FRA EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS

BULLETIN #3

CORONAVIRUS PANDEMIC IN THE EU – FUNDAMENTAL RIGHTS IMPLICATIONS: WITH A FOCUS ON OLDER PEOPLE

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Acronyms and abbreviations

Charter	Charter of Fundamental Rights of the European Union
ECHR	European Convention of Human Rights
ECtHR	European Court of Human Rights
EU	European Union
FRA	European Union Agency for Fundamental Rights
JHA	Justice and Home Affairs Council
OJ	Official Journal of the European Union
OSCE	Organization for Security and Co-operation in Europe
TEU	Treaty on European Union
TFEU	Treaty on the Functioning of the European Union

Foreword

The sense of relief accompanying falling COVID-19 infection rates and the gradual reopening of economies and societies across the European Union cannot mask the on-going impact of the pandemic. Over 130,000 people in the EU have lost their lives. Millions are unemployed as the virus deals a devastating blow to economies, leaving businesses struggling to recover. Months of interrupted education threaten the life chances of many children and young people across Europe. Some of the most vulnerable members of our communities – persons with disabilities, homeless people, victims of domestic violence and people in precarious work – find themselves facing new obstacles that compound existing challenges.

Globally, the virus continues to take a particularly heavy toll on older people, who make up a disproportionately high number of those who have died with COVID-19. Across the EU, a tragedy has unfolded in care homes, a situation made still more painful by the fact that many people could not see their family members as they fell ill and, often, died. Many other older people have been cast adrift from family and friends as social lives move online. As societies reopen, it is more important than ever to keep a focus on this group for whom the passage to the 'new normal' will likely be slower and more difficult.

In Europe, and in some other countries around the world, there are signs of hope amid such difficult circumstances. It is encouraging to see different parts of society – local authorities, businesses and civil society, among others – coming together to support different parts of our communities through the pandemic. These collaborations are a crucial source of information and support, helping some of the most vulnerable members of our society access much-needed services and maintain social contact.

As authorities balance the need to reopen the economy and society with the duty to stem any further spread of COVID-19, fundamental rights must remain at the forefront. The particular vulnerability of older persons to COVID-19 cannot become an excuse for rhetoric that belittles them. The pandemic served to underline the contribution older people make to our communities, as epidemiology experts, frontline service providers, colleagues, providers of childcare, mentors or volunteers. Anchoring responses to the pandemic in the recognition that equal treatment is a right, regardless of age, will ensure that older people can live full lives in dignity and respect.

Michael O'Flaherty
Director

Key findings

The impact of the COVID-19 pandemic touches nearly every aspect of daily life in the European Union (EU). As infection and death rates continued to fall in May, governments took additional steps to lift the restrictive measures imposed at the start of the pandemic (for developments from 1 February–30 April 2020 see FRA Bulletins **#1** and **#2**). Yet, the reopening of more sectors of the economy, and greater freedom of movement and social interaction provided a first insight into the longer-term impact of the pandemic. It also revealed the prolonged adaptations to our economies and societies necessary to prevent renewed infections. The ongoing restrictions of the 'new normal' pose significant challenges to the civil, political, social, cultural and economic rights of everyone in the EU.

This report outlines some of the measures EU Member States have put in place to protect public health during the Coronavirus pandemic and examines aspects of the pandemic's impact on older people. It highlights how the different measures may affect fundamental rights. Where specific articles are mentioned in the report, these refer to the **Charter of Fundamental Rights of the European Union**, as a proxy also for the many other human rights standards that apply at national level.[1] The report covers the period 1 – 31 May 2020 and focuses on four interrelated issues:

- states of emergency or equivalent measures;
- measures to contain the spread of COVID-19 and mitigate its impact on social life, education, work, the justice system and travel to and within the EU;
- the impact of the virus and efforts to limit its spread on particular groups in society, namely persons with disabilities, detainees, homeless people and victims of domestic violence;
- the impact of the pandemic on the fundamental rights of older persons – as a specific focus.

The combination of the most widespread restrictions on daily life experienced in peacetime in modern Europe affect everyone living in the EU, albeit in different ways. This has implications for the enjoyment across our societies of nearly all the fundamental rights enshrined in the Charter. The following paragraphs outline key findings from FRA's data collection across the 27 EU Member States, illustrating the impact of the virus and the measures to contain it.

FRA will continue to examine the impact on fundamental rights of the virus and measures to contain it in its next Bulletin in July 2020.

States of emergency

As the health situation improved, Member States looked at when and how to lift **states of emergency** or their equivalent, and what measures to adopt to replace them. States of emergency typically allow certain rights to be limited, such as freedom of movement (Article 45 of the Charter), freedom of assembly and of association (Article 12), and private and family life (Article 7). During the reporting period between 1 and 30 May:

- states of emergency – or equivalent – remained in place in some Member States: others extended the states of emergency in force;
- in other cases, new emergency measures replaced states of emergency, prompting concerns about both changes to the law-making process and on-going limitations on fundamental rights;
- courts, parliamentary committees, national human rights bodies and civil society organisations continued to scrutinise – within their respective areas of competence – limitations on fundamental rights linked to states of emergency and their enforcement. In several cases, this prompted governments to change their approach.

Impact on daily life: Member States' measures to address the outbreak

While countries eased restrictions during May, **physical distancing measures remained in place in all EU Member States**. Such measures affected many fundamental rights, including the rights to liberty and security (Article 6 of the Charter), respect for private and family life (Article 7), freedom of thought, conscience and religion (Article 10), freedom of expression and information (Article 11), freedom of assembly and of association (Article 12), freedom of the arts and sciences (Article 13), and freedom of movement and of residence (Article 45). They can also affect the rights of specific groups including children (Article 24), older persons (Article 25) and persons with disabilities (Article 26).

- Member States continued to reopen their economies and societies, but maintained strict hygiene and physical distancing rules.
- Many countries relaxed restrictions on the number of people who could attend public events, while generally continuing to ban mass gatherings/events.
- Approaches to enforcement and sanctions for the violation of COVID-19 containment measures varied across the EU, ranging from minor fines for not wearing face masks, to prison sentences for violating quarantine orders.

Although some educational facilities reopened in May for certain pupils, with strict physical distancing and hygiene requirements, distance learning remained widespread across the EU. This has consequences for the right to education of all children living in the EU, without discrimination (Articles 14 and 21 of the Charter). The results of early studies on the impact of school closures suggested that they may particularly affect children from socioeconomically disadvantaged backgrounds.

- Many Member States prioritised the return of kindergarten and primary school pupils, and those preparing for major school exams. Universities generally remained closed for in-person teaching.
- Physical attendance at reopened schools is typically not obligatory. Several countries introduced measures to reduce the number of pupils present in schools at any one time.
- Some Member States took steps to allow exams to go ahead, while others announced that they would replace them with other forms of assessment.

Steps to protect against infection accompanied the **gradual reopening of most sectors of the economy** in May. Ongoing economic pressures and preventative measures against the virus can affect fundamental rights including: workers' right to information and consultation (Article 27), protection in the event of unjustified dismissal (Article 30), the right to fair and just working conditions (Article 31), social security and social assistance (Article 34), the right to health (Article 35), but also the freedom to choose an occupation, the right to engage in work (Article 15), and the freedom to conduct a business (Article 16). People in precarious work, already among the most vulnerable members of the workforce, are especially affected.

- Most Member States developed guidelines on protection against infection in the workplace, centred around physical distancing requirements. These include hygiene standards, shift patterns and wearing face masks.
- Some governments – and the EU – continued their efforts to mitigate the effects of the pandemic on particularly vulnerable sectors of the economy such as tourism and the cultural sector.
- Reports in several countries highlighted the particular risk of contracting COVID-19 in meat processing plants; governments responded with targeted measures.

Disruption to judicial proceedings affects people's right to access justice, in particular the right to an effective remedy and a fair trial (Article 47). It also has possible implications for the right to equality before the law (Article 20) and the right to good administration (Article 41). **Judicial proceedings began to resume** across the EU in May, including the return of courtroom hearings, although the situation remained far from that of the 'pre-COVID-19' period.

- Member States issued new rules on health and safety measures in courtrooms as courts reopened. These include physical distancing, wearing masks, frequent handwashing and cleaning of surfaces, ventilation and use of protective screens.
- Remote proceedings continued to play an increased role in the justice systems of some Member States.
- Many Member States reported substantial backlogs in cases and proceedings due to lockdown restrictions. To tackle this, some countries scheduled extra hearings or reduced judicial vacations during summer 2020.

Many Member States **extended restrictions on non-essential travel into the EU** until 15 June 2020, in line with the **European Commission guidelines**. At the same time, Member States **began to ease temporary controls at their internal borders** and several resumed asylum procedures.

- Restrictions to free movement were lifted between some EU Member States – for example, to visit family or for tourism – typically in agreement with neighbouring countries.
- While many Member States continued to require most people entering the country to self-isolate for 14 days, they monitor and enforce this very differently. In some cases, entry was possible for people who present a negative COVID-19 test result.
- Several Member States resumed asylum procedures. Some reported low numbers of asylum applicants since the onset of the pandemic, as border controls and travel restrictions made it difficult to reach the EU.

Impact on particular groups in society

COVID-19 and the measures adopted to contain it continued to severely affect the fundamental rights of particular groups, such as persons with disabilities, detainees and homeless people. Continuing lockdown restrictions also had an impact on domestic violence.

The situation for persons with disabilities gave particular cause for concern, with evidence emerging of high numbers of deaths in residential settings. Evidence indicated that the COVID-19 pandemic continued to affect the provision of essential services such as education, healthcare, community-based support and transport for persons with disabilities.

- Children with disabilities faced difficulties accessing education, both in schools and distance learning.
- People with disabilities continued to be under-represented in decision-making concerning responses to the crisis.

Detention conditions and measures to contain the COVID-19 pandemic continued to **affect detainees' rights across the EU.**

- Many Member States lifted the ban on visits to detainees, but restrictions continued to apply, including on the number and duration of visits. Prisons in some Member States lacked the protective equipment to allow visits to take place safely.
- Prisons in some countries recommenced activities for detainees, such as educational and cultural events, work and sports.
- Some Member States continued to apply alternatives to detention such as house arrest and early release to reduce overcrowding in prisons.
- No further disturbances or riots were reported (see previous Bulletins for examples of riots reported in some Member States).

Homeless people faced particular challenges accessing shelters and obtaining protection from COVID-19 as demand for shelters and support continued to increase in many Member States.

- Some municipalities, national authorities and civil society organisations responded by increasing shelter capacity and quarantine possibilities, as well as dedicated COVID-19 testing and healthcare hubs.
- Many civil society organisations considered existing efforts to support homeless people insufficient, and raised concerns about continued challenges once temporary support measures were lifted.

Evidence from some Member States indicated that **domestic violence increased during confinement**.

- Public authorities and civil society organisations highlighted the challenges victims face in reporting incidents during the lockdown, when they were in close proximity to their abuser.
- Some Member States took steps to raise awareness about domestic violence, provide information in a safe environment, keep hotlines active, open shelters for victims, and continue to issue protection orders and handle domestic violence court cases during the lockdown.

