

FUNDAMENTAL RIGHTS REPORT — 2022

The year 2021 brought both progress and setbacks in terms of fundamental rights protection. FRA's *Fundamental Rights Report 2022* reviews major developments in the field, identifying both achievements and remaining areas of concern. This publication presents FRA's opinions on the main developments in the thematic areas covered, and a synopsis of the evidence supporting these opinions. In so doing, it provides a compact but informative overview of the main fundamental rights challenges confronting the EU and its Member States.

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Manuscript completed in April 2022.

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Luxembourg: Publications Office of the European Union, 2022

Print	ISBN 978-92-9461-811-5	ISSN 2467-2599	doi:10.2811/707006	TK-AM-22-001-EN-C
PDF	ISBN 978-92-9461-776-7	ISSN 2467-2823	doi:10.2811/7041	TK-AM-22-001-EN-N

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1 [FOCUS]

SOCIAL RIGHTS AND EQUALITY IN LIGHT OF THE RECOVERY FROM THE COVID-19 PANDEMIC

The Covid-19 pandemic has affected people's enjoyment of their social rights, albeit not to the same degree. Large sections of the population in the EU have faced excess mortality, an increased risk of poverty, restrictions on employment, lack of access to digital infrastructure, reduced access to healthcare, childcare, education and training, limitations on participation in society and tensions in their work-life balance.

The EU responded with swift action from the European Commission and several agencies, including the European Centre for Disease Prevention and Control, which provides a detailed weekly analysis of the epidemiological situation, and the European Medicines Agency, which assesses Covid-19 treatments and vaccines. Moreover, to address the social impact of the pandemic, € 723.8 billion was made available to Member States, through the Recovery and Resilience Facility. As a result, Member States put forward more than 850 measures to improve the realisation of social rights in the recovery from the pandemic.

The implementation of these measures needs to be systematically monitored for compliance with fundamental rights to ensure that they are used effectively and efficiently, and that they respect people's rights. Yet Member States do not generally involve statutory bodies with a human rights remit in monitoring the effectiveness of measures adopted in their recovery and resilience plans to promote social rights.



The EU's commitment to social rights is rooted in the Union's legal order, as Articles 4, 9 and 151 of the Treaty on the Functioning of the European Union and Article 3 of the Treaty on European Union show, as well as Title IV on solidarity of the EU Charter of Fundamental Rights.

In 2021, the EU and its Member States responded to the Covid-19 pandemic with a renewed commitment to realising a 'social Europe', as the Porto Social Summit and the European Pillar of Social Rights Action Plan demonstrated. The Regulation establishing the Recovery and Resilience Facility (2021/241) reflects the Union's legal and political commitments, and requires Member States to explain how their national recovery and resilience plans will contribute to implementing the European Pillar of Social Rights. The regulation also includes references to fundamental rights, for example as regards data protection, environmental protection and equality.

The EU made € 723.8 billion available to Member States through the facility, including to address the social damage the pandemic caused. Therefore, the facility marks the Union's commitment to building a fairer, inclusive and social Europe. It enabled Member States to put forward more than 850 measures that would lead to fostering social and territorial cohesion, and could contribute to realising social rights. These measures address a number of social vulnerabilities



FRA OPINION 1.1

The EU and its Member States should promote the social rights of people in situations of vulnerability who were most affected by the pandemic through the disbursement of funds from the Recovery and Resilience Facility in line with all relevant legal obligations and political commitments. EU Member States should adjust the funded measures if they are not found to be sufficiently effective in addressing people's social vulnerabilities.



among a variety of population groups in the EU, including women, children and young people in situations of vulnerability; people with disabilities; older people; Roma people; and people in precarious working conditions.

Broadly speaking, Member States included measures in their national recovery and resilience plans to improve the quality of education, employment opportunities and labour market integration. Some of them specifically address children and young people. Other measures pertain to reforming social security and social systems, while others relate to improving access to healthcare and long-term care.



FRA OPINION 1.2

The EU and its Member States should ensure that no funds from the Recovery and Resilience Facility are used in a manner that is incompatible with the EU Charter of Fundamental Rights or the Convention on the Rights of Persons with Disabilities (CRPD). The European Commission and EU Member States should put in place effective fundamental rights monitoring mechanisms in relation to the facility. The competent Member State authorities are encouraged to engage in systematic and meaningful consultations with their statutory human rights and equality bodies in this process. This could include seeking their advice on putting in place systems to ensure compliance with the EU Charter of Fundamental Rights and obligations stemming from the CRPD. EU Member States could also consider involving statutory human rights bodies in fundamental rights impact assessments of recovery measures.

Public funds, including EU funds, play a key role in ensuring fundamental rights, including social rights, are protected. This is especially the case where relevant authorities ensure that they do not finance activities that are not compatible with fundamental rights. This requires effective monitoring of the use of funds, in practice.

The regulation establishing the facility envisages Member States reporting twice a year in the context of the European Semester on the progress made in achieving their recovery and resilience plans (Article 27). Yet the regulation does not contain safeguards for monitoring the fundamental rights compliance of expenditures, comparable to those of the Common Provisions Regulation, whether in relation to setting up national monitoring mechanisms or involving statutory national bodies with a human rights or equality remit in such mechanisms.

Some Member States put forward measures in their plans that may raise concerns about compatibility with the EU Charter of Fundamental Rights or the CRPD. For example, using facility funds to refurbish or build institutions for people with disabilities may not comply with Article 19 of the CRPD on living independently and being included in the community.



2

IMPLEMENTATION AND USE OF THE CHARTER AT NATIONAL LEVEL

The Council expressed its full commitment to the European Commission 'Strategy to strengthen the application of the Charter of Fundamental Rights in the EU'. The 10-year strategy and the Council conclusions put a major emphasis on the application of the Charter at national level, stressing the relevance of national actors.

At national level, courts, parliaments, governments and other bodies continue to use the Charter, which judgments, impact assessments and parliamentary debates mention, as evidence collected in 2021 shows. There are few examples of policy initiatives aiming to enhance training on the Charter. Yet, so far, national bodies do not appear to implement the Commission strategy and Council conclusions through coordinated, long-term planning. But the appointment of Charter national focal points might indicate that progress may be more evident in 2022.



EU level

At the beginning of March 2021, the Council of the European Union adopted conclusions on strengthening the application of the EU Charter of Fundamental Rights (Charter). These conclusions have the potential to contribute to a better application of the Charter at national level and thereby to a better protection of fundamental rights in the EU Member States. The Council calls for more training, more awareness raising, better rules on law making, more exchange of experiences and practices with the application of the Charter, strict Charter conditions for EU funds, more coordination on Charter-related matters, stronger national human rights institutions (NHRIs) and more cooperation with civil society.

