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## INTRODUCTION

On the occasion of World Press Freedom Day, on May 3<sup>rd</sup> 2013, European Union (EU) High Representative Catherine Ashton released a declaration in which she stated: "The EU will continue to promote freedom of expression"<sup>1</sup>. This declaration reiterates a main concept in the Strategic Framework on Human Rights and Democracy<sup>2</sup>, adopted in June 2012: that the EU is an ambassador of human rights, and especially civil liberties<sup>3</sup>, in third countries.

The EU claims to be based on respect for human rights. And this is the basis from which it promotes human rights externally. Respect for human rights is a condition for countries to become EU Member States<sup>4</sup>; human rights are mentioned among the founding values of the Union<sup>5</sup>, in the EU Charter of Fundamental Rights<sup>6</sup>, and also in the European Convention on Human Rights<sup>7</sup>, to which the EU became a party in 2012.

<sup>1</sup> The Council of the European Union (2013). *Declaration by the High Representative, Catherine Ashton, on behalf of the European Union on the occasion of World Press Freedom Day, 3 May 2013*. Retrieved from:

[http://www.consilium.europa.eu/uedocs/cms\\_Data/docs/pressdata/en/cfsp/136985.pdf](http://www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/cfsp/136985.pdf)

<sup>2</sup> The Council of the European Union. (2012). *EU Strategic Framework and Action Plan on Human Rights and Democracy*. Retrieved from: [http://www.consilium.europa.eu/uedocs/cms\\_data/docs/pressdata/EN/foraff/131181.pdf](http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/EN/foraff/131181.pdf)

<sup>3</sup> Civil liberties are understood to encompass human rights which relate to civil participation in society. Civil liberties often refer to freedom of expression, of assembly, and of association.

<sup>4</sup> The European Commission (2013). *Conditions for membership*. Retrieved from:

[http://ec.europa.eu/enlargement/policy/conditions-membership/index\\_en.htm](http://ec.europa.eu/enlargement/policy/conditions-membership/index_en.htm)

<sup>5</sup> The European Union (2009). *Treaty of the European Union. Article 2*. Retrieved from: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:en:PDF>

All 47 Member States of the Council of Europe, an entirely separate institution from the EU, have signed the European Convention on Human Rights. And the Council of Europe describes itself as the continent's leading human rights organisation<sup>6</sup>.

Despite this emphasis, there are currently developments which contradict the concept that countries in Europe are models of the protection of human rights. Ordinary people and NGOs are being constrained from participating in democracy. It is urgent to address this threat to human rights and democracy in many European countries.

## DEFINING SHRINKING CIVIL SPACE

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### a. What is civil society?

To understand the concept of 'shrinking civil space', we must first establish a definition for civil society. Defining civil society is tricky: according to the European Commission (EU Commission), there is no universal definition<sup>7</sup>. The United Nations (UN)<sup>10</sup> states that civil society can be embodied in a great variety of actors, either organized groups or individual citizens. These can be trade unions, NGOs, community groups, faith-based organisations, and other groups or associations. Civil society is characterised by its independence (from state institutions and businesses), its voluntary basis, and the fact that it is not profit-driven<sup>11</sup>. According to the EU Commission<sup>12</sup>, civil society plays a role in defending people's voices and interests in the public arena, and also in providing services to society. Civil society shapes the public sphere by exercising people's rights to freedom of expression, association, and assembly<sup>13</sup>. Therefore, civil society is a crucial element in democratic governance: it enables discussion and expression of opinions on issues relevant to local citizens. It also amplifies people's voices as they address their political representatives on a continuous basis, whereas elections only take place once every few years.

### b. Space for civil society is shrinking

'Shrinking civil space' is the process through which the established rights of civil society actors are being restricted or denied. This is happening in states where a shift towards democracy has taken place in the past. (States where civil society is weak because of a lack of democratic culture also have problems with the full participation of civil society. However, there, the space for civil society cannot be described as 'shrinking' from a previously larger space.)

