Prof. Dr. Robert Uerpmann-Wittzack
Chair of Public and International Law
University of Regensburg
93040 Regensburg

robert.uerpmann-wittzack@ur.de

Freedom of Association: The Shrinking Space of Civil Society

Contribution to the German-French Joint Conference: Democracy – Fundamental Building-Block of the International Order?, Tutzing, 25 and 26 September 2020[*]

I. Introduction

Freedom of association is a core guarantee of international human rights law. Together with the freedom of assembly, freedom of association complements freedom of expression. Article 20 of the Universal Declaration of Human Rights (UDHR), Article 22 of the International Covenant on Civil and Political (ICCPR) and Article 11 of the European Convention on Human Rights (ECHR) guarantee freedom of association. Article 22(2) ICCPR and Article 11(2) ECHR both allow restrictions, which must have, however, a legal basis, serve an enumerated legitimate aim and be "necessary in a democratic society". The ECHR uses the same formula in Articles 8-11 with regard to the protection of private and family life, freedom of expression, freedom of thought, conscience and religion, and freedom of assembly. By contrast, the ICCPR reserves the reference to a democratic society for freedom of assembly (Article 21 ICCPR) and freedom of association, thus emphasizing the specific nexus between these two collective guarantees and democracy.

While freedom of expression allows individuals to expose their ideas, and freedom of assembly enables them to do so collectively,[1] freedom of association permits them to create a stable framework for pursuing common goals over a long time. Hence, freedom of association is the very basis of civil society commitment.

Freedom of association gained ground in Europe and worldwide in the 1990s, after the Cold War had ended. The backlash followed since the new millennium.[2] After the terrorist attacks of 11 September 2001, restrictive laws were enacted with a view to fighting international terrorism and money laundering. Simultaneously, the enthusiasm for common, global values yielded again to thinking in terms of national sovereignty and self-determination. Freedom of association is being restricted in many countries worldwide, and restrictions take various forms. Associations are compelled to submit to strict registration requirements, funding is restricted and activists are prosecuted. Associations face severe sanctions and even forced dissolution in case of minor non-compliance or they are stigmatized by public authorities.

[*] I owe thanks to Charlotte Wicke for preliminary research and precious comments.

[1] See Human Rights Committee (HRC), General comment No. 37 (2020) on the right of peaceful assembly (article 21), CCPR/C/GC/37, paras 1, 4.

[2] See Douglas Rutzen, "Civil Society under Assault", in *Journal of Democracy* 26 (2015), pp, 28-39; Chrystie F. Winey, "The Counter-Associational Revolution: The Rise, Spread, and Contagion of Restrictive Civil Society Laws in the World's Strongest Democratic States", in *Fordham International Law Journal* 43 (2019), pp. 399-456.

Examples are manifold. In 2012, Russia enacted a law on foreign agents obliging associations that receive any funding from abroad to register as a "foreign agent" if the association participates in political activities.[3] The term "political activities" is both broad and vague. It covers, inter alia, activities in the field of human rights, democracy and the rule of law.[4] In principle, a single rouble or Euro, which a foreign citizen sends to the association's bank account, would suffice to turn the NGO into a foreign agent.[5] The qualification as a "foreign agent", which must be indicated on all materials issued or distributed by the association,[6] bears a negative and stigmatizing connotation.[7] According to the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, the Russian expression is equivalent to "foreign spy".[8] Moreover, the status of a foreign agent implies enhanced monitoring obligations, which are burdensome and costly.[9]

In a similar vein, the Hungarian Transparency Law of 2017 obliges any association receiving a certain amount of funding from abroad to make a declaration and to indicate on its homepage as well as in its publications and other press products that it has been classified as an organization in receipt of support from abroad.[10] Non-compliance may be sanctioned by a fine or by forced dissolution.[11] The European Court of Justice (ECJ) found these requirements to be deterrent and stigmatizing.[12] According to the Court, they were based on a mere presumption that any foreign funding would invariably jeopardise Hungary's "political and economic interests … and the ability of its institutions to operate free from interference".[13]

The Kavala case illustrates the problem of criminal prosecution for engaging in civil society activities. In Kavala, the European Court of Human Rights (ECtHR) did not only find a violation of the right to liberty under Article 5(1)(c) ECHR because Turkey had arrested the applicant without a "reasonable suspicion".[14] Rather, the Court engaged in an analysis of Article 18 ECHR, which prohibits applying restrictions for "any purpose other than those for which they have been prescribed". Eventually, the Court found Article 18 ECHR to be violated because Turkey had used unconvincing charges in order to prosecute the applicant for his legitimate activities as an NGO leader, to reduce him to silence and to dissuade others from following his example.[15] Angelika Nußberger has compared such a condemnation under Article 18 ECHR with showing the red card.[16]

