



FUNDAMENTAL RIGHTS
AND THE RULE OF LAW

National developments from a civil society perspective, 2020-2021

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Foreword

by EESC president Christa Schweng

Europe is facing serious challenges in the area of fundamental rights and the rule of law. Organised civil society and citizens ask for concrete action, notably to eliminate corruption, to safeguard the independence, quality and efficiency of justice systems, to guarantee media pluralism and freedom, and ensure a meaningful consultation of relevant stakeholders in policy-making.

Global crises do not spare Europe. Who would have thought, two and a half years ago, that to the daunting challenges of climate change, we would add the biggest pandemic faced by humanity in a century and the return of a brutal war on our continent?

In front of so many crises, some countries are tempted to call for more authoritarian responses and to curb freedoms or rights, to give an illusion of efficiency. In reality, authoritarian states do not fare better in crisis, as seen during the COVID pandemic.

In the EESC, on the contrary, we believe in the power of organised civil society and dialogue. We believe that state policies are more effective if they result from the full involvement of civil society. We are also convinced that fundamental rights, the rule of law, democracy, and the protection of minorities concern us all, beyond our countries' borders. Ultimately, regressions in one Member State always affect other countries, not only because of the interconnection of our societies and economies, but also – and maybe even more importantly – because we all share the same destiny as Europeans.

Since matters of fundamental rights and the rule of law require careful attention, the EESC set up a dedicated body in 2018 to provide a voice for organised civil society identifying and addressing challenges at European level (Fundamental Rights and Rule of Law Group – FRRL group).

This report includes seven country missions carried out by the members of the FRRL group in 2020-2021, as well as a few pictures of the views of civil society on developments in the area of fundamental rights and the rule of law. These pictures should be taken as they are: not a film covering all EU Member States at the same time; not a book allowing in-depth scientific analysis; but an image of the key trends in a given country at a given time. The kaleidoscopic view, which results from it, points to a few worrying trends, a great number of challenges and only few positive developments.

In any case, these trends show the need and legitimacy for us, European organised civil society, to pay very close attention to what is happening in all EU Member States, in order to help each other to tackle them and to build better societies.

Christa Schweng,
EESC President

Introduction

This report provides an overview of the country visits organised by the EESC Fundamental Rights and Rule of Law (FRRL) group in 2020 and 2021. It deals with seven country visits: to Denmark, Germany, Ireland, Czech Republic, Spain, Cyprus and Lithuania¹. The report follows the first synthesis report, issued by the FRRL group in June 2020, which covered the first seven country visits, which took place in the first two years of the Group's existence (2018-2019), to Romania, Poland, Hungary, Austria, France, Bulgaria and Italy².

The EESC Group on Fundamental Rights and the Rule of Law

The FRRL group was created in 2018 as a horizontal body within the European Economic and Social Committee. It was tasked with enhancing the contribution of organised civil society to strengthening fundamental rights, democracy and the rule of law and responding to the shrinking civic space for civil society organisations. Its work is structured around an approach that covers areas that are considered particularly important and relevant to the work of the EESC: fundamental rights of social partners, freedom of association and assembly, freedom of expression and freedom of the media, the right to non-discrimination, and the rule of law³.

This report

Besides other key activities, such as its work on EESC opinions and organising conferences and hearings, one of the main ways that the FRRL group implements its mission of outreach to civil society is through country visits. The objective of the group is to visit all 27 Member States, which means that this report marks the half-way point in the endeavour.

The country visits of the FRRL group were slowed down by the COVID pandemic. Therefore, a year passed between the last country visit of the first synthesis report (Italy, December 2019) and the first visit of the present report (Denmark, December 2020). Faced with challenges raised by the health and travel restrictions, the FRRL group continued to be active, holding some of its visits (to Denmark, Germany, Ireland, Lithuania) virtually while keeping in-person meetings as its default mode of interaction whenever the situation allowed.

Despite these constraints, the FRRL group's methodology for country visits has not changed. Country visits last two days, during which a delegation of six members of the EESC meets with a few dozen stakeholders, such as social partners, civil society organisation (CSO) representatives

1 Because of the COVID situation, the visits to Denmark, Germany, Ireland, and Lithuania were virtual visits. The visits to the Czech Republic, Spain and Cyprus took place in person.

2 EESC, Fundamental rights and the rule of law - National developments from a civil society perspective, 2018-2019, June 2020, <https://www.eesc.europa.eu/sites/default/files/files/qe-02-20-156-en-n.pdf>. That report is available in the languages of the visited countries at <https://www.eesc.europa.eu/en/sections-other-bodies/other/ad-hoc-group-fundamental-rights-and-rule-law>

3 For more information on the FRRL Group's work, see its web section: <https://www.eesc.europa.eu/en/sections-other-bodies/other/ad-hoc-group-fundamental-rights-and-rule-law>.

and media and legal professionals, to discuss the five key themes of interest to the group in as many sessions. Discussions take place under the Chatham House Rule, meaning that the FRRL group uses the information received, but that neither the identity nor the affiliation of the participants is revealed in the country visit report that results from the discussions. The FRRL group also systematically meets with authorities during the visit. After the visit, the government of the country visited is granted a right of response (“observations”), which are appended to the present report).

As stated in the first FRRL group synthesis report, all the views which form the content of the country reports and this synthesis report are relayed in good faith and do *not* represent the opinion of the EESC, nor its assessment of a situation. This report does not aim to provide a legal analysis or a scientific comparison, but rather to relay the views of civil society on key trends in Europe. Nor should anything be deduced from the choice of the seven countries highlighted in this report. The only reason for considering them together is to achieve geographical balance. An example of a trend described in the context of a given country visit does not mean that such a phenomenon only exists in that country. Conversely, where a phenomenon is not mentioned as being present in another country, that does not mean that the country in question is devoid of such a challenge. However, taken together, these examples give an overview of some of the key challenges developing in Europe, which call for a coordinated national and European response.

While the FRRL group’s methodology for visits has not changed, the group has sought to reinforce its role with follow up to country visits. Since June 2021, stakeholders met during the visit are therefore invited to provide follow-up contributions through the dedicated page on the FRRL group section of the EESC website⁴. Through this, and through the invitation of some national stakeholders to its yearly autumn conference, the FRRL group intends to play its part in developing a joint culture of fundamental rights and the rule of law – at national level by highlighting trends and encouraging dialogue between authorities and civil society, and at European level by contributing to open discussions on these trends and possible avenues for collective solutions.

4 EESC, Fundamental Rights and the Rule of Law: trends in EU Member States, <https://www.eesc.europa.eu/en/sections-other-bodies/other/group-fundamental-rights-and-rule-law/frrl-trends-eu-member-states>.

Fundamental rights of social partners

The first session held by the FRRL group delegation during country visits involves employer organisations and trade unions. During this session, participants generally raise questions which are closely related to the protection of social partners' fundamental rights, such as social dialogue or collective bargaining. In this cycle of visits, the role that social partners play in addressing crises like COVID and tackling discrimination has also particularly emerged.

Social dialogue and participation

Social partners participating in the FRRL group country visits described what they overall considered to be **solid and well-functioning social dialogues**, with variations and specific challenges in each specific country situation.

- The **level of trade union membership** could vary across a country where there are geographical divisions, as in *Cyprus*, or where there used to be such divisions, as in *Germany*. Some categories of workers can also be underrepresented in trade union. Examples given include foreign workers in *Cyprus* or platform workers in *Germany* or the *Czech Republic*. In *Lithuania*, only a very small percentage of private sector workers were unionised.
- The coverage of **collective bargaining** was considered to be wide in *Denmark* and *Germany* (although decreasing there), but fairly low in Ireland. In the *Czech Republic*, participants regretted that the Labour Code was not sufficiently facilitating the negotiation of collective agreements, which were declining over the years. In Spain, trade unionists regretted that collective agreements were difficult to obtain in the framework of Small and Medium Enterprises (SMEs), where trade union presence was weak. In *Cyprus*, it was considered a paradox that the number of workers covered by collective agreements in the private sector was low despite above-average trade union presence in the country.
- The assessment of the quality of **public consultations** varied amongst countries. For example, in *Cyprus*, participants considered that they were routinely consulted on work-related policies and other relevant areas, but they regretted that consultations were also sometimes circumvented. In *Lithuania*, participants felt that they were not sufficiently heard by authorities, despite a good framework and the access offered to policy making through a tripartite council. A positive aspect underlined in *Ireland* was that social dialogue did not only include social partners, but encompassed a broader dialogue with civil society organisations.

Social dialogue as a factor of resilience: COVID

In a number of countries visited, social partners recognised the importance of strong social dialogue in **facing the COVID crisis**.

- In *Denmark*, participants appreciated that the government involved social partners in the **discussions on measures** to face the crisis, leading to tripartite agreements and compensation schemes. In *Germany*, participants made similar comments, welcoming the collaboration between authorities and social partners on mitigating measures such as the temporary adaptation of working time, while, however, also underlining that the involvement of social partners in designing measures differed from one federal state to another. In the *Czech Republic*, the existence of strong social dialogue proved very important in helping to clarify a number of legal uncertainties around measures to be implemented by social partners, such as home working.
- In *Ireland*, participants generally felt that social dialogue had been affected by **the 2008 financial crisis and the COVID crisis**. In *Spain*, participants believed that, contrary to what had happened during the financial crisis, good social dialogue allowed employers, trade unions, and the government to conclude agreements on subjects such as the minimum wage, which helped to preserve jobs. In *Cyprus*, participants regretted that traditional social dialogue had been cast aside during the first part of the pandemic. However, they also felt that they had been adequately consulted on several aspects such as health measures, financial aid, and the recovery and resilience plan. In *Lithuania*, participants regretted that the consultations on the recovery and resilience plan were based on inaccurate information, involved too many participants and provided too little time for contributions.

Social partners as players in the fight against discrimination

A key point made by social partners in a number of visited countries was the importance of **strong social dialogue to face various societal changes such as the integration of migrants or Brexit**.

- In *Germany*, it was considered that the proactive stance of social partners and the quality of social dialogue had played an important role in relation with the high number of asylum seekers who had arrived in the country in 2015-2016. This had led to a number of measures facilitating the **integration of asylum seekers** through work. In *Denmark*, participants highlighted the issues of social dumping and undeclared work while regretting that foreign workers were in particularly complicated situations as they mostly worked in sectors where there were both fewer collective agreements, fewer companies and poor knowledge of the Danish model. In the *Czech Republic*, participants regretted that trade unions did not integrate enough migrants into their ranks, too often associating them with social dumping, and they also felt that employers in smaller companies approached

migrants more as an opportunity for cheap labour rather than from the positive angle of diversity. In *Spain*, participants welcomed positive efforts to give migrants or irregularly established people access to health, thanks to a 2018 decree on universal access to health. In *Cyprus*, social partners were consulted on the first national plan for the integration of migrants, which they considered a much-needed development given the high risks of migrants being exploited and confined to low-skilled positions, and given their exposure to hate speech and discrimination.

- The **Diversity Charter** was welcomed as an important initiative in *Ireland* and the *Czech Republic*, while in the latter country participants regretted that it mostly applied to large companies such as multinationals. In *Ireland*, social partners appreciated their strong involvement in the strategies for LGBTIQ+ inclusion, Traveller and Roma inclusion, and in the consultations on the development of the national action plan against racism. Inclusion of people with disabilities when it came to work focused on access to the labour market, incentives, subsidies and flexible work arrangements. In *Spain*, participants stressed the difficulties faced by some workers, in particular young workers, who did not earn salaries allowing them to cover their needs.
- In *Ireland*, trade unionists underlined that the ending of freedom of movement across the borders between the Republic of Ireland and Northern Ireland resulting from **Brexit** posed significant problems to workers, in particular to “frontier workers”. Irish workers needed frontier permits to work legally in Northern Ireland, but there was a serious lack of knowledge about legal requirements. Another concern was the risk that Brexit could result in divergences between the rights of workers in the Republic of Ireland and Northern Ireland. They also pointed to a more general hostile attitude from Great Britain and Northern Ireland towards EU migrants in the context of Brexit.

Freedom of association and assembly

Participants in the FRRL group country visits pointed to an overall good legal framework for the protection of the activities of civil society organisations (CSOs), including freedom of association and assembly. Within this generally solid legal framework, however, specific challenges emerged.

Participation in public life

While procedures for consulting CSOs and levels of consultation varied amongst countries, participants generally called for **mechanisms for involving CSOs to be reinforced**, hoping for more influence on decision-making. They also felt that the place of CSOs in the public debate was challenged.

- In *Ireland*, participants felt that they were properly consulted by the authorities, but hoped that broader social dialogue could be re-established as in the past. In *Germany*, participants regretted that there was no government body in charge of civil society, and few possibilities for their **involvement in political decision-making**. In the *Czech Republic*, participants felt that access to decision-making could be improved, notably through better implementation of the government's strategy on cooperation with civil society, which they believed was good. In *Lithuania*, participants felt that social partners and CSOs were often informed rather than consulted, and they had not had sufficient time to prepare their contribution. In *Cyprus*, participants pointed to a lack of active consultation, regretting that the authorities only consulted social partners on the Cyprus recovery and resilience plan, leaving other organisations aside.
- Some participants – for example in the *Czech Republic* – pointed to **growing distrust of CSOs among the general public**. A confrontational attitude was fuelled by some politicians describing CSOs active in human rights and anti-discrimination advocacy as “political CSOs”. In *Denmark*, participants feared that despite a generally high level of trust among society in democracy, confidence was lower amongst young people and minorities, in a context where political debates were becoming tougher and more polarised. In *Cyprus*, participants mentioned that some public officials would often libel certain organisations, purely because those organisations were working with migrants or

had links with organisations from the area which were in practice controlled by the Turkish Cypriot community. This contributed to a climate where certain civil society organisations were viewed as adversaries of the public authorities.

Freedom of assembly

In some countries visited, participants gave examples of measures which could **limit freedom of assembly**.

- In the *Czech Republic*, participants agreed that freedom of assembly was well protected by the law. However, they also said that several cases of **excessive use of power by the police** had been brought to court in the past few years. In *Germany*, participants expressed their concerns around policing of demonstrations. They also feared that the tension around the protests against anti-COVID measures might be used as a reason to restrict freedom of assembly in the future.
- In *Spain*, participants were particularly concerned with the 2015 **Citizen Safety Law**, which they feared could lead to very high sanctions for a wide range of behaviours associated with protests and strikes. Participants found that some provisions were problematic – such as the provision on severe disobedience of authority and the provision on respect for security agents – especially as their ambiguity offered police forces excessive leeway to interpret how to enforce them. Participants also criticised the excessive use of force by the police during demonstrations, and they criticised the low conviction rate of police officers taken to court for excessive use of force.
- In *Lithuania*, participants explained that different municipalities had **denied requests** from the LGBTIQ+ community and from those opposing same-sex marriage to organise public meetings in September 2021. The former, however, was eventually granted permission after a court appeal.

The impact of COVID on civic space

Participants in the countries visited felt that the **COVID situation** and related restrictions complicated their watchdog role or their activities reaching out to citizens and raising funds.

- In *Denmark*, participants considered that the **COVID-related limitations on freedom of association and assembly** had remained within the boundaries of the Constitution and were proportionate. They appreciated that exceptions to limitations were, for example, envisaged for political or other important meetings. Some concerns were, however, expressed with regard to a possible cut in available funding for CSOs following the COVID crisis, in a country where they otherwise benefitted from a high level of public funding. In *Ireland*, participants appreciated the fact that the Constitution granted strong protection to peaceful protests. However, they regretted what they presented as random

application of measures limiting movement and participation in events in the context of COVID. In *Cyprus*, participants mentioned that COVID-related restrictions regarding public demonstrations had been lifted much later than those regarding other social events. This meant that people were being fined for participating in protests, while they would have legally been able to participate in other social events, such as weddings.

- In *Lithuania*, participants considered that COVID presented a challenge to the activities of organised civil society, as remote meetings had become the only option. Participants also regretted the relatively small proportion of funding linked with the **National Recovery and Resilience Plans** (NRRP) benefiting civil society organisations. Participants in other country visits, such as the *Czech Republic* and *Denmark*, regretted that they had not been properly involved in drawing up these plans.

Access to funding

Access to funding was a general concern raised in all country visits.

- In the *Czech Republic*, participants explained that access to funding had become increasingly challenging for CSOs because the majority of the budget allocated to civil society activities avoided activities in the area of non-discrimination, human rights and advocacy, especially for “hot” topics such as gender equality or Roma integration. In **Germany**, participants considered it to be problematic that the exemptions granted under federal tax law for a CSO considered as being a “charity” could be denied if the activities of the CSO in question were **considered to be too political**.
- In *Ireland*, participants pointed to the unintended effects of the Electoral Act on CSOs. While the Act governed donations to political parties, the rule **limiting private and foreign donations** also applied to CSOs, which created hurdles in the area of access to funding. Organisations with a general mission such as “protection of human rights” were not considered charities, which had a negative effect on their access to donations and prevented donations benefiting from tax exemption.
- In *Cyprus*, participants felt that organisations that were more critical of the government tended to have more difficulties in accessing public funding. They also explained that the closing of the national registry for CSOs and its replacement with regional registries led to lengthy **registration** periods, and incoherent rules concerning the establishment and functioning of CSOs of various kinds. In addition, in 2020 the Cypriot authorities had published a list of over 2 500 CSOs under the procedure for deregistration for failing to fulfil certain administrative obligations – some organisations had allegedly been deregistered despite fulfilling their obligations within the two-month deadline.

- Also in *Cyprus*, participants complained about the low threshold for **auditing requirements** for CSOs, which placed small organisations with limited capacity or resources to conduct such an audit at a disadvantage. In *Lithuania*, it was felt that the strict transparency requirements that were being applied to CSOs could harm the many Lithuanian-based Belarussian organisations that often needed protection and anonymity for the safety of their members.

Freedom of expression and freedom of the media

The session on freedom of expression and media freedom allowed the FRRL group to hear the views of CSO representatives and media professionals on key developments. Participants in the seven countries visited generally found that freedom of expression and media freedom were well protected in legal terms. However, serious challenges existed in a number of areas, such as media pluralism, the right to information, and the individual situation of journalists.

Regulatory framework

Participants in some country visits showed particular concerns about legal developments which they felt could limit media freedom and freedom of expression.

- This was, for example, the case when it came to **security**-related legal developments. In *Spain*, participants considered that, despite being a constitutional right, freedom of expression had been seriously affected by the Citizen Safety Law. They criticised the heavy fines imposed on journalists for recording images of the police, as well as concerning certain forms of expression considered to be an offence to religion, the royal family, or the Spanish flag. In *Denmark*, participants were concerned that the counter-terrorism legislation could lead to websites being blocked too fast and infringe upon journalists' rights to protect their sources.
- In *Ireland*, a key concern for participants was the very restrictive law on **defamation** and the high cost of libel, which they felt restricted media in their role as watchdogs. In *Cyprus*, participants regretted the strictness of the commercial libel legislation, which allowed courts to prohibit media outlets from mentioning a specific company, person, or organisation in publications. On the other hand, in the *Czech Republic*, participants appreciated the fact that the Constitutional Court had ruled that public figures could not claim the same level of protection against defamation as private persons, thus reducing the risks of abusive lawsuits against journalists on this basis.
- Overall concerns with strategic lawsuits against public participation (SLAPP) emerged in several countries, such as Lithuania or the *Czech Republic*. In *Lithuania*, participants believed that the implementation of the General Data Protection Regulation (GDPR) was sometimes used by the public authorities as an excuse to **withhold information** from journalists, for example during journalistic investigations. In *Denmark*, participants considered that Article 24 of the Freedom of Information Act was problematic because it limited access to documents in the area of government work. In *Spain*, participants considered that the law on transparency had not been properly implemented, especially during COVID, and that, very often, citizens and organisations had to go to court to seek to obtain public information.

Economic model for journalism and pluralism of the media

Participants in a number of country visits adopted a vigilant approach, underlining the existence of a healthy media environment, while calling for caution towards a **trend towards media concentration** and changing economic models.

- While situations varied amongst countries visited, participants were cautious about the general trend towards **media concentration**. In the *Czech Republic*, participants felt that the COVID crisis had accelerated the trend, as illustrated by the closures or restructuration of some media outlets and the increased economic precariousness of journalists. In *Cyprus*, participants appreciated the fact that the legislation entailed measures to combat concentration of media ownership, such as the obligation to list all shareholders owning more than a small share of a media company and the ban on owning more than a quarter of the shares. However, some participants believed that such measures were circumvented by shareholders who operated through third parties.
- The question of the changing **economic model** came up regularly in discussions on media freedom. In *Ireland*, *Lithuania*, and the *Czech Republic*, participants regretted that the majority of the income from the advertising market sector was flowing away from traditional media outlets towards social media platforms, a trend which had accelerated with the COVID crisis. In *Lithuania*, participants regretted that state aid to the national public service broadcaster was bigger than the sum for all commercial television providers taken together, creating an imbalance on the media market between public and private outlets. In *Denmark*, on the other hand, participants appreciated the availability of public funding, which they considered was essential to support quality journalism and the plurality of media.
- The evolution of the economic model was intrinsically linked to generally more difficult working conditions for journalists. For example, in the *Czech Republic*, participants explained that many journalists had been working under **precarious work contracts**, while membership of journalist trade unions had decreased. The number of investigative journalists able to sustain lengthy investigations was considered very low, and few young people were opting for this career.
- Participants pointed to better support for **quality journalism** as being essential to address such a trend. In *Ireland*, participants called for more training and support for young people interested in journalism as a career, in addition to better protection of freedom of association and collective bargaining rights of journalists. In *Lithuania*, participants noted a revival of quality journalism, in the form of investigative teams currently active in the media.

Disinformation, influence, and self-censorship

The rise of disinformation and, more generally, the importance of safeguarding the right to information against the risks of **influence** and self-censorship came up as a key topic of concern in the discussions with stakeholders in the countries visited.

- Participants generally supported public action to tackle the rise of disinformation, but with caution, to avoid infringements of freedom of expression. In *Denmark*, participants pointed to the risk that public action against **disinformation** could have a chilling effect on freedom of expression. The example was given of the extension of the scope of the legislation on *espionage* to assistance to foreign powers with influence on operations. In *Spain*, participants regretted that the country was not equipped with specific legislation on fake news, but they welcomed the creation of a working group on disinformation in the department of national security. In *Cyprus*, participants felt that fake news was more prevalent online than in classic media outlets, which, however, were more prone to be biased, especially on sensitive topics like the Cyprus dispute, or migration.
- In the *Czech Republic*, participants considered that the **influence of politicians**, including from the highest level, on the media was particularly problematic. The few main media owners in the country were depicted as combining business profit with political influence – including through the propagation of fake news. Participants also regretted attempts at political interference with editorial content by members of media supervisory bodies elected by the parliament. In *Spain* and in the *Czech Republic*, participants indicated that some journalists had been prevented from participating in conferences with government representatives, sometimes in the context of the COVID pandemic, but also when it came to covering high-level diplomatic meetings.
- Several participants in various country visits described an increasing tendency towards **self censorship**, such as in *Germany*, where some journalists confirmed that there were topics or events which they intentionally avoided, or in the *Czech Republic*, where participants considered that self-censorship was more of a risk than the rare outright censorship attempts which had failed. In *Cyprus*, such a tendency to self-censorship was related to certain subjects that might have financial implications for the news outlet or that covered certain sensitive topics, like the division of the island or migration. In *Denmark*, self-censorship would develop in the context of the rise of tensions in public debates.
- The rise of **hate speech** was addressed in several country visits, during the discussion in the sessions on freedom of expression and media freedom, but also in the sessions on the right to non-discrimination. In *Spain*, participants welcomed a positive development with the adoption in 2021 of a protocol to fight hate speech online, based on the involvement of civil society, legal operators and internet companies. In *Cyprus*, participants explained that the media complaints commission received multiple complaints regarding racism, and xenophobia. In *Lithuania*, it was noted that the radio and television commission could prevent the re-broadcasting of foreign programmes involving hate speech, without, however, being able to cover the internet.

- While, in most countries visited, participants considered that journalists could work in a safe environment, they also described the **environment** as being increasingly **hostile for media professionals**. For example, in *Germany* and *Spain*, participants mentioned cases of attacks on journalists, which mostly occurred during protests. In *Ireland*, participants noted that threats to journalists, particularly on social media, were often directed against female journalists. Furthermore, threats to journalists covering Northern Ireland were on the rise. In *Cyprus*, participants explained that some people had been arrested and detained in the non government controlled areas for what they wrote on social media or for speeches made on television.

The right to non-discrimination

Discussions with participants in the sessions on the right to non-discrimination provide the opportunity to better understand both the general trends concerning this central concern for open societies, and more specific developments linked to particular groups, such as migrants, people of ethnic or religious minorities, women, LGBTIQ people and people with disabilities – but also people suffering from discrimination based on social status or age.

General framework on non-discrimination

More or less developed frameworks to address discrimination existed in all the countries visited. However, participants generally called for more efforts concerning **implementation of legislation**, monitoring and data collection, funding, and access to remedy for victims of discrimination.

- In *Ireland*, participants mentioned that **legislation** on anti-discrimination needed to be updated and implemented in a timely manner, and based on proper resourcing. In *Spain*, participants considered that the country lacked a comprehensive law on equality at national level to address all types of discrimination in all spheres. Participants explained that several institutions existed to deal with discrimination issues, but that their working procedures needed to be improved. In the *Czech Republic*, it was noted that the position of Minister for Human Rights and Equal Opportunities had disappeared a few years ago, and that the public defender of rights was reluctant to work on issues concerning minorities, migrants and gender equality. In *Cyprus*, participants considered that the implementation of labour legislation remained a weak point, notably because the labour inspection body was not adequately staffed. In *Lithuania*, participants noted that there was no separate ministry for equality, and that the Ministry of Labour and Social Affairs, which was in charge of non-discrimination, did not have the capacity to address discrimination cases in depth.
- Participants also generally called for more **legal aid and compensation for victims** of discrimination, for example in *Ireland* and the *Czech Republic*, as well as training for the legal profession, in particular in the judiciary. In *Germany*, participants described that seeking legal aid for those who experienced discrimination in the workplace could be difficult, not only because it was challenging to prove but also because there were low levels of awareness about legal protection and rights to compensation. It was also noted that it was very difficult to litigate against state institutions. In *Lithuania*, participants believed that the minor consequences that the defendant would face if deemed guilty often discouraged victims from seeking legal remedy.
- Participants in several country visits, such as *Germany*, *Ireland* and the *Czech Republic*, called for more efforts in the area of desegregated data collection covering all areas of

discrimination. Participants also generally agreed that more **resources** were needed to support public and private actors in the area of non-discrimination. In the *Czech Republic*, the example was given of migrants needing to turn to private lawyers in the absence of sufficient funding for CSOs offering similar aid free of charge. Indeed, funding for CSOs dealing with discrimination, for example in the areas of migration and gender, mostly came from the EU rather than the state.

Migrants, including asylum-seekers

Participants generally felt that the regulatory framework for migration needed **to be adapted** to fully ensure respect for migrants' rights.

- In *Denmark*, participants described what they called a “**paradigm shift**” in national policy towards migrants over the recent years, from an integration-oriented approach to a return oriented one. Participants particularly criticised the draft law on Security for all Danes, which would allow the authorities to ban people from specific areas based on the vaguely defined concept of “behaviour and appearance creating insecurity in public spaces”, which they felt would disproportionately affect migrants and members of ethnic minorities. In *Cyprus*, participants mentioned that the situation of migrants, including asylum seekers, was quite difficult, since some public figures presented the refugee question as a threat to the national identity of the country. In *Spain*, participants considered that immigration regulations were obsolete and inappropriate to the needs of migrants, who faced precariousness, human rights violations, and limited access to public services. In *Ireland*, participants regretted that a referendum in 2004 had removed the right of children born in Ireland to foreign parents to obtain Irish citizenship at birth.
- The question of **reception and accommodation of migrants**, including asylum seekers, was a central issue raised by participants in several country visits. In *Denmark*, participants presented the situation in pre-expulsion refugee camps as being very harsh, including the imposition of unjustified and disproportionate restrictions. They criticised the overall approach of detaining rejected asylum seekers. In *Spain*, participants considered that detention camps for migrants still existed, where people were held for up several weeks without access to a lawyer. In *Cyprus*, participants explained that a decree banned migrants from renting housing in a certain area, based on the argument that the measure was necessary to prevent demographic changes. In *Ireland*, participants welcomed the publication of a white paper on accommodation of asylum seekers, which provided the prospect of an independent inspection regime in the centres. They also welcomed the government's announcement that the situation of undocumented migrant children would be regularised. In *Lithuania*, participants expressed the view that state institutions were not equipped to handle the influx of migrants, many of whom were children and women, blocked at the border between Belarus and Lithuania. The declaration of a state of emergency in the border regions temporarily restricted access to the area for CSOs.

Ethnic or religious minorities

Participants in country visits described the rise of a **climate of intolerance** against minorities in general, and ethnic and religious minorities in particular.

- The rise of **hate speech** against people with minority ethnic or religious background was mentioned in several country visits. For example, in *Germany*, the mounting antiziganism and anti-Semitism was acknowledged by the authorities themselves, in what they considered should be a wake-up call for the country. Participants also reported that representatives of linguistic minorities experienced discrimination in the workplace.
- In *Denmark*, participants pointed to the prevalence of **structural discrimination**, giving the example of the so-called “ghetto law”. They described how this law provided seemingly objective criteria on which basis the authorities could declare that a certain area was a “ghetto”, which in practice only related to areas populated by a majority of “non-Western” people. As in other countries visited, participants also mentioned that minorities had been targeted in discourses, including online, for allegedly not being responsible enough during the COVID pandemic. In *Spain*, it was explained that migrants or people with minority ethnic backgrounds were more likely to be arrested by the police than the rest of the population.
- The situation of **Roma** people was mentioned in most country visits, where they faced de facto discrimination in access to housing, health, education and employment. In *Spain*, participants considered that Roma people were still the minority group that was most discriminated against, for example suffering from ethnic profiling by the police. However, they welcomed the creation in the Congress of Deputies of a committee to fight anti-Gypsyism, involving civil society. In *Germany*, participants regretted that, although Sinti and Roma people had been living in the country for 600 years, they still did not enjoy the same citizens’ rights as ethnic Germans. In the *Czech Republic*, participants acknowledged the existence of programmes for inclusion through work, but they also regretted that the situation of Roma people was generally approached by authorities as a social issue rather than an issue of discrimination. A law had been recently passed to compensate Roma women who were victims of forced sterilisation, but there was uncertainty as to whether the law was being properly enforced due to the difficulty in presenting evidence to the compensation committee or in seeking legal remedy without an effective system of legal aid. In *Ireland*, participants exposed the difficulties that Roma and Irish Travellers had in accessing services and adequate housing. Participants welcomed the legal recognition by the authorities a few years ago of Irish Travellers as an ethnic group, but they also explained that the pandemic had disproportionately affected them and Roma people and that more efforts were needed, notably in the area of integration into education.

