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UPHOLDING FUNDAMENTAL RIGHTS IN TIMES OF CRISES

Exchange of views with the Director of Fundamental Rights Agency

A Europe that is both secure and safe standing on the undeniable protection and enforcement of fundamental human rights and freedoms is one of the priorities, and goals, of the Strategic Agenda 2019-2024. Since its adoption two of the most challenging crises the EU has faced in decades impacted both the public discourse and the policies applied by the EU and the individual Member States. Fundamental rights, their protection, or the perceived lack thereof, came under intense scrutiny. So much that the definition of fundamental rights was in fact questioned at times.

The COVID-19 pandemic and the subsequent public health measures opened the debate on individual rights and freedoms. Many Member States faced information warfare that dominated cyberspace and media further undermining public confidence in democratic institutions and their decision making. Russia's war of aggression only exacerbated the need for more effective, more coordinated, and better targeted civic discourse strategies.

Therefore, the Presidency sees a chance to follow up on the momentum and promote discussion on how to further safeguard fundamental rights, promote democracy and highlight the benefits of functioning civil society. Without their continuous support rights taken for granted could turn into no rights at all. Ministers of Justice have an important role to play in such discussions.

Following on the debate of Ministers of Justice held during Finnish Presidency in very different circumstances just 3 years ago on future fundamental rights challenges in 2020 and beyond, the Presidency asked the Fundamental Rights Agency to prepare a background paper on current challenges based on their recent research. The contribution by FRA is appended to this note. On the bases of the note, the Presidency invites the ministers to discuss in particular following questions:

1. How would you assess the resilience of the human rights infrastructure (in particular that of national institutions, the judiciary and civil society) in your country in the face of crises?
2. What further steps should be taken to increase the resilience of the human rights infrastructure in your country, so that it is better able to deal with crises?

Upholding Fundamental rights in times of crises

The prevailing geo-political and socio-economic situation in the EU and its Member States is marked by a confluence of crises, the effects of which have a profound impact on people's full enjoyment of their fundamental rights, and on the ability of States to uphold these rights. These crises include, but are not limited to, the COVID-19 pandemic, Russia's war of aggression against Ukraine, the related energy crisis and the climate emergency. The full impact of these crisis on fundamental rights is still unfolding and will continue to be felt in the years to come. Addressing the impact of these crises effectively and lastingly requires investing in human rights and in the infrastructure that supports them.¹

Whereas the EU has developed tools and rules to manage crises and strengthen resilience in a range of areas,² this has not yet specifically been the case with regard to fundamental rights. Yet, the EU and its Member States need to be able to rest on a solid and resilient human rights infrastructure and call upon reliable partners (as outlined below) to enable them to address the impact of such crises and emergencies on fundamental rights in a swift, efficient and systematic manner.

The EU Charter of Fundamental Rights³ provides a set of shared values and fundamental rights that can serve as a compass to guide justice systems through times of crises. However, awareness and use of the Charter remains limited at the national level, including in national courts and in the justice sector more widely.⁴ This gap could be addressed by investment in training for justice practitioners on how to use the Charter in their work. The appointment of Charter Focal Points,⁵ as has been done by almost all Member States, will also ease the flow of information between Member States and help promote best practices in capacity building on the Charter.

Strong justice systems lie at the basis of the human rights infrastructure, and they too must be resilient in the face of crises. For example, it quickly became apparent in the context of the COVID-19 pandemic that judicial independence was a prerequisite for the effective oversight of the legality, necessity and proportionality of emergency measures that Member States put in place to counter the pandemic.⁶ It also became apparent, however, that justice systems in several Member States did not always manage to perform as well as could be expected of them when they were put under the stress test of the pandemic.⁷

¹ <https://fra.europa.eu/en/news/2022/putting-human-rights-heart-europes-future>

² <https://www.consilium.europa.eu/en/policies/eu-crisis-response-resilience/>

³ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A12016P%2FTXT>

⁴ <https://fra.europa.eu/en/publication/2022/fundamental-rights-report-2022>, Chapter 2.

⁵ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A52020DC0711&qid=1608047356199>

⁶ [https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI\(2020\)003-e](https://www.venice.coe.int/webforms/documents/?pdf=CDL-PI(2020)003-e)

⁷ <https://fra.europa.eu/en/themes/covid-19>

Building a resilient human rights infrastructure entails maintaining an environment conducive for bodies with a human rights remit to do their work in full independence and to the best of their abilities. Sustainable Development Goal 16 recognises the importance of strong institutions for peace and justice.⁸ Such bodies include in particular national human rights institutions, which are a vital component of the human rights protection system⁹ – where they exist, where they are appropriately resourced, and where they are set up according to the required standards.¹⁰ Not all EU Member States have yet set up a national human rights institution, in accordance with the United Nations Paris Principles.¹¹ Besides, Member States generally do not involve statutory bodies with a human rights remit in monitoring the effectiveness of measures adopted in their COVID-19 recovery and resilience plans, nor indeed in developing these plans.¹²