---

[3] Venice Commission, Opinions no. 716-717/2013 on Federal Law N. 121-FZ on non-commercial organisations ("Law on foreign agents"), on Federal Laws N. 18-FZ and N. 147-FZ and on Federal Law N. 190-FZ on making amendments to the Criminal Code ("Law on treason") of the Russian Federation, CDL-AD(2014)025, paras 9, 44 ff.

[4] Ibid., para. 83.

[5] Ibid., para. 70.

[6] Ibid., para. 48.

[7] Ibid., paras 54 ff.

[8] UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, [Second] Report, A/HRC/23/39, para. 28.

[9] Venice Commission (note 3), paras 91-92.

[10] ECJ (GC), Judgment of 18 June 2020, case C-78/18, paras 1-5, 54 – Commission v. Hungary; see also Venice Commission, Opinion 889/2017 on the Hungarian Draft Law on the transparency of organisations receiving support from abroad, CDL-AD(2017)015.

[11] Ibid., para. 56, 58.

[12] Ibid., para. 118.

[13] Ibidl., para. 86, 93.

[14] ECtHR, Judgment of 10 December 2019, App. No. 28749/18, paras 135-160 – Kavala v. Turkey.

[15] ECtHR, Judgment of 10 December 2019, App. No. 28749/18, paras 222-224, 231-232 – Kavala v. Turkey.

[16] Angelika Nußberger, "Europa, deine Menschenrechte", in *Europäische GrundrechteZeitschrift* 47 (2020), pp. 389 at 393; see also Helen Keller and Sebastian Bates, "Article 18 ECHR in Historical Perspective and Contemporary Application", in *Human Rights Law Journal* 39 (2019), pp. 2 at 12, who highlight the relevance of Article 18 ECHR as a codification of the doctrine of abuse of rights.

This chapter shall analyse the role of freedom of association and civil society from two perspectives: Section II takes the perspective of liberal human rights law, while Section III explores the democratic dimension. Whereas liberal human rights law protects global civil society, democracy builds upon a civil society formed by the citizens constituting the people of a given country. Tensions between both approaches arise, when civil society organisations are funded or operate in a transnational way. Against this backdrop, Section IV outlines standards for the justification of restrictions on freedom of association before some conclusions will be drawn in Section V.

The chapter draws on United Nations and Council of Europe practice comprising the work of political, expert and judicial bodies. Within the United Nations, contributions made by the Human Rights Committee and the Special Rapporteur on the rights to freedom of peaceful assembly and of association[17] are particularly relevant. On the European level, the case law of the European Court of Human Rights[18] is corroborated and complemented by documents issued by the so-called Venice Commission, i.e. the European Commission for Democracy through Law,[19] and by the Committee of Ministers[20].

II. Human rights liberalism

From a human rights perspective, freedom of association is important because it enables individuals to pursue common goals collectively and in an enduring way. The ECtHR has emphasised the link between freedom of association and freedom of expression by pointing out that freedom of association has, inter alia, the objective of protecting opinions and the freedom to express them.[21] Since 1976, the ECtHR holds that "pluralism, tolerance and broadmindedness" characterize a "democratic society"; therefore, freedom of expression covers not only "'information' or 'ideas' that are favourably received or regarded as inoffensive or as a matter of indifference, but also … those that offend, shock or disturb".[22] Given the close relationship between freedom of expression and freedom of association, the Court has applied the same formula to associations "whose views offend, shock or disturb".[23] The Court's willingness to interpret freedom of association in the light of the principle personal autonomy[24] confirms its liberal approach.

