

# PART II.

## Impacts on Democratic Institutions and Human Rights

Both the pandemic itself and the state responses have had significant implications for the exercise and enjoyment of fundamental freedoms, human rights, and the functioning of democratic institutions and processes across the OSCE region. In the following sections, an overview is provided on how the pandemic has affected democratic institutions based on the rule of law and participation; specific human rights and civil society; and how equality and inclusiveness have been impacted. These three sections are aligned with ODIHR's strategic work and analyse the implications of emergency responses in the different fields of expertise of the Office.

This part is further divided in sections. The first addresses the functioning of parliaments, democratic law-making, justice institutions, elections and election observation, and National Human Rights Institutions (NHRIs) and human rights defenders. The second examines specific fundamental rights and freedoms that have been particularly affected by the emergency response, namely the freedom of movement, freedom from torture, ill-treatment and arbitrary detention, the freedoms of assembly and association, freedom of religion and belief, and the right to a fair trial. Third, it gives a deeper look at the human rights situation of all

those who have suffered from the negative (and often cumulative) consequences of inequality, which includes sections on hate crimes and discrimination, discrimination against women, gender inequality and domestic violence, Roma and Sinti, migrants, as well as victims and survivors of trafficking in human beings.

Examples from across the OSCE region are provided to illustrate the thematic trend analysis and highlight areas of concern as well as indicate what may be considered as good practices. All observations offered here are firmly rooted in OSCE commitments, as well as international human rights law and other relevant standards. The observations are also based on relevant good national practices, and on previous recommendations where applicable. In accordance with relevant OSCE commitments to mainstream a gender perspective into all policies, measures and activities, this report also takes into account the potentially different impact on women and men.

Finally, each section will conclude with a series of recommendations, to support participating States in their efforts to ensure they fulfil their commitments and respect human rights in their responses to the Covid-19 pandemic and other emergency situations.

## II.1 DEMOCRATIC INSTITUTIONS AND PROCESSES

This section aims at identifying prominent trends and providing indications of areas of concern, as well as good practices, regarding the regular functioning of national parliaments, justice institutions, electoral processes and National Human Rights Institutions in the OSCE region. It is beyond the purview of this report to offer a detailed and comprehensive record of all the measures and processes adopted by participating States during the Covid-19 pandemic, also taking into account the diversity of parliamentary, judicial and electoral systems that exist across the OSCE region.

### II.1.A FUNCTIONING OF PARLIAMENTS

The scope of this section is to offer an overview of the functioning of national legislatures across the OSCE region during the Covid-19 pandemic, providing an assessment of the potential limitations that the crisis has exerted on the normal exercise of legislative and parliamentary oversight powers in participating States. National parliaments need to play a crucial role in shaping democratic responses to this unprecedented crisis and in ensuring its ability to continue to make decisions, by guaranteeing the representation of all voices in society, an effective oversight of governments,<sup>238</sup> and the inclusive and transparent adoption of legislative measures.<sup>239</sup> To this end, participating States have committed in 1991 in Moscow “to ensure that the normal functioning of the legislative bodies will be guaranteed to the highest possible extent during a state of public emergency.”<sup>240</sup>

Rather than a thorough legal assessment of the national parliamentary procedures put in place by participating States in response to the Covid-19 pandemic, this section will review how states have successfully ensured the regular functioning of their legislatures, in accordance with principles of separation of powers and pluralistic democracy.<sup>241</sup>

The 56 national parliaments of the OSCE participating States<sup>242</sup> have responded in considerably different ways to the challenges posed by the Covid-19 pandemic, adapting their functioning through specific measures and some unique solutions. Within such a diversity, three main observations are possible. First, the data collected by ODIHR illustrate national parliaments' general ambition across the OSCE region to continue their regular functioning to the extent possible, offering as a result a number of good practices and lessons which could inform counterparts in other countries and inspire inter-parliamentary co-operation. Secondly, however, limitations (in some cases rather severe) have impacted the functioning of many national parliaments, in regard to both procedural and logistical aspects, as well as to the substantial scope of their work, curtailing legislative functions and limiting oversight. Thirdly, in a limited number of participating States, national parliaments have been harshly impacted by the crisis, and have been unable, to a great extent, to ensure their normal functioning. In a few cases, it was up to the point of *de facto* abdicating legislative, representative or parliamentary oversight functions.

Within the diverse spectrum of measures taken by parliaments across the OSCE region to ensure they continue functioning properly, it is possible to identify five main trends that illustrate shared solutions adopted to address the challenges posed. While the ultimate results of these solutions vary, they point on the one hand to the reactivity of parliaments in dealing with the emergency situation, and on the other hand to the impact this had on their normal parliamentary work.

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discussed in Part I. This section rather looks at how the pandemic and emergency measures affected parliaments in their normal functioning as democratic institutions.

242 The **Holy See** does not have a parliament due to the specificities of its statehood. The European Parliament, while being a full legislative body for 27 Member States, is not included here, as the European Union cannot be considered a participating State as such. It is recognized that the European Parliament was also majorly affected by the pandemic and that a series of adaptive measures were introduced to ensure its continued functioning.

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238 See Copenhagen Document (1990) para. 5.2

239 See Copenhagen Document (1990) para 5.8

240 See Moscow Document (1991) para 28.5

241 See also the section on the role of parliaments specifically in adopting and controlling the introduction of emergency measures, including formal states of emergency, which is

The first trend highlights the decision of a number of national parliaments to amend their rules of procedures, allowing for certain alternative arrangements in their work to be introduced under the specific circumstances of the Covid-19 pandemic.<sup>243</sup> Although procedural in nature, such a decision has been instrumental and necessary to alter the normal functioning of parliamentary work, enabling the introduction of some of the other measures that are reported further below. Such examples can represent, in their flexibility and responsiveness, a valuable practice for those national parliaments that have in their rules of procedure an obstacle to introduce necessary measures to continue working under emergency circumstances.

A second set of measures put in place by a number of legislatures has been to limit the number of plenary sessions and committee meetings, revising the calendar and streamlining the work of the parliament. This approach seems to be aimed, in most cases, at reducing the potential health risks of carrying out parliamentary work for those parliaments that require physical presence, usually complemented by additional measures for members of parliament and parliamentary staff involving social distancing and voting procedures. More than half of the national parliaments of participating States have reduced their work during the Covid-19 pandemic.<sup>244</sup>

Closely related to reduced calendars, several parliaments have also adopted measures to limit the thematic span of their work, deciding in most cases to limit their functioning in connection to work related to Covid-19 or similarly urgent cases. Different degrees of prioritization were noted across the OSCE region.<sup>245</sup> As a result, the pandemic turned out to be a substantial challenge to representative democracy across the OSCE region, halting or weakening a considerable part of legislative processes, parliamentary oversight and scrutiny, as well as regular representation of citizens' concerns and interests beyond the immediate crisis-related needs.

A fourth set of measures adopted by a number of parliaments was to reduce the number of deputies having to physically attend plenary sessions and committee meetings, in some cases also lowering the quorum necessary for voting and passing legislation.<sup>246</sup>

However, the most widespread practice emerging during pandemic, and perhaps the one with the most lasting impact, has been the introduction by several parliaments of innovations and technological solutions allowing legislatures to operate remotely and virtually. Despite only a few legislatures being equipped prior to the current crisis to use communication technologies to conduct their functions remotely, and with many others having legal and constitutional barriers to prevent such practices, many parliaments of participating States have allowed for much of their work to be carried out online, through videoconferencing and other remote systems.<sup>247</sup> Moreover, the innovative measures intro-

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243 Among others in the OSCE region, national parliaments in **Albania, Belgium, Bosnia and Herzegovina, Croatia, Denmark, Germany, Lithuania** and **Poland** and **Russian Federation** have all decided to amend their rules in procedure. On 15 May, the House of Representatives of the United States Congress changed its rules to allow for proxy voting during plenary sessions and remote committee meetings.

244 This includes parliaments in **Austria, Czech Republic, Estonia, France, Greece, Iceland, and the Netherlands**. In **Latvia**, the parliament decided to limit the number of plenary sessions, barring deputies from working all together in the session hall and providing eight separate parliamentary premises equipped with conference equipment to ensure social distancing. In **Russian Federation**, the Duma also altered its working schedule until the end of August, as to limit the number of plenary sessions and mass gatherings. In **Slovenia**, the national assembly held extraordinary sessions, providing at least 1.5 meters of distance between the participants, while most committee meetings were postponed.

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245 Parliaments in **Andorra, Bulgaria, Cyprus** and **France**, for instance, limited their work to crisis-related legislation. Other legislatures adopted a rather less restricting approach, such as in **Denmark, Germany, Iceland, Italy** and **Portugal**, allowing also for other essential and urgent legislative functions.

246 National parliaments in **Austria, Denmark** and **Finland** have all introduced provisions in this direction. In **Norway**, the parliament decided to reduce the number of deputies having to attend plenary sessions from 169 to 87 until the end of April. In **Portugal**, plenary sessions of the parliament changed their minimum attendance quorum to one fifth of the total number of members of parliament, reflecting the proportions of the parliamentary groups. Similarly, in **Sweden** party group leaders agreed that in March and April the number of deputies required to pass legislation would be 55 out of 349.

247 For example, in **Canada** the Standing Committee on Procedure and House Affairs has been tasked "to study ways in which members can fulfil their parliamentary duties

duced in this area by parliaments since March 2020 have been evolving rapidly. In the majority of cases, parliaments have favoured the work of committees to be allowed to take place remotely, possibly due to the stricter provisions regulating the work of plenary sittings in many legislatures.<sup>248</sup> A number of parliaments have allowed for plenary work to be moved and take place remotely, through videoconferencing platforms or other innovative solutions.<sup>249</sup> Additionally, remote voting during committee and plenary sittings was introduced in many participating States.<sup>250</sup>

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while the House stands adjourned, including [...] technological solutions". Similar exploratory work has been carried out by parliaments in **Georgia** and **Mongolia**.

248 Among others, parliaments in **Croatia, Germany, Italy,** and **Luxembourg** have all adopted measures to allow committee meetings to take place remotely and using internet technology solutions. The parliament in **Albania** was one of the first to allow for committees to work remotely, through electronic means of communication. In **Norway**, the parliament suspended until 30 April the requirement for deputies to be physically present at committee meetings, allowing for remote teleworking. In **Ukraine**, parliamentary committees have been holding their meetings through videoconference, allowing also for remote voting by a show of hands or a verbal roll call voting. Committees are allowed to meet and vote remotely also in **Switzerland**, either through the polling function available in the platform or via nominal roll call.

249 For instance, parliaments in **Estonia, Finland, Lithuania, Monaco, Slovenia** and the **United Kingdom** have all endorsed a certain degree of remote participation for their deputies during plenary sittings. In March, for the first time the plenary sitting of the Senate in **Uzbekistan** was held in the form of videoconferencing.

250 In **Spain**, the parliament has interpreted the Covid-19 pandemic to be a special circumstance under its rules of procedure, initially introduced in 2012 to enable legislators who were sick or on maternity leave to participate in voting procedures, authorizing deputies to vote remotely during plenary sessions. In **Belgium**, the House of Representatives decided to consider deputies as present at committee meetings and plenary sittings even if not physically but only virtually present, and to vote remotely. All committee meetings were held using a videoconferencing platform with parallel interpretation in Dutch/French, allowing members to vote through the available function 'raise hands'. For plenary sittings, remote voting was made possible through a brand-new digital voting system developed by the parliament. The parliament of **Poland** has also introduced electronic means of communication to enable remote working of deputies during plenary sittings, committees and subcommittees. According to the new measures, each deputy received a tablet from the parliament, together with individual login credentials and password, allowing participation in parliamentary work and e-voting. In **Latvia** the parliament launched its full e-parliament platform in May, allowing for all parliamentary work to happen remotely.

The current crisis is playing the role of a catalyst towards innovative legislatures that increasingly embrace e-parliament features... but videoconferencing and remote debates still fall short of replacing in-person practices.

These examples are evidence that, in many states, the adoption of ICT solutions and innovative online platforms has ultimately facilitated the regular functioning of parliaments to continue to a certain extent during the pandemic. In several respects, this trend can be expected to continue in the future, with the current crisis playing the role of a catalyst towards the innovation of legislatures and their increasing embrace of e-parliament features. It is, however, important to mention the challenges that remain when introducing ICT solutions, such as the implications remote and online working platforms could have in terms of privacy of data, party patronage, proxy voting, and digital accessibility, among others. So far, videoconferencing and remote debates still fall short of replacing in-person practices, posing an important question about how virtual plenary sittings and committee meetings can ensure meaningful discussions, inclusive law-making, space for reaching political compromises, and most importantly safeguard the voice of the parliamentary oppositions, as cornerstones of representative democracies across the OSCE region. Further the use of ICT solutions has shown to have differing affects on the participation of men and women.<sup>251</sup>

A limited number of parliaments have been severely impacted – directly or indirectly – by the pandemic, ultimately undermining their regular functioning, as required by commitments in the 1991 Moscow Document. Despite differences in context and measures being adopted, these cases have raised concerns regarding the rule of law and the balance of powers, depriving decision-making processes of parliamentary checks or oversight. In North Macedonia<sup>252</sup> and

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251 See the House of Commons Library [report](#) from 26 May, 2020.

252 In **North Macedonia**, the parliament self-dissolved working on 16 February 2020, in advance of early parliamentary elections scheduled for 12 April. A technical "caretaker" government, including representatives of the ruling and opposition parties, had previously been established in January 2020 following the resignation of the prime

Serbia<sup>253</sup> for example the parliaments were not functioning either because they had been dissolved or were not in a position to convene. As a result the declarations of a states of emergency and related measures adopted by the two governments went without parliamentary scrutiny for a significant period of time.

While these examples suffered in part from unfortunate coincidence in timing, it points to the possible need to reflect upon legal parameters for the dissolution and recomposing of parliaments in contexts of emergency. In order to ensure that at least some basic functions of parliamentary power are maintained, contingencies may need to be built into constitutional and legal frameworks to prevent the complete absence of a legislative branch of government in emergency periods.

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minister in anticipation of the early elections. Following the introduction of a state of emergency on 18 March, the government issued a legally binding decree which suspended the electoral process until the termination of the state of emergency. There was no functioning parliament for the first several months of the pandemic, and the Constitution does not foresee parliamentary validation of legally binding government decisions during a state of emergency, though a high number of requests to review government decisions were submitted to the Constitutional Court. On 6 May, the Constitutional Court of North Macedonia unanimously ruled that the conditions for reconvening the parliament were absent, since following its dissolution on 16 February the mandate had been given back to the citizens. As a result, the parliament in North Macedonia was not functioning in this period; new elections were held on 15 July.

- 253 In **Serbia**, on 4 March 2020, the President called for new parliamentary elections initially set to take place on 26 April and later postponed. On 16 March, the President (together with the President of the Parliament and the Prime Minister) introduced a state of emergency in Serbia. This decision was not approved by the parliament, as it was considered unable to convene due to the government imposed COVID-19 or pandemic related restrictions on gathering exceeding 50 people. The parliament did not function for over 40 days. On 28 April, without clear justification for the suspension of its activities, the President of the Parliament convened the first plenary session since the introduction of the state of emergency. During the plenary the parliament approved the declaration of state of emergency from 15 March along with 44 decrees that were adopted by the Government during the state of emergency. On 6 May, the parliament again convened in a plenary session, and approved the decision to lift the state of emergency.

## GOOD PRACTICES

Oversight functions conducted by national parliaments remain an essential requirement of parliamentary democracy, especially at times when states of emergency are introduced and the balance of power is tilted towards the executive. To minimise the risk for abuse of these increased powers, as well as to contribute to better decision-making, a number of parliaments in the OSCE region successfully continued to play their constitutional role of oversight, in some cases adopting dedicated oversight provisions. Some participating States' parliaments have created fact-finding missions or special committees to ensure close and timely monitoring of the handling of the crisis and its consequences.<sup>254</sup> Other parliaments allowed for the submission of questions in digital form to ensure the continuation of this important oversight function<sup>255</sup> or have initiated parliamentary inquiries.<sup>256</sup> Some parliaments have set up commissions looking into the human rights implications of the government's overall response to the crisis.<sup>257</sup> In regard to the transparency of parliamentary work, good practices in using the current crisis to raise access to information and open data have also been registered among a number of participating States.<sup>258</sup>

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- 254 In **France**, for example, on 17 March, the parliament decided to create a fact-finding mission on the overall impact, management and consequences of the Covid-19 pandemic. This cross-party effort includes all political fractions and standing committees. The parliament of **Norway** has established a Covid-19 special committee, with the purpose of considering urgent matters relating to the crisis and the decisions taken by the government to address it.

- 255 In **Norway**, the parliament has ensured that the practice of deputies asking questions to representatives of the government can continue during the Covid-19 crisis, allowing questions and answers to be submitted digitally.

- 256 In the **United Kingdom**, on 30 March, the committee on women and equalities launched an **inquiry** on Covid-19 responses with regard to people with protected characteristics and has issued a call for evidence.

- 257 In the **United Kingdom**, a significant inquiry has been launched by the joint committee on human rights.

- 258 In **Albania**, for example, the decision to allow committee meetings to take place remotely using videoconferencing platforms has allowed for the side-effect of making the livestreaming of these meetings available to the wider public. In **Estonia**, the parliament decided to reinforce its level of transparency during the Covid-19 crisis and arranged to also livestream the parliamentary question-time on its Facebook page, with recordings of plenary sittings being available on the parliamentary YouTube channel.



## RECOMMENDATIONS

- States should ensure the regular functioning of parliaments by providing for emergency situations in the rules of procedure, considering among other things physical arrangements, quorums, remote sessions, and the use of ICT solutions.
- As states come out of emergency situations, they should conduct an assessment of the application of ICT solutions to support the work of parliament in periods of emergency and beyond, evaluating the risks and benefits, impact on the participation of women and men and what needs to be introduced in the legal framework to facilitate the use of new technologies.
- Parliaments should ensure full transparency of their work and decisions regarding how they will function in emergency periods to offer clarity to citizens and may consider allowing citizens to submit on-line petitions to parliaments and their members addressing emergency related legislation/problems.
- Parliaments should conduct special hearings/debates on emergency related issues and states should ensure that parliaments are in the lead in designing policy responses in a transparent and accountable way (rather than allowing the executive to issue decrees without scrutiny).

### II.1.B DEMOCRATIC LAW-MAKING

While parliaments, elected on the basis of genuine elections, exercise the legislative function in constitutional democracies, democratic law-making involves more than just the mechanical functioning of legislatures. The ICCPR (in Article 25), provides a legal foundation for the inclusive participation of every citizen in the conduct of public affairs. The UN HRC noted specifically in this respect that “citizens also take part in the conduct of public affairs by exerting influence through public debate and dialogue with their representatives or through their capacity to organize themselves”.<sup>259</sup> Furthermore, the UN General Assembly has recognized the right of individuals to participation in their government and in the conduct of public affairs, *inter alia*. This implies the right of petition, submitting proposals for improving the functioning of governmental institutions and drawing attention to any aspect of their work.<sup>260</sup> On a regional level, the Council of Europe has advised that governments at all levels should ensure, without discrimination, the

effective participation of NGOs in dialogue and consultation on public policy objectives and decisions.<sup>261</sup>

The ECtHR has held that the review of draft legislation that limits or restricts the exercise of fundamental rights, before being enacted by the legislature, and not only afterwards by the judiciary, makes such restrictions easier to justify and that the “quality of the parliamentary and judicial review of the necessity of the measure is of particular importance”.<sup>262</sup> The lack of substantive debate about issues by members of the legislature could result in a failure to meet the proportionality test applied by the Court.<sup>263</sup> In addition, the ECtHR has also held that policy-making decisions “must necessarily involve appropriate investigations and studies in order to allow them to strike a fair balance between the various conflicting interests at stake.”<sup>264</sup> The principles are

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259 UN Human Rights Committee, General Comment No. 25 (1996), Art. 25 (Participation in Public Affairs and the Right to Vote) – The Right to Participate in Public Affairs, Voting Rights and the Right of Equal Access to Public Service.

260 Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms, Art. 8, UN General Assembly Resolution 53/144 of 9 December 1998.

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261 See Recommendation on the Legal Status of NGOs in Europe (Art. 76), Committee of Ministers on 10 October 2007 at the 1006th meeting of the Ministers’ Deputies, CM/Rec (2007)14.

262 ECtHR, *Animal Defenders International v. the United Kingdom*, 48876/08, 22 April 2013, para. 108.

263 ECtHR, *Hirst (No. 2) v. the United Kingdom*, 74025/01, 6 October 2005, para. 79. Where, when applying the proportionality test, the Court looked into the extent of parliamentary debate on the issue of prisoners’ right to vote and observed that “it cannot be said that there was any substantive debate by members of the legislature on the continued justification in light of modern-day penal policy”

264 ECtHR, *Hatton v. the United Kingdom*, 36022/97, 8 July 2003, para. 128; See also *Evans v. the United Kingdom*, 6339/05, 10 April 2007, para. 86. About the absence of real

applicable also to decisions that need to be taken as a matter of urgency, albeit with the need to find a good balance between expediency and participation.

Principles of democratic law-making are firmly rooted in OSCE commitments. The Copenhagen Document (1990) and the Moscow Document (1991) specify that legislation should be “adopted at the end of a public procedure, and regulations will be published, that being the condition for their applicability” and that “legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives”.<sup>265</sup> OSCE participating States have also committed to ensure that the normal functioning of legislative bodies will be guaranteed to the highest possible extent during a state of public emergency.<sup>266</sup> States have further committed to “secure environments and institutions for peaceful debate and expression of interests by all individuals and groups of society”,<sup>267</sup> as well as to enable non-governmental organisations to contribute to matters of public debate and, in particular, to the development of the law and policy at all levels, whether local, national, regional or international.<sup>268</sup>

Legislative and policy decisions should also be informed by the recognition of the diversity inherent in societies, groups, gender and individual identities. The OSCE High Commissioner on National Minorities’ (HCNM) noted in this respect that “diversity is a feature of all contemporary societies and of the groups that comprise them” and recommended that “the legislative and policy framework should allow for the recognition

that individual identities may be multiple, multi-layered, contextual and dynamic.”<sup>269</sup> The Council of Europe’s **Framework Convention for the Protection of National Minorities** also recognizes the obligation of signatory states to create the conditions necessary for the effective participation of persons belonging to national minorities in public affairs, in particular those affecting them.<sup>270</sup>

In general, the legislative process should adhere to the principles of democracy and the rule of law, core elements of which are legality, transparency, accountability and respect for human rights. Rule of law “promotes democracy by establishing accountability of those wielding public power and by safeguarding human rights, which protect minorities against arbitrary majority rules.”<sup>271</sup> Further, a transparent and accountable law-making process supports anti-corruption efforts, reinforces good governance, and contributes to international development efforts, including in achieving the UN Sustainable Development Goals.<sup>272</sup>

## AREAS OF CONCERN

In times of crisis, authorities are often inclined or compelled to shorten procedures, circumventing normal legislative processes, adopting laws and policy decisions in an expedited manner, avoiding meaningful discussions and public consultations. The pandemic prompted most participating States to resort to states of emergency or other extraordinary measures, which justified utilizing fast and simple legislative processes,

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parliamentary debate since the adoption of a statute, which took place in 1870.

<sup>265</sup> Among those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of human beings are (...) legislation, adopted at the end of a public procedure, and regulations that will be published, that being the conditions of their applicability. Those texts will be accessible to everyone;” (Copenhagen Document (1990), para. 5.8) “Legislation will be formulated and adopted as the result of an open process reflecting the will of the people, either directly or through their elected representatives” (Moscow Document (1991), para. 18.1).

<sup>266</sup> Moscow Document (1991), para. 28.5. For a detailed analysis of the role of parliaments, see the previous section.

<sup>267</sup> Maastricht Ministerial Council (2003)

<sup>268</sup> See Moscow Document (1991), para. 43

<sup>269</sup> See OSCE High Commissioner on National Minorities (HCNM), Ljubljana Guidelines on Integration of Diverse Societies (2012), Principle 5, pages 14–15 and the Lund Recommendations on the Effective Participation of National Minorities in Public Life (1999).

<sup>270</sup> Art. 15 of the Framework Convention for the Protection of National Minorities, February 1995. Similar principles are expressed in the UN Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities, adopted by General Assembly resolution 47/135 of 18 December 1992.

<sup>271</sup> Rule of Law Checklist, Venice Commission 106th Plenary Session (CDL-AD(2016)007-e, Venice, 11–12 March 2016.

<sup>272</sup> **Goal 16** aims to promote peaceful and inclusive societies for sustainable development, provide access to justice for all and build effective, accountable and inclusive institutions at all levels. Target 16.7 is to ‘ensure responsive, inclusive, participatory and representative decision-making at all levels’.

swiftly adopting laws in order to provide a legal basis for urgent public health measures and to address the consequences of the pandemic across all sectors of society. At the same time, there have been instances when states applied accelerated procedures, fast-tracking legislation for purposes other than the emergency response. Furthermore, processes that lacked consultations, and sometimes a complete absence of meaningful parliamentary debate on proposed legislation, further distorted allocations of legislative power between the executive and legislature.

Most participating States have a regulatory framework in place that governs urgent or accelerated procedures (sometimes referred to as extraordinary or emergency procedures) through which legislation can be swiftly proposed and adopted in order to respond to imminent or pressing societal needs. It is without doubt that circumstances during the pandemic justify the use of expedited mechanisms, as has been the case in the vast majority of OSCE countries.<sup>273</sup> While these procedures generally allow certain aspects of the regular legislative process to be passed over, the principles of transparency, inclusiveness and accountability should guide the overall process to ensure that laws are legitimate and accessible, as well as compliant with human rights and the rule of law.

Even in times of emergency, the principles of transparency, inclusiveness and accountability should guide legislative processes to ensure that laws are legitimate and accessible, as well as compliant with human rights and the rule of law.

In a few instances, where national legislation provides for safeguards or conditions for the use of an accelerated legislative process, states' emergency measures were adopted in contravention to these procedures.<sup>274</sup>

273 See Part I of this report for a detailed analysis of the relevant legal frameworks on states of emergency.

274 For example in **Poland**, an important, extensive **bill on regulating the conduct of the presidential elections** was passed through the lower house in a matter of days, notwithstanding parliamentary rules of procedure and international electoral standards.

Similarly, some participating States used such procedures for proposing contentious legislation, with only cursory reference to the emergency context, and/or to adopt legislative or other measures completely or partially unrelated to the emergency needs, for example on pensions, migration, and media freedom.<sup>275</sup> ODIHR has noted that in some states, emergency legislation covered cross-sectional issues resulting in omnibus legislation (or legislative packages).<sup>276</sup> While in emergency situations this law-making tool provides an opportunity to act rapidly and address several areas at once, it represents a risk with regard to the law's compliance with OSCE commitments, constitutional requirements and human rights principles. These issues have far-reaching consequences for societies and, in the absence of an objectively justifiable reason of urgency, should be subjected to a rigorous and participatory legislative process.

In a number of states, accelerated legislative processes have also been used to adopt legislative acts in order to retroactively provide a legal basis for government action already undertaken or being implemented. This was noted both for issues such as the imposition of fines, as well as the overall regulatory framework for the emergency response.<sup>277</sup>

275 For example, in **Estonia** where the coalition introduced in an emergency legislation package provisions on the change of the existing pension system and stricter controls on migration; in **Poland** the emergency legislative package included provisions amending the Penal Code and common court system; these amendments were considered by many to be unrelated to the Covid-19 pandemic response. See *Access to Information* section above for further examples related to media freedom.

276 In **Hungary**, a provision in an omnibus legislation passed on 18 May 2020, made it impossible for transgender persons to legally change their gender. The law will make it impossible for transgender and gender diverse persons to legally change their sex and/or gender marker since Art. 33 provides that all references to "sex" will now instead refer to "sex assigned at birth" in the national registry and on identity documents; in **Turkey** the omnibus legislation suspended collective bargaining processes for three months.

277 For instance, in **Belgium** (at some point, municipalities were fining people who did not respect lockdown measures without a legal basis, a measure authorized later on by the federal government); in **Croatia** (The Civil Protection Authority adopted quarantines measures and movement restrictions based on legislation that says such measures should be adopted by the Minister of Health. The situation was retroactively addressed by Parliament, potentially contravening the general prohibition of retroactive effect



In a few participating States, legislation was fast-tracked with little parliamentary scrutiny, resulting in measures that have disproportionate impact on fundamental freedoms and human rights. These measures ranged from hefty (and perhaps disproportionate) penalties for violations of lockdown measures, to widening of surveillance powers or other regulations infringing on the privacy of individuals that were subjected to only a few hours of parliamentary discussion. Furthermore, some far-reaching measures were imposed amidst serious doubts about the legal basis and questions on whether risks and necessity of such measures had been weighed properly.<sup>278</sup>

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of legislation under Art. 90 of the Constitution ‘unless for exceptionally justified reasons’, which were not stated during in this law-making process); **Germany** (a ban on assemblies in public spaces and the prohibition of religious services in the presence of a congregation adopted by local authorities was not expressly provided by Art. 28 of the Federal Infection Protection Act, which was then later amended); **Lithuania** (the Government acted in a manner of urgency, adopting the quarantine measures that were not prescribed by the Law on Contagious Diseases and the *Seimas* (parliament) had to amend the Law retroactively giving legitimacy to the Quarantine Resolution adopted weeks earlier); **Portugal** (the most significant measures were introduced by Decree-Law 10-A/2020 enacted by the Government on 12 March although there was no prior delegation by the Parliament nor a proper legal basis provided in law; the Decree-Law was ratified ex post facto even though the Art. 18(3) of the Constitution bans the retroactive restrictions of fundamental rights); in the **Russian Federation** (the Federal Law No. 68-FZ “On Protection of the Population and Territories against Emergency Situations of Natural and Technogenic Nature” dated 21 December 1994 did not explicitly allow Regions to order their residents to self-isolate at home; moreover, at the time of the enforcement of the Mandatory Lockdown Amendment, the definition of the emergency situation in the Federal Law, which was the legal basis for adopting such measures did not include the spread of dangerous diseases, which was only added later with the adoption of the Federal law No. 98-FZ dated 1 April 2020). Similar examples can be found for example in **Italy**, where a decree was quickly converted into law by parliament resulting in legal uncertainty due to lack of understanding of the hierarchy between the announced measures, which was later corrected through amendments; in **Switzerland**, the government offices’ measures raised doubts regarding the legal basis; and in **Malta**, after a period of confusion as to the legal basis for the Superintendent to take certain measures, including on suspension and altering legal and judicial time limits, an Act was adopted to retroactively validate any subsidiary legislation made under the Public Health Act.

278 For example, **Armenia** passed amendments to “Legal Regime of the State of Emergency” and “Electronics Communication”, giving authorities broad surveillance powers, with only a few hours for consideration of the

ODIHR noted instances where parliaments assumed a correcting role in the law-making process, for instance by taking up an effective oversight function in scrutinizing proposed legislation where governments would otherwise be granted far-reaching authority on matters that require parliament’s legitimization and adding safeguards to proposed legislation by ensuring the involvement of experts and necessary temporal and other limitations.<sup>279</sup>

Another area of concern relates to the accessibility and publication of adopted legislation and other regulations.<sup>280</sup> In certain instances, the underlying legal texts or documentation on which decisions were based (scientific models, statistics, etc.) have not been published, which does not meet commitments that call for legislation to be published following a public procedure. Swift legislative responses and accelerated law-making procedures also result in omitting other aspects of a regular legislative process, such as public consultations and impact assessments.

A significant number of participating States do not appear to have included either experts, civil society

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final draft on 31 March; in **Georgia** amendments to the Criminal Procedure Code introducing harsh penalties for the violation of quarantine rules were adopted through urgent procedure, with three readings in one day; in **Montenegro** the government body in charge of the response to health concerns related to the pandemic adopted a decision to publish personal data of individuals who have been required to self-isolate; in **Poland** a phone app was launched by the government that allows police to monitor individuals’ compliance with quarantine with the possibility to impose a fine; and in **Romania**, the government decree declaring the state of emergency, simply referred the human rights and fundamental freedoms it would restrict for a period of a month.

279 For example, in **Norway**, parliament managed to add safeguards to ensure that the Government would not be able to pass legislation without involvement of Parliament; in **Canada**, the opposition struck down provisions to include in a statute responding to the financial dimension of the crisis, including the power to spend, borrow and tax without Parliamentary approval until December of 2021; in the **Netherlands** the number of legislative proposals that were classified as ‘urgent’ during the pandemic was reduced.

280 Good practices can be drawn from the following examples: in **Ireland** the government has published an easy-to-understand overview of the next steps in the government’s plan and what citizens should or should not do and in **Iceland** the government provides timely, accessible and easy-to-understand information on what is not allowed in the current situation.

representatives or the general public in the legislative and decision-making process when adopting emergency legislation.<sup>281</sup> Other participating States even explicitly restricted public debates on non-emergency related issues they included in their emergency legislation.<sup>282</sup>

Both the coronavirus pandemic itself and the immediate consequences of the response, be it in the form of emergency measures or their socio-economic impact, have exacerbated inequalities and sharpened differences between groups in society.<sup>283</sup> It would therefore be equally important to reflect the potential or intended impact of any newly adopted rules and regulations on different groups. ODIHR has found that states often either bypassed impact assessments or conducted these in a limited manner, which did not sufficiently consider the differentiated impact of emergency rules on different parts of society.<sup>284</sup> Where the impact of

emergency legislative responses cannot, due to urgent public health requirements or other legitimate reasons, be analysed prior to their adoption, it is of importance to conduct an *ex post facto* evaluation of the impact on vulnerable groups. This should include a gender and diversity analysis to ensure that the rights of women and children, older people, persons with disabilities,<sup>285</sup> migrants and Roma and Sinti, amongst others, are duly respected. Such analysis and refinement of the regulatory framework should be done in a participatory and inclusive manner and should be informed by independent and unbiased analysis of impacts on various groups.

In some countries, while the initial emergency legislation or measures may have been gender- and diversity-blind, later amendments or extensions have at times introduced more gender and diversity-sensitive measures.<sup>286</sup> Evidence-based gender and diversity analysis is essential to increase the effectiveness of responses

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281 For example, **Armenia, Azerbaijan, Denmark** and **Georgia**.

282 For example, in **Armenia** a bill giving authorities broad surveillance powers was passed without sufficient time for input by the public or civil society; in **Austria**, where government actions were taken in stages, little room was left for public debate on the measures adopted in response to the pandemic; in **Denmark** amendments to the Epidemics Acts were rushed through parliament in 12 hours; in **Georgia**, immediately after state of emergency was lifted, the Parliament adopted amendments to the Law on Public Health granting the government broad powers to design and implement unspecified quarantine measures without parliamentary oversight; in **Norway**, the government prepared a draft emergency bill without the involvement of experts or holding a public discussion; in **Portugal**, the Emergency Decree suspended the right to participate in the drafting of new labour legislation (enshrined in the Constitution for trade unions and in the Labour Code for trade unions and employers associations) insofar as the exercise of such right may delay the entry into force of urgent legislative measures provided for in this Decree; in **Romania**, a new provision to the government emergency ordinance was added, providing that: "During the state of siege or the state of emergency, the legal norms regarding decisional transparency and social dialogue do not apply in the case of draft normative acts establishing measures applicable during the state of siege or state of emergency or which are a consequence of the establishment of these states."

283 This is discussed in detail in Part I, as well as subsequent sections of this Part, analysing the negative impacts of the crisis on the rights of marginalized or discriminated groups or parts of society.

284 For example, in **Finland**, decrees issued under the Emergency Powers Act lacked a proper assessment of the measures' compatibility with international human rights obligations. Similarly in Latvia, the Government decision on an emergency situation and subsequent related legislation

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do not foresee an individual assessment of restrictions of human rights, such as the right to respect for private and family life, the freedom of assembly, the right to education and the freedom of movement.

285 For example, in terms of a good practice, **Canada** established the Covid-19 Disability Advisory Group (CDAG) to advise the government on the real-time lived experiences of persons with disabilities during the crisis, including disability-specific issues, challenges, systemic gaps and recommendations; The Covid-19 Law (enacted March 26, 2020) in the **United Kingdom** is an example of a law with serious implications for the rights of persons with disabilities. The law grants authorities emergency powers and needs to be renewed by parliament every 6 months. The law seems to lower the threshold for detention on mental health grounds by requiring only one doctor's recommendation instead of two under the Mental Health Act. The Covid-19 Law also makes it harder for adults with disabilities and their caregivers to have their needs met as a result of the effective suspension of the Care Act 2014. As the Bill is a temporary, emergency law, a formal impact assessment was not required; however, the government did carry out an equalities assessment though no mention of persons with disabilities is made in the assessment.

286 For example, the Law of 11 May 2020, extending the state of health emergency in **France**, introduced new provisions specifically regulating the situation of victims of domestic violence in the context of quarantine and confinement. Certain countries, such as **France, Greece, Ireland, Italy, Poland** and **Slovakia** have automatically extended the validity period of residence permits for foreigners. **Poland** has also provided that foreigners staying in Poland permanently, including refugees and beneficiaries of subsidiary protection, will be released from the obligation to apply for new residence cards until the relevant offices restore regular service.

to the pandemic, as well as inform preparedness and response plans in other contexts and future health emergencies. In that respect, experts and civil society

groups should be involved with relevant parliamentary committees in the overall decision-making process, and given a role in evaluating the legislative impact.

## RECOMMENDATIONS

- States should refrain from considering legislation that is not of urgent nature, while parliamentary functions are not fully operational and when certain civic and political rights are restricted, especially legislation that may impact fundamental freedoms and human rights.
- To the extent possible and using innovative approaches, states and parliaments should follow ordinary legislative processes, including public consultations (organised online if necessary) and review the impact on under-represented persons or groups of emergency and non-emergency legislation adopted in this period.
- Ensure inclusive public hearings and consultations to the extent possible, including through the use of online platforms.
- Ensure a parliamentary approval process for emergency response legislation and other regulatory actions.
- Ensure that safeguards are in place in relevant legislation on the functioning of democratic institutions.
- Conduct an evidence-based gender and diversity analysis of the measures adopted in response to the pandemic and review documentation of the gender- and diversity-specific human rights impacts of the emergency measures to inform preparedness and response plans for future emergencies.

### II.1.C JUSTICE INSTITUTIONS

The observance of the rule of law “based on respect for internationally recognized human rights, including the right to a fair trial, the right to an effective remedy, and the right not to be subjected to arbitrary arrest or detention” may never be more relevant than in times of crises and emergency.<sup>287</sup>

In order to ensure these goals, and access to justice more broadly, participating States have committed to pay due attention to the efficient administration of justice and proper management of the court system.<sup>288</sup> Judicial independence has repeatedly been recognized by participating States as a prerequisite to the rule of law and as a fundamental guarantee of a fair trial.<sup>289</sup>

To this end, participating States have pledged to continue and enhance efforts to strengthen the rule of law

in a range of related areas, including the effective administration of justice, the right to a fair trial, access to court and the right to legal assistance.<sup>290</sup> The specific role of constitutional courts as an instrument to ensure the principles of the rule of law, democracy and human rights has also been emphasized.<sup>291</sup>

In the context of restrictions and derogations, participating States have committed to ensure that “legal guarantees necessary to uphold the rule of law will remain in force during a state of public emergency” and “to provide in their law for control over the regulations related to the state of public emergency, as well as the implementation of such regulations.”<sup>292</sup>

The pandemic posed particular challenges to upholding these commitments, not only because of the widespread and catastrophic implications for the general population, but also in order to ensure the safety and health of people serving in justice sector institutions

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287 Decision No. 12/05 of the Ministerial Council on Upholding Human Rights and the Rule of Law in Criminal Justice Systems, Ljubljana, 6 December 2005.

288 Decision of the Ministerial Council No. 5/06 on Organized Crime, Brussels, 5 December 2006, para. 4.

289 Brussels Declaration on Criminal Justice Systems of the Ministerial Council, 5 December 2006.

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290 Decision No. 7/08 of the Ministerial Council on Further Strengthening the Rule of Law in the OSCE Area, Helsinki, 5 December 2006, para. 4.

291 *Ibid.*

292 Moscow Document (1991), para. 28.8.

themselves. Judges, lawyers, prosecutors and court staff, as all human beings, have the right to life and right to health, which requires states to set measures to ensure their protection.<sup>293</sup> At the same time, judges and others working in the justice sector may justifiably be asked to accept a higher degree of risk than other individuals who do not hold public office, in a similar way as medical staff, police and fire-fighters.<sup>294</sup>

Key functions of courts reflected in international law relate to the right to a fair trial by an independent and impartial court (Art 14 ICCPR), the right to judicial control of deprivation of liberty (Art 9(3) and (4) ICCPR) and the right to an effective remedy (Art 2(3) ICCPR). These rights are mirrored in specific OSCE commitments and principles.<sup>295</sup> All three functions are essential in times of emergency or crises. Courts deliver a particularly crucial role with regard to the protection of non-derogable rights and absolute rights.<sup>296</sup>

Even where courts remained open in principle, they worked with limited capacity and physical access to court buildings was restricted significantly in many places. As a consequence, individuals faced considerable challenges in access to justice in civil, criminal and administrative procedures.

The judiciary also plays a crucial role in keeping checks on the other state powers, in particular the executive, which tends to increase its power during states of emergency. As the UN Special Rapporteur on the

Independence of Judges and Lawyers has emphasized, national courts must remain competent and capable to evaluate and if necessary, nullify any unlawful imposition or unjustified extension of emergency measures.<sup>297</sup>

Courts have a vital function during and after the pandemic in providing an effective remedy against excessive or discriminatory emergency measures in individual cases. Uninterrupted access to courts is also required in other urgent legal matters, in particular for vulnerable people in cases of domestic violence, trafficking in human beings, detention and torture related situations.<sup>298</sup> As violations of quarantine and lock down measures carry significant criminal penalties, including imprisonment, in a number of countries, access to courts is essential in these matters as well.

States of emergencies, curfews and lock-down measures during the pandemic have created considerable challenges for the functioning of courts and access to them. In most participating States, the pandemic has resulted in (partial) closures of courts and the suspension of procedures, except for urgent cases. Even where courts remained open in principle, they worked with limited capacity.<sup>299</sup> Physical access to

293 It is worth noting that the mortality rate of the virus seems to increase with age, and that in many judiciaries a relatively high proportion of judges are older, compared to other professions.

