



# Report from the Europe regional consultation on climate change and civic space with the United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association, Clément N. VOULE

## I. INTRODUCTION

1. The Europe regional consultation on climate change and civic space was organized by the European Center for Not-for-Profit Law Stichting (ECNL) and Lawyers for Nature as part of a series of consultations with the UN Special Rapporteur Mr. Clément N. Voule (UNSR). The consultation took place on 12 May 2021 and it was held online, with approx. 25 participants coming from different parts of Europe.
2. The consultation was organized with the aim to support the preparation of UNSR's next thematic report to the General Assembly at its 76th session, which will focus on the role of fundamental freedoms to advance climate justice. The consultation furnished an opportunity to share and discuss information regarding challenges and risks facing climate defenders in Europe, and to develop recommendations for ensuring that the assembly and associational rights of climate defenders are protected and promoted.

## II. THE CONSULTATION PROCESS

3. As mentioned above, the consultation was held online and it was moderated by the representatives of ECNL and Lawyers for Nature. The format of the consultation, plenary discussion, encouraged participants to share their experiences and discuss strategies and recommendations on how to overcome them. The participants were asked to provide their responses to the following questions:

Challenges and strategies:

- i. What are the key challenges climate defenders and civil society actors facing in your country while exercising assembly and association rights and strategies CSOs have developed in response to these challenges?

Recommendations:

- ii. What measures and actions would you recommend that States, businesses, and multilateral institutions take to ensure the promotion and protection of assembly and association rights in the context of climate action?
- iii. How can UNSR Voule best support climate defenders with the challenges they face in his report?

4. The participants were selected to represent different regions of Europe and they were coming from the following countries: Armenia, Azerbaijan, Belarus, Czechia, Georgia, Germany, Hungary, Ireland, Moldova, Netherlands, North Macedonia, Serbia, Slovenia, Sweden, Ukraine and United Kingdom. The consultation was held in English.

### III. SUMMARY OF PARTICIPANT INPUT

#### A. Threats and Challenges

5. The consultation process commenced with a question related to the key challenges climate defenders and civil society actors face in their respective countries while exercising assembly and association rights and strategies CSOs have developed in response to these challenges.
  6. There were numerous responses to this question, with respondents sharing their personal experiences or experiences of their peers and/or organisations they work with. Responses of the participants can be grouped around four main themes:
    - i. Threats to the right to freedom of peaceful assembly (including protest bans, criminalization of non-violent protest actions and civil disobedience; and critical infrastructure laws).
    - ii. Threats to the right to freedom of association (including operation barriers, surveillance and infiltration; access to information and participation restrictions).
    - iii. Threats affecting specific groups.
  7. The above issues guide the structure of this section and are followed by examples of strategies shared by the participants to address these challenges. Efforts have been made to provide useful and comprehensive overview for the drafting of the UNSR's thematic report.
- i. Threats to the right to freedom of peaceful assembly (including protest bans, criminalization of non-violent protest actions and civil disobedience; and critical infrastructure laws).**
8. Freedom of assembly in the past year was restricted in several countries around Europe under the pretext of fighting against the spread of COVID-19. This also negatively affected the possibility for climate activists to protest against climate regulations and policies adopted during the pandemic. Participants from Slovenia, the Netherlands and Hungary shared their stories related to the freedom of assembly during global pandemic.
  9. In Slovenia, the government has introduced a protest ban right when the first wave of the virus hit Europe. The measure was adopted with the claimed intention to fight COVID-19, however, other types of gatherings were less severely restricted. During these times, the government started to change core laws and policies with extensive impact on country's environment. One of the participants from Slovenia described the situation in his country in the following way:

*“In Slovenia, I will speak generally for the whole country, peaceful assembly and any kind of protest has been in fact forbidden by the Slovenian government since March 2020 or the first (corona)virus wave, by making any kind of gathering, formal or informal, banned and enforced with financial penalties until October. In October 2020, the government has adopted a new regulation explicitly banning any kind of assembly where one would express political opinions, no matter how much one would follow health recommendations, while at the same time allowing other forms of gatherings. This was in effect*

*until the decision of our Constitutional Court, based on our appeal, where the Court demanded that government allows peaceful assemblies. For a very short time, less than a week, the government allowed assemblies with 100 protestors at a time, then quickly reduced this number down to 10, with it being completely unrelated to (the spread of the) infections or the state of the (corona)virus. And why is this so critical from the environmental point of view, the ability to publicly protest? The government has been, during the (corona)virus (pandemic) changing the core environmental laws at an unprecedented rate ever since the (corona)virus (pandemic) began...*

