

2023 Rule of Law Report - targeted stakeholder consultation

Submission by ILGA-Europe and organisations Bilitis (Bulgaria), LSVD (Germany), LGBT Ireland (Ireland), Háttér Társaság (Hungary), KPH & Atlas of Hate (Poland), ACCEPT Romania (Romania), Legebitra (Slovenia), and FELGTBI+ (Spain).

ILGA-Europe are an independent, international LGBTI rights non-governmental umbrella organisation bringing together over 600 organisations from 54 countries in Europe and Central Asia. We are part of the wider international ILGA organisation, but ILGA-Europe were established as a separate region of ILGA and an independent legal entity in 1996. ILGA itself was created in 1978. <https://www.ilga-europe.org/who-we-are/what-ilga-europe>

Contents

Horizontal developments.....	1
Bulgaria	2
Germany.....	4
Hungary.....	6
Ireland	12
Poland	13
Romania	18
Slovenia.....	22
Spain.....	24

Horizontal developments

The developments encompassed in this submission point to systematic attacks on the fundamental rights of LGBTI people enabled by the weakening of rule of law and democratic structures. We have kept our inputs relevant to the content asked for by the consultation, and therefore we have not included all fundamental rights violations against LGBTI people, or all restrictions experienced by LGBTI civil society in the respective countries. We have only included them where there is a clear link to the issues of rule of law contained in the consultation.

In 2022 we continued to see the manipulation of judicial processes to attempt to erode the human rights of LGBTI people and their access to justice. Harassment and intimidation of LGBTI people and human rights defenders via the courts continued in a number of countries. Particularly in Poland, the Prosecutor General being also the Minister of Justice has resulted in the misuse of the prosecutor's office to repeatedly appeal verdicts in favour of LGBTI defendants, and the use of prosecutors to intimidate LGBTI people undergoing judicial processes, or the outcome of said processes. In a couple of countries, we also saw politicians attempting to discredit and delegitimise the rulings of courts when the rulings did not align with their political preferences.

In addition, we saw that in countries where the independence of the media has been eroded, there were consistent smear campaigns and negative narratives against LGBTI people, often under the guise of combating so-called "LGBT ideology" or "gender ideology". Smear campaigns are often deployed ahead of elections or anti-LGBT referenda, in which LGBTI people are used as a scapegoat to distract people from government failings, creating fear among society, and against which the government proposes to defend the nation from, in order to win votes. This leads to an environment in which violence and discrimination is enabled, and in which laws violating the fundamental rights of LGBTI people are proposed and often adopted. For example, smear campaigns in Hungary ahead of the national election and referendum on the anti-LGBT amendments of the Child Protection Act, resulted in a significant increase in hate crime and hate speech at the beginning of 2022. The European Commission referred the latter law to the CJEU on 15 July 2022, for breaching a number of EU laws.

Issues related to civic space shifted more towards legislative proposals or policy practices which restrict the functioning of and funding of civil society organisations, such as laws and draft laws banning LGBTI content in the public space, and an attempt in one country to ban foreign funding of civil society organisations, among others. However, smear campaigns, restrictions to the right to freedom of assembly, vandalism of LGBTI themed projects and flags and LGBTI-phobic campaigns continued in a number of countries, and hate crimes against LGBTI people often are not sufficiently investigated. A number of EU countries still do not have hate crime legislation with sexual orientation, gender identity or sex characteristics as aggravating grounds. In some countries which do have such legal protection, it is often not implemented properly by police, prosecutors or even Ombudspersons.

Bulgaria

IV. Other institutional issues related to checks and balances

D. The enabling framework for civil society

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

[Update since last year] On 24 June, the Sofia City Court [fined](#) former presidential candidate and neo-fascist party leader, Boyan Rasate, 3000 leva (about 1533 euro) for last year’s anti-LGBT attack. Rasate was acquitted with regard to causing bodily harm. Last October, he [stormed](#) into the Rainbow Hub with ten others, punched staff member Gloriya Filipova in the face, and destroyed the furniture and electronics. Local [civil society](#), politicians in Bulgaria and Bulgarian [MEPs](#), and the EU LGBTI Intergroup firmly [condemned](#) the attack back then. The weak judgement [drove](#) activists to the street to call for justice for the victim and the whole LGBTI community.

Hate speech by politicians continued to be a serious issue. In July, outgoing Prime Minister Kiril Petkov used homophobic language in a social media post, which he later deleted due to criticism. The Prosecutor’s Office [presented](#) a proposal for legislation that would sanction hate speech, including by MPs. The proposal does not include sexual orientation, gender identity or sex characteristics as protected grounds. ECRI’s country [report](#), published in October, called on Bulgaria to include sexual orientation and gender identity in legislation that criminalises hate crimes and hate speech, and to monitor anti-LGBTI hate crimes.

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

On 27 October a new draft anti-foreign agent law was submitted to parliament by the nationalist political party Vazrazhdane (Revival). The draft law is entitled "[Foreign Agents Registration Act](#)" and is a second attempt to create a such a legal framework in Bulgaria, and clearly inspired by the Russian anti-foreign agent laws. The draft law is similar to one passed in Hungary in 2017 and which on June 18, 2020, the [Court of Justice of the European Union found](#) “discriminatory and unjustified”. In its ruling, the CJEU found that “the restrictions imposed by Hungary on the financing of civil organisations by persons established outside that Member State do not comply with EU law”. One of the articles of the law regulates the scope of the Draft law as applicable to:

1. public dissemination of information through mass media;
2. carrying out explanatory, educational, informational campaigns, political campaigning and other campaigns;
3. provision of social, consumer or other services freely or by virtue of a law or other regulatory act, as well as in any other non-profit activity for private or public benefit;
4. implementation of projects aimed at or affecting specific social groups in the society and financed from external sources.

The last provision directly targets the work of NGOs working with vulnerable groups, including LGBTI persons, migrants and refugees, Roma people and other marginalized groups. Articles 4 and 5 define the persons liable under this law, both legal and natural persons. As *“natural persons associated with foreign agents are considered the founders, managers, participants or employees of organizations designated as foreign agents”*, which is a direct attack on the entire civil society sector and more specifically an attack on activists, including LGBTI activists as one of the most visible and recognizable groups in the civil society.