294 Guidance Note of International Commission of Jurists (ICJ), **The Courts and COVID-19**, 6 April 2020

295 See, in particular, Moscow Document (1991) paras. 18 to 23.

296 In the ICCPR context, non-derogable rights include the prohibition of torture, prohibition of slavery, right to life, the presumption of innocence in criminal proceedings, the prohibition of retrospective criminal law and the availability of a remedy (Human Rights Committee, General Comment 29, para. 14). Also, guarantees of fair trial may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights.

297 UN Special Rapporteur on the Independence of Judges and Lawyers, *Report to the UN General Assembly*, 12 August 2008, UN-Doc. A/63/271, paras. 16–19, 66.

298 This is discussed in more detail in the respective sections of Part II below.

299 Examples of states in which court operations were limited to urgent cases during lock-down measures include **Azerbaijan, Canada, Denmark, Greece, Kyrgyzstan, Moldova, the Netherlands, Slovenia, Switzerland and Uzbekistan**. In **Ireland**, a range of courts (e.g. District Courts, Circuit Civil and Family Law Courts, High Court, Supreme Court, Court of Appeal) continued regular operations, however scaled back their work to urgent matters in response to Government directions to minimize social contact. In **Hungary**, an extraordinary judicial vacation was introduced from 15 to 30 March; however, court operations resumed on 31 March. Based on a Government decree (No 74/2020), proceedings continued, mainly by written procedure and remote hearings. In criminal cases with the requirement of personal presence, hearings were held with social distancing measures. In **Germany**, decisions to carry out court hearings remained within the judicial discretion of each judge. However, most courts (including the Federal Court of Justice, the Federal Administrative Court and the Federal Constitutional Court) decided to keep visitor traffic to a minimum. Whether or not court proceedings were to be postponed under these circumstances, however, was decided by the judges within their judicial discretion.

court buildings was restricted significantly in many countries.<sup>300</sup>

As a consequence, individuals faced considerable challenges in access to justice in civil, criminal and administrative procedures. Lawyers were largely unable to represent their clients effectively and faced obstacles in accessing clients in detention, women subject to domestic violence and persons with disabilities.<sup>301</sup> Unrepresented defendants and applicants struggled to navigate the changes in already complex legal proceedings as a result of emergency measures.<sup>302</sup> In response to these challenges, many participating States suspended, interrupted or expanded procedural deadlines

and statutes of limitation.<sup>303</sup> Jury trials have also been suspended.<sup>304</sup>

States have used a range of different sources of law in order to regulate these and other changes in the judicial system as a result of the pandemic, including laws, ordinances by ministries of justice and government decisions, as well as resolutions of judicial councils and instructions issued by court administrations. As a consequence, judges and court users often faced an abundance of instructions from a host of different sources, at times overlapping or even contradictory. Videoconference hearings have been introduced or expanded, from some to all types of procedures (civil, criminal and administrative) in a large number of jurisdictions, although often without clear legal basis and/or without much preparation or guidance to judges and court users.

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300 In **Austria**, for example, an ordinance of the Minister of Justice limited the movement of parties (“Parteienverkehr”) to the exercise of elementary procedural rights of parties. These included the inspection of files and the timely submission of applications and other submissions to the court. Courts tried to compensate by handling queries of parties by phone or email. Another example is **Bulgaria**, where the Supreme Judicial Council prohibited citizens, parties to cases, experts, translators, attorneys and all other persons from access to court buildings, except for those summoned in the context of explicitly listed types of cases.

301 In **Kazakhstan**, for example, civil society organizations consistently reported difficulties for lawyers to effectively defend their clients, including due to difficulties to submit procedural motions. As a result of the quarantine in the cities of Nur-Sultan and Almaty on 28 March 2020, visiting court buildings to participate in court sessions could be considered a violation of the quarantine.

302 **Albania**’s Normative Act, adopted on 25 March 2020, for example, provided that deadlines for lawsuits and on any procedural action shall be suspended in administrative, civil and criminal cases; however, if the deadlines started during the suspension period, they were postponed “until the end of the epidemic”. The Normative Act went on to provide a list of cases in which the suspension of deadlines does not apply; for example, in administrative cases, the subject of which is the adjudication of measures on securing lawsuits in the event that the court deems that the examination after the deadline determined in the prior article of the law could cause serious and irreparable damages to parties. In **Romania**, most Courts have restricted their activities with the public, indicating that petitions should be submitted by regular post and email. However, it was reported that the servers and email addresses of the Courts quickly became unavailable, due to limited capacity. (Source: EU Fundamental Rights Agency, Coronavirus COVID-19 outbreak in the EU Fundamental Rights Implications: Romania, 23 March 2020)

Courts faced new types of cases as a result of the pandemic and ensuing emergency legislation, in particular complaints and other remedies for individuals sanctioned for breach of quarantine rules. The definition of such offences, as well as the sanctions, often lacked clarity, contrary to the principle of legal certainty. Furthermore, quarantine measures resulted in increasing family disputes, in particular in terms of domestic violence but also with regard to other family-related conflicts. Labour disputes and insolvencies are also expected to increase considerably in the aftermath of the pandemic and will likely result in an additional caseload for already strained court personnel and infrastructure.

While state and court practices across the OSCE region differed, certain commonalities emerged with regard to cases and procedures considered urgent and hence to be continued despite the (partial) closure of courts. These typically included procedures related to persons deprived of their liberty and cases related to vulnerable individuals (children, women, older people and persons

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303 Such measures were put in place in a large number of participating States, of which **Austria, Bosnia and Herzegovina** (Republika Srpska), **Bulgaria, Croatia, Czech Republic, France, Italy, Poland, Serbia, Spain** and **Ukraine** are illustrative. A smaller number of states did not suspend procedures, such as **Sweden**.

304 Examples of this practice include **Ireland, Kazakhstan, the United Kingdom** and the **United States**.



with disabilities), in particular in the context of their need of injunctive relief against violence.

In many participating States, cases of individuals in pre-trial detention or eligible for probation were reviewed with a view to their release from detention. This measure served as a means to protect these individuals from the risk of infection in closed quarters, as well as with a view to reducing the burden on the penitentiary and the judiciary systems during the pandemic.<sup>305</sup>

However, judicial systems were not always able, or even required, to adjudicate in a timely and effective manner on remedies against sanctions for breach of emergency measures, prompting concern especially in cases relating to non-derogable rights. Judicial self-governing bodies and general assemblies of courts also faced challenges in decision-making as a result of quarantines and social distancing requirements, including when seeking to determine emergency measures. In many jurisdictions, rules of procedure of such bodies do not envisage remote deliberation or decision-making. Following the peak of the pandemic, re-opening courts faced challenges in establishing protocols of social distancing, including arrangements relating to public attendance of hearings.

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305 For example, in **France**, some 11,500 people who were within three months of completing their sentences or awaiting trial were released from prison to ease overcrowding and reduce the risk of infection with the SARS-CoV-2 virus. In **Norway**, 194 prisoners benefited from early release measures approved on 16 March. In **Germany's** federal state of Hesse, 268 prisoners were released by 12 April 2020, and in more than 3,600 cases, the execution of prison sentences was postponed. In the **United Kingdom**, by contrast, by 27 April 2020, only 33 out of 4,000 prisoners in England and Wales eligible for early release had indeed been freed, and initial proposals for early release of offenders under certain conditions were eventually shelved by the government. For recommendations on reducing the number of detainees and release of vulnerable detainees and low-level offenders see for example the **statement** of UN High Commissioner for Human Rights, on 25 March 2020 and the Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), **Advice** of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic, 25 March 2020.

## CONCERNS RELATING TO THE RULE OF LAW AND ACCESS TO JUSTICE

The pandemic demonstrated limitations in the ability of judges, court personnel, lawyers, judicial self-governing bodies and other justice stakeholders to work remotely using digital technology for communication, to file motions and conduct proceedings via videoconference,<sup>306</sup> and with a view to decision-making in matters of judicial administration. Judicial systems in many participating States also lack provisions for judges to access files remotely while providing data security, and to authenticate themselves through electronic or digital signatures in order to validate decisions. Women justice stakeholders faced obstacles working from home while still bearing the main care-taking responsibilities for children and other family members.

The lack of clarity on the processing of pending cases and inconsistencies within jurisdictions, and even within courts, resulted in considerable legal uncertainty. Concerns arose in a number of states regarding the legality of the use of videoconference hearings due to lack of a (clear) legal basis, and regarding the use of videoconference hearings even where not all trial parties had adequate access to and familiarity with the respective technology. Other concerns related to data protection and privacy issues.

Various fair-trial related problems occurred in the context of videoconference hearings, including lack of meaningful participation during online hearings, shortcomings in terms of the ability of trial participants to observe non-verbal cues of individuals being summoned, problems with the examination of evidence, and lack of confidential client-lawyer communication during online hearings. Some judges or courts sought to compensate access of the public (partially) by broadcasting hearings, however, shortcomings remained, including access of trial monitors.<sup>307</sup>

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306 See, e.g., European Union Agency for Fundamental Rights, **Coronavirus Pandemic in the EU – Fundamental Rights Implications**, Bulletin 1 (1 February – 20 March 2020)

307 For example, in **Georgia**, a civil society organization requested permission from the High Council of Justice to carry out remote monitoring of criminal proceedings, yet the request was rejected, on the basis of technical issues.

In some jurisdictions, concerns have been raised in the context of judicial administration during states of emergency, in particular the selection of judges or court chairpersons through procedures that were irregular and/or not transparent as a result of the pandemic.<sup>308</sup> In

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Information about the court sessions was posted on the court website, except for sessions on 'First Appearance of the Accused'. However, only the defence and the prosecution could attend the hearing. Issues were eventually resolved with Tbilisi City Court on 4 May, but not at four other courts (Kutaisi, Batumi, Telavi, Rustavi) that also rejected monitoring by the civil society organization for technical reasons.

308 In **Ukraine**, civil society organizations reported that they were unable to monitor the work of the High Council of

a number of participating States, judicial stakeholders have voiced concern regarding the ability of courts to deal with the backlog of cases following the pandemic and recommended to ensure that any prioritization in the adjudication of cases be fair, non-discriminatory and transparent.

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Justice because it had closed its doors to the public and did not broadcast its sessions. Videoconference sessions of the Council were eventually conducted, however not in disciplinary cases. In **Georgia**, the new Chair of the Supreme Court was appointed during the state of emergency, a process criticized due to the use of an accelerated and non-transparent process, which did not allow for public discussion of the candidate (the candidate's identity was only disclosed at the voting stage).

## RECOMMENDATIONS

- Courts need to remain functional to discharge key functions while preserving the right to life and health of judges and judicial staff, as well as for all users of court services. Key functions of courts include the review of legality of emergency measures, judicial review of emergency legislation with regard to constitutionality and compatibility with international law, and urgent legal matters where delay would cause irreparable harm.
- Emergency measures relating to courts and judicial procedures need to preserve judicial independence and should be consulted with judicial stakeholders, such as judges' associations, judicial self-governing bodies, lawyers, notaries and trade unions, where applicable.
- Standards of judicial independence need to be observed at all times, including adherence to national rules and international standards for the appointment, promotion and disciplinary procedures of judges.
- Avoid a 'hyper-production' of laws, decrees, regulations and instructions on emergency measures for the judiciary from different branches of power (legislative, executive, judicial), and make sure provisions are not contradictory, vague or incomplete.
- Clear criteria should be established, preferably in law, with a margin of appreciation for judges, for the determination of urgent cases, which should be continued even during lockdown measures. These include cases relating to individuals deprived of their liberty; individuals requiring immediate protection from (domestic) violence; urgent family disputes; complaints against sanctions for violation of emergency measures and other cases where effective remedies are required by international human rights law. The prioritisation of cases should ensure gender equality and protection of the most vulnerable.
- Online tools and technology should be used to deliver the key functions of courts, however weighing the interest in continuing the procedure despite shortcomings of videoconference hearings as compared to an actual trial hearing. ICT-solutions must never undermine the right to fair trial.
- Judicial self-governing bodies and judges' associations should engage in discussions on preparing for the restoration of court activities at the end of lock-down measures, including on ways in which to reduce the backlog of cases.
- Protocols should be discussed in a timely manner before the end of emergency measures to determine an organized and safe return to court for judges, parties, lawyers, witnesses, etc.
- A dialogue should be established and continued between different judicial stakeholders, in particular judges and lawyers, to discuss safety measures such as physical distancing protocols at court.

- Training for judges should be initiated to build the capacity of the judiciary relating to the new types of cases arising as a result of the pandemic, including international law and the requirements of necessity and proportionality of sanctions for breach of emergency measures.
- Provide the necessary resources for justice systems to deliver their functions during and in the aftermath of the pandemic, including adequate safety measures at courts and other justice sector infrastructure.
- Where judges are subject to periodic evaluation, such processes should take into account lower numbers of procedural conclusions as a result of the pandemic. Covid-19-related delays must never infringe the security of tenure of judges.
- Systematically collect and analyse information about court operations during and in the aftermath of the pandemic in order to capture lessons learned. This should include an assessment of the impact of emergency measures on their outcome, including remote hearings.

## II.1.D ELECTIONS AND ELECTION OBSERVATION

In line with the ODIHR's specific election-related mandate, this section takes account of the emerging challenges to the OSCE commitments, takes stock of the already noticeable and prospective trends and approaches by participating States, and provides recommendations that could help states ensure their elections are in line with OSCE commitments, including if held during the pandemic, or similar circumstances in the future.

Greater attention is being paid to the constitutional and legal frameworks governing elections in crisis situations. There is also a heightened interest in alternative voting methods and an increase in understanding that the ability to effectively enjoy fundamental rights is key for genuine elections.

Elections are both a political and a technical exercise that involves a multitude of stakeholders and take place over a number of stages. Most elements of the electoral process come under pressure in the conditions of states of emergency or similar measures, and they have been significantly affected during the pandemic. This included, for instance, the predictability of election dates, fulfilling conditions for registering as candidates, full opportunities for political actors to campaign in a meaningful way and their ability to communicate with voters, the preparedness of election administrations to conduct necessary operations, and the provision of unimpeded access for voters. On the whole, the normal

conduct of elections in compliance with the OSCE's election-related commitments has been put at risk by the pandemic and in particular the measures taken in response. The impact of the pandemic on the elements mentioned above threatens to diminish the capacity for elections to serve as a mechanism to genuinely reflect the will of the people. Increased uncertainty, especially with election dates, may also pose questions to the legitimacy of the incumbents. The effects of the limitations imposed on the exercise of a number of fundamental rights that are key for elections reconfirmed that elections do not take place in the vacuum and freedoms of assembly, expression and movement are essential for genuine democratic elections.<sup>309</sup>

National authorities can and have tried to overcome some of the election-related challenges, but many will remain. While the validity of election-related commitments and other international obligations and standards is not in question, even in times of emergency, authorities of participating States have been forced to balance them with public health requirements, which sometimes override other considerations. Some steps have been taken to amend the rules for elections in an expedited manner, which has increased risks to the fulfilment of OSCE commitments. Politically disadvantaged groups, such as women, persons with disabilities and national minorities, may be disproportionately affected.<sup>310</sup> New trends that emerged in the public discussion across the OSCE region are greater attention to the constitutional

309 See also Council of Europe's Venice Commission **compilation** of opinions and reports on states of emergency.

310 See also International Foundation for Electoral Systems (IFES) paper on **Safeguarding Health and Elections**.

and legal frameworks governing the principle of periodic elections in crisis situations, a heightened interest in alternative voting methods, an increase in understanding that the ability to effectively enjoy fundamental rights is key for genuine elections, and the reaffirmation of the crucial role that election observers – citizen and international – play in the process. It is important for the OSCE participating States to ensure that measures to temporarily adjust to the imperatives of maintaining public health do not undermine adherence to existing commitments related to elections.

Apart from the postponement and suspension of elections in some participating States, the immediate effect of the pandemic on the respect of election-related commitments is difficult to assess at this stage. Planned and future ODIHR election-related activities will provide such assessments, focusing both on the electoral legislation and its implementation, including through practical arrangements considering public health requirements. Still, the challenges to the fulfilment of some commitments are already now perceptible as a result of the pandemic and conditions imposed to curb it.

As elections are a multi-faceted process, effects of Covid-19 on many aspects of civic and political participation are additionally covered in other parts of this report. Most importantly, genuine democratic elections are contingent on the respect of fundamental rights, such as the freedoms of assembly, expression or movement. Non-discrimination and the protection of vulnerable or marginalized groups are essential for the inclusiveness of democratic processes. Under the current conditions, citizens of the OSCE participating States may also face challenges with access to effective remedy, including when their electoral rights are violated. As the conduct of elections is guided by the relevant legal framework, attention should be given to the legislative powers and the law-making process and to the question whether the lawmakers take unnecessary or politically convenient shortcuts. ODIHR has underscored on multiple occasions that care should be taken to have rules governing the conduct of elections adopted and amended on the basis of a broadly inclusive, transparent and effective consultation and with due regard

to the principles of stability of electoral legislation.<sup>311</sup> Below, specific consideration is given to how the pandemic affects adherence to particular election-related commitments in general, with specific references to countries to illustrate the matter. Thorough analysis of a particular state's compliance with OSCE's election related commitments will be provided in the course of regular ODIHR election-related activities including Election Observation Missions and Assessments.

OSCE participating States committed to “hold free elections at reasonable intervals, as established by law.”<sup>312</sup> The concept of periodic elections emanates from the Universal Declaration of Human Rights and is reflected in other international standards and OSCE commitments. In the context of the pandemic, the principle of periodic elections had to be balanced against other obligations of states, particularly ensuring the right to life and the right to health and, thus, taking urgent measures to contain the pandemic. Postponement or suspension of elections under a state of emergency does not necessarily contravene human rights obligations of states, but highlights the importance of safeguards to prevent misuse.<sup>313</sup> Importantly, the “suspension of electoral rights is only permitted to the extent required by the situation and the suspension must therefore meet a proportionality test.”<sup>314</sup> The principle that reasonable intervals need to be established by law has been challenged as the legislation in a number of participating States did not provide for the postponement of scheduled elections in a state of emergency.<sup>315</sup> At times, when such provisions were in place, decisions were taken

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311 See also ODIHR Opinions on **The Draft Act on Special Rules for Conducting the General Election of the President of the Republic of Poland Ordered in 2020**, paragraphs 12 – 16, (April 27, 2020) and on **The Draft Act on special rules for the organisation of the general election of the President of the Republic of Poland ordered in 2020 with the possibility of postal voting**, paragraph 10, (29 May 2020).

312 See Copenhagen Document (1990) para. 7.1.

313 See also IFES **paper** on “Legal Considerations When Delaying or Adapting Elections” and the Council of Europe’s **“Elections and COVID-19”**.

314 See para. 100 of the Council of Europe Venice Commission’s **report** “Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections.”

315 For example, postponement of local elections in England and Wales required adoption of a law by the Parliament.

not to declare the state of emergency,<sup>316</sup> which either made the postponement of elections a legal uncertainty or necessitated the creation of *ad hoc* context-specific solutions.<sup>317</sup> Some of the *ad hoc* decisions to either postpone the elections, suspend the conduct of an already ongoing process, or to hold elections in a challenging environment, raised questions as to whether a reasonable assessment was made vis-à-vis other state obligations, including safeguarding the right to health. Such decisions put an additional spotlight on the importance of genuine public debate and inclusive and transparent decision-making processes on matters of public concern.

Where elections were already taking place at the outset of the pandemic, participating States faced particular challenges with regard to their commitment to ensure that law and public policy work to permit political campaigning to be conducted in a fair and free atmosphere.<sup>318</sup> It was particularly challenging to ensure that no “administrative action [...] bars the parties and the candidates from freely presenting their views and qualifications, or prevents the voters from learning and discussing them”.<sup>319</sup> Public gatherings, door-to-door visits and distributing campaign materials, all a traditional way for candidates to reach out to voters and for the voters to impart information or demonstrate their support, may be restricted due to public health considerations.<sup>320</sup>

Advantages of the incumbency and abuse of state resources, including through policies and initiatives related to the crisis and its socio-economic effects, might be especially pronounced when those in power have not only a duty to respond to the Covid-19 crisis but also a political role to play in the elections.

Previous ODIHR election observation reports show that restrictions on the conduct of election campaigns may often be accompanied by discretionary enforcement by the authorities.<sup>321</sup> As the public health considerations may continue to dictate restrictions on campaign methods, this calls for a greater attention to whether and how participating States will “provide ... the necessary legal guarantees to enable [political parties and organizations] to compete with each other on a basis of equal treatment before the law and by the authorities.”<sup>322</sup> Advantages of the incumbency and abuse of state resources, including through policies and initiatives related to the crisis and its socio-economic effects, might be especially pronounced when those in power have not only a duty to respond to the Covid-19 crisis but also a political role to play in the elections.

In most participating States, media coverage was dominated by significant coverage of the developments around the pandemic and the responses of governments and the officials leading the crisis management. In the context of elections, this gives rise to some concerns regarding the commitment of participating States to provide conditions for “unimpeded access to the media on a non-discriminatory basis for all political groupings and individuals wishing to participate in the electoral process.”<sup>323</sup> Whether the electoral contestants are able to use the media to convey their messages to the voters will certainly depend on how previously identified media-related shortcomings are rectified, on the impact of the economic downturn on the media landscape, but also on the willingness of those in power to not abuse their prominence in the context of the pandemic to gain an unfair advantage over political competitors. At the same time, they may be ‘punished’ by voters if they are seen as having failed to lead effectively during the crisis.

316 See Part I for details.

317 For example, **Poland** declared a “state of epidemic” and not one of the possible types of a “state of emergency” that would have precluded the holding of an election.

318 See also the ODIHR statement from 7 April 2020 on the **importance of genuine campaign and public debate for democratic elections**.

319 See Copenhagen Document (1990) para. 7.7

320 See Para. 103 of the Council of Europe Venice Commission’s **report** “Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections.”

321 See, for example, the ODIHR **Final Report** on 2018 Early Presidential and Parliamentary Elections in Turkey, the ODIHR **Final Report** of 2019 Early Parliamentary Elections in Belarus, the ODIHR **Final Report** on 2018 Presidential Election in the Russian Federation, the ODIHR **Final Report** on 2018 Early Presidential Election in Azerbaijan, the ODIHR **Final Report** on 2019 Early Presidential Election in Kazakhstan.

322 See Copenhagen Document (1990) para. 7.6

323 See Copenhagen Document (1990) para. 7.8



The principles of universal and equal suffrage were also challenged regarding both the longer-term processes, such as voter and candidate registration, and the methods of voting. OSCE commitments to “guarantee universal and equal suffrage to adult citizens”<sup>324</sup> may be challenged if voter registration or verification efforts are halted due to public health concerns. Movement of people caused by health concerns (such as when people choose to leave their place of residence to join their family) or economic effects of the pandemic (when people move because of losing a job) may necessitate the revision of voter lists.

While few countries allow for electronic submission of required documents, in a number of participating States the registration of electoral contestants is premised on an in-person collection, submission and verification of supporting signatures, which may be problematic in the conditions of social distancing or restrictions to assembly or movement. Substituting signature collection by alternative requirements for registration, such as monetary deposits, might disproportionately affect politically underrepresented groups, such as women or national minorities in certain countries, or pose additional financial burdens on those already hit by the economic downturn.

While traditional voting mechanisms may pose threats to public health, alternative solutions to voting in polling stations may, in turn, endanger the principle of universal and equal suffrage, as well as secrecy of the vote. A number of previous ODIHR election observation reports noted that homebound voting or casting ballots in such specially designated locations as prisons, hospitals or elderly homes raised concerns of undue influence on the voter.<sup>325</sup> Facilitating voting by those subject to quarantine with the aim to uphold the principle of universality is a particular challenge in the current situation. Adherence to the commitments in such cases may be ensured by effective legal and practical safeguards against wrong-doing and the development of adequate

staff capacities and technical skills within election management bodies.

Some alternative voting methods may also pose a risk to the fulfilment of the commitment to “ensure that votes are cast by secret ballot or by equivalent free voting procedure.”<sup>326</sup> Allowing or expanding proxy voting, which has been consistently identified by ODIHR as falling short of commitments to an equal and secret ballot, would not be a solution to address the prevailing health concerns. Women, older people and people with disabilities may be particularly vulnerable to undue coercion and their right to secrecy may be compromised if introduction of postal voting or other alternative voting methods is not accompanied by adequate safeguards.

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OSCE participating States have agreed that “the presence of observers, both foreign and domestic, can enhance the electoral process for States in which elections are taking place.”<sup>327</sup> The deployment of observers, both citizen and international, has been challenging in the conditions imposed by the pandemic. While certain temporary adaptations of the ways for citizen and international observers to conduct their activities might be necessary, the principle of transparency that the observers serve to uphold might also be challenged. Limitations on access to the meetings of election management bodies may be remedied to a certain extent with proactive outreach, including by means of information and communication technologies, but effective observation of the procedural integrity of election day operations may nonetheless be difficult. This may particularly threaten the commitment to have votes “counted and reported honestly with the official results made public.”<sup>328</sup>

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324 See Copenhagen Document (1990) para. 7.3

325 See, for example, ODIHR **Final Report** on 2013 Presidential Election in Montenegro, **Final Report** on 2013 Partial Repeat Parliamentary Elections in Ukraine, **Final Report** on 2019 Parliamentary Elections in Belarus.

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326 Copenhagen Document (1990) para. 7.4

327 Copenhagen Document (1990) para. 8.

328 Copenhagen Document (1990) para. 7.4.

During the pandemic, a number of participating States postponed or suspended elections or revised specific elements in the timeline of electoral activities. In most of the countries where elections were planned to take place after the declaration of the global health emergency or a national state of emergency, decisions were taken to postpone or suspend them; a number of countries, however, kept the election day as initially planned.<sup>329</sup> Although a decision to hold, postpone or cancel an election in times of a pandemic is a matter each participating State has to decide for itself and in full consideration of public health requirements, it should be taken in line with OSCE commitments and other international obligations and standards. In most cases, such a decision required modification of a country's legal and even constitutional framework.

In many participating States, a postponement of the election day was possible due to the declaration of a state of emergency (or equivalent measures) during which elections could not be conducted. In other cases, the existing legal apparatus and the types of declared states of emergency required the adoption of a special legal framework for the cancellation or postponement of elections and consequent extension of the mandate of institutions in place.<sup>330</sup> In some participating States,

legislative processes and the adoption of laws were undertaken in a rushed manner, in the absence of a meaningful public and inclusive consultation among key electoral stakeholders, challenging the principles of legality and stability of election law.<sup>331</sup> While the Council of Europe's Venice Commission notes that "late amendments to the electoral legislation applicable only for concrete elections do not necessarily go against the European principles of electoral law,"<sup>332</sup> substantial amendments of the fundamental elements of the electoral law shortly before an election may influence the outcome of an election. It is equally important to uphold the principle of legality by adhering to a country's constitutional provisions when making any decision related to elections.

In some participating States, the likelihood of early elections increased as a result of the impacts of the pandemic and related measures on the economy and prevailing attitudes in the population. Both the opposition and the incumbents started focusing their political rhetoric on the effectiveness of combatting the pandemic and its social and economic effects. In some cases, the incumbents may be more willing to time the elections in accordance with their preferences.

Some participating States that decided to proceed with their planned elections introduced alternative voting methods with the stated aim to mitigate risks

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329 Elections in the OSCE region were postponed as following: local elections in **Kyrgyzstan** (originally scheduled for 12 April), second round of local elections in **France** (originally scheduled for 22 March, moved to 28 June), parliamentary elections in **North Macedonia** (originally scheduled for 12 April, moved to 15 July), parliamentary and local elections in **Serbia** (originally scheduled for 26 April, moved to 21 June), local elections in **Romania** (originally scheduled for June 2020), local elections in the **United Kingdom** (England and Wales, originally scheduled for 7 May 2020, moved to 6 May 2021), local elections scheduled for some federal states in **Austria** on 15 and 22 March have been cancelled. The first round of local elections in **France** took place on 15 March; **Germany's** state of Bavaria conducted first round of local elections on 16 March 2020 and second round on 29 March 2020. **Poland** decided to introduce "state of epidemic" instead of "natural disaster" or "state of emergency" that would allow for postponement of the presidential election which was to take place on 10 May 2020 but was eventually found to be not possible to occur. The presidential election was then held on 28 June and 12 July (second round). Other elections, such as presidential elections in **Belarus**, **Iceland** and the **United States**, parliamentary elections in **Mongolia** and local elections in **Bosnia and Herzegovina** are maintained on schedule.

330 For example, postponement of local elections in the **United Kingdom** (England and Wales) required the

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adoption of a law by Parliament. In **France**, the Election Code provides that mayors are elected for six years and their renewal should take place in March at a date set by Ministerial Council decree at least three months in advance. The law does not have any provision to deal with an eventual postponement/cancelling of an election, not even under exceptional circumstances, related to the fact that the law does not provide for a competent authority entitled to take such decision. A special law postponing the second round by six months was adopted by the parliament, following broad consultations with health officials and an agreement between political forces. **Serbia** and **North Macedonia** introduced states of emergencies followed by government decrees suspending the organization of elections.

331 For example, on 6 April 2020, the lower chamber of the parliament of **Poland** adopted the "Draft Act on special rules for conducting the general election of the President of the Republic of Poland ordered in 2020". It was passed within one day and with a narrow majority.

332 See para. 115 of the Council of Europe Venice Commission's **report** "Respect for Democracy, Human Rights and the Rule of Law During States of Emergency – Reflections."

of contagion posed by social contact.<sup>333</sup> Decisions were taken either by extending already existing legal provisions or through developing additional ones. Preparations for an exclusive vote by mail would clearly be best applied in countries with a record of having conducted such processes for some categories of voters. This would, therefore, benefit from comprehensive analysis of different factors that may impact the likelihood of voters receiving ballots by mail and the possibility to return them in time. In principle, good practice suggests that alternative voting methods should be introduced gradually, well in advance of elections and based on appropriate testing and consultations with election stakeholders.

Women and other politically disadvantaged groups, such as people with disabilities, may be disproportionately affected by using alternative voting methods, such as postal voting. While such measures may increase the participation of women voters, the older people, voters with disabilities and those living in remote areas, the main challenge arising from postal voting is to maintain the secrecy and equality of the vote, since the voter receives a ballot that is to be marked in an uncontrolled environment outside of the polling station. In addition to this, reports of a worldwide increase in the number of domestic violence cases as a result of stay-at-home orders and confinement pose a question about whether vulnerable persons could be subjected to undue influence when making their electoral choices.<sup>334</sup> Considerations that provide real equal opportunities for all should therefore be taken into account when introducing new voting methods. Civil society organizations focused on the electoral rights of politically underrepresented groups should be involved in the introduction of new voting methods. Their expertise and lessons previously learned throughout the OSCE region with regard to protecting electoral rights of vulnerable groups might be valuable for all voters. The equality of opportunity to cast ballots with the use of alternative

methods might encounter specific challenges when voting is organized for those residing abroad when regulations of both the host country and the participating State organizing elections may apply.

At the initial stages of the pandemic, public opinion focused on the possibility of employing new technologies for casting and counting of ballots, such as Internet voting. It is, however, noteworthy that decision-makers in most participating States have not made any substantive moves toward such alternative solutions, in part due to the realization that introduction of new voting technologies requires substantial time and resources and, therefore, may not present the short-term solution for the challenges associated with the pandemic.

In many participating States, adjustments to election management were necessitated by safety considerations in light of threats posed by the pandemic. For instance, the recruitment and training of polling staff have proven to be more difficult. Additional safety measures, including provision and use of personal protective equipment, were introduced through legislation or sub-legal acts. Restrictions on gatherings have led to holding meetings of election management bodies behind closed doors, challenging transparency. Positively, some election commissions decided to stream their sessions online and increased the amount of information available on their websites.<sup>335</sup> Some adaptations of election management placed additional responsibilities on the bodies outside of election administration, such as postal services or municipalities, at times without adjustment of the legal framework, allocation of appropriate resources or ensuring proper training. Specific attention should be paid to voter education and outreach by the election management bodies.<sup>336</sup>

In several cases when the participating States decided to proceed with planned elections either without

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333 **Germany's** state of Bavaria conducted the second round of local elections using the postal vote for all. Shortly before the election, **Poland's** parliament adopted a law introducing the possibility of postal voting for all voters.

334 See also a [statement](#) by the Secretary-General of the United Nations António Guterres on Gender-Based Violence and Covid-19. More details on this aspect are discussed in the section on Gender Equality in Part II.

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335 For example, the Republic Electoral Commission of **Serbia**, the Central Election Commission of **Moldova** and the Central Election Commission of **Belarus** decided to conduct all their sessions online while the Central Election Commission of **Russian Federation** continued the practice of streaming their session online.

336 See also International IDEA's "[Elections during COVID-19: Considerations on how to proceed with caution.](#)"

changing the date or re-starting the process, some elements of the electoral process were adapted and revised. Specific examples include revision of timelines pertaining to the collection of supporting signatures,<sup>337</sup> voter registration updates, and the duration of the campaign period. Some procedural deadlines for the organization of voting and counting were altered due to the introduction of alternative voting methods. As with changes to the date of elections, such changes were in some cases made without consultation with or debate among electoral stakeholders.

During the pandemic, freedoms of movement and assembly have been restricted in many participating States.<sup>338</sup> Public rallies, door-to-door canvassing, and in-person distribution of materials are all standard campaigning methods that had to be limited. A number of political actors shifted their activities to the media and online sphere. This further increased the role of social networks and heightened attention to the transparency of political finance and the ability of voters to form opinions independently and without manipulative interference.<sup>339</sup> Some participating States faced the situation when legal provisions pertaining to campaigning or placing paid advertisement in online media or social networks were lacking.

Travel restrictions across the OSCE region, as well as the duty of care for observers by international organizations, have resulted in temporary suspension of ODIHR observation missions.<sup>340</sup> The level of access to all aspects of the electoral process was also lowered. Citizen observers faced similar difficulties in their activities. While travel and health protocol restrictions across the OSCE region posed challenges to deployment of observation missions, ODIHR was able to deploy special election assessment missions and other election-related activities to a number of participating States holding elections, highlighting its ability to deliver on its mandate even in these extraordinary circumstances.

A number of participating States have engaged in follow-up activities, at times in order to strengthen their response to the challenges posed by the pandemic. At times, these responses were premised on addressing previous ODIHR recommendations. However, some states did not take into account previous ODIHR reports and recommendations and proposed legislative and practical measures that risk weakening their election processes. Based on requests from participating States, ODIHR strengthened its focus in this period on providing assistance to states in their efforts to follow-up on previous assessments and recommendations.<sup>341</sup>

337 **Poland** (2nd amendment), **Romania**, **Serbia**.

338 For a detailed overview, see the section on Freedom of Movement below.

339 Para. 19 of the **UNHRC 1996 General Comment No.25 to the ICCPR** states that “Persons entitled to vote must be free to vote ... without undue influence or coercion of any kind which may distort or inhibit the free expression of the elector’s will. Voters should be able to form opinions independently, free of violence or threat of violence, compulsion, inducement or manipulative interference of any kind.”

340 ODIHR has suspended the Election Observation Mission deployed for the 12 April early parliamentary elections in **North Macedonia** and cancelled the deployment of Election Observation Mission for the 26 April parliamentary elections in **Serbia** and the Limited Election Observation Mission for the 10 May presidential election in **Poland**.

341 The successful completion of electoral reform in **Albania** is an example for such fruitful co-operation.

## RECOMMENDATIONS

- Refrain from fundamental changes to the electoral law shortly before an election in order to ensure stability of the law. The more fundamental the change, the more time before an election should be allowed.
- Should legal amendments or new legislation be introduced to regulate any elements of an electoral process during a pandemic or state of emergency, it is of utmost importance that electoral stakeholders, political forces, civil society, health authorities and other pertinent institutions are engaged in a consultative process and that laws are adopted at the end of a democratic debate.
- In participating States where there are no legal provisions for postponing or cancelling elections, consider amending the legal framework to allow such actions under exceptional circumstances, including

the competent authority entitled to take the decisions. Furthermore, states should consider introducing legal provisions that would guarantee continuity of the mandate of the institutions beyond the legal term, under exceptional circumstances for a reasonable period of time.

- Countries should use the opportunity to review their electoral legislation and assess the extent to which it covers situations like the pandemic just experienced, and to fill in the gaps in preparation of future similar emergency situations.
- If alternative voting methods are introduced, consideration should be given to adopting a gradual approach and piloting prior implementation of these methods nationwide, as well as providing comprehensive awareness raising, in particular to politically vulnerable groups (women, older people, persons with disabilities).
- With a view to ensure transparency and accountability, genuine consideration should be given to enabling citizen and international elections observation.
- States should develop and maintain contingency plans as an integral part of election management. Proper attention should be given to the preparedness of authorities other than election management bodies.
- If socio-economic recovery plans are developed, make sure the distribution of state aid does not create an impression of favouring incumbent political forces or vote buying by introducing clear, fair and objective criteria to identify those who are eligible for the aid, as well as making sure the timeline of the distribution of aid is not adjusted to the period of electoral campaigning.

## II.1.E NHRIS AND HUMAN RIGHTS DEFENDERS

Independent, accountable and effective institutions and an active civil society, independent media and the ability of individual citizens to hold authorities to account are essential for democracy and democratic governance. National human rights institutions (NHRIs), as independent statutory bodies protecting and promoting human rights, as well as human rights defenders, whether they advocate for transparency, justice or the rights of marginalized or vulnerable groups, play a particularly important role in this regard.

In line with the UN Declaration on Human Rights Defenders, people who individually or in association with others act to promote and protect human rights and fundamental freedoms by peaceful means and without discrimination shall be considered 'human rights defenders'.<sup>342</sup> They are, therefore, first of all defined by their actions and can include associations,

institutions as well as individuals of any professional background, including journalists or medical personnel. ODIHR has observed that during the Covid-19 pandemic, numerous organizations and activists continued to actively promote human rights, raising critical issues of public interest. Furthermore, individuals of diverse professional backgrounds in a number of participating States stepped in to act as whistle-blowers to uncover information about human rights abuses, mismanagement of public resources or other acts of corruption in relation to governments' responses to the pandemic.

NHRIs are also considered human rights defenders and play a crucial role in advancing and protecting human rights.<sup>343</sup> They can act as a bridge between civil society and the state, linking the responsibilities of states to the rights of citizens. The importance of NHRIs and their mandate to protect and promote human rights is recognized in OSCE commitments. In Copenhagen (1990), participating States pledged to "facilitate the establishment and strengthening of independent national institutions in the area of human rights and the rule of law." States are encouraged to strengthen the role of independent NHRIs and their mandate in accordance

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342 UN General Assembly Res. 53/144, "Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms" (**Declaration on Human Rights Defenders**), UN Doc. A/RES/53/144 (9 December 1998). See also, The **ODIHR Guidelines on the Protection of Human Rights Defenders**.

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343 For more about how NHRIs exercised their oversight function over emergency measures, see Part II.1.



with the Paris Principles.<sup>344</sup> The General Observations to the Paris Principles refer to the state of emergency and emphasize that in the situation of a state of emergency, “it is expected that an NHRI will conduct itself with a heightened level of vigilance and independence, and in strict accordance with its mandate.”<sup>345</sup>

The role of civil society, as recognized in the OSCE commitments, remains key during times of crisis. During the pandemic, human rights defenders have raised public awareness about human rights issues, including pertaining to public health; have challenged reprisals and retaliation targeting activists and whistle-blowers; and have exposed gaps in states’ responses to the health emergency, thus contributing to accountability for violations and abuses. The UN Special Procedures have also reiterated the key role played by civil society organizations in responding to the crisis, including by providing support to vulnerable populations and promoting access to public health. They further highlighted that “no country or government can solve the crisis alone” and thus “civil society organizations should be seen as strategic partners in the fight against the pandemic.”<sup>346</sup>

During the pandemic, human rights defenders have raised public awareness about human rights pertaining to public health; have challenged reprisals and retaliation targeting activists and whistle-blowers; and have exposed gaps in states’ responses to the health emergency.

NHRIs have been playing a similarly important role in responding to the extraordinary circumstances of the pandemic. They continued monitoring the implementation of human rights obligations and to hold

governments to account when violations occur. Many NHRIs published guides, notes or other documents to inform the public about their rights and governments’ restrictive measures.<sup>347</sup> Several NHRIs established telephone hotlines to provide the public with information but also to file complaints.<sup>348</sup> Many NHRIs also further issued recommendations and advice to their governments emphasizing the need to uphold human rights standards and protect vulnerable groups during the Covid-19 pandemic.<sup>349</sup>

On the basis of its monitoring of the situation of human rights defenders, including journalists, whistle-blowers and NHRIs, from March to May 2020, ODIHR has identified a number of challenges, as well as good practices, pertaining to the role played by human rights defenders and the need for their protection. ODIHR has also formulated recommendations to participating States to address identified gaps.

## AREAS OF CONCERN

ODIHR has received a number of reports of threats and attacks targeting human rights defenders, reportedly connected to their human rights work during the pandemic. These included allegations of physical and verbal attacks, along with death threats, for reporting on the pandemic<sup>350</sup> or for requesting information of

344 Principles relation to the Status of National Institutions (the **Paris Principles**), UN GA Resolution 48/134, 20 December 1993; and **ODIHR Guidelines on the Protection of Human Rights Defenders**, 2014.

345 **General Observations** is an interpretative tool of the Paris Principles, for application during the accreditation process, aiming to assist NHRIs in developing their own practices and procedures in compliance with the Paris Principles.

346 See, e.g., **States responses to Covid 19 threat should not halt freedoms of assembly and association**, OHCHR, 14 April 2020.

347 See, e.g., **Frequently Asked Questions about human rights standards during a pandemic** by the Public Defender in **Georgia**.

348 These include NHRIs from **Bulgaria, Cyprus, Czech Republic, Denmark, Greece, Lithuania, Portugal, Slovakia, Slovenia** and **Spain**. ENNHRI, **The rule of law in the European Union**, 11 May 2020, p. 27.

349 See, for example, **Bosnia and Herzegovina – Recommendations on the protection of human rights of vulnerable categories of citizens**, 31 March 2020, available; **Norway – Letter on the protection of human rights during the covid-19 pandemic to Ministry of Health, Directorate of Health, Norwegian Institute of Public Health**, 6 April 2020.

