete contradiction with the fundamental principles of freedom of expression and journalistic work."⁵⁷

Apart from the prohibition of installing intrusive surveillance software on any device used by journalists, a provision transposed from the European Media Freedom Act, the proposed draft Mass Media Act introduces no specific measures supporting or promoting the safety of journalists.

The Slovenian Association of Journalists has continued to carry out various initiatives to increase the safety of journalists. They maintain the online platform 'Report Attack' and provide, in cooperation with a law firm, free first legal advice in case of attacks. The 2024 attempts by the association

54 T. L. Š., B. R., *RTV obsoja napad na svoje zaposlene*. "Gre za povsem nesprejemljivo ravnanje.", rtv slo.si, 27 November 2024, <https://www.rtv slo.si/slovenija/rtv-obsoja-napad-na-svoje-zaposlene-gre-za-povsem-nesprejemljivo-ravnanje/728771>.

55 T. L. Š., B. R., *RTV obsoja napad na svoje zaposlene*. "Gre za povsem nesprejemljivo ravnanje.", rtv slo.si, 27 November 2024, <https://www.rtv slo.si/slovenija/rtv-obsoja-napad-na-svoje-zaposlene-gre-za-povsem-nesprejemljivo-ravnanje/728771>.

56 Luka Volk, *Napad na fotoreporterja Mladine*, mladina.si, 27 December 2024, <https://www.mladina.si/237544/napad-na-fotoreporterja-mladine/>.

57 Luka Volk, *Napad na fotoreporterja Mladine*, mladina.si, 27 December 2024, <https://www.mladina.si/237544/napad-na-fotoreporterja-mladine/>.

to obtain the support of the Ministry of Culture for follow-up activities on the safety of journalists such as legal support, training and protocols, and cooperation with safety experts, in recent years financed by the Network of European Foundations, have not been successful. An initiative to establish a working group on the safety of journalists, with the participation of the Ministry of Culture, has been recently considered.⁵⁸

In 2024, journalists with the investigative portal Necenzurirano were targeted by another lawsuit filed by Rok Snežič, a tax expert close to former Prime Minister Janez Janša. He has been using SLAPPs against the Necenzurirano newsroom for four years. In November 2024, in an article published after the 52nd amongst these lawsuits was initiated, the editorial board wrote: “The theatre of the absurd goes on. Rok Snežič continues to file a series of lawsuits, not seeking justice, but wanting to financially drain our media. All the lawsuits he has filed are more or less the same. They are three or four pages long, usually revolving around one sentence from our articles, even though Snežič loses every case. But he does it because he can. He makes a mockery of

everyone, both the courts and the state, for which he is officially a social case.”⁵⁹

In October 2024, the government made steps towards transposing the Anti-SLAPP Directive when it approved the preliminary framework for drafting legislation on preventing SLAPP lawsuits, prepared by the Ministry of Justice.⁶⁰ According to the government statement, the preliminary framework envisages that the legislation will be broader in scope than the directive and will apply not only to cross-border cases but also to national cases. Also, it shall be examined whether the rules against SLAPPs can be laid down in such a manner as to apply to criminal proceedings involving offences related to honour and reputation, and not only to civil proceedings, as required by the directive. General safeguards in court proceedings are expected to include bail, the earliest possible hearing, and support and assistance in the proceedings. In cases of abusive litigation, the bill should provide additional safeguards for the beneficiaries such as the possibility of rejecting such claims as quickly as possible following an appropriate prior substantive assessment, and reimbursement of all legal costs.⁶¹

58 Information on activities of the Slovenian Association of Journalists regarding the safety of journalists were provided by Špela Stare, Secretary General of the association, 6 January 2024.

59 Uredništvo, *Še 52. tožba Roka Snežiča: od nas zahteva 10 tisoč evrov zaradi duševnih bolečin*, necenzurirano.si, 20 November 2024, <https://necenzurirano.si/clanek/novice/rok-snezic-slapp-andreja-katic-tozbe-1383623>.

60 Republic of Slovenia, 'Government confirms starting points for legislation to prevent SLAPP lawsuits', 10 October 2024, <https://www.gov.si/novice/2024-10-10-vlada-potrnila-izhodišca-zakonodaje-o-preprečevanju-slapp-tozb/>. See also A.K., STA, *Vlada nad neutemeljene tožbe za osebe, ki se javno udeležujejo*, 24ur.com, 10 October 2024, <https://www.24ur.com/novice/slovenija/vlada-nad-neutemeljene-tozbe-za-osebe-ki-se-javno-udeležujejo.html>.

61 Republic of Slovenia, 'Government confirms starting points for legislation to prevent SLAPP lawsuits', 10 October 2024, <https://www.gov.si/novice/2024-10-10-vlada-potrnila-izhodišca-zakonodaje-o-preprečevanju-slapp-tozb/>.

CHECKS AND BALANCES

Key recommendations

- *The government ministries should respect national provisions related to public consultations in the process of adopting laws and regulations.*

Process for preparing and enacting laws

The National Assembly of the Republic of Slovenia adopted in 2009 a Resolution on Legislative Regulation.⁶² The resolution was aimed at improving standards for drafting laws and regulations. Among other things, the resolution in question provides for minimum standards as regards public consultations, with a minimum period of 30 to 60 days budgeted for consultation with the public. The Rules of Procedure of the Government of the Republic of Slovenia were later also amended to include the provision related to the minimum period for public consultations.⁶³

The Centre for Information Service, Co-operation and Development of NGOs (CNVOS) established a violation meter, a mechanism to monitor the frequency of violations of provisions related to public consultations. This mechanism captures regulations for which the

resolution stipulates a minimum time for public consultations. It also captures other acts for which such consultations are provided in the government rules of procedure. After taking office from 1 June 2022 until 23 December 2024, data gathered through this monitoring mechanism revealed that the current government did not respect provisions concerning public consultations in 63% of the cases. The former government, in office from 13 March 2020 until 1 June 2022, did not respect the relevant provisions in 70% of the cases.⁶⁴

Electoral Framework

Until 2024, persons who reached the age of 18 did not have the right to vote and to stand for election if the court decided when they were placed under guardianship that they were not capable of understanding the meaning, purpose and effects of elections. On 30 January 2024, the National Assembly passed amendments to the National Assembly Election Act

62 National Assembly of Slovenia, Resolution on legislative regulation (Resolucija o normativni dejavnosti), 19 November 2009.

63 Government of the Republic of Slovenia, Rules of procedure of the Government of the Republic of Slovenia (Poslovnik Vlade Republike Slovenije).

64 For more information see the CNVOS website on <https://www.cnvos.si/stevec-krsitev/>.

which did away with this practice. The adopted amendments grant both active and passive voting rights in parliamentary elections to persons deprived of legal capacity (i.e. persons under guardianship). Provisions governing assistance in voting at polling stations have also been modified to capture more persons with disabilities. The amendment sets out that a voter with long-term physical, mental, intellectual or sensory impairment may bring a person of their choice to the polling station to help them. The assistant must respect the free will of the voter and provide for the secrecy of the vote. The electoral committee decides on the voter's right to an assistant. Already initiated procedures concerning the right to vote in proceedings on the placement of an adult under guardianship that have not yet been legally completed by the date of entry into force of the amendments shall be halted. Legally binding court decisions by which persons of legal age were deprived of legal capacity or over whom the parental rights of parents or other persons were extended beyond their majority, or placing them under guardianship, shall be annulled in the part relating to the deprivation of the right to vote

or to stand as a candidate in an election. The voting register shall be adjusted accordingly. Following the principle of equality, relevant provisions of other election laws have been modified, including, for instance, the Election of Members of the European Parliament from the Republic of Slovenia Act.

Citizens of other EU Member States who have reached the age of 18 by the election day and have a permanent residence permit and registered permanent residence in the Republic of Slovenia or have a certificate of registered residence and a registered temporary residence in the Republic of Slovenia, are no longer obliged to produce evidence that their voting right has not been revoked in the EU Member States. Regardless of possible loss of voting rights in another EU Member State, they are free to fully exercise their right to vote and stand as candidates in EU elections in Slovenia, the same as Slovenian citizens.⁶⁵ The 2024 European Parliament elections were the first election held in Slovenia allowing for the participation of all adults.

65 National Assembly of Slovenia, National Assembly election act (*Zakon o volitvah v državni zbor*), 10 September 1992, and subsequent modifications; National Assembly of Slovenia, Election of Members of the European Parliament from the Republic of Slovenia act (*Zakon o volitvah poslancev iz Republike Slovenije v Evropski parlament*), 25 October 2002, and subsequent modifications.

CIVIC SPACE —

Key recommendations

- *The funding authorities should provide transparent procedures for awarding funds to the NGO sector and should honour the outcomes of procedures where no failures on the part of applicants have been established.*
- *The authorities, including law enforcement, should further provide for the unhindered right to public gatherings and safety at public gatherings. Attention should be given to public gatherings involving historically vulnerable groups of the population. Violent acts against such gatherings should be resolutely prosecuted.*

Freedom of association

In spring 2023, the Ministry of Public Administration launched a public call for funding NGO projects aimed at fostering public participation, enhancing advocacy skills, and promoting democratic governance, transparency, and active citizenship.⁶⁶ The process became controversial, leading to the minister's resignation in autumn.⁶⁷ A group of NGOs, including the national umbrella organisation, criticised the minister over alleged irregularities, such as adjustments to tender conditions after

evaluations, personal and familial ties to fund recipients, and the sudden replacement of the tender commission's head mid-process. These issues eroded trust in public calls for funding and tarnished the NGO sector's reputation.⁶⁸ In January 2024, citing ongoing internal and external oversight procedures, not expected to be completed shortly, the new minister annulled the call entirely,⁶⁹ leaving successful applicants without their promised funding. In February 2024, a coalition of non-governmental organisations (NGOs) in Slovenia filed a lawsuit against the Ministry of Public

66 Republic of Slovenia, 'Public call for proposals for strengthening active civil rights and empowering NGOs in this area - CANCELLED', 24 March 2023, <https://www.gov.si/zbirke/javne-objave/javni-razpis-za-sofinanciranje-projektov-za-krepitev-aktivnih-drzavljskih-pravic-in-opolnomočenje-nvo-na-tem-področju/>.

67 Ministry of Public Administration (2023), Ministrica Ajanović Hovnik se je v odstopni izjavi zahvalila tudi zaposlenim za korektno sodelovanje, public release, 6 October 2023.

68 CNVOS, 'Call for the resignation of Minister of Public Administration Sanja Ajanović Hovnik', 6 October 2023, <https://www.cnvos.si/novice/3416/poziv-k-odstopu-ministrice-za-javno-upravo-sanje-ajanovic-hovnik/>.

69 Ministry of Public Administration (2024), Obvestilo v zvezi z javnim razpisom za krepitev aktivnih državljskih pravic in opolnomočenje NVO, public release, 16 January 2024.

Administration, challenging the annulment of the public call. They contend that the ministry misapplied substantive law governing public calls and violated procedural rules. Specifically, the ministry cited the Public Finance Act and the Rules on Procedures for the Implementation of the Budget of the Republic of Slovenia as the basis for annulment. These provisions, however, do not stipulate the annulment of a call, particularly when recipients have already been selected. Additionally, the ministry failed to invite the selected organisations to conclude contracts concurrently with the issuance of selection decisions, as required by the aforementioned rules. The organisations also claim that the ministry acted arbitrarily, infringing upon their right to equal protection under Article 22 of the Constitution, which prohibits arbitrary conduct by public authorities. They highlight the lack of a proper legal basis for the annulment as evidence of this arbitrariness.

The NGOs are seeking a ruling from the Administrative Court to declare the ministry's annulment decision unlawful and to overturn it entirely. They believe such a judgment would rectify the violations of their rights and help prevent similar infractions in the future. This legal action follows unsuccessful appeals and discussions with the ministry, during which the NGOs emphasised that the annulment decision did not affect individual selection decisions already issued. Despite a meeting with

the Minister of Public Administration, who expressed regret over the situation, the ministry maintained its stance on the annulment, citing the protracted nature of review procedures as justification.⁷⁰ The Administrative Court dismissed the lawsuit but acknowledged that the legal position of the petitioners did not change and that decisions on the selection of projects were still valid. The NGOs once again requested the conclusion of the relevant contracts but were rejected by the ministry, so they are currently planning to file for administrative enforcement. There was also another group of NGOs that were successful in this public call which filed civil lawsuits requesting the conclusion of contracts or payment of compensation. This case is still pending.⁷¹

Freedom of peaceful assembly

Although less frequently compared to 2023, participants in the 2024 Ljubljana Pride Parade were again victims of incidents motivated by hate based on homophobia, biphobia and transphobia. A dedicated report analysed 22 such incidents (21 taking place during the day of the parade – from 10 AM on 15 June to 5 AM on 16 June – and one taking place on 17 June). According to the report, males represented an overall majority of alleged perpetrators. Almost half of the incidents took place between 2 and 6 PM, mostly outside the official sites. Reports indicate that during this

70 Pravna mreža za varstvo demokracije, 'Nevladne organizacije zoper državo vložile tožbo zaradi razveljavitve razpisa', 16 February 2024 <https://pravna-mreza.si/nevkladne-organizacije-zoper-dzavo-vlozile-tozbo/>.

71 Information provided by a representative of PIC – Legal Center for the Protection of Human Rights and the Environment, 13 January 2025.

period, groups of mostly younger men threw eggs at people they suspected were participants in the parade, sprayed them with water pistols, spat on them, poured beer on them, pulled parade flags from their bags and backpacks, insulted them, incited intolerance, and threatened them with physical harm and death. Existing descriptions of incidents suggest that these were organised groups at work. At an official parade site, some participants were further targeted with pepper spray. While in 2023, the police did poorly to protect participants in the parade, the year 2024 saw more appropriate and effective cooperation between organisers and the police. However, according to the report, police officers present at the scene should be able to more effectively assess the circumstances of the incidents and apply aggravating penalties in cases involving intolerance due to, for example, sexual orientation.⁷²

Attacks and harassment

In 2024, the Slovenian Democratic Party, which is the largest opposition party and the second largest party in the current parliament, and the winning party in the last EP elections, as well as its leader continued to be involved in spreading negative stereotypes and in smearing civil society organisations. This seems to be a regular feature of the party's functioning in

recent years. Both by the party and its media ecosystem, civil society organisations and their activities are often portrayed as being without value for society or being blamed for societal problems. Via X (formerly Twitter), a platform which frequently serves such purposes, the party leader often led by example. For example, commenting on the European citizens' initiative for safe and accessible abortion, started by the 8th of March Institute, a Slovenian NGO, the party leader related that it was a Soros campaign for the disintegration of Europe carried out under a simple formula, namely as few births as possible and as many illegal migrants as possible. According to this politician, nothing changes culture, customs, lifestyle and identity more than Great Replacement.⁷³

In another comment regarding the decision on the simultaneous implementation of the EP election and several referenda in Slovenia, the party leader suggested that next time prohibition of budget funding of non-humanitarian NGOs should be on the agenda.⁷⁴ A local youth branch of the party, campaigning for a party candidate in the EP election, posted on X that non-governmental organisations were leftist paramilitaries and that this should be resisted.⁷⁵ In the party's media ecosystem civil society organisations are often depicted, in a formulaic manner, as privileged and parasitic.

72 Eva Gračanin, *Poročilo o incidentih s sovražnim nagibom na Paradi ponosa 2024*, Društvo Parada ponosa, 2024.

73 Janez Janša, X, 23 April 2024, <https://x.com/JJansaSDS/status/1782767764094001648>. The Southern Poverty Law Center, 'The Racist 'Great Replacement' Conspiracy Theory Explained', 17 May 2022, <https://www.splcenter.org/resources/hate-watch/racist-great-replacement-conspiracy-theory-explained/>.

74 Janez Janša, X, 2 May 2024, <https://x.com/JJansaSDS/status/1785974970746622053>.

75 SDM Kranj, X, 13 May 2024, https://x.com/sdm_kranj/status/1789987571964977375.

For example, according to these outlets, public calls for funding CSO activities prove that CSO work is the most profitable activity in the country, and not that of the entrepreneur,

craftsman or worker who earns their daily bread and contributes to prosperity, but those of the parasite — the one who takes from them.⁷⁶

76 C.Š., *Nov – kar 12,6-milijonski – razpis za “nevladnike”*, nova24tv.si, 9 June 2024, <https://nova24tv.si/lnov-kar-12-milijonski-razpis-za-nevladnike/>; Marko Puš, *Parazitske nevladne organizacije*, Demokracija.si, 24 February 2024, <https://demokracija.si/komentar/parazitske-nevladne-organizacije/>; A.H., *Nov “plačni dan” za nevladnike*, nova24tv.si, 9 October 2024.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *The state should establish accessible and fair legal pathways to status regularisation for the erased and other long-term irregularly staying migrants. The state should re-open and review special legislation on access to permanent residence so that all those who were erased can regularise their status, regardless of where they currently reside. Such a law should not impose any restrictive conditions and must have an open deadline for applications. The country should also adopt additional measures of fair redress for all erased people that include compensation and appropriate healthcare, social welfare and pension measures. The state should establish a special legal pathway for regularising the status of long-term irregularly staying migrants, respecting the right to private and family life enshrined in Article 8 of the European Convention for the Protection of Human Rights. Such remedy should provide for an effective pathway to a permanent regularisation of their status, allowing free access to the labour market, health and social care, etc.*
- *The state should establish by law a dedicated statelessness determination procedure (SDP) and protection status in line with norms and good practice, to give full effect to the rights under the 1954 Convention for stateless persons in Slovenia. There should be equal access to SDPs regardless of residence or documentation status, language, gender, ability, age, or any other aspect of identity or circumstances. Also, Slovenia should assume its responsibility and immediately ratify the 1961 Convention on the Reduction of Statelessness.*
- *The state should immediately address the problem of over crowdedness in Slovenian prisons, including by amending Article 308 of the Criminal Code so that sentences are reverted to the level before the 2020 amendment.*

Systemic human rights violations

In 2024, the police processed 44,375 irregular border crossings (97% involving border

crossings from Croatia). The number is 20% lower compared to 2023. Most often, citizens of Syria were processed, followed by citizens of Afghanistan, Morocco and Turkey. In 2024,

42,673 intentions to apply for international protection were recorded,⁷⁷ while 5,173 asylum applications were lodged, and only 175 people were granted international protection in 2024.⁷⁸ 258 persons were accepted by foreign security authorities to Slovenia, while 141 foreigners were handed over to foreign security authorities (most to Croatian) on the basis of international readmission agreements.⁷⁹ The persons returned to Croatia are at risk of violence and inhumane treatment, and further chain return to Bosnia and Herzegovina or Serbia.

In 2024, there was an increased number of very young unaccompanied children – between five and 10 years old – on the move recorded. Last year saw a lack of legal guardians that the state appoints *ex officio* to each unaccompanied minor. Per the relevant legislation, each legal guardian should not represent more than five children, however, in practice, it happens that one legal guardian is representing up to 15 children at the same time. In 2024, there was a lack of new candidates for this function,

and the training for new legal guardians was not even implemented. On a positive note, a special accommodation centre for unaccompanied children was established. Since April, all unaccompanied migrant children (those who have declared their intention to claim asylum, asylum seekers, persons with international protection, and so-called “irregular” migrants) are being placed in the same centre in Postojna.⁸⁰ This facility, however, is not without its significant issues. For example, there is a staff shortage and no separate departments for girls and other particularly vulnerable children have been set up.

Despite lower numbers compared to the previous year, significant difficulties in accommodating people on the move remain, as the existing accommodation facilities are ill-suited to accommodate larger groups of people. There were attempts to open new reception centres in Obrežje and in Središče ob Dravi (close to the Croatian border), but local communities have protested such developments.⁸¹

77 Republic of Slovenia Ministry of Interior, Statistical reports on illegal migration, <https://www.policija.si/o-slovenski-policiji/statistika/mejna-problematika/nedovoljene-migracije-na-obmocju-republike-slovenije>.

78 Republic of Slovenia, Immigration to Slovenia, <https://www.gov.si/podrocja/drzava-in-druzba/priseljevanje-v-slovenijo/>.

79 Republic of Slovenia Ministry of Interior, Statistical reports on illegal migration, <https://www.policija.si/o-slovenski-policiji/statistika/mejna-problematika/nedovoljene-migracije-na-obmocju-republike-slovenije>.

80 Sabrina Mulec, *V Centru za mladoletnike brez spremstva v Postojni vse nared za sprejem prvih stanovalcev*, rtv slo. si, 27 March 2024, <https://www.rtv slo. si/slovenija/v-centru-za-mladoletnike-brez-spremtva-v-postojni-vse-nared-za-sprejem-prvih-stanovalcev/703013>.

81 STA, N1, *Na vlado prinesli skoraj 7.000 podpisov proti azilnemu domu na Obrežju*, n1info.si, 11 April 2024, <https://n1info.si/novice/slovenija/na-vlado-prinesli-skoraj-7-000-podpisov-proti-azilnemu-domu-na-obrezju/>; STA, *Minister Poklukar v Središču ob Dravi: stališče glede azilnega doma niso zblížali*, n1info.si, 9 April 2024, <https://n1info.si/novice/slovenija/minister-poklukar-v-srediscu-ob-dravi-stalisc-glede-azilnega-doma-niso-zblizali/>.

The length of the asylum procedures is another issue of concern. According to Article 47 of the International Protection Act, the decision should be made at the latest within six months from the lodging of the application, or in two months in accelerated procedures. However, in practice, these deadlines are mostly not respected, and the duration of the procedure is seen as one of the biggest shortcomings of the Slovenian asylum system.⁸²

The situation in the field of migration and asylum additionally underlines the need for additional complementary legal pathways that will provide for a safe arrival and access to the international protection procedure. This would save people in need of protection from irregular dangerous and costly routes, often exploitation, violence and risks of trafficking in human beings.⁸³

Related to the state asylum and migration policies is the increasingly higher percentage of foreign nationals in Slovenian prisons, resulting in their considerable overcrowding.⁸⁴

Both are the consequence of the 2020 amendment to the Criminal Code, which significantly increased the penalty for the criminal offence of illegal crossing of the state border or territory — smuggling of undocumented migrants (Article 308).⁸⁵ Among experts and human rights activists there is a concern that the stricter penalties for smugglers (who are dominantly foreigners) imposed by Criminal Code amendments are too high or even draconian and in combination with the prison overcrowding, lack of prison staff and language barriers could lead to a situation when the rehabilitative component of imprisonment is not accomplished. Smugglers account for more than 50% of detainees and around 30% of convicts in Slovenian prisons.⁸⁶ In 2024, the police arrested 524 persons accused of smuggling.⁸⁷

More than half of the 25,671 erased did not receive any form of redress, neither the restitution of the status they were illegally deprived of nor the financial compensation for the damage suffered. The erasure from the register of permanent residents implemented by the

82 Urša Regvar, Lana Krznarič, *Asylum Information Database – Country report: Slovenia – 2023 Update*, ECRE, 2024.

83 Maja Ladić, Iza Thaler, Katarina Vučko, Urša Regvar, *Priporočila za uvedbo programov zasebnega sponzorstva v Sloveniji*, Peace Institute, 2023.

84 Republic of Slovenia, Occupancy of institutions for serving prison sentences and re-education homes, 15 January 2024, <https://www.gov.si/assets/organi-v-sestavi/URSIKS/Dokumenti/Zaporska-statistika/2024/Stevilo-zaprtih-oseb-in-zasedenost-zavodov-dne-15.-1.-2024.pdf>.

85 National Assembly of Slovenia, Criminal Code (Kazenski zakonik), 20 May 2008, and subsequent modifications.

86 Gregor Cerar, *Slovenski zapori so iz dneva v dan bolj prezasedeni, najbolj jih polnijo tihotapci ljudi*, rtvslo.si, 29 January 2024, <https://www.rtvsl.si/slovenija/slovenski-zapori-so-iz-dneva-v-dan-bolj-prezasedeni-najbolj-jih-polnijo-tihotapci-ljudi/696267>.

87 G. K., *Nezakonitih migracij je vse manj, na Zahodnem Balkanu je 80-odstotni upad*, rtvslo.si, 28 December 2024, <https://www.rtvsl.si/slovenija/nezakonitih-migracij-je-vse-manj-na-zahodnem-balkanu-80-odstotni-upad/731800>

administrative bodies of the Republic of Slovenia was an arbitrary act that did not have any basis in the law. With the loss of status, they also lost all economic and social rights tied to permanent resident status. In Slovenia, there are still some erased persons who live in Slovenia without regulated status since the erasure, i.e., over 32 years. The remedies available to them are ineffective. The special law intended for the regularisation of the permanent residence of the erased people expired in 2013 and ever since, there has been no remedy that would provide for a permanent residence status. The distress of the erased people without a status in the country is severe, many of them are elderly and sick people, who, without permanent residence, are ineligible for any form of social protection or benefits.

In 2023, the NGOs Peace Institute, Civil Initiative of Erased Activists and Amnesty International Slovenia, in cooperation with the Office of the President of the Republic of Slovenia, drafted a legal proposal that would provide for status regularisation to all who were erased, removing the obstacles that have prevented many erased persons from regularising

their status in the past. The President of the Republic sent the proposal to the Prime Minister, who in March 2024 responded only in the media.⁸⁸ In the statement, the Prime Minister expressed support for the proposal, but at the same time linked it to the decision of the Constitutional Court, which at the time was deciding on a constitutional appeal against an article of the 2010 Status Act. The Constitutional Court subsequently found no unconstitutionality in this case,⁸⁹ and the government did not respond further to the NGOs' proposal.

In December, the President of the Republic of Slovenia awarded the erased the recognition for work in the field of human rights, which gave some moral satisfaction to at least some of the erased people.⁹⁰ At the award ceremony, the President stated that the award was another attempt to encourage the government to finally address the problems of the erased. In the same month, the government approved amendments to the Social Welfare Act to allow the erased to be placed in crisis accommodation in elderly homes. The new law aims to address urgent cases, including those of the erased who lack residence documents.⁹¹

88 Peter Petrovčič, *Končno poprava krivic izbrisanim?*, mladina.si, 1 March 2024, <https://www.mladina.si/231091/koncno-poprava-krivic-izbrisanim/>.

89 Constitutional Court (Republic of Slovenia), For more information, Decision of 6 February 2024 No. U-I-465/22-13, Up-1038/19-33, <https://www.us-rs.si/odlocba-ustavnega-sodisca-st-u-i-465-22-up-1038-19-z-dne-6-2-2024/>.

90 G. K., *Pirc Musar priznanje za delo na področju človekovih pravic podelila izbrisanim*, rtvslo.si, 10 December 2024, <https://www.rtvsl.si/slovenija/pirc-musar-priznanje-za-delo-na-podrocju-clovekovih-pravic-podelila-iz-brisanim/730138>.

91 Republic of Slovenia, '133rd regular session of the Government of the Republic of Slovenia', 18 December 2024, <https://www.gov.si/novice/2024-12-18-133-redna-seja-vlade-republike-slovenije/>.