Germany

I. Justice System

A. Independence

Independence/autonomy of the prosecution service

Germany has deficits in the prosecution and punishment of hate crimes. The police and prosecution offices are not sufficiently able to adequately record motives and motivations; the courts don't adequately take them into account in their sentences. Moreover, the statistical recording system does not fully record hate crimes and usually only does so when there is a connection to extremist-oriented perpetrators. Cases of racist abuse and assaults by the police were repeatedly documented. LGBTIQ* people repeatedly report experiences of belittlement and blame shifting by the police, which discourage LGBTIQ* from reporting acts of violence. LGBTI civil society recommends that:

- Special responsibilities for hate crimes be established in the public prosecutor's offices and police forces.
- Independent complaints bodies be set up at federal and state level to investigate police misconduct.
- A federal-state programme against anti-LGBTIQ* violence be initiated, which includes targeted measures for prevention and training for the police and judiciary, the appointment of contact persons for the concerns of LGBTIQ* in the police with appropriate equipment, tasks and powers, the creation of independent complaints offices as well as measures for target group-sensitive victim support.
- Hate crime on all grounds must be fully reflected in the statistics, differentiated according to the groups affected, even if there is no connection to organised right-wing extremism.
- Racism, LGBTI-phobia and other forms of misanthropy are investigated and documented throughout the entire chain of investigation: police, prosecution, courts.

III. Media Freedom and Pluralism

B. Safeguards against government or political interference and transparency and concentration of media ownership

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

Some private media engaged in transphobic narratives this year. This includes far right and conservative media houses/publishers alike and has been increasing over the past year. The likely

reason are the German government's plans to implement a self-determination law for trans*, inter* and nonbinary people.

C. Framework for journalists' protection

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

On 14 May 2022 LGBTI media outlet queer.de won a [SLAPP lawsuit](#) levied against them by religious sex education organisation Teenstar. Queer.de and LSVD Saxony were sued in June 2019 by Teenstar after they wrote articles exposing teaching materials of Teenstar which [claim](#) being LGBT can be cured. Due to the financial risk, LSVD Saxony decided to issue a cease-and-desist declaration, but queer.de fought the case for 2.5 years. On 8 December 2021 the district court of Cologne rejected Teenstar's lawsuit as "unfounded" in the main proceedings. This decision became final in May 2022.

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

Covid-19 measures have to some regard been discriminatory towards LGBTI people. [Some restrictions](#) only allowed people to see their close relatives, e.g. parents or spouse, but not their close friends. LGBTI people often don't have relatives who they're close to, but instead have a family of choice who they were not allowed to meet. In addition, LGBTI people often face discrimination and violence from their families of origin.

Hungary

I. Justice System

A. Independence

Independence/autonomy of the prosecution service

The prosecution service often fails to carry out its duty to initiate public interest procedures to ensure that (administrative) authorities act in line with the applicable laws. In particular, the prosecution service has the power to call on public bodies to revoke unlawful administrative decisions and initiate court proceedings if the public bodies decline to do so [Act CLXIII of 2011 on the prosecution service, Sections 29. (2) and 26. (4)]. In 2020 the Budapest Government County Office transferred dozens of cases of transgender persons requesting legal gender recognition to local registrars, who later rejected them. These procedures had been initiated before May 2020 when legal gender recognition was still allowed. Courts found the rejections unlawful [in dozens of cases](#). Two applicants who did not take their cases to court at the time of the rejection, requested the prosecution service to call on the registrars to revoke their decisions that they issued ultra vires. In one case, the prosecution service called on the local registrar in 2021 to revoke their decision, but did not initiate judicial proceedings after its request was declined (District Prosecution Service of Szombathely, case no. T.K.1214/2021/5.). In 2022 the chief prosecution service agreed with the district prosecution service for not taking any further action in the case (Vas County Chief Prosecution Service, case no. T.K. 2601/2022/2-I). In 2022 one more applicant submitted the same request, but the chief prosecution service refused to take any action in the case after it was transferred to them by the district prosecution service (Metropolitan Chief Prosecution Service, case no. T.K. 2096/2022). They claimed the petition was not submitted within the deadline: the prosecution service can reject the petition if it was submitted more than a year after the challenged decision had become final and binding.

In two similar cases the applicants requested the prosecution service to call on the Budapest Government County Office to revoke their decision: in these cases their legal gender recognition applications were rejected and after the failed delivery of the decision they could not pursue remedy. Both petitions were rejected by the chief prosecution service after the requests were transferred to them by the district prosecution service claiming the petitions were not submitted by the deadline (Metropolitan Chief Prosecution Service, case nos. T. K. 6193/2022 and T.K. 4249/2022).

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

On 1 February the Metropolitan Court of Appeal [changed](#) the first instance verdict in the case between Labrisz Lesbian Association and Magyar Nemzet, ruling that the newspaper did not damage the reputation of Labrisz when it labelled them paedophiles. In its oral reasoning the court referred to the speech of Prime Minister Viktor Orbán, from 14 January, as justification, namely that the Prime Minister also sees a connection between homosexuality and paedophilia, and the author of the impugned article supported that with “scientific evidence”. Labrisz launched an appeal before the Curia, which upheld the second instance court’s decision. Labrisz submitted a constitutional complaint against the judgement. The case is pending.

C. Efficiency of the justice system

Length of proceedings

The Constitutional Court has no deadline for adjudicating constitutional complaints or abstract review petitions submitted by those with standing, and the procedures take unreasonably long. Even where there is a deadline (constitutional reviews in concrete cases initiated by lower level courts), the deadlines are not kept. For example, according to Article 24(2) *b*) of the Fundamental Law, the Court should decide on the constitutionality of a legislative provision within 90 days if the review is initiated by an ordinary judge in a concrete case pending before them. In the case III/02647/2021 concerning the ban of legal gender recognition for trans and intersex people, the deadline for the Court's decision was 23 September 2021, but no decision has been issued, the case was put on the agenda of the Court only in late November 2022. The other constitutional complaints challenging the ban on legal gender recognition (case nos. IV/00948/2020, IV/01154/2020, IV/01155/2020, IV/02001/2020) where there is no deadline required by law, have been pending at the Court for over 32 months. In comparison, in cases where the interest of the government is a prompt decision, the Court decides in a very speedy way. For instance, in December 2022 the Court delivered a decision in a case where the petition for an abstract review had been submitted in early September 2022. The petition related to abolishing a preferential taxation scheme, which triggered harsh criticism and nation-wide demonstrations.

III. Media Freedom and Pluralism

A. Media authorities and bodies

Measures taken to ensure the independence, enforcement powers and adequacy of resources (financial, human and technical) of media regulatory authorities and bodies

The Media Council in several cases reached out to its foreign counterparts with requests to proceed against service providers registered in another EU member state. Háttér Society knows about six procedures and continues to monitor the practice with the periodical use of freedom of information requests. The files of the four closed cases were received as a result of a freedom of information request submitted by Lakmusz, a fact-checking website (the analysis of Lakmusz is available [here](#), Háttér's analysis of the impact of the anti-LGBT amendments of the "child protection" law is available [here](#)).

