



FUNDAMENTAL RIGHTS  
AND THE RULE OF LAW

## **National developments from a civil society perspective, 2023-2024**



European Economic  
and Social Committee

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Fundamental rights and the rule of law  
National developments from a civil society  
perspective 2023-2024

# Introduction

This report aims to synthesise national developments in 2023-2024 in the areas of fundamental rights and the rule of law from a civil society perspective.

It is based on the reports produced by the FRRL Group concerning the visits to:

- Luxembourg: 2-3 March 2023
- Croatia: 30-31 March 2023
- Belgium: 20-21 April 2023
- Malta: 13-14 September 2023
- Estonia: 12-13 October 2023
- Latvia: 29-30 November 2023
- The Netherlands: 7-8 February 2024

These reports, which also include as annex the observations made by the relevant authorities, are available on the dedicated web page of the FRRL Group.<sup>1</sup>

This report covers the visits carried out in 2023-2024, following the same methodology as the previous reports covering the visits carried out in 2018-2019,<sup>2</sup> 2020-2021,<sup>3</sup> and 2022<sup>4</sup>. The role of the FRRL Group is to listen to and relay the views of civil society, in order to foster constructive debates at national and European level. The views reproduced in good faith in this report therefore do not reflect the stance of the EESC, nor do they serve as an official assessment of any situation. The primary aim of this report is not to provide legal or scientific analyses, but rather to convey the perspectives of civil society regarding trends concerning fundamental rights and the rule of law in Europe. While certain phenomena may be unique to specific countries, others can be observed across multiple Member States. However, the report makes no claims to being exhaustive as regards the reporting of such trends.

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<sup>1</sup> EESC, FRRL Group country visits reports, <https://www.eesc.europa.eu/en/sections-other-bodies/other/ad-hoc-group-fundamental-rights-and-rule-law>

<sup>2</sup> EESC FRRL Group, Fundamental Rights and Rule of Law - National developments from a civil society perspective, 2018-2019, <https://www.eesc.europa.eu/sites/default/files/files/qe-09-23-165-en-n.pdf>

<sup>3</sup> EESC FRRL Group, Fundamental Rights and Rule of Law - National developments from a civil society perspective, 2020-2021, <https://www.eesc.europa.eu/sites/default/files/files/qe-09-23-229-en-n.pdf>

<sup>4</sup> EESC FRRL Group, Fundamental Rights and Rule of Law - National developments from a civil society perspective, 2022, [https://www.eesc.europa.eu/sites/default/files/2024-03/qe-04-23-955-en-n\\_1.pdf](https://www.eesc.europa.eu/sites/default/files/2024-03/qe-04-23-955-en-n_1.pdf)

## Fundamental rights of the social partners

The session bringing together employers' and workers' representatives allows for discussions on key issues relating to the fundamental rights of the social partners, such as social dialogue, workers' rights, the implementation of labour law, and societal considerations having an impact on them.

### Social dialogue

Despite differences in national contexts, participants universally stressed the **importance of social dialogue**, emphasising the need to ensure its quality and impact.

- In Luxembourg, Belgium, and the Netherlands, participants emphasised the quality of **social dialogue** and the importance of regular tripartite meetings involving employers, trade unions, and government representatives in facilitating decision-making on labour laws and policies.
- Despite a long tradition of social dialogue in these countries, challenges remained. In Belgium, participants criticised the government for implementing agreements selectively and overlooking their perspectives when drafting legislation, undermining the **impact** of social dialogue. Participants in the Netherlands hoped that political change would not affect the positive relationship that had traditionally existed between the Dutch social dialogue model and the political decision-making process. In Luxembourg, participants perceived a growing dominance of legislation over collective bargaining.
- The situation of social dialogue was viewed as being nuanced in Estonia, where regular tripartite meetings were appreciated but consultation was seen as too short and implementation problematic. In Latvia, participants felt that the **quality** of social dialogue had dramatically declined since the COVID-19 pandemic. In Croatia, participants believed that the involvement of the social partners in decision-making was all too often merely symbolic and came too late. In Malta, the participants highlighted the limited capacity of the social partners to deal with the many short deadlines of legal consultations.

### Workers' rights

Participants in several countries expressed concerns about limitations on **workers' rights**, such as the right to strike, the right to demonstrate, and rights in the workplace.

- Participants in several countries presented various situations concerning the **right to strike** and **the right to demonstrate**. In Latvia, participants raised concerns about limitations on police workers' right to strike and called for this right to be strengthened more generally, both in law and in practice. In Croatia, participants deplored the legal limitations on the right to strike in specific situations. On the

other hand, in Luxembourg, participants appreciated the fact that the right to strike was not limited to conflicts connected to collective bargaining agreements. In Belgium and in the Netherlands, participants and the authorities had diverging interpretations of the scope of permitted restrictions on the right to demonstrate, for example where the obstruction of traffic was concerned.

- Some participants emphasised the need for stronger effective protection of **workers' rights in the workplace**. In Croatia and in Estonia, participants lamented the increasing pressure on unionised workers, and the pressure placed on employees to prevent them from joining unions. In Latvia, participants regretted the lack of consequences for actions that discouraged union membership. In Belgium, a trend was evoked whereby multinational companies preferred to pay fines rather than follow the appropriate procedures for dismissing individuals. In the Netherlands, participants stressed the existence of 'yellow unions', and they lamented the discrimination faced by vulnerable workers in the workplace.

### **Implementation of labour laws**

Participants in various countries called for better **enforcement of labour laws**, highlighting challenges such as understaffed and underfunded labour inspectorates.

- In Luxembourg, Croatia, Malta, and Estonia, participants called for more human and financial resources for **labour inspections** and more efficient oversight and sanctions.
- Trust in the **judiciary** and legal system also emerged as a key theme for the social partners in some countries. In Croatia, participants were concerned about the judiciary's susceptibility to outside influence, slow processes, and inconsistency in labour case-law, which posed challenges for businesses and workers. In Malta, participants raised the need to tackle corruption more effectively, as it affected foreign investment and impacted trust among stakeholders.

### **Societal considerations**

Participants in various countries highlighted **challenges** linked to demographic changes and unions' representation, capacities, and density.

- In Malta, it was explained how low income from membership fees impacted the **capacities of trade unions**, resulting in less bargaining power. In Latvia, participants pointed to a situation characterised by low rates of union membership, low collective agreement coverage, salaries that did not keep pace with inflation, and unfilled vacancies. In the Netherlands, despite a high level of union organisation, participants shared concerns about the absence of representativeness and independence criteria in law.



- In Croatia, Estonia, and Malta, participants highlighted how population decline and labour shortages posed challenges for both the labour market and union density. Despite efforts to integrate **migrant workers** in Belgium and the Netherlands, participants considered that language barriers and difficulties surrounding the recognition of qualifications remained major obstacles to migrant workers' full participation in the workforce.

## Freedom of association and freedom of assembly

Participants in the sessions on freedom of association and freedom of assembly raised issues relating to the legal environment for civil society organisations, pressure on civil society organisations and the civic space, access to funding, participation in decision-making, and freedom of association.

### Legal environment for civil society organisations

In several countries, participants stressed the adequacy of the **legal framework for civil society organisations**, which did not mean that challenges concerning the civic space did not exist in practice.

- In Luxembourg, participants viewed the **overall environment** for civil society organisations as favourable, but they also expressed concerns that an ongoing, albeit justified, reform of the statute of associations could potentially create challenges for some very small civil society organisations. In Belgium, participants appreciated the high level of respect for the civic space, but they also remarked that the authorities had historically delegated civic tasks to civil society organisations, for example in the area of healthcare and education.
- In Latvia, participants viewed the legal framework regarding freedom of association and freedom of assembly as strong; however, they also remarked that civil society organisations were strictly monitored and the **intervention of the authorities in the civic space** was possible to a level that could pose issues for civil society organisations' operations. In Croatia, participants considered that the legal framework regulating freedom of association and freedom of assembly was liberal, but they also highlighted concerns about the increasing administrative burden imposed on civil society organisations. Participants also deplored what they considered to be the absence of trust and partnership spirit between the state authorities and civil society organisations. In Malta, participants explained that restrictions on voluntary organisations were proposed in 2021 but in the end had not been adopted.

### Pressure on civil society organisations and the civic space

In several countries, participants highlighted **various forms of pressure exerted on civil society organisations** and the civic space, stemming from the state and society.

- In Croatia, participants considered that the rise of **negative public narratives** had exacerbated pressure on civil society organisations, particularly those advocating for LGBTIQ rights, migrants' rights, and environmental protection. Participants also considered that the high number of strategic lawsuits against public participation (SLAPPs) targeting journalists, civil society organisations, and human

rights defenders was an example of broader attempts to stifle dissent and civic engagement.

- In Malta, participants considered that the use of the media and social networks to discredit and intimidate civil society organisations and activists highlighted systemic efforts to undermine their activities and impact. Participants also referred to an attempt by the authorities to **disband** a civil society organisation that they considered to be political in nature.
- In the Netherlands, participants explained how increased questioning of the legitimacy of civil society organisations' actions had notably taken the form of repeated pressure for **transparency** – they hoped that this would not be transformed into legislation aimed at controlling foreign funding.

### Access to funding

Participants in all countries visited highlighted **challenges of various forms and levels** relating to civil society organisations' access to funding. Despite the diversity of issues, common concerns emerged regarding overreliance on government funds, potential self-censorship, and limited financial resources for advocacy work.

- Besides the usual question of the **need to increase the level of funding** available for civil society, participants in several countries addressed the question of the issues and types of activities supported by public funding. Participants in Croatia lamented diminishing national lottery funding and the reallocation of funds away from corruption monitoring and civic education. In Belgium, concerns were raised about potential funding cuts for civil society organisations working with minority groups. In the Netherlands, participants voiced their concerns about a potential shift in development cooperation strategies away from traditional support for international solidarity and human rights defenders. Despite increased public funding in Latvia, participants highlighted the intense competition for resources at the expense of local civil society organisations and certain sectors.
- Another key related question that emerged in the countries visited was the **risk of overreliance on government funds** and the potential self-censorship this could lead to. In Estonia, while strategic partnerships between ministries and civil society organisations facilitated funding and policy collaboration, concerns arose over the dependency of some civil society organisations on government funding, affecting their ability to criticise governments publicly. Similar reflections were voiced, for example, in Luxembourg. In Malta, participants explained that civil society organisations faced challenges in accessing funding for advocacy work and experienced pressure to align with government policies in order to secure funding, with those critical of government actions risking marginalisation.

### Participation in decision-making

Participants in several countries expressed a **desire for more transparent and inclusive decision-making processes**, with calls for extended consultation periods and efforts to address low civic participation, particularly among young people.

- Participants in Estonia and Latvia appreciated the existence of **strategic partnerships** to foster collaboration between civil society organisations and public authorities; however, assessments of the relationship between civil society organisations and public authorities were more nuanced in other countries.
- In Croatia, participants acknowledged the existence of processes to involve civil society organisations in decision-making processes, but they also considered this involvement to be too superficial for **meaningful impact**. In Malta, despite the absence of a tradition of authorities engaging with civil society organisations, participants felt that there was potential for growth, based on some good examples of organisations being invited for consultations on legislation.
- In Belgium, participants perceived a decrease in the **influence of civil society in policy-making**, notably because of a growing tendency to publicly question the added value of advisory councils. In the Netherlands, participants hoped that the traditionally good access that civil society organisations had had to consultations with the government and with political parties in parliament would be preserved, despite political changes.

### Freedom of assembly

Participants across several countries called for greater **transparency, dialogue, and adherence to international standards** concerning the right to protest and freedom of assembly.

- Although participants in Luxembourg and Croatia considered that the legal frameworks in place were adequate, they also called for **legislative clarification** and more transparency on the conditions for exercising the right to protest.
- In the Netherlands, participants expressed concerns about **inconsistencies in the treatment of different types of assemblies**, with certain groups facing harsher treatment and negative rhetoric from the media and politicians. Criticism was also directed towards provisions in the Public Assemblies Act, which, according to some participants, could have a chilling effect on the freedom of assembly.
- In Belgium, participants highlighted **cases of excessive use of force** by the police at public demonstrations, and raised concerns about municipal level restrictions on freedom of assembly as well as proposed legislation allowing judges to impose preventative bans on the right to demonstrate.

## Freedom of expression and media freedom

Participants in the sessions on freedom of expression and media freedom generally considered that the legal framework in place in their countries offered good protection for these freedoms overall. However, they pointed to serious challenges in the areas of access to information, socio-economic conditions, pressure on the media and journalists, media pluralism, and public service media.

### Access to information

**Access to information and government transparency** emerged as a concern shared by participants in several countries, albeit to various levels of challenges.

- In Belgium, participants had a mixed assessment of the ongoing reform of legislation on **access to information**, acknowledging some improvements but also regretting provisions that made it possible to conceal information on procedures involving the authorities or their internal communications. In Luxembourg, participants explained that access to information about government activities would now pass through the intermediary of communication officers. In the Netherlands, participants felt that the authorities were increasingly prepared to pay fines rather than grant access to information for some types of documents.
- In Latvia, participants evoked a trend of ‘securitisation of public discourse’ in reference to restrictions on access to information justified by invoking **national security**. In Malta, participants regretted that the authorities could invoke exceptions to the legal right to access information, creating situations of delay to challenge such decisions, to the point where the information became obsolete. In Croatia, the potential criminalisation of the use of information leaked from investigations raised concerns among participants.

### Socio-economic conditions for media outlets and professionals

Participants in several countries highlighted how **quality journalism was at stake** in a context marked by challenges to the economic viability of the media sector and increasingly difficult working conditions for journalists.

- Participants in several countries visited called for **a reflexion on more sustainable funding models** for media outlets. Participants in Luxembourg highlighted the excellent national model whereby public support for the media ensured the sustainability of the sector. They explained that such support was linked to the number of recognised journalists in an outlet, noting, however, that this entailed the risk that the distribution of available funding would favour large organisations. In the Netherlands, participants discussed the impact of digitalisation on journalism revenue models, and of targeted online advertising and its potential influence on public discourse. In Belgium, participants highlighted the sharp decline in printed media due to unprofitable business

models. They also pointed to the growing role of public broadcasters as being problematic for media market diversity.

- Challenges relating to the **working conditions of media professionals** were highlighted across several countries. In the Netherlands, participants emphasised the precarious nature of journalism-related work and the need for safe, stable employment contracts to protect media freedom. In Latvia, participants noted unhealthy working conditions, particularly in regional media, where wages were below the national average. In Estonia, participants raised issues relating to freelance journalists' socioeconomic circumstances, calling for support mechanisms to address their disadvantage. In Belgium, participants regretted that this category was not covered by collective bargaining agreements similar to those enjoyed by employed professionals. In Croatia, participants lamented the lack of social dialogue in the media sector and stressed that the challenges faced by journalists, such as self-censorship and socioeconomic hardship, had led to a tendency for media workers to leave the world of journalism.

### **Pressure on the media and journalists**

Participants in several countries visited stressed the urgent **need for stronger protections for journalists** in the face of mounting threats and intimidation of all sorts.

- Participants in several countries expressed deep concerns about the rise in the number of **strategic lawsuits against public participation (SLAPPs)** targeting journalists. In Croatia, participants decried the prevalence of SLAPP cases, with examples ranging from public officials to businesspersons launching litigation to silence journalists. In Malta, participants considered that journalists faced a number of legal threats, including foreign libel suits, as well as online hate campaigns. While those responsible for ordering the murder of Maltese journalist Daphne Caruana Galizia had still not been punished, her children were still fighting SLAPP cases against her in court. In Croatia and Malta, participants pointed to a context marked by an anti-media narrative that fuelled verbal and physical attacks on media professionals.
- In several countries, participants evoked how various forms of **legal intimidation** of journalists had a chilling effect on their work. For example, in the Netherlands, participants regretted that slander and defamation had not been made legal. On the other hand, in Belgium, participants appreciated that defamation and slander would no longer be punished with prison sentences, but also considered that SLAPP cases were on the rise. In Estonia, participants mentioned cases of misuse of the General Data Protection Regulation (GDPR) and copyright legislation against journalists. In Latvia, participants noted that public media had faced hefty fines due to content-related issues.

## Media pluralism

Participants in several countries cited the need for more **transparency and diversity in media ownership**, as well as for better regulatory frameworks for the digital media landscape.

- Participants in several countries emphasised the **importance of regulatory measures to address media concentration** and safeguard pluralism. In Croatia, participants criticised the lack of transparency in media ownership, in a context where large-scale private media were often owned by foreign entities and local media were controlled by local councils. In Latvia, participants echoed these concerns, pointing to media concentration in digital platforms and calling for more pluralism in the television sector. In the Netherlands, participants were concerned about the proposed takeover of a major broadcaster.
- Participants in several countries highlighted the disruptive impact of **digital platforms** on media pluralism. In the Netherlands, in particular, participants discussed the challenges posed by online platforms reusing news content without adequate compensation and the potential impact of generative artificial intelligence on media plurality.

## Public service media

Participants in several countries expressed concerns about **political influence over public broadcasting**.

- In Croatia, criticism was directed at the **procedure for selecting the board** of the public broadcasting service. In Malta, participants perceived that the government's influence over public broadcasting was stronger than ever, in a context where media outlets were often associated with particular political affiliations.
- **Financial challenges for public service media** were highlighted in several countries. In the Netherlands, participants called for safeguards, such as guaranteed long-term funding for the public broadcasting service to prevent potential political interference. Similarly, participants in Latvia called for an independent funding mechanism to reduce politicians' dependency on public broadcasters. In Estonia, participants regretted the general lack of funding for the public broadcaster and independent regional media outlets.

## The right to non-discrimination

Discussions in the sessions on the right to non-discrimination concerned the general framework for addressing discrimination, as well as the particular challenges faced by groups such as migrants, ethnic and religious minorities, women, LGBTIQ people, and people with disabilities, and discrimination based on other grounds.

### General framework on non-discrimination

Participants across several countries highlighted an **implementation gap** between legal frameworks that were, overall, adequate and the reality. They also raised the issue of the key role played by civil society organisations working on the right to non-discrimination.

- The **inadequate implementation of legislation** was identified in several countries. For example, in Croatia, participants felt that political will concerning this issue had waned after EU accession. In Latvia, participants considered that the implementation of satisfactory anti-discrimination legislation was a challenge, especially when it came to marginalised groups. In Belgium, participants called for better streamlining of anti-discrimination policies across all government departments, and for closer monitoring of the application of anti-discrimination laws, in order to address the existing implementation gap.
- Participants in several countries visited highlighted the **key role played by civil society organisations** in the fight against discrimination. Participants in Belgium, Malta, and Estonia called for more funding for civil society organisations working on anti-discrimination. In Estonia, Croatia, and Belgium, participants called for improved consultation processes and more coordination among different anti-discrimination bodies. In several countries, for example in Malta, Estonia, and Latvia, participants also called for more resources for institutions in charge of enforcing anti-discrimination measures. On the other hand, participants in the Netherlands described a highly-developed system for reporting discrimination at both national and local level, building on a network of ombud-type institutions in most municipalities, independent public institutions, and a rich environment of civil society organisations active in all areas of discrimination.

### Migrants, including asylum-seekers

Participants across various countries raised concerns about policies on the reception of migrants, including asylum seekers, and highlighted challenges relating to their **rights and integration**.

- **Reception policies and conditions** were raised in several countries. In Croatia, participants criticised the alleged pushbacks and what they considered to be a lack of independent monitoring mechanisms to oversee the implementation of migration policy at the country's borders. In Malta, participants also referred to alleged pushbacks, as well as to restrictive detention policies and difficulties



accessing legal aid. In Belgium, participants regretted that the state had been condemned several times on account of the country's reception policies. Participants in Luxembourg criticised the lack of refugee facilities and the overcrowded conditions in those that did exist.

- **Discrimination against migrants** and other specific difficulties concerning the integration of migrants into society were raised in several countries. In Belgium, participants raised issues such as discrimination in employment opportunities and access to healthcare. In Malta, concerns were raised about the lack of access to legal aid and healthcare services. In Luxembourg, participants highlighted language requirements as posing barriers to employment, and the difficulty in obtaining citizenship due to requirements concerning the Luxembourgish language, in a context where half of the population did not have citizenship. In Estonia, participants expressed concerns about discrimination against Ukrainian refugees and challenges in accessing housing, healthcare, and legal documentation. In Belgium and Luxembourg, differences in the treatment of refugees depending on their country of origins (notably Ukrainians compared to Syrians) was highlighted.
- Overall, participants called for **stronger enforcement of legal frameworks** for the protection of migrants' rights, improved mechanisms for monitoring migration and reception policies, better policies to ensure equitable access to services and opportunities for integration, and enhanced cooperation between governments and civil society, including access to detention centres.

### **Ethnic and religious minorities**

Across various countries, concerns were raised about discrimination against ethnic and religious minorities and the **need for greater inclusion and equality**.

- In the Netherlands, despite a solid legal framework for reporting discrimination, participants noted persistent **discriminatory attitudes in society**. Data showed that people of various ethnic and religious origins faced discrimination in employment, and also proved the existence of ethnic profiling by police. In Belgium, participants regretted the absence of a comprehensive anti-racism plan at federal level, which, in their view, illustrated the lack of political priority that was given to tackling racism. In Luxembourg, participants looked forward to the implementation of the action plan against racism, although they regretted that, to their knowledge, no persons of colour or civil society organisations representing them had been consulted during its preparation.
- **Hate speech and polarisation of society** were identified as growing concerns across several countries. In Luxembourg, participants noted the prevalence of hate speech online and the need for more awareness-raising efforts. In the Netherlands, participants expressed their worries concerning an increase in hate speech, including anti-Semitic and anti-Muslim rhetoric, leading to members of

the Jewish and Muslim communities fearing for their safety. Despite some positive initiatives in the area, participants regretted that the Netherlands did not yet have a law to combat hate speech and hate crime.

- Efforts to address discrimination and promote the inclusion of **Roma people** were mentioned in several countries. In Croatia, participants appreciated the national Roma inclusion strategy, but highlighted the slowness of its implementation and the need for improved integration measures, particularly in education and employment. In Belgium, progress in integrating Roma pupils in schools was noted, but challenges remained, especially regarding employment opportunities. Similarly, in Latvia, participants appreciated initiatives like the Roma platform in education, but they also considered that support for Roma children in education was still insufficient and that discrimination in the job market persisted.

## Women

Participants in the country visits called for the reinforcement and full implementation of legal frameworks to **promote gender equality**, and highlighted various specific examples of the persistence of gender inequality.

- Beyond general provisions, participants in several countries visited called for the **reinforcement of legal frameworks**. In Estonia and Croatia, the lack of a national action plan on gender inequality was seen as problematic. In Latvia, such a plan was associated with the process of ratifying the Istanbul Convention (the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence), while in Luxembourg, participants felt that the implementation of that convention was still not complete. In the Netherlands, participants regretted that the rules on domestic work did not do enough to protect women. In Belgium, participants considered it crucial to modernise the law to take into account new and multiple forms of discrimination.
- **Gender-based violence** remained a central concern in several countries. In Luxembourg, participants called for an extension of the prescription period for rape. In the Netherlands, participants considered that, despite good laws and practices, the fight against domestic violence suffered from a lack of expertise and trained personal in police forces and in the justice system. In Latvia, participants regretted the lack of laws protecting victims of sexual harassment and grooming. In Malta, processes to prevent domestic violence were deemed to be too slow. In Croatia, participants considered that sexual harassment was not sufficiently addressed, including in the education sector, and they regretted that the high cost and length of judicial proceedings was detrimental to women's access to redress.
- Participants also associated changes in law and in practice with **social considerations**. In Croatia, participants noted that the right to abortion was limited by the fact that many doctors resorted to conscientious objections. In Malta, participants felt that overall progress on gender equality had been slow, pointing

to the fact that societal considerations limited access to abortion. In the Netherlands, participants considered that, despite generally positive conditions for women, discrimination was still strong against women from particular ethnic or religious backgrounds. In Luxembourg, participants explained how women were underrepresented in positions of power.

### **LGBTIQ people**

In several countries, participants described important legal progress made over recent years, but also noted social attitudes and cultural influences which continued to pose significant **barriers to full acceptance** and equality.

- In Estonia, participants explained that **same-sex marriage** would be legal as of 2024, while, in Latvia, a law on same-sex partnerships had been delayed several times but was due to be adopted in the same year. In Croatia, participants highlighted a lack of systematic implementation of the law on same-sex partnerships and the absence of a national strategy for LGBTIQ persons, amidst a mix of growing social acceptance and persistent social stigma.
- In Malta, significant progress in legislation was seen as contrasting with conservative **cultural attitudes**, with challenges in healthcare provisions encountered by transgender and intersex persons. In the Netherlands, despite early advances in LGBTIQ rights, participants explained that recent trends indicated a regression in societal acceptance and political support, as well as an increase in hate speech targeting LGBTIQ individuals. In Belgium, participants stressed that hate speech against LGBTIQ people was prosecuted, with aggravated penalties imposed for discrimination based on sexual orientation or gender identity.

### **Persons with disabilities**

Across several countries, participants expressed concerns with regard to the **persisting challenges** surrounding the rights of persons with disabilities, as well as specific challenges such as accessibility.

- In Belgium, while participants appreciated the introduction of an inter-federal plan for persons with disabilities, they highlighted the challenges that remained when it came to creating **suitable job opportunities** and meeting employment quotas for persons with disabilities. In Malta, despite some legal progress, participants believed that accessibility issues persisted in education, employment, and services, with disparities in support provided for different types of disabilities. In Latvia, participants considered that anti-discrimination measures for persons with disabilities were primarily focused on employment, with a lack of systematic approach to accessibility and discrimination across other domains, such as polling stations and healthcare facilities.

- In Estonia, participants expressed dissatisfaction with the Equal Treatment Act's consideration of disability rights, highlighting a **lack of consultation with relevant civil society organisations** during the drafting process. In the Netherlands, participants highlighted disparities between regions when it came to providing care for persons with disabilities and the absence of a comprehensive programme for inclusive education. While improvements in accessible voting and emergency services were welcomed, digital communication channels still posed challenges when it came to inclusion.

### **Other grounds for discrimination**

On several occasions, participants evoked situations involving **discrimination on various other grounds**.

- In Luxembourg, participants shared their concerns with regard to the **juvenile justice system**, pointing to what they considered to be outdated practices and a lack of implementation of UN recommendations on child-friendly justice.
- In Belgium, **ageism** was identified as a form of discrimination, with participants raising concerns about the lack of support for people over 65 years in accessing integration allowances for assistive devices.
- In Estonia, participants considered that the **rural population** faced indirect discrimination due to their marginalisation in policy-making processes. Additionally, the regional pay gap disproportionately affected the elderly.

## The rule of law

Participants in the sessions on the rule of law mostly discussed topics relating to the resources required in the areas of independent and efficient justice, access to justice, anti-corruption efforts, and transparency.

### Resources for independent and efficient justice

Participants across several countries expressed various concerns regarding the lack of **human and financial means** allocated to the judiciary, and the challenges this posed for its efficiency.

- In Belgium, for example, participants stressed that the judicial system lacked **financial, technological and human resources**, which led to a slow pace of investigations and a lack of transparency in some legal proceedings, such as in the area of environmental law. They also explained that becoming a judge was no longer an attractive career prospect, due to the poor working conditions, high workload and low status. Participants also criticised what they considered as appalling prison conditions as well as overpopulation and inadequate treatment of vulnerable groups in prisons.
- Budget cuts affecting judicial staff and **workload** were also mentioned in the Netherlands, where participants also had wider concerns about possible future interference in the judiciary that would affect the traditionally strong rule of law culture in the country.
- In Croatia, participants explained that, despite strategies for judicial development, trust in the judicial system remained low in the context of **overburdened courts** and a lack of training for judges and prosecutors on victim support.
- Participants in Latvia also regretted **lengthy judicial proceedings**, as well as high vacancy rates, low salaries, and inadequate training in police forces.
- Despite the fact that Estonia's highly **digitalised judicial system** was praised for its efficiency, participants still raised concerns about a shortage of judges and inadequate social guarantees for judicial professionals.
- Participants in Malta regretted the backlog of cases and the limited resources for law enforcement. They also had the feeling that people with **political influence** were not prosecuted and that the police force lacked the means and experience to efficiently investigate high-level crime. They raised concerns about delays and risks of impunity in murder cases, including high-profile cases such as the assassination of Ms Caruana Galizia.

## Access to justice

Participants across different countries stressed the importance of **access to justice**, particularly issues such as legal aid and confidentiality in lawyer-client relations.

