



7th meeting, Belgrade, 23 October 2018

Civic Space in the EU and Serbia

Joint report by Marina Škrabalo, EESC member (Solidarna, Croatia) and Bojana Selaković (Civic Initiatives, Serbia), expert

Edited by: Sonja Stojanović Gajić, JCC member

1. Introduction

Civic space is a fundamental feature of European societies, with a long and rich history of communal and collective action, instrumental for today's democratic profile of Europe. [As defined by CIVICUS and Civic Space Monitor](#), the term refers to the political, legislative, social and economic environment which enables citizens to come together, exercise their civic rights and freedoms, share their interests and concerns, engage in pluralist public debate and act individually and collectively to influence and shape policy-making. An open, plural and dynamic civic space is a central feature of democratic societies because it allows citizens to be an active part of the political sphere beyond elections. It also encourages governments to be transparent and accountable. The freedoms of expression, media and media pluralism, association and assembly – the key pillars of the civic space – lie at the heart of European civic rights and are enshrined in the European Charter of Human Rights, the EU Charter of Fundamental Rights and the EU Treaties.

[Article 11 of the Lisbon Treaty](#) provides a strong legal basis for the systematic integration of citizen engagement in the EU's policy-making process, as one of the key practices of the rule of law, enshrined in Article 2 and enforced by Article 7 of the Treaty. According to Article 11, the EU institutions shall enable citizens and representative associations to take part in policy debates in all EU competency areas through "an open, transparent and regular dialogue with representative associations and civil society". The Commission is obliged to carry out broad public consultations on its policy proposals and to respond to [the European Citizens Initiative](#), which is a collective petition by at least one million European citizens from a significant number of Member States to [„submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties“](#).

Regarding EU enlargement, [the Copenhagen criteria](#) state that the stability of the institutions guaranteeing democracy, the rule of law, human rights and respect for and protection of minorities is a fundamental requirement from any state that wishes to join the EU. Consequently, candidate countries should be obliged to create an enabling environment and safeguarding mechanisms for autonomous development of civic space, where citizens actively exercise their freedoms of expression, association and assembly for the greater good of society. [The current EU Enlargement Strategy](#), adopted by the Commission in February 2018, corroborates the instrumental role of civil society in democratic governance and the success of the pre-accession reforms. It affirms the focus on safeguarding media

freedom as a pillar of democracy and ensuring an environment promoting civil society, whose role is viewed as instrumental for the success of the accession reforms. The Commission strongly recommends inclusive, structured dialogue on reform priorities, independent civil society monitoring of governments' work, and the active multi-level engagement of civil society in social policy development, service provision and socio-economic development work.

2. Civic space in the EU: Current trends and challenges¹

Despite its rich tradition and relatively good global standing, civic space is showing serious signs of deterioration and exposure to threats across the EU and Europe as a whole, as evidenced by the Civic Space Watch platform, set up by the European Civic Forum. [According to the latest findings of the CIVICUS Monitor from October 2017](#), only 13 of the 28 European Union (EU) Member States now have an 'open' civic space; an uncomfortable statistic for the leaders of a union founded on the values of democracy and human rights. The picture shows great asymmetries between Western Europe and its Southern and Eastern regions in civil society organisations' assessment of real respect for fundamental freedoms and the degree of pessimism about future prospects.

The most notorious case of government pressure on civic space has occurred in Hungary, where the government has waged a political and legal campaign against the autonomy of watchdog CSOs that protect and advocate for liberal-democratic values. It has even gone as far as to introduce a register of foreign-funded CSOs under special government surveillance and labelling them enemies of the Hungarian state. The recent Hungarian law on the transparency of organisations receiving overseas funding, passed in June 2017, was condemned by the European Commission, the European Parliament and the Council of Europe. This demonstrates why the Commission needs to ensure that measures to combat terrorism financing and money laundering cannot have unintended consequences for CSOs when it comes to accessing funding and loans. In September 2018, the European Parliament adopted a groundbreaking proposal for the Council to determine, in accordance with Treaty Article 7, whether Hungary is at risk of breaching the EU's founding values. Parliament expressed concern about a wide array of issues including the key pillars of civic space - freedom of expression, academic freedom and freedom of association, as well as the rights of persons belonging to minorities, including Roma and Jews, religious freedom and the fundamental rights of migrants, asylum-seekers and refugees.

Behind these more visible, severe forms of violation of core civic freedoms and European values, there lies an inert, fragmented, under-regulated yet over-administered institutional framework for upholding civic rights and supporting civil society organisations at the EU and national levels. [The June 2018 report "Civic Space in Europe 2017". prepared by Civil Society Europe](#), presents the current state of affairs in EU, EEA and candidate countries, with a special focus on government measures that disable and enable active citizenship. Among factors that raised concern about the shrinking of civic space is the decline of the rule of law and transparency, and the emergence of forms of managed participation in countries that have traditionally been supportive of civil society. Also worrying are the rise of right-wing populism and the normalisation of hate speech, which act as informal barriers and discourage people, especially those belonging to vulnerable groups, from joining the public debate. neoliberal policies, austerity, and a lack of understanding of the specific features of civil society are also source of anxiety.