The Charter strategy of the European Commission also triggered reactions from the Committee of the Regions and the European Economic and Social Committee. They stressed the importance of involving regional and civic society actors, respectively. The European Parliament underlined the importance of monitoring the implementation of all Charter rights.



FRA OPINION 2.1

EU institutions should use their respective policy documents adopted in 2021 as benchmarks for their future efforts to ensure that the Charter is fully applied. Any review of the implementation of these policy documents necessitates data, information, and experiences of relevant national and local actors to be regularly collected.

For instance, the Council could use the main areas identified in its 2021 Charter-related conclusions as a framework of reference when commenting in future on the application of the Charter of Fundamental Rights. In the preparation of such annual follow-up conclusions on the Charter, the Council could consider organising an interactive and evidence-based exchange in the relevant Council working group to foster mutual learning, also engaging the national Charter focal points.

EU agencies and bodies could consider following the example of Justice and Home Affairs agencies and regularly assessing how they can further develop their contribution to implementing and promoting the Charter rights.



The regular collection of promising practices in applying the Charter has started with the revamped e-Justice Portal, which the European Commission provided. The nine Justice and Home Affairs agencies carried out the second annual Charter exchange, discussing various measures introduced to ensure and promote the application of the Charter within their respective mandates.

All these 2021 EU-level documents and developments are a good basis for further development.

FRA OPINION 2.2

EU Member States that have not yet established Charter focal points, as invited under the Charter strategy, should do so soon in order to foster coordinated and effective implementation of the Charter strategy.

EU Member States should consider implementing the Charter strategy of the European Commission and the conclusions of the Council of the European Union through a structured process based on concrete targets, milestones and timelines. This could take the form of a dedicated Charter action plan or making specific references to the Charter in existing action plans or strategies.

EU Member States should consider assessing the level of Charter expertise that they provide in professional training for future and practising judges, prosecutors and other legal professionals, in order to develop measures addressing possible shortcomings in this regard, drawing on the existing expertise of national and international training institutions and using tools available at international level, for instance those developed by FRA.

National level

Much emphasis was put on the national layer of governance in 2021, as the Council conclusions show. This trend builds on the 2020 Charter strategy, in which the European Commission has invited the Member States to undertake concrete steps, for instance to establish focal points in the national administrations, to adapt procedures concerning impact assessments and legal scrutiny, to ensure that committees with sufficient Charter expertise monitor the management of EU funds, or to establish or strengthen NHRIs. It also invited Member States to expand Charter-related policy measures in the area of training, awareness raising, or the promotion of a supportive and safe environment for CSOs and rights defenders.

Delivering on all these dimensions requires a shift in the fundamental rights culture at national level. Fundamental rights practice remains focused on national constitutional law and the ECHR, as evidence from court cases, but also from fundamental rights reasoning applied in the context of law making, shows. This signals that the added value of the Charter is not yet sufficiently utilised and that the interaction between the Charter and national law and the Charter and the ECHR are not yet sufficiently part of standard training curricula.



Compounding this, there are only few visible efforts at national level to implement the Charter strategy in a structured process with concrete targets, milestones and timelines. The establishment of Charter focal points is an important first step in this direction, as they may steer or assist the process of implementing the Charter strategy. However, so far only half of the Member States have appointed their Charter focal points.

Local level

Turning to the local level of governance, it is worth recalling that the Charter “applies to regional or local bodies, and to public organisations, when they are implementing Union law” (see Explanations, Article 51, Official Journal of the European Union C 303/17 – 14.12.2007). Governments should share their experience and practice to enable mutual learning.

In 2021, the European Commission opened a section in the European e-Justice Portal where Member States can share best practices in the use and awareness of the Charter, including at local level. So far, however, they have not used the portal much for this purpose.

The European Commission’s Charter strategy uses the term ‘local’ 17 times. It not only calls for the sharing of best Charter practices at local level and promoting a supportive and safe environment for CSOs and rights defenders at local level, but also demands that Member States provide sufficient guidance at local level so that local authorities can comply with their Charter duties. The strategy also points to the potential of local bodies to raise awareness of people’s rights and of what people can do if their rights are breached.

The Council conclusions adopted in March 2021 also underline the role of regional and local administrations, including civil servants, “in mainstreaming the Charter and ensuring compliance with fundamental rights in policy-making, and in nurturing a fundamental rights culture across all levels of the executive”.

However, local administrations are not very aware of the Charter, according to **FRA’s analysis of the data from the consultations** that the European Commission carried out while preparing the Charter strategy. The potential of the local level for better protection and promotion of fundamental rights is beyond doubt. For instance, in 2021 FRA proposed a framework that aims to encourage more cities in the EU to become human rights cities, and to help develop a local culture of rights.



FRA OPINION 2.3

EU Member States should discuss the new Charter strategy with local and regional authorities and explore how they could best contribute to promoting fundamental rights and the Charter.

Local and regional authorities should ensure that their instruments, procedures and policies refer to the Charter. Existing local practices should be communicated to the new national Charter focal points, to ensure that they can share such practices and experiences with other Member States, for instance through the European e-Justice Portal.

Cities could consider becoming ‘human rights cities’, stepping up fundamental rights considerations in their work, programmes and activities. The framework for reinforcing rights locally as proposed by FRA could be useful in this regard.

The Committee of the Regions could consider regularly providing a forum for the exchange of Charter-related experiences and promising practices.

3

EQUALITY AND NON-DISCRIMINATION



The 21st anniversary of the EU equality directives fell in 2021. It prompted stocktaking of the achievements and missed opportunities, and assessments of the implementation of the legislation, but most importantly reflections on the next steps to take. This year the chapter focuses on discrimination against LGBTI people and discrimination against EU citizens on the ground of their nationality.

Violation of the rights of LGBTI persons in some Member States, as well as an increase in related hate crime and hate speech incidents – which can reflect an actual increase in incidents as well as increased willingness to report them – prompted the reaction of several international institutions. In parallel, there has been a growing recognition of family rights for same-sex couples and homosexual parents in international and national jurisprudence.

There is some evidence that EU citizens experience discrimination on the ground of nationality in various areas of life, but data are scarcely collected on this subject.

In 2021, some of the measures to tackle the coronavirus disease 2019 (Covid-19) pandemic affected LGBTI people negatively, while EU citizens faced some problems when crossing EU borders, and in receiving or recording their vaccinations.

This year the chapter focuses on discrimination against LGBTI people and discrimination against EU citizens on the ground of their nationality.

