

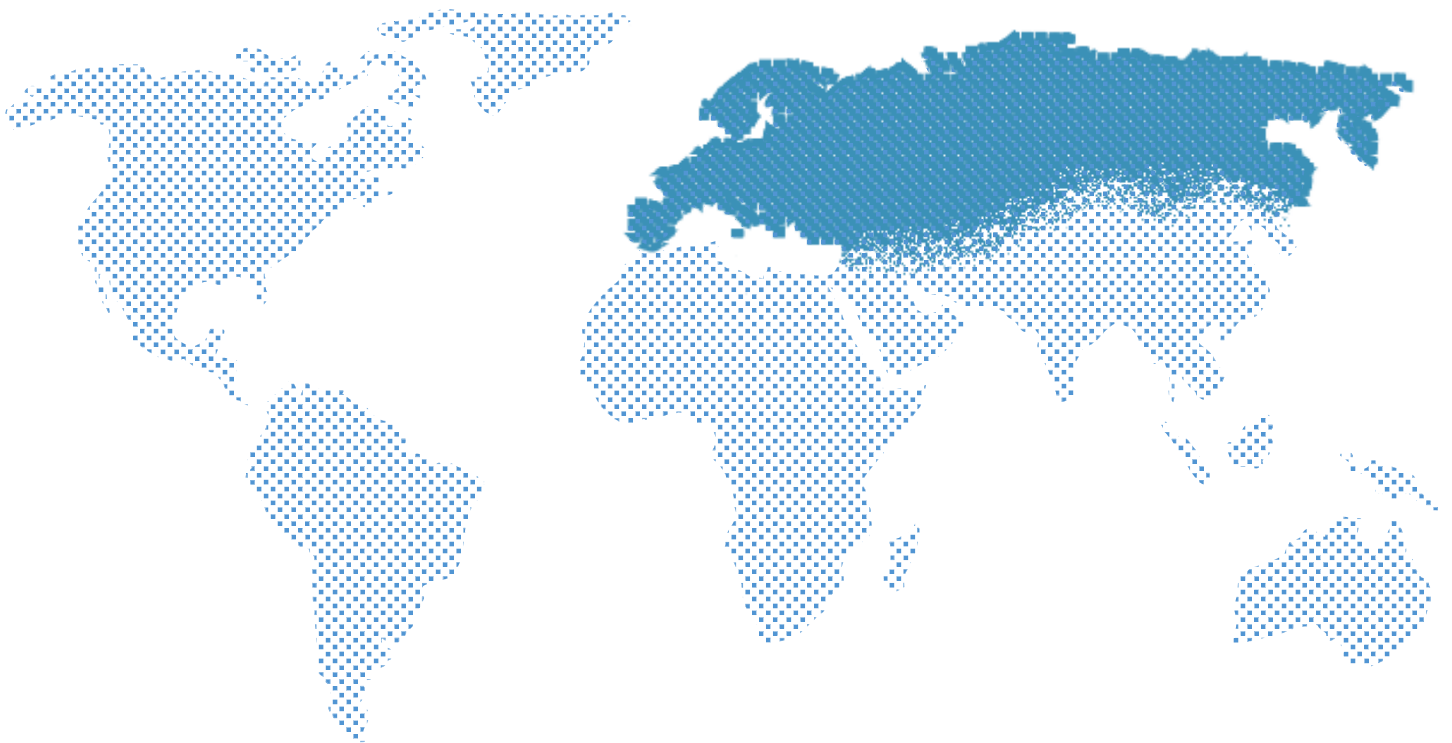


**CENTRE FOR LAW
AND DEMOCRACY**

Restrictions on Civic Space Globally: Law and Policy Mapping Series

Volume 2: Europe and Central Asia Region

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Restrictions on Civic Space Globally: Law and Policy Mapping Series

This Report is part of a five-part Series. Each Report maps the legal restrictions on civic society in selected countries in five geographic regions, as of 2019. The five volumes are as follows:

Volume 1: Asia Pacific Region

Volume 2: Europe and Central Asia Region

Volume 3: Latin America Region

Volume 4: Middle East and North Africa Region

Volume 5: Sub-Saharan Africa Region

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Executive Summary

This Report reviews the legal environment for civic space in nine countries in the Europe and Central Asian region as of August 2019, with an emphasis on identifying laws and policies which represent serious threats to the ability of civil society organisations to operate freely. The nine countries are: Azerbaijan, Bosnia and Herzegovina, Georgia, Hungary, Moldova, Montenegro, Russia, Serbia and Turkey. While precise concerns for civil society in each country vary, a few trends may be observed:

- **Overly Broad Powers to Interfere with Internal Organisational Matters:** In a number of countries, authorities have unduly broad discretion to refuse to register civil society organisations or to dissolve organisations. This is frequently accompanied by expansive powers to inspect or audit organisations, send government representatives to organisation events or make arbitrary demands that organisations produce additional financial reporting.
- **Funding Restrictions:** Four of the countries have significant restrictions on the ability of civil society organisations to fundraise or access foreign funding. Other countries have proposed or actively debated adopting similar laws although, positively, in at least one country (Moldova) a draft law which would have restricted foreign funding was withdrawn due to public push back.
- **Insufficient Regulation to Ensure Media Diversity and Independence:** Concentrated media ownership is a serious concern across the region and, although some countries have introduced laws to promote media diversity, these have not been sufficiently strong to prevent media monopolies. In addition, several countries do not have adequate protection for the independence of media regulatory bodies or public broadcasters.
- **Inappropriate Content Restrictions:** Most countries have overbroad criminal content restrictions. For example, most States still criminalise defamation and have special rules on insult to government institutions, the nation or certain public figures. A number of hate speech laws are insufficiently precise or lack required defences.
- **Emergency Powers and National Security Laws:** In three countries, in particular, laws permit states of emergency to be declared too easily and/or grant broad powers to restrict fundamental human rights.* More generally, anti-terrorism and other national security laws sometimes define illegal activity in a manner that could cover peaceful civil society work.
- **Insufficient Protection against Arbitrary or Secret Surveillance:** Many laws governing surveillance fail to prohibit the arbitrary surveillance of civil society organisations. In addition, there are concerns in some countries about the government's ability to access electronic data.
- **Secrecy Laws and Broad Exceptions Regimes Undermine the Right to Information:** Although countries in the region have generally adopted right to information laws, these laws are seriously undermined by the existence of broad exceptions allowing for denials of access to information. Secrecy laws, often containing very broad categories of secrets, generally override right to information laws.

**Editorial note: This research, completed in 2019, was prior to the COVID-19 pandemic and the concerns with states of emergencies noted in this report primarily refer to security-related emergencies, not health emergencies.*

Approach and International Standards

Laws which regulate civil society are numerous and often complex. Rather than provide a comprehensive review, this Mapping focuses on more problematic provisions in each country with the goal of identifying areas in need of reform. For example, it documents legal provisions which have been used to bring criminal charges against journalists and activists. The result is that the overall description for each country may skew towards the negative, as even countries which generally have an enabling environment for civil society often still have problematic laws in some areas.

The assessment of laws and policies is organised into nine categories. For each category, domestic laws are assessed against international human rights standards. The nine categories are presented here, along with the key international standards for each area.

Category 1. Freedom of association: non-profit registration requirements and restrictions on advocacy: Are civil society organisations required to register? Are features of the registration process burdensome? Do authorities have discretion to deny registration? What limitations are placed on the ability of civil society organisations to operate and advocate?

The right freely to associate with others is guaranteed by Article 22 of the International Covenant on Civil and Political Rights (ICCPR),¹ among other international treaties. States should create an enabling environment in which organisations can be established and operate freely.² Any restrictions on the right to association must be prescribed by law and be necessary to protect national security, public safety, public order, public health or public morals, or the rights or freedoms of others.³

Civil society organisations should not be required to register as a legal entity; the right to form informal associations is protected under human rights law. Should an organisation choose to be formally legally registered, the procedures for this should be simple, accessible, non-discriminatory and not overly burdensome.⁴ If officials can deny registration, it should be on narrow, objective grounds, with the opportunity to appeal to an independent oversight body, such as a court.

Once registered, States should not impose highly burdensome reporting obligations on organisations or intrude on their internal operations. Laws should not prevent organisations from engaging in advocacy activities on matters of public interest. Dissolution of an organisation should be permitted only where there has been a very serious breach of the law, based upon narrow

¹ Adopted by General Assembly Resolution 2200A (XXI) of 16 December 1966, entry into force 23 March 1976. Available at: <https://www.ohchr.org/EN/ProfessionalInterest/Pages/CCPR.aspx>.

² UN Human Rights Council Resolution 24/5, 8 October 2013, p. 2. Available at: <https://undocs.org/A/HRC/RES/24/5>.

³ ICCPR, Article 22(2).

⁴ Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 21 May 2012, UN Doc. A/HRC/20/27, para. 95. Available at: <https://undocs.org/A/HRC/20/27>.

grounds which are clearly articulated in the law, as decided by an independent authority, preferably a court.⁵

Category 2. Funding restrictions, financial reporting requirements and special tax requirements:
Are limits placed on the ability of civil society organisations to obtain foreign funding? Are there burdensome financial reporting or tax requirements?

The right to freedom of association protects the right of organisations to seek, receive and use funding. This includes the ability to access foreign funding, meaning that prohibitions on accessing foreign funding or onerous requirements for organisations receiving foreign funding are not legitimate. States may screen for fraud, money laundering or terrorist financing activities, and promote transparency in the use of funds. However, financial reporting requirements should be tailored to the operating realities of non-profit organisations, and not inhibit their ability to engage in legitimate operations.⁶

States should also not indirectly limit the work of civil society via tax laws. Rather, better practice is to create an enabling environment for civil society, including mechanisms such as allowing tax exempt status for non-profit organisations and tax deduction options for donors.⁷

Category 3. Media regulation: Are there registration or licensing requirements for print media or journalists? Are any bodies which are responsible for regulating the media independent?

Regulation of the media must respect the right to freedom of expression, meaning it should respect media independence and should not become a means of government control. On the other hand, intervention may be necessary to promote media diversity and to prevent the emergence of media monopolies.

States should not require journalists to obtain licences or register in order to engage in journalistic activities.⁸ Print media should also not be subject to a licensing regime, although merely technical registration requirements may be permissible if they are not overly complex and do not grant authorities discretion to deny registration.⁹ In the broadcasting sector, licensing requirements may be appropriate to ensure diversity when allocating broadcasting frequencies, but the process should be fair and transparent, and be overseen by an independent authority.¹⁰

⁵ See Report of the Special Rapporteur, note 4, paras. 75-76 and 100; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 24 April 2013, UN Doc. A/HRC/23/39, para. 38. Available at: <https://undocs.org/A/HRC/23/39>.

⁶ Report of the Special Rapporteur, note 4, paras. 67-72.

⁷ Report of the Special Rapporteur, note 4, para. 72.

⁸ UN Human Rights Committee, General Comment No. 34, Article 19: Freedoms of opinion and expression, 12 September 2011, CCPR/G/GC/34, para. 44, available at: <http://undocs.org/ccpr/c/gc/34>; and International Mandates for Promoting Freedom of Expression, 2003 Joint Declaration, available at: <https://www.osce.org/fom/28235?download=true>.

⁹ International Mandates for Promoting Freedom of Expression, 2003 Joint Declaration, *ibid.*

¹⁰ General Comment No. 34, note 8, para. 39.

Bodies that regulate the media should be independent from political or private sector actors. Such regulatory bodies should be accountable and have a clear mandate and structure. The appointment process for members and manner of allocating funding should protect their independence.¹¹

Category 4. Content restrictions: Are there undue restrictions on the content that the media or civil society may disseminate? Is defamation criminalised? Are there other overbroad or vague restrictions on speech?

The right to freedom of expression, guaranteed by Article 19 of the ICCPR, may only be subject to restrictions which: 1) are provided by law; 2) aim to protect the rights or reputations of others, public order, national security, or public health or morals; and 3) be necessary to protect that interest. Several types of content restrictions commonly found in the Asia Pacific region frequently fail to meet this test:

- Defamation laws: While it is legitimate to protect the reputation of others, special or heightened protections for the reputations of heroes or public figures are inappropriate, since the public has a greater interest in their actions. Criminal penalties for defamation are almost always disproportionate and, as such, do not pass the “necessity” part of the test; defamation should therefore be decriminalised. National symbols, institutions or icons should not be protected by defamation or libel rules, as they cannot be said to have reputations of their own.¹²
- Hate speech: Hate speech is prohibited by Article 20(2) of the ICCPR, which provides: “Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law”. States should, therefore, prohibit such speech. However, hate speech laws should not be crafted in vague terms or go beyond the narrow scope of hate speech as recognised under international law. They should also require hateful intent and a sufficiently close nexus to an act of discrimination, violence or hostility. Without these elements, hate speech laws are easily abused to target non-hateful speech.¹³ Laws prohibit the expression of opinions about historical facts (genocide denial laws) or impose certain interpretations of history are also not legitimate.¹⁴
- Religious offence: Speech which incites hatred of certain religious groups may properly be restricted as a form of hate speech. However, other speech criticising religious views or practices should be protected rather than criminalised via blasphemy laws, which often

¹¹ African Commission on Human and Peoples’ Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa, Adopted at the 65th Ordinary Session, 21 October to 10 November 2019, Principles 17(1)-(2), available at: <https://www.achpr.org/legalinstruments/detail?id=69>; and Council of Europe, Recommendation (2000) 23 of the Committee of Ministers to Member States on the Independence and Functions of Regulatory Authorities for the Broadcasting Sector, 20 December 2000, available at: [https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reference%20texts/CoE%20-%20Media%20Freedom%20and%20Pluralism/REF%20COE-CM-Rec\(2000\)23.pdf](https://www.ebu.ch/files/live/sites/ebu/files/Publications/Reference%20texts/CoE%20-%20Media%20Freedom%20and%20Pluralism/REF%20COE-CM-Rec(2000)23.pdf).

¹² General Comment No. 34, note 8, paras. 38 and 47.

¹³ *Jersild v. Denmark*, 23 September 1994, Application No. 15890/89 (European Court of Human Rights), paras. 24 and 35-36, available at: <http://hudoc.echr.coe.int/eng?i=001-57891>; and Article 19, Camden Principles on Freedom of Expression and Equality, April 2009, available at: <https://www.article19.org/data/files/pdfs/standards/the-camden-principles-on-freedom-of-expression-and-equality.pdf>.

¹⁴ General Comment No. 34, note 8, para. 49.

allow for the suppression of minority religious views or inappropriately limit public discourse on religious matters.¹⁵

- Disinformation: Laws generally prohibiting the dissemination of “fake news” or the sharing of false information are too vague to meet the Article 19 test for restrictions on freedom of expression.¹⁶ Instead, States should only prohibit false statements linked to particular harmful results, such as defamation or fraud, subject to them being made with malicious intent.
- Contempt of court: Contempt of court laws can be legitimate as a means of maintaining order in a courtroom and the fair administration of justice, but laws which prohibit criticism of the judiciary, such as so-called “scandalising the judiciary” offences, improperly restrict public scrutiny of the judiciary.¹⁷
- Other overly vague offences: The Article 19 test requires restrictions on freedom of expression to be “provided by law”, meaning that they should be “formulated with sufficient precision to enable an individual to regulate his or her conduct accordingly and it must be made accessible to the public.”¹⁸ Prohibitions on obscenity, for example, may be subject to abuse if not clearly defined.

Category 5. Internet and digital rights: Is online speech subject to more burdensome restrictions than offline speech? Do data retention laws raise privacy concerns? Are intermediaries responsible for content posted by users?

International law clearly establishes that the “rights that people have offline must also be protected online.”¹⁹ Although the digital era brings some new challenges that require novel regulation, States should not generally create special content restrictions or impose harsher penalties for Internet speech.²⁰ Blocking of certain websites or requiring the takedown of specific content should only apply to clearly illegal content, following a court order or order from another independent oversight body.

Intermediaries which provide merely technical Internet services, such as Internet service providers, should not be liable for content posted by others. The question of intermediary liability is more complex for intermediaries which play a more proactive role in supporting and interacting with user content. However, at a minimum, such intermediaries should not be directly liable for user

¹⁵ Rabat Plan of Action, 11 January 2013, para. 25. Available at:

https://www.ohchr.org/Documents/Issues/Opinion/SeminarRabat/Rabat_draft_outcome.pdf.

¹⁶ International Mandates for Promoting Freedom of Expression, Joint Declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda, 3 March 2017. Available at: https://www.law-democracy.org/live/wp-content/uploads/2017/03/mandates.decl_.2017.fake-news.pdf.

¹⁷ International Mandates for Promoting Freedom of Expression, 2002 Joint Declaration. Available at: <https://www.osce.org/fom/39838?download=true>.

¹⁸ General Comment No. 34, note 8, para. 25.

¹⁹ UN Human Rights Council Resolution 32/13, 18 July 2016, para. 1, available at: <https://undocs.org/A/HRC/RES/32/13>; and UN General Assembly Resolution 68/167, 21 January 2014, para. 3, available at: <https://undocs.org/A/RES/68/167>.

²⁰ International Mandates for Promoting Freedom of Expression, 2018 Joint Declaration on Media Independence and Diversity in the Digital Age, para. 3. Available at: <https://www.osce.org/representative-on-freedom-of-media/379351?download=true>.

content and should not be required to monitor user content proactively. Overreaching takedown requirements for intermediaries incentivise them to over-police user speech.²¹

Category 6. Right to information and secrecy laws: Are public authorities required to provide access to the information they hold? What rules, including secrecy laws, are in place which limit public access to information and/or penalise civil society for disseminating it?

The right to seek and receive information held by public authorities (the right to information or RTI) is a crucial component of freedom of expression. It should be given effect through comprehensive legislation which enables persons to request information from their governments. Such legislation should establish a presumption in favour of public access to information, subject only to a narrow regime of exceptions.²² The strength of legal frameworks for RTI is assessed based on CLD and Access Info Europe's RTI Rating (rti-rating.org). This uses 61 indicators to assess the strength of the legal framework for RTI in seven categories: (1) the extent to which the law supports a fundamental right to access information; (2) the scope of the law; (3) the procedures for requesting information; (4) what exceptions justify denying requests for information and the process for such denials; (5) appeals; (6) sanctions for misconduct and protections for those who disclose public interest information; and (7) measures to promote the right to information.

This category also assesses what secrecy laws prohibit the disclosure of information and what penalties are imposed by those laws. Overly broad secrecy laws undermine transparency and public access to information. Of particular concern are provisions which penalise third parties, such as civil society or journalists, for sharing or re-sharing information which has been disclosed to them.²³

Category 7. Restrictions on freedom of assembly: Must organisers obtain prior permission before holding an assembly? Are there other restrictions on or criminal sanctions for participating in an assembly?

The right to assembly, guaranteed by Article 21 of the ICCPR, protects the right to organise and participate in non-violent gatherings, subject to restrictions which meet a test which is similar to the one which applies to freedom of expression and association. States must therefore allow assemblies and protests to occur without unwarranted interference. They may require advance notice of an assembly but laws which require organisers to obtain permission for an assembly are not appropriate.²⁴ In the interests of public order, some limited requirements regarding the time,

²¹ International Mandates for Promoting Freedom of Expression, 2011 Joint Declaration on Freedom of Expression and the Internet. Available at: <https://www.osce.org/fom/78309?download=true>.

²² International Mandates for Promoting Freedom of Expression, 2004 Joint Declaration on Access to Information and on Secrecy Legislation. Available at: <https://www.osce.org/fom/38632?download=true>.

²³ General Comment No. 34, note 8, para. 30; and 2004 Joint Declaration on Access to Information and on Secrecy Legislation, note 22.

²⁴ Report of the Special Rapporteur, note 4, para. 28; and Report of the Special Rapporteur on the rights to freedom of peaceful assembly and of association, 7 August 2013, U.N. Doc. A/68/299, para. 24, available at: <https://undocs.org/A/68/299>; and African Commission on Human and Peoples' Rights, Guidelines on Freedom of Association and Assembly in Africa, 10 November 2017, para. 71, available at: <https://www.icnl.org/post/tools/guidelines-on-freedom-of-association-and-assembly-in-africa>.

location or manner of assemblies may be legitimate, subject to the Article 21 test, and participants must be able to assemble “within sight and sound” of their audience and with enough time to express their views.²⁵

Law enforcement actions should respect and protect the exercise of the fundamental rights of the participants and the public. Policing should aim to enable an assembly to take place as planned and minimise the potential for injury to persons or damage to property.²⁶ Force should be used only when necessary and should be proportionate; lethal force is only permissible “as a last resort to protect against an imminent threat to life and that it may not be used merely to disperse a gathering.”²⁷ States should also avoid bringing disproportionate penalties against protestors. Laws which criminalise mere participation in a protest or impose criminal penalties on protest organisers for acts committed by other participants are particularly problematic.²⁸

Category 8. National security: Are crimes based on national security concerns, such as terrorism, defined in such a way as to include peaceful civil society activity? What surveillance powers do authorities have? What powers do governments have to suspend human rights obligations during states of emergency?

Where there is a “public emergency which threatens the life of the nation”, States may announce states of emergency and derogate from certain of their human rights obligations. However, derogations are allowed only insofar as they are strictly required by the exigencies of the situation.²⁹ States of emergency are exceptional circumstances; unrest or internal conflict that does not gravely and imminently threaten the life of the nation, or economic difficulties, are not sufficient to meet this standard.³⁰ Furthermore, certain rights cannot be derogated from even in emergencies, such as the right to life and the right to be free from torture or slavery.³¹

Where a legitimate state of emergency is not in place, any restrictions on national security grounds must meet the standard tests for restrictions on human rights. States often problematically rely on national security to justify overbroad criminal restrictions on expression, such as in anti-terrorism or treason laws. Such laws should not rely on vague terms like “glorification” of terrorism or

²⁵ See, for example, Human Rights Committee, *Denis Turchenyak et al. v. Belarus*, Communication No. 1948/2010, 10 September 2013, available at: <https://juris.ohchr.org/Search/Details/1672>; and Organization for Security and Co-operation in Europe, *Guidelines on Freedom of Peaceful Assembly: Second Edition*, 25 October 2010, paras. 99-100, available at: <https://www.osce.org/odihr/73405>.

