

# STATE OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW



Report of the Secretary General  
of the Council of Europe

2023

# STATE OF DEMOCRACY, HUMAN RIGHTS AND THE RULE OF LAW

*Report of the Secretary General  
of the Council of Europe  
2023*

**French edition**

*Situation de la démocratie,  
des droits humains et  
de l'État de droit*

All rights reserved.  
No part of this publication  
may be translated,  
reproduced or transmitted,  
in any form or  
by any means, electronic  
(CD-Rom, internet, etc.)  
or mechanical, including  
photocopying, recording  
or any information storage  
or retrieval system,  
without the prior  
permission in writing  
from the Directorate  
of Communications  
(F-67075 Strasbourg Cedex  
or publishing@coe.int).

Layout:  
Documents and Publications  
Production Department (SPDP),  
Council of Europe

Photos: Council of Europe,  
Parliament of Iceland

Council of Europe Publications  
F-67075 Strasbourg Cedex  
[www.coe.int](http://www.coe.int)

© Council of Europe, April 2023  
Printed at the Council of Europe

# Contents

<b>A PREFACE BY THE SECRETARY GENERAL</b>	<b>5</b>
<b>KEY FINDINGS OF THE REPORT</b>	<b>8</b>
<b>GUIDE TO THE REPORT</b>	<b>13</b>
<b>PART I – DEMOCRATIC INSTITUTIONS</b>	<b>15</b>
<b>CHAPTER 1 – EFFICIENT, IMPARTIAL AND INDEPENDENT JUDICIARIES</b>	<b>17</b>
Introduction	17
Judicial independence	21
Judicial accountability	29
Efficiency of judicial systems	32
<b>CHAPTER 2 – FREEDOM OF EXPRESSION</b>	<b>37</b>
Introduction	37
Legal guarantees for freedom of expression	38
Safety of journalists and others who speak up	41
Independent and pluralistic media environment	45
Reliability and trust in information	48
<b>CHAPTER 3 – FREEDOM OF ASSEMBLY AND FREEDOM OF ASSOCIATION</b>	<b>53</b>
Introduction	53
Freedom of assembly	54
Freedom of association	58
<b>CHAPTER 4 – POLITICAL INSTITUTIONS</b>	<b>65</b>
Introduction	65
Functioning of democratic institutions	66
Democratic elections	68
Local and regional democracy	72
Good governance at all levels	73
<b>CHAPTER 5 – INTEGRITY OF INSTITUTIONS</b>	<b>79</b>
Introduction	79
Institutional integrity frameworks	80
Standards of conduct for public officials	83
Integrity, effectiveness and the impact of accountability and enforcement mechanisms	86
Criminal and non-criminal enforcement mechanisms	89
<b>PART II – DEMOCRATIC ENVIRONMENT</b>	<b>93</b>
<b>CHAPTER 6 – HUMAN DIGNITY</b>	<b>95</b>
Introduction	95
Combating trafficking in human beings	96
Promoting and protecting women's rights	98
Human rights and dignity of children	102
Social rights	110
Humane detention conditions	117
<b>CHAPTER 7 – ANTI-DISCRIMINATION, DIVERSITY AND INCLUSION</b>	<b>121</b>
Introduction	121
Anti-discrimination	122
Diversity and inclusion	130
<b>CHAPTER 8 – DEMOCRATIC PARTICIPATION</b>	<b>143</b>
Introduction	143
Education for democracy	144
Youth for democracy	147
Culture and cultural heritage for democracy	152





Marija Pejčinović Burić  
Secretary General of the Council of Europe

# A PREFACE BY THE SECRETARY GENERAL

---

**O**n 16 and 17 May of this year, European leaders will gather in Reykjavik for the 4th Summit of Heads of State and Government of the Council of Europe. This will be an opportunity for our 46 member states to recommit to the values and standards that this Organisation protects and promotes across our common legal area. More than that, these leaders will have the chance to agree on specific actions and priorities that will improve the lives of people throughout our continent. This could not be more timely. The brutal, illegal and ongoing aggression launched by the Russian Federation against Ukraine and its people has made a deep impact on the geopolitics of Europe and the wider world. Every international organisation must be clear about how it will adapt its action in order to take account of the new realities and to ensure the success of multilateralism in line with its mandate. The Council of Europe is no exception.

■ This Organisation was established to ensure peace based on unity, underpinned by human rights, democracy and the rule of law. Democratic security of this kind, however, relies on political will. The Russian Federation lost that will over the course of many years. It began a process of democratic backsliding that can be charted in previous annual reports and, ultimately, led up to the appalling violence that necessitated Russia's swift exclusion from this Organisation last year.

■ Reykjavik will therefore be the place in which we ask member states to demonstrate their determination to ensure that the Russian Federation will be both the first and last country to break away from our values and our Organisation, that democratic backsliding will be halted and reversed and that they will work together so that our standards are applied across every aspect of Europeans' lives – both existing challenges and those that emerge.

■ In deciding these things, leaders should consider the state that Europe is in today, the recommendations made last year by the High-level Reflection Group, chaired by Ireland's former President Mary Robinson, and this annual report.

■ Unfortunately, these pages show that, in many areas, democratic backsliding continues. Examples include:

- ▶ an increase in violence against journalists, the use of surveillance to track and intimidate them and the deployment of tactics ranging from detention to strategic lawsuits against public participation (SLAPPs) in order to disrupt, discourage and prevent investigative journalists and others from doing their jobs;
- ▶ new legislation and the misuse of existing laws to constrain civil society activism and freedom of association and assembly, with public demonstrations wrongly classified as dangerous and/or restricted or prevented, excessive force used against demonstrators and non-governmental organisations (NGOs) being faced with increased financial restrictions and bureaucratic hurdles; similarly, judiciaries continue to be used to undermine political opposition;
- ▶ a polarised political environment in which hate speech continues to grow, both online and offline, often targeting women and a range of minorities and vulnerable groups.

■ These negative trends are not found everywhere, and it is important to recognise that there are also positive developments in some member states. These include:

- ▶ further ratifications of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence, with criminal legislation in more countries being better aligned with the treaty's requirements, and progress on the criminalisation of the digital dimension of violence against women;

- ▶ on children's rights, most member states have put in place laws and policies to protect children from violence, with more than 25 developing integrated strategies; most have done the same for the purposes of tackling child poverty and social exclusion; and at least 30 countries have acted to implement the Committee of Ministers' Guidelines on child-friendly justice;
- ▶ notwithstanding the growing problem of hate speech, there are also increased efforts to combat it in the longer term with our own Committee of Ministers' recommendation to member states on a comprehensive approach within a human rights framework, several national and regional parliaments adopting codes of conduct and the use of international and regional co-operation initiatives that map trends, review legislation and build capacity to tackle hate speech effectively.

■ It is also right to make special mention of the steps that member states have taken to welcome millions of Ukrainian refugees and to ensure that these people's human rights are upheld. National authorities have engaged in training designed to help them meet the physical and psychological needs of those who have often suffered greatly and who live in fear for the people and places that they have left behind. This approach has been necessary and is very welcome.

■ For each of these trends – and every indicator measured in this report – there is an overall impression and there are outlying examples, for good and for ill. Taken together, it is a highly mixed picture, and that is not good enough. We cannot tolerate a stop-go “traffic lights” approach to our values and standards, with danger signals and red, amber and green lights flashing on and off. There was never a time at which all of our member states were travelling at exactly the same speed. There was, however, a period where it felt that we were clearly on the same journey, making progress together and towards a shared destination. In the interests of every European, we must return to that.

■ How can we achieve this? First and foremost, member states must implement the European Convention on Human Rights and execute the judgments of the European Court of Human Rights fully and rapidly, and meet their commitments under the terms of the European Social Charter. This is the fundamental starting point.

■ At this moment, a clear priority is to support our member state Ukraine and its people. Their suffering and their needs are laid bare before us all. Some of what we are doing to help is mentioned in this report, but it is important that we signal our readiness to see that through and to adapt and expand it as required. Over the past year, we have implemented the action plan that we adapted with the Ukrainian authorities in light of the realities on the ground. We have adopted another on resilience, recovery and reconstruction. We have also been clear about the need to ensure accountability for the crimes that the Russian Federation is committing on the ground, with expert support for the Ukrainian Prosecutor General's investigation of serious human rights violations, our proposal to develop a register of damage as a necessary first step to a compensation mechanism and our offer to co-operate with others on a possible international judicial body to address the crime of aggression.

■ Looking further forward, we are ready to help Ukraine, the Republic of Moldova, Georgia and other countries in the European Union (EU) accession process undertake the reforms required for membership of the EU, as we have done for many countries in the past. These countries are sovereign democracies. They have sought and been offered a European perspective. We must play our part in delivering it.

■ Similarly, we must work with the EU itself to conclude the positive and important progress made over the past year towards its accession to the European Convention on Human Rights. This is essential for completing the human rights architecture of our continent.

■ So too must we maintain our commitment to applying our values and standards to the new and evolving challenges that face our societies. We are already at work on new instruments addressing artificial intelligence (AI) and human rights and the environment and human rights. It is right that this should continue and deliver. We must do the same in all of our standard-setting, monitoring and co-operation activities. This report shows that in every aspect of our work, progress has been achieved for some, while others experience the risk, threats and harms that occupy the space where rights should safeguard justice. This is true whether we speak about Roma and Travellers, LGBTI people or those of specific faiths or from national or linguistic minorities. It is also true where judicial systems are weak or compromised, where corruption has set in or where cybercrime flourishes. We must redouble our efforts to address all of these and more.

■ Lastly, it is important to acknowledge the hope that we represent for others. At the time of my last annual report, Russia had already been excluded from the Council of Europe. Now it is outside the European Convention on Human Rights too. As this report acknowledges, over the past 12 months, the Russian authorities have further suppressed Russians' rights, including in the months during which the authorities were legally required

to implement the Convention. Now the Russian people have no recourse to the European Court of Human Rights for violations of their human rights and freedoms, carried out by their own government.

■ Where civil society and democratic forces from Russia and Belarus share our values, we should be open to co-operating with them and providing a window with a view to better times. We have already begun that with the Council of Europe–Belarus Contact Group established last year. It is right that we look to do more. The Russian and Belarusian authorities may regard supporters of human rights, democracy and the rule of law as their enemies. We never will.

■ The past year has been a terrible one for Europe. The aggression against Ukraine has caused extraordinary suffering: hundreds of thousands of deaths, millions of refugees, horrifying stories of torture, rape and loss. We yearn for a return to peace: a sustainable peace based on justice. In the meantime, we must learn and apply what lessons we can. Europe cannot be allowed to go back to the wild. We must instead recommit to the core values and standards of the unique and modern European civilisation that we have built, but which stands in peril. For individuals to live in safety and dignity, and for societies to thrive in the peace that comes with democratic security, we must act with commitment and determination.

■ Reykjavik will be the litmus test for us all.



**Marija Pejčinović Burić**  
Secretary General of the Council of Europe



# KEY FINDINGS OF THE REPORT

## EFFICIENT, IMPARTIAL AND INDEPENDENT JUDICIARIES

- ▶ Member states have made efforts to protect judges and prosecutors, and their self-governing bodies, from external and internal influences. This notwithstanding, serious threats to their independence persist in some states, and public mistrust in the judiciary is widespread.
- ▶ Mechanisms for the appointment and evaluation of judges have evolved as far as transparency and accountability are concerned, and new codes of ethics have been adopted.
- ▶ Judges, prosecutors and lawyers have increased their demand for training on ethics and on access to justice for women and groups in vulnerable situations, particularly when that training is tailored to national legislation and practice.

## FREEDOM OF EXPRESSION

- ▶ Violent attacks against journalists have been on the rise in several member states. Member states' efforts to enact favourable legal and policy frameworks, improve the safety of journalists and increase media transparency and viability have been overshadowed in some cases by growing violence, harassment and interference in the work of journalists. Online disinformation and hate speech have continued to pose major problems, showing the need for stronger governance and oversight of digital platforms.
- ▶ Safety has taken on particular urgency, with the Russian Federation's aggression against Ukraine posing lethal risks to journalists.
- ▶ The upward trend in the number of detentions and SLAPP lawsuits has threatened to undermine the investigative work of journalists and silence critical voices.
- ▶ The use of surveillance measures to target journalists has been a rising issue of concern across Europe.
- ▶ The independence and funding of public service media and media regulatory authorities has been at risk in several member states.

## FREEDOM OF ASSEMBLY AND FREEDOM OF ASSOCIATION

- ▶ In a growing number of states, governments consider public demonstrations to be dangerous and treat them as such, even when they are peaceful.
- ▶ Since the beginning of the war against Ukraine, Russian authorities have intensified the crackdown on civil society and the press by liquidating non-governmental organisations and arresting over 16 000 peaceful anti-war demonstrators.
- ▶ Free speech and public participation have been curtailed in several member states by measures ranging from harsh policing of demonstrations, bans on and dispersals of assemblies, and changes in legislation aimed at increasing the possibilities of sanctioning those who organise or participate in peaceful assemblies.
- ▶ Cases of law-enforcement officers using excessive force were registered in some member states, violating the principles of necessity, proportionality and non-discrimination, notably when policing peaceful demonstrations.
- ▶ The violation of the right to freedom of association in the Russian Federation, through its legislation labelling and stigmatising NGOs as "foreign agents" or "undesirable", has become systemic. Civil society organisations in member states are also increasingly concerned about states that draw justifications from international laws and treaties to restrict NGOs' access to financial resources, while undermining their ability to function with increased bureaucratic requirements.

## POLITICAL INSTITUTIONS

- ▶ Elections held in Europe are broadly in line with democratic standards and generally respect the principles defined in the Venice Commission Code of Good Practice in Electoral Matters. In some cases, allegations of misuse of state resources, vote buying and family voting have caused concern.
- ▶ In 2022, many countries held elections that had been postponed earlier due to the Covid-19 pandemic. Countries adapted their voting arrangements to pandemic circumstances and to the needs of social distancing, introducing distance voting arrangements, early voting and various other forms of convenience voting, ranging from drive-through polls to medically supported polling stations.
- ▶ The most prominent issues for local authorities included reception and hosting of refugees, improving environmental protection, strengthening participatory democracy and using deliberative methods such as citizens' assemblies at local level, engagement of youth in decision making, and inadequacy of available resources.
- ▶ The downward trend in electoral turnout, which has been monitored over a long period of time, does not seem to have fundamentally changed despite a slight improvement in 2022. On the other hand, citizens seem to desire to participate more in public life. While citizens are increasingly reluctant to cast their vote at the ballot box and mistrust towards public institutions is growing, new forms of participation such as citizen assemblies, consultation platforms or participatory budgeting initiatives are on the rise.
- ▶ Polarisation of the political landscape in some countries has led to the use of hate speech and inflammatory or aggressive language from contestants. The level of participation of women in electoral processes is often unsatisfactory. The use of new technologies in electoral processes has resulted in mixed, and sometimes critical assessments.
- ▶ Countries have continued reforms for the decentralisation of competences, fiscal decentralisation, regionalisation, territorial and administrative reforms and encouraging civil participation.

## INTEGRITY OF INSTITUTIONS

- ▶ The transfer of additional competences to local levels of government represents a challenge in terms of increased risks for integrity; it should be accompanied by commensurate additional resources.
- ▶ In the domain of sport, integrity has been under strain. A lack of integrity in sport erodes the values that are at the heart of the sport movement, such as respect, equality, fairness and trust.
- ▶ Transparency of public authorities has increased. This notwithstanding, implementation of integrity standards remains weak in several countries.
- ▶ Anti-corruption authorities and other similar monitoring/supervisory bodies are often under resourced; they should have adequate financial and personnel resources to effectively perform their duties.
- ▶ A "zero-tolerance" policy on money laundering must be adopted by all member states to prevent the spread of non-democratic trends within Europe, and to dissuade those regimes abroad looking to sustain themselves by laundering their money in Europe.
- ▶ The prosecution of corruption-related offences has not proved satisfactory in some countries. The prosecution service should be shielded from undue influence and interference in the investigation of criminal cases. This is particularly important for the prosecution of high-profile corruption cases.
- ▶ Many member states have put in place whistle-blower protection laws or legal provisions addressing protected reporting or prevention of retaliation against whistle-blowers.

## HUMAN DIGNITY

- ▶ Commendable steps have been taken across Europe to protect Ukrainian refugees and mitigate the risks of trafficking. The number of confirmed cases of human trafficking in relation to the war in Ukraine remains low.
- ▶ Ensuring access to compensation for victims of human trafficking remains a major challenge in some member states.
- ▶ Criminal legislation in many countries is being better aligned with the requirements of the Istanbul Convention and there has been progress in the criminalisation of the digital dimension of violence against women through specific offences.
- ▶ Discriminatory distribution of marital assets in divorce proceedings and the ongoing failure to consider the value of women's unpaid care and domestic work continued to perpetuate women's economic vulnerability. Women continue to face challenges in enforcing alimony and child maintenance orders, which further contributes to the feminisation of poverty.
- ▶ Most member states have put legislative and policy measures in place to protect children from violence, and more than 25 states have developed an integrated strategy on violence against children.
- ▶ In April 2021, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse entered into force in Ireland, bringing the number of states parties to 48.
- ▶ Online child sexual exploitation and abuse, including the exploitation of child self-generated sexual images and/or videos, have increased during the Covid-19 pandemic.
- ▶ Children in vulnerable situations have been more exposed to risks during the pandemic and have severely suffered from the consequences of lockdown, and the crisis has revealed discrimination and inequalities. The negative impact of the pandemic on children's mental health has been acute.
- ▶ Most member states have made changes in their legislation or policies for the purpose of tackling child poverty and social exclusion. At least 30 member states have changed their legislation and/or policy to implement the Committee of Ministers' Guidelines on child-friendly justice.
- ▶ A recurring problem has been the high infant and maternal mortality rates in several countries. The measures taken to effectively guarantee the right of access to healthcare were insufficient.
- ▶ As regards law-enforcement agencies, the three basic safeguards against ill-treatment (access to a doctor/access to a lawyer/the right of detained persons to inform a close relative or another third party of their situation (notification of custody)), were still not fully respected in all countries, even when laid down in law.
- ▶ Poor conditions in prisons, social care homes and psychiatric hospitals, which in certain cases could be considered as amounting to inhuman and degrading treatment, have been found.

## ANTI-DISCRIMINATION, DIVERSITY AND INCLUSION

- ▶ Member states have taken steps to combat racism and intolerance in policing, notably through awareness raising, improved police training, enhanced internal reporting mechanisms and investigation procedures, and more diversified police forces. Still, indications of racism, antigypsyism and LGBTI-phobia in police abuse and practices regularly come to light, ranging from illegal profiling, the use of racist or LGBTI-phobic language and, in some instances, excessive force or violence by police officers.
- ▶ The Committee of Ministers adopted Recommendation [CM/Rec\(2022\)16](#) on combating hate speech providing a comprehensive approach to addressing hate speech within a human rights framework. Several regional and national parliaments have adopted codes of conduct to address hate speech. Online hate speech and disinformation in the context of ongoing crises arising from

the Covid-19 pandemic and the Russian Federation's war of aggression against Ukraine affect many public representatives at local, regional and national levels.

- ▶ There is a trend of increased regional co-operation in different areas. France, Germany, Greece, Italy, Montenegro and Spain have engaged in an EU–Council of Europe joint project on combating hate speech in sport. Armenia, Georgia, the Republic of Moldova and Ukraine have completed a systemic mapping of their national approaches to combating hate speech, and, together with countries in the Western Balkans, are building capacities of national agencies and reviewing legislation and policies to effectively record and address hate speech and hate crime. Austria, France, Germany and Norway took measures to improve reporting of harmful and illegal online content.
- ▶ Significant progress has been achieved in several member states through legislative measures advancing the rights of LGBTI persons, such as legal recognition of same-sex couples, legal gender recognition based on self-determination and bans of so-called sex-normalising surgeries on intersex children. At the same time, backsliding on existing protections, combined with a surge in hate speech and stigmatisation, often stirred by politicians and opinion makers for political gain, are worrisome indicators of increased polarisation.
- ▶ Several Council of Europe bodies have called for particular attention to be given to the heightened vulnerability of marginalised groups fleeing the war, notably LGBTI refugees from Ukraine, but also LGBTI asylum seekers from the Russian Federation and Belarus.
- ▶ Some member states improved their legal framework for the protection of minority languages, including by accepting new undertakings under the European Charter for Regional or Minority Languages.
- ▶ Education in and of minority languages continues to face many challenges. These include the lack of teachers, as well as the insufficient quality and quantity of educational materials.
- ▶ There is a significant lack of progress in addressing the specific situation of Roma and Traveller women and girls.

## DEMOCRATIC PARTICIPATION

- ▶ Education authorities, institutions and professionals in member states have continued to adopt policies, legislation and practices to develop a culture of democratic participation through education.
- ▶ The number of participating member states joining the European Qualifications Passport for Refugees has increased, bringing it to 20.
- ▶ Research demonstrates that, because of the Covid-19 pandemic, young workers have experienced considerable loss of work and income.
- ▶ Access to political structures for young people remains difficult and prevents them from participating effectively in the political process.
- ▶ The existence of a civil society network has been critical to the delivery of support in times of crisis, such as during the Covid-19 pandemic, to young people living in Ukraine and to young refugees fleeing the war.





# GUIDE TO THE REPORT

---

**T**he Secretary General's 2023 report covers the two years since the last full report was published. It 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 assesses the quality of the democratic environment in which those institutions function.

■ The data come predominantly from Council of Europe sources, such as monitoring reports, decisions by the European Court of Human Rights (the Court), Parliamentary Assembly reports, reports by the Commissioner for Human Rights and opinions of the European Commission for Democracy through Law (Venice Commission) and others. As was the case in previous reports, many of the findings are country specific and a deliberate effort has been made to include as many examples of good practice as possible, while pointing out 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 excluding some areas of activity, without prejudice to their importance or pertinence with regard to the Council of Europe's mandate and priorities. On 16 March 2022, the Committee of Ministers adopted a decision excluding the Russian Federation from the Council of Europe. Under the terms of the Convention, the Russian Federation has a binding legal obligation to implement all judgments and decisions from the European Court of Human Rights concerning its actions or omissions occurring until 16 September 2022. This report therefore covers the Russian Federation's activities and obligations as a member state until 16 March 2022, and its outstanding obligations.

■ Each of the eight chapters includes a summary of the main challenges. These will guide the preparation of the next biennial programme and budget, which will include specific measures and activities.



PART I

# DEMOCRATIC INSTITUTIONS



# CHAPTER 1

## EFFICIENT, IMPARTIAL AND INDEPENDENT JUDICIARIES

---

### INTRODUCTION

Judicial independence, impartiality and efficiency are fundamental parameters for an effective justice system. Only an independent and impartial judiciary, free from external pressure and not subject to political influence or manipulation, can adequately fulfil its role as guardian of the rule of law and upholder of peoples' human rights and fundamental freedoms. This is a precondition for ensuring society's trust in the justice system and for any individual's right to a fair trial. The responsibility for upholding this independence and impartiality lies with various institutions and society as a whole: the executive, the legislative, judges, members of courts, legal professionals, the media, civil society and others each have a role to play.

■ The measures put in place in the face of the Covid-19 pandemic have significantly changed how justice systems operate. They have brought about innovations, including the implementation of new court procedures and an increased use of information and communication technologies (ICT). Other measures have reduced the availability and accessibility of legal advice, which has disproportionately affected vulnerable people or has led to a reduction in the budget for the judiciary. The significant backlogs and delays observed in proceedings in member states will require time to be solved and will continue to put pressure on the justice system in the short to medium term.

■ Several member states have made important steps to bring their judiciaries in line with European standards, reversing constitutional or legislative drafts or abolishing previously adopted laws. These steps were often based on judgments of the European Court of Human Rights, Council of Europe standards, policy documents such as the Plan of Action on Strengthening Judicial Independence and Impartiality (Sofia Action Plan)<sup>1</sup> and recommendations by advisory and monitoring bodies. Council of Europe co-operation and capacity-building projects provided support.

■ Attention should be paid to the way these legislative changes regarding the judiciary and the prosecution are prepared and adopted – whether public consultations with relevant stakeholders preceded parliamentary debates,<sup>2</sup> and whether sufficient time is allocated for such public consultations and parliamentary debates.<sup>3</sup> Reforms of the court systems, such as changes in judicial maps or changes to self-governing bodies of the judiciary (for instance, councils for the judiciary), should be undertaken after consultation with the judiciary.

1. Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (CM(2016)36 final).

2. See, for example, Venice Commission Opinion No. 1086/2022, Republic of Moldova – Opinion on draft amendments to Law No. 3/2016 on the Public Prosecution Service (CDL-AD(2022)018), 20 June 2022.

3. See, for example, Venice Commission Opinion No. 1079/2022, Romania – Opinion on the draft law on the dismantling of the section for investigating criminal offences within the judiciary (CDL-AD(2022)003), 21 March 2022.



### Review of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality (Sofia Action Plan)<sup>4</sup>

The Plan of Action on Strengthening Judicial Independence and Impartiality, adopted by the Committee of Ministers, was a response to threats to judicial independence and a means of providing guidance to member states on processes and situations in which judicial independence needs to be reinforced. The plan of action lays out Council of Europe standards on judicial independence and impartiality, emphasising how to safeguard and strengthen it in its relations with the executive and the legislature and how to protect the independence of individual judges, building on the European Court of Human Rights' case law.

In 2022, the European Committee on Legal Co-operation (CDCJ) published its review of measures undertaken by member states from 2016 to 2021 to implement the plan of action, concluding that the latter's measures remain topical and relevant and that there is a clear need to continue providing and improving stronger guarantees for judicial and prosecutorial independence in the member states. It noted a strong commitment to creating the necessary conditions for compliance with the principles laid down in the plan of action. Member states had made efforts to protect judges and prosecutors from external and internal influences by strengthening the independence and role of self-governing bodies; improving legal frameworks that minimise the risks of external influence over selection, appointment and promotion procedures, as well as working conditions; and clarifying procedures concerning the adherence to ethical codes, disciplinary liability or evaluation, hence minimising the risk of arbitrary use of such procedures in order to exert influence over the work of judges or prosecutors.

Challenges remain in implementing regulatory frameworks and creating an enabling environment and a culture of judicial independence. The European Court of Human Rights' judgments also demonstrate that threats to judicial and prosecutorial independence persist. National courts and judicial professions are still faced with attempts by the executive power, including the use of legislative intervention to facilitate political influence over judicial appointments and the composition and functioning of judicial self-governing bodies, to weaken the security of judges' tenure or empower the executive to discretionally replace court presidents. National courts and judicial professions also suffer from a lack of financial and human resources and budgetary autonomy.

■ Legislative reforms alone are not sufficient to achieve a proper balance between the independence and accountability of judges and prosecutors: a steady change in the legal culture is necessary. It is essential that all actors relevant to the judiciary work together in a spirit of co-operation to ensure that justice is appropriately implemented.

■ In most member states judicial independence is satisfactory. The process of de-politicising the procedure of appointing top officeholders in the judiciary and the prosecution service, carried out by various member states in the last two years, has been positive. The nomination of judges, their career progression, evaluation and any disciplinary liability must continue to be protected against undue influence.

■ There is a general tendency towards increased independence of prosecutors and prosecution services, with several member states undertaking reforms concerning accountability, financial independence, transparency of the relationship with the executive, and appointments to the post of prosecutor general. In a few member states, the prosecution service has been separated from the executive, and in several others the power of the executive to issue instructions in individual cases has been *de facto* abandoned. This was confirmed at the European Conference of Prosecutors (Palermo, 5-6 May 2022), whose conclusions point to the need to update the Committee of Ministers' [Recommendation Rec\(2000\)19](#) on the role of public prosecution in the criminal justice system, and to update standards on prosecutorial independence. In Opinion No. 17 (2022),<sup>5</sup> the Consultative Council of European Prosecutors (CCPE) stressed that prosecutors' increased and sustained attention to environmental crimes and enforcement is essential for strengthening the rule of law and setting benchmarks and values in this respect.

4. [Review of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality](#), Report by the European Committee on Legal Co-operation (CDCJ) to the Secretary General of the Council of Europe, published on 25 November 2022.

5. See Consultative Council of European Prosecutors, [Opinion No. 17 \(2022\) on the role of prosecutors in the protection of the environment](#), 4 October 2022.

■ Judicial councils or equivalent bodies safeguard the independence of the judicial system and individual judges. Their balanced composition and membership are essential for strong independence from the executive and the legislature. Reforms in the election and composition of judicial or prosecutorial councils have been carried out in various member states, generally pointing in the right direction, thus ensuring more independence and pluralism in their composition, so that they may not be dominated by one professional group or by one political force, and granting them a key role in the appointment, career advancement, and evaluation and discipline of judges and prosecutors. Mechanisms for the appointment and evaluation of judges have also evolved as far as transparency and accountability are concerned.

■ Judicial self-governing bodies should oversee relevant decisions affecting all aspects of the profession. At the same time, as regards matters such as the ethical conduct of judges and prosecutors, disciplinary breaches, and criteria for professional performance, while more detailed and precise rules could be developed in codes of conduct and similar documents adopted by the judicial or prosecutorial councils, legislation should describe at least some of the main substantive principles and not give to judicial and prosecutorial councils carte blanche in defining such principles.<sup>6</sup>

■ There cannot be an effective fight against corruption without a truly independent judiciary. The Fourth Evaluation Round of the Group of States against Corruption (GRECO) deals with “Prevention of corruption in respect of members of parliament, judges and prosecutors”. As shown in the 48 evaluation reports published, member states have made progress in complying with GRECO’s recommendations concerning the judicial branch.<sup>7</sup> New codes of ethics have been adopted, together with practical reforms regarding guidance and training. Financial disclosures, conflicts of interest and gifts are some of the issues dealt with in new regulations.

■ 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, including budgets, staffing and infrastructure. Member states have put in place legislation to protect the right of citizens to seek compensation if they have suffered pecuniary or non-pecuniary damage due to cases that have been tried outside reasonable time. Furthermore, systems are in place for filing complaints about the functioning of the judicial system (to judicial authorities, but also to other competent bodies, such as ombudspersons). Modern court management techniques now include time management. Procedures are also in place to effectively challenge a judge considered to be biased.

■ Online access to judgments increases transparency and public trust and can contribute to consistency in case law. Various member states have taken initiatives – often with Council of Europe support – aimed at fostering transparency of judicial decisions through their online publication. Open access to judicial decisions also brings with it challenges, including with respect to personal data and the right to privacy. The anonymisation (or pseudonymisation) of judicial decisions before their publication is one of the ways of mitigating such concerns. A multilateral project aims at proposing methodological and technological solutions for the anonymisation/pseudonymisation of judgments for their publication and categorisation.<sup>8</sup> A new body, the Artificial Intelligence Advisory Board (AIAB), will support the Council of Europe European Commission for the Efficiency of Justice (CEPEJ) to monitor the actual emergence of artificial intelligence applications in the justice sector and to provide expert guidance on the application of the CEPEJ’s principles in the “European Ethical Charter on the Use of Artificial Intelligence in Judicial Systems and their environment”.<sup>9</sup>

■ The CEPEJ uses an indicator on accountability as part of its evaluations of judicial reforms in Albania, Armenia, Azerbaijan, Bosnia and Herzegovina, Georgia, the Republic of Moldova, Montenegro, North Macedonia, Serbia and Ukraine.

■ Justice for all also depends on knowledgeable and skilled justice professionals who can apply European standards at home. The Council of Europe HELP (Human Rights Education for Legal Professionals) platform supports judges, prosecutors, lawyers and other professionals. In the past two years some 20 000 people in Europe and beyond attended HELP courses adapted to their national needs and over 15 000 self-learners completed HELP courses.<sup>10</sup> HELP training courses on judicial independence and impartiality, judicial reasoning and human rights, and ethics for judges, prosecutors and lawyers were launched in 2021. Covering Council

6. See, for example, Venice Commission Opinion No. 1086/2022, Republic of Moldova – Opinion on draft amendments to Law No. 3/2016 on the Public Prosecution Service (CDL-AD(2022)018), 20 June 2022.

7. See GRECO 22nd General Activity Report (2021), Anti-corruption trends, challenges and good practices in Europe & the United States of America, p. 9.

8. See <https://www.coe.int/en/web/national-implementation/tjeni>. The TJENI project is currently implemented in Cyprus, Hungary, Lithuania, Poland, Romania and Slovenia.

9. European ethical charter on the use of artificial intelligence in judicial systems and their environment, adopted by the CEPEJ at its 31st plenary meeting (3-4 December 2018) <https://rm.coe.int/ethical-charter-en-for-publication-4-december-2018/16808f699c>.

10. Available on the HELP e-learning platform <https://help.elearning.ext.coe.int/>.

of Europe and European Union standards, the development and national contextualisation of HELP courses also contribute to the implementation of the European Union European Judicial Training Strategy 2021-2024.

## Challenges

■ Challenges for judiciaries persist in Europe. They have been highlighted by the European Court of Human Rights and by the Council of Europe's monitoring, advisory or expert bodies, pointing to a deterioration of the situation in several member states, as has the European Rule of Law Mechanism in respect of European Union member states.<sup>11</sup>

■ Public mistrust in the judiciary is widespread. In some cases, this has led to a public demand for radical judicial reforms, which may involve reshuffling the constitutionally established bodies of judicial governance and lead to the temptation to create parallel bodies of judicial governance which would assume part of the powers of the constitutionally established bodies. Several judicial and prosecutorial councils have taken measures to address attacks on the judiciary and on individual judges and prosecutors. Cases of improper pressure on individual judges by the executive or the legislature, by individual litigants, pressure groups or other judges, have also been observed.

■ There is no uniform European standard as to which elements of the judicial system should be regulated by the constitution and which should be governed at the level of legislation, but when certain rules are not fixed at constitutional level, a new parliamentary majority may attempt to change them to obtain control of the institutions or replace key officeholders in the judiciary.<sup>12</sup>

■ Judicial self-governance has also been challenged, including through proposed reforms involving an early termination of the mandates of the incumbent members or a change to the regime for dismissal of its members. The European Court of Human Rights has recently stated that the removal, or threat of removal, of a member of a national council for the judiciary during his or her term of office has the potential to adversely affect his or her personal independence and, by extension, the council's mission.<sup>13</sup>

■ The position and powers of the prosecution services, and of the prosecutor general, also deserve attention. The prosecution needs sufficient autonomy to shield prosecutors from strict hierarchical instructions and undue political influence. Some countries insist on keeping the powers of the prosecution service vast and broadly defined, outside the sphere of criminal law. An over-powerful prosecutor general may become *de facto* immune from accountability, including criminal liability. It is therefore important to ensure that alleged misconduct is effectively investigated.

■ Attempts to replace key officeholders in the judiciary and the prosecution service under the pretext of institutional reforms have continued to occur. Radical institutional reforms may lead naturally to early termination of the mandate of current officeholders, but reforms need to meet two conditions to be legitimate: they must lead to improvements in line with relevant European standards and respect, to the maximum extent possible, the stability of tenure of those officeholders.

■ The Russian Federation's<sup>14</sup> invasion of Ukraine has put the latter's judiciary in an extremely difficult position. Data presented in November 2022 to the Consultative Council of European Judges (CCJE) by the Ukrainian member showed that, at the time, 11% of courts of appeal and local courts did not administer justice and 12% of court premises had been damaged or destroyed. Notwithstanding, Ukrainian courts adopted over 3.8 million decisions between 24 February and 28 November 2022. According to statistics from the office of the Prosecutor General of Ukraine, 52 633 war-related crimes were registered as of 12 December 2022.<sup>15</sup>

■ Shortly after the outbreak of the war, the Council of Europe started to provide the Ukrainian judiciary and prosecution services with advice and training on how to meet the requirements of the European Convention on Human Rights in criminal investigations, how to manage justice systems in times of war, how to organise

11. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, "2022 Rule of Law Report – The rule of law situation in the European Union", COM/2022/500 final.

12. Venice Commission Opinion No. 1086/2022, Republic of Moldova – Opinion on draft amendments to Law No. 3/2016 on the Public Prosecution Service (CDL-AD(2022)018), 20 June 2022.

13. *Grzęda v. Poland*, Grand Chamber judgment of 15 March 2022 (Application No. 43572/18).

14. On 16 March 2022, the Committee of Ministers adopted a decision excluding the Russian Federation from the Council of Europe. Under the terms of the European Convention on Human Rights, the Russian Federation has a binding legal obligation to implement all judgments and decisions by the European Court of Human Rights concerning its actions or omissions occurring up until 16 September 2022.

15. See <https://gp.gov.ua/>.

remote judicial work and how to conduct proceedings under martial law or states of emergency. Support and advice were also provided to the office of the prosecutor general on communication. The Council of Europe helped set up asylum/migration HELP e-desks for up to 1 000 lawyers supporting those fleeing the war. An entire chapter of the new Council of Europe Action Plan for Ukraine entitled “[Resilience, Recovery and Reconstruction 2023-2026](#)”, is dedicated to the functioning and development of an independent, effective and trusted justice system.

## JUDICIAL INDEPENDENCE

### Measurement criteria

---

#### Institutional independence

- ▶ The independence of the judiciary is protected at constitutional or equivalent level.
- ▶ The independence of the judiciary is guaranteed through the existence of councils for the judiciary or equivalent bodies in which not less 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.
- ▶ Institutional reforms are not used as a pretext for reducing the independence of the judiciary.

#### Individual independence

- ▶ Decisions on judges’ careers, including appointment, promotion, transfer and removal from office, are taken independently of the executive and legislative powers and are made on merit, based on transparent and objective criteria and subject to judicial 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 over the above-mentioned decisions vis-à-vis the judges of their courts.
- ▶ The allocation of cases to individual judges is based on objective and transparent criteria established by law.
- ▶ Measures are in place to protect lawyers in the discharge of their professional duties.

### Findings

---

#### Independence of the judiciary from political influence

■ The Parliamentary Assembly of the Council of Europe noted that Armenia has taken several measures over the past few years to promote the independence of judges and strengthen confidence in the judiciary. The Assembly called for the continuation of the reform through the introduction of an appeal mechanism against decisions of the Supreme Judicial Council of Armenia in disciplinary matters and the establishment of a neutral and competent body to provide confidential counselling to judges on improper influences, conflicts of interest and corruption, in line with GRECO recommendations. Tangible results are also expected in terms of sanctions against undue interference with the administration of justice.<sup>16</sup>

---

16. Parliamentary Assembly [Resolution 2427 \(2022\)](#) “The functioning of democratic institutions in Armenia”, 27 January 2022.

■ Supervising the execution of the *Kolevi v. Bulgaria*<sup>17</sup> judgment, the Committee of Ministers welcomed the amendments included in a draft bill to guarantee independent investigation of chief prosecutors or their deputies by appointing an ad hoc prosecutor, making sure investigators are not subordinate to the chief prosecutor and reducing the chief prosecutor's influence in the new Supreme Judicial Council of Bulgaria. It encouraged the Bulgarian authorities to pursue their adoption and invited them to analyse the possible need, at a subsequent stage, to further improve these rules through a constitutional amendment.

■ The new strategy of the Georgian Prosecutor's Office for 2022-2027, adopted with the support of the European Union and the Council of Europe, envisages specific steps to strengthen the institutional independence of the prosecution and measures for prosecutorial self-governance.

■ The Parliamentary Assembly and GRECO reiterated issues related to the independence of the judicial system in Hungary. The Assembly considered that the reforms introduced in 2019 and 2020 had failed to address previously identified structural problems. It noted an imbalance of power between the Hungarian National Judicial Office (NJO) and the National Judicial Council (NJC), a concentration of power in the hands of the President of the Supreme Court and voiced its concern that appointments to the Supreme Court, including the presidency, risked being politicised.<sup>18</sup>

■ GRECO continued to call for a review of the NJO president's powers, both as regards appointing and promoting candidates for judicial positions and reassigning judges. The far-reaching immunity of judges was considered to be another issue of concern.<sup>19</sup> The Venice Commission also criticised the extensive powers of the NJO president in defining the number of judges sitting on the panel for certain types of cases and in allocating cases.<sup>20</sup>

■ Adequate funding of the judiciary is key to ensuring and safeguarding the independence of the judiciary since it determines the conditions under which the courts and judges perform their functions. In Lithuania, the Law on Strategic Management, which took effect as of 1 January 2021, has recognised the judicial council's role of representing the courts in the process of strategic management and formation of the state budget.

■ Measures adopted to address the Covid-19 pandemic affected the remuneration of judges and prosecutors. In Slovenia, the Constitutional Court rejected a complaint lodged by the Prosecutors' Society against a reduction by 30% of prosecutors' remuneration during the pandemic, considering that it did not directly affect their independence under the constitution.<sup>21</sup>

■ GRECO was satisfied with measures taken by Malta to strengthen judicial independence and accountability by putting the Maltese Commission for the Administration of Justice in charge of judicial discipline procedures and discontinuing the involvement of parliament in the dismissal of judges.<sup>22</sup> Similar considerations were expressed by the Parliamentary Assembly, who welcomed *inter alia* the reforms implemented with regard to the appointment process for judges and magistrates and especially the strengthening of checks and balances, as well as the reduction of the excessive and discretionary powers of the prime minister in this process.<sup>23</sup>

■ GRECO urged the Polish authorities to address problems arising from an extensive judicial reform between 2016 and 2018 which critically affected judicial independence,<sup>24</sup> along with amendments adopted in December 2019 which leave judges vulnerable to political control, particularly in respect of disciplinary proceedings. GRECO believes that disciplinary proceedings could be misused, giving rise to serious concerns in respect of the independence of judges and having a chilling effect on the judiciary.

17. [Decision CM/Del/Dec\(2022\)1451/H46-9](#) of the 1451st meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-9 S.Z. Group/Kolevi v. Bulgaria (Application Nos. 29263/12 and 1108/02), 6-8 December 2022 (DH), paragraphs 6-10.

18. Parliamentary Assembly [Resolution 2460 \(2022\)](#) "The honouring of membership obligations to the Council of Europe by Hungary", 12 October 2022. The Assembly resolved to continue to closely follow the developments with regard to the functioning of democratic institutions and the rule of law in Hungary and decided to open a monitoring procedure in respect of Hungary.

19. [GRECO Third Interim Compliance Report in respect of Hungary](#) (GrecoRC4(2021)24), adopted 3 December 2021, published 8 September 2022, paragraph 54.

20. Venice Commission, Opinion No. 1050/2021, Hungary – Opinion on the amendments to the Act on the organisation and administration of the courts and the Act on the legal status and remuneration of judges adopted by the Hungarian Parliament in December 2020 (CDL-AD(2021)036), 16 October 2021.

21. [Review of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality](#), Report by the European Committee on Legal Co-operation (CDCJ) to the Secretary General of the Council of Europe, published on 25 November 2022.

22. [GRECO Addendum to the Second Compliance Report in respect of Malta](#) (GrecoRC4(2021)10), adopted 25 March 2021, published 31 May 2021, paragraph 19.

23. Parliamentary Assembly [Resolution 2451 \(2022\)](#), "The honouring of membership obligations to the Council of Europe by Malta", 23 June 2022.

24. [GRECO Interim Compliance Report in respect of Poland](#) (GrecoRC4(2021)18), 22 September 2021, paragraph 80.



■ Cases before the Court highlighted issues with the way Poland was respecting the rule of law and the Court's jurisdiction. The Court found violations of the right to a "tribunal established by law" because the process for appointing judges to the Polish Supreme Court's Disciplinary Chamber, Extraordinary Review Chamber and Civil Chamber involved the National Council of the Judiciary, which the Court said did not offer sufficient guarantees of independence from the legislative or executive powers. Many more applications raising similar issues have now been registered by the Court.<sup>25</sup> The Committee of Ministers has expressed concern about the authorities' failure to take rapid remedial action and criticised the June 2022 Supreme Court reform, especially the failure to introduce election of members to the Polish National Council of the Judiciary by their peers, to address the matter of judges appointed under deficient procedures, and to remove the risk of disciplinary liability for judges who questioned the legitimacy of the deficient appointments.<sup>26</sup>

■ In December 2021, the Secretary General initiated the procedure envisaged under Article 52 of the European Convention on Human Rights and requested explanations from Poland on how Polish law respects the right to a fair trial (Article 6) and the jurisdiction of the Court (Article 32). The request was triggered by two judgments of the Polish Constitutional Court, which stated that Article 6, paragraph 1, of the Convention as interpreted by the European Court of Human Rights was not compliant with the Polish Constitution in certain circumstances.<sup>27</sup> The Secretary General's report concluded that the Constitutional Court judgments challenged the Strasbourg Court's competence to apply and interpret the Convention in accordance with Article 32 of the Convention and that Poland had not fulfilled its obligation to ensure the right to a fair trial by an independent and impartial tribunal. The report also stated that the rise in applications to the Court reveals shortcomings in the Polish legal order, which might threaten the efficiency of the human rights protection system.<sup>28</sup> The Committee of Ministers also stressed that national law could not justify failing to perform obligations stemming from international treaties which the state had chosen to ratify and insisted upon the unconditional obligation to abide by the Court's judgments.<sup>29</sup> It requested the Polish authorities to ensure that the Constitutional Court is composed of lawfully elected judges, to address the status of decisions in cases which involved irregularly elected judges, and to implement measures to prevent external undue influence on the appointments of the Constitutional Court's judges in the future.<sup>30</sup>

■ GRECO noted with satisfaction that San Marino had thoroughly reformed its legislature to address flaws regarding the composition and functioning of its judicial council. The new system represents a complete overhaul, providing for safeguards of independence, including exclusion of political membership, non-liability assurances, voting rights and changes to decision-making procedures. GRECO welcomed that *ex officio* membership of representatives of the executive and legislative powers in the Judicial Council of San Marino has been abolished.<sup>31</sup>

■ In Serbia, constitutional amendments followed by a referendum in early 2022 paved the way for reforms to strengthen the independence of the judiciary by enabling the adoption of new procedures for the recruitment and promotion of judges. The Venice Commission was concerned that a system where presidents of higher courts supervise the performance of presidents of lower courts created an atmosphere of hierarchy and multiple forms of evaluation and control, which was not beneficial for the internal independence of the judiciary.<sup>32</sup>

25. *Reczkowicz v. Poland*, judgment of 22 July 2021 (Application No. 43447/19); *Dolińska-Ficek and Ozimek v. Poland*, judgment of 8 November 2021 (Application Nos. 49868/19 and 57511/19); *Advance Pharma sp. z o.o. v. Poland*, judgment of 3 February 2022 (Application No. 1469/20).

26. *Decision CM/Del/Dec(2022)1451/H46-25* of the 1451st meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-25 *Reczkowicz group v. Poland* (Application No. 43447/19), *Broda and Bojara v. Poland* (Application No. 26691/18), 6-8 December 2022 (DH), paragraphs 5-9.

27. *Xero Flor w Polsce sp. z o.o. v. Poland*, judgment of 7 May 2021 (Application No. 4907/18). The Court found a violation of the right to a "tribunal established by law" on account of the participation of a judge whose election by the eighth-term Sejm (the lower house of the bicameral parliament) in December 2015 was vitiated by grave irregularities in the Constitutional Court's panel that rejected the applicant's constitutional complaint in 2017. See also *Broda and Bojara v. Poland*, judgment of 29 June 2021 (Application Nos. 26691/18 and 27367/18) and *Reczkowicz v. Poland*, judgment of 22 July 2021 (Application No. 43447/19).

28. *Report by the Secretary General* under Article 52 of the European Convention on Human Rights on the consequences of decisions K 6/21 and K 7/21 of the Constitutional Court of the Republic of Poland (SG/Inf(2022)39), 9 November 2022.

29. *Decision CM/Del/Dec(2022)1436/H46-18* of the 1436th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-18 *Xero Flor w Polsce sp. z o.o. v. Poland* (Application No. 4907/18), 8-10 June 2022 (DH), paragraph 4.

30. *Decision CM/Del/Dec(2022)1451/H46-24* of the 1451st meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-24 *Xero Flor w Polsce sp. z o.o. v. Poland* (Application No. 4907/18), 6-8 December 2022 (DH), paragraphs 3-5.

31. *GRECO Compliance Report in respect of San Marino* (GrecoRC4(2022)10), adopted and published on 17 June 2022, paragraph 43.

32. Venice Commission Opinion No. 1088/2022, Serbia – Opinion on three draft laws implementing the constitutional amendments on the judiciary (CDL-AD(2022)030), 24 October 2022.

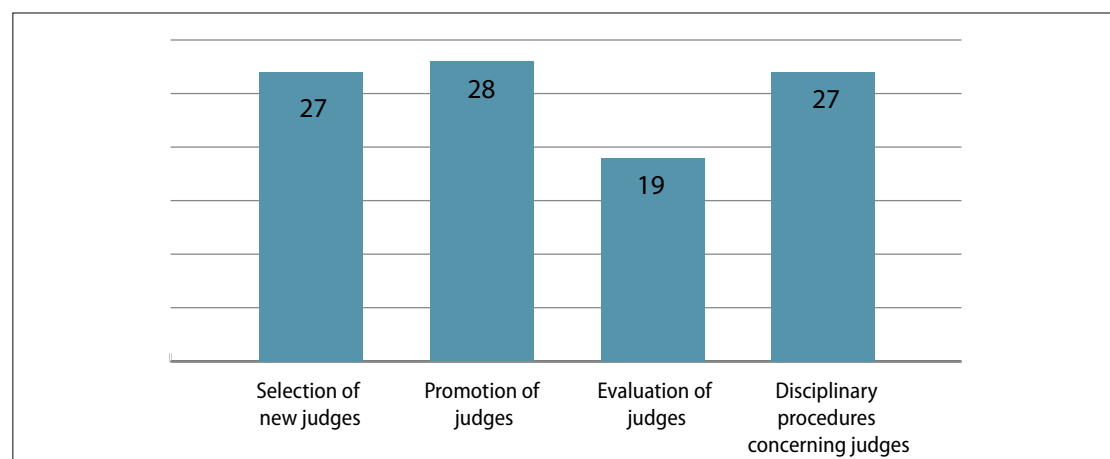
Following the Court's findings in the *Kavala v. Turkey* case and events which showed continuing violations, the Committee of Ministers pointed out a failure of the judiciary, at many levels, to act independently and in accordance with the Convention and urged the authorities to take measures in line with Council of Europe standards to ensure full independence and impartiality, free of influence from the executive, and to ensure the structural independence of the Council of Judges and Prosecutors of Türkiye.<sup>33 34</sup> The Parliamentary Assembly also expressed the urgent need for reforms, noting that the change to the political system adopted in 2017 – while being a sovereign right of any member state – had seriously weakened democratic institutions in Türkiye and made the system of checks and balances dysfunctional and deficient.<sup>35</sup>

In a case concerning the transfer of a Turkish judge, the Court held that the applicant's lack of access to a court for an important career matter had not pursued a legitimate aim. The Court stressed the importance of the separation of powers and the independence of the judiciary, and noted its concern about the improper use of the transfer mechanism against judges, stressing that it is imperative that there exist procedural safeguards to ensure that judicial autonomy is not jeopardised by undue external or internal influences, and that what was at stake was public trust in the functioning of the judiciary.<sup>36</sup>

## Councils for the judiciary

There is no uniform model of judicial governance in Europe. Nonetheless, at least 36 member states have established councils for the judiciary, which exist in both civil and common law countries, and vary in their organisation, composition and responsibilities.<sup>37</sup>

### Competences of the Councils for the Judiciary in member states



The Council of Europe continued to play a pivotal role in developing minimum standards for the creation, membership and role of such bodies, while recognising their diversity. The CCJE adopted Opinion No. 24 (2021) on the evolution of councils for the judiciary and their role in independent and impartial judicial systems, which focuses on their mandate, organisation, resources, accountability and how they work with others, such as civil society, the media and anti-corruption bodies. The opinion stresses that councils for the judiciary should be able to defend the independence of the judiciary and individual judges, so that the latter are free to decide

33. [Decision CM/Del/Dec\(2021\)1406/H46-31](#) of the 1406th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-31 *Kavala v. Turkey* (Application No. 28749/18), 7-9 June 2021 (DH), paragraph 7. See also the [Submission by the Council of Europe Commissioner for Human Rights](#) in proceedings before the European Court of Human Rights pursuant to Article 46 § 4 of the European Convention on Human Rights in the case of *Kavala v. Turkey* (Application No. 28749/18, judgment of 10 December 2019), (CommDH(2022)9), published on 6 April 2022, p. 5. See also the European Court of Human Rights [Grand Chamber judgment](#) of *Kavala v. Türkiye*, 11 July 2022.

34. [Decision CM/Del/Dec\(2022\)1443/H46-30](#) of the 1443rd meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-30 *Kavala v. Türkiye* (Application No. 28749/18), 20-22 September 2022 (DH), paragraph 11; see also [Decision CM/Del/Dec\(2022\)1443/H46-29](#) of the 1443rd meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-29 *Selahattin Demirtaş (No. 2) group v. Turkey* (Application No. 14305/17), 20-22 September 2022 (DH), paragraph 6.

35. Parliamentary Assembly [Resolution 2459 \(2022\)](#) "The honouring of obligations and commitments by Türkiye", 12 October 2022.

36. *Bilgen v. Turkey*, judgment of 9 March 2021 (Application No. 1571/07), paragraph 96.

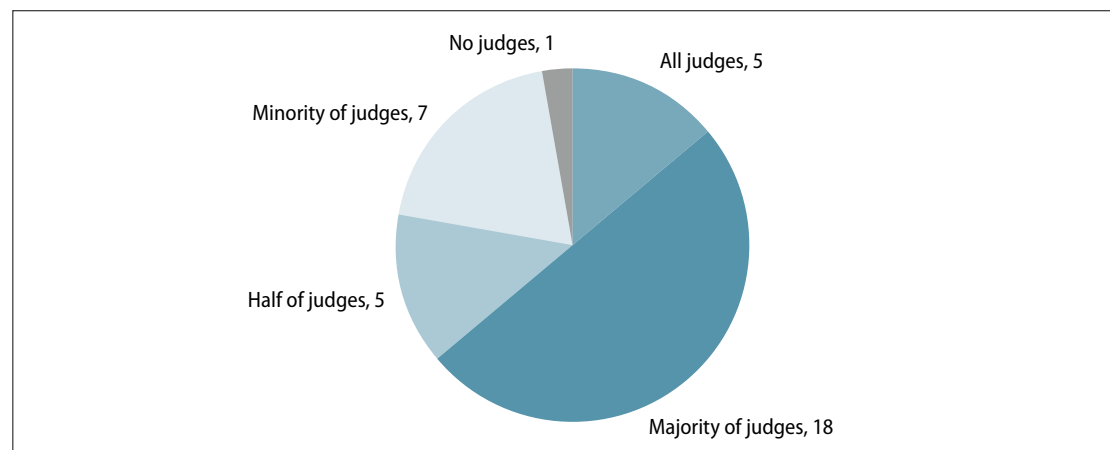
37. See the [Comparative overview on judicial councils in Europe](#) (DG I – DCJ (2022)1, 14 March 2022).

cases without undue influence.<sup>38</sup> An international round table organised by the Venice Commission on the issue included recommendations on their composition and mandate.<sup>39</sup>

■ The Council of Europe has gradually developed soft-law standards and recommended actions on prosecutorial autonomy and independence to guide member states' reforms.<sup>40</sup> They underline the need to ensure that prosecution offices are autonomous and can carry out effective and impartial investigations, free from political pressure. The Consultative Council of European Prosecutors observed on numerous occasions that, due to the complementary nature of the missions of judges and prosecutors, the latter must have similar requirements and guarantees in terms of their status and conditions of service, such as recruitment, training, career development, salaries, discipline and transfer or removal from office.

■ As regards the composition of councils of prosecutors, prosecutorial members of the councils should not necessarily be in a majority but should still represent a substantive part of them. Their method of election and their position vis-à-vis the prosecutor general are important to ensure their independence. Similarly, other (lay) members should not be appointed by the executive or the parliamentary majority alone. Pluralism should be ensured, for instance through the election of the lay members by parliament on the basis of a proportional system, and/or through the appointment of a certain number of lay members by independent bodies (ombudsperson, the president of the Bar, etc.).<sup>41</sup> If lay members are appointed by a qualified majority in parliament, an anti-deadlock mechanism should be put in place.<sup>42</sup> The composition of the prosecutorial councils, the status of their members and the rules on their functioning should be such as to exclude the undue influence of the prosecutor general within the council.<sup>43</sup> A properly composed prosecutorial council should ensure that neither prosecutorial members nor lay members can govern alone. It is necessary to ensure that internal rules – especially the rules on the majorities and quorum – do not create blockages.<sup>44</sup>

### Composition of the Councils of the Judiciary



Source: CCJE

38. Consultative Council of European Judges, Opinion No. 24 (2021) – Evolution of the councils for the judiciary and their role in independent and impartial judicial systems (CCJE(2021)11), 5 November 2021.

39. Venice Commission, International Round Table – “Shaping judicial councils to meet contemporary challenges” General Conclusions, Rome, 21-22 March 2022 (CDL-PI(2022)005), 23 March 2022.

40. See, for instance, Recommendation Rec(2000)19 of the Committee of Ministers to member states on the role of public prosecution in the criminal justice system; Recommendation CM/Rec(2012)11 of the Committee of Ministers to member States on the role of public prosecutors outside the criminal justice system; Bordeaux joint Declaration of the CCJE and CCPE “Judges and Prosecutors in a Democratic Society”; CCPE “Rome Charter” (Opinion No. 9 (2014) on European norms and principles concerning prosecutors); Venice Commission “Report on European Standards as regards the independence of the judicial system: Part II – The Prosecution Service” (CDL-AD(2010)040) (adopted in December 2010); Compilation of Venice Commission opinions and reports concerning prosecutors (CDL-PI(2022)023) (latest edition: April 2022).

41. Venice Commission Opinion No. 1080/2022, Kosovo – Opinion on the revised draft amendments to the Law on the Prosecutorial Council (CDL-AD(2022)006), 23 March 2022.

42. Venice Commission, Opinion No. 1025/2021, Montenegro – Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the prosecutor’s office for organised crime and corruption (CDL-AD(2021)012), 22 March 2021.

43. Venice Commission Opinion No. 1080/2022, Kosovo – Opinion on the revised draft amendments to the Law on the Prosecutorial Council (CDL-AD(2022)006), 23 March 2022.

44. Venice Commission Opinion No. 1088/2022, Serbia – Opinion on three draft laws implementing the constitutional amendments on the judiciary (CDL-AD(2022)030), 24 October 2022.

■ In the period covered by the review of implementation of the Sofia Action Plan, judicial councils have been introduced in Finland, Ireland and Switzerland. In Luxembourg, a constitutional reform has been initiated to strengthen judicial independence by anchoring it in the constitution and by establishing a council for the judiciary.<sup>45</sup> Several member states have amended their laws or adopted new legislation which has brought changes in the role and composition of councils. Appeal systems against the decisions of the judicial/prosecutorial bodies have been introduced or improved in Armenia and Georgia.<sup>46</sup>

■ In Resolution 2438 (2022) “The honouring of obligations and commitments by Georgia”, the Parliamentary Assembly welcomed reforms but expressed its concern about remaining obstacles to a genuinely independent and impartial judiciary, especially as regards the High Council of Justice in Georgia.<sup>47</sup> Similar concerns were expressed by the Venice Commission, which noted that the introduction of an increase in the powers of the High Council of Justice to second/transfer judges without their consent, the new and vague grounds for disciplinary misconduct and the suspension of a judge’s salary in cases of disciplinary investigation, may create a chilling effect on judges’ freedom of expression and internal judicial independence.<sup>48</sup>

■ Important progress has been made in the Republic of Moldova with the adoption of the new constitutional framework for a 12 member composition of the Moldovan Superior Council of Magistracy, including six judges elected by their peers and six lay members elected by parliament. This framework must now be completed by appropriate legislation to organise fair and transparent criteria and procedures for these elections.<sup>49</sup>

■ In Montenegro, amendments to the Law on the State Prosecution Office have been adopted, taking into account comments by the Venice Commission,<sup>50</sup> although some of the latter’s recommendations related to mitigating the risk of politicisation and amending the manner of appointment of lay members by parliament are still to be addressed. A comprehensive reform of the Law on the Judicial Council and Judges, proposed by the ministry of justice, is ongoing, aiming at strengthening the independence, responsibility and efficiency of the judiciary. While expressing its concerns regarding the lack of political agreement as to the appointment of the lay members of the judicial council, the Venice Commission welcomed these amendments, finding that, *inter alia*, they would improve the accountability and transparency of the judiciary. A series of issues, such as the protection of work-related rights of judges remain, however, to be addressed.<sup>51</sup>

■ In Serbia, the 2022 constitutional reform of the judicial and prosecutorial councils and the ongoing legislative reform were aimed at reducing the politicisation of the system of appointments and dismissals. The prosecutor general is now appointed with the involvement of the high prosecutorial council. The Serbian High Judicial Council (HJC) now comprises a majority of judges elected by their peers and *ex officio* membership of representatives of the executive and legislative powers has been abolished. The HJC has been recognised as an independent body under the constitution. The process of alignment of laws with the constitution based on the recommendations of the Venice Commission, GRECO reports and CCJE and CCPE opinions is advancing. Additional measures remain to be taken to ensure the budgetary autonomy of the HJC.<sup>52</sup> The Venice Commission recommended further measures aimed at the de-politicisation of the process of electing lay members to the HJC (more stringent incompatibility requirements for candidates for the positions of lay members, and giving the parliamentary opposition more say in the process of shortlisting the candidates for those positions).<sup>53</sup>

45. [Review of the implementation of the Council of Europe Plan of Action on Strengthening Judicial Independence and Impartiality](#), Report by the European Committee on Legal Co-operation (CDCJ) to the Secretary General of the Council of Europe, published on 25 November 2022.

46. Venice Commission Opinion No.1039/2021, Georgia – Urgent opinion on the amendments to the organic law on common courts (CDL-AD(2021)020), 2 July 2021; Venice Commission Opinion No. 1101/2022, Armenia – Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on the draft amendments to the judicial code (CDL-AD(2022)044), 19 December 2022.

47. Parliamentary Assembly [Resolution 2438 \(2022\)](#), “The honouring of obligations and commitments by Georgia”, 28 April 2022.

48. Venice Commission Opinion No.1039/2021, Georgia – Urgent opinion on the amendments to the organic law on common courts (CDL-AD(2021)020), 2 July 2021.