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<sup>6</sup> The European Union (2009). Charter of Fundamental Rights. Retrieved from:

[http://www.europarl.europa.eu/charter/pdf/text\\_en.pdf](http://www.europarl.europa.eu/charter/pdf/text_en.pdf)

<sup>7</sup> The Council of Europe (2010). European Convention on Human Rights. Retrieved from:

[http://www.echr.coe.int/Documents/Convention\\_ENG.pdf](http://www.echr.coe.int/Documents/Convention_ENG.pdf)

<sup>8</sup> <http://www.coe.int/aboutCoe/index.asp?page=quisommesnous&l=en>

<sup>9</sup> The European Commission (2012). Civil society, General overview. Retrieved from: [http://ec.europa.eu/transparency/civil\\_society/general\\_overview\\_en.htm#5](http://ec.europa.eu/transparency/civil_society/general_overview_en.htm#5)

<sup>10</sup> UNRISD, Mario Pianta (2005). UN World Summits and Civil Society, The State of the Art. Civil Society and Social Movements Programme Paper Number 18. P.5: "Civil society is a complex social arena, with individuals and groups organized in various forms of associations and networks in order to express their views and fulfil their interests. They could constitute anything from a global advocacy movement down to a village self-help group"

<sup>11</sup> World Bank (2013). Defining Civil Society. « The term civil society to refer to the wide array of **non-governmental and not-for-profit organizations** that have a presence in public life, expressing the interests and values of their members or others, based on ethical, cultural, political, scientific, religious or philanthropic considerations. Civil Society Organizations (CSOs) therefore refer to a wide array of organizations: community groups, non-governmental organizations (NGOs), labor unions, indigenous groups, charitable organizations, faith-based organizations, professional associations, and foundations". Retrieved from:

<http://web.worldbank.org/WBSITE/EXTERNAL/TOPICS/CSO/0,,contentMDK:20101499-menuPK:244752-pagePK:220503-piPK:220476-theSitePK:228717,00.html>

<sup>12</sup> European Commission (2001). White paper on European Governance. P.11. Retrieved from: [http://europa.eu/legislation\\_summaries/institutional\\_affairs/decisionmaking\\_process/110109\\_en.htm](http://europa.eu/legislation_summaries/institutional_affairs/decisionmaking_process/110109_en.htm)

<sup>13</sup> Those civil liberties are enshrined in the European Convention on Human Rights, Art. 10 and 11.

## THE DIFFERENT FACES OF SHRINKING CIVIL SPACE

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Over the past few years, there have been a number of crackdowns on civil liberties in some Member States of the European Union. Some examples are described below.

### a. Police violence threatening freedom of assembly

An alarming increase in excessive use of force by police during demonstrations has been observed in some EU Member States. Excessive use of force refers to a way of policing demonstrations which goes beyond what is accepted in international law and best practice. According to Article 3 of the UN Code of Conduct for Law Enforcement Officials, the police “may use force only when strictly necessary and to the extent required for the performance of their duty”<sup>16</sup>. The Code emphasizes that resorting to the use of force should be exceptional: a police agent may only resort to it to prevent crime, but never in an unnecessarily violent manner.

Despite this clear definition, many demonstrators have had to cope with police violence when they were legitimately using their freedom of assembly in Member States of the EU. In 2011 and in 2012, anti-austerity demonstrators in Member States such as Spain, Greece, or Romania<sup>17</sup> were faced with police violence when they were demonstrating peacefully: demonstrations were dispersed and some people badly injured. Excessive use of police force represents a crackdown on freedom of assembly and of expression. Violence scares people. Introducing a factor that instils fear can prevent citizens from joining demonstrations and exercising their freedoms of assembly and expression.