²⁶ UN Human Rights Council Resolution 38/11, 18 July 2016, para. 10, available at: <https://undocs.org/A/HRC/RES/38/11>; and Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, 6 April 2018, UN Doc. A/HRC/26/36, para. 51, available at: <https://undocs.org/A/HRC/26/36>.

²⁷ UN Human Rights Council Resolution 38/11, note 26, para. 11.

²⁸ See, for example, Inter-American Commission on Human Rights, *Criminalization of Human Rights Defenders*, Chapter 3(B)(2), 31 December 2015. Available at: <http://www.oas.org/en/iachr/reports/pdfs/Criminalization2016.pdf>.

²⁹ ICCPR, note 3, Article 4.

³⁰ Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights, 1 July 1984, Principles 40 and 41. Available at: <https://www.icj.org/wp-content/uploads/1984/07/Siracusa-principles-ICCPR-legal-submission-1985-eng.pdf>.

³¹ ICCPR, note 3, Article 4.

“extremism”. Instead, they should only punish behaviour which specifically intends to promote violence and is directly linked to an actual increased risk of a violent or terrorist attack.³²

Laws should also protect against arbitrary surveillance of civil society actors by the State. Legal frameworks often fail to provide adequate procedural protections to ensure surveillance is not conducted arbitrarily. Surveillance regimes should be clearly established in law and be subject to precise limits on their scope and duration. Monitoring of private communications should be subject to oversight by an independent body, subject to judicial review and should incorporate adequate due process protections.³³

Category 9. Whistleblower, witness and other protection systems for those at risk: Are any such systems in place and, if so, are they sufficiently robust?

Whistleblowers play an essential role in exposing institutional corruption, fraud and human rights violations. Due to the high personal risk assumed and the public’s interest in the disclosure of this information, States should enact whistleblower protection laws which prohibit retaliatory actions taken by the State or private actors. Strong whistleblower protections laws will also establish accessible channels for reporting wrongdoing, provide whistleblowers with access to remedies and create enforcement mechanisms which enable follow-up and reform following a disclosure. For standards on international better practice in this area, see Transparency International’s *International Principles for Whistleblower Protection Legislation*.³⁴

Country Analysis

Azerbaijan

Freedom of association: non-profit registration requirements and restrictions on advocacy

Non-profit organisations wishing to obtain legal personality must register with the Ministry of Justice. Once a group decides to form an association, it has 30 days to officially notify the Ministry of Justice.³⁵ Such a notification does not constitute registration. Once the notification has been

³² International Mandates for Promoting Freedom of Expression, 2008 Joint Declaration on Defamation of Religions, and Anti-Terrorism and Anti-Extremism Legislation, available at: <https://www.osce.org/fom/99558?download=true>; and The Johannesburg Principles on National Security, Freedom of Expression and Access to Information, 1 October 1995, Principle 6(c), available at: <https://www.article19.org/data/files/pdfs/standards/joburgprinciples.pdf>.

³³ UN and OAS Special Rapporteurs on freedom of expression, Joint Declaration on Surveillance Programs and their Impact on Freedom of Exchange, 21 June 2013, paras. 7-10, available at: <http://www.oas.org/en/iachr/expression/showarticle.asp?artID=927&>; and Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, 17 April 2013, para. 3, available at: undocs.org/A/HRC/23/40.

³⁴ 5 November 2013. Available at: https://www.transparency.org/whatwedo/publication/international_principles_for_whistleblower_legislation.

³⁵ Law on Non-Governmental Organisations, Article 15.1. Translation available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2011\)049-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2011)049-e).

acknowledged by the Ministry of Justice, the applicant may submit a detailed registration form.³⁶ The Ministry of Justice then has 40 days to respond and may extend this time by an additional 30 days, significantly longer than the 2 days given to respond to commercial company applicants.³⁷

State registration of NGOs may be rejected only if: 1) a registered NGO already has the same name; 2) the registration documents are inconsistent with the law of Azerbaijan; 3) the NGOs' operations or goals are inconsistent with Azerbaijani law; or 4) the registration documents contain false information.³⁸ While these grounds are fairly standard, in practice, they are commonly abused to deny registration.³⁹

More serious concerns arise in the area of government supervision of NGO operations and activities. The Ministry of Justice is empowered to issue warnings to NGOs to the effect that they are violating the law and to require the elimination of the violation. Two warnings in one year allow the government to initiate court proceedings to dissolve the organisation.⁴⁰ Provisions in the Law of Administrative Offences also impose financial penalties for even minor errors in documents or a failure to register changes to certain information; this has a clear punitive element rather than merely promoting regulatory compliance.⁴¹

In 2015, the Ministry of Justice adopted a set of Rules on Studying the Activities of NGOs. This allows for inspections of NGOs to determine whether they are complying with the law. This may involve requesting documents and site visits, in which case the NGO may be required to give office space to the inspector and provide basic resources. The Rules grant broad authority to inspectors and, combined with steep financial penalties for relatively minor errors or reporting failures, create a clear potential to enable harassment of civil society.⁴²

Funding restrictions, financial reporting requirements and special tax requirements

Non-profit organisations must contend with highly restrictive financial regulations. They must register all grant agreements with the Ministry of Justice and no bank transactions or other operations may be completed without this. The process requires highly specific documentation, such as some documents being notarised or affixed with an apostille, and must be completed within

³⁶ ICNL, Civic Freedom Monitor: Azerbaijan. Available at: <http://www.icnl.org/research/monitor/azerbaijan.html>.

³⁷ ICNL and MG Consulting. *Assessment of the Legal Framework for Non-Governmental Organizations in the Republic of Azerbaijan*, July 2017, p. 24. Available at: http://www.icnl.org/programs/eurasia/Assessment_NGO%20Law%20Azerbaijan%20Oct%202017%20fv.pdf#page=15&zoom=100,0,636.

³⁸ Law on Non-Governmental Organisations, note 35, Article 17.3.

³⁹ ICNL and MG Consulting, note 37, p. 26.

⁴⁰ Law on Non-Governmental Organisations, note 35, Article 31.

⁴¹ Zohrab Ismayil and Ramute Remezait, *Shrinking Space for Civil Society in Azerbaijan*, Caucasus Civil Initiatives Center, June 2016, p. 12. Available at: <https://www.irfs.org/wp-content/uploads/2016/07/Shrinking-Space-for-Civil-Society-in-Azerbaijan.pdf>.

⁴² Rules on Studying the Activities of NGOs, as described by ICNL, note 36; and Human Rights Watch, *Harassed, Imprisoned, Exiled: Azerbaijan's Continuing Crackdown on Government Critics, Lawyers, and Civil Society*, 20 October 2016, available at: <https://www.hrw.org/report/2016/10/20/harassed-imprisoned-exiled/azerbaijans-continuing-crackdown-government-critics#fdddbb>.

a limited time window of 15 days. Donations are also subject to reporting requirements. Cash donations are generally not allowed.⁴³

Where grants are received from foreign entities, the foreign donor must have an office in the country and have signed an agreement with the Ministry of Justice. Then, for each individual grant, the foreign donor must obtain approval from the Ministry of Finance as to the financial/economic expediency of the grant in question.⁴⁴ The Ministry of Finance has broad discretion to deny the grant, for example based on the ground that there is already sufficient State funding for the issue in question.⁴⁵

Media regulation

Technically, there is no need to obtain authorisation to issue a print publication. However, these must register with the Ministry of Justice seven days before publication commences and a failure to do so may justify their liquidation.⁴⁶ Overall, the print media is relatively unregulated compared to other Azerbaijani media although in practice the sector has struggled. This is partly due to government control over advertising and distribution networks. For example, a ban on street vendors and on newspaper distribution in the metro seriously hurt independent newspapers which compete in terms of distribution with a State-owned network of shops from which independent newspapers are generally excluded.⁴⁷ Arrests and charges of editors and journalists have also had a negative impact.⁴⁸

The broadcasting sector is highly regulated. The National Television and Radio Council (NTRC), established under a 2002 Presidential Decree, consists of nine members all appointed by the President.⁴⁹ The NTRC is therefore not independent.⁵⁰ Concerns have been raised about the lack of transparency in the licensing process. A 2017 decision from the UN Human Rights Committee found that Azerbaijan had violated the right to freedom of expression of persons denied a licence by failing to publish the list of available frequencies, failing to hold regular open tenders and by granting broadcasting frequencies to State-affiliated entities without holding a tender.⁵¹

⁴³ Law on Grants as described in Zohrab Ismayil and Ramute Remezaite, note 41, p. 13-15.

⁴⁴ Law on Grants, as described by ICNL, note 36 and Zohrab Ismayil and Ramute Remezaite, note 41, p. 13.

⁴⁵ Human Rights Watch, note 42.

⁴⁶ Law on Mass Media, Article 14. Translation available at:

http://azerbaijan.az/portal/Society/MassMedia/massMedia_e.html (not including all amendments). Part of the law was amended to exclude the possibility of dissolution of a print media outlet for failing to register but this language remains elsewhere in the law and in regulations. For a discussion of this see Council of Europe, *Analysis of Azerbaijani Legislation on Freedom of Expression*. Available at: <https://rm.coe.int/azerbaijan-analysis-of-legislation-on-freedom-of-expression-december-2/16808ae03d>.

⁴⁷ Reporters without Borders, *Deprived of Income, Azerbaijani Paper is Force to Stop Publishing*, 20 January 2016. Available at: <https://rsf.org/en/news/deprived-income-azerbaijani-paper-forced-stop-publishing>.

⁴⁸ Article 19, *Written Comments of the Third Party Intervener, Aynur Ganbarova v. Azerbaijan*. Available at: https://www.article19.org/wp-content/uploads/2018/02/2018_01_26-Ganbarova-Intervention-Final-ARTICLE-19.pdf.

⁴⁹ Presidential Decree 795, 5 October 2002, as described by Article 19, note 48, para. 16.6 and Council of Europe, note 46, p. 15.

⁵⁰ Council of Europe, note 46.

⁵¹ Human Rights Committee, *Yashar Agazade and Rasul Jafarov v. Azerbaijan*, 27 October 2016. Available at: https://tbinternet.ohchr.org/Treaties/CCPR/Shared%20Documents/AZE/CCPR_C_118_D_2205_2012_25699_E.pdf

The Law on Mass Media, as amended in 2015, allows the Ministry of Justice to apply to the courts for liquidation of a media outlet if it publishes/broadcasts information that damages the integrity of the State, the country's security or public order, if it includes pornographic materials, if there is evidence of illegal financing by foreign entities or if a court, twice in the same year, has held the outlet responsible for biased content (some translations say this is for defamation).⁵²

Content restrictions

Criminal acts under the Criminal Code include slander, insult, smearing or humiliating the honour or dignity of the President and desecrating the flag or coat of arms of Azerbaijan. All of these are inappropriate as criminal offences. The Code also contains a broadly formulated hate speech provision, defined as incitement of national, racial, religious or social hatred or enmity, which may include "humiliation of national dignity".⁵³

Other laws contain problematically generic and insufficiently defined content restrictions. The Law on Mass Media prohibits abusing freedom of the media. It defines this as disclosing secrets protected by Azerbaijani legislation, using the media to overthrow the constitutional order, encroaching on the integrity of the State, issuing propaganda of war, violence or cruelty, inciting national, racial or social hatred or intolerance, publishing rumours, lies and biased publications under the name of an authoritative source, degrading the honour and dignity of citizens, publishing pornography or engaging in slander or other unlawful acts.⁵⁴

Internet and digital rights

A 2017 amendment to the Law on Dissemination and Protection of Information permits the blocking of online content and allows the Ministry of Transport, Communications and High Technologies to shut down an Internet outlet without a court order.⁵⁵ Grounds for blocking a site include posting content that promotes terrorism, propagates violence or religious extremism, constitutes a State secret, calls for public disorder, promotes changes to the constitutional order, constitutes hate speech, infringes intellectual property rights, promotes suicide, constitutes insults or slander, or includes "other information prohibited for distribution". The website owner is personally responsible for removing the content and has eight hours to delete it following a notice from the ministry.⁵⁶

The Law on Administrative Offences now imposes penalties for publishing prohibited information on the Internet and for failing to prevent publication of such information.⁵⁷ Amendments to the

⁵² Freedom House, Freedom on the Net 2018, Azerbaijan, 1 November 2018. Available at: <https://www.refworld.org/docid/5be16b273d.html>.

⁵³ Council of Europe, note 46, p. 38-39; and IREX, Azerbaijan, Media Sustainability Index 2018, available at: <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2018-azerbaijan.pdf>.

⁵⁴ Law on Mass Media, Article 10. As translated at: Council of Europe, note 46.

⁵⁵ IREX, note 53, p. 3.

⁵⁶ IREX, note 53, p. 3; and IRFS, *Government Blocks Access to Azadliq.info and Azadliq.org Websites in Azerbaijan*, 27 March 2017, available at: <https://www.irfs.org/news-feed/government-blocks-access-to-azadliq-info-and-azadliq-org-websites-in-azerbaijan>.

⁵⁷ IREX, note 53, p. 3.

Criminal Code have also introduced some new offences and/or steeper penalties for online speech, specifically in the context of defamation, such as a provision criminalising insult or slander disseminated online using anonymous usernames or accounts.⁵⁸

The Ministry of Transport, Communication and High Technologies (MTCHT), the State regulatory body, holds significant shares in leading Internet service providers (ISPs).⁵⁹ Access to international online traffic is controlled by companies with close ties to the government.⁶⁰ It appears that the government has used this control to engage in Internet shutdowns or slowdowns.⁶¹

Right to information and secrecy laws

Azerbaijan's right to information law is strong, ranked at 17th out of the 124 countries assessed by the RTI Rating.⁶² However, a few key problems with the Law seriously undercut its potential strengths. The Law's relationship with other laws is ambiguous but it appears that information classified as secret under the Law on State Secrets shall not be disclosed under the right to information legislation.⁶³ In addition, a 2012 amendment significantly expands the basis for withholding information, including for the protection of public order, health or morality, the protection of the rights and freedoms or commercial or other economic interests of others, or to ensure the authority and impartiality of the courts.⁶⁴ This amendment, along with other amendments to the Law on State Registration of Legal Entities and the Law on Commercial Information, mean that information on the registration, structure and ownership of commercial legal entities is secret, a change enacted by Parliament after a series of investigative reports implicated the President in corruption.⁶⁵

The Law on State Secrets establishes categories of information which may or may not be classified. The President then has the power to develop a precise list of classified information which, since the categories are highly general, gives the executive branch significant power to determine what

⁵⁸ Freedom House, Freedom on the Net 2018: Azerbaijan, available at: <https://freedomhouse.org/report/freedom-net/2018/azerbaijan>; and Council of Europe, note 46, p. 10.

⁵⁹ Freedom House, Freedom on the Net 2018: Azerbaijan. Available at: <https://freedomhouse.org/report/freedom-net/2018/azerbaijan>.

⁶⁰ Azerbaijani Authorities Tighten Screws on Independent Media, Aravot. Available at: <http://www.aravot-en.am/2017/01/21/188061/>.

⁶¹ Freedom House, Freedom on the Net 2018: Azerbaijan-Partly Free, Freedom House (2018), available at: <https://freedomhouse.org/report/freedom-net/2018/azerbaijan>; and IRFS, *Government Blocks Access to Azadliq.info and Azadliq.org Websites in Azerbaijan*, 27 March 2017, available at: <https://www.irfs.org/news-feed/government-blocks-access-to-azadliq-info-and-azadliq-org-websites-in-azerbaijan>.

⁶² The RTI Rating is the leading global methodology for assessing the strength of a right to information law. See RTI Rating, Country Data. Available at: <https://www.rti-rating.org/country-data/>.

⁶³ Law on the Right to Obtain Information, Article 4.2.1. Available at: <https://www.rti-rating.org/wp-content/uploads/Azerbaijan.pdf>.

⁶⁴ Law on the Right to Obtain Information, Article 2.4.1 as amended by Law No. 385-IVWD of 12 June 2012, as translated at ILO, Natlex, Azerbaijan Law No. 384-IVQD of 12 June 2012. Available at: https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=&p_isn=92485.

⁶⁵ IRFS, *A Comprehensive Analysis of Azerbaijan's Media Landscape*, June 2017, available at: <https://www.irfs.org/wp-content/uploads/2018/02/2017-A-COMPREHENSIVE-ANALYSIS-OF-AZERBAIJAN%E2%80%99S-MEDIA-LANDSCAPE.pdf>; and Freedom House, Freedom of the Press 2015: Azerbaijan, available at: <https://freedomhouse.org/report/freedom-press/2015/azerbaijan>.

constitutes State secrets.⁶⁶ The Criminal Code penalises disclosure of and unlawfully obtaining State secrets. Various other laws protect commercial and bank secrets, defined so as to cover a broad range of information about a company, specifically mentioning information about founders and shareholders. Sharing this information is a criminal offence.⁶⁷ These criminal penalties create a chilling effect on anti-corruption and other investigations by journalists and activists.

Restrictions on freedom of assembly

Organisers of an assembly, which is loosely defined as a “gathering of several people”, must provide notification at least five days in advance to the relevant regulatory authority, which must then respond within three days. A denial can be appealed by organisers within three days.⁶⁸ It is not uncommon for the government to deny permission to assembly organisers and no protests have been sanctioned in the centre of the capital Baku for years.⁶⁹

Under the Criminal Code, carrying out an assembly without permission can result in a fine, correctional labour or imprisonment for both participants and organisers whether or not the assembly caused harm or a disturbance.⁷⁰ Furthermore, under the Law on Administrative Offences, organising an unauthorised demonstration can result in 60 days of administrative detention and disobeying the police can result in 30 days administrative detention.⁷¹

National security laws

Azerbaijan passed a new Law on Martial Law in 2017, followed by amendments to the Code of Administrative Offences and the Law on Mass Media. These provide that during a state of emergency, military and State authorities may coordinate/censor mass media information and engage in surveillance of social media, and electronic, telephone and radio communications. Rallies, marches and pickets may also be banned.⁷² Although limited derogations from human rights obligations are permissible during genuine times of public emergency, this must be restricted to what is strictly required by circumstances; the breadth of powers permitted under martial law fails to respect this standard.

The Azerbaijani Criminal Code contains a number of prohibitions on public calls for terrorism or terrorist training, the creation of armed groups, riots, violence against citizens, violent change to the constitutional order and other forms of violence. These provisions do not always require a

⁶⁶ Council of Europe, note 46, p. 16.

⁶⁷ Council of Europe, note 46, p. 17.

⁶⁸ The Law on Freedom of Assembly of the Republic of Azerbaijan, Articles 5 and 9. Translation available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL\(2007\)113-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL(2007)113-e).

⁶⁹ International Media Support, *Azerbaijan: New legislative amendments further erode rights to freedom of expression and peaceful assembly*, 15 May 2013. Available at: <https://www.mediasupport.org/azerbaijan-new-legislative-amendments-further-erode-rights-to-freedom-of-expression-and-peaceful-assembly/>.

⁷⁰ ICNL, Civic Freedom Monitor: Azerbaijan. Available at: <http://www.icnl.org/research/monitor/azerbaijan.html>.

⁷¹ International Media Support, note 69.

⁷² Azerbaijani Vision, *Azerbaijani Parliament Adopts Bill on Martial Law*, 14 February 2017, available at: <https://en.azvision.az/news/59077/azerbaijani-parliament-adopts-bill-on-martial-law-.html>; and IREX, note 53, p. 3.

consideration of context or a sufficient nexus to the risk of actual harm. In practice, these provisions have been used against those who criticise government policy.⁷³

Whistleblower, witness and other protection systems for those at risk

Currently, Azerbaijan does not have a whistleblower protection law.⁷⁴

Bosnia & Herzegovina

Note: The State of Bosnia & Herzegovina (BiH) is made up of two entities – the Federation of Bosnia and Herzegovina (FBiH) and the Republic Srpska (RS). These entities are politically autonomous while the district of Brcko is jointly administered. Each entity has its own constitution.

Freedom of association: non-profit registration requirements and restrictions on advocacy

Non-profit organisations in Bosnia and Herzegovina (BiH) can register on the State level or the entity level (i.e. in FBiH, RS or Brcko). There are separate laws governing registration in each jurisdiction but they generally align. In each jurisdiction, registration is voluntary. In order to register, organisations must submit an application containing basic information.⁷⁵ The federal ministry, cantonal body or district court (depending on jurisdiction) is required to issue a decision on entry to the registry within 30 days of receiving the application or notify the applicant about the need to correct an incomplete application or fulfil unmet legal requirements.⁷⁶ If the organisation fails to rectify these issues within the specified time frame, registration will be denied. This decision may be appealed before the administrative courts.⁷⁷

The largest issue with the registration process is that each entity keeps their own register and the registries are not harmonised. According to the BiH law, registered NGOs are permitted to operate in any entity in BiH, regardless of where they are registered,⁷⁸ but the registration and supervision structure can cause confusion as it is sometimes unclear which ministry is responsible for which organisation.⁷⁹

⁷³ Council of Europe, note 46, p. 8.

⁷⁴ Transparency International-Azerbaijan, Concept Paper on Whistleblower, April 2015, p. 2-6. Available at: http://transparency.az/alac/files/Paper_on_whistleblowers_en.pdf.

⁷⁵ BiH, Law on Associations and Foundations, 2002, Article 28, translation available at: <http://www.icnl.org/research/library/files/Bosnia%20and%20Herzegovina/BiH%20Law%20on%20Associations%20and%20Foundations.pdf>; FBiH, Law on Associations and Foundations, 2002, Article 28, translation available at: <http://www.icnl.org/research/library/files/Bosnia%20and%20Herzegovina/FBiH%20Law%20on%20Associations%20and%20Foundations.pdf>; and RS, Law on Associations and Foundations, 2001, Articles 9 and 26, translation available at: <https://www.legislationline.org/documents/id/6248>.

⁷⁶ BiH, Law on Associations and Foundations, Articles 32 and 34; FBiH, Law on Associations and Foundations, Articles 30 and 31; and RS, Law on Associations and Foundations, 2001, Articles 27 and 29.