In Slovakia, an investigative journalist and his fiancée were assassinated, most likely by mafia linked to corrupt politicians, and a similar tragedy occurred in Bulgaria in October 2018. [Refugee rights activists are being smeared, attacked and even punished in Italy and along the Mediterranean Sea, but also in recipient countries such as Norway, Sweden, the UK and the Netherlands](#). Instead of cherishing their own citizens for their acts of solidarity with people fleeing from wars and suffering extreme

¹ This section of the report has been prepared by Marina Škrabalo, EESC member from Croatia, and has drawn on the analysis of the EU democratic governance prepared by Marina Škrabalo and Duje Prkut for [the public consultation process on the new EU presidency trio 2019-2020](#), launched by Croatian civil society organisations Gong and Crosol in September 2018.

poverty, the EU institutions seem to be turning a blind eye to the growing trend on the part of [the police and security agencies of the Member States](#) of [seeing solidarity as a criminal act](#). This approach is fuelled by the aggressive anti-immigration discourse prevailing in social media and populist political campaigns. [In Poland, activists and artists are demonised and silenced by Catholic fundamentalists](#) in both civil society and government structures, while LGBTIQ activists in Romania are being physically attacked not only for marching in PRIDE, but for showing award-winning art films in public libraries. In Spain, reproductive health service providers are exposed to strong pressure from Christian fundamentalist lawyers, resulting in the revocation of the public utility status of the Spanish Family Planning Association in 2016. In these cases, it is evident that many Member States do not provide the necessary protection to civic activists and journalists

In many European countries, we are seeing the emergence of measures designed to introduce conditionality into CSO subsidies, which limit their advocacy role and their capacity to be party to legal proceedings². In many countries, the financial and economic crisis has meant that public funding for CSOs has been cut back and/or made available in the form of short-term grants. Funding schemes that operate primarily on a project basis may force CSOs to adapt their priorities and distance themselves from their original mission and from societal needs. In some countries, governments have backed organisations that follow their strategic line (to the detriment of others) and fostered an atmosphere of political connivance, and we are seeing an increasing lack of transparency in how grants are awarded.

Under the assumption that pro-democratic political actors, who are committed to improving EU democratic governance and opening up opportunities for the EU's common future, manage to mobilise adequate voter support in the next European elections, the new Commission will be tasked with continuing and amplifying its efforts towards greater transparency, lower corruption and enhanced citizen participation in European governance. The Civil Society Europe Report calls for the European institutions to act more proactively in the shrinking civic space by playing a greater role in upholding democratic principles and setting guidelines to ensure an enabling environment for civil society. Hence, the shrinking of civic space should be viewed in the wider context of dissolution of European values in the political actions of EU Member States, as well as the EU's "fundamentals first" approach to EU enlargement, where the credibility of the EU itself plays a vital role in achieving tangible progress with regard to the quality of democracy in the enlargement countries. The budget should therefore encompass and facilitate the protection of civic space in the EU as well as with regard to all of the EU's external actions.

3. Shrinking space for civil society in Serbia

The deterioration of civic space in Serbia took place in the context of a political environment that also influenced the legislative, social and economic environment with regard to people's enjoyment of their civic rights and freedoms and their expressions of interest and concerns. The space for participation in policy-making has shrunk and, following the announcement of changes to some key legislation for civic rights (e.g. freedom of access to information, free legal aid...), the situation is likely to get even worse in the near future. The space for CSO participation in public decision-making is getting progressively smaller, with some long-term partnerships between state institutions and CSOs coming to an end. In 2017, CSOs—particularly those engaged in work related to anti-corruption, election monitoring, democratisation, and human rights—were the targets of negative media coverage.

The lack of institutional space for communication between citizens and authorities at all levels has contributed to the creation of informal groups that are making their [demands public](#). Government messages regarding cooperation are constantly confused. [From a very high level of public intention](#)

²

See the Lobbying Act in the UK which prevents NGOs from voicing their views during electoral campaigns or the recent Referendum on EU membership and current reviews of the Electoral (Amendment) Act 2011 in Ireland, which aims to prevent third parties from influencing electoral campaigns but where interpretation of "political aims" and thresholds for individual donations to NGOs has fuelled controversy, including in connection with the financing of a campaign in support of abortion.

which is expressed in particular during official meetings with senior foreign officials, to blatant criminalisation of mainstream civil society organisations [using rhetoric from '1990 that refers to traitors, foreign agents as well as the main threat to Serbian stability](#).