Women

Participants in country visits generally regretted the **important remaining challenges** in the area of political, social, and economic inclusion of women, which the COVID situation did not help to improve.

- In several countries, for example *Germany* and the *Czech Republic*, or *Cyprus*, participants explained that women remained **underrepresented** in the political sphere and that the pay and pension gaps were still very large. In *Lithuania*, the fact that 50% of the recently formed government was made up of female representatives, more than ever before, was welcomed. However, participants believed that the gender pay gap had not decreased in recent years.
- In several countries, such as in *Spain*, participants explained that women were still facing burdens and responsibilities related to **family care** and were overrepresented in precarious or temporary jobs, facing higher unemployment and lower salaries. Participants in several country visits explained that COVID had imposed extra tasks, which typically fell on women, such as combining home working with home schooling of children.
- The rise of **gender-based violence** in the context of the lockdowns was also heard in several country visits. In *Spain*, participants highlighted that the number of murders of women was considerably on the rise in that context. In *Cyprus*, participants mentioned that statistical data on the incidence of domestic violence was still scarce. In the *Czech Republic*, participants regretted the lack of public funding for organisations working on gender equality and gender violence. In *Lithuania*, participants noted that cross-sectional groups such as women with disabilities were an especially vulnerable group when it came to domestic violence. In *Ireland*, participants felt that the services provided to victims of domestic and sexual violence were limited in the light of the numbers of reported cases. They also considered that court system reforms were needed to avoid secondary victimisation. In *Germany*, participants mentioned the existence of forced marriage at a young age, female genital mutilation and trafficking of women.
- In *Lithuania* and the *Czech Republic*, the two countries visited which had not ratified the **Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence**, participants hoped for a swift ratification. However, they explained that public debates on this possibility were tense. For example, in the Czech Republic, politicians were leading a disinformation campaign associating any activity in that area with a so-called “gender ideology” under foreign influence, an argument which was used to limit financial and political support to activities in that area. In *Lithuania*, participants considered that the Catholic Church adopted a radical stance opposing the Istanbul Convention, but also access to safe abortion, and same-sex partnerships, which had a great impact on policymakers.
- In *Cyprus*, participants mentioned that assisted **abortion** has been legal since 2018. In *Lithuania*, participants explained that access to safe abortion was limited, and that political voices, including at the highest levels, were in favour of a ban on abortions, including because of the important influence of the Church.

LGBTIQ people

The rights of LGBTIQ people was one of the rare areas where participants in the countries visited noted **a general positive trend** over the past years – which did not mean that significant challenges did not remain or increase, notably in relation to hate speech.

- Participants gave various examples of the significant advances which had occurred over the recent years, notably with **same-sex marriage**, for example in *Germany, Denmark, Ireland* and *Spain*. In the *Czech Republic*, participants explained that registered partnerships had existed for gay people and lesbians since 2006. They regretted, however, that a bill on equal marriage had been stalled in Parliament since 2018, despite a comfortable majority of the Czech population being in favour of equal marriage for all. While same-sex civil unions had been legal in Cyprus since 2015, in *Lithuania*, a proposal for such partnership had been rejected in the Parliament in 2021.
- In all the countries visited, participants pointed to the rise of **hate speech**, particularly online and very often fuelled by far right movements. In that regard, in *Ireland* and *Spain*, participants considered that hate crime legislation was not updated enough to address hate speech and hate crime against LGBTIQ people. In *Ireland*, participants felt that more education on relationships and sexuality should be set up, considering that a vast majority of LGBTIQ pupils were feeling unsafe at school. In *Spain* and the *Czech Republic*, participants explained that LGBTIQ people did not report the majority of hate speech and hate crime to the police. In *Cyprus*, it was felt that hate speech against LGBTIQ people was high but that authorities did investigate cases.
- The rest of the picture painted by participants was mixed. In *Denmark*, LGBTIQ people's rights extended to adoption, and legal gender recognition. In the *Czech Republic*, a bill on child foster care for unmarried couples had been blocked in the initial parliamentary stages. In *Germany*, participants explained that, in lesbian couples, a woman could not enjoy equal parenting rights with her partner concerning the child born from the latter. Surveys also showed that **transsexual people** encountered even more discrimination in the workplace than homosexual people did. In *Ireland*, it was considered that a clear ban on conversion therapy was needed, as was progress on gender recognition for under-18s and non-binary people. In the *Czech Republic*, participants pointed out that the country still had to adapt its legislation to implement a decision by the European Committee of Social Rights concerning transgender people. The decision stated that the Czech law violated the right to health of transgender people by imposing sterilisation before they changed their identity on their personal documents.

Persons with disabilities

The general picture given in country visits concerning persons with disabilities was that, overall, they still faced **many forms of discrimination**, notably in the areas of health, employment, housing and education.

- In *Ireland* for example, partisans pointed to the fact that these **multiple forms of discrimination** led to more prevalent experiences of poverty and exclusion for people with disabilities. On a positive note, the establishment of a parliamentary committee on disability matters in 2020 was applauded.
- In *Denmark* and *Lithuania*, it was explained that legal recognition of the principle of “**reasonable accommodation**” for people with disabilities was too slow in arriving. In *Denmark*, a recent positive development was that schools and institutions could not any more discriminate with regard to access for people with disabilities, whereas restaurant and hotels, for example, still could. In *Lithuania*, it was considered that the authorities had waited too long to start working on the implementation of the UN Convention on the Rights of Persons with Disabilities (CRPD). Until 2019, the country’s legislation, for example, included the term “unable to work” with reference to a person with disability.
- Amongst several other types of challenges faced by people with disabilities, participants in *Ireland* regretted that people were still placed in **institutions**, regardless of the calls to deinstitutionalise. In *Spain*, participants were particularly concerned about the forceful unwanted medical treatments for people with mental disabilities and the fact that it was impossible for them to obtain information on their medical treatment.
- As far as **access to justice** was concerned, participants observed some progress in *Spain* as a result of a reform of the civil code to support people with disabilities in the legal space. In *Cyprus*, participants explained that there was no adapted recourse mechanism for complaints made by persons with disabilities. In *Denmark*, too, participants mentioned fact that it was more difficult for people with disabilities to gain access to justice compared to the rest of the population.

Social status and age-based discrimination

Presumably as a result of the fact that the COVID pandemic had brought generational challenges to the fore, **social discrimination**, in particular against young and elderly people, were mentioned more in that cycle of visits than in the previous one.

- In *Ireland*, it was mentioned that **child** poverty disproportionately impacted single-parent families, Roma people and Travellers, or households with persons with disabilities. More generally, COVID had exacerbated existing forms of poverty, and in particular food poverty. In that context, participants welcomed the government's announcement of a revision of the equal status policy aiming to recognise socioeconomic status as potential grounds for discrimination. Homelessness was said to lead to increased discrimination and marginalisation. Most homeless persons were already in a situation of marginalisation before they experienced homelessness.
- In *Spain*, participants highlighted the difficult situation of **elderly people** during the COVID pandemic, having suffered some rights violations in senior homes and centres. The acceleration of the digitalisation of access to services because of COVID was also pointed to in *Germany*, where participants also mentioned the more general age-related discriminations faced in recruitment processes. In *Ireland*, participants described stereotypes on ageing, and they called for more data concerning older persons and for a digital inclusion strategy.

The rule of law

Sessions on the rule of law held during FRRL group country visits allow the delegation to hear civil society actors and legal professionals on many issues beyond judicial reform. During the seven visits covered in this report, participants have dwelled particularly on challenges related to the separation of power, and how the COVID situation affected democratic decision-making.

Separation of powers

The central question of **separation of powers** and the independence of the judiciary came up in several countries visited.

- In the *Czech Republic*, participants assessed the overall situation of the rule of law as good but fragile. They felt that the **independence of the judiciary** was guaranteed and that the general situation with regard to justice was better than in some neighbouring countries. However, they also considered that a key point for concern was the pressure imposed by the executive power on the chief prosecutor, a situation which was particularly problematic in the context of investigations into conflicts of interest at the top of the state.
- In *Lithuania*, participants were concerned about the procedure for the **selection of judges**, which gave a final say to the President of the Republic based on the selection by the special commission for the selection of judges. They also pointed to the unclear rules on temporary transfers of judges without their consent. Participants were also concerned about the fact that, due to conflicts between political powers, the Supreme Court and the Constitutional Court were not at full capacity. They believed that this situation prolonged judicial processes, affected the quality of the rulings and compromised the reputation of the courts.
- In *Spain*, participants also complained about the **impact of political disputes on the functioning of the judiciary**, which they believed threatened its independence. In the absence of an agreement amongst political parties in the parliament, the renewal of the governing body of the judiciary (the General Council of Judicial Power, GCJP) had been pending for the last three years. Participants called for a change in the nomination procedure for this body, which in their view should directly be elected by judges.
- In *Cyprus*, participants criticised the fact that the attorney-general took part in the Council of Ministers as a legal advisor to the executive, while also being in charge of prosecution. They considered that such **proximity of executive and judicial prerogatives** was a potential conflict of interest, especially since the attorney-general at the time of the visit had also served as Minister for Justice in the past.

Specific challenges

Several countries visited faced **particular challenges** in the area of the rule of law, in connection with their particular history or more global challenges in national contexts.

- In *Cyprus*, participants explained that, following the events of 1963, the Cypriot authorities had developed a “doctrine of necessity”, which was supposed to be temporary but had applied ever since, leading to what participants considered to be a **concentration of power**. Participants gave numerous examples of discretionary powers existing within the framework of that doctrine. A major issue concerning application of the law was linked with the division of the country, as inhabitants of the non-government controlled area did not have the same access to their EU citizen-rights as in the south of the island. Participants also explained that children from mixed marriages with so-called “mainland Turks” were discriminated against.
- Still in *Cyprus*, participants regretted that, despite discussions concerning **judicial reform** over the past decade, judicial processes were still extremely slow. They also criticised what they considered to be the absence of effective means, including effective sanctions, to ensure the enforcement of court decisions issued against public authorities. Participants also felt that the presumption of innocence was not sufficiently enforced, as there had been instances of civil courts considering that the existence of a criminal investigation was a proof of wrongdoing, even prior to any court decision in the case concerned.
- In *Lithuania*, participants were worried about the proliferation of **unaccountable secret surveillance** of private individuals carried out by law enforcement agencies, such as the anticorruption agency, and the *de facto* systematic approval of such requests by judges. In Denmark, it was felt that the counter terrorism legislation lacked sufficient due process guarantees in relation to far-reaching provisions leaving a wide margin of interpretation to the police.
- In *Ireland*, in the absence of major rule of law issues, participants considered that improvements were needed concerning **access to justice**, which entailed high legal costs. Legal aid was limited by too low a threshold and exclusions from coverage were too broad. In Denmark, too, participants mentioned accessibility of legal aid and justice in general, in particular for members of marginalised groups, as a key challenge.
- In the *Czech Republic*, participants raised the **lack of a unified case law** system in the country and problematic inconsistency in the severity of decisions made by courts depending on the geographical locations of the cases or the area of law.

Decision-making processes, including in the context of COVID

As in the rest of the EU, in the countries visited, the urgent and extraordinary decisions imposed by the COVID crisis raised questions about adequate safeguards.

- In the *Czech Republic*, participants explained that some citizens had sued the state for disproportionate, unclear or unjustified legal decisions in the context of COVID, which had led the Supreme Court to cancel some decisions on this basis. Participants felt that there had not been enough general **debate on decision-making** in response to the crisis, nor consideration of some legitimate criticisms stemming from civil society.
- In *Denmark*, participants explained that while the original legislation adopted to address the COVID epidemic provided for **excessive transfer of power** to the Ministry of Health, the views of CSOs and the national human rights institution were taken into account well at a later stage, which led to a second much more balanced version of the law. However, they pointed to instances of illegal instructions ordered by the authorities, in the context of COVID concerning the massive culling of minks without a legal basis, and outside that context concerning the order to separate married and cohabiting couples at asylum centres, where one of the parties was a minor.
- In *Lithuania*, participants explained that the government had only requested **constitutional reviews** of COVID-related restrictions very late in the day. As far as the law-making process was concerned, participants indicated that the parliament had often adopted regulations through the urgency procedure even before the COVID pandemic. It was felt that the pandemic had worsened the legislative process and shifted the balance of power from the legislative to the executive branch.
- In *Ireland*, participants regretted the lack of a human rights and equality committee within the Parliament, which they believed could have offered a rigorous **human rights analysis** of COVID- related legislation, which they felt was also lacking.

Corruption

Corruption was one of the topics on which perception varied amongst the participants from the countries most visited.

- In *Germany* and *Denmark*, participants considered that corruption was **limited**, which did not mean that attention should not be paid to it.
- In *Ireland*, participants recalled that the Mahon Tribunal established in 1997 to look into allegations of **corrupt payments** to politicians had issued recommendations in 2012, which had been partly implemented. A committee had been set up to oversee declarations of interests, gifts received, and donations to political parties and politicians. However, some recommendations, such as in the domain of liabilities, still needed to be implemented.
- In the *Czech Republic*, participants pointed to a danger of state capture if **high-level cases of conflict of interests** were not properly tackled. Such cases, combined with politicians' influence on the media and pressure on the highest level of the judicial system, could also fuel a long term trend of erosion of public trust in the institutions.
- In *Lithuania*, participants mentioned that some changes had been made to create unfavourable conditions for **corruption** in the legal sphere. For instance, the process of assigning judges to cases had been computerised and the system was connected with the database of declared conflicts of interest. Participants called for stronger action from the anticorruption agency, a stricter legal framework and greater economic independence of the judges.
- In *Spain*, participants considered that corruption was still quite strong, in particular in the area of public procurement, despite **positive developments** in the area of the prosecution and sanction of corruption. Participants notably suggested reinforcing the monitoring power of the Court of Auditors, which controlled government spending.
- In *Cyprus*, participants considered that the perception of corruption was high. In 2020, after the emergence of a corruption scandal, Cyprus terminated the so-called "**golden passport**" programme, which had allowed the government to grant citizenship to investors.

Conclusion

This report had provided an overview of the second cycle of country visits undertaken by the Fundamental Rights and Rule of Law group in 2020-2021. The main trends that emerge from the lengthy discussions with hundreds of civil society representatives are very informative.

It is, for example, interesting to note that **social partners** met during the country visits shared a vision of fundamental rights which goes beyond the issues of trade union membership or collective bargaining – they insisted in particular on the importance of being fully involved in societal discussions. In that regard, they generally found that the level of social dialogue was good in the seven countries visited, but they also called for more meaningful inclusion in decision-making beyond the labour area. In all countries visited, social partners considered that social dialogue was a key factor of resilience for tackling a crisis like COVID. They generally called for more inclusion in the discussion and implementation of the recovery and resilience plans. Social partners showed great interest in issues related to equality and non-discrimination, highlighting their usefulness, but also a number of challenges in the area of integration of migrants, for example.

Representatives from civil society organisations consulted on **freedom of association and assembly** also drew the FRRL group's attention to the central question of their participation in public life. In a context where CSOs, in particular those working on sensitive issues, have become more and more stigmatised or discredited as political opponents, they sought to reaffirm their role as essential intermediary actors between states and societies. They therefore called for reinforcement of mechanisms to involve them in decision-making. This was all the more needed in that COVID seriously impacted civic space, and notably their watchdog role and their public outreach activities. In all countries visited, even those where public funding was high, the vital question of access to funding came up as a key concern for CSO representatives.

Representatives from CSOs and media professionals generally agreed that **freedom of expression and freedom of the media** were well protected in legal terms in the countries visited, but they also highlighted a number of challenges in many areas. The economic model for journalism is evolving, in a context of digitalisation and concentration of the media, which puts pressure not only on pluralism of the media but also on the economic and social status of journalists. These journalists are confronted with an ever more precarious work environment, added to a climate of distrust sometimes tantamount to hostility and individual hate targeting. Such fragility in the structure and actors of the media world is conducive to disinformation and influence. While explicit censorship is generally a practice of the past, self-censorship has been increasing. Such a challenging context does not mean that everything is dark, however. Participants in the sessions on freedom of expression and media freedom have also pointed to solutions, which could be summed up as support to quality journalism in the form of funding, adequate protection of journalists' work and other human rights, and a protective framework including, for example, greater monitoring of media concentration and action against strategic lawsuits against public participation (SLAPP).

The sessions on the **right to non-discrimination** are certainly those where the FRRL group heard from the most diverse types of CSOs, which generally brought about both a general discussion on trends with regard to discrimination, and specific considerations concerning groups such as migrants, people from ethnic or religious minorities, women, LGBTIQ people or people with disabilities. A new element in this cycle of visits is the emergence of social-based (and notably age-based) discrimination in a context where the COVID crisis has been harsher for groups less integrated into the socio-economic world. What results from these discussions is the conviction that the fight against discrimination is not one topic amongst others, but rather a key factor determining the future of our societies. While all countries visited had legal frameworks and institutions to work on discrimination, participants generally called for more efforts concerning implementation of legislation, in particular in areas such as monitoring, data collection, and access to remedy for victims of discrimination. Like other CSO representatives heard in the sessions on freedom of association and assembly, participants generally called for more funding for civil society, in a context where authorities are sometimes tempted to limit public funding in support of certain minorities. This trend reflects a general rise in mistrust and hate speech – certainly the trend that was the most present across all sessions – against minorities. This offers the perspective of the need for major collective efforts to ensure equality in practice of all individuals, all components of society, whatever their backgrounds.

Discussions on the **rule of law** with CSOs and legal practitioners concerned a very diverse range of situations, on the basis of which it would be artificial to draw common conclusions. Some countries visited had very solid and well-implemented systems of checks and balances, but challenges existed at various levels in all countries visited. A topic which particularly came to the fore is the separation of powers, showing the importance of continuing efforts to preserve the independence of the judiciary. However, questions also came up regarding the efficiency of justice, and notably the speed of justice and access to legal remedies for all. This cycle of visits being the first since the start of the COVID crisis, it has also provided the opportunity to hear the views of CSOs and legal practitioners on the impact of urgent and extraordinary decisions taken during the crisis. While democratic systems in countries visited have generally shown a good level of resilience, the need for safeguards and effective checks and balances, including the role of watchdog played by civil society, has been clearer than ever.

This overall picture, based on what the FRRL group has heard from civil society representatives during country visits, offers a glimpse of trends within the European Union. One could legitimately ask what the connection is between Denmark, Germany, Ireland, the Czech Republic, Spain, Cyprus and Lithuania, and why they are dealt with together in a single report. The response is simple: they are all members of our European Union, committed to protecting and implementing the EU founding values defined in Article 2 of the Treaty. This in itself is good reason to consider them together in a report on fundamental rights and rule of law trends seen from the civil society perspective.

Recent crises and the significant response offered by the EU have certainly reinforced the feeling that the destinies of the inhabitants of the European continent are intertwined. As European actors focus more on developments in the areas of fundamental rights and the rule of law, it is also becoming clearer and clearer that the rights of an inhabitant or an economic actor in a Northern, Southern, Western, Eastern, or Central Member State can be affected by developments in another Member State, even on the other side of the continent. Civil society representatives at national level are conscious of this and they have generally been calling for a robust response from the EU, in terms of high-quality frameworks for civic space, funding, freedom of expression and media freedom (including SLAPPs and the need to address hate speech), discriminations, etc. In the view of national civil societies, a robust EU response to fundamental rights and rule of law challenges is needed to support their watchdog roles and encourage authorities to act to raise standards.

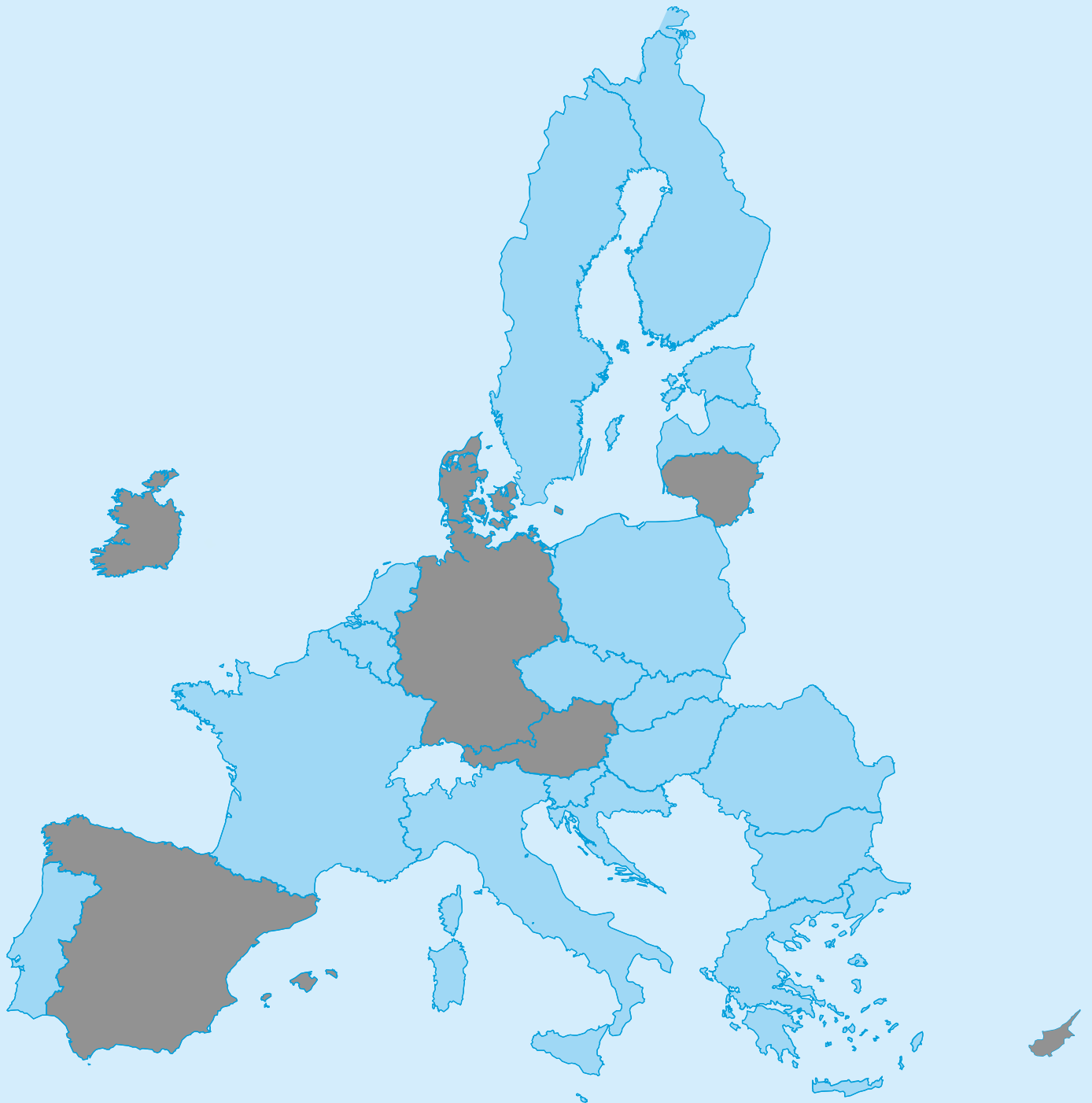
Convinced of that need and of the added value of continuing to hear and relay the voice of civil society in all Member States, the FRRL group will visit the remaining thirteen countries and will continue to report on them through country visit reports and another two synthesis reports.

The EESC Fundamental Rights and Rule of Law Group

Cristian Pîrvulescu, President

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APPENDICES

Country reports of the visits to:

Denmark

(21-22 December 2020)

Germany

(21-22 April 2021)

Ireland

(28-29 June 2021)

Czech Republic

(30 September-1 October 2021)

Spain

(14-15 October 2021)

Cyprus

(25-26 November 2021)

Lithuania

(15 and 17 December 2021)

Report on the visit to Denmark

21-22 December 2020

Six members took part in the virtual country visit to Denmark. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, on the one hand, and the Danish authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society.

Fundamental rights related to social partners

Participants agreed that the **Danish social model** was strong and well-functioning. In this model, social partners decided on collective agreements, which many times were the basis for tripartite agreements, which were then turned into law. The span of collective bargaining was wide, as was the density of union representation, although there could be variations of representation according to sectors. Overall, social dialogue was considered as efficient to safeguard social achievements like the level of salaries.

Participants mentioned that the authorities generally did not interfere with social dialogue and that the ministries were easily accessible, both formally and informally. The government's involvement of social partners in the context of the **COVID-19 crisis** was seen as very efficient, leading to tripartite agreements to address the situation. The employers' side acknowledged that business had suffered because of the crisis and that compensation schemes were put in place, adding that businesses did not intend to depend on public funding beyond the crisis.

A particular area of concern was equality of pay and treatment, in particular of **non-Danish workers** coming from the EU. A participant pointed to social dumping and undeclared work in sectors like construction, agriculture and the hotel trade. In the views of a trade union representative, the situation of foreign workers was particularly complicated in situations combining low density of collective agreement, low density of companies, and a low knowledge of the Danish model. Platform work was considered as another challenging area. Participants considered that a combination of regulation, dialogue, and responsibility of social partners was necessary to address these challenges. A participant also mentioned the government executive order to cull minks in the context of the COVID-19 response. This raised issues for farmers but they were confident proper remedies and compensation were to be found.

Freedom of association and assembly

CSO representatives agreed that the overall **environment** for CSOs in Denmark was good. Many people in Denmark took part in civil society activities, although the trend was for these activities to increasingly take place outside of classical CSO frameworks. A participant mentioned that this could be problematic as informal groups tended to focus relatively less on democratic values.

Both CSO participants and the Danish authorities mentioned that the **COVID-19** related limitations on freedoms of association and assembly had remained within the boundaries of the Constitution and were proportionate. Exceptions to limitations were for example foreseen for political or other meaningful meetings. Despite an overall good level of protection of freedom of assembly, a participant mentioned the unconstitutional restrictions that were imposed on pro-Tibet demonstrators during a Chinese official visit a few years ago, and the fact that investigations were still ongoing.

Participants agreed that it was generally easy for CSOs to register and to access **funding**. The level of public funding was high, and the national lottery fund secured amounts beyond short-term political decisions. Some concerns were expressed with regards to a possible diminution of available funding for CSOs following the COVID-19 crisis. A representative mentioned that CSOs could have been better included in the negotiations of the EU Multiannual Financial Framework and the postCOVID-19 recovery plan, and another one insisted the need to better fund democracy promotion activities. The Danish authorities explained that public funding was always available based on transparent and competitive public procurements and that CSOs were key partners in policies like gender equality.

CSO participants provided their analysis on more controversial areas like the draft law on **“Security for all Danes”** (*“Tryghed for alle danskere”*), which could be adopted by mid-2021. The law would allow the authorities to ban people from specific areas based on the vaguely defined concept of “behaviour and appearance creating insecurity in public spaces”. Participants in the session on the “right to nondiscrimination” also pointed to this bill as having the potential to disproportionality affect members of ethnic minorities. The Danish authorities commented that the bill aimed to address the feelings of insecurity in some areas controlled by groups of young people, and a general prohibition included all persons in the specific area. Therefore, it did not constitute discrimination.

One participant mentioned the risks to privacy rights and freedom of assembly that the Danish **CounterTerrorism legislation** inferred because of a lack of sufficient due process guarantees in relation with far-reaching provisions leaving a wide margin of interpretation to the police. It was recommended to review the full Danish Counter Terrorism legislation and its implementation and to ensure that judicial review was available in all its aspects. This topic was also raised in following sessions.

Several representatives in this session and the following ones shared their concerns with regards to the deterioration of the **democratic tone** in Denmark. It was said that debates had become tougher and more polarised, with less and less effort put towards understanding the other’s viewpoint. It was thought that more was to be done on education to debate. A participant explained that despite a general high level of societal trust in democracy, this level of confidence was lower amongst young people and minorities.

One participant considered it problematic that the Danish Constitution enshrined into law the **nonseparation between the State and the Church**. The participant considered that criticisms of this situation were too often considered as being aggressive, instead of being taken as a basis for a wide debate on how to make the Danish society more opened to various life stances.

Freedom of expression and freedom of the media

Participants agreed that the **general picture** concerning freedom of expression in Denmark was good, but they also mentioned several examples referring to serious challenges. As in the previous sessions, they considered that public debate was more tense than before, especially on line. Persons would fear reprisals for speaking about certain subjects in a number of areas. For example, academic freedom was affected by some students' reactions that considered some teachings as offensive.

Although the **blasphemy** law was repealed in 2017, the impact of the "caricature case" was still vivid and led to both self-censorship and polarisation of online discourses. On the other hand, a participant mentioned that Danish legislation treated differently public speeches according to whether they were made in a religious context. Another participant summarised the challenge as managing to protect at the same time freedom of expression and the rights of minorities.

The Danish **Counter-Terrorism** legislation was also discussed in this session. It was found problematic that it could facilitate the urgent blocking of websites and infringe upon journalists' rights to protect their sources. More generally, a participant explained that broadly-worded provisions could lead to imbalanced implementation and that this area of law should be reassessed against fundamental rights to strike a better balance concerning the proportionality, efficiency and necessity aspects of restrictions.

Another participant pointed out that public action to tackle **disinformation** could have a chilling effect on freedom of expression. Reference was made to a recent extension of the legislation on espionage to cover assistance to influence operations by foreign powers. Too vague a definition of such acts was seen as risky for freedom of expression. The Danish authorities explained that they were taking very seriously the issue of deliberate disinformation, while differencing it from involuntary misinformation. An inter-governmental task force tracked false narrative in order to detect state actors' spread of disinformation towards Denmark and potentially counter these false narratives. Since the beginning of the COVID-19 crisis, the inter-governmental task force had a particular focus on screening, whether foreign states used the crisis as an opportunity to launch disinformation campaigns directed at Denmark. The Danish authorities did not see clear evidence of such state directed campaigns against Denmark.