⁷⁷ BiH, Law on Associations and Foundations, Articles 34 and 35; FBiH, Law on Associations and Foundations, Articles 31 and 32; and RS, Law on Associations and Foundations, 2001, Articles 29 and 30.

⁷⁸ BiH, Law on Associations and Foundations, note 75, Article 3.

⁷⁹ EPRD Office for Economic Policy and Regional Development, *Mapping Study of CSOs in Bosnia and Herzegovina*, 2016, p. 9. Available at: <http://europa.ba/wp-content/uploads/2016/11/Mapping-study-of-CSOs-in-BiH.pdf>.

Funding restrictions, financial reporting requirements and special tax requirements

Registered associations and foundations must maintain financial records and submit financial reports in accordance with the relevant law.⁸⁰ There are no current restrictions on foreign funding but, in 2018, a proposed law in RS would have allowed authorities to categorise NGOs which received foreign funds as “foreign agents”, allowing for extensive unwarranted monitoring.⁸¹

“Humanitarian” organisations are exempt from corporate tax in FBiH and RS (and presumably Brcko)⁸² but the criteria for qualifying as a humanitarian organisation are not specified, leaving it unclear as to which organisations qualify. There is no legislation providing tax incentives for contributions to non-profit organisations.⁸³

The mechanisms and criteria for State allocation of funding for CSOs lacks transparency. A large amount of the public funds distributed are assigned without any invitation to tender or public procurement procedures.⁸⁴

Media regulation

Journalism is not a registered or licenced profession in any area of BiH and there is no licencing framework for print media. Various journalists’ associations exist, all of which are members of the Press Council of BiH, a self-regulatory organisation.⁸⁵

Broadcast media is regulated pursuant to the Law on Communications⁸⁶ and the various Laws on the Public Broadcasting Service.⁸⁷ The Communications Regulatory Agency (CRA) is the State

⁸⁰ BiH, Law on Associations and Foundations, note 75, Article 47; FBiH, Law on Associations and Foundations, note 75, Article 40; and RS, Law on Associations and Foundations, note 75, Article 37.

⁸¹ Human Rights Watch, *Bosnia and Herzegovina, Events of 2018*, 2019. Available at: <https://www.hrw.org/world-report/2019/country-chapters/bosnia-and-herzegovina>.

⁸² FBiH, Law on Corporate Income Tax, Article 3, translation available at: <http://www.fic.ba/uimages/zakoni/FBiH%20Law%20on%20Corporate%20Income%20Tax.pdf>; and RS, Law on Corporate Income Tax, Article 4, translation available at: http://www.fipa.gov.ba/publikacije_materijali/zakoni/12.04.2018.%20Law%20on%20Corporate%20Income%20Tax%20of%20RS.pdf.

⁸³ Sarajevo Open Centre and Helsinki Citizens’ Assembly, *Alternative Answers of Civil Society Organisations to the European Commission Questionnaire*, 2017. Available at: http://eu-monitoring.ba/site/wp-content/uploads/2017/08/alternativni-odgovori_ENG-1.pdf.

⁸⁴ Sarajevo Open Centre and Helsinki Citizens’ Assembly, note 83, p. 19; and Balkan Civil Society Development Network, *Monitoring Matrix on Enabling Environment for Civil Society Development in BiH*, 2017, available at: http://www.balkancsd.net/novo/wp-content/uploads/2017/07/BosniHerzegovina_CMCR_2015.pdf.

⁸⁵ Press Council in Bosnia-Herzegovina, About Us. Available at: <http://english.vzs.ba/index.php/press-council-in-bih/about-us>.

⁸⁶ BiH, FBiH, RS and Brcko, Law on Communications. Translation available at: <https://advokat-prnjavorac.com/legislation/Law-on-communications-of-Bosnia-and-Herzegovina.pdf>.

⁸⁷ BiH, Law on the Public Broadcasting Service of Bosnia and Herzegovina. Translation available at: <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/New2015/BH%20Law%20on%20Public%20Broadcasting%20Service%2092-05.pdf> (as well as entity level laws).

agency tasked with licensing broadcasting.⁸⁸ Its independence is protected by several provisions, including prohibitions on political party members or legislative and executive officials from being members of the Council of the Agency or the Director General.⁸⁹ Members of the Council are nominated by the Council of Ministers based on a list of candidates proposed by the Agency itself. Parliament accepts or rejects these nominations.⁹⁰

The independence of the CRA was enhanced in 2017 when amendments to the Law on Ministries made it exempt from the Ministry's direct control over administrative agencies.⁹¹ However, requirements in the Law on Financing of the State Institutions which specify how the Agency must generate its budget, along with Ministry of Finance responsibilities for budget execution and the fact that the Agency is treated similarly to other government administration entities, may compromise its financial independence.⁹²

Media ownership is poorly regulated. The Law on Communications places no restrictions on media concentration or ownership, so that concentration is only regulated by the general Law on Competition of BiH. This Law prohibits concentration that distorts competition or creates/strengthens the dominant position of a company but it does not create special rules for concentration of media ownership, unlike in many other countries.⁹³ A lack of transparency requirements means that there is no public register containing information about media outlets operating in the country.⁹⁴ In December 2018, draft laws were put forward to bring the media ownership transparency standards up to EU standards but these laws have not yet been passed.⁹⁵

As with funding for NGOs, State funding of media outlets is also not transparent or regulated.⁹⁶ There are no guarantees that funding is not allocated along political lines and the requirement that

⁸⁸ Law on Communications, note 86, Article 3.

⁸⁹ *Ibid.*, Articles 39 and 40.

⁹⁰ *Ibid.*, Article 39.

⁹¹ BiH, Law Making a Change and Amendment to the Law on Ministries and Other Bodies of Administration of Bosnia and Herzegovina, Article 2. Available at: <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/New2018/BH%20Law%20Amending%20the%20BiH%20Law%20on%20Ministries%20and%20Other%20Bodies%20of%20Administra...pdf>.

⁹² Law on Financing of the State Institutions, as described in OSCE, *Bosnia and Herzegovina: Legislative Framework on the Communications Regulatory Agency*, 2012. Available at: <https://www.osce.org/fom/94101?download=true>. It appears this is the current state of the law (see US Department of State, 2018 Country Reports on Human Rights Practices: Bosnia and Herzegovina, 2019) but we could not locate the precise legislation.

⁹³ IREX, Media Sustainability Index 2017, Bosnia and Herzegovina, available at: <https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2017-bosnia-and-herzegovina.pdf>; and BiH, Law on Competition in BiH, Article 13, translation available at: <http://bihkonk.gov.ba/en/competition-act-unofficial-consolidated-text.html>.

⁹⁴ IREX, note 93.

⁹⁵ The Draft Laws for Regulating Media Ownership Transparency Presented, Sarajevo Times, 25 December 2018, available at: <https://www.sarajevotimes.com/the-draft-laws-for-regulating-media-ownership-transparency-presented/>; and Conference on Transparency of Media Ownership and Media Pluralism, Sarajevo Times, 5 January 2019, available: <https://www.sarajevotimes.com/conference-on-transparency-of-media-ownership-and-media-pluralism-held/>

⁹⁶ IREX, note 93.

funding be awarded according to the “public interest” is undefined.⁹⁷ Media outlets have reported that officials have threatened to eliminate advertising or funding, attempting to influence media content.⁹⁸

Content restrictions

Freedom of expression is guaranteed in Article 3(h) of the BiH Constitution, Article 2(1) of the FBiH Constitution and Article 26 of the RS Constitution.⁹⁹ However, in practice, journalists engage in extensive self-censorship. This is partly due to frequent civil defamation lawsuits brought by public officials and courts imposing temporary publication bans or high damages due to “mental anguish” in such cases.¹⁰⁰ Physical attacks against journalists are also a serious concern. In 2018, the Bosnian Journalists’ Association reported 41 attacks against journalists, while the Human Rights Ombudsman received nine complaints about this.¹⁰¹ Media outlets have also reported that political parties and entity-level institutions attempt to influence their content through both legal and financial means.¹⁰²

Internet and digital rights

In 2015, RS introduced a public order law which extended the definition of public spaces to include social networks and then criminalised the posting of content that could disturb social order of that was deemed to be obscene or offensive, as well as insulting or threatening other persons. This latter offence may be punished by 30 days in prison while fines may be imposed for all of these offences.¹⁰³

⁹⁷ *Ibid.*

⁹⁸ US State Department, 2018 Country Reports on Human Rights Practices: Bosnia and Herzegovina, 2019. Available at: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/bosnia-and-herzegovina/>.

⁹⁹ BiH Constitution, Article 3(h); FBiH Constitution of the Federation of Bosnia and Herzegovina, Article 2(1), available at: <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/FBH/FBH%20CONSTITUTION%20FBH%201-94%20and%2013-97.pdf>; and RS Constitution, Article 26, available at: <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/RS/RS%20CONSTITUTION%20OF%20REPUBLIKA%20SRPSKA.pdf>.

¹⁰⁰ Mladen Lakic, “Bosnian Journalist Probing Youngster’s Death Defies Minister’s Lawsuit”, Balkan Insight, 11 May 2018, available at: <https://balkaninsight.com/2018/05/11/bosnian-serb-minister-sues-bosnian-journalist-05-11-2018/>; Human Rights Watch, *A Difficult Profession: Media Freedom under Attack in the Western Balkans*, 2015, available at: <https://www.refworld.org/docid/55adf7fa4.html>; Freedom House, *Freedom of the Press: Bosnia and Herzegovina*, 2015, available at: <https://freedomhouse.org/report/freedom-press/2015/bosnia-and-herzegovina>; and U.S. State Department, *Bosnia and Herzegovina 2018 Human Rights Report*, available at: <https://ba.usembassy.gov/wp-content/uploads/sites/270/2018-Human-Rights-Report-for-Bosnia-and-Herzegovina.pdf>.

¹⁰¹ Human Rights Watch, *World Report: Bosnia and Herzegovina 2018*. Available at: <https://www.hrw.org/world-report/2019/country-chapters/bosnia-and-herzegovina>.

¹⁰² US State Department, 2018 Country Reports on Human Rights Practices: Bosnia and Herzegovina, 2019, note 98.

¹⁰³ RSF, *Republika Srpska Adopts Law Criminalizing Social Network Content*, 23 February 2015. Available at: <https://rsf.org/en/news/republika-srpska-adopts-law-criminalizing-social-network-content>.

Right to information and secrecy laws

The right to information is not guaranteed in any Bosnian constitution but it is protected by the various access to information laws.¹⁰⁴ Bosnia and Herzegovina's legislative framework ranks highly globally, at 36th place out of the 124 countries assessed by the RTI rating.¹⁰⁵ The framework is particularly strong regarding scope: everyone has the right to file requests for information, the right applies to all material held by or on behalf of public authorities which is recorded in any form and to the executive, legislative and judicial branches.¹⁰⁶ It also applies to State-owned enterprises and private bodies that perform public functions or receive significant public funding. Requesters have the right to access both information and records/documents.¹⁰⁷

The framework is, however, exceptionally weak in relation to sanctions and protections. The law lacks sanctions for those who wilfully undermine the right to information, a system for redressing the issue of public authorities which systemically fail to disclose information or underperform, protection for those who disclose information in good faith under the RTI law and legal protections for whistleblowers.¹⁰⁸

Each criminal code in BiH prohibits the disclosure of State secrets but in all of these provisions it is a defence to have released the secret with the aim of disclosing to the public fact "which constitute a violation of the order established by the Constitution and the Statute or of an international agreement."¹⁰⁹ This represents a limited form of whistleblower protection but does not protect disclosure of all information about corruption or human rights violations, for example.

Restrictions on freedom of assembly

Freedom of assembly is protected by Article 3(i) of the BiH Constitution, Article 3(1) the FBiH Constitution and Article 30 of the RS Constitution.¹¹⁰ There are eleven laws regulating public assemblies in BiH, as freedom of assembly is regulated at the cantonal level in FBiH and the entity level in RS.¹¹¹

¹⁰⁴ Law on Freedom of Access to Information, Official Gazette of BiH, No. 80/00. Available at: <https://www.rti-rating.org/wp-content/uploads/Bosnia-and-Herzegovina.pdf>.

¹⁰⁵ RTI Rating, Bosnia and Herzegovina. Available at: <https://www.rti-rating.org/country-data/Bosnia%20and%20Herzegovina/>.

¹⁰⁶ Article 2-4, Law on Freedom of Access to Information.

¹⁰⁷ Article 2-3, Law on Freedom of Access to Information.

¹⁰⁸ RTI Rating, Bosnia and Herzegovina. Available at: <https://www.rti-rating.org/country-data/Bosnia%20and%20Herzegovina/>.

¹⁰⁹ BiH, Criminal Code, Article 164; FBiH, Criminal Code, Article 158; RS Criminal Code, Article 305; and Brcko, Criminal Code, Article 157. All available at: <https://www.legislationline.org/documents/section/criminal-codes/country/40/Bosnia%20and%20Herzegovina/show>.

¹¹⁰ BiH Constitution, Article 3(i); and FBiH Constitution of the Federation of Bosnia and Herzegovina, Article 3(1), available at: <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/FBH/FBH%20CONSTITUTION%20FBH%201-94%20and%2013-97.pdf>; and RS Constitution, Article 30, available at: <http://www.ohr.int/ohr-dept/legal/laws-of-bih/pdf/001%20-%20Constitutions/RS/RS%20CONSTITUTION%20OF%20REPUBLIKA%20SRPSKA.pdf>.

¹¹¹ ECNL, *Monitoring the Right to Free Assembly: 2017-2018 Bosnia and Herzegovina*, 2018, p. 13. Available at: http://ecnl.org/wp-content/uploads/2019/02/BosniaHerzegovina_Monitoring-assembly-report-2018.pdf.

The restrictions on freedom of assembly in these laws vary but some violate international standards. The Freedom of Assembly Law of Central Bosnia Canton, for example, provides that organisers who fail to notify authorities of the assembly in advance can be imprisoned for up to 30 days. Various cantons have disproportionate restrictions on permissible locations or times at which assemblies may occur.¹¹² In several Cantons, assemblies that are not registered can be terminated by the police. While some laws recognise the right to appeal a ban on assemblies, others do not. All the laws provide that organisers may be held liable for breaches of the laws on assemblies by participants.¹¹³

Starting in 2017, FBiH has been working on creating an entity-wide freedom of assembly law.¹¹⁴ The draft law contains a prior notice obligation without exceptions, incomplete appeal provisions, a long list of scenarios in which assemblies may be dispersed and excessive obligations for organisers.¹¹⁵

In practice, freedom of assembly is typically respected and peaceful protests are frequent but police have “overreacted” to demonstrations, violently dispersing peaceful protests.¹¹⁶ In addition, the State has frequently made it difficult to obtain permits and has restricted assemblies to specific locations.¹¹⁷ In RS, assemblies have sometimes been banned outright.¹¹⁸

National security laws

The Law on Intelligence Security Agency of BIH (ISA) and the criminal procedure codes outline which court can issue warrants upon the demands of the ISA or police agencies. Due to Bosnia’s complex judicial and policing system, 68 courts are able to issue warrants.¹¹⁹ In addition, while the criminal procedure codes state that surveillance warrants can only be issued for up to one month, with the possibility of being reissued for six months, there is no mechanism to prevent multiple police agencies from all conducting surveillance in relation to the same individual consecutively.¹²⁰ This situation limits effective oversight of improper surveillance.

In practice, surveillance appears to be rampant. In 2011, an RS newspaper published a list of over 5,000 phone numbers that were under surveillance by the ISA. The people targeted included

¹¹² *Ibid.*, p. 13-15.

¹¹³ *Ibid.*, p. 14-16.

¹¹⁴ *Ibid.*, p. 16.

¹¹⁵ OSCE, *Comments on the Draft Law on Public Assembly in the Federation of Bosnia and Herzegovina*, 2018 at paras. 26, 55, 60 and 69. Available at: <https://www.osce.org/odihr/388256?download=true>.

¹¹⁶ Freedom House, *Freedom in the World 2018: Bosnia and Herzegovina*. Available at: <https://freedomhouse.org/report/freedom-world/2018/bosnia-and-herzegovina>.

¹¹⁷ Freedom House, note 116; and Human Rights Watch, *World Report 2019: Bosnia and Herzegovina*, available at: <https://www.hrw.org/world-report/2019/country-chapters/bosnia-and-herzegovina>.

¹¹⁸ ECNL, note 111, p. 16; and US State Department, *2018 Country Reports on Human Rights Practices: Bosnia and Herzegovina*, 2019, available at: <https://www.state.gov/reports/2018-country-reports-on-human-rights-practices/bosnia-and-herzegovina/>.

¹¹⁹ Sanjin Hamidicevic, *Use and Abuse of Electronic Surveillance*, DCAF Young Faces, 2015. Available at: https://issuu.com/css9/docs/telecommunication_surveillance_in_b.

¹²⁰ *Ibid.*

security experts, lawyers and civil society representatives. In 2014, leaks revealed that communications between journalists and politicians had been intercepted.¹²¹

Whistleblower, witness and other protection systems for those at risk

There are two legislative frameworks for the protection of whistleblowers in BiH, one at the State level and one in RS.¹²² The federal legislation applies only to employees and founders of public institutions, while the RS legislation applies to all persons in the public and private sector.¹²³ The federal legislation defines corruption broadly to cover “violations of laws and other regulatory acts, as well as irregularities and frauds that indicate the existence of corruption,” while the RS law limits the definition to the commission of crimes.¹²⁴ The two laws lay out entirely different protection mechanisms. At the federal level, whistleblowers are protected by the Agency for the Prevention of Corruption and for the Coordination of the Fight against Corruption (APIK) and at the RS entity level they are protected by judicial action.¹²⁵

Despite the formal protection mechanisms, most whistleblowers are not granted protection in practice. Between 2014 and 2017, only 16 requests for whistleblower status were made at the federal level and only 3 were accepted.¹²⁶ In FBiH, there is no entity-level whistleblower protection scheme.

Georgia

Freedom of association: non-profit registration requirements and restrictions on advocacy

The Constitution guarantees the right to form and join public associations.¹²⁷ Legally registering a non-profit organisation in Georgia is relatively easy and non-bureaucratic.¹²⁸ Registration is handled by the Public Registry which, upon receiving an application, is required to make a decision on registration the same day. The registration fee is low.¹²⁹ Any refusal by the Public Registry to register an organisation must be justified and can be challenged in court. Non-profit organisations can have their official registration revoked if they are found to be engaging principally in

¹²¹ Global Information Society Watch, Bosnia and Herzegovina, 2014. Available at:

<https://www.giswatch.org/en/country-report/communications-surveillance/bosnia-and-herzegovina>.

¹²² BiH, Law on the Protection of Persons who Report Corruption in the Institutions, available at: <http://rai-see.org/wp-content/uploads/2015/08/LAW-ON-WHISTLEBLOWER-PROTECTION-IN-THE-INSTITUTIONS-OF-BiH-en.pdf>; and RS, Law on the Protection of People who Report Corruption.

¹²³ As described in Osservatorio Balcani Caucaso Transeuropa, *Bosnia and Herzegovina: Whistleblowing and Distrust of Institutions*, 2017. Available at: <https://www.balcanicaucaso.org/eng/Areas/Bosnia-Herzegovina/Bosnia-and-Herzegovina-whistleblowing-and-distrust-of-institutions-184416>.

¹²⁴ *Ibid.*

¹²⁵ *Ibid.*

¹²⁶ *Ibid.*

¹²⁷ Constitution of Georgia, Article 22. Translation available at: <https://matsne.gov.ge/en/document/view/30346?publication=35>.

¹²⁸ European Union, *Roadmap for Engagement with Civil Society in Georgia: 2018-2020*, p. 5. Available at: https://eeas.europa.eu/sites/eeas/files/cs_roadmap_2018-2020_-_part_i_and_ii_consolidated_final_clean.pdf.

¹²⁹ Transparency International Georgia, *National Integrity System Country Study Georgia 2010*, p. 149. Available at: https://www.transparency.ge/sites/transparency.ge.nis/files/TIGeorgia_NISReport_en.pdf.

entrepreneurial activity. The Civil Code also allows for the operation of unregistered organisations.¹³⁰

Funding restrictions, financial reporting requirements and special tax requirements

There are no notable restrictions on the ability of civil society organisations to receive funding or especially burdensome financial reporting requirements. However, the Tax Code generally treats non-commercial organisations similarly to commercial organisations which may expose especially smaller organisations to unnecessarily complex reporting requirements.¹³¹ Civil society access to government grants is also limited by an outdated Law on Grants. Reform of the legal framework governing government grant-making processes to ensure better transparency and funding for civil society work is therefore needed.¹³²

Media regulation

Georgia's legal framework regulating the media is generally strong. The Constitution guarantees a free media governed by an independent national regulatory body.¹³³ Entry into journalism and the establishment of print media outlets are not restricted by law.¹³⁴

The Georgian National Communications Commission (GNCC) is responsible for issuing licences to broadcasters apart from the public broadcaster.¹³⁵ It has strong procedural guarantees for its independence. The five commissioners are selected from a list of nominees generated by an open competition, narrowed to a list of candidates by the President in agreement with the Government and appointed by Parliament.¹³⁶ Dismissal, only allowed on defined grounds, requires a three-fifths majority vote in Parliament.¹³⁷

Georgia has a national public broadcaster with a public interest mandate rather than a State-controlled body. Both the Constitution and the Law on Broadcasting protect its independence.¹³⁸ The appointment of the board of trustees is by Parliament via a complex nominating process. A 2013 amendment shifted the power to appoint members from the President during a leadership crisis at the broadcaster, with the goal of better protecting its independence.¹³⁹ Despite these

¹³⁰ Georgian Civil Code, Articles 27-31 and 39. Translation available at: <https://matsne.gov.ge/en/document/view/31702?publication=101>.

¹³¹ ECNL, *Registering a Civil Society Organisation*, 2018. Available at: <http://ecnl.org/wp-content/uploads/2018/10/ECNL-civil-society-handbook-final-22-Oct-2018.pdf>.

¹³² Europe Foundation, *Public Financing of Civil Society Organisations: Considerations for Georgia*, 2018. Available at: <http://www.epfound.ge/wp-content/uploads/2018/11/Report-CSO-Public-Funding-Final.pdf>. A translation of the Law on Grants is available at: <http://www.icnl.org/research/library/files/Georgia/grants.pdf>.