4. Disabling environment - Legal framework vs. Practice

The constitution guarantees the right to freedom of association, and the registration and operation of CSOs is regulated by the Law on Associations and the Law on Endowments and Foundations. The registration process is simple and clear and there are no restrictions on the receipt of foreign funding. Some human rights defenders, investigative journalists and their organisations have been subjected to continuous smear campaigns, defamation, attacks and harassment. LGTBI activists and female human rights defenders are especially vulnerable to attacks. Moreover, the law and/or secondary legislation do not prevent potential conflict of interest, particularly when it comes to access to public funding. This creates a broad space for the activities of the numerous GONGOs. [The national strategy for creating an enabling environment for civil society has not yet been adopted. In addition, public debate on the draft Civil Code proposed by the Ministry of Justice in 2015 was postponed until December 2017; the proposed Code suggests a more restrictive framework for non-profits.](#)

[There are gaps in the adoption of the necessary changes into legislation with regard to freedom of assembly, although a new Law on Public Gathering was adopted at the beginning of 2016.](#) For example, simultaneous and/or counter assemblies are not directly recognised in primary legislation. Further, the law provides for a notification process which must be completed prior to holding a demonstration and which imposes numerous restrictions regarding the location of the assembly and provides authorities with a wide range of justifications for banning a demonstration ([see the guidelines of the OSCE and the Venetian Commission on freedom of assembly](#)³). In terms of implementation and practice, there were cases of encroachment on freedom of assembly. For example, the [president of the National Assembly halted the work of the Parliament in April 2017 during public protests, claiming that the Parliament would only continue its work once the protests had ended. Cases of violent counter-assemblies are not prosecuted, or if they are, the perpetrators are not punished.](#) Additionally, there were cases in which excessive use of force was exercised by law enforcement bodies during the assemblies (protests organised by the Ne da(vi)mo Beograd initiative. There were also cases of pre-emptive detentions or court summons for organisers of and participants in legal assemblies

5. Seriously endangered freedom of expression

There are no gaps in the legislation and policy framework regarding **freedom of expression**; nevertheless, the former are poorly implemented. Numerous cases of violations of this particular right have been recorded. According to the [European Commission report on Serbia's progress in 2018](#), freedom of expression is one of the most vulnerable human rights. All international organisations and institutions dealing with the freedom of the media have noted the continuous decline of Serbia in this area over the years. [Reporters Without Borders](#) published their latest report in April 2018, in which Serbia fell 10 places (from 66th to 76th position in the world list), which is one of the biggest drops worldwide. Serbia is among the countries that have fallen the most places in the list that measures media freedom according to a Freedom House report published in 2017. Through privatisation of local media, almost all private media has been taken over by individuals close to the ruling party and used for biased reporting and [drawing funds from public resources through advertising and financing of public campaigns](#). [According to research by civil society organisations in Serbia](#), all the television stations using the national frequency and the vast majority of local media and print media covering over 95% of the total circulation in Serbia are under the total control of the government. In such circumstances, citizens' associations that work professionally and have a critical attitude towards the work and results of the Government, the President of the Republic and other institutions are prevented

³ <http://www.osce.org/odihr/73405?download=true>

from presenting their findings to a wider public, working for advocacy campaigns, or promoting the values they are committed to.

Recently published [research](#) on "Control and Freedom of the Media" conducted by the Slavko Curuvija Foundation shows that [the most widespread influence on editors comes from the authorities and political parties](#). As stated in the publication: "The aims of the research were to gather the experiences of journalists with regard to forms of control over journalism and information content over the past 12 months, to establish the sources of the control with the strongest influence and their most common forms, and to identify the mechanisms that give these sources the power to use the media for certain special interests. Three quarters of respondents (74%) viewed media freedom in Serbia negatively in 2017. Half (50%) believed that there were serious obstacles to the practical realisation of freedom of the media and the rights of journalists, and a quarter (24%) felt that in practice there were no conditions enabling freedom of the media to be realised. Only 3% of respondents assess positive media freedom (1% do not know, and 22% are without answers). When asked "Who is the main bearer of media control in Serbia today", 58% answered that it was a political establishment, and 9% that media control was in the hands of owners and management bodies (22% did not respond, 2% did not know, and 9% gave other answers). In the opinion of 42% of respondents, the media best served the interests of the authorities; 15% think that these were special political interests, and 9% saw them as the interests of media owners. Only 2% felt that the media efficiently worked for the benefit of public interests (3% in favour of special economic interests, 7% in favour of a combination of interests, and 22% provided no answer). "

[Pressures on the media continued with the use of tax inspection. Following the closing down of "Vranjskih" in September 2017, after several weeks of tax inspections](#), the most readable portal in southern Serbia, "Južne vesti", was targeted by the same institution. Two tax inspections have been inflicted upon the business of "Južnih vesti" to date, setting unreasonable demands upon management and jeopardising the work of the editorial staff. The inspectors also called business partners of the "Južnih vesti", [as well as members of their families, pressuring them to stop cooperating with this portal because they are "foreign spies"](#). After a detailed inspection, no irregularities were found, [but an alleged violation was found in the fact that the editor-in-chief was not registered as a portal employee. Since such a legal obligation does not exist, the tax inspection has called for a job directory to be set up for public services and other public sector organisations that have no relation to private enterprises. Media and Journalists' Associations felt that this amounted to pressure on the media; they requested a review of the procedure and called for the Director of Tax Administration's remit to be made clear.](#) Prime Minister Ana Brnabic ignored all the evidence and told "Južne vesti" [to complain if they were not satisfied](#).