- Participants in various countries highlighted the importance of **providing resources to ensure access to justice**, notably through legal aid. In the Netherlands, it was explained that funds for legal aid depended on political arbitration carried out annually on the budget allocated to justice matters. In Estonia, participants emphasised the importance of linguistic accessibility in court proceedings and called for measures to address the departure of legal professionals from the state legal aid system due to the low remuneration. In Luxembourg, efforts to improve legal aid were also mentioned, such as the fact that legal aid was not restricted to nationals.
- Across various countries, participants expressed worries about the **increasing pressure on lawyer-client relations**, fuelled by rhetoric associating legal professionals with their clients' alleged crimes. In the Netherlands, participants explained that the confidentiality of lawyer-client contacts had been coming under pressure because of developments in the working methods of the public prosecution service. In Luxembourg, participants also highlighted tensions arising from issues linked to professional secrecy between lawyers and clients. In Belgium, too, concerns were raised about the erosion of confidentiality between lawyers and clients, citing exceptions to the scope of professional secrecy deriving from the Whistleblower Act, and the increase in interrogations of lawyers owing to their alleged involvement in their clients' practices.

## Corruption and transparency

Participants across different countries highlighted various levels of concerns about **corruption, nepotism, and conflicts of interest** within governmental and judicial systems.

- In Croatia, participants regretted that nepotism was common notably at local level, and they remarked that SLAPPs against journalists were often linked to their work on corruption. They called for more efforts at national level and emphasised the importance of EU-level monitoring. In Malta, endemic corruption and organised crime were described as systemic issues, with concerns raised about the effectiveness of legal institutions and the influence of political elites. In Latvia, participants regretted delays in implementing **anti-corruption measures** and in establishing a lobbying registry.
- Participants in Belgium considered that the country faced challenges linked to favouritism in local authorities and a lack of **resources** for investigating corruption cases. In Estonia, recent increases in corruption cases were attributed to improvements in detection and prevention. Despite a high ranking in the corruption perception index, participants in the Netherlands regretted the long-

term downward trend. They perceived shortcomings in lobbying transparency and money laundering prevention, prompting calls for stronger measures to protect whistle-blowers and improve access to information.





## Reports on the country visits

Luxembourg

Croatia

Belgium

Malta

Estonia

Latvia

The Netherlands

# Report on the visit to Luxembourg

2-3 March 2023

Six EESC members took part in the country visit to Luxembourg. The delegation met with representatives of civil society, namely civil society organisations (CSOs), social partners and the media on the one hand, and several governmental and judicial authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society. The authorities' views will be reflected in their reply to the report.

## **Fundamental rights related to social partners**

Participants described Luxembourg as a melting pot with a diverse workforce, with workers from many different nationalities. The social partners have continuous social dialogue. They come together two times a year and they also discuss social security. There is a **long tradition of tripartite social dialogue** and the parties generally adopt a positive proactive approach, it is a good long-term system.

With regards to freedom of association for employers, a small fringe of employers have complained about mandatory membership of the chamber of commerce, however, in employers' associations there is no mandatory membership.

One participant mentioned that the employer side was concerned about EU initiatives on social dialogue, because 'strengthening social dialogue' was sometimes shorthand for companies being forced to the negotiating table. Instead, there should be incentives for companies to agree to collective agreements. Labour law was advantageous for trade unions, with strong legal and social protections, and no possibility of derogation. It was thus **difficult to obtain advantages in collective bargaining**, leading to a decrease in agreements with only about 5-6 sectoral agreements remaining. As an example, a working time agreement in the cleaning sector was found illegal by the courts and even the trade union that had signed the agreement was ultimately against it in court.

The tendency towards legislation instead of collective bargaining had been increasing in the last 10 years, and also at the European level. The employers felt that what was not obtained with them, trade unions went to the government to obtain. The trade unions on the other hand felt it was the opposite. Negotiations are often tripartite and when no agreement is found, the government decides through legislation. The outcome then depends on the political orientation of the party in power.

The right to strike was not limited to conflicts connected to collective bargaining agreements, and it was allowed to strike in reaction to social or employment policies. The additional protocol to the **European Social Charter** had not been ratified.

One participant mentioned that many companies did not respect the information obligation linked to **democracy at work**, despite research showing its positive socio-economic benefits, and more enforcement tools were needed.

With regards to respect for fundamental rights in companies and due diligence, the trade unions were for binding legislation affecting all sectors and the entire **supply chain**. For fundamental social rights to be implemented there was a need for more efficient control, financial sanctions and public shaming of companies. **Labour inspection** should be well resourced and cross-border cooperation enabled.

With regards to **workers with a disability**, there was a unique structure for work reintegration and people in a protected work situation had equal status. The state provided for special material for assistance, job coaching and awareness raising in work places. However, further inclusion in the real labour market was needed. Although consultations were always granted, they mostly felt like a formality and there was a lack of representation of people with disabilities in decision-making processes that affected them.

### **Freedom of association and assembly**

Participants mentioned the problems for homeless people during the pandemic, where there had been several problems with access to assistance and health care for them. Participants mentioned that there could **potentially be a risk of self-censorship** for organisations that received large amounts of funding. Some people were in irregular situations, which made it difficult for them to speak up about their plight and to obtain the needed care. Associations were not allowed to distribute written material concerning the possibility to obtain medical care in Luxembourg, such information was only allowed to be given orally, as the authorities wanted to prevent medical tourism.

In Luxembourg the **right to assembly was well protected**, but during late 2021 there had been a number of protests against covid measures that had turned violent. Such protests were unusual in Luxembourg and the police had been unprepared and had to receive help from Belgian police forces. Participants felt that there was a need to legislate to clarify the exercise of the right to protest. Some politicians had made declarations about the protection of police that could potentially be cause for concern. The government had established a working group, but consultation had not taken place at the time of writing. CSOs tried to maintain a dialogue on this, as they wanted more transparency about this reflection process and its potential impact on the right to protest.

Organisations could form freely and the **overall environment for CSOs was favourable**. There was a project among CSOs to create a joint platform; such a platform existed on migration and it meets frequently. A justified reform of the statute of associations or ASBL was underway, but it could potentially create challenges for some very small CSOs. The rules on privacy sometimes complicated life for small associations which had difficulties complying with all the requirements, and CSOs also experienced that they were unable to obtain information because of privacy regulations. Funding requirements were generally reasonable and recipients had become more professionalised. Larger and more professional CSOs obtained around 80% of the funding, like in many other countries.

Human rights organisations did not have many sources of financing unless they were involved in training or provision of social services. Some were working with schools and educating children in participation and empowerment. Others, e.g. the scouts, were more ingrained in the culture and had different relations.

**CSOs were consulted on rules concerning associations**, and in 2018 when there had been a global assessment of development cooperation there had been frequent discussions with the ministry. CSOs had managed to influence certain points although the general vision had not changed.

In the past CSOs had been implicated during disease outbreaks like monkey pox, tuberculosis and covid among migrants in irregular situations. However, instead of lessons being learnt from earlier good practices they had to start over every time.

### **Freedom of expression and freedom of the media**

In Luxembourg the media landscape was **complicated due to the use of multiple languages**. Over the last 30 years a lot had changed. Originally newspapers were linked to political parties, and given that everybody knew everybody in a small country, the tradition was not confrontational, however, now that there is a majority of foreigners in the media, there is a tendency to be more direct and critical.

Luxembourg has gone down to 21 in 2022 from 17th place in 2020 in the World Press Freedom Index. There was a law on freedom of expression in the media, but this **did not allow for the same access to information as in comparable countries**. In 2021 there had been a campaign backed by the European Federation of Journalists asking to change the law. The Minister for Media had issued a circular that access to information for journalists should be regulated and pass via communication officers. Journalists took this as a negative sign, as one of the advantages in Luxembourg was easy access to officials and politicians. After a question in parliament, the Minister for Communication had clarified that a second circular would make sure that the communication officer would give an answer within 24 hours as to whether and when the information could be provided. This mostly worked well, however, it was cumbersome to file a complaint in case of non-compliance. Delay in access to information was the biggest problem for journalists. The government mentioned that it was obliged to reply to requests within 24 hours. This requirement was not always easy to meet, so sometimes they asked journalists for more time. However, a new constitution was adopted and would enter into effect in July, after 20 years of drafting, and the principle of access to documents was included in the new constitution.

Participants explained that the government provided **financial support to the media** that was now linked to the number of recognised journalists working for an outlet. It could be debated who was a recognised journalist, but the Press Council was the authority that handed out press cards. It was composed of 15 people representing publishers and

15 representing journalists. The salary paid to journalists had to be paid for journalistic work and be covered by a work contract. Freelancers also had to prove income. In this system bigger newspapers might be privileged, but it was not linked to political affiliations and there was a cap on how much support an outlet could get.

**Freedom of expression was guaranteed, there was no control.** There have been a few mishaps during the COVID-19 lockdown where press conferences had not been accessible to the public for lack of microphones and cameras.

Foreign influence on the media has not been an issue in Luxembourg and the financial support for the media meant that the **media landscape was healthy in Luxembourg.**

### **The right to non-discrimination**

The constitution makes a distinction based on citizenship, although around **half of the population does not have citizenship.** Non-citizens can participate in municipal and EU elections. Until 2019 you had to renounce your former nationality to become a Luxembourg citizen. However, the Luxembourgish language requirement remained an obstacle to obtain citizenship. Some CSOs had been pushing for more rights for non-nationals. As about 50% of residents were not voting, it meant that a large part of the population was not represented and this was increasingly becoming a problem, notably with regards to housing. Housing was the biggest problem in Luxembourg, which was also a discrimination issue. Housing had long been a problem in Luxembourg, but only now that it was also affecting voting citizens had it become a political issue. One participant estimated that only 3% of the population could access home ownership. It was also becoming a recruitment issue, as it was difficult to recruit due to the housing situation. The winter truce had also not been working well, with many families evicted during the winter period.

According to participants, although there were no statistics, there were three groups of immigrants mainly affected by **discrimination**: Portuguese, Muslims and Black people.

Discrimination also affected education, as the educational system was not adapted to the multicultural situation and led to **different educational attainment outcomes.** According to participants, many immigrants and their descendants mostly got technical education, in comparison to natives where education attainment was higher. They ascribed this to language issues, as many schools offered education in German, whereas many migrants spoke mainly French, and this later translated into the job market. Furthermore, Belgian, German and French diplomas were recognised, but not Portuguese. The government pointed out that they were making efforts to open international schools and provide a larger offer and that there was a large offer of education in different languages.

Participants mentioned that **language requirements were also a barrier** for access to the job market, where it is a requirement to speak two languages. In the public

administration, you also had to speak Luxemburgish. One participant mentioned that the first Muslim woman admitted to the bar had to remove her veil when sworn in.

Some participants also felt that a recent security package on drugs, targeting the main station area, indirectly signalled that migrants were criminals as they predominantly lived in this area. Despite multiculturalism in Luxembourg, racism was present and there had been differences in treatment of Ukrainian and Syrian refugees. Participants believed that the Luxemburgish authorities had been sleeping for too long on **racism**, as well as on women's rights. The FRA study *Being black in the EU* showed high levels of discrimination in the EU, including on the basis of skin colour. According to a participant, black children were more often placed in institutions or foster care in Luxembourg. Following lobbying from CSOs, the government wanted to introduce an action plan against racism. Participants were impatient to see this implemented, but no persons of colour, nor CSOs representing them, had been consulted. Since 2017 CSOs have called for an observatory on racism, but there was only an inter-ministerial envoy with limited competences. Some participants felt that there was no need for an observatory, but called for better use of existing structures and inclusion of people of colour. The government pointed out that Luxembourg's very existence was due to foreigners, and that it was preparing a new bill on immigration.

In recent years there had been some **progress on hate speech**. The press showed sensitivity, but on the web hate speech was more prevalent due to lack of content moderation. There was a need for more awareness raising, including among journalists.

Participants found **refugee facilities lacking**. Due to the problematic housing situation in Luxembourg, it was also difficult to be housed once a residence permit was granted, leading to overcrowded facilities. Participants mentioned that out of 13 facilities, one had rooms without daylight, and despite calls to close it, it was still open at the time of the EESC's visit. It took too long to appoint ad hoc administrators for unaccompanied minors, and this was a big problem because it prevented the child from accessing schooling.

There had been progress as regards the **rights of the child**, but the **juvenile justice system was outdated**. There had been three attempts to reform it, but none adopted. Child protection was unnecessarily judicialised. The placement of a third of the children in institutions had been approved by a judge, and children were not automatically designated an independent lawyer to represent them. In many other countries it was the bar that would make the selection independently from the court system. Many children were unaware of, and were not advised about, their right to have a lawyer. If a child is in conflict with the law, they should be able to change an appointed lawyer to one of their choosing. Pretrial detention of children happened and children could be imprisoned for three months, with the possibility of prolongation. Children up to 15 years stayed in institutions for youth, and at the time of the visit three young people about 16-17 years old were held in an adult prison. Luxembourg had not implemented the recommendation

for child-friendly justice by the UNs Committee on the Rights of the Child. There was still no minimum age for criminal responsibility and no specific criminal law for minors.

**Gender equality** remained an issue, with women still bearing the brunt of household chores and being underrepresented in positions of power. Although the official **gender pay gap** is only 0.7%, there are big variations in sectors, e.g. finance, where it is more like 30%. One participant mentioned that in the legal profession progress has been made, but at senior partner level there was still a big gender gap. Luxembourg had ratified the Istanbul Convention, but it still needed to be fully implemented. CSOs called for an extension of the period of limitation for reporting rape from 10 to 30 years, as well as more action with regards to psychological violence, harassment etc., in addition to the measures against domestic violence. **Domestic violence** was also exacerbated by the housing crisis. A child would, for instance, be given to a violent parent who had housing, with the victim losing both housing and child. This was more pronounced for non-nationals who have no local family or support network.

A participant mentioned that instances like the Centre for Equal Treatment, the Consultative Human Rights Commission and the Ombudsman were not direct complaints mechanisms. A participant mentioned, for instance, that the long-term obligation to employ people with disabilities was not enforced and there was no follow-up or monitoring.

### **The rule of law**

According to the participants, the **overall situation for the rule of law was positive**. The creation of a National Council of Justice had just been voted for at the time of the visit, which would be a supervisory body for judges, to which citizens would be able to complain about the justice system or judges (it entered into force on 1 July 2023). There was also a law pending about increasing legal aid to be financed by the government.

Participants from the **legal profession mentioned that they had good relations with the Ministry of Justice**. They felt that the communication was good and they were heard. Whistle-blower legislation was also satisfactory. The bar association autoregulated and was in charge of disciplining lawyers for lack of respect for professional rules in order to protect the profession.

There have been calls to reform the Law of 22 August 2003 establishing an **Ombudsman** to give more competences to the Ombudsman, such as filing *amicus curiae* in court. The Ombudsman's mandate included receiving complaints about administrative decisions and monitoring prisons. Complaints could also concern return of refugees, placement of children and actions of private operators carrying out public work, for example with vulnerable persons. The major issue they faced was the lack of social housing, another challenge was mental health, which made annual administration and documentation requirements difficult to fulfil for social housing or unemployment benefits.

One area of concern was highlighted by participants. **Professional secrecy** was never an issue before, but recently investigative magistrates more often accepted to seize documents from lawyers' offices. This was justified by a distinction between the lawyers' role as an advisor or a defender, but there was no legal basis for this distinction, as secrecy applies to all activities. The Council Chamber validated this interpretation in the interest of finding the truth, but participants disagreed. Clients must be able to share everything with their lawyer, and their communication should not be used to help convict clients. To combat money laundering there was more and more pressure to target lawyers, but although the participants agreed with this aim, lawmakers, including at EU level, should respect the need for professional secrecy and let the bar association autoregulate on this point.

There has always been a good relationship between judges and lawyers, but the atmosphere had tensed up slightly in some instances, notably due to a case at the time of writing where a lawyer had been accused of undue pressure of a judge and contempt of court. This was a cause for concern, as the lawyer had worked 50 years in the bar and was previously a judge himself. One participant believed that there could be instances where, to uncover sensitive information, a lawyer could be made a suspect instead of a witness to oblige the lawyer to abandon the client and remove the obligation to be bound by professional secrecy. The criminal code was not clear enough in this area. There were already sufficient safeguards in place to prevent lawyers from contributing to crimes, as lawyers were bound by a strict moral code, although, as with other kinds of professional secrecy, there existed the potential for abuse. However, tools to fight complex crime still had to be proportionate.

The Ombudsman had also been affected by the duty to report. According to a participant, the Ombudsman had once been accused of helping somebody who was trying to avoid taxes. Participants felt that it was very important that the authorities should refrain from interfering in the independence of lawyers and the Ombudsman and that ethical codes should apply instead. There were ongoing discussions with the authorities on how to resolve this legal ambiguity.

**Access to justice** was facilitated by legal aid, which is not restricted to nationals and residents, commuters can also benefit from assistance. With regards to **effectiveness of justice**, there had been much improvement with regards to financial crime over the last 10 years. The financial criminal intelligence unit had grown and preventative efforts had been deployed, but sufficient means were still lacking to suppress such crime. At the prosecutor's office, there was a team on **economic crime**, but the police did not have sufficient resources for investigation, including IT-based investigation, and judges were not specialised in financial crime. The bar association had been calling for a specialised court or chamber for financial crime.



# Report on the visit to Croatia

30-31 March 2023

Six members took part in the visit to Croatia. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), the social partners, the media and the legal professions, as well as the Croatian authorities. The aim of this report is to faithfully reflect and reproduce the views of civil society.

## Fundamental rights of the social partners

Participants considered that workers were not legally impeded from enjoying **freedom of association and freedom of assembly**, in particular the right to join a trade union. However, the extent to which these rights were enjoyed in practice varied along with the size of the company and was particularly complicated in the case of small and medium-sized enterprises, where pressure on unionised workers had been on the rise in recent years. Participants regretted that the Labour Act had limited the right to strike to specific situations and they advocated for the adoption of a general right to strike.

Participants believed that the **involvement of the social partners in decision-making** was all too often merely symbolic. The social partners were included in working groups set up by the authorities for the discussion of draft laws, but this came too late in the process, when comments on a near-final draft law could not have any meaningful impact. They also regretted the fact that the recommendations stemming from the Economic and Social Council (ESC) did not lead to tangible action by the government. They advocated for the resources and expertise of the ESC to be boosted and for the ESC to be given a more prominent role in the decision-making process. The Croatian authorities indicated that, since its establishment as a tripartite body in 2020, the ESC had been involved in every important decision made in the country concerning labour and social affairs, such as the updated Labour Act and the Action Plan on the minimum wage. They added that the social partners had been involved from the planning phase of the ESC's work, as well as in relevant parliamentary committees.

Participants explained that the coverage of **collective bargaining agreements** varied considerably between the public and the private sectors. Some participants regretted the lack of motivation on the part of the social partners when it came to negotiating collective agreements, although it was remarked that the EU Directive on adequate minimum wages had boosted discussions in several sectors. The Croatian authorities indicated their intention to extend the coverage of collective bargaining agreements. They appreciated that the social partners had shown flexibility during the COVID-19 crisis by accepting the temporary suspension of two extended collective bargaining agreements in the areas of construction and health.

The social partners considered that **over-regulation came at the expense of collective bargaining**. The example was given of the law on the status of physicians, which created a special status for physicians in the public service. Participants felt that such a law overstepped the limits of the role played by representative unions in collective bargaining. Some participants also considered that the state was not setting the right example by refraining from entering into collective bargaining in state-owned enterprises such as banks. Multinational enterprises also tended to be less open to collective bargaining in Croatia than they were in their home country.

Participants criticised the lack of proactivity on the part of state authorities in ensuring the proper **implementation of labour laws**. For example, the law limiting short-term contracts to a maximum of six months was considered as being not properly applied, and the detection of violations was not helped by an understaffed and underpaid labour inspectorate. One participant also explained that the restitution of trade unions' properties previously appropriated by the state had been lagging behind since 1997, despite an agreement on principles being reached in 2020. Overall, participants considered that the Labour Act was too procedural, which meant that labour case-law mostly concerned procedures rather than content, for example concerning the right to strike.

The social partners participating in the session expressed a general **low level of trust in the judiciary**, which they saw as susceptible to outside influence, slow and insufficiently efficient. Examples were given of a decision handed down in 2021 concerning the illegality of a collective agreement dating from 2006 – in the meantime that agreement had been replaced twice, and such a delay made the fulfilment of rights and compensation impossible. Participants also regretted the lack of consistency in labour case-law, resulting from diverging approaches to lawsuits depending on location. Unpredictability resulting from inconsistent case-law and poor implementation of law was presented as a real problem for business.

The social partners expressed their concerns with regard to **demographic decline** in Croatia, which had lost around 400 000 people (a tenth of its population) in a decade. Emigration concerned both the most educated and lower skilled workers and their families, looking for better prospects in other EU Member States. This had not been compensated for by the arrival of foreign workers, despite the abolition of quotas.

### **Freedom of association and freedom of assembly**

Participants considered that the **legal framework regulating the freedom of association and the freedom of assembly** was liberal. Only three people were needed to set up a CSO, which resulted in the creation of a wide number of small associations. Generally speaking, there was no major issue concerning the right to protest. However, some participants criticised the restrictions on protests on St Mark's Square – the seat of state institutions in Zagreb – which had not been lifted since a shooting in 2020. CSOs had appealed to the

government to seek the reopening of the square to demonstrators, but the authorities had reportedly refused, referring to a security level assessment which they had, however, kept secret.

The **legal framework for CSOs**, dating from 2014, was considered to be adequate, notably because it introduced important principles for the sector and facilitated the running of economic activities with a non-profit aim. However, the availability of information on the operation of CSOs was found to be insufficient, while the financial and administrative burden imposed by the state on their running (for example concerning book-keeping and reporting) was felt to be constantly increasing. Calls for proposals imposed criteria (for example in the area of taxation) that generated many issues for small CSOs, often resulting in their staff being overwhelmed by administrative tasks at the expense of the vocation of the CSO. On the other hand, the contractualisation and reception of payments for projects financed by the state were often late, creating delays and complicating the day-to-day work of CSOs.

A central concern raised by participants was the **absence of trust and partnership spirit** between the state authorities and CSOs, a situation which had not changed considerably since the country had gained independence. Participants strongly criticised the inability of the authorities to renew the National Strategy for the Creation of an Enabling Environment for the Development of Civil Society, which had expired in 2016. Participants also referred to the lack of influence of the Council for Civil Society Development – the government advisory body entailing CSO participation – to illustrate what was, in their view, a lack of political will on the part of the authorities to develop a genuinely free civic space in Croatia. The Croatian authorities indicated that the 2023-2030 National Strategy for CSOs was currently being prepared.

Participants considered that the **involvement of CSOs in decision-making** through the mentioned council, as well as the government's Council on Human Rights and the legislative drafting groups, was mostly superficial. Some participants also considered that the authorities were favouring the inclusion of CSOs close to their views in such bodies, even when they were not representative of a given sector, at the expense of independent organisations. CSOs made use of the e-consultation portal to comment on draft legislation, but doubted whether it had an impact. One participant explained that the Government Office for Cooperation with NGOs organised elections for the EESC but that, in 2020, candidates could not present their programmes or take part in debates before the vote had taken place.

**Access to funding** was also considered a serious issue by the participants. According to them, national lottery funding channelled through the National Foundation for Civil Society Development had diminished over recent years. It was particularly complicated for CSOs doing watchdog activities or providing legal aid to finance themselves, and the EU was seen as a better source of funding than the national level. CSOs regretted that they had not been properly included in the discussions on the Croatian National Recovery

and Resilience Plan (NRRP) or as recipients of its funding. One participant pointed out that EU funds earmarked for corruption monitoring and civic education had been reallocated by the national authorities to CSOs providing services in other domains. The Croatian authorities indicated that public funding for CSOs had increased by half between 2015 and 2019. They also pointed to efforts to propose tenders on core CSO funding during the COVID-19 crisis. Acknowledging the difficulties highlighted by participants concerning yearly tenders, the Croatian authorities indicated their intention to favour multiannual funding contracts in the future.

Participants explained that CSOs were confronted with a rise in **negative narratives** – particularly those working on issues such as the rights of LGBTQI persons, migrants and ethnic minorities, gender equality, the protection of the environment, and a historic approach to the war of independence. One participant explained that Croatia was one of the countries with the highest numbers of strategic lawsuits against public participation (SLAPPs), targeting journalists but also CSOs and human rights defenders.

### **Freedom of expression and media freedom**

Noting that Croatia was among the lowest ranked EU Member States on the Reporters without Borders index, participants considered that the pro-EU stance by the authorities was not sufficiently matched by measures to protect **media freedom**. One participant warned about the introduction by the authorities of amendments to the Penal Code that would criminalise the use of information leaks from investigations.

Participants regretted the rise of an **anti-media narrative**, which fuelled verbal and physical attacks on media professionals. One participant believed that around a thousand SLAPP cases, entailing damages amounting to over EUR 10 million, were allegedly ongoing in Croatia. Such cases of strategic litigation to silence journalists were being launched by figures as diverse as public officials, political parties from both the majority and the opposition, local politicians, businesspersons, and judges themselves. One participant regretted the fact that the courts did not use the possibility offered by the Civil Procedure Act to dismiss abusive litigation at an early stage. The Croatian authorities considered that the figure of 1000 SLAPP cases was very much overestimated compared to their own estimation of slightly over 30 cases. According to them, the figure of 1000 cases actually referred to all lawsuits involving journalists, including, for example, labour disputes. The Croatian authorities also referred to the work of the expert group set up in 2021 on policies to combat SLAPPs, which included media representatives.

Participants regretted the **lack of social dialogue and collective bargaining** in the media sector. While unions were well established in the traditional media and the public broadcasting service, representation was low in new media and particularly digital media. Discussions were called for concerning benefits, media workers' rights, and a fair share in the post-COVID-19 recovery. Media workers hoped that the European Media Freedom Act could prompt employers to join comprehensive discussions.

Participants considered the **transparency of media ownership** to be very low. While large-scale private media were mostly in the hands of foreign owners, local media outlets were often controlled by local councils, which strongly affected the independence of reporting. The lack of transparency of ownership raised suspicions in cases such as the reallocation of a radio frequency from an independent station to a radio channel that was part of a large conglomerate. The Croatian authorities indicated that electronic media now had the obligation to inform the relevant agency about the composition of their ownership, and that a system on the disclosure of financial data for all media was planned.

Participants regretted that **pressure and socioeconomic hardship** had led to a tendency for media workers to leave the world of journalism. Those remaining in the sector often had to cope with self-censorship or pressure if they wrote on topics such as history, minorities, or business activities. At university, journalism curricula were now in competition with public relations curricula, illustrating a blurring of the lines between communications and reporting. Young journalists often ended up in news portals mostly processing existing information in order to produce low-cost content instead of investigating or producing original content. There was hope that the European Media Freedom Act, which defined journalism as a public good, could help bring about a change of approach.

Foremost among the **funding difficulties** faced by the media sector, participants stressed that the Media Act adopted two decades ago was no longer fit to address the current challenges. Participants regretted the fact that the authorities did not publish yearly tenders, as intended in that Media Act. They also criticised the alleged refusal by the authorities to disclose the allocation of millions of euros in advertising funds on the grounds that it was a matter of business secrecy. One participant also pointed to the lack of transparency concerning the use of EU funds to promote fact-checking, which would mostly have benefitted a state agency, and concerning the visibility components of EU projects, which would usually benefit media closer to the government.

Participants criticised the procedure for selecting the board of the **public broadcasting service**, which was in the hands of the political forces controlling the majority in Parliament. One participant referred to data showing a clear overrepresentation of government views over those of the opposition in prime-time public debates on public television. The Croatian authorities stated that a law reforming the appointment procedure for public broadcasting service managers was planned.

One participant expressed concerns with regard to the protection of the **copyright of authors** in the context of the transposition into Croatian law of the EU Copyright Directive. It was explained that the Croatian legislator had changed the logic of the Directive by granting copyright to the owner rather than the producer of the content. In the absence of any deadline on the right of exploitation of a work, the owner could change its content without the consent of the author, which raised serious questions concerning the risk of censorship and the right to access information.

## The right to non-discrimination

According to participants, Croatia had a good **legal framework** and oversight mechanisms on discrimination, but there were issues with implementation in practice. They had the feeling that the political will in the area of non-discrimination had slowed down after Croatia's accession to the EU, in parallel with the re-emergence of nationalist discourses. Participants felt that consultations on the recently adopted National Plan to promote and protect human rights and combat discrimination did not allow them to influence its content in a meaningful way. On their side, the Croatian authorities considered that CSOs had indeed been fully involved in the working group meetings and the public consultation, and that the authorities had provided explanations when suggestions could not be integrated into the document.