*...The changes introduced by the government made it easier for investors to build hydro powerplants, new nuclear powerplants, hotels, gas stations, supermarkets etc. right next to the sea, rivers or lakes. This significantly increases the risk of pollution of surface waters and through them the underground waters that are the most important sources of water in Slovenia. Civil society, that opposes these changes, was unable to protest without being punished for it by the police, even when following the health recommendations.”*

10. Another participant from Slovenia added that the restrictions related to the freedom of assembly adopted to fight the spread of COVID-19 extended to disturbing lengths when solo protestors were fined for expressing their opinions. It was a paradox, because people were still able to go to the shopping malls and gather there, in some limited numbers. This makes it very difficult for climate activists to challenge the legal proposals from the government and express their opinion.
11. Similarly, in Hungary, the government has introduced a ban on assemblies shortly after the first wave of COVID-19 pandemic. This negatively affected the climate movement in the country that was just gaining its momentum. A participant from Hungary described this change in the context of geographically differentiated restrictions

*“Now with the pandemic in 2020, the Hungarian government has introduced a total ban on assemblies, which is still in force. Therefore, it was not possible to organize any kind of demonstrations and that was the case for climate activists as well. Just at the time when the (climate) movement was starting to become stronger and bigger.”*

12. In the Netherlands, during the COVID-19 pandemic, the protests were not completely banned, however, they have become more restricted. In particular, the principle of notification of planned protests to the state authorities has shifted towards obtaining a permission and complying with various conditions imposed by the authorities. A participant from the Netherlands described this change in the context of geographically differentiated restrictions:

*“So in March, just ahead of the national elections, there was an initiative to hold the climate march... This then by the organizer was decentralized, so we had like 15-20 municipalities where assemblies were held and each of these municipalities put different conditions, in particular based on the size. It was limited, but some rather small*

*municipalities allowed up to 1,000 or maybe in one case even 1,500 persons and some rather bigger municipalities, including the Hague had 100 and after the protests in the municipal council it was upgraded to 200.”*

13. During the pandemic, we have also seen cases of crackdown on peaceful protestors by the law enforcement bodies. In the UK, there have been cases of abuse of power by the police identified in the past year. The government is also proposing a policing bill that will effectively criminalize most forms of protests because of the broad definition of protests. It is not coincidental that this bill is proposed now, when we see the growth of climate movements. A participant from the UK stated that:

*“...(in the past year) we have seen, in particular, the Covid restrictions that have been deliberately abused by the police to crackdown on peaceful protests and on freedom of expression. And even I as a lawyer was threatened with a fine for trying to help a client during a protest.”*

14. In some countries participants of climate protests are subject to fines and other punishments, including criminal prosecution, for expressing their views and taking part in non-violent protests. A participant from Belarus, where all peaceful protest are subject to the prior permission from the state authorities, stated that:

*“We have one interesting example from Brest (city in Belarus) about a power plant construction. For about 2 years people go to the main square in the city to express their opinions against the construction of this plant. And there, we have a lot of cases of detentions, fines, and some criminal prosecution....”*

15. In this context, a participant from the UK shared examples of arbitrary prosecutions and arrests of climate protestors, as well as use of SLAPPs by the large companies to clamp down on peaceful protestors.

*“I think it has been one of the biggest mass prosecutions of people through the magistrates court that we have never seen before. Thousands and thousands of people being prosecuted for minor offenses...”*

*We also see a very little allowance of protest that is trying to protect (the environment). So in this country, we have very little environmental protections and activists often want to go and peacefully defend and protect nature. And we have regularly seen crackdowns by the police on that, dubious arrests, and also the growing rise of what is called civil injunctions so that is private cases brought by particularly polluters, and those who want to destroy the environment trying to crackdown down on protest, to bankrupt people through costs, to tie them up in the court system..”*

16. A participant from North Macedonia raised a similar challenge concerning the use of civil lawsuits to impede climate activists. One recent case involved mining operators

filing defamation lawsuits against climate defenders protesting against the opening of copper and gold mines in the southeastern part of the country.

17. The participants shared also a few strategies to overcome the above threats and challenges, including pushing back through legal procedures, providing/obtaining legal support, using social media to express their opinions etc. In Slovenia, a civil society organization working on climate change forecasts the potential costs of fines ahead of protests, using crowdfunding to cover costs imposed by the state.