There is no publicly available information on the outcome of proceedings initiated before the Dutch media authority. On 17 August the Hungarian media regulator [launched an investigation](#) into Netflix show "Jurassic World Camp Cretaceous" for violating the anti-LGBTI law due to two female characters kissing, following a number of complaints from the public. On 29 September, the media regulator also received a complaint against Baymax! on Disney+, as supposedly a robot is encouraging a boy to ask another boy out and in the opinion of the Hungarian authority, it should have been offered only for children above 12 (instead of its original classification of 9+).

C. Framework for journalists' protection

Access to information and public documents (incl. transparency authorities where they exist, procedures, costs/fees, timeframes, administrative/judicial review of decisions, execution of decisions by public authorities, possible obstacles related to the classification of information)

In March 2021 information was leaked that the Prime Minister's Office urgently requested local governments to submit a list of actions taken to counter so-called "LGBTQI propaganda". In August,

Háttér filed a public interest data request with the Prime Minister's Office, asking it to send all the documents it received from the municipalities through the government offices. In its brief response, the ministry claimed that the requested documents serve as the basis for a further future decision, and therefore refused to release them. Subsequently, Háttér filed a lawsuit against the Prime Minister's Office, asking the court to oblige it to release the requested data. The defence of the Prime Minister's Office consisted only in the fact that the data prepared for internal use may even contain freer wording, and their disclosure could therefore harm the employees' right to work free from external influence. The first instance court [ruled](#) in favour of Háttér, however, the Prime Minister's Office appealed (case no. 40.P.22.648/2022/13). In December the Metropolitan Court of Appeal upheld the first instance judgement: according to the court, the Prime Minister's Office did not intend the requested data for any decision-preparation purpose, the correspondence sent to the Prime Minister's March 2021 inquiry "does not contain more than, different from, opinions, evaluations, blanket statements, or anything similar". The court ordered the Prime Minister's Office to release the requested data within only 3 working days, which have passed and the documents have not been received by Háttér (case no. 2.Pf.20.579/2022/4.).

[Lawsuits \(incl. SLAPPs - strategic lawsuits against public participation\) and convictions against journalists \(incl. defamation cases\) and measures taken to safeguard against manifestly unfounded and abusive lawsuits](#)

On 8 April, the National Election Commission (NVB) delivered a series of decisions declaring the campaign calling for invalid votes on the April referendum ballots illegal and imposing high fines on 16 CSOs. The decisions argue that while voters do have the option to consciously cast an invalid vote, campaigning for such an invalid vote is an abuse of rights. In [decision no 324/2022](#) NVB imposed a fine of 3 million HUF (c. 8,000 EUR) on Háttér Society and in [decision no. 325/2022](#) a fine also of 3 million HUF (c. 8,000 EUR) on Amnesty International Hungary. In [decision no. 327/2022](#) NVB imposed a fine of 176,400 HUF (c. 500 EUR) on 16 CSOs each who - allegedly - also campaigned for an invalid vote. The list of CSOs fined: Amnesty International Hungary, Háttér Society, Artemisszió Foundation, Rainbow Mission Foundation / Budapest Pride, Labrisz Lesbian Association, Hungarian Asexual Community, Hungarian Helsinki Committee, Atlasz LGBTQ Sports Association, PATENT Association, Ökotárs Foundation, noÁr mi vagyunk!, Prizma Transgender Association, Szimpozion LGBT Youth Association, Rainbow Families Foundation, Hungarian Civil Liberties Union, and Transvanilla Transgender Association. Three of the fined CSOs (Patent, Atlasz, Artemisszió) did not in fact join the campaign. In [decision no. 328/2022](#) NVB also found the campaign website to also be unlawful on the same grounds, but no fine was imposed. In [decision no 329/2022](#) NVB also found a post on the website of the Hungarian Civil Liberties Union calling for an invalid vote illegal on the same grounds. On 11 April all affected organizations challenged the decisions at the Curia (highest regular court), which had three days to decide. On 13 April the Curia [rejected](#) to review the appeal brought by Hatter Society, based on a legal technicality, and on 15 April the Curia ruled the other fines unlawful. Háttér Society and Amnesty International Hungary submitted a constitutional complaint to the Constitutional Court which on 19 April declared the complaints [inadmissible](#). The case is currently pending before the European Court of Human Rights (case no. 43901/22).

IV. Other institutional issues related to checks and balances

B. Independent authorities

[Independence, resources, capacity and powers of national human rights institutions \('NHRIs'\), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions](#)

On 27 April the Commissioner for Human Rights' status was [demoted](#) from "A" to "B" by GANHRI with reference to the lack of effective engagement with the human rights of vulnerable groups, among them LGBTI people. On 1 December 2020, the Parliament adopted legislation to abolish the Equal Treatment Authority (Act no. CXXVII of 2020), Hungary's most important equality body established in 2005. In recent years the Equal Treatment Authority was one of the last public bodies standing up for the rights of LGBTQI people in Hungary. From 1 January 2021, the tasks of the Equal Treatment Authority were taken over by the Commissioner for Fundamental Rights (CFR). While the law requires that the equal opportunity related tasks of CFR are carried out by a separate directorate (Equal Treatment Directorate) within the Office of the CFR, no director has been appointed for over 24 months now.

C. Accessibility and judicial review of administrative decisions

[Follow-up by the public administration and State institutions to final \(national/supranational\) court decisions, as well as available remedies in case of non-implementation](#)

In April 2022 the Ministry of Justice [confirmed](#) that same-sex marriages conducted abroad are not recognised in Hungary, because it would be against the public order, and since these marriages are not valid, they cannot serve as the basis for family member status for immigration purposes either, not even among persons with citizenship of countries that do recognize same sex marriage. This contravenes the 2018 CJEU judgment in the Coman Case (C-673/16) by which was recognized that the term "spouse" includes same-sex spouses under EU freedom of movement laws, and therefore EU Member States' national authorities should recognize the right of residence of the spouse of an EU citizen in a same-sex marriage.