6. Smear campaign against critical civil society

Negative media campaigns have been aimed at certain associations and at civil society in general. For example, the Don't drown Belgrade (Ne da(vi) mo Beograd) [initiative is continuously being sued either by the media](#), or in some cases by the Public Prosecution Office. The former Prime Minister (current President) has made multiple incorrect statements with regard to sources and amounts of funding of this initiative. In November 2016 for example, a pro-government outlet accused some investigative media organisations of being financed by Western countries in order to destabilise the country. Another example is the [Belgrade Centre for Security Policy, which has been accused in the media by an SNS MP of being an organisation that "works per assignment for a foreign secret service" while an official of the Ministry of Interior claimed that this organisation "undermines security of the country"](#). This also is important as BCSP is one of the leading organisations that monitors accession negotiations for Chapter 24.

There is an increasing number of encroachments on the right of freedom of expression, particularly for journalists and CSO representatives that publicly criticise the government, President and/or members of the ruling party. For example, CSO [BIRODI](#) has carried out media monitoring during the elections (which is the obligation of the Regulatory Authority for Electronic Media, which refused to monitor

media for the last elections); when they presented their findings in the EU, they were attacked in the media by an SNS MP as well as by some of the tabloids. Civil society organisations dealing with the protection of human rights and facing the past have, in [an open letter, asked Federica Mogherini, the High Commissioner for Security and Foreign Affairs of the European Union](#), to take a stand against the ethnic exchange of territories and the change of borders between Serbia and Kosovo. Following this letter, a campaign of government and media representatives against the most prominent representatives of human rights organisations followed. The pro-government tabloid *Serbian Telegraph* published a news article entitled "These Grannies Are Evil!", [with photos of Natasa Kandic, Sonja Biserko, Vesna Pesic and Maje Stojanovic, who were accused of treasonous behaviour](#). The portal *Telegraf*, which supports the government's politics, transmitted the text of the *Serbia Today* portal in which Natasa Kandic and Sonja Biserka are referred to as ["Siptar lobbyists"](#). The extreme right-wing organisation Zavetnici, close to the ruling party in Serbia, covered one of the windows of the House of Human Rights and Democracy in Belgrade in Belgrade on February 2, 2018, [with posters featuring Natasa Kandic \(founder of the Humanitarian Law Centre\), with the message "Nobel prize for treason against the Serbian people."](#) Representatives of the Human Rights House made statements to the police about this attack, but there was no feedback from the police and no prosecution. Informal groups are also under constant attacks and legal threats on the part of the most senior officials of the ruling party. The previous period marked the establishment of informal associations as a result of the lack of room for public debate. These include [Source keepers, Defend the Stara Planina rivers and Savski Ramp, which conduct active online and offline campaigns to preserve the natural environment and ensure that healthy drinking water is available to the population](#). Also, one group of pregnant woman and mothers dissatisfied with the new Law on Financial Support to Families organised online actions and a protest in September, highlighting the fact that the law discriminates against working mothers, especially those on sick leave because they are taking care of an ill/disabled child, and as well as mothers that have recently started working and those with high salaries, by limiting the amount that a woman receives during maternity leave. The day after the protest, [the head of the ruling party in the parliament described this event as a political weapon aimed at the President of the Republic of Serbia](#).

7. Decreasing civil society toolbox

Recently announced changes to legislation regulating access to public information, free legal aid and provision of social assistance are all limiting the work of civil society and the access of citizens to this public good. More than 60 CSOs requested the immediate withdrawal of the **Draft Law on Amendments to the Law on Free Access to Information of Public Importance**, because it reduces the level of citizens' rights. This law excludes certain legal entities, such as state-owned companies, from being subject to free access to information requests. This has the potential to seriously hamper the work of investigative journalists and civil society organisations in accessing information in the areas of privatisation, public procurement, public expenditure and foreign donations to political subjects (key risk areas identified in section 2.2.5.1 from AP Chapter 23). The second problem is that the Draft Law provides the possibility for first-instance authorities to initiate administrative disputes against the Commissioner's decision, thus seriously slowing down access to information and weakening the position of the Commissioner for Freedom for Information.

The Draft Law on Free Legal Aid discriminates against lawyers based on their place of employment, by forbidding lawyers who are working in CSOs from providing free legal advice. The government issued a statement that free legal aid will be provided by attorneys/barristers and lawyers employed in the local self-government units (Art. 9 of the Proposal).. If the law is adopted, lawyers who are working in human rights CSOs will be forbidden from providing free legal aid or representing victims at court and only allowed to fill in forms and give general legal advice. Citizens, if provided with the most costly legal advice, will be deprived of free, specialised legal aid provided by human rights CSOs with decades of experience. The government recognised only citizens' associations working in the area of migration and protection from discrimination as providers of free legal aid, excluding all other civil society organisations providing these services to vulnerable groups. [More than 30 citizens' associations warned the government of the inadmissibility of such solutions. The government did not](#)

[take these requests into account and the text of the Proposal of the Law was sent to the National Assembly for adoption.](#)

8. Volunteering

[While the definition of volunteering is clear](#), it is not in line with international standards and best practices. Administrative procedures prescribed by the law are overwhelming and do not encourage volunteering. In fact, the law is treating volunteering in the same way as it treats labour regulations. Accurate data on the number of volunteers in CSOs, as well as such data on annual level are not available. Therefore, it is not possible to estimate the change in the number of volunteers in CSOs in terms of an increase/decrease in comparison with the previous year. Similarly, accurate data on the number of hours of volunteering completed in CSOs (this year or annually) are not available. Therefore, the total number of voluntary hours implemented in CSOs is unknown at an annual level.