49. [GRECO Interim Compliance Report in respect of the Republic of Moldova](#) (GrecoRC4(2021)22), adopted 3 December 2021, published 9 February 2022, paragraph 79.

50. Venice Commission, Opinion No. 1025/2021, Montenegro – Opinion on the draft amendments to the Law on the State Prosecution Service and the draft law on the prosecutor’s office for organised crime and corruption (CDL-AD(2021)012), 22 March 2021; Opinion No. 1041/2021, Montenegro – Urgent opinion on the revised draft amendments to the Law on the State Prosecution Service (CDL-AD(2021)030), 6 July 2021.

51. Venice Commission Opinion No. 1110/2022, Montenegro – Opinion on the draft amendments to the Law on the Judicial Council and Judges (CDL-AD(2022)050), 19 December 2022.

52. [GRECO Second Interim Compliance Report in respect of Serbia](#) (GrecoRC4(2022)6), adopted 25 March 2022, published 30 March 2022, paragraph 74.

53. Venice Commission Opinion No. 1112/2022, Serbia – Follow-up Opinion to the Opinion on three draft laws implementing the constitutional amendments on the judiciary (CDL-AD(2022)030), (CDL-AD(2022)043), 19 December 2022.

■ In Spain, reforms remain necessary to introduce additional safeguards against undue political influence in the selection process of members of the judicial council, to solve the deadlock in the designation of the general council for the judiciary and to address concerns regarding the system of appointments, especially by ensuring that judges are elected by their peers.<sup>54</sup>

■ As underlined by GRECO in its reports in respect of Türkiye, the fact that the newly established Council of Judges and Prosecutors of Türkiye is made up of members appointed by the President of the Turkish Republic and the Grand National Assembly of Türkiye, and that none are elected by judges and prosecutors themselves, runs counter to European standards regarding the need for an independent self-governing body of the judiciary.<sup>55</sup>

## Appointment/dismissal of judges and prosecutors

■ Procedures aimed at screening the integrity of members of the judiciary may raise concerns about the potential selective application of these procedures, or undue influence by the executive in the process. The attempt to subject the judiciary and prosecution service to comprehensive vetting therefore requires scrutiny. In several opinions on the matter the Venice Commission confirmed that vetting should be avoided, to the maximum extent possible, should be based on the broadest political agreement and be supported by society. Nonetheless, some preliminary checks on integrity, such as those carried out in the Republic of Moldova, may be allowed under certain conditions.<sup>56</sup> The Venice Commission also welcomed plans for a mixed composition, including international experts, in the appointment of members of the Ukrainian High Council of Justice;<sup>57</sup> it also accepted the extension of the term of office of transitional vetting bodies in charge of re-evaluating Albanian judges and prosecutors provided that the extension was adopted with a qualified parliamentary majority through a constitutional amendment.<sup>58</sup>

■ GRECO considered that the competitive procedure for promoting judges to the Georgian courts of appeal is in line with its requirements, but it had serious misgivings about promotion without competition, inviting the authorities to consider revision or abolition of this promotion track. It welcomed improvements to the procedure for the appointment of judges to the Supreme Court, but expressed concern about the alleged lack of impartiality during re-examination of a case by the same composition of the Georgian High Council of Justice (HCJ) and the lack of an anti-deadlock mechanism as regards the requirement to have a two-thirds majority for HCJ decisions.<sup>59</sup>

■ The Committee of Ministers closed its supervision of a case against Iceland concerning the judicial appointment procedure and expressed its satisfaction with the rapid reaction of the government in response to the judgment in the case of *Guðmundur Andri Ástráðsson v. Iceland* and with the measures taken, *inter alia*, to ensure that all judges in the Court of Appeal were appointed in full compliance with the domestic legal framework and procedures, in accordance with the requirements of the Convention, stressing that the procedure should be followed in the future.<sup>60</sup>

54. See GRECO's [Addendum to the Second Compliance Report in respect of Spain](#), (GRECORC4(2022)16, adopted 2 December 2022, published 5 December 2022, paragraph 16. See also European Commission 2022 Rule of Law Report – Country Chapter on the rule of law situation in Spain (SWD(2022) 509 final), 13 July 2022.

55. [GRECO Third Interim Compliance Report in respect of Türkiye](#) (GrecoRC4(2022)5), adopted 25 March 2022, published 23 June 2022, paragraph 94.

56. Venice Commission Opinion No. 1069/2021, Republic of Moldova – Joint opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) of the Council of Europe on some measures related to the selection of candidates for administrative positions in bodies of self-administration of judges and prosecutors and the amendment of some normative acts (CDL-AD(2021)046), 13 December 2021.

57. Venice Commission Opinion No. 1029/2021, Ukraine – Urgent joint opinion of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on the draft law on amendments to certain legislative acts concerning the procedure for electing (appointing) members of the High Council of Justice (HCJ) and the activities of disciplinary inspectors of the HCJ (draft law no. 5068) (CDL-AD(2021)018), 5 July 2021; Venice Commission Opinion No. 1091/2022, Ukraine – Joint *amicus curiae* brief of the Venice Commission and the Directorate General of Human Rights and the Rule of Law (DGI) of the Council of Europe on certain questions related to the election and discipline of the members of the High Council of Justice of Ukraine (CDL-AD(2022)023), 24 October 2022.

58. Venice Commission Opinion No. 1068/2021, Albania – Opinion on the extension of the term of office of the transitional bodies in charge of the re-evaluation of judges and prosecutors (CDL-AD(2021)053), 14 December 2021.

59. [GRECO Addendum to the Second Compliance Report in respect of Georgia](#) (GrecoRC4(2022)11), adopted 17 June 2022, published 13 July 2022, paragraph 29.

60. Resolution [CM/ResDH\(2022\)48](#) of the Committee of Ministers of the Council of Europe – Execution of the judgment of the European Court of Human Rights – *Guðmundur Andri Ástráðsson against Iceland*, 9 March 2022.



GRECO welcomed the entry into force of amendments to the Lithuanian Law on Courts which change the composition of the selection commission and give the judicial council a more important role in the appointment of judges. It noted that the President of the Lithuanian Republic does not have the power to take a decision regarding appointments, promotions, transfers or dismissals of judges without giving reasons and without the consent of the judicial council.<sup>61</sup>

GRECO criticised the large-scale dismissal of around 160 court presidents and vice-presidents in Poland in 2017/18. The dismissal procedure was amended in December 2019, effectively cementing the then newly appointed presidents and vice-presidents in their positions. GRECO emphasised that the strong involvement of the Polish Minister of Justice (who is also the prosecutor general) in the process of dismissing court presidents and vice-presidents should be avoided and that dismissal procedures should be transparent and subject to established procedures and safeguards, with clear and objective criteria, free from political influence and with a possibility for appeal.<sup>62</sup>

The Court found a violation of Article 6 of the Convention in respect of the premature termination of the term of office of two of the vice-presidents<sup>63</sup> and, in December 2022, the Committee of Ministers asked the authorities to present their reflection on the measures still necessary to protect court presidents from arbitrary dismissal.<sup>64</sup>

GRECO sees the involvement of the Minister of Justice in Romania in appointing or dismissing senior prosecutors as detrimental to judicial independence. It remains to be clarified whether objective and clear criteria have been established for the promotion of judges and prosecutors to higher positions, taking into account their actual merit and qualifications.<sup>65</sup>

In supervising the execution of the judgment in the case of *Alparslan Altan group v. Turkey*, concerning the dismissal and pretrial detention of a Constitutional Court judge in Türkiye, the Committee of Ministers noted that domestic courts still appeared to interpret extensively the concept of in flagrante delicto criticised by the Court and invited the authorities to consider taking further legislative or other measures to ensure that procedural safeguards afforded to judges in the relevant legislation are also fully afforded in practice.<sup>66</sup>

Continued reform of the prosecution service was high on the agenda in Ukraine. The Council of Europe assisted the Ukrainian authorities in modernising the selection and appointment of prosecutors through a more transparent and merit-based procedure including the appointment of prosecutors to administrative positions, with the setting up and capacity enhancement of prosecutorial self-governing and disciplinary bodies.

### Protection of lawyers against undue interference in the free and independent exercise of the legal profession

Lawyers and their professional associations play a fundamental role in strengthening the rule of law. Their contribution is essential for making justice work for people in everyday life and ensuring that their fundamental rights are respected. National legislation should guarantee the freedom of exercise of the legal profession, and protect lawyers from pressure, threats and interference in the discharge of their professional duties towards their clients. The Council of Europe has adopted soft-law standards on the freedom of exercise of the profession of lawyer<sup>67</sup> and, in the light of increasing threats and identified gaps, is currently preparing a draft convention on this subject.

61. GRECO Addendum to the Second Compliance Report in respect of Lithuania (GrecoRC4(2021)2), adopted 25 March 2021, published 6 May 2021, paragraph 32.

62. GRECO Interim Compliance Report in respect of Poland (GrecoRC4(2021)18), adopted 22 September 2021, published 27 September 2021, paragraph 81.

63. *Broda and Bojara v. Poland*, judgment of 29 June 2021 (Application Nos. 26691/18 and 27367/18).

64. Decision CM/Del/Dec(2022)1451/H46-25 of the 1451st meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-25 *Reczkowicz group* (Application No. 43447/19), *Broda and Bojara* (Application No. 26691/18) v. *Poland*, 6-8 December 2022 (DH), paragraph 10.

65. GRECO Second Interim Compliance Report in respect of Romania (GrecoRC4(2021)1), adopted 25 March 2021, published 5 May 2021, paragraph 32.

66. Decision CM/Del/Dec(2022)1428/H46-33 of the 1428th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-33 *Alparslan Altan group v. Turkey* (Application No. 12778/17), 8-9 March 2022 (DH), paragraph 3.

67. Recommendation Rec(2000)21 of the Committee of Ministers to member States on the freedom of exercise of the profession of lawyer, 25 October 2000.

Attacks against the legal profession took place in several member states, as noted by the United Nations Special Rapporteur on the independence of judges and lawyers.<sup>68</sup> This included situations undermining the independence of professional associations and Bars, acts of pressure, threats and interference in the course of lawyers' activities, or situations violating the confidentiality of lawyer–client communications such as wiretapping, searching offices, covert surveillance, or even threats to their physical safety. The identification of lawyers with their clients, including by media reports, led to attacks on lawyers in the performance of their professional duties, which prompted national Bar associations<sup>69</sup> and European associations<sup>70</sup> to issue statements in defence of their members. A [resolution on lawyers at risk](#) was issued by the representatives of Bar associations in G7 countries in which they called on their governments to tackle issues regarding undue interference with the independence of the legal profession.

Positive legislative developments regarding lawyers concerned the prevention of searching of law offices to ensure protection of lawyer–client confidentiality (Estonia), limiting searches of lawyers when entering a court building (Czech Republic), simplified civil procedures (Luxembourg) and the reform of disciplinary procedures (France).

In an opinion on the Slovak Republic, the Venice Commission noted that it is compatible with international standards and good practice to have multiple Bars in a country and to entrust the examination of disciplinary cases to a mixed panel composed of judges and lawyers. However, the situation in which several Bars compete for members could lead to politicisation and a “race to the bottom” as far as the standards of the legal profession are concerned.<sup>71</sup> Uniformity of standards could be achieved through more regulation by the state or, preferably, through a central umbrella organisation, with regulatory and supervisory functions, that is representative of all lawyers and Bars in a country. Such a body would develop common rules and oversee their implementation.

## JUDICIAL ACCOUNTABILITY

### Measurement criteria

#### Institutional accountability

- ▶ Explanatory accountability of the judiciary is regularly manifested in the form of transparency vis-à-vis society, for instance through open hearings or public reports.
- ▶ Lay members participate in judicial governance bodies.
- ▶ 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.

#### Individual accountability

- ▶ Disciplinary violations and offences relating to removal from office are precisely defined by law.
- ▶ A range of possible misconduct and respective sanctions are defined by law and respect proportionality.
- ▶ Disciplinary proceedings against judges are conducted by independent bodies.
- ▶ Disciplinary decisions against judges are subject to review by a judicial organ; such reviews should be sufficient, appropriate to the subject matter and provide the necessary institutional and procedural safeguards in accordance with Article 6 of the Convention.

68. Report of the United Nations Special Rapporteur on the independence of judges and lawyers, Diego García-Sayán, “Protection of lawyers against undue interference in the free and independent exercise of the legal profession”, (A/HRC/50/36), presented at the 50th session of the UN Human Rights Council, 13 June–8 July 2022. See also the [contribution](#) of the Council of Bars and Law Societies of Europe (CCBE) to this report (December 2021).

69. See, for example, the [statement of the Slovak Bar Association \(September 2021\)](#) – Lawyers must not be the target of hate speech.

70. See, for example, the [CCBE's statement on the Pegasus scandal](#), 1 February 2022.

71. Venice Commission Opinion No. 1048/2021, Slovak Republic – Opinion on two questions regarding the organisation of the legal profession and the role of the Supreme Administrative Court in the disciplinary proceedings against lawyers, (CDL-AD(2021)042), 18 October 2021.

- ▶ Procedural errors by judges are rectified through a system of appeals; only manifest, grave, deliberate or systemic errors may exceptionally lead to disciplinary liability of judges.
- ▶ Guarantees of freedom of expression extend to judges, bearing in mind their duties and responsibilities and the need to ensure the judiciary's impartiality and independence.
- ▶ Judges are not subjected to personalised abusive criticism in the media regarding cases under their consideration.

## Findings

Several member states have revised the disciplinary liability systems for judges by strengthening the independence of disciplinary bodies or establishing independent authorities, securing fair trial guarantees and transparency of disciplinary proceedings, clarifying legal definitions of disciplinary misconduct and ensuring the implementation of the principle of proportionality in the application of sanctions.

Some member states have observed an increase in restrictions on judicial freedom of expression. Conversely, in several member states, judicial restraint has been relaxed, which has led to increased public engagement of judges, especially on social media.

In December 2022, the Consultative Council of Judges adopted its landmark opinion on judges' freedom of expression,<sup>72</sup> which aims to strike a balance between judges' freedom of expression and its permissible restrictions, in order to ensure that lawful and justified restrictions on judicial freedom of expression are not used as a pretext to undermine or suppress it. The CCJE opinion states that, in situations where democracy, the separation of powers or the rule of law are under threat, judges must be resilient; they have a duty to speak out in defence of the rule of law, judicial independence, the constitutional order and the restoration of democracy, both at national and international levels.<sup>73</sup> This includes views and opinions on issues that are politically sensitive and extends to the independence of individual judges and the judiciary in general. Judges who speak on behalf of a judicial council, judicial association or other representative body enjoy wider discretion. Under no circumstances may judges be forced to explain publicly the reasons for their judgments as delivered. The CCJE recommended that any rules or codes of conduct concerning the extent of judges' freedom of expression and any limitations on its exercise should be drawn up by judges themselves or their judicial associations.

In Belgium, federal-level administrative court judges are subject to ethical rules, supervision and appropriate sanctions, and progress has been made at regional level. According to GRECO, the entry into force of the law of 23 March 2019 amending the judicial code has enabled progress in the recruitment and training of substitute judges, the expansion of the audit and investigation activities of the Belgian High Council of Justice and the circulation of rules of professional conduct that are uniform for all members of the judiciary, professional or other. Legislation governing the operating reports of the courts and prosecution service has been adopted.<sup>74</sup>

In the case of *Miroslava Todorova v. Bulgaria* concerning disciplinary proceedings against a judge who was also the president of the main professional association of judges, the Court found that the domestic authorities had failed to accompany their decisions with relevant and sufficient reasons to explain why the disciplinary proceedings and the sanctions imposed had been necessary and proportionate to the legitimate aims pursued, and that these measures had not been "necessary in a democratic society". It added that this finding did not rule out the possibility of prosecuting judges for breaches of their professional duty following the exercise of their freedom of expression, provided that such action could not be suspected of constituting retaliation for the exercise of that fundamental right. The Court also found that the predominant purpose of the disciplinary proceedings and of the sanctions imposed on the applicant by the Bulgarian Supreme Judicial Council had been to penalise and intimidate the applicant on account of her criticism of the Supreme Judicial Council and the executive.<sup>75</sup>

In Croatia, efforts have been made to improve the transparency and accessibility of judicial work, as well as to train judges and prosecutors on how to communicate with, and reach out to, the media and, more

72. Consultative Council of European Judges, *Opinion no. 25(2022) on freedom of expression of judges*, adopted on 2 December 2022, paragraph 22. See also the preparatory works and country-specific responses ([www.coe.int/ccje](http://www.coe.int/ccje)).

73. See also *Zurek v. Poland*, judgment 16 June 2022 (Application No. 39650/18), paragraph 222.

74. GRECO Third Interim Compliance Report in respect of Belgium (GrecoRC4(2022)17), adopted 17 June 2022, published 12 September 2022, paragraph 63.

75. *Miroslava Todorova v. Bulgaria*, judgment of 19 October 2021 (Application No. 40072/13).

generally, to the public at large. GRECO welcomed all these noteworthy developments but noted that, on the other hand, a communication policy for the judiciary is still lacking.<sup>76</sup>

■ In the context of the supervision of the execution of the judgment in the case of *Baka v. Hungary*, the Committee of Ministers adopted an interim resolution in March 2022 underlining that, “in the current circumstances, the declaration made by the Hungarian Minister of Justice, at the Committee of Ministers’ ordinary 1400th meeting, must be interpreted to the effect that Hungary will fully abide by the Convention requirements as set out in the *Baka* and *Erményi* judgments, so that no similar violations of the Convention will occur in the future”. It also strongly urged the authorities to step up their efforts to find ways, in close co-operation with the Secretariat, to introduce the required measures to ensure that a decision by parliament to impeach the President of the Kúria (Supreme Court) will be subject to effective oversight by an independent judicial body, in line with the European Court’s case law.<sup>77</sup>

■ GRECO noted that an induction training programme covering ethics for newly appointed judges in Malta still needs to be implemented, and that a regular in-service training programme, targeted guidance and counselling on preventing corruption should be established for various professionals of courts (judges, magistrates and adjudicators of boards and tribunals).<sup>78</sup>

■ GRECO welcomed Monaco’s new legislation on the Supreme Court, the adoption of a code of conduct for its members and a compendium of ethical and deontological principles for judges and prosecutors. It was pleased to see that there has been an increase in the number of public hearings of the court of review and that a continuing and coherent system has been established to regulate incompatibilities and secondary activities in the courts and the prosecution service.<sup>79</sup>

■ In Portugal, GRECO regretted that a fully-fledged clear and enforceable code of conduct for judges, covering issues such as gifts and conflicts of interest, has not been developed. Periodic evaluation of judges needs to be in compliance with the standards of conduct.<sup>80</sup>

■ The Committee of Ministers welcomed the swift response by the authorities of Romania to remedy shortcomings identified in the case of *Kövesi v. Romania*<sup>81</sup> by means of a law on the status of judges and prosecutors enacted in October 2022 as part of a broader judicial reform. The law introduced a full judicial review of decisions to remove from office senior staff in the state prosecution service and abandoned existing provisions which unduly restrict the freedom of expression of judges and prosecutors vis-à-vis the other branches of government. The Venice Commission welcomed the improvement, especially in respect of political interference in the work of anti-corruption bodies. It recommended introducing a competitive selection procedure for deputy court managers, longer non-renewable mandates for high-ranking prosecutors, obliging the general prosecutor to follow the prosecutorial hierarchy when he or she finds prosecutorial measures unlawful or unfounded and excluding any reporting from the judicial police to the minister of interior.<sup>82</sup>

■ In Serbia, a permanent ethics committee was established within the Serbian High Council of Justice and new rulebooks on the work of the High Council of Justice and the ethics committees of the State Prosecutorial Council were enacted. The Venice Commission recommended regulating basic principles of ethical behaviour of judges and prosecutors in law, while the respective code of ethics may develop them in more detail, and setting out the composition of commissions dealing with judicial ethics.<sup>83</sup>

76. [GRECO Second Addendum to the Second Compliance Report in respect of Croatia](#) (GrecoRC4(2022)1), adopted 25 March 2022, published 28 October 2022, paragraph 32.

77. Interim Resolution [CM/ResDH\(2022\)47](#) of the Committee of Ministers of the Council of Europe – Execution of the judgment of the European Court of Human Rights – *Baka v. Hungary* (Application No.20261/12), 9 March 2022.

78. [GRECO Second Addendum to the Second Compliance Report in respect of Malta](#) (GrecoRC4(2021)10), adopted 25 March 2021, published 31 May 2021, paragraph 29.

79. [GRECO Interim Compliance Report in respect of Monaco](#) (GrecoRC4(2021)16), adopted 22 September 2021, published 8 October 2021, paragraph 85.

80. [GRECO Second Compliance Report in respect of Portugal](#) (GrecoRC4(2022)20), adopted 17 June 2022, published 6 September 2022, paragraph 82.

81. [Decision CM/Del/Dec\(2021\)1406/H46-21](#) of the 1406th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court’s judgments, H46-21 *Kövesi v. Romania* (Application No. 3594/19), 7-9 June 2021 (DH), paragraph 3.

82. Venice Commission Opinion No. 1105/2022, Romania – Urgent Opinion on three laws concerning the justice system ([CDL-PI\(2022\)047](#)), 18 November 2022.

83. Venice Commission Opinion No. 1106/2022, Serbia – Opinion on two draft laws implementing the constitutional amendments on the prosecution service ([CDL-AD\(2022\)042](#)), 19 December 2022, and Venice Commission Opinion No. 1112/2022, Serbia – Follow-up Opinion to the Opinion on three revised draft laws implementing the constitutional amendments on the judiciary ([CDL-AD\(2022\)030](#)), ([CDL-AD\(2022\)043](#)), 19 December 2022.

■ In the case *Kozan v. Turkey*, the Court found that a reprimand imposed on a serving judge for having shared, in a private Facebook group, a press article about the independence of the justice system, and allowing his colleagues to comment in response, violated the freedom of the applicant to impart or receive information in an area crucial for his professional life. The Court pointed out the overriding importance of freedom of expression on matters of public interest and the chilling effect of the imposition of a disciplinary sanction on a civil servant belonging to the judiciary for having shared value judgments on the independence of the Turkish Council of Judges and Prosecutors from the executive. The Court further criticised the lack of impartiality of the Turkish Council of Judges and Prosecutors on account of the composition of the plenary assembly acting as an appeal body for disciplinary sanctions, as the plenary assembly included members of the chamber that had imposed the disciplinary sanction in question.<sup>84</sup>

## EFFICIENCY OF JUDICIAL SYSTEMS

### Measurement criteria

---

#### Institutional/structural criteria

- ▶ The state allocates courts adequate human and financial resources, facilities and equipment to enable them to function efficiently.
- ▶ Information and communication technologies are increasingly used in judicial systems to facilitate access to justice, develop online proceedings, speed up court proceedings and improve the administration of justice and management of courts.
- ▶ Legal professionals are provided with initial and in-service training to have advanced, up-to-date knowledge of the legislation in force and 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 enforcement of the final decision.
- ▶ E-filing is developed.
- ▶ Regular efficiency evaluations of court performance are implemented.

### Findings

---

■ Adequate funding is necessary to enable courts and judges to live up to European and national standards and perform their duties with integrity and efficiency.<sup>85</sup>

■ The CEPEJ's latest report confirms a positive trend in the national courts' ability to cope with incoming cases in the long term.<sup>86</sup>

■ Member states have generally increased the budget per inhabitant allocated to their judicial system, with the European median per inhabitant standing at €78, but there are wide gaps ranging from as low as €8.7 (Georgia) to a maximum of €217 (Switzerland).<sup>87</sup>

---

84. *Kozan v. Turkey*, judgment of 1 March 2022 (Application No. 16695/19).

85. Venice Commission, Report on the independence of the judicial system. Part 1: the independence of judges, (2010, [CDL-AD\(2010\)004-e](#)).

86. *European judicial systems – CEPEJ Evaluation Report, 2022 evaluation cycle (2020 data)*, Council of Europe Publishing, Strasbourg.

87. The judicial system budget, as defined by CEPEJ, is composed of the budgets allocated to courts, public prosecution services and legal aid. These three elements provided a solid basis for consistent comparison between member states.

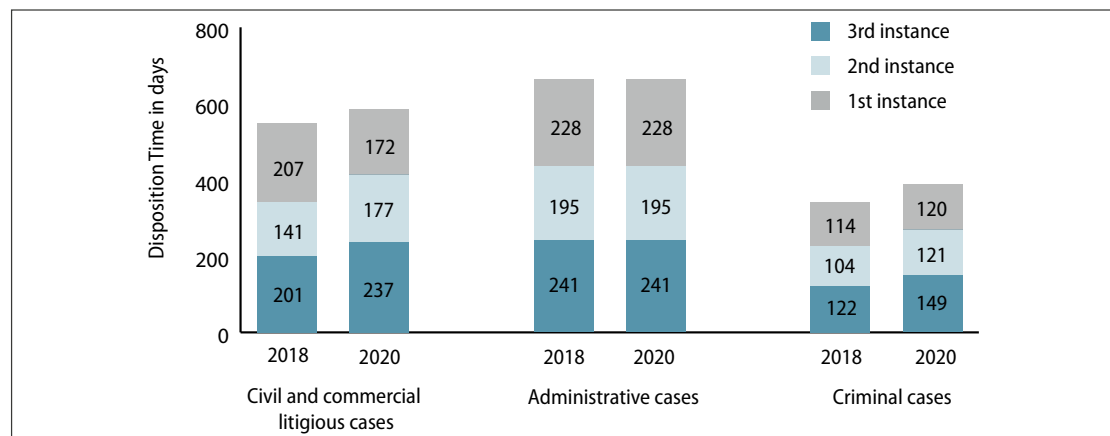
## Implemented judicial system budget per inhabitant

ALB	14.5	AND	158.4	ARM	10.5	AUT	138.0	AZE	9.6	BEL	87.0
BIH	37.8	BGR	54.1	HRV	64.3	CYP	63.5	CZE	64.5	DNK	92.4
EST	53.6	FIN	79.1	FRA	72.5	GEO	8.7	DEU	140.7	GRC	45.2
HUN	55.3	ISL	116.0	IRL	NA	ITA	82.2	LVA	56.5	LTU	47.4
LUX	176.7	MLT	63.0	MDA	15.7	MCO	199.4	MNE	64.0	NLD	125.3
MKD	19.3	NOR	78.8	POL	NA	PRT	NA	ROU	49.6	SRB	40.2
SVK	71.5	SVN	100.0	ESP	87.9	SWE	127.7	CHE	217.3	TUR	16.1
UKR	NA	UK:ENG&WAL	NA	UK:NIR	111.9	UK:SCO	85.2				

Source: CEPEJ data 2020

A large majority of states and entities have increased the budget allocated to their judicial systems (+8% on average). The budgets of courts are mostly dedicated to salaries – 66% on average, with the lowest in the United Kingdom-Northern Ireland and Ireland with 37% and 40% respectively and the highest in the Czech Republic and Lithuania with 88%. Generally, one of the most significant increases concerns investments in digitalisation.

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



Source: CEPEJ data 2020

The proceedings with the longest duration were recorded in administrative justice. Those with the shortest duration were found in criminal cases, which is in the interest of litigants, whose individual freedom may be at stake. As a result of Covid-19 restrictions, courts throughout Europe encountered problems in performing their daily operations, but were affected differently as states and entities resorted to various innovative measures to mitigate the restrictions. First instance courts were affected the most; second and third instances were more efficient, although the results were somewhat lower compared to 2018. There were significant variations, with Bosnia and Herzegovina, Croatia, France and Italy taking over two years for civil cases at first instance, while Azerbaijan and Iceland took the least time in all instances.

The Committee of Ministers noted significant progress in the supervision of cases concerning length of proceedings. In the cases pending against Italy related to the longstanding problems of the excessive length of civil,<sup>88</sup> criminal,<sup>89</sup> and administrative proceedings,<sup>90</sup> the Committee of Ministers noted positive trends in all three sectors; it identified areas requiring further action and lent its support to ongoing reforms to bring a definitive solution to these issues. In the *Gazsó group v. Hungary* cases, it welcomed the introduction on

88. [Decision CM/Del/Dec\(2021\)1419/H46-20](#) of the 1419th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-20 *Trapani group v. Italy* (Application No. 45104/98), 30 November – 2 December 2021 (DH).

89. [Decision CM/Del/Dec\(2021\)1406/H46-15](#) of the 1406th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-15 *Ledonne No. 1 v. Italy* (Application No. 35742/97), 7-9 June 2021 (DH).

90. [Decision CM/Del/Dec\(2021\)1411/H46-19](#) of the 1411th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-19 *Abenavoli group v. Italy* (Application No. 25587/94), 14-16 September 2021 (DH).



1 January 2022 of compensation for lengthy civil proceedings.<sup>91</sup> The Committee of Ministers invited Serbia to tackle the problems of the unequal distribution of cases at national level and the insufficient number of judicial staff revealed by the *Jevremovic* group of cases concerning excessive length of proceedings and lack of an effective remedy.<sup>92</sup>

■ In Bosnia and Herzegovina, GRECO observed that no analysis has been carried out from a budget and staffing angle to address the issue of backlogs of cases. Some measures were planned in 2022 to address prioritisation of posts and financial resources in the judiciary but, according to the last situation report, these have not yet implemented.<sup>93</sup>

■ Raising the question of impediments to the work of environmental activists following her visit to Georgia, the Commissioner for Human Rights of the Council of Europe noted allegations that the length of judicial proceedings prevented decisions from being delivered within time frames which are necessary to prevent and/or mitigate ongoing environmental damage.<sup>94</sup>

■ In Greece, GRECO stressed that the problem of delayed judicial proceedings and ineffective case-flow management is yet to be addressed and appropriate procedures for complaints against undue judicial delays remain to be introduced.<sup>95</sup>

■ The integration of key HELP courses in initial training by national justice training institutions was expanded to cover Bosnia and Herzegovina, the Czech Republic, Finland, Italy, North Macedonia, Portugal, Romania, Serbia, Slovakia and Spain.

■ CEPEJ has carried out an evaluation of member states' use of information and communication technology in three categories: decision support, court and case management systems, and communication between courts, professionals and/or court users. It showed ICT being used most for court and case management systems (average score 6.9 out of a maximum 10), followed by decision support systems (average score 6.7) and finally communication between courts, professionals and/or court users (average score 5.2). Variations between 2018 and 2020 of the ICT indices provide interesting indications, not only of the overall improvement of states and entities, but also of the level of specific categories. In most cases, improvement can be seen in all categories, with several states making consistent improvements in electronic communication between courts, professionals and/or court users. This can be linked to the efforts made by all member states and entities, as a result of the Covid-19 crisis, to reconfigure justice services and provide remote access to justice, allowing remote working, hearings and legal communication.

■ Reform processes in several member states have improved the performance of their justice systems. Albania has revised its judicial map, with CEPEJ support on methodology and statistical analysis on the impact of the reorganisation. Azerbaijan has been strengthening the enforcement of court decisions through legal and institutional modernisation. Croatia has introduced specialised family departments in 15 municipal courts to deal efficiently with these sensitive cases. France has taken into account the CEPEJ report on case weighting in judicial systems, adopted in July 2020, to set up a weighting table for each judicial function exercised within the courts and courts of appeal. Latvia is widening the scope, availability and quality of state-ensured legal aid while increasing the recourse to mediation as a means of conflict resolution. Malta has launched a national digital strategy for the justice sector.

■ The Council of Europe and the European Union have supported Croatia in adjusting the regulatory framework for the application of e-communication tools in civil proceedings, in compliance with fair trial requirements, and a new project has been launched to offer high-quality digital services to end-users of the justice system, provide advanced tools for judges and judicial clerks, and publish all judicial decisions online.

■ The Supreme Court of Cyprus has adopted new rules of civil procedure, prepared with the support of the Council of Europe and the European Union. The new rules allow for modernisation of the justice administration

91. [Decision CM/Del/Dec\(2021\)1419/H46-15](#) of the 1419th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-15 *Gazsó group v. Hungary* (Application No. 48322/12), 30 November-2 December 2021 (DH), paragraph 4.

92. [Decision CM/Del/Dec\(2022\)1428/H46-32](#) of the 1428th meeting of the Committee of Ministers of the Council of Europe, Supervision of the execution of the European Court's judgments, H46-32 *Jevremović group v. Serbia* (Application No. 3150/05), 8-9 March 2022 (DH), paragraph 7.

93. [GRECO Interim Compliance Report in respect of Bosnia and Herzegovina](#) (GrecoRC4(2021)21), adopted 3 December 2021, published 1 September 2022, paragraph 88.

94. [Report of the Commissioner for Human Rights of the Council of Europe following her visit to Georgia from 21 to 24 February 2022](#) (CommDH(2022)17), p. 28.

95. [GRECO Addendum to the Second Compliance Report in respect of Greece](#) (GrecoRC4(2022)8), adopted 25 March 2022, published 1 June 2022, paragraph 55.

in civil cases and enable courts to handle cases faster and more efficiently through introduction of new principles and procedures in the adjudication of civil cases.<sup>96</sup>

■ Portugal has put in place resources to restructure and maintain the European Case Law Identifier (ECLI) database, which also serves as a repository of all final first instance court judgments.<sup>97</sup>

■ Türkiye is developing a case-law database for the Court of Cassation and installing a user-friendly tool modelled on the Court HUDOC system and the Spanish Judicial Documentation Centre. This will improve the quality of judicial decisions, increase public confidence in the judiciary and ensure effective information sharing.

### Digitalisation of justice

The 2022-2025 CEPEJ action plan entitled Digitalisation for a Better Justice is designed to help states and courts transition successfully towards digitalisation of justice in line with European standards and in particular Article 6 of the Convention. It covers the following principles.

Efficiency of justice – judicial administrations must use information technology to optimise operations and connect various judicial institutions. Digitalisation must improve the efficiency of court procedures, but also the quality of the work carried out by justice professionals.

Transparency of justice – new technologies must provide users with better knowledge of procedures and judicial institutions. Each court must have dashboards enabling it to monitor and manage its case flow, making it possible to identify and limit potential backlogs, respect reasonable time frames and better manage the workload of justice professionals.

Collaborative justice – setting up digital tools to connect participants in judicial proceedings is a priority. All justice professionals contribute to the same public service, that of justice at the service of the user: they must therefore have easy-to-use, compatible and efficient communication tools.

Human justice – digitalisation should make justice more efficient but must never seek to replace the judge. The judge must remain at the centre of the procedure.

People-centred justice – the training of justice professionals in the process of digital transformation is vital. Users should be supported in this digital environment, but digital proficiency cannot become a condition for access to justice.

The CEPEJ Guidelines on electronic court filing (e-filing) and digitalisation of courts, adopted in 2021, cover the governance and legal aspects of building a complete ecosystem of electronic judicial services. They cover socio-cultural and organisational aspects and focus on the basic technical requirements.

The CEPEJ Guidelines on videoconferencing in judicial proceedings, also adopted in 2021, were developed following requests for expertise from member states during the Covid-19 crisis. The guidelines provide a set of key measures that states and courts should follow to ensure that videoconferencing in judicial proceedings does not undermine the right to a fair trial and that it meets the requirements of the Convention for the Protection of Individuals with regard to Automatic Processing of Personal Data (ETS No. 108, Data Protection Convention).

CEPEJ provides support through its co-operation projects: for example, supporting the development of the Maltese national strategy on digitalisation and providing expertise on efficient judicial organisation in the context of digitalisation in Spain. The guidelines on videoconferencing in judicial proceedings have also proved useful for Ukrainian authorities in ensuring the continuation of justice through remote hearings, despite the war and occupation of Ukrainian territories.

96. [Enhancing the current reform of the Court system and the implementation process as well as the efficiency of justice \(coe.int\)](#).

97. GRECO Second Compliance Report in respect of Portugal (GrecoRC4(2022)20), adopted 17 June 2022, published 6 September 2022, paragraph 59.



## CHAPTER 2

# FREEDOM OF EXPRESSION

---

### INTRODUCTION

In 2021, two journalists were awarded the 2021 Nobel Peace Prize “for their courageous fight for freedom of expression” and as “representatives of all journalists who stand up for this ideal in a world in which democracy and freedom of the press face increasingly adverse conditions”.<sup>98</sup>

■ Safety issues acquired urgency in 2022, when the Russian Federation’s invasion of Ukraine posed a lethal threat to journalists. Amidst a formidable effort to deliver reliable information to the public, at least 12 journalists have lost their lives while reporting on the war. This contributed to an overall number of 19 journalists who lost their lives while doing their jobs across Europe in 2021 and 2022, a five-fold increase on previous years. There was also an increase in violent attacks on journalists, often following on from online abuse and, in some cases, related to anti-media rhetoric by politicians and public figures. The Council of Europe’s online Platform to promote the protection of journalism and safety of journalists (Platform for the safety of journalists) recorded 282 alerts in 2021 and 289 during 2022, a significant rise on previous years (between 2016 and 2020 the number of alerts ranged between 130 and 200 per year).<sup>99</sup>

■ In many countries the legal framework for the protection of freedom of expression showed weaknesses. The European Court of Human Rights continued to find violations of Article 10 of the European Convention on Human Rights on issues where its jurisprudence had long been settled. Countries should review their legal frameworks and redouble their efforts to implement the Court’s judgments in a timely manner: 344 remained pending as of January 2023, around 100 of which had been pending for five years or more.<sup>100</sup> The rise in the number of reported SLAPP cases against journalists was a noticeable manifestation of this problem in the course of 2021 and 2022.<sup>101</sup>

■ The biennium 2021-2022 also marked a period when the media industry and journalism sought to recover from the Covid-19 pandemic. The pandemic had hit the media sector particularly hard, with media outlets struggling to survive, journalists losing their jobs, and the imposition of sometimes harsh regulations to guard against mis- and disinformation.<sup>102</sup> During 2021, most of those regulatory restrictions affecting the media sector were lifted, making for a more enabling environment; but in several countries the economic operating environment remained challenging, especially for smaller and independent media. Financial support provided relief but also brought concerns about discriminatory allocation and financial dependency.

98. The prize was awarded to Dmitry Muratov, editor of the Russian *Novaya Gazeta*, and Maria Ressa, editor of the Philippines-based news website Rappler. [Nobel Peace Prize 2021](#), 8 October 2021.

99. As detailed under “Safety of journalists and others who speak up”.

100. Some 116 cases are examined under the enhanced procedure which is used for cases requiring urgent individual measures or revealing important structural problems, and for interstate cases. A further 207 cases are examined under the standard procedure, and 21 new cases are to be classified in 2023. There are also some friendly settlements pending supervision.

101. As detailed in, among others, the [Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists](#), April 2022.

102. Noorlander P. (2020), “Covid and free speech – The impact of Covid-19 and ensuing measures on freedom of expression in Council of Europe member states”, Background Paper, Council of Europe Ministerial Conference, Cyprus.



■ Concentration of ownership in both traditional and online media reached critical levels in many countries, threatening media pluralism. In some countries the independence of public service media was also under threat.<sup>103</sup> Online disinformation and hate speech continued to pose major challenges, prompting public and private stakeholders alike to strengthen standards and put in place further initiatives to counter these phenomena.<sup>104</sup>

■ This chapter reviews overall trends in respect of the right to freedom of expression during 2021 and 2022 in the Council of Europe member states. It follows a methodology that has been established for the past seven years: it considers developments in the legal framework, noting the impact of new or proposed legislation on freedom of expression; it surveys arrests, incidents of violence and other threats against the safety of journalists and others who speak up on issues of public interest; it looks at developments that affect the overall environment for an independent and pluralistic media; and it considers trends relating to reliability and trust in information.

## Challenges and priorities

■ The Council of Europe and its member states have continued to take action to support freedom of expression and improve the environment for media freedom. In 2021, the Conference of Ministers responsible for Media and Information Society focused on safety, the resilience of frameworks for the protection of freedom of expression, the changing media environment and the impact of artificial intelligence on freedom of expression. In 2022, recommendations were adopted on combating hate speech; on the impacts of digital technologies on freedom of expression; on electoral communication and media coverage of election campaigns; on principles for media and communication governance; and on promoting a favourable environment for quality journalism in the digital age.<sup>105</sup> Two guidance notes were adopted on different aspects of automated decision making on digital and social media platforms, content moderation and prioritisation.<sup>106</sup>

■ Priorities for the coming years involve guidance on legislative and regulatory guarantees for an environment favourable to freedom of expression. To that end, a draft recommendation on strategic lawsuits against public participation and an extended implementation guide on Recommendation [CM/Rec\(2016\)4](#) on the protection of journalism and safety of journalists are being prepared. The latter is focusing on prevention and promotion of journalists' safety; it will also offer practical guidance on the preparation of dedicated national action plans on the safety of journalists, one of the commitments resulting from the 2021 Conference of Ministers responsible for Media and Information Society.

■ The Committee on Artificial Intelligence is drafting a framework convention on artificial intelligence, human rights, democracy and the rule of law. The principles of the future convention will be complemented by sector-specific instruments such as guidelines on the responsible use of artificial intelligence in journalism.

■ The Council of Europe's Steering Committee on Media and Information Society (CDMSI) and its expert committees will also continue to work on the online aspects of freedom of expression, such as countering the spread of online mis- and disinformation, analysing the criteria of content moderation and studying the implications of digitalisation on individuals' capacity to take informed and autonomous decisions. The Council of Europe is also exploring good practices for sustainable media financing and practical media and information literacy tools to help media users understand the digital media environment and navigate their media choices.

## LEGAL GUARANTEES FOR FREEDOM OF EXPRESSION

■ Legal guarantees create the regulatory framework for the exercise of the right to freedom of expression. States are under a duty to create an enabling environment for the exercise of this right, which implies the introduction of legislative frameworks to safeguard freedom of expression, including the right of access to information. While these rights may be restricted, any restrictions must remain within the scope of the second paragraph of Article 10 of the Convention: they must be prescribed by law and be necessary in a democratic society to protect a legitimate aim. These requirements apply to restrictions to freedom of expression online

103. As indicated in the Council of Europe [Conference conclusions, Public Service Media for Democracy](#), 22 November 2022; see also, for example, Alert No. 58/2021, [Pressure on PSM Governance Threatens Independence of Czech Television and Erodes Media Freedom and Pluralism](#), 12 April 2021; Alert No. 228/2022, [Funding of Public Broadcasting Weakened \(France\)](#), 27 July 2022; and Alert No. 130/2022, [Pressure on Editorial and Financial Independence of Latvian Television](#), 11 April 2022.

104. As detailed under "Reliability and trust in information".

105. Recommendations [CM/Rec\(2022\)16](#), [CM/Rec\(2022\)13](#), [CM/Rec\(2022\)12](#), [CM/Rec\(2022\)11](#) and [CM/Rec\(2022\)4](#).

106. [Guidance note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation](#), May 2021, and [Guidance note on the prioritisation of public interest online](#), December 2021.

as well as offline. States must also ensure that any surveillance measures or other activities that may interfere with the right to privacy, an important enabling factor for freedom of expression, remain within the limits set by the Convention.

## Measurement criteria

- ▶ Freedom of expression is guaranteed offline and online. The internet is available, accessible and affordable to everyone without discrimination. Any restrictions of 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 stakeholders, 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 the grounds of national security, are clear and necessary in a democratic society, in compliance with Article 10, paragraph 2, of the Convention.
- ▶ There is no general obligation on intermediaries to monitor content which they merely give access to, or which they transmit or store. Internet intermediaries are not held responsible for 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, paragraph 2, of the Convention.

## Findings

■ In 2021–2022, the European Court of Human Rights issued judgments in 178 cases concerning Article 10 of the Convention, finding a violation in 137. Some of the judgments concerned relatively novel issues, often aspects of the online exercise of the right to freedom of expression, but the Court has also been called upon to issue judgments in areas where its jurisprudence has long been settled. In one case the Court found a “manifestly unreasonable interpretation and application of the domestic law” on access to information; in another, it stated that the criminal law prohibition on insulting the president “would not, as a rule, be in keeping with the spirit of the Convention”; and, in a third, it indicated shortcomings in surveillance laws and their resulting impact on investigative journalism.<sup>107</sup> Judgments such as these raise concerns about the compatibility with the Convention of the wording and interpretation of domestic laws in some countries.

■ In the same period, the Committee of Ministers closed the examination of several leading cases. Apart from one case concerning a ban on a newspaper as a consequence of a state of emergency,<sup>108</sup> five cases concerned convictions for defamatory offences: in two of them media outlets and respective authors were convicted,<sup>109</sup> another one concerned the conviction of a journalist,<sup>110</sup> yet another a criminal conviction for alleged malicious falsehoods<sup>111</sup> and in one of them domestic courts failed to give relevant and sufficient reasons for findings that certain statements were defamatory.<sup>112</sup>

■ The ease with which defamation laws can be used to bring SLAPP lawsuits was of concern across Europe. The Platform for the safety of journalists recorded alerts in 16 countries ranging from Croatia and Malta to the

107. *Rovshan Hajiyev v. Azerbaijan*, 9 December 2021, Application Nos. 19925/12 and 47532/13; *Vedat Şorli v. Turkey*, 19 October 2021, Application No. 42048/19; *Big Brother Watch and Others v. the United Kingdom* (Grand Chamber), 25 May 2021, Application Nos. 58170/13, 62322/14 and 24960/15.

108. *Dareskizb Ltd v. Armenia*, 21 September 2021, Application No. 61737/08.

109. *Flux (no.2) v. Moldova*, 3 July 2007, Application No. 31001/03, and *Ungváry and Irodalom Kft. v. Hungary*, 3 December 2013, Application No. 64520/10.

110. *Uj v. Hungary*, 19 July 2011, Application No. 23954/10.

111. *Tête v. France*, 26 March 2020, Application No. 59636/16.

112. *Myrskyy v. Ukraine*, 20 May 2010, Application No. 7877/03.



United Kingdom and Romania, some concerning media outlets forced to defend dozens of cases simultaneously.<sup>113</sup> SLAPPs are a concern because they are typically brought by a claimant who is in a position of relative economic or political power against a defendant with only limited means. When a journalist or media outlet is under financial duress, a letter threatening legal action can be enough to force the withdrawal of a critical report.<sup>114</sup> In most cases, “claimant-friendly” defamation laws are used to bring SLAPPs. The platform recorded several alerts concerning SLAPPs brought in the United Kingdom, where legal costs are the highest in Europe and only few can afford to defend a defamation case, including by claimants from overseas.<sup>115</sup>

■ The Commissioner for Human Rights raised the alarm about SLAPPs in 2020 followed by an alert by the Secretary General in 2021.<sup>116</sup> Regulatory initiatives to counter the phenomenon have been launched by the Committee of Ministers and Parliamentary Assembly as well as by the European Union.<sup>117</sup> Law reform has been announced in Ireland, Lithuania, Malta and the United Kingdom; and the Solicitors Regulation Authority in England and Wales has issued a formal warning to lawyers not to represent SLAPP claimants.<sup>118</sup> In 2022, the Court referred to SLAPPs in a judgment holding that a defamation case brought by a public authority against journalists pursued no legitimate aim.<sup>119</sup> The same year, the Committee of Ministers set up an expert committee (Committee of Experts on Strategic Lawsuits against Public Participation, MSI-SLP), composed of member states’ representatives and independent experts, to work on a recommendation on SLAPPs to be finalised by the end of 2023.

■ There was also concern about the proposal of several new laws that appeared to restrict freedom of expression beyond the extent permitted under the European Convention on Human Rights. This included legislation prohibiting the publication of “false news” or “misleading information” in Greece, the Russian Federation and Türkiye,<sup>120</sup> a Bulgarian bill requiring the registration as “foreign agents” of media that receive funding from abroad and a bill in Poland banning non-European media ownership, which was eventually not passed;<sup>121</sup> and proposed national security legislation in the United Kingdom.<sup>122</sup> In Hungary, emergency laws introduced during the Covid-19 pandemic criminalising “fearmongering” were made permanent;<sup>123</sup> and in Ukraine, a bill that expands the national media regulator’s powers to include the regulation of online and print outlets and empowers it to revoke media licences and temporarily block certain outlets without a court order<sup>124</sup> was eventually adopted with several amendments considered largely in compliance with Council of Europe standards.<sup>125</sup> Some bills that had threatened to restrict freedom of expression were put aside: in Albania, the so-called “anti-defamation” package of laws that had been under consideration for several years was withdrawn from the parliamentary agenda in October 2022.<sup>126</sup>

■ Several positive legislative developments are to be welcomed. Many countries across Europe took steps to either strengthen or introduce legislation to protect whistle-blowers;<sup>127</sup> new open government legislation was adopted in the Netherlands; access to information law reform was enacted in Lithuania and steps to reform

113. See <https://fom.coe.int/alerte>, for example Alert No. 190/2021, [Croatian News Website Index.hr and its Journalists Face 65 Lawsuits](#), 27 September 2021.

114. As highlighted by the Council of Europe Commissioner for Human Rights: [Time to take action against SLAPPs](#), 27 October 2020.

115. For example Alert No. 272/2022, [Media Outlets Facing Libel Claims from Kazakhstani Endowment Fund](#), 29 September 2022, concerning legal proceedings against several media outlets for their reporting on business enterprises associated with the former President of Kazakhstan.

116. Council of Europe Commissioner for Human Rights, [Time to take action against SLAPPs](#), 27 October 2020; [Current trends in threats to Freedom of Expression: interference with the coverage of public events, broadcasting bans and strategic lawsuits](#), SG/Inf(2021)36, 2021.

117. Concrete cases of SLAPPs and anti-SLAPP initiatives initiated at both the European and national levels were discussed at the [European Anti-SLAPP Conference 2022](#) organised by the European Centre for Press and Media Freedom and the Coalition Against SLAPPs in Europe, with the support of the Council of Europe.

118. In Malta, civil society has protested at the lack of consultation in the law reform process: Alert No. 275/2022, [Media Freedom Organisations Concerned over Moves to Pass Anti-SLAPP Legislation Without Adequate Scrutiny](#), 7 October 2022.

119. [OOO Memo v. Russia](#), 15 June 2022, Application No. 2840/10.

120. Alert No. 243/2021, [New Law against Disinformation Threatens Press Freedom \(Greece\)](#), 23 December 2021; Alert No. 82/2022, [Bill Criminalising “False Information” on Russian Armed Forces to be Submitted to the State Duma \(Russian Federation\)](#), 3 March 2022; Alert No. 181/2022, [Draft Legislation Incriminates “Misleading Information” and Tightens Online Control \(Türkiye\)](#), 2 June 2022.

121. Alert No. 306/2022, [“Foreign Agents” Bill Sparks Media Freedom Concerns \(Bulgaria\)](#), 23 November 2022; Alert No. 143/2021, [Bill to Ban Non-European Media Ownership \(Poland\)](#), 14 July 2021.

122. Alert No. 301/2022, [Media Freedom Organisations Raise Alarm over National Security Bill \(United Kingdom\)](#), 17 November 2022.

123. Commissioner for Human Rights, [Memorandum on freedom of expression and media freedom in Hungary](#), 30 March 2021.

124. Alert No. 232/2022, [Draft Bill Increases Control over Online Media \(Ukraine\)](#), 29 July 2022.

125. [Opinion of the Directorate General Human Rights and Rule of Law Information Society and Action against Crime Directorate, Information Society Department, on the Law “On Media” of Ukraine \(24 February 2023\)](#), prepared on the basis of the expertise by Council of Europe experts Eve Salomon and Tanja Kerševan.

126. Alert No. 87/2019, [New “Anti-defamation” Legislative Package Threatens Online Media Freedom \(Albania\)](#), 29 July 2019.

127. Directive 2019/1937 on the protection of persons who report breaches of Union law, 26 November 2019. For implementation see [www.whistleblowingmonitor.eu/](http://www.whistleblowingmonitor.eu/).

existing access to information laws to improve transparency were taken in Austria, Denmark and Finland.<sup>128</sup> The Council of Europe Convention on Access to Official Documents entered into force for Albania, Armenia and Iceland, and the Council of Europe Access Info Group of independent experts, monitoring the implementation of the convention, had its first meeting.<sup>129</sup> In several countries obstacles remained in the implementation of access to information laws: in Croatia, there were concerns about persistent delays and refusals necessitating the frequent intervention of the information commissioner; in Poland, there were concerns about limitations to access to information and about a legal challenge before the Supreme Court seeking to limit the application of access to information legislation, and in Flemish Belgium new legislation limited access to documents concerning “internal communications” and the federal Commission for Access to Administrative Documents ceased functioning.<sup>130</sup>

■ The use of surveillance measures to target journalists was an issue of concern across Europe. Investigative reporting uncovered the use of spyware against journalists, activists and politicians in several countries; in the Netherlands, it transpired that one journalist had been spied on by the security service for nearly 35 years.<sup>131</sup> In Germany, legislation was adopted broadening the use of surveillance and removing special protection for journalists.<sup>132</sup> The European Court of Human Rights handed down two key judgments on so-called “bulk surveillance”: the interception of millions of electronic communications and scanning them for indications of unlawful activity.<sup>133</sup> The Court held that such surveillance violated the right to respect for private life and also jeopardised journalists’ confidential sources. The Council of Europe’s Information Society Department published a report on the Pegasus spyware and its impacts on human rights,<sup>134</sup> and the Parliamentary Assembly is working on a report on the use of Pegasus and secret state surveillance.<sup>135</sup>

## SAFETY OF JOURNALISTS AND OTHERS WHO SPEAK UP

■ Tolerance and broadmindedness are hallmarks of a democratic society, and all who speak up on matters of public interest should be able to do so without fear of repercussions – even if others in society do not share their points of view, ideas and opinions. Journalists should be able to report safely and without threats or harassment. Anti-media rhetoric has no place in a democratic society and any violence against or abuse of journalists, offline or online, should be condemned by politicians. Anyone who is under threat for speaking up should receive protection if they need it, and those who have information on issues of public interest should be able to communicate with journalists securely and confidentially.

### 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 the journalists and others who speak up in political discourse is promptly condemned by authorities.

128. Austria, [Freedom of information law reform package](#) (revision of the government bill is currently in progress), 2021; Denmark, [Parliamentary Resolution V64 on Access to Public Administration Files Act](#), 1 April 2022; Finland, [Ministry of Justice working group on law reform](#) (Julkisuuslain ajantasaistaminen), 2021; Lithuania, Law No. XIV-867, 23 December 2021; and the Netherlands, [Open Government Act](#), 2022.

129. Council of Europe Access Info Group, 1st meeting, 16-17 November 2022.

130. As highlighted in the European Union [Rule of law reports](#) for 2021 and 2022, COM/2021/700 final, 20 July 2021 and COM(2022) 500 final, 13 July 2022. See also Alert No. 203/2022, [The Access to Public Information Act under Legal Challenge](#) (Poland), 28 June 2022.

131. Alert No. 252/2022, [Dutch Journalist Stella Braam Spied On For Almost 35 Years](#), 6 September 2022. Other alerts include Alert No. 147/2021, [Journalists Targeted with Pegasus Spyware](#) (Hungary), 26 July 2021; Alert No. 154/2022, [Several journalists Targeted with Pegasus Spyware](#) (Spain), 5 May 2022; Alert No. 148/2021, [Journalists Targeted with Pegasus Spyware](#) (Azerbaijan), 26 July 2021; Alert No. 297/2022, [Numerous Greek Journalists and Media Owners Allegedly Targeted with Predator Spyware](#), 10 November 2022.

132. Alert No. 122/2021, [German Law Increases Government Surveillance and Hacking Powers, Removes Protection for Journalists](#), 17 June 2021.

133. [Big Brother Watch and Others v. the United Kingdom](#) (Grand Chamber), 25 May 2021, Application Nos. 58170/13, 62322/14 and 24960/15; [Centrum för rättvisa v. Sweden](#) (Grand Chamber), 25 May 2021, Application No. 35252/08.

134. Kaldani T. and Prokopets Z. (June 2022), [“Pegasus spyware and its impacts on human rights”](#), DGI(2022)04, Council of Europe, Strasbourg.

135. [Motion for a recommendation, Pegasus and similar spyware and secret state surveillance](#), 21 September 2021. An [Introductory Memorandum](#) was published in April 2022.

- ▶ 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 professionals, or against others who speak out on matters of public interest and/or perform watchdog functions, 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 the public, for example to a journalist, on matters of public interest.
- ▶ Journalists and other media professionals are not forced to reveal their confidential sources unless ordered by an independent authority, when the legitimate interest in the disclosure clearly outweighs the interest in keeping the information secret and when alternative measures are not available.

## Findings

■ During 2021, six journalists lost their lives while doing their jobs; in 2022, 13 journalists were killed.<sup>136</sup> This is the highest number of journalists killed in any two-year period in Europe since 2015, when the Platform for the safety of journalists started recording this data.

■ Concern about the murders of journalists has been raised in consecutive annual reports of the Secretary General, with particular attention to the ongoing state of impunity in nearly all of these cases and the need for states to take effective steps to protect journalists and bring those responsible for violence to justice. The 2021 Conference of Ministers responsible for Media and Information Society adopted a resolution on the safety of journalists<sup>137</sup> stating that, “[t]he prevailing impunity, which fuels further threats and attacks on journalists, remains the most serious concern ... Council of Europe member States too frequently fail to fulfil their obligation to conduct prompt and effective investigations and prosecution of these crimes, falling short of bringing those responsible to justice”.

■ Despite the ministers’ pledge to resolve this as a matter of priority, and the Court reaffirming the duty on states to launch effective investigations into the murders of journalists,<sup>138</sup> the Platform for the safety of journalists continues to list 26 unresolved cases of murder against journalists. Most of the cases date back many years with little progress made in the investigations.<sup>139</sup> During 2021 and 2022 there were few convictions: a retrial confirmed guilty verdicts for the murderers of Serbian journalist Slavko Ćuruvija; a retrial was ordered against the suspected “mastermind” behind the murder of Slovak journalist Ján Kuciak; and three of the accused in the murder of Daphne Caruana Galizia pleaded guilty (the trial of the suspected mastermind has not yet begun).<sup>140</sup>

■ The years 2021 and 2022 saw the highest number of annual alerts lodged on the platform since 2015, when the collection of safety-related data began. Reported incidents rose in all categories: the number of physical attacks more than doubled in 2022 compared to 2019 (from 33 to 74), as did the incidents of harassment and intimidation (from 43 to 94); and the category “other acts” rose by 67% in the same period (from 48 to 80). Incidents ranged from death threats and beatings of journalists to firebombs and threats to family.<sup>141</sup>

136. In 2021, Greek crime reporter Giorgos Karaivaz was shot by two men outside his house; Turkish broadcaster Hazim Özsu was shot by a man who disliked his comments; Georgian journalist Aleksandre Lashkarava died after being beaten by anti-LGBTI protesters; Dutch journalist Peter R. de Vries was shot when he left a TV studio; and Azerbaijani journalists, Maharram Ibrahimov and Siraj Abishov, died when the car they travelled in hit a landmine. In 2022, Brent Renaud, Frédéric Leclerc-Imhoff, Ihor Hudenko, Maks Levin, Mantas Kvedaravičius, Oksana Baulina, Oleksandra Kuvshynova, Pierre Zakrzewski, Roman Nezhyborets, Yevgeny Bal, Yevheniy Sakun and Zoreslav Zamoysky were all killed while reporting on the war in Ukraine; and Güngör Arslan died after being shot in his office in Türkiye: see the [Platform for the safety of journalists](#) for respective alerts.

137. Conference of Ministers responsible for Media and Information Society, [Resolution on the safety of journalists](#), 11 June 2021.

138. For example *Estemirova v. Russia*, 31 August 2021, Application No. 42705/11; *Tagiyeva v. Azerbaijan*, 7 July 2022, Application No. 72611/14.

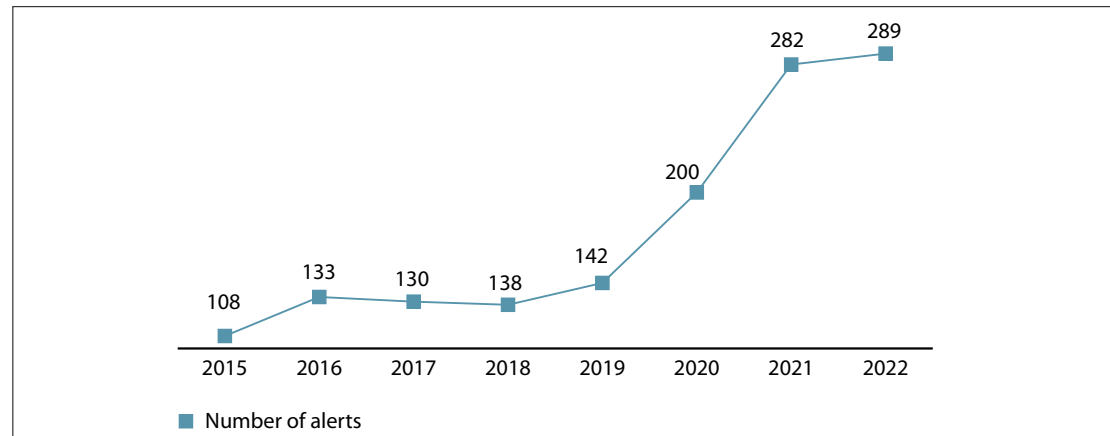
139. For details, see <https://human-rights-channel.coe.int/end-impunity-for-crimes-against-journalists-en.html>.

140. Alert No. 120/2017, [Investigative Journalist Daphne Caruana Galizia Killed by Car Bomb](#), update 17 October 2022; Alert No. 18/2018, [Slovak Investigative Journalist Ján Kuciak Killed at Home](#), update 16 June 2021; for the retrial of the murderers of Slavko Ćuruvija, see [Annual Report by the partner organisations to the Council of Europe Platform to Promote the Protection of Journalism and Safety of Journalists](#), April 2022.

141. For example Alert No. 323/2022, [Turkish Journalist Halil Tekin Assaulted while Reporting](#), 15 December 2022; Alert No. 287/2022, [Journalist Zoran Bozinovski Violently Attacked And Beaten Outside His Home](#) (North Macedonia), 27 October 2022; Alert No. 128/2022, [Russian Journalist Dmitry Muratov Attacked with Paint](#), 8 April 2022; Alert No. 29/2021, [Action 24 TV Station Attacked with Stones, Paint and Molotov Cocktail](#) (Greece), 25 February 2021; Alert No. 160/2021, [Molotov Cocktails Thrown into Journalist Willem Groeneveld's Home](#) (the Netherlands), 19 August 2021.