FRA OPINION 3.1

In respect of the planned legislative initiative on the recognition of parenthood and related measures, the European Commission should provide Member States with the relevant framework and further guidance to ensure mutual recognition of parenthood for same-sex couples.

EU Member States should implement the measures included in the EU LGBTIQ equality strategy by developing national action plans and strategies, and by reinforcing legal protection for LGBTIQ people against violence and hate speech.



In 2021 there was growing recognition of the family rights of same-sex couples and homosexual parents in international and national jurisprudence and legislation. However, mutual recognition of same-sex parenthood between Member States is still difficult in the light of discrepancies between EU countries in the scope of legal recognition of same-sex couples and their family rights (as regards adoption, surrogacy or assisted reproduction). This creates legal uncertainty and interferes not only with the right to free movement but also with the right to family life, when recognition of family ties between parents and children, legally established in another country, is refused.

The European Commission recognised that differences in Member States' rules on parenthood, and the lack of EU conflict rules in this regard, may cause families difficulties in crossing borders within the EU. It considers a legislative initiative on cross-border recognition of parenthood between the EU Member States. The proposal would lay down common conflict

of laws rules and common provisions on the recognition of judgments on parenthood. While substantive law on parenthood is within the remit of Member States' law, the EU can adopt measures concerning family law with cross-border implications pursuant to Article 81(3) of the Treaty on the Functioning of the European Union (TFEU).

Cross-border recognition of parenthood is particularly difficult for same-sex parents, owing to differences in Member States' legal frameworks. That interferes with the right to respect for family life and the rights of the child, as well as the child's rights derived from EU citizenship.

The CJEU recognised the family ties between same-sex parents and their child in *V.M.A. v. Stolichna obshtina*. It recalled that Member States can only derogate from their obligations under EU free movement law if they do not breach fundamental rights under the Charter of Fundamental Rights (Charter). The court concluded that it would be contrary to Articles 7 (the right to respect for family life) and 24 (the rights of the child) of the Charter if the child were deprived of her relationship with one of her parents when exercising her right to free movement, or if her exercise of that right were impossible or excessively difficult in practice because her parents are of the same sex. The court emphasised that the obligation to recognise the parent-child relationship in the context of free movement does not undermine national identity and competences.

Furthermore, measures to contain the pandemic, including lockdowns and entry restrictions to Member States, disproportionately affected partners and children of LGBTIQ people, as well as young LGBTIQ persons in several Member States. They prompted increases in domestic violence, hate speech and hate crimes, and limited access to psychological assistance and healthcare.

In this context, the EU LGBTIQ equality strategy gains significance. It sets out targeted actions around four main pillars: tackling discrimination, ensuring safety, building inclusive societies and leading the call for LGBTIQ equality. As the strategy announced, in 2021 the Commission set up an LGBTIQ equality subgroup under the **EU High Level Group on Non-discrimination, Equality and Diversity** to support and monitor progress in the Member States on LGBTIQ rights, including development of national action plans.

Several Member States adopted national action plans aimed at combating discrimination in general, which included LGBTIQ rights. Others developed action plans specifically aimed at LGBTIQ equality. These action plans, which the 2015–2019 List of Actions to Advance LGBTI Equality already advocated, are necessary to recognise the particular needs of LGBTIQ persons for the protection of their rights and to introduce specific measures.



FRA OPINION 3.2

EU Member States should ensure that no legislation and administrative practices lead to discrimination against EU citizens, and in certain contexts their family members, based on nationality, within the scope of EU law. Regular collection of data and experiences will provide useful input in this regard.

The European Commission should strengthen the assistance provided to Member States for exchanging information and raising awareness with regard to preventing discrimination against EU citizens on the ground of nationality.



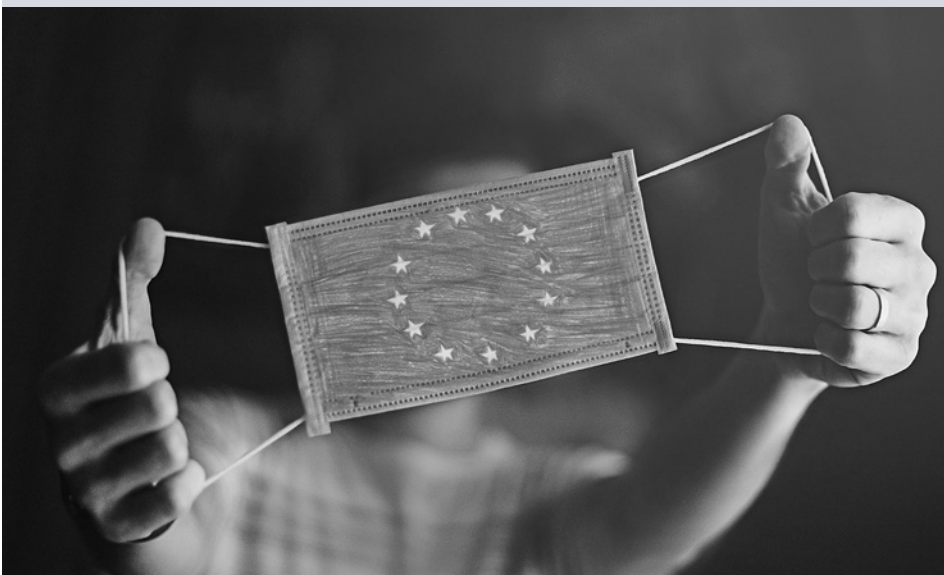
Discrimination against EU citizens on the ground of nationality may create barriers to free movement even if it does not directly relate to the implementation of free movement legislation.

Both Article 18 of the TFEU and Article 21(2) of the Charter provide that, within the scope of EU law, any discrimination on grounds of nationality shall be prohibited. This prohibition has direct effect, horizontal and vertical. This means that under certain conditions individuals can invoke it against both private entities and state authority.

Article 24 (1) of the Free Movement Directive (2004/38/EC) confirms the fundamental commitment to the principle of equal treatment of EU nationals, expressed in the Treaties: "all Union citizens residing on the basis of this Directive in the territory of the host Member State shall enjoy equal treatment with the nationals of that Member State within the scope of the Treaty. The benefit of this right shall be extended to family members who are not nationals of a Member State and who have the right of residence

or permanent residence" Article 4 of the Free Movement of Workers Enforcement Directive (2014/54/EU) obliges the Member States to designate bodies for the promotion, analysis, monitoring and support of equal treatment of Union workers and members of their families without discrimination on grounds of nationality but also without any unjustified restrictions or obstacles to their right to free movement.

