

THE CORONAVIRUS PANDEMIC AND FUNDAMENTAL RIGHTS: A YEAR IN REVIEW

FOCUS

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1

AN UNPRECEDENTED CHALLENGE TO FUNDAMENTAL RIGHTS

"We must look out for each other, we must pull each other through this. Because if there is one thing that is more contagious than this virus, it is love and compassion. And in the face of adversity, the people of Europe are showing how strong that can be."

Ursula von der Leyen, President of the European Commission, **Speech** at the plenary session of the European Parliament, 26 March 2020

In 2020, the COVID-19 pandemic and the measures it prompted raised an unprecedented collective challenge to the fundamental and human rights of everyone living in the EU. The EU Charter of Fundamental Rights enshrines these rights.¹

Fundamental and human rights obligations of EU Member States also derive from other international human rights instruments. These include the European Convention on Human Rights (ECHR),² or the treaty system of the European Social Charter,³ and the instruments adopted in the context of the United Nations (UN), such as the international covenants on civil and political rights and on economic, social and cultural rights.⁴ In addition, fundamental and human rights are well rooted in the constitutions and legislation of EU Member States. They are also among their commonly shared values on which the EU is founded.⁵

All these instruments shape the human and fundamental rights framework that calls for a rights-based approach in dealing with the COVID-19 pandemic and its consequences.

This focus takes a look at measures imposed in response to the pandemic, and explores their implications for a wide range of rights. Specifically, it first looks at states of emergency, and equivalent emergency situations and measures, that Member States have declared (**Section 2**). It then examines the pandemic's impact on rights in key areas of daily life (**Section 3**), and on the rights of particular groups in our diverse societies (**Section 4**).

The evidence provided is mainly linked to provisions of the EU Charter of Fundamental Rights, which is of particular importance in the EU context.



EU and its Member States bound by Charter when tackling the pandemic

Tackling a public health crisis is primarily the responsibility of EU Member States. EU institutions, as required by the EU Treaties, provide coordination and support. The EU Charter of Fundamental Rights applies, however, when the measures taken by the Member States to contain COVID-19 are linked to the implementation of EU law.

For instance, they may affect non-discrimination and equality in accessing rights (e.g. in healthcare, education, services, social protection), freedom of movement within the EU, the internal market, working conditions, data protection, or asylum and migration. More broadly, the emergency measures have implications for human dignity, the functioning of democratic institutions, rule of law and the overall respect for human rights – all core EU values. In this regard, upholding the Charter when taking decisions to fight the pandemic

is obligatory for EU institutions and for Member States when implementing EU law.

In addition, EU Member States remain bound by the provisions of the ECHR and by other international human rights obligations.

As the European Affairs Committee of the French Senate stressed – while recognising the need for Member States to take urgent measures to tackle COVID-19 – “the Charter of Fundamental Rights of the European Union continues to apply during the pandemic”.*

For more on the Charter, see Chapter 2 in the *Fundamental Rights Report 2021*.

* France, Senate (Sénat), European Affairs Committee (2020), **Minutes** of the session of 6 May 2020, ‘Respect for the rule of law in Europe during the COVID-19 epidemic’.



A human rights-based framework to tackle the COVID-19 pandemic

Since the outset of the COVID-19 pandemic, international organisations have recalled that fighting against the pandemic is also a matter of human rights. They have consistently promoted a rights-based approach to tackling the pandemic.

Such an approach requires, for example, protecting everyone's right to life and the right to health without discrimination, paying attention to the needs and rights of the most vulnerable, balancing rights when adopting restrictive measures, or using emergency legislation and measures in compliance with the standards and guarantees of international human rights law for emergency situations. It also requires ensuring transparency and involving those concerned in decision making.

As the UN Secretary General underlined in April 2020, "human rights can and must guide COVID-19 response and recovery" while "people – and their rights – must be front and centre".¹

The Office of the UN High Commissioner for Human Rights (OHCHR) provided guidance throughout 2020.² It published a compilation of statements that UN human rights treaty bodies adopted on COVID-19, which addressed rights-related issues based on their mandate. In addition, the OHCHR prepared a toolkit translating international human rights standards, as the international human rights instruments and relevant jurisprudence shaped them, "into an operational contribution to strengthen the human rights-based approach".

The human rights-based approach is also at the heart of the work of the Council of Europe (CoE) on the pandemic. For example, the CoE addressed guidance to governments on respecting human rights, democracy and the rule of law in the context of the pandemic.³ It is a useful, practical reminder for CoE member States of their obligations on issues such as derogating from the ECHR and upholding the rule of law and democratic principles in times of emergency; human rights standards, including freedom of expression, privacy and data protection, protection of vulnerable groups from discrimination and the right to education; and protection from crime and protecting victims of crime, in particular regarding gender-based violence and human trafficking.

The CoE also focused on children by adopting a rights of the child perspective when reviewing measures taken.⁴

Throughout the year, the CoE Commissioner for Human Rights raised issues of particular concern as regards vulnerable groups, for example older persons; persons with disabilities; persons in care facilities; Roma and Travellers; refugees and migrants, including in the context of rescue operations at sea and migration detention; or prisoners.⁵

Treaty bodies of the CoE also provided human rights guidance on specific topics, such as the treatment of persons deprived of their liberty; the protection of children against sexual exploitation and abuse; human rights principles guiding health decisions; tackling domestic violence and gender-based violence against women; fighting trafficking in human beings; and COVID-19 tracing apps and their side effects on data protection.⁶

Of particular importance in the context of the health crisis was the 'Statement of interpretation on the right to protection of health in times of pandemic' (Article 11 of the European Social Charter) by the European Committee of Social Rights (ECSR). It called for the adoption of all necessary emergency measures and highlighted the goal of "health equity".⁷

In a rare public statement, the European Commission against Racism and Intolerance (ECRI) raised the alarm about the situation of Roma and migrants as well as LGBTI persons during the pandemic, and provided guidance.⁸



Different aspects of life are becoming ever more digital during the pandemic. Reflecting the general trend, the CoE Human Rights Education for Legal Professionals (HELP) platform for online human rights education went from 42,000 users in January to 78,000 in December 2020. HELP topical courses cover both the CoE and EU legal systems.⁹

Academic analysis also focused on the impact of the pandemic and the measures taken to contain it on human and fundamental rights. Debates and country reports examined how states used their emergency powers from the perspectives of democracy, human rights and the rule of law.¹⁰

Research suggested models for assessing human rights protection and promotion during the pandemic in a comprehensive way. These models aim to measure the impact on economic and social rights, civil and political rights, equality and non-discrimination, as well as the rule of law.¹¹

¹ UN Secretary General (2020), *Statement 'We are all in this together: Human rights and COVID-19 response and recovery'*, 23 April 2020; UN Secretary General (2020), *Policy Brief 'COVID-19 and human rights – We are all in this together'*, 23 April 2020.

² OHCHR (2020), *'COVID-19 guidance'*, 13 May; OHCHR, *Human Rights Treaties Branch (HRTB)* (2020), *'Compilation of statements by human rights treaty bodies*

in the context of COVID-19', September; OHCHR, HRTB (2020), *'Internal HRTB toolkit of treaty law perspectives and jurisprudence in the context of COVID-19'*, 15 July 2020.

³ CoE (2020), *'Coronavirus: Guidance to governments on respecting human rights, democracy and the rule of law'*, 8 April 2020.

⁴ CoE (n.d.), *'Protecting and empowering children during the Covid-19 pandemic'*.

⁵ CoE Commissioner for Human Rights (n.d.), *'Pandemic and human rights'*.

⁶ CoE, *'Covid-19: Human rights are more important than ever in times of crisis'*.

⁷ CoE, ECSR (2020), *Statement of interpretation on the right to protection of health in times of pandemic*, 21 April 2021.

⁸ CoE, ECRI (2020), *Statement on the impact of the Covid-19 pandemic and related government responses on groups of concern to ECRI*, 19 May 2020.

⁹ CoE (n.d.), *'HELP online courses'*.

¹⁰ Verfassungsblog (2020), *'COVID 19 and states of emergency'*.

¹¹ Scheinin, M. and Molbæk-Steensig, H. (2020), *'Pandemics and human rights: Three perspectives on human rights assessment of strategies against COVID-19'*, European University Institute, Department of Law, EUI Working Paper LAW 2021/01.

First and foremost, the deadly impact of the virus and the obligation of governments to act to protect the rights of people to life (Article 2) and health (Article 35 on healthcare) required their urgent action.

Following advice and guidance by national, EU and international health authorities, including the European Centre for Disease Prevention and Control (ECDC), they took a wide range of measures to deliver on this obligation. These measures ranged from imposing curfews, travel restrictions and bans, and preventing people from meeting, to closing schools and restricting the functioning of many economic sectors.

Towards a European Health Union

On 11 November 2020, the European Commission took a first step towards a European Health Union, acknowledging that more coordination at EU level is necessary to tackle the pandemic and future health crises effectively.