¹³³ Constitution, Article 17. Available at: <https://matsne.gov.ge/en/document/view/30346?publication=35>.

¹³⁴ Transparency International Georgia, note 129.

¹³⁵ Law on Broadcasting, Articles 5, 6 and 36. Translation available at: <https://matsne.gov.ge/en/document/download/32866/39/en/pdf>.

¹³⁶ Law on Broadcasting, Article 9.

¹³⁷ Law of on Broadcasting, Article 10.

¹³⁸ Constitution of Georgia, note 133, Article 17; and Law on Broadcasting, note 135, Articles 18 and 24.

¹³⁹ Freedom House, *Freedom of the Press: Georgia*, 2015. Available at: <https://freedomhouse.org/report/freedom-press/2015/georgia>.

changes, in practice the public broadcaster has still been criticised for being overly pro-government.¹⁴⁰

In practice, a key challenge to media freedom is a lack of diversity in media ownership and concerns with consolidation of control over the media in the political elite. A key controversy in recent years has been over the allegedly politically motivated takeover of the largest television station, Rustavi 2.¹⁴¹ In 2019, Parliament overrode a presidential veto to pass a contentious set of amendments to the Broadcasting Law which permit the public broadcaster to expand its advertising and limit its obligations under the public procurement law. Private sector media generally opposed the move, as it would increase competition for advertising revenue and possibly decrease advertising opportunities for smaller, independent broadcasters.¹⁴²

Content restrictions

The Constitution and the 2004 Law on Freedom of Speech and Expression establish a legal framework that generally sets appropriate standards for content restrictions, in accordance with international human rights law.¹⁴³ A few provisions in the Criminal Code may raise minor concerns. For example, the prohibition on disclosure of secrets of personal life may not sufficiently protect public interest disclosures.¹⁴⁴

Article 366 of the Criminal Code contains a problematically broad definition of contempt of court, referring generally to insult of a participant in legal proceedings.¹⁴⁵ Statements issued by the judiciary calling for civil society and others to refrain from statements damaging the authority of the judiciary also raise freedom of expression concerns.¹⁴⁶

Statements by public officials in early 2019 suggested that the government was considering developing a new defamation law. Civil society has expressed concern that this would serve to reintroduce criminal defamation rules or otherwise unduly restrict free speech.¹⁴⁷

Internet and digital rights

¹⁴⁰ Maia Mikashavidze, Television, Georgia Media Landscape, 2019. Available at: <https://medialandscapes.org/country/georgia/media/television>.

¹⁴¹ *Ibid.*

¹⁴² “Parliament Overrides President’s Veto on Broadcasting Law”, Agenda.ge, 21 February 2018. Available at: <https://agenda.ge/en/news/2018/394>.

¹⁴³ Law on Freedom of Speech and Expression, translation available at: <https://matsne.gov.ge/en/document/download/33208/1/en/pdf>; and Constitution, note 133, Article 17.

¹⁴⁴ Criminal Code, Article 157. Translation available at: <https://matsne.gov.ge/en/document/view/16426?publication=207>.

¹⁴⁵ *Ibid.*, Article 366.

¹⁴⁶ IDFI, *Threat Posed to Freedom of Expression in Georgia*, 13 May 2019. Available at: https://idfi.ge/en/threat_posed_to_freedom_of_expression_in_georgia.

¹⁴⁷ “Georgia Looks at New Law on Libel at Behest of Newly Elected President”, JAM News, 14 January 2019, available at: <https://jam-news.net/georgia-looks-at-new-law-on-libel-at-behest-of-newly-elected-president/>; and “Proposed Georgian Defamation Law ‘Puts Freedom of Speech at Risk’”, 18 January 2018, OC Media, available at: <https://oc-media.org/proposed-georgian-defamation-law-puts-freedom-of-speech-at-risk/>.

The GNCC oversees regulation of the Internet in Georgia under the Law of Georgia on Electronic Communications.¹⁴⁸ The regulatory framework, for the most part, does not raise major issues. A 2006 GNCC Regulation establishes certain categories of inadmissible content and includes some unclear provisions on takedown responsibilities and the obligations of intermediaries but it has apparently not been used in practice and the GNCC is in the process of reforming it.¹⁴⁹

In practice, Georgians can generally freely use the Internet. Apart from a few isolated cases, Georgians have not been subject blocked of sites or content. Key challenges include growing concentration of ownership of online news services (similar to media trends offline), self-censorship among Internet users and the presence of pro-government bots and trolls.¹⁵⁰

Surveillance of Internet users, along with other forms of surveillance, remains a concern. This is discussed in the section on national security.

Right to information and secrecy laws

Georgia's right to information rules are contained in the General Administrative Code, and are of middling quality, ranked in 45th place out of the 124 countries assessed by the RTI Rating.¹⁵¹ The law is broad in scope and has a reasonably limited list of exceptions. However, information which is classified or rendered secret by other laws will not be disclosed which is very problematical and there is no public interest override. A further key weakness is a lack of a central oversight body.¹⁵² Because of these deficiencies and poor enforcement of the current law, several non-profit organisations have called on the Georgian government to revise the law.¹⁵³

Restrictions on freedom of assembly

The Constitution of Georgia guarantees freedom of assembly.¹⁵⁴ The Law on Assemblies and Demonstrations protects the right to demonstrate without prior permission and only requires prior notice where road traffic will be obstructed.

¹⁴⁸ Law of Georgia on Electronic Communications, Article 1. Translation available at: <https://matsne.gov.ge/en/document/download/29620/26/en/pdf>.

¹⁴⁹ IDFI, *Regulating Inadmissible Internet Content – Georgia in Need of Legal Changes*, 2017, available at: https://idfi.ge/public/upload/IDFI_Photos_2017/media_internet_telecommunications/Inadmissible_content_in_internet_law_eng.pdf; and European Union, *EU Twinning Project Supporting the Georgian National Communication Commission Wraps Up Activities*, 5 July 2019, available at: https://eeas.europa.eu/delegations/georgia/65065/eu-twinning-project-supporting-georgian-national-communication-commission-wraps-activities_en.

¹⁵⁰ Freedom House, *Freedom on the Net 2018: Georgia*. Available at: <https://www.refworld.org/docid/5be16b174.html>.

¹⁵¹ RTI Rating, *Country Data*. Available at: <https://www.rti-rating.org/country-data/>.

¹⁵² The General Administrative Code of Georgia, Chapter 3. Translation available at: <https://www.rti-rating.org/wp-content/uploads/Georgia.pdf>.

¹⁵³ Open Society Georgia Foundation, *Reforming Georgia's Access to Information Law*, July 2016, p. 1, available at: https://www.osgf.ge/files/2016/EU%20publication/Angarishi_A4_Corruption_ENG.pdf; and IDFI, *Access to Public Information in Georgia 2010-2015*, available at: <https://idfi.ge/en/access-to-public-information-in-georgia-report-summarizing-2010%E2%80%932015>.

¹⁵⁴ Constitution, note 133, Article 21.

Some provisions in the Code of Administrative Offences raise freedom of assembly concerns and have previously been used against peaceful protesters. The offence of disorderly conduct, defined as swearing in public, harassing citizens or similar actions that disrupt public order, may result in a fine of administrative detention of up to 15 days. The offence of non-compliance with a lawful law enforcement order has also been applied in ways that have unjustifiably restricted the rights of protesters.¹⁵⁵ Additionally, in practice, Georgian police have in the past used excessive force on legitimate protests.¹⁵⁶

National security laws

Georgia has come under fire from multiple civil society organisations for practising extensive secret surveillance programs, considered by many to be illegal.¹⁵⁷ In 2016, the Constitutional Court ruled that the existing secret surveillance regime, which allowed the State Security Service to access telecommunications networks, was unconstitutional. Parliament then adopted an amended surveillance law, over the President's veto, in 2017. Many activists have criticised the new law as failing to address the concerns of the Court. It provides for surveillance to be carried out by an agency which is still subordinate to the State Security Service.¹⁵⁸ A constitutional challenge to the new law is pending in the courts.¹⁵⁹

Whistleblower, witness and other protection systems for those at risk

Georgia's whistleblower protections are primarily contained in the Law on Conflict and Corruption in Public Service.¹⁶⁰ This law prohibits reprisals against and protects the anonymity of whistleblowers. The Law on Public Service also requires the superiors to protect public officials who are whistleblowers and keep their identity confidential.¹⁶¹

While the legislation provides some key protections, it does not provide for compensation for damages incurred by whistleblowers, does not apply to the private sector, does not require that all public organisations establish clear internal disclosure procedures and imposes a two-month period during which whistleblowers cannot make disclosures to the media or civil society.¹⁶²

¹⁵⁵ Administrative Offences Code of Georgia, Articles 166 and 173, available at:

<https://matsne.gov.ge/en/document/download/28216/341/en/pdf>; and Coalition for an Independent and Transparent Judiciary, *Coalition Communicates with the UN Special Rapporteur on the Rights to Freedom of Peaceful Assembly and of Association*, 7 May 2018, available at: http://coalition.ge/index.php?article_id=187&clang=1.

¹⁵⁶ Human Rights Watch, *Georgia Police Use Teargas and Rubber Bullets against Protesters*, 21 June 2019.

Available at: <https://www.hrw.org/news/2019/06/21/georgia-police-use-teargas-rubber-bullets-against-protesters>.

¹⁵⁷ Luka Pertaia, "Georgia's Perpetual System of Illegal Surveillance", OC Media, 9 February 2017. Available at: <https://oc-media.org/georgias-perpetual-system-of-illegal-surveillance/>.

¹⁵⁸ IDFI, *Regulating Secret Surveillance in Georgia*, 14 September 2017. Available at:

<https://idfi.ge/en/regulating-secrete-surveillance-georgia-january-august-2017>.

¹⁵⁹ European Commission High Representative of the Union for Foreign Affairs and Security Policy, *Joint Staff Working Document: Association Implementation Report on Georgia*, 30 January 2019, p. 9. Available at:

<https://eeas.europa.eu/sites/eeas/files/2019-association-implementation-report-georgia.pdf>.

¹⁶⁰ Law on the Conflict and Corruption in Public Service, Chapter V. Translation available at:

<http://csb.gov.ge/uploads/745748.pdf>.

¹⁶¹ Law on Public Service, Article 73. Translation available at:

<https://matsne.gov.ge/en/document/download/3031098/1/en/pdf>.

¹⁶² Transparency International, *Whistleblower Protection-International Practices and Recommendations for Georgia*, pp. 12-13. Available at:

Hungary

Freedom of association: non-profit registration requirements and restrictions on advocacy

The primary relevant legal structure for Hungarian NGOs is an association although other legal forms are available, including informal civil groups that do not require registration and that operate without legal personality.¹⁶³ Associations obtain legal personality through a registration process with the regional courts. This includes providing their name and basic data, after which they are registered in the public Registry of Civil Organisations. The process is relatively straight forward but it can be lengthy, taking up to 60 days or longer if the applicant must make a correction to the application.¹⁶⁴ The Civil Code establishes somewhat detailed requirements regarding the internal structure of associations – in some cases more detailed than is strictly necessary – although the rules are mostly flexible. Dissolution of an organisation requires the prosecutor to initiate a case based on a violation of the CSO law, including when the organisation is formed for a military or unlawful purpose, it violates the rights and freedoms of others or it undertakes a task which is reserved for State bodies.¹⁶⁵

Funding restrictions, financial reporting requirements and special tax requirements

The 2017 Act on the Transparency of Organisations Supported from Abroad raises serious concerns about stigmatising organisations which receive foreign funding. The law requires associations and foundations to register as foreign funded organisations if they receive, directly or indirectly, funding from abroad that exceeds a set limit. This limit, pegged to an amount set in the Anti-Money Laundering Law, currently stands at HUF 7.2 million per year (approximately USD 24,800). Associations receiving more than this amount are labelled as foreign funded organisations in the public Registry of Civil Organisations and on a government website known as the Civil Information Portal (<http://civil.info.hu>).¹⁶⁶ They must also use this label on their websites and all publications.¹⁶⁷

Those organisations designated as receiving foreign funds must also submit a declaration on their foreign donors. For donors which contribute HUF 500,000 (USD 1,725) or more per year, the organisation must list the exact source of the funding, including the name, country and city of any individual donors and the name and registered address of any legal donor.¹⁶⁸ Combined with the labelling requirements and a current climate of deep suspicion of foreign funded NGOs in Hungary, this law is seen as an attempt to stigmatise and silence voices that are critical of the

https://www.transparency.ge/sites/default/files/post_attachments/whistleblower_protection_and_georgia_-_policy_brief_july_2015.pdf.

¹⁶³ Eszter Hartay, Hungary, ECNL. Available at:

<https://scholarworks.iupui.edu/bitstream/handle/1805/16743/Hungary.pdf?sequence=1&isAllowed=y> (referencing Act CLXXV).

¹⁶⁴ Eszter Hartay, note 163, p. 2.

¹⁶⁵ *Ibid.*, p. 4.

¹⁶⁶ Act LXXVI of 2017 on the Transparency of Organisations Receiving Foreign Funds, Article 2. Translation available at: <https://www.helsinki.hu/wp-content/uploads/LexNGO-adopted-text-unofficial-ENG-14June2017.pdf>.

¹⁶⁷ Act LXXVI of 2017, note 166, Article 2.

¹⁶⁸ *Ibid.*, Article 2(3) and Annex 1.

government.¹⁶⁹ Failure to comply with the law despite notices to do so may result in a fine or the public prosecutor initiating proceedings to dissolve the organisation.¹⁷⁰

Additionally, in July 2018, the government introduced a special tax on the provision of financial support for “immigration supporting activity” and organisations that carry out “immigration supporting activity.” Such activities are defined broadly to include any direct or indirect activity that promotes immigration through media campaigns, education, network/coalition building or propaganda.¹⁷¹

Media regulation

Hungary enacted a media regulatory package in 2010 which consolidated regulation of all forms of media (print, broadcasting and Internet). The package was then subject to a series of amendments in 2012 following a Constitutional Court decision finding some provisions unconstitutional and negotiations with the European Union. Even with these changes, the rules allow for significant politicisation of media regulation.¹⁷² This is primarily due to the appointments process and powers given to the National Media and Telecommunications Authority (NMHH), the main media regulatory body in Hungary, and the Media Council, which is responsible for licensing and monitoring.

The President of the NMHH is appointed by Hungary’s President upon a recommendation of the Prime Minister for a nine-year term. The NMHH President has significant powers to appoint persons to other key posts within the Authority. In most cases, the NMHH President also serves as the President of the Media Council, automatically becoming a candidate under the law.¹⁷³ All five members of the Media Council are elected by Parliament for nine-year terms by a qualified majority. This means, in the current political context, significant political control over the Media Council, given that the ruling party was able to command a supermajority when the 2012 media package was adopted.¹⁷⁴

The Media Council has significant authority, including allocating broadcasting licences, monitoring compliance, including with requirements of balanced coverage, imposing sanctions for illegal content, appointing the Chairperson of the Board of Trustees, registering linear media services and setting programme ratings on age-appropriateness. Importantly, the President of the NMHH and the Media Council also have a large influence on the public sector media. The President of the NMHH nominates two candidates to the public service media board, which the

¹⁶⁹ Krisztina Than and Marton Dunai, “Hungary Tightens Rules on Foreign-Funded NGOs, Defying EU”, Reuters, 13 June 2017. Available at: <https://uk.reuters.com/article/uk-hungary-ngo-law/hungary-tightens-rules-on-foreign-funded-ngos-defying-eu-idUKKBN19417T>.

¹⁷⁰ Act LXXVI of 2017, note 166, Article 3.

¹⁷¹ Act XLI of 2018 Amending Certain Tax Laws, Section 253. Translation available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2018\)059-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2018)059-e).

¹⁷² OSCE, “Revised Hungarian Media Legislation Continues to Severely Limit Media Pluralisms, says OSCE Media Freedom Representative”, 25 May 2012. Available at: <https://www.osce.org/fom/90823>.

¹⁷³ Act CLXXXV of 2010 on Media Services and Mass Communication, Article 125. Translation available at: http://hunmedialaw.org/dokumentum/153/Mttv_110803_EN_final.pdf.

¹⁷⁴ *Ibid.*, Article 124. For an explanation of the parliamentary voting procedure and its political significance, see Venice Commission, *Opinion on Media Legislation of Hungary*, *Opinion No. 798/2015*, 22 June 2015, para. 64. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2015\)015-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2015)015-e).

Media Council approves and sends to the Board of Trustees for selection.¹⁷⁵ The Media Council may also supervise public sector broadcasters and decide annually whether or not to continue the media services they provide.¹⁷⁶

In practice, the media sector is increasingly consolidated under the control of the ruling party. In 2018, over 400 news websites, newspapers, television channels and radio stations were transferred to the Central European Press and Media Foundation, which has close ties to Prime Minister Orban.¹⁷⁷ In 2018, more than 500 Hungarian news outlets took a pro-government stance, compared with 31 in 2015.¹⁷⁸

Content restrictions

Defamation and slander remain criminal offences, along with desecrating the memory of a deceased person. The Criminal Code also prohibits dishonouring or degrading national symbols, while the prohibition on incitement to hatred problematically includes incitement to hatred of the Hungarian nation.¹⁷⁹ Prohibitions on totalitarian symbols and open denial of Nazi or Communist crimes also raise free speech concerns, since they are not limited to contexts where this speech constitutes hate speech and they do not include intent requirements.¹⁸⁰ Provisions on scaremongering, threatening public endangerment and incitement against a decree of authority, while limited to public contexts and linked to disturbances of the peace, would benefit from greater precision to prevent their misuse.¹⁸¹

The 2010 Media Law stipulates that media content may not offend, discriminate or "incite hatred against persons, nations, communities, national, ethnic, linguistic, and other minorities or any majority as well as any church or religious group", a prohibition defined more broadly than is proper for hate speech under international human rights law.¹⁸² It also requires a prior warning before distributing content that may hurt religious or ideological convictions or which is violent or otherwise disturbing.¹⁸³

Another media law enacted in 2010, Act CIV on Freedom of the Press, imposes a number of additional restrictions on media service providers, including a prohibition on wanton, gratuitous and offensive presentation of persons in humiliating situations and a requirement that content shall respect human dignity, which is too vague to allow for media to adjust their conduct accordingly.¹⁸⁴

¹⁷⁵ Act CLXXXV of 2010, note 173, Article 102.

¹⁷⁶ *Ibid.*, Article 98.

¹⁷⁷ Patrick Kinglsey, "Orban and his Allies Cement Control of Hungary's News Media", The New York Times, 29 November 2018. Available at: <https://www.nytimes.com/2018/11/29/world/europe/hungary-orban-media.html>.

¹⁷⁸ Batorfy Attila, "Infographic: Explore the Media Empire Friendly to the Hungarian Government, Atlatzso", 17 January 2018. Available at: <https://english.atlatzso.hu/2018/01/16/infographic-explore-the-media-empire-friendly-to-the-hungarian-government/>.

¹⁷⁹ Act C of 2012 on the Criminal Code, Sections 228, 332 and 334. Translation available at: <https://www.refworld.org/pdfid/4c358dd2.pdf> (not all recent amendments are incorporated in this version).

¹⁸⁰ *Ibid.*, Sections 334-335.

¹⁸¹ *Ibid.*, Sections 336-338.

¹⁸² Act CLXXXV of 2010, note 173, Article 17.

¹⁸³ *Ibid.*, Article 14.

¹⁸⁴ Press Law, Act CIV of 2010, Article 14. Translation available at: http://nmhh.hu/dokumentum/162262/smtv_110803_en_final.pdf.

The Act also prohibits content that violates the constitutional order, which raises similar vagueness concerns.¹⁸⁵ The provisions on hate speech, similar to those in the Media Law, also include a prohibition on content that *excludes* any minority or majority. It is highly unclear what this would entail or how it could be assessed.¹⁸⁶

In practice, the government has allegedly employed these laws against independent media outlets, especially those critical of the ruling party.¹⁸⁷

Internet and digital rights

In most cases, intermediaries are not liable for content that they have not interacted directly with or modified. There have been two notable exceptions to this in recent years. In 2014, the Hungarian Constitutional Court ruled that Internet content providers can be held liable for unlawful user-generated comments and, in another case, a Hungarian court held a news website liable for posting a hyperlink to defamatory content. The European Court of Human Rights found that both of these were improper.¹⁸⁸

The anti-terrorism legislative package (discussed in the “national security” section) requires providers of encrypted services to grant intelligence agencies access to communications and to store client metadata for one year. The Electronic Communications Act also requires communications service providers to cooperate with the authorities on information gathering and covert data acquisition and to provide the means of doing so to the National Security Special Services when requested. This is highly unclear language which raises concerns over the powers of authorities to require data from service providers.¹⁸⁹

Right to information and secrecy laws

Hungary’s right to information law is in the middle-tier, ranked in 62nd position out of the 124 countries assessed on the RTI Rating.¹⁹⁰ The law has been amended several times since it was first adopted. Starting in 2013, Hungary’s Freedom of Information Act underwent the first of several amendments that have made it more difficult for the public to access information.¹⁹¹ Notably, the 2013 amendment limited the scope of the law by granting public bodies the discretion to reject requests for information on vaguely defined grounds, such as that the request was excessive or too large, while also requiring justification for requests.¹⁹² Other amendments to the law allow public

¹⁸⁵ *Ibid.*, Article 16.

¹⁸⁶ *Ibid.*, Article 17.

¹⁸⁷ Freedom House, *Hungary: 5-Year Decline in Press Freedom*, 2015. Available at: <https://freedomhouse.org/report/freedom-press/2015/hungary>.

¹⁸⁸ European Court of Human Rights, *Magyar Jeti Zrt v. Hungary*, Application No. 11257/16, 4 March 2019, available at: <https://hudoc.echr.coe.int/eng#%7B%22itemid%22:%5B%22001-187930%22%5D%7D>; and European Court of Human Rights, *Magyar Tartalomszolgáltatók Egyesülete and Index.hu Zrt. v. Hungary*, Application No. 22947/13, 2 February 2016, available at: <http://hudoc.echr.coe.int/eng?i=001-160314>.