**ii. Threats to the right to freedom of association (including operational barriers, surveillance and infiltration; access to information and participation restrictions).**

18. Similarly to freedom of assembly, freedom of association was also affected by the measures adopted to fight the spread of COVID-19. More specifically, a participant from the Netherlands mentioned the issue of a “ban on indoor gatherings” that restricts all sorts of in-person meetings. Due to this restriction, people cannot associate/meet in larger numbers and physically interact together. This is still very much present in the Netherlands and is not being sufficiently addressed.
19. A participant from Hungary also stated that they are witnessing a shrinking of civic space for civil society organizations in the country, including for environmental groups. Civil society organizations in Hungary are subject to legal restrictions, administrative burdens, defunding of organizations, smear campaigns and harassment.
20. Numerous participants, including from Armenia, Czechia, Hungary, North Macedonia, Slovenia and the UK shared stories where civil society was not properly represented in the decision-making about key investment projects in their respective countries, in particular in the area of construction. In some countries, it is also possible to limit the participation of individuals and civil society in the decision making, by declaring certain investments or projects to be of “national importance”.
21. Several participants raised that one of the issues is insufficient representation of civil society in the adoption of environmental plans and development plans. Furthermore, even when consultations are held, they may not have any legal effect on the final decision adopted by the national or local governments. A participant from Armenia mentioned that:

*“Public hearings and discussions are held, however, they are imitative, formal and have no legal consequences.”*

22. Participant from North Macedonia also added that civil society does not have any means to challenge disputable decisions adopted by national or local governments that have negative impact on the environment.

*“Our civil litigation code is not favorable in initiating civil procedures against the country (state), in which there is no identifiable victim, where there is no direct evidence that the city and its plan is responsible for the air pollution etc...”*

23. Another overarching issue raised by the participants is a clash between private and public interests in their respective countries, in particular related to the construction projects, when voices of public are often overheard. A participant from Czechia mentioned that:

*“There are also many cases of harmful urban development, especially in Prague, where also these interests of private sector are pushing forward and are taken into account way more than public interest, especially when speaking about, for example, blue-green infrastructure, traffic solutions etc.”*

### iii. Threats affecting specific groups.

24. Some participants also shared cases of threats affecting vulnerable groups, in particular children and youth. A participant from Ukraine talked about attacks on youth climate movements, including attacks on activists and prosecutions. There are also counter-initiatives that are provoking participants and disturbing protests of youth movements.
25. In Hungary, the youth climate movement faces significant and imminent barriers to successful operation. They are subject to smear campaigns from the government, calling them “Soros networks” or misguided and misinformed young people ostensibly controlled by investor and philanthropist George Soros. Such statements can be seen in the pro-government media and similar statements can be heard also from leading government figures. Though participants from Hungary highlighted misinformation about Soros, it should be noted that other civil society actors with a focus on climate have been publicly targeted in a similar way.

## B. Recommendations

26. The consultation process continued with a question related to recommendations. Participants were asked what measures and actions would they recommend that States, businesses, and multilateral institutions take to ensure the promotion and protection of assembly and association rights in the context of climate action. How can UNSR Voule best support climate defenders with the challenges they face in his report?

### i. International Institutions

27. Most of the recommendations shared by the participants were directed towards the international institutions, in particular the United Nations that initiated this consultation. The key recommendations shared by the participants are as follows:
- a. Strengthen the demand of the international community for adherence to the Aarhus Convention and other international conventions by the national governments.
  - b. Adopt a monitoring mechanism of the Aarhus Convention, such as a rapid response mechanism.
  - c. Demand from participating states the implementation of stronger guarantees related to the freedom of assembly and other related freedoms, while ensuring that these are not only declared on paper.
  - d. Support strengthening rights of civil society to gather in some format around the COP, and to make sure that the fact that COP will be held online this year due to COVID-19 will not create a precedent going forward.

- e. Make sure that conclusions and recommendations for climate defenders in Europe distinguish and take into account the differences between various regions of Europe, considering also their history.
- f. Ensure the presence of third parties from international institutions and non-governmental organizations at climate court cases.
- g. Collect examples of violations of climate activists' rights from all over Europe and present them publicly.
- h. Strengthen the Aarhus cost caps protection to reduce cost liability in case of climate cases brought to the court against the government.

## ii. States

- 28. Following up on the recommendations for the international institutions, some of the recommendations are also addressed to the states:
  - a. Protect freedom of assembly and avoid adoption of laws that further restrict the right to protest. In countries where such laws were adopted, such laws should be repealed. Protest should be seen as a valid and legal part of the countries' ecosystem.
  - b. Support through any funding and encourage the education of young legal environmental defenders to help people on the streets.
  - c. Challenge the worldview that the nature is property and something to be exploited through repealing existing laws and policies that currently protect this worldview.

## IV. CLOSING REMARKS

- 29. The consultation was concluded with closing remarks from the UN Special Rapporteur, who thanked all participants for their input and invited them to submit any additional inputs through an open call. He emphasized that this is just a starting point of the conversation and the defense of environment shall be seen as the defense of our fundamental rights.