A participant considered that **whistle-blowers** could be more protected in the public and business sectors. The more general question of the right of public servants to use their freedom of expression to criticise their employer was mentioned, with a reference to the recent case of public railway employees being warned for having publicly criticised their working conditions. The Danish authorities stated that they were in the process of implementing the EU Directive on whistle-blowing, with a law foreseen to be discussed in Parliament in Spring 2021. All ministries were already ordered to establish whistle-blowing channels within their structures.

Participants considered that Denmark had a robust framework protecting **media** freedoms, with a minimal interference by the State. There was at least one person responsible for content (editor or journalist) in each media, which eased claims in Courts and before the Press Council. Although the situation was not considered as problematic, a trend towards the concentration of media ownership, especially at local level, was mentioned as worth being monitored. Although it was considered that the authorities did not seek to use the COVID-19 situation to

restrict or influence media, it was noted that the format of the exchanges between journalists and government representatives could be more open in that context.

Participants referred to public funding to media as an important support to **quality journalism** and to the plurality of media, in particular of local and smaller ones whose existence depended on them. The Danish authorities confirmed that media pluralism and independence were a priority and that they acted to support robust public service media and private sectors in the written press as in the digital one, and that they intended to focus their aid even more on regional media.

Many participants considered that Article 24 of the **Freedom of Information Act** was problematic because it prevented access to documents in the area of government work. On this specific point, the Danish authorities expressed their views that the provision was actually striking a balance between the public interest need for transparency and the necessity for a government to be able to protect its reflection on important issues. Pointing to the fact that the act had been backed by a wide political spectrum, they also referred to recent discussions on adjustments, which did not however reach a compromise.

The right to non-discrimination

Participants referred to a **paradigm shift** in Danish policy towards migrants over the recent years. They explained that, while the previous approach oriented asylum seekers to integration, the current one focused on ultimately returning them to their countries of origin. To illustrate this current approach, participants mentioned the increasing difficulties for refugees to enjoy related rights like family reunification or to maintain a residency permit. They mentioned the example of the so-called “jewellery law”, which entailed the confiscation of asylum seekers’ assets upon entry in the country.

The situation in pre-expulsion refugee **camps** was also presented as being very harsh, including the imposition of unjustified and disproportionate restrictions. According to some participants, the Danish authorities have not considered seriously a critical Council of Europe report on these camps. These participants acknowledged that the authorities had ordered minimal renovation of the camps, but regretted that they failed to question their overall approach consisting in detaining rejected asylum seekers. On asylum and migration questions, the Danish authorities asserted that all its pieces of legislation had been drafted based on a thorough fundamental rights assessment and therefore remained within the boundaries of the Danish Constitution as well as European and International law. They added that this set of legislation obtained a broad political support amongst the parliamentary forces and responded to societal demands.

CSO representatives pointed to a related area of key concern, which was the discrimination suffered by members of ethnic and religious minorities. To them, the most striking illustration of a situation that some qualified as “structural” was the “**ghetto law**”. They described how this law provided the criteria on which basis the authorities could declare that a certain area was a “ghetto”. While these criteria were seemingly objective, like income, unemployment rate, levels of education and criminal convictions, they de facto only related to areas populated by a majority of “Non-Western” persons. Participants explained that the distinction between “Western” and “Non-Western” was the one in use in some public services like job centres. They also explained

how the “ghetto” label was imposing discriminatory constraints on their residents, increasing the possibility for harsher convictions in case of crime. They felt that being in a “ghetto” was far away from offering social emancipation perspectives and was instead stigmatising residents, who moreover could be subject to forced eviction. The Danish authorities contextualised the “ghetto law” as the official response to the challenge of increasing segregation and “parallel societies” developing since the 1990s. They asserted that it did not amount to ethnic or religious discrimination and that it was proportionate and necessary.

A participant mentioned that minorities had been targeted in public and online discourses in the context of COVID-19. While minorities were over-represented in frontline jobs, some were accused of not being responsible enough during the epidemic. Another participant indicated that several states had recommended to Denmark in the last Universal Periodic Review (UPR) to work on an **Action Plan on Racism and Anti-Semitism**. This participant considered it important that authorities would adopt a comprehensive document, covering all areas.

A CSO representative presented the situation of **persons with disabilities** in Denmark, who represent up to a fifth of the population. This participant explained that the country was lagging behind concerning the legal recognition of “reasonable accommodation” for persons with disabilities. A recent positive development was that schools and institutions could not any more have discriminative access preventing disabled persons from entering, however restaurant and hotels for example still could. Other challenges that were mentioned included the de facto problem of more difficult access to justice for persons with disabilities as compared with the rest of the population, and the lack of full proper access to public transportation. Finally, the participant was concerned that the employment gap between persons with disabilities and the general population was high, while the education gap was actually increasing.

A CSO representative recognised the significant advances that had taken place in Denmark with regards to **LGBTIQ** rights over the past twenty years, in particular in the areas of the rights to marriage and adoption, and legal gender recognition. However, the participant also pointed out to particular challenges concerning healthcare for transsexual persons, the rights of intersex persons (and the issue of forced treatment on children), and the situation of LGBTIQ asylum seekers. The participant regretted that it was difficult to obtain remedy with the Danish Equal Treatment Board concerning LGBTIQ discrimination outside the area of the job market (for example concerning housing).

The rule of law

Participants in this session considered that the **overall situation** regarding the rule of law in Denmark was good, recalling notably that the country ranked first in the global Rule of Law Index. Participants agreed that corruption and conflicts of interests were a very limited phenomenon, which did not mean that attention should not be paid to this. The independence and quality of the judiciary was considered as good and not an area of particular concern. A challenge that was mentioned was the need to ensure more accessibility of legal aid and justice in general to members of marginalised groups.

However, a participant also shared concerns with regards to what was qualified as a slow but steady **regression** of the rule of law over the last years. While the parliamentary system was seen as solid, the participant pointed out to an increasing political offer of anti-human rights ideas, mostly on the extreme sides, but with an influence on mainstream politics. A significant recent increase in hate speech and attacks against Muslims and Jews were mentioned as examples.

Participants covered the **security**-related aspects of the rule of law. The already discussed Bill on “Security for all Danes” was also evoked in this session and was associated with risks of discriminatory implementation because of its vague conceptualisation of what was meant by “creating insecurity in public spaces”. Participants also mentioned a trend towards the extension of surveillance in the public sphere and the handling of data retention contrary to European standards. A participant also mentioned a lack of oversight of the intelligence services, which could have been involved in the transfer of data of Danish citizens to foreign services.

Participants explained that while the original legislation adopted to address the **COVID-19** epidemic organised an excessive transfer of power to the Ministry of Health, the views of CSOs and the national human rights institution were well taken account of at a later stage, which led to a second much more balanced version of the law. They however pointed to concerning instances of illegal instructions ordered by the authorities. One was related to the COVID-19 situation, and led to the massive culling of minks in the country without a legal basis. The other example referred to whether the former Minister for Immigration and Integration issued an illegal order to separate married and cohabiting couples at asylum centres, where one of the parties was a minor – which has not yet been finally clarified. Consequences for these actions were under discussion at the moment of the visit. Participants considered that such examples showed that Denmark was not free from concerns and that vigilance was appropriate.

Report on the visit to Germany

21-22 April 2021

Six EESC members took part in the virtual country visit to Germany. The delegation met with representatives of civil society, namely civil society organisations (CSOs), social partners and the media on the one hand, and the German federal authorities as well as authorities of the federal states of Saxony and Bavaria on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society. The authorities' views will be reflected in their reply to the report.

Fundamental rights related to social partners

Participants described **social dialogue** as lively; the authorities added that collective bargaining was given full autonomy, while the trade unions suggested that the benefits of collective bargaining deserved to be better promoted. Statistics from 2016 showed that more than 50% of companies (representing some 3/4 of workers) were covered by collective bargaining⁵. These figures had been decreasing over the past few years and they were higher in the public sector than in the private sector. Social partners could seek legal protection, and legal requirements were the same across all federal states. They pointed out, however, that although the legal framework was good, in practice problematic issues had been observed, such as the following:

- differences persisted between areas in former East Germany and former West Germany;
- large companies were concentrated in the west;
- small companies did not have strong trade unions;
- the unemployment rate was higher in the east and workers were more reluctant to join trade unions there, as they feared that it might put their jobs at risk;
- 30 years after reunification, workers in the east still earned less than workers in the west, which might be one of the causes of the rising social and political discontent in the east, partly resulting in an increase in extreme right-wing movements;
- gender equality, as reflected in wages, was better in former East Germany.

Overall, trade unions had seen a decrease in their membership since reunification.

Participants discussed the challenges linked to the **COVID-19 pandemic**. They agreed that cooperation between social partners remained good. Social partners had called for the implementation of measures to mitigate the negative impact of the crisis, namely shorter working hours, thanks to which the pandemic was not affecting the labour market as heavily

5 <https://ilostat.ilo.org/topics/collective-bargaining/>

as it might have. In the public sector, those workers who had to take care of their children or older family members because of the COVID-19 measures were able to be temporarily released from their duties. However, the social partners had not been involved in designing the measures from the outset and the situation differed from one federal state to another. One participant from Saxony noted that the borders with the Czech Republic and Poland had been closed overnight without any prior consultation with the social partners, and employees had not been able to get to work.

During the **2015 – 2016 migration crisis**, the social partners had been very vocal and participants praised the cooperation between them in managing this crisis. They pointed out a number of measures put in place following their initiatives, such as language courses and vocational training for refugees, as well as projects facilitating refugees' integration into the labour market. As a result, half of the refugees had been employed, proving that the involvement of the social partners since the beginning of the crisis had borne fruit.

Social partners were open in their opposition to any expression of **extremism**. Trade unions ran projects aimed at helping people to recognise elements of extremism in order to combat them. During the migration crisis, trade unions were promoting an open society and adopting a clear stance against any kind of **discrimination**. In this regard, the participants mentioned a *Diversity Charter* whose objective was to protect the identity of each individual, to which more and more companies were becoming signatories. One participant mentioned that a specific parliamentary committee had been put in place in order to tackle issues such as discrimination against sexual and religious minorities at the workplace. Social partners were involved in designing the measures, which were supported by the relevant parliamentary committee.

Freedom of association and assembly

Freedom of association and freedom of assembly were guaranteed by the German Constitution. Nevertheless, the authorities underlined that both freedoms could be limited by law.

Participants highlighted that the federal tax law granted exemptions for **non-governmental organisations** (NGOs). In this regard, it raised the question as to the degree to which an NGO could be political and still maintain its **charity⁶ status**. NGOs who spoke out against far-right tendencies faced allegations of being too political, with subsequent investigations. Although these allegations often lacked legal basis, they discouraged NGOs from being active and created an atmosphere of unease. If a CSO wanted to apply for government programmes, it had to be registered as a charity⁷. In autumn 2020, legal changes had been introduced to the **charity law** and the list of purposes for which an organisation could be granted charity status was amended and extended. It was underlined that charity status was vital for many organisations. This status could be automatically withdrawn if the organisation appeared on a certain list of the German intelligence service and it would then become

6 In Germany, charity as a legal term is only relevant in tax law.

7 Charity status is granted to organisations who pursue aims that benefit the public, benevolent aims, or religious aims.

extremely difficult to get this status back. One participant qualified this law as restrictive. It was noted that civil society was not receiving rescue funding from the state to mitigate the impact of COVID-19 and that this fact, combined with the restrictive law, might be detrimental to some organisations. Organisations who acted as watchdogs were particularly vulnerable, especially if their scope of work included monitoring COVID19 measures. As a result, some organisations admitted that they tended to self-censor so as not to lose charity status.

Furthermore, one participant pointed out that the **transparency and public accountability of CSOs** were not very advanced; some CSOs continued to fail to disclose their sources of funding, a fact that was leading to calls for this to be made a legal obligation for CSOs. It was also pointed out that no single register of CSOs existed; a number of different registers were available instead, with different conditions for registration, which provided for a confusing overview of civil society organisations.

Participants noted that there was no government body in charge of civil society. They believed that there was a certain lack of understanding at government level as to the *raison d'être* and role of civil society. Some regretted that there was no provision for involving CSOs in the debate on human rights and that, in general, there was little scope for their involvement in political decision-making. The importance and benefits of engaging civil society were made clear during the refugee crisis in 2015-2016, when CSOs were essential in managing the situation, in particular in Germany.

There was general agreement that the **police** had sufficient powers to deal with the current situation and that there was no need to extend them. The authorities believed that there was no structural problem as regards the police and explained that the police in Germany came under the responsibility of individual federal states. Authorities from Saxony reported on awareness-raising activities about the rights of minorities, organised for future police officers. It was noted by civil society participants that a worrying law on policing had been passed in Bavaria in 2018 without any prior consultation with civil society in the drafting process. German federal law, stipulated that if a perpetrator of an act of violence was identified during the protest, the individual needed to be removed from the gathering, without the protest being dispersed. However, one participant highlighted concerns in connection with the protests on the margins of the G-20 Summit in Hamburg in 2017. Individuals who took part in protests in which acts of violence were committed, but without their direct involvement, had been detained. (The German authorities contested the views expressed by the participant). It was pointed out that the police tended to protect different types of protests in a selective manner: protests by left-wingers seemed to be subject to more surveillance than right-wing protests. One participant expressed concern about the fact that the current anti-COVID-measure protests might be used as a reason to restrict freedom of assembly in the future. The authorities stated to the delegation that they strived to strike the right balance between freedom of assembly and the protection of public health, within the legal limits.

Freedom of expression and freedom of the media

As a general introduction, participants referred to the 2020 World Press Freedom Index⁸ published by Reporters without Borders in April 2021. Germany's rating had dropped by two points and the overall evaluation changed from "good" to "satisfactory". This drop was mainly due to the higher number of attacks on journalists, which mostly occurred during protests, and not because of increased influence from the state. Authorities noted, however, that legal provisions to protect journalists were good and that further measures to combat extremism had been put in place. Participants agreed that Germany had good legislation on **media pluralism**.

Since 2015, following the migration crisis, there had been an **increase in negative attitudes towards the media** from right-wing movements. In some cases, police failed to grant the necessary protection to journalists, which had led to an initiative proposed by media representatives to raise awareness about the increase in attacks on journalists. Nonetheless, the authorities underlined that Germany applied high standards as regards the protection of journalists and that no immediate action was needed. A study on how much journalists were affected by hate speech showed that 16% of respondents had been physically attacked, while another 16% had received threats on their lives. Out of these cases, 90% turned out to be politically motivated and 80% of them were conducted by the far right⁹. As a result, there was an **increasing tendency towards self-censorship** to prevent possible confrontations. Some journalists confirmed that there were topics or events which they intentionally avoided; these included anti-COVID-measures marches and right-wing protests. As for **journalists of colour** and **journalists with a migrant background**, they tended to avoid topics such as racism in order to prevent hate speech. Another issue raised by participants was the **lack of protection for foreign media representatives** who operated on German soil.

The right to non-discrimination

An **anti-discrimination law** had been put in place in Germany. However, seeking legal help for those who experienced **discrimination at the workplace** based on their identity could be difficult, not only because it was challenging to prove but also because there were low levels of awareness about legal protection in this regard, as well as about subsequent rights to compensation. As a result, it was problematic to obtain statistics on how many people were victims of discrimination and the proportion of those who sought legal help. It was also noted that it was very difficult to litigate against state players. Between 2019 and 2020, the number of cases of **discrimination based on race or origin** had increased according to the participants. In the majority of cases, people of Asian origin were victims of these attacks.

⁸ <https://rsf.org/en/ranking>.

⁹ Study published in May 2020 by the Bielefeld "Institute for Interdisciplinary Research on Conflict and Violence", https://pub.uni-bielefeld.de/download/2943243/2943245/Studie_Hass_und_Angriffe_auf_Medienschaffende.pdf

The **LGBTIQ+ community** had noticed many positive developments over the past few decades, including at legislative level, although efforts to improve their integration still needed to be stepped up. In 2017, same-sex marriages were introduced. For **lesbian couples**, if one of the women gave birth to a child, the other woman did not enjoy equal parenting rights. Recently, the community had been under fire from right-wing and populist movements. Surveys showed that **transsexual people** encountered even more discrimination at the workplace than homosexual people did.

In 2017, Saxony proposed an ambitious plan in relation to LGBTIQ+ rights, but it was not fully implemented; the plan failed, for example, to grant healthcare to transsexual people. Many cases of discrimination had been reported in Saxony, but the police had not reacted sufficiently. In October 2020, a gay couple was stabbed in Dresden; one of the men died, the other was seriously injured. It took a long time before police identified this as a hate crime. Bavaria was the only federal state without any action plan to tackle homophobia or transphobia. However, the Bavarian authorities explained that in January 2021 an office for the protection of LGBTIQ+ people had been set up to protect both victims and witnesses of crimes against the community. Participants called for the implementation of the European LGBTIQ Equality Strategy 2020-2025¹⁰ and expressed the belief that it would considerably improve the situation in Germany.

Concerning **elderly people**, some of the stakeholders believed that the age limit required for some services was often not justified and that the approach should be individual, for instance in the case of health insurance or car rental. Authorities explained that in these cases, statistical data assessing potential risks were used to determine insurance premiums. Elderly people experienced discrimination in the recruitment process and their subsequent complaints were usually dismissed as age-related. People older than 65 had to pay extra for comprehensive car insurance. Loans could not be granted to people above a certain age limit. It was underlined that digitalisation was posing difficulties for the elderly and therefore non-digital alternatives should be kept available to ensure that they had the same access to services, especially when it came to healthcare.

Although **Sinti and Roma** had been living in Germany for 600 years, they still did not enjoy the same citizens' rights as ethnic Germans. Their children continued to experience discrimination in schools. It was stated that, in discussions in the General Council convened a week before the EESC's country visit to Germany, the German State Secretary of EU Affairs had acknowledged that mounting antiziganism and anti-Semitism in Germany should be a new wake-up call for the country.

¹⁰ https://ec.europa.eu/info/policies/justice-and-fundamental-rights/combating-discrimination/lesbian-gay-bi-trans-and-intersex-equality/lgbtiq-equality-strategy-2020-2025_en

Representatives of **linguistic minorities** reported that they were faced with attacks by right-wing movements and experienced discrimination in the workplace. In Saxony, which was home to Sorbs, signs could be written in their language along with German signs.

Women remained underrepresented in the German Bundestag: less than one third of parliamentarians were female¹¹. The average federal pay gap was estimated at 19% (2019)¹². The pension gap was even more striking: women aged 65+ received 59.6% of that which their male peers¹³ received. Organisations protecting women rights reported cases of forced marriage at a young age, female genital mutilation and the traffic of women. Childcare facilities remained insufficient, which made it more challenging for mothers of young children to be integrated into the labour market. Authorities agreed that COVID-19 imposed extra tasks, which typically fell on women; they had to deal with telework and home-schooling of their children at the same time, which was often difficult to combine. One CSO participant was concerned that positive developments achieved in gender equality before the pandemic might be reversed.

The rule of law

The authorities emphasised that laws were issued in a transparent, accountable and democratic way and a great deal of attention was paid to impact assessments. As regards **independence of the judiciary**, one needed to distinguish between courts and judges on the one hand, and prosecutors on the other. In the case of **courts and judges**, independence was assured, but their structure was governed by the relevant ministry. In some federal states, the selection, nomination and promotion of judges was carried out exclusively by the relevant ministries. In Saxony and Bavaria, the participation of freely elected judges was very limited. On the contrary, **prosecutors** were civil servants at the Ministry of Justice. Some raised doubts about the resilience of the German judiciary system; remuneration was not sufficient and a number of judges would be going into retirement in the next decade. Lastly, judges were increasingly receiving threats.

As a final point, participants agreed that **corruption** was not a major issue in Germany.

11 German Bundestag – members <https://www.bundestag.de/en/members>

12 Eurostat – https://ec.europa.eu/eurostat/statistics-explained/index.php?title=Gender_pay_gap_statistics.

13 Federal Ministry for Family Affairs, Senior Citizens, Women and Youth – The Gender Pension Gap, <http://ec.europa.eu/social/BlobServlet?docId=8113&langId=en#:~:text=In%20Germany%20the%20Gender%20Pension,less%20individual%20pension%20than%20men>

Report on the visit to Ireland

28-29 June 2021

Six members took part in the virtual country visit to Ireland. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners and the media, on the one hand, and the Irish authorities on the other. The main aim of this report is to faithfully reflect and reproduce the views of civil society.

Fundamental rights related to social partners

Participants explained that **social dialogue** had collapsed in 2009 due to the financial crisis. Consultation had only tentatively restarted in 2014, when Ireland rejoined the European Semester, and with the creation of the “Labour Employer Economic Forum” (LEEF) in 2016. Within a few months of the onset of the pandemic, an agreement on a return-to-work protocol had been negotiated within the LEEF. Social partners wanted to build on the success of this renewed and expanded social dialogue and the positive result seemed to have strengthened the government’s commitment to the process. Government engagement could still be improved with regard to issues outside the LEEF: for example, once the Protocol on Ireland/Northern Ireland entered into force participants felt that the government had stopped engaging with regard to the implications of Brexit for workers. In relation to consultation as part of the European Semester, trade unions criticised the tightness of the timeframes, and felt that the process should be set up to allow for presentation of alternative narratives and proposals, instead of just reactions to government proposals.

It was noted that **collective bargaining** coverage was fairly low, and that this was being examined by the LEEF. Digital platform workers were outside the scope of agreements, and in general they were not members of trade unions. Their employment status was disputed. The LEEF had a number of subgroups looking at issues such as pensions, housing, childcare and discrimination, but many subgroups were yet to become active. In Ireland, social dialogue did not only include social partners, but encompassed a broader dialogue with civil society organisations, and relationships between stakeholders were good.

Gender **equality** and gender pay gap reporting were a significant area of focus. A gender pay gap reporting Bill was before the Parliament at the time of the visit. With regard to disability, the LEEF subgroup focused on access to the labour market, incentives, subsidies and flexible work arrangements. There was strong social partner involvement in the strategies for LGBTI+ inclusion, Traveller and Roma inclusion, and in the consultations on the development of the National Action Plan Against Racism.

The Irish Trade Union Congress covered the entire island, and both jurisdictions. Some participants called for further discussion of the human rights **implications of Brexit** for people living and working in the island of Ireland. Specifically, with regards to labour rights,

the ending of freedom of movement posed significant problems to workers, in particular for “frontier workers”, i.e. people living in the Republic of Ireland but working in Northern Ireland: they needed frontier permits to work legally in Northern Ireland, but there was a serious lack of knowledge about the legal requirements. Despite the Protocol on Ireland/Northern Ireland participants were concerned that Brexit could result in divergences between the rights of workers in the Republic of Ireland and in Northern Ireland.

Participants expressed concerns about a hostile environment from Great Britain and Northern Ireland towards EU migrants in the context of Brexit. EU-migrants having difficulties documenting their status, such as Travellers and homeless people, were at risk of losing their rights. Despite the Protocol on Ireland/Northern Ireland, which ensures no hard border on the island of Ireland, participants expressed concern that one possible consequence of Brexit was that what had previously been an invisible border could “harden” with regard to freedom of movement for certain groups of people, and this could result in some people inadvertently finding themselves in an irregular situation when crossing the border. Participants also mentioned concerns about EU citizens being subject to racial profiling during immigration checks in Northern Ireland, and a risk of detention if they could not prove their status. They also expressed the hope that the EU would continue to engage with people in Northern Ireland.

Freedom of association and assembly

Generally speaking, participants considered the protection of human rights in Ireland to be strong, albeit with some challenges. For instance, over the past year, the COVID-19 pandemic had entailed very difficult trade-offs between human rights and restrictive measures to avoid the spread of the virus.

With regard to **freedom of association**, participants’ main concern was the unintended effects of the Electoral Act on CSOs: the Act governed donations to political parties, but the rule limiting private and foreign donations also applied to CSOs. The government had expressed its intention to address these issues and discussions were ongoing on amending this provision in the law. There were also sometimes issues related to the destination of funding: for instance, public funding was received for providing services and not for developing advocacy campaigns, making resources for advocacy more limited. Organisations with a generic mission such as “protection of human rights” were not considered charities, which had a negative effect on their access to donations and prevents tax exemption of donations. The need for tax exemptions could also lead to some not-for-profit organisations scaling back advocacy work. Some organisations had experienced a significant drop in their income due to the pandemic and its limitation of fundraising opportunities. To obtain emergency funding from the state, an organisation’s income needed to have dropped by 25%.

CSOs felt they had good access to, and were properly **consulted** by, the authorities, but said they would like an expanded social dialogue like in the past. During the pandemic, consultations had moved online, a trend which one participant warned could lead to the exclusion of people without access to digital infrastructure.

Participants explained that **Brexit** had not yet impacted most CSOs. Some organisations, for instance in the field of sport, encompassed the whole of Ireland, while others were divided. However, they were expecting difficulties to come in relation to EU funds for cross-border activities.

The Constitution granted strong protection to **peaceful protest**. During the pandemic, measures had been introduced limiting movement and participation in events, and no exceptions had been made to enable participation in socially distanced protests. This had led to random application of the rules: in some cases protestors had been threatened with prosecution or fined for taking part in or organising protests, whereas others had been allowed to proceed without interference.

Freedom of expression and freedom of the media

Participants emphasised that the country had **a very healthy media environment**, both offline and online, and that public trust in the independence of Irish journalism was high.

The main concern mentioned was the **law on defamation** and the high cost of libel. The legislation had been criticised for being very restrictive, both by the European Court of Human Rights and by the European Commission in its rule of law report. The high cost of libel restricted media in their role as watchdogs and their ability to reveal matters of public interest. Freedom of the media legislation is under review.

Concentration of ownership, despite improvements, still presented a concern in Ireland, as the government was not using all of its existing tools to ensure greater media diversity. In addition, the media market was exposed to a large volume of international English-language content, which impacted the sustainability and operability of media based in the country. Brexit had shown the importance of having independent media in the country, in order to offer an Irish perspective on arising issues. Additionally, the advertising market constituted an issue of concern, because the majority of the income from the sector was flowing towards the high-tech companies.

Participants mentioned the need for EU regulation of social media platforms that would not interfere with freedom of expression, but would address the issues of hate speech, online harassment, disinformation and fake news. Ireland would be one of the eight national hubs of the European Digital Media Observatory, helping to collect and analyse data to help counter disinformation.

With regard to online harassment, participants mentioned **threats to journalists, particularly on social media**, and noted that such attacks were often directed against female journalists. Furthermore, threats to journalists covering Northern Ireland were on the rise.

One participant called for better protection of freedom of association and collective bargaining rights for journalists to ensure better working conditions. The idea of greater investment and training in journalists was raised, including public money for **quality journalism**. Concerns

were also expressed concerning the fact that the print and broadcasting sectors did not reflect the diversity of the Irish society, and that Irish-language broadcasts were less well remunerated.

The right to non-discrimination

Participants mentioned that **legislation** on anti-discrimination needed to be updated and emphasised that, although the government had sent promising signs in this regard, there was a need for timely implementation and proper resourcing. Cross-cutting issues include the need for early intervention to avoid exclusion of vulnerable groups and inclusion with regard to education, housing, access to social services and employment. Social partners and CSOs had a key role in promoting anti-discrimination at work, and also in society more broadly. Many participants called for increased and disaggregated data to better inform policy. Participants found it regrettable that vulnerable groups were not mentioned in Ireland's National Recovery and Resilience Plan 2021, as they had been particularly hard hit during the COVID-19 pandemic.

The pandemic had disproportionately affected **Roma and Travellers** and exposed the difficulties that these communities have in accessing health services and adequate housing. Participants welcomed the recognition of Irish Travellers as an ethnic group, the legislative developments in relation to hate crime and hate speech, and the proposed Nation Action Plan Against Racism. However, discrimination remained relatively high in the country, and the participants emphasised the need to translate policy into tangible action. They highlighted a need for a national educational strategy for Travellers including targets and timelines to counter early school leaving and reduced hours.

Participants noted that there had been significant progress in **LGBTIQ rights** lately, particularly with the introduction of marriage equality. However, hate crime legislation and education on relationships and sexuality needed updating. Online hate remained prevalent and 70% of LGBTIQ young people felt unsafe at school. A clear and immediate ban on conversion therapy was needed, as was progress on gender recognition for under-18s and non-binary people. Difficulties in accessing mental health services before the age of 18, without parental consent, remained a problem. Furthermore, a participant expressed concern about the EU-wide situation for LGBTIQ rights, and called on the EU to protect them.

The publication of a White Paper on direct provision (the system for accommodation of **asylum** seekers) was welcomed. The White Paper expressed the intention to establish an independent inspection regime in the welcoming centres. Another positive aspect was the government's announcement that the situation of undocumented migrant children would be regularised. A referendum in 2004 removed the right of children born in Ireland to foreign parents to get Irish citizenship at birth. This meant that these children were not registered and no longer have the right to benefits. The inability for undocumented workers to access employment tribunals was also an issue.

Child poverty disproportionately impacted single-parent families, Roma and Travellers, households with persons with disabilities etc. COVID-19 had exacerbated existing forms of poverty, and in particular food poverty. Participants welcomed the government's

announcement of a revision of the equal status policy aiming at recognising socioeconomic status as a potential ground for discrimination. The use of reduced timetables in schools was also referred to as an element of concern, as it generally disproportionately impacted certain groups of children, affecting their well-being and mental health.

Ireland had ratified the Council of Europe Istanbul Convention for the elimination of violence against women. However, the services provided to victims of **domestic and sexual violence**, including online violence and abuse, were limited, in particular in light of the numbers of reported cases. Court system reforms were needed to avoid secondary victimisation.

Experiences of poverty and exclusion from education, transport, employment, housing were still common among **persons with disabilities**. Social cohesion was key to avoid exclusion, as was the implementation of the UN Convention on the Rights of Persons with Disabilities. The establishment of a Parliamentary Committee on Disability Matters in 2020 was applauded. Participants felt that early intervention should be promoted because it was crucial in inhibiting further debilitation. Unfortunately, Ireland still placed people in institutions, regardless of the calls to deinstitutionalise.

Older people experienced many of the same challenges mentioned above and suffered from cumulative disadvantages. Stereotypes on ageing were described as a significant challenge to equality, as was a lack of data on the diversity of older peoples' situations. A digital inclusion strategy was needed, particularly in the context of the pandemic, where lack of skills prevented access to the public debate.