Its proposal refers to the EU's obligation to ensure a high level of human health protection, as the EU Charter of Fundamental Rights requires. It aims to strengthen the EU's health security framework and reinforce its crisis preparedness, enhancing the mandates of the two key EU agencies, the ECDC and the European Medicines Agency (EMA).*

** European Commission (2020), **Communication from the Commission on Building a European Health Union**, COM(2020) 724 final, Brussels, 11 November 2020.*

However, many of these measures had significant implications for nearly all other rights that international human rights law enshrine and the Charter sets out. For instance, they interfered with:

- the right to the integrity of the person and the prohibition on selecting persons when practising medicine and biology (Article 3);
- the rights to liberty and security (Article 6), private and family life (Article 7) and the protection of personal data (Article 8);
- the freedoms of religion (Article 10), expression and information (Article 11) and assembly and association (Article 12);
- the prohibition of discrimination (Article 21);
- and the freedoms of movement and residence (Article 45).

They also affected how people access and enjoy many social and economic rights, in particular:

- the right to education (Article 14);
- rights related to the labour market (e.g. to engage in work, to conduct a business and make use of property, or to fair and just working conditions; Articles 15, 16 and 17, and 31 respectively);
- the right to social protection and assistance (Article 34);
- or the right to healthcare (Article 35) for reasons other than COVID-19, including mental health.

The pandemic particularly affected:

- the rights of children (Article 24);
- older persons, especially those living in institutions (Article 25);
- persons with disabilities (Article 26);
- as well as the equal access to rights (Article 21) of vulnerable groups of the population such as Roma, refugees and migrants, or homeless people.

Moreover, it had implications on people's access to justice and their right to an effective remedy and a fair trial (Article 47).

Overall, the pandemic exacerbated already existing challenges and inequalities. According to the United Nations, it had major implications on the efforts to achieve the global Agenda 2030 for sustainable development and its Sustainable Development Goals (SDGs).⁶ The global Agenda 2030 and the SDGs are closely linked and reflect human and fundamental rights commitments and obligations.⁷ Its core principle requires that "no one will be left behind".⁸

By accelerating the process of digitalisation of our societies, the pandemic also revealed how important it is, for that purpose and for equality, to ensure that everyone has access to the internet and appropriate digital equipment and is able to profit from technological developments.

FRA ACTIVITY

Highlighting the pandemic's fundamental rights implications

Between April and November 2020, FRA published a series of six bulletins looking at the impact on fundamental rights of the COVID-19 pandemic across the EU and the measures to contain it.*

These bulletins aim to provide evidence to inform the efforts of the EU and its Member States to provide rights-based responses to the pandemic and its consequences.

Five of the bulletins looked at three fundamental rights aspects of the impact of the pandemic: states of emergency

and other emergency situations; impact on key areas of daily life; and impact on particular groups in society.

In addition, Bulletin 2 had a specific focus on contact-tracing apps, Bulletin 3 considered how the pandemic has affected older persons, and Bulletin 6 addressed the impact of the pandemic on social rights. Bulletin 5 looked specifically at the pandemic's impact on the rights of Roma and Travellers.

*** FRA (2020), Fundamental rights implications of COVID-19.**

Vaccination plans in full respect of fundamental rights

In late December 2020, vaccination against COVID-19 started in some Member States.* It will be crucial to ensure that the rollout of the vaccines fully respects fundamental rights, including equitable access to vaccines, the principle of non-discrimination and the right to personal data protection.

Encouragingly, national vaccination plans, in line with EU guidelines,** prioritise healthcare workers, older persons, those with pre-existing health conditions, and those at greater risk of exposure to the virus due to their living settings and conditions. These may include people living in care settings, Roma and Traveller settlements, refugee and migrant facilities, prisons or homeless shelters.

In this regard, the statement of the CoE's Committee on Bioethics about equitable access to vaccination underlines that, within each group that the prioritisation process defined, everyone, without discrimination, should be offered a fair opportunity to receive a safe and effective vaccine.***

Vaccination plans and rollouts have important fundamental rights implications. So do interrelated issues. For example, free and informed consent to have the vaccine is linked to the right to personal integrity, and access to rights depending on whether people have been vaccinated or not (e.g. 'vaccine passports') is linked to equality. These topics will be under scrutiny in 2021.

*** European Commission (2020), 'European Commission authorises first safe and effective vaccine against COVID-19', press release, 21 December 2020; Euractiv (2020), 'EU begins vaccinations to end Covid "nightmare"', 28 December 2020.**

**** European Commission (2020), 'Coronavirus vaccines strategy'; ECDC (2020), 'ECDC releases COVID-19 vaccination rollout strategies for EU/EEA', 22 December 2020.**

***** Council of Europe, Committee on Bioethics (2021), 'COVID-19 and vaccines: Equitable access to vaccination must be ensured', 22 January 2021.**



2

EMERGENCY MEASURES: IMPACT ON FUNDAMENTAL RIGHTS

Starting in the spring of 2020, to contain the spread of the virus, the majority of EU Member States, exercising their national competence, officially declared a state of emergency or resorted to other equivalent emergency legislation. This other legislation included declaring, for example, a 'state of alarm', 'state of health emergency', 'state of epidemic situation', 'state of calamity', or 'state of danger'.⁹

Nine EU Member States – **Bulgaria, Czechia, Finland, Estonia, Hungary, Luxembourg, Portugal, Romania, and Spain** – declared an official state of emergency or equivalent, based on constitutional provisions.¹⁰ Another five EU Member States declared a state of emergency under their ordinary laws – namely **France, Germany, Italy, Latvia and Slovakia**.

This meant granting governments extraordinary decision-making powers. It affected all human rights and allowed governments to impose restrictions on many of them, such as the freedom of movement, including travelling within the EU and within countries, the freedom of assembly, the right to private and family life, the right to access goods and services or the right to work and conduct a business.



As the situation improved, states of emergency or equivalent legislation were gradually lifted or eased over the summer, only to be partially or fully reinstated in the autumn with the ‘second wave’ of the pandemic. This happened, for example, in **Czechia, France** and **Slovakia**. Emergency legislation remained in force in **Italy**. Other Member States – such as **Bulgaria, Hungary, Portugal, Romania** and **Spain** – kept in force or introduced special emergency legislation that replaced previously applied states of emergency or similar legal regimes.¹¹

During 2020, three EU Member States (**Estonia, Latvia** and **Romania**), as well as **North Macedonia** and **Serbia**, gave notice under Article 15 of the ECHR that they exercised their right to temporarily derogate from their obligations enshrined in the Convention.¹² In December, for the second time in a year, **Latvia** notified the CoE under Article 15 about measures taken concerning in particular the freedom of assembly.¹³ Such notices reveal the gravity of the situation. At the same time, however, they ensure transparency and comply with the rules set in the ECHR.

As many as 13 EU Member States – **Austria, Belgium, Croatia, Cyprus, Denmark, Greece, Ireland, Lithuania, Malta, the Netherlands, Poland, Sweden** and **Slovenia** – adopted exceptional, emergency and restrictive measures without declaring a state of emergency or introducing equivalent legislation during the pandemic.¹⁴

The use of emergency legislation drew the attention of the European Parliament and the European Commission.

In a November 2020 resolution, the European Parliament, echoing the CoE’s Venice Commission,¹⁵ recalled that “even in a state of public emergency, the fundamental principles of the rule of law, democracy and respect for fundamental rights must prevail, and that all emergency measures, derogations and limitations are subject to three general conditions, those of necessity, proportionality in the narrow sense and temporariness”.¹⁶ It called on Member States “to explicitly define in a legislative act, where a de facto state of emergency is maintained, the objectives, content, and scope of the delegation of power from the legislature to the executive”.

A stringency index to measure strictness of policies

Oxford University has developed a COVID-19 Government Response Tracker. Through 19 indicators it systematically collects information on policy responses to the pandemic, such as school closures and travel restrictions. It now has data from more than 180 countries. The tool also includes a ‘stringency index’, which records the strictness of policies that restrict people’s behaviour.

University of Oxford, Blavatnik School of Government, ‘Coronavirus government response tracker’.

According to the Venice Commission, a system of de jure constitutional state of emergency is preferable to a de facto extra-constitutional one because it “provides for better guarantees of fundamental rights, democracy and the rule of law and better serves the principle of legal certainty”.¹⁷ However, the constitutional framework of Member States may not always provide for such options.

The European Commission has been monitoring the emergency measures in all the Member States. Its first annual Rule of Law Report, published in September 2020, reflected this where relevant.¹⁸ The Commission monitored in particular if safeguards exist to ensure that measures are necessary, strictly proportionate and clearly limited in time, and if parliamentary and judiciary oversight, as well as scrutiny by the media and by civil society, continue.

For more about the rule of law, see Chapter 9 in the *Fundamental Rights Report 2021*.

FRA ACTIVITY

Highlighting civil society experiences

COVID-19 and measures introduced to contain it had a strong impact on civil society organisations and their work. There were obvious practical challenges, such as reduced access to beneficiaries, travel bans, or the cancellation of events. In addition, there were far-reaching consequences on the space to operate, notably as regards access to decision-makers, freedom of assembly and, to some extent, freedom of expression.*

In November 2020, FRA conducted an online consultation with its civil society network, the **Fundamental Rights Platform**, on how measures taken since March 2020 to address the COVID-19 pandemic affected their work, and how organisations could mitigate adverse effects. In total, 177 human rights civil society organisations (CSOs) from across the EU completed the brief online survey. For many CSOs, measures to contain the pandemic exacerbated pre-existing civic space challenges.**

The majority (75 %) of the responding CSOs found the measures to contain the pandemic overall justified. Fewer (56 %), albeit still the majority, considered them proportional. Moreover, most CSOs (75 %) said that the impact of measures

on their operations and activities since March 2020 had been negative. Of those who said the measures had a negative impact, 41 % were very worried and 52 % somewhat worried that this would persist for the next 6 months.