350 See, for example, **North Macedonia, AJM and SSNM: Acibadem Sistina’s reaction to IRL is a pressure on journalists and an attempt for censorship**, safe-journalists.net, 30 March 2020; **Russian Federation – Journalist at risk after receiving death threat: Elena Milashina**, Amnesty International, 17 April 2020; **Tajikistan – Attack on and threats against Avazmad Ghurbatov**, Frontline Defenders, 13 May 2020.

public interest related to the pandemic.<sup>351</sup> Threats and attacks targeting journalists, including gender-based insults directed at women defenders, allegedly came from both state and non-state actors, including on social networks, in the media or through anonymous phone calls.<sup>352</sup>

Furthermore, emergency measures adopted by participating States to combat Covid-19 have significantly impacted the ability of NHRIs to carry out their mandate and preserve their independence. These include freedom of movement restrictions, including restrictions on access to places of deprivation of liberty, limiting NHRIs' monitoring function; suspension of core public services; and risk of funding cuts.<sup>353</sup>

Emergency measures to combat Covid-19 have significantly impacted the ability of NHRIs to carry out their mandate and preserve their independence.

ODIHR further noted reports of judicial harassment and detention of human rights defenders, including journalists, in retaliation for expressing critical views or reporting on irregularities concerning governments' responses to the pandemic. For example, restrictions imposed to slow down the spread of the coronavirus, including limitations to freedom of movement imposed under a lockdown regime, were allegedly used to silence government critics and prosecute activists who denounced the poor conditions of state-run quarantine facilities or called for the provision of adequate social programs and financial compensation to people economically affected by the crisis.<sup>354</sup> Several journalists faced criminal charges in retaliation for their coverage of

the pandemic, including on social media.<sup>355</sup> Particularly worrisome were reports of journalists being targeted for pointing out shortcomings in the public health system, such as lacking protective gear or inadequate preparedness in medical institutions.<sup>356</sup>

Judicial harassment and detention of human rights defenders, including journalists, in retaliation for expressing critical views or reporting on irregularities in governments' responses to the pandemic has taken place.

There are numerous accounts of whistle-blowers and activists across the OSCE region facing criminal investigations or being detained as a result of undue application of newly adopted emergency laws, or existing legislation, criminalizing the dissemination of false information during a state of emergency. Under such laws, investigations were initiated against activists who reported (often on social media platforms) about public concerns relating to the 'inadequate' quarantine measures implemented in certain health facilities, or denounced on social media alleged cases of corruption and mismanagement of resources in the context of the pandemic response.<sup>357</sup> In some participating States, individuals who raised doubts about the official statistics of Covid-19 related infections or deaths were arrested over allegations relating to the spread of 'fake news' about the pandemic.<sup>358</sup>

351 **Seven organizations call on the Slovenian government to stop harassing an investigative journalist**, Reporters Without Borders, 27 March 2020.

352 *Ibid.* See also, for example, a **social media post** by a Belgian/Romanian journalist writing about the rule of law in Hungary.

353 See, for example, **Affirming the work of NHRIs in times of crisis**, Asia Pacific Forum of NHRIs, 24 April 2020.

354 See, for example, **Azerbaijan – Crackdown on Critics Amid Pandemic**, Human Rights Watch, 16 April 2020.

355 See, for example, **Turkey – COVID-19 pandemic increases climate of fear for journalists**, Amnesty International, 1 May 2020.

356 See, for example, **Serbia – Reporter's Arrest Over Pandemic Article Draws PM's Apology**, Balkan Insight, 2 April 2020. In this case, a journalist was arrested (but released the following day) for reporting about the lack of adequate protective gear for medical personnel in health facilities. Allegedly, her apartment was searched and her private assets seized.

357 See, for example, **Russian Federation, Activist Says She's Hit By First Investigation Under 'Fake' Coronavirus News Law**, Radio Free Europe Radio Liberty, 5 April 2020; **Kazakhstan detains government critic for 'spreading false information'**, Reuters, 18 April 2020.

358 See, for example, **Montenegro, Police arrest man for spreading fake coronavirus news**, mia.mk, 12 March 2020; **Turkey – detains more than 400 for Covid-19 social media posts**, France24, 27 April 2020.

ODIHR also noted alarming reports of doctors or other medical staff being interrogated or intimidated after raising concerns on social media platforms about the situation in health facilities.<sup>359</sup> Medical personnel have faced retaliation for informing the media about public health issues in the framework of the pandemic. In a number of cases, they have been prevented from speaking out, including by being threatened with disciplinary actions.<sup>360</sup> There have been numerous reports of nurses or other staff in medical or nursing facilities exposing shortfalls in the availability of protective gear, inadequate procedures or missing equipment. Frequently, such criticism was reprimanded by the management of health institutions or even the authorities.<sup>361</sup>

ODIHR has also been noted the acute vulnerability of those human rights defenders who remain in detention and other closed facilities. While some inmates have been released as a measure to cope with the spread of Covid-19 in prisons (for details, see the section on Detention below) a number of human rights defenders and political prisoners have remained in jail.<sup>362</sup> Civil society organizations and international organizations called for the release of activists from detention facilities, where their health is at serious risk due to their great exposure to infectious diseases, including Covid-19.<sup>363</sup>

In March and April, human rights defenders from a number of participating States were subject to online smear campaigns as a result of their pandemic-related journalistic activities.<sup>364</sup> For example, several journalists and media outlets were the target of negative portrayals, including by state officials, and labelled as ‘traitors’ or ‘provocateurs’, ‘spreading lies’, ‘misleading the public’, ‘attempting to cause panic’ or ‘someone to be protected against’.<sup>365</sup> In one instance, a defender and the members of his family faced online smear attacks and other forms of harassment as a result of the activist’s calls for the provision of social assistance to individuals affected by the pandemic.<sup>366</sup>

Undue application of or overly restrictive emergency legislation introduced by governments across the OSCE region during the pandemic is likely to have produced a chilling effect on freedom of expression and freedom of the media, potentially hindering access to information of public interest.<sup>367</sup> For example, between March and May, ODIHR observed instances in which online media outlets were arbitrarily blocked after publishing Covid-19 related news, as a result of the application of regulations pertaining to the dissemination of false information.<sup>368</sup> In other cases, investigative journalists’

359 See, for example, **Belarus, faces growing criticism for dismissive coronavirus response**, Financial Times, 7 April 2020.

360 See, for example, **United Kingdom, NHS staff forbidden from speaking out publicly about coronavirus**, The Guardian, 9 April 2020.

361 See, for example, **Poland, Dyrektor szpitala zwolnił położną, bo alarmowała na Facebooku, że brakuje maseczek i sprzętu** [Hospital director fires midwife because she raised alarm on Facebook that masks and equipment were missing], wyborcza.pl, 24 March 2020. A nurse was fired by the director of a hospital after denouncing on social media the lack of protective gear in hospitals and posting pictures of her homemade surgical mask on social media.

362 **Defending rights during an epidemic: The impact of Covid-19 on the safety and functioning of human rights defenders**, Frontline Defenders, 17 April 2020. See also **Turkey, Imprisoned journalists, human rights defenders and others, now at risk of Covid-19, must be urgently released**, Amnesty International, 30 March 2020.

363 See, e.g., **Kyrgyzstan, health of prisoner of conscience at risk: Azimjan Askarov**, Amnesty International, 22 April 2020. See also **Kyrgyzstan must uphold its human rights obligations and release human rights**

**defender Azimjan Askarov**, says UN expert, OHCHR, 8 May 2020.

364 **OSCE Media Freedom Representative urges public officials in Slovenia to refrain from pressure on independence of public broadcaster**, OSCE Representative on Freedom of the Media, 27 March 2020. See also **United States**.

365 See, e.g., **Repressive laws, prosecutions, attacks... Europe fails to shield its journalists against the abuse of the COVID-19 crisis**, Reporters Without Borders, 8 April 2020.

366 See, e.g., **Azerbaijan, Urgent action: harassment of activist and family must stop**, Amnesty International, 9 April 2020.

367 On occasion of World Press Freedom Day 2020, OSCE Media Freedom Representative calls on States to let journalists work freely without fear or favour, OSCE RFoM **statement**, 2 May 2020. See also, for example, **Kazakhstan, authorities threatened the media with criminal liability**, Analytical Center for Central Asia, 18 March 2020; **Hungary, Journalists fear coronavirus law may be used to jail them**, The Guardian, 3 April 2020; **Bosnia and Herzegovina, Bosnia Trying to Censor Information About Pandemic, Journalists Say**, Balkan Insight, 8 April 2020.

368 **Site-uri sancționate pentru știri false. Unul dintre ele, blocat pentru că „a publicat constant informații false, cu scopul de a dezinforma și a induce panica”**,

requests to access information were not granted but followed by threats and smear attacks against them.<sup>369</sup>

Several NHRIs reported that they were facing difficulties in carrying out their investigation and monitoring work due to the freedom of movement restrictions.<sup>370</sup> Several NHRIs had to suspend their monitoring of places of deprivation of liberty, including the ones exercising their mandate as the National Preventive Mechanism (for more, see the section on Detention and Torture Prevention, below).<sup>371</sup> Furthermore, with the temporary closure of public services, NHRIs had reduced access to the individuals in need of their support, especially with regard to “walk-in” opportunities to file a complaint.<sup>372</sup>

ODIHR observed that in some participating States’ governments did not communicate with their NHRIs or follow their recommendations in the context of the

Covid-19 pandemic.<sup>373</sup> Many NHRIs have submitted recommendations to their governments, raising specific concerns about, for example, the freedom of movement restrictions, intimidation of journalists, domestic violence or the treatment of people with disabilities, children, and people deprived of liberty.<sup>374</sup>

## GOOD PRACTICES

ODIHR has observed a number of good practices pertaining to the protection of and support for human rights defenders. For example, some participating States, including Romania and Slovakia, have collaborated with civil society to develop websites providing up-to-date information about Covid-19 and the measures taken by governments to respond to the spread of the disease.<sup>375</sup> In Norway, the local authorities have supported a civil society initiative launched to assist people, through a hotline, in accessing information of public interest on Covid-19 in different languages.<sup>376</sup>

In April, a number of participating States that are part of the Group of Friends on Safety of Journalists within the OSCE co-signed a joint statement to highlight the need to ensure the safety of journalists and access to information during the pandemic. They called upon all states to protect media representatives and guarantee unhampered access to information, both online and offline.<sup>377</sup>

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[Websites that have been penalised for fake news. One of them was blocked because ‘it constantly published false information with the purpose of spreading disinformation and creating panic’], [Paginademedia.ro](#), 26 March 2020; **OSCE Representative Désir concerned by several cases of restrictions on media publication linked to false information on COVID-19 in the Russia**, OSCE Representative on Freedom of the Media, 2 May 2020.

369 **Seven organisations call on the Slovenian government to stop harassing an investigative journalist**, Reporters Without Borders, 27 March 2020.

370 Especially NHRIs from **Austria, Belgium, Bulgaria, Cyprus, Czech Republic, Luxembourg and the Netherlands** emphasized several challenges and barriers in relation to carrying out their investigation and monitoring function. ENNHRI, **The rule of law in the European Union**, 11 May 2020, p. 27.

371 *Ibid.*

372 In this context, some NHRIs reported an increase of complaints during the time of the Covid-19 pandemic, including, for example, **Armenia, Bulgarian, Estonia, Slovenia, Montenegro and Russia**. Other NHRIs have experienced a decrease, such as **the Netherlands and North Macedonia**. ENNHRI, **State of the rule of law in Europe**, 29 June 2020, p. 36.

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373 See, e.g., **Slovakia, Ombudsmanka: Rozprava v parlamente vo mne vzbudila obavy o práva žien**, [Ombudsman: Parliament’s debate has raised concerns about women’s rights], [dennikn.sk](#), 22 May 2020.

374 **COVID-19 Guidance**, OHCHR. For more specific examples of the recommendations see **Bulgaria’s example of how NHRIs are responding**, ENNHRI

375 **Collecting Open Government Approaches to COVID-19**, Open Government Partnership.

376 *Ibid.*

377 **Joint statement on safety of journalists and access to information during the COVID-19 crisis**, 16 April 2020.

## RECOMMENDATIONS

- Ensure that attacks and threats faced by human rights defenders, including journalists and whistle-blowers, are investigated and addressed in a prompt, thorough and efficient manner.

- Investigate promptly, independently, impartially and effectively any reported cases of administrative or judicial harassment of human rights defenders, including journalists and whistle-blowers. Ensure access of human rights defenders to effective remedies.
- Publicly condemn attacks and threats against human rights defenders, including journalists and whistle-blowers, and raise public awareness of the positive role played by civil society in the context of the pandemic. Acknowledge the key role of civil society in promoting awareness, accountability and the respect for human rights, fundamental freedoms, democracy and the rule of law, especially during times of crisis.
- Ensure that human rights defenders, including journalists and whistle-blowers are protected from retaliation and any form of administrative or judicial pressure, including through undue application of legislative and other measures adopted in response to the Covid-19 outbreak.
- Ensure that information of public interest, including related to Covid-19 and governments' response to the crisis, is made available online on a regular basis and is provided to civil society upon their request.
- Ensure adequate public funding for NGOs and access to financial and other resources for civil society organizations, in particular smaller ones working at the grassroots level, during the pandemic.
- Ensure meaningful participation of civil society and NHRIs in decision-making processes pertaining to governments' responses to Covid-19.
- Improve co-operation and communication with NHRIs when developing and implementing measures to combat Covid-19.
- Ensure effective implementation of NHRIs' recommendations, including those related to the public health response and emergency measures. Inform the public on a regular basis of the implementation progress.
- Ensure that NHRIs may exercise their monitoring functions, especially when freedom of movement restrictions are still in place.
- Refrain from cutting financial resources allocated to NHRIs and secure sufficient financial and other resources for NHRIs to ensure that they may exercise their mandates effectively and independently.



## II.2 SPECIFIC HUMAN RIGHTS CHALLENGES

The interconnectedness and indivisibility of human rights implies that the impacts of something as massive as the present pandemic are complex and extend across the whole range of the human rights canon. However, a number of rights and freedoms were particularly affected by the emergency measures taken to contain the spread of the virus, mostly in states' efforts to stem the pandemic with the aim to protect the right to life and the right to health. The rights and freedoms analysed more in depth here are all gateway rights, in the sense that their exercise conditions the enjoyment of other rights. For instance, the freedom of movement is intrinsically connected with the right to work, the right to education, the right to health and other social, economic and cultural rights, as well as civil and political rights. The freedom from torture and arbitrary detention is closely connected with the right to health, and the freedoms of assembly and association are key for democratic participation and elections. The freedom of religion and belief, in particular regarding the manifestations of one's religion in community with others, was an early and obvious victim of various distancing rules and restrictions. The right to a fair trial is essential for the rule of law, not only with regard to the implementation of emergency measures but any other rights guaranteed by international law and commitments.

### II.2.A FREEDOM OF MOVEMENT

The coronavirus was able to spread globally, easily traveling across borders and into remote areas, by taking advantage of unprecedented human interconnectivity and movement. Freedom of movement both within countries and across international borders was therefore an early victim of responses and emergency measures as states scrambled to slow transmission of the virus. Movement drastically slowed down in most countries, both as a result of enforced lockdowns and voluntary measures.<sup>378</sup>

As early as 1975, OSCE participating States committed to "facilitating freer movement and contacts...among persons institutions and organizations of participating States," and recognized this as an important element in the strengthening of friendly relations and trust among peoples.<sup>379</sup> In Vienna (1989), participating States further committed to "fully respect the right of everyone to freedom of movement and residence within the borders of each State" and "the right to leave any country," which was reiterated in Copenhagen (1990).<sup>380</sup> Freedom of movement is therefore a core commitment of the OSCE acquis and has become a reality taken for granted by hundreds of millions across the region. Freedom of movement is also firmly enshrined in international human rights law. Art. 12 of the ICCPR stipulates the right of persons to move freely within a state, the right to leave a country and the right to return to one's country. General Comment 34 underlines that all residents, including aliens, are protected by the Covenant. Freedom of movement standards can also be found under Art. 13 of the Universal Declaration of Human Rights and Art. 2, Protocol 4 of the ECHR. Freedom of movement is also a prerequisite for the enjoyment of a broad range of civil, political, economic, social and cultural rights, including non-derogable rights such as the right to life, the right to be free from torture and other inhumane or degrading treatment or punishment.

When most states introduced drastic movement restrictions, including lockdowns and border closures, they justified these actions on the basis of the need to protect the population from harm, and to guarantee the right to life and the right to health. While certain restrictions on freedom of movement are permissible in times of emergency and under international law, including for reasons of security and public health, they, like other derogations or restrictions, must be strictly necessary for that purpose, proportionate to the interest to be protected and non-discriminatory. (See Part I for

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378 For a detailed analysis of mobility data, see, for instance, **Google Mobility Trends: How has the pandemic changed the movement of people around the world?**, Hannah Ritchie, 2 June 2020

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379 **Conference on Security and Co-operation in Europe, "Helsinki Final Act"**, Helsinki, 1 August 1975

380 Concluding Document of the Third Follow-up Meeting, Vienna 29 June 1990.

further information on derogations.) They also must be provided in law, must be the least intrusive instrument for the desired result, consistent with other rights and limited in time.

General Comment No. 27 of the ICCPR elaborates that restrictions to the right to freedom of movement (Art. 12) are permitted, but any restrictions must be provided for in law that specifies the conditions and duration under which the rights may be limited (the duration should in any case be ‘expeditious’) and the legal remedies that are available due to such restrictions. Any legislation or policies on freedom of movement of participating States should follow these legal tests if derogations or restrictions are invoked or applied. Finally, in situations of conflict, in addition to human rights standards, relevant provisions under the law of armed conflict, and soft law documents such as Guiding Principles on Internal Displacement<sup>381</sup> provide a framework for parties of any given conflict to follow in relation to freedom of movement.

Eight participating States formally derogated from Article 12 of the ICCPR,<sup>382</sup> while six have derogated from Article 2 Protocol 4 of the ECHR during the pandemic.<sup>383</sup> Participating States have placed a number of restrictions on international freedom of movement (between states) and internal freedom of movement (within states) to curb the outbreak of the virus. Restrictions include the closing of land borders (both incoming and outgoing), airports and ports, restrictions of movement between cities and/or regions, the quarantining of cities or regions, the imposition of quarantines at borders or in one’s home and/or curfews, and the permission of internal movement only for specific purposes including *inter alia* grocery shopping, medical visits, visits to the pharmacy, and exercise. Moreover, there have been specific restrictions for certain categories of people, in particular people of advanced age.

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381 The **Guiding Principles on Internal Displacement** (E/CN.4/1998/53/Add.2) restate and compile human rights and humanitarian law relevant to internally displaced persons.

382 **Albania, Armenia, Estonia, Georgia, Latvia, Moldova, Romania, and San Marino.**

383 **Albania, Estonia, Georgia, Latvia, Moldova and North Macedonia.**

Some participating States have restricted international movement through the suspension of flights from specific countries or regions, particularly high-risk areas, closing land border crossings with certain countries and allowing movement only within a specific region. Others have employed a stricter approach fully closing their land borders, ports and airports, allowing passage only to diplomats for humanitarian reasons or for repatriation. Some regional approaches have been taken in the OSCE area, such as the recommendations issued by the European Commission on 16 March 2020, to EU Member States to apply a 30-day restriction of non-essential travel from third countries into the EU.<sup>384</sup> These recommendations were endorsed and applied by most EU Member States and non-EU Schengen countries<sup>385</sup> and were renewed for another 30 days.<sup>386</sup>

Upon departure or arrival, some states required that passengers have their temperature measured. Some states provided for state quarantines at entry points or required self-isolation (usually 14-day) quarantines in order to permit entry, or only once persons who may possibly be infected were identified. Quarantines were often monitored by telecommunications systems (i.e., GPS, mobile applications or CCTV) or simply through frequent police visits.<sup>387</sup> Several countries required negative tests for visitors before being allowed to enter.<sup>388</sup>

Starting at the end of April, a number of States decided to reopen their international borders, or developed

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384 **“Communication from the Commission: Temporary Restriction on Non-Essential Travel to the EU”.** 16 March 2020.

385 Currently, the Schengen Area consists of 26 member countries. **Iceland, Norway, Switzerland and Liechtenstein** are associate members of the Schengen Area but are not members of the EU. **Monaco, San Marino,** and Vatican City/**Holy See** have opened their borders with, but are not members of the visa free zone.

386 **“Communication from the Commission to the European Parliament, The European Council and the Council and the Council on the second assessment of the application of the temporary restriction on non-essential travel to the EU”.** 8 May 2020.

387 For example in **Poland**, see **“Poland: App helps police monitor home quarantine”**, Privacy International, 19 March 2020.

388 For example in **Austria, Cyprus, Czech Republic, Estonia, Greece, Iceland, Portugal, Slovakia, Slovenia,** and **Switzerland.**

regional approaches (“bubbles”) to ease travel.<sup>389</sup> On 15 April, the European Commission called for a co-ordinated approach towards the lifting of restrictions prioritizing internal movement (restoration of the Schengen area) and easing restrictions with third countries as a second stage.<sup>390</sup> However, many travel restrictions remain in place across the OSCE region at the time of reporting, likely to continue throughout the duration of the pandemic.

In addition to travel restrictions and conditions of entry, participating States have introduced internal freedom of movement restrictions in their efforts to curb the spread of the pandemic. Measures introduced have generally shifted depending on specific country developments and have varied in severity. They include

general curfews or curfews for specific parts of the population, physical distancing, self-isolation, self-induced quarantines, the quarantines of specific cities or establishments, the permission of movement only for specific purposes and/or during specific times and within specific geographic proximities. Public and private transport has also been affected to varying degrees. These measures have been monitored through various methods, including mobile phone applications, GPS signals, police checks on quarantines, drones, CCTV, location bracelets, or police patrols. (A more detailed account and implications of such monitoring systems can be found in Part I.3) In some states in conflict situations (including post-conflict), additional measures and restrictions on internal movement including at crossing points were introduced by different parties.<sup>391</sup>

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389 Examples include border openings between the Baltic states and with neighbouring countries. For example, **Estonia's** government on 8 May decided that the restrictions for border crossings between Estonia and Finland would be eased as of Thursday, 14 May. **Austria** opened its borders with Czech Republic, Slovakia and Hungary (17 May), and travel restrictions were lifted between certain countries in the Western Balkans as of June 15.

390 **'A Joint European Roadmap towards lifting COVID-19,** 15 April 2020. The document prioritizes co-ordination on cross-border travel and seasonal workers but also working together to plan summer holiday travel. It prioritizes internal movement before restrictions at the external borders can be relaxed in a second stage.

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391 For example, in eastern **Ukraine**, a number of people were stuck at crossing points in mid-April unable to return to their homes after visiting family and exposed to active fire.

The variety of restrictions on internal movement introduced by participating States and enforcement mechanisms are schematically summarized in the table below:

<b>CURFEWS</b>	<b>RESTRICTIONS ON INTERNAL MOVEMENT</b>	<b>QUARANTINES AFTER INTERNATIONAL TRAVEL, OR CONTACT WITH INFECTED PERSON</b>	
		<b>TRANSPORTATION</b>	
During specific times during the day/evening.	Social distancing guidelines – no to minimal enforcement.	14 days – Self-isolation – not monitored	No disruption, distancing and face covering required
Complete or for specific dates that are deemed risky (eg. Public holidays lasting the duration of, for example 48 hours or 60 hours). Monitored by law enforcement, lack of adherence may result in fines or imprisonment.	Movement allowed but only for reasons allowed by government (usually for work, medical needs, groceries, exercise, assistance to vulnerable people, charity work, etc.). No permission or permission required (via applications, papers, etc.) Enforcement by police, penalties vary from fines to imprisonment.  Number of times able to move from dwelling vary from once a day to indefinite times per day.	14 days self-isolation – monitored by the police or via online applications/web surveillance systems, CCTV.  Non-compliance resulting in fines or imprisonment.	Some disruption or restrictions of number of people within train carriage, bus, tram.  Fewer available routes.  Restriction of use of bicycles.
Complete curfews for certain parts of population, people aged above 65–70, people with underlying health conditions, pregnant women	Geographical limitations – movement for reasons specified, allowed only near place of residence (e.g., going for a walk within 2 km from one's house), within the same municipality.	14 days, organized by state at borders for new entrants from high-risk countries or other criteria.	No public transport.
	Residency limitations: People only allowed to move inside their place of residence. Enforced by police.	Quarantines of entire cities/ municipalities enforced by the state.	Use of private vehicle: Permission required through various means including obtaining a permit in the government transport offices or via applications. Enforced by police – failure to comply vary from fines, confiscation of driver's license for varied periods of time, and confiscation of license plates.
	Restrictions in crossing administrative boundary lines in contested territories.	Quarantine in migration centres or other settlements, enforcement by army/police	

## AREAS OF CONCERN

During the early phases of the pandemic, the closures of borders and air-travel were imposed very quickly by most participating states (becoming effective within 24 to 48 hours), leaving people including migrants, tourists and other travellers stranded at airports and land borders, unable to leave and return to their place of residence, when they did not reach the borders or airports on time. Reports include cases of evictions at airports when travel was not made possible.<sup>392</sup> Some countries in the EU provided unclear guidelines on the right of third country (non-EU and EEA), residents to enter irrespective of holding a permanent residence permit, and required medical examinations and registry with the epidemiological authorities, a measure not necessary for permanent residents from the EU and EEA countries.<sup>393</sup> Further, outside of the EU, some states introduced mandatory quarantines run by the state at facilities such as hotels.<sup>394</sup>

Any discriminatory practice conditioning return for certain groups due to Covid-19 is not in line with international standards and OSCE commitments. Other concerns include the well-being of persons with expiring documents (resident permits, visas, etc.), who could not leave in before their documents expired. While the aim of internal restrictions on movement was generally to protect persons from contamination, including those most vulnerable, excessive restrictions can lead to violations of other rights, which may not be proportional

to the aim and may not be necessary, as other less intrusive measures can achieve the same result.

Complete curfews on certain groups could leave people completely reliant on state or volunteer services to obtain medicine, food and other essential items, or socially isolated, even when they are healthy and able.

For example, internal movement restrictions on care providers in at least one participating State reportedly led to the death of the elderly or the seriously ill, which could have been averted with clear instructions for care-workers.<sup>395</sup> The decision to impose a complete curfew on certain groups such as the elderly, pregnant women or youth, which has been the practice in several participating States, could leave them completely reliant on state or volunteer services to obtain medicine, food and other essential items, or socially isolated, even when they are healthy and able. Single pregnant women could also be left particularly vulnerable. In addition, older people, may be in good health and/or may require exercise for their particular health condition. Complete bans on movement for these groups may be disproportional to the legitimate aim.

While the aim of internal restrictions on movement was to protect people's health, including those most vulnerable, excessive restrictions can lead to violations of other rights, which may not be proportional to the aim and may not be necessary, if other less intrusive measures can achieve the same result.

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392 ODIHR received reports of 300 migrants, including approximately 200 from **Tajikistan**, stuck for up to two weeks at an airport in the **Russia**. There were also reports of migrants stuck at the border between **Uzbekistan** and **Kazakhstan** at the end of March. Local residents and the local administration provided food and tents.

393 EU Fundamental Rights Agency, **Coronavirus Pandemic in the EU – Fundamental Rights Implications**, 1 February to March 2020, and **Hungary**, Consular Service (2020), Information on entry requirements due to COVID-19 situation, 25 March 2020

394 For example, **North Macedonia** and **Albania**, where permanent residents entering the country were required to undergo a 14-day quarantine. Some civil society reports have pointed to concerns of discriminatory practices in this requirement, namely applying to persons from the Roma community. See, for instance, a **report** on Roma being quarantined at the border to **North Macedonia**. See also the section on Roma and Sinti, below.

Most participating States introduced enforcement measures to discourage the breaking of curfews and/or quarantines. As indicated in the schematic overview above, some countries introduced imprisonment or monetary fines. Extreme punitive measures included imprisonment of up to five years or extremely high

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395 EU FRA, Coronavirus Pandemic in the EU – Fundamental Rights Implications, 1 February to March 2020



finer.<sup>396</sup> While these sanctions may serve as a disincentive, it is important that policies introduced are proportional and necessary. It is also important for states to note that as provided in the UN OHCHR Guidance on the use of force by law-enforcement personnel in times of emergency, “breaking a curfew, or any restriction on freedom of movement, cannot justify resorting to excessive use of force by the police; under no circumstances should it lead to the use of lethal force.”<sup>397</sup>

Other concerns related to the right to privacy and the publicly published data of infected persons, or cases where ‘warning labels’ were placed on the doors of residents to indicate infection.<sup>398</sup> Most states used some form of surveillance, varying from mobile applications (voluntary or compulsory), GPS systems, CCTV, monitoring bracelets and drones, to monitor compliance with lockdowns or quarantines. EU Member States agreed on a protocol to ensure cross-border interoperability of voluntary contact tracing apps, so citizens can be warned of a potential infection when they travel within the EU.<sup>399</sup> The long-term implications of these measures on privacy and other rights are still unknown, however, it is important that legislation provide safeguards and security measures to preclude leaks of personal data or third party access to such data, and limitations on the duration that data is stored. (See also section on surveillance in Part I).

In some participating States public transport restrictions impacted medical and other essential staff from reaching their work. Persons wishing to return home from state quarantines at land borders also struggled where no public transport was available. Some countries confiscated drivers licenses and vehicle license

plates for violating restrictions.<sup>400</sup> While this can be seen as a means to discourage movement, the impact such a measure could have on the ability of people living in isolated areas to shop for food, reach medical services or to buy medicine, may be disproportional, if other less intrusive measures can be imposed to achieve the same result.

In some states, with active conflicts, some people were stuck at checkpoints that were closed, making them unable to return home and potentially exposing them to active fire.<sup>401</sup> This is of particular concern to their right to life, but also their right to leave and return. Furthermore, certain populations were prevented from accessing healthcare and medical facilities and some difficulties with the movement of medical personnel. In some post-conflict countries, populations including elderly returnees living in remote areas were not able to access healthcare, medicine or other provisions.<sup>402</sup>

## GOOD PRACTICES

Many participating States organized repatriation charter flights for nationals or residents, in some cases subsidizing flights.<sup>403</sup> ‘Emergency corridors’ were introduced across certain land borders and airports to allow persons transiting countries to pass through for specific periods of time.

In order to prevent hardships which could arise for migrants or travellers with expiring documents, such as residency permits or visas who could not return, many countries automatically extended all ID documents and residency permits for the duration of the Covid-19 crisis, or for specific periods (ranging from one to three months).<sup>404</sup> Some countries introduced systems to regularize irregular migrants for the period (See also the

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396 For example in **Albania** and **Bulgaria**. See also Chapter I for more information on sanctions for violating restrictive measures.

397 Office of United Nations High Commissioner for Human Rights, 17 April 2020, **COVID-19 security measures no excuse for excessive use of force, say UN Special Rapporteurs**.

398 EU Fundamental Rights Agency, Coronavirus Pandemic in the EU — Fundamental Rights Implications, 1 February to March 2020, Section 1.1.1 Enforcement and penalties

399 **Communication** From the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Tourism and transport in 2020 and beyond, 13 May 2020

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400 For example, in **Greece** and **Albania**.

401 See, for example, a report on eastern **Ukraine: Dozens Stranded in a War Zone – Authorities Close Crossing Points in Eastern Ukraine Due to COVID-19**.

402 Examples have been reported from **Bosnia and Herzegovina**. Isolation from public services is a problem in many rural and remote areas but is exacerbated as a long-term effect of conflict.

403 For example, in the **United Kingdom** or **Sweden**.

404 Euronews, **Portugal grants temporary citizenship rights to migrants**, 29 March 2020.

section on migration, below). The EU issued a clarification on the obligation of its Member States to allow entry not only to all nationals, EU and EEA residents but also to third country nationals who are residents in the EU.<sup>405</sup>

Many participating States did not introduce curfews or restrictions for specific age groups or groups perceived vulnerable, but instead provided recommendations and guidelines while applying the same rules for everybody. Several States introduced schemes for vulnerable persons including developing volunteering networks to deliver food and supplies, hotlines for emergency services, online shopping platforms targeting only such groups, schemes that provide medical stock for a two-month period, or introduced shop opening times only allocated for elderly and vulnerable groups.

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405 **Communication** From the Commission to the European Parliament, the European Council and the Council on the second assessment of the application of the temporary restriction on non-essential travel to the EU, 8 May 2020

Regarding data-protection and the use of tracking devices and other surveillance methods, the EU decided that any measures introduced that would affect the rights to private life and data protection should be grounded in law, necessary, proportionate, and should cease at the end of the pandemic. Data collected during the emergency should also be treated according to ordinary procedures.<sup>406</sup>

Co-operation among different sides of conflicts in some regions on the transportation of sick people across administrative boundary lines via liaison officers and the introduction of measures to allow quarantine-free passage of medical personnel living on either side of the relevant territories was also noted as a good practice.<sup>407</sup>

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406 See European Parliament article on “**Covid-19 tracing apps: ensuring privacy and data protection**” from 15 May 2020.

407 Such examples have been reported from **Kosovo**. Please see OSCE disclaimer on page 26.

## RECOMMENDATIONS

- Provide timely information about land and sea border openings and closings and on airport travel restrictions through official government and consular websites, radio and television communication. Continued arrangements should be made to repatriate persons who would otherwise be stranded via special flights, and subsidized, when possible, for people requiring this. Return for all legal residents should be facilitated without discrimination and communicated accordingly. Timely information should be provided to all returnees on the pandemic-related measure upon arrival, including quarantine and other requirements, contact details and hotlines in all relevant languages.
- When state quarantines are imposed, border guards and other relevant personnel should be trained to impose isolation measures in a non-discriminatory fashion. State-run quarantine premises should ensure that health standards are able to be maintained. Travel home from state-run quarantines should be facilitated through the continuation of public transport or other means, as long as appropriate safety measures are observed due to the elevated risks of infection in public transport.
- A thorough analysis of lessons learned from agreements reached and practices to facilitate the passage of persons through land borders designating corridors for return should be conducted. These lessons could help to develop rules that are practical and feasible for travellers and border authorities, and relevant authorities should be trained accordingly on providing necessary information to travellers at border points.
- Extend residency permits, work permits, IDs and other expiring documents to facilitate the legal stay in case return is not desired or possible. States should also explore possibilities to provide temporary residence for irregular migrants.
- Complete curfews or lockdowns for the elderly, pregnant women and or/youth should be avoided, instead governments should provide recommendations on risks associated to each group, while allowing at least minimum movement, determined by consultations with the target groups, or lessons learned. Services

should be arranged through hotlines, to provide support to people unable to care for themselves, including the acceptance of referrals to ensure that no-one is left without necessary supplies. All available measures should be widely advertised in languages that will reach the entire population. Comprehensive information on all services and the necessary contact information should be provided through a designated government website, and other tools to disseminate the information as widely as possible and in a format that is accessible.

- Guidelines for care providers should be drafted and communicated to ensure that vulnerable persons are not endangered due to freedom of movement restrictions.
- States should abstain from introducing disproportionate punitive measures, instead opting for proportionate fines as a penalty for violating internal movement restrictions or through encouraging voluntary compliance. States should also ensure that police or other state actors, including the army, do not use excessive force when enforcing measures. Training on this should be organized by the state, and complaint mechanisms should be widely advertised.
- In situations of conflict, people stuck at checkpoints, or who wish to return to their homes, should be allowed to cross and, if necessary, quarantined for the required period. Special arrangements for medical staff should be made. Crossings for medical purposes should still be facilitated, including through intermediaries, such as the Red Cross. Returnees living in remote areas, unable to move, should be assisted by state and non-state actors

## II.2.B FREEDOM FROM TORTURE AND ILL-TREATMENT AND ARBITRARY DEPRIVATION OF LIBERTY

The freedom from torture and ill-treatment are fundamental rights enshrined in international human rights law<sup>408</sup> and have since been further elaborated by a number of international human rights instruments at the international and the regional level, including OSCE commitments. The prohibition against torture is absolute and non-derogable.

The prohibition of torture means that “no exceptional circumstances whatsoever, whether a state of war or a threat of war, internal political instability or any other public emergency, may be invoked as a justification of torture.”<sup>409</sup> The prohibition against torture includes the obligation of states to actively prevent torture and other ill-treatment through different preventive

measures.<sup>410</sup> Factors that place detainees and prisoners in situations of vulnerability (and increase the risk of torture or other abuse) include: “a power imbalance between detainees and those in charge of them, an almost complete dependency upon the institution which has deprived them of their freedom or limits their movements, weakened social ties and stigmatization related to detention.”<sup>411</sup> The prevention of torture, in particular in settings where people are deprived of their liberty, but also the investigation, prosecution and punishment of such acts have suffered a setback during the current pandemic.

The prevention of torture, in particular in settings where people are deprived of their liberty, but also the investigation, prosecution and punishment of such acts have suffered a setback during the current pandemic.

408 See, Art. 9 of the UDHR.

409 See, for instance, Copenhagen Document (1990), para.16.3; see also: UNCAT, Art. 2(2) and ICCPR, Art. 4 and 7; **Emergency Measures And Covid-19: OHCHR Guidance**; and **Statement of UN Special Rapporteurs, ‘COVID-19 security measures no excuse for excessive use of force, say UN Special Rapporteurs’**, 17 April 2020.

410 OSCE participating States have committed to “prohibit torture and other cruel, inhuman or degrading treatment or punishment and take effective legislative, administrative, judicial and other measures to prevent and punish such practices;” (Vienna 1989)

411 See ATP’s **page** on groups in situations of vulnerability.

The pandemic not only brought to light the pre-existing shortcomings in penitentiary systems or other places of deprivation of liberty, such as overcrowding, lack of or insufficient access to health care or unsanitary conditions of detention, which could amount to ill-treatment or even torture. It also posed additional challenges to the fight against torture. For instance, in addition to existing places of deprivation of liberty,<sup>412</sup> new places of detention have emerged in the course of the current crisis, such as quarantine centres or places where people are not allowed to move freely. In fact, the measures taken in response to the pandemic have placed much of the population in participating States in some form of isolation, confinement or quarantine. In this extraordinary situation, deprivation of liberty has taken on new dimensions. In addition, one of the key safeguards against torture and other ill-treatment, the independent monitoring and oversight of places of detention, has been either suspended completely or has been only partially functional since the beginning of the pandemic in the majority of states.<sup>413</sup>

Measures taken in response to the pandemic have placed much of the population in participating States in some form of isolation, confinement or quarantine. In this extraordinary situation, deprivation of liberty has taken on new dimensions.

Places of deprivation of liberty became further isolated from the outside world during the pandemic as a result of the preventive health measures leading to a situation where torture or ill-treatment may occur behind closed doors, out of sight of monitors, inspectors, civil society organizations, lawyers and the public.<sup>414</sup> Current limitations to the effective functioning of state institutions and the judiciary across the OSCE region may pose additional challenges to the investigation, prosecution and punishment of acts of torture or other ill-treatment, thereby decreasing accountability for such acts and fostering impunity.

This section cannot examine all ways in which the pandemic has complicated efforts to eradicate torture and ill-treatment in the OSCE region. It highlights some immediate concerns about a) conditions of detention and effects of restrictive measures in places of detention that could amount to ill-treatment or even torture and b) key challenges that inhibit the prevention of torture or its effective investigation.

States have a “heightened duty of care to protect the lives of individuals deprived of their liberty”<sup>415</sup> and they must provide medical treatment to protect and promote the physical and mental health and wellbeing of prisoners.<sup>416</sup> As stated by the Committee against Torture,

412 This includes prisons, pre-trial detention facilities, police custody, interrogation centres, military detention facilities, immigration detention centres, elderly homes and psychiatric institutions. According to Article 4 *Optional Protocol To The Convention Against Torture (OPCAT)*, places of detention means: “any place [...] where persons are or may be deprived of their liberty, either by virtue of an order given by a public authority or at its instigation or with its consent or acquiescence (hereinafter referred to as places of detention). [...] deprivation of liberty means any form of detention or imprisonment or the placement of a person in a public or private custodial setting which that person is not permitted to leave at will by order of any judicial, administrative or other authority.”

413 With regard to National Preventive Mechanisms, decisions to undertake or suspend visits to places of deprivation of liberty fall within the prerogatives of NPMs themselves, and not of national, or subnational, authorities. Monitors are impacted by the restrictive measures for the general population (such as physical distancing and restrictions of movement, as well as the lockdown of places of deprivation of liberty). In the OSCE region, most NPMs (out of the 39) have decided to suspend in person visits from mid-March. Only in **Italy** have onsite visits continued without limitations. There are examples in *APT/ODIHR Guidance on Monitoring Places of Detention through the COVID-19 pandemic*, 3 June 2020.

414 *Ibid.*, See for example **blog on living-in prison officers in Georgia** (a practice also implemented in **Malta** and the **Russian Federation**); and the introduction of living-in prison officers in **Malta, the Russian Federation and in Georgia**.

415 UN Human rights committee, General Comment no. 36, para. 25. “The duty to protect the life of all detained individuals includes providing them with the necessary medical care and appropriately regular monitoring of their health, [89] shielding them from inter-prisoner violence, [90] preventing suicides and providing reasonable accommodation for persons with disabilities. [91]”

416 ODIHR/PRI *Guidance Document on the Nelson Mandela Rules: Implementing the UN Revised Standard Minimum Rules for the Treatment of Prisoners* (2018), Chapter 6,

overcrowding, poor hygiene in prisons and the lack of appropriate medical treatment “aggravate the deprivation of liberty of prisoners (...) making of such deprivation cruel, inhuman and degrading punishment.”<sup>417</sup>

In the OSCE region, overcrowding and poor hygiene in prisons endanger the health of prisoners and provide fertile ground for the spread of communicable diseases like Covid-19.<sup>418</sup> Persons deprived of their liberty are particularly vulnerable to infectious diseases because of their inability to protect themselves because of the often-limited access to healthcare and the lack of necessary hygiene, sanitation and medical equipment, as well as their underlying health conditions.<sup>419</sup> In closed facilities, people are under the care and control of authorities for most aspects of their daily lives. In such contexts, failing to protect persons deprived of liberty from a serious disease as a result of a lack of precaution or due diligence may amount to ill-treatment.<sup>420</sup> Women prisoners face a specific and additional set of

challenges.<sup>421</sup> Another concern is that people from marginalised and impoverished backgrounds are over-represented in prison<sup>422</sup> and they may be even more vulnerable to such diseases for various reasons.<sup>423</sup> Reports from across the OSCE region indicate that overcrowded prisons severely limit the possibility for prisoners to physically distance themselves from one another.<sup>424</sup> A distinct lack of personal protective equipment for prisoners, as well as staff, but also access to testing, water and hand sanitiser has been noted in many states.<sup>425</sup>

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Numerous legal challenges have already been started in the OSCE region that argue that states are failing to protect the health and safety of prisoners because of conditions of detention, coupled with the heightened risks that Covid-19 poses to (overcrowded) prison

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para. 1; See also Nelson Mandela Rules 24, 25, 27 and 30: As part of their commitment to treating individuals in detention with humanity and respecting their inherent dignity, participating States have committed to observing the internationally recognized standards relating to the administration of justice and the human rights of detainees, including the Standard Minimum Rules (SMR) for the treatment of prisoners, nowadays called the Nelson Mandela Rules (Vienna 1989); *Kudla v Poland* (no. 30210/96, ECHR 2000-XI).