Homelessness was said to lead to increased discrimination and marginalisation. Most homeless persons were already in a situation of marginalisation before they experienced homelessness. A good protection system was in place, but it was overly complex and bureaucratic and required significant documentation, which could pose challenges to homeless people who were not able to provide documents. It also presented challenges in terms of access to education and services.

Participants called for better support for people to help them defend their rights in the area of anti-discrimination, including through effective **reparation**. They also called for a more explicit statutory duty for public bodies to consider anti-discrimination when performing their jobs. Participants considered that the EU should strengthen the impact of equality bodies, with the support of the EESC.

The rule of law

Generally, participants considered that the rule of law functioned well in Ireland. With regard to **access to justice**, some participants mentioned high legal costs, and problems relating to access to legal aid. The means test was set at a level that did not reflect real income levels in Ireland, precluding most from receiving legal aid. Furthermore, the exclusions from coverage were too broad, as legal costs linked to e.g. tribunals, quasi-judicial bodies, and labour courts were excluded. A recent review recommended allowing for multi-party action, but no concrete

progress had been made. Court organisation also needed to be improved, although progress had been made due to COVID-imposed rationalisations.

Corruption affected Ireland more than the best performing countries on the corruption perception index, although adequate safeguards against abuse of power were in place. Recommendations issued in 2012 by the Mahon Tribunal (established in 1997 to look into allegations of corrupt payments to politicians) partly been implemented, including safeguards for conflict of interest, and the establishment of a committee responsible for declaration of interests and gifts received and donations to political parties and politicians, but some recommendations, for example on liabilities, still need to be implemented. There were no room for complacency, according to the participants. One participant expressed concerns about implementation of the Lobbying Act and the Act protecting whistle-blowers, as well as the phenomenon of “the revolving door” between the public and private sectors.

The **absence of a proper and rigorous human rights analysis of COVID-19 related legislation** was mentioned. This could also be related to the lack of a human rights and equality committee within the Parliament. The prisoner complaint system had not been operating properly over recent years, which had caused particular challenges in terms of reporting inmates’ needs or violations of rights during the pandemic. The situation was amplified by the fact that external monitors like CSOs were not allowed to access prisons during the pandemic.

Report on the visit to the Czech Republic

30 September-1 October 2021

Five members took part in the country visit to the Czech Republic. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media and the legal profession, as well as the Czech authorities. The aim of this report is to faithfully reflect and reproduce the views of civil society.

Fundamental rights related to social partners

Social partners assessed positively social dialogue in the Czech Republic. They considered that exchanges between employers and trade unions worked well, as did the **tripartite social dialogue with the government**, which spanned from Minister level to a variety of working groups. They explained that CSOs were not directly represented in these tripartite dialogues but that the key concerns they defended, for example the inclusion of persons with disabilities at work, was taken up by social partners themselves.

Social partners considered that the existence of a strong social dialogue had been **very important in tackling COVID-19 related difficulties** around a number of legal uncertainties calling for clarification, for example in relation to home working. They offered illustrations of such legal uncertainties that complicated the lives of employers and workers during the crisis. For example, the absence of legal provisions on short-time work proved to be a challenge during the economic lockdown. A lack of clarity around the rules surrounding the crossing of borders and freedom of movement of goods and labour was also cumbersome for economic life. The question of whether employers had to prevent entry to the workplace for non-vaccinated workers was also a source of confusion.

The main difficulties identified by the social partners concerned **some legal aspects of the Labour Code**. Notably, trade union representatives regretted that Section 24 of the Labour Code imposed the existence of mutual consent amongst all trade unions in a company as a precondition for the conclusion of a collective agreement with the employer, which de facto made them very difficult to attain. It was explained that the number of collective agreements had been declining in recent years. An employers' representative also considered that the Labour Code was unclear on whether or not employers had the obligation to negotiate collective conventions.

Freedom of association and assembly

Civil society representatives agreed that **freedom of assembly** was well protected in Czech law. One representative referred to the "Million Moments for Democracy» movement which had not been hindered by the authorities since its creation in 2018. A few cases of excessive

use of power by the police had been brought to Court in the past few years and proceedings were ongoing. During the peak of the COVID-19 pandemic, mass gatherings were restricted but the threshold of the number of demonstrators allowed was adapted to the evolution of the situation.

Participants indicated that there was **no legal restriction to freedom of association**, but that concrete obstacles had increased in recent years. There was a trend towards more distrust of CSOs amongst the general public and a risk of polarisation of Czech society on this topic. Some politicians indeed adopted a confrontational attitude, claiming to be the only legitimate voices of society and denying the role of CSOs. They labelled CSOs active beyond the sphere of social services or sport as “political CSOs” and claimed that they lacked transparency. On this point, the Czech authorities noted that the positions of individual politicians were not those of the government, and the official work of the authorities aimed to support an enabling environment for all CSOs.

In such a context, **access to funding** had become increasingly challenging for CSOs. Participants explained that the majority of the budget allocated to civil society activities went to sport, at the expense of other topics, especially those related to non-discrimination, human rights, and advocacy. They felt that areas like the environment or the fight against corruption were underfunded and that it was particularly difficult to obtain funding for “hot” topics like gender equality or Roma integration. Participants pointed to the 2020 gap between the two EU Multiannual Financial Frameworks, which disrupted the work of CSOs and created an additional burden for them to find co-financing. A participant also pointed to important administrative and bureaucratic barriers in the registration process of CSOs. Reference was also made to studies showing that most CSOs considered that their activities had been seriously impacted by the COVID-19 crisis. The Czech authorities mentioned that funding was available for CSOs to lead anti-corruption awareness campaigns and that the Government Anti-Corruption Council was also open to CSOs.

Participants felt that **access to decision making** needed to be improved. They considered that the government’s strategy on cooperation with civil society was good but that it needed to be better implemented. CSOs were formally part of advisory committees but the nomination procedures differed amongst administrations in charge. CSOs considered that there was a lack of representativeness of their sector and regretted that authorities could freely decide to consider or discard CSO contributions without proper feedback. Over the last few years, some CSO representatives had resigned from the advisory body composed of CSOs and government officials. The Office of the Public Defender of Rights as an institution offered very good cooperation with CSOs. However, CSOs criticised the controversial public positions taken by the mandate holder. They considered that the Public Rights Defender’s refusal to deal with some issues like minorities, and in particular Roma people, hindered the overall trust in the institution and its authority. On a more operational level, CSOs in the environment field faced restrictions in accessing land planning or related decision-making processes.

Participants also considered that the **COVID-19 crisis** further affected the effectiveness of CSO consultation procedures. CSOs considered that they were not properly involved in the preparation of the Czech National Recovery and Resilience Plan (NRRP) and that they had to turn directly to Brussels to obtain information.

Freedom of expression and freedom of the media

Media representatives agreed that journalists benefitted from **a secure environment** in the Czech Republic and that overall the situation was better than in some neighbouring countries. Freedom of expression and media freedom were solidly protected in the Czech Charter of fundamental rights and freedoms.

However, participants also assessed that the **general trend was going in the wrong direction**. Journalists in the Czech Republic did not normally risk their lives as in some other countries and some attempts to put pressure on some journalists had failed. For example, a “muzzle” bill had been proposed a few years ago which could have restricted the work of journalists, but it was never passed. In the area of libel, the Constitutional Court also ruled that public figures could not claim the same level of protection against defamation as private persons, thus reducing the risks of abusive lawsuits against journalists on such basis.

However, the **influence of politicians** (including from the highest level) on media was considered particularly problematic. The few main media owners of the country were depicted as combining business profit with political influence – including through the propagation of fake news. Participants shared their concerns with regards to the recent barring of representatives of international media from a press conference of the Prime Minister with his Hungarian counterpart, which was unprecedented. Questioned by the EESC delegation about the motivation for such exclusion and its possible link to ongoing legal proceedings concerning the Prime Minister, the representatives of the authorities did not express their views. Participants saw local media as particularly at risk of being influenced by local politicians. There was however also a public demand for quality and independent information, which explained the success of some media projects in that area. The Czech authorities explained that the legislation on conflicts of interest prevented public officials from directly carrying out TV, radio or magazine broadcasting, but that this did not prevent holding shares in the media market.

Participants felt that the **increasing economic fragility** of the media sector made media outlets more prone to influence. Social media platforms absorbed the vast majority of advertising revenue, leaving only a slight share to classical media producing content. This trend had accelerated with the COVID-19 crisis, as its impact on the economy dried up sources of advertising. As a result, some of the smallest and weakest media outlets had to close down or undertake restructuration, and the precarious conditions of journalists increased. Many journalists have been working under precarious work contracts or as freelancers, while membership of journalist trade unions has decreased, following a similar trend in other European countries.

Although media representatives considered that there was no topic that could not be covered by journalists in the country, they also considered that the **risk of self-censorship** was on the rise. The number of investigative journalists able to sustain lengthy investigations was considered very low, and there were not many vocations for such career amongst the youth. Participants considered it essential to obtain better support for quality journalism, including through training on how to treat and analyse information.

Participants also felt that the **independence of public media** was in danger. Until recently, there had not been real attempts of political interference in content by members of media

supervisory bodies elected by the parliament. However, a trend had emerged in that direction, in particular in relation to the public broadcaster Czech Television.

The right to non-discrimination

Participants in that session considered that diversity was not yet conceived as a positive value in Czech society. In that context, they felt that official data on discrimination was lacking and that **effective protection against discrimination** remained a challenge. Access to justice for victims of discrimination and vulnerable groups was problematic. It was felt that police lacked sufficient training in this area and that investigations by the general inspection of police forces did not lead to a truly visible outcome. Legal assistance was very formal, for example migrants would need to turn to private lawyers in the absence of sufficient funding for CSOs offering similar aid free of charge. The Czech authorities mentioned that data on hate crime were actually collected, although they did not cover all grounds for discrimination. They gave information on training programmes to better identify and protect victims.

Participants explained that several **institutions** were in place to deal with discrimination issues, but that their modality of work needed to be improved. The Government Council for Human Rights had not met regularly in the last few years and some participants felt that the Government Council for Gender Equality did not have enough influence. It was noted that the position of Minister for Human Rights and Equal Opportunities disappeared a few years ago, and that the Public Defender of Rights was not keen on working on issues concerning minorities, migrants and gender equality. Funding for CSOs dealing with discrimination, for example in migration and gender areas, mostly came from the EU rather than State level. The Czech authorities acknowledged that there had been a pause in the meetings of the Government Council for Human Rights, but that these had since resumed, including virtually during COVID times. An extension of the mandate of the Public Defender of Rights was under consideration.

CSO representatives explained that the Czech Diversity Charter was adopted by some big companies like multinationals, but they felt that employers in smaller companies approached **migrants** more as an opportunity for cheap labour rather than through the positive angle of diversity. A participant also considered that trade unions did not integrate enough migrants amongst their ranks, too often associating them with social dumping. Similarly, local municipalities in industrial areas did not know how to deal with the integration of migrant workers. Participants also explained that third country nationals did not have full access to health care – they could not benefit from public insurance and had to contract private ones, offering less protection and reimbursement.

Participants shared their feeling that there was little general awareness and very little political support for **gender equality**. The position of women in the political world was insufficient beyond a few exceptions at top level. There was a positive but slow trend towards more female candidates in the general election. Generally speaking, women benefited from a good level of education but this did not translate into more representation in top positions of public companies. Women could benefit from long maternity leave, which was positive but also challenging to regain access to the job market, especially in the absence of adapted part-time jobs.

It was explained that **gender violence** had increased during the COVID-19 crisis. Despite this worrying development, the State budget available for CSOs working on gender equality and gender violence was considered very low. Participants explained how some politicians led a disinformation campaign associating any activity in that area with a so-called “gender ideology” under foreign influence, and how they used this as an argument to limit financial and political support. Participants expressed their hope that the Istanbul Convention on violence against women and domestic violence would be on the parliament’s agenda in the coming months. The Czech authorities called for a distinction between the issue of the ratification of the Istanbul Convention and actual concrete actions led by the government, and they considered that the Government Council for Gender Equality worked well.

CSO representatives explained that a registered partnership existed for gay and lesbians since 2006, but that since then no legislation was passed to protect the rights of **LGBTIQ persons**. They appreciated that a comfortable majority of the Czech population was in favour of equal marriage for all, but regretted that politicians were not more daring, having let a bill stall in Parliament since 2018. A bill on child foster care for unmarried couples was similarly blocked in the initial parliamentary stage. They also regretted that the strategy prepared by the committee on sexual minorities of the Government Council for Human Rights had not been transmitted to the government. Participants also mentioned that LGBTIQ persons did not report the majority of hate speech and hate crime to the police. They also pointed out that the country still had to adapt its legislation to implement a decision by the European Committee of Social Rights concerning transgender people. The decision stated that the Czech law violated the right to health of transgender people by imposing sterilisation before they changed identity on their personal documents. The Czech authorities said that a bill had been prepared to adapt the law and that it was ready for consideration by the next government.

CSO representatives explained that the situation of **Roma people** was generally approached by authorities as a social issue rather than an issue of discrimination. Roma people faced discrimination in access to housing, health, education and employment, despite the existence of programmes for inclusion through work. They considered that special schools for Roma children were actually segregated schools. A law was recently passed to compensate Roma women who were victims of forced sterilisation, but adequate implementation was uncertain due to the difficulty in presenting evidence to the compensation committee or in seeking legal remedy without an effective system of legal aid.

The rule of law

Legal practitioners assessed the overall situation of the rule of law in the Czech Republic as good but fragile. They felt that the **independence of the judiciary** was guaranteed and that the general situation with regards to justice was better than in some neighbouring countries.

However they considered that a key point for concern was the pressure imposed by the executive power on the **chief prosecutor**, as it had the power to dismiss the mandate holder at any time. This situation was particularly problematic in the context of investigations of conflicts of interest at the top of the State. The previous chief prosecutor resigned because of such

pressure and the Czech authorities had not yet amended the law to ensure full independence of the position of chief prosecutor, as recommended notably by the Council of Europe Group of States against Corruption (GRECO). While they did not consider that the situation could be generalised, participants felt that judges in the highest Courts were more prone to pressure by politicians than normal ranking judges.

Participants pointed to a danger of state capture if **high level cases of conflict of interests** were not properly tackled. Such cases, combined with politicians' influence on the media and pressure on the highest level of the judicial system could also fuel a long term trend of erosion of public trust in the institutions. Law practitioners felt that, as in other countries, awareness on the rule of law and key principles like separation of powers amongst the general public was too low and would deserve more support. In their view, however, the "Million Moments for Democracy» movement showed a real sense of justice and a call for a fair and transparent political system in the population.

A positive illustration of the importance of an independent judiciary was offered in the context of the **COVID-19 crisis**. Some citizens sued the State for disproportionate, unclear or unjustified legal decisions, which led the Supreme Court to cancel some decisions on this basis. Participants felt that there had not been enough general debate on decision-making in response to the crisis, nor consideration for some legitimate criticisms stemming from civil society. This, combined with the cancellation of some authorities' decisions by the judiciary as previously mentioned, contributed to a loss of confidence by the population in the authorities' capacity to offer the appropriate responses to the crisis.

Another challenge raised by participants was **law enforcement**. One participant pointed to a lack of a unified case law system in the country and to a problematic inconsistency in the severity of decisions made by Courts depending on the geographical locations of the cases or the area of law. Within the field of construction law, many illegal acts were never prosecuted, whereas within the area of debt and foreclosure law, the law had been applied very stringently, which has particularly affected the low income population. This had led many people to fall into debt traps for not having been able to pay fines or debts and the subsequent accumulating interest, leading to the seizure of their properties.

Report on the visit to Spain

14-15 October 2021

Six EESC members took part in the country visit to Spain. The delegation met with representatives of civil society, namely civil society organisations (CSOs), social partners and the media on the one hand, and several governmental and judicial authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society. The authorities' views will be reflected in their reply to the report.

Fundamental rights related to the social partners

Participants described **social dialogue** as functioning quite well in Spain. In contrast with the economic and financial crisis of 2008, employers' associations, trade unions and the government concluded agreements which made it possible to preserve jobs during the COVID-19 pandemic. One particular example was the agreement on the increase of the minimum wage.

Participants felt that **transparency and the right to information** still needed to be improved. The social partners said that the law on transparency was not properly implemented and that certain pieces of public information were not publically disclosed (e.g. expenditure for the purchase of health equipment during the pandemic). Very often, going to court was the only recourse for individuals and organisations wanting to obtain information. However, court proceedings were often lengthy, and the requested piece of information could be communicated years after it was requested, when it was no longer relevant. Therefore, in order to overcome difficulties in accessing information, participants considered that transparency legislation needed to be promoted more efficiently and should be accompanied by institutional support for verification and monitoring.

One of the main improvements needed identified by participants concerned **Organic Law 4/2015 of 30 March on the protection of citizens' security** (also referred to by participants as the "gag law"). They considered that it violated freedom of expression, the right to protest and the right to strike, and that under certain circumstances it criminalised the right to strike and protest and those who defend these rights. The law made it possible to penalise demonstrators: participants mentioned cases of trade unionists being fined, prosecuted or sentenced after taking part in protests. Whilst participants considered that the provisions of the law leaned towards a criminalisation of certain types of behaviour, the public authorities said that Organic Law 4/2015 did not criminalise any behaviour since it only established administrative sanctions. They also said that a proposal was being discussed by the Parliament regarding potential modifications to the law.

Participants also mentioned other obstacles faced by workers in their daily life. On the one hand, **access to social housing** was considered to be very difficult. The social partners called for a national consolidated policy on social rents, which would build on the good practices of regional policies in the Basque country and Catalonia.

On the other hand, participants regretted that some workers, particularly young ones, did not earn high enough salaries to cover their needs. They also indicated a strong **gender pay gap**, with average annual salaries for women being around 16% lower than average salaries for men, particularly in SMEs where trade union presence is weaker and collective bargaining agreements are rare. Moreover, they also pointed out that despite the noticeable extension of paternity and maternity leave, women were still largely responsible for supporting the family. The lack of public services such as crèches also complicated the combination of work and childcare.

Another area of concern was **migrant workers' access to health**, particularly in the area of hospitality, which participants considered to be lower than for other workers. A July 2018 decree granting universal access to health was however presented as a positive effort in that area.

Freedom of association and assembly

Participants explained that in Spain, freedom of association and freedom of assembly were enshrined in the Constitution. However, participants shared concerns regarding the actual implementation of these freedoms.

The main concern shared by participants was linked to the implementation of the **Law on citizens' security**, which they believed led to a **reduction of civic space**. Participants described the content of the law as violating international standards and as excessively ambiguous, meaning that it could be interpreted as required, stressing that hundreds of thousands of fines had been imposed under the law.

They said that the law permitted the sanctioning of a wide range of behaviour usually linked with the **right to protest and the right to strike**.

For instance, participants said that the law made it possible to fine demonstrators in a disproportionate manner (fines up to EUR 600 000 for very serious offences according to Article 39 of the law).

In addition, two particular articles were highlighted by participants in that regard: Article 36(6) on severe disobedience to authority and Article 37(4) on disrespecting security agents.

Participants said that the police force had considerable discretion when it came to interpreting these two articles in order to impose fines. According to participants, giving the police considerable discretion regarding the application of a law regulating individual behaviour affected the balance of power at the expense of the judiciary.

Participants were also concerned about **the way demonstrations were broken up by the police**, which in some cases was done with excessive use of force. They illustrated this phenomenon by referring to the judgment of the European Court of Human Rights in the case

“Laguna Guzman v. Spain”, which concerned a protester who had been injured as a result of the violent dispersal of a demonstration by the police.

Related to this issue was the difficulty, according to participants, **of clearly identifying police officers** on several places of their uniform in the event of alleged excessive use of force. Participants highlighted a good practice from Catalonia, where police officers’ uniforms now clearly display their identification number on their back, chest and helmet. They were also concerned about the apparently rare sentencing of police officers appearing in court for excessive use of force.

Participants also referred to the limitations on **freedom of assembly during the COVID-19 pandemic**. They reported excessive and disproportionate use of force by the police to ensure compliance with lockdown rules during the “state of alarm”. Public authorities stressed at all times that the actions of the police complied strictly with the law and contested claims regarding excessive and disproportionate use of force.

Freedom of expression and freedom of the media

Participants explained that freedom of expression was a constitutional right in Spain. However, they also considered that this right had been violated in the past years as a result of the entry into force of the **Law on citizens’ security** in 2015.

This law was considered by participants as violating international standards in the area of **freedom of expression and freedom of the media**. According to participants, since its entry into force, the administrative authorities have relied on that law to impose fines on journalists, in particular photographers and cameramen who recorded images of the police.

Participants also criticised the vagueness of some articles of the Criminal Code concerning freedom of the media and freedom of speech, which allowed for too wide an interpretation and an abusive use of the provisions by the police. Participants reported cases of journalists being fined for “lack of respect and obstruction” or for “disobeying authority” during their work.

Participants also criticised the Law on citizens’ security, which they felt criminalised certain forms of expression considered as an offence to religion, the royal family or the Spanish flag. They reported that a comedian had been tried in court for blowing his nose into the Spanish flag during a sketch and that rap singers had been jailed for song lyrics allegedly promoting terrorism.

Participants explained that in Spain, the **right to access information** is enshrined in the Spanish Constitution as an administrative right rather than a fundamental right, with a resulting lower level of protection. Concerning access to information, participants regretted that the Law on transparency (intended to allow journalists or individuals to request information from the government or the public administration) was not properly implemented. Participants said that journalists have had difficulty accessing information on salaries of public officials. Moreover, according to the participants, the Law on transparency was put on hold during the COVID-19 pandemic, preventing access to information on health measures.

Participants reported that **violence against journalists** was on the rise, mostly from police officers but sometimes also from demonstrators themselves. Participants also highlighted the alleged difficulty in clearly identifying police officers in the event of attacks or excessive use of force against journalists. Public authorities said that Spain had not been found in breach of the provisions of the European Convention on Human Rights regulating interactions between the State and journalists or protecting their independence against threats from the government since 1979. Public authorities also provided information about the range of agreements between the Ministry of the Interior and journalist associations in order to protect journalists from threats and situations of vulnerability.

Participants also expressed concerns regarding **pluralism of information**. They underlined the difficulty in getting information on the distribution of public funds for institutional advertising. They also regretted that Spain did not have an audiovisual council to guarantee the independence of the public media.

Participants said that some journalists had been **prevented from participating in press conferences with government representatives**, as well as with some political parties. They highlighted that certain local authorities had not accepted questions from some journalists at some press conferences. Participants also said that during the pandemic, the government prevented health professionals from giving statements to the media.

Participants explained that Spain did not have specific legislation on **fake news**, and that fact checking was done by journalists and media companies using a professional mechanism. As regards **disinformation**, participants said that progress was ongoing and that the Spanish Department of National Security had created working groups to draft a white paper on how to tackle disinformation campaigns.

Participants expressed their concerns regarding Spain's failure to transpose the EU Directive on the **defence of whistle-blowers**.

Another concern expressed by participants related to the **regulation of the internet**. Participants considered that Royal Decree-Law 14/2019 of October 31, adopting urgent measures for reasons of public security in matters of digital administration, public sector contracting and telecommunications, allowed the government to take control of the broadcasting network. According to participants, the decree-law stipulated that the network was increasingly administered by the State, with no obligation for a judicial ruling to limit access.

The right to non-discrimination

According to participants, Spain's legal framework lacked an umbrella law to protect and sanction discrimination on all grounds. Civil society organisations agreed on the need for a **comprehensive law on equality** at national level to address all types of discrimination. They also said that Catalonia had a law on equality. A law on equal treatment was currently

being discussed by the Congress of Deputies. Public authorities also said that they were setting up training groups to raise awareness about equality in the public administration and provided information on initiatives to ensure effective equality of women and men in Spain (the Organic Law 3/2007 of 22 March 2007 on the effective equality of women and men in force since 2007, the proposed comprehensive law on equal treatment and non-discrimination, policies on conciliation, the Draft Bill on Family Diversity and Support for Families or the institutional response to gender violence).

Participants reported progress in several areas. They underlined the ratification by Spain of the Council of Europe's Revised European Social Charter in May 2021. Similarly, in March 2021, the Action Plan to Combat Hate Crimes was established to fight hate speech in general and online. This protocol was presented by the Spanish government with the involvement of civil society, legal professionals and internet companies. Participants also appreciated the large social diversity of police officers. Public authorities said that the fight against discrimination by the Ministry of the Interior focused on combating hate crimes based on race, national or ethnic origin, language, colour, religion, sex, age, intellectual or physical disability, sexual orientation or other similar factors. The 2019-2021 Action Plan had recently been evaluated, and that evaluation would inform the Second Action Plan against Hate Crimes.

Roma people were still considered the most discriminated against minority group in Spain, facing generalised discrimination in all areas of daily life, particularly communication, social media, access to employment and housing. Ethnic profiling of Roma people by the police was considered to be very frequent, with Roma people being stopped by police ten times more than the rest of the population. Participants called for equality bodies such as the Council for the Elimination of Racial or Ethnic Discrimination to be more involved in fighting anti-Gypsyism. In this regard, public authorities provided information about the Strategic Plan for Inclusion, the Inter-institutional Plan for the fight against racism, xenophobia, LGBTI phobia and other forms of intolerance, and the National Strategy for Roma Equality, Inclusion and Participation 2021-2030. Some progress was also reported, such as the creation within the Congress of Deputies of a committee to fight anti-Gypsyism, involving civil society.

Women still faced burdens in the area of family care, which complicated their access to the political, economic and employment spheres. The participants explained that more women than men occupied precarious or temporary jobs and that women faced higher unemployment rates and lower salaries than men. Participants also highlighted gender violence, with murders of women rising considerably during the pandemic. Sexual violence was also considered to be on the rise. Public authorities said that they were taking measures to improve work-life balance and care facilities to address gender equality.

The **LGBTIQ community** reported concerns regarding an increase in hate speech on social media, particularly against trans people. Participants also considered that hate speech against the LGBTIQ community mainly stemmed from certain political groups. Participants also explained that reporting on situations of discrimination or hate crimes to the police was difficult. Moreover, they considered that the Spanish legislation on hate crime was not efficient. Lastly, participants expressed dissatisfaction with the interpretation of the law by the judiciary, which had at times limited the freedom of the community.

All participants demanded a reform of Spanish **immigration legislation**, which they felt was obsolete and inappropriate for the needs of migrants. According to participants, migrants were particularly subject to precariousness and human rights violations, and had limited access to public services (such as health and education). Participants signalled their concerns as regards the management of migrants arriving in Spain within the Spanish internment centres (*Centros de Internamiento de Extranjeros*). Participants explained that some people were held up to 60 days without access to a lawyer or the possibility of obtaining legal advice. They said that most of them were deported by plane to their country of origin.

Another problem presented by the participants was the fact that one “racialised” person or migrant was around seven times more likely to be arrested than the rest of the population. Participants reported that the Law on citizens’ security included a set of provisions allowing for *refoulement* of migrants crossing the border, without checking their situation or their being able to ask for asylum.

People with disabilities still faced discrimination in several areas such as health, employment, housing and education. Therefore, representatives called for a cross-cutting approach covering all these areas. Participants were particularly concerned about forceful medical treatments for people with mental disabilities and the impossibility for them to obtain information on their medical treatment. Participants complained about other difficulties linked to disability. The EESC delegation regretted that one of those difficulties was reflected by the experience of one of its members during the country visit. Upon arrival at Madrid airport, EESC member Pietro Vittorio Barbieri’s wheelchair was misplaced. Police officers removed him from the plane, after Mr Barbieri had been waiting for his wheelchair for over an hour. Participants also discussed the legal capacity of people with a disability as referred to in Article 12 of the UN Convention on the Rights of Persons with Disabilities. They noted that public authorities had taken steps to implement legal capacity. For instance, progress had been observed as a result of a reform of the civil code providing better legal support for people with disabilities.

Lastly, participants highlighted the difficult situation of the **elderly** during the COVID-19 pandemic, who suffered some human rights violations in retirement homes and centres.

The rule of law

Despite a few challenges, participants said that the rule of law was solid. They underlined that the Spanish system was rights-based, offering guarantees to citizens.

The main challenge in this area related to the **delay in the renewal of the governing body of the judiciary (the General Council of Judicial Power, GCJP)**. Due to difficulties in reaching an agreement between political parties, the GCJP had not been renewed for three years. Public authorities confirmed that no political agreement had been reached regarding the renewal of the GCJP. Participants considered that the non-renewal of the GCJP was a threat to the independence of the judiciary, and that the election of the members of the GCJP was too politicised.

Participants suggested that the GCJP election process should change to ensure that its members were directly elected by judges instead of the legislative chambers. However, participants considered that beyond the issue of the nomination process of the GCJP, the judiciary was independent overall. They considered that Spanish judges could carry out their daily work in an independent way, unimpeded by political pressure.

Participants felt that the judiciary laboured under a shortage of resources. According to participants, the **number of judges per inhabitant** was insufficient, leading to overly lengthy proceedings, especially in upper courts and the Supreme Court. However, public authorities pointed out that the number of judges per 100 000 inhabitants in Spain was similar to that of other nearby countries with a similar population like France or Italy.

Participants considered that **corruption** was quite strong in Spain, particularly in the area of public procurement. Progress had been achieved in the prosecution and sanctioning of corruption, but improvements were still needed. For instance, participants suggested reinforcing the monitoring power of the Court of Auditors, responsible for monitoring the spending of public money. The Spanish authorities considered that they had made **progress on the prosecution and sanctioning of corruption**, describing an additional framework for the fight against corruption in Spain which also **strengthened the National Anti-Fraud Strategy**.

Regarding the **prosecuting of police officers** for violent crimes and hate crimes, the participants did not have the impression that police officers benefitted from any special protection from the judiciary to the detriment of the general public.

Lastly, participants did not feel that the **COVID-19 pandemic** had had a particular impact on the situation of the rule of law in Spain.

Report on the visit to Cyprus

25-26 November 2021

Six EESC members took part in the country visit to Cyprus. The delegation met with civil society organisations (CSOs), social partners and the media on the one hand, and several government and judicial authorities on the other hand. The aim of this report is to faithfully reflect and reproduce the views of civil society. The authorities' views will be set out in their reply to the report.

Fundamental rights of social partners

Participants in this session expressed the view that Cyprus had a **very strong tradition of social dialogue**, with high trade union presence and good interaction between employers' and employee organisations. Social partners were routinely consulted on work-related policies and other relevant areas through mechanisms such as the Labour Advisory Board, the highest consultative body to the Ministry of Labour. Despite the above-average trade union presence in Cyprus, participants pointed to the existence of a paradox as Cyprus also had a low number of workers covered by collective agreements in the private sector. This was particularly true in the case of non-Cypriot workers, regardless of whether they came from the EU or from a third country.