Another group without an effective pathway to status regularisation are the long-term irregularly staying migrants, who have resided in the country without status for longer periods. Currently, permission to stay under Article 73 of the Foreigners Act, is the only legal solution to status regularisation of persons, who have resided in the country for years, sometimes decades, and thus created in Slovenia their centre of life interests, social and cultural ties, and possibly (but not necessarily) family ties. Under the cited provision, the police may issue permission of stay to foreigners, whose removal from the country is currently not possible, for limited statutory reasons. Protection of private and family life is not reflected in these statutory grounds. For the majority of the long-term irregularly staying migrants, this solution was ineffective in practice.⁹²

The issue of statelessness has generally been ignored by Slovenian authorities and there is no reliable data about the number of stateless persons residing in the country. While Slovenia is a party to the 1954 Convention Relating to the Status of Stateless Persons, Slovenia did not accede to the 1961 Convention on the Reduction of Statelessness. Slovenia does not have a dedicated statelessness determination

procedure, there is no stateless protection status and no obligation in law to consider a claim of statelessness, nor clear instructions, guidance or training for officials conducting the assessment. Furthermore, in other administrative procedures, the burden of proof is on the applicant, the standard of proof is very high, and legal aid is only available for judicial review. Existing research also shows that people claiming to be stateless will face the presumption of having another citizenship or being able to apply for one in another country and the public officials will refer them to embassies of other countries rather than considering their statelessness as a relevant circumstance. Stateless persons face a heightened risk of arbitrary detention particularly where procedural safeguards to identify and determine statelessness and related barriers to removal are lacking.⁹³ There are also significant gaps in existing safeguards that should protect children from statelessness. The safeguard in nationality law to prevent statelessness among children born in Slovenia relies on the status of the parents rather than the child.⁹⁴ The parents of a stateless child born on the territory must also be stateless (or unknown) for the child to acquire Slovenian citizenship.

92 Human Rights Ombudsman (Slovenia), Annual Report of the Human Rights Ombudsman of the Republic of Slovenia for 2018 (Letno poročilo Varuha človekovih pravic Republike Slovenije za leto 2018), 2019, https://www.theioi.org/downloads/c1kn/Slovenia_HR%20OM_NPM%20Report_2018_EN.pdf.

93 European Network on Statelessness, *Protecting Stateless Persons from Arbitrary Detention: An Agenda for Change*, 2017, https://www.statelessness.eu/sites/www.statelessness.eu/files/attachments/resources/ENS_LockeInLimbo_Detention_Agenda_online.pdf.

94 National Assembly of Slovenia, Citizenship of the Republic of Slovenia act (Zakon o državljanstvu Republike Slovenije), 5 June 1991, and subsequent modifications.

Other systemic issues

The marginalisation of Roma communities is a recurrent issue in Slovenia. They often face exclusion, bias discrimination and are at risk of experiencing hate crime.⁹⁵ They mostly live in segregated settlements, often without basic infrastructure, the majority of them do not complete even primary school and are unemployed.⁹⁶ Around 20% of Roma settlements in Slovenia do not have access to clean drinking water. According to Amnesty International Slovenia, in cases when municipalities are not willing to ensure such access, the state must do so (especially having enshrined the right to water in the Slovenian Constitution).⁹⁷

The year 2024 was marked by a wave of calls for repressive measures against the Roma communities in the southeast municipalities

in Slovenia, which was sparked by an incident in June involving a Roma student in a primary school in the Brežice municipality.⁹⁸ Several local communities have organised protests against Roma, and mayors of several municipalities have also continuously emphasised the criminality and security issues. The Human Rights Ombudsman has publicly condemned their rhetoric.⁹⁹

In the summer of 2024, tensions escalated as locals suggested forming militias,¹⁰⁰ police increased their presence in Roma areas,¹⁰¹ and political parties (SDS, NSi, and SD) sought to use the events to gain political capital.¹⁰² For example, the NSi proposed stricter Criminal Code amendments targeting younger juvenile offenders, which was later rejected.¹⁰³ In August, Ribnica officials conditioned connecting Roma settlements to public water supplies

95 Iza Thaler, Katarina Vučko, Maja Ladić, *Hata crime in Slovenia: National report*, Peace Institute, 2023.

96 For more information see the Amnesty of Slovenia website at <https://www.amnesty.si/romi>.

97 STA, *NGOs wants govt to ensure water access for all Roma villages*, sta.si, 19 November 2024, <https://english.sta.si/3364828/ngos-wants-govt-to-ensure-water-access-for-all-roma-villages>

98 STA, *Calls for govt to tackle Roma issues continue*, sta.si, 4 July 2024, <https://english.sta.si/3318846/calls-for-govt-to-tackle-roma-issues-continue?q=roma>.

99 M. Z., Al. Ma., *Ribniški župan v odzivu na kritike varuha človekovih pravic povabil na "doživetje v romsko naselje"*, rtvslo.si, 27 august 2024, <https://www.rtvsl.si/slovenija/ribniski-zupan-v-odzivu-na-kritike-varuha-clovekovih-pravic-povabil-na-dozivetje-v-romsko-naselje/719183>.

100 STA, *Interior Ministry officials visit communities facing Roma-perpetrated crime*, sta.si, 17 July 2024, <https://english.sta.si/3323286/interior-ministry-officials-visit-communities-facing-roma-perpetrated-crime?q=roma>.

101 STA, *Police bolster presence in Roma-populated areas in Slovenia*, sta.si, 23 August 2024, <https://english.sta.si/3334906/police-bolster-presence-in-roma-populated-areas-in-slovenia?q=roma>.

102 Uroš Esih, *Poslanci so poleti odkrili romsko problematiko*, delo.si, 8 august 2024, <https://www.delo.si/novice/slovenija/poslanci-so-poleti-odkrili-romsko-problematiko>.

103 M. Z., *NSi predlaga zaostritev zakonodaje, po kateri bi bil zapor možen tudi za mlajše mladoletnike*, rtvslo.si, 20 August 2024, <https://www.rtvsl.si/slovenija/insi-predlaga-zaostritev-zakonodaje-po-kateri-bi-bil-zapor-mozen-tudi-za-mlajse-mladoletnike/718507>.

with the Roma meeting obligations and joining integration efforts.

In September 2024, the working group for dealing with the Roma issues,¹⁰⁴ whose task is primarily to monitor the implementation of the National Program of Measures for the Roma for the period 2021-2030,¹⁰⁵ formed a sub-group¹⁰⁶ that focuses on the security issues.¹⁰⁷ This was the first of the three priorities of this working group, the other two being "attending primary school" by Roma children and alleged "inappropriate spending of social welfare allowances".

In October, a round table on the expansion of police powers was organised by the Ministry of the Interior. The Minister stated that there will be no general or radical changes to the relevant legislation but technical updates to the powers will be made, with details remaining unclear.¹⁰⁸

In December, the government endorsed amendments to the Financing of Municipalities Act to reduce development gaps and set out criteria to ensure dedicated spending of funding for Roma communities and a blueprint of measures that include the promotion of integration of Roma children and efforts to improve living conditions in Roma villages.¹⁰⁹ The government plans amendments to several laws, namely the Act on the Roma Community to improve living conditions, the Kindergartens Act to boost Roma children's inclusion before primary school, and the Parental Protection and Family Benefits Act to remove extra child allowance for children under four not enrolled in kindergarten. The Act on Primary Schools would extend Slovenian language and culture lessons for Roma children outside class if needed for other students' safety. Mandatory Roma coordinators in municipalities and changes to enhance police effectiveness in maintaining public order are

104 Republic of Slovenia, 'Interdepartmental working group to address Roma issues in Škocjan', 19 September 2024, <https://www.gov.si/novice/2024-09-19-medresorska-delovna-skupina-za-obravnavo-romske-problematike-v-skocjanu/>.

105 Republic of Slovenia, 'The government adopted the National Programme of Measures for the Roma for the period 2021-2030', 18 December 2021, <https://www.gov.si/novice/2021-12-28-vlada-je-sprejela-nacionalni-program-ukrepov-za-rome-za-obdobje-20212030/>.

106 STA, *Ustanovljena podskupina za romsko problematiko, obenem potekal protest*, n1info.si, 19 September 2024, <https://n1info.si/novice/slovenija/ustanovljena-podskupina-za-romsko-problematiko-obenem-potekal-protest/>.

107 STA, *Focus in dealing with Roma shifts to security*, sta.si, 21 August 2024, <https://english.sta.si/3334274/focus-in-dealing-with-roma-shifts-to-security>.

108 Republic of Slovenia, 'Roundtable: New Police Powers – Yes or No?', 4 October 2024, <https://www.gov.si/novice/2024-10-04-okrogla-miza-nova-policijska-pooblastila-da-ali-ne/>.

109 Republic of Slovenia, '132nd regular session of the Government of the Republic of Slovenia', 12 December 2024, <https://www.gov.si/novice/2024-12-12-132-redna-seja-vlade-republike-slovenije/>.

also being considered.¹¹⁰ In the same month, The Ministry of Cohesion and Regional Development published a call under which €2 million is available for basic utility infrastructure in Roma settlements in the next two years.¹¹¹

110 STA, *Govt lays the groundwork for tackling Roma issues*, sta.si, 12 December 2024, <https://english.sta.si/3373322/govt-lays-the-groundwork-for-tackling-roma-issues>.

111 Republic of Slovenia, 'Public tender for co-financing basic municipal infrastructure projects in Roma settlements in 2025 and 2026', 2 December 2024, <https://www.gov.si/zbirke/javne-objave/javni-razpis-za-sofinanciranje-projektov-osnovne-komunalne-infrastrukture-v-romskih-naseljih-v-letih-2025-in-2/>.

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Xnet is a Barcelona-based collective of activists and specialists dedicated to advancing digital rights and modernising democracy for the digital age. Since its inception in 2008, Xnet has championed internet freedom, transparency, and anti-corruption through a combination of technopolitical tools and advocacy.

KEY CONCERNS

Justice System

Spain did not reform its judicial system, which maintained structures inherited from the dictatorship.¹ In 1985, a governance model controlled by the two main parties was established.² This is the reason for the blockage of the General Council of the Judiciary (CGPJ), blocked since 2018 due to the lack of consensus between the two majority parties.³ In 2024, the European Union intervened to force its

renewal, evidencing systemic failures and the inability to solve the problem.⁴

The Council of Europe's mediation to unblock the renewal of the CGPJ did not result in any substantial changes.⁵ Spain has not adopted measures to ensure that the members of the CGPJ are elected by judges, as requested by the European Commission.⁶ Decision-making remains in the hands of political parties, without transparency or objective criteria, thus perpetuating undue political influence.⁷ While recognising some progress, the European Commission urged further reforms to ensure

- 1 José Manuel Romero, *25 Years of a Judiciary Controlled by the Right (25 años de Poder Judicial bajo control de la derecha)*, *El País*, 11 October 2022, <https://elpais.com/espana/2022-10-11/25-anos-de-poder-judicial-bajo-control-de-la-derecha.html>.
- 2 Guy Hedgecoe, *Spain's Judiciary in the Dock*, *POLITICO*, 26 October 2020, <https://www.politico.eu/article/spains-judiciary-in-the-dock/>.
- 3 Fernando Portillo, *The Conflict of the General Council of the Judiciary (El lío del Consejo General del Poder Judicial)*, *Economist & Jurist*, 13 November 2023, <https://www.economistjurist.es/premium/la-firma/el-lio-del-consejo-general-del-poder-judicial/>.
- 4 *EFE Noticias*, *The European Commission Agrees to Mediate to Unblock the Renewal of the CGPJ (La Comisión Europea acepta mediar para desbloquear la renovación del CGPJ)*, 26 January 2024, <https://efe.com/espana/2024-01-26/comision-europea-mediacion-desbloqueo-cgpj/>.
- 5 *EFE Noticias*, *The European Commission Agrees to Mediate to Unblock the Renewal of the CGPJ (La Comisión Europea acepta mediar para desbloquear la renovación del CGPJ)*, 26 January 2024, <https://efe.com/espana/2024-01-26/comision-europea-mediacion-desbloqueo-cgpj/>.
- 6 Spain, *Organic Law 3/2024 of 2 August, amending Organic Law 6/1985 of 1 July on the Judiciary, and Law 50/1981 of 30 December regulating the Organic Statute of the Public Prosecutor's Office (Ley Orgánica 3/2024, de 2 de agosto, de reforma de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, y de reforma de la Ley 50/1981, de 30 de diciembre, por la que se regula el Estatuto Orgánico del Ministerio Fiscal)*, accessed 28 November 2024, <https://www.boe.es/buscar/doc.php?id=BOE-A-2024-16127>.
- 7 José Marcos, *For a Judiciary Held Hostage (Para un gobierno de los jueces maniatado)*, *El País*, 25 June 2024, <https://elpais.com/espana/2024-06-25/cronologia-cinco-anos-de-infierno-para-un-gobierno-de-los-jueces-maniatado-y-convertido-en-ariete-politico-del-pp.html>.

an effective separation of powers and to avoid future deadlocks.^{8,9}

Anti-Corruption Framework

In Spain, corruption is mainly concentrated in the major political parties and high state institutions,¹⁰ as evidenced by the ‘exile’ of King Emeritus Juan Carlos I. Citizens rarely encounter administrative corruption, but scandals involving the political elite are common.¹¹ Most public procurement is the privilege of large companies close to the government.¹²

Progress in implementing European Commission recommendations, such as the mandatory lobbying register, has been unsatisfactory due to a lack of structural enforcement, which perpetuates systemic problems of opacity, corruption in public procurement and weak whistleblower protection. The proposed recommendations are not structural enough to solve the problem. The problem is systemic.^{13,14}

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- 8 *EFE Noticias, The European Commission Agrees to Mediate to Unblock the Renewal of the CGPJ (La Comisión Europea acepta mediar para desbloquear la renovación del CGPJ)*, 26 January 2024, <https://efe.com/espana/2024-01-26/comision-europea-mediacion-desbloqueo-cgpj/>.
- 9 Spain, Organic Law 3/2024 of 2 August, amending Organic Law 6/1985 of 1 July on the Judiciary, and Law 50/1981 of 30 December regulating the Organic Statute of the Public Prosecutor’s Office (Ley Orgánica 3/2024, de 2 de agosto, de reforma de la Ley Orgánica 6/1985, de 1 de julio, del Poder Judicial, y de reforma de la Ley 50/1981, de 30 de diciembre, por la que se regula el Estatuto Orgánico del Ministerio Fiscal), accessed 28 November 2024, <https://www.boe.es/buscar/doc.php?id=BOE-A-2024-16127>.
- 10 José Abreu, *Political Corruption in Spain: A Descriptive Analysis (2000–2020) (La corrupción política en España: un análisis descriptivo (2000–2020))*, *Documents de treball (Institut de Recerca en Economia Aplicada Regional i Pública (IREA))*, 2022, <https://diposit.ub.edu/dspace/handle/2445/191715>.
- 11 Carlos Rocha Ley and Marta Ley, *The Paradox of Corruption in Spain: There’s Little, but It Makes a Lot of Noise (La paradoja de la corrupción en España: hay poca, pero hace mucho ruido)*, *El Confidencial*, 16 March 2024, https://www.elconfidencial.com/espana/2024-03-16/paradoja-corrupcion-espana-hay-poca-hace-mucho-ruido_3849362/.
- 12 Statista, *Topic: Corruption in Spain (Tema: Corrupción en España)*, accessed 28 November 2024, <https://es.statista.com/temas/3543/corrupcion-en-espana/>.
- 13 Wikipedia contributors, *List of Spanish Politicians Involved in Judicial Cases (Anexo: Políticos de España implicados en casos judiciales)*, *Wikipedia, la enciclopedia libre*, 13 November 2024, https://es.wikipedia.org/w/index.php?title=Anexo:Pol%C3%ADticos_de_Espa%C3%B1a_implicados_en_casos_judiciales&oldid=163568012.
- 14 Sara González and Albert Martín, *Political Parties Do Not Prioritize Passing Anti-Corruption Laws (Albert Martín: ‘Los partidos no priorizan aprobar leyes contra la corrupción’)*, *El Periódico*, 2 November 2024, <https://www.elperiodico.com/es/politica/20241102/corrupcion-partidos-politicos-albert-martin-observatori-ciutada-catalunya-leyes-110893731>.

Media Environment and Media Freedom

Current policies to combat disinformation often focus on restricting freedom of expression rather than addressing the systemic source of the problem: the disinformation practices of powerful actors such as governments, political parties and major donors. This perspective suggests that the measures adopted may distract attention from the real sources of disinformation, with negative consequences for press freedom and freedom of expression.¹⁵

In November 2022, the Council of Ministers approved the Preliminary Draft Law on Transparency and Integrity in the Activities of Interest Groups, still pending in 2024. Access to public information in Spain continues to be limited by obsolete regulations such as the Official Secrets Law of 1968.

Checks and Balances

Although the agreement to renew the General Council of the Judiciary is a step forward, delays in its reform and insufficient progress in areas such as the regulation of lobbying, access to information and conflicts of interest show a weak institutional commitment.

Key recommendations of the European Commission's 2024 report have not been implemented. The lack of progress in areas such as transparency and judicial independence reflects a lack of political will and structural inertia to address systemic problems.

Civic Space

After 15 May 2011, Spain experienced massive social mobilisations supported by up to 80% of the population. In response, the 'Gag Law' was introduced in 2015, restricting fundamental rights. Although its repeal was promised and there was a parliamentary majority for it, the reforms have been insufficient, maintaining regressive provisions that undermine civil rights and trust in political power.¹⁶

The recommendations of the Council of Europe Commissioner for Human Rights, which highlighted how the application of the Gag Law and certain articles of the Penal Code continue to have a negative impact on the exercise of the rights to freedom of assembly and expression, in particular on human rights defenders and journalists, have not been adequately addressed. These measures continue to have a demobilising effect on citizens,

15 Xnet, *#FakeYou: An Activist's Guide to Defeating Disinformation*, Xnet - Internet Freedoms & Digital Rights, 23 July 2024, <https://xnet-x.net/en/fakeyou-disinformation-free-download/>.







16 Amnistía Internacional, *Gag Laws: Analysis of 9 Years of Restrictions and Freedom of Expression in Spain (Leyes Mordaza: Análisis de 9 años de restricciones y libertad de expresión en España)*, accessed 29 November 2024, <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/ley-mordaza/>.

making it difficult for them to fully exercise their democratic rights.¹⁷




Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

A pattern of violations and lack of accountability persists in Spain, including uninvestigated cases of torture, unfulfilled European judgments and a housing crisis that leaves many unprotected.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

- | | | |
|---|---|---|
| Regression | No progress | Progress |
|  |  |  |

17 Commissioner for Human Rights, *Spain: The Review of the 2015 Law on Citizens' Safety Should Result in Better Protecting Human Rights*, accessed 29 November 2024, <https://www.coe.int/en/web/commissioner/-/spain-the-review-of-the-2015-law-on-citizens-safety-should-result-in-better-protecting-human-rights>.

JUSTICE SYSTEM -

Key recommendations

- *Reform the judicial appointment system, avoiding automatic election of judges: the European Union's recommendation that judges elect members of the CGPJ is not the ideal solution in the Spanish context, where the continuity of judicial elites since Franco's rule has perpetuated the lack of transparency and political influence.¹⁸ Any change must be accompanied by profound reforms that democratise access to judicial structures and guarantee impartiality in appointments.*

- *Diversify and strengthen access to and the operation of the judicial career in Spain:*

Specialised judicial training programmes with remuneration, as in France, to reduce socio-economic barriers.¹⁹

A dual system with paid internships, as in Germany, for rotations in different legal institutions.²⁰

A selection model based on merit and professional experience, overseen by independent commissions, as in the United Kingdom.²¹

18 Ricardo Bodas Martín, *European Standards and the Renewal of the CGPJ (Los estándares europeos y la renovación del CGPJ)*, *El País*, 31 January 2024, <https://elpais.com/espana/2024-01-31/los-estandares-europeos-y-la-renovacion-del-cgpj.html>.

19 Rosario Serra Cristóbal, *Some Proposals for Improving the Selective Tests for Access to the Judicial Career: Weighing the Merits and Capacities Required by the Role of Judge (Algunas propuestas de mejora de las pruebas selectivas para el acceso a la carrera judicial. Ponderar los méritos y capacidades que la función de juez demanda)*, *Revista Española de Derecho Constitucional*, no. 130 (18 April 2024): 79–113, <https://doi.org/10.18042/cepc/redc.130.03>.

20 Clara Nuño, *How the Judiciary Is Elected in Other European Countries (Así se elige al gobierno de los jueces en otros países de Europa)*, *Newtral*, 17 November 2020, <https://www.newtral.es/cgpj-reforma-eleccion-jueces-europa/20201117/>.

21 Asociación Judicial Francisco de Vitoria, *Access to the Judicial Career in Spain: Analysis of the Situation and Proposals for Improvement (El acceso a la Carrera Judicial en España: análisis de la situación y propuestas de mejora)*, *AJFV (blog)*, 3 February 2021, <https://www.ajfv.es/el-acceso-a-la-carrera-judicial-en-espana-analisis-de-la-situacion-y-propuestas-de-mejora/>.

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

In July 2024, the OSCE/ODIHR (Office for Democratic Institutions and Human Rights) issued a series of recommendations to strengthen the independence of the judiciary in Spain. These include reforming the process of appointing judges and changing the structure of the General Council of the Judiciary (CGPJ) to ensure a model that is less susceptible to political influence.^{22,23,24}

Political pressure from the European Commission was key to breaking the more than five-year deadlock on the renewal of the General Council of the Judiciary (CGPJ) in July 2024. However, the CGPJ continues to face significant internal difficulties in reaching consensus on a reform of the system for electing its members, a critical point highlighted by both the European Commission and national legal experts.^{25,26}

Promotion of judges and prosecutors

The first problem is the lack of socio-cultural diversity in the profession. The promotion system in the Spanish judiciary has been criticised

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- 22 OSCE Office for Democratic Institutions and Human Rights, *Opinion on the Proposed Changes to the Modalities for Nominating Members of the Constitutional Court of Spain* (Opinion-Nr.: JUD-ESP/459/2023 [NR]), 24 March 2023, <https://www.osce.org/files/f/documents/7/f/540689.pdf>.
 - 23 OSCE Office for Democratic Institutions and Human Rights, *Spain: Opinion on the Proposed Changes to the Modalities for Nominating Members of the Constitutional Court*, accessed 28 November 2024, <https://www.osce.org/odihhr/540689>.
 - 24 Manuel Marraco, *The OSCE Also Criticizes the System for Electing Spain's CGPJ, Which the Government Refuses to Change: 'It Is Extremely Politicized'* (*La OSCE también critica el sistema de elección del CGPJ que el Gobierno no quiere cambiar: 'Es extremadamente politizado'*), *El Mundo*, 30 March 2023, <https://www.elmundo.es/espana/2023/03/30/6425ce27fdddfc9b98b45d0.html>.
 - 25 Silvia Martinez, *The European Commission Celebrates Agreement for the CGPJ Because "It Improves the Situation of the Judiciary in Spain"* (*La Comisión Europea celebra acuerdo para el CGPJ porque "mejora la situación del poder judicial en España"*), *El Periódico*, 25 June 2024, <https://www.elperiodico.com/es/politica/20240625/comision-europea-celebra-acuerdo-cgpi-104279472>.
 - 26 Reyes Rincón, *The Renewed Judicial Council Stumbles Over Reform of the System for Electing Judges at the Edge of the Agreed Deadline* (*El renovado Poder Judicial se atasca en la reforma sobre el sistema de elección de vocales al filo del plazo pactado*), *El País*, 15 January 2025, <https://elpais.com/espana/2025-01-15/el-renovado-poder-judicial-se-atasca-en-la-reforma-sobre-el-sistema-de-eleccion-de-vocales-al-filo-del-plazo-pactado.html>.

for its lack of transparency and the perception of political or personal influence, especially at senior levels.^{27,28} This undermines both judicial independence and public confidence. Although formal procedures based on merit and capacity exist, stricter oversight and additional measures are needed to ensure fairness and transparency.

Remuneration/bonuses for judges and prosecutors

Salaries for judges and prosecutors in Spain do not reflect the workload or responsibility of their roles, which has a negative impact on attracting and retaining diverse talent in the judiciary.^{29,30} In addition, the private pension system managed by mutual entities is inadequate, with pensions in some cases amounting to around €300 per month.³¹

To address ongoing issues in this area, authorities should:

- Reduce workload and efficiency criteria by focusing on quality rather than quantity.
- Update salary structures to reflect the current needs of the justice system. This point refers to the entire chain, up to and including the state security forces or social services.
- Reform the private pension system to allow the transition to the General Social Security System, which guarantees adequate pensions.

27 Ángel Rodríguez, *From the Judiciary to Politics and Back: The Exercise of Jurisdictional Functions After Holding Other Public Offices (De la judicatura a la política y viceversa. El ejercicio de funciones jurisdiccionales después de ejercer otras funciones públicas)*, *Teoría y Realidad Constitucional*, no. 50 (18 December 2022): 185–217, <https://doi.org/10.5944/trc.50.2022.36372>.

28 Maria Angels Gili Saldaña, Nuno Garoupa, and Fernando Gómez Pomar, *Explaining the Behaviour of the Spanish Judiciary: A Critical Review of the Empirical Evidence (Explicando el comportamiento de la judicatura española. Una revisión crítica de la evidencia empírica)*, *Economía Industrial*, no. 398 (2015): 89–101, <https://dialnet.unirioja.es/servlet/articulo?codigo=5405258>.

29 *Infobae*, *The Salary of Judges and Prosecutors in Spain: How Much Do They Earn After the Approved Raise? (El sueldo de los jueces y fiscales en España: ¿cuánto cobran tras el aumento firmado?)*, 23 May 2023, <https://www.infobae.com/espana/2023/05/23/el-sueldo-de-los-jueces-y-fiscales-en-espana-cuanto-cobran-tras-el-aumento-firmado/>.

30 Marcelino Abad Ramón, *How Much Do Court Clerks, Judges, Prosecutors, and Other Court Officials Earn? (¿Cuánto ganan los letrados de la Administración de Justicia, jueces, fiscales y otros funcionarios de los juzgados?)*, *Cinco Días*, 23 January 2023, https://cincodias.elpais.com/legal/2023/01/19/juridico/1674146050_331922.html.

31 *EFE*, *Thousands of Lawyers and Legal Representatives Demand Fair Pensions and a Move to the General Scheme in Madrid (Miles de abogados y procuradores reclaman en Madrid pensiones dignas y pasarse al régimen general)*, *RTVE.es*, 3 February 2024, <https://www.rtve.es/noticias/20240203/miles-abogados-procuradores-reclaman-madrid-pensiones-dignas-pasarse-regimen-general/15954856.sht>.

Independence/autonomy of the prosecution service

On 18 December 2024, the General Council of the Judiciary approved a report on the legal reform transferring the investigation of criminal cases to prosecutors. This opinion considers it “imperative” to strengthen the independence of the public prosecutor’s office beforehand in order to avoid “external interference or pressure”.³²

Independence of the Bar (chamber/association of lawyers) and of lawyers

The legal profession in Spain is characterised by precarious working conditions and inadequate remuneration,³³ which have a negative impact on the quality of legal services³⁴ and perpetuate economic inequalities.³⁵ Moreover, the scales

of access to free justice affect the middle and working classes, who often do not have access to quality legal representation.³⁶ It is necessary to update payment scales for public defenders and provide adequate resources to ensure equal legal representation without economic bias.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

Court fees in Spain can be prohibitive for some citizens, limiting their access to justice. Although a system of legal aid exists, its effectiveness has been questioned, particularly with regard to the remuneration of public defenders. Moreover, these rates and the quality of free legal assistance vary considerably between the Autonomous Communities, creating

32 General Council of the Judiciary (Spain), Report on the Reform of the Criminal Procedure Law (Informe sobre la reforma legal que transfiere la instrucción de las causas penales a los fiscales), approved on 18 December 2024, published on the official website of the General Council of the Judiciary (CGPJ), <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Consejo-General-del-Poder-Judicial/Actividad-del-CGPJ/Informes>.