417 **Statement** by the Committee against Torture, A/56/44. **Statement** by the Committee against Torture, A/56/44, Para. 95f; see also **ECtHR jurisprudence** on violations of Article 3 relating to prisoners’ health-related rights; on the hygienic conditions of cells see: *Clasens v. Belgium* 28 May 2019 or *Petrescu v. Portugal* 3 December 2019; on personal space in multi-occupancy cell and prison overcrowding see: *Varga and Others v. Hungary* 10 March 2015 or *Torreggiani and Others v. Italy*; on solitary confinement see: *Öcalan v. Turkey* (no. 2) 18 March 2014.

418 Infection rates for tuberculosis are between 10 and 100 times higher than in the community, as has been **documented** by a number of reports.

419 See for instance, “**Building our response on COVID-19 and Detention – OMCT guidance brief to the SOS-Torture Network and partner organisations**”; on the **right to health and hygiene** or on the special **focus on health in prisons**.

420 See **ECtHR jurisprudence** above. See also UN Special Rapporteur on torture and other cruel inhuman or degrading treatment, ‘Interim report’, **A/68/295**, 9 August 2013, para. 50; or **OHCHR COVID-19 Dispatch – Number 2**.

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421 As **noted** by PRI, “women in prison have complex health needs with disproportionate rates of underlying health conditions compared to women in the community. This fact coupled with overcrowded and unhygienic prisons (...) puts women at great risk of contracting Covid-19. High numbers of women also enter prisons pregnant or having recently given birth, as drug users and/or with serious physical and mental effects of violence and related trauma.”

422 *Ibid.* and see the **report on global prison trends** by Penal Reform International (PRI), p. 7.

423 In the **United States**, for instance, minorities, including African-Americans, are disproportionately represented, both among the prison population and among those succumbing to Covid-19. On 29 May, **UN human rights experts urged** the United States to do more to prevent major outbreaks of Covid-19 in detention centres.

424 **Austria, Belgium, Czech Republic, Denmark, France, Greece, Hungary, Italy, Malta, Portugal, Romania, Russian Federation, Serbia, Slovenia, Turkey, United Kingdom and United States**. See also a **graph of prison overcrowding across Europe**.

425 For example: **Armenia, Belgium, France, Greece, Italy, United States and Turkey**. For the latter, see for instance, **Covid-19 Spreading Fast in Turkey’s Prisons, Rights Defenders Warn**.



populations, which could amount to inhuman or degrading treatment.<sup>426</sup> While restrictive measures implemented by most states may be necessary and in the public interest, they need to be properly assessed in conjunction with the fundamental rights and freedoms that are curtailed in order to be proportionate and, therefore, in accordance with international human rights standards and OSCE commitments.

To limit the spread of Covid-19, many states have implemented restrictive measures in prisons, temporarily suspending physical visits from family, friends and sometimes even lawyers – despite the fact that the denial of family visits can be considered ill-treatment in itself.

Contact with the outside world is crucial to the material and psychological health and well-being of prisoners and other persons deprived of liberty and acts as a key safeguard against torture or other ill-treatment. It also provides opportunities for reporting human rights violations, including torture or other ill-treatment.<sup>427</sup> To limit the spread of Covid-19, many participating States have implemented restrictive measures in prisons, temporarily suspending physical visits from family, friends and sometimes even lawyers – despite the fact that the denial of family visits can be considered ill-treatment in itself.<sup>428</sup> As stated by the UN Subcommittee on the prevention of torture, in situations where visiting regimes

are restricted for health-related reasons, states must “provide sufficient compensatory alternative methods for detainees to maintain contact with families and the outside world, for example, by telephone, Internet/email, video communication and other appropriate electronic means. Such contacts should be both facilitated and encouraged, be frequent and free.”<sup>429</sup> Although there are many positive examples of how OSCE participating States introduced innovative compensatory measures,<sup>430</sup> there are also worrying reports that they are often not satisfactory. In some countries, there is a lack of telephones or videoconferencing equipment and calls are not offered for free or for an extended period of time.<sup>431</sup>

The pandemic and resulting restrictive measures leading to heightened isolation have caused widespread fear and confusion among prison populations, for instance due to the lack of masks and poor communication about the nature and scope of preventive measures.<sup>432</sup> Across the region, there have been hunger strikes<sup>433</sup> and prison protests or riots<sup>434</sup> as an expression of anger against the suspension of visits (and conditions of detention). In some contexts, the suppression of riots has resulted in alleged excessive use of force by

426 For an example from the **United Kingdom**, see *Hafeez vs. UK; Manning, R. v (Rev 1) [2020] EWCA Crim 592* (30 April 2020), giving the lead judgment in the Court of Appeal, the Lord Chief Justice considered that the impact of a custodial sentence is likely to be heavier during the coronavirus pandemic than it would otherwise be, and that this was a factor that judges and magistrates can and should keep in mind when sentencing; Similarly, a **report** on a claim from **Canada**; an **example** about legal action in **France**; and an **account** about a law suit in the **United States**; which **claimed** inmates are unable to socially distance and have insufficient access to personal protective equipment and cleaning supplies, as well as inadequate medical treatment. Similar cases were also opened in **Spain**.

427 ODIHR/PRI, **Guidance Document on the Nelson Mandela Rules**, Chapter 5, para. 13–15.

428 UN Special Rapporteur on torture, Report to the Human Rights Council on observations on communications transmitted to Governments and replies received, 12 March 2013, A/HRC/22/53/Add.4, para. 20.

429 **Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic** (adopted on 25th March 2020).

430 See e.g., ODIHR/APT, *Monitoring Places of Detention Through the COVID-19 Pandemic* p. 23. **Italy**; other examples of extended phone times and videoconferencing include using Skype (**Albania**) or Zoom (**United States** – Pennsylvania), **United Kingdom secure video calls** at distribution of pre-paid phonecards (**Spain**) or tablets (**Norway**); more access to TV, radio and press (**Poland, Estonia**); **Prison service allows family members to pay money at post offices for the benefit of their relative in prison that can be used for phone calls** (**Ireland**); or the distribution of one laptop computers for every 100 inmate aiming to give prisoners access to remote visits via video conferences (**Belgium**).

431 **Austria, Hungary and Italy**. There are also worrying **reports about monitoring prisoner phone calls** for mentions of Covid-19.

432 See APT/ODIHR *Guidance on Monitoring Places of Detention through the COVID-19 pandemic*

433 **Croatia, Luxembourg**, and a hunger strike in the **United States**.

434 **Belgium, France, Greece, Italy, Luxembourg, the Netherlands, Romania, Spain, Switzerland and United States**.

law enforcement officials, the use of solitary confinement as a punishment and accusations of torture or ill-treatment.<sup>435</sup>

Another measure that many participating States have resorted to is the preventive isolation or quarantine of prisoners suspected to be infected with Covid-19, as well as a 14-day quarantine for newly arrived prisoners. In order to ensure that this type of quarantine does not constitute *de facto* solitary confinement,<sup>436</sup> “the person concerned should be provided with meaningful human contact every day.”<sup>437</sup> In many states, whether prisoners are quarantined or not, access to out of cell time,<sup>438</sup> outdoor and other educational or group activities has been further limited as a result of restrictive measures.<sup>439</sup> The consequences of these limitations (leading to more isolation) on the physical and psychological health of persons deprived of liberty are not yet fully understood.<sup>440</sup>

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435 **France, Russian Federation and Switzerland.**

436 “The predominant method of isolation and social exclusion is ‘solitary confinement’, which is defined as ‘the confinement of prisoners for 22 hours or more a day without meaningful human contact’. Under international human rights standards, solitary confinement can only be imposed in exceptional circumstances, and ‘prolonged’ solitary confinement, in excess of 15 consecutive days, is regarded as a form of torture or ill-treatment. The same applies to frequently renewed measures which, in conjunction, amount to prolonged solitary confinement. Even more extreme than solitary confinement is so-called ‘incommunicado detention’ which deprives the inmate of any contact with the outside world, particularly to medical doctors, lawyers and relatives, and has repeatedly been recognized as a form of torture.” A/HRC/43/49; Solitary confinement is prohibited for children, pregnant or breastfeeding women and people with mental disabilities (see e.g. Nelson Mandela Rules). 57.

437 **Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic**, Council of Europe

438 Examples can be found in a **report** from **Canada**; an **example** from the **United Kingdom**, or in **Portugal** due to staff shortages.

439 In **Austria**, the time outside in the open air was reduced from one hour to 15 minutes. Similar reports were received from **Croatia, Denmark, Italy, United Kingdom**, where a **report** on short scrutiny visits to young offender institutions holding children

by the Chief Inspector of Prisons recommended between 3 hours and 40 mins only outside of cells; as well as the **United States**.

440 See, for instance, a report from the **United Kingdom**, **Alarm over five suicides in six days at prisons in England and Wales**, The Guardian, 28 May 2020.

Outside of the criminal justice system, people held in other places of detention, such as immigration detention centres, psychiatric institutions and elderly homes, are similarly affected by the pandemic, and resulting restrictive measures, limiting contact with the outside world. Based on currently available information, certain people are considered more vulnerable to the Covid-19 virus, such as people over 60 years of age or who have health conditions like lung or heart disease, diabetes or conditions that affect their immune system, as well as pregnant or breastfeeding women.<sup>441</sup> The effect of increased isolation on persons in vulnerable situations is concerning.<sup>442</sup> The UN has recalled that “no-visitor policies in nursing homes and home care exacerbate the risk of violence, ill-treatment, abuse and neglect of older persons and others living in institutions.”<sup>443</sup>

In many countries across the OSCE area, migrants live in overcrowded camps, shelters or reception centres in unsanitary conditions, lacking minimal protection against infection. New restrictions on movement, as part of efforts to stem the spread of Covid-19, prevent migrants housed in temporary reception centres from maintaining the distance from others necessary to safeguard both their health and their dignity.<sup>444</sup> In some cases, migrants were locked in their cells for up to 21 hours each day without activities provided for out-of-cell hours.<sup>445</sup>

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441 The Working Group on arbitrary detention “is aware that COVID-19 mostly affects persons older than 60 years of age, pregnant women and women who are breastfeeding, persons with underlying health conditions, and persons with disabilities” and has therefore **recommended** “that States treat all such individuals as vulnerable” and “refrain from holding such individuals in places of deprivation of liberty where the risk to their physical and mental integrity and life is heightened.”; WHO has also issued specific **guidance** with regard to the situation of older people.

442 In **France**, according to a **study** on long-term care facilities, elderly people may have died of confinement disease (hypervolemic shock), not Covid-19 due to reduced numbers of caregivers and quality of care and isolation; In the **United Kingdom**, a **report** stated that deaths of detained mental health patients double due to covid-19.

443 **COVID-19 security measures no excuse for excessive use of force**, Statement by UN Special Rapporteurs.

444 **ODIHR statement**, 4 May 2020.

445 Examples have been **documented** by the Covid-19 Global Immigration Detention Platform of the Global Detention Project. For conditions in the **United States**, see also **As COVID-19 spreads in ICE detention, oversight is more critical than ever**, Brookings Institution, 14 May

New places where people are held in compulsory quarantine for reasons of public health protection are places of deprivation of liberty.

In response to the pandemic, many States have adopted restrictive measures such as enforced lockdowns or quarantine, often applicable to the entire population. According to the UN Subcommittee on the prevention of torture, these new places where people are held in compulsory quarantine for reasons of public health protection are places of deprivation of liberty<sup>446</sup> and possible ill-treatment or even torture should be prevented and addressed. Research on the situation of compulsory quarantine facilities in the OSCE region is limited, as is information available on the situation of the general population who have been under mandatory quarantine in their own residences and are thus deprived of their liberty. Whereas there is consensus on the requirements for mandatory quarantine in order for it not to be arbitrary,<sup>447</sup> the question whether compulsory quarantine and enforced lockdowns *per se* may constitute cruel, inhuman or degrading treatment is largely unexplored as of today. Reports of authorities welding

doors of apartment buildings shut in order to quarantine the inhabitants are highly worrying.<sup>448</sup> Similarly, the changes some participating States have made to legislation to punish violations of quarantine through incarceration are a matter of concern.<sup>449</sup>

The need to monitor the situation of torture or other ill-treatment also in this context is clear. Many NPMs are starting to monitor such places (sometimes private homes, hotels, ships or other facilities), taking into consideration quarantine conditions and the effect on more vulnerable groups.<sup>450</sup> To prevent ill-treatment, all fundamental safeguards must be respected and individuals should not be treated as detainees, but free agents.<sup>451</sup>

The independent monitoring of all places of detention, a key safeguard against torture and other ill-treatment, plays a vital role in the context of the pandemic and related emergency measures. The pandemic raises new challenges for independent monitors such as NPMs, ombuds institutions, NHRIs and civil society with respect to their monitoring functions, as access to detention facilities has been severely restricted in almost all participating States. Likewise, the risk of infection to the monitors themselves, as well as individuals deprived of their liberty and staff, has reached unprecedented levels.<sup>452</sup> The restriction of access for monitors has also reduced the access to an important complaint mechanism for victims of torture or ill-treatment as onsite visits play a crucial role in collecting complaints from inmates and submitting allegations of torture to the judiciary.

Any person has the right to judicial review of his or her deprivation of liberty under international law.<sup>453</sup> Courts assume a particularly important role with regard to the protection of non-derogable rights, such as the

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2020. (For more on immigration detention, including promising practices see the section on migration, below.)

446 “Any place where a person is held in quarantine and from which they are not free to leave is a place of deprivation of liberty for the purposes of the OPCAT and so falls within the visiting mandate of an NPM.” Subcommittee on Prevention of Torture (SPT), **Advice to the National Preventive Mechanism** of the **United Kingdom**, regarding compulsory quarantine (10–14 February 2020).

447 The UN Working Group on Arbitrary Detention has **clarified** that “mandatory quarantine in a given premise, including in a person’s own residence that the quarantined person may not leave for any reason, is a measure of de facto deprivation of liberty. When placing individuals under quarantine measures, States must ensure that such measures are not arbitrary. The time limit for placement in mandatory quarantine must be clearly specified in law and strictly adhered to in practice”. See also, **Enhorn v. Sweden**, para. 44: “The essential criteria when assessing the “lawfulness” of the detention of a person “for the prevention of the spreading of infectious diseases” are: whether the spreading of the infectious disease is dangerous to public health or safety; and whether detention of the person infected is the last resort in order to prevent the spreading of the disease, because less severe measures have been considered and found to be insufficient to safeguard the public interest. When these criteria are no longer fulfilled, the basis for the deprivation of liberty ceases to exist.”

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448 According to a report by Amnesty International, **Eastern Europe and Central Asia: Human rights must be protected during COVID-19 pandemic** of 29 April 2020, in **Kyrgyzstan** and **Kazakhstan**, authorities welded shut the doors of apartment blocks to enforce quarantines.

449 For example, **Albania, United Kingdom** and **Bulgaria**.

450 **Georgia, Italy**, and **Montenegro**.

451 See **SPT advice on “Measures to be taken by authorities in respect of those in official places of Quarantine”**, para. 10

452 Reference to *APT/ODIHR Guidance on Monitoring Places of Detention through the COVID-19 pandemic*.

453 Art. 9(3) and (4) ICCPR

absolute prohibition of torture. The pandemic has created considerable challenges for the functioning of courts, and lawyers have faced obstacles in accessing clients in detention and in representing clients effectively, in particular in cases where court hearings are held remotely.<sup>454</sup> Those and additional issues pose a significant challenge to the fight against impunity and the prompt, independent and impartial investigation into allegations of torture or ill-treatment, including allegations made about conditions of detention that may amount to ill-treatment.<sup>455</sup> (See also the section on access to justice and the functioning of courts, above.)

Cases of excessive use of force by law enforcement, such as beatings, the use of truncheons, threats of use of pepper spray and death threats, for violations such as not wearing face masks or not complying with restrictions of movement were reported in a number of participating States.<sup>456</sup> Any unnecessary, excessive or otherwise arbitrary use of force by law enforcement

officials is incompatible with the absolute prohibition of cruel, inhuman or degrading treatment. Where such force intentionally and purposefully inflicts pain or suffering on powerless individuals who are unable to escape or resist, it is always conclusively unlawful and may amount to torture. In this context, developments regarding new legislation enacted in some participating States that could heighten the risk of ill-treatment or obstruct accountability for acts of ill-treatment were observed.<sup>457</sup>

## GOOD PRACTICES

Promisingly, many states have taken action to reduce the number of prisoners during the Covid-19 crisis including the early release of certain categories of prisoners, increasing use of house arrest and delaying the start of prison sentences, leading to reduced prison populations by thousands.<sup>458</sup>

454 See Fair Trials Commentary: **Impact assessment of remote justice on fair trial rights**, see also **Coronavirus: Defendants more likely to be jailed in video hearings, research warns amid rise of remote justice**, The Independent, 5 May 2020 and an **evaluation of video enabled justice**.

455 For more information see also **Fair Trials, COVID-19 Justice Project**.

456 See, for instance, a **report** from **France**, an **account** from **Romania**; several **country examples** from Eastern Europe and Central Asia, an **example** from **Slovakia**, an

**incident** in the **United Kingdom**; and a **report** from the **United States**.

457 See, for instance, a **report on new police powers** in the **Russian Federation**

458 This includes practices regarding the early release of certain categories of prisoners in the **Netherlands**, **Ireland** and **France**; the increasing use of house arrest in **Spain** and **Italy**; and the delaying of the commencement of prison sentences in **Germany** and **Czech Republic**. Steps like these have contributed to reducing prison populations by thousands (e.g. **Italy** 7,000 and **France** 10,000). See e.g. **EU Observer**

## RECOMMENDATIONS

- Reduce prison populations by considering alternatives to detention and by releasing prisoners and other persons deprived of liberty with no discrimination, taking into account the principle of do no harm, time already served, the vulnerability of certain groups of prisoners, including to a Covid-19 infection, and categories such as those convicted of non-violent acts.
- Release all people detained arbitrarily, without sufficient legal basis or for crimes that are incompatible with international law, as well as all those incarcerated for exercising their human rights, including expression of dissenting opinions. This covers, but is not limited to, human rights defenders, journalists, political prisoners and dissenting voices.
- Reduce the number of new arrests during the pandemic and consider the risk to prisoners' health during such an emergency in assessing appropriateness of detaining someone.
- Provide compensatory measures for the limited contact with the outside world for those in detention and thereby enhance preventive monitoring and access to complaint mechanisms for persons deprived of liberty during the pandemic.

- Enable the independent monitoring and oversight of places of detention. Where not possible through onsite visits, remote monitoring options for independent monitoring bodies, such as remote access to detention registers, files and data should be considered.
- Ensure that law enforcement agents are trained, equipped and instructed to avoid any unnecessary, excessive or otherwise arbitrary use of force, and to give priority to non-violent means of carrying out their duty in particular in the context of pandemic-related measures that they are supposed to implement, facing not only individuals in conflict with the law but entire populations affected by those measures.<sup>459</sup>
- Provide for a safe environment and inclusion of civil society organizations and human rights defenders working to fight torture, other ill-treatment and impunity.
- Ensure effective oversight and monitoring of all places of detention, including the first hours of police custody, through the development and strengthening of independent NPMs, as well as through ongoing dialogue and the implementation of NPM and other independent monitoring bodies' recommendations to address key issues in places of detention.
- Establish effective and independent mechanisms to ensure that all allegations of torture and other ill-treatment are promptly, thoroughly and impartially investigated and prosecuted.
- Ensure that the fight against torture and the zero-tolerance policy adopted by states remains high on the OSCE agenda also during emergency situations.
- Ensure that the zero-tolerance policy translates into a safe and conducive environment to report cases of torture and other ill-treatment for professionals within the security sector and the penitentiary system, victims, medical staff, lawyers, human rights defenders and other actors.
- Improve sanitary conditions and healthcare in prisons to prevent inhumane treatment and improve health and safety for all.
- Enhance capacity building for penitentiary staff and others working in places of detention on human rights standards and the humane treatment of prisoners such as the Nelson Mandela Rules and the Bangkok Rules.

## II.2.C FREEDOM OF ASSEMBLY

The freedom of peaceful assembly is one of the foundations of a democratic society and should not be interpreted restrictively.<sup>460</sup> This right is instrumental in enabling the full and effective exercise of other civil, political, economic, social and cultural rights. A robust body of international documents and regional standards governs the right to freedom of peaceful assembly, including of the UDHR,<sup>461</sup> the ICCPR,<sup>462</sup> the Convention on

the Rights of the Child (CRC)<sup>463</sup> and the ECHR.<sup>464</sup> OSCE Commitments to respect the right to freedom of assembly are stated *inter alia* in the Copenhagen Document,<sup>465</sup> the Charter of Paris for a New Europe (1990)<sup>466</sup> and the Helsinki Ministerial Council (2008).<sup>467</sup> On the basis of these standards and commitments, ODIHR, jointly with the Venice Commission of the Council of Europe, has also developed the *Guidelines on the Freedom of Peaceful Assembly*.<sup>468</sup>

459 For more information see e.g. **report of the UN Special Rapporteur on torture** (July 2017)

460 See, for example, European Court of Human Rights (ECtHR), *Kudrevičius and Others v. Lithuania* [GC], Application no.37553/05, 15 October 2015, par 91, *Nemtsov v Russia*, Application no. 1774/11, 15 December 2014, par 72, ;see also UN Human Rights Committee: Belgium CCPR/C/79/Add.99, 19 November 1998, par 23.

461 Art. 20 (1), Universal Declaration on Human Rights (**General Assembly resolution 217 A**)

462 Art. 19 and Art. 21, International Covenant on Civil and Political Rights (ICCPR)

463 Art. 15 para. 1 of the Convention on the Rights of the Child (CRC)

464 Art.10 and 11, European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR)

465 Copenhagen Document (1990) para. 9.2.

466 Charter of Paris (1990), preamble.

467 Statement adopted by the 16th Ministerial Meeting in Helsinki on 4 and 5 December 2008 (p. 5).

468 ODIHR/Venice Commission, *Guidelines on Freedom of Peaceful Assembly*, 2nd edition (2010) and a forthcoming 3rd edition (2020).



The right to freedom of assembly covers a wide range of different public gatherings, including planned and organized assemblies, unplanned and spontaneous assemblies, static assemblies (such as public meetings, “flash mobs”, sit-ins and pickets) and moving assemblies (including parades, processions and convoys).<sup>469</sup> There should be a presumption in favour of (peaceful) assemblies, without regulation to the extent possible. States have a positive duty to facilitate and protect the exercise of the right to peaceful assembly, which should be reflected in the legislative framework and relevant law enforcement regulations and practices.<sup>470</sup> Pursuant to Art. 21 (2) of the ICCPR, this right may only be restricted in conformity with the law, and only if necessary in a democratic society, in the interests of national security, public safety, public order, the protection of health or morals or the protection of rights and freedoms of others. This means that the legal provisions covering the freedom of assembly must be sufficiently clear and that imposed restrictions should be the least intrusive means of achieving a legitimate aim.<sup>471</sup> In order to be warranted, such limitations must neither be more restrictive nor last longer than needed.<sup>472</sup>

In times of public emergency, states can take measures derogating from obligations as prescribed by Articles 19 and 21 the ICCPR and Articles 10 and 11 of the ECHR. However, such measures must be of an exceptional and temporary nature.<sup>473</sup> In case of the right to peaceful assembly, restrictions of the right in certain situations might be justifiable and sufficient, not requiring the declaration of the overall state of emergency<sup>474</sup> (for a detailed discussion on the state of emergency and related restrictions, see Part I.1).

The pandemic poses particular challenges to states in this regard, as large gatherings and crowds had been identified by the WHO as particularly prone to facilitating Covid-19 transmission. This overview is not to judge

whether particular restrictions were in fact legitimate or proportionate, as that has to be determined within each specific context. In most cases, it appears that restrictions on public gatherings have been lawful and necessary, but it would require a far deeper analysis to assess whether and to what extent they were proportionate. In many cases, public assemblies were treated in the same way as other forms of social gatherings and public events, such as concerts or sport matches, school attendance, religious and private gatherings. The question whether restrictions experienced across the region were justifiable due to health concerns and whether they were within the limits of proportionality and legality needs to be determined case by case and with specific considerations of the local context in light of international standards. In April, UN Special Rapporteur on the rights to freedoms of peaceful assembly and of association outlined the main principles that states should consider when designing their response to Covid-19 threats, while respecting the right to freedom of assembly.<sup>475</sup>

According to information collected by ODIHR, in the period between March and May, the freedom of peaceful assembly was restricted in most participating States due to the pandemic. In some states, all public assemblies were banned. In others, assemblies were restricted to a certain number of participants,<sup>476</sup> or by an obligation for participants to adhere to epidemiological measures, such as maintaining physical distance from others, or wearing personal protective equipment or facemasks. Some participating States that introduced a state of emergency or equivalent regime, transferred powers from the legislative to the executive branch, which then restricted the right to the freedom of assembly through governmental decisions.<sup>477</sup> Other countries

469 *Ibid.*

470 *Ibid.* paras 31 and 33.

471 *Ibid.* paras 35 and 39.

472 See, for example, **UN Human Rights Office of the High Commissioner paper on Emergency measures and Covid 10: Guidance**

473 CCPR General Comment No. 29: Article 4: Derogations during a State of Emergency, para 1.

474 *Ibid.*, para 5.

475 See UN Special Rapporteur on the rights to freedoms of peaceful assembly and of association, **Guidelines on Freedom of Peaceful Assembly and COVID-19 restrictions**

476 During the pandemic some countries banned all public assemblies (**Mongolia**), and some even in private gatherings (**Azerbaijan**). Others banned those of more than a very few people, two (**Montenegro**) or three (**Georgia**). Most countries introduced bans on assemblies, especially larger events (**Switzerland** and the **United Kingdom**).

477 Examples include **Armenia, Azerbaijan, Belgium, Bosnia and Herzegovina, Georgia, Hungary, Kazakhstan, and Serbia**.

introduced restrictions on assemblies through temporary legislation and/or legislation linked to health and natural disaster emergencies, for instance disease prevention acts.<sup>478</sup> The degree of parliamentary oversight of the transfer of powers and the possibility to challenge regulations on the freedom of assembly in court varied from strong to complete suspension.<sup>479</sup> The duration of the restrictions also varied from indefinite to clearly limited in time. During the course of the pandemic, several countries gradually lifted restrictions.

Early in the pandemic across the OSCE region, organizers cancelled or postponed many planned public assemblies, even before restrictions or bans had been introduced. According to information received by ODIHR, in the first half of April, despite the bans and in the face of restrictions, public assemblies re-emerged, and by May around 80 per cent of the participating States were seeing some form of public assembly during the pandemic, most of them multiple times.

Some of the assemblies typical to the context of the pandemic included assemblies held in protest against the introduction, expansion or extension of restrictive measures adopted by authorities. Assemblies over perceived abuse of power by state and non-state actors seeking to pass controversial legislation or lacking of transparency in the development of plans amid the crisis were also seen. Other assemblies were organized to call for improved access to personal protective equipment and to protest increased economic challenges for citizens.

Before and during the pandemic numerous examples of assemblies, such as meetings or protests, took place online, including climate strikes, petitions and webinars. Online assemblies are still an emerging subject<sup>480</sup> and a clear definition of such assemblies does not yet exist. It is crucial that “new or alternative” ways to gather are respected both during times of crisis and other times to allow for (political) debate and joint expression of opinions. Keeping the Internet accessible is essential,

and Internet shutdowns or restrictions must not take place to avoid debate and criticism.<sup>481</sup> Online forms of mobilization and protest can, however, not be considered a full substitute to the freedom of assembly as it is guaranteed by human rights norms and standards.

The monitoring of the right to freedom of assembly has a crucial role in ensuring stronger respect for this fundamental right. Independent assembly monitoring activities are mostly exercised by civil society, NHRIs and international human rights bodies, missions or institutions, including ODIHR. Across the region, all major actors in this regard have faced difficulties and limitations to their monitoring activities during the Covid-19 crisis, except for assemblies that were happening online. At the same time, civil society organizations, NHRIs and international bodies, such as ODIHR, have remained active in monitoring developments in the region related to the freedom of assembly and raised some of the concerns and issues with respective governments.

## AREAS OF CONCERN

Restrictions on the freedom of movement indirectly affected public assemblies, such as excluding by law and regulations certain groups (for example, older people or pregnant women) from participating in protests, preventing people from traveling to demonstrations outside of their usual place of residence, or by limiting the time of day when public assemblies may take place. Persons with disabilities faced particular challenges due to imposed physical distancing rules and a lack of flexible mechanisms allowing them to safely leave their homes during mandatory quarantine; unavailability of accessible information; limited access health care services; and disruption of services and support.<sup>482</sup> These challenges contributed to the limited participation of persons with disabilities in many public gatherings or assemblies.

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478 Examples include **France** (“health emergency”) and **Norway** (Temporary legislation and the Disease prevention act”).

479 Examples include **Serbia** (suspension) and **Bulgaria** (oversight).

480 *Guidelines on Freedom of Peaceful Assembly*, para. 45.

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481 Internet shutdowns or restrictions have been reported in some countries, both prior and during the pandemic. See also Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, A/HRC/17/27, 26 May 2011, para. 30.

482 European Disability Forum, **Open letter to leaders at the EU and in EU countries: COVID-19, disability inclusive response**.

The right to effective remedy to challenge bans or restrictions on assemblies, and especially blanket bans, is an important safeguard against unjustified restrictions. This right should be in place even in times of public health emergencies when the judiciary may itself operate in a reduced mode for the same reasons. On several occasions, courts in effect upheld the right to peaceful assembly, striking down emergency regulations or individual orders, reinforcing the approach of a case-by-case assessment of public assemblies.<sup>483</sup>

Despite the pandemic, the basic principles for the use of force of the law enforcement remain unchanged: all representatives of law enforcement agencies must adhere to principles of legality, necessity and proportionality in the use of force, and officers who employ force contrary to these principles must be held accountable.

In some cases, law enforcement authorities used force to disperse assemblies that were not held in compliance with regulations, approaching participants with physical force and batons, or deploying pepper spray, tear gas and other special means. ODIHR has noted instances of unnecessary or excessive use of force in several participating States during the pandemic. Despite the pandemic, the basic principles for the use

of force of the law enforcement remain unchanged; all representatives of law enforcement agencies must adhere to principles of legality, necessity and proportionality in use of force, and officers who employ force contrary to these principles must be held accountable.

While authorities did not always attempt to end an assembly that was organized without respecting the health crisis regulations, in numerous instances participants were identified, fined, charged with infractions and felonies linked to their participation in assemblies, including non-compliance with lockdown rules and/or breach of curfew.<sup>484</sup> ODIHR has received information about countries adopting legislation and development plans that require extensive public consultation or are known to have triggered public protests and demonstrations in the past.<sup>485</sup> Some participating States already had strict legislation on the freedom of peaceful assembly in place prior to the pandemic, which have been further exacerbated during the crisis. It is important to emphasize that times of crisis should not be used as an opportunity to introduce restrictive legislation on the freedom of assembly.<sup>486</sup>

## GOOD PRACTICES

State responses to public assemblies that did not follow the laws and regulations during the pandemic varied, but, in many states, authorities allowed the assemblies to continue for at least a certain period of time. In some cases, authorities urged participants to maintain

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483 The Federal Constitutional Court in **Germany** decided on freedom of assembly related issues on several occasions during the pandemic when organizers sought preliminary injunctions. In the case of a prohibition of assemblies planned in the city of Gießen, state of Hesse, the Court found that local authorities violated the petitioner's right to freedom of peaceful assembly by failing to recognize that there was no general prohibition on public assemblies of more than two people who do not belong to the same household in Hesse, and that the city had discretion to decide in this particular case. BVerfG, **Order** of the 1st Chamber of the First Senate of 15 April 2020 – 1 BvR 828/20-, paras. (1–19). In the instance of another planned assembly, in Stuttgart, Baden Württemberg, the Court ruled that authorities failed to take the freedom of peaceful assembly into account as an exception to the general rules on protection measures, and that they did not decide based on specificities of the organizer's case and possibilities to minimize infection risks. BVerfG, **Order** of the 1st Chamber of the First Senate of 17 April 2020 – 1 BvQ 37/20-, paras. (1–29).

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484 Peaceful activists in **Poland** were administratively fined 10,000 Polish Zloty (approx. 2,205 EUR) each for violating physical distancing rules at a small protest, **10 tysięcy złotych za list artystów do Sejmu. „Karę doręczył mi do rąk własnych zamaskowany oddział policji”** [10,000 zloty for the artists' letter to the Sejm. 'Masked police unit gave me the fine'], TOK FM, 19 May 2020; Other examples of harsh penal reactions include: In **Greece**, the penalty for violating physical distancing rules was 1,000 Euro, while in **Georgia** the violation of state of emergency rules could amount to a fine up to 5,000 Euro and imprisonment of up to 3 years for repeated violations.

485 For instance, ongoing legislative processes to pass stricter legislation on abortion in **Poland**, where similar proposals had previously caused large-scale protests.

486 This has been the case in **Kazakhstan**, although there have also been some improvements in the newly adopted law.

physical distance from each other.<sup>487</sup> In some cases, police engaged with protesters and followed flexible, ‘do-no-harm’ approaches, thus avoiding greater health risks and provocations.<sup>488</sup> During assembly, police often enforced social distancing rules and issued fines to those who were not complying with the required

measures. Law enforcement services in various states also allowed people to hold assemblies for some time before urging them to disperse. Anti-conflict and similar units of law enforcement specifically deployed to communicate with organizers and participants were present and active at several assemblies during the pandemic.

487 In **Romania**, General Directorate of the Gendarmerie in Bucharest urged people not to participate in a planned assembly and cautioned them that organizing and conducting an assembly was prohibited, but in the same message published an infographic with instructions how to behave during an assembly. See: **“A doua zi de protest al celor care neagă existența coronavirusului în Piața Victoriei din București”** [The second day of coronavirus deniers protest at Victory Square in Bucharest], Radio Europa Liberă România, 16 May 2020

488 The State Police of **Latvia** engaged with the organizers/ participants and the civil society organizations and tried to dissuade them from publicly commemorating 9 May at the Riga monument. The police subsequently decided not to block the access to the monument to ensure the shortest possible stay of people who eventually came to the monument **“Piespriež pirmos sodus par pārkāpumiem 9.maijā; policija noliedz labvēlību pret pārkāpējiem”** [First penalties imposed for 9 May violations; police deny favouring offenders], TVNet.lv, 13 May 2020.

ODIHR observed that some assemblies were organized in motor vehicles or on bicycles, as a largely safe (and physical distancing compliant) manner of publicly expressing views during a health emergency. ODIHR noted that in most cases these assemblies were not viewed by the authorities as problematic from a public health perspective.<sup>489</sup>

489 However, the Constitutional Court of **Spain decided** against holding one such assembly, with a single participant planned per vehicle, ruling that without safety guarantees in the situation of the highest risk of infection, the right to life outweighs the right to freedom of assembly.

490 Guidance can be found in ODIHR/Venice Commission, Guidelines on Freedom of Peaceful Assembly; 2nd edition and 3rd edition

## RECOMMENDATIONS

- Ensure, also in times of emergency, that restrictions on the freedom of peaceful assembly are clearly prescribed and easily accessible to the public, and that they are based on law, proportionate, time-bound and non-discriminatory.<sup>490</sup>
- Avoid introducing blanket bans on holding assemblies and facilitate the freedom of assembly through regulations, proportionate to the existing public health threat; authorities should engage in dialogue with organizers and/or participants on ways to decrease the risk of infections or on alternative ways to gather, and not impose unnecessary bans.
- Ensure, to the extent possible, meaningful public consultations when designing and implementing any public emergency related restrictions, reviewing restrictive temporary special measures from a gender perspective, evaluating impact on persons with disabilities, minorities, etc.
- Consider delaying legislation and development plans while restrictions on the freedom of assembly, freedom of expression and other rights remain in place; restrictions on the freedom of assembly that are inhibiting public debate is not an opportunity to pass controversial legislation or development plans.
- Ensure respect for freedom of expression, including through unhindered access to Internet and online space.
- Ensure consistent and non-discriminatory enforcement of the freedom of assembly-related restrictions. Clear instructions should be issued to law enforcement authorities, who should practice consistent and easily understandable communication with the public and apply a “no-surprise approach” to policing any public gatherings.

- Ensure that despite the health crisis, any instances of use of force by law enforcement must be in line with basic principles on the use of force.
- Ensure that fines and penalties for violating restrictions and non-compliance with epidemiological rules are applied in a proportionate way and are not excessively harsh; ensure that penalties that are equally applicable to participants in different public assemblies are applied in a non-discriminatory manner and not based on the assembly's message.
- Support and encourage civil society organizations and NHRIs' in monitoring the freedom of assembly, to the extent possible during public health crises, recognizing the positive contribution it brings to strengthening the respect for this fundamental right.

## II.2.D FREEDOM OF ASSOCIATION

OSCE commitments and international human rights standards recognize that restrictions of the right to freedom of association are only permissible in strictly limited circumstances, including in the interests of public safety<sup>491</sup> or to protect public health.<sup>492</sup> Any such restriction shall be prescribed by law in a precise, certain and foreseeable manner, must be necessary in a democratic society and, thus, proportional to their legitimate aim. A restriction shall always be narrowly construed and applied, the least intrusive option chosen, and shall never completely extinguish the right nor encroach on its essence.<sup>493</sup> In that respect, the ten key principles developed by the UN Special Rapporteur on the right to peaceful assembly and association in the context of the current health emergency is useful guidance to ensure respect for the right to freedom of association.<sup>494</sup>

Through a number of documents, most significantly the Copenhagen Document (1990), participating States have reiterated that all forms of associations, interest groups, trade unions and political parties are crucial to a vibrant democracy.<sup>495</sup>

It is crucial to see restrictions on freedom of association in the context of the shrinking space for civil society in a number of countries of the OSCE region, which has been observed in recent years.<sup>496</sup> Prior to the start of the current crisis, existing constraints included legal and administrative barriers that hindered certain types of NGOs to receive funds, both domestic and foreign, blanket restrictions on foreign funding or the introduction of new stringent reporting and disclosure obligations. Further, in some countries, negative stigmatization and discrediting of civil society groups and organizations may have hampered their operational capacity and the physical safety of their representatives. Already before the pandemic, a growing number of

491 Public safety is a broad notion involving the protection of the population at large from varied kinds of significant damage, harm, or danger, including emergencies, see ODIHR-Venice Commission **Guidelines on Freedom of Association** (2015), p. 121.

492 Art. 22 of the ICCPR and Article 11 of the ECHR. For a more detailed discussion, see PART I.

493 ODIHR-Venice Commission **Guidelines on Freedom of Association** (2015), Principles 9 and 10.

494 The UN Special Rapporteur's **statement** of 14 April 2020; see further ODIHR-Venice Commission **Guidelines on Freedom of Association** (2015); ODIHR-Venice Commission **Guidelines on Political Party Regulation** (2010); ODHR **Guidelines on the Protection of Human Rights Defenders** (2014); Council of Europe, **Legal Status of Non-Governmental Organisations**, Recommendation CM/Rec(2007)14 and explanatory memorandum; further the jurisprudence of the ECtHR which on numerous occasions affirmed the direct relationship between democracy, pluralism and freedom of association;

e.g., ECtHR *Gorzeliak and Others v. Poland* [GC], para. 88; *Sidiropoulos and Others v. Greece* para. 40.

495 Copenhagen Document (1990), para. 26.

496 See e.g., UN Special Rapporteur on the rights to freedom of peaceful assembly and of association, **Thematic Report on Civil Society Space, Poverty and National Policy** (11 September 2019), especially paras 21–27; and **Report on Trends in relation to the Exercise of the Rights to Freedom of Peaceful Assembly and of Association** (26 July 2018), Section III; UN High Commissioner for Human Rights, **Report on Practical Recommendations for the Creation and Maintenance of a Safe and Enabling Environment for Civil Society** (2016), paras. 4 and 9; **2019 Report** of the Secretary General of the Council of Europe, pages 17–19; EU Fundamental Rights Agency, **Report on Challenges Facing Civil Society Organisations Working on Human Rights in the EU** (2018); European Parliament Policy Department's **Study on Shrinking Space for Civil Society: the EU response** (2017), pp. 9–12.



human rights defenders have been subjected to intimidation and harassment (for the impacts of the crisis on the activities of human rights defenders, see the specific section above).<sup>497</sup>

This challenging environment for NGOs to operate in some participating States has been aggravated by the emergency measures introduced as a response to the Covid-19 pandemic. For example, restrictions on the freedom of expression and access to information imposed by number of States undermine the watchdog function of civil society, sideline critical voices and limit their capacity to reach the decision-making level and have some impact on policies and legislation.

In this context, there is a danger that more constraints may be imposed impeding the operation of some types of associations under the pretext of responding to the pandemic. There is a serious risk that some governments will use emergency measures in order to justify the imposition of further restrictions on civic space. This might entail consequences in the long-term perspective that may unduly and disproportionately restrict rights to freedom of expression and association.

Associations, and civil society more broadly, should be regarded as essential partners for governments when addressing the Covid-19 pandemic, especially when developing emergency policy and legislative responses, disseminating information accessible to all, and providing support and services to marginalized communities. Associations providing support or services to marginalized communities are traditionally considered particularly vulnerable and, hence, in need of enhanced protection. A state of emergency should not be used “as a basis to target particular groups, minorities, or individuals. It should not function as a cover for repressive action under the guise of protecting health nor should

it be used to silence the work of human rights defenders.”<sup>498</sup> (see also the sections on NHRIs and human rights defenders).