Impact on older persons

The pandemic has particularly affected the rights to life (Article 2) and health (Article 35) of older persons. Issues around access to treatment and testing, the situation in institutional settings, access to services and the impact of isolation emerged across the EU. This affects older people's right to lead a life in dignity and independence, as enshrined in Article 25 of the Charter, alongside many other fundamental rights. While certain measures were important to reduce the risk to health and life of older people by preventing infection, they raised questions about potential discrimination on the grounds of age.

- Evidence pointed to a much higher death rate among older persons who contract COVID-19, despite them not being more likely to contract the virus than other age groups.
- People in institutional settings experienced particularly high rates of infection and death, as COVID-19 spread in settings where people live in close proximity.
- Better data would help states and health authorities to understand the impact of COVID-19 on older people and support informed decision-making.

Human rights bodies and NGOs called on states to **establish regular and systematic testing** to prevent and contain outbreaks of the virus.

- Some Member States prioritised targeted testing from the onset of the pandemic, while others tested on an ad-hoc basis.
- As of 31 May 2020, mass testing of staff and residents of institutional care settings was either underway or planned in a third of EU Member States.

National health systems and medical professionals came under pressure and faced difficult choices about who to treat in view of scarce resources, putting the right to equal access to healthcare at risk.

- Most EU Member States did not stipulate age as a decisive criterion when assigning or prioritising treatment for COVID-19. However, some examples of guidance suggesting a patient's age as a criterion for prioritising treatment emerged.
- Reports emerged of older people in residential care facing difficulties accessing healthcare and treatment in hospitals, prompting oversight bodies to take action.

The particular vulnerability of older people prompted many countries to put in place specific restrictive measures or recommendations targeting older persons, including: stricter stay-at-home or self-isolation rules than for the general population; and special rules concerning shopping and accessing services, using public transport, accessing workplaces and participating in communal or voluntary activities.

- All Member States introduced initiatives to meet older persons' basic needs during the lockdown period to mitigate the impact of restrictions imposed on them, such as support to access to goods and services.
- Member States began to lift limitations on older people living in the community in May as part of wider easing of the lockdown.

Physical distancing requirements risked increasing the social isolation of older persons who may lack the equipment or knowledge to take advantage of digital tools to maintain social contact. For example, restrictions on **visitors entering residential care homes during the first phase of the pandemic** substantially limited social contacts between older people in institutional settings and their families and social networks.

— Reports emerged of the impact of restricted services on the mental and physical wellbeing of people with dementia. Some Member States set up hotlines and advice to support people with dementia and their carers.
— Many initiatives to support older people involved cooperation between local authorities, civil society organisations and volunteers, and the private sector.
— Almost half of Member States lifted visiting bans in nursing homes in May, accompanied by physical distancing and hygiene measures. Some Member States loosened restrictions on social activities in nursing homes.

Countries prioritised treating COVID-19 patients over other areas of healthcare, with many countries **suspending non-urgent treatment**, or limiting physical access to doctors and health services. Such restrictions hit older people particularly hard, as they are more likely to have existing medical conditions requiring treatment.

— Some Member States implemented measures to address the specific needs of older people with underlying health conditions, in particular those living in care homes.
— As part of the wider easing of restrictions in May, many Member States began to reopen suspended medical services.

Introduction

By 23 June 2020, COVID-19 had infected 1,202,311 people in the EU and 132,062 have died from it, according to the **European Centre for Disease Prevention and Control**. Infection rates continued to fall throughout May, and Member States focused on gradually lifting the restrictions they had put in place to combat the spread of COVID-19 and protect the health and lives of people in the EU.

In May, many families and friends could reunite for the first time since the pandemic began. Children began to return to school and more businesses – such as restaurants and cafes – opened their doors to welcome customers. Despite the gradual return to normal life, Member States continued to exercise caution, recognising that the pandemic is not yet over and amid concerns about a possible second wave of COVID-19 infections. Protecting the rights to life and health – while avoiding further inequalities that may result from measures adopted – should remain a priority as countries begin to ease restrictions.

This third FRA Bulletin on how the Coronavirus pandemic affects fundamental rights outlines some of the measures that EU Member States adopted to safely reopen their societies and economies while continuing to mitigate the spread of COVID-19. It highlights the impact these measures may have on civil, political and socioeconomic rights. The bulletin starts by looking at declarations of states of emergency, or their equivalent, including how and under what circumstances Member States began to lift them. It then considers the impact on fundamental rights of measures to contain the virus on important areas of daily life, including social life, work, education, travel and the judicial system. **Section 3** describes the impact of the pandemic and containment measures on certain population groups. The bulletin closes with a thematic focus on older people, looking in particular at issues such as access to treatment and testing, the situation in institutional settings, access to services and the impact of isolation.

Given the speed with which the pandemic and policy responses have unfolded, the Bulletin does not present an in-depth socio-legal analysis of measures and their impact, nor does it offer recommendations for future policies. Rather, it presents illustrative examples drawn from data collected by FRA's research network FRANET (see box). It is beyond the Bulletin's scope to present an analysis of relevant international human rights law since it applies to the situation in the EU and its Member States. This could warrant a separate – future – FRA study.

Bulletin #3 addresses several areas of life affected by the COVID-19 outbreak. While these are all reflected in various articles of the EU Charter of Fundamental Rights, they are not all comprehensively covered by secondary EU law. For example, the bulletin encompasses core areas affected by measures enacted in response to COVID-19 – such as education. These are, in the main, questions of national competence. But in combination, they might nevertheless have implications in EU law relevant fields such as non-discrimination.

Selected examples of promising practices to mitigate the impact of public health measures on fundamental rights are included throughout. These examples of practices in EU Member States presented in the report do not comprehensively cover the huge number of actions taken across the EU Member States.

The situation concerning COVID-19 among migrants and refugees at the EU's external borders is beyond the scope of this report. More information on this issue is available in FRA's **regular reporting on migration.**

BULLETIN #3: COVERAGE AND TIMELINE

Bulletin #3 on COVID-19 documents the situation in 27 EU Member States from 1 to 31 May 2020. It retains the main structure of Bulletins #1 and #2, published on 8 April and 28 May 2020, in looking at the impact on both society as a whole and particular groups within it, with some differences in the specific issues considered. In addition, a specific focus section in this third Bulletin considers the particular situation of older people.

FRA's multidisciplinary research network, FRANET, collected the data for the report across all 27 EU Member States. It gathered information from sources that were publicly available at the moment of data collection.

FRA's next report, Bulletin #4 on COVID-19, will cover measures adopted during June 2020.

1

STATES OF EMERGENCY

[R]estrictions of some fundamental rights are inherent to emergency measures. This is why it is important that those measures include democratic safeguards. Any emergency measure must be limited to what is necessary and strictly proportionate and cannot mean "switching off" national constitutions or EU law. Such measure has to be limited in time and face scrutiny of the people, normally by elected Parliament. This is why I decided that the Commission should monitor the emergency situations in the Member States, especially their impact on the rule of law and fundamental rights. The focus here is to closely scrutinise limitations which might go beyond what is proportionate or measures which might breach EU law.

Vice-President Věra Jourová, **Threats to democracy during the COVID-19 crisis**, *11 May 2020.*

The majority of states of emergency, or equivalent, introduced to contain the spread of COVID-19 remained in place across the EU for part or all of May 2020. However, as the health situation improved, attention shifted to when and how to lift them and the limitations on rights they entail. This report uses the respective national terminology, without prejudice to the specific legal consequences different terms may refer to.

It is a basic principle of international human rights standards that any restrictions to a right must be prescribed by law, proportionate and necessary, and of limited duration. Well-established case law of the European Court of Human Rights provides that derogations need to be notified, and should happen only in exceptional circumstances and in a limited and supervised manner to secure certain rights and freedoms under the European Convention on Human Rights (ECHR). On 26 May, the Council of Europe's **Venice Commission published a report** on the challenges states of emergency pose to respect for democracy, human rights and rule of law.

All three EU Member States (Estonia, Lativa – partially, Romania) that had **notified a derogation from the ECHR** in times of emergency withdrew these derogations in May. **Latvia's partial withdrawl concerned the derogation to Article 11** (freedom of assembly and association); derogations to Article 8 of the ECHR (respect for private and family life) and Article 2 of Protocol 4 of the ECHR (freedom of movement) remained in place.

On 4 May, the **Hungarian government issued a decree suspending, during the state of danger, the one-month deadline for data controllers to reply to data subjects' rights requests** under the General Data Protection Regulation. This prompted the **European Data Protection Board to adopt a statement** recalling that "even in these exceptional times, the protection of personal data must be upheld in all emergency measures, thus contributing to the respect of the overarching values of democracy, rule of law and fundamental rights".

1.1 FROM STATES OF EMERGENCY TO OTHER EMERGENCY SITUATIONS

The situation concerning states of emergency – or equivalent – varied greatly across the EU:

— states of emergency in Italy (in place until 31 July), Luxembourg (24 June) and Slovakia (mid-June) remained in place.[2] The emergency ordinances in the Netherlands' 'safety regions' remained in force at the end of May;[3]

— Latvia and Spain extended their states of emergency until 9 and 7 June, respectively.[4] **France extended its state of health emergency** until 10 July, including new provisions for the quarantine or isolation of people arriving in France and for the establishment of information systems relating to people affected by COVID-19 or those who had been in contact with infected persons. Finland **extended some sections of its Emergency Powers Act** concerning health and social care to 30 June;
— in several countries, states of emergency ended and were replaced with other measures. These include Bulgaria (ended 13 May, replaced by emergency epidemic situation), Portugal (ended 2 May, replaced by situation of calamity until 14 June), and Romania (ended 14 May, replaced by state of alert);[5]
— the state of emergency ended in Czechia (17 May) and in Estonia (18 May).[6] Many of the main restrictions on daily life remained in place in both countries, however. Lithuania **revoked its state of emergency on 31 May, but extended the quarantine regime** to 16 June.

Developments in some Member States showed that the withdrawal of formal states of emergency does not necessarily entail the end of emergency measures. This prompted concerns about both changes to the law-making process and on-going limitations on fundamental rights.

The end of the state of emergency in Bulgaria, for example, was accompanied by the **adoption of amendments to the Health Act.** This introduced a legal definition of an 'emergency epidemic situation' and authorised the government to introduce such a situation, which it did the day after the state of emergency ended. The **President of Bulgaria challenged the new provisions before the constitutional court**, arguing that authorising the government to introduce an emergency epidemic situation – during which fundamental rights can be restricted by orders of the Ministry of Health – without a parliamentary decision or a specified maximum duration contradicts the constitutional provision that only law can restrict fundamental rights. The case was pending at the end of May.