Participants in this session and the session on the rule of law expressed their trust in the work of the general and sectoral **ombudsbodies**, which they considered as more efficient than the various Government offices in the area of human rights and discrimination. However, they regretted the fact that ombudsbodies depended on the Parliament for their election and that the ombudsbodies for children, gender equality, and persons with disabilities could be dismissed by the Parliament if their report was not accepted. On that point, the Croatian authorities indicated that the situation could be addressed through the transposition of the EU Directive on Equality Bodies.

Participants regretted the absence of a Strategy on **Gender Equality** in Croatia since 2015, while noting that a new one was currently being prepared. They noted that the right to abortion dated back to when Croatia formed part of Yugoslavia, but that such a right was limited by the fact that many doctors used conscious objections. Participants called for more awareness-raising efforts to inform women about their rights and to complement the repressive approach to gender-based violence with prevention campaigns. Sexual harassment, notably in the education sector, was not sufficiently addressed and sexual education was missing in school curricula. Participants pointed to the high cost and length of judicial proceedings as detrimental to women's access to redress, and called for more training for the police and the judiciary. Participants regretted that women bore the brunt of the fact that Croatia was largely a precarious work economy that relied on short-term contracts. They acknowledged that the gender pay gap had decreased but felt that it was still too big.

Participants appreciated that the National **Roma** Inclusion Strategy was ambitious and that, overall, the situation had improved over the last twenty years. However, they considered that implementation was still slow in leading to long-term results. Lack of skills and education were believed to lead to a vicious circle limiting the real integration of Roma people in the labour market, despite the existence of positive discrimination policies that were welcomed.

Participants believed that the 2014 Law of Same-Sex Life Partnership was not being systematically implemented. They regretted the lack of a national strategy for **LGBTIQ persons**, and the fact that their rights were generally absent from other strategies on gender and human rights. They indicated that a change of legal identity was possible for transgender people, but also that there was a total lack of public policy concerning the relevant medical aspects. Participants believed that there was a growing social acceptance of same-sex relations in Croatia, but that the weight of religion and conservative culture was the source of an anti-civil society narrative which particularly targeted LGBTIQ persons.

The rights of **migrants, including asylum seekers**, were raised in both this session and the one on the rule of law. It was remarked that the alleged thousands of illegal pushbacks at the border had to be considered as a rule of law issue given what was qualified as a near total absence of investigations. According to one participant, only around ten judicial proceedings had been initiated, most of which had been dismissed by the attorney. According to that participant, the Croatian authorities denied there was any systematic aspect to the alleged pushbacks and presented proven acts of violence as isolated cases, despite the fact that the country had been condemned by the European Court of Human Rights (ECHR). It was felt that the independent monitoring mechanism put in place by the authorities was not fully independent, as it could apparently not make unannounced visits to the border or access the databases of the Ministry of Interior. It was also regretted that neither the ombudsbodies nor CSOs could apparently access police stations and places where asylum seekers were detained – the ban on CSOs providing legal aid to access reception centres resulted from COVID-19-related restrictions, which had not been lifted. Concerning the alleged pushbacks, the Croatian authorities pointed to the fact that the country was the first EU Member State that had set up a monitoring mechanism – which they insisted was independent – as requested by the EU Pact on Migration and Asylum. They added that every incident at the border had been investigated through disciplinary or judicial channels.

### **The rule of law**

Participants considered that Croatia had progressed in the area of the rule of law in the **decade preceding its accession** to the EU, but that efforts had been less substantial since its accession. Participants acknowledged the existence of national strategies in the area of human rights and gender equality, but regretted the lengthy processes of adoption and piecemeal action points. The Croatian authorities contested the idea that reforms in the area of the judiciary had slowed down after the country's accession to the EU, referring to several strategies in the area, such as the Strategy on the Development of the Judiciary.

Participants explained that **trust in the judicial system** among the general public was very low, and that the quality of justice was affected by the fact that the system was overburdened. The absence of publication of the decisions of courts of first and second instance was considered an major issue. It was regretted that the implementation of some

decisions of the ECHR was still lagging behind and that references to the EU Charter of Fundamental Rights were apparently decreasing in national judgments. Participants remarked that this called for more training for judges and prosecutors on victim support and on international human rights law and EU law more generally. Participants also regretted that free legal aid provided by CSOs was underfunded. Justice for war crimes was seen as stagnating, with most trials held in absentia and investigations not progressing because of the limited capacity of the police and the attorney. The Croatian authorities considered that the low level of public trust in the judiciary did not match the comprehensive legal framework put in place to guarantee the independence of judges and the courts. They remarked that Croatia had a litigation-based, rather than conciliation-based, approach to dispute resolution, which contributed to the courts being overwhelmed. They indicated that work was underway to ensure that all court decisions would be made public as of 2024.

Concerning **corruption**, participants remarked that nepotism was common, for example, obtaining a job at local level through connections with local politicians. It was believed that Croatian citizens placed greater trust in EU-level monitoring through the European Anti-Fraud Office (OLAF) than the national monitoring through the Office for Combating Corruption and Organised Crime (USKOK), whose mandate had been weakened. One participant remarked that some files reopened by OLAF had remained in the drawers of the national prosecutor for years, which was a sign of a lack of will to investigate. According to participants in this session and the session on media freedom, SLAPPs against journalists were often linked to their work on corruption and Croatia distinguished itself by the fact that judges were also at the source of such legal proceedings. Participants considered that legislation on whistle-blowers was a major step in the right direction, and they called for increased support from public authorities to ensure the effective protection of whistle-blowers. The Croatian authorities indicated their political will to tackle corruption, notably through that the Anti-Corruption Strategy 2021-2030, which was the basis for triennial action plans entailing more than two hundred measures in the areas of prevention and repression. They added that USKOK had opened cases against top-level officials and that they were collaborating with all relevant international institutions in the relevant area.



# Report on the visit to Belgium

20-21 April 2023

Six members took part in the visit to Belgium. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), the social partners, the media and the legal professions, as well as the Belgian authorities. The aim of this report is to faithfully reflect and reproduce the views of civil society.

## **Fundamental rights of the social partners**

Participants considered **social dialogue** to be well respected in Belgium. Social partners were represented in labour courts and consulted by authorities at federal or regional level on all labour-related legislative initiatives. Social partners were members of the National Labour Council (CNT) and the Central Economic Council (CCE), federal bodies responsible for supporting social dialogue and concluding national collective agreements, while other structures were in place at regional level. The CNT and CCE were also the contact points for international labour institutions and were consulted on the European Semester cycle. Participants highlighted that collective agreements could be extended to the whole private sector, and their coverage was close to 100%.

In the context of recent socio-economic crises, social partners had been requested to deliver a high number of opinions within a limited amount of time, so participants were concerned that the increased workload would impact on the quality of their work. In addition, they criticised the government for having a cherry-picking approach, by not implementing all the agreements reached by social partners during **consultations**, undermining their impact. Participants also felt that their views were not taken into consideration upstream, during the drafting of legal texts. As a consequence, laws did not reflect the reality of the work sectors from their perspective, and corrective work had to be done at a later stage.

Participants expressed concern regarding **limitations on the right to demonstrate**, following two recent cases at the port of Antwerp and the Cheratte bridge. Local union representatives had been sentenced by the court for "obstruction of traffic", picketing and merely being present at demonstrations, on the basis of "passive behaviour". According to their view, the possibility for civil courts to impose unilateral penalty payments for organising pickets, giving demonstrators the right to be heard only after the ruling was issued, was also perceived as a worrying trend. Other participants pointed out the negative impact of strikes on other sectors and rights, such as on small and medium-sized enterprises and mobility. The Belgian authorities underlined that the right to strike was protected by international conventions and national law.

According to participants, a court verdict was needed for the **dismissal of trade union representatives** in the past. However, this trend had changed and businesses, especially

multinational companies, were dismissing individuals without following the appropriate procedures, preferring to pay a fine. Privacy and data in the workplace were protected by collective agreements, but participants mentioned a recent judicial case against a bank which had monitored its employees' emails, especially targeting those who were part of trade unions. Career advancements were considered to be more difficult for union members and there was no rule regarding gender equality in union representation. Participants also asked for equal representation of social partners in national human rights institutions such as Unia.

From the participants' point of view, there was more consensus among social partners than political forces on the need to integrate people of foreign origin in the labour market, in order to meet employers' **workforce needs**. They reported that language ability and the recognition of qualifications and skills, rather than country of origin, were the major barriers to the increased participation of these individuals in the labour market and in society. Participants demanded more effort in this area, such as courses, training and simplified procedures.

Participants also reported that social partners had recently tried to update the 2005 collective agreement on **teleworking**, given the increase in digital work brought about by the COVID-19 pandemic, and were following negotiations at European level. The impact of artificial intelligence and the reintegration of people on long-term sickness in the job market were mentioned as other work priorities.

### **Freedom of association and freedom of assembly**

Participants considered that Belgium generally had high levels of protection for human rights, freedom of association and respect for civic space. They highlighted the fundamental role of CSOs in building a democratic society, and how the authorities had historically delegated civic tasks to CSOs, for example in the area of healthcare and education. However, some major concerns relating to restrictions on **freedom of association** were flagged. Participants reported cases involving the excessive use of force by the police at public demonstrations, violence against people in custody, as well as restrictions on the recording of police actions. In this context, they recalled that Belgium has not yet ratified the UN Optional Protocol to the Convention Against Torture (OPCAT). The Belgian authorities replied that any restriction occurred in a lawful manner, and the police were only managing demonstrations on basis of negotiations conducted by local authorities.

According to the participants, a draft law under discussion would impose preventative bans on the **right to demonstrate**, giving judges the power to decide and impose penalties on protesters. They pointed out that, in cases relating to social conflict, all sides had the right to be heard, as opposed to unilateral applications to the court from employers. Participants described how certain municipalities had imposed further restrictions on freedom of association that were not in line with international law: from changing local

by-laws to require an authorisation for protest organisers instead of a notification, to setting up local "neutral zones" where protests could not be held.

From the participants' perspective, there had been a **major shift from the role historically attributed to CSOs**, due to their instrumentalisation and recent regulations. Participants reported a growing public tendency to question the added value of Advisory Councils and Committees, which could lead to their reorganisation, a reduction in number, and a consequent decrease in their influence and overall participation of civil society in policy-making. Following a 2019 law that allowed non-profit organisations to pursue profit-making activities, participants had some concerns about the possibility that CSOs would be encouraged to become self-funded and pursue profit, drawing them away from their original goals (such as advocacy or support to individuals). It was also feared that the assimilation of non-profit associations with commercial companies would exacerbate competition for funding, which could in turn create a kind of self-censorship environment for CSOs seeking to maximise their chances of succeeding in public calls for tenders. According to their view, well-intentioned measures, for example on data protection and fraud, increased bureaucratic requirements for all CSOs, having a negative impact at grassroots level mainly on newly founded, small, and volunteer-led CSOs, unable to deal with more red tape. In addition, participants considered that such provisions had also been misused by the authorities, to target undesirable CSOs.

Participants provided examples of problematic cases related to **access to funding** for CSOs in Flanders: a new decree could potentially halt public funding for CSOs working with people of foreign origin, especially socio-cultural organisations. Many organisations in this situation were under stress and were considering changing name to continue applying for public funds. Participants mentioned the case of a CSO focused on minority groups that felt pressured to avoid criticism under the threat of budget cuts. Participants were also concerned about the instrumentalisation of funding for CSOs by political forces. It was explained that citizens had been contributing much less to organisations via memberships or donations. As a result, CSOs had become more dependent on public financial support, giving the State more power to control CSOs' existence, according to participants. Certain differences in the tax regime applicable to CSOs were also deemed discriminatory; for instance regarding the criteria for benefitting from tax exemptions on gifts. Participants pointed out that economic support had often been project-based and short-term, which made it difficult for CSOs to plan for the future.

### **Freedom of expression and media freedom**

Whilst participants considered Belgium to be a very positive example in terms of freedom of expression, they were concerned about the future **economic perspectives for the media sector**. Given the structural changes in recent years, including the sharp decline of printed media, it was deemed almost impossible to maintain a profitable business model in the near future. Readership and advertising remained the core economic sources for media, and public funding only represented 5% of resources. However, a participant

predicted that without any progress, the sector would soon have to be mainly subsidised by the State. Participants explained that public authorities had provided more funds to public broadcasting services, as a way to fight against fake news. However, the growing role of public broadcasters was criticised for destroying the market of daily newspapers, harming pluralism and diversity and undermining press freedom. Participants also feared that the staff reductions in the media sector would result in a dramatic impoverishment in terms of quality of information, because smaller teams would have to fact-check an increasing number of news and content. The Belgian authorities stated that they had begun taking measures to fight fake news and support the media sector financially.

Participants reported that new developments were ongoing in relation to **access to information**, at both federal and Flemish level. Two acts regulated the access to information at the federal level and one of them was undergoing amendment. Despite some positive elements, such as the proactive communication from the government, an improvement on the existing exceptions to access to information and the elaboration of the scope of application of the law on other administrative instances, other aspects were raised. Participants explained that the text would authorise two more exceptions, namely the possibilities to conceal information on procedures involving the government and to protect internal communications between authorities, with the both exceptions exception already introduced at Flemish level.

As regards the **conditions of journalists**, participants considered that strategic lawsuit against public participation (SLAPP) cases, online intimidation and physical abuse during demonstrations remained concerning and were on the rise. They indicated that hate speech had grown considerably, especially against women professionals and journalists sometimes did not comment on certain topics on social media to avoid harassment. In this regard, participants welcomed the implementation of the Digital Services Act (DSA) and appreciated that defamation and slander would no longer be punished with prison sentences. They also welcomed the government's commitment to increase penalties for assault, and its support for the EU initiative on SLAPPs, but feared the potential watering down of the proposal during negotiations. The Belgian authorities stated that a new criminal code expanding protection for journalists and abolishing prison sentences for slander was being drafted. Authorities supported a swift transposition of the DSA and added that they would amend national law on SLAPPs based on the outcome of the EU directive. Participants also demanded solutions to improve the situation of freelance journalists (around 25% of the whole sector), regretting that this category was not covered by collective bargaining agreements like employed professionals, and explaining that the conditions of these journalists had worsened due to changes in the fiscal system and the recent health and cost-of-living crises.

To support **freedom of the press**, participants stressed the need to continue distinguishing between real journalism ruled by ethical codes, from fake news and advertising disguised as journalism, and advocated self-regulation through press councils, as opposed to State and EU regulation. For this reason, reservations on the EU Media

Freedom Act (MFA) initiative were also raised, as participants feared that a new regulatory body, set up by the government, would be involved in journalistic content and thus undermine press freedom.

### **The right to non-discrimination**

The Belgian legislative framework on **anti-discrimination** was considered good and wider than EU-level rules. According to the participants, inadequate implementation of this legislation was the issue, and they therefore proposed monitoring the application of anti-discrimination laws. In terms of participation in decision-making process, participants felt that consultations on anti-discrimination issues took place when decisions had already been made, no follow-up was provided and CSOs' opinions were not really listened to. The funding system for CSOs was considered very weak, since funds could easily be withdrawn. Participants regretted that CSOs were put in competition with one another to obtain funding, hampering the possibility for cooperation among them.

**Belgium's institutional system** featuring multiple political entities was identified as a major source of problems by the participants, who criticised the "compartmentalisation" of issues and the lack of exchanges among different levels of administration. They called for anti-discrimination subjects to be more streamlined across all government's departments, demanded more diversity in public administrations and sanctions for failing to respect diversity criteria. Participants explained that the multiplication of bodies dealing with anti-discrimination at different territorial levels made it difficult for citizens to understand to which institution address their complaints, especially in cases of intersectional discriminations. The Belgian authorities affirmed their engagement to improve coordination among different anti-discrimination entities.

Participants explained that **gender equality** laws were in place and had been extended in their scope multiple times to include, among others, gender identity and sexist behaviour in public spaces, including online. It was reported that a draft law to protect individuals who defended another person from discrimination, for example by launching a complaint, was under discussion. Modernising the criteria to take into account new and multiple forms of discrimination was considered crucial.

Hate speech against **LGBTIQ** people was prosecuted, with aggravated penalties imposed for discrimination based on sexual orientation or gender identity. Participants reported that a law respecting self-determination of people was in place, but there was no provision to "de-gender" administrative forms. They asked for a ban of non-consensual surgeries performed on intersex people, including children.

Participants felt that Belgium had persisted in not respecting the rights of **asylum seekers and refugees**, despite being condemned multiple times over their reception. According to them, the 2015 law to remove Belgian citizenship ended up stigmatising people of certain nationalities. Participants pointed out discrimination in accessing employment opportunities for people of foreign origin and double standards between the treatment

given to Ukrainian refugees and to asylum seekers from other countries. Issues affecting foreigners in the health sector were also mentioned, for example access to healthcare for undocumented people and the difficulty of providing linguistic assistance. The Belgian authorities explained that migration policy was a split competence, with the federal government managing residence permits, regions in charge of issuing labour cards, and communities responsible for schooling and education; and efforts were ongoing to improve links between the different administrative entities.

Progress had been made on the integration of **Roma** pupils in schools, but the COVID-19 pandemic had halted the positive trend. Participants reported that barriers to the inclusion of Roma people still existed, especially with regard to their employment. Through projects, Roma adults could receive coaching to enter adult education and vocational training or have access to internships, but it was often difficult to convince employers to accept Roma candidates.

With regard to **racism**, regional action plans were in place, but the country lacked a comprehensive inter-federal plan. Participants felt that the issue of racism was given different levels of priority in society, while some political forces were avoiding this topic as a whole. They added that police violence and Islamophobia were very sensitive topics.

Participants appreciated the recent introduction of the first inter-federal plan dedicated to **persons with disabilities**, but expressed the struggle to find open and suitable job opportunities for such people, explaining that the quotas for their employment were rarely met and no sanctions were foreseen. From the participants' perspective, **ageism** was present, but often invisible. They advocated more support from the EU to develop awareness-raising campaigns on ageism both at national and EU level. Participants were concerned that people above 65 years of age did not have access to an integration allowance for assistive devices. In their view, the government was ignoring this issue, even though the Constitutional Court had declared it as a form of discrimination in 2022.

### **The rule of law**

Participants felt that the **principle of confidentiality** between lawyers and their client was not entirely respected. The 2022 Whistleblower Act had established that not all the information exchanged in the context of legal advice was protected by professional secrecy and could therefore be reported. Participants warned that lawyers were increasingly interrogated or subjected to house searches because of their alleged involvement with their clients' practices. Lawyers' identification with clients interfered with the preparation of cases and was damaging their reputation, according to the participants. For this reason, they welcomed the Council of Europe's draft legal instrument to protect the lawyer's role from excessive government interference as well as from threats and harassment from individuals. In relation to the EU directives on anti-money laundering and cooperation among national tax administrations, participants were concerned that lawyers would have to declare to the authorities any cross-border fiscal

advice and "suspicious operations" relating to their clients. These provisions were deemed to be against lawyers' professional secrecy and independence. In addition, participants expressed a preference for internal self-regulation as a way to shield lawyers from external pressure, as opposed to establishing a regulation layer at EU level, through the Anti-Money Laundering Authority (AMLA).

Participants highlighted the **negative record of convictions against Belgium** by national courts and the European Court of Human Rights (ECHR) in relation to appalling prison conditions and the treatment of certain vulnerable groups. The number of detainees had exceeded the maximum capacity of detention centres. Participants pointed out that measures to address this problem were announced but not put in place, and a recent law change would have an additional impact on overpopulation, so prison staff asked for its postponement. They pointed out that mentally incompetent people who had committed criminal offences were still sent to prison, without specific provisions for their needs, despite numerous rulings against it. In addition, participants criticised the recent government's reaction to pronouncements condemning Belgium for the reception of asylum seekers: authorities had refused to carry out the judgements and to pay the inflicted penalties. The Belgian authorities indicated that the overcrowding of prisons intersected with the migration issue, since around half of the detainees were foreigners and the process to return illegal migrants to their country of origin was sometimes difficult and lengthy.

In terms of **access to justice**, participants stressed that the judicial system lacked financial, technological and human resources, leading to significant delays in court times. Becoming a judge was no longer an attractive career prospect, due to poor working conditions, high workload and low status. Participants stated that the Flemish government had tried to restrict the right to appeal to court, but the Constitutional Court had rejected the proposed provisions. In addition, the legitimacy of the judicial system was repeatedly attacked by political power. Participants regretted that the well-established mechanism for legal protection of the underprivileged was being questioned by the authorities. The legal framework on the environment was presented as an example of inadequate application of the law: exceptions from rules were regularly invoked and allowed, failing to provide protection in practice. It was reported that investigations often took a long time and little information was given to the public, while harmful practices continued. The Belgian authorities mentioned some recent measures taken to improve the situation of delays in justice, which included an ongoing project towards full digitalisation, more human resources and a bigger budget for the judiciary.

Participants felt that the important role of the media as a watchdog in relation to **corruption** was highlighted over past year, unveiling abuses by politicians and businesses. Because local authorities were given a degree of competence to decide on permits, practices of favouritism and conflict of interest existed. Laws for more transparency in cryptocurrencies and whistleblowing protection were supported, and so was the initiative to have a transparency register for lobbying activities at the national level. However,

participants also reported a general lack of effort and resources to investigate and prosecute corruption cases, and called for a more uniform approach on anti-corruption legislation throughout the country.



# Report on the visit to Malta

13-14 September 2023

Six EESC members took part in the country visit to Malta. The delegation met with representatives of civil society, namely civil society organisations (CSOs), social partners and the media on the one hand, and several governmental and judicial authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society. The authorities' views will be reflected in their reply.

## **Fundamental rights related to social partners**

Malta was facing demographic challenges with low fertility and an aging native population. The participation of women in the workforce had increased, but labour shortages remained an issue, and there had been rapid population growth due to immigration. This had put a strain on existing infrastructure for housing, health etc, and was having an adverse effect on Maltese living standards. Despite wage indexation, disposable income was low. Wage indexation was based on retail prices, but the trade unions wanted to have productivity taken into account. In many companies, over 50% of the workforce was non-Maltese. Many were hired by temp agencies, and had poor working conditions. Third-country workers worked predominantly in the private sector and received lower pay.

Participants said that a better framework for governance was needed to counter the high perception of corruption, which was damaging foreign direct investment. Participants had made a number of proposals for improvements in the justice system, including quicker procedures. The average time taken to deal with a court case was 1356 days, and for civil and commercial cases it was 529 days. Furthermore, participants mentioned unequal enforcement, with some companies having to pay fines, while others might not. This did not favour Maltese companies in particular, but was an issue that needed to be addressed. Participants felt that there was a need for more transparency, including with regard to why and how public funds were allocated. 'Golden passports' were also an issue in Malta.

The right to organise was guaranteed by law, but examples of employers resisting the right of workers to organise existed. Overall, social dialogue was effective; dialogue between the government and the social partners was constructive. Participants would, however, like to see a more structured approach to dialogue on the budget. Malta's main tripartite social dialogue bodies at national level were the Malta Council of Economic and Social Development (MCESD), and the Employment Relations Board (ERB). The ERB discussed all draft legislation, and all members were able to propose legislation. By mutual agreement, discussions would start, but the government decided on the way forward.

Participants mentioned the need to update the Employment and Industrial Relations Act. While the world of work was rapidly changing, adaptation had been too slow. The participants highlighted the limited capacity of the social partners to deal with many short deadlines, including with regard to incoming EU legislation. They called for more capacity-building and support. Membership fees were low, and this made it difficult to build strong trade unions, resulting in less bargaining power. Therefore, some unions were in favour of automatic obligatory membership for those with low skills, who faced obstruction to organising, for example in the construction sector. They also wanted an increase in labour inspectors. According to the government, they supported trade unions by releasing 2-3 paid employees to work for trade unions.

### **Freedom of association and assembly**

The right to freedom of assembly was respected in Malta. During the three-week-long peaceful mass demonstrations in 2019, tensions had run high, but the police had not intervened. In general, the police presence had been disproportionate, far outnumbering the protesters.

A civil society committee within the MCESD existed, but the process for selecting CSOs could be more transparent. The Government tended to favour certain forms of organisations like youth organisations. The civil society committee was at times more effective than the council itself.

Voluntary organisations under Maltese law were regulated by the Voluntary Organisations Act. In 2021, the Commissioner for Voluntary Organisations attempted to introduce restrictions, but they were not adopted. Some organisations received support such as office space, but funding was not transparent. After the protests in 2019, a number of advocacy-based civil society organisations had emerged; however, there was no tradition of the authorities engaging with such organisations. Participants felt that there was potential for growth, and that there had been good examples of organisations being invited for consultations on legislation. The government mentioned that they were open to dialogue with CSOs and were developing, inter alia, a forum to discuss CSO initiatives.

CSOs suffered from a lack of both financial and human resources. Many small organisations consisted of only one person. CSOs did not get any funding for advocacy work. Those that received Government funding were vulnerable when criticising government policies, as funds created a dependence. If CSOs were voicing criticism, participants felt it would affect their support. For example an 24/7 helpline created during the COVID-19 pandemic had been closed by the Government, only to be reopened at a later stage with another service provider replicating the methods/model designed by the first provider. Participants also gave examples of having been asked to rescind press releases, or of hearing that others would not support positions criticising the government for fear of losing funding. Some mentioned the rescue and arrivals of migrants as an area

where CSOs had been asked to stop providing support, or risk being cut out of activities concerning migrants already settled in Malta. Those that had been vocal in their criticism had subsequently been sidelined and had less access to funding. In 2020, attempts had been made to disband the CSO *Repubblika*, because it was considered to be of a political nature and not a charity. Some participants felt that this was because of its opposition to government policies.

Participants mentioned that CSOs were often ignored, or that there was a systemic effort to use state media to discredit dissenting opinions, affecting their activities and impact negatively. Activists were also targeted publicly, with some having had their picture on television. Systematic targeting of individuals on social media had a chilling effect on their activities. For instance, organisations that had been critical of deaths of migrants at sea had been branded as traitors on television during the COVID-19 pandemic and as being in favour of letting disease enter the country.

Some participants felt that they existed despite the government, and relied on support from the people via crowdfunding. They called for continued scrutiny from EU bodies, as this facilitated their work.

### **Freedom of expression and freedom of the media**

According to the participants, most media outlets had links to the two political parties and had political agendas not allowing its journalists to be fully independent. According to participants, the Government, always had some control over public broadcasting, but they were of the impression that it had never been as bad as now, with no critical investigation of government actions. According to participants, the Government used funding and spending in advertising to stifle unwanted coverage.

Some private radio outlets existed, some with links to the church. The English-speaking press was more vibrant. The online spaces led by independent operators were all experiencing financial problems and some politicians refused to give interviews to independent journalists.

Access to information was a big problem, according to participants. Despite legal rights to access to information, the authorities invoked exceptions. The long timeframe involved in challenging such decisions ended up making the information obsolete. An example was the lack of information on migrants' conditions, with limited access to the migrants.

According to participants, journalists were routinely silenced. Malta had the highest incidence of 'strategic litigation against public participation' (SLAPPs) in the EU and in the past public officials made extensive use of SLAPPs. Liability could also extend to the heirs of an estate. This was the case for the children of murdered journalist Daphne Caruana Galizia, who were still fighting several court cases linked to their mother's investigations.

Another tactic used was filing libel suits in foreign jurisdictions. For example, the son of Ms Galizia had been sued in Bulgaria, six months after her assassination, due to a report on a bank licence. The bank involved was the subject of investigation for money laundering in other countries. Another company threatened him with a lawsuit in the UK, forcing him to withdraw an article about it. The company had assets frozen six months later in another country, confirming the reported irregularities in the company, but he still had to write a letter of apology to the company. He only managed to face the charges from the lawsuit in Bulgaria because a German association offered to cover his legal costs. His mother had also been sued by a company in the United States, which had requested a large amount in damages. It was very problematic for journalists that they were expected to adhere to legislation all over the world, and risk lawsuits in many different jurisdictions. Another case mentioned concerned a banker who had threatened to sue for libel for GBP 72 million in the United Kingdom. However, the banker was imprisoned before he could file the suit. Such lawsuits were preventing investigative journalism.

Online hatred was being mobilised to target journalists. Ms Galizia, as well as other critics, had been subjected to hate campaigns. In the last election, there had been negative billboards singling out one person, which had prompted harassment both online and offline of the said individual. One activist experienced his wife being assaulted whilst shopping. The government regretted that social media had allowed some individuals to target persons in the public spotlight.

