

STATE OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW

A democratic renewal
for Europe



*Report by the Secretary General
of the Council of Europe*

2021

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French edition

*Situation de la démocratie,
des droits de l'homme et de
l'Etat de droit – Un nouveau
démocratique pour l'Europe*

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Marija Pejčinović Burić
Secretary General of the Council of Europe

A PREFACE BY THE SECRETARY GENERAL

Since 2020, the Covid-19 pandemic has presented our continent's governments and societies with a challenge unlike any other since the Council of Europe was founded. Tragically, at the time of writing, millions of people have lost their lives. Many more have lost their jobs and the various lockdown and physical restrictions have required enormous changes to the way that we live, work and communicate.

■ Last year's annual report, *Multilateralism 2020*, outlined the way in which the Council of Europe responded quickly, adjusting its working methods and activities and providing member states with the support they needed to address the public health crisis in a way that is effective and upholds our common standards in human rights, democracy and the rule of law.

■ Almost a year later, that role has evolved. From the various guidance documents issued to national authorities, to the current debates about how to ensure human rights compliant vaccination requirements, certificates and "passes", the Council of Europe has continued to play its unique role.

■ Inevitably, that role and responsibility also feature in this report, but its scope is wider than that.

■ This year's report, *A democratic renewal for Europe*, reverts to the practice of previous years in assessing the state of the key building blocks of which democratic security in Europe is comprised. The last such report was published in 2018 and, in the interim, we have seen trends change, evolve and emerge. These trends are examined in this edition. There are many examples of progress from across our member states, and they should be neither overlooked nor undervalued. Indeed, they can be found throughout the report, and national authorities merit recognition for what they have achieved, sometimes in the face of difficult circumstances.

■ Overall, however, what can be seen is a clear and worrying degree of democratic backsliding.

■ Europe's democratic environment and democratic institutions are in mutually reinforcing decline. Evidence for this is drawn from across the work and activities of the Council of Europe. Often, it pre-dates the emergence of coronavirus. However, there is no doubt that legitimate actions taken by national authorities in response to Covid-19 have compounded this trend. Individuals' rights and liberty have been curtailed in ways that would be unacceptable in normal times. Democracy has been restricted. The danger is that our democratic culture will not fully recover.

■ This is deeply troubling. Democracy is essential if people are to live in freedom, dignity and security. More than that, it is also required as a backstop for maintaining human rights and the rule of law. The three pillars of our work are in fact inseparable. If one weakens, so do the others. The evidence for this is also clear in the pages that follow.

KEY FINDINGS OF THE REPORT

■ Efficient, impartial and independent judiciaries:

- ▶ national courts have received an increasing number of challenges to the actions of the executive power;
- ▶ legislation or intervention has been used more commonly in recent years to facilitate political influence over judicial appointments and the composition and functioning of judicial self-governing bodies;
- ▶ steps have been taken to weaken the security of judges' tenure or empower the executive to discretionally replace court presidents;
- ▶ Covid-19 has resulted in new court procedures, an anticipated backlog in cases, and delays to important judicial appointments.

■ Freedom of expression:

- ▶ is in decline in many member states;
- ▶ there has been an increase in violence against journalists, including murders, often with impunity;
- ▶ during the public health crisis, violence has risen sharply along with censorship and reprisals for questioning government policies;
- ▶ the pandemic has highlighted the need for quality, fact-checked journalism but, by contrast, it has also cut news media revenues and put further strain on a sector that was already struggling to deliver; this, along with the rise of disinformation, has resulted in "news scepticism" whereby public trust is lost;
- ▶ wrongful imprisonment of journalists and smear campaigns against them, sometimes led by politicians or public officials, remains a problem;
- ▶ restrictive legislation and instances of large-scale blocking of websites have also curtailed free speech;
- ▶ online hate speech has increased.

■ Freedom of assembly and freedom of association:

- ▶ the space for civil society is shrinking in an increasing number of states and peaceful public events are often treated as being dangerous;
- ▶ restrictive legislation has been introduced in recent years;
- ▶ legitimate concerns about such things as terrorism and the need for public transparency are now being used to attack selected non-governmental organisations (NGOs) and public events;
- ▶ discrimination, notably on grounds such as political views, religion, ethnic background or sexual orientation, is being inflicted on minorities and vulnerable groups on the pretext of protecting society at large;
- ▶ organisations that protect the rights of migrants and asylum seekers have become a target for new criminal penalties and special financial regulations;
- ▶ government-led campaigns have been observed against selected associations, human rights defenders and civil society leaders;
- ▶ restrictions adopted in light of the coronavirus pandemic have placed further limitations on the capacity to exercise these freedoms.

■ Political institutions:

- ▶ there is a growing disconnect between public expectations and political institutions' record of delivery;
- ▶ poverty and inequality are increasing and public priority issues such as the environment are not being addressed in line with expectations;
- ▶ trust in public authorities and satisfaction with the quality of democracy are at historic lows and attacks on multilateralism have increased;
- ▶ weakness in democratic governance feeds dissatisfaction;
- ▶ electoral turnout continues to fall, while public protest – sometimes leading to violence and unrest – has increased;
- ▶ Covid-19 has resulted in a recentralisation of power that should be temporary, while added demands have been imposed on local government at a time when its revenue has fallen.

■ Integrity of institutions:

- ▶ some anti-corruption authorities remain under-resourced, without adequate infrastructure, lacking in competence and capacity and without sufficient transparency in their decision making;
- ▶ a number of countries still have weak implementation and enforcement of important public integrity and anti-corruption frameworks;
- ▶ the public health crisis has tested the capacity and integrity of public health systems, exposing shortcomings;
- ▶ corruption risks have become apparent with regard to medical procurement and services and there has been a notable level of counterfeiting of medicines and equipment.

■ Human dignity:

- ▶ human trafficking remains a problem and trafficking for the purposes of labour exploitation is rising;
- ▶ violence against women and domestic violence persists and has increased during recent lockdowns; false narratives and misconceptions about the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210, Istanbul Convention) continue and have resulted in the failure of additional states to ratify it, while others have taken steps to leave or indicated an intention to do so;
- ▶ children have been exposed to an increased risk of violence, sexual abuse and exploitation in recent months, both in the home and online, against a backdrop of under-reporting and high levels of impunity;
- ▶ migrant and refugee children remain vulnerable to a range of failings, among them inadequate age assessment, failure to identify unaccompanied children and a lack of child-friendly information, interpretation, legal advice and access to services; procedures for family reunification and addressing statelessness are often inadequate and the move towards detention of migrant children is of concern;
- ▶ on social rights, existing weaknesses in provision have been further exposed by the impact of the Covid-19 pandemic, with healthcare and education suffering, child poverty rising and jobs, incomes and housing coming under particular strain, the full impact of which is not yet known;
- ▶ prison overcrowding remains a problem, though this has eased for the moment as a result of measures taken during the public health crisis; these measures were necessary because preventing the spread of Covid-19 in overcrowded prisons proved very difficult.

■ Anti-discrimination, diversity and inclusion:

- ▶ hate speech and hate crime have increased over recent years with Roma, Travellers, Jews, Muslims, Black people and ethnic minorities among the key targets. There has also been frequent victimisation on the basis of sexual orientation and gender. In the context of Covid-19, Roma and migrants have been stigmatised in particular;
- ▶ hate speech against minority groups and migrants has increasingly featured in election campaigning;
- ▶ the rise of xenophobia and racism also infringes on the democratic space of national minorities and can lead to exclusion from political discourse and decision making; measures taken during the public health crisis have exacerbated these vulnerabilities and have had a disproportionately negative impact on education in minority languages and also led to a widespread lack of communication and information in regional and minority languages;
- ▶ Roma and Travellers still lack access to inclusive, quality education and training and the discrimination that they face increased during the pandemic period, during which many of their communities experienced appalling living conditions.

■ Democratic participation:

- ▶ steps are required to ensure that a culture of democracy is open to all and that innovations, notably artificial intelligence, provide widespread benefits, while upholding our common values;
- ▶ there must be access to education for democracy; citizens – and young people in particular – should be able to acquire competences for democratic culture;
- ▶ public provision of youth spaces, programmes and services is decreasing in some member states; half of youth civil society organisations fear retribution when they exercise freedom of expression and many young people show a high degree of political interest but a low degree of engagement with essential democratic processes, including voting in elections;
- ▶ European culture and heritage face multiple challenges, including environmental degradation, which impacts on human rights and is an increasing public priority.

■ What emerges here is a picture of democracy in distress but, while the problems are real, so too are the solutions. In each of these areas, this report points to existing Council of Europe tools and highlights others that are now being considered or developed for member states' use. Their effective use will be essential to Europe's democratic future.

■ Certainly, the ongoing public health crisis is far from over. Transmission rates remain high in some areas. Consequently, countries and regions continue to cycle in and out of restrictions and the long-term economic impact of all of this is yet to be fully understood. Clearly, there will be a further impact on social rights. Nonetheless, a range of Covid-19 vaccines have now been developed and licensed and mass vaccination programmes are underway. Notwithstanding the threat posed by mutations and unforeseen events, there is good reason to be optimistic that the worst is now behind us, that Europe is working its way back to more normal life.

■ This being the case, Council of Europe member states now face a choice. They can continue to permit or facilitate the democratic backsliding witnessed in recent years, exacerbated by the impact of the coronavirus, and outlined in this report.

■ Alternatively, governments can work together to reverse this trend, reinforce and renew European democracy and create an environment in which human rights and the rule of law flourish. This is democracy in its proper sense. Not restricted to free and fair elections – essential though they are – but embracing an inclusive, democratic culture in which participation is open, diverse and accessible to all. It is a future in which corruption withers and civil society blossoms, and where power is shared, not just among the organs of the state, but fairly among citizens, who live in equality and dignity and to whom the state should answer.

■ This is the right option for the more than 830 million Europeans who live in the Council of Europe's common legal area. Delivering democracy for them will require determined and concerted action.

■ First, Covid-related restrictions and measures must not only be necessary and proportionate, but also limited in duration. This means that, as the public health crisis eases, they should be lifted in as complete and

timely a manner as possible. This point has been made repeatedly in guidance issued by Council of Europe bodies. In the coming months, it must be fully respected.

■ Second, national authorities should return to fundamental democratic principles. They must recommit to the Organisation's acquis, starting with European Convention on Human Rights (ETS No. 5) and the European Social Charter (revised) (ETS No. 163). Between them, these treaties define human rights on our continent and they must be a consistent reality in the life of Europeans.

■ Judgments by the European Court of Human Rights should be respected, and always executed, fully and swiftly, by national authorities. This is required under the legal obligations to which every member state committed itself voluntarily upon joining the Council of Europe.

■ Opinions and advice offered by Council of Europe bodies including, for example, the European Commission for Democracy through Law (Venice Commission), should also be followed. The findings of the Commissioner for Human Rights and other monitoring bodies, in addition to recommendations by the Parliamentary Assembly and the Congress of Local and Regional Authorities of the Council of Europe, are also important. All of these are derived from our common legal standards and designed to reinforce democratic governance and the rule of law. They should be observed.

■ Governments from across Europe must also ensure that they meet the standards outlined in whichever Council of Europe treaties they have ratified, and they should follow the decisions, guidance and recommendations of the Committee of Ministers. This will enhance the quality of governance and therefore also increase public trust in democratic government.

■ They should also look anew at treaties they might now become party to, in particular, at those instruments intended to enhance the quality of democracy.

■ Third, member states should fully embrace the multilateralism embodied by the Council of Europe and which has served as a democratic guarantor for more than seven decades. This will sometimes involve national authorities turning proactively to the Council of Europe for advice when making difficult decisions and recognising that seeking and following that advice is a sign of strength.

■ On a day-to-day basis, it requires governments' full commitment to the Organisation's work and activities, to maintaining and upholding our unique strategic triangle of standard setting, monitoring and co-operation.

■ Fourth, national authorities should embrace democratic culture. They should recognise where their words, activities or legislation have diminished that culture by reducing civic space, by intimidating or preventing individuals, organisations and NGOs from exercising their freedom of speech or assembly, or by in any way excluding people from participating fully in society because of any given personal characteristic.

■ What is required here is not a change of gear, but a change of direction. Every member state should work proactively to engage with civil society and enlarge its operational space. Every individual should feel safe, secure and welcome to contribute to their community and broader society in the certain knowledge that their democracy protects their human and other legal rights. Inclusive societies are confident societies in which diversity benefits the economy and culture alike. It is up to governments to foster these, making use of the support and tools that the Council of Europe has made available.

■ This is an ambitious perspective, but it is certainly within the capacity of member states to deliver. After all, it is not a request to Europe's governments to adopt a new philosophy or found a new institution. Rather, it is an invitation to return to the commitments that they have already made, and to meet these in the spirit that was originally intended. This is a democratic renewal, not a systemic revolution, but it has the potential to transform Europe's outlook in a wholly positive way.

■ It is also in line with my Strategic Framework, published at the end of 2020. In essence, this report provides further evidence of the need for action on the priorities and deliverables laid out in that framework. The Programme and Budget for 2022-2025 should also ensure that this work is prioritised and receives the funding required.

■ All of the Council of Europe's bodies will have a role to play in this, reinforcing our intergovernmental work, and assisting member states in democratic renewal. The Committee of Ministers, the European Court of Human Rights, the Parliamentary Assembly, the Congress of Local and Regional Authorities and the Commissioner for Human Rights are all vital to the Organisation's progress.

■ Over the course of the last year or so, Europeans have experienced great hardships, and they have borne them with strength. The media has reported on many acts of kindness, goodwill and self-sacrifice by individuals whose motivation has been the welfare of others, sometimes at risk to their own health.

■ As we look to emerge from the current pandemic, it is also for Europe's governments to show strength: to look beyond short-term choices and invest in the long-term health of our democratic environment and governance.

■ The Council of Europe can help member states to reverse the slide. Progress, however, requires the political will of member states. Now is the time to show it.



Marija Pejčinović Burić
Secretary General of the Council of Europe

GUIDE TO THE REPORT

The Secretary General's report 2021 covers the period of three years since the publication of the last similar report.

■ It builds on the structure and the methodology of the previous reporting cycle, but reflects the principle described in the Secretary General's 2020 report, *Multilateralism 2020*, that the protection and promotion of the European Convention on Human Rights requires both supervision of the member states' compliance and intergovernmental co-operation to create an environment in which rights and freedoms are secured.

■ Consequently, the report is divided into two parts. The first looks at strengths and weaknesses in the functioning of democratic institutions in Council of Europe member states, while the second part assesses the quality of the democratic environment which is indispensable for the functioning of these institutions.

■ The data, predominantly from Council of Europe sources, monitoring reports, decisions by the European Court of Human Rights (the Court), Parliamentary Assembly reports, reports of the Commissioner for Human Rights and opinions of the Venice Commission and others, are assessed based on measurement criteria. As was the case in earlier reports, many of the findings are country specific, but a deliberate effort has been made to include as many examples of positive practice as possible, alongside identified shortcomings.

■ The report covers many, but not all, areas of the Council of Europe's work. The structure, methodology and space constraints made it necessary to limit the selection of topics, thereby necessarily excluding some areas of activity, without prejudice to their importance or pertinence with regard to the Council of Europe's mandate and priorities.

■ This report includes multiple references to the impact of the Covid-19 pandemic and the measures undertaken to respond to it. A compilation of the initial responses by the Council of Europe was included in the 2020 report and the information is constantly updated on the Council of Europe website.

■ The introduction to each of the eight chapters includes a summary of the main challenges in the respective area examined. As announced in the 2020 report, these findings – which largely reinforce the priorities of the four-year Strategic Framework – will support the preparation of the next biennial Programme and Budget, which will include detailed and specific measures and activities aimed at responding to the challenges identified by the report.

PART I

DEMOCRATIC INSTITUTIONS



CHAPTER 1

EFFICIENT, IMPARTIAL AND INDEPENDENT JUDICIARIES

INTRODUCTION

An efficient, impartial and independent justice system whose decisions are enforced is an essential pillar of the rule of law and a precondition for the enjoyment of all fundamental rights and freedoms. It also constitutes a key element of public trust in justice and in democratic institutions more broadly.

■ Only independent judges can be impartial and efficient. Judicial independence is therefore not a prerogative or privilege in the interest of judges, but is in the interest of the rule of law and of those seeking and expecting justice.¹

■ Over recent decades, the role of the judiciary has evolved. The number of cases brought to the courts and the number of legislative acts the courts must apply have increased dramatically. The technological aspects of trials and proceedings in many jurisdictions have also been greatly expanded, placing additional responsibilities on judges.

■ There have been more challenges to the actions of the executive power in courts and this in turn has led some to question the scope of the role of the judiciary as a check on the executive. There has also been an increasing number of challenges to legislative powers and actions brought before courts. As a result, the judiciary has increasingly had to examine the actions of the other two state powers.²

■ Today, courts rule on issues of political, social and economic importance, and therefore the significance and implications of judicial efficiency, impartiality and independence have increased in parallel with the increasing role of justice systems in our societies.

■ In 2020 in particular, as a result of the measures adopted in the context of the Covid-19 pandemic, derogations, restrictions and suspensions of fundamental rights, including changes to the distribution of functions and powers among different organs of the state, have been put in place across member states. The judiciary has been at the forefront of the efforts to fight against the pandemic, while preserving the fundamental freedoms and protecting the most disadvantaged members of society.

■ The Council of Europe's legal and advisory instruments provide broad and detailed guidance and serve as a basis for member states' laws and policies. The standards comprise formal legal obligations such as the European Convention on Human Rights (the Convention), soft-law instruments such as the pivotal Recommendation CM/Rec(2010)12 of the Committee of Ministers "Judges: independence, efficiency and responsibilities", and political commitments such as those set out in the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (Sofia Action Plan).³ Moreover, the Organisation's competent intergovernmental committees cultivate a genuine dialogue between the member states about their efforts to further improve their justice systems and meet the expectations of the users of these systems.

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1. Consultative Council of European Judges (CCJE) Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, paragraph 10.
 2. CCJE Opinion No. 18 (2015) on the position of the judiciary and its relationship with the other powers of state in a modern democracy, paragraph 1.
 3. Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality, (CM(2016)36 final), available at <https://rm.coe.int/1680700285>.

■ The Council of Europe also supports the improvement of the quality and efficiency of justice by advising member states on an ad hoc basis in connection with their law-making process and when they undertake wider justice reforms. The Council of Europe works with national authorities in such cases to help ensure that reforms pursue aims that respect fundamental rights and the rule of law and are in line with the principles and values of the Organisation. The contribution of all groups of legal professionals to the efficient functioning of national justice systems is also very important.

Challenges

■ Challenges for the judiciaries have persisted in Europe, including those already observed in previous years, such as legislation that allows and even facilitates undue influence or political interference over judicial appointments or the composition and functioning of judicial self-governing bodies. Other steps taken have aimed to weaken the security of judges' tenure or empower the executive authorities to discretionally replace court presidents.⁴ The European Court of Human Rights (the Court) has found violations by the executive power in the process of judicial appointments that undermine the independence and the legitimacy of the domestic court in question.⁵

■ Along with these negative developments, there are also positive examples of member states reversing controversial constitutional or legislative drafts or abolishing earlier adopted laws because of assessments by the Council of Europe's monitoring, advisory or expert bodies. Such examples provide a clear illustration of the added value of the Council of Europe in ensuring and strengthening judicial independence and the rule of law.

■ Challenges to the rule of law and to judicial independence require an even closer exchange of information and best practices between the member states. The judiciary cannot strengthen the rule of law on its own and public authorities have a duty to protect human rights by adopting and implementing laws which protect the right to a fair trial and ensure effective access to justice for all.

■ At national level, the efficiency, impartiality and independence of the judiciary should be guaranteed at the highest possible level and, crucially, they should be translated into practice⁶ and respected by all institutions and actors.

■ "Digital justice" and the allocation of more resources towards the public service of justice are some of the political actions which may improve the efficiency, professionalism and transparency of the justice sector. Human rights should be an integral part of any solutions that link technology and justice.⁷

■ Effective enforcement of judicial decisions is also fundamental for an efficient, impartial and independent judiciary. The member states have an obligation to organise a system of enforcement of judgments that is effective, both in law and in practice.⁸ Failure to execute judicial decisions, or their protracted non-execution, creates a risk for the credibility and stability of the justice system. Enforcement of decisions is especially important when it comes to maintaining public trust in the judicial system.⁹

■ To overcome the pandemic and defend our common democratic values, co-operation and mutual trust between member states of the Council of Europe is essential. The Council of Europe has been active in responding to member states' requests for advice and sharing of experience on how to ensure the delivery of justice and thus ensure that the fundamental principles of the rule of law prevail in a state of public emergency. These efforts should continue.

■ Member states should reinforce institutional independence of the judiciary. Reforms of the court systems such as changes in judicial maps, or to self-governing bodies of the judiciary such as councils for the judiciary, should be undertaken after consultation with the judiciary.

■ The individual independence of judges should be strengthened through application of the Council of Europe standards governing aspects of the nomination and career of judges and their evaluation and

4. Report of the Secretary General of the Council of Europe (2018) on the "State of democracy, human rights and the rule of law – Role of institutions – Threats to institutions".

5. *Guðmundur Andri Ástráðsson v. Iceland*, Grand Chamber judgment, 1 December 2020 (Application No. 26374/18), paragraphs 288-290.

6. "What is critical is not the perfection of principles and, still less, the harmonisation of institutions; it is the putting into full effect of principles already developed.", CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, paragraph 6.

7. Conclusions of the Conference of Ministers of Justice entitled "Independence of justice and the rule of law", organised within the framework of the Greek Chairmanship of the Council of Europe, 9 November 2020.

8. *Jovic v. Montenegro*, judgment of 18 July 2017 (Application No. 46689/12), paragraph 32.

9. CCJE Opinion No. 13 (2010) on the role of judges in the enforcement of judicial decisions, Section VII(A).

disciplinary liability, which must be protected against undue influence from both outside and inside the judiciary. Judicial self-governing bodies, such as councils for the judiciary or equivalent bodies, constituted and empowered in line with the Council of Europe standards, should oversee relevant decisions affecting all aspects of the judicial profession.

Public trust and confidence in the judiciary are important for balance among state powers in a democracy. Member states should ensure that analyses and criticisms by one power of state of another are undertaken in a climate of mutual respect. Unbalanced critical comments about the justice system, individual judges and/or court proceedings or judgments risk disrupting the checks and balances.

JUDICIAL INDEPENDENCE

The judiciary is one of three basic and equal state powers and it has an important role and function in relation to the executive and legislative powers in the system of checks and balances in a modern democratic state. Judicial independence is therefore a prerequisite for the rule of law and a fundamental guarantee of a fair trial.

At the individual level, the independence of judges is a *sine qua non* condition for all elements and aspects of the judicial profession. It is a starting point for their ability to work impartially and efficiently, enjoy public trust, be legitimate and preserve their integrity.

Judicial independence must be guaranteed, at both institutional and individual levels, and it must be implemented in practice.

Relevant standards

Institutional (or organisational) independence must be set out at constitutional level and must be provided for through the existence of bodies for judicial self-government, such as councils for the judiciary or the equivalent. Their introduction has been recommended by the Committee of Ministers,¹⁰ by the Consultative Council of European Judges (CCJE)¹¹ and by the European Commission for Democracy through Law (Venice Commission).¹² Over recent years, many European legal systems have introduced councils for the judiciary.¹³

At least half of the members of such councils must be judges elected by their peers from all levels of the judiciary, with respect for pluralism inside the judiciary.¹⁴ Elections must be free from any kind of external influence. Only an independent council for the judiciary can secure the independence of judges and their ability to render decisions which fulfil the requirements of an independent and impartial tribunal under Article 6 of the Convention.

Councils for the judiciary must have significant competences to effectively safeguard the independence of both the judicial system and of individual judges and to guarantee at the same time the efficiency and quality of justice.¹⁵ The councils must preferably be competent for the selection, appointment and promotion of judges; this should be carried out in absolute independence from the legislature or the executive and in absolute transparency as to the criteria for selection of judges. The councils must also be actively involved in the assessment of the quality of justice and in the implementation of techniques ensuring the efficiency of judges' work. Ethical issues may be a part of their mandates, along with the organisation and supervision of judicial training. The councils may have extended financial competences to negotiate and manage the budget allocated to justice.¹⁶

The judiciary must be provided with sufficient funds to carry out its functions and it should be for the judiciary to decide how these funds are used. Management of courts and their budgets must not be the task

10. Recommendation CM/Rec(2010)12 of the Committee of Ministers "Judges: independence, efficiency and responsibilities", paragraphs 26-29.

11. CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, paragraph 45; CCJE Opinion No. 10 (2007) on the Council for the judiciary at the service of society.

12. Venice Commission Study No. 494/2008, "Report on the independence of the judicial system – Part I: the independence of judges" (CDL-AD(2010)004), 16 March 2010, paragraph 32.

13. The CCJE Bureau's "Report on judicial independence and impartiality in the Council of Europe member states (2019 edition)" (CCJE-BU(2020)3), paragraph 20.

14. Recommendation CM/Rec(2010)12 of the Committee of Ministers "Judges: independence, efficiency and responsibilities", paragraph 27.

15. CCJE Opinion No. 10 (2007) on the Council for the judiciary at the service of society, summary of the recommendations and conclusions, section A(b).

16. Ibid., section D(b)(c)(d)(e)(f).

of structures established or run by the executive or legislative power. Court presidents can act as managers of independent courts instead of managers under the influence of the outside powers.

■ As regards the individual (or functional) independence of judges, every decision relating to a judge's appointment, career and disciplinary action must be regulated by law, based on objective criteria, and must be either taken by an independent authority or subject to guarantees, for example judicial review, to ensure that it is only taken on the basis of such criteria.¹⁷ Political considerations should be inadmissible,¹⁸ irrespective of whether they are made within councils for the judiciary, the executive or the legislature.

■ The security of tenure of judges and their permanent appointment until the statutory age of retirement are fundamental tenets of independence.¹⁹ This implies that a judge's tenure cannot be terminated other than, in principle, for health reasons or because of disciplinary proceedings. Protection against the undue dismissal of judges is of course an important element of judicial independence.

■ The potential risk for judicial independence that might arise from an internal judicial hierarchy²⁰ must also be considered. A judge is the holder of a state office and the servant of, and answerable only to, the law. It goes without saying that a judge, when deciding a case, does not act on any order or instruction of a third party inside or outside the judiciary,²¹ including the president of the court.

■ Associations of judges may contribute significantly to protecting the independence of judges, safeguarding their status and ensuring adequate working conditions for them. They can also play an important role as regards the training and ethics of judges and provide advice during judicial reforms.²²

■ This is the overall framework for judicial independence at both institutional and individual levels.

Practices and the response of the Council of Europe

■ There are different legal models and appointment procedures for judges across member states. They include, for example, appointment by a council for the judiciary or another independent body, election by parliament and appointment by the executive, or mixed procedures. As the findings in the present report illustrate, some attempts are made to influence, in various ways, the process of appointment of judges and the work of councils for the judiciary, or even to remove the holders of judicial office following reforms.

■ Legal and organisational reforms, and the question of when and how the legislation should be changed, fall within the responsibility of the legislature. However, too many changes within a short period of time should be avoided if possible, at least in the administration of justice. Where changes to the system of justice are made, care must be taken to ensure that they are accompanied by adequate financial and procedural provisions and that there will be sufficient human resources. Otherwise, there is a risk of instability in the proper administration of justice and the public might perceive any failings in administering a new system to be the fault of the judiciary. This can lead to mistrust and conflict.²³

■ The Council of Europe is closely engaged in supporting member states²⁴ through its Sofia Action Plan²⁵ and in strengthening the professional skills and knowledge of judges. Much has been achieved in co-operation with the European Union and the European Judicial Training Network (EJTN)²⁶ to ensure a coherent approach to human rights training. The European Programme for Human Rights Education for Legal Professionals (HELP) has developed novel online techniques to reach wider professional audiences in each of the 47 member states.

■ The Sofia Action Plan is built upon the case law of the Court in the field of the independence and impartiality of the judiciary and encapsulates the relevant Council of Europe standards by emphasising how

17. CCJE Opinion No. 1 (2001) on standards concerning the independence of the judiciary and the irremovability of judges, paragraph 37.

18. *Ibid.*, paragraph 17.

19. *Ibid.*, paragraphs 52 and 57.

20. *Ibid.*, paragraph 66.

21. *Ibid.*, paragraph 64.

22. CCJE Opinion No. 23 (2020) on the role of associations of judges in supporting judicial independence, conclusions and recommendations, paragraphs 4-5.

23. CCJE Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy, paragraph 45.

24. Reflections are under way in countries such as Ireland about the setting up of a council for the judiciary, or in Spain as regards possible reforms to the manner of appointment of the members of such a council.

25. Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (CM(2016)36 final) (<https://rm.coe.int/1680700285>).

26. The EJTN has observer status with the CCJE.

to safeguard and strengthen the judiciary in its relations with the executive and the legislature and how to protect the independence of individual judges.

■ Many Council of Europe bodies have contributed to implementing the Sofia Action Plan since its adoption. The Parliamentary Assembly made observations on the situation in some member states in relation to what it saw as a tendency to limit the independence of the judiciary, pointing out attempts to politicise judicial councils and courts and widespread dismissals of judges and prosecutors. It has called upon member states to implement fully the principles of the rule of law, in line with Council of Europe instruments.²⁷

■ The Commissioner for Human Rights examined this issue in depth through the country monitoring work. The Group of States against Corruption (GRECO) assessed it as part of its fourth evaluation round and its follow-up, focusing on corruption prevention in respect of judges and prosecutors and providing numerous findings and recommendations. The Venice Commission also provided extensive input on specific legal issues at the request of member states and the Parliamentary Assembly. The work of the European Commission for the Efficiency of Justice (CEPEJ) also resulted in important insights.

■ The CCJE and the Consultative Council of European Prosecutors (CCPE) prepared reports on judicial and prosecutorial independence and impartiality in member states in which they highlighted challenges – based on information submitted by CCJE and CCPE members and observers, as well as by judicial and prosecutorial bodies and associations – concerning alleged infringements of relevant standards in member states.²⁸

■ The Council of Europe observes a strong commitment in many member states to creating the necessary conditions – legislatively, structurally and financially – to comply with the principles set out in the Sofia Action Plan. The main challenges continue to arise from the implementation of regulatory frameworks and the continuous need for an enabling environment and a legal culture of judicial independence.

Measurement criteria

Institutional independence

- ▶ The independence of the judiciary as one of the branches of the state power is protected at constitutional or equivalent level.
- ▶ The autonomy of the judiciary is guaranteed through the existence of councils for the judiciary or equivalent bodies for judicial self-government in which more than half of the members are judges chosen by their peers, which have independent and sufficient decision-making powers and whose decisions are respected.
- ▶ Management of courts and their budgets is not carried out by structures established and/or run by the executive or legislative power.
- ▶ Professional organisations of judges can effectively defend their interests and those of their members.
- ▶ The judiciary is provided with sufficient funds to carry out its functions and decides how these funds are used.

Individual independence

- ▶ Decisions on judges' careers, including appointment, promotion, transfer and removal from office, are:
1. taken independently of the executive and legislative powers; and 2. are made on merits, transparent, based on objective criteria and subject to review.
- ▶ Judges' remuneration, social protection and other benefits are established by law, commensurate with the importance of their mission.
- ▶ Ethical principles of professional conduct for judges are established by law.
- ▶ Court presidents do not have influence on the above-mentioned decisions vis-à-vis the judges of their courts.

27. Parliamentary Assembly Resolution 2188 (2017) "New threats to the rule of law in Council of Europe member States: selected examples", 11 October 2017.

28. The CCJE Bureau's "Report on judicial independence and impartiality in the Council of Europe member states (2019 edition)" (CCJE-BU(2020)3) and "Report on the independence and impartiality of the prosecution services in the Council of Europe member states (2019 edition)" (CCPE-BU(2020)4).

Findings

General trends in member states

■ In general, challenges have persisted for the judiciary in Europe. However, some positive examples exist where reforms or legislation which were questionable from the viewpoint of judicial independence were either modified or abandoned following intervention by the Council of Europe.

■ Overall, in most member states, judicial independence is satisfactory. Progress was noted in several countries, notably through actions aimed at establishing or strengthening independent national councils for the judiciary or reforming the processes and decision making in relation to judges' careers.

■ There have been attempts to place the appointments of judges, including those at the highest level, under the influence of the ruling political majority or executive power. Judicial self-governing bodies have also been a target of reforms as regards both their composition and competence. Legislative changes negatively affected the security of judges' tenure in general and the mandates of court presidents, as well as the overall framework of the court system.

Independence of the judiciary from political influence

■ In Hungary, the changes to the Act on the Constitutional Court, the Act on the Organisation and Administration of Courts and the Act on the Legal Status and Remuneration of Judges were criticised by the Council of Europe Commissioner for Human Rights. She pointed out that the government did not carry out a general consultation on these changes and that they may have a negative effect on the independence of courts and judges and on fair trial guarantees for individuals.²⁹

■ On another occasion, the Commissioner for Human Rights recalled that a series of long-standing reforms in Hungary, pre-dating the above-mentioned changes, were also of concern as regards judicial independence. She drew attention to the risk of politicisation of the judiciary in terms of its appearance of impartiality because of the central role of parliament in appointing the most senior judges and the interpretative guidance given to judges through legislative acts. The Commissioner for Human Rights recommended that the authorities consider further safeguards, such as measures strengthening the collective role of the judiciary in appointments or a more consensual manner of nominating judges to the Constitutional Court.³⁰

■ In the Republic of Moldova, a draft law was prepared in 2019 to reform the Supreme Court of Justice and the prosecutor's office. The Venice Commission expressed concern that the draft law apparently combined a vetting process with the reform and aimed to replace the Supreme Court by a new court with a different jurisdiction and fewer judges. According to the Venice Commission, such a vetting scheme could create a dangerous precedent and might lead to an expectation that there would be a vetting scheme after each change of government.³¹

■ GRECO reported that following the Venice Commission's opinion and the follow-up by the Council of Europe Ad Hoc Working Group,³² starting with its visit to Chişinău in January 2020, the Ministry of Justice of the Republic of Moldova conducted public consultations and abandoned this legislative initiative. The Ministry of Justice instead decided to focus on strengthening existing anti-corruption prevention tools.³³

■ Poland's wide-ranging judicial reforms, carried out in several stages and still ongoing, have had, according to the Commissioner for Human Rights, a major impact on the functioning and independence of practically all building blocks of the country's justice system, fundamentally affecting the Constitutional Tribunal, the National Council for the Judiciary, the Supreme Court, the common courts, individual judges and the prosecution service.³⁴

29. Statement of the Council of Europe Commissioner for Human Rights, 28 November 2019.

30. Report of the Commissioner for Human Rights of the Council of Europe following her visit to Hungary from 4 to 8 February 2019 (CommDH(2019)13), p. 5.

31. Venice Commission Opinion No. 966/2019, Interim joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) on the draft law on the reform of the Supreme Court of Justice and the Prosecutor's Office of the Republic of Moldova (CDL-AD(2019)020), 14 October 2019, paragraph 85.

32. See at https://search.coe.int/directorate_of_communications/Pages/result_details.aspx?ObjectId=09000016809987ea.

33. GRECO Second compliance report in respect of the Republic of Moldova (GrecoRC4(2020)9), adopted 25 September 2020, published 13 October 2020, paragraph 61.

34. Report of the Commissioner for Human Rights of the Council of Europe following her visit to Poland from 11 to 15 March 2019 (CommDH(2019)17), p. 1.

■ Various aspects of the reforms in Poland, as well as the polarising manner in which they were implemented, have resulted in serious concerns being expressed by domestic stakeholders and Poland's international partners, and have led to recurring protests by judges, prosecutors and defence attorneys. The Commissioner for Human Rights stressed that the stated objectives of the reform, such as improving accountability and efficiency, must not be pursued at the expense of judicial independence, and she was not persuaded that the reform had brought about a discernible improvement in either the efficiency or the independence of the courts or of individual judges, or that it is likely to produce such improvement in future.³⁵

■ GRECO stressed in December 2019 that no improvements in Poland had taken place as regards several aspects of the judicial reforms and concluded that the procedures enabled the legislative and executive powers to influence the functioning of the judiciary, thereby weakening the latter's independence.³⁶

■ In respect of Turkey, the Commissioner for Human Rights, stressing the seriousness of the situation of the judiciary and the urgency to act, called in February 2020 on the authorities, as a first step, to revert to the situation before the state of emergency following the attempted coup in 2016 in terms of constitutional and structural guarantees for the independence of judges, as well as procedural fair trial guarantees, and then to reinforce them progressively. Considering that the prevailing attitude within the judiciary represented one of the main problems concerning the administration of justice, the Commissioner for Human Rights also urged the Turkish authorities to start respecting the independence of the judiciary both in their discourse and their actions, in particular when imperatives of human rights required judicial actions against the authorities' expressed or perceived interests. While welcoming the authorities' Judicial Reform Strategy, the Commissioner for Human Rights considered that the measures taken thus far did not correspond to the current and future needs, which required a more comprehensive and resolute response.³⁷

■ The Committee of Ministers underlined that the Court's findings, in particular under Article 18 of the Convention, and the subsequent events which gave rise to the presumption that the violation of the Convention was continuing, supported by the findings of other Council of Europe bodies, revealed pervasive problems regarding the independence and impartiality of the Turkish judiciary. The Committee invited the authorities to take adequate legislative and other measures to protect the judiciary and ensure that it is robust enough to resist any undue influence, including from the executive power.³⁸ Taking note of the adoption by Turkey of its Human Rights Action Plan, the Committee of Ministers encouraged the authorities to proceed with the reforms in the context of its implementation and expressed the readiness of the Council of Europe to provide assistance to this end.³⁹

Councils for the judiciary

■ In 2020, the Venice Commission, at the request of the President of the National Assembly of Bulgaria, issued its opinion on the new draft Constitution of Bulgaria, noting in particular that the most significant changes were introduced as regards the judiciary and the prosecution service, and that the draft made several steps in the right direction, including establishment of two independent councils, one for judges and another for prosecutors. This was in line with previous Venice Commission recommendations.⁴⁰

■ The Venice Commission also pointed out certain issues to be addressed, either in the draft constitution or at the legislative level. While judges would be in the majority in the future Judicial Council, at least half of the seats should belong to judges chosen by their peers from all levels of the judiciary. The Venice Commission also provided several other recommendations as regards the lay members of the Judicial Council, its tasks and other aspects.⁴¹ The draft constitution has not been submitted for consideration by the plenary of the National Assembly and is no longer valid.

■ The report of the European Commission entitled "Progress in Bulgaria under the Cooperation and Verification Mechanism", published on 22 October 2019, emphasised the progress made in respect of the benchmarks established earlier, in particular as regards the following recommendations: 1. to ensure a transparent election

35. Ibid.

36. GRECO Second addendum to the second compliance report including follow-up to the addendum to the fourth round evaluation report (Rule 34) in respect of Poland (GrecoRC4(2019)23), adopted 6 December 2019, published 16 December 2019, paragraph 65.

37. Report of the Commissioner for Human Rights of the Council of Europe following her visit to Turkey from 1 to 5 July 2019 (CommDH(2020)1), pp. 4-5.

38. Decision CM/Del/Dec(2021)1398/H46-33 of the 1398th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-33 *Kavala v. Turkey* (Application No. 28749/18), 9-11 March 2021 (DH), paragraph 6.

39. Ibid., paragraph 7.

40. Venice Commission Opinion No. 1002/2020, Urgent interim opinion on the draft new Constitution of Bulgaria (CDL-AD(2020)035), 11 December 2020, paragraphs 97, 102.

41. Ibid., paragraph 103.

for members of the future Supreme Judicial Council, with a public hearing in the National Assembly before the election of members of the parliamentary quota, and giving civil society the possibility to make observations on the candidates; 2. to improve the practical functioning of the judicial inspection and the follow-up by the Supreme Judicial Council to the inspectorate's findings on integrity issues. The report indicated that, while there were relevant issues which would need attention from the authorities, the recommendations made in January 2017 had been satisfactorily addressed.⁴²

■ In Hungary, the powers of the President of the National Judicial Office and the National Judicial Council raised a long-standing concern dating from the inception of reforms in 2012. In her latest report, the Commissioner for Human Rights highlighted earlier assessments by the Venice Commission and GRECO, which noted that the central administration of the judiciary in Hungary was unique as it vested in a single person, the President of the National Judicial Office, extensive powers to manage the judiciary.⁴³

■ Following a dialogue between the Council of Europe and the authorities in Hungary, the powers initially given exclusively to the President of the National Judicial Office have been reduced in some areas by developing the participatory and supervisory functions of the collective self-regulatory body, the National Judicial Council. However, the pivotal position of the President of the National Judicial Office in the judiciary, and the fact that the latter is elected by parliament with a two-thirds majority, remained an issue for the independence of the judiciary in Hungary.⁴⁴

■ In the Republic of Moldova, the Venice Commission recommended that all decisions concerning the transfer, promotion and removal of judges from office be taken by the Superior Council of Magistracy. The latter should be entrusted to take decisions based on the recommendation of the Evaluation Committee, and these decisions should be public and fully reasoned, with the possibility of an appeal before a judicial body.⁴⁵

■ The number of members of the Superior Council of Magistracy increased in 2019 from 12 to 15 which, according to the Venice Commission, may be positive as the functions of this council concerning the evaluation, management, discipline and accountability of judges can be qualitatively strengthened with a broader and more representative composition. The election of non-judge members of the Superior Council of Magistracy by the Parliament of the Republic of Moldova by a vote of the "majority of the elected deputies" was also welcomed as a positive step. At the same time, a stronger majority in parliament would be more appropriate because it would involve the opposition too.⁴⁶

■ In Montenegro, GRECO found it alarming that no progress had been demonstrated as regards the composition and independence of the Judicial Council, nor in reviewing the disciplinary framework for judges. In this context, GRECO was particularly concerned by the decision taken by the Judicial Council to reappoint five court presidents for at least a third term, which was not in line with its recommendations. GRECO emphasised the need to closely follow further actions in this respect.⁴⁷

■ In Poland, the Venice Commission criticised legislative amendments in December 2019 which "may be seen as further undermining the independence of the judiciary, while trying to resolve problems resulting from the reform of 2017". The participation of judges in the administration of justice was further reduced: judicial self-governance bodies were replaced, in important matters, with colleges composed of court presidents appointed by the Minister of Justice. The Venice Commission recommended to return to the election of the 15 judicial members of the National Council of the Judiciary not by parliament but by their peers.⁴⁸

42. Report of the European Commission entitled "Progress in Bulgaria under the Cooperation and Verification Mechanism", published on 22 October 2019, pp. 4-7.

43. Report of the Commissioner for Human Rights of the Council of Europe following her visit to Hungary from 4 to 8 February 2019 (CommDH(2019)13), paragraph 94.

44. Ibid., paragraphs 94 and 101.

45. Venice Commission Opinion No. 966/2019, Interim joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) on the draft law on the reform of the Supreme Court of Justice and the prosecutor's office of the Republic of Moldova (CDL-AD(2019)020), 14 October 2019, paragraphs 86-87.

46. Venice Commission Opinion No. 976/2019, Urgent joint opinion of the Venice Commission and the Directorate of Human Rights (DHR) of the Directorate General of Human Rights and Rule of Law (DGI) on the draft law on amending the Law No. 947/1996 on Superior Council of Magistracy of the Republic of Moldova (CDL-AD(2020)015), 19 June 2020, paragraphs 34-35.

47. GRECO Second compliance report in respect of Montenegro (GrecoRC4(2019)27), adopted 6 December 2019, published 6 February 2020, paragraph 43.

48. Venice Commission Opinion No. 977/2019, Joint urgent opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) on amendments to the Law on the Common Courts, the Law on the Supreme Court, and some other laws in Poland (CDL-PI(2020)002), 16 January 2020, paragraphs 59 and 61.

■ GRECO stressed the lack of progress in amending the provisions on the election of members of the National Council of the Judiciary, which, in its current composition, did not meet the Council of Europe standards and urged the Polish authorities to address the concerns raised in its report of December 2019.⁴⁹

■ The CCJE President issued a statement on 31 December 2019 expressing support for the silent march by judges in Poland on 11 January 2020 in response to these amendments.⁵⁰ The Office for Democratic Institutions and Human Rights of the Organization for Security and Cooperation in Europe (OSCE/ODIHR) also criticised these amendments.⁵¹ Earlier in 2019, the Commissioner for Human Rights pointed to serious remaining concerns as regards the composition and independence of the National Council of the Judiciary, whose judicial members were removed and replaced by new members, elected by parliament.⁵²

■ In a letter addressed to the authorities of San Marino, the Commissioner for Human Rights raised several issues relating to recent developments in relation to the judiciary. Referring to the communications received from representatives of the judiciary in San Marino concerning allegations of undue interference by the executive and the legislature, the Commissioner recalled a number of important principles and European standards highlighting the essential role of judicial councils, which must be firmly established in law and made up by a majority of members of the judiciary elected by their peers. The Commissioner for Human Rights considered that the best way of dealing with such allegations in San Marino would be to make full use of the assistance and guidance of specialised Council of Europe bodies, such as the Venice Commission, the CCJE and GRECO.⁵³

■ The situation in Turkey as regards the Council of Judges and Prosecutors remained of concern. This situation pertains despite earlier input by the Commissioner for Human Rights, who expressed concern that the composition of this council would not offer adequate safeguards for judicial independence and would considerably increase the risk of political influence.⁵⁴ The Venice Commission, for its part, also considered it extremely problematic, having pointed out that getting control over this body meant getting control over judges and public prosecutors, especially in a country where the dismissal of judges has become frequent and where transfers of judges are a common practice.⁵⁵

■ The four members of the Council of Judges and Prosecutors were appointed directly by the President of Turkey and seven members were elected by parliament without a procedure guaranteeing the involvement of all political parties and interests. This was confirmed by the latest report of the Commissioner for Human Rights, which underlined that no member of this council was elected by their peers, in contradiction to European standards.⁵⁶ The observer status of the Council of Judges and Prosecutors with the European Network of Councils for the Judiciary (ENCJ) remained suspended.⁵⁷

■ Regarding Ukraine, the Venice Commission welcomed, in December 2019, the newly adopted Law No. 193-IX simplifying the system of judicial administration by bringing closer the High Council of Justice and the High Qualification Commission of Judges and providing new rules on their role, structure and status. In the long term, the merger of these two bodies could be envisaged.

■ At the same time, the fact that the High Qualification Commission of Judges was dissolved on 7 November 2019 resulted in a complete halt to the procedure of appointments for courts of first and second instance in Ukraine, which the Venice Commission considered regrettable. More than 2 000 judicial vacancies needed to be filled urgently in these courts, some of which did not work at all due to the absence of judges. Law No. 193-IX intervened, according to the Venice Commission, at a damaging moment and at a critical point

49. GRECO Second addendum to the second compliance report including follow-up to the addendum to the fourth round evaluation report (Rule 34) in respect of Poland (GrecoRC4(2019)23), adopted 6 December 2019, published 16 December 2019, paragraph 65.

50. CCJE President's statement supporting Polish judges.

51. OSCE/ODIHR Opinion Nr. JUD-POL/365/2019, Urgent interim opinion on the bill amending the Act on the Organization of Common Courts, the Act on the Supreme Court and certain other acts of Poland, 14 January 2020.

52. Report of the Commissioner for Human Rights of the Council of Europe following her visit to Poland from 11 to 15 March 2019 (CommDH(2019)17), p. 1.

53. See at <https://www.coe.int/en/web/commissioner/-/commissioner-calls-on-the-authorities-of-san-marino-to-refrain-from-actions-jeopardising-the-independence-of-the-judiciary>.

54. Statement of the Council of Europe Commissioner for Human Rights, 7 June 2017.

55. Venice Commission Opinion No. 875/2017, Opinion on the amendments to the constitution adopted by the Grand National Assembly on 21 January 2017 and to be submitted to a national referendum on 16 April 2017 (CDL-AD(2017)005), 13 March 2017, paragraph 119.

56. Report of the Commissioner for Human Rights of the Council of Europe following her visit to Turkey from 1 to 5 July 2019 (CommDH(2020)1), paragraph 14.

57. The decision to suspend Turkey's observer status was taken by the ENCJ General Assembly in 2016, see at <https://www.ency.eu/node/449>.

in the reform process and the members of the High Qualification Commission of Judges should at least have been enabled to continue their work until they were replaced.⁵⁸

■ A Joint Statement of the Chairs of the High Qualification Commission of Judges, the High Council of Justice, the Supreme Court, the Council of Judges, the State Judicial Administration and of the Rector of National School of Judges of Ukraine was published in June 2019, drawing attention to the problems originating from the dismissal of a very large number of judges following the general qualification assessments carried out for all Ukrainian judges.⁵⁹

Appointment/dismissal of judges

■ As mentioned above, in 2020, the Venice Commission evaluated the draft new Constitution of Bulgaria, noting that it made several steps in the right direction, while at the same time providing some recommendations, for example that the probationary periods for young judges should be removed, or conditions for not confirming the tenure should be narrowly defined in the law.⁶⁰

■ In Georgia, the new constitution changed the procedure for the selection of Supreme Court judges and modified their term of office from 10 years (as a minimum) to lifetime appointments (until retirement). Thus, 10 current judges with a fixed term of office would have to work with peers newly appointed for life. Since the new constitution left the final decision of the appointment to parliament, this implied that the parliamentary majority would be entrusted with the appointment of a new majority in the Supreme Court, the composition of which would possibly remain unchanged for a very long time.⁶¹

■ The Venice Commission underlined that this was an unusual situation and recommended that consideration be given to having the fixed term of office of the current Supreme Court judges transformed to lifetime appointments and that parliament only appoint the number of judges necessary to render the work of the Supreme Court manageable. Further appointments may then be made by the parliament elected at future general elections. Such an arrangement could both alleviate the burden on the Supreme Court and ensure that it enjoys public trust and respect.⁶²

■ A law was adopted in Hungary in December 2018 with the aim of creating a separate administrative court system.⁶³ The Venice Commission, in its opinion of March 2019,⁶⁴ invited the authorities to re-examine the legislation, emphasising the broad powers reserved by the law for the Minister of Justice, including as regards the appointment and career of judges, promotion to positions of responsibility and salary increases. Furthermore, the Minister of Justice was given a central role in the setting up and shaping of the new system of administrative courts during the transitional period, including the selection of future judges and the first heads of court. On 23 July 2019, the Minister of Justice confirmed that the government had abandoned plans to set up separate administrative courts, but it would pass legislation to speed up administrative court cases.

■ With respect to Iceland, the Grand Chamber of the Court pointed out that the legal framework governing judicial appointments has undergone a number of important changes aimed at limiting ministerial discretion in the appointments process, thereby strengthening the independence of the judiciary.⁶⁵ However, this legal framework was breached by disregarding a procedural rule during the process for the appointment of the new court of appeal judges. In this light, the Court considered that the applicant had been denied the right to a “tribunal established by law”, and therefore concluded that there has been a violation of Article 6, paragraph 1, of the Convention.⁶⁶

■ In Poland, the Venice Commission criticised legislative amendments in December 2019 which risked reducing the role of the judges of the Supreme Court in the process of selection of the first president. The

58. Venice Commission Opinion No. 969/2019, Opinion on amendments to the legal framework governing the Supreme Court and judicial governance bodies in Ukraine (CDL-AD(2019)027), 9 December 2019, paragraph 25.

59. The CCJE Bureau's “Report on judicial independence and impartiality in the Council of Europe member states (2019 edition)” (CCJE-BU(2020)3), paragraph 249.

60. Venice Commission Opinion No. 1002/2020, Urgent interim opinion on the draft new Constitution of Bulgaria, (CDL-AD(2020)035), 11 December 2020, paragraphs 97, 102 and 103.

61. Venice Commission Opinion No. 949/2019, Urgent Opinion on the selection and appointment of Supreme Court judges in Georgia (CDL-AD(2019)009), 24 June 2019, paragraphs 12-13 and 64-65.

62. Ibid., paragraphs 12-13 and 64-65.

63. The CCJE Bureau's “Report on judicial independence and impartiality in the Council of Europe member states (2019 edition)” (CCJE-BU(2020)3), paragraph 190.

64. Venice Commission Opinion No. 943/2018, Opinion on the Law on Administrative Courts and on the Law on the Entry into Force of the Law on Administrative Courts and certain transitional rules of Hungary (CDL-AD(2019)004), 19 March 2019, paragraphs 114-116.

65. *Guðmundur Andri Ástráðsson v. Iceland*, Grand Chamber judgment, 1 December 2020 (Application No. 26374/18), paragraph 287.

66. Ibid., paragraphs 288-290.

Venice Commission recommended returning to the pre-2017 method of election or developing a new model whereby each candidate proposed to the President of Poland enjoys the support of a significant number of the Supreme Court judges. The Venice Commission also urged that the powers of the judicial community be restored in the questions of appointments, promotions and dismissal of judges and that court presidents not be appointed and dismissed without significant involvement by the judicial community.⁶⁷

■ In 2019, the Commissioner for Human Rights welcomed the steps taken by Poland in response to the order of the Court of Justice of the European Union, which restored to their posts all forcibly retired judges of the Supreme Court and the Supreme Administrative Court. However, she deeply regretted that despite the recommendations by many international and domestic actors, the Polish authorities had not yet found a solution to the prolonged deadlock affecting the functioning of the Constitutional Tribunal.⁶⁸

■ The Commissioner for Human Rights, having referred to the dismissals of judges and prosecutors in Turkey during the state of emergency declared after the attempted coup in 2016, observed that by adopting the Law No. 7145 in July 2018, the authorities had extended the emergency powers underpinning these dismissals for a further three years. This meant, according to the Commissioner, that one of the most basic guarantees of judicial independence was effectively suspended until July 2021.⁶⁹

■ The Court found that in Turkey, the dismissal and pre-trial detention of a Constitutional Court judge in question had disregarded the procedural safeguards afforded to members of the Constitutional Court, and that the initial detention had not been based on any factual evidence.⁷⁰

■ The International Commission of Jurists condemned the dismissal of eight judges and three prosecutors by the Council of Judges and Prosecutors of Turkey on 14 October 2020 as a violation of their right to a fair trial, urged that the order be revoked and asked that their cases be re-examined under the ordinary dismissal procedures. The International Commission of Jurists also urged the Turkish Government and Parliament to modify the constitutional rules on the Council of Judges and Prosecutors to ensure its full independence.⁷¹

■ In Ukraine, the Venice Commission took note that the governmental majority seemed to be open to changes in the judicial system to remove shortcomings in the new Law No. 193-IX, which was adopted without sufficiently taking into account the view of all relevant stakeholders. The Venice Commission underlined that the provision reducing the number of judges of the Supreme Court to 100 effectively amounted to a second vetting and thus it should be removed.⁷²

■ In November 2020, the President of Ukraine requested an urgent opinion by the Venice Commission to assess the constitutional situation created by the Constitutional Court's judgment No. 13-r/2020 of 27 October 2020, to issue an opinion on the state of anti-corruption legislation after this judgment and to consider the issue of judges of the Constitutional Court who might possibly find themselves in a situation of conflict of interest.⁷³

■ The Venice Commission considered the judgment of the Constitutional Court to be an indication that a reform of that court was warranted and that it was a starting point for the reform. It therefore recommended a number of measures for reinforcing the independence and impartiality of the Constitutional Court including, for example, regulating the disciplinary procedure in the Law on the Constitutional Court and providing a better, more detailed, definition of "conflict of interest", as well as a number of other measures.⁷⁴

■ The Venice Commission also recommended the establishment of a screening body for candidates for the office of judge of the Constitutional Court to ensure the moral and professional qualities of the candidates. It also recommended filling the current vacancies at the Constitutional Court only after an improvement in the system of appointments.⁷⁵

67. Venice Commission Opinion No. 977/2019, Joint urgent opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) on amendments to the Law on the Common Courts, the Law on the Supreme Court, and some other laws in Poland (CDL-PI(2020)002), 16 January 2020, paragraph 61.

68. Report of the Commissioner for Human Rights of the Council of Europe following her visit to Poland from 11 to 15 March 2019 (CommDH(2019)17), published on 28 June 2019, p.1.

69. Report of the Commissioner for Human Rights of the Council of Europe following her visit to Turkey from 1 to 5 July 2019 (CommDH(2020)1).

70. *Alparslan Altan v. Turkey*, judgment of 16 April 2019 (Application No. 12778/17). See also the Report of the Commissioner for Human Rights of the Council of Europe following her visit to Turkey from 1 to 5 July 2019 (CommDH(2020)1).

71. See www.icj.org/turkey-dismissal-of-judges-and-prosecutors-fundamentally-unfair/.

72. Venice Commission Opinion No. 969/2019, Opinion on amendments to the legal framework governing the Supreme Court and judicial governance bodies in Ukraine (CDL-AD(2019)027), 9 December 2019.

73. Venice Commission Opinion No. 1012/2020, Urgent opinion on the reform of the Constitutional Court of Ukraine (CDL-AD(2020)039), 11 December 2020, paragraph 1.

74. *Ibid.*, paragraphs 101-102.

75. *Ibid.*, paragraphs 102 and 104.

JUDICIAL ACCOUNTABILITY

■ In the context of the judiciary, accountability must not be confused with being responsible or subordinate to another state power, since that would run contrary to judicial independence. The judiciary – like the executive and the legislature – provides a public service. It goes without saying that it should answer in some manner to the society it serves. Judicial authority must be exercised in the interest of the rule of law and of those seeking and expecting justice. Therefore, the judiciary faces the responsibility of demonstrating the use to which its power, authority and independence have been put.⁷⁶

■ There has been an increasing demand by court users for a more effective court system. Better access to the courts has been considered of increasing importance. Effectiveness and accessibility are aspects of demonstrating accountability of the judiciary. This accountability takes several forms.

Relevant standards

■ The appeal system is, in principle, the only way by which a judicial decision can be reversed or modified after it has been handed down and the only way by which judges acting in good faith can be held accountable for their decisions. This is so-called “judicial accountability”.

■ Judges are also made accountable by working in a transparent way, by having open hearings and by giving reasoned judgments. The dialogue with the public, directly or through the media, is of crucial importance in increasing confidence in the judiciary. This is known as judges’ “explanatory accountability”.