EU citizens and their family members still experience discrimination on the ground of nationality in various fields, including taxation, the right to exercise a profession, and access to goods and services, including health services or social benefits, according to evidence from FRA's research in 2021. During the Covid-19 pandemic, certain measures, including the deployment of vaccination plans or travel restrictions, had negative effects on EU citizens from other Member States. While discrimination on grounds of nationality does not appear to be widespread compared with other grounds of discrimination, there are insufficient data about it. Neither is there adequate awareness of when such discrimination occurs, although EU citizenship is one of the pillars of EU integration, as the CJEU has reiterated on several occasions and the Commission's three-yearly citizenship reports highlight.



4

RACISM, XENOPHOBIA AND RELATED INTOLERANCE

Racist hate crimes and hate speech persisted across the EU in 2021. Migrants and ethnic minorities, including Roma, Jews, Muslims and Asians, continued to be blamed for the coronavirus disease 2019 (Covid-19) pandemic.

The European Commission took decisive steps to implement existing EU law by initiating infringement procedures against 11 EU Member States for not fully and correctly transposing the Framework Decision on Racism and Xenophobia into national law. It also called on Member States to better implement the provisions of the Racial Equality Directive.

Reflecting EU-wide commitments to combat racism, Member States adopted national action plans against racism and continued to strengthen measures to address data gaps and develop structures and processes for the effective reporting of racist incidents.

The Framework Decision on Racism and Xenophobia (2008/913/JHA) sets out a common criminal law approach for forms of racism and xenophobia that amount to hate speech and hate crime. In 2021, the European Commission initiated infringement procedures against 11 Member States that had not fully and correctly incorporated the framework decision into national law. The European Court of Human Rights (ECtHR) and national supreme courts set limits on relying on freedom of speech to justify hate speech and incitement to hatred.

Racism continued to pose serious challenges across the EU in 2021. Racist hate crime and hate speech incidents persisted, as official and unofficial reports show. Moreover, international and national human rights bodies raised concerns during the pandemic about the growing rate of hate speech online, and often by the media or politicians, targeting migrants and ethnic minorities.



FRA OPINION 4.1

EU Member States should fully and correctly transpose and apply the provisions of the Council Framework Decision on combating Racism and Xenophobia. This includes Member States taking measures to ensure that a racist or xenophobic motive is considered an aggravating circumstance, or, alternatively, the courts taking such a motive into consideration in determining the penalties.

FRA OPINION 4.2

EU Member States should significantly improve the effectiveness of their measures and institutional arrangements for applying fully the provisions of the Racial Equality Directive, in particular as regards the effective, proportionate and dissuasive sanctions in case of breaches of the obligations as required by the Racial Equality Directive. This can contribute to reducing the barriers ethnic minorities and migrants face when they try to access education, employment, goods and services – including housing – and social protection.

Article 21 of the EU Charter of Fundamental Rights prohibits any discrimination on the grounds of ethnic origin or race. Similarly, the Racial Equality Directive (2000/43/EC) prohibits any discrimination on grounds of ethnic or racial origin in access to education; employment; services, including housing; and social protection, including healthcare. Twenty-one years after the adoption of the Racial Equality Directive, a number of Member States still do not implement the directive's provisions fully, as reports of the European Commission and of international human rights monitoring bodies show.

The Commission continued infringement procedures against three Member States that discriminated against Roma children in education. In 2021, ethnic minorities, including migrants, continued to experience discrimination and institutional racism across different areas of life, survey and discrimination testing findings reveal. Discriminatory profiling based on ethnicity persists in the EU, as monitoring bodies' reports attest.



FRA OPINION 4.3

EU Member States are encouraged to develop dedicated national action plans or strategies to fight racism, racial discrimination, antisemitism, xenophobia and related intolerance. National efforts should be informed and guided by the common guiding principles for national action plans against racism and guarantee participation and cooperation with relevant partners and CSOs. Member States should ensure that, when developing, implementing and monitoring national action plans against racism, all actions are informed by and based on reliable equality data.

In 2021, the EU started laying the groundwork for delivering on commitments made in the EU's first anti-racism action plan. Notably, the EU High Level Group on combating racism, xenophobia and other forms of intolerance adopted common guiding principles for national action plans against racism.

National developments underpin wider EU efforts. Some Member States adopted national anti-racism action plans for the first time in 2021. Reflecting different national contexts, others included anti-racism measures in broader non-discrimination policies, or developed strategies addressing specific forms and manifestations of racism, such as strategies against antisemitism.

Despite some positive developments addressing data gaps at national level, overall there is a lack of data on experiences of racism and discrimination based on racial or ethnic origin across the EU. A paucity of reliable and comprehensive data hinders the effective design, implementation and monitoring of anti-racism action plans and prevents the EU and Member States from effectively monitoring the state of equality.



Findings from national and FRA data continuously show significant levels of under-reporting of experiences of discrimination and bias-motivated violence. Under-reporting undermines victims' rights to find support and protection, and results in a failure to ensure access to justice for all on an equal footing. It compromises efforts of national authorities in investigating and punishing hate crime.

In 2021, the EU High Level Group on combating racism, xenophobia and other forms of intolerance adopted key guiding principles on encouraging the reporting of hate crime. The principles are victim centred and aim to provide a framework that can guide national efforts towards removing barriers to reporting, and putting in place enabling structures and processes that support the effective reporting of hate crimes. A number of Member States reported dedicated efforts towards effective reporting systems such as targeted outreach to groups at risk of hate crime victimisation; capacity building within law enforcement; and steps towards enhanced cooperation.



FRA OPINION 4.4

EU Member States are invited to apply the key guiding principles on encouraging reporting, which can also serve as an evaluative framework for identifying national actions towards designing and implementing a victim-centred approach to reporting hate crime. Member States should continue their efforts in creating structures that facilitate reporting, such as setting up third-party reporting services as well as building the capacity of law enforcement officials to identify and record potential hate crimes. They should also enhance cooperation with CSOs and victim support organisations and engage in tailored outreach measures to reach those at risk of hate crime victimisation.

5

ROMA EQUALITY AND INCLUSION



In 2021, the Council of the European Union adopted its recommendation on Roma equality, inclusion and participation. It calls on EU Member States to adopt national Roma strategic frameworks and to make every effort to achieve the objectives and targets of the new EU Roma strategic framework by 2030. The EU and Member States developed several initiatives to involve Roma and Travellers in preparing the strategies, and consulted relevant stakeholders, such as equality bodies and national human rights institutions.

The EU mainstreamed Roma inclusion in several policy and legislative files. However, most Member States have not mainstreamed Roma inclusion in their main national strategies and measures on major policy areas, such as employment, education, health and housing.