¹⁸⁹ Act C of 2003 on Electronic Communications, Article 92. Translation available at: http://www.ictregulationtoolkit.org/document?document_id=2347.

¹⁹⁰ RTI Rating, Country Data. Available at: <https://www.rti-rating.org/country-data/>.

¹⁹¹ Freedom House, *Freedom of the Press 2017: Hungary*. Available at: <https://freedomhouse.org/report/freedom-press/2017/hungary>.

¹⁹² Act CXII of 2011 on the Right to Informational Self-Determination and on the Freedom of Information, Section 6 (as most recently amended), translation available at: http://njt.hu/translated/doc/J2011T0112P_20190426_FIN.pdf;

bodies to charge for vaguely defined labour costs, potentially making the provision of information very expensive.¹⁹³ The changes also allow State bodies to reject claims if the requested data is “preparatory”, meaning that it could be used in future government decisions, if it is subject to copyright interests vested in a third party or in case of repeat requests, even if the initial request went unanswered.¹⁹⁴

Restrictions on freedom of assembly

Hungary enacted a new Law on the Right of Assembly (Act LV of 2018) in 2018 which is generally more restrictive than the previous law.¹⁹⁵ The Act requires prior notice for any non-spontaneous assembly, defined as any public gathering of two or more people to discuss public affairs.¹⁹⁶ Authorities are empowered to deny permission for the assembly or impose conditions, meaning that prior notice is tantamount to a requirement to obtain prior permission.¹⁹⁷

Denials of requests to protest must be based on specified grounds. While some of these have roots in proper restrictions under human rights law, the breadth of the permissible grounds for prohibiting assemblies is troubling, particularly a reference to impairment of the “dignity of the Hungarian nation” as a basis for prohibiting an assembly.¹⁹⁸ Authorities are also given broad discretion in interpreting the grounds for denying a protest. Other concerning components of the Act include requiring organisers of an assembly to have staff in place to maintain public order, clean up after the assembly and monitor the behaviour of participants.¹⁹⁹

National security laws

Hungary enacted an anti-terrorism package in 2016 that amended the Constitution as well as several other laws. The Constitutional amendment creates a new category of states of emergency – a “state of terrorist threat” – during which derogations from existing laws are permitted. This state is triggered by a two-thirds vote of the National Assembly in the event of a “significant and direct threat of a terrorist attack”.²⁰⁰ The amendment does not define a terrorist attack and, without clearer criteria, it may allow the National Assembly to declare a state of emergency on political rather than genuine national security grounds. It also does not establish clear limits to ensure that any derogations from fundamental human rights obligations are imposed only where strictly necessary.

and Freedom House, Freedom of the Press 2014: Hungary, available at:

<https://www.refworld.org/docid/54a148f4c.html>.

¹⁹³ Act CXII of 2011, note 192, Sections 29 and 31.

¹⁹⁴ *Ibid.*, Sections 6, 27 and 42.

¹⁹⁵ Human Rights First, *Rule of Law, Free Speech, and Individual Rights Disappearing in Hungary*, 2018. Available at: <https://www.humanrightsfirst.org/sites/default/files/Hungary-Rule-of-Law-Brief-Oct-18.pdf>.

¹⁹⁶ Act LV of 2018 on the Right of Assembly, Section 2. Translation available at: https://njt.hu/translated/doc/J2018T0055P_20181002_FIN.pdf.

¹⁹⁷ *Ibid.*, Section 13.

¹⁹⁸ *Ibid.*, Section 13.

¹⁹⁹ *Ibid.*, Sections 3, 5 and 20.

²⁰⁰ Constitution, Article 51/A. Translation available at:

https://www.kormany.hu/download/f/3e/61000/TheFundamentalLawofHungary_20180629_FIN.pdf.

Hungary's surveillance regime under previous anti-terrorism and national security laws already raised a number of concerns, particularly around a lack of protections against mass secret surveillance. A European Court of Human Rights judgment in 2016 found that surveillance practices by the anti-terror task force violated privacy rights due to their breadth, the lack of a determination of necessity, the role of the executive branch in authorising the surveillance and the lack of judicial oversight.²⁰¹ Hungary is in discussions with the EU over implementing this judgement but has so far failed to amend the problematic laws which underlie the surveillance regime.²⁰²

Whistleblower, witness and other protection systems for those at risk

Hungary has a whistleblower law in place, Act CLXV of 2013 on Complaints and Public Interests Disclosures, but it is not a strong law. It generally prohibits actions being taken against whistleblowers due to their having made a public interest disclosure but it does not specifically establish protections against firing or other types of retaliation, or require investigations into such retaliations.²⁰³ Similarly, it establishes a reporting structure but does not establish specific protection mechanisms and the institutional framework is not well established. The personal data of the whistleblower may be disclosed to institutions which can carry out criminal or other proceedings if the whistleblower is found to have reported false information in bad faith.²⁰⁴

Moldova

Freedom of association: non-profit registration requirements and restrictions on advocacy

The Moldovan Constitution guarantees the rights of citizens to join political parties and other socio-political organisations but it does not generally protect the right to freedom of association. A proposed amendment to affirmatively establish the right has been approved by the Constitutional Court but as far as we know it is still pending.²⁰⁵

The 1994 Law on Public Associations is outdated and contains some problematic provisions. The government was developing a new Law on Non-Commercial Organisations²⁰⁶ but this process was

²⁰¹ European Court of Human Rights, *Szabo and Vissy v. Hungary*, Application No. 37138/14, 1 December 2016. Available at: [https://hudoc.echr.coe.int/eng#{%22itemid%22:\[%22001-160020%22\]}](https://hudoc.echr.coe.int/eng#{%22itemid%22:[%22001-160020%22]}) (addressing multiple domestic laws but especially the Police Act and the National Security Services Act).

²⁰² European Parliament Committee on Civil Liberties, Justice and Home Affairs, Report of 4 July 2018 on a proposal calling on the Council to determine, pursuant to Article 7(1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded (2017/2131(INL)), available at: http://www.europarl.europa.eu/doceo/document/A-8-2018-0250_EN.html (and no indication that it has since this publication date); and IAPP, *Privacy's Role in the Article 7 Proceedings against Hungary*, 25 September 2018, available at: <https://iapp.org/news/a/privacys-role-in-the-article-7-proceedings-against-hungary>.

²⁰³ Act CLXV of 2013 on Complaints and Whistleblowers, Articles 11 and 12. Translation available at: http://corruptionprevention.gov.hu/download/7/a2/90000/KIM%20555_2013-4.pdf.

²⁰⁴ *Ibid.*, Article 3(4).

²⁰⁵ Constitution of the Republic of Moldova, Article 41. Translation available at: <http://www.presedinte.md/titul2#2>.

²⁰⁶ An earlier version of the draft law (from 2017) is available in English at: http://ecnl.org/wp-content/uploads/2017/08/MD-draft-NCO-law-v2-18.07.2017_Eng.pdf.

derailed by the introduction of amendments targeting foreign funded NGOs (discussed below). The law was withdrawn due to the controversy but was re-introduced in 2018 without the problematic amendments. It remains pending and, in the meantime, the 1994 law remains in force.²⁰⁷

Under the Law on Public Associations, associations may register under their Charter to obtain legal personality. The process is relatively straightforward although potentially lengthy. The registering authority may postpone a decision for up to three months in some cases.²⁰⁸ The authority may refuse to register an organisation on enumerated grounds, some of which allow for undue discretion to refuse registration, for example where information in the registration papers is unclear or if the name of the association insults morals or national or religious feelings.²⁰⁹

The Law grants unnecessarily intrusive powers to the organ responsible for registration, whose officials have the vaguely defined ability to participate in the actions of the association, study the papers of the association or gain information about their activities.²¹⁰ Powers to suspend an organisation's activities are relatively constrained. If an association violates the law, the entity that registered it or the public prosecutor may issue a warning. If the association does not address the violation within 10 days, its activity may be suspended for six months with a court decision.²¹¹

In practice, civil society has been subject to hostility from public institutions and sometimes even the press, including apparent bad faith efforts to discredit civil society. For example, in December 2017, eight media outlets published articles alleging that NGOs finance opposition parties; in reality, some individual NGO members had donated in their personal capacity but the NGOs themselves had not. There have also been threats to collect data or issue reports on outspoken NGOs.²¹²

Funding restrictions, financial reporting requirements and special tax requirements

The draft Law on Non-Commercial Organisations had been scheduled for adoption in 2017. At the last minute, the Minister of Justice introduced three additional articles. These prohibited foreign funding for organisations involved in political activities, which was defined ambiguously to include general advocacy activities. They also included burdensome quarterly financial reporting obligations for any organisation that receives foreign funding. Failing to submit this quarterly report or submitting an incomplete one can result in dissolution of the organisation.²¹³ Following the controversy over these amendments, the draft law was withdrawn and the version of the law re-introduced in 2018 did not include them.

²⁰⁷ Sorina Macrinici, *Shrinking Space for Civil Society in Moldova: Policy Brief*, April 2018. Available at: <https://www.soros.md/files/publications/documents/Civil%20Society%20Macrinici.pdf>.

²⁰⁸ Law on Public Associations, Article 18. Translation available at: <http://www.legislationline.org/documents/action/popup/id/15955>.

²⁰⁹ *Ibid.*, Article 21.

²¹⁰ *Ibid.*, Article 38.

²¹¹ *Ibid.*, Articles 42 and 43.

²¹² Sorina Macrinici, note 207, pp. 6 and 7.

²¹³ ECNL, *Opinion on the Special Provisions of the Draft Law on Noncommercial Organizations of the Republic of Moldova*, 8 August 2017, available at: http://ecnl.org/wp-content/uploads/2017/08/ECNL-Comments-on-MD-NCO-law-08.2017_Eng.pdf; and Sorina Macrinici, note 207, p. 3.

In a positive development, Moldova adopted a law in 2016 that allows individual donors to direct two percent of their income tax to NGOs.²¹⁴ Notably, the controversial provisions described above that were withdrawn had attempted to impose the same burdensome reporting obligations for foreign funded organisations to organisations benefitting from these sorts of donations.²¹⁵

Media regulation

Moldova adopted a new Audiovisual Services Media Code in late 2018. An English version of the new Code is not yet available but reliable sources indicate that it includes important reforms that bring freedom of expression protections more strongly into line with European Convention of Human Rights standards. However, the new Code fails to resolve issues about the transparency and impartiality of the process of selection of members of the Audiovisual Media Council.²¹⁶ In the past, and especially in recent years, this body has been highly politicised.²¹⁷

In practice, around 70% of the media market is controlled by one particularly influential businessman and political party leader. The new Code limits media ownership to 30% of the media market but it remains to be seen if this can meaningfully increase diversity in the media market.²¹⁸ The media is also highly politicised with around 80% of domestic television stations being owned by persons affiliated to political parties.²¹⁹

Content restrictions

The new Audiovisual Code reportedly brings content restrictions more closely into line with freedom of expression guarantees in the European Convention of Human Rights. A contentious area has been content produced by foreign media outlets, specifically Russia. The new Code reinforces the 2017 Anti-Propaganda Law which prohibited Russian content. For this reason, the pro-Russian President refused to sign the Code and it was enacted by Parliament over his refusal. Partisan divides regarding European versus Russia allegiances are strong in Moldova and reflected in both politics and the media, which is highly partisan.²²⁰

Defamation was decriminalised in 2009.²²¹ However, the Contravention Code still prohibits insult, which is defined as public words or acts that humiliate a person's honour or dignity, and

²¹⁴ EU Roadmap for Engagement with Civil Society in the Republic of Moldova 2018-2020, pp. 9 and 10. Available at: https://eeas.europa.eu/sites/eeas/files/md_cs_o_roadmap_2018_2020_approved.pdf.

²¹⁵ ECNL, note 213.

²¹⁶ Ludmila Nofit, "The More Things Change, The More They Stay the Same: Challenges Facing Moldovan Media in 2019 and Patterns from the 2016 Election", Media Forward, January 2019, p. 4. Available at: <https://freedomhouse.org/sites/default/files/Nofit-EN-final.pdf>.

²¹⁷ Reporters without Borders, *Romania's Press Freedom in Free Fall as it Takes Over EU Presidency*, 27 December 2018. Available at: <https://rsf.org/en/news/romania-press-freedom-free-fall-its-takes-over-eu-presidency>.

²¹⁸ Ludmila Nofit, note 216, p. 4.

²¹⁹ Freedom House, Freedom in the World 2019: Moldova, <https://freedomhouse.org/report/freedom-world/2019/moldova>.

²²⁰ Ludmila Nofit, note 216.

²²¹ Freedom House, Freedom of the Press 2015: Moldova. Available at: <https://freedomhouse.org/report/freedom-press/2015/moldova>.

defamation, and provides for steeper penalties for the media.²²² In practice, in recent years, even civil defamation lawsuits against the press are less common. Instead, politicians appear to prefer to respond with counter-attacks from media which are affiliated with their own political parties.²²³

Some troubling content restrictions remain in the Criminal Code. It is a crime, punishable by up to three years' imprisonment to profane "the flag, coat of arms, or anthem of the Republic of Moldova or of any other State."²²⁴ A provision on hate speech is far too broad, particularly inasmuch as it encompasses humiliating national honour and dignity and dissension and disunity rather than specifically targeting vulnerable groups.²²⁵ Some provisions in the Contravention Code are also overbroad, such as one which prohibits showing disrespect in a court of law or to the Constitutional Court and another which prohibits offending the religious feelings of individuals.²²⁶

Internet and digital rights

Internet use in Moldova is generally free. The Law on Electronic Communications is generally aligned with European Union norms on electronic communications.²²⁷ There are no special content rules for Internet content and online journalism is not subject to special registration or other regulatory requirements.

In 2016, a package of legal reforms was proposed by the government, ostensibly to improve responses to child pornography and hate speech online. Civil society, however, labelled the legislation as the "Big Brother" amendments, noting that they would dramatically increase government surveillance powers and allow for websites to be blocked on overly broad grounds.²²⁸ The proposals did not move forward because of the controversy and it appears that they are still pending in Parliament although they appear to be dormant.²²⁹

Right to information and secrecy laws

Moldova's current Law on Access to Information is strong, ranking in 25th place out of the 124 countries assessed by the RTI Rating.²³⁰ The law's strengths include the broad scope of

²²² Contravention Code, Articles 69 and 70. Translation available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86500/97673/F144678591/MDA86500.pdf>. Some sources indicate that some amendments, such as to penalties, have been enacted since the date of this translation but it appears that the provisions on insult and defamation are still present.

²²³ IREX, Media Sustainability Index 2019: Moldova, p. 6. Available at:

<https://www.irex.org/sites/default/files/pdf/media-sustainability-index-europe-eurasia-2019-moldova.pdf>.

²²⁴ Criminal Code of the Republic of Moldova, Article 347. Translation available at:

<https://www.legislationline.org/documents/section/criminal-codes/country/14/Moldova/show>.

²²⁵ *Ibid.*, Article 346.

²²⁶ Contravention Code, Articles 54 and 317. Translation available at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/86500/97673/F144678591/MDA86500.pdf>.

²²⁷ EBRD, *Commercial Law of Moldova – Telecommunications*. Available at:

<https://www.ebrd.com/documents/legal-reform/moldova-country-law-assessment.pdf>.

²²⁸ Legal Resources Centre from Moldova, *Opinion on the Draft Law No. 161 on Amendments and Supplements to Certain Legislative Acts ("Big Brother" Law)*, 23 November 2016. Available at: http://crjm.org/wp-content/uploads/2016/12/2016-11-Op-Big-Brother-CRJM-Manolea_Eng-fin.pdf.

²²⁹ Digital Report, *Moldova: State of Affairs Report*, 18 April 2018. Available at: https://digital.report/moldova-state-of-affairs-report/#_ftnref29.

²³⁰ RTI Rating, Country Data, Moldova. Available at: <https://www.rti-rating.org/country-data/Moldova/>.

information covered, a set time period of 15 days to respond to requests, and clear requesting procedure and appeals systems.²³¹ A weakness is that most of the exceptions are not harm-tested. Oversight of this system is also entrusted to an ombudsman, an approach which has normally not proven to be successful as compared to creating a dedicated information commission. In practice, requests are often refused by relying on the Law on State Secrets or the Law on Trade Secrets.²³²

Restrictions on freedom of assembly

The Constitution guarantees freedom of assembly and the Law on Assemblies regulates this right.²³³ Generally, the regulation of assemblies is in keeping with international standards. However, assemblies do require the organiser to submit a written notification at least five days prior to the assembly to the local public administration.²³⁴ This notice requirement can be expedited and simplified for so-called “spontaneous assemblies”, with organisers responsible for notifying authorities as soon as the intent to hold an assembly becomes known.²³⁵

Officials can only recommend changes to the time and place of an assembly. If officials have convincing evidence that an assembly will constitute a prohibited assembly, such as one advocating violence or hatred, they can apply for a court order to prohibit the assembly.²³⁶ In practice, freedom of assembly is mostly respected, with some notable exceptions in the semi-autonomous region of Transnistria and a few examples of disproportionate police force being applied during assemblies.²³⁷

National security laws

The Criminal Code contains national security provisions regarding treason, sedition and espionage.²³⁸ Specific provisions regarding terrorism, including financing and recruitment, are also provided for.²³⁹ Moldova also has a separate law on combating terrorism.²⁴⁰ Both laws have been criticised for having an overly broad definition of terrorism and terrorist acts, which could be misread to apply to things like labour union protests that damage property.²⁴¹ The law on

²³¹ As summarised by Transparency in the Balkans and Moldova, Balkans Insight, 2016, p. 8. Available at: <https://balkaninsight.com/wp-content/uploads/2016/06/transparency-in-the-balkans-and-moldova.pdf>.

²³² Freedom House, *Moldova: Stakeholder Submission for the Universal Periodic Review*, 28 March 2016. Available at: <https://freedomhouse.org/article/moldova-stakeholder-submission-universal-periodic-review>.

²³³ Constitution of the Republic of Moldova, Article 40, translation available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/41173/73129/F1743609028/MDA41173%20English.pdf>; and Law on Assemblies, translation available at: <https://www.legislationline.org/topics/country/14/topic/15>.

²³⁴ Law on Assemblies, *ibid.*, Article 9.

²³⁵ *Ibid.*, Article 12.

²³⁶ *Ibid.*, Article 14.

²³⁷ Civicus Monitor, *Moldova*, 6 January 2016, available at: <https://monitor.civicus.org/country/moldova/>; and Promo-Lex, *Concerns Regarding Latest Development around the Freedom of Peaceful Assemblies in the Republic of Moldova*, 25 September 2018, available at: <https://www.osce.org/odihr/397262?download=true>.

²³⁸ Criminal Code, note 224, Articles 337-345.

²³⁹ *Ibid.*, Articles 278-282.

²⁴⁰ Law on Combating Terrorism. Translation available at: [https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF\(2018\)046-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-REF(2018)046-e).

²⁴¹ Venice Commission, *Republic of Moldova Opinion on the Law on Preventing and Combating Terrorism*, Council of Europe, 22 October 2018, pp. 4 and 5. Available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2018\)024-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2018)024-e).

combatting terrorism has also been criticised for not providing effective checks on the powers it grants to authorities.²⁴²

Whistleblower, witness and other protection systems for those at risk

Moldova enacted a Law on the Protection of Whistleblowers in July 2018.²⁴³ Unfortunately this Law is not yet available in English. It appears to be a major step forward in establishing a framework for whistleblower protection, including protections for public and private sector whistleblowers, a designated public agency to investigate disclosures and criminal penalties for retaliation.²⁴⁴ The key challenge will likely be ensuring that this law is implemented effectively.

Montenegro

Freedom of association: non-profit registration requirements and restrictions on advocacy

Non-profit organisations in Montenegro are categorised as associations, foundations or foreign NGOs.²⁴⁵ Registration is voluntary and appears to be straightforward. An NGO seeking registration must submit an application as well as its founding act (which must include information about the NGO's goals and activities, personal information about the president and board of directors, and data on the initial assets of the organisation), the minutes from the founding session and the statute.²⁴⁶ The registration form is prescribed by the Ministry of Justice.²⁴⁷ Registration is required to be processed within ten days of the application and an NGO obtains legal personality on the date it is placed on the register.²⁴⁸

In practice, civil society organisations are able to operate relatively free from legal interference although some civil society have been subject to smear campaigns and other intimidation tactics.²⁴⁹

Funding restrictions, financial reporting requirements and special tax requirements

NGOs are exempt from paying income tax on grants, donations and membership dues.²⁵⁰ The situation is more complex for tax deductions. Corporations and individuals may claim a tax

²⁴² *Ibid.*, pp. 9-11.

²⁴³ A Romanian version of the law is available at: http://www.legis.md/cautare/getResults?doc_id=105486&lang=ro.

²⁴⁴ Olga Bitca, *Moldovan Whistleblower on Their Own*, Southeast Europe Coalition on Whistleblower Protection, 13 January 2018. Available at: <https://see-whistleblowing.org/moldovan-whistleblowers-on-their-own/> (describing provisions in a draft version of the law).

²⁴⁵ Law on Non-Governmental Organisations. Translation available at: http://ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=89379&p_count=96232&p_classification=02&p_classcount=3608.

²⁴⁶ *Ibid.*, Articles 11 and 15.

²⁴⁷ *Ibid.*, Article 14.

²⁴⁸ *Ibid.*, Articles 6 and 18.

²⁴⁹ Freedom House, *Nations in Transit 2017: Montenegro*. Available at: <https://freedomhouse.org/report/nations-transit/2017/montenegro>.

²⁵⁰ Law on Non-Governmental Organisations, note 245, Article 32.

deduction for contributions made to support certain goals.²⁵¹ The categories listed do not align exactly with the definition of “public benefit” activities in the NGO law,²⁵² creating ambiguity about whether tax deductions are available for organisations that deal with certain issues, such as the rule of law.