In addition, a solid human rights infrastructure needs to rest on a genuine commitment to nurture civic space,¹³ to protect human rights defenders¹⁴ and, in the specific context of justice, to adequately resource victim support services.¹⁵ Furthermore, “[c]ivil society organisations and human rights defenders play an essential role as watchdogs against breaches of the rule of law and actively contribute to fostering the rule of law, democracy and fundamental rights on the ground,” as the European Commission notes.¹⁶

In times of crises, it is more important than ever to ensure that functioning civil society and government structures are in place, so that they can provide legal, financial and technical support, and thereby contribute to ensuring that States uphold fundamental rights at all times. Support services for displaced women who have been victims of sexual and gender-based violence in the context of Russia’s war of aggression against Ukraine provide an example of the crucial role played by civil society in upholding fundamental rights.¹⁷

⁸ <https://www.un.org/sustainabledevelopment/peace-justice/>

⁹ <https://fra.europa.eu/en/publication/2020/strong-effective-nhris>

¹⁰ <https://ennhri.org/our-work/nhri-establishment/>

¹¹ <https://fra.europa.eu/en/publication/2022/june-2022-update-nhri-accreditation-status-and-mandates>

¹² <https://fra.europa.eu/en/publication/2022/social-rights-equality-recovery-covid-19>

¹³ <https://fra.europa.eu/en/cooperation/civil-society/civil-society-space>

¹⁴ <https://www.ohchr.org/en/special-procedures/sr-human-rights-defenders>

¹⁵ <https://fra.europa.eu/en/themes/victims-rights>

¹⁶ <https://eur-lex.europa.eu/legal-content/EN/TXT/?qid=1658828718680&uri=CELEX%3A52022DC0500>

¹⁷ <https://fra.europa.eu/en/publication/2022/ukraine-bulletin-2-2022>

Victims of crime are often among the most vulnerable members of the society who should be able to rely on strong structures ensuring access to information, providing support, protection, and access to justice and to compensation. Further steps need to be taken towards encouraging reporting, granting victims access to the proceedings, and, ultimately, enabling criminal justice systems to perform their functions and hold offenders accountable,¹⁸ in accordance with Article 47 of the EU Charter of Fundamental Rights and with Member State obligations under EU secondary law, such as the Victims' Rights Directive.¹⁹ The capacity of support services in some Member States to intervene remains all too often limited, whether in terms of funding or available staff.

Moreover, for fundamental rights to be upheld at all times, special attention must be paid to ensuring fair criminal justice systems, where procedural safeguards for suspects and accused persons are fully respected, in accordance with Articles 47 and 48 the Charter of Fundamental Rights of the European Union and the six EU Procedural Rights Directives²⁰.

¹⁸ <https://www.eurojust.europa.eu/publication/documenting-international-crimes-and-human-rights-violations>

¹⁹ <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32012L0029>

²⁰ Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32010L0064>; Directive 2012/13/EU on the right to information in criminal proceedings, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32012L0013>; Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32013L0048>; Directive (EU) 2016/343 on the strengthening of certain aspects of the presumption of innocence and the right to be present at the trial, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0343>; Directive (EU) 2016/800 on procedural safeguards for children who are suspects and accused in criminal proceedings, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L0800>; Directive (EU) 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A32016L1919>

Reactions across the EU to the immediate aftermath of Russia’s invasion of Ukraine and to the fall out of the ongoing war illustrate the importance of Member States, national and local authorities, human rights actors and civil society joining their efforts to ensure the protection of fundamental rights and to meet the needs of displaced persons.²¹ This became evident in the provision of accommodation, in ensuring children’s access to education, in the support provided to women who are victims of sexual violence and/or of exploitation, or in the prevention of human trafficking. Sexual violence, exploitation and trafficking require appropriate responses in the area of criminal justice, in addition to the provision of adequate victim support. Many displaced people, including Ukrainian refugees in the EU Member States, are victims of core international crime. The provision of adequate and where relevant gender sensitive support services and protection measures are crucial for their socio-economical integration into the societies and healing. This is particularly valid in the context of the on-going investigations on war crimes and other most serious crimes that are currently taking place in the EU Member States in relation to crimes committed in Ukraine.

The ability of the EU and its Member States to resist and to respond to crises relies on robust crisis-preparedness mechanisms and on a solid human rights infrastructure being in place, supported by a vibrant civic space. Upholding fundamental rights cannot be an afterthought in crisis management. Instead, respect for fundamental rights should be embedded by design in crisis-preparedness, and in any related oversight mechanism.

²¹ <https://fra.europa.eu/en/themes/ukraine>