Some restrictions affected CSOs’ physical access to their beneficiaries, e.g. older persons, asylum seekers and protestors. They significantly affected 44 % of CSOs. More than a quarter (27 %) faced financial difficulties “often”, and 15 % “every time”. Almost a third (29 %) also said that reduced work contribution by volunteers was “often” an important practical challenge, and 18 % “every time”.

The full results from the consultation, including examples of promising practices – such as dedicated financial support to CSOs – will be published in autumn 2021 as part of FRA’s upcoming report on civic space in the EU.

* *FRA, COVID-impact on civil society work – Results of consultation with FRP 2020, Vienna, 24 February 2021.*

** *FRA (2018), Challenges facing civil society organisations working on human rights in the EU; FRA (2020), Civic space – Experiences of organisations in 2019.*

It is a basic international human rights principle that any restrictions to a right – including in emergencies, when certain rights may even be suspended – must be prescribed by law, proportionate, necessary and non-discriminatory, and of limited duration. The approach of the European Parliament and the European Commission adheres to this principle.¹⁹ The European Court of Human Rights (ECtHR) has based well-established case law on Article 15 of the ECHR. It also provides that derogations from the ECHR, which may result in the suspension of certain rights, need to be notified, and should happen only in exceptional circumstances and in a limited and supervised manner.²⁰

Moreover, certain rights – such as the right to life, or the right to be free from torture and other inhumane or degrading treatment or punishment – are non-derogable. Last but not least, emergency measures must be under parliamentary and judicial scrutiny. Governments should not use their extraordinary powers to bypass parliaments and their legislative function on issues unrelated to the pandemic.²¹ The CoE also points out that “as a general rule, fundamental legal reforms should be put on hold during the state of emergency”.²²

Tackling disinformation while upholding rights

An emergency can generate disinformation and the spread of conspiracy theories. They may negatively affect citizens’ trust in democracy, the rule of law and fundamental rights. In a health crisis, they may affect public trust in the efforts of the authorities and undermine the fight against the pandemic. Fighting disinformation is therefore an important aspect of safeguarding fundamental rights in times of emergency, including protecting people’s life and health.

The results of a large-scale online survey about COVID-19 disinformation/fake news in **France, Italy, Germany, Spain** and the **United Kingdom** came out in September. Over half of those surveyed in each country had seen COVID-19 disinformation/fake news, it found. A smaller but substantial portion reported sharing COVID-19 disinformation with others either intentionally or unintentionally.* Despite significant differences between countries, respondents who had seen and/or shared COVID-19 disinformation/fake news tended overall to be younger, daily users of social media, with fewer years of formal education and more likely to self-identify as a minority.

Effectively fighting disinformation needs adequate and accurate data, and transparency about the data and the criteria used to inform and justify authorities’ decisions. However, evidence collected by FRA indicated data gaps in 2020 – for example, regarding the numbers of infections and deaths of people living in institutional settings.**

On 13 November 2020, the European Parliament called on Member States to provide citizens with comprehensive, up-to-date, precise and objective information about public health and measures taken to safeguard it. Furthermore, it urged Member States to fight disinformation that discredits or distorts scientific knowledge, but at the same time to ensure freedom of expression and information, and media pluralism. They should not create a chilling effect on freedom of expression and on journalists, healthcare workers or others by resorting to criminalisation or disproportionate sanctions.***

For its part, the European Commission highlighted the crucial role that freedom of expression and a pluralistic democratic debate play in fighting disinformation.****

* *Crime and Security Research Institute, Cardiff University (2020), ‘Survey of public attitudes to coronavirus disinformation and fake news in France, Germany, Italy, Spain and the UK – Summary findings’.*

** *FRA (2020), Bulletin #3 – Coronavirus pandemic in the EU – Fundamental rights implications: With a focus on older people, p. 37.*

*** *European Parliament (2020), Resolution on the impact of COVID-19 measures on democracy, the rule of law and fundamental rights, P9_TA(2020)0307, Brussels, 13 November 2020.*

**** *European Commission (2020), Tackling COVID-19 disinformation – Getting the facts right, JOIN(2020) 8 final, 10 June 2020.*

STATES OF EMERGENCY AND EMERGENCY MEASURES UNDER JUDICIAL SCRUTINY

The examples below highlight select high court decisions that examined limitations on freedom of movement, including travelling within a given country, on freedom of assembly and demonstration, and on freedom of religion. Other areas of life and the impact of emergency measures on relevant rights are covered in the following sections.

The **Belgian** Council of State rejected an urgent appeal to suspend a prohibition on protest. It stated that the infringement of the freedom to demonstrate was not sufficient to justify the urgency of the appeal.²³ The court highlighted, however, that the measure banning protests was temporary and subject to continuous review.

The **Greek** Council of State rejected a similar appeal for the suspension of an order prohibiting demonstrations. It considered the order justified for overriding reasons of public interest relating to the protection of public health.²⁴

The **French** Council of State ruled that the prohibition of demonstrations in public is justified only when COVID-19 physical distancing and other preventive measures cannot be respected or when the event may bring together more than 5,000 people.²⁵ Considering the scope of and grounds for the curfew restricting freedom of movement, the same court concluded in October that the curfew did not violate fundamental rights.²⁶

In **Germany**, the Federal Constitutional Court ruled on an application for a temporary injunction. It found that some local authorities infringed the freedom of assembly when they banned an assembly after interpreting a regulation in Hesse as generally prohibiting any meeting of more than two persons.²⁷

In a separate case, the court provisionally disappplied a provision of a COVID-19-related regulation in Lower Saxony. The provision did not allow for case-by-case exceptions to the general ban on religious services and other religious gatherings, even where there was no significant increase in the infection risk.²⁸ The court had previously ruled that prohibitions of religious services are severe limitations of religious freedom and require strict scrutiny of proportionality in the light of new developments concerning the pandemic.²⁹

In April, the **Slovenian** Constitutional Court assessed if a government ordinance restricting freedom of movement and assembly in public places, and banning the movement and travel of residents outside their municipalities, was constitutional. To ensure that the measures were proportionate, the court ordered the government to assess, at least every seven days, if they remain necessary to achieve the objectives pursued.³⁰ The same court, however, found in August that measures restricting movement between municipalities were proportionate.³¹

These national high court decisions confirm, first of all, the critical role of the judiciary as a safeguard for human and fundamental rights when emergency legislation applies. Second, they also confirm that all restrictions of rights need to be in line with international standards (i.e. legality, necessity, temporariness, proportionality). Third, they prove that in each case the balancing of requirements deriving from different rights and objectives is a challenging exercise. This makes it important to collect evidence on fundamental and human rights implications of the pandemic, and to provide, promote and make visible the guidance from international human rights bodies, as well as international human rights jurisprudence.

3

IMPACT OF THE PANDEMIC ON FUNDAMENTAL RIGHTS IN DAILY LIFE

This section outlines how COVID-19 has affected fundamental rights in six key areas of daily life, namely social interaction, healthcare, education, work, the judicial system, and travel to and within the EU. It also highlights concerns regarding privacy and personal data protection.

3.1. SOCIAL INTERACTION

At the outbreak of the pandemic, EU Member States introduced physical distancing measures limiting social interaction.³² Most instituted mandatory physical distancing measures for everyone, such as suspension of mass gatherings, stay-at-home requirements (including quarantine measures), closure of public spaces, limitations in public transport and physical distancing when outside the house.

In some cases entire provinces, regions or cities were placed under quarantine (e.g. in **Austria, Bulgaria, Italy** and **Lithuania**). In others, leaving home without a permit was prohibited (e.g. in **France, Greece, Italy** and **Spain**).



Such measures affected different rights enshrined in national constitutions, EU and international human and fundamental rights instruments. They primarily affected the right to liberty and security, including freedom of movement, and the right to private and family life. They also had an impact on other rights, such as the right to protection of personal data, freedom of religion, the right to education, work and business-related rights, or the right to health, especially mental health.

The use of the internet and digital communication tools helped keep alive some interaction between people, alleviating feelings of loneliness and psychological stress. At the same time, it highlighted the importance of having access to the internet and digital equipment, and of digital literacy.

Social and physical distancing measures were lifted or eased over the summer,³³ but were largely reintroduced after the summer to mitigate the health impact of subsequent pandemic waves.³⁴ The adoption and easing of measures varied in each country and region depending on its epidemiological

situation. Sanctions were introduced to ensure enforcement – typically fines, but in some cases also custodial sentences.

Courts and oversight bodies scrutinised if actions enforcing such measures complied with fundamental rights. For example, **France**'s highest administrative court ruled out the use of drones to observe if people were respecting the lockdown rules in Paris.³⁵

In **Poland**, the Ombuds body warned that no legal provision permitted police officers to forward personal data obtained from police interventions to the sanitary inspector for imposing penalties.³⁶ In **Slovenia**, the Ombuds body stated that the failure to comply with the government decree on the mandatory use of face masks in enclosed public spaces could not be penalised because it was not based on proper legal grounds.³⁷

A common factor in these cases is that they highlight that not only do the measures themselves need to comply with human rights standards – so do the authorities' enforcement actions.