Similarly, the Estonian President expressed concern about **amendments to the Emergency Act and the Communicable Diseases Prevention and Control Act**, which give the Health Board the right to apply certain quarantine measures, close establishments, prohibit public meetings and events and take other measures necessary to prevent the spread of communicable diseases. The President suggested that the amendments increase the powers of administrative authorities during future emergencies at the expense of parliament and the government; legal experts also highlighted a lack of legal clarity and judicial oversight of the Health Board.[7]

In Hungary, the government submitted a **legislative proposal to the parliament to end the state of danger and to withdraw the Act on defence against the Coronavirus (Authorisation Act)** (see **Bulletin #2** for more information on the Act). On the same day, it submitted another **proposal on temporary rules in relation to ending the state of danger**. The latter would entitle the government, on a proposal from the Minister responsible for health care following a recommendation of the National Chief Public Health Officer, to declare a 'health crisis situation' for up to six months. In such a situation, the government could impose restrictions on the operation of any institution or facility and on the organisation of events that could contribute to spreading the disease. It would also be able to restrict the sale and consumption of certain goods, passenger and cargo traffic, social connections, visiting certain facilities, leaving certain territories or accessing certain medical services. The proposal stressed that the government may only use these powers in line with the principles of necessity and proportionality and that it cannot introduce restrictions on movement. Nevertheless, commentators expressed concern that the proposal could enable the government to govern through decrees with fewer safeguards than in relation to the current state of danger.[8] They highlighted that the adoption of the bill could lead to the restriction of basic rights such as the freedoms of movement, assembly and information, and the protection of personal data.[9] They also raised concerns about a **proposed amendment to the Disaster Management Act** that would authorise the government to suspend or set aside laws if deemed necessary under a state of danger.[10]

As noted in **Bulletin #2**, around a third of EU Member States did not declare a state of emergency or equivalent. In several cases, this prompted discussion about the legality of some measures adopted to contain COVID-19. A group of citizens and politicians in Croatia, which did not declare a state of emergency, requested the Constitutional Court to review whether certain decisions ordered by the government and the National Civil Protection Headquarters during the pandemic, including the amended Civil Protection System Act and the Law on the Protection of the Population from Infectious Diseases, are in accordance with the Constitution.[11]

1.2 STATES OF EMERGENCY AND EMERGENCY MEASURES UNDER SCRUTINY

Continuing the trend highlighted in **Bulletin #2**, courts, parliamentary committees, national human rights bodies and civil society organisations continued to scrutinise – within their respective areas of competence – limitations on fundamental rights linked to states of emergency and their enforcement. In several cases, this prompted governments to change their approach.

Some actors focused on the legal basis of emergency measures. For example, in the Netherlands the **Advisory Division of the Council of State published a report assessing the emergency ordinances** in light of the fundamental rights set out in the country's constitution, the ECHR and the Charter. It states that the restriction on rights imposed by the ordinances does not strictly correspond to the specific legal basis required by the Constitution. While justifiable during the initial acute phase of the pandemic, the report argues that these restrictions must now have a better legal foundation, and calls for the adoption of an Emergency Act to replace the ordinances. The **Netherlands Institute for Human Rights expressed** similar concerns. Parliamentarians in Luxembourg focused on the **government's plans for legislation to follow the end of the country's state of emergency**. They **argued that the initial proposal for a broad general law complemented by grand-ducal regulations would give too much power** to the executive, and indicated their preference to separate pieces of legislation. The government adopted this approach.

Other scrutiny looked at specific provisions of emergency measures. The **Constitutional Council in France imposed two partial censures on the law extending the country's state of health emergency**. It censured the law's provision on quarantine and isolation, noting that it did not provide sufficient guarantees of individual freedom. The Council also demanded more civil liberties safeguards concerning the new measures for persons arriving from abroad, ruling that the prolongation of quarantine and isolation measures for more than 12 hours a day requires the authorisation of a judge. The second censure concerned access to the information systems to combat COVID-19. The Council ruled that communicating data, without the consent of the person concerned, to organisations providing social support is not justified, as this support is not directly related to tackling the pandemic. This violates the right to privacy, and is not in line with the Constitution.

The Finnish Parliament's Constitutional Law Committee considered **temporary provisions of the Communicable Diseases Act** covering the number of customers, opening hours and hygiene requirements for restaurants. Given that the revision infringes on the constitutional rights to engage in commercial activity and to property, **the Committee concluded that the obligations of the restaurateur need to be more clearly specified in the Act**. The Committee also found that, to comply with the necessity requirement applicable when restricting fundamental rights, there should be a possibility to ease restrictions in regions where the epidemiological situation allows. **Parliament adopted an amended version of the original proposal** setting out detailed provisions.

Finally, oversight bodies in several EU Member States addressed the enforcement of emergency measures (see also **Section 2.1**). **Bulletin #2** highlighted that the **Romanian Ombuds institution challenged the constitutionality of fines** for not respecting measures implemented during the state of emergency and asked the Minister of Interior to be more precise in defining the offenses to avoid disproportionate sanctions. On 6 May, the **Constitutional Court ruled that the emergency ordinance is unconstitutional** as it, among other aspects, does not clearly indicate the acts, facts or omissions that constitute contraventions; leaves the determination of the contraventions to the discretion of the ascertaining agent; and establishes the same sanction regardless of the nature or gravity of the act. **The Finnish Parliamentary Ombuds body considered fines issued by the police** during the lockdown of the region of Uusimaa, noting that, while the Emergency Powers Act stipulates that fines can be issued for offences under the Act, it does not criminalise the attempt to commit such an offence. The Ombuds body concluded that it is essential that prosecutors ensure fines are not issued for lawful acts.

2

IMPACT ON DAILY LIFE: EU MEMBER STATES' MEASURES TO ADDRESS THE OUTBREAK

States should ensure that restrictions on freedom of movement and assembly are not discriminatory and do not target or unnecessarily hinder human rights defenders, including journalists. Steps should be taken to help ensure that civil society remains able to reach affected communities for advocacy, monitoring and service provision. Restrictions to freedom of expression, association, movement or peaceful assembly should never be used as a pretext to criminalize human rights defenders, journalists and others.

United Nations Human Rights, Office of the High Commissioner, **Civic space and Covid-19: guidance**, *4 May 2020.*

This section showcases how COVID-19 continues to affect five key areas of daily life: daily interaction, education, work, the judicial system, and travel to and within the EU. The evidence indicates that, while restrictions in many areas are being lifted, significant challenges to fundamental rights remain.

2.1 DISRUPTIONS TO DAILY INTERACTION: PHYSICAL DISTANCING

All Member States continued to gradually ease restrictions to contain COVID-19, accompanied by specific rules on health protection, hygiene and physical distancing. Central to the instructions still in place in May was the principle of keeping a minimum physical distance from others in public. Other limitations included limiting the number of customers in shops and restaurants, and the installation of protective shields in shops and other service facilities.

In many Member States, it was compulsory to wear protective face masks on public transport, in indoor public places and whenever the minimum physical distance could not be maintained, often with exceptions for children and persons with disabilities or respiratory impairments. **Luxembourg announced the distribution of 50 face masks** for each resident over the age of 16 and to cross-border workers.

Public events remain banned or restricted

Despite a relaxation of restrictions on the number of people who could attend public events, a ban on mass events remained in force in many Member States. This meant, for instance, that Labour Day celebrations did not take place in most countries, with some exceptions: in **Portugal, people gathered on 1 May** while respecting physical distancing rules, for example. In Austria, the government announced in May that any **event with more than 100 attendees must have a designated 'COVID-19 officer'** responsible for developing and implementing a plan to prevent the spread of COVID-19 at the event.

Religious services resumed in many countries over the course of the month, and Member States eased restrictions on the number of people allowed to attend weddings and funerals.

Concerns over enforcement and sanctions

Approaches to enforcement and sanctions for violating COVID-19 containment measures continued to vary across the EU, ranging from minor fines for not wearing face masks to prison sentences for violating quarantine orders.

Courts, oversight bodies and NGOs scrutinised enforcement actions for compliance with fundamental rights standards and raised concerns about additional police powers temporarily introduced during the pandemic, as the following selected examples illustrate:

- **France's highest administrative court ruled that** authorities could no longer use drones to observe whether lockdown rules were respected in Paris. In addition, **local, national, and international organisations in France wrote a letter** calling on the government to take urgent and concrete steps to end discriminatory police checks.
- In Poland, the **Ombuds institution warned that there is no legal provision permitting** police officers to forward their notes from police interventions, which include personal data, to the Sanitary Inspector for imposing penalties.
- The **Irish Council for Civil Liberties called for an end to police powers** under temporary COVID-19 regulations, underlining that no test had been made to show if such powers were necessary and proportionate.
- The **Independent Authority for Complaints against the Police in Cyprus reported** that it received about 70 complaints concerning police misconduct during the two months up to mid-May.

2.2 DISRUPTION TO EDUCATION

Schools in most EU Member States began to reopen in May, with guidelines setting out safety and hygiene measures. Nevertheless, concerns persist about the particular impact of interruptions to education on vulnerable children, such as those with special educational needs or from socioeconomically disadvantaged backgrounds.

The general move towards reopening masks significant differences between and within EU Member States, however. Schools in Ireland and Romania will remain closed until September, for example.[12] In some countries, such as Spain[13] and Poland, final decisions on reopening lie with regional or local authorities, raising the prospect of regional differences. In **Slovakia, individual schools could decide** whether to reopen.

Ongoing concerns about the risk of the further spread of COVID-19 significantly shaped how education facilities reopened:

- nearly all governments set out guidelines on physical distancing and hygiene measures in schools, including wearing masks and regular hand washing. In many Member States, certain rules – such as wearing masks – did not apply to younger children;
- many Member States staggered the return of pupils to school, often prioritising nurseries and primary schools and those preparing for national exams. In France, the reopening of some secondary schools for certain grades took into account the local infection rate;[14]
- several countries introduced 'shifts' to reduce the number of pupils in school at any one time and limit class sizes. **Pupils in Luxembourg** physically attend school for alternating weeks, while **in Austria the week is split** between different shifts;
- governments often indicated that physical attendance is not compulsory. Children who are, or have family members, in the risk group for COVID-19 can request permission to be absent from school in Finland, for instance;
- Member States took two main approaches to the organisation of major school exams: exams taking place, often with adaptations to reduce risk of infection; and exams getting cancelled, with teachers assessing pupils based on their work over the year. Completing final year exams will **not be a condition for graduating from secondary school in Estonia**, although exams will be arranged for students wishing to go on to university;
- universities and other further education facilities typically remained closed, with distance learning continuing.

Ombuds institutions in several Member States raised concerns about schooling for children with special educational needs. The **Czech Deputy Ombuds wrote to the Minister of Education, Youth and Sports** arguing that the continued closure of schools for children with disabilities infringed their right to education. The **Croatian Ombuds body for children highlighted that children with developmental disabilities may face particular difficulties following distance learning** as their parents return to work, and called for classroom learning for this group.

FIRST EVIDENCE OF LONG-TERM IMPACT OF SCHOOL CLOSURES ON CHILDREN EMERGES

Research from several Member States provides insights into the potential long-term impact of school closures, raising particular concerns about the consequences for children from socioeconomically disadvantaged backgrounds.

Data drawn from a representative sample of 1,318 children in primary and secondary education in the Netherlands, gathered from 13-28 April 2020, showed that children from advantaged backgrounds receive more parental support and have more resources (e.g. own computer) to study from home. Parents also reported that schools provide more extensive distant schooling for children in the academic track in secondary education than for those in the pre-vocational track. Finally, the research also pointed to a clear gender gap: parents report that girls like their schoolwork more, and that they feel more able to support their daughters than their sons.

For more information, see: Bol, T. (2020), **Inequality in homeschooling during the Corona crisis in the Netherlands**.