33 Cristina Alonso Pascual, *How Much Do Public Defenders Earn in Spain? (¿Cuánto se cobra en el turno de oficio en España?)*, *Newtral*, 4 October 2021, <https://www.newtral.es/abogados-de-oficio-retribuciones-justicia-gratuita/20211004/>.

34 Ministry of Justice (Spain), *Asistencia Jurídica Gratuita - Trámites y Gestiones Personales (Free Legal Aid - Personal Procedures)*, accessed 28 November 2024, <https://www.mjusticia.gob.es/es/ciudadania/tramites/asistencia-juridica-gratuita>.

35 Spanish Parliament, Spanish Constitution, Title VI, The Judiciary (*Título VI, Del Poder Judicial*), accessed 28 November 2024, <https://app.congreso.es/consti/constitucion/indice/titulos/articulos.jsp?ini=117&fin=127&tipo=2>.

36 Abogacía Española, *XVIII Report of the Free Legal Aid Observatory (XVIII Informe del Observatorio de Justicia Gratuita)*, accessed 28 November 2024, <https://www.abogacia.es/publicaciones/abogacia-en-datos/observatorio-de-justicia-gratuita/xviii-informe-del-observatorio-de-justicia-gratuita/>.

inequalities in access to justice and violating the right to effective judicial protection.³⁷

The Council of Europe has urged Spain to ensure that judicial proceedings can be conducted in the co-official languages at the request of one of the parties, whether in criminal, civil or administrative proceedings.³⁸ In practice, however, the use of these languages in the judiciary has been hampered by a lack of human resources.

In one case, the United Nations condemned the Spanish state for violating access to justice of a person with intellectual disabilities, who was sentenced to 25 years in prison.³⁹

The main obstacle remains the lack of a robust system of collective redress in Europe that allows citizens to organise themselves without relying exclusively on consumer organisations.

This restrictive model limits access to justice, perpetuates the overburdening of existing organisations and deprives affected people of agile and effective solutions.⁴⁰ Furthermore, the European Parliament and Council Directive on representative actions for the protection of the collective interests of consumers, which should be transposed in 2022 and come into force in 2023, has not yet been transposed in Spain.⁴¹

In Spain, strategic lawsuits against public participation (SLAPPs) target civil society organisations and journalists. The European Union's Anti-SLAPP Directive provides an opportunity to create legal protection at the national level.

37 Spain, Law No. 10/2012 of 20 November regulating certain fees in the field of the Administration of Justice and the National Institute of Toxicology and Forensic Sciences (*Ley 10/2012, de 20 de noviembre, por la que se regulan determinadas tasas en el ámbito de la Administración de Justicia y del Instituto Nacional de Toxicología y Ciencias Forenses*), BOE-A-2012-14301, accessed 28 November 2024, <https://www.boe.es/buscar/act.php?id=BOE-A-2012-14301>.

38 Council of Europe, Secretariat of the European Charter for Regional or Minority Languages, *The European Charter for Regional or Minority Languages: Evaluation Mechanism and Process*, MIN-LANG(2024)17, published on 24 September 2024, <https://www.coe.int/en/web/european-charter-regional-or-minority-languages>.

39 Committee on the Rights of Persons with Disabilities, *Views adopted by the Committee under article 5 of the Optional Protocol, concerning communication No. 69/2019*, adopted on 29 August 2024, <https://www.plenainclusion.org/wp-content/uploads/2024/09/CRPD-C-31-D-69-2019-AUV.pdf>.

40 Xnet, *Danger to Consumer Rights in the EU (Peligro para los derechos de los consumidores en la UE)*, Xnet - Internet freedoms & digital rights, 9 January 2020, <https://xnet-x.net/es/xnet-advierte-peligro-para-derechos-consumidore-si-ue-impide-accion-colectiva>.

41 Xnet, *Registramos en el Congreso una proposición de ley para que se eliminen las trabas a las demandas colectivas y faciliten las acumuladas*, Xnet - Internet, derechos y democracia en la era digital, 20 March 2018, <https://xnet-x.net/es/ley-demandas-colectivas-acumuladas/>.

Featured cases

Luis Ferreirim

The case against Luis Ferreirim, Livestock Director of Greenpeace Spain, relates to complaints about the environmental impact of macro-farms (large-scale livestock farms). Greenpeace has documented environmental pollution, including the discharge of nitrate-rich manure, in projects such as the Odieta Valley in Caparroso (Navarre). These practices are causing serious soil and water pollution problems and are in breach of European directives on nitrates and water quality. Valle de Odieta, the company responsible for the macro-farms in question, filed a lawsuit against Ferreirim in 2021, claiming damages resulting from Greenpeace campaigns such as the collection of signatures and public events against these facilities.

The case is still pending. The company accuses Ferreirim of making allegedly defamatory statements that would affect its honour and reputation, mainly in relation to criticism of spills, animal abuse and other irregularities at

its macro farm in Caparroso. Ferreirim, for his part, defends that his statements are based on official documents and sanction files from the Navarrese authorities.^{42,43}

Jesús Rodríguez Sellés

Catalan journalist Jesús Rodríguez Sellés, known for his work in *The Direct*, is facing a terrorism investigation in Spain. The investigation, linked to his alleged involvement in organising the democratic protests of October 2019, has raised concerns among international press freedom organisations.

Rodríguez Sellés, who moved to Switzerland citing a lack of guarantees to practice his profession and the risk of arbitrary arrest, was declared an official suspect in 2023 after a four-year investigation. Various organisations, such as the International Press Institute (IPI) and the European Federation of Journalists (EFJ), have pointed out that the use of anti-terrorism legislation to criminalise political dissent and journalism poses a risk to freedom of expression and the press in Spain.^{44,45}

42 Greenpeace, *Valle de Odieta S.C.L. Files a Lawsuit Against the Head of Livestock at Greenpeace (Valle de Odieta S.C.L. interpone una demanda contra el responsable de ganadería de Greenpeace)*, Greenpeace España, accessed 2 December 2024, <https://es.greenpeace.org/es/sala-de-prensa/comunicados/valle-de-odieta-s-c-l-interpone-una-demanda-contra-el-responsable-de-ganaderia-de-greenpeace/>.

43 Greenpeace International, *The Spanish Factory Farming Industry Is Trying to Silence Us*, 1 November 2024, <https://www.greenpeace.org/international/story/54303/the-spanish-factory-farming-industry-is-trying-to-silence-us/>.

44 IPI-Admin, *Catalan Journalist Investigated for Terrorism Ahead of Elections*, *IPI.Media (blog)*, 30 April 2024, <https://ipi.media/terrorism-investigation-catalonia-journalist/>.

45 FeSP - Federación de Sindicatos de Periodistas, *European Organizations Call for Review of Terrorism Charges Against Journalist in the 'Tsunami Democrático' Case (Organizaciones europeas piden revisar la acusación de terrorismo contra un periodista en el caso de 'Tsunami Democrático')*, 15 May 2024, <https://fesperiodistas.org/organizaciones-europeas-piden-revisar-la-acusacion-de-terrorismo-contra-un-periodista-en-el-caso-de-tsunami-democratico/>.

Spanish authorities should take on the following recommendations to strengthen the rule of law and fundamental rights protections in this area:

- Implement the EU Anti-SLAPP Directive at the national level and adopt national legislation to protect organised civil society and journalists from abusive claims that restrict freedom of expression.⁴⁶
- Review the use of anti-terrorism legislation to ensure that these laws are not used to criminalise political dissent.
- Strengthen judicial protection mechanisms by providing specific training to judges and prosecutors on the impact of SLAPPs and the importance of ensuring a proper balance between fundamental rights and legal claims.

Resources of the judiciary (human/financial/material)

According to the 2022 report of the European Commission for the Efficiency of Justice (CEPEJ), which assesses the judicial systems of 44 European countries using data from 2020, the average length of court proceedings varies considerably between Member States. In

Spain, the times are higher than the European average in several areas. For example, civil and commercial cases in the Supreme Court take an average of 888 days, compared to the European average of 172 days. Furthermore, the report highlights that although Spain invests more in the judiciary than the European average (0.37% of GDP compared to 0.30%), it has fewer judges (11.24 per 100,000 inhabitants compared to 17.6) and tax officials (5.37 compared to 11.10).⁴⁷ These data suggest that although Spain devotes a significant proportion of its GDP to the judicial system, its efficiency in terms of the duration of proceedings is lower than that of other European countries.

In a positive development, the Organic Law on the Efficiency of the Public Judiciary has recently been approved, which aims to modernise and optimise the judicial structure. The proposed reform of the Spanish justice system focuses on three key pillars: restructuring the judicial organisation with the creation of Tribunals of Instance and Justice Offices in Municipalities, promoting alternative dispute resolution mechanisms (ADR) to reduce court overload, and enhancing consumer and user rights protection through streamlined collective action procedures and digital platforms. However, this law does not address the need to

46 Fundación Española de Abogados Cristianos, *Wikipedia, The Free Encyclopedia (Wikipedia, la enciclopedia libre)*, last modified 31 October 2024, accessed 2 December 2024, https://es.wikipedia.org/w/index.php?title=Fundaci%C3%B3n_Espa%C3%B1ola_de_Abogados_Cristianos&oldid=163329796#Lista_de_causas.

47 Comisión Europea para la Eficacia de la Justicia (CEPEJ), *European judicial systems CEPEJ Evaluation Report , report2022*: <https://rm.coe.int/cepej-report-2020-22-e-web/1680a86279>.

increase human and financial resources, which limits its practical impact.⁴⁸

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

In Spain, the continuous training of judges and prosecutors has been controversial due to the involvement of private entities in its financing, which has led to systemic conflicts of interest.

The following cases were again the subject of debate in 2024:

Case 1: Financing of the SGAE

In 2007, it was reported that the General Society of Writers and Editors (SGAE) was financing courses and conferences for members of the judiciary. This practice provoked criticism from associations that questioned the impartiality of judges who receive training sponsored by entities with a vested interest in copyright litigation.⁴⁹

Case 2: Trips to Cartagena de Indias

In 2009, a taped conversation between then Public Prosecutor Dolores Delgado and Superintendent José Manuel Villarejo mentioned that Spanish judges and prosecutors had participated in trips to Cartagena de Indias (Colombia) where they allegedly had inappropriate encounters with minors. These revelations caused a media scandal and raised questions about the ethical behaviour of those involved.⁵⁰

It is recommended that private funding of judicial training courses be prohibited and that strict controls be put in place to prevent conflicts of interest and ensure transparency in the organisation of judicial training.⁵¹

48 Ministry of Justice (Spain), *Organic Law on the Efficiency of Public Justice Service (Ley Orgánica de Eficiencia del Servicio Público de Justicia)*, BOE, 2023, available at: <https://www.mjusticia.gob.es/es/institucional/gabinete-comunicacion/noticias-ministerio/aplo-judicial>.

49 Ramón Muñoz, *Two Associations Denounce That SGAE Finances the Judiciary (Dos asociaciones denuncian que la SGAE financia al poder judicial)*, *El País*, 17 December 2007, sec. Cultura, https://elpais.com/diario/2007/12/17/cultura/1197846003_850215.html.

50 Javier Suárez, *Delgado Told Villarejo in 2009 That Spanish Judges and Prosecutors Met with Underage Girls During a Trip to Colombia (Delgado contó a Villarejo en 2009 que jueces y fiscales españoles se citaron con menores de edad durante un viaje a Colombia)*, *Moncloa.com*, 26 September 2018, <https://www.moncloa.com/2018/09/26/delgado-jueces-fiscales-menores-1398/>.

51 European Commission, *Ensuring Justice in the EU — A European Judicial Training Strategy for 2021-2024*, COM(2020) 713 final, 2 December 2020, accessed 28 November 2024, <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=LEGISSUM%3A4578250>

Digitalisation (e.g. use of digital technology, particularly electronic communication tools, within the justice system and with court users, including resilience of justice systems in COVID-19 pandemic)

The implementation of systems such as LexNET (created in 2004 and mandatory since 2016), designed to electronically manage communications in the Spanish judicial system, reflects the challenges and shortcomings of public digitisation in Spain. The main problems include:

- **Poor usability and sovereignty:** LexNET is an expensive and inefficient proprietary software that compromises both functionality and democratic principles. This closed system, which cannot be audited in a distributed manner, has generated numerous technical and security problems that make it a poor tool for judicial communication.^{52,53} Under the exclusive control of the Ministry of Justice and not the General Council of the Judiciary, it seriously violates the separation of powers and inappropriately centralises the management of critical information.⁵⁴ The lack

of transparency and flexibility in its design reinforces its opaque nature and demonstrates how poor technological management can undermine fundamental rights and trust in the justice system.

- **Security flaws:** Serious vulnerabilities were identified in 2017, allowing unauthorised access to sensitive judicial documents and compromising the confidentiality and privacy of users.
- **Frequent system crashes:** LexNET service interruptions are a recurring problem, affecting the efficiency of judicial proceedings and causing significant delays.
- **Lack of adequate training:** Many members of the judiciary have not received the necessary training to use digital systems such as LexNET effectively, which limits their uptake and increases resistance to change.

On a positive note, the digitisation of the judiciary has led to initial progress in case management and internal communication. However, persistent problems highlight the need for structural and procedural reform, as well as

52 Manuel Ángel Méndez, *The Great 'LexNet' IT Disaster in Justice That Has Cost More Than 7 Million (La gran 'chupaza' informática de LexNet en Justicia que ha costado más de 7 millones)*, *El Confidencial*, 28 July 2017, https://www.elconfidencial.com/tecnologia/2017-07-28/lexnet-justicia-informatica-ciberseguridad-rafael-catala_1421916/.

53 Manuel Ángel Méndez, *A Failure in the Justice Telematic System Allowed Access to All Open Cases (Un fallo en el sistema telemático de Justicia permitió acceder a todos los casos abiertos)*, *El Confidencial*, 27 July 2017, https://www.elconfidencial.com/tecnologia/2017-07-27/lexnet-justicia-sistema-telematico_1421771/.

54 Patricia Esteban, *Two Lawyers Report LexNet to the European Commission (Dos abogados denuncian LexNet ante la Comisión Europea)*, *Noticias Jurídicas*, accessed 28 November 2024, <https://noticias.juridicas.com/actualidad/noticias/11127-dos-abogados-denuncian-lexnet-ante-la-comision-europea/>.

greater investment in government technology and professional training.⁵⁵

Additional improvement could be realised by implementing the following recommendations:

- **Ensure digital sovereignty:** Adopt free software and open standards that allow distributed auditing of systems and ensure their transparency, reliability and usability by professionals and citizens.⁵⁶
- **Invest in training:** Implement mandatory and updated training programmes on digital systems for all justice professionals.⁵⁷

Fairness and efficiency of the justice system

Length of proceedings

Legal proceedings in Spain tend to be excessively long, leading to frustration and mistrust of the system. In Cádiz, for example, some trials are scheduled to take place in 2029, while urgent cases, such as fast-track trials for gender

violence or disability cases, face unacceptable delays. This situation reflects structural problems such as overburdened courts and staff shortages.

There are also significant delays in the execution of sentences, affecting both victims and public confidence in the justice system. A notable example in 2024 is the case of the documentary *How to Hunt a Monster*, where a paedophile sentenced to 23 years in prison remained free, meeting his victims regularly, while his sentence remained unexecuted. This case reveals a serious systemic failure in the administration of justice and highlights the need for urgent solutions.⁵⁸

One positive development is the adoption of Organic Law on the Efficiency of the Judiciary; see the section on judicial resources (human/financial/material) for further discussion.

55 Bartolomé Procuradores, *LexNet: Improvements in Its Development for an Efficient Digital Justice (LexNET: mejoras en su desarrollo para una eficiente justicia digital)*, Bartolomé Procuradores (blog), 8 December 2017, <https://bartolome-procuradores.com/blog/lexnet-mejoras-eficiente-justicia-digital/>.

56 Simona Levi et al., *Proposal for a Sovereign and Democratic Digitalisation of Europe: Reflection Paper*, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2861/671958>.

57 Javier Campillo, *Digital Efficiency in the Administration of Justice (Eficiencia digital en la Administración de Justicia)*, Auris Advocats, 3 January 2024, <https://aurisadvocats.com/eficiencia-digital-administracion-justicia/>.

58 Miguel Triviño Dorta and Irene Irene, 'How to Catch a Monster' or Why the Judicial System Fails Those Who Need It Most ('Cómo cazar a un monstruo' o por qué el sistema judicial falla a quienes más lo necesitan), *El Independiente*, 20 September 2024, <https://www.elindependiente.com/espana/tribunales/2024/09/21/como-cazar-a-un-monstruo-o-como-el-sistema-judicial-falla-a-quienes-mas-lo-necesitan/>.

Respect for fair trial standards including in the context of pre-trial detention

Spain's Audiencia Nacional is a unique court in the Spanish judicial system, with national powers and specialised in crimes of major importance such as terrorism, drug trafficking, corruption and economic crimes. This institution has no direct equivalent in other European countries, which makes it unique in the European judicial landscape. For instance, in France, serious crimes are tried by ordinary courts, such as the Courts of Grand Instance or the Courts of Appeal, without the existence of an institution comparable to the National Court. Germany has specialised courts for various matters, but no body with centralised and national jurisdiction such as the National Court. Italy has specialised courts but no court with the characteristics and scope of jurisdiction of the National Court.

The Audiencia Nacional was created in 1977 after the dissolution of the Court of Public Order, an institution of the Franco dictatorship.^{59,60} Its creation responded to the need to deal with complex and highly significant crimes, particularly those related to ETA terrorism. Over time, its jurisdiction has been extended to include cases of corruption, economic crimes and international affairs.⁶¹

This model has sparked debate, as its centralised and specialised nature is considered an “anomaly” compared to the judicial systems of other European countries.⁶² Some jurists argue that its existence can lead to duplication and conflicts of jurisdiction with other courts, and question its compatibility with the principles of decentralisation and separation of powers.⁶³

The ECtHR has condemned Spain on several occasions for failing to adequately investigate

59 Francisco Javier Díaz González, *Los delitos de terrorismo y la creación de la Audiencia Nacional (1977-1978)*, in *La transición a la democracia en España: Actas de las VI Jornadas de Castilla-La Mancha sobre Investigación en Archivos*, Guadalajara, 4-7 de noviembre 2003, Vol. 2 (COMUNICACIONES: CD-Rom), ISBN 84-931658-9-1, p. 22, Asociación de Amigos del Archivo Histórico Provincial de Castilla La Mancha, 2004, <https://dialnet.unirioja.es/servlet/articulo?codigo=3410467>.

60 Consejo General del Poder Judicial (CGPJ), *History of the National Court (Historia de la Audiencia Nacional)*, accessed 28 November 2024, <https://www.poderjudicial.es/cgpj/es/Poder-Judicial/Audiencia-Nacional/Informacion-institucional/Historia-de-la-AN/>.

61 Amnistía Internacional, *Human Rights in Spain (Los derechos humanos en España)*, accessed 28 November 2024, <https://www.amnesty.org/es/location/europe-and-central-asia/western-central-and-south-eastern-europe/spain/report-spain/>.

62 Martina Alcobendas, *The Exception of the National Court: A Court Without Equivalent in Europe (La excepción de la Audiencia Nacional: un tribunal sin equivalente en Europa)*, *Ara en Castellano*, 2 February 2024, https://es.ara.cat/politica/excepcion-audiencia-nacional-tribunal-equivalente-europa_1_4927849.html.

63 José María Asencio Mellado, *La Audiencia Nacional: una visión crítica*, *Documentos de trabajo (Laboratorio de alternativas)*, no. 29 (2003): 1, <https://dialnet.unirioja.es/servlet/articulo?codigo=8573057>.

allegations of torture in relation to the actions of the Audiencia Nacional.

We urge national authorities to consider the following recommendations regarding the Audiencia Nacional:

- **Redistribute powers:** Study the possibility of abolishing the National Court and redistributing its powers between specialised and ordinary courts, following the model of other European countries.
- **Strengthen international monitoring mechanisms:** Effectively implement the recommendations of bodies such as the

Council of Europe and the European Court of Human Rights, particularly with regard to respect for fundamental rights and judicial efficiency.

Other

The Court of Justice of the European Union (CJEU) has ruled that the period for claiming mortgage charges starts when the consumer becomes aware of the abusive nature of the clause. This ruling extends the period of time available to consumers to make complaints, thereby strengthening their protection against abusive clauses.⁶⁴

64 Supreme Court (Spain, Civil Chamber, Full Court), *Judgment No. 857/2024 of 14 June 2024 (Sentencia núm. 857/2024, de 14 de junio de 2024)*, ECLI:ES:TS:2024:3076, Appeal No. 1799/2020, Declaration on the *dies a quo* for the beginning of the limitation period for the restitution of undue mortgage expenses (*Declaración sobre el dies a quo para el inicio del plazo de prescripción de la acción de restitución de gastos hipotecarios indebidos*), published on the official website of the General Council of the Judiciary (CGPJ), <https://www.poderjudicial.es/search/openDocument/fd5fddc5d46df4c4a0a8778d75e36f0d>.

ANTI-CORRUPTION FRAMEWORK

Key recommendations

- *Enforce the division of public procurement into lots: Public procurement should be divided into independent lots to facilitate SME participation and promote competition. Each lot must be tailored to the specific economic and technical needs of smaller players, reducing the dominance of large suppliers and increasing the fairness of public tenders. This will improve market access and reduce systemic barriers for smaller companies.*
- *Giving priority to qualitative criteria in procurement: Move away from awarding contracts solely on the basis of the lowest price and instead prioritise social, environmental and innovation criteria in procurement processes. This approach promotes sustainability, prevents artificially low price strategies that jeopardise quality, and is in line with the EU's broader goals of green and inclusive growth.*
- *Repeal Law 15/1997⁶⁵ and strengthen public health oversight: Initiate the legislative process to repeal Law 15/1997 and revise Article 90⁶⁶ of the General Health Law to remove the legal framework that allows privatisation of public health services.⁶⁷ At the same time, implement robust control and audit mechanisms through the Ministry of Health and the National Transparency Agency to ensure transparent allocation of health resources, thereby improving public confidence and reducing the risk of corruption.*

65 Cortes Generales, Ley 15/1997, de 25 de abril, sobre habilitación de nuevas formas de gestión del Sistema Nacional de Salud, published in Boletín Oficial del Estado (BOE-A-1997-9021), accessed 28 November 2024, <https://www.boe.es/eli/es/l/1997/04/25/15>.

66 Cortes Generales, Ley 14/1986, de 25 de abril, General de Sanidad, published in Boletín Oficial del Estado (BOE-A-1986-10499), accessed 28 November 2024, <https://www.boe.es/buscar/act.php?id=BOE-A-1986-10499>.

67 CAS Madrid, Never Again Preventable Deaths! (¡¡Nunca más muertes evitables!!), report submitted to the Commission for Social and Economic Reconstruction (Informe presentado a la Comisión para la Reconstrucción Social y Económica), 2020, https://www.congreso.es/docu/comisiones/reconstruccion/documentacion_participacion_ciudadana/20200614_C11.pdf

Framework to prevent corruption

Cases of corruption by political parties in Spain are so numerous that they monopolise political news. This year's novelty is the lifting of the veto on reporting cases of corruption linked to the former royal family, a taboo subject for decades.^{68,69} Beyond the sums stolen, this corruption has a negative impact on the allocation of resources, which affects all public activity.

Integrity framework including incompatibility rules (e.g.: revolving doors)

Although rules exist to address issues such as 'revolving doors', their application is uneven.⁷⁰ High-profile cases have shown individuals

moving between public positions and the private sector without adequate cooling-off periods, undermining public confidence.⁷¹

General transparency of public decision-making (including public access to information such as lobbying, asset disclosure rules and transparency of political party financing)

The Transparency Law aims to improve access to information, but its practical application is weak.⁷² Lobbying is not fully regulated and asset declaration rules for public officials need to be strengthened to ensure accountability.⁷³ Spain lacks a unified framework to regulate lobbying at the national level, although there

68 Fernando Ramos Fernández, *The Journalistic 'Taboo' of the Monarchy in Spain. The Royal Crisis and the Situational Crisis (El 'tabú' periodístico de la monarquía en España. La crisis real y la crisis coyuntural)*, *Revista Latina de Comunicación Social*, no. 68 (18 March 2013): 217–247, <https://doi.org/10.4185/RLCS-2013-975>.

69 Pedro Pérez Bozal, *Streaming Platforms Break the Taboo About the Spanish Monarchy... from the Past (Las plataformas rompen el tabú sobre la monarquía española... del pasado)*, *Merca2.es*, 5 June 2023, <https://www.merca2.es/2023/06/05/plataformas-tabu-monarquia-1327673/>.

70 Noelia Acedo, *Close the Revolving Door and Regulate 'Lobbies': OECD's Recommendations for Spain to Fight Corruption (Cerrar puertas giratorias y regular 'lobbies', los deberes que la OCDE pone a España para combatir la corrupción)*, *infoLibre*, 19 August 2024, https://www.infolibre.es/economia/falta-enfoque-estrategico-global-control-lobbyismo-puertas-giratorias-sombreas-lucha-corrupcion_1_1864513.html.

71 Natalia Junquera and Quino Petit, *Key Points: The Government's Regeneration Plan Measures and What Has Been Left Out (Claves | Las medidas del plan de regeneración del Gobierno y todo lo que se queda fuera)*, *El País*, 17 September 2024, <https://elpais.com/espana/2024-09-17/claves-las-medidas-del-plan-de-regeneracion-del-gobierno-y-todo-lo-que-se-queda-fuera.html>.

72 Confilegal Redacción, *Review of the 10 Years of the Transparency Law: A Law Without Sanctioning Power is a Problem for Democratic Quality (Balance de los 10 años de la Ley de Transparencia: una ley que no tiene potestad sancionadora es un problema de calidad democrática)*, *Confilegal*, 20 December 2023, <https://confilegal.com/20231220-balance-de-los-10-anos-de-la-ley-de-transparencia-una-ley-que-no-tiene-potestad-sancionadora-es-un-problema-de-calidad-democratica/>.

73 Ángel Munárriz, *The Black Hole of Uncontrolled Lobbying and Lack of Transparency in Spain (El agujero de descontrol y opacidad del 'lobby' en España)*, *El País*, 22 September 2024, <https://elpais.com/espana/2024-09-22/el-agujero-de-descontrol-y-opacidad-del-lobby-en-espana.html>.

have been regional advances, such as registers in Catalonia and Valencia, and tools such as the Transparency Law (2013) and the Code of Conduct for High Officials (2022), which remain insufficient due to weak implementation and lack of enforcement mechanisms. The European Commission has recommended the creation of a mandatory national register to ensure transparency, identify who influences public decisions and prevent corruption, as seen in countries such as France and Ireland. Political decision-making continues to take place in opaque offices and exclusive environments.⁷⁴

Rules on preventing conflicts of interest in the public sector

The revolving door problem is serious in Spain. The Office for Conflicts of Interest lacks the independence and sanctioning power to effectively monitor and address violations.^{75,76,77}

Measures in place to ensure whistleblower protection and encourage reporting of corruption

The implementation of the European directive in Spain has been extremely poor. It only covers crimes and serious offences, leaving out acts that undermine democracy on a daily basis.⁷⁸ Moreover:

74 INAP, *Causes for the Rejection of Access to Information Requests; Particularly, the Doctrine of Independent Transparency Authorities* (*Las causas de inadmisión de las solicitudes de acceso a la información; en particular, la doctrina de las autoridades independientes de transparencia*), accessed 28 November 2024, <https://laadministracionaldia.inap.es/noticia.asp?id=1507961>.