Freedom of association does not only protect the right to establish an association,[25] but also the whole functioning of an association including its funding.[26] In fact, proper funding is essential for the success of any civil society organisation. In his 2020 report, the UN Special Rapporteur

[17] See UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, Ten years protecting civic space worldwide, Report of 13 May 2020, A/HRC/44/50.
[18] For an overview, see ECtHR, Guide on Article 11 of the European Convention on Human Rights, Freedom of assembly and association, updated on 31 May 2020, paras 105-222.
[19] See Venice Commission, Compilation of Venice Commission opinions concerning freedom of association (revised in December 2019), CDL-PI(2019)007.
[20] See Council of Europe, Committee of Ministers, Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe.
[21] ECtHR (GC), Judgment of 8 December 1999, App. No. 23885/94, para. 37 – Freedom and Democracy Party (ÖZDEP) v. Turkey; Judgment of 27 April 2010, App. No. 20161/06, para. 46 – Vörður Ólafsson v. Iceland.
[22] ECtHR, Judgment of 7 December 1976, App. No. 5493/72, para. 49 – Handyside v. United Kingdom; see also Sally Dollé and Clare Ovey, "Handyside, 35 years down the road", in Josep Casadevall, Egbert Myjer, Michael O'Boyle and Anna Austin (eds.), *Freedom of Expression. Essays in Honour of Nicolas Bratza*, 2012, pp. 541 at 544-545.
[23] ECtHR, Judgment of 6 November 2012, App. No. 47335/06, para. 56 – Redfearn v. United Kingdom.
[24] ECtHR, Judgment of 27 April 2010, App. No. 20161/06, para. 46 – Vörður Ólafsson v. Iceland.
[25] See ECtHR, Judgment of 10 July 1998, App. No. 26695/95, para. 40 – Sidiropoulos and others v. Greece.
[26] Special Rapporteur (note 8), para. 16.

on the rights to freedom of peaceful assembly and of association has underlined the importance of cross-border funding for the continued operation of civil society organisations.[27]

Hence, the right to seek for and to accept funding from other States, international organisations, NGOs or private individuals is covered by freedom of association.[28] Registration requirements, restrictions on funding and sanctions applied in case of non-compliance with these rules all constitute interferences with the right to freedom of association. They may be justified only under the conditions laid down in Article 22(2) CCPR and Art. 11(2) ECHR.[29]

In sum, the liberal approach to freedom of association has a cosmopolitan dimension. This is in line with freedom of expression, which comprises, according to the relevant human rights instruments, the right to "receive and impart information and ideas … regardless of frontiers".[30] Liberal human rights practice has extended the transnational dimension to freedom of association, thus laying ground for a global, cosmopolitan civil society. It should be kept in mind, however, that international human rights instruments highlight the importance of trans-border speech and information. Trans-border financial influence does not necessarily enjoy the same degree of protection.

III. The perspective of democratic self-determination

Analysing freedom of association from the perspective of democratic self-determination may lead to other results. In his concept of an ideal democracy, Jean Jacques Rousseau was hostile towards any associations regrouping some citizens.[31] According to Rousseau, such partial associations would compromise the *volonté générale*. This concept stands in sharp contrast with freedom of association as guaranteed by Article 22 ICCPR and Article 11 ECHR. From the perspective of international human rights law, democracy must be a pluralist one.[32] Hence, the freedom to establish political parties[33] and other civil society organisations is an essential element of democracy.

Freedom of association is important for any pluralist democracy, because it enables groups of citizens to organize and to collectively promote their goals and pursue a given agenda.[34] According to the European Court of Human Rights, there is a direct relationship between democracy, pluralism and freedom of association.[35] Still according to the Court, the way in which freedom of association is secured under domestic law and in which domestic authorities apply it in practice are benchmarks for the state of democracy in a given State.[36] Like the media,[37] civil society organisations may serve as watchdogs,[38] as Transparency International does. They

[27] Special Rapporteur (note 17), para. 51.
[28] Committee of Ministers (note 20), para. 50; see also Special Rapporteur (note 8), para. 16-17.
[29] See above, Section I.
[30] Article 19 UDHR, Article 19(2) ICCPR, Art. 10(1) ECHR.
[31] Jean Jacques Rousseau, *Du contrat social*, Amsterdam 1762, Livre II, Chapitre III, pp. 57-59.
[32] ECtHR (GC), Judgment of 8 December 1999, App. No. 23885/94, para. 37 – Freedom and Democracy Party (ÖZDEP) v. Turkey; Judgment of 13 February 2003, App. No. 41340/98 and others, para. 89 – Refah Partisi and others v. Turkey; HRC (note 1), para. 40, also confirms the link between democracy and political pluralism.
[33] See Steven Wheatley, "Democracy in international law: a European perspective", in *ICLQ* 51 (2002), pp. 225 at 240.
[34] See Venice Commission (note 19), p. 4, 13; see also Special Rapporteur (note 17), para. 1.
[35] ECtHR (GC), Judgment of 17 February 2004, App. No. 44158/98, para. 88 – Gorzelik and others v. Poland; confirmed by ECJ, Judgment of 18 June 2020, C-78/18, para. 112 – Commission v. Hungary.
[36] ECtHR (GC), Judgment of 17 February 2004, App. No. 44158/98, para. 88 – Gorzelik and others v. Poland.
[37] See ECtHR (GC), Judgment of 7 February 2012, Apps. Nos.40660/08, 60641/08, para. 102 – von Hannover v. Germany (No. 2).
[38] See HRC, Views of 28 March 2011, CCPR/C/101/D/1470/2006, paras 6.3, 7.4 – Toktakunov v. Kyrgyzstan.

