
Introduction

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Civil society is widely commended for its contribution to the functioning of society at large. In both the scientific literature¹ and policy documents published by international institutions,² civil society is cited as an important partner in shaping public policy and making a significant positive contribution to the functioning of public administration as well as to helping create a sense of community and ‘pluriformity’. Civil society plays a major role in the provision of elementary services (education, health, social services, housing, development aid etc.), but it also functions as a carrier for inter alia artistic, social and idealistic expression, sports and recreation, advocacy and social cohesion. Ultimately, civil society is considered beneficial, if not indispensable, in the development and maintaining of a healthy democratic society.³

Although the concept of civil society is used widely, there does not seem to be one generally accepted definition of the term.⁴ By some definitions, the term ‘civil society’ is used to refer to a society that is based on a

¹ A.C. Zijderveld, *The Waning of the Welfare State: The End of Comprehensive State Succor*, New Brunswick, NJ, Transaction Publishers, 1999; R.D. Putnam, *Bowling Alone. The Collapse and Revival of American Community*, New York, Simon and Schuster, 2000; M. Edwards, *Civil Society*, Cambridge, England: Polity Press, 2004.

² See for example UN website for the UN position vis-à-vis civil society: www.un.org/en/civilsociety/; and the World Bank website *The World Bank and Civil Society*: <http://go.worldbank.org/PWRRFJ2QH0>. For numerous EU documents on civil society, see Chapter 3 in this book.

³ Copenhagen Criteria. With respect to the role of civil society in relation to a healthy democratic society in the case law of the European Court for Human Rights, see Chapter 2 in this book.

⁴ See for definitions, see J. Keane, ‘Civil Society, Definitions and Approaches’, in: H.K. Anheier, S. Toepler, R. List (eds), *International Encyclopedia of Civil Society*, New York, Springer, 2010.

4 I EUROPEAN LAW AND POLICY PERTAINING TO CIVIL SOCIETY

recognition of the rule of law and of democratic principles and human rights.⁵ Generally, however, civil society is understood to be constituted by informal groups and formal organisations that citizens are free to choose to join or not. In this respect, civil society is distinct from family and the state.⁶ In addition to its voluntary character, civil society is commonly considered to contribute to objectives that are non-commercial in nature. This latter characteristic sets it apart from businesses, which aim to make a profit and distribute these profits to their members or shareholders. In this volume, we adopt this latter concept of civil society. Characteristics such as adhering to the rule of law and democratic principles in this approach do not constitute civil society, even if they are a precondition for developing and maintaining a healthy civil society.

When viewed in this way, civil society is generally seen as the third major component in the fabric of society, alongside the state and the market. It is the area in which collective social goals are identified and pursued and that provides an infrastructure for the representation of citizens. Civil society organisations (CSOs) play an important role as intermediaries between citizens, on the one hand, and the state and the market on the other.

The roles and functions of civil society and its contribution to the economy and society at large differ significantly among countries.⁷ The same is true for the law and administrative practices that pertain to CSOs. Presumably, history and (legal) culture, as well as the dominant view on the role of the state in society, have a strong influence on the shape of civil society in a specific country and the legal and administrative environment within which it has to operate.

This book is about the legal, normative and administrative framework that pertains to civil society, with a focus on Europe. The reason for exploring this subject is that civil society is, at least partly, defined by these three aspects. The freedom of citizens and their organisations to engage in civic initiatives, as well as the extent to which the legal and administrative environment is discouraging, indifferent or positive towards the participation of CSOs in social and political life, are what determine the 'habitat' in

⁵ Economic and Social Committee on Organised Civil Society and European Governance: the committee's contribution to the drafting of the White Paper, OJ C 193, 10/07/2001, nr. 2.2.1.

⁶ The concept of 'state' in this context is wider than just the state at a national level and includes other levels in the organisational structure of the state.

⁷ See L.M. Salamon, S.W. Sokolowski et al., *Global Civil Society: Dimensions of the Non-Profit Sector*, Bloomfield, CT, Kumarian Press, 2004.

which civil society exists and develops. The focus on Europe has allowed us to add another dimension to the comparison. At the European level, an unmistakably normative approach toward civil society has evolved. The relevant norms and views emanate from the European Court of Human Rights, the European Court of Justice, the Council of Europe and the European Union. Sources include the case law of the European Court of Human Rights, the Recommendations of the Committee of Ministers of the Council of Europe to Member States on the legal status of CSOs in Europe, the proposal for a Council Regulation by the EEC on the statute for a European association of 1991, the 2006 proposals by international experts regarding a European foundation and the Proposal for a Council Regulation on the statute for a European Foundation (EF). Although not all of these documents have legislative authority, they reflect the views of European experts in this field and of the relevant European institutions on how CSOs should be regulated, especially those that are active in the member states.