In Austria, results of a **study conducted by the Centre for Social Innovation** and published in May show that, of the 342 students aged 7-19 in Vienna surveyed, 35 % feel overburdened and uncertain because of having to study from home. Pupils with fewer educational resources and children of single parents felt the most uncertain.

More positively, a **survey conducted by the University of Turku in Finland between 4-13 May 2020**, covering 48,338 students in Grades 1-9 across 416 schools, shows that 59 % liked school fairly or very much during this period. In addition, 88 % report that it has been easy to contact teachers, 86 % that teachers have ensured that everyone is included, and 83 % that they received help from adults at school when doing assignments. The results also show reduced experiences of bullying during the distance-learning period.

[A]s governments continue to reduce restrictions and workers begin to return to work, we urge all States and businesses to ensure preventative and precautionary measures are in place to protect every worker. We are also deeply concerned about the disproportionate risk presented to workers that are low-income, minorities, migrants, older persons and those with pre-existing health conditions, women, as well as the informal sector and those in the 'gig' economy.

"Every worker is essential and must be protected from COVID-19, no matter what" – UN rights experts, *18 May 2020*

2.3 DISRUPTION TO WORK

Member States gradually reopened most sectors of the economy in May. Over time, governments and relevant bodies will gradually assess the actual impact of the pandemic on unemployment and underemployment in certain economic sectors when official data become available. With people increasingly returning to work, it is indispensable for governments to develop health and safety guidelines to protect against infection at the workplace. A key element of such guidelines is employees' adherence to a minimum physical distance. Governmental health and safety instructions also prescribe stringent hygiene standards and measures such as working in shifts or restricting the number of customers per square metre. In a third of Member States, it was obligatory to wear face masks at the workplace, particularly indoors and when the minimum physical distance could not be maintained.

Many countries continued to encourage employers to allow their staff to work remotely whenever possible. In France, the **National Consultative Commission for Human Rights stressed that teleworking is a significant challenge** to work-life balance and mental health as a result of increased working hours and 'hyperconnectivity'.

Impact on tourism

Tourism – a key sector in many Member States – was particularly hard hit by the closure of borders and restrictions on movement prompted by the pandemic. A **study in Portugal based on data from the Institute of Employment and Vocational Training and the Ministry of Labour, Solidarity and Social Security** showed that almost three quarters (73 %) of the increase in unemployment can be attributed to unemployment in the service sector, specifically in tourism.

The Greek government announced a special economic support mechanism for workers and businesses in the air transport sector and extended to June 2020 the possibility to suspend work contracts with state compensation for workers and businesses in the tourism industry.[15]

People in precarious work

Bulletins #1 and #2 highlighted concerns that people in precarious work, such as seasonal workers, domestic workers or those on 'zero-hours' contracts, may struggle to access some financial support measures. Reflecting this, in May Member States continued to introduce targeted measures to support these workers. **Greece extended a support measure to cover artists**; a new € 90m fund for artists in Austria offset the previous ineligibility of artists to access support funds.[16] In Italy, **a decree introduced € 55 billion of economic support measures** including financial compensation to freelancers, self-employed workers, seasonal workers and domestic workers.

EU ACTION TO SUPPORT TOURISM

Ahead of the summer holiday season, on 13 May the European Commission presented a set of measures to boost the tourism industry, including:

- **Providing liquidity for tourism businesses, in particular small businesses, through the Coronavirus Response Investment Initiative, under shared management with Member States. The Commission also provides financial support through the European Investment Fund.**
- **Financial relief from the European Commission's SURE programme, helping Member States cover the costs of national reduced-hours work schemes and other measures allowing companies to safeguard jobs.**
- **Promoting sustainable tourism and communication campaigns featuring Europe as a safe tourist destination.**

COVID-19 OUTBREAKS IN MEAT FACTORIES

Germany, the Netherlands and Ireland reported several outbreaks of COVID-19 in meat factories, where working conditions increase the infection risk.[17] The **Irish Health Service Executive issued specific guidelines** for infection prevention and control for meat factories, while the **German government announced measures** to improve the situation, including:

- from 1 January 2021 butchering and processing of meat is to be performed only by company employees; contract and temporary workers are not permitted to do so;
- doubling of fines and additional steps to ensure compliance with occupational health and safety, infection prevention and health protection standards;
- assessing how to enforce minimum standards in workers' accommodation;
- informing migrant workers of rights and regulations in their own language.

To help to help employers and workers to stay safe and healthy during the pandemic, the European Union information agency for occupational safety and health published sector-specific guidance related to COVID-19, including for the food sector, on its **OSHwiki page**.

DISRUPTIONS TO THE WORK OF EUROPEAN COURTS

Like national courts, the European Courts also resorted to exceptional measures during the pandemic.

From 16 March 2020, the European Court of Human Rights (ECtHR) extended time limits in pending procedures and the lodging of applications. Otherwise, the Court continued essential activities, including the registration of incoming applications and their allocation to the relevant judicial formations, while respecting the confinement measures in its host State.

The Court of Justice of the European Union (CJEU), after initially suspending all hearings, resumed hearings with effect from 25 May 2020 to 15 July 2020, accompanied by the introduction of hygiene and social distancing protocols.

Further information: European Court of Human Rights,* Extension of exceptional measures at the European Court of Human Rights*, Press Release, 9 April 2020.

European Court of Human Rights,* The functioning of the Court during the period of confinement*, Press Release, 14 April 2020.

Court of Justice of the European Union,* Continuity of the European public administration of justice: the Court of justice of the European Union provides for hearings to resume from 25 may 2020*, Press release No 51/20, 27 April 2020.

2.4 DISRUPTIONS TO THE JUDICIAL SYSTEM

Many EU countries announced a gradual return to 'business as usual' in the judicial system from May 2020, including the return of courtroom hearings. To help avoid new outbreaks of COVID-19, most Member States will apply new health and safety measures as courts resume in-person operations. These typically include physical distancing, wearing masks, frequent handwashing and cleaning of surfaces, ventilation and use of protective screens.

Remote proceedings will continue to play an increased role in the justice systems of some Member States, however. In Poland, for example, all court hearings in civil proceedings will be held remotely during, and for a year after the end of, the state of epidemic.[18] Courts in Hungary **shall, as far as possible, conduct all proceedings electronically**. The Netherlands and Ireland – in the case of the Supreme Court and Court of Appeal – will also continue to hold hearings remotely as much as possible.[19]

Challenges to courts' operations persist

The resumption of physical hearings illustrated the ongoing challenges prompted by the pandemic that could affect the right to access justice. These include a lack of a uniform approach to guidelines, problems in introducing appropriate physical distancing and hygiene measures at court, and barriers to guaranteeing public access to courts:

- The **Italian Criminal Chambers Union issued a letter expressing concern** about the diversity of procedures adopted at local level to deal with the pandemic. They noted that many proceedings remain postponed, even to 2021, at the discretion of judicial authorities.
- The **President of the Portuguese Bar Association criticised** the measures adopted to reduce the risk of COVID-19 transmission in courts, suggesting that conditions in some courtrooms make it difficult to maintain physical distance. **The Union Association of Portuguese Judges echoed these concerns**, highlighting a lack of windows or air conditioning in many courts.

— Public access to courtrooms remains limited in several Member States. In the **Netherlands, only the parties involved and journalists** may enter court buildings; the public is excluded. **Access to courts in France is restricted to those directly involved in the case**, such as witnesses, technicians or interpreters.
— The **Croatian Ombudswoman expressed concern about the consequences of the pandemic**, highlighting the situation of parties who, due to the pandemic, cannot use suspensive remedies such as appeals in a timely manner, or who will miss deadlines for private lawsuits. She also underlined the importance of legal aid during the pandemic, as a precondition for exercising the rights to equal access to justice, fair trial and an effective remedy.

Addressing the case backlog

Several Member States reported substantial backlogs in cases and proceedings prompted by lockdown restrictions. In the Netherlands, **the backlog in criminal cases increased to 55,000**, while the pandemic had reportedly **delayed almost 50,000 court proceedings in Portugal** by early May. The **National Courts Administration in Finland estimated** that it will take at least two years to address the backlog, requiring additional resources.

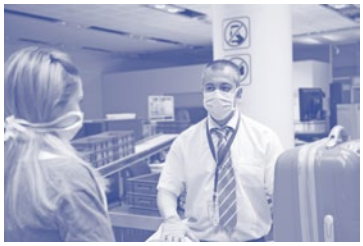
To tackle backlogs, Member States such as Belgium, Cyprus, Luxembourg, Romania and Slovenia scheduled extra hearings or reduced judicial vacations during summer 2020.[20]

PROMISING PRACTICE: FREE LEGAL ADVICE IN LATVIA

The **Legal Aid Administration in Latvia organised free legal counselling** via telephone consultations or online queries on prominent issues during the pandemic, including in the areas of: family law, safety from violence, labour disputes, recovery of compensation and victims' rights. Counselling was available from 10:00 to 16:00 on working days between 18 and 29 May. The provision of these consultations will continue after the end of the emergency.

2.5 TRAVEL RESTRICTIONS AT THE EU EXTERNAL BORDERS AND WITHIN THE EU

On 8 May, the **European Commission invited Member States to extend restrictions** on non-essential travel to the EU until 15 June 2020; many subsequently did so.



With regard to the situation at internal borders, the European Commission also published a Communication '**Towards a phased and coordinated approach for restoring freedom of movement and lifting internal border controls**' on 13 May. This proposed a return to the unrestricted free movement of persons in the EU and the Schengen area as the health situation improves. While several countries eased their unilateral travel restrictions in May, the situation remained extremely complex, with checks, restrictions and conditions of entry – depending on who wants to travel and for what purpose – differing widely and changing frequently across the EU. The lawfulness of travel restrictions at internal borders, beyond border controls, under EU law is not addressed in this Bulletin.

Travel restrictions lifted between some Member States

Bulletins #1 and #2 reported that Member States temporarily re-introduced border controls at internal borders, a measure allowed only under exceptional circumstances,[21] at the height of the pandemic. In May, some Member States

"It was really a bit of a chaos at some borders when they first introduced these restrictions and border checks. [...] I think [EU governments] acted a little bit like individuals. When the crisis first came upon us everybody rushed to the supermarket to buy a lot of pasta and toilet paper and went home and locked the doors more or less. And Member States a little bit acted the same."