■ If a judge has engaged in improper actions of a sufficiently serious nature, he/she must of course be held accountable through the application of disciplinary procedures and, if appropriate, under criminal law. Care must be taken in all cases to preserve judicial independence. This is known as “punitive accountability” and should be the exception in a well-functioning judicial system.

■ As regards the relations between the three state powers, judges, like all other individuals, are entitled to take part in public debate if it is consistent with maintaining their independence and impartiality.

■ It is important that any criticism by one power of state of either of the other powers is undertaken in a climate of mutual respect. Unbalanced critical commentaries by politicians can cause a serious problem by undermining public trust and confidence in the judiciary. Individual courts and the judiciary as a whole need to discuss ways in which to deal with such criticism.

■ Judges, as long as they are dealing with a case or could be required to do so, should not consciously make any observations which could reasonably suggest some degree of prejudgment of the resolution of the case or which could influence the fairness of the proceedings.

■ Judges should also discharge their functions with due respect for the principle of equal treatment of the parties, by avoiding any bias and any discrimination, maintaining a balance between the parties and making sure that each side receives a fair hearing.

Measurement criteria

Institutional accountability

- ▶ Explanatory accountability of the judiciary is regularly manifested in the form of transparency vis-à-vis society, for instance with open hearings or public reports.
- ▶ The media is encouraged to report responsibly on matters related to the judiciary and courts.
- ▶ Punitive accountability of the judiciary imposed by the executive and legislative powers in various forms is firmly ruled out.
- ▶ The media is not misused to abusively criticise the judicial system and thus undermine public trust.

Individual accountability

- ▶ Disciplinary violations and removal offences are precisely defined by law.
- ▶ A range of possible sanctions are defined by law.

76. CCJE Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy.

- ▶ Disciplinary proceedings against judges are conducted or controlled by independent self-governing bodies.
- ▶ Court presidents do not have influence on such proceedings vis-à-vis the judges of their courts.
- ▶ Judges are not subjected to personalised abusive criticism in the media regarding cases under their consideration.
- ▶ The media reports on matters relating to judges in a responsible way.
- ▶ Cases involving alleged misconduct by judges, including integrity-related issues, are pursued through procedures offering the necessary objectivity and procedural safeguards are carried out.

Findings

■ There have been positive developments in member states towards rooting out conflicts of interest and preventing corruption of judges, repealing requirements for judges to declare their membership of professional organisations, providing safeguards in disciplinary proceedings against judges and improving rules of ethics and professional conduct.

■ At the same time, the Council of Europe has received information from CCJE members, observers and judicial associations as regards situations in some member states that, if confirmed, raise questions as to abusive criticism of the judiciary. Instances of public statements by state officials or politicians or media campaigns against members of the judiciary, the legal profession and the prosecution services, at national and international level, have also been reported by the media in some member states. While such allegations have not yet been confirmed by Council of Europe monitoring and advisory bodies, they merit attention and proper action, given the risk they raise in undermining public trust in the judiciary.

■ The Venice Commission examined the amendments to the Judicial Code and some other laws in Armenia in 2019. The rationale behind these amendments, as it was explained to the Venice Commission, was that after the events of spring 2018 known as the “velvet revolution” and a landslide victory of the “My Step” alliance in the 2018 parliamentary elections, the new government tried to respond to a strong popular demand for quick and visible changes in the area of the judiciary and the fight against corruption. The Venice Commission praised the “Judicial Reform Package” and pointed out that the government demonstrated openness to dialogue with all interlocutors, within and outside the country. Most proposals contained in this package were, according to the Venice Commission, in line with European standards and contributed to combating corruption without, at the same time, encroaching on the independence of the judiciary.⁷⁷

■ Nonetheless, the Venice Commission also pointed to the need for further improvements to the legislative framework in Armenia as regards: the composition of the Ethics and Disciplinary Commission; the methodology of election of members of the Commission for the Prevention of Corruption; accompanying access to information interfering with judges’ right to privacy by adequate procedural safeguards; and developing a mechanism for the appeal of decisions of the Supreme Judicial Council in disciplinary matters.⁷⁸

■ The report of the European Commission entitled “Progress in Bulgaria under the Cooperation and Verification Mechanism”, published on 22 October 2019, noted the commitment of the Bulgarian authorities to adopt legislation to repeal provisions in the Judicial System Act requiring judges and prosecutors to declare their membership of professional organisations and calling for their removal from office following a public criminal charge against them concerning premeditated crime. It also noted that the Bulgarian Government had already submitted a legislative proposal for this purpose to parliament.⁷⁹ These provisions were previously the subject of an opinion by the CCJE Bureau.⁸⁰ The Bulgarian authorities reported that these provisions were repealed in 2019 by the National Assembly.

■ With respect to Georgia, the Venice Commission welcomed the draft law on conflict of interest and corruption in public institutions in 2019, which stipulated that a candidate nominated for the position of a judge of the Supreme Court should submit the asset declaration of a public official within seven days after publication

77. Venice Commission Opinion No. 963/2019, Joint opinion of the Venice Commission and the Directorate of Human Rights (DRH) of the Directorate General of Human Rights and Rule of Law (DGI) on the amendments to the Judicial Code and some other laws in Armenia (CDL-AD(2019)024), 14 October 2019.

78. *Ibid.*, paragraph 62.

79. Report of the European Commission entitled “Progress in Bulgaria under the Cooperation and Verification Mechanism”, published on 22 October 2019, p. 14.

80. Opinion of the CCJE Bureau following the request of the Bulgarian Judges Association to provide an opinion with respect to amendments of 11 August 2017 of the Bulgarian Judicial System Act (CCJE-BU(2017)10), 2 November 2017, paragraphs 26-28.

of relevant information on the website of the High Council of Justice of Georgia. The Venice Commission also noted that it might be appropriate to impose on candidates an obligation to report not only their own assets, but also the assets of their spouses and children.⁸¹

■ Regarding Hungary, the Committee of Ministers of the Council of Europe continued examining the execution of the judgment of the Court in the case of *Baka v. Hungary*. It recalled that the case concerned the undue and premature termination of the applicant's mandate as president of the former Hungarian Supreme Court through *ad hominem* legislative measures of constitutional rank and therefore beyond judicial control. The measures, prompted by views and criticisms expressed by the applicant on reforms affecting the judiciary, therefore exerted a "chilling effect" on other judges and court presidents.⁸²

■ The importance of procedural fairness in cases involving the removal of a judge from office, and of effective and adequate safeguards against abuse when it comes to restrictions on judges' freedom of expression, was reiterated by the Committee of Ministers. The absence in Hungary of safeguards in connection with *ad hominem* constitutional-level measures terminating a judicial mandate was noted with a concern. The authorities indicated that the measures which led to the premature termination of the applicant's judicial mandate were part of a unique constitutional reform that had been completed, and that no similar measures were envisaged in future. Nevertheless, the Committee of Ministers urged the authorities to submit information on further measures adopted or planned with a view to guaranteeing that judicial mandates would not be terminated in a similar way.⁸³

■ The Committee of Ministers of the Council of Europe closed the execution of the judgments of the Court in four relevant cases in respect of North Macedonia, having examined the action report provided by the government indicating the measures adopted, and having satisfied itself that all the measures required have been adopted.⁸⁴

■ On 22 May 2019, the Parliament of North Macedonia adopted a new act on the State Judicial Council, which provided safeguards for a fair trial in the disciplinary proceedings involving judges. For example, the member of this council who filed a request related to the accountability of a judge would not be able to attend a hearing before the council and was exempted from voting regarding the final decision. The president and members of the inquiry commission were excluded from voting and decision making in the given case. The act also envisaged that judges who were subject to dismissal proceedings should be entitled to a fair hearing in compliance with the safeguards enshrined in Article 6, paragraph 1, of the Convention.⁸⁵

■ The Court reaffirmed, in the context of a case in Romania, the freedom of expression of a prosecutor with respect to legislative reforms which could have an impact on the judiciary and its independence. It also set out that the executive branch of a national government cannot remove chief prosecutors without an independent judicial review.⁸⁶

■ With regard to Ukraine, the Venice Commission recommended that the disciplinary procedure should be simplified by reducing the excessive number of remedies available. In addition, an appeal against disciplinary decisions of the High Council of Justice should lie directly with the Supreme Court and no longer with the Kyiv City Administrative Court and the administrative court of appeal. The Venice Commission also recommended that some of the deadlines in disciplinary proceedings shortened by Law No. 193-IX should be re-established.⁸⁷

■ The Committee of Ministers of the Council of Europe continued examining the execution of judgments of the Court in a group of cases in respect of Ukraine. It noted with satisfaction the decision of the Constitutional Court declaring unconstitutional Article 375 of the Criminal Code on criminal liability of judges and encouraged the Ukrainian authorities to give full effect to this decision and amend the legislation rapidly.⁸⁸

81. Venice Commission Opinion No. 949/2019, Urgent opinion on the selection and appointment of Supreme Court judges in Georgia (CDL-AD(2019)009), 24 June 2019, paragraphs 59-60.

82. CM/Notes/1383/H46-8 of the 1383rd meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-8 *Baka v. Hungary* (Application No. 20261/12), 29 September-1 October 2020 (DH), paragraph 1.

83. Ibid., paragraphs 2-4.

84. Resolution CM/ResDH(2019)300 of the Committee of Ministers of the Council of Europe, Execution of the judgments of the European Court of Human Rights – Four cases against North Macedonia, 13 November 2019.

85. Ibid.

86. *Kövesi v. Romania*, judgment of 5 May 2020 (Application No. 3594/19), paragraphs 154, 201, 205 and 208-209. See also *Baka v. Hungary*, judgment of 23 June 2016 (Application No. 20261/12), paragraphs 156-157 and 164-167.

87. Venice Commission Opinion No. 969/2019, Opinion on amendments to the legal framework governing the Supreme Court and judicial governance bodies in Ukraine (CDL-AD(2019)027), 9 December 2019, paragraph 85.

88. CM/Notes/1383/H46-26 of the 1383rd meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-26 *Oleksandr Volkov group v. Ukraine* (Application No. 21722/11), 29 September-1 October 2020 (DH).

■ The Committee of Ministers also reiterated its call on the authorities in Ukraine to ensure that any criminal investigation against a judge is compliant with Council of Europe standards and recommendations, that criminal sanctions are applied only in case of malice or if the fault was otherwise clearly intentional, and that the necessary procedural safeguards and review of investigative practices are in place to effectively protect judges against undue influence.⁸⁹

Covid-19 and judicial independence and efficiency

■ Covid-19 has presented the judiciary in general and individual judges with unique challenges. Responding effectively to a health crisis with full respect for human rights and the principles of democracy and the rule of law has been the main challenge. The pandemic has resulted in the introduction of restrictions affecting not only civil and political rights protected by the Convention, but also economic, social and cultural rights. The impact appears to have been particularly severe for the most vulnerable groups.⁹⁰

Challenges and risks

■ The challenge for judges has been to make sure that, in the course of their work, the public health emergency is not used as a pretext for human rights infringements, but aims at protecting people and that new legal measures are applied with strict respect for human rights obligations. A balance must be struck between public safety on the one hand, and the enjoyment of fundamental rights and freedoms on the other.⁹¹

■ The rule of law is guaranteed by the fair, impartial and effective administration of justice,⁹² notably including the rights to access to a court and to an effective remedy. The judiciary must be independent in order to fulfil its constitutional role in relation to the other powers of the state, society in general and the parties to any dispute.⁹³ This principle should not be called into question during a pandemic or any other emergency situation.⁹⁴

■ CCJE standards for the appointment, promotion and disciplinary procedures of judges should always be retained and observed. In the aftermath of the crisis, no “interim” judges or “special courts” should be established, as this would undermine judicial independence and create a risk of politicisation. The backlogs as regards the selection and promotion of judges should be resolved, and positions filled based on relevant CCJE criteria, taking into account the urgency factor without, however, politicising this issue in any way.

■ In the context of the pandemic, there is a risk that member states may overlook the significance of the role of courts, such as in relation to effective remedies against emergency measures and grievances caused by the pandemic – and also from the perspective of the economy. Already underfunded judicial systems struggle with resolving the challenges due to the pandemic and there is a risk that court budgets may further be reduced.

■ In this context, member states should provide the necessary resources for courts to fulfil their functions, to address and recover from the pandemic, since chronic underfunding undermines the foundations of a democratic society. The need to have adequate resources, equipment and software for effective teleworking and teleconferencing becomes particularly important.

■ The role of training as a guarantee of judicial independence and impartiality is very important. It is essential that judges receive detailed, in-depth, diversified training on national and international law so that they can perform their duties satisfactorily. Despite an emergency such as the pandemic, training initiatives should not be suspended, and online training should be considered at national and European level.

89. Ibid.

90. Statement of the President of the CCJE, “The role of judges during and in the aftermath of the COVID-19 pandemic: lessons and challenges”, 24 June 2020.

91. Venice Commission Opinion No. 359/2005, Opinion on the protection of human rights in emergency situations (CDL-AD(2006)015), 4 April 2006.

92. CCJE Opinion No. 12 (2009) on the relations between judges and prosecutors in a democratic society (Bordeaux Declaration).

93. CCJE Opinion No. 18 (2015) on the position of the judiciary and its relation with the other powers of state in a modern democracy.

94. Statement of the President of the CCJE, “The role of judges during and in the aftermath of the COVID-19 pandemic: lessons and challenges”, 24 June 2020.

■ The courts' caseloads are expected to increase considerably due to the suspension of proceedings during the crisis. Allocation and prioritisation of cases will be required and properly regulated and any politicisation should be strictly prevented. In particular, the prioritisation of cases following the end of emergency measures should not place economic issues over the protection of rights of individuals and should follow fair and objective criteria.

■ There will also be an effect on supranational courts. Human rights concerns in member states are likely to increase the caseload of the Court. It will therefore be in the Court's interest that as many cases as possible are resolved at national level.

Efficiency of justice

■ As regards the efficiency of the judicial systems, Covid-19 cannot be used to excuse deficiencies in judicial systems and even less to reduce standards or breach legal guarantees. Information and communication technologies (ICTs) have proven to be valuable, even indispensable tools for the continued work of judicial systems. The legal community found solutions to short-term problems, learnt lessons from the fast-tracked trialling of new methods and, for the future, only retained the positive aspects suited to reducing backlogs and the normal operation of judicial systems. From this perspective, the crisis served both as an indicator of the current level of use of new technology in courts and as a force driving judicial systems towards the widespread use of such technology, as in many other sectors of society.

■ To address all these issues, on 10 June 2020, the CEPEJ adopted a Declaration on lessons learnt and challenges faced by the judiciary during and after the Covid-19 pandemic,⁹⁵ which states that:

- ▶ the principles of Article 5 – the right to liberty and security – and Article 6 – the right to a fair trial – of the Convention must be protected at all times and become especially important during the crisis;
- ▶ a crisis requires an immediate and urgent response. However, any kind of reaction to the crisis must be strictly based on the principles of the rule of law and must respect and protect human rights;
- ▶ greater consultation and co-ordination between all justice professionals (including lawyers, enforcement agents, mediators and social services) will help to ensure a good level of access to justice;
- ▶ judicial systems should give priority to cases which concern vulnerable groups, such as cases of domestic violence, in particular against women and children, those involving elderly people or people with disabilities, or to cases that concern serious economic situations;
- ▶ ensuring the health and safety of all justice professionals and users of courts must be a priority during and after the health crisis. Particular attention needs to be paid to well-being during teleworking and to the fact that these are exceptional working conditions which may require appropriate support;
- ▶ authorities responsible for court management should continue, even remotely, to monitor and manage cases according to their responsibilities. This includes triage of cases and possible prioritisation and redistribution of cases based on objective and fair criteria, as well as ensuring quality justice;
- ▶ additional human resources and budgetary support should help courts to put plans in place to absorb backlogs;
- ▶ judicial training should adapt to emerging needs. New curricula should be developed and specific training on teleworking provided;
- ▶ to reduce inherent risks in the deployment of ICTs, their use and accessibility for all users should have a clear legal basis;
- ▶ the Covid-19 pandemic has also been an opportunity to introduce emergency innovative practices. A transformation strategy for judiciaries should be developed to capitalise on the benefits of newly implemented solutions. Some aspects of traditional court procedures should be

95. See <https://rm.coe.int/declaration-en/16809ea1e2>.

reconsidered (relations with media, level of use of new technologies, increased recourse to alternative dispute resolution, especially mediation).

■ Covid-19 showed the decline in the traditional single judge system, written proceedings and the lawyer's profession based on oral proceedings and human contact, despite the repeatedly expressed wish by citizens "to be able to appear before their judge".

EFFICIENCY OF JUDICIAL SYSTEMS

■ The speed with which cases are completed by national courts is a key indicator of the efficiency of justice, but other important factors are at play as well. The budgets allocated to judicial systems, the staffing and infrastructure available to courts and the provision made for individuals to pursue a case through the system also affect the efficiency of a judicial system.

■ Article 6 of the Convention guarantees the right to a fair trial within a reasonable time. What is reasonable, according to the case law of the Court, is determined by the complexity of the case, the conduct of the applicant and relevant authorities and what is at stake for the applicant in the dispute.⁹⁶ This requirement continues to generate large numbers of applications from individuals and numerous findings of violations by the Court, although progress has been made in a few member states.

The CEPEJ and artificial intelligence

■ The "European ethical charter on the use of artificial intelligence in judicial systems and their environment",⁹⁷ adopted by the CEPEJ in December 2018, has been widely disseminated within the judicial sphere, as it is the first text setting out ethical principles relating to the use of artificial intelligence (AI) in judicial systems. The five principles are as follows:

- ▶ principle of respect of fundamental rights – ensuring that the design and implementation of AI tools and services are compatible with fundamental rights;
- ▶ principle of non-discrimination – specifically preventing the development or intensification of any discrimination between individuals or groups of individuals;
- ▶ principle of quality and security – regarding the processing of judicial decisions and data, using certified sources and intangible data, with models conceived in a multidisciplinary manner, in a secure technological environment;
- ▶ principle of transparency, impartiality and fairness – making data-processing methods accessible and understandable, authorising external audits;
- ▶ principle "under user control" – precluding a prescriptive approach and ensuring that users are informed actors and in control of their choices.

■ Compliance with these principles must be ensured, both in the processing of judicial decisions and data by algorithms and in the use made of them.

■ The CEPEJ is now working to ensure the charter principles are implemented on the possible establishment of a mechanism for certifying AI solutions in accordance with these principles.

Measurement criteria

Institutional/structural criteria

- ▶ The state allocates adequate human and financial resources, facilities and equipment to courts to enable them to function efficiently.
- ▶ The use of ICTs in judicial systems is generalised to facilitate access to justice, develop online proceedings, speed up court proceedings and improve the administration of justice and management of courts.

96. *Nicolae Virgiliu Tănase v. Romania*, judgment of 25 June 2019 (Application No. 41720/13), paragraph 209.

97. See <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>.

- ▶ Legal professionals are provided with initial and in-service training to have advanced, up-to-date knowledge of the legislation in force and of working methods.
- ▶ Simplified procedures are in place for different types of legal proceedings.
- ▶ The state allows online access to judicial decisions, subject to anonymity.

Operational criteria

- ▶ Users are given clear information about the functioning of the court and the various stages of the procedure, including the foreseeable time frame of the case.
- ▶ Effective communication between all actors in the procedure is a priority.
- ▶ An efficient and transparent case management system is in place within the court.
- ▶ Cases are decided by courts within a reasonable time, from the beginning of the procedure to the enforcement of the final decision.
- ▶ E-filing is developed.
- ▶ Regular efficiency evaluations of court performance are implemented.

Findings

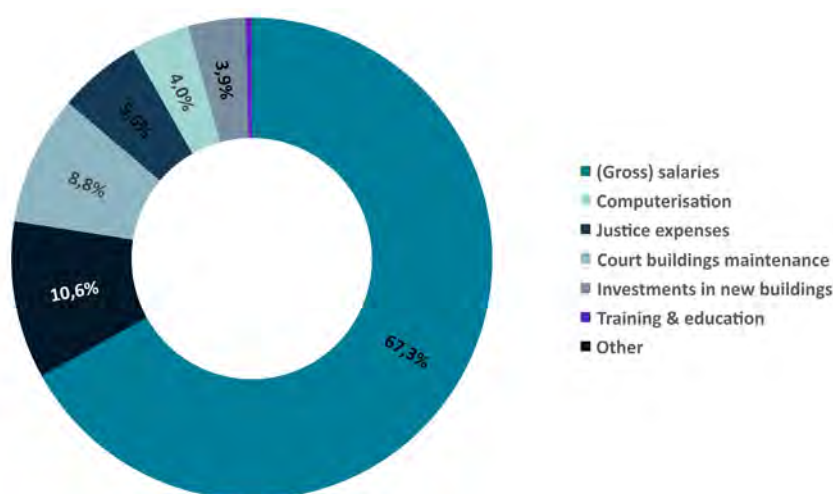
■ According to the CEPEJ's latest available report,⁹⁸ there is a positive trend as regards the ability of European courts to cope with incoming cases in the long term.

■ As stated by the Venice Commission, adequate funding is necessary to enable the courts and judges to live up to the standards laid down in Article 6 of the European Convention on Human Rights and in national constitutions and perform their duties with the integrity and efficiency which are essential to the fostering of public confidence in justice and the rule of law.⁹⁹

■ According to the report, member states have increased the budget they allocate to their judicial system. Switzerland, Monaco and Luxembourg (€220, €188 and €165 respectively) invest the most in judicial systems per inhabitant compared to the European median of €72. On the other hand, Montenegro and Bosnia and Herzegovina dedicate the highest percentage of their gross domestic product (GDP) (0.88% and 0.72% respectively), showing a greater budgetary effort for their judicial systems than the wealthiest countries (on average (0.2%)). Generally, one of the most significant increases concerns investment in digitalisation.

■ The budgets of courts are mostly dedicated to salaries – as high as 66% on average, with the lowest proportion being spent on salaries in the UK-Northern Ireland (36%) and Ireland (39%) and the highest in Lithuania (88%).

Average distribution of the court budget by category

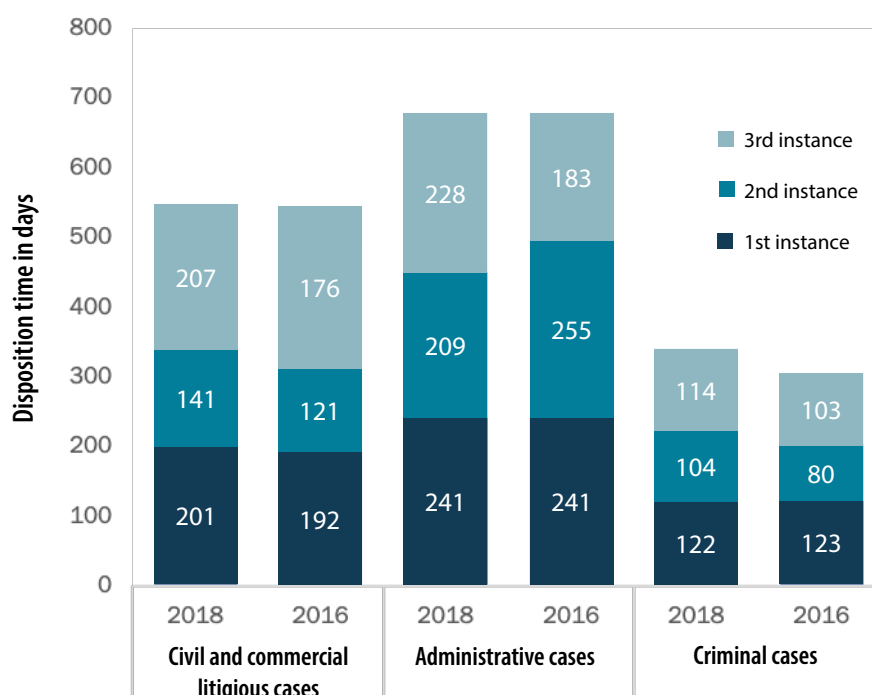


98. European judicial systems – CEPEJ Evaluation Report (2020 evaluation cycle (2018 data)), Council of Europe Publishing, Strasbourg.

99. Venice Commission Study No. 494/2008, "Report on the independence of the judicial system – Part 1: the independence of judges", (CDL-AD(2010)004), 16 March 2010.

Regarding the length of court proceedings, the longest durations are recorded in administrative justice. The shortest durations are found in criminal cases, which is in the interest of litigants whose individual freedom may be at stake. Significant variations exist, with between over 500 days for civil cases at first instance in Greece and Italy, to Azerbaijan and the Russian Federation at the other extreme, with very fast proceedings in all instances. It is important to note that this could be creating a different challenge in relation to the quality of the decisions rendered.

Disposition time (calculated time necessary for a pending case to be resolved) by instance and type of case



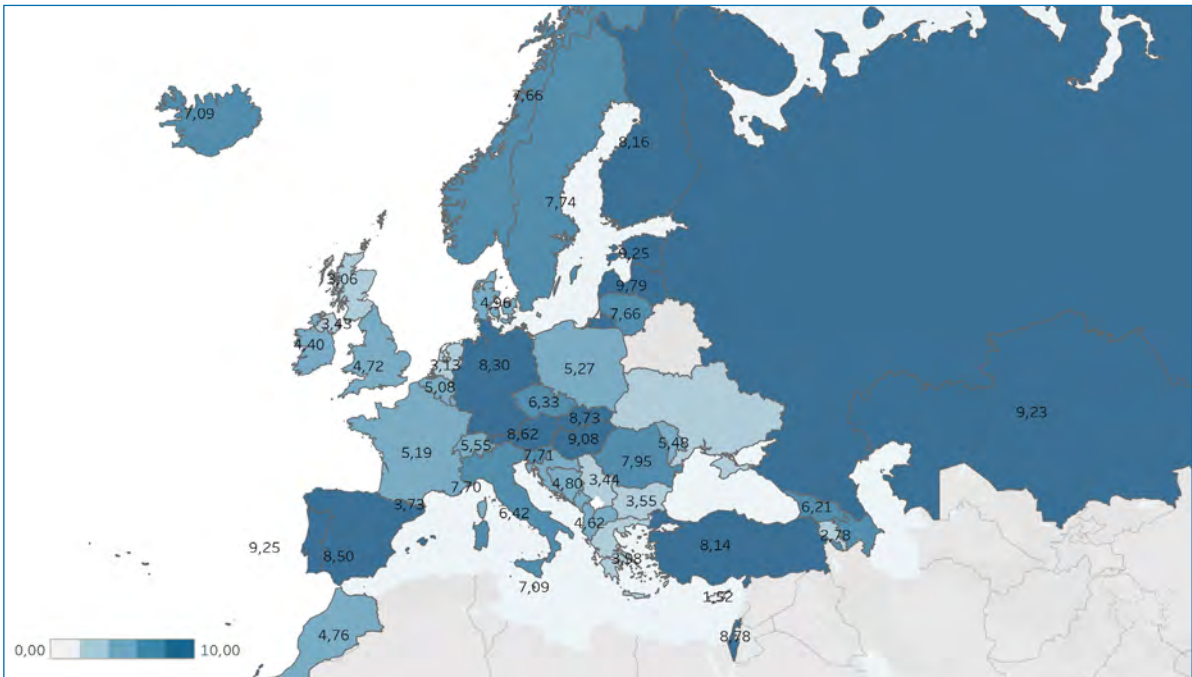
In their ongoing efforts to improve judicial efficiency, several states have undergone, or are currently undergoing, significant justice sector reforms which have influenced the performance of their systems. States also try to improve the functioning of their judicial systems inspired by best practices. In that framework, Serbia launched its inaugural Court Rewards Programme, designed to motivate first instance courts to improve their efficiency and productivity in processing cases. Azerbaijan integrated scientific principles into court operations covering time, cost efficiency/productivity and quality. The Court in Catania (Italy), as one of the most affected courts in terms of asylum proceedings, implemented a set of efficiency-raising measures.

ICT is now a constitutive part of justice service provision. States have focused their efforts on court and case management tools, rather than on decision support and communication tools. European judicial systems are increasingly moving from paper-based procedures to electronic ones for activities carried out within courts, as well as for communication between courts and parties.

In the Russian Federation, measures adopted following the judgments of the Court included the introduction of ICT tools in the judicial system and publication of domestic judgments on the courts' websites.¹⁰⁰ Among ICTs, although AI is not widely used today in the field of justice, it is attractive and can challenge the traditional role of the judge. The ICT index, which shows the level of development of tools in the judiciary, varies from 1.5 to almost 9.8.

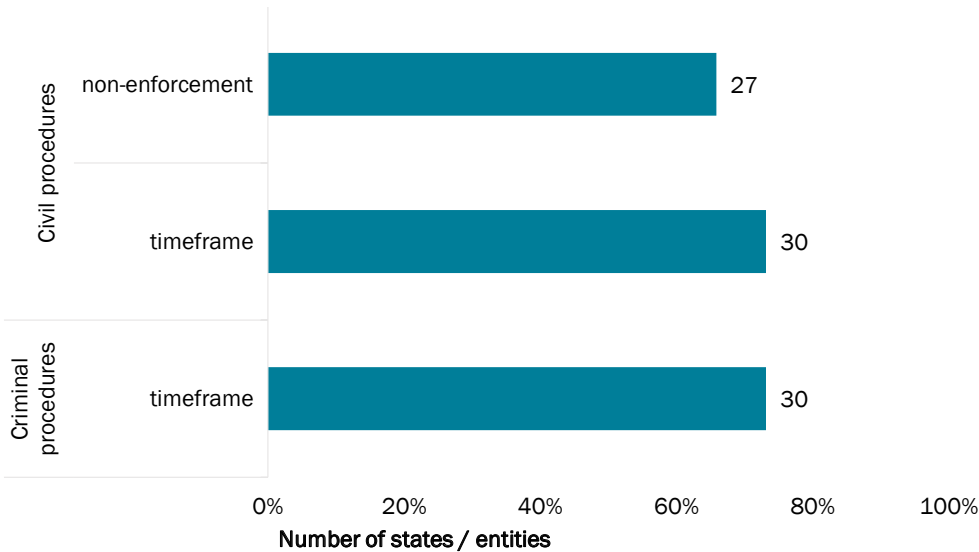
100. Resolutions CM/ResDH(2020)332 and CM/ResDH(2020)334 of the Committee of Ministers of the Council of Europe, Execution of the judgments of the European Court of Human Rights, 8 December 2020.

ICT index in the judiciary (1 to 10)



Increasingly, states provide specific information to users, both on the judicial system in general and on individual court proceedings. Many examples show how states address specific information to and provide arrangements for vulnerable categories of users (children and young people, minorities, people with disabilities); offer the possibility of making complaints concerning the functioning of justice and have put in place compensation systems (43 states with an average compensation amount of €6 300); conduct user satisfaction surveys (one example is the extensive quantitative surveys on satisfaction with the functioning of courts in Slovenia – see also its broader project IQ Justice, where the results of the surveys serve to improve the management and efficiency of the courts); and create monitoring mechanisms in respect of violations of the Convention.

Number of states where a monitoring system exists for violations related to Article 6 of the Convention



States are aware that the initial training of judges and prosecutors, even if of good quality, must be reinforced by lifelong training in order to enable them to keep up to date with legislative reforms and respond to the increasing specialisation of cases. Compulsory continuous training of judges and prosecutors is in place in 42 member states.



CHAPTER 2

FREEDOM OF EXPRESSION

INTRODUCTION

During the period 2018-2020, respect for freedom of expression was in decline in many countries. Extremists and those who oppose tolerance, broad-mindedness and democratic values continued to threaten journalists. Six journalists lost their lives, targeted and murdered for their work, and many others suffered attacks and threats against their and their families' safety. The Council of Europe's Platform to promote the protection of journalism and safety of journalists logged 118 attacks on the physical integrity of journalists across Europe.¹

■ In 2020, this epidemic of harassment and violence was compounded by the Covid-19 pandemic. Like other sectors, the media was hit hard, and many journalists lost their jobs. Covid-19 also brought a wave of censorship: there were reports of journalists suffering reprisals for questioning government policies and of some oppositional and non-mainstream voices being silenced.² Also, the benefits of the digital transformation have been diminished by the negative phenomena associated with the rise of digital platforms (online hate speech, disinformation, private censorship). These developments have affected public trust in the media and information.³

■ There were some positive developments as well. Following the 10th ratification, the Council of Europe Convention on Access to Official Documents (CETS No. 205; "the Tromsø Convention") entered into force.⁴ Sweden and the Netherlands adopted action plans for the protection of freedom of expression; Ukraine and France set up response mechanisms to co-ordinate follow-up to alerts published on the Council of Europe safety of journalists platform; in the United Kingdom, a National Committee for the Safety of Journalists was set up, and pressures on media freedom diminished in some countries, including North Macedonia.⁵ These are positive developments that can be built on. In Malta, following a resolution by the Parliamentary Assembly of the Council of Europe, the government established an independent public inquiry into the 2017 assassination of Daphne Caruana Galizia, which is still ongoing.⁶

■ Overall, the increasing challenges require strong action and a strategic approach, which is why ensuring freedom of expression, both online and offline, was made a key priority in the Strategic Framework of the Council of Europe.

■ In the period 2018-2020, the Council of Europe's work included a series of Committee of Ministers' declarations and recommendations, including those on the financial sustainability of quality journalism in the digital age, the human rights impacts of algorithmic systems, and media pluralism and transparency of media ownership.⁷ In response to the Covid-19 crisis, the Secretary General issued first a toolkit on respecting democracy, rule of law and human rights, including a chapter on freedom of expression and information, media

1. An upward trend is being observed, with 33 attacks in 2018 and 2019 and 52 in 2020. A similar upward trend has been recorded in relation to the incidents of harassment and intimidation of journalists: 35 in 2018, 43 in 2019 and 70 in 2020, amounting to a total of 148.
2. As described, for example, in "Covid-19: politicisation, 'corruption', and suppression of science," British Medical Journal, 13 November 2020, BMJ 2020; 371.
3. See the Reuters Institute Digital News Report 2020, May 2020: www.digitalnewsreport.org/; the European Broadcasting Union's Trust in Media reports 2019 and 2020: www.ebu.ch/home.
4. CETS No. 205, 18 June 2009, entry into force 1 December 2020.
5. PACE Report, Threats to media freedom and journalists' security in Europe, Doc. 15021, 03 January 2020. For the UK Committee, see www.gov.uk/government/groups/national-committee-for-the-safety-of-journalists.
6. Parliamentary Assembly Resolution 2293 (2018), adopted on 26 June 2019. For progress in the inquiry, see www.daphne.foundation/en/justice/public-inquiry.
7. See the Declaration by the Committee of Ministers on the financial sustainability of quality journalism in the digital age (13 February 2019) and the Declaration by the Committee of Ministers on the manipulative capabilities of algorithmic processes (13 February 2019); Recommendation CM/Rec(2020)1 of the Committee of Ministers to member states on the human rights impacts of algorithmic systems; and Recommendation CM/Rec(2018)1 of the Committee of Ministers to member states on media pluralism and transparency of media ownership.

freedom, and access to official information,⁸ then an information document on the impact of the Covid-19 crisis on freedom of expression and media freedom.⁹ The Council of Europe issued the Implementation Guide to Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors.¹⁰

■ This chapter reviews respect for freedom of expression in the Council of Europe member states. As well as surveying incidents of violence and the implications for the safety of journalists and others who speak up, it considers the legal framework for freedom of expression; the conditions for an enabling and pluralistic media environment; and the steps taken to promote quality journalism.

■ Wherever available, the chapter draws on publicly available sources, prioritising those from within the Council of Europe mechanisms, including reports on media freedom incidents lodged with the safety of journalists platform and information taken from previous annual reports surveying respect for freedom of expression.¹¹

Challenges

■ The period 2018-2020 has been challenging for freedom of expression. Tolerance and broad-mindedness, hallmarks of democratic society, were in retreat, as evidenced by murders and attacks on journalists; the public sphere became fragmented; and the economic downturn has made it harder for journalism to perform its functions as a trusted voice and public watchdog. It is true that Covid-19 has underscored the value of facts and independent news sources, but it has also exacerbated many pre-existing weaknesses, including the financially weak position of many media outlets. The Council of Europe faces the important task of working with the member states to reverse this decline.

■ In the coming years, priorities will include the implementation of Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors, also by addressing online attacks against women journalists, protection of journalists during protests and abusive lawsuits aimed at silencing critical voices. Further support will be provided to slow the spread of mis- and disinformation, by focusing on quality journalism and helping media users understand the digital media environment and navigate their choices. Governance options will need to be explored to address the challenges related to social media content moderation and the impact of data harvesting and exploitation on freedom of expression. Guidance and identification of best practices on the use of artificial intelligence (AI) tools related to the promotion of freedom of expression and media freedom will be key to ensuring wide access to new technologies and the skills needed to use them.

■ The Council of Europe will continue its work to level the playing field in the digital media environment, to promote quality journalism and to share best practices in media and information literacy. In 2021, Council of Europe expert committees will prepare guidance on the impacts of digital technologies on freedom of expression; and on media and communication governance in the context of the shift to social media platforms.¹² An expert committee is developing a recommendation on combating hate speech offline and online. Furthermore, the Ministerial Conference on Media and Information Society (10-11 June 2021) will provide a forum for ministers to discuss further action needed to address the challenges.

LEGAL GUARANTEES FOR FREEDOM OF EXPRESSION

■ States must take proactive steps to create an enabling environment for the exercise of the right to freedom of expression and ensure that any restrictions comply with the requirements set out in Article 10 of the European Convention on Human Rights: they must be provided for by law, a step necessary in a democratic society in pursuit of a legitimate aim.¹³

■ Between 2018 and 2020, the European Court of Human Rights issued judgments in 263 Article 10 cases and found violations of the right to freedom of expression in a high percentage of cases.¹⁴ Most of the cases

8. SG/Inf(2020)11.

9. (SG/Inf(2020)19), 7 July 2020. See also Noorlander P., "COVID and Free Speech: The impact of COVID-19 and ensuing measures on freedom of expression in Council of Europe member states", Background Paper, Ministerial Conference, Cyprus 2021.

10. Council of Europe DGI (2020)11, June 2020.

11. Ibid. The paragraphs on states' responses to the Covid-19 pandemic draw, in part, on responses to a questionnaire to the Steering Committee on Media and Information Society.

12. For more information, see www.coe.int/msi-dig and www.coe.int/msi-ref.

13. As required under Article 10(2) of the Convention.

14. In only 26 out of these 263 judgments the Court found no violation of Article 10. Statistics taken from the Court's HUDOC database: <https://hudoc.echr.coe.int>.

were brought before 2018, indicating a trend that pre-dates the period under review. The Court's judgments were not always implemented fully and in a timely fashion: as of January 2021, a total of 332 cases involving freedom of expression issues awaited implementation.¹⁵

Measurement criteria

- ▶ Freedom of expression is guaranteed offline and online. The internet is available, accessible and affordable to everyone without discrimination. Any restrictions on freedom of expression, including any filtering of content, are prescribed by law, pursue the legitimate aims set out in Article 10 of the Convention, and are necessary in a democratic society.
- ▶ Robust safeguards exist against the abuse of laws that restrict freedom of expression offline and online, such as public order and anti-terrorism laws, including control over the scope of restrictions exercised by public authorities or private actors, and effective judicial review and other complaint mechanisms.
- ▶ The right of access to information and documents held by public authorities is guaranteed in law and in practice. Any restrictions, including on grounds of national security, are clear and necessary in a democratic society, in compliance with Article 10.2.
- ▶ There is no general obligation on intermediaries to monitor content that they merely give access to or that they transmit or store. Internet intermediaries are not held responsible for the content that is transmitted via the technology they supply except when they have knowledge of illegal activity and content and do not act expeditiously to remove it.
- ▶ Any surveillance of users' communication and activity online is compliant with Article 8 of the Convention.
- ▶ Defamation laws are in line with standards developed by the European Court of Human Rights. There are no criminal offences of blasphemy or religious insult, unless incitement to violence, discrimination and hatred is an essential component. Criminal laws aimed at combating "hate speech" are clear and precise and meet the requirements of Article 10.2 of the Convention.

Findings

■ As Covid-19 took hold, countries introduced various legislative measures to help bring the pandemic under control. Concerns at the potential for "fake news" to spread panic and erode trust in institutions led several states to introduce measures requiring the take-down of "fake" or "distorted" news and criminalising the spreading of "disinformation".¹⁶

■ The risk with such restrictions is that "fake news" is a broad and vague concept, open to different interpretations, and regulations criminalising it can be abused. Disinformation is a complex issue with deep societal roots. If any restrictions are imposed, only assertions that are blatantly false and that pose a clear risk to public health should be restricted.¹⁷

■ Most European countries have recognised the right of access to information in legislation and have taken various steps to promote its practical implementation. The Court has affirmed the importance of this right, emphasising that journalists should have access to relevant locations to report on issues of public interest.¹⁸

■ During the pandemic, states took further proactive steps by holding regular press conferences, led by senior government figures and health professionals, and creating dedicated websites and hotlines.¹⁹ The press

15. These 332 judgments pending execution include 87 leading and 231 repetitive cases. Statistics taken from the Department for the Execution of Judgments: <https://hudoc.exec.coe.int>.

16. The World Health Organization announced that the coronavirus pandemic was accompanied by an "infodemic" of mis- and disinformation that constituted a serious risk to public health: WHO Situation Report No. 13, 2 February 2020. Restrictive measures were introduced in countries including Armenia (Decree on the State of Emergency, 23 March 2020); Azerbaijan (Amendments to the Law on Information, Informatization and Information Protection, 17 March 2020); Romania (Decree on The State of Emergency, 16 March 2020); Republika Srpska in Bosnia and Herzegovina (Decree on False News, 19 March 2020); Hungary (Emergency Law of 30 March 2020); and the Russian Federation (Article 207.1 of the Criminal Code, as amended).

17. For example, *Gözel and Özer v. Turkey*, Application Nos. 43453/04 and 31098/05, 6 July 2010. See also joint statement issued by freedom of expression monitors of the United Nations, the OSCE and the OAS, "COVID-19: Governments must promote and protect access to and free flow of information during pandemic, say international media freedom experts", 19 March 2020.

18. In *Szurovecz v. Hungary*, the Court held that refusing a journalist access to a reception centre for asylum seekers violated the right to freedom of expression (Application No. 15428/16, 8 October 2019).

19. There was some criticism: methodologies for counting fatalities and those recovered differed from country to country and in some cases changed over time, raising questions about accuracy and intentions.

conferences were good opportunities to gather accurate and up-to-date information, although in some countries there were concerns that journalists did not have sufficient opportunity to pose questions.²⁰ Covid-19 also caused delays in processing access to information requests, and several states suspended deadlines or issued blanket extensions. Some countries sought to impose controls around Covid-19 information.

■ It is expected that the effective protection of the right to information will be given a new impetus with the entry into force of the Tromsø Convention, the first binding international legal instrument to recognise a general right of access to official documents held by public authorities.

■ The parliament of Albania is considering an “anti-defamation” package of laws. Against a backdrop of critical assessment, including from the Venice Commission, the Albanian authorities are preparing revised amendments and have pledged to meet all the concerns. The French National Assembly considered legislation according to which police officers must not be identifiable in photos published by the media “with the intent to cause them harm”.²¹ Lively debates took place over the question of whether these restrictions comply with the Convention.

■ In the Russian Federation, four bills regulated online expression and penalised journalists labelled “foreign agents”.²²

■ During the period 2018-2020, there were several instances of large-scale blocking of websites, notably in Russia, Turkey and Ukraine.²³ Wikipedia is challenging the blocking of its site in Turkey before the Court, with the Commissioner for Human Rights intervening;²⁴ in December 2019 the Turkish Constitutional Court ruled that the blocking was unconstitutional.²⁵

■ The recent case law of the European Court of Human Rights provides valuable guidance for regulating freedom of expression online. The Court affirmed that laws that provide for blocking or filtering must be transparent, proportionate and necessary for the aim pursued, and include effective guarantees against abuse, and that intermediaries or journalists cannot be held liable for content they host or link to unless they are aware of it and its potential illegal nature.²⁶

■ The abuse of civil lawsuits to silence critical voices is a growing concern.²⁷ In October 2020, the Commissioner for Human Rights noted several instances where journalists and others faced dozens of specious lawsuits, including the murdered Maltese journalist Daphne Caruana Galizia, who was facing over 40 defamation suits at the time of her assassination. The commissioner warned that such lawsuits pose a significant threat to freedom of expression and called on states to devise a comprehensive response, allowing the early dismissal of cases; punishing the abuse of proceedings; and giving practical support to those who are sued.²⁸ A 2019 Council of Europe study warned that with regard to online publications, “forum shopping” could constitute a threat to freedom of expression if claimants can choose to bring defamation cases in jurisdictions that are likely to be favourable to them, despite a very weak link between their cases and such jurisdictions.²⁹

20. In Hungary, Serbia and Spain journalists complained that questions had to be submitted in advance and were pre-selected (the practice was eventually abandoned in Spain and Serbia).

21. Regarding the French Global Security Bill, Section 24, it was passed by the National Assembly in November 2020, but was reconsidered on account of its vague wording potentially leading to abuse. The draft law was referred to the Constitutional Court; Council of Europe Platform Alert 137/2020. The Albanian anti-defamation legislation is subject to Council of Europe Platform Alert 87/2019, New “Anti-defamation” Legislative Package Threatens Online Media Freedom. The Venice Commission adopted the Opinion on draft amendments to the Law No. 97/2013 on the Audiovisual Media Service, 19 June 2020, CDL-AD(2020)013-e.

22. Council of Europe Platform Alert 36/2019, 23 April 2019: Russia: President Putin Signs into Law Russia’s “Fake News” and “Internet Insults” Bans; Council of Europe Platform Alert 44/2019, 30 April 2019: “Sovereign Internet Bill” Adopted; Council of Europe Platform Alert 68/2018, Duma Committee Approves Legislation to Label Individual Journalists “Foreign Agents”, update of 20 December 2019.

23. See, for example, Council of Europe Platform Alert 118/2019, 18 September 2019, Ukrainian Court Rules to Block Access to 17 Online Media; Platform Alert No. 119/2019, Russian Internet Regulator Blocks Independent Fergana News Website; and Platform Alert No. 92/2019, 14 August 2019: Roskomnadzor Requests the Take-down of Information about Moscow Protests, Platform Alert No. 91/2019, 12 August 2019: Court Imposes Access Block on News Portals and Social Media.

24. *Wikimedia Foundation INC v. Turkey*, Third party intervention by the Council of Europe Commissioner for Human Rights, Application No. 25479/19: www.coe.int/en/web/commissioner/-/commissioner-publishes-observations-on-internet-blocking-in-turkey.

25. Constitutional Court Case No. 2017/22355, 26 December 2019.

26. *OOO Flavis and Others v. Russian Federation*, Application Nos. 12468/15 23489/15 19074/16, 23 June 2020; *Kablis v. Russian Federation*, Application Nos. 48310/16 and 59663/17, 30 April 2019; *Magyar Jeti Zrt v. Hungary*, Application No. 11257/16, 4 December 2018; *Hainess v. Norway*, Application No. 43624/14, 19 June 2019.

27. As highlighted in, among others, the 2020 Annual Report by the partner organisations to the Council of Europe Platform. Cases were recorded in countries including Austria, Croatia, Malta, Poland and the United Kingdom.

28. Commissioner for Human Rights Human Rights Comment “Time to take action against SLAPPs”, 27 October 2020.

29. Liability and jurisdictional issues in online defamation cases, Council of Europe study DGI(2019)04.

SAFETY OF JOURNALISTS AND OTHERS WHO SPEAK UP

Protecting the safety of journalists and others who speak up on issues of public interest has been a key part of the Council of Europe's work. In 2020, the Parliamentary Assembly underscored the urgency of protecting journalists' safety, stating that over the last five years "[t]hreats to media freedom and the safety of journalists have become so numerous, repeated and serious that they are jeopardising ... the stability and smooth functioning of our democratic societies."³⁰ The Council of Europe book, *A Mission to Inform – Journalists at risk speak out*, draws on interviews with 20 journalists to illustrate the cost of these threats to society as well as to individual journalists.³¹

With the number of violent attacks against journalists rising across Europe, the Council of Europe is stepping up its efforts to ensure the effective implementation of Recommendation CM/Rec(2016)4 on the protection of journalism and safety of journalists and other media actors. In 2021, safety of journalists will be a focal point for the Ministerial Conference on Media and Information Society.³² The Council of Europe is calling on member states to draw up all-encompassing national action plans to protect the safety of journalists more effectively.³³

Measurement criteria

- ▶ There are no killings, physical attacks, disappearances or other forms of violence against journalists, bloggers, artists, politicians or others who use their right to freedom of expression to speak up on issues of public interest.
- ▶ There is no impunity for crimes against those who speak out on issues of public interest. There is an effective legal framework in place including criminal law provisions dealing with the protection of the physical and moral integrity of the person, and there are independent, prompt and effective investigations of all crimes against those who speak out.
- ▶ Political leaders and public officials engage positively with the media and do not denigrate journalists or others who speak out. Verbal intimidation or harmful rhetoric against media actors and others who speak up in political discourse is promptly condemned by authorities.
- ▶ All those who face threats to the exercise of their right to freedom of expression are provided with adequate protection when requested.
- ▶ Journalists and other media actors are not arrested, detained, imprisoned or harassed because of critical reporting. There are no selective prosecutions, sanctions, inspections or other arbitrary interferences against journalists and other media actors, and others who speak out on matters of public interest, nor are they subjected to state surveillance for their exercise of the right to freedom of expression.
- ▶ There are no reprisals against whistle-blowers who, in good faith and as a matter of last resort, provide information to journalists and other media actors on matters of public interest.
- ▶ The confidentiality of sources of journalists and other media actors is respected, in line with standards developed by the European Court of Human Rights.

Findings

Previous annual reports of the Secretary General have documented a rise in violence against journalists and others who speak up in criticism of those in positions of power. This trend was amplified in 2020, notably due to the Covid-19 pandemic, with the safety of journalists platform seeing an increase in reported alerts by 60%.³⁴

30. Resolution 2317 (2020), Threats to media freedom and journalists' security in Europe.

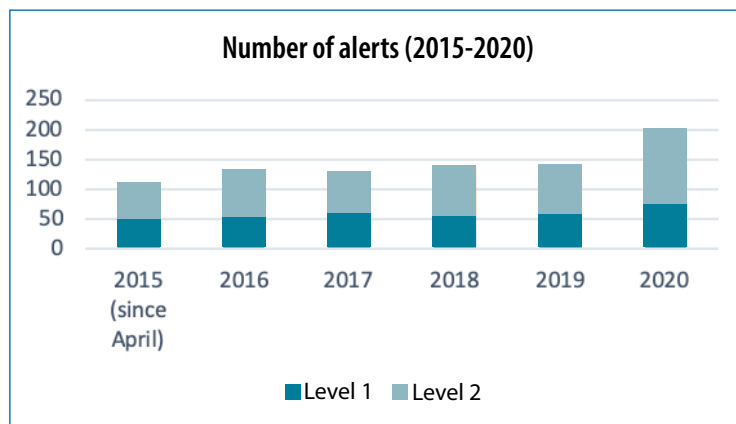
31. Clark M. and Horsley W., edited by E. Brodeală, September 2020.

32. Council of Europe Conference of Ministers responsible for Media and Information Society "Artificial intelligence – Intelligent politics: Challenges and opportunities for media and democracy", co-organised with the Republic of Cyprus: www.coe.int/media2021nicosia.

33. See Background paper "Taking action to protect journalists and other media actors", September 2019. Steps towards improving the protection of journalists have been taken in other multilateral forums as well; in July 2019, a number of Council of Europe member states came together as part of a Global Media Freedom Coalition, pledging to uphold media freedom and speak out whenever it is violated.

34. Of a total of 104 incidents reported on the platform in the first half of 2020, 32 were Covid-19 related. In the equivalent period of last year, 64 incidents were registered. The increase is largely due to Covid-19-related incidents, including incidents of violence as well as arrests and detentions of journalists.

There was a marked increase in violence between 2018 and 2020. Six journalists and a teacher were killed or died most likely in connection to their work, the latter explicitly for defending freedom of expression: Slovak journalist Ján Kuciak; Saudi journalist Jamal Khashoggi (killed in the Saudi Consulate in Istanbul); British journalist Lyra McKee; Ukrainian journalist Vadym Komarov; Russian journalist Irina Slavina; Russian journalist Maksim Borodin; and French teacher Samuel Paty, who was killed for showing his class cartoons depicting the Prophet Muhammad previously published in *Charlie Hebdo* magazine.



Source: Council of Europe's Platform to promote the protection of journalism and safety of journalists

The murders, most of which remain unresolved, point to a rising lack of tolerance in society along with a disregard for the rule of law. The worrying trend is confirmed by the statistics from the safety of journalists platform. The annual number of alerts has gone from 139 in 2018 to 201 in 2020 – a 45% increase on the 2018 level. Countries with a high number of alerts mostly remained on a downward trajectory.³⁵

Covid-19 laid bare the fault lines. Physical attacks and violence against journalists rose across Europe, often during demonstrations or public unrest. Attacks included physical assaults on journalists by law-enforcement officers, as well as arrests, police hindrance and disruptions on reporting of protests and demonstrations.³⁶ Increasingly, journalists and other media workers were being targeted by protesters. Award-winning journalist Lyra McKee was shot while reporting on riots in Northern Ireland in April 2019.

Violence often followed online threats and smear campaigns, some of which have been automated: bots are discrediting the work of journalists on Instagram and Twitter. Female journalists suffer particularly severe online abuse, often sexualised and gender-based, with threats of rape distressingly common.³⁷ The Court has strongly condemned such smear campaigns, describing them as “grave and an affront to human dignity”.³⁸ In some countries, senior politicians and public officials led anti-media rhetoric. This is particularly dangerous as it creates the impression that violence against journalists is not only condoned but encouraged.³⁹

While investigations have been launched into some attacks, the phenomenon of “impunity” – the absence of prosecutions or convictions for serious attacks and killings – is on the rise. The safety of journalists platform recorded 33 cases of impunity by the end of 2020, 24 concerned murder cases.⁴⁰ The Secretary General, the President of the Parliamentary Assembly and the Human Rights Commissioner have called for the murderers

35. During the period 2018-2020, only three out of 16 countries with a high number of alerts saw an improvement; and the number of countries with more than 10 alerts per year went from five to eight.

36. In this connection, in 2020 the Venice Commission issued, together with the Office for Democratic Institutions and Human Rights (ODIHR), the third edition of the Guidelines on freedom of peaceful assembly. They contain a chapter on the “Duty to protect and facilitate the work of journalists and media personnel” and recommend that no media credentials should be required to cover an assembly. The duty of law-enforcement authorities to protect media professionals from violence emanating from third people, but also to refrain from interfering with the work of journalists is valid irrespective of whether they represent national or foreign media; this duty also covers the freedom of media representatives from arbitrary arrest or detention in connection with their coverage of an assembly.

37. As documented by, among others, the Council of Europe Commissioner on Human Rights and the OSCE Representative on Freedom of the Media: www.osce.org/fom/safety-female-journalists-online.

38. *Khadija Ismayilova v. Azerbaijan*, Application Nos. 65286/13 57270/14, 10 January 2019.

39. Council of Europe Platform Alert 31/2019, 8 April 2019: Former PM Robert Fico Launches a New Attack on Media; Council of Europe Platform Alert 59/2020, 18 May 2020: Prime Minister Janez Janša Denigrates Journalists.

40. Twenty-four cases of impunity for murders of journalists: www.coe.int/en/web/human-rights-channel/end-impunity-for-crimes-against-journalists.

to be brought to justice and pledged to work with all stakeholders to bring domestic laws and practices into compliance with Convention requirements.⁴¹

■ In a smaller number of countries, the imprisonment of journalists continued to be an issue of concern. As of December 2020, according to the Council of Europe's safety of journalists platform, 119 journalists were imprisoned in member states.

■ Several investigations and prosecutions were initiated against journalists and others who voiced criticism of government actions or inaction in response to Covid-19.⁴² There were reports that whistle-blowers who had raised the alarm about the lack of protective equipment for medical staff suffered retaliation and did not always receive protection of the law, with some reportedly losing their jobs. In 2019, responding to long-standing concern over the inadequate level of protection, the Parliamentary Assembly called for a binding legal convention for the protection of whistle-blowers.⁴³

■ While the confidentiality of journalists' sources is an integral part of the right to freedom of expression,⁴⁴ throughout the period 2018-2020 there were cases of journalists being forced or pressured to reveal sources for their reports.⁴⁵ Concerns were raised that tracking and tracing apps to detect possible coronavirus carriers could impact on the confidentiality of journalists' sources. NGOs and intergovernmental watchdogs urged that the impact of any app on privacy and freedom of expression should be proportionate.⁴⁶

INDEPENDENT AND PLURALISTIC MEDIA ENVIRONMENT

■ States should have in place an enabling and pluralistic environment under which all media outlets can operate on a "level playing field". No media outlet or conglomerate should enjoy unfair competitive advantages; ownership, management and financial structures should be transparent; and public-service media should be independent and sufficiently funded.

■ In today's media landscape, this remains a real challenge. States must have a comprehensive understanding of the media environment and ensure that regulatory frameworks, not just for media but also those governing competition, tax and employment law, digital privacy and elections, are fit for today's challenges.⁴⁷ Journalists and media workers, without whom there would be no media, should enjoy good working conditions to be able to fulfil their mission of purveyors of quality information, as well as their role of public watchdog in European democracies.

■ In 2018, the Committee of Ministers issued new guidelines on media pluralism and transparency of media ownership. Recommendation CM/Rec(2018)1 calls on states to develop strategies to increase media sustainability and to support quality journalism.⁴⁸ In April 2018, the Parliamentary Assembly adopted a resolution on improving working conditions for journalists.⁴⁹ However, it is critical that member states intensify their efforts to effectively implement the guidelines included in these instruments.