may raise concerns for human rights issues, for the situation of minorities or other disadvantaged groups or for common concerns such as environmental degradation and climate change. According to the HRC, the existence and operation of such associations, "including those which peacefully promote ideas not necessarily favourably viewed by the Government or the majority of the population, is a cornerstone" of democratic societies as referred to in Article 22(2) ICCPR.[39] Hence, admitting associations that "offend, shock or disturb"[40] is not only a liberal demand but also a democratic one.

In a democratic context, freedom of association is a right of citizens.[41] Article 25 ICCPR guarantees the right to take part in the conduct of political affairs, to vote and to be elected to all citizens. Likewise, Article 3 of the First Protocol to the ECHR obliges States parties to hold free elections permitting "the free expression of the opinion of the people". Both provisions correspond to Article 1 ICCPR, which grants "all peoples" the right of self-determination. All these provisions connect democracy to the self-determination of a certain group, i.e. to citizens that constitute a people.

It is true that the concept of citizenship and, even more, the concept of peoples may appear vague and indeterminate. At the local level, for instance, there may be good reasons to grant the right to vote and to be elected to foreigners residing in a country as suggested by Article 6(1) of the European Convention on the Participation of Foreigners in Public Life at Local Level.[42] This would detach elements of citizenship from nationality and create partial citizenship of non-nationals at the local level. In any case, however, citizenship, as understood by existing international human rights law, presupposes special ties to a certain community.

If freedom of association is to serve democratic self-determination, its point of reference will be the respective people. The Venice Commission has elaborated this point in an Opinion regarding Azerbaijan:

> "Freedom of association should form the basis of any pluralist democracy. All groups in society should therefore have the freedom to participate in associative life as this contributes towards the development of a strong democratic civil society."[43]

This corresponds to Article 16 ECHR, which permits State parties to restrict the political activity of aliens also with regard to freedom of association. Even though Article 16 ECHR is applied narrowly,[44] it confirms the basic idea that democracy means self-determination of and within a given group.

From this perspective, a pluralist democracy demands that citizens are able to establish both political parties and civil society organisations and that they are free to engage in these associ-

[39] HRC, Views of 15 November 2011, CCPR/C/112/D/2153/2012, para. 9.2 – Kalyakin v. Belarus.
[40] See above note 23.
[41] See Venice Commission (note 19), p. 4, 13.
[42] Convention of 5 February 1992, ETS No. 144.
[43] Venice Commission, Opinion no. 636/2011 on the compatibility with human rights standards of the legislation on non-governmental organisations of the Republic of Azerbaijan, DCL-AD(2011)035, para. 79; see also idem (note 19), p. 4.
[44] See ECtHR (GC), Judgment of 15 October 2015, App. No. 27510/08, para. 122 – Perinçek v. Switzerland; Lukas Meyer, "Der Ausländervorbehalt in der Rechtsprechung des EGMR", *Archiv des Völkerrechts* 56 (2018), pp. 258-267.

ations. Foreign interference by contrast, may appear as a challenge to democratic self-determination. From a democratic point of view, admitting foreign or transnational associations does not seem obvious.

Questions of funding are ambivalent from a democratic point of view. Any association wishing to raise its voice in a pluralist democracy needs appropriate funds. Therefore, proper funding is crucial in a democratic society. On the other hand, those who support an association with important funds may do so in order to implement their own agenda and to give particular weight to their own goals. A democratic society, by contrast, is based on the principle of democratic equality of all citizens. Therefore, neither economic power nor external actors should bias elections and public debate.