The safety of journalists remained an issue in Malta, particularly in the aftermath of the murder of Ms Galizia in 2017. The authorities underlined that they had established a Central Intelligence Unit within the Malta Police Force to determine the level of risk on the alleged victims, including journalists, in line with a detailed Standard Operating Procedures. The Government has also proposed the setting up of a Committee for the Recommendation of Measures for the Protection of Journalists, other Media Actors and Persons in Public Life. The Committee shall be composed of the Permanent Secretary of the Ministry responsible for security matters, the Commissioner of Police, the Head of the Malta Security Service, and the Commander of the Armed Forces of Malta, but participants felt that it was more used to monitor journalists' behaviour than to protect them. Ms Galizia faced safety concerns before her murder, having received several threats. She had exposed several corruption cases, but those involved faced no consequences. It showed how difficult and dangerous it was to investigate corruption.

Participants strongly condemned the lack of punishment for those responsible for ordering the murder six years on, and expressed frustration at the time it had taken, without the family obtaining justice. There was a perception of environment of impunity for perpetrators, which was compounded by the fact that the main suspect for ordering the murder was still drawing financial benefits from the corrupt activities uncovered by Ms Galizia.

The participants expressed dissatisfaction that although a list of recommendations had been published by the Board of Inquiry into the assassination of Daphne Caruana Galizia on 29 July 2021, almost nothing had been implemented at the time of the visit. On 4 October 2022, the Government had tabled legislation, but there had been no proper discussion between the government, CSOs and journalism professionals on the implementation of the inquiry's recommendations. The authorities explained that, given the call for a wider public consultation by members of civil society, the Government put on hold the legislative process until further public consultations were held.

On 24 July 2023, the Committee of Experts on Media, advising the Government on implementing the recommendations of the public inquiry on media laws, delivered its report, but at the time of the EESC visit this report had not yet been made public. The participants asked that the government launch a broad public consultation process on potential draft legislation before presenting it to parliament.

### **The right to non-discrimination**

Right-wing extremism was on the rise, but not to the same extent as in other European countries. There had been attempts to change the equality legislation since 2014, but the legislation was in general fine. In a small country, the implementation was difficult, with small CSOs and a lack of resources to enforce anti-discrimination measures. It was difficult to obtain redress. The resources of the police unit dealing with hate crime were very limited, and more training was needed to ensure that attacks were correctly categorised as hate crimes. Furthermore, cases of conversion therapy were difficult to prosecute. Participants emphasised that this was not due to a lack of will on the part of the authorities. The authorities pointed out that 53 persons had been found guilty of online hate speech since 2020. There is a National Commission for the Promotion of Equality (NCPE). An attempt to change the equality legislation had been pending since 2019. An equality body existed; however, appointments to the body had reportedly caused problems in the past.

With regards to LGBTIQ rights, a lot had been done, but there was a divide between the legislation and the country's conservative culture, with divorce only becoming legal in 2011. For ageing LGBTIQ persons it was an alleged challenge that elderly homes were sometimes run by the church. Transgender persons still faced discrimination in healthcare provision with regard to gender-related surgery. A pledge to make this free had been put on hold. Intersex persons also experienced a lack of mental health provision due to lack of resources. Healthcare needed to be updated, including on sexual health, but the overall service was declining with waiting times for certain forms of healthcare reaching 1-2 months.

Progress on gender equality had been slow, but had been boosted by the need to increase the workforce, and by free childcare and the lifting of other care obligations. Participants said that abortion was not popular with the general Maltese public. With regard to

domestic violence, the process was too long, and it was difficult to hide and to enforce a restraining order on a small island. There had been a case where a woman was killed, although she had taken all the legal steps to protect herself. This had prompted additional police training on domestic violence.

The Commission for the Rights of Persons with Disability (CRPD) was the national regulatory body for disability. It also included a panel on the inclusion of people with a disability, and cases of discrimination could be brought before this panel. Malta was one of the first countries to transpose the European Accessibility Act, in March 2022. There are CRPD inspection, compliance and enforcement units, and many cases had been opened in the previous year. This unit reached out to businesses and was also working with building authorities. The lack of accessibility to education, employment and services constituted the majority of the cases reported. While 91% of the cases were closed in a satisfactory manner, some problems remained. Participants stated that persons with a disability often had to pay themselves for services they needed.

People with psycho-social disabilities were less supported than people with physical disabilities. There was a lack of accessibility to voting, and support in the voting booth was according to the participants not allowed.

Organisations tried to have access to migrants and asylum seekers experiencing discrimination, but there was a lack of cooperation by Government. Participants stated that Malta also refused to respond to and receive boats, claiming that they were not in distress, and had a very small search and rescue zone. The Government refused to meet CSOs regarding pushbacks that CSOs witnessed at the sea. Participants contented that approximately 400 migrants had died during the COVID-19 pandemic, , CSOs had not been able to meet and speak with migrants. Migrants were in mandatory 'health' detention for two weeks, extendable for a month, and only afterwards were they released into the community. The list of safe third countries was too large according to participants. Many arriving in Malta came from Bangladesh. A short process for return existed, but in reality most migrants stayed in detention. CSO lawyers had to prove that they had been requested by identified individual migrants to represent them, so they felt that in essence they did not have any access to the migrants. CSOs tried to contact arriving migrants, but it was difficult and not sufficient. Appeals on refugee status would take up to 2-3 years, and participants felt that the government was waiting for countries to stabilise to return people. The authorities stressed that asylum cases were examined on an individual basis. Participants mentioned that detained migrants had been paraded publicly in the street tied together.. CSOs allege that they also been criticised for their support to migrants.

### **The rule of law**

Malta was placed 30 out of 140 in the Rule of Law index. Some participants described the country as a client state with endemic corruption and organised crime, with progress being only illusory.

MPs had low wages and only performed their functions part-time, creating the conditions for influence by their employer/clients. There was no revolving door policy for elected officials. The two political parties were dependent on a small cartel of people with a vast influence on politics. The authorities mentioned the introduction of a Commissioner for Standards in Public Life, who was a watchdog for MPs' conflicts of interests. Civil servants had often worked for the governing party or expressed public support for it. They were appointed by the ministries. Although many people were employed in the civil service, it was ineffective.

Access to government was easy, as Malta was a small country. However, there were no legal obligation to consult on legislation. The civil society committee of the MCESD met once a month, but consultation and dialogue could become more substantial.. Participants stated that the Freedom of Information Act was not well implemented leading to a lack of access to information. The government underlined that it was reviewing this legislation, and had a public consultation website, where CSOs could contribute. They could also intervene during the committee stage in parliament.

Participants mentioned problems with equality before the law. They stated that some businesses were given preferential treatment, such as when governments had sold land below the market price, or sold the rights to public spaces to hotels and restaurants. This resulted in a lack of accessibility for families to public spaces and people having to pay to go to the beach. Participants stated that people with political influence were not prosecuted, and there was a feeling that the police were more likely to protect the government than the people.

With regard to access to justice, participants said that there was a substantial backlog in cases and the courts lacked resources. Procedures designed in Victorian times were slow and ineffective, especially for criminal proceedings. For instance, the presumed instigator of the murder of Ms Galizia was apprehended in 2019, but there was still no date set for the trial. The Government said that it had increased resources for the courts, was introducing digitalisation, had introduced a successful legal aid project, and hoped that the Court concluded the last trial in connection with the murder of Ms Galizia in 2024.

Participants said that the Malta Police Force also had problems with resources and lacked experience in the investigation of high-level crime. Investigations were not effective, and there had been cases where criminals had been released because of prosecution mistakes.

According to some participants, recommendations of the Ombudsman were often ignored. Participants explained that the previous Commissioner for Standards in Public Life had been promoted to the Court of Auditors, a role with less exposure, after having been critical. There were no independent national human rights institutions, and human rights bodies were fragmented.

Participants stated that corruption was a serious issue and legislation on organised crime, racketeering, unexplained wealth, and 'golden passports' had to be strengthened. According to participants, a road project involving about EUR 1 million was being investigated by the EU Public Prosecutor, only due to the murder of Ms Galizia. The government had not reacted to this case at first. A recent scandal concerning benefit fraud allegedly involved politicians having enabled individuals to receive benefits illegally in exchange for political support. Although the beneficiaries had been forced to pay back the money, no politician had been punished at the time of writing the report. The government believed that there had been misconceptions concerning this case, and they were still pursuing the benefit case. Participants also mentioned a windfarm scandal, and in 2016 it had been revealed that politicians had set up financial shelters, but there had been no prosecutions. Even in cases where prosecutions had taken place, it had not resulted in sentencing. According to participants, institutions were partly unable, partly unwilling to enforce the law leading to impunity.

Participants argued that the lack of justice in the Ms Galizia murder case was a case in point. Only one in ten murder cases ended in a sentence, and it had taken five years for her assassins to be sentenced. Participants feared that their prison term might be reduced. Furthermore, the trial of the person suspected of ordering the murder was still pending. It had still not had direct consequences financially for the suspect. The government was continuing to use a hotel in which he was a big shareholder, and was also using the power station for which he had allegedly made bribes. The suspect also stood to gain EUR 18 million for a pipeline project involving a gas company he was linked to. The gas company had violated EU competition law several times, and yet some participants felt that nothing was done. The authorities emphasised that the assassins had already been sentenced and that the case against the presumed instigator was still being built. It had also adopted several measures, and this showed their goodwill.

A Monitoring Board for Detained Persons existed. They published an annual report with their recommendations, but those were not necessarily implemented. There had been an example of migrant detainees setting a building on fire, only to be sent to a civil prison afterwards.

Participants welcomed the Commission's rule of law report, but felt that the recommendations had not been implemented. They felt that they were still at the point of departure, and that there was an apathy amongst Maltese people. Although the EU had a positive influence on the rule of law in Malta, it was not enough. They felt that the European Commission had other priorities than Malta, and that the government was profiting from this. The government presented a façade to the EU. Legal proceedings were dragged on until people lost interest and no progress was made.



# Report on the visit to Estonia

12-13 October 2023

Six members took part in the country visit to Estonia. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs) and social partners, on the one hand, and the Estonian authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society.

## Fundamental rights related to the social partners

Participants in this session mentioned their appreciation for the regular **tripartite meetings** (employers-trade unions-government) to discuss the labour laws. They regretted the fact that the last meeting had been over a year ago (as of October 2023), although they understood that this was linked to the turbulent political situation in Estonia.

According to the participants, a good legal framework and good practices for the inclusion of the social partners in government policy-making processes existed; however, the implementation was problematic. For example, the **consultation period** was often deemed too short and the social partners claimed that it did not allow them enough time to consult internally. Participants felt that there had been a recent rise in this phenomenon of consultation periods that were too short, particularly since the start of the COVID-19 pandemic.

Participants considered that the **social partners' capacity was limited** for various reasons. They explained that their organisations depended on membership fees and that Estonia had amongst the lowest density of union coverage in the EU. Participants believed that this low union density could be linked to the demographic situation in Estonia, a lack of education about trade unions, the large number of small companies, and a lack of capacity in the trade unions to promote their work and therefore recruit more members. It was also believed that some employers might threaten their employees against joining unions, and reference was made to the situation of Russian-speaking dockworkers.

Participants agreed that the Estonian workforce was not **sufficiently aware of their right to freedom of association** as part of social partner organisations. Participants also considered that the lack of funding and staff in the **labour inspectorate** was problematic.

## Freedom of association and assembly

Participants considered that there were **no unjust restrictions** that would limit the freedom of assembly or activity of CSOs in Estonia.

Participants explained that the Estonian CSO community was diverse and that **functioning strategic partnerships** were in place between the ministries and umbrella CSOs. These

partnerships allowed for selected CSOs to receive funding and to work together with ministries on policy development and implementation. However, a downside of the overall good availability of public funding was that some CSOs were too dependent on government funds. In these cases, the freedom of the CSO to publicly criticise could depend on the minister and their team. Participants also noticed that 2022 had seen a big increase in private donations to CSOs due to the war in Ukraine.

As far as **participation of CSOs in public affairs** was concerned, participants said that bills being discussed in parliament had to indicate the way in which CSOs had been involved in the process of drafting of the bill. Participants appreciated this cooperation between CSOs and public authorities, which they believed was not questioned in Estonia.

Participants, however, explained that there was a conflict of approach and organisational structures concerning the **consultations**: While CSOs would like to be consulted in a flexible manner, the ministries preferred structured consultations, which was criticised for sometimes overly limiting the ability to express ideas fully. Generally speaking, participants considered that the time given by the ministries for consultation on draft policies needed to be extended.

Participants explained that the fabric of CSOs was less dense in the **Russian-speaking groups** than in the rest of the population.

### **Freedom of expression and freedom of the media**

Participants agreed that freedom of expression and media freedom were **good overall** in Estonia. They explained that it was safe for journalists to express themselves, but they also considered that self-censorship might also exist in relation to a journalist's loyalty to their employer. Participants believed that freelance journalists' socio-economic situations were at a disadvantage in the Estonian media business model. A participant called for a fund to be set up to support freelance journalism.

Participants believed that journalists stood up efficiently for the protection of **press freedom**. Participants noted that the Estonian authorities had not expressed much interest in changes to media freedom although it was believed that access to documentation had been considered.

Despite an overall good picture, participants agreed that pressure on media freedom had been growing in the last decade through the use of legislation. Some participants believed that some cases of **strategic lawsuits against public participation (SLAPP)** existed, which the authorities denied based on the criteria used in Courts in 2022-2023. Participants also shared their concerns that some provisions of the European Media Freedom Act, which introduce additional controls by the authorities on journalistic content, could potentially impact press freedom. Precedents involving misuse of the General Data Protection Regulation (GDPR) and copyright legislation were mentioned as examples illustrating such

concerns. Participants also regretted that, in their view, judges in the first-instance courts lacked sufficient training in media law.

Participants noted a **lack of funding** for the public broadcaster and independent regional media outlets.

Participants mentioned that a **hate speech law** was being discussed in Estonia. They generally expressed concern over the use of social media to propagate hate speech. A participant believed that Russian propaganda was the biggest issue for Estonian media's trustworthiness and that this propaganda encouraged discrimination against minority groups such as LGBTQI+.

Participants considered that the **protection of whistle-blowers** was very important in a small society where loyalty came before values, and where one could potentially lose one's job and jeopardise relations for reporting abuses in a public way.

### **The right to non-discrimination**

Participants noted that there were generally not many issues regarding how CSOs working against discrimination could operate in Estonia. Participants in this session also welcomed the strategic partnerships that existed between ministries and CSOs, as participants had done in other sessions. Participants referred to research showing that the legislative procedure had been positively impacted by these partnerships. Nevertheless, according to participants, the **consultation** of anti-discrimination CSOs by the authorities during the policy-drafting process remained inconsistent. It was considered problematic that the processes seemed to vary depending on the minister and their cabinet. Participants explained that some politicians in power chose not to consult CSOs in drafting laws, despite the existence of best practice documents that indicated the need for consultation. Participants asked for more meaningful and longer consultation periods.

Participants believed that there was a **lack of funding** available for CSOs working against discrimination in Estonia. They also considered problematic that access to social services was inconsistent, both regionally and within target groups. It was explained that social entrepreneurship was growing in Estonia, but a participant lamented that CSOs were not eligible for the funding available for that sector due to their non-profit status.

Participants complained that the **equal treatment act** did not adequately consider the rights of people with disabilities. They asserted that the relevant CSOs had not been consulted when the act was drafted.

According to a participant, the **rural population** faced indirect discrimination by being ignored in policy-making. It was added that the regional pay gap was increasing and that the elderly were disproportionately impacted by this.

Participants believed that there had been a decrease in general support for **Ukrainian refugees** amongst the Estonian population. It was explained that some Estonians did not want to see refugees moving into their neighbourhood and therefore discriminated against them when renting out housing. Participants believed that the exact number of Ukrainian refugees was not known, which complicated the provision of adequate services. A lack of understanding of their rights amongst asylum-seekers was an issue, as was a long waiting time for the issuing of passports. Access to healthcare was also considered to be complicated for asylum-seekers in Estonia.

Participants expressed concern over the amendments to the **State Borders Act**, and the impact on migrants seeking temporary protection.

Participants explained that **same-sex marriage** and adoption by same-sex couples would be legal as of 2024 in Estonia. A participant however called for further efforts by the authorities to tackle the prejudice against same-sex couples and their children that continued to exist in society.

The lack of a national action plan on **gender inequality** was considered problematic by participants. They called a plan to be developed through consultations with CSOs and with due consideration of the regional differences as well as the prevailing gender segregation in certain professions in Estonia.

### **The rule of law**

Participants believed that the **highly digitalised Estonian judicial system** was working well and that the length of proceedings and pending cases was amongst the shortest in the EU. This had proven useful during the COVID-19 pandemic, as the courts had continued their work without interruption thanks to such a high level of digitalisation.

Participants considered that there was **equal access** to the courts for all, although the sole litigation language was Estonian, which might deter members of minorities such as the Russian-speaking minority. People living in Estonia that did not speak the language could however request an interpreter from the court.

An issue noted by the participants was the **low fees available under state legal aid**. They explained that court-appointed attorneys under the state aid legal system could not financially sustain their work and were therefore leaving the system.

A participant noted that there was a **shortage of judges**, which was likely to be a long-term issue given the lack of vocations and reduced enrolment in training to become a judge. As a result, judges were faced with an increasingly high workload. They also did not benefit from the same social guarantees as other categories of professions, as their salaries did not include a pension provision. This in turn impacted the attractiveness of the profession.

There was concern among the participants that the new directive to make national competition authorities more effective enforcers (the ECN+ Directive) would endanger **client confidentiality**. They believed that the lack of rules clarifying when a law firm could be searched also threatened client confidentiality.

Participants agreed that Estonia did **not have a general issue with police violence**.

Participants felt that in recent years Estonia had witnessed an increase in **corruption cases**, particularly in the private sector, as a result of better detection of these cases.

# Report on the visit to Latvia

29-30 November 2023

Six members took part in the visit to Latvia. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media and the legal professions, as well as the Latvian authorities. The aim of this report is to faithfully reflect and reproduce the views of civil society.

## Fundamental rights of the social partners

**Freedom of association** for social partners was considered to be protected by the Constitution, labour laws and a recent trade union law. Although trade union rights were perceived to be guaranteed, participants pointed to the absence of liability for violating trade unions' rights as being a notable shortcoming in the legal framework: employers faced no consequences for actions that discouraged workers from joining unions. To address this issue, a proposal to sanction such behaviour had been submitted to the Ministry of Justice. Trade unions also lacked standing for collective claims, preventing them from submitting claims on behalf of their members. While this practice was not established in many EU countries, participants hoped that the expected EU directives on due diligence and platform work would change this. The need to facilitate strike action and protect the right to strike emerged during the discussion as being significant concerns. Police workers did not have the right to strike in Latvia. Trade unions were seeking to raise their profile and boost unionisation and, in this regard, a proposal to boost trade union membership via tax instruments was under consideration.

Regarding **social dialogue**, participants faced challenges to achieving successful outcomes in negotiations and to highlighting the advantages of social dialogue to their members. According to participants, another major concern was the decreasing effectiveness of social dialogue. The tripartite social dialogue, once robust, had dramatically declined during the COVID-19 pandemic. The Parliament had discontinued the practice of sending all draft labour laws to the Tripartite Cooperation Council. Participants explained that the social partners had previously had a type of veto power, but they felt that this trend demonstrated the government's indifferent attitude towards social dialogue as well as the weakening of consultation processes, and they emphasised that the effectiveness of the tripartite social dialogue was contingent on the government's commitment. A revision of social dialogue in terms of balanced representation of employers' and workers' organisations in decision-making procedures was deemed necessary. The Latvian authorities said that an action plan to promote social dialogue was under consideration.

Reports indicated that trade union **membership** was consistent with that in other Baltic states, but significantly lower than in Scandinavian countries. Participants attributed this trend to two reasons that might be hindering the unionisation of workers in Latvia. In their view, because Latvia was a young European country, the term "collective" had strong

associations with the Soviet Union in people's minds, making it challenging for trade unions to rebrand themselves effectively. Secondly, the weakness of originally strong democratic movements in Latvia during its transition towards democracy in the 1990s had led to rapid economic liberalisation, which had impeded the development of trade unions.

The coverage of **collective bargaining agreements** was small and shrinking. Labour law restrictions on collective bargaining were cited as some of the reasons behind this. Such restrictions included the need for employers to seek permission to dismiss a union member, if an agreement was in place, and the lack of a time limit on collective agreements: once one had been established, it remained in force until a new one was reached. Private companies preferred individual contracts, bypassing collective agreements, and the number of general sectoral agreements in place was limited. According to participants, Latvia's detailed labour law, whilst incorporating highly protective standards, also limited room for negotiation during collective bargaining between employers and workers. As an alternative approach, the social partners suggested implementing an opt-out clause, allowing more flexibility for reaching mutually beneficial agreements. Participants deemed the incentives for participating in collective bargaining to be insufficient. The Latvian authorities explained that in the past, they had supported social partners in reaching collective agreements across different sectors, but the results had fallen short of expectations. Moving forward, the government's focus would be on capacity-building projects for social partners.

Participants stressed that **wages** struggled to keep pace with inflation, resulting in uncompetitive salaries and numerous unfilled vacancies, particularly in the public sector, including in education, healthcare, the police force and State authorities. In their view, social contributions represented an additional burden for small businesses.

### **Freedom of association and freedom of assembly**

Participants viewed the **legal framework** for freedom of assembly and freedom of association in Latvia as being strong, although State intervention in civic space could pose issues for CSOs' operations. The monitoring of CSOs was strictly regulated and the authorities could close CSOs on grounds of security concerns. Despite a high number of CSOs registered in the country, only a minority was active in advocacy and interest representation. The impact of the COVID-19 pandemic had exposed the fact that there was insufficient CSO representation of vulnerable groups' interests. This had prompted the government to create special programmes, funded by the National Recovery and Resilience Plan (NRRP), to encourage the development of new organisations focused on these themes. Participants reported that various efforts were under way at ministerial level to update the rules for CSOs receiving public funds, and also to draft a law regulating the operations of associations and foundations.

According to participants, **cooperation between CSOs and State institutions** was one positive aspect of the Latvian civic landscape. CSOs and ministries had established a

memorandum of cooperation and met regularly to discuss draft laws, policies and future strategies. Additionally, a special declaration had solidified the relationship between civil society and the Parliament. Recent years had seen discussions on the integration of “civil dialogue” into governmental declarations, with an emphasis on translating this discourse into practice. As a way to implement civil dialogue, participants reported that the government had decided to allocate more funds to the Memorandum Council, so that experts from CSOs could provide advisory services to the government. They expressed their hope for a single ministry to serve as a central point of contact and take responsibility for civil society matters. The Latvian authorities explained that a unified portal had facilitated public consultations since 2021, by making draft legislation available for feedback. The government had to specify the form of participation undertaken on this platform.

Despite the increased allocation of public **funds to CSOs**, and the efforts by the government to explore other funding ideas, primarily through pilot projects, participants warned that public resources were still insufficient to address all civil society's needs. Intense competition among CSOs for funding remained a significant concern. Participants had noted clear funding disparities, based on CSOs’ scope and subject area. National-level CSOs had better access to public funding than their regional counterparts, and areas such as sport and culture received more funds than civic involvement. The Latvian authorities reported that more funding had recently been secured to strengthen civil dialogue and CSOs’ capacities. New programmes aimed to support these efforts, alongside longstanding support from the state budget for the NGO Fund.

**Youth organisations** faced several challenges, such as insufficient capacity and a lack of recognition of volunteer work as valuable experience. Youth councils often grappled with tokenism, where young people's contribution to decision-making processes remained largely symbolic and focused on organising activities. New initiatives such as digital platforms facilitating aid distribution during the COVID-19 pandemic and efforts to support Ukrainians demonstrated people’s willingness to help, underscoring the importance of robust networks and organisational support. Plans for special programmes to enhance coordination and capacity-building for volunteers offered hope for increased civic involvement.

Participants indicated a longstanding trend of **decreasing levels of civic participation**, with young people's involvement notably lacking, especially in urban settings. Following a recommendation in the European Commission's Rule of Law report, mechanisms for public involvement in local governance had been set up: each municipality had been required to organise initiatives to increase civic participation, including the creation of a citizens’ council. However, participants believed that the small size of Latvian municipalities caused residents to fear retaliation when expressing dissenting views. The Latvian authorities cited Latvia’s 2023 Council of Europe presidency as a positive example of civic engagement, as CSOs had actively participated in working groups and events, and had been consulted on an implementation plan.



With a view to the **2024 European elections**, participants were concerned about the persistent challenge of boosting the typically low turnout of voters, especially young ones. In order to overcome the widespread perception of the EU being distant, CSOs were actively engaged in explaining the EU's role through outreach activities such as seminars. The European Parliament had allocated specific grants for CSOs involved in the upcoming elections, while youth CSOs had prepared a manifesto aimed at first-time voters, highlighting educational opportunities and the significance of the EU.

### **Freedom of expression and media freedom**

Participants believed that Latvian public broadcasters were politically **independent**. A positive piece of news concerned the funds for public radio and TV, set to increase by about 50% in the next few years, thus facilitating more content production and better salaries for journalists. However, participants hoped to alter the funding model by introducing an independent mechanism that would make budget decisions less dependent on the party in power. As digital media were becoming increasingly aggregated, media concentration was indicated as an issue by participants, prompting calls for greater pluralism in the Latvian television market.

Fact-checking initiatives to counter fake news and **disinformation** were mainly handled by the professional media as an internal matter; there was no cohesive national approach for all media. Recent debates revolved around the future of Russian-language content in public broadcasters. Participants disagreed with the proposal to shut down Russian-language programmes by 2026, amid concerns that such action could amplify disinformation from Russia. In addition, they pointed out the inconsistency of allowing Russian-speaking commercial programmes to remain operational.

Participants were concerned about implementation of the General Data Protection Regulation (GDPR), explaining that the government was contemplating restricting the duration of publicly available information on politicians' incomes, which had traditionally been widely used by journalists. The Latvian authorities noted that discussions about potential time restrictions were ongoing, but all information remained available. With regard to recent threats to media freedom, participants had observed a shift in the narrative surrounding perceptions of Russian influence and its impact in Latvia in the aftermath of Russia's invasion of Ukraine. This trend was identified as "the securitisation of public discourse", where restrictions on **access to information** were justified by invoking reasons of national security. According to participants, such limitations had a detrimental impact on editorial independence, which facilitated attacks on public service media and prompted self-censorship by journalists. They mentioned that the Electronic Media Law had recently been amended to counter disinformation spread by Russian government-controlled media. However, they reported concerns that this law was also being selectively enforced when media were airing content in investigative programmes that was deemed controversial. As for legal documents, politicians and businesses interpreted "business secrets" differently from journalists. The Latvian authorities

explained that the Freedom of Information Law had ensured public access to information. The authorities also mentioned that the Criminal Procedure Act had allowed journalists to access information pertaining to criminal proceedings, except in cases involving classified information.

Although a legislative framework had been set up, participants reported that the lobbying registry remained inactive and would only become operational in 2025. While the **whistle-blowing** legislation was deemed adequate, its implementation lagged, partly due to government shortcomings and a misunderstanding of this concept in society. There were suspicions regarding the misuse of the Pegasus spyware in Latvia, but journalists' requests for clarification had been rejected by the security services because information had been classified as state secrets.

According to participants, violence against journalists was not a concern, but other challenges regarding freedom of expression existed in social media, namely a negative narrative aimed at diminishing trust in journalists' work. Participants stressed that **working conditions for journalists** were poor, particularly in regional and local media, where the majority of journalists' wages were below the national average. Although conditions were comparatively better in national media, overall wages remained low. Women journalists were the primary target of online attacks. The Latvian authorities commented that in 2020, the journalists' association had formalised a memorandum with the state police, inaugurating a dedicated contact line for journalists, enabling direct communication with the police in the event of threats. While no strategic lawsuits against public participation (SLAPP) had been reported, participants warned that there was no monitoring of SLAPP cases, while public media were facing ever-stronger accusations and hefty fines due to content-related issues.

### **The right to non-discrimination**

**Anti-discrimination legislation** in Latvia was generally considered satisfactory, with provisions included in the Constitution. However, participants identified some shortcomings: EU legislation provided only minimum standards of protection, leaving certain areas of discrimination inadequately covered, particularly outside employment contexts, such as with consumer rights. Even where legislation existed, implementation remained a significant challenge, particularly as regards the rights and protection of marginalised groups. The stagnation of the anti-discrimination directive at EU level was deemed to be a matter for concern. In addition, participants expressed their apprehension about the future composition of the European Commission and the potential disappearance of the Equality portfolio. The Latvian authorities stated that combating stereotypes remained a key challenge in addressing discrimination across all sectors.