Commissioner for Home Affairs, Ylva Johansson, ***Interview with Politico****, 2 June 2020*

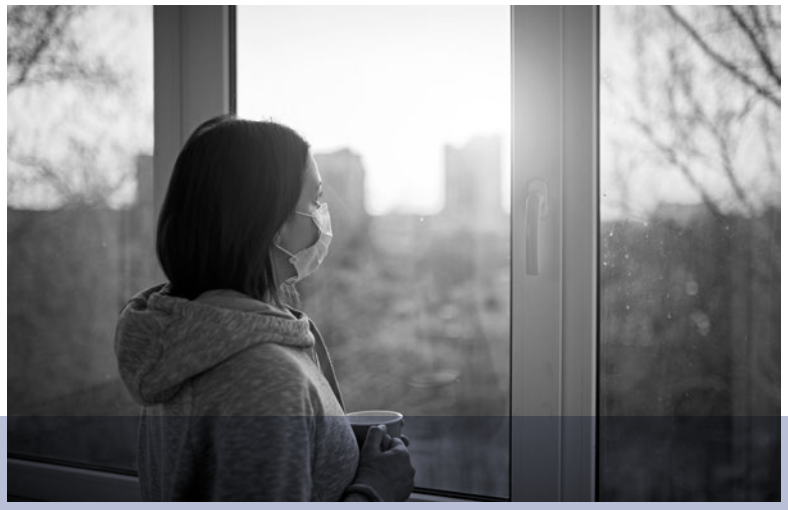
relaxed these controls as COVID-19 infections fell, easing restrictions on free movement within the EU. **Germany adopted a 'flexible and risk-based' approach**, opening borders with neighbouring countries such as Belgium and Denmark for people to visit close family members, for example. **Estonia, Latvia and Lithuania began to allow free movement for their citizens and residents within the three countries**, with no requirement to self-isolate for 14 days, provided that they show no COVID-19 symptoms.

Some countries, including Denmark, Greece and Croatia, also allowed entry for tourists.[22] People who reside in EU or Schengen Area Member States and have booked accommodation in a tourist facility are **exempt from the 14-day quarantine upon arrival in Slovenia**.

Stricter prohibitions on entering and leaving the country remained in place in some countries. In Italy, travel to and from other countries was forbidden, except for urgent work or health reasons, until 2 June 2020. Spain, which also experienced high rates of COVID-19 infections and deaths during the reporting period, did not set a date for the possible reopening of its internal and external borders.

Self-isolation requirements vary significantly

Evidence indicates a wide variety of requirements concerning self-isolation on arrival in EU Member States, which can negatively affect freedom of movement rights inside the EU. Many Member States continued to require most people entering the country to self-isolate for 14 days. This obligation is sometimes waived for some groups, such as cross-border or seasonal workers, diplomats, or citizens and residents of the country itself or certain neighbouring countries.



ASYLUM PROCEDURES

Asylum procedures began to return to normal in some Member States that imposed temporary restrictions on registration and processing of asylum applications (as reported in Bulletins **#1** and **#2**). More information on this issue is available in FRA's **regular reporting on migration**.

Evidence points to reduced numbers of asylum applications, however, reflecting strengthened border controls and travel restrictions – including very limited air travel – that limit individuals' ability to arrive in the EU to seek asylum (see also **Bulletin #2)**. For example, the **number of asylum applications in Sweden decreased by more than half** during April and May 2020 compared with the same periods in 2017–2019. The **Finnish Immigration Service reported that** only a few individuals submitted asylum applications during the COVID-19 pandemic. Similarly, **Luxembourg reported a large drop in the number of asylum applications** since the beginning of the pandemic, with only 10 applications in **April 2020** and 15 in **May 2020** (compared with 170 and 140 in April and May 2019, respectively).

Arrivals typically complete a form indicating where they will self-isolate. **The Irish Council for Civil Liberties raised data protection and privacy concerns** about such 'passenger locator' forms, stating that any mandatory use must be necessary, proportionate and legal. In some cases, failure to self-isolate is sanctioned with fines or possible imprisonment - for example in Bulgaria and Ireland.[23] Police in Hungary and Poland monitor home quarantine through a mobile application.[24]

In other cases, where a traveller is coming from determines the self-isolation requirements. Only **people entering France from certain countries** or with symptoms of COVID-19 must self-isolate. Similarly, the **quarantine requirement in Estonia** depends on the COVID-19 situation in the country a person arrives from.

Some countries require a negative COVID-19 test as a condition for entry or to be exempt from self-isolation requirements. Cross-border commuters and seasonal workers have to present a **negative COVID-19 test not older than 96 hours when entering Slovakia**. Anyone **travelling to Cyprus must take a COVID-19 test in the source country** no more than 72 hours before travel. Similarly, as of 27 May, groups including **EU citizens or residents entering Czechia** for economic activity, to attend university or to visit (for up to 72 hours) family members do not have to self-isolate if they present a recent negative COVID-19 test.

Some countries – for example **Croatia since 9 May** – do not oblige arrivals to self-isolate.

3

IMPACT ON PARTICULAR GROUPS

Unfortunately, the pandemic has also given rise to a new wave of hate speech and discrimination. 'COVID-19 related hate speech' encompasses a broad range of disparaging expressions against certain individuals and groups that has emerged or been exacerbated as a result of the new coronavirus disease outbreak – from scapegoating, stereotyping, stigmatization and the use of derogatory, misogynistic, racist, xenophobic, Islamophobic or antisemitic language. Closely linked to this is the dissemination of 'disinformation' or 'misinformation' related to COVID-19.

United Nations guidance note on addressing and countering COVID-19 related hate speech, *11 May 2020.*

As reported in Bulletins **#1** and **#2**, COVID-19 and the measures to contain it affect people's fundamental rights in different ways, often exacerbating existing inequalities. FRA asked the FRANET researchers in each Member State to select three social groups particularly affected by the pandemic in their country (reflecting differences between countries). This section summarises the main developments for the groups that featured most prominently in the country studies, namely:

- people with disabilities;
- detainees;
- homeless people;
- victims of domestic violence.

Several Member States noted ongoing concerns about the detention of asylum seekers during the pandemic and the heightened risk of infections spreading in detention facilities. This issue – among others concerning COVID-19 among migrants and refugees at the EU's external borders - is covered in FRA's **regular reporting on migration**. FRA is collecting in-depth information on the impact of COVID-19 on Roma and Travellers, and is planning to publish its findings in a separate publication in the coming months.

3.1 PERSONS WITH DISABILITIES

Evidence indicates that the COVID-19 pandemic continues to affect the provision of essential services such as education, healthcare, community based support and transport for persons with disabilities. In addition, the voice of people with disabilities remains absent from many crisis response measures.

IMPACT OF THE PANDEMIC ON RACIALISED COMMUNITIES, ON LGBTI PEOPLE AND ON PERSONS WITH DISABILITIES

The European Network Against Racism published a number of **resources** highlighting the impact of COVID-19 on racialised communities across the EU. This includes an **interactive map,** which shows examples of racist incidents in key areas including healthcare, housing, employment, racist violence and speech, as well as racial profiling and police brutality.

ILGA-Europe collated **information** from its network of organisations working to promote LGBTI rights in the EU on the impact of COVID-19 on LGBTI communities. This rapid assessment tool provides information on the impact of COVID-19 in different areas, such as health, hate speech, domestic violence or access to justice.

The European Disability Forum published a number of **resources** – also in accessible formats – relating to the impact on COVID-19 on persons with disabilities on areas including transport, the situation in prisons. It also prepared a set of frequently asked questions on COVID-19 and disability organisations.

Persons with disabilities in institutional settings

Concerns about the impact of the pandemic on residential care facilities for people with disabilities remain. A **Mortality Census of Long Term Residential Care Facilities in Ireland**, published in May, indicated that 16 out of 73 deaths in Irish residential facilities for persons with disabilities related to COVID-19. The Romanian **National Authority for the Rights of Persons with Disabilities, Children and Adoptions** reported that 10 % of the country's total COVID-19 related deaths were of people with disabilities living in institutions.

A number of Member States gradually lifted bans on visits to institutional settings for children and adults with disabilities. Some restrictions remain, however, such as only allowing visits in outdoor areas in Belgium, Denmark and Finland.[25]

Impact on children with disabilities

Evidence mounted of particular difficulties faced by children with disabilities in accessing education and support. Some countries put in place special provisions for children with disabilities as they reopened schools. The **Cypriot Ministry of Education announced that a special committee would assess on a case-by-case basis** whether to allow students with special needs or requiring assistants to enter schools. This prompted protests by parents of children with disabilities, while the Commissioner for Administration and academics highlighted that it risked being discriminatory and unlawful.[26]

A number of organisations also highlighted the barriers that children with disabilities face in accessing distance learning. **Several organisations expressed concerns** about the impact on students with disabilities of **education guidelines issued by the Flemish Government in Belgium**, including the financial burden on parents. Reflecting fears about differences in the support offered to students with disabilities in different schools, the country's Interfederal Agency for Equal Opportunities, Steunpunt voor Inclusie and the Department of Orthopedagogics of Ghent University published **guidelines on how to better take into account children with special needs in the COVID-19 education policy.**

In Malta, the Commissioner for the Rights of Persons with Disability **raised concerns about the provision of physical, occupational, speech and language therapy services for children with disabilities**, which had stopped in March.

Provision of services

Bulletin #2 highlighted the decreasing provision of in-home and community-based services for persons with disabilities. National data for May indicate that these difficulties continue, although provision of services resumed in some Member States under certain conditions. **Social and healthcare activities – including those provided by institutions –resumed in Italy**, based on guidelines adopted by each region. Social facilities for persons with disabilities in Portugal reopened as of 18 May. **The president of the Confederation of Disabled People's Organisations** argued, however, that most institutions need time to adapt and that users with cognitive impairments face difficulties complying with distance and hygiene rules.

Challenges remain: the Slovak Ombuds reported the cancellation of personal assistance, social and health services usually provided to people with disabilities.[27] The Estonian **Association of Persons with Reduced Mobility noted that** many people with disabilities were deprived of rehabilitation services during the emergency. In Austria, the Independent Monitoring Committee, the Council of People with Disabilities and the NGO *Self-Determination Austria* **issued a press release voicing concerns about the availability of psychosocial**

PROMISING PRACTICE - COVID-19 CRISIS HOTLINE FOR PERSONS WITH DISABILITIES

The Hungarian National Assembly of Associations for Persons with Disabilities launched a COVID-19 crisis hotline to help persons with disabilities who lack assistance during the pandemic. It provides social care and legal advice on work days between 8am and 4pm.

ParkinsonNet Luxembourg created a helpline during the crisis for people living with Parkinson's disease and their family members.

services for women with disabilities who often face challenges including caring responsibilities, precarious work and isolation.

Lack of involvement of persons with disabilities

Disabled persons organisations in a number of Member States called for the stronger involvement of people with disabilities in decisions about responses to the pandemic. The Maltese **Commissioner for the Rights of Persons with Disability expressed regret that they were not consulted** about measures such as the reopening of restaurants – resulting in difficulties for wheelchair users as restaurants put more chairs on pavements – or on the guidelines for face masks, which disregard their impact for example on children with sensory difficulties.

In contrast, civil society organisations contributed to the **Dutch government's strategy for enhancing the participation of persons with disabilities** during the pandemic. Following consultations with the Ombuds body for persons with disabilities and other organisations, the **Austrian government announced** that persons with disabilities who are unable to wear face masks are exempt from the obligation.

The European Disability Forum published **recommendations on exit measures for transport services in light of COVID-19** to help European, national and local authorities and representatives of transport operators consider the needs of all passengers when developing and implementing COVID-19 exit strategies related to transport. In Belgium, the association for persons with visual impairments ***VeBes* published an open letter** asking the Flemish transport company 'De Lijn' to help persons with visual impairments to use public transportation safely, as social distancing measures and the requirement to board through the front door present difficulties.