In June 2018, in a case launched by a transgender refugee from Iran, the Constitutional Court found that there was a constitutional omission because Hungary has no procedure for legal gender recognition for transgender people who are not Hungarian citizens, but lawfully reside in the country permanently. The Court gave a deadline of 31 December 2018 for the government to adopt new legislation (6/2018. (VI. 27.) CC decision). No such legislation has been adopted to date, and in May 2020, the Parliament adopted legislation that banned legal gender recognition for Hungarian citizens as well. The same person also turned to the ECtHR, which also sided with the applicant arguing that the lack of such procedure infringes on the right to respect for private life (Art. 8) of the applicant ([Rana v. Hungary](#), no. 40888/17). The just satisfaction was paid to the applicant, but he still has to live with official documents that are not in line with his gender identity, no legislation has been passed to remedy his situation. After extensive litigation, the Budapest Government County Office started to proceed in the cases that had been submitted prior to the adoption of the law banning legal gender recognition in line with Constitutional Court Decision 11/2021. (IV. 7.). For the overview of these procedures see: <https://en.hatter.hu/what-we-do/legal-aid/significant-cases/article-33>

IV. Other institutional issues related to checks and balances

D. The enabling framework for civil society

[Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil](#)

society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

In the months leading up to the national elections of 3 April, the government announced that they would hold a referendum on the anti-LGBT amendments of the child protection law on the same day. Council of Europe Commissioner for Human Rights, Dunja Mijatović, [condemned](#) this as instrumentalization of the human rights of LGBTI people. The questions of the referendum [were](#) deliberately leading and in bad faith, encouraging people to vote “no” which would be in favour of the anti-LGBT amendments.

On 14 January, Viktor Orbán [said on national radio](#) “Homosexuality may also turn into paedophilia, there is much debate over this.” This was during months of anti-LGBT rhetoric from government officials and media leading up to the referendum.

LGBTI and other human rights CSOs campaigned for voters to invalidate their votes on the referendum. This tactic proved successful, with around 32% of the ballots cast being invalid (21% of those eligible to vote) and 33% of those eligible to vote not showing up / not casting a ballot – so a total of 54% helping to create an invalid result, with 41% voting the way the government wanted them to. The Hungarian Fundamental Law requires 50% of the votes to be valid for a referendum to be valid, therefore the referendum was declared invalid. Notably there was no majority in favour of the government line for any of the four referendum questions. On 4 April, Fidesz in the European Parliament sent an email to all MEPs, falsely stating that the referendum result was valid and the majority voted in favour of the government line. The National Elections Commission imposed high fines on the CSOs who campaigned (see under section III.C. above). This can further contribute to the silencing of civil society as most organisations and (informal) groups would not have the means to pay such fines. The differing outcomes of the appeals against the fines erode predictability and foreseeability, and ultimately undermine legal certainty that is central to the rule of law.

Act CXC of 2011 on national public education was one of the amended laws, and “content that is pornographic or that depicts sexuality as having a purpose in itself or that depicts or propagates divergence from self-identity corresponding to sex at birth, sex change or homosexuality” was outlawed. Furthermore, the National Public Education Act - as amended - authorises the minister responsible for education (currently the Minister for Interior) to issue a decree which designates the state organ maintaining the registry of experts and civil society organisations that may hold sex education classes in institutions of public education. It authorises the minister to regulate in a decree the exact conditions of registration. However, no such decree has been issued as of January 3, 2023. As a result, currently no civil society organisation may hold sex education classes in institutions of public education.

E. Initiatives to foster a rule of law culture

Other

On 15 July the European Commission [referred](#) Hungary to the CJEU due to amendments adopted in June 2021 to its child protection law, which discriminate against LGBTI people. Háttér Society has [reported](#) that the amendments have already had a severe impact on LGBTI people in Hungary, as

media service providers, bookshops, libraries, schools, and other actors covered by the law have begun to implement it voluntarily, in fear of sanctions. The discriminatory amendments and government campaigning around them have also resulted in a stark increase in hate crime against LGBTI people, and the amendments also leave LGBTI people and organisations at risk of arbitrary legal proceedings.

Furthermore, in December the European Commission [referred](#) to this law as one of the examples in which Hungary does not fulfil the horizontal enabling condition on compliance with the Charter of Fundamental Rights in the implementation of certain specific objectives of three cohesion programmes. If Hungary continues to not comply, the Commission will not be able to reimburse related expenditure.

In 2012 the Human Rights Roundtable aimed at fostering dialogue with civil society was set up with thematic working groups on both women's and LGBT persons' human rights. However, there has been no call for civil society organisations to join the Roundtable since 2012, and the request of Transvanilla Transgender Association to join was rejected. There have been no meetings of the LGBT Working Group since April 2021, although member organisations have requested meetings several times. The duty to allow time for public consultation is often circumvented, and the working groups were not consulted either in the past years on any restrictive legislative development.

Ireland

I. Justice System

A. Independence

Independence/autonomy of the prosecution service

Ireland currently does not have a law dealing with hate crimes. However, the Dáil (Parliament) is currently considering a draft bill. LGBTI civil society would like to see this passed, enacted and commenced as soon as possible. They would also like to see additional measures introduced to improve hate crime reporting, police training, victim support and hate crime prevention.

B. Quality of justice

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

Cost is a key barrier to justice in Ireland (see findings from last year's rule of law report). [According to](#) the President of the High Court "Ireland ranks among the highest-cost jurisdictions internationally for civil litigation" (2020). Not only do applicants incur their own legal fees, but they also run the risk of incurring the other side too. Public interest cases are not being pursued because of this fear. While some free legal aid is provided by the Legal Aid Board, the waiting lists are long, and the means test thresholds are set too low ([PILA](#), 2010). In 2022, a dedicated LGBT Free Legal Advice Clinic was set up on a trial basis to improve access to justice for LGBT people in Ireland. LGBTI civil society would like to see additional resources provided to this service to ensure that it can be sustained and expanded.

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence-based policy-making, stakeholders'[1]/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process [1] This includes also the consultation of social partners

The level at which LGBTI organisations are included in policymaking varies by Department, Minister, and issue. LGBTI civil society would like to see greater engagement on some key issues, including LGBTI family rights, hate crime and a ban on conversion practices.

D. The enabling framework for civil society

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

The enabling framework for LGBTI civil society in Ireland is inhibited by online hate and a lack of funding. Some LGBTI activists have been subjected to sustained abuse online. In addition, civil society organisations are underfunded and under-resourced. The funding that is provided is often restrictive and, in some cases, doesn't meet the needs of organisations or the communities they serve.

Poland

I. Justice System

A. Independence

Independence/autonomy of the prosecution service

In April 2022 the prosecutor's office [joined](#) a civil case brought against Bart Staszewski by the commune of Tuszów for his activism [against](#) their anti-LGBT resolution. Bart regards this as an intimidation attempt. In June, Minister of Justice and Prosecutor General Zbigniew Ziobro reportedly [sent](#) a prosecutor to the home of Jakub Kwieciński and Dawid Mycek, right before the final hearing of the Supreme Administrative Court of their case on the recognition of their marriage conducted abroad in Spain, which they were seeking to get legally recognised in Poland. The couple regard this as an intimidation attempt.