Measurement criteria

- The public has access to a variety of print, broadcast and online media that represent a wide range of political and social viewpoints and groups within society, including local communities, minorities and those with special needs. Political parties and candidates have fair and equal access to the media, and

41. See www.coe.int/en/web/human-rights-channel/end-impunity-for-crimes-against-journalists.

42. For example, Serbian journalist Ana Lalić was charged with causing panic for reporting that medical staff at the Vojvodina Clinical Centre lacked sufficient protective gear (Council of Europe Platform Alert No. 38/2020, 1 April 2020), the charges were later dropped; Turkish journalist Can Tugay was accused of "creating fear and panic amongst the public" for criticising a presidential campaign for donations (Council of Europe Platform Alert No. 41/2020, 15 April 2020).

43. Improving the protection of whistle-blowers all over Europe, PACE Recommendation 2162, 1 October 2019.

44. *Goodwin v. United Kingdom*, Application No. 17488/90, 27 March 1996.

45. For example, see Council of Europe Platform Alert 134/2019, TV Reporter Robert Bas Jailed for Refusing to Disclose Source at Murder Trial.

46. See the report by Reporters without Borders: "Coronavirus: State measures must not allow surveillance of journalists and their sources", 10 April 2020. See also the Joint Statement on Digital Contact Tracing by the Chair of the Committee of Convention 108, and the Data Protection Commissioner of the Council of Europe, 28 April 2020.

47. See also "Key messages from the Ljubljana Conference (Last) Call for Quality Journalism", <https://rm.coe.int/slovenia-2019-media-conference-messages/1680994ef1>.

48. Recommendation CM/Rec(2018)1 on media pluralism and transparency of media ownership, 7 March 2018.

49. Resolution 2213 (2018) on the status of journalists in Europe, 25 April 2018: <https://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=24735&lang=en>.

ownership of media by political actors is regulated. Coverage of elections by broadcast media is balanced and impartial.

- ▶ Regulatory frameworks safeguard the editorial independence of media outlets from government, media owners and political or commercial interests, and are respected in practice. Print, broadcast and internet-based media are not subject to direct or indirect censorship.
- ▶ Media concentration is addressed through effective regulation and monitored by independent regulatory authorities vested with powers to act against concentration. Information about media ownership and economic influence over media is easily accessible to the public. Internet platforms identify paid-for content.
- ▶ The operating environment for independent and community media is favourable. All types of media have fair access to technical and commercial distribution channels and electronic communication networks, as well as to state advertising and state subsidies and other funding schemes.
- ▶ All state support measures for media consider the distinct role and contribution to journalism of different media actors, including commercial media, public-service media, community media and independent journalists. National frameworks providing for support measures are based on clear, objective and transparent criteria and include safeguards to protect the editorial independence and operational autonomy of all media.
- ▶ Public-service media have institutional autonomy and secure funding to be protected from political or economic interference. They play an active role in promoting social cohesion and integration through outreach to diverse groups of the population, including minorities and those with special needs.
- ▶ Journalists have satisfactory working conditions with adequate levels of pay and social protection. Content creators, including individuals as well as media businesses, are rewarded fairly for their work and copyright is protected against abuse. Journalists are not subjected to undue requirements before they can work. Foreign journalists are not refused entry or work visas because of their potentially critical reports.

Findings

Throughout the period 2018-2020, the media has suffered from a financial and economic crisis. Media struggled to find viable business models, with sales falling and advertising diverted to social media and other online conglomerates. Smaller, regional and local outlets suffered, and many were forced to merge, were taken over by larger conglomerates or shut down completely. Some 43% of independent media expected to lose up to 30% of revenue over 2020; 36% even more: as reported to the Council of Europe, around 30 UK publishers suspended titles and broadcasters made budget cuts of £245 million; French broadcaster M6 made 100 million euros' worth of budget cuts.

The economic crisis that accompanied the Covid-19 pandemic exacerbated this trend. While audiences flocked to the media for information, the main financial impact of this was to drive up costs: online media had to upgrade infrastructure and Covid-safe working routines drove up the production costs of traditional media. At the same time, lockdowns and the economic downturn caused by Covid-19 led to even further loss of advertising and sales, forcing media companies to continue to cut costs and lay off journalists. In contrast, the media that have fared particularly well during the pandemic are online entertainment platforms.⁵⁰

Many member states responded to the emergency with financial and fiscal support packages for the media.⁵¹ Despite this, there is no doubt that the financial position of the media has been weakened, and a growing concern that their potential dependence on either government or owner subsidies will threaten their independence.⁵²

Media pluralism was also under threat. According to the 2020 Media Pluralism Monitor, the basic conditions that make up media pluralism (market concentration, transparency of ownership, businesses' influence over editorial content and the sustainability of media production) were at "medium" or "high" risk in all countries

50. <https://reutersinstitute.politics.ox.ac.uk/few-winners-many-losers-covid-19-pandemics-dramatic-and-unequal-impact-independent-news-media>. www.nielsen.com/us/en/insights/article/2020/covid-19-tracking-the-impact-on-media-consumption/.

51. A list of support packages has been compiled by the EFJ:

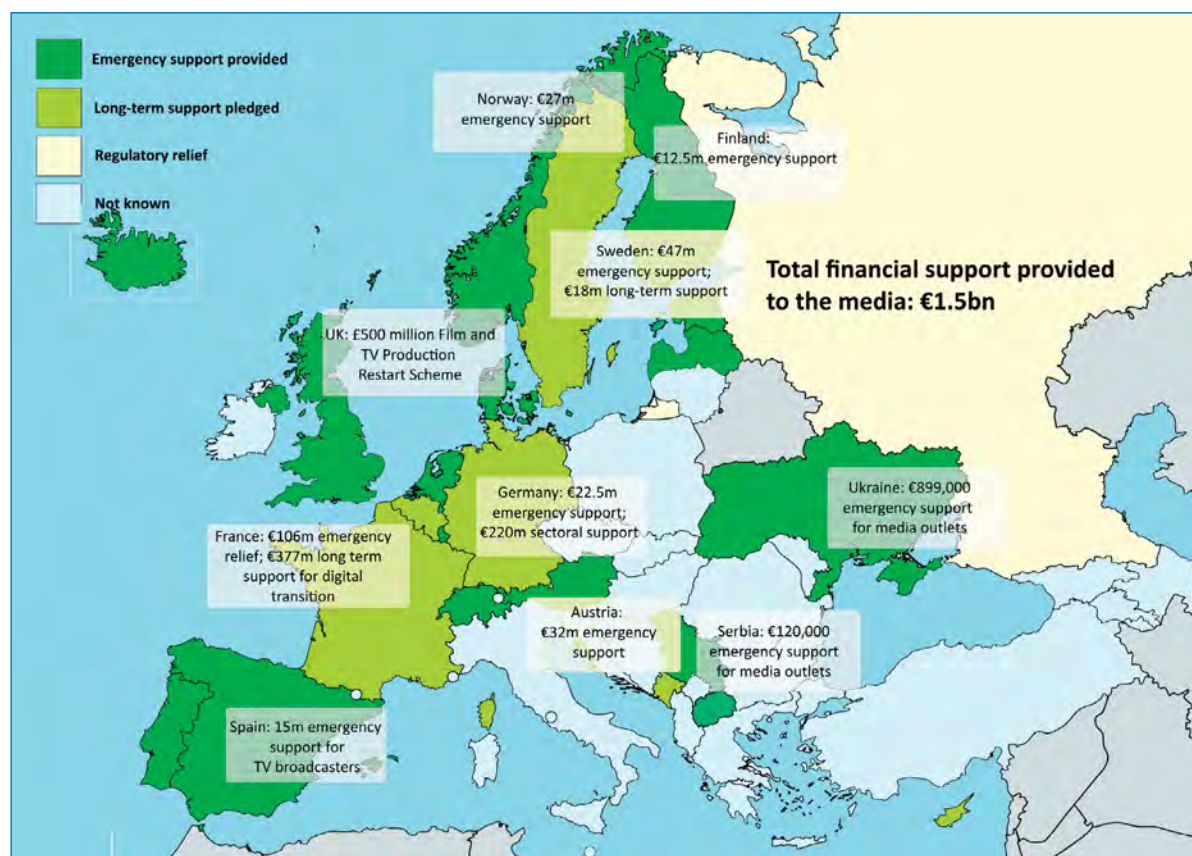
<https://europeanjournalists.org/blog/database/covid-19-what-financial-support-has-the-media-and-journalists-received-in-europe/>.

52. For example, concerns raised in the European Commission's 2020 Rule of Law Report.

that were examined.⁵³ The average risk score increased, indicating a growing threat. Political independence of the media and social inclusiveness were similarly under threat.⁵⁴

■ At the same time, some positive developments could be noted as well, notably on the transparency of ownership.⁵⁵

Support provided to the media in response to the Covid-19 crisis (data provided by the European Federation of Journalists) ⁵⁶



■ In several countries, concerns were expressed that state advertising was unfairly distributed and used as a means of exerting political pressure.

RELIABILITY AND TRUST IN INFORMATION

■ The public should have adequate access to trusted sources of information. This was poignantly underscored with the outbreak of Covid-19, when reliable information became critical not only to keep people informed but also safe and healthy. Quality journalism is an essential public good and must be nurtured with substantial investments. Media and information literacy is a key accompanying factor, enabling individuals to access content critically and to participate actively and through multiple channels.

■ Throughout the period 2018-2020, the Council of Europe engaged in several activities seeking to restore public trust in the media, promote quality journalism and support media and information literacy among the public. In 2019, the Committee of Ministers' Declaration on the manipulative capabilities of algorithmic processes was issued, with a follow-up recommendation in 2020 warning of the dangers of the use of such processes to influence social and political behaviours.⁵⁷ Also issued in 2019, the Committee of Ministers' Declaration on

53. The Media Pluralism Monitor is a scientific tool devised to survey media pluralism: <https://cmpf.eui.eu/mpm2020/>.

54. Ibid.

55. The European Commission's 2020 Rule of Law Report commented positively on disclosure of ownership requirements in Germany, France and Portugal (in the latter, the constitution requires transparency of media ownership).

56. <https://europeanjournalists.org/blog/database/covid-19-what-financial-support-has-the-media-and-journalists-received-in-europe/>.

57. Declaration on the manipulative capabilities of algorithmic processes, 13 February 2019; Recommendation CM/Rec(2020)1 on the human rights impacts of algorithmic systems, 8 April 2020.

the financial sustainability of quality journalism in the digital age calls on member states to acknowledge the pivotal need for quality journalism as a public good and to join efforts in promoting and supporting it;⁵⁸ and a large international conference, “(Last) call for quality journalism”, brought together experts from across Europe to exchange knowledge and experiences and explore future directions.⁵⁹ It is also hoped that the draft recommendation on promoting a favourable environment for quality journalism in the digital age,⁶⁰ a comprehensive instrument providing guidance on transparent and equitable funding, professional practices and media education, will soon be adopted.

Measurement criteria

- ▶ Quality journalism, which seeks to provide accurate and reliable information of public interest and complies with the principles of fairness, independence, transparency and public accountability, is acknowledged as a public good that is essential to the health of democracies.
- ▶ Journalists, including freelance journalists, media actors and individuals committed to producing quality journalism, have access to lifelong training opportunities to update their skills and knowledge, specifically in relation to their duties and responsibilities in the digital environment, including through fellowship programmes and financial support measures.
- ▶ The media’s commitment to verification and quality control is complemented by effective self-regulatory mechanisms such as ombudspersons and press/media councils. The public is aware of relevant complaints mechanisms allowing for the flagging of content that breaches journalistic ethics. Media regulatory bodies are pluralistic and broadly representative of wider society.
- ▶ There are effective self- or co-regulatory mechanisms in place to deal with risks related to the digital platforms’ algorithmic curation and selection/recommendation of content, and to respond to the problem of dissemination of contentious, harmful and illegal content on these platforms. Users’ right to freedom of expression guaranteed by Article 10 of the Convention is respected and transparency of platforms’ operation is ensured along with independent oversight and access to effective remedies for all alleged violations of human rights.
- ▶ Educational policies are in place to further media and information literacy among all age groups, not only children and young people. Media literacy initiatives promote the cognitive, technical and social skills that enable people to make informed and autonomous decisions about their media use, grant trust to credible news sources and communicate effectively, including by creating and publishing content.

Findings

■ Quality journalism, trust in the media and a media- and information-literate public are interrelated and of great importance to the functioning of democracy. In this context, research showed that during the Covid-19 pandemic traditional media – television, radio and press – ranked as more trusted sources.⁶¹ However, overall trust in the media remained worryingly low, with only 38% of people saying that they trust the news media “most of the time”.⁶² There was a worrying tendency towards “news scepticism” and the amplification of opinion echo chambers on social media.

■ Public opinion is increasingly shaped by personal beliefs fuelled by emotional appeals.⁶³ In this connection, the digital platforms’ influential role in shaping and facilitating communication in the public sphere offers new possibilities for free expression, but also makes it easier to disseminate contentious, harmful and illegal content. In addition to hate speech, a growing volume of disinformation contributes to “information disorder” and impacts negatively on society’s trust in the media and in democratic institutions more broadly.⁶⁴

■ To refocus on quality output and restore the public’s trust, investment is crucial. But cost-cutting during 2018 and 2019 decimated the ranks of professional journalists, and when the Covid-19 pandemic hit, there

58. Declaration on the financial sustainability of quality journalism in the digital age, 13 February 2019.

59. See www.coe.int/en/web/freedom-expression/qualityjournalism2019.

60. See <https://rm.coe.int/msi-jq-2018-rev7-e-draft-recommendation-on-quality-journalism-finalis/168098ab76>.

61. Reuters Institute for the Study of Journalism, 2020 Digital News Report.

62. As evidenced by the Reuters Institute Digital News Report 2020, May 2020: www.digitalnewsreport.org/, and the EBU’s Trust in Media reports 2019 and 2020: www.ebu.ch/home.

63. Tambini D., “Media Freedom, Regulation and Trust: A Systemic Approach to Information Disorder”, Background Paper, Ministerial Conference, Cyprus, June 2021.

64. Ibid.

were not enough journalists specialised in science journalism to ensure a responsible and critical coverage of the pandemic. Many media outlets repeated statistics but without the ability to investigate and put the science in context, they were unable to curb polarised public debate. As a result, in many countries sensationalist narratives continued to dominate, especially online.⁶⁵

■ The use of technology has an obvious impact on the quality of journalism. Artificial intelligence-driven tools can almost fully automate some reporting; audience analytics inform editorial decisions; and investigative journalists use AI to analyse huge amounts of data. But there are downsides to the use of AI: *in extremis*, it can threaten journalism and even democracy by manipulating algorithms for political purposes, automating censorship, disseminating mis- and disinformation and entrenching audiences in information “bubbles”.⁶⁶

■ Several member states launched media and information literacy initiatives aimed at strengthening critical thinking skills.⁶⁷ Fact-checking initiatives that were already emerging prior to the pandemic turned their efforts to checking claims made about Covid-19, and government information campaigns provided further content to the media.⁶⁸

■ In the media sector, effective self- and co-regulation is of key importance to encourage quality journalism. But just as the media landscape has changed beyond recognition over the last decade, so has self-regulation. A 2020 study found that while much publishing is now online, digital-only and digital native media are regularly left out of self-regulatory bodies, leaving a growing blind spot with potentially detrimental impacts on media quality.⁶⁹

■ Concerns also appear regarding the lack of democratic control and oversight over digital platforms. Search and social media platforms are taking editorial decisions through their content moderation practices for the purpose of restricting access to illegal and harmful content. They exercise even more profound influence by their control over the availability, findability and accessibility of content they distribute. However, so far, their content-related responsibilities have largely been a matter of their often-opaque community standards and terms of service. The Council of Europe, however, has continuously promoted the rule of law approach to the governance of platforms, with self-regulation as an important complementary component.⁷⁰

■ In its endeavours, the Organisation is collaborating closely with the member states and other relevant stakeholders, as well as with international organisations sharing similar approaches to the increasing influence of the platforms on public opinion formation and public debate, such as the OSCE and the European Union.

■ With regard to audiovisual media, the transposition across the European Union of the 2018 Audiovisual Media Services Directive has begun to cement co-regulation, although this has also led to questions about risk of self-censorship and censorship by non-judicial institutions.⁷¹ In the industry, however, effective approaches to self- and co-regulation still need to be explored and carefully mapped.

■ In 2020, Facebook announced its “Oversight Board”, an independent body mandated to make content moderation decisions.⁷² Given the huge volume of content on Facebook along with its self-interest in monetising user content, this raises serious questions about the transparency of decision making and the impact on its billions of users’ human rights, as well as the role of public authorities in ensuring compliance mechanisms for overseeing content moderation practices on the basis of international human rights standards.

65. For example, “Global Media Forum digital session: the role of the media in COVID-19 reporting”, www.dw.com/en/global-media-forum-tackles-role-of-media-in-covid-19-reporting/a-53934262.

66. Helberger N., Eskens S., van Drunen M., Bastian M. and Moeller J., “Implications of AI-driven tools in the media for freedom of expression”, Background Paper, Ministerial Conference, Cyprus 2021.

67. For example, Iceland’s campaign “Stop, think, check”, a collaborative initiative based on the Norwegian Media Authority’s campaign and similar to campaigns in the UK, Ireland and the Netherlands.

68. For example, www.tagesschau.de/faktenfinder/faktenchecks-corona-101.html; www.bbc.com/news/reality_check.

69. Harder R. A. and Knapen P., *Media Councils in the Digital Age*, 2020.

70. In 2018, the Council of Europe adopted Recommendation CM/Rec(2018)2 of the Committee of Ministers to member states on the role and responsibilities of internet intermediaries, which acknowledges the curatorial and editorial roles of various platforms and calls on states to assign to them corresponding responsibilities.

71. Directive (EU) 2018/1808, OJ L 303, 28 November 2018. For discussion, see IRIS Special 2019-2, Self- and Co-regulation in the new AVMSD, European Audiovisual Observatory, 2019.

72. See www.oversightboard.com/.



CHAPTER 3

FREEDOM OF ASSEMBLY AND FREEDOM OF ASSOCIATION

INTRODUCTION

A modern democratic state owes its stability and legitimacy to its capacity to defend and promote the values it proclaims. The peaceful cohabitation of all the members of a society is achieved through the recognition that fundamental freedoms are the inalienable right of everyone. When dissent is not allowed to be collectively expressed and channelled, it increases the likelihood of friction and conflict between the state and the people.

■ The Council of Europe has always promoted and defended political freedoms. These are today well accepted in most Council of Europe member states, where these values are long and deeply embedded. In these countries, legislation is interpreted and applied based on a presumption in favour of the unhindered exercise of these freedoms.

■ This however is not the case everywhere. There is a contradiction between the political programmes of certain governments purporting to represent and defend the interests of the people and these same governments' action to silence critical or opposing voices. In an increasing number of states, the space for civil society is shrinking, and peaceful public events are viewed and treated as dangerous. Restrictive legislation has been introduced in recent years, despite Council of Europe attempts at persuading those governments to change course. New ways of eroding these fundamental freedoms have been observed: invoking otherwise legitimate concerns such as the fight against corruption or fight against terrorism as a pretext to target selected associations, human rights defenders or civil society leaders. Discrimination, notably on grounds of political views, religion, ethnic background or sexual orientation, is inflicted on the pretence of protecting the interests of society at large or moral imperatives such as religious and traditional family values.¹ Organisations that work to protect the rights of migrants and asylum seekers have been subjected to new criminal penalties and special financial regulations.

■ There can be no complacency about these kinds of attacks on political freedoms. We must put resources into helping member states to reverse this trend and assisting them to reinstate legislation and practice fully protecting and guaranteeing the freedoms of assembly and association.

■ This can be achieved through strengthening the implementation of the European Convention on Human Rights at national level, including through full and timely execution of the judgments of the Court. Several judgments disclosing violations of the freedom of assembly or association have been pending for many years under the Committee of Ministers' supervision of execution, with decisive results yet to be achieved in most, although some examples of successful implementation can be noted. They reveal deficiencies often structural or systemic in nature requiring not only far-reaching legislative, executive and judicial action to tackle them but over and above a fundamental shift towards genuine adherence to the underlying value of pluralism by public authorities at all levels and by society. From this perspective, in the longer term, the Council of Europe's action in this area can be strongly and meaningfully complemented by supporting education for democratic citizenship and empowerment and strengthening young people's role in decision making.

1. *Bayev and Others v. Russia* (Application No. 67667/09), 20 June 2017. The Court expressed the view that "there is an important difference between giving way to popular support in favour of extending the scope of the Convention guarantees and a situation where that support is relied on in order to narrow the scope of the substantive protection. The Court reiterates that it would be incompatible with the underlying values of the Convention if the exercise of Convention rights by a minority group were made conditional on its being accepted by the majority", at paragraph 70).

■ In close connection with the above, strengthening the independence, efficiency and resilience in all parts of the judicial systems, in parallel with enhancing their capacity to implement Council of Europe standards, is also key to the full realisation of freedom of assembly and association in our member states. The situation observed in some states, including positive developments in the execution of judgments, shows the many ways in which the judiciary can step in to guarantee full respect of and protection for these freedoms. Shortcomings in the relevant legal framework can and have been corrected through a Convention-compliant reading and/or application of the same. Violations of these freedoms can be prevented through judicial restraint in applying excessively restrictive legislation or effective judicial review of restrictions or sanctions imposed by the administration, involving prompt, full and effective examination of their compliance with the Convention. Impunity for state agents in relation to allegations of excessive use of force in policing public assemblies or dereliction of duty in protecting the same against attacks from private parties can be prevented and non-repetition guaranteed when judicial systems are independent, efficient and free from bias and mechanisms are in place to shield them from any undue external influence.

■ The Council of Europe focus on fighting discrimination and ensuring protection for vulnerable groups, notably LGBTI people, national and religious minorities, and migrants and refugees, will also be fundamental in countering long-standing or emerging patterns of state action or inaction which suppress or hinder the freedom of assembly or association of members of these groups or organisations working to protect them. The fact that Council of Europe action has had positive results in some member states shows that “pockets of resistance” can be countered and that efforts should continue to challenge similar emerging patterns in other member states.

■ Of similar fundamental importance is the Council of Europe’s action to support the role and diversity of civil society, including human rights defenders, as well as human rights institutions in member states. Alarming, actions aimed at or having the effect of restricting or even suppressing NGO activities or silencing human rights defenders have come to form the most widespread pattern over the past four years in the Council of Europe member states, although swift interventions by Council of Europe bodies did persuade some to abandon such initiatives.

FREEDOM OF ASSEMBLY

■ As the European Court of Human Rights has underlined on many occasions, “the right to freedom of assembly is a fundamental right in a democratic society and, like the right to freedom of expression, is one of the foundations of such a society”²

■ The right to freedom of assembly covers all sorts of gatherings and demonstrations: private meetings and meetings in public places; static events and moving processions; demonstrations involving a single participant or hundreds of thousands; organisers and participants.³ Many purposes can be served: celebration, commemoration, picketing and protest, as well as the expression of opinions of all kinds, including diverse, unpopular, shocking or minority opinions. The only type of assembly not covered by this right is where the organisers and participants have violent intentions, incite violence or otherwise reject the foundations of a democratic society.

■ While the Convention permits restrictions to freedom of peaceful assembly, these must be limited because of the importance of freedom of assembly in a democratic society. Restrictions should be clearly defined in national law, pursue a legitimate aim (such as preventing disorder or crime, or protecting other people) and be kept to the necessary minimum. States have a duty not only to refrain from interfering unduly with the exercise of the right to freedom of assembly, but also to put in place adequate mechanisms and procedures to ensure that it is enjoyed in practice and by all, without discrimination.

■ Many member states have placed restrictions on freedom of assembly as part of the exceptional measures taken to limit the spread of the Covid-19 virus. Such restrictions are permissible under Article 11 to the extent that they are lawful, proportionate to the need to protect public health and safety and are non-discriminatory.

■ Interference with the right to freedom of assembly does not need to amount to an outright ban, legal or de facto, but can consist in various other measures taken by the authorities. “Restrictions” include both measures taken before or during a gathering and those, such as punitive measures, taken afterwards.

2. See, for a recent example, *Navalnyy v. Russia* (Application Nos. 29580/12 and four others), 15 November 2018.

3. Ibid.

■ State authorities may require that reasonable and lawful regulations on public events, such as a system of advance notification, be respected and may impose sanctions on organisers for failure to do so. When rules are deliberately circumvented, it is reasonable to expect the authorities to react. However, the Court and the Venice Commission have emphasised that the enforcement of these regulations cannot be an end in itself. Notification of an event must not be transformed into a request for authorisation. The absence of prior notification and the ensuing “unlawfulness” of the action do not give “carte blanche” to the authorities; they are still restricted by the proportionality requirement of Article 11. Peaceful public events should thus not be dispersed, even if unlawful, if they do not pose a threat to public order. Peaceful participants should not be arrested nor prosecuted. Peaceful demonstrations that do not threaten public order should be facilitated by the police.

■ The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly, within the limits established in paragraph 2 of Article 11. The Court has stressed in this connection that the organisers’ autonomy in determining the assembly’s location, time and manner of conduct, such as, for example, whether it is static or moving or whether its message is expressed by way of speeches, slogans, banners or by other means, are important aspects of freedom of assembly. Thus, the purpose of an assembly is often linked to a certain location and/or time, to allow it to take place within sight and sound of its target object and at a time when the message may have the strongest impact. Consequently, restrictions on time, place or manner of the assembly should not interfere with the message communicated.⁴

■ In particular, the mere existence of a risk of clashes between the demonstrators and their opponents is insufficient as justification for banning an event. If every time the potential for tension and heated exchange between opposing groups during a demonstration were to warrant its prohibition, society would be faced with being deprived of the opportunity of hearing differing views on any question which offends the sensitivity of the majority opinion. Participants in peaceful assemblies must be able to hold demonstrations without having to fear that they will be subjected to physical violence by their opponents. It is the duty of states to take reasonable and appropriate measures to enable lawful demonstrations to proceed peacefully, including by providing adequate police protection against possible counter demonstrators.

■ Freedom of assembly laws which allow for severe sanctions (both pecuniary and non-pecuniary) in situations where there has been no use of violence or threats to public order have a strong chilling effect on potential organisers and participants and on open political debate in general. Disproportionate measures targeting well-known public figures, bound to attract wide media coverage, do the same. Legislators, courts and law-enforcement bodies should take all necessary actions to avoid this.

■ States may draw on the detailed guidelines issued jointly by the Venice Commission and the OSCE/ODIHR in June 2019 to ensure unhindered exercise of the right to peaceful assembly.⁵

Measurement criteria

- ▶ There is an appropriate legal basis for the exercise of freedom of assembly, which provides for only restrictions that are foreseeable and proportionate.
- ▶ There is an effective, independent, timely and accessible procedure available to challenge any refusal to allow an exercise of freedom of assembly or to attach conditions to its exercise.
- ▶ Peaceful demonstrations are not dispersed or prevented solely because of formal irregularities.
- ▶ The authorities take appropriate measures to protect those exercising their right to peaceful assembly from interference by others.
- ▶ Organisers of and participants in peaceful assemblies are not arrested, detained, convicted or punished if they have not committed or incited an act of violence.
- ▶ Where it is necessary on public order grounds to disperse an assembly, excessive force is avoided, and law-enforcement officials are held accountable for abuses.
- ▶ Media professionals are guaranteed access to assemblies.
- ▶ There are no or few judgments of the Court finding a violation of Article 11 of the Convention in respect of freedom of assembly.
- ▶ Adequate and sufficient execution measures are swiftly implemented following judgments of the Court finding a violation of Article 11 of the Convention in respect of freedom of assembly.

4. *Lashmankin and Others v. Russia* (Application No. 57818/09), 7 February 2017.

5. For detailed guidelines, see Joint Guidelines on Freedom of Peaceful Assembly (3rd Edition, June 2019), prepared by the Venice Commission and the OSCE/ODIHR – CDL-AD(2019)017.

Findings

Legislative framework

■ Although the legislative framework governing freedom of assembly in most Council of Europe member states is consistent with the principles of the Convention, a minority of countries continue to resist indications from the Court and calls from the Committee of Ministers and other Council of Europe bodies to reform legislation which has been found to be overly restrictive or are in the process of enacting legislation that gives cause for concern.

■ The Court has highlighted major problems with legislation in Azerbaijan governing public assemblies, which lacks foreseeability and precision. In particular, it noted that, whereas the constitution of Azerbaijan requires only prior notification of a planned public assembly, the Law on Freedom of Assembly provides the relevant local executive authority with broad powers to prohibit or stop a public assembly and to restrict or change the place, route and/or time of a gathering. In June 2018, examining the execution of the *Gafgaz Mammadov* group of cases, the Committee of Ministers expressed deep concern regarding the continued absence of information on legislative and other action taken to address these structural problems.⁶

■ The Venice Commission, at the request of the Monitoring Committee of the Parliamentary Assembly, examined the legal framework of peaceful assembly in Bosnia and Herzegovina.⁷ There are 12 separate laws governing freedom of assembly, since Republika Srpska has one law, as do each of the 10 cantons in the Federation of Bosnia and Herzegovina and Brčko District. The opinion underlines that the national legislation governing freedom of assembly should clearly articulate three main principles: the presumption in favour of holding assemblies; the state's duty to protect peaceful assembly; and proportionality. The content-related prohibition grounds which are not limited to actual incitement of unlawful conduct, violence or armed conflict and which interfere with the expressive purpose of assemblies should be excluded, as should the prohibition of an assembly that has been held without proper notification. Lastly, the provisions which impose blanket restrictions on the location and time of assemblies should be removed.

■ In a memorandum⁸ of February 2019, which contained observations on the events related to the "yellow vests" protest movement in France, the Commissioner for Human Rights expressed concerns that the proposed changes in the draft law to enhance and ensure public order might have a deterrent effect on the exercise of the right to peaceful assembly. She expressed similar concerns in a letter addressed to the chair and members of the Law Committee published in December 2020 in respect to some provisions in the draft General Security Bill pending approval by the French Senate.⁹

■ Following extensive legislative and administrative reforms in the Republic of Moldova, the Committee of Ministers was able in September 2019 to close its supervision of the execution of the case of *Genderdoc-M v. Moldova*.¹⁰ The case concerned the unlawful banning of a protest by LGBTI activists. The Committee of Ministers noted significant progress as concerns the organisation of Pride marches in recent years, which meant that the applicant NGO was able to exercise this right effectively, by holding Pride events without undue restrictions imposed by the authorities and with adequate police protection.

■ With regard to the Russian Federation, the Committee of Ministers considered that further legislative amendments are required to the Public Events Act, the Code of Administrative Offences, the Code of Administrative Procedure and the Information Act to provide for more flexibility in the procedure for the authorisation of peaceful assemblies and to reduce the scope of the authorities' discretion to place limits on events and to ban and disperse them.¹¹

■ Measures are also required in response to a Court judgment of April 2019 concerning the refusal to grant a request to hold a public assembly against corruption in March 2017, holding that the remedy under the Code of Administrative Procedure of the Russian Federation to challenge such a refusal was ineffective because there was no requirement for the local authorities to enforce the district court's decision.¹²

6. 1318 meeting (DH) June 2018, *H46-2 Gafgaz Mammadov group v. Azerbaijan* (Application No. 60259/11).

7. Venice Commission Opinion, CDL-AD(2019)026, December 2019.

8. *Maintaining public order and freedom of assembly in the context of the "yellow vest" movement: recommendations by the Council of Europe Commissioner for Human Rights*.

9. *The French Senate should amend the General Security Bill to make it compatible with human rights*.

10. Resolution CM/ResDH(2019)239, Execution of the judgment of the European Court of Human Rights, *Genderdoc-M* against Republic of Moldova: <https://hudoc.exec.coe.int/ENG#%7B%22EXECIdentifier%22:%5B%22001-196632%22%5D%7D>.

11. See the notes and decisions of the Committee of Ministers for its September 2020 examination of the *Lashmankin* group of cases: *Lashmankin and Others v. Russia*.

12. *Elvira Dimitreyva v. Russia* (Application No. 60921/17), 30 April 2019.

■ As regards the exercise of the right of freedom of assembly by LGBTI activists, in December 2018 the Committee of Ministers regretted the failure of the Russian authorities to provide statistics on the number of events authorised or refused, and noted that the only statistics available, submitted by an NGO, supported the assessment that progress had been limited.¹³ The Committee of Ministers invited the authorities, in light of the problems raised by the laws prohibiting “propaganda of non-traditional sexual relations among minors”, as highlighted by the Court,¹⁴ to consider their abrogation or amendment in line with Convention requirements. It also urged the authorities in parallel to continue to actively develop awareness-raising activities and judicial practice to ensure a Convention-compliant application of the regulations regarding freedom of assembly and expression with respect to LGBTI people, in particular to help to circumscribe the excessive discretion granted by the “propaganda laws”, notably to local authorities, and to dispel the bias found in these laws by the Court.

■ In a letter of November 2018 to the parliament of Spain, the Commissioner for Human Rights stressed that the legislation in force, which allows the imposition of administrative sanctions and fines for certain types of behaviour in the context of public assemblies, could have a chilling effect on the right to peaceful assembly.¹⁵

■ In Turkey, the Law on Meetings and Demonstrations requires notice to be given to the local authorities at least 72 hours before an event, which gives them power to decide whether, where and when an event can be held and requires assemblies which the authorities deem to be in breach of these provisions to be dispersed. The Committee of Ministers, most recently in March 2019, has underlined that legislative reform is indispensable to ensure the enjoyment of freedom of peaceful assembly in Turkey.¹⁶

■ In the report following her visit to Turkey in July 2019, the Commissioner for Human Rights noted the indiscriminate and indefinite ban declared in Ankara during the state of emergency on public events focusing on the human rights of LGBTI people which, after the state of emergency, was replaced by a new ban made under far-reaching powers granted to provincial governors under Law No. 7145. The ban was maintained despite administrative court decisions declaring it unlawful. Governors in other cities, including Istanbul, Izmir, Antalya and Mersin have enforced similar bans for Pride events.

Case law of national superior courts

■ In a positive trend, in some countries where the legislation on freedom of assembly has been criticised by the European Court, the national superior courts have stepped in to clarify how the legislation can be interpreted and applied to ensure that restrictions are Convention-compliant.

■ In the Russian Federation, rulings of the Constitutional and Supreme Courts in 2018 and 2019 provided important clarifications as regards the organisation and conduct of public events and underlined the need for the executive authorities to display tolerance in respect of peaceful assemblies and for the courts to uphold this right with well-reasoned decisions. It remains to be seen how these rulings are applied in practice.¹⁷

■ In Turkey, the Constitutional Court has maintained an approach to the interpretation and application of the Law on Meetings and Demonstrations which is consistent with the principles outlined by the European Court. For example, it has held that the mere lack of notification before a meeting does not justify an intervention by law-enforcement officers, that acts of violence by a few participants are not sufficient to qualify the entire event as violent and that the authorities should tolerate peaceful gatherings and demonstrations.¹⁸

Use of force to disperse assemblies

■ While some positive developments can be noted, concerns about excessive use of force in policing assemblies and the means employed, and about impunity for state agents involved, have been raised in several instances. These underscore the importance of developing and pursuing human rights-compliant policing of demonstrations together with a vigorous policy of zero tolerance for excessive use of force by state agents.¹⁹

■ The Commissioner for Human Rights called on the authorities in Albania to show restraint in policing demonstrations and ensure thorough, independent and effective investigations into all allegations of excessive

13. *Bayev and Others v. Russia* (Application Nos. 67667/09 and others), 20 June 2017.

14. Ibid.

15. *Shrinking space for freedom of peaceful assembly – Human Rights Comments – Commissioner for Human Rights*.

16. *Ataman v. Turkey*.

17. See the notes and decisions of the Committee of Ministers for its September 2020 examination of the *Lashmankin group v. the Russian Federation: Lashmankin and Others v. Russia*.

18. *Ataman v. Turkey*.

19. *Shrinking space for freedom of peaceful assembly, Human Rights Comments, Commissioner for Human Rights*.

use of force in the context of an escalation of clashes between police and protesters following the fatal shooting of a young man by the police in December 2020.²⁰

■ The UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, after his visit to Armenia following the events of April and May 2018, noted that the action of law-enforcement officials has improved in the management of assemblies and that public institutions have over time improved their capacity to absorb shocks and control crowds while respecting human rights. He also noted a good level of dialogue and negotiations between the police and the organisers and participants.

■ In a mission to Paris in January 2019, the Commissioner for Human Rights raised concerns about the large number of people injured in or on the side-lines of the “yellow vests” protests in France, including by projectiles from so-called intermediary defence weapons. She invited the French authorities to refrain from introducing excessive restrictions to freedom of peaceful assembly through the bill on strengthening and guaranteeing public order at demonstrations.²¹

■ On 5 August 2019 the Commissioner published a letter addressed to the Minister of Interior of the Russian Federation, regarding the action taken by law-enforcement agencies to disperse the largely peaceful protests in Moscow on 27 July 2019 and recommended that the Russian authorities ensure that human rights are respected in the context of policing of assemblies. She specifically raised the numerous reports of excessive use of force by law-enforcement officers against protesters who were not offering resistance and against journalists, which had reportedly resulted in injuries, some of them serious, to dozens of demonstrators.²²

■ In July 2020 the Commissioner called on the authorities of Serbia to investigate reports of police violence used to disperse demonstrators.²³

■ In the context of its examination of the execution of the Ataman group of cases in March 2020, the Committee of Ministers encouraged Turkey to review the provisions of the 2016 Directive on Tear Gas and Defence Rifles to ensure that it complies in all respects with international standards. It also requested the authorities to inform it of the number of interventions over recent years by law-enforcement officers to disperse demonstrations and meetings and the number of interventions where tear gas and other crowd-control weapons were used.²⁴

Criminal and administrative sanctions/detention for participants of peaceful assemblies

■ Recent events in some member states have led to the European Court of Human Rights raising concerns about repeated violations because judgments have not been effectively and fully implemented.

■ In October 2019 the Commissioner for Human Rights raised concerns about the dispersal of unsanctioned rallies in Baku, Azerbaijan, and the arrest and detention of about 100 people (60 according to the authorities), some of them ahead of the rally, about which the organisers had notified the authorities.²⁵

■ In two judgments against the Russian Federation concerning Aleksey Navalnyy,²⁶ the Court found that it had been unjustified and arbitrary to arrest and detain him on seven occasions in connection with his peaceful participation in public gatherings and that the measures taken on two of these occasions, as well as 10 months' house arrest imposed in the context of a separate criminal investigation, had an ulterior purpose, “namely to suppress that political pluralism which forms part of ‘effective political democracy’ governed by ‘the rule of law’”. Examining the execution of these cases in September 2020, the Committee of Ministers took note with concern of the applicant's recent complaints of continuing interferences with his freedom of assembly, including further arrests and administrative convictions entailing deprivation of liberty and called on the authorities to take action as a matter of urgency with a view to ensuring that he is able without hindrance to exercise his rights to freedom of peaceful assembly and freedom of expression in full compliance with the Convention requirements.²⁷

■ In August 2019 the Commissioner for Human Rights wrote to the authorities of the Russian Federation to share her serious concerns regarding excessive interferences with the right to hold peaceful assemblies in

20. Albanian authorities must prevent further police violence and uphold the right to freedom of peaceful assembly.

21. Maintaining public order and freedom of assembly in the context of the “yellow vest” movement: recommendations by the Council of Europe Commissioner for Human Rights.

22. Russian Federation: failure to respect human rights while policing peaceful protests, News 2019, Commissioner for Human Rights.

23. Commissioner calls for effective investigations into cases of police violence in Belgrade.

24. *Ataman v. Turkey*.

25. Commissioner raises concerns about police conduct and people's right to peaceful protest in Azerbaijan.

26. *Navalnyy v. Russia* (Application Nos. 29580/12 and others), 15 November 2018; *Navalnyy v. Russia* (No. 2) (Application No. 43734/14), 9 April 2019.

27. Ibid.

Moscow, during which more than 1 000 demonstrators were arrested. Later on, she highlighted the imposition of criminal convictions and prison sentences on activists for repeated violations of the rules governing public events, even though they were reportedly not engaged in violent action.²⁸

Ensuring the right of freedom of assembly

■ In September 2019 the Commissioner for Human Rights welcomed the holding, in a peaceful and dignified manner, of the first Pride march in Sarajevo, Bosnia and Herzegovina, despite public opposition to the event, including from members of the government.²⁹

■ In June 2019 the Commissioner for Human Rights urged the authorities in Georgia to ensure the safety of participants in the Pride march in Tbilisi, in a context marked by tension, hate speech and threats. After being postponed, the march was eventually spontaneously held in July, but on a smaller scale than planned due to the lack of security guarantees.³⁰ In its examination of the execution of the *Identoba v. Georgia* group of cases in October 2020, which concern violations on account of the lack of protection by state authorities from homophobic or religiously motivated attacks by private individuals during marches or meetings and of an adequate criminal justice response to these, the Committee of Ministers noted with concern the Public Defender's 2019 special report on discrimination and NGO communications indicating that discrimination on grounds of sexual orientation and gender identity remains a serious challenge in Georgia, including the realisation of freedom of expression and assembly by LGBTI persons or Jehovah's Witnesses, while the identification of bias in the context of investigations remains a major challenge.

FREEDOM OF ASSOCIATION

■ Freedom of association is an essential condition for the exercise of other human rights. Associations play an important role in achieving goals that are in the public interest and are important actors in supporting the protection of human rights. Their functions cover many fields, including in particular lobbying for better health, protection of the environment, advancement of education for all, delivering humanitarian relief and securing and protecting basic civil and political rights. They also play a role in the religious and cultural life of individuals and society.

■ NGOs play an important role in public monitoring of state action and in exposing human rights abuses. The way in which national legislation enshrines the freedom of association and its practical application by the authorities reveals the state of democracy in a country.

■ International human rights law explicitly recognises the right to participate in public affairs, and associations should be free to pursue their goals related to the normal functioning of a democratic society; refusal to register them on account of the "political" nature of their goals or in order to prevent a certain religious faith from organising itself would violate the freedom of association. Only those associations that wish to take part in elections may be asked to register in the form of political parties and to meet the more stringent conditions applicable to the latter. Portraying advocacy NGOs as masked "political parties" is a false justification for restricting their legitimate watchdog function in a democratic society, as NGOs do not participate in elections, though they can conduct election monitoring.

■ A restrictive approach to NGOs is incompatible with a pluralist democracy, which should guarantee the work of all NGOs, without undue interference in their internal functioning. Unduly restrictive laws and practices have a strong adverse effect on freedom of association and democracy itself. Legitimate concerns such as protecting public order or preventing extremism, terrorism and money laundering cannot justify controlling NGOs or restricting their ability to carry out their legitimate watchdog work, including human rights advocacy.

■ It is therefore essential that states first put in place a legal framework to enable the unimpeded exercise of freedom of association, and subsequently implement it and create an enabling environment based on a presumption in favour of the freedom to form and run an association. This includes a favourable legal framework for the registration and functioning of NGOs and sustainable mechanisms for dialogue and consultation between civil society and public authorities.

28. Commissioner for Human Rights: Russian Federation – failure to respect human rights while policing peaceful protests. Letter addressed to the Minister of Interior of the Russian Federation, published 5 August 2019.

29. Shrinking space for freedom of peaceful assembly, Human Rights Comments, Commissioner for Human Rights

30. Ibid.

■ This was underscored in Recommendation CM/Rec(2018)11³¹ of the Committee of Ministers to all Council of Europe member states ensuring an enabling legal framework and a conducive political and public environment for civil society organisations, allowing them to freely carry out activities, on a legal basis, consistent with international law and standards, to strive for the protection and promotion of all human rights and fundamental freedoms.

■ This also means that, in order to carry out their activities, NGOs should be free to solicit and receive funding not only from public bodies in their own state but also from institutional or individual donors, another state or multilateral agencies, subject only to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties.³² In a recent report requested by the Secretary General, the Venice Commission concluded that obligations requiring associations to report to the authorities about the amount and origin of their funding can be considered to pursue a legitimate aim, but should not be used as a pretext to control NGOs or to restrict their ability to accomplish their legitimate work.³³

■ Because of the vulnerability of NGOs engaged in human rights advocacy, special instruments that codify standards applicable to human rights defenders have been adopted over the past decades both at the universal and the European level.³⁴ NGOs and their members should not be targeted.

Measurement criteria

- ▶ There is an appropriate legal basis for the exercise of freedom of association, including any registration requirements, which provides for only restrictions and formalities that are foreseeable and proportionate.
- ▶ Sanctions imposed on an association or its members, including dissolution, are foreseeable and proportionate and are not applied in an arbitrary or discriminatory manner.
- ▶ There is an effective, independent, timely and accessible procedure available to challenge any refusal to register an association, any interference with its operation, any sanction imposed on it or its members or dissolution.
- ▶ Associations have the right, in law and practice, to express their opinions through their objectives and activities and to participate in political and public debate.
- ▶ Associations are free to seek, receive and use financial, material and human resources, whether domestic, foreign or international, for the pursuit of their activities, subject only to restrictions that are foreseeable and proportionate.
- ▶ Public funding is available and is provided in a non-discriminatory manner.
- ▶ There are no or few judgments of the Court finding a violation of Article 11 of the Convention in respect of freedom of association.
- ▶ Adequate and sufficient execution measures are swiftly implemented following judgments of the Court finding a violation of Article 11 of the Convention in respect of freedom of association.

Findings

Legislative framework

■ In January 2021 the Parliamentary Assembly adopted Resolution 2362 (2021) on restrictions on NGO activities in Council of Europe member states. It noted that the civil society space continued to shrink in several member states and that “restrictive legislation and regulations previously criticised by various Council of Europe bodies, including the Venice Commission, the Expert Council on NGO Law of the Conference of International Non-Governmental Organisations and the Assembly itself, are still being applied, particularly in Azerbaijan, the Russian Federation and Turkey”.³⁵

31. Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe.

32. Committee of Ministers Recommendation CM/Rec(2007)14 on the legal status of non-governmental organisations in Europe. See also the [OSCE/ODIHR-Venice Commission Guidelines on Freedom of Association](#), Principle 7.

33. Venice Commission, Report on Funding Associations, CDL-AD(2019)002.

34. The Declaration on the “Council of Europe action to improve the protection of human rights defenders and promote their activities” of 6 February 2008 stresses the contribution of human rights defenders to the protection and promotion of human rights and calls upon states to “create an environment conducive to the work of human rights defenders, enabling individuals, groups and associations to freely carry out activities, on a legal basis, consistent with international standards, to promote and strive for the protection of human rights and fundamental freedoms without any restrictions other than those authorised by the European Convention on Human Rights” (paragraph 2(i)).

35. https://pace.coe.int/en/files/28906/html#_TOC_d22e47.

■ Despite criticism from Council of Europe bodies, certain member states have not repealed legislation imposing excessive reporting and public disclosure obligations on NGOs receiving funding from abroad. Some other states have abandoned legislative initiatives found to be inconsistent with Council of Europe standards.

■ In 2018, following an opinion by the Venice Commission,³⁶ the authorities in Romania decided not to pursue draft legislation amending the Law on Associations and Foundations, which would have introduced additional reporting obligations for all NGOs. The Venice Commission underlined that the reference to “public concern” and “suspicions” about the legality and honesty of financing of NGOs were insufficient reasons to impose the reporting obligations.

■ In April 2020 the Expert Council on NGO Law of the Conference of INGOs published an opinion on amendments to the Law on Associations in Turkey, which require an association to notify the local administrative authority of any changes in its membership within 30 days or become liable to a penalty. The opinion concluded that the sweeping membership notification requirement ran counter to the right to respect for private life and to freedom of association and the penalty that can be imposed failed to meet the legality and proportionality requirements under Article 11 of the Convention. Also in 2020, the president of the Conference of INGOs cautioned that proposed amendments to the Non-Profit Legal Entities Act put forward in Bulgaria, targeting civil society organisations with public benefit status that are in receipt of foreign funding, replicate similar provisions in other countries already found inconsistent with the opinion of the Venice Commission and the Expert Council on NGO Law. By contrast, the ongoing legislative process in the Republic of Moldova to enact a single instrument governing all types of NGOs was found to address a number of existing problems, for instance by enabling all individuals, whatever their citizenship or residence, to found and be members of associations, as well as to become their managers and members of their control bodies.

■ The parliament of Ukraine decided in April 2018 not to adopt a draft law requiring civil society representatives or other persons working on anti-corruption issues to declare their assets in the same way as state officials or public servants. The Venice Commission adopted an opinion in March 2018³⁷ finding that the proposed stringent disclosure requirements, coupled with severe sanctions in case of non-compliance, were likely to have a chilling effect on civil society and jeopardise the existence of a number of civil society organisations which might lose their non-profit status as a sanction.

Non-registration and liquidation of associations

■ Several high-profile cases concerning the non-registration or liquidation of associations have been pending for more than a decade before the Committee of Ministers, with little progress made in the last few years. In newer cases, positive first results can be seen thanks to action by the domestic courts.

■ The case of *UMO Ilinden v. Bulgaria*³⁸ concerns a violation of the right to freedom of association because of the unjustified refusals of the national courts, between 1999 and 2015, to register associations whose aim was to achieve the recognition of and protect the interests of “the Macedonian minority in Bulgaria”. In 2018, to execute the judgment, the Bulgarian authorities established a new administrative registration procedure. However, in an interim resolution adopted on 1 October 2020,³⁹ the Committee of Ministers regretted that the applicant association and others were still encountering problems in benefitting from a Convention-compliant registration procedure. The Committee underlined that a clear message is needed from the authorities to ensure that the obstacles to registration were overcome.

■ The Bekir Ousta group of cases against Greece concerns the refusal of the national courts to register two associations, and a decision leading to the dissolution of another one, on the ground that their aim was to promote the idea that an ethnic minority existed in Greece (as opposed to the religious minority recognised by the 1923 Treaty of Lausanne). The Greek authorities amended the Code of Civil Procedure in 2017 with the aim of facilitating registration of these associations. However, in decisions adopted in September 2019 and September 2020 the Committee of Ministers deplored the fact that the applications had still not been re-examined by domestic courts on their merits in the light of the Court’s case law.⁴⁰

■ More positive progress was noted in the execution by North Macedonia of the Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy) group of cases. The Court had found violations of the applicant associations’ right to freedom of association on account of the domestic courts’ refusal to register

36. Venice Commission Opinion CDL-AD(2018)004.

37. Venice Commission Opinion CDL-AD(2018)006-e).

38. *UMO Ilinden v. Bulgaria* (Application No. 34960/04).

39. Ibid.

40. *Bekir-Ousta and Others v. Greece*.

them as religious entities between 2004 and 2012. At its examinations at the human rights meetings in March 2019 and June 2020, the Committee of Ministers noted the development of Convention-compliant practices in the handling of registration matters by the courts and invited the authorities to sustain their efforts with a view to ensuring that the applicants' requests are examined by domestic courts promptly and in full and effective compliance with the requirements of Article 11 of the Convention and the European Court's case law.⁴¹

■ In October 2020 the Committee of Ministers expressed serious concern about the ban imposed on all activities of the Jehovah's Witnesses in the Russian Federation in 2017, through the liquidation of the central organisation and all its constituent entities by the Supreme Court, in breach of their right to freedom of association.⁴² In October 2019, the Commissioner for Human Rights urged the authorities of the Russian Federation to discontinue liquidation proceedings against the All-Russia Movement for Human Rights, an umbrella organisation for dozens of human rights NGOs in different Russian regions.⁴³

NGOs defending LGBTI rights⁴⁴

■ Ahead of the International Day against Homophobia, Biphobia and Transphobia in May 2020, the Commissioner for Human Rights underlined that human rights defenders working for LGBTI rights are themselves in need of protection in some member states.

NGOs helping migrants and refugees

■ In recent years, concerns have been expressed by Council of Europe bodies about measures or actions in some member states aimed at or having the effect of obstructing the activity of NGOs helping migrants and refugees.

■ An information note prepared for the Parliamentary Assembly's Committee on Legal Affairs and Human Rights in June 2019⁴⁵ referred to reports of reprisals taken against members of organisations defending migrants' and refugees' rights in Croatia, France, Italy and Spain.

■ In a resolution adopted on 4 December 2020,⁴⁶ the Parliamentary Assembly paid tribute to the enormous and tireless efforts of NGOs that assist refugees and migrants in Europe. It underlined that many NGOs provide specialised forms of humanitarian assistance in refugee camps or other accommodation for migrants, including medical and psychological support, educational services, or legal assistance and translation services before administrations and courts. The Assembly expressed deep concern about reports of politically motivated and undue restrictions on the work of such NGOs assisting refugees and migrants. It called on member states to refrain from criminalising the activities of NGOs assisting refugees and migrants, except in line with Article 11 of the European Convention on Human Rights, and underlined that NGOs should be allowed to carry out search-and-rescue activities in international waters and disembark rescued people at the nearest safe port, in accordance with international maritime law.

■ On 20 June 2018 the parliament of Hungary adopted draft Article 35A of the Criminal Code on Facilitating Illegal Migration, without waiting for the opinion of the Venice Commission, which had been requested by the chairperson of the Committee on Legal Affairs and Human Rights of the Parliamentary Assembly.⁴⁷ The Venice Commission found that, in criminalising certain activities of NGOs that work with migrants, the draft legislation disproportionately restricted the rights guaranteed under Article 11 of the European Convention on Human Rights and might leave migrants without the essential services they provide.

41. 1340th meeting (DH) March 2019, H46-22 "*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*" v. "*the former Yugoslav Republic of Macedonia*" (Application No. 3532/07); 1377th meeting (DH) June 2020, H46-23 "*Orthodox Ohrid Archdiocese (Greek-Orthodox Ohrid Archdiocese of the Peć Patriarchy)*" v. *North Macedonia* (Application No. 3532/07).

42. *Jehovah's Witnesses of Moscow and Others v. Russia*.

43. *The Commissioner urges the authorities of the Russian Federation to discontinue the liquidation proceedings against the All-Russia Movement for Human Rights*, News 2019, Commissioner for Human Rights.

44. *Commissioner for Human Rights: Hate mongering against LGBTI people has no place in today's Europe*, statement 15 May 2020.

45. AS/JUR (2019) 31.

46. Resolution 2356 (2020).

47. Venice Commission Opinion CDL-AD(2018)013.

■ In another opinion concerning Hungary, adopted in December 2018,⁴⁸ the Venice Commission considered Section 253 of Act XLI of 20 July 2018, which imposed a 25% tax on financial support to an immigration-supporting activity carried out in Hungary or on the financial support to the operations of an organisation with a seat in Hungary that carries out immigration-supporting activity. The commission considered that the special tax constitutes an interference with the right to freedom of expression of the NGOs, since it limits their ability to undertake research, education and advocacy on issues of public debate.

Use of criminal proceedings to silence human rights activists

■ In a series of judgments against Azerbaijan the Court found “a troubling pattern of arbitrary arrest and detention of government critics, civil society activists and human rights defenders through retaliatory prosecutions and misuse of criminal law in defiance of the rule of law”.⁴⁹ The Committee of Ministers has called on Azerbaijan to erase all the negative consequences of the abusive criminal proceedings. In September 2020 the Committee of Ministers was able to close its supervision of three similar cases relating to the applicants Ilgar Mammadov and Rasul Jafarov, following a landmark judgment by the Supreme Court of Azerbaijan which quashed their convictions and awarded them compensation. The Committee of Ministers continues to insist that the convictions of the remaining applicants are quashed without further delay.⁵⁰

■ In a judgment of 10 December 2019,⁵¹ the Court found that the arrest and pre-trial detention in Turkey of Osman Kavala, a businessperson and rights defender involved in setting up numerous non-governmental organisations and civil society movements, was based on unfounded allegations and pursued an ulterior purpose, namely, to silence him and dissuade other human rights defenders. In the context of the supervision of the execution of this judgment, the Committee of Ministers has called repeatedly for Mr Kavala’s immediate release.

■ In her third-party intervention to the Court on the Kavala case, the Commissioner for Human Rights underlined that the applicant’s detention had fostered a sense of insecurity among human rights defenders and was a clear illustration of the increasing pressure on civil society in Turkey in recent years.⁵²

48. Venice Commission Opinion CDL-AD(2018)035.

49. *Aliyev v. Azerbaijan* (Application No. 68762/14), 20 September 2018; see also *Mammadli v. Azerbaijan* (Application No. 47145/14), 19 April 2018; *Rashad Hasanov and Others v. Azerbaijan* (Application No. 48653/13), 7 June 2018; *Natig Jafarov v. Azerbaijan* (Application No. 64518/16), 7 November 2019; and *Ibrahimov and Mammadov v. Azerbaijan* (Application No. 63571/16), 13 February 2020.

50. *Mammadli v. Azerbaijan*.

51. *Kavala v. Turkey* (Application No. 28749/18), 10 December 2019.

52. Commissioner for Human Rights third party intervention.



CHAPTER 4

POLITICAL INSTITUTIONS

INTRODUCTION

■ The year 2020 was challenging in Europe, and throughout the world, as the impact of the Covid-19 pandemic intensified trends that undermine democratic standards.

■ There are worrying signs that the gap between citizens' expectations and the public decisions taken on their behalf is growing. Inequalities and poverty have increased, and an increasing number of people have fallen through the social safety net. At the same time, trust in public authorities and satisfaction with the quality of democracy are at historic lows, electoral turnout has continued its worrisome downward trend, attacks against multilateralism have increased and more and more people are taking their dissatisfaction to the streets in demonstrations that often lead to unrest and violence. The civic space has continued to shrink, in part because of new legislation adopted in several countries in response to the pandemic.

■ Public authorities at every level have strived to rise to the new challenges. Elections were postponed in many countries or organised in less than ideal conditions, while the observation of elections was almost impossible to carry out. Parliaments and regional and local assemblies reorganised their work and tried to make more use of new technologies and teleworking while public services had to be restructured to take into account social distancing rules.

■ Some cases of temporary recentralisation of power have been noted. While exceptional circumstances may call for exceptional measures, those taken to fight the epidemic should not threaten the balanced distribution of powers and resources between different levels of government. Local government is the closest to citizens, the most efficient in delivering proximity services and the most trusted; local authorities should not become collateral victims of the pandemic as their role in the democratic system of European countries is paramount.