On **gender equality**, participants regretted that the relevant EU directives were not being fully implemented. They criticised the lack of laws protecting victims of sexual harassment

in public places and those subjected to grooming. The ratification process of the "Istanbul Convention on preventing and combating violence against women and domestic violence" was ongoing, but participants were concerned about its effectiveness in addressing gender-related issues comprehensively and inclusively. The Latvian authorities announced that the Parliament was discussing the ratification of the Istanbul Convention, which they considered to constitute potentially significant progress for Latvia, and that efforts were also being concentrated on developing a comprehensive five-year action plan to tackle violence against women.

Regarding **LGBTIQ rights**, progress with a new draft law had stalled. Participants reported that there had been a persistent struggle in relation to LGBTIQ rights in recent years, marked by two judicial cases, on the right to form a family and on securing equal social and economic rights. Despite favourable rulings from the Constitutional Court in both instances, the Parliament faced significant internal resistance in passing comprehensive legislation in this domain.

Access to education for **Roma** children remained inadequate, and their high dropout rates were attributed to prejudice and insufficient support. While the Ministry of Culture initiative for a Roma platform with Roma mediators was considered to be a positive step, its limited presence across regions impeded full effectiveness.

Participants pointed out that Latvian individuals had faced discrimination on the job market due to a lack of proficiency in Russian, given the fact that a sizeable part of the population was Russian-speaking. In this connection, the impending **education reform** concerning the use of Russian language in schools signalled a shift towards an education system centred on the State language, namely Latvian, within a few years. The Latvian authorities explained that the aim of this reform was to prevent social separation between the Latvian-speaking majority and the Russian-speaking minority, inherited from the Soviet period, foster an inclusive society and enhance labour market access. The authorities pointed out that national minorities would retain rights to learning the minorities' languages, and that this reform had recently been found by the European Court of Human Rights (ECHR) to comply with human rights. According to participants, the absence of comprehensive sex education in schools was contributing to higher rates of HIV cases, episodes of sexual violence and teenage pregnancies. The accessibility of women's hygiene products in schools was contingent on municipality budgets, which further exacerbated social disparities.

Concerns were raised about the accessibility of polling stations and information for **people with disabilities** during the European elections, potentially impeding their right to vote. Anti-discrimination measures for people with disabilities were primarily focused on employment, lacking a systematic approach to accessibility and discrimination across other domains. Participants regretted that access to higher education for people with disabilities hinged on the availability of accessible materials and adherence to accessibility standards in buildings, which was not monitored. Discrimination against people with

disabilities extended to the healthcare sector, where barriers to accessing healthcare facilities persisted and there were no adequate measures to ensure compliance. Addressing these systemic issues needed concerted efforts to bolster legislation, enhance implementation mechanisms and foster inclusivity across all sectors of society. The Latvian authorities said that significant efforts had been made in recent years to improve the conditions of people with disabilities, through strong collaboration with CSOs, societal awareness and professional training, particularly in construction.

### **The rule of law**

On the **justice system**, participants explained that the public was concerned about the length of judicial proceedings. Even though this public perception was not backed up by statistics and was caused by a few cases that took longer than 5 years to adjudicate, it had fuelled a pervasive sense of impunity and had dissuaded individuals from seeking legal remedies. They noted that recent and ongoing reforms in the justice system had encompassed various aspects such as the selection and qualification of judges and the creation of a justice academy. Unlike in the past, the Ministry of Justice had refrained from intervening in court decisions or in respect of judges' comments in recent times. In the participants' view, this shift was aligned with the Judicial Council's action plan, which emphasised ongoing efforts to establish a clear separation between the justice system and the government, thereby ensuring the Council's complete independence. Participants felt that pilot projects for electronic-court systems seemed promising, yet challenges remained in ensuring system interoperability and providing courts with adequate document scanning and e-formatting capabilities. The Latvian authorities explained that each court president had been tasked with maintaining a high standard of verdicts, including accurately estimating the time required for cases. Their efforts included restructuring courtrooms in larger facilities and redistributing judges' workloads to improve the balance between them, in order to facilitate swifter case resolutions at all levels of the judiciary.

With regard to **legal professionals' conditions**, participants stressed that many positions for judges remained vacant and this shortage was attributed to the quality of legal education. Because only a small fraction of candidates had passed the common law career exam, a re-evaluation of the process was needed. Efforts were under way to improve the qualifications of judicial support personnel, ensuring their active support in advancing proceedings alongside judges. However, low salaries remained a challenge, prompting legal professionals to opt for higher-paying roles despite incremental salary improvements in the judiciary. A stringent and comprehensive training regime was mandatory for lawyers, incorporating ethics as a fundamental component. Consultations with lawyers' associations played a vital role in shaping justice-related legislation and amendments, ensuring a comprehensive and informed approach to legal reforms.

Participants noted that the Corruption Perception Index and Eurobarometer data suggested a stagnant scenario regarding **corruption** in Latvia. Although a majority of

respondents had acknowledged that there was indeed corruption in government and society at large, only a small percentage believed that it had affected them personally. According to participants, this discrepancy revealed a widespread lack of awareness about corruption's impact on individuals. Participants explained that the 'Corruption Prevention and Combating Bureau', Latvia's national anti-corruption authority, had faced criticism for the delayed adoption of its action plan, which had taken more than two years. In addition, the Bureau seemed to fall short in preventive anti-corruption measures. The participants highlighted the fact that the lobbying law, enacted earlier in the year, had stipulated that a lobbying registry should be set up. However, the government had yet to fulfil its obligation of producing a detailed legal document outlining the operation of the registry. According to participants, this delay hampered effective implementation and oversight of this instrument. The Latvian authorities explained that a specialised court for economic crimes had been created in 2021 and had recently been deemed to be effective. The authorities highlighted the collaborative development of the anti-corruption plan involving public institutions and CSOs and including preventive measures. They also mentioned Latvia's positive, internationally recognised achievements in combating corruption.

Participants regretted that **public procurement** regulations exclusively targeted tenders exceeding EUR 10 000, leaving a regulatory void below this threshold. They demanded clear guidelines in this domain, especially in light of the limited knowledge and capacity at municipal level, to be able to navigate procurement procedures effectively. Participants explained that only companies involved in a tender process could raise concerns about any issues encountered. As this could lead to problems such as lack of competition or favouritism, participants recommended that third parties be able to challenge public tender procedures. Not all the municipalities adhered to ethical standards for procurement, and their enforcement was not obligatory. Regarding the new municipality law aimed at regulating the participation of civil society at local level, participants pointed out that implementation challenges had emerged due to unclear guidelines and differing interpretations among municipalities.

Participants mentioned that a critical issue affecting **police forces** was their limited capacity. In their view, low salaries and inadequate training hindered police effectiveness, especially in dealing with emerging issues like criminal activities involving virtual assets. The Latvian authorities noted that salary inadequacy and also burnout situations had led to numerous vacancies and compromised operational efficiency for police forces. The authorities acknowledged that rapid vacancy filling remained challenging.

# Report on the visit to the Netherlands

7-8 February 2024

Six EESC members took part in the visit to the Netherlands. The delegation met with several representatives of civil society, more specifically civil society organisations (CSOs), the social partners, the media and the legal professions, as well as the Dutch authorities. The aim of this report is to faithfully reflect and reproduce the views of civil society.

## Fundamental rights of social partners

Participants described the well-established **Dutch model of social dialogue**, building on the tripartite Economic and Social Committee (SER), the bilateral Labour Foundation (StdvA) at national level, collective bargaining at sectoral and company level, and the role of work councils at company level. They agreed that relations were very cordial in discussions between the government, employers' organisations and trade unions.

One participant explained that the absence of any reference to representativeness or independence criteria for unions in law made it easier for some employers to bypass the **right to form or join trade unions**. Unions were highly organised, very open to dialogue and mostly tended to turn to strikes only as a last resort. Some participants mentioned "yellow unions", set up sporadically with money from employers to seal collective bargaining agreements.

Participants considered that the Dutch model of social dialogue has traditionally had good links with political decision-making, with past governments building on **social partners' agreements as a basis for law-making** and implementation. There was, however, a fear that this approach might be called into question in the country's new political landscape. Uncertainty about political follow-up on social dialogue agreements could disincentivise compromise amongst the social partners. The social partners tended to have more similar views amongst themselves on the need for migrant workers to plug the gaps caused by labour shortages than they had with the rest of society and the political class.

Social dialogue had not escaped the trend towards **rising tensions in society**, there being increased division within the different social partners' groups memberships in between dialogue-oriented views and the uncompromising ones. A slight rise in social conflict in the country had been attributed to actions to seek compensation for loss of buying power, notably due to inflation. References were also made to a general feeling in the population, in particular amongst the middle class, that there had been progressive erosion of Dutch social standards, with fewer options for stability in life in many spheres, including employment, housing and health.

One participant considered that the Netherlands might be considered a testing ground for new forms of **flexible work** in Europe. In that connection, the question of labour rights

coverage for the large number of self-employed people was considered crucial, with the social partners present at the meeting agreeing on the need to avoid creating a less-protected sub-category in between employers and workers. The Dutch authorities indicated that they are currently working on labour market reforms. Another participant believed that platform workers and other vulnerable workers such as migrants were deemed to be more likely to be victims of discrimination or intimidation for being part of a trade union – a tendency which was thought to be overall on the rise. That participant felt that some platforms had engaged in an anti-union discourse to discourage workers from opting in to coverage by a judicial decision on their status.

### **Freedom of association and freedom of assembly**

For a country with a strong tradition of respecting freedom of association and assembly, according to one participant, the Netherlands' **Public Assemblies Act** contained provisions that did not meet international standards. According to the participant, the act allowed for restrictions on assemblies based on traffic considerations, and it also made it possible to prosecute and punish peaceful protesters for merely failing to submit the required notification (in time) or for violating a prior restriction. It was believed that such provisions had a chilling effect, opening the door to unlawful threats of enforcement. The Dutch authorities clarified that, in practice, peaceful protesters were never punished without sufficient reasons, and never in itself for a late notification, for the failure to comply with prior restrictions, or for traffic considerations (provided they did not prevent circulation of emergency services).

Besides these legal considerations, the participant believed that the authorities – notably the local authorities in charge of authorising assemblies and maintaining security at them – and also the general public, did not have an adequate **understanding of freedom of assembly**. Based on insufficient regard for the presumption of peaceful intent, the authorities and the police would consider protests through the prism of risk rather than through one of rights, and would apply too low a threshold for restricting or banning protests. Other aspects of policing that were also criticised by several participants included the use of excessively violent methods such as water cannons and the rough manhandling of seated protestors, ID checks on protestors, and at least one proven case of human rights violation resulting from the use of biometric surveillance (face recognition).

Several participants underlined the more general inconsistency of approach to assemblies, notably in the face of new forms of action such as peaceful blockades. They gave the examples of the harsher treatment meted out to climate and housing protestors compared to that reserved for farmers, and the lack of protection provided to anti-racism protestors facing a hostile counter-demonstration. This, to their mind, illustrated a general trend towards **negative rhetoric** in the media and amongst politicians towards protestors defending such causes – for example, labelling climate protestors as terrorists. While participants believed that this ambient had a chilling effect on the freedom of

assembly, they felt that, on the other hand, “uncivil” society was becoming better organised, as illustrated by the spread of anti-migrant narratives in society and protests against the opening of centres for asylum seekers.

According to participants, the growing distrust of civil society had also affected **freedom of association** in general. Increased questioning of the legitimacy of civil society organisations’ (CSOs) actions had notably taken the form of repeated pressure for transparency. There was also a fear that a legislative proposal on the foreign funding of CSOs could be revived in Parliament following the European Commission’s proposal on the Defence of Democracy package. In addition, a participant explained that some banks had implemented anti-terrorism legislation in an overzealous way, refusing to allow some Muslim CSOs to open bank accounts. The Dutch authorities explained that they were aiming for more transparency to address the phenomenon of non-illegal, but nevertheless problematic, foreign influence through funding.

It was also feared that the result of the 2023 general election and the overall drift towards the more conservative end of the political spectrum would affect the traditionally good access that CSOs had had to **consultations** with the government and with Parliament. One participant considered that a draft law aimed at restricting CSOs’ abilities to conduct legal class actions had been an attempt to limit their action against the State in the area of climate responsibility. Access to funding was also considered at risk, with the prospect of a radical change to the traditional Dutch approach to development cooperation, which had until now provided staunch support for international solidarity and human rights defenders worldwide.

### **Freedom of expression and media freedom**

Despite the country’s solid foundations in terms of freedom of expression and media freedom, participants called for vigilance in the face of trends that might at some point severely affect those freedoms. With its tradition for tolerance, the Netherlands was maybe not properly equipped to face **new challenges** such as misinformation and disinformation, or the spread of hate speech. One possible new trend referred to was that the authorities might be increasingly prepared to pay fines rather than grant access to information for some types of documents. While acknowledging the scale of disinformation and hate speech issues, the Dutch authorities pointed to the fact that they had been proactive in setting up a number of programmes tailored to civil servants, politicians and the general public, as well as cross-ministerial coordination and cooperation with local authorities and civil society on these questions.

One participant explained how **media pluralism** had been upset by digital changes and related funding difficulties. Online platforms had disrupted the traditional market for news by re-using news produced by the traditional media without fair remuneration, without employing journalists, and without having to respect the ethical guidelines that journalists had to follow. Such a trend would be further amplified by the mass rollout of



generative artificial intelligence. Several participants referred to EU tools in this area, with high hopes that they might have a positive impact on media freedom at national level, notably the European Media Freedom Act and the Digital Services Act.

**Concentration of media ownership** was raised by several participants, notably with reference to the proposed takeover of the main Dutch broadcaster, RTL Nederland, by a Belgian media group. One participant remarked that market concentration was sometimes the only way to save some media outlets that were in difficulty (for example while undergoing the digital transition) and therefore did not always mean a reduction in pluralism. As far as a media regulation was concerned, another participant pointed out that the Netherlands was a rare case in Europe where the government could suspend a decision made by the independent media authority – a situation which undermined its autonomy of action. The Dutch authorities indicated that they considered the creation of a framework to better measure media concentration to be part of their steps to implement the European Media Freedom Act.

One of the participants felt that the question as to how to generate revenue models to fund independent journalism in the **digital age** was a central issue. They called for greater consistency and a holistic approach here, given that the relationship between media and readership increasingly went through online platforms. Targeted online advertising was also considered to be a key issue, illustrated by the massive use thereof in the recent general election. Despite the ban imposed by the Digital Services Act on using sensitive data for such targeted ads, some political parties had managed to circumvent the ban by exploiting the supposed preferences of certain groups. The impact of online platforms on public debate was underlined, in particular the danger inherent in their unilateral capacity to amplify or tone down specific views.

Given some radical statements directed against the **Public Broadcasting System (PBS)** by the leader of the party that had gained the most seats in the 2023 general election, several participants underlined the need to protect the PBS from hostile decisions that could be made by means of a simple majority in Parliament. Inter alia, they called on the EU to step up its actions in this domain to promote a European model for stable public funding for public broadcasting services. One participant, however, observed that a balance was needed to cater for the interests of private media, which were not always able to compete with subsidised public broadcasting services.

The difficult **labour situation of journalists** was deemed to be another consequence of the shrinking amount of money being made available for the production of news. Participants agreed that the increasingly precarious nature of this type of work constituted a threat to media freedom and that safe, stable contracts were one of the most solid types of investment that could be made in quality journalism. Some participants feared that the political landscape that had emerged from the 2023 general election could lead to the “normalisation” of hostile attitudes towards journalists – given the insults made by the leader of the party which had gained the most seats. Others

believed that such stigmatisation endangered journalists, who were facing increasing verbal and physical threats, forcing some of them to take action such as removing the logo of their media outlet from their vans in order to avoid being targeted.

Strategic lawsuits against public participation (SLAPPs) were not considered to be a widespread phenomenon in the Netherlands, but more data needed to be collected, inter alia to identify a potential impact on CSOs. According to participants, there were other forms of **legal intimidation of journalists** which had also had a chilling effect on their work. There was regret expressed at the fact that slander and defamation were offences under criminal law. One participant referred to transnational repression carried out by foreign states seeking to intimidate Dutch and other journalists covering topics in their spheres of interest from the Netherlands. They also mentioned the scandal provoked by the Public Prosecution Service's wiretapping of a newspaper investigating the face-mask crisis during the COVID pandemic. On a more positive note, the PersVeilig Platform that addressed threats against journalists was welcomed.

### **The right to non-discrimination**

Participants described a **highly-developed system for reporting discrimination** at national and local levels, building on a network of ombuds-institutions in most municipalities, independent public institutions, and a rich environment of CSOs active in all areas of discrimination. One participant explained that regular meetings took place in every region to bring together the public prosecutor dealing with discrimination, the police officer dealing with discrimination, and anti-discrimination support bodies. This helped with the prioritisation of – and follow-up to – discrimination cases. Despite these solid foundations, this participant explained that while around a fifth of the population had experienced discrimination, only a tiny percentage had lodged complaints. One participant advocated the introduction of specialised anti-discrimination inspectors in the police force, referring to examples in other EU Member States.

Some participants explained that there was proof of ethnic profiling by the police, including border police. The childcare benefits scandal was also referred to: tens of thousands of families (often with low incomes or from **ethnic minorities**) had been subjected to false allegations of fraud based on an algorithm among other factors, employed by the tax administration. Data also showed that people of various ethnic and religious origins faced discrimination in employment, including in internships. One participant, however, referred to one good practice in that domain: a programme set up by the Ministry of Education to prevent discrimination in internships. Another participant pointed out that members of ethnic and religious minorities felt that, despite a solid legal framework for reporting discrimination, they were still marginalised in society because of the persistence of discriminatory attitudes in politics and society, exacerbated by the rise of a nativist discourse.

Several participants described an increase in **hate speech**, including anti-Semitic and anti-Muslim rhetoric, and a polarisation of society on questions relating to ethnic and religious minorities, which had appeared even before the current conflict in the Middle East began. Members of both Jewish and Muslim communities feared for their safety, with – for example – members of the Jewish community being afraid to wear religious symbols in public. In a country with a strong tradition of freedom of speech, it was regrettable that the Netherlands did not yet have a law to combat hate speech and hate crime. On the other hand, participants underlined good practice in education, referring to work of the Slavery History Dialogue Group and school programmes on the history of the Jewish community, including the Holocaust.

Despite the overall positive situation for **women** in Dutch society, one participant underlined the multiple forms of discrimination that could affect them, in particular women of different ethnic or religious backgrounds, and especially Muslim women. The participant regretted that the regulation on domestic work in the Netherlands did not provide labour rights to workers working less than four days in a private household. It was also underlined that despite adequate laws, the fight against domestic violence suffered from a lack of expertise and trained personal in the police and justice. However, one good practice mentioned was the existence of a prosecutor specialising in gender violence in one of the largest cities in the Netherlands; it was hoped that this practice would be expanded. The participants did regret the absence of mandatory gender mainstreaming in Dutch law-making. The Dutch authorities acknowledged the challenge of addressing the economic marginalisation of women, pointing to new legislation facilitating payroll transparency in companies and laying down quotas for women on company boards.

Although it had been the first country in the world to allow marriage for same sex couples, the Netherlands no longer appeared to be much of a frontrunner in protecting the rights of **LGBTIQ+ people**, according to one participant. They explained that, for the first time in two decades, acceptance of LGBTIQ+ people in Dutch society was no longer progressing, and had even regressed slightly. The participant considered it a warning sign that most political parties in the negotiations on a possible government coalition did not adhere to the Rainbow Ballot Box Agreement on LGBTIQ+ rights, illustrating a more general loss of support for the cause in the political parties represented in Parliament. More widely, LGBTIQ+ people, and in particular trans people, were being increasingly targeted by hate speech online and in the press. Seven out of ten LGBTIQ+ people had experienced verbal or physical threats – but reporting was low and only a few perpetrators were sentenced every year. Another participant expressed regret at the fact that Dutch criminal law on group insults contained no grounds referring to gender – thus limiting the protection offered to trans and intersex people in particular. Underlining the importance of awareness-raising, participants referred to the good example of “Purple Fridays” devoted to the acceptance of LGBTIQ+ students.

One participant explained that **people with disabilities** were the second-largest group reporting discrimination to the relevant national and local bodies. Commenting on the

fact that responsibility for providing care for people with disabilities had been assigned to local government, the participant observed that this was leading to discrepancies between regions in the Netherlands. They expressed regret at the absence of a solid programme for inclusive education in the country, which to their view could leave thousands of children with disabilities out of the education system. The point was made that people with disabilities were amongst the millions of people marginalised by overreliance on digital channels for communication in the area of banking and administration. One positive trend was welcomed, namely improvements made in the area of accessible voting for people with disabilities, contributing to better political representation. The creation of accessible ways for people with disabilities to use emergency numbers was also underlined.

### **The rule of law**

Several participants underlined their appreciation of the EU rule of law review mechanism, which acted as a catalyst for debates at national level and in relation with the EU. Participants in this session expressed fears that the strong **rule of law culture** established in the Netherlands might fade away, given the political direction that the country was taking after the 2023 general election. It was explained that several anti-constitutional measures (notably in the area of migration policy) had appeared in the manifestos of the political parties that were in the negotiations on a possible future government coalition. In a country normally characterised by the self-restraint of the executive in its relations with the judiciary, the point was made that the appointment of judges ultimately depended on the executive and legislative arms of government, and this called for caution regarding possible future attempts by politicians to influence the judiciary. The setting of minimum thresholds for penalties in law was mentioned as another example of politicians' restrictions on judges' autonomy. It was also regretted that some politicians tended to comment on judicial decisions.

Several participants underlined the fact that the **quality of justice** had been severely affected by the disproportionate workload faced by judges and other judicial personal. This was the result of sizeable budgetary cuts in recent years, which had led to a shortage of judiciary staff; this in turn had had an impact on the time and attention devoted to cases. It was felt that the judiciary was facing a generational challenge, with difficulties in recruiting new judges to compensate for an aging judicial profession. Participants believed that alternative mechanisms like mediation or "agreements for the sake of judicial economy" (when the public prosecutor and the defence agreed on a joint proposal to submit to the judge in order to settle a criminal case) could marginally reduce the backlog of cases, but that the general approach to justice should never affect the right to legal remedy. As far as administrative justice was concerned, one participant remarked that the childcare benefits scandal had led to jurisprudence reinforcing the necessity and proportionality assessments in administrative matters.

Several participants considered that the polarisation of society had led to an increase in **pressure on judges and lawyers**. A rhetoric was growing which associated lawyers with their clients' alleged crimes, for example associating them with organised crime or the so-called "asylum industry". Participants explained that threats were multiplying on- and off-line, from third parties and also sometimes from lawyers' clients, and that this could on occasion lead to physical attacks (a lawyer was murdered in 2019). Lawyers and judges expected more action by the authorities to ensure their protection and raise awareness about their roles.

Participants also hoped for better guarantees to be offered on **access to justice**. One participant explained that funds for legal aid depended on political arbitration carried out annually on the budget allocated to justice matters. A long-term plan was called for to secure an adequate level of funding for legal aid over several years. It was acknowledged that there had been a previous re-evaluation of funding for legal aid, but it was also felt that this increase had already been cancelled out by inflation. One participant observed that legal aid also needed to be extended to cover administrative procedures and the preliminary phases before the opening of a court case – given that the lack of legal aid in the childcare benefits scandal had also contributed to the scale of its impact. One participant expressed regret at the fact that the confidentiality of lawyer-client contacts had been under pressure because of developments in the working methods of the Public Prosecution Service, which tended to infringe on the principle of confidentiality in the conduct of investigations. It was also pointed out that prisoners' contacts with the outside world, including with their lawyers, had become very strictly limited in high security prisons. The Dutch authorities noted that the confidentiality of lawyer-client contacts would be one of the aspects examined in an upcoming review of the criminal procedure code.

One participant considered that, despite the **Open Government Act**, there was still too much of a delay in accessing documents, sometimes because of bureaucratic slowness, but sometimes also because of a supposed culture of secrecy. The Dutch authorities explained that they were aware of this issue and that the lack of public confidence that this had created had been identified in independent audits. They pointed to a number of measures taken to address the issue and promote a genuine open government culture, including targeted training for civil servants.

One participant observed that the Netherlands had recently reached its lowest ever score in the **Corruption** Perceptions Index, which denoted a worrying trend. It was felt that the Netherlands was lagging behind its neighbours as regards lobbying transparency and interest representation. The Dutch authorities announced that they were reviewing their tools for the transparency of interest representation in the context of the European discussions on the Defence of Democracy package. Another participant acknowledged that the EU "Whistle-blowers" Directive had been transposed into national law, but called for more action to increase socio-psychological and financial support for whistle-blowers and to prevent retaliation against whistle-blowers in companies. The participant also

expressed regret at the fact that the Netherlands had not done enough to reduce the risk of money laundering, notably in the area of transparency regarding ultimate beneficial owners. Yet another participant expressed regret at the lack of investigations into the potential involvement of Dutch companies in corruption abroad. The Dutch authorities announced that the dedicated corruption investigation team of the Fiscal Intelligence and Investigation Service had recently been doubled in size.

## Government observations

Luxembourg

Croatia

Belgium

Malta

Estonia

Latvia

The Netherlands

# Luxembourg



## **Observations by Luxembourg on the draft report on the country visit to Luxembourg on 2-3 March 2023 by the European Economic and Social Committees' Fundamental Rights and Rule of Law Group**

Luxembourg welcomes the work of the EESC's Fundamental Rights and Rule of Law Group and would like to highlight the constructive discussions that have taken place on 2-3 March 2023 in Luxembourg.

While taking note of the observations made in the draft report following this visit, as received on 26 January 2024, the Luxembourg authorities use this occasion to present a number of observations.

The following ministries and entities have been involved in the drafting process of this statement: Ministry of State, Department of Media, Connectivity and Digital Policy; Ministry of Home Affairs; Ministry of Family Affairs, Solidarity, Living Together and Reception of Refugees; Ministry of Justice; Ministry of Health and Social Security; Ministry of Labour; as well as the Ministry of Foreign and European Affairs, Defence, Development Cooperation and Foreign Trade which has been in charge of the coordination of this statement.

Should the Fundamental Rights and Rule of Law Group have any further questions based on these additional observations, the above-mentioned authorities remain at its disposal for further clarifications.

As a general remark, Luxembourg draws the attention of the EESC's Fundamental Rights and Rule of Law Group to the annual rule of law reports published by the European Commission, which also include a dedicated country chapter on Luxembourg. The Commission's reports and their underlying methodology constitute an important reference of the Luxembourg authorities as regards the discussion and evaluation of the rule of law situation in the Union and the Member States.

### **Fundamental rights related to social partners**

As concerns *mandatory membership to professional chambers*, employees of the private sector pay an annual mandatory membership fee for the Chamber of Employees, established by the law of 13 May 2008 creating a single status for employees with private sector status and merging the Chamber of Private Employees and the Chamber of Labour. Like the Chamber of Commerce, the Chamber of Employees is one of five professional chambers created by the Luxembourgish legislator and each one of them represents the interests of a specific professional category. Any person who practices a profession falling within the competence of one of the professional chambers is inevitably affiliated to this chamber.

As regards *collective agreements*, it is true that they are no longer as easy to reach among social partners as in the past. The coalition agreement 2023-2028 of the new government provides for the revision of the legal provisions related to collective agreements, among other things, to enable work reorganization and improvement of working conditions, particularly concerning the work life balance. One of the objectives is to facilitate agreements between employers and employees while ensuring that these discussions take place on an equal footing.

Nowadays, five institutions guarantee a *permanent social dialogue on a tripartite basis*: the Economic Committee, the Economic and Social Council, the Tripartite Coordination Committee, the Tripartite Steel Conference and the Permanent Committee on Labour and Employment. In this context, several tripartite agreements were signed by the social partners over the last years, as for instance the Solidaritéitspak 1.0–3.0 in order to support households' purchasing power and companies' competitiveness.

As concerns '*democracy at work*', the Labour and Mines Inspectorate is responsible for monitoring the application of the provisions in the area of staff delegations (organization and functioning of delegations, withholding of information by employers, the right of participation of staff delegations). Any obstruction carried out intentionally to setting up a staff delegation, to the free appointment of its members, to its regular functioning or to the appointment of an Equal Opportunity Officer or a Health and Safety Representative, is punishable by fines ranging from EUR 251 to EUR 15 000.

### **Freedom of association and assembly**

Regarding *access to assistance and health care during the pandemic for homeless people*, the facilities for homeless people financed by the Ministry of Family Affairs, Solidarity, Living together and Reception of Refugees were all accessible during the pandemic. Particularly worth emphasizing is the so-called 'Winter Action' (WAK), which is a humanitarian action introduced by the government in 2001, aiming to provide shelter to homeless people during periods of extreme cold. The WAK comprises a day and a night foyer and offers temporary accommodation, meals, access to health facilities and services such as on-call nurses to meet the basic needs of homeless people. The WAK is organized by the association 'Dräieck asbl' with the financial support of the Ministry of Family Affairs, Solidarity, Living together and Reception of Refugees and usually runs from 15 November until 15 April.