There were denials of service attacks on media websites and of online attacks against individual journalists. Some had their addresses and other private information revealed online, leading to physical attacks.<sup>142</sup> Women journalists were particularly exposed to online gender-based violence, as highlighted by the Commissioner for Human Rights and in the June 2021 ministerial resolution on the safety of journalists.<sup>143</sup> Threats of rape remain disconcertingly common.<sup>144</sup>

### Number of alerts on the Platform for the safety of journalists, 2015-2022



■ The steep rise in the number of alerts since 2019 is deeply concerning. Closer analysis of the figures shows a deterioration in safety in countries across Europe: from 2019 to 2022, the number of countries with no alerts fell from 22 to 9. In 2022, the total number of alerts rose in 28 countries; it fell in only eight countries. In 2022, 12 countries had 10 alerts or more or a situation of impunity for murder, up from only seven in 2019. It confirms that violence against journalists is steadily spreading across Europe.

■ To instil a greater culture of safety of journalists and others who speak up on matters of public interest, respect for the rule of law is essential. It is concerning that judgments of the Court were often not implemented in a timely manner: as of January 2023, a total of 344 freedom of expression judgments awaited implementation. Of these, around 100 had been pending for five years or more.<sup>145</sup>

■ The urgency of devising national action plans for the safety of journalists and taking decisive follow-up actions could not be clearer, and it is positive that during 2021 and 2022 several states took steps in this direction. Denmark and the United Kingdom published their first action plans for the protection of journalists;<sup>146</sup> the Dutch “PersVeilig” press safety protocol was reviewed and, in the face of a growing number of incidents, suggestions were made for improvement;<sup>147</sup> Denmark, Finland and Montenegro strengthened their criminal law frameworks for the protection of journalists;<sup>148</sup> and law reform proposals were tabled in Cyprus and Sweden.<sup>149</sup> In Austria and France, steps were taken to improve the safety of journalists during demonstrations and, in Germany,

142. For example Alert No. 216/2022, *Doxing and Death Threats against Columnist Marcel van Roosmalen* (the Netherlands), 12 July 2022; Alert No. 284/2022, *Daily Sabah Publishes Locations of Exiled Journalists* (Türkiye), 26 October 2022; Alert No. 27/2021, *Anonymous Telegram Channel Publishes Financial Information of Russian Journalist Elena Solovyova*, 18 February 2021.

143. Council of Europe Commissioner for Human Rights, *Combating violence against women in a digital age utilising the Istanbul Convention*, 24 November 2021; Conference of Ministers responsible for Media and Information Society, *Resolution on the safety of journalists*, 11 June 2021.

144. For example Alert No. 61/2022, *Belgian Journalist Samira Atillah Targeted by Death Threats and Sexual Harassment*, 4 February 2022; Alert No. 8/2022, *Turkish Journalist Subjected to Online Harassment and Threats after Publishing Statement on Ethical Coverage of Refugee News*, 31 December 2021; Alert No. 169/2021, *Južne Vesti Portal Journalists Receive Death Threats* (Serbia), 14 January 2021.

145. As per statistics from the Department for the Execution of Judgments (<https://hudoc.exec.coe.int>).

146. Danish action plan for safety for journalists, 13 June 2022; UK National Action Plan for the Safety of Journalists, 9 March 2021.

147. See <https://www.persveilig.nl/>.

148. Denmark: Law No. 2601/2021, 28 December 2021; Finland: Law No. 698/2021, 29 June 2021; Montenegro: *Parliament of Montenegro unanimously adopts Amendments to the Criminal Code strengthening Criminal Protection of Journalists*, 29 December 2021.

149. Cyprus: as reported in the *Country Chapter on the rule of law situation in Cyprus*, 13 July 2022; Sweden: *Report of the inquiry into enhanced criminal law protection for certain socially useful functions*, January 2022.

discussions to improve the relationship between media and police were underway.<sup>150</sup> Working groups and commissions to provide recommendations to improve the safety of journalists were active in several countries including Greece, Lithuania, Malta, Montenegro and Switzerland.<sup>151</sup>

■ These advances are laudable, however good practices need to extend across the continent. In the June 2021 ministerial resolution on the safety of journalists, the ministers invited the Council of Europe to “carry out a comprehensive campaign, at European level, to promote the protection of journalism and the safety of journalists and support corresponding campaigns at national level”. A five-year campaign is being prepared to reinforce the efforts towards a safer, independent, pluralistic media environment, aiming for member states to take ownership and transpose the campaign in line with their respective needs and contexts. Primarily, they are to take steps to put in place national plans/mechanisms for the safety of journalists.

■ Safety issues have also been a focus of the European Union; in 2021 the European Commission published a recommendation to strengthen the safety of journalists and other media professionals.<sup>152</sup>

■ As of January 2023, the Platform for the safety of journalists recorded 93 journalists in detention, up from 64 at the end of 2021, and the total number of alerts for new incidents of detention and imprisonment rose from 41 in 2019-2020 to 73 in 2021-2022. Journalists and media workers were detained in seven countries: 53 in Türkiye, 19 in the Russian Federation and 14 in the Russian-occupied territories in Ukraine, 4 in Azerbaijan and 1 in each of Georgia, Poland and the United Kingdom. Several journalists were detained for issues related to suspected involvement with terrorism.<sup>153</sup> In April 2021, the Court ruled in one such case that there was no “reasonable suspicion” of any criminal offence, resulting in the journalist being freed.<sup>154</sup> Other journalists were detained or convicted on charges of “insulting” high-level politicians including the president,<sup>155</sup> despite the Court having ruled that this offence was contrary to the spirit of the Convention.<sup>156</sup> The Commissioner for Human Rights called on the Government of the United Kingdom not to extradite Julian Assange to the United States of America.<sup>157</sup>

■ Demonstrations were often flashpoints for violence and journalists reporting on them were at real risk, including in some cases of violence by the police: journalists covering protests were shot at in Martinique and Spain.<sup>158</sup> Incidents such as these led both the Secretary General and the Commissioner for Human Rights to call for stronger protections for journalists during protests.<sup>159</sup> There were fewer incidents in 2022 than in 2021.<sup>160</sup>

■ While the aforementioned ministerial resolution on the safety of journalists condemned aggressive rhetoric and anti-media smear campaigns, in practice such incidents increased in number with anti-media

150. Austria: Interior Ministry, [Polizei implementiert “Medienkontaktbeamte” bei Demos](#) [Police implement “media contact officers” at demonstrations] 29 January 2021; France: Interior Ministry, [Mise à jour du schéma national du maintien de l’ordre \(SNMO\)](#), 16 December 2021 (as per the recommendations of the Delarue Commission, [Rapport de la Commission indépendante sur les relations entre la presse et les forces de l’ordre](#), 2 April 2021); Germany: Conference of Ministers of the Interior, [Schutz der Pressefreiheit insbesondere in Versammlungslagen](#), June 2021.

151. Greece: Interministerial Memorandum of Understanding on the Protection, Safety and Empowerment of Journalists and Other Media Professionals, 23 May 2022; Montenegro: Commission for monitoring the actions of competent authorities in investigations of cases of threats of violence against journalists, murders of journalists and attacks on media property; Malta: Committee of Experts on Media, established on 11 January 2022 as part of the follow-up on the recommendations of the Public Inquiry into the assassination of Daphne Caruana Galizia (see [Alert No. 275/2022](#) regarding civil society concerns); Lithuania: Ministry of Culture working group to co-ordinate the preparation of an action plan on the safety of journalists; Switzerland: working group on drafting a national action plan, led by the Swiss Federal Office of Communications (as per information reported to the Council of Europe).

152. European Commission, [Recommendation on the protection, safety and empowerment of journalists](#), 16 September 2021.

153. In total 16 alerts on 31 December 2022. See, for example, Alert No. 266/2022, [Turkish Journalist Hatice Şahin Sentenced to 6 Years, 3 Months in Prison on Terrorism Charge](#) (Türkiye), 21 September 2022; Alert No. 51/2022, [Citizen Journalist Amet Suleymanov Sentenced to 12 Years in Prison on Terrorism Charges](#) (Ukraine), 31 December 2021; Alert No. 102/2022, [Journalist Martin Banks Detained and Interrogated, Equipment Seized](#) (United Kingdom), 25 March 2022.

154. [Ahmet Hüsrev Altan v. Turkey](#), 13 April 2021, Application No. 13252/17.

155. Six alerts in total as at 31 December 2022. See, for example, Alert No. 135/2021, [Turkish Journalist Hakkı Boltan Sentenced to 2 Years and 17 Days in Prison for Insulting President and Prime Minister](#), 2 July 2021; Alert No. 48/2022, [Turkish Journalist Sedef Kabaş Arrested and Charged with Insult to the President](#), 25 January 2022.

156. [Vedat Şorli v. Turkey](#), 19 October 2021, Application No. 42048/19.

157. [Commissioner calls on UK government not to extradite Julian Assange](#), 18 May 2022.

158. Including Alert No. 205/2022, [Three Photojournalists Detained, Several Reporters Assaulted by the Police while Covering Istanbul Pride Parade](#) (Türkiye), 29 June 2022; Alert No. 176/2022, [Journalist Buse Söğütlü Assaulted and Arrested by Police](#) (Türkiye), 25 May 2022; Alert No. 223/2021, [Journalists Targeted with Live Ammunition in Martinique](#) (France), 26 November 2021; Alert No. 28/2022, [Serbian journalists intimidated by police ahead of protests](#), 31 December 2021; Alert No. 25/2021, [Photojournalist Joan Gálvez Shot with Detonating Ammunition by Catalan Riot Police](#) (Spain), 17 February 2021.

159. The Commissioner for Human Rights expressed strong concern on this issue at the World Press Freedom Day: [Journalists covering public assemblies need to be protected](#), 30 April 2021. Similar concern was expressed by the Secretary General in her report, [Current trends in threats to Freedom of Expression: interference with the coverage of public events, broadcasting bans and strategic lawsuits](#), 22 November 2021.

160. The number of alerts that related to incidents at protests fell from 41 in 2021 to 21 in 2022.



hate speech reported in 27 countries during 2021 and 2022, sometimes led by senior politicians and public figures.<sup>161</sup> Such negative rhetoric is a strong contributory factor to violence against journalists, as confirmed by the board of inquiry that investigated the circumstances that led to the murder of the Maltese investigative journalist Daphne Caruana Galizia.<sup>162</sup> Even Council of Europe institutions have been attacked: following a critical report on media freedom, the then-Slovenian Prime Minister tweeted that the Commissioner for Human Rights was “part of #fakenews network”.<sup>163</sup> As stated by the Secretary General in her report “Freedom of political speech: an imperative for democracy”,<sup>164</sup> the politicians’ important role in democratic debate brings with it a responsibility to demonstrate tolerance towards criticism and respect for democratic institutions in addition to their right to free speech.

■ There were also several reports across Europe of journalists forced to reveal their sources, in apparent contravention of European standards.<sup>165</sup> The Court ruled, in the “Big Brother Watch” case referenced above, that surveillance regimes that allow for bulk interception threaten the right of journalists to protect their confidential sources.<sup>166</sup>

## INDEPENDENT AND PLURALISTIC MEDIA ENVIRONMENT

■ Democracy requires a pluralistic media environment able to provide the public with reporting from a variety of different viewpoints, fulfilling the public’s right to receive information from a broad spectrum of voices. Achieving media pluralism requires a carefully calibrated media policy, adjusted to economic realities and aimed at promoting a sustainable media. The independence of the media and media regulators should be firmly respected. All media should be able to operate on a level playing field and no single outlet or media conglomerate should have unfair advantages over another.

### 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, interests 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 ownership of media by political stakeholders is strictly 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. Media and platforms identify paid-for content.
- ▶ The operating environment for independent and community media is favourable. All types of media (public service, private and community) have fair and equal access to technical and commercial distribution channels and electronic communication networks, as well as to state advertising and state subsidies and other funding schemes. They are encouraged to develop new business models including through supportive fiscal and regulatory regimes.

161. See, for example, Alert No. 239/2021, *Tbilisi Mayor Kakha Kaladze Openly Insults the Press (Georgia)*, 22 December 2021; Alert No. 299/2022, *Hungarian Politician Discusses the Hanging of Journalist Boróka Parászka*, 9 November 2022; Alert No. 271/2022, *Finance Minister Denigrates Denník N Editor Matúš Kostolný and the Media (Slovak Republic)*, 27 September 2022; Alert No. 67/2021, *Slovenian Prime Minister Accuses ARD Correspondent Nikolaus Neumeier of Nazi-style Propaganda after Criticism*, 14 April 2021; Alert No. 237/2021, *Prime Minister Nikol Pashinyan Publicly Insults the Press (Armenia)*, 22 December 2021; Alert No. 78/2021, *Newly elected Bulgaria MP jokes about cutting off journalist’s body parts*, 23 April 2021; Alert No. 89/2021, *Croatian President Milanović verbally attacked HRT journalists*, 11 May 2021; Alert No. 185/2021, *Czech Prime Minister Andrej Babiš Lambasts Investigative Journalist Jaroslav Kmenta*, 20 September 2021; Alert No. 16/2021, *Journalist Nadine White Smeared by Minister for Equalities (United Kingdom)*, 1 February 2021.

162. Board of Inquiry – Daphne Caruana Galizia, *Public Inquiry Report*, 29 July 2021.

163. Alert No. 110/2021, *Prime Minister Janša Attempts to Discredit Commissioner for Human Rights Dunja Mijatović’s Report on Media Freedom in Slovenia*, 11 June 2021.

164. *Freedom of political speech: an imperative for democracy* (SG/Inf(2022)36).

165. For example Alert No. 127/2021, *Investigative Programme “Report” Ordered by Court to Reveal its Sources (Italy)*, 23 June 2021; Alert No. 37/2022, *French Media Street Press Pressed to Reveal Source*, 31 December 2021.

166. *Big Brother Watch and Others v. the United Kingdom (Grand chamber)*, 25 May 2021, Application Nos. 58170/13, 62322/14 and 24960/15.



- ▶ All state support measures for media consider the distinct role and contribution to journalism of different media actors (public service, private and community media and independent journalists). National frameworks providing for support measures are based on clear, objective and transparent criteria and include appropriate safeguards to protect the editorial independence and operational autonomy of all media.
- ▶ Public service media have institutional autonomy, secure funding and adequate technical resources to be protected from political or economic interference. They play an active role in promoting social cohesion and integration through proactive outreach to diverse sectors and age groups of the population, including minorities and those with special needs.
- ▶ Journalists have satisfactory working conditions with adequate levels of pay and social protection. All content creators, including individuals and media businesses, are fairly rewarded for their work and copyright is protected against abuse, including online. 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

■ In 2021 and 2022, as media recovered from the economic and financial impact of the Covid-19 pandemic, maintaining a pluralistic media environment was a real challenge. Many media businesses had already been weakened by the challenging operating environment posed by the digital transition, in which large parts of the advertising income that traditionally funded media were absorbed by digital platforms and search engines. As the pandemic continued into 2021, there were closures of media outlets and job losses as well as mergers. While many states provided support packages, in some cases there were concerns about discriminatory allocation of this support.<sup>167</sup> While the global advertising market recovered, advertising revenue remained concentrated with global conglomerates and large companies; many smaller and independent media outlets continued to struggle. Subscription-based models were only viable in select countries.<sup>168</sup> The looming cost-of-living crisis threatened further cuts, but there was some optimism around new business models and other innovations.<sup>169</sup>

■ Recognising that the pandemic to a large extent accelerated pre-existing structural problems, European media ministers resolved to work with the media industry to support a pluralistic and independent media ecosystem and enhance the resilience of the media.<sup>170</sup> The European Commission devised a Media and Audiovisual Action Plan to support the recovery and transformation of the sector;<sup>171</sup> and the European Commission's proposal for a European Media Freedom Act aims, among other things, to protect media pluralism and editorial independence and ensure media diversity online and offline.<sup>172</sup> Recognising that media and communication governance needs modernising, the Committee of Ministers adopted Recommendation [CM/Rec\(2022\)11](#) detailing 15 principles to be applied in governance. The text calls for governance frameworks to include both media and online platforms to guarantee a level playing field, formulates requirements for states and media stakeholders against undue interference with freedom of expression and provides a clear indication of both the public and private stakeholders' rights and responsibilities.

■ In April 2022, the Grand Chamber of the Court reaffirmed the importance of media pluralism in democracy and the pivotal duty that it places on the state to put in place an appropriate legislative and administrative framework to guarantee effective diversity of overall programme content, reflecting as far as possible the variety of opinions in society.<sup>173</sup>

■ The need for action to protect media pluralism and independence is borne out by trends on the ground. The annual Media Pluralism Monitor, which covers 32 countries across Europe, has for years signalled risks to media pluralism. Its 2022 edition confirmed this trend, documenting ever greater market concentration in the traditional media sector, along with the rising market power of a small number of digital intermediaries.<sup>174</sup>

167. Bleyer-Simon K. and Nenadić I. (2021), "[News Media Subsidies in the First Wave of the COVID-19 Pandemic – A European Perspective](#)", European University Institute, Florence. See also the [Resolution on the impacts of the COVID-19 pandemic on freedom of expression](#), paragraph h., Conference of Ministers responsible for Media and Information Society, 11 June 2021.

168. Oxford Reuters Institute, [Digital News Report 2022](#), June 2022.

169. Oxford Reuters Institute, [Overview and key findings of the 2022 Digital News Report](#), 15 June 2022.

170. Conference of Ministers responsible for Media and Information Society, [Resolution on the changing media and information environment](#) and [Resolution on the impacts of the COVID-19 pandemic on freedom of expression](#), 11 June 2021.

171. European Commission, [Media and Audiovisual Action Plan: implementation updates](#).

172. European Commission, [European Media Freedom Act: Proposal for a Regulation and Recommendation](#), 16 September 2022.

173. [NIT S.R.L. v. the Republic of Moldova](#), 5 April 2022, Application No. 28470/12.

174. European University Institute, [MPM2022 Results](#), June 2022.

It found some improvements as regards transparency of media ownership, but it also reported that political and commercial interference remained a serious concern, especially with regard to the governance of public media, funding and the allocation of state advertising.<sup>175</sup>

■ The 2022 European Union Rule of Law Report flagged up concerns about the allocation of state advertising to the media, raising concerns about the leveraging of state funds to favour certain outlets. However, there were also some advances: updated rules concerning the transparency of state advertising were adopted in Croatia; guidelines were introduced in Cyprus and Malta; and the Austrian government announced a review of its state advertising policies and practices.<sup>176</sup>

■ In a few countries, media pluralism was threatened by the banning of media outlets or the refusal of licence renewal. In Hungary, one outlet had its licence renewal refused and another was forced to rebid.<sup>177</sup> The Russian Federation's full-scale invasion of Ukraine has been an information war as much as a military aggression; in this context, Ukraine banned several news channels and websites before the start of the war<sup>178</sup> and, in the Russian Federation, several news outlets were forced to stop operating following the start of the war.<sup>179</sup> Russian independent TV channel Dozhd was operating in exile in Latvia, until in December 2022 the national media regulator revoked its broadcasting licence,<sup>180</sup> alleging multiple violations of Latvia's laws amounting to threats to national security and public order. Dozhd TV subsequently obtained a five-year TV broadcasting licence in the Netherlands.<sup>181</sup> In Poland, there was concern that no public authority had a mandate to assess media market concentration from the point of view of media pluralism and about a bill passed by the parliament banning majority non-European ownership of media companies.<sup>182</sup> The bill was eventually vetoed.

■ Research reports published by the European Broadcasting Union affirmed a strong positive link between the strength of democracy and the strength of public service media, but also showed a decline in funding.<sup>183</sup> In several countries the independence of public service media was under challenge; alerts on the Platform for the safety of journalists concerned the Czech Republic, Latvia and Ukraine, and further concerns over political pressure and interference over the appointment of supervisory board members were expressed by the European Commission in its 2022 Rule of Law Report, for example in respect of Croatia, Cyprus, Greece, Hungary, Malta, Poland, Slovakia and Slovenia.<sup>184</sup> In Bosnia and Herzegovina, France and Slovenia, public service media funding has been under threat.<sup>185</sup> There were also positive developments, including a large-scale project to reinforce European standards and promote best practices for public service broadcasters in the Western Balkans.<sup>186</sup> Case studies from several European countries were presented at the 2022 Conference *Public Service Media for Democracy*,<sup>187</sup> showcasing both the potential problem areas and achievements to be gained if standards were respected and the mission of public service media fulfilled.<sup>188</sup>

175. The impact of the Court of Justice of the European Union's judgment in *WM v Luxembourg Business Registers* (Case C-37/20, 22 November 2022), invalidating a European Union law provision requiring transparency of beneficial ownership of companies, remains to be considered.

176. European Commission, *COM/2022/500*, 13 July 2022.

177. Alert No. 173/2020, *Hungary's Last Independent Radio Station has License Extension Rejected by Media Council*, update 25 July 2022; Alert No. 165/2022, *Media Council Blocks Tilos Rádió's Licence Renewal* (Hungary), update 29 September 2022.

178. Alert No. 161/2021, *Ukrainian News Website Strana.ua Banned*, 25 August 2021; Alert No. 21/2021, *TV Channels 112 Ukraine, NewsOne and ZIK TV Suspended by Presidential Decree*, 5 February 2021.

179. Alert No. 83/2022, *Ekho Moskvy and Dozhd TV Cease Operations*, 4 March 2022.

180. Alert No. 317/2022, *Latvian Broadcasting Licence for Exiled Russian Broadcaster Dozhd TV Cancelled*, 9 December 2022, update 24 January 2023.

181. The Council of Europe is planning to develop a new framework of co-operation with, respectively, Russian and Belarusian civil society, which will include giving voice to the opposition media and journalists, many of which are in exile, from the two states.

182. Alert No. 205/2020, *Orlen's Takeover of Polska Press Exposes Media Pluralism*, update 7 November 2022; Alert No. 143/2021, *Bill to Ban Non-European Media Ownership*, update 30 December 2022; and *Letter from the Council of Europe Commissioner for Human Rights*, 8 March 2021.

183. European Broadcasting Union, *How public service media deliver value*, 25 November 2022; *Funding of Public Service Media*, 18 March 2022.

184. Alert No. 58/2021, *Pressure on PSM Governance Threatens Independence of Czech Television and Erodes Media Freedom and Pluralism*, 12 April 2021; Alert No. 130/2022, *Pressure on Editorial and Financial Independence of Latvian Television*, 11 April 2022; Alert No. 113/2021, *Independence of the Public Broadcaster's Supervisory Board Challenged* (Ukraine), 11 June 2021; and the 2022 Rule of Law reports for Croatia, Cyprus, Greece, Hungary, Malta, Poland, Slovakia and Slovenia.

185. Alert No. 228/2022, *Funding of Public Broadcasting Weakened* (France), 27 July 2022; Alert No. 62/2021, *Slovenian Press Agency (STA) under Financial Pressure from the Government*, 13 April 2021; Alert No. 111/2022, *Public Broadcaster BHRT Faces Closure*, 30 March 2022.

186. European Broadcasting Union (EBU), *Technical Assistance to Public Service Media in the Western Balkans*, 2022.

187. Lithuania, 22 November 2022, organised by the EBU and the Council of Europe.

188. The Council of Europe standards on public service media are summarised in the *Digest* featuring the Committee of Ministers' recommendations, Parliamentary Assembly's instruments, the European Court of Human Rights' case law, Venice Commission opinions and other resources including the IRIS Plus report of the European Audiovisual Observatory on *Governance and independence of public service media*.

Large numbers of journalists were laid off in response to the tightening economic and financial environment, especially in 2021,<sup>189</sup> but in some instances lay-offs were motivated by non-financial reasons. For example, in Ukraine, all journalists at the Kyiv Post were laid off without any notice; in Poland, an editor at the public broadcaster was dismissed for allowing an artist to perform with a rainbow flag; and the president of the Croatian Journalists' Union was threatened with dismissal by the national public broadcaster for talking about sexual harassment among its staff.<sup>190</sup>

## RELIABILITY AND TRUST IN INFORMATION

Democracy requires not only a media environment that is free, independent and pluralistic, but also one in which quality journalism thrives: it is through this that the public receives news and information which it can trust and based on which people can make informed choices and decisions. By contrast, the lack of such trust and reliability imperils informed decision making, contributes to polarisation and undermines democracy. This means that quality journalism is a public good and requires continued protection and investment.

Reliability and trust in information has featured prominently in the recent Council of Europe instruments. In 2021, two guidance notes were adopted regarding automated decision making on digital and social media platforms, one on content moderation and the other on the prioritisation of public interest content online. In 2022, the Committee of Ministers adopted three recommendations concerning quality journalism in a digital environment, principles for media and communication governance and the impacts of digital technologies, all of which aim, among other things, to improve the trustworthiness of information coming from news media as well as from other, mostly online sources.<sup>191</sup>

### 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 stakeholders and individuals are 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 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 algorithmic decision making regarding online content and to tackle the dissemination of contentious, harmful and illegal content on digital platforms. Decision making is transparent and respects the rights of all users. Digital platforms ensure that there is 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. 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.

189. Reuters Institute, [Overview and key findings of the 2022 Digital News Report](#), 15 June 2022; [Executive summary and key findings of the 2021 report](#), 23 June 2021.

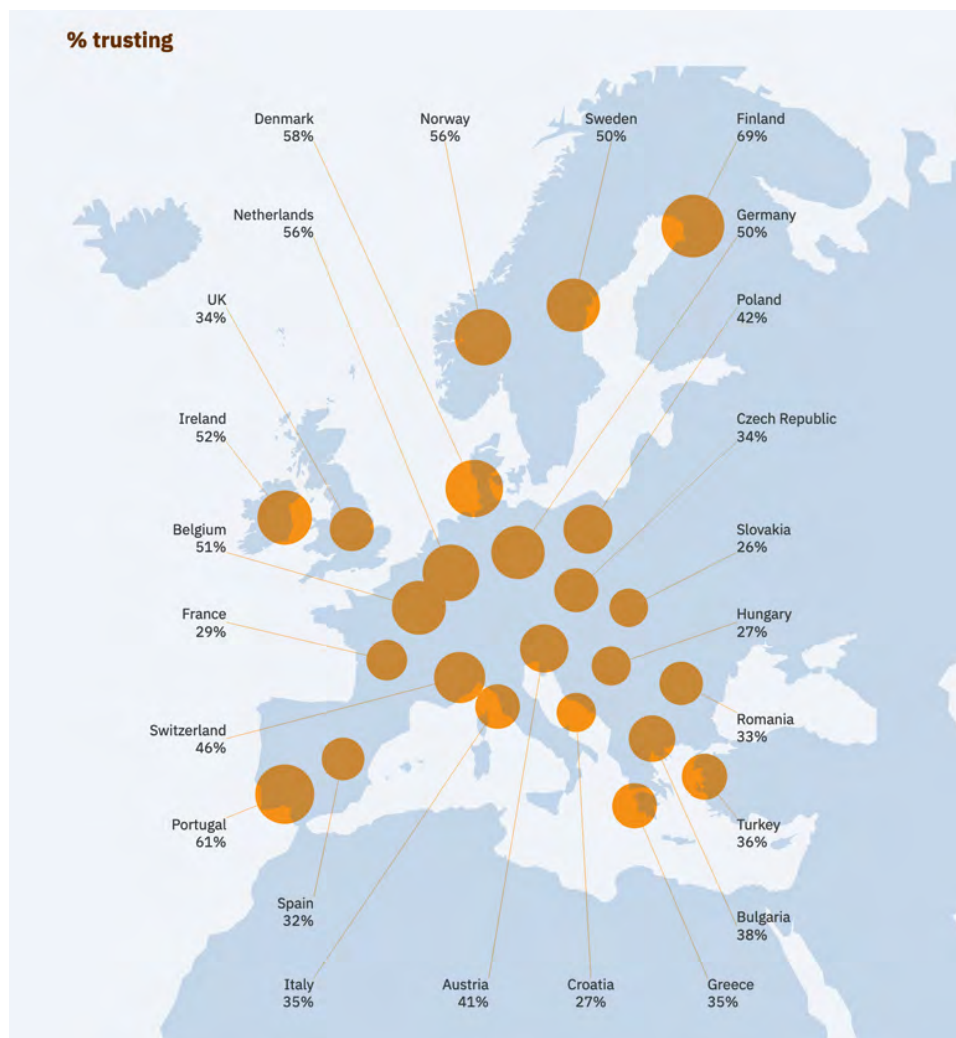
190. Alert No. 221/2021, [Kyiv Post Journalists Fired Collectively](#), 22 November 2021; Alert No. 146/2021, [TVP Programme Editor Dismissed over a Rainbow Flag](#), 23 July 2021; Alert No. 40/2021, [President of Croatian Journalists' Union Threatened with Dismissal](#), 15 March 2021.

191. CDMSI [Guidance note on best practices towards effective legal and procedural frameworks for self-regulatory and co-regulatory mechanisms of content moderation](#) and [Guidance note on the prioritisation of public interest online](#); and recommendations [CM/Rec\(2022\)4](#) on promoting a favourable environment for quality journalism in the digital age; [CM/Rec\(2022\)11](#) on principles for media and communication governance; and [CM/Rec\(2022\)13](#) on the impacts of digital technologies on freedom of expression.

## Findings

Trust in the media has been an issue of concern for some years. During the Covid-19 pandemic, there appeared to be a reversal in the decline of trust in the media. Radio and television news was particularly trusted, especially from public service media who were generally among the most trusted except in a small number of countries.<sup>192</sup> However, according to the annual report on news consumption by the University of Oxford's Reuters Institute, trust in the media fell in 2022, partly reversing some of these gains.<sup>193</sup> The reasons for this varied and included a new phenomenon of "news avoidance": up to half of all respondents in a Europe-wide interview said they avoided the news because it negatively affected their mood.<sup>194</sup> Research on diversity and the media that covered a few large European countries found a dearth of female and non-white editors in the media, and that young people, women and people who are politically partisan often feel less fairly represented by or in the media. These were contributing factors to the lack of trust.<sup>195</sup>

### Trust in News 2022



Source: Digital News Report 2022

192. University of Oxford Reuters Institute, Digital News reports 2021 and 2022; EBU Market Insights: [Trust in media 2022](#), September 2022. According to the latter, Hungary, Poland and Türkiye were the only countries where public service media were not among the top five best trusted news brands.

193. University of Oxford Reuters Institute, Digital News reports 2022.

194. University of Oxford Reuters Institute, Digital News reports 2022; EBU Market Insights: [Trust in media 2022](#), September 2022; European Platform of Regulatory Authorities (EPRA), [News avoidance, generational gap and the limits of the news business model](#), 29 June 2022.

195. Reuters Institute, [Women and leadership in the news media 2022: evidence from 12 markets](#), 2022; [Race and leadership in the news media 2022: evidence from five markets](#), 2022; EBU Market Insights, [Trust in Media 2022](#).

Disinformation was a problem in nearly all European countries during 2021 and 2022.<sup>196</sup> While in 2020, several countries introduced (sometimes disproportionately harsh) legislation to curb the problem in relation to the Covid-19 pandemic,<sup>197</sup> in the course of 2021 and 2022 these efforts lapsed or were abandoned in favour of approaches based on raising awareness and enhancing media and information literacy. In 2021, the European Media and Information Fund was established to fund researchers, fact checkers, not-for-profits and other public interest-oriented organisations working on disinformation research and strengthening media literacy and fact checking.<sup>198</sup> In several European Union countries, anti-disinformation hubs have been established as part of the European Digital Media Observatory (EDMO), a platform for fact checkers, academic researchers and other stakeholders.<sup>199</sup>

The Russian Federation's war against Ukraine weaponised disinformation and provided challenges for media regulators. Many European countries formally banned Russia Today, Sputnik and other Russian state-financed news outlets,<sup>200</sup> and court challenges to the bans failed.<sup>201</sup> The Council of Europe responded to the aggression with a package of immediate action to support the Ukrainian authorities and media, such as assisting the public broadcaster UA:PBC in fulfilling its functions, supporting the relocation of its staff, covering technical services for ensuring uninterrupted broadcasting and helping the National TV and Radio Broadcasting Council of Ukraine with the temporary accommodation of staff and purchase of information technology equipment.

Lithuania has been held up as an example of effectively countering disinformation. It was among the first to deploy legislation countering disinformation in the broadcast media and combines this legislative approach with self-regulatory initiatives as well as with media and information literacy initiatives. In December 2021 it launched the Baltic Research Foundation for Digital Resilience (DIGIRES), which combines the efforts of academia, media organisations and independent journalists to detect, analyse, prevent and curb disinformation activities. Finland has been named as another positive example, combining governmental efforts against disinformation with self-regulation in journalism.<sup>202</sup>

In most countries the importance of media and information literacy is acknowledged, but this acknowledgement is not always reflected in action. In most countries where there are strategies, literacy campaigns are implemented by civil society; in a small number of countries, such as Luxembourg, media and information literacy programmes are incorporated into the formal education system and aimed at the wider public.<sup>203</sup>

Effective self-regulation is an important factor in generating public trust. However, during 2021 and 2022, self-regulatory bodies for the media were found to be effective in only a minority of countries (Belgium, Denmark, Estonia, Germany, Ireland, Luxembourg, the Netherlands and Sweden).<sup>204</sup> There were also challenges in terms of the suitability of existing codes of ethics to online media: a Europe-wide survey found that journalists believe that new or adapted ethical principles are needed, particularly in the face of pressure to publish quickly and attract traffic ("clicks") and on the issue of content found online, linked content, user-generated content and content produced by bots.<sup>205</sup> Responding to this challenge, the Alliance of Independent Press Councils of Europe agreed that journalistic content needs to be self-regulated regardless of platform, but acknowledged that accomplishing this is difficult.<sup>206</sup>

The regulation of social media to minimise harmful and illegal content and improve the transparency of algorithms that govern online content has been a focus point of decision makers for several years. For European

196. Media Pluralism Monitor 2022, pp. 8-9.

197. Noorlander P. (2020), "Covid and free speech – The impact of Covid-19 and ensuing measures on freedom of expression in Council of Europe member states", Background Paper, Council of Europe Ministerial Conference, Cyprus. As detailed under "Legal guarantees for freedom of expression", Greece, Hungary, the Russian Federation and Türkiye bucked the trend: Greece and Türkiye introduced new legislation to criminalise the publication of "false information", and in Hungary and the Russian Federation the legislation introduced during the Covid-19 pandemic has remained in effect.

198. European Media and Information Fund at a glance: <https://gulbenkian.pt/emifund/emif-at-a-glance/>.

199. European Digital Media Observatory homepage: <https://edmo.eu/>.

200. The Russian Federation imposed similar bans on European outlets which were taken off the satellite, their websites were blocked and communicating with "undesirable" foreign organisations was criminalised. The authorities also required domestic media to only use state-verified sources of information and required that the war be referred to as a "special military operation", forcing many independent outlets into exile. Alert No. 78/2022, Russian Watchdog Roskomnadzor Requires Media Outlets to Cover the War in Ukraine Using Only Official Russian Sources, 24 February 2022.

201. See, for example, Court of Justice of the European Union, *RT France v. Council*, Case T-125/22, 27 July 2022; Carlin, *Re Application for Judicial Review* [2022] NIKB 20, 27 October 2022. The European Audiovisual Observatory prepared a note on "The implementation of the EU sanctions against RT [Russia Today] and Sputnik" and an IRIS Extra Sanction law against Russian and Belarusian audiovisual media.

202. Media Pluralism Monitor 2022, p. 143.

203. BEE Secure (Safer Internet Awareness Centre for Luxembourg) homepage: [www.bee-secure.lu/fr/](http://www.bee-secure.lu/fr/).

204. Media Pluralism Monitor 2022, p. 80.

205. Presscouncils.eu, *Media Councils in the Digital Age. Survey results*, 2020.

206. Presscouncils.eu, *The Media Councils Debates – Facing the Challenges of the Digital Age*, January 2022.



Union countries, the Digital Services Act (DSA) came into force in November 2022, seeking to ensure a safer and more predictable and trusted online environment. Linked to the DSA, the European Union Code of Practice on Disinformation was updated in 2022, featuring stronger commitments by most large tech companies to, among other things, demonetise disinformation, increase transparency and tackle fake accounts and bots. This was in response to its 2020 assessment which highlighted its usefulness for structured co-operation with platforms and monitoring and improving platforms' policies on disinformation, but also observed that further improvements were necessary.<sup>207</sup> The Committee of Ministers adopted Recommendation [CM/Rec\(2022\)16](#) on combating hate speech, a comprehensive text formulating a wide range of legal and non-legal measures to counter hate speech in a human rights-compliant manner.

■ Meta's Facebook reported in 2022 that it had continued to make some politicians exempt from content moderation rules, allowing them to post offensive material if it was newsworthy.<sup>208</sup> There were also concerns about a failure by social media companies to act promptly against hate speech: an evaluation showed that the number of notifications reviewed by the companies within 24 hours dropped from 90% in 2020 to 64% in 2022.<sup>209</sup>

■ In addition to strengthened regulation, there is a need for collaboration and collective action to address the threats to information integrity. In the past two years, the Council of Europe has reinforced its partnership framework with digital technology companies and their associations,<sup>210</sup> which enables the private sector to work alongside governments on digital policies. The opportunity for technology companies to deepen their understanding of the Organisation's legal framework and participate in the work of steering and expert committees developing policy instruments can improve their compliance with international standards and, by extension, boost public confidence and users' trust in their services.

■ The Council of Europe has also established a Committee of Experts on the Integrity of Online Information (MSI-INF) with a mandate to draft a guidance note to counter the spread of online mis- and disinformation and it is currently in the process of reviewing the implementation of Recommendation CM/Rec(2018)2 on the roles and responsibilities of internet intermediaries in Council of Europe member states.

---

207. European Commission Staff Working Document: [Assessment of the Code of Practice on Disinformation – Achievements and areas for further improvement](#) (SWD(2020)180 final), 10 September 2020.

208. *Washington Post*, [Facebook gave 13 newsworthy exemptions to politicians in the past year](#), 25 August 2022.

209. European Commission, [Factsheet, 7th evaluation of the Code of Conduct](#), November 2022.

210. See [www.coe.int/en/web/freedom-expression/digital-partnership](http://www.coe.int/en/web/freedom-expression/digital-partnership).





## CHAPTER 3

# FREEDOM OF ASSEMBLY AND FREEDOM OF ASSOCIATION

---

### INTRODUCTION

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

■ But this is not the case everywhere. There is a contradiction between the 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 and shrink the space for civil society.

■ New ways of eroding freedom of assembly and association were already noted in the 2022 report: using the fight against corruption or terrorism to target associations, human rights defenders or civil society leaders, or using public interest or traditional values to justify discrimination on the basis of political opinion, religion, ethnic origin or sexual orientation. These concerns continue to be relevant today.

■ Democracy cannot exist without the right of individuals to organise among themselves to express and promote common interests. Freedom of assembly and freedom of association are therefore essential to nurturing democratic debate and enabling civil society to play its role as a catalyst for social change, a bulwark against possible abuses of power and a support for the protection of human rights.<sup>211</sup>

■ 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 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.

■ New challenges have also arisen in the context of the Russian Federation's exclusion from the Council of Europe<sup>212</sup> following its war of aggression against Ukraine. In its [Resolution 2446 \(2022\)](#), the Parliamentary Assembly reiterated its condemnation of the measures taken by the Russian authorities since the beginning of the war to further curtail freedom of expression, freedom of assembly and freedom of association, through the intensifying crackdown on civil society and independent media, the liquidation of NGOs and the mass arrests of over 16 000 peaceful anti-war demonstrators.

211. See the Venice Commission's urgent interim Opinion [CDL-AD\(2022\)008](#) on Belarus, issued on 21 February 2022, underlining that democratic referendums are not possible without respect for human rights, in particular freedom of expression and of the press, freedom of movement inside the country, freedom of assembly and freedom of association for political purposes.

212. The Russian Federation has ceased to be a member of the Council of Europe as from 16 March 2022 (Resolution CM/Res(2022)2) and a Party to the European Convention on Human Rights as from 16 September 2022, but the Committee of Ministers continues to supervise the execution of the judgments and friendly settlements adopted by the European Court with regard the Russian Federation and the latter is required to implement them ([Resolution CM/Res\(2022\)3](#), paragraph 7).

■ In a statement of 7 March 2022, the Commissioner for Human Rights [urged](#) the Russian authorities to end internal repression against human rights defenders, journalists, activists, and ordinary citizens who oppose the war against Ukraine and to fully respect their human rights, including the right to freedom of peaceful assembly and association. In an [Interim Resolution of 9 March 2022](#), the Committee of Ministers noted with deep concern reports of dispersals and arrests across the Russian Federation of thousands of peaceful demonstrators, in clear and blatant violation of their right to spontaneous assembly.

■ Free speech and public participation have been curtailed in several member states with measures ranging from harsh policing of demonstrations, bans on and dispersals of assemblies and changes in legislation aimed at increasing the possibilities of sanctioning persons organising or participating in peaceful assemblies, as stressed by the Commissioner for Human Rights in the [presentation](#) of her [2021 Annual Activity Report](#) to the Parliamentary Assembly.

■ Resources must be devoted to reversing this trend and assisting member states to reinstate legislation and practice fully protecting and guaranteeing freedoms of assembly and association. The Council of Europe's commitment, alongside its member states, to promote and defend political freedoms is more important than ever. The Council of Europe also continues to focus on the protection of particularly vulnerable groups, including LGBTI people, national and religious minorities, migrants and refugees, environmental activists,<sup>213</sup> and civil society, whose role and diversity are under threat.

■ 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 freedom of assembly or association have been pending for years under the Committee of Ministers' supervision of execution of judgments, with decisive results yet to be achieved. They reveal deficiencies often structural or systemic in nature requiring far-reaching legislative, executive and judicial action and a fundamental shift towards genuine adherence to the underlying value of pluralism by public authorities at all levels.

■ Strengthening the independence, efficiency and resilience of judicial systems, in parallel with enhancing their capacity to implement Council of Europe standards, is key to the full realisation of freedom of assembly and association in member states. 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 can prevent violations of these freedoms. When judicial systems are independent, efficient and free from bias and mechanisms are in place to shield them from any undue external influence, excessive use of force in policing public assemblies or dereliction of duty in not protecting the public can be prevented.

## FREEDOM OF ASSEMBLY

■ "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" as the Court has underlined on many occasions.<sup>214</sup>

■ 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 of organisers and participants.<sup>215</sup> 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, clearly defined in 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.

213. See Commissioner for Human Rights, [Human Rights Comment](#) published on 25 May 2021, which addresses the rise in attacks against environmental activists as well as acts of intimidation, stigmatisation and harassment faced by them and proposes several steps to remedy the situation.

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

215. 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. 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. Absence of prior notification and the ensuing “unlawfulness” do not give carte blanche to the authorities, they are still restricted by the proportionality requirement of Article 11. Peaceful public events should not be dispersed, even if unlawful, if they do not pose a threat to public order. Peaceful participants should not be arrested or prosecuted.<sup>216</sup>

■ The right to freedom of assembly includes the right to choose the time, place and manner of conduct of the assembly. The Court has stressed that the organisers’ autonomy in determining the assembly’s location, time and manner of conduct, such as 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.<sup>217</sup>

■ The mere existence of 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 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 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 Organization for Security and Co-operation in Europe (OSCE) Office for Democratic Institutions and Human Rights (OSCE/ODIHR) in June 2019 to ensure unhindered exercise of the right to peaceful assembly.<sup>218</sup>

## 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.

216. In an opinion on Belarus, the Venice Commission recalled that the use of violence by a small number of participants in an assembly did not automatically turn an otherwise peaceful assembly into a non-peaceful assembly. For more details, see Opinion [CDL-AD\(2021\)002](#) – Belarus – Opinion on the compatibility with European standards of certain criminal law provisions used to prosecute peaceful demonstrators and members of the “Coordination Council”, adopted by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021).

217. *Lashmankin and Others v. Russia* (Application No. 57818/09), 7 February 2017: in this case, the principle was in substance applied to the prohibitions to gather around the court buildings (paragraphs 431-442).

218. 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.



- ▶ 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.

## Findings

### Legislative framework

■ In March 2021, the Venice Commission reviewed the Spanish Citizens' Security Law,<sup>219</sup> and concluded that the law gave the authorities broad powers in policing mass gatherings, leaving them too much discretion to decide which behaviour is punishable and what powers the police had within its mandate to protect public order. For the Venice Commission, the authorities should tolerate demonstrations unless there is an ascertainable risk of "substantial disorder". Organisers and promoters of demonstrations should not be held liable for deviations which could not be reasonably foreseen or averted by them. The commission also criticised the high penalties, which might have a chilling effect on the exercise of the freedom of assembly. The Citizens' Security Law was also criticised by the Commissioner for Human Rights, in a [letter](#) published on 11 February 2022, calling on the Spanish parliament to ensure that the review of the 2015 Citizens' Security Law is used as an opportunity to bring it fully in line with European and international human rights standards, in particular as concerns the provisions impinging on several rights and freedoms, including on peaceful assembly.

■ On 1 July 2021 the Commissioner for Human Rights published a [letter](#) to the UK House of Commons and House of Lords, in which she urged parliamentarians to reject restrictions on peaceful demonstrations contained in the Police, Crime, Sentencing and Courts Bill. She issued a [report](#) on 9 December 2022 following a country visit to the United Kingdom, expressing concern about the chilling effect on the right to peaceful assembly of provisions in the Police, Crime, Sentencing and Courts Act which would be aggravated if the Public Order Bill – which was still before the parliament – were to be adopted.

■ On 9 March 2022, the Committee of Ministers [urged](#) the Russian authorities to ensure that the Public Events Act complies with requirements of the Convention, in particular, by improving notification rules; limiting the discretion of local authorities in approving public events; legitimising spontaneous assemblies; and ceasing to consider several solo demonstrations as one mass assembly. It also urged the authorities to ensure that other laws comply with the Convention, in particular, the Information Act and anti-extremism legislation.

■ In its [Resolution 2438 \(2022\)](#) "The honouring of commitments by Georgia", the Parliamentary Assembly expressed its concern about the law on administrative offences, which dates from the Soviet era and allows for excessive use of administrative detention, as well as excessively high fines, and runs counter to the principles of freedom of expression and assembly.

■ The Venice Commission joint opinion on Azerbaijan<sup>220</sup> dealt with restrictions imposed by the law on media entities including as regards foreign ownership and foreign funding. The Venice Commission found these provisions excessive and called for them to be repealed, highlighting the importance of fostering media pluralism. The commission considered that the media law represents a clear case of over-regulation in a legislative environment which was already very restrictive and will have a further chilling effect.

■ In December 2021, the Committee of Ministers examined the Gafgaz Mammadov group of cases concerning the dispersal of unauthorised peaceful demonstrations and the applicants' arrest and convictions for participation. The general underlying problem was the lack of predictability and precision in the legislation, which allowed public gatherings to be prohibited or improperly dispersed. The Committee reiterated its previous call that the authorities take legislative and other measures in order to ensure that national legislation and practice is compatible with Convention requirements and urged them to submit a comprehensive action plan on the measures taken and/or planned without further delay.<sup>221</sup>

219. Venice Commission, Opinion [CDL-AD\(2021\)004](#) – Spain – Opinion on the Citizens' Security Law, adopted by the Venice Commission at its 126th plenary session (online, 19-20 March 2021).

220. Venice Commission, Opinion [CDL-AD\(2022\)009](#) – Azerbaijan – Joint Opinion of the Venice Commission and the Directorate General of Human Rights and Rule of Law (DGI) on the Law on Media, adopted by the Venice Commission at its 131st Plenary Session (Venice, 17-18 June 2022).

221. Council of Europe, [Interim Resolution CM/ResDH\(2021\)421](#).

## Ensuring the right of freedom of assembly

■ A margin of tolerance should be applicable for all gatherings, even in cases of unauthorised, peaceful assemblies. On 9 March 2022, the Committee of Ministers urged the Russian authorities to issue a clear high-level message of tolerance for all, including unauthorised, peaceful assemblies.

■ In a [statement](#) on 13 September 2022, the Commissioner called on the Serbian authorities to withdraw the ban on the Europride march and protect participants. She stressed that states have the obligation to take preventive measures to neutralise risks of violence against an assembly and must ensure the security of participants.

■ On 13 October 2022, the Parliamentary Assembly held a current affairs debate on threatened bans on Pride events in Council of Europe member states. As a follow-up to this debate, the Assembly's Committee on Equality and Non-Discrimination has been entrusted with drawing up a report on freedom of expression and assembly of LGBTI people in Europe.

■ The issues which NGOs and social movements tackle are increasingly of a cross-border nature: climate change, cross-border pollution, preservation of indigenous cultures, refugee and immigration crises, or human rights violations. To restrict the activities of transnational civil society by, for instance, labelling local associations of transnational NGOs "foreign agents", is to deny the cross-border character of the major issues facing decision makers, and the important contribution of transnational civil society both to enhancing awareness of these issues and to providing proposals for solving them.

## Use of force to disperse assemblies

■ On 5 February 2021, the Commissioner for Human Rights sent a [letter](#) to the Russian authorities regarding the dispersal of peaceful demonstrations in the Russian Federation and the detention of numerous people. She urged the Russian authorities to halt the practice of arresting peaceful demonstrators and to align policing of demonstrations with human rights standards, and requested information about action taken to ensure accountability of law-enforcement officers for human rights violations. In [Resolution 2435 \(2022\)](#) "Fighting and preventing excessive and unjustified use of force by law-enforcement officers" adopted on 27 April 2022, the Parliamentary Assembly regretted that law-enforcement officers in member states had used excessive force in many cases, violating the principles of necessity, proportionality, precaution and non-discrimination, notably in policing peaceful demonstrations and counter-demonstrations. It noted that in some situations, police officers themselves had caused mass disorder by infiltrating *agents provocateurs* into peaceful demonstrations or by violently cracking down on peaceful rallies by the political opposition.

## Criminal and administrative sanctions/detention for participants of peaceful assemblies

■ On 5 February 2021, the Commissioner for Human Rights [urged](#) the Russian authorities to free those who had been detained during peaceful protests that had taken place in various Russian cities and to hold law-enforcement officials accountable for their improper conduct. She also raised concerns regarding allegations of ill-treatment of some demonstrators held in custody.

■ On 9 March 2022, the Committee of Ministers [urged](#) the Russian authorities to ensure that criminal sanctions against peaceful demonstrators, notably deprivation of liberty, are in principle excluded, and that trials imposing sanctions for participation in assemblies are fair.

■ In [Resolution 2372 \(2021\)](#) concerning human rights violations in Belarus, adopted on 21 April 2021, the Assembly said that peaceful protests against the falsification of presidential election in Belarus had been brutally put down, with many protesters being arrested and tortured in detention. In February 2021, a new wave of arrests and prosecutions was launched against opposition activists. The Assembly considered that those detained or serving prison sentences for merely participating in peaceful protests or publishing information on those protests were political prisoners, according to the Assembly's definition of this term. It called on the Belarusian authorities to release them without delay, and to cease all restrictions on media freedom and freedom of assembly.

■ The Commissioner for Human Rights addressed the growing issue of violence against journalists covering public assemblies and highlighted steps member states might take to better safeguard them in a [Human Rights Comment](#) that was published on 30 April 2021. She stressed that, in cases where threats or crimes against



journalists covering demonstrations occur, these require prompt, thorough, and transparent investigations to bring perpetrators to justice. She also underlined the importance of adequate training of law-enforcement officers about the role and function of journalists, particularly during a public assembly, and of promoting dialogue between state authorities and journalists' organisations to prevent friction or clashes between police and members of the media. In a [memorandum](#) on Slovenia published on 4 June 2021, the Commissioner for Human Rights expressed the concern that several measures taken by the Slovenian authorities, including blanket bans on public gatherings, may have constituted disproportionate restrictions on the right of peaceful assembly. Authorities should find solutions that enable the exercise of the right to freedom of peaceful assembly and should stop issuing prohibitively large fines to protesters.

■ In a statement of 25 May 2022, the Commissioner for Human Rights [called](#) on the Slovenian authorities to drop lawsuits and fines against peaceful demonstrators. Demanding that peaceful demonstrators reimburse the costs for policing unregistered public assemblies was incompatible with both Slovenia's international human rights obligations regarding the right to freedom of peaceful assembly, and with Slovenia's Public Assembly Act.

## FREEDOM OF ASSOCIATION

■ Freedom of association is both a fundamental freedom and 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 essential to a pluralist democracy and in supporting the protection of human rights. They cover many areas, advocating for better health, calling for protection of the environment or 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 recognises explicitly 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 to prevent a certain religious faith or other identifiable social groups from organising themselves would violate the right to freedom of association. Only those associations that wish to take part in elections should register as political parties and meet more stringent conditions. Portraying advocacy NGOs as masked "political parties" is to restrict their legitimate watchdog function in a democratic society, as NGOs mobilise people to be active and engaged citizens and raise awareness on political topics.

■ A restrictive approach to NGOs is incompatible with pluralist democracy. They should be allowed to work without undue interference. NGOs should not be unlawfully or arbitrarily refused their registration.<sup>222</sup> 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 watchdog work, including human rights advocacy.

■ It is essential that member states put in place a legal framework that enables NGOs to function freely and creates an enabling environment that allows them to be registered and to function properly, including sustainable mechanisms for dialogue and consultation between civil society and public authorities.

■ Civil society and NGOs are key partners of the Council of Europe as they provide expertise, knowledge and services complementary to those provided by governments and international organisations. The Secretary General highlighted the need to strengthen and promote civil society space in Europe in her [final report](#) in April 2022<sup>223</sup> of the follow-up to the Helsinki decisions on civil society where a series of actions were presented, including the launching in 2022 of a civil society portal and a practical guide on how civil society can work with the Council of Europe. These measures were endorsed at the Turin Ministerial Session in May 2022.

■ Supporting the role and diversity of civil society, including human rights defenders and national human rights institutions in member states, is also a key strategic priority of the Council of Europe.

■ In July 2022, the Venice Commission published a compilation on freedom of association.<sup>224</sup> The crucial role of civil society was also underlined during the [Round Table on civil society, empowerment and accountability](#)

222. See *Ramazanov and Others v. Azerbaijan* (Application No. 44363/02), 1 February 2007.

223. *Follow-up to the Helsinki decisions on civil society: implementation of the Secretary General's proposals – Final Report*, 12 April 2022.

224. *Compilation of Venice Commission's Opinions and Reports concerning Freedom of Association*, July 2022.

organised by the commission in September 2022, which stressed that a vibrant and diverse civil society is an essential part of checks and balances in a stable and effective democracy<sup>225</sup> and that an independent and active civil society is one of the required conditions for a functioning system of checks and balances.

■ NGOs should be free to solicit and receive funding not only from public bodies but also from institutional or individual donors, another state or multilateral agencies, subject to the laws generally applicable to customs, foreign exchange and money laundering and those on the funding of elections and political parties, without being subject to unjustifiable burdens and restrictions.

■ NGOs engaged in human rights advocacy are especially vulnerable and should not be targeted. 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.

## Measurement criteria

---

- ▶ There is an appropriate legal basis for the exercise of freedom of association, including any registration requirements. Restrictions and formalities must be foreseeable and proportionate.
- ▶ Sanctions imposed on an association or its members, including dissolution, are foreseeable and proportionate and 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

■ Civil society is increasingly concerned with member states drawing justifications from international laws and treaties to restrict NGOs' access to financial sources, while undermining the work of NGOs with increasing bureaucratic requirements.

■ Oversight bodies must take into account how money laundering and terrorist financing rules could impact NGOs. The principal responsibility for this lies with member states, who should avoid adopting laws which allow governments to target specific associations or specific areas of work.<sup>226</sup>

■ Committee of Ministers Recommendation [CM/Rec\(2007\)14](#) is a clear legal framework outlining member states' commitment to ensure adequate legal status and an enabling environment for NGOs. A [study on the legal status of NGOs](#), published in December 2021 by the Expert Council on NGO Law of the Conference of INGOs highlighted wide differences in the level of implementation and awareness of European standards amongst member states and civil society. It noted that there was considerable variation in the time taken to register NGOs and that restrictions were posed by more than a dozen member states on "political" activities.

---

225. Round table "Civil society: empowerment and accountability", organised by the Venice Commission in September 2022.

226. [Study on Non-Governmental Organisations and the Implementation of Measures Against Money Laundering and Terrorist Financing](#) issued by the Expert Council on NGO Law of the Conference of INGOs in May 2022. The study was based on an assessment done with civil society from the Council of Europe member states and includes inputs from Belarus, Kosovo\* and the Russian Federation.

\* All references to Kosovo, whether 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.

Member states should improve their efforts to implement the recommendation, translate it into their national languages and bring it to the attention of civil society.

■ Recent amendments in NGO legislation in Belarus include an overly broad conception of “extremist activities” and excessive additional controls relating to the organising and holding of mass events. Their adoption has added to what was already a particularly hostile environment for NGOs and are incompatible with international and regional standards.<sup>227</sup>

■ In the Russian Federation, the law stigmatising NGOs as foreign agents or undesirable represents a systemic violation of freedom of association. The legal environment for NGOs in the Russian Federation has been constantly deteriorating since the adoption of the law on foreign agents in 2012 and new challenges lie ahead, with NGOs, individual members of NGOs and those working with them at risk of heavy prison sentences.

■ A Venice Commission opinion<sup>228</sup> focused on the special category of NGOs created by the Russian legislation, so-called “foreign agents”. In 2020 the definition of a “foreign agent” was expanded to cover individuals, and reporting/disclosure obligations and sanctions significantly increased. The commission noted that the law used vague and overly broad terminology, and that the measures – in particular, reporting obligations and sanctions – were not related to the aims allegedly pursued. The commission recommended abandoning the notions of “political activities” and “foreign support” which the law used to identify who was a “foreign agent”.

## Non-execution of judgments relating to Article 11, Freedom of Association

■ A study by the Expert Council on NGO Law of the Conference of INGOs in March 2022 highlights significant challenges with the execution of Court judgments involving freedom of association.<sup>229</sup>

■ The Committee of Ministers adopted several interim resolutions calling on the authorities to take action without further delay to remedy violations of Article 11.<sup>230</sup>

## Non-registration and liquidation of associations

■ The execution of the judgments in several high-profile cases concerning the non-registration or dissolution of associations have been pending for more than 10 years. These include the following.

- ▶ *Stankov and UMO Ilinden v. Bulgaria* concerns the unjustified refusal of the national courts to register associations whose aim was to protect the interests of the Macedonian minority. In 2018, to execute the judgment, the Bulgarian authorities established a new administrative registration procedure, but the applicant associations and others are still encountering problems. In decisions adopted in [December 2022](#) the Committee of Ministers urged the Bulgarian authorities to find swift solutions.
- ▶ 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 grounds that their aim was to promote the idea that an ethnic minority existed in Greece. Amendments to the law allowed the cases to be reopened, but the applicant’s cases were rejected on the grounds already challenged by the Court. In December 2022, the Committee of Ministers called on the authorities to consider other possible avenues to execute the Court judgments fully and effectively and to amend the registration system in line with the Court’s case law and the 2014 [Venice Commission and OSCE Joint Guidelines on Freedom of Association](#).
- ▶ *Taganrog LRO and Others v. Russia*. The Court found various violations in this case brought by 1 444 Jehovah’s Witness, whose publications were declared extremist, with individual applicants prosecuted

227. Expert Council on NGO Law, [Opinion on the compatibility with international and regional standards of recent amendments to the Belarusian legislation affecting NGOs](#), prepared by the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, 18 October 2022.

228. Venice Commission, Opinion [CDL-AD\(2021\)027](#) – Russian Federation – Opinion on the Compatibility with international human rights standards of a series of Bills introduced to the Russian State Duma between 10 and 23 November 2020, to amend laws affecting “foreign agents”, adopted by the Venice Commission at its 127th Plenary session (Venice and online, 2–3 July 2021).

229. Expert Council on NGO Law, [The execution of judgments involving Freedom of Association: The impact on Human Rights Organisations and Defenders](#), thematic study prepared by Carla Ferstman on behalf of the Expert Council on NGO Law of the Conference of INGOs of the Council of Europe, 15 March 2022.

230. *Bekir-Ousta and Others against Greece And 2 Other Cases* [CM/ResDH(2021)105 (Interim Resolution)]; *Lashmankin And Others against Russia* [Cm/Resdh(2022)54 (Interim Resolution)] (the outstanding general measures are summarised in a memorandum prepared by the Department for the Execution of Judgments of the Court (H/Exec(2022)2); *Gafgaz Mammadov against Azerbaijan And 29 Other Cases* [Cm/Resdh(2021)421 (Interim Resolution)].

and the Samara branch dissolved for using them in their religious ministry. The Court said this showed a policy of intolerance towards the religious practices of Jehovah's Witnesses and said pending criminal proceedings should be dropped, imprisoned Jehovah's Witnesses released and confiscated property returned or compensation paid. On 8 December 2022, the Committee of Ministers [strongly urged](#) the authorities to immediately reverse their actions.

- In 2021, the Commissioner for Human Rights called on [Cyprus](#), [Greece](#) and the [Russian Federation](#) to amend restrictive regulatory frameworks affecting freedom of association which led to the deregistration of a number of NGOs including KISA – a leading NGO in Cyprus assisting migrants and asylum seekers, and the prominent human rights group Memorial in the Russian Federation.

■ The Russian Federation's use of the Foreign Agents Law<sup>231</sup> to liquidate the prominent human rights organisation Memorial, which has since won a Nobel Peace Prize, caused great concern. In [Ecodefence and Others v. Russia](#) brought by 73 Russian NGOs, including Memorial, the Court found that the Russian Federation had violated Article 11. The Council of Europe has condemned the law as stigmatising NGOs, media and individuals and repressing civil society in the Russian Federation (see the Secretary General's [statement](#)). The Russian Federation has not responded to the repeated calls to repeal the law.

■ Türkiye's actions to prevent the financing of the proliferation of weapons of mass destruction were criticised in a Venice Commission opinion<sup>232</sup> which said that attempts to control online funding could have a negative impact on legitimate fundraising by NGOs, and that government powers to remove board members without judicial review was a serious infringement of the right of associations to conduct their own affairs. The duty of foreign associations to seek permission for any co-operation activity in Türkiye was also deemed disproportionate.