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## AREAS OF CONCERN

Overall, many measures adopted in the context of the pandemic do not sufficiently reflect the crucial role of the freedom of association for the functioning of democracy, and the fact that it constitutes an essential prerequisite to the exercise of other fundamental freedoms.<sup>499</sup> The restrictions on civil society during the pandemic have been significant across the OSCE region, especially the impact on their regular activities, participation in public decision-making processes, the ability to register and manage them, and their access to resources.

Restrictive laws providing for lockdown measures and containment have generally prevented associations from continuing regular operations, because in many countries their activities were generally not covered by exceptions concerning businesses and/or organizations carrying out “essential services”. Many associations have had to put planned activities on hold and tried to shift some of their work online. Associations that generally provide support to vulnerable communities have been especially limited when their activities involved physical proximity or contact, whereas civil society has a key role to play for providing support and services to the most vulnerable and marginalized people, such as

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<sup>497</sup> ODIHR, **2019 HDIM Report from Working Session 6 on Freedom of Peaceful Assembly and Association**. See further, ODIHR, **Report on “The Responsibility of States”: Protection of Human Rights Defenders in the OSCE Region** (2014–2016), 14 September 2017; UN Special Rapporteur on the Situation of Human Rights Defenders, **World Report on the Situation of Human Rights Defenders** (December 2018); Council of Europe Commissioner for Human Rights, **Human Rights Defenders in the Council of Europe Area: Current Challenges and Possible Solutions** (December 2018).

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<sup>498</sup> See UN OHCHR **COVID-19: States should not abuse emergency measures to suppress human rights – UN experts**.

<sup>499</sup> ODIHR-Venice Commission **Guidelines on Freedom of Association** (2015), para. 8.

homeless people, people in poverty, victims of domestic violence, victims of hate crimes, victims of trafficking, refugees or migrants.

At least two participating States specifically derogated from Article 22 of the ICCPR on the right to freedom of association, including San Marino that explicitly informed ODIHR of such derogation.<sup>500</sup> Some states have also considered tightening legislation regulating associations in the midst of the Covid-19 pandemic.<sup>501</sup> In others, Covid-19 pandemic related restrictions further exacerbated already stringent legislation and practices pertinent to the work of associations.<sup>502</sup>

While the participation of associations in policy and law-making is a key principle of democratic law-making,<sup>503</sup> associations and civil society have generally not

been involved nor consulted in the process of developing, implementing or reviewing emergency measures (see the section on democratic law-making above). At times, certain emergency decrees or laws expressly excluded the participation of associations in, or social dialogue during, the law-making process.<sup>504</sup>

This is especially worrisome since associations are often at the forefront of representing the interests of marginalized communities and under-represented groups in public decision-making processes. The right to public participation should be ensured in times of emergency as well, especially as this allows the specific needs and expectations of under-represented persons or groups to be taken into account, thus enhancing the effectiveness of the response to the pandemic. Some countries have also introduced provisions allegedly linked to the pandemic, which impact the independence and autonomy of associations or render the participation of associations in public decision-making even more cumbersome.<sup>505</sup>

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500 For example, see the **notification** by **Estonia** and the **notification** by **San Marino**.

501 On 4 March, in **Kyrgyzstan**, deputies of the Jogorku Kenesh approved the draft amendments to the law on associations in the first reading. The draft obliges NGOs to additionally report on sources of funding, as well as provide more information about their official activities. **Belarus** has prepared further legislation on volunteering and foreign grants for associations.

502 For example, in 2018, two **Joint Opinions** of ODIHR and the Venice Commission criticized the so called “Stop Soros” Legislative Package targeting NGOs working in the field of migration; in 2017, legislation in **Hungary** enhancing reporting and disclosure obligations for non-governmental organizations receiving foreign funding were also criticised by the **Venice Commission**; in 2018, Ukraine introduced new disclosure and reporting obligations for NGOs, which was criticized in a ODIHR and Venice Commission **Joint Opinion**; also in 2018, **Romania** introduced new regulatory requirements for NGOs which was criticized in a ODIHR and Venice Commission **Joint Opinion**; the Law on Amendments to Legislative Acts of the **Russian Federation** regarding the Regulation of the Activities of Non-profit Organisations Performing the Functions of a Foreign Agent of 2012, which requires civil society organizations receiving funding from abroad to register as “foreign agents” has been criticized by the **Venice Commission** and the OSCE Parliamentary Assembly; Article 193-1 of the Criminal Code of **Belarus** on the right of non-registered associations has been assessed by the **Venice Commission** in 2011.

503 See Moscow Document (1991), para. 18.1 according to which participating States committed to have legislation adopted “as the result of an open process reflecting the will of the people, either directly or through their elected representatives”; see also Copenhagen Document (1990), para. 5.8; see also ODIHR-Venice Commission **Guidelines on Freedom of Association** (2015) paras. 186, 207.

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504 In **Portugal**, the Emergency Decree of 3 April explicitly suspended the right to participate in the drafting of new labour legislation, which is enshrined in the Constitution for trade unions and in the Labour Code for trade unions and employers associations, insofar as the exercise of such right may delay the entry into force of urgent legislative measures for the purposes provided for in the Decree. In **Romania**, Article 33(1) of the Emergency Ordinance no. 34 of March 26, 2020 amending and completing of the Government Emergency Ordinance no. 1/1999 on the state of siege and the state of emergency, provides that: “During the state of siege or the state of emergency, the legal norms regarding decisional transparency and social dialogue do not apply in the case of draft normative acts establishing measures applicable during the state of siege or state of emergency or which are a consequence of the establishment of these states”.

505 In **Poland**, the new legislation on combating Covid-19, which entered into force on 31 March 2020, contains a provision authorizing the Prime Minister during the period of the state of epidemiological emergency to dismiss members of the Social Dialogue Council, which is a statutory forum for dialogue between employers, employees and the government, whose members are designated by trade unions and employers organizations. In **Slovenia**, Art. 42 of the Anti-Corona Act introduces new stringent conditions for public interest NGOs in the field of environmental protection to participate in procedures for obtaining a building permit, which was supposed to allow public scrutiny of the legality and environmental adequacy of the projects.

Limitations to freedom of peaceful assembly, access to information and freedom of expression have especially impacted associations.

The limitations to freedom of peaceful assembly, access to information and freedom of expression have especially impacted associations. Several participating States have adopted or amended legal provisions, or used existing ones, to criminalize the dissemination of “false information” about the pandemic.<sup>506</sup> As mentioned above, although there may well be a legitimate concern about the deliberate and malicious spread of disinformation, such criminal provisions are unlikely to comply with the principle of specificity of criminal law enshrined in Article 15 of the ICCPR and Article 7 of the ECHR due to the inherent vagueness and ambiguity of the term “false information”. Moreover, the very existence of such provisions has a chilling effect on associations and civil society in general, especially in contexts where state authorities are prone to abuse such powers to curb criticism or limit the freedom of expression (see also sections on access to information and human rights defenders above). Further, such prohibitions of “false information” are incompatible with normally applicable international standards for restrictions on freedom of expression and may unreasonably restrict the ability of civil society to monitor, analyse and report on issues of public importance.<sup>507</sup>

506 For instance, the **Azerbaijan, Hungary, Kazakhstan, Kyrgyzstan, Romania, Russian Federation, Spain, Turkey, Uzbekistan**. In **Bulgaria**, the President partially vetoed a controversial law on emergency measures that would have introduced prison sentences for spreading false information about infectious diseases. In **Bosnia and Herzegovina**, the government of the Republika Srpska had issued a decree on 18 March that prohibited causing “panic and disorder” by publishing or transmitting false news during a state of emergency, which has been withdrawn since then; see also [Press Releases](#) by the OSCE Representative on Freedom of the Media on several legislative initiatives trying to stem the dissemination of “false information”.

507 See para. 2 (a) of the Joint declaration on Freedom of Expression and “Fake News”, Disinformation and Propaganda (3 March 2017) by the OSCE Representative on Freedom of the Media, UN Special Rapporteur on Freedom of Opinion and Expression, the Organization of American States’ Special Rapporteur on Freedom of Expression and the African Commission on Human and Peoples’ Rights Special Rapporteur on Freedom of

While public authorities need to combat information that may contribute to damaging public health during a health emergency, such a goal is best achieved by ensuring access to independent and pluralistic sources of information, the disclosure of detailed data and statistics that form the basis of government decision-making and a pro-active and transparent information policy by the authorities.<sup>508</sup> Despite the importance of civil society actors, including associations, journalists and human rights defenders, freely exercising their right to seek, receive and impart ideas and information, whether concerning the crisis and its management or other subjects, several states have also limited in law or in practice the rules regulating access to public information (see access to information section in Part I).<sup>509</sup>

In many countries, the registration of associations is not possible online, and the lockdown and closure of public offices have impeded the establishment of new associations. Regulations should remain flexible so that any registration or reporting requirements can be conducted online and public administration should have in place the necessary infrastructure to facilitate this, thus simplifying the establishment and conduct of business and operations of associations.<sup>510</sup> The legislation of some States also requires that associations hold their annual general or other meetings in person.

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Expression and Access to Information, that calls for the abolishment of such provisions.

508 See also the [Press Release of the OSCE Representative on Freedom of the Media on Occasion of World Press Day 2020](#).

509 For instance, the government in the Netherlands announced at the end of April that dealing with requests under access to information legislation about Covid-19-related policies would be put on hold until at least 1 June. In **Slovenia**, the government passed a law suspending most deadlines in administrative proceedings, including those under the Public Information Access Act, thus *de facto* suspending all freedom of information requests. In the United States of America, the Federal Bureau of Investigation (FBI) announced in March that they would only accept freedom of information requests sent by mail not through its online portal, though this has changed since then. Other countries such as **Moldova, Poland, Serbia** and the **United Kingdom** have adopted measures or have made announcements concerning the extension of the times that public officials have to respond to freedom of information requests or may in practice delay the obtention of public information.

510 ODIHR-Venice Commission [Guidelines on Freedom of Association](#) (2015), para. 262.

In addition to existing legislation in some participating States already unduly limiting access to international funding and resources, the pandemic may pose additional challenges for associations to access financial and other resources. This is of particular concern with declines in donations and potential additional costs associated with the crisis, including costs associated with equipping staff to work remotely and/or to be provided with necessary personal protective equipment. Also, the rules imposed by their donors may not allow enough flexibility to re-allocate funds to address new priorities or extend deadlines for expenditures until after lockdown measures have been eased. This affects the ability of associations to provide support and services, especially to the most marginalized persons or communities.

Political parties are a specific form of associations. Pursuant to the Copenhagen Document (1990), participating States “recognize the importance of pluralism with regard to political organizations.”<sup>511</sup> While in many countries, political parties are regulated by separate legislation that supplements the regulations applicable to all associations, groups of individuals choosing to associate themselves as political parties, as well as political parties themselves, have the full protection of freedom of association and the interconnected rights of freedom of peaceful assembly and freedom of expression. Thus, many of the limitations outlined above are applicable to political parties during an emergency situation. Additionally, when election campaigns have continued during the pandemic, due to generalized, strict limitations on public gatherings and assemblies, political parties have not been able to organize public

rallies and campaigning in traditional forms.<sup>512</sup> (see the section above on elections).

## GOOD PRACTICES

Positive trends have been observed in a number of participating States, where charitable and social organizations were specifically considered to constitute “essential services” and were authorized to continue operating during the crisis.<sup>513</sup> Some states also provided for specific exceptions from restrictions or bans on movement or travel when providing support to vulnerable or marginalized people. In certain countries, measures for mitigating the impact of the pandemic on businesses are also made applicable to associations.<sup>514</sup> Rules have been adopted to facilitate the management of associations online and to extend the time-limits for the completion of reporting requirements and other administrative formalities.<sup>515</sup>

512 See ODIHR Director’s **statement** of 7 April 2020 on genuine campaigning and public debate during the pandemic.

513 For instance, several states in the **United States** have specifically exempted organizations carrying charitable and social services from the order to stay home and prohibition to travel. **Spain** and **Portugal** listed the provision of protection and assistance services to victims of gender-based violence as an essential activity to remain operational during the lockdown.

514 In **Slovenia**, the Act Determining the Intervention Measures to Contain the COVID-19 Epidemic and Mitigate its Consequences for Citizens and the Economy, also regulates the possibility of state reimbursement of wage compensation to employees of NGOs. In **France**, the support measures for businesses are also applicable to associations. In **Latvia**, crisis-affected employers and crisis-affected taxpayers, including those working in the NGO sector, are eligible to apply for a downtime allowance. **Georgia** currently is considering draft legislation that would waive income tax for certain groups of employees, specifically including the NGO sector.

515 For instance, this has been the case in **France**.

511 Copenhagen Document (1990) para 3.

## RECOMMENDATIONS

- States should ensure that the ability of associations to operate during a public health emergency is not unduly limited and may consider providing specific exceptions to allow them to continue operating and ensure access to the communities they serve.
- States should refrain from introducing blanket bans preventing associations from monitoring the police, prisons, migrant detention centres or accessing these facilities for that purpose.

- Consideration should be given to providing opportunities for associations, especially women's groups and organizations representing the interests of under-represented persons or groups to participate in the proposal, design, approval, implementation, monitoring and evaluation of responses to public health emergencies, including policy- and law-making.
- States should refrain from introducing and should repeal any criminal offenses pertaining to the dissemination of "false information" or other similar provisions and instead ensure access to independent and pluralistic sources of high-quality information.
- Authorities should provide clear, accurate, timely and accessible information to associations, civil society and the public about public health issues, extraordinary measures adopted and the management of the public health emergency.
- Seek to introduce regulations on association that are flexible so that any registration, reporting or other accounting and administrative requirements can be conducted online, including annual general meetings, while putting in place the necessary infrastructure to facilitate this, thus simplifying the establishment and conduct of business and operations of associations.
- To ensure the continued functioning of key civil society, states should extend the time-limits for the completion of reporting requirements and other administrative formalities.
- Recognize the key role many associations play in responding to a health emergency by allowing NGOs to access funds designed for legal persons to mitigate the impact of the pandemic and provide both financial and other forms of support to associations, together with the support and incentives offered to commercial entities.
- Where election campaigns continue during through the pandemic, ensure that restrictions do not have a discriminatory effect on certain political parties or candidates or contravene the principle of equal treatment.

## II.2.E FREEDOM OF RELIGION OR BELIEF

Since religious activities typically involve the gathering of larger groups of people, and since public gatherings of any type are particularly prone to spread the viral infection, the imposition of preventive measures related to Covid-19 has had a profound impact on the ability of individuals and communities to manifest their religion or belief across the OSCE region.

The freedom of religion or belief is a multi-faceted human right, embracing individual, collective, institutional, educative and communicative dimensions, and is expressly recognized in OSCE commitments<sup>516</sup> and international and regional standards. The right to the freedom of thought, conscience and religion is

non-derogable – according to Art. 4(2) of the ICCPR. States cannot derogate from their obligations under Art. 18(2) of ICCPR even in a state of emergency, declared as a result of a threat to the life of the nation.

Moreover, the inner dimension of the right to freedom of religion or belief (*forum internum*) – to have or adopt a religion or belief of one's choice and to change one's religion or belief – is afforded absolute protection. This dimension cannot be subject to the limitation clauses enshrined in Article 18 of the ICCPR and Article 9 of the ECHR. The external component of freedom to manifest a religion or belief (*forum externum*) – as elaborated in detail in the OSCE's Vienna Document (1989) – protects a wide range of acts such as the freedom to worship, teach, practice and observe one's religion or belief.<sup>517</sup>

This external dimension can be limited, but only if the limitation is prescribed by law; pursues the purpose of protecting public safety, public order, public health or

<sup>516</sup> For OSCE commitments and international standards see *ODIHR Freedom of Religion or Belief and Security Policy Guidance*, p. 12

<sup>517</sup> Vienna Document (1989) para. 16.



morals, or the fundamental rights and freedom of others; is necessary for the achievement of one of these purposes and proportionate to the intended aim; and is not imposed for discriminatory purposes or applied in a discriminatory manner.

Because religious activities typically involve the gathering of larger groups of people who do not share a household, and public gatherings of any type have been identified as particularly likely to spread the viral infection, the imposition of preventive measures related to Covid-19 has had a profound impact on the ability of individuals and communities to manifest their religion or belief across the OSCE region. The pandemic has also put the interrelationship between the right to freedom of religion or belief and the right to health, specifically in the public health context, into sharp focus.

The health crisis has posed a challenge for individuals and communities to manifest their religion or belief and has greatly affected their ability to access places of worship, observe religious holidays and participate in rituals associated with certain stages of life, such as religious funeral services. It has also impacted the ability of people to gather in homes for worship, to conduct community activities and religious processions and to teach religion or belief. Moreover, physical distancing has hampered the efforts of religious or belief communities to undertake charitable and humanitarian work and to reach out to and assist the most vulnerable people.

In response to the virus, depending on the spread of Covid-19 in different national or local contexts, certain states<sup>518</sup> chose to impose very high-level restrictions, effectively banning private prayers in public places of worship, as well as public religious gatherings. Others<sup>519</sup> imposed highly restrictive measures by banning public gatherings but allowing for private prayer to be accommodated in public places of worship. Yet others<sup>520</sup> adopted a moderate approach, allowing public

gatherings to take place, so long as they did not exceed a maximum number of participants (ranging from five to 50 participants). Certain states<sup>521</sup> opted for lower-level restrictions, allowing public religious celebrations subject to physical distancing or without any limitations. In this category, some religious or belief communities elected to impose stricter restrictions than those minimally required by law.<sup>522</sup>

## AREAS OF CONCERN

Most religious or belief communities have complied with the public health directives from their governments or have adopted voluntary restrictions on their activities following public health recommendations. However, some have refused, challenging the existing guidelines on social distancing or insisting that religious services and activities continue in person. Some of these incidents have been met with wide publicity.<sup>523</sup> In a few cases, religious leaders have been arrested and detained by the authorities, following their defiance of national and regional orders. Such arrests have resulted in social tensions and unrest.

Toxic narratives espoused by state and non-state actors in certain participating States have emerged, blaming Jews and Muslims,<sup>524</sup> in particular, for the spread of the virus. The pandemic has also exacerbated existing discrimination and intolerance on grounds of religion or belief, fuelling an upsurge in incitement to hostility or violence, conspiracy theories and scapegoating. Such negative stereotyping, stigmatization, discrimination and incitement to violence and violence based on religion or belief has particularly affected the ability of individuals and communities to manifest their freedom of religion or belief (e.g., wearing distinctive religious

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518 For example, **Cyprus, Denmark, Germany, Romania, Tajikistan, Turkey** and the **United Kingdom**.

519 For example, **Croatia, Estonia, Finland, France, Italy, Kazakhstan, Kyrgyzstan, Latvia, Lithuania** and **Uzbekistan**.

520 For example, **Czech Republic, the Netherlands, Poland** and **Sweden**.

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521 For example, **Bulgaria, Hungary, Spain** and **Turkmenistan**.

522 For a good overview, see, for example, Alexis Artaud de La Ferrière, **Coronavirus: how new restrictions on religious liberty vary across Europe**, The Conversation.

523 See, for instance, **Kyiv Pechersk Lavra Closes for Quarantine: Over 90 Coronavirus Cases Found**, hromadske.ua, 13 April 2020. The Lavra's clergy had previously called on believers to ignore state-imposed quarantine restrictions.

524 For example, **shaming Muslims for allegedly failing to adhere to lockdown measures** and a **report about global conspiracy theories about Jews**.

clothing or symbols).<sup>525</sup> (See also the section on Hate Crimes and Discrimination, below.)

As a result of the pandemic, many individuals and communities have moved their activities online. In light of this, there is a growing concern that state authorities might utilize this trend for surveillance, monitoring and the collection of digital footprints for profiling purposes. In some cases, the availability of online religious services has made it possible for women and girls to participate in collective religious practice for the first time, if they were previously not allowed to leave the house to go to places of worship by their male relatives or spouses. However, engaging in private worship or online religious activities may be very difficult or impossible for those living in oppressive households; women and girls belonging to religions or beliefs different from the male members are particularly at risk in this regard.

Religious leaders have shared and reinforced the advice of credible health authorities and helped to counteract misinformation about the pandemic. Religious or belief communities responded to needs by supporting health services and reaching out to and assisting the most vulnerable members of societies.

The widespread use of online religious services has also enabled “converts” to participate in collective religious practice, as previously they were fearful of their public participation in such activities. However, there are also cases where converts were reluctant to participate in online activities for fear of being identified.<sup>526</sup>

During the lockdown in a few participating States, there were incidents of law enforcement raiding the homes of individuals belonging to non-registered religious or belief communities. These raids were considered by

some as rising to the level of harassment.<sup>527</sup> Concerns were also raised about the health and safety conditions of those currently in detention.<sup>528</sup>

## GOOD PRACTICES

As the pandemic has progressed, a number of good practices, such as careful legal assessment of initial bans on public worship and increased co-operation between state authorities and religious or belief communities could be observed. Blanket bans on meetings in places of worship were considered excessive as they did not allow for exceptions<sup>529</sup> or as disproportionate to the objective of preserving public health.<sup>530</sup>

Religious or belief communities, organizations, leaders and actors have played a key role in responding to the pandemic across the OSCE region, often working in collaboration with public authorities and civil society organizations to make a direct and important contribution to societal resilience, cohesion and security. In many instances, religious leaders have shared and reinforced the advice of credible health authorities and helped to counteract misinformation about the virus. Religious or belief communities respond to need by supporting health services and reaching out to and assisting the

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527 See for example, in Kazakhstan “**Warned for violating coronavirus regulations, but fined for leading worship,**”

in Uzbekistan “**Despite coronavirus lockdown officials continue literature raids,**” and in Russia “**Mass raids, new arrests on “extremism” charges.**”

528 For example see **statement** from Forum 18 from 18 May, 2020.

529 For example, following the initial imposition of blanket bans on meetings in places of worship, the highest courts in **France** and **Germany** ruled to lift such bans. The German Federal Constitutional Court **argued** that “the prohibition of meetings in churches, mosques and synagogues as well as prohibition of meetings of other religious communities for the common practice of religion” has to be “provisionally suspended, as it is then impossible to allow exceptions to the ban on request in individual cases”. The Court also stated that “the competent authority – if necessary in coordination with the responsible health authority – has to deal with individual cases after a corresponding application to check whether church services can exceptionally take place with appropriate conditions and restrictions, provided that a relevant increase in the risk of infection can be reliably denied.”

530 The French Council of State **found** that the blanket ban was “disproportionate to the objective of preserving public health.”

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525 See, for instance, a **report** on how a religious community in **France** was scapegoated by politicians and media.

526 ODIHR received information that despite the lockdown, law enforcement officials in certain participating States have continued to harass and raid the homes of individuals belonging to non-registered religious or belief communities in disregard of the existing health and safety measures to combat the virus.

most vulnerable members of societies. Many leaders also promote a much-needed sense of solidarity and hope, especially against the backdrop of great stress and anxiety, as well as rising nationalist tendencies, xenophobia and division.

In some states, governments have engaged in constructive dialogue and collaboration with religious leaders and actors to ensure an evidence- and

science-based and gender-sensitive policy response to the pandemic.<sup>531</sup>

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531 As a recent **example** of effective co-operation between authorities and civil society related to the easing of lockdown restrictions, religious leaders and the **United Kingdom** government have established a taskforce to develop a plan to enable the phased, safe and evidence-based reopening of places of worship.

## RECOMMENDATIONS

- Ensure that any limitations imposed on the right to manifest freedom of religion or belief are prescribed by law, necessary for the achievement of the legitimate aim of protecting public health, are proportionate and non-discriminatory and framed in a gender-sensitive manner.
- Ensure that such limitations are accompanied by guidance for the authorities responsible for implementing them and those affected, in order to minimize the potential misuse or lack of implementation of such measures.
- Ensure that individuals and communities have effective recourse to appeal or review measures in question and/or decisions taken regarding their implementation.
- Make sure that in the process of imposing limitations newly established religious or belief communities and those more recently established or numerically smaller religious or belief communities are afforded equal protection.
- In consultation with all religious or belief communities and taking gender considerations into account, periodically review the restrictions imposed, monitor their impact and adjust the level of restrictions in accordance with the evolving health and risk considerations.
- In cases when religious or belief communities resist implementing measures, avoid sensationalizing or misrepresenting such developments. They should not attribute blame to the community as a whole and should sanction only the individuals concerned, as appropriate.
- Ensure that the competent authorities that monitor places of worship for compliance with preventive measures are trained in both religious literacy and in freedom of religion or belief, deal with those attending places of worship with due sensitivity and are aware of and trained to deal with potential issues specific to men and women, including the different ways in which they might exercise their freedom of religion or belief in those spaces.
- Take steps to understand how the right to freedom of religion or belief of women and girls and young people is affected in oppressive homes and develop appropriate responses to address these concerns.
- Government leaders should speak out strongly and quickly against any forms of incitement to discrimination, hostility or violence on grounds of religion or belief; they should also proactively promote a counter-narrative of solidarity, hope and inclusion.
- Ensure that privacy and personal data are adequately protected in light of increased use of online media and technology by religious or belief communities.
- Establish permanent channels of communication and/or focal points at national, regional and local levels to build trust with representatives of different religious or belief communities.
- Proactively and systematically engage with all religious or belief communities within their jurisdiction to enable the phased, safe and evidence-based reopening of places of worship.

- Hold regular meetings with the focal points from religious or belief communities at national, regional and local levels. Such meetings should be used to set up crisis management systems, to ensure the best possible joint planning and response to emergency situations.

## II.2.F THE RIGHT TO A FAIR TRIAL AND MONITORING OF TRIALS

All participating States have made significant commitments to respecting and protecting the right to a fair trial.<sup>532</sup> This includes commitments to elements of such as the right to a fair and public hearing by a competent, independent and impartial tribunal established by law,<sup>533</sup> and the right to a hearing within a reasonable time.<sup>534</sup> These commitments are reiterated in several international human rights conventions.<sup>535</sup>

Specifically in criminal cases, states are obligated to respect the right to be presumed innocent until proven guilty,<sup>536</sup> the right to defend oneself in person, and the right to legal assistance.<sup>537</sup> These rights are applicable regardless of whether an action is classified as criminal offence or an administrative offence or other offence under domestic law.<sup>538</sup> It is rather the nature of the offence and the severity of the penalty applied that are decisive.<sup>539</sup>

While the fundamental principles of fair trial, including the presumption of innocence shall not be deviated from, states can limit certain aspects of the right to a fair trial.<sup>540</sup> For example, courts may restrict public access to the entirety or parts of a trial to protect the privacy of the parties or other participants in the process. Such limitations must be provided for by law and be necessary and proportionate. Limitations must not be applied in such a way or to such an extent that the very essence of the right to a fair trial is impaired.<sup>541</sup>

Under no circumstances can states invoke Article 4 of the ICCPR as justification for acting in violation of peremptory norms of international law by deviating from fundamental principles of fair trial,<sup>542</sup> and states always have an obligation to ensure that the legal guarantees necessary to uphold the rule of law remain in force.<sup>543</sup> States are not allowed to derogate from certain fair trial related rights, such as the prohibition of retroactive criminalization,<sup>544</sup> the right of detained persons to be brought promptly before an (independent and impartial) judicial authority to decide without delay on the lawfulness of detention,<sup>545</sup> the presumption of innocence and

532 For instance, the Copenhagen Document (1990) and Moscow Document (1991).

533 Copenhagen Document (1990) para. 5.15.

534 Vienna Document (1989) para. 13.9.

535 For instance, ECHR, Art. 6 and the ICCPR, Art. 14. In these conventions, several features of the right to a fair trial are established, such as 1) a fair and public hearing by a competent, independent and impartial tribunal established by law, 2) to be presumed innocent until proved guilty, 3) to be informed promptly and in detail in a language which he understands of the nature and cause of the charge or accusation, 4) to examine or have examined witnesses against him or her and to obtain the attendance and examination of witnesses on his or her behalf under the same conditions as witnesses against him or her, 5) to have adequate time and facilities for the preparation of the defence and to communicate with counsel of one's own choosing, 6) to not be compelled to testify against oneself, 7) to have one's conviction and sentence reviewed by a higher tribunal.

536 Copenhagen Document (1990) para. 5.19.

537 Copenhagen Document (1990) para. 5.17.

538 See for instance *Deweert v Belgium*, no. 6903/75, ECtHR 1980.

539 See for instance *Engel and Others v the Netherlands*, no. 5100/71; 5101/71; 5102/71; 5354/72; 5370/72, ECHR 1976.

540 CCPR, General Comment no. 29, para. 11.

541 See for instance **Siracusa Principles on the Limitation and Derogation Provisions in the International Covenant on Civil and Political Rights**, (1985) (Siracusa Principles), Art. I. Limitation Clauses.

542 CCPR, General Comment no. 29, para. 16; and General Comment no. 32 (2007), para. 6. These would include the right to be tried by an independent and impartial tribunal (CCPR General Comment no. 32 (2007), para. 19); the presumption of innocence (CCPR General Comment no. 32 (2007), para. 6); the right to access to a lawyer; and the right of arrested or detained persons to be brought promptly before an (independent and impartial) judicial authority to decide without delay on the lawfulness of detention and order release if unlawful/right to habeas corpus (CCPR, General Comment no. 29, para. 16; and **General Comment no. 35, Art. 9 (Liberty and security of person)**, para. 67).

543 Moscow Document (1990) para. 28(2).

544 ICCPR, Art. 4(2) and 15(1).

545 CCPR, General Comment no. 29, para. 16; and **General Comment no. 35, Art. 9 (Liberty and security of person)**, para. 67.

the independence of the judiciary.<sup>546</sup> ODIHR noted that even in countries that formally derogated from human rights instruments, their notifications lacked details on concrete limitations of fair trial rights.<sup>547</sup>

Prior to the pandemic, multiple issues regarding participating States respecting the right to a fair trial were reported, including persecution of defence attorneys in sensitive cases.<sup>548</sup> Further, ODIHR's previous work showed that fair trial rights were often negatively impacted when participating States declared states of public emergency to combat security threats.<sup>549</sup>

## AREAS OF CONCERN

In response to the pandemic, most participating States (partially) closed their courts and examined only urgent matters (for more on prioritization of cases see Section on the functioning of courts, above). In many of these cases, courts limited the physical access of the public and media to court hearings and held hearings remotely by using information and communication technologies (ICT). The increased use of ICT by courts raised serious challenges to respect the right to a fair trial and access of the public to hearings, in particular, in criminal cases.<sup>550</sup> Further, the use of remote hearings was not

sufficiently regulated and therefore questioned by some judges.<sup>551</sup>

Existing and emergency legislation generally lacked sufficient guidance for court officials to ensure the observance of the right to a fair trial during the pandemic. In some cases, judicial self-governing bodies and courts issued guidance and advice,<sup>552</sup> however, such recommendations or instructions does not substitute a firm legal basis for conducting trials in such circumstances.

An important feature of the right to a fair trial is that trials should be public.<sup>553</sup> It builds trust in the judiciary and allows the public, including media, to attend all stages of trials and understand their nature. Publicity discourages possible abuses, such as false charges or excessive judicial sanctions and contributes to the overall fairness of trials.<sup>554</sup> It further contributes to the perception of impartiality of those adjudicating.<sup>555</sup> For

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accused. MEDEL Institute E-Book, Justice and Challenges in Times of Pandemic in Europe, 1 June 2020.

For instance, in **Serbia**. See **Commentary: Preserving procedural safeguards during the COVID-19 crisis – a Serbian perspective** Vladimir Hrle, Fair Trials, 29 April 2020.

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546 See for instance Human Rights Committee, General Comment 29, para. 16. Guarantees of fair trial, including judicial independence may never be made subject to measures of derogation that would circumvent the protection of non-derogable rights such the prohibition of torture, prohibition of slavery, right to life, the presumption of innocence in criminal proceedings, the prohibition of retrospective criminal law and the availability of a remedy. See also ODIHR expert meeting report **Fair trial rights during state of conflict and emergency**, October 2016.

547 Participating States that made formal derogations from human rights treaties, often made no mention of any intention to limit the right to a fair trial. See for instance the notifications to the Council of Europe by **Albania, Armenia, Georgia and Romania**.

548 See, for example, an **NGO report** to the OSCE Human Dimension Implementation Meeting 2018 on **Azerbaijan, Kazakhstan, Tajikistan and Ukraine**.

549 **Fair Trial Rights during States of Conflict and Emergency: OSCE/ODIHR Expert Meeting Report** (2016).

550 In **Sweden**, the use of video conference in court increased by 101 per cent in May 2020 compared to the previous year, according to a **report**. See also **statistics** from the **United Kingdom**. In many jurisdictions, the use of ICT was approved in a haphazard manner, sometimes without proper consideration of safeguards, such as consent of the

551 In some countries, the criminal procedure code and other legislation only foresee trials where the accused is physically present. In such jurisdictions, it is questionable to hold a trial where the accused is present only via video link or other remote technology. A court or tribunal is not considered established by law if it does not have authority to try a case established in domestic law, see for instance *Richert v. Poland*, no. 54809/07, ECtHR 2011.

552 In the **United Kingdom**, judicial self-governing bodies and the Lord Chief Justice issued guidance continuously throughout the pandemic. See for instance **Practice Direction 51y – Video or Audio Hearings During Coronavirus Pandemic**. In **Romania**, the Superior Council of Magistrates issued instruction on which cases to prioritize. In **Ukraine**, the High Council of Justice introduced **recommendations for courts on ensuring stable operation under quarantine conditions**. In **Georgia**, the High Council of Justice adopted **Recommendations to prevent the transmission of Coronavirus**.

553 See UDHR Art. 10 and 11(1); ICCPR Art. 14(1); ECHR Art. 6(1) and the Copenhagen Document (1990).

554 See Chapter IV of the **OSCE/ODIHR Legal Digest of International fair Trial Rights (2012)**.

555 The essence of the right to a fair trial is to have an independent and impartial tribunal established by law. It is not enough that judges and courts are free from political interference, they should also be perceived as such, see for instance *Ergin v. Turkey*, no. 47533/99 ECHR or *Bochan*



these reasons, states should take all possible measures to ensure that the trial is held in public.<sup>556</sup> Judges can restrict the publicity of trials only in very limited cases,<sup>557</sup> and should provide a reasoned court decision in such case.<sup>558</sup>

The pandemic has led to substantial limitations on the right to a public hearing, impacting transparency and the ability of trial monitors and the media to observe the process.

One valuable tool to reinforce publicity of trials is trial monitoring. Specialized trial monitors can attend hearings and assess the performance of professional trial participants, such as judges, prosecutors and attorneys, and the observance of the right to a fair trial.<sup>559</sup> Reports that elaborate on the findings from trial monitoring activities may result in judicial reforms, which consequently may lead to a more fair and transparent justice system. Monitoring trials is particularly important in situations where the judiciary is under pressure for various reasons, including during a public health

emergency. ODIHR (and OSCE field operations) have conducted trial monitoring on many occasions,<sup>560</sup> and developed important tools to enable monitors from civil society to effectively observe the respect of fair trial rights in courts.<sup>561</sup>

During the height of the pandemic, ODIHR received reports about substantial limitations of the right to a public hearing, impacting transparency and the ability of trial monitors and the media to observe the process. Although some courts held in-person hearings with the physical participation of parties, trial monitors and the public were often not allowed to attend.<sup>562</sup> Other courts used ICT to hold remote hearings, but they failed to provide effective access to the public and trial monitors to such hearings. Further, the transparency of the process was limited by the lack of schedules for remote hearings or information on how to connect to ICT platform, Internet connectivity issues and incidents of trial participants being disconnected were reported.<sup>563</sup> Some courts sought to compensate in part for the lack of public access by broadcasting hearings, however, shortcomings remained. Further, as violations of quarantine and lockdown measures began being prosecuted there was public interest in transparent court processes for these cases.<sup>564</sup>

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*v. Ukraine, no.7577/02 ECHR (2007), para 65 and 66. See more about this in the Section of the report on functioning of courts.*

556 States have a positive obligation to ensure publicity through targeted actions. Such measures may include providing adequate venue for the court, which is accessible to the public, having a court room which can accommodate some persons in addition to parties.

557 Art.6 (1) of ECHR envisages that: “[...] the press and public may be excluded from all or part of the trial in the interests of morals, public order or national security in a democratic society, where the interests of juveniles or the protection of the private life of the parties so require, or to the extent strictly necessary in the opinion of the court in special circumstances where publicity would prejudice the interests of justice [...]”.

558 Although states can restrict the publicity of trials as an exception, see ICCPR, Art. 14(1) and ECHR Art. 6(1), the issue of public health is not expressly mentioned under such exceptions. Some interlocutors suggested that during the pandemic states should formally derogate from fair trial obligations under national and international law before effectively limiting publicity of trials, at least in the absence of a substitute such as video broadcasting of proceedings, see **Guidance Note of International Commission of Jurists (ICJ), The Courts and COVID-19**, 6 April 2020.

559 In Copenhagen Document (1990), para. 12, participating States committed to allow observation of hearings as a measure to build public trust in the judiciary.

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560 Information about OSCE/ODIHR's previous trial monitoring projects can be found in the following country specific trial monitoring reports: **Georgia** in 2014, **Belarus** in 2011 and **Armenia** in 2010.

561 See **OSCE/ODIHR's Reference Manual on Trial Monitoring for Practitioners** and **OSCE/ODIHR Legal Digest of International fair Trial Rights (2012)**.

562 For example, in **Georgia**, trial monitors initially faced difficulties accessing remote hearings but this was later resolved with some courts facilitating access. Further, during the **Annual Trial Monitoring Meeting of May 2020**, ODIHR was informed by a civil society organization that in **Armenia** the public was not being granted access to remote court hearings and trial monitoring activities had to be temporarily suspended.

563 For example, it was reported that during a remote hearing in **Kazakhstan**, the court secretary disconnected one of the defence lawyers from the hearing for a short period based on instructions from the judge. This reportedly happened after the lawyer had made allegations about the judge being biased.

564 In **Serbia**, a person was sentenced to three years imprisonment for violating the obligatory quarantine after returning from abroad. The trial was conducted remotely via Skype. Detailed information about the situation in Serbia can be found in the report **“Human Rights and Covid-19 – Analysis of the changes in legal framework during**

OSCE participating States have referred to the right to a fair hearing as being part of those elements of justice that are essential to the full expression of the inherent dignity and of the equal and inalienable rights of all human beings.<sup>565</sup> Further, the principle of equality of arms means that the procedural conditions at trial and sentencing must be the same for all parties. It calls for a “fair balance” between the parties, requiring that each party should be afforded a reasonable opportunity to present the case under conditions that do not place her/him at a substantial disadvantage vis-à-vis the opponent.<sup>566</sup>

Among the minimum guarantees for a fair trial are:

- The right to be informed of the charges promptly, in detail and in a language understood by the defendant;
- The right to have adequate time and facilities to prepare the defence, including the right to communication confidentially with legal counsel;
- The right to a lawyer of one’s choice, with free legal assistance if the defendant does not have the means to pay for it;
- The right to be present at the trial; and
- The right to obtain the attendance and examination of defence witnesses.<sup>567</sup>

Remote hearings may seriously limit the ability of states to ensure these minimum guarantees and therefore, in many participating States, procedural legislation allows the use of ICT rather as an exception in certain situations when trial participants cannot attend some hearings or for reasons of protecting certain trial participants.<sup>568</sup> Still, the use of remote hearings during the

pandemic should not automatically amount to a fair trial violation if the courts took all possible efforts to prevent it, i.e., the restrictions should be proportionate and necessary.<sup>569</sup>

The rights to adequate time and facilities to prepare a defence and to confidential communication with legal counsel was particularly difficult for states to ensure when strict quarantine and lockdown measures were in place. In some participating States, defence lawyers could not obtain special permissions to travel to or to enter detention facilities and communicate with their clients.<sup>570</sup> Further, when communication between defendant and counsel is confined to video communication, this must remain private.<sup>571</sup> Privacy is difficult to ensure through ICT communication particularly when the defendant is in a place of detention.

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all trials are held with the physical participation of participants in front of judges. Nevertheless, some parts of the proceedings can be held remotely as an exception. For example, art.110 stipulates that some in cases when there are serious reasons to believe that the life and physical integrity of witnesses or of their relatives is endangered; courts may allow remote interrogation of such witnesses with the use of ICT. The legislation establishes a list of guarantees against possible abuses. In particular, judges need to issue a formal decision in this sense and to provide reasoning on the need to undertake remote interrogation of witnesses. Moreover, judges should ensure that defendants and their lawyers have all possibilities to address questions. Although the witnesses interrogated through such remote procedure may be physically outside the court building, they should provide the statements only in the presence of an instruction judge. The **statements** of such witnesses should be considered by the court as evidence only to the extent their validity is confirmed by other evidence.

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569 See International Commission of Jurists **paper**, *op.cit.*, page 5, “[...] If they (the use of ICT) are based in law, time-limited and demonstrably necessary and proportionate in the local circumstances of the present outbreak, and do not for instance prevent confidential communication of a person with their lawyer, in principle such adaptations of modalities can be a proportionate response, at least in civil matters and criminal appeals...].”

570 For example, in **Kyrgyzstan** and **Uzbekistan**, special travel permits had to be issued by the authorities in order to move around during the lockdown; however, such permits were not issued to private advocates and defense lawyers. For that reason, some lawyers’ ability to operate during the state of emergency was significantly hampered and this also affected the defendants’ right to effectively select a lawyer of his/her own choice.

571 See for instance *Gorbunov and Gorbachev v. Russia*, no 43183/06 and 27412/07, ECtHR 2016.

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**a state of emergency and impact on enjoying human rights**” published on 7 May 2020 by the Serbian NGO Lawyers’ Committee for Human Rights (YUCOM).

565 Copenhagen Document (1990) para. 5.

566 Article 14 of the ICCPR states that “All persons shall be equal before the courts and tribunals... In the determination of any criminal charge against him, everyone shall be entitled to the following minimum guarantees, in full equality.”. See also **ODIHR Legal Digest of International Fair Trial Standards**, citing *Werner v Austria* [1997] ECHR 92, para 63; *Coëme and Others v Belgium* [2000] ECHR 250, para 102; *G. B. v France* [2001] ECHR 564, para 58.