■ More and more authorities at each level are starting to use new forms of democracy with the direct involvement of citizens and civil society. These innovations are extremely useful in bridging the gap between citizens' legitimate expectations and decisions taken on their behalf. They help to improve trust in government and upgrade the quality of democracy. They need, however, to be used with care and in an efficient way.

■ A silver lining of the pandemic was that authorities at all levels of government have strengthened their efforts to reform administrations and improve the quality of governance, making more extensive use of digital technologies, including artificial intelligence. The organic link between the quality of democracy and the quality of governance cannot be overstated: a degradation of democracy will lead to reduced accountability and a degradation of governance; a degradation of governance will in turn lead to dissatisfied citizens and hence to a debasement of democracy. Efforts to cope with Covid-19 may serve as a catalyst to turn a potential vicious circle into a virtuous one, leading to long-term improvement of both democracy and governance.

Challenges

Countering the democratic backslide

■ The negative trends observed in recent decades demand a strong response from states.

■ The quality of elections should be impeccable for citizens to regain trust in their elected representatives. The electoral cycle, from preparing legislation to solving electoral disputes, can and should be improved.

■ New forms of participation should be encouraged but they need to follow Council of Europe standards and best practice if they are to bridge the gap between expectations and policies and avoid further damaging citizens' trust.

■ The shrinking of civic space must stop, and civil society should have the full support of authorities to exercise its essential democratic role in all European societies.

Improving the quality of multilevel governance

■ In the long term, poor governance is an existential threat to democracy. Member states should continue to invest in:

- ▶ ensuring that different levels of government are balanced in terms of their competences, resources and the way they relate to each other;
- ▶ continuing decentralisation efforts which were halted or suspended because of the Covid-19 pandemic;
- ▶ improving the quality of governance, public services and decisions taken in the exercise of public authority, in line with good democratic principles.

Confronting the effects of the Covid-19 pandemic

■ The Covid-19 crisis has had negative effects but has also sped up a few long-due reforms. It is essential that member states continue to innovate and share their experience. The Council of Europe can offer an unequalled forum for learning from peers in this respect.

Responding to environmental and climate challenges

■ Climate change also brings challenges. How do we reconcile individual and collective interests? How do we balance the short and long-term, and environmental and economic, interests? How can we equip institutions and create democratic processes to tackle climate change? Both states and international organisations can meet these challenges with innovations such as eco-friendly public services and energy-responsible urban planning that can be shared and replicated throughout Europe.

Examining the impact of digital transformation, including artificial intelligence, on democracy and governance

■ Digital transformation is accelerating. Big data and the accompanying rise in processing power, the use of sophisticated algorithms and artificial intelligence provide opportunities for democracies to function more effectively, but there are also additional risks to democratic safeguards and to the personal privacy of citizens. The Council of Europe plays a key role in identifying threats and navigating opportunities for best practice that can be shared by public authorities as they adapt to new technologies.

FUNCTIONING OF DEMOCRATIC INSTITUTIONS

■ The proper functioning of democratic institutions can only be effectively secured in a democracy which fully respects the rule of law and the principles of good democratic governance, even in times of war or public emergencies. Responses to emergency situations can be an important challenge to the separation of powers, due to the concentration of exceptional powers in the hands of the executive branch. Emergency legislation requires a particularly vigilant application of constitutional checks and balances and the respect for due process and the freedom of expression as guaranteed by the European Convention on Human Rights.

■ National parliaments are the institutions which, at their best, embody society in all its diversity and allow public debate to result in effective compromise between competing claims. Opposition is important to the functioning of democracy and enjoying a large majority does not absolve ruling parties from the obligation to engage in an inclusive political process, and to respect and accommodate minority views and interests.

■ Effective civil society and citizen participation, and transparent and inclusive decision making, increase public trust and improve the quality of public decisions which, in turn, makes them easier to implement. Participatory democracy with the direct involvement of civil society and citizens, often by means of digital technologies, enriches democracy.

Measurement criteria

- ▶ The principle of the separation of powers is enshrined in domestic law and duly applied in practice.
- ▶ The role of the parliamentary opposition is regulated and respected. Political forces and individuals representing the opposition can participate meaningfully in the work of the parliament, without fear of harassment or undue interference from the executive or the courts.

- ▶ Parliamentary immunity is an integral part of the European constitutional tradition. It should be functional, not to place members of parliament above the law, but rather to provide certain guarantees so that they can effectively fulfil their democratic mandate, without fear of harassment or undue interference from the executive or the judiciary.
- ▶ Clear and predictable rules on parliamentary immunity, including procedures explaining how it may be lifted, are prescribed by law and applied. Such procedures are transparent and respect the principle of the presumption of innocence.
- ▶ Parliaments have a code of conduct for their members and a transparent system for the declaration of interests.
- ▶ Legislation on the financing of political parties and election campaigns is sufficient to deter corruption and is effectively applied in practice.
- ▶ An inclusive political process is applied. Open and transparent public decision making leads to effective and genuine involvement of those directly affected by policy and legislative decisions.
- ▶ Different forms of civil participation are in place and used.
- ▶ Derogations from certain international commitments are possible only in exceptional situations, where parliamentary control and judicial review are guaranteed.

Findings

■ In 2020, extraordinary measures were introduced by most governments in response to the Covid-19 pandemic and elections were at times postponed. Such measures have had – and continue to have – a significant impact on people's lives, the exercise of fundamental rights and the functioning of democratic institutions.¹

■ In some cases, this has affected the separation of powers, often to the detriment of legislative control over the executive, which has been replaced at times by courts, without parliamentary endorsement, in judging government decisions taken during the health crisis. Many measures taken to contain the pandemic have had discriminatory effects, thereby exacerbating existing structural inequalities affecting women, elderly people, people living in institutionalised settings, people from a minority or disadvantaged background or LGBTI people.² In times of crisis, the trust of citizens in public authorities, democratic institutions and processes is particularly under strain and yet it is more important than ever.

State of emergency

■ A state of emergency, whether formally declared or not, affects the system of democratic checks and balances. In the context of the Covid-19 pandemic, 10 Council of Europe member states put in place derogations from the European Convention on Human Rights under its Article 15 due to a state of emergency in 2020, which in several cases were prolonged.

■ Most if not all member states have enacted emergency legislation and executive decrees which aim to limit the spread of the virus. The extent of the challenge posed by the pandemic requires great democratic resilience in order to avoid emergency powers curtailing fundamental rights and conflicting with the rule of law.³ In all circumstances, these powers must be framed by the overarching principle of the rule of law, and by the principles of necessity, proportionality, temporariness, effective (parliamentary and judicial) scrutiny, predictability of emergency legislation and co-operation among state institutions.⁴

■ It is important that the restrictions on fundamental rights and freedoms taken to deal with the pandemic are lifted as soon as possible. The health situation should not serve as a pretext to adopting legislation which permanently limits such rights and freedoms.

1. See Assembly Doc. 15157. See also Venice Commission, "Interim Report on the measures taken in the EU member states as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights", available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)018-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)018-e).
2. See Assembly Doc. 15157.
3. Venice Commission, "Respect for democracy, human rights and the rule of law during states of emergency: reflections", available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)014-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)014-e).
4. See: <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>; Venice Commission, Observatory of situations of emergency in Venice Commission member states, available at: www.venice.coe.int/WebForms/pages/?p=02_EmergencyPowersObservatory&lang=EN; Venice Commission, "Respect for democracy, human rights and the rule of law during states of emergency: reflections", available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)014-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)014-e).

■ Health measures during the pandemic should not result in legislation being adopted without meaningful consultation with civil society, especially at constitutional level.⁵

Role of parliaments

■ During the Covid-19 pandemic, most parliaments in Council of Europe member states “have continued to exercise, without interruption, their statutory duties relating to representing the interests of the citizens, considering new legislation to alleviate the effects of the pandemic and overseeing the emergency measures introduced by governments”.⁶ It is of vital importance for representative democracies that parliaments continue to perform their role as guarantors of democracy in times of crisis and play their oversight role in holding government to account.

Majority-minority relations

■ As regards the interaction between parliamentary majorities and the opposition, the peaceful transfer of power that took place in Montenegro following elections in August 2020 is a positive development. The Parliamentary Assembly assesses that this was made possible “thanks to the responsible attitudes shown by both the new majority and the new opposition in the aftermath of the elections”.⁷

■ Some irregularities were noted during the last parliamentary elections in Georgia and led to the decision of opposition parties to boycott the newly elected parliament. The Parliamentary Assembly underlines that parliament is “the place for the conduct of politics and debate” and has therefore consistently opposed parliamentary boycotts.⁸ In Albania, nearly all parliamentarians from the opposition parties then present in parliament resigned in 2019 and have since constituted the extra-parliamentary opposition. The Venice Commission noted in this respect that the fact that the parliament is not composed of the full number of members is not problematic in terms of international standards given that it operates in line with the constitutionally prescribed quorum. It nonetheless urged the Albanian political forces – both in and outside parliament – to ensure the normal democratic functioning of the institutions in the country, in the interest of the Albanian people.⁹

■ The Parliamentary Assembly, in a resolution adopted on 23 October 2020, deplored the treatment of the political opposition in Turkey, including restrictions affecting elections.¹⁰ As the Assembly stressed, the Turkish authorities should “create the necessary conditions for a proper functioning of representative democracy with political parties able to operate in a free and safe environment, guarantee parliamentary immunity and ensure that politicians, including from the opposition, are able to express themselves and to exercise their political mandates”.¹¹

Participatory democracy

■ Recourse to a great variety of forms of participatory democracy continued to rise, with the multiplication of citizen assemblies, juries and panels, public consultations and other initiatives directly involving citizens and the public at large. While many of these initiatives were spontaneous, many others were initiated by the authorities, with the aim of garnering the largest possible input, expertise and support for policies, legislation and far-reaching reforms. Given the proximity between local authorities and citizens, the local level continued to be the privileged setting for this kind of consultation, but there are examples at national level, such as in France and Ireland. Two features emerged: the use of digital technologies and the random selection of participating citizens to represent society.

5. See for example, Venice Commission, Joint VC-OSCE/ODIHR Opinion on the Amendments to the Constitution of Albania of 30 July 2020 and to the Electoral Code of 5 October 2020, available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)036-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)036-e); Urgent Interim Opinion on the draft new Constitution of Bulgaria, available at: [www.venice.coe.int/webforms/documents/?pdf=CDL-AD\(2020\)035-e](http://www.venice.coe.int/webforms/documents/?pdf=CDL-AD(2020)035-e).

6. See Assembly Resolution 2337 (2020) on democracies facing the Covid-19 pandemic.

7. See PACE Resolution 2357 (2021) on progress of the Assembly’s monitoring procedure (January-December 2020).

8. See PACE Resolution 2357 (2021) on progress of the Assembly’s monitoring procedure (January-December 2020) and Assembly Doc. 15157, paragraph 68.

9. See Venice Commission, Joint VC-OSCE/ODIHR Opinion on the Amendments to the Constitution of Albania of 30 July 2020 and to the Electoral Code of 5 October 2020, available at: [www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2020\)036-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2020)036-e).

10. See PACE Resolution 2347 (2020) “New crackdown on political opposition and civil dissent in Turkey: urgent need to safeguard Council of Europe standards”.

11. Ibid.

LOCAL AND REGIONAL DEMOCRACY

■ According to polls, people tend to trust local governments more than central governments. To enable local and regional government institutions to deliver good governance and the best possible services to citizens and the public at large, they must have the necessary competences, financial resources and qualified staff. They also need to be resilient to cope with the various threats to institutions by ensuring openness, transparency, accountability and integrity.

■ The European Charter of Local Self-Government (ETS No. 122) is the only international treaty in the field of local self-government. It has a total number of 30 substantial paragraphs, each creating an obligation for the states that accept them. The main obligations that states enter into when ratifying the charter form a set of indicators in this area.

Measurement criteria

- ▶ The principle of local self-government is recognised in the constitution or in law.
- ▶ Local authorities regulate and manage a substantial part of public affairs.
- ▶ Local authorities are freely elected.
- ▶ Basic competences are provided for in the constitution or in law; local authorities can implement any initiative which is not excluded from their competences; public responsibilities are exercised by authorities that are closest to citizens; powers given to local authorities are full and exclusive or delegated powers; local authorities can adapt to local conditions; local authorities are consulted on decisions affecting them.
- ▶ Local boundaries are not changed without the prior consultation of concerned authorities, if possible, by referendum.
- ▶ Administrative supervision is only exercised according to law.
- ▶ Local authorities have adequate financial resources of their own which they can use freely; these resources are commensurate with responsibilities and are sufficiently buoyant; a financial equalisation mechanism exists.
- ▶ Local authorities can form consortia and associate for tasks of common interest.
- ▶ Local authorities have the right of recourse to judicial remedy.

■ Over the past few years, many Council of Europe member states have undertaken reforms leading to increased decentralisation. This trend slowed in 2020 because of the need for governments to prioritise other issues – such as the response to the pandemic – and the difficulty of tackling major political and technical matters during an emergency which also affected the working methods and calendar of parliament. Delays, however, do not indicate a change in the trend. On the contrary, decentralisation processes that were already underway continued in 2020. In Ukraine, for instance, there has been an intense debate around constitutional amendments and several draft laws in this area.

■ Several states are working on implementing territorial consolidation reforms of their various tiers of government and strengthening horizontal co-operation at those levels. Consisting either in amalgamation into larger communities or in arrangements for intermunicipal co-operation, these efforts are aimed at ensuring greater capacity and efficiency in delivering good governance and public services. Such reforms are being implemented in Armenia, Iceland, Lithuania, Slovakia and Ukraine, and are being discussed in other countries. In Lithuania, a new law on regional development was adopted in 2020, establishing regions as administrative entities. In addition to the Covid-19 pandemic, political instability is an element contributing to the delay of territorial consolidation reforms, for instance in the Republic of Moldova.

■ The inadequacy of resources available to local and regional authorities in the exercise of their powers remains. According to monitoring by the Congress of Local and Regional Authorities of the Council of Europe (the Congress), this is a recurring problem in most member states which has been exacerbated by the Covid-19 emergency. During the first wave of the pandemic, municipalities had to react urgently to deliver basic services, provide care for people in a vulnerable situation, reduce the impact of the crisis on the economic fabric of their communities, mobilise the solidarity effort, raise awareness of Covid-19 and ensure compliance with lockdown measures by the population. Many municipalities had to shoulder these responsibilities without having the necessary means, because of the unforeseen needs and the fall in local tax revenues resulting from fiscal and other relief measures.

■ In recent years, the importance of involving citizens and civil society at large in public decision making has been receiving greater attention from governments. The Additional Protocol to the Charter of Local Self-Government (CETS No. 207) defines the right to participate in the affairs of a local authority. With the ratification by Georgia in November 2019 and France in September 2020, the protocol has reached a total of 20 ratifications. Some four countries have signed it but have not yet ratified it.

■ The European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities (CETS No. 106, Madrid Convention) and its protocols are the cornerstones of cross-border co-operation in Europe. In 2020, cross-border co-operation was negatively affected by restrictions on domestic and international movements, even if there were exceptions such as for social and health workers. In spite of this, co-ordination has continued to be intense in border areas with a long tradition of co-operation, namely as regards the exchange of information, the hospitalisation of patients from across the border and the development of fast-track customs, for instance among the Benelux countries. Since the outset of the pandemic there has been close co-ordination between the central authorities of the countries concerned. In many cases, however, the best examples of swift and effective cross-border co-ordination can be found directly at the local and regional levels.

GOOD GOVERNANCE AT ALL LEVELS

■ A democratically secure society requires both effective democracy and good governance at all levels of government: local, regional and national. Good governance enhances the performance of public administration and the delivery of services which meet citizens' legitimate needs and expectations. It helps to strengthen democratic institutions from the inside and to increase citizens' trust. This is particularly important when democratic institutions and society must confront a major emergency such as the Covid-19 pandemic.

■ The [12 Principles of Good Democratic Governance](#) are a compass on how to deliver good governance. At the same time, they provide measurement criteria for the performance of public institutions.

Measurement criteria

- ▶ Efficiency and effectiveness: results meet agreed objectives making the best possible use of resources; performance-management systems and evaluation methods are in place; audits are carried out regularly.
- ▶ Sound financial management: charges meet the cost of services provided; budget plans are prepared in consultation with the public or civil society organisations; consolidated accounts are published.
- ▶ Competence and capacity: public officials are encouraged to improve their professional skills and performance; practical measures and procedures seek to transform skills into capacity and improved results.
- ▶ Fair representation and participation: citizens are at the centre of public activity and have a voice in decision making; there is always a genuine attempt to mediate between various legitimate interests; decisions are taken according to the will of the many while the rights of the few are respected.
- ▶ Openness and transparency: decisions are taken and enforced in accordance with rules and regulations; the public has access to all information that is not classified for well-specified reasons; information on decisions, policies, implementation and results is made public.
- ▶ Accountability: all decision makers take responsibility for their decisions; decisions are reasoned, subject to scrutiny and remedies exist for maladministration or wrongful decisions.
- ▶ Ethical conduct: the public good takes precedence over individual interests; effective measures exist to prevent and combat corruption.
- ▶ Responsiveness: objectives, rules, structures and procedures seek to meet citizens' legitimate needs and expectations; public services are delivered; requests and complaints are dealt with in a reasonable time frame.
- ▶ Sustainability and long-term orientation: long-term effects and objectives are duly taken into account in policy making, thereby aiming to ensure the sustainability of policies in the long run.
- ▶ Innovation and openness to change: new, efficient solutions to problems and improved results are sought; modern methods of service delivery are tested and applied and a climate that is favourable to change is created.

Findings

■ Multilevel governance came to the forefront in 2020 as a crucial factor in enabling countries to effectively respond to emergencies such as the Covid-19 pandemic. However, the distribution of responsibilities between different tiers of government, their co-ordination, genuine collaboration and the exchange of information are crucial parameters of a well-functioning democracy and of the ability of public institutions to consistently deliver good governance.

■ Prior to 2020, public administration reforms were already being pursued in several member states with a view to streamlining procedures and enhancing competency, capacity and efficiency of public service. One focus is human resource management, for instance in Albania and Serbia, or the reform of the professional training system of civil servants, such as in Cyprus and Ukraine.

■ The most visible trend of the past few years, however, concerns digital transformation in public administration, which has resulted in the adoption of strategies and action plans in virtually all member states. Some countries, such as Denmark and the United Kingdom, have set up digital academies to upskill their civil servants, to ensure that they are fully prepared to use and embrace new technologies in their daily work. Digital transformation affects both the internal working methods and procedures of the civil service and the way in which services are delivered to citizens and the public at large. It can help public administration become more efficient, cost-effective, responsive and innovative.

Examples of digital strategies for public administration

Member state	Strategy or strategic document	Date of publication
Austria	The ABC guide of the eGovernment in Austria	March 2016
Croatia	The eCroatia 2020 Strategy	2017
Czech Republic	Digital Czech Republic	2019
	Strategic Framework of the Development of Public Administration in the Czech Republic	2018
Denmark	Digital Strategy 2016-2020	2016
Estonia	Digital Agenda 2020 for Estonia	2018
Finland	A roadmap to advance digital services	2017
France	Stratégie pour la transformation de l'action publique (Public Action 2022)	2018
Germany	National E-Government Strategy	Updated in 2015
Italy	Three Year Plan for Information Technology in the public sector 2019-2021	2019
Lithuania	Information Society Development Programme 2014-2020: Digital Agenda for the Republic of Lithuania	2014, updated 2017
Malta	National Digital Strategy 2014-2020	2014
Netherlands	Digital Government Agenda	July 2018
Portugal	ICT Strategy 2020 – Public Administration Digital Transformation Strategy	2018
Spain	Digital Agenda for Spain	2013
	Digital Transformation Plan of the General Administration and Public Agencies	September 2015
Sweden	For sustainable digital transformation in Sweden – a Digital Strategy	2017
Switzerland	Digital Switzerland Strategy	September 2018
United Kingdom	Government Digital Strategy	December 2013

■ In the past few years, member states have introduced national strategies on AI. These documents often address the use of AI in the public sector, notably to deliver better public services and enhance efficiency through automating routine processes. In fact, some member states see the public sector as leading in the push for the development and uptake of AI. Member states recognise the fact that they need to invest in building the capacity of civil servants and public sector officials, with some national strategies explicitly addressing “up-skilling” as an issue. The most frequent examples of the use of AI technology by public administrations consists of chatbots and intelligent digital assistants. Other frequent uses of AI are in predictive analytics, language processing or algorithmic decision making.

■ The Covid-19 pandemic has acted as a catalyst, further accelerating the already existing trend of public administration reform, especially as regards its technological component. Reforms that in normal times would have taken years were completed in record time. For instance, bureaucratic procedures were simplified, teleworking and teleconferencing were systematically introduced, services and information were made available online and new partnerships with the private sector were introduced. In Greece, for example, the Ministry of Digital Governance adopted an action plan to increase the capacity of the telecommunication networks and develop solutions for public entities and private companies. This helped to launch a series of initiatives, including the platform “e-presence” enabling public entities to hold high-quality teleconferences with the adequate level of security, use of distance-learning platforms offered for free by mobile phone networks and teleworking for public administrations, with VPN connections for up to 100 000 staff members. In Malta, the initiative YouSafe was set up as a community support platform with 68 Facebook groups, one for each council. The platform has enabled local councils to keep in contact with their community during the crisis. YouSafe also supports dialogue between local councils and residents, the business community, elderly people, NGOs and civil society networks. In Romania, the digital project “stirioficial.ro” was implemented as part of a partnership between the task force of the NGO Code for Romani and the Romanian Government. The project is designed to encourage the Romanian population to be vigilant in the way they access, assimilate and circulate information presented in the media. The project functions as a central information point about Covid-19 in Romania.

■ To avoid disruption of essential services, some civil servants were redeployed, administrative structures were overhauled and special support was introduced for essential categories – especially in the health sector.

■ In 2020, following ratification by Ukraine, the Council of Europe Convention on Access to Official Documents (CETS No. 205) entered into force. This is an important step forward to ensuring greater transparency, accountability and openness in public administrations, being the first binding instrument guaranteeing the right to access to official documents.

■ In 2020, multilevel governance was put to a test in all Council of Europe member states due to Covid-19. Finding the right balance between taking urgent and effective action while ensuring a balanced response between central, regional and local authorities has proved to be a daunting challenge. This was true at all stages of the emergency and despite changes in the role, responsibilities and areas of intervention of different territorial levels of government over time in response to the pandemic. Whereas at the beginning of the emergency the role of the central authorities was predominant, in other phases local and regional authorities had greater opportunities to implement policies that were specific and adapted to the local situation. Multilevel governance will remain crucial also for the successful handling of the next stage of the pandemic and its middle and long-term consequences.

■ To ensure closer dialogue, co-ordination mechanisms have been set up or pre-existing crisis management schemes have been tested for the first time. In Austria, crisis management boards were established at national, regional and local levels and a national crisis response structure was set up under the co-ordination of the Ministry of the Interior, which involves all relevant federal ministries, governments of the provinces, front-line organisations, civil protection bodies, health authorities and critical infrastructure. In Spain, the Federation of Municipalities and Provinces (FEMP) has collected and shared timely and updated information on the handling of the crisis to local governments thorough circulars and numerous communications.

■ A cross-border task force was set up with members from the Dutch, North-Rhine Westphalian and different levels of Belgian authorities to streamline several Covid-19-related areas that created cross-border obstacles. This has also helped to resolve inconsistencies in the way the situation of certain people is apprehended as regards the place of residence, for instance in relation to freelance workers and cross-border workers (for example in one country the registered residence principle was applied, while another followed the social security principle).

■ The **European Label of Governance Excellence (ELOGE)** is a Council of Europe award for municipalities which have achieved a high level of good governance measured against a [Council of Europe benchmark](#).

■ ELOGE enables municipalities to assess themselves using the [12 Principles of Good Democratic Governance](#) as indicators. It is both a recognition and a tool for local authorities to better identify strengths and areas where improvement is needed. ELOGE is implemented in 13 Council of Europe member states.

Teleworking for public administrations

■ In 2020, the global pandemic dramatically impacted practically every sector of society, including the work of public administrations. Ensuring the continuity of service delivery meant that many public institutions have, for the first time, experimented with teleworking. As a result of the emergency, they may not have had the time or all the information and necessary resources available to ensure that the transformational benefits of teleworking could be realised for themselves as employers, for public servants and for citizens and the public at large, as end-users of public services.

■ One of the aspects of the pandemic is that many effects will continue to linger, even after the public health crisis is over. Developments in digitalisation, and citizens' and employees' expectations in how they access services, will have changed for good. Public administrations need to be prepared to manage this shift in mentality and working methods.

■ To assist member states, the Centre of Expertise for Good Governance has developed the Toolkit on Teleworking for Public Administrations, aimed at central, regional and local authorities. Its main objective is to explore, in a very practical way, how public institutions can implement teleworking arrangements for civil servants, given both the particular challenges faced by public sector entities and the growing financial, human resources and political incentives to allow at least a portion of public employees to work remotely. The toolkit is designed to facilitate decision making on the different aspects of teleworking within public administrations and create a clear, research-based road map.

FREE AND FAIR ELECTIONS

■ The right to free and fair elections is crucial to sustaining the foundations of an effective and meaningful democracy governed by the rule of law. The legitimacy of any government relies on elections that allow citizens to participate in the democratic debate and to express their choices in the ballot boxes. Political parties remain the key actors of electoral processes, even if they are no longer the only ones: civil society, the media and social networks have taken on an increasingly important role in elections.

■ There is a renewed interest in public affairs, while electoral turnout continues its worrisome downward trend. This apparent paradox, coupled with the historic lows in the public's trust in elected institutions, seems to indicate that the current electoral systems are not sufficiently sharp enough to ensure the continued influence of citizens over public decisions and the ensuing bond of trust between the electorate and its elected representatives.

■ Considering these developments, some countries are striving to complement representative democracy with more and renewed forms of participative democracy. Many governments and policy makers should however initiate substantive reflection on the evolution of electoral systems and practices and make sure that they are adapted to our modern world. The necessary adaptations concern the impact of digital technologies, including artificial intelligence, on the entirety of the electoral cycle, from registration to solving electoral disputes, but also the electoral system itself, including issues of electoral funding and thresholds. The Council of Europe is currently working on guidelines on the impact of digital transformation on the electoral process, which should be presented to the Committee of Ministers at the end of 2021.

■ The year 2020 was marked by the Covid-19 pandemic and its impact on our societies, which has prompted Council of Europe member states to adapt to the health crisis. All facets of society have been impacted by the Covid-19 outbreak; democracy and elections have not been spared. Travel restrictions, health quarantines and social distancing were among the challenges faced by our democracies to continue to fully involve citizens in decision-making processes.

■ Under Article 3 of the Protocol to the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 9), Council of Europe member states undertake to guarantee free and democratic elections,

at reasonable intervals, by secret ballot, under conditions which ensure the free expression of the opinion of all people in the choice of the legislature. The Venice Commission's Code of Good Practice in Electoral Matters complemented these principles. Committee of Ministers Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making¹² is the main reference document on how to guarantee gender equality in the electoral process.

Measurement criteria

- ▶ Universal suffrage: all adult citizens have the right to vote and stand for election; electoral registers are public, permanent and regularly updated, the registration process of electoral candidates is guided by an administrative or judicial procedure with clear rules and no excessive requirements.
- ▶ Equal suffrage: each voter has the same number of votes, seats are evenly distributed between constituencies and equality of opportunity is guaranteed for parties and candidates alike through the electoral campaign, media coverage and the funding of parties and campaigns.
- ▶ Free suffrage: voters can freely form an opinion, they are offered a genuine choice at the ballot box and they can vote freely, without threats of violence at the polls, and the counting of results takes place in a transparent way.
- ▶ Secret suffrage: voting is individual; no link can be established between the content of the vote and the identity of the voter who cast it.
- ▶ Direct suffrage: at least one chamber of the national legislature, subnational legislative bodies – if any – and local councils are elected directly.
- ▶ Regularity: elections are conducted at regular intervals.
- ▶ Legal predictability: fundamental elements of electoral law are not open to amendment less than one year before an election.
- ▶ Independence and impartiality of the body organising elections.
- ▶ Openness: national and international observers may observe the whole electoral process.
- ▶ Responsiveness: there is an effective remedy system.

Findings

■ The 2020 electoral observation mission reports of the Parliamentary Assembly and of the Congress of Local and Regional Authorities of the Council of Europe, along with other international observation missions show that elections held in Europe are broadly in line with democratic standards and generally respect the principles defined in the Venice Commission's Code of Good Practice in Electoral Matters.

■ Between March and September 2020, elections had to be postponed or cancelled. This was the case for one presidential election, two parliamentary elections, five referendums and five local or regional elections.¹³

■ Out of 10 parliamentary elections which took place in 2020, no parliament was elected in accordance with Committee of Ministers Recommendation Rec(2003)3.

■ At the end of 2020, 7 out of the 47 member states of the Council of Europe (14.89%) satisfied the requirements of Committee of Ministers Recommendation Rec(2003)3. At the same time the number of elected women in parliaments has increased. In total, out of 10 372 members of parliament in Europe, 3 126 are women, which represents 30.14%.¹⁴ This percentage was 29.52% at the end of 2019.

■ At the same time, public confidence in the electoral process is falling, as shown by continually decreasing voter turnout. For the 10th year in a row, the average turnout in parliamentary elections in Europe has not increased and it actually decreased in 2020.¹⁵ At the end of 2020, 13 member states (27.66%) had elected their parliament with a turnout lower than 50%.¹⁶

12. Committee of Ministers Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making (<https://bit.ly/3mglO7B>).

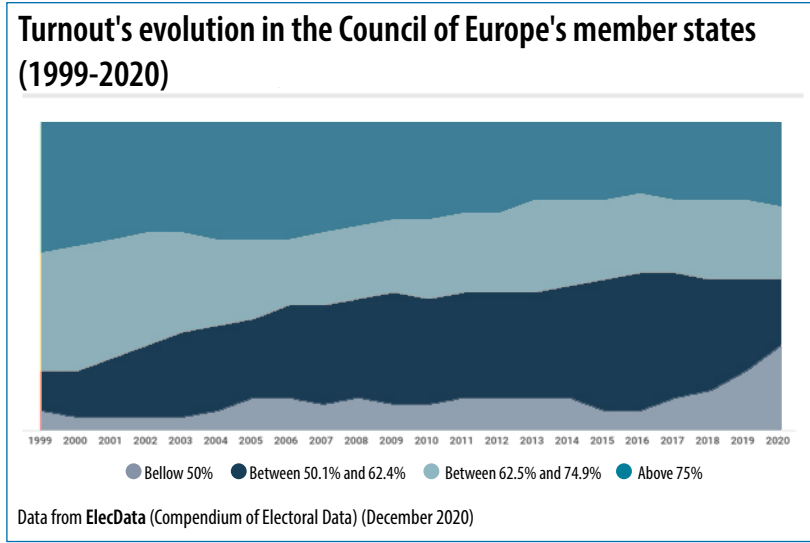
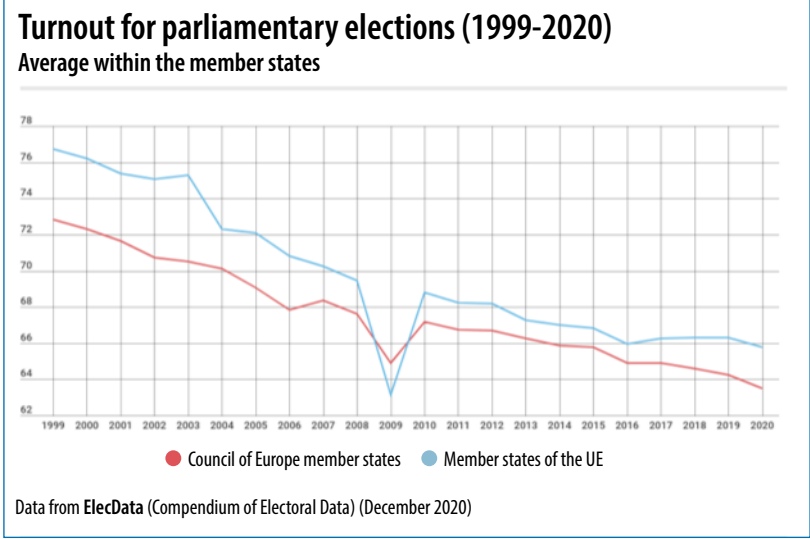
13. Compendium of Electoral Data (ElecData), Impact of COVID-19 on elections and referenda in Europe (<https://bit.ly/37cYV1D>).

14. Compendium of Electoral Data (ElecData), Gender equality in parliaments (<https://bit.ly/349O8n6>).

15. Compendium of Electoral Data (ElecData), Turnout for parliamentary elections (<https://bit.ly/3olR8hY>).

16. Compendium of Electoral Data (ElecData), Turnout's evolution in the Council of Europe's member states (<https://bit.ly/37WU4Ro>).

■ Among the countries which have benefitted from electoral assistance from the Council of Europe, Bosnia and Herzegovina, Georgia, the Republic of Moldova and Ukraine held elections.





CHAPTER 5

INTEGRITY OF INSTITUTIONS

INTRODUCTION

Public institutions are the guardians of democracy, the rule of law and human rights. They are established for the service and benefit of citizens. The integrity of public institutions is the result of a dynamic interaction between organisational integrity, the integrity of public officials and the effectiveness of public accountability and enforcement mechanisms. These dimensions of integrity are interrelated and mutually reinforce one another.

■ This chapter unpacks these dimensions of integrity by drawing on the core principles, standards, judgments, benchmarks, findings and recommendations emanating from, and the action undertaken by, the following Council of Europe bodies: the Democratic Governance Division, GRECO, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL), the Economic Crime and Co-operation Division, the Criminal Law Division, the European Directorate for the Quality of Medicines & HealthCare (EDQM) and the European Court of Human Rights.

■ To mitigate integrity vulnerabilities, Council of Europe member states need to extend the implementation of integrity frameworks to all levels of national government, continuously measuring progress through targeted benchmarks and examining whether their institutions are fit for purpose. The greatest challenge is still to prevent corruption before it arises. To this end, promoting a shared integrity culture and preventive mechanisms throughout all institutional layers and branches of power is essential to creating the necessary protective “guard-rails” around the public sector, at all levels. These include transparency, which is key to accountability. Bringing integrity to the forefront of the agenda is even more important in the aftermath of the Covid-19 pandemic.

■ Integrity rules and anti-corruption and anti-money laundering laws are only as effective as their enforcement. The work of GRECO and MONEYVAL is central to ensuring that national action fully complies with the Council of Europe’s integrity, anti-corruption and anti-money laundering standards. Anti-corruption and anti-money laundering authorities also depend on GRECO’s and MONEYVAL’s recommendations and guidance to firmly assert themselves as key pillars in national and international efforts to counter corruption and money laundering. Peer responsibility for continued pressure on member states to reform is vital, as is the Council of Europe’s rapid reaction to violations of its standards.

■ To lead by example, the Council of Europe has already started to modernise its integrity framework and continues to do so.

INSTITUTIONAL INTEGRITY FRAMEWORKS

Measurement criteria

- ▶ Citizens trust their institutions at national and subnational level.
- ▶ Institutional integrity frameworks provide clear standards and obligations for the conduct of all public officials and public institutions or organisations.
- ▶ Institutional integrity frameworks comprise, as appropriate, strategies, legislation, regulations, codes of conduct and guidance that work together to enable and embed integrity in the activities of institutions or organisations and in the decision making and actions of public officials.

- The organisation, functioning and decision-making processes of public administrations consider the need to combat corruption, by ensuring there is as much transparency as needed to achieve effectiveness.

Integrity frameworks for all levels of national governance

Public institutions are complex systems. Their integrity cannot be solely measured by a lack of corruption – although this is an important factor. Integrity of institutions is a dynamic process of shaping a culture which makes it difficult for corruption to take root and ensures that officials carry out their duties in an ethical manner and in the public interest.

Institutional integrity is a combination of the integrity of officials and employees, and how they interact, and of the rules, action and decision making within a given institution. Accordingly, commitment to integrity implies creating mechanisms which make it more likely that the institution adheres to the values it has publicly declared and to which it is publicly committed.

The 12 Principles of Good Democratic Governance

1. Participation, representation, fair conduct of elections
2. Responsiveness
3. Efficiency and effectiveness
4. Openness and transparency
5. Rule of law
6. Ethical conduct
7. Competence and capacity
8. Innovation and openness to change
9. Sustainability and long-term orientation
10. Sound financial management
11. Human rights, cultural diversity and social cohesion
12. Accountability

“Ethical conduct”

- The public good is placed before individual interests.
- There are effective measures to prevent and combat all forms of corruption.
- Conflicts of interest are declared in a timely manner and the people involved must abstain from taking part in relevant decisions.

Within the Council of Europe, the process of setting standards for institutional integrity at all levels of national governance has been spearheaded by the European Committee on Democracy and Governance (CDDG) and the European Court of Human Rights. The CDDG is the Council of Europe’s intergovernmental forum on good governance, public administration reform, decentralisation, citizen participation and public ethics. In its work, the CDDG has often been guided by the 12 Principles of Good Democratic Governance,¹ which encapsulate fundamental values and requirements for public administration at all levels of government.

Many standards on integrity, from the funding of political parties and electoral campaigns to the protection of whistle-blowers, have been adopted by various Council of Europe bodies and need to be fully and consistently implemented by member states. This strategic approach to mainstreaming institutional integrity is the core aim of the CDDG.

In March 2020, the Council of Europe’s Committee of Ministers adopted the Guidelines on public ethics, drawn up by the CDDG, with the goal of mainstreaming integrity and public ethics across all levels of national government. They consolidate the core Council of Europe integrity-related principles, standards and

1. The 12 Principles of Good Democratic Governance were approved in 2007 in Valencia by ministers responsible for local and regional government. They were endorsed by a decision of the Council of Europe Committee of Ministers in 2008. While the principles refer to the local level, they are of general relevance and application.

recommendations and encourage the establishment by member states of comprehensive and effective public ethics frameworks. The eight principles of public ethics, set out by the guidelines, together encompass the principle of integrity and underlie public officials' duty to put the obligations of public service above private interests when carrying out their mandates and functions.

The eight principles of public ethics

1. **Legality**
2. **Integrity**
3. **Objectivity**
4. **Accountability**
5. **Transparency**
6. **Honesty**
7. **Respect**
8. **Leadership**

"Integrity" means that public officials are to put the obligations of public service above private interests when carrying out their mandates and functions.

■ The guidelines cover all categories of public officials and address challenges that go beyond traditional corruption prevention and conflicts of interest, including emerging issues such as whistle-blower protection, the use of social media and the prevention of sexism, hate speech and discrimination. They provide a blueprint for an effective public ethics framework that outlines the standards and obligations for public officials and public sector structures, and the standards of conduct that citizens can expect from public officials and public structures at all levels.

■ The guidelines are complemented by the document "Steps to implementing public ethics in public organisations", adopted in September 2020. This guide fosters the development of public ethics frameworks at all levels by presenting good practice from across member states.

■ The standards have been converted into practical co-operation tools by the Centre of Expertise for Good Governance, which has provided legal and policy advice and carried out co-operation programmes in member states and beyond. By the end of 2020, the centre had developed a repertoire of capacity-building tools based on the Council of Europe's standards and good practices from member states. Some of these tools tackle integrity matters and offer road maps and benchmarks to create an "integrity infrastructure" and public ethics frameworks for public administration institutions.

■ The Public Ethics Benchmarking Toolkit for Central Authorities and the Public Ethics Benchmarking Toolkit for Local Authorities ensure the effective implementation of the Guidelines on public ethics and promote compliance with these norms. Both entail self-evaluation according to a set of indicators and the development, on that basis, of a national score card. Since 2018, it has been used in co-operation projects in Croatia, Estonia, Greece, the Republic of Moldova, Romania and Ukraine. The toolkit for central authorities was produced in September 2020. Co-operation projects have consistently pointed to the narrow understanding of public ethics and the shortage of robust corruption-prevention mechanisms at this level of governance. Some of the outcomes are summarised below.

Croatia (15 participating municipalities)

- ▶ In the national score card, the overall average score on all ethics-related indicators did not exceed 54% for participating municipalities.
- ▶ Areas identified as insufficiently resilient to integrity risks included: internal rules and mechanisms ensuring the transparent conduct and functioning of local councils/councillors, internal control and audit, supervision of legality of local administrations and corruption-related risk management and prevention.

Estonia (12 participating municipalities)

- ▶ There is no integrated approach to corruption prevention and there is insufficient attention paid to establishing whistle-blowing channels and implementing internal controls.
- ▶ Areas with better-managed integrity risks included clear and transparent recruitment and personnel policies, procurement procedures and access to public services.
- ▶ The practice of accepting gifts and other favours, failure to report side activities and the absence of corruption risk assessment for specific posts were indicative of the low awareness of corruption risks among municipal servants and employees.
- ▶ A self-assessment platform (www.kovriskid.ee), established thanks to the project, is currently used by over one third of municipalities.
- ▶ The project also led to the preparation, in 2020, of proposals for local self-governance reform by the municipalities in conjunction with the parliament's Anti-Corruption Select Committee.

Greece (19 participating municipalities)

- ▶ A corruption risk assessment revealed frailties such as discretionary decision making, which in turn stemmed from vague legislation and insufficient oversight.
- ▶ There was a growing awareness of anti-corruption measures and their use was strongly encouraged. These included appropriately drafted and standardised procedural frameworks, electronic registers of services and procedures, the clear division of responsibilities between employees and departments, improved systematic assessment of administration performance and providing citizens with user-friendly information on applicable regulatory frameworks.
- ▶ The project introduced "service cards", which helped increase the transparency of administrative processes by offering a detailed recording of municipal service delivery.

■ The European Label of Governance Excellence (ELoGE) – a certificate of compliance with the 12 Principles of Good Democratic Governance – has been awarded to nearly 100 local authorities in Bulgaria, France, Greece, Italy, Lithuania, Malta, Norway, Poland, Portugal, Slovakia and Spain. The self-evaluation benchmarking process helped identify weaknesses and strengths in the shaping of public institutions, the delivery of public services and the exercise of public authority. The process consisted of benchmarking,² a citizens' survey and a local-elected representative's survey.

■ Co-operation projects have consistently pointed to below average compliance with Principle 6 (ethical conduct) in most participating municipalities. Consequently, follow-up for most of the countries has included recommendations for the review of conflict-of-interest frameworks, the reform of public-procurement procedures, the revision of codes of conduct and the establishment of internal controls.

■ Local financial benchmarking for central authorities and for local authorities provides practical road maps for implementing Committee of Ministers Recommendation Rec(2004)1 to member states on financial and budgetary management at local and regional levels and Recommendation Rec(2005)1 of the Committee of Ministers to member states on the financial resources of local and regional authorities. Both aim at bolstering accountable and efficient local finance systems. The issues of integrity, public ethics and good governance have also been addressed via this tool, alongside fiscal decentralisation and distribution of resources among the different levels of government and better management of local budgets.

■ The benchmarking was conducted at national level in Greece and included the provision of policy advice to the Ministry of the Interior to support the improvement of intragovernmental fiscal relations and the management of local financial resources. It focused on fiscal decentralisation, fiscal relations and municipal financial management. The project entailed interviews with stakeholders, the development of a disaggregated local finance database, the review of the interior ministry's data and a survey of mayors. The checklist assessed local taxation, grant allocation policies and methods, fees and charges, borrowing and whether there was a sound financial management framework (budgeting and budget implementation). The results of the project have served as input to the new legislation dealing with intragovernmental fiscal relations.

2. For each of the 12 principles, the benchmark contains: a description of the principle and a list of activities that would typically aid a municipality to deliver in accordance with the principle; a self-assessment asking to identify the level of maturity for that principle; evidence to support the self-assessment provided by the municipality. A municipality is expected to consider the evidence capable of corroborating the delivery of the principle, carry out a self-assessment of their maturity for that principle and record the evidence they would wish to offer in support of their self-assessment.

■ Since 2018, the European Court of Human Rights has dealt with a large number of cases dealing with institutional integrity.³ The issues addressed by the Court embraced such dimensions of institutional integrity as anti-corruption and integrity policies, risk management, the risks of political interference in the activities of public institutions and public officials, conflicts of interest, restrictions on side activities of public officials, interest and asset disclosures by public officials, freedom of expression, association and assembly of public officials, codes of conduct for public officials and criminal, disciplinary and other procedures concerning public officials. Among judgments of particular interest are *Guðmundur Andri Ástráðsson v. Iceland* (Application No. 26374/18, Grand Chamber decision of 1 December 2020) concerning the appointment of judges in flagrant breach of domestic law as a result of undue discretion exercised by the executive, and *Kövesi v. Romania* (Application No. 3594/19) on the inability of the chief prosecutor to effectively challenge the premature termination of her mandate.

Integrity frameworks for international governance: the Council of Europe

■ The 2017 allegations of corruption and fostering of interests made against some members or former members of the Parliamentary Assembly of the Council of Europe were a “wake-up call” for the Council of Europe as a whole. The Organisation reacted immediately. PACE set up an independent investigation body on the allegations of corruption within the Parliamentary Assembly (IBAC), whose report is now publicly available. PACE also requested GRECO’s opinion on its integrity framework. More broadly, the Secretary General strengthened the investigative capacity of the Directorate for Internal Oversight (DIO) at the end of 2015 and, on 1 April 2019, set up the function of [Ethics Officer](#). In doing so, the Secretary General appropriately distinguished the preventive/advisory (Ethics Officer) roles from the audit/investigative (DIO and Directorate General of Administration) roles. All staff members were also required to attend compulsory ethics training.

■ The Council of Europe is in the process of substantially reforming its ethics and integrity framework. The year 2020 was pivotal in this context. A code of conduct and the new “Speak Up” policy were finalised, and internal regulations were reviewed with a view to introducing related changes. These are welcomed initiatives which take fully into account the specific recommendations issued by the Ethics Officer in his first annual report.

■ For its part, the Parliamentary Assembly has taken steps to make its ethical framework fully operational, including by taking account of the recommendations provided by the IBAC and GRECO, which carried out a thorough review of the Assembly’s integrity framework and the set of rules and mechanisms governing the conduct of members of the Assembly.⁴

■ These developments show that the Organisation is not only taking integrity matters seriously but has engaged on a path of reforms. The modernisation of the ethical framework is ongoing. Ethics and integrity are areas where the Council of Europe needs to lead by example at all levels.

3. *Catalan v. Romania*, Application No. 13003/04, 9 January 2018; *Akarsubaşı and Alçiçek v. Turkey*, Application No. 19620/12, 23 January 2018; *Adigüzel and Others v. Turkey*, Application No. 65126/09, 13 February 2018; *Alpha Doryforiki Tileorasi Anonymi Etairia v. Greece*, Application No. 72562/10, 22 February 2018; *Guja v. the Republic of Moldova (No. 2)*, Application No. 1085/10, 27 February 2018; *Falzon v. Malta*, Application No. 45791/13, 20 March 2018; *Sadrettin Güler v. Turkey*, Application No. 56237/08, 24 April 2018; *Rungainis v. Latvia*, Application No. 40597/08, 14 June 2018; *Tuskia and Others v. Georgia*, Application No. 14237/07, 11 October 2018; *Brisic v. Romania*, Application No. 26238/10, 11 December 2018; *Ghincea v. Romania*, Application No. 36676/06, 9 January 2018; *Seven v. Turkey*, Application No. 60392/08, 23 January 2018; *Güç v. Turkey*, Application No. 15374/11, 23 January 2018; *Boyets v. Ukraine*, Application No. 20963/08, 30 January 2018; *Pereira Cruz and Others v. Portugal*, Application No. 56396/12, 26 June 2018; *Lázaro Laporta v. Spain* (dec.), Application No. 32754/16, 3 July 2018; *Denisov v. Ukraine* [Grand Chamber], Application No. 76639/11, 25 September 2018; *Ramos Nunes de Carvalho e Sá v. Portugal* [Grand Chamber], Application Nos. 55391/13, 57728/13 and 74041/13, 6 November 2018; *Urat v. Turkey*, Application Nos. 53561/09 and 13952/11, 27 November 2018; *Berardi and Mularoni v. San Marino*, Application Nos. 24705/16 and 24818/16, 10 January 2019; *Alparslan Altan v. Turkey*, Application No. 12778/17, 16 April 2019; *Batiashvili v. Georgia*, Application No. 8284/07, 10 October 2019; *Libert v. France*, Application No. 588/13, 22 February 2018; *Hovhannysyan v. Armenia*, Application No. 18419/13, 19 July 2018; *Rola v. Slovenia*, Application Nos. 12096/14 and 39335/16, 4 June 2019; *Polyakh and Others v. Ukraine*, Application No. 58812/15, 17 October 2019 (not final); *Kula v. Turkey*, Application No. 20233/06, 19 June 2018; *Grace Gatt v. Malta*, Application No. 46466/16, 8 October 2019; *Thiam v. France*, Application No. 80018/12, 18 October 2018; *Magnitskiy and Others v. Russia*, Application Nos. 32631/09 and 53799/12, 27 August 2019; *Hülya Ebru Demirel v. Turkey*, Application No. 30733/08, 19 June 2018.

4. See [PACE committee’s response to corruption report detailed in new assessment](#) for more details.

STANDARDS OF CONDUCT FOR PUBLIC OFFICIALS

Measurement criteria

- ▶ Member states, through integrity frameworks, develop and maintain the highest standards of conduct and exemplarity by public officials to sustain citizens' confidence and trust.
- ▶ When carrying out their mandates and functions, public officials put the obligations of public service above their private interests.
- ▶ Codes of conduct play a special role in ensuring the effectiveness of the integrity framework with an emphasis on public officials' individual responsibility for their behaviour. The standards of conduct for different categories of public officials are set out in specific codes and complement professional standards.
- ▶ Rules relating to the rights and duties of public officials take into account the requirements of the fight against corruption and provide for appropriate and effective disciplinary measures.
- ▶ Public officials act and take decisions in an open and transparent manner, ensure access to information and facilitate understanding of how public affairs are conducted.

■ The integrity of public officials refers to the core values and behavioural standards according to which a public official must conduct his or her duties. Public officials implement laws and public policies, govern state assets and provide services to the public and it is vital that they operate with the utmost integrity; maintain a reputation for impartiality, objectivity and professionalism; and demonstrate effectiveness in their duties.

■ Creating a general understanding of what constitutes proper behaviour by public officials requires clear standards. Nurturing a reputation for integrity can be extremely challenging as the combination of public authority and discretionary power means that opportunities and incentives for illicit benefits, large or small, can be plentiful. Moreover, perceptions of what is appropriate behaviour for a public official currently exceed merely following rules and demand excellence and exemplarity.

■ International standards oblige states to go beyond minimum requirements and set high standards of conduct for public officials. The Council of Europe has adopted both generic standards applying to all public officials and public administration more broadly and specific standards for such categories as members of parliament and other elected representatives, judges, prosecutors, law-enforcement officers and so on.⁵

■ Since 2018, the Council of Europe has been strengthening the integrity of its member states' public officials in law and in practice. Relevant national policies, standards and practices have been scrutinised by GRECO as part of its peer evaluation and compliance reviews. GRECO has adopted a total of 18 country evaluation reports and more than 60 country compliance reports. Nearly all of them examined in one way or another the standards of conduct prescribed for and expected of public officials.

■ GRECO has contributed to clarifying standards of conduct for members of government, parliament, the judiciary and police forces as their ability to maintain integrity and cope with corruption risks are vital for the proper functioning of democracies. Some of the standards examined by GRECO apply to all or almost all the groups. Others are contingent on the legal status, mandate and functions of a specific institution as well as the duties and rights of public officials employed within it.

■ The following issues emerged as cross-cutting and applicable to all the mentioned groups across most of the member states.

■ The adoption of codes of conduct has become a common tool to codify professional and integrity standards. Codes of conduct, whether regulatory, educational and/or aspirational in nature, strive to create an environment and culture that place considerable emphasis on propriety, honesty, dignity, fairness, probity and transparency. GRECO has helped advance both the crafting of new codes for specific groups of public officials and improving the existing ones. The strict limitation of gifts, hospitality and other advantages, and rules on the misuse of confidential information, were recurrent themes in many such codes.

5. Generic standards are embodied, among others, by the Council of Europe's "Twenty guiding principles for the fight against corruption", Committee of Ministers Recommendation Rec(2000)10 on codes of conduct for public officials, Recommendation Rec(2002)2 on access to official documents, Recommendation CM/Rec(2017)2 on the legal regulation of lobbying activities in the context of public decision making, the aforementioned Guidelines on public ethics as well as the Council of Europe Convention on Access to Official Documents (CETS No. 205). Among the specific standards are Committee of Ministers Recommendation CM/Rec(2010)12 "Judges: independence, efficiency and responsibilities", the Magna Carta for Judges and the European Guidelines on ethics and conduct of prosecutors. At the global level such standards are stipulated by the OECD Recommendation on Public Integrity and the United Nations Convention against Corruption.

■ The regulation of conflicts of interest encountered by public officials has noticeably improved in general legislation and internal rules. A requirement of ad hoc disclosure of a conflict between specific private interests of a particular official and the public interest has come up as a central issue, especially for members of government and parliament. Most GRECO members have improved or are improving the management of conflicts of interest with respect to these groups of officials, clearly defining the rules and procedures for managing conflicts of interest, including those arising on an ad hoc basis.

■ Interest and asset disclosure and their publication have become a standard obligation and, arguably, one of the most reliable and transparent means of preventing and identifying corruption, conflicts of interest or illicit enrichment. Most disclosure regimes include the top tiers of the executive, legislative, judiciary and civil service as these positions enjoy high discretionary powers when allocating public money. In some countries, the scope of the disclosure is being widened to include political advisers associated with a minister's decision making, senior civil servants appointed to political positions as well as public officials' spouses and dependent family members.

■ The enforcement of standards of conduct is not feasible if they are not well understood and internalised. Member states have introduced regular training and guidance on integrity standards, corruption prevention and conflict-of-interest rules to ensure that public officials can identify the range of potential challenges that may arise, and know how best to address them. Preventive tools are also being better explained to the public so that citizens are aware of the integrity standards applicable to the different groups of public officials.

■ Insofar as specific groups of public officials are concerned, GRECO has identified the following strengths and weaknesses.

People with top executive functions in central government (ministers, state secretaries, etc.)

- ▶ **Successes** – Governments' official websites give the public access to information on the functioning of the government, agreements, declarations and general news items and ministers' decisions (for example in Belgium).⁶ Public consultation procedures on legislation are prescribed by law and conducted in practice. In some countries, the time frame for public consultation is adapted to the circumstances of each case (complexity of the legislation, specialised agencies to be consulted, etc.), but is sufficiently long to allow consulted parties to react (for example in Denmark).⁷
- ▶ **Weaknesses** – Applicable integrity policies as well as regulatory and institutional frameworks remain weak. The importance of analysis and mapping of integrity risks is underestimated (for example in the United Kingdom)⁸ or deliberately avoided. Many countries have yet to adopt all integrity-related requirements. In some countries, there is a lack of clarity as to which integrity rules apply (for example in Slovakia).⁹ This situation contradicts GRECO's principle that the higher the position, the higher the standards that must apply. Lobbying, management of conflicts of interest and the phenomenon of "revolving doors", the act of taking employment or other activities after leaving public office, remain to be tackled (for example in Belgium, Iceland and the Netherlands).¹⁰

Members of parliament

- ▶ **Successes** – Public access to information on the functioning of parliaments has noticeably improved. Most member states have taken proactive steps to enhance the transparency of their legislative processes by making publicly available a wide range of information via parliamentary websites, e-communication, recording and livestreaming tools. This includes information on schedules, agendas, ongoing consultations and bills (for example in North Macedonia).¹¹ Nearly all member states collect information on parliamentarians' financial assets, income and liabilities at the start of their service. This information is typically made available to the public (for example in Georgia).¹² Engaging in accessory activities and holding outside positions considered incompatible with serving in parliament are also well regulated. Existing rules on accessory activities are clear, strict and well understood across the majority of GRECO members.

6. GRECO's Fifth Round Evaluation Report on Belgium.

7. GRECO's Fifth Round Evaluation Report on Denmark.

8. GRECO's Fifth Round Evaluation Report on the United Kingdom.

9. GRECO's Fifth Round Evaluation Report on Slovakia.

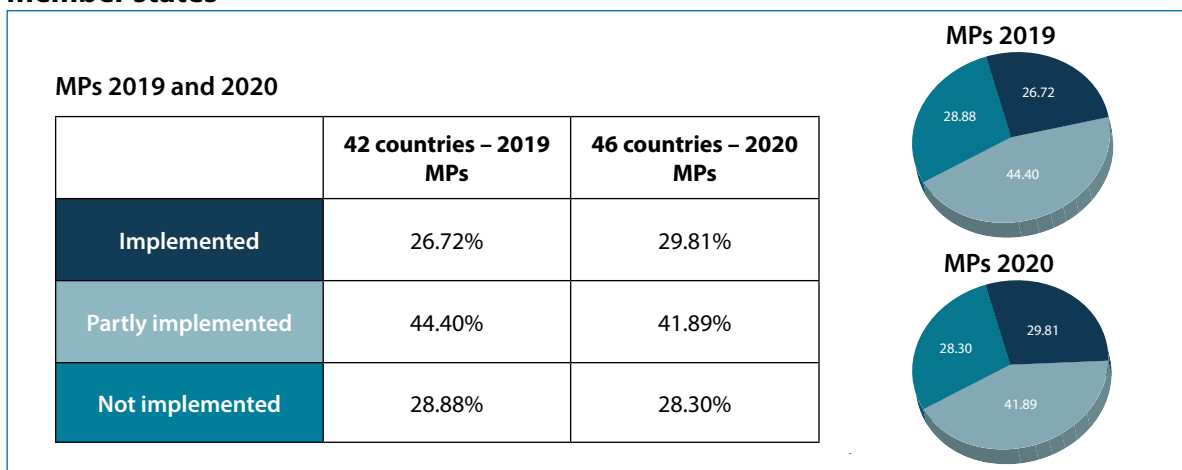
10. GRECO's Fifth Round Evaluation Reports on Belgium, Iceland and the Netherlands.