## Criminalisation of civil society organisations and human rights defenders

■ Environmental organisations and environmental defenders are facing clampdowns via a range of intimidatory tactics such as smear campaigns and SLAPPs. Yet states have an obligation to protect their right to protest, as highlighted in the Expert Council on NGO Law [report](#) of May 2021.

■ In 2021 and 2022, the Commissioner for Human Rights made several statements in reaction to unprecedented large-scale crackdowns on freedom of expression, assembly and association in the [Russian Federation](#) and [Belarus](#), as such repressions led to a sharp rise in reprisals against civil society activists in those countries.

■ In [March](#), April and July 2022, the Commissioner held meetings with human rights defenders, journalists and civil society activists from the Russian Federation and Belarus to assess their situation and the challenges they had faced in their countries of origin and in exile in other countries, including Council of Europe member states. On 31 August 2022, the Commissioner published a [Human Rights Comment](#) on the need to support Russian and Belarusian civil societies and human rights defenders with a set of recommendations.

## NGOs defending LGBTI rights

■ Organisations representing or advocating for the LGBTI community face undue burdens, legal uncertainty, threats and even violence.

■ On 2 March 2021, the Turkish authorities adopted an action plan, prepared in consultation with the Council of Europe and other international bodies, aimed at strengthening freedom of expression, association and religion. In a [letter](#) addressed to the Minister of Interior and the Minister of Justice of Turkey, published on 24 June 2021, the Commissioner for Human Rights, while noting with interest the action plan, called on the authorities to uphold the right of LGBTI people to peaceful assembly by lifting the bans on LGBTI events and take all necessary measures to ensure the safety of participants at these events and expressed concern about the visible rise in hateful rhetoric and the propagation of homophobic narratives by some politicians and opinion makers.

■ In their examination of the [Identoba and Others v. Georgia](#) group of cases in December 2021, the Committee of Ministers expressed their profound concern over the events of July 2021 in respect of the Tbilisi March of

231. Concerning the so-called "Foreign agents law", see also previously mentioned Venice Commission opinion [CDL-AD\(2021\)027](#).

232. Venice Commission Opinion [CDL-AD\(2021\)023cor](#) – Turkey – Opinion on the compatibility with international human rights standards of Law No. 7262 on the Prevention of Financing of the Proliferation of Weapons of Mass Destruction, adopted by the Venice Commission at its 127th Plenary Session (hybrid, 2-3 July 2021).

Dignity, with wide-scale violent attacks committed by radical groups on LGBTI community, civic activists and journalists, and urged the authorities to demonstrate a firm political will to combat hate crimes and safeguard freedom of assembly by conveying a clear zero-tolerance message at the highest level towards any form of discrimination, hate speech and violence, in particular those targeting the LGBTI community. The Committee called further upon the authorities to take all the necessary measures to ensure unhindered exercise of the right to peaceful assembly for the LGBTI community and activists, *inter alia*, by providing adequate security protection and effective policing. During their most recent examination of this group in [December 2022](#), the Committee noted the safe conduct of the closed events in the framework of the Tbilisi Pride Week of 2022. Taking into consideration the decision of the LGBTI organisations not to hold the March of Dignity in 2022, the Committee underlined that “the freedom of assembly implies also a possibility to hold public demonstrations and marches without fear of any form of violence and called upon the authorities to reinforce their efforts to enable the LGBTI community to fully enjoy their right to peaceful assemblies.”

## NGOs helping migrants and refugees

■ Laws, policies and practices related to human trafficking, migrant smuggling and the treatment of refugees and other migrants should not prevent NGOs’ legitimate work, yet they continue to be penalised.

■ Early in 2022, the Commissioner for Human Rights [spoke out](#) against harassment and intimidation faced by civil society and activists assisting migrants at the Polish-Belarusian border.

■ In March 2021, the Venice Commission endorsed a Parliamentary Assembly recommendation<sup>233</sup> on NGOs assisting refugees and migrants in Europe, which outlined several principles included in the Joint Guidelines on Freedom of Association<sup>234</sup> and suggested incorporating the Joint Guidelines on Freedom of Peaceful Assembly.<sup>235</sup>

233. Venice Commission, [CDL-AD\(2021\)014](#) – Memorandum prepared by the Secretariat on Parliamentary Assembly Recommendation 2192 (2020) “Rights and obligations of NGOs assisting refugees and migrants in Europe”, in view of the preparation of the Committee of Ministers’ reply to this Recommendation, endorsed by the Venice Commission at its 126th Plenary Session (online, 19-20 March 2021).

234. Venice Commission and the OSCE/ODIHR, Joint Guidelines on Freedom of Association, [CDL-AD\(2014\)046](#).

235. Venice Commission and the OSCE/ODIHR, Joint Guidelines on Freedom of Peaceful Assembly, [CDL-AD\(2019\)017](#).







# CHAPTER 4

## POLITICAL INSTITUTIONS

---

### INTRODUCTION

**M**ajor challenges such as globalisation, migratory movements, digitalisation, climate change, economic stagnation and growing inequality have all contributed to a general feeling of dissatisfaction with democracy. The Russian Federation's aggression against Ukraine in February 2022, which resulted in a full-scale war on the European continent and the exclusion of the Russian Federation from the Council of Europe, has also highlighted how much democracy is not only a commitment of each member state towards its citizens, but also a responsibility to be shared and mutually guaranteed among member states.

■ The issue of democratic stability in Europe and beyond is again high on the agenda of most governments and international organisations. There is an urgent need for member states to invest in good democratic governance as a key condition to ensuring peace and prosperity in Europe.

■ Trust in public authorities continues to be at a record low, while civic space has continued to shrink, prompting national, regional and local governments to open up new forms of participatory democracy. Such initiatives can be very effective, but can also, if improperly utilised, present risks to democracy and further weaken trust in public authorities: international standards are needed.

■ On the positive side, elections, which were affected by the Covid-19 pandemic in 2020 and 2021, are gradually returning to their pre-Covid-19 normal and the processes of recentralisation of decisions which was observed in the previous report has all but stopped. Many countries plan further decentralisation of competences and resources. Territorial reforms, which are politically sensitive and technically difficult, are also back on the agenda in several countries.

■ The need to tackle climate change and environmental degradation has become obvious in many countries, and governments are taking measures to ensure the greening of public administration. Many countries are considering measures aimed at building capacity and resilience in public administration at all levels, which would enable the public administration to maintain essential public services when crises occur.

■ New digital technologies such as artificial intelligence bring both challenges and opportunities for democracy and human rights. They can either serve or hinder people's ability to form and act on opinions and to have influence in decisions taken on their behalf.

### Challenges

---

■ Last year was a stark reminder that neither democracy nor peace is guaranteed. In this respect, the challenges are to:

- ▶ ensure that elections are continuously improved, by focusing on all of the components of the electoral cycle, not only on its most visible ones on or close to the election day, that is campaigning, vote casting and counting;
- ▶ promote more citizen participation and organise it in line with best practice and Council of Europe standards, to avoid giving new forms of participation a bad name by organising them poorly, exercising undue influence on citizens or using such exercises as mere "window dressing" operations;

- ▶ continue reforms aimed at ensuring a balanced vertical structure of public authorities, including regionalisation, decentralisation and various territorial reforms;
- ▶ launch reforms in line with the 12 European principles of good democratic governance to modernise public administration and increase trust in public authorities.

■ Solutions also need to be found to challenges such as climate change, the impact of digital technologies on democracy and governance and to make public administration resilient in the face of crises.

## FUNCTIONING OF DEMOCRATIC INSTITUTIONS

■ Democratic institutions can only be effective in a society which fully respects the rule of law and the principles of good democratic governance, even in times of war or public emergencies.

■ The normal functioning of democratic institutions through free and fair periodic elections in line with international standards should be maintained even during a public health emergency, a natural disaster or security threats. National parliaments at their best embody society in all its diversity and allow public debate to result in effective compromise between competing claims, with the opposition being important for a functioning and inclusive democracy.

■ Pluralist parliamentary democracies reflect a political, legal and cultural system based on respect of human rights, the rule of law and everyone's right to take part in public life. They demand active commitment to values such as equality, social integration, tolerance and respect for diversity. Participatory democracy with the direct involvement of civil society organisations and individual citizens, often by means of digital technologies, enriches democracy. Freedom of speech and of the media are even more important in the digital age, with disinformation leading to increased polarisation in politics.

## 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 place members of parliament above the law, but rather 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 mechanisms 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

■ After a period of extraordinary measures introduced by governments in 2020-2021 in response to the Covid-19 pandemic, when elections were at times postponed, the year 2022 paved the way for a gradual return to normal.

■ Covid-19 nevertheless continued to affect elections during 2021, with national authorities and election management bodies having to cope with various challenges, such as complying with health emergency measures, restrictions on campaigning and public gatherings, campaign financing, electoral integrity and inclusivity, and election observation. Many countries held elections that had been postponed due to health security concerns.

■ Countries adapted their voting arrangements to the pandemic situation and to the needs of social distancing, introducing extended distance voting arrangements (postal, absentee, proxy, internet or mobile ballot boxes), early voting and other forms of voting, such as drive-through polls in the Czech Republic and Iceland, and medically supported polling stations. These arrangements helped maintain electoral participation in difficult circumstances.

■ As the functioning of democratic institutions in member states gradually returned to normality after the Covid-19 pandemic, the Parliamentary Assembly warned that new crises or emergencies of a different nature could again prompt public authorities to take exceptional emergency measures that call into question the democratic order. In this context, the Assembly reiterated the importance of ensuring that the key mechanisms and institutions of democracy function properly, with particular attention being paid to parliaments, elections, local democracy and civil society organisations.<sup>236</sup>

## Elections in a time of crisis

■ The Covid-19 pandemic has exposed limits and vulnerabilities to long-standing electoral policies. The pandemic demonstrated that long-established electoral policies and practices, built up over the past decades to protect electoral integrity against different and largely foreseeable risks, have proven overly rigid and need rethinking. The Parliamentary Assembly and Swiss Parliament will hold a conference in May 2023 seeking to define innovative policies that could pre-empt crises and mitigating their impact by building greater resilience and adaptability into election procedures to make them the truly inclusive, representative, participatory and trusted processes they are meant to be.

■ The Congress of Local and Regional Authorities of the Council of Europe (the Congress) continued to observe local elections through remote or hybrid missions in Albania and the Netherlands, at a time of gradual lifting of Covid-19-related measures.<sup>237</sup> The Congress also published a guidebook as part of its “Democratic elections” series entitled “Local and regional elections in major crisis situations”, providing guidelines based on international standards and best practices for the conduct and postponement of local and regional elections in times of major crisis.<sup>238</sup>

## Role of parliaments and local governments

■ It is of vital importance for representative democracies that parliaments continue to perform their role as guarantors of democracy in times of crisis and continue to hold government to account. The Ukrainian Parliament and local authorities have achieved this: the Assembly lauded the Ukrainian authorities for their considerable efforts to ensure the continuing functioning of the democratic and rule of law institutions in spite of the challenging situation presented by the war.<sup>239</sup> The resilience of Ukrainian cities and regions in the face of the Russian Federation’s aggression has been tested and has proven exemplary.

## Polarisation/pluralism

■ Freedom of speech and the media are even more important in the digital and social media age. Disinformation affects elections and leads to increased polarisation. The Congress has warned that hate speech and fake news have a paralysing effect on European democracies and political life at all levels of government. This negative trend creates toxic working conditions for local and regional politicians, eventually having the potential to disturb societal cohesion.<sup>240</sup>

236. Parliamentary Assembly [Resolution 2470 \(2022\)](#) “Protecting the pillars of democracy during health crises”.

237. [Congress Resolution 455 \(2020\)](#) on local and regional elections in major crisis situations.

238. Congress, “[Local and regional elections in major crisis situations](#)”, August 2022.

239. Parliamentary Assembly [Resolution 2483 \(2023\)](#) “The progress of the Assembly’s monitoring procedure (January-December 2022)”.

240. Congress, [Hate speech and fake news: the impact on working conditions of local and regional elected representatives](#), 25 October 2022.

■ The Parliamentary Assembly remained concerned about political polarisation in Georgia which is affecting the progress of reforms needed for further democratic consolidation. It called for an improvement in the media environment to ensure the fairness of the electoral procedure.<sup>241</sup>

■ The Assembly welcomed amendments to electoral legislation in Serbia and the election of a more pluralistic parliament in April 2022. It urged the authorities to address long-standing issues such as access to media, campaign finance and pressure on voters, and to adopt measures to allow for public scrutiny and the audit of voter lists.<sup>242</sup> During its election observation mission, the Congress delegation reiterated its previous recommendation that local elections be conducted separately from national elections to ensure local issues are not overshadowed by the national political discourse during the campaign.<sup>243</sup>

■ Türkiye reduced the electoral threshold from 10% to 7% – a step welcomed by the Parliamentary Assembly and an important way to increase parliamentary pluralism.<sup>244</sup>

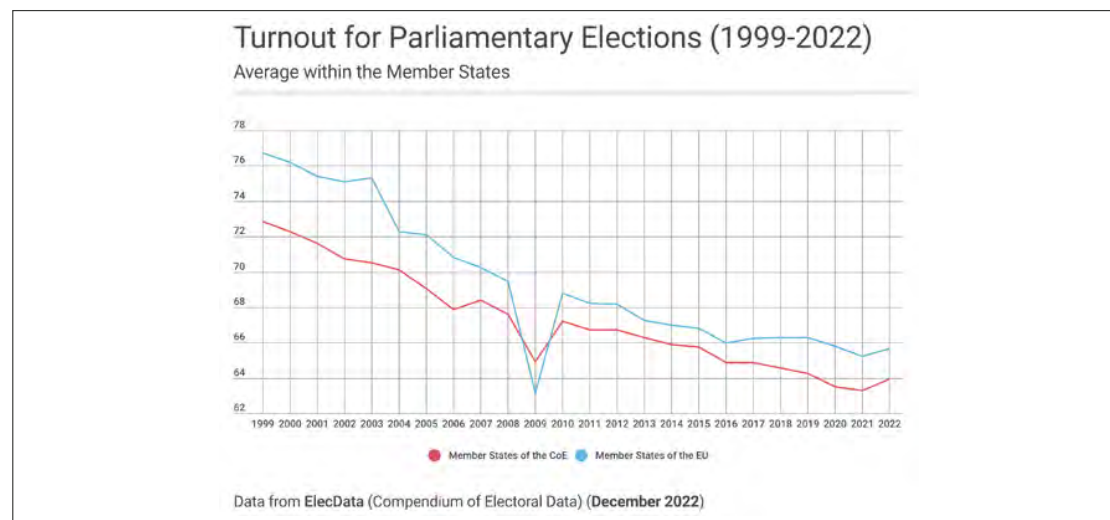
## DEMOCRATIC ELECTIONS

■ Free and fair elections not only give legitimacy to government but also link citizens to their representatives, giving citizens influence over political decision making and building their trust in the institutions that represent them. Representative democracy remains the indispensable democratic pillar it has always been, but democratic elections are not just about what happens on election day.

■ Public confidence in the electoral process is falling, as shown by continually decreasing voter turnout.

■ For the tenth year in a row, the average turnout in parliamentary elections in Europe remained dangerously low.<sup>245</sup> At the end of 2020, 13 member states elected their parliament with a turnout lower than 50%<sup>246</sup> and in the five local and regional elections observed by the Congress in 2022 turnout had dropped. However, there are much higher levels of citizen activism which, although welcome, could indicate that people feel their voices are not being heard and are taking their disenchantment to the streets.

■ Further reflection is needed on how electoral systems and practices can be adapted to our modern world. Expressing a preference once every four or five years in a voting booth no longer gives citizens sufficient leverage over decisions taken on their behalf.



■ The Council of Europe provides guidance and support to its member states in all stages of the electoral cycle. This includes the following.

241. Parliamentary Assembly [Resolution 2483 \(2023\)](#).

242. Ibid.

243. See the Congress election observation report "[Partial local elections in Belgrade and several other municipalities in Serbia \(3 April 2022\)](#)", 26 October 2022.

244. Parliamentary Assembly [Resolution 2459 \(2022\)](#) "The honouring of obligations and commitments by Türkiye".

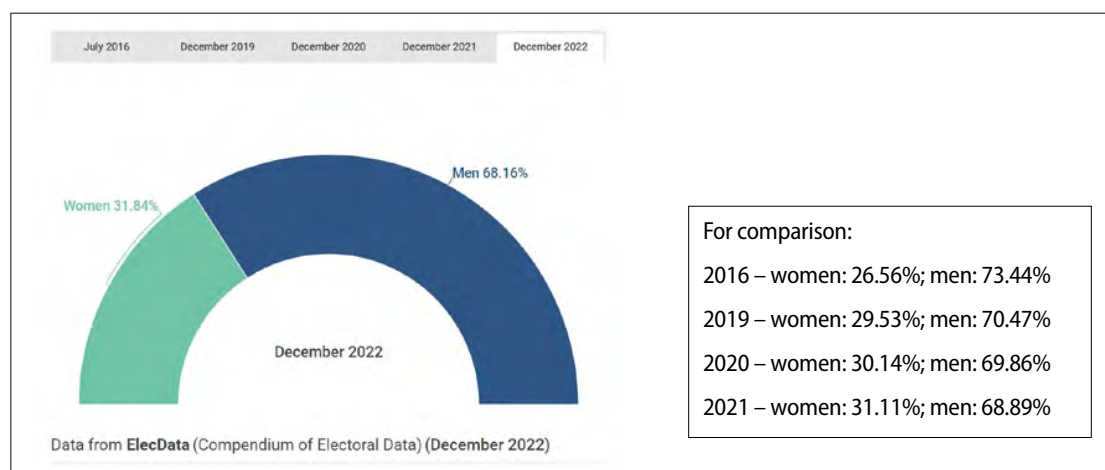
245. Compendium of Electoral Data (ElecData), [Turnout for Parliamentary Elections \(1999-2022\)](#).

246. Compendium of Electoral Data (ElecData), [Turnout's evolution in the Council of Europe's member States \(1999-2021\)](#).



- ▶ On the right to participate in elections: 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.
- ▶ On the basic electoral principles: the Venice Commission's Code of Good Practice in Electoral Matters and Code of good practice on referendums developed the principles of the European electoral heritage.
- ▶ On the impact of digital technologies: the Committee of Ministers adopted in February 2022 a set of guidelines on the use of information and communication technology in electoral processes.
- ▶ On e-voting: after the Covid-19 pandemic, the issue of e-voting became a lot more popular. Recommendation CM/Rec(2017)5 on standards for e-voting and the guidelines<sup>247</sup> on the implementation of the provisions of this recommendation provide standards aiming at guaranteeing the respect of the principles when using e-voting, thus building trust and confidence in domestic e-voting schemes.
- ▶ On electoral campaigns: the increasing use of online platforms, less regulated than audiovisual or printed media, for electoral communication and campaigning led the Committee of Ministers to adopt, on 6 April 2022, Recommendation CM/Rec(2022)12<sup>248</sup> on electoral communication and media coverage of election campaigns with a set of guidelines and principles to address these new challenges.
- ▶ On the participation of youth civil society organisations and young people in democratic processes: Recommendation CM/Rec(2022)6<sup>249</sup> on protecting youth civil society and young people and supporting their participation in democratic processes aims at addressing the challenges faced by young people and youth civil society in their quest for meaningful and genuine engagement in public life.
- ▶ On a balanced participation of women and men: the Committee of Ministers' Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making<sup>250</sup> is the main reference document in this area. Here the process of change is slow although noticeable, as shown in the graph below.

### Parliamentarians in Council of Europe member states



### Measurement criteria

- ▶ Universal suffrage: all adult citizens have the right to vote and stand for elections; 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.

247. Council of Europe, *Standards for e-voting – Recommendation CM/Rec(2017)5 – Guidelines and explanatory memorandum* (2018).

248. Committee of Ministers, *Recommendation CM/Rec(2022)12 on electoral communication and media coverage of election campaigns*, 6 April 2022.

249. Committee of Ministers, *Recommendation CM/Rec(2022)6 on protecting youth civil society and young people, and supporting their participation in democratic processes*, 17 March 2022.

250. Committee of Ministers *Recommendation Rec(2003)3 on balanced participation of women and men in political and public decision making*, 12 March 2003.



- ▶ 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 form freely 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 European Court of Human Rights had delivered 105 judgments on the right to free elections by the end of 2021. Since 1989, around 350 election observation missions have been deployed by the Parliamentary Assembly in 37 countries, 115 by the Congress, and the Venice Commission has adopted more than 160 opinions and 70 general texts on elections, referendums and political parties.

■ The 2021 and 2022 electoral observation mission reports of the Parliamentary Assembly and 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, some elections had to be postponed or cancelled due to the Covid-19 pandemic. This was the case for one presidential election, two parliamentary elections, five referendums and five local or regional elections.<sup>251</sup>

■ In the 10 parliamentary elections which took place in 2020, none achieved a balanced participation of women and men in political and public decision making. At the end of that year seven member states did, and the number of elected women in parliaments increased. In total, out of 10 371 members of parliament in Europe, 3 133 are women.

■ Albania, Bosnia and Herzegovina, Georgia and the Republic of Moldova carried out elections with electoral support from the Council of Europe. In 2022, the Congress of Local and Regional Authorities of the Council of Europe observed local elections in Albania, Bosnia and Herzegovina, the Netherlands, Serbia and Slovenia. In 2021, the Parliamentary Assembly sent election observation missions to Albania, Armenia, Bulgaria, Kyrgyzstan, the Republic of Moldova and Morocco and an assessment mission to the Russian Federation. In 2022, the Assembly observed elections in Bosnia and Herzegovina, Bulgaria and Serbia. While most elections observed by the Parliamentary Assembly were well organised, there were several issues undermining the fairness of elections. In several countries, issues pertaining to media freedom, safety of journalists, transparency of media ownership and transparency of campaign funding limited the opportunity of voters to make a fully informed choice. In some cases, allegations of misuse of state resources, vote buying and family voting are still of concern. Severe polarisation of the political landscape in some countries led to the use of hate speech, inflammatory or aggressive language from key contestants. The level of participation of women in electoral processes was often unsatisfactory. The use of new technologies in electoral processes led to mixed, and sometimes critical assessments. The recent tendency to adopt laws to combat "inaccurate" or false information has limited freedom of expression. Repeated elections also contributed to voter apathy and disillusionment.

■ In Ukraine, where the Council of Europe provides important electoral support, the preparation and organisation of post-war elections will be of paramount importance. A needs assessment has been undertaken

251. Compendium of Electoral Data (ElecData), [COVID-19 crisis: Impact on elections and referenda](#).

and the focus will be on voter registration and defining criteria to assess the environment necessary for the organisation and holding of elections.

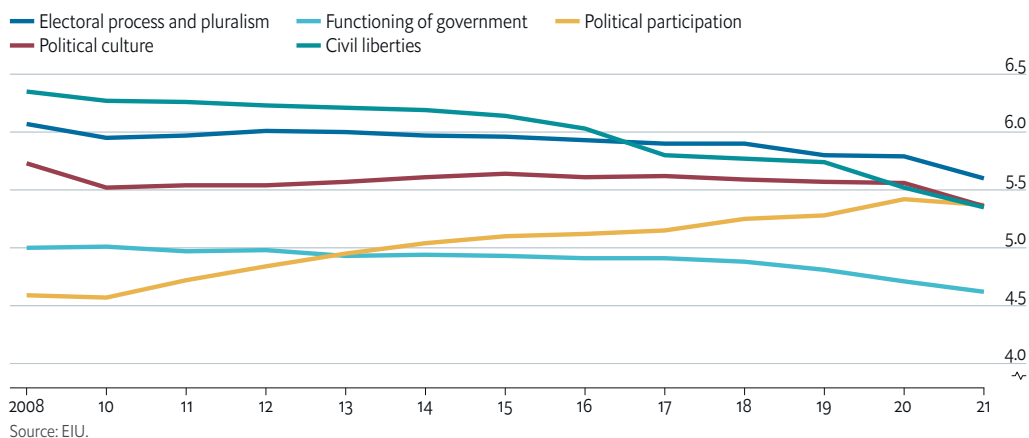
■ In 2021, the review of the implementation of standards for e-voting, carried out every two years by the European Committee on Democracy and Governance (CDDG), demonstrated that while some member states were in the process of introducing or updating legislation, most member states were not using e-voting solutions. Reasons mentioned included security concerns, lack of public trust and political consensus, costs and difficulty in guaranteeing the freedom and secrecy of the vote. At the same time, member states indicated that information and communication technologies were increasingly being used throughout the electoral process. Member states were digitalising various processes within the election administration, including such aspects as e-identification of voters and e-counting.

## Participatory and deliberative democracy in 2022

While citizens are increasingly reluctant to cast their vote at the ballot box and mistrust towards public institutions is growing, new formats such as citizens' assemblies, consultation platforms and participatory budgeting initiatives are on the rise. They offer citizens the opportunity to take part in decision-making processes through innovative methods often using social media and information technology tools.

### Evolution of democracy by category, 2008-21

(Index score out of 10, 10 being best)



The Democracy Index 2021 developed by the Economist Intelligence Unit and presented during the World Forum for Democracy 2022 clearly shows a global increase of political participation in the last decade, whereas in global terms categories like civil liberties, electoral process and pluralism have recorded the biggest deterioration. Political participation has increased in momentum since 2016, “reflecting an upsurge of popular engagement in politics in developed democracies and waves of political protests in the developing world” and is seen as “a reaction to the shortcomings of democratic governance and as a demand for more representation and accountability”.<sup>252</sup>

In this sense, the participation of citizens in decision making at all levels of government is today largely seen as one of the prerequisites for a functioning democratic society. Ideally it complements and supports representative democracy, rebuilding trust and the interest of citizens in the political system. Citizens who have a say in decisions that affect their daily life are more likely to trust their elected representatives.

There are different levels of participation, from information provision, consultation and dialogue to co-creation and partnerships, and there are numerous methods and models for ensuring participation.

The 2022 CDDG draft report on deliberative democracy notes that the argument is often heard that people do not trust government or parliament, but it is important to recognise that the reverse may also be true: governments sometimes distrust the public and prefer the expertise of select groups, such as those of

<sup>252</sup>. [Democracy Index 2021](#), Economist Intelligence Unit.

consultants, business representatives, and other experts. This has come at the expense of participation and trust. Even when the public is consulted this can be narrowly scoped, restricted in terms of time and space and the primacy of expert opinion can lead to a de-valuing of citizens' views. All this re-enforces feelings of dislocation and dis-engagement – of distrust. Therefore, international standards are needed to ensure a positive impact and added value of participation for both, citizens and government.

Deliberative democracy has recently grown in prominence. It is seen as an important way to achieve better policy outcomes and as a powerful instrument to better align political decisions and democratic preferences, providing that it is properly organised and accompanied with meaningful follow-up to citizens' deliberations. For citizens, deliberative initiatives are a learning experience, and their design must reflect a space for "just-in-time" learning. Adequate recruitment must ensure that minority voices are present and good facilitation is vital to steer the debate and ensure that all voices are heard. It is important that these new participative and deliberative formats, innovative as they might be, are inclusive and based on democratic principles of non-discrimination, equality and accessibility.

During 2022, the Congress continued its work on developing best practices for the use of deliberative methods as part of local and regional democracy. This included publishing a guidebook entitled "Beyond elections: The use of deliberative methods in European municipalities and regions" as part of its "Democratic elections" series<sup>253</sup> as well as adopting a recommendation on their use.<sup>254</sup> As a follow-up, the European Committee on Democracy and Governance is currently preparing a Committee of Ministers' recommendation on deliberative democracy addressing all levels of government, to be finalised in April 2023. This new international standard in the field of deliberative democracy will provide a set of principles on how to implement deliberative processes to make them inclusive and transparent and to ensure benefits are maximised by embedding the provisions of this legal instrument in regular participatory processes and in the decision-making processes.

Development of frameworks for institutionalised deliberative democracy is under way in Belgium, Finland, France, Ireland and the Netherlands. They aim to give individual citizens, organisations, associations, partnerships and entrepreneurs the possibility to submit policy proposals and to work closely with local authorities and the right to challenge decisions. In Ireland, citizens' assemblies have become well-established mechanisms within the state system. They have shown considerable success in pushing several sensitive topics forward to the public referendum stage, thereby creating tangible change.

However, there is no single script for running a participatory or a deliberative process, and it is important to further develop good practices, recognising the diversity of democratic cultures and processes across member states. To this end, the Council of Europe launched the online platform BePART in 2022 which offers authorities and civil society organisations a space to share their experience or get inspiration on how best to engage citizens in decision-making processes.

The Council of Europe has supported participatory and deliberative processes through co-operation activities in Georgia, South-East Europe and Ukraine, organising in 2023 the first two citizens' assemblies in Georgia. The Congress is implementing projects in Bosnia and Herzegovina. A first citizens' assembly was organised with support from the Congress in Mostar in 2021, the first of this kind in Bosnia and Herzegovina and South-East Europe. The Congress is supporting the organisation of two new deliberative processes in Banja Luka and Mostar, planned for 2023.

The need for evaluation and monitoring tools to measure the real impact of these new formats and participatory instruments is growing and measurement criteria are in the process of being developed, in order to clearly understand the importance and added value of participatory processes to democratic systems.

## LOCAL AND REGIONAL DEMOCRACY

Local authorities form the first democratic links of our social fabric. They are closest to citizens and offer them services which are indispensable for their quality of life. They are more flexible, ready to adapt services to expectations, benefit from more citizen trust than the higher level of government, are part of a system of interinstitutional checks and balances which create a solid and stable state and are important laboratories of democratic innovation, continuously testing and offering innovative solutions to common problems.

253. Congress, "Beyond elections: The use of deliberative methods in European municipalities and regions", August 2022.

254. Congress Recommendation 472 (2022), "Beyond elections: The use of deliberative methods in European municipalities and regions".

■ Strong local and regional democracy and self-government are essential and supported by the fact that the European Charter on Local Self-Government (ETS No. 122) – the only international treaty in the field of local self-government – has been ratified by all 46 Council of Europe member states and by the multitude of decentralisation reforms conducted in the last decades.

## 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 exercise 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 resources of their own which they can dispose of freely; financial resources are commensurate with responsibilities and sufficiently buoyant. Local authorities can form consortia and associate for tasks of common interest.
- ▶ Local authorities have the right of recourse to judicial remedy.

## Findings

---

■ In Albania, Belgium, Cyprus, the Czech Republic, Denmark, Luxembourg, North Macedonia, Spain, Sweden, Türkiye and the United Kingdom, the Congress has seen recurring issues include the inadequacy of financial resources available to local and regional authorities, restrictions to the exercise of their functions and shortcomings in consultation.

■ There are also recurring issues concerning the accuracy of voter lists, the misuse of administrative resources during electoral campaigns, politicisation of the electoral administration at all levels and lack of voter confidence in electoral processes. Compliance with the principle of a level playing field for all candidates, including independents, has become increasingly problematic.

■ The most prominent issues for local authorities included reception and hosting of refugees, environmental issues, strengthening participatory democracy, using deliberative methods such as citizens' assemblies and engaging young people in decision making.

■ Underfunding is a recurring problem in most member states. The need for fiscal decentralisation and improvement of the management of local finances is demonstrated by the requests received by the Council of Europe's Centre of Expertise for Good Governance (CEGG). Management of local finance is being addressed by the CEGG's projects in Bulgaria, Finland, Hungary, Lithuania and Slovakia.

■ In 2021-2022, cross-border co-operation projects intensified in the Western Balkans and the Caucasus, as well as along the western borders of Ukraine.<sup>255</sup>

■ Resilience building<sup>256</sup> has also become one of the priorities for member states.

## GOOD GOVERNANCE AT ALL LEVELS

■ Good governance is essential for the quality of life of citizens, but also to keep them engaged, to build their trust, to deal with unexpected emergencies and to create sustainable communities. It demands co-ordination at all levels of government, local, regional, national and international.

255. [European Outline Convention on Transfrontier Co-operation between Territorial Communities or Authorities \(ETS No. 106\)](#).

256. [Resilience Building Strategies \(ReBuS\)](#), a new toolkit developed by the CEGG in 2021 helps address the capacity of a community to withstand, recover, adapt and persist in the face of crises.

■ The 12 Principles of Good Democratic Governance<sup>257</sup> are a compass on how to deliver good governance and provide criteria to measure the performance of public institutions. They are used in many Council of Europe member states to deliver the European Label of Governance Excellence (ELoGE)<sup>258</sup> to local authorities.

## 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; 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 and 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 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 favourable to change is created.

■ In 2021-2022, the Committee of Ministers prepared important standards in the area of good democratic governance, which can contribute to increasing trust in public authorities, such as Recommendation CM/Rec(2022)2<sup>259</sup> on democratic accountability of elected representatives and elected bodies at local and regional level and the Committee of Ministers' Guidelines on the use of information and communication technology (ICT) in electoral processes in Council of Europe member States (CM(2022)10).<sup>260</sup>

## Findings

■ Public administration, decentralisation and governance reforms, which slowed down at the peak of the Covid-19 crisis, have been resumed in many member states in 2021-2022.

■ According to CDDG reports, many countries continued reforms of decentralisation of competences, fiscal decentralisation, regionalisation, territorial and administrative reforms, and boosted civil participation in response to major challenges. Digitalisation has also continued, making public administration more efficient, cost-effective, responsive and innovative. Teleworking in public administration has become a norm in most countries.

257. Council of Europe, 12 Principles of Good Democratic Governance.

258. The European Label of Governance Excellence is a Council of Europe label for municipalities which have achieved a high level of good governance measured against a Council of Europe benchmark, available at <https://rm.coe.int/eloge-benchmark-en-17-09/16808d71d4>. It is both a recognition and a tool for local authorities to better identify their strengths and areas of improvement. By 2022, ELoGE has been or is being implemented in 20 member states, with seven new states joining since 2020 and at least three more states preparing requests for ELoGE accreditations.

259. Committee of Ministers, Recommendation CM/Rec(2022)2 on democratic accountability of elected representatives and elected bodies at local and regional level, 9 February 2022.

260. Committee of Ministers, Guidelines on the use of information and communication technology (ICT) in electoral processes in Council of Europe member States, 9 February 2022.

Examples of legal and policy advice requested from the CEGG by the member states in 2021-2022 illustrate their priorities and reforms:

- ▶ improvement of the structure and competences of local governments in Slovakia;
- ▶ a national training and capacity-building strategy for local self-government in Slovakia;
- ▶ territorial consolidation in Slovakia;
- ▶ a strategy to strengthen local governance in Slovakia;
- ▶ participation of women in political life at the local level in Greece;
- ▶ increasing the fiscal autonomy and fiscal capacity of local authorities in Armenia;
- ▶ legal personality at local level for Ukraine;
- ▶ a draft law on public consultations in Ukraine;
- ▶ a revised draft law on the city of Kyiv – the capital of Ukraine;
- ▶ a new draft law on hotel tax in Armenia;
- ▶ fiscal equalisation in Armenia;
- ▶ enhancing the capital city of Bratislava and the city of Košice in Slovakia;
- ▶ a draft law on service in local self-government bodies in Ukraine;
- ▶ financing of public functions at the regional level in Finland and Lithuania;
- ▶ the programming, planning, fiscal decentralisation and institutional set-up of the regions in Lithuania;
- ▶ a road map for local self-government recovery from the consequences of the war in Ukraine.

■ Member states have been implementing territorial consolidation reforms to ensure greater capacity and efficiency in delivering good governance and public services, including amalgamations into larger communities or arrangements for intermunicipal co-operation. This has created more efficient and effective local government in Armenia. Communities with greater financial and human resources have been formed, which in turn made it possible to transition to the proportional electoral system for the formation of local self-government bodies. In Cyprus, the recently approved local government reform focuses on intermunicipal co-operation and amalgamations and strengthens the financial independence and administrative autonomy of municipalities. Reforms are being implemented also in Latvia, Malta and Ukraine and are being discussed in other countries, for instance in the Republic of Moldova and Slovakia.

■ In Lithuania, a new law on regional development is being implemented to address regional disparities, develop strategic planning and build capacities at regional level. Finland is strengthening its regions and introducing 21 well-being counties: county councils will be elected in local ballots and so accountable directly to citizens, with healthcare, social assistance and emergency services coming within their purview. Malta has created new regions based on intermunicipal co-operation to improve the quality of local services and a reform is being carried out to strengthen their capacities. The creation of a regional level is being discussed in Portugal.

■ It is also important to build resilience of public administrations at all levels of government. This has become a priority for many countries. In Albania, the impact of the pandemic and the earthquakes have highlighted the importance of addressing resilience in policy planning at local level. In the face of an emergency unprecedented in both scale and scope, municipalities have had to address challenges to ensure the effectiveness and continuity of public services in respect of principles of good democratic governance, including civil participation. Armenia has been building local authority capacities and resilience and strengthening cross-border co-operation with Georgia. Most European Union member states have been preparing national resilience strategies under the European Union recovery and resilience instrument.

■ Fiscal decentralisation continued in Armenia, Bulgaria, Cyprus and Ukraine. In Georgia, a decentralisation strategy for 2020-2025, to increase municipal capacities, provide municipalities with additional funding and allocate property rights for unregistered properties, was adopted and is being implemented, including financial decentralisation.



■ Human resource management reforms have been carried out in Albania, Lithuania, Serbia and Ukraine, to ensure competence and capacity in public administration at all levels.

■ In the United Kingdom, as in Finland, well-being is a core concept of the levelling-up reform, which aims to boost productivity, jobs and living standards, provide equal access to opportunities, improve public services, restore the sense of community and empower local leaders and communities. In addition, a devolution of powers to Scotland is another ongoing effort in decentralising power in the country.

■ Other important trends in many member states include environmental protection, energy efficiency and the greening of public administrations.

■ In Ukraine, the successful decentralisation and amalgamation reforms conducted just before the Russian Federation's invasion proved to be a major factor in strengthening resilience and capacity at local level and enabling local authorities to provide local services even in wartime. It is also strongly supported by the Ukrainian population.<sup>261</sup> Local authorities, the government and civil society worked together to ensure uninterrupted governance, integrating internally displaced people and maintaining infrastructure and basic services. Since February 2022, the government, supported by the Council of Europe, has been working on provisions for the exercise of local authorities' powers under martial law<sup>262</sup> and preparing Ukraine's recovery, including enhancing good democratic governance in a post-war recovery context.

■ The Russian Federation's military destroyed and damaged critical civilian infrastructure in densely populated residential areas, ruining public services infrastructure in large parts of the country. However, local authorities continued providing basic public services, even areas occupied or encircled by Russian troops. They have adapted to an unprecedented and volatile wartime context, taken up new responsibilities with limited resources and introduced innovative solutions. Many elected local leaders headed the military state administrations replacing authorities at community level. The need for further development of a flexible and career-oriented public administration system became obvious.

---

261. According to the survey conducted with the support of the Council of Europe in November 2022, more than three out of four Ukrainian resident respondents (76.5%) believe that the decentralisation reform should be continued (a significant increase compared to 2021, when 63% believed so).

262. Kliuchkovskiy Y. and Venher V. (2022), "[Organisation and holding of elections in post-war Ukraine. Prerequisites and challenges, Needs Assessment Report](#)", Council of Europe, Strasbourg.





# CHAPTER 5

## INTEGRITY OF INSTITUTIONS

---

### INTRODUCTION

Integrity is essential for strong institutions. It reassures citizens that officials are working in the public interest and is one of the pillars of healthy political, economic and social structures.<sup>263</sup> It builds a culture that is resilient to corruption, which would otherwise affect all areas of activity, erode trust in public institutions, hinder economic development and have a disproportionate impact on the enjoyment of human rights, including by hampering people's access to basic social rights such as healthcare, housing and education.<sup>264</sup>

Nearly 30 years after it made the fight against corruption one of its priorities, the Council of Europe is today well equipped to address these challenges. However, despite strong Council of Europe and international standards, corruption continues to pose a serious threat to the rule of law and human rights in member states.

Corruption scandals emerged regularly throughout 2021 and 2022. Some of the most noticeable scandals during the last two years were linked to the pandemic and privileged access to government contracts, often facilitated by lobbying. Revelations by investigative journalists, such as money-laundering revelations from the OpenLux and Pandora Papers investigations,<sup>265</sup> have been key in bringing the information into the public domain. This demonstrated once again the importance of access to information and freedom of information laws, which help fight corruption by uncovering corrupt behaviour and increasing accountability. The entry into force of the Tromsø Convention,<sup>266</sup> the first binding international legal instrument to recognise a general right of access to official documents held by public authorities, should contribute to greater transparency.

People speaking out against corruption are often threatened and journalists who investigate corruption are facing the risk of so-called "strategic lawsuits against public participation". Whistle-blowers play a pivotal role in disclosing corrupt practices and they should be protected by the state. The United Nations Special Rapporteur on the situation of human rights defenders underlined that states should not only end attacks on defenders but also publicly applaud the vital contribution they make to fighting corruption and building just societies based on the rule of law.<sup>267</sup>

A shared culture of integrity and preventive mechanisms within all institutional layers and branches of power are essential. These include transparency and watchdog institutions, which are key to accountability. To tackle corruption effectively, member states should guarantee the independence of the judiciary, ensure effective prosecution services and access to independent media.

263. OECD *Recommendation on Public Integrity*, 2017.

264. Commissioner for Human Rights, "*Corruption undermines human rights and the rule of law*", Human Rights Comment, 19 January 2021.

265. See [www.lemonde.fr/les-decodeurs/visuel/2021/02/08/openlux-enquete-sur-le-luxembourg-coffre-fort-de-l-europe\\_6069132\\_4355770.html](http://www.lemonde.fr/les-decodeurs/visuel/2021/02/08/openlux-enquete-sur-le-luxembourg-coffre-fort-de-l-europe_6069132_4355770.html) and [www.icij.org/investigations/pandora-papers/](http://www.icij.org/investigations/pandora-papers/).

266. Council of Europe *Convention on Access to Official Documents* (CETS No. 205).

267. Report of the United Nations Special Rapporteur on the situation of human rights defenders, Mary Lawlor, "*At the heart of the struggle: human rights defenders working against corruption*" (A/HRC/49/49), 28 December 2021.

Renewed international commitment is important. On 2 June 2021, UN member states adopted a political declaration at the first-ever UN General Assembly Special Session against Corruption (UNGASS 2021), pledging their commitment to prevent and combat corruption and strengthen international co-operation.<sup>268</sup> On 26 November 2021, the Organisation for Economic Co-operation and Development (OECD) adopted a new anti-bribery recommendation,<sup>269</sup> and in her 2022 State of the Union address, the President of the European Commission announced an update to the European Union legislative framework for fighting corruption.<sup>270</sup>

This chapter reviews measures that have been taken in member states in terms of organisational integrity, integrity of public officials, effectiveness of public accountability and enforcement mechanisms drawn from standards set by the following bodies within the Council of Europe: the Democratic Governance Division, the Congress of Local and Regional Authorities, GRECO, the Committee of Experts on the Evaluation of Anti-Money Laundering Measures and the Financing of Terrorism (MONEYVAL),<sup>271</sup> the Economic Crime and Co-operation Division, the Sport Division, the Court and to some extent the European Committee on Legal Co-operation.

## INSTITUTIONAL INTEGRITY FRAMEWORKS

Institutional integrity is the outcome of 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. It covers the way officials and employees behave and the rules, activities and decision making within a given institution. Council of Europe standard setting was spearheaded until 1999 by the Multidisciplinary Group on Corruption (GMC) and complemented by the work of the European Committee on Democracy and Governance (CDDG). Judgments of the Court have also contributed to the development of integrity standards. The Congress of Local and Regional Authorities promotes public integrity and the prevention of corruption at local and regional levels.

### Measurement criteria

- ▶ Citizens trust their institutions at national and sub-national levels.
- ▶ 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 combat corruption by ensuring that there is as much transparency as needed to achieve effectiveness.

### Findings

The European Committee on Democracy and Governance has as its core aim the mainstreaming of institutional integrity. It runs the European Label of Governance Excellence, which is based on the 12 Principles of Good Democratic Governance (see panel), in co-operation with the Centre of Expertise for Good Governance.<sup>272</sup> The label is awarded to municipalities which have achieved a high level of good governance by translating

268. UN General Assembly [Political declaration](#) “Our common commitment to effectively addressing challenges and implementing measures to prevent and combat corruption and strengthen international cooperation” (A/RES/S-32/1), 7 June 2021.

269. [OECD Recommendation of the Council for further combating bribery of foreign public officials in international business transactions](#), 26 November 2009, amended 26/11/2021.

270. 2022 State of the Union Address by President von der Leyen, 14 September 2022, [https://ec.europa.eu/commission/presscorner/detail/ov/speech\\_22\\_5493](https://ec.europa.eu/commission/presscorner/detail/ov/speech_22_5493).

271. 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. According to Article 2 of its statute, MONEYVAL evaluates member states of the Council of Europe which are not members of the FATF (27 states in total), two non-member states (Israel, the Holy See) and several territories for whose international relations the United Kingdom is responsible (the United Kingdom Crown Dependencies of Guernsey, the Isle of Man and Jersey, as well as the United Kingdom Overseas Territory of Gibraltar). The 19 member states who are members of the FATF and thus evaluated by that organisation (<https://www.coe.int/en/web/moneyval/moneyval-brief>).

272. The [12 Principles of Good Democratic Governance](#) were approved in 2007 in Valencia at a [Conference](#) of European Ministers responsible for local and regional government. The principles 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.

the 12 principles into assessable action. The ELoGE label is being accredited and awarded to a steadily increasing number of countries – 16 at the end of 2022.<sup>273</sup>

Many countries have been engaged in the initiation or continuation of decentralisation processes in 2021 and 2022. The transfer of new competences to local levels of governance – those closest to citizens – has proved to be a challenge, especially if it has not been accompanied by additional resources. This challenge became obvious during the Covid-19 pandemic, the severe summer drought, and during a time of rising inflation and energy prices.<sup>274</sup> Public authorities under pressure to find solutions may have been tempted to resort to arrangements which are questionable or unreliable, or which expose them to risks of fraud and corruption. The lack of resources has also made it difficult to attract or retain staff with the necessary competences in public bodies; qualified personnel have tended to move to the private sector, and those employed in small communities have sought employment opportunities in larger urban areas. Several European countries are currently in the process of pooling local administrative structures to reduce the number of small municipalities, develop more robust structures at county or regional level and increase the quality of public service delivery, thus reducing some of the above-mentioned risks.

Between 2021 and 2022, the European Court of Human Rights examined several applications addressing issues concerning access to information of public interest,<sup>275</sup> information and asset disclosures by public officials,<sup>276</sup> respect for private life and correspondence,<sup>277</sup> freedom of expression,<sup>278</sup> protection of confidentiality of journalistic sources<sup>279</sup> and removal from office of members of parliament and disqualification from standing as an electoral candidate on account of criminal convictions for corruption.<sup>280</sup> In particular, given the prominent place that the judiciary occupies in a democratic society and the growing importance attached to the separation of powers and the necessity to safeguard the independence of the judiciary, the Court was particularly attentive to legislative reforms and other measures that could weaken and threaten judicial independence and autonomy, the integrity of the judicial appointment process and the protection of members of the judiciary against measures affecting their status or career.<sup>281</sup>

Throughout the period 2021-2022, the Congress continued to promote integrity standards and decision making free from personal interest or any other undue influence. In Armenia, it helped develop a model code of conduct for public officials (piloted in six municipalities) and endorsed the corruption risk self-assessment tool for local communities, accompanied by an implementation guide.<sup>282</sup>

#### 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

273. Bulgaria, Croatia, France, Greece, Hungary, Ireland, Italy, Lithuania, Malta, North Macedonia, Norway, Poland, Portugal, Romania, Slovak Republic, Spain.

274. See, for instance, Parliamentary Assembly “The climate crisis and the rule of law”, Report Doc. 15353, 26 August 2021.

275. *Rovshan Hajiye v. Azerbaijan*, Application Nos. 19925/12 and 47532/13, 9 December 2021.

276. *Samoylova v. Russia*, Application No. 49108/11, 14 December 2021.

277. *Algirdas Butkevicius v. Lithuania*, Application No. 70489/17, 14 June 2022.

278. *Akdeniz and Others v. Turkey*, Application Nos. 41139/15 and 41146/15, 4 May 2021; *The Association of Investigative Reporters and Editorial Security of Moldova and Sanduța v. the Republic of Moldova*, Application No. 4358/19, 12 October 2021; *Miroslava Todorova v. Bulgaria*, Application No. 40072/13, 19 October 2021; *Mukhin v. Russia*, Application No. 3642/10, 14 December 2021; and *Azadliq and Zayidov v. Azerbaijan*, Application No. 20755/08, 30 June 2022.

279. *Sergey Sorokin v. Russia*, Application No. 52808/09, 30 August 2022.

280. *Galan v. Italy* (decision), Application No. 63772/16, 18 May 2021; and *Miniscalco v. Italy*, Application No. 55093/13, 17 June 2021.

281. *Grzęda v. Poland* [GC], Application No. 43572/18, 15 March 2022; *Xhoxhaj v. Albania*, Application No. 15227/19, 9 February 2021; *Bilgen v. Turkey*, Application No. 1571/07, 9 March 2021; *Xero Flor w Polsce sp. z o.o. v. Poland*, Application No. 4907/18, 7 May 2021; *Broda and Bojara v. Poland*, Application Nos. 26691/18 and 27367/18, 29 June 2021; *Reczkowicz v. Poland*, Application No. 43447/19, 22 July 2021; *Gumenyuk and Others v. Ukraine*, Application No. 11423/19, 22 July 2021; *Dolińska-Ficek and Ozimek v. Poland*, Application Nos. 49868/19 and 57511/19, 8 November 2021; as well as interim measures indicated by the Court on 22 March 2022 in the cases of *Synkiewicz v. Poland* (Application No. 46453/21), *Niklas-Bibik v. Poland* (Application No. 8687/22), *Piekarska-Drązek v. Poland* (Application No. 8076/22) and *Hetnarowicz-Sikora v. Poland* (Application No. 9988/22); on 31 March 2022 in the case of *Wróbel v. Poland* (Application No. 6904/22); on 14 April 2022 in the case of *Stępka v. Poland* (Application No. 18001/22); and on 12 July 2022 in the case of *Raczkowski v. Poland* (Application No. 33082/22) regarding criminal charges brought against Polish judges or proceedings to lift the judges’ immunity.

282. See the Congress [Toolkit for self-assessment of corruption risks in the activities of local self-governing bodies and municipalities and guide for its use](#).



■ The Congress also pointed to the increased vulnerability of local and regional politicians due to hate speech, fake news and intimidation, especially online.<sup>283</sup> It advocated more openness and transparency in decision making, adequate access to information, preventive measures such as support to victims, counselling and training for politicians and public awareness raising. It welcomed the use of digital tools and artificial intelligence for more transparency, accountability and integrity at local and regional levels.<sup>284</sup>

■ The Congress continued to promote open, transparent and inclusive policies, including by supporting Open Government Partnership action plans in Bosnia and Herzegovina. An Open Government Partnership (OGP) road map, as part of the project “[Strengthening local democratic governance in Ukraine](#)” implemented by the Congress of Local and Regional Authorities within the Priority Adjustments to the [Council of Europe Action Plan for Ukraine 2018-2022](#), resulted in Armenian local authorities joining the implementation and evaluation of the national OGP action plan. In Ukraine, local authorities will be able to contribute to a new OGP action plan thanks to the platform for national–local dialogue on open government. In October 2022, the Congress, the OGP and the Association of Ukrainian Cities signed a memorandum of understanding to support Ukraine’s reconstruction efforts. The partnership also aims to support Ukrainian local authorities in ensuring transparency, openness and inclusiveness, and accountability according to open government principles.<sup>285</sup>

■ The online [bE-Open](#) platform, which presents international standards and national frameworks addressing local corruption risks in an interactive way, was updated in 2022 with the publication of handbooks on open local government and public ethics in [Albania](#), [Bosnia and Herzegovina](#) and [Georgia](#).

### Enhanced standards for Congress members

■ On 12 March 2021, the Congress adopted a new [code of conduct](#) for its members and revised its rules and procedures to strengthen its ethics regime, including the obligation to declare conflicts of interest. These rules and procedures are mandatory for all Congress members and for Congress youth delegates and members of the Group of Independent Experts (GIE).

#### Integrity in sport – The Council of Europe playing forward

Sport contributes to upholding the Council of Europe’s values and ideals in society, yet it is regularly confronted with challenges and threats, as shown by recent allegations of widespread corruption and money laundering. Without integrity, the values that are at the heart of the sports movement, such as respect, equality, fairness and trust are eroded and financial resources are diverted to the detriment of all those involved in practising, managing, adjudicating, organising and watching sport. Therefore, for more than five decades, the Council of Europe has taken the lead in defending values-based sport, equality and fair play for athletes, good governance, unbiased competitions and safety and security at major sporting events. This role has been recognised in the [Strategic Priorities for 2022-2025](#), which define the path towards reinforcing integrity in sport.

The [European Sports Charter](#) lays down the basic principles for national sports policies; it promotes personal, competitive and organisational integrity and condemns offences such as corruption, fraud, coercion, violations of statutory and disciplinary regulations, and unethical behaviour. It upholds the pursuit of sport integrity by promoting the right of people to take part in and watch sport in a secure environment, safe from violence and abuse; through competitions that are free from doping; and through organisations that are run in accordance with the principles of good governance. Sports integrity rests on ground-breaking legal texts such as the Committee of Ministers’ [Recommendation CM/Rec\(2022\)14](#) on general principles of fair procedures applicable to anti-doping proceedings in sport, the Council of Europe Convention on the Manipulation of Sports Competitions (CETS No. 215, [Macolin Convention](#)) and the work of the [Network of Magistrates/Prosecutors Responsible for Sport](#), launched in November 2022, which aims to become an international reference body promoting effective criminal investigations and procedures, focusing initially on match fixing and betting in sport.

As a founding and steering committee member of the International Partnership against Corruption in Sport (IPACS), the Council of Europe works to reduce the risk of corruption in procurement relating to sporting events and infrastructure; ensure integrity in the selection of major sporting events; optimise

283. Congress Report “[Hate speech and fake news: the impact on working conditions of local and regional elected representatives](#)”, 25 October 2022.

284. Congress Report “[Smart cities and regions – prospects for a human rights-based governance approach](#)”, 25 October 2022.

285. Congress news, “[Strengthened co-operation between the Congress, Open Government Partnership and the Association of Ukrainian Cities](#)”, 11 October 2022.

the processes of compliance with good governance; and enhance effective co-operation between law-enforcement, criminal justice authorities and sports organisations. GRECO has also developed a working level partnership with the Fédération Internationale de Football Association [International Association Football Federation] (FIFA), exploring how FIFA may rely on Council of Europe expertise in strengthening its rules for preventing and fighting corruption.

## STANDARDS OF CONDUCT FOR PUBLIC OFFICIALS

■ The Group of States against Corruption studies national anti-corruption policies and practices as part of its peer evaluation and compliance reviews. GRECO has adopted 75 country evaluation reports and more than 160 country compliance reports focusing on corruption prevention in respect of members of parliament, judges and prosecutors, persons with top executive functions in central governments and in law-enforcement agencies, clarifying the standards of conduct expected and, in most cases, requesting that codes of conduct be adopted or that clear guidance be provided. It has also recommended drawing up rules or guidance on dealing with lobbyists or others seeking to influence the public decision-making process, including through contacts outside the workplace.

■ For a majority of the countries evaluated so far, GRECO has recommended improving the management of conflicts of interest, including those arising on an ad hoc basis. Incompatibilities, acceptance of gifts, misuse of confidential information and restriction of post-employment activities have also been assessed, and many countries were asked to improve the mobility of top executives from the public to the private sector and vice versa.<sup>286</sup>

### Measurement criteria

- ▶ Member states, through integrity frameworks, develop and maintain the highest standards of conduct by public officials to sustain citizens' confidence and trust.
- ▶ When carrying out their mandates/functions, public officials put the obligations of public service above private interests.
- ▶ Codes of conduct play a special role in ensuring the effectiveness of the integrity framework by placing 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 account of 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.

### Findings

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

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

- ▶ **Successes:** new codes of ethics for persons with top executive functions have been adopted. North Macedonia has introduced rules on interaction with lobbyists and third parties seeking to influence the public decision-making process, revised a decree on accepting gifts in public institutions and developed a practical guide on how to identify conflicts of interest.<sup>287</sup> GRECO welcomed the fact that the High Authority for Transparency in Public Life (HATVP) in France must now carry out ethics vetting of persons moving from the private sector who are being considered for employment as members of ministers' private offices or the presidential staff.<sup>288</sup>

286. GRECO 22nd General Activity Report (2021), "Anti-corruption trends, challenges and good practices in Europe & the United States of America", March 2022.

287. GRECO Compliance Report in respect of North Macedonia (GrecoRC5(2021)2), adopted 25 March 2021, published 27 April 2021, paragraph 122.

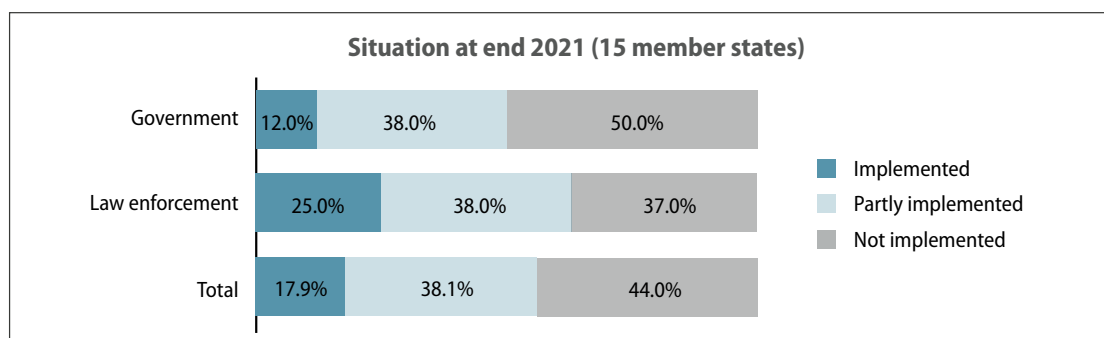
288. GRECO Compliance Report in respect of France (GrecoRC5(2021)12), adopted 3 December 2021, published 7 January 2022, paragraph 105.

- **Weaknesses:** there is slow progress in including top executive functions in integrity policies. In Denmark, for example, no progress has been made regarding an analysis of integrity-related risks involving members of the government and special advisers, and no or very little progress on other GRECO recommendations covering issues such as developing a code of conduct; improving access to information under the Access to Public Administration Files Act; increasing the transparency of lobbying; introducing rules to deal with employment following the termination of public service; or including more data in the financial declarations of ministers and ensuring that these declarations are subject to substantive control.<sup>289</sup> Likewise, much work remains to be done in Sweden on a wide range of issues, such as supervising top executives' compliance with rules of conduct; establishing confidential counselling mechanisms on ethical issues, rules on and transparency in contacts with lobbyists; widening of the scope of asset declarations; and substantive control of the broader system of declarations.<sup>290</sup> In Poland, existing integrity training appears to focus on the civil service in general, which does not make it very likely that the topics are sufficiently tailored to integrity issues faced by top executives, nor that deputy prime ministers, ministers, state secretaries or under-secretaries of state would readily participate in such training.<sup>291</sup>

## Police

- **Successes:** the inclusion of integrity as a mandatory subject in the initial and in-service training for police officers is a positive development, for example in Croatia. The process of implementing measures necessary in order to abandon the practice of fines being paid in cash directly to police officers is under way and the launch of a corresponding pilot project with regard to the traffic police is also a step in the right direction.<sup>292</sup> In Malta, several important policy documents have been adopted, such as the National Anti-Fraud and Corruption Policy, the Code of Ethics of the Malta Police Force, the Malta Police Transformation Strategy 2020-2025, and the Horizontal Movement Policy and the Policy on Business Interests and Additional Occupations, both relating to the Maltese police force. In addition, new provisions on gifts have been reflected in the updated Anti-Fraud and Corruption Policy for the police force. It has also been made clear that breaches of the code of ethics may trigger sanctions commensurate with the gravity of such breaches, and the role of the newly introduced position of integrity officer has been specified. Finally, police officers can now report possible corruption offences anonymously.<sup>293</sup>
- **Weaknesses:** codes of conduct and overall policy guidelines still need to be adopted or complemented with provisions on gifts, conflicts of interest and relations with third parties. In Slovenia, for instance, a number of issues still need to be dealt with, including developing the management of conflicts of interest through advisory, monitoring and compliance mechanisms (during and after employment); establishing a reporting obligation and a registry for secondary employment; ensuring systemic use of the "multiple-eye principle"; and strengthening the protection of whistle-blowers.<sup>294</sup>

## Implementation of the fifth Evaluation Round recommendations by GRECO



Source: GRECO

289. GRECO Compliance Report in respect of Denmark (GrecoRC5(2021)9), adopted 22 September 2021, published 17 December 2021, paragraph 82.

290. GRECO Compliance Report in respect of Sweden (GrecoRC5(2021)1), adopted 25 March 2021, published 24 November 2021, paragraph 98.

291. GRECO Compliance Report in respect of Poland (GrecoRC5(2021)4), adopted 25 March 2021, published 27 September 2021, paragraph 22.

292. GRECO Compliance Report in respect of Croatia (GrecoRC5(2021)10), adopted 3 December 2021, published 22 December 2021, paragraph 70.

293. GRECO Compliance Report in respect of Malta (GrecoRC5(2021)5), adopted 22 September 2021, published 24 May 2022, paragraph 121.

294. GRECO Compliance Report in respect of Slovenia (GrecoRC5(2020)1), adopted 29 October 2020, published 5 October 2021, paragraph 81.