In 2021, the fundamental rights of Roma and Travellers are still not fully respected. Antigypsyism, discrimination, poverty and social exclusion, as well as hate crime and hate speech, continue to affect a disproportionate number of Roma and Travellers across the EU. Measures to tackle the coronavirus disease 2019 (Covid-19) pandemic compounded these problems.

On 12 March 2021, the Council of the European Union adopted its recommendation on Roma equality, inclusion and participation, calling on Member States to adopt national Roma strategic frameworks by September 2021. Only 11 Member States submitted their revised national strategies before the end of 2021.

The EU encourages Member States to include Roma and Travellers in all policy and legal files that are deemed to support and protect vulnerable groups. The new EU Roma strategic framework sets seven objectives and related targets to be achieved by 2030. It focuses on fighting antigypsyism and discrimination and on promoting the full participation and inclusion of Roma, through a combination of mainstream and targeted policies.

Most Member States submitted their strategies late, and often without taking previous strategies into account or conducting evaluations of the previous strategies. There were increased efforts to consult with civil society and equality bodies, but there is little evidence of meaningful participation of Roma and Travellers in the design and implementation of the new strategies. Only 11 Member States had set up a national Roma platform to involve civil society more effectively in 2021.



FRA OPINION 5.1

EU Member States should prioritise the implementation of their national Roma strategic frameworks. These should include concrete and measurable targets to ensure efficient monitoring and data collections. Member States should consider promising practices in other EU countries and make use of the guidance that FRA and the Roma Working Party provided. Member States should promote capacity building of Roma civil society organisations and systematically invite them to participate in the design, implementation and monitoring of Roma inclusion measures.



FRA OPINION 5.2

Member States should consider measures to tackle discriminatory attitudes against Roma and Travellers in law enforcement. Such measures could include training for law enforcement and justice professionals, drawing on guidance developed by FRA and training initiatives by the EU Agency for Law Enforcement Training and FRA, as well as Organization for Security and Co-operation in Europe and Office for Democratic Institutions and Human Rights training initiatives. Member States should ensure that cases of police violence involving Roma are swiftly investigated by independent bodies and should assist victims in reporting any police misconduct.

Article 21 of the EU Charter of Fundamental Rights prohibits any discrimination because of ethnic or social origin or membership of a national minority. Since 2000, EU law (Racial Equality Directive, 2000/43/EC) has promoted equal treatment and prohibited direct and indirect discrimination.

In its 2021 Fundamental Rights Report, FRA called on EU Member States to adopt the necessary measures to prevent and eradicate discriminatory attitudes among police officers. It also called on law enforcement authorities to issue specific, practical and ready-to-use guidance to tackle discriminatory ethnic profiling by police officers. This guidance should be included in standard operating procedures and codes of conduct and should be systematically communicated to frontline officers.

Ethnic or racial profiling by the police against people perceived as being Roma or Travellers is still widespread, and negative experiences of the police undermine trust in public authorities, FRA research published in 2021 shows. In 2021, two lethal incidents involving Roma men and police authorities were reported in two Member States. The report of the European Commission to the European Parliament on the implementation of the Racial Equality Directive asks Member States to publish data on complaints received by the police, inspectorates and judiciary.



6

ASYLUM, VISAS, MIGRATION, BORDERS AND INTEGRATION

Respect for fundamental rights at external borders remained one of the top human rights challenges in the EU. Allegations of pushbacks and violence at the border continued. So did deaths at sea and on land, and delays in finding a safe port for migrants rescued at sea. Asylum and return-related detention persisted, including as part of enhanced containment policies at borders.

The EU worked on operationalising new large-scale information technology (IT) systems that include fundamental rights safeguards that are expected to be effectively implemented.

Article 78 (1) of the TFEU and Articles 18 and 19 of the EU Charter of Fundamental Rights (Charter) prohibit *refoulement* – meaning the return of an individual to a risk of persecution or serious harm – and collective expulsion. Article 4 of the Charter prohibits torture and other forms of ill-treatment. That is an absolute obligation, not allowing for exceptions or derogations.

Respecting fundamental rights at borders remained a major challenge in the EU in 2021, with multiple reports of alleged pushbacks and police violence. Meanwhile, 3,402 people died at sea and land borders while trying to reach the EU, and humanitarian rescue boats faced threats and difficulties in finding a safe port. Rescued migrants and refugees were left waiting at sea for days or longer, which put at risk their safety and physical integrity.



FRA OPINION 6.1

Member States should consider establishing effective and independent national border monitoring mechanisms, along with available complaint mechanisms, independently of the outcome of the negotiations on the proposed EU rules under the Pact on Migration and Asylum. Member States should ensure that allegations of pushbacks and ill-treatment are investigated by the competent authorities promptly and effectively.





FRA OPINION 6.2

Member States should in each individual case assess the possibility of using alternatives to detention. When resorting to detention as a measure of last resort, Member States must respect all safeguards required by the Charter and the European Convention on Human Rights. For those detained pending their return, access to free legal aid should be made available in practice to enable people in return proceedings to exercise their right to an effective judicial remedy under Article 47 of the Charter and to access justice in general.

While Article 6 of the Charter, Article 8 (2) of the revised Reception Conditions Directive (2013/33/EU), Article 15 (1) of the Return Directive (2008/115/EC) and Article 28 (2) of the Dublin Regulation require Member States to examine in each individual case the viability of measures less coercive than detention, in practice alternatives to detention are rarely used owing to fears of absconding.

Fundamental rights safeguards in the context of detention continued to be undermined in 2021 by prolonged detention periods, inadequate detention conditions, alleged ill-treatment by guards, lack of an individual assessment of the necessity and proportionality of the deprivation of liberty, and lack of separation of vulnerable people. In addition, some Member States restrict access to free legal aid.



FRA OPINION 6.3

The EU and Member States should intensify efforts to raise awareness of the rights of and available remedies for persons whose data are stored in the databases of the EU's large-scale information systems, together with putting in place effective oversight mechanisms. Member States should ensure that all staff involved receive mandatory fundamental rights training.

Article 8 (2) of the Charter, as well as EU data protection law, provides for the right of access, correction and deletion of one's own stored data. Regulations setting up interoperable large-scale EU databases in the area of freedom, security and justice equally guarantee this right. The operation and interoperability of the EU's large-scale information systems, which collect a range of personal data, has important fundamental rights implications, as FRA noted in its past research.