567 See for instance Copenhagen Document (1990), para. 5.12. and 5.17, ECHR, Art. 6(3c) and ICCPR, Art. 14(3d).

568 For instance, Criminal Procedure Code of the Republic of **Moldova**, Law No.122 from 12 June 2003, envisages that

Recognizing this, some courts consulted the lawyers on whether hearings could take place or need to be postponed. Still courts need to balance the need to hold a hearing with the necessity to guarantee defendant's rights, including the right to examine witnesses and evidence, which some judges argue is not possible in all cases through the use of ICT.<sup>572</sup> Further, while the increased use of ICT for transferring electronic files and correspondence may increase the efficiency of trials, it also raises concerns in respect of the privacy of such communication.

The impact of other fair trial rights must also be balanced with the right to trial without undue delay.<sup>573</sup> States faced challenges not only in ensuring that everyone deprived of his or her liberty had the possibility to bring proceedings before a court to challenge the legality of the detention,<sup>574</sup> but also in ensure the right to be tried without undue delay.<sup>575</sup> In a number of states, courts had to postpone hearings as the presence of the necessary trial participants could not be facilitated.<sup>576</sup>

Where remote hearings were held, participants were dependent on their ability to use ICT, the quality of communication platforms and quality of the Internet connection. Not all trial participants have the necessary knowledge, skills and material possibilities to access hearings through ICT and therefore, remote hearings may restrict their rights to effectively participate in hearings and to defend their legitimate interests. Further, consideration must be given for the specific needs of persons with disabilities to have equal access to participate fully in hearings.

## GOOD PRACTICE

As a good practice, some states introduced regulations or recommendations to provide a clear framework for the increased use of remote hearings and ICT equipment by the courts in times of emergency,<sup>577</sup> and clarity on judicial discretion on holding remote hearings or not.<sup>578</sup> Some individual courts facilitated the participation of trial monitors through connection to online hearings.<sup>579</sup> As a good practice, some courts made preparations well in advance which allowed online hearings to be held as smoothly as possible from a technical point of view,<sup>580</sup> and for some courts a certain level of formality was maintained despite the hearing being

572 During ODIHR Webinar on Functioning of Courts during Covid-19 Pandemic, 4 June 2020, some judges participating stressed that cases where the main facts are disputed and where live evidence has to be examined are unsuitable for remote adjudication.

573 Anyone involved in court proceedings has a legitimate interest in having the trial take place within a *reasonable time*. Excessively lengthy investigations and proceedings may violate the right to a fair trial, see for instance *Dobbertin v. France*, no. 13089/87, ECHR 1993. However, such a right cannot be observed at the detriment of the right to effective defence.

574 See Working Group on Arbitrary Detention, **Deliberation No. 11 on prevention of arbitrary deprivation of liberty in the context of public health emergencies** (8 May 2020), para. 5; **Report of the Working Group on Arbitrary Detention to the UN Human Rights Council**, A/HRC/22/44, 24 December 2012, paras. 42–51; **General Comment no. 35** on Art. 9 of the ICCPR (Liberty and security of person), para. 67.

575 Article 14(c) of the ICCPR.

576 For instance in the **European Union**, there was difficulties executing the surrender of persons under the auspices of European Arrest Warrant, **EJJUST Report the impact of COVID-19 on judicial cooperation in criminal matters**, p3. In the **Netherlands**, due to the lack of video technology in detention facilities the time each suspect could only use the connection was restricted to 45–60 minutes per hearing, <https://www.fairtrials.org/news/short-update-challenges-right-fair-trial-netherlands>.

577 For example in **France**, Ordinance n°2020-303 adapts the rules applicable to courts' ruling on criminal matters and makes it possible for Judges to use IT technologies (electronic or audio), even without the consent of the accused, see MEDEL Institute E-Book, Justice and Challenges in Times of Pandemic in Europe, 1 June 2020, page 18.

578 For example in **Croatia** and **Georgia**, general recommendations and guidelines were provided, but in the end it is up to the individual judge to decide if a case is considered as urgent and suitable for online hearing, as discussed in the ODIHR webinar on the Functioning of Courts in the aftermath of COVID-19 pandemic, 9 June 2020.

579 For example in **Georgia**; while general access to trial monitors to observe criminal court proceedings was not granted by the High Council of Justice due to technical difficulties, trial monitors from civil society were still permitted by Tbilisi City Court to connect to some hearings.

580 For example, in **North Macedonia**, the court had prepared and shared in advance a set of detailed instructions on how to connect to a video hearings and how to behave during the hearing (e.g., that trial monitors were encouraged to keep their microphone muted and connect well in advance). A technician was present throughout the hearing and was ready to assist in case of any technical difficulties.

held online.<sup>581</sup> Although there was no unified practice on what platform to use for online hearings and much effort is still needed to ensure confidential communication between lawyer and client, most platforms did provide for some level of private communication between clients and lawyers either in via the chat function

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581 For example, in **North Macedonia** the judges wore their robes and the attendees stood up when the verdict was delivered.

or in separate breakout rooms.<sup>582</sup> Finally, some courts broadcasted hearings live to ensure transparency.<sup>583</sup>

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582 Online hearings in **North Macedonia** were conducted via Microsoft Teams, while the Zoom platform was used in **Kazakhstan**. Although the platforms provided an option for communication, there were concerns raised on whether communication could happen in a secure manner.

583 For instance, in the **United States**, the **Supreme Court allowed lived broadcasting of hearings**. Also the Supreme Courts in **Bulgaria** and in the **United Kingdom** livestreamed court sessions via YouTube during the pandemic.

## RECOMMENDATIONS

- Develop in co-operation and consultation with civil society and legal professionals a solid legal framework for the conduct of remote proceedings and use of ICT during a state of emergency. Such legislation should be fully compliant with fair trial standards and provide the relevant fair-trial guarantees.
- Ensure that all hearings are held in person where fair-trial rights cannot otherwise be guaranteed and that the physical presence of parties in court hearings remains the rule and the recourse to remote proceedings should be made only as an exception.
- Develop standards or protocols to be used by courts for the conduct of remote proceedings with concern for privacy and data protection, which should cover the following issues: how to identify the parties, how the parties should certify their statements, what ICT should be used, what personnel should be in charge of ICT, what should be their professional qualification, etc.
- Provide the necessary financial resources to courts to conduct remote proceedings that should cover: the necessary technical equipment, connection to the Internet, training for the staff in charge with the use of this equipment, etc.
- Develop the legal basis and allocate sufficient financial resources to guarantee the access of vulnerable defendants, injured parties, and witnesses to remote hearings through the use of ICT. Such resources could cover the necessary ICT equipment, access to the Internet, training on the use of ICT, etc. Adequate solutions should be provided for the access to remote hearing of vulnerable trial participants, including persons with disabilities.
- Judges should respect the right to publicity of trials and the right to a fair hearing of defendants during the pandemic. Any restrictions should be necessary, proportionate and based on law.
- Judges should issue reasoned decisions on the conduct of remote hearings which should be available to trial participants and the public. Such decisions should clarify what fair trial restrictions will be imposed due to state of emergency/health reasons and what possible compensatory actions will be undertaken by courts to balance such restrictions.
- Judges should take steps to compensate and balance possible fair-trial restrictions triggered by the conduct of a remote hearing.
- With a view to guaranteeing the right to a fair trial in the future, judges in co-operation with governments, civil society and professional trial participants assess recent practices, existing procedures, guidelines and legislation for the managing of cases in emergency situations to identify gaps in legislation and build on emerging good practices.

## II.3. INEQUALITY, DISCRIMINATION AND MARGINALIZATION

Whereas the rights described above in general are enjoyed by all individuals in a given jurisdiction equally, it is important to emphasize that the pandemic and the resulting emergency measures have affected groups and individuals differently, depending on their gender, status, age, or belonging to a particular community. Although all humans are more or less equally susceptible to getting infected, the likelihood of falling ill or dying from Covid-19 starkly differ between certain segments of society. Moreover, access to health care and quality of healthcare is uneven. Emergency restrictions such as lockdowns or stay-at-home orders affect different people differently, and the impact on the socio-economic dimension further exacerbates inequalities.

The pandemic has aggravated societal problems such as hate crime, domestic violence and discriminatory measures against certain communities. People already in difficult situations, such as Roma in informal settlements, migrants and victims of trafficking, found themselves in particularly dire circumstances as a result of the pandemic. Often, states failed to live up to their legal and political obligations concerning non-discrimination and in doing so often exacerbated existing inequalities.

While the following analysis is not exhaustive, it aims at highlighting the particular impact the pandemic has had on vulnerable groups and those otherwise marginalized and references are made to particular participating States to illustrate this. They are only meant to serve as examples, and should not be read as indicating that similar incidents have not occurred in other states. Further, the mere fact that a country has multiple mentions is not necessarily indicative of a problem but may be a consequence of more and better reporting, access to independent media, stronger civil society, and/or the presence of OSCE field operations.

### II.3.A HATE CRIMES AND DISCRIMINATION

Addressing all forms of discrimination and intolerance, including hate crime, is an integral aspect of the

OSCE's concept of comprehensive security, and is central to its human dimension. OSCE participating States have committed to strongly condemn racial and ethnic hatred, xenophobia, discrimination, anti-Semitism and intolerance against Muslims, Christians and other religions, and have committed to address these phenomena in all their forms.<sup>584</sup> States have also committed to the equality of all before the law and to prohibiting discrimination as essential elements of justice.<sup>585</sup>

Numerous Ministerial Council declarations and commitments acknowledge the need to address manifestations of intolerance, including hate crime, especially as they may give rise to conflict and violence on a wider scale.<sup>586</sup> This includes a comprehensive set of commitments to prevent and counter hate crimes, by strengthening legislation, collecting reliable data, building the capacity of actors in criminal justice systems, and considering drawing on resources developed by ODIHR in relevant areas.<sup>587</sup> In addition to participating States, civil society also has an indispensable role in the process of addressing intolerance and discrimination.<sup>588</sup>

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584 Copenhagen Document (1990).

585 Copenhagen Document (1990).

586 Since 2003, participating States have established a normative framework of Ministerial Council decisions to reflect their commitments to address these phenomena: MC Decision 4/03, further reinforced with subsequent MC Decisions 12/04, 10/05, 13/06, 10/07 and 9/09.

587 MC Decision No. 9/09.

588 In numerous Ministerial Council Decisions, participating States have committed to establishing and intensifying co-operation with civil society to promote tolerance and non-discrimination, including at Maastricht (2003); Ljubljana (2005); Brussels (2006); and Athens (2009). At the 2006 Brussels Ministerial Council, States identified the need for "effective partnerships and strengthened dialogue and co-operation between civil society and State authorities in the sphere of promoting mutual respect and understanding, equal opportunities and inclusion of all within society and combating intolerance." Furthermore, civil society organizations have the potential to play an essential role in combating intolerance and discrimination and promoting mutual respect and understanding, including through hate crime data collection and the provision of victim support (Brussels 13/06; Maastricht 4/03).



Finally, a number of OSCE human dimension commitments recognize the vital importance of participating States' realization of their binding human rights obligations under international treaties,<sup>589</sup> in order to ensure lasting peace and security in the OSCE region.<sup>590</sup> In the context of public emergencies, the ICCPR specifies that emergency measures taken by states, *inter alia*, cannot involve discrimination solely on the ground of race, colour, sex, language, religion or social origin.<sup>591</sup> Additionally, states must guarantee non-discrimination in the exercise of economic, social and cultural rights guaranteed by the International Covenant on Economic, Social and Cultural Rights (ICESCR).<sup>592</sup>

Across the OSCE area, the pandemic has added new layers of complexity to an already difficult task of addressing discrimination and hate crime, exacerbating it by intolerant discourse and racist scapegoating of minorities. In general, victims of hate crime often belong to groups facing discrimination and marginalization on a daily basis. In times of crisis, such as the current pandemic, the threat posed by hate crimes only intensifies, heightening the sense of fear and uncertainty. Reports have proliferated of hate-motivated attacks across the OSCE region, especially against people perceived to be of Asian backgrounds, as well as other minority communities. The pandemic and its physical distancing restrictions also fuelled the proliferation of various forms of online intolerance and discrimination, which can lead to acts of violence and hate crimes.<sup>593</sup> Jewish, Muslim and minority Christian communities were also

targeted in incidents. Refugees and migrants have also found themselves singled out for abuse and hatred. Meanwhile, discrimination and hate crimes affect men and women in different ways in the context of the pandemic. While some political leaders condemned hate crime during the pandemic, others fuelled intolerance with their statements.

The pandemic has deepened existing inequalities and exposed vulnerabilities in all spheres of society, which as a result amplifies the impact of the pandemic on women simply by virtue of their sex.<sup>594</sup> This is especially concerning in the case of migrant and minority women, who are affected by multiple forms of discrimination and incidents of hate, including discrimination based on intersectionality of gender with race/ethnicity and religion.<sup>595</sup>

In the light of related OSCE commitments, at the start of the pandemic, the OSCE leadership called on participating States to ensure that "national minorities and vulnerable groups are adequately protected, and that it is made clear that discrimination and hatred will not be tolerated."<sup>596</sup> ODIHR sent out a reminder that in the current situation, intolerance and discrimination are particularly damaging,<sup>597</sup> and publicly condemned racist slogans and attacks.<sup>598</sup> A number of other intergovernmental organizations and their experts, including the UN and Council of Europe, condemned various aspects of intolerance and discrimination in the course of the pandemic. With regards to human rights during the

589 By the means of ratifying international human rights treaties, states commit to render their policies and legislation in line with their treaty obligations and duties. In this manner, human rights guaranteed under international law are protected under domestic legal systems.

590 Budapest Summit Declaration (1994), para. 14; Madrid Document (1983).

591 ICCPR, Art. 4(1).

592 CESCR, **General Comment No. 20 on Non-Discrimination in economic, social and cultural rights**, article 2(2), 2009; General Comment No. 16.

593 Participating States have long recognized the inherent challenges and dangers connected to hate speech that manifests itself as hate on the internet – "Cyberhate." (MC Decision 9/09). At the same time, States need to both ensure the freedom of expression and fulfil their obligation to renounce hate speech by public officials and ensure robust interventions whenever comments expressed on the Internet pose a threat to targeted individuals and communities.

594 See for example, Titan Alon, Matthias Doepke, Jane Olmstead-Rumsey, Michèle Tertilt, **"The impact of COVID-19 on gender equality,"** 19 April 2020.

595 For example, in the **United States**, Asian-American women reported incidents of harassment 2.4 times more than men while in **Canada**, a number of verbal attacks and physical assaults against women of Asian descent were reported in Toronto and Vancouver. In **Germany**, reports showed physical attacks on women of Asian descent. In **Greece**, a **cartoon** published in a daily newspaper showed Muslim women as virus carriers.

596 See, **A message to the OSCE Community: We need solidarity and co-operation, OSCE core values, to work together to stop the pandemic**, OSCE Chairmanship, OSCE HCNM, OSCE ODIHR, OSCE RFoM, OSCE Secretariat, 26 March 2020.

597 See, **Societies that stand together are more resilient in times of crisis**, ODIHR, 20 March 2020.

598 See, **Inclusion and not hatred needed to overcome the common crisis we face**, ODIHR, 17 April 2020.

pandemic, UN human rights experts emphasized the importance of non-discrimination in all pandemic-related policies.<sup>599</sup> They also called on states to provide support to special groups, including (but not limited to) minorities, migrants and women.

## AREAS OF CONCERN

While people around the world are affected by the pandemic, it is important to note that some groups were already in a position of vulnerability before the pandemic started. Evidence gathered during the compilation of ODIHR's annual hate crime data indicates that violent acts against particular groups and communities continue to be a concern across the OSCE region.<sup>600</sup> Already existing types of racism, xenophobia and other types of intolerance now also emerge as acts of intolerance and discrimination related to the pandemic. Some minority communities were negatively portrayed by the general public, ranging from ordinary citizens to high-level politicians and policymakers and in the media. Numerous virus-related hate incidents have been reported since the beginning of the pandemic in many participating States.<sup>601</sup>

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599 **No exceptions with COVID-19: "Everyone has the right to life-saving interventions – UN experts say,** OHCHR, 2020.

600 Hate crimes are criminal acts motivated by bias or prejudice towards particular groups of people. To be considered a hate crime, the offence must meet two criteria. The first is that the act constitutes an offence under criminal law. Secondly, the act must have been motivated by bias. ODIHR maintains a [website](#) that presents information from participating States, civil society and inter-governmental organizations about hate crime. Information is categorized by the bias motivations ODIHR has been mandated to report on by participating States.

601 Such cases were reported from **Austria, Belgium, Canada, Croatia, France, Germany, Italy, the Netherlands, Russian Federation, Spain, Sweden, the United Kingdom** and the **United States**. With regards to all references to particular participating States in this chapter, it is important to emphasize that they are presented to illustrate the manifestations of the phenomena described, and that these lists are by no means to be considered exhaustive. They are only meant to serve as examples, and not definite conclusions on where certain phenomena manifested themselves. In a similar vein, more information available publicly about a State may also be a consequence of more and better reporting, stronger civil society, and/or the presence of OSCE field operations. This entails the possibility that some of the described phenomena could also apply to other countries, which

As the coronavirus is widely considered to have spread from China to other countries, intolerance and discrimination was significantly directed towards people perceived to be of Asian descent in the early phase of the pandemic.<sup>602</sup> Individuals perceived to be of Asian descent also appear to have been particularly and highly disproportionately targeted in hate incidents.<sup>603</sup> The scale of the reported incidents of this type was considerably wider in several States, compared to others.<sup>604</sup> This may be a reflection of the numerical presence of the particular community in a country, their representation

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are not mentioned here. ODIHR's capacities and ensuing methodology in collecting information on hate crime and discrimination in the light of the Covid-19 pandemic did not allow for a comprehensive and uniform data collection across participating States.

602 For example, in **Austria, Canada, Croatia, Czech Republic, Denmark, France, Estonia, Finland, Germany, Ireland, Italy, Latvia, the Netherlands, Poland, the Russian Federation, Serbia** and the **United States**.

603 Incidents have been reported in **Austria, Belgium, Canada, Croatia, France, Germany, Italy, the Netherlands, Poland, Russian Federation, Spain, Sweden, the United Kingdom** and the **United States**. In terms of types of incidents, hate incidents targeting people included threats (**Austria, Canada, Sweden, Kyrgyzstan**) and physical assault (**Belgium, Canada, Italy, Poland, Spain, Sweden**), including cases of serious bodily harm. Attacks against property consisted of arson (**Italy** and **United Kingdom**) and vandalism (**France, the Netherlands, United Kingdom** and **United States**) or racist graffiti (**Canada**). In **Canada** and the **United States**, various types of property connected to or associated with East Asia were attacked, targeting cultural institutions, businesses and restaurants. Through association, members of Japanese, Korean, Singaporean and Vietnamese communities were also physically assaulted, and their businesses and property vandalised (**Canada, France, United Kingdom, United States**). In some cases, members of the Hindu community were victims of anti-East Asian hate crime, due to their facial features (**United Kingdom**). Nationals of Central Asian States living abroad were also sometime treated in a discriminatory anti-East Asian manner. In the **Russian Federation**, there were reports of its own citizens from the far east of the country, who have East Asian facial features, were mistaken for Chinese and harassed.

604 In particular, **Canada, the United Kingdom** and the **United States** stand out, most likely in relation to the availability of data and the considerable size of Asian communities in these countries. More serious attacks against Asians also happened in **Belgium, Croatia, Denmark, France, Germany, Italy, Poland, Spain** and **Sweden**. Activists also emphasized that racism directed at Chinese people is not a new phenomenon, yet the pandemic caused it to come to the surface and propagate.

and social position, the states' policy and practice on recording hate crime, as well as the level of reporting by media and civil society.<sup>605</sup> It was also reported that the usage of face masks by persons of East Asian appearance was sometimes interpreted as a sign of danger and provoked hate incidents.<sup>606</sup>

Organized hate groups whose activities consistently display hostility towards protected groups, in particular, appeared to exploit the public emergency by spreading intolerant discourse and conspiracy theories, assigning blame to different minority communities, often at the same time.<sup>607</sup> For instance, Jewish communities were targeted by anti-Semitic conspiracy theories, scapegoating related to Covid-19, and various other expressions of anti-Semitism, including hate crime.<sup>608</sup> In a similar vein, predominantly Muslim minority communities, such as ethnic Turkish minorities in Western Europe, as well as Muslim migrants and foreign Muslim students, were blamed for the spread of the virus in some participating States with majority non-Muslim populations.<sup>609</sup> At

the same time, the spread of hate online affects communities across state borders. In some states where tensions between Christian Orthodox denominations exist simultaneously on religious and ethnic grounds, the minority communities in questions reported concerns about more intensive surveillance regarding the respect for regulations limiting religious services during the pandemic, including arrests of clergy for lockdown violations.<sup>610</sup> Sikh communities reported difficulties of living in mainly multigenerational households under lockdown, while trying to keep older members safe. At the same time, the closure of gurdwaras which provide meals for the needy left vulnerable community members without access to food.<sup>611</sup> Roma communities were also frequently accused of violating public order and pandemic-related measures, as well as spreading Covid-19.<sup>612</sup> (See also the section on Roma and Sinti below.) Refugees and migrants were also blamed for the spread of Covid-19 in many participating States.<sup>613</sup> Inflammatory rhetoric by local political figures was also reported, and it may have provided legitimacy and

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605 In addition to widely spread intolerant and discriminatory discourse, sometimes by politicians and mainstream media (**Italy, United States, Russian Federation**), examples include discrimination of persons of East Asian descent in access to shops, restaurants, hotels and public transportation, or obstacles in access to healthcare, education and housing (**Estonia, Germany, Poland, Romania, Russian Federation and Sweden**).

606 Such incidents have been reported from, for instance, **Poland** and the **United States**. Virus-related anti-Asian conspiracy theories further negatively contributed to the intolerant atmosphere, as well as numerous smaller acts contributing to a hostile atmosphere (**Canada, Poland, United States**).

607 This has been the case in, for example, **Austria, Canada**, the **Netherlands**, the **Russian Federation** and the **United Kingdom**.

608 Such reports have been received from **Austria, Canada, France, Poland**, the **Russian Federation** and the **United States**, where politicians singled out Jewish communities as alleged violators of physical distancing restrictions. In **Canada**, as Jewish communities turned to online Holocaust memorial commemorations, online religious services when synagogues closed down, or online classes and other events, these were aggressively disrupted in various ways, including through displays of Nazi symbolism and anti-Semitic slurs. "Zoom bombing" emerged as a new phenomenon of deliberate intrusions characterized by the use of hateful and pornographic messages and images, and originated and flourished during the first months of the pandemic.

609 This has been reported from **Austria, Belgium, Georgia, Greece, Hungary, Poland**, the **United Kingdom** and

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the **United States**. In **Serbia** and the **United Kingdom**, untruthful claims and old video clips were circulated claiming that Muslim communities violated physical distancing measures to attend prayer and communally break the fast during the holy month of Ramadan.

610 **Montenegro**.

611 **United Kingdom**.

612 Incidents have been reported from numerous states, including **Bulgaria, North Macedonia, Romania, Slovakia** and **Spain**.

613 For example, in **Austria, Croatia, Denmark, France, Germany, Ireland, Malta, Portugal, Serbia** and **Slovenia**. In **Poland**, this belief built on already existing prejudice against migrants as "spreading disease." In **Bosnia and Herzegovina**, the local population opposed the construction of makeshift camps intended to accommodate transiting migrants (because of the applicable restrictions of movement for all, as well as to stop the spread of the pandemic) and a high-level political representative demonized migrants in the context of the pandemic and threatened them with deportation. **Hungary** expelled a group of foreign university students for alleged violations of hospital quarantine, severely affecting their personal and professional lives. In **Poland**, activists expressed concern about the lack of local information about the pandemic in the languages asylum seekers speak. In **Ireland**, concerns were expressed that asylum seekers have to share bedrooms and attend joint canteens in state-supported centres, which placed them at higher risk of contracting the virus than the majority population.

encouraged hate crimes and discriminatory acts.<sup>614</sup> (See also the section on migrants and refugees, below.)

Old age represented grounds for marginalization and discrimination in the pandemic, particularly among women and under-represented groups. One such example was the consideration of age as the criterion in making decisions on the allocation of medical treatment for Covid-19, without differentiating between various health conditions of older people. Older citizens also faced restrictions on freedom of movement, as some participating States requested older people not to leave their homes, for days or even weeks, including those living alone and without assistance.<sup>615</sup> Ageist discourse also appeared, which referred to older people as less deserving of societal solidarity and state protection.<sup>616</sup>

Women were also victims of pandemic-related gender-based hate crimes, with single and multiple bias motivations in which gender intersects with race/ethnicity and religion; women are also affected by hate crime in different ways than men.<sup>617</sup> Members of some minority groups, such as LGBTI, were in a particular situation of vulnerability in the context of the pandemic.<sup>618</sup>

For example, self-isolation and quarantine can render them vulnerable from discrimination and hate crime at the hands of their own family members. In some participating States, the state of emergency was seen as an opportunity to amend legislation that adversely impacted the LGBTI community in those states.<sup>619</sup>

The pandemic had a disproportionate impact on persons with disabilities, who in addition to concerns about contracting the virus also may have had concerns about how they would be treated if they get ill. Some disabilities make individuals more susceptible to falling seriously ill from the disease and can therefore be considered particularly vulnerable. Persons with disabilities have faced a long history of discrimination in accessing healthcare and have often been excluded, largely because of out-dated attitudes about the value

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614 For instance, in **Bosnia and Herzegovina**, a high-level political representative demonized migrants in the context of the pandemic and threatened them with **deportation**. In **Sweden**, a high-level public health official **blamed nursing-home staff** of mainly migrant background for the high number of COVID-19 cases in their country's nursing homes. The staff allegedly did not adequately apply instructions due to lack of skills in the country's language.

615 **Bosnia and Herzegovina, Serbia.**

616 In **Ukraine**, a minister of health referred to the people over 65 years of age as "corpses" who should not be in the focus of Covid-19 efforts; in the **United States**, a high-level official suggested that older people should sacrifice themselves for the sake of the economy of the country.

617 For instance, in the **United States**, women of East Asian descent were physically assaulted and insulted with racist and sexist slurs. Moreover, in **Canada** and the **United States**, a notable majority of hate incidents targeting persons of East Asian descent targeted women. According to UN Women, female health workers were also frequently targeted in hate incidents. With regards to women from Muslim communities, in **Austria, France** and **Canada**, that ban the face coverings typically used by Muslim women, the mandatory use of face masks created a paradoxical situation where the type of behaviour that was banned for them now became obligatory for all.

618 See Victor Madrigal-Borloz, UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity, webinar "**COVID-19**

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**and the Human Rights of LGBTI People**" organized by Columbia Law School, 19 May 2020. For example, in **Bosnia and Herzegovina** and **Hungary**, LGBTI community members reported that self-isolation and quarantine rendered them vulnerable to discrimination and hate crime at the hands of their own family members (Emina Bošnjak, Executive Director, Sarajevo Open Centre, webinar "**Digital Presentation of LGBTI Human Rights: Pink Report 2020**" organized by Sarajevo Open Centre, 18 May 2020. Tamás Dombos, Board Member, Háttér Society, webinar "**Minorities and Disadvantaged Groups during the Pandemic**" organized by Hungarian Helsinki Committee, 12 June 2020). In several participating States, such as **Bosnia and Herzegovina** and **Germany**, there were reports of LGBTI migrants quarantined in collective centres suffering abuse from other migrants and they could not access either safe shelter or legal aid (Amnesty International, "**Refugees and Migrants Forgotten in Covid-19 Crisis Response**," 12 May 2020; Darko Pandurević, Programme Co-ordinator, Sarajevo Open Centre, webinar "**Digital presentation of LGBTI Human Rights: Pink Report 2020**" organized by Sarajevo Open Centre, 18 May 2020; Mengia Tschalaer and Nina Held, "**Coronavirus exacerbates LGBTQI refugees' isolation and trauma**," Al Jazeera, 22 April 2020). In , Kosovo see, Dafina Halili, "**LGBTQ Life Under Quarantine**," *Kosovo 2.0*, 12 May 2020. *Please see OSCE disclaimer on page 26.*

619 For example, in North Macedonia anti-discrimination legislation was repealed leaving particularly vulnerable and marginalized communities of society unprotected against any form of discrimination; and in **Hungary**, a provision in an omnibus legislation passed on 18 May 2020, made it impossible for transgender persons to legally change their gender. The law will make it impossible for transgender and gender diverse persons to legally change their sex and/or gender marker since Art. 33 provides that all references to "sex" will now instead refer to "sex assigned at birth" in the national registry and on identity documents.



and quality of their lives that are present in many participating States. As life-saving health care resources were stretched to capacity in some countries, persons with disabilities were concerned whether they would be discriminated against or their needs brushed aside. Additionally, persons with disabilities who require assistance from others have been particularly affected by the restrictions in freedom of movement.<sup>620</sup> Persons with disabilities were also targeted by pandemic-related hate crime in some participating States.<sup>621</sup>

The process of “othering” in order to condemn extended to national and even regional identity. Individuals assumed to be nationals of states with a high number of Covid-19 cases at the time faced discrimination.<sup>622</sup> In some places, this was also the case with the countries’ own citizens returning from abroad during the pandemic.<sup>623</sup> Medical status, as well as profession, also became grounds for intolerance and discrimination. People infected or suspected to be infected with the virus, in general, were targeted by intolerance and discrimination in some participating States and threatened and/or physically assaulted. This included social workers and medical professionals, due to their presumed contact with infected people.<sup>624</sup> In some participating

States, minorities and persons of migrant background are overrepresented among essential workers, many of them women.<sup>625</sup> Especially in the health care sector, concerns were expressed about their public invisibility, and dangerously inadequate personal protective equipment that appeared to be designed for the size of an average white man.<sup>626</sup> Furthermore, discrimination, often structural in nature, in economic and social rights can create poor public health conditions in affected minority communities, which places them at special risk of contracting the virus and falling sick.

In some minority communities, such as Roma, people of African descent and/or of migrant background, discrimination in access to adequate housing, characterized by high density of housing units or entire neighbourhoods and settlements sometimes without access to clean water, exposed them to the virus and made them more likely to fall seriously ill.<sup>627</sup> Access to clean water has also been reported as an issue for indigenous communities living on reservations.<sup>628</sup> Discrimination in access to adequate health, especially if in combination

620 See, **Protect Rights of People with Disabilities During COVID-19**, Human Rights Watch, 26 March 2020.

621 For instance, in the **United Kingdom**. In **Finland**, intolerant discourse targeting persons with disabilities blamed them for allegedly using healthcare resources that could alternatively be used to fight Covid-19. Mandatory face covering also created communication difficulties both for persons who rely on lip reading, as well as medical staff working with them, as reported for instance from the **United States**.

622 For instance, in **Bulgaria**. In **Austria** and **France**, Italian nationals were exposed to intolerance and discrimination, in the light of the early expansion of the Covid-19 in Italy. Similarly, some French individuals were treated in a discriminatory manner in neighbouring countries’ areas bordering France. Anti-German pandemic-related conspiracy theories spread in some neighbouring countries. In **Portugal**, people coming from particular areas of the same country, including capital cities, known for a high number of Covid-19 infections, also faced discrimination and intolerance outside of their region.

623 For example, in **Bosnia and Herzegovina**, **Montenegro**, **Romania** and **Ukraine**.

624 Such incidents were reported in **Bosnia and Herzegovina**, **Montenegro**, **Russian Federation**, **Ukraine** and the **United Kingdom**. This was particularly an issue for medical professionals from minority communities: in the **United Kingdom**, a survey among minority

health care workers in state medical institutions showed that one in five of them experienced discriminatory behaviour. In **Poland** and **Spain**, medical staff received messages of hate because of their assumed exposure to infection. In **Canada** and the **United Kingdom**, for example, individuals and minority communities were threatened with being intentionally infected with the virus, including Jewish communities, people of East Asian descent and indigenous peoples.

625 For example, in the **United Kingdom**, **statistics** show that BAME (Black, Asian and Minority Ethnic) professionals make up about 20 per cent of the National Health Service (NHS); in the **United States**, Black and Latino people are overrepresented among essential workers, according to JoAnn Yoo of the Asian American Federation (Reimagining Racial Justice webinar, 9 June 2020). In **Canada**, many migrant workers and other non-permanent residents have been working on the front lines of the COVID-19 pandemic.

626 For example, **reports** show in the **United Kingdom**, of the 53 NHS staff known to have died in the pandemic thus far 68 per cent were BAME. In **Canada**, many female Filipino nurses working in the health sector without personal protective equipment due to the lack of work safety, were blamed for allegedly carrying the Covid-19 virus (Jeffrey Andrión, PhD, University of Toronto (Resisting Anti-Asian Racism in Canada webinar, 27 May 2020). Already in 2017, a **report** established that “most PPE is based on the sizes and characteristics of male populations from certain countries in Europe and the United States”.

627 For example, in **Bulgaria** and **Sweden**.

628 See, the **United States**, **Covid-19 Disparities Reflect Structural Racism, Abuses**, Human Rights Watch



with undocumented status and limited health insurance, put many migrant workers at risk. Many were forced to leave their jobs and return to their home countries, out of concern that they may not receive equal treatment in healthcare institutions. In some states, migrant workers were also made vulnerable through their high representation in specific high-risk workplaces, such as the meat industry.<sup>629</sup>

Furthermore, against the backdrop of the pandemic, the killings of African Americans in the United States<sup>630</sup> sparked massive anti-racist protests inspired by the Black Lives Matter movement in the United States as well as a number of other participating States. A number of hate crimes targeting people of African descent, or those supporting the anti-racist movement, were recorded in some participating States since the beginning of protests and directly relating to the protests, without explicit connection to the pandemic.<sup>631</sup> At the same time, in some States concerns were expressed about the possibility of virus propagation during public protests.<sup>632</sup>

Furthermore, the emergency measures introduced by authorities across the OSCE region to contain the spread of the pandemic appeared to frequently affect minority communities in a disproportionate manner. In terms of monitoring and ensuring the application of measures, media and civil society made allegations of disproportionate securitization of minority communities.

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Testimony to US House of Representatives Ways and Means Committee.

629 For example, the **United States**; and in **Germany** a significant number of clusters of Covid-19 infections have been linked to meat processing plants employing predominantly Eastern European workers.

630 Including Breonna Taylor and George Floyd, both killed at the hands of police, as well as the racist murder of Ahmaud Arbery.

631 These included physical assaults, threats, vehicle rammed into them, activists' signs and vehicles damaged, and churches vandalized (**United States**).

632 For example, **Belgium, Denmark** and the **United States**. Fears over the spread of the virus during the protests arose, with some participating States (e.g., **Norway**) discouraging their citizens from the participation in protests. In some States (e.g., **Germany**), the protesters made efforts to respect physical distancing recommendations as much as possible. Some scientists also suggested that use of tear gas by the police against the protesters (**United States**) may contribute to propagation of the disease.

This reportedly included minority groups, including predominantly migrant or Roma communities, being threatened with, or actually selectively placed under enforced lockdown, monitored by police, without a medical or other legitimate justification or in a discriminatory or disproportionate manner.<sup>633</sup> According to some reports, only a small number of states provided pandemic-related information in minority languages.<sup>634</sup>

There is a general continued trend of gaps in reported official data, indicating that under-reporting and under-recording of hate crimes is prevalent throughout the OSCE region.<sup>635</sup> The state of public health emergency, including the involvement of police and military in enforcing related measures, as well as the closure of many judicial institutions, can only be assumed to have further hindered access of victims of hate crimes to justice and/or deterred them from reporting hate crimes to state authorities. Lack of appropriate support to victims of hate crime, characteristic for many states before the pandemic, may likely deteriorate due to a potential shift of resources, or adoption of austerity measures, including cuts in funding of civil society organizations.<sup>636</sup> Civil society organizations often bear the brunt of supporting the victims of hate crime and have, therefore, often

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633 For example, in **Azerbaijan, Bulgaria, Georgia, the Russian Federation, Slovakia** and **Spain**. In **Belgium, France, the Russian Federation** and **Slovakia**, heavy-handed law enforcement raids, meant to monitor the implementation of restrictive pandemic-related policies, disproportionately affected minority communities, including instances of police violence. In **Romania, Slovakia, Spain, Greece, France** and **Turkey**, this was particularly the case with Roma communities, persons of African descent or those of migrant background. In **Canada**, "random checks" and profiling that police conducted in the streets, in the context of ensuring lockdown, sometimes appeared to disproportionately affect racialized minority groups. In the **United States**, an overrepresentation of people of African or Latin American descent were fined for apparent violations of physical distancing restrictions, indicating the possibility that these groups may have been disproportionately profiled and fined. In **Canada**, concerns were raised around "carding", racial and social profiling in the context of police checks on potential violations of lockdown regulations, leading to mass collection of data about marginalized people.

634 See also statements and reports by the HCNM.

635 For details, see ODIHR's annual **Hate Crime Reporting**.

636 In **Poland**, for instance, the funding of development civil society organizations was abruptly cancelled because of the pandemic.

developed expertise, good practice and standards in dealing with these victims.

The work of civil society organizations addressing hate crime and discrimination has been further hampered by physical distancing and other state-imposed restrictions due to the pandemic. Concerns were expressed that hate crimes not related to the pandemic continue to take place, for example against Roma or African-Americans,<sup>637</sup> yet civil society's limited resources do not allow for adequate research and advocacy work. Unveiling phenomena such as intolerance and discrimination in a developing crisis situation is heavily reliant on the strength and capacity of civil society and on how much media focuses on and reports such issues, which also underlines the need for heightened state attention on these issues during times of crisis. Provided that they had such capacity in terms of human and technical resources, some organizations moved their related advocacy work online. Yet, virtual space can also be unsafe for human rights defenders.<sup>638</sup>

## GOOD PRACTICES

Despite the enormous challenges with regard to confronting discriminatory practices, attitudes and structural obstacles, and facing an upsurge in expressions of intolerance and even hate crimes, many participating States, civil society actors and international organizations acted with determination to halt and reverse these trends. The long-term effects on social cohesion across the OSCE region are yet to be assessed, but some of the positive examples observed in many states may help to inspire others to follow suit.

Several participating States addressed hate crime in different forms and applied various approaches.<sup>639</sup>

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637 This was reported from **Ukraine** and the **United States**.

638 Online events focusing on addressing intolerance and discrimination were frequently interrupted by "Zoom bombing." At the same time, an intensified online presence may also make civil society organizations vulnerable to state surveillance. In addition, their work cannot reach those who cannot afford adequate technical equipment and access to the Internet.

639 For example, with regards to addressing hate crime, police services including the Vancouver police in **Canada** or other public authorities in the **United Kingdom** and the **United States** publicized data on recorded pandemic-related hate

These actions not only raised public awareness of hate crime, and emphasized the dangers of hate crime for the security of entire societies, but also sent a strong message that hate crime is recorded and adequately dealt with. High-ranking, regional and local politicians of several participating States, including presidents and prime ministers, condemned hate crime against their nationals of Asian descent.<sup>640</sup>

In the area of addressing intolerance and discrimination in the context of the pandemic, some participating States recognized the need for special support to minority communities by announcing new health-care support for, *inter alia*, indigenous communities amid the pandemic<sup>641</sup> or carried out other symbolically important acts to signal inclusiveness and tolerance.<sup>642</sup> Special commissions were created to monitor the impact of the pandemic on vulnerable groups.<sup>643</sup> Some States provided information on Covid-19 in the languages of national minorities, and/or languages of the main migrant groups in their countries.<sup>644</sup> Information on Covid-19 specifically for persons with disabilities was also provided in some participating States.<sup>645</sup>

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crime and highlighted a sharp increase compared to 2019. Special task forces on hate crime were created, as well as special funds allocated to address them. In **Canada** and the **United Kingdom**, police services also created Sign Language videos on hate crime, representing a positive example of reaching out to persons with disabilities.

640 For example, in **Canada**, the **United States** and the **European Union**.

641 For example, in **Canada**.

642 For instance, national or local authorities in **Canada**, **France**, **Germany**, the **Netherlands** and the **United States** temporarily allowed public playing on loudspeakers of the Muslim call for prayer from local mosques or prayer facilities as a sign of support for Muslim communities during the pandemic.

643 For example, in **Belgium** and in **Canada**. In terms of addressing the disproportionate impact of the pandemic on minority communities, some participating States provided a good practice of publishing detailed reports, including the Centres for Disease Control and Prevention, **COVID-19 in Racial and Ethnic Minority Groups** in the **United States**, where a number of lawmakers **declared racism a public health emergency**, and the governor of a state provided its population of African descent with free medical insurance.

644 For example, in **Sweden**, **Austria**, **Czech Republic** and **Georgia**.

645 For example in **France**, where a dedicated and Universal Design-compatible **website on Covid-19** was created for people with disabilities. Similar examples were reported in **Czech Republic** and **Finland**.

The engagement of national human rights institutions also brought some inspiring examples calling on national governments and local authorities to safeguard the rights of minorities and marginalized groups or intervened in the interest of particularly vulnerable communities.<sup>646</sup>

There have been numerous examples of civil society organizations quickly adapting to changed circumstances, and providing material or psychological assistance, whether online or in a manner adapted to local circumstances, and filling gaps left by government bodies.<sup>647</sup> This assistance was sometimes provided by minority organizations to marginalized communities, however in practice the assistance was frequently provided to any individual in need, regardless of their background. In this manner, civil society compensated for overburdened state services in a number of participating States.<sup>648</sup> In some cases, such work on behalf of marginalized communities, otherwise frequently vilified

in public discourse, also served to counter negative prejudice and stereotypes.<sup>649</sup>

In a number of participating States, civil society organizations engaged in monitoring how the pandemic directly and indirectly affected minority communities.<sup>650</sup> They also invested considerable effort into raising public awareness of instances of intolerance and discrimination, as well as hate crime, through webinars, reports, campaigns and public statements.<sup>651</sup> All this advocacy work is extremely important in the current crisis situation, with the state authorities mainly focusing their efforts on public health aspects of the pandemic. Civil society organizations, including faith-based ones, also created virtual bridge-building and dialogue between communities, countering the flourishing of prejudice, stereotypes, assigning blame and conspiracy theories.<sup>652</sup>

646 For example, in **Ireland**, the NHRI called political parties involved in government formation to safeguard human rights and equality measures amid the emergency responses to the pandemic. In **Serbia**, the NHRI called the authorities to provide particular support to Roma communities, including access to clean water.