11. GRECO's Fourth Round Evaluation Report on North Macedonia.

12. GRECO's Fourth Round Evaluation Report on Georgia.

- **Weaknesses** – In many countries, legislative proposals have yet to be processed with a more adequate level of transparency and consultation (for example in Hungary).¹³ Urgent procedures are to be resorted to as an exception, and only in a limited number of circumstances. The principle of transparency of public documents is to be implemented in practice. Any exceptions to the rule of public disclosure should be kept to the minimum. Outcomes of public consultation procedures are to be systematically made public. Rules and/or guidance on how to engage with lobbyists and other third parties seeking to influence public decision making are often non-existent (for example in the United Kingdom, Italy, Ireland and Liechtenstein).¹⁴ In most countries few, if any, restrictions apply to “revolving doors”.

Figure 1 – Members of parliament – Implementation of recommendations by GRECO member states



Judges and prosecutors

- **Successes** – Judiciaries often rely on structured and institutionalised integrity systems (for example in Norway and San Marino)¹⁵ and benefit from formalised training. Rules on the incompatibility of judicial office with other functions are robust and, overall, effective. Rules on when a judge or prosecutor is prohibited from acting and must recuse him/herself from a case are clearly regulated in most countries. Many criminal procedure codes introduce post-employment restrictions for prosecutors: they cannot interact with prosecution offices in the area where they have served as prosecutors for several years after the end of their mandate. Rules on the acceptance of gifts are often detailed for both judges and prosecutors. Judges enjoy security of tenure. Both judges and prosecutors are highly aware of their duty to keep confidential the information they receive during legal proceedings.
- **Weaknesses** – In some countries, the judiciary’s independence and its authority as a fair and impartial arbiter for all citizens have still not been fully recognised and guaranteed.¹⁶ Appointment procedures at every level within the prosecution services remain to be addressed to ensure that they provide enough guarantees against undue political influence. Case management systems, in particular rules on the assignment of cases and the possibility to remove a case from a judge or prosecutor, require revision to ensure the independence of individual judges or prosecutors and as an important safeguard against pressures from within the judiciary and other branches of power.

13. GRECO’s Fourth Round Evaluation Report on Hungary.

14. GRECO’s Fourth Round Evaluation Reports on the United Kingdom, Italy, Ireland and Liechtenstein.

15. GRECO’s Fourth Round Evaluation Reports on Norway and San Marino.

16. GRECO’s Ad hoc (Rule 34) reports on Hungary and Poland.

Figure 2 – Judges – Implementation of recommendations by GRECO member states

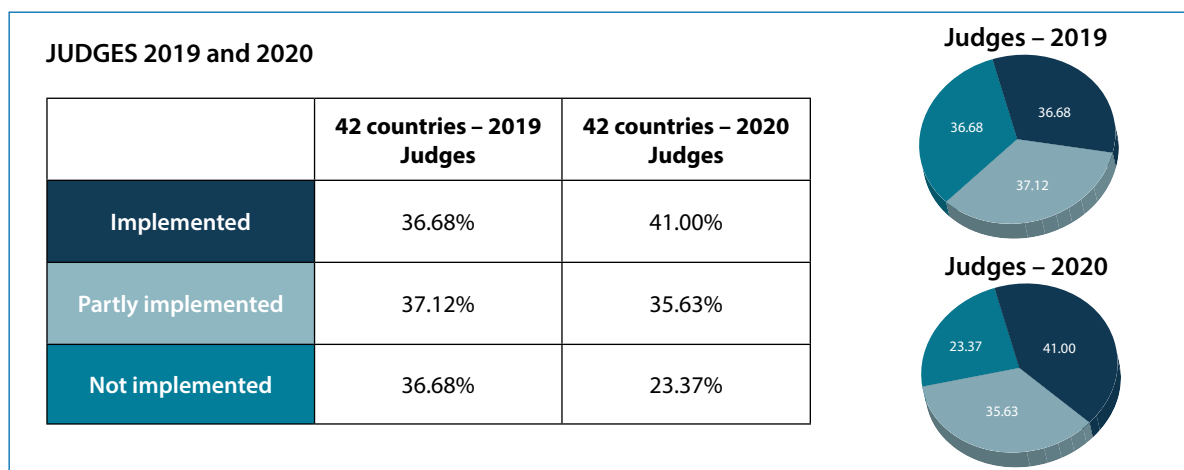
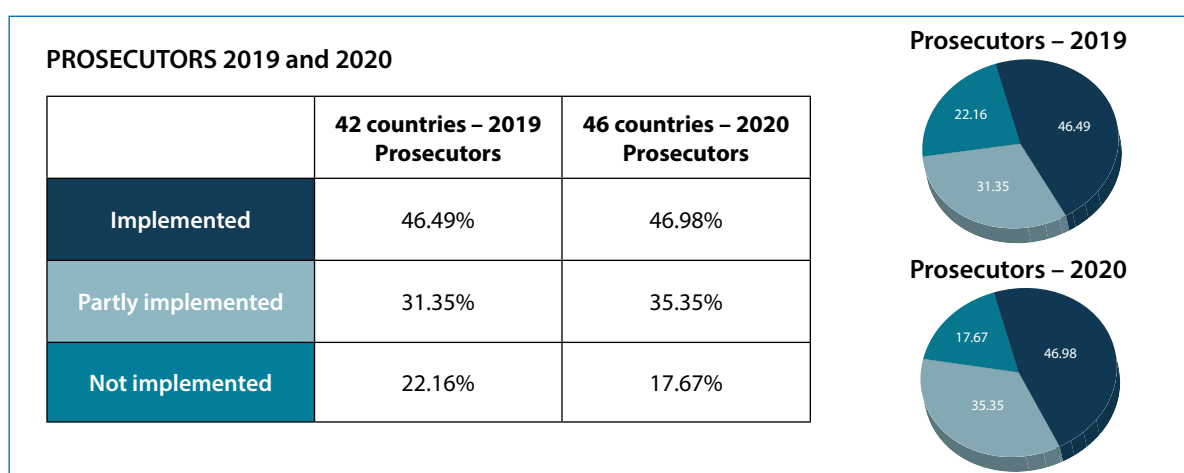


Figure 3 – Prosecutors – Implementation of recommendations by GRECO member states



Police

- **Successes** – Risk-management measures for integrity and corruption prevention are in place in many countries (for example in Estonia).¹⁷ These include rotation of staff, the application of the “four-eyes” principle in services where there is a higher risk of corruption (traffic police, border guards at check points, migration services or services dealing with residence cards and permits), installation of cameras and other technical equipment, the prohibition of cash transactions and the responsibility of line managers to ensure good behaviour of their subordinates as well as greater gender mainstreaming.
- **Weaknesses** – Under-resourcing remains a recurrent concern (for example in Luxembourg).¹⁸ In some countries, authorities still need to ensure appropriate pay for officers (for example in Latvia).¹⁹ The principles of objective, transparent and merit-based recruitment and promotion have yet to permeate careers at every level so that vacancies are systematically advertised and candidates are not “hand-picked” by means of transfers from the civil service. Integrity and security checks at regular intervals throughout the careers of police officers need to be introduced as their personal circumstances are likely to change over time and, on occasion, make them more vulnerable to possible integrity risks.

Examining the robustness of behavioural standards set for various categories of public officials has been and will remain on GRECO’s agenda, as set out in the Strategic Framework of the Council of Europe. Setting, and adhering to, high standards of conduct is a powerful prevention tool that can stop improprieties and corruption before they occur.

17. GRECO’s Fifth Round Evaluation Report on Estonia.

18. GRECO’s Fifth Round Evaluation Reports on Luxembourg.

19. GRECO’s Fifth Round Evaluation Report on Latvia.

INTEGRITY, EFFECTIVENESS AND IMPACT OF ACCOUNTABILITY AND ENFORCEMENT MECHANISMS

Measurement criteria

- ▶ Those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy levels of independence and autonomy that are appropriate for their functions; are free from improper influence and have effective means for gathering evidence, protecting the people who help the authorities in combating corruption and preserving the confidentiality of investigations.
- ▶ Anti-corruption and anti-money laundering authorities adhere to the rule of law and are accountable to mechanisms established to prevent the abuse of power.
- ▶ Anti-corruption and anti-money laundering authorities demonstrate the highest integrity in their own behaviour, while supporting and promoting integrity frameworks, and challenging poor ethical behaviour.
- ▶ Anti-corruption and anti-money laundering authorities report at least annually on their activities to the public and communicate and engage with the public at regular intervals.

Findings

■ Among public enforcement and oversight institutions, anti-corruption and anti-money laundering authorities play a pivotal role. Their establishment signals a country's determination to prioritise integrity and prevent and combat corruption, money laundering and related crimes. Anti-corruption authorities lead the development of multigovernance integrity efforts and help to instil appropriate conduct throughout the public sector. Anti-money laundering authorities, such as financial intelligence units, central banks and other financial supervisors, analyse and report suspicious transactions and ensure the integrity of financial systems, including insurance, securities markets, money transfer services, cryptocurrency operators and other types of financial businesses.

■ Given the decisive role these authorities play in society, the public has high expectations for their impact and effectiveness and their adherence to the highest integrity standards. For the same reason, these authorities often attract criticism regarding their performance, particularly, in cases of unsuccessful pursuits of high-level systemic or political corruption and crime.²⁰

■ Anti-corruption authorities (ACAs) are increasingly recognised as an important feature of contemporary good governance and "a model institutional response" to increasingly sophisticated forms of corruption. International treaties, such as the Council of Europe's Criminal Law Convention on Corruption (ETS No. 173) and the UN Convention against Corruption, introduce an obligation to have specialised individuals or entities in the fight against corruption that are sufficiently resourced, trained and enabled to carry out their functions effectively and free from any undue influence. The Jakarta Statement on Principles for Anti-Corruption Agencies provides a road map for further strengthening their independence and effectiveness by prescribing institutional stability to be guaranteed by the constitution or a special law, adequate staff remuneration, qualified immunity of staff from civil and criminal liability for acts committed in the exercise of their duties coupled with internal and external accountability mechanisms to prevent abuses of power. This type of framework is seen as an assurance of ACAs' integrity, impartiality and effectiveness.²¹

■ In those member states where they have been established, ACAs fall into one of the following categories: those dealing with prevention only, those endowed with preventive and investigative powers and those focusing exclusively on enforcement. Most ACAs are involved in developing, implementing and evaluating national anti-corruption strategies and policies; identifying and mapping out integrity and corruption risks; testing the integrity of public officials; promoting whole-government integrity and corruption-prevention efforts and ensuring their country's compliance with related international standards. Some ACAs also manage public officials' interest and asset disclosures and supervise the transparency of political funding and lobbying. Where ACAs' oversight duties are supplemented with law-enforcement powers, they typically have the authority to inquire into possible corruption offences before referring the case to a competent criminal justice institution. In such cases ACAs do not ordinarily have full investigative powers.

20. According to the June 2020 Eurobarometer, only 38% of EU citizens believe that the measures against corruption are applied impartially.

21. For details on various ACA models, see the report "Global mapping of anti-corruption authorities" at: <https://rm.coe.int/ncca-analysis-report-global-mapping-acas/16809e790b>.

■ The Council of Europe has taken a three-pronged approach to further bolstering ACAs' integrity and effectiveness and maximising impact in those member states where they have been established. First, ACAs' performance has been and remains subject to continuous monitoring by GRECO, which assesses these agencies against Council of Europe and international standards and has produced a valuable body of assessments and recommendations both on their establishment and functioning. Second, interested member states have received support and advice on how to further amplify their ACAs' functionality through technical assistance projects administered by the Economic Crime and Co-operation Division.²² Third, to promote the systematic collection, management and exchange of information, intelligence and good practice among ACAs worldwide, the Council of Europe encouraged the establishment, in October 2018, of the Network of Corruption Prevention Authorities (NCPA, also known as the "Šibenik Network").²³ As a result of all these efforts, ACAs throughout Europe have been gaining in integrity, effectiveness and impact, and overall, a positive trend is discernible attesting to their capacity to fulfil tasks.

- Funding and staffing patterns have increased in those member states where they were not readily available at the stage of the ACA's creation. For example, the ACA in Montenegro is now entitled, by law, to at least .2% of the overall state budget for its operations, with a possibility to obtain increased resources if needed. In Ukraine, in January 2019, the ACA's staff reached its statutory maximum of 408 people and the agency is now able to work at its full capacity²⁴ (in comparison, in 2017, it relied on 250 staff members out of 311 positions envisaged by law).

In the framework of the joint EU–Council of Europe Partnership for Good Governance in the Eastern Partnership countries, Armenia has benefitted from advice on revising the procedure for selecting the management of its newly established Corruption Prevention Commission. Relevant legislation has been amended and a competitive process involving a selection board has been introduced.

- The status of staff and the selection procedures for ACAs' leaders have been revised to eliminate outside influence and to provide for transparent and merit-based processes, bolstering the agencies' integrity and effectiveness. For example, in Ukraine, reforms were implemented to address frequent impasses caused by multilevel executive decision-making processes within the ACA.²⁵ Until October 2019, the ACA was governed by a management board composed of five commissioners, which impeded the decision-making process. In 2019, the law was revised:²⁶ a single agency head replaced the board, which expedited and made the executive decision-making process more efficient.

Thanks to the joint EU–Council of Europe Horizontal Facility for the Western Balkans and Turkey project, countries in South-East Europe obtained advice on systems for disclosure and verification of public officials' assets. Consequently, Albania has introduced such a system online, whereas the Anti-Corruption Agency of Montenegro has updated procedures for verifying asset disclosures.

- Supervision and enforcement powers of some ACAs have been expanded in response to previously identified shortcomings. For example, ACAs in North Macedonia, Serbia and Ukraine were endowed with the power to access the banking information of public officials, and the ACA in Moldova was authorised to initiate administrative action in the event of failure or late submission of asset declarations by public officials.²⁷
- Partnerships have been nurtured beyond traditional law-enforcement circles. In Albania and Serbia, civil society has become involved in the monitoring of election expenses. In France and the Republic of Moldova, ACAs have partnered with chambers of commerce and law firms to raise the private sector's awareness of the imperative to comply with relevant anti-corruption requirements.
- Some ACAs' mandates have been broadened to cover corruption prevention in the private sector. A notable example is France which adopted new legislation (Sapin II) and established an ACA charged with guiding and monitoring private sector compliance with anti-corruption rules. This initiative has been since replicated by other countries, for example Moldova.

22. For more information on current projects see: www.coe.int/en/web/corruption/projects.

23. See: www.coe.int/en/web/corruption/ncpa-network.

24. GRECO Fourth Evaluation Round Compliance Report for Ukraine.

25. Ibid.

26. The Law of Ukraine No. 140-IX "on amendments to certain legislative acts of Ukraine to ensure the effectiveness of the institutional mechanism for preventing corruption", in force since 18 October 2019.

27. GRECO Fourth Evaluation Round Compliance Report for the Republic of Moldova.

- ▶ The Network of Corruption Prevention Authorities has become a global network dedicated to exchanging information, sharing good practices and finding concrete solutions to addressing corruption more effectively. Starting with 17 agencies mostly from the European continent, the NCPA currently brings together 29 member authorities, 1 observer (Balearic Islands, Spain) and 4 affiliated partners from various regions of the world and different sectors of society. Many publications and resources have been made available online, such as the technical guide on codes of conduct and the global mapping of anti-corruption authorities. Benefitting from the continuous support of the Council of Europe, the network has been conducting numerous co-operation projects and promoting anti-corruption best standards such as those on the identification and mitigation of conflicts of interest, oversight of political funding, verification of asset declarations, whistle-blower protection and integrity testing.

■ The positive trends noted above tend to influence public perception of the effectiveness of efforts made by respective governments to promote integrity and counter corruption. This is confirmed by the June 2020 Eurobarometer, according to which the views of EU citizens towards their governments' anti-corruption efforts have been improving since 2013.²⁸

■ Despite these welcome developments, various challenges still impede the successful everyday execution of duties by many ACAs.

■ Undue influence on ACA activities can still be observed in some countries. This mainly stems from loopholes in the selection and appointment procedures for their leaders. For example, in Armenia members of the ACA are currently appointed by parliament based on nominations submitted by the government, the ruling party, the opposition and the Supreme Judicial Council.²⁹ The selection of members is through nomination alone, without a competition, which heightens the risks of politicisation of the ACA's work and of undermining its independence and effectiveness. Similarly, in Serbia, the ACA's director is selected by the national assembly following an open call for candidatures by the Ministry of Justice which retains the power to select any candidate and reject those with the highest score on the competition test.³⁰

The analysis of the practical handling of conflict-of-interest files in the Anti-Corruption Agency of Montenegro, conducted in 2018 by the Council of Europe Economic Crime and Co-operation Division, concluded that only three out of its 55 staff members were assigned to conflict-of-interest, incompatibilities, gifts and sponsorship files, and that this was largely disproportionate in view of the agency's overall workload.
(EU–Council of Europe Horizontal Facility – [Action against Economic Crime in Montenegro](#), “Enforcement of rules on conflict of interest in Montenegro”, 2018)

■ Under-resourcing and inadequate infrastructure and capacity remain a concern. ACAs often have fewer members of staff than prescribed by law. This has a direct impact on their workload, especially in more demand-driven areas such as the oversight of conflicts of interest, political funding and verification of asset disclosures, due to an apparent mismatch between the number of incoming files and the staff assigned to their processing. In some countries, such as Cyprus, the Office for Transparency and Prevention of Corruption under the Ministry of Justice and Public Order, responsible for the co-ordination of the implementation of the national anti-corruption strategy, had for some time been staffed by only one person. After criticism, Cyprus is putting in place a much stronger ACA.³¹ Neglect of the ACAs' back-room organisational infrastructure with a greater focus on front-line activities is a feature that is observed in many member states.

■ The lack of competences and capacity to perform roles and various enforcement deficiencies remain to be tackled. In Serbia, incompatibility requirements are not directly enforceable.³² In Croatia, the ACA has no power to punish the established cases of conflicts of interest or breaches of integrity and impartiality; it can only establish such violations. There are no mechanisms to reverse decisions made in the context of a conflict of interest or to overturn the advantage an official may have obtained by placing his or her private interest above the public interest, if it does not at the same time rise to the level of crime.³³ In Malta, the ACA lacks the capacity to perform functions independently of the executive as its findings in all investigations are to be reported to the Ministry of Justice which does not have a statutory obligation to take follow-up action.³⁴

28. European Commission, [Special Eurobarometer 502: Corruption](#), June 2020, p. 15.

29. GRECO Fourth Evaluation Round Compliance Report for Armenia.

30. Articles 11-13 of the Law on Prevention of Corruption in Serbia (*Official Gazette of Serbia*, No. 35/2019).

31. As indicated by Cyprus in the project description submitted in the framework of a joint EU–Council of Europe project.

32. Article 56, paragraph 8, of the Law on the Prevention of Corruption (*Official Gazette of Serbia*, No. 35/2019).

33. GRECO, Fifth Evaluation Round Report for Croatia. The authorities indicate that this shortcoming has already been rectified as part of the ongoing reform process.

34. European Commission, “2020 Rule of Law Report – Country Chapter on the rule of law situation in Malta”, September 2020.

■ Insufficient transparency of ACA decision making, including the processing of high-profile cases in some countries, is noteworthy.³⁵ In Slovenia, the ACA was deprived of the power to publish the names of top-level executive functionaries whose integrity violations it has identified, as only anonymised information may be published.³⁶ This shortcoming was rectified with the 2020 amendments to the Integrity and Prevention of Corruption Act. In Montenegro and Serbia, the public is denied access to decisions that terminate further inquiry into violations committed by public officials and to decisions that establish the absence of a violation due to a refusal by a public official to undergo scrutiny.³⁷ Such an approach is in effect disabling oversight over decision making in cases where the consent of public officials is missing and contradicts transparency requirements promoted by GRECO.

■ Emerging challenges await solutions, for example, those generated by the EU General Data Protection Regulation and the revised Council of Europe Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108 and CETS No. 223). ACAs typically process large amounts of personal data and need to simultaneously balance the requirements for greater transparency of information about public officials and those for protection of personal data. In the absence of clear guidance on how to ensure compliance with both in the context of their work, many ACAs are likely to continue applying functional solutions which risk undermining either the transparency or the data protection goals.

■ Overall, the outcomes of the Council of Europe's work are encouraging as they show ACAs' greater conformity with international and Council of Europe integrity and anti-corruption standards and a significant measure of commitment by numerous member states to enhancing the effectiveness, impact and accountability of their ACAs. Problems persist which indicate that many countries still have some distance to go in equipping their enforcement and oversight bodies with genuine authority. Since ACAs are the pillars of national integrity systems and principal institutional tools to counter corruption, their organisational stability and maturity need to be further nurtured and the available funding, staffing and capabilities better reconciled with the nature, scale and complexity of corruption in a particular country as well as government and public expectations. The Council of Europe remains committed to supporting ACAs to develop their full potential, operate with integrity and transparency, and tackle existing challenges as well as emerging issues.

■ Anti-money laundering/Countering the financing of terrorism (AML/CFT) authorities prevent criminal abuse and safeguard the integrity of national financial systems by promoting the effective implementation of legal, regulatory and operational measures for combating money laundering, financing of terrorism and proliferation of weapons of mass destruction. The AML/CFT authorities comprise primarily law-enforcement bodies, financial intelligence units and the financial sector and designated non-financial supervisors.

■ A financial intelligence unit (FIU) is a central national agency responsible for receiving reports of suspicious financial transactions from financial institutions, other bodies and individuals, analysing them and sharing the resulting intelligence with competent law-enforcement bodies and foreign FIUs.³⁸ Most FIUs were established as a response to law-enforcement agencies' limited access to, and capacity to process, related financial data and in an effort to involve the financial system directly in combating money laundering.³⁹ In the member states where they are established, FIUs have been placed either under a public administration body (a ministry), a law-enforcement body (a police department) or a judicial or prosecutor's office, or a combination of these arrangements.⁴⁰ Most frequently, FIUs are integrated into the Ministry of Finance, a central bank or a regulatory agency. Regardless of the mode of functioning, all FIUs serve as a national centre for collecting, analysing and sharing information on money laundering and the financing of terrorism.

■ Financial sector supervisory bodies exercise supervision of financial institutions and of certain non-financial businesses and professions, notably by licensing their activities and undertaking supervisory checks and inspections. Organising compliance with AML/CFT requirements is a function that is common to all financial sector supervisors as well as many FIUs, which are frequently entrusted with overseeing specific sectors.

■ In the realm of finance, the importance of a personal and organisational reputation for integrity is more accentuated. A lack of institutional integrity of AML/CFT authorities not only undermines their core functions but also severely damages the good functioning of national financial systems by allowing criminally obtained funds to pass through the banking system, insurance or securities market. Conversely, the integrity of the banking, financial and securities sectors depends on the perception that they function within a framework of high legal and professional probity, which is exhibited in large part by the AML/CFT authorities. In the absence of

35. OECD, *Competitiveness in South East Europe – A Policy Outlook 2018*.

36. GRECO, Fifth Evaluation Round Report for Slovenia.

37. See Article 39 of the Law on Prevention of Corruption (*Official Gazette of Montenegro* No. 53/2014 and 42/2017 – decision of the Constitutional Court) and Article 81 of the Law on the Prevention of Corruption (*Official Gazette of Serbia*, No. 35/2019).

38. International Monetary Fund, *Financial Intelligence Units: An Overview*, p. 4.

39. Gilmore W.C. (1999), *Dirty money – The evolution of money-laundering counter-measures*, 2nd ed., Council of Europe Publishing, Strasbourg, p. 103.

40. International Monetary Fund, *Financial Intelligence Units: An Overview*, p. 10.

such a framework, there is a risk that the financial sector will not comply with AML/CFT requirements or will comply less thoroughly than they should.

■ At international level, integrity standards for AML/CFT authorities are prescribed by the recommendations of the Financial Action Task Force (FATF)⁴¹ and the Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism (CETS No. 198). Since FIUs are public bodies, standards applicable to them are more rigorous. They must be operationally independent; have the degree of autonomy necessary to fulfil their responsibilities objectively and without undue influence; have the financial, human and technical means to successfully pursue objectives that are commensurate with their size and workload; and be held accountable to ensure that the special powers vested in them are not abused and that the public resources at their disposal are used efficiently and for the intended purposes. The integrity standards that apply to financial sector supervisors are largely similar but less stringent, given that they comprise public as well as non-public bodies.

■ The approach that the Council of Europe has been pursuing to boost the integrity, effectiveness and impact of AML/CFT authorities resembles that adopted for ACAs. Their activities are subject to an ongoing peer evaluation by MONEYVAL, the Council of Europe anti-money laundering monitoring watchdog.⁴² Since 2018, MONEYVAL has evaluated 10 states and territories (Albania, Latvia, Czech Republic, Lithuania, Republic of Moldova, Malta, Gibraltar, Cyprus, Georgia and Slovakia), as well as the Russian Federation and Israel – jointly with the FATF. Technical assistance and co-operation projects are also being carried out in individual countries.

■ The efforts to mainstream the integrity and anti-corruption agendas throughout the activities of the Council of Europe have had a direct effect on MONEYVAL and its approach to this issue.⁴³ Whereas, in the past, financial supervisors' integrity was called into question in some countries' evaluation reports, it is notable that there have been fewer cases of impropriety recently. For that reason, MONEYVAL takes any evidence pointing to financial supervisors' lack of integrity very seriously and has tailored its approach accordingly within the framework of provisions set out by the FATF assessment methodology used by MONEYVAL.

■ The available evidence suggests that the authorities in many Council of Europe member states are striving to improve the integrity and effectiveness of their AML/CFT measures.

- ▶ Most jurisdictions subject to MONEYVAL evaluations were found to have a proper legal basis guaranteeing FIUs' operational independence and autonomy. Malta lacks a procedure for appointing the FIU director by the FIU board of governors. This casts doubts on the independence of the FIU director in operational decision making. In Latvia, the general prosecutor's office involvement in the FIU's organisation and activities was deemed contrary to the FIU's operational autonomy. Latvia was given a recommendation to review the modalities of the oversight of the FIU by the general prosecutor's office. In December 2019 MONEYVAL confirmed that Latvia had reached a satisfactory level of compliance with all FATF Recommendations.

According to the EU Albania 2020 Report, within the framework of the EU Enlargement Policy, in the first semester of 2020 there were 126 new money-laundering cases referred to prosecution in Albania. Of the total number of referrals to the prosecution on trafficking in human beings, money laundering and drugs trafficking, 141 cases resulted in indictments. As for final convictions, there were four on money laundering.

- ▶ The capacity of many FIUs has been reinforced through the deployment or development of tools for automated financial intelligence processing (for example in Montenegro) and the enhanced use of special financial intelligence ICT analysis tools and procedures (for example in Azerbaijan and Ukraine).
- ▶ Cases of criminal infiltration of financial institutions, notably banks, have been successfully tackled (for example by Andorra and Latvia).
- ▶ The fact that financial sector supervisors and FIUs in some Council of Europe members states (for example in the United Kingdom and Belgium) are funded by private sources was not considered as amounting to undue interference in their work, provided effective checks were in place and supervisors' operational independence was fully maintained.

41. Established by the G-7 Summit in Paris in 1989 to develop a co-ordinated response to money laundering.

42. MONEYVAL is a permanent monitoring body of the Council of Europe entrusted with the task of assessing compliance with the principal international standards to counter money laundering and the financing of terrorism and the effectiveness of their implementation as well as with the task of making recommendations to national authorities in respect of necessary improvements to their systems. It brings together 28 member states of the Council of Europe as well as the following non-members: Israel, the Holy See, the UK Crown Dependencies of Guernsey, Jersey and the Isle of Man and the British Overseas Territory of Gibraltar (www.coe.int/en/web/moneyval/moneyval-brief).

43. See: www.fatf-gafi.org/publications/mutualevaluations/documents/fatf-methodology.html.

- Risk-based approaches to AML/CFT supervision have been introduced and further developed. Capacities to better assess and mitigate sectoral risks and increase sectoral awareness have been reinforced, with a particular focus on non-financial businesses and professions such as gambling and the law, which are among the most vulnerable in terms of money laundering and financing of terrorism risks. New methodologies and working methods were adopted (for example in Albania, Montenegro and Ukraine).

In May 2020, MONEYVAL formally ended the follow-up reporting procedure for Montenegro concluding that sufficient progress had been made. The 2020 Montenegro report notes that “the initial track record on money laundering was further developed”. The first final money-laundering convictions were achieved in 2019 and an increase in the number of investigations and prosecutions in 2020 is noted. Montenegro continued to develop the supervisory process by developing the capacity of the central bank with a dedicated AML/CFT unit and introducing a risk-based approach to capital market supervision. Consequently, Montenegro became a member of the Egmont Group.

■ Perils to the integrity of AML/CFT authorities are still numerous. Due to their intermediary role, FIUs tend to be particularly susceptible to undue influence from other authorities, which may exercise budgetary or administrative leverage on them. Therefore, establishing and safeguarding their operational autonomy and preventing undue interference in their work are of crucial importance. In Montenegro, the FIU was moved from an administrative to a law-enforcement set-up (the police directorate) under the authority of the Ministry of the Interior. In Romania, in 2019, the FIU lost the status of an independent agency directly under the government and became a sub-structure of the Ministry of Finance. During follow-up reporting measures applied by MONEYVAL, both situations were resolved and institutional reforms carried out. In Montenegro, the necessary regulatory requirements were adopted to guarantee FIU operational autonomy, whereas in Romania, the development and adoption of new FIU regulations is underway.

■ In accordance with the Strategic Framework of the Council of Europe, MONEYVAL will continue to ensure that its members guarantee in law and in practice institutional integrity for all types of AML/CFT authorities and scrutinise such aspects as operational independence and autonomy, professionalism, capacities and financial and human resources, which are vital for their enhanced efficiency and impact. Focus will be applied to ensure that self-regulatory bodies of certain professions that are particularly prone to money-laundering risks, such as lawyers, trust and company service providers, real estate agents and dealers in precious metals and stones, are in turn supervised by a public agency as an additional layer of oversight. A new area of focus will be the establishment of supervisory frameworks for the cryptocurrencies sector and ensuring that these new supervisors apply high integrity standards and safeguards.

CRIMINAL AND NON-CRIMINAL ENFORCEMENT MECHANISMS

Measurement criteria

- Clear procedures are put in place for handling complaints and grievances from the public and from public officials where a breach of integrity is suspected.
- In carrying out their mandates and functions, public officials are accountable for their actions and submit to the necessary scrutiny.
- The system of public liability or accountability takes account of the consequences of the corrupt behaviour of public officials.
- Immunity from investigation, prosecution and adjudication of corruption offences is limited only to a degree considered necessary in a democratic society.
- Sanctions for corruption offences and integrity violations are effective, proportionate and dissuasive.
- All enforcement and accountability measures are taken in compliance with the rule of law and respect for human rights, and a necessary balance is achieved between crime control and the protection of individual rights.

■ Public-integrity and corruption-prevention frameworks rely not only on defining and monitoring integrity, but also on enforcing relevant rules. Criminal and non-criminal enforcement mechanisms are the necessary “teeth” of any country’s public-integrity system and are the principal means by which societies can ensure compliance and deter misconduct.⁴⁴

44. OECD, *OECD Public Integrity Handbook*.

■ In member states, integrity breaches and corruption offences trigger disciplinary, administrative, civil and/or criminal liability and the corresponding enforcement mechanisms. Within a public-integrity framework, disciplinary enforcement plays an essential role since it informs and guides public officials' everyday activities and ensures adherence to and compliance with public-integrity values and norms.

■ Standards from the Council of Europe and other international organisations⁴⁵ require member states to have fair, objective and timely mechanisms to address suspected integrity breaches and corruption offences. These should include clear procedures for handling complaints and grievances. Disciplinary measures in respect of public officials must be objective and effective, and safeguarded from undue influence, whereas sanctions and measures for corruption offences must be effective, proportionate and dissuasive. Co-operation between enforcement and oversight bodies should be bolstered to increase the effectiveness of enforcement. Immunities enjoyed by certain public officials, notably members of government, parliament and the judiciary, must be limited to the extent necessary in a democratic society so as not to impede the investigation, prosecution or adjudication of corruption offences. The effectiveness of enforcement and the outcomes of cases should be transparent, with due respect for privacy and confidentiality. Civil law mechanisms need to provide legal remedies for those who have suffered damage from acts of corruption by enabling them to defend their rights and interests, including by seeking compensation for damages. Finally, enforcement mechanisms must comply with the rule of law and respect for human rights.

■ Enforcement mechanisms for integrity breaches and corruption offences vary significantly among Council of Europe member states and reflect different legal traditions as well as national priorities and policies. Their integrity, effectiveness and impact have been mostly driven by continuous monitoring by GRECO, which has not only contributed to the rectification of multiple substantive and procedural frailties, but also fostered the development of more coherent criminal and non-criminal enforcement mechanisms across Council of Europe member states more broadly.

- ▶ Control mechanisms for integrity have been increasingly developed in legislatures and the judiciary to ensure continuous supervision and enforcement of internal rules, with an emphasis on the existing, revised or new codes of conduct (for example in Iceland).⁴⁶
- ▶ Disciplinary mechanisms for the judiciary are being reassigned to professional bodies, such as judicial or prosecutorial councils, and handled outside immediate hierarchies to increase objectivity and trust and exclude interference with autonomous decision making. Where ministers of justice have retained a role in disciplinary procedures, this is currently being reviewed with the aim of elimination (for example in Armenia).⁴⁷
- ▶ Audit systems of public officials' interest and asset disclosures have become more robust and have been reinvigorated through checks extended specifically to those in high-level management positions in government. Many countries have further refined related reporting requirements, extended the reporting obligation to public officials' spouses and dependent family members, implemented e-declarations and assured their timely publication (for example Croatia).⁴⁸ Co-ordination between disciplinary bodies in public institutions and external oversight authorities is improving, providing for a more effective implementation of oversight regimes, their better complementarity and a more uniform application of public-integrity and corruption-prevention standards.
- ▶ The arsenal of measures to promote compliance with integrity and anti-corruption norms has been strengthened significantly. A broad range of criminal, administrative and civil measures and sanctions have been put in place and applied more consistently. Properly graduated administrative sanctions remain the most common tool to punish failures of integrity and corruption violations that do not attain the gravity of a criminal act. In many instances, administrative sanctions have been diversified to cover a wider range of violations, including minor breaches, which previously went unpunished (for example in the Republic of Moldova and the Russian Federation with respect to parliamentarians).⁴⁹
- ▶ Immunities no longer impede the accountability of the judiciary. Excessive administrative or criminal liability within the judiciary that goes beyond functional immunity, such as cases where judges or

45. The Council of Europe's "Twenty guiding principles for the fight against corruption" and the [Criminal Law Convention on Corruption](#), the [Civil Law Convention on Corruption](#) (ETS. No. 174), the [OECD Recommendation on Public Integrity](#), the [United Nations Convention Against Corruption](#).

46. GRECO's Second Compliance Report on Iceland.

47. GRECO's Second Interim Compliance Report on Armenia.

48. GRECO's Addendum to the Second Compliance Report on Croatia.

49. GRECO's Fourth Round Compliance Reports on Moldova and the Russian Federation.

prosecutors cannot be investigated or subject to civil procedures for the conduct of their judicial activities, is being eliminated. Such an excessive administrative system was, for example, abolished in Latvia where it applied to judges, prosecutors and members of parliament. The procedures for lifting immunity in respect of parliamentarians are also being reviewed, for example in Poland and Romania, to provide for clear and objective criteria. In Greece, reforms brought about amendments to the constitution, which have limited the scope of parliamentary immunity to ensure that it is lifted mandatorily in cases of corruption offences. The rate of removal of immunity in Greece has grown from 31.8% between October 2015 and October 2017 to 46.4% between October 2017 and June 2019.

- ▶ Statutes of limitation for violations have been reviewed in those countries where excessive delays in carrying out enforcement proceedings were perceived as undermining the rule of law and precluding the administration of justice. In the Republic of Moldova, the limitation period for administrative violations by members of parliament was extended from three months to one year.⁵⁰ In Spain, the limitation period for disciplinary procedures against judges was extended from six months to one year and aligned with the deadline applicable for proceedings against judicial secretaries and civil servants in judicial administration.⁵¹ Poland decided not to propose the prolongation of statutory limits in respect of judges but rather to eliminate the possibility not to impose disciplinary sanctions in cases where disciplinary proceedings have not been terminated within three years.⁵²
- ▶ Enforcement data has become more transparent in respect of groups of public officials and made available in a more user-friendly format. In Slovenia, legislation allowing for the publication of details of public officials who violated conflict-of-interest rules is effective since 2020. In Andorra, the annual report on the activities and administration of the justice system has been complemented with a list of disciplinary cases against judges and prosecutors opened, investigated and closed in the course of the year, together with complaints lodged and the resulting disciplinary decisions, specifying the offences committed and the misconduct penalised.⁵³ Data concerning complaints, including the number and their outcome, are also being systematically gathered and published.

■ Findings emerging from some countries still reveal weak implementation and enforcement of important public-integrity and anti-corruption frameworks. Examples of issues that have not yet been properly handled include the following.

- ▶ Badly articulated legal consequences for integrity breaches and corruption violations and failure to accompany prescriptions with relevant sanctions persist. In some countries this is aggravated by a fragmented approach to monitoring compliance, the absence of a clear demarcation between the administrative (internal) and criminal response to disciplinary cases and the possibility of a line supervisor to single-handedly decide on disciplinary matters (for example in Poland and Spain with respect to police forces).⁵⁴ These undermine the foundations of appropriate enforcement and require reforms to clarify rules, supervisory roles and procedures triggered by non-compliance.
- ▶ Mechanisms for oversight of police misconduct with independent and objective investigations into police complaints and a sufficient level of transparency for public scrutiny are still missing in some countries. The informal rule among law-enforcement officers not to report their colleagues' misconduct remains a concern. Transparency is an essential tool for upholding citizens' trust in the functioning of the police and a guarantee against any public perception of self-protection within the profession, however some countries have yet to properly enforce the obligation for their police to report not only corruption but also integrity-related misconduct and to investigate it properly and fairly (for example in Slovakia).⁵⁵ The protection of whistle-blowers in law enforcement and the strengthening of internal inquiry functions, making sure that they have the powers and resources to conduct independent investigations, also remain to be tackled.
- ▶ The system of immunities and lifting procedures hampers or delays bringing charges against top executive functionaries, such as ministers (for example in Finland).⁵⁶ The scope of immunities can be broad to cover any act committed in the exercise of functions and beyond criminal law violations, including unrelated to official duties, such as speeding and acts of possible bribery. In some countries, the powers

50. GRECO's Fourth Round Compliance Report on Moldova.

51. GRECO's Fourth Round Second Interim Compliance Report on Spain.

52. GRECO's Fourth Round Compliance Report on Poland.

53. GRECO's Fourth Round Compliance Report on Andorra.

54. GRECO's Fifth Round Evaluation Report on Poland, GRECO's Fifth Round Evaluation Report on Spain.

55. GRECO's Fifth Round Evaluation Report on Slovakia.

56. GRECO's Fifth Round Evaluation Report on Finland.

of prosecution and jurisdiction in matters involving ministers are not assigned to a judicial authority but to a parliamentary chamber (for example in Luxembourg).⁵⁷ In 2020, in its Compliance Report on Luxembourg, GRECO took note of the new proposal for constitutional revision expected to assign to the judicial authorities the prosecution and judgment of members of government for acts committed in connection with their office.

■ When carried out in a fair, co-ordinated, transparent and timely manner, enforcement mechanisms promote confidence in a country's integrity framework, strengthening its legitimacy over time. Evidence available to GRECO attests to the gradual improvement of the efficiency and impact of integrity-related enforcement mechanisms. This fosters accountability and ensures greater compliance with relevant standards. Core enforcement policies are being further clarified and tools for supporting the timely, objective and fair enforcement of decisions are being provided. Mechanisms enabling co-operation and exchange of information among bodies and officials of each enforcement regime are being strengthened. Member states are receiving guidance and instruments from the Council of Europe and GRECO to ensure a more coherent approach across their administrative, criminal and civil law mechanisms to enforce public-integrity and corruption-prevention standards throughout the public sector.

Integrity of public health institutions: withstanding the test of the Covid-19 pandemic

■ The Covid-19 pandemic has created large-scale integrity challenges for public health institutions in the Council of Europe member states. It has placed a strain on medical facilities, staff and supplies. The need to instantly mobilise all available healthcare resources has revealed latent integrity vulnerabilities in public health institutions. Consequentially, mandatory controls and other "checks and balances" have in many instances been worked around and the risks of corruption have risen sharply.

■ Corruption risks included procurement of medication and medical supplies and interference in new product research and development. Incidences of bribery in medical services, insider trading, Covid-19-related fraud, conflicts of interest and lobbying, preferential treatment in delivery of healthcare services as well as favouritism in the management of healthcare workforces have proliferated.⁵⁸ Taken as a whole, this has hindered equal access to medical care, especially by the most vulnerable, undermining public trust in public health institutions.

■ The context of the pandemic has facilitated the circulation of counterfeit medicines, preventive protection equipment, rapid detection tests and so on. Shortages in public health systems have already been a cause of tragic fatalities and have allowed criminal networks to capitalise on them.⁵⁹

■ Health authorities have confronted the crisis at different levels. They addressed the immediate need for emergency supplies of medical products meeting standards for quality, safety and efficiency of medicines, medical devices, healthcare products and equipment. They have supported the development of new vaccines, diagnostics and medicines and those products' authorisation and, when possible, accelerated time frames.

■ To assist member states in bolstering the resilience of public health institutions to multiple integrity challenges and risks of corruption, the Council of Europe has relied on its key instruments: policy guidance, international treaties and standards and specific co-operation programmes.

■ GRECO published the guidelines "Corruption risks and useful legal references in the context of Covid-19".⁶⁰ Addressed to GRECO's 50 member states, the guidelines aim to prevent corruption in public health institutions and in the broader society. The guidelines stress that member states should enhance measures against unethical conduct. By highlighting the relevance of the Council of Europe's anti-corruption legal instruments⁶¹ and GRECO's recommendations for many of the specific integrity challenges confronted by member states' health institutions, GRECO has made a strong case for the streamlining of the three cornerstones of integrity and anti-corruption – transparency, oversight and accountability – in Covid-19 efforts.

57. GRECO's Fifth Round Evaluation Report on Luxembourg.

58. Council of Europe, Groups of States against Corruption (GRECO), "Corruption risks and useful legal references in the context of COVID-19", Greco(2020)4, Strasbourg, 15 April 2020.

59. Committee of the Parties to the MEDICRIME Convention, "Advice on the application of the MEDICRIME Convention in the context of COVID-19", Strasbourg, 8 April 2020.

60. Council of Europe, Groups of States against Corruption (GRECO), "Corruption risks and useful legal references in the context of COVID-19", Greco(2020)4, Strasbourg, 15 April 2020.

61. The Council of Europe's Guidelines on public ethics, the Council of Europe's "Twenty guiding principles for the fight against corruption", the Council of Europe's [Criminal Law Convention on Corruption](#).

■ The Committee of the Parties to the Council of Europe Convention on the Counterfeiting of Medical Products and Similar Crimes Involving Threats to Public Health (CETS No. 211, MEDICRIME Convention) published “Advice on the application of the MEDICRIME Convention in the context of Covid-19”.⁶²

■ The MEDICRIME Convention, designed partly with public health pandemics such as Covid-19 in mind, is an innovative international treaty focusing on pharmaceutical crime and the risks that it poses to public health. Thanks to this treaty, the notion of what constitutes counterfeiting of medical products and related crimes is now well defined. All actions related to counterfeiting (production, storage, trafficking, offering for sale, etc.) are criminalised and sanctioned and may no longer be treated as merely a violation of intellectual property rights. People suffering harmful side effects because they used a counterfeit medical product or a medical product derived from a related crime can be recognised as victims.

■ Bearing in mind that the prevention of the unauthorised diversion of vital medical products from health systems and the supply chain is critical to deterring criminals from exploiting shortages and making a profit at the expense of Covid-19 victims, the committee urged all countries to combine their resources to address the evolving health concerns and protect public health.⁶³

■ The committee’s own immediate response to this call was to intensify the co-operation and information exchange necessary for the fight against falsified medical products with the bodies co-ordinated by the European Directorate for the Quality of Medicines & HealthCare: the European Network of Official Medicines Control Laboratories and the Committee of Experts on Minimising Public Health Risks Posed by Falsification of Medical Products and Similar Crimes.

62. Committee of the Parties to the MEDICRIME Convention, “Advice on the application of the MEDICRIME Convention in the context of COVID-19”, Strasbourg, 8 April 2020.

63. Ibid.

PART II

DEMOCRATIC ENVIRONMENT



CHAPTER 6

HUMAN DIGNITY

INTRODUCTION

With its proclamation that “all human beings are born free and equal in dignity and rights”, the Universal Declaration of Human Rights makes human dignity the foundation stone on which human rights and fundamental freedoms rest, concepts that Council of Europe member states have undertaken to respect under the European Convention on Human Rights. The Council of Europe thus devotes special attention to the violations of human dignity, such as combating the trafficking in human beings, violence against women and domestic violence, abuse and exploitation of children, non-respect of fundamental social rights, or torture and inhuman or degrading treatment in detention.

■ The findings of the monitoring bodies, the judgments of the European Court of Human Rights and other reports show that there has been progress – in some cases considerable – in many of the above-mentioned issues. However, the Covid-19 pandemic is now testing the limits of the European models in their capacity to protect the human rights and dignity of all. It has had devastating effects on individuals and communities, forcing governments to make difficult policy choices, and creating new challenges for the years to come. The Covid-19 pandemic brought healthcare, occupational health and safety, income and housing under particularly severe stress.

■ Some forms of trafficking in human beings, notably for the purpose of labour exploitation, are on the rise, requiring specific attention. The Strategic Framework of the Council of Europe identifies the full implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210; “the Istanbul Convention”) as a key challenge for the protection of women’s rights. Rejection of the principles and objectives of the Istanbul Convention, motivated by false narratives and misconceptions, is preventing the full disclosure of its potential. Even where this is not the case, much needs to be done to prevent trafficking, protect victims and punish perpetrators and to counter the vulnerabilities exacerbated by the Covid-19 pandemic.

■ False narratives also threaten the progress on women’s rights more generally. Sexism and harmful gender stereotypes, the protection of women exposed to multiple and intersectional discrimination, and the equal and effective participation of women in public and political life require special attention.

■ Regarding the human rights and dignity of children, weaknesses in legislation, family and social protection services and in justice, education and health systems increase children’s vulnerability to human rights violations. Because of children’s limited access to justice and difficulties in having their voices heard, their needs and rights are often overlooked. Violence against children, sexual abuse and exploitation are under-reported. The steady increase of online sexual exploitation of children and the impunity of such crimes are particularly shocking.

■ Prison overcrowding is an issue in many member states, exacerbated when prisoners remain locked up in their cells for 23 hours per day, without being offered any activities. The Covid-19 pandemic further strained detention conditions, adding severe health risks for persons held in prisons and other places of detention.

■ Combating trafficking in human beings must remain a priority for the member states. While the monitoring of the Convention on Action against Trafficking in Human Beings (CETS No. 197) focuses on access to justice and effective remedies for victims, specific attention needs to be given to strengthening action against trafficking in human beings for the purpose of labour exploitation, as set out in the Roadmap of the Secretary General and in the four-year Strategic Framework of the Council of Europe, including through adoption and implementation of new legal instruments.

■ Equally, the promotion of gender equality needs to remain a policy priority for member states, with adequate resources allocated to it and effective mechanisms in place. Specific attention needs to be dedicated to the fight against sexism and harmful gender stereotypes, especially to protect women exposed to intersectional discrimination, such as migrant women, but also to ensure equal and effective participation of women in public and political life. Full implementation of the Istanbul Convention, including by spreading information on its positive impact, promoting progress in ratification and combating misinformation around it, remains a key challenge ahead.

■ The 2022-2027 Council of Europe Strategy for the Rights of the Child will build upon the results of the previous strategies, integrating the challenges emerging from the Covid-19 pandemic. As it is expected that an increase in poverty, social exclusion, discrimination and violence will disproportionately affect children, the strategy will focus on strengthening child protection systems and child-friendly social services. Implementation tools will be developed to support states in upholding the rights of the child in the digital environment and in practising meaningful, safe and ethical child participation, with specific actions designed for children in particularly vulnerable situations.

■ The Council of Europe Convention on Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201; “the Lanzarote Convention”) has become a blueprint for law and policy makers around the world to prevent child sexual exploitation and abuse, protect its victims and end the impunity of offenders. To meet the growing expectations of governments and civil society in this area, there is a need to strengthen the Lanzarote Committee, to review its working methods and to further develop its capacity to address issues in a timely and efficient manner, to provide guidance and to increase its outreach.

■ Steps will need to be taken to enable the Council of Europe to engage in a dialogue with the member states on their respect for social and economic rights, and especially the role and place of the European Social Charter, including on its interaction with the European Union. The Council of Europe will need to complete the revision of the Charter’s treaty system, reinforcing its efficacy and its monitoring arrangements, its impact at national levels, communication and the outcomes of its processes, reigniting co-operation in the areas of public health and social cohesion.

■ Resolute action must be taken by all relevant authorities in the member states to prevent torture and other forms of ill-treatment of detained people by law-enforcement officials and prison staff and ensure humane conditions of detention in prisons. Concerted action is needed, including by prosecutorial and judicial authorities, to combat prison overcrowding by increasing non-custodial measures for sentenced persons and, at the pretrial stage, in the light of relevant recommendations of the Committee of Ministers,¹ to ensure that prisoners are offered sufficient living space. Prisoners should be able to maintain effective contact with the outside world, either through visits, telephone calls or internet calls. Further action is needed to prevent the spread of Covid-19 in prisons and other places of detention by supplying sufficient quantities of appropriate protection equipment, arranging access to testing for inmates and staff and providing detained persons with healthcare that respects the principle of equivalence of care.

COMBATING TRAFFICKING IN HUMAN BEINGS

Measurement criteria

- ▶ National law criminalises trafficking in human beings in accordance with the definition set out in Article 4 of the Council of Europe Anti-Trafficking Convention.
- ▶ Comprehensive national policy documents (strategies and/or action plans) are adopted to prevent and combat trafficking in human beings for all forms of exploitation.
- ▶ Victims of human trafficking are identified as such and are provided with assistance, protection, legal remedies and support towards their social inclusion.
- ▶ Human trafficking offences are effectively investigated and prosecuted, and are punishable by effective, proportionate and dissuasive sanctions.

Findings

■ The fight against human trafficking remains a priority for the Council of Europe, as it impinges on a few issues of concern to the Organisation, including violence against women and children, social rights, migration and organised crime.

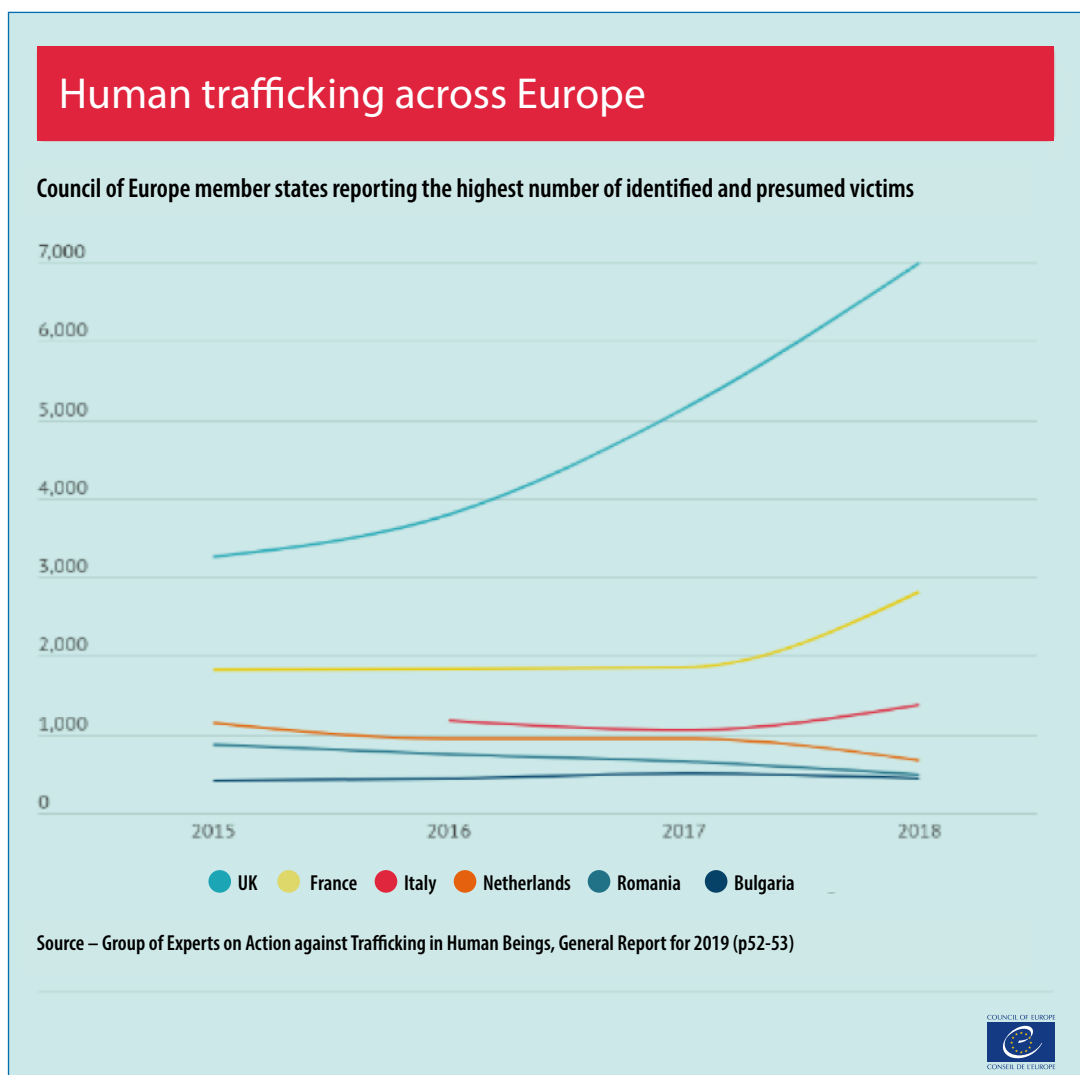
■ Covid-19-related lockdown measures and movement restrictions have contributed to a surge in some forms of exploitation. At the same time, it has diverted law-enforcement resources and led to a decrease in identification of human trafficking cases. Delayed access to justice, including postponement of trials, caused disturbances in the conduct of proceedings before criminal, civil and administrative courts.

1. See, in particular, Recommendation R (99) 22 concerning prison overcrowding and prison population inflation, Recommendation Rec(2000)22 on improving the implementation of the European rules on community sanctions and measures, Recommendation Rec(2003)22 on conditional release (parole), Recommendation Rec(2006)13 on the use of remand in custody and Recommendation CM/Rec(2010)1 on the Council of Europe Probation Rules.

■ The Council of Europe Convention on Action against Trafficking in Human Beings is applicable in all Council of Europe member states (except the Russian Federation) as well as in Belarus. Tunisia and, most recently, Israel, have requested and been invited to join the convention.

■ At the end of 2019, the Group of Experts on Action against Trafficking in Human Beings (GRETA), which monitors the implementation of the convention, took stock of the situation at the end of the second round of evaluation. All states parties to the convention have criminalised human trafficking. In the period between the first and the second evaluation by GRETA, 26 of them had amended their criminal code provisions on trafficking in human beings, reflecting GRETA's proposals. In 13 countries,² however, the national definition of human trafficking was still not fully consistent with the definition in Article 4 of the convention.

Data made available to GRETA by the national authorities shows a trend towards an increase in the number of presumed and formally identified victims of trafficking: from 10 620 in 2015, to 15 042 in 2018, a 44% increase.³ There are considerable differences between countries in the way in which victims are counted, and a lack of disaggregated data in some countries. Since identification is not systematic, many victims of human trafficking remain undetected.



2. Andorra, Bosnia and Herzegovina, Bulgaria, Denmark, France, Georgia, Hungary, Iceland, Liechtenstein, Malta, Monaco, Norway and Slovenia. Source: [9th General report on GRETA's activities, March 2020](#).
3. Ibid., paragraph 81.

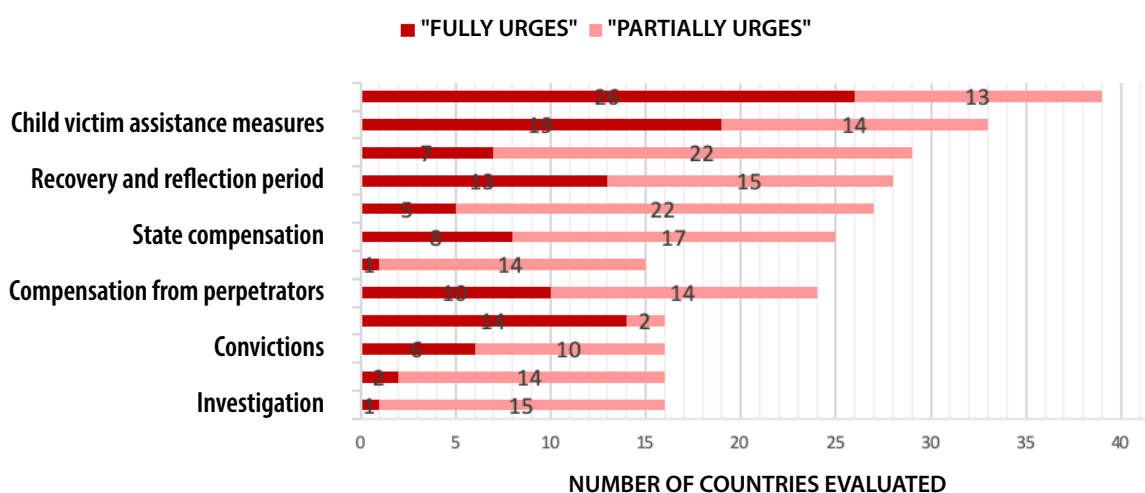
■ To be effective, national action against human trafficking must be comprehensive and multisectoral, taking on board the required multidisciplinary expertise. At the end of the second evaluation by GRETA, eight of the 42 countries examined did not have a national action plan for combating trafficking in human beings.⁴ GRETA has asked the national authorities to ensure that national action against human trafficking is comprehensive and addresses all victims of trafficking for all forms of exploitation, while taking into account the gender dimension of trafficking and the particular vulnerability of children.