#### Excessive use of force during demonstrations: the use of rubber bullets

Amnesty International<sup>14</sup> calls rubber bullets “less-lethal weapons”, for they are not made out of lead, as are more standard bullets, but still have the potential to be lethal. Use of rubber bullets, along with the way in which they are used, is a clear indication of police violence during many demonstrations in EU Member States. In November 2012, during a 24-hour general strike against austerity in Madrid, police resorted to firing rubber bullets<sup>15</sup> against protesters, among whom 22 were injured.

### b. Political interference in freedom of expression and media freedom

According to the Copenhagen criteria<sup>18</sup>, accession to the EU requires the prospective Member State to comply with political criteria for democracy and respect for human rights. Surprisingly enough, for some EU Member States which already went through this process, such as Poland or Hungary, this compliance is currently not verified, and freedom of speech and of the media is politically controlled.

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<sup>14</sup> Amnesty International (2012). *Policing demonstrations in the European Union*. P.8. Retrieved from: <http://www.amnesty.org/fr/library/asset/EUR01/022/2012/en/1e06df7d-6878-40e0-8e82-d07605e9a6e9/eur010222012en.pdf>

<sup>15</sup> F. Govan. (2012). Police fire rubber bullets as Spain protests against austerity. The Telegraph. Retrieved from : <http://www.telegraph.co.uk/finance/financialcrisis/9679013/Police-fire-rubber-bullets-as-Spain-protests-against-austerity.html>

<sup>16</sup> UN GA (1979). Code of Conduct for Law Enforcement Officials. Retrieved from: <http://www.ohchr.org/Documents/ProfessionalInterest/codeofconduct.pdf>

<sup>17</sup> Amnesty International (2012). *Policing demonstrations in the European Union*. Retrieved from: <http://www.amnesty.org/fr/library/asset/EUR01/022/2012/en/1e06df7d-6878-40e0-8e82-d07605e9a6e9/eur010222012en.pdf>

<sup>18</sup> European Commission (2012). Accession criteria. Retrieved from: [http://ec.europa.eu/enlargement/policy/glossary/terms/accession-criteria\\_en.htm](http://ec.europa.eu/enlargement/policy/glossary/terms/accession-criteria_en.htm)

Hungary has been attracting a lot of criticism since its Prime Minister Viktor Orban and his government brought into force a new constitution in January 2012. Both the EU and the Council of Europe (CoE) were then concerned about freedom of expression, the independence of the media, and the rule of law. The originally restrictive version of the new constitution has since been amended, but concerns still remain regarding restriction of freedom of expression and freedom of the media.

**Poland: Broad criminalization of defamation restricts freedom of expression**

Despite the fact that Poland has a history of political dissidence during the Cold War, its current laws include restrictive measures on freedom of expression. One Polish law makes defamation of public figures a criminal offence<sup>19</sup>. For instance, the editor of a website was found guilty for having published satirical material about the Polish president and sentenced to 10 months' community service<sup>20</sup>. Despite regular judgements<sup>1</sup> by the European Court of Justice, which finds Poland guilty of restricting freedom of expression, this restrictive law remains.

When, in March 2013, a fourth constitutional amendment was passed in Hungary, the Council of Europe Venice Commission<sup>21</sup> released an opinion<sup>22</sup> stating that this amendment made limitation of the freedom of expression possible. One article of the new constitution introduces a possibility of restricting freedom to express opinions that violate the "dignity of the Hungarian nation". According to the Venice Commission, this gives an excessively broad scope to possible restrictions.

These concerns pushed the European institutions to take action. The CoE charged the Venice Commission to release an opinion<sup>23</sup> on the fourth constitutional amendment. The opinion confirmed concerns over this amendment restricting freedom of expression. Despite this, the Parliamentary Assembly of the Council of Europe (PACE) rejected the opening of a monitoring procedure on Hungary during its plenary session in June 2013.<sup>24</sup>

And the EU also acted on concerns, with the Commission launching two infringement procedures against Hungary in 2012 and declaring in April 2013<sup>25</sup> that it was conducting a legal analysis in order to determine whether a third infringement procedure was to be launched. (No other statements have been issued by the Commission at the time of writing.)