3.2. HEALTHCARE

The measures taken to fight the pandemic have sometimes had an adverse impact on the right they sought to protect, namely the right to health and healthcare. It requires ensuring access to both preventive healthcare and medical treatment.³⁸ A major issue was how to ensure access to healthcare on an equal footing for all, in a context where health systems had to prepare for and faced huge pressure, as well as limited staff and equipment (e.g. intensive care beds).

FRA's collected evidence indicated cases of de-prioritisation based on age and medical triage on the same ground.³⁹ At the same time, the need to fight the pandemic, to prevent health staff and patients from infections, and to prioritise treating people infected with COVID-19 led to de-prioritising access to healthcare for reasons other than COVID-19. That sometimes affected patients with other critical health conditions such as cancer, or people facing mental health issues.⁴⁰

Physical access to doctors and healthcare services, including hospitals, was limited, at least at the onset of the pandemic. Non-urgent medical treatment, including surgical interventions, was often postponed. For example, in **Romania** the number of hospitalised cancer patients dropped by 46 % between 2019 and 2020.⁴¹ In **Finland**, at the end of August 2020, 137,165 patients were waiting to receive non-urgent specialised healthcare.⁴²

This situation affected particularly older people, as they are more likely to have pre-existing health conditions requiring medical attention.



More broadly, certain groups of the population, in particular people living in institutions, people with disabilities, Roma and Travellers, refugees and immigrants, or homeless people, may face compounded difficulties in accessing healthcare.⁴³ People also reported incidents of discrimination based on their racial or ethnic minority background.⁴⁴

Such practices raised concerns about the equal treatment of all when accessing healthcare. Several **German** medical associations recommended, for instance, that prioritisation in providing medical treatment should follow the principle of equality.⁴⁵ It should not only cover those infected with COVID-19 and should not be based solely on age or social criteria. The main criteria are the urgency of treatment and its chances of success.

Last but not least, the pandemic has put a lot of pressure on healthcare workers, threatening their rights to life and health. Healthcare workers have been the most infected community during the COVID-19 pandemic, as a World Health Organization (WHO) report highlights.⁴⁶

Data from EU Member States corroborate this finding.⁴⁷ In **Ireland**, for example, healthcare workers exceeded 20 % of the total number of COVID-19 infections as of the middle of October. Several COVID-19 hospital units in **Romania** temporarily suspended their operations because so many medical workers were either sick or in quarantine. Reports of burnout among medical staff emerged in **Latvia**.

As an acknowledgement of their efforts, many Member States introduced additional financial benefits in 2020.⁴⁸ To address staff shortages, several Member States also relaxed recruitment procedures and the working conditions of medical staff. Some countries also mobilised military staff to support hospitals.

3.3. EDUCATION

By late March 2020, almost all EU Member States had closed their educational facilities. This led to an unprecedented shift to distance learning to ensure the continuity of education.⁴⁹ Educational facilities started reopening in late spring. After the summer break most Member States sought to keep them open, in particular primary schools, to minimise the impact on children's right to education and their well-being.

However, the rise of infections in autumn soon led many to close them again and reintroduce distance learning to varying extents.⁵⁰ Some kept a number of schools open for children of parents working in 'essential' professions, or for families that had no other solution but childcare provided by grandparents. In some cases authorities distinguished between age groups, usually keeping older children in distance learning.

The sudden transition to distance learning affected the education of all children. Educational systems were not prepared for such a swift transition. They often lacked the necessary digital infrastructure or training. Fewer than 40 % of educators felt ready to use digital technologies in teaching, according to the 2018 Organisation for Economic Co-operation and Development (OECD) Teaching and Learning International Survey (TALIS), but there were wide differences between Member States.⁵¹ Moreover, children in many cases lacked support to cope with the needs of distance learning, although measures such as special leaves for parents to stay at home and take care of their children were helpful.

The European Commission highlighted that many low-income homes have no access to computers, and broadband access varies widely across the EU depending on household income.⁵² Throughout the EU, children from socio-economically disadvantaged backgrounds were particularly negatively affected, FRA's evidence confirms. They lacked adequate computer equipment, internet access and appropriate work spaces, as well as home support. This situation exacerbated existing learning inequalities.⁵³

For example, in **Bulgaria** the Ombuds body expressed concern that some 70,000 children, particularly from families with low incomes, unemployed parents or more than one child, did not have computers and internet access.⁵⁴ In **Romania**, 25 % of all children did not have access to online education, a survey by the NGO Save the Children shows.⁵⁵ In **Spain**, a survey with almost 11,000 respondents found that only one third of Roma children had access to a computer at home and more than 40 % of Roma students did not have access to the internet.⁵⁶

EU action plan promotes digital education

Member States are responsible for education, in particular for teaching and the organisation of their education systems. However, the EU can contribute and support their efforts, including through guidance and recommendations. The European Commission published its Digital Education Action Plan 2021–2027 on 30 September 2020. It sets out key measures for high-quality and inclusive digital education and training where the EU can bring added value to national efforts.

Acknowledging the impact of the pandemic on education and training systems, the Action Plan points out that these difficult circumstances accelerated the digital transformation, triggering rapid, large-scale change. In this light, the Action Plan asks Member States to develop higher quality, more accessible and more inclusive digital teaching, learning and assessment, making full use of the EU's Recovery and Resilience Facility to adapt their education and training systems to the digital age.

*European Commission (2020), **Digital Education Action Plan 2021–2027: Resetting education and training for the digital age**, COM(2020) 624 final, 30 September 2020.*



Another issue that required attention is the protection of children's privacy and personal data in digital education settings. The CoE adopted relevant guidelines in November 2020 addressing policymakers, data controllers and the industry.⁵⁷

For more information on the impact of COVID-19 on children's rights, see Chapter 8 in the *Fundamental Rights Report 2021*.⁵⁸

Encouragingly, all Member States intensified their efforts to support schools' capacity for distance learning – for example, by creating online platforms, and providing disadvantaged pupils with digital devices and internet connections.⁵⁹ To promote the digitisation of schools, **Germany** increased its investments in the School Digital Pact to € 6.5 billion.⁶⁰ The funding can be used, for example, to procure suitable devices for teachers, as well as for pupils in need, who can receive them through their schools.

Such efforts deliver on the obligation to ensure the right of children to education. During emergencies, such as the COVID-19 pandemic, that right requires effective distance learning systems. By including targeted measures for children in more disadvantaged socio-economic situation, those efforts also deliver on the obligation to ensure the equal access of all children to education. At the same time, they help bridge the digital divide between different social groups, implementing the principle of the European Pillar of Social Rights that everyone has the right to access essential services, including digital communications.⁶¹

3.4. WORK AND BUSINESS ACTIVITY

Many sectors of the economy remained closed for long periods during 2020. The impact on a range of social and economic rights became increasingly clear, in particular on those relating to work. These include the rights to engage in work, to fair and just working conditions, to conduct a business and to make use of property.

The pandemic exacerbated existing inequalities, widening the gap between rich and poor and disproportionately affecting those in precarious and low-income jobs, young people, women and minority ethnic groups. It exposed serious gaps in EU's and Member States' social safety nets, raising concerns about the effective implementation of the right to social security and assistance.

The EU and Member States put in place wide-ranging economic support measures to mitigate the impact on businesses, workers and their families and to bolster their incomes.⁶² These included helping businesses by supplementing wages; other financial support, including unemployment benefits and relief for home owners and renters; support and compensation for self-employed people and businesses (e.g. by covering loss of monthly turnover to a certain extent); support for particular groups in society; support for people with caring responsibilities; sick leave; and support for people in quarantine.

Several Member States introduced programmes specifically targeting those employed in precarious forms of work, such as seasonal workers, domestic workers or those on 'zero-hours' contracts. However, the pandemic worsened the already precarious situation of platform workers, research published by the European Trade Union Institute (ETUI) shows.⁶³



EU action counters pandemic's social and economic impact

The EU took extensive measures in 2020 to contain the spread of the pandemic, counter its socio-economic impact and support national healthcare systems.*

In May, the Council of the EU adopted the European instrument for temporary support to mitigate unemployment risks in an emergency (SURE), a temporary scheme to provide up to € 100 billion in loans to Member States to support businesses and self-employed people, among other purposes.**

In November, the European Parliament and the Council of the EU reached agreement on a recovery package of € 1.8 trillion.*** It combines the EU budget for 2021-27 and NextGenerationEU, a temporary recovery instrument allowing the Commission to raise funds on the capital market to address the immediate economic and social damage the pandemic has caused in the Member States.

To monitor progress systematically across the EU, on 17 December Eurostat launched the European Statistical Recovery Dashboard. It gives monthly and quarterly indicators from a number of statistical areas that are relevant to tracking the economic and social recovery from the COVID-19 pandemic.****

** See the European Commission's **Coronavirus response web page** for an overview.*

*** **Council Regulation (EU) 2020/672 of 19 May 2020.***

**** **European Commission welcomes agreement on €1.8 trillion package to help build greener, more digital and more resilient Europe.***

***** See an overview of relevant data in the **European Statistical Recovery Dashboard**.*

Overall, in spite of all efforts, unemployment rose, particularly among young persons. The number of unemployed young persons (under 25) was much higher in December 2020. Compared with December 2019, it increased by 438,000 persons in the EU, an increase of 3 percentage points (from 14.8 % to 17.8 %).