9. Legal framework for individual and global giving and tax benefits

There is a discrepancy in the notion of public benefit activities between the tax legislation and laws on associations/foundations. The concept of organisations acting for public benefit is not covered in details in tax laws. However, certain elements of the concept were defined in statutory regulations for associations, legacies and foundations. At this point, due to the way in which the current legal mechanism for tax deductions for legal entities is applied, obtaining transparent, specific and current data on giving for public purposes (and to CSOs) from legal entities is not possible. Further, since there is no tax relief for natural persons, data on numbers, amounts etc. are not available.

CSOs do not receive tax exemptions on income from donations, although foreign grants are generally exempt from taxation per donor protocols with the host country. The procedure for obtaining tax exemptions has become more difficult for local CSOs, as it now requires them to spend two days in the capital to complete it, instead of one, which was previously the case. Corporate donors can access some exemptions for donations to CSOs, but few take advantage of these incentives. In July, the Ministry of Finance issued an opinion that legal entities may also deduct the value of in-kind donations in the form of goods and services from their taxable income.

Individuals do not receive any tax benefits for donating. Serbia does not have a percentage law system (percentage of tax allocation for public benefit purposes does not exist in Serbia.). Legislation provides tax incentives for corporate giving. There is tax relief of up to 5% of gross income for legal entities. However, while the Legal Entity Tax Law provides a mechanism for tax deductions for giving for public benefit purposes, there are no bylaws or additional documents or opinions from the Ministry of Finance or the Tax Authorities on how to apply the mechanism. Surveys carried out among business entities demonstrate that 22.2% of companies and 16.7% of SMEs do not use the mechanism due to perceived obstacles (type of tax-deductible expenditure, low level of knowledge of various tax departments on this issue, inadequate support from TA). Recently, the Ministry of Finance has issued an opinion which refers to in-kind giving in tax-deductible expenditure, but contains no other clarifications.

[The foundation "Podrži život"](#), which was set up by an influential actor and opposition representative, Sergej Trifunović, who is often the target of tabloid attacks, was attacked by a series of Serbian Telegraph articles stating he had misappropriated money for the treatment of sick children. This Foundation took over the role of the state in the provision of funding for specialised medical care services and the organisation of the treatment of seriously sick children when there is no way for them to undergo surgery in Serbia, and it is necessary that parents themselves pay to go on expensive interventions abroad. The front page was for days taken up with pictures of the actor along with allegations that he was stealing money and accusing him of being a narcotics user. The mother of the detainees who helped the Foundation denied the tabloid allegations and claimed that the quotations cited in the newspaper were made up. This did not prevent Serbian Telegraph from publishing a new article on this topic every day. [This creation of a false picture of the illegal use of the collected funds](#)

[resulted in an additional decline in the already low trend of giving in Serbia. The ultimate victims of the gross violation of the journalistic codex and the collection of political points in this case were sick children and their families.](#) Criminal charges were brought against the Foundation by the council for monitoring, human rights and the fight against corruption, "Transparency", led by Trstenik Mario Spasic. Mario Spasic describes himself as a member of the Anti-Corruption Team of the Ministry of Health of the Republic of Serbia, led by Minister of Health Zlatibor Loncar. Often there is a speaker of pro-government media such as Informer, Pinka and an MP from the Serbian Progressive Party, Vladimir Djukanovic, on KCN television. [Spasic was recently in the public eye when he accused the Commissioner of embezzling 15 million dinars of state money, which was an unfounded accusation.](#) The government of Serbia recently founded the Philanthropy Council, whose goal is to promote the culture of giving and charity in Serbia, and urgent reactions to media texts that spread inaccurate information about those who incite philanthropy demonstrate the government's systematic commitment to this goal. Ironically, [Health Minister Zlatibor Loncar is a member of that council, and he referred to and supported the allegations of the tabloid Serbian Telegraph, in which Sergej Trifunović and the Foundation "Podrži život" were accused of misappropriating money intended for the treatment of children.](#)

10. Public funding for CSOs

CSOs can earn an income through the provision of goods and services and can legally compete for government contracts and procurements. By law, funds from the state and local authorities for social services should be distributed equally between state and CSO service providers. In practice, however, the state often allocates significantly larger amounts to state-owned social service providers. It then tries to compensate for this by offering CSO social service providers funding from budget line 481, which increases competition for this funding. Starting in 2017, some municipalities increased their control over the selection of paid individual services providers, such as housekeepers or personal assistants for persons with disabilities, as well as beneficiaries entitled to receive state-funded services, leading CSOs in some municipalities to complain that the process favoured members of the ruling parties.