3.2 DETAINEES

States should urgently review existing cases of deprivation of liberty in all detention settings to determine whether the detention is still justified as necessary and proportionate in the prevailing context of the COVID-19 pandemic. In doing so, States should consider all alternative measures to custody.

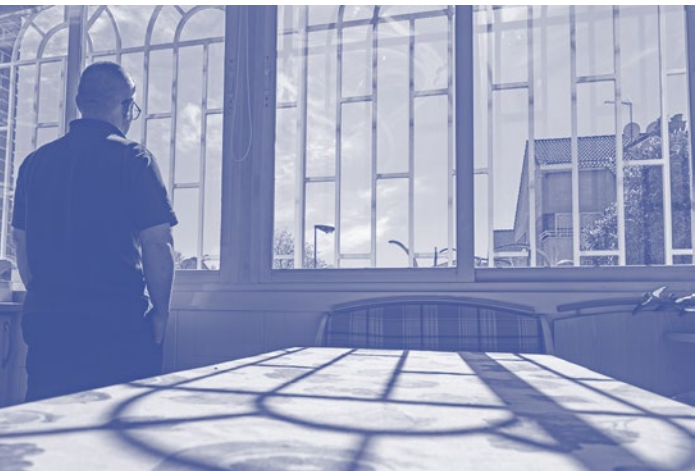
Working Group on Arbitrary Detention, **Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies**, *8 May 2020.*

Prison authorities in Denmark, Finland, Greece, Latvia and Spain announced that activities for detainees such as educational and cultural events, work and sports would gradually resume in May and June.[28] In addition, many EU Member States lifted bans on visits to detainees, with some restrictions. According to data compiled by the **European Organisation of Prison and Correctional ServicesEuropean Organisation of Prisons and Correctional Services,** these included:

- limits to the number of visitors and visits detainees can receive
- limited duration of visits

Most countries prohibited physical contact during visits. Visits take place with a protective screen or with physical distance between the visitor and detainee. Most prison services give priority to direct family members of the prisoner (e.g. in Finland and Romania). Prisoners with children are granted more visits in some cases (e.g. in Denmark). Some countries (e.g. Croatia and Slovenia) organised visits to take place outdoors to reduce the risk of infection.

Some prisons lack the necessary protective equipment to allow visits to take place safely, however, prompting concerns in several Member States. In Belgium,



the trade union **CGSP** presented a strike notice for all prisons claiming that the safety of inmates, visitors and staff was not guaranteed, and started **negotiations** with the Federal Ministry of Justice. Similarly, the **National Union of the Prison Guard Corps** in Portugal criticised the Directorate for Health's **guidelines** on visits, arguing that prisons cannot comply with them. The French **National Consultative Commission on Human Rights** noted the lack of masks for detainees and called on authorities to distribute hygiene kits and increase tests.

The continuation, in some countries, of early release measures or the postponement of the start of certain sentences helped to reduce prison populations and ease tensions in prisons. According to the **French Minister of Justice**, the average prison occupancy rate fell from 119 % on 16 March to 98 % on 14 May. The **Irish Prison Service also reported a significant reduction**, with bed capacity falling from 97 % in early March to 85 % by late May.

Some countries announced the end of such temporary measures, however. The **Slovenian government adopted a decision** on 21 May terminating interim measures such as temporarily suspended sentences, applicable from 1 June. Following controversy over the release into home custody of some prisoners serving sentences for mafia-related offences,[29] **a Law-Decree in Italy requested the Supervisory Court** that adopts home-custody decrees to periodically reassess if the reasons linked to preventing COVID-19 in prison facilities are still valid in cases concerning certain mafia or terrorism related crimes. Another **Law-Decree requested judicial authorities** to obtain the opinion of the relevant Public Prosecutor before deciding on home-custody and other alternative measures.

Some reports emerged in Ireland and Portugal of a minority of prisoners on temporary or early release being imprisoned again in May for reoffending.[30]

PROMISING PRACTICE: PRISONER-TO-PRISONER SUPPORT

The **Irish Red Cross has a long-standing programme within Irish prisons**, training prisoners to become volunteers with first aid, advocacy and other skills. During the COVID-19 pandemic, **these volunteers have helped other prisoners to understand the importance of difficult measures** such as cancelling visits and reducing out-of-cell time. They also helped to negotiate minor concessions to alleviate tensions, such as access to streaming services in cells.

3.3 HOMELESS PEOPLE

Homeless people continued to struggle to access shelters and protection from COVID-19 in many EU Member States. Compounding the problem, job dismissals, evictions, closure of boarding houses and the arrival of people who had lost their jobs and homes abroad led to increased numbers of homeless people at a time when many shelters were closing or restricting access to comply with physical distancing rules. The **Italian Federation of Organisations for Homeless People reported that** the number and types of people in need of assistance dramatically increased during the emergency period. In Portugal, **Caritas Setúbal estimated a 150 % increase in the number of homeless people** during the crisis. The Slovak association *Vagus* also **reported an unprecedented increase** in requests for assistance.

Increased shelter and access to healthcare for homeless people

Some national and local authorities, and civil society organisations tackled these challenges by creating additional shelter and quarantine possibilities, and by reaching out to homeless people to provide food and protection kits. In Brussels, **Belgium, 700 homeless people were housed in 11 hotels**, while the **mayor of Budapest opened a wing of the City Hall** as a homeless shelter and the city councils of Barcelona and Madrid in Spain set up new shelters on exhibition sites.[31] The **government of Luxembourg prolonged the winter protection scheme**, which usually ends on 31 March, until 30 June and the French **government created 21,000 new shelter places and 97 sites** for homeless people who had tested positive for COVID-19 but did not require hospitalisation.

In several cases, the shelters provide additional services. **Lisbon City Council in Portugal set up four temporary accommodation centres** that also provide daily health screening services, meals and clothes banks. In addition, street teams respond to alerts and make referrals to temporary accommodation spaces. Similarly, in Finland, **service centres took their services to the street**, offering meals and guidance.

PROMISING PRACTICE: ACCESS TO TESTS AND HEALTHCARE FOR HOMELESS PEOPLE

A **COVID-19 Community Assessment Hub** opened in Dublin, Ireland, to test, monitor and treat vulnerable groups including people who are homeless, living in extreme poverty or undocumented migrants. Berlin opened the first German **quarantine station for homeless people**, while the organisation **Doctors without borders runs eight mobile teams and a dedicated COVID-19 centre** in Brussels, Brussels.

Risks to homeless people persist

However, evidence points to a continued need for Member States to be vigilant in addressing the risk that COVID-19 poses to homeless people. In Germany, for example, the **Federal association for assistance to homeless people published the first results of a survey** on the situation of homeless people, based on replies received from 91 facilities and services for homeless people in March and April. The results illustrate concerns about: lack of information from public administration; emergency assistance to homeless people not being considered 'system-relevant'; scarcity of protection equipment; and shortages in the supply of food and medicine. They expected that the situation will worsen as the crisis continues.

The **NGO Focus Ireland warned that** any sudden lifting of temporary prevention measures, such as the rent freeze and ban on evictions, could result in a new surge of homelessness as the country reopens, and called for a clear Roadmap for Housing and Homelessness. On a positive note, they welcomed the third consecutive monthly drop in homelessness, attributing it to effective collaboration between the state, local authorities and other NGOs.

3.4 VICTIMS OF DOMESTIC VIOLENCE

Bulletin #1 highlighted the additional risk of domestic violence during the pandemic. Evidence from May suggests this remains a significant challenge. Member States including Belgium, France, Latvia and Greece reported an increase in domestic violence during the lockdown,[32] with incidents tripling within one month in Greece, for example. The French **platform dedicated to domestic violence** received five times more reports during the eight weeks of confinement than in a normal period.

Official statistics from other countries, such as Croatia and Malta,[33] did not reveal a substantial increase in the frequency of domestic violence. Nevertheless, authorities, civil society organisations and victims' support services warned that this might reflect that victims in close proximity to an abuser are less likely to report violence. Latvian courts, which saw applications for temporary protection orders between 13 March and 7 May 2020 fall by a quarter compared to the same period in 2019, pointed to difficulties victims face in reporting violence during confinement.[34] To overcome these challenges, the **Vidzeme District Court of Riga released a video** showing how to submit an application for a temporary protection order.

Many Member States took steps to address rising levels of domestic violence, such as 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.[35]

The Croatian Ministry of the Interior issued a public warning about increased risks of domestic and online violence against children during the coronavirus pandemic, asking citizens to **report such violence via their online application**. The ministry also published a **statement containing instructions** for recognising domestic violence, self-protection measures for victims and obligations of professionals in contact with victims, and launched the campaign **"Behind closed doors"** to raise public awareness of domestic violence during the pandemic. In France and Belgium, victims can call for help in pharmacies, where the police or relevant hotline are immediately alerted.[36] The French government also **financed 'pop-up counselling centres' in grocery stores**.

4

FOCUS: IMPACT ON FUNDAMENTAL RIGHTS OF OLDER PEOPLE

We reaffirm the intrinsic value of human life at every age, strongly deplore all forms of ageism, and call on the Union and the Members States to protect human rights of all persons, without discrimination on the ground of age.

Letter by 36 MEPs to the Commission and Council, 28 May 2020

While infection and death rates vary widely across EU Member States, a clear common trend emerges: a much higher death rate among older persons, although they are not more likely to contract the virus than other age groups. For example, as of late May, Hungary, Lithuania and the Netherlands each report that over 90 % of Coronavirus-related deaths are of people over 60; in France the same applies to people over 65.[37] This situation forcefully underlines the profound threats to older persons' rights to life and to health presented by the COVID-19 pandemic. There is no agreement across Member States concerning the age at which people become 'older persons', but in the COVID-19 context it usually refers to people no younger than 60.

The **UN Secretary General highlighted** three key areas where COVID-19 and the measures put in place to contain it, including measures specifically targeting older persons, affect the lives of older persons: 1) life and death; 2) vulnerability and neglect, and 3) social and economic wellbeing. Governments across the EU face grave tests in each of these areas, with widespread reports of issues around access to treatment and testing, the situation in institutional settings, access to services and the impact of isolation. This affects older people's right to lead a life in dignity and independence, as enshrined in Article 25 of the Charter, alongside many other fundamental rights.

Age Platform Europe – a network of organisations working for older people – published a number of resources relating to the impact of COVID-19 on older people, as well guidance for individuals and healthcare professionals.

Taking the necessary steps to uphold the right to life and health of older persons while mitigating the impact of restrictive measures poses a significant challenge. As **the UN Secretary General underlined**, all initiatives must be underpinned by the principle of non-discrimination. Human rights institutions, equality bodies and civil society organisations in countries including Belgium and Lithuania, raised concern that some measures disproportionately restrict older people's rights, amounting to discrimination on the grounds of age.[38]

This section looks at how the COVID-19 pandemic has particularly affected the rights of older persons. It looks first at the situation in institutional settings, which have experienced particularly high rates of infection and death from the virus. It then looks at some of the particular challenges facing older persons, namely: access to COVID-19 tests, treatment in hospitals, restrictive measures specifically targeting older people, isolation and access to non-COVID-19 related health services.