The EU unemployment rate was 7.5 % in December 2020, according to Eurostat.⁶⁴ That was up from 6.5 % in December 2019, an increase of around 15 %. This increase amounts to around 1.95 million more people unemployed. Almost 1.1 million of them were women, showing that women are affected more than men.

Unemployment rates were alarmingly high in certain EU countries and in particular sectors of the economy, such as tourism, hospitality, entertainment and the arts, in which businesses and related employment were disproportionally affected. The risk of layoffs or reduced hours in the second quarter of 2020, measured as a probability from 0 to 1, was 0.5 for the sector of accommodation and food services and more than 0.3 for other services.⁶⁵

Another significant consequence of the pandemic was the expanded use of teleworking. In July a third (34 %) of respondents were solely working from home, according to the second Eurofound 'Living, Working and Covid-19' survey.⁶⁶ Telework/information and communication technology mobile work (T/ICTM) tends "to extend working hours, create an overlap between paid work and personal life due to a blurring of work-life boundaries, and also lead to the intensification of work".⁶⁷ Eurofound advised better regulation of T/ICTM, including the 'right to disconnect' to improve work-life balance.⁶⁸

For many types of work, teleworking arrangements, and hence saving jobs, were not an option. These jobs are often lower paid. Those who telework tend to be relatively privileged in terms of their high levels of educational qualifications and economic resilience, Eurofound's data show.⁶⁹

From a fundamental rights perspective, the evidence presented here indicates the areas where action by duty-bearers is most urgent. This action needs to have a particular focus on those most affected by unemployment, reduced working hours and income. It also needs to pay attention to the new working environment that moving to teleworking arrangements creates – especially for those who face more challenges to keep their work-life balance, including as a result of caring responsibilities.

Pandemic proves particularly challenging for women

The pandemic has disproportionately affected women, particularly in employment, work-life balance and caring responsibilities, evidence indicates. They have also been more exposed to health risks, as they are more represented among essential workers, especially as frontline workers in the health and care sector.*

For example, people are returning to more traditional gender roles at home, research by the Vienna University of Economics and Business and the Chamber of Labour in Austria shows.** Women report feeling that they do most of the work at home and that they are under intense pressure to handle the multiple responsibilities of telework, childcare and domestic work.

Women are more likely than men to be caring for a child and, as a result, are finding it more difficult to work from home, a survey by the Irish Central Statistics Office reveals. Similarly, the expansion of unpaid work in the care of children, older family members and the home is a serious challenge for women's professional lives, the women's office of the trade union Pancypríot Confederation of Labour highlights.***

Unemployment prompted by the pandemic also affects women more adversely than men, a study published by the National Institute for Demographic Studies in France (INED) shows.**** Only two in three women employed on 1 March 2020 were still in employment two months later, compared with three in four men. This corroborates Eurostat's data.

** For a comprehensive presentation of gendered impacts of the pandemic, see the European Institute for Gender Equality's dedicated web page on **COVID-19 and gender equality**.*

*** Vienna University of Economics and Business and Chamber of Labour (2020), **Online survey on time use of couples during COVID-19**.*

**** FRA (2020), **Bulletin #4 – Coronavirus pandemic in the EU – Fundamental rights implications**, p. 22.*

***** INED (2020), **How the COVID-19 epidemic changed working conditions in France**, July 2020.*



3.5. JUSTICE

Restrictive measures affected the work of courts in EU Member States.⁷⁰ This had an impact on people's access to justice, which is important for ensuring the right to an effective remedy and a fair trial. From the end of May 2020, courts began to resume functioning in many Member States, but new restrictions were adopted in the autumn.

Courts were often closed down, 'non-urgent' cases and investigations were suspended, and hearings were postponed. In many cases this extended both proceedings and case backlogs.⁷¹ In some cases concerns were also raised about people missing judicial deadlines.⁷² Detailed information on temporary measures taken in EU Member States is available on the European Commission's e-Justice Portal.⁷³ The CoE has also created a web page on national judiciaries' COVID-19 emergency measures.⁷⁴

To mitigate the effects of the pandemic and ensure the continuity of justice as much as possible, digital and videoconference tools were used. However, challenges emerged with respect to the judicial system's ability to work remotely using electronic devices for communication, to access files through databases, and to conduct proceedings by videoconference. This affected in particular those Member States with less developed information technology (IT) systems in their judiciaries.

Overall, the pandemic accelerated the digitalisation of justice. In this process it is crucial to ensure the respect of the minimum standards developed under Articles 47 and 48 of the Charter and Article 6 of the ECHR, regarding effective participation in proceedings, particularly criminal ones, including one's right to be present, and the principle of publicity. Ensuring appropriate training for the judiciary is also important. For more on access to justice, see Chapter 9 in the *Fundamental Rights Report 2021*.

"The [ECtHR] has established that physical absence does not necessarily constitute a violation of the right to a fair trial. The ECtHR has pointed to several international law instruments that provide for participation in the trial using videoconferencing as a way of respecting Article 6 of the ECHR, and it has adopted several judgments as regards the use of videoconferencing. It should be noted that, when establishing videoconferencing in courts, due attention should be paid to the preservation of the right of defence."

The Consultative Council of European Judges (CCEJ) of the Council of Europe (2020), **Statement of the President of the CCEJ on the role of judges during and in the aftermath of the COVID-19**

Guidance on online court proceedings

On 15 April 2020, **Finland's** National Courts Administration published a guide on online court proceedings for legal practitioners to follow during the emergency. The guide includes practical information on various communication tools as well as general recommendations on how to organise court proceedings online.

Finland, National Courts Administration (2020), 'A guide for courts to use remote access in proceedings', 15 April 2020.

3.6. TRAVELLING WITHIN AND INTO THE EU

In March 2020, EU Member States restricted travel by introducing controls at the internal borders between them and limiting the movements of those entering and leaving their territory.⁷⁵

In a number of cases, the restrictions partially or almost completely closed borders, through banning flights, closing airports or reducing the number of border-crossing points. More often they meant requirements to undergo health checks, present a negative COVID-19 test and/or self-isolate after entry for a certain period, which could be up to 14 days. There were also exemptions – for example for healthcare, cross-border or seasonal workers.⁷⁶

These practices interfered with the freedom of movement and residence enshrined in Articles 21 and 45 of the Treaty on the Functioning of the EU, and Article 45 of the Charter. This is a fundamental component of Union citizenship. Details about its exercise are set in Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States.⁷⁷

The restrictions and controls were based on Article 28 of the Schengen Borders Code (Regulation (EU) 2016/399), which allows this possibility under strict conditions and for a limited period.⁷⁸ Articles 27 and 29 of Directive 2004/38/EC also justify measures restricting the freedom of movement in cases of “diseases with epidemic potential”, such as COVID-19, provided they comply with the principle of proportionality.

In this context, when implementing public health measures, the European Commission noted that these must not discriminate between Member States’ own nationals and resident EU citizens.⁷⁹ It also underlined that a Member State must not deny entry to EU citizens or third-country nationals residing on its territory and must facilitate the transit of other EU citizens and residents who are returning home.

In May 2020, the European Commission proposed a return to the unrestricted free movement of persons in the EU and the Schengen area, as the health situation was improving.⁸⁰ By July, all EU Member States eased their travel restrictions regarding internal borders.

However, the increase in infections in the autumn resulted in new border controls and travel restrictions. This time the restrictions were less severe, in line with the Council Recommendation on a coordinated approach to the restriction of free movement in response to the COVID-19 pandemic, adopted in October.⁸¹

“Without the return to a fully functional Schengen Area, we are still missing an essential stepping-stone on our way to recovery. A complete return to free movement, no discrimination, mutual trust and solidarity are of utmost importance and core values of the EU.”

Juan Fernando López Aguilar, Chair of the European Parliament Committee on Civil Liberties, Justice and Home Affairs, **Press release**, 19 June 2020



'Re-open EU' platform guides travellers

On 15 June, the Commission launched the web platform 'Re-open EU'. Available in all EU languages, it provides real-time information on borders, available transport, travel restrictions, health and safety measures and other practical information for travellers. National governments also publish up-to-date online information on travel restrictions.

European Commission (2020), web platform 'Re-open EU'.

The ECDC started publishing a weekly map of EU Member States and regions, marking areas in 'traffic light' colours (red, orange and green), depending on the COVID-19 infection rates, to facilitate the EU's coordinated approach.⁸² Border controls, mandatory health tests, self-isolation rules and lists of 'safe' countries and regions were applied, depending on the epidemiological developments, but Member States avoided closing down their internal borders in the rest of the reporting period. In this way they served better the requirements of the freedom of movement, as enshrined in EU law.

At the onset of the pandemic, Member States restricted travel to and from third countries, with special measures and exemptions for certain categories. To promote a coordinated approach to border controls, on 16 March 2020, the European Commission recommended the

temporary restriction of non-essential travel to the EU to prevent the further spread of COVID-19.

These restrictions – initially for 30 days – were extended until 30 June, when the Council of the EU adopted a recommendation providing for coordinated gradual lifting of travelling restrictions from third countries.⁸³ This recommendation is regularly reviewed and amended on the basis of health data and containment measures in each country. Its last amendment in 2020 was in December and included a list of third countries whose residents could be allowed to enter the EU for non-essential travel.⁸⁴

In October, the Commission published guidance on persons exempted from the temporary restriction on non-essential travel to the EU.⁸⁵ This is necessary to ensure the respect of the right of certain third-country nationals (e.g. family members of Union citizens, third country nationals holding a valid residence permit, cross-border workers) to enter the EU. That is linked to the exercise of other rights, for example to private and family life or to engage in work. Other exemptions served the needs of Member States for workers, for instance seasonal workers in agriculture or healthcare workers.