■ GRETA reports provide examples of legislative, policy and practical measures taken to strengthen the implementation of the convention. In Cyprus, amendments were made to the anti-trafficking legislation in 2019, increasing significantly the penalties for human trafficking and criminalising the use of sexual services of victims of trafficking.⁵ In Austria, following the development of guidelines specifying the role of federal states in the fight against human trafficking, regional co-ordinators were appointed in Tyrol and Vorarlberg.⁶ In Lithuania, public funding for specialist NGOs providing assistance to victims of trafficking was increased.⁷ Additional specialist shelters for victims of trafficking were opened in Bulgaria and Portugal.

■ Protection of the rights of victims is still problematic. In the great majority of countries there are important gaps in the identification of, and assistance to, child victims of trafficking. The risks of trafficking and exploitation faced by children and young people remain of concern, as child protection systems in many countries are not fit to ensure timely responses to their rights and needs, especially where migrant and asylum-seeking children are concerned. The vulnerability of child victims is also highlighted in the recent GRETA guidance note on the entitlement of victims of trafficking and persons at risk of being trafficked to international protection.⁸

■ Other gaps identified by GRETA concern the application of the recovery and reflection period, access to compensation and legal aid, and compliance with the non-punishment provision. There is nevertheless some improvement in the implementation of these provisions compared to the first evaluation round, during which the proportion of countries where GRETA found gaps was higher.

**Main gaps in the implementation of the Council of Europe anti-trafficking convention:
number of countries "urged" by GRETA to take action**



Analysis of GRETA evaluations; Ninth General Report on GRETA activities, page 68.

4. Andorra, Finland, Germany, Iceland, Liechtenstein, Monaco, the Netherlands, San Marino. Source: 9th General report on GRETA's activities, March 2020.
5. GRETA Third Evaluation Round Report on Cyprus, 2020, paragraph 15.
6. GRETA Third Evaluation Round Report on Austria, 2020, paragraph 21.
7. GRETA Second Evaluation Report on Lithuania, 2019, paragraph 103.
8. Published in June 2020, available at: <https://rm.coe.int/guidance-note-on-the-entitlement-of-victims-of-trafficking-and-persons/16809ebf44>.

■ The punishment of traffickers remains unsatisfactory. The number of prosecutions and convictions for human trafficking offences is still low in many countries, and the sentences imposed are sometimes not sufficiently dissuasive. Further, the confiscation of traffickers' assets remains all too rare. GRETA has stressed that failure to convict traffickers and the absence of effective, proportionate and dissuasive sanctions undermines efforts to combat human trafficking and guarantee victims' access to justice.

■ The third round of evaluation of the convention by GRETA has a thematic focus on access to justice and effective remedies for victims of trafficking. The first six country reports published under this round⁹ indicate that victims' access to compensation and the criminal justice response to human trafficking need to be considerably strengthened. This echoes the findings of the European Court of Human Rights in the case *S.M. v. Croatia*,¹⁰ in which the Grand Chamber of the Court found a violation of Article 4 of the European Convention on Human Rights in a case of internal trafficking (i.e. within the country) for the purpose of sexual exploitation, concluding that there were significant flaws in the authorities' procedural response.¹¹

■ Increased capacity building, including through the Council of Europe HELP e-learning platform, can contribute to improvements in these areas. More generally, the Council of Europe has been supporting member states in their effort to ratify the anti-trafficking convention and to implement GRETA recommendations, with targeted projects ongoing in Bosnia and Herzegovina, North Macedonia, Serbia and Turkey, as well as Kosovo,^{*12} Tunisia and Morocco.

■ Trafficking for the purpose of labour exploitation is on the rise and has emerged as the predominant form of exploitation in some states. This form of trafficking occurs in both the formal and informal economy, and concerns women, men and children, and combating it can be challenging on many levels, such as its link with other illegal activities, some lack of awareness among institutions of its specificities and the need for co-ordinated action between states, civil society, trade unions and the private sector. Following the decision of the Committee of Ministers at its 129th session in Helsinki¹³ and in line with the Secretary General's Roadmap on strengthening action against trafficking in human beings for the purpose of labour exploitation,¹⁴ presented in November 2019, GRETA prepared a compendium of good practices¹⁵ and a guidance note¹⁶ on preventing and combating human trafficking for the purpose of labour exploitation. What emerges from these documents is the added value that a Committee of Ministers recommendation could have to complete the international legal framework in this area.

■ The fight against human trafficking requires a comprehensive approach as well as multistakeholder engagement and innovative solutions. Particular attention needs to be paid to the impact of information and communication technologies on human trafficking, and on the opportunities that partnership with internet and telecommunication companies, and more generally the private sector, can provide for implementation, including in the framework of the Council of Europe partnership platform. A GRETA study on online and technology-facilitated trafficking in human beings, currently under preparation, will indicate possible avenues for further guidance on online and technology-facilitated trafficking in human beings.

PROMOTING AND PROTECTING WOMEN'S RIGHTS

Measurement criteria

- ▶ The Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (CETS No. 210; "the Istanbul Convention") is ratified.
- ▶ Comprehensive and co-ordinated policies are developed in relation to all forms of violence covered by the Istanbul Convention and financial and human resources allocated.
- ▶ National co-ordinating bodies are established to prevent and combat violence against women.

9. Albania, Austria, Croatia, Cyprus, Republic of Moldova and Slovak Republic.

10. 60561/14, 25 June 2020.

11. GRETA had made a written submission to the Court in this case, pursuant to Rule 44, paragraph 4, of the Rules of Court.

12. *All references to Kosovo, whether to the territory, institutions or population, in this text shall be understood in full compliance with United Nations Security Council Resolution 1244 and without prejudice to the status of Kosovo.

13. Decision CM/Del/Dec(2019)129/2 (17 May 2019). Available at: https://search.coe.int/cm/pages/result_details.aspx?objectId=09000016809477f1.

14. <https://rm.coe.int/CoERMPublicCommonSearchServices/DisplayDCTMContent?documentId=090000168098e630>.

15. Available at: <https://rm.coe.int/mpendium-of-good-practices-in-addressing-trafficking-in-human-beings-f/16809f9bef>.

16. Available at: <https://rm.coe.int/guidance-note-on-preventing-and-combating-trafficking-in-human-beings-/1680a1060c>.

- ▶ Specialist support services for all forms of violence are set up.
- ▶ Criminal legislation offers effective, proportionate and dissuasive sanctions in relation to forms of violence against women covered by the Istanbul Convention and investigations and judicial proceedings are carried out in a timely manner.
- ▶ Gender equality bodies and authorities are provided with the powers, competences and resources to implement gender equality policies, monitor and evaluate progress and co-ordinate and support gender mainstreaming activities carried out by other government departments and civil society organisations.
- ▶ Targeted measures are taken to mitigate the effects of the Covid-19 pandemic on gender equality and on violence against women.
- ▶ Measures are taken to prevent and combat sexism and its manifestations in the public and private spheres, drawing on the definition and guidelines contained in Recommendation CM/Rec(2019)1 on preventing and combating sexism.

Findings

■ Covid-19 has had a regressive effect on gender equality, threatening to roll back women's and girls' fundamental human rights,¹⁷ putting in stark relief the difficulties many women face in seeking support and protection and the level of risk of exposure to domestic violence, rape and other forms of violence against women, including the digital dimension.¹⁸

■ In this context, institutional mechanisms for gender equality have an important role in adopting measures to mitigate the social and economic impacts of the crisis on women, given that they are overrepresented in the sectors providing essential services, but also due to the increased burden of care work and their heightened exposure to different forms of violence. At the same time, the status of governmental structures in charge of gender equality has declined and gender mainstreaming efforts have also been reduced.¹⁹ Weaker gender equality mechanisms result in the limited application of the tools to fully realise equality between women and men.

■ Sexist behaviours and gender stereotypes continue to prevent further progress in achieving effective equality between women and men in Europe and beyond. The adoption of [Committee of Ministers Recommendation CM/Rec\(2019\)1 on preventing and combating sexism](#), followed by a promotional campaign "Sexism: See it. Name it. Stop it" has put at the disposal of member states an effective toolbox, which is bearing fruits also with the adoption of new legislation. The decisions of the European Committee of Social Rights (ECSR) on state compliance with the right to equal pay, as well as the right to equal opportunities in the workplace,²⁰ shed light on the inequalities which continue to affect women in the labour market, recognising them as a human rights violation.

■ In spite of these persistent shortcomings, reports from member states on the implementation of the [Council of Europe Gender Equality Strategy 2018-2023](#) indicate that "the number and intensity" of national initiatives in the field of gender equality remain high.²¹ Covid-19 may have changed short-term priorities, due to the need to focus on the response to the health crisis, but it is also an opportunity to build more equal, inclusive and resilient societies. Crisis and post-crisis response measures and recovery plans need to integrate the voices and needs of women as a key requirement to bring gender equality closer to reality.

17. Report of the Council of Europe seminar "Advancing Gender Equality: The Role and Situation of Gender Equality Mechanisms in the Context of COVID-19" (21 October 2020). Council of Europe information page [Women's rights and the COVID-19 pandemic](#) (which includes initiatives, practices, statements and guidelines put in place by Council of Europe member states, Council of Europe institutions, other international organisations and NGOs). See also Commissioner for Human Rights, Dunja Mijatović: [COVID-19: Ensure women's access to sexual and reproductive health and rights](#), 7 May 2020.
18. See statements made by the Secretary General on 30 March 2020 and 24 November 2020, as well as the "For many women and children, the home is not a safe place" statement by the President of GREVIO, Marceline Naudi, on the need to uphold the standards of the Istanbul Convention in times of a pandemic, 24 March 2020, and "The standards of the Istanbul Convention apply at all times", Declaration by the Committee of the Parties, 20 April 2020.
19. "Beijing +25: the fifth review of the implementation of the Beijing Platform for Action in the EU Member States", European Institute for Gender Equality (March 2020).
20. No. 124/2016 *University Women of Europe (UWE) v. Belgium*; No. 125/2016 *University Women of Europe (UWE) v. Bulgaria*; No. 126/2016 *University Women of Europe (UWE) v. Croatia*; No. 127/2016 *University Women of Europe (UWE) v. Cyprus*; No. 128/2016 *University Women of Europe (UWE) v. Czech Republic*; No. 129/2016 *University Women of Europe (UWE) v. Finland*; No. 130/2016 *University Women of Europe (UWE) v. France*; No. 131/2016 *University Women of Europe (UWE) v. Greece*; No. 132/2016 *University Women of Europe (UWE) v. Ireland*; No. 133/2016 *University Women of Europe (UWE) v. Italy*; No. 134/2016 *University Women of Europe (UWE) v. the Netherlands*; No. 135/2016 *University Women of Europe (UWE) v. Norway*; No. 136/2016 *University Women of Europe (UWE) v. Portugal*; No. 137/2016 *University Women of Europe (UWE) v. Slovenia*; No. 138/2016 *University Women of Europe (UWE) v. Sweden*.
21. [2019 Annual Report](#) on the implementation of the Council of Europe Gender Equality Strategy 2018-2023.

■ The importance of the Istanbul Convention in this context becomes even greater. Monitoring the implementation of the Istanbul Convention carried out by the Group of Action on Violence against Women and Domestic Violence (GREVIO) and the Committee of the Parties indicates that the convention has led to the introduction of higher legislative and policy standards at national level in a number of countries. In many countries criminal legislation has undergone a thorough change to bring it in line with the standards of the Istanbul Convention – allowing for great strides to be made in holding perpetrators accountable.²² A notable exception is the paradigm shift required in relation to sexual offences, putting into focus consent expressed to a sexual act rather than force or threats applied to overcome it. Progress in this area is slower to emerge, with only a few examples of consent-based rape offences, but more legislative reform is underway.²³

■ National co-ordinating bodies have been set up in order to ensure the implementation of policies on all forms of violence against women as required by the Istanbul Convention, bringing their number to a total of 24.²⁴ These bodies are becoming increasingly solid as their mandates, structures and resources grow. Coupled with robust data collection, they allow progress to be traced over time. Progress has also been made in offering more specialist support services for women victims of violence, although limited service reach and serious funding constraints currently still place a significant cap on their potential, especially for women and girls exposed to intersectional forms of discrimination, or seeking dedicated services for specific forms of violence such as sexual violence, forced marriage and online violence, among others.²⁵

■ The positive impact of the Istanbul Convention and its full consistency with the European human rights protection system also emerged from the way the European Court of Human Rights has referred to its provisions and to the monitoring activity of GREVIO in numerous cases that relate to domestic violence and sexual violence, including, by way of example, in *Buturugă v. Romania*, *Kurt v. Austria*, *Volodina v. Russia*, *Levchuk v. Ukraine*, *Tërshana v. Albania*, *Association Innocence en Danger et Association Enfance et Partage v. France*, *Z v. Bulgaria* and *E.B. v. Romania*. In October 2020 the Committee of Ministers, in the context of the supervision of the execution of the judgment *Talpis v. Italy*, requested the Italian authorities to provide information on issues that have also been identified by GREVIO as particularly problematic in its baseline evaluation report on Italy,²⁶ and invited the authorities to draw inspiration from the 2019 recommendation on preventing and combating sexism to counter prejudices and attitudes fuelling gender-based violence and discrimination.

■ Targeted bilateral and regional co-operation projects are in place with member states (Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Latvia, Republic of Moldova, Russian Federation, Turkey and Ukraine),²⁷ as well as in Belarus, Kosovo* and the Southern Mediterranean region. The Council of Europe continues to support national authorities, on a demand-driven basis, with tools and expertise to comply with gender equality standards and to facilitate accession to and implementation of the Istanbul Convention. Gender equality considerations are increasingly present and applied in specific areas of Council of Europe action. For instance, as a follow-up to the 2015 recommendation of the Committee of Ministers on gender mainstreaming in sport, the Enlarged Partial Agreement on Sport (EPAS) ran the project “ALL IN” during the period 2019-2020. The project included the collection of data on gender equality in sport in around 20 countries and all Olympic sports based on a set of equality indicators, showing serious gaps in the fields of leadership, coaching, participation, gender-based violence and media/communication. EPAS is now supporting member states and partner organisations developing strategies on the basis of the ALL IN evaluations.

22. GREVIO's first General Activity Report published in April 2020, paragraph 59, available at <https://rm.coe.int/focus-section/16809cf54b>.

23. GREVIO has welcomed in its baseline evaluation reports the alignment of Swedish, Belgian and Maltese legislation with the convention's requirement of having the offence of rape based on the notion of freely given consent. Denmark also recently changed its law to this effect. In other states, such as Austria, Montenegro and Portugal, new laws have been passed to criminalise non-consensual sexual acts, but the respective GREVIO reports note that additional steps would be required to bring such legislation fully in line with the conventions (see GREVIO's baseline evaluation report on Austria, paragraphs 140-2, p. 39; Montenegro, paragraphs 179-180, p. 45; Portugal, paragraph 174, p. 49).

24. List available on the Istanbul Convention website: [Official co-ordinating bodies \(coe.int\)](https://rm.coe.int/focus-section/16809cf54b).

25. GREVIO's first General Activity Report published in April 2020, paragraph 50, available at <https://rm.coe.int/focus-section/16809cf54b>.

26. 41237/14, Committee of Ministers decision taken at the 1383rd CM-DH Meeting. This includes the collection of statistical data on the practical application of protection orders and on the systematic training of law-enforcement agents and the judiciary on violence against women. See also the [written observations](#) submitted by the Commissioner for Human Rights on 20 July 2020 to the Committee of Ministers in the context of the supervision of the execution of the judgment *Bălşan v. Romania* (Application No. 49645/09).

27. “Capacity building and co-operation projects: making European standards on combating violence against women a reality (projects implemented in 2016-2019: analysis and lessons learned)”, Council of Europe, May 2019.

■ Despite these developments, which show the importance of the Istanbul Convention for better protecting women from violence, the convention, and more generally the rights it defends, continue to be under attack. Since the ratification by Ireland in March 2019, no other Council of Europe member state has ratified.²⁸ In most countries where initiatives have been taken in this direction, strong opposition by some political forces and parts of public opinion has emerged on the basis of false assumptions or deliberate misinterpretations about its possible legal and social implications.²⁹ In this context, the decision of the Kosovo* Assembly to amend its constitution to give direct application to the convention deserves to be welcomed.

■ The decision by Turkey to withdraw from the Istanbul Convention, announced on 19 March 2021 and notified to the Secretary General on 22 March, is a huge setback to the international efforts to protect women and girls from the violence that they face every day in our societies, and something which compromises the protection of women in Turkey, across Europe and beyond.³⁰ In summer 2020, declarations had been made by government officials in Poland, evoking the possibility of withdrawing from the Istanbul Convention.

■ Many initiatives have been taken in the last few years in the Council of Europe and in its member states to clarify the unfoundedness of the concerns on the implications of the ratification of the Istanbul Convention, including around the term “gender”. The Commissioner for Human Rights has also called for deconstructing false narratives concerning the Istanbul Convention and for its full ratification and implementation by member states.³¹ But clearly more needs to be done, also to avoid further spreading of this “backlash”. The Istanbul Convention is, in fact, not the only target of these attacks. In recent years other initiatives have been taken in member states to restrict access to sexual and reproductive health and rights, including to safe and legal abortion,³² and to cut funding to NGOs working with victims of violence and to gender-related studies and research.

HUMAN RIGHTS AND DIGNITY OF CHILDREN

Measurement criteria

- ▶ Legislation, national strategies, action plans and other policy measures strengthen the rights of the child.
- ▶ Legislation, policies and mechanisms to prevent and respond to violence against children are in place, including to protect children online.
- ▶ Child participation is embedded in a systemic manner and in all contexts relevant for children; the right of the child to be heard is duly upheld in justice proceedings.
- ▶ Migrant and refugee children have access to justice and their rights are protected.
- ▶ The Council of Europe Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse (CETS No. 201) is implemented at national level and promoted beyond Europe.
- ▶ Structures, measures and processes are in place to prevent and protect children from sexual abuse in the circle of trust.
- ▶ Child victims of sexual violence are adequately assisted and supported in a holistic multi-agency framework, backed by relevant legislative and institutional frameworks.
- ▶ Initiatives to measure and raise awareness of the scourge of sexual violence against children are taken.

28. Eleven member states have signed but not ratified the Istanbul Convention: Armenia, Bulgaria, Czech Republic, Hungary, Latvia, Liechtenstein, Lithuania, Republic of Moldova, Slovak Republic, Ukraine and the United Kingdom. Azerbaijan and the Russian Federation have not signed the convention.

29. In some cases, this has led to official positions taken by national parliaments, such as the rejection of the convention by the Slovak Parliament and the adoption of a Political Declaration by Hungarian National Assembly on the importance of the protection of children and women, calling upon the Hungarian Government not to take any further steps towards the ratification of the convention.

30. Secretary General responds to Turkey's announced withdrawal from the Istanbul Convention: www.coe.int/en/web/portal/-/secretary-general-responds-to-turkey-s-announced-withdrawal-from-the-istanbul-convention.

31. See, for instance, the [opinion of the Venice Commission on the constitutional implications on the ratification of the Istanbul Convention by Armenia](#), adopted in October 2019, which contains useful clarifications on most of the legal concerns expressed; the brochure “Questions and Answers on the Istanbul Convention”, available in 31 languages; a set of [infographics](#) and a brochure on the implications of ratifying the convention developed for Ukraine; a [guide on good practices for the ratification](#) developed for the Republic of Moldova; the Commissioner for Human Rights, report following her visit to Bulgaria, 31 March 2020, paragraphs 53-58 and 70-71

32. See, for instance, Commissioner for Human Rights' letters of [26 November 2019](#) and [10 September 2020](#) to the Slovak Parliament; statement concerning Poland of [22 July 2020](#); and [written observations](#) submitted to the Committee of Ministers in the context of the supervision of the execution of European Court of Human Rights judgments in three cases against Poland, 11 February 2020.

Findings

■ Although not always specifically mentioned in the texts, children are entitled to the full protection of all international human rights treaties. The United Nations Convention on the Rights of the Child confirms this and strengthens the protection of children's rights by introducing the principle of the child's best interest and the notion of children's evolving capacities. However, weaknesses in legislation, family and social protection services and in justice, education and health systems increase children's vulnerability to human rights violations. This, together with the pervasive social norms that condone violence against children and deny their agency as human rights holders, makes children the category of people hardest hit by any social, economic or public health crisis.

■ Due to children's limited access to national and international justice and the difficulties that they experience in having their voices heard, children's needs and rights are often overlooked and violence against children is under-reported. At the same time, children are increasingly mobilised to defend their rights and have successfully triggered and joined important social movements, such as to fight violence, climate change and discrimination.

■ The Council of Europe's transversal programme "Building a Europe for and with children" mobilises all Council of Europe stakeholders around the adoption and implementation of multi-annual strategies aimed at maximising states' individual and collective capacity to make children's rights a reality in Europe. The creation in 2020 of the Steering Committee for the Rights of the Child reflects the importance that member states attach to the rights of the child and illustrates their willingness to continue setting standards and monitoring and supporting their implementation, be they related to protecting children from violence, upholding their rights in the digital environment, ensuring equality and fighting discrimination, strengthening the participation of children in decision making or providing children with effective access to justice, services and systems. States' continued requests for new standards and tools, peer support, exchange of good practice and thematic exchanges will be at the centre of the new Council of Europe Strategy for the Rights of the Child beyond 2022.

■ The prevalence of sexual abuse and exploitation of children continues to be a priority concern, with most countries hit by scandals of abuse, sometimes involving hundreds of child victims, and many debating important issues such as consent and the statute of limitations. Particularly shocking is the steady increase in online sexual exploitation of children and the impunity of perpetrators. The Lanzarote Convention on the protection of children against sexual exploitation and sexual abuse continues to trigger important improvements at national level. While noting these improvements, its monitoring body keeps urging countries to take additional measures, to fight online sexual violence and to prevent all forms of sexual abuse and exploitation.

■ The mid-term evaluation of the Council of Europe Strategy for the Rights of the Child (2016-2021) undertaken in 2019 provided important insights into the progress achieved and problems in member states. Together with the results of a broad consultation process, they will form the pillars of the Council of Europe Strategy for the Rights of the Child (2022-2027).

■ The 2022-2027 Council of Europe Strategy for the Rights of the Child will build upon the results of the previous efforts, integrating the challenges emerging from the Covid-19 pandemic. As it is expected that an increase in poverty, social exclusion, discrimination and violence will disproportionately affect children, the strategy will focus on the strengthening of child protection systems and child-friendly social services. Implementation tools will be developed to support states in upholding the rights of the child in the digital environment and in practising meaningful, safe and ethical child participation, with specific actions designed for children in particularly vulnerable situations. Further efforts to strengthen children's access to civil, administrative and criminal justice will be pursued.

■ The Lanzarote Convention currently numbers 48 states,³³ which include all Council of Europe members states and Tunisia. It has become a blueprint for law and policy makers around the world to prevent child sexual exploitation and abuse, protect its victims and end the impunity of offenders. Child sexual abuse in the circle of trust and online sexual exploitation of children are high on the political agenda in Europe and beyond and are among the most discussed issues in the media. Both topics have been addressed by the Lanzarote Committee. To meet the growing expectations by states and civil society in this area, there is a need to strengthen the Lanzarote Committee, to review its working methods and to develop its capacity to timely and efficiently address issues, provide guidance and increase its outreach.

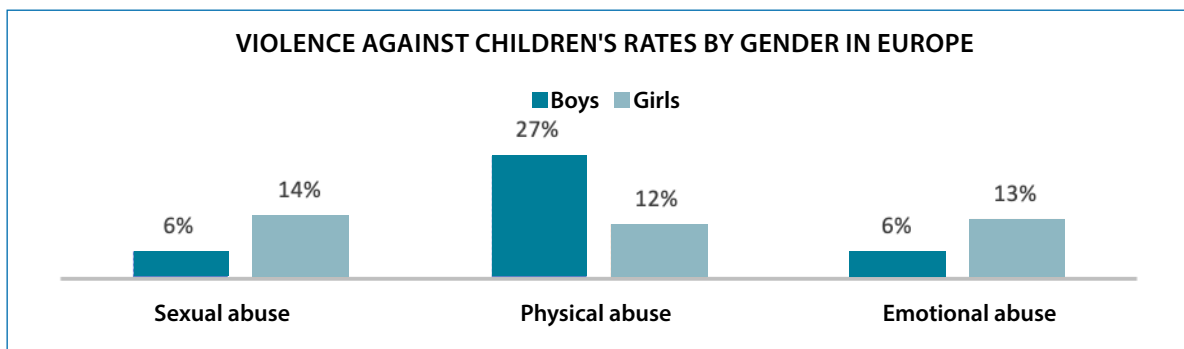
■ At least 26 member states have introduced, planned or currently have in place strategies or action plans on the protection of children's rights.

33. Status on 1 March 2021.

Violence against children

■ The majority of member states have put legislative and policy measures in place to protect children from violence and more than 25 have developed an integrated strategy on violence against children.³⁴ However, only one in five national action plans to tackle violence against children has clear objectives with measurable targets and only one in three is fully funded.³⁵

■ The main reasons for contacting child helplines in Europe in 2019 were mental health issues (36.3%) and violence (16.5%).³⁶ Rates of violence against children are too high, with considerable differences between girls and boys.³⁷



Data retrieved from WHO and others (2020), Global status report on preventing violence against children 2020.

■ Progress also varies according to the type of violence or where it takes place. Two member states have prohibited corporal punishment in all settings since 2018 (France and Georgia), bringing the current total to 34. Scotland and Wales also banned corporal punishment in 2019 and 2020. The specific needs and risks of children in institutions and with disabilities are comparatively sidelined. GRETA has also highlighted that child protection systems in many countries reveal a shortage of suitable accommodation for child victims of trafficking.³⁸

Protection of children against sexual abuse and exploitation

■ Four additional Council of Europe member states have ratified the Lanzarote Convention on the protection of children against sexual exploitation and sexual abuse,³⁹ which now covers 47 countries. In addition, the EU Council has called for EU accession to the Lanzarote Convention.⁴⁰ Co-operation projects in Ukraine, the Republic of Moldova and Slovenia have allowed the Council of Europe to develop tailored support to strengthen their legislation and practices to protect children from sexual violence.

■ While the fight against impunity progresses, prevention measures are lacking. The Lanzarote Committee has highlighted shortcomings in the obligation to raise children's awareness and to provide information on the risks of child sexual abuse, emphasising the need to strengthen general sex and relationship education at school.⁴¹ The committee has also urged 13 out of the 26 countries monitored to extend mandatory screening to the recruitment of all professionals (public or private) in regular contact with children. It found that most still need to offer effective intervention programmes or measures to assist both people who fear they might commit sexual offences against children and those already convicted for sexual offences against children.

■ Online sexual violence against children is a serious concern. One in three internet users worldwide is a child. Young children are particularly exposed to the online sharing of images, including as a result of coercion of carers. In 2020, the amount of child sexual abuse material which has been produced by children who have been tricked into filming themselves on webcams by online predators has drastically increased. The current

34. Council of Europe (2019), *A life free from violence for all children: Report on action taken by the Council of Europe and member States*. Based on the responses of 38 member states.

35. WHO Regional Office for Europe (2018), *European Status Report on preventing child maltreatment*.

36. Council of Europe (2019), *A life free from violence for all children: Report on action taken by the Council of Europe and member States*. Based on the responses of 38 member states.

37. WHO and others (2020), *Global status report on preventing violence against children 2020*.

38. Group of Experts on Action against Trafficking in Human Beings, 8th (2018) and 9th (2019) General Reports.

39. Armenia, Azerbaijan, Norway and the United Kingdom. Note also that Tunisia became the first non-European State to have acceded to the Lanzarote Convention.

40. See *Council Conclusions on EU priorities for cooperation with the Council of Europe 2020-2022*.

41. <https://rm.coe.int/2nd-implementation-report-protection-of-children-against-sexual-abuse-/16808d9c85>.

monitoring round of the Lanzarote Committee is focusing on the protection of children against sexual exploitation and sexual abuse facilitated by information and communication technology (ICT). The regional project End Online Child Sexual Exploitation and Abuse in Europe is developing complementary tools and carrying out activities by mobilising and building the capacity of policy makers, law enforcement, the judiciary, academics, teachers, parents and carers, as well as of children and young people.

■ Promotion by the Lanzarote Committee of a victim-centred and child-friendly response to sexual violence through “Children’s Houses” (Barnahus model) initiated a movement that continues to grow. Twenty-nine member states have established, are committed to or are in the process of assessing the feasibility of setting up Children’s Houses,⁴² ensuring timely access to justice and child-friendly services to victims of violence.

■ Awareness of sexual violence against children has increased steadily through the years due to activities carried out on the European Day on the Protection of Children against Sexual Exploitation and Sexual Abuse⁴³ and as a result of campaigns such as “Start to talk”, launched by EPAS to prevent sexual abuse of children in sport and which is mobilising public authorities and sports movements in over 20 countries.

Child participation

■ Today more children are enjoying their right to participation, although there are still obstacles to it being safe and meaningful. Thirty-four member states have changed legislation and policy to implement children’s right to participation, with Ireland being the first member state to adopt a strategy dedicated to child participation. Using the Council of Europe [Guidelines for Implementation of Child Participation in the 2nd thematic monitoring round of the Lanzarote Convention on “The protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies \(ICTs\)”](#), 306 children from 10 countries submitted their views on the issue. In 2020, Andorra launched a nationwide child consultation on the drafting of its National Plan for Children and Adolescents, aiming to reach all children between the ages of six and 18.

Child-friendly justice

■ Twenty-eight member states report having changed legislation and policy to implement the Committee of Ministers’ guidelines on child-friendly justice. In the mid-term evaluation of the strategy in 2019, 13 member states indicated taking steps to decrease the number of children deprived of liberty, while four said that they had taken steps to improve deprivation of liberty conditions for children. In some member states, the minimum age of criminal responsibility is still too low. In Ireland, Switzerland and parts of the United Kingdom,⁴⁴ children can be held liable for criminal offences from the age of 10. The Commissioner for Human Rights has supported the UN’s position that 14 years old should be the minimum age of criminal responsibility.⁴⁵

■ The CPT has found⁴⁶ that children apprehended due to suspicions of having committed criminal or other offences in some member states could face a higher risk of ill-treatment than adults due to their particular vulnerabilities, and has called on some member states⁴⁷ to improve conditions of imprisoned children.

■ Most member states have also strengthened the realisation of the rights of the child within family law disputes, including in the determination of their best interests. In the field of criminal justice, action has been taken to improve early intervention, to improve contact between children and incarcerated parents. Specialised courts, judges and services have also been established.

Equal opportunities

■ Most member states have made changes in their legislation or policies for the purpose of tackling child poverty and social exclusion. However, 23.4% of children in the EU and the UK were at risk of poverty or social exclusion in 2019. The continued effects of austerity (including the consequences of the Covid-19 pandemic) are hampering improvement to children’s social rights, particularly for vulnerable groups of children.

■ Deinstitutionalisation remains a challenge. Many member states are developing alternative arrangements for children with disabilities, but others note that unaccompanied migrant children continued to be held in large residential institutions, with a higher risk of being sexually abused, as highlighted by the Lanzarote Committee in its 2019 declaration.⁴⁸

42. Including Estonia, Ireland, Lithuania, Greece and Slovenia.

43. See [European Day on the Protection of Children against Sexual Exploitation and Sexual Abuse \(18 November\)](#).

44. The rules are different in Scotland.

45. [Commissioner’s Letter to the Convener of the Scottish Parliament’s Equalities and Human Rights Committee \(2019\)](#).

46. [CPT \(2018\), 28th General Report on the CPT’s Activities](#), paragraph 67.

47. Such as Croatia, Hungary, Republic of Moldova and Serbia.

48. Declaration of the Lanzarote Committee on protecting children in out-of-home care from sexual exploitation and sexual abuse (2019).

■ Few initiatives have been reported by member states with respect to actions regarding migrant children, children of national minorities and Roma children, and relatively few initiatives have been reported on countering discrimination against LGBTI children.

Migrant and refugee children

■ There are still numerous shortcomings in the protection of refugee and migrant children in member states. Age assessment is not always conducted in an adequate way and unaccompanied children are not always identified, registered and provided with a guardian, exposing them to serious protection risks and a vacuum in their ability to access and enjoy their rights. Procedures do not always guarantee effective identification of trafficking victims. Children are rarely provided with child-friendly information; the assistance of an interpreter or free legal aid and access to education and health services are very limited. Member state relocation pledges are insufficient, as are procedures to reunify families and reduce statelessness. Several countries have moved towards the use of detention of migrant children instead of child welfare protection, while the case law of the European Court of Human Rights has identified numerous violations resulting from the detention of migrant children, both accompanied and unaccompanied.⁴⁹

■ In 2020, the Special Representative of the Secretary General on Migration and Refugees highlighted the existing gap in Council of Europe member states between the standards set by the various instruments on child-friendly procedures for children in migration and their implementation.⁵⁰ In relation to child victims of trafficking, GRETA's reports⁵¹ highlight that child protection systems in many countries are not fit to ensure timely responses to the rights and needs of migrant and asylum-seeking children at risk. The 2019 evaluation by the Lanzarote Committee of follow-up to its five recommendations of non-compliance in its 2017 special report⁵² shows improvements following the countries' efforts to align with the requirements of the Lanzarote Convention, with the screening of persons in contact with children remaining the main difficulty.⁵³

Digital environment

■ There is significant evidence of positive outcomes regarding the protection of children's rights in the digital environment. Thirty-four member states have changed their legislation or policy since 2016 and at least eight member states⁵⁴ have introduced strategies, action plans or other policy mechanisms to protect children online. During the mid-term evaluation of the strategy in 2019, 17 member states reported having taken action to empower children to make use of the full potential of information and communication technology.

■ In 2018, the Cybercrime Convention Committee focused on cyberbullying and other forms of online violence against children found that measures in member states often focused on the protection of children against online sexual abuse and exploitation, but that there was less focus on other forms of cyberviolence, with specific legal responses being less common. It noted several obstacles to the enforcement of criminal laws in relation to cyberviolence: victims frequently may not know what to do to get help and law-enforcement authorities may not consider cyberviolence a priority.⁵⁵

49. For further reference see: *Bistieva and Others v. Poland* of 10 April 2018, Application No.75157/14; *Khan v. France* of 28 February 2019, Application No. 12267/16; *H.A. and Others v. Greece* of 28 February 2019, Application No. 19951/14; *G.B. and Others v. Turkey* of 17 October 2019, Application No. 4633/15; *Bilalova and Others v. Poland* of 26 March 2020, Application No. 23685/14; *Moustahi v. France* of 25 June 2020, Application No. 9347/14.

50. Special Representative of the Secretary General on Migration and Refugees (2020), "Refugee and migrant children in Europe" – Final report on the implementation of the Action Plan (2017-2019).

51. Group of Experts on Action against Trafficking in Human Beings, 8th (2018) and 9th (2019) General Reports.

52. [Evaluation of the follow-up given by Parties to the 5 recommendations urging Parties to implement the Convention \(2019\)](#); [Special report of the Lanzarote Committee: Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse \(2017\)](#).

53. Finland, Iceland, Liechtenstein, Republic of Moldova, North Macedonia, Slovenia, Sweden and Ukraine.

54. Croatia, Cyprus, Hungary, Ireland, Portugal, Russian Federation, Slovak Republic and Sweden.

55. [T-CY mapping study on cyberviolence 2018](#).

The EDQM (European Directorate for the Quality of Medicines) responses to Covid-19 pandemic

■ The availability of and access for patients to quality medicines are more important than ever in the context of the current Covid-19 pandemic. The race to find, and sustain, a treatment or vaccine in the fight against Covid-19, demonstrating quality, safety and efficacy is critical. The EDQM has been working extremely hard to ensure the continuous supply of its goods and services, and has been engaging with all stakeholders, including national, European and international authorities, to help protect public health.

Supporting developers of Covid-19 vaccines – reliable information

■ The EDQM is committed to supporting vaccine developers during the Covid-19 pandemic by openly sharing knowledge and offering temporary free access to relevant guidance and standards.

■ In addition to a set of guidance and pharmacopoeial quality standards applicable to candidate Covid-19 vaccines, the EDQM published a document entitled “Recombinant viral vectored vaccines for human use” for which no guidance existed, to support vaccine developers in designing appropriate analytical strategies for their candidate vaccines and to help ensure the quality and safety of the final product. The application of the package’s quality requirements may ultimately help facilitate regulatory acceptance of subsequent marketing authorisation applications, thus contributing to protecting public health.

■ Training materials on the European Pharmacopoeia texts related to vaccines have been made available and numerous virtual events have been organised to share best practices. The EDQM has worked together with the British Pharmacopoeia to make supportive pharmacopoeia texts relevant for anti-viral medicines freely available.

■ The Ph. Eur. Online and the EDQM’s public consultation platform Pharmeduropa, as well as other databases and documentary resources, have functioned as normal throughout the pandemic, and remain fully accessible to users; they are also continuously updated and maintained.

Ensuring the Quality of Covid-19 treatments – European Pharmacopoeia

■ The Ph. Eur. consists of documentary standards, describing the tests to ensure the quality of medicines. Most of the monographs require the use of reference standards, physical material to perform these tests, which means that manufacturers need them to release batches of medicines to the market.

■ Since the beginning of the crisis, the EDQM has been ensuring continuity of the supply of Ph. Eur. reference standards for medicines used in intensive care units to treat Covid-19 symptoms and in Covid-19 clinical trials.

■ The EDQM also put in place a fast-track system within its Certification of suitability to the monographs of the Ph. Eur. (CEP) Procedure for active pharmaceutical ingredients (APIs). The EDQM issues CEPs, which attest that the API can be suitably controlled by the quality requirements set out in the Ph. Eur. This centralised assessment reduces the workload of both regulators and industry. The fast-track approach has helped to ensure critical APIs are available.

Trust in public health institutions

■ Finally, standards for safe medicines and their safe use developed by the EDQM have allowed the general public to maintain a high level of trust vis-à-vis health authorities in charge of the regulation of medicines, including vaccines under development for Covid-19 and existing ones. In the context of future Covid-19 vaccines, trust in public health institutions is critical to overcoming vaccination hesitancy and to reach the desirable level of collective immunity needed to defeat the pandemic.

■ Together with Official Medicines Control Laboratories of EU member states, EDQM has ensured that Official Control Authority Batch Release (OCABR) of Covid-19 vaccines was ready on the day of their marketing authorisation to prevent any delays in the availability of the new vaccines while ensuring compliance with quality standards.

SOCIAL RIGHTS

Measurement criteria

- ▶ Ratification of the European Social Charter, number of adopted key provisions of the Charter, acceptance of the collective complaints' procedure.
- ▶ Measures are applied to ensure adequate level of social security benefits and to extend social security benefits and healthcare services to unemployed and elderly people.
- ▶ Safeguards are enshrined in law and applied in practice to ensure equal rights between men and women, in particular with regard to pay and opportunities in employment, protection of pregnant employees and employees on maternity leave against dismissal and measures to address violence against women.
- ▶ Safeguards are available and applied to protect children against physical and moral danger, and employment below the age of 15.
- ▶ Measures are applied to provide families with adequate child benefits and family housing.
- ▶ Safeguards are available and applied against all forms of corporal punishment, to ensure placement of children in foster care, to ensure safe and adequate accommodation of accompanied and unaccompanied migrant children, to protect unaccompanied migrant children against violence and abuse, to combat domestic violence and to ensure equal access to education for all children.
- ▶ Measures are applied to implement the right to family reunion.
- ▶ Safeguards are available and applied to ensure housing standard adequacy and supervision, prevent and reduce homelessness, implement the right to shelter, protect persons from eviction, and ensure available, accessible social housing and housing assistance.

Findings

■ The resilience of social and economic models continues to be severely tested across Europe by the Covid-19 crisis. The pandemic has put a severe stress on healthcare services, income inequality and poverty figures are rising, and entire economic sectors have been temporarily shut down while certain categories of jobs have all but disappeared, leading to higher unemployment figures.

■ The prospect of prolonged Covid-19-related restrictions underlines the need for sustainable and tailored solutions to address the vulnerabilities of large swathes of the population – be it self-employed people, children, students, older persons, families, minorities or migrants – and to support them through the crisis.

■ Member states designed policies and allocated extraordinary resources to address these challenges. Schools have adapted to remain open in many countries, temporary solutions have been found for homeless people, income-support schemes have been put in place for businesses administratively closed, and countries have eased visa regularisation or employment restrictions for in-country migrants. The health response often required the allocation of considerable resources, and authorities set up scientific advisory panels to guide them in decision making.

■ These are extraordinary measures in extraordinary times. Safeguarding the dignity of life and fundamental rights in these times of crisis are prerequisites for a sustainable recovery effort that is yet to begin.

■ During this period, the Council of Europe institutions have provided expertise and legal remedies to member states, helping them to respond to the crisis based on common values and standards (see the Covid-19 boxes).

■ In September 2020, the Secretary General called for increased multilateral co-operation among member states with detailed proposals⁵⁶ to draw lessons from the crisis and enhance preparedness for addressing health concerns based on common principles and best practices. Further action should be taken to strengthen countries' capacities.

■ The European Social Charter should be a guide to sustainable recovery efforts. Social rights complement civil and political rights, and set them in context, safeguard social justice, and bond cohesive and inclusive societies. Universal healthcare, resilient public health systems, employment security, arrangements to ensure

56. SG/Inf(2020)24 "A Council of Europe contribution to support member states in addressing healthcare issues in the context of the present public health crisis and beyond".

protection of the rights of older people, solid public education and the protection of children and women are obligations under the European Social Charter.

■ Some aspects of social rights have been fine-tuned under specific conventions, for instance by the Convention on Human rights and Medicine, the European Code of Social Security, the European Convention on the Adoption of Children, the Istanbul Convention and the European Convention on the Legal Status of Migrant Workers. In their respective fields, the monitoring undertaken by bodies such as the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) or the Group of Experts on Action against Trafficking in Human Beings (GRETA) further specifies the social rights protection.

■ Other aspects of social rights are being supported through intergovernmental programmes, for instance in the field of non-discrimination, gender equality, social cohesion, youth, education and sport, as well as regarding the rights of migrants, children and people with disabilities.

■ Taken together, these resources provide a governance framework to assist countries in their endeavours to uphold social rights, work towards social progress and ensure democratic governance.

How strong is the commitment to social rights in Europe?

■ All member states have signed the 1961 or the revised European Social Charter. Four countries – Liechtenstein, Monaco, San Marino and Switzerland – have not ratified either version, and eight – Croatia, Czech Republic, Denmark, Iceland, Luxembourg, Poland, Spain and the United Kingdom – remain with the 1961 Charter. Germany ratified the revised Charter on 29 March 2021. Two member states (France and Portugal) have committed to all the provisions of the revised Charter and one (Spain) to all the provisions of the 1961 Charter and the 1988 protocol.

■ The 1995 Additional Protocol providing for a system of collective complaints has been ratified by only 15 member states. On 4 February 2021 Spain signed the Additional Protocol.⁵⁷ The collective complaints procedure enables bodies such as national social partners, certain international workers' organisations or accredited non-governmental organisations to complain if they consider that a state has failed to comply with the Charter. The lack of required individual victim status and prior exhaustion of local remedies gives this remedy a strong participative dimension.

■ Member states have repeatedly been encouraged to increase their level of undertaking with the Charter, including at the Helsinki Ministerial Session⁵⁸ and in the Athens Declaration.⁵⁹

Assessing social rights implementation

■ The conclusions of the European Committee of Social Rights reveal a level of conformity in 48.9% of the situations examined over the last four supervisory cycles, and non-conformity in around 34.4% of cases. The 896 Conclusions 2019 and Conclusions XXI-4(2019) relating to children, families and migrants⁶⁰ published in March 2020 showed 289 situations of non-conformity and 453 situations of conformity with the provisions of the revised Charter and respective provisions of the 1961 Charter. In 154 cases, the European Committee of Social Rights was unable to assess the situation due to a lack of sufficient information.⁶¹ The committee's monitoring and case law developed under this supervisory cycle contributes towards achieving the UN 2030 agenda for sustainable development goals (SDGs).

Children and young persons

■ The conclusions indicate a high number of member states (Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, Republic of Moldova, Romania, Serbia, Turkey and Ukraine) not in conformity with the right of children and young persons to protection on the grounds that the prohibition of employment below

57. European Social Charter News, [Spain signs the Additional Protocol to the European Social Charter on collective complaints](#), 4 February 2021.

58. [CM/Del/Dec\(2019\)129/2a](#), adopted at its 129th Session, Helsinki, 17 May 2019, point 3.

59. [CM\(2020\)110-final](#), adopted at its 130th session, Athens (videoconference), 4 November 2020, point 10.

60. This supervisory cycle monitors compliance in the reference period from 1 January 2014 to 31 December 2017 with the right of children and young persons to protection (Article 7), the right of employed women to protection of maternity (Article 8), the right of the family to social, legal and economic protection (Article 16), the right of children and young persons to social, legal and economic protection (Article 17), the right of migrant workers and their families to protection and assistance (Article 19), the right of workers with family responsibilities to equal opportunity and treatment (Article 27), and the right to housing (Article 31) under the revised Charter and the 1961 Charter, as appropriate.

61. European Social Charter News, [Social rights of children, families and migrants in danger across Europe: latest annual conclusions from the European Committee of Social Rights](#), 24 March 2020.

15 years of age was not sufficiently monitored or that the situation was problematic in practice. Some member states (Armenia, Estonia, Georgia, Greece, Lithuania, Malta and Portugal) did not adequately regulate light work that can be performed by children under the age of 15 or by children who are still in compulsory education to prevent excessively long hours of work. A significant number of member states (Albania, Andorra, Armenia, Azerbaijan, Belgium, Georgia, Germany, Serbia, Spain, Romania, United Kingdom and Ukraine) did not comply with the right of young workers and apprentices to a fair wage, as their pay fell too far below the level of adult starting wages. The conclusions also revealed a failure to protect children against physical and moral dangers, mainly on the grounds that the law did not fully protect them against all forms of sexual exploitation (Bosnia and Herzegovina, Georgia, Russian Federation, Turkey and Ukraine).⁶² Member states' obligations in this regard are specified under the Warsaw⁶³ and Lanzarote⁶⁴ Conventions, the recommendations of GRETA⁶⁵ and the Lanzarote Committee.⁶⁶ The Parliamentary Assembly⁶⁷ and the Commissioner for Human Rights⁶⁸ have urged further action.

■ The conclusions on the right of children and young persons to social, legal and economic protection⁶⁹ indicate that the prohibition of all forms of corporal punishment has yet to be achieved in several member states (Armenia, Belgium, Bosnia and Herzegovina, Georgia, Russian Federation, Serbia, Slovak Republic and the United Kingdom). If the procedures for placement of children in care are in general well established and observed, the ratio of children in institutions to the number of children in foster care or other types of family-based care remains too high at times (Armenia and Ukraine). In a Rule 9 submission over the supervision of the execution of the judgment of the European Court of Human Rights in the related case *D.H. and Others v. Czech Republic*,⁷⁰ the Commissioner for Human Rights recommended steps to ensure the sustainability of the inclusion of Roma children in mainstream education.⁷¹ Assessing the treatment of children in an irregular migrant situation and asylum-seeking children, and considering that member states should provide accommodation instead of detention, the European Committee of Social Rights found two situations (Greece and Hungary) not in compliance, given the inadequate and often unsafe accommodation of unaccompanied migrant children or the inadequate protection from violence and abuse. The Commissioner for Human Rights has addressed urgent situations in several other member states.⁷² Taking up the protection of the family in migration, the Committee of Ministers recommended guiding principles to member states for an effective guardianship of unaccompanied migrant children.⁷³ Several bodies have addressed the issue within their respective mandates.⁷⁴ The European Committee of Social Rights' conclusions also document the abolition of all forms of corporal punishment in all settings in several member states (Estonia, France, Ireland, Lithuania, Malta, Montenegro and the United Kingdom) and efforts made to ensure that children cannot be taken into care on grounds of their families' financial circumstances (Republic of Moldova and Ukraine). The conclusions show termination of the practice of detaining children in adult prison facilities (Ireland).

62. See also Commissioner for Human Rights: "Bosnia and Herzegovina must urgently improve its migrant reception capacities, improve access to asylum and protect unaccompanied migrant children", [CommHR/DM/sf 029-2020](#), 7 December 2020.

63. Convention against Trafficking in Human Beings, CETS No. 197.

64. Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse, CETS No. 201.

65. GRETA [Trafficking in Children](#), thematic chapter of the 6th General Report on GRETA's activities, Strasbourg 2018.

66. Lanzarote Committee: Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse, [Special report](#) adopted on 3 March 2017.

67. Parliamentary Assembly: Resolution [2330 \(2020\)](#) "Addressing sexual violence against children: stepping up action and co-operation in Europe", 26 June 2020.

68. Commissioner for Human Rights: "Member states must give renewed impetus to children's rights", [statement](#) on 19 November 2020.

69. Article 17.1 of the revised Charter and of the 1961 Charter.

70. Application No. [57325/00](#), judgment of 13 November 2007.

71. Commissioner for Human Rights: "Czech authorities should adopt broader measures to end school segregation of Roma children", Rule 9 Submission, 9 November 2020; see also Commissioner for Human Rights: "ECRI webinar on inclusive education in time of COVID-19 with special focus on migrant and Roma children", statement, 30 June 2020.

72. Commissioner for Human Rights: Commissioner calls on Greek authorities to provide adequate support to all those affected by the fire in Moria, statement 9 September 2020; Bosnia and Herzegovina must urgently improve its migrant reception capacities, improve access to asylum and protect unaccompanied migrant children, letter to the Chairman of the Council of Ministers and Minister for Security of Bosnia and Herzegovina 11 December 2020.;

73. Committee of Ministers Recommendation [CM/Rec\(2019\)11](#) on effective guardianship for unaccompanied and separated children in the context of migration, 11 December 2019.

74. Parliamentary Assembly: Resolution [2330 \(2020\)](#), Addressing sexual violence against children: stepping up action and co-operation in Europe, 26 June 2020; GRETA: [Trafficking in Children](#), thematic chapter of the 6th General Report on GRETA's activities, Strasbourg 2018; Lanzarote Committee: "Protecting children affected by the refugee crisis from sexual exploitation and sexual abuse", [Special report](#) adopted on 3 March 2017; Council of Europe (ed.), [Family reunification for refugee and migrant children](#): standards and promising practices, Strasbourg, April 2020; HELP/UNHCR [online course](#) on alternatives to immigration detention, June 2020; Council of Europe/EU Agency for Fundamental Rights (ed.), [Fundamental rights of refugees, asylum applicants and migrants at the European borders](#), Vienna/Strasbourg 2020, p. 10.

■ Member states have positive obligations under Article 17.2 of the revised Charter to ensure equal access to education for all children. The conclusions show that some member states (Armenia, Bulgaria, Republic of Moldova, North Macedonia, Romania and Slovak Republic) have low enrolment rates in compulsory education. In a decision made public at the time of writing, the Committee assessed the inclusion of persons with mental disabilities in ordinary education in Belgium's French Community, finding a violation of Article 17.2 of the revised Charter on the ground that children with intellectual disabilities do not have an effective right to an inclusive education.⁷⁵ Regarding autism, the Parliamentary Assembly has recommended that member states provide support in educational settings, involving parents in the education and social progress of their child, and facilitating the transition to adulthood.⁷⁶

Gender equality

■ Following a collective complaint lodged by University Women Europe (UWE), the European Committee of Social Rights adopted a set of 15 landmark decisions concerning the right to equal pay and the right to equal opportunities in the workplace, made public in June 2020.⁷⁷ The decisions specify obligations under the right to work, the right to a fair remuneration and the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex. Except for Sweden, all the respondent member states were found to be in violation of one or more of these aspects, but the committee also noted recent measures that have led to some progress in reducing the gender pay gap. It established criteria on realising equal pay and equal opportunities for women in employment.⁷⁸ On other aspects of gender equality, the Commissioner for Human Rights called on member states to promote equality and combat sexism in all spheres of life,⁷⁹ and she called on member states to address online violence against women by implementing their obligations under the Istanbul Convention,⁸⁰ and by setting up online mechanisms enabling women to report abuse and obtain both protection and the removal of harmful materials.⁸¹ Taking stock of its country monitoring under the Istanbul Convention, GREVIO has identified first trends in domestic violence and the challenges in implementing the convention provisions, and shed light on valuable practices.⁸²

■ The European Committee of Social Rights' conclusions show that several member states (Bosnia and Herzegovina, Ireland, Republic of Moldova, Turkey, Russian Federation and the United Kingdom) – either in private or public sectors – are not in conformity with the right of employed women to postnatal paid leave, as women employed in the public and private sectors were not paid at least 70% of the salary during compulsory maternity leave. Often the dismissal of pregnant employees and employees on maternity leave was allowed in circumstances that go beyond those allowed by Article 8.2 of the Charter (Bosnia and Herzegovina, Ireland, Slovak Republic, Spain and Turkey) or there was no adequate remedy or compensation in case of unlawful dismissal (Albania, Bosnia and Herzegovina and Turkey). Insufficient evidence of adequate protection by the law caused findings of non-conformity with the right to paid nursing breaks (France and Spain), the protection of employees who are pregnant, have recently given birth or are nursing their child in respect of night work (Bosnia and Herzegovina, Georgia, Republic of Moldova and Poland) and in respect of dangerous, unhealthy or arduous work (Azerbaijan, Bosnia and Herzegovina, Georgia, Hungary, Republic of Moldova, Serbia, Turkey and Ukraine). The conclusions also document positive developments relating to increased postnatal leave (Luxembourg), improved compensation during maternity leave (Bosnia and Herzegovina, North Macedonia and Slovak Republic), and extended protection of pregnant women (Lithuania) and women following maternity leave (France) against dismissal.

The rights of the family

■ The European Committee of Social Rights' conclusions indicate that almost half of the member states that accepted the right of the family to social, legal and economic protection are not in compliance. Some make the entitlement to child benefits for nationals of other countries conditional on a length of residence of more than six months (Azerbaijan, Belgium, Bosnia and Herzegovina, Greece, Italy, Latvia, Republic of Moldova, North Macedonia and Poland). Others fail to ensure that child benefits are available to a significant number

75. *International Federation for Human Rights (FIDH) and Inclusion Europe v. Belgium*, complaint No. 141/2017, decision on the merits, 9 September 2020.

76. Parliamentary Assembly: Resolution 2353 (2020), Supporting people with autism and their families, 4 December 2020.

77. See for example, *University Women of Europe (UWE) v. Belgium*, complaint No. 124/2016, decision on the merits, 6 December 2019.

78. European Committee of Social Rights: *Realising equal pay and equal opportunities for women in employment*, 17 November 2020.

79. Commissioner for Human Rights: "Let us all rise to the challenge of making a world where gender equality is a reality", *statement*, 5 March 2020.

80. Convention on Preventing and Combating Violence against Women and Domestic Violence, CETS No. 210.

81. Commissioner: "Stop cyberviolence against women and girls", *statement*, 25 November 2020.

82. GREVIO: 1st *General Report* on GREVIO's activities, Strasbourg, April 2020, p. 24.

of families or are of an adequate level (Azerbaijan, Italy, Latvia, Republic of Moldova, Montenegro, North Macedonia, Poland, Spain and Ukraine). More than half of the member states are not in conformity on the issue of family housing, as they do not provide for equal treatment of foreign nationals, housing adequacy, housing supply or legal protection against eviction. Most member states fail to ensure the eligibility of vulnerable families. Some of these concerns are mirrored in a Rule 9 submission by the Commissioner for Human Rights to the Committee of Ministers⁸³ over the supervision of the execution of the judgment of the European Court of Human Rights in the case of *Yordanova and Others v. Bulgaria*.⁸⁴ The conclusions also document positive developments on equal treatment of foreign nationals for housing (Austria) and family benefits (Hungary), rises in housing benefits (Iceland) and child allowances (Estonia), under new legislation or in practice.

Migrant workers

■ The European Committee of Social Rights' conclusions on the rights of migrant workers and their families to protection and assistance indicate that all member states are implementing equal treatment with regard to the payment of employment taxes, dues or contributions; only two (Armenia and Luxembourg) did not have appropriate measures to facilitate reception of migrant workers and their families, and a few (Belgium, France, Georgia, Italy and Turkey) experienced problems with racism and xenophobia in media and public discourse. However, 72% of member states infringe the right to family reunion on account of excessive residence, language or income requirements.⁸⁵ Only a few member states (Greece, Luxembourg, North Macedonia, Poland, Romania and Turkey) were found not in conformity with the requirement that migrant workers lawfully residing within their territory should not be expelled unless they endanger national security or offend against public interest or morality.

■ Some member states (Ireland, Malta and Turkey) do not ensure compensation for the loss of earning during parental leave or ensure a compensation of inadequate level (Armenia, Azerbaijan and Ukraine). All but three (Bulgaria, Italy and Turkey) prohibit dismissal on grounds of family responsibilities and provide effective remedies in case of unlawful dismissal. The conclusions also document amendments ensuring that workers with family responsibilities may work part-time until their children reach compulsory school age (Turkey).

Housing

■ The European Committee of Social Rights' conclusions reflect a relatively low degree of compliance with the right to housing. Whereas two member states (Andorra and Finland) meet the criteria for housing adequacy, many report substandard housing conditions for Roma/Travellers (France, Greece, Italy, Latvia, Portugal, Turkey and Ukraine), issues on supervising housing standards (Lithuania) and a lack of rules requiring landlords to ensure that dwellings are of an adequate standard (Turkey). Most member states do not meet the criteria for the reduction of homelessness as legal protection for people threatened by eviction; their actions to reduce and prevent homelessness and their respect for the right to shelter are insufficient. The conclusions also document positive developments regarding the required prior residence obligation for housing benefits eligibility (France and Italy), existing long-term homelessness (Finland) and the legal protection for people threatened by eviction (Lithuania).