**c. When freedom of expression restricts freedom of expression**

When some use their freedom of expression to broadcast hate speech, others are constrained by fear from expressing their own opinions freely. Hate speech includes "all forms of expression which spread, incite, promote or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance."<sup>26</sup> In the past few years,

<sup>19</sup> M.H.Migalski (2012). Parliamentary question on criminal liability for defamation under Article 212 of the Polish Criminal Code. Retrieved from: <http://www.europarl.europa.eu/sides/getDoc.do?type=WQ&reference=E-2012-008096&language=EN>

<sup>20</sup> Amnesty International (2013). The State of the World's Human Rights. Pp.214. Retrieved from: [http://files.amnesty.org/air13/AmnestyInternational\\_AnnualReport2013\\_complete\\_en.pdf](http://files.amnesty.org/air13/AmnestyInternational_AnnualReport2013_complete_en.pdf)

<sup>21</sup> The Venice Commission, or the European Commission for Democracy through Law, is an advisory body of the Council of Europe on constitutional matters. Composed of legal experts in the field, the Venice Commission aims at providing legal advice to Council of Europe Member States regarding their alignment with the Council's standards.

<sup>22</sup> European Commission for Democracy through Law (Venice Commission). (2013). Opinion on the Fourth Amendment to the fundamental law of Hungary. Retrieved from: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)012-e)

<sup>23</sup> European Commission for Democracy through Law (Venice Commission). (2013). Opinion on the Fourth Amendment to the fundamental law of Hungary. Retrieved from: [http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2013\)012-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2013)012-e)

<sup>24</sup> Council of Europe. (2013). Hungary : PACE decides not to open a monitoring procedure. Retrieved from : [http://assembly.coe.int/ASP/NewsManager/EMB\\_NewsManagerView.asp?ID=8881&L=2](http://assembly.coe.int/ASP/NewsManager/EMB_NewsManagerView.asp?ID=8881&L=2)

<sup>25</sup> V. Reding (2013). Hungary and the Rule of Law - Statement of the European Commission in the Plenary Debate of the European Parliament. Spokespersons' service. Retrieved from: [http://europa.eu/rapid/press-release\\_SPEECH-13-324\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-324_en.htm)

<sup>26</sup> Anne Weber. (2009). *Manual on hate speech*. Council of Europe Publishing. p.3. Retrieved from: <http://book.coe.int/ftp/3342.pdf>

intolerance and hate speech have been increasing in Europe<sup>27</sup>, and more and more minorities are being stigmatized.

In Hungary, anti-Semitism is quite vocal: in November 2012, Hungarian Member of Parliament Marton Gyongyosi asked authorities to produce a list of Jewish people representing a “national security risk”<sup>28</sup>. On July 2<sup>nd</sup>, French MEP Marine Le Pen lost her parliamentary immunity for having compared the prayer of Muslims in the street to Nazi occupation<sup>29</sup>. In Greece, the far-right movement Golden Dawn, which is associated with armed groups, is involved in many attacks against immigrants, LGBT (lesbian, gay, bisexual, and transgender) people, and left-wing activists<sup>30</sup>. They do not hide their affiliation to neo-Nazism, and they are now the third largest party in Greece.

By broadcasting racist and intolerant ideas about minorities, hate speech creates a violent climate around them. Because the target groups are often discriminated against or even attacked as a result of hate speech, being who they are and expressing their voice in society becomes not only difficult, but also dangerous.

## WHAT SHOULD EUROPE AND EUROPEANS DO?

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### a. European institutions need to be consistent regarding human rights

European institutions should be more consistent and less flexible in their approach to human rights in Europe. Human rights, and specifically civil liberties, are held up to be core values of both the EU and the CoE. If a Member State does not respect them, this should trigger sanctions.