During the COVID-19 crisis, to allow homeless people to comply with curfew and other measures introduced by the Luxembourgish government to combat the pandemic, the 2019/2020 and 2020/2021 editions of the WAK were accessible until the 30 June. In addition, the 2020/2021 edition was launched early on 2 November.

Furthermore, special health measures were put in place, to detect and prevent COVID-19 among the beneficiaries of the WAK, including the distribution of rapid antigen tests and

face masks. On eight dates in June and March 2022, a voluntary Covid vaccination campaign was organized for homeless people on the premises of the WAK as well as in the locations of associations working in the field of homelessness or in vaccination centres, reaching several hundred homeless people and people in irregular situations. These vaccination campaigns were organized by the Ministry of Health, in particular the mobile vaccination teams of the Directorate of Health, and the Ministry of Family Affairs, Solidarity, Living Together and Reception of Refugees, in close collaboration with the Luxembourgish associations working in the field of homelessness. A similar measure was initiated again at the end of 2021 for booster vaccinations and first-time vaccinations.

As part of the fight against COVID-19, a special facility had been set up in one of the Winter Action buildings to care for homeless people awaiting COVID-19 test results. In the event of suspected infection, homeless services were allowed to use the second floor of the so-called Bâtiment B building to isolate people until they got their test results. Where necessary, homeless people that were testing positive for COVID-19 were then transferred to specific facilities dedicated to their care.

Concerning *workers with a disability*, it has to be noted that they are free to apply for the disabled employee status, giving them access to specific aids and employment services in order to facilitate long-term work integration (i.e. special professional equipment, adaptation of the workstations, tailored job guidance and training, allowance for the severely disabled). Luxembourg encourages the inclusion of workers with a disability in the general labour market while at the same time offering employment in sheltered workshops. Workers with a disability have the same rights as workers without a disability, and in both cases, the national Labour Code applies.

On another note, there are *no restrictions for organisations in the healthcare sector* that receive funding from the government in the area of healthcare.

A multitude of *information material concerning access to healthcare* was made available by the authorities during the pandemic. Its efforts to translate the material in many different languages was notably highlighted as a best practice in the OECD's evaluation report of Luxembourg's Covid response and bears witness to the fact that no efforts were spared to reach all citizens living in Luxembourg.

In Luxembourg the *right to assembly* is a fundamental right. During late 2021, some of the protests against COVID-19 measures turned violent. Since such large scale protests are unusual in Luxembourg and since the Grand-Ducal Police did not have the necessary material or human resources to accompany such events, they asked Belgian police forces for support. In addition, the government has established a working group charged with drafting a bill to introduce a legal framework for the orderly running of gatherings, guaranteeing the constitutional right of peaceful assembly and open-air gatherings. During the drafting process, the working group has already consulted with unions and CSOs, in order to clarify the exercise of the right to protest and to enable police forces and communal

authorities to prepare for such events, keeping in mind the safety of all citizens and participants, as well as of the police forces.

### **Freedom of expression and freedom of the media**

The Luxembourg law guarantees freedom of expression and the protection of sources (Loi modifiée du 8 juin 2004 sur la liberté d'expression dans les médias) and the Luxembourgish media landscape is rich and dynamic due to the use of multiple languages.

As regards *financial support to the media*, the Law of 30 July 2021 on an aid scheme in favour of professional journalism is based on 3 pillars: preserving pluralism, the promotion of pluralism, and citizen media. In order to support media pluralism and diversity, the second scheme is dedicated to start-ups and new entrants whereas the third pillar is aimed at non-for-profits. This press aid regime of more than EUR 10 million establishes a technologically neutral framework for online and offline media. The annual allocation is calculated based on the number of professional journalists (journalists with a press card from the Press Council) with a work contract (EUR 30 000 per year per journalist). It therefore explicitly recognizes and values the journalistic work. In addition to this, each beneficiary receives an annual share (EUR 200 000 per year) regardless of the size of the media. There are several caps (per media and per media group) in order to avoid effects on media concentration.

The press aid scheme also aims at inclusion: publications in every language spoken by at least 15% of the population are eligible (currently: German, French, English, Portuguese and Luxembourgish). In addition, the law encourages accessibility of the media for people with disabilities by requiring the beneficiaries to disclose in their annual report what measures they have taken in this respect.

*Access to information* is regulated by the Loi du 14 septembre 2018 relative à une administration transparente et ouverte, which guarantees the right to access documents to everyone (therefore also journalists) within one month, as is common practice also in other European countries. In addition to this, a circular letter by the then Prime Minister ('*Circulaire Bettel 2*') established a procedure for civil servants to respond to journalists' requests for information, in order to improve the flow of information and respect the short deadlines required by journalistic work. The *circulaire* therefore introduced the obligation for civil servants to reply to journalists within 24 hours. If it is not possible to reply with the information that has been asked for in this timeframe, civil servants are required to give an estimate of the time needed to reply, or they have to indicate the legal reasons why the information cannot be provided.

## **The right to non-discrimination**

According to the *National Survey on Racism and Racial Discrimination*, there are generally four population groups that experience discrimination more than others: Portuguese, Muslims, Black people and Immigrants from sub-Saharan Africa. Link to the survey:

<https://mfsva.gouvernement.lu/dam-assets/publications/rapport-etude-analyse/racisme/Rapport-d-etude-Enquete-Racisme.pdf>

As such, this survey confirms that Luxembourg – despite its multiculturalism and very large share of non-Luxembourgish residents – is not a country devoid of racism and discrimination. While the Luxembourgish authorities have long favoured a mainstream approach to combating these phenomena, since 2020 they have been developing more targeted actions in the fields of research, capacity-building, awareness-raising, legislation and policies. Moreover, Luxembourg is in the process of designing a National Action Plan against Racism and Racial Discrimination. This Plan is drawn up in collaboration with public stakeholders, human rights organizations, and civil society organizations. The fight against racism is also an integral part of the law of 23 August 2023 on living together in an intercultural way and modifying the law of 8 March 2017 on the Luxembourgish nationality (*Loi du 23 août 2023 relative au vivre ensemble interculturel et modifiant la loi modifiée du 8 mars 2017 sur la nationalité luxembourgeoise*), which has replaced the law on integration.

These measures appear to have a positive effect, since the results of the latest Fundamental Rights Agency survey (2023) show a clear improvement in the situation, with a significant reduction in the feeling of discrimination among affected population groups (on average a reduction by 13%).

As regards the situation of migrant groups seeking international protection: the National Reception Office (NRO), which is the administration in Luxembourg responsible for organizing the reception of applicants for international protection and managing accommodation facilities reserved for the temporary accommodation of applicants for international protection and people eligible for subsidiary protection, acknowledges that issues of racism between different migrant groups have been observed within its accommodation facilities. These occurrences could be explained by the fact that the migrant groups have been granted different statuses, i.e. beneficiaries of temporary protection (BTP) on the one hand, and applicants for international protection (AIP) on the other hand. In any case, the NRO works towards creating an environment that promotes a culture of mutual respect, understanding, and solidarity among the accommodated people. AIPs and BTPs have equal access to a state-run structure of the NRO and they are also provided with the same support such as a financial allowance (depending on the size of the household), an allowance to purchase clothing, and an allowance to purchase school supplies.

As concerns *the refugee facilities*, the National Reception Office (NRO) has in total 68 facilities (+3 emergency accommodation facilities), not 13. By the end of December 2023, the NRO was accommodating a total of 5 840 individuals across its 68 housing facilities, with a net occupancy rate of 95.25%. The numbers highlight the urgency of the situation and underscore the need for both short-term relief measures and long-term sustainable solutions to ensure the well-being and integration of those seeking refuge in Luxembourg. Currently, Luxembourg still counts over 200 new arrivals in the NRO accommodation network every month (214 in January 2024 and 233 in December 2023), with a record number in July 2023 with 429 arrivals.

On the topic of *hate speech*, although there is no legal definition of hate speech as such, several provisions of the Criminal Code deal with malicious comments, depending on whether the message is addressed to a specific person, or in a diffuse manner. In the first category, the following articles of the Criminal Code apply: Article 275 contempt of a member of the government or a magistrate (*l'outrage à un membre du gouvernement ou à un magistrat*), Article 442-2 on obsessive harassment (*harcèlement obsessionnel*), articles 443 to 452 attacks on the honour or consideration of people, namely slander, defamation and insult (*les atteintes portées à l'honneur ou à la considération des personnes, à savoir la calomnie, la diffamation et l'injure*). The second category covers diffuse messages of hatred online and offline referred to in point 1 of Article 457-1. In this context, the jurisprudence unanimously recognizes that the legislator intended to demonstrate its firm intention to fight racism and intolerance in all its forms, including anti-Semitism. It established the principle according to which it is not necessary for the messages to contain an exhortation to hatred, violence or discrimination but it is sufficient, for the offense to be constituted, that the messages are likely to arouse these feelings. In accordance with the jurisprudence of the European Court of Human Rights, the national courts and tribunals have held that articles 454 et seq. of the Criminal Code, therefore including Article 457-1 of the Criminal Code, constitute a necessary measure within the meaning of Article 10 paragraph 2 of the European Convention on Human Rights.

Furthermore, Article 80 of the Criminal Code has introduced a general aggravating circumstance for crimes and offences committed for a motive based on discrimination, as set out in Article 454 of the Criminal Code (<https://legilux.public.lu/eli/etat/leg/loi/2023/03/28/a185/jo>). This Article gives the courts the possibility to hold that the perpetrator of a crime or an offence committed on the grounds of an element listed in Article 454, may be sentenced to an increased penalty or fine. The hate motives, which can be taken into account as an aggravating circumstance, are the following: origin, skin colour, gender, sexual orientation, gender reassignment, gender identity, family status, age, state of health, disability, morals/customs, political or philosophical opinions, trade union activities, actual or assumed membership or non-membership of a particular ethnic group, nation, race or religion. BEE SECURE, which is an initiative of the Government, implemented by the National Youth Service and in particular the Grand Ducal Police and the Office of the Prosecutor General, is part of the European INSAFE networks (awareness centres and helplines) and INHOPE (illegal

content reporting centres). Regarding online hate speech, BEE SECURE plays its role as a national platform (<https://stopline.bee-secure.lu>) for reporting potentially illegal content, which will be conceptually analysed and forwarded to the law enforcement authorities for further proceedings and final decision. In 2022, BEE SECURE also launched the anti-hate speech campaign called ‘No Hate Online’, which promotes more mutual respect on the Internet and aims to reduce hate speech. Additionally, the campaign aims to provide information on freedom of expression and its legal limits. This program can be considered a promising practice in combating online hate speech, as it contributes to awareness, education, training and the use of alternative discourse.

### **Rule of law**

As concerns the *contempt of Court case*, a lawyer registered with the Luxembourg Bar Association filed an application before the European Court of Human Rights (ECtHR) after being convicted for contempt of Court according to Article 275 of the Luxembourgish Criminal Code. The application has been declared admissible on 19 October 2023 and the government has submitted its observations to the ECtHR. The case is currently pending.

# Croatia



## **CROATIAN AUTHORITIES OBSERVATIONS ON THE Draft Report on the FRRL visit to Croatia 30-31 March 2023**

### **1. Fundamental rights of the social partners**

Observations regarding Croatia's efforts to increase the efficiency and quality in the justice system, and thus improve the overall public trust, which were raised by the social partners, are addressed under item 5 below.

As concerns demographic decline, the National Development Strategy until 2030 recognises the nexus between the demographic challenges, labour market and strengthening of the human capital. The Government of the Republic of Croatia is committed to shaping public policies for all sectors which are critical for addressing demographic revitalization, which has been set as one of the strategic goals in the National Development Strategy and will be further elaborated in the dedicated strategy on demographic revitalization, which is currently in preparation.

### **2. Freedom of association and freedom of assembly**

In connection with the remarks on the legal framework for CSOs and, more specifically, procedure regarding the calls for proposals, the Government Office for Cooperation with NGOs has clarified that at the level of the calls for proposals, no additional conditions have been introduced that generate additional administration, but the rules and regulations prescribed by the Regulation of the Council and Parliament of the EU as well as the conditions of national legislation are applied. That said, further digitalization of the procedure would make the implementation easier for the users.

As for the remarks on the involvement of CSOs in decision-making, which is taking place primarily, but not exclusively, in the framework of the Council for Civil Society Development, it should be pointed out that the Council regularly elects CSO representatives in various decision-making bodies. For instance, in 2022 the Council elected a wide variety of CSO representatives to participate in the work of 18 different commissions, advisory or working bodies, and at the request of state administration bodies, government offices and other public authorities, dealing with a range of different thematic areas. With respect to the remarks by one participant on the manner of conducting the elections for the EESC in 2020, which were organised by the Government Office for Cooperation with NGOs, it should be clarified that the elections for the EESC were held in accordance with the normative framework that was the same as in the previous election for EESC members, mindful of the restrictions that were in force due to the COVID-19 pandemic.

With respect to the reference in the draft report about the restrictions on protests on St. Mark's Square, it should be noted that there is no general restriction regime in place. Protests on St Mark's Square do take place, but with restrictions that are necessary to protect the interests of state security, public order and peace, and to prevent disorder and crime. Since 2020 when a shooting took place, 10 peaceful

gatherings and public protests as well as several individual protests have been organized and held on St Mark's Square.

As concerns the access to funding and the multiannual funding approach, it is based in the Conclusion by the Government of Croatia adopted on Government session on 11 May 2023, which adopted the model of multi-year support and provided additional funds for programs and activities.

### **3. Freedom of expression and media freedom**

In 2023 Croatia was ranked 42<sup>nd</sup> on the World Press Freedom index<sup>5</sup>, compared to 48<sup>th</sup> in 2022, 56<sup>th</sup> in 2021 and 59<sup>th</sup> in 2020. Regrettably, this **upward trend in media freedom** is not reflected in the FRRL Report.

As regards the remarks on the transparency of media ownership, it should be noted that the existing legislation<sup>6</sup> clearly stipulates rules on transparency of media ownership and provide a system of notification of ownership. The ownership structures of the media outlets are published at least once a year in the Official Gazette of the Republic of Croatia, and in addition, the ownership structures of electronic media are publicly available, up to the level of physical persons, on the website of the Agency for Electronic Media<sup>7</sup> and are verified against an extract from the Registry of Beneficial Owners. Furthermore, it should be emphasized that within the National Recovery and Resilience Plan, the Government has allocated the amount of € 663,614.00 for developing a single publicly available database of ownership and sources of financing of all media under the jurisdiction of the Republic of Croatia.

It should be pointed out that since 2005, through the Fund for the Promotion of Pluralism and Diversity of Electronic Media, funds have been allocated for production and publication of programs of radio and television publishers at the local and regional level, non-profit broadcasters of television and/or radio, non-profit providers of on-demand media services and those broadcasting via satellite, cable, internet and other permitted forms of transmission, providers of electronic publications and non-profit producers of audio-visual and/or radio programs. The funds are allocated based on criteria stipulated in advance, in the annual amount of approximately 4.5 million Euro.

When it comes to media freedom and pluralism, and thus professional journalism, it should be emphasized that the Republic of Croatia will build a network of fact

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<sup>5</sup> Croatia | RSF

<sup>6</sup> The Media Act (Official Gazette No. 59/04, 84/11, 81/13 and 114/22) and the Electronic Media Act (Official Gazette No. 111/21 and 114/22)

<sup>7</sup> <http://www.aem.hr>

checkers for the establishment of verification of factual accuracy of claims in the media space, for which the amount of approximately 6 million euro has been allocated from the National Recovery and Resilience Plan. The idea for establishing fact checking was developed in cooperation with the media sector, i.e. with journalists and publishers, and also follows the recommendation of the European Commission to work on finding methods to combat disinformation. The establishment of a fact-checking network will provide an incentive measure for the employment of professional researchers and journalists, and support the media in their insisting that the media spectrum contains as much verified and accurate information as possible. One of the primary goals is to reduce misinformation in the media and encourage professional journalism.

Furthermore, as an example of good practice, it is worth noting that in 2020, the Agency for Electronic Media launched a project to encourage journalistic excellence by awarding grants<sup>8</sup> to journalists for journalistic works and research of topics of public interest in electronic publications. The project continued and was successfully realized in 2021, and enters the third cycle in 2022 with a significantly increased budget<sup>9</sup>.

Further to the remarks on combating SLAPPs<sup>10</sup>, it should be recognized that the Croatian Ministry of Culture and Media, among the first in EU member states, established an Expert Working Group in mid-2021 to formulate a policy to combat SLAPP lawsuits, in line with the goals of the Action Plan for European Democracy to support individual and independent media through the suppression of strategic lawsuits directed against public participation (SLAPP lawsuits), which are recognized as a problem throughout the European Union. The Expert Working Group for Shaping of Policy for Combating of SLAPP lawsuits brings together key experts – representatives of the media sector (journalists and publishers), professional journalists' associations (HND and SNH), the Judicial Academy, the Croatian Bar Association, academia, the Office of the Ombudswoman, the Ministry of Culture and Media and the Ministry of Justice and Administration. Its objectives include: collection and analysis of SLAPP data and existing practices; identifying legal tools already available to courts to prevent SLAPPs; proposing future anti-SLAPP legislative measures; educational activities for the judicial system and the media; awareness raising activities in the professional and general public about the negative consequences of SLAPPs and raising the level of social dialogue. The Expert Working Group has identified a number of recommendations on improving

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<sup>8</sup> In the total amount of 1 million HRK.

<sup>9</sup> It is estimated that the funds for the Quality Journalism Promotion Programme would increase by cca 50% after the Government allocated a higher percentage of the revenue from the games of chance for 2022 to the Programme, as one of the beneficiaries (in the amount equaling 1.81% of total revenue in 2022 compared to 1.30% in 2021, based on the *Ordinance on criteria for determination of beneficiaries and the manner of distribution of share of revenue from games of chance for 2022*, Official Gazette No. 23/2022).

<sup>10</sup> SLAPP lawsuits are unfounded lawsuits brought by socially powerful individuals/entities, aimed at intimidation and silencing of critical voices in society in respect to issues of public interest, which are contrary to interests of plaintiffs.

the status of journalist and suppressing SLAPPs. The Ministry of Culture and Media has thus far organized a series of public educational workshops across Croatia for judges and other stakeholders in the judicial system, attended by legal experts and journalists, which in addition to educating judges on this problem, raise public awareness of the negative consequences of SLAPPs and thus contribute to their suppression. The Ministry of Culture and Media is about to adopt the umbrella medium-term strategic planning enactment, the National Plan for the Development of Culture and Media from 2023 to 2027, and one of the measures outlined in the National Plan, which is intended to ensure the protection of journalists against unfounded and malicious court proceedings, is the establishment of a mechanism for early recognition and dismissal of SLAPP lawsuits.

#### **4. The right to non-discrimination**

In the context of the overall framework for combating discrimination, of which the new *National Plan for promotion and protection of human rights and combating discrimination to 2027* is an important part, it should be stressed that the consultations preceding its adoption were inclusive and meaningful. The Working group for the development of the National Plan included: 20 representatives of state administration and public bodies, 4 national equality bodies, representatives of academia and 5 representatives of civil organizations operating in the field of protection and promotion of human rights and suppression of discrimination. Before the public consultation through the on-line portal, five rounds of consultation were held in different forms: on-line meetings with all members of the working group, in person: small group meetings with members of the working groups, bilateral and multilateral meetings with state bodies. The public consultation lasted 39 days; the regular 30-day deadline was extended at the request of civil society organizations. In addition, during the public consultation on e-portal, additional meeting was held with the representatives of the NGOs where the arguments for rejections of the comments (referring to the additional activities) were in detail discussed as well as opportunities for their involvement in the future Action plans for the 2024-2025.

As for the remarks on the National Plan for Roma Inclusion 2021-2027, according to the EU Fundamental Rights<sup>11</sup> and compared to 2019 base-line indicators, its implementation is producing tangible results, with significant decrease noted with respect to the rate of severe material deprivation (47%) and in the share of housing deprivation (14%). Furthermore, there has been significant increase in the share of the population with access to drinking water in household (14%), the reduction in the risk of poverty rate (7%) as well as slight decrease in the share of young people in the NEET status (4%). The progress achieved in reducing the rates of severe material and housing deprivation can be directly linked to the implementation of measures and activities delivered under the National Plan for Roma Inclusion 2021-2027, i.e. Annual Program for the Improvement of Living Conditions of Members

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<sup>11</sup> <https://fra.europa.eu/en/publication/2022/roma-survey-findings>

of the Roma National Minority). Program provided bathroom equipment, sanitary units and delivery of appliances for Roma from 2019 onwards.

It should be noted that the rights of the LGBT persons are addressed under the new National *Plan for promotion and protection of human rights and combating discrimination to 2027*.<sup>12</sup> The goals and activities envisaged under this National Plan are targeting most commonly discriminated groups in accordance with the annual reports of ombudsman, ombudsman for children, gender equality, and persons with disabilities. Most commonly discriminated groups, according to those reports, are Roma, LGBT persons, persons with disabilities, women.

In relation to the topics regarding migrants and asylum seekers, it is worth noting that the statements in this draft report have reiterated the statements from almost all previous reports of the CSOs. These statements are false and should be revised according to objective facts. For the sake of clarification, the notion “pushback” is not recognised in any EU or international instrument; nevertheless, it is widely used mostly by CSOs in order to enhance the negative narrative about the Croatian police “preventing migrants’ access to asylum system by returning them illegally to the neighbouring third countries”. In order to challenge this presumption, it is worth mentioning that in the first four months of 2023 alone, 12,125 migrants expressed an intention for international protection in Croatia which is almost as many as in the whole 2022 (12,872). Out of the number of asylum seekers in the first four months of 2023, only 746 were physically present in the Croatian reception centers on 30 April 2023, which means that all the others engaged in secondary movements towards their destination countries of the EU<sup>13</sup>. Having that in mind, as well as the context described in the footnote, it is clear that so called “asylum shopping” is widely used by migrants despite the fact that neither the 1951 Refugee Convention and its 1967 Protocol nor any other international instrument provide for the right of migrants to cross several safe countries in order to apply for asylum where they find it the most lucrative. Being aware of this long-lasting phenomenon, the Croatian police use all legal means, namely the Schengen Borders Code, to discourage illegal crossings of the green border while migrants are still on the territory of a neighbouring third country. Once they manage to cross the Croatian border, mostly illegally, they can freely apply for asylum in which cases the procedures defined in the Act on International and Temporary Protection will be applied. Since the Croatian police register all migrants in the Eurodac system, irrespectively of them being asylum seekers or not, many of them give up their right to apply for asylum and voluntarily return to a third country, knowing that registration in Eurodac means that they would be returned to Croatia from another EU Member State (via

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<https://pravamanjina.gov.hr/UserDocImages/dokumenti/Nacionalni%20plan%20za%20ZPLJP%20razdoblje%20do%202027.pdf>

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According to IOM research conducted among migrants in Bosnia and Herzegovina in January 2023, for 61,5% of Afghan nationals the destination country is Germany, for 23,1% of them it is France, while Italy is the destination for 5,1% of Afghan migrants. With slight deviations in percentages, the same goes for Moroccan, as well as for Syrian nationals. Croatia was not mentioned as a destination country at all. As well, migrants stated that they do not feel endangered or persecuted in Bosnia and Herzegovina at all.

Dublin procedure) if they succeeded in secondary migration to their desired destination country. This is precisely the main reason why they create a negative narrative about the Croatian police being violent, thus trying to “loosen” the procedures applied at the external border and/or influence the legal decisions in the destination countries in order for them not to be returned to Croatia via Dublin system. In an attempt to corroborate this claim, migrants tend to blame the Croatian police even for the injuries they get during their mutual fights or for those inflicted by smugglers. Having all this in mind, it is profoundly incorrect to extrapolate one case before the ECHR in which Croatia’s liability was determined, in order to claim that the Croatian police engage in systematic illegal activities at the external border. On the contrary, any kind of violence, including the excessive use of force by the police is strictly prohibited and subject to both disciplinary and legal sanctions. This was communicated to all police administrations by the Police Headquarters on many occasions. With the aim of investigating all isolated cases of possible ill-treatment of migrants, the Croatian Ministry of the Interior has enhanced its internal control system with additional 61 officers. Since 2018, the internal control department has initiated 58 cases related to treatment of migrants, some of which resulted in sanctions ranging from fines to termination of civil service, while 5 police officers faced criminal charges in line with the Criminal Code. When it comes to the case of three police officers whose ill-treatment had been video-recorded and published in October 2021, they were held accountable in the subsequent disciplinary proceeding and sanctioned with suspended sentence of permanent termination of civil service. In parallel, the State Attorney’s Office run the criminal investigation of the case. Since the published video was rearranged and of poor quality, the Croatian police requested, for the sake of investigation, access to the original video via the channels of international police cooperation, but the original video has never been made available.

Croatia furthermore established the Independent Mechanism for monitoring police actions with respect to migrants and asylum seekers at the external border in June 2021. It was the first EU Member State to do so, following the proposals of the Pact on Migration and Asylum, which is still under consideration in the Council of the EU. In early December 2021, the Coordination Board of the Mechanism published its first semi-annual report, and it published its final (annual) report in July 2022. Further to the recommendations contained in the Mechanism’s report, the Ministry of the Interior prepared an Action Plan for their implementation. Since the initial Agreement establishing the Independent Monitoring Mechanism elapsed on June 8, 2022, the new Agreement for the period of 18 months was signed on November 4, 2022. Every complaint received in relation to the actions of police officers on the external border is examined by the Ministry of the Interior in line with its internal procedures and in some cases by the State Attorney’s Office and all of them are also reported to the Independent Monitoring Mechanism. As stipulated in the Agreement, the Coordination Board is cooperating closely with all relevant state bodies who have the obligation, under national law, to investigate allegations of the breaches of fundamental rights, including ensuring that complaints are dealt with expeditiously and in an appropriate way. In line with the applicable national framework, the Coordination Board shall submit its reports on irregularities and/or

fundamental rights violations to the relevant state bodies, primarily the Internal Control Department of the Ministry of the Interior, the State Attorney's Office as well as the Ombudswoman's Office. The Advisory Board, headed by the EU Agency for Fundamental Rights (FRA) as of November 2022, is also closely linked with the Mechanism. Together with FRA, the Advisory Board consists of the representatives of the European Commission, Frontex, EUAA, the Ombudsperson, the Ombudsperson for Children, the Ombudsperson for Gender Equality, as well as IOM and UNCHR. When it comes to the part of the draft report stating that "the independent monitoring mechanism put in place was not fully independent since it does not provide the possibility of unannounced visits to the border", Croatia strongly rejects such claim. The first Agreement (June 2021 – June 2022), provided for 20 visits to the border and the implementers conducted 3 announced and 17 unannounced visits, with 5 visits to the green border. The new agreement also provides for at least 20 visits, including the unannounced ones, in all locations at the green border.

As regards the question on requests for access to information by the Ombudsperson, it should be emphasized that the Ministry of the Interior is processing Ombudsperson's requests for access to information in line with the provisions of the Act on the Ombudsperson and the Act on the National Preventive Mechanism for Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The Ministry of the Interior is regularly submitting information following the requests for access to information by the Ombudsperson or her Office. When it comes to direct access of the Office of the Ombudsperson to the Information System of the Ministry of the Interior, it should be noted that the Police Act grants access to the Information System only to police officers based on personalized access parameters. On the other hand, providing direct access to any other party would imply breaching of the law and would be subject to strict sanctions. However, over the past period the Ministry held numerous meetings with the Office of the Ombudsperson in order to improve the cooperation and to clarify the restrictions to the Information System of the Ministry.

## **5. The rule of law**

The reform activities in the judiciary, anchored in a number of legislative and organizational changes and development projects, remain in the focus of the Croatian Government, with the aim to improve the quality and efficiency of justice, as well as of the public perception thereof and public trust in justice, which in turn, strengthens the rule of law overall. The Government is also focused on decisively combating corruption and strengthening all bodies which take part in the anti-corruption efforts, including by promoting education of all segments of the public administration and of the society as a whole, to advance the rule of law and the fight against corruption. An important part of this effort are activities aimed at raising awareness about the harmful effects of corruption, in order to make it socially unacceptable.

In connection with the remarks on justice system and, more specifically, the publication of the court decisions, it should be noted that the Ministry of Justice and

Public Administration is launching a project which will result in the publication of all decisions of first and second-instance courts, starting with the end of 2024.