It was also pointed out that **consultations were sometimes circumvented** in that political parties made legislative proposals that were not discussed with trade unions or employers' organisations. Furthermore, social partners also complained that their advice was not sought or followed when it came to the implementation of labour legislation, nor when it came to relevant related legislation such as that concerning corruption or whistle-blower protection.

Participants considered that the implementation of **labour legislation** remained a weak point in Cyprus, notably because the labour inspection body was not adequately staffed. As a result, measures concerning discrimination, equal pay for men and women, protection of migrant workers in Cyprus, and other pieces of legislation, were not properly enforced.

In 2020, social partners were consulted on the first **National Plan for the Integration of Migrants**. Participants considered that public policies in that area were desperately needed, as migrants were often abused and exploited. This was partly because they mostly worked in unskilled positions, regardless of their skills and background. There were also reports indicating that public employment offices were dissuading asylum seekers from looking for employment in Cyprus. Participants also mentioned that migrant workers were exposed to hate speech and discrimination in the public space, sometimes even from public officials.

Regarding **COVID-19**, social partners said that traditional social dialogue had been cast aside during the first part of the pandemic. However, they felt that they had been adequately consulted on a number of aspects such as health measures, financial aid and the recovery and resilience plan. Moreover, social partners indicated that, since July 2021, consultations on labour issues had returned to their pre-pandemic level.

Freedoms of association and assembly

Civil society representatives considered that, despite adequate protection of the freedoms of assembly and association at constitutional level, certain actions by the authorities had caused civic space to shrink fast. The first example given concerned the suppression of the national registry for CSOs and its replacement by regional registries. This measure, coupled with a lack of coordination between local and central authorities, had led to lengthy registration periods of up to 18 months and incoherent rules concerning the establishment and functioning of CSOs. Furthermore, representatives felt that the registration procedure was also complicated by the multiple potential statuses available for CSOs, which could be classified as associations, non-profit companies or sports associations.

Participants also complained of **hefty, unnecessary bureaucratic requirements** imposed on CSOs. One such example was the obligation for organisations with annual incomes of over EUR 40 000 to undertake an annual audit. While participants acknowledged the legitimacy of auditing to prevent money laundering or financing of terrorism, they regretted that the threshold had been set too low, placing at a disadvantage small organisations with limited capacity or resources to conduct such an audit. Another example of an ambiguous administrative burden was the obligation for board members to provide a criminal record extract. As there was no proper information about which criminal convictions would be incompatible with the position, there was a lack of clarity surrounding applications rejected on those grounds.

Participants explained that in 2020, the Cypriot authorities had published a list of over 2 500 CSOs that were being **deregistered** for failing to meet certain administrative obligations. In most cases, they had not met the obligation to submit audited accounts or to conduct statutory and electoral assemblies. Some organisations had allegedly been deregistered despite meeting their obligations within the two-month deadline. CSO representatives viewed this process as disproportionate, believed that it had been carried out without sufficient official communication and considered that it was an attempt to limit civic space. However, the Cypriot authorities considered that the deregistration process had been applied in order to strengthen civil society by deregistering associations which were not active any more. They indicated that the organisations concerned had been notified of their irregularities by letter well before the publication of the list, and that some of them had not received the notification because they had failed to update the address of their headquarters after having moved.

Participants mentioned that some public officials would often **libel** certain organisations, solely on the grounds that those organisations were working with migrants or had links with organisations from the area under the de facto control of the Turkish Cypriot community. This

contributed to a climate where certain civil society organisations were viewed as adversaries of the public authorities. Participants also mentioned that organisations that were more critical towards the government tended to find it more difficult to access public funding.

Participants felt that they were **not actively consulted** in matters concerning legislation covering their sphere of activity. For example, it was pointed out that, in regard to the Cyprus Recovery and Resilience Plan, the government had only consulted social partners, leaving other organisations aside.

In terms of freedom of assembly, participants mentioned that the COVID-19 health restrictions regarding public demonstrations had been lifted much later than those regarding other social events. This meant that people were being fined for participating in protests, while they would have been able to participate legally in other social events, such as weddings.

Freedom of expression and freedom of the media

Participants felt that freedom of the media and freedom of expression were well protected overall in Cyprus, by both **constitutional provisions** and ordinary legislation. However, they considered that the media institutional framework was outdated. Discussions with stakeholders had been under way for almost seven years to update the law, and participants hoped that it would bring about a new legislative framework by the end of the current legislature. Participants believed that the new legislation should allow journalists to self-regulate, in particular in the area of disciplinary procedures and ethical matters – a possibility which already existed according to a later comment by the Cypriot authorities, respecting the Code of Ethics as set out by the Cyprus Media Complaints Commission. They also shared concerns with regard to the draft law on strategic lawsuits against public participation (SLAPP).

Participants mentioned that **media pluralism** fared well in Cyprus, as there were multiple publications, and radio and TV stations. Current legislation entailed measures against concentration of media ownership, such as requiring media companies to list all shareholders who owned more than a small share, and prohibiting any shareholder from owning more than a quarter of the shares. However, some participants believed that such measures were being circumvented by shareholders who operated through third parties, which the authorities had limited capacity to address.

Participants expressed the view that commercial libel legislation in Cyprus was very strict. For example, it was stated that certain rules allowed courts to prohibit media outlets from mentioning a specific company, person or organisation in publications. Participants mentioned a tendency to **self-censorship** when covering certain subjects that might have financial implications for the news outlet in question, or which covered certain sensitive topics. For example, journalists avoided topics like migration or the Turkish Cypriot community out of fear of being stigmatised or labelled unpatriotic. Some stories about corruption in Cyprus were given good coverage in international media, but not as much in national media.

Regarding **hate speech**, the Cyprus Media Complaints Commission had received multiple complaints regarding racism and xenophobia. There were numerous instances where the language used in subjects relating to migration was inappropriate.

Participants felt that **fake news** was more prevalent in the online environment than in classic media outlets. However, some participants felt that certain media productions were predominantly one-sided, especially on matters regarding the Cyprus problem, or that certain topics such as migration were treated in an exaggerated manner. In the participants' views, the most reliable source of news was the written press, which adhered to rigorous standards.

The right to non-discrimination

Participants regretted the **lack of cooperation** between the authorities and CSOs operating in the area of non-discrimination, as well as the lack of an intersectional approach in the design of policies on topics like domestic violence and migrants.

Regarding **women's rights**, participants explained that assisted abortion had been legal in Cyprus as of 2018. The Istanbul Convention on Preventing and Combating Violence against Women and Domestic Violence had come into force in the country in the same year, but statistical data on the incidence of domestic violence was still scarce.

Participants expressed concerns about the **underrepresentation of women** at the highest administrative and political levels and about the lack of public policies to address the issue. They also pointed to the fact that women in Cyprus were being paid around 10% less than their male counterparts and that their pensions were almost four times lower. Women over the age of 65 were more exposed to poverty than men of a similar age, which participants attributed to a conservative society and a lack of day centres for older people. Furthermore, according to social partners, the number of women working in informal and partial employment had greatly increased in recent years.

Participants mentioned that **migrants** (including asylum seekers) experienced particular difficulties, since some public figures presented the refugee issue as a threat to Cypriot national identity, which did not help the public's overall negative perception of migrants. One participant explained that a Muslim woman wearing a hijab would typically have difficulty getting a job in Cyprus. Participants also explained that there was a decree banning migrants from renting housing in a certain area, which they believed was based on the argument that the measure was necessary to prevent demographic changes.

CSO representatives welcomed some positive steps taken by the government towards integrating **migrant children**, such as appointing bilingual teachers. However, the situation was still problematic, as migrant children faced challenges at school, such as random allocation to classes without further consideration of their background or education level. The COVID-19 lockdown period had been particularly difficult for migrant children who had been isolated in migrant centres. Generally speaking, they had problems accessing the health system.

Participants mentioned an acute lack of funding for accommodation for **people with disabilities**. They also regretted the fact that the European Disability Strategy had not yet been fully implemented. They explained that there was no dedicated recourse mechanism

for complaints made by persons with disabilities. The exercising of voting rights was also still considered a challenge for persons with disabilities. Participants also felt that the authorities did not do enough to support the integration of children with disabilities into regular schools.

Regarding the rights of **LGBTIQ persons**, participants mentioned that civil unions had been legal in Cyprus since 2015. They considered there was a lot of hate speech against LGBTIQ persons, but that it was investigated by the authorities.

The rule of law

Participants in this session explained that, following the events of 1963, certain aspects of the bi-communal Constitution of Cyprus had become inapplicable. As an emergency response to that crisis, the Cypriot authorities had developed a “**doctrine of necessity**”, which had been intended as a temporary measure but had applied ever since, leading to what participants considered a concentration of power and an impediment to a proper system of checks and balances. Participants gave numerous examples of discretionary powers existing within the framework of that doctrine, such as: the president’s prerogative to appoint a considerable number of high officials, such as the judges of the Supreme Court of Cyprus, the ombudsman and the attorney-general; the possibility for the government to override urban plans made by a local authority, without any justification or prior technical assessment; the ability granted to the Ministry of the Interior to act unilaterally on all matters of migration, including expulsions; the former government prerogative to grant citizenship to investors as part of the former so-called “golden passport” programme.

Another issue that was mentioned was the fact that **Cyprus’s attorney-general** was a legal advisor to the executive, while also being in charge of prosecution. Participants considered that the proximity of these executive and judicial prerogatives was a potential conflict of interest, especially since the current attorney-general had also served as Minister for Justice in the past.

Despite discussions concerning judicial reform over the past decade, participants regretted that **judicial processes were still extremely slow**, sometimes taking up to seven or eight years. The Cypriot authorities indicated that a bill on judicial reform on second instance jurisdiction, was under discussion in the parliament and that its objective was to alleviate waiting times for judicial decisions.

Participants expressed the view that there was **no effective means of enforcing court decisions issued against public authorities**, and that authorities’ failure to comply did not lead to any sanctions. Cypriot courts were also reportedly reluctant to send referral questions to the Court of Justice of the European Union.

Participants also invoked certain cases where **legislation lacked clarity and transparency**. For example, there was no transparent clear migration policy that would allow migrants to be fully informed about the conditions of entry into Cyprus before leaving their country of origin.

Participants felt that the **presumption of innocence** was not sufficiently enforced in Cyprus, and believed that civil courts sometimes considered the existence of a criminal investigation to be proof of wrongdoing, which the authorities strongly denied.

Participants considered that the general perception of **corruption** was high in Cyprus. They notably referred to the former so-called “golden passport” programme – which, for more than a decade, had allowed the government to grant citizenship to investors – as an illustration of the fact that corruption was prominent across the political field. Participants also felt that corruption encouraged other criminal activities such as human trafficking.

Fundamental rights challenges in the non-government controlled areas of Cyprus

Participants noted that people in the non-government controlled area did not have the same access to their EU citizenship rights as in the areas under the effective control of the government of the Republic of Cyprus. This applied in particular to the recognition of the citizenship to which they were entitled, and the resulting rights. Participants also explained that children from mixed marriages with so-called “mainland Turks” were discriminated against.

One of the most prominent problems described by CSO representatives from the non-government controlled areas of Cyprus was related to **human trafficking**, which extended to sex trafficking, forced labour and human egg trafficking, the latter being carried out via some in vitro fertilisation (IVF) clinics. Participants found it difficult to provide support to victims in the absence of witness protection programmes, shelters and financial assistance.

CSO representatives from the non-government controlled areas felt that the scope of **freedom of expression** was narrowing, as illustrated by the fact that some people were arrested and detained for what they wrote on social media or for speeches made during TV programmes. Participants also expressed concerns regarding disinformation and the lack of media literacy, although there were some efforts to address the latter.

Participants expressed concerns regarding **religious freedoms**, pointing to some activism aiming to make religion part of social life, and pressure exerted on religious minorities.

Participants had also noticed a certain backsliding in **women’s rights** in a society that was becoming more conservative.

Civil society organisations mentioned that they were finding it harder and harder to obtain **funding** to operate.

Report on the visit to Lithuania

16-17 December 2021

Six members took part in the virtual country visit to Lithuania. The delegation met with several representatives of civil society, specifically civil society organisations (CSOs), social partners, the media, and the legal profession, on the one hand, and the Lithuanian authorities on the other. The aim of this report is to faithfully reflect and reproduce the views of civil society.

Fundamental rights relating to social partners

Social partners agreed on the disparity between the legal framework regarding **social dialogue** and the practice. It was said that even though the legal base was favourable, the willingness on the side of the public authorities to consult and negotiate with the social partners was not sufficient. Many of the organisations participating in the discussion were part of the Tripartite Council, which gave them access to the policymaking process. However, the extent to which social partners were actually heard by the public authorities was not satisfactory, in their view.

It was noted that both social partners and CSOs would often be informed rather than consulted (sometimes ex-post), and they did not have sufficient time to prepare a response that would be taken into account in the drafting of policies. The Lithuanian authorities, however, claimed that they had not received any complaints regarding social dialogue and that the number of meetings had even increased and intensified on all levels due to the digitalisation brought about by the COVID-19 pandemic. The latter was also pointed out by a social partners' representative. Furthermore, the representatives of the public authorities noted that all draft laws were publicly available online on the website of the Parliament and were open to comments.

According to the participants, the **right to strike** was enshrined in Lithuanian law, but in practice the legal framework made strikes very difficult to organise; it was also said that the extent to which trade unions could utilise this right was limited. Furthermore, trade union representation was very low, and only a very small fraction of private sector workers was unionised, while employees in the public sector faced stricter strike regulations according to the Labour Law.

Finally, according to the participants, the consultations on the **Recovery and Resilience Facility** had not been constructive. There had been too many participants in the meetings, very little time, the presented information was often imprecise, and there had been no opportunity for genuine discussion. Furthermore, no continuity to the consultations had been ensured and social partners had no access to the monitoring of policy implementation.

Freedom of association and assembly

Participants expressed the view that COVID-19 presented a challenge to the activities of organised civil society, as remote meetings had become the only option. However, it was noted that such remote meetings made it possible for a broader scope of civil society representatives to participate in the working groups organised by the ministries. At the same time, the attendees of the discussion agreed that the meetings were often carried out with the intent to relay information to the CSO representatives rather than to have a discussion and receive their feedback. The government officials were adamant that there had been plenty of constructive meetings with CSOs during the pandemic.

On the topic of funding, CSO representatives shared that the **lack of financial and human capital** were the biggest obstacles in achieving their goals. Although the COVID-19 pandemic had had a positive impact on state funding for non-governmental organisations, in general there was a lack of a systematic approach and data to make it easier for them to apply for financing opportunities. The participants were pleased with the establishment of an NGO Fund under the Ministry of Social Affairs, which had started its activity in 2021. A new law providing state funding to NGOs had been adopted in 2021 but did not enter into force as the Constitutional Court had ruled that certain amendments were needed. CSO representatives were worried about the delays in funding and the resulting halt to their activities caused by inefficient policymaking. Another negative aspect noted by the participants was that the share of Recovery and Resilience Facility funds allotted to the public sector compared to the private sector actors providing public services was disproportionate, with the majority of the funds being aimed mainly at the public sector.

Furthermore, it was said that the change of government that took place in the autumn of 2021 had interrupted cooperation between the CSOs and the State, but the disruption had been temporary and soon it resumed as usual. A negative development noted by the CSO representatives was the high number of legislative proposals and amendments that were submitted to the ministerial working groups. Often it was difficult to keep track of the parallel processes, and this diminished the quality of input the CSOs could provide to policymakers.

Participants also reflected on some **recent restrictions on freedom of assembly**. For example, different municipalities had denied requests from the LGBTIQ+ community and from those opposing same-sex marriage to organise public meetings in September 2021. The former, however, was eventually granted permission after a court appeal. It was noted that the announcement of an emergency situation at the border with Belarus had temporarily limited access to the area to journalists and NGOs. Once the restrictions were lifted, the NGOs successfully cooperated with the Ministry of the Interior and were able to provide humanitarian aid to the migrants.

A participant shared that Lithuania was the host of around 200 **Belarussian CSOs** that would be unable to exist in Belarus. Establishing a CSO in Lithuania as a foreigner was seen as a complicated process, burdened also by the reluctance of Lithuanian banks to provide services to Belarussian nationals. Furthermore, the speaker noted that the strict transparency requirements that were being applied to Lithuanian NGOs may harm Lithuanian-based Belarussian organisations that often needed protection and anonymity for the safety of their members.

Freedom of expression and freedom of the media

With regards to **freedom of expression** in Lithuania, participants agreed that the media were safe and independent. Moreover, there was diversity and pluralism of opinions, and no serious problems existed in this area. Especially in the area of radio and television, a very large diversity of media outlets were present in Lithuania (notwithstanding the high concentration of media ownership). However, it was said that the written press had lost its stronghold in Lithuania compared to many other EU countries, with only one daily newspaper left, and the internet was currently the main source of access to media. The market for news portals on the internet was very competitive and most journalistic innovations were taking place there. TV was said to be the most influential and richest media in the country, whereas the internet was seen by the participants as the most easily accessible channel for expressing one's opinion.

Regarding **hate speech** and instigation of hatred, participants agreed that it was present in social media, especially in comments sections, with gender, ethnicity and social standing being the main targeted aspects. Journalists, however, were not systematically targeted by hate speech in Lithuania. Furthermore, it was noted that the Radio and Television Commission of Lithuania had the authority to stop programs from other countries being re-broadcast on the territory of the country, if hate speech or other infringements were identified in them. However, these decisions only applied to rebroadcast television programmes, and did not cover the internet.

Freedom of media was assessed as an area of no particular concern, even though it was noted that journalists were facing some attempts to withhold certain information from them. In this regard several participants mentioned aspects of the **implementation of the General Data Protection Regulation (GDPR)** in Lithuania, which had been a lengthy and complex process. An element brought forward by the participants was that the implementation of the GDPR was sometimes used by the public authorities as an excuse to withhold information from journalists, for example during journalistic investigations.

Implementation of the GDPR was also mentioned as the area where journalists had to “fight” the most due to the scarce legal practice in the country, as well as to some decisions taken by the Ethics Inspector of the Office of the Inspector of Journalist Ethics, accountable to the Lithuanian Parliament, which had later been overruled by the courts. Investigative journalists had challenged those decisions, as they were working on important issues in the public interest, and if the GDPR was used against them as a means of strategic lawsuits against public participation (**SLAPP**) action to silence them, then it would violate freedom of speech in the country very significantly.

Furthermore, it was noted that journalists were following **standards of ethics**, and the editorial boards did a lot to ensure the safety of journalists and to avoid prosecution. It was also noted that a revival of quality journalism could be observed, with four investigative teams currently active in the media. However, it did not seem that a self-regulation mechanism existed in the country. Furthermore, a significant need for training and advice for journalists, especially regarding social media, was mentioned, which was said to be provided by the Office of the Inspector of Journalist Ethics both in writing and orally, as well as through training seminars.

Regarding **media funding**, commercial media saw State aid to the national public service broadcaster as a problem as it was considered that such support was bigger than the sum for all commercial television providers taken together. The media had limited possibilities to monitor how this public broadcaster funding was spent and how it matched its mission. As for the private media, it was said that they could receive funding from the Media Support Fund as well as various projects. However, funding was not considered as sufficient.

Another point mentioned with regard to funding of the public service broadcaster was the fact that the significant funding it received from the State budget (through personal income tax and excise duties collected) was automatic, without the broadcaster having to justify its needs; some therefore believed that this distorted the entire market. Furthermore, due to this capital, the public service broadcaster could also attract the best and the most experienced journalists, which also impacted the salaries paid to journalists in private media outlets.

Finally, with regard to the COVID-19 pandemic, it was said that it had negatively impacted the quality of journalism, because of the reduction of revenue from advertisement for the media.

The right to non-discrimination

CSO representatives found both negative and positive aspects in the area of non-discrimination in Lithuania. The National Program for Equal Opportunities for Men and Women had been discontinued in 2021, with the intention to replace it with a horizontal implementation of gender equality across strategic planning initiatives. A participant expressed concern that the general lack of understanding of **gender equality issues** would prevent progress in this area. Others agreed that implementation of non-discriminatory strategic planning would be hard to monitor, especially in fields that have long-standing traditions of systemic discrimination. Furthermore, it was noted that as there was no separate ministry for equality, all related issues fell in the hands of the Ministry of Labour and Social Affairs. The latter, however, did not have the capacity to address discrimination cases in depth.

It was said that since 2010 the ratified Convention on the **Rights of Persons with Disabilities** (CRPD) had been applied directly into Lithuanian law, in accordance with the Constitution, thereby protecting the rights of disabled persons. However, a participant in the discussion expressed the view that the Lithuanian Parliament had only started taking action in 2019, for example by eliminating the term “unable to work” when referring to a person with disability, and by adopting legislation improving the rights of children with disabilities.

It was underlined that the current Lithuanian **Law on Equal Opportunities** contained an exhaustive list of fourteen grounds on which discrimination was banned. In 2019 an amendment had been submitted to the Parliament to extend the list to include gender identity, family status and health status as further possible grounds of discrimination. The proposal also stipulated that all State institutions, employers and service providers had to guarantee reasonable accommodation for people with disabilities. However, it was said that there had been no progress in adopting the amendment.

With regard to the **Istanbul Convention** on Action against violence against women and domestic violence, CSO representatives said that although the current government seemed

inclined to ratify it, the initiative had been met with a lot of pushback from the general public. This public outrage posed the biggest challenge to progress towards ratification and there was not enough political will to counter it.

Furthermore, **access to safe abortion** was limited, and it was not guaranteed by law; it was noted that the current President of the Republic was in favour of a ban on abortions, and the influence of the Church on this topic was also said to be very significant. Abortion, as well as gender-based violence, were highly stigmatised topics in Lithuanian society, which put further pressure on women. Participants noted that cross-sectional groups such as women with disabilities were an especially vulnerable group when it came to domestic violence. Recently, the Parliament had put forward a proposal to update the Law on Protection against Domestic Violence which would remove the explicit mention of violence against women in the context of domestic violence. A representative from the Ministry of Labour and Social Affairs, however, claimed that this draft law would implement the core ideas of the Istanbul Convention.

According to a participant, the 2017-2019 and 2021-2023 Action Plans for Promoting Non-Discrimination were not sufficient, as they did not include a single measure that would specifically concern the **LGBTIQ+ community**. The current Law on Equal Opportunities did not specifically cover discrimination on the grounds of gender expression or gender identity, which put transgender individuals at a disadvantage in terms of the law. Slight progress had been made in 2019 when transgender individuals were no longer prohibited from seeking certain medical and legal professions. Furthermore, in 2021 the Ministry of Justice established a working group to create a legislative framework to provide recognition and protection for transgender persons.

It was said that there was **no legal gender-neutral partnership** in the country, as the Lithuanian Constitution defined marriage as between a man and a woman, and a proposal for single-sex partnerships had been rejected in the Parliament in the autumn of 2021. In general, a participant deemed the situation in Lithuania regarding the rights of the LGBTIQ+ community as grave. Representatives of the Lithuanian government stated that there was no plan to create a programme specifically aimed at protecting the LGBTIQ+ community, but that the intention should be included in all strategic planning initiatives horizontally.

A representative from a State-funded organisation providing legal guidance to **victims of discrimination** stated that most claims they had received in 2021 concerned discrimination on the basis of gender, disability and age. The office had handled around 400 inquiries last year, though a lot of them did not lead to legal processes. According to another participant, the minor repercussions that the defendant would face if deemed guilty often discouraged victims from seeking legal remedy. A lack of recognition of hate speech and hate crimes in the public and within authorities was mentioned as another element leading to a relatively small number of complaints.

CSO representatives expressed the view that State institutions were unprepared to handle the influx of **migrants**, many of whom were children and women, blocked at the border between Belarus and Lithuania. The rights of those people were not always respected, and NGOs and volunteers often provided the help that was lacking from the side of the State institutions, ranging from warm coverings in wintertime to legal guidance. Moreover, the declaration of a state of emergency in the border regions restricted access to the area for NGOs. A government

representative noted that permission to enter the restricted area could be obtained from the State Border Guard service. It was also reported that representatives from government institutions and NGOs were having weekly meetings in order to share relevant information and tackle various issues.

All attendees in the meeting agreed that the **Catholic Church** had a great impact on policymakers, as they would informally meet with high Church representatives to discuss all important issues. Furthermore, the Catholic Church had taken a radical stance opposing the Istanbul Convention, access to safe abortion, and the same-sex partnership law, as progressive Catholic voices were a minority. At the same time, besides receiving direct funding without having the obligation to declare its income, the Catholic Church benefitted from many exemptions under Lithuanian law, which would be reduced with the adoption of the aforementioned amendment to the Law on Equal Opportunities.

Participants discussed that although they were sometimes invited to working groups organised by the ministries, their seat at the table was not guaranteed. It was also unclear how the ministries decided on the invitee list. Often, the participating CSOs only had the opportunity to express their opinions on the final draft of a legislation, rather than participate in the drafting. On the other hand, one representative felt that the governmental authorities delegated much of the work, including both the creation and implementation of support mechanisms, to the CSOs.

Finally, it was noted that the government elected in the autumn of 2020 entailed more female representatives than ever before (half of the ministers were women). Despite this increased representation, the gender pay gap had not decreased in recent years.

The rule of law

Legal practitioners present at the discussion were most worried about the **proliferation of unaccountable secret surveillance** of private persons carried out by law enforcement agencies, such as the Anticorruption Agency. A structural problem was being observed: judges would issue surveillance permissions in almost 100% of cases, as their own career prospects depended directly on the information reports provided on their persona by the Anticorruption Agency to decision-makers, without the judges having any possibility to be acquainted with this information. This could be regarded as indirect pressure, as hardly any judge would consider a decision which would be contrary to the interests of the Anticorruption Agency.

When the Lithuanian Bar took legal action in 2019 in this regard, incited by the belief that the president and the vice president of the Bar were under legal surveillance, the case reached the European Court of Human Rights (ECHR). The incident led to important pressure being imposed on the Bar by the executive power, which affected the independence of the Bar. In 2020, a complaint was also submitted to the European Commission regarding infringement of EU law by misuse of the Data Protection Directive, but the Lithuanian Bar had not yet received a response.

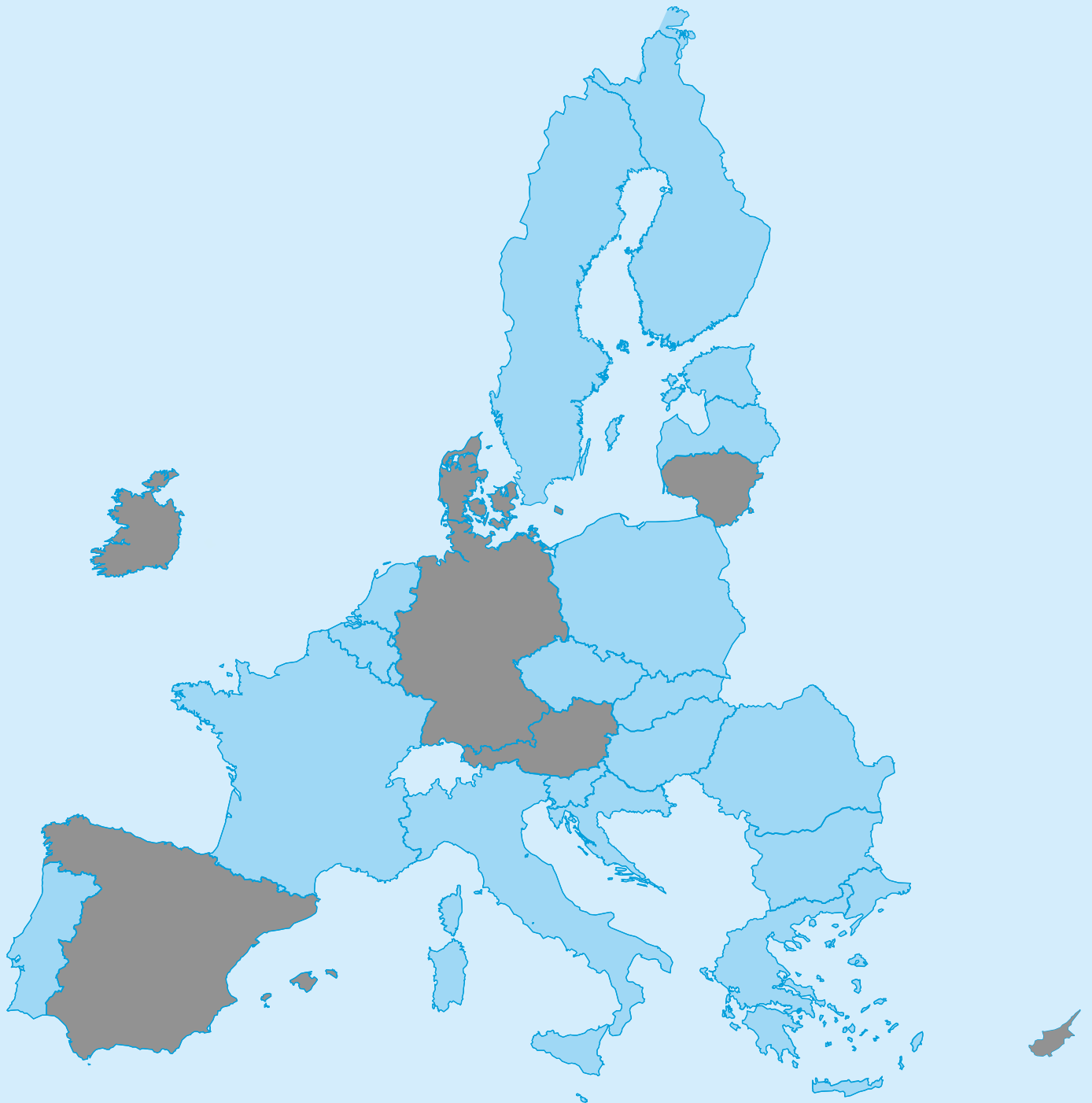
It was noted that the Lithuanian Council of Judges had no direct contact with the Ministry of Justice and was not involved in the drafting of the **judicial budget**, nor was it represented in the government. However, according to a participant, there were no clear criteria for how this budget was decided. Participants underlined the inadequately low salaries of judges, which had not yet reached their level of before the 2008 crisis. It was said that judges were the group mostly affected by the crisis among all high-ranked public officials, as their salaries would rise less than those of other high-ranked public officials. This was deemed as not in line with the principle of judicial independence, and, as a result, the courts were losing qualified lawyers to the private sector.