On 2 March 2021, three activists facing trial for 'offending religious feelings' for painting a rainbow halo over an image of the Virgin Mary in 2019 were acquitted of charges by Judge Agnieszka Warchoń. An appeal was launched against the judgement by Ziobro, and the defendants were acquitted on 12 January 2022. Despite this verdict being final, the Deputy Justice Minister, Marcin Romanowski, has [announced](#) they intend to use the extraordinary complaint to appeal again. Romanowski also publicly [opposed](#) the verdict of the Court of Ostrołęka in January 2022 which acquitted the Atlas of Hate defendants from one of the SLAPP trials (see more in section on SLAPPs), saying that the court was being "ideological".

In June Ziobro [announced](#) he would ask the prosecutor's office to get involved with cases of conservative people being sanctioned under the University of Adam Mickiewicz's new anti-discrimination policy and asked the university to withdraw or change its new equality policy as it uses the term "gender identity" (which is in fact an internationally recognised human rights term).

In September, Ziobro [requested](#) the Supreme Court to consider that in addition to their parents, trans people should also sue their children and spouse when they want to access legal gender recognition. Civil society considers this as yet another attack on trans rights. Civil society has also observed throughout the year an increased presence of prosecution delegates in cases related to legal gender recognition, interpreting it as politically motivated and having a chilling effect both on judges and parties involved.

On 27 January 2022, during the trial of a person who was arrested during the August 2020 violent arrests of LGBTI protestors, a police officer [revealed](#) that police had been given the order to "detain all LGBT-labelled people, regardless of how they behaved", proving the politicised motivation of the arrests and the breach of the right of LGBTI people to publicly assemble. The Polish Ombudsperson published a [report](#) after investigating the arrests, which identified degrading treatment, bordering on inhumane treatment in some cases.

Independence of the Bar (chamber/association of lawyers) and of lawyers

In July it was [discovered](#) that the driver of the homophobic vans referred to in our previous submissions to this report, is a legal adviser. These vans are driven around cities broadcasting slogans warning that the "LGBT lobby wants to teach children" and include calls to "stop paedophilia", with a logo showing a crossed-out rainbow flag.

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

On 22 June, Minister of Justice Ziobro publicly [criticised](#) the judgement of the Supreme Administrative Court which had the previous day upheld the annulment of four resolutions against so-called “LGBT ideology” adopted by the councils of the municipalities of Serniki, Klwów, Istebna and the City Council in Osiek.

The Equal Signs Federation which works locally for LGBTI rights noticed that there are some worrying practices at a local court in Słupsk when it comes to legal gender recognition cases. After a short period of successful and fast processing, the situation started to change and all the cases started to be referred to the same neo-judge. Civil society has suspicions that the designation of cases has been deliberately changed to be processed by this judge and since then all the legal gender recognition cases have been stuck without further developments.

III. Media Freedom and Pluralism

B. Safeguards against government or political interference and transparency and concentration of media ownership

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

Many media outlets continued to spread hate speech, misinformation and fear about LGBTI people in 2022, including misinformation spread by politicians, under the guise of combating so-called “LGBT ideology” or “gender ideology”. One media outlet even included a special [pamphlet](#) dedicated to the “threats related to LGBT ideology”. In May, a TVP journalist published a recording showing him [breaking](#) the LGBT flag that hung next to the Polish flag, and then told TVP viewers about it. The National Broadcasting Union [decided](#) not to take action. In August the prosecutor’s office [decided](#) not to act on complaints brought against the same journalist for hate speech against LGBTI people online.

On 1 February 2022, [leaked emails](#) of Mariusz Chłopik, informal advisor to Mateusz Morawiecki, revealed that the Polish government was [coordinating](#) a hate campaign against LGBTI people from March 2019, having found two celebrities to partake in the campaign, and looking for more. This proves the direct government involvement in anti-LGBT smear campaigns in the media.

After three years of legal battle, the Warsaw District Court [ordered](#) the Polish National Television to pay a fine and issue an apology for slandering the LGBT community in a prime time reporting in 2019. The Court affirmed that anti-LGBT content is incompatible with media ethics and reminded of the media’s role to build social awareness.

C. Framework for journalists’ protection

Lawsuits (incl. SLAPPs - strategic lawsuits against public participation) and convictions against journalists (incl. defamation cases) and measures taken to safeguard against manifestly unfounded and abusive lawsuits

A SLAPP case was [brought](#) by Kaja Godek against LGBTI and women's rights activist Monika "Pacyfka" Tichy in May 2021, for shouting in a protest about how Kaja Godek does not help disabled children in Poland, whilst she calls for banning abortion. Tichy used insulting words against Godek and her organisation. Godek sued Tichy for defamation and insult, and demanded Tichy pay 5.000 PLN (~1.200 EUR) to her anti-choice foundation. The amount is double Tichy's monthly social benefit for an unemployed mother of a child with disability, which is her only income. The first hearing took place in February 2022, and on 14 June 2022 Tichy was found guilty of defamation. The judge asked her to pay 1000 PLN to the Red Cross, and 9000 PLN to cover the court costs and Godek's legal costs. The court costs and Godek's legal costs were covered by KPH's "Frontline Defenders Fund. KPH also paid for Tichy's lawyers.

The SLAPP cases against the creators of the Atlas of Hate, an online map tracking anti-LGBT resolutions, continued this year. In October 2022 one municipality dropped its lawsuit, and in December the District Courts of two municipalities dismissed the respective lawsuits. This further highlights the baselessness of the lawsuits and that their main aim is intimidation. Background: the authors of the [Atlas of Hate](#), an online map launched in 2019 that tracks which municipalities have adopted anti-LGBT resolutions, are facing 7 court cases, represented by far-right organisation Ordo Iuris. In all of these cases the activists are charged with defamation for sharing facts about the anti-LGBT resolutions. Atlas of Hate won its first case in December 2021. Given the high costs, professional and personal burdens brought about by the cases, and the fact that so far the activists have not lost any cases or complaints, it is clear these cases are designed to silence and intimidate them from pursuing their activism and holding the powerful to account.

IV. Other institutional issues related to checks and balances

B. Independent authorities

Independence, resources, capacity and powers of national human rights institutions ('NHRIs'), of ombudsman institutions if different from NHRIs, of equality bodies if different from NHRIs and of supreme audit institutions

The new Human Rights Commissioner, Marcin Wiącek, has showed his support for the LGBT community on several occasions. On the other hand, he dismissed one of the vice directors in the office, Hanna Machińska, who was actively engaged in Rainbow Night and cases related to human rights defenders. Polish civil society expressed their concern at this decision.

D. The enabling framework for civil society

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

Twice in 2022, President Duda vetoed controversial bills (Lex Czarnek & 2.0) aiming to amend the Education Law to give more governmental control over educational institutions and content. Minister

Czarnek is looking at submitting a third such bill. Related to this, lists of CSOs [were being drawn up](#) that designated various human rights CSOs, including LGBTI ones, as “harmful to children”.