Currently, there are six budget classifications (481 – Grants for civil society organisations, 472 – Compensation for social protection, 451 – Subventions to public non-financial corporations, 423 – Contract services, 424 – Specialised services, 462 – Grants for international organisations) through which funds can be allocated to non-profit entities (both at national and local levels). Currently, official data on the amount of public funding of CSOs is partially available at the annual level. However, [the governmental Office for Cooperation with Civil Society](#) is preparing Consolidated Annual Reports (soon to be available for 2015, 2016 and 2017). Still, there is no obligation for state institutions to provide data to the OCCS and in that respect, data obtained through those reports might not be complete.

The funds from line 481 (grants for civil society organisations) and 472 (financing services of social protection) are still used for financing sport clubs, churches and religious communities, public institutions and the Red Cross, although these entities have separate lines in the state budget.

Public funding does not entail all the necessary elements (scope, recipients, implementation rules, code of conduct, reporting, etc.). However, a procedure for changing the regulation is underway, though it has not yet been adopted. Based on the indicators from the [Guidelines for EU support to civil society in the enlargement countries](#), at this point, the legal framework for public funding is characterised by the following:

- Public funding is not systematically decided on the basis of policy papers and public institutions do not have an obligation to allocate funds on that basis (especially at local level), although there are cases in which policy papers are taken into account (e.g. Ministry for youth and sport).
- Cases of inclusion of beneficiaries in programming of the tenders are still rare.

- In practice criteria are not always clear or published well in advance, especially at local level (public funding from local governments).
- There are deadlines for decision.
- There is an obligation for public institutions to justify their decision. However, in practice, decisions – while based on a score system – are not always accompanied by argumentation. This is particularly true for public funding at local level (by local governments).
- There is no evaluation of achieved outputs and outcomes at the project and programme level and public institutions do not have an obligation to monitor and/or evaluate achieved outputs and outcomes.
- There is possibility of prepayments.
- In principle, there are no multi-annual contracts, although in rare cases exceptions are made.

While transparent reporting on the implementation of financial supports is obligatory, in practice public institutions do not report on regular basis.

11. Participation in decision-making processes

Data on the draft laws/bylaws that are sent to CSOs for consultation in accordance with national legislation is not available, and so there is no annual data. Provisions on obligations for consultations with CSOs exist, albeit in different regulations; therefore, practices differs according to the institution. When it comes to consultations with CSOs regarding draft laws/bylaws/strategies and policy reforms:

- There is a legal obligation to publish draft laws on the Internet (and drafts are regularly published); this obligation however does not include local governments.
- There is sufficient time to comment (minimum 15 working days), although such an obligation does not include the local level (local governments). However, there are no consequences when this procedure is not respected by government and we have seen extensive use of the so-called "urgent procedure".
- Criteria for the appointment of civil society representatives are not always transparent, open, inclusive and known in advance. Process, transparency, inclusiveness etc. depend on the institution. However, the number of institutions that consult the Office for Cooperation with Civil Society is increasing. When consulted, the OCCS publishes open calls with clear criteria.
- There is an obligation to publish a feedback report with a summary of consultation process, list of involved stakeholders, summary of received comments/proposals, their impact on the draft law and justification of rejected comments/proposals). However, while summaries are usually published, they often do not contain obligatory information; therefore, feedback is not appropriate.

In addition, the increase in the number of laws passed in urgent procedures is increasing which is stifling democratic debate as well as effective inclusion of CSOs in the consultation process.⁴ In the April 2018-September 2018 period, the parliament adopted 82 laws. In 28 cases, the parliament accepted governmental requests for an "[urgent procedure](#)." Similarly, parliament continued to accept drafts that were never publicly debated, despite the fact that such debates were mandatory according to the Law on Public Administration and despite its own Resolution on Legislative Policy. For instance, the Amendments to the Law on Security Information Agency and the Law on the Construction of Apartments for Members of the Military, Police and Security Services⁵ had not previously been publicly debated. Furthermore, grouping sets of diverse pieces of legislation on the agenda as one item and spending time for parliamentary debate on reading out hundreds of amendments is a technique used to hamper the work of parliament. It is now already an established practice to submit a large number of amendments in order to curtail the discussion time; this practice began in December 2017

⁴ For more details see

⁵ <http://www.transparentnost.org.rs/index.php/sr/aktivnosti-2/pod-lupom/9985-da-li-ce-novi-lex-specialis-narusiti-sistem-javnih-nabavki>

when the annual budget was considered and adopted. In other words, ruling coalition MPs are using a mechanism aimed at hindering their counterparts from presenting the opposition's amendments and comments by abusing the rules of procedure. The total time envisaged for the debate was spent by presenting a large number of their amendments (almost all of identical content), which were later withdrawn once the discussion had expired. Such practices have continued throughout 2018 and have prevented a constructive debate about a large number of legal acts, including a whole set of laws regulating the security sector that had been adopted during the spring.