## Members of parliament

- ▶ **Successes:** member states have made some progress in drafting new codes of conduct for members of parliament and in preparing related laws and/or guidance concerning conflicts of interest, gifts, secondary activities, financial and ad hoc disclosure requirements and contacts with lobbyists and third parties, among other things. In Iceland, GRECO was pleased that a number of improvements have been made: a code of conduct for members of parliament has been established; declarations of interest are to be more detailed and will include quantitative data on financial support and contributions received above a certain threshold; and members of parliament are also obliged to report conflicts of interest as they appear.<sup>295</sup> Likewise, in Spain, a code of conduct for the congress and senate has been adopted, coupled with the establishment of an office on conflicts of interest. The code introduces reinforced transparency obligations (including information regarding contacts of deputies/senators with third parties), as well as additional disclosure requirements.<sup>296</sup>
- ▶ **Weaknesses:** legislative and institutional changes needed to strengthen the integrity system for parliamentarians have often been stalled. In Bosnia and Herzegovina, appropriate rules have still not been introduced for parliamentarians to regulate their interaction with third parties, and members of parliament still lack advisory and training opportunities on corruption prevention.<sup>297</sup> A similar situation can be found in the Republic of Moldova, where too many laws are still adopted speedily, without adequate time frames and consultation. A code of conduct for parliamentarians and a code of parliamentary rules and procedures are yet to be adopted. Clear and objective criteria on lifting parliamentary immunity are not in place and rules remain to be introduced on how parliamentarians may interact with third parties.<sup>298</sup>

## Judges and prosecutors

- ▶ **Successes:** new codes of ethics for judges and prosecutors have been adopted, together with practical reforms regarding guidance and regular training. Financial disclosures, conflicts of interest, incompatibilities, outside activities and acceptance of gifts and other advantages are some of the issues dealt with in new regulations. GRECO welcomed the adoption of a new code of conduct for prosecutors in Portugal<sup>299</sup> and noted that real progress has been made in developing integrity standards for the judiciary in Belgium. Federal-level administrative court judges in Belgium are now subject to ethical rules, supervision and appropriate sanctions, and progress has also been made at regional level.<sup>300</sup>
- ▶ **Weaknesses:** GRECO observed that progress is still expected on confidential counselling for judges on integrity matters, along with effective supervision and enforcement of rules. In Georgia, GRECO encouraged the authorities to conduct confidential counselling for judges, increase training activities and provide guidance and explanations on the updated rules of judicial ethics.<sup>301</sup> GRECO also noted that Iceland should complement the judges' code of ethics with further guidelines and explanatory comments.<sup>302</sup> Similarly, GRECO underlined that additional efforts must follow in certain countries<sup>303</sup> in order to introduce adequate arrangements to shield the prosecution service from undue influence and interference in the investigation of criminal cases. This is particularly important for the prosecution of high-profile corruption cases.

295. GRECO Second Addendum to the Second Compliance Report in respect of Iceland (GrecoRC4(2021)8), adopted 25 March 2021, published 26 April 2021, paragraph 31.

296. GRECO Second Compliance Report in respect of Spain (GrecoRC4(2021)3), adopted 25 March 2021, published 30 September 2021, paragraph 80.

297. GRECO Interim Compliance Report in respect of Bosnia and Herzegovina (GrecoRC4(2021)21), adopted 3 December 2021, published 1 September 2022, paragraph 87.

298. GRECO Interim Compliance Report in respect of the Republic of Moldova (GrecoRC4(2021)22), adopted 3 December 2021, published 9 February 2022, paragraph 78.

299. GRECO Second Compliance Report in respect of Portugal (GrecoRC4(2022)20), adopted 17 June 2022, published 6 September 2022, paragraph 83.

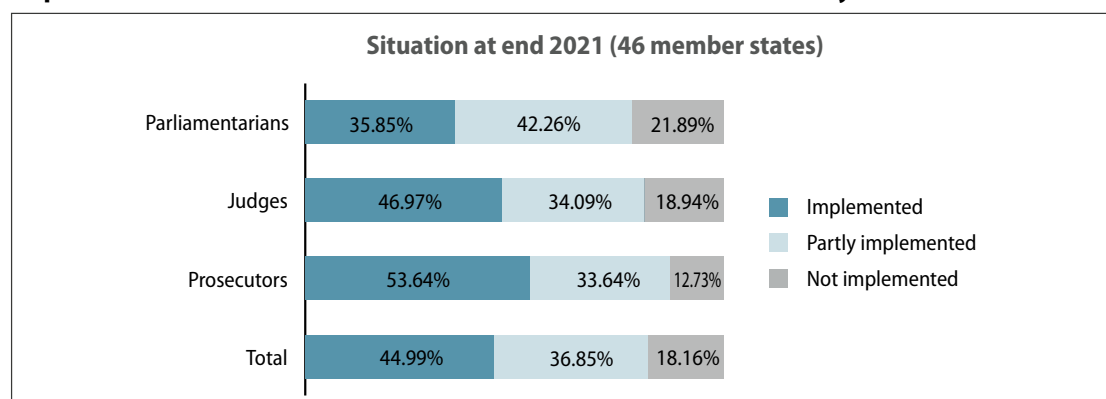
300. GRECO Third Interim Compliance Report on Belgium (GrecoRC4(2022)17), adopted 17 June 2022, published 12 September 2022, paragraph 63.

301. GRECO Addendum to the Second Compliance Report in respect of Georgia (GrecoRC4(2022)11), adopted 17 June 2022, published 13 July 2022, paragraph 61.

302. GRECO Second Addendum to the Second Compliance Report in respect of Iceland (GrecoRC4(2021)8), adopted 25 March 2021, published 26 April 2021, paragraph 32.

303. GRECO 22nd General Activity Report (2021), "Anti-corruption trends, challenges and good practices in Europe & the United States of America", March 2022.

## Implementation of the fourth Evaluation Round recommendations by GRECO



Source: GRECO

## INTEGRITY, EFFECTIVENESS AND THE IMPACT OF ACCOUNTABILITY AND ENFORCEMENT MECHANISMS

■ Dedicated anti-corruption and anti-money laundering authorities play a pivotal role<sup>304</sup> in public enforcement and oversight institutions.

■ Anti-corruption authorities (ACAs) are an important feature of contemporary good governance and a model institutional response to increasingly sophisticated forms of corruption that cannot be curbed by traditional law enforcement or by judicial authorities alone. Their performance remains subject to continuous monitoring by GRECO, while the Economic Crime and Co-operation Division (ECCD) has developed technical assistance projects<sup>305</sup> to further improve their functionality.

■ Anti-money laundering authorities/combating the financing of terrorism authorities (AML/CFT authorities) prevent criminal abuse and safeguard the integrity of national financial systems by promoting legal, regulatory and operational measures to combat money laundering, financing of terrorism and proliferation of weapons of mass destruction. The AML/CFT authorities comprise law-enforcement bodies, financial intelligence units<sup>306</sup> the customs and the financial sector and designated non-financial supervisors. They must function effectively<sup>307</sup> to prevent foreign and domestic organised crime from destabilising economies and political systems. All European countries must adopt a “zero-tolerance” policy on money laundering to prevent its spread and to stop foreign regimes sustaining themselves by laundering money in Europe. The activities of AML/CFT authorities are reviewed by MONEYVAL and the Conference of the Parties to 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 2021, MONEYVAL has evaluated eight states and territories – Bulgaria, Croatia, Estonia, the Holy See (including Vatican City), Liechtenstein, Monaco, Poland and San Marino – and the Conference of the Parties to CETS No. 198 has issued a number of horizontal review reports. Technical assistance and co-operation projects are being carried out in individual countries.

### Measurement criteria

- ▶ Those in charge of the prevention, investigation, prosecution and adjudication of corruption offences enjoy the independence and autonomy appropriate to 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 any abuse of power.

304. See the Council of Europe [Criminal Law Convention against Corruption](#) (ETS No. 173), the [United Nations Convention Against Corruption](#) (2004) and the [Jakarta Statement on Principles for Anti-Corruption Agencies](#) (2012).

305. For more information on the ongoing projects see [Projects – Economic Crime and Co-operation Division](#).

306. Financial Action Task Force (FATF), [Recommendation 29](#).

307. At international level, integrity standards for AML/CFT authorities are prescribed by the recommendations of the FATF and the [Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds from Crime and on the Financing of Terrorism](#).

- ▶ 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

### Anti-corruption authorities

- ACAs throughout Europe have gradually become more effective.
  - ▶ In some member states, ACAs and other specialised bodies have been set up or restructured. Cyprus established the Independent Authority against Corruption (IAAC) in early 2022 and in Azerbaijan, a new Department for Co-ordination of Special Confiscation Issues was set up as part of the General Prosecutor's Office in mid-2020. In Georgia, an Anti-Corruption Bureau was established in November 2022 to support the country's Anti-Corruption Council.
  - ▶ GRECO has repeatedly recommended that ACAs or other monitoring/supervisory bodies have adequate financial and personnel resources to effectively perform their tasks. In Albania, the Special Anti-Corruption and Organised Crime Structure (SPAC) now has 17 prosecutors and is fully operational, while the National Bureau of Investigation has been fully staffed with 60 investigators.
  - ▶ The status of staff of ACAs and the selection procedures for their senior staff have been revised to eliminate outside interference and provide for transparent and merit-based processes, bolstering the authorities' effectiveness and efficiency. For example, following constitutional and legal amendments, political influence in the appointment process of prosecutors in Serbia is expected to decrease.
  - ▶ Some ACAs have expanded their supervision and enforcement powers in response to previously identified shortcomings. For instance, SPAC jurisdiction in Albania has been extended to encompass all terrorist offences. The Albanian Central Election Commission, with technical assistance from the Council of Europe, is developing an online platform to facilitate the monitoring of political parties and electoral campaign finances. In Croatia, the duty of top executives to submit asset declarations annually and the expansion of the content of data required in such declarations have been coupled with additional supervisory powers vested in the Commission for Resolution of Conflicts of Interest.<sup>308</sup> In Serbia, legislation has been amended to introduce criteria for regulating the performance of business activities by public officials, especially as regards conflicts of interest, and to assign a role to the Agency for Prevention of Corruption (APC), which can now impose more severe sanctions against public officials for violations of the law.<sup>309</sup>
  - ▶ The Network of Corruption Prevention Authorities (NCPA) – also known as the “[Šibenik Network](#)” – continues to dedicate itself to exchanging information, sharing good practices among ACAs worldwide and finding concrete solutions in order to address corruption more effectively. Starting out with 17 agencies, mostly from the European continent, the NCPA currently brings together 31 member authorities, one observer (Balearic Islands, Spain) and five affiliated partners from various regions of the world (such as Brazil, Quebec/Canada, Chile, Ecuador, Kazakhstan) and different sectors of society.
- Despite these welcome developments, various challenges still impede the successful everyday work of many ACAs.
  - ▶ Undue influence on ACAs' activities can still be observed in some countries. It stems mainly from loopholes in the selection and appointment procedures for their senior staff. For example, in Serbia, the ACA 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 among those with a score higher than 80/100 in the competition test.<sup>310</sup> The head of the Moldovan National Integrity Authority (NIA) is appointed by the president upon the proposal of the NIA's oversight body whose members are politically affiliated. In Bosnia and Herzegovina, the Agency for Prevention of Corruption and Co-ordination of the Fight against Corruption (APIK) faces challenges to its ability to function independently.<sup>311</sup> Concerns were expressed

308. [GRECO Compliance Report in respect of Croatia](#) (GrecoRC5(2021)10), adopted 3 December 2021, published 22 December 2021, paragraph 33.

309. [GRECO Second Interim Compliance Report in respect of Serbia](#) (GrecoRC4(2022)6), adopted 25 March 2022, published 30 March 2022, paragraph 67.

310. Articles 11-13 of the Law on Prevention of Corruption in Serbia (Official Gazette of the Republic of Serbia Nos. 35/2019; 88/2019; 11/2021 – authentic interpretation; 94/2021 and 14/2022).

311. European Commission, Staff Working Document, Bosnia and Herzegovina 2022 Report ([SWD\(2022\) 336 final](#)), p. 25.



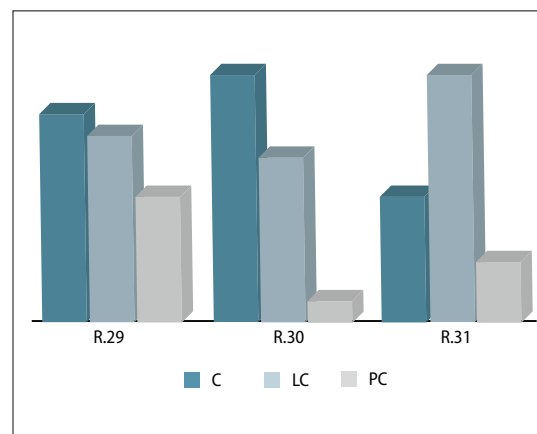
by GRECO that changes to legislation removed the competition board from the system for appointing members of the Armenian Corruption Prevention Commission (CPC) and introduced a system of direct nominations by parliament; the competition board was reinstated following GRECO's report.<sup>312</sup> A legal framework relating to the submission and verification of asset declarations and stronger CPC capacity in applying the asset declaration regime was implemented with Council of Europe support.

- ▶ Underresourcing and inadequate infrastructure and capacity remain a recurrent concern. In South-East Europe, ACAs often have fewer staff than prescribed by law. This has a direct impact on staff 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. Neglect of the ACAs' back-office organisational infrastructure and greater focus on front-line activities is a feature observed in many member states. In North Macedonia, GRECO noted that while substantial financial resources have been injected into the State Commission for Corruption Prevention (SCPC), it is not yet fully functional and the SCPC cannot properly perform its duties. A particular concern is the substantial number of conflict of interest and asset disclosure cases involving top executives processed by the SCPC.<sup>313</sup>
- ▶ In several member states, an integrity framework for members of parliament and public officials in top executive positions is still missing. ACAs' decision making is insufficiently transparent, including regarding the processing of high-profile cases in some countries.
- ▶ Keeping positions vacant or filling positions by interim officials, including at the leading functions in tax administration, financial intelligence units or other institutions (as was the case in Montenegro) is an issue of concern when such situations last for a long period. In Ukraine, the appointment of the new head of the Specialised Anti-Corruption Prosecutor's Office (SAPO) took almost two years (2020-2022), thus affecting the proper management of the institution.
- ▶ The Covid-19 pandemic and political instability in several contexts have delayed key legislative initiatives aimed at strengthening integrity and anti-corruption and anti-money laundering systems. This has been the case in Montenegro, with the primary legislation on AML/CFT and restrictive measures relating to targeted financial sanctions being affected.
- ▶ Anti-corruption mechanisms continue to have a limited impact in particularly vulnerable areas (such as, in the case of Albania, road infrastructure, property, customs, tax administration, education, health and public procurement). In several member states, there needs to be a further increase in transparency and accountability in the private sector, and in the identification, analysis, assessment and mitigation of corruption risks.

## Anti-money laundering authorities

Member states are still struggling to improve the effectiveness of their AML/CFT measures in key areas such as the investigation of money-laundering cases and transparency of legal persons.

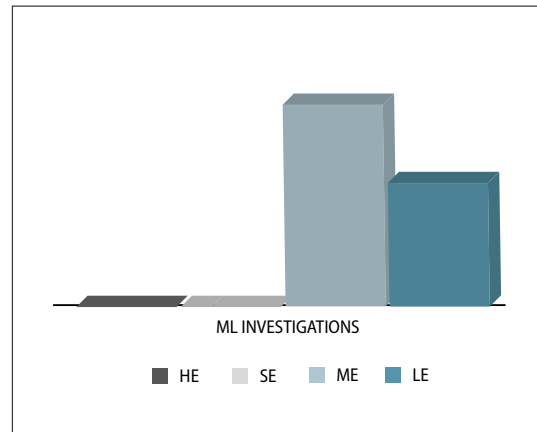
- ▶ Most jurisdictions subject to MONEYVAL evaluation were found to have a proper legal and institutional basis, guaranteeing financial intelligence units and law-enforcement operational independence and autonomy, and effective functioning: 91% of MONEYVAL jurisdictions were found to be "compliant (C)" or "largely compliant (LC)" with international requirements; 95% of jurisdictions were found to have designated law-enforcement authorities responsible for combating money-laundering and terrorist financing, and 86% of jurisdictions were found to have vested those law-enforcement authorities with powers to pursue cases. However, the practical outcome of law-enforcement work leaves much to be desired.



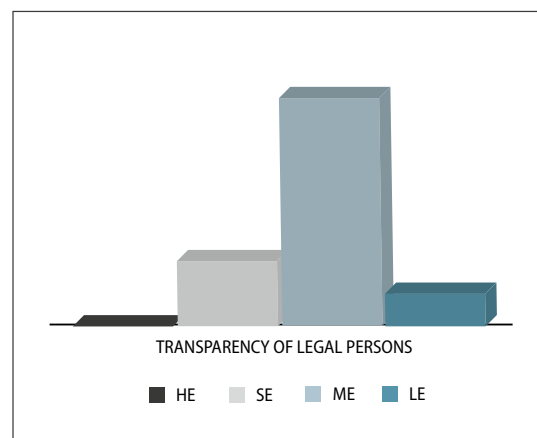
312. [GRECO Interim Compliance Report in respect of Armenia](#) (GrecoRC4(2021)15), adopted 22 September 2021, published 30 September 2021.

313. [GRECO Compliance Report in respect of North Macedonia](#) (GrecoRC5(2021)2), adopted 25 March 2021, published 27 April 2021, paragraph 123.

- ▶ MONEYVAL jurisdictions have not yet received a single positive “high (HE)” or “substantial (SE)” rating measuring the practical investigation of money-laundering cases, although law-enforcement authorities have all the legislative tools and powers to properly pursue such cases. These authorities were found not to be pro-actively using financial intelligence and international co-operation to build evidence and trace criminal proceeds in money-laundering cases. It was found that, in many countries, law-enforcement authorities pursue a small number of money-laundering investigations not commensurate with the large number of proceeds-generating crimes.



- ▶ The capacity of many law-enforcement authorities was found to need reinforcement through the deployment of additional human and information technology resources and the development of the skills and knowledge to pursue complex cases.
- ▶ The lack of transparency of legal persons was found to create challenges in MONEYVAL jurisdictions, only three of which were able to establish sufficient safeguards to ensure transparency. States were found to be struggling to conduct a proper risk assessment of legal persons, which limits states’ understanding of how these entities can be misused. Nor do they have public registers on legal persons, even beneficial ownership information, which could serve as a credible and reliable source of adequate and verified data.



■ The Council of Europe and the European Commission are providing technical support and assistance to member states including Bulgaria, Croatia, the Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Portugal, Romania and the Slovak Republic. These joint efforts aim at strengthening the AML/CFT framework in these countries and enhancing risk-based supervision, including the development of automated supervisory tools (Croatia, Portugal and the Slovak Republic), implementation of sanctions (the Czech Republic, Latvia and Malta) and other priority areas of support and assistance.

■ Risks to the integrity of AML/CFT authorities are still numerous. MONEYVAL will continue to ensure that its members guarantee the effectiveness of all types of AML/CFT authorities and scrutinise such aspects as operational independence and autonomy, professionalism, capacity, and financial and human resources, which are vital for their efficiency and impact. A major focus is to ensure that self-regulatory bodies of certain professions which 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, thus providing an additional layer of oversight. A new area of focus is the establishment of effective supervisory frameworks for the virtual currencies sector and ensuring that these new frameworks apply high standards of integrity and safeguards for transnational crypto business groups.

## CRIMINAL AND NON-CRIMINAL ENFORCEMENT MECHANISMS

■ Public integrity and corruption prevention frameworks rely not only on defining and monitoring integrity, but also on enforcing relevant rules. Council of Europe and other international standards<sup>314</sup> require member states to have fair, objective, and timely mechanisms to address suspected integrity breaches and corruption offences. These include both criminal and non-criminal enforcement mechanisms. While some countries refer

314. [Resolution \(97\) 24](#) of the Committee of Ministers on the twenty guiding principles for the fight against corruption, the [Criminal Law Convention against Corruption](#), the [Civil Law Convention on Corruption](#) (ETS No. 174), the [OECD Recommendation on Public Integrity](#) (2017) and the [United Nations Convention Against Corruption](#) (2004).

to political responsibility in the form of “naming and shaming” as the most effective sanction, GRECO does not consider that this is enough and has called for the development of additional controls and sanctions to ensure that ethical misconduct is detected and addressed even without media scrutiny and public or political pressure. GRECO has issued a series of recommendations relating to accountability and the enforcement of anti-corruption measures, for example to strengthen public integrity bodies and equip law enforcement with the proper means to conduct inquiries and investigations. In some instances, GRECO has encouraged law enforcement to be more proactive in dealing with suspected offences by top executives and start investigations on the basis of reasonable suspicion rather than irrefutable evidence.<sup>315</sup>

■ GRECO has also issued recommendations to some countries about the standard laid down in the Committee of Ministers Resolution on the twenty guiding principles for the fight against corruption, stipulating that immunities should be limited to the extent necessary in a democratic society, so as not to hamper the investigation, prosecution or adjudication of corruption offences. GRECO has notably recommended limiting the privileges enjoyed by top executives with respect to prosecution for acts performed outside of their official capacity and has stressed the importance of objective and fair criteria for lifting immunities.

### 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/functions, public officials are accountable for their actions and submit themselves 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 the 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.

### Findings

---

■ Enforcement mechanisms for integrity breaches and corruption offences vary significantly among member states and reflect different legal traditions as well as national priorities and policies. Their integrity, effectiveness and impact have been mostly driven by GRECO’s continuing monitoring, which has helped remedy many problems and fostered the development of coherent criminal and non-criminal enforcement mechanisms across member states.

■ GRECO has seen gradual improvement in the efficiency and impact of integrity-related enforcement mechanisms, with some gaps.

■ In Lithuania, new legislation has been introduced that regulates parliamentarians’ declarations of private interests, with a specific register increasing efficiency and leading to a more effective supervision and enforcement of the relevant rules. The system also provides for potential in-depth checks as a result of the cross-checking of various registers.<sup>316</sup>

■ In North Macedonia, GRECO welcomed the fact that top executives and advisers in central government must comply with the new code of ethics and that breaches may lead to graduated sanctions, including dismissal.<sup>317</sup>

■ GRECO noted that the Greek parliament’s capacity to refuse a prosecutor’s request to lift the immunity of serving and former members of government is strictly limited to those cases which have immediate relevance to parliamentary duties, and that this does not include corruption offences. GRECO was satisfied that

---

315. See GRECO 22nd [General Activity Report](#) (2021), “Anti-corruption trends, challenges and good practices in Europe & the United States of America”, p. 13.

316. [GRECO Addendum to the Second Compliance Report in respect of Lithuania](#) (GrecoRC4(2021)2), adopted 25 March 2021, published 6 May 2021, paragraph 22.

317. [GRECO Compliance Report in respect of North Macedonia](#) (GrecoRC5(2021)2), adopted 25 March 2021, published 27 April 2021, paragraph 25.

immunity could be lifted mandatorily if the request was not connected to the performance of the duties of the parliamentarian or serving or former minister.<sup>318</sup>

■ There is now greater transparency concerning complaints, including their number and the outcome. GRECO welcomed the decision of the National Police Commissioner of Sweden to publish information on complaints received and investigations carried out by the Swedish Special Investigations Department and ongoing work towards establishing a designated portal on the police authority's external website.<sup>319</sup>

■ Lack of proper supervision and enforcement of internal rules remains a general concern. In Spain, for instance, GRECO recommended providing the Council for Transparency and Good Governance with proper independence, authority and the resources to perform its monitoring functions effectively.<sup>320</sup>

■ Interference with the autonomous decision making of judicial or prosecutorial councils has been reported in several member states. In Armenia, GRECO reiterated its position that the role of the minister of justice in disciplinary procedures against judges should be removed as it is not compatible with judicial independence.<sup>321</sup>

■ While the arsenal of measures to promote compliance with integrity and anti-corruption norms has been strengthened, with a broad range of criminal, administrative and civil measures and sanctions now in place, properly graduated administrative sanctions to punish failures of integrity and corruption violations that do not attain the gravity of a criminal act are still missing in some countries. This was the case in Malta, where GRECO noted that the draft code of ethics for members of parliament contained no provisions regarding sanctions and their effective enforcement in the event of violations.<sup>322</sup>

■ A fragmented approach to monitoring compliance and the absence of a clear demarcation between the administrative (internal) and criminal response to disciplinary cases persist. This is a concern that GRECO expressed in respect of police forces in Poland, where progress is still pending to see if a clarification of responsibilities between the various bodies involved in internal oversight has taken place.<sup>323</sup> Reforms are needed 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. In Croatia, GRECO recommended that a requirement be established for police staff to report integrity-related misconduct they come across in the service.<sup>324</sup> GRECO noted that the Slovakian Bureau of the Inspection Service (BIS) processes reports from whistle-blowers within the police, although it is answerable to the ministry of the interior. In GRECO's view, this role would be better entrusted to an external independent body.<sup>325</sup>

■ Finally, the issue of immunity is still pending in some member states. In Türkiye, GRECO recommended that measures be taken to ensure that lifting parliamentary immunity does not hamper criminal investigations in respect of members of parliament suspected of having committed corruption offences.<sup>326</sup> In Georgia, GRECO recommended that the immunity of judges be limited to activities relating to their participation in judicial decision making ("functional immunity"). While a draft amendment to legislation is being considered, this has not yet materialised.<sup>327</sup> In Croatia, work is still ongoing to comply with GRECO's recommendation to amend the law to limit procedural immunity provided to members of the government, by excluding corruption-related offences which are subject to public prosecution.<sup>328</sup>

318. [GRECO Addendum to the Second Compliance Report in respect of Greece](#) (GrecoRC4(2022)8), adopted 25 March 2022, published 1 June 2022, paragraph 50.

319. [GRECO Compliance Report in respect of Sweden](#) (GrecoRC5(2021)1), adopted 25 March 2021, published 24 November 2021, paragraph 83.

320. [GRECO Compliance Report in respect of Spain](#) (GrecoRC5(2021)8), adopted 22 September 2021, published 29 March 2022, paragraph 40.

321. [GRECO Interim Compliance Report in respect of Armenia](#) (GrecoRC4(2021)15), adopted 22 September 2021, published 30 September 2021, paragraph 43.

322. [GRECO Addendum to the Second Compliance Report in respect of Malta](#) (GrecoRC4(2021)10), adopted 25 March 2021, published 31 May 2021, paragraph 13.

323. [GRECO Compliance Report in respect of Poland](#) (GrecoRC5(2021)4), adopted 25 March 2021, published 27 September 2021, paragraph 116.

324. [GRECO Compliance Report in respect of Croatia](#) (GrecoRC5(2021)10), adopted 3 December 2021, published 22 December 2021, paragraph 65.

325. [GRECO Compliance Report in respect of the Slovak Republic](#) (GrecoRC5(2021)7), adopted 22 September 2021, published 19 January 2022, paragraph 92.

326. [GRECO Third Interim Compliance Report in respect of Türkiye](#) (GrecoRC4(2022)5), adopted 25 March 2022, published 23 June 2022, paragraph 28.

327. [GRECO Addendum to the Second Compliance Report in respect of Georgia](#) (GrecoRC4(2022)11), adopted 17 June 2022, published 13 July 2022, paragraph 45.

328. [GRECO Compliance Report in respect of Croatia](#) (GrecoRC5(2021)10), adopted 3 December 2021, published 22 December 2021, paragraph 10.

## Whistle-blower protection

Over the last two decades, the Council of Europe has taken the lead in examining the role of whistle-blowing in democratic societies and in developing principles for the safe disclosure of information in the public interest. This process started with its actions to prevent corruption and later became a matter of human rights and democratic governance, with the recent adoption of the Guidelines on public ethics (2020)<sup>329</sup> and a recommendation on the protection of whistle-blowers in the context of the fight against doping in sport (2022).<sup>330</sup>

Whistle-blower protection is a fundamental aspect of freedom of expression and freedom of conscience. It is important in the fight against corruption and for ensuring and promoting a culture of accountability and integrity in both public and private institutions, as recommended by the 29 common principles set out in the appendix to [Recommendation CM/Rec\(2014\)7 of the Committee of Ministers to member States on the protection of whistleblowers](#).

More Council of Europe member states have put in place whistle-blower protection laws in the last two years,<sup>331</sup> either through a dedicated whistle-blower protection law or legal provisions addressing protected reporting or prevention of retaliation against whistle-blowers. Complementary efforts have included the publication of new or more comprehensive guidance to facilitate the whistle-blowing process, the organisation of dedicated training for judges, the implementation of public awareness campaigns and education, and the active engagement of civil society organisations in several member states to provide free and independent legal advice to whistle-blowers and protect them in the public interest.

Most of the countries evaluated by GRECO have been given a recommendation regarding the protection of whistle-blowers within law-enforcement agencies, with a special focus on the need to strengthen that protection and provide dedicated guidance and training for all levels of the hierarchy. Whistle-blower protection is particularly important in this sector because of the “wall of silence” which may exist in law-enforcement agencies. For the system to work in practice, a legislative ban on retaliation should be coupled with workable remedies and relief for whistle-blowers. It should also provide for adequate sanctions for those who retaliate. GRECO has found that more can be done to promote awareness in this area, including with a view to changing perceptions and attitudes towards protected disclosures and whistle-blowers within law-enforcement agencies. To this end, training opportunities in law-enforcement agencies on these matters should be intensified.

There is still a long way to go before whistle-blowers are effectively protected and the key elements of effective institutional and normative arrangements that build trust and strengthen protections need to be reviewed in numerous member states. Adopted legislation does not always protect both public and private sector employees, nor does it cover the reporting of all forms of misconduct. More is needed to be done to protect private sector whistle-blowers.<sup>332</sup>

329. [Guidelines of the Committee of Ministers of the Council of Europe on public ethics](#) (CM(2020)27-addfinal), adopted on 11 March 2020.

330. [Recommendation on the protection of whistle-blowers in the context of the fight against doping in sport](#) (T-DO(2021)28 Final), adopted on 11 January 2022.

331. For example, in Croatia, Cyprus, Denmark, France, Ireland, Latvia, Lithuania, Malta, Portugal and Sweden.

332. See European Committee on Legal Co-operation, [Evaluation Report](#) on Recommendation CM/Rec(2014)7 on the protection of whistleblowers (June 2022).

PART II

# DEMOCRATIC ENVIRONMENT





## CHAPTER 6

# HUMAN DIGNITY

---

### INTRODUCTION

**T**he Russian Federation's full-scale invasion of Ukraine has provoked the largest displacement of people in Europe since the Second World War, exacerbating risks of human trafficking and exploitation. Across the Council of Europe member states, commendable steps have been taken to protect Ukrainian refugees. The level of awareness raising on conflict-related trafficking in countries that neighbour Ukraine and beyond is very high compared to other humanitarian crises.

■ Combating the trafficking in human beings must remain a priority for member states. Further guidance has been provided by the new Committee of Ministers [Recommendation](#) on preventing and combating trafficking in human beings for the purpose of labour exploitation, the [explanatory memorandum](#) of which contains a comprehensive list of measures in the areas of prevention, labour market regulation, victim identification and assistance, prosecution and corporate responsibility.<sup>333</sup> Reinforced action is needed to strengthen the criminal justice response and compensate victims for the harm suffered.

■ The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) has continued to receive allegations of ill-treatment of detainees by law-enforcement officials and staff working in prison establishments, psychiatric institutions and social care homes. The basic safeguards against ill-treatment are still not fully respected in all countries. Nevertheless, CPT delegations have observed progress in efforts by authorities to properly investigate allegations of torture and ill-treatment in a certain number of country visits.

■ During post-pandemic visits, the CPT found that some places of detention continued to apply restrictions on interpersonal contacts and maintained long periods of quarantine. Other states eased prison overcrowding by resorting to non-custodial measures during the Covid-19 pandemic. Recent CPT visits indicate that, for some countries, this may have been temporary.

■ Over the past decades, the Council of Europe has been at the forefront of standard setting in women's rights, true to its mandate as a pan-European human rights organisation. The Istanbul Convention is the Council of Europe's key instrument for women's rights and continues to gain traction. With the number of ratifications steadily rising, currently at 37, it is a driving force for change at the national level.

■ Monitoring carried out by the Group of Action on Violence against Women and Domestic Violence (GREVIO) and its Committee of the Parties indicates that the convention has led to greater legislative and policy compliance at national level in several countries. The need to develop comprehensive and co-ordinated policies in relation to all forms of violence covered by the Istanbul Convention and to allocate financial and human resources is being met with concrete action.

■ Criminalisation of the various forms of online violence against women is progressing in many member states. This was encouraged by GREVIO's recommendation on the digital dimension of violence against women.<sup>334</sup> Considering the extent of this worrying phenomenon and its evolving nature, the international community will need to intensify its efforts to prevent these new forms of gender-based violence, protect victims and ensure effective conviction of perpetrators.

<sup>333</sup>. Recommendation [CM/Rec\(2022\)21](#) of the Committee of Ministers on preventing and combating trafficking in human beings for the purpose of labour exploitation.

<sup>334</sup>. GREVIO's [General Recommendation No. 1](#) on the digital dimension of violence against women.

■ Child sexual abuse and exploitation online are truly global issues and efforts need to be made to implement recommendations of the Committee of the Parties to the Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (Lanzarote Committee) and further strengthen international co-operation. The Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse (CETS No. 201, Lanzarote Convention), open for ratification by the European Union and for accession by non-member states, provides a blueprint for states to fight this crime. Promotion of this convention at global level is now timely.

■ While progress has been noted in providing children with access to justice, there are still several shortcomings for child victims or witnesses and especially for child offenders or children who display risky and harmful behaviour. The Barnahus model has proved to be a promising practice across Europe, providing a truly child-friendly justice process, where the child victim is at the centre of the proceedings. The Council of Europe undertakes to promote this model further in its member states.

■ Recognising the right of children to participate in decision-making processes, adopting legislation or policies aimed at enhancing children's right to be heard in all matters that concern them, including by strengthening the legal framework for child human rights defenders, must remain high on member states' agendas.

■ The Russian Federation's war against Ukraine and the Covid-19 pandemic have made it clear that women and girls are disproportionately affected by such crises, which exacerbate gender inequalities while shining a spotlight on issues surrounding domestic violence and unpaid care work. The negative impact of those crises has erased years of progress in women's economic and political empowerment. It is therefore crucial to be better prepared and to ensure a gender-sensitive management of crises related to conflicts, economic downturn or climate change.

■ There has also been a steep rise in anti-gender movements, which jeopardise the progress on women's rights and gender equality. The backlash against policies and actions relating to gender leads to exclusionary narratives with harmful side effects, such as the perpetuation of gender-based violence, sexism and discrimination, as well as increased risks for the rights of all women.

■ In this difficult context, the European Social Charter plays a crucial role. It promotes social justice, fair distribution of burdens and gains, and it guarantees a much-needed safety net. In 2022, special attention was paid to the rights of people in vulnerable situations, ranging from protection against social exclusion and poverty to social welfare services and the social protection of older persons.

■ Member states have embraced the objective of strengthening social rights and embarked on the modernisation of the European Social Charter monitoring system. In September 2022, the Committee of Ministers enabled the European Committee of Social Rights to prioritise the examination of the most pressing social rights issues, such as those resulting from current crises or from the broader social transformations brought about by the rapid increase in the number of workers providing services on digital/online platforms and the need to ensure their social protection.

## 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 Convention on Action against Trafficking in Human Beings (CETS No. 197).
- ▶ Comprehensive national policy documents (strategies and/or action plans) have been 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 they are punishable by effective, proportionate and dissuasive sanctions.

### Findings

---

■ War and humanitarian crises create a fertile ground for organised criminal groups and individual profiteers to target vulnerable individuals. The Russian Federation's aggression against Ukraine has provoked the largest displacement of people in Europe since the Second World War, creating risks of human trafficking and

exploitation. In a statement issued on 17 March 2022, the Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) [called on states to act urgently to protect people fleeing Ukraine from human trafficking](#). Further, on 4 May 2022, GRETA issued a [guidance note](#) providing practical advice to ensure that public agencies, NGOs, the private sector and the general public minimise the risks of human trafficking created by the war in Ukraine.

■ During its country visits, GRETA has been collecting information on steps taken to prevent and limit the risks of trafficking of Ukrainian refugees. In Poland, which has been the main country of arrival for refugees fleeing the war, the Law of 12 March 2022 on Assistance to Ukrainian Citizens provided for a temporary increase in the sanctions for committing human trafficking. Systematic registration of all individuals and organisations helping those fleeing the war was put in place. Measures were also taken to alert refugees and the public on how to avoid human trafficking through posters and leaflets at border crossing points, reception centres, train stations and city halls, as well as through online information. At the time of GRETA's visit in June 2022, no victims of human trafficking had been identified among people fleeing the war in Ukraine, but four suspected cases had been detected. One case of trafficking for the purpose of sexual exploitation of two Ukrainian girls has been confirmed following an investigation and the proceedings are ongoing.

■ In Spain, legislation adopted in March 2022 on urgent measures for dealing with the economic and social consequences of the war in Ukraine enabled the local authorities and specialised NGOs to grant the status of victim of trafficking to detected victims of sexual exploitation. In the Netherlands, the government set up a specific directorate general within the Ministry of Justice and Security to deal with policy co-ordination, support and planning of the reception of displaced people from Ukraine. Six investigations into possible cases of trafficking (five concerning sexual exploitation and one case of fraud which may also involve exploitation) were under investigation. In Sweden, the authorities informed GRETA that some 40 Ukrainian refugees had complained about labour exploitation, however, after investigations, no victims of trafficking were identified.

■ So far, the number of confirmed cases of human trafficking in relation to the Russian Federation's war in Ukraine remains low, which may be a sign of success of the early preventive measures taken to protect refugees and mitigate the risks of trafficking. The level of awareness raising on trafficking related to the war in Ukraine is very high compared to other humanitarian crises. However, trafficking in human beings has always been considered as an "invisible crime" and the use of new technologies to facilitate trafficking makes it even more difficult to detect. The social and economic vulnerabilities of the millions of people affected by the war in Ukraine are likely to increase as time goes on. That is why co-ordinated action and rapid exchange of information at national and international level are crucial to prevent trafficking, detect potential victims and investigate and prosecute any detected cases.

■ GRETA carried out the third evaluation round of the Council of Europe Convention on Action against Trafficking in Human Beings which was focused on access to justice and effective remedies for victims of human trafficking. GRETA's reports provide examples of legislative, policy and practical measures. In Malta, for example, legislation was amended to increase the penalty for trafficking in human beings, introducing new aggravating circumstances for trafficking offences, excluding companies involved in trafficking from public procurement procedures and strengthening trafficking victims' access to assistance.<sup>335</sup> In Belgium, a specific provision on the non-punishment of victims of trafficking for unlawful acts they were compelled to commit was added to the Criminal Code.<sup>336</sup> In France, a specialised centre for child victims of trafficking was set up, run by an NGO that provides educational, psychological, legal and health support.<sup>337</sup> In Latvia, a multidisciplinary victim identification commission was set up and steps were taken to improve the detection of victims of trafficking for the purpose of labour exploitation.<sup>338</sup>

■ At the same time, GRETA's reports highlight several persistent gaps. Ensuring access to compensation is a major challenge. The inadequate criminal justice response to human trafficking is another persistent concern. Human trafficking offences often involve multiple victims and perpetrators in several countries and may include other offences. The lack of resources and prioritisation contributes to low prosecution and conviction rates of perpetrators. The quick return of victims to their countries of origin is another factor which affects the authorities' ability to prosecute traffickers. GRETA has recommended additional steps to ensure that cases of trafficking are investigated proactively and prosecuted effectively, leading to effective, proportionate and dissuasive sentences.

335. GRETA Third Evaluation Round Report on Malta, 2021, paragraphs 15-16.

336. GRETA Third Evaluation Round Report on Belgium, 2022, paragraph 115.

337. GRETA Third Evaluation Round Report on France, 2022, paragraph 239.

338. GRETA Third Evaluation Round Report on Latvia, 2022, paragraphs 153-164 and 179.



■ Another important gap concerns the identification of victims of trafficking, which in several countries depends on victims making complaints and co-operating in the investigation. GRETA has stressed the need for a formalised national referral mechanism which defines the procedures and roles of all frontline actors who may come into contact with victims of trafficking, including NGOs, labour inspectors, social workers and child protection staff.

■ A growing number of Court judgments related to different articles of the European Convention on Human Rights (mostly Article 4, but also Articles 2, 3, 6.1, 8 and 13) refer to GRETA's reports.<sup>339</sup>

■ The new Committee of Ministers [Recommendation](#) on preventing and combating trafficking in human beings for the purpose of labour exploitation, adopted on 27 September 2022, was prepared in accordance with the Secretary General's "Roadmap on strengthening action against trafficking in human beings for the purpose of labour exploitation".<sup>340</sup> The recommendation supplements existing legally binding instruments and draws on GRETA's monitoring work and [guidance](#), the [case law of the Court](#) and the conclusions and decisions of the European Committee of Social Rights. It calls on member states to adopt national laws, policies and strategies which address trafficking for the purpose of labour exploitation, following a human rights-based and victim-centred approach. The recommendation's [explanatory memorandum](#) contains a comprehensive list of measures covering prevention, labour market regulation and inspections, victim identification and assistance, prosecution, international co-operation, corporate responsibility and corporate liability.

■ The Council of Europe has continued supporting member states in their efforts to implement GRETA recommendations, through co-operation projects implemented in Bosnia and Herzegovina, North Macedonia, Serbia and Türkiye, as well as Kosovo\*, Tunisia and Morocco. A revision of the HELP e-learning course on combating trafficking in human beings started in the autumn of 2022 and the updated course will be available in 2023. The Council of Europe network of specialised anti-trafficking lawyers and NGOs is essential for building capacity to provide legal assistance and legal representation to victims of human trafficking.

## PROMOTING AND PROTECTING WOMEN'S RIGHTS

### Measurement criteria

- ▶ The Istanbul Convention has been ratified.
- ▶ Comprehensive and co-ordinated policies have been developed in relation to all forms of violence covered by the Istanbul Convention, and financial and human resources are allocated.
- ▶ National co-ordinating bodies have been established to prevent and combat violence against women.
- ▶ Specialist support services for all forms of violence have been set up.
- ▶ Criminal legislation offers effective, proportionate and dissuasive sanctions in relation to all the 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 and legislation, monitor and evaluate progress and co-ordinate and support gender-mainstreaming activities carried out by other government departments and other organisations, in line with the Council of Europe Gender Equality Strategy.
- ▶ Targeted measures have been taken to mitigate the effects on gender equality of the Covid-19 pandemic, the economic downturn and the war in Ukraine, including as regards violence against women.
- ▶ Measures have been 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.
- ▶ Standards and measures on protecting the rights of migrant, refugee and asylum-seeking women and girls are being further developed and promoted.

339. See *Zoletic and Others v. Azerbaijan*, Application No. 20116/12, judgment of 7 October 2021; *V.C.L. and A.N. v. United Kingdom*, Application Nos. 77587/12 and 74603/12, judgment of 16 February 2021; *Lăcătuș v. Switzerland*, Application No. 14065/15, judgment of 19 January 2021.

340. [SG/Inf\(2019\)34](#) and [SG\(2020\)29](#).

- An increased number of states and other organisations adopt a gender-mainstreaming approach in their policies and activities.

## Findings

■ The Republic of Moldova, the United Kingdom and Ukraine ratified the Istanbul Convention in 2022, providing positive impetus and reassurance of widespread support for the convention, in spite of Türkiye's withdrawal in 2021. The Istanbul Convention is now in force in 37 member states.<sup>341</sup>

■ Twenty-nine countries have been assessed by GREVIO and received tailored-made recommendations by the Committee of the Parties, showing the importance of addressing all forms of violence against women with due regard for the specific experiences of women with disabilities, migrant and refugee women, national and/or ethnic minority women, women with addiction issues and any other women at risk of intersectional discrimination.<sup>342</sup> Since the beginning of supervision, progress in this area has become visible in several countries, including Austria,<sup>343</sup> Portugal<sup>344</sup> and Sweden.<sup>345</sup> For example, in Sweden, the government provided support to the Sami Parliament in preventing and combating violence against Sami women and girls<sup>346</sup> and it assessed the situation of women with disabilities.<sup>347</sup> Portugal introduced specialised domestic violence shelters for elderly women victims of domestic violence, for migrant women and for women with physical disabilities and cognitive impairments.<sup>348</sup>

■ Albania increased training for gender budgeting and financed the setting-up of the first ever sexual violence referral centres.<sup>349</sup> There has been an overall increase in funding for essential measures to prevent and combat violence against women in Austria<sup>350</sup> and Sweden,<sup>351</sup> including higher and more stable funding for specialist support services. Montenegro increased funds for programmes and projects run by NGOs on combating violence against women and promoting gender equality,<sup>352</sup> as well as for domestic violence shelters and other specialist support services.<sup>353</sup>

■ National co-ordinating bodies continue to become increasingly stable as their mandates, structures and resources grow, and their impact in ensuring the development of comprehensive policies on all forms of violence against women is beginning to show. GREVIO's more recent baseline evaluations highlight examples of national action plans for the implementation of the Istanbul Convention and legislation that are firmly based on the convention's concepts and principles.<sup>354</sup>

■ While limited service reach and serious funding constraints continue to place significant restrictions on the potential of specialist support services for victims of gender-based violence, especially for women and girls exposed to intersectional forms of discrimination, progress is being made in introducing or rolling out dedicated services for victims of sexual violence.<sup>355</sup>

341. States who have ratified: Albania, Andorra, Austria, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, Denmark, Estonia, Finland, France, Georgia, Germany, Greece, Iceland, Ireland, Italy, Liechtenstein, Luxembourg, Malta, the Republic of Moldova, Monaco, Montenegro, the Netherlands, North Macedonia, Norway, Poland, Portugal, Romania, San Marino, Serbia, Slovenia, Spain, Sweden, Switzerland, Ukraine and the United Kingdom.

States who have signed but not ratified: Armenia, Bulgaria, the Czech Republic, Hungary, Latvia, Lithuania and the Slovak Republic.

342. The Committee of the Parties also issued the [Recommendation](#) on the implementation of the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence by Turkey (2019) which later withdrew from the Istanbul Convention.

343. [Committee of the Parties conclusions on the implementation of the recommendations in respect of Austria](#), recommendations 1, 2, 3, 4, 5 and 9.

344. [Committee of the Parties conclusions on the implementation of the recommendations in respect of Portugal](#), recommendations 2, 3 and 5.

345. [Committee of the Parties conclusions on the implementation of the recommendations in respect of Sweden](#), recommendations 1, 3 and 8.

346. [GREVIO Baseline Evaluation Report Sweden](#), paragraph 126.

347. *Ibid.*

348. [GREVIO Baseline Evaluation Report Portugal](#), paragraph 17.

349. [Committee of the Parties conclusions on the implementation of the recommendations in respect of Albania](#), recommendations 1 and 4.

350. [GREVIO Baseline Evaluation Report Austria](#), paragraph 2.

351. [GREVIO Baseline Evaluation Report Sweden](#), paragraph 28.

352. [GREVIO Baseline Evaluation Report Montenegro](#), paragraph 262.

353. *Ibid.*, paragraph 129.

354. See for example [GREVIO's baseline evaluation report on Switzerland](#), paragraph 8. See also [GREVIO's baseline evaluation report on Georgia](#), paragraph 34.

355. Second General Report on GREVIO's Activities, paragraph 98, published in April 2021, available at <https://rm.coe.int/grevio-s-second-activity-report-2021/1680a2165c>.



■ Criminal legislation in many countries is being ever more aligned with the requirements of the Istanbul Convention and progress is emerging in criminalising and prosecuting violence against women in the digital sphere in line with GREVIO's recommendation on the issue, a key tool for states in the face of a growing threat.<sup>356</sup>

■ The strength of the Istanbul Convention is also demonstrated by the way in which 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 *G.M. and Others v. the Republic of Moldova*,<sup>357</sup> *Malagić v. Croatia*,<sup>358</sup> *I.M. and Others v. Italy*,<sup>359</sup> *J.I. v. Croatia*,<sup>360</sup> *C. v. Romania*,<sup>361</sup> *M.S. v. Italy*,<sup>362</sup> *De Giorgi v. Italy*,<sup>363</sup> *Landi v. Italy*,<sup>364</sup> and *Y. and Others v. Bulgaria*.<sup>365</sup> GREVIO continues to cite the Court's case law in its baseline evaluation reports, for example in recent reports on Bosnia and Herzegovina, Cyprus, Georgia, Germany, Iceland and Romania.

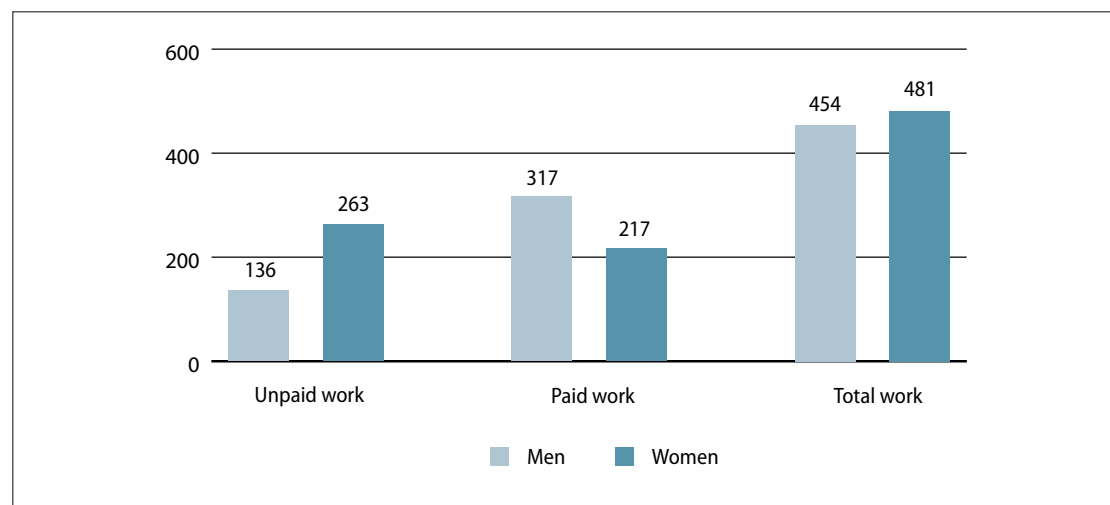
■ The Assembly, with its General Rapporteur on violence against women and the Parliamentary Network Women Free from Violence, called for regular debates on preventing and combating violence against women in national parliaments.

■ The impact of Covid-19 and other emerging crises were considered in the swift re-assessment of needs and adaptation of Council of Europe action and co-operation programmes.

■ Gender-blind decision making relating to the Covid-19 pandemic resulted in women disproportionately bearing the burden of emergency measures, especially during lockdown periods. The most dramatic consequence was the significant rise in domestic violence resulting from the widespread application of lockdowns.

■ The disproportionate burden of unpaid household and care work on women during the pandemic also had a significant impact on women's economic independence. School and childcare closures forced parents, and especially women, to take on additional unpaid care work in countries as diverse as the United Kingdom, Italy and Spain.<sup>366</sup>

#### Time spent by women and men in paid and unpaid work (OECD, 2023, minutes/day)



Source: Employment: Time spent in paid and unpaid work, by sex (oecd.org)

356. See for example GREVIO's baseline evaluation report on Estonia, paragraphs 166 and 216, and GREVIO's baseline evaluation report on Germany, paragraph 236.

357. Application No. 44394/15, 22 November 2022.

358. Application No. 29417/17, 17 November 2022.

359. Application No. 25426/20, 10 November 2022.

360. Application No. 35898/16, 8 September 2022.

361. Application No. 47358/20, 30 August 2022.

362. Application No. 32715/19, 7 July 2022.

363. Application No. 23735/19, 16 June 2022.

364. Application No. 10929/19, 7 April 2022.

365. Application No. 9077/18, 22 March 2022.

366. See <https://www.oecd.org/coronavirus/policy-responses/caregiving-in-crisis-gender-inequality-in-paid-and-unpaid-work-during-covid-19-3555d164/>.

■ Some member states integrated a gender dimension in their response to the pandemic. In Spain for instance, the Recovery, Transformation and Resilience Plan (PRTR) was developed in response to the strong impact of the pandemic on the Spanish economy. Gender equality was mainstreamed in the plan to promote equal treatment and opportunities between women and men.

■ Institutional mechanisms for gender equality have an important role to play in adopting measures to mitigate the social and economic impacts of crises on women due to structural gender inequalities, the fact that women are overrepresented in sectors providing essential services, the increased burden of unpaid care work and women's heightened exposure to various forms of violence.

■ Discriminatory distribution of marital assets in divorce proceedings and the ongoing failure to consider the value of women's unpaid care and domestic work continue to perpetuate women's economic vulnerability. Women still face challenges in enforcing alimony and child maintenance orders, which further contributes to the feminisation of poverty.

■ The Council of Europe supports national authorities in addressing the impact of the Russian Federation's aggression against Ukraine in its work with victims of violence against women, including internally displaced persons and migrant, refugee and asylum-seeking women and girls. In Ukraine, civil society organisations provided vital support to women.<sup>367</sup>

■ The [Committee of Ministers Recommendation CM/Rec\(2022\)17 on protecting the rights of migrant, refugee and asylum-seeking women and girls](#) was adopted in May 2022. Drawing on Council of Europe treaties, including the Istanbul Convention, it addresses issues faced by women and girls – from adequate transit and reception facilities to women's and girls' health needs – and aims to foster empowerment and gender-sensitive migration, integration and asylum policies. Also drawing on findings from the European Committee on the Prevention of Torture and from relevant United Nations instruments, it provides member states with a checklist of measures to ensure that the rights of all migrant, refugee and asylum-seeking women and girls are better protected.

■ In Croatia, a visibility package was developed to promote the recommendation in the national language. In the Republic of Moldova, a checklist for gender mainstreaming was developed to inform the country's response to the refugee crisis and reinforce a human rights-based approach to the national humanitarian response.

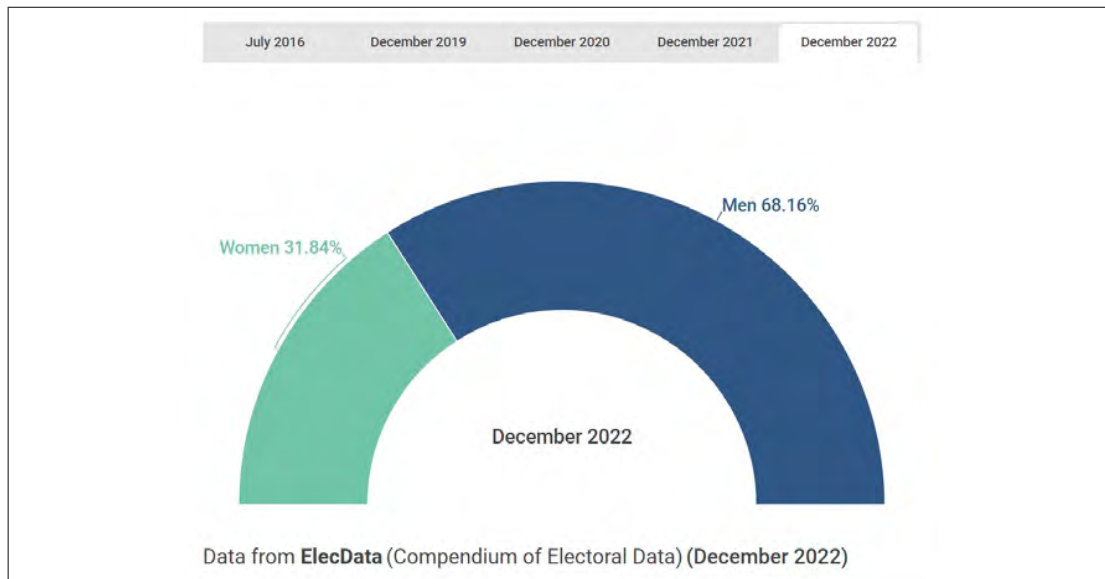
■ Sexist behaviour and gender stereotypes continue to prevent further progress in achieving effective equality between women and men in Europe and beyond. [Recommendation CM/Rec\(2019\)1 on combating and preventing sexism](#) gained wider visibility through the promotional campaign "Sexism: See it. Name it. Stop it", with a toolbox made available to member states. In Luxembourg, a [campaign](#) was launched in November 2022 by the Ministry of Equality between Women and Men to promote the recommendation.

■ The Council of Europe's Gender Equality Division, Women Against Violence Europe Network (WAVE) and UN Women have developed a [methodology](#), including advocacy resources and tools to support civil society organisations in promoting the Istanbul Convention.

■ The high-level conference "Work-life balance as a leverage for women's empowerment and promoting gender equality", organised in 2022, led to [conclusions](#) that the gendered division of roles linked to the care of dependants (children, elderly people, ill people or those with disabilities) hampers women's access to the labour market and to decision-making positions and limits their professional development/choice of career or occupational field. Concrete measures were proposed to promote the equal sharing of responsibilities, with a view to their possible inclusion in the third Council of Europe Gender Equality Strategy.

<sup>367</sup>. See <https://www.coe.int/en/web/genderequality/-/ukrainian-civil-society-organisations-provide-vital-support-to-women-during-war>.

## Parliamentarians in Council of Europe member states



Source: [Gender Equality in parliaments \(minimum 40% representation of each sex\)\\* - Electoral assistance \(coe.int\)](#)

■ 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 and women's rights remain high. This was also confirmed by the adoption of the [Dublin Declaration](#) in 2022, through which 38 Council of Europe member states committed to promoting gender equality in order to help prevent domestic, sexual and gender-based violence.

■ Increasing efforts were made to ensure a gender-mainstreaming approach across all policies and activities of the Council of Europe. For example, gender mainstreaming is part of the work on drug abuse and illicit trafficking, intercultural integration and media – with a focus on the safety of women journalists. Pioneering activities were also being developed in relation to gender equality and antidoping, national minorities and minority languages.

■ Positive trends have been observed in the results of co-operation programmes, in increased awareness among women of the Istanbul Convention and in efforts to ensure co-operation among different bodies to combat violence against women and to deliver support to victims. A new HELP programme on combating violence against women and domestic violence tailored to law-enforcement agencies was made available.

## 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 all forms of violence against children are in place.
- ▶ Child participation is recognised as a right and ensured systematically in matters that concern children.
- ▶ All children, including those in situations of vulnerability, have access to justice and their rights are protected.
- ▶ Promising practices to address major common challenges at the national level are identified through the monitoring of the Lanzarote Convention.
- ▶ Child victims and witnesses of sexual violence, as well as children alleged to be perpetrators, are adequately assisted and supported in a holistic multi-agency framework, backed by relevant legislative and institutional frameworks.
- ▶ Initiatives to measure and raise awareness on the scourge of sexual violence against children are taken.

## Findings

■ Although children are entitled to the full protection of all international human rights treaties, 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 pervasive social norms that condone violence against children and deny them agency, makes children a category of people particularly at risk during any crisis or emergency situation. 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 underreported.

■ In recent years, children's lives in Europe have been marked by technological developments, climate change, armed conflict (particularly since the aggression of the Russian Federation against Ukraine) and public health challenges, particularly the Covid-19 pandemic which significantly interrupted the functioning of society. These challenges have changed children's role and expectations in decision-making processes. More than ever before, an increasing number of children are raising their voices to defend their own rights and the causes they believe in, such as the fight against climate change.

### The Council of Europe Strategy for the Rights of the Child (2022-2027) – Children's rights in action: from continuous implementation to joint innovation

On 23 February 2022, the Committee of Ministers adopted the new [Strategy for the Rights of the Child \(2022-2027\)](#), the "[Rome Strategy](#)", confirming its long-standing commitment to put children at the centre of its work.

The strategy is a result of consultations, which included national governments, international organisations and civil society organisations and 220 children from 10 member states. It guides member states in strengthening the rights of the child, identifying six strategic objectives that flow from previous priority areas and respond to new areas of concern. These are:

- ▶ freedom from violence for all children;
- ▶ equal opportunities and social inclusion for all children;
- ▶ access to safe use of technologies for all children;
- ▶ child-friendly justice for all children;
- ▶ giving a voice to every child;
- ▶ children's rights in crisis and emergency situations.

As children are disproportionately affected by the current rise in poverty, social exclusion, discrimination and violence, the strategy focuses on strengthening child protection systems and child-friendly social services. It includes a new strategic objective on protecting children in crisis and emergency situations, including as they flee their country as refugees, and for children affected by climate change.

The Steering Committee for the Rights of the Child (CDENF) guides work to implement the strategy.

■ The fight against sexual exploitation and sexual abuse of children continues to be a priority, and the [Lanzarote Convention](#) continues to foster improvements at national level. Its monitoring body, the Lanzarote Committee, continues its work by identifying progress and issuing recommendations and looking at new trends, including those related to information and communication technologies.

■ 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. The issues of child sexual abuse in the circle of trust, online sexual exploitation of children and sexual exploitation and sexual abuse of children in crisis and emergency situations remain high on the political agenda in Europe and they have all been addressed by the Lanzarote Committee.

## General action on children's rights

■ Since 2021, at least seven member states<sup>368</sup> have adopted a strategy or action plan on the rights of the child and other countries have adopted specific strategic documents in dedicated thematic areas.<sup>369</sup>

368. Andorra, Croatia, Finland, Greece, Iceland, Italy and Slovenia.

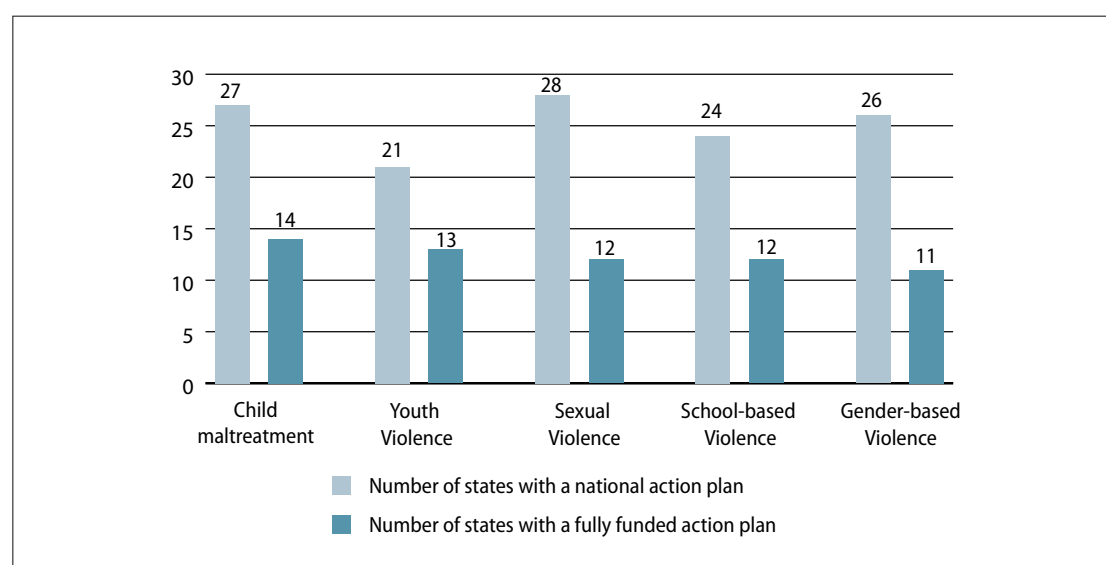
369. Council of Europe (2022), Council of Europe Strategy for the Rights of the Child (2016-2021), [Final implementation report](#).