Training for authorised staff is a legal obligation under most of the legal instruments governing large-scale IT systems and their interoperability. At EU level, CEPOL, eu-LISA and Frontex organised training activities in 2021 to boost competent authorities' knowledge of the technical and business use aspects and implications of the use of the systems. FRA contributes to such training with fundamental rights input.

7

INFORMATION SOCIETY, PRIVACY AND DATA PROTECTION

In 2021, legislative and policy initiatives addressing new technology focused on managing the risks that the increased digitalisation of every aspect of life has created. Key files relating to artificial intelligence (AI) and online content moderation were in the spotlight. Emergency situations relating to the management of the pandemic tested data protection principles in practice; so did the development of security-related measures.

The draft AI regulation published in April 2021 provided a first attempt to regulate the AI industry while introducing fundamental rights safeguards. EU institutions and Member States were working towards an agreement on the scope and limits of the acceptable use of AI. In parallel, the rights to data protection and privacy had to be constantly reaffirmed concerning measures meant to protect individuals, both with respect to the pandemic and against criminal activities. That followed a pattern that FRA's fundamental rights reports have identified each year since 2014.

In 2021, experts and civil society, at both EU and national levels, commented extensively on the inclusion of adequate fundamental rights safeguards in the draft EU Act on Artificial Intelligence (AI). It continues to go through several iterations that variously address different fundamental rights concerns. The draft proposal contains encouraging fundamental rights references, but the European Data Protection Board (EDPB) and European Data Protection Supervisor (EDPS), national human rights institutions, civil society organisations (CSOs) and academics, among others, have identified common concerns. Examples include the category of prohibited AI applications and the potential need to include additional AI systems, such as private social scoring; the high reliance on companies' self-assessment of high-risk AI use cases; and the need to strengthen oversight mechanisms and bodies tasked with this work.



FRA OPINION 7.1

The EU legislator should ensure that the future AI Act fully respects fundamental rights by taking into account, as appropriate, shortcomings identified by the EDPB/EDPS, civil society and others. Notably, the EU legislator should ensure that the scope of use cases in the different risk categories is clear and that sufficient guidance and protection – with respect to fundamental rights compliance – is offered in relation to diverse practical contexts. The reliance on self-assessment, although a welcome first step, should be underpinned with effective oversight by independent bodies that are sufficiently resourced and possess the necessary fundamental rights expertise.

FRA OPINION 7.2

EU institutions and Member States regulating digital services should ensure that both over- and under-removal of content are prevented and that moderation practices are not disproportionate, so as not to interfere with the rights to freedom of expression, freedom of information and non-discrimination. In view of the importance of evidence-based oversight for effective and fundamental rights-compliant moderation of online content, EU institutions and the Member States should ensure that the relevant legal framework allows academic and civil society experts to legally access data and conduct research.

The proliferation of illegal content online, including hate speech, is a threat to fundamental rights. In this context, proposals to regulate digital services at the EU and national levels constitute a promising trend. Yet, as several stakeholders (the EDPS, EDPB, national human rights institutions, data protection authorities and CSOs) have highlighted, regulating content and services provided online also poses challenges to the protection of fundamental rights, such as the rights to privacy and data protection, the rights to freedom of expression and information, and the right to non-discrimination (Articles 7, 8, 11 and 21 of the EU Charter of Fundamental Rights).

Both national legal initiatives and the draft Digital Services Act have prompted varying opinions and criticism. Assessing them brings to light certain common concerns. These include the need to ensure that measures to moderate online content are proportional, and the importance of ensuring effective oversight mechanisms.

In addition, research is crucial to understand how online content can be moderated without endangering the protection of users' rights. That requires access to data on the functioning of digital platforms, with respect to their impact on fundamental rights. Yet some large platforms prevented external experts from CSOs from conducting fundamental rights-related research in 2021, by denying them access to their data.





Protecting citizens from threats of various natures – including the pandemic, illegal content online and cybercrime – is well-intentioned. However, with that objective, EU institutions and Member States have adopted or are considering legislation that may interfere with fundamental rights, most notably with the rights to privacy and data protection (Articles 7 and 8 of the Charter).

Developing the Covid-19 certificates posed data protection challenges, which data protection institutions and CSOs in most Member States highlighted. Despite the recent ECtHR case law on mass surveillance, and the CJEU case law on data retention, Member States have continued to table legislative proposals aimed at reinforcing surveillance and data retention, without incorporating sufficient fundamental rights safeguards. While protecting individuals' health and security are legitimate aims, experts have pointed out the need to conduct appropriate necessity and proportionality tests to make sure that no measure will result in violations of the rights to privacy and data protection or other fundamental rights.



FRA OPINION 7.3

EU institutions and Member States should ensure that any new legal initiatives proposed to foster individuals' security, be it in an emergency context or not, respect fundamental rights. Notably, legal measures adopted to combat the Covid-19 pandemic or foster security against national threats should ensure that appropriate safeguards are implemented to protect the rights to data protection and privacy. Such measures should be prescribed by law, necessary and proportionate in a democratic society. Independent oversight mechanisms should ensure that these measures are regularly scrutinised. Individuals should be able to complain about such measures and have access to effective remedies.

8

RIGHTS OF THE CHILD



In 2021, the coronavirus disease 2019 (Covid-19) pandemic continued to pose challenges to children's rights. In March 2021, the European Commission adopted for the first time an EU Strategy on the Rights of the Child on six thematic areas, including: children's socio-economic inclusion, health and education; promoting children's participation; and combating violence against children. The European Child Guarantee, another important milestone addressing child poverty and social exclusion, complements the strategy.

The number of asylum-seeking children increased substantially, while the volatile situation at the borders posed serious challenges. The detention of child migrants continued in several Member States, including in cases where the person's age was not yet determined. The challenges in implementing the directive on procedural safeguards continued in several Member States, while international monitoring bodies raised concerns about the detention conditions of children in conflict with the law.

FRA OPINION 8.1

The European Commission could consider providing targeted support and guidance to Member States for the implementation of the European Child Guarantee and the EU Strategy on the Rights of the Child. This could include facilitating the exchange of good practices on implementation and monitoring.

Member States should ensure that their national action plans implementing the European Child Guarantee and the EU Strategy on the Rights of the Child are sufficiently resourced and address the most vulnerable children, especially with regard to the impact of the Covid-19 pandemic.

The European Commission and Member States should continue to assess the pandemic's impact on children's mental health and establish measures to prevent further negative consequences.



The Covid-19 pandemic continued to affect a range of children's rights that the EU Charter for Fundamental Rights (Charter) protects, such as the right to education (Article 14) and to the protection and care necessary for their well-being (Article 24). The share of children living at risk of poverty and social exclusion in the EU27 increased from 22.2 % in 2019 to 24.2 % in 2020, according to the latest Eurostat statistics.