Hence, it is recognized that a State may outlaw foreign funding of political parties.[45] According to the Common Rules against Corruption in the Funding of Political Parties and Electoral Campaigns adopted by the Committee of Ministers of the Council of Europe in 2003, "States should specifically limit, prohibit or otherwise regulate donations from foreign donors".[46] For the ECtHR, there was no doubt that a ban on financing by foreign States was "necessary for the preservation of national sovereignty".[47] The Court was less convinced with regard to funding by a foreign non-State actor, but it saw the ban covered by the State's margin of appreciation.[48]

The complete ban on foreign financial influence is seen as an exception that only applies to actors directly involved in the election of a people's representatives.[49] Other civil society organisations should, as a rule, retain the possibility to receive foreign funding. A similar tendency to reduce measures against foreign influence to the core of democratic participation appears in the case law concerning Article 16 ECHR. The article allows States to limit "the political activity of aliens". The ECtHR tries to restrict the exception clause to activities that "directly affect the political process",[50] thus leaving space for foreigners engaging in public debates. Nevertheless, it may be retained that democracy does not militate in favour of accepting outward interference. If activities of non-domestic associations and foreign funding of associations is protected, this stems from the liberal dimension of international human rights law, not from democratic principles.

IV. Standards for justifying restrictions

The liberal approach underlying freedom of association as well as its democratic implications set the framework for permissible restrictions. International bodies have developed a series of standards for the justification of interferences with Article 22 ICCPR and Article 11 ECHR.

First, any restriction must pursue a legitimate aim. Under Article 22(2) ICCPR, freedom of association may only be restricted "in the interest of national security of public safety, public order *(ordre public)*, the protection of public health or morals or the protection of the rights and

[45] See Venice Commission, Opinion No. 366/2006 on the prohibition of financial contributions to political parties from foreign sources, CDL-AD(2006)014, para. 33 and passim.
[46] Articles 7 and 8 of the Common Rules, Appendix to Council of Europe, Committee of Ministers, Recommendation Rec(2003)4 on common rules against corruption in the funding of political parties and electoral campaigns.
[47] ECtHR, Judgment of 7 June 2007, App. No. 71251/01, para. 47 – Parti nationaliste basque – Organisation régionale d'Iparralde v. France; see also Mazia Jamnejad and Michael Wood, "The Principle of Non-intervention", in *Leiden Journal of International Law* 22 (2009), pp. 345 at 368 according to whom State funding of a party in another country may amount to unlawful intervention.
[48] ECtHR, Judgment of 7 June 2007, App. No. 71251/01, para. 47 – Parti nationaliste basque – Organisation régionale d'Iparralde v. France.
[49] Venice Commission, Report on funding of associations, Study No. 895/2017, CDL-AD(2019)002, para. 78.
[50] ECtHR (GC), Judgment of 15 October 2015, App. No. 27510/08, para. 122 – Perinçek v. Switzerland.

freedoms of others." Article 11(2) ECHR replaces the interests of public order by "the prevention of disorder and crime". These lists are exhaustive and must not by extended.[51] According to the ECtHR, they must be construed narrowly.[52]

While the fight against international terrorism and money laundering are recognized aims,[53] justifying restrictions with the interest to protect state sovereignty from foreign interference seems problematic. State sovereignty and non-interference as such are not listed in Article 22(2) ICCPR or Article 11(2) ECHR.[54] In *Parti national basque*, the ECtHR held that national sovereignty might justify a ban on foreign state funding of political organisations but not necessarily on funding by foreign private actors.[55] The European Court refrained, however, from referring to any of the aims listed in Article 11(2) ECHR.[56] In another context, the ECtHR has held that certain restrictions imposed on civil servants could be justified by the "right of others … to effective political democracy"[57] even in the absence of any concrete "threat to the stability of the constitutional or political order".[58] In this context, the ECtHR emphasised the fundamental character of democracy for the European public order.[59]

Hence, exercising a certain control over the funding of civil society organisations in general and political parties in particular may be justified under the headings of the rights of others, i.e. the rights of all citizens, or of public order, where the proper functioning of democracy is at stake. Here, the ambivalent character of funding has to be kept in mind: While adequate funding is essential for the functioning of any association, financially strong actors may use their financial means in order to push their goals at the expense of others.[60] Even in a liberal democracy, there are good reasons to limit the influence of economic power on democratic process in favour of the democratic equality of all citizens. This may justify quite strict regulations on the funding of political parties that directly participate in the election of the people's representatives, and it may justify at least transparency obligations with regard to civil society organisations that participate in public debates. It is true that the Venice Commission has condemned any public disclosure obligation for civil society organisations others than political parties as "a drastic measure".[61] This is certainly true if the disclosure obligation stigmatizes like labelling an association as "foreign agent"[62]. However, simply making resources transparent hardly seems stigmatizing or "drastic" unless public opinion strongly condemns any foreign influence. If public opinion is fundamentally opposed to any foreign influence, however, it seems problematic to circumvent this problem by concealing even substantial foreign influence. It may be discriminating, though, to impose public disclosure obligations on foreign funded associations alone and not on all associations.[63]