On 29 October, Minister of Education Czarnek [called](#) principals allowing Rainbow Friday to take place “irresponsible”. The Ombudsman for Children, Mikołaj Pawlak, called for penalties against LGBTI+ and women’s rights organisations, who did not register on the Sex Offender Register, [suggesting](#) that they can be paedophiles. In October he sent a letter to LGBTI organisation KPH, delivered to their offices by two police officers, asking them to check whether any of their employees are in the register of sex offenders. Since KPH does not work with children, they regard this request as politically motivated, and the use of police as an intimidation method. KPH’s attorneys analysed whether KPH actually is one of the kinds of organisations listed in the law (e.g. working on education, with children etc) and concluded that they are not, since they do not organise any educational activities with minors. The police brought KPH’s Director in for questioning, and while he was being interrogated a police officer attempted to file charges against him. Luckily one of KPH’s attorneys was present and managed to stop this. The police do not to know how to treat the case as the charges are not adequate.

On 23 November LGBTI activist Ali Kopacz was [arrested](#) for organising a protest against the transphobic policies of his university. He was convicted for leading a protest by a summary judgment (without trial).

Polish Ministers continued to use discriminatory speech against LGBTI people this year. For example, Przemysław Czarnek, Minister of Science and Higher Education [stated](#) numerous times that so-called “LGBT ideology” is destructive; Kaczyński continued to [attack](#) LGBT people, particularly trans people, in his political speeches; President Duda also used [speech](#) discriminatory against LGBTI people by talking about the importance of the traditional conservative family, among others.

Various acts of vandalism against rainbow flags or symbols took place again this year in Poland.

[Organisation of financial support for civil society organisations and human rights defenders \(e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding\)](#)

The EU Common Provisions Regulation requires effective mechanisms to be in place to ensure compliance of EU fund planning, implementation and evaluation with the Charter of Fundamental Rights, and the principle of non-discrimination. It specifically states that members of the monitoring committees should include “relevant bodies representing civil society, such as environmental partners, non-governmental organisations, and bodies responsible for promoting social inclusion, fundamental rights, rights of persons with disabilities, gender equality and non-discrimination.” However, this autumn, Ordo Iuris - an organisation which actively works against sexual and reproductive rights, gender equality and fundamental rights of women and LGBTI people - was pre-selected in Poland as a member of the ESF+ monitoring committee and selected as a member of two monitoring committees of programmes financed under the Cohesion Fund: [European Funds for Smart Economy 2021-2027](#) and [European Funds for Digital Development 2021–2027](#), for the thematic groups on fundamental rights.

The President of Ordo Iuris, Jerzy Kwasniewski also sits on the board of the Confederation of Non-Governmental Initiatives of the Republic (Związek Stowarzyszeń Konfederacja Inicjatyw Pozarządowych Rzeczypospolitej, KIPR). The President of KIPR, Paweł Kwaśniak, coordinated the anti-

LGBT Family Charters, and testified as a witness against the Atlas of Hate in one of the SLAPP lawsuits brought by local authorities and supported by Ordo Iuris (see more under section III. C. above). KIPR has been elected to the following EU funds monitoring committees: [European Funds for Infrastructure, Climate and Environment 2021-2027](#); [European Funds for Eastern Poland 2021-2027](#); [European Funds for Digital Development 2021–2027](#); [Technical Assistance for European Funds 2021-2027](#); [Regional Operational Program Podlaskie](#).

E. Initiatives to foster a rule of law culture

Other

In December a minister in the Prime Minister's Office, Michał Wójcik, [announced](#) plans to amend the Family and Guardianship Code to ban the adoption of children by same-sex couples. The draft will be submitted to Parliament in 2023.

Romania

I. Justice System

A. Independence

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

There have been no more homophobic and transphobic statements by judges in the public space in 2022.

III. Media Freedom and Pluralism

B. Safeguards against government or political interference and transparency and concentration of media ownership

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting obligations and the allocation of resources) and safeguards for plurality of information and opinions
- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

The national authorities do not monitor and do not sanction hate speech against LGBTI people. Despite the fact that the Audio-visual Code obliges radio and television stations to invite a representative of the community or an NGO when addressing sensitive issues, such as the rights of LGBTI people, this obligation is not respected by the vast majority of TV stations, such as Romania TV, Antena 3, Realitatea TV. Moreover, the impartiality of TV presenters does not exist in many cases when there is news about the LGBTI community and in some cases they [even incite hatred against LGBTI people](#).¹ The National Audio-visual Council, the institution that could fine television and radio stations for inciting hatred and discrimination against LGBTI people, either does not actively monitor problematic broadcasts, and in the event that it is notified with a complaint from citizens or NGOs, [applies ridiculous fines](#).²

¹ A famous TV presenter of a news station who frequently incites hatred and discrimination against the LGBTI community in Romania and who spreads fake news about LGBTI people, in the context of the scandal related to the rainbow armband from the World Championship, stated: "Victor Ciutacu ironizes Germany, humiliated at the CM after the "politically correct" protest: "Bunnies, take your rainbow armbands, purses and submit your CVs to NGOs!"

² Although statements such as: "LGBTI people are Satan's servants", "LGBTI education is an attack on the human being", "LGBTI people are engineers who are against human nature, against God", "a biological man can wake up to be an animal or a cockroach" (about transgender people), were made in several shows on Romania TV the National Audiovisual Council applied a fine of approximately 2,000 euros, the minimum provided by the audio-visual law (the maximum is 40,000 euros).

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence-based policy-making, stakeholders'[1]/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] This includes also the consultation of social partners

Despite the fact that there is law 52/2003 on decision-making transparency in which the authorities should consult with citizens and NGOs in the decision-making processes, both at the local and central level, national authorities don't respect this obligation, even less regarding the LGBTI community.

COVID-19: provide update on significant developments with regard to emergency regimes/measures in the context of the COVID-19 pandemic judicial review (including constitutional review) of emergency regimes and measures in the context of COVID-19 pandemic oversight (incl. ex-post reporting/investigation) by Parliament of emergency regimes and measures in the context of COVID-19 pandemic processes related to lessons learned/crisis preparedness in terms of the functioning of checks and balances

[Update from 2022 submission] National courts have issued contradictory decisions regarding the fining of the organizers of Bucharest Pride and Cluj Pride in 2021 for organizing Pride marches which exceeded the number of participants requested by the municipality, under the pretext of the COVID-19 pandemic (despite other gatherings having more participants and not being penalised – see our 2022 submission to the rule of law report consultation). The Bucharest Court of Appeal decided to cancel the regulations regarding the limitation of the number of participants in public meetings within the Government Decision of the respective period, while the Cluj Court of Appeal found this request unfounded. In the Bucharest trial, the Romanian Government appealed to the High Court of Cassation and Justice, and in the Cluj trial the organizer will appeal against the sentence pronounced by the Cluj Court of Appeal. It is important to emphasize that in other cases, the Cluj Court of Appeal has already cancelled the Government Decision on the limitation of the number of participants in public meetings, being contrary to fundamental rights, but in the case of Cluj Pride, the provisions regarding the limitation of the number of participants in public meetings were maintained.