75 Ignacio S. Calleja, *The Office of Conflict of Interest That Will Examine Sánchez: 10 Sanctions Against Senior Officials in a Decade* (*La Oficina de Conflictos de Intereses que examinará a Sánchez: 10 sanciones contra altos cargos en una década*), *El Confidencial*, 14 March 2024, https://www.elconfidencial.com/espana/2024-03-14/la-oficina-de-conflictos-de-intereses-que-examinara-a-sanchez-10-sanciones-contra-altos-cargos-en-una-decada_3848235/.

76 Natalia Junquera, *Recipes for Democratic Regeneration: Regulating Conflicts of Interest and Controlling Press Financing* (*Recetas para la regeneración democrática: regular los conflictos de interés y controlar la financiación de la prensa*), *El País*, 16 July 2024, <https://elpais.com/espana/2024-07-16/carrera-contra-la-desconfianza-en-las-instituciones-del-control-de-la-financiacion-de-la-prensa-a-los-asesores-y-los-conflictos-de-interes.html>.

77 Manuel Viejo, *The Endless Debate on Revolving Doors: A Common Law and Numerous Scenarios* (*El eterno debate de las puertas giratorias: una ley común y multitud de escenarios*), *El País*, 6 April 2024, <https://elpais.com/espana/2024-04-06/el-eterno-debate-de-las-puertas-giratorias-una-ley-comun-y-multitud-de-escenarios.html>.

78 European Commission. Proposal for a Directive of the European Parliament and of the Council on combating corruption, replacing Council Framework Decision 2003/568/JHA and the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, and amending Directive (EU) 2017/1371 of the European Parliament and of the Council. 2023. Retrieved from <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX%3A52023PC0234>

- It discriminates against anonymous complaints, ignoring that platforms such as Globaleaks, installed by Xnet in more than 10 institutions, demonstrate the effectiveness of technical means that do not require identification.
- It abandons organisations that help whistleblowers to their fate, without eliminating the criminal responsibility linked to the gathering of information, except in the case of crimes against the integrity of the person. This means that whistleblowers in cases such as the Black Cards or the Panama Papers would not be protected.
- The body responsible for protecting whistleblowers in Spain is the Independent Authority for the Protection of Whistleblowers (AAI), created by Law 2/2023, which transposed the European Directive on the Protection of Whistleblowers (Directive 2019/1937). However, its independence and effectiveness have been questioned by various organisations and experts.^{79,80,81}

Steps to address problems in this area should include extending the scope of whistleblower protection to cover non-criminal acts that undermine democracy and support anonymous reporting platforms.

List the sectors with high-risks of corruption in your country and list the relevant measures taken/envisaged for preventing corruption and conflicts of interest in these sectors. (e.g. public procurement, health-care, other)

In terms of public procurement, more than 70% of public contracts do not comply with current legislation due to issues like the fragmentation of contracts, unjustified direct contracts, lack of trans-parency, and unjustified contract changes. This sector is particularly vulnerable to corruption. Although the Public Procurement Law contains provisions on transparency and competition, there are gaps in its implementation, leading to irregularities.

The privatisation of health services raises concerns about resource allocation and conflicts of

79 Sierra-Rodríguez, J. (2022). La autoridad independiente de protección del informante en la Ley 2/2023. *Revista española de control externo*, 24(72), 78-103. Universidad Nacional de Educación a Distancia. <https://dialnet.unirioja.es/servlet/articulo?codigo=9099099>

80 Sánchez, L. (s.f.). Es fundamental garantizar la independencia de la Autoridad de Protección al Informante para que su labor sea efectiva, afirma la World Compliance Association. <https://www.economistjurist.es/actualidad-juridica/legislacion/es-fundamental-garantizar-la-independencia-de-la-autoridad-de-proteccion-al-informante-para-que-su-labor-sea-efectiva-afirma-la-world-compliance-association/>

81 Xnet, *We Ask the Senate to Amend the Law in Defense of Whistleblowers (Pedimos al Senado que enmiende la ley en defensa de los informantes)*, Xnet - Internet, derechos y democracia en la era digital, 6 February 2023, <https://xnet-x.net/es/pedimos-senado-enmiende-ley-defensa-informantes-alertadores/>.

interest. Strengthening oversight mechanisms is essential to mitigate these risks.⁸²

Steps to improve the situation should include:

- **Transparency in procurement:** Require the publication of contract information in open and reusable formats to enable effective public scrutiny.
- **Simplify solvency requirements:** Allow SMEs to use external resources or less

restrictive criteria to demonstrate capacity, particularly for smaller contracts.

Any other relevant measures to prevent corruption in public and private sector

Encourage open source software: Promote free and open source software in digital contracts to avoid vendor lock-in and encourage collaborative innovation.

82 Simona Levi et al., *Proposal for a Sovereign and Democratic Digitalisation of Europe: Reflection Paper*, Publications Office of the European Union, 2022, <https://data.europa.eu/doi/10.2861/671958>.

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *Regulate major media and institutional broadcasters under business-like frameworks, compelling them to verify their content and display transparency labels. This ensures clear distinction between profit-driven communication and genuine information.*
- *Lower the threshold to 50,000 followers for parties, media outlets, and influencers, requiring them to disclose all communication-related income and expenses.⁸³ This captures most relevant cases and clarifies financing sources.*
- *Impose sanctions proportional to the profits generated from disinformation, mandating explicit identification of bots and automated content. Reinforce the right to rectification by guaranteeing it the same visibility as the original material.⁸⁴*

Media and telecommunications authorities and bodies

Independence, enforcement powers and adequacy of resources of media and telecommunication authorities and bodies

Although the National Commission for Markets and Competition (CNMC) is mainly

concerned with the audiovisual and telecommunications sectors, it plays an important role in monitoring mergers and practices that may limit press plurality.⁸⁵ In the context of the Digital Services Regulation (DSA), the CNMC has been designated as the coordinator of digital services, but its dedicated drive is not yet operational.⁸⁶

83 Cortes Generales, Real Decreto 444/2024, de 30 de abril, por el que se regulan los requisitos a efectos de ser considerado usuario de especial relevancia de los servicios de intercambio de vídeos a través de plataforma, en desarrollo del artículo 94 de la Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual, Boletín Oficial del Estado (BOE-A-2024-8716), accessed 28 November 2024, <https://www.boe.es/buscar/act.php?id=BOE-A-2024-8716>.

84 Xnet, #FakeYou: An Activist's Guide to Defeating Disinformation, Xnet - Internet Freedoms & Digital Rights, 23 July 2024, <https://xnet-x.net/en/fakeyou-disinformation-free-download/>.

85 Comisión Nacional del Mercado de Valores (CNMV), *Funcions (Funciones)*, accessed 29 November 2024, <https://www.cnmv.es/portal/quees/funciones-cnmv.aspx?lang=es>.

86 Alberto R. Aguiar, *The Reform of the CNMC Remains Pending Seven Months After the European Law Requiring It Came into Force (La reforma de la CNMC sigue pendiente siete meses después de que entrara en vigor la ley europea que la exige)*, *Business Insider España*, 27 September 2024, <https://www.businessinsider.es/reforma-cnmc-sigue-pendiente-siete-meses-despues-entrara-vigor-ley-europea-exige-1407248>.

In 2021, the President of the CNMC, Cani Fernández, highlighted the need for legislative reforms to strengthen the independence of the body and address the limitations of legal, human and budgetary resources.⁸⁷ This inadequate framework poses challenges to the CNMC's effective contribution to a pluralistic and free media environment.

Conditions and procedures for the appointment and dismissal of the head / members of the collegiate body of media and telecommunication authorities and bodies

The appointment and dismissal procedures for the heads of media and telecommunications authorities in Spain have been the subject of constant scrutiny. Critics argue that political influence can compromise the impartiality of these processes,⁸⁸ thus compromising the independence and objectivity of regulatory bodies.⁸⁹

This perception weakens public confidence in the role of these authorities as guarantors of a pluralistic media environment free from undue interference

Other

Although important announcements have been made regarding the implementation of the European Media Freedom Law in Spain, there have been no significant changes in the regulatory environment for media and telecommunications.^{90,91}

Pluralism and concentration

Levels of market concentration

The Spanish media landscape is characterised by a high concentration of ownership in a small number of conglomerates, which

87 Miguel Ángel Noceda, *The President of the CNMC Demands Legal Changes to Grant Greater Independence to the Institution (La presidenta de la CNMC exige cambios en la ley para dar mayor independencia al organismo)*, *El País*, 3 February 2021, <https://elpais.com/economia/2021-02-03/la-presidenta-de-la-cnmc-exige-cambios-en-la-ley-para-dar-mayor-independencia-al-organismo.html>.

88 Petit, Quino. *La designación en el Senado de cuatro consejeros propuestos por el PP culmina la renovación de RTVE*. *El País*, November 21, 2024. <https://elpais.com/comunicacion/2024-11-21/la-designacion-en-el-senado-de-cuatro-consejeros-propuestos-por-el-pp-culmina-la-renovacion-de-rtve.html>.

89 Centre for Media Pluralism and Freedom. *Spain*. European University Institute. Accessed November 29, 2024. <https://cmpf.eui.eu/media-pluralism-monitor/mpm-2016-results/spain/>.

90 Emilio Ordiz, *'Media Freedom Act': This Is the Regulation Sánchez Uses to Support His 'Democratic Regeneration Plan' ('Media Freedom Act': así es la norma en la que apoya Sánchez su 'plan de regeneración democrática')*, *20minutos*, 18 July 2024, <https://www.20minutos.es/noticia/5532383/0/media-freedom-act-cual-es-norma-que-se-apoya-sanchez-para-su-plan-regeneracion/>.

91 La Moncloa, *The Spanish Presidency of the Council of the European Union Pushes for Agreement on the European Media Freedom Act (EMFA)*, accessed 29 November 2024, https://www.lamoncloa.gob.es/lang/en/gobierno/news/Paginas/2023/20231215_european-media-freedom-act.aspx

negatively affects information plurality and editorial independence. Although there is a wide and seemingly diverse media offering, it is controlled by a limited number of economic actors who dominate both traditional media and digital platforms, television and radio.

Concentration of ownership in the main sectors:

- Written press:

PRISA Group (*El País*): Part of its capital is in the hands of Banco Santander and HSBC.

Vocento Group (*ABC*): Linked to Banco Santander and BBVA.

Editorial Unit Group (*El Mundo*): With nexos with Intesa Sanpaolo.

Planeta Group/Atresmedia (*La Razón, Antena 3, La Sexta*): Related to Banco Sabadell.

Godó Group (*La Vanguardia*): Partially controlled by Caixabank.

- Television and radio:

National television is concentrated in two large groups: Atresmedia and Mediaset Spain, which hold more than 80% of the advertising market share.

In the radio field, PRISA Group (SER Channel) and COPE. They concentrate the majority of the audience, making it difficult for new stations to enter.

- **Digital platforms and social networks:** Although large international corporations such as Meta, Google and Twitter, national media conglomerates also dominate online content, reinforcing their influence in the Spanish digital ecosystem.
- **Content distribution:** Content distribution in Spain is highly concentrated in companies such as Planeta Group, which limits access to different editorial formats and approaches.

Identified problems:

- **Economic dependence:** The debts accumulated during the 2007–2008 financial crisis have meant that most media outlets de facto belong to banks. The loss of traditional revenue has increased the media's dependence on institutional advertising and large corporations, compromising its editorial independence.
- **Multimedia convergence:** The same conglomerates control multiple distribution channels (press, television, radio, digital), reducing the diversity of voices and content.
- **Impact on information plurality:** High concentration leads to homogenisation of information and makes access to alternative narratives difficult. Furthermore, it reinforces political and economic influence on public discourse.

Conclusions and recommendations:

The high concentration of the Spanish media market continues to be an obstacle to information plurality and editorial independence. It is essential:

- Implement specific antitrust regulations for the media sector, which encourage competition and limit ownership concentration.
- Establish mechanisms that guarantee transparency in the relationship between media and large financial groups.
- Promote public policies that support independent media and diversify funding sources.⁹²

Rules governing and safeguarding the pluralistic media market, and their application (including regulating mergers, acquisitions and other ownership changes)

Although Spain has rules to prevent excessive media concentration, their application has been inconsistent. The National Commission for Markets and Competition (CNMC) has intervened in some cases where mergers or acquisitions threatened to reduce competition,⁹³ but

these decisions are usually taken behind closed doors with little public scrutiny.

Rules governing ownership in different segments of the media market, and their application (print, television, radio, online media)

Spain has announced several initiatives to promote transparency in media ownership, such as the creation of a public register detailing the ownership structure of the media and its financing, the annual publication of figures on advertising investment by public administrations and the reform of the law on institutional advertising to introduce criteria of proportionality and non-discrimination, but still faces challenges in terms of the accessibility and clarity of this information. The lack of easily verifiable data on the economic and political links of owners limits the ability of citizens to assess the independence and plurality of the media landscape.

The creation of public consultation tools based on open and structured data would allow citizens to easily and effectively access information on media ownership in different segments (written press, television, radio and digital media).

92 Xnet, *#FakeYou: An Activist's Guide to Defeating Disinformation*, Xnet - Internet Freedoms & Digital Rights, 23 July 2024, <https://xnet-x.net/en/fakeyou-disinformation-free-download/>.

93 Cinco Días, *The CNMC Opens Another Disciplinary Proceeding Against Telefónica for Breaching Commitments in the Purchase of Sogecable (La CNMC abre otro expediente sancionador a Telefónica por incumplir compromisos en la compra de Sogecable)*, Cinco Días, 18 November 2024, <https://cincodias.elpais.com/companias/2024-11-18/la-cnmc-abre-otro-expediente-sancionador-a-telefonica-por-incumplir-compromisos-en-la-compra-de-sogecable.html>.

Fairness and transparency of licencing procedures (including allocation of licences, fines and penalties)

The awarding of audiovisual licences has traditionally been a key moment of interaction between political power and large media groups. Often perceived as a mechanism of political reward or punishment, this process raises concerns about fairness and transparency as well as the possibility of a diverse ecosystem.⁹⁴

It is essential to ensure that licensing procedures are based on clear and objective criteria, with mechanisms that allow for a greater plurality of actors, public oversight and accountability by regulatory bodies.⁹⁵

Transparency and media ownership

The transparent allocation of state advertising (including any rules regulating the matter)

Although there are regulations aimed at preventing the misuse of state advertising budgets, in practice, the allocation lacks transparency

and is influenced by political criteria. Contracts and amounts awarded are rarely subject to public scrutiny, fuelling perceptions of favouritism. As of January 2025, Spain has announced plans to reform its institutional advertising law with the aim of improving transparency, proportionality and non-discrimination in the allocation of state advertising. However, these measures are still in the planning stage and have not yet been fully implemented, so there are no significant updates beyond the announcements made in 2024.

Spanish authorities should implement an obligation for public disclosure of state advertising budgets, linking expenses to content clear and verifiable. They should also introduce a mandatory labelling system to make financial links between the media and public administrations visible, promoting equitable and transparent allocation.⁹⁶

94 INAP, *The Legal Regime of Prior Communication and Licences in the New Law 13/2022, of 7 July, General Audiovisual Communication Law (El régimen jurídico de la comunicación previa y las licencias en la nueva Ley 13/2022, de 7 de julio, General de Comunicación Audiovisual)*, accessed 29 November 2024, <https://laadministracionaldia.inap.es/noticia.asp?id=1514427>.

95 María Pilar Cousido González, *La transparencia en el sector audiovisual: comentarios a la normativa española y comunitaria*, Bosch, 2008, ISBN 8497903692, https://books.google.es/books/about/La_transparencia_en_el_sector_audiovisua.html?id=OK5dQwAACAkJ.

96 Xnet, *#FakeYou: An Activist's Guide to Defeating Disinformation*, Xnet - Internet Freedoms & Digital Rights, 23 July 2024, <https://xnet-x.net/en/fakeyou-disinformation-free-download/>.

Rules governing transparency of media ownership and public availability of media ownership information, and their application

Existing laws in Spain establish certain requirements for transparency in media ownership, but the information available is not always accessible or structured for effective consultation by citizens.

The European Media Freedom Act could bring significant improvements by harmonising European regulations, requiring centralised platforms that make it possible to know the ownership and financing sources of the media. Specific changes in national legislation that fully reflect the principles of European law have not yet been detailed. We recommend authorities to create centralised public databases, with detailed information on the ownership and financing of traditional media and influential digital platforms, and to extend these obligations to digital platforms, ensuring traceability of the flow of income and promoted content.

Other

Precarious employment in key sectors such as journalism and content moderation undermines transparency by creating an environment where temporary or low-paid workers lack the resources and training to apply rigorous ethical standards, the pressure to produce content quickly and cheaply prioritises quantity over quality — making it easier to disseminate unverified information — and the lack of job security discourages reporting opaque practices (algorithmic manipulation, external pressure) for fear of reprisals.^{97,98}

Public service media

Independence of public service media from governmental interference

The independence of public media in Spain, such as RTVE, has been a recurring topic of debate. Although reforms have been implemented, such as the change in the system of elections to the board of directors, concerns remain about the influence of political parties in its management. For decades, there has been a two-party dynamic, with opposition parties demanding independence and then using public media in a partisan way when they come to power.⁹⁹

97 European Commission, *Proposal for a European Media Freedom Act*, 2023, https://ec.europa.eu/commission/press-corner/detail/es/ip_22_5504.

98 European Federation of Journalists, *Concentration of Media Ownership in Europe*, 2023, <https://europeanjournalists.org/wp-content/uploads/2019/03/manifestoEN-3.pdf>.

99 Cortes Generales, Real Decreto-ley 5/2024, de 22 de octubre, por el que se modifica la Ley 17/2006, de 5 de junio, de la radio y la televisión de titularidad estatal, para adoptar medidas urgentes relativas al régimen jurídico aplicable a la Corporación RTVE, Boletín Oficial del Estado núm. 256, 23 October 2024, pp. 135386-135397, https://www.boe.es/diario_boe/txt.php?id=BOE-A-2024-21699.

The situation is even more worrying in some regional public channels, where political influence is more pronounced. In several autonomous communities, the level of degradation in the management of these media has reached extreme levels. A significant example is the case of Televisión de Galicia (TVG) in 2024, where employees denounced political pressure and editorial manipulation that seriously compromised informative pluralism, leading to a strike in protest at the conditions imposed.¹⁰⁰

In order to break this cycle and guarantee independence, it would be essential to establish protocols for the evaluation of citizens, which would make it possible to verify the neutrality and objectivity of the information provided by these means.

Editorial standards (including diversity and non-discrimination)

RTVE and other public media are committed to standards of diversity and non-discrimination, but implementation is uneven. They also have to compete with virulently partisan

private channels. Reports of a lack of editorial pluralism highlight the need to strengthen internal control mechanisms.

One case to highlight is the Supreme Court's decision to annul the dismissal of a TVE script writer for a controversial programme about Princess Leonor on the grounds that his labour rights had been violated. This case highlights the need to strengthen the protection of public media professionals against political and labour pressure.¹⁰¹

State authorities should introduce general quality and non-discrimination obligations in all public and private media, for example during election periods. They should also integrate digital verification tools, inspired by distributed models, to improve the quality and reliability of editorial content.¹⁰²

Financing (including transparency of financing)

Transparency in the use of public funds allocated to the media is essential.¹⁰³ Although

100 Sonia Vizoso, *The Crisis at Televisión de Galicia Leads to the First Indefinite Strike in Its History (La crisis en la Televisión de Galicia desemboca en la primera huelga indefinida de su historia)*, *El País*, 7 October 2024, <https://elpais.com/espana/galicia/2024-10-07/la-crisis-en-la-television-de-galicia-desemboca-en-la-primera-huelga-indefinida-de-su-historia.html>.

101 Tribunal Supremo, Sala de lo Social, *Sentencia núm. 4566/2022, de 7 de noviembre de 2023, procedimiento núm. 286/21, Juzgado de lo Social N° 16 de Madrid*, https://mcusercontent.com/58ab66b7d6bec5b0aab78d1c3/files/56f40c43-d24b-8286-8665-1b0ac5022525/TS_inadmissi%C3%B3n_guionista.pdf?_hsmi=79732547.

102 Xnet, *#FakeYou: An Activist's Guide to Defeating Disinformation*, Xnet - Internet Freedoms & Digital Rights, 23 July 2024, <https://xnet-x.net/en/fakeyou-disinformation-free-download/>.

103 Reporters Without Borders (RSF), *Spain (España)*, 6 July 2023, <https://rsf.org/en/country/spain>.

RTVE publishes annual reports, these do not always allow detailed analysis by citizens.¹⁰⁴ Law 19/2013 of 9 December on transparency, access to public information and good governance establishes transparency obligations for entities that manage public funds, including RTVE. This law obliges them to publish relevant information on the management and use of public funds, such as budgets, contracts and subsidies, on their transparency portals.

Authorities can improve the situation in this area by establishing a financial system that links each expense to specific, measurable objectives, increasing accountability and building public trust.

Online media

Impact on media of online content regulation rules (including content removal obligations, liability rules)

The Digital Services Act has introduced transparency obligations for digital platforms,¹⁰⁵ but these regulations tend to focus on intermediaries, leaving out large producers of

disinformation. It is crucial to extend accountability to those who finance or profit from disinformation, including political parties, institutions and corporations.¹⁰⁶

Public trust in media

According to the Reuters Institute's Digital News Report 2024, trust in news in Spain remains low, with only 33% of respondents regularly trusting it, while 39% express distrust.

In addition, the report indicates that 44% of Spaniards feel overwhelmed by the amount of news, a significant increase compared to the 26% registered in 2019.

These data reflect a growing information fatigue and one disconnection with traditional media, underlining the need to strengthen journalistic quality and guarantee plurality in the media environment to regain public trust.¹⁰⁷

104 RTVE.es, *Transparency - Corporate Economic Information (Transparencia - Información Económica Corporación)*, accessed 29 November 2024, <https://www.rtve.es/corporacion/transparencia/economia/>.

105 European Commission, *EU Digital Services Regulation*, 27 October 2022, https://commission.europa.eu/strategy-and-policy/priorities-2019-2024/europe-fit-digital-age/digital-services-act_es.

106 Xnet, *Digital Services Package (DSA), Xnet's Analysis (Paquete de Servicios Digitales (DSA), el análisis de Xnet)*, Xnet - Internet, Rights and Democracy in the Digital Era, 25 August 2023, <https://xnet-x.net/es/posicion-xnet-dsa-package/>.

107 Rasmus Kleis Nielsen and Richard Fletcher, *Perspectives of the Public on Trust in News, Reuters Institute for the Study of Journalism*, 17 June 2024, accessed 29 November 2024, <https://reutersinstitute.politics.ox.ac.uk/es/digital-news-report/2024/perspectivas-del-publico-sobre-la-confianza-en-las-noticias>.

Safety and protection of journalists and other media actors

Law enforcement capacity to ensure journalists' safety and to investigate attacks on journalists and media activist

Security forces in Spain lack specific training and sufficient resources to deal with threats against journalists. Furthermore, in daily practice, police actions under the protection of the Citizen Security Law (known as the Ley Mordaza, or the 'Gag Law')¹⁰⁸ often constitute an obstacle to the practice of journalism, limiting freedom of information and expression.^{109,110}

We urge Spanish authorities to:

- **Repeal the Gag Law:** Eliminate provisions that restrict journalistic practice and guarantee a legal framework that protects press freedom and the safety of journalists.

- **Improve police action protocols:** Develop clear procedures that prioritise the protection of journalists during sensitive coverage, such as demonstrations or public events.
- **Training and awareness of security forces:** Expand the programs on fundamental rights, freedom of the press and the role of the media in a democracy, strengthening security forces capacity to address threats against journalists.

Confidentiality and protection of journalistic sources (including whistleblower protection)

The protection of sources in Spain has been weakened in recent years and have not adequately evolved to address the complexities introduced by digital technologies.

In the current context, this lack of updating creates significant gaps in the effective protection of sources, exposing them to risks derived

108 CPPA, *What You Should Know About the 'Gag Law' and Other Articles of the Penal Code If You Are a Journalist (Lo que debes saber de la 'Ley Mordaza' y otros artículos del Código Penal si eres periodista)*, *Periodistas de Andalucía* (blog), 19 July 2021, <https://periodistasandalucia.es/lo-que-debes-saber-de-la-ley-mordaza-y-otros-articulos-del-codigo-penal-si-eres-periodista/>.

109 Reporteros Sin Fronteras, *Spain: RSF Welcomes Compliance with European Media Freedom Standards, Urges Prompt Reform of the 'Gag Law' and Will Closely Monitor the Implementation of Government Measures (España: RSF celebra el cumplimiento de la normativa europea de libertad de medios, pide que la reforma de la Ley Mordaza se concrete cuanto antes, y vigilará de cerca cómo se materializan las medidas anunciadas por el Gobierno)*, 17 July 2024, <https://www.rsf-es.org/espaa-rsf-celebra-el-cumplimiento-de-la-normativa-europea-de-libertad-de-medios-pide-que-la-reforma-de-la-ley-mordaza-se-concrete-cuanto-antes-y-vigilara-de-cerca-como-se-materializan-las-medidas/>.

110 Amnistía Internacional, *Gag Laws: Analysis of 9 Years of Restrictions and Freedom of Expression in Spain (Leyes Mordaza: Análisis de 9 años de restricciones y libertad de expresión en España)*, accessed 29 November 2024, <https://www.es.amnesty.org/en-que-estamos/blog/historia/articulo/ley-mordaza/>.

from digital monitoring, mass data collection and threats to online privacy. These vulnerabilities directly affect journalists' ability to ensure the confidentiality of their informants, a key principle for press freedom.¹¹¹

The state should expand the scope of the legal protection of whistleblowers to ensure robust protection of journalistic sources and sanction oversights interested or reckless. Training programs for journalists on the use of technologies such as encryption, anonymous reporting platforms and other systems that reinforce the confidentiality of their sources should also be implemented.

Access to information and public documents

Access to public information in Spain continues to be limited by the limitation of the transparency law and by the inadequate transposition of the General Data Protection Regulation (GDPR), as well as by obsolete regulations such as the Official Secrets Law of 1968. Reforming these laws is essential.^{112,113}

Implementing Article 85 of the GDPR

Article 85 of the GDPR establishes the balance between data protection and freedom of expression and information, requiring Member States to harmonise national legislation with these principles. In Spain, while this article has been referenced in some legal frameworks, its implementation remains incomplete. For example, ensuring that journalistic activities or archiving for public interest purposes do not conflict with data protection laws still presents challenges. It is essential to adapt existing regulations to provide clearer protections for both journalists and individuals whose data may be involved, ensuring that their rights are upheld without undermining the principle of transparency or public access to information.

Amending Administrative Legislation for Better Data Protection

Key Spanish laws, such as Law 39/2015 on administrative procedures, Law 19/2013 on transparency, and Organic Law 3/2018 on data protection, require revisions to better align with GDPR principles. Current administrative processes often collect excessive personal

111 Cristina Pauner Chulvi, *The Protection of Journalistic Sources in the Digital Age and the European Union's Regulatory Push* (*La protección de las fuentes periodísticas en la era digital y el impulso regulatorio de la Unión Europea*), *Teoría y Realidad Constitucional*, no. 54 (2024): 189–216, <https://doi.org/10.5944/trc.54.2024.43312>.

112 Cortes Generales, *Ley 9/1968, de 5 de abril, sobre secretos oficiales*, *Boletín Oficial del Estado*, núm. 84, 6 April 1968, pp. 5143–5144, <https://www.boe.es/buscar/act.php?id=BOE-A-1968-444>.