Participants also raised concerns regarding the procedure of the **selection of judges**. Although the Special Commission for the Selection of Judges would provide a ranked list of candidates to the President of the Republic, the President had the absolute power to select any candidate from the list, without the obligation to provide any substantive argumentation. Similarly, legal practitioners pointed to the unclear rules on temporary transfers of judges without their consent from one court to another. The Judicial Council had the right to temporarily transfer a judge to a court to ensure a proper functioning of the court, but there were no clear legal criteria as to the choice of the judge to be relocated. In this context it was stressed that the courts in Lithuania were lacking around 20% of the judges needed and, hence, the workload of the judges was often too high, thus either leading to longer time periods for a ruling on a case or a poorer quality of decision-making.

Furthermore, a concern was expressed about the fact that due to conflicts between political powers some major courts were not in full composition. The Supreme Court of Lithuania had been without a chairman since 2019, and the Constitutional Court had unfilled seats as well. This prolonged the judicial process, affected the quality of the rulings and compromised the reputation of the courts.

Concerning corruption, it was mentioned that some changes had been made to create unfavourable conditions for **corruption** in the legal sphere. For instance, the process of assigning judges to cases had been computerised and the system was connected with the database of declared conflicts of interest. However, some participants expressed the view that the Anticorruption Agency was not the most efficient channel to address the issue, as their own actions lacked transparency. Rather, a stricter legal framework and improved economic independence of the judges should be relied upon.

As regards the response to the **COVID-19 pandemic**, it was agreed that it had had an effect on human rights, e.g. restricted freedom of movement, but only now did the courts receive requests from the government to evaluate whether those restrictions had been in line with the Constitution. However, it was noted that similar issues had been prevalent also before the pandemic, as the parliament often adopted regulations through a “urgent procedure” framework, which did not leave time for the courts or the civil society to participate in the policymaking. It was emphasised, however, that the pandemic had worsened the legislative process in Lithuania and shifted the balance of power from the legislative to the executive branch.



APPENDICES

Government observations to country reports

Denmark

Germany

Ireland

Czech Republic

Spain

Cyprus

Lithuania

DENMARK



JUSTITS MINISTERIET

Ministry of Justice

European Economic and Social Committee
Fundamental Rights and Rule of Law Group

Date: 4 March 2021
Office: Constitutional Law and Human Rights
Division

Contact: Karen Fowler Lund
Our ref.: 2020-301/21-0001
Doc.: 1861661

Observations from the Danish Government on the draft report of the European Economic and Social Committee Fundamental Rights and Rule of Law Group on its virtual visit to Denmark on 21-22 December 2020

The Government of Denmark would like to thank the Fundamental Rights and Rule of Law Group for the constructive discussions on 22 December 2020 and wishes to present additional comments to the subsequent draft 'Report on the virtual visit to Denmark 21-22 December 2020' in the following sections.

The Government of Denmark believes that the rule of law and fundamental rights are basic important principles in a democratic society and thus supports the work of the Fundamental Rights and Rule of Law Group in its efforts to promote respect for these values in EU Member States.

1. Fundamental rights to social partners

Regarding *social dumping* it should be noted, that the Government has taken a number of measures to combat social dumping. With the Finance Act for 2020, the Government has strengthened the total allocation for the fight against social dumping by an extra DKK 245 million. The grant will be raised for the next three years to the highest level ever. A large part of the money goes to the joint government action, which is carried out in collaboration between the Danish Working Environment Authority, the tax authorities and the police.

The Government has established a new state control unit to control labor clauses by verifying that private suppliers and their subcontractors performing work for the state comply with proper pay and working conditions in all parts of the major construction projects in Denmark.

Furthermore, the Government has tightened the requirements for Danish and foreign drivers, to prevent wage dumping on the roads. All drivers who drive cabotage in Denmark must have a salary corresponding to the most representative in the road transport industry.

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2. *Freedom of association and assembly*

Due to COVID-19 restrictions certain limitations on freedoms of association and assembly has been enforced. As stated during the meeting, these restrictions are proportionate and within the boundaries of the Constitutional Act and the European Convention on Human Rights. The Government would like to add that a broad range of assemblies, events, activities etc., however, are exempted from the ban. Thus, the executive order, for example, does not apply to the Danish Parliament, the Courts or political assemblies, events, activities etc.

The draft report further mentions the draft law on “*Security for all Danes*” (“*Tryghed for alle danskere*”). The purpose of this legislative proposal is, among other things, to enable the police to issue a general prohibition of sojourn at a specific place to which there is common access, if a group of people exhibit behaviour, which is suited to cause insecurity for residents and passers-by in the area. Hereby, the police will be given a new tool to effectively respond to groups of people causing insecurity in an area.

On the topic of *Counter-Terrorism legislation*, it can be noted that substantial counter-terrorism initiatives have been launched in the last couple of years, since the 2015 terror attacks in Copenhagen. Recent initiatives have focused on the areas of foreign fighters and countering terrorism financing. Currently, a review is conducted on the legislation regarding the Danish Security and Intelligence Service with the involvement of independent experts and relevant NGOs.

3. *Freedom of expression and freedom of the media*

On the concern regarding the *democratic tone* in Denmark, the Government would like to add highlighted conclusions of the Commission of Freedom of Expression. The Commission, established in 2017, was tasked with describing and concluding on the overall framework and general conditions of freedom of expression in Denmark, among other things. In 2020, the Commission reached the overall conclusion freedom of expression is well protected in Denmark. However, freedom of expression does face certain challenges, which must be addressed, such as situations where people through harassment, coercion or terror attempts to prevent others from taking part in the public debate. The Government will include the Commission’s observations and recommendations in its further political work in the area.

The Government is currently in the process of transposing the EU Whistleblowing Directive into national law. The transposition bill is foreseen to be discussed in the Danish Parliament in the spring 2021. The material scope of the Directive is limited to breaches of specific areas of Union law. To ensure a comprehensive and coherent legal basis of protection of the whistleblower in national law, it is proposed to extend the material scope of the transposition bill to include, inter alia,

serious breaches of national law and Union law.

4. *The right to non-discrimination*

Discrimination of any kind is unacceptable and Denmark aims to ensure equal treatment of all groups of society. The Act on Prohibition against Discrimination on Grounds of Disability prohibits discrimination in all parts of society outside the labour market on grounds of disability. The law entails the possibility of filing complaints for direct and indirect discrimination to The Danish Board of Equal Treatment. The Board may award compensation and invalidate dismissals.

On 1 January 2021 an amendment to this law entered into force underlining the responsibility of schools and daycares to undertake reasonable accommodation for children and young people. With the amendment, The Danish Board of Equal Treatment will also have the competence to consider complaints of lack of reasonable accommodation and to award compensation if the complaint is justified

With regards to the mentioned *paradigm shift* in the draft report, the Government would like to note that following the refugee crisis, particularly the situation in Syria, the (former) Danish Government introduced a new form of temporary protection status, to be used in cases where the obligation to provide (subsidiary) protection under international conventions is based on a particularly serious situation in a third country resulting in arbitrary violence and attacks on civilians.

In 2015, it was introduced as a condition for family reunification to foreigners with temporary protection status that the temporary protection status had been extended after one year. In 2016, the condition was amended in that the family member in Denmark must have held temporary protection status for three years. The condition does not apply to family members who are 1951 Convention refugees or beneficiaries of subsidiary protection when individually persecuted. The postponement is derogated from in all cases where Denmark's international obligations so require.

Regarding the reference to the “jewellery law” which refers to the seizing of valuable assets from asylum seekers, only amounts exceeding DKK 10.000 per person and items of major financial value i.e. exceeding DKK 10.000 will be seized. However, personal items of special sentimental value will not be seized, e.g., wedding rings, engagement rings etc.

On the topic of the situation in *pre-expulsion refugee camps*, the Government maintains that foreign nationals, without legal right to remain in Denmark, are obliged to leave the country as soon as possible. As a result, return efforts are highly prioritised by the Government. The Government wishes to clarify that when an application for asylum has been denied, the asylum seeker is obliged to leave

the country in accordance with the return decision. If he or she does not leave the country voluntarily, the person in question will be placed at a return center and the removal will be done forcibly, if necessary.

One of the purposes of administrative detention can be to motivate rejected asylum seekers, who refuse to cooperate with Danish authorities on their return. As a general rule, an asylum seeker can bring an administrative detention to an end by cooperating with the authorities. The legality of an administrative detention can be brought before a court, and the court must consider the lawfulness and proportionality of the detention.

Regarding the reference to the CPT report of the Council of Europe, the Government wishes to clarify that international reports, such as the mentioned report, always will be taken into due consideration.

In relation to the action plan on housing initiatives to counteract parallel societies adopted in 2018, it can be noted that the overall objective of the action plan is to create open, non-isolated residential areas with mixed income housing that reflects the surrounding community and offer better environment for a positive social development. The goal is to ensure that all persons in Denmark, regardless of background and birthplace, will grow up with the same opportunities in life.

In response to the voiced recommendation of Denmark to work on a national action plan against antisemitism, the Government can inform FRRL, that the work on a national action plan against antisemitism has commenced. The action plan will, among other things, focus on informing about Jewish life and educating about the Holocaust in order to counteract prejudices against Jews. The action plan is expected to be launched in 2021.

Finally, in august of 2020 the Government proposed 10 legislative initiatives to better protect rights of LGBTI-persons in Denmark. The proposed amendments will explicitly prohibit discrimination on the basis of sexual orientation, gender identity, gender expression and sex characteristics both inside and outside the labor market. The right to obtain remedy with the Danish Equal Treatment Board will follow accordingly. The amendments are expected to go to Parliament in the fall of 2021.

The Government notes that Denmark follows international standards and procedures in regards to healthcare for transgender persons. Regarding intersex persons, Denmark notes that surgery based on cosmetic indications is illegal for children under the age of 18. Surgery is only conducted on medical indication and after thorough medical evaluation by specialized medical experts in a multidisciplinary setting, and is never performed solely with the intention to decide the sex of a child or for gender normalization reasons. Training of health care staff

is continuously strengthened, and guidelines regarding treatment of intersex persons are constantly evaluated and assessed.

5. The rule of law

The section of the rule of law in the draft report mentions a challenge related to ensure accessible legal aid and justice. With regards to this topic, it should be noted that the a Committee has been established with the aim to review the current regulations in relation to legal aid. The Committee has also been tasked to put forth recommendations on how to improve the current regulation. The Committee is expected to conclude its review before summer 2022.

Participants also mentioned a trend towards the extension of surveillance in the public sphere and the handling of data retention contrary to European standards. As regards the issue of data retention, the Government notes that it expects to submit new draft legislation on data retention to parliament in October 2021 in light of recent judgments by the European Court of Justice and notably the judgments of 6 October 2020.

The Government would again like to extend its gratitude to the FRRL Group for its visit to Denmark on 22 December 2020 and to let the FRRL Group know, that the Government is available, should there be any follow up questions based on these additional observations.

Yours sincerely

Anders Sparholt Jørgensen

GERMANY

Berlin, 7 July 2021

Observations from the German authorities on the report of the Fundamental Rights and Rule of Law Group on its Virtual Mission to Germany on 21-22 April 2021

Germany attaches particular importance to respect for the fundamental values of the European Union. As one of the fundamental values referred to in Article 2 TEU, the rule of law is a prerequisite for the protection of all other fundamental values and for the functioning of the EU as a rules-based system. We are committed to the further development of EU instruments to strengthen it.

Under Germany's presidency of the Council of the EU, we established a rule of law dialogue in the Council – based on the Commission's new annual report on the rule of law situation in the EU – that was continued successfully under the Portuguese presidency. We also very much welcome the fact that, during the German presidency of the Council, another instrument was introduced, in the form of the conditionality mechanism in the EU budget, to penalise breaches of the rule of law under certain conditions.

Fundamental rights related to social partners

Freedom of association, the right to collective bargaining and the right to strike are fully guaranteed in Germany. The social partners characterise the legal framework for the autonomy of collective bargaining as good, an assessment shared by the federal government. In so far as practical difficulties are raised by the social partners – such as differences between east and west, the fact that the vast majority of large companies are located in the states of the former West Germany, the different unemployment rates and wage levels in the respective regions, and the lower number of collective agreements in small companies – these are in particular questions of economic strength and structural economic differences in the respective regions, over which the federal government has only limited influence. Since economic and working conditions are primarily the responsibility of the parties to collective bargaining, which they carry out independently and in principle free from state interference, the federal government is itself also concerned about the decline in collective bargaining. It has therefore adopted support measures, such as the law in the last legislature to strengthen collective bargaining, which makes it easier to extend collective agreements to broaden the effect of their provisions.

Social dialogue in Germany is strong. The social partners are in principle involved and consulted at an early stage in legislative proposals. Regarding criticism of a reduced – or possibly even absence of – involvement in legislative and regulatory procedures during the COVID-19 pandemic, this was due to the particular urgency of individual measures, which had to respond – sometimes with extreme urgency – to one of the most serious crises since the creation of the Federal Republic of Germany. This does not, however, constitute a departure from the established social dialogue.

With regard to the closure of borders with the Czech Republic and Poland, the government of Saxony points out that the uppermost priority of the measures taken by the governments was to protect people's health. The swift adoption and implementation of provisions to contain the pandemic was imperative in this. In order to alleviate the burdens on businesses and employees resulting from the closure of the borders between Saxony and the Czech Republic and Saxony and Poland to contain the infection, the

government of Saxony has launched a support programme to help commuters cover accommodation costs and extra costs for compulsory coronavirus testing.

Freedom of assembly and of association

The federal government regularly stresses the importance of civil society, civic engagement and the voluntary sector. The coalition agreement enshrines at a number of points their promotion and reinforcement. It is regularly put centre stage and afforded prestige through campaigns by the Federal Ministry of the Interior, Building and Community and numerous statements from ministers.

In so far as the report regrets that "there [is] no provision for involving CSOs in the debate on human rights and that, in general, there [is] little scope for their involvement in political decision-making", it should be noted that, according to Article 2(5) of the Act on the Legal Status and Mandate of the German Institute for Human Rights, the institute submits an annual report to the German federal parliament on its work and the evolution of the human rights situation in Germany, on which the parliament is called upon to comment. In addition, civil society is involved in the legislative process as a matter of principle. It is given the opportunity to comment on federal government bills, in particular as part of the participation of the federal states and associations. Representatives of civil society organisations are also invited to expert hearings in the federal parliament.

As regards the amendment to the Bavarian Police Task Act 2018, it should be noted that the proper legislative procedure was followed before it was adopted by the Bavarian parliament as a legislature. The rules governing the legislative procedure also provide, in this connection, for the prior involvement of associations, trade unions and other professional bodies, which also happened in this instance. In addition to this consultation of associations, an expert hearing took place on the draft legislation in question in the Bavarian state parliament at which experts in jurisprudence and legal practice submitted their comments on it. This therefore repudiates the claim that civil society was not involved in the legislative process.

There is no unequal treatment by the police based on the topic of demonstrations. Police security measures and, in this context, intelligence before, during and after demonstrations are always taken on the basis of a case-by-case police risk forecast. This includes, in particular, findings from generally accessible sources (Open Source Intelligence, such as public calls for violent action), disturbances at past gatherings of the same organiser or similar gatherings, as well as ongoing developments in the situation or the atmosphere on the day of the gathering itself.

Should this police threat forecast indicate a high probability of violent assault or other disturbances of major importance to public security before, during or after a gathering, the police measures to counter these threats are stepped up accordingly. On no account, however, is there any baseless "surveillance", especially using technology, of gatherings. We do not, then, share the concerns expressed about a less favourable police approach to gatherings on the left of the political spectrum.

Freedom of expression and freedom of the media

Germany condemns all threats, attacks and harassment against journalists. We take such incidents very seriously and support rigorous prosecution. Free and unhindered reporting is a *sine qua non* for a vibrant

democracy and for the formation of individual and public opinion. The right to free reporting by journalists must therefore always be guaranteed. This also applies to demonstrations. We cannot be satisfied that Germany only rates "satisfactory" in Reporters Without Borders' World Press Freedom Index. Independent journalists must be neither intimidated nor gagged. We shall therefore continue to be vigilant that laws and legal practices provide sufficient protection for independent reporting. With this in mind, the federal government has launched a legislative package that criminalises, among other things, the distribution of "enemy lists" so that personal data, such as private addresses, will in future no longer be made available online for purposes of intimidation and threat¹.

The German Government would also point out that access to information is legally guaranteed in Germany. The Freedom of Information Act (IFG) grants everyone an unconditional right of access to official information from the federal authorities. The federal states have corresponding legal provisions. Moreover, according to the case law of the Federal Administrative Court, a press information right arises directly from Article 5(1)(2) of the Basic Law.

The right to non-discrimination

The report's conclusion that Saxony's action plan on the acceptance of diversity in life choices has not been fully implemented and has partially failed is unfounded. The state's action plan is still being implemented; this is an ongoing process. Irrespective of this, transsexual people do of course have access to the German health system. In view of the aim set out in the action plan to improve "non-discriminatory medical care for transgender and intersex people in Saxony", a workshop with representatives of the community has already been held as a first step to identify what needs to be done. This was followed by a discussion with the State Chamber of Physicians of Saxony and the organisation Queer Network Saxony concerning, *inter alia*, the initial and further training of medical professionals on the subject. The measure is to be continued. Saxony's action plan also sets out the aim of "raising awareness among the police, the judiciary, the State Prevention Council and the Victim Advice Centres on 'hate violence' against LGBTIQ* people", for which measures are also being taken continuously. This includes raising awareness among police officers in their initial and further training.

With regard to some stakeholders' criticisms of age limits or higher charges for certain services provided to the elderly, in particular for certain insurance, rental and loan contracts, the following should be noted: German insurance contract law does not impose restrictions related to the age of policyholders. Under Section 19 of the General Act on Equal Treatment (AGG), discrimination on grounds, *inter alia*, of age is prohibited. Under Section 20, differences of treatment on grounds of age is permissible if it is based on recognised principles of risk-appropriate calculations, in particular on the basis of an assessment of risk based on relevant and accurate actuarial and statistical data. This may lead in practice to age being taken into account in the level of premiums, for example. In motor insurance, for instance, premiums may be higher for old but also very young drivers than for other policyholders if, according to statistical surveys, such policyholders cause more accidents than average. In principle, there is no entitlement to take out an insurance policy. However, there is an obligation to do so in the case of motor vehicle liability insurance and private health insurance for the base tariff, so it can be mandatory to take out a policy. The same is true for older policyholders. Furthermore, German law does not impose restrictions on elderly people taking out loans or entering into rental agreements. In fact, it expressly states that age

¹ The federal parliament adopted the law on 24 June 2021.

is no barrier to borrowing. As with insurance, however, there is no right to conclude a contract under loan and rental law.

The Federal Government considers the fight against racism, including antiziganism, to be an important political priority (e.g. the recent final report and catalogue of measures of the Cabinet Committee for the fight against racism and right-wing extremism, Cabinet Decision of 12 May 2021). Effectively combating antiziganism is also part of the broad consultation process (involving civil society at federal and state level) on the country's transposition of the new EU Roma strategic framework for equality, inclusion and participation up to 2030.

The federal government wants women and men to be involved on an equal footing in parliaments at all levels. To achieve a higher representation of women in politics, the coalition agreement for the current legislature (from 2017) included the remit to perpetuate the Helene Weber College and the Helene Weber Prize. This task has been met in the current legislature in part through mentoring and empowerment programmes for women provided by the college, as well as by the award of the Helene Weber Prize in 2020, which went to eminent women politicians at local level. Between June 2021 and December 2024, the federal government will also be providing EUR 1.7 million to promote the action programme "The future on the ground – shaping local policy together" by the Berlin EAF and the German Association of Rural Women to overcome the persistent under-representation of women in municipal offices (municipality, city and district councils) and in the office of mayor. The programme combines regional activities or action alliances with nationwide outreach and networking activities.

Rule of law

It should be noted at the outset that the remarks in the report regarding the rule of law are, in their brevity, very vague and sweeping. A somewhat more detailed explanation on individual points is therefore provided below:

The statement that the independence of courts and judges is assured, but their structure is governed by the relevant ministry, is misleading. The misconception that the executive has influence over the "structure" of the courts must be repudiated. "Structural decisions" are essentially restricted to location, establishment plan posts and general administrative resources, while internal court procedures (in particular the distribution of cases) are largely managed by the presidium, which is composed only of judges.

The finding that in some federal states the selection, nomination and promotion of judges is carried out exclusively by the relevant justice ministries omits to mention that the ministers concerned are in turn accountable to the parliament, which thus democratically legitimises the selection. The Bavarian law on judges and public prosecutors provides for extensive participation rights for the staff representative bodies elected by judges and prosecutors. In Saxony, the conditions for the nomination and promotion of judges are laid down in the Basic Law and the provisions of the Saxony Judiciary Act. This is decided by the Saxony justice ministry on the basis of these provisions and, in the case of promotions, on the basis of the assessment of the candidates. This is in line with the practice in many federal states. The Saxony government is only involved in filling the posts of high court president and attorney general.

The wording "prosecutors [are] civil servants at the Ministry of Justice" does not reflect their special position in Germany. While public prosecutors are in the service of either a federal state or the federal government, the criteria for nomination and promotion are generally the same as for judges. There are also many parallels in the rules on dismissal. In addition, public prosecutors – like judges – are initially appointed as probationary judges. Public prosecutors are also part of the executive, which is subject to parliamentary scrutiny. The principle of democracy goes hand in hand with the need for public prosecutors to follow instructions from the justice ministries. However, the right to issue instructions is strictly limited in law. In particular, instructions must be free from inappropriate considerations. This means that a legitimate decision of a public prosecutor's office may not be supplanted by a decision of a justice minister based on considerations of purely political expediency that are not procedural.

The Pact for the Rule of Law contributes to the efficiency and resilience of the judiciary in Germany. Bavaria has already exceeded its obligations under this pact by creating and filling 322.75 new posts for judges and prosecutors. In addition, by the end of 2021, there will have been 315.71 new posts in the non-judiciary and non-public prosecutor sector in Bavaria since 2017. The age structure of the Bavarian judiciary is healthy. Despite the imminent retirement of the baby-boomer cohort, it is expected that – thanks to the successful recruitment of a large number of young staff for the judiciary and prosecution service in recent years – sufficient candidates will remain available in the future. There are therefore no fears of staff shortages.

Saxony's judiciary is facing major challenges in the coming years as a result of a significant increase in the number of those retiring, including judges. However, for a number of years now, this trend has been offset by increased recruitment. Another challenge is the issue raised in the report that judges are increasingly exposed in the course of their work to threats or insults from parties to proceedings or third parties. No one suggests there are any threats from the state. In order to support judges faced by ever-increasing professional challenges, the justice ministry last year introduced a provision of external coaching ("Supervision") within its sphere of operations to complement its own long-standing provision of conflict counselling.

IRELAND

Observations from the Irish Government on the draft report of the European Economic and Social Committee's Fundamental Rights and Rule of Law Group on its virtual visit to Ireland on 28-29 June 2021

Ireland would like to thank The Fundamental Rights and Rule of Law Group of the European Economic and Social Committee (EESC) for its virtual visit during June 2021.

Ireland remains committed to the preservation and promotion of the rule of law throughout the EU and welcomed the opportunity to participate in this process.

We acknowledge the important contribution the Fundamental Rights and Rule of Law Group plays in advancing respect for foundational EU values.

1. Brexit and fundamental rights related to social partners

The Protocol on Ireland/Northern Ireland, an integral part of the EU-UK Withdrawal Agreement, protects the Good Friday Agreement, North-South cooperation and the all-island economy. It avoids a hard border on the island of Ireland, while preserving the integrity of the EU Single Market and Ireland's place in it. Among other things, it includes commitments to ensure no diminution of rights, safeguards and equality of opportunity, as set out in the GFA, and confirms that Irish citizens in Northern Ireland will continue to enjoy their rights as EU citizens.

While the Protocol was designed and agreed by the EU and the UK to minimise the inevitable disruption caused by Brexit on the island of Ireland, there are significant and permanent changes as a result of the UK's decision to leave the EU. The Irish Government is aware that, as outlined in the EESC's report, the UK's withdrawal from the EU has given rise to concerns for some people living and working in Northern Ireland about what it might mean for their rights and entitlements.

The Irish Government is also conscious of the cross-border nature of many people's lives on the island, with thousands of individuals crossing the border each day to work, study, shop and socialise. The continued protection of this way of life has been a priority throughout the Brexit process. The all-island economy, which facilitates many people's livelihoods across the island of Ireland, is particularly important in this regard. The Irish Government also consistently engages with stakeholders, including businesses and civil society, on both sides of the border, including in relation to challenges posed by Brexit.

The Common Travel Area (CTA), which is recognised in the Protocol, ensures that Irish and British citizens living and working anywhere on the island of Ireland (or between Ireland and Great Britain), including as frontier workers, do not need to take any action to continue to work and/or reside in either jurisdiction. From 1 January 2021, the UK introduced changes for frontier workers (and other workers) who are not Irish or British. The Irish authorities have engaged extensively with UK authorities

in this regard and has made comprehensive information on the new UK requirements available on gov.ie.

Regarding concern that the UK's withdrawal from the EU could result in divergence between the rights of workers in Ireland and Northern Ireland, it should be noted that the Trade and Cooperation Agreement includes level playing field provisions to ensure open and fair competition between the EU and the UK. As noted, the Protocol also commits the UK to ensuring no diminution of rights, safeguards, or equality of opportunity, as set out in the Good Friday Agreement. This includes the right to equal opportunity in all social and economic activity, regardless of class, creed, disability, gender, or ethnicity. The North South Ministerial Council will also have a role in considering any issues on a North-South basis in this context.

With respect to participants' expression of concern that the border between Ireland and Northern Ireland could "harden" for certain groups of people as a result of the UK's withdrawal from the EU, it should be noted that the Protocol ensures no hard border on the island of Ireland. However, relevant immigration rules in both jurisdictions continue to apply, as they did before Brexit.

2. Freedom of association and assembly

As regards participants' expression of concern as to the impact of the Electoral Act on civil society groups' ability to access funding, the Irish authorities would note the following point.

- The Government's intention is that the Electoral Commission (when established) will carry out a comprehensive review of the Electoral Act 1997 with a view to making recommendations to address, among other matters, the concerns raised by civil society. The General Scheme of the Electoral Reform Bill, which provides for the establishment of an Electoral Commission, was published earlier this year and work is ongoing to progress the Bill's development.

3. Freedom of expression and freedom of the media

Regarding the reform of Ireland's defamation laws, the Irish authorities would note the following three points.

- The Review of the Defamation Act 2009 is a legislative priority for the Government as reflected in the Programme for Government which commits to "review and reform defamation laws to ensure a balanced approach to the right to freedom of expression, the right to protection of good name and reputation, and the right of access to justice".
- The objective of the review is to ensure, in accordance with the Irish Constitution and with the European Convention on Human Rights, that our defamation law continues to strike the right balance between protecting an individual's good name and privacy, and protecting the right to freedom of expression, taking account of the vital role in our democracy played by a free and independent press.

- It is expected that the report of the review will be published imminently, subject to Government agreement. As outlined in the Justice Plan 2021, it is intended that a General Scheme of a Defamation (Amendment) Bill will be prepared by the end of 2021.

4. The right to non-discrimination

On LGBTIQ issues, the Irish authorities would like to note that cross-government, action orientated LGBTI+ National Youth Strategy 2018 – 2020 was extended into 2021 to offset any delays in implementation caused by the pandemic.

On the issue of sexual violence, the Irish authorities wish to note the following update on a development that occurred after the FRRL EESC June 2021 visit. On 2 September 2021, the Department of Justice launched a portal to enable victims of non-consensual intimate image sharing to report and remove images and videos, under the #NoExcuses campaign. The functioning of this portal, hosted online at hotline.ie, is in line with the provisions of the Harassment, Harmful Communications and Related Offences Act 2020, which criminalises the recording, distributing, or threatening to distribute intimate images without consent and with or without the intention to cause harm. In enabling victims to report these images through hotline.ie, which will then issue notice and takedown orders, this portal addresses online sexual violence and abuse and assists in the prevention of repeat victimisation of the affected individual. The portal also facilitates the possible reporting of these images to An Garda Síochána for potential criminal investigation.

5. The rule of law

Concerning the point that asserted that corruption affected Ireland more than the best performing countries on the corruption perception index, although adequate safeguards against abuse of power were in place, the Irish authorities would make the following observations.

Criminal Justice (Corruption Offences) Act 2018

The Criminal Justice (Corruption Offences) Act 2018 repealed and replaced the seven previous Prevention of Corruption Acts 1889 to 2010. The Act provides a single, consolidated modern piece of legislation which is more comprehensive and more accessible. As well as being a consolidation, the Act responds to recommendations from the Mahon Tribunal, from GRECO (Council of Europe's Anti-corruption group), from the OECD Working Group on Bribery and from the UNCAC (UN Convention Against Corruption) Implementation Review Mechanism. Some of the key aspects of the Act include the introduction of new offences and tougher penalties in areas relating to the giving of gifts; trading in influence; false documentation; and a liability offence for bodies corporate where any individual connected with the company has been found guilty of corruption.

Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption

In December 2020, the Minister for Justice published a cross-government report which examines how best to tackle economic crime and corruption in Ireland: "Review of Structures and Strategies to Prevent, Investigate and Penalise Economic Crime and Corruption". Subsequently, an all-of-Government implementation plan to progress the recommendations in the report was published in April 2021. The plan broadly categorised the recommendations under the following headings: (i) Structural/Systemic, (ii) Resourcing, and (iii) Legislative.

Some of the recommendations include:

- The Establishment of an Advisory Council against Economic Crime and Corruption to make proposals to Government on strategies and policies to tackle economic crime and corruption.
- A permanent forum of senior representatives from State agencies to facilitate greater collaboration and information sharing.
- A review of Ethics in Public Office with a view to strengthening the law relating to ethics in public office.
- Development of continuous training for investigators of economic crime and corruption.
- Engagement with the judiciary on the development of training for economic crime/corruption cases and the potential for judicial specialisation in the area.