In 2021, the Council of the European Union adopted the European Child Guarantee, a scheme to prevent and combat child poverty and ensure access to basic services for all children, including those in vulnerable groups. Many stakeholders and civil society welcomed the guarantee. Member States will need to transform it into national action plans in during 2022.

The European Commission adopted the first-ever EU Strategy on the Rights of the Child. It defines a number of measures in areas that the Covid-19 pandemic also affected.

Member States continued in 2021 to provide financial assistance, as well as social protection and special educational measures, to minimise the negative consequences of the Covid-19 pandemic. The pandemic's impact on children's mental health raised concerns, although its extent is not yet fully known.





The number of children and unaccompanied children applying for asylum in 2021 increased substantially raising from less than 130,000 in 2020 to almost 167,000 in 2021. Migrant children are entitled to protection under the UN Convention of the Rights of the Child, the European Convention on Human Rights, the Charter and EU legislation, such as the Reception Conditions Directive. However, migrant children experienced often alarming conditions in some Member States and at the borders of the EU.

Pushbacks and the use of violence in at least seven EU Member States have also affected children travelling with their families and unaccompanied children. UN organisations, civil society and the Council of Europe have strongly condemned this situation.

The detention of children with their families and unaccompanied children continues in several Member states, including during age assessments. The detention of children should only be used as an exceptional measure of last resort, according to EU law. The EU Strategy on the Rights of the Child, adopted in March 2021, proposes several measures, including developing alternatives to detaining migrant children.



FRA OPINION 8.2

EU institutions and Member States should ensure that any new legal initiatives proposed to foster individuals' security, be it in an emergency context or not, respect fundamental rights. Notably, legal measures adopted to combat the Covid-19 pandemic or foster security against national threats should ensure that appropriate safeguards are implemented to protect the rights to data protection and privacy. Such measures should be prescribed by law, necessary and proportionate in a democratic society. Independent oversight mechanisms should ensure that these measures are regularly scrutinised. Individuals should be able to complain about such measures and have access to effective remedies.

FRA OPINION 8.3

EU Member States should consider using alternatives to detention for children who are suspects or accused persons in their efforts to implement the EU directive on procedural safeguards and other international and national law. Allegations of inadequate conditions or treatment of children deprived of liberty should be fully investigated and redressed. Member States should ensure that professionals who engage with children in the criminal justice system participate in training on the rights of children in contact with the law and of children deprived of liberty.

Article 48 of the Charter provides important safeguards for the presumption of innocence and the right of defence. Article 24 of the Charter requires that primary consideration is given to the best interests of the child.

The Procedural Safeguards Directive for children who are suspects or accused persons in criminal proceedings (2016/800/EU) establishes a number of limitations to the deprivation of liberty of a child in conflict with the law, and lays down minimum conditions for their treatment, such as access to healthcare, physical and mental development, education and regular exercise, and their right to family life. The Charter prohibits any form of torture or inhuman or degrading treatment or punishment (Article 4). Several international monitoring bodies, however, highlighted the inappropriate treatment of children deprived of liberty in some Member States in 2021.

Legal reforms to incorporate the Procedural Safeguards Directive into national law, due in June 2019, continued in 2021. The infringement procedures initiated in 2019 against seven Member States remained open. Several Member States began amending their criminal justice laws in 2021, with a strong focus on alternatives to detention and the establishment of specialised juvenile courts.



9

ACCESS TO JUSTICE

This chapter focuses on two broad themes: victims' rights with respect to specific categories of victim, and the independence of the judiciary. The latter is particularly important as regards the rule of law.

The EU strengthened victims' rights further in 2021. In the framework of the Victims' Rights Platform, the European Commission continued to discuss how the Victims' Rights Directive relates to different categories of victims. Member States adopted new legal and/or policy measures to reinforce the generic rights of all victims of crime, and in particular of women as victims of gender-based violence.

Meanwhile, concerns deepened regarding respect for the rule of law, in particular the independence of the judiciary. Deficits persisted in several EU Member States. The mechanism for making the distribution of EU funds conditional entered into force, so measures to punish violations of the rule of law are gradually taking shape.



Articles 8 and 9 of the Victims' Rights Directive grants every victim of crime the right to appropriate support services. Accordingly, Member States' criminal justice systems are under an obligation to ensure that sufficient support services are available that meet defined performance standards.

The network of existing support organisations in many Member States is still piecemeal and incomplete, and the police often have difficulty in assessing which support organisations are available and most appropriate for individual victims, evidence from FRA research in 2021 suggests. For example, this situation results in some Member States having extensive coverage for victims of human trafficking or women as victims of domestic or sexual violence, whereas other victims, such as victims of racist, homophobic or situational violence, such as property crime, have limited victim support provision.

In addition, very few Member States have a register of accredited victim support services, according to FRA's research covering 2021. Such a register would make it easier for the police and criminal justice authorities to decide which services can be called on to provide victim support that meets certain standards.



FRA OPINION 9.1

In accordance with the Victims' Rights Directive, EU Member States should ensure that all victims of crime – irrespective of the type of crime – have access to an organisation that provides support services. The provision of victim support services should be underpinned by quality standards, for example in a process of certification or accreditation that ensures that the support services provided meet defined performance standards.



FRA OPINION 9.2

EU Member States should establish a solid legal basis for emergency barring orders issued by the police without requiring the consent or an application of the victim, in accordance with the Istanbul Convention. In addition, Member States should ensure that such barring orders are actually issued by the law enforcement authorities in all appropriate cases, that compliance with these orders by the offender is strictly monitored and that non-compliance is resolutely sanctioned.

In accordance with Articles 50 and 52 of the Istanbul Convention, Member States that have ratified the convention are required to ensure that the police are able and willing to provide immediate and reliable protection to victims by issuing emergency barring orders. However, some Member States still do not have emergency barring orders in their legal systems, while in others the police are reluctant to use them, according to FRA data generated in 2021. In still others, emergency orders are issued but little is done to ensure that violent offenders comply with them reliably.

FRA OPINION 9.3

EU Member States need to ensure that their judiciaries remain independent and impartial in order to guarantee that EU law relevant cases are decided in line with the rule of law and fundamental rights, including Article 47 of the Charter. In particular, EU Member States should make sure that judges and prosecutors are not threatened with disciplinary proceedings because of the manner in which they perform their judicial functions.