Even when formally respecting the importance of public debate, the government in Serbia essentially prevents this mechanism from working. This practice is particularly dangerous when it comes to the most important legal acts, such as the Constitution of Serbia. The Ministry of Justice has called for organisations dealing with the judiciary in 2016 to propose amendments to the Constitution. This was referred to by the ministry as a "consultation" and is not provided for in the legislation. It covers everything from the written proposals of civil society organisations about everything they think should be changed, to roundtables that do not specify the topics discussed. [Due to the apparent unwillingness of the authorities to discuss essential issues such as strengthening the independence of the judiciary and the prosecution, professional associations and civil society organizations refused to participate in consultations in October 2017.](#) All relevant citizens' associations, professional organisations such as the Association of Judges and the Association of Prosecutors of Serbia, professors of constitutional law, but also the courts, including the Supreme Court of Cassation and finally the High Judicial Council and the State Council of Prosecutors, sent the same [remarks and comments to the ministry at that time, that its proposals seriously jeopardised the independence of the judiciary.](#) The public hearing itself, held at the beginning of 2018, was marked by improper behaviour on the part of officials of the Ministry of Justice who insulted judges and representatives of professional associations, and the media could hear open threats made by the state secretary to judges. The draft constitutional amendment, published in April 2018, also caused discontent. Following the opinion of the Venice Commission, which largely coincides with the demands of the profession in Serbia, the Ministry of Justice has published a new Draft Amendment again ignoring the most important requirements for ensuring the independence of the judiciary. Constitutional amendments are not the only legal acts where a simulation of a public hearing took place with the obvious intention of reducing it to formalities. Other proposals for laws of immense importance for the protection of human rights were adopted after formal public hearings in which the government completely ignored the unique position of the profession.

The lack of institutional space for communication between citizens and authorities at all levels contributed to the creation of informal groups that put their [demands on the streets](#). For example, mass protests took place in Nish during April following the city's decision to transfer the local airport to the state's jurisdiction. The civic initiative "[Ne damo nishki aerodrom](#)" (We are not giving Nish Airport) organised several [gatherings](#) to show their dissatisfaction. One of the most [significant](#) results of the initiative was that it brought together citizens of Nish, regardless of their political commitment or preference. Similar local civic movements have taken place in other cities, such as in [Požega](#) and [Smederevo](#), where citizens protested against corruption, nepotism and reckless management of community issues.

12. Government-organised non-government organisations (GONGOs)

In last few years, a number of GONGOs (government-organised NGOs) and PONGOs (political party NGOs) were set up either to compete in particular funding contests or to discredit the advocacy efforts of other CSOs. State organisation of non-governmental organisations, that is, the establishment of organisations that are not dedicated to their mission, but exist exclusively to achieve the goals of officials and parties in power, is not a new phenomenon, but has in the past few years become a worrying trend in Serbia. Such organisations usually appear for two reasons - simulating support to authorities and their initiatives, and, on the other hand, participating in vacancies and corrupt disposal of public money. [After a unique resistance to the changes in the Constitution in the field of justice of almost all relevant professional organisations and citizens' associations in Serbia,](#) support from the

Ministry of Justice's proposal came in March 2018 from 40 civil society organisations. Following the analysis, the Insider portal announced that nearly a third of signers could not be found either in the registry or in an Internet search. In the area of freedom of expression, the authorities also resorted to the establishment of media and journalistic associations, bringing people closer to the ruling structures. [These associations delegate the majority of representatives to the local commissions for deciding on projects of co-financing media content of public importance that are burdened with numerous scandals and suspicious decisions.](#) During a protest against shifts on Radio Television Vojvodina, a group of organisations, until then completely unknown to the public, held a counter protest giving support to the authorities. Among the signatories were the organisations "Patku Daj tati", "Politikolozi bez granica", "Institut za borbu protiv korupcije" i "Serbona". Some of them were established only a few days before the protest. These and similar associations in the public are advertised only when they give support to the authorities or condemn the critics of the regime. In addition, such associations also serve to propose appointing people that are close to the authorities in different bodies or positions, commissions or working groups. The inflation of false associations of citizens whose goal is either to defend the government or distribute public money corruptly seriously threatens the freedom of association in Serbia. [Even when strong arguments about corruption related to the creation of false associations are offered, the prosecution and other competent authorities remain silent.](#) The creation of a parallel civil sector fuses public hearings and the whole process of civic participation, which can seriously jeopardise citizens' confidence in democratic processes and institutions.