Review of Ethics Legislation

The Department of Public Expenditure and Reform are currently reviewing the statutory framework for ethics in public life, which is proposed to include the following elements:

- A review of Ireland's existing ethics legislative framework, including a reassessment of the 2015 Public Sector Standards Bill;
- A review of the recommendations of relevant tribunals of inquiry;
- A review of recommendations of the Standards in Public Office Commission (SIPO) based on its operation of the current regime – and consideration of ethical questions that have arisen since 2017;
- Consultations with the Department of Housing, Planning and Local Government on the local government aspects of a consolidated statutory regime;
- A review of current EU/international best practice; and
- A Public Consultation - Consultations with various parties.

Regarding the reference to the non-operation of the prisoner complaint system, the Irish authorities would like to note a number of points:

- The Irish Prison Service Prisoner complaints system is fully functioning and continues to operate throughout the COVID-19 pandemic.

- Following issues raised by the Office of the Inspector of Prisons a new Prisoner Complaints Policy and process is being drafted, supported by a new Prisoner Complaints ICT System to assist with the management and administration of complaints.
 - While some issues have arisen with regard to the administration of complaints under the current system, it is not correct to state that the system is not working.
 - Prisoners can and continue to raise issues of concern via the current complaints system.
 - While there were limitations on non-essential visits to prisons, oversight has continued throughout the COVID-19 pandemic.
 - The Inspector of Prisons continued to have unrestricted access to prisons during COVID-19 and undertook inspections which are culminating in the completion of a significant number of COVID-19 Thematic Inspection Reports.
 - In addition, in July 2020 the Inspector of Prisons, in association with Maynooth University, published a report titled "Ameliorating the impact of cocooning on people in custody". This report is based on a ground-breaking collaboration between the Office of the Inspector of Prisons and criminologists, which aimed to listen to and document the experiences of people who were cocooning in custody during the lockdown.
 - Members of the prison Visiting Committees, who are appointed under statute, continued to have access to the prisons through the COVID-19 pandemic. Their function is to visit at frequent intervals the prison to which they are appointed and hear any complaints which may be made to them by any prisoner.
 - Prisoners continued to be able to contact the Inspector of Prison and other statutory bodies such as the Visiting Committees throughout the pandemic.
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CZECH REPUBLIC

Observations from the Czech authorities on the report of the Fundamental Rights and Rule of Law Group on its visit to Czech Republic on 30 September - 1 October 2021

Observations on specific issues:

4) The right to non-discrimination

Legal assistance for victims of discrimination and hate crime

Generally, according to the Crime Victims Act (Act No 45/2013 Coll.), legal help is provided to victims by entities registered in the Register of providers of assistance to crime victims which is accessible on the website of the Ministry of Justice¹. These entities which can be both CSOs and lawyers must provide their services free of charge in the registered scope. In the Register it is possible to find another provider of help, which is the Probation and Mediation Service. It is a state organisation funded by the state which operates in more than 74 service centres across the Czech Republic and also provides its services to victims free of charge.

Moreover, for all particularly vulnerable victims, services of agents are available free of charge according to the Criminal Procedure Code. The agent is entitled to make proposals and submit petitions and appeals on their behalf, and is also entitled to participate in all actions in which the aggrieved person could participate. If other legal conditions are also met, he or she is also entitled to be present at investigative actions aimed to clarify the matters of fact significant for assertion of rights of the persons he represents, and the outcome of which may be used as evidence in trial proceedings. The victims decide on their own by whom they would like to be represented, respectively who should be their agent. At the request of the victim the agent can be also appointed to him or her. This is primarily done through the Register mentioned above, secondly through the ex-offo lawyers.

In conclusion, it is not true that only CSOs provide help and are the only ones providing the help free of charge. There are still the services of lawyers and of the Probation and Mediation Service. In case of assistance under the Crime Victims Act, the Probation and Mediation Service provides the assistance free of charge, lawyers and CSOs in the registered

¹ <https://otc.justice.cz/verejne/rychleVyhledavani.jsf>

scope. In the case of acting as an agent for particularly vulnerable victims in criminal proceedings, this representation is free of charge. Therefore, the claim that the assistance would be provided solely by the CSOs and that legal help from lawyers would always be paid cannot be accepted.

5) The rule of law

Alleged pressure on the chief prosecutor by the executive power and his resignation

Neither the official statement of the former chief prosecutor nor his resignation letter refer to any grounds for his resignation. Moreover, the Act on Public Prosecution Office does not require from the chief public prosecutor to reason his or her resignation from the office.

Since the statement provided in the report does not stipulate the origin and expresses only surmises, such a statement is unverifiable. Therefore, no conclusions should derive from such surmises. The Czech law provides adequate safety legislative measures which ensure that investigation of conflicts of interest at the top of the State can be lead and that clear outcomes can be achieved.

SPAIN

Comments by the Spanish authorities on the report of the Fundamental Rights and Rule of Law Group (FFRL) of the European Economic and Social Committee (EESC) following the visit of an FRRL mission to Spain on 14 and 15 October.

Opening remarks:

Spain would like to highlight from the outset that the report by the Fundamental Rights and Rule of Law Group (FFRL) of the European Economic and Social Committee (EESC) following the visit of a FRRL mission to Spain on 14 and 15 October does not reflect in any form an analysis of the situation of fundamental rights and rule of law in Spain. It simply reflects the opinions of the selected representatives of civil society that the FRRL mission identified as its interlocutors for the visit. Spain notes that a rigorous methodology for drafting reports on these issues is key to enhancing their credibility, thereby benefitting the exercise's objectives.

Comments by the Spanish authorities:

The report cites several statements by the participants regarding **Organic Law 4/2015, of 30 March, on the protection of citizen security** (*Ley Orgánica 4/2015, de 30 de marzo, de protección de la seguridad ciudadana*) which require clarification.

The Organic Law on Citizen Security did not modify the Criminal Code, nor create any new category of offences. This law only establishes administrative sanctions. Article 36(6) refers to serious infringements, punishable by a fine of between EUR 600 euros and EUR 30 000 euros and Article 37(4) refers to minor infringements, punishable by a fine of up to EUR 600. Penalties of up to EUR 600 000 can only be imposed in the case of very serious infringement.

Participants cited in the report also indicate that police officers "could interpret these two articles broadly in order to impose fines, which affected the balance of power at the expense of the judiciary". This is incorrect, as law enforcement authorities do not impose fines, but only propose them by means of a police report¹. The Organic Law on the protection of citizen security stipulates that sanctions are imposed, where appropriate, by the administrative authority according to a regulated procedure, which can be appealed in court. Any sanction is subject to judicial review and judges have absolute power not only to judge the legality of the sanction but also to modify its amount, taking into account the specific circumstances of the case.

The decision in the "**Laguna Guzman v. Spain**" case cited in the report cannot be taken as evidence of the widespread practice of excessive use of force against demonstrators by the Spanish police, as the report seems to suggest, but rather as a decision that concerns a specific case. Proof of this is that the "Laguna Guzmán v. Spain" case is the only violation by Spain of Article 11 of the European Convention on Human Rights since 1979² and that there has not been another decision declaring a breach of the Convention in this area since this judgment. Furthermore, this case is not related to Organic Law 4/2015 on the protection of citizen security because the events described in the Laguna case took place more than a year before its last reform in 2015.

¹ Police procedures related to Organic Law 4/2015 have been further regulated in Instruction 13/2018, of 17 October, of the Secretary of State for Security, on the practice of external body searches, the interpretation of certain offences and procedural issues in relation to Organic Law 4/2015, of 30 March, on the protection of citizen security.

² https://www.echr.coe.int/Documents/Stats_violation_1959_2021_ENG.pdf

The report also refers to difficulties in **identifying police officers**. In this regard, it must be noted that it has been compulsory for national police officers, both from the *Cuerpo Nacional de Policía* and the *Guardia Civil*, to clearly display their personal identification number on their uniforms since 2007, as established in the Instruction 13/2007 of the Secretary of State for Security. The relevant regulations also include citizens' right to request police officers to identify themselves during police operations. The best practices of one Autonomous Community that are referred to in the document were adopted subsequent to national legislation.

It is also important to note that Organic Law 4/2015 on the protection of citizen security has been the subject of two rulings by the Constitutional Court (case 172/2020, of 19 November 2020 and case 13/2021, of 28 January 2021). These decisions upheld the text of the Organic Law, apart from one reference in its text. Decision 13/2021 of 28 January 2021 of the Constitutional Court found that the reference to the "unauthorised" use of images or personal or professional data of authorities or members of law enforcement agencies of Article 36(23) was contrary to the Spanish Constitution, and as a result, this specific provision was declared null and void.

Regarding the protection of human rights, it is important to note the establishment of the National Human Rights Guarantee Office (*Oficina Nacional de Garantía de los Derechos Humanos*) under the Secretary of State for Security. This initiative highlights the commitment of the Spanish Police forces to upholding human rights and improving procedures to ensure their protection³.

With regard to the allegations on the difficulties in the area of access to **social housing**, it should be noted that access to decent housing is a right established in Article 47 of the Constitution. The right to decent housing is protected by the Ombudsman, and its recognition, respect and protection are at the core of secondary legislation, judicial practice and the actions of the public authorities. In this regard, it is worth noting that:

- Royal Decree 42/2022, of 18 January, which regulates the youth rental voucher and the State Plan for access to housing 2022-2025 (*Real Decreto 42/2022, de 18 de enero, por el que se regula el Bono Alquiler Joven y el Plan Estatal para el acceso a la vivienda 2022-2025*)⁴, has recently been approved.
- Royal Decree-Law 2/2022 of 22 February extended a series of measures, including the suspension of evictions and reposessions of primary residences until 30 September 2022 for vulnerable individuals and families in the cases provided for in Royal Decree-Law 11/2020 of 31 March and Royal Decree-Law 37/2020 of 22 December.
- Currently, the Draft Law on the Right to Housing is proceeding through parliament under the urgency procedure. This is the first legal provision at the central level with the status of law to regulate this matter. It aims to establish, for the whole of the Spanish territory, the basic conditions that guarantee equality in the exercise of rights and the fulfilment of constitutional duties related to housing.

The report also refers to **transparency and access to public information**. The right to access public information is guaranteed by the Spanish Constitution itself, specifically in Article 105 b): "citizens' access to administrative archives and records shall be regulated by law, except in

³ Instrucción 1/2022 de la Secretaría de Estado de Seguridad

⁴ <https://www.boe.es/buscar/act.php?id=BOE-A-2022-802>

matters affecting the security and defence of the State, the investigation of crimes and the privacy of individuals".

This right was reinforced by Law 19/2013, of 9 December, on Transparency, Access to Public Information and Good Governance, which recognises the right of every person to access public information and is rigorously applied by the Spanish administration. Law 19/2013 establishes a procedure under which citizens can request information held by public administrations. According to the official statistics provided by the Transparency and Good Governance Council, which oversees and controls the application of Law 19/2013, 46% of requests for information were upheld in first instance, giving access to the requested documentation⁵, so it was not necessary to claim the information in court.

Law 19/2013 was largely inspired by the Council of Europe Convention on Access to Public Documents (the "Tromsø Convention"), which was signed by Spain in November 2011. Spain has an institutional and legal framework that includes all the rules required by European law, supplemented by rules that go beyond those required by the EU, making Spain an example in terms of transparency, prevention of corruption and good governance.

In this regard, the Revision Mechanism of the Open Government Alliance has highlighted in its evaluation report that the implementation of the Third Spanish Open Government Plan has "strengthened the governance of the OGP process through the creation of the Open Government Forum, which provided spaces for dialogue and involvement of civil society. The high level of compliance achieved during this cycle allowed for significant advances in government openness, especially in the areas of access to information and citizen participation⁶".

According to Law 19/2013, of 9 December, information subject to transparency obligations must be published on the relevant websites in a manner that is clear, structured and understandable to all stakeholders. In addition, the General State Administration has a **Transparency Portal**⁷, which has an active disclosure section and which is intended to facilitate citizens' access to all information (Article 10). The *Consejo General del Poder Judicial* (General Council for the Judiciary, CGPJ), Congress and Senate also have their respective transparency portals. The law also provides for the creation of Transparency Portals for the Autonomous Regions and local authorities. All public institutions, as well as political parties, trade union organisations, business organisations and private entities that receive public aid or subsidies exceeding certain economic thresholds during a period of one year are also subject to active disclosure obligations.

The Transparency Portal of the General State Administration proactively publishes the remuneration received annually by senior officials and heads of the bodies covered by the scope of the Law, as well as the compensation received, if applicable, when those persons leave office (Article 8(1)(f) Law 19/2013, of 9 December)⁸.

⁵ https://www.consejodetransparencia.es/ct_Home/Actividad/Datos-actividades/Estadisticas2021.html

⁶ The report is available on the Transparency Portal at the following link: https://transparencia.gob.es/transparencia/dam/jcr:2fb5b3e9-d444-4ec7-8472-464fa3c61927/Spain_ImplementationReport_2017-2019.pdf

⁷ <https://transparencia.gob.es/>

⁸ https://transparencia.gob.es/transparencia/transparencia_Home/index/PublicidadActiva/AltosCargos/Retribuciones-de-altos-cargos.html

Regarding access to public procurement information, the Transparency Portal publishes all the relevant information regarding a contract, including the contractor's data. This information is coordinated by a centralised source within the General State Administration (the Public Sector Procurement Platform of the Ministry of Finance and the Civil Service).

With regard to COVID-19, it should be noted that, during the state of emergency, the Transparency Portal of the General State Administration operated normally in terms of active disclosure, and it continued offering relevant and updated public information in compliance with the provisions of Law 19/2013. All purchases of health material during the pandemic are covered by the obligation to publish public procurement contracts, including those of less economic value⁹.

The Royal Decree 463/2020 of 14 March, which declared a state of emergency for the management of the health crisis caused by COVID-19, introduced a general suspension of all administrative deadlines, including those of existing requests for access to public information. During this period, all ministerial departments gave priority to requests for information related to the state of emergency, in order to avoid a backlog of requests and to be able to conclude all requests by means of the corresponding resolution as soon as the state of emergency was over. After the end of the state of emergency on 1 June 2020, the deadlines for procedures related to the right of access to public information were fully re-established.

On the issue of the **protection of journalists**, it should be noted that Spain has not in any recent time been found to be in breach of the provisions of the European Convention on Human Rights that regulate interactions between the State and journalists or that protect their independence against threats from the government.

In addition to the protection that the Spanish Constitution gives to the effective exercise of the fundamental rights to freedom of expression and information (Article 20 EC), the relevant cooperation agreements and operational instructions of the Ministry of the Interior, which regulate the way in which police officers must act in order to protect the work of professional journalists, are worth highlighting:

- the renewal in December 2020 of the collaboration agreement between the Ministry of the Interior and the *Federación de Asociaciones de Periodistas de España* (Federation of Spanish Journalists' Associations), which also involves the *Federación de Asociaciones de Periodistas de España* (Federation of Spanish Journalists' Associations) and the *Asociación Nacional de Informadores Gráficos de Prensa y Televisión* (National Association of Press and Television Graphic Reporters) for the identification and protection of information professionals in events requiring police intervention. The purpose of this agreement is to improve cooperation between police officers and journalists, with the main aim of facilitating the work of information professionals so that they can carry out their activity in a safe environment, even when they are reporting from places and events where situations of risk or violence may occur.
- The Ministry of the Interior is constantly monitoring the situation of victims, and, in particular, those who may be more likely to suffer any illegal act aimed at infringing their freedoms and fundamental rights (for instance, due to their vulnerability, age,

⁹ All information regarding the contracting of health material supplies and the amounts involved is available on the Transparency Portal at the following link: <https://transparencia.gob.es/servicios-buscador/buscar.htm?pag=1&categoria=licitaciones&categoriasPadre=conconvsub&ente=E04921901,E05025001,E05070101&historico=false&lang=es>

social situation or occupation). In this sense, a reform of the *Sistema Estadístico de Criminalidad* (Crime Statistics System) is currently being undertaken. This system will take into account the data that is included in the National Classification of Occupations, which allows for the classification and registration of the profession of all crime victims who disclose it. The National Classification of Occupations will include a special category for journalists.

With regard to **pluralism of information**, it is necessary to make some clarifications to the text of the document:

Institutional advertising is regulated in Spain both by State and regional regulations. The General State Administration, Law 29/2005, of 29 December, on Institutional Advertising and Communication, and Royal Decree 947/2006, which regulates the Commission on Institutional Advertising, establish certain provisions aimed at guaranteeing the publication of expenditure forecasts and their execution in relation to institutional advertising campaigns.

At the beginning of each year, the regulations provide for the approval by the Council of Ministers of an Advertising and Communication Plan that includes all institutional campaigns that the General State Administration plans to carry out. Pursuant to Article 12 of Law 29/2005, of 29 December, "the plan shall specify, at least, the necessary indications on the objective of each campaign, the foreseeable cost, the period of execution, the communication tools used, the meaning of the messages, their recipients and the bodies and entities affected". Once the annual plan has been carried out, a report on its implementation must be submitted to Parliament and be made available to all professional organisations in the sector.

Consequently, information on the distribution of public funds for institutional advertising in the General State Administration is available through the Annual Plan, which provides information on the budget planned for the campaigns planned by each ministerial department, and the corresponding Annual Report, which includes the total amount that was spent¹⁰. The relevant departments are also subject to the information requests provided for in Law 19/2013, of 9 December, on transparency, access to public information and good governance.

In relation to the report's allusion to the non-existence of a media council, it should be noted that Spain has an **independent audio-visual supervisory authority**: the National Commission for Markets and Competition (CNMC). Law 3/2013 of 4 June 2013, establishes that this body shall supervise and monitor the smooth operation of the audio-visual communications market, including the compliance of audio-visual content with current legislation and self-regulation codes, as well as the fulfilment of the public service mission entrusted to public service providers.

Regarding the allegation that some **journalists were not allowed to participate in press conferences** with members of the government, it should be noted that despite the measures to reduce seating capacity during events due to COVID-19, there is no record of any duly accredited media not being able to attend press conferences organised by the government. Furthermore, the accreditation procedure for media outlets for events organised by the

¹⁰ Since the entry into force of the regulations in 2006, all annual plans and reports have been published in general and can be consulted by all interested parties on the website of the Presidency of the Government (<https://www.lamoncloa.gob.es/serviciosdeprensa/cpci/paginas/PlanesEInformes.aspx>) and the Transparency Portal website (<https://transparencia.gob.es/>)

President of the Government's office is public and open to all professionals interested in attending¹¹.

The draft report notes the participants' concern at Spain's failure to transpose the directive for the **protection of whistleblowers**. The Ministry of Justice is currently coordinating the transposition of Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019, on the protection of persons who report breaches of Union law ("whistleblowers"). The text of the draft bill is being finalised and is expected to be submitted to the Council of Ministers for a second reading soon.

In the **fight against discrimination**, the report omits to mention the large number of measures taken by the Spanish authorities (and presented during the meeting with public authorities on 15 October) to combat hate crimes based on race, national or ethnic origin, language, colour, religion, sex, age, intellectual or physical disability, sexual orientation or any other similar factor.

It is worth highlighting, first of all, that any citizen may seek protection of the freedoms and rights recognised in Article 14 (the principle of equality) and Section One of Chapter Two (Fundamental Rights and Public Liberties) of Title I (Fundamental Rights and Duties) of the Constitution before the ordinary Courts, through a procedure based on the principles of preference and summary proceedings and, where appropriate, through an appeal for protection before the Constitutional Court.

In this regard, and in addition to the Bill on Equal Treatment - which is currently being discussed in Parliament and is referred to in the report - it is essential to note that the Organic Law against Racism, Racial Discrimination and Related Forms of Intolerance has been included in the Annual Regulatory Plan for 2022. On 22 March 2022, a public consultation procedure was launched to gather the opinions of citizens, organisations and associations.

Non-discrimination in the audio-visual field is established in Article 4(2) of Law 7/2010, of 31 March, which provides that "audio-visual communication should never incite hatred or discrimination based on gender or any personal or social circumstance and must be respectful of human dignity and constitutional values, with special attention to the eradication of conduct that favours situations of inequality for women".

Likewise, in the **Draft General Law on Audio-visual Communication**, which is currently proceeding through parliament, the principles contained in Law 7/2010, of 31 March have been expanded and strengthened. To this end, Article 4(2) of the draft states that "Audio-visual communication shall not incite violence, hatred or discrimination against a group or members of a group on grounds of age, sex, disability, sexual orientation, gender identity, gender expression, race, colour, ethnic or social origin, sexual or genetic characteristics, language, religion or beliefs, political or any other opinions, nationality, heritage or birth."

Article 71 of Organic Law 4/2000, of 11 January on the rights and freedoms of foreigners in Spain and their social integration provides for the establishment of the **Spanish Observatory on Racism and Xenophobia** (OBERAXE). This institution deals with the fight against racism, xenophobia and other forms of intolerance, the promotion of equal treatment and non-

¹¹ It can be consulted on the Moncloa website, and only deals with the organisational and security needs of official events (<https://www.lamoncloa.gob.es/serviciosdeprensa/acredita/Paginas/index.aspx>)

discrimination, awareness-raising and training, and collaboration with national and international institutions and stakeholders in the prevention, reporting and protection of victims.

In 2020, the "Strategic Framework for citizenship and inclusion against racism and xenophobia, 2021-2027" updated the "Integral Strategy against racism, racial discrimination and xenophobia, 2021-2027" and the Strategic Plans for Citizenship and Integration (PECI I and PECI II). The aim of this review is to adapt the relevant strategies to the new migratory situation and to incorporate the recommendations made to Spain by the main international and European organisations in the areas of prevention of racism, racial discrimination, xenophobia and other forms of intolerance.

The existence of the **Inter-institutional Agreement against racism, xenophobia, LGBTIphobia** and other forms of intolerance has led to the adoption of the Protocol to Combat Illegal Hate Speech Online. This protocol is a key instrument that sets the ground for effective cooperation between the actors involved in the fight against illegal hate speech online in Spain and includes public authorities, civil society organisations, companies and data-hosting service providers.

It should also be noted that in 2018, the Ministry of the Interior established the **National Office for the Fight against Hate Crimes (ONDOD)**¹², whose main task is to advise the Secretary of State for Security on hate crimes and to provide the appropriate strategic and technical information for the adoption of public policies in relation to these crimes. ONDOD is also responsible for training public servants to assist victims of hate crimes and acts as an observatory, gathering information and originating strategic analysis for the adoption of new initiatives to tackle this problem. ONDOD is also the national point of contact with other international organisations working in this area.

International and European organisations such as the European Union Agency for Fundamental Rights (FRA) and the Office for Democratic Institutions and Human Rights (ODHIR) of the Organisation for Security and Cooperation in Europe (OSCE) have been very appreciative of these initiatives and have flagged up Spain as an example of good practice in the fight against hate crimes.

Also related to the fight against hate crimes, it is worth noting that the evaluation of the 2019-2021 Action Plan has recently concluded. This exercise was essential in the process of designing the Second Action Plan against Hate Crimes¹³.

The report states that **Roma people** are frequently ethnically profiled by the police. The report does not, however, provide any data to support this statement regarding a behaviour that, in any case, is in contradiction with all existing legislation. In this regard, Article 16 of Organic Law 4/2015, of 30 March, on the protection of citizen security requires that "*in the practice of identification, the principles of proportionality, equal treatment and non-discrimination on grounds of birth, nationality, racial or ethnic origin, sex, religion or beliefs, age, disability, sexual orientation or identity, opinion or any other personal or social condition or circumstance shall be strictly respected*". These guidelines are also covered by all police operational and

¹² Additional Information can be found at the following link: <http://www.interior.gob.es/web/servicios-al-ciudadano/delitos-de-odio>.

¹³ https://www.lamoncloa.gob.es/consejodeministros/resumenes/Documents/2022/120422_II_Plan_Accion_contra_delitos_odio.pdf

ethics regulations, and failure to comply with all these principles leads to the intervention of the control mechanisms in place for this purpose and the corresponding sanctions. The claim that Roma people are being stopped by the police ten times more than the rest of the population is also presented without any data to support it. In this regard, it is essential to note that law enforcement agencies do not register the racial data of detainees in Spain.

Other initiatives of the Spanish government regarding combating discrimination against the Roma people are worth highlighting, such as the National Strategy for Roma Equality, Inclusion and Participation 2021-2030¹⁴, or the role of the Council for the Elimination of Racial or Ethnic Discrimination, whose aim is to provide assistance to victims of discrimination on the basis of racial or ethnic origin. Regarding this Council, it is important to note that the budget for victim assistance was increased last year. As a result, during this year, the number of offices that deal with these issues will increase to a minimum of 21 locations across Spain.

Regarding statements about the Spanish legislative framework on **people with a disability**, Spain would like to state that the principle of mainstreaming is included as one of the principles that must guide government policies in this area in Article 3(m) of Royal Legislative Decree 1/2013 of 29 November on the Rights of Persons with Disabilities and their social inclusion.

With regard to the comment "Participants were particularly concerned about forceful medical treatments for people with mental disability and the impossibility for them to obtain information on their medical treatment", it is noted that, in accordance with Article 763(1)(1) of Law 1/2000, of 7 January, on Civil Procedure, the internment, on grounds of mental disorder, of a person who is unable to decide for themselves requires prior judicial authorisation, except for reasons of urgency which, in any case, must be ratified by a judge within a maximum period of 72 hours. Furthermore, Spain's position with regard to the additional protocol on involuntary hospitalisation and treatment to the Convention for the Protection of Human Rights and Dignity of the Human Being with regard to the Application of Biology and Medicine remains one of abstention.

The report also mentions the **obstacles that women still face**. Spain would like to qualify some of the statements that can be found in it and to correct some interpretations of the data that is provided.

In Spain, Organic Law 3/2007, of 22 March 2007, on the **effective equality of women and men**, has been in force since 2007. This is a regulation of great relevance, which establishes various policies and initiatives to fight against discrimination and inequality based on gender and establishes the right to equal treatment and opportunities. Currently, and with the aim of complementing this regulatory framework, the Proposed Comprehensive Law for Equal Treatment and Non-Discrimination, referred to in the report, is currently being discussed in Parliament.

The report also refers to the **gender pay gap** in Spain. In this regard, it is important to note that in order to move towards real and effective equality and close the wage gap, in 2020, the regulatory development provided for in Royal Decree-Law 6/2019, of 1 March, on urgent measures to guarantee equal treatment and opportunities between women and men in

14 https://www.mdsocialesa2030.gob.es/derechos-sociales/poblacion-gitana/docs/estrategia_nacional/Estrategia_nacional_21_30/Estrategia_aprob_cm_2_nov_ENGLISH.pdf

employment and occupation¹⁵, took place through Royal Decrees 901/2020, of 13 October, regulating equality plans and 902/2020, of 13 October, on equal pay for men and women. These measures have already contributed to decreasing the gender pay gap to 16.2%, which is a reduction of 4.8 points since 2018.

With regard to **policies on conciliation**, it is worth expanding on the information given in the report. As was reported during the visit, the government has implemented different policies in the area of family care. In 2021, the Ministry of Equality launched the "*Plan Corresponsables (Joint Carers Plan)*" in partnership with the Autonomous Communities. The aim of the Plan is to guarantee care as a right in Spain from the perspective of equality between women and men. It is designed to be a seed policy with a view to developing a State Care System. It seeks to design comprehensive care systems from a gender, intersectional and human rights perspective that promote co-responsibility between women and men, the State, the market, families and the community.

Furthermore, the Ministry of Social Rights and Agenda 2030 are working on the **Draft Bill on Family Diversity and Support for Families**, which aims to include, among other measures, seven days of paid leave, a universal child-rearing income for all Spanish households and an extension of parental leave to 24 months for both parents.

As part of a comprehensive review process and of strengthening the **institutional response to gender violence**, the Council of Ministers adopted the "Agreement Approving the Catalogue of Urgent Measures of the Plan for Improvement and Modernisation against Gender-Based Violence" at the initiative of the Ministers of Equality, Justice, Interior, Health, and Social Rights and Agenda 2030. This Catalogue of Urgent Measures includes 15 measures in six different areas. In addition to this, the Government Delegation against Gender Violence ran a number of communication campaigns in 2021 with the aim of promoting awareness throughout the year, as provided for in the Catalogue of Urgent Measures approved in July 2021 and in the State Pact itself.

It is equally important to note that on 24 November 2021, the Interterritorial Council of the National Health System approved the **Standardised Instrument for the early detection of Gender Violence in the National Health System** which complements the Common Protocol for Healthcare Action against Gender Violence in the National Health System (2012) in the achievement of standardised and homogeneous action guidelines.

The **Draft Organic Law on the Comprehensive Guarantee of Sexual Freedom**, which aims to provide comprehensive protection of the right to sexual freedom and the eradication of all sexual violence, is currently being discussed in Parliament, following its approval by the Council of Ministers in July 2021. The Law envisages the adoption and implementation of effective, comprehensive and coordinated policies among the different competent public administrations, which guarantee the prevention and punishment of sexual violence, as well as the establishment of a specialised and comprehensive response for women, girls and boys, as the main victims of all forms of sexual violence.

In this context, it is also important to mention the "**Spain protects you against male violence**" plan. The strategy focuses on extending, improving and expanding comprehensive care services for all forms of violence against women with the aim of complying with international

¹⁵ Which, among other regulations, amended Organic Law 3/2007, of 22 March, on effective equality between women and men and the Workers' Statute (Royal Legislative Decree 2/2015 of 23 October)

standards and the current legal framework. In order to do so, it provides for the creation of 24-hour comprehensive assistance centres for victims of sexual violence in all provinces and autonomous cities of the State.

Regarding **hate speech against the LGBTQI community**, it is worth highlighting the draft bill on the real and effective equality of trans people and on guaranteeing the rights of **LGBTQI** people, which is currently being developed. This law consolidates and guarantees rights that represent a great step forward for trans and **LGBTQI** people.

The report also argues that "participants also explained that reporting on situations of discrimination or hate crimes to the police was difficult". In this regard, it is essential to note that there is a "**Law enforcement action protocol for hate crimes**". Furthermore, all police reports are forwarded to the Provincial Delegate Prosecutor for hate and anti-discrimination crimes, even when there is not a known perpetrator.