3.7. PRIVACY AND PERSONAL DATA PROTECTION – USE OF TECHNOLOGY TO FIGHT THE PANDEMIC

Following advice from international and EU health institutions, most Member States used digital tracking and monitoring tools to limit the spread of the pandemic, particularly tracing apps.⁸⁶ Some countries also allowed health and police authorities to access traffic and geolocation data from telecommunication providers to track individuals subject to quarantine measures.⁸⁷

Other technological tools were employed, as well. These included, for example, drones to monitor compliance with physical distancing measures in public spaces; online forms or text messages before leaving the house or for travelling across the EU; thermal cameras to measure people's temperatures; and collecting and sharing of lists of patients with COVID-19.⁸⁸

FRA's Bulletin 2 focused on these tools and their fundamental rights implications.⁸⁹ It highlighted that tools that interfere with the right to privacy and personal data protection need to be grounded in law, and must be necessary and proportionate, as the General Data Protection Regulation

(GDPR)⁹⁰ and ultimately the EU Charter (Articles 7 and 8) require. It also noted that Article 23 of the GDPR provides the possibility for legislative measures to restrict data subjects' rights, including where required for public health reasons.

As regards COVID-19-tracing apps, the EU's eHealth network,⁹¹ the European Commission⁹² and the European Data Protection Board⁹³ adopted guidance on how to uphold data protection standards in the development and use of tracing apps.

At the CoE level, two joint statements by the Chair of the Consultative Committee of Convention 108 (the Council of Europe Convention on the protection of individuals with regard to automatic processing of personal data) and the Data Protection Commissioner recalled the principles to be upheld to help fight the pandemic while respecting individuals' right to privacy and data protection, and warned against unwanted effects.⁹⁴ The Council of Europe report *Digital solutions to fight COVID-19*, published in October, examined key legal and policy developments from a data protection perspective, focusing in more depth on the use of tracing apps and other monitoring tools.⁹⁵



In April, the OECD also published recommendations for preserving privacy when using apps and biometric data in the fight against COVID-19.⁹⁶

A set of common recommendations emerged from these documents aiming to safeguard privacy and data protection. They all emphasised the need to ensure that only minimal, accurate and secure data are collected, and that they are processed in a transparent way and with appropriate technological methods. For tracing apps this implies, for instance, using Bluetooth proximity data, decentralised storage methods and open source codes. They also noted that any data collection and processing to address the pandemic must be limited in time and linked to the health crisis. Finally, they emphasised that using such digital tools should be voluntary.

At national level, in most cases data protection authorities (DPAs) provided extensive guidance on how to employ tracing apps in line with international rules and guidance, and monitored their use, as far as possible.⁹⁷ Member States developed and used tracing apps that overall complied with this guidance. Notably, all use of tracing apps was voluntary.⁹⁸

For more on privacy and data protection, see Chapter 7 in the *Fundamental Rights Report 2021*.

4

IMPACT OF PANDEMIC ON RIGHTS OF PARTICULAR GROUPS

The pandemic affects everyone, but its impact has not been even across society. The pandemic and the measures to contain it hit vulnerable groups harder, FRA evidence and other data suggest.⁹⁹ Overall, the pandemic accentuated the fundamental rights challenges that certain groups already faced. Thus it further entrenched existing inequalities and discrimination, and exacerbated social exclusion and marginalisation.

4.1. OLDER PERSONS



Older people have been severely affected by the pandemic – especially those living in institutional settings or with underlying health conditions.¹⁰⁰ The death toll was much higher than in other age groups. Infection and mortality rates for those in institutions were worrying.¹⁰¹ In addition, the measures to contain the pandemic affected older people's right to a life of dignity, independence and participation, as enshrined in Article 25 of the EU Charter of Fundamental Rights, and their right to non-discrimination based on age (Article 21).

For example, older persons faced more restrictions relating to physical distancing (e.g. bans on visiting those living in institutions, and stay-at-home rules or recommendations) and accessing goods and services.¹⁰²

Council of Europe bodies highlight pandemic's effects

The Steering Committee on Anti-discrimination, Inclusion and Diversity (CDADI) of the Committee of Ministers of the CoE published a study on the anti-discrimination, diversity and inclusion dimensions of the pandemic.*

The Parliamentary Assembly of the CoE adopted, on 13 October 2020, Resolution 2340 on the humanitarian consequences of the Covid-19 pandemic for migrants and refugees.**

* CoE, Committee of Ministers, CDADI (2020), Study, *COVID-19: an analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe member states*, November 2020.

** CoE, Parliamentary Assembly (2020), *Resolution 2340 on humanitarian consequences of the Covid-19 pandemic for migrants and refugees*, 13 October 2020.

There is also evidence of problems in access to medical treatment for reasons other than COVID-19; medical triage practices based on age as a deciding factor when selecting whom to treat in hospitals faced with large numbers of patients and limited resources; an adverse impact on their psychological well-being and mental health; and discriminatory public discourse or practices, particularly about their participation in the labour market.

FRA dedicated the focus section of Bulletin 3 to the pandemic's impact on the fundamental rights of older persons. For more on the rights of older persons, see Chapter 3 in the *Fundamental Rights Report 2021*.

4.2. PERSONS WITH DISABILITIES

The consequences were also grave for many people with disabilities.¹⁰³ Pre-existing health conditions increased the risks to their health and lives from a possible COVID-19 infection. The risks proved to be higher for those in institutional care settings, who also faced bans on visits, isolation and psychological stress.¹⁰⁴

A major issue was the disruption of and decrease in essential services for persons with disabilities. They include education, schools and other learning support for children with disabilities, healthcare, community-based and at-home support, and facilitated transport.¹⁰⁵ Transition to digital and remote learning and working arrangements did not help much either. It revealed a risk of an increased digital divide between persons with disabilities and the rest of the population.

Member States took a number of measures to address these challenges, in line with their obligations under the Convention on the Rights of Persons with Disabilities (CRPD).¹⁰⁶ The CRPD is also binding on the EU. Moreover, Article 26 of the Charter provides for “the right of persons with disabilities to benefit from measures designed to ensure their independence, social and occupational integration and participation in the life of the community”.

The measures included, for example, additional funding for services to persons with disabilities, targeted financial assistance, financial support for maintaining persons with disabilities in employment, special leave for persons with disabilities and those facing pre-existing health conditions, special leave for parents of children with disabilities following school or day-centre closure, home assistance for students or special arrangements for schools with children with disabilities, and targeted hotlines for psychological support and assistance.¹⁰⁷

Despite these efforts, the situation worsened for persons with disabilities because of the pandemic, and further action is needed, FRA's evidence suggests. For more on this topic, see Chapter 10 in the *Fundamental Rights Report 2021*.

4.3. VICTIMS OF DOMESTIC VIOLENCE

Based on previous experiences, already at the outset of the pandemic WHO warned of a likely increase in intimate partner violence against women.¹⁰⁸ In 2020, domestic violence incidents increased, evidence collected by FRA confirmed.¹⁰⁹ For example, **Czechia** and **Germany** indicated that calls to their national domestic violence hotlines rose by 50 % and 20 %, respectively, between March and June.¹¹⁰



In **Italy**, calls to the national helpline between 1 March and 16 April increased by 73 %, and the number of victims asking for help increased by 59 %, compared with the same period in 2019, according to a report published by the National Institute for Statistics in June.¹¹¹ The data also show that 45 % of the victims reported being afraid for their safety and life, 73 % decided not to report the violence to the police, 93 % of the incidents occurred at home, and 64 % involved children witnessing violence.

In June, the Technical University of Munich in **Germany** published the findings of a representative online survey on women and children's experiences of domestic violence during the pandemic.¹¹² It asked around 3,800 women aged 18 to 65 about their experiences during the lockdown period between 22 April and 8 May. About 3 % of women respondents became victims of physical violence at home. In 6.5 % of all households, children were subjected to corporal punishment.

Member States took steps to address rising levels of domestic violence, as FRA reported.¹¹³ Measures included, for example, awareness raising; provision of information in a safe environment; keeping hotlines active; opening shelters for victims; and continuing to issue protection orders and handle court cases of domestic violence during the lockdown. In 2020, the European Institute for Gender Equality (EIGE) assessed more systematically the measures taken by Member States to protect women against intimate partner violence.¹¹⁴ The relevant report is expected in 2021.

Member States are obliged to address domestic violence effectively to deliver on their duties to protect women and children. Domestic violence is a severe violation of their fundamental rights, which the Istanbul Convention of the Council of Europe enshrines.¹¹⁵ EU law also binds Member States to provide support services to victims based on individual assessments of their specific protection needs, according to the Victims' Rights Directive.¹¹⁶

On violence against women and children, including the increased risk of children being exposed to sexual abuse, see also Chapter 8 and Chapter 9 in the *Fundamental Rights Report 2021*.