13. Recommendations

a) for the EU Institutions

1. [A strategic approach to protecting the shrinking civic space, both in the EU and in its external action](#) should be developed in close cooperation with civil society organisations and all EU institutions. The JCC calls for a strategy facilitating the development of a strong and independent civil society in Europe and for the establishment of an EU Ombudsman on civic space freedoms, to whom NGOs would report incidents related to any harassment or restriction of their work.
2. [The EU strategy on civic space protection and promotion should include actions to implement Article 11 of the Treaty on European Union \(TEU\)](#), which states that the EU institutions have an obligation to engage with citizens and their representative associations. The *prospective process of negotiating the new Interinstitutional Agreement (IIA) should be approached as a clear opportunity to put proper mechanisms in place for structured dialogue with civil society in the final stages of the legislative process accompanying and feeding into the triologue between the Parliament, the Commission and the Council.*
3. The JCC calls on the Commission to act upon [the European Parliament's proposal of the Pact on Democracy, Rule of Law and Fundamental Rights](#) - to be applied both in all EU Member States and by the EU institutions, as well as in the accession countries. This would be used as a standard source of evidence and analysis for any further oversight and disciplinary measures in cases of serious and systematic degradation of the civic space, which is considered to be one of the key aspects of functioning democracy and compliance with the rule of law.
4. The JCC calls on the European Commission to react promptly with relevant measures, including infringement procedures against Member States, when national administrative or legal provisions restrict the access of national civil society organisations to EU funds, including when funding conditions are imposed that make it harder to for these organisations to speak out .
5. Building upon the experience of triggering the Article 7 procedure against Hungary, the EU institutions should recognise that systematic violations and degradation of civic space can

trigger disciplinary mechanisms with respect to a Member State's compliance with the EU's fundamental values, Articles 2 and 11 of the Lisbon Treaty in particular, as well as the EU Charter of Fundamental Rights, which explicitly recognises not only the freedoms of association, assembly and expression but also media freedom and media pluralism as fundamental freedoms.

6. Concerning the future multiannual financial framework (MFF), the JCC calls on the budget authorities to increase funding for CSOs, including in the form of operating grants and multiannual financing, which can reach out to the smallest organisations and the most disadvantaged sectors of society. With this in mind, the Commission should provide for a variety of financing arrangements, including local foundations as intermediaries, and further simplify administrative formalities, providing training and guidelines on the implementation of contracts and financial obligations, while ensuring consistent interpretation by its departments of the Regulation on the financial rules.
7. The JCC calls on the Commission to monitor the implementation of the code of conduct on partnership with civil society within the Structural Funds and the Instrument for Pre-accession (IPA). The Commission should also call on national and regional authorities to use the technical assistance provisions, designed to boost capacity-building, for civil society organisations.
8. The European Digital Agenda should fully support further democratisation of EU institutions, which should start building a common e-participation infrastructure, based on a common vision. The Commission should encourage and facilitate digital experiments in participatory budgeting, monitoring of Member States' positions on Council decisions, greater civic engagement from MEPs and an exploration of the ICT crowdsourcing of policy ideas for the Commission.
9. It is of critical importance that freedom of the media, media pluralism and media literacy be incorporated into all future EU legal and funding actions that help protect European values and civic space from the dissemination of hatred, prejudices, fake news and extremism.

b) for the Serbian Government

10. The attacks on civil society organisations by representatives of government, parliament and government-funded media must stop.
11. The government of Serbia must guarantee the protection of human rights defenders, anti-corruption organisations and independent journalists and must prosecute and bring to justice perpetrators and those that have commissioned attacks on civil society organisations.
12. Although the legal framework for the workings of civil society is mostly in place, there is a need for improvement in the following areas:
 - introduce necessary changes in the legislation and policy framework with regard to freedom of association (adopting the necessary secondary legislation with regard to conflicts of interest) and freedom of assembly (clarification in primary legislation and adopting the secondary legislation noted above);
 - regarding volunteering, we need to see, as a matter of urgency, the development and adoption of the new law on volunteering and the accompanying legislation, in line with best international standards and practices that would provide a stimulating framework for volunteering. We also recommend the development and adoption of so-called "soft" policies, which would for example offer incentives for various governmental departments (e.g. the ministry of education) if they promote and stimulate volunteering;

- In the area of the charity development, the Government Council for Charities needs to provide urgent support for those who are active in the area of giving. Further recommendations are aimed at improving the institutional framework for giving, especially in the area of tax legislation;
 - With regards to the institutional framework for public funding for CSOs, there is a need for improvements in the following areas: a clear diversification of budget line 481, to enable exact calculations and monitoring of the funds that are allocated to CSOs to distinguish them from funds allocated to churches, sport associations, political parties and other similar entities; a clear diversification of other budget lines from which funds can be allocated to non-profit organisations, to enable monitoring of the public funds received by CSOs; *explore whether public enterprises, which are state-owned, should also be subject to regulations on the distribution of public funds due to their very non-transparent distribution of funds to CSOs.* For the sake of completeness, the regulation of public funding needs to address various elements such as scope, recipients, implementation rules, a code of conduct, the clear avoidance of conflict of interest and transparent reporting;
13. While some progress has been made on the institutional framework for participation in decision-making processes, there is a need for improvements in terms of:
- strengthening mechanisms for cooperation with civil society: establishing a Government Council for Cooperation; a contact point with civil society in the Parliament and designated units or officers for cooperation with civil society within all state bodies, at both national and local level;
 - creating and adopting common standards for the effective inclusion of CSOs in consultation processes, which will be obligatory for public institutions at both national and local level;
 - increasing pressure on public institutions to be efficient in the way they receive, acknowledge and report on input from civil society;
 - clarifying conditions under which laws could be passed in an urgent procedure and decrease the use of the urgent procedure, and abandon tactics to decrease the time available to the opposition in parliamentary debates on new legislation.
-