Media regulation

Freedom of the press and other forms of public information is guaranteed in article 49 of the Montenegrin Constitution²⁵³ and is regulated pursuant to the Law on Media, the Law on Electronic Media and the Law on the Public Broadcasting Services. Importantly, an ongoing reform process has led to the development of new versions of the Law of Media and the Law on the Public Broadcasting Services.²⁵⁴

The Agency for Electronic Media (AEM) regulates the broadcasting and online media sectors. Established by the Law on Electronic Media, AEM awards broadcasting licences.²⁵⁵ In order to maintain its independence, AEM’s council members are elected by Parliament but nominations may be made by various stakeholders including academics, NGOs and commercial broadcasters’ associations. Council members are elected from among “renowned experts” in relevant fields and politically involved persons are not eligible for membership.²⁵⁶

The Electronic Media Law has provisions to protect media diversity but they have proven to be insufficient. Article 129 requires electronic media to provide AEM with information annually about its ownership structures²⁵⁷ but there is no corresponding requirement for AEM to publish this information and it has chosen not to do so.²⁵⁸ While the Electronic Media Law places limits on media concentration, broadcast owners have avoided these limits by transferring shares to family members while maintaining their managerial roles.²⁵⁹ There is also a lack of transparency regarding the allocation of State advertising or how much public money is spent per media outlet.

²⁵¹ Law on Tax on Profit of Legal Entities, Article 14, available at:

<http://www.mif.gov.me/ResourceManager/FileDownload.aspx?rid=263421&rType=2&file=Law%20on%20Corporate%20Profit%20Tax%20-%20OG%20MN%2055-2016%20EN.DOCX>; and Law on Tax on Income of Natural Persons, Article 24, available at:

<http://www.poreskauprava.gov.me/ResourceManager/FileDownload.aspx?rid=263160&rType=2&file=Law%20on%20Tax%20on%20income%20of%20natural%20persons.pdf>.

²⁵² Law on Non-Governmental Organisations, note 245, Article 32.

²⁵³ Constitution, Article 49. Available at: https://www.constituteproject.org/constitution/Montenegro_2007.pdf.

²⁵⁴ An English version of the draft amendments is available at: <https://www.osce.org/representative-on-freedom-of-media/403652?download=true>.

²⁵⁵ Electronic Media Law, Article 12. Available at: <http://aemcg.org/wp-content/uploads/2011/11/Electronic-Media-Law-17.08.2016.pdf>.

²⁵⁶ *Ibid.*, Article 17.

²⁵⁷ *Ibid.*, Articles 16, 18-19 and 129.

²⁵⁸ European Parliament Directorate-General for External Policies, *Freedom of Media in the Western Balkans*, 2014, p. 20. Available at:

[http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534982/EXPO_STU\(2014\)534982_EN.pdf](http://www.europarl.europa.eu/RegData/etudes/STUD/2014/534982/EXPO_STU(2014)534982_EN.pdf).

²⁵⁹ South East European Media Observatory, *Media Integrity Report: Media Ownership and Financing in Montenegro*, 2015. Available at: <https://mediaobservatory.net/radar/media-integrity-report-media-ownership-and-financing-montenegro>.

Content restrictions

The Criminal Code contains problematic content restrictions. For example, it is a crime for anyone to tarnish “the reputation of Montenegro” by exposing the country, its flag, coat of arms or anthem to mockery.²⁶⁰ It is also a crime to disclose or spread false news or allegations that cause panic or seriously disrupt public law and order.²⁶¹

While Montenegro decriminalised defamation and insult in 2011,²⁶² journalists often face civil defamation suits brought by public figures. Media organisations have been sued and fined for “insulting” the Prime Minister and his family.²⁶³ Recently, the President sued a newspaper for publishing allegations of bribery involving him.²⁶⁴

Internet and digital rights

Article 145 of the Law on Electronic Communications allows the regulator to suspend Internet and telephone communications, if it deems this to be “justifiable in cases of deceit or abuse”.²⁶⁵ Based on this provision, on the day of the 2016 parliamentary elections, the Agency for Electronic Communications and Postal Services shut down the applications Viber and WhatsApp because many users had received a message stating that the ruling political party was buying votes.²⁶⁶ However, this incident, despite being serious, does not seem to reflect a pattern of suppressive behaviour in practice.

Right to information and secrecy laws

Montenegro’s Constitution guarantees the right to access information held by public authorities and other organisations exercising public authority. This may only be limited to protect life, public health, morality, privacy, criminal proceedings, security and defence, and foreign, monetary and economic policy.²⁶⁷

Montenegro first adopted a right to information law in 2005 and a new version was enacted in 2012 with significant further amendments in 2017. Overall, the law is relatively strong.²⁶⁸ It has a

²⁶⁰ *Ibid.*, Article 198.

²⁶¹ *Ibid.*, Article 398.

²⁶² *Ibid.*, Articles 195 and 196.

²⁶³ Freedom House, Freedom of the Press 2015: Montenegro. Available at: <https://freedomhouse.org/report/freedom-press/2015/montenegro>.

²⁶⁴ Samir Kajosevic, “Montenegro President Sues Newspaper, Businessman, Over Bribe Claims”, BalkanInsight, 19 April 2019. Available at: <https://balkaninsight.com/2019/04/19/montenegro-president-sues-newspaper-businessman-over-bribe-claims/>.

²⁶⁵ Electronic Media Law, note 255, Article 145.

²⁶⁶ Human Rights Action, *Viber and Whatsapp Shutdown During Parliamentary Elections in Montenegro*, 17 October 2016. Available at: <https://www.hraction.org/2016/10/17/17102016-viber-and-whatsapp-shutdown-during-parliamentary-elections-in-montenegro-in-breach-of-free-speech/?lang=en>.

²⁶⁷ Constitution, Article 51. Translation available at: https://www.constituteproject.org/constitution/Montenegro_2007.pdf.

²⁶⁸ The law earns a score of 101 out of 150 points on the RTI Rating, updated with information from the 2017 amendments to the law and on file with CLD.

broad scope in terms of the information it covers, and it establishes clear requesting procedures. A key weakness is the poor guarantees for the independence of the oversight body. In addition, amended Article 1 introduces additional exceptions, including information that must be kept secret pursuant to the law regulating classified information.²⁶⁹ Problematically, if information is denied because it is classified, requesters do not have a right to appeal to the oversight authority.²⁷⁰ The law also gives authorities fairly broad discretion to determine whether information is secret and provides only for an inappropriately narrow public interest test.²⁷¹

Proposed amendments to the Law on Classified Information might also potentially undermine the right to information. Under the proposals, public bodies may declare information secret if its disclosure would influence their ability to “perform their activities”, which could conceivably apply to a sweeping array of information. Combined with the recent amendments to Montenegro’s right to information law, this language would seriously limit access to information.²⁷²

Restrictions on freedom of assembly

Freedom of assembly without prior approval is guaranteed by Article 52 of the Montenegrin Constitution.²⁷³ The right is regulated by the 2016 Law on Public Assemblies and Public Performances.²⁷⁴ Pursuant to article 11 of that Law, prior notification is required for any assembly.²⁷⁵ Following notification, the police can invite organisers to discuss any potential issues or sources of confusion. Such a meeting is not mandatory but most organisers choose to attend.²⁷⁶ If the assembly is banned, organisers have a right to appeal directly to the administrative court if the time frame is urgent and the matter needs to be decided within 72 hours.²⁷⁷ However, this right of appeal has not had a large impact; not a single appeal regarding a banned assembly has been upheld by the administrative court.²⁷⁸

Spontaneous assemblies appear to be accepted in practice. In 2017, 87 spontaneous assemblies took place, with no use of force or misdemeanour charges filed.²⁷⁹ While the law recognises spontaneous assemblies, the article is vague, stating that police officers will inform participants

²⁶⁹ Law on Free Access to Information of Montenegro (as amended), Article 1, as described by Access Info Europe and MANS, *Analysis: Law on Free Access to Information of Montenegro*, 2018. Available at: <http://www.mans.co.me/wp-content/uploads/2018/06/AIE-MANSanalysis.pdf>.

²⁷⁰ *Ibid.*, Article 34.

²⁷¹ *Ibid.*, Articles 16 and 17.

²⁷² OCCRP, *Montenegro: Draft Secrecy Law Would Fuel Corruption, Critics Warn*, 8 July 2019. Available at: <https://www.occrp.org/en/27-ccwatch/cc-watch-briefs/10141-montenegro-draft-secrecy-law-would-fuel-corruption-critics-warn>.

²⁷³ Constitution, note 267, Article 52.

²⁷⁴ Law on Public Assemblies and Public Performances, as described in Aleksandra Vavic, *Monitoring the Right to Free Assembly*, ECNL. Available at: <http://ecnl.org/wp-content/uploads/2019/04/Montenegro-Monitoring-assembly-report-2018.pdf>.

²⁷⁵ *Ibid.*, Article 11.

²⁷⁶ Aleksandra Vavic, note 274, p. 14.

²⁷⁷ Law on Public Assemblies and Public Performances, as described in Aleksandra Vavic, *ibid.*

²⁷⁸ Aleksandra Vavic, *ibid.*, p. 17.

²⁷⁹ *Ibid.*, p. 17.

that the assembly is not organised in accordance with the law and warn them that they must comply with the law.²⁸⁰ This appears to allow the police to disperse spontaneous assemblies.

Another issue arises in relation to the implementation of the assembly law. Police frequently misinform organisers of assemblies of their rights and obligations, referring to the previous law. This misinformation has related to limitations on the location of assemblies and the former requirement for organisers to provide a certain number of stewards for assemblies.²⁸¹ In addition, while the Ministry of Interior is required by law to provide parliament with a report on the annual implementation of the law, it has shirked this responsibility by submitting a report consisting of only a list of the assemblies that took place, with no substantive material.²⁸²

In 2017, the Minister of the Interior announced amendments to the Assemblies Law. The amendments would have banned all assemblies on roads.²⁸³ The Ministry justified these amendments on the basis that they were needed to protect the right to free movement of goods and people but did not provide any data supporting this claim.²⁸⁴ Civil society organisers spoke out against these amendments²⁸⁵ and they have still not been adopted.

National security laws

The National Security Agency of Montenegro (NSA) has broad powers to conduct surveillance. The empowering statute allows the NSA to access private electronic communications of citizens on the authority of the Agency Director.²⁸⁶ While the Agency Director must usually obtain an order from the Supreme Court in order to issue this authority he may, in “urgent” circumstances, issue an order prior to receiving judicial authorisation. After issuing permission, the Director must then seek judicial authorisation and must cease the implementation and destroy the information if the authorisation is denied. Telecommunication companies are required to ensure that the “conditions for surveillance” are maintained.²⁸⁷

In the past, at least, inappropriate surveillance is widely believed to occur. Various reports indicate that surveillance wiretapping is often used without grounds, including against opposition parties, NGOs, and other groups.²⁸⁸

²⁸⁰ Law on Public Assemblies and Public Performances, Official Gazette of Montenegro No. 52/16.

²⁸¹ ECNL, *Monitoring the Right to Free Assembly*, 2017, p. 4 and 7. Available at: <http://ecnl.org/wp-content/uploads/2017/12/ECNL-FoPA-Montenegro-2017.pdf>.

²⁸² Aleksandra Vavic, note 274, p. 17.

²⁸³ *Ibid.*, p. 17.

²⁸⁴ ECNL, note 281, p. 6.

²⁸⁵ Aleksandra Vavic, note 274, p. 17.

²⁸⁶ Law on National Security Agency, Articles 11-13. Translation available at: <http://www.anb.gov.me/ResourceManager/FileDownload.aspx?rid=194323&rType=2&file=LOW%20ON%20THE%20NATIONAL%20SECURITY%20AGENCY.pdf>.

²⁸⁷ *Ibid.*, Articles 11-13; and Electronic Communications Act, Articles 180 and 181, translation available at: <http://www.mid.gov.me/ResourceManager/FileDownload.aspx?rid=148089&rType=2&file=Law%20on%20Electronic%20Communications%20ispravka.pdf>.

²⁸⁸ Transparency International, *Montenegro: Montenegro's National Security Agency Confirms Surveillance of Anti-Corruption Advocates*, 2010, available at: https://www.transparency.org/news/pressrelease/20100723_montenegro_montenegros_national_security_agency_co

Whistleblower, witness and other protection systems for those at risk

A whistleblower scheme was established in the 2014 Law on Prevention of Corruption.²⁸⁹ According to this legislation, whistleblowers may submit a request for protection to the Agency for Prevention of Corruption, an independent body established by Parliament.²⁹⁰ Anyone who blows the whistle based on a “threat to the public interest” has a right to protection if their life, health or assets are at risk, if their employment has been terminated or modified, or if they have been subjected to disciplinary proceedings or prohibited from accessing data required for the performance of their working duties.²⁹¹ If the Agency’s proceedings confirm that damage has occurred, the Agency will submit an opinion to the organisation or individual who caused this damage. If the whistleblower chooses to pursue legal action, the Agency will provide necessary expert assistance in proving the causal connection between the whistleblowing and the damage. Whistleblowers who can establish retaliation have a right to an award of damages.²⁹²

Despite this legislation, whistleblowers do not receive adequate protection in practice.²⁹³ The Agency has frequently refused protection by denying whistleblower status.²⁹⁴ In addition, the Agency does not operate transparently and civil society organisations believe it to be highly political.²⁹⁵

Russia

Freedom of association: non-profit registration requirements and restrictions on advocacy

Russian law recognises a range of legal forms for non-commercial organisations (around 11-14, depending on how you count them).²⁹⁶ Registration procedures are reportedly bureaucratic for

[nfirms surveilla](#); and United States State Department, Human Rights Report for 2017: Montenegro, p. 13-14, available at: <https://2009-2017.state.gov/documents/organization/204530.pdf>.

²⁸⁹ Law on Prevention of Corruption. Translation available at:

<http://www.poreskauprava.gov.me/ResourceManager/FileDownload.aspx?rid=322641&rType=2&file=Law%20on%20%20Prevention%20of%20Corruption.pdf>.

²⁹⁰ *Ibid.*, Articles 4 and 60.

²⁹¹ *Ibid.*, Article 59.

²⁹² *Ibid.*, Article 62, 66 and 69.

²⁹³ Emir Kalac, *Anti-Corruption Mechanisms and Accountability of Police Officers in Montenegro*, Centre for Democracy and Human Rights (CEDEM), December 2013, available at:

www.osce.org/montenegro/110441?download=true; European Commission, Montenegro Progress Report, available at:

https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2014/20141008-montenegro-progress-report_en.pdf; and Freedom House, *Nations in Transit 2018: Montenegro*, available at:

<https://freedomhouse.org/report/nations-transit/2018/montenegro>.
²⁹⁴ OECD, *Anti-corruption Policy in South East Europe*, 2018, p. 689. Available at: <https://www.oecd-ilibrary.org/docserver/9789264298576-22-en.pdf?expires=1562879832&id=id&accname=guest&checksum=7B6FCA11816125E8A56F23CF497CA4EC>.

²⁹⁵ Freedom House, note 293.

²⁹⁶ INCL, *Civic Freedom Monitor: Russia*, 19 May 2019, available at:

<http://www.icnl.org/research/monitor/russia.html>; and Council of Europe Expert Council on NGO Law, *Regulatory Political Activities of Non-Governmental Organisations*, p. 48, available at: <https://rm.coe.int/1680640fc2>.

most legal forms.²⁹⁷ Grounds for denying registration include if the constituent documents contradict the Constitution or other laws, if another organisation has the same name, if the organisation insults morality or disturbs national and religious feelings, if the documents are incomplete or submitted improperly, if the founder is not legally permitted to be a founder or if the documents are inaccurate.²⁹⁸

Registration authorities have relatively intrusive powers to interfere with the internal operations of non-commercial organisations. This includes the ability to require the production of documents regarding daily operations and finances, the ability to send representatives to all events, including internal meetings, the power to review whether the organisation's activities are in accordance with its goals and the power to conduct unscheduled audits on a variety of grounds.²⁹⁹

Funding restrictions, financial reporting requirements and special tax requirements

The Russian “foreign agent” law requires all non-profit organisations which receive foreign donations and engage in “political activity” to register as “foreign agents”.³⁰⁰ Political activity is defined quite broadly to include any activity designed to influence public authorities to change State policy or to influence public opinion to that end.³⁰¹ Failure to register may result in suspension of the organisation. Furthermore, if the Ministry of Justice believes that an organisation is acting as a foreign agent but has not registered itself as one, it may unilaterally place the organisation in the registry.³⁰²

Organisations on the foreign agent registry must include a label on all materials they publish or disseminate which states that they are acting as a foreign agent. In addition, such organisations have significant additional administrative responsibilities. They must maintain separate accounting of foreign funds, submit biannual activity reports, submit expenditure reports on a quarterly basis and pass an annual independent audit. Government authorities have additional auditing powers over “foreign agent” organisations and expanded powers to interfere in the internal operations of organisations or suspend their activities.³⁰³

Amendments to Federal Law 272-FZ (also known as the “Dima Yakovlev law”) establish further restrictions for non-profits receiving funds from United States citizens or organisations, which shall be suspended if they participate in political activities or activities that threaten the interests of Russia.³⁰⁴

²⁹⁷ ICNL, *ibid.*

²⁹⁸ Law on Non-Commercial Organisations, Article 23.1, as described at ECNL, *Handbook on Civil Society Organisation Registration and Operations*, 2015. Available at: <https://drive.google.com/file/d/0Bwh6rJZ1JOWsU1FvYjZmV3dwekk/view>.

²⁹⁹ Law on Public Associations, Articles 29 and 39; and Article 32 of the Law on Non-Commercial Associations, Article 32, as summarised by ICNL, note 296.

³⁰⁰ Federal Law No. 121-FZ (2012), Article 1. Available at: <http://www.citwatch.org/upload/wysiwyg/files/ICNL%20Unofficial%20Translation%20Russian%20Enacted%20Law.pdf>.

³⁰¹ Council of Europe Expert Council on NGO Law, note 296, para. 221.

³⁰² Law on Non-Commercial Associations, Article 31 (with 2014 amendments), as described by ICNL, note 296.

³⁰³ ICNL, *ibid.*

³⁰⁴ *Ibid.*

Generally, all organisations must submit information about the funding and property they receive from foreign or international organisations and must report on the use of funds and other assets received from both foreign and local sources.³⁰⁵ Public associations and non-profits organisations which repeatedly fail to report this information in a timely fashion could have their status as a legal entity terminated.³⁰⁶ Civil society organisations report that other tax and financial reporting requirements have become highly burdensome in practice. One organisation noted that they had to file reports almost every month and that the tax and pension fund authorities regularly change deadlines and then impose fines for failing to file in a timely manner.³⁰⁷

Media regulation

Media must register under the Mass Media Law. This law governs newspapers, magazines, periodic publications which publish at least one issue per year under the same name, radio, television and any other form of periodic dissemination of mass information.³⁰⁸ All media covered by the law must apply for registration with Roskomnadzor, the regulator, except for State media and some media with very low circulation (such as periodicals printing less than 1000 copies). Roskomnadzor must base denials of registration on specified grounds but these are broad, including if the topics or specialisation of the media represents an abuse of freedom of the press.³⁰⁹

In addition to mass media registration, telecommunications service providers must obtain a communications services licence. Broadcasters must additionally obtain a broadcasting licence, which Roskomnadzor is also responsible for providing.³¹⁰ Roskomnadzor is an executive agency rather than an independent body, in breach of international law.

Most media outlets, including regional and local newspapers and periodicals, are owned by the State either directly or through proxies. Independent media outlets generally operate online or focus on minority audiences and some have moved abroad.³¹¹ There are also limitations on foreign media. Media entities which receive foreign funding, as with civil society organisations which receive foreign funding, must be labelled as “foreign media outlets” and must mark their content as being distributed by a foreign agent.³¹² In April 2019, an amendment to the Code of

³⁰⁵ Law on Public Associations, Articles 29 and 38. Translation available at:

http://host.uniroma3.it/progetti/cedir/cedir/Lex-doc/Ru_1-1995.pdf (not including most recent amendments).

³⁰⁶ *Ibid.*, Article 29; and Law on Non-Profit Organisations of the Russian Federation, Article 32.6(10), available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2013\)037-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2013)037-e).

³⁰⁷ EU-Russia Civil Society Forum, *2016 Report on the State of Civil Society in the EU and Russia*, p. 139. Available at: https://eu-russia-csf.org/wp-content/uploads/2019/04/16_08_2017_RU-EU_Report_online.pdf.

³⁰⁸ As translated at Thomson Reuters Foundation, *Media Regulation in Russia*, p. 20. Available at: <https://www.trust.org/contentAsset/raw-data/4798c68a-eed1-4660-b7c9-fc16a0032cc9/file>.

³⁰⁹ Mass Media Law and Order of the Ministry of Communications and Mass Media No. 362 of 29 December 2011, as described by Thomson Reuters Foundation, *ibid.*, p. 29.

³¹⁰ Getting the Deal Through, Telecoms and Media: Russia, June 2019. Available at: <https://gettingthedealthrough.com/area/39/jurisdiction/26/telecoms-media-russia/>.

³¹¹ As summarised by Freedom House, *Freedom of the Press: Russia, 2016*. Available at: <https://freedomhouse.org/report/freedom-press/2016/russia>.

³¹² ARTICLE 19, Mass Media Defence Centre, OVD-Info, PEN International, Roskomsvoboda, and the SOVA Center, *Joint Submission to the Universal Periodic Review of the Russian Federation*, 9 October 2017, p.10. Available at: <https://www.article19.org/wp-content/uploads/2017/10/Russia-3rd-UPR-Updated-Submission-090418-FINAL.pdf>

Administrative Offences was proposed which would have imposed fines for distributing print media from foreign outlets without having obtained prior permission from Roskomnadzor.³¹³

Content restrictions

Russian law includes a number of content restrictions which are unduly restrictive of free speech. For example, the Criminal Code prohibits slander (Article 128.1), defamation of a judge or prosecutor (Article 298.1) and insulting authorities (Article 319).³¹⁴ Another provision criminalises insulting the religious feelings of believers.³¹⁵ The provision on hate speech uses similarly overbroad language, criminalising not just incitement to hatred but also degrading human dignity.³¹⁶ Another problematic provision is the criminalisation of disseminating information which disrespects the days of military glory and memorable dates associated with defending the Fatherland.³¹⁷ A number of content restrictions which are specific to online content are discussed below.