113 Marisol Hernández, *Brussels Urges the Government to Reform the Official Secrets Law to Meet European Standards* (*Bruselas apremia al Gobierno a reformar la ley de secretos oficiales para cumplir el estándar europeo*), *elconfidencial.com*, 16 August 2024, https://www.elconfidencial.com/espana/2024-08-16/bruselas-apremia-gobierno-reformar-ley-secretos_3939362/.

data, even when it is not strictly necessary for the service being provided. For example, citizens are sometimes asked to provide identifying information to access public services that could operate with anonymised data. A comprehensive amendment of these laws should ensure that the identity of citizens is protected by default, only requiring personal data when strictly necessary. Moreover, internal protocols within institutions and companies should reflect these changes, mandating the protection of identities where possible and ensuring full compliance with data minimisation principles.

Guaranteeing Data Minimisation by Default

One of the GDPR's fundamental principles is data minimization, which requires that only the data strictly necessary for a specific purpose be collected and processed. In practice, both public and private sector actors often collect excessive data as a default approach. This includes overly broad data requests in public service applications or during commercial transactions. To address this, Spain should establish stricter regulations and oversight mechanisms to enforce data minimisation as the standard practice. This includes conducting regular audits of commonly used forms, systems, and procedures to ensure compliance. If it is found that a regulation or standard requires more data than necessary, immediate steps should be taken to amend it and bring it in line with GDPR principles.

Aligning National Laws with the GDPR

A critical issue in Spain is ensuring that national laws and regulations do not conflict

with GDPR requirements. This is particularly relevant in sectors such as healthcare, finance, and telecommunications, where extensive personal data collection occurs. A thorough review of these laws should be undertaken to identify any discrepancies. For example, if a national regulation mandates the collection of additional data beyond what is required under GDPR, it should be amended to ensure compliance. This process would also involve engaging with stakeholders, including regulators, businesses, and civil society, to ensure that changes are practical and enforceable. Promoting these changes proactively would strengthen citizens' trust in how their data is handled and reinforce Spain's commitment to GDPR compliance.

Proactively Publishing Public Interest Information

In addition to addressing data collection issues, Spain should adopt a more proactive approach to making public interest information readily available to citizens. Currently, the transparency framework often requires citizens to submit formal requests to access information that should be freely accessible. By creating systems and platforms that automatically publish relevant data—such as environmental statistics, public spending details, or legislative updates—Spain could significantly enhance transparency and accountability. This would not only reduce the administrative burden on both citizens and public bodies but also foster a culture of open governance that aligns with the principles of both GDPR and national transparency laws.

Amending Administrative Legislation

Laws such as Law 39/2015 and Law 19/2013 require updates to limit excessive data collection. Public institutions often demand unnecessary personal information for routine services, treating all interactions as formal procedures. Reforms should ensure data collection is minimal and proportional.

Guaranteeing Data Minimisation

Despite GDPR requirements, public and private entities in Spain often collect more data than necessary. Current frameworks, including Organic Law 3/2018, lack strong enforcement mechanisms for minimisation. Laws and practices must be reviewed to guarantee compliance with GDPR principles.

Aligning National and European Laws

Conflicts between Spanish and European laws undermine GDPR compliance. National regulations frequently mandate extensive data collection, contradicting EU standards. Legislative action is required to harmonise definitions and ensure practices align with GDPR protections.

Proactive Transparency

Spain's transparency system often requires formal requests to access public information, hindering citizen engagement. Institutions should proactively publish essential data, such as budgets and policies, on accessible platforms. Strengthened enforcement and open data initiatives are key to fostering accountability.¹¹⁴

Other

In 2014, Grupo Planeta and the Kiss FM radio station were in a legal conflict related to the advertising management of the Kiss FM stations. During this process, Planeta hired active Superintendent José Manuel Villarejo to investigate the arbitrator in charge of the case. Villarejo used his police position to access confidential information without authorisation. In 2024, the National Court confirmed his sentence to three years in prison for bribery, considering that he had accepted bribes to carry out these illegal investigations while he was still a public official.¹¹⁵

114 Xnet, *Privacy, Data Protection and Institutional Abuses (Privacidad, protección de datos y abusos institucionalizados)*, project coordinated by Simona Levi with Míriam Carles and the collaboration of Rubén Bujalance, César Manso-Sayao, and other participants, updated version as of December 2022, published under CC by-sa 4.0 license, <https://xnet.maadix.org/nextcloud/index.php/s/bwo2RQ5foDk3NMe>.

115 RTVE.es/EFE, *The National Court Confirms Villarejo's Bribery Conviction for Espionage in the Conflict Between Kiss FM and Planeta (La Audiencia Nacional confirma la condena por cohecho de Villarejo por espionaje en el conflicto entre Kiss FM y Planeta)*, RTVE.es, 13 November 2024, <https://www.rtve.es/noticias/20241113/audiencia-nacional-confirma-condena-por-cohecho-villarejo-por-espionaje-conflicto-entre-kiss-fm-planeta/16329665.shtml>.

CHECKS AND BALANCES –

Key recommendations

- *The establishment of objective and transparent criteria for judicial appointments: The lack of clear and verifiable criteria for appointments to the CGPJ and other judicial bodies remains a serious problem. A framework must be put in place to eliminate political influence on appointments and to ensure that appointments are made solely on the basis of merit.*¹¹⁶

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

Public consultations and citizen participation

In Spain, public consultation processes for legislative development are regulated by Article 133 of Law 39/2015, of 1 October, on the Common Administrative Procedure of Public

Administrations. However, these consultations are frequently perceived as a formal procedure and opaque in terms of participation and use of this participation. The limited practical implementation of these consultations has been criticised, calling into question their ability to reflect the capabilities and real concerns of citizens.^{117,118}

Ex post legislative impact assessments

Ex post evaluation, or the analysis of the effectiveness and compliance of laws after their implementation, is unusual in the Spanish legislative system. A report from the Center for Political and Constitutional Studies (CEPC)

116 Antonio Vico, *Elitist and Conservative Justice? Young Judges from Humble Backgrounds Make Their Way Through a Demanding and Expensive Selection Process (¿Justicia elitista y conservadora? Futuros jueces de origen humilde se abren paso ante una oposición exigente y cara)*, Cadena SER, 21 October 2023, <https://cadenaser.com/nacional/2023/10/21/justicia-elitista-y-conservadora-futuros-jueces-de-origen-humilde-se-abren-paso-ante-una-oposicion-exigente-y-cara-cadena-ser/>.

117 Cortes Generales, *Ley 39/2015, de 1 de octubre, del Procedimiento Administrativo Común de las Administraciones Públicas*, *Boletín Oficial del Estado*, núm. 236, 2 October 2015, pp. 89343-89424, <https://www.boe.es/buscar/act.php?id=BOE-A-2015-10565>.

118 Ministerio de Derechos Sociales, Consumo y Agenda 2030, *Preliminary Public Consultations (Consultas públicas previas)*, accessed 29 November 2024, <https://www.mdsocialesa2030.gob.es/index.htm>.

highlights the lack of a systematic approach in these evaluations, which affects the ability of laws to adequately respond to the problems they aim to solve.

Regulatory proliferation and legislative quality

The excess of regulations and their lack of clarity. It is a serious problem in Spain for legal security.^{119,120}

Problems in this area could be addressed by implementing the following recommendations:

- **Strengthen public consultation mechanisms:** Improve the accessibility and effectiveness of public consultations to guarantee genuine citizen participation.
- **Establish systematic ex post evaluations:** Evaluate laws after their application, ensuring an evidence-based approach for continuous improvement.
- **Simplify the regulatory framework:** Reorder the regulatory framework and prioritise the effective application of existing

laws before enacting new regulations, reducing regulatory proliferation and improving legislative clarity.

Independent authorities

The revolving door problem in Spain is very serious. Although Spain has a broad framework of independent organisations, their effectiveness as a real counter-power is limited. In practice, with a few exceptions, these organisations lack independence, generate duplication and do not carry out the task of counter-power and effectiveness that is entrusted to them.

The influence of the ‘partitocracy’ in the Spanish government reduces the operational autonomy of these organisations. As a result, their ability to act as guarantors of citizens’ rights and as a check on political power is questionable. At present, the countervailing power with a real capacity to counter this dynamic is the European Union, through its supervisory and regulatory mechanisms, which often promote necessary changes in areas such as transparency, judicial independence and fundamental rights.

119 Rosa María Fernández Riveira y María Díaz Crego, *Legislative Procedure: Quality and Evaluation of Laws. Conclusions from the Third Seminar of the Institute of Parliamentary Law (Procedimiento legislativo: calidad y evaluación de las leyes. Conclusiones del III Seminario del Instituto de Derecho Parlamentario)*, *Revista de las Cortes Generales*, no. 74 (August 2008): 205–28, <https://doi.org/10.33426/rcg/2008/74/849>.

120 Elsa Marina Álvarez González, *Legislative Technique and Dysfunctions of Normative Techniques in Spain: Current Challenges (Técnica legislativa y disfunciones de las técnicas normativas en España: Retos actuales)*, *Revista Vasca de Administración Pública (RVAP). Administrazio Publikoaren Euskal Aldizkaria*, no. 117 (2020): 17–73, <https://dialnet.unirioja.es/servlet/articulo?codigo=7563615>.

The annual reports of organisations such as the Ombudsman¹²¹ and the scrutiny of the European Parliament¹²² have helped to highlight areas for improvement and to expose systemic problems, in some cases encouraging reform.

Electoral framework

Enabling environment for the exercise of the right to vote: voter registration systems, accessibility of polling stations, remote/e-voting arrangements, threats and intimidation

Most voters avoided using polling booths in general, which exposed their preferences when collecting ballots in public areas and compromised the secrecy of the vote. In addition, physical accessibility problems were noted in several polling stations visited. Although the election results are always quickly published online, they were not broken down by constituency, which had a negative impact on the transparency of the process.

It is recommended that the secrecy of the ballot be strengthened through voter education and improvements in the layout of the polling stations to weaken patronage politics.¹²³

Rules on political advertising and their enforcement

In every election, cases of early campaigning and violations related to the use of official media for partisan purposes are commonplace. In addition, the intensive use of social networks for campaigning, including organic content and paid advertising, with illegal rules on transparency, segmentation and amplification based on personal data, stands out.^{124,125}

Eligibility criteria and restrictions to be a candidate

In Spain, electoral lists are closed and blocked, except in the Senate. This system contributes to the phenomenon of partitocracy,

121 Defensor del Pueblo, *Annual Report 2023 (Informe anual 2023)*, accessed 29 November 2024, <https://www.defensordelpueblo.es/informe-anual/informe-anual-2023/>.

122 Katarina Barley, *Report on the Situation of Fundamental Rights in the European Union: Annual Report 2022 and 2023*, A9-0376/2023, accessed 29 November 2024, https://www.europarl.europa.eu/doceo/document/A-9-2023-0376_ES.html.

123 Equipo de Expertos Electorales de la OIDDH, *Report on the Electoral Process (Informe sobre el proceso electoral)*, Madrid: Organización para la Observación Electoral, 2024, <https://www.osce.org/files/f/documents/d/3/564919.pdf>.

124 Equipo de Expertos Electorales de la OIDDH, *Report on the Electoral Process (Informe sobre el proceso electoral)*, Madrid: Organización para la Observación Electoral, 2024, <https://www.osce.org/files/f/documents/d/3/564919.pdf>.

125 Xnet, *Electoral Integrity and Political Microtargeting*, Xnet - Internet Freedoms & Digital Rights, 19 November 2024, <https://xnet-x.net/en/electoral-integrity-political-microtargeting-monitoring-european-elections-spain/>.

limiting the ability of voters to directly elect their representatives.

Irregularities, fraud and related safeguards, including independence and effectiveness of electoral bodies

Recurring irregularities include errors in vote counting and differences in criteria between electoral boards. Furthermore, the inability of polling stations to address complaints reflects a system that prioritises efficiency over transparency. The absence of robust mechanisms to preserve ballots exacerbates the lack of trust in the electoral process.¹²⁶

Transition of power

Although Spain does not face significant problems in the transition of power, the instability created by the bipartisan blockade has affected the political landscape. For the first time in

Spanish democracy, the opposition party has adopted rhetoric questioning the legitimacy of the government elected by parliament.

Access to balanced and reliable information online and offline during electoral campaign: campaigning, media coverage, disinformation and misinformation

Television remains the main tool for shaping political perception, due to demographic reasons. However, traditional media, dependent on government aid, has seen their editorial independence compromised, limiting the quality of information available to citizens.

In parallel, social networks have transformed campaign strategies. Facebook and Instagram lead in overall reach, while YouTube and Telegram have gained relevance among young and critical segments.¹²⁷

126 Partido X, 2014, *Journey to the Core of the Electoral System (2014, Viaje a las tripas del sistema electoral)*, accessed 2 December 2024, <https://partidox.org/2014-viaje-tripas-sistema-electoral/index.html>.

127 Xnet, *Electoral Integrity and Political Microtargeting*, *Xnet - Internet Freedoms & Digital Rights*, 19 November 2024, <https://xnet-x.net/en/electoral-integrity-political-microtargeting-monitoring-european-elections-spain/>.

CIVIC SPACE

Key recommendations

- *Repeal the 'gag law': We propose the repeal of provisions that criminalise peaceful protest and guarantee the full exercise of the right to demonstrate and freedom of expression, as this would reduce the demobilising effect on citizens and strengthen the protection of fundamental rights.*
- *Strengthen citizen participation: We propose the development of rigorous initial documents that bring together legislation, electoral programmes and previous contributions from civil society, as well as real-time moderation to guide the debate, prioritising the quality of contributions to generate viable public norms and policies, rather than limiting it to the volume of participation.*^{128,129}

Freedom of expression and of information

Rules on hate speech and their enforcement

In Spain, EU laws that criminalise hate speech have generated grave damage. Their application has generated a wide debate about possible excesses that could limit freedom of expression and cause legal uncertainty and have been used to protect non-discriminated groups.

These regulations are designed to combat hate speech in the digital and offline environment, but have been criticised for their collateral effects on freedom of expression. Framework Decision 2008/913/JHA requires Member States to criminalise hate speech, but its vague definition of 'hate speech' has allowed for broad interpretations that can restrict legitimate debate, and the Digital Services Act (DSA) reinforces this framework by requiring platforms to take stronger action against illegal content, but without clear safeguards to prevent abuse of moderation. Taken together,

128 Xnet, *Report on Promoting Participation Through the 'Decidim.Barcelona' Tool (Informe sobre la dinamización de la participación a través de la herramienta 'Decidim.Barcelona')*, Xnet - Internet, derechos y democracia en la era digital, 2 February 2017, <https://xnet-x.net/es/recomendaciones-herramienta-decidim-barcelona/>.

129 Partido X, *Democracy. Period. [Reduced Version] (Democracia y punto [versión reducida])*, accessed 2 December 2024, <https://partidox.org/democracia-y-punto-version-reducida/index.html>.

these laws have contributed to an environment in which self-censorship and the removal of legitimate content are inevitable by-products.¹³⁰

Identified Problems

- **Shifting focus toward discourse instead of facts:** It is criticised that Article 510 of the Penal Code, introduced in 2015, prioritises pursuing speech rather than actions, generating a broad and non-specific application. This makes it easier for the regulations to be used to censor legitimate expressions, especially in private contexts such as WhatsApp messages.¹³¹
- **Risks of criminalizing private spaces and freedom of expression:** Current legislation allows intervention in private communications, which threatens principles such as the inviolability of communications.
- **Polarizing and liberticidal effect:** The indiscriminate use of the concept of “hate speech” reinforces censorship dynamics that expand social polarization. This

especially affects satirical media, journalists and activists who criticise power structures.

- **Criminalisation of anonymity:** Although social networks allow the use of pseudonyms to protect privacy, campaigns against anonymity can violate this right, confusing freedom of expression with impunity to commit crimes.¹³²

In light of these problems, we recommend authorities to:

- **Review Article 510 of the Penal Code:** Limit its application to situations of power asymmetry or structural vulnerability, guaranteeing that only conduct that truly incites hatred or violence is prosecuted.
- **Protect private communications:** Ensure that the sanctity of communications remains a basic principle and private conversations are not used to justify sanctions.
- **Ensure anonymity:** Defend the right to anonymity on the internet, ensuring that legitimate privacy protection practices are

130 Xnet, #FakeYou: An Activist’s Guide to Defeating Disinformation, Xnet - Internet Freedoms & Digital Rights, 23 July 2024, <https://xnet-x.net/en/fakeyou-disinformation-free-download/>.

131 Cortes Generales, *Ley Orgánica 1/2015, de 30 de marzo, por la que se modifica la Ley Orgánica 10/1995, de 23 de noviembre, del Código Penal*, *Boletín Oficial del Estado*, núm. 77, 31 March 2015, pp. 27061-27090, <https://www.boe.es/eli/es/lo/2015/03/30/1>.

132 Simona Levi, *The Unsustainable Technophobia of the Left: Hate Speech, Fake News and Anonymity; The Corcuera Complex of the ‘New’ Politics in the Digital Age (La insostenible tecnofobia de la izquierda: discurso de odio, fake news y anonimato; el deje Corcuera de la ‘nueva’ política en la era digital)*, *Dominio Público* (blog), 19 February 2018, <https://blogs.publico.es/dominiopublico/25148/insostenible-tecnofobia-izquierda/>.

not criminalised while maintaining clear mechanisms to prosecute real crimes.¹³³

Criminalisation of speech

The Gag Law, enacted in 2015, continues to be an emblematic example of the criminalisation of public expression in Spain. Although reform proposals were presented in 2024, many of the most controversial provisions remain intact.¹³⁴

These include sanctions for disobedience to authority and the prohibition of disseminating images of members of the security forces in the exercise of their duties.

Crimes against the Crown and other crimes of expression

The debate on the decriminalisation of the crimes of libel against the Crown and other State institutions, such as the Government or the Army, has gained strength in 2024. According to the agreement reached between Government partners:

- It is proposed to repeal Articles 490.3 and 491 of the Penal Code, which criminalise insults against the Crown.
- The suppression of the crimes of insults to the Government of the Nation, the General Council of the Judiciary, the Constitutional Court and the Army is also proposed (Article 504 of the Penal Code).^{135,136}

This change seeks to align Spanish legislation with international standards of freedom of expression, ceasing to consider acts such as burning the flag or satirical expressions as crimes, such as those that led to the conviction of the comedians of satirical newspaper *El Jueves*.

These reforms have been celebrated as a step towards democratic regeneration, but their implementation depends on achieving a broad parliamentary consensus. However, the negotiations are in danger due to a lack of concrete progress.

133 Xnet, *#FakeYou: An Activist's Guide to Defeating Disinformation*, Xnet - Internet Freedoms & Digital Rights, 23 July 2024, <https://xnet-x.net/en/fakeyou-disinformation-free-download/>.

134 Onda Cero, *The Government and Bildu Agree on the Reform of the 'Gag Law': These Are the Key Points of the New Regulation (Gobierno y Bildu pactan la reforma de la ley mordaza: estos son los puntos clave de la nueva normativa)*, Onda Cero, 3 October 2024, https://www.ondacero.es/noticias/espana/gobierno-bildu-pactan-reforma-ley-mordaza-estos-son-puntos-clave-nueva-normativa_2024100366fe673a077ed10001de704d.html.

135 Gobierno de España, *Código Penal. Ley Orgánica 10/1995, de 23 de noviembre*, *Boletín Oficial del Estado*, núm. 281, 24 November 1995, pp. 33987-34058, <https://www.boe.es/buscar/act.php?id=BOE-A-1995-25444>.

136 Europa Press, *The Government Will Reform the Penal Code to Repeal Insults to the Crown and Religion, According to Sumar (El Gobierno reformará el Código Penal para derogar las injurias a la Corona y a la religión, según Sumar)*, Europa Press, 17 September 2024, <https://www.europapress.es/nacional/noticia-gobierno-reformara-codigo-penal-delitos-libertad-expresion-afecten-instituciones-religion-20240917131143.html>.

Restrictions on access to information

Identified problems in this area include:

- **Obsolete regulations:** The Official Secrets Act 1968 remains in force, severely limiting access to key information and perpetuating an opaque system that benefits established interests.
- **Deficiencies in the Transparency Law:** Although this law seeks to promote access to public information, its implementation is restrictive. Furthermore, the penalties for non-compliance are ridiculous, which discourages its correct application.¹³⁷
- **Lack of transparency in essential public developments:** The case of BOSCO, the application that decides who receives the social electricity bonus, is a paradigmatic example. Despite its impact on millions of people, the Government has refused to publish its source code, citing security and intellectual property risks. This reflects an opaque approach to transparency in crucial public tools.¹³⁸

These limitations hinder accountability and hinder informed citizen participation in

matters of public interest, weakening transparency and trust in institutions.

Considering this, we urge Spanish authorities to:

- **Reform of the Official Secrets Law:** Modernise the legal framework to guarantee access to relevant information of public interest.
- **Strengthening the Transparency Law:** Increase sanctions for non-compliance and simplify procedures for access to public information.
- **Transparency in public digital tools:** Mandate the publication of the source code of key developments such as BOSCO, ensuring adequate public scrutiny and fostering public trust.

Attacks and harassment

Administrative harassment

The Gag Law, in force since 2015, has imposed more than 2.1 million fines, collecting €1,289 million, with a 64.5% sanctions under progressive governments. Although its repeal was

137 Xnet, *Consultation on the Regulation of the Transparency Law (Consulta sobre el reglamento de la Ley de Transparencia)*, Xnet - Internet, derechos y democracia en la era digital, 7 September 2017, <https://xnet-x.net/es/consulta-reglamento-ley-transparencia/>.

138 Civio, *The National Court Again Refuses to Disclose the Source Code of the Program That Decides Who Receives the Social Bonus (La Audiencia Nacional vuelve a rechazar abrir el código fuente del programa que decide quién recibe el bono social)*, 8 May 2024, <https://civio.es/novedades/2024/05/08/la-audiencia-nacional-vuelve-a-rechazar-abrir-el-codigo-fuente-que-decide-quien-recibe-el-bono-social/>.

promised, it remains in force, affecting fundamental rights such as freedom of expression and peaceful assembly, with 291,400 fines for disobedience or disrespect.¹³⁹

Law enforcement capacity to ensure the safety of civil society actors and to investigate attacks and harassment

The application of the so-called ‘gag law’ in Spain has been remarkably selective, being used mainly to repress protesters and activists defending civil rights, while those linked to the glorification of Francoism have been treated with worrying leniency.¹⁴⁰ This bias in

the application of the rules is not accidental, as it reveals a structural problem.¹⁴¹ The security forces in Spain generally have a political leaning much closer to the extreme right^{142,143} than the average of the Spanish population.¹⁴⁴ This panorama has created a dangerous distortion in the climate of public space.

Online civic space

Digital surveillance

The Pegasus scandal in Spain broke in 2022 after it was revealed that politicians, activists and journalists had been spied on using

139 Santiago F. Reviejo, *The ‘Gag Law’ Already Surpasses Two Million Fines with No Agreement in Sight for Its Repeal (La ‘ley Mordaza’ supera ya los dos millones de multas sin acuerdo a la vista para su derogación)*, *Público*, 25 September 2024, <https://www.publico.es/politica/ley-mordaza-supera-millones-multas-acuerdo-vista-derogacion.html>.

140 Pedro Águeda, *Jupol Tries to Have a Far-Right Psychiatrist Act as an Expert Witness for the Defense of the Police Officers Who Killed a Young Man in Vallecas (Jupol intenta que un psiquiatra referente de la extrema derecha sea perito en defensa de los policías que mataron a un joven en Vallecas)*, *EIDiario.es*, 8 March 2024, https://www.eldiario.es/politica/jupol-psiquiatra-referente-extrema-derecha-sea-perito-defensa-policias-mataron-joven-vallecas_1_10992253.html.

141 Confidencial Digital, *Internal Affairs Already Identified Several Police Officers with Far-Right Profiles in ‘Spanish Spring’ (Asuntos Internos ya tiene identificados a varios policías con perfiles ultras en ‘Primavera Española’)*, *Confidencial Digital*, 1 April 2019, <https://www.elconfidencialdigital.com/articulo/seguridad/asuntos-inter-nos-tiene-identificados-varios-policias-perfiles-ultras-primavera-espanola/20190329144217123611.html>.

142 Álvaro Sánchez Castrillo, *SUP, the Progressive-Origin Police Union Seduced by Desokupa’s Far-Right (SUP, el sindicato policial de origen progresista que se dejó seducir por los ultras de Desokupa)*, *infoLibre*, 5 August 2024, https://www.infolibre.es/politica/sup-sindicato-policial-origen-progresista-dejo-seducir-ultras-desokupa_1_1856752.html.

143 Onda Cero, *Police Unions Reject the Agreement Between SUP and Desokupa for its ‘Serious Harm’ to the Police and Democracy (Sindicatos policiales rechazan el acuerdo entre el SUP y Desokupa por su ‘grave perjuicio’ a la Policía y la democracia)*, *Onda Cero*, 5 August 2024,

144 Francisco Martínez Hoyos, *The Spanish Police: Between Dictatorship and Democracy (La policía española, entre la dictadura y la democracia)*, *La Vanguardia*, 17 July 2024, <https://www.lavanguardia.com/historiayvida/propuestas/20240717/9788604/libros-agosto-ensayo-policia-dictadura-democracia.html>.

surveillance software, developed by the NSO Group. Pegasus allows remote access to mobile devices, collecting messages, calls and data without the user's knowledge.

In the Spanish context, it was discovered that Catalan independence leaders and members of their entourage, including lawyers in the exercise of their duties, had been targeted by this software, leading to accusations of political espionage. It was later revealed that the Spanish government itself, including members of the executive, were also victims of this programme.^{145,146}

The case raised serious concerns about the use of spyware in Spain, including

- **Lack of transparency:** It has not been fully clarified who ordered and authorised these spying operations.
- **Legal shortcomings:** Existing legislation does not adequately address the risks of misuse of these technologies.
- **Impact on fundamental rights:** The protection of privacy, freedom of expression

and confidentiality of communications has been called into question.

The Pegasus scandal has reopened the debate on the need to address the existence of a spyware industry that appears to be out of control.

Public participation

Other

The demands for greater political participation formulated by citizens during the mobilisations at the beginning of the decade have been unevenly addressed by political parties. While the spectrum on the right did not accept them, the parties on the left responded by implementing hollow participation mechanisms and occupations that, far from empowering citizens, ended up wearing out and exhausting the people involved.¹⁴⁷

Impact on civic space of emergency and crisis situations

During almost five decades of democracy in Spain, political parties have tried to hegemonise political life, but civil society has repeatedly demonstrated its ability to mobilise in the

145 Amnesty International, *Spain: Pegasus Spyware Scandal Reveals Risk of Intelligence Services Acting with Total Impunity*, 26 May 2022, <https://www.amnesty.org/en/latest/news/2022/05/spain-pegasus-spyware-scandal-reveals-risk-of-intelligence-services-acting-with-total-impunity/>.

146 Ronan Farrow, *How Democracies Spy on Their Citizens*, *The New Yorker*, 18 April 2022, <https://www.newyorker.com/magazine/2022/04/25/how-democracies-spy-on-their-citizens>.

147 Xnet, *Report on Promoting Participation Through the 'Decidim.Barcelona' Tool (Informe sobre la dinamización de la participación a través de la herramienta 'Decidim.Barcelona')*, *Xnet - Internet, derechos y democracia en la era digital*, 2 February 2017, <https://xnet-x.net/es/recomendaciones-herramienta-decidim-barcelona/>.

face of emergencies and humanitarian crises. Prominent examples include the Prestige disaster (2002), the Lorca earthquake (2011) and the COVID-19 pandemic (2020). The most recent case is the isolated high altitude depression phenomenon (DANA) that hit Valencia in October 2024, causing torrential rain and flooding with the tragic result of more than 200 deaths.