4.4. ROMA AND TRAVELLERS

Roma and Travellers often live in marginalised settings, in substandard and overcrowded housing conditions. Not only did they face an increased risk of contracting COVID-19, but containment measures also disproportionately affected them. Evidence points to the heightened risk of disrespect and violation of Roma and Travellers' fundamental rights, as enshrined in the

EU Charter.¹¹⁷ This concerns in particular their right to non-discrimination and equal treatment with the non-Roma population, including in healthcare, work, education, social security and assistance, and housing.

In September 2020, FRA's Bulletin 5 examined the situation of Roma and Travellers during the first wave of the pandemic. In a number of countries, entire Roma neighbourhoods were put in strict quarantine. Lockdowns left many Roma unemployed if they had been engaged in precarious work, and many could not work as street vendors and travelling traders. Working informally, and sometimes having no formal registration of residence, made it difficult for them to claim support and benefits available to workers in the formal labour market. This resulted in increased poverty and risk of malnutrition.

Housing deprivation or poor housing conditions, and limited access to water, electricity and sanitation, created serious health concerns. Barriers to accessing health services exacerbated them. The younger generation faced yet another hurdle: without internet access and appropriate IT equipment, they run the risk of falling even further behind at school or even dropping out.

Amid these difficult realities, the persistent scourge of antigypsyism remained ever present. Media and social networks especially portrayed Roma as a public health hazard and responsible for spreading the virus. For more on this topic, see Chapter 5 in the *Fundamental Rights Report 2021*.

4.5. LGBTI PEOPLE

The pandemic compounded challenges for lesbian, gay, bisexual, trans and intersex (LGBTI) persons, who are protected against discrimination under Article 21 of the EU Charter. In April, the OHCHR drew attention to COVID-19's impact on LGBTI people and their rights. It underlined issues such as limited access to health services; stigmatisation, discrimination and hate speech, and even being blamed for the pandemic; increased risk of violence; and difficulties in accessing the labour market and social assistance services and benefits.¹¹⁸



Mitigating the pandemic's impact on LGBTIQ people



The European Commission issued its first-ever EU lesbian, gay, bisexual, trans, non-binary, intersex and queer (LGBTIQ) equality strategy in 2020. It noted that it will encourage Member States to make full use of the NextGenerationEU financial instrument to mitigate the disproportionate impact of the COVID-19 pandemic on LGBTIQ people and to advance LGBTIQ equality.

*European Commission (2020), **Union of Equality: LGBTIQ Equality Strategy 2020–2025**, COM(2020) 698 final, Brussels, 12 November 2020.*

Also in April, ILGA-Europe sent an open letter to the President of the European Commission, urging the Commission to keep equality for all at the core of EU policies.¹¹⁹ It warned, for example, that young LGBTI people were particularly at risk, finding themselves trapped in hostile, locked-down family situations.

In June, ILGA-Europe published a rapid assessment report presenting evidence of the impact of COVID-19 on LGBTI people, organisations and communities in Europe and Central Asia.¹²⁰

Intersex people face a highly increased risk of being unable to access healthcare because of their medical history, even when infected with COVID-19, the Organisation Intersex International Europe (OI Europe) found in an online survey. Most respondents (62 %) said that their mental health had deteriorated and

21 % that they had experienced a relapse into a previous mental health condition as a result of the pandemic.¹²¹

For more information on the rights of LGBTI persons, see Chapter 3 in the *Fundamental Rights Report 2021*.

4.6. REFUGEES AND MIGRANTS

Asylum seekers, refugees and migrants have also been disproportionately affected. These include children, and in particular unaccompanied minors. FRA's COVID-19 bulletins,¹²² and its quarterly bulletins on migration,¹²³ repeatedly reported on their situation during the pandemic. The measures taken to contain it had an impact on their rights, as enshrined in EU law, including the EU Reception Conditions Directive for those recently arrived in the EU.¹²⁴

Overcrowded accommodation, poor hygiene conditions and limited access to health services increased the risk of infection among all different migrant groups, evidence shows.¹²⁵ Research in a number of countries found that infection rates were much higher among them, in particular for those who were at risk of poverty and social exclusion and were living in overcrowded housing and poor hygienic conditions, than in the general population.¹²⁶



Evidence from some Member States suggests that the pandemic resulted in job losses, especially among those in precarious and unofficial jobs, and rising poverty levels among asylum seekers, refugees and migrants.¹²⁷

The situation was particularly challenging in reception and detention facilities, as the ECDC also highlighted.¹²⁸ Member States introduced physical distancing or quarantine measures, banned residents from leaving accommodation facilities, and restricted or did not allow visits, including by providers of social services.¹²⁹

Evidence collected by FRA indicated concerns that such measures in severely overcrowded camps could deepen human suffering, increase existing tensions and exacerbate the risk of violence. Moreover, restrictive measures affected the right of asylum seekers to look for protection in the territory of the EU, as well as their right and that of migrants to access relevant procedures, their residence status and permits, and the enjoyment of other rights, including to access health services and education.

In March 2020, FRA, in cooperation with the Special Representative of the CoE on Migration and Refugees, published an analysis on fundamental rights at the external borders of the EU, including during a pandemic.¹³⁰ It underlines that “[p]rotection needs cannot be set aside while implementing measures to address public health considerations at the borders” and therefore “[r]efusing entry of all asylum applicants, or of those of a particular nationality, does not comply with the right to seek asylum and could lead to a risk of violating the principle of *non-refoulement*”.

For more information on asylum and migration, see Chapter 6 in the *Fundamental Rights Report 2021*. On issues relating to children, see Chapter 8 of the report.

4.7. HOMELESS PEOPLE

Homeless people live constantly in conditions that jeopardise their right to life and health and often violate human dignity. Worryingly, homelessness increased during the pandemic.¹³¹ This reflected job dismissals and loss of income, which may lead to failure to pay rent or a mortgage, and hence may result in eviction.

At the outset of the pandemic, the European Federation of National Organisations Working with the Homeless (FEANTSA) warned that COVID-19 put homeless people’s health at greater risk because of poor living conditions combined with the fact that many of them have underlying medical conditions.¹³²

Difficulties in and barriers to accessing healthcare, including testing and protective equipment, and lack of information on hygiene measures increased demand for places in shelters. That led to overcrowding because shelters needed to reduce their capacity to comply with physical distancing measures. Together with disruption in other support services, including the provision of food, it heightened health risks and further worsened the living conditions of homeless people.¹³³ Containment measures, in particular stay-at-home, curfew and physical distancing measures, added further hardship.



Focus on adequate housing

In March, the UN Special Rapporteur on the right to adequate housing urged states to:

- cease all evictions;
- provide emergency housing with services for those who are affected by the virus and must isolate;
- ensure that enforcing containment measures (e.g. curfews and stay-at-home measures) does not lead to the punishment of homeless people;
- provide equal access to testing and healthcare;
- provide adequate housing.

UN Special Rapporteur on the right to adequate housing (2020), “Housing, the front line defence against the COVID-19 outbreak,” says UN expert’.

FEANTSA noted that staying at home is not an option for homeless people. Nevertheless, FEANTSA reported sanctions against homeless people who infringed lockdown rules.¹³⁴

National, regional and local authorities adopted measures to alleviate the difficulties homeless people or people at risk of homelessness face.¹³⁵ For example, **France**, the **Netherlands** and **Spain** introduced moratoria on evictions and/or rent increases. In **Belgium** and **France**, the number of available accommodation places, including in hotels, increased.

Municipal authorities (e.g. Barcelona, Budapest, Lisbon and Madrid) also took action. Authorities in **Belgium**, **France** and the **Netherlands** set up special accommodation facilities for homeless people who become infected. **French** authorities distributed vouchers enabling homeless people to buy food and hygiene products. In **Finland**, service centres for homeless people took their services to the streets, offering meals and guidance.

Nevertheless, the authorities need to devote systematic attention and action to their obligation to protect the human dignity and the rights to life and health of people deprived

of their right to housing and experiencing homelessness.

4.8. DETAINEES

The structure and internal organisation of prisons, particularly when overcrowded, make it difficult to observe hygiene and physical distancing rules. This exposes both detainees and staff to severe risks to their life and health. To avoid the spread of COVID-19 in prisons, authorities in Member States adopted restrictive measures.¹³⁶

These measures concerned visits to detainees, time granted outside their cells, sports and other external activities, and prison transfers. Sometimes they included total bans on visits, including from their lawyers. That could undermine their right to access to justice. People infected had to quarantine. Preventive quarantine applied in many cases to those newly entering a facility.

The restrictions affected the rights of detainees and put a severe psychological strain on them, affecting their mental health. In some cases they increased tension. For instance, in **Italy**, they led to revolts in detention facilities, during which some prisoners died, and several others and prison officers were injured.¹³⁷

These challenges prompted many international organisations,¹³⁸ national human rights and monitoring bodies¹³⁹ and CSOs¹⁴⁰ to call on authorities to drastically reduce prison populations through measures such as temporary or early releases and minimising pre-trial detention. For example, the UN High Commissioner for Human Rights encouraged authorities to “examine ways to release those particularly vulnerable to COVID-19 as well as low-risk offenders”.¹⁴¹

For its part, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) of the CoE issued a statement of principles in March 2020 relating to the treatment of persons deprived of their liberty during the pandemic.¹⁴² In a follow-up statement in July, the CPT welcomed that most states had increased the use of non-custodial measures as alternatives to detention, such as suspending or deferring sentences, bringing forward conditional release, temporary release, commuting imprisonment into house arrest or extended use of electronic monitoring.¹⁴³

After the first phase of the pandemic, restrictive measures were eased, FRA evidence shows. Alternative arrangements (e.g. using protective screens during visits) ensured access to lawyers and communication with family members.¹⁴⁴

Most importantly, a significant number of EU Member States adopted measures to reduce their prison population. For example, between mid-March and mid-May, **France** reduced its prison population by 13,082.¹⁴⁵ In **Germany**, several *Länder* released prisoners in the last stages of their prison sentences for minor criminal offences.¹⁴⁶

A new law adopted in **Portugal** on 9 April provided for an amnesty for prison sentences and remaining prison terms of up to two years, as well as for special measures for vulnerable inmates aged 65 or more, with the exception of those convicted for serious crimes.¹⁴⁷ Portugal also established an extraordinary leave regime.