IV. Other institutional issues related to checks and balances

C. Accessibility and judicial review of administrative decisions

Follow-up by the public administration and State institutions to final (national/supranational) court decisions, as well as available remedies in case of non-implementation

One of the most important problems refers to the lack of execution of the decisions of the Court of Justice of the European Union and the European Court of Human Rights regarding the rights of LGBTIQ+ persons by the national authorities.

Even in 2022, the General Inspectorate of Immigration does not apply the Coman judgment ruled by the CJEU (C-673/16) and does not consider that rainbow families fall within the definition of "spouses" who have the right of residence on the territory of the EU.

Despite the fact that Romania is under enhanced supervision before the Committee of Ministers of the Council of Europe in the procedure for the execution of two decisions (M.C. and A.C. v. Romania 12060/12 and ACCEPT Association and Others v. Romania (19237/16) which address the lack of effective and efficient investigation of hate crimes, the national authorities have not punished even a single person for committing hate crimes against LGBTI people, although there are numerous criminal complaints. The ACCEPT association filed 12 criminal complaints in the period 2018-2022 for very serious crimes, such as death threats, vandalism of the headquarters, one bomb alert at the Bucharest PRIDE 2022 March, the spreading of an unknown gas among the participants who came to the organization's PRIDE Park event, and asked the criminal investigation bodies for official requests regarding the status of the investigations. In the answers received from the Police and Prosecutor's Office, there was no concrete information regarding the stage of the criminal investigations, and in the case of one request, the answer from the Police came after 8 months. Also, the Romanian Police does not want to make public the data collection methodology in the case of hate crimes and has officially refused in writing to transmit it, as a result of the ACCEPT request based on the law on access to information of public interest. Thus, ACCEPT was forced to open a trial before the Bucharest Court. Despite the fact that the ECtHR found that Romania does not have a clear, accessible and predictable procedure for the legal gender recognition, the national authorities did not execute the decision X and Y against Romania (2145/16). Thus, transgender people who want to make the legal transition do not know what evidence they have to submit before the judge or the duration of the process. Also, the right to self-determination in these cases does not exist, in many cases transgender people are forced to undergo psychiatric examinations carried out by the National Institute of Legal Expertise, as evidence requested ex officio by the judge and in other cases, arbitrary refusals were identified as a result of the judges' prejudices and transphobia.

D. The enabling framework for civil society

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

In 2022, there were a series of legislative proposals aimed at decreasing the rights and dignity of LGBTI people, but also of NGOs that defend and promote the rights of the community.

For example, seven UDMR (Democratic Union of Hungarians from Romania) deputies submitted to the Romanian Parliament a draft law amending and supplementing Law no.272/2002 on the protection and promotion of children's rights. The [legislative proposal](#) prohibits the dissemination, by any means, of information on homosexual orientation and gender identity in the public space, thus representing an impermissible state censorship in a democratic society and a flagrant violation of fundamental rights and freedoms. The Senate has tacitly adopted this legislative proposal and it is in the Chamber of Deputies and can be used at any time for electoral purposes.

In December 2022, several parliamentarians from the governing coalition, PNL and PSD, submitted to the Senate a [draft law](#) that proposes to amend Government Ordinance 26/2000 regarding associations and foundations, which has the effect of making it impossible for NGOs to challenge administrative

acts issued by local or central public authorities and institutions. The legislative proposal provides for a series of conditions that NGOs must fulfil in order to be able to challenge an administrative act: the deposit of a bond of up to 50,000 lei (10.000 euro), the administrative act must have been issued after the time of the establishment of the association, the association must have been established by more than 2 years.

At Bucharest Pride death threats were levied against participants a day before, and there was a bomb threat the day of the march. An unidentified attacker threw gas bombs into the crowd during the closing concert of the Pride Festival - seven people needed first aid. ACCEPT filed criminal complaints in all three cases and the police was notified. There was also a clear rise in hate crimes – over 20 victims asked ACCEPT for legal advice related to incidents which occurred during or around Pride. So far ACCEPT has not received any response to their complaint about the gas attack. On 9 January the Organised Crime and Terrorism Investigation Directorate dismissed ACCEPT's complaint concerning the bomb attack, saying that the threat was not motivated politically, religiously or ideologically and therefore does not constitute a crime. They also dismissed the complaint concerning the death threats, saying that it is not a certainty that death threats against Pride participants constitute death threats against the LGBTI community. ACCEPT has filed a complaint to the Superior Prosecutor against the Organised Crime and Terrorism Investigation Directorate's decision.

Slovenia

I. Justice System

A. Independence

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

This year far-right groups and politicians, including MPs tried to paint a ruling of the Constitutional Court that found in favour of rights for same-sex couples as unconstitutional. Rallies were [held](#) by far-right and neo-Nazi groups to protest the Constitutional Court decision of 16 June 2022 which deemed that same-sex couples can marry, and that those who are in a formal union can adopt children. A conservative NGO coalition also protested the voting of laws enacting this decision, and the protest was called for and [attended](#) by the SDS party, including Alenka Jeraj, Božo Predalič, Branko Grims and Aleš Hojs. Grims, a representative of SDS, publicly [said](#) that the decision of the Constitutional Court was a "pure abuse of law" and is contrary to the Slovenian Constitution and declarations of the United Nations. Deputy leader of party Nova Slovenija, Janez Cigler Kralj, said that the opposition will use all legal means available to oppose the Constitutional Court's decision. Despite these attempts to delegitimise the decision of the Court, the government continued with the drafting of the necessary laws. In October the National Assembly passed the marriage equality law, but the National Council (upper chamber), vetoed it. The National Assembly then voted to overturn this veto, and they also declared inadmissible the [call](#) by far-right coalition "The Children are at Stake" to hold a national referendum on the law. Nevertheless, the coalition still aims to overturn the law, as it [filed](#) a constitutional appeal against the ban on the referendum in November 2022. On 11 January 2023 the Constitutional Court published its 14 December 2022 ruling that the National Assembly decision is not inconsistent with the Constitution, therefore upholding the National Assembly's decision declaring the call for referendum inadmissible.