In the field of combating corruption, the Anti-Corruption Strategy 2021-2030 sets the strategic framework at the national level which aims to strengthen the existing and create new systemic solutions against corruption, both on the preventive and on the repressive side. The Strategy defines priorities for further strengthening of the mechanisms to prevent and combat corruption at all levels, both through raising awareness on the harmfulness of corruption in a society, and by strengthening the institutional and normative framework for preventing, investigating and prosecuting corruption, including by amending criminal legislation in order to have more efficient and effective criminal procedure in corruption cases; amending criminal law in the area of criminal responsibility of legal persons for corruption offences; enhancing human resources, capacities and education for the law enforcement bodies or strengthening integrity measures for law enforcement bodies.

Concerning the repressive aspects of the fight against corruption, there is no basis for suggesting that the mandate of the Office for Suppression Corruption and Organised Crime (USKOK) has been weakened in any way. On the contrary, it continued to prosecute perpetrators of corrupt criminal acts in a number of social segments at all levels, including high-level corruption, resulting in significant verdicts handed down in a number of lengthy and complex high-level corruption cases in recent years.

Concerning the reference on the “justice for war crimes which was seen as stagnating in the draft report, with most trials held in absentia and investigations not progressing because of the limited capacity of the police and the attorney”, it should be stated that, on the contrary, the resolution of war crimes shows an upward trend in the period from 2019 to 2022. In the said period, 304 war crimes were resolved (e.g. 54 crimes were resolved in 2020, 101 in 2021 and 128 in 2022). The trend of resolving the criminal cases related to war crimes continued also during the first four months of 2023. More specifically, 45 war crimes were resolved, which represents an increase of 246.2% compared to the first four months of 2022. Most criminal charges were filed against immediate perpetrators and a somewhat smaller number of charges against responsible commanders. It is important to note that in 2022 criminal charges were filed against 36 persons for war crimes committed to the detriment of 126 people, while criminal charges in 2021 were also filed in relation to 153 injured parties.



# Belgium



**RE : Observations from the Belgian Government on the draft report of the European Economic and Social Committees Fundamental Rights and Rule of Law Group on its visit to Belgium on 20-21 April 2023**

The Government of Belgium would like to thank the Fundamental Rights and Rule of Law Group for their visit to Belgium on the 20<sup>th</sup> and 21<sup>st</sup> April of 2023. Belgium took note with interest of the concerns of the civil society, and appreciates the value of this process, even if the Government does not endorse several of the assertions made in the report. Therefore, Belgium wishes to present the following observations to the draft report:

**1. Fundamental rights of the social partners**

With regard to concerns about the right to demonstrate, the Government points out that the freedoms of expression, assembly and association are fundamental freedoms protected by the Belgian Constitution. The right to strike is also recognised by the Court of Cassation and by various international instruments that are binding. It follows from the second paragraph of articles 10 and 11 of the European Convention on Human Rights that the right to strike or demonstrate is not an absolute right, and restrictions are possible when they meet strict criteria. The convictions handed down in the Port of Antwerp and Pont de Cheratte cases (on the basis of article 406 of the Criminal Code) fall within the scope of these permissible restrictions.

The use of urgent proceedings before the President of the Court of First Instance enables urgent action to be taken in order to obtain a rapid decision that will prevent infringement of the rights (of the employer, other employees, third parties, etc.). The use of urgent proceedings on the basis of a unilateral application is reserved for cases of absolute necessity. It would not be possible to obtain a decision within the same timeframe, in an adversarial context. An appeal may also be lodged against the order by the requesting or intervening parties. A third party who has suffered prejudice as a result of the order may lodge a third-party objection. The effect of this is to enlighten the judge so that he has a contradictory view of the case. At that point, the parties may submit incidental claims and any defence or claim under ordinary law.

Regarding the dismissal of trade union representatives, the Government of Belgium wishes to clarify that according to the law of 19 March 1991 the workers' representatives and candidates may only be dismissed for a serious reason recognised in advance by the labour courts, or for economic or technical reasons recognised in advance by the joint committee or, failing that, by the labour courts. In the event of unlawful dismissal by the employer, the worker must be reinstated in the company or may claim payment of a special protection indemnity. An employer who fails to reinstate a dismissed worker who has applied for reinstatement, must pay him, without prejudice to the right to higher compensation due under the individual employment contract, a collective labour agreement or customary practice and to any other damages for material or non-material loss, an indemnity that depending on the duration of the mandate and the worker's length of service can amount to up to eight years' wages.

In addition, trade union activity is also a criterion protected by the anti-discrimination law of 10 May 2007. This law protects against direct discrimination, indirect discrimination, instructions to discriminate and harassment of trade union members.

## **2. Freedom of association and freedom of assembly**

With regard to the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, a draft law to establish a preventive mechanism with the power to visit federal places of deprivation of liberty will shortly be submitted to Parliament.

Regarding the draft law that still has to be voted in parliament and that would impose judicial bans on the right to demonstrate, the Government would like to underline the fact that this ban is not a preventive measure, but can only be imposed as an additional punishment by a judge during adversarial proceedings. The draft law allows a judge, upon conviction for certain serious offences committed during a protest rally, to impose an additional punishment, in particular a ban (limited to three years) on participating in a protest rally in the future. There are several conditions and guarantees attached to the imposition of this ban, such as the fact that the right to strike cannot be touched and that a strike can never be considered a protest rally.

On the one hand, the 2019 reform of the Code of companies and associations is part of the wider framework of the reform of the concept of enterprise and, on the other hand, was intended to continue the professionalisation of the sector (which started with the 2002 reform) but also to emphasise the specific nature of these legal entities, which, while allowing them to carry out economic activities, and therefore to put an end to an uncertainty that existed in doctrine and case law, is not to distribute the revenue of their activities to their members and therefore to pursue their non-profit-making aims. As a legislator, we must aim to achieve a balance between all stakeholders, which is why the formalities for small NPO's are less burdensome than those for large NPO's (e.g. hospitals) and companies. Although both categories are dealt within the same law, the provisions are divided according to the type and legal form of each entity, in accordance with their specific characteristics. Finally, the professionalisation of the sector also aims to increase public confidence in the not-for-profit sector.

### **3. Freedom of expression and media freedom**

Regarding freedom of the press, the Belgian authorities want to stress that negotiations on the Media Freedom Act were still ongoing and that there is no question of a major media "watchdog".

Regarding access to information, it is reported that the new text (regulating access to information at the federal level) would authorise two more exceptions, namely the possibilities to conceal information on procedures involving the government and to protect internal communications between authorities, with both exceptions already introduced at the Flemish level. We would like to inform that the ground of exception concerning the internal communication did, meanwhile, pass the constitutionality check of the Constitutional Court.

### **4. The right to non-discrimination**

Several Belgian government entities have engaged in recent years in processes aimed at independently evaluating the effectiveness of their anti-discrimination legislation, which led them to initiate reforms. At the federal level, the reform aims in particular to clarify the interactions between the protected criteria, by expressly enshrining in law the concepts of multiple discrimination, discrimination by association and discrimination based on a criterion attributed by the perpetrator. Penalties have also been made more effective and dissuasive. In addition, new legislation strengthening the protection against reprisals for people who report discrimination, give evidence or provide support to victims of discrimination came into force in June 2023.

Belgium supports CSOs in the fight against discrimination, on the one hand through the development of a legal framework for the structural funding of CSOs, in particular associations combating racism and gender-based discrimination as well as associations defending the rights of LGBTIQ+ people, and on the other hand through regular calls for projects and one-off funding at the various levels of competence.

Regarding the concerns on the law 2015/07/20 on combatting terrorism law to remove Belgian citizenship, the Government would like to add that the conditions for removing Belgian citizenship are the same for everyone, regardless of the original nationality of the person revoked. No specific foreign nationality is targeted by the legislation, which is therefore non-discriminatory.

The report also makes remarks on double standards between the treatment given to Ukrainian refugees and to asylum seekers from other countries. The Belgian

authorities hereby refer to the different mechanism that has been put in place on European level for asylum seekers and temporary displaced persons.

Various action plans have been adopted in order to streamline anti-discrimination measures across all levels and all fields of competences, in particular with regards to gender mainstreaming, handistreaming, rights of Roma and LGBTQI+ persons. When it comes to racism, in addition to regional action plans, the federal government and the governments of the federated entities are continuing work to adopt a holistic National Action Plan to combat racism, in collaboration with all stakeholders.

Regarding the remarks on ageism, a data collection project concerning age discrimination will be launched by the end of the year in order to better understand this phenomenon and provide appropriate responses,.

## **5. The rule of law**

The report describes various elements that are the subject of the execution of two judgments handed down by the European Court of Human Rights and are currently under the supervision of the Committee of Ministers of the Council of Europe (the Vasilescu group concerning detention conditions: and the W.D. group concerning internment, both available on the website <https://hudoc.exec.coe.int>). These two action plans set out the measures adopted and planned by the Belgian government to address these issues, which include improving detention conditions by constructing and renovating buildings (including the construction of new forensic psychiatric centers, in order to increase the capacity for taking care of internees in specialized medical settings) and recruiting:

- Detention support staff (in addition to assistant prison guards) who will work in the new prisons and “houses of detention” (maisons de détention) in order to better support inmates during their detention, thereby limiting the damage caused by their detention and actively supporting their resocialization;
- Medical staff to improve the care offered to inmates and internees;
- Staff to strengthen the multidisciplinary care teams for inmates and internees suffering from mental health problems in the psychiatric annexes of prisons. Pilot projects with the Federal Public Health Service in 10 prisons - launched as part of the overall reform of prison healthcare - include the recruitment of front-line psychologists and social workers, and an intercultural mediation project is also planned.

Matters relating to improving the functioning of the judicial system and the length of proceedings are dealt with in the action plans issued in the context of two judgments handed down by the European Court of Human Rights and currently under the supervision of the Committee of Ministers (the Bell group concerns the civil aspect and the Aboud group concerns the criminal aspect) as well as in the latest government communication of October 2023.

The execution of these judgements are available on the website <https://hudoc.exec.coe.int>, and the relevant documents describe how Belgium is continuing to put in place various tools aimed at reducing the length of legal proceedings and improving the functioning of the judicial system, including: the digitalisation of the justice system, ongoing work to develop reliable statistics, the introduction and strengthening of alternative dispute resolution methods, and the optimization of the use of human resources as well as the resources made at their disposal.

Belgium continues its efforts to tackle corruption via its specialized units within police ('CDBC') and the prosecutor's offices. In this area, specific measures have especially been taken to combat corruption linked to criminal organisations and drug trafficking. Belgian authorities also continue to invest in the recruitment of staff.

The Belgian government remains at your disposal in case of further questions.

# Malta



## Malta's Contribution in view of the Report of the EESC's Visit of 13-14 September 2023

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The Government of Malta takes note of the report prepared by the EESC following the meetings of the six representatives to Malta held between 13 and 14 September 2023. It is appreciated that the report is intended to reflect the views of civil society organisations (CSOs). In light of this, the Government wishes to offer the following observations.

### **1. Fundamental Rights Related to Social Partners**

#### ***Employment Sector***

Malta has made significant improvements on nearly all employment related indicators, working on the EU headline targets to reach a national employment rate target of 84.6%. Malta's unemployment rate currently stands at an average of 3.2% in comparison to the EU's average of 6%.

The Government of Malta is determined to continue fostering an inclusive society and ensure a prosperous future for the benefit of its residents, committing to a number of initiatives, strategies and legislation to secure this objective the recent being the 2023 National Reform Programme. The National Reform Programme includes is targeted towards a growth socio-economic model that ensures a fair and just society, promoting social inclusion, mobility and poverty reduction, good governance and transparency, strengthening housing policies, the health care system, the judicial system, and institutional capacities to combat tax evasion and avoidance. In addition, through the National Employment Policy, the Government of Malta is embarking on a human-centric approach to work and the future of work. Reskilling and upskilling remain key to prepare the working age population for the future industry-demanded skillsets characterised by technology and green skills.

Whilst taking note of the information highlighted by CSOs, the Government of Malta continues to put forward targeted measures including:

- an increase in the Cost of Living Allowance (COLA), the establishment of the low wage commission and revision of the national minimum wage and other allowances to address diverse societal challenges;
- investments in training and research and innovation, for employability, and to boost skills within the workforce such as the Training Pays Scheme, the Work Exposure Scheme, the Investing in Skills Scheme, the Access to Employment Scheme, and the VASTE Programme, the STEM Community Fund, student stipends, the Get Qualified Tax Credit Programme; and
- various gender equality initiatives including free childcare services and the equality mark certification for organisations which foster equality as part of their management values.

On 23 November 2023, the Employment Agencies Regulations (Subsidiary Legislation 452.130 of the Laws of Malta) were published to introduce a new licensing mechanism for Temping, Outsourcing and Recruitment Agencies in Malta with the aim of safeguarding the interests of all stakeholders and to uphold the integrity of the employment market for such agencies and employment conditions. These regulations aim



to ensure rigorous oversight and obligations for operations to be conducted in an orderly and accountable manner.

Additionally, on the fundamental right of workers to organise, the Department for Industrial and Employment Relations (DIER) operates in accordance with the Recognition of Trade Union Regulations (Subsidiary Legislation 452.112 of the Laws of Malta) to ensure that workers have the opportunity to form unions and attain recognition within their workplaces. These efforts are evident in the numerous exercises conducted by the department throughout the year.

It is apt to explain that the Employment Relations Board in Malta is a tri-partite entity. It consists of an independent chairperson, the Director General responsible for Employment and Industrial Relations (who also serves as Deputy Chairperson), four representatives each from employees and employers nominated by the Malta Council for Economic and Social Development, and three other individuals appointed by the Minister responsible for employment and industrial relations. The Board's main functions include making recommendations to the Minister on regulations pertaining to working conditions and providing advice on employment matters referred to it by the Minister. Typically, recommendations are the result of consensus among the parties on the Board and are incorporated into legislation. However, in cases where divergent perspectives arise among social partners, these are also conveyed to the Minister for consideration.

Whereas the Government takes note of the comment by CSOs on the need to update the Employment and Industrial Relations Act, the employment legislation is continuously updated to reflect the changing realities. In fact, several main legislative amendments were introduced over the past three years:

- Work-Life Balance for Parents and Carers Regulations (Subsidiary Legislation 452.125 of the Laws of Malta);
- Transparent and Predictable Working Conditions Regulations (Subsidiary Legislation 452.126 of the Laws of Malta);
- Digital Platform Delivery Wages Council Wage Regulation Order (Subsidiary Legislation 452.127 of the Laws of Malta);
- Employment Agencies Regulations (Subsidiary Legislation 452.130 of the Laws of Malta);
- National Minimum Wage National Standard Order (Subsidiary Legislation 452.131 of the Laws of Malta).

The Government takes note of the reference to 'Golden Passports' in this and other sections of the report. However, following the start of the judicial process, the Government will maintain its position that it is appropriate to refrain from commenting on this matter directly or indirectly at present, pending the decision of the Court of Justice of the European Union on its legislative framework on citizenship-by-investment.

### ***Judicial System***

Throughout the past years, Malta has implemented significant reforms to enhance the justice system in line with the recommendations of various EU and international partners. Legislative amendments were adopted with numerous other initiatives to maximise the efficiency and quality of the justice system. Since 2020, the number of members of the judiciary substantially increased by 35% with the recruitment for additional judges and magistrates to deal with the increased caseload.



Several initiatives have been undertaken to further address the shortcoming due to the length of proceedings such as through the creation of additional chambers to the Court of Appeal (Superior Jurisdiction) with the aim of expediting case resolution and alleviating backlog. Currently, work is ongoing to increase court room space for trials by jury; the setting-up of a specialised Commercial Court; and a reform of the Family Court. Changes are also expected in the system of committal proceedings to impose a time limit for the compilation of evidence period of one year.

In addition, work has been ongoing to facilitate the transition towards further digitalisation of the courts through the national Digital Justice Strategy (2022-2027) which sets out objectives to gradually re-design the business processes in the justice sector by means of a digital-by-default architecture whilst ensuring that all citizens and legal professionals continue to have effective access to justice and legal information irrespective of one's level of digital literacy.

## **2. Freedom of Association and Assembly**

The Government acknowledges the recognition of Malta's commitment to upholding the right to freedom of assembly. It is important to highlight that during the 2019 demonstrations referred to in the Report the presence of a substantial contingent of the Malta Police Force was strategically planned to ensure comprehensive oversight, balancing the imperative of public safety with the preservation of the rights of protesters.

The Government recognises the fundamental importance of Civil Society Organisations in a healthy and vibrant democracy and emphasises the pivotal role of the Office of the Commissioner for Voluntary Organisations (OCVO) as Malta's regulatory body. The **OCVO's mission** is to facilitate the socio-economic sector while promoting and upholding the governance standards of voluntary organisations. In pursuit of this mission, additional administrative procedures have been implemented to ensure robust governance and oversight over the Commissioner's powers. To this end, to provide the appropriate platform for civil society and advocacy group to fulfil their role, additional administrative processes were established to have more governance and controls on the use of the power of the Commissioner.

In 2024, the office launched a public consultation titled '*Bl-Oħla Dawl Libbist - The Reform of the Voluntary and Not for Profit Sector*' to strengthen the volunteering sector which was positively received. The inclusion of "Advocacy Groups" as a sub-category in the "Governance and Policy Interest" category was also notably welcomed. This initiative underscores the Government's commitment to providing a conducive platform for civil society and advocacy groups to fulfil their roles effectively.

## **3. Freedom of Expression and Freedom of the Media**

The Government takes note of the input noted under this section but wishes to clarify the following elements:

### ***Local Media Landscape***

Whilst recognising that both major Political Parties, each represented in Parliament, have been running their respective TV and radio stations for the past three decades, the local media landscape is not solely defined by such albeit their wide representation. Malta has 15 Print Media companies, 12 radio stations, 6 TV Stations, and 22 Electronic News websites registered in total, which are privately-owned commercial TV and radio stations without any political affiliations.

The **Broadcasting Authority**, the independent statutory body, that serves as both regulator and arbiter, ensures compliance with the Broadcasting Act (Chapter 350 of the Laws of Malta) and subsidiary legislation made thereunder. This includes mechanisms such as the Code for the Investigation and Determination of Complaints (Subsidiary Legislation 350.06 of the Laws of Malta) where third parties can lodge complaints prompting the broadcaster to address concerns. Should the broadcaster fail to respond adequately or if the complainant remains unsatisfied, recourse is available through the Broadcasting Authority's website. In addition, guided by the provisions of the Broadcasting Act and the Code for Investigating and Resolving Complaints and Requirements as to Standards and Practice applicable to News Bulletins and Current Affairs Programmes (Subsidiary Legislation 350.14 of the Laws of Malta), the Broadcasting Authority oversees complaints against both public service and private broadcasters.

**Political advertising** is prohibited under the Third Schedule of the Broadcasting Act. In case of any complaints in this regard, the aggrieved party maintains the right to seek redress through the judicial system, including access to the highest court in Malta, that is, the Constitutional Court.

On access to information, **Malta's Freedom of Information Act** (Chapter 496 of the Laws of Malta) empowers individuals to request information held by public authorities. This legislation ensures transparency and accountability within Government. The Act delineates specific grounds for refusal to access to information, thus ensuring a balance between on the one hand, the right to information and, on the other hand, other legitimate interests. In addition, should an applicant find himself/ herself aggrieved with the response or handling of his/ her request, the Act offers several avenues for recourse. Applicants can seek a decision from the Information and Data Protection Commissioner regarding the handling of his/ her information request by a public authority. Subsequently, decisions made by the Commissioner may be appealed before the Information and Data Protection Appeals Tribunal and decisions are subject to further appeal to the Court of Appeal. This mechanism provides a robust system of checks and balances to safeguard the effective exercise of the right to information as part of the broader freedom of expression.

### ***Strategic Lawsuits Against Public Participation***

On Strategic Lawsuits Against Public Participation (SLAPPs), it is pertinent to highlight that the Media and Defamation Act (Chapter 579 of the Laws of Malta) enacted in 2018, was already crafted with the aim of safeguarding freedom of expression and ensuring fair legal proceedings. Notable provisions of the Act include:

- The abolishment of criminal libel and the shift of the pending criminal libels to civil proceedings (Article 3);
- The prohibition from filing multiple actions on the same facts of substantially the same nature (Article 13);
- The prohibition of issuing precautionary interim measures whilst the case is still pending;
- The capping of damages to €11,640 for moral damages (Article 9) and in awarding damages the Court is bound to make an assessment as to gravity and extent of the defamation and the economic capacity of the defendant with due regard to the principle of proportionality (Article 11).

In addition, following the Report of the **Board of Public Inquiry on the assassination of Ms Daphne Caruana Galizia** dated 29 July 2021, the Government of Malta undertook a



series of comprehensive internal discussions to delve into these recommendations. In line with the recommendations, the Prime Minister appointed a Committee of Experts on Media on 11 January 2022, chaired by former Justice Michael Mallia, who also served as Chair of the Board of Public Inquiry. The committee comprises of individuals with extensive knowledge and experience in Malta's media industry and representative of the local media landscape.

The Government submitted draft legislative amendments to the Committee for consideration, addressing issues highlighted in the Public Inquiry recommendations and other pertinent matters. The Committee presented its report on 1 July 2022, following which the Government introduced new draft legislation in the House of Representatives on 4 October 2022, subsequently published in the Government Gazette on 10 October 2022, namely, the:

- Media Actors and Persons in Public Life (Establishment) Bill (Bill No. 17);
- Constitution of Malta (Amendment) Bill (Bill No. 18); and
- Protection of the Media and Journalists (Various Laws) (Amendment) Bill (Bill No. 19).

Responding to calls for wider consultation, the Government maintained the Bills at the First Reading stage in Parliament, while the Prime Minister tasked the Committee of Experts with initiating another consultation process. The Committee was granted a six-month extension until 30 June 2023 to conduct this broader public consultation. Upon receiving the updated report from the Committee on 24 July 2023, the Government promptly issued a press release informing of its receipt and tabled the report before the House of Representatives on 2 October 2023. During the ensuing debate, the Prime Minister announced the Government's intention to issue a white paper proposing media reform laws.

These efforts to enact legislation at the local level reflect the unwavering support to ensure coherence, consistency and full alignment with the EU's proposal for the recently adopted Anti-SLAPP Directive. Malta was one of the Member States that, from the very start of the negotiations including during negotiations with the European Parliament, strongly advocated for a broad material scope for the Directive. This proactive approach reflects Malta's commitment to ensuring that the Directive is as robust and effective as possible in safeguarding public participation and freedom of expression.

Finally, it is important to clarify that the Government's responsibility is bound by reasonable limits of competence. The Government cannot be held accountable for libel suits initiated outside the jurisdiction of Malta. More specifically, it is worth drawing a distinction between the Central Intelligence and Analysis Unit (CIAU) within the Malta Police Force (MPF) and the Committee for the Recommendation of Measures for the Protection of Journalists, other Media Actors and Persons in Public Life, which will be established following the enactment of the Bill No. 19 as, referred to above.

The Committee makes recommendations and coordinates the actions of the forces and service represented thereon on the following matters:

- a. to respond to any real and immediate risks of acts of violence against journalists, other media actors and person in public life;
- b. to decide upon measures beyond interim solutions in order to manage any risk encountered by journalists, other media actors and persons in public life;

- c. to draw up a security plan which shall be based, amongst other matters, on threat assessments which give due consideration to the levels of threat, risk and vulnerability, early warning systems and systems of rapid response;
- d. to provide the necessary protection for journalists and other media actors; and
- e. to provide the necessary protection for persons in public life.

On the other hand, the CIAU carries out assessments to determine the level of risk on the alleged victim/s in line with a detailed Standard Operating Procedure (SOP) entitled 'Managing and Responding to Threats to Life' first released in January 2023. The SOP provides for a number of precautionary measures to prevent administrative failures. Firstly, the SOP ensures a dual response by the MPF based on a threat assessment by the intelligence section coupled with a parallel traditional police investigation. Secondly, the SOP caters for a Rapid Response Mechanism and an Early Warning System.

### ***Daphne Caruana Galizia Case***

On the ongoing judicial process against the persons criminally responsible for the assassination of Ms Daphne Caruana Galizia, it should be highlighted that to date three persons have been sentenced by the Maltese Courts for their involvement in the murder. One person was imprisoned for 15 years, whilst the other two persons were handed down prison sentences lasting 40 years each. The alleged mastermind of the murder is currently awaiting the commencement of his trial by jury, whilst criminal proceedings are currently ongoing against two other persons for their role in procuring explosives which are suspected to have been used in the murder. It is also apt to recall that the alleged mastermind's assets have been frozen since the day he was charged with the alleged murder. The freezing order is still in place to date.

## **4. The Right to Non-Discrimination**

### ***LGBTIQ+ Rights***

Over the last decade, Malta has made significant strides on the equality front. The public perception for the LGBTIQ+ community in Malta is notably positive. Moreover, Malta has made significant progress in gender equality, ranking 13<sup>th</sup> in the EU Gender Equality Index.

The LGBTIQ+: Equality Strategy and Action Plan 2023-2027 further strengthens Malta's position in this regard, with the action plan itself aiding the Government to further acknowledge the different lived experiences of LGBTIQ+ persons and to better address remaining issues.

Furthermore, to retain the positive momentum on LGBTIQ+ rights, the Government also updated the Affirmation of Sexual Orientation, Gender Identity and Gender Expression Act (Chapter 567 of the Laws of Malta) with Act XIII of 2023 (concerning conversion practices) to facilitate prosecutions and increase legal clarity, it provided additional clarification on what constitutes the criminalised act of advertising conversion methods by adopting a new definition. A prosecution concerning conversion practices is underway. In addition, Malta is the only Member State in the European Union with a total ban on conversion practices in the broadest sense. On 14 May 2024, the Government of Malta presented the Gender Identity, The objects and reasons of this Bill are to provide for the legal recognition of non-binary genders in order that individuals are free to be identified on their official documents in accordance with their lived gender.



### ***Abortion***

While certain elements of conservatism persist, largely associated with an aging demographic, there has been a significant shift in dynamics. It is important to acknowledge that Malta, like any other nation, has ingrained cultural and social beliefs that hold sway in society. The Government respects these beliefs while also working towards greater inclusivity and understanding. Abortion is illegal under the Criminal Code (Chapter 9 of the Laws of Malta), but Government pushed forward amendments to ensure that a doctor can proceed with the cessation of pregnancy if the mother's life is at immediate risk or is gravely jeopardising her health.

### ***Hate Crime and Hate Speech***

In terms of hate crime and hate speech, the Malta Police Force ensures that its officers are exposed to related training during the Basic Training Course, during promotion courses but more importantly during its ongoing in-service training which is the Malta Police's continuous professional development training targeted mainly towards frontline officers. From a legislative front, Article 82A of the Criminal Code criminalizes incitement to racial hatred, whereas Article 83B of the Criminal Code establishes an aggravating circumstance when any offence is motivated by hate on the grounds of any protected characteristic.

### ***Gender Equality***

In 2022, Malta launched its the Gender Equality and Mainstreaming Strategy and Action Plan 2022-2027 supported by an Inter-Ministerial Committee. The public sector has been reinforced with administrative reforms for the elimination of bias when a person indicates their marital status and/or the gender by which they identify. Numerous private sector entities have followed suit. Guidelines on the recognition of sex, sexuality and gender were published in 2021 for guidance to Government departments and entities on the collection, use and amendment of name and/or gender information or gendered terminology in individual personal records or when communicating with service users.

The Equality Bill (Bill No. 96) and the Human Rights and Equality Commission Bill (Bill No. 97) were both presented in Parliament on 17 July 2019 but were not concluded due to disagreement with the Opposition on the proposed amendments. This is therefore the result of the democratic parliamentary process which could not be ignored. The Government intends to proceed with the legislative amendments in due course.

### ***Inclusivity***

In relation to persons with disabilities, whilst being subjected to pay for certain services, the Government offers a substantial amount of services for free or provides subsidies, grants or even tax rebates. Malta was also one of the 8 Member States participating in a pilot project testing the European Disability card and has held favourable positions for the introduction of this card at an EU level.

### ***Migration***

In relation to the various references to discrimination vis-à-vis migrants, it should be recalled that Malta always abided by its international obligations and carried out SAR activities in accordance with international law. Malta's SAR is 250,000 square kilometres, which is relatively large when compared to the country's entire surface area of 316 square kilometres. All cases of alleged distress within Malta's SAR zone are duly investigated by the Armed Forces of Malta, which is the only entity competent to determine if there is a case of distress, and if in the affirmative, the appropriate course of action to be taken.