In October, **Italy** allowed the extension of 'special leaves' from prison and permitted detainees with sentences of up to 18 months to serve them in home custody until 31 December 2020, monitored using electronic bracelets.¹⁴⁸ Exceptions applied for those serving sentences for serious offences.

Measures to reduce prison populations were also adopted in **Cyprus**, following an intervention by the Ombuds body.¹⁴⁹

4.9. ETHNIC MINORITIES

The COVID-19 pandemic triggered an increase in racist and xenophobic incidents, including verbal insults, harassment, physical aggression and online hate speech, according to evidence that FRA and other sources collected.¹⁵⁰ This increase undermines and violates Article 21 of the Charter, EU criminal provisions combating racism and xenophobia,¹⁵¹ and the Racial Equality Directive.¹⁵²

Initially, racist incidents targeted people of perceived Chinese or other Asian origin. For example, according to the **French** Public Defender of Rights (Ombuds institution and equality body), anti-Asian racism took on a new dimension with insults and assaults in public places and harassment of children at school.¹⁵³ By 19 June, the **German** Federal Anti-discrimination Office had received some 300 requests for counselling about COVID-19-related incidents,¹⁵⁴ mostly targeting people of Asian origin.

Other minority groups were also blamed and attacked, particularly on social media. This also concerned religious groups, as the UN Special Rapporteur on freedom of religion or belief



Highlighting the pandemic's effect on diverse communities

The European Network against Racism released in May 2020 the EU-wide interactive map of COVID-19's impact on racialised communities. It also documents hate speech and hate crime incidents linked to COVID-19.

European Network against Racism (2020), 'COVID-19 impact on racialised communities: Interactive EU-wide map', 12 May 2020.

highlighted in a statement in April 2020.¹⁵⁵ Conspiracy theories driven by antisemitism emerged.¹⁵⁶

This particularly affected Roma and people with an immigrant background. Some politicians, other public figures and media outlets stirred racist perceptions, while others countered hatred and promoted non-discrimination and tolerance. Persons of Chinese or other Asian origin, and other minority groups, also encountered discrimination in accessing goods, including access to health services and education.¹⁵⁷

Reports pointed to the strict enforcement of containment measures against minority groups. A June report by Amnesty International covered incidents in 11 EU Member States. It focused on the disproportionate impact of enforcement measures on people of North African and sub-Saharan origin, and other minority ethnic groups living in working-class districts, including cases of disproportionate use of force.¹⁵⁸

For more information on developments pertaining to racism, see Chapter 4 in the *Fundamental Rights Report 2021*.

FRA opinions



FRA OPINION 1.1

EU Member States should assess and balance the requirements of different fundamental and human rights when adopting restrictive measures in an emergency, such as the one presented by the COVID-19 pandemic. To achieve this balance, they should take into consideration international human and fundamental rights standards, including relevant case law and guidance by international human rights bodies. They should also involve national statutory human rights bodies when designing, implementing, and monitoring restrictive measures. These measures should be necessary, temporary and strictly proportionate.

EU Member States should ensure that restrictive measures are based on law and that courts, parliaments, statutory human rights bodies and other stakeholders, including civil society, can scrutinise them.

EU institutions should continue to monitor emergency measures in the light of the EU's founding values as laid down in Article 2 of the TEU, including fundamental rights, rule of law and democracy. Policy documents, such as the new annual European Rule of Law Mechanism report, should reflect the outcome of monitoring the emergency measures, where relevant.

The pandemic and the measures adopted to contain it have seriously affected all aspects of our personal and collective life, including the functioning of our democratic institutions, as the evidence shows. The pandemic has revealed new challenges to upholding the fundamental values of the functioning of our states and the European Union. It has implications for our fundamental rights. Restrictions have an impact on our personal and social interaction, and on the protection of our sensitive personal data. At the same time, the social and economic consequences of the pandemic will be lasting and will significantly exacerbate already existing inequalities.

It is essential, as many have stressed at international, EU and national levels, that emergency and restrictive measures fully respect international human rights and rule of law standards, as international instruments enshrine them and relevant case law shapes them. A large number of documents from authoritative sources have identified these standards, which provide guidance to duty-bearers on how to better protect the rights of people to life and health without negating all their other rights.

As the European Parliament underlined, “even in a state of public emergency, the fundamental principles of the rule of law, democracy and respect for fundamental rights must prevail”. In this respect, the EU Charter of Fundamental Rights is of major importance when it comes to EU actions, and actions of Member States that fall within the scope of EU law. FRA's bulletins throughout 2020 highlighted with evidence the implications on fundamental rights in the EU context.

At national level, restrictive measures have been under scrutiny by courts, parliaments, human rights bodies, civil society and other stakeholders. Although they recognised the need for emergency measures to contain the pandemic, they objected to those that were not based on law, lasted for a long time and were disproportionate. They also stressed the importance of fighting COVID-19-related discrimination, hate speech and racism.

Modern science responded to this challenge in record time, making vaccines available as early as the end of 2020. Still, the pandemic exposed gaps and limitations in the capacity and preparedness of our healthcare, education, employment and social protection systems to deal with such a crisis, and deliver on the obligation to fulfil the rights of all to health, education, work and social security and assistance. It also revealed gaps in our capacity to protect the rights of those more vulnerable. The pandemic is a litmus test of our readiness to respect the promise of the global Agenda 2030 to “leave no one behind” in achieving a socially just transition to sustainable development.

Despite the shortcomings, however, the EU and its Member States made considerable efforts to support their healthcare, education and social protection systems, and to assist individuals and businesses against the economic downturn and the risk of unemployment.

FRA OPINION 1.2

EU Member States should improve the resilience of their healthcare, social welfare and social assistance systems to ensure that they provide equitable services to everyone even during a crisis. To achieve this in a coordinated way across the EU, the European Commission’s proposal for a strong European Health Union should be adopted without delay. The proposal aims to seriously improve the protection of health, but also social and economic life across the EU.

FRA OPINION 1.3

EU Member States should enhance their efforts to ensure the continuity of education for all children under any circumstances, particularly in times of crisis such as the one presented by the COVID-19 pandemic. In this respect, they should prioritise establishing a digital infrastructure across all levels of education, and ensure appropriate training to familiarise teachers with working in a digital environment. In this regard attention should be given to the Digital Education Action Plan (2021-2027), which suggests this, and calls for stronger cooperation at EU level to make education and training systems fit for the digital age.

EU Member States should also ensure that this digital infrastructure is inclusive. This means catering to the needs of those who are socially excluded and vulnerable, such as children with disabilities, children of Roma and Travellers, and children of migrants and refugees.

FRA OPINION 1.4

The EU and its Member States should continue to fight COVID-19-related discrimination, hate speech and racism against ethnic minority groups, migrants and refugees, or people with a migrant background. This includes strengthening measures against disinformation that spreads hate speech, and discriminatory and racist perceptions, particularly online.

FRA OPINION 1.5

EU Member States should focus on the needs of vulnerable groups that are most at risk of infection and/or severe disease. These groups include older people, people in care homes, persons with pre-existing health conditions, and those living in limited and overcrowded spaces or poor living and housing conditions. This last group includes many Roma and Travellers, and people in reception or detention facilities for migrants and refugees, prisons, and shelters for homeless.

This also requires prioritising these groups for vaccination and ensuring they enjoy equitable access to health and social services as necessary.

The EU's added value was once again of critical importance. It put in place various instruments to help Member States finance their actions. Looking forward, the EU institutions reached agreement on a recovery package of € 1.8 trillion. It combines the EU budget for 2021-2027 and NextGenerationEU, a temporary recovery instrument allowing the European Commission to raise funds on the capital market to address the immediate economic and social damage caused by the pandemic.

These EU financial measures, together with policy instruments promoting human and fundamental rights, such as the European Pillar of Social Rights, form a comprehensive framework to support national efforts.

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PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

As the COVID-19 pandemic spread across the globe, authorities across the European Union adopted myriad restrictive measures to protect people's lives and health. These interfered with a wide range of fundamental rights, such as to movement and assembly; to private and family life, including personal data protection; and to education, work and social security.

The pandemic and the reactions it triggered exacerbated existing challenges and inequalities in all areas of life, especially affecting vulnerable groups. It also sparked an increase in racist incidents.

This focus looks at COVID-19's impact on fundamental rights. It underscores that a human rights-based approach to tackling the pandemic requires balanced measures that are based on law, necessary, temporary and proportional. It also requires addressing the pandemic's socio-economic impact, protecting the vulnerable and fighting racism.



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