Faced with the inaction of the authorities and the power struggles between the central

and regional administrations, civil society responded in an exemplary manner. Thousands of volunteers organised themselves to rescue trapped people, distribute food and clothing, and help with clean-up and reconstruction. This collective effort once again demonstrated the ability of citizens to deal effectively with crises, replacing the neglect of institutional functions, which overturned their efforts mainly by politicising the facts.¹⁴⁸

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

Between 2015 and 2022, at least 162 people died in Spain during police operations or in police custody.

The judicial career of the current interior minister is notable. Fernando Grande-Marlaska's career as a judge reflects a serious failure to

protect human rights. During his time as a judge, Spain was condemned by the ECtHR on several occasions, including in the Portu and Sarasola cases, for failing to investigate allegations of torture. This inaction shows a worrying alignment with the narrative of police impunity.

Grande-Marlaska's subsequent political rise and appointment as Minister of the Interior illustrates a worrying institutional tolerance of these failures. This undermines the credibility

148 elDiario.es, *This Is How the International Press Is Covering the Valencia Tragedy: 'The Macabre Search of a Small Town'* (*Así está contando la prensa internacional la tragedia de València: 'La macabra búsqueda de un pequeño pueblo'*), elDiario.es, 1 November 2024, https://www.eldiario.es/rastreador/contando-prensa-internacional-tragedia-valencia-macabra-busqueda-pequeno-pueblo_132_11785288.html.

of the Spanish democratic system in the defence of fundamental rights.^{149,150,151,152}

Impunity and/or lack of accountability for human rights violations

The ECtHR condemned Spain for insufficient investigation of a human trafficking network reported by a victim. The Court considered that the procedures carried out were inadequate and did not meet the standards required for cases of this severity. As a consequence, it was ordered to compensate the victim with €15,000 for damages and €12,000 for expenses.¹⁵³

Other systemic issues

The housing situation in Spain, marked by the rental crisis and the increasing difficulty in accessing a decent home, represents a serious violation of human rights. Real estate speculation, the lack of public housing and the absence of effective policies to mitigate prices have left many people in a situation of extreme vulnerability. This context not only generates housing insecurity, but also affects basic rights such as health, education and equal opportunities, by converting housing, a fundamental right, into an unattainable luxury for a significant part of the population.

Article 17.12 of the Horizontal Property Law (LPH) allows communities of owners to prohibit the activity of tourist rentals through

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- 149 Civio, *At Least 162 People Died During Police Operations or in Custody in Spain Between 2015 and 2022 (Al menos 162 personas murieron en actuaciones o bajo custodia policial en España entre 2015 y 2022)*, 29 October 2024, <https://civio.es/2024/10/29/al-menos-162-personas-murieron-en-actuaciones-o-bajo-custodia-policial-en-espana-entre-2015-y-2022/>.
- 150 Raphael Tsavkko Garcia, *Not Everyone Is in Awe of Spain's New Progressive Government*, *Al Jazeera*, accessed 29 November 2024, <https://www.aljazeera.com/opinions/2018/6/19/not-everyone-is-in-awe-of-spains-new-progressive-government>.
- 151 Amnistía Internacional, *Eight Convictions by the European Court of Human Rights Show That the Investigation of Torture Remains an Unresolved Issue in Spain (Ocho condenas del Tribunal Europeo de Derechos Humanos evidencian que la investigación de torturas es una asignatura pendiente de España)*, accessed 29 November 2024, <https://www.es.amnesty.org/en-que-estamos/noticias/noticia/articulo/ocho-condenas-del-tribunal-europeo-de-derechos-humanos-evidencian-que-la-investigacion-de-torturas-e/>.
- 152 Sam Jones, *Spanish Minister Defends Police Accused of Brutality at Melilla Border*, *The Guardian*, 6 March 2022, *World News* section, <https://www.theguardian.com/world/2022/mar/06/spanish-minister-defends-police-accused-brutality-melilla-border>.
- 153 European Court of Human Rights, *T.V. v. Spain* (Application no. 22512/21), Judgment of 10 October 2024, Fifth Section, <https://www.coe.int/en/web/anti-human-trafficking/-/european-court-of-human-rights-reaffirms-states-duties-to-investigate-human-trafficking-in-t.v.-v.-spain-judgment>.

an agreement adopted by a double three-fifths majority. This interpretation has been confirmed by the Plenary Sentences of the Supreme Court 1232/2024 and 1233/2024, which has represented the only progress of the year in this systemic problem.^{154,155}

154 Tribunal Supremo (España), Sala Primera (Civil), *Sentencia núm. 90/2024*, 24 January 2024 (casación, procedimiento núm. 6528/2021), ponente: Excmo. Sr. D. Antonio García Martínez, <https://vlex.es/vid/980946053>.

155 Tribunal Supremo (España), Sala Primera (Civil), *Sentencia núm. 1671/2023*, 29 November 2023 (casación e infracción procesal, procedimiento núm. 3508/2019), ponente: Excma. Sra. D.^a M.^a Ángeles Parra Lucán, <https://vlex.es/vid/972360236>.

CONTACT

Xnet-Institute for Democratic Digitalisation

Xnet is a Barcelona-based collective of activists and specialists dedicated to advancing digital rights and modernising democracy for the digital age. Since its inception in 2008, Xnet has championed internet freedom, transparency, and anti-corruption through a combination of technopolitical tools and advocacy.

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ABOUT THE AUTHORS

Civil Rights Defenders



Civil Rights Defenders is a politically and religiously independent international human rights organisation. Its mission is to defend civil and political rights, as well as local human rights defenders by increasing their security, capacity, and access to justice. We work as part of a global movement of human rights defenders and partner with those at risk. Through legal means and public advocacy, we hold states, individuals, and non-state actors accountable for human rights violations. We advocate for the norms and values of the International Covenant on Civil and Political Rights and other relevant human rights standards, as we encourage people to use these rights to promote democratic societies.

International Commission of Jurists – Swedish section



The Swedish section of the International Commission of Jurists (ICJ-Sweden) – whose members are lawyers – works to promote human rights and the rule of law in Sweden and internationally. At the national level, ICJ-Sweden monitors Sweden's international, regional, and constitutional obligations in the field of human rights, ensuring that the rights of individuals are observed, that the judiciary is independent and accountable, and works to strengthen its compliance with fundamental rights. ICJ-Sweden works for equality before the law and non-discrimination and claims the right to a fair trial a right in itself, and promotes active resistance when violations of rights occur. ICJ Sweden designs a Program for Justice in Sweden, organises debates and seminars on current issues, and collaborates with other rights organisations when individual and structural violations in society have been identified. At the international level, ICJ-Sweden monitors trials in order to promote human rights and the rule of law.

Reporters Without Borders – Sweden



Reporters Without Borders has existed in Sweden since 1994. Nine years earlier, in 1985, the French parent organisation, Reporters sans frontières, was created. Today, Reporters Without Borders has its own offices in seven countries and independent sections in six countries around the world. In addition, Reporters Without Borders has correspondents in almost 150 countries. With its long history and global network, Reporters Without Borders is one of the most important actors in the world for issues related to freedom of expression and the press.

KEY CONCERNS

Judicial System

The judicial appointment system is still vulnerable to systemic political interference. The proposal to strengthen the protection of democracy and the independence of the judiciary has not yet been implemented and is not expected to enter into force before 2027. The legal aid system still does not fully meet the needs of those in need and does not ensure equal access to justice.

No further progress has been made this year to ensure that the judicial nomination system safeguards the independence of the judiciary. The proposal to strengthen the protection of democracy and the independence of the judiciary has not been implemented and the proposal to empower the government unilaterally to decide upon a state of emergency with controls is still under consideration.

Anti-Corruption Framework

Sweden is still awaiting the conclusions of the committee of inquiry, which are not expected to be presented until July 2025. The committee has been tasked with assessing whether criminal legislation regarding corruption is sufficient and effective, and whether specific definitions related to bribery, among other issues, need to be amended. As such, no progress has yet been made in strengthening the fight against foreign bribery. The existing legal definitions, which are seen to be limiting, have not been amended. No changes have been made in

terms of improving the prosecution and final judgments of cases.

Gaps in ethics guidance persist, including implementation of rules relating to revolving doors for top officials and the political financing framework. Concerns about safeguarding the independence of the judiciary by addressing the nomination system persist. No further progress has been made in terms of combatting foreign bribery as the committee of inquiry will not present its findings until mid-2025. As such, the existing legal definitions have not yet been amended to improve on the prosecution of, and final judgments in foreign bribery cases.

Media Environment and Media Freedom

Sweden has a long-standing tradition of press freedom and freedom of speech. Overall, Sweden has strong laws protecting media and journalists, making conditions for pluralistic journalism highly favorable. Studies show that the public service media maintains high credibility. However, there are concerns about increased polarisation and politicisation, leading to increased threats against journalists in 2024. Furthermore, new legislation and legislative proposals, especially within the area of national security, threaten to restrict these protections and limit access to public information.

Checks and Balances

The issues highlighted in the 2023 report became more severe in 2024, with the fast pace and high volume of proposed legislation, combined with short deadlines for stakeholders to respond, continuing to impede full participation in the legislative process. Adding to this, the government has started to pre-emptively assign conclusions in the terms of reference for government-appointed committees of inquiry, especially within the areas of criminal law and migration. In other words, government directives are increasingly specifying in advance the conclusions that an investigation should reach. Committees have been tasked with presenting proposals regardless of the actual conclusions.

The EU Commission did not make any specific recommendations in this area. It did note that several stakeholders, as well as the Council on Legislation, raised concerns about the accelerated pace of legislative initiatives and the short consultation periods, and the risks this entails – a situation that has not improved in 2024.

Civic Space







Fundamental rights, in particular the rights to freedom of assembly and of expression, are being restricted. The government employs ever more stringent measures to break up peaceful protests and prevent activists from exercising their rights. Climate activists in particular have been increasingly subjected to prosecution and conviction. The Swedish government cancelled funding for ‘ethnic organisations’ in 2024. Civil society organisations continue to be impeded from fully participating in the legislative process.

The Swedish government cancelled funding for ‘ethnic organisations’ in 2024. For many of those organisations, this government funding is their sole source of income. As such, Sweden has been acting in direct contradiction to the Commission’s recommendation. The Parliament has now passed the controversial ‘democracy requirements’ bill regulating the eligibility of civil society organisations, especially faith-based organisations, to receive public funding. The right to freedom of assembly is increasingly restricted, in particular when it comes to activists engaging in peaceful demonstrations.




Disregard of Human Rights Obligations and Other Systemic Issues Affecting the Rule of Law Environment

Proposed legislation undermining human rights and the rule of law noted in last year’s report has now been implemented. This includes stop-and-search zones, stay-away orders, and preventive coercive measures. Stop-and-search zones not only increase the risk of discriminatory ethnic and racial profiling, but also legitimize systematic intrusions into individuals’ personal integrity. Preventive coercive measures such as phone tapping, data interception, and camera surveillance also risk causing far-reaching violations of privacy. Expanded surveillance can lead to fear that prevents people from rightfully exercising their freedoms and rights, which in turn threatens democratic society.

State of play (versus 2024)

-  Justice system
-  Anti-corruption framework
-  Media Environment and Media Freedom
-  Checks and balances
-  Civic Space
-  Human Rights

Legend

- | | | |
|---|---|---|
| <i>Regression</i> | <i>No progress</i> | <i>Progress</i> |
|  |  |  |

JUSTICE SYSTEM –

Key recommendations

- *In order to ensure effective access to justice, the legal aid system must be updated. The requirements for being able to obtain legal aid should be revised in order to make legal aid more accessible for a wider group of people. Court proceedings should be adapted to address the individual needs of persons with disabilities in order for them to be able to enjoy the same conditions as others during the legal process. The limited legal aid system prevents applicants from receiving the support they need to be able to assert their rights.*
- *All educational curricula, including at the university level, should include knowledge of the Swedish Constitution, the European Convention on Human Rights, the EU Charter of Fundamental Rights, and the UN's core conventions and their application. Judges, as well as jurors, prosecutors, and trial attorneys should also receive regular training on democracy and human rights.*

Judicial independence

Appointment and selection of judges, prosecutors and court presidents

One of the primary criticisms of the organisation of the Swedish judiciary is that the authority responsible for central court administration is a government agency. To bolster the independence of the judiciary, the committee of inquiry has proposed restructuring this agency. While it would remain a state agency under the executive branch, oversight would be transferred to a board predominantly composed of current or former permanent judges. The government would appoint board members but would be restricted to selecting nominees put forward by the courts, the Swedish Bar Association, or the Swedish Agency for Government Employees. Representatives

of the executive and legislative branches would be barred from serving on the board. The board, rather than the government, would be responsible for appointing the director of the National Courts Administration, marking a shift from the current system in which the director is appointed by the government.

The committee of inquiry has also considered changes to the Judges' Proposal Board (*Domarnämnden*) to similarly strengthen its independence. Currently, the board is appointed by the government.

Regarding the retirement age of permanent judges, including Supreme Court justices, the committee of inquiry has proposed that permanent judges can only be removed from office upon reaching a statutory retirement age. Moreover, any changes to the statutory

retirement age cannot be applied retroactively to current permanent judges.

The justice committee within the Parliament has appointed a new all-party committee that will examine how to strengthen the courts' and judges' independence. This was partly motivated by recent political developments in Europe, including the pressure faced by judiciaries in Hungary and Poland. This most recent parliamentary inquiry stems from the previous one from 2023 that concluded that more work needs to be done to properly protect judicial independence through the legal system. The justice committee has stated that judicial independence is fundamental in a democracy. A central part is that the system for accountability of judges and courts is designed in a way that protects that independence.

The committee shall review the accountability processes for regular judges and analyse the need to change the organisation of the court administration agency. More specifically, it will look at options for creating a disciplinary board for judges and put forth a proposed solution, analyse certain aspects of the process for dismissing judges from their posts due to age and illness, and finally analyse the need for and submit a proposal for a changed organisation within the board of justice.

This parliamentary inquiry will launch at the latest on 13 May 2025.

Irremovability of judges; including transfers, dismissal and retirement regime of judges, court presidents and prosecutors

As noted in last year's report, there is a lack of regulations regarding the use of age to get rid of judges. The new government committee expected to launch in 2025 will specifically review certain aspects of the removal of judges due to their age and/or illness. In particular, the committee will address the need to regulate the retirement age in the Constitution in order for the government not to be able to use the retirement age as a pretext for removing certain judges. The previous investigation noted that more work needed to be done before any regulations can be set in place.

Independence (including composition and nomination of its members), and powers of the body tasked with safeguarding the independence of the judiciary (e.g. Council for the Judiciary)

The system for the appointment and selection of judges, prosecutors and court presidents is still vulnerable to systemic political interference and does not include measures to hinder such interference. Currently, the government formally appoints judges and, moreover, appoints the members of the board that proposes judicial nominations (Judges' Proposal Board – *Domarnämnden*). The proposal to strengthen the protection of democracy and the independence of the judiciary has not yet been implemented and is not expected to go into effect before 2027.

Quality of justice

Accessibility of courts (e.g. court fees, legal aid, language)

At present, it is extremely challenging for the average individual in Sweden to bring a legal case regarding violations of human rights in court, and thus to have reasonable prospects of success in obtaining justice, due to financial reasons. The costs of litigation are generally too high for most individuals to meet. Moreover, the ‘loser pays’ rule remains in place, meaning that in addition to having to pay their own legal fees, an individual seeking to bring a case may also be required to pay the opposing party’s costs, creating a major deterrent.

The income level required to qualify for legal aid has not been raised in over 20 years. During the same period, disposable incomes in Sweden have more than doubled. Moreover, cases involving violations of civil rights and fundamental freedoms are most often brought by individuals against the state or another party with much greater financial resources. People who are most often subject to discrimination generally tend to have fewer resources, making the costs of pursuing a legal case a major barrier to achieving justice.

This imbalance results in a situation where most people whose rights are violated do not have the ability or opportunity to have their cases tried in courts or to obtain redress, thus raising the question of whether Sweden is fully living up to its responsibility to ensure effective legal protection and equal access to justice. This ought to be changed in order to foster

true access to justice that gives more people a real opportunity and the means to assert their rights in practice.

Training of justice professionals (including judges, prosecutors, lawyers, court staff)

All education curricula, both at the primary and secondary school levels, as well as at the university level, should include knowledge of the Swedish Constitution, the European Convention, the EU’s Charter of Rights, and the UN’s core conventions and how they can be invoked. The knowledge of judges, especially administrative court judges, as well as jurors, prosecutors, and trial attorneys, could also be improved through recurring training on democracy and human rights. However, there are no concrete plans currently in place to change this going forward.

Other

The fight against gang criminality has led to the police and prosecutors being given increased tools to monitor individuals. Legislation implemented in 2023 gave authorities the power to use secret surveillance as a preventive measure against persons who are not suspected of having committed a crime. This includes secret data interception, telephone wiretapping, camera surveillance, stop-and-search zones, restricted ability to send encrypted messages (chat-control), anonymous witnesses, locking people up for preventive purposes or access to DNA registers at genealogy services.

In a recent eviction case involving an assessment of the best interests of the child, the

Court of Appeal found that the police's interest in obtaining access to information from a preschool took precedence over the child's rights to confidentiality. The police were initially denied information from the preschool administration about the child's location. The administration emphasized in its decision that it had the child's best interests in mind, and that the preschool maintained strict confidentiality regarding information about individuals and pointed to the risk of children in general being kept home from school if the confidentiality-breaking general clause in the Publicity and Privacy Act were to be routinely applied to cases related to eviction decisions. However, the Court of Appeal did not share this assessment and allowed the police to obtain the confidential information.

Fairness and efficiency of the justice system

Other

The government has changed the legal system through the passage of many new laws and proposals for new laws. Examples include:

- A bill allowing the usage of anonymous witnesses to testify in trials has been passed and will enter into force in January 2025.
- A bill allowing the police to create stop-and-search zones went into effect in March 2024. In these designated geographic areas,

police are permitted to arbitrarily stop and search individuals and vehicles without the need to have reasonable suspicion. Children under 15 can also be searched. This expanded authority, combined with the lack of clear guidance for police on how to conduct these searches in a fair and non-discriminatory manner, raises significant concerns about the risk of increased discriminatory profiling.

There has been a mixed reaction from a variety of actors to the legislative proposal that the government itself should be able to declare a state of emergency with checks being carried out only after it has taken effect. Civil Rights Defenders, among other civil society organisations, has expressed concern that the proposal weakens protections for democracy.¹ However, no further actions have been taken to address these concerns.

The justice system still involves direct involvement from the government in appointing judges and the system is not protected from political influence in the decision-making process.

The possibilities for access to justice for individuals whose human rights have been violated ought to be improved substantially. As described above, human rights protections are often ineffective and inaccessible due to the high costs the individual is unable to cover. Access to justice is unequal. There are few opportunities to have legal claims based

1 DN Debatt, *Bevara riksdagens makt över undantagstillstånd*, 9 May 2024, <https://www.dn.se/debatt/bevara-riksdagens-makt-over-undantagstillstand/>.

on discrimination tried in court, and in cases where the issues are raised, the assessments are often out of date. Lack of equal access is a concern for individuals with disabilities,

who should be able to have court proceedings adapted to accommodate their specific needs and thereby ensure that they can participate equally throughout the legal process.

ANTI-CORRUPTION FRAMEWORK -

Key recommendations

- *The government should ensure appropriate follow up once the committee of inquiry has presented its findings from its review of criminal law legislation regarding corruption and bribery.*
- *The government should develop rules regarding revolving doors that cover top executive functions in the government.*

Levels of corruption

Perceptions of corruption in Sweden have remained stable and at a low level. Sweden is ranked 6th out of 180 countries, according to Transparency International's *2023 Corruption Perception Index*.² At the same time, it is important to note that Sweden's score of 82 is the lowest score it has ever received, following a negative trend apparent since 2012.³

The EU has noted concerns about Sweden's judicial appointment system (described in the previous section).⁴ Issues which were highlighted in previous country submissions remain unaddressed. These include the failure to develop rules regarding revolving doors for top executive functions and political positions, as well as the lack of progress in addressing concerns about foreign bribery. Sweden does

2 Transparency International, *Corruption Perceptions Index – Sweden*, <https://www.transparency.org/en/countries/sweden>.

3 *CPI 2023: Sverige på lägsta nivå i korruptionsindexet – Den negativa trenden fortsätter*, Transparency International Sverige, 30 January 2024, <https://www.transparency.se/nyheter/cpi2023>.

4 Transparency International, *CPI 2023 for Western Europe & EU: Rule of Law and Political Integrity Threats Undermine Action Against Corruption*, 30 January 2024, <https://www.transparency.org/en/news/cpi-2023-west-europe-european-union-rule-of-law-political-integrity-threats-undermine-action-against-corruption>.

not require a ‘cooling-off period’ for former members of parliament.⁵

Although the government in February 2024 appointed a committee of inquiry to review existing criminal law legislation regarding corruption and bribery, the committee is not expected to present its findings until mid-2025,

at which point any potential legislative changes will still have to be considered. Among other issues, the committee has been tasked with assessing whether criminal legislation regarding corruption is sufficient and effective, and whether specific definitions related to bribery, among other issues, need to be amended.

MEDIA ENVIRONMENT AND MEDIA FREEDOM

Key recommendations

- *The government should ensure that proposed and existing legislation does not restrict access to public information or impact freedom of the press and journalistic integrity.*

Media and telecommunications authorities and bodies

The media and telecommunications authorities operate independently and relatively smoothly. However, the work of the authorities is guided by government directives and a recent proposal has raised potential concerns. According to a new report, the Swedish National Defence Radio Establishment (FRA) is set to receive clearer legal authority to hack into computers and mobile phones. This proposal could grant Swedish authorities a broader mandate for signal intelligence, allowing access to sensitive information, which in practice could impact

press freedoms and journalistic integrity. This poses a risk of increased security requirements for those within the media industry, especially for those reporting on issues related to national security.

Pluralism and concentration

It is important to note that the laws protecting media and journalists in Sweden remain strong. Compared to other countries, the conditions for pluralistic journalism are highly favorable. Nonetheless, certain issues raise concerns.

⁵ Silvia Kotanidis, *Rules on Revolving Doors in the EU*, 29 April 2024, <https://epthinktank.eu/2024/04/29/rules-on-revolving-doors-in-the-eu-post-mandate-restrictions-on-members-of-eu-institutions-and-parliamentarians-in-member-states/>.

The Foreign Espionage Act, which came into force on 1 January 2023, makes it illegal to disclose information that could harm Sweden's relations with other countries. Although journalists have some protections enshrined in the law, it is vaguely formulated, which may lead some journalists to avoid potential sensitive topics, particularly in security reporting. At the same time, General Data Protection Regulation (GDPR) regulations are increasingly used to restrict access to public documents, making it harder for journalists to obtain information and threatening transparency. Under proposals that entered into force in 2024, a broadcasting license can be withdrawn if a court finds that a programme contains a freedom of expression offence that constitutes a serious abuse of freedom of expression. This applies to both public service and commercial broadcasters. This creates insecurity among media outlets, which risk losing their licenses if they deviate from certain norms. Additionally, the FRA has been granted expanded powers to monitor electronic communication, including journalists' devices, which could jeopardise journalists' ability to guarantee anonymity of their sources.⁶ Threats and harassment against journalists have also increased, forcing media companies to allocate more resources to security, potentially affecting their independence and editorial choices. According to the Swedish Union of Journalists, *Journalistförbundet*, almost 30% of Swedish journalists have been threatened and around

70% have received derogatory comments in the past year.⁷

It is also important to highlight that a significant portion of Swedish media is owned by a few large corporations, such as the Bonnier Group and Schibsted. Bonnier owns about 43% of all subscription-based multi-day newspapers in Sweden, making them the largest player on the market. Schibsted is also a major player, directly owning 13 newspapers, including *Aftonbladet* and *Svenska Dagbladet*. Additionally, Schibsted has indirect influence over other newspapers through its 29% ownership in Polaris Media, which in turn owns parts of Stampen Media. This concentration of ownership can lead to a homogenisation of news content and perspectives, potentially limiting the diversity of viewpoints available to the public. Smaller, local newspapers and media outlets often struggle financially and may be bought out or forced to close, thereby reducing local news coverage and diminishing pluralism at the regional level.

Transparency and media ownership

There is media transparency in Sweden, but it could be improved. In 2019, Reporters Sans Frontières developed a tool called the Journalism Trust Initiative (JTI), an international standard to increase transparency and certify

6 Journalistförbundet, *Skydda källskyddet – Stoppa FRA:s inhemska signalspaning*, 9 December 2024, <https://www.sjf.se/aktuellt/202412/skydda-kallskyddet-stoppa-fras-inhemska-signalspaning>.

7 Journalistförbundet, *Hot och hat mot journalister*, 22 March 2024, <https://www.sjf.se/yrkesfrigor/yttrandefrihet/hot-och-hat-mot-journalister>.

credible journalism. The goal of the JTI is to provide a transparent mechanism for curbing misinformation and tangible rewards for ethical and professional journalism. This initiative was born from a simple realization that journalism is undergoing direct competition from manipulative content that proliferates in the digital space: propaganda, advertising, and disinformation. More than 1,500 media outlets in 85 countries have already joined JTI, but no actor in Sweden has yet done so. The European Media Freedom Act (EMFA) also refers to JTI. The challenge is to make it mandatory for digital platforms to promote reliable information.

Public service media

The public service media acts professionally and maintains high credibility. Public service in Sweden, comprising Sveriges Radio (SR), Sveriges Television (SVT), and Utbildningsradion (UR), is the foundation of Swedish media coverage and holds a prominent place in society. It enjoys very high trust levels compared to private media, with studies showing over 70% of the population expressing strong trust in SVT and SR, in contrast to significantly lower trust in private media – around 20% to 60%. Public service media provides independent journalism, free from both political and commercial interests, making it one of the most trusted information sources in Sweden. This trust was clearly evident during the COVID-19 pandemic when a majority of the Swedish population turned to the public service media for relevant information as a way to avoid misinformation and conspiracy theories that spread widely online.

A key strength of public service media is its commitment and requirement to deliver pluralistic information – a demand that commercial media, which is more dependent on clicks and advertising revenue, is not subject to in the same way. Public service has a special responsibility to highlight social issues that might otherwise be overlooked.

Despite its strong position, public service media in Sweden faces challenges, particularly when it comes to funding and political pressure. The public service companies are increasingly tasked with countering disinformation while dealing with growing security threats and strengthening their preparedness. Recently, they have also faced rising operational costs due to inflation.

Currently, political discussions are underway about the role of public service media between 2026 and 2033. The parliamentary inquiry underpinning this has proposed a budget increase: 3% for 2026, followed by a 2% increase each year from 2027 to 2030, and 1% annually from 2031 to 2033.

However, SR, SVT, and UR have assessed that a greater increase is needed to maintain their current standards (3.5%, 3%, and 2.8%, respectively, on an annual basis, with additional contributions). Without this, public service may need to cut back on both journalists and programming, potentially weakening their ability to fulfill their mission in the future.

Reporters Without Borders has also noted extensive social media campaigns against public service, primarily from far-right groups

claiming it is biased toward the left. Recently, left-wing activists have similarly criticised public service for leaning too far to the right in its reporting, especially regarding the war in Gaza. Additionally, public service journalists have faced threats and vandalism.

Overall, public service in Sweden maintains a strong position, but significant challenges lie ahead.