In addition to these provisions of the Criminal Code, various administrative authorities have the power to enforce content restrictions. For example, the Ministry of Culture issues exhibition licences for movies and can prohibit movies that threaten national unity or denigrate Russian culture.³¹⁸

Internet and digital rights

The media regulator, Roskomnadzor, is also responsible for regulating online content. Roskomnadzor's authority over online activity has expanded significantly in recent years. The most notable recent example is the enactment of the so-called "Sovereign Internet Bill" in May 2019. The law gives Roskomnadzor control over Internet network routing, creates a centralised system of devices for blocking Internet traffic and requires Internet service providers to install these on their networks. Roskomnadzor is then empowered, in the event of a security threat, to isolate the Russian Internet from the global Internet. The law does not define what would constitute a sufficient security threat to trigger this.³¹⁹

This follows the adoption in recent years of a series of laws which allow Roskomnadzor to block certain websites. Federal Law 139-FZ allows Roskomnadzor to create a website 'blacklist'. Once a website is added to the list, Roskomnadzor gives the site's host 24 hours to notify the owner,

³¹³ As summarised by the Committee to Protect Journalists, *Russian Draft Legislation Would Ban Distribution of Foreign Print Media without Government Permission*, 4 April 2019. Available at: <https://cpj.org/2019/04/russian-draft-legislation-would-ban-distribution-o.php>.

³¹⁴ As summarised by International Press Institute, *MediaLaws Russia*. Available at: <http://legaldatabase.freemedia.at/legal-database/russia>.

³¹⁵ Joint Submission, note 312, p. 3.

³¹⁶ Criminal Code, Article 282. Available at: <https://www.wipo.int/edocs/lexdocs/laws/en/ru/ru080en.pdf>.

³¹⁷ Maria Kravchenko, *Inappropriate Enforcement of Anti-Extremist Legislation in Russia in 2017*, SOVA Center for Information and Analysis, 24 April 2018. Available at: <https://www.sova-center.ru/en/misuse/reports-analyses/2018/04/d39253>.

³¹⁸ Vladimir Kazlov, "Russia to Ban Films that 'Threaten National Unity'", *Hollywood Reporter*, 16 January 2016. Available at: <https://www.hollywoodreporter.com/news/russia-ban-films-threaten-unity-764333>.

³¹⁹ Human Rights Watch, *Joint Statement on Russia's 'Sovereign Internet Bill'*, 24 April 2019. Available at: <https://www.hrw.org/news/2019/04/24/joint-statement-russias-sovereign-internet-bill>.

which must then remove any content deemed to be offensive.³²⁰ If the owner does not comply, the host must remove the blacklisted material or block access to the website. Roskomnadzor will remove the owner from the list only when the ‘harmful’ content is taken down or the owner successfully appeals the ban in court.³²¹

The powers noted above are engaged without a court order. Originally this power was limited to content impacting the rights of children (such as websites containing child pornography or information on suicide and drugs). However, the list of prohibited content has now been substantially expanded.³²² For example, Federal Law FZ-398 grants Roskomnadzor broad powers to block access to online sources of information that call for mass riots, extremist activities or unauthorised mass public events without a court order.³²³

A number of laws specifically restrict online content. For example, in March 2019, President Putin signed two such laws. The first criminalises the publication of online materials displaying blatant disrespect for the State, official symbols, society, the Constitution or public bodies. The second criminalises the online dissemination of fake news.³²⁴

Other laws raise privacy and surveillance concerns. Federal Law 241-FZ prohibits the use of anonymity tools by users of online messaging applications.³²⁵ A 2016 law requires telecom operators to provide decryption keys to the Federal Security Service upon request. They must also store customer data in Russia and Russian authorities can then access this data without a court warrant.³²⁶ Internet service providers must also install surveillance technology in order to receive an operating licence.³²⁷

Right to information and secrecy laws

Russia’s right to information law is reasonably strong, currently ranked in 44th place out of 124 countries assessed by the RTI Rating.³²⁸ One of the strongest aspects of the law is its scope, which covers anyone, and the law applies to public authorities at all levels. The law also establishes

³²⁰ Human Rights Watch, *Online and On All Fronts: Russia’s Assault on Freedom of Expression*, 2017, p.18. Available at: https://www.hrw.org/sites/default/files/report_pdf/russiafoe0717_web_2.pdf.

³²¹ *Ibid.*, p. 18.

³²² Thomson Reuters Foundation, note 308, p. 21.

³²³ Joint Submission, note 312, p. 5.

³²⁴ Pen International, *Russia: New Laws Threaten Freedom of Expression and Media Freedom*, 1 April 2019. Available at: <https://pen-international.org/news/russia-new-laws-threaten-freedom-of-expression-and-media-freedom>.

³²⁵ Joint Submission, note 312, p. 6.

³²⁶ Law No. 374-FZ, as described in FIDH, *Table Illustrating Legislative Crackdown on Rights and Freedoms of the Civil Society in Russia since 2010*, p. 20, available at: https://www.fidh.org/IMG/pdf/loisrussie_web_finalv4.pdf; and Freedom House, *Freedom on the Net 2017: Russia*, available at: <https://freedomhouse.org/report/freedom-net/2017/russia>.

³²⁷ Freedom House, *ibid.*

³²⁸ RTI Rating: Country Data. Available at: <https://www.rti-rating.org/country-data/>.

relatively clear procedures for requesting information and the possibility of appeals both internally and externally. It creates an oversight body which has legal protections for its independence.³²⁹

A major weakness, however, is the regime of exceptions. There is no public interest override, there is an exception for government secrets and the right to information law does not override legislation on State secrets. The Law on State Secrets establishes general categories of information which are deemed to be State secrets and the President of Russia can then approve Decrees with more specific lists of information classified as a State secret. This Presidential Decree has been updated more than 30 times since 1995 and the general tendency has been to increase secrecy. A recent decision of the Supreme Court permitted the President to add to this list items such as the number of peacetime military deaths, indicating its acceptance of the expansion of the idea of State secrets via a presidential decree.³³⁰

Restrictions on freedom of assembly

Article 31 of the Constitution guarantees citizens of the Russian Federation the right to assemble peacefully without weapons and to hold rallies, meetings, demonstrations, marches and pickets.³³¹ The Law on Assemblies, which provides the primary regulatory framework for this right, provides that public event organisers must notify the government no later than ten days before the event.³³² The notification must include numerous details, including the organisers' full names, addresses and phone numbers and planned methods for ensuring public peace.

The Law on Assemblies does not allow for the prohibition of an assembly but it does provide that the authorities may require the organisers to change the place or time of the event. The Law also does not clearly establish what might happen if this is refused.³³³ However, a 2014 law provides for administrative penalties, including administrative detention and fines, for holding a public event without prior notification, irregularities in holding a public event or participating in an irregular public event which disrupts public utilities, traffic or communications.³³⁴ In practice, these penalties effectively allow the authorities to prohibit protests, such as by stating that the time and place of a protest must be changed without giving alternate options. As a result, local

³²⁹ Federal Law on Providing Access to Information on the Activities of Government Bodies and Bodies of Local Self-Government, 2009. Translation available at: https://www.rti-rating.org/wp-content/uploads/2018/12/Russia.FOI_09.updated.pdf.

³³⁰ Yekaterina Sinelschikova, *Supreme Court of Russia Upholds Decision to Classify Peacetime Military Casualties*, Russia Beyond, 17 August 2015. Available at: <https://www.rbth.com/politics/2015/08/17/supreme-court-of-russia-upholds-decision-to-classify-peacetime-milit-48553.html>.

³³¹ Russian Constitution, Article 31. Translation available at: [https://www.policinglaw.info/assets/downloads/1993_Constitution_of_the_Russian_Federation_\(as_amended\)_\(English_translation\).pdf](https://www.policinglaw.info/assets/downloads/1993_Constitution_of_the_Russian_Federation_(as_amended)_(English_translation).pdf).

³³² Federal Law No. 54-FZ, Art. 7 (2004). Translation available at: [https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2012\)010-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2012)010-e) (not including subsequent amendments to the law which are described at Commissioner for Human Rights, *Follow-Up Memorandum on Freedom of Assembly in the Russian Federation*, 5 September 2017, available at: <https://rm.coe.int/follow-up-memorandum-on-freedom-of-assembly-in-the-russian-federation-/16807517aa>).

³³³ See generally Federal Law No. 54-FZ, *ibid*.

³³⁴ Law No. 258-FZ of 2014, as described at Commissioner for Human Rights, note 332, para. 12.

authorities regularly refuse to authorise protests and police regularly disperse protests as unauthorised and detain protesters.³³⁵

Furthermore, Russia has introduced other administrative and criminal offences relating to protests which significantly raise the risks for those participating. This includes potential liability for not informing citizens and government bodies that an event has been cancelled, filing a notice of a public event but not indicating its purpose and involving minors in unauthorised events. Participating in a protest that does not align with government regulations may result in fines as high as USD 5,000 or detention for individuals and USD 16,500 for organisations.³³⁶ Repeat administrative violations may lead to criminal penalties.³³⁷ Even posting information about an unauthorised protest may result in sanctions. In a high-profile case, a human rights defender was sentenced to 25 days imprisonment for repeated violations of public assembly rules. He had posted a social media announcement about an unauthorised protest and, earlier in the year, he had been fined for a peaceful, single-person protest.³³⁸

As of April 2019, the government was developing a draft law allowing the authorities to freeze bank accounts for up to ten days without a court order of those who donate to or finance unlawful protests. A court order would permit indefinite freezing of the accounts. This is significant because of the broad array of actions which make a protest unlawful and because crowdfunding has become a popular way of supporting activist causes in Russia.³³⁹

National security laws

The Russian government is permitted to ban any foreign or international NGO the activities of which undermine Russia's national security, defence capabilities or constitutional order.³⁴⁰ Direction or participation in the activities of a banned organisation may lead to imprisonment for up to six years.³⁴¹

A number of recent laws targeting extremism, terrorism or other acts of violence have serious impacts on freedom of expression and other fundamental rights. For example, the definition of treason could inappropriately apply to public interest organisations sharing information with foreign organisations. Treason is defined as “a deed, carried out by a citizen of the Russian Federation, damaging to the security of the Russian Federation, including espionage or passing to a foreign State, international or foreign organisation or their representatives information that contains a State secret that has been entrusted and became known to the person through service, work or studies or other cases determined by Russian legislation, or providing financial material, technical, consultative or other assistance directed against security of the Russian Federation.”³⁴²

³³⁵ Commissioner for Human Rights, *ibid.*, paras. 17-18.

³³⁶ ICNL, note 296.

³³⁷ Human Rights Watch, *Russia: Drop Provisions to Punish Funding Protests*, 15 April 2019. Available at: <https://www.hrw.org/news/2019/04/15/russia-drop-provisions-punish-funding-protests>.

³³⁸ Human Rights Watch, *Russia: Human Rights Defender Jailed*, 7 December 2018. Available at: <https://www.hrw.org/news/2018/12/07/russia-human-rights-defender-jailed>.

³³⁹ Human Rights Watch, note 337.

³⁴⁰ Joint Submission, note 312, p. 10.

³⁴¹ *Ibid.*, p. 10.

³⁴² As summarised by ICNL, note 296.

As recently amended, the Criminal Code also contains numerous provisions on terrorism or extremism which may be applied to peaceful speech or actions. This includes publicly calling for or justifying terrorism online, convincing, recruiting or engaging a person in “mass disorder”, displaying extremist symbols, establishing an extremist organisation, mass distribution of extremist materials and financing extremist activity.³⁴³ Since key concepts, including “extremism”, are not defined, these provisions are prone to abuse and, in practice, they are frequently used against critical or opposition voices.³⁴⁴

Whistleblower, witness and other protection systems for those at risk

Article 9(4) of the Anti-Corruption Law generally provides that civil servants or State officials who report on corruption shall enjoy State protection but there is no dedicated whistleblower protection legislation in Russia.³⁴⁵ Amendments to the Anti-Corruption Law, under discussion in late 2018, would have extended protection for whistleblowers but it appears these have not moved forward. One source suggested that they were rejected by the Duma.³⁴⁶ Russia does have a law generally protecting victims, witnesses and other participants in criminal procedures.³⁴⁷

Serbia

Freedom of association: non-profit registration requirements and restrictions on advocacy

According to the 2009 Law on Associations, it is voluntary for associations to register. Associations obtain legal personality on the date of registration.³⁴⁸ The application process includes submitting fairly standard information, although the relevant Minister has authority to require additional documentation. Registration may only be refused if the name of the proposed association is the same as or too similar to an already registered association, if the application is submitted by an unauthorised person or does not include the required documents.³⁴⁹ A decision must be given within thirty days after an application is received. Applicants have a right to appeal to the Minister and then to the courts.³⁵⁰

While NGOs typically act freely, some organisations who take “openly critical stances” or discuss sensitive topics have been the targets of threats, harassment or smear campaigns.³⁵¹

³⁴³ Criminal Code, note 316, Articles 20.3, 205.2, 205.6, 280 and 282.

³⁴⁴ Freedom House, Freedom in the World 2019: Russia, available at: <https://freedomhouse.org/report/freedom-world/2019/russia>; and Human Rights Watch, note 320.

³⁴⁵ I-Sight, *A Practical Guide to Whistleblower Protections in 2019*, 28 January 2019. Available at: <https://i-sight.com/resources/a-practical-guide-to-whistleblower-protections/#Russia>.

³⁴⁶ Center Russia-OECD, *The Protect Whistleblowers, We Fight Snitches*, as translated by Boryana Kiskinova. Available at: <https://oecd-russia.org/en/news/they-protect-whistleblowers-we-fight-snitches.html>.

³⁴⁷ Federal Law No. 119-FZ, Article. 2 (2004), as summarised by I-Sight, note 345.

³⁴⁸ Law on Associations, Article 4. Available at:

https://www.ilo.org/dyn/natlex/natlex4.detail?p_lang=en&p_isn=85336. See also Council on Foundations, *Nonprofit Law in Serbia*, October 2018. Available at: <https://www.cof.org/country-notes/serbia>.

³⁴⁹ Law on Associations, *ibid.*, Articles 29 and 30.

³⁵⁰ *Ibid.*, Articles 32, 68 and 69.

³⁵¹ Freedom House, Freedom in the World 2019: Serbia. Available at: <https://freedomhouse.org/report/freedom-world/2019/serbia>.

Funding restrictions, financial reporting requirements and special tax requirements

NGOs do not face any legal barriers to obtaining foreign funding. Associations are subject to financial audits but are generally not subject to unduly complex financial reporting requirements.³⁵² Registered NGOs qualify for tax exemptions.³⁵³ Corporations can claim as tax-free up to five percent of their expenses for charitable contributions but many companies report that successfully claiming the deduction is difficult.³⁵⁴

In July 2019, a Serbian newspaper published an article in which the Association of Judges and Prosecutors, which is widely considered to be affiliated with the ruling party, voiced support for a new law to govern NGO financing, alleging that a small number of NGOs were receiving most projects funding. Independent civil society groups have suggested that this is an attempt to make it more difficult for groups which are critical of the government to access funding.³⁵⁵ There have also been some attacks in State-affiliated media and elsewhere against NGOs alleged to have foreign links or funding.³⁵⁶

Media regulation

Journalism is not a registered or licensed profession in Serbia and the Press Council is a self-regulatory body.³⁵⁷ The broadcasting regulatory authority is the Regulatory Authority for Electronic Media (REM). REM was established by the 2014 Law on Electronic Media.³⁵⁸ The REM's board members are elected by a simple majority in Parliament, based on nominations by civil society organisations and parliamentary committees.³⁵⁹ State officials are not permitted to become board members.³⁶⁰ While these protections may be sufficient to preserve independence in some contexts, a lack of a tradition of independent administrative authorities in Serbia makes ensuring REM's independence challenging in practice.³⁶¹

³⁵² Law on Associations, note 348, Article 39.

³⁵³ Law on Endowments and Foundations, Article 7, available at: <https://legislationonline.org/documents/id/21621>; and Corporate Profit Tax Law, Article 44, available at: <https://www.mfin.gov.rs/UserFiles/File/english/Corporate%20Profit%20Tax%20Law.pdf>.

³⁵⁴ Council on Foundations, *Non-Profit Law in Serbia*, 2018. <https://www.cof.org/country-notes/serbia#deductibility>.

³⁵⁵ Civicus Monitor: Serbia. Available at: <https://monitor.civicus.org/country/serbia/>.

³⁵⁶ Sasa Dragojlo, *Serbian Tycoon Accuses Soros of Attempted Subversion*, Balkan Insight, 18 August 2016. Available at: <https://balkaninsight.com/2016/08/18/serbia-s-pro-government-tv-owner-accused-soros-for-country-s-destabilization-08-18-2016/>.

³⁵⁷ South East European Media Observatory, Flash Report 4: Serbia, 2014, available at: <https://mediaobservatory.net/radar/flash-report-4-serbia>; and Press Council, Articles of Association, available at: <http://www.savetzastampu.rs/english/the-articles-of-association>.

³⁵⁸ Law on Electronic Media, Article 5. Available in Serbian at: https://www.paragraf.rs/propisi/zakon_o_elektronskim_medijima.html and in English at: <http://www.anem.org.rs/download/files/cms/attach?id=508>.

³⁵⁹ *Ibid.*, Articles 8 and 9.

³⁶⁰ *Ibid.*, Article 12.

³⁶¹ Kristina Irion, *et al.*, *The Independence and Functioning of the Regulatory Authority for Electronic Media in Serbia*, Council of Europe, October 2017. Available at: <https://rm.coe.int/the-independence-and-functioning-of-the-regulatory-authority-for-elect/16808c9c75>.

Media freedom is also jeopardised by insufficient legal guarantees for media diversity. Media concentration is restricted by the Law on Public Information and Media, which prohibits the merging of two or more publishers of daily newspapers whose combined annual circulation exceeds 50% of newspaper circulation and the merging of two or more audio or audio-visual services if the rating shares would exceed 35% of the combined ratings of all broadcasters operating within the same geographic zone.³⁶² In practice, despite these rules, over half of the audience of each medium (print, radio and television) are dominated by the top four owners in each category.³⁶³

Serbian media operates in an often hostile environment. Public officials have openly insulted journalists or called them foreign agents/enemies of the State. The President has publicly minimised the importance of these attacks on journalists.³⁶⁴ Impunity for acts of violence against journalists is a serious and recurring concern.³⁶⁵

Content restrictions

Various reputation based offences exist in the Criminal Code although defamation is no longer criminalised in Serbia.³⁶⁶ Insult is criminalised, although there are exceptions, including if the statement is made in the context of activities such as journalism or political activity and it is evident that there was no intent to disparage.³⁶⁷ Article 173 criminalises “whoever publicly ridicules Serbia, its flag, coat of arms or anthem”.³⁶⁸ Journalists are excluded from liability under this provision as long as it is evident that the statement was not made with intent to disparage, or if the truth or reasonableness of the statement can be demonstrated.³⁶⁹

Dissemination of information on personal or family life is a criminal offence when it “may harm honour or reputation.” Truth is a defence if the offender is a journalist defending a right or the public interest.³⁷⁰ Article 343 criminalises “whoever by disclosing or disseminating untrue information or allegations causes panic, or serious disruption of public peace and order or frustrates

³⁶² Law on Public Information and Media, as described by Tasic & Partners, *The Law on Public Information and Media, The Law on Electronic Media, and the Law on Public Service Media*, 2014. Available at: <http://tasiclaw.com/?p=341&lang=en>.

³⁶³ Reporters without Borders, *Media Ownership Monitor: Serbia*. Available at: <https://www.mom-rsf.org/en/countries/serbia/>.

³⁶⁴ Safe Journalists, “Serbian Media Coalition Letter to the International Community”, 2018, available at: <http://safejournalists.net/serbian-media-coalition-alerts-international-community/>; and Reporters without Borders, *Serbian Authorities Must Protect Journalists Who Are Targets of Violence*, 4 January 2019, available at: <https://rsf.org/en/news/serbian-authorities-must-protect-journalists-who-are-targets-violence>.

³⁶⁵ Amnesty International Public Statement, 29 June 2018, available at: <https://www.amnesty.org/download/Documents/EUR7086982018ENGLISH.pdf>; Reporters Without Borders, *ibid.*; and CPJ, *Serbia*, available at: <https://cpj.org/europe/serbia/>.

³⁶⁶ Criminal Code, Article 171 (with amendments from 31 August and 29 December 2009 and 24 December 2012). Translation available at: <https://www.legislationline.org/documents/section/criminal-codes/country/5/Serbia/show>.

³⁶⁷ *Ibid.*, Article 170.

³⁶⁸ *Ibid.*, Article 173.

³⁶⁹ *Ibid.*, Article 176.

³⁷⁰ *Ibid.*, Article 172.

or significantly impedes enforcing of decisions of government authorities or organisations exercising administrative authority” and provides for increased penalties for media offenders.³⁷¹

The Criminal Code’s provision on hate speech criminalise merely “exacerbating” national, racial or religious hatred.³⁷² This is an unduly low threshold and risks criminalising legitimate debate.

Internet and digital rights

Under the 2010 Law on Electronic Communications, telecommunications providers are required to keep records of the source, destination and timing of all electronic communications (metadata) for one year for potential government use.³⁷³ Originally, data could be obtained by the State without court approval but, in 2013, the Constitutional Court ruled this was unconstitutional so that court approval is now required.³⁷⁴ The practical impact of this decision is unclear, however, as the Law on Electronic Communications still requires operators to “enable lawful interception”.³⁷⁵ Furthermore, absent new regulations to govern the conditions for government access to telecommunications, it appears unauthorised access remains common practice among the secret services and other authorities.³⁷⁶

Right to information and secrecy laws

The right to information is guaranteed in Article 51 of the Serbian Constitution.³⁷⁷ Serbia’s Law on Free Access to Information of Public Importance ranks very highly, in third place out of the 124 countries assessed by the RTI rating.³⁷⁸ Notably, the Law receives full marks in the area of scope because everyone has the right to file requests for information,³⁷⁹ the right applies to all material held by or on behalf of public authorities which is recorded in any format (regardless of who produced it),³⁸⁰ and the right applies to the executive, legislative, and judicial branches.³⁸¹

Article 13 of the Law is potentially problematic. It states that a public authority shall not allow an applicant to exercise the right to access information if the applicant is “abusing the rights to access information of public importance, especially if the request is irrational, frequent, when the same or already obtained information is being requested again, or when too much information is

³⁷¹ *Ibid.*, Article 343.