These are just some of the risks to fundamental rights of older people presented by the pandemic. International and European institutions, national human rights bodies and civil society organisations highlight many other concerns, including:[39] increased risk of neglect, violence and financial exploitation; stereotyping of, prejudice or discrimination against individuals or groups based on their age; stigmatisation and hate speech; threats to social and economic well-being; and the situation of specific groups of older people. These important issues, which are beyond the scope of this bulletin, may be addressed in future FRA work in this area.

INCLUDING OLDER PEOPLE IN DECISIONS THAT AFFECT THEIR LIVES

A wide body of evidence underlines the importance for effective, fundamental rights-compliant policymaking of involving the people concerned in decisions made about their lives. Actively engaging older persons in designing, implementing and monitoring measures during the COVID-19 pandemic and its aftermath helps to ensure that policies meet their needs and retain their support, and increases understanding of restrictive measures.

Evidence collected by FRA identified only isolated examples of consultation with representative organisations of older people on COVID-19 related measures. National health authorities in Denmark and Finland consulted national organisations of older people before updating their guidelines for care homes and relaxing visitation restrictions. The Slovenian organisation of pensioners participated in consultations on a proposed one-off solidarity payment to pensioners and engaged with local communities to provide information to volunteers about the needs of older people.

In contrast, civil society organisations and academics criticised the lack of consultation in Ireland and the Netherlands.*

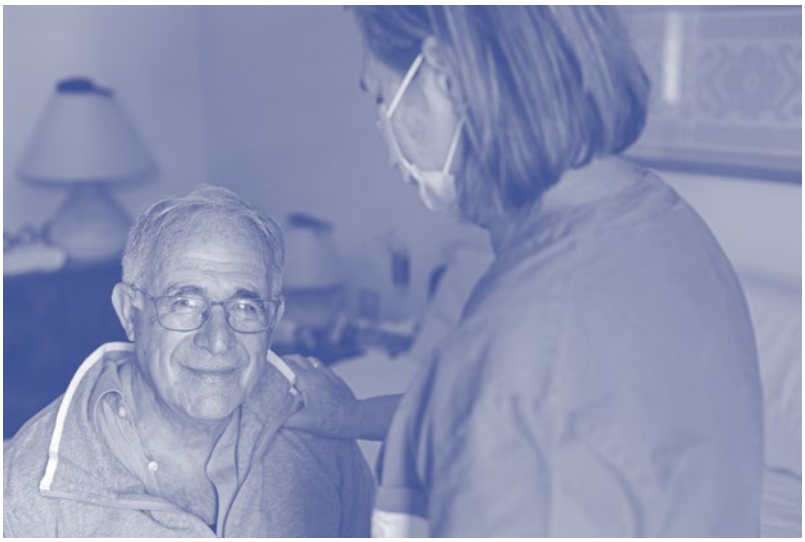
** Ireland, Age Action, Call for Voices of Older People to be Heard, 1 May 2020; Netherlands, Leyden Academy on Vitality and Ageing, Tineke Abma: involve older people in the corona measures, 15 May 2020.*

The tragedy that Europe has experienced over the past weeks in its long-term care facilities is a stark reminder that member states ignore international human rights standards and expertise, and the recommendations of their own national human rights structures, at the peril of the lives of their own citizens. The absolute priority right now must be to make sure that this experience is never again repeated over the course of the COVID-19 pandemic. But this should not detract from the urgency of the social care reforms that all European countries must undertake without fail to eliminate the root causes of this tragedy in the long run, and transition to long-term care systems which put persons' needs and dignity at their heart."

Council of Europe Commissioner for Human Rights, **Statement***, 20 May 2020.*

4.1 INSTITUTIONAL SETTINGS GIVE PARTICULAR CAUSE FOR CONCERN

The situation in residential care settings gives particular cause for concern amid growing evidence of alarmingly high infection and mortality rates in some Member States. This likely in part reflects the difficulty of implementing physical distancing and hygiene measures in these settings, where people often live in close proximity. In addition, physical distancing requirements put them at significant risk of isolation, with consequences for both their physical and mental health. To ensure the safety of older people in long-term care facilities, in May, the **WHO** and **ECDC** published specific quidelines on managing and monitoring COVID-19 in long-term care (LTC) facilities.



Data from several Member States underscored the disproportionate level of COVID-19 infections and deaths in institutional settings. Almost half of the 7,000 Establishments for Dependent Senior Citizens in France were affected by the virus, and a **report by the National Public Health Agency shows that** 3,558 older people died with COVID-19 in hospitals and 10,248 in institutional settings between 1 March-25 May. **Radio Televisión Española in Spain reported** on 31 May 19,218 deaths caused by COVID-19 in 5,457 Spanish nursing homes; this would account for 71 % of the entire official death total reported by the Ministry of Health. While Croatia did not report official statistics on mortality rates in care homes, **media** reported on 6 May that residents of care homes represented 40% of all COVID-19 related deaths (34 of 83).

Some reports of differences between publically and privately run care homes emerged. Of the **167 institutions affected by COVID-19 deaths in Ireland**, 125 were privately run or operated by voluntary groups. The head of the **Irish Health Service Executive** indicated that this suggested "obvious gaps in clarity and responsibility" in the governance and oversight of the private nursing home sector. However, **correspondence released by the Irish Department of Health** indicated that private nursing homes repeatedly requested guidance, assistance and meetings with senior officials in March.

4.1.1 Gradual easing of restrictive measures

As reported in Bulletins **#1** and **#2**, all Member States – with **the exception of Greece** – prohibited visitors entering residential care homes during the first phase of the pandemic. This substantially limited social contacts between older people in institutional settings and their families and social networks, potentially increasing loneliness and affecting well-being.

Some Member States started to ease some of the most restrictive measures in May with the publication of updated rules and guidelines concerning nursing homes. Almost half lifted visiting bans and allowed residents to receive family members and friends. Various precautionary conditions applied, depending on the epidemiological situation. A **protocol in the Netherlands stipulated only one visitor per resident**, and that visits must be scheduled and all visitors checked for signs of infection, for example. Other Member States took a similar approach.

Strict bans on visits continued throughout May in Bulgaria, Estonia, Finland, Hungary, Ireland, Lithuania, Slovakia and Sweden.[40] In Slovakia, a **regulation** approved on 7 May stipulated that social contact with family members or other close persons cannot be secured during the pandemic, for example. Romania **maintained the measures adopted during the period of the state of emergency** imposing restrictions on residents leaving care homes, except to stay with relatives at home.

New guidelines in several Member States relaxed restrictions on activities in nursing homes. Updated guidelines in Flanders, **Wallonia** and **Brussels** in Belgium, for example, included recommendations to organise physical exercise and other outside activities, as well as social activities. They also permitted services such as hairdressers to resume, provided precautionary measures are taken. Croatia **allowed walks in nature**, under certain conditions, as well as delivery of hygiene items, groceries and other supplies by family members and friends. While restrictions on leaving nursing homes in France remained, **instructions adopted on 10th May allowed residential settings to organise** collective activities, entertainment activities, or meals in small groups, depending on the specific situation in the institution and surrounding area. Admissions of new residents were authorised under certain conditions. In **Luxembourg**, which never forbade residents from leaving institutional settings, authorities **issued recommendations on the access of health and personal care professionals** in accommodation structures for older people and people with disabilities.

Member States also started to reflect on the lessons learned from the handling of the pandemic. Spain's **de-escalation plan** recognises that "the experience of the ongoing health crisis has shown the limitations of the current system of residential care homes, which must be analysed for its improvement".[41]

CHALLENGING TO COMPARE DATA ACROSS COUNTRIES

Member States defined and recorded COVID-19 related deaths in different ways. Belgium included both confirmed and suspected cases, while in Sweden persons who had died from suspected COVID-19, but who had not tested positive, were not included in the official statistics. Ireland broke down mortality data by 'lab confirmed deaths' and 'probable deaths'.

Given the difficulties this poses to comparing the situation across countries, the WHO and ECDC recommended monitoring 'excess mortality' – that is mortality exceeding the level would normally expected during a given period. Analysis by the Financial Times showed excess mortality levels over 40 % in Belgium, Italy, the Netherlands and Spain.

For more information: WHO,* How comparable is covid-19 mortality across countries?*; Comas-Herrera A., Zalakaín J., Litwin C., Hsu AT., Lane N. and Fernández J-L. (2020),* Mortality associated with COVID19 outbreaks in care homes: early international evidence, *International Long-Term Care Policy Network, CPEC-LSE, 21 May 2020.

4.1.2 Data gaps leave true situation unknown

Understanding the true situation in institutional settings is hampered by limited data on the number of infections and deaths of people residing in institutional settings, and on the number and type of institutions affected. Evidence collected by FRA suggests that while, in a majority of EU Member States, overall COVID-19 infection figures include cases reported in institutional settings, a breakdown showing how many deaths occurred in institutional settings is not available or is provided only occasionally. For example, Portugal and Slovenia presented such data at dedicated press conferences in May.[42] In other Member States, media reports were the only source of data on cases in institutional settings.

Furthermore, national data does not always distinguish clearly between different types of institutional setting. For example, in Germany **figures referring to institutional care** included residential care facilities for older people, facilities for persons with disabilities, homeless shelters, prisons and communal settings for refugees and asylum seekers. In Poland, in contrast, an **NGO raised concerns that such** data only covers nursing homes, and omits data from other care and treatment facilities.

Issues also emerged concerning the completeness of data. Finnish **media** reported in April that national data did not include deaths in care homes in the Helsinki and Uusimaa districts, as municipalities, who monitor the situation in care homes, had not submitted the data to the hospital district. This prompted the Finnish Institute for Health and Welfare to issue **specific instructions** requesting municipalities to report all deaths associated with COVID-19 – in all settings – to the hospital district on a daily basis.

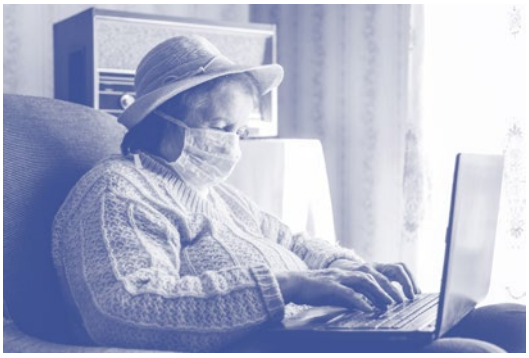
This points to a need for more and better data to enable states and health authorities to understand and assess the impact of COVID-19 on people and settings particularly at risk. Such data would support evidence-based decision making on the allocation of resources such as tests, protective equipment and access to intensive care, which significantly affect fundamental rights (see **Section 4.2.1**).

4.2 PARTICULAR CHALLENGES FACING OLDER PEOPLE

This section looks at five specific challenges facing older persons during the pandemic, and the actions Member States took to mitigate any adverse impact that measures to combat COVID-19 had on their rights and lives in these areas:

- systematic testing for COVID-19
- hospital triage
- specific restrictive measures affecting older people
- social isolation
- access to wider healthcare

By the end of May, most of these challenges had evolved and some became less problematic due to the drop in the infection rate and the gradual reopening of society and the economy. Others, however, are likely to persist as physical distancing measures remain in place.