■ The Covid-19 pandemic brought in restrictive measures such as lockdowns and school closures that negatively affected children's rights and freedoms. Children were less visible, met obstacles in accessing quality education or in reporting cases of violence or abuse and saw their physical and mental well-being decrease.<sup>370</sup> The Commissioner for Human Rights called on the German authorities to consider school closures as a measure of last resort only, when other measures had proven ineffective.<sup>371</sup>

## Violence against children

■ Most member states have put legislative and policy measures in place to protect children from violence, and more than 25 states have developed an integrated strategy on violence against children. Since 2021, at least 12 states<sup>372</sup> have adopted strategic documents, including national programmes and action plans, on various issues including trafficking, gender-based violence, sexual violence, prostitution and online violence.

### Number of states with national action plans by type of violence<sup>373</sup>



■ Progress in the prohibition of corporal punishment has been stagnant since 2020. Thirty-four member states have banned it in all settings, but there is room for progress. The Court has found that Croatia failed to provide an adequate and effective response to a public school teacher's verbal abuse of a student.<sup>374</sup>

■ In the past two years, seven member states<sup>375</sup> have taken action to fight online violence against children and at least five member states<sup>376</sup> have set up or reinforced their helplines for child victims of violence. The fight against bullying both online and offline has been reviewed in at least seven member states.<sup>377</sup> Very few member states address the needs and consider the risks for children in care and with disabilities, even in the context of sports.

■ The Commissioner for Human Rights has welcomed steps taken by Portugal to ensure that children who witness domestic violence are considered as victims and receive adequate protection.<sup>378</sup> Other member states have adopted legislation or policies to protect children from violence in the circle of trust and the family, including Austria, Denmark, Greece, Ireland, Norway, Ukraine and the United Kingdom.

370. Ibid.

371. Commissioner for Human Rights (2021), [Germany should pursue efforts to fully ensure children's rights, Letter to the German authorities, 31 August 2021](#).

372. Belgium, Bulgaria, Finland, France, Hungary, Iceland, Ireland, Italy, Norway, the Slovak Republic, Spain and the United Kingdom.

373. World Health Organization (2021), [European regional status report on preventing violence against children 2020](#).

374. *F.O. v. Croatia*, Application No. 29555/13, 28 April 2021.

375. Denmark, France, Germany, Iceland, Italy, Norway and Poland.

376. France, Georgia, Iceland, Italy and Poland.

377. Belgium, Finland, France, Germany, Italy, Poland and Serbia.

378. Commissioner for Human Rights, [Memorandum on combating racism and violence against women in Portugal, 24 March 2021, CommDH\(2021\)4](#).

■ The Court found<sup>379</sup> that the United Kingdom had failed to take adequate measures to protect children who were prosecuted despite credible suspicion that they were victims of trafficking. Bulgaria, Greece and Hungary have undertaken action to prevent and improve the protection of child victims of trafficking.

## Protection of children against sexual abuse and exploitation

■ In April 2021, the Lanzarote Convention entered into force in Ireland, the last member state to ratify this convention that currently counts all Council of Europe member states, the Russian Federation and Tunisia.<sup>380</sup> It is open to accession by any country in the world, whether or not they are a member state, and efforts are being made to increase its geographical scope of protection. European Union accession to the Lanzarote Convention is a Council of Europe priority.

■ Through projects in Finland, Georgia, Ireland, the Republic of Moldova, Slovenia, Spain and Ukraine, the Council of Europe has developed tailored support to strengthen legislation and practice to prevent, and protect children against, violence, especially online and offline sexual violence. Ukraine has adopted an act on implementation of the convention and the Republic of Moldova has set up a national co-ordination committee. Fifteen states reported taking action to prevent or fight sexual violence against children and Finland adopted its first action plan for the implementation of the Lanzarote Convention.<sup>381</sup>

■ Child sexual exploitation and abuse increased during the Covid-19 pandemic, including self-generated sexual images and videos. The Lanzarote Committee has called for explicit references to child self-generated sexual materials in domestic law and specific action against children being blackmailed because of sexual images, asking 23 out of 43 countries monitored to help child victims recover from the long-term impact of such offences.<sup>382</sup>

■ The committee highlighted promising practices from parties to combat online child sexual exploitation and abuse. Portugal and Denmark conduct mandatory training for law-enforcement officials on handling cyber-related crime, including offences related to child self-generated sexual images and/or videos, as well as interviewing child victims and collecting forensic evidence. The Icelandic Criminal Code provides that offences covered by the Lanzarote Convention can be prosecuted under Icelandic law even if committed outside Iceland and irrespective of the identity of the perpetrator. In Slovenia, law-enforcement officials visit elementary schools around the country to educate children, parents and school staff about the safe use of the internet, focusing on the dangers of producing and distributing self-generated sexual material. In the state of Baden-Württemberg in Germany, topics related to sexuality and sexualised violence in a digital context will be addressed in age-appropriate discussions at all education levels. Slovenia is the only country where using force or threats to obtain self-generated sexual material from a child constitutes a distinct criminal offence, and the committee has called for wider adoption of such laws.

■ High-profile cases of child abuse in sport, including sexual abuse cases, continue to come to light and perpetrators are often not prosecuted. Austria, Belgium, Bulgaria, Croatia, Norway and Portugal are strengthening policy and legal frameworks, advice and support structures, education and training frameworks and case management systems with concrete steps for setting up child safeguarding officers in sport with the support of the Enlarged Partial Agreement on Sport (EPAS). Croatia, Finland, France, Georgia, Greece, the Netherlands, Norway, Portugal and Spain have launched the EPAS “Start to Talk” campaign.<sup>383</sup>

■ In the case *N.C. v. Turkey*,<sup>384</sup> the Court found that a girl who was sexually exploited was not given help, protected from her abusers or given a safe environment for hearings. She was forced to experience the unnecessary reconstruction of the rape incidents and endure repeated medical examinations, as well as having her consent assessed.

379. *V.C.L. and A.N. v. the United Kingdom*, Application Nos. 77587/12 and 74603/12, 16 February 2021.

380. Status as of 1 November 2022.

381. See [Finland launches the Action Plan to implement the Lanzarote Convention](#).

382. Lanzarote Committee (2022), “Implementation report on the protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs): addressing the challenges raised by child self-generated sexual images and/or videos”.

See also [Lanzarote Committee \(2022\)](#): Key monitoring findings “The protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies (ICTs): addressing the challenges raised by child self-generated sexual images and/or videos”.

383. European Network of Sport Education (2021), “Start to Talk – Final Interim Evaluation Report”.

384. *N.C. v. Turkey*, Application No. 40591/11, 9 February 2021.



## Equal opportunities

■ Children in vulnerable situations have been even more exposed to risks during the pandemic and have severely suffered from the consequences of lockdowns, and the crisis has revealed or increased discrimination and inequalities. The negative impact of the pandemic on children's mental health has been acute. In fact, the main reason for contact reported by child helplines in Europe in 2021 was mental health (41.7%), followed by violence (17.9%).<sup>385</sup>

■ Austerity measures continue to hamper children's social rights, but most member states have made changes in their legislation or policies to tackle child poverty and social exclusion. The latest conclusions published by the European Committee of Social Rights<sup>386</sup> highlight action in the Netherlands to further reduce child poverty and the adoption by Norway of an equal opportunities strategy for children. Most European Union member states have adopted or are in the process of adopting action plans on the EU Child Guarantee. The Commissioner for Human Rights has called on the United Kingdom to take urgent measures to combat child poverty by addressing structural shortcomings in the welfare and benefits system and tackling food insecurity and inadequate housing among children.<sup>387</sup>

■ While deinstitutionalisation remains a challenge, five member states<sup>388</sup> are acting to reduce the number of children living in institutions. At least 10 states<sup>389</sup> have undertaken reforms or improvements in the alternative care system and five<sup>390</sup> have changed laws or policies to better protect children with disabilities.

■ There are few initiatives regarding national minority and Roma children (three member states), and relatively few initiatives have been reported on protecting LGBTI children (four member states).

■ The Venice Commission concluded that there was no evidence that the depiction of diverse gender identities and sexual orientations in the public sphere could adversely affect children whose interest was to obtain information about sexuality, sexual orientation and gender identity. This followed Hungary's adoption of a law banning discussion of gender identity in the public sphere.<sup>391</sup>

## Children and technologies

■ At least 10 member states have introduced strategies or action plans to protect children online, while others have adopted regulations or launched awareness-raising campaigns on cyberbullying, cyber-grooming, hate speech, victim recognition, age verification, artificial intelligence, data protection or privacy.<sup>392</sup>

■ The Covid-19 pandemic led to an increased use of technologies by children, exposing them to online child sexual abuse and exploitation. As schools closed, e-learning became a cornerstone for most children. Guaranteeing an inclusive education, including for children with disabilities, children in migration or children living in poverty raised new challenges for states. Availability of and access to high-quality online education has been unequal, within and between countries.<sup>393</sup> The pandemic has shown that those countries endowed with more advanced digital services have managed to be more resilient and adapt more easily, including in online schooling, care and support. The Council of Europe Guidelines on children's data protection in an education setting<sup>394</sup> outline the need to ensure that the full range of the rights of the child are met.

## Child-friendly justice

■ At least 30 member states have changed their legislation and/or policy to implement the Committee of Ministers' Guidelines on child-friendly justice. CEPEJ indicates that 33 member states and observers have special methods in place to prepare children for trials or lawsuits. Twenty-three states and observers use special ways to communicate and explain court decisions. Other states offer training for judges and other legal professionals on child-friendly justice. Most states have an age threshold of 18 for child-friendly proceedings.<sup>395</sup>

385. Child Helpline International (2022), [Voices of Children & Young People Around the World, Global Child Helpline Data from 2021](#).

386. European Committee of Social Rights (2021), [Conclusions 2021](#).

387. Commissioner for Human Rights (2022), [United Kingdom: Commissioner warns against regression on human rights, calls for concrete steps to protect children's rights and to tackle human rights issues in Northern Ireland](#), 9 December 2022, CommDH(2022)27.

388. Georgia, Greece, Poland, Serbia and the Slovak Republic.

389. Cyprus, France, Germany, Greece, Ireland, Norway, Poland, Serbia, the Slovak Republic and the United Kingdom.

390. Greece, Italy, Malta, Serbia and the United Kingdom.

391. Venice Commission (2021), [Opinion on the compatibility with international human rights standards of Act LXXIX amending certain acts for the protection of children](#).

392. Bosnia and Herzegovina, Croatia, Cyprus, Hungary, Ireland, Monaco, Norway, Portugal, the Slovak Republic and Sweden.

393. Council of Europe Strategy for the Rights of the Child (2016-2021), [Final implementation report](#).

394. See [Guidelines on children's data protection in an education setting](#).

395. European Commission for the Efficiency of Justice (2022), [European judicial systems CEPEJ Evaluation Report](#).

Some 10 member states adapted their justice system to the needs of children in conflict with the law.<sup>396</sup> In some member states, the minimum age of criminal responsibility is still too low. In Ireland, Switzerland and parts of the United Kingdom,<sup>397</sup> children can be prosecuted for criminal offences from the age of 10. The Commissioner for Human Rights and the Parliamentary Assembly have already called on member states to set a minimum age of criminal responsibility of at least 14.<sup>398</sup>

Juvenile specialised courts exist in France, Italy, Malta, Spain, Switzerland and Türkiye. In other countries, child-friendly mechanisms for juvenile justice have been embedded in the justice system, through specialised chambers, sections and judges that exist within courts of general jurisdiction.<sup>399</sup>

Ireland adopted the Youth Justice Strategy 2021-2027, with the objective of diverting child offenders from the criminal justice system and focusing on early intervention and family support. In 2021 and 2022, the Council of Europe assisted the Slovenian authorities to reform the juvenile justice system to ensure the fair treatment of all children who have committed or are accused of having committed an offence, by taking into consideration their personal circumstances and ensuring their reintegration into society.

Regarding children deprived of liberty, the European Committee for the Prevention of Torture has observed various shortcomings and recalls that juveniles are vulnerable and should be held in an appropriate environment and be provided with adequate care and support. In some states, detained young people are subjected to police questioning without the presence of a lawyer, are not always properly interviewed and examined by a healthcare professional shortly after their admission to an institution and are sometimes accommodated with unrelated adults. Solitary confinement and restraint (sometimes combined with forcibly administered medication) as disciplinary punishment measures are still imposed on juveniles for extended periods of time and unaccompanied children are sometimes placed in immigration detention.

The CPT has noted positive developments in various countries. In Spain<sup>400</sup> steps are being taken to reduce and then abolish the use of restraint of children. In Germany,<sup>401</sup> the range of cases in which a lawyer must be appointed before the first police interview has been broadened. In Greece,<sup>402</sup> measures have been taken to officially end the policy of holding unaccompanied children in “protective custody” in police stations and plans were put in place to transfer unaccompanied children from reception centres and emergency accommodation on the islands to safe accommodation on the mainland. In Romania,<sup>403</sup> police staff with custodial duties in contact with children are being trained and there has been a reduction in the overall number of children placed in detention. In Serbia,<sup>404</sup> children were transferred to appropriate premises and special sections for children have been included through renovations of the premises.

The European Court of Human Rights and the Lanzarote Committee have stressed that investigative and judicial proceedings have to protect the best interests and rights of children, including child-friendly and protective measures for child victims and witnesses. In *R.B. v. Estonia*,<sup>405</sup> the Court found that the authorities made no distinction between adults and children. In *X and Others v. Bulgaria*,<sup>406</sup> concerning child sexual abuse in an orphanage, the Court found that the authorities failed to use all reasonable investigative and international co-operation measures and to give proper weight to the views of the abused child.

CEPEJ highlights special arrangements to protect children when they participate in judicial proceedings. At least six member states<sup>407</sup> have implemented changes in the past two years to protect the rights of child victims and witnesses when they come into contact with the justice system. In Germany, children are entitled to free psychosocial assistance during proceedings and in Poland, special accelerated proceedings in domestic violence cases were introduced and the statute of limitations for crimes against children was extended in

396. Belgium, Cyprus, Germany, Greece, Italy, Poland, Serbia, the Slovak Republic, Slovenia and the United Kingdom.

397. The rules are different in Scotland.

398. See Parliamentary Assembly of the Council of Europe (2014), [Resolution 2010 \(2014\) “Child-friendly juvenile justice: from rhetoric to reality”](#) and the Commissioner for Human Rights, [Letter to the Convener of the Scottish Parliament’s Equalities and Human Rights Committee](#), 16 January 2019.

399. European Commission for the Efficiency of Justice (2022), [European judicial systems CEPEJ Evaluation Report](#).

400. CPT (2021), [Report to the Spanish Government on the visit to Spain carried out by the CPT in 2020](#).

401. CPT (2022), [Report to the German Government on the periodic visit to Germany carried out by the CPT in 2020](#).

402. CPT (2022), [Report to the Greek Government on the ad hoc visit to Greece carried out by the CPT in 2021](#).

403. CPT (2022), [Report to the Romanian Government on the ad hoc visit to Romania carried out by the CPT in 2021](#).

404. CPT (2022), [Report to the Serbian Government on the periodic visit to Serbia carried out by the CPT in 2021](#).

405. *R.B. v. Estonia*, Application No. 22597/16, 22 June 2021.

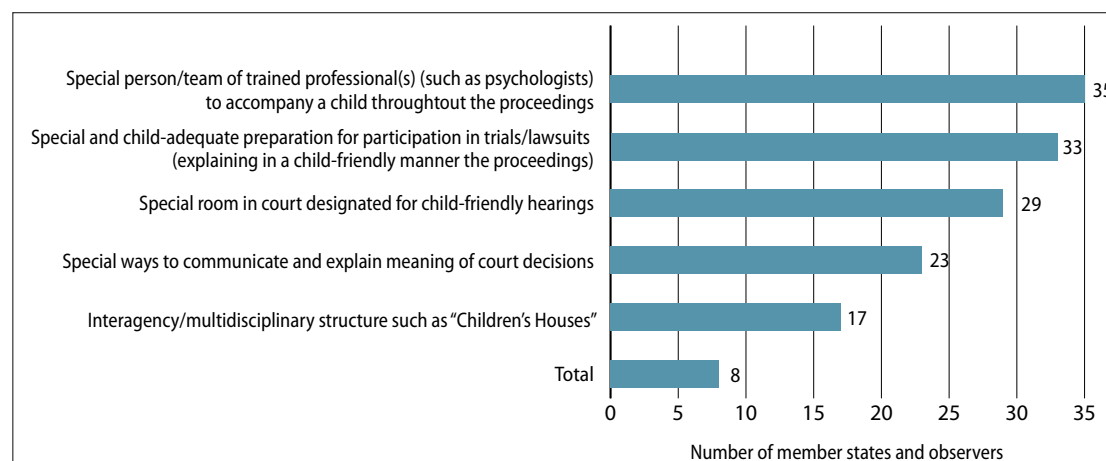
406. *X and Others v. Bulgaria*, Application No. 22457/16, 2 February 2021.

407. Austria, Denmark, Georgia, Iceland, Ireland and the United Kingdom.

response to the increase in domestic violence during the pandemic.<sup>408</sup> Special child-friendly hearing and interrogation rooms exist in Austria, France, Georgia, Poland, the Slovak Republic, Slovenia, Türkiye and Ukraine.<sup>409</sup>

■ Member states are committed to creating children's houses (Barnahus model).<sup>410</sup> The Council of Europe is carrying out four such projects with the European Commission in Ireland, Finland, Slovenia and Spain. Slovenia is the first country in Europe to regulate, with a unique comprehensive law, the establishment and operation of children's houses.

### Special arrangements for the protection of children in judicial proceedings<sup>411</sup>



■ Most member states have strengthened the rights of the child within family law disputes, including in the determination of their best interests, the fulfilment of their right to be heard and the adequate enforcement of decisions.

### Child participation

■ Most member states have changed their legislation and/or policy to implement children's right to participation. At least 20 member states are integrating child consultations in their decision-making processes. In Slovenia, children were consulted when the Barnahus model was developed and they were involved in drafting the Andorran Action Plan on Children and Adolescence.<sup>412</sup>

■ Since 2021, Finland, France, Greece, Hungary and Iceland have stepped up efforts to involve children – including those with hearing and physical impairments – in decision-making processes at local, national and European levels, using the [Child Participation Assessment Tool of the Council of Europe](#), even during the Covid-19 pandemic. The CP4Europe<sup>413</sup> Child Advisory Team composed of 14 children from the above-mentioned countries, is leading the preparation of a child-friendly version of the assessment tool and a campaign package with tools to promote child participation.

■ At least 16 member states are undertaking legislative or policy action to strengthen child participation either at national, regional or local level. Austria has recently reduced the voting age for work councils from 18 to 16 and at least five member states<sup>414</sup> have reinforced children's right to be heard in administrative or judicial proceedings. Denmark, Finland, Georgia, Greece and Poland are also promoting children's citizenship

408. European Commission for the Efficiency of Justice (2022), [European judicial systems CEPEJ Evaluation Report](#).

409. Ibid.

410. The "Barnahus model" (Children's House) is the leading European response model for child sexual abuse. Its unique inter-agency approach brings together all relevant services under one roof to avoid re-victimisation of the child and provide every child with a co-ordinated and effective response that has a legal standing. The core purpose of Barnahus is to co-ordinate parallel criminal and child welfare investigations and provide support services for child victims and witnesses of violence in a child-friendly and safe environment.

411. European Commission for the Efficiency of Justice (CEPEJ) (2022), [European judicial systems CEPEJ Evaluation Report](#).

412. The plan also establishes the Committee for Children and Adolescents, which will collaborate with the Andorran Government in all areas affecting young people.

413. The European Union–Council of Europe joint project CP4EUROPE – [Strengthening National Child Participation Frameworks and Action in Europe](#) aims to contribute to the promotion of children's rights to participation at national and pan-European levels in accordance with Council of Europe standards and tools in this area.

414. Finland, France, Greece, Hungary and Iceland.

education by integrating human and children's rights in school curriculums. The United Kingdom is encouraging children to act as defenders of the environment, through its Sustainability and Climate Change Strategy.

■ Some 306 children from 10 Lanzarote Convention signatory countries were consulted during the monitoring on protecting children against sexual exploitation and sexual abuse facilitated by information and communication technologies.<sup>415</sup> Their views are included in the report on the challenges raised by child self-generated sexual images and/or videos<sup>416</sup> and were used by the Lanzarote Committee in drafting its recommendations.

■ In 2021, Armenia ratified the optional protocol to the United Nations Convention on the Rights of the Child, becoming the 28th member state to do so.<sup>417</sup>

■ The Commissioner for Human Rights has called on member states to strengthen the available channels for effective child participation, involve children in identifying policy priorities, support child-led initiatives and consider lowering the voting age to boost democratic participation.<sup>418</sup>

## Children in crisis and emergency situations

■ As of 19 December 2022, at least 428 children had been killed and 790 had been injured in Ukraine,<sup>419</sup> while millions are seeing their lives disrupted and their rights violated. Children are forced to leave their homes, either with their families or as unaccompanied migrants or refugees and flee to other European countries. Thousands of children are thought to have been forcibly deported to the Russian Federation.<sup>420</sup> Following a visit to Ukraine, the Commissioner for Human Rights stressed the numerous violations of children's rights including their right to life and their ability to access healthcare and education, as well as numerous other violations of their rights.<sup>421</sup>

■ The Lanzarote Committee secretariat prepared a checklist<sup>422</sup> and handbook,<sup>423</sup> to support policy makers and frontline practitioners to prevent and protect children against sexual exploitation and sexual abuse in crisis and emergency situations. Additionally, the Lanzarote Committee adopted a statement on protecting children from sexual exploitation and sexual abuse resulting from the Russian Federation's war against Ukraine.<sup>424</sup>

■ The 2022 fact-finding missions by the Special Representative of the Secretary General on Migration and Refugees (SMSG) focused mostly on Ukrainian refugees, including children. In the Czech Republic,<sup>425</sup> Slovakia<sup>426</sup> and Poland,<sup>427</sup> the SMSG found that there were shortcomings in the registration of unaccompanied children. The SMSG expressed concerns about the mental health of Ukrainian refugee children, due to the lack of trained psychologists and social workers in all receiving countries. The SMSG praised the outstanding efforts and promptness of Poland<sup>428</sup> in response to the influx of refugees, including the special law on assistance, which provides for temporary guardianship and foster care for unaccompanied children.

415. See [Lanzarote Committee, 2nd monitoring round](#).

416. Lanzarote Committee (2022), "[Implementation report on the protection of children against sexual exploitation and sexual abuse facilitated by information and communication technologies \(ICTs\): addressing the challenges raised by child self-generated sexual images and/or videos](#)".

417. Albania, Andorra, Armenia, Belgium, Bosnia and Herzegovina, Croatia, Cyprus, the Czech Republic, Denmark, Finland, France, Georgia, Germany, Ireland, Italy, Liechtenstein, Lithuania, Luxembourg, Monaco, Montenegro, Portugal, San Marino, the Slovak Republic, Slovenia, Spain, Switzerland, Türkiye and Ukraine.

418. Commissioner for Human Rights, "[Boosting child and youth participation – from voice to choice](#)", 1 July 2021.

419. Office of the United Nations High Commissioner for Human Rights (2022), [Ukraine: civilian casualty update 19 December 2022](#).

420. Office of the United Nations High Commissioner for Human Rights (2022), [Human rights concerns related to forced displacement in Ukraine](#).

421. Commissioner for Human Rights, [Memorandum on the human rights consequences of the war in Ukraine](#), 8 July 2022, CommDH(2022)18.

422. Lanzarote Committee (2022), [Checklist on the protection of children affected by the refugee crisis from sexual exploitation and sexual abuse: States' main obligations under the Lanzarote Convention on the Protection of Children from Sexual Exploitation and Sexual Abuse](#).

423. Lanzarote Committee Secretariat (2022), "[Handbook on the protection of children against sexual exploitation and sexual abuse in crisis and emergency situations](#)". The handbook is available in Czech, English, French, Hungarian, Polish, Romanian, Slovak and Ukrainian.

424. Lanzarote Committee (2022), [Statement on protecting children from sexual exploitation and sexual abuse resulting from the military aggression of Russia against Ukraine](#).

425. Special Representative of the Secretary General on Migration and Refugees (2022), Report of the fact-finding mission to the Czech Republic, [SG/Inf\(2022\)25](#).

426. Special Representative of the Secretary General on Migration and Refugees (2022), Report of the fact-finding mission to the Slovak Republic, [SG/Inf\(2022\)24](#).

427. Special Representative of the Secretary General on Migration and Refugees (2022), Report of the fact-finding mission to Poland, [SG/Inf\(2022\)30](#).

428. Ibid.

■ The Council of Europe continues its work with professionals in Ukraine, including supporting prosecutors in documenting the violation of children's rights with a focus on sexual violence, capacity building for social workers, and for psychologists on trauma intervention. The Council of Europe is also supporting the Republic of Moldova in protecting the rights of Ukrainian migrant children.

■ Regarding the protection of migrant and refugee children more generally, there are still numerous shortcomings 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. The SRSB has pointed to challenges in Bosnia and Herzegovina<sup>429</sup> and Türkiye<sup>430</sup> relating to the protection of unaccompanied children. The Court has confirmed that during age-assessment procedures the principle of presumption of minority should apply, a guardian or legal representative should be appointed and that there should be access to legal advice and informed participation.<sup>431</sup> The Court has also confirmed that a victim of trafficking, especially a child, cannot be required to self-identify as such, or penalised for not doing so in criminal proceedings, and that there must be clear and weighty reasons for criminal prosecution.<sup>432</sup>

■ Children are rarely provided with child-friendly information; the assistance of an interpreter, free legal aid and access to education and health services are limited. Detention of migrant children has been addressed by the Court, which has found states responsible for the lack of a legal remedy to challenge administrative detention,<sup>433</sup> and for the lack of a review process encompassing all the conditions required for administrative detention to be lawful.<sup>434</sup> The European Committee on Social Rights concluded that the Greek authorities failed to take the necessary measures to guarantee migrant children special protection from physical and moral dangers, and that there was a lack of adequate accommodation, access to education and healthcare.<sup>435</sup>

■ With respect to European nationals held in camps in north-east Syria, the Commissioner for Human Rights has stated that the removal of all foreign children from the camps is an absolute and mandatory priority from the perspective of children's rights, and that to safeguard their best interests, their mothers must be repatriated with them.<sup>436</sup>

■ The protection of migrant and refugee children remains one of the strategic priorities of the Council of Europe. In May 2021, the [Action Plan on Protecting Vulnerable People in the Context of Migration and Asylum in Europe \(2021-2025\)](#) was adopted by the Committee of Ministers. The action plan aims to enhance the protection of vulnerable people in the context of asylum and migration, with a particular focus on children. Ensuring the social inclusion of refugee and migrant children by supporting their transition to adulthood is an important area of the action plan.

## SOCIAL RIGHTS

### Measurement criteria

- ▶ Ratification of the European Social Charter, the number of adopted key provisions of the Charter and acceptance of the collective complaints' procedure.
- ▶ The enjoyment of social rights is guaranteed in times of crisis.
- ▶ The health and safety of all workers are guaranteed in law and practice.
- ▶ All aspects of the right to protection of health are guaranteed, including access to healthcare and measures to prevent epidemic, endemic and other diseases.
- ▶ An adequate level of social and medical assistance is secured, including for persons in vulnerable situations.

429. Special Representative of the Secretary General on Migration and Refugees (2021), Report of the fact-finding mission to Bosnia and Herzegovina, [SG/Inf\(2021\)19](#).

430. Special Representative of the Secretary General on Migration and Refugees (2021), Report of the fact-finding mission to Turkey, [SG/Inf\(2021\)35](#).

431. *Darboe and Camara v. Italy*, Application No. 5797/17, 21 July 2022.

432. *V.C.L. and A.N. v. the United Kingdom*, Application No. 77587/12, 16 February 2021.

433. *R.R. and Others v. Hungary*, Application No. 36037/17, 2 March 2021.

434. *M.D. and A.D. v. France*, Application No. 57035/18, 22 July 2021.

435. [International Commission of Jurists \(ICJ\) and European Council for Refugees and Exiles \(ECRE\) v. Greece](#).

436. Commissioner for Human Rights (2021), [Commissioner publishes her observations on the repatriation of European nationals held in camps in North-East Syria](#).

- ▶ Adequate resources enabling older people to lead a decent life and play an active role in the community are secured and age discrimination is prohibited.
- ▶ Adequate minimum levels of welfare benefits are secured, including unemployment benefits, sickness benefits and disability benefits.
- ▶ Poverty levels and social exclusion are reduced.
- ▶ The right to equal opportunities and equal treatment in employment without gender discrimination is secured, and the pay gap between women and men is reduced.

## Findings

### A multiplication of crises that underline the need for social rights

Europe has faced several large-scale crises over the last few years. Their quick succession and overlapping effects put the resilience of social cohesion in our societies to the test and threatened the enjoyment of social rights for large parts of the population.

We had not turned the page of the Covid-19 pandemic when the Russian military aggression against Ukraine and the widespread brutal attacks on civilians triggered large-scale migration. The situation was difficult for those who fled the conflict and for the communities that received them. It was – and continues to be – dire for those who stayed behind or who were displaced internally.

Covid-19 and the Russian Federation's brutality have been followed closely by a full-blown cost-of-living emergency that is sweeping across Europe. The soaring prices for the most basic commodities and utilities are bringing incredible hardship upon an increasing number of people. The cost-of-living crisis is hitting the poorest the hardest. All of this is a stark reminder that social rights are vital to ensure decent living conditions for everyone.

The [European Social Charter \(ETS No. 35, the Charter\)](#), with its legally binding provisions, remains the irreplaceable benchmark for the continent. It is precisely in these extreme conditions that states must demonstrate their resolve to uphold fundamental rights and step up their efforts to ensure that no one's social human rights suffer erosion – or suppression – especially for those who are in a situation of greater vulnerability.

The European Committee of Social Rights, the Charter's monitoring body, adopted a statement on 24 March 2022 declaring in no uncertain terms that a military aggression is in direct contradiction with the very spirit of the Charter.<sup>437</sup> It emphasised that the Russian Federation's aggression should not result in a reduction of the protection of Charter rights in Ukraine or elsewhere, and that the states parties to that treaty have the duty to take all necessary steps to ensure that the most basic everyday human rights it protects are effectively guaranteed at all times.

Against a backdrop of growing social unrest, states are striving to attenuate the impact of the cost-of-living emergency. However, its magnitude is placing many people on a slippery slope towards poverty and social exclusion. Unlike the ruthless austerity measures deployed in response to the previous economic crisis but drawing instead inspiration from the social rights-sensitive responses to the pandemic, the social safety net based on Charter standards must be firmly supported to protect those in need.

### Commitment of states to the European Social Charter

In times of crisis, the commitment made by states to uphold the human rights enshrined in the European Social Charter takes on a particular significance. The European Committee of Social Rights provides additional valuable insight for states to pursue compliance with social rights exigencies not only in legislation but also in practice. The objective should be that people all over Europe are guaranteed decent living standards that preserve their human dignity.

Observance of social rights as set out in the European Social Charter and engagement with the Charter's monitoring system are thus a matter of good governance for states that are resolved to uphold the most basic everyday human rights for all and intent on preserving social cohesion.

<sup>437</sup>. [Statement of the European Committee of Social Rights on the crisis caused by Russia's military aggression against Ukraine, 24 March 2022.](#)



■ States' resolve to protect those who are the most exposed to situations of vulnerability is also demonstrated by accepting to be bound by more Charter provisions to broaden social rights protection. This is particularly true for the right to protection from poverty and social exclusion, a human rights commitment that too few states have embraced.

■ As of December 2022, 35 member states had ratified the European Social Charter, as revised in 1996, and seven are still bound by the 1961 treaty. Four member states have yet to ratify either version. A total of 16 states parties have ratified the [Additional Protocol of 1995](#) (ETS No. 158) providing for the collective complaints procedure, which is the most modern and effective supervision system.

■ Under Article 22 of the Charter, states report on the provisions that they have not yet accepted. The European Committee of Social Rights examines these reports and assesses which provisions could reasonably be accepted in view of the prevailing situation. In 2022, the situation as regards non-accepted provisions was examined in Finland and Türkiye.

■ Starting in 2023, there will be more engagement with states and national stakeholders such as the social partners (trade unions and employers organisations) in order to encourage acceptance of additional provisions, ratification of the revised Charter by states still bound by the 1961 treaty and acceptance of the collective complaint procedure.

■ On 1 July 2022, Bulgaria accepted eight additional provisions of the Charter, bringing the total number it has accepted to 70 (out of a maximum of 98). The newly accepted provisions relate to vocational guidance and training, social security and migrant workers.

■ Andorra, Armenia and Azerbaijan have announced their intention to accept further provisions under the Charter.

## Modernising the European Social Charter monitoring system

■ In September 2022, the Committee of Ministers adopted a reform package designed to modernise the European Social Charter monitoring system.<sup>438</sup> The declared purpose of this reform is to improve the implementation of social rights in Europe. It confirms the attachment of member states to social rights and to their fulfilment on the continent at a time when challenges abound.

■ The reform provides for enhanced dialogue between states and the Charter bodies (the European Committee of Social Rights and, in the follow-up to its findings, the Governmental Committee of the European Social Charter and the European Code of Social Security). The reform also seeks to make monitoring work more focused on pressing matters. Subject to decisions to be taken by the Charter bodies, this could involve matters related to the cost-of-living crisis or emerging forms of so-called atypical work.

■ In the last few years, the European Committee of Social Rights has started addressing questions to states parties that target more immediate social rights needs. The Covid-19 pandemic received particular attention.

■ With this approach, focused on today's challenges, the European Committee of Social Rights will further develop its case law in sync with the realities faced by rights holders. States will now be required to report every two years (four years for states bound by the collective complaint procedure) but, from time to time, may be asked to provide ad hoc reports on urgent questions identified by the Charter bodies. This quick-reaction mechanism outside reporting cycles will be an opportunity for the committee to sharpen its analysis of topical problems and make known the criteria it will apply when examining those matters in the future.

■ The collective complaint procedure remains unchanged, but follow-up has been simplified. Declared violations of Charter rights followed by Committee of Ministers recommendations will require a single report from the state concerned on action taken to remedy the shortcoming.

■ Closer interaction will also contribute to improving respect for the most basic everyday human rights. As part of the follow-up to the conclusions of the European Committee of Social Rights, this enhanced dialogue (meetings and exchanges with authorities and other stakeholders) will help the Committee of Ministers formulate recommendations, a starting point in assisting states in their endeavour to bring the situation into conformity with the Charter. If the authorities so wish, these good governance responses could also involve co-operation and assistance activities.

438. [Operational proposals for the reform of the European Social Charter system](#), 1444th meeting of the Ministers' Deputies, 27 September 2022.

■ Reflection on the future of the Charter system continues, with both procedural and substantive issues under consideration.

## Decisions adopted in collective complaints

■ The collective complaints procedure adds a democratic dimension to the social rights governance system by giving the initiative to the social partners and to NGOs. It is for them to complain about issues that they consider to be problematic. It is a genuinely adversarial procedure that gives states the opportunity to present their views in detail.

■ In 2022, 16 new collective complaints were lodged with the European Committee of Social Rights, against Greece, France, Ireland, Italy, Norway, Portugal and Spain.<sup>439</sup> The complaints involved a variety of issues such as the impact of austerity measures on the accessibility and affordability of healthcare in Greece, especially for marginalised groups; working conditions of members of the armed forces in Ireland; and allegations that the legal and judicial protection of older people is not ensured in practice in France.

■ Eight decisions on the merits adopted by the European Committee of Social Rights became public in 2022,<sup>440</sup> including four decisions with findings of a violation of the Charter: undue limitation of compensation in cases of workers' unfair dismissal (France, two decisions),<sup>441</sup> repeated temporary contracts of municipal employees in Sicily (Italy)<sup>442</sup> and bogus internships (Belgium).<sup>443</sup>

■ In 2022, the European Committee of Social Rights also adopted a further 11 decisions which are not yet public. It also adopted nine decisions on admissibility, finding seven admissible, one partly admissible and one inadmissible.

## Gender pay gap

■ In April 2022, as a follow-up to the [European Committee of Social Rights "Conclusions 2020"](#) (employment, training and equal opportunities) and on a proposal of the Governmental Committee of the European Social Charter and the European Code of Social Security, the Committee of Ministers adopted recommendations on the need to take measures to tackle the enduring gender pay gap in several states.<sup>444</sup>

## Reporting on health, social security and social protection

■ The Covid-19 pandemic has put public health under the spotlight. It has also highlighted the importance of social protection for those living in poverty or facing social exclusion. Successive crises have compounded vulnerabilities and shown the importance of guaranteeing decent living conditions for all.

■ The European Committee of Social Rights published its conclusions 2021 in respect of 33 states relating to health, social security and social protection.<sup>445</sup> It adopted 165 conclusions of non-conformity with the Charter (41%), 110 conclusions of conformity (27.5%) and requested more information on the rest (31.5%).<sup>446</sup>

439. All new collective complaints available at: <https://www.coe.int/en/web/european-social-charter/pending-complaints>.

440. All decisions on the merits made public pursuant to Article 8, paragraph 2 of the collective complaints protocol and all admissibility decisions are available on the [Hudoc database](#).

441. [Decisions of the European Committee of Social Rights on the merits](#) in *Confédération Générale du Travail Force Ouvrière (CGT-FO) v. France*, Complaint No. 160/2018 and *Confédération générale du travail (CGT) v. France*, Complaint No. 171/2018 became public on 26 September 2022.

442. The [decision of the European Committee of Social Rights in \*Unione sindacale di base \(USB\) v. Italy\*](#), Complaint No. 170/2018, became public on 5 July 2022.

443. The [decision of the European Committee of Social Rights in \*European Youth Forum \(YFJ\) v. Belgium\*](#), Complaint No. 150/2017, became public on 16 February 2022.

444. The 17 recommendations of the Committee of Ministers to member states on the application of the European Social Charter by Albania, Andorra, Armenia, Austria, Azerbaijan, Bosnia and Herzegovina, Denmark, Estonia, Georgia, Hungary, Latvia, Lithuania, Malta, the Netherlands (Curaçao), the Netherlands (Sint Maarten), North Macedonia and Turkey (period 1 January 2015 to 31 December 2018) (Conclusions 2020) (adopted on 20 April 2022, 1432nd meeting of the Ministers' Deputies).

445. This supervisory cycle monitors compliance in the reference period from the reference period 1 January 2016 to 31 December 2019 on the right to safe and healthy working conditions (Article 3), the right to protection of health (Article 11), the right to social security (Article 12), the right to social and medical assistance (Article 13), the right to benefit from social welfare services (Article 14), the right of elderly persons to social protection (Article 23/ Article 4 of the 1988 Additional Protocol in respect of the 1961 Charter), the right to protection against poverty and social exclusion (Article 30) under the revised Charter.

446. European Social Charter News, [Several problems relating to health and social protection still persist in Europe](#), latest annual conclusions from the European Committee of Social Rights, 23 March 2022. The full text of the conclusions for each state referred to in the following can be consulted in the HUDOC database for the European Social Charter: [HUDOC-ESC \(coe.int\)](#).

■ The European Committee of Social Rights provided forward-looking general guidance on several matters of concern through statements of interpretation. For instance, on the right of workers to refrain from performing work outside their normal working hours or while on leave. In a digital context, this is sometimes referred to as the “right to disconnect”. The committee underlined the need to limit and regulate the electronic monitoring of workers which, in addition to interfering with the right to privacy, may have implications for their health.

■ As to social coverage for digital platform workers, the European Committee of Social Rights underlined that states parties must take all necessary steps to ensure that all workers in new forms of employment have a legal status (employee, self-employed or other category) which is in line with their actual situation. Their social security rights must be adequately protected by preventing “bogus” or “false” self-employed arrangements to circumvent the applicable social security regulations.

## Health and safety at work

■ Positive developments noted by the European Committee of Social Rights include: a right to disconnect incorporated into Spanish legislation, protection of domestic workers by occupational safety and health regulations in Montenegro and the development by the Labour Inspectorate of Estonia of a new e-service system, which increases the efficiency of inspections.

■ However, the European Committee of Social Rights found that self-employed and domestic workers were not covered by the occupational health and safety regulations in several states (United Kingdom, Hungary and, only as regards self-employed workers, Andorra). In other cases, it was not established that temporary or interim workers and workers on fixed-term contracts (Serbia and Ukraine), self-employed workers (Republic of Moldova, the Slovak Republic and Ukraine) or domestic workers (Romania, Serbia, the Slovak Republic and Ukraine) were covered by these regulations.

■ The high and increasing numbers of accidents at work and occupational diseases, as well as the inefficiency of measures taken to reduce those numbers were revealed in several countries (Albania, Hungary, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, Romania, Spain and Türkiye). Similarly, the examination by the European Committee of Social Rights showed a lack of effectiveness of some labour inspectorates (Lithuania, Republic of Moldova, Montenegro and Türkiye).

## Protection of health

■ Among the positive achievements observed by the European Committee of Social Rights, the Czech Republic started a project to help target groups that do not seek medical and social care, in particular expanding access and creating healthcare opportunities for the homeless.

■ The information provided by states and other sources revealed wide gaps or differences as regards life expectancy between men and women, different regions in the country, urban and rural areas, income and level of education (the Czech Republic, Estonia, Hungary, Latvia, Lithuania, the Republic of Moldova, the Netherlands, Poland, Romania, Serbia, the Slovak Republic, Türkiye, Ukraine and the United Kingdom).

■ A recurring problem is the high infant and maternal mortality rates in several countries (Azerbaijan, Georgia, Hungary, Latvia, the Republic of Moldova, Romania, Türkiye and Ukraine). Free and regular consultation and screening for women during pregnancy and for children has not been established throughout the territory in Bosnia and Herzegovina and Ukraine and is not adequate in Georgia.

■ In several countries, the measures taken to effectively guarantee the right of access to healthcare are insufficient (Latvia, Lithuania, the Republic of Moldova and Ukraine). Public healthcare expenditure has been found to be too low in certain cases (Albania and Azerbaijan) and long waiting times in the provision of healthcare are also a cause for concern (Albania, Azerbaijan, Georgia and Türkiye).

■ Some 13 countries provided satisfactory information about awareness and education with respect to gender-based violence and to sexual orientation and gender identity (Andorra, Austria, Croatia, Denmark, Estonia, Lithuania, Luxembourg, Montenegro, North Macedonia, Norway, Slovenia, Spain and the United Kingdom). In Spain, training activities have been organised to combat homophobic and transphobic bullying in schools and, in North Macedonia, training sessions for primary healthcare workers on preventing and combating gender-based violence have been held annually since 2017. However, information was lacking in respect of 11 countries (Azerbaijan, Cyprus, the Czech Republic, Hungary, Latvia, the Netherlands, Poland, Romania, the Slovak Republic, Sweden and Türkiye).

■ A lack of efficient immunisation and epidemiological monitoring programmes was noted in several countries (Albania, Bosnia and Herzegovina and Romania). Another source of concern is the insufficient information provided on the existence of such programmes (Malta, Serbia and the Slovak Republic), and on the measures taken to overcome environmental pollution (Albania, Azerbaijan, Georgia, Malta, the Republic of Moldova, the Russian Federation, Serbia and the Slovak Republic).

## Social security

■ The Charter guarantees the right to social security for all workers and their dependents. Social security systems are in conformity in most states, with a coverage of roughly 90% of the active population. States were found to maintain their social security systems at a satisfactory level, at least equal to the level required for the ratification of the European Code of Social Security.<sup>447</sup>

■ The European Committee of Social Rights observed progress in some states in specific areas. In Lithuania, a reform initiated at the beginning of 2017 is modernising the social security system to cover self-employed workers and the different groups of platform workers (such as those working in the bicycle delivery service sector).

■ By contrast, the situation in many states was found to have changed very little compared to previous conclusions. While the minimum levels of unemployment benefits, sickness benefits and disability benefits have in some cases risen to between 40% and 50% of the median equivalised income, which is still insufficient, in others they remain below 40%. In some states the levels of benefits were found to have risen at a higher rate than the median income, but they remain low.

■ A targeted question was addressed to all states on social security coverage for employees of digital platforms or whose work is managed through such platforms. For a majority of states (13 out of a total of 25), the situation could not be assessed due to insufficient information. This suggests some tardiness in adapting social security systems in response to changes in the labour market.

## Social and medical assistance

■ The level of social assistance paid to a person without resources was found to be inadequate in many states because it remained below the poverty threshold (Armenia, Bosnia and Herzegovina, Croatia, the Czech Republic, Denmark, Estonia, Hungary, Latvia, Lithuania, Malta, the Republic of Moldova, Montenegro, North Macedonia, Norway, Romania, Serbia, the Slovak Republic, Spain, Türkiye and the United Kingdom). The level of social assistance in the Netherlands was found to be adequate in the light of the basic, additional and healthcare benefits as compared to the poverty threshold.

■ In several countries (the Republic of Moldova, Montenegro, Romania, Spain and the United Kingdom) the right to social and/or medical assistance is not guaranteed to everyone in need, and the length of residence in the country required to access social and medical assistance for foreigners who are lawfully resident is excessive in others (Andorra, Austria, Croatia, Latvia, Lithuania, North Macedonia, Romania and Serbia).

## Social welfare services

■ Under the Charter, states are expected to set up a network of social services to help people attain or preserve a situation of well-being, or to overcome any problems of social adjustment. An example of a positive development is Romania's Social Assistance Law: all local public authorities are now required to set up public social assistance services in both urban and rural areas.

■ However, the access to social services by nationals of other states appears to be problematic. A restrictive approach persists in Azerbaijan, the Czech Republic, Hungary, Latvia, Poland, Serbia and Türkiye.

■ States were also asked to explain how and to what extent the operation of social services was maintained during the Covid-19 crisis and whether specific measures were taken in view of possible similar crises arising in the future. This information fed into the examination of whether the provision of social welfare services was satisfactory, including during the Covid-19 pandemic. For instance in Denmark, all 24-hour services, placement institutions for children and young people and housing services for adults were maintained at the height of the crisis and, in Georgia, persons with severe disabilities and children with disabilities received an allowance for six months in addition to that provided by the social package.

<sup>447</sup>. See the [web page of the European Code of Social Security](#) for further information.

## Social protection for older persons

■ The situation regarding the social protection framework for older persons was found to fall below existing standards in 12 states (Bosnia and Herzegovina, the Czech Republic, Denmark, Malta, Montenegro, the Netherlands, Norway, Serbia, the Slovak Republic, Spain, Türkiye and Ukraine). The European Committee of Social Rights underlined once again the importance of moving away from institutionalisation and towards community-based care. The objective pursued should be independent living and assisted decision-making procedures.

## Protection from poverty and social exclusion

■ Living in a situation of poverty and social exclusion violates the dignity of human beings. However, the related European Social Charter provision has been accepted by only 19 Council of Europe member states.

■ With a view to ensuring the effective exercise of the right to protection from poverty and social exclusion, the Charter requires states to adopt an overall and co-ordinated approach. Everyone – including civil society and people affected by poverty and exclusion – should be involved in the process. States should demonstrate that poverty and social exclusion reduction is an embedded aspect of all the relevant strands of public policy.

■ The European Committee of Social Rights found that the situation was in line with existing standards in five of the states examined in 2021 (the Netherlands, Norway, the Slovak Republic, Slovenia and Sweden). The Netherlands and Norway have specific policies in place to tackle child poverty.

■ The same could not be said of another five states (Estonia, Latvia, Serbia, Türkiye and Ukraine). While the specifics of the situation in these states varied greatly, the committee noted that poverty rates were generally high, the measures taken were not properly co-ordinated and targeted or that the resources allocated were inadequate in view of the extent of the problem.

### Social rights of older persons

The Covid-19 pandemic has had devastating effects on the social rights of older persons – not only on their right to protection of health but also on their rights to autonomy and to make their own decisions and life choices.

All too often during the pandemic, older persons in institutions were cut off from their loved ones for long stretches of time or allowed very limited contacts with them. Lockdowns and other restrictions also severely affected older persons living in their homes whose interaction with the community was brought to a halt. Information on the pandemic and on vaccination was often inaccessible to them, outside urban areas.

The right of older persons to equal treatment was jeopardised as a result of decisions taken on the allocation of healthcare services, including life-saving treatments. Rationing of scarce resources (such as ventilators) was sometimes based on stereotyped perceptions of vulnerability and decline in old age. Too much leeway was allowed for implicit judgments about the “quality of life” or “worth” of lives of older persons. Equal treatment under the Charter calls for an approach based on the recognition of the equal value of older persons’ lives.

This situation has magnified already existing shortcomings, with an overreliance on institutionalisation and often inadequate levels of staffing leading to poor services and, in the worst cases, abuse. This approach is also usually characterised by chronically insufficient resources to ensure resilient support that would allow older persons to continue living autonomously in their homes and in the community for as long as they wish.

Article 23 of the Charter is the first human rights treaty provision to specifically protect their rights. Older persons should have the resources and facilities to enable them to lead a decent life and play an active role in society, without ostracism on account of their age. To this end, states must adopt appropriate legislation to combat age discrimination in all areas. For example, in the Czech Republic, Slovenia and Sweden, there is legislation prohibiting age discrimination not only in employment but in other aspects of life.

States must show resolve against abuse, whether it is physical, psychological or emotional, sexual, financial, intentional or unintentional. The extent of the problem must be assessed, awareness needs to be

raised on abuse and neglect of older persons and legislative or other measures must be adopted to this effect.

Older persons should be able to remain in their own homes for as long as possible through the provision of adequate housing and assistance, including financial, for the adaptation of homes. Institutionalisation should not be the default option whenever obstacles to full autonomy in their homes arise.

When older persons are in institutions, preference should be given to small units where they can benefit from adequate and individualised support. The risks that larger institutions pose have been made abundantly clear during the Covid-19 pandemic. The objective of moving away from larger institutions must become a priority as in the Slovak Republic's development of community-based care as an alternative to institutional care.

In all circumstances, older persons living in institutions must receive appropriate care and services, their privacy and personal dignity must be preserved at all times and they must be able to maintain personal contact with those close to them. They must also be involved in decisions concerning their living conditions. In any context, it should never be assumed that older persons are not capable of making their own decisions on life choices, and they may need support to express their will and preferences. And, in light of recurring scandals concerning institutions in many states, their right to complain about treatment and care in institutions must be ensured so that their voices are heard. It is paramount that all institutions are licensed and subject to regular assessments by an independent inspection body.

The overall emphasis in the Charter is on using social rights to underpin personal autonomy and respect the dignity of older persons. States must take a wide range of measures to combat ageism in society. They must review and amend legislation and policy for discrimination on grounds of age and adopt action plans to ensure equality. States must play an active role in promoting positive attitudes towards ageing through activities such as society-wide awareness campaigns and the promotion of intergenerational solidarity in order to have a truly inclusive society of which older persons are full members.

## HUMANE DETENTION CONDITIONS

### Measurement criteria

- ▶ Three fundamental safeguards against ill-treatment are respected from the very outset of detention.
- ▶ There are adequate living conditions in places of detention in terms of state of repair, ventilation, hygiene and access to natural light.
- ▶ Overcrowding is reduced, resulting in sufficient living space for prisoners.
- ▶ Covid-19-related measures that negatively affect living conditions are restricted in time and based on medical necessity.
- ▶ Despite the rising cost of living in places of detention, a dignified life for prisoners is maintained.

### Findings

Throughout the Covid-19 pandemic, the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment continued to carry out its statutory mandate to visit places of deprivation of liberty. In the course of several of these visits, the CPT received allegations of ill-treatment and even of torture<sup>448</sup> of detainees by law-enforcement officials and staff working in prison establishments, psychiatric institutions and social care homes.

As regards law-enforcement agencies, it found that the three basic safeguards against ill-treatment (access to a doctor/access to a lawyer/the right of detained persons to inform a close relative or another third party of their situation) were still not fully respected in all countries, even when laid down in law.<sup>449</sup> In several countries, criminal suspects are still not interviewed in dedicated rooms equipped with audiovisual recording devices.

448. For instance, the CPT reports on Bulgaria [CPT/Inf \(2022\) 20](#) and Romania [CPT/Inf \(2022\) 06](#).

449. For instance, the CPT reports on Bulgaria [CPT/Inf \(2022\) 20](#), Romania [CPT/Inf \(2022\) 06](#), Sweden [CPT/Inf \(2021\) 20](#) and Switzerland [CPT/Inf \(2022\) 9](#) (French only).



In certain countries, CPT delegations observed progress by authorities to properly investigate allegations of torture and ill-treatment, and in others, issues of impunity still hampered effective investigation.<sup>450</sup>

■ The CPT continued to document poor conditions of detention in prisons, which in certain cases could be considered as amounting to inhuman and degrading treatment, in particular where prisoners were held in dilapidated cells with poor ventilation and limited access to natural light and a lack of out-of-cell time, exacerbated by overcrowding.<sup>451</sup> It is not uncommon for the CPT to visit prisons where cell maintenance is not ensured by the prison administration; as a consequence, prisoners use their own resources to maintain their cells. The lack of purposeful activities to support prisoners to prepare for their reintegration into the community was evident in many of the states visited.

■ The CPT also found living conditions in social care homes and psychiatric hospitals which could amount to inhuman and degrading treatment. In November 2021, the CPT issued a public statement in response to the persistent appalling conditions and treatment in social care institutions and psychiatric hospitals in Bulgaria, including physical ill-treatment and poor hygiene in certain care facilities.

■ CPT delegations observed a wide variety of approaches taken by authorities to cope with the pandemic, ranging from no visible adaptation to regimes with limited or no vaccination programme for staff and detainees,<sup>452</sup> to fully fledged vaccination programmes, longer spells of quarantine for newly arrived detainees and the limitation of personal interaction, in addition to the cancellation of education, work programmes, family visits, social and group psychosocial or therapeutic activities. Limitations to visits from family and friends were sometimes compensated by (enhanced) access to video meetings and phone calls, but by no means in all places.<sup>453</sup>

■ Post-pandemic CPT visits found that certain places of detention continued to apply restrictions to inter-personal contacts, including on outside visits, and maintained long spells of quarantine that were not in line with developments in the rest of the country. Certain states eased prison overcrowding by resorting to non-custodial measures during the Covid-19 pandemic. Some recent country visits suggest that in certain states this may have been temporary.<sup>454</sup>

■ The CPT expressed a concern that the longer-term economic impact of the Covid-19 pandemic and the steeply rising costs of living in Europe were having a negative effect on prison conditions. It has adopted a “decency threshold” of basic requirements for prisoners to be able to have a dignified life, including ready access to sufficient clean drinking water, adequate food, decent conditions and cleanliness.<sup>455</sup>

■ CPT delegations have observed that, notwithstanding general inflation, in many countries the prices prisoners pay for food, tobacco, telephone call cards and hygiene products have disproportionately increased compared to their cost in the outside community.<sup>456</sup> The CPT is concerned that in countries where the state contributes little to a prisoner’s livelihood, prisoners without means of their own risk falling behind hygienic and health standards.

450. For instance, the CPT reports on Bulgaria [CPT/Inf \(2022\) 20](#) and Romania [CPT/Inf \(2022\) 06](#).

451. In its [31st General Report](#) published in 2022, the CPT once again set out the nefarious effects of overcrowding.

452. For instance, the CPT report on Bulgaria [CPT/Inf \(2022\) 20](#).

453. For instance, the CPT report on Switzerland [CPT/Inf \(2022\) 9](#) (French only).

454. For instance, the CPT report on the United Kingdom [CPT/Inf \(2022\) 13](#).

455. In its [30th General Report](#), published in 2021, the CPT sets out a decency threshold for prisons. The Committee considers that all people deprived of their liberty in prisons should be provided, at minimum, with: ready access to sufficient clean drinking water; adequate food: both in quantity and nutritional value; decent sleeping and living conditions and the means to keep clean: proper sanitation, including toilet and shower facilities, washing water, cleaning products, laundry, personal hygiene products; effective access to, and fair remuneration for, work; ready access to other activities; and regular possibilities to remain in contact with the outside world.

456. For instance, the CPT reports on Bulgaria [CPT/Inf \(2022\) 20](#) and Romania [CPT/Inf \(2022\) 06](#).





# 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, stigmatisation and exclusion in a systemic manner, by preventing and sanctioning discrimination, racism and intolerance, hate speech and hate crime, and by devising strategies to empower minorities and manage diversity positively.

The key standards on anti-discrimination, diversity management and intercultural integration are found in the European Convention on Human Rights, the [Framework Convention for the Protection of National Minorities](#) (FCNM), the European Charter for Regional or Minority Languages (ECRML), the Committee of Ministers recommendations on [measures to combat discrimination on grounds of sexual orientation or gender identity](#), on [combating hate speech](#), on multilevel policies and governance for [intercultural integration](#) at national level, and recommendations related to Roma and Traveller<sup>457</sup> inclusion. The European Commission against Racism and Intolerance (ECRI) has also adopted 16 general policy recommendations in its field of competence.

ECRI, the Advisory Committee on the FCNM (ACFC) and the Committee of Experts on the ECRML (COMEX) are specialised independent bodies set up to assess how member states are implementing standards. The Steering Committee on Anti-Discrimination, Diversity and Inclusion (CDADI) develops and updates European intergovernmental policies, guidelines and standards. A range of targeted co-operation programmes support member states in developing comprehensive strategies and multi-stakeholder governance models to improve compliance. The Secretary General has appointed a [Special Representative](#) on antisemitic, anti-Muslim and other forms of religious intolerance and hate crimes in response to a rise in attacks against Jews and Muslims.

The Assembly adopted its [Resolution 2447 \(2022\) “Preventing and combating antisemitism in Europe”](#), calling on Council of Europe member and observer states to adopt strategies or national action plans to prevent and combat antisemitism. The Assembly also called on political parties to take strong measures in the event of manifestations of antisemitism or any form of hate speech within their bodies.

In the period covered by this report, a series of challenges have been addressed. These include:

- ▶ failure to curb hateful political rhetoric and online hate speech, including a lack of national legal frameworks to remove illegal online hate speech and prosecute perpetrators;
- ▶ lack of national action and developing European standards on combating hate crime;
- ▶ limited institutional awareness, knowledge and capacity to record and investigate hate crime and hate speech and to support victims;
- ▶ shortcomings in preventing racism in policing, including racial profiling, LGBTI-phobic police abuse and failure to ensure police accountability;

---

457. 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.

- ▶ failure to combat widespread antigypsyism, including in political discourse and online;
- ▶ lack of action to ensure equality for Roma and Traveller women and girls;
- ▶ lack of progress in addressing the specific situation of Roma and Traveller women and girls through an intersectional approach;
- ▶ more guidance and action needed in combating antisemitism and intolerance and discrimination against Muslims;
- ▶ insufficient efforts to encourage meaningful participation of people belonging to national minorities in political debate and decision making, especially young people;
- ▶ insufficient efforts and resources to ensure the learning and use of minority languages;
- ▶ failure to adequately respond to widespread anti-LGBTI rhetoric and a related backsliding in human rights standards;
- ▶ restrictions on freedom of expression and assembly for minorities, including sexual minorities;
- ▶ slow progress in adopting legislation and policies for equal rights of intersex people, legal gender recognition, same-sex marriage or partnership and for combating hate crime against LGBTI people;
- ▶ lack of coherent and co-ordinated multilevel governance and policies of intercultural integration, including uptake by national, regional and local authorities of an intercultural approach to migrant and refugee inclusion.

■ In the coming years, priorities will include rigorous monitoring of developments related to racism, intolerance and discrimination, including antigypsyism, antisemitism, anti-Muslim racism and discrimination, and intolerance and discrimination against LGBTI people. There will also be a focus on effective monitoring related to national minority rights and regional or minority languages. Support will be provided to legislative and policy reforms and to building capacity to implement existing standards. New standards are needed to address long-standing challenges such as hate crime; active political participation of people belonging to national minorities, Roma and Travellers; equality for Roma girls and women; the rights of intersex people; and discrimination resulting from the use of artificial intelligence.

## ANTI-DISCRIMINATION

### Measurement criteria

- ▶ Adequate legal and institutional frameworks for combating racism, intolerance and discrimination exist.
- ▶ Recommendations by ECRI and other Council of Europe bodies are implemented.
- ▶ There are effective legislative and other measures aimed at addressing hate speech and hate crime.
- ▶ Action is taken to prevent and combat racist and LGBTI-phobic abuse by law-enforcement officials.
- ▶ Legal frameworks on gender recognition exist, equality of rights of intersex people is established, and same-sex partnership or marriage is enabled.
- ▶ Measures to ensure freedom of expression and of association for minorities and LGBTI people exist.

### Findings

#### Preventing and combating racism and intolerance in policing

■ Different forms of racism and intolerance in policing have been highlighted over the past few years. ECRI has observed that some member states are using independent research to measure the scale of the problem, working to raise awareness, improve police training, boost internal reporting mechanisms and investigation procedures, and diversify police through recruitment, retention and promotion policies. Yet incidences of illegal profiling, the use of racist or LGBTI-phobic language and excessive force or violence by police officers are still being reported, affecting not only individuals, but whole communities who lose their trust in the police and state institutions in general.<sup>458</sup> ECRI has called on Germany to commission an independent study on racial profiling across the country and was also concerned to note that little progress had been made in France to

458. ECRI (2022), [annual report](#) on ECRI's activities for the period covering the period from 1 January to 31 December 2021.



take action against police misconduct affecting people perceived as having an immigrant background, Black people, people of North African origin, and Roma and Travellers. ECRI has expressed concern about racism and LGBTI-phobic policing in Greece, in particular concerning migrants and Roma.<sup>459</sup>

■ In order for these complex and sensitive issues to be addressed effectively, a significant change in the mindset of police officers, thorough reviews of police regulations and practices, as well as the establishment of stronger police complaints bodies, may be required. ECRI and the CPT have developed clear guidance<sup>460</sup> and the [Intercultural Cities \(ICC\) programme](#) has prepared specific guidance on community policing.