Aims that are, in principle, legitimate must not be abused as a pretext for restricting freedom of association. Such an abuse may be presumed if the restriction at hand is not fitted to realize the

[51] Special Rapporteur (note 8), para. 30.
[52] ECtHR, Judgment of 10 July 1998, App. No. 26695/95, para. 38 – Sidiropoulos and others v. Greece.
[53] Venice Commission (note 19), para. 53.
[54] See also Special Rapporteur (note 8), para. 30.
[55] ECtHR, Judgment of 7 June 2007, App. No. 71251/01, para. 47 – Parti nationaliste basque – Organisation régionale d'Iparralde v. France.
[56] For a deeper analysis see Venice Commission (note 49), paras 74-76.
[57] ECtHR, Judgment of 2 September 1998, App. No. 22954/93, para. 54 – Ahmed and others v. United Kingdom.
[58] Ibid., para. 52.
[59] Ibid., para. 54.
[60] See also Venice Commission (note 49), para. 38, in the context of lobbying.
[61] Venice Commission (note 49), para. 106; but see idem (note 10), paras 52-53.
[62] See above note 7.
[63] Venice Commission (note 49), para. 127.

legitimate aim or contradictory. In the fight against money laundering, for instance, it would be incoherent and discriminating to impose stronger reporting obligations on civil society organisations than on business corporations, given that the latter are at least as exposed to money laundering activities.

Furthermore, any restriction must be necessary for achieving the aim pursued. Restrictions on foreign funding, for instance, would be excessive if they applied even to minor donors and negligible sums.[64] Hence, the German Statute on Political Parties exempts donations not exceeding 1000 Euro from the ban on foreign funding of political parties.[65] Moreover, lawful activities must not be stigmatized.[66]

Finally, any restriction must stand a strict proportionality test. Thus, reporting obligations must not be overly burdensome and costly.[67] This is particularly true for small NGOs that would be overburdened and deterred by excessive bureaucracy. Dissolving an association must be reserved for the most extreme cases.[68] While it is legitimate to require transparency, liquidating an association for not fully complying with complicated reporting requirements will hardly meet a serious proportionality test.

V. Conclusions

To sum up, democracy, as understood by international human rights law, is a pluralist one. Freedom of association is essential for any pluralist democracy. There is, however, an inherent tension between liberal human rights cosmopolitanism and democratic self-determination of a given group. If domestic associations receive relevant foreign funding or if powerful transnational associations come into play, their financial power may shift the balance within a given group. Of course, this does not only apply to external actors but also to financially powerful internal actors that may dominate debates in contradiction to the idea of democratic equality of citizens, which implies that all voices should have the same impact. While external voices must be heard in a liberal democracy, there are good reasons to control the impact of financial power.

It would be excessive, however, to prohibit all foreign funding of civil society organisations. While some monitoring and transparency requirements may be imposed on civil society organisations, the must be neither overly costly or burdensome nor stigmatizing. During the last twenty years, many States have enacted laws that go far beyond what would be acceptable in a pluralist democracy, thus shrinking the space for civil society. This development reveals a fundamental scepticism towards liberalism and pluralism, which form the very basis of international human rights law. At the same time, the growing aversion against foreign influence reflects a dwindling transnational consent on which values should be promoted.[69] In the absence of a real consent on common values, investing funds in the promotion of values abroad may be perceived as hegemonic.

[64] See Venice Commission (note 49), para. 13; idem (note 3), para. 70.
[65] Section 25(2)(3)(c) Parteiengesetz.
[66] See also Venice Commission (note 3), para. 87.
[67] Venice Commission and OSCE Office for Democratic Institutions and Human Rights, Joint Opinion on Ukrainian Draft Law No. 6674 on introducing changes to some legislative acts to ensure public transparency of information on finance activity of public associations and of the use of international technical assistance, CDL-AD(2018)006, para. 40.
[68] ECtHR, Judgment of 8 October 2009, App. No. 37083/03, paras 63, 82 – Tebieti Mühafize Cemiyyeti and Israfilov v. Azerbaijan; Venice Commission (note 49), para. 116.
[69] See also Nußberger (note 16), p. 397.