Initial studies captured how some measures impacted negatively on the well-being of older persons. **France, the platform 'Ergocall' published a survey**In **France, the platform 'Ergocall' published a survey** on 6 May of 2,000 people over the age of 65 living alone. The findings indicate that 41 % did not receive a visit for the last two months and 56 % did not have help from home professionals; 55 % reported feelings of anxiety. A **survey in Germany of over 1,000 relatives of residents in institutions revealed worrying signs** of the impact of limited visits on the well-being of residents. Around 65 % noticed a decline in their relatives' cognitive skills, around 50 % saw major changes in weight, 70 % found a deterioration in their general condition and 80 % complained about the loss of their relatives' zest for life.

4.2.1 Using testing to protect the health and life of older people in institutions

Systematic testing for COVID-19 infections is essential to prevent and contain outbreaks of the virus, according to the WHO. Human rights bodies and NGOs in some EU Member States, including **Romania** and **Poland,** called on states to establish regular testing and to prioritise staff and residents of care homes. **Bulletin #2** reported on states' efforts to test staff and residents of institutions. Some Member States, such as Ireland and Luxembourg, prioritised targeted testing from the onset of the pandemic, while others tested on an ad-hoc basis, when a case was detected.

As evidence of the seriousness of the situation in institutional settings mounted, mass testing of staff and residents of institutional care settings was either underway or planned in a third of EU Member States as of 31 May. For example, the **Portuguese Minister of Internal Affairs announced** on 19 May that around 83,000 tests for COVID-19 had been carried out in care homes for older people. Similarly, **Sweden laid out a national strategy** introducing systematic testing; the **Public Health Agency urged priority testing** of older persons in care facilities. A **draft regulation issued by the German Federal Ministry of Health** at the end of May recommended that more asymptomatic people should be tested in these facilities, with the cost covered by health insurance. In countries without nationally coordinated testing efforts, evidence collected by FRA highlighted regional coordination, in **Denmark**, **Germany** and **Italy**, or local efforts in **Budapest**, **Krakow** and **Madrid**.

Some Member States focused on periodic testing of staff in residential care homes, with varying frequency. Staff in care homes for older people **in Czechia were tested every 14 days**; in **Malta before each 2-3 week shift begins work** and 'periodically' in **Lithuania**. In Bulgaria, the **Minister of Labour and Social Policy outlined plans to carry out over 17,000 tests** in residential settings for children, older people and persons with disabilities, prioritising staff.

In contrast, some Member States only tested staff and residents in care homes when a case was detected, for example in **Denmark**, **Finland** and **France**.

4.2.2 Discrimination concerns in hospital triage

The pandemic put tremendous pressure on national health systems, especially intensive care units. Medical staff faced difficult choices about prioritising treatment in light of scarce resources, putting the right to equal access to healthcare at risk. International and national actors called on health authorities to ensure that all patients are treated equally, that decisions about life-saving therapies and access to care are based on medical needs, and that they are objectively justified and allocated without discrimination.[43]

Most Member States issued national decrees, guidelines, and specific recommendations at the start of the pandemic stressing the importance of equal access to healthcare. The **German Interdisciplinary Association for Intensive Care and Emergency Medicine, for instance, recommended** that the age of a patient is not a criterion for deprioritising treatment, because this would be group-based and potentially discriminatory. The main criteria are the urgency of treatment, and its chances of success. Longer-term survival probability and quality of life do not play a role.

Any prioritisation procedure that disregards the basic principle of equal worth of all human beings, and is based for instance on assumptions about "social value" or "quality of life", or criteria such as age, disability status or the fact that the person is in a long-term care facility, are not in line with ethical and human rights principles, as stressed by many international and national ethics bodies.

Council of Europe Commissioner for Human Rights, **Statement**, *20 May 2020.*

Evidence collected by FRA indicates that the majority of EU Member States did not explicitly stipulate age as a decisive criterion during patient triage. **Bulletin # 1** reported on a few exceptions, where guidance to support doctors to determine which patients to prioritise for life-saving treatment suggested a patient's age as a key criterion.

Reports emerged in some countries of older people in residential care struggling to access healthcare and treatment in hospitals. For example, the **Slovenian Association of Social Institutions started a petition requesting authorities** to provide for the isolation of infected residents outside nursing homes and to ensure access to hospital care for all. The country's Equality Body, **the Advocate of the Principle of Equality, announced** that they would examine possible discrimination against older people accommodated in nursing homes. The **Swedish Health and Social Care Inspectorate initiated an in-depth inspection of residential care homes for older people** after evidence emerged of older persons being denied access to intubation.

4.2.3 Specific restrictive measures affecting older people

At the onset of the pandemic, many Member States put in place specific restrictive measures – or recommendations – targeting older persons. The most common restrictions included: obligations to stay at home for long periods, self-isolate and not meet other people; and special rules concerning shopping and accessing services, leisure time, using public transport, accessing workplaces and participating in communal and voluntary activities. While these measures aimed to lower the risk to the health and life of older people by preventing infection, they raised questions about potential discrimination on the grounds of age.

Bulgaria instituted particularly strict rules on 19 May, making all persons over 60 who tested positive for COVID-19 subject to mandatory hospital isolation and/or treatment, depending on their clinical condition, unless they explicitly refused hospitalisation in writing. After testing negative for COVID-19, these persons should be discharged from hospital and placed under mandatory home isolation for 28 days.

In an effort to mitigate some of the impact of such measures on older persons, all Member States introduced initiatives specifically to meet older persons' basic needs during the lockdown period, as reported in the previous Bulletins. These focused mainly on ensuring access to goods and services, in particular to food and medication, as well as in-home services.

As part of the overall easing of restrictions in May (see **Section 2**), evidence indicates a general loosening of limitations imposed on older people living in the community. Some Member States retained some specific restrictions, however. Hungary lifted restrictions on freedom of movement in May, but retained **measures designating particular time slots**

for people over the age of 65 to visit grocery stores, drugstores or pharmacies. **Phase 3 of Spain's exit strategy**, adopted on 30 May, kept in place **previous rules establishing timeslots** (10.00-12.00 and 19.00-20.00) during which people over 70 can practice individual sports or take walks. Day centres and specialised social services for older people **remained closed in Slovakia in May**, and the prohibition of people over 65 **visiting patients in hospitals continued**.

Finland, **France**, **Greece**, **Ireland, Italy** and **the Netherlands** adopted new recommendations specifically addressing older people in particular in May. These invoked the personal responsibility of each individual and were not coupled with sanctions if not respected. However, many asked older people to continue staying at home and avoid crowded places and social contact. Such restrictions, while not mandatory, could raise concerns about discrimination if they apply for an indefinite period.[44]

4.2.4 Reducing isolation of older people during the pandemic

As reported in the previous bulletins, physical distancing requirements posed particular challenges to older persons, many of whom live alone and may lack the equipment or knowledge to take advantage of digital tools to maintain social contact.

Many Member States introduced particular initiatives to support older people during the lockdown period, including services to help them with shopping, especially for food and medication, or guidance and psychological support. Several initiatives aimed to improve older people's digital skills. For example, higher education students (volunteers) set up a phone support line **'Somos Todos Digitais'** in Portugal to help older people use common online communication platforms. They also taught them how to make video calls with family and friends, create accounts on social networks and share photos.

Hotline services, guidelines and advice to support people with dementia, their caregivers and families were reported in many countries. For example, in Denmark, the Alzheimer's

PROMISING PRACTICE: FUNDING TO ASSIST OLDER PEOPLE

The Romanian **Ministry of Labour and Social Protection launched a project**, funded by the European Social Fund, to provide direct support to 100,000 older people and people with disabilities affected by COVID-19 related measures. It includes direct financial assistance, and psychological and other tailored support to beneficiaries, and will be implemented in partnership with 116 municipalities.

The Swedish **Ministry of Culture presented in May an investment of SEK 100 million** (€9.6 million) to support civil society organisations working with those most vulnerable during the COVID-19 crisis, earmarking 50 million SEK (€4.8 million) for organisations addressing loneliness and isolation of older persons.

Association and the Danish Dementia Research Centre published material for relatives and professionals about COVID-19 and people with dementia.[45]

Importantly, such initiatives often involved cooperation between local authorities, civil society organisations and volunteers. In Vilnius, Lithuania, **municipal staff, scouts, volunteers and NGOs cooperated to provide** food, medication, and emotional support to older people. The **Swedish Association of Local Authorities and Regions, the National Civil Contingencies Agency and many voluntary groups and civil society organisation agreed** to coordinate their activities.

The private sector also played a role. In Slovakia, **several private companies, through an association of social service providers donated** around 550 tablets to residential care homes to enable residents to communicate with friends and relatives.

4.2.5 Access to wider healthcare services

From the onset of the pandemic, EU Member States faced the challenge of ensuring continued access to health services and medical treatment while treating patients with COVID-19 and containing the outbreak. In practice, treating COVID-19 patients was prioritised, with many countries suspending non-urgent medical treatment and surgeries, or limiting physical access to doctors and health services.[46] This raised questions concerning potential discrimination in access to healthcare, as noted in **Bulletin # 1**.

Evidence suggests that such restrictions hit older people particularly hard, as they are more likely to have existing medical conditions requiring medical attention. In addition, organisations in many Member States highlighted the impact of disrupted or curtailed services on the mental and physical wellbeing of people with dementia. The **Alzheimer Society of Finland, for example, underlined that** reducing basic services for people with dementia impairs their ability to conduct their daily lives.

Some Member States implemented measures to address the specific needs of older people with underlying health conditions, in particular those living in care homes, although these were not widespread. In Czechia, **mobile teams** provided special support for older people in care homes. France ensured the continuity of palliative care via access to dedicated hospital teams or with the support of mobile teams/expert teams in palliative care. It also adopted measures to facilitate health professionals visiting **care homes for older people**. Austria provided **financial assistance** to those requiring 24 hour care and their relatives. Some Member States made particular efforts to ensure access to medicines. **Estonia**, **Hungary** and **Ireland** introduced e-prescriptions, for example.

As part of the overall easing of restrictions in May (see **Section 2**), many Member States began to reopen suspended medical services. In **Germany**, hospitals returned to 'business as usual' from the beginning of May, reducing from 50 % to 25 % the proportion of intensive care beds reserved for COVID-19 patients. **Hungary**, **Slovakia** and **Slovenia** lifted restrictions on non-urgent surgeries. Similarly, **Latvia** and **Malta** resumed much of their health services, and **Luxembourg** lifted restrictions on visiting doctors.

PROMISING PRACTICE: USING TELEMEDICINE TO SUPPORT HEALTH NEEDS

With physical trips to get medical advice restricted, France promoted the use of teleconsultations via video or telephone. Health insurance fully covers the cost of such consultations until the end of the state of health emergency.

Teleconsultations were also employed for the care of patients residing in care homes for older people.

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The Coronavirus pandemic continues to interrupt everyday life in the EU in unprecedented ways. But the way it affects our societies is shifting. As governments gradually lift some of the measures put in place to contain the spread of COVID-19, new fundamental rights concerns arise: how to ensure that the rights to life and health are upheld as daily life transitions to a 'new normal'. This Bulletin looks at declarations of states of emergency, or equivalent, and how they came under scrutiny. It considers the impact on fundamental rights in important areas of daily life, and includes a thematic focus on the pandemic's impact on older people.

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