Organic Law 4/2000, of 11 January, on the rights and freedoms of foreigners in Spain and their social integration, establishes that detention in a CIE (Centro de Internamiento de Extranjeros or Foreigner Detention Centre) can only be decided by the relevant judicial authority. In doing so, it must take into account the principle of proportionality and other applicable circumstances, such as the lack of documents, the existence of previous convictions or administrative sanctions, pending criminal or administrative sanctioning proceedings or possible risks to public health or to the foreigner's own health. Furthermore, the person will remain in detention for the time necessary for the purposes of the procedure, and for a maximum of 60 days. The reference to detention for 60 days in CIEs is not only in line with Directive 2008/115 (which establishes the possibility of detention periods of up to 18 months), but it should be noted that Spain is one of the Member States with the shortest detention periods.

In addition, it is worth highlighting the fact there is a double judicial control over the detention of migrants, since, in addition to the judge that is competent to authorise and cancel the detention, there is an additional judge in charge of monitoring the stay of foreigners in CIEs. These judges are competent to hear petitions and complaints made by inmates insofar as they affect their fundamental rights. These judges may also visit such centres when they become aware of any serious breach or when they deem it appropriate. If the detention takes place in illegal conditions, the foreigner has the right to issue a *habeas corpus* request.

Furthermore, Royal Decree 220/2022, of March 29, which approves the Regulations governing the reception system for international protection, has been approved with the aim of developing Chapter III of Title II of Law 12/2009, of October 30, 2009, which regulates the right to asylum and subsidiary protection. Among the various elements developed by the Regulation, there is a catalogue of rights for those to whom the system is addressed, as well as an assessment of the needs of persons in a vulnerable situation during the time they remain in the reception system. In order to determine the material reception conditions to which the beneficiaries will have access, the particular needs of persons in a vulnerable situation will be taken into account, among other aspects.

It is also important to note that there are two legal frameworks for adopting a return decision:

- Expulsion, applicable to those who have been found in Spanish territory in an irregular situation and which will entail an entry ban.

- Return, applicable to foreigners who, having been expelled, contravene an entry ban, and for those who have been intercepted trying to enter Spain illegally.

In both cases, which are regulated by Organic Law 4/2000, the applicable guarantees are duly taken into account, such as the rights to free legal assistance, to an interpreter, to effective judicial protection and to appeal administrative decisions. Furthermore, these are individualised procedures, which can never be carried out collectively. These procedures must respect the principle of non-refoulement and the right of access to international protection is provided for.

The European Court of Human Rights, in its decision of 13 February 2020 (N.D and N.T v. Spain), and the Spanish Constitutional Court (decisions 172/2020 and 13/2021) have validated the **border procedure** regime which is established in the Tenth Additional Provision of Organic Law 4/2000, through the First Final Provision of Organic Law 4/2015, of 30 March, on the protection of citizen security. The aim of this procedure is to fulfil, in Ceuta and Melilla, the obligation to protect Spain's external borders, as established by the Schengen Borders Code, and Article 72 of the TFEU.

As regards the **renewal of the CGPJ**, the expression "the non-renewal of the CGPJ was a threat to the Independence of the judiciary" is not considered acceptable. It is also contradictory with other statements in the report which state that the rule of law in Spain is solid and that Spanish judges are able to carry out their daily work in an independent way. The CGPJ continues to carry out its main task, which is the defence of judicial independence, after the entry into force of Organic Law 4/2021. The CGPJ is not a judicial body. Consequently, the interim situation does not prevent the proper performance of the tasks attributed to courts and tribunals, and the protection of citizens' rights is fully guaranteed.

Spain points out that the CGPJ is composed of the President of the Supreme Court, who presides over it, and twenty members appointed by the His Majesty the King for a period of five years. Of these, twelve are selected among Judges and Magistrates of all judicial categories, and eight among lawyers and other jurists. All of them must be professionals of recognised competence and with more than fifteen years of practice in their profession. Furthermore, the Congress of Deputies and the Senate elect ten members of the CGPJ respectively, four from among jurists of recognised competence with more than fifteen years of practice in their profession and six from a list of judges. The election of the members requires a three-fifths majority in each Chamber. It is not, therefore, an agreement between political parties but between parliamentary groups in the Congress and the Senate. The election of the members from the list of judges by each Chamber is made from among candidates who are presented by the members of the Judiciary, since each candidate must be endorsed by 25 judges or by a judicial association.

The report notes that participants felt there was a shortage of resources in the judiciary, citing that the "number of judges per inhabitant was insufficient, which led to lengthy procedures, especially in the High Courts and the Supreme Court". In this regard, it must be noted that the number of judges per 100 000 inhabitants in Spain (11.5%) is similar to that of other nearby countries with a similar population (France (10.9%) or Italy (11.6%)). These data are taken from graph 3.4 of the 2020 CEPEJ report.

The report mentions that **judicial procedures** are often lengthy and that information can be communicated years after the request. In this respect, it should be noted that, according to

the "Justice Scoreboard 2021"¹⁶, Spain is in a reasonable comparative position in terms of the length of judicial proceedings in the contentious-administrative field.

Regarding the topic of corruption, Spain **highlights the positive developments that have been achieved in the area of the prosecution and sanctioning of behaviours related to corruption.**

The project "**Strengthening the National Anti-Fraud Strategy in Spain**", which is currently being carried out by the National Anti-Fraud Coordination Service of the IGAE, with the Technical Assistance of the OECD and with funding from the European Commission's Directorate-General for Structural Reforms Support, is particularly relevant to this topic. It includes the following measures, among others:

- A draft National Anti-Fraud Strategy, which is expected to be presented in July-August 2022.
- Extending the scope of action in the domain of fraud and corruption prevention beyond the financial interests of the European Union, providing for a more general approach in the fight against corruption as agreed at the meeting of 15 March 2022 of the Coordinating Committee of the General Services Inspectorates of the Ministries of the General State Administration.

The strategy will also take into account the risks associated with implementing the funds that are being used to alleviate the economic and social consequences of COVID-19, such as risks arising from public procurement contracts under the emergency procedure, or attempts to influence the authorities that are in charge of managing those funds.

In the **fight against fraud, corruption, embezzlement, money laundering, organised crime and other crimes affecting the financial interests of the European Union**, the National Anti-Fraud Coordination Service of the IGAE maintains operational and coordination relations with the Special Prosecutor's Office against Corruption and Organised Crime, the Spanish National Police and *Guardia Civil* Forces and the European Public Prosecutor's Office, especially with the latter, since it became operational on 1 June 2021.

Furthermore, representatives of the aforementioned Institutions are part of the Commission for drafting the National Anti-Fraud Strategy, created within the Advisory Council for the Prevention and Fight against fraud against the financial interests of the European Union, which will assist and advise the National Anti-Fraud Coordination Service of the IGAE in drafting the Strategy.

In addition to this, in 2017, the IGAE's National Anti-Fraud Coordination Service launched the **Infraud system**. Complaints relating to the management of the Recovery and Resilience Mechanism will be channelled through this system, which deals with complaints of fraud, corruption and any other illegal actions with respect to directly managed, indirectly managed or shared management funds. In this regard, it is worth noting that complaints concerning public procurement are monitored particularly closely, but represent only 6.69% of the total number of complaints received since 2017. This channel is currently being modified to adapt it to Directive (EU) 2019/1937 of the European Parliament and of the Council of 23 October 2019 on the protection of persons reporting breaches of Union law.

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https://ec.europa.eu/info/policies/justice-and-fundamental-rights/upholding-rule-law/eu-justice-scoreboard_en

CYPRUS

Observations from the Government of the Republic of Cyprus on the draft report of the European Economic and Social Committees Fundamental Rights and Rule of Law Group on its visit to Cyprus on the 25th-26th of November 2021

The Republic of Cyprus would like to express its appreciation to the Fundamental Rights and Rule of Law Group for the interesting exchange of views that took place on the 25th of November and would like to present additional comments to the subsequent draft “Report on the visit to Cyprus 25-26 November 2021” in the following sections.

The Republic of Cyprus would like to underline once more its commitment to uphold the rule of law principle as a core value of the EU and an indispensable element of a democratic society.

1. Fundamental Rights related to social Partners

Social dialogue is one of the most important elements for setting labour policy. Especially in the sphere of work, but also generally in the social sector, making good use of honest social dialogue in an atmosphere of trust for the development of policy decisions, remains central to the processes of consensus-based policy formulation. In this respect, Cyprus has a large number of permanent Tripartite Social Dialogue Bodies dealing with employment policies, labour law, and social issues in which social partners participate as advisors. The most important of these is the Labour Advisory Board, which regularly deals with all labour and social issues affecting the world of work. The introduction of new legislation or amendments to existing legislation are always discussed at the highest tripartite level that is the Labour Advisory Board.

In order to further strengthen the implementation and enforcement of equal pay legislation in particular, officers and inspectors of the Ministry, along with officers from the Ombudsman’s Office, follow a detailed training programme of theoretical and practical content, aimed at enhancing their knowledge and skills when conducting inspections or handling complaints regarding the Law on Equal Pay between Men and Women for the Same Work or for Work to which Equal Value is Attributed. Their training includes job evaluation methods. Moreover, during the period 2010-2021 inspections were carried out on the basis of an annual target set at 200-300 inspections per year, which were both preventive and repressive in nature. In addition to requesting data aiming mainly at detecting direct discrimination in pay, the inspectorate’s role also focused on providing information to both employers and employees on the provisions of the legislation, but also practical compliance guidance to employers. In 2022, targeted and more detailed inspections are taking place, based on a risk assessment that has been conducted.

It is important in this context to explain that measures concerning discrimination, equal pay between men and women, protection of migrant workers in Cyprus and other pieces of legislation in relation to labour inspection are covered by specific Laws.

Such legislation is Law N.205(I)/2002 regarding equal opportunities for men and women in the workplace and vocational training which is monitored by the Department of Labour. The

Department of Labour is actively taking all necessary measures to implement its national legislation on the enforcement of the equality principle and the promotion of equal opportunities for men and women in the workplace, vocational training, according to the Law 205(I)/2002 as has been amended and is fully harmonized with EU directive 2006/54/EC. This is fulfilled with the extrajudicial mechanism of Gender Equality Inspectors of the Department of Labour which continues to examine complaints concerning gender discrimination (including complaints in relation to sexual harassment at work, pregnancy and maternity) in order to ensure equality in employment and to combat discrimination. A person facing sex discrimination can submit a complaint to the quality Inspectors under The Equal Treatment for Men and Women in Employment and Vocational Training Law. This Law No.205(I)/2002, as amended, provides in Section 27 the way/procedure for investigating a complaint by the Gender Equality Inspectors of the Ministry of Labour and Social Insurance. Specifically, the gender equality inspector will proceed with mediation between the complainant and the employer in order to resolve the issue. If an agreement is reached the inspector will write a report and both parties will then sign it. If an agreement is not reached, a report will be drafted which can be presented before a court. Equality Inspectors are posted in each PES District Office and may advice or receive and examine complaints regarding the protection of maternity or may receive complaints regarding sex discrimination which are investigated according to the Equal treatment of Men and Women in Employment and Vocational Training Law.

Regarding the **National Action Plan for the Integration of Migrants** it should be mentioned that a draft Action Plan was prepared by the Ministry of Interior in 2020 and although its formal adoption by the Council of Ministers is still pending, many actions have been implemented by the competent authorities.

In this context it should be clarified that the Public Employment Services (PES) of the Department of Labour offer all job seekers (including migrants) assistance in finding employment, without discrimination, through registration, job search services and placement services, which include vocational guidance, counselling and referrals to training programmes and job vacancies. Asylum seekers have access to specific sectors of employment regulated by a ministerial order. The range of these sectors/occupations has been expanded in 2019 in order to include more attractive occupations.

In the period 2018-2021, in order to improve the services offered by the Public Employment Service, the Department of Labour hired 30 new temporary Employment Counselors, for the provision of individualized services to the unemployed, mainly people belonging to vulnerable groups. They are placed in Public Employment Service Offices throughout the Republic of Cyprus. Their contracts have been extended until the end of 2023.

2. Freedom of association and assembly

As regards the observation of the **shrinkage of civic space**, partly because of the replacement of the national registries with regional registries and the delays this has provoked, it should be

taken into account that the decentralization of the procedures followed by the public service is a process that has been repeatedly proven to benefit the citizens. The delay observed is due to the fact that suddenly a huge number of NGOs had to be checked regarding the compliance of the statutes with the provisions of a new Legislation [104(I)/2017]. The audits were mainly aimed at ensuring that, unlike under the previous legislation, the statutes have been strengthened with degrees of transparency and democracy. In order to expedite the process, especially for the Nicosia District which has the largest number of registrations, the ministry proceeded with the process of purchasing services from law firms.

The changes imposed by the Law 104(I)/2017 were aimed, on the one hand, at the proper management of the finances of NGOs in order to avoid tax evasion and money laundering phenomena, on the other hand, they were aimed at strengthening democracy in the operation of NGOs. For the first time, the requirement for collective decision-making through general assemblies was strengthened to such an extent that it made the NGO's pillars of democracy, rather than the one-person or few-person entities they were before and created a healthier framework for their operation. As far as the implementation of a single policy is concerned, training seminars were organized, and a huge amount of time and cost was invested in order to improve the procedures. Through statutes reviewing, it was found that a large part of the problem facing the NGO's sector in Cyprus today is mainly the attempt to exploit the definition of the Association, so that various companies, mainly sports or other schools, are not registered as companies but as Associations, in an effort to win tax and other reliefs but also to receive grants. This is also the reason why the owners of sports schools feel strongly about the implementation of the new law, since when such cases are detected, they are deleted from the Association registers. We do not agree that there is complexity in the process for unions operating on the basis of the constitutional right of assembly. On the contrary, the process became very demanding for Associations that were actually businesses and falsely registered as Associations. The complexity arose from the Ministry of Interior requirements to establish that Associations representatives were not in fact tax-evading businessmen through the 104(I)/2017 Law.

As for the allegations of **“hefty and unnecessary requirements”** imposed on CSOs, the Ministry of Interior considers that the amount of €40,000 is too high, since more than 90% of NGOs declare income below €40,000 per year. Also, a large number of NGOs that declare income below €40,000 have not yet submitted the simple financial report required by the Law. Taking into account that a large number of associations are actually businesses which, if were registered as debtors in the register of companies, would have to submit accounts from zero income, it emerges how the amount of €40,000 creates a huge incentive for companies to submit false representations (declaring e.g. that instead of a karate school it is a karate club, instead of a tennis school it is a tennis club) in order to manage to evade taxes on the one hand and create unfair competition on the other. These cases have been identified and a strict control framework has been implemented, which so far shows among other things that in

several cases the audited accounts submitted for income over €40,000 do not follow European or International Audit standards. In addition to that, a risk assessment of the entire NGOs registry for the offenses of money laundering and terrorist financing has been initiated on the basis of the FATF guidelines. The results so far have shown that 24% of NGOs are moderately high and high risk for money laundering and 13% for terrorist financing. The Ministry has drawn up a program of further control for these cases. The requirement for a clean criminal record and a certificate of non-conviction for crimes against minors [in the case of Associations that also target minors in their activities-e.g dancing, martial arts, sports, reading etc], provided for by the Law 104(I)/2017, does not differ from the definitions in the rest of the legislation of the Republic of Cyprus which provide such obligations. Finally, the outcome of the controls performed by the Registrars do not support the claims of the NGOs regarding the reasons behind the rejection of applications of many CSOs.

Concerning the **deregistration procedure**, the inclusion of these organizations in the lists of Associations/institutions to be deleted, relate primarily to the non-submission, after a period of 4 years, of a statute harmonized with Legislation 104(I)/2017. The deregistration procedure targets the vast majority of inactive NGOs that were established since the enactment of the previous legislation in 1972 and which ceased to operate without being obliged to notify the Registrar. The fact that out of 2500 unions only about 60 came forward and protested their deletion and only one appealed to the Court, with the decision being against it, proves that the vast majority of the deleted CSOs were inactive unions. There were even some NGOs that did not present themselves for updating because they owed income tax and contributions to the social security fund and saw the process as an opportunity to deregister. Of course, according to Law 104(I)/2017 a liquidation process follows.

Furthermore, we reiterate our position that claims regarding **libel** are completely baseless and unsubstantiated.

Last but not least, we would like to mention some measures that the Republic of Cyprus has taken in order to strengthen the role and the involvement of CSOs in public life:

In 2021 the Council of Ministers approved the elaboration of a **National Strategy on Active Citizenship and Participatory Governance**, which is currently being conducted by the Office of the Commissioner for the Citizen.

The Government submitted to the Parliament the **legislation on “Citizens’ Initiative”**, the philosophy of which is based on the European Citizens’ Initiative. The legislation has already been discussed at the Parliamentary Committee on Legal Affairs and will be discussed at the Plenary Session of the Parliament in autumn, in order to be approved.

The Office of the Commissioner for the Citizen takes on **actions to empower the civil society**, as follows:

- In December 2021 a major Conference under the title “SDGs and the aspect of co-design and participatory processes regarding the implementation of the 2030 Agenda” was organized, with the participation of NGOs, citizens, politicians, the government and other stakeholders.
- In 2022 the Open Citizens’ University was established, with regular round-table debates open to the public.
- The first Democracy Forum in Cyprus took place in May 2022, with two pre-events, i.e. an Ideas Lab on Public Consultations and a Digital Democracy Hackathon.
- In 2021 a series of presentations on the EU Program CERV (Citizens, Equality, Rights and Values) and its funding opportunities for NGOs was organized all over Cyprus.

3. Freedom of Expression and the Freedom of Media

Regarding **Media Pluralism** it should be taken into account that transparency has been strengthened (Article 30A) following the enactment of the amending law of Radio Television Organizations Laws on 23/12/2021 (aligning national legislation with the Directive 2018/1808/EU). More specifically paragraph (2) of Article 30A stipulates that the media service provider shall make accessible to the Cyprus Radio Television Authority, information concerning its ownership structure, including the beneficial owners. Paragraph (3) provides that any measure the Authority takes for this purpose shall respect fundamental rights, such as private and family life of the beneficial owners and shall be necessary and proportionate and its aim shall be to achieve a goal of general interest.

4. The right to non-discrimination

The **gender pay gap** has decreased significantly during the last decade and keeps following a downward trend. It has further decreased by 20% since 2017 (11,2%), and currently stands at 9% according to the latest available data for 2020.

Eliminating the gender pay gap, has been a clear and constant goal of the Ministry of Labour and Social Insurance, and this has been pursued through several targeted actions. A national model for certifying enterprises which adopt policies promoting gender equality in the workplace and especially equality in pay has been developed, and a National Certification Body has been established since April 2014. So far, 61 companies have been rewarded for their efforts to ensure equal pay and attract and retain the underrepresented sex, for applying actions to improve gender balance in decision-making positions, for adopting gender-neutral job classification systems, for implementing policies aiming at the reconciliation of work and family life, to mention only a few. 25 of the certified companies have renewed their certification.

Moreover, the Ministry of Labour and Social Insurance engages in activities contributing to raising public awareness on the gender pay gap and its detrimental consequences on women's economic and social life, such as the organisation of annual Equal Pay Day events. A panel discussion which was titled "The gender pay gap between men and women - The current situation and concerns for the future" as well as an online campaign marked the 2022 Equal Pay Day. A representative of the Ministry and one representative from each of the trade unions and employers' associations participated in the panel, aiming to shed light on issues such as the implications of the gap for workers, the economy and society, the impact on young people and the importance of choosing a profession amongst others. More than 1700 persons watched the panel discussion online, commenting and raising questions.

The following table shows the percentage and number of women in partial employment for the past 10 years according to the Labour Force Survey of the Statistical Service of Cyprus:

	2011	2012	2013	2014	2015	2016	2017	2018	2019	2020	2021
Percentage of women working in partial employment	12,9%	13,7%	16,1%	17,2%	16,5%	16,5%	16,1%	14,9%	15,1%	14,2%	13,4%
Number of women working in partial employment	24.505	25.138	28.103	30.597	28.721	28.785	29.315	28.362	29.401	27.749	27.138

As shown above, the number and percentage of women working in partial employment has decreased in the last 2 years. Also, the share of employed women working in partial employment in 2021 is the lowest since 2012.

Furthermore, additional effort was taken to safeguard the **rights of people with disabilities**. After the ratification of the UN Convention on the Rights of Persons with Disabilities in 2011, the Republic of Cyprus has adopted its National Strategy for Persons with Disabilities 2018-2028 and implements three-yearly National Disability Action Plans (2013-2015, 2018- 2020 and 2021-2023), defining the vision, values, strategic goals and actions for further fulfilment of the rights of citizens with disabilities, in all areas of their life. Cyprus's Disability Strategy and Action Plans are linked to the concluding observations made to the Republic of Cyprus by the UN Committee for the Rights of Persons with Disabilities in 2017 and take into account the opinions and suggestions of the organisations representing persons with disabilities.

Moreover, the National Strategy for Persons with Disabilities 2018-2028 and the National Disability Action Plans (2013-2015, 2018- 2020 and 2021-2023) are in line with the European Disability Strategy 2021-2020 and the European Disability Strategy 2021-2030. The National Disability Action Plan 2018-2020 included 86 actions, of which 54 (percentage 63%) were fully implemented, 26 (percentage 30%) were partially implemented, and 6 (percentage 7%) were

not implemented. The New National Disability Action Plan 2021-2023 was enriched with more actions (135 in total) to be implemented by 8 ministries and 3 deputy ministries.

For the purposes of monitoring the effective implementation of the National Disability Strategy and the NDAPs, the Department of Social Inclusion of Persons with Disabilities requests from each competent body to self-evaluate its implementing actions annually. The results are submitted to the Pancyprian Council for Persons with Disabilities and the Council of Ministers.

Regarding complaints from persons with disabilities, the Office of the Commissioner for Administration and Human Rights has been designated as the Independent Mechanism by the Ministers' Council with its Decision No. 73.519 dated 9.5. 2012. Every person with disability has access to submit a complaint to be independently investigated. In addition, Cyprus has ratified the Optional Protocol of the UNCRPD giving the right to every person to submit a complaint to the UN Committee for CRPD.

In relation to access in housing it is noted that every person with disability who fulfils financial criteria and is eligible for Guaranteed Minimum Income, is also eligible for a monthly subsidy to rent a house, higher than the subsidy of a person without a disability.

On the issue raised regarding the limitations on the **place of residence of migrants** it is clarified that the relevant Decree prohibiting asylum seekers to stay in certain areas aimed to the avoidance of the creation of ghettos resulting from the concentration of big numbers of migrants in areas with small populations in a way that would prohibit their integration in local communities. It is reminded that relevant Acquis (Reception Conditions Directive- Article 7(2)) allow MS to decide on the residence of the asylum seeker.

5. The Rule of Law

The “**doctrine of necessity**” is irrelevant to the rule of law and the reforms put forward by the Government aiming to further safeguard the application of this fundamental principle.

However, since it is mentioned in the Draft Report it is necessary to put forward certain factual Information regarding this doctrine in order to avoid misunderstandings. Following the inter-communal conflicts of 1963 and the subsequent withdrawal of Turkish Cypriot officials from functions and bodies of the Republic, the Cypriot legal system ended up at once unable to reproduce itself by, and in accordance with, its own framework and legality (of which the principle of bi-communality was a basic constitutional trait). The Parliament, consisting solely now of Greek Cypriot members, passed a law that overrode certain provisions of the Constitution related to the bi-communal composition of the judicial bodies and the adoption and promulgation of legislation. The Supreme Court rendered the pivotal decision *The Attorney General of the Republic v. Mustafa Ibrahim and others* [1964] CLR 195, ruling famously that the aforementioned legislation is not subject to unconstitutionality, due to the ‘doctrine of necessity’ (fundamental maxim of which, as stated, is that the salvation of the state should be the supreme law), Basically the doctrine of necessity applied so as to preserve the fundamental services of the state including the administration of Justice. **CY Constitution provides**

preventive and repressive control of the Laws (articles 140 and 144 of the constitution) so checks and balances are existing within the framework of the doctrine of necessity. Therefore, all the information provided under section 5 in this report must be considered, with the above clarifications in mind.

Furthermore, references to the **Attorney General** are inaccurate because the Attorney General does not participate in the Council of Ministers but he participates in the National Council. He is the legal advisor to the government. Furthermore, there is no Constitutional norm that prohibits the President of the Republic to appoint as an Attorney General a person that participated in the government as a Minister before his appointment as an Attorney General as long as he has the qualifications which the Constitution provides in Art 112,113. It should be taken into account that the Ministers in the Republic of Cyprus are not Members of the Parliament and they do not necessarily participate in a political party. The Attorney General performs his duties in accordance to the Constitution and the legislation of the Republic of Cyprus.

Regarding the **presumption of innocence** in civil cases it is underlined that the allegation concerning “the existence of a criminal investigation to be proof of wrongdoing, even prior to any court decision in the case in question” is plainly wrong. A criminal investigation is never proof of wrongdoing without a court decision.

Concerning the allegations regarding **lack of transparency on migration policy** it should be noted that migrants who enter the Republic of Cyprus legally are very well informed about their rights and obligations prior to their arrival in order to proceed with the practical arrangements of their stay (visa, residence permit, work permit, access to health and educations etc.). Irregular migrants are not informed since they arrive irregularly. Asylum seekers are given access to the required reception conditions, health care and vulnerability screening as prescribed by EU Law as soon as they arrive.

Furthermore, the Ministry of Interior has never proceeded with expulsions before the rejected asylum or irregular migrant concerned had received a final decision (i.e after an appeal to the court) regarding his/her case.

Finally, **the Cyprus Investment Program** (referred to in the document as “golden passports”), has stopped.

6. Fundamental Rights Challenges in the non - government controlled areas of the Republic of Cyprus

The official term is “areas that are not under the effective control of the Government” and references to the “south” should be avoided.

LITHUANIA



LIETUVOS RESPUBLIKOS SOCIALINĖS APSAUGOS IR DARBO MINISTERIJA
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European Economic and Social Committee
Fundamental Rights and Rule of Law Group

No. (. -) SD -

**OBSERVATIONS FROM THE LITHUANIAN GOVERNMENT ON THE DRAFT
REPORT OF THE AD HOC GROUP ON FUNDAMENTAL RIGHTS AND THE
RULE OF LAW OF THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE
ON ITS VIRTUAL VISIT TO LITHUANIA ON 15-17 DECEMBER 2021**

The Government of the Republic of Lithuania would like to thank the ad hoc Group on Fundamental Rights and Rule of Law of the European Economic and Social Committee for the constructive discussion on 17 December 2021 and wishes to present additional comments to the subsequent draft "Report on the virtual visit to Lithuania 15 and 17 December 2021" in the following sections:

3. Freedom of expression and freedom of the media

Regarding *the application of the GDPR*. In 2022, the Government is organising public consultations with journalists and other stakeholders aiming to clarify the issues faced by journalists when applying the GDPR. As a result, amendments of legal acts might be drawn up, if there is such a need. Besides, it is planned to organise trainings on the GDPR and national laws for journalists, data controllers and data protection officers and to publish guidelines on applicable requirements.

Regarding *the initiative on preventing SLAPP*. In spring of 2021, the Parliament of Lithuania took the initiative and established the working group to specifically tackle the problem of abusive litigation, also known as Strategic Lawsuits against Public Participation (SLAPP). The following draft laws have been prepared:

- *the amendment to the Code of Civil Procedure* provides a new possibility of early dismissal of the claim if a court establishes that this claim may be categorised as SLAPP;
- *the amendment to the Criminal Code* revises the criminal liability for defamation, in order to strengthen the protection of journalists and other disseminators of public information from unjustified prosecution.

These draft laws are still under consideration in the Parliament.

4. *The right to non-discrimination*

Although it is true that the National Programme for Equal Opportunities for Men and Women was discontinued in 2021, it should be noted that now, with the horizontal implementation of gender equality across all strategic planning initiatives in place, all ministries are obliged to include gender equality issues, within their competence, in their development programmes and other strategic documents and provide measures to address it. Furthermore, issues of gender equality are included in the newly prepared development programmes of the Ministry of Social Affairs.

Additionally, to improve general understanding of gender equality issues and to aid in the process, the Ministry of Social Security and Labour of the Republic of Lithuania was appointed as coordinator of the horizontal principle "equal opportunities for all", which includes gender equality, monitors the implementation of gender equality measures and conducts consultations with other Ministries on the specificities of gender equality issues within their competences. As regards capacities, there is a separate group that also covers gender equality issues functioning in the Ministry of Social Security and Labour.

On 31 December 2021 the Minister of Justice adopted amendments to the order "On the approval of the order on the amendment of the name and surname", which establishes an effective administrative procedure for persons who are diagnosed with Gender Identity Disorder to change their names and surnames so that they correspond to their chosen gender.

5. *The rule of law*

Regarding *the drafting of the judicial budget*. According to the laws in force, the budget procedure for the next year begins in the spring of the current year. The Government approves a budgeting plan and sets deadlines by which the managers of appropriations, including courts, provide the Ministry of Finance with funding needs for the coming year, justifying the necessary change compared to the current year's budget. At a later stage the Office of the Government organizes meetings between the Prime Minister, the Minister of Finance and the managers of appropriations in the relevant area (in this case, the representatives of the judiciary) on the budget needs for the coming year. Based on the decisions taken, a draft Law on budget indicators for the coming year is prepared and submitted to the Parliament, which is then discussed in the Parliament's committees and is usually adopted in December.

In 2021 the Justice System Development Programme was approved by the Government. One of the problems identified in the area of judicial self-government is that "the current funding model is not linked to the legal status and needs of the courts as independent authorities". The abovementioned Development Programme includes a measure focused on solving this and other identified problems ("to increase the efficiency of the organisation of activities of the judicial system"). The organiser and coordinator of this measure is the National Courts Administration.

Regarding *the procedure for the selection of judges*. The President of the Republic of Lithuania initiated amendments to the Law on Courts and other related laws aimed at ensuring greater efficiency and openness of the judicial system. The amendments are currently under discussion in the Parliament and aim, among other things, to improve the procedure of the selection of judges in Lithuania.

In addition, some changes were made to the procedure and conditions for the transfer of judges to other courts. The mentioned amendments to the Law on Courts entered into force at the beginning of this year and aim to increase efficiency of the courts.

Regarding *the Constitutional Court of the Republic of Lithuania*. The Constitutional Court of the Republic of Lithuania has been operating at full capacity since 2021. The new President of the Constitutional Court took up office on 18 June 2021.

We would again like to extend our gratitude to the FRRL Group for its visit to Lithuania on 15-17 December 2021 and to confirm our availability, should there be any follow-up questions based on these additional observations.

Yours sincerely,

Vice-Minister

Vytautas Šilinskas

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Notes

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European Economic and Social Committee

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