647 For example, in **Romania**, the **United Kingdom** and **Poland**.

648 See, for instance **Inclusion Europe Coronavirus (COVID-19) pandemic**, which provided easy-to-read information on COVID-19 in four major European languages, for persons with intellectual disabilities. In some participating States, Roma civil society organizations mobilized networks of volunteers who shared information and distributed face masks and humanitarian assistance in Roma settlements. Migrant associations organized hostel accommodation for stranded migrant workers in the **Russian Federation**.

649 For example, in **Poland**, Chechen women refugees were sewing face masks, and in the **United States**, Chinese-American and Vietnamese-American communities purchased personal protective equipment.

650 For example, in **Canada**, the **United States**, the **United Kingdom**, **Germany**, **Ireland**, and through the European Network Against Racism (ENAR), a network of member organizations across Europe.

651 Some minority organizations, such as ENAR in Europe, as well as examples in the **United States**, the **United Kingdom**, **Canada** and **Spain**, actively debunked dangerous narratives presenting their communities as not respecting pandemic-related regulations. In **Hungary**, they also provided legal defence to individuals affected by discriminatory state policies in the light of the pandemic.

652 For instance, some organized webinars where representatives of different communities spoke of the rise of discrimination and hate crime during the pandemic and about the importance of inclusion and working together to address these negative phenomena. See, for instance in the **United Kingdom** **Dialogue & Debate: Faith Responses to COVID-19**, Cumberland Lodge webinar.

## RECOMMENDATIONS

- States should uphold existing commitments and international obligations on tolerance and non-discrimination.
- Condemn any form of discrimination and hate crime and abstain from any statement or action that exacerbates vulnerabilities.
- Respond swiftly to hate crimes, including those motivated by gender or sex, to record and investigate them so that the perpetrators can be brought to justice and adequate penalties imposed. Support victims

as they report their experiences, and ensure the availability of all necessary psychological, social and legal support for victims, including through close co-operation with civil society. Relevant authorities should also publicly condemn any such acts and ensure that perpetrators are brought to justice.

- Consider, where states have not done so, providing the possibility to report hate crimes online and allowing third-party reporting to police by civil society groups and equality bodies.
- Ensure that any measures and restrictions imposed due to the emergency situation are created and applied in a non-discriminatory manner, as prescribed by relevant international standards. Working together with civil society organizations and minority communities in this process is crucial.
- Ensure meaningful public participation of minority communities' representatives, in both the assessment of the situation as well as in designing and implementing the adequate remedial policies and actions, while taking into account the different needs of women and men. In the process, women and men should be equally included.
- Promote policies focusing on equality of opportunity by making the collection of equality data in the context of the pandemic a norm across the public sectors in participating States, assess how health and emergency measures have disproportionately affected minority and/or marginalized communities, adopt mitigating measures, as well as ensuring that further disadvantages are not created. Participating States should support and co-operate with civil society in the collection and analysis of equality data.
- Make sure adequate guidance is widely provided on measures taken by the state in the languages of minority communities and distributed in a manner socially and culturally appropriate for these groups.
- Stop and further prevent discrimination through disproportionate securitization and profiling of minority communities and their members in the context of the pandemic.
- Base criteria for prioritization in providing medical assistance in the context of Covid-19 on clinical appropriateness and proportionality of the treatments, and not on criteria related to protected characteristics, such as age or disability.
- States should implement the WHO guidelines for persons with disabilities.<sup>653</sup>
- Assess and improve relevant mechanisms for hate crime recording and data collection, including gender disaggregated data and assess the existing current victim support systems.
- Ensure that the consequences of the current pandemic, including the economic crisis, do not affect states' capacities to provide support to victims of hate including through appropriate funding to non-state actors and civil society organizations.
- Build law enforcement and justice sector capacities to recognize and effectively investigate hate crimes and to ensure that specialized training, focused on hate crime victims and their needs, is provided for officials and civil society organizations within the victim support structures. Enact policies, through inter-agency co-operation, to address hate crimes in a comprehensive manner.
- Prevent new outbursts of hate crime against racialized minorities by undertaking pre-emptive and proactive steps when easing physical distancing restrictions.
- For countries banning face covering typically used by Muslim women, banning or restricting the Muslim call to prayer, or requiring mandatory handshakes in some formal contexts, to consider repealing such policies and legislation, in the light of the changes brought about by the pandemic that proved these bans and obligations unfounded.

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653 These include: "Captioning and, where possible, sign language for all live and recorded events and communications. This includes national addresses, press briefings, and live social media; Convert public materials into 'Easy Read' format so that they are accessible for people with intellectual disability or cognitive impairment; Develop accessible written information products by using appropriate document formats, (such as "Word"), with structured headings, large print, braille versions and formats for people who are deafblind; Include captions for images used within documents or on social media. Use images that are inclusive and do not stigmatise disability; Work with disability organizations, including advocacy bodies and disability service providers to disseminate public health information." **World Health Organization "Disability considerations during the COVID-19 outbreak".**

- Promote policies focusing on equality of opportunity by making equality data collection and disaggregated statistics a norm across the public sector and co-operating with civil society in the collection and analysis of equality data.
- Design and implement recovery assistance in a non-discriminatory manner, with the participation of underrepresented groups affected by discrimination.
- Celebrate and harness the strength of diversity within participating States, as a means of overcoming current and forthcoming social and economic challenges of the pandemic.

### II.3.B GENDER INEQUALITY AND DOMESTIC VIOLENCE

There is an extensive acquis of OSCE commitments covering gender equality and domestic violence. Participating States have called for more equal participation of women and women's organizations in legislative, programmatic and policy development, and enhanced measures to address violence against women, including through effective investigation, prosecution and service provision.<sup>654</sup> The importance of these commitments as essential elements of comprehensive security and the human dimension has been underlined on numerous occasions. In the Moscow Document (1991), participating States recognized gender equality as a cornerstone of security and democracy in the OSCE region. In 2003, states committed to *"pay special attention to the health of women and girls, inter alia, by: Improving access to gynaecological health care,*

*including prenatal, delivery and postnatal health care services"*.<sup>655</sup> The Covid-19 pandemic and related emergency measures have presented an unprecedented challenge to live up to these standards and ensure these commitments are reality across the OSCE region.

The public health emergency responses to the pandemic have had a significantly negative impact on women's human rights, exacerbating existing gender inequalities and discrimination, and raising concerns regarding the implementation of gender equality commitments across the OSCE region. The economic impact on women is likely to be greater, as they face a higher risk than men of losing their job in the private sector. At the same time, they make up the majority of staff in the medical or care services, as well as caring for children, older people and the sick at home.<sup>656</sup> However, ODIHR monitoring has revealed low numbers of women in Covid-19 decision-making bodies such as commissions or taskforces in most participating States; limited gender analysis within crisis response and recovery planning; and an inability of many states to tackle the increased levels of economic vulnerabilities and employment discrimination against women. Quarantines, curfews, and closures of schools and other public services have intensified women's time constraints as their unpaid care work has increased. Confined living conditions due to lockdowns and self-isolation regimes, coupled with increased financial stress, unemployment and strained community resources, have compounded existing forms of gender-based discrimination. This includes violence against women, as their exposure to abuse at the hands of an intimate partner or family member has

654 2009 MC Decision 7/09 on Women's Participation in Political and Public Life; and the 2005, 2014 and 2018 MC Decisions on Violence Against Women (15/05; 7/14 and 4/18). Reaffirming the earlier two Ministerial Council Decisions (15/05 and 7/14) on Preventing and Combatting Violence Against Women, Decision 4/18 called on participating States to "ensure access to justice, effective investigation, prosecution of perpetrators, as well as provide, while respecting their rights and privacy, adequate protection, rehabilitation and reintegration support for victims of all forms of violence against women and girls" (Cf. OSCE MC.DEC/4/18 para 1); The earlier MC Decision 7/14 called also on States to "Give consideration to the signature and ratification of relevant regional and international instruments, such as the Council of Europe Convention on preventing and combating violence against women and domestic violence, where applicable". OSCE pS have also committed to "adhere to and fully implement the international standards and commitments they have undertaken concerning equality, non-discrimination and women's and girls' rights", in particular the UN Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW). (MC.DEC/14/04 - 2004 OSCE Action Plan for the Promotion of Gender Equality)

655 MC.DEC/3/03 - OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area

656 **OECD Policy Responses to Coronavirus (COVID-19): Women at the core of the fight against COVID-19 crisis**



increased, while opportunities to seek and receive vital support have diminished.<sup>657</sup>

Public services normally available to women victims of violence, including gynaecological health services, police interventions, judicial remedies and sheltering services have all been disrupted, while the risk of violence has increased. In some cases, pressure on referral mechanisms available to victims of violence, in addition to restrictions of movement, has been lethal for women, with a documented rise in femicides.<sup>658</sup>

Diversity in public and political life, policy making, advisory and decision-making bodies, as well as a gender-sensitive legislative process, translate into more representative and effective laws and policies, which benefits everyone.<sup>659</sup> An analysis of the composition of Covid-19 taskforces reveals significant gaps in terms of gender balance in many participating States. While women's representation is higher in public health councils and vaccination advisory groups, it has been low in roles with stronger links to political decision-making.<sup>660</sup> The limited integration of gender perspectives into pandemic-related crisis planning and response is likely to exacerbate existing gender inequalities. In this context, it is of concern that few participating States

are reported to be conducting gender impact assessments to guide more gender-sensitive Covid-19 recovery policies.<sup>661</sup>

Although gender statistics such as sex- and age-disaggregated data on the socio-economic impact of Covid-19 are not systematically collected across the OSCE region, such data is important to address the differential impact that emergency responses and measures have had on women and men, including those in different situations of vulnerability and risk, such as older women, adolescent girls, migrant and refugee women, women with disabilities, women deprived of liberty, and women from minority backgrounds, including Roma and Sinti, as well as indigenous women.<sup>662</sup>

The impact of the pandemic response measures on women's economic rights has been significant. Women are globally over-represented in less protected and low-paid jobs and in most hard-hit sectors, such as tourism, retail and manufacturing, and are therefore at a disadvantage as the economic situation deteriorates.<sup>663</sup> In many participating States women, particularly those who are pregnant, have been disproportionately affected by pandemic-related lay-offs.<sup>664</sup>

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657 **Covid-19 and Ending Violence Against Women and Girls, UN Women**

658 **Statement by the UN Working Group on discrimination against women and girls - Responses to the COVID-19 pandemic must not discount women and girls.** The UN called domestic violence "the shadow pandemic" alarming over its spread and extent. Many international and national governmental and non-governmental organizations have joined their voices to calls for action. Joint calls on participating States to step up measures to protect women and children were made by heads of **OSCE Executive Structures, ODIHR and the Parliamentary Assembly** as well as by **forty-three OSCE participating States**. WHO warned of a surge of domestic violence as COVID-19 cases decrease in Europe, **UN Regional Information Centre for Western Europe, COVID-19 Pandemic: Tackling the Dramatic Increase in Cases of Violence Against Women, Council of Europe**

659 ODIHR, **Making Laws Work for Women and Men: A Practical Guide to Gender-Sensitive Legislation**, Warsaw, 2017.

660 **For instance, the Covid-19 taskforce of the United States and Italy did not initially include any women. Hungary's taskforce included one woman out of 15 task force members.** For an overview of different countries' task forces see [here](#).

661 Based on the information published by the **Council of Europe** only **Serbia** and **Sweden** initially reported to be conducting gender impact assessments.

662 See also: MC.DEC/04/13, para. 2.12 on Enhancing OSCE Efforts to Implement the Action Plan On Improving The Situation Of Roma And Sinti Within the OSCE Area, With A Particular Focus On Roma And Sinti Women, Youth And Children. For the intersecting forms of discrimination and impact of pandemic-related responses and measures with relation to access to rights, see the Section on Roma and Sinti Issues. Disaggregating data on a variety of characteristics, including disability, migrant and refugee status is recommended to facilitate more inclusive decision making.

663 The economic and labour crisis created by the pandemic could increase global unemployment by almost 25 million, according to a new **assessment** by the International Labour Organization (ILO).

664 For example, an **analysis** by the state bodies in **Finland** has revealed that while the proportion of those laid off has increased overall, this has disproportionately impacted women, particularly in the age cohort of 35–45 years. In the **United States**, 60 percent of those who lost jobs during the first two months of the epidemic were women, according to some **reports**. The **United Kingdom's** Equality and Human Rights Commission has **noted** increased employment discrimination against pregnant women. According to a **study** by the Institute for women's policy research, women lost more jobs than men in almost

Throughout the health crisis, women appeared slightly more likely than men to be diagnosed with Covid-19, possibly partly due to the fact that women account for the majority of healthcare workers. Globally, women constitute a majority of employees in healthcare and frontline services sectors<sup>665</sup>, which makes them more susceptible to infection.<sup>666</sup> A large majority of healthcare workers infected with Covid-19 have been women.<sup>667</sup>

Available evidence has shown that across the OSCE region, states experienced a dramatic surge of domestic violence cases reported to national helplines and support services,<sup>668</sup> with women and girls forming the overwhelming majority of victims in search of emergency shelter. According to women's rights experts and media sources, different forms of online violence have also been on the rise including stalking, bullying, sexual harassment, and sex trolling during the pandemic, in particular during strict lockdown periods.<sup>669</sup>

The sudden introduction of lockdown measures in many countries and the lack of or inadequate level of preparedness by national governments and local authorities for this extraordinary situation has affected protection

and response measures to tackle the increase in domestic violence. In some cases, first responders from the police and judicial and health services have found themselves overwhelmed; in other cases, resources have been diverted away from the criminal justice system towards more immediate public health measures to deal with the pandemic. This has resulted in the scaling back of helplines, crisis centres, legal aid and social services in some states, in particular in the initial phase of the crisis.<sup>670</sup> Examples of gaps in protection also included the replacement of walk-in free legal aid services with remote counselling because of social distancing requirements, which *de facto* often hindered access to justice for victims of domestic violence as they were unable to speak in the presence of their abuser.<sup>671</sup> The crisis has also disrupted the work of courts in many states,<sup>672</sup> leading to delays in issuing injunctions for protection or restraining orders as well as in adjudicating divorce and child custody proceedings. In many cases, the severity of quarantine regimes and the enactment of curfews have affected the opportunity of women to escape from the household, fearing fines, reprisals by their abuser and a lack of protection by the state.<sup>673</sup>

In shelters, lengthy admittance procedures linked to virus-testing or confirmation of medical certification have often exposed victims to further harm in the home.<sup>674</sup> In some countries, equitable access to sexual and reproductive health care has been severely reduced, with relevant health services classified as non-essential during the course of the pandemic.<sup>675</sup>

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all sectors of the economy. Amnesty International has **noted** increased discrimination and job insecurity in Hungary, particularly impacting pregnant women.

665 For example, in **Czech Republic** and **Ukraine**, the proportion of women in health services is 78 percent and 82 percent, respectively, which is higher than the global average of 70 percent, according to a Council of Europe **study**.

666 Furthermore, according to media **reports**, the standard-sized personal protective equipment is often designed for male bodies and facial features, which exposes women in frontline health care work to further evitable and unnecessary risks, which indicates gender bias in the decision-making process and insufficient consideration of the needs of women.

667 Early figures from Spain, **Italy** and the **United States** indicates that 75.5 percent, 69 percent and 73 percent respectively of the total health-care workers infected with Covid-19 were women, which is significantly higher than the percentage of women infected amongst the general population. Source: UN Women **calculations**

668 For instance, in the **United Kingdom**, this was reported to range from 15 percent to 120 percent, **UK domestic abuse helplines report surge in calls during lockdown**, The Guardian

669 Examples include unsolicited pornographic videos appearing in virtual chat rooms. See, for instance, **Risk of online sex trolling rises as coronavirus prompts home working**. Reuters

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670 **Justice for Women Amidst COVID-19**, UN Women, IDLO, UNDP, UNODC, World Bank and The Pathfinders.

671 **Eastern Europe and Central Asia Confronted with COVID-19: Responses and Responsibilities**, Amnesty International

672 See the section on the judiciary and access to justice above for more detail.

673 **COVID-19 and Domestic Abuse: When Home is not the Safest Place**, Balkan Insight

674 **Eastern Europe and Central Asia Confronted with COVID-19: Responses and Responsibilities**, Amnesty International

675 Reports include examples from **Poland**, the **Russian Federation** or in some states in the **United States**. See **Abortion Access Worsens Amid Pandemic**, Foreign Policy, **How COVID-19 affects Women's Sexual and Reproductive Health**, Medical News Today; **Denying Women Abortion Access in Moscow**, Human Rights Watch.

Emergency measures have had extremely negative consequences on women with less access to security, justice and health services such as women with disabilities, women from ethnic and other minority or indigenous backgrounds, and women from at-risk groups such as migrants, asylum seekers or refugee women in camps, all of whom have found themselves in situations of increased vulnerability to violence.<sup>676</sup> During lockdowns, these groups of women have had to cope with numerous accumulated challenges. For example, women with disabilities have also faced poor access to health and social services.<sup>677</sup> Women from minority, marginalized or migrant backgrounds have faced a lack of access to life-saving information through a lack of internet access or due to the unavailability of information in minority languages or in remote or rural areas.<sup>678</sup>

Alongside increased reports of domestic violence, risks for women also increased in institutional settings. Disruption to the work of many external oversight bodies and mechanisms has meant that women detained in criminal justice facilities, or in need of mental and other healthcare services including in nursing homes and other institutions, may have been exposed to heightened risk of violence.<sup>679</sup>

## GOOD PRACTICES

This brief overview of the negative impact of pandemic and related emergency measures on women and how they have exacerbated gender inequalities can only be considered as indicative. A thorough analysis is still needed at all levels and in all sectors, based on disaggregated data and gender-sensitive research. As the pandemic continues and some emergency measures are still in place, and as in particular the social and economic consequences will be felt for years to come,

it is too early to present a comprehensive analysis at this point. It has, however, already become clear that a number of states have acknowledged the importance of the gender dimension of the pandemic and response measures, and some positive examples of policy adjustments, dedicated services and communication initiatives have emerged. Several such examples are presented below, with the aim of feeding into recommendations to participating States and encouraging a positive learning exchange between countries.

Some participating States have made concerted efforts to integrate gender considerations into their Covid-19 policy responses<sup>680</sup>, or have established mechanisms to capture and analyse the available documentation and provide lessons learned.<sup>681</sup> Some countries have developed targeted guidance on maternal health.<sup>682</sup> Emergency sexual and reproductive health services and treatment have remained available in many states.<sup>683</sup> The rise in domestic violence has prompted some participating States to make emergency support programmes part of their emergency response.<sup>684</sup>

676 Covid-19 and violence against women and girls: Addressing the shadow pandemic. UN Women, <https://www.unwomen.org/en/digital-library/publications/2020/06/policy-brief-covid-19-and-violence-against-women-and-girls-addressing-the-shadow-pandemic>

677 **Rapid gender assessment of the situation and needs of women in the context of COVID-19 in Ukraine**, Reliefweb.

678 **COVID-19 compounds isolation of rural women facing violence**, Canada's National Observer

679 **Justice for Women Amidst COVID-19**, UN Women, IDLO, UNDP, UNODC, World Bank and The Pathfinders.

680 For example, in **Belgium**, the Institute for the Equality of Women and Men is represented in the taskforce conducting analysis, monitoring and proposing policy measures. In **Serbia**, the co-ordination body for gender equality is conducting a gender analysis of the situation to set measures to remedy the adverse effects of Covid-19 on women and men, and on gender equality in the country. In **Sweden**, a government decision has made gender impact assessments mandatory regarding all policies related to Covid-19. Similar mechanisms and practices are in place in **Ireland** and **Bosnia and Herzegovina**. Promoting and protecting women's rights at national level, **Council of Europe. Belgium, Serbia, Sweden, Ireland, Bosnia and Herzegovina**

681 In **Finland**, the National Institute of Health and Welfare has created an online repository of resources that capture the effects of coronavirus and its impact on men and women as well as on gender equality in Finland.

682 For instance, **Spain, Slovenia** and the **United States (New York State)**. In **Ireland**, the Department of Justice and Equality produced a videoclip on "Pregnancy and COVID-19" targeting travellers and Roma and Sinti. See **Promoting and protecting women's rights at national level, Council of Europe. Spain, Slovenia, Ireland**.

683 Including in **Slovenia** and **Finland**, as well as in **Belgium** where access to regular and emergency contraception has been facilitated via e-prescription. **Promoting and protecting women's rights at national level, Council of Europe. Slovenia, Finland, Belgium**

684 In **Spain**, the Ministry of Equality has promoted a contingency plan against gender-based violence during the Covid-19 crisis, which includes declaring as essential all

Some states have set up detection and protection measures focused on expanding access to counselling and sheltering services to victims of domestic violence through early warning mechanisms, including through the use of radio and TV, social media, mobile applications, dedicated 24-hour helplines and web-pages<sup>685</sup> or established email-based services<sup>686</sup> for domestic violence cases. Some states have introduced new helplines to provide free legal and psychological advice in collaboration with international organizations and civil society.<sup>687</sup> To tackle the digital divide, efforts have also been made to expand internet access<sup>688</sup> or make mobile services affordable or free.<sup>689</sup> Some participating States have enabled pharmacies to initiate referral pathways through code words.<sup>690</sup> Others have trained personnel from postal services to identify and

respond to cases of domestic and gender-based violence.<sup>691</sup> Additional sheltering accommodation has been put in place in some states, including the use of hotels or holiday apartments as shelters for victims of domestic violence.<sup>692</sup> Special crisis teams have been created on the basis of law-enforcement and civil society co-operation.<sup>693</sup>

In some states, national human rights bodies and institutions have taken a leading role in developing appropriate responses in this area.<sup>694</sup> Several countries have begun prioritizing court cases for violence hearings.<sup>695</sup> Additional funding sources have been allocated to deal with the increased needs in several participating States.<sup>696</sup>

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comprehensive assistance services for victims of such violence. **Promoting and protecting women's rights at national level, Council of Europe. Spain**

- 685 In **Italy**, police have expanded the usage of an app called "YouPol", originally designed to report bullying and drug dealing, to give victims of violence an opportunity to alert the police without the partner's knowledge. **European Countries Develop New Ways to Tackle Domestic Violence During Coronavirus Lockdowns, NBC News.**
- 686 In **Portugal**, the Commission for Citizenship and Gender Equality has activated an email service to request support in domestic violence cases.
- 687 The Gender Equality Commission of the Republic of **Uzbekistan**, with the support of the UNFPA and Civic Initiative Support Centres, launched a helpline for the prevention of domestic violence during the quarantine. Senate of the Oliy Majlis of the Republic of Uzbekistan: **"Establishment of telephone helpline of the Gender Commission".**
- 688 Modems have been delivered to families without internet in **Malta**, **Promoting and protecting women's rights at national level, Council of Europe. Malta**
- 689 The government of **Belarus** has partnered with a mobile operator to make the national help-line toll free to subscribers. **Eastern Europe and Central Asia Region. COVID-19 Situation Report. UNFPA.**
- 690 This innovative practice has been reported from **Belgium, Uzbekistan, Spain, the United Kingdom and France.**

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691 For example **Czech Republic.**

692 Examples include **Belgium, Germany, Italy, Bosnia and Herzegovina** and **France, Charities look for creative ways to protect women trapped in their homes with violent partners during COVID-19 shutdown,** Thomson Reuters Foundation News

693 For instance, in **Bulgaria** and in **Kyrgyzstan.**

694 In **Armenia**, the Human Rights Defender's Office has established a working group on domestic violence prevention during the pandemic. In the **Russian Federation**, the Human Rights Commissioner has called on the authorities to allow domestic violence victims to leave their homes without obtaining special digital permits that several cities have introduced to monitor the lockdown measures, while members of the parliament have asked the government to exempt victims from punishments for violating quarantine rules. **Domestic Abuse in Russia Doubles Amid Virus Lockdown: Official.** The Moscow Times

695 E.g. in **Malta** and in the **Netherlands. Promoting and protecting women's rights at national level, Council of Europe**

696 In **Canada**, for instance, the federal government has earmarked funding for the immediate needs of shelters and sexual assault centres including an existing network of emergency shelters to support Indigenous women and children fleeing violence. **Violence Against Indigenous Women During COVID-19 Sparks Calls for MMIWG plan,** CTV News

## RECOMMENDATIONS

- Involve state bodies responsible for gender equality, as well as women's civil society, in emergency response and post-emergency planning and explicitly incorporate gender considerations into any recovery strategies and plans;

- Take into account the gendered impact of the crisis in state budgeting to ensure adequate resource allocation for social protection and safety nets for those who have been laid off due to the emergency and to ensure sectors with so-called essential workers are adequately resourced and individuals in these sectors are adequately compensated;
- Prioritize proceedings to investigate and prosecute cases of domestic violence and other forms of gender-based violence and provide judicial remedies in all cases;
- Pay particular attention to ensure information dissemination campaigns reach marginalized women, women from minority backgrounds and women with disabilities to step up the accessibility of violence reporting mechanisms and ensure alternative accommodation for victims, even after quarantine measures are lifted;
- Classify shelters and crisis centres as essential during all stages of emergencies and increase support to civil society organizations assisting victims of domestic violence;
- Ensure the delivery and accessibility of health services of immediate need, including health services covering gynaecological health, making these available to all women experiencing violence by an intimate partner, and consider targeted delivery of health services to women subject to intersecting forms of discrimination, such as Roma and Sinti women and women with disabilities;
- Collect sex-disaggregated data to understand the social, economic and legal impacts of the public health crisis on women and girls, and the implications of restrictions to fundamental freedoms brought about by government responses;
- Integrate gender considerations into laws, policies, budgets and other measures related to emergency planning, preparedness and response, so they efficiently address inequalities and deliver adequate services, protection and equitable recovery to all, women and men, in all their diversity;
- Ensure greater representation of women in any future emergency taskforces, efficiently address women's needs, and reflect a diversity of women's perspectives in decision-making;
- Promote inclusive approaches to addressing public crises, with the participation of civil society organizations catering to different population segments, including the most marginalized;
- Increase women's participation in the delivery of security and justice services and continue enabling special crisis teams to function beyond the termination of quarantine measures;
- Set up effective legal protection and guarantees to prevent and combat domestic violence and other forms of gender-based violence through national legislation; and thoroughly revise enforcement mechanisms where gaps have been reported during the pandemic.

### II.3.C ROMA AND SINTI

As early as 1990, participating States recognized the specific human-dimension challenges faced by Roma and Sinti communities throughout the region.<sup>697</sup> Since then, Roma and Sinti issues have continued to figure prominently on the OSCE agenda, exemplified by the establishment of the Contact Point for Roma and Sinti Issues (CPRSI) within ODIHR in 1994 by the Budapest Summit, which tasked ODIHR, among other things, to act as a clearing house for the exchange of information on Roma and Sinti issues, including information on the

implementation of commitments pertaining to Roma and Sinti.<sup>698</sup>

Recognizing the particular difficulties faced by Roma and Sinti people and the need to undertake effective measures in order to eradicate racism and discrimination against them, in 2003 in Maastricht participating States adopted the Action Plan on Improving the

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<sup>697</sup> Copenhagen Document (1990) para. 40

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<sup>698</sup> The Roma are Europe's largest ethnic minority. Out of an estimated 10–12 million in total in Europe, some 6 million live in the EU, and most of them hold the citizenship of an EU country. The term Roma encompasses diverse groups, including Roma, Gypsies, Travellers, Manouches, Ashkali, Sinti and Boyash. See, [Roma and the EU](#), European Commission



Situation of Roma and Sinti within the OSCE area.<sup>699</sup> Subsequently, three more Roma-focused Ministerial Council Decisions<sup>700</sup> were adopted, expanding the OSCE commitments on Roma while placing further emphasis on aspects such as access to early education, addressing the rise of violent manifestations of intolerance against Roma and Sinti, and challenges faced by Roma women, youth and children.

Since the outbreak of the pandemic, the CPRSI has engaged with civil society organizations from which it has received reports of a number of measures adopted by States that can be considered as targeting Roma communities in a discriminatory manner.

Due to the nature of the pandemic, the poorer and more vulnerable groups and categories of populations are hit harder than the rest of the population. Against a backdrop of widespread fear caused by the health crisis, there has been a surge in manifestations of prejudice and racism coupled with some (local) authorities undertaking hasty and biased measures against such groups, including Roma and Sinti. At times, they were abusively labelled as ‘a hazard to public safety’, ‘undisciplined’ and ‘spreading the virus’.<sup>701</sup> At the same time, the authorities often failed to raise awareness among these communities of the emergency measures and their necessity, and to help them understand how to prevent contamination and its spreading.

Many Roma live in informal settlements, in overcrowded and substandard conditions, lacking proper infrastructure for running water, sanitation and sewage. Widespread poverty and linguistic challenges make this population ‘hard-to-reach’ in public health terms. As a consequence, such areas and their inhabitants are more prone to the risks of contamination. The pandemic poses particular challenges to the Roma population as it is compounded by a long history of neglect and marginalization of these communities, with many

people already suffering from poor health.<sup>702</sup> Due to these hardships, as documented through various analyses in the past decade, the life expectancy of Roma people from such communities is 10–15 years below that of the majority population. Any health crisis therefore has the potential to deepen an already adverse situation.

Due to the differences in the health status of the Roma communities compared to the majority population, states need to pay more careful attention to the former, in line with the principle of leaving no one behind.<sup>703</sup> Therefore, states have an obligation to assess the specifics of the situation of Roma communities to ensure that the standard measures taken to contain the epidemic consider all the risk factors. This will ensure that interventions are tailored to address those specific challenges and at the same time avoid infringing on people’s rights and their further stigmatization and marginalization. It is in the best interest of states to be mindful of the principle of the weakest link in the chain, and therefore act proactively to ensure that Roma communities have adequate access to health services and care and can fully enjoy their social and economic rights.

A number of restrictive and quarantine measures were imposed in the absence of solid evidence that those communities had been affected by the pandemic, while full lockdowns were enforced in large communities where only a handful of individuals were infected. Arguing concern for public safety, some authorities undertook strict measures that amounted to limiting the

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699 Maastricht Ministerial Council 2003 (MC.DEC/3/03) - OSCE Action Plan on Improving the Situation of Roma and Sinti within the OSCE Area

700 Helsinki Ministerial Council, 6/2008, Athens Ministerial Council 8/2009, and Kyiv Ministerial Council 4/2013

701 The CPRSI has collected reports of such incidents and documented abusive statements by officials and political leaders.

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702 Also, indicators such as child mortality, malnutrition and mental health are generally worse among Roma communities in poverty and living in informal settlements.

703 Numerous OSCE commitments refer to equal access to human rights and social justice for all. In 2015, UN Member States resolved, in the UN summit outcome document ‘Transforming our world: the 2030 Agenda for Sustainable Development’, “between now and 2030, to end poverty and hunger everywhere; to combat inequalities within and among countries; to build peaceful, just and inclusive societies; to protect human rights and promote gender equality and the empowerment of women and girls; and to ensure the lasting protection of the planet and its natural resources.” Recognizing “that the dignity of the human person is fundamental” and wishing to see the Sustainable Development Goals and targets “met for all nations and peoples and for all segments of society”, they also “pledged that no one will be left behind” and endeavoured “to reach the furthest behind first.”

movement of people, restricting access to and outside of their communities, curfew, checkpoints with barriers manned by police and the military, and full lockdowns of communities. Such measures were clearly discriminatory in nature as they were only imposed on the Roma, while other districts and areas inhabited by non-Roma were not targeted in the same way. These discriminatory lockdown measures have had a severely negative impact on the economic opportunities of Roma, which often depended on informal and temporary work, pushing many further into poverty.

Unfortunately, some of these early patterns of negative attitudes and biased measures targeting Roma that occurred soon after the outbreak have intensified and been replicated in numerous places. Only a few authorities have introduced positive measures to try and identify ways to help vulnerable communities, for example small-scale campaigns to provide them with social and humanitarian support, or raising awareness about the prevention of contamination. The overall situation of Roma communities across the OSCE region remains critical.

## AREAS OF CONCERN

OSCE participating States have placed combating racism and discrimination against Roma and Sinti at the core of efforts to improve their situation.<sup>704</sup> Nevertheless, racism and discrimination against Roma and Sinti continue to manifest themselves across the OSCE area.

Adding to already existent social and economic vulnerability, manifestations of racism and discrimination, often violent, have been reported in a number of participating States since the outbreak of the pandemic. Many such incidents stemmed from restriction measures imposed by the authorities, as well as by increased anti-Roma rhetoric in the public arena, including online, and not infrequently by public officials, media and opinion leaders.<sup>705</sup> Some measures to subject Roma communities to quarantine or other limitations and restrictions are

thought to be connected to allegations made against Roma and spread through the mass media.<sup>706</sup>

There have been reports of Roma communities subjected to Covid-19 testing by the authorities that was administered with the involvement of the military.<sup>707</sup> While testing is in principle a necessary and welcome public health measure, civil society groups expressed concern over such practices without the provision of necessary protection and support, thus contributing to further stigmatization of the communities concerned.<sup>708</sup> The anti-Roma rhetoric in the public arena further contributed to fuelling hate and intolerance. Unabated hate speech<sup>709</sup> inciting people against Roma have the potential to lead to hate crime and racially motivated violence.<sup>710</sup> There have been cases of harassment,<sup>711</sup> damage to property,<sup>712</sup> physical assault<sup>713</sup> and violent

706 See, for instance, Amnesty International, **Stigmatizing quarantines of Roma settlements in Slovakia and Bulgaria**

707 Cases have been reported in **Bulgaria, Slovakia** (see previous footnote), **Romania** (Deutsche Welle, **Coronavirus: Europe's forgotten Roma at risk**), **North Macedonia** (European Roma Rights Centre (ERRC), **Roma quarantined at the border to North Macedonia**), or **Spain** (El Diario, **Coronavirus: el racismo que la pandemia deja al descubierto**)

708 Amnesty International, **Roma must not be further stigmatized during COVID-19**

709 See, **National Equality Bodies report Impacts on Equality of Coronavirus Pandemic**.

710 This can be illustrated by reports from **Bulgaria** (ERRC, **Anti-Roma hate speech by MEP Angel Dzhabazki**), **Romania** (Ziare.com, **The National Agency for Roma asks Prime Minister Orban to take measures after the statement of the prefect of Timis county**, Liliana Onet; Libertatea.ro, Traian Băsescu, Racist statements against the Roma: **"Gypsy groups must understand that they cannot be tolerated with their way of life"**), **Ukraine** (NGO "Human Rights Roma Center" **alleged** that the head of the Odesa regional health department, used "hate speech" against Roma in describing the epidemiological situation in the region; ERGO Network **statement** on the eviction of Roma by the mayor of Ivano-Frankivsk), **Slovakia** (EU Observer **reported** on a racist statement of the mayor of Kosice on social media), or **Spain** (El Diario **reporting** on a widespread message spreading false and racist accusation against Roma).

711 **Young Roma Student harassed and discriminated in a bus** in **North Macedonia**, 24vakti portal

712 **Demolished office and stolen inventory of Roma CSO** in **North Macedonia**, Setaliste news portal

713 **Driver runs into Romani boy in crosswalk, shouts racist abuse at him and drives off**, in **Czech Republic**, Romea news portal

704 See, for instance Copenhagen Document (1990) para. 40

705 See also the section on Hate Crimes and Discrimination, above.

attacks<sup>714</sup> against Roma that were reported and documented by media or civil society.<sup>715</sup>

Amidst restrictions to movement, quarantines and lockdowns imposed by the authorities as part of their declared status of emergency, there have been a number of cases of police or law enforcement intervention in relation to Roma communities, involving the unjustified and disproportionate use or abuse of force.<sup>716</sup> In a number of participating States, police and security forces, while carrying out checks on the compliance by Roma with quarantine or other safety measures, have displayed conduct that is disproportionate and unjustified, including hitting children with truncheons, extensive hitting of handcuffed Roma lying face down on the ground, the use of tear gas, including against women and children, and entering private houses and physically abusing Roma residents.<sup>717</sup> Such interventions have been posted and praised on the Facebook page of a police union with thousands of subscribers, and accompanied by openly racist remarks by their administrators, demonstrating a widespread<sup>718</sup> racial bias behind police action in some places.<sup>719</sup>

Long before the outbreak of the pandemic, Roma and Sinti pupils and students already suffered from inequality in education, including through their routine

placement in segregated schools and “special schools” designated for children with intellectual disabilities and learning difficulties, meaning they are educated according to a substandard school curriculum by poorly qualified teachers. Throughout their quest to access education, they have been often subjected to a hostile school environment, discrimination and bullying both from teachers as well as from their peers, leading to high dropout rates and poor learning outcomes. Segregation deprive Roma and Sinti students of a quality education and opportunities to obtain the qualifications necessary to secure jobs in the future.<sup>720</sup>

Due to the pandemic and emergency school closures to be found in most participating States at some point during the outbreak, education moved online, with students expected to study and participate in classes from home. While pupils and students quickly adapted to this home-learning environment in many countries, these measures excluded tens of thousands of Roma students from educational processes as they generally lack the minimum requirements (e.g. quiet rooms, computer access, or internet connections) for such learning.

Furthermore, the crisis and movement restriction measures have exerted a higher toll on such poor communities as their capacity to secure their daily subsistence has diminished drastically. The lack of proper equipment to attend online classes is therefore compounded by the burden of poverty, including a lack of regular and decent nutrition. Extended school closures, which are expected to persist in several states, and potentially new waves of the pandemic, is likely to widen and deepen the educational gap for Roma students, resulting in even higher dropout rates and loss in employment opportunities over the long term.

The outbreak of the pandemic was accompanied by a surge in inflammatory articles in the European media that portrayed Roma in a biased and negative manner.<sup>721</sup>

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714 **Roma camp attacked and tents burned down by unknown assailants in Ukraine**, ERRC

715 See additional information in the preceding section on Hate crime and Discrimination.

716 **Bulgaria military allowed to use force amid coronavirus curbs**.

717 Such cases were reported in **Germany** (Central Council of German Sinti and Roma, Central Council of German Sinti and Roma **demands** complete clarification of police violence against a Roma family in Freiburg); **Slovakia** (Romea news portal, Slovak police officer **said** to have beaten five Romani children in Krompachy settlement and threatened to shoot them); **Romania** (Center for Legal Resources, **Roma minority – scapegoated during the pandemic**, Letter to the President, Prime-Minister and other relevant institutions)

718 In the past month in Romania alone, **The European Roma Rights Center** recorded at least eight incidents where police officers used disproportionate force against the Roma.

Amnesty International’s **Evidence Lab** verified 34 videos from across Europe showing police used force unlawfully, and in many instances when it was not required at all.

719 Facebook **page** of **Romanian** police union “Sindicatul Europol.”

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720 See **Education: the situation of Roma in 11 EU Member States**, EU FRA, 30 October 2014, p 43.

721 News outlets in 9 countries: **Spain**: Diari16, **Coronavirus and gypsies**, 19 March; **Slovakia-Czech Republic**: Novinky, **Headlines “It exploded in Roma settlements, the prime minister said. Coronavirus is spreading uncontrollably”**, 16 April; **Romania**: MEDIAFAX, **Traian Basescu was also reported to CNCD for his**

In these, Roma are often scapegoated and blamed for the spread of the disease, for irresponsible and negligent behaviour, and for disregarding social distancing measures. Even though non-compliance with the imposed measures was common and widespread, the cases of Roma were highly publicised and presented as a risk to the majority population.

A number of media outlets resorted to the use of anti-Roma and Sinti discourse. Racist and discriminatory articles and TV broadcasts<sup>722</sup> were prominent and amplified further through their extensive dissemination on social media platforms. Civil society organizations and human rights defenders in a number of countries have sent open letters to governments with a request for such incidents and crimes to be promptly and properly investigated.<sup>723</sup>

Throughout the OSCE region, many Roma and Sinti communities live in poverty, characterized by informal settlements and improvised housing, often without access to running water and sanitation infrastructure.<sup>724</sup> During the pandemic, these communities have faced increased risks and further exclusion, affecting their ability to follow basic hygiene measures such as hand washing that were recommended to stem the spread of Covid-19.<sup>725</sup> Along with the higher exposure to potential

contamination, Roma and Sinti faced significant barriers in accessing healthcare services.<sup>726</sup> Taken together, all these circumstances have placed Roma and Sinti communities in a very vulnerable situation, which, if not addressed properly, will leave these communities unable to keep the pandemic at bay.<sup>727</sup>

As the economic situation has declined in many countries, many Roma and Sinti have lost their sole sources of daily income due to the movement restrictions and lockdown measures.<sup>728</sup> People living from collecting scrap metal and recyclable materials, as well as those who are self-employed, or work in markets or as daily labourers without a contract, were unable to benefit from the unemployment measures provided during the pandemic, and were thus left alone to survive as best they could.<sup>729</sup> In some instances, due to pre-existing barriers such as a lack of personal documentation or statelessness, Roma were unable to benefit from measures designed to help the population during the pandemic.<sup>730</sup> Without an economic safety net to compensate for their loss of daily income, the socio-economic situation of Roma and Sinti may become significantly worse than before the pandemic, making it still more difficult to escape from the cycle of poverty.<sup>731</sup>

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**declarations. Was it incitement to hatred? What the former president said about ethnic Roma**, 3 May; **Hungary**: HirKliKK, **The coronavirus can be devastating among Roma**, 9 April; **United Kingdom**: Glasgow Times, **Claims 50% of Roma group have fled Govanhill after false Covid-19 rumours**, 11 April; **North Macedonia**: KANAL5TV, **The number of infected is growing and in Topansko Pole a wedding was held today despite the ban**, 22 March; **Bulgaria**: Your News, **Bulgaria's Roma say some coronavirus measures are discriminatory**, 24 March; **Greece**: Keep talking Greece, **Tsiodras visits Roma settlement in quarantine, gives anti-racism lesson**, 10 April; **Ukraine**: Zaxid net, **The mayor of Ivano-Frankivsk apologized to the Roma for the discrimination**, 23 April.

722 In **Bulgaria**, see: **Btnovinite, Residents of Sliven's Nadezhda in an attempt to fight with a BTV team**, 25 April.