83. Commissioner for Human Rights: Bulgarian authorities should prevent forced evictions, tackle the stigmatisation and marginalisation of Roma and improve their access to adequate housing, including social housing, [Rule 9 submission](#), 24 November 2020.

84. Application No. 25446/06, judgment of 24 April 2012.

85. On this issue, see Council of Europe (ed.), [Family reunification for refugee and migrant children](#): standards and promising practices, Strasbourg, April 2020.

Social rights in the time of the Covid-19 pandemic

■ Covid-19 has had a devastating effect on individuals and communities across Europe. It has also revealed that some countries were better prepared to respond to the crisis than others. The pandemic brought to light many good practices. Many countries encouraged prevention measures to slow down transmission, such as social distancing and lockdowns. The health response often required the allocation of considerable resources, and authorities drew on scientific advisory panels to inform and guide their decision making. Many also adopted measures to protect income and employment, to extend access to healthcare and to cater for basic needs, including temporary arrangements for accommodation for the homeless or authorising the stay on the territory of persons awaiting completion of required documents. International co-operation in science, including for the development of vaccines and tools for tracking and tracing, has also proven to be a positive practice.

■ The responses were not always sufficiently rapid or vigorous. Healthcare services were under-resourced, often ill-prepared and almost invariably overstretched.

■ The effects on health and employment are evident. But the most vulnerable in society have been affected disproportionately. Poverty, deprivation and homelessness increased their exposure to the virus or to risks of abuse.

■ The setback for education and training due to the pandemic is obvious, and worse for those most in need or suffering from the digital divide. Whereas in 2019, the Committee of Ministers had underscored “the need to re-align, as a matter of urgency, objectives and funding of services such as child welfare, education, social services and social protection programmes towards the eradication of child poverty”,⁸⁶ the situation deteriorated in 2020.

■ The pandemic has revealed the great vulnerability of older persons and, in some cases, the perception that they can be sacrificed in the face of competing needs. The situation is sometimes gruesome, when our elders are left without basic care or assistance, abandoned to their fears and disconnected from their community.

■ The price paid is also high for frontline and health workers fighting the pandemic, dealing with the crisis and its effects. They were often unprepared, unprotected and poorly equipped.

■ The pandemic brought to light vital aspects of preparedness: universal healthcare and resilient, well-equipped and well-resourced health services; employment security; health and safety at work; arrangements to ensure protection of the rights of older people; adequately resourced and solid public education and the protection of children and women against violence and abuse; and a minimum income and adequate guarantee of the right to housing.

■ The Council of Europe put its knowledge and talent in the service of member states, with a human rights, democracy and rule of law toolkit and helpful guidance on the right to health, protection of children against abuse, non-discrimination of minorities and persons with disabilities, and protection against fake medical products.⁸⁷

■ Many people around the world are calling for a new social contract. In Europe, it has a name: the European Social Charter. In its statement of interpretation on the right to protection of health in times of pandemic,⁸⁸ the European Committee of Social Rights has announced that it will monitor member states’ performance in respect of preparedness over the years to come, starting with the Conclusions 2021 (on the rights to health, social security and social protection), on which member states are currently preparing reports. In her most recent issue paper on the right to health,⁸⁹ the Commissioner for Human Rights recommended ratification of the European Social Charter and the European Code of Social Security.

■ In many member states, private initiatives and social partners are being associated with decision making in the management of the Covid-19 crisis. Coming out of the pandemic will require social rights reconstruction, and the Charter can provide the framework for a process of restoring social justice and ensuring sustainability.

86. Committee of Ministers Declaration on addressing child poverty, Doc. CM(2019)181, 4 November 2019: <https://rm.coe.int/abridged-report-of-the-4th-pecs-meeting-/16809f843e>.

87. Secretary General, Respecting democracy, rule of law and human rights in the framework of the COVID-19 sanitary crisis: a toolkit for member states, Doc. SG/Inf(2020)11, 7 April 2020: <https://rm.coe.int/sg-inf-2020-11-respecting-democracy-rule-of-law-and-human-rights-in-th/16809e1f40>.

88. European Committee of Social Rights, Statement of interpretation on the right to protection of health in times of pandemic, 21 April 2020: <https://rm.coe.int/statement-of-interpretation-on-the-right-to-protection-of-health-in-ti/16809e3640>.

89. Commissioner for Human Rights, Protecting the right to health through inclusive and resilient health care for all, Issue paper prepared by Dr Rachel Hammonds, Strasbourg, February 2021: <https://rm.coe.int/protecting-the-right-to-health-through-inclusive-and-resilient-health-/1680a177ad>.

HUMANE DETENTION CONDITIONS

Measurement criteria

- ▶ Adequate material conditions of detention in terms of state of repair, ventilation and access to natural light.
- ▶ Prisoners to be provided with purposeful out-of-cell activities (including at least one hour of outdoor exercise per day).
- ▶ Sufficient living space for prisoners, at least 6 m² in single cells and at least 4 m² per person in multiple-occupancy cells (without counting the area taken up by in-cell sanitary facilities).
- ▶ Availability of adequate personal protective equipment (PPE) and other protective measures (such as PCR tests) in prisons.

Findings

■ In recent years, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has visited many countries. In several, it received allegations of ill-treatment – and sometimes torture – of detained persons by law-enforcement officials or prison officers. In addition, it found poor conditions of detention in prisons (and other places of detention) which could be considered inhuman and degrading. Detention cells were often in a poor state of repair, poorly ventilated and sometimes with limited access to natural light. All too often prison overcrowding remained a problem, and many prisoners were held in appalling conditions, with living space of less than 2 m² per person. On occasion, even up to six prisoners were being held in a cell measuring 8 m² or eight prisoners in a cell measuring 15 m². As a result, prisoners were compelled to share beds or sleep in turns. The problem of prison overcrowding was often further exacerbated by the fact that prisoners (in particular those on remand) were locked up in their cells for 23 hours a day, without being offered any activities, and, sometimes, prisoners did not benefit from the minimum entitlement of spending at least one hour in the open air every day.

■ In early 2020, the emerging Covid-19 pandemic constituted a particular risk for persons held in prisons and other places of detention, even more so when inmates were being held in cramped conditions.

■ On 20 March 2020, the CPT issued a [Statement of principles](#) relating to the treatment of persons deprived of their liberty in the context of the pandemic. While acknowledging the clear imperative to take firm action to combat Covid-19, the CPT stressed the absolute nature of the prohibition of torture and inhuman or degrading treatment and emphasised that protective measures must never result in inhuman or degrading treatment of persons deprived of their liberty. To this end, the committee presented a set of principles which should be applied by all relevant authorities within the Council of Europe region in places of deprivation of liberty, including police detention facilities, penitentiary institutions, immigration detention centres, psychiatric hospitals and social care homes, and various newly established facilities/zones where persons were placed in quarantine. Principle 5 states that, as close personal contact encourages the spread of the virus, concerted efforts should be made by all relevant authorities to resort to alternatives to deprivation of liberty. Such an approach is imperative in situations of overcrowding. Authorities should make greater use of alternatives to pretrial detention, commutation of sentences, early release and probation.

■ The Council of Europe Annual Penal Statistics (SPACE)⁹⁰ have shown that, when comparing the prison population rates of 15 September 2020 in 35 prison administrations with those of 1 January 2020, there had been a significant decrease in 20 countries, while the numbers remained overall stable in 11 other countries. Twenty-five prison administrations reported releases of prisoners as a preventive measure against Covid-19.

■ On 9 July 2020, the CPT published a [Follow-up Statement](#) in which it emphasised that temporary restrictions imposed to contain the spread of the virus in prisons (in particular, limitations on prisoners' contact with the outside world and reductions in the range of activities) should be lifted as soon as they were no longer required. On the other hand, certain emergency measures put in place temporarily in prisons should be made sustainable. This applies to the increased use of alternatives to deprivation of liberty, with a view to putting an end to the phenomenon of overcrowding. In this regard, further steps were needed to reduce the use of remand detention. The committee stressed the crucial importance for the prevention of ill-treatment of monitoring of detention places by independent national and international human rights bodies.

90. See SPACE study [“An evaluation of the medium-term impact of Covid-19 on prison populations”](#).



CHAPTER 7

ANTI-DISCRIMINATION, DIVERSITY AND INCLUSION

INTRODUCTION

The strategic goal of the Council of Europe in the field of anti-discrimination, diversity and inclusion is to ensure genuine equality and full access to rights and opportunities for all members of society. This can be achieved through legislation and policies that address inequality and racism in a systematic manner, by preventing and sanctioning discrimination, xenophobia, hate speech and hate crimes both on specific grounds and where people face multiple discrimination (intersectionality) and by devising strategies for the empowerment of minorities and for the positive management of diversity.

Anti-discrimination, diversity and inclusion are the key building blocks of the inclusion policies for which the Council of Europe has developed standards. These include the European Commission against Racism and Intolerance (ECRI)'s General Policy Recommendations, the Framework Convention for the Protection of National Minorities (ETS No. 157, Framework Convention), the European Charter for Regional or Minority Languages (ETS No. 148), Committee of Ministers Recommendations CM/Rec(2010)5 on measures to combat discrimination on grounds of sexual orientation or gender identity and CM/Rec(2015)1 on intercultural integration, and several recommendations on the inclusion of Roma and Travellers.¹ The respective monitoring bodies assess member states' policies and their implementation of standards and the Steering Committee on Anti-discrimination, Diversity and Inclusion (CDADI) develops common European policies, guidelines and standards. A range of field programmes support member states in developing comprehensive strategies and multistakeholder governance models to improve compliance with standards. In response to a rise in attacks against Jews and Muslims, the Secretary General of the Council of Europe appointed a Special Representative on antisemitic, anti-Muslim and other forms of religious intolerance and hate crimes² in October 2020. The Special Representative aims to ensure that the collective knowledge of the Council of Europe is put to full use in the joint effort to develop effective counter-strategies at national and international levels.

In the period covered by this report a series of challenges have been addressed by the "strategic triangle" of monitoring, standard setting and co-operation. These include:

- ▶ insufficient efforts and resources to ensure the learning and use of minority languages and to encourage minority participation;
- ▶ lack of awareness of structural racism and racism in policing, and the provision of adequate strategies to address them;³
- ▶ slow progress in adopting legislation and policies for legal gender recognition and same-sex marriage or partnership;
- ▶ restrictions on freedom of expression and assembly for minorities, including sexual minorities;
- ▶ the failure to curb hateful political rhetoric and online hate speech, as well as widespread antigypsyism;

1. The term "Roma and Travellers" is used at the Council of Europe to encompass the wide diversity of the groups covered by the work of the Council of Europe in this field: on the one hand a) Roma, Sinti/Manush, Calé, Kaale, Romanichals, Boyash/Rudari; b) Balkan Egyptians (Egyptians and Ashkali); c) Eastern groups (Dom, Lom and Abdal); and, on the other hand, groups such as Travellers, Yenish, and the populations designated under the administrative term "Gens du voyage", as well as persons who identify themselves as Gypsies. The present is an explanatory footnote, not a definition of Roma and/or Travellers.

2. See: www.coe.int/en/web/antisemitic-anti-muslim-hatred-hate-crimes.

3. See the annual report on ECRI's activities in 2020 (pp. 6-17), published on 18 March 2021.

- ▶ the need for further guidance and action in combating antisemitism and intolerance and discrimination against Muslims;
- ▶ the failure to adequately respond to widespread anti-LGBTI rhetoric and a related backsliding in human rights standards;
- ▶ insufficient legal frameworks to take down illegal online hate speech and prosecute perpetrators;
- ▶ limited institutional awareness, knowledge and capacity to record and investigate hate crimes and hate speech, and to support victims;
- ▶ insufficient efforts to encourage the meaningful participation of people belonging to national minorities in political debate and decision making, especially young people;
- ▶ timid measures to promote the uptake by local authorities of the intercultural approach to migrant and refugee inclusion and the lack of a coherent and co-ordinated approach to multilevel governance and policies of intercultural integration.

■ In the coming years, priorities will include rigorous monitoring of developments related to racism, anti-semitism, intolerance and discrimination, including against Muslims, and enhancing the effectiveness of the monitoring mechanisms related to minority rights and minority languages through the implementation of recent reforms. Support will be provided to legislative and policy reforms and to building institutional capacity for the implementation of existing standards, for example those on LGBTI equality, on combating hate speech and on intercultural integration. The development of new standards will be necessary in order to address long-standing challenges such as hate crime, the participation of people belonging to national minorities, including Roma and Travellers, equality for Roma girls and women and emerging issues such as discrimination resulting from the use of artificial intelligence or the rights of intersex people.

ANTI-DISCRIMINATION

Measurement criteria

- ▶ Policies or actions to prevent racial profiling and police violence.
- ▶ Effective legislative and other measures aimed at addressing various forms of hate speech and hate-motivated violence.
- ▶ Existence of legal frameworks on gender recognition and enabling same-sex partnership and/or marriage.
- ▶ Existence of measures to ensure freedom of expression and of association for minorities and LGBTI people.

Racism in policing

■ In July 2020, ECRI deplored in a rare public statement that instances of racist police abuse have tarnished the profession and jeopardised the work of police officers who comply with police ethics and the law and combat racist hate crime.⁴ The same message was conveyed a few months later by the French President Emmanuel Macron following a public outcry provoked by video footage showing the beating of a Black music producer by police officers. It is indeed crucial that a firm public message of zero tolerance of racism⁵ in policing be promptly delivered when such cases come to light.

■ Regrettably, instances of racist police abuse may be indicative of a more general pattern,⁶ which largely explains why the death of George Floyd in the United States at the hands of police officers and the following Black Lives Matter protests in 2020 had such a large impact in Europe. Recent ECRI reports point to the need for scrutinising racism in policing in several countries. The issues range from police racial profiling to cases of racist police violence occasionally leading to serious injuries, or even death, among the victims. It also appears

4. [Statement](#) on racist police abuse, including racial profiling, and systemic racism adopted by ECRI at its 82nd plenary meeting (30 June-2 July 2020).

5. www.elysee.fr/en/emmanuel-macron/2020/11/27/france-must-never-allow-hate-and-racism-to-prosper.

6. See, in this context, *Lingurar v. Romania*, Application No. 48474/14, 16 April 2019.

from ECRI country reports that Black and Roma people have been particularly affected in recent years.⁷ If racist police behaviour and attitudes remain unchallenged, they may irretrievably break down trust between the police and the communities concerned. For instance, the law-enforcement interventions that took place during the Covid-19 pandemic caused fears of stigmatisation among the Roma in Slovakia, bearing in mind past incidents during police operations.⁸

■ ECRI's findings suggest that action has been taken in some member states. For instance, racial profiling was explicitly prohibited by law, as in Finland, and some governments, for example in the Netherlands, commissioned detailed studies to determine whether and to what extent such practices existed.⁹ Studies on racial profiling have often revealed that people with specific ethnic, national and/or religious backgrounds, such as Black and Roma people, and people with a Muslim or migrant background, are disproportionately subjected to stop-and-search measures. Certainly, the need for studies of this nature may become a much-debated matter at national level, as was the case in Germany after the publication of ECRI's report in March 2020.¹⁰ The fact that the German authorities eventually decided to commission a study reviewing police work, including racism in policing, is a positive step.

■ Serious efforts have also been made to provide more guidance to police officers, to improve complaints and mediation mechanisms and to recruit staff with minority or migrant backgrounds.¹¹ In the Netherlands, a new operational framework for police control measures was adopted and tested, complaints officers and co-ordinators were trained and pilot projects with independent mediators were implemented. In Germany, ECRI noted that more than 30% of Berlin police staff members had migrant backgrounds in 2018. In the Slovak Republic, plans to recruit 2 000 Roma as members of civic patrols working closely with the police are also a step forward.¹²

■ However, the failure to recruit police officers with different minority backgrounds and the lack of adequate training and guidance on the issue of racial profiling and on the use of the reasonable suspicion standard have also emerged as significant obstacles in addressing racism within the police in other countries. Poor police accountability and the absence of a specialised investigative body that is genuinely independent of police and prosecuting services have been among the most recurrent issues over the last few years.¹³

■ Racism in policing may also mirror racism and inequalities in the society at large. It is no coincidence that cases of serious racist police abuse have served as catalysts for greater awareness of existing and more profound inequalities faced by members of certain communities in their day-to-day lives, including in the fields of education, employment, housing and health. In some countries, as in the Czech Republic for instance, most Roma find themselves trapped in a vicious circle of under-education leading to limited opportunities in the labour market and *de facto* residential segregation, which also has negative repercussions on their access to healthcare and other basic services.¹⁴ Whether this type of situation is the result of structural racism and inequalities, implying the existence of unconscious biases in public services and in society as a whole, or the result of other factors, may be discussed at length. What matters is that in the end decisive action is taken. Finally, achieving effective equality for all lies in the ability of European governments and societies to face up to their countries' past, including the dark side of it, in public discourse and in history teaching.¹⁵

Hate speech and hate crime

■ Victims of hate speech and hate crime in Council of Europe member states are mostly Roma, Jews, migrants, Muslims or Black people. Victimisation also frequently occurs on grounds of sexual orientation and gender identity.

7. ECRI sixth monitoring cycle reports on [Austria](#), paragraphs 99-101; on [Germany](#), paragraphs 104-109; on [Switzerland](#), paragraphs 110-112 and on the [Slovak Republic](#), paragraphs 104-109; as well as ECRI fifth monitoring cycle reports on [Finland](#), paragraphs 61-63; on the [Republic of Moldova](#), paragraphs 58-61; on [the Netherlands](#), paragraphs 98-104; on [Portugal](#), paragraphs 53-67; on [Romania](#), paragraphs 52-53 and 59-60; and on the [Russian Federation](#), paragraphs 92-97. See also *R.R. and R.D. v. Slovakia*, Application No. 20649/18, 1 September 2020.
8. ECRI sixth monitoring cycle report on the [Slovak Republic](#), paragraph 104.
9. ECRI fifth monitoring cycle reports on [Finland](#), paragraph 62, and on [the Netherlands](#), paragraph 100.
10. ECRI sixth monitoring cycle report on [Germany](#), paragraphs 108-109.
11. At the local level, the [Intercultural Cities Manual on Community Policing](#) is becoming a reference in this field.
12. ECRI fifth monitoring cycle report on [the Netherlands](#), paragraph 101, and sixth monitoring cycle reports on [Germany](#), paragraph 91, and on the [Slovak Republic](#), paragraph 63.
13. ECRI fifth monitoring cycle reports on [Portugal](#), paragraphs 62-63; on [Switzerland](#), paragraph 111; and the [Russian Federation](#), paragraph 96.
14. See, for instance, ECRI sixth monitoring cycle report on the [Czech Republic](#), paragraphs 76-96.
15. See, for example, ECRI fifth monitoring cycle report on [Portugal](#), paragraphs 31 and 35-36.

■ Hate speech and attacks against migrants have increased in recent years as a negative reaction to the significant increase in the influx of migrants into Europe in 2015 and afterwards. This also prompted increased support for populist xenophobic movements and political parties.

■ During the Covid-19 pandemic, Roma and migrants have been particularly stigmatised and targeted. In a statement of May 2020, the Bureau of ECRI raised the alarm and underlined the need for countering anti-Roma and anti-migrant hate speech and violence as a matter of urgency.¹⁶ The pandemic has notably shed light on deeply rooted antigypsyism in a number of Council of Europe member states.¹⁷

■ Hate speech by politicians against minority groups and migrants, including by parliamentarians and especially in the form of xenophobic populism during election campaigns, has increased in frequency in recent years, as noted in ECRI's annual report for the year 2019.¹⁸ This tendency was confirmed in ECRI monitoring reports published in 2020, including the one on Austria, where anti-immigrant and anti-Muslim rhetoric increased during election periods.¹⁹ At times, even high-level politicians have engaged in negative stereotyping.²⁰

■ The Advisory Committee on the Framework Convention for the Protection of National Minorities (ACFC) has continued to observe a trend whereby political representatives, both from far-right and mainstream political parties, actively play a part in or fail to condemn intolerant discourse and hate speech targeting national minorities.²¹

■ As a measure to counter hate speech by politicians, several parliaments, at both regional and national levels, have adopted codes of conduct for their members, with sanctions foreseen in cases of breaches. By way of example, the Parliament of Albania adopted in 2018 a code of conduct that, among other things, prohibits members of parliament from using racist hate speech, with violations resulting in disciplinary measures.²² Similar codes exist both on state (*Länder*) level and federal level in Germany.²³ Where such codes do not exist, ECRI has recommended their adoption, as is the case in its most recent reports on the Netherlands and the Russian Federation.²⁴

■ In many member states self-regulatory codes of conduct for the media that forbid the publication of hate speech have been adopted. For example, the Austrian Press Council has adopted a code of ethics for this purpose²⁵ and the Swiss Press Council has published guidelines for detecting and removing hate speech. Nonetheless, in several of its recent reports, ECRI has noted prevalent use of hateful language in the media towards many groups, including Muslims and Roma.²⁶

■ In its country reports, ECRI has frequently observed that hate crime is generally under-reported by victims. Under-reporting undermines any evaluation of the effectiveness of the response to hate crime. It therefore remains crucial to implement confidence-building measures to enhance the relationship between the police and vulnerable groups, in particular Black and Muslim communities. In Malta, a special police unit was set up in October 2020, whose tasks include outreach work towards typical victims of hate speech and hate crime. The unit will encourage victims to report these crimes and direct them to support services.

■ Support to victims of online hate speech is another area that needs urgent action. For instance, in the Austrian state of Styria, the anti-discrimination office developed a mobile application called BanHate,²⁷ through which online hate speech can be reported. Through this application, a significant number of posts were forwarded to the authorities for criminal investigation.²⁸ In the Czech Republic, an internet hotline for reporting hate crime was expected to be reinstated in 2020.²⁹ Similarly, in Finland, the police have launched a net-tip system through which people can report online hate material.³⁰

16. [Statement](#) by the Bureau of ECRI on the impact of the Covid-19 pandemic and related government responses on groups of concern to ECRI (19 May 2020).

17. [Study](#) prepared for the CDADI by Stéphanie Cramer Marsal, Christian Alhund and Robin Wilson (2020), "COVID-19: an analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe member states", pp. 28-30.

18. [ECRI annual report for the year 2019](#).

19. ECRI sixth monitoring cycle report on [Austria](#), paragraph 34.

20. ECRI sixth monitoring cycle reports on the [Czech Republic](#), paragraph 29 and on the [Slovak Republic](#), paragraph 38.

21. ACFC, [12th activity report](#), 2020, p. 11.

22. ECRI sixth monitoring cycle report on [Albania](#), paragraph 32.

23. ECRI sixth monitoring cycle report on [Germany](#), paragraph 48.

24. ECRI fifth monitoring cycle reports on [the Netherlands](#), paragraph 41 and on the [Russian Federation](#), paragraphs 39 and 40.

25. ECRI sixth monitoring cycle report on [Austria](#), paragraph 48.

26. ECRI sixth monitoring cycle report on [Switzerland](#), paragraph 32; ECRI fifth cycle monitoring report on [Romania](#), paragraph 29.

27. [App gegen Hasspostings und Hassverbrechen - BanHate](#).

28. ECRI sixth monitoring cycle report on [Austria](#), paragraph 45.

29. ECRI sixth monitoring cycle report on the [Czech Republic](#), paragraph 36.

30. ECRI fifth monitoring cycle report on [Finland](#), paragraph 41.

■ Adequate reporting and data collection are prerequisites for gauging the scale of hate speech and hate crime in each society. These in turn require a clear legal definition of what is to be understood by these terms, as well as appropriate training of law-enforcement officials, including prosecutors, to better identify those acts and to ensure the effective functioning of the justice system against them.³¹ Furthermore, it has often been brought to ECRI's attention that especially hate-motivated violence is not always classified consistently or not specified by law-enforcement bodies. Enhancing the capacity and expertise of those professionals is therefore important for the proper qualification of hate crimes and addressing them. To help member states confront this challenge, co-operation programmes are being carried out in Armenia, Georgia, Moldova, Ukraine and the Western Balkans.

■ Reliable data are key to developing appropriate legal and policy responses. As ECRI puts it, the lack of systematic data collection undermines any evaluation of the effectiveness of the relevant provisions and the possibility of obtaining a clear picture of the extent of hate crime and hate speech.³²

■ Regrettably, ECRI has in recent years observed shortcomings in data collection in a number of countries, including in Austria, Finland, Ireland, Latvia, Malta, Portugal and the Republic of Moldova.³³ In some countries, hate speech and hate crime statistics are combined, such as in Latvia.³⁴ While ECRI recognises the link between hate speech and hate crime, not separating the data collection on the two categories makes it more difficult to adopt appropriate policy measures. On a more positive note, in Spain, the ACFC welcomed the recognition, in 2019, of antigypsyism as a motivated bias in data collection by the police as a positive step.³⁵

■ Despite progress made in the execution of judgments of the European Court of Human Rights, some cases shed light on the full scope of challenges related to protecting Roma and Travellers against discrimination, hate speech and hate crime.

■ In recent country reports, ECRI has revealed numerous examples of antigypsyism manifested through hate speech and hate crimes against Roma and/or Travellers. Roma are still the target of hateful content on social networks in Austria, particularly in connection with the spreading of false information.³⁶ ECRI is also concerned about the use of hate speech against Roma communities in the Czech Republic, which is not limited to radical political parties but includes the higher political sphere, such as the president of the republic.³⁷ In Ireland, many of the prejudices and hate content spread online are directed against Irish Travellers, and more recently against Roma as well, leading to the creation of online groups aiming to expel these communities.³⁸ This flood of hate may lead to an increase in hate crimes, as noted by ECRI in the Slovak Republic, where statistics show that the majority of hate crimes reported in 2018 were directed against Roma.³⁹ ECRI also highlighted the negative role of some public authorities in this context, for example in Romania, where police officers often use excessive force against Roma.⁴⁰

■ In June 2020, the Committee of Ministers examined progress in the *Fedorchenko and Lozenko v. Ukraine*⁴¹ group of Court cases concerning the authorities' failure to effectively investigate violent acts carried out on racial or ethnic grounds mainly against Roma and, in the *Burlya* case, the failure to protect the homes of the applicants. The legislative framework governing criminal responsibility for hate crimes has been improved and now includes hatred based on racial or ethnic origin. The criminal code criminalises as hate crimes any deliberate actions of discrimination and any intentional acts aimed at incitement of racial, national or religious hatred. Practical guides have also been developed. The State Bureau of Investigation has been given the competence to investigate alleged cases of discriminatory motivated misconduct by the police through specialised investigators in this area. Finally, free legal aid is now available to victims of racially motivated crimes. However, progress is still needed as there is often an inadequate response by the law-enforcement authorities and justice system to hate crimes. The Committee of Ministers urged the authorities to establish a mechanism for accurately recording hate crimes and to monitor the responses of law-enforcement authorities and the progress of cases through the justice system so as to be in a position to evaluate the impact of the measures already taken and to identify, where appropriate, the need to take additional targeted measures.

31. See, for example, *Alkovic v. Montenegro*, Application No. 66895/10, 5 December 2017.

32. See, for example, ECRI fifth monitoring cycle report on [Finland](#), paragraph 28.

33. ECRI sixth monitoring cycle report on [Austria](#), paragraphs 61-62; ECRI fifth monitoring cycle reports on [Finland](#), paragraphs 28-29; on [Ireland](#), paragraphs 22-26; on [Latvia](#), paragraphs 19-20; on [Malta](#), paragraph 20-21; on [Portugal](#), paragraph 25; and on [the Republic of Moldova](#), paragraph 28.

34. ECRI fifth monitoring cycle report on [Latvia](#), paragraph 19.

35. ACFC (2020), *5th Opinion on Spain*, paragraphs 4, 129 and 139.

36. ECRI sixth monitoring cycle report on [Austria](#), paragraph 37.

37. ECRI sixth monitoring cycle report on [Czech Republic](#), paragraph 29.

38. ECRI fifth monitoring cycle report on [Ireland](#), paragraph 32.

39. ECRI sixth monitoring cycle report on [Slovakia](#), paragraph 56.

40. ECRI fifth monitoring cycle report on [Romania](#), paragraph 52.

41. *Fedorchenko and Lozenko v. Ukraine*, Application No. 387/03, 20 September 2012.

■ Significant progress has also taken place in the execution of the *Šečić v. Croatia* group of cases⁴² concerning the failure to consider racist motives behind attacks on Roma applicants and the lack of effective investigation. A special provision for a hate motive as an aggravating circumstance of criminal offences has been adopted. A specialised police unit to deal specifically with hate crimes has been established. The effectiveness of criminal investigations is subject to judicial review by the Constitutional Court. Finally, targeted training programmes and awareness-raising measures to ensure that hate crimes are properly classified and effectively prosecuted have been put in place. The main issue remaining under consideration relates to the authorities' efforts to improve the quality of their statistical data collection on hate crime. ECRI had pointed out that despite the generally good data collection system for hate crimes, the available data refer to different stages of proceedings leading to variations in statistics.

■ Court judgments show that alleged cases of police violence or brutality against Roma, even if afterwards reported to the authorities by the victims, often concerned minors, rarely necessitated the use of force by the police and are often not effectively investigated.⁴³ A large part of police violence cases decided by the Court concern violence against Roma, even though the Court may not always conclude that there has been discrimination on grounds of (Roma) ethnic origin or explore the fact that the observed conduct could have been the result of structural or institutional racism, for example in the police force.

■ At the 10th Council of Europe Dialogue with Roma and Traveller Civil Society meeting on 26 and 27 November 2020, representatives reported an increasing number of hate speech incidents and emphasised that the severity of the aggressions had been aggravated by the Covid-19 crisis.

■ According to the review of the implementation by member states of Committee of Ministers Recommendation CM/Rec(2010)5, which was carried out in 2018 and 2019, there was some progress in inclusion of the grounds of sexual orientation or gender identity in hate crime and hate speech legislation. This was confirmed by ECRI's findings in recent years. By way of example, in the Finnish criminal code, sexual orientation is mentioned in the list of grounds for hate or bias-related offences. While not explicitly included in the criminal code, gender identity is mentioned as a ground in the preparatory documents, which play an important role for interpreting legislation in the Finnish legal system.⁴⁴ In some other member states, the prohibition against discrimination and hate speech is included in separate anti-discrimination legislation. This is the case in Slovenia, where the Act on Protection against Discrimination includes sexual orientation and gender identity among prohibited grounds of discrimination.⁴⁵

■ According to the above-mentioned review, by 2018, 25 member states had revised anti-discrimination legislation, for example by enlarging the scope of expressly prohibited grounds of discrimination to include sexual orientation and gender identity on an equal footing (Albania, Georgia, Greece, Luxembourg, North Macedonia, Slovakia), or by including sex characteristics (Montenegro) or gender expression (Norway). However, effective implementation of existing legislation remains a challenge and hate crimes based on sexual orientation and gender identity continue to be under-reported. The main challenges also include difficulties for victims to access the justice system, the rise of hate speech in social media and the fact that public officials making homophobic or transphobic statements are rarely sanctioned.

■ In the report of her visit to Armenia,⁴⁶ the Commissioner for Human Rights called on the authorities to take prompt and firm action against all instances of violence, hate speech and hate crimes targeting LGBTI people in the country. On the International Day Against Homophobia, Transphobia and Biphobia 2020, the Commissioner called on all member states of the Council of Europe to take resolute action against hate speech targeting LGBTI people, which is spreading across Europe. The statement contains country-specific references.⁴⁷

■ During the reporting period, there have been important developments in relation to the execution of the Court judgments related to hate crime targeting sexual orientation, gender identity and expression and sex characteristics.

42. *Šečić group v. Croatia*, Application No. 40116/02, 31 May 2007.

43. *A.P. v. Slovakia*, Application No. 10465/17, 28 January 2020, *R.R. and R.D. v. Slovakia*, Application No. 20649/18, 1 September 2020, and *X and Y v. North Macedonia*, Application No. 173/17, 5 November 2020.

44. ECRI fifth monitoring cycle report on *Finland*, paragraph 96.

45. ECRI fifth monitoring cycle report on *Slovenia*, paragraphs 14 and 34.

46. Commissioner for Human Rights, Report following her visit to Armenia from 16 to 20 September 2018, 29 January 2019 (<https://bit.ly/2W1OV52>).

47. Commissioner for Human Rights, "Hate mongering against LGBTI persons has no place in today's Europe", statement on the occasion of the International Day Against Homophobia, Transphobia and Biphobia, 15 May 2020 (<https://bit.ly/386kj8f>).

■ In its last examination of *Identoba and Others v. Georgia*, in September 2020,⁴⁸ the Committee of Ministers noted that from 2018 to 2019 there was a significant increase in hate crime investigations, prosecutions and convictions and that discrimination on grounds of sexual orientation and gender identity remains a serious challenge in Georgia, in addition to freedom of expression and assembly for LGBTI people. The Committee of Ministers reiterated their call on the authorities to establish a specialised investigative unit within the police in order to carry out effective investigations of hate crimes.

■ Following its examination of *M.C. and A.C. v. Romania*⁴⁹ in September 2019, the Committee of Ministers noted progress in terms of the effectiveness of investigations into hate crime incidents, including capacity building for criminal justice system officials. However, it noted that further efforts are required, including a common methodology for hate crime investigations, as well as training for the investigative and judicial authorities specifically focused on detecting and handling hate crimes. An effective data collection system in relation to hate crimes should also be established. To help Romania and Georgia to implement the Court's judgments, the Council of Europe, in co-operation with the police academies, is offering training to police to address hate crime based on sexual orientation, gender identity and expression and sexual characteristics.⁵⁰

LGBTI equality

■ According to the review of the implementation by member states of [Committee of Ministers Recommendation CM/Rec\(2010\)5](#), carried out in 2018 and 2019, a number of member states have made substantial progress regarding the legal and social recognition of LGBTI people and their ability to enjoy equal rights.⁵¹

■ Quick and transparent procedures for legal gender recognition based on self-determination is a reality today in eight member states, a sign of the political commitment to go beyond the minimum standards set by the recommendation.

■ Malta has adopted the most progressive legal framework on gender recognition in the world, giving gender identity constitutional protection. Belgium, Denmark, France, Greece, Ireland, Luxembourg, Norway and Portugal removed medical requirements from legal gender recognition procedures, instead basing them on the self-determination principle. Notwithstanding this, many transgender people continue to face extensive obstacles in changing their sex marker with public institutions and private organisations. Unfortunately, explicit sterilisation requirements are still a reality in several member states covered by the review: Armenia, Azerbaijan, Bosnia and Herzegovina, Czech Republic, Finland, Georgia, Latvia, Montenegro, Romania, Serbia and the Slovak Republic, while others have laws requiring surgery or treatment likely to result in sterilisation.

■ In May 2020, Hungary adopted a law that made legal gender recognition for trans and intersex people impossible in the country. Parliamentary Assembly General Rapporteur on the rights of LGBTI people, Fourat Ben Chikha, stressed that depriving trans and intersex people of legal gender recognition in Hungary is intolerable.⁵²

■ During the reporting period, there have been several important developments in relation to the execution of judgments of the European Court of Human Rights related to legal gender recognition for transgender persons.

■ In 2018, the Committee of Ministers closed its supervision of the execution of the *A.P., Garçon and Nicot v. France* judgment.⁵³ The law adopted in 2016 and a supplementary decree of 2017 expressly exclude sterilisation from the conditions required of transgender persons to obtain legal recognition of their gender identity. The Committee of Ministers also closed its supervision of the *YY v. Turkey*⁵⁴ case in 2018 as the sterilisation requirement in Article 40 of the civil code was declared unconstitutional and deleted further to a Constitutional Court judgment of 2017. In March 2020, the Committee of Ministers noted with satisfaction that following

48. *Identoba and Others v. Georgia*, Application No. 73235/12, 12 May 2015.

49. *M.C. & A.C. v. Romania*, Application No. 12060/12, 12 April 2016.

50. See Council of Europe (2017), "Policing hate crime against LGBTI persons: training for a professional police response", (<http://bitly.ws/aMEa>).

51. See Council of Europe, CDDH (2020), "Combating discrimination on grounds of sexual orientation and gender identity in Council of Europe member states – A review of the Recommendation CM/Rec(2010)5 of the Committee of Ministers", (<http://bitly.ws/aME7>), ECRI monitoring work (<https://bit.ly/2WdHibX>) and the work of ILGA-Europe (<https://bit.ly/2KdMJVb>), Transgender Europe (<https://bit.ly/373qlH4>) and Organisation Intersex International Europe (<https://bit.ly/371GT2o>).

52. PACE General Rapporteur on the rights of LGBTI persons, "Depriving trans and intersex persons of legal gender recognition in Hungary is intolerable, says General Rapporteur", 22 May 2020 (<https://bit.ly/2LptQiU>).

53. *AP, Garçon and Nicot v. France*, Application Nos. 79885/12, 5247/13, 52596/13, 6 April 2017.

54. *YY v. Turkey*, Application No. 14793/08, 10 March 2015.

the judgment *X v. "the former Yugoslav Republic of Macedonia"*,⁵⁵ a broad road map of steps with a view to the adoption of a gender recognition law was adopted by the authorities. The Committee of Ministers encouraged the authorities to adopt the necessary legislation quickly.

■ At its last examination of the case of *L. v. Lithuania* in 2018,⁵⁶ the Committee of Ministers noted with concern that after 10 years, a clear legal framework regulating the conditions and procedures for gender reassignment and legal recognition has still not been adopted. There have been some positive developments in the domestic courts so that official documents can be amended, and compensation can be claimed for both non-pecuniary and pecuniary damage for the financial costs of gender confirmation surgeries.

■ Several positive trends were identified in the review of the implementation by member states of Committee of Ministers Recommendation CM/Rec(2010)5, in relation to private and family life. By 2018, 27 member states had adopted laws on either same-sex partnerships or same-sex marriages, 17 had extended access to joint adoption and 18 to second-parent adoption. Assisted reproductive treatment is provided to same-sex couples in 13 member states and to single people in 26. A growing challenge is the need for more comprehensive protection during divorce and custody proceedings of LGBTI parents.

■ The practice of "sex-normalising" surgeries on intersex children is still a particularly problematic issue. These surgeries have only been banned in two member states. In most countries, no explicit prohibition to perform the surgery without the child's consent exists. However, Malta and Portugal adopted legislation banning sex-normalising surgeries and other member states (Belgium, Bosnia and Herzegovina, Finland, Germany, Greece, Norway and Spain) revised anti-discrimination legislation to include sex characteristics as a protected ground.

■ In most member states, the right to freedom of expression and assembly on topics dealing with sexual orientation and gender identity can be exercised without significant restrictions. At the same time, Court judgments and ECRI monitoring reports indicate that certain states still fail to take sufficient measures to protect participants of peaceful demonstrations.⁵⁷ In addition, restrictions of freedom of expression have been introduced in some member states through legislation or administrative decisions banning LGBTI events.⁵⁸

■ The emergence of a widespread pattern of stigmatisation and statements targeting LGBTI people in Poland culminated with 88 localities declaring themselves LGBTI-free zones. In the 2020 "Memorandum on the stigmatisation of LGBTI persons in Poland",⁵⁹ the Commissioner for Human Rights called on the Polish authorities to take steps promptly to ensure that hate speech and hate crimes based on sexual orientation, gender identity or sex characteristics are properly punished in law and in practice.

■ As member states throw all their collective efforts behind curbing the spread of the coronavirus, civil society organisations across Europe are struggling to support LGBTI people in their communities.⁶⁰ The Covid-19 pandemic threatens to compound the disparities that LGBTI people already experience in their access to healthcare, as well as their high rates of poverty.⁶¹

55. *X v. "the former Yugoslav Republic of Macedonia"*, Application No. 29683/16, 17 January 2019. As of 12 February 2019, the official name of this country has changed to North Macedonia.

56. *L. v. Lithuania*, Application No. 27527/03, 11 September 2007.

57. ECRI [annual report](#) for 2018, paragraph 25. See also the ECRI fifth cycle monitoring report on [the Russian Federation](#), paragraph 59.

58. *Genderdoc-M v. Moldova*, Application No. 9106/06, 12 September 2012; *Bayev and Others v. Russia*, Application Nos. 67667/09 44092/12 56717/12, 20 June 2017; *Berkman v. Russia*, Application No. 46712/15, 1 December 2020.

59. Commissioner for Human Rights, "Memorandum on the stigmatisation of LGBTI persons in Poland", 3 December 2020, (<https://bit.ly/3gzDsTI>).

60. See ILGA-Europe, "COVID-19 impacts on LGBTI communities in Europe and Central Asia: a rapid assessment report", 19 June 2020 (<https://bit.ly/37PNDiZ>); Transgender Europe, "COVID-19 & trans people" (<https://bit.ly/3n062A1>); and Dan Christian Ghattas and Irene Kuzemko (2020), "COVID-19 – A report on the situation of intersex people in Europe and Central Asia", OII Europe, questionnaire developed by Irene Kuzemko, Berlin (<https://bit.ly/37UivPt>).

61. Statement by Secretary General Marija Pejčinović Burić ahead of the International Day Against Homophobia, Transphobia and Biphobia (IDAHOT), 15 May 2020 (<https://bit.ly/3m0C8dL>).

Towards a Committee of Ministers recommendation on combating hate speech

■ The Council of Europe's intergovernmental Steering Committee on Anti-discrimination, Diversity and Inclusion and the Steering Committee on Media and Information Society (CDMSI) are preparing a new legal instrument to guide member states in developing holistic policies to prevent, counter and redress hate speech and to support victims.

■ Given the complexity and multidimensional nature of hate speech, a comprehensive human rights-based approach to addressing and countering such speech must be informed by the interdependence and interplay between the different rights and freedoms enshrined in the European Convention on Human Rights, including freedom of expression; the right to non-discrimination and equality; the right to life; the right to be free from torture, inhuman or degrading treatment; the right to private and family life; freedoms of thought, conscience and religion; freedom of assembly and association; and the right to an effective remedy.

■ The legal instrument will outline the responsibilities of member states to take appropriate and effective measures against hate speech in all its forms, taking into account the different kinds of harm caused by different instances of hate speech for different groups in different contexts, and the need for properly calibrated responses that are fully aligned with the case law of the European Court of Human Rights and broader tenets and contemporary, authoritative interpretations of European and international human rights law.

■ At the same time, member states should put in place and ensure effective guarantees for a robust right to the freedom of expression, which includes protection for information and ideas that offend, shock or disturb the state or any sector of the population, in order to safeguard the pluralism, tolerance and broadmindedness that are the hallmarks of democratic society.

■ The following elements are being considered: monitoring and hate speech; counter-speech; political discourse and leadership; human rights education and awareness raising for specific professional groups as well as the general public; legal and non-legal mechanisms for reporting; support to victims and redress, including conditions for the takedown of illegal hate speech online; a safe and favourable environment for public debate; roles and obligations of specific actors, such as political representatives and officials, justice professionals, law-enforcement professionals, the media and internet intermediaries.

DIVERSITY AND INCLUSION

Measurement criteria

- ▶ Adequate legal and institutional framework for combating discrimination against national minorities.
- ▶ Implementation of the recommendations of the Advisory Committee on the Framework Convention for the Protection of National Minorities and of the Committee of Experts of the European Charter of Regional or Minority Languages (COMEX).
- ▶ Level of use of regional and minority languages and level of participation of persons belonging to national minorities in public life.
- ▶ Adoption of policies to combat segregation of minorities, including Roma and Travellers, and migrants in schools and in neighbourhoods.
- ▶ Adoption by member states of measures to promote intercultural integration.
- ▶ Adoption and implementation of comprehensive local strategies for migrant and refugee inclusion.

Effective equality for national minorities

■ The legal and institutional framework for combating discrimination against national minorities has improved in some countries, for example in Bulgaria, which has introduced a broader prohibition of incitement to discrimination, violence or hatred on religious grounds.⁶² In some states, however, the need for comprehensive

⁶². ACFC, 4th Opinion on Bulgaria, 2020, paragraph 86.

anti-discrimination legislation has been stressed by the advisory committee, and in particular the fact that such legislation should cover all grounds of discrimination.⁶³ Similarly, the Committee of Experts of the European Charter for Regional or Minority Languages found that the fact that language is not an explicitly prohibited ground for discrimination may lead to insufficient consideration of cases of discrimination on this ground.⁶⁴

■ The Advisory Committee on the Framework Convention for the Protection of National Minorities has observed some progress concerning national anti-discrimination bodies and, in some member states, regarding the institutional powers or budgetary resources of equality bodies.⁶⁵ For example, in Cyprus, the Ombudsperson's Office has seen an increase in human and financial resources, which provide better conditions to ensure the more timely examination and treatment of discrimination-related complaints, including those submitted by people belonging to religious groups and ethnic communities, more *ex officio* investigations and additional awareness-raising activities to reach out to groups most exposed to discrimination.⁶⁶ In some countries, however, ombudspersons or equality bodies do not exist, are not sufficiently independent or do not have enough resources or sufficiently strong mandates to reach out to and protect persons belonging to minorities,⁶⁷ despite previous recommendations by the advisory committee to this effect. Furthermore, the duty of states to raise awareness among people and groups most frequently targeted by discrimination of the applicable legislative standards and of the available remedies to victims of discrimination is regularly underlined by the advisory committee.⁶⁸

■ The Covid-19 pandemic has exacerbated the vulnerability of certain national minorities in many countries and has deepened the inequalities that already exist in many Council of Europe member states. In May 2020, the Advisory Committee on the Framework Convention for the Protection of National Minorities warned that the suspension of classes in schools and pre-school education during the pandemic had often resulted in the unequal access to education and discrimination of children belonging to national minorities, particularly those who were not proficient enough in the official languages to be provided with appropriate educational content.⁶⁹

■ The widespread lack of communication and health information in regional or minority languages was a major concern during the pandemic, which the Committee of Experts of the European Charter for Regional or Minority Languages regretted, reminding states on several occasions of their obligations under the charter.⁷⁰ Of the 47 Council of Europe member states, 26 provided Covid-19-related information, health advice and services, including emergency hotlines in some regional or minority languages in spring 2020, 18 of them being parties to the charter.⁷¹

■ In Albania, information on Covid-19 provided by the authorities has been translated into eight minority languages in the framework of the joint European Union–Council of Europe Horizontal Facility for the Western Balkans and Turkey II.⁷² The information was already available from the national authorities in Albanian, and this project aims to share it with speakers of other languages in the region. The booklet can be used by majority and minority populations in many countries during the Covid-19 pandemic. The lessons learnt during this period should include the development by member states of public health policies taking full account of language-related issues.

■ The Advisory Committee of the Framework Convention for the Protection of National Minorities published its 12th Activity Report in 2020, in which it reflected on the challenges of national minority participation. It noted the continuing rise in xenophobia and racism, and how this infringes on the democratic space of national

63. ACFC, 5th Opinion on Spain, 2020: the Advisory Committee noted that “the grounds of language, citizenship and national or ethnic origin are missing from the Constitution and from other legal provisions” (paragraph 51) and “that a fragmented approach to anti-discrimination legislation does not guarantee adequate protection against discrimination.” (paragraph 53).

64. COMEX, 7th report on Sweden, 2020, paragraph 12.

65. ACFC, 12th activity report (2018-2020), 2020, p. 13.

66. ACFC, 5th Opinion on Cyprus, 2019, paragraph 4.

67. ACFC, 5th Opinion on Portugal, 2019, paragraphs 38-40; 3rd Opinion on Montenegro, 2019, paragraphs 50-51; 3rd Opinion on Georgia, 2019, paragraphs 37-39; 5th Opinion on Spain, 2020, paragraphs 71-72; 5th Opinion on Hungary, 2020, paragraphs 63-64; 4th Opinion on Bulgaria, paragraphs 39-43.

68. See, *inter alia*: ACFC, 5th Opinion on Denmark, 2019, paragraph 52; 4th Opinion on Portugal, 2019, paragraph 49; 3rd Opinion on Georgia, 2019, paragraph 46; ACFC, 4th Opinion on the Russian Federation, 2018, paragraphs 38-39.

69. ACFC, “Statement on the COVID-19 pandemic and national minorities”, 28 May 2020.

70. COMEX, Statement by the chair, 25 March 2020. A survey carried out by the Federal Union of European Nationalities (FUEN) showed that 44.2% of the respondents had received no Covid-19-related information in their regional or minority language (source: FUEN, “Do you speak Corona?”, 2020, p. 7). However, positive examples could also be found such as in the United Kingdom where a comprehensive [guidance on Covid-19 in Welsh](#) has been on the official website of the British Government since spring 2020.

71. Armenia, Austria, Croatia, Denmark, Finland, Germany, Hungary, Netherlands, Norway, Poland, Romania, Serbia, Slovak Republic, Slovenia, Spain, Sweden, United Kingdom and Ukraine. See: FUEN, “Do you speak Corona?”, 2020 and CDADI, “COVID-19: an analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe member states”, 2020.

72. See: www.coe.int/en/web/tirana/covid-19-and-human-rights.

minorities – excluding them from political discourse and decision-making processes. The advisory committee highlighted how the democratic participation of all in society is the foundation of a genuinely democratic society, and how working with the Framework Convention's standards and norms can help to create inclusive societies that are ready for the future.

■ Participation of people belonging to national minorities can take different forms, be it through direct representation to parliament,⁷³ minority councils,⁷⁴ local governance bodies or through an active involvement of minority representatives in decision making at all levels.⁷⁵ It also implies that a dialogue is established between the authorities and the representatives of national minorities and that countries actively seek the involvement of national minorities in the drafting, implementation and evaluations of strategies and legislation and in decisions, particularly those affecting them.⁷⁶ In this respect, the advisory committee has repeatedly underlined that formal participation is not sufficient and that countries “should also ensure that their participation has a substantial influence on decisions which are taken, and that there is, as far as possible, a shared ownership of the decisions taken”.⁷⁷ This possibility given to everyone – minorities and majority alike – to voice their concerns in public debate and to influence decisions is a key indicator of a genuinely democratic society.

■ The Steering Committee on Anti-discrimination, Diversity and Inclusion launched a study on the political participation of young people belonging to national minorities, in September 2020, in order to assess the current situation and compile good practice in this field. It has issued two questionnaires to states and to organisations involved in the youth sector and will report back on its findings in the course of 2021.

■ The effectiveness of the European Charter for Regional or Minority Languages and the Framework Convention for the Protection of National Minorities is enhanced by monitoring of the implementation of the parties' obligations. The monitoring mechanisms have been strengthened through reforms that entered into force in July and December 2019 respectively.

■ Reform of the language charter addressed delays in the submission of periodical state reports, adjusted their due dates with those of the Framework Convention and introduced a confidential dialogue and an information procedure on the implementation of recommendations for immediate action.⁷⁸ COMEX adopted its first four evaluations with recommendations for immediate action in 2020. Reform of the Framework Convention aims to update the monitoring system, including shortening the period before publication of an opinion, introducing a confidential dialogue and a rapid response mechanism.⁷⁹ The advisory committee adopted four opinions in accordance with the new procedure in 2020.

Regional or minority languages

■ The Covid-19 pandemic has shown that the Council of Europe standards regarding the rights of people belonging to national minorities were relevant in addressing the emergency and that what was often lacking was their full implementation before the emergency. Although progress can be seen in many countries,⁸⁰ it has been noted that countries do not always follow the monitoring recommendations, and that the expert committees must then repeat their recommendations, cycle after cycle. This is the case for education in and of minority languages, where the lack of a structured approach, or the chronic lack of minority language teachers, is repeatedly pointed out by COMEX.⁸¹

■ Education in and of minority languages is crucial for the preservation and development of these languages, and thus for the maintenance of the rich linguistic diversity in Europe. However, during the Covid-19 pandemic, of 47 member states, only 22 provided at least some online education in or of regional or minority

73. ACFC, 5th Opinion on Hungary, 2020, paragraph 158; and 4th Opinion on Poland, 2020, paragraph 165.

74. ACFC, 5th Opinion on Finland, 2019, paragraph 180.

75. ACFC, 5th Opinion on Denmark, 2019, paragraph 129.

76. ACFC, 4th Opinion on Switzerland, 2018, paragraph 108; 3rd Opinion on the Netherlands, 2019, paragraph 158; 5th Opinion on Cyprus, 2020, paragraph 208.

77. ACFC, 12th activity report, p. 15; ACFC (2008), Thematic Commentary No. 2 “The Effective Participation of People Belonging to National Minorities in Cultural, Social and Economic Life and in Public Affairs”, paragraph 19.

78. Committee of Ministers, “Strengthening the monitoring mechanism of the European Charter for Regional or Minority Languages”, decisions CM/Del/Dec(2018)1330/10.4e, adopted on 28 November 2018.

79. Committee of Ministers Resolution CM/Res(2019)49 on the revised monitoring arrangements under Articles 24 to 26 of the Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers on 11 December 2019.

80. COMEX, 5th report on Montenegro, 2020, p. 4 (acceptance and tolerance amongst the minorities and the majority population); COMEX, 6th report on the Netherlands, 2019, paragraph 65 (use of Frisian in communication with and within the public authorities); ACFC, 5th opinion on Spain, 2020, paragraph 3 (social inclusion of Roma in all fields of daily life); ACFC, 4th Opinion on Portugal, 2019, paragraph 6 (anti-discrimination legal framework).

81. COMEX, 5th report on Armenia, 2020, p. 4; 6th report on Croatia, 2020, p. 5; 7th report on Sweden, 2020, p. 4.

languages.⁸² The role of individual teachers and schools has proved to be crucial in ensuring that students have access to education in their own language during the pandemic. Similarly, speakers' associations played an important role in providing online education in regional or minority languages.

■ New laws on education and on state language have triggered tensions with national minorities in a number of member states, underlining the difficulty to find a balance between the legitimate aim of promoting the state language, which has been clearly recognised by the Framework Convention and the charter,⁸³ and the right of those belonging to national minorities to be taught in their language, which is also protected by these two treaties as a crucial element of the preservation of the identity of national minorities.

■ Among the recurrent problematic areas in the field of minority language protection, COMEX frequently points out the lack of proactive measures to ensure the use of minority or regional languages by administrative authorities and public services.⁸⁴ The use of minority or regional language in the media is another area of concern, where some languages are absent, while for others the regularity and duration of programmes in minority or regional languages are considered insufficient to promote them as languages of communication and to properly reflect the diversity of society in the media.⁸⁵

Roma and Traveller inclusion

■ Many of the 10-12 million Roma and Travellers in Europe still suffer from discrimination, poverty and exclusion. The existence of widespread antigypsyism reinforces and aggravates their economic and social deprivation across Europe.

■ Inequalities persist despite ongoing efforts made at national, European and international levels since the 2010 Strasbourg Declaration on Roma and the Council of Europe's Thematic Action Plan on the Inclusion of Roma and Travellers (2016-2019) to tackle anti-Roma and anti-Traveller prejudice, discrimination and hate crimes and address further their inclusion. Particularly in the areas of access to education, employment, healthcare and housing, the situation continues to be far from satisfactory. Lack of political will and limited capacity of local administrations to develop, implement and monitor effective policies and projects hamper the implementation of Roma and Traveller integration strategies at local level. The lack of mutual trust also hinders co-operation between local authorities and local Roma and Traveller communities. The new Strategic Action Plan for Roma and Traveller Inclusion (2020-2025), approved by the Committee of Ministers in January 2020, is giving new impetus to the Organisation's activities in this field.

■ Despite progress made in the execution of judgments of the European Court of Human Rights, some cases shed light on the full scope of challenges related to the access to housing.

■ In March 2020, the Committee of Ministers examined progress in the *Yordanova and Others v. Bulgaria*⁸⁶ group of cases concerning the eviction of Roma or demolition orders for their homes. Some progress has been achieved through domestic case law, as some courts have started to develop a practice of proportionality review for demolition orders and actions for the enforcement of demolition orders. However, no progress has been achieved with the pending legislative reform required to ensure that orders to recover public land or buildings would be subject to proportionality review, even in cases of unlawful occupation.

■ Recent judgments by the Court confirm that the right to the respect for private and family life and the home is still not always respected in the case of forceful evictions.⁸⁷

■ Roma and Travellers were particularly affected by the Covid-19 pandemic. Many were denied equal access to health information or healthcare, and to hygiene products or medication. In some Roma settlements or halting sites for Travellers not even the most basic needs for sanitation or running water were met.⁸⁸ Small grant schemes were put in place by the European Union–Council of Europe Joint Programmes ROMACT and ROMACTED to support municipalities and Roma communities in mitigating the consequences of the Covid-19 pandemic on Roma families and individuals, often providing urgent necessities such as sanitary and healthcare

82. FUEN (2020), "Do you speak Corona?"; CDADI (2020), "COVID-19: an analysis of the anti-discrimination, diversity and inclusion dimensions in Council of Europe member states".

83. Article 14.3 of the Framework Convention. See also paragraph 78 of the Explanatory Report of the Framework Convention: "[t]he opportunities for being taught the minority language or for receiving instruction in this language are without prejudice to the learning of the official language or the teaching in this language. Indeed, knowledge of the official language is a factor of social cohesion and integration". The preamble of the charter recognises that "the protection and encouragement of regional or minority languages should not be to the detriment of the official languages and the need to learn them".

84. COMEX, 5th report on Montenegro, 2020, paragraph 28; COMEX, 5th report on Slovenia, 2020, paragraphs 26-29.

85. COMEX, 6th report on Croatia, 2019, paragraphs 50-54 and 58; 5th report on Armenia, 2020, paragraphs 46-50.

86. *Yordanova and Others v. Bulgaria*, Application No. 25446/06, 24 April 2012.

87. *Hirtu and Others v. France*, Application No. 24720/13, 14 May 2020.