Because European norms and views take a central position in this research project, they are dealt with in Part I ('European Law and Policy Pertaining to Civil Society') of the book (chapters 2 and 3). In Chapter 2, the fundamental freedoms and the case law of the European Court of Human Rights are set out in further detail, while Chapter 3 is devoted to the development of the European Union's approach towards civil society.

These various sources of (case) law and opinions generated at the European level provide an insight into the current European normative approach of CSOs. They aim to promote civil society and are therefore relevant when looking more closely at the legal and administrative framework for CSOs in a particular country. Incorporating these norms and views into the comparison enables us to assess the extent to which the national-level frameworks in individual countries (including but not limited to the countries that are part of this project) meet European standards. Also, the case law of the European Court of Human Rights and laws and practices in individual countries encourages further reflection on the views and norms developed by the European Union and its institutions. In Part II ('National Laws Pertaining to Civil Society: A Comparative Overview and Evaluation'), a comparative overview of national laws pertaining to civil society is given, as well as an evaluation.

The way in which we have conducted this comparative survey is first by collecting information from the countries included using a questionnaire developed with the assistance of national experts from each country. We point out that political parties, trade unions and religious organisations

6 I EUROPEAN LAW AND POLICY PERTAINING TO CIVIL SOCIETY

were not included. This was not because we do not consider them to be part of civil society but because they are often subject to specific regimes. Including them would have rendered the project unfeasible. The countries were selected using certain criteria. One of these was that they should be members of the Council of Europe and therefore subject to the jurisdiction of the European Court of Human Rights. Furthermore, the countries included in this survey were selected to include both large and small countries, both older and younger democracies and representatives of the various relevant legal traditions (common law, civil law and Scandinavian law).

The information obtained from the questionnaires underlies the systematic overviews concerning the approaches, norms, types of regulation and sometimes administrative practices pertaining to civil society. These overviews are part of the thematic surveys, set out in Chapter 4, grouped into the following main themes:

- I. legal forms: characteristics, access, restrictions on activities;
- II. governance: internal supervision, transparency and liability of board members;
- III. registration: types of registration, information registered and public access;
- IV. external supervision and sanctions;
- V. CSO-government relations: public benefit status, government funding, involvement in public policy agenda; and
- VI. foreign and international CSOs.

Each thematic overview is preceded by an introduction, explaining the relevance of that particular (sub)theme, followed by a section that analyses the findings of the preceding overview in relation to the European views and norms that have been derived from the case law of the European court and the other sources referred to earlier. This method is designed to facilitate a systematic analysis of the normative and administrative approaches to civil society in the countries included in this project and at the European level. To enable comparison between the countries included in the surveys, the main findings in relation to each theme are set out in matrices.

Subsequently, we undertook to determine minimum norms that should be applied in the legal and normative framework pertaining to civil society from the perspective the fundamental rights and freedoms described under the European Convention on Human Rights, for example, and on the basis of general notions such as the recognition of the rule of law and

democratic principles such as ‘pluriformity’. Furthermore, because European institutions such as the Council of Europe and the European Union strive to encourage CSOs and their participation in society, it also seemed appropriate to seek to determine what might be considered the optimal conditions for an empowering legal and normative framework pertaining to CSOs. The thinking behind this is not that we believe that uniformity in CSO law, or even harmonisation, is necessarily desirable, but rather that materially minimum and preferably optimum norms for achieving a healthy, flourishing civil society should be provided for. Our findings, which are presented in Chapter 5, show that this is not always the case.

A consequence of the methodology that we applied is that information presented regarding the individual countries included in the survey is taken out of the context from which it originates. The thematic surveys do not allow the presentation of the overall picture on how the law and administrative practices pertaining to civil society function in a particular country. By way of a supplement to the thematic surveys, we therefore include country essays, written by the national experts involved in this project, on the legal and normative approach to civil society in each country. These country essays are presented in Part III (‘Country Essays on Civil Society Law’). This text was completed on 1 January 2016, and later national developments should be taken into account with regard to the country essays.