723 See Centre for Legal Resources (Bucharest), **Roma minority: scapegoat during the pandemic**, 12 May 2020.

724 European Roma Rights Centre, **Thirsting for Justice: A Report** by the European Roma Rights Centre, March 2017.

725 Council of Europe, **Governments must ensure equal protection and care for Roma and Travellers**, 7 April 2020.

726 In **France**, **No money, no water, no food: Covid-19 lockdown in a Paris Roma slum**, France 24, 16 April 2020.

727 With a focus on the situation of **Ireland's Roma** **A Marginalized People Facing A New Crisis With Coronavirus Pandemic**, International Business Times, 27 April 2020; EU Observer, **Inequality, anti-Roma racism, and the coronavirus**, 21 May 2020.

728 EurActive, **The Roma are among most threatened by coronavirus in Europe**, 8 April 2020.

729 Exit News, **Roma Community Suffering Due to Coronavirus Crackdown**, reporting on the situation in **Albania**, 20 March 2020; Reporting Democracy, **Roma: Europe's Neglected Coronavirus Victims**, 1 April 2020; Reuters, reporting a story on **Hungary's Roma facing economic disaster as COVID restrictions lifted**, 4 May 2020.

730 The Institute for Research and Policy Analysis (Romalítico) documented this situation in **North Macedonia** in **People without Personal Documents in Macedonia are Still Invisible for the Institutions**, 14 May 2020.

731 Open Society Foundations, **Roma in the COVID-19 Crisis: An Early Warning** from Six EU Member States (Spain, Italy, Slovakia, Hungary, Romania and Bulgaria).

## GOOD PRACTICES

In the course of the pandemic, a few notable initiatives have been implemented by some participating States to support Roma communities. In Greece, the Ministry of Interior announced allocations of 2.25 million EUR to help Roma during the pandemic.<sup>732</sup> At the same time, 34 municipalities from seven participating States have co-operated with the Council of Europe to mobilize small-scale funding and human resources in order to respond to the pandemic and help Roma communities.<sup>733</sup>

732 This example from **Greece** is reported in RomeaCZ, **Greece approves crisis fund for Romani settlements**, 21 April 2020

733 Council of Europe, **ROMACTED Contribution to COVID-19 Action**, 30 April 2020

However, the majority of good practices related to the Roma have come from civil society organizations, primarily through the provision of humanitarian aid in the form of food packages, disinfectants and masks.<sup>734</sup> Self-mobilization by Roma and Sinti communities has also been important throughout the pandemic.

734 Activists, civil society organizations, and Roma from **Albania, Czech Republic, Montenegro, North Macedonia, Romania, Serbia, Ukraine** and other participating States have mobilized through various causes to help alleviate the pandemic effects for the most marginalized Roma and Sinti. See for example: **Roma Women Rights Center - Albania**, 5 May 2020; Agentia “Impreuna” **video report**, 18 April 2020; or Blog Hate Free, **A pair of Roma Women from Tanvald Sewed over 1,000 Veils for Seniors and People in Financial Distress per week**. Also see **Kosovo**, *Please see OSCE disclaimer on page 26*.

## RECOMMENDATIONS

- Utilize existing national social and poverty maps and databases from social protection services to identify people in need, on the threshold of poverty or below, who need to be supported through the establishment of food banks and delivery of food support based on assessment of their basic needs per month;
- Ensure that Roma and Sinti communities have equal access to basic medical services, such as doctors or pharmacies during lockdown; ensure that healthcare is guaranteed for everyone, including for those without health insurance or personal documents;
- Guarantee access to clean drinking water for Roma and Sinti communities living in marginalized settlements that are lacking water infrastructure and basic sanitation;
- Together with local authorities, bridge the digital divide affecting Roma settlements by providing them with internet hotspots free of charge, as these are essential for accessing public information as well as online education and learning;
- Assist Roma and Sinti children in accessing remote learning and materials, by providing the necessary electronic equipment and support by social and education workers;
- Ensure that the upcoming recovery plans being developed for the post-pandemic period are inclusive and take the challenges and vulnerabilities of Roma and Sinti communities and their needs fully into account; ensure the full participation of Roma in the consultations, design and development of such recovery plans and strategies;
- Strongly and unequivocally condemn racial and ethnic hatred, anti-Roma sentiment, xenophobia and discrimination against Roma and Sinti, and ensure that violations of human rights do not enjoy impunity;
- Share information and experience about the provision of large-scale humanitarian aid and emergency support, and match efforts with state funding to establish and implement such plans, ensuring that Roma and Sinti communities are among the prioritized and targeted beneficiaries;
- Develop measures to promote and protect human rights while actively countering racism and discrimination against Roma and Sinti.



## II.3.D MIGRATION

Since the Helsinki Final Act, OSCE participating States have expressed concern for the protection of the rights of migrant workers and refugee populations. Subsequently, in Madrid in 1983, they reiterated the application of existing human rights standards in the field of civil and political rights, as well as the economic, social and cultural rights to migrants and refugees. Participating States have made specific commitments related to migration, such as border security and management,<sup>735</sup> as well as detention and other situations of deprivation of liberty.<sup>736</sup>

Although the legal framework and practical needs of a specific category of migrant may differ and require specific analysis, for the purposes of this overview, all people affected by migration share similar vulnerabilities and it is in this context that the human rights impact on this population are described here. The focus is therefore on the common effect that the pandemic and related emergency measures have had on migrants overall, such as border restrictions, detention practices or difficulties in accessing legal procedures.

ODIHR's mandate on the protection of the human rights of migrants stems from the commitments made by participating States as long ago as 1990 in the Copenhagen Document and at the Helsinki Summit (1992). Later, these commitments were further developed to incorporate concerns such as enabling migrants to participate in public life,<sup>737</sup> creating the conditions that foster harmonious relations between migrants and the rest of the society,<sup>738</sup> combatting discrimination and violence,<sup>739</sup> and developing or reinforcing national plans for migrant integration.<sup>740</sup>

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735 Ljubljana Ministerial Council (2005).

736 Copenhagen Document (1990).

737 Moscow Document (1991), Maastricht Ministerial Council (2003).

738 Ljubljana Ministerial Council (2005), Athens Ministerial Council (2009), Hamburg Ministerial Council (2016).

739 Maastricht Ministerial Council (2003).

740 Helsinki Summit (1992), Budapest Summit (1994), Maastricht Ministerial Council (2003), Ljubljana Ministerial Council (2005), Athens Ministerial Council (2009), Hamburg Ministerial Council (2016). The rights of migrants and refugees are enshrined in international law, in particular in UN conventions such as the **1951 Refugee Convention**,

## AREAS OF CONCERN

The **closure of international borders** was one of the first measures taken by participating States at the onset of the crisis. In many countries of the Schengen area, which comprises 26 OSCE participating States that have agreed to freedom of movement, internal border controls were reinstated.<sup>741</sup> Border restrictions brought international travel to a standstill, by suspending international air and rail links, closing airports, imposing strict conditions on who could cross borders and in exceptional cases, even limiting the ability of nationals to leave their own country.<sup>742</sup>

Across the OSCE region, border restrictions impacted international mobility and, as such, migrants' ability to return home or to take up employment, including of a recurrent seasonal nature. As a result, many migrants were left stranded and availed of repatriation efforts put in place by their countries of origins.<sup>743</sup> Uncertainty regarding international travel and reopening of borders poses great threats for migrants whose physical safety and economic well-being may be dependent on crossing borders.<sup>744</sup>

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the **International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families**, adopted by General Assembly resolution 45/158 of 18 December 1990, as well as within the framework of the Council of Europe or through consensus-led processes such as the **Global Compact on Migration** or the **Global Compact on Refugees**. In adopting the **New York Declaration for Refugees and Migrants**, the 193 UN Member States recognized the need for a comprehensive approach to human mobility and enhanced co-operation at the global level.

741 The Schengen Borders Code provides Member States with the capability of temporarily reintroducing border control at the internal borders in the event that a serious threat to public policy or internal security has been established. See, European Commission, **Temporary Reintroduction of Border Control**.

742 This has been reported from **Czech Republic, Belgium and Ukraine**, among others. See, for instance, **Only Czechs and Belgians Banned From Travel Abroad in Europe Over Coronavirus**, by Prague Morning, 22 April 2020.

743 See, for example, **Coronavirus Exposes Central Asian Migrants' Vulnerability**, The Diplomat, 10 April 2020.

744 See, **The coronavirus pandemic could be devastating for the world's migrants**, World Economic Forum, 6 April.

Border crossing points are already risk areas for migrants in normal times but emerged as particularly vulnerable flashpoints for many migrants during the pandemic. Despite pandemic-related restrictions increasing the obstacles to carrying out border monitoring work,<sup>745</sup> several incidents at international borders were reported by civil society. For instance, reports from civil society working at the external borders of the European Union highlighted the continued use of illegal pushbacks, incidents of violence and health risks posed by border officials continuing to carry-out controls despite testing positive for Covid-19.<sup>746</sup> Pushbacks, or arbitrary and collective expulsions, are illegal under international law. These principles are applicable to all migrants and not just refugees. Refugee law emphasizes the principle of *non-refoulement*, which cannot be guaranteed when undergoing a collective expulsion as no individual assessment can be carried out.

Following the onset of the pandemic and the ensuing border closures, access to the asylum procedures was *de-facto* or *de-jure* impacted in many countries across the OSCE region. Some States were able to maintain the pre-registration or registration of asylum-seekers.<sup>747</sup> However, in many other countries, restrictions on access to the territory were applied to those seeking asylum and in others due to the physical closure of asylum

offices, new asylum claims could not be filed, and existing claims could not be further processed.<sup>748</sup>

The pandemic has brought to light the challenges in terms of physical distancing and hygienic measures present at collective centres, such as reception centres and transit centres, which are often subject to overcrowding. Not only is this an issue of concern for migrants living in such centres, but it also impacts authorities' efforts to protect the wider population from transmission. Unfortunately, in a few countries, entire reception centres were locked down and the movements of residents curtailed, without any evidence of cases being diagnosed.<sup>749</sup> In some cases, the lockdowns were enforced by armed forces and violent incidents were reported.<sup>750</sup> These indiscriminate lockdowns may have contributed to an increased perception of migrants as vectors of disease, resulting in reported incidents of vigilantism and anti-migrant sentiment.<sup>751</sup>

Expert guidance emphasized that people in immigration detention are at particular risk of contracting coronavirus.<sup>752</sup> Detention facilities are not walled off from society and even with increased restrictions and screening, there is a constant flow of people. Thus, not only is it very difficult to preclude the virus from entering a detention facility and spreading rapidly, its spread may pose risks of amplifying and spreading the virus to communities in its vicinity and at large. Due to travel and health restrictions in response to the pandemic, the implementation of many return orders has been suspended; as it becomes impossible to determine the duration of pre-return detention, such detention is rendered arbitrary and thus, unlawful. There is a general growing consensus on the importance of increasing the use of alternative means to custodial detention for

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745 Border monitoring is a common activity carried out by CSOs but also national institutions such as NHRIs. Border monitoring, including the role of CSOs and human rights defenders in border monitoring, are enshrined in the **OHCHR Recommended Principles and Guidelines on Human Rights at International Borders**.

746 Before the start of the pandemic in Europe, an increase in the number of migrants trying to enter the EU through Turkey was reported (see media **report** from 1 March) which contributed to pressures at the border before and during the pandemic (see media **report** from 2 May). In late March, Turkey reportedly relocated some 6,000 migrants from the border (see media **report** from 30 March). During the pandemic, the illegal use of pushbacks was reported in **Croatia, Bosnia and Herzegovina, and Greece**. See the **report** of the Border Violence Monitoring Network of 5 May 2020. See the **report** by the same group on incidents of violence along the "Balkan Route" in **Slovenia, Croatia, Serbia and Greece**.

747 This included **Austria, Georgia, Germany, Iceland, Ireland, Italy, Liechtenstein, Moldova, Slovakia, Slovenia and Switzerland**.

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748 See, for instance, **statement from UNHCR, 19 March 2020**.

749 This included **Bosnia and Herzegovina, Cyprus and Serbia**.

750 See, for example a **report** of the situation in **Serbia and Bosnia and Herzegovina**.

751 See, for example, a report from **Bosnia and Herzegovina, Bosnian minister proposes deportation and incarceration of migrants** by Sertan Sanderson, 24 April 2020.

752 **Guidance** provided by the WHO, the International Committee of the Red Cross (ICRC), the Council of Europe and the Inter-Agency Standing Committee (IASC).

the purposes of immigration,<sup>753</sup> to ensure that detention remains legal, not arbitrary and that human rights violations can be prevented. Similarly, the issues of alternative and child detention are interconnected. For states to be able to eliminate the practice of child and family detention, non-custodial alternatives must be in place (both for families and unaccompanied children). (For more on issues related to the deprivation of liberty and detention in the context of the pandemic in general, see the previous section.)

In the first months of this year, the number of people reaching Europe from North Africa and Asia was expected to be slightly higher than in the previous year, but following the escalating Covid-19 crisis, departures of boats carrying asylum seekers were reduced drastically.<sup>754</sup> However, this pause was only temporary. As weather conditions improved in April, departures began again but only one search and rescue vessel continued to operate in the Mediterranean Sea.<sup>755</sup> In an unprecedented move, several states declared their ports unsafe for asylum seekers and closed them,<sup>756</sup> citing sanitary safety as the reason.<sup>757</sup>

The UN High Commissioner for Human Rights has expressed concern over reports of failure to assist,

co-ordinated pushbacks of migrant boats in the central Mediterranean, and potential violations of the principle of *non-refoulement*.<sup>758</sup> These reports included allegations of requests from authorities for commercial ships to push back boats carrying migrants back into the sea, and to escort boats back to Libyan territorial waters a violation of the principle of *non-refoulement*.<sup>759</sup>

## GOOD PRACTICES

It is important to emphasize that following an initial period of suspension and halting of asylum procedures, many countries found ways to resume them despite existing restrictions. These include states that introduced innovative approaches,<sup>760</sup> including the use of online procedures to continue processing some or all asylum cases.<sup>761</sup>

On May 14, the Court of Justice of the European Union declared that Hungary's use of transit zones along the Hungarian-Serbian border amounts to unlawful detention. Following the judgment, Hungarian authorities released approximately 280 people who had been detained on average for eight months.<sup>762</sup>

Health concerns helped advance existing plans for relocation of asylum seekers. In early May, Greece made a commendable effort to move almost 400 asylum seekers from the island of Lesbos to mainland Greece

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753 Administrative detention (such as immigration detention) needs to be distinguished from criminal detention (imprisonment) and preventive detention (e.g., health-related). The framework for immigration detention is substantially different from other forms of detention (irregular stay/entry is not generally a criminal offence but rather administrative in nature) and the purpose of immigration detention also varies from that of criminal detention (rather than a punishment, it is there for the purpose of ensuring return to country of origin). As such, detention is considered a pre-return tool. These elements are specific to migration frameworks and policies. In this regard, ODIHR focuses on the promotion of alternatives to detention and the end of the practice of child and family detention.

754 See, UNHCR's [Sea Arrivals Dashboard](#) for Italy.

755 The *Alan Kurdi*, operated by the German NGO Sea Eye.

756 For example, see a [report](#) on Italy's port closures, or a similar [report](#) from Malta. In the past rescue ships had been refused docking on multiple grounds, including security-related issues, while in this case states decided to close the ports, as they were deemed 'unsafe' because of risk of SARS-CoV-2 transmission.

757 Unable to disembark in Malta, several boats carrying migrants in distress were left adrift for long periods of time while awaiting disembarkation. Up to 85 migrants were feared dead as a result. See [85 migrants feared dead in Mediterranean](#), InfoMigrants, 13 April 2020.

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758 See [UN rights office concerned over migrant boat pushbacks in the Mediterranean, 8 May 2020](#).

759 See, for instance, [12 die as Malta uses private ships to push migrants back to Libya](#), The Guardian, 12 May 2020.

760 For example, in Malta, registration of new asylum applications was done by phone and/or email and all follow-up communications were carried out by phone and/or email; and in Germany, the Federal Government updated its procedures to allow for asylum applications in writing, written follow-ups are also permissible.

761 See [Practical Recommendations and Good Practice to Address Protection Concerns in the Context of the COVID-19 Pandemic](#), UNHCR.

762 See for instance, [Hungary: Abolishment of Transit Zone Following CJEU Ruling](#), ECRE, 22 May 2020. Since then, however, new problematic restrictions have been introduced and the European Commission is likely to launch an infringement action over this non-compliance with the Court's judgement. UNHCR has [found](#) these measures to be against international law.

in order to address overcrowding in the hotspots.<sup>763</sup> The first relocations of unaccompanied children from Greece to Luxembourg took place in mid-April. This is a part of a commitment by ten EU member states to relocate 1,600 children.<sup>764</sup>

Many countries issued guidance and put in place measures to address the risk of transmission in collective centre settings, such as reception centres and transit centres.<sup>765</sup> Such measures included reducing the occupancy of centres to allow for physical distancing, introducing shifts and additional hygiene procedures in refectories, bathrooms and common areas, allocating designated areas for those self-isolating and transferring vulnerable residents to more appropriate accommodation settings. In order to prevent further spread of the virus and maintain the legality of immigration detention, many countries opted for the release of detainees.<sup>766</sup>

The pandemic has shed light on the contribution that migrants provide to essential sectors of the economy, and the key role they play in society.<sup>767</sup> This has become evident in the role that migrants played in the

provision of care in medical facilities and nursing homes. Their work in agriculture and meat processing has also been essential to society during the lockdown. While this period has highlighted the contribution of migrants, it has also exposed the poor conditions under which many of them are employed.

Several countries automatically extended the residence permits of migrants in their territory for the duration of the health emergency.<sup>768</sup> This included regularisation for migrants working in the agriculture and domestic work sectors,<sup>769</sup> or relaxations of employment restrictions in the health care sector.<sup>770</sup> Some states also changed labour laws for some categories of workers.<sup>771</sup> Several countries put in place measures to ensure access to healthcare, accommodation and other services for migrants.<sup>772</sup> Some of the most successful and progressive practices during the pandemic relate to extending access to rights, services and care for all or some

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763 The definition of hotspots as per the European Border and Coast Guard regulation is “an area in which the host Member State, the Commission, relevant union agencies and participating Member State co-operate with the aim of managing an existing or potential disproportionate migratory challenge characterised by a significant increase in the number of migrants arriving at the external border”. See also, **Almost 400 migrants moved from Lesbos to Greek mainland**, Emma Wallis, 4 May 2020.

764 Relocations to **Finland** and **Germany** followed in the month of April, to be followed by **Belgium, Bulgaria, Croatia France, Ireland, Lithuania** and **Portugal**.

765 This included **Austria, Belgium, Croatia, Denmark, Germany, Greece, Ireland, Italy, Latvia, Serbia, Spain, Sweden** and **Turkey**

766 **Spain** halted all immigration detention and released all detainees during the pandemic. In **Slovenia**, those in immigration detention were released and granted temporary permission to stay. Other countries which have released at least some immigration detainees include **Belgium, the Netherlands, Norway, Romania**, and the **United Kingdom**. In order to facilitate the release of detainees, authorities have teamed up with civil society organizations and municipalities to ensure safe accommodation for those who cannot reside in the community or with family members.

767 See, for example, a note from the European Commission **Immigrant Key Workers: Their Contribution to Europe's COVID-19 Response**, 24 April 2020

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768 Including **Ireland, Italy, Portugal, Poland**, the **Russian Federation** and **Uzbekistan**. In **Portugal**, all pending immigration-related applications, including those of irregular migrants, were approved for the duration of the emergency to ensure equal access to services as Portuguese citizens.

769 In May, the government of **Italy** approved a targeted regularisation for migrant workers. The regularisation concerns migrants working in the agriculture and domestic work sectors and offers six-month renewable residence permits to those meeting a certain criterion. See, **Italian government adopts targeted regularisation for migrant workers**, European Commission, 18 May 2020.

770 Calls for regularisation have also been made in **Ireland**, and the measure has been included in the Programme for Government of the newly-formed coalition. A number of migrants and asylum seekers benefited from some relaxation of employment restrictions in the health care sector as an exceptional measure.

771 **Germany changed** some of its labour laws to allow for the employment of certain categories of migrants, including asylum seekers and some irregular migrants in the agriculture sector until October.

772 This includes the **example of Portugal** as previously mentioned, where migrants were granted equal access to services as Portuguese citizens until July, and also **Ireland** where all migrants who lost their employment as a result of the pandemic, irrespective of their legal status, can access the newly introduced Covid-19 Pandemic Unemployment Payment. The Irish government also **announced** that no data will be shared with immigration authorities regarding an applicant's status and that accessing this payment will not have an implication on future residence or citizenship applications.

migrants to ensure equal access to services irrespective of legal status.<sup>773</sup>

In some countries specific measures were put in place to address homelessness among migrants in order to avoid the spread of infections<sup>774</sup> or set up special programmes to assist migrants.<sup>775</sup> Many countries<sup>776</sup> made exceptions to allow seasonal workers to travel despite restrictions raising questions regarding the prioritisation of economic activity over the health and safety of workers in sectors such as agriculture.<sup>777</sup> Inadequate

employment and accommodation conditions for these essential workers was part of the rationale to implement the regularisation of workers.<sup>778</sup> The inability to keep social distancing in workplaces, for example in meat processing plants, resulted in infectious outbreaks and led to a broad realization of inadequate working conditions in such facilities.<sup>779</sup>

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773 For example, the decision of **Ireland** to extend welfare payments to all migrants, or the decision by **Portugal** to extend residence rights to all migrants with pending applications, or the **United Kingdom** decision to extend healthcare rights to all migrants irrespective of status.

774 For example, in **Belgium, Bulgaria** and **Italy**.

775 In the **United States**, California set up a \$75 million Disaster Relief Fund that will support undocumented Californians impacted by the pandemic who are ineligible for unemployment insurance benefits and disaster relief due to their migration status. In Chicago, the mayor signed an executive order to ensure that refugee and migrant communities have equal access to benefits and services provided by the city, including the pandemic disaster relief.

776 This includes **Germany, Ireland** and the **United Kingdom**.

777 Agricultural and farm workers have been included in the list of essential workers of most countries that applied such exceptions. A number of reports and studies have shown the essential nature of this work in order to ensure a continued supply of food during lockdown. One example is **Italy**,

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where virtually all food and vegetable harvesting is carried out by migrants. The proportion of migrants in health care or other service sectors is also significant.

778 This was the case, for example, in **Italy**, as described above.

779 The large majority of workers in meat processing plants across Western Europe are migrant workers. Furthermore, due to lockdown measures, the essential contribution of workers in both meat processing and agriculture became apparent and the requirement of migrant labour was further exacerbated. See, for instance, **reports** from such outbreaks in **Germany** and **Ireland**.

780 Firewalls are designed to ensure, in particular, that immigration enforcement authorities are not able to access information concerning the immigration status of individuals who seek assistance or services at, for example, medical facilities, schools, and other social service institutions. Relatedly, firewalls ensure that such institutions do not have an obligation to inquire or share information about their clients' immigration status. Access to service and care are part of guaranteed rights and state obligations as per a number of international conventions (e.g., access to healthcare for children, access to maternity care, access to minimum standards of social protection that ensure the right to life).

## RECOMMENDATIONS

- States should consider introducing explicit exemptions to guarantee access to the territory for asylum-seekers when imposing border restrictions, as well as simplifying the registration process at borders. States may also consider allowing, where possible, the submission and continuation of asylum procedures via written or electronic means. States should also introduce automatic extensions of residence permissions of all those present in the state for the duration of exceptional measures.
- In an emergency situation such as the Covid-19 pandemic, states should consider the regularisation of pending applicants, both in the asylum and migration frameworks to ensure equal access to services and care.
- Introduce 'firewalls'<sup>780</sup> between immigration control and access to services and care in order to reach the broadest number of migrants at risk of Covid-19 or similar diseases.
- Whenever possible, shift reception facilities to independent, individual accommodations or smaller collective centres, particularly for older people and those deemed vulnerable. Implement decongestion measures in communal areas to lower the risk of transmission.



- Implement systematic health checks for new arrivals and isolation rooms for suspected or confirmed cases of Covid-19.
- Address the specific vulnerabilities of migrant homeless groups, including through the provision of temporary housing.
- Implement a moratorium on the use of immigration detention and consider the release of detainees into alternative community-based facilities.
- Reinstate search and rescue operations<sup>781</sup> and ensure they are maintained during emergency situations based on principles of solidarity and responsibility-sharing.
- Ensure that human rights defenders can continue to safely carry out border monitoring activities.
- Address legislation and other regulations that may prevent the population from assisting migrants in need.
- Consider facilitating the employment of temporary migrants and asylum seekers in sectors deemed essential during the crisis.
- Ensure appropriate health measures are implemented in vulnerable sectors of employment with high concentrations of migrant workers.

### II.3.E VICTIMS AND SURVIVORS OF TRAFFICKING IN HUMAN BEINGS

OSCE commitments call on participating States to implement anti-trafficking measures in the areas of prevention, prosecution and protection, including the development of National Referral Mechanisms (NRMs), National Anti-Trafficking Plans of Action, legislative and other measures aimed at effective prevention and combating trafficking in human beings and protection of victims of trafficking.<sup>782</sup> In addition, participating States have recognized the importance of international instruments, in particular the UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children (the Palermo Protocol) (2000), which includes the first internationally agreed definition of the crime of trafficking in persons and provides a framework to effectively prevent and combat trafficking in human

beings. Other international and regional instruments<sup>783</sup> have inspired and impacted work in this area in many participating States. Furthermore, with regard to emergency situations, the UN General Assembly called upon Governments and the international community "...to address the heightened vulnerability of women and girls to trafficking and exploitation, and associated gender-based violence."<sup>784</sup>

The outbreak of the pandemic across the OSCE region increased the vulnerability of at-risk groups to trafficking in human beings<sup>785</sup> and impacted the ability of states to

781 The obligation of states to implement search and rescue operations derives from obligations to protect the right to life. Additionally, the Ljubljana Ministerial Council (2005) goes into more detail in relation to border management, including the respect for migrants' human rights, including the right to life.

782 OSCE participating States have made a series of commitments in various areas of combating trafficking in human beings. See, in particular, the OSCE Action Plan on Combating Trafficking in Human Beings, adopted at the Maastricht Ministerial Council (2003) as well as Ministerial Council Decisions and Declarations in Vienna (2000), Porto (2002), Sofia (2004), Ljubljana (2005), Brussels (2006); Madrid (2007); Helsinki (2008); Vilnius (2011); Kyiv (2013); Vienna (2017) and Milan (2018).

783 The Council of Europe Convention on Action against Trafficking in Human Beings (2005), the UN Convention on the Rights of the Child (1989) and its optional protocols, the Worst Forms of Child Labour Convention No. 182 (1999), the Directive 2011/36/EU of the European Parliament and of the Council on preventing and combating trafficking in human beings and protecting its victims (2011), the Global Compact for Safe, Orderly and Regular Migration (2018), and the CEDAW Draft General Recommendation on Trafficking of Women and Girls in the Context of Global Migration (2020). See also the Agenda 2030 for Sustainable Development in particular the Sustainable Development Goals 5, 8 and 16.

784 UN General Assembly Resolution, **Trafficking in women and girls**, 30 January 2009, A/RES/63/156, paragraph 4.

785 The UN Special Rapporteur on Trafficking in Persons, emphasized that while the full impact of the pandemic on trafficking in human beings is not yet fully possible to assess, "it is sure that its socio-economic consequences are already making precarious and marginalized people more vulnerable to trafficking and exploitation." See OHCHR (2020) **COVID-19 Position paper: The impact and consequences of the COVID-19 pandemic on trafficked and exploited persons**.

address the crime of trafficking in human beings. The pandemic poses significant concerns for the effective response to trafficking, including the identification of victims, their access to services, protection, redress, and prevention. Although many governments have prioritized resources for pandemic-related measures, it is essential that NRMs and equivalent systems continue to function effectively based on a human-rights, victim-centred, trauma-informed and gender-sensitive approach.

In order to assess the impact of pandemic-related measures on victims and survivors of trafficking and on combating trafficking in human beings and develop appropriate responses, ODIHR and UN Women conducted a survey [hereinafter survey] of non-governmental anti-trafficking stakeholders and survivors of trafficking.<sup>786</sup> The survey results have informed the findings and conclusions below.

## AREAS OF CONCERN

The outbreak of the pandemic has exacerbated vulnerabilities to trafficking in human beings.<sup>787</sup> According to the World Bank, the pandemic will push approximately 40 to 60 million people into extreme poverty. People working in the informal economy are even more at risk of falling victim to different forms of exploitation.<sup>788</sup> The pandemic has decreased the transfer of remittances by at least 20 percent, further increasing the vulnerability of at-risk groups dependent on these funds for survival.<sup>789</sup> Moreover, it has had a detrimental impact on the access to employment or rights of migrant workers,

especially young women.<sup>790</sup> As many countries partially or fully closed their borders for a lengthy period, these travel restrictions led many migrants or asylum-seekers to look for alternative, more dangerous migration routes, exposing them to trafficking in both transit and destination countries.<sup>791</sup>

Prior to the pandemic, women and girls already made up the majority of detected victims of trafficking in human beings and it is likely that they will also be the most affected during and in the aftermath of the pandemic,<sup>792</sup> especially those from marginalized communities. Emerging trends are affected by pre-existing gender inequality, as the surge of domestic violence during the pandemic is a well-documented push factor for trafficking in human beings.<sup>793</sup> The pandemic has also increased the vulnerability of children to trafficking,<sup>794</sup> especially online. Law enforcement agencies in the OSCE region have reported increased grooming and exploitation of children through the internet, as well as an exponential growth of child sexual exploitation material shared online.<sup>795</sup> Concerns have also been raised about convicted traffickers who use the pandemic to claim that they are no longer generating income and therefore cannot afford to pay the court-ordered compensation.

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786 Responses of non-governmental anti-trafficking stakeholders were collected from over 100 countries (45 countries from the OSCE region) and of survivors of trafficking from over 40 countries (13 countries from the OSCE region). Selected quotes from key respondents are included in the box below.

787 **COVID-19 Position paper: The impact and consequences of the COVID-19 pandemic on trafficked and exploited persons**, OHCHR (2020)

788 World Bank, **“The impact of COVID-19 (Coronavirus) on global poverty: Why Sub-Saharan Africa might be the region hardest hit”**, 20 April 2020

789 See **Coronavirus a challenge, and opportunity, to fix remittances system than funnels billions home from abroad**, UN News, 2 June 2020

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790 Fraser, E. (2020) Impact of COVID-19 Pandemic on Violence against Women and Girls, VAWG Helpdesk Research Report No. 284. London, UK: VAWG Helpdesk.

791 **COVID-19 Position paper: The impact and consequences of the COVID-19 pandemic on trafficked and exploited persons**, OHCHR (2020)

792 **Aggravating circumstances: How coronavirus impacts human trafficking**, Wagner L., Hoang T. (2020)

793 **The Intersections of Domestic Violence and Human Trafficking**, NNEDV (2017)

794 **Policy Brief: The Impact of COVID-19 on children**, United Nations (2020)

795 See **Exploiting Isolation: Offenders and victims of online child sexual abuse during the COVID-19 pandemic**, EUROPOL, 19 June 2020.

## ODIHR/UN Women Survey of Victims and Survivors of Trafficking in Human Beings (2020)

*"Survivors are suffering – mental health is suffering – we are having flashbacks of being trapped, of nearly dying, suffocating, of not having food, etc. We need to know that we won't lose our homes, will have food and will not have to choose between life and income. Do I really have to die? Do I have to feel like I'm being suffocated every time I go out or have to stay in a tiny apartment. No one speaks to me..."*

Woman survivor from the United States

*"[Victims are] being forced to interact with others who may be infected, as traffickers find new ways to exploit victims."*

Woman survivor from the United Kingdom

*"Better knowledge of escape plans for women, they feel they have nowhere to go, shelters are full of Covid-19. Apartments won't rent, girls can't access social workers or social services to escape."*

Woman survivor from Canada

*"[Provide] financial support from the state to cope with the difficulties even after the Covid-19 pandemic."*

Woman survivor from Albania

*"Yes, frontline services should get in touch with those affected and make exit offers. Hotels affected by the closure due to Corona could be rented cheaply by responsible authorities in the cities and made available to victims of human trafficking during the Corona pandemic."*

Women survivor from Germany

The emergency measures during the pandemic have led to a number of increased risks for victims of trafficking, including intensification of control, violence and isolation at the hands of exploiters and reduced access to assistance. There are concerns that victims of trafficking will not seek medical assistance for Covid-19 due to fears of administrative detention because of their irregular migration status. Victims of trafficking in immigration detention or other detention settings may not be identified due to lack of access for NGOs conducting monitoring. Other identified victims of trafficking were sometimes left in limbo and unable to return to their countries of origin due to border closures, lack of documentation and resources for return or absence of coordination between countries' authorities. Some survivors of trafficking reported an increase in domestic violence, economic insecurity, and a fear of traffickers released from prison during the pandemic.<sup>796</sup> Furthermore, there

are indicators that victims of trafficking who have debts to repay to traffickers may be forced to engage in high risk activities, such as informal labour, prostitution or the production of pornography online<sup>797</sup>.

According to the survey results, the pandemic has impacted the effective functioning of NRMs and national child protection systems, and particularly access to identification procedures, sheltered accommodation, and social services. Other obstacles included accessing referral to NRMs or equivalent mechanisms, regularization of migration status, non-sheltered accommodation, psychological, medical, interpretation and legal services. In addition, civil society frontline responders indicated a lack of funding to continue addressing the needs resulting from the pandemic.

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<sup>796</sup> See **Safety Planning During COVID-19: Tips From Survivors For Survivors**, Sanctuary for Families, 17 March 2020.

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<sup>797</sup> See OHCHR (2020), COVID-19 Position paper: The impact and consequences of the COVID-19 pandemic on trafficked and exploited persons. <https://www.ohchr.org/Documents/Issues/Trafficking/COVID-19-Impact-trafficking.pdf>

Due to the impact of the pandemic on law enforcement operations and capacity, detecting trafficking cases has become more challenging. Victims in the process of receiving the statutory 'victim of trafficking' status have experienced delays, resulting in a lack of access to services and thus a greater vulnerability to further exploitation. Victims have also experienced difficulties in accessing sheltered accommodation and other assistance, as many shelters and service providers were only partially functional, closed or did not accept new clients. For child victims of trafficking, significant changes in procedure, delays and postponements in the appointment of legal guardians have had a negative impact on access to appropriate protection and legal procedures<sup>798</sup>.

Besides limited access to accommodation, victims and survivors of trafficking had difficulty in accessing health-care, including access to primary doctors, psychological services, hospitals, pharmacies, Covid-19 testing, and personal protective equipment (PPE). Particularly significant is the increase of PTSD symptoms and other psychological issues among victims and survivors of trafficking.

There have been changes in procedure, delays and postponements in administrative, criminal and civil cases due to the implementation of emergency measures, which negatively impacts victims' and survivors' access to protection, justice and redress. Administrative procedures are central to the processing of asylum applications, temporary and permanent residence permits, work permits and the regularization of residence during the pandemic.<sup>799</sup>

The pandemic has led to a loss of employment, resulting in a lack of financial means to cover basic necessities, such as food, housing and childcare. In this context, effective remedial action in the form of financial assistance has been identified by survivors as one of the most urgent needs, as it is necessary for their reintegration and social inclusion and for reducing

vulnerability to exploitation and re-trafficking during and post-pandemic<sup>800</sup>. In some states, survivors still living in sheltered accommodation have been prevented from moving out as emergency measures make it difficult to visit housing and sign rental contracts. Furthermore, victims of trafficking are often unable to return to their country of origin or experience delays due to closed borders, interrupted long-distance transport and unavailability of assistance from governmental agencies and service providers in the country of return<sup>801</sup>.

Since the pandemic began, the dynamics of trafficking for sexual exploitation, particularly of women and children, are currently shifting from the more traditional formats of exploitation to **various** forms of trafficking online. Some evidence of production and proliferation of pornography of victims of trafficking, especially child pornography, has been reported in the media.<sup>802</sup> For instance, the largest pornography website in the world, which is under investigation for hosting videos of victims of trafficking, children and rape,<sup>803</sup> has been providing free access to all its content during the Covid-19 outbreak worldwide, which is expected to generate further demand for trafficking in women and children for the purpose of pornography production and other forms of trafficking for sexual exploitation online. Although the evidence is anecdotal, webcam sex trafficking also appears to be increasing.<sup>804</sup> Additionally, remote working amid the pandemic gives abusers new ways to target people online, both to generate demand and to groom vulnerable women and children for trafficking for sexual exploitation.<sup>805</sup>

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798 OSCE/ODIHR and UN Women (2020), Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic: Survey of Non-Governmental Frontline Service Providers. Summary Report

799 Ibid.

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800 OSCE/ODIHR (2020), Addressing Emerging Human Trafficking Trends and Consequences of the COVID-19 Pandemic: Survey of Survivors of Trafficking. Summary Report.

801 Ibid.

802 See **How traffickers exploit the covid-19 pandemic**, Siddharth Kara

803 **Pornhub Under Fire After Videos of Rapes, Sex Trafficking Victims Posted to Site**, The Dailywire, 12 February 2020.

804 **'Traffickers Are Not Shut Down': Congressman Warns of Risk to Children & Other Victims**, CBN NEWS, 28 April 2020.

805 **Risk of online sex trolling rises as coronavirus prompts home working**, Thomson Reuters Foundation, 18 March 2020.

School closures, increase in domestic violence and economic insecurity, as well as increased time spent online are all exacerbating the potential vulnerabilities of children to trafficking in human beings. Children who are victims of abuse, homeless, stateless, internally displaced or undocumented or unaccompanied are particularly exposed to trafficking. Isolation with potential perpetrators can lead to additional risk factors for children to become victims of trafficking, especially for the purpose of sexual exploitation. During the period of emergency measures, there has been an increased number of reports of child abuse, including new ways to sexually exploit and abuse children, such as live-streaming child sexual abuse or the establishment of “delivery” or “drive-thru services”.<sup>806</sup>

Moreover, there are reports of increased grooming and exploitation of children online through gaming sites and social media platforms by sexual predators during the emergency measures, as children have to stay at home and are spending more time online, and at the same time the demand for pornography has risen.<sup>807</sup> International and national law enforcement agencies, including EUROPOL and the FBI, are warning about the increasing risk of sexual exploitation on the internet and signs of child abuse or child trafficking.<sup>808</sup> Available information indicates a growth of demand for child sexual abuse materials and growth of such materials and online exploitation, especially through the use of live-streams during the pandemic.<sup>809</sup> Distributors of child sexual abuse materials are constantly developing sophisticated, cross-platform strategies to evade detection by the technology companies’ automated tools to detect child abuse.<sup>810</sup>

806 UN News, **COVID-19 crisis putting human trafficking victims at risk of further exploitation, experts warn**, 6 May 2020.

807 See, **Video Games and Online Chats Are ‘Hunting Grounds’ for Sexual Predators**, New York Times, 7 December 2019.

808 See **Exploiting Isolation: Offenders and victims of online child sexual abuse during the COVID-19 pandemic**, EUROPOL, 19 June 2020, and **Pandemic Profiteering: How Criminals Exploit the COVID-19 Crisis**, EUROPOL, 27 March 2020; See also **School Closings Due to COVID-19 Present Potential for Increased Risk of Child Exploitation**, FBI, 23 March 2020

809 Ibid.

810 See, for instance, **Child sexual abuse images and online exploitation surge during pandemic**, NBC NEWS, 23 April 2020.

## GOOD PRACTICES

Many states recognize the emerging trends and dynamics in trafficking in human beings. In some countries, measures to ease the situation of migrants has been positive for victims and survivors of trafficking. However, very few states have taken dedicated action focused on trafficking in human beings specifically, such as developing special protocols to ensure that NRMs can continue to function.<sup>811</sup> Granting temporary residence and access to services has reduced vulnerability to trafficking in some countries.<sup>812</sup> Others have extended the ‘move-on’ policy,<sup>813</sup> which is granted to individuals not recognized as victims of trafficking or who do not require accommodation. Some states have also begun to look into ways to address the growing exploitation online.<sup>814</sup>

811 **Kyrgyzstan** is in the process of developing a State of Emergency Protocol on Combating trafficking in human beings to ensure the functionality of NRMs in any state of emergency.

812 In March 2020, the government of **Portugal** announced that migrants and asylum seekers with pending residence permit applications would be granted permission for temporary residence, reducing their vulnerability to trafficking, as this at-risk group then has access to the same rights as citizens. See **Portuguese government gives temporary residence to immigrants with pending applications**, European Commission, 28 March 2020.

813 The **United Kingdom** extended it for three months, see **Modern Slavery Act 2015: statutory guidance for England and Wales**.

814 The Eliminating Abusive and Rampant Neglect of Interactive Technologies Act of 2020 in the **United States** proposes revising the framework governing the prevention of online sexual exploitation of children. See **EARN IT Act of 2020**



## RECOMMENDATIONS

- Ensure that participating States are better equipped to create, strengthen and implement effective anti-trafficking legislation, National Referral Mechanisms (NRMs), National Action Plans (NAP) and Standard Operating Procedures by developing a protocol for combating trafficking in human beings for emergency situations;
- Strengthen existing NRMs to ensure effective implementation after the pandemic. Develop NRMs in states that are currently lacking them. Ensure that specific emergency-related vulnerabilities and needs of women and girls are addressed in NRMs and NAPs;
- Provide funding for frontline responders to ensure availability of all necessary services to victims and survivors of trafficking during and after the pandemic. Alert and provide protection for victims and survivors at risk from the early release of convicted traffickers from prison;
- Ensure availability of exit services from the sex industry to increase identification of victims of trafficking and reduce vulnerability to trafficking in human beings for sexual exploitation during and after the pandemic;
- Introduce identification protocols in healthcare institutions, as healthcare workers may be the only people in contact with victims of trafficking during states of emergency;
- Develop, strengthen and implement policy on supply chain management practices as businesses resume operations to ensure that trafficking in human beings or forced labour do not take place. This should include campaigns to promote ethical recruitment practices in the private sector and raise awareness among at-risk groups of the dangers of trafficking in human beings during and post-pandemic;
- Commit to developing and implementing public procurement regulations that ensure public funds are not used for labour exploitation of trafficking victims;
- Work with internet service providers, credit-card companies, banks, etc. to prevent the use of the internet for sexual exploitation of children and to disrupt traditional payment methods to reduce profitability.<sup>815</sup>

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815 Pursuant to OSCE MC.DEC 7.17.