■ The Council of Europe has worked with national law-enforcement agencies and internal ministries to raise awareness and increase capacity in policing diversity. In 2021 the Georgian Academy of the Ministry of Internal Affairs of Georgia integrated religious and ethnic diversity into its curriculum, including training for police academy instructors and middle-level managers.<sup>461</sup> Since 2019, Georgian law-enforcement officers have joined the annual equality week and other community outreach opportunities. Co-operation programmes in the Western Balkans, the Republic of Moldova and Ukraine have engaged with law-enforcement agencies to increase awareness of international standards and practices in working with national minorities and LGBTI people, covering management of pride marches, investigation and recording of hate crimes, trust-building measures and sensitised treatment of LGBTI prisoners.<sup>462</sup>

■ Capacity building of law enforcement in policing hate crime based on sexual orientation, gender identity, gender expression and sex characteristics was also carried out in Spain, Lithuania and Romania<sup>463</sup> as part of technical assistance activities to support the execution of judgments.<sup>464</sup> The toolkit on policing these kinds of hate crimes was translated into Catalan, Lithuanian, Montenegrin, Romanian and Ukrainian.

## Hate speech and hate crime

■ Hate speech and hate crime<sup>465</sup> are directed at many different people and groups,<sup>466</sup> including Roma and Travellers, Jews, Muslims, Black people,<sup>467</sup> migrants, and LGBTI people.<sup>468</sup> [ECRI's annual report published in 2022](#) points to a rise in attacks prompted by support for xenophobic movements and political parties following the arrival of migrants in Europe.

■ Online hate speech and disinformation persist in the context of the Covid-19 pandemic and the war in Ukraine, affecting Austria, France and the United Kingdom particularly acutely.<sup>469</sup> ECRI was prompted to adopt a [statement on preventing and combating ultra-nationalistic and racist hate speech and violence](#): one year

459. ECRI (2022), [conclusions](#) on the implementation of recommendations in respect of Germany subject to interim follow-up (sixth cycle), sixth-cycle [report](#) on France and sixth-cycle [report](#) on Greece.

460. See ECRI's [General Policy Recommendation No. 11](#) on combating racism and racial discrimination in policing, ECRI's [statement](#) on racist police abuse, including racial profiling, and systemic racism, as well as the CPT's [standards on police and law enforcement](#).

461. See: [Programme on Policing in Diverse Society](#) has been launched - Council of Europe Office in Georgia (coe.int).

462. See among others: [Sensitised treatment of LGBTI prisoners in correctional institutions – Inclusion and anti-discrimination \(coe.int\)](#), [Sensitised treatment of LGBTI prisoners in correctional institutions – Council of Europe Office in Sarajevo \(coe.int\)](#), [Montenegro police visiting peers in Bosnia and Herzegovina ahead of 2022 Sarajevo pride – Inclusion and anti-discrimination \(coe.int\)](#), [Training on responding to hatred based on sexual orientation and gender identity grounds continue for the Montenegro Police – Inclusion and anti-discrimination \(coe.int\)](#), [Albanian State Police, an ally in the fight against hate speech and hate crimes – Inclusion and anti-discrimination \(coe.int\)](#), [Peer-to-peer trainings for Police officers on addressing discrimination and hate crime towards vulnerable groups – Inclusion and anti-discrimination \(coe.int\)](#), [11 police officers from Moldova gathered with counterparts in Spain, for exchanges on diversity aspects and policing against hate crime – Inclusion and anti-discrimination \(coe.int\)](#), [Increasing the capacities of police investigators and prosecutors on combating hate crime in Ukraine – Inclusion and anti-discrimination \(coe.int\)](#).

463. Council of Europe, [Policing Hate Crime against LGBTI People: training for a professional police response](#), May 2017.

464. *M.C. and A.C. v. Romania*, Application No. 12060/12, 12 April 2016; *Beizaras and Levickas v. Lithuania*, Application No. 41288/15, 14 January 2020.

465. [Recommendation CM/Rec\(2022\)16](#) on combating hate speech contain measures to protect and assist not only those directly targeted by hate speech, such as victims of hate speech liable under criminal, civil and administrative law, but also those who are indirectly targeted (for example members belonging to a certain minority or group of the person directly targeted) and hence are affected by hate speech. To designate all these people, it uses the general term “people targeted by hate speech”. A similar rationale applies to hate crime, for example hate crime against a building or symbol of emotional importance to a targeted group.

466. See the definition in paragraph 2 of [CM/Rec\(2022\)16](#) and paragraph 7 of its [Explanatory Memorandum](#).

467. Parliamentary Assembly [Resolution 2389 \(2021\)](#) “Combating Afrophobia, or anti-Black racism, in Europe”; [Resolution 2457 \(2022\)](#) “Raising awareness of and countering Islamophobia, or anti-Muslim racism, in Europe”; and [Resolution 2447 \(2022\)](#) “Preventing and combating antisemitism in Europe”.

468. Parliamentary Assembly [Resolution 2417 \(2022\)](#) “Combating rising hate against LGBTI people in Europe”; Commissioner for Human Rights, [Combating racism and racial discrimination against people of African descent in Europe](#), [Report](#) of the round-table with human rights defenders, 19 March 2021; Commissioner for Human Rights, 13 January 2022. [Pride vs. indignity: political manipulation of homophobia and transphobia in Europe](#), 18 August 2021.

469. Congress of Local and Regional Authorities of the Council of Europe [Resolution 485 \(2022\)](#), [Recommendation 478 \(2022\)](#) and [explanatory memorandum](#) “Hate speech and fake news: the impact on working conditions of local and regional elected representatives”.



later, it adopted yet another [statement](#), this time in the context of the Russian Federation's aggression against Ukraine, warning against any form of ultra-nationalist and racist hate speech. The CDADI adopted [observations on the consequences of the aggression of the Russian Federation against Ukraine](#) and will prepare a study on preventing and combating hate speech in times of crisis.

■ In May 2022, the Committee of Ministers adopted a groundbreaking new legal text to guide member states in preventing hate speech, and to support those people targeted by hate speech.<sup>470</sup> The CDADI and the CDMSI joined forces to prepare this standard.

### Committee of Ministers Recommendation on combating hate speech

The Council of Europe's [Recommendation CM/Rec\(2022\)16](#) on combating hate speech, adopted by the Committee of Ministers on 20 May 2022 in Turin, Italy, calls on governments to develop comprehensive strategies to prevent and fight hate speech through legal and other measures.

It provides a definition of hate speech, distinguishes different levels and calls for adequately calibrated and proportionate measures. Member states are invited to adopt an effective legal and policy framework covering criminal, civil and administrative law, and to set up and implement alternative measures, including awareness raising, education, and the use of alternative speech. States are also encouraged to set up support mechanisms to assist those targeted by hate speech, conduct monitoring and engage in international co-operation and national co-ordination.

Member states should ensure that their legislation addressing hate speech contains clear provisions for swiftly and effectively removing online hate speech that is prohibited under criminal, civil or administrative law. Member states should also establish by law that internet companies must take effective measures to fulfil their duties to remove hate speech that is prohibited under criminal, civil or administrative law.

It provides guidance for everyone involved in preventing hate speech, including public officials, elected bodies and political parties, internet companies, the media and civil society.

Its implementation will be reviewed by the CDADI and the CDMSI. Thematic reports will be prepared on effective measures to support those targeted by hate speech; on preventing and combating hate speech in times of crises; and on promising practices at national level.

■ Court judgments continue to emphasise that member states must assess the severity and harm of hate speech in keeping with its case law,<sup>471</sup> which are also reflected in [Recommendation CM/Rec\(2022\)16](#) on combating hate speech.<sup>472</sup> Following *Association ACCEPT and Others v. Romania*, member states have a positive obligation to investigate in an effective manner whether verbal abuse directed towards the individual applicants constitutes a criminal offence motivated by hate.<sup>473</sup> *Budinova and Chaprazov v. Bulgaria* outlined criteria for groups that deserve protection and underlined that the imposition of serious criminal-law sanctions may be justified in cases of hate speech.<sup>474</sup>

■ The Congress has repeatedly expressed concern about the spread of fake news and hate speech on the internet during election campaigns and called for effective measures to fight it.<sup>475</sup> The ACFC says political representatives, both from extreme and mainstream political parties, actively play a part in or fail to condemn

470. [Recommendation CM/Rec\(2022\)16](#) on combating hate speech contains measures to protect and assist not only those directly targeted by hate speech, such as victims of hate speech under criminal, civil and administrative law, but also those who are indirectly targeted (for example members belonging to a certain minority or group of the person directly targeted). To designate all these people, it uses the general term "people targeted by hate speech". A similar rationale applies to hate crime, for example hate crime against a building or symbol of emotional importance to a targeted group.

471. See, among others; *Erkizia Almandoz v. Spain*, Application No. 5869/17, 22 June 2021; *Yefimov and Youth Human Rights Group v. Russia*, Application Nos. 12385/15 and 51619/15, 7 December 2021; *Üçdağ v. Turkey*, Application No. 23314/19, 31 August 2021; *Standard Verlagsgesellschaft mbH v. Austria*, Application No. 39378/15, 7 December 2021; *Sanchez v. France*, Application No. 45581/15, 2 September 2021; *Budinova and Chaprazov v. Bulgaria*, Application No. 12567/13, 16 February 2021.

472. See paragraph 4 of [CM/Rec\(2022\)16](#) on combating hate speech.

473. *Association ACCEPT and Others v. Romania*, Application No. 19237/16, 1 June 2021.

474. *Budinova and Chaprazov v. Bulgaria*, Application No. 12567/13, 16 February 2021, see also paragraph 56 of the explanatory memorandum of [CM/Rec\(2022\)16](#) on combating hate speech.

475. Congress [Recommendation 488 \(2022\)](#) on municipal elections in the Netherlands (16 March 2022); [Recommendation 482\(2022\)](#) on partial local elections in Belgrade and several other municipalities in Serbia (3 April 2022).

intolerant discourse and hate speech targeting national minorities. In *Sanchez v. France*,<sup>476</sup> the Court stated that “politicians have indeed both a political obligation and a moral responsibility to refrain from using hate speech and stigmatising language, especially in electoral context”.

■ Several parliaments, at both regional and national levels, have adopted codes of conduct for their members, with sanctions foreseen in case of breaches.<sup>477</sup> In its 2022 monitoring report on Estonia, ECRI noted that such a code of conduct exists and that it foresees sanctions in case of non-respect.<sup>478</sup> The Parliamentary Assembly commended the Romanian parliament for revising its rules of procedure, allowing for more efficient prosecution of hate speech among politicians.<sup>479</sup> The Parliamentary Assembly revised the Charter of European Political Parties for a Non-racist and Inclusive Society and urged political parties throughout Europe to sign and observe this charter. ECRI has recommended that such codes be adopted everywhere.<sup>480</sup> In many member states, self-regulatory codes of conduct for the media which regulate hate speech have been adopted. An example is the Greek journalists’ code of conduct, which applies to TV and radio programmes: many Greek broadcasters use a technical delay function to allow TV and radio stations to stop any statements which would constitute hate speech from being broadcast.<sup>481</sup> However, in several of its recent reports, ECRI has noted the prevalent use of hateful language in the media towards many groups, including Muslims and Roma. ECRI encourages debates within media professions on their role in preventing and combating anti-Muslim racism and discrimination, and on their particular responsibility for the image they convey of Islam and Muslim communities.<sup>482</sup> ECRI has revised its recommendation on preventing and combating anti-Muslim racism and discrimination. In the case of *Zemmour v. France*<sup>483</sup> the Court found remarks by the French politician were discriminatory to the Muslim community and the sentence given by the domestic courts were justified.

■ Victims of hate speech, particularly online hate speech, must receive better support.<sup>484</sup> ECRI welcomed online initiatives in France such as the Observatory of Online Hate and the PHAROS (Plateforme d’harmonisation, d’analyse, de recoupement et d’orientation des signalements), which processed almost 300 000 reports in 2020, of which 23 525 concerned cases of racism or discrimination.<sup>485</sup> In Norway, the police established a website to report hate speech and introduced an online patrol.<sup>486</sup> Germany revised its Network Enforcement Law which now requires internet companies to immediately report to the police content deemed to be relevant under criminal law. The Commissioner for Human Rights welcomed measures taken by the Austrian authorities to address online violence against women and recommended awareness raising on measures to stop online hate.<sup>487</sup> The CDADI has initiated a study to identify support measures for those targeted by hate speech.

■ Internet companies should assume specific responsibilities based on international standards and national legislation regarding users’ protection against online harms, including hate speech. However, mandating automated moderation by law is an inappropriate and incomplete solution, because human decision making in content moderation is essential to ensure human rights compliance. Content removal is not in itself a solution as hate speech might migrate to less popular platforms.<sup>488</sup>

■ Armenia, Georgia, the Republic of Moldova and Ukraine have carried out a systemic mapping of national approaches to hate speech. These mapping studies, implemented through Council of Europe co-operation programmes, provide a strong basis to enhance national co-ordination and targeted policy interventions.

■ Through co-operation programmes with Belgium, Germany, Italy and Romania, new online tools were developed and capacity-building activities organised to support civil society in effectively using human rights

476. *Sanchez v. France*, Application No. 45581/15, 2 September 2021.

477. Parliamentary Assembly [Resolution 2443 \(2022\)](#) “The role of political parties in fostering diversity and inclusion: a new charter for a non-racist society” and [CM/Rec\(2022\)16](#) on combating hate speech both contain recommendations for parliaments and political parties on how to address hate speech; see also Parliamentary Assembly [Resolution 2381 \(2021\)](#) “Should politicians be prosecuted for statements made in the exercise of their mandate?”

478. [ECRI Sixth monitoring report on Estonia](#) (published 9 June 2022), paragraph 50.

479. Parliamentary Assembly [Resolution 2466\(2022\)](#) “The honouring of membership obligations to the Council of Europe by Romania”.

480. [ECRI Sixth report on Denmark](#) (published on 9 June 2022), paragraph 60 and [ECRI Sixth report on France](#) (published on 21 September 2022), paragraph 62.

481. [ECRI Sixth monitoring report on Greece](#) (published 22 September 2022), paragraph 43.

482. [ECRI revised General Policy Recommendation No. 5](#) (8 December 2021) on preventing and combating anti-Muslim racism and discrimination, paragraph 34.

483. Chamber judgment in the case of *Zemmour v. France*, Application No. 63539/19, 20 December 2022.

484. Paragraphs 55-57 of [CM/Rec\(2022\)16](#) on combating hate speech.

485. [ECRI Sixth report on France](#) (published on 21 September 2022), paragraph 54.

486. [ECRI Sixth report on Norway](#) (published 23 February 2021), paragraph 58.

487. [Council of Europe Commissioner for Human Rights report following her visit to Austria from 13 to 17 December 2021](#), 12 May 2022, [CommDH\(2022\)10](#).

488. Parliamentary Assembly [Resolution 2454 \(2022\)](#) “The control of online communication: a threat to media pluralism, freedom of information and human dignity”; and [CM/Rec\(2022\)16](#) on combating hate speech, paragraphs 18, 20-22, 26-27 and 30-37.

education and counternarratives to combat hate speech. Ukraine and member states in the Western Balkans and the Caucasus carried out reviews of their national legislations, built the capacity of law-enforcement officials and the judiciary to address hate speech and hate crime and provided support to victims. Awareness-raising campaigns, such as “Block the hate, share the love” in the Western Balkans and “I choose equality” in Georgia, jointly implemented by national authorities and civil society, are informing a wide audience of the risks that hate speech presents and of options available to them.

■ Sports events are still far too often a forum for racism, sexism, LGBTI-phobia and other forms of hate speech. France, Germany, Greece, Italy, Montenegro<sup>489</sup> and Spain are following a European Union–Council of Europe joint project on combating hate speech in sport, developing comprehensive strategies to combat it and scaling up national strategies. Guidelines are being drafted with sports federations, sports clubs, sports associations, athletes, journalists and others to curb hate speech in sport – in stadiums, in the media and online.

■ ECRI has observed that hate crime is generally under-reported by victims and has recommended that member states establish dedicated hate-crime units within the police to work closely with the communities most affected. In Denmark, confidence-building measures aimed at encouraging the reporting of hate crimes against Muslims exist, with police meeting Muslim communities and visiting asylum-seeker reception centres as needed.

■ ECRI has stressed that there is a persistent problem with a lack of systematic data collection which undermines effective evaluation and the possibility of obtaining a clear picture of the extent of hate crime and hate speech.<sup>490</sup> Better co-ordination is needed between the various mechanisms for reporting instances of discrimination and hatred and for clarifying the respective responsibilities of the bodies that operate them.<sup>491</sup> Data collection should distinguish between hate speech and hate crime if appropriate policy measures are to be adopted. Adequate reporting and data collection require a clear legal definition of what is to be understood by these terms, along with appropriate training of law-enforcement officials, including prosecutors.

■ Council of Europe co-operation programmes are being carried out with Armenia, Georgia, the Republic of Moldova, Ukraine and in the Western Balkans to support member states in addressing this challenge. Georgia signed a memorandum of understanding<sup>492</sup> and law-enforcement authorities in the Republic of Moldova took steps to improve the methods of disaggregated data collection on bias motives. Equality bodies from East and South-East Europe regularly meet to exchange and learn from each other’s good practices to address data collection on hate speech.

■ Hate crime based on sexual orientation, gender identity, gender expression and sex characteristics is the focus of the second annual thematic review of Recommendation [CM/Rec\(2010\)5](#) on measures to combat discrimination on grounds of sexual orientation or gender identity, conducted by the CDADI working group on the issue. The findings will be presented in a report, due in mid-2023.

■ CDADI and the European Committee on Crime Problems (CDPC) were recently mandated to prepare the text for a new Committee of Ministers’ recommendation on combating hate crime, building on Court case law. The objective is to guide member states in developing comprehensive measures to prevent and combat hate crime, including monitoring, prevention, and victim support, effective investigation and adequate sanctions. The following elements are being considered: definition of hate crime and clarification of basic principles; legislative models and range of offences; victim support; effectiveness of criminal justice system; post-conviction services and measures; monitoring and prevention; recommendations for other key stakeholders; and national and international co-operation and co-ordination.

## LGBTI equality

■ Significant progress has been made in many member states, notably through the adoption of legislation for same-sex unions and adoption rights, the advancement of legal gender recognition based on self-determination and the protection of intersex children, while other member states have rolled back on existing protection. Hate speech and stigmatisation have been on the rise, including by governing parties and their representatives in some member states, stirring up anti-LGBTI sentiments among the general public.<sup>493</sup> This

489. See, for example, *Alkovic v. Montenegro*, Application No. 66895/10, 5 December 2017.

490. [ECRI Sixth report on Greece](#) (published 22 September 2022), paragraph 35.

491. [ECRI Sixth report on France](#) (published 21 September 2022), paragraph 55.

492. The memorandum of understanding was signed by the Supreme Court, the Office of the General Prosecutor, the Ministry of Internal Affairs and the National Statistics Office of Georgia in 2020. Since then, an annual report has been published each year. The Committee of Ministers in its supervision of the execution of the judgments of the Court welcomed the introduction of a new system for collecting and publishing statistical data on hate crimes and extensive training efforts deployed (see [CM/Del/Dec\(2021\)1419/H46-14](#)).

493. [ECRI annual report for 2021](#), paragraphs 17-20.

has led to increased violence and discrimination against LGBTI people, including in access to employment, housing and healthcare, in addition to harmful impacts on LGBTI people's mental health and their ability to live openly in freedom and safety.<sup>494</sup> This has been further exacerbated by the Covid-19 pandemic and other ongoing crises on the continent.

■ Research shows a marked increase of hate and violence on the grounds of sexual orientation, gender identity or expression and sex characteristics, as illustrated by the recent fatal shootings targeting the LGBTI community in Norway<sup>495</sup> and Slovakia, and assaults on pride participants in Georgia<sup>496</sup> and Germany.

■ The Parliamentary Assembly has highlighted a surge in LGBTI-phobic hate and violence, especially towards transgender people, coupled with increasingly hostile rhetoric from elected politicians, government representatives and religious leaders, pointing to backsliding in progress towards LGBTI equality, sexual and reproductive rights and women's and children's rights.<sup>497</sup> The Commissioner for Human Rights has also expressed concerns over the visible rise in hateful rhetoric and the propagation of homophobic and anti-trans narratives by politicians and opinion-makers in several member states, including in Türkiye and Georgia, and has called on authorities to combat impunity for hate crimes.<sup>498</sup>

■ Italy's failed legislative efforts to criminalise hate crime against LGBTI people<sup>499</sup> were an example of stagnation in advancing towards LGBTI equality, while in the United Kingdom, the Equality and Human Rights Commission decided that transgender people can be legitimately excluded from single-sex services if the reasons are "justifiable and proportionate".<sup>500</sup>

■ The Court issued a series of relevant judgments, such as condemning the ineffectiveness of the Croatian authorities' response to a violent homophobic attack (2010),<sup>501</sup> the failure of Moldovan authorities to conduct an effective investigation into whether the assault by a private party was a hate crime motivated by homophobia (2014),<sup>502</sup> unprecedented violence against LGBTI demonstrators with Georgian authorities' connivance (2013),<sup>503</sup> inadequate legal response by the Bulgarian authorities to a homophobic murder (2008),<sup>504</sup> and failure of the Armenian authorities to protect against homophobic attacks and hate speech (2012) due to the lack of effective investigation and the absence of effective domestic criminal-law mechanisms for investigating discrimination complaints.<sup>505</sup>

■ There have been positive developments in relation to the execution of judgments of the Court related to combating hate crime. In its last examination of *Identoba and Others v. Georgia*, the Committee of Ministers welcomed the introduction of a new system for collecting and publishing statistical data on hate crimes<sup>506</sup> and encouraged the authorities to further improve the data collection system.<sup>507</sup> Following its examination of *M.C. and A.C. v. Romania*, the Committee of Ministers expressed their satisfaction at the authorities' ongoing efforts to ensure that officials in all parts of the justice system gave full effect to the criminal-law protection against hate crime and hate speech, but said further efforts were required, including upgrading the existing relevant data collection system.<sup>508</sup> In its first examination of *Beizaras and Levickas v. Lithuania*, the Committee

494. Commissioner for Human Rights, "Pride vs. indignity: political manipulation of homophobia and transphobia in Europe", 16 August 2021.

495. On 25 June 2022, two people were killed and 21 were wounded in a mass shooting in Oslo. The shooting happened at locations associated with Oslo Pride, the night before the planned pride parade. The police believe that the attack could be motivated by anti-LGBTI hate and be intended to target Oslo Pride. As a result, Oslo Pride was cancelled. Parliamentary Assembly, "PACE President reacts to attack in Oslo", 25 June 2022.

496. On 5 July 2021 a journalist was attacked at Tbilisi Pride. Parliamentary Assembly, "Rapporteur on the rights of LGBTI people in the Southern Caucasus denounces violence in Georgia during Tbilisi Pride Week", 6 July 2021.

497. Resolution 2417 (2022) "Combating rising hate against LGBTI people in Europe"; Resolution 2418 (2022) "Alleged violations of the rights of LGBTI people in the Southern Caucasus".

498. Commissioner for Human Rights "Pride vs. indignity: political manipulation of homophobia and transphobia in Europe", 16 August 2021; "Turkish authorities should stop the stigmatisation of LGBTI people", Letter to the Turkish authorities, 17 June 2021; "Report following the visit to Georgia from 21 to 24 February", 15 July 2022.

499. Amendments to Articles 604-bis and 604-ter of the penal code, concerning violence or discrimination on grounds of sexual orientation or gender identity, voted on 27 October 2021.

500. *The Guardian*, "Trans people can be excluded from single-sex services if 'justifiable', says EHRC", 4 April 2022, <https://bit.ly/3Uajp0t>.

501. *Sabalić v. Croatia*, Application No. 50231/13, 14 January 2021.

502. *Genderdoc-M and M.D. v. Moldova*, Application No. 23914/15, 14 December 2021.

503. *Women's Initiatives Supporting Group and Others v. Georgia*, Application Nos. 73204/13 and 74959/13, 16 December 2021.

504. *Stoyanova v. Bulgaria*, Application No. 56070/18, 14 June 2022.

505. *Oganezova v. Armenia*, Application Nos. 71367/12 and 72961/12, 17 May 2022.

506. First ever Memorandum on Cooperation on Collection of Data on Hate Crime signed in Georgia - Council of Europe Office in Georgia ([coe.int](https://coe.int)).

507. *Identoba and Others group v. Georgia*, Application No. 73235/12, 2 December 2021.

508. *M.C. and A.C. v. Romania*, Application No. 12060/12, 2 December 2021.

of Ministers noted the wide-ranging and multifaceted measures taken by the authorities to improve investigations into hate crimes and hate speech.<sup>509</sup>

■ The Committee of Ministers closed examination of *B. and C. v. Switzerland*<sup>510</sup> regarding the domestic courts' failure to sufficiently assess the risks of ill-treatment as a gay person in the event of his deportation to the Gambia.

■ In 2021, Hungary banned any depiction or discussion of diverse gender identities and sexual orientations for individuals under 18 years of age in the public sphere, including schools and the media. The Venice Commission called for the law to be repealed or modified since it stigmatised LGBTI people and discriminated against them.<sup>511</sup> The Commissioner for Human Rights regretted that the Hungarian national referendum on children's access to information concerning sexual orientation and gender identity was scheduled on the same day as the parliamentary elections. She warned that the ambiguous and misleading questions put to popular vote would entrench stereotypes, prejudice and hate against LGBTI people.<sup>512</sup>

■ The 2022 [Report on Legal Gender Recognition in Europe](#),<sup>513</sup> shows that there was substantial progress with 38 member states having legal or administrative measures to ensure legal gender recognition, nine of which are based on a self-determination system (Belgium, Denmark, Iceland, Ireland, Luxembourg, Malta, Norway, Portugal and Switzerland). Legal gender recognition is accessible to children in 17 member states (although some restrictions may apply). In many member states, there have been discussions about reviewing age limits especially when these limits lead young transgender people to face rejection, exclusion, or other problems in their everyday lives and emphasis is put on the maturity and the development of the child. Six member states (Austria, Belgium, Germany, Iceland, Malta and the Netherlands) have introduced legal reforms in order to recognise a non-binary or gender-neutral registration. However, 27 member states require a medical diagnosis and 13 member states still require sterilisation (Bosnia and Herzegovina, Bulgaria, Cyprus, the Czech Republic, Finland, Georgia, Latvia, Liechtenstein, Montenegro, Romania, Serbia, Slovakia and Türkiye).<sup>514</sup> In 19 member states, divorce is required (or *de facto* needed) to access legal gender recognition. In its judgment *X. and Y. v. Romania*, the Court found that the Romanian authorities' refusal to legally recognise a change of gender identity in the absence of surgery amounted to unjustified interference with the right to respect for private life.<sup>515</sup>

■ The Committee of Ministers noted improvements in the situation of transgender people in Lithuania, in particular through the recent order to enable transgender people to change their first name and surname in line with their gender identity through an administrative procedure. However, it stressed its profound concern that the legislative process regulating the conditions and procedures for gender reassignment and legal recognition has still not been completed 14 years after the judgment became final.<sup>516</sup> In the examination of the judgment *X v. "the former Yugoslav Republic of Macedonia"*, the authorities adopted a broad road map of steps on gender recognition.<sup>517</sup>

■ Only six member states prohibit medical intervention on intersex children before they are able to consent (Albania, Germany, Greece, Iceland, Malta and Portugal). ECRI recommended that Estonia, France and Norway introduce legislation to prohibit medically unnecessary "sex normalising" surgery and other treatments until such time as the child is able to participate in the decision, based on the right to self-determination and on the principle of free and informed consent.<sup>518</sup> A CDADI working group will prepare a draft recommendation on the equality of rights of intersex people, with invited representatives of the Steering Committee for Human Rights in the fields of Biomedicine and Health (CDBIO).

■ In the case *Drelon v. France*, the Court found that the collection and retention, by the French blood donation service, of personal data reflecting applicant's presumed sexual orientation without proven factual basis amounted to a violation of Article 8 of the Convention.<sup>519</sup>

509. *Beizaras and Levickas v. Lithuania*, Application No. 41288/15, 2 December 2021.

510. *B. and C. v. Switzerland*, Application Nos. 889/19 and 43987/16, 17 November 2020.

511. Venice Commission, [Opinion No.1059 / 2021](#) on the compatibility with international human rights standards of Act LXXIX amending certain acts for the protection of children (CDL-AD(2021)050), 13 December 2021.

512. Commissioner for Human Rights, "[Hungarian government must stop instrumentalising and weakening the human rights of LGBTI people](#)", 13 January 2022.

513. [Thematic report on Legal Gender Recognition in Europe, first thematic implementation review report on CM/Rec\(2010\)5](#).

514. See, for example, ECRI Fifth Monitoring Cycle Report on Finland.

515. *X and Y v. Romania*, Application Nos. 2145/16 and 20607/16, 19 January 2021.

516. *L. v. Lithuania*, Application No. 27527/03, 31 March 2008.

517. *X v. the former Yugoslav Republic of Macedonia*, Application No. 29683/16, 17 April 2019.

518. ECRI Sixth Cycle Monitoring Reports on [France](#), paragraph 35; on [Estonia](#), paragraphs 31 and 32; and on [Norway](#), paragraph 34.

519. *Drelon v. France*, Application Nos. 3153/16 and 27758/18, 8 September 2022.



■ There were positive trends in relation to private and family life. Thirty member states now recognise same-sex couples: Montenegro passed by-laws to enable registration of same-sex partnerships in 2021, and Andorra, Slovenia and Switzerland adopted laws on same-sex unions. Nineteen member states have extended access to joint adoption and to second-parent adoption, while assisted reproductive treatment is provided to same-sex couples in 15 member states and to single people in 27. However, 17 member states have constitutional limitations to same-sex marriage.

■ In two cases against the Russian Federation, the Court found that depriving the applicant of their parental rights on gender identity grounds violated the Convention.<sup>520</sup> The lack of any opportunity for same-sex couples to have their relationships formally acknowledged went beyond the margin of appreciation enjoyed by authorities.<sup>521</sup>

■ 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. However, the Commissioner for Human Rights noted occurrences of LGBTI people being denied that right, pointing to political backtracking; displays of hate; a ban on the Belgrade Europride in September 2022; a terrorist attack on the eve of Oslo Pride; the ban and subsequent massive arrests of participants at Istanbul Pride; the cancellation of Tbilisi Pride due to threats of violence and the inaction of the authorities to tackle them, and the restrictions on freedom of association imposed by the Turkish Government in recent years in the name of counter-terrorism.<sup>522</sup>

■ The Covid-19 pandemic and the Russian Federation's war against Ukraine have put LGBTI people at heightened risk of grave human rights violations and have forced civil society to focus its resources on humanitarian assistance.<sup>523</sup> Stressing that LGBTI people are even more vulnerable in times of war and displacement, the Commissioner for Human Rights stressed that Ukrainian LGBTI refugees face specific challenges, notably transgender women blocked in Ukraine because they have not completed the legal gender recognition process and consequently the gender markers in their identity documents remain male. Other challenges include a lack of access to specific healthcare for transgender and intersex people in countries where such medication is already in short supply or subject to burdensome requirements, while same-sex partners fleeing Ukraine also face difficulties related to the fact that their status as couples or families was not recognised, either in Ukraine or in some of the neighbouring countries, leading to problems in securing family reunification or access to temporary protection.<sup>524</sup>

■ In Georgia, the Council of Europe manual on policing hate crime against LGBTI people has been adapted and integrated in the curriculum of the mandatory basic police training course. In Bosnia and Herzegovina, an LGBTI action plan was adopted and launched on 12 October 2022,<sup>525</sup> supported by Council of Europe co-operation programmes.

## Artificial intelligence and discrimination

■ The CDADI and the Gender Equality Commission are jointly developing a study on the impact of artificial intelligence, its potential for promoting equality – including gender equality – and the risks it may present in relation to non-discrimination, with a view to a new legal text. France has increased capacity in the Ombudsperson's Office, the Personal Data Protection Office and ministerial contact points to identify the risks artificial intelligence and automated decision-making systems pose to the principles of equality and non-discrimination.<sup>526</sup>

520. *A.M. and Others v. Russia*, Application No. 47220/19, 6 July 2021.

521. *Fedotova and Others v. Russia*, Application Nos. 40792/10, 30538/14 and 43439/14, 17 July 2021: case pending before the Grand Chamber.

522. Commissioner for Human Rights, "[Europride 2022 – closing remarks by Dunja Mijatović](#)", 16 September 2022; Commissioner for Human Rights' [statement](#) on attack in Oslo, 25 June 2022; Commissioner for Human Rights' [statement](#) on Istanbul Pride, 24 June 2022; "[Georgia should ensure effective implementation of the anti-discrimination legislation and improve protection of human rights in the fields of labour and the environment](#)", 15 July 2022; "[Turkish authorities should stop the stigmatisation of LGBTI people](#)", 24 June 2021.

523. Parliamentary Assembly General Rapporteur on the rights of LGBTI people, "[General rapporteur expresses deep concern for the rights of LGBTI people in or fleeing Ukraine](#)", 1 April 2022.

524. Commissioner for Human Rights, "[LGBTI people affected by the war in Ukraine need protection](#)", 17 May 2022.

525. [2021-2024 Action plan](#) to improve the state of human rights and fundamental freedoms of LGBTI people in Bosnia and Herzegovina, adopted by the Council of Ministers of Bosnia and Herzegovina at its 54th session on 28 July 2022.

526. [AI and discriminations course completed in France - Inclusion and anti-discrimination \(coe.int\)](#).



In its [report](#) (published in 2019), ECRI recommended that the Russian authorities abolish the legal ban on the provision of information about homosexuality to minors. The Russian authorities indicated to ECRI that this recommendation was “irrelevant” – a matter of great concern to ECRI given the fact that it was based on the judgment of the Court in the case *Bayev and others v. Russia*. ECRI considered in its [conclusions](#) (published in October 2021) that this recommendation had not been implemented.

In the Russian Federation, since the beginning of the war, anti-war protests have been quickly and brutally suppressed and banned, reporting has been restricted and access to information online has been blocked. Activists working for human rights have been mobilising against the Russian Federation’s invasion, including LGBTI activists. The LGBTI community living in the Russian Federation has been severely affected by the war and the shrinking of civic space: people leaving or trying to leave the country have had difficulties in seeking refuge due to the impossibility of providing relevant documents to obtain temporary protection.<sup>527</sup> Furthermore, transgender people fleeing the Russian Federation have encountered barriers to accessing transition-related medical treatments.<sup>528</sup> The Russian parliament adopted two new laws banning “information that denies family values” and “propaganda of non-traditional sexual relations” among minors, applying the ban to all ages and thus making life even more difficult for already very marginalised LGBTI Russians.<sup>529</sup> International NGOs, Council of Europe representatives, the Commissioner for Human Rights and the Parliamentary Assembly’s General Rapporteur for the rights of LGBTI people have called for supporting LGBTI people fleeing the conflict and seeking asylum. In particular, the Commissioner called on member states to take into consideration the situation of LGBTI people from the Russian Federation who had sought refuge in Ukraine and who may not be able to safely return to their country of origin, and stressed that more LGBTI people might be seeking to leave the Russian Federation in the future, given the worsening of their human rights situation there.<sup>530</sup>

## DIVERSITY AND INCLUSION

### Measurement criteria

- ▶ An adequate legal and institutional framework for protecting national minorities and regional or minority languages exists.
- ▶ Recommendations by the ACFC and by COMEX are implemented.
- ▶ Regional and minority languages are used in public life and the level of participation and visibility of people belonging to national minorities in society improves.
- ▶ Policies are adopted to promote equality for minorities, including Roma, Travellers and migrants and to combat segregation in schools and in neighbourhoods.
- ▶ Member states adopt [measures to promote intercultural integration](#).
- ▶ Comprehensive local strategies for migrant and refugee inclusion are adopted and implemented.

### Findings

#### National minorities and regional or minority languages

##### General developments

■ The rights of people belonging to national minorities were deeply impacted by the Russian Federation’s aggression against Ukraine. Many of the most affected regions in the east and south of Ukraine are multi-ethnic and home to numerous national minorities. Crimean Tatars, who had been internally displaced to mainland

527. Commissioner for Human Rights, [Human Rights Comment](#) “Support Russian and Belarusian civil societies and human rights defenders”, 31 August 2022.

528. ILGA Europe, [Briefing Document: Ukraine War – Medications Needed By Trans And Intersex People](#), 6 April 2022.

529. Human Rights Watch, [Russia: Expanded ‘Gay Propaganda’ Ban Progresses Toward Law](#), 25 November 2022; Amnesty International, [“First approval of anti-LGBTII bill ramps up state-sanctioned homophobia”](#), 27 October 2022; *The Guardian*, [“Russia passes law banning ‘LGBTI propaganda’ among adults”](#), 24 November 2022.

530. Statement of the Secretary General of the Council of Europe, 17 May 2022, [“IDAHOT: LGBTI people fleeing war face specific risks and need protection”](#); Commissioner for Human Rights, [Statement](#), LGBTI people affected by the war in Ukraine need protection, 17 May 2022.

Ukraine after the Russian Federation's illegal annexation of Crimea in 2014, have had to flee from their homes for a second time in eight years. Roma are particularly vulnerable, also as refugees, because of widespread discrimination and poverty, and a lack of documentation. Both the ACFC and COMEX condemned the Russian Federation's aggression in the strongest terms.<sup>531</sup> Referring to the situation of Roma fleeing the war in Ukraine, the Commissioner for Human Rights stressed that humanitarian assistance, including shelter and adequate transportation, must be provided to all, without any discrimination.<sup>532</sup>

■ The Advisory Committee on the FCNM also expressed concerns about the repercussions of the war on people belonging to national minorities and inter-ethnic relations in the Russian Federation. Young men from minorities are reportedly over-represented among recruits and make up the majority of fatalities in the Russian army. People belonging to national minorities also suffer from severe restrictions on freedom of expression and cross-border co-operation.<sup>533</sup> The Advisory Committee will continue following the situation of people belonging to national minorities in the Russian Federation, which remains party to the FCNM.

■ The Commissioner for Human Rights has highlighted the continued politicisation of national minority rights, including in the spheres of language use, education and participation in public life, and expressed her hope that the Framework Convention for the Protection of National Minorities and the European Charter for Regional or Minority Languages would serve as an inspiration for a human rights-based approach to minority protection.<sup>534</sup> Hate speech, including by senior politicians, has also continued to affect national minorities in different states. In the case *Budinova and Chaprazov v. Bulgaria*, the Court found that by refusing to grant the applicants redress in respect of a politician's discriminatory statements targeting Jews and Roma, the domestic courts had failed to comply with their obligation to respond adequately to discrimination on account of the applicants' ethnic origin and to secure respect for their private life.<sup>535</sup>

### Adequate legal and institutional framework

■ Some states have continued to improve the legal framework for the protection of regional or minority languages, as seen in Germany, Norway and the United Kingdom for the Isle of Man. COMEX encourages all states to regularly review their commitments to reflect developments in the situation of the regional or minority languages and to set medium- or long-term improvement targets.<sup>536</sup> The signature of the Charter by Portugal confirms the relevance of the convention 30 years after its opening for signature<sup>537</sup> and the willingness of member states to take further steps to protect regional or minority languages in Europe.

■ Positive legal developments include the new Norwegian Language Act of 2021 to protect the Sami Kven, Romani and Romanes languages as an indigenous languages.<sup>538</sup> In Germany, the 2021 broadcasting agreement for the regional channel NDR says regional or minority languages should be taken into account in a regular and adequate manner.<sup>539</sup> Budget cuts and the formal reduction in teaching German to one hour per week is a worrying sign in Poland, all the more because these measures target only the German language and go against the commitments the country undertook under the ECMRL.<sup>540</sup>

■ The CDADI is currently working on a draft recommendation on the active political participation of national minority youth that is building on best practice from member states.

531. See [Statement of the Advisory Committee on the Framework Convention for the Protection of National Minorities on the Russian aggression against Ukraine](#), 20 May 2022, and [Statement by the Committee of Experts of the European Charter for Regional or Minority Languages on Russian Federation's aggression against Ukraine](#), 15 June 2022.

532. Commissioner for Human Rights, Statement on International Roma Day, "Let us fight discrimination and prejudices against Roma fleeing the war in Ukraine", 7 April 2022.

533. 13th activity report of the Advisory Committee on the Framework Convention for the Protection of National Minorities, 1 June 2020 to 31 May 2022, p. 12.

534. Commissioner for Human Rights, [Annual activity report 2021](#) presented to the Committee of Ministers and the Parliamentary Assembly, section 2.9, 26 April 2022, CommDH(2022)8.

535. *Budinova and Chaprazov v. Bulgaria*, Application No. 12567/13, 16 February 2021.

536. COMEX, [Seventh evaluation report on Germany](#), MIN-LANG (2022) 7, paragraph 6; COMEX, [Evaluation recommendations of immediate action United Kingdom](#), MIN-LANG (2021)3, paragraphs 34 and 36; [Protection of Manx Gaelic under the ECRML extended - News about the European Charter for Regional or Minority Languages \(coe.int\)](#).

537. [Portugal signs the European Charter for Regional or Minority Languages - News about the European Charter for Regional or Minority Languages \(coe.int\)](#).

538. ACFC, [Fifth opinion on Norway](#), 2022, paragraph 184.

539. COMEX, [Seventh evaluation report on Germany](#), MIN-LANG (2022) 7, paragraphs 8 and 34.

540. [Poland: Committee of Experts concerned about decisions affecting German language in education - News about the European Charter for Regional or Minority Languages \(coe.int\)](#).

## Towards a Committee of Ministers recommendation on the active political participation of national minority youth

The CDADI is preparing a new legal text to ensure that young people belonging to national minorities have the opportunity, the space, the means and, where necessary, the support to participate in and influence public decisions affecting their lives.

It builds on Council of Europe and other international treaties and jurisprudence, the work of the ACFC, COMEX and the CDADI [Study on the active political participation of national minority youth in Council of Europe member states](#), which involved young people in its preparation. The study identified several obstacles to political participation of national minority youth at individual and organisational level, including legal restrictions, lack of awareness of rights and opportunities, and a lack of capacities among national minority youth to engage in these processes.

### Implementation of recommendations

■ Most member states conducted a population and housing census in 2021 and 2022.<sup>541</sup> This exercise is held once every 10 years and is particularly relevant in countries where minority rights such as the use of minority languages in administration or on signage depend on the size of a minority in a given region. Many states made stronger efforts to involve representatives of national minorities in the preparation of the census, recruiting people belonging to national minorities as interviewers, or make questionnaires available in minority languages.<sup>542</sup> This helps increase the trust in census results and ensures that all respondents, including those often exposed to stigma such as Roma, feel safe to indicate their ethnic affiliation.

■ Some states still grant language rights only in regions surpassing very high thresholds, such as absolute or relative majority in Bosnia and Herzegovina<sup>543</sup>, 50% in Estonia,<sup>544</sup> 33% in Croatia,<sup>545</sup> or 30% for some minority language rights in Switzerland.<sup>546</sup> Both COMEX and the ACFC have repeatedly criticised such high thresholds as not being compatible with the respective conventions.

■ As the size of minorities is expected to drop in many regions, the Advisory Committee on the FCNM reminded states to apply thresholds flexibly and not lower existing rights because of census results.<sup>547</sup> It is also important to complement census results with other data concerning regional or minority language speakers and their geographic distribution.<sup>548</sup>

■ Several member states did not use the opportunity of the census to gather any data on affiliations with national minorities or use of minority languages.<sup>549</sup> This makes it more difficult to devise evidence-based policies for people belonging to those groups. Others, such as Slovakia or Estonia, provided the possibility to indicate two ethnic affiliations. The Advisory Committee on the FCNM welcomed this possibility as it provides the potential for reinforcing inter-ethnic dialogue and social cohesion.<sup>550</sup>

■ During the second and third years of the Covid-19 pandemic, member states drew lessons from the negative impact of lockdowns and school closures on people belonging to national minorities. Remote teaching in and of minority languages, for instance, was better organised during the second phase of school closures in Germany.<sup>551</sup> Some countries provided specific economic support to mitigate the effects on people belonging to national minorities. Norway, for example, supported Sami reindeer herders affected by border closures and a decrease in tourism financially.<sup>552</sup> North Macedonia supported artists and cultural workers from the Albanian and other minorities in the framework of Covid-19 relief packages.<sup>553</sup> In all monitored countries with a signifi-

541. [UN World Population and Housing Census Programme, Census dates](#).

542. ACFC, Fifth opinion on North Macedonia, 2022, paragraphs 33-34; ACFC, Fifth opinion on Croatia, 2021, paragraphs 38-41; ACFC, Fifth opinion on Estonia, 2022, paragraph 51.

543. COMEX, Third evaluation report on Bosnia and Herzegovina, MIN-LANG(2022)2, paragraph 9.

544. ACFC, Fifth opinion on Estonia, 2022, paragraphs 128-133.

545. ACFC, Fifth opinion on Croatia, 2021, paragraph 168; COMEX, Evaluation of recommendations for immediate action Croatia, MIN-LANG(2022)3, paragraph 14.

546. COMEX, Eighth evaluation report on Switzerland, MIN-LANG (2022)8, paragraph 47.

547. ACFC, Fifth opinion on Croatia, 2021, paragraph 51; ACFC Fifth opinion on the Slovak Republic, 2022, paragraph 55.

548. COMEX, Third evaluation report on Poland, MIN-LANG (2021) 15, paragraph 14.

549. ACFC, Fifth opinion on Germany, 2022, paragraphs 78-83.

550. ACFC, Fifth opinion on Slovakia, 2022, paragraphs 55-56; ACFC, Fifth opinion on Estonia, 2022, paragraph 54.

551. ACFC, Fifth opinion on Germany, 2022, paragraph 225.

552. ACFC, Fifth opinion on Norway, 2022, paragraphs 283-285.

553. ACFC, Fifth opinion on North Macedonia, 2022, paragraph 48.

cant Roma population, however, the pandemic resulted in a significant setback in Roma children's access to education, which will reduce life chances for them in the long term.<sup>554</sup>

■ Regardless of the consequences of the pandemic, education in and of minority languages continues to face many challenges. Among these, the lack of teachers, highlighted by the monitoring bodies for many years, remains widespread. The consequences of this lack of teachers threatens what has been achieved in the field of regional or minority language education.<sup>555</sup> Another frequent problem is insufficient quality and quantity of textbooks and other educational materials.<sup>556</sup>

■ The ECRML and the FCNM are more effective thanks to targeted co-operation activities assisting Albania, Bosnia and Herzegovina, Serbia and Ukraine in developing reforms. A pilot project to strengthen the visibility of minorities and their languages at local level was completed in Bosnia and Herzegovina in autumn 2022: 49 new signs were installed in five municipalities, marking cultural heritage and places inhabited by national minorities.

### Visibility of regional and minority languages

■ Several member states have significantly increased their financial support for the promotion of national minority cultures.<sup>557</sup> Unfortunately, project-based funding for a maximum duration of one year remains the rule, which means a high level of financial insecurity for minority associations, as well as concerns about sustainability and planning.<sup>558</sup> Also, annual application procedures are often overly bureaucratic and stretch the administrative capacity of minority NGOs.<sup>559</sup> In some cases, the funding is not transparent nor systematic.<sup>560</sup> It is important to ensure stability and sustainability of the activities of national minorities or regional or minority language speakers.<sup>561</sup> The German model of multi-annual framework agreements through the Foundation for the Sorbian people and the newly established Foundation for the Frisian Ethnic Group is a good basis for sustainable funding schemes.<sup>562</sup>

■ The use of regional and minority languages in public administration, courts and signage is of high practical as well as symbolic importance. However, despite some good practices at national and local levels, for instance in Slovakia,<sup>563</sup> regional or minority languages are still rarely used in courts<sup>564</sup> or administrative authorities.<sup>565</sup> Measures such as recruitment, language training for staff and translation services are needed and minority language speakers should be encouraged to use their language in contacts with the authorities.<sup>566</sup> Digitalisation can be an opportunity as well as a challenge for regional or minority languages. Services in regional or minority languages might, in some cases, be provided later than those in the official language or online accessibility to forms in regional or minority languages may prove difficult.<sup>567</sup> It is important that digitalisation does not lead to a barrier to equal access to services for those speaking regional or minority languages.<sup>568</sup> In this sense, states should include the promotion of the use of regional or minority languages in their policies, legislation and practice on digitalisation.<sup>569</sup>

554. ACFC, Fifth opinion on North Macedonia, 2022, paragraph 109; ACFC, Fifth opinion on Croatia, 2021, paragraphs 195 and 200; ACFC, Fifth opinion on the Slovak Republic, 2022, paragraphs 213-214; [ACFC, Fifth opinion on Slovenia, 2022](#), paragraph 148; [ACFC, Fifth opinion on the Czech Republic, 2021](#), paragraph 137.

555. COMEX, Seventh evaluation report on Germany, MIN-LANG (2022)7, paragraphs 16, 48, 51 and 55; [COMEX, 6th evaluation report on Cyprus, MIN-LANG \(2021\)16](#), paragraphs 14 and 20; COMEX, Evaluation recommendations of immediate action United Kingdom, MIN-LANG (2021)3, paragraph 31.

556. ACFC, Fifth opinion on North Macedonia, 2022, paragraph 114; ACFC, Fifth opinion on Slovakia, 2022, paragraphs 199-200; ACFC, Fifth opinion on Croatia, 2021, paragraphs 179-180.

557. ACFC, Fifth opinion on Slovakia, 2022, paragraph 103; ACFC, Fifth opinion on Croatia, 2021, paragraph 91; ACFC, Fifth opinion on Germany, 2022, paragraph 93.

558. COMEX, Eighth evaluation report on Norway, MIN-LANG (2021)20, paragraph 12.

559. ACFC, Fifth opinion on Slovakia, 2022, paragraph 106.

560. COMEX, Third evaluation report on Bosnia and Herzegovina, MIN-LANG (2022)2, paragraph 17.

561. COMEX, Seventh evaluation report on Germany, MIN-LANG (2022)7, paragraph 57, Eighth evaluation report on Norway, MIN-LANG (2021)20, paragraph 12, Third evaluation report on Poland, MIN-LANG (2021)15, paragraph 59; ACFC, Fifth opinion on the Czech Republic, 2021, paragraphs 75 and 77.

562. ACFC, Fifth opinion on Germany, 2022, paragraph 98.

563. ACFC, Fifth opinion on Slovakia, 2022, paragraph 184.

564. COMEX, Seventh evaluation report on Germany, MIN-LANG (2022)7, paragraph 20.

565. COMEX, Third evaluation report on Bosnia and Herzegovina, MIN-LANG (2022)2, paragraph 21, COMEX, Seventh evaluation report on Germany, MIN-LANG (2022)7, paragraph 26.

566. COMEX, Evaluation of recommendations for immediate action Croatia, MIN-LANG(2022)3, paragraph 15.

567. COMEX, Seventh evaluation report on Germany, MIN-LANG (2022)7, paragraph 31, COMEX, Eighth evaluation report on Norway, MIN-LANG(2021)20, paragraphs 56 and 69.

568. COMEX, Eighth evaluation report on Norway, MIN-LANG(2021)20, p. 4.

569. [Statement of the Committee of Experts of the European Charter for Regional or Minority Languages on the promotion of regional or minority languages through artificial intelligence.](#)

## Roma and Traveller inclusion

### Worrying trends and positive developments

■ The scapegoating of Roma and Travellers for political gain and hate speech in the media and on the internet have fuelled a wave of violence, with anti-Roma hate crime reported in several member states. Insufficient action to end *de facto* segregation in schools despite several judgments of the Court, and forced evictions without proper safeguards, are among the key issues highlighted by recent ECRI reports. Gaining equal access to housing, employment and healthcare remain particular challenges for many Roma communities in member states.

■ A study by the Committee of Experts on Roma and Traveller Issues (ADI-ROM) highlighted the causes, prevalence and consequences of antigypsyism, the long-lasting impact of social inequalities and low self-esteem among Roma, the trauma inflicted by violence on many generations, and the limited impact of social inclusion policies targeting Roma.<sup>570</sup> ECRI defines antigypsyism as a specific form of racism.

■ Escaping war and crossing borders has proved an additional challenge for Roma without identification documents. There are reports that, following the aggression of the Russian Federation against Ukraine, Roma families fleeing the war – almost exclusively composed of women and children – have been discriminated against in the provision of humanitarian assistance or transportation in some of Ukraine's neighbouring countries.<sup>571</sup>

■ These issues were raised by the Special Representative of the Secretary General on Migration and Refugees after fact-finding missions to [Slovakia](#), the [Czech Republic](#), the [Republic of Moldova](#) and [Poland](#) and by the Commissioner for Human Rights following emergency missions carried out by her and her team to countries neighbouring Ukraine.<sup>572</sup>

■ The Covid-19 pandemic had a severe impact on Roma and Traveller communities and individuals. They have become even more vulnerable as hatred and xenophobia have risen, employment opportunities have diminished and growing numbers of Roma and Traveller children have dropped out of school due to limited access to distance learning.<sup>573</sup>

■ The Committee of Ministers reacted with the [Guidelines on upholding equality and protecting against discrimination and hate during the Covid-19 pandemic](#). The CDADI prepared in addition an [explanatory memorandum](#) to those guidelines and a [compilation of good practices](#). To further alleviate the negative impacts of the Covid-19 pandemic, the actions for the implementation of the [Strategic Action Plan for Roma and Traveller Inclusion \(2020-2025\)](#) were adapted. The main achievements included strengthening the capacities of local authorities to respond to the needs of Roma and Travellers, enhancing effective participation of Roma and Travellers in decision-making processes, monitoring the situation of Roma and Travellers during the Covid-19 pandemic and strengthening the resilience of Council of Europe member states in responding to the pandemic, especially by supporting local-level initiatives and strengthening inclusive education. The ADI-ROM also shared experiences and examples of good governmental practice to mitigate the risks of the pandemic and put together a compilation of best practices in member states.

■ Some member states have taken steps to publicly recognise wrongdoings and acts of assimilation vis-à-vis the Roma community. Even if such decisions have come years or even decades after the events, gestures such as public apologies or compensation schemes are of high symbolic value. In 2021, the Czech parliament voted to compensate thousands of Roma women who were unlawfully sterilised by the Czechoslovak and subsequently Czech authorities between 1966 and 2012. In 2021, the Slovakian government issued a public apology for a 2013 police raid in the Košice region that saw 30 Roma people injured. In Germany, an independent commission on antigypsyism commissioned by the government dealt in its 2021 report not only with the Nazi genocide of the Sinti and Roma, but also with the injustices inflicted on members of the community in post-war Germany. The publication of the report was followed-up by the appointment of a Commissioner for the Fight against Antigypsyism.

570. [Antigypsyism - Causes - Prevalence - Consequences - Possible Responses \(2022\)](#).

571. See, for instance, the reports of the fact-finding missions of the Special Representative of the Secretary General on Migration and Refugees to [the Slovak Republic](#), [the Czech Republic](#), [the Republic of Moldova](#) and [Poland](#) and the Commissioner for Human Rights' [statement](#) on the discrimination and prejudices against Roma fleeing the war in Ukraine, 7 April 2022.

572. See the reports of the fact-finding missions of the Special Representative of the Secretary General on Migration and Refugees to [the Slovak Republic](#), [the Czech Republic](#), [the Republic of Moldova](#) and [Poland](#) and the Commissioner for Human Rights' [statement](#) related to these aspects.

573. [Statement "Covid-19: Rapporteur denounces discrimination against Roma and Travellers"](#).



■ In 2021, Romania adopted a law on combating antigypsyism. Finland, Germany and Spain included “bias against Roma” or “antigypsyist motivation” in national hate crime statistics or data collection.

■ Historical trauma of assimilation and forced adoption of Romani/Tater children also plays a role in the minority’s relationship with child protection services in Norway.<sup>574</sup> The new Norwegian Child Welfare Act requires that children’s cultural, linguistic and religious backgrounds be taken into account. However, more efforts are needed to re-build the trust of Romani/Tater families in the child protection services.

■ Roma children’s access to education continues to be a problem in many member states. Roma children have also been disproportionately affected by the Covid-19 pandemic. Widespread poverty, lack of equipment, overcrowded housing and the limited ability of parents to support them rendered it difficult for them to follow remote education during school closures. Legal progress has been made with reference to Roma children’s access to quality education. The new law on primary education in North Macedonia attempts to address obstacles to Roma children’s access to education and several member states have taken steps to increase the participation of Roma children in pre-school education: Slovenia introduced the possibility of free-of-charge kindergarten and the Czech Republic and Slovakia introduced compulsory pre-school education. In 2022, the ADI-ROM started to work on a study on desegregation and inclusion policies and practices in the field of education, including Roma and Traveller children.

■ ADI-ROM assists member states in implementing the recommendation on the inclusion of the history of Roma and/or Travellers in school curriculums and teaching materials. It decided to set up a working group and put it in charge of developing a capacity-building programme and tools to help national roll-out. During 2023, it will work on developing methodological guidelines, which will be adaptable to the national context.

### **Court judgments and their execution**

■ Access to quality inclusive education remains one of the major challenges for Roma and Traveller children and impedes their effective social and economic inclusion. Monitoring reports establish that, compared to the majority population, Roma children continue to have significantly lower educational outcomes. This is also reflected in a recent judgment of the Court, *X and Others v. Albania*,<sup>575</sup> where authorities failed to implement swift and comprehensive desegregation measures in an elementary school attended almost exclusively by Roma children.

■ The Committee of Ministers has noted slow progress in the case of *D.H. and Others v. the Czech Republic*, which concerns discrimination due the higher likelihood that Roma pupils are assessed with “mild mental disabilities” and assigned to special primary schools.

■ Between January and June 2021, the joint European Union–Council of Europe project Inschool continued to work with education ministries in the Czech Republic, Romania and Slovakia. Schools and public authorities were helped with the design, implementation, monitoring and review of quality and inclusive education policies.

■ ADI-ROM is preparing a feasibility study and possible Committee of Ministers recommendation on desegregation and inclusion policies and practices in educating Roma and Traveller children.

■ Quality inclusive education, including early childhood education, is closely interlinked with sustainable employment in both the private and public sectors. The lack of equal access to employment affects low-skilled Roma and Travellers but also those who are highly skilled and qualified. Ensuring equal opportunity, equity and non-discrimination in hiring practices is highlighted by the thematic report of the ADI-ROM on stimulating Roma and Traveller employment.

■ The Council of Europe, in co-operation with the European Roma Institute for Arts and Culture, supported the Ukrainian authorities in enhancing the quality of teaching in the Romani language. It provided assistance in establishing the inter-agency working group for the codification of Romani and codified a dictionary of 700 words in Romani, which will serve as a basis for the development of teaching materials. Over the course of 2021 and 2022, assistance was provided in developing the curriculum and teaching materials in the Romani language for primary schools.

■ Lack of effective investigations and court proceedings, including the failure to investigate possible racist motives in the use of force during arrest and other law-enforcement operations, continues to be an issue in some member states (see *M.B. and Others v. Slovakia*, Application No. 45322/17, 1 April 2021; *J.I. v. Croatia*, Application No. 35898/16, 8 September 2022).

574. Advisory Committee on the Framework Convention for the Protection of National Minorities - Fifth opinion on Norway.

575. *X and Others v. Albania*, Application Nos. 73548/17 and 45521/19, 31 May 2022.



■ The Committee of Ministers continues to examine *Soare and Others v. Romania*,<sup>576</sup> concerning deaths, life-threatening injuries, or ill-treatment during arrest and other law-enforcement operations. The Roma and Travellers team has published the [Toolkit for police officers: Council of Europe standards on racially motivated crimes and non-discrimination](#) including relevant Court case law with the aim of supporting police officers to better understand, investigate and prosecute human rights violations.

■ In the case of *Lacatus v. Switzerland*,<sup>577</sup> the Court held that the imposition of a fine on a poor and vulnerable Roma woman for intrusive begging, followed by imprisonment for five days for non-payment, amounted to a violation of her right to respect for private and family life.

■ Criminalising poverty by fining and imprisoning individuals begging, and stigmatising Roma because of their culture, are based on stereotypes that need to change. A [thematic report of ADI-ROM on legislation and policies related to begging, with special focus on children](#), stresses that such action traumatises a minority community already facing tremendous and complex social difficulties.

■ The Committee of Ministers closed its supervision on the execution of *Lakatosova and Lakatos v. Slovakia*<sup>578</sup> judgment, concerning the authorities' failure to investigate a shooting spree in 2012 by an off-duty police officer at the home of a Roma family, which led to two serious injuries and three deaths. However, the questions raised are taken up in the *R.R. and R.D. v. Slovak Republic* case,<sup>579</sup> which remains under supervision.

■ The Committee of Ministers closed its supervision on the execution of *Secic v. Croatia*, concerning the failure of domestic authorities to take into account the racist motives of attacks on Roma origin or their association with a Roma partner.

■ The [Factsheet on Roma and Travellers](#) was updated with the most recent Court judgments and a thematic factsheet was also published.<sup>580</sup>

### Political participation and empowerment

■ Roma public participation is another frequent concern of monitoring bodies. The political participation of Roma communities and the presence of Roma in public services does not reflect the demographic weight of the communities. Even though there are now more Roma with solid educational qualifications and a renewed vision of community leadership and community organising, this does not yet directly translate into Roma presence in the political sphere. The Joint Council on Youth is in the process of preparing a recommendation on Roma Youth Participation.

■ Empowerment of Roma civil society through Roma political schools was a focus of the work of the Council of Europe in Albania, Greece, Italy, Portugal, Spain and Ukraine in 2021. In 2022, political schools were organised in Albania, Bosnia and Herzegovina, Greece, Kosovo\*, Italy and the Iberian Peninsula, and a group of young Roma activists took part in the 2022 World Forum for Democracy. The schools aim at preparing Roma youth for active public and political participation in their country at the local, regional and national levels.