- ✓ EU: The European Commission, Member States, and Council of the European Union (EU Council of Ministers) should more actively sanction any Member State restricting its citizens’ rights. For instance, after the European Commission launched two infringement procedures<sup>31</sup> against Hungary, which did not trigger any change in the protection of human rights, and is considering a third one, the Commission should suggest to the EU Council of Ministers that it resort to the next step: Article 7 TEU<sup>32</sup>. Article 7 is a procedure that could potentially lead to the suspension of a Member State’s voting rights in the EU Council of Ministers. A third of the EU Member States or the EU Commission could propose such a suspension of a Member State’s voting rights to the Council of Ministers, which would then determine whether there is a serious breach of the values of Article 2 TEU and whether there should be a suspension of voting rights.
- ✓ Council of Europe: the (CoE) is based on values such as the rule of law, democracy, and respect for human rights. Member States

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<sup>27</sup> Council of Europe, European Commission against Racism and Intolerance (2012). Annual Report on ECRI’s Activities. P.3. Retrieved from: [http://www.coe.int/t/dghl/monitoring/ecri/activities/Annual\\_Reports/Annual%20report%202011.pdf](http://www.coe.int/t/dghl/monitoring/ecri/activities/Annual_Reports/Annual%20report%202011.pdf)

<sup>28</sup> The Economist (2013). The world Jewish congress comes to Budapest. Retrieved from: <http://www.economist.com/blogs/easternapproaches/2013/05/anti-semitism-hungary>

<sup>29</sup> EurActiv. (2013). Marine Le Pen loses immunity as MEP in racism case. Retrieved from : <http://www.euractiv.com/justice/marine-le-pen-loses-immunity-mep-news-529044>

<sup>30</sup> J. Roos (2012). Golden Dawn and the deafening silence of Europe . *Statewatchjournal*. Vol 23, no. 1. March 2013.

<sup>31</sup> European Commission (2013). Hungary and the Rule of Law - Statement of the European Commission in the Plenary Debate of the European Parliament. Retrieved from: [http://europa.eu/rapid/press-release\\_SPEECH-13-324\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-13-324_en.htm)

<sup>32</sup> The Treaty of the European Union (TEU, 1992) constitutes one of the two treaties ruling the European Union; the other being the Treaty on the Functioning of the European Union. See: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:C:2010:083:0013:0046:EN:PDF>

which commit themselves to be part of the CoE, should push other Member States which have made the same commitment, to live up to it. Although the proposal to open a monitoring procedure with Hungary was not accepted by PACE last June, QCEA welcomes the fact that it was the first time that members of PACE brought a Member State in front of the assembly to request a monitoring procedure<sup>33</sup>. As the resolution that was passed on June 25<sup>th</sup> by PACE advises<sup>34</sup>, CoE Member States should follow closely developments of the Hungarian constitution and act to protect human rights if those developments do not show indications of alignment with the Council of Europe's standards.

#### **b. European institutions should publicly denounce the reduction of civil space in Europe**

The European institutions should denounce abuses loudly and clearly. They should not remain silent on violations within their own Member States:

- ✓ No comments have been voiced by the Commission or the European Parliament about the excessive use of force by police during many demonstrations in the Member States of the EU. In contrast, the Parliamentary Assembly of the CoE has shown concerns about police violence<sup>35</sup>. Both the CoE and the EU should give the issue of excessive use of force against demonstrators the attention it deserves. These human rights violations should be publicly and loudly denounced: the negative impact denunciation could have on a Member State's image might encourage it to stop police violence, or at least investigate it in order to bring justice to its victims. This is the best European institutions can do in the absence of possible legal action to hold Member States accountable for police violence. Indeed, the International UN Code of Conduct for Law Enforcement Officials is not binding on parties. In addition, the European Court of Human Rights (ECHR) does not have the competence to judge a Member State on its own initiative. It can only start legal proceedings against a state if it receives a complaint, from an individual or a state party to the European Convention on Human Rights.
- ✓ Hate speech must be stemmed. In February 2013, Nils Muižnieks, Council of Europe Commissioner for Human Rights denounced racist violence in Greece<sup>36</sup>; the CoE also funds a 'No Hate Speech Movement' campaign<sup>37</sup>. QCEA welcomes steps taken by the EU institutions, such as the Parliament suspending MEP Marine Le Pen's parliamentary immunity, which makes her prosecution for hate speech possible. However, given the seriousness of the situation in some Member States, such as in Greece where a growing far-right movement openly affiliates itself with Nazism, the EU must denounce intolerant behaviour much more loudly. The European Parliament should organize a debate or campaign on hate speech and freedom of expression, to remind European citizens that hate speech was one of the factors of the escalation of violence during