An independent judiciary is the cornerstone of the rule of law and of access to justice (Article 19 of the Treaty on European Union, Article 67 (4) of the Treaty on the Functioning of the European Union and Article 47 of the EU Charter of Fundamental Rights). Not only external actors, such as the government or the media, but also internal mechanisms of a rigid judicial administration that puts pressure on prosecutors or judges can threaten this independence, as 2021 judgments of the CJEU in cases concerning courts in Poland and Hungary recalled.

This danger is particularly associated with measures of disciplinary control. If such measures are used at all against judges and public prosecutors, strict care must be taken to ensure that they do not interfere with the exercise of judicial functions.



10

DEVELOPMENTS IN THE IMPLEMENTATION OF THE CONVENTION ON THE RIGHTS OF PERSONS WITH DISABILITIES

The European Commission launched the new EU disability strategy for 2021–2030. The Common Provisions Regulation was formally adopted, introducing strict criteria to ensure EU funding complies with the Convention on the Rights of Persons with Disabilities (CRPD). Rail passenger rights for people with disabilities were strengthened. A European Parliament report on lessons learned from petitions regarding rights of people with disabilities shed light on areas of improvement for both the Union and the Member States.

The coronavirus disease 2019 (Covid-19) pandemic resulted in higher death and sickness rates among people with disabilities. Reports of ill-treatment prompted increased calls for urgent de-institutionalisation. A European Committee of Social Rights decision on segregated education for children with disabilities highlighted the need for fully inclusive education in primary and secondary education.

Member States took the next steps towards implementing the new European Accessibility Act. CRPD implementation beyond the scope of current EU directives remained uneven. All Member States now have a national CRPD monitoring body.

Article 19 of the CRPD and the EU disability strategy 2021–2030 require the de-institutionalisation of people with disabilities. The roll-out of the disability strategy will increase the need to complete the process of de-institutionalisation in the EU. This process will be assisted by guidance from the Commission to Member States regarding improvements in independent living and inclusion in the community, scheduled for publication in 2023.



FRA OPINION 10.1

The EU and its Member States should urgently accelerate their efforts towards de-institutionalisation, including through the appropriate use and monitoring of EU funds to ensure that people with disabilities can live independently and be included in the community. This becomes particularly important to prevent further violations of the rights of people with disabilities in future pandemics or other emergencies with similar effects.

The new Common Provisions Regulation (2021/1060), adopted in 2021, lays down the conditions and procedures for eight EU funds. It explicitly links funding to CRPD compliance. The regulation requires Member States to create arrangements to ensure that accessibility policy, legislation and standards are properly reflected in the preparation and implementation of programmes. It also requires involvement of organisations of people with disabilities throughout the funding cycle, and implementation and application of the CRPD as an 'enabling condition' for the use of EU funds.

The Common Provisions Regulation, therefore, is an important means to ensure that EU funds are not used to solidify or otherwise extend institutionalised forms of living (for instance by co-funding the renovation of such institutions). It seeks to ensure that the funds instead contribute to the process of de-institutionalisation (for instance by co-funding new structures and services allowing for supported forms of living in the community).

The Covid-19 pandemic has underlined the urgent need for de-institutionalisation. People with disabilities are at greater physical risk as a result of the pandemic. They also face great risks to their mental well-being, especially when they are in institutionalised settings, because of their higher risk of social isolation.



Article 33 (2) of the CRPD requires all EU Member States to set up an independent monitoring body. All EU Member States and the Union have now done so, marking 2021 as the year when this key milestone in CRPD monitoring was fully achieved.

However, as reported here and in previous editions of the Fundamental Rights Report, challenges remain for the operation of these bodies, including insufficient funding, facilities and human resources. At the same time, the pandemic has reminded us of the need to raise awareness of the rights of people with disabilities, which is a core function of such bodies. Finally, the role that the new Common Provisions Regulation envisages for national bodies, including monitoring the CRPD compliance of the various stages of EU funds, will require additional resources for these bodies.



FRA OPINION 10.2

EU Member States should ensure that they allocate sufficient human and financial resources to the bodies they designate as Article 33 (2) monitoring bodies. They should seek close partnerships with these bodies in the design, monitoring and implementation of relevant policies and EU funds. They should also ensure these bodies are fully resourced to fulfil their tasks effectively and efficiently, especially in the EU policy and funding cycles.



Article 9 of the CRPD requires States Parties to the convention to ensure that people with disabilities have access, on an equal basis with others, to the physical environment, to transport, to information and communications, including information and communications technologies and systems, and to other facilities and services open or provided to the public, in both urban and rural areas.



FRA OPINION 10.3

EU Member States should speed up their implementation of the Web Accessibility Directive and European Accessibility Act, and should aim to ensure accessibility in areas not yet harmonised by EU legislation, so that people with disabilities can participate fully in all aspects of life and have access, on an equal basis with others, to facilities and services open or provided to the public.

The pandemic revealed deficiencies in providing information to people with disabilities. Many public websites still need improvement despite the adoption of the Web Accessibility Directive, while the implementation of the European Accessibility Act is still in its early stages. Accessibility challenges remain in areas such as electoral settings, courts and transport.





The year 2021 brought both progress and setbacks in terms of fundamental rights protection. FRA's *Fundamental Rights Report 2022* reviews major developments in the EU between January and December 2021, and outlines FRA's opinions thereon. Noting both achievements and remaining areas of concern, it provides insights into the main issues shaping fundamental rights debates across the EU.



This year's focus looks at social rights and equality in light of the recovery from the Covid-19 pandemic. The remaining chapters discuss the EU Charter of Fundamental Rights; equality and non-discrimination; racism, xenophobia and related intolerance; Roma integration; asylum and migration; information society, privacy and data protection; rights of the child; access to justice; and developments in the implementation of the Convention on the Rights of Persons with Disabilities.



PROMOTING AND PROTECTING YOUR FUNDAMENTAL RIGHTS ACROSS THE EU —

For the full FRA Fundamental Rights Report 2022 – see
<https://fra.europa.eu/en/publication/2022/fundamental-rights-report-2022>

See also related FRA publications:

- FRA (2022), *Fundamental Rights Report 2022 – FRA opinions*, Luxembourg, Publications Office, <https://fra.europa.eu/en/publication/2022/fundamental-rights-report-2022-fra-opinions> (available in all 24 official EU languages)
- FRA (2022), *Social rights and equality in light of the recovery from the Covid-19 pandemic*, Luxembourg, Publications Office, <https://fra.europa.eu/en/publication/2022/social-rights-equality-recovery-covid-19> (available in English and French)

Previous FRA Annual reports on the fundamental rights challenges and achievements in the European Union remain available on FRA's [website](https://fra.europa.eu/en) (available in English, French and German).

FURTHER INFORMATION



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