■ While all Roma and Travellers are affected by antigypsyism, gender-based discrimination amplifies the inequalities for women. There are significant gender gaps between Roma women and men in various fields, notably education, employment, health, participation in public and political life, and awareness of how to respond to discrimination. The Advisory Committee on the FCNM highlighted topics such as the impact of early marriages on school absenteeism and dropouts, and of compensation for past sterilisation of Roma women. There are significant data which point to gaps in this field, but also significant expertise, good practices and field experience which can be used as a basis for further action on the preparation of a Committee of Ministers recommendation on equality for Roma and Traveller women and girls.

■ Various co-operation activities aim to tackle these issues, such as the joint European Union–Council of Europe programmes,<sup>581</sup> and the Roma political schools. There are regular consultations with Roma and Traveller civil society and individuals. The 8th International Roma Women's Conference was held in Strasbourg on 24-26 November 2021.

576. [CM/Del/Dec\(2021\)1406/H46-24](#).

577. *Lacatus v. Switzerland*, Application No. 14065/15, 19 January 2021.

578. [Resolution CM/ResDH\(2021\)218](#) Execution of the judgment of the Court *Lakatošová and Lakatoš against Slovak Republic* (Adopted by the Committee of Ministers on 7 October 2021 at the 1413th meeting of the Ministers' Deputies).

579. *R.R. and R.D. v. Slovak Republic*, application no. 20649/18, 1 December 2020.

580. [Thematic factsheet - Roma and Travellers](#).

581. [ROMACT](#) – "Building up political will and understanding of Roma inclusion at local and regional level", [ROMACTED](#) – "Promoting good governance and Roma empowerment at local level" and [JUSTROM](#) – "Roma Women's Access to Justice".

### Towards a Committee of Ministers recommendation on equality for Roma and Traveller women and girls

ADI-ROM and the CDADI are preparing a new standard to guide member states in taking effective and targeted measures to advance equality for Roma and Traveller women and girls.

There are still structural obstacles, and Roma and Traveller women and girls suffer from stark inequalities in fields such as education, employment, housing, health, life expectancy, and participation in public and political life. They are often subject to gender-based violence and not aware of the redress mechanisms that are in place to tackle discrimination. The aim of the new standard is to help member states to effectively address those issues.

## Intercultural integration

■ Committee of Ministers [Recommendation CM/Rec\(2015\)1](#) calls upon member states to help implement intercultural integration at local level and to take it into account when developing or revising national migrant integration policies. The CDADI highlighted commitment and promising measures. At the same time, it underlined that these examples were often sectoral and that a co-ordinated, systemic approach was still missing.<sup>582</sup>

■ The CDADI has prepared and adopted a [Model Framework for an intercultural integration strategy at the national level](#), containing guidance and tools for practitioners from all levels of government on steps to take in intercultural integration. The Model Framework is available in English, [French](#), [Polish](#), [Romanian](#), [Slovakian](#) and [Ukrainian](#). It is currently being translated into Finnish and Swedish; other member states are encouraged to translate it into their respective national language(s).

■ The Committee of Ministers adopted [Recommendation CM/Rec\(2022\)10 on multilevel policies and governance for intercultural integration](#) on 6 April 2022 to promote and guide effective government policies on intercultural integration.

### Recommendation CM/Rec(2022)10 on multilevel policies and governance for intercultural integration

Recommendation CM/Rec(2022)10 is based on the wide range of Council of Europe standards and practice in the field of equality and diversity and builds on the wealth of knowledge from 14 years of work on local integration under the ICC programme. It acknowledges that diversity comes with challenges but can also bring richness to society if managed in a competent way and in the spirit of inclusion. The recommendation recognises the role of public authorities at all levels of government in devising policies that help to realise the potential of diversity and make it an advantage for society as a whole, while reducing friction and conflict and ensuring everyone is included.

The goals and key principles of the intercultural integration approach covered are: 1) enabling equal access to rights and opportunities for everyone; 2) valuing and managing diversity as a collective advantage; 3) promoting meaningful intercultural interaction; 4) fostering active citizenship and participation as a means to well-being, prosperity and community cohesion. It also outlines the elements needed for a multilevel implementation of intercultural integration strategies.

■ The CDADI approved a [model capacity-building programme](#) developed by the Expert Committee on Intercultural Integration of Migrants (ADI-INT). It enables member states to design and implement their own tailor-made capacity-building programmes for intercultural integration. The ADI-INT has produced first tool – the [Manual for the design of a training course on intercultural competence to help implement such capacity-building programmes](#).

■ The recommendations have been the basis for action in a number of member states and some have benefited from technical support through the ICC programme. A [project](#) is implemented by the ICC programme in partnership with the Cypriot Ministry of the Interior and the European Union is helping Cyprus build structures for intercultural integration. It aims to empower local authorities, NGOs and migrant organisations to be part of the integration process and helps authorities to enable local policy development, capacity building, exchange of good practices and co-ordination. Five regional intercultural networks have been created; having completed

<sup>582</sup>. CDADI(2021)5 Report on the implementation of CM/Rec(2015)1 on intercultural integration.

the Intercultural Cities Index assessment, the networks are currently developing intercultural strategies or action plans for their districts, based on Council of Europe standards.<sup>583</sup>

■ Finland has recently launched a similar two-year [project](#) to build an inclusive integration approach providing technical support based on the Finnish “good relations” concept and the Council of Europe’s intercultural integration approach for all levels of government. The aim is to improve community relations and to support better integration of migrants across society in areas such as participation, education, cultural and social life, urban planning, business, the labour market, anti-discrimination and multilingualism.

■ In Italy, the cities of Reggio Emilia and Modena launched a [project on anti-discrimination and promotion of public–private co-operation](#) with seven other cities that are members of the Italian Network of Intercultural Cities. The project aims to expand the intercultural integration model through study visits and exchanges of good practices. Milan, Montesilvano, Pontedera, Turin and Reggio Emilia have started a 24-month project based on the “[anti-rumours](#)” methodology designed by the ICC programme with the aim of strengthening the role of youth and educating the community. The Italian Network of Intercultural Cities is co-ordinating a 20-month project including eight cities from four member states focusing on promoting an effective bottom-up approach promoting citizens’ participation in local intercultural policies.

■ Luxembourg has launched the pilot project [Pakt vum Zesummeliewen](#) (Pact for living together) to promote diversity through inclusive communication, access to information and citizen participation. It targets the whole population, with particular attention paid to integrating newcomers.

■ Malta used intercultural integration principles in its [anti-racism strategy](#) launched in October 2021. Developed with the support of the ICC programme, it aims to confront and eliminate racism in all its forms and to stimulate and support intercultural inclusion based on the core principles of intercultural integration. Malta is currently drafting its second national integration strategy, based on the Council of Europe principles, and has just established a community police unit in the national police service. Police officers are trained using the ICC Manual on Community Policing.

■ North Macedonia is currently implementing its first [national strategy](#) for the development of the concept of “One Society and Interculturalism”, prepared in co-operation with 140 NGOs. The strategy’s co-ordination body and the Nansen Dialogue Centre in Skopje will develop a specific programme for intercultural training of educational staff, students and parents. The module is currently being introduced in higher education institutions. A digital intercultural education platform has been developed and a training centre for intercultural education has been set up. The programme aims to improve the quality of the educational process by promoting equality and reducing ethnic-based segregation in schools through the promotion of interculturalism.

■ Norway introduced the new [Integration Act](#) in 2021 to provide intercultural integration of immigrants with refugee backgrounds through education and professional training. The act regulates induction programmes and Norwegian language training and social studies; it gives people granted residence on humanitarian grounds and their family members the right to participate in the programme, which is run by local authorities who have been given new duties. Biannual co-ordination meetings between local, regional and national authorities have proven very helpful to enable all levels of government to provide an adequate response to welcome people fleeing Ukraine.

■ In Portugal, the Secretary of State for Integration and Migration ensures co-ordination between ministries, public institutions, civil society and local authorities. Twenty municipal plans for migrant integration with intercultural elements are currently being implemented, together with some local plans for Roma integration. An [open-source online intercultural competence course](#) has been developed and published to build citizens’ skills and show which behaviours enable meaningful intercultural interaction.

■ Spain has developed a strategic framework on inclusion for people of foreign origin aligned with [CM/Rec\(2022\)10](#) and based on the intercultural model to empower community participation and fight xenophobia, racism and associated forms of intolerance, taking into account the essential role played by local and regional authorities.

■ Switzerland uses the [Cantonal Integration Programme](#) and the [Agenda for Integration](#). These empower teenagers and young adults to acquire skills and competences to access the job market. The Neuchâtel State Council mainstreams diversity in its current legislative programme. One of the canton’s flagship measures is a [road map for an open and egalitarian state](#).

583. Baseline overview and assessment of integration policies in the Republic of Cyprus, Council of Europe, Strasbourg, August 2022; Elements of multilevel governance of intercultural integration and their application to the Republic of Cyprus, Council of Europe, Strasbourg, August 2022.

■ The United Kingdom has evaluated the impact of the [Integrated Communities Strategy Green Paper](#). It found some delays and limitations due to the Covid-19 pandemic, but conclusions were positive overall and many of the practices and measures undertaken are worth sustaining and replicating in future. Bradford, an ICC member, is one five participating local authorities and is currently implementing its first intercultural integration strategy.

### Special Representative of the Secretary General (SRSG) on Migration and Refugees

The aggression by the Russian Federation against Ukraine, which started on 24 February 2022, has resulted in the largest influx of refugees in Europe since the Second World War. As an immediate reaction, the SRSG on Migration and Refugees intensified efforts to identify where the Organisation could best assist member states to protect the millions of people fleeing Ukraine – mostly women, children and the elderly.

To assess the situation on the ground, the SRSG conducted five fact-finding missions: to Slovakia (2-4 May 2022), to the Czech Republic (4-6 May 2022), to Poland (30 May-3 June 2022), to the Republic of Moldova (13-14 June 2022) and to Romania (12-14 December 2022). These missions were aimed at providing adequate support to authorities.

While the reports of the SRSG are snapshots of the situation at the time of the visits regarding vulnerable people fleeing Ukraine, the recommendations address short-, medium-, and long-term needs. They address access to housing, healthcare, education and the labour market – including psychological support, protection against sexual exploitation and sexual abuse and human trafficking, and linguistic inclusion.

Follow-up activities have been undertaken in close co-operation with national authorities and international partners, such as the United Nations High Commissioner for Refugees (UNHCR), the International Organization for Migration and the OSCE/ODIHR, notably in the Republic of Moldova, Poland and Slovakia.

A joint Council of Europe–UNHCR event was organised on 21 September 2022 on strengthening the protection against abuse and exploitation of vulnerable people, in particular women and children, fleeing the war in Ukraine.

In Poland, a joint Council of Europe, European Union and the UNHCR seminar on European legal practices to assist Ukrainian refugees took place on 27 September 2022. A HELP course on asylum and human rights was organised for Polish legal practitioners, in partnership with the UNHCR and the Polish National Bar Association, on 20 October 2022 in Warsaw. Pilot training events took place in the Republic of Moldova and Poland on 15-17 June 2022 and 19-20 December 2022 on providing psychological support to refugees. A roundtable in the Czech Republic, jointly organised by the Council of Europe and the UNHCR, took place on 26 January 2023, focusing on the protection of vulnerable people, in particular women and children fleeing Ukraine. A two-year project was launched in the Republic of Moldova to strengthen human rights protections for refugees and migrants, providing tailor-made support to the authorities and building resilient systems in the long term.

An [interim report](#) on implementation of the current Action Plan for 2021-2025, which has informed this work, was presented to the Committee of Ministers in February 2023.

The Council of Europe Network of Focal Points on Migration, set up in 2019, with members appointed by all member states, held two meetings in 2022 and a third to address the situation of people fleeing Ukraine. In June 2022, the network held a thematic discussion on child-friendly approaches and procedures in migration. A restricted web page has been created, allowing members to share and access relevant documents that can be of help in their work.

■ The CDADI adopted [observations on the consequences of the aggression of the Russian Federation against Ukraine](#). It stressed the need to ensure that all those fleeing the war in Ukraine have equal access to protection and assistance, especially those particularly vulnerable to discrimination and hatred. The Committee underlined the need to implement intercultural integration measures for all refugees from the outset, including language learning, schooling, vocational training, recognition of qualifications and sustainable social integration. As mentioned above, a capacity-building programme and a first tool for migrant integration were finalised by the ADI-INT and adopted by the CDADI and are ready for use by member states. Several member states (e.g. Finland and Cyprus) have started using those tools. Work on the collection of promising practices at national

level on combating hate speech has started; a specific focus is put on crisis situations and preventing and combating hate speech during such crisis situations.

■ ECRI issued a statement<sup>584</sup> in March 2022 praising the exceptional efforts of countries to welcome people fleeing from Ukraine, urging governments to continue doing so for as long as necessary, regardless of the ethnic or national origin, citizenship, language, skin colour, religion or other characteristics of the people seeking protection, and warned all sides against the use of any ultra-nationalistic or racist hate speech. It also underlined that the Russian Federation's aggression against Ukraine was preceded and accompanied by ultra-nationalist political discourse and propaganda. It commended authorities, equality bodies and civil society offering protection to people fleeing from Ukraine by helping them to ensure access to their rights, such as their rights to healthcare, social welfare, housing, education and employment, while pointing to reports about unjustified differential treatment of Roma and people of African or Asian descent. ECRI called on all member states to ensure that solidarity with people in need always remains the norm in the management of current and future humanitarian crises. ECRI also recalled that, in times of conflict or other crisis, just as in ordinary times, politicians and other public figures must refrain from any form of ultra-nationalist and racist hate speech and should challenge any such manifestations of hatred.

■ ECRI's monitoring reflected good practices, including an online counselling portal offering information on Estonian daily life in several languages and a welcome centre in the Estonian city of Tartu; a women's centre in Oslo, where migrant women can practice spoken Norwegian and build up contacts, and recognition of refugees' and asylum seekers' qualifications in France linked to the ERQP.

■ In 2022, the members of the ICC Network, a coalition of local authorities committed to building peaceful, human rights based intercultural societies, closely monitored the situation in the Ukrainian Network of Intercultural Cities (ICC-UA) and addressed some of the most pressing needs in Ukraine and in Poland, where ICC member cities were directly confronted with people fleeing the war. It adopted a declaration of mayors containing measures for peer support to cities confronted with the war. A dedicated [web page](#) containing a collection of good practices in support of Ukraine has been published and shared. The ICC-UA network held five online thematic or co-ordination meetings to implement ICC-sponsored projects and psychological training and support for unaccompanied minors, youth and women through intercultural art therapy. Delegates of Melitopol and Vinnytsia participated in the ICC study visit on greening intercultural cities and the ICC media training on promoting inclusive narratives in difficult times.

■ After a series of needs assessment sessions carried out with Polish members, three policy briefs have been developed on: rethinking welcoming policies from an intercultural perspective; good practices on data collection for refugee reception at the community level; and long-term sustainable housing solutions. These policy briefs were particularly useful to support the city of Lublin (Poland) in rapidly setting up a refugee reception centre designed according to human rights principles. The ICC programme also supported specific projects on welcoming Ukrainian refugees in Portugal.

■ The ICC programme is advising on a three-year project run by the European Union Assembly of European Regions. It applies the intercultural approach to regions for the successful integration of migrants and refugees from outside of the European Union for the first time.

■ ICC programme membership increased to 158 in 2022. Most new members are in countries where the ICC has set up national networks, such as Cyprus, Italy, Portugal and Spain. Member states should encourage more cities to apply the intercultural integration approach to their policies and to step up the mainstreaming of positive diversity management and inclusion.

■ Most ICC member cities report that they have implemented or are in the process of implementing intercultural integration strategies. A number of cities are also mainstreaming gender equality, Roma and Traveller inclusion, and sexual-orientation and gender identity issues in their policies. Members also use the Intercultural Cities Index to measure progress: nine cities completed this exercise in 2022.

■ An independent evaluation in 2022 showed that the Intercultural Cities Index encourages the intercultural integration of cities and highlighted that peer learning, networking and the opportunity to pilot new methodologies are particularly useful. This is particularly true for ICC national networks that have been awarded a series of European Union-funded projects, especially in Italy, Portugal and Spain. One of these projects has brought together 15 cities and four national ICC networks to develop intercultural competence, international co-operation on the local level and youth empowerment and participation.

584. [Statement](#) of ECRI on the consequences of the aggression of the Russian Federation against Ukraine (adopted at ECRI's 88th plenary meeting, 29 March - 1 April 2022).

■ Members of the ICC network held an online emergency meeting on 4 March 2022, during which a joint [Declaration of Mayors](#) was made to mark the political support of the ICC network to its Ukrainian member cities and to organise direct co-operation and support for both the Ukrainian network and the Polish ICC member cities welcoming Ukrainian refugees. In September and October 2022, the ICC programme provided up-to-date practical guidance to public administrations responsible for the reception and accommodation of migrants and refugees.<sup>585</sup>

---

585. [Rethinking welcoming policies from an intercultural perspective](#), ICC Unit, Council of Europe, Strasbourg, September 2022; [Long-term sustainable housing solutions for the intercultural city. Policy brief](#), ICC Unit, Council of Europe, Strasbourg, October 2022.





## CHAPTER 8

# DEMOCRATIC PARTICIPATION

---

### INTRODUCTION

**D**emocracy needs laws and institutions, but it also depends on active and engaged citizens, with opportunities, competence and motivation. Ensuring the effective participation of citizens in local public life remains crucial to building inclusive, stable and prosperous communities with shared attitudes and behaviours and which value diversity and conflict resolution through dialogue.

■ In times of economic and political crisis, it becomes even more evident that citizens should be able and willing to engage actively in defence of these values and principles. Education plays an important role in the lifelong process of acquiring and maintaining the capacity to take part actively in democratic processes. Democratic education should be part of a comprehensive and coherent vision of education, of education of the whole person.<sup>586</sup>

■ The Parliamentary Assembly has urged governments to combine clear political engagement and top-down leadership with bottom-up, participatory governance to ensure meaningful contributions from citizens. Deliberative democracy could provide an antidote to the resurgent threat of authoritarian regimes and reinvigorate democratic practices.<sup>587</sup>

■ A European Forum on citizenship and human rights education in Europe with young people was co-organised in April 2022 by the Council of Europe's education and youth programmes and the Italian Government as part of Italy's Presidency of the Committee of Ministers. It **concluded** that the **Reference Framework for Competences for Democratic Culture** (RFCDC) was effective and instrumental for democratic citizenship and human rights education (EDC/HRE), and highlighted the need for further efforts to support schools, teachers and other education professionals and higher education institutions to integrate the RFCDC into their practice.

■ A democratic environment must provide opportunities for citizens, especially young people, to engage and participate. On 23 January 2020, the **Youth Sector Strategy 2030** was launched to revitalise pluralistic democracy, guarantee young people's access to rights, promote living together in peaceful and inclusive societies, and strengthen youth work while retaining the flexibility to respond to new trends and challenges in our rapidly changing world.

■ Attempts to distort and hijack the notions of culture, cultural heritage and identity by populism and authoritarian nationalism, and their use as instruments of wartime propaganda, polarisation, stigmatisation of minorities, and undermining democratic institutions and values, continue to pose a serious threat. They are the exact opposite of the role of culture and heritage which the **1954 European Cultural Convention** (ETS No. 18) affirmed as a foundation of European unity and co-operation.

■ Culture and heritage are powerful vectors of democratic participation. Freedom of artistic expression is an integral part of the freedom of expression and has in recent years been regrettably afflicted by similar trends of restrictions and interference. This was highlighted in the report *Free to Create: artistic freedom in Europe*, published in February 2023, based on a **manifesto** launched by the Steering Committee on Culture, Heritage and Landscape of the Council of Europe in November 2020.

586. Committee of Ministers, **Recommendation CM/Rec(2007)6** on the public responsibility for higher education and research, 16 May 2007.

587. Parliamentary Assembly **Resolution 2397 (2021)** "More participatory democracy to tackle climate change".

■ Public trust in institutions and democracy as a whole will depend on the speed and effectiveness of the response to citizens' legitimate needs and expectations, including with regard to participation. Transformative changes are required to address today's global issues, which also imply behavioural change. Culture, cultural and natural heritage, and environmental resources contribute positively to this process and their potential should be fully used.

■ The Council of Europe's work to protect wildlife and natural habitats and mitigate major hazards is directly relevant to our capacities to face major global challenges, including the Covid-19 pandemic. Participation in the Council of Europe Landscape Convention ([ETS No. 176](#)) helps member states work together to reverse degradation of the living environment. The Convention on the Conservation of European Wildlife and Natural Habitats (Bern Convention, [ETS No. 104](#)) helps stop the erosion of biodiversity and the decrease in animal and plant habitats. The EUR-OPA Major Hazards Agreement helps protect populations against major natural, technological and public health risks. These instruments reinforce the support and trust of Europeans in their institutions by providing relevant and significant responses to their most pressing expectations.

■ Over the coming years, the main thematic Council of Europe priorities should include:

- ▶ education: the teaching of democratic values and the knowledge, attitudes, skills, and critical understanding necessary for the exercise of democracy should be given a prominent place in education systems, especially in light of new technology, rapid changes in the world of work, economic and environmental crises, demographic changes and increased mobility. In the next few years, there will be a focus on teaching democracy, strengthening education systems in the face of multiple crises, protecting the right to education and equal opportunities for all students, promoting ethics transparency and integrity in education at all levels and making the most of the opportunities presented by digitalisation and artificial intelligence;
- ▶ youth: strengthening the capacity of young people across Europe, youth leaders and youth workers to actively uphold, defend and promote the Council of Europe core values, including through specific programmes and activities implemented in the European Youth Centres; advising and supporting member states in developing youth recovery plans and policies with a view to strengthening access to civil, political and social rights; quality youth work at the national and European level; strengthening young people's meaningful participation in policy making and decision making, and providing financial support, notably through the European Youth Foundation;
- ▶ culture, cultural heritage and environment: supporting member states to protect and manage cultural, natural and landscape resources; assisting major stakeholders to implement the [Guiding Principles for an Integrated Culture, Nature and Landscape Management](#) (CDCPP(2022)5) to face global challenges; identifying appropriate responses to growing threats to the freedom of cultural expression, at European and national levels; fostering positive aspects of digitalisation and artificial intelligence on culture and heritage; promoting environmental and cultural co-operation, diversity and democratic participation.

## EDUCATION FOR DEMOCRACY

■ Providing young people with the competences, values and attitudes for life in democratic and diverse societies through education is essential. Education also needs to address declining trust in public authorities and dissatisfaction with the quality of democracy: it must give learners "the will to act in society for the defence and promotion of human rights, democracy and the rule of law".<sup>588</sup>

■ In 2022, the Steering Committee for Education (CDEDU) discussed the impact of the Russian Federation's aggression on Ukraine on the education of Ukrainian school children and students, the situation of teachers, along with the situation in neighbouring countries which are hosting refugees. In March 2022, the CDEDU adopted a [statement](#) condemning the aggression and the disruption to the fundamental right to education and pledging support to the Ukrainian education community.

■ The CDEDU will devote the 26th session of the Standing Conference of Ministers of Education in September 2023 to the transformative power of education: universal values and civic renewal. The conference will discuss the renewal of the civic mission of education, education in times of crisis and the potential of digitalisation and artificial intelligence in education. The conference results and the renewed political commitment will support the launch of the Council of Europe strategy in the field of education, which is currently being developed in order to set out long-term objectives.

588. [Recommendation CM/Rec\(2010\)7](#) of the Committee of Ministers to member states on the Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education.

■ The High-level Reflection Group's [report](#) stressed the importance of teaching democracy and democratic citizenship being taught in schools and universities as a prerequisite for safeguarding a strong culture of democracy. The report calls for a new legal instrument on education for democracy.

### Measurement criteria

---

- ▶ Policies, legislation and practices are adopted 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 in their education policies and practices based on guidelines and tools developed through the Platform on Ethics, Transparency and Integrity in Education.
- ▶ Policy makers and the education community have access to policy orientations, 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 share and promote the value of quality language learning, including online.
- ▶ Education policies and practices that ensure the right to quality education and promote a culture of non-discrimination, integration and social inclusion, including in times of crisis, are adopted and implemented in member states.
- ▶ The European Qualifications Passport for Refugees is used by member states to recognise qualifications held by refugees even when these cannot be fully documented, allowing access to further studies and employment, including in key sectors such as health during the Covid-19 pandemic.

### Findings

---

■ Education authorities, institutions and professionals in member states have continued to adopt policies, legislation and practices to develop a culture of democratic participation through education by implementing the Council of Europe's Reference Framework of Competences for Democratic Culture, including co-operation activities with the direct support of the Council of Europe. Some notable examples include Serbia, where [guidelines](#) to integrate the RFCDC in 10 selected subjects were developed and distributed to all elementary and secondary schools and a professional development training course on the RFCDC was included in teacher-training programmes. In Türkiye, more than 6 000 teachers were trained on the RFCDC, the RFCDC-based whole school model was piloted in 110 schools and enriched materials and cartoons for children were produced. In the Republic of Moldova, all civic education teachers were trained on the new RFCDC-based civic education subject, guides for teachers for all grades in secondary education were developed and disseminated to all civic education teachers and all secondary schools received a series of policy and methodological documents. In Bosnia and Herzegovina, over 400 teachers and 800 students from 29 pilot schools promoted the benefits of democratic school culture in their schools and local communities through school clubs, joint school projects (involving at least three schools from different ethnic communities) and school-community initiatives. In Albania, the Council of Europe helped establish a TeacherNet network, which already counts some 300 active members and seven Learning Modules Online (LEMON) courses for teachers received full accreditation and became an official part of the national teacher-training curriculum. In Georgia, the RFCDC has become an integral part of teachers' professional competency exams – for all subjects and all school levels. To strengthen democracy in Georgia by increasing young people's participation in local decision making, the project "[Democracy starts in schools – Engaging school children in decision-making processes in schools and communities in Georgia](#)" is being implemented in 20 schools.

■ [LEMON](#), the Council of Europe Education Department's online learning platform, offers practical teaching and training resources to education professionals across Europe. It is currently gaining momentum with new additions that focus on education as a human right, social media as an educational tool for democracy and courses on the Framework of Competences for a Culture of Democracy.

■ Member states continued to implement RFCDC-based digital citizenship education by incorporating it in curriculums and through teacher-training seminars, workshops, awareness-raising events, policy development and research. In a survey conducted in May 2022 among education professionals, 15 member states indicated that digital citizenship education is a priority for future curriculum revision.

■ The Lisbon Recognition Convention (ETS No. 165) celebrated its 25th anniversary in 2022. The [second monitoring report on Lisbon Recognition Convention implementation](#) focused on the right to appeal, information provision, transnational education, automatic recognition and digital solutions. It noted significant improvements in comparison to the first monitoring exercise in 2016-17. According to the current report, the right to appeal is implemented in the 53 contracting parties to the convention. Information on the national education systems is available online in all countries, which also publish lists of higher education institutions and around 90% provide information concerning recognition issues. However, there is still room for improvement on the type of information available: only 55% of respondents confirmed that information on the recognition of refugees' qualifications is available online. The report also noted a high level of digitalisation of the recognition process, with 79% of participating countries stating that they have implemented different types of online electronic systems. Both automatic recognition of qualifications and transnational education were identified as areas where progress needs to be made.

■ The Committee of Ministers adopted [Recommendation CM/Rec\(2022\)18](#) on countering education fraud, which covers prevention, prosecution, international co-operation and monitoring of fraudulent activities. Best practices from member states on promoting academic integrity were identified and shared through a [compendium of best practices](#) and a conference organised jointly with the Erasmus University Rotterdam. In Montenegro, the first member state to criminalise education fraud through a special law, the capacities of the national Ethics Committee, Quality Assurance Agency and ethical bodies at the higher education institutions were strengthened through standards development, training, conferences, peer exchange and online courses. At the initiative of the National Information Centre on Academic Recognition and Mobility of Armenia, a [study](#) on education fraud in the context of Covid-19 in Armenia was developed and published.

■ A new [report](#) on artificial intelligence and education provided an overview of the issue through the lens of human rights, democracy and the rule of law and recommendations for further work in this area.

■ [Recommendation CM/Rec\(2022\)1 on the importance of plurilingual and intercultural education for democratic culture](#) addresses two worrying developments in member states: the dominance of English to the detriment of the learning of other languages and the populist notion that proficiency in minority or migrant languages is harmful to societal cohesion. Two webinars on the issue were organised by the [European Centre for Modern Languages](#) (ECML), attracting just under 2 000 followers.

■ Language professionals in 29 Council of Europe member states have taken part in [training workshops](#) organised by the [ECML](#) to implement key aspects of plurilingual and intercultural education, including a focus in 15 member states on the [integration of young migrant learners](#) in multilingual classrooms.

■ A [Reference Guide for Literacy and Second Language Learning for the Linguistic Integration of Adult Migrants](#) was published. It builds upon the Companion Volume of the Common European Framework of Reference for Languages to support high-quality learning environments for migrants with poor or non-existent literacy skills.

■ In Bosnia and Herzegovina, education authorities from all 13 ministries of education continued to build their capacities and understanding of democratic values and democratic school culture through joint development of the implementation plan for the "[Policy Recommendation with a Roadmap for Improving Inclusive Education](#)" (adopted by the Council of Ministers in September 2020).

■ In Kosovo\*, educational professionals from municipal offices, pilot schools, resource centres dealing with the education of children with disabilities and inspectors from the Ministry of Education were trained on different topics of inclusive education.

■ Albania, Andorra, Croatia, Ireland, Latvia, the Republic of Moldova, Poland, Portugal and Serbia have joined the European Qualifications Passport for Refugees (EQPR), bringing to 20 the number of participating member states. Under a joint European Union–Council of Europe project, Italy has launched a [project](#) to use and adapt the EQPR methodology at national level and to develop a national co-ordination mechanism for the recognition of refugees' qualifications; other member states have shown an interest in adapting the EQPR methodology at the national level.

■ The [Observatory on History Teaching in Europe](#) (OHTe) presented its first thematic report on pandemics and natural disasters at its annual conference in December 2022. The report is the result of in-depth work carried out in its 16 member states. One of the main findings is that, despite the relatively little attention given to pandemics and natural disasters in curriculums, teachers do teach these topics because teachers see them as highlighting common challenges that students may face in the future. Pandemics and natural disasters could be better integrated in national curriculums through improved teaching strategies, and this will help nurture responsible global citizens. The report is the first milestone towards the production of the general



report on the state of history teaching in Europe, the cornerstone of the OHTE's work, which will be presented in 2023. In parallel, the European Union–Council of Europe [joint project](#), Transnational History Education and Cooperation Laboratory was launched to support innovative initiatives in teaching practices, research and academia in history education.

### Education in times of crises

The CDEDU adopted a [statement](#) expressing deep concern at the disruption of the fundamental right to education caused by the Russian Federation's aggression against Ukraine and called on Council of Europe member and observer states to ensure the access of Ukrainian people and displaced/refugee persons to education, training and higher education. The CDEDU urged action to ensure educational continuity for displaced/refugee persons, such as the linguistic integration of children and young people in host countries' education systems, support to teachers and other education professionals in integrating refugee children in classrooms and schools, and the recognition of qualifications when these are not fully documented.

The next session of the Standing Conference of Ministers of Education in 2023 will discuss the issue of the resilience of education systems in times of crisis, and specific tools and guidelines are being designed to contribute towards resilient educational systems in times of uncertainty and crisis.

The ECML hosted a [webinar](#) and set up a [dedicated website](#) with resources focused on refugees from Ukraine, including children. In addition, the Council of Europe project on [Linguistic Integration of Adult Migrants](#) provided policy guidelines and pedagogical resources for authorities and educators in member states receiving refugees and other migrants, covering adults and children. [Two sets of tools](#) were developed to support member states in providing language support to refugees arriving from Ukraine.

A task force on Ukrainian qualifications was established within the European Qualifications Passport for Refugees to follow the recent developments and analyse the effects of the war on Ukraine's education sector to support credential evaluators in their work on recognising Ukrainian qualifications. Two webinars for credential evaluators in the [European Network of Information Centres in the European Region](#), in the [National Academic Recognition Information Centres in the European Union](#) and in higher education institutions on evaluating qualifications of Ukrainian refugees were organised.

In the Republic of Moldova, over 1 000 civic education and history teachers attended a series of online workshops on the pedagogical tools and approaches to discussing the war in neighbouring Ukraine in schools. A module on intercultural education was developed within the continuous teacher-training programmes to help teachers better integrate Ukrainian refugee children in Moldovan schools.

A special [website](#) on education in times of crises presents the Council of Europe tools to facilitate the integration of migrants and refugees through language learning, recognition of qualifications or training, in addition to initiatives implemented by individual Council of Europe member states in the field of education.

## YOUTH FOR DEMOCRACY

■ Young people have been disproportionately affected by the Covid-19 pandemic.<sup>589</sup> Many have suffered educational and economic losses and mental-health problems. However, policy responses provided by member states seem insufficient to recover fully from "[pandemic scars](#)".<sup>590</sup>

■ While young people's engagement in political issues takes various forms,<sup>591</sup> in addition to traditional avenues, such as voting or standing for election,<sup>592</sup> alternative forms of participation are increasingly explored.<sup>593</sup> The Congress of Local and Regional Authorities has been at the forefront of encouraging youth participation at the local and regional level. As part of its Rejuvenating Politics initiative, it became the first pan-European political assembly to include youth delegates directly in its work. Youth delegates form a part of national delegations and develop their own projects to encourage youth participation in local and regional politics during the session. The Congress also organises the European Local Democracy Week, bringing together citizens and local

589. European Youth Forum, "Beyond Lockdown: the 'pandemic scar' on young people", June 2021; [OECD Legal Instruments](#).

590. European Commission, "Employment and Social Developments in Europe (ESDE) review 2022", June 2022.

591. European Youth Forum, "Safeguarding civic space for young people in Europe" Report, 4 May 2022.

592. [Call for Action, Action Week](#), Council of Europe campaign "Democracy Here. Democracy Now", June 2021.

593. Ibid.



authorities to debate the most pressing issues and celebrate democracy in their home communities. These events also have a strong focus on encouraging youth participation in local and regional politics.

■ Participation in policy making and decision making, and more generally in governance processes, is highly dependent on the political, social, and economic context in member states. State policies and administrative frameworks, and resources (media and networks) are critical components. Repressive, selective policies and measures hinder the work of youth civil society.

■ [Recommendation CM/Rec\(2022\)6](#), adopted by the Committee of Ministers on 17 March 2022, encourages member states to promote and apply a broad set of measures aiming to identify and address threats to youth civil society and to ensure that all young people and youth civil society can engage meaningfully with and in democratic political processes.

■ The youth sector of the Council of Europe celebrated its 50th anniversary in 2022. Its co-management system, in which young people decide on an equal basis with governmental representatives on the youth sector's priorities, budget and programme, continues to be a reference at the international level and for member states. Co-planning and participation at local level are also gaining interest and popularity at the European level, with interesting examples from member states (Sweden, Armenia and Malta).<sup>594</sup>

■ Youth work has adapted to digital transformation and responded to the challenges brought by the Covid-19 pandemic and the refugee situation in Europe. However, several obstacles continue to hamper its full development across Europe. The review of the implementation of [Recommendation CM/Rec\(2017\)4](#) on youth work has started, with the objective to support member states in their efforts to improve relevant policies and practices.

## Measurement criteria

- ▶ Young people and all forms of youth civil society can rely on legislative and policy frameworks, mechanisms, and resources (including youth centres) for the full exercise of all their rights and freedoms.
- ▶ Young people and their representatives/organisations are participating meaningfully (which means that they are being heard and given the possibility to contribute), in policy, decision-making and governance processes which concern them.
- ▶ Young people's transition to autonomy and their democratic citizenship are being strengthened through youth work and non-formal education/learning, and social inclusion is fostered.
- ▶ Youth work is recognised and embedded in youth-policy frameworks, and equipped with and given sufficient resources. Volunteers and paid staff responsible for young people receive adequate education and training.

## Findings

### Report of the European Youth Forum on the “pandemic scar” on young people<sup>595</sup>

Research demonstrates that, because of the pandemic, young workers have experienced considerable loss of work and income as a result of unemployment and reduction in working hours. Students have experienced significant loss of learning, and the quality of remote education has been variable. Nearly two thirds of young people in Europe may now be affected by depression and anxiety. Young people from marginalised backgrounds are more severely affected in nearly all areas. Worryingly, nearly half (49%) of young people who were not in education, employment or training said they were not aware of the support services offered by the government to help them find a job.

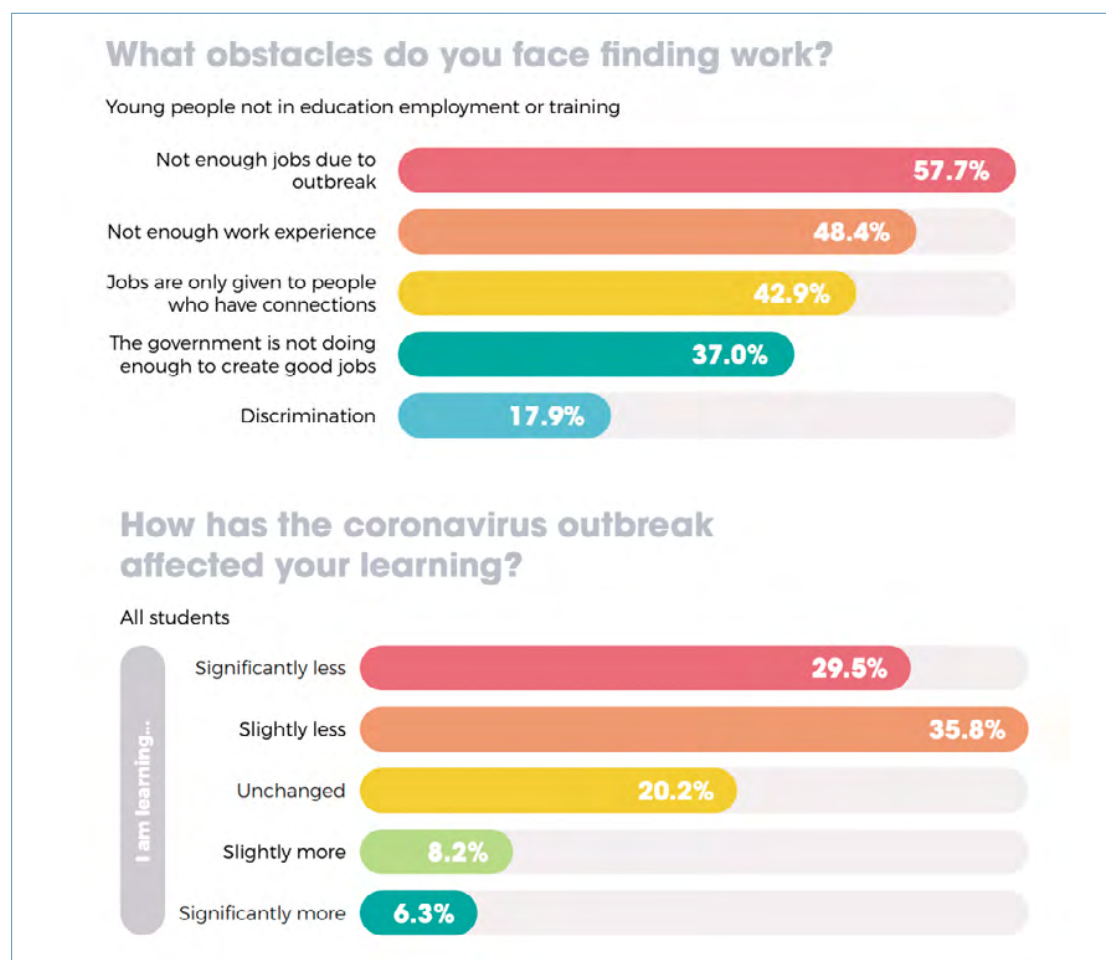
To mitigate the long-term effects of the Covid-19 pandemic on young people, a strong youth-policy response is needed, possibly in the form of youth-inclusive and comprehensive post-pandemic recovery plans. They should include a strong intersectional dimension to compensate for young people's loss of income, education, employment and leisure opportunities, to address mental-health issues, and to support young people's long-term social and economic inclusion.

594. *About time! A reference manual for youth policy from a European perspective*, EU-Council of Europe Youth Partnership, 2021, p. 109.

595. European Youth Forum, “Beyond Lockdown: the ‘pandemic scar’ on young people”, June 2021.

■ Access to political structures and effective engagement in the political process remain difficult for young people. Young people may refrain from voting, as they feel invisible within the system and perceive that youth issues have a low priority on the agenda.<sup>596</sup>

■ Unconventional political participation, ranging from signing petitions to volunteering in an NGO or taking part in a protest march, is becoming increasingly accepted as a way of expressing political opinions and promoting social change. Engagement in these types of activities is often issue led (e.g. climate change, racial justice, gender equality) and short term.



Source: European youth forum

■ Research confirms that youth organisations and youth programmes are an important vehicle for participation, typically promoting and ensuring young people's democratic and social rights; encouraging their social and political participation at all levels in community life; and offering opportunities for personal and social development through leisure activities, voluntary engagement and non-formal and informal learning. Youth movements nowadays are increasingly transnational, particularly on relevant global issues, such as climate change.<sup>597</sup>

■ However, a trend of decline of youth civic space, already observed in previous reports, has continued and has been aggravated by the Covid-19 pandemic: less than 20% of youth organisations felt that they were able to participate fully in decision-making processes during the pandemic (down from its pre-pandemic level of 38%), and almost 30% had significant difficulties in participating (up from 11%). Less than 30% of youth activists have no fear of retribution in response to expressing themselves publicly.<sup>598</sup>

596. Meaningful youth participation in Europe: concepts, patterns and policy implications, research study, EU-Council of Europe Youth Partnership, 2021.

597. Ibid.

598. Covid-19 impact on youth participation and youth spaces, EU-Council of Europe Youth Partnership, November 2022.

■ Surveillance of youth civil society organisations, difficulties in accessing national and international funding, reserving funds only for the organisations which support the government agenda and priorities, criminalisation of youth activism, imposition of restrictions and limitations such as onerous registration procedures, and limits on freedom of expression, assembly and association have been observed across Europe.

■ The existence of a civil society network has been critical to delivering support in times of crisis, such as during the Covid-19 pandemic and to young people fleeing the war in Ukraine. However, funding policies are project-based and endanger the very existence of vulnerable youth civil society, while structural funding is extremely limited.

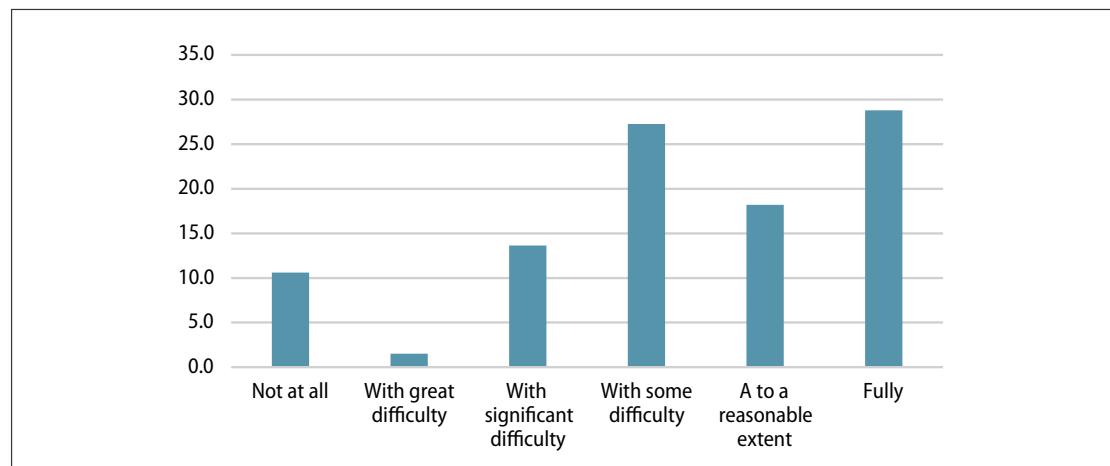
■ Youth work fosters the development of competences of democratic citizenship, reaches more vulnerable segments of the youth population, and promotes democratic and social inclusion. However, the lack of regulation, a decrease of welfare services, the transition to service provision by civil society organisations, and dramatic cuts in resources have led to a decline in or absence of quality youth work services.

■ The Covid-19 pandemic has exacerbated this situation: trained youth workers have left the sector because of financial instability; significant difficulties in transferring their work to online environments due to a lack of digital resources and digital skills have been reported within the youth work community.<sup>599</sup>

■ Advocating, securing and then sustaining an adequate (or sufficient) resource base for youth work across Europe, along with a stronger policy commitment to education and training in youth work, are critical challenges for the European youth work sector. Considering that most youth work continues to be provided largely by volunteers, youth work recognition and professionalisation also continue to be important issues on the agenda.<sup>600</sup>

■ EDC/HRE needs to be further strengthened.<sup>601</sup> The participation of NGOs in EDC/HRE policy making and implementation, along with better funding, are the areas that need to be prioritised to better implement the [Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education](#). Better synergies between formal and non-formal education, and between education and youth sectors, need to be put in place. The lack of training opportunities for educators and youth workers remains a fundamental challenge for EDC/HRE implementation.

**Thinking about the time since the outbreak of Covid-19, to what extent have your organisation and its members been able to engage in advocacy activities without fear of retribution?<sup>602</sup>**



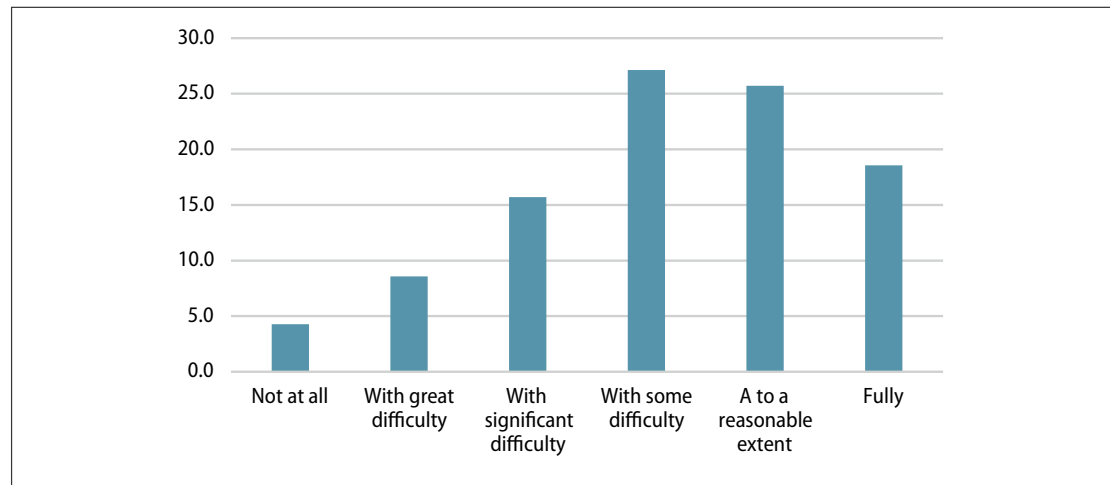
599. Covid-19 Knowledge Hub, EU-Council of Europe Youth Partnership.

600. Cornerstone challenges for European Youth Work and Youth Work in Europe – Making the connections and bridging the gaps – Howard Williamson, August 2020.

601. Conclusions of the review of the Charter Council of Europe Charter on Education for Democratic Citizenship and Human Rights Education, [CM/Rec(2010)7], Council of Europe, September 2022.

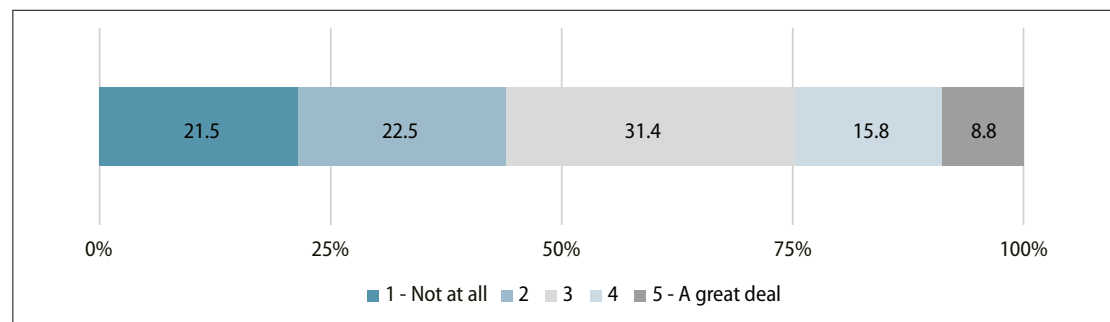
602. Survey based on 109 responses from youth organisations across Europe, representative of youth aged 16 to 30 or to 35, depending on the country. The sample of respondents included politically and socially relevant youth organisations, regardless of their legal form, belonging to the main European and national youth umbrella organisations.

Thinking about the time since the outbreak of Covid-19, to what extent have your organisation and its members been able to participate in processes of deliberation and decision-making processes on issues that are important to you (e.g. through public consultations, joint committees, participatory planning or policy-making processes, etc)?

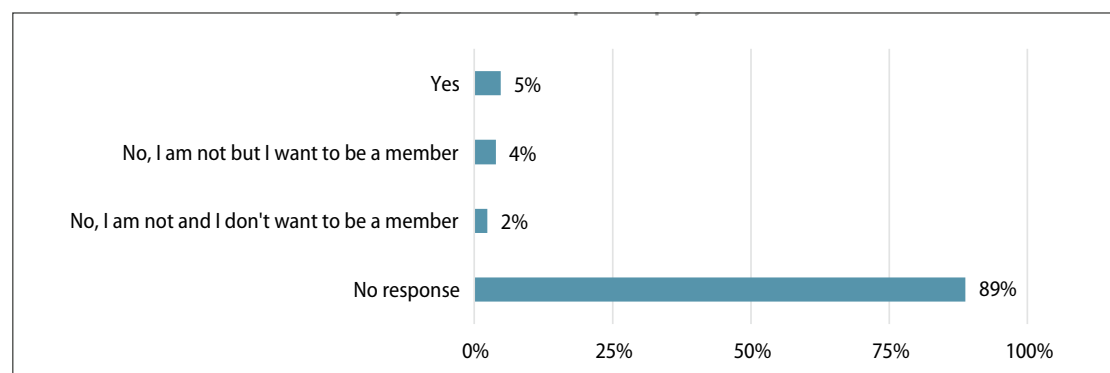


Source: EU-Council of Europe Youth Partnership, "Covid-19 impact on youth participation and youth spaces", by Professor Dr Tomaž Deželan.

And how much would you say that the political system in [your country] allows people like you to have an influence on political and social issues?<sup>603</sup>



### Are you a member of a political party?



Source: Study on new forms of youth political participation – March 2023. A survey of 3 220 young people between the ages of 15 and 35.

603. Yurttagüler, L. and Pultar, E. (2023), "New forms of youth political participation", [Statistical survey](#), EU-Council of Europe Youth Partnership.

### **A holistic approach to protect, promote and manage natural, landscape and cultural diversity through participatory governance.**

The fight against environmental degradation and climate change is the 10th key priority of the [Council of Europe's Strategic Framework for 2022-2025](#).

New and effective policies to manage and conserve landscapes and biodiversity are urgently required in light of challenges to the environment. The Department for Culture, Nature and Heritage is taking steps to promote its conventions, programme of activities and policies at national, regional and local level. A first draft of the Guiding Principles for an integrated culture, nature and landscape management was developed by the Steering Committee for Culture, Heritage and Landscape in November 2022, promoting a holistic approach to policy making, management, research, and practice, with an emphasis on mainstreaming environmental, landscape and cultural heritage and addressing social and economic inequalities.

The Council of Europe [Landscape Convention](#) is the ideal forum to discuss existing and new practices for an integrated culture, nature and landscape management and to identify innovative co-operation activities. Recommendations on landscape and responsibility of stakeholders for sustainable and harmonious development, town planning and landscape have been adopted and a report "Urban landscapes and climate change: the contribution of Landscape Architects to improve quality of life" has been drafted. Good practices to promote the landscape dimension of human rights and democracy, and for improving people's conditions, have been provided through the Landscape Awards.

The [Bern Convention](#) aims to ensure conservation of wild flora and fauna species and their habitats. Through the protection of natural heritage, it safeguards basic human rights, including rights to life, health, food, livelihood, water, housing and culture. By engaging multiple sectors of society in nature conservation, it also strengthens democratic participation. A [Bern Convention Strategic Plan](#) for the period to 2030 is in development in the face of new and increasing environmental challenges. The Standing Committee has adopted a vision for the Bern Convention, led by the slogan "Healthy nature for healthy people". It states that "By 2030, declines in biodiversity are halted, leading to recovery of wildlife and habitats, improving the lives of people and contributing to the health of the planet". The surface of protected areas was expanded to ensure the long-term survival of species and habitats through the designation of new sites in Iceland and Liechtenstein. To improve access to information and decision making, the casefile dashboard, which contains information on more than 200 case files, was launched.

The [EUR-OPA Major Hazards Agreement](#) aims to reinforce prevention and protection of people against major natural or technological disasters, to develop actions related to prevention and preparedness in epidemic scenarios, and to promote projects addressing the role of nature-based solutions in disaster risk reduction. More transversal actions within the Department for Culture, Nature and Heritage are required to raise public awareness on major hazards, develop a culture of risk prevention and preparedness and protect human beings and their livelihoods. In November 2021, the EUR-OPA Major Hazards Agreement elaborated [recommendations](#) addressing the specific needs of people belonging to the most vulnerable groups during pandemics. The recommendations are useful to fine-tune strategies and policies that offer better protection during pandemics to people with disabilities as well as migrants, asylum seekers and refugees. The [BeSafeNet Olympiads](#), managed by the European Centre for Disaster Awareness in Cyprus with support from the EUR-OPA Major Hazards Agreement, continued to enjoy be highly popular among high-school pupils. The Olympiads seek to increase awareness on the nature, causes and consequences of natural and technological disasters and promote a global risk culture among young people. Many projects implemented in 2021 and 2022 within the EUR-OPA's Network of Specialised Scientific Centres, with grants provided by the EUR-OPA Major Hazards Agreement, addressed issues relating to hazards amplified by climate change (fires, droughts, coastal erosion, landslides, floods).

## **CULTURE AND CULTURAL HERITAGE FOR DEMOCRACY**

■ Culture and heritage are powerful vectors of democratic participation. They are means of dialogue, learning, comment and fostering identity and European unity, based on democratic values. They are generators of creativity and innovation, which are necessary for an open, tolerant and prosperous society. Freedom of cultural expression is essential for creativity and a flourishing cultural life.

■ Robust cultural and cultural-heritage policies allowing citizens equal access to a wide range of cultural opportunities and to their governance are required. Steady innovation of these policies is also important to fully use their potential as strategic resources for bringing about the transformations required in reply to today's global challenges.

■ New instruments of pan-European public financial support for film and television need to be developed to complement projects which promote diversity and pluralism in the audiovisual sector in Europe, and the work of Eurimages. It is also essential to raise public awareness by including the concerns of artists and cultural professionals and fostering exchange of information.

■ The [Manifesto on the Freedom of Expression of Arts and Culture in the Digital Era](#), a digital exhibition "[Free to Create, Create to be Free](#)" and a [report](#) on artistic freedom in Europe have contributed to energising democratic processes.

## Measurement criteria

---

- ▶ Innovative and integrated policies and strategies are promoted towards a new understanding of culture, cultural heritage and the environment as strategic resources, to stimulate participative practices in member states, prevent risks in the day-to-day management of cultural heritage and offences against cultural property.
- ▶ Policies are put in place to promote a vibrant cultural environment and diversity of voices and pluralism in cultural institutions and creative industries, specifically in the audiovisual sector.
- ▶ Member states guarantee and promote freedom of expression of the arts and culture through dedicated awareness-raising activities, policies and complaint mechanisms, and support initiatives.

## Findings

---

■ According to analyses carried out by the Indicator Framework on Culture and Democracy<sup>604</sup> in 2020, 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.

■ The [Council of Europe Conference of Ministers of Culture \(Strasbourg, 1 April 2022\)](#) underlined the importance of meeting the challenges and opportunities of digital technologies for European cultural policy, cultural-heritage standards and audiovisual practices, and condemned the Russian Federation's aggression against Ukraine, offering support to Ukraine through cultural co-operation activities and programmes.

■ Democratic governance of the sector, including citizens' participation in decision making, is essential. The Council of Europe Framework Convention on the Value of Cultural Heritage for Society (Faro Convention, [CETS No. 199](#)) and the [European 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. By 2022, 28 member states had signed the Faro Convention and 23 had ratified it. The Committee of Ministers has adopted a recommendation on the European Cultural Heritage Strategy and 40 member states have reported hundreds of examples of good practices. An online course, an online role-playing game and two new publications on the convention offer examples of how heritage policy can tackle social issues.

■ On 1 April 2022, upon ratification by Italy, the Council of Europe Convention on Offences Relating to Cultural Property ([ETS No. 119](#)) entered into force. Increasing efforts are deployed to promote the convention – the first international convention to criminalise offences against cultural property – among member states. A guidebook was published in 2022, explaining the convention's functioning and accession.

■ The [2020 Committee of Ministers Recommendation on promoting the continuous prevention of risks in the day-to-day management of cultural heritage: co-operation with states, specialists and citizens](#) helps foster a culture of anticipation, precaution, steady resource allocation, training, capacity building and international knowledge transfer in member states.

■ On 13 February 2019, the Committee of Ministers adopted a [declaration on the manipulative capabilities of algorithmic processes](#). The declaration expressed concern that individuals may not be able to formulate

---

604. The [Indicator Framework on Culture and Democracy](#) was created by the Hertie School of Governance for the Council of Europe in 2014 and since 2018 has been overseen by the University of Administrative Science in Speyer.



opinions and take decisions independently of automated systems. A [study](#) commissioned by Eurimages<sup>605</sup> the same year revealed that on-demand audiovisual media service companies use predictive algorithms to propose content to their users and, by extension, to decide upon which audiovisual content will be commissioned or acquired. The Covid-19 pandemic accelerated the dominance of global audiovisual media service companies within the European audiovisual landscape, to the detriment of traditional, regulated, media providers. This development has impacted not only the independence of content producers but also their capacity to retain creative control and ownership rights to the cultural content they have developed when negotiating with on-demand and broadcasting companies. A conference<sup>606</sup> on the issue concluded that this imbalance, combined with the use of predictive algorithms, poses a significant challenge to the freedom of artistic creation, pluralism and cultural diversity.

■ With democracy under great pressure, the central 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 key to this and ensures the pluralism and vitality of the democratic process.<sup>607</sup> In 2016, the French Senate, as part of its preparations to amend its existing legislation, published a list of 22 states worldwide that included this right in their constitutions. Among them were those with poor records of support, often to the extent of violation, revealing in some cases a gap between rhetoric and practice. Conversely, there are states with good protection of freedom of expression for artists, but which do not specify these in their constitutional or legal frameworks.<sup>608</sup>

■ When the Council of Europe formulated its manifesto on the freedom of expression of the arts and culture in the digital era in late 2019, the arts freedom monitor Freemuse noted in a report that over the period 2018-19, 380 freedom of artistic expression violations were carried out in 28 European countries and that 31 artists were imprisoned, a further 50 had been detained awaiting trial and 21 more were on trial, while others had experienced harassment, censorship and travel bans.<sup>609</sup> The numbers had risen in 2021 to 402 attacks in the arts and cultural sectors in 28 countries in Europe, representing 32% of the global total of violations worldwide, according to the 2021 Freemuse report.

■ Monitoring and documenting the state of artistic freedom is still in the initial stages, and coverage is not consistent, particularly in authoritarian states where freedom of expression is suppressed. While physical attacks, litigation and imprisonments tend to be well reported, threats to artistic freedom are often under the radar and difficult to measure. There are situations where there may be no direct bans but there exists a self-censorship reflex responding to fears of losing grants, nominations for awards, or access to performance space.<sup>610</sup>

■ Action is therefore needed to create a European platform inspired by the Council of Europe's Platform to promote the protection of journalism and the safety of journalists to oversee issues around artistic freedom and to support governments, while offering communication, networking and information resources. Training of human rights lawyers, court prosecutors and judges to bring cases is also desirable.

605. Baujard T. et al. (2019), "Entering the new paradigm of Artificial Intelligence and Series: Executive Summary", Strasbourg – a [study](#) commissioned by the Council of Europe and Eurimages.

606. Preserving Independent Production, Diversity and Pluralism in Drama Series in Europe: Can International Cooperation be Part of the Solution? held in Budapest, on 30 September 30 to 1 October 2021. Acknowledging the groundwork carried out during this conference and the future steps to be taken during successive presidencies of the Committee of Ministers, the Hungarian authorities named this initiative the "Budapest Drama Series Process".

607. Freemuse (2019) [Security, creativity, tolerance and their co-existence: the new European agenda on freedom of artistic expression](#). Freemuse, Copenhagen, [The new European agenda on freedom of artistic expression](#), accessed on 30 September 2022.

608. "Indeed, whether or not a state has explicit protection for artistic freedom in its constitution, (if not, it should be looking to ensure that it is included), the questions that it should be asking to ensure creative freedom are according to UNESCO's questionnaire for its member states reporting to the Quarterly Periodic Review on their adherence to the 2005 Convention on the Protection and Promotion of the Diversity of Cultural Expressions are:

- 1) Is there an official policy relating to protecting artistic freedom?
- 2) What challenges exist that prevent the full practice of artistic freedom?
- 3) Are there bodies in the country that monitor violations and receive complaints?
- 4) What legal or other mechanisms exist to which complaints can be addressed?
- 5) Are public funding programs decision making transparent, and free from political influence?
- 6) Are there initiatives to protect artists at risk, such as safe havens and safety guidelines?"

(Source: *Free to Create: artistic freedom in Europe* (2022), Council of Europe, Strasbourg.)

609. Freemuse (2019) [Security, creativity, tolerance and their co-existence: the new European agenda on freedom of artistic expression](#). Freemuse, Copenhagen, [The new European agenda on freedom of artistic expression](#), accessed on 30 September 2022.

610. Whyatt S. (2023), [Report on the freedom of artistic expression](#) *Free to Create: artistic freedom in Europe*, Council of Europe Publishing, Strasbourg.

**[www.coe.int](http://www.coe.int)**

The Council of Europe is the continent's leading human rights organisation. It comprises 46 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.