Moreover, with reference to the deaths of migrants with COVID-19, it is of utmost importance to highlight that there were no such deaths. Migrants screened by the migrant health service did not even need hospital treatment and the alleged 400 deaths did not occur.. Indeed, Malta's overall COVID-19 death toll, according to the WHO, stands at 885, and hence the figure in the report is erroneous. A statement by the responsible medical officer is being attached in this regard.

In addition, due to COVID-19 uncertainties, restrictions were enforced to prevent cross contamination and outbreaks within the reception and detention facilities. Finally, it stands to reason that a lawyer, whether employed by a CSO or a private firm – should treat all clients equally when it comes to sharing their personal details. Exceptions may apply based on the principles of necessity and proportionality.

Whilst the Government acknowledges some delays by the International Protection Appeals Tribunal (IPAT) in taking decisions on appeals, it should be noted that the Tribunal is an independent body.

Finally, the referred incident stating that "migrants were paraded publicly" is erroneous. The migrants were dropped off at a location near the law courts and then escorted to court on foot since the road in which the law courts are located is pedestrian.

## **5. Rule of Law**

On the death of Ms Caruana Galizia and its aftermath, updates were already extensively provided in Section 3 of this report.

Regarding the statement that "[a]lthough many people were employed in the civil service, it was ineffective", the Government wishes to underline that public servants are appointed in line with the procedure enshrined in the Public Service Commission General Regulations (Subsidiary Legislation Const.01).

On the alleged failure to prosecute people with political influence, the Government wishes to highlight two points. Firstly, individuals, whether in the political sphere or otherwise, are prosecuted before the courts of laws when the prosecution has enough evidence to prove a case beyond reasonable doubt in line with the established burden of proof applicable in all democratic jurisdictions. Secondly, it is apt to highlight that the party currently in Government had immediately upon election in 2013 removed the applicability of prescription to the offence of bribery when committed by persons elected to political office and therefore a criminal action may be launched at any point in time against the alleged perpetrator.

As for the statement that "people having to pay to go to the beach", it is worth noting that beaches in Malta are predominantly public and there are only a few limited beaches which have been privatized for a definite period.

On the alleged lack of resources of the Financial Crimes Investigations Department (FCID) of the Malta Police Force (MPF), it is pertinent to highlight that the Department has undergone significant strengthening through increased human and financial resources. Between 2018 and 2023, there was an 81% growth in staff and a 260% rise in expenditure, enabling the department to effectively combat financial crimes including high-level offences. Strategic and continuous recruitment and the introduction of specialised allowances aim to attract and retain top talent. Officers possess diverse educational backgrounds, ensuring a comprehensive approach to investigations, bolstered by continuous training and international collaboration. Prioritising investigations based on the National Risk Assessment aligns resources with the most critical threats and risks.

Despite these improvements, complex investigations, particularly those related to corruption, may require extended timeframes due to challenges such as disclosure rules and legal representation



during suspect interviews. To address this, the FCID has adopted innovative techniques, including a follow-the-money approach to identify abnormal wealth accumulation, enabling charges of money laundering when corruption charges are not feasible. Collaboration with partner agencies like the Financial Intelligence and Analysis Unit (FIAU) and the use of specialized software such as IBM i2 and Chainalysis enhance investigative capabilities. To further bolster capabilities, the Malta Police Force is procuring additional cryptocurrency analytical and OSINT software. These efforts underscore a commitment to continuously enhance the FCID's effectiveness in combating financial crimes.

On the Ombudsman's recommendations, it should be further highlighted that according to the Governance Action on the on the Parliamentary Ombudsman's Annual Report issued by the Principal Permanent Secretary on 13 March 2024, 86.1% of Ombudsman cases received during 2022 having been closed.

**On the road project involving about EUR 1 million being investigated by the European Public Prosecutor Office (EPPO)**, the national authorities have refrained from making any comments, particularly considering that the investigation falls within the EPPO's competence.

Finally, on social benefits issue, it is pertinent to highlight that several individuals have been charged with a series of offences, including a former Government Member of Parliament who stands accused with a series of offences, including money laundering, fraud and organised crime. Police investigations have unearthed a total fraud in Severe Disability Assistance of approximately €5.1m, of which €1.1m have already been recovered by the respective Department. These refunds are the result of agreements reached between the Department and the alleged fraudsters or imposed by the Law Courts as part of the judgments delivered.

In relation to the mentioned incident in which migrant detainees set a building on fire and were subsequently transferred to a civil prison, it is important to underscore that the law applies universally and impartially to all individuals. Arson constitutes a serious criminal offense, and if found guilty, the perpetrator is held criminally responsible, regardless of his status or background.



# Estonia

## **Observations from the Estonian authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to the Republic of Estonia on 12-13 October 2023**

The Estonian Government consider the rule of law and fundamental rights to be the cornerstone principles in a democratic society. Their preservation and protection are of great importance. The Government therefore welcomes the work of the Fundamental Rights and Rule of Law Group (FRRL) and its efforts to emphasise and promote respect for these values in Member States of the European Union.

We understand that due to the methodology of the EESC FRRL's work the report reflects mainly the views and perceptions of civil society. Bearing that in mind, we would still like to provide a brief context or perspective for some of the comments made by civil society.

### **Fundamental rights related to the social partners**

*Short consultation period on the policy-making process* – the number of draft acts prepared in an expedited manner has been higher in recent years due to a number of factors. As mentioned in the report, the COVID-19 pandemic was one of them, but also the war in Ukraine and increased national security concerns have prompted a number of drafts to be prepared urgently. However, what most recently has impacted the perception of tight consultation periods, is the government's priority to decrease the state budget deficit, which has led to legislative amendments aimed at reducing the state's costs and increasing revenues. In autumn 2023, several draft acts related to the state budget, some of which had a significant impact on the business sector, were prepared urgently and without sufficient time for public consultation.

According to Estonian legislation the minimum consultation period for draft acts is fifteen working days, during which other ministries, stakeholders and the public can express their opinion on the draft. The Code of Good Public Engagement, however, foresees a standard period of four weeks as good practice. The Ministry of Justice recently analysed the consultation periods of draft acts. The data confirmed that for amendments directly linked to the adoption of the 2024 state budget the formal consultation period was significantly shorter than for drafts that were not directly linked to the budget (5 working days and fourteen working days, respectively). Therefore, concerns expressed by CSOs are justified. There are, however, specific reasons behind this phenomenon, and it cannot be considered a general shift in practice.

*Reasons for social partners' limited capacity* – the overall culture of trade unions is not very widespread in Estonia. Various reasons for that are already covered in the report as well. Concerning the reference made to the employers threatening employees against joining unions it should be noted that such threats are illegal under the Trade Unions Act. Violation of freedom of membership in a trade union is also punishable under the Penal Code.

Insufficient awareness of the right to freedom of association – we would like to inform FRRL that the Ministry of Economic Affairs and Communications is preparing an action plan for promoting social dialogue and collective bargaining. This action plan will include different activities that should, inter alia, help with promoting trade unions and collective agreements. The ministry will also continue to hold tripartite meetings with the participation of social partners and the minister in charge of the policy sector. The last tripartite meeting was held in December 2023.

### **Freedom of expression and freedom of the media**

Self-censorship in relation to a journalist's loyalty to their employer – it should be noted that loyalty to an employer cannot be considered as self-censorship in its true sense. Being loyal to an employer is rather inherent to all democratic countries. When working for a publication that supports certain worldviews, it is rather normal for a journalist to follow some basic principles of the publication without it being self-censorship.

Alleged SLAPP cases – regarding this statement, it should be noted that no strategic lawsuits against public participation (SLAPP) have been identified in Estonia. According to the respective SLAPP proposal and recommendations of the European Commission (initiated in April 2022), there are criteria that should be met to qualify the case as a SLAPP. No such cases were identified in courts during 2022-2023. There might be claims outside the court that from some aspect can be perceived as SLAPP-related by the civil society representatives. Due to the very general information in the report, we cannot comment specifically on the referred cases.

### **The right to non-discrimination**

Funding for CSOs – the state provides multi-annual financial support through the strategic partnership system to the CSOs working in the field of equal opportunities and gender equality. In 2022-2024 strategic partnership projects in this field are carried out with a total funding of 1.5 MEUR.

Complaints about the Equal Treatment Act – as there are no further explanations about the referred shortages, it is difficult to provide specific comments on these statements. Nevertheless, it should be noted that the current Equal Treatment Act (ETA) was adopted in 2008, i.e., the practice criticised in the second sentence – that the relevant CSOs had not been consulted when the act was drafted – is from approximately 15 years ago. Present practice is that relevant CSOs are always provided an opportunity to comment and make proposals to the draft law during the public consultation.

Lack of action plan in gender equality – we would like to inform FRRL that gender equality strategy is part of the national Welfare Development Plan. In 2023, the government adopted the Welfare Development Plan for 2023-2030, which outlines the main challenges and opportunities as well as courses of action for advancing gender equality and equal opportunities. The strategic goals for gender equality set out in the strategy include increasing economic equality between men and women, increasing gender balance in

decision-making processes, changing societal attitudes to value and support gender equality, strengthening institutional capacities to promote gender equality, enhancing sectoral law enforcement, and increasing cooperation with stakeholders and CSO-s and ensuring well-functioning advocacy. The development plan is implemented through four-year rolling programmes. The Welfare Development Plan 2023-2030 was developed through public consultations with women's rights organisations, relevant stakeholders and other civic society organisations.

### **The rule of law**

Equal access to the courts – the official working language of courts in the Republic of Estonia is Estonian. At the same time, the opportunity is guaranteed to protect the rights and go to court for those people who do not speak Estonian. It is possible to use interpreters in all courts in Estonia (in civil, criminal and administrative cases).

Shortage of judges – the Ministry of Justice shares concerns about the attractiveness of the judiciary profession and has taken legislative steps to address this issue. A process of amending the law has been initiated with the aim of making the role of a judge more flexible and appealing to younger generations of legal professionals. The intention is to amend the Courts Act to allow judges to work part-time (currently a very limited option) and engage in entrepreneurial activities, provided these activities align with judicial ethics and do not impede the administration of justice. Additionally, to mitigate the impact of judges retiring due to generational shifts, the Ministry of Justice has amended regulations allowing for the simultaneous presence of an outgoing judge and a new judge in smaller courts.

The ECN+ Directive and client confidentiality – in the latest version of the ECN+ Directive transposition draft, the confidentiality of the communication between the lawyer and the client is guaranteed without any exceptions. This means that any communication is protected, both in connection with the ongoing competition supervision procedure and outside of it, including information exchanged before the procedure in any form (including documents, correspondence, etc.). The bill contains a direct reference to the lawyer's professional secrecy stipulated in the Bar Association Act. The regulation of law office searches has also been specified – namely, such searches can only take place in accordance with the provisions of the Code of Criminal Procedure, which means the highest possible standard of fundamental rights protection in Estonian law.

# Latvia

## **Observations by the Latvian Government on the draft report of the European Economic and Social Committee's Fundamental Rights and Rule of Law Group on its visit to Latvia on 29-30 November 2023**

Latvia would like to thank the Fundamental Rights and Rule of Law Group of the European Economic and Social Committee (FRRL Group EESC) for its visit to Latvia and an engaging discussion with the Latvian state institutions. Latvia firmly believes that the EU is a union built on values with high standards of democracy, rule of law and fundamental rights and is committed to continue the work of further strengthening the rule of law. Latvia also believes that a regular exchange of views and good practices is valuable for strengthening the rule of law in the European Union.

### **1. Fundamental rights of the social partners**

As stated by the report with regard to **social dialogue**, participants faced challenges to achieving successful outcomes in negotiations and to highlighting the advantages of social dialogue to their members. According to participants, another major concern was the decreasing effectiveness of social dialogue. However, the Tripartite Cooperation Council meetings took place regularly also during the COVID-19 pandemic. Besides, the dialogue took place in other formats as well, where social partners were involved in an active role during the COVID-19 pandemic, for example, in the COVID-19 strategic management group.

Although, the report states that the Parliament had discontinued the practice of sending all draft labour laws to the Tripartite Cooperation Council, it must be noted that the draft laws related to labour rights were discussed with parties concerned, including with social dialogue partners, in the course of their development (before being sent to the Parliament). The discussions were led by the responsible ministry, and, afterwards, discussions took place on also at the Parliament with the parties concerned.

### **2. Freedom of association and freedom of assembly**

Latvia has no additional comments regarding the views expressed in the report.

### **3. Freedom of expression and media freedom**

Although the report states that fact-checking initiatives to counter fake news and **disinformation** were mainly handled by the professional media as an internal matter and there was no cohesive national approach for all media, Latvian Government would like to emphasize that since 2017, all media organizations have had the opportunity to receive state support for fact-checking projects, as well as for projects in other journalism genres.

As far as the Russian language content is concerned, in 2024, several discussions have taken place with the aim to reach the minority groups in Latvia by public media. The institution responsible for overseeing public media has indicated that by 2026, public media must address various minority groups in different minority languages, not only in Russian, while also maintaining content for minorities in Russian.

According to participants, violence against journalists was not a concern, but other challenges regarding freedom of expression existed in social media, namely a negative narrative aimed at diminishing trust in journalists' work. On 10.04.2024, the Ministry of Culture established a broad stakeholder working group with representatives from the media sector as well as the relevant ministries and state institutions to address journalists' safety issues and create an action plan in line with the European Commission and Council of Europe Recommendations. The plan is expected to be completed and submitted to the Cabinet by the end of 2024. The working group, consisting of 26 members, will meet in smaller configurations to cover specific problems facing journalists e.g. data protection, SLAPPs, legal assistance, online harassment, necessary improvements in the legislation etc.

#### **4. The right to non-discrimination**

On **gender equality**, the Istanbul Convention has been ratified and entered into force on 1 May 2024. As a result, various laws are being developed in accordance with the Convention.

Participants pointed out that Latvian individuals had faced discrimination on the job market due to a lack of proficiency in Russian, given the fact that a sizeable part of the population was Russian-speaking. In this connection, the impending **education reform** concerning the use of Russian language in schools marked a transition towards an education system centred in the State language, namely Latvian, within a few years. The Latvian authorities explained that the aim of this reform was to i) prevent social separation between the Latvian-speaking majority and the Russian-speaking minority, inherited from the Soviet period, ii) foster an inclusive society and iii) enhance labour market access. The authorities pointed out that national minorities would retain rights to learning the minorities' languages, and that the reform of 2018 had recently been found by the European Court of Human Rights (ECHR) to comply with human rights.

Although concerns were raised about the accessibility of polling stations and information for **people with disabilities** during the European elections, there is no reason to fear that the use of rights of the disabled persons will be restricted during the elections, as information on the accessibility of polling stations for people with disabilities is provided and, if necessary, they can choose a convenient polling station or apply for a vote at the voter's seat.

#### **5. The rule of law**

On the **justice system**, the Ministry of Justice has never interfered in the decision-making of judges. According to Article 1 of the Law "On Judicial Power", in the Republic of Latvia, independent judicial power exists alongside the legislative and the executive power. In administering the justice, judges shall be independent and subject solely to law. State institutions, public and political organisations, and other legal and natural persons have the obligation to respect and abide by the independence of the judiciary and the immunity of judges (the first part of Article 10 and the first part of Article 11 of the Law "On Judicial Power").

In response to various societal processes, the Ministry of Justice has initiated/provided proposals on specific necessary training topics.

Regarding the action strategy of the Council of Justice - the Council of Justice has set as one of the priorities of 2024 the approval of the concept of the transfer of administrative support functions of the judicial system from the executive power to the institutions of judicial power.

Taking into account the above, it is not correct to indicate in the text that the Ministry of Justice would have interfered with the judicial process. Certain statements of previous ministers of justice, which have caused discussions in the judiciary about the independence of the judiciary, cannot be generalized and defined as interference in judicial process, nor can they be considered a norm.

With regard to **legal professionals' conditions**, participants stressed that many positions for judges remained vacant and this shortage was attributed to the quality of legal education. However, the lack of judges cannot be explained by the quality of legal education. In addition, if the emphasis here is on the number of young specialists needed in the legal professions, which is decreasing in the labour market also due to the failure to pass the national unified lawyer's professional qualification exam, it is necessary to indicate not only judges, because lawyers are needed not only in courts, but also in various legal fields, for example in the prosecutor's office, as well as in the free legal professions.

It must be clarified that the "common law career exam" is not the procedure for selecting candidates for the position of judge. The procedure for the selection of judges was not changed due to unfilled judicial vacancies, but rather to ensure that highly qualified lawyers of impeccable reputation, with appropriate professional skills and personal qualities become judges. The requirements for candidates for the position of judge have not been lowered with the new selection procedure.

In 2023, the monthly salaries of court employees were increased by 16%, thus reducing staff turnover (for assistant judges, staff turnover was 11.27% in 2022, but already 8.88% in 2023).

It is not clear what is meant by consultations with "lawyers' associations", whether it is actually meant self-governing institutions of judges.



# The Netherlands

## **Observations from the Dutch authorities on the report of the ad hoc Fundamental Rights and Rule of Law Group of the European Economic and Social Committee on the country visit to the Netherlands**

We would like to thank the ad hoc group on Fundamental Rights and the Rule of Law (FRRL Group) of the European Economic and Social Committee (EESC) for the valuable time and effort they put into visiting the Netherlands. The EESC's FRRL Group provides an important forum for European civil society organisations to meet and share their assessment on the state of fundamental rights and the rule of law. The topics covered during the visit are essential for a well-functioning society and the well-being of its citizens. These rights cannot be taken for granted and should therefore be the subject of a continuous dialogue.

A large number of aspects related to the five main topics are covered in the report. We wish to particularly reflect on the following topics mentioned in the report.

### **Fundamental rights of social partners**

A strong social dialogue with solid social partners is of great importance. The Dutch 'polder-model' has a longstanding tradition and is strongly developed whereby social partners work together and with the government in the socio-economic field. This ensures more stable labour relations and socio-economic development. Overall, the Dutch government (Ministry of Social Affairs and Employment) recognises and gives attention to the challenges regarding the fundamental rights of the social partners presented in the report of the EESC's FRRL Group.

### **Freedom of association and freedom of assembly**

The Netherlands' Public Assemblies Act provides possibilities to restrict **the right to demonstrate**. However, the government acknowledges that, given the importance of the right to demonstrate as a fundamental right, the main objective is to facilitate assemblies: prohibiting or ending a demonstration is considered an absolute last resort. For each demonstration, the specific circumstances of the case are weighed up in order to make the right decisions that ultimately leads to a peaceful assembly. In this respect, it has been proven to be hard, if not sometimes impossible, for local authorities to facilitate demonstrations in an appropriate manner when the assembly does not follow the general procedural rules that are prescribed by the Public Assemblies Act in order to ensure the safety of participants and others. Still, the right to demonstrate requires careful consideration by local authorities in each specific case: the decision to restrict or even prohibit or end an assembly should never be taken lightly. In its letters of July and December 2023, the government provides a comprehensive response to the criticisms regarding, amongst other aspects, the evaluation of the Public Assemblies Act and the use of ID-checks during demonstrations<sup>14</sup>.

### **Freedom of expression and media freedom**

Journalists should be able to do their work **without the fear of intimidation**. The government has therefore stepped up efforts to protect journalists. Besides the *PersVeilig*

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<sup>14</sup> *Kamerstukken II 2022/23, 34 324, No 9 and Kamerstukken II 2023/24, 34 324, No 11.*

platform mentioned in the report, another example thereof is legislation criminalising ‘doxing’. It entered into force on 1 January 2024. With this law, the use of personal data for intimidating purposes is made punishable. It not only criminalises the doxing of journalists, but of all citizens. The law provides for higher possible penalties for the doxing of specific professionals, such as journalists. The report mentions the Public Prosecution Service’s wiretapping of a newspaper investigating the face-mask crisis during the COVID-19 pandemic. In the case at hand, the suspects were being wiretapped when journalists were present. The Public Prosecution Services has taken the incident very seriously and attaches great importance to press freedom and the right of protection of journalistic sources. It is currently reviewing its policies to assess whether these need to be improved.

### **The right to non-discrimination**

The Dutch government (Ministry of the Interior and Kingdom Relations) is working on increasing the visibility and accessibility of the **anti-discrimination agencies**. In January 2024, the anti-discrimination agencies started operating under the same name – *Discriminatie.nl* – and launched a campaign with a new website ([www.discriminatie.nl](http://www.discriminatie.nl)) and a freephone number (0800-0880). The government is preparing new legislation to strengthen the structure, financing and tasks of the anti-discrimination agencies. An outline will be available in the summer of 2024.

In addition, in January 2021, the Dutch police started a pilot project called the Expertise Centre for Tackling Discrimination-Police (*Expertise Centrum Aanpak Discriminatie-Politie*) (ECAD-P). In this pilot, national expertise will be developed to **strengthen the role of the police in the (criminal-law) approach to discrimination in society**. ‘Discrimination officers’ are part of this pilot. ECAD-P provides various forms of expertise to the police organisation. First of all, they provide operational support for handling discrimination cases and help the regional police forces to recognise and deal with reports. In addition, ECAD-P screens all registrations of reports in the police systems that contain keywords that may indicate a report of discrimination. ECAD-P is also committed to improving cooperation with, for example, the anti-discrimination facilities at municipalities.

There is great social outrage about **ethnic profiling** as a form of discrimination on the basis of race and nationality. Preventing and combating discrimination has the full attention of the government. In response to the Supreme Court’s ruling on the use of race and ethnicity in selection decisions in certain procedures of the Royal Military Police (KMar) regarding border security, the KMar has adjusted its working methods. The police have also looked, on their own initiative, at how lessons can be learned from the ruling and have therefore adjusted their working methods.

The government regrets that members of both Jewish and Muslim communities indicate that they fear for their safety. Every form of **hate speech and hate crime** is unacceptable. Jewish and Muslim communities as well as all other groups in our society should be able to live without fear. Contrary to what is stated in the report, there are laws to combat hate speech and hate crime in the Netherlands. Hate crime and hate speech are punishable by law through a number of legal provisions, such as Articles 137c and d of the Dutch Penal Code, supplemented by the Public Prosecutor’s guidelines for criminal proceedings. There is currently a bill in parliament that further makes the criminalisation of these offences more explicit. Nevertheless, the emphasis is on preventive measures to

combat hate speech and hate crime effectively with criminal law as a measure of last resort.

In addition, the government is committed to safeguarding the rights of **LGBTIQ+ people**. The terminology ‘hetero- or homosexual orientation’ in the General Equal Treatment Act (Awgb) and the Criminal Code (WvSr) will be changed to ‘sexual orientation’. This is stated in the bill that was sent to the House of Representatives by the government in February this year. The Awgb offers protection to people who are discriminated against. This amendment brings the Awgb and the WvSr into line with an earlier amendment to Article 1 of the Constitution. The WvSr is also being amended to add that discrimination on the basis of gender also includes discrimination on the basis of sexual characteristics, gender identity and gender expression. This is already stated in the Awgb and the WvSr is now being brought into line with this.

In the Netherlands, 2.4 million children and young people go to school every day (about 99.6% of all young people subject to compulsory education and qualification). They do so to learn and to meet each other. For more than ten thousand children, unfortunately, this does not apply. They do not go to school for a short or longer period for various reasons<sup>15</sup>. The reasons for not going to school are very diverse, sometimes the education is not suitable for the person, or something is going on in the young person’s life. **Education** in the Netherlands is becoming more inclusive. Together with a wide variety of partners, the government has established a vision for inclusive education in 2035. This vision is currently being developed and made more tangible. Furthermore, the government is taking steps to encourage pioneers to get started.

### **The rule of law**

The report mentions that the **quality of justice** is threatened by the disproportionate workload faced by judges and other judicial personnel as a result of budget cuts in recent years. There have not been budget cuts in recent years. Around ten years ago there were sizeable budgetary cuts, which at that time led to a shortage of judicial staff. As from 2023, the judiciary receives structural extra finance of EUR 155 million a year and 130-140 new candidate-judges are being trained to become a judge. In addition, in order to improve the working conditions of the judiciary and public prosecutors, an independent expert was appointed to propose recommendations. The expert organised several thematic sessions to which relevant stakeholders were invited. The thematic sessions touched upon topics such as how to increase the number of judges and judicial/supporting personnel, as well as innovation, working methods and digitalisation. The recommendations will be published this spring.

**Access to justice** not only strengthens the rule of law, but it also builds trust of citizens and businesses in the government. Therefore, it stands as one of the key priorities of the Dutch government to ensure and strengthen access to justice. The Dutch government considers access to justice to be broader than access to the courts. It encompasses access to information, access to advice and legal support, and access to a decision from a neutral body, such as a court. The government’s commitment is reflected in the national plan to strengthen access to justice presented to parliament in June 2023. The national plan

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<sup>15</sup> *Kamerstukken II, 2021/22, 26 695, No 138.*

includes ongoing efforts such as the national programme to renew the government-funded legal aid system as well as new measures to encourage the use of alternative dispute resolution and restorative justice, and measures to strengthen access to the courts.

Furthermore, the government greatly values **openness and transparency**. Granting access to information, proactively and upon request, is an important cornerstone of its policy. As from 2022, the government actively monitors in the Annual Report on Operational Management (*Jaarrapportage Bedrijfsvoering Rijk*) how many information requests under the Open Government Act (since 1 May 2022) were received by each ministry and whether they were processed within the statutory deadlines<sup>16</sup>. The 2022 report shows, as the report of the EESC's FRRL Group also states, that increasing penalty payments are being made by administrative bodies because of delays in processing information requests under the Open Government Act<sup>17</sup>. On a quarterly basis, data on penalty payments due to delays in processing requests are published<sup>18</sup>. However, the government does not recognise a trend of preferring to pay fines rather than act within statutory deadlines, but rather a situation of overload and administrative challenges.

The government is currently taking steps to address these challenges and accelerate the processing of requests. Towards this end, pilot projects were conducted in 2023 with the goal of gaining insight into what measures contribute to faster and better processing of information requests<sup>19</sup>. Furthermore, an implementation review (*invoeringstoets*) on the Open Government Act was conducted<sup>20</sup>. The review identified challenges faced by citizens, journalists and administrative bodies regarding the Act, as well as best practices. In addition, the external research agency formulated several recommendations on the identified challenges. Following the publication of the implementation review, a response by the Cabinet will follow in 2024 on measures to improve the implementation and enforceability of the Open Government Act. One of the goals of the measures to be announced is to ensure that requests are processed within the statutory deadlines.

As also stated in the report of the EESC's FRRL Group, the government is taking several measures to encourage an open government culture. For example, the oath of office for civil servants has been revised after 25 years. The new oath emphasises serving society and taking responsibility for an open government<sup>21</sup>. Moreover, the government has a programme that provides civil servants with practical tools and inspiring examples to put

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<sup>16</sup> *Kamerstukken II, 2022/23, 31 490, No 328.*

<sup>17</sup> From *Jaarrapportage Bedrijfsvoering Rijk 2022* (p. 68-69), available at: <https://open.overheid.nl/documenten/ronl-b46def6afb3da457fe5330739244a42c8126a324/pdf>.

<sup>18</sup> *Kamerstukken II, 2023/24, 32 802, No 82.*

<sup>19</sup> *Kamerstukken II, 2023/24, 32 802, No 80.*

<sup>20</sup> *Kamerstukken II, 2023/24, 32 802, No 80.*

<sup>21</sup> See the news item (in Dutch) at <https://www.rijksoverheid.nl/actueel/nieuws/2023/01/20/ambtseed-rijksambtenaren-wijzigt-meer-nadruk-op-werken-in-het-algemeen-belang-voor-onze-samenleving> and the official letter to Parliament in this matter (*Kamerstukken II 2022/23, 29 362, No 320*).

into practice the values of openness and transparency within an open government<sup>22</sup>. This contributes to a more trusted and open government.

During the EESC session, a participant called for more action to increase social-psychological and financial support for **whistleblowers**. It should be noted that since 1 September 2022, free psychosocial support for whistleblowers has been available from Victim Support Netherlands (*Slachtofferhulp Nederland*) after referral by the Whistleblowers Authority (*Huis voor klokkenluiders*). As of 1 February 2024, free legal assistance and/or mediation will be available for whistleblowers who require assistance due to a report of suspected wrongdoing. After referral by the Whistleblowers Authority, a whistleblower is assigned a lawyer or mediator through the Legal Aid Board (*Raad voor Rechtsbijstand*). Experiences with these facilities are evaluated to adjust the offering if necessary. The intention is that a broad range of support will ultimately be available to the whistleblower

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<sup>22</sup> See the website of the programme (in Dutch): <https://www.grenzeloossamenwerken.nl/ambtelijk-vakmanschap/gids-ambtelijk-vakmanschap/werken-vanuit-vertrouwen>.





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