IV. Other institutional issues related to checks and balances

D. The enabling framework for civil society

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

In 2022 Slovenian right-wing media (such as Demokracija and Nova24) published a series of articles smearing LGBTI people by presenting them as a threat to children, and using the guise of so-called "LGBT ideology", seen in many other countries. This was particularly virulent after the change of government in April. For example Nova24's [article](#) "Parents, watch out! The new coalition plans to introduce LGBT ideology in schools".

Aleš Primc of the far-right "Children are at Stake Coalition" (which smears LGBTI people as a threat to children), ran for mayor in the capital Ljubljana in the 2022 elections, and his Voice of Children and Family, a non-parliamentary party, won a seat on Ljubljana's city council. As part of his election campaign, posters with the words "Against LGBTQIA" and "Against LGBTQIA+ child adoption" were also [hung](#) around the city, expressing open homophobia and hostility.

In June, SDS member Domen Cukjati [compared](#) the rainbow symbol – the symbol of the LGBTI community, to the swastika on Twitter. The same month, before the Pride Parade, the LGBTI community received hateful homophobic messages and threats of tear gas attacks. In the days leading up to the 2022 Pride Parade, there was an increase in direct threats and hostility directed at LGBTI people, clearly signed by nationalist extremists. In the centre of Ljubljana, posters promoting the integration of LGBTI people into society were [vandalized](#) and hateful messages inciting violence against LGBTI people were written on the posters.

Spain

I. Justice System

A. Independence

Appointment and selection of judges, prosecutors and court presidents (incl. judicial review)

(The reference to ‘judges’ concerns judges at all level and types of courts as well as judges at constitutional courts)

The Spanish Constitutional Court consists of twelve members appointed by the King. Of these, four are nominated by Congress by a majority of three-fifths of its members, four are nominated by the Senate with the same majority, two are nominated by the Government, and two by the General Council of the Judiciary. Members of the Spanish Constitutional Court must be jurists of recognised standing with at least 15 years’ experience. They are appointed for a period of nine years during which they are independent and irremovable, and each three years one third of the Court is renewed. However, in recent months the independence of the judiciary has been in question. In June 2022, the official mandate of 4 of the 12 judges appointed by the Government and the General Council of the Judiciary (GCJ) expired. The appointment of their replacements was been stalled for a long time, mainly due to the conservative majority at GCJ, whose mandate expired back in December 2018. In October 2022 its president, Carlos Lesmes, resigned to try to force its renewal with no success. There were several unsuccessful attempts to reach an agreement between the two largest parties in Spain (Partido Popular and PSOE) to renew both Constitutional bodies (Constitutional Court and GCJ) due to the unwillingness of the conservative Partido Popular who wanted to avoid a hypothetical progressive majority in both Constitutional bodies. At the end of December an agreement was [reached](#), with the four new judges appointed. In mid-January the Constitutional Court [elected](#) its president, but the renewal of the Spanish General Council of the Judiciary is still pending.

Independence/autonomy of the prosecution service

Abogados Cristianos, an ultra-catholic barrister’s office (camouflaged as a foundation) is very active when it comes to litigating against LGBTI and other civil rights organisations or any institution who supports them. Abogados Cristianos has made it its particular crusade to ban the exhibition of the LGBTI flag from any public building e.g. Sevilla and Zaragoza city councils. They also tried to ban the distribution of LGBTI books in Castellón’s high schools in February 2022. Even if both these actions had an initial limited success, both were overturned.

III. Media Freedom and Pluralism

B. Safeguards against government or political interference and transparency and concentration of media ownership

Safeguards against state / political interference, in particular:

- safeguards to ensure editorial independence of media (private and public)
- specific safeguards for the independence of heads of management and members of the governing boards of public service media (e.g. related to appointment, dismissal), safeguards for their operational independence (e.g. related to reporting

obligations and the allocation of resources) and safeguards for plurality of information and opinions

- information on specific legal provisions and procedures applying to media service providers, including as regards granting/renewal/termination of licenses, company operation, capital entry requirements, concentration and corporate governance

There is media plurality in Spain and most of the media are private-owned, however the administrative board of RTVE (Spanish Public Radio and TV Channels) is directly elected by members of both legislative chambers (*Congreso* and *Senado*) and as such has been criticised by some sectors of civil society. In September 2022, José Manuel Pérez Tornero [resigned as president of the administrative board](#) due to disagreements with the coalition government. On a positive note, in July 2022, [RTVE broadcasted live](#) the LGBTI Pride demonstration in Madrid for the first time.

There is a wide variety of media and opinions, however, during the current debate on the LGBTI and trans law there have been instances of [political talk shows and news outlets](#) which showed biased opinions and misinformation which went uncontested.

IV. Other institutional issues related to checks and balances

A. The process for preparing and enacting laws

Framework, policy and use of impact assessments and evidence-based policy-making, stakeholders'[1]/public consultations (particularly consultation of judiciary and other relevant stakeholders on judicial reforms), and transparency and quality of the legislative process

[1] This includes also the consultation of social partners

At national level Spain has an LGBTI Participation Council (*Consejo de Participación de las Personas LGTBI*) and in December 2022 the Ministry of Equality will launch a participatory process to draft the national LGBTI strategy. However, at a regional level (since the almost federal status of Spain transfer powers over e.g. healthcare and education to its Autonomous Communities) the situation differs wildly, going from narrow cooperation (e.g. Comunidad Valencia or Balearic Islands) to lack of cooperation or interest (e.g. Asturias, Castilla y León, Galicia, etc.)

D. The enabling framework for civil society

Rules and practices having an impact on the effective operation and safety of civil society organisations and human rights defenders. This includes measures for protection from attacks – verbal, physical or online –, intimidation, legal threats incl. SLAPPs, negative narratives or smear campaigns, measures capable of affecting the public perception of civil society organisations, etc. It also includes measures to monitor threats or attacks and dedicated support services.

In Spain conservative forces, including the VOX party and some members of Partido Popular, regularly target LGBTI people with smear campaigns and negative narratives under the guise of combating so-called “gender ideology” or “LGBT ideology”. The leader of the Partido Popular, Alberto Núñez Feijóo, who is expected to be its candidate for the national election in autumn/winter 2023 [stated that it is](#)

[his intention](#) to overturn the Democratic Memory Law ([Ley de Memoria Democrática](#)) passed in October 2022 as well as the LGBTI and trans law.

Organisation of financial support for civil society organisations and human rights defenders (e.g. framework to ensure access to funding, and for financial viability, taxation/incentive/donation systems, measures to ensure a fair distribution of funding)

Most funding for LGBTI services is handled through calls for tenders. These calls are usually allocated to private consulting companies due to the economic conditions which LGBTI NGOs are unable to satisfy. This tends to occur particularly at the regional and local level. However, [the recent ruling of the ECJ](#) regarding the exclusion of profit-making entities from tender calls linked to social services might change this scenario.