Online media

While existing laws, measures, and practices facilitate a properly functioning online media ecosystem, Sweden has experienced increased polarisation. The tone online has hardened and threats and harassment against journalists have risen. Recent studies by the Swedish Union of Journalists (*Journalistförbundet*) revealed that nearly 30% of Sweden's journalists faced threats and around 70% received disparaging comments.⁸ Female journalists are particularly vulnerable, with two out of three having been subjected to hateful comments.⁹

In a survey by the Swedish Union of Journalists, a striking 39% reported practicing self-censorship to avoid hatred and threats, and 48% stated that they had adjusted their reporting for the same reasons.¹⁰

In May, the private TV channel TV4 revealed that one of the country's largest parties, the Sweden Democrats – who closely cooperate with the government – ran a troll factory to anonymously smear the opposition, as well as the government parties they work with.¹¹ Following the revelation, party leader Jimmie Åkesson claimed it was “a major influence operation from the left-liberal establishment”.¹² He also accused his political opponents of trying to sabotage the Sweden Democrats ahead of the EU election.

Safety and protection of journalists and other media actors

Sweden ranks 3rd out of 180 in Reporters Without Borders' *Press Freedom Index*¹³ and often tops similar lists. It has a long-standing tradition of press freedom and freedom of speech. Sweden was the first country in the

8 Journalistförbundet, *Hot och hat mot journalister*, 22 March 2024, <https://www.sjf.se/yrkesfragor/yttrandefrihet/hot-och-hat-mot-journalister>.

9 Ibid.

10 *Hot och trakasserier mot journalister och forskare*, https://www.riksdagen.se/sv/dokument-och-lagar/dokument/interpellation/hot-och-trakasserier-mot-journalister-och-forskare_hc10130/.

11 Kalla fakta, *Undercover i trollfabriken*, 7 May 2024, <https://www.tv4.se/artikel/2VCWExxK0L1Xmai2Y60Z2/kalla-fakta-avsloelar-sd-driver-en-trollfabrik>.

12 Miranda Olsson, *Åkesson om Kalla faktas avslöjande: "Påverkansoperation"*, Altinget, 14 May 2024, <https://www.altinget.se/artikel/kalla-fakta-sd-konton-haanar-partiledare-i-tidosamarbetet>.

13 Reporters Without Borders, *Index 2024*, <https://rsf.org/en/index>.

world to pass a Freedom of the Press Act in 1766, granting substantial freedom to the media. Citizens also gained the right to access government documents. Today Sweden has maintained a strong, positive attitude toward the media as reflected in robust legislative protections.

Public media is regulated by an independent broadcasting commission, which is part of the Swedish Press and Broadcasting Authority, while an independent function known as the media ombudsman handles ethics complaints, for example, from the public.

Swedish authorities increasingly reference the General Data Protection Regulation to justify the confidentiality of public documents. This use of the GDPR has made it more difficult for journalists to access information and gain insight into public affairs, sparking concerns that Sweden's transparency principle is being undermined. There are also proposals to introduce opportunities to revoke broadcasting licenses on the basis of protecting national security and to anonymise certain decisions, which would further complicate journalistic investigations of public records. Additionally, new legal proposals aiming to restrict access to databases could also be seen as potential threats to press freedom.

At the same time, a division in freedom of expression is emerging. Public statements by government officials calling for the deportation of individuals who express support for certain organisations that are considered extremist¹⁴ have created a climate of uncertainty, effectively curtailing the freedom of speech, and non-Swedish citizens feel restricted in expressing their views, for example, during demonstrations.

In summary, Sweden has strong legal protections for media and journalism. However, in recent years, there has been a growing number of proposals aimed at restricting these protections - a development that raises serious concerns.

Frequency of verbal and physical attacks

While the risk of physical attacks on journalists in Sweden is relatively low, online threats and harassment campaigns are more common. The harassment directed at female journalists is especially brutal, according to a study from Lunds Universitet. The Swedish Defense Research Agency (FOI) studied hate and harassment on the online forum *Flashback*, focusing on journalists, politicians, and influencers. It found that 55% of women faced hate, compared to 41% of men. Female journalists were the most targeted, with 67% experiencing hate.¹⁵ Women were also more likely to receive

14 Dagens Nyheter, *Ministern vil utvisa personer som viftar med Hamasflaggor*, 29 October 2024, <https://www.dn.se/sverige/ministern-vill-utvisa-personer-som-viftar-med-hamasflaggor/>.

15 SVT Nyheter, *FOI:s rapport visar: Två av tre kvinnliga journalister hatas på nätet*, 16 December 2020, <https://www.svt.se/nyheter/inrikes/foi-s-rapport-visar-tva-av-tre-kvinnliga-journalister-hatas-pa-natet>.

sexual harassment and insults related to their appearance. Because of this, public broadcasters and media companies are being forced to allocate more resources to security.

Exiled journalists in Sweden also report facing threats and feeling inadequately protected by authorities. For example, several Turkish exiled journalists expressed particular concern during Sweden's NATO application as Turkey's president demanded their extradition. In autumn 2024, prominent reporter Ahmet Dönmez, who had reported on corruption in Turkey, moved to the United States as a result of feeling unsafe in Sweden.¹⁶ In 2022, Dönmez was severely assaulted by two unidentified assailants.

Lawsuits and prosecutions against journalists (including SLAPPs) and safeguards against abuse

Swedish journalists are relatively well protected by law against being sued in 'Strategic Lawsuit Against Public Participation' (SLAPP) cases. However, threats of lawsuits and actual lawsuits do occur, though to a lesser extent than in Southern European countries.

Confidentiality and protection of journalistic sources (including whistleblower protection)

Journalistic sources are legally protected and the principle of access to public information is one of the cornerstones of Swedish democracy. However, recent amendments to the Constitution, aimed at protecting information related to international relations, have raised concerns about potential sanctions against whistleblowers and journalists who reveal wrongdoings. The 2023 amendments to Sweden's foreign espionage laws introduced changes across several key legal areas. In the **Penal Code (Brottsbalken)**, new offenses were created, including foreign espionage, aggravated foreign espionage, and gross unauthorized handling of classified information, under Chapter 19. These crimes target the unauthorized disclosure of secrets that could damage Sweden's relations with other states or international organizations. In the **Freedom of the Press Act (TF)** and the **Fundamental Law on Freedom of Expression (YGL)**, changes were made to criminalize foreign espionage in the context of press and expression rights, limiting whistleblower protections and the acquisition of information related to espionage. Lastly, the **Code of Judicial Procedure (Rättegångsbalken)** was amended to broaden the use of secret coercive measures, such as surveillance and data collection, during investigations into foreign espionage.

16 Kurdo Baksi, *Förföljd journalisten har flyttats till USA – "Jag känner mig inte trygg i Sverige"*, Journalisten, 28 August 2024, <https://www.journalisten.se/nyheter/forfoljd-reporter-har-flyttat-till-usa-jag-kanner-mig-inte-trygg-i-sverige/>.

CHECKS AND BALANCES

Key recommendations

- *The government must ensure that the constitutionally mandated legislative process – a cornerstone of democracy and rule of law in Sweden – is respected and upheld. Stakeholders in the legislative process, including civil society actors, must be given sufficient time to respond to legislative proposals during the consultation process. Government inquiries must be able to carry out their intended purpose of thoroughly examining and reporting on relevant matters, including understanding the potential consequences of a proposed action, in an objective, neutral manner without external interference.*
- *The government must ensure that all aspects of the asylum and migration process, including the process for appealing negative decisions by the Migration Agency, adhere to the rule of law and due process principles.*

Process for preparing and enacting laws

Framework, policy and use of impact assessments, stakeholders/public consultations (particularly consultation of judiciary on judicial reforms), and transparency and quality of the legislative process

The legislative pace has continued to be rapid, particularly within the area of criminal law. Responses to several government inquiries and consultations have highlighted how this makes it difficult to ensure adequate oversight, which threatens the quality of legislation as well as the due consideration given to human rights obligations.

The legislative consultation process is a fundamental aspect of Swedish democracy and rule of law. Legislative proposals are sent to stakeholders, including civil society organisations, to gather input and expert analysis on the potential consequences of enacting proposed bills.¹⁷ However, the combination of high tempo and short response timeframes have frequently resulted in significant stakeholders in the legislative process, such as civil society organisations with already limited resources, being unable to provide critical input on proposed legislation. In effect, civil society and other relevant stakeholders are being impeded from participating in the legislative process. This includes situations where the perspectives of individuals or communities directly affected

17 Government (Sweden), Responding to a referral, <https://www.regeringen.se/contentassets/b682c0e61b4c40c9ab-88d227707c47b5/svara-pa-remiss---hur-och-varfor-pm-200302>.

by certain legislative proposals should be included, or where a human rights perspective could be applied.

Moreover, the current Swedish government has increasingly started to pre-emptively assign conclusions in the terms of reference for the committees of inquiry – especially within the field of criminal law and migration law.¹⁸ The function of the terms of reference is to guide the inquiry’s examination and reporting on relevant matters. However, the past year has seen formulations which task the committee to present certain proposals, *regardless* of the conclusions of the report. This has resulted in government inquiries that insufficiently analyse the matter at hand in relation to relevant human rights and the input from relevant communities and individuals and, in graver circumstances, entirely bypass such an analysis. As such, the basis for further legislative proceedings is severely undermined.

Independent authorities

Civil Rights Defenders continues to urge that safeguards be included in the Swedish Constitution to protect the independence, mandate, and authority of the Swedish Institute for Human Rights.

Accessibility and judicial review of administrative decisions

Civil Rights Defenders is concerned that Swedish courts are not sufficiently requesting preliminary rulings from the Court of Justice of the European Union (CJEU). This is clearly noticeable at the Migration Court of Appeal, which is the highest judicial body in migration cases. As there are no judicial remedies under national law to appeal the Migration Court of Appeal’s rulings, they are obliged to request preliminary rulings regarding the interpretation of EU law in accordance with Article 267 of the Treaty on the Functioning of the European Union (TFEU). In 2006, new national legislation was enacted after an infringement procedure was conducted against Sweden based on the lack of requests for preliminary rulings.¹⁹ However, Civil Rights Defenders does not believe that this legislation has had a sufficient impact. Swedish courts are still remarkably hesitant to turn to the CJEU. A recent ruling from the Migration Court of Appeal concerned the interpretation of EU directive 2008/115/EG, which sets out common standards and procedures for Member States to follow when returning unlawfully staying third-country nationals. One judge chose to issue a dissenting opinion strongly indicating that the interpretation of the directive was not

18 Government Offices of Sweden, Committees, 2 March 2015, <https://www.government.se/how-sweden-is-governed/committees/>.

19 Swedish Parliament, Act (2006:502) with certain provisions on preliminary rulings from the Court of Justice of the European Union (*Lag med vissa bestämmelser om förhandsavgörande från Europeiska unionens domstol*), https://www.riksdagen.se/sv/dokument-och-lagar/dokument/svensk-forfattningssamling/lag-2006502-med-vissa-bestammelser-om_sfs-2006-502/.

obvious. Despite this, the Court neglected to ask for a preliminary judgement from the CJEU.²⁰ In another ruling from the Migration Court of Appeal concerning the interpretation of the Dublin Regulation, the Court conducted an analysis of the presumed aims of the regulation and stated that “according to the Migration Court of Appeal” page 19 of the preamble should not be interpreted as giving a right to appeal regarding decisions made on the basis of Article 26.1 of the Regulation.²¹ This application of the Dublin Regulation was not at all obvious, since it required a new teleological interpretation by the Migration Court of Appeal. The interpretation of the article also varies amongst the EU Member States. Despite this, the Migration Court of Appeal did not ask for a preliminary ruling.

The lack of requests for preliminary rulings unduly restricts access to judicial review of national decisions and hinders the uniform implementation of EU legislation within Member States. It is of fundamental importance to the correct application of EU legislation that national courts adhere to the requirement of Article 267 of TFEU and measures

need to be introduced to encourage Swedish courts to do so.

In 2024, the government appointed a new legislative inquiry committee which was tasked with evaluating the Act Concerning Special Controls of Certain Aliens (2022:700).²² The inquiry committee is expected to present its proposal for legislative amendments in November 2025. However, the government has instructed the inquiry to extend the circumstances and time under which a foreign national can be placed in custody based on security concerns, extend the use of coercive measures and to propose legislative changes which enables authorities to apply the Act Concerning Special Controls of Certain Aliens even if the alien only poses an indirect threat to national security.

The lack of disclosure of evidence supporting the rejection of residence permits in these cases is a serious infringement on the adversarial principle and hinders individuals’ rights to a fair proceeding. The government’s wish to extend the application of these rules to cases where the alien is only considered an indirect

20 Migration Court of Appeal (Sweden), Judgement of 27 September 2024, MIG 2024:11, <https://www.domstol.se/globalassets/filer/domstol/migrationsoverdomstolen/avgoranden/mig-2024-11.pdf>.

21 Migration Court of Appeal (Sweden), Judgement of 26 February 2020, MIG 2020:4, <https://lagen.nu/dom/mig/2020:4>.

22 Department of Justice (Sweden), Supplementary directive to the inquiry on strengthened protection against foreign nationals who pose qualified security threats or who are linked to criminal networks (Tilläggsdirektiv till utredningen om stärkt skydd mot utlänningar som utgör kvalificerade säkerhetshot eller som har koppling till kriminella nätverk), Ju 2024:10, 29 August 2024, <https://www.regeringen.se/rattsliga-dokument/kommittedirektiv/2024/08/dir.-202478>.

threat to national security further calls into question the proportionality of the regulation.

It is also greatly concerning that recently proposed amendments to the statute of limitations in asylum procedures will limit migrants' ability to legalise their stay in Sweden.²³ This is particularly worrisome since the procedure for granting residence permits based on impediments to deportation lacks several procedural safeguards, rendering it an inadequate form of protection for migrants against deportations which may violate the prohibition of torture or the right to private and family life.

The Migration Agency's decisions regarding other impediments than protection grounds to enforcing an expulsion decision, such as severe disease, cannot be appealed. There are also reports which show that the Migration Agency applies a higher evidentiary standard than that mandated by the legislation. Due to precedent from the Migration Court of Appeal, the individual is also required to show that they have actively participated in proving their identity.²⁴

This leads to many of the proceedings being focused only on the individual's participation in facilitating the deportation instead of the impediments to the deportation.²⁵ Furthermore, the individual usually lacks a right to public counsel in these proceedings. The inadequacy of these proceedings can be supported by statistics showing that, between 2017 and 2022, 22%-29% of applicants received a residence permit after the statute of limitations on their deportation decisions had expired.²⁶

Currently, expulsion decisions have a statute of limitations of four years. However, if the proposed legislation is enacted, the statute of limitations would last five years and would not start to run before the individual leaves Swedish territory. Civil Rights Defenders is gravely concerned that this will lead to an increasing number of individuals resorting to living in Sweden without legal residence permits indefinitely, even though in some cases they may have acquired the legal right to remain in Sweden during that time.

23 Swedish Government Official Reports (Sweden), *Statute of limitations of removal orders and certain issues relating to re-entry bans (Preskription av avlägsnandebeslut och vissa frågor om återreseförbud)*, SOU 2024:10, 2 February 2024, <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2024/02/sou-202410/>.

24 Migration Court of Appeal (Sweden), *Judgement of 31 March 2009*, MIG 2009:13, <https://lagen.nu/dom/mig/2009:13>.

25 Swedish Government Official Reports (Sweden), *Residence permits due to practical impediments to enforcement and statutes of limitations (Uppehållstillstånd på grund av praktiska verkställighetshinder och preskription)*, SOU 2017:84, 1 November 2017, <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2017/11/sou-201784/>.

26 Swedish Government Official Reports (Sweden), *Statute of limitations of expulsion decisions and certain issues relating to re-entry bans (Preskription av avlägsnandebeslut och vissa frågor om återreseförbud)*, SOU 2024:10, 2 February 2024, <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2024/02/sou-202410/>.

Transparency of administrative decisions and sanctions (including their publication and the availability and publicity of data concerning administrative decisions)

In last year's report, Civil Rights Defenders highlighted the growing concern regarding an increased number of rejections of residence permits and citizenship applications based on undisclosed security concerns. According to the Act Concerning Special Controls of Certain Aliens (2022:700), the Swedish Migration Agency forwards cases involving residence permits and citizenship to the Security Police for review. If the Security Police have reason

to suspect that the applicant may constitute a security threat, they then conduct an investigation into the concerning activities and provide an opinion to the Migration Agency, which makes the final decision on the individual's application. Applicants have a right to appeal a negative decision by the Migration Agency. However, in these cases they lack access to the information upon which the Migration Agency has based its decision. This lack of transparency constitutes a significant obstacle for the individual as they have no knowledge of which circumstances they need to contest during the appeal.

CIVIC SPACE –

Key recommendations

- *The government must demonstrate its commitment, through its actions and rhetoric, to ensuring a robust civil society by, among other things, safeguarding access to stable public funding.*
- *The government, particularly judicial and law enforcement authorities, must respect and uphold the rights to freedom of association and assembly.*
- *The government must ensure equal treatment of civil society organisations and adhere to national anti-discrimination laws in this respect, especially with regards to Muslim civil society organisations.*

Freedom of association

Equal treatment among CSOs, including by reference to CSOs' focus of activities, type of activities, and geographical location of activities

The targeted, discriminatory treatment of religious and ethnic organisations and the shrinking of such organisations' access to public spaces is evident from the way they are routinely demonised, scrutinised and stigmatised within the media and political discourse in Sweden – a development fully endorsed and acted upon by high-ranking government officials. Sweden lacks the necessary legal frameworks to force the involuntary dissolution of CSOs. However, since the majority of Swedish CSOs in practice rely on public funding, the withdrawal of such in effect forces them to 'voluntarily' dissolve, either through declaring bankruptcy or liquidation.

One such case of 'involuntary voluntary' dissolution, which received significant political and media attention, occurred when the Swedish National Council for Adult Education (hereinafter 'the Council'), a non-profit organisation with a government mandate to distribute the budgeted allocation of grants decided by the Swedish Parliament to Sweden's nine adult education associations, decided on 4 September 2024 not to distribute any of the allocated grants to the Islamic adult education association Ibn Rushd ('the Association'). This decision meant that Ibn Rushd, Sweden's oldest and largest Muslim association, was completely deprived of state funding from 2025 – a decision that forced them to shut down.

The Council based the decision on their assessment of the Association as lacking the necessary organisational and financial capacity required by the newly adopted state grant system for adult education associations, which came

into effect on 1 January 2024. Following the 2022 Tidö Agreement, the state's grant-giving system has been reformed with the explicit purpose of making it more difficult for associations to receive public funding; for example, by raising the requirements within the relevant regulatory frameworks as well as reducing the total budget allocation set aside for financing the associations by SEK 250,000,000 (approximately €21.8 million).

This decision comes after the Association had been subjected to several public investigations, all debunked, in recent years. The background to Ibn Rushd's worsened financial situation lies in events that occurred at the tail end of 2023. After a routine review conducted by the Association over its activities identified that two books listed in the syllabi of five study circles included chapters that could be construed as being in conflict with the 'democracy requirement' necessary for adult education associations to be eligible to receive public funding, the Association initiated formal proceedings to pay back funding used by the targeted study circles, this owing to the fact that the Association had neglected their obligation to maintain proper documentation of its activities. Though there was no indication that these particular chapters had actually been studied or otherwise used, the proceedings were misconstrued in media and in the public debate as Ibn Rushd being under state investigation after teaching "seven-year-olds about Sharia",²⁷ the right of parents to dole out corporal

punishment, antisemitic conspiracy theories, and that homosexuality is a sin. The false allegations were widely circulated and exacerbated by then Minister of Education Mats Persson, who had previously described adult education associations as fraudulent. Immediately following the media and political debate, several municipalities and regions decided to cut or withhold funding to any of the Association's member organisations operating in their administrative districts, despite both the Association and Council refuting the promulgated narratives. In 2024, following the Association and Council ending their proceedings, most municipalities and regions decided not to continue allocating funds to Ibn Rushd for 2025.

The events reflect the low evidentiary standards applied to the actions of Muslim civil society organisations and the way media narratives influence public institutions, perpetuating discriminatory conspiracy theories. Moreover, Ibn Rushd was neither contacted by any municipalities or regions before their funding was frozen nor provided with any meaningful avenues for redress against such abrupt institutional actions.

27 Daniel Vergara, *Sanning eller sensation – så byggs mediedrevet mot Ibn Rushd*, 15 December 2023, <https://tidningen-syre.se/2023/15-december-2023/sanning-eller-sensation-sa-byggs-mediedrevet-mot-ibn-rushd/>.

Financing framework for CSOs, including availability of and access to public funding, rules on fundraising, rules on foreign funding, tax regulations

Democracy requirements

On 18 June 2024, the Swedish Parliament voted to pass a bill introducing a so-called ‘democracy requirement’ for civil society organisations and faith-based communities (FBCs) to be eligible for public funding. The adopted legislation will enter into force on 1 January 2025.

According to the bill, CSOs or faith-based communities (FBCs) will be prohibited from receiving public funding if they, either themselves as legal entities or through any of their representatives, (1) exercise violence, coercion or threaten other persons or otherwise violate the fundamental rights and freedoms of persons, (2) discriminate against individuals or groups of individuals or otherwise violate the principles of equality or non-discrimination,

(3) defend, promote or incite any of the previous categories of actions or (4) in other ways ‘counteract’ the democratic system of governance. CSOs or FBCs that are found to have violated any of these conditions might be further liable to pay back previously granted public funding retroactively.

The legislative process behind the proposed law has been contentious from the start. The initial parliamentary inquiry in 2018 stemmed from a protracted legal case between the Swedish Agency for Youth and Civil Society (*Myndigheten för Ungdoms- och CIVILSAMBÄLLESFRÅGOR* or MUCF), the primary distributor of public funding to CSOs, and the organisation Sweden’s Young Muslims (*Sveriges Unga Muslimer* or SUM). In December 2016, MUCF had rejected SUM’s application for state funding, finding that SUM failed to meet certain requirements – specifically, the expectation to uphold democratic values in its activities, including gender equality and the prohibition of discrimination.²⁸

28 MUCF, *Bakgrund till beslut om statsbidrag gällande Sveriges unga muslimer*, 13 April 2018, <https://www.mucf.se/om-oss/aktuellt/bakgrund-till-beslut-om-statsbidrag-gallande-sveriges-unga-muslimer>.

This decision was widely criticised by a number of anti-racist actors and other CSOs.²⁹ SUM appealed the decision to the Administrative Court in Stockholm, which overturned MUCF's decision and sent the case back to MUCF for further review and a new decision.³⁰ SUM's appeal was subsequently upheld in the appellate court. However, the government directive guiding the parliamentary inquiry made references to questions about "whether taxpayers' money may have gone to organisations where there are circumstances that may indicate that the organisation's activities are not compatible with society's fundamental values".³¹

The Social Democratic and Green government on 28 June 2022 proposed a bill prohibiting the distribution of public funding if the recipient organisation as such or any of its representatives committed acts of violence, coercion, or threats against a person, or in other ways violated the fundamental rights and freedoms of persons; discriminated against individuals or groups of individuals, or otherwise violated the principles of all persons equal value; defended, promoted or incited any of the aforementioned conducts or otherwise "opposed democratic governance".³² Conduct considered to "oppose[d] democratic governance" included an organisation expressing support for "undemocratic or violent regimes".³³

29 Antiracist Academy's (*Antirasistiska akademien*) press release voicing grave concern that MUCF's decision was based on arbitrary evidence with a political agenda to discredit Muslims in general and SUM in particular, masking it with vague concepts such as 'democratic equality.' Antirasistiska Akademien, *ArA fördömer statens godtyckliga beslut att neka bidrag till Sveriges Unga Muslimer*, 30 November 2016, <https://www.antirasistiskaakademien.se/ara-for-domer-statens-godtyckliga-beslut-att-neka-bidrag-till-sveriges-unga-muslimer/#more-587>. The National Forum for Voluntary Organisations (Forum – *idéburna organisationer med social inriktning*) called it "a violation of the Administrative Act" and noted the serious consequences for Muslim organisations in general as well all civil society organisations in Sweden. Forum idéburna organisationer med social inriktning, *MUCF pekar ut organisation som odemokratisk – utan bevis*, 19 April 2017, <https://socialforum.se/mucf-pek-ut-organisation-som-odemokratisk-utan-bevis/>. Other civil society networks expressed further concerns about the shrinking space for Muslim civil society and increasingly negative perceptions of Muslims more generally, including the network Swedish Muslims in Cooperation and the National Council of Swedish Children and Youth Organisations. LSU, *Alla måste lära sig av den felaktiga bedömningen av SUM*, 1 February 2019, <https://lsu.se/nyhet/alla-maste-lara-sig-av-den-felaktiga-bedomningen-av-sum/>.

30 Stockholm Administrative Court. (2019). Judgment in case nr. 1383-19, published on the 13 October 2019.

31 Ministry of Culture. (2017). Tilläggsdirektiv till Utredningen om Översyn av statens stöd till trossamfund.

32 Ministry of Culture. (2022). Statens stöd till trossamfund samt demokrati villkor vid stöd till civilsamhället. (Prop. 2021/22:272). <https://www.regeringen.se/contentassets/8d33b0da0d1d4c399989a8fc7cc7125f/202227200-webb-omslag-ok-och-godkand-mk.pdf>.

33 Ministry of Culture. (2022). Statens stöd till trossamfund samt demokrati villkor vid stöd till civilsamhället. (Prop. 2021/22:272). <https://www.regeringen.se/contentassets/8d33b0da0d1d4c399989a8fc7cc7125f/202227200-webb-omslag-ok-och-godkand-mk.pdf>.

The proposed legislation was met with criticism, with many stakeholders expressing concern that the bill would, in practice, solely or at least disproportionately target ethnic and religious organisations, especially Muslim civil society organisations and religious communities, and that this was the bill's true purpose.³⁴ Several of the ethnic and religious organisations consulted during the legislative process reported that they felt particularly singled out by the proposals and felt that the media's disproportionate focus on their activities had led authorities to closely scrutinise their organisations, in comparison with more lax oversight of other types of organisations.³⁵

Yet in November in 2022, the new right-wing conservative government withdrew the bill from consideration only two months before it was supposed to enter into force, ostensibly in response to criticism from Christian organisations and religious communities. Government

representatives stated that they were working on a new bill to introduce a democracy requirement, but that it would be adjusted so that the scope would not include Christian organisations and communities.³⁶

After a number of delays, the final bill was presented on 27 March 2024 and hastily voted through Parliament shortly thereafter, on 18 June 2024.³⁷ Unlike previous iterations, the new legislation clarified a number of points which had been especially criticised during the review process. One such clarification concerns who is to be considered a representative of an organisation, stating that such a person needs to have a 'decisive influence' on the operations of the organisation in order for their conduct to be assessed under the law.³⁸ Further, the bill has been ameliorated in such a way that it makes an exception for speeches made during sermons or other activities that are protected by the freedom of religion. It further clarifies that

34 Civil Rights Defenders. (2019). Yttrande över demokrativillkorsutredningens betänkande Demokrativillkor för bidrag till civilsamhället (2019:35). <https://www.regeringen.se/contentassets/b9e50218e1ad4119bc16d18d28d86019/civil-rights-defenders.pdf>; Forum – idéburna organisationer med social inriktning. (2019). Villkorad demokrati. <https://www.regeringen.se/contentassets/b9e50218e1ad4119bc16d18d28d86019/forum---ideburna-organisationer-med-social-inriktning.pdf>; Islamic Relief. (2019). Betänkandet (SOU 2019:35) Demokrativillkor för bidrag till civilsamhället. <https://www.regeringen.se/contentassets/b9e50218e1ad4119bc16d18d28d86019/islamic-relief.pdf>; LSU – Sveriges barn- och ungdomsorganisationer. (2019). Demokrativillkor för bidrag till civilsamhället.