88. PACE news (2020) COVID-19: Rapporteur denounces discrimination against Roma and Travellers.

products as well as information on recommended behaviour during the pandemic, distributed in the Romani language.⁸⁹ The European Union–Council of Europe Joint Programme JUSTROM expanded the scope of the programme for Roma women from access to justice to access to health information and healthcare.⁹⁰

■ Several Roma settlements were cordoned off or quarantined by the police or the military, depriving residents of liberty of movement and thus of the possibility to seek work opportunities outside the camps. Even the provision of food aid and the disbursement of welfare benefits were endangered.⁹¹ In some countries, Roma were demonised by the sensationalist press or publicly scapegoated by right-wing politicians who accused them of being responsible for bringing or spreading the virus. Such conduct often led to increased hate speech against Roma or Travellers in online forums or social media.⁹²

■ On 8 April 2020, on the occasion of International Roma Day, the Secretary General of the Council of Europe issued a statement together with Helena Dalli, European Commissioner for Equality, calling for efforts by member states to ensure that marginalised groups and ethnic minorities, in particular Roma, do not face additional disadvantage, discrimination, hate speech or hate crimes. They called on all European countries to comply with the standards of the European Convention on Human Rights and the European Social Charter by stepping up their support for marginalised groups, and to do their utmost to prevent national or ethnic minorities, in particular Roma, from becoming scapegoats in the current crisis. They urged governments to ensure equal access to the provision of public services, which in times of a pandemic also includes the provision of food, clean water and basic means of hygiene and health protection.⁹³

■ First-hand accounts of the hardships and suffering experienced by Roma and Travellers during the Covid-19 pandemic were shared during the 9th meeting of the Council of Europe Dialogue with Roma and Traveller Civil Society, held on 29 and 30 October 2020.⁹⁴

Inclusion of the history of Roma and Travellers in school curricula and teaching materials and an action plan for Roma and Traveller inclusion

■ On 1 July 2020, the Committee of Ministers adopted Recommendation CM/Rec(2020)2 on the inclusion of the history of Roma and/or Travellers in school curricula and teaching materials, calling upon member states to counter persistent antigypsyism by offering balanced and contextualised teaching of the history of Roma and Travellers. Such teaching should reflect their historical presence in Europe for centuries and thus help to understand their contribution to the common European cultural heritage as well as their situation and place in society today.

■ The recommendation emphasises the importance of teaching about the Roma Holocaust, as perpetrated by the Nazi regime and its allies, as well as other acts committed against Roma and Travellers across Europe. It calls on governments to integrate activities related to the remembrance of the Roma Holocaust into formal and non-formal education, in connection with the European Roma Holocaust Memorial Day (2 August) or with a date more appropriate in the historical context of the country concerned.

■ Negative historical periods should be complemented by teaching about historical episodes when Roma and Travellers were not victims. Positive narratives about Roma and Travellers, such as their contribution to the local, national and European cultural heritage or economy, for example through trade, metalwork or other handicrafts, should be included.

■ The European Roma Institute for Arts and Culture (ERIAC), established in 2017 in Berlin by the Council of Europe in co-operation with the Open Society Foundations (OSF) and the Alliance for ERIAC, continued its international cultural outreach programme supported by the German Government. The institute launched new initiatives on the teaching and learning of Romani history and language, for example through codification of the language or publication of textbooks and teaching materials. Exhibitions in Berlin on diaspora arts in Europe included Romani, Sinti and Jewish artists. Upon invitation by the Serbian Government, the first ERIAC branch office will soon be opened in Belgrade.

■ Including the history of Roma and/or Travellers in school curricula is thus recommended as an effective tool to combat prejudice, discrimination, hate speech, antigypsyism, history distortion and Holocaust denial.

89. For the beneficiaries of the programmes – ROMACT: Bulgaria and Romania; ROMACTED: Albania, Bosnia and Herzegovina, Montenegro, North Macedonia, Serbia, Turkey and Kosovo*.

90. In the beneficiary countries of the programme: Bulgaria, Greece, Italy and Romania.

91. FRA (2020), *Coronavirus pandemic in the EU – impact on Roma and Travellers* - Bulletin 5, pp. 11-12.

92. OSCE/ODIHR (2020), *OSCE Human Dimension Commitments and State Responses to the Covid-19 Pandemic*, p. 145.

93. 8 April, International Roma Day: “Step up human rights protection for Roma and guarantee their access to vital services during COVID-19 pandemic” – Newsroom.

94. See: www.coe.int/en/web/roma-and-travellers/dialogue-with-civil-society.

Council of Europe Strategic Action Plan for Roma and Traveller Inclusion (2020-2025)

■ The action plan was approved by the Committee of Ministers on 22 January 2020 and translates the strategic objectives of the Council of Europe regarding the protection and promotion of human rights, democracy and the rule of law into a policy framework for the social and intercultural inclusion of Roma and Travellers in Europe. It provides a flexible framework that is adaptable to country-specific conditions and can serve as a road map and practical tool for the design, implementation and adjustment of relevant programmes and actions.

■ The action plan aims to promote and protect the human rights of Roma and Travellers, to combat antigypsyism and discrimination and to foster inclusion in society. It is structured around three main lines of action:

- ▶ combating antigypsyism and discrimination and supporting real and effective equality;
- ▶ supporting democratic participation and promoting public trust and accountability;
- ▶ supporting access to inclusive quality education and training.

■ In addition, the intersectional needs of specific segments of the Roma and Traveller population who are particularly vulnerable or suffer from multiple discrimination will be tackled as cross-cutting issues.

■ The expected results are to be achieved through co-operation and capacity-building activities, such as promoting the participation and empowerment of Roma and Travellers through the Roma Political Schools and teaching Roma history and recognition of the Roma Holocaust.

■ In the framework of joint programmes implemented with the European Union, activities include Inclusive Schools – Making a Difference for Roma Children (INSCHOOL), Roma and Traveller Women's Access to Justice (JUSTROM), Building capacity at local level for the integration of Roma (ROMACT), and promoting good governance and Roma empowerment at local level (ROMACTED).

■ Other actions, such as the biennial International Roma Women's Conferences or the Action Plan for Ukraine are supported via voluntary contributions from member states. Roma and Traveller civil society organisations and individuals are consulted on the implementation and assessment of the plan through regular biannual dialogue meetings.

Access to quality inclusive education for Roma and Traveller children

■ Equitable access to quality inclusive education remains one of the major challenges for Roma and Traveller children. Considerable differences in educational attainments between Roma and non-Roma children have been reported in many member states because of persisting social exclusion, discrimination, racism and hate speech. Roma often find themselves in segregated schools or classes, enrolled in remedial classes, or schools for children with special educational needs, where they receive less demanding and often substandard education. The exclusion or separation of Roma and Travellers, or other minority groups, from or within educational systems harms the social integration of children and may further exacerbate attitudes of racism, discrimination and exclusion. The effects of the Covid-19 crisis and the lockdowns have left many children unable to attend school, thus further increasing the educational gaps between Roma and non-Roma children.

■ High-quality and inclusive education is essential for the personal and professional development of Roma and Traveller individuals and communities and will enable children and young people to become engaged and responsible citizens in social and democratic life. The fundamental principle of inclusive education is that all children should learn together, wherever possible, regardless of their differences. Inclusive schools must recognise and respond to the diverse needs of students, accommodating both different styles and rates of learning and ensuring quality education for all through appropriate curricula and teaching methods or materials. Access to quality education should be ensured without discrimination on any ground.

■ Some judgments of the European Court of Human Rights, and the state of their implementation, reveal domestic practices that run counter to and prevent the inclusion of Roma into society, pointing to the lack of inclusive quality education for Roma children.

■ At its last examination in June 2019 of the *Horvath and Kiss v. Hungary* case concerning the discriminatory misplacement and overrepresentation of Roma children in special schools for children with mental disabilities, due to their systematic misdiagnosis, the Committee of Ministers expressed grave concern that the authorities had still not provided statistics or other information to demonstrate the effective implementation and the actual impact of the current examination system, in particular as regards the evolution of the number of Roma children in special schools. It noted with interest the authorities' initiative concerning collection of data with a view to verifying whether the problem of systematic misdiagnosis and misplacement still prevails under the current system and invited them to carry out analysis on whether the current examination system is applied comprehensively and effectively across the country.

■ At its last examination of the similar *D.H. and others v. the Czech Republic* case in December 2020,⁹⁵ the Committee of Ministers noted with satisfaction the closure, from 1 September 2020, of the reduced educational programme for children with "mild mental disabilities"; the significant drop in 2019 of the proportion of Roma primary school children educated under either individual plans or the former reduced educational programme and the fact that, of all the primary school children assessed as needing individual educational plans in 2019, only 4% were Roma. It called on the authorities to make every effort to ensure that the positive trend is sustained over time, while noting with concern that most Roma pupils assessed as needing individual educational plans are still educated outside the mainstream.

■ Roma and Traveller children were particularly affected by the consequences of the Covid-19 pandemic. Many of them were denied access to education. Several Roma settlements were cordoned off or quarantined by the police or the military, depriving residents of the liberty of movement and thus the children of equitable access to quality inclusive education in the municipal schools.⁹⁶ General lockdown regulations and the subsequent closing of the schools led to increased teaching online, often resulting in the *de facto* exclusion of Roma and Traveller pupils from tuition due to the lack of availability of or access to the necessary ICT equipment in terms of hardware, software or internet connections.⁹⁷

■ Small grant schemes were put in place by the European Union–Council of Europe Joint Programme INSCHOOL to support municipalities, schools, teachers and Roma families and children in mitigating the consequences of the Covid-19 pandemic by providing the necessary equipment, teacher training and psycho-social support to pupils and/or parents, if needed.⁹⁸

Intercultural integration

■ Committee of Ministers Recommendation [CM/Rec\(2015\)1](#) calls upon member states to encourage the implementation of the urban model of intercultural integration at the local level and to take it into account when developing or revising national migrant-integration policies.

■ The Steering Committee on Anti-discrimination, Diversity and Inclusion carried out a review⁹⁹ of the implementation of Recommendation CM/Rec(2015)1 by asking member states to report on the legal and institutional frameworks they have put in place, the resources they have allocated and the initiatives they have undertaken in order to embed the intercultural integration principles in national and local policy.

■ The review underlined the significant commitment and action among member states to create the conditions for progress on intercultural integration at all levels of governance. Specifically, actions to establish and operate a national-level institutional infrastructure to carry out intercultural integration policies were identified in various forms across the member states. In some member states these actions cover a wide range of minority groups exposed to inequality and discrimination, allowing for a comprehensive and intersectional approach to diversity and equality, fully in line with the intercultural integration approach. In other jurisdictions they target a particular group or groups, most specifically Roma, national minorities, refugees, asylum seekers or those granted international protection, without introducing a whole-society approach.

■ In Flanders, Belgium, the Decree of 7 June 2013 regarding the Flemish policy on integration and civic integration provides a legal framework for the integration of legal residents of foreign origin, and establishes four objectives: autonomous and proportional participation; accessibility of all facilities; active and shared citizenship of all; and reinforcement of social cohesion.

95. *DH and Others v. the Czech Republic*, Application No. 57325/00, 13 November 2007.

96. FRA (2020), *Coronavirus pandemic in the EU – impact on Roma and Travellers - Bulletin 5*, pp. 13-15 ; European Roma Rights Centre (ERRC) (2020) *Roma Rights in the Time of COVID*.

97. European Commission (2020), "Overview of the impact of coronavirus measures on the marginalised Roma communities in the EU".

98. In the beneficiary countries of the programme: Bulgaria, the Czech Republic, Romania and the Slovak Republic.

99. CDADI(2021)5 Report on the implementation of CM/Rec(2015)1 on intercultural integration.

■ In the United Kingdom, the Equality Act 2010 prohibits discrimination in work and in the wider society, on a wide range of grounds. It imposes a duty on public authorities, and bodies exercising public functions, to have due regard to the need to eliminate discrimination, harassment, victimisation and any other prohibited conduct; advance equality of opportunity; and foster good intercultural relations.

■ The review of Recommendation CM/Rec(2015)1 revealed that many institutions in member states play a role in advancing intercultural integration at the national level, in some cases across the different levels of governance. These include dedicated institutions that advise on intercultural integration or equality at different levels of governance and mainstream institutions, usually public authorities, that co-ordinate or implement national strategies related to intercultural integration.

■ In Austria, the Advisory Committee on Integration provides a platform for co-operation, networking and collaboration among authorities, at different levels, and with civil society in this field. In Georgia, the Office of the State Minister of Georgia for Reconciliation and Civic Equality co-ordinates implementation of the State Strategy for Civil Equality and Integration, with a government commission established for its effective implementation. In the Slovak Republic, the Ministry of Labour, Social Affairs and Family supports stakeholder dialogue on integration in the labour market, through the Interdepartmental Expert Commission on Migration and Integration of Foreigners, with members from central government bodies, local authorities and other institutions involved in integration issues.¹⁰⁰

■ National strategies or action plans containing specific elements of intercultural integration are reported in most member states. However, as also noted by ECRI in its sixth cycle monitoring reports, such strategies are rarely comprehensive, actionable and endowed with clear indicators and monitoring framework,¹⁰¹ or perceive integration as a two-way process requiring the entire society to facilitate, support and promote integration.¹⁰²

■ Dedicated strategies or plans on intercultural integration are very rare, while specific strategies or plans focused on a particular group, or strategies or plans that include a focus on intercultural integration as part of a wider policy field, are more common. ECRI systematically recommends that member states adopt comprehensive integration plans with impact indicators.¹⁰³

■ For example, Integrating Estonia 2020, the Strategy of Integration and Social Cohesion in Estonia, promotes integration as a two-way process, with action on diversity management through the active involvement of community organisations and businesses, and with local authorities identified as key partners.¹⁰⁴

■ The review makes specific recommendations for a more strategic approach to intercultural integration by systematically mainstreaming interculturalism into general integration policies, strategies and action plans and by setting up platforms for multilevel engagement and co-ordination in this field.

■ Member states are invited to take inspiration from an increasing number of local authorities that are adopting an intercultural, inclusive approach to migrant and refugee integration with support from the Intercultural Cities programme.

■ In several member states such as Italy, Portugal, Spain and Norway, where national networks of intercultural cities have been set up, the intercultural integration approach has been adopted by a significant number of cities. This represents a positive shift towards the mainstreaming of the approach across the territory. To realise the benefits of intercultural integration, member states should encourage more cities to apply it in their policies.

■ The review found that action at the local level is promising. Intercultural cities are adopting strong measures to build the capacity of their officials and civil society stakeholders to deal with the challenges of diversity and intercultural relations, to manage conflict and to ensure opportunities for all residents to participate in local life and realise their potential. Approximately 30 cities are running effective anti-rumour strategies to address negative stereotypes and negative discourse, including by specific work with young people or within the school environment.

■ An increasing number of local authorities are adopting an intercultural, inclusive approach to migrant and refugee integration, mainstreaming it into a range of local policies such as education, housing, social services, urban planning and economic development.

■ The take up of Recommendation CM/Rec(2015)1 at the local level is measured, *inter alia*, through the [Intercultural Cities Index](#). The index results for 2018-2020 show that cities are most successful in terms of

100. Ibid.

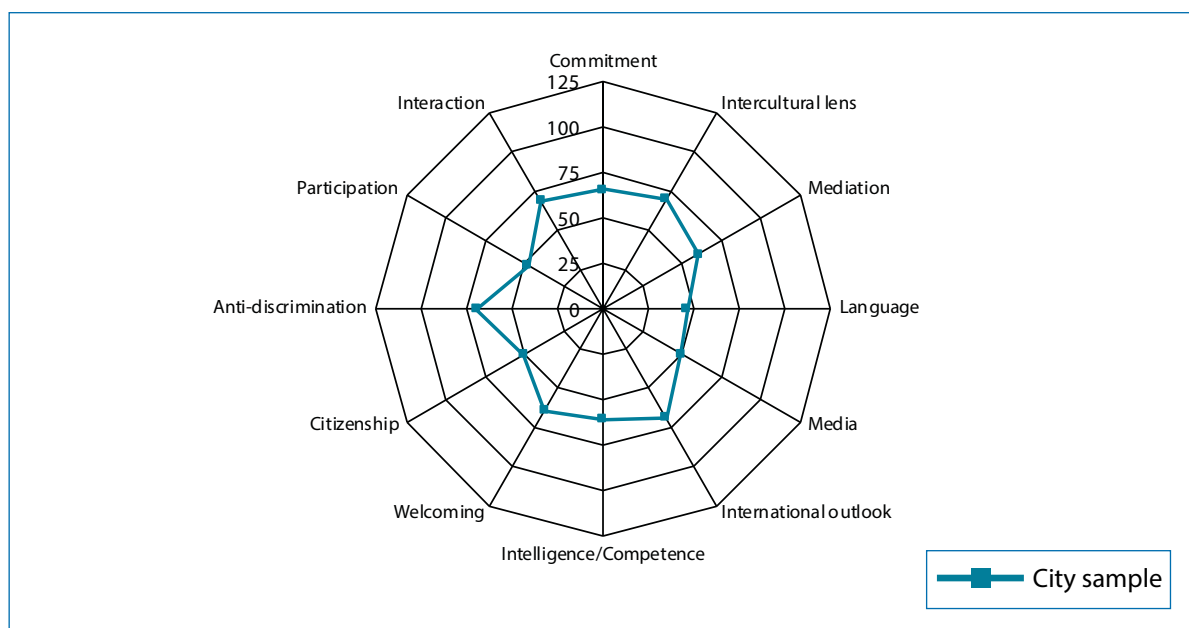
101. ECRI recent monitoring reports on [Germany](#), paragraph 77; [Malta](#), paragraph 72; [Moldova](#), paragraph 93; [Portugal](#), paragraph 73; and [Spain](#), paragraph 83.

102. ECRI fifth cycle monitoring reports on [Malta](#), paragraph 72; and the [Netherlands](#), paragraph 70.

103. See for instance ECRI fifth cycle monitoring report on [Germany](#), paragraph 77.

104. CDADI(2021)5 Report on the implementation of CM/Rec(2015)1 on intercultural integration.

securing political commitment for intercultural strategies and have allocated human and financial resources to them, as well as to specific policy areas such as mediation, anti-discrimination and relations with countries of origin. Sectoral policies have continued to be adapted to diversity contexts (through the “intercultural lens”), in the fields of education and neighbourhood participation. Progress is needed in the fields of multilingualism, civic engagement and media discourse on migration and diversity.



There is also compelling evidence that cities which adopt the intercultural integration approach have better results in relation to citizens’ perception of safety, the quality of public administration and services, community cohesion and employment opportunities.¹⁰⁵

There are promising developments in terms of institutional mandates and official migrant-integration and/or minority-protection strategies in many member states, towards diversity and inclusion policies based on the principles of intercultural integration. The challenge for the future is to adopt a systemic approach: to apply the intercultural integration approach in sectoral policies such as education, social services, housing, urban planning, economic development, culture and sport, and to develop intercultural competences among policy officials and public service professionals.

Towards a new legal instrument on a multilevel policy and governance of intercultural integration

Fulfilling the potential of diversity and human mobility for societies’ development and prosperity, building cohesion and social trust between people of different origins, heritage and identity and reducing the costs of non-integration are common challenges for member states.

In order to address this challenge, the Steering Committee for Anti-discrimination, Diversity and Inclusion is working on a new legal instrument to offer guidance in translating the core principles of intercultural integration, which are the basis of the Council of Europe’s successful policy model for the local level, into national-level policies.

The goal of intercultural integration is to foster mutual respect and trust between migrants and minorities and the broader society, and to nurture a sense of belonging and shared purpose. Consistent evidence shows that the intercultural approach is best suited to deliver results.

The new legal instrument will offer comprehensive strategies to enable active citizenship and participation for people who live in a country other than their country of origin, ensure respect for their fundamental rights and the equality and dignity of all members of society and build societies which are inclusive, cohesive and prosperous thanks to the benefits of positive management of diversity. Intercultural integration policies should target societies as a whole and not only newcomers.

105. Migration Policy Group, (2018), “How the Intercultural integration approach leads to a better quality of life in diverse cities”.

■ This new legal instrument will encourage member states to set out regulatory frameworks and adopt a holistic approach for the inclusion of newcomers through partnerships with regional and local institutions, civil society organisations and groups and the private sector.

■ It will prompt member states to build intercultural integration policies that are coherent, co-ordinated and effective via joint and multilevel participatory governance at all stages of the policy process.

Special Representative of the Secretary General on Migration and Refugees (SRSG)

■ The Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe, implemented from 2017 to 2019, was co-ordinated by the SRSG and focused on ensuring access to rights and child-friendly procedures, providing effective protection and enhancing the integration of children who would remain in Europe. Building on the lessons learnt, the SRSG was mandated to prepare a new action plan.

■ Effective integration and inclusion policies for migrants and refugees should aim at overcoming legal and practical barriers to the labour market. Several recent Council of Europe tools, adopted in the framework of the Council of Europe Action Plan on Protecting Refugee and Migrant Children in Europe, tackle this objective.

■ The European Qualifications Passport for Refugees (EQPR) facilitates the access of refugees to the labour market as well as to further education programmes by providing for an assessment of the applicant's higher education qualifications, work experience and language proficiency based on available documentation and a structured interview. The project was launched in 2017 as a pilot initiative and it has been pursued since 2018 in a three-year implementation phase.

■ Implementation of the Linguistic Integration of Adult Migrants project is being pursued. It focuses on the development of language policies, language learning programmes for adult migrants and the assessment of learning outcomes. They are intended to help member states to meet the specific needs of adult migrants and therefore to facilitate the integration of migrants and social cohesion.

■ [Recommendation CM/Rec\(2019\)4 of the Committee of Ministers to member states on supporting young refugees in transition to adulthood](#) addresses social exclusion and violations of human rights of young refugees reaching the age limit of 18 years old. Youth work and non-formal education are underlined as an essential part of youth policies developed by member states. They contribute to building the competences for active citizenship and participation which are crucial for social inclusion.

Best practices to protect the human rights of refugees and migrants

■ The activities carried out by the SRSG, notably within the action plan, helped to identify best practices in member states to protect the human rights of refugees and migrants.

■ As a follow-up to this, a compilation of promising practices on migration-related child-friendly procedures was developed ("Promoting child-friendly approaches in the area of migration – Standards, guidance and current practices")¹⁰⁶ and launched jointly with the United Nations International Children's Fund (UNICEF) in December 2019 in Belgrade, Serbia. This publication brings together international and European standards on child-friendly processes in the context of migration with initiatives, programmes and procedures to help authorities uphold those standards.

■ In July 2020, the Special Representative published a handbook on standards and good practices¹⁰⁷ to restore family links and reunify refugee and migrant children with their families. This handbook presents an overview of principles of human rights, children's rights and refugee law relevant to family reunification, as well as a series of key examples of noteworthy practices.

■ A network of focal points was established to facilitate the sharing of information, to promote a better understanding of challenges and to exchange good practices and solutions for daily challenges of migration management. Good examples from Albania, Belgium, Bulgaria, Germany, Greece and Portugal on policy developments or successful projects have already been shared within the network.

106. [Promoting child-friendly approaches in the area of migration – Standards, guidance and current practices.](#)

107. See: <https://edoc.coe.int/en/refugees/8948-epub-family-reunification-for-refugee-and-migrant-children-standards-and-promising-practices.html>.

Edu4Europe

Forum on European Education
for Democratic Citizenship
European Youth Centre Strasbourg, 19-21 November 2019



PROGRAMME



CHAPTER 8

DEMOCRATIC PARTICIPATION

INTRODUCTION

Democracy is more than just a matter of laws and institutions. They are necessary but insufficient. Functioning democracies depend on what is often called a culture of democracy – shared attitudes and behaviours, valuing diversity and conflict resolution through dialogue.

■ Education is central to democratic societies. It must provide students with the competences they need to participate in democracy, exercise their human rights and value those of others and respect the rule of law.

■ A democratic environment must provide opportunities for citizens to engage and participate and must motivate them to do so. This is of particular importance for young persons. Their participation in social, economic and political life is crucial for a vibrant and healthy democracy. When deprived of institutional opportunities to engage, young persons are more likely to participate through boycotts or protests.

■ In recent years, we have witnessed attempts by populism and authoritarian nationalism to distort and hijack the notions of culture, cultural heritage and identity and to use them as instruments of polarisation, stigmatisation of minorities and for undermining democratic institutions and values. This is the exact opposite of the role of culture and heritage as it was set out in the [1954 European Cultural Convention \(ETS No. 18\)](#) which underlined its importance in affirming European unity and co-operation. It was no coincidence that the European Cultural Convention was one of the earliest conventions to be adopted by the Council of Europe after the European Convention on Human Rights. It was adopted to create an environment in which the European institutions could operate and flourish. Culture and heritage are powerful vectors of democratic participation. They are both the means for expressing and themselves expressions of human rights. Freedom of artistic expression is an integral part of the freedom of expression which has, regrettably, been afflicted by similar trends of restrictions and interference in recent years. Moreover, the European Cultural Convention has been reinforced with the creation of the Observatory on History Teaching in Europe.

■ Confidence in institutions is the ultimate ingredient of a truly democratic environment. This, in turn, requires that political institutions adhere to the principles of integrity, competence, transparency and accountability, but also that they recognise, respect and effectively respond to citizens' legitimate needs and expectations.

■ Two of the most serious public concerns today are related to the environment and public health. Public trust in institutions, and consequently citizens' trust in democracy, will depend on the speed and effectiveness of the response to these concerns. The Council of Europe's work on the protection of wildlife and natural habitat conservation, promotion of appropriate public policies and preventing major hazards is directly relevant to our capacities to face major global challenges, including the Covid-19 pandemic. Participation in the European Landscape Convention (ETS No. 176) helps our member states to work together to reverse the degradation of the living environment. The Convention on the Conservation of European Wildlife and Natural Habitats (ETS No. 104, Bern Convention) – currently exploring bold reforms to secure the sustainability of financial support for its important activities – helps to stop the erosion of biodiversity and the decrease in the habitats of animal and plant species. Finally, the EUR-OPA Major Hazards Agreement helps to protect populations against major natural, technological and public health risks. Through these instruments, and through the work of European Directorate for the Quality of Medicines & HealthCare (EDQM), the Council of Europe can reinforce the support and trust of Europeans in their institutions by providing relevant and significant responses to their most pressing concerns.

■ Over the next four years, the main thematic Council of Europe priorities should include:

- ▶ Education: responding to challenges aggravated by the Covid-19 pandemic, including the rise of populism, disregard for facts, deepening inequalities and a diminishing belief in and even a backlash

against democracy; promoting education that fosters a culture of democracy, values human dignity and encourages the active participation and responsibility of citizens in democracies and inclusive and sustainable societies; highlighting the role of education, itself deeply transformed by digital technologies, in helping our societies take advantage of the possibilities and avoid the pitfalls of digital transformation, including a growing use of artificial intelligence, ensuring that their use is rooted in democratic values and promotes democratic practice; finally, investing in education for active global citizenship, through regional and cross-border co-operation.

- ▶ Youth: developing policies and programmes that enable young persons across Europe to actively uphold, defend, promote and benefit from the Council of Europe's core values, and that help to defend and revitalise pluralistic democracy, including through capacity building in the European Youth Centres; advising and supporting member states in developing youth policies and sustainably supporting youth civil society; encouraging pan-European intergovernmental co-operation based on co-management, with a focus on providing youth input to the development of responses to emerging policy issues; developing the quality and quantity of youth work in member states and at local, regional and national levels; providing structural and financial support to the development of youth civil society, notably through the European Youth Foundation.
- ▶ Culture, cultural heritage and environment: supporting member states to protect and expand cultural, natural and landscape diversity, which is vital for sustainable development and the well-being of our societies; developing an integrated culture, nature and landscape strategy based on the Council of Europe's human rights and participatory approach; responding to growing threats to the freedom of cultural expression; responding to the impact of digitisation and AI on culture, as well as using culture as a means to respond to technological and other societal challenges; promoting cultural co-operation, diversity and pluralism, including in the audiovisual sector in Europe.

EDUCATION FOR DEMOCRACY

■ The goals of education for democratic citizenship and human rights are not just to equip learners with knowledge, understanding and skills, but also with values and attitudes which empower them to take action in society in the defence and promotion of human rights, democracy and the rule of law.

■ The [Council of Europe Reference Framework of Competences for Democratic Culture](#) (RFCDC) constitutes the basis on which our education systems and institutions should develop these competences at all levels and in all strands of education. In the case of higher education, academic freedom and institutional autonomy are cornerstones of democratic societies. Public authorities should set the framework for academic freedom and institutional autonomy and continuously monitor the implementation of those fundamental rights, while encouraging the adoption of sustainable, long-term strategies for higher education.

■ In 2020, the Steering Committee for Education Policy and Practice (CDPPE) became a platform for exchanging experience; it developed a political declaration on the [education response to the Covid-19 crisis](#) that aimed to ensure the right to education also in times of crisis, which was later endorsed by ministers of education; it also devised a [road map for action](#) and established a [Covid-19 website](#).

■ The framework for the education programme is the European Cultural Convention, ratified by all member states as well as Belarus, the Holy See and Kazakhstan. In the course of 2020, the situation with regard to academic freedom, institutional autonomy and student and staff participation in higher education governance deteriorated significantly in Belarus.

■ Making the right to education real, also in times of crisis, is of vital importance to the future of European democracy. In years to come, the Council of Europe will help member states strengthen democracy through education, innovate teaching and learning and ensure the right to education for the most vulnerable students.

Measurement criteria

- ▶ Policies, legislation and practices are adopted in member states to strengthen the ability of education systems to prepare students for life as active citizens in diverse and democratic societies, including through digital citizenship education.
- ▶ Principles of academic freedom and institutional autonomy are respected.

- ▶ Member states integrate principles of ethics, transparency and integrity into their education policies and practices based on guidelines and tools developed through the Platform on Ethics, Transparency and Integrity in Education (ETINED).
- ▶ Policy makers and the education community have access to tools and resources for innovative learning and teaching in the digital era.
- ▶ Education professionals and the wider public have access to information and resources to disseminate and promote the value of quality language learning, including online.
- ▶ Education policies and practices that ensure the right to quality education, including in times of crisis, and that promote a culture of non-discrimination, integration and social inclusion, are adopted and implemented in member states.
- ▶ The European Qualifications Passport for Refugees (EQPR) is used by member states to recognise qualifications held by refugees, even when these qualifications cannot be fully documented, allowing access to further studies and employment, including in key sectors such as health during the Covid-19 pandemic.

Findings

■ The RFCDC has been implemented through the [European Policy Advisors Network](#), which represents the 50 States Parties to the European Cultural Convention, through the [Democratic Schools Network](#) and by using [implementation guidance](#) for curriculum development, teaching and learning strategies and assessment. The [Guidance document for higher education](#) was completed in 2020. The RFCDC has been integrated into teacher education in Andorra and, as an outcome of [co-operation and capacity-building activities](#), into the curriculum and teacher training in the Republic of Moldova, Montenegro and Serbia. Education authorities in the Western Balkans decreed national days to celebrate democratic culture in schools.¹

■ There is increasing concern within the European Higher Education Area, to which the Council of Europe is a key contributor, about the state of academic freedom and institutional autonomy.² The higher education law of Hungary that forced the Central European University to move from Budapest to Vienna is an alarming example of a breach of these [principles](#). Similar concerns were raised by the Council of Europe Parliamentary Assembly.³ A [special volume \(No. 24\)](#) in the Council of Europe [Higher Education Series](#) was dedicated to academic freedom and institutional autonomy as key factors in higher education institutions' ability to further democracy.

■ [Recommendation CM/Rec\(2019\)9](#) of the Committee of Ministers on fostering a culture of ethics in the teaching profession is intended to foster ethics, transparency and integrity in education through the drafting, implementation and review of codes of ethics for the teaching profession.

■ Montenegro is one of the first countries to adopt a Law on Academic Integrity, which provides a national legal framework for tackling academic misconduct and enforcing ethical principles in higher education.⁴

■ The Committee of Ministers adopted a set of guidelines to member states on developing and promoting digital citizenship education through [Recommendation CM/Rec\(2019\)10](#), making it a priority for policy makers and education communities.

■ The growing use of technology in education due to Covid-19 has increased the need for guidance and tools on digital citizenship education for education professionals, students and parents. The Council of Europe developed a series of resources to respond to this need.⁵ Over 21 000 parents took part in a Council of Europe [digital citizenship survey](#) on the role of parents in developing children's competences as digital citizens.

■ Online courses are available through the [Learning Courses Online platform \(LEMON\)](#). These include a masterclass on media and information disorder and introductory key courses on topics of interest such as media literacy, competences for democratic culture and dealing with controversial issues, along with nine self-learning courses.

1. A "National day against bullying" in schools has been set in Albania on 21 November; in Montenegro, the celebration of an "[Inclusive Day](#)" has been decreed on 11 October; [Democratic School Open Days](#) are organised in pilot schools in Serbia every year; and an official "[Diversity Day](#)" has been decreed in schools in Kosovo* on 26 April.
2. See the communiqués of the EHEA ministerial conferences in [Paris 2018](#) and [Rome 2020](#), as well as the [Bologna Process Implementation Report 2020](#).
3. See [Resolution 2352 \(2020\) of the Parliamentary Assembly of the Council of Europe](#) on threats to academic freedom and autonomy of higher education institutions in Europe.
4. The law was adopted as an outcome of the Joint EU–Council of Europe project on [Strengthening Academic Integrity and Combating Corruption in Higher Education in Montenegro](#).
5. See [10 lesson plans](#) on topics related to the ongoing Covid-19 pandemic, a [leaflet for parents](#) on helping children become digital citizens, and an [info sheet and an educational game](#) (available in 14 languages) for students.

Language professionals in 16 Council of Europe member states have taken part in [training workshops](#) organised by the [European Centre for Modern Languages \(ECML\)](#) to improve the use of digital technology in learning and teaching. Over 15 000 language teachers watched the recordings of three [webinars](#) to help language teachers ensure quality online provision. Another webinar focusing on innovation in language education through hybrid learning and teaching attracted over 5 000 followers.

Since 2018, 25 [workshops](#) relating to language curricula, tests and examinations for the Common European Framework of Reference for Languages (CEFR) and its [Companion volume](#) have been conducted in 20 countries. Albania initiated a reform of its curriculum for foreign languages following a Council of Europe Language Education Policy Profile and set up language curricula, tests and examinations. In the Slovak Republic, there has been a review of language examinations as a result of which these examinations are now fully aligned to the CEFR.

Bosnia and Herzegovina and Romania joined the EQPR initiative in 2020, bringing the number of participating countries to 11. The Ministry of Interior of France has also become an active partner in the EQPR. In 2020/2021, [Italian universities started accepting the EQPR](#) for scholarship applications. Of 629 applicants assessed by the end of 2020, 525 earned the EQPR, including through online assessments held during the Covid-19 pandemic. At the beginning of the pandemic, 46 EQPR holders with health-related qualifications were identified to support national authorities. By mid-July, 20 additional online evaluations had been organised in France, Greece and Italy for refugees with health-related qualifications, as a result of which 16 passports were issued, following a joint initiative by the Secretary General of the Council of Europe and the United Nations High Commissioner for Refugees.⁶ The EQPR helps to implement Article VII of the Convention on the Recognition of Qualifications concerning Higher Education in the European Region (ETS No. 165, [Lisbon Recognition Convention](#)).

An updated version of the [CEFR](#) (entitled *Companion volume*) was published in 2020. All descriptors are now gender-neutral or gender-sensitive, new descriptors have been added for mediation, online interaction and plurilingual/pluricultural competence, and an explicit preference is expressed for applying the descriptors for teaching and learning rather than for assessment. The *Companion volume* includes descriptors for sign language for the first time.

New measures on inclusive education and anti-discrimination in education were adopted in Western Balkan countries through co-operation and capacity-building projects. A [Policy Recommendation with a Roadmap for Inclusive Education](#) was adopted by the Council of Ministers of Bosnia and Herzegovina. The ECML [ProSign projects](#) developed European standards that define the skill levels required of sign language teachers and interpreters.

Workshops on supporting multilingual classrooms have been held in 18 countries since January 2018. In Slovenia, materials used within the workshop have become part of the resources in pre-service courses within first- and second-degree programmes at the University of Ljubljana. In Latvia, the principles of mediation and pluricultural/plurilingual skills were applied to the development of the new secondary school curriculum in foreign languages, which was introduced in September 2020.

Highlights of Council of Europe education activities in response to Covid-19

An [informal conference of ministers of education under the Greek chairmanship of the Committee of Ministers](#) was held online on 29 October 2020. Ministers endorsed a [political declaration](#) and took note of a [roadmap for action](#) on the education response to Covid-19, which aims to make the right to education a reality in times of crisis.

A set of 20 learning activities was published based on the [RFCDC](#) and intended to help learners in primary and secondary education understand the social and human rights challenges raised by Covid-19.

On the [dedicated webpage](#) for the Education Department's Covid-19 response, [10 lesson plans](#) on digital citizenship education were produced and published, together with other resources.

The [ENIC and NARIC Networks](#) developed measures to [ensure the right to fair recognition of qualifications in times of Covid-19](#).

6. A [joint initiative](#) by the Council of Europe's Secretary General and the UN High Commissioner for Refugees helped mobilise support for the EQPR during the Covid-19 pandemic, as well as articles in [TIME Magazine](#) and [University World News](#).

■ The EQPR project helped carry out evaluations of qualifications of refugees with health-related backgrounds during the pandemic, boosted by high-level political support from the [Council of Europe's Secretary General](#) and the [UN High Commissioner for Refugees](#).

■ An analysis of parents' views of digital citizenship and their role as educators during the Covid-19 crisis was carried out as a result of a [survey](#) to which over 21 000 parents responded.

■ New publications were developed to support teachers during the pandemic, including a [teachers' manual](#) on how to teach competences for democratic culture online.

■ The Council of Europe and the United Nations Educational, Scientific and Cultural Organization (UNESCO) conducted a survey of the impact of the Covid-19 pandemic on student participation in school communities and the results were discussed at a joint Council of Europe–UNESCO [online conference](#) on making student voices heard and civic participation in the digital age.

■ The LEMON platform launched a new series of two-hour courses on media literacy, competences for democratic culture and recognising cyberbullying, and conducted two interactive masterclasses on media and information disorder.

■ The ECML moved its [new programme](#) fully online. It launched a series of additional support activities during the pandemic, including a “[treasure chest](#)” of resources for learners, parents and teachers and [webinars](#) for language teachers, head teachers and policy makers.

YOUTH FOR DEMOCRACY

■ The nature and scope of youth participation is rapidly evolving and rapid digitalisation, precarious life situations, the advancement of populist ideologies, increased inequalities and the rise of global youth movements are all contributing factors.

■ Young peoples' motivation to participate within democratic structures depends, to a large extent, on the impact, on being heard and on being treated as equal partners.⁷ At the same time, young persons are refraining from voting in elections when they perceive the governing systems in place to be ineffective in addressing the issues that are most pressing for youth.

■ A decrease in public provision for youth spaces, programmes and services is being observed in numerous member states, while in a few countries, youth work is practically carried out without support from the authorities. Resources allocated to education for democratic citizenship and human rights education are decreasing.

■ The economic and social consequences of Covid-19 hit young people disproportionately hard.⁸ Youth from disadvantaged backgrounds and communities and young women have been particularly affected.

■ In January 2020, the member states adopted the Council of Europe [Youth Sector Strategy](#), which embraces a commitment to democracy and human rights, as well as to diversity and inclusion. The strategy invites member states to implement Council of Europe youth policy standards and to assist young people across Europe in actively upholding, defending, promoting and enjoying the Council of Europe's core values: human rights, democracy and the rule of law.

Measurement criteria

- ▶ Young people and all forms of youth civil society can rely on an enabling environment for the full exercise of all their rights and freedoms, including concrete policies, mechanisms and resources.
- ▶ Young people are participating in decision making at all levels, based on a broad social and political consensus in support of participatory governance and accountability.
- ▶ Policies and governance processes are conducted in a participatory manner, involving young people and their representatives/organisations.
- ▶ Young people's autonomy and democratic citizenship are being strengthened through youth work and non-formal education/learning, and social inclusion is fostered.

7. Bárta O., Boldt G. and Lavizzari A. (2021, upcoming), Meaningful youth political participation in Europe: concepts, patterns and policy implications, EU-Council of Europe youth partnership.

8. See: [Latest update and analysis](#).

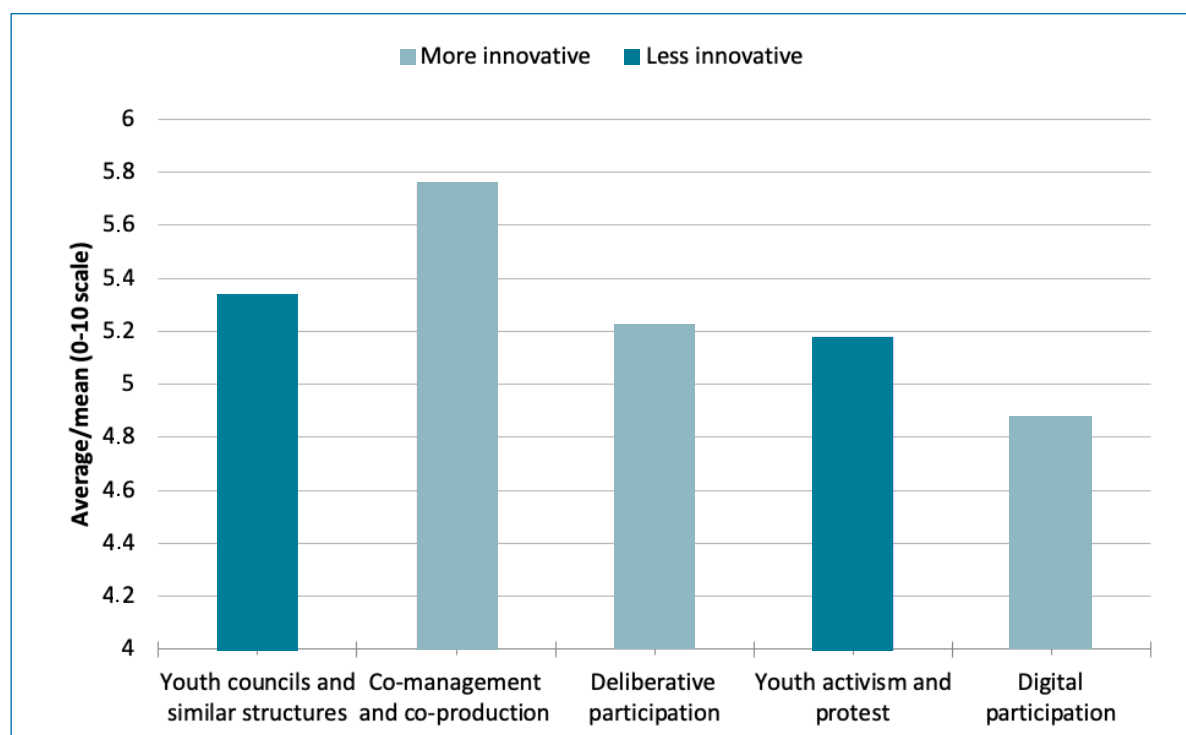
- Youth work is recognised and embedded within youth policy frameworks and equipped with the respective resources. Volunteers and paid staff with responsibility for young people receive adequate education and training.

Findings

More than half of youth civil society organisations in Europe fear retribution when they exercise freedom of expression in public according to a study⁹ carried out by the European Youth Forum. Nearly half of youth civil society organisations state that they cannot exercise their activities independently and free from government interference. Legal frameworks and judicial safeguards are essential in this regard.¹⁰

Only a few member states have youth policies ensuring youth participation structures at national, regional and local levels, where young people are actively encouraged to take part in democratic governance. While the effectiveness of different forms of influencing decision making is generally seen as similar (see graph below), the highest ranked form remains that of “co-management and co-production”, which could be important for the design of the post-pandemic recovery measures.

How effective are the different forms at influencing the decisions of public authorities?



Source: Council of Europe, “New and innovative forms of youth participation in decision-making processes” (2017).¹¹

The widespread preconception of “disillusioned generations” has to be revisited. Young people today are generally interested in politics, however, there are huge discrepancies across member states:¹² while 90% of young people aged 15-29 years in Germany and the Nordic countries say they are interested in politics, only 50% or even less say the same in the Czech Republic, Hungary and Lithuania. Members of national parliaments worldwide are predominantly male and over 40.¹³

9. “Safeguarding civic space for young people in Europe” (2020), European Youth Forum.

10. Recommendation CM/Rec(2018)11 of the Committee of Ministers to member States on the need to strengthen the protection and promotion of civil society space in Europe.

11. Crowley A. and Moxon D. (2017), “New and innovative forms of youth participation in decision-making processes”, Council of Europe, Strasbourg.

12. OECD (2019), “Voting” in *Society at a glance 2019: OECD social indicators*, OECD Publishing, Paris.

13. Inter-Parliamentary Union (2018), *Youth participation in national parliaments: 2018*, Inter-Parliamentary Union, Geneva.

■ Young people represent one of the most at-risk groups of human rights defenders as they tend to be at the bottom of many hierarchies and face age-based discrimination, which intersects with other forms of oppression.

■ General stereotypes portraying young people as idealistic or immature or as troublemakers are frequently used in attempts to discredit and silence activists. The pressure applied on those individuals is made up of a repertoire of various methods conducted by both state and non-state actors and range from stigmatisation, surveillance, harassment, ill-treatment and physical violence to persecution through prosecution.

■ Youth work provisions providing important support to young people's personal, social and professional development vary in quality and quantity across member states. Free youth work provisions accessible to all young people should be ensured by national youth policies and legislation. Public funds from national budgets decreased by 30% on average after the economic crisis that began in 2008; the decrease took place mainly in countries without a budget specifically earmarked for youth work.¹⁴

■ Only about half of all member states offer formal education for youth workers. If youth work is carried out, it is either undertaken by untrained personnel and volunteers, or those who have acquired their knowledge through training offered by international organisations or other organisations abroad.¹⁵

CULTURE AND CULTURAL HERITAGE

■ The diversity of cultures, the arts and cultural heritage help to trigger genuine openness of mind, and open and interactive culture and cultural heritage practices help us deal with the complexities of individual well-being and living with others. Democratic participation in culture and its governance are key to these processes. As part of the freedom of expression, enshrined in Article 10 of the Convention, the freedom of cultural expression is essential for creativity and a flourishing cultural life.

■ To encourage broad participation in culture and trust in institutions, it is necessary to promote robust cultural and cultural heritage policies allowing citizens equal access to a wide range of cultural opportunities.

■ In a similar vein, to promote diversity and pluralism in the audiovisual sector in Europe, we need to apply the model of cultural co-operation implemented in the domain of film by the European Support Fund for the Co-production and Distribution of Creative Cinematographic and Audiovisual Works (Eurimages) to new instruments of pan-European public financial support and create a legal framework to facilitate international television series co-productions. Furthermore, to promote the freedom of cultural expression, we need to raise the level of participation in culture and online creativity – with the digital accessibility of culture and heritage and the increasing ramifications of AI in this sector becoming crucial issues that need to be addressed.

■ In November 2020, the Steering Committee for Culture, Heritage and Landscape (CDCPP) launched a Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era, as well as the concept for a digital @exhibition Free to Create, Create to be Free. The manifesto sums up the importance of artistic creation and the cultural industry for our democratic societies as well as protection of the freedom of expression, which Article 10 of the Convention extends to freedom of artistic expression. The power of art to communicate and open up new perspectives and ideas makes the artist, artistic mobility and artistic freedom strategic resources for society, helping to overcome fragmentation and addressing today's global challenges.

Measurement criteria

- ▶ Policies are put in place to promote a vibrant cultural environment and diversity in cultural institutions and industries; appropriate infrastructure and institutions exist to support active participation in cultural life and in cultural activities.
- ▶ Innovative policies and strategies are implemented to enhance the democratic governance of culture and heritage and inspire participative practices in member states, as well as to prevent risks in the day-to-day management of cultural heritage and offences against cultural property.
- ▶ Member states guarantee and promote the freedom of expression/freedom of academic and cultural expression that trigger participation in culture, including online participation, which is gaining greater importance in times of cultural lockdowns related to the Covid-19 pandemic.

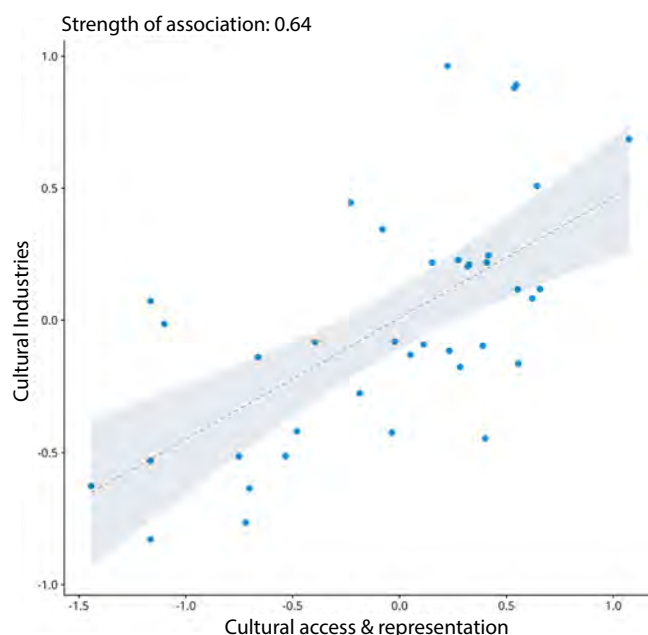
14. Deželan T. and Yurttaguler L. (2020), "Shrinking democratic civic space for youth", EU-Council of Europe youth partnership, available at https://pjp-eu.coe.int/documents/42128013/59895423/TDLY_CSYP.pdf/cb8643c1-2707-0f1b-3f81-f13704dc9081.

15. See <https://pjp-eu.coe.int/en/web/youth-partnership/expert-group-researching-education-career-paths-youth-workers>.

Findings

■ According to analyses carried out by the Indicator Framework on Culture and Democracy (IFCD)¹⁶ in 2020, participation in cultural activities is higher where people have equal access to culture. Furthermore, stronger cultural industries and a more solid cultural infrastructure coincide with higher levels of cultural access and participation and trust in political institutions, and could therefore provide clues as to where policies or initiatives might contribute to improving inclusion in society. Societies are said to be more open, tolerant and economically successful when people have access to a wide range of cultural activities and when participation rates in these activities are high.

Relationship between cultural access and cultural industries



■ Democracy translates in the cultural and heritage field not only to equal access and participation opportunities, but also to the democratic governance of the sector – implying citizens' participation in decision making. The Council of Europe's Framework Convention on the Value of Cultural Heritage for Society (CETS No. 199, Faro Convention) and its European Cultural Heritage Strategy for the 21st Century enable member states to implement innovative and democratic heritage policies and practices, directly involving civil society and heritage communities in the work. The Faro Convention has been signed by 26 member states and 20 have ratified it. The Committee of Ministers adopted Recommendation CM/Rec(2017)1 to member States on the European Cultural Heritage Strategy for the 21st Century, and 35 member states have reported 150 good practices testifying to the implementation of the strategy and inspiring heritage activities in all member states.

■ To avoid irreversible threats and deterioration of cultural heritage in member states, a new Council of Europe recommendation promotes the continuous prevention of risks in the day-to-day management of cultural heritage and fosters a culture of anticipation, precaution, steady resource allocation, training, capacity building and international knowledge transfer. Increasing efforts are geared at promoting the Council of Europe Convention on Offences relating to Cultural Property (CETS No. 221) in member states.

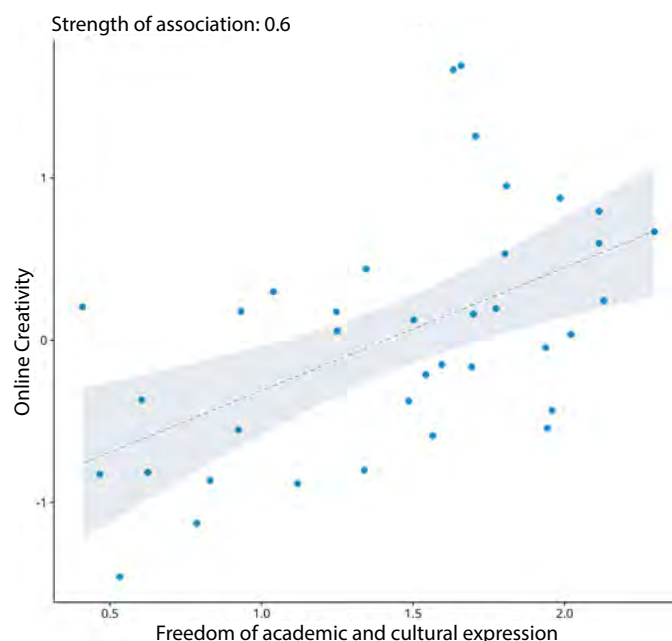
■ With democracy under great pressure, the key role of arts and culture as powerful means for maintaining constructive dialogue in democratic and open societies becomes ever more evident. The right to freedom of artistic expression is a key to this and ensures the pluralism and vitality of the democratic process.¹⁷

■ According to the IFCD, freedom of expression is related to cultural access and participation and, specifically, the freedom of academic and cultural expression is closely related to online creativity.

16. The Indicator Framework on Culture and Democracy was created by the Hertie School of Governance (Berlin) and other partners for the Council of Europe in 2014 and, since 2018, has been overseen by the University of Administrative Science in Speyer. See <https://culturalindicators.org/>.

17. See: <https://rm.coe.int/manifesto-on-the-freedom-of-expression-of-arts-and-culture-in-the-digi/1680a056a2>.

Relationship between freedom of academic and cultural expression and online creativity



■ A study commissioned by Eurimages in 2019 aimed to determine whether the situation of the television series sector in Europe required specific measures to preserve the founding principles of the Council of Europe, such as freedom of expression or cultural diversity. Television series have become a cultural and social phenomenon in recent years. The number of productions has rapidly increased worldwide, including in Europe, with 10% annual growth. Their qualitative upgrade (technically and artistically) has resulted in higher production costs, making their financing only feasible for large corporations. The most important producers of television series are now video-on-demand platforms, mostly non-European. They lead this expanding market by imposing their rules of the game.

■ As a result, creative control of cultural content does not lie in the hands of independent European producers and intellectual property rights are essentially held outside Europe. Many European countries do not have the resources to finance the production of costly, high-quality television series, which has a negative impact on the diversity of voices and pluralism essential to democratic societies.

■ Building on the recommendations of the study, the need for specific measures to facilitate international television series co-productions could be assessed.

Protecting the environment to preserve democracy, human rights and our quality of life

■ Council of Europe work on the protection of wildlife and natural habitat conservation, promotion of appropriate public policies and preventing major hazards is directly relevant to our capacities to face major global challenges, including the Covid-19 pandemic.

■ According to the World Health Organization (WHO), the human impact on the environment is increasing the risk of emerging infectious diseases in humans, over 60% of which originate from animals, mainly from wildlife. Plans for post-Covid-19 recovery, and specifically those plans to reduce the risk of future epidemics, need to be put in place in advance of early detection and control of disease outbreaks. They also need to lessen our impact on the environment to reduce the risk at its source. Natural environments and accessible green spaces play a direct role in health and well-being. They can mitigate climate change impacts such as extreme temperatures or flooding; reduce pollution in air, soil or water; and lower the risks of disasters caused by the combination of extreme weather events and land erosion, as in the case of flooding and landslides.¹⁸

Landscape Convention – Reverse the degradation of the living environment

■ Developments in spatial and town planning, transport, infrastructure, agriculture, industrial production techniques and, at a more general level, changes in the world economy are accelerating the transformation of everyday landscapes. If these transformations are not controlled, they cause health problems and a feeling of unease, even exclusion, which is at the root of social problems. The convention aims to promote landscape protection, management and planning, and to organise international co-operation on landscape issues.

Bern Convention – Stop the erosion of biodiversity and the decrease in the habitats of animal and plant species

■ Biodiversity loss is driven by human and economic activities and policies that fail to value properly the environment and its resources and by legal and institutional systems that promote unsustainable exploitation, inequity in ownership and access to natural resources. Species are under threat from poaching, overfishing, illegal trade and from destruction or alteration of their habitats. The convention aims to ensure conservation of wild flora and fauna species and their habitats. Special attention is given to endangered and vulnerable species.

EUR-OPA Major Hazards Agreement – Protect populations against major natural, technological and sanitary risks

■ Natural, technological and health risks affect all populations, in particular the most vulnerable groups. Increased greenhouse gas emissions are raising the temperature in the atmosphere and enhancing the frequency and intensity of natural disasters. The agreement aims to reinforce better prevention and protection of people against major natural or technological disasters, to develop actions related to the prevention and preparedness in epidemic scenarios and to promote projects addressing the role of nature-based solutions in disaster risk reduction.

■ In addition to these long-standing Council of Europe programmes and instruments, which have already demonstrated their relevance and impact on efforts to protect our environment and habitats, the four-year Strategic Framework also envisages a new instrument on human rights and the environment.

■ The need to apply the principles of democracy to the environment is also the focus of the 9th World Forum for Democracy,¹⁹ under the title, Can Democracy Save the Environment?, which started in November 2020 with a series of online events and discussions and will, public health conditions permitting, conclude with a forum in Strasbourg from 8 to 10 November 2021.

18. See www.euro.who.int/en/health-topics/environment-and-health/pages/news/news/2020/6protecting-nature-protects-health-lessons-for-the-future-from-covid-19.

19. See: www.coe.int/en/web/world-forum-democracy.

This is the 2021 report of the Secretary General of the Council of Europe on the state of democracy, human rights and the rule of law in Europe.

The report covers the period of three years since the publication of the last similar report. It is divided into two parts. The first looks at strengths and weaknesses in the functioning of democratic institutions in the Council of Europe member states, while the second part assesses the quality of the democratic environment, which is indispensable for the functioning of these institutions.

Each chapter includes a summary of the main challenges in the respective areas. The findings and assessments are predominantly based on Council of Europe sources, monitoring reports, European Court of Human Rights decisions, Parliamentary Assembly reports, reports of the Commissioner for Human Rights and opinions of the Venice Commission and other bodies.

These findings will support the preparation of the next biennial programme and budget, which will include measures and activities aimed at responding to the challenges identified in this report.

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The Council of Europe is the continent's leading human rights organisation. It comprises 47 member states, including all members of the European Union. All Council of Europe member states have signed up to the European Convention on Human Rights, a treaty designed to protect human rights, democracy and the rule of law. The European Court of Human Rights oversees the implementation of the Convention in the member states.