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<sup>33</sup> Council of Europe (2013). Interview with Mrs. Kerstin Lundgren. Retrieved from:

<http://www.youtube.com/watch?v=fm7GTJ00R9w&feature=youtu.be>

<sup>34</sup> PACE (25/06/2013). Request for the opening of a monitoring procedure in respect of Hungary. Retrieved from:

<http://assembly.coe.int/ASP/Doc/XrefViewPDF.asp?FileID=19933&Language=EN>

<sup>35</sup> PACE (2013). Popular protest and challenges to freedom of assembly, media and speech. Retrieved from:

<http://assembly.coe.int/ASP/XRef/X2H-DW-XSL.asp?fileid=19955&lang=en>

<sup>36</sup> Council of Europe (2013). Nils Muiznieks : Racist violence is a threat to Greece's democracy. Retrieved from :

<http://www.humanrightseurope.org/2013/02/nils-muiznieks-racist-violence-is-a-real-threat-to-greeces-democracy/>

<sup>37</sup> Council of Europe (2012). No hate speech movement webpage. <http://www.nohatespeechmovement.org/>

the Second World War. It is the EU's responsibility, given the Nobel Peace Prize it received last year, to keep reminding its citizens of the importance of tolerance.

### c. What can the ordinary citizen do?

Institutions have a role to play when it comes to protecting civil space and discourse, and so does the ordinary citizen. In fact, individuals' actions often have more leverage on society than anything else. We, who uphold the value of democracy, must be willing to take action to protect the democratic governance of others throughout the EU and in CoE Member States.

- ✓ Firstly, ordinary citizens experiencing the fear instilled by police violence during demonstrations should remain peaceful. By answering police violence with violence, protesters put themselves into the same illegality as excessive use of police force. Committing themselves to a peaceful way of demonstrating, on the contrary, highlights very clearly whose rights are violated, and by whom.
- ✓ Secondly, laws restricting freedom of expression, as in Hungary or Poland, should not be tacitly accepted. Just as conscientious objectors defy laws requiring them to bear arms in times of war, citizens who vocalise their opinions, even if they are faced with legal sentences for it, contribute to things changing over time. It is through citizens speaking truth to power and resisting unjust laws that change will be achieved.
- ✓ Thirdly, we should join the resistance to hate speech. We can do this by responding to hate speech when we hear it, non-violently challenging it and explaining why it is dangerous and discriminatory. Anti-hate speech actions can be found in things as simple as conversations that we have with one another, in blogs we may be writing or reading, in the education we give to children we are raising.
- ✓ Lastly, one valuable element in a democracy is access to one's representative. You could help protect European citizens deprived of their freedom of expression by the fear that is being instilled through police violence, legal sentences, or hate crimes, by writing to your MEP or MP. Ask them to raise awareness on those issues in the national parliament, the Parliamentary Assembly of the CoE, and the EU Parliament. Take advantage of the upcoming European Parliament elections in 2014 - ask candidates to commit themselves to the promotion of democracy and civil rights.

*"Never doubt that a small group of thoughtful, committed people can change the world. Indeed, it is the only thing that ever has."*

*Anthropologist Margaret Mead*

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