35 Demokrativillkorsutredningen. (2019).

36 Dagen. (8 March 2023). Demokrativillkor röstades ner – kritiken från kyrkoledare blev avgörande. <https://www.dagen.se/nyheter/2023/03/08/s-initiativ-om-trossamfund-rostades-ned-i-riksdagen/>.

37 Ministry of Social Affairs. (27 March 2024). Statens stöd till trossamfund och civilsamhället – enhetliga och rättssäkra villkor. (Prop. 2023/24:119). <https://www.regeringen.se/rattsliga-dokument/proposition/2024/04/prop-202324119/>.

38 Ibid.

conduct that violates the democracy requirement will not necessarily lead to the suspension of funding, but rather that organisations are to be given the time and opportunity to correct their operations to bring them into compliance with the requirement.

Still, the requirement that organisations do not violate the general principles of democracy is still present and broad in its wording, despite the significant criticism it has garnered. The bill also makes several references to ‘Sharia law’ and ‘Roma courts’ as examples of conduct that might be in violation of the democracy requirement. Despite being considered an improvement overall, the law has been met with criticism from CSOs.³⁹

Good administration and redress mechanisms in relation to decisions by public authorities affecting CSOs

Ethnic and religious organisations do not have any recourse to seek redress or appeal funding decisions made by public authorities. For example, Ibn Rushd was not contacted by any of the municipalities or regions before their finances were frozen, nor do they have any meaningful

way of redress against such summary institutional measures.

Freedom of peaceful assembly

Since last year, the pro-Palestinian solidarity movement in Sweden has continued its efforts to support the Palestinian peoples through demonstrations and student encampments. At the same time, the Swedish state has continued to enact stringent measures which, in practical terms, encroach significantly upon several fundamental rights and freedoms. Students at the encampments throughout various universities and cities in Sweden have been forcibly moved by police, occasionally with a disproportionate amount of violence.⁴⁰

Last year’s report also noted the exploitation of the escalated situation by various Swedish parliamentarians and ministers to further their individual political motives and foster social division. Regretfully, this has not changed. The newly appointed Minister of Migration has publicly stated that waving flags tied to Hamas should be regarded as defying “honourable conduct” and thus lead to deportation.⁴¹ The Minister of Education has

39 Forum – idéburna organisationer med social inriktning, Fremia, Sveriges kristna råd. (17 April 2024). Betydande risker även i nya förslaget till demokrativillkor. *Altinget*. <https://www.altinget.se/artikel/betydande-risker-aven-i-nya-forslaget-till-demokrativillkor>.

40 Sveriges Radio, *Polisen anmäler sig själva – filmklipp ska utredas*, 31 May 2024, <https://www.sverigesradio.se/artikel/polisen-anmaler-sig-sjalva-filmklipp-ska-utredas>, *Flera gripna efter studentprotester vid KTH: "Skakade och grät"*, 29 May 2024, <https://www.sverigesradio.se/artikel/studentdemonstrant-pahoppad-av-polishund-jag-skakade-och-grat>.

41 Dagens Nyheter, *Ministern vill utvisa personer som viftar med Hamasflaggor*, 29 October 2024, <https://www.dn.se/sverige/ministern-vill-utvisa-personer-som-viftar-med-hamasflaggor/>.

described the student protests as escalating in a worrying and unacceptable way, calling it a threat against freedom of academia and an open democratic dialogue.

Such propositions necessitate careful consideration against the backdrop of the rapidly evolving definition of terrorism, especially in the context of the numerous pro-Palestinian demonstrations held across Sweden, and the contentious expansion of anti-terrorism legislation in 2023.

Policing practices, including dispersion of protests, use of force

Civil Rights Defenders has noted a worrying trend where activists are increasingly suspected of *blåljussabotage* – roughly translated to ‘sabotage of emergency services personnel’ – and that, more alarmingly so, there are often few or no reasonable grounds to evoke such suspicions. *Blåljussabotage* is a relatively new and heavily criticised serious criminal offense that criminalises actions that constitute an attack or other type of disturbance aimed at police, ambulances, or emergency services with the intent to severely hinder or make such operations more difficult. Penalties include prison sentences up to 4 years, which in Swedish criminal law makes it a serious offense.

The police authority has for instance warned pro-Palestinian student encampments that they needed to disperse and end their demonstration, or everyone would otherwise be suspected of committing *blåljussabotage*. In one notable case, a spokesperson for a student encampment in Lund was detained during a peaceful demonstration, deprived of her liberty, and immediately suspected of *blåljussabotage*. The police themselves explained their actions by saying that she obstructed a police vehicle by sitting down in front of it multiple times, despite video footage indicating the opposite. The preliminary inquiry was quickly dropped by the prosecutor.⁴²

During the dispersal of a student encampment in Lund, news outlets started reporting that *blåljussabotage* was occurring, based on interviews with police officers on site. According to the police, a suspect had thrown a rock at an ambulance. Later, the police themselves withdrew the initial accusation.⁴³ In this case, a preliminary inquiry was not even started.

When viewed as a police tactic, the usage of serious offences in this way can be seen as a way to discourage activists from exercising their rights to freedom of assembly and freedom of expression. Furthermore, when such suspicions are communicated without legitimate grounds to the media, it also feeds into the delegitimation of social movements.

42 SVT, *Emily greps för blåljussabotage – nu är alla misstankar avskrivna*, 9 September 2024, <https://www.svt.se/nyheter/lokalt/skane/emily-greps-for-blaljussabotage-nu-ar-alla-misstankar-avskrivna>.

43 Fredrik Palmqvist, Joel Malmen, *Polisen tar tillbaka uppgift om kastade flaskor i Lund*, Omni, 30 May 2024, <https://omni.se/laget-har-skruvats-upp-i-lund-flaskor-mot-ambulans/a/Rz9pnj>.

Criminalisation of protesters

In recent years, the right to freedom of assembly in Sweden has increasingly been restricted. A clear example is the frequent prosecution and conviction of climate activists, or environmental defenders, who engage in peaceful demonstrations. The term ‘environmental defenders’ refers to people seeking information, public influence or redress in climate and environmental issues. According to Article 3.8 of the Convention on Access to Information, Public Participation in Decision-making and Access to Justice in Environmental Matters (the Aarhus Convention), states are required to ensure that persons who exercise their right to information, public influence or redress in accordance with the provisions of the Convention are not in any way penalised, persecuted or harassed for this.

The UN Special Rapporteur on Environmental Defenders has noted that a growing number of environmental defenders in Sweden are being fined for participating in peaceful protests, with the amounts of these fines increasing.⁴⁴ Organisations such as Extinction Rebellion and Återställ våtmarker (Restore the Wetlands) have gained significant attention through their

protest actions. These protests are usually conducted through obstruction of road traffic. The protests are peaceful, in the sense that they do not contain elements of violence or vandalism. They have led to some traffic congestion, but the inconveniences caused by the protest have been limited to the specific location.

Since 2022, prosecutors have been prosecuting climate activists for the serious crime of sabotage, as stipulated in Section 4, Chapter 13 of the Swedish Criminal Code, for acts that previously were considered misdemeanours. Sabotage is a crime which carries up to four years in prison, but because most activists have not been previously convicted, they have so far generally received suspended sentences with high fines. However, if these activists continue to carry out actions, there is a likelihood that harsher penalties will be imposed. In light of this development, several scholars have criticised the application of the sabotage provision to the exercise of freedom of assembly.⁴⁵ They point out that the sabotage provision was introduced in the Criminal Code before the rights catalogue in the Swedish Constitution and the European Convention on Human Rights came into force. Consequently, those rights were not considered when the sabotage provision was

44 UN Special Rapporteur on Environmental Defenders, ‘State repression of environmental protest and civil disobedience: a major threat to human rights and democracy’ - Position Paper by Michel Forst, UN Special Rapporteur on Environmental Defenders under the Aarhus Convention, February 2024, p. 14. Available at: https://unece.org/sites/default/files/2024-02/UNSR_EnvDefenders_Aarhus_Position_Paper_Civil_Disobedience_EN.pdf.

45 Bull, Thomas., ‘Saboterad demonstrationsfrihet?’ in *Festskrift till Elisabeth Rynning – Integritet och rättssäkerhet bortom den medicinska rätten*, Iustus 2023; Lind, Anna-Sara and Routsis, Mikael, *Om fängslade klimatdemonstrationer*, Dagens Juridik, 21 June 2023. Available at: <https://www.dagensjuridik.se/nyheter/debatt-om-fangsladeklimatdemonstrationer/#:~:text=Demonstrationsfriheten%20omfattas%20av%20flera%20stadganden>, R F.

enacted. Furthermore, the provision makes a specific exception for certain acts that, while meeting the criteria for sabotage, were considered labour market actions. In other words, it was recognised even then that the right to express certain fundamental rights must be allowed, even if it could potentially lead to the consequences the sabotage provision is designed to prevent.

Sabotage-related convictions were virtually non-existent in cases involving demonstrations before 2022. Current legal application has suddenly and unexpectedly led to the use of the sabotage provision to hinder peaceful demonstrations. The fact that climate activists now risk imprisonment for the very same actions that previously were considered misdemeanours, which could result in fines, has raised criticism. Prominent legal experts argue that the constitutionally protected freedom to demonstrate carries more weight than the disruption of traffic.⁴⁶ Case law from District Courts as well as from the Courts of Appeal has been inconsistent, with some activists being convicted and some acquitted for very similar actions. The Supreme Court granted leave to appeal in a case concerning climate activists charged with sabotage in November 2024.⁴⁷

Civil Rights Defenders, along with many other civil society organisations, believes that this legal development violates the freedom of assembly as outlined in Article 11 of the European Convention on Human Rights. The development has had a chilling effect, and many climate activists are concerned about what might happen if they continue with their actions. The risk of imprisonment and high fines is discouraging. There is a risk that activists may effectively be prevented from carrying out legitimate actions or conveying their message and that the freedom of demonstration will be undermined.

Surveillance of protests

The police in the city of Helsingborg have publicly announced that police officers document ‘anti-democratic expressions’ at pro-Palestinian demonstrations.⁴⁸ It is unclear what legal basis the police authority is relying on to justify their actions and how they are defining ‘anti-democratic’, but such practices must be regarded as a severe infringement on the freedom of expression and might also render a chilling effect on the right to peaceful assembly. As of December 2024, the Helsingborg police have been reported to the Parliamentary Ombudsman, but the Ombudsman has not yet issued a decision.

46 Bull, Thomas, ‘Saboterad demonstrationsfrihet?’ in *Festskrift till Elisabeth Rynning*, Iustus förlag, Uppsala, 2023, p. 63-64.

47 Aktuell Hållbarhet, *Uppmärksammas vägblockad blir fall för HD*, 20 November 2024, <https://www.aktuellhallbarhet.se/ekonomi-och-strategi/juridik/uppmarksammad-vagblockad-blir-fall-for-hd/>.

48 Hedlund, Cecilia & Kristiansson, Ulf, *Polisen i Helsingborg anklagas för åsiktsregistrering*, HD, 5 November 2024, <https://www.hd.se/2024-11-05/polisen-i-helsingborg-anklagas-for-asiktsregistrering/>.

Defenders under the Aarhus Convention, Michel Forst, regarding a case where a woman was dismissed from her job at the Swedish Energy Agency (*Energimyndigheten*) apparently as a result of her participation in peaceful environmental protests and the sharing of her views on social media. The Special Rapporteur expressed grave concern about the apparent dismissal of the woman from her role at the Energy Agency as a result of her participation in peaceful environmental protest in her private life. He stated that, if proven to be accurate, the events may constitute penalisation, persecution, or harassment of an environmental defender engaged in peaceful environmental protest in breach of Article 3.8 of the Aarhus Convention. He further expressed deep concern about the fact that the woman's participation in peaceful environmental protest has apparently been deemed a national security threat and was the basis for withdrawing her security clearance, as well as the public statements by the Minister of Civil Defense, Carl-Oskar Bohlin, in relation to the termination of the woman's employment. The Special Rapporteur stated that "rather than being concerned about (the woman) facing reprisals for exercising her right to engage in peaceful environmental protest in her private life, Minister Bohlin was more concerned that an environmental defender like (the woman) was employed at the Energy Agency in the first place".⁵²

In October 2024, the Swedish government replied to the Special Rapporteur stating that domestic judicial and constitutional proceedings regarding the case are still pending.

Public participation

Rules on access to and participation in consultations and decision-making processes

Please see section above ('Process for preparing and enacting laws') for additional details about the fast legislative pace. By imposing short deadlines for stakeholders to submit responses during the consultation process, the government is creating a serious impediment to civil society stakeholders' participation in the legislative process.

The legislative consultation process is a fundamental aspect of Swedish democracy and rule of law. Legislative proposals are sent to stakeholders, including civil society organisations, to gather input and expert analysis on the potential consequences of enacting proposed bills.⁵³ However, the combination of a high tempo and short response timeframes has frequently resulted in significant stakeholders in the legislative process, such as civil society organisations with already limited resources, being unable to provide critical input on proposed legislation. In effect, civil society and other relevant stakeholders are being impeded

52 Michel Forst, UN Special Rapporteur on environmental defenders under the Aarhus Convention, Ref: ACSR/C/2024/39 (Sweden).

53 Svara på remiss - hur och varför, PM 2003:02, <https://www.regeringen.se/contentassets/b682c0e61b4c40c9ab-88d227707c47b5/svara-pa-remiss---hur-och-varfor-pm-200302>.

from participating in the legislative process. This includes situations where the perspectives of individuals or communities directly affected by certain legislative proposals should be included, or where a human rights perspective could be applied. Several government inquiries and consultations responses have highlighted how this makes it difficult to ensure adequate oversight, which threatens the quality of legislation as well as the due consideration given to human rights obligations.

Moreover, the current Swedish government has increasingly started to pre-emptively assign conclusions in the terms of reference for the

committees of inquiry – especially within the field of criminal law and migration law.⁵⁴ The function of the terms of reference is to guide the inquiry’s examination and reporting on relevant matters. However, the past year has seen formulations which task the committee to present certain proposals, *regardless* of the conclusions of the report. This has resulted in government inquiries that insufficiently analyse the matter at hand in relation to relevant human rights and the input from relevant communities and individuals and, in graver circumstances, entirely bypass such an analysis. As such, the basis for further legislative proceedings is severely undermined.

DISREGARD OF HUMAN RIGHTS OBLIGATIONS AND OTHER SYSTEMIC ISSUES AFFECTING THE RULE OF LAW ENVIRONMENT

Key recommendations

- *The government must ensure that proposed and implemented legislation is in line with Sweden’s international obligations and protects rights enshrined in the European Convention on Human Rights and other international agreements to which Sweden is party.*
- *The government should adopt the proposal to expand the scope of the National Discrimination Act to include a prohibition on the use of discriminatory measures. This is of particular urgency given the implementation of stop-and-search zones and other legislative measures likely to lead to increased discriminatory racial and ethnic profiling.*

54 Government Offices of Sweden, Committees, <https://www.government.se/how-sweden-is-governed/committees/>.

Systemic human rights violations

Widespread human rights violations and/or persistent protection failures

During 2024, the government and the Sweden Democrats proposed and/or enacted a range of legislative bills that undermine human rights and fundamental freedoms, particularly within the areas of migration policy and criminal policy. In particular, many legislative measures have been taken to limit migrants' access to fundamental rights. Many of these proposed changes have been introduced very quickly and through parallel legislative procedures, making it difficult to fully assess and consider their cumulative effects. Even more concerning is, of course, that it is almost impossible for the individuals most directly affected by these proposals to grasp the new requirements.

In November, a parliamentary committee of inquiry appointed by the Swedish government and the Sweden Democrats presented a proposal that would impose a mandatory reporting requirement on public employees at the Public Employment Service, the Social Insurance Agency, the Prison and Probation Service, the Enforcement Authority, the Pensions Agency and the Tax Agency, obligating them to contact the Police Authority if they have reason to believe that a foreigner they

have encountered does not have the right to stay in Sweden.⁵⁵ The sharing of personal information is ostensibly designed to help the Police Authority and Migration Agency combat irregular migration.⁵⁶

This proposal effectively limits access to fundamental rights, both directly and indirectly, for individuals residing in Sweden without legal permits. The public authorities affected by the proposal in some cases perform services directly linked to fundamental rights, such as rights enshrined in the Convention on the Rights of the Child and the EU Charter of Fundamental Rights. For example, when a baby is born at a Swedish hospital, the attending midwife will report the birth to the Swedish Tax Agency. The proposed mandatory reporting requirement for the Tax Authority to, in turn, inform the police if, for example, the mother is undocumented, might lead to an increasing number of families choosing to give birth at home without medical professionals present. This could lead to infringements on the rights of the child and endanger the mother's right to healthcare. Moreover, the proposal would likely deter migrants from seeking assistance from other public institutions, even those not subject to the reporting requirements, effectively infringing upon other fundamental rights as well.

55 Beri Zangana, *5 Punkter om informationsplikten*, Aftonbladet, 26 November 2024, <https://www.aftonbladet.se/nyheter/a/93x4ew/det-har-ar-angiverilagen-fem-punkter-om-nya-informationsplikten>.

56 Swedish Government Official Reports (Sweden), Certain measures to strengthen return procedures and immigration control (Vissa åtgärder för stärkt återvändandeverksamhet och utlänningskontroll), SOU 2024:80, 26 November 2024, [Vissa åtgärder för stärkt återvändandeverksamhet och utlänningskontroll - Regeringen.se](https://www.regeringen.se/49131913).

Many new proposals have also been put forward limiting migrants' access to social and economic rights, including a proposal that part of the current financial introduction benefit given to newly arrived asylum seekers should be removed. The committee of inquiry appointed to examine the proposal found that removing this benefit could lead to increased child poverty and therefore declined to support the proposal. The government, however, has made no indication that it intends to withdraw the proposal.⁵⁷ A separate inquiry is examining a proposal to waive the right to municipal financial aid if the asylum seeker also receives the financial introduction benefit.⁵⁸ In the government's coalition agreement with the Sweden Democrats, they have also stated that they wish to do away with the ability to give out municipal financial aid to those who are unable to meet their needs completely, if the individual applying for assistance has not been granted legal residence in Sweden.

Sweden is obligated to uphold a certain standard of living for all persons, especially children, residing within its territory, regardless of immigration status. This includes ensuring access to appropriate housing, food, clothing,

and other basic needs. Removing and limiting access to financial support could lead to serious infringements upon these rights, both for asylum seekers and for those living in Sweden without legal permits.

Within the area of criminal law, there is a continued trend of stricter sentencing, further criminalisation and expanding the powers of the police authority. The entire criminal justice system is being transformed according to a punitive logic. Examples of these include stricter sentencing in cases of recidivism, prison sentences without time constraints and lowering the usage of probation. Of utmost concern is the fact that several legislative acts target individuals that are not suspected or convicted of crime. The blurring between suspect and non-suspect in the criminal justice system is not only a threat to the rule of law, but also creates a risk for arbitrary infringement of human rights based on discriminatory stereotypes.

Several alarming bills have gone into effect during the year. Following the adoption of legislation early in 2024, the police now have the authority to establish stop-and-search zones, areas in which the police have the

57 Swedish Government Official Reports (Sweden), Steering force for successful integration (Styrkraft för lyckad integration), SOU 2024:41, 14 June 2024, <https://www.regeringen.se/rattsliga-dokument/statens-offentliga-utredningar/2024/06/sou-202441/>.

58 The Ministry of Social Affairs and Public Health (Sweden), A new model for eligibility for social security and financial assistance for newcomers and non-citizens (En ny modell för kvalificering till socialförsäkring och ekonomiskt bistånd för nyanlända och icke-medborgare), Dir. 2023:149, 20 October 2023, <https://www.regeringen.se/rattsliga-dokument/kommittedirektiv/2023/10/dir.-2023149>.

authority to search people and vehicles without the requirement of reasonable suspicion.⁵⁹ Despite warnings that these zones are likely to lead to increased discriminatory racial and ethnic profiling, the government has so far failed to adopt any safeguards to prevent this. The police are now also permitted to confiscate belongings from individuals even without reasonable suspicion if the police deem that that the person-in-question does not appear to them to have the (presumably financial) means to possess such an item. This has been justified as a tool to tackle organised gang criminality, but such legislation also opens the door for discrimination based on stereotypes. Furthermore, individuals that have not been convicted of a crime may now be issued a so-called *vistelseförbud*, roughly translated to a ban of entrance or a stay-away order preventing them from accessing certain public areas.

In November, a government committee of inquiry presented a proposal regarding stricter sentencing for juvenile delinquency. The general results during this year have been that age will have no or little bearing for a more lenient sentencing, which in turn will result in more minors being deprived of their liberty – either through prison sentences, or through compulsory care.

The current system for handling juvenile delinquency is undergoing a structural change.

Examples of these changes include the pending introduction of juvenile prisons, as well as proposals to lower the age of criminal liability and more extensive use of pre-trial detention. There is a clear lack of crime preventive measures and, where such measures are mentioned, these are most often framed in a punitive manner and thereby counterproductive to their purpose.

In terms of organised gang criminality, the government has appointed several committees of inquiry to tackle the issue. The inquiries tasked with exploring the criminalisation of participation in gang criminality and the possibility of double sentencing in cases related to gang criminality, inspired by Denmark, are likely to result in infringements on individual rights.

Lastly, several government inquiries have presented proposals that have a negative impact on the right to privacy. These include lowering the threshold for when camera surveillance can be used, coupled with the usage of AI.

Following a proposal from the Swedish Democrats, a new committee of inquiry has been launched with the goal of determining how the rules regarding family reunification can be stricter. This involves tightening the financial/economic requirements, as well as the requirements for obtaining a temporary resident permit based on connection to someone who has

59 Krisinformation.se, *Security Zones*, 25 October 2024, <https://www.krisinformation.se/en/hazards-and-risks/disasters-and-incident/2023/gang-related-violence/security-zones#:~:text=As%20of%2025%20April%202024,areas%20are%20called%20security%20zones.&text=A%20new%20law%20allows%20the%20Swedish%20Police%20to%20introduce%20security%20zones>.

a resident permit or is a Swedish citizen. The stated purpose of the investigation is to identify ways to limit the law so that it does not grant more individuals more rights than needed under EU law, but in a manner consistent with Sweden's international commitments. The investigation will be presented on 25 August 2025 at the latest.

In 2022, the Swedish Security Service requested that the government make amendments to the regulation on security protection. The regulation stipulates that mandatory security clearances should be performed when employees work in, or applicants apply to, a position which is considered sensitive from a national security perspective. The Security Service requested that the regulation be amended to explicitly state that the security assessment should include information about the applicant or employee's connection to another country and that it is the responsibility of the applicant or employee to provide the authorities with the necessary information. According to the Security Service, having relatives in a country other than Sweden or having a spouse or partner who has relatives outside of Sweden can constitute such a connection to another country. The individual being a citizen of – or even ever having visited – the aforementioned country should not be a requirement for establishing

such a connection, according to the Security Service.⁶⁰

Following the Security Service's request, Civil Rights Defenders has noted that applicants with relatives in countries like Iran, Russia and China are increasingly being denied or losing employment in government agencies, companies and municipalities either because they cannot obtain a security clearance or because employers neglect to carry out a security clearance assessment because they assume that the individual will not pass the assessment. There are currently no possibilities for individuals who fail the security assessment to appeal the decision or to gain insight into the circumstances which led them to fail the assessment.⁶¹

At the same time as the requirements for rejecting an applicant or terminating an employee based on a security assessment have been interpreted more broadly, the number of positions that are designated as sensitive and thus mandated to be subject to security assessments have increased exponentially over the past years, efficiently excluding Swedes with a minority background from tens of thousands of positions and entire employment sectors.

As a result of the Security Service's request, the government has appointed a legislative inquiry committee to review possible amendments to

60 The Swedish Security Service (Sweden), Stricter requirements for documentation in security clearance assessments (Skärpta krav på underlag vid säkerhetsprövning), 2021-18945-5, 1 June 2022, <https://www.regeringen.se/contentassets/f181fd269e5a4ff98b9446171ab23609/hemstallan---skarpta-krav-pa-underlag-vid-sakerhetsprovning.pdf>.

61 Kristina Hedberg, *Swedish-Iranians are being excluded from working life - in violation of the law*, Dagens Nyheter, 3 June 2024, <https://www.dn.se/sverige/svensk-iranier-sorteras-bort-i-strid-med-lagen/>.

the regulation on security protection. While Civil Rights Defenders agrees that the inquiry is needed, the scope of the inquiry is too narrow and will not allow for the amendments necessary to ensure fair, non-discriminatory, and legally certain security clearance assessments. Because of this, Civil Rights Defenders is gravely concerned that the trend toward excluding people with a minority background from security-sensitive positions will continue. There is also a risk that the inquiry committee will adopt the Security Service's suggestions mentioned above, which could cement discriminatory practices. Particularly, the suggestions could negatively affect Swedes with a refugee background, who may not be able to access the required information from their countries of origin to present to the Swedish Security Service.

Impunity and/or lack of accountability for human rights violations

Civil Rights Defenders and several other stakeholders have routinely highlighted the need to move forward with the proposal to expand the scope of the National Discrimination Act to include a prohibition on the use of discriminatory measures but have not received any conclusive answers about the future of the proposal. The need to adopt the proposal is bigger than ever given the implementation of legislation enabling stop-and-search zones, as well as other legislative measures likely to lead to increased racial and ethnic profiling. In December 2021, the committee of inquiry recommended that the prohibition against discrimination in the National Discrimination Act be expanded to encompass discriminatory

measures in addition to discriminatory treatment by public sector employees, including the judiciary, police, and prosecutors. As described in previous reports, if adopted the proposal would contribute to closing a massive accountability gap.

FOSTERING A RULE OF LAW CULTURE

Contribution of civil society and other non-governmental actors

In December 2024, Civil Rights Defenders convened the fourth Nordic Rule of Law Forum in Stockholm. The goal of this annual event is to create a platform for dialogue and learning around important human rights and rule of law issues that brings together civil society actors, including legal practitioners and non-governmental organisations, as well as representatives of the judiciary and other state authorities.

The theme of this year's forum was "Rule of Law and States' Use of Human Rights to Defend and Justify their Actions". One panel examined how governments have used a human rights narrative to justify the infringement of human rights in the context of migration, the climate crisis, and COVID/global pandemics. Another, on state of emergency laws and the need to balance competing rights and interests during times of crisis, looked at the balance between ensuring the government's ability to act effectively and the need to protect individual human rights. A third panel consisting of

representatives of civil society from Sweden and Denmark, addressed ways in which civil society can act to confront these worrying trends and take a more proactive role in preventing democratic backsliding.

Speakers included academics, legal practitioners (both lawyers and members of the judiciary), and representatives from international organisations and civil society. The forum, which drew nearly 100 in-person participants, received overwhelmingly positive feedback.

CONTACT

Civil Rights Defenders

Civil Rights Defenders is a non-profit expert human rights organization working worldwide to defend people's civil and political rights. Civil Rights Defenders also takes on the role of a multi-focus national watchdog organization in Sweden, promoting and protecting human rights in the Swedish context.

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LIBERTIES' CONTACT

The Civil Liberties Union for Europe

The Civil Liberties Union for Europe (Liberties) is a non-governmental organisation promoting the civil liberties of everyone in the European Union. We are headquartered in Berlin and have a presence in Brussels. Liberties is built on a network of 21 national civil liberties NGOs from across the EU.

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