³⁷² *Ibid.*, Article 317

³⁷³ Law on Electronic Communications, note 358, Articles 128 and 129.

³⁷⁴ Global Freedom of Expression, *Serbia’s Law on Electronic Communications*. Available at:

<https://globalfreedomofexpression.columbia.edu/cases/serb-law-on-electronic-communications-articles-128-1-128-5-129-4-2013/>.

³⁷⁵ Law on Electronic Communications, note 358, Article 127.

³⁷⁶ Global Information Society Watch, Serbia, 2014. Available at: <https://www.giswatch.org/en/country-report/communications-surveillance/serbia>.

³⁷⁷ Constitution of The Republic of Serbia, Article 51. Available at:

<https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf>.

³⁷⁸ RTI Rating: Serbia. Available at: <https://www.rti-rating.org/country-data/Serbia/>.

³⁷⁹ Law on Free Access to Information of Public Importance, Articles 5 and 6. Available at: <https://www.rti-rating.org/wp-content/uploads/Serbia.pdf>.

³⁸⁰ *Ibid.*, Article 2.

³⁸¹ *Ibid.*, Article 3.

requested”.³⁸² The classification of requests as “irrational” or too extensive is inherently subjective and open to abuse.

The authorities frequently obstruct requests for information³⁸³ and the oversight body, the Commissioner can only issue nominal fines that most institutions can easily afford to pay.³⁸⁴ Between 2015 and 2018, public authorities ignored 601 decisions of the Commissioner regarding complaints about access to information.³⁸⁵

Draft amendments to the law were proposed in 2017. These amendments were criticised as weakening access to information by providing public authorities with the ability to initiate court proceedings against the Commissioner’s decisions thereby delaying implementation of his or her orders.³⁸⁶

Restrictions on freedom of assembly

Freedom of assembly is guaranteed under the Serbian Constitution but outdoor assemblies must be reported to authorities.³⁸⁷ The Law on Public Assembly requires requests for assemblies to be made five days in advance.³⁸⁸ A decision must be rendered at least 96 hours before the assembly.³⁸⁹ The applicant may appeal to the Minister within 24 hours of receiving a negative decision. The applicant may also appeal to an administrative court but there is no timeframe requiring the court to decide the case before the assembly is due to take place. Spontaneous assemblies are excluded from the prior authorisation requirement under the Law but are defined narrowly, including only assemblies for which an organiser cannot be identified.³⁹⁰

The penalty scheme put in place by the Law also creates barriers to freedom of assembly. The Law on Public Assembly allows a legal entity, the “responsible person” in the legal entity, or organisers/leaders of an assembly to be held liable for the actions of other assembly participants.³⁹¹ In addition, Article 324 of the Criminal Code criminalises participating in a group which by joint

³⁸² *Ibid.*, Article 13.

³⁸³ Freedom House, Freedom of the World 2019: Serbia, available at: <https://freedomhouse.org/report/freedom-world/2019/serbia>; and Global Freedom of Expression, note 374.

³⁸⁴ Law on Free Access to Information of Public Importance, note 379, Articles 46, 47 and 48.

³⁸⁵ Safe Journalists, “Serbian Media Coalition Letter to the International Community”, 2018. Available at: <http://safejournalists.net/serbian-media-coalition-alerts-international-community/>.

³⁸⁶ South East European Network for Professionalization of Media, *Serbian Law Changes ‘Will Curb Freedom of Information’*, 2018, available at: <http://seenpm.org/serbian-law-changes-will-curb-freedom-information/>; and Preugovor, *Proposals and Comments for a Public Debate on the Draft Law on Free Access to Information of Public Importance*, 2018, available at: <http://www.preugovor.org/Amendments/1476/Proposals-and-Comments-for-a-Public-Debate-on-the.shtml>.

³⁸⁷ Constitution, Article 54. Available at: <https://www.ilo.org/dyn/natlex/docs/ELECTRONIC/74694/119555/F838981147/SRB74694%20Eng.pdf>.

³⁸⁸ Law on Public Assembly as described by ECNL, *Freedom of Assembly in Serbia*, Western Balkans Assembly Monitor Project, 2016. Available at: http://ecnl.org/wp-content/uploads/2016/07/Serbia_WBA-Project-Report.pdf.

³⁸⁹ *Ibid.*

³⁹⁰ *Ibid.*

³⁹¹ *Ibid.*

action prevents an official from performing an official act.³⁹² This potentially leaves the organisers of an assembly open to criminal liability for the actions of attendees.

Whistleblower, witness and other protection systems for those at risk

Serbia has a strong Whistleblower Protection Act.³⁹³ It applies to a broad category of persons (not just employees) who report on a wide range of topics and whistleblowers may seek protection measures from the courts or compensation for damages; retaliation against whistleblowers is prohibited.³⁹⁴ Employers who fail to adopt an internal whistleblowing procedure are subject to fines, as are employers who fail to protect a whistleblower.³⁹⁵ On the other hand, an ongoing challenge is a failure to align other laws with the positive provisions of the Whistleblower Protection Act.³⁹⁶ Furthermore, implementation has been challenging. Employers often ignore court orders in respect to whistleblowers and courts rarely abide by the eight-day statutory deadline for issuing a decision on provisional protection measures for whistleblowers.³⁹⁷

Turkey

Freedom of association: non-profit registration requirements and restrictions on advocacy

Article 33 of the Constitution grants the right to form associations without obtaining prior permission.³⁹⁸ Registration of associations is relatively straight forward and authorities are not explicitly empowered to reject applications. However, associations are restricted from undertaking certain activities and this presumably invites interference at the registration stage or subsequently. Specifically, under the Associations Law, associations may not be founded to serve a purpose prohibited by the Constitution or the law while according to the Civil Code “no association will be formed with objectives in contravention of law and morality”.³⁹⁹

Other potentially troublesome requirements include annual reporting forms which can be overly time consuming.⁴⁰⁰ A requirement that associations with office space within residential buildings must secure permission of all residents in the building is a potential barrier for some organisations,

³⁹² Criminal Code, note 366, Article 234.

³⁹³ Osservatorio Balcani Caucaso Transeuropa, *Whistleblowers in Serbia: A Model Law*, 2017. Available at: <https://www.balcanicaucaso.org/eng/Areas/Serbia/Whistleblowers-in-Serbia-a-model-law-184197>.

³⁹⁴ Law on the Protection of Whistleblowers, Articles 21 and 22. Available at: <https://whistlenetwork.files.wordpress.com/2017/01/law-on-protection-of-whistleblowersfinal.pdf>.

³⁹⁵ *Ibid.*, Article 14.

³⁹⁶ Transparency Serbia, *The Law on Protection of Whistleblowers*, 2017, p. 108. Available at: <http://www.transparentnost.org.rs/images/publikacije/The%20Law%20on%20Protection%20of%20Whistleblowers%20-%20what%20is%20the%20meaning%20of%20norms%20and%20where%20it%20can%20be%20improved.pdf>.

³⁹⁷ Osservatorio Balcani Caucaso Transeuropa, note 393.

³⁹⁸ Constitution of the Republic of Turkey, Article 33. Translation available at: https://global.tbmm.gov.tr/docs/constitution_en.pdf.

³⁹⁹ Law on Associations, Article 30, available at: <http://www.lawsturkey.com/law/law-on-associations-5253>; and Turkish Civil Code, Article 56, available at: <http://www.lawsturkey.com/law/turkish-civil-code-4721>.

⁴⁰⁰ As summarised by ICNL, Civic Freedom Monitor: Turkey, 6 May 2019. Available at: <http://www.icnl.org/research/monitor/turkey.html>.

since a lack of office space may be a barrier to registration.⁴⁰¹ Another key concern is that the chair of an association's executive board is personally liable for any sanctions or fines assessed against the association.⁴⁰²

Under the Constitution, associations cannot be dissolved except by a court order. There is an exception where a delay would harm national security, public order or preventing a crime or arrest, but even then an authority must obtain approval from a judge within 48 hours.⁴⁰³ In practice, since 2017 the Turkish government has relied on the state of emergency to close numerous non-profits, which is discussed further in the section on national security.

Funding restrictions, financial reporting requirements and special tax requirements

The Law on Collection of Aid requires non-profit organisations to receive permission from the local State authority for each fundraising activity through an application procedure in which the organisation is requested to provide extensive information including, but not limited to, the amount of money to be raised, how it will be used, the timeframe of the activity, where it will take place and so on.⁴⁰⁴ There are no limitations on obtaining foreign funding but associations must notify the government before using any such funding.⁴⁰⁵

In 2018, the President of Turkey issued Presidential Decree Law No. 703 which authorises the President to grant public benefit status to associations, the engages tax exemptions. This will hopefully bring substantial changes to the process for determining public benefit status for non-profit organisations given that less than one percent of active associations are currently classified as public benefit organisations.⁴⁰⁶ However, given the role of the President in this process, there is clearly a risk of political interference.

Media regulation

The Supreme Council of Radio and Television (RTÜK), whose nine members are elected by the Turkish parliament for six-year terms, has the power to issue and cancel broadcasting licences.⁴⁰⁷ It also has the authority to sanction broadcasters if they breach the law or the Council's expansive broadcasting principles.⁴⁰⁸

Nominations for membership of RTÜK, which go to the Turkish parliament for selection, are based on the number of members each political party group holds in Parliament. This has contributed to the RTÜK taking a decidedly pro-AKP (the political party of the president) stance,

⁴⁰¹ *Ibid.*

⁴⁰² Law on Associations, note 399, Article 32.

⁴⁰³ Constitution, note 398, Article 33.

⁴⁰⁴ Law on Collection of Aid, Articles 6-10. Translation available at: <http://www.icnl.org/research/library/files/Turkey/lawaid.pdf>.

⁴⁰⁵ Law on Associations, note 399, Article 21.

⁴⁰⁶ As summarised by ICNL, note 400.

⁴⁰⁷ Law on the Establishment of Radio and Television Enterprises and Their Media Services, Articles 5, 34 and 35. Translation available at: <https://www.rtuk.gov.tr/en/audio-visual-media-law/5350/5139/the-law-no6112-on-the-establishment-of-radio-and-television-enterprises-and-their-media-services-march-3-2011.html>.

⁴⁰⁸ *Ibid.*, Articles 8 and 32.

especially in the wake of the attempted 2016 coup when it took aggressive action against dozens of television and radio stations in the form of warnings, fines and even termination of operating licences.⁴⁰⁹

The Directorate of Communications, operating under the Turkish presidency, is the agency responsible for issuing and cancelling permanent press cards.⁴¹⁰ It has broad powers to both deny and cancel press cards for journalists on terror related charges, for behaving against the public order and for other vaguely defined reasons.⁴¹¹ In practice, this is a serious ongoing concern. Between November 2018 and March 2019, the Turkish government cancelled 682 press cards.⁴¹²

Turkey imprisons more journalists than any other country.⁴¹³ Following the attempted 2016 Coup, hundreds of journalists were arrested and thousands more were left jobless as the government shut down hundreds of media outlets on vague accusations of terrorism links.⁴¹⁴

Content restrictions

The criminal law contains a number of problematic content restrictions. Article 125 criminalises insult according to which penalties are higher for insulting public officers, if the insult is due to one's religious or philosophical beliefs, if the subject matter is sacred to the religion of the insulted person or if the crime is committed in public.⁴¹⁵ Other provisions criminalise insulting the President and degrading national symbols. It is also a crime publicly to degrade the nation, the State, the National Assembly, the government or judicial bodies, although in this case it is a defence to express an opinion "for the purpose of criticism".⁴¹⁶

It is also an offence publicly to praise an offence or a person on account of committing an offence if this results in imminent danger to public order. Provoking public hatred or hostility or degrading others based on protected grounds, such as race or religion, is also a crime. The sentence is higher if imminent danger to public safety results but this is not a required element. Publicly degrading the religious values of a sector of the public is also an offence.⁴¹⁷

⁴⁰⁹ Freedom House, Freedom of the Press 2017: Turkey. Available at: <https://freedomhouse.org/report/freedom-press/2017/turkey>.

⁴¹⁰ "New Regulation Places Restrictions on Obtaining, Maintaining Turkish Press Cards", Ahval, 15 December 2018. Available at: <https://ahvalnews.com/press-freedom/new-regulation-places-restrictions-obtaining-maintaining-turkish-press-cards#>.

⁴¹¹ IPI, "Key provisions of the 2018 Regulation on Press Cards Reproduced in English at Free Turkey Journalists, IPI Condemns New Regulation on Press Cards in Turkey", 18 December 2018. Available at: <https://freeturkeyjournalists.ipi.media/ipi-condemns-new-regulation-on-press-cards-in-turkey/>.

⁴¹² "Turkey Cancels Press Accreditation of 682 Journalists in 4 Months", Turkish Minute, 9 May 2019. Available at: <https://www.turkishminute.com/2019/05/09/turkey-cancels-press-accreditation-of-682-journalists-in-4-months/>.

⁴¹³ CPJ, *Hundreds of Journalists Jailed Globally*, 13 December 2018. Available at:

<https://cpj.org/reports/2018/12/journalists-jailed-imprisoned-turkey-china-egypt-saudi-arabia.php>.

⁴¹⁴ Asylum Research Centre, Turkey: Country Report Version 3, pp. 231-235, 21 November 2017. Available at: <https://www.refworld.org/pdfid/5a1313bf4.pdf>.

⁴¹⁵ Criminal Code of Turkey, Article 125. Translation available at: <https://www.legislationline.org/documents/id/20076>.

⁴¹⁶ *Ibid.*, Articles 299-301.

⁴¹⁷ *Ibid.*, Articles 215 and 216.

These laws have been employed in recent years alongside the Anti-Terrorism Law to crack down on non-profit organisations, media outlets and journalists through charges, shutdowns and arrests based on allegations of insult or terrorist propaganda.⁴¹⁸

Internet and digital rights

Content is also heavily restricted online. Amendments to the Internet Law in 2015 expanded the power of the Communication Technologies Authority to order the blocking of websites on vaguely defined grounds and without prior court approval. Some of the grounds for this raise free speech concerns, such as obscenity or crimes committed against Atatürk. Authorities also are able to request a court order to block websites on broad grounds in other contexts.⁴¹⁹ In 2018 alone, 54,903 sites were blocked by the authorities.⁴²⁰ Wikipedia has been blocked since 2017.⁴²¹

Internet hosting and access providers must retain all traffic information for one year and maintain the accuracy, integrity and confidentiality of such data. In addition, access providers are responsible for retaining traffic information regarding services they provide for a period of at between 1-2 years.⁴²² Use of encryption tools is limited and it is widely believed that there is pervasive surveillance of online activity by security agencies.⁴²³

Right to information and secrecy laws

Turkey's current Law on the Right to Information is slightly below average, ranking in 72nd place out of the 124 countries assessed by the RTI Rating.⁴²⁴ A key weakness is the absence of a clear system for appeals or a strong independent oversight body. The law contains numerous exceptions including, but not limited to, State secrets, commercial secrets and the privacy of either individuals or communications.⁴²⁵ This is particularly problematic because Turkey is one of the few countries which does not make State secret classification rules public.⁴²⁶

Restrictions on freedom of assembly

⁴¹⁸ As summarised by ICNL, Civic Freedom Monitor: Turkey, 6 May 2019. Available at:

<http://www.icnl.org/research/monitor/turkey.html>.

⁴¹⁹ Internet Law. Translation available at:

[https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF\(2016\)026-e](https://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-REF(2016)026-e).

⁴²⁰ "Over 245,000 Sites, Domains Blocked in Turkey Over 5 Years – Report", Ahval, 2 July 2019. Available at:

<https://ahvalnews.com/internet-freedom/over-245000-sites-domains-blocked-turkey-over-5-years-report>.

⁴²¹ Article 19, *Turkey: Two years without Wikipedia*, 29 April 2019. Available at:

<https://www.article19.org/resources/turkey-two-years-without-wikipedia-2yearswithoutwiki/>.

⁴²² Internet Law, note 419, Article 5(3).

⁴²³ Freedom House, Freedom of the Net: 2018. Available at: <https://freedomhouse.org/report/freedom-net/2018/turkey>.

⁴²⁴ RTI Rating, Country Data. Available at: <https://www.rti-rating.org/country-data/Turkey/>.

⁴²⁵ Law on the Right to Information, Articles 15-28. Available at: <https://www.rti-rating.org/wp-content/uploads/Turkey.pdf>.

⁴²⁶ Amanda L. Jacobsen, *National Security and the Right to Information*, April 2013, p. 20. Available at:

https://www.right2info.org/resources/publications/national-security-page/national-security-expert-papers/jacobsen_nat-sec-and-rti-in-europe.

The Turkish constitution recognises the right of citizens to organise an assembly and demonstration without having to obtain prior authorisation.⁴²⁷ However, all members of the organising committee of a demonstration must sign a declaration 48 hour prior to the assembly and submit it to the district governor's office during working hours. If they fail to do so, the administration considers the assembly to be illegal and has the right to take measures to disperse it, which may include police intervention.⁴²⁸

Police have heightened powers during demonstrations which allow them to detain anyone without consulting the prosecutor's office, and protestors who cover their faces, fully or partially, during demonstrations can face a five-year prison term.⁴²⁹

National security laws

Turkey declared a state of emergency following an attempted coup in July 2016. This lasted until 2018. During the emergency, it suspended a number of fundamental rights. For example, the Turkish government relied on the state of emergency to justify arresting individuals such as Amnesty International Turkey's director⁴³⁰ and to close over 1,500 non-profit organisations.⁴³¹ Similarly, many assemblies and protests were prohibited during this time and many people were detained for participating in protests. In a two-month period in 2018, for example, 845 people were detained for participating in protests opposing Turkish military operations in Syria.⁴³²

The legal basis for a state of emergency changed with constitutional amendments in 2017. A state of emergency is now declared by the President and approved by the National Assembly. During a state of emergency, fundamental rights may be suspended. While, normally, presidential decrees may not suspend fundamental rights, they may during a state of emergency. Such decrees must be approved by the National Assembly within three months. However, this still raises concerns over unilateral presidential power to restrict rights, as the President could continually issue new rights restricting decrees every three months.⁴³³

While the state of emergency was lifted in 2018, concerns have been raised that new anti-terrorism legislation institutionalises similar restrictions to those imposed during the state of emergency.⁴³⁴ The 2018 law grants the authorities significant powers, under the control of the President,

⁴²⁷ Constitution of the Republic of Turkey, Article 34. Translation available at:

https://global.tbmm.gov.tr/docs/constitution_en.pdf.

⁴²⁸ Law on Meetings and Demonstrations, Article 10. Translation available at:

<http://www.judiciaryofturkey.gov.tr/Law-on-Assemblies-and-Demonstrations-is-available-on-our-website>.

⁴²⁹ The Law Amending the Law on Powers and Duties of the Police, Other Laws and Decrees, as summarised by ICNL, Civic Freedom Monitor: Turkey, 6 May 2019. Available at:

<http://www.icnl.org/research/monitor/turkey.html>.

⁴³⁰ *Ibid.*; and Decree No. 667, Article 2, translation available at:

<https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168069661d>.

⁴³¹ Freedom House, Freedom of the World 2019: Turkey. Available at: <https://freedomhouse.org/report/freedom-world/2019/turkey>.

⁴³² ICNL, note 429.

⁴³³ Constitution, Article 119. Available at: https://global.tbmm.gov.tr/docs/constitution_en.pdf. For a discussion of the impact of the 2017 changes, see Serap Yazici, *Constitutional Amendments of 2017*, GlobaLex. Available at: https://www.nyulawglobal.org/globalex/2017_Turkey_Constitution_Amendments.html#EmergencyRegimes.

⁴³⁴ Civicus, Monitor: Turkey. Available at: <https://monitor.civicus.org/country/turkey/>.

including to dismiss judges and other public officials, restrict movement, ban public assemblies and detain individuals for prolonged periods of time without charge.⁴³⁵

The Criminal Code penalises those who make statements that could be interpreted as praising a terrorist organisation.⁴³⁶ It also prohibits establishing a terrorist organisation and membership in a terrorist organisation. In practice, these provisions, along with others establishing anti-State offences, have increasingly been used against government opponents.⁴³⁷ Numerous people remain detained on terrorist charges including journalists, lawyers and human rights defenders.⁴³⁸ The Ministry of Interior has also monitored social media for alleged terrorist propaganda and detained people for posting alleged terrorist content.⁴³⁹

Whistleblower, witness and other protection systems for those at risk

There is no dedicated legislation providing for whistleblower protection.⁴⁴⁰

⁴³⁵ Human Rights Watch, *Turkey: Normalizing the State of Emergency*, 20 July 2018. Available at: <https://www.hrw.org/news/2018/07/20/turkey-normalizing-state-emergency>.

⁴³⁶ Criminal Code, note 415, Article 220.

⁴³⁷ “The Arrested Lawyers Initiative, Abuse of the Anti-Terrorism Laws by Turkey is Steadily Increasing”, 30 May 2019, available at: <https://arrestedlawyers.org/2019/05/30/abuse-of-the-anti-terrorism-laws-by-turkey-is-steadily-increasing/>; and Human Rights Watch, *Lawyers on Trial*, 2019, available at: <https://www.hrw.org/report/2019/04/10/lawyers-trial/abusive-prosecutions-and-erosion-fair-trial-rights-turkey>.

⁴³⁸ Amnesty International, *Turkey: Amnesty International’s Brief on the Human Rights Situation*, 1 February 2019. Available at: <https://www.amnesty.org/download/Documents/EUR4497472019ENGLISH.PDF>.

⁴³⁹ As summarised by ICNL, note 429.

⁴⁴⁰ Transparency International, *G20 Position Paper 2014: Whistleblower Legislation*, 2014, available at: https://www.transparency.org/files/content/activity/2014_TI_G20PositionPaper_WhistleblowerLegislation_EN.pdf; and ICLG, *Turkey: Corporate Investigations 2019*, available at: <https://iclg.com/practice-areas/corporate-investigations-laws-and-regulations/turkey>.