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Protecting the pillars of democracy during health crises

Report¹

Committee on Political Affairs and Democracy

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Summary

The Covid-19 pandemic and the exceptional restrictions introduced by public authorities to stop it have had a major impact on all aspects of the lives of individuals and societies, including the functioning of democratic institutions and individual freedoms.

As early as 2020, the Parliamentary Assembly warned Council of Europe member States against any attempt to undermine the fundamental principles of democracy under the pretext of the emergency situation resulting from the pandemic.

The overall management of the pandemic by member States has ensured the continuity and proper functioning of democratic institutions and mechanisms, including the system of democratic checks and balances, parliamentary work and the holding of elections, as well as a gradual return to normality.

New crises or emergencies of different kinds could, however, again lead the public authorities to take exceptional measures calling into question the democratic order. The report calls for vigilance and reiterates the importance of ensuring the functioning of the essential mechanisms and institutions of democracy, with particular attention to the continuity of the work of parliaments, elections, local democracy and civil society organisations.

1. Reference to committee: Doc. 15176, Reference 4547 of 20 November 2020.



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A. Draft resolution²

1. The Covid-19 pandemic which swept the world from the start of 2020 was and is above all one of the most significant public health crises in recent history with the most serious repercussions for our health, societies, economies and freedoms. Saving lives and protecting people's health through the introduction of exceptional restrictions was, legitimately, governments' top priority. The pandemic and the emergency measures taken to end it have therefore had a major impact on all aspects of our lives and societies.
2. The Parliamentary Assembly refers to all the resolutions and recommendations on the various aspects of this crisis which it has adopted since 2020. It draws particular attention to [Resolution 2337 \(2020\)](#) and [Recommendation 2179 \(2020\)](#) "Democracies facing the Covid-19 pandemic" in which it took stock of the pandemic's impact on the way democratic institutions work and warned Council of Europe member States against any attempt to use the public health emergency resulting from the pandemic to undermine the fundamental principles of democracy.
3. Overall, pandemic management by member States ensured the resilience, the continuity and proper functioning of democratic institutions and mechanisms, including the democratic system of checks and balances, parliamentary work and the holding of elections, even at the most difficult times of the pandemic, and paved the way for a gradual return to normal.
4. New crises or emergencies of a different nature could, however, again prompt the public authorities to take exceptional emergency measures that call into question the democratic order. The Assembly therefore calls for vigilance to be exercised and considers it necessary to reiterate the importance of ensuring that the key mechanisms and institutions of democracy function properly, with particular attention being paid to parliaments, elections, local democracy and civil society organisations.
5. Parliaments are vital democratic institutions that play a crucial role in representing, deliberating, legislating, and overseeing government action, thereby ensuring the legitimacy of the democratic system. The pandemic has severely tested their capacity to perform some of these core functions. The Assembly is concerned that, two and a half years on from the outbreak of the pandemic, the governments of some Council of Europe member States are still using exceptional powers and procedures and are therefore able to escape parliamentary scrutiny.
6. The Assembly points out that it is of the utmost importance to ensure the continuity of parliamentary work and the full exercise of parliaments' powers during crisis situations. To this end, it calls on the authorities of member States and observers of the Council of Europe and countries whose parliament has observer or partner for democracy status with the Assembly to:
 - 6.1. make the necessary changes to parliamentary structures, rules and procedures, preferably on the basis of a consensus between the main political forces, to ensure parliamentary business continuity during emergencies, in particular as regards the physical or hybrid presence of their members and adjusting voting arrangements;
 - 6.2. ensure permanent and effective scrutiny by parliamentarians of government decisions, in particular by simplifying the procedures for putting oral or written questions to the government; initiating thematic monitoring, fact-finding missions, and regular hearings in committee of government members in order to provide legal safeguards against possible infringements of fundamental rights and freedoms;
 - 6.3. involve parliamentarians in the work done by scientific authorities in order to guide decision making on how to combat the disease, protect the public and get back to normal as quickly as possible, as well as on countering misinformation;
 - 6.4. involve parliamentarians in the co-ordination work carried out between State services and local authorities in order to monitor the implementation of measures taken at local level and ensure their autonomy to the fullest extent possible;
 - 6.5. provide for parliamentary scrutiny of the crisis management through parliamentary committees of inquiry or parliamentary missions, both during and after the crisis;
 - 6.6. consider, where appropriate, the possibility to bring cases before judicial bodies (constitutional courts or councils or high courts) throughout the period of emergency in order to check whether measures taken by the government are necessary and proportionate to the urgency of the situation.

2. Draft resolution adopted unanimously by the committee on 11 October 2022.

7. The Assembly points out that the right to participate at regular intervals in free elections on the choice of the legislature is a fundamental human right. The pandemic disrupted the standard election timetable in several member States, which decided to postpone or suspend elections or referendums. In addition, the introduction of restrictive measures to curb the pandemic's spread affected freedom of movement and freedom of assembly, which are vital to any electoral process.

8. The Assembly reiterates its call on member States to apply the principles devised by the European Commission for Democracy through Law (Venice Commission), when deciding whether to postpone, or change the procedures for, elections during a public health emergency, and refers to [Resolution 2337 \(2020\)](#). It also calls on member States that have not yet done so to adapt or amend legislation on elections in advance so as to allow the electoral process to continue during public health crises, and to provide for, among other things:

- 8.1. new campaigning methods, such as the use of public or private media, the use of the internet and social media;
- 8.2. widening the voting arrangements, for example by extending the right to vote by proxy and increasing postal voting, and considering the introduction of e-voting;
- 8.3. increasing the limits on election spending for periods beyond the initial election deadline;
- 8.4. the need to ensure the conditions for effective electoral competition by enabling local debates to be held, including by media which are usually not required to reflect a plurality of opinions;
- 8.5. implementing public health measures and taking other steps to ensure that votes can be cast and that observation exercises can take place.

9. The pandemic has had a major impact on the functioning of local and regional democracy and has brought about a shift in the balance of power between local, regional and national levels. Several States centralised crisis management at national government level on the one hand, while on the other, put local authorities in charge of dealing with the pandemic's impact without providing the necessary resources or giving them the opportunity to take part in drawing up and determining policies.

10. The Assembly appreciates the outstanding work done by the Congress of Local and Regional Authorities of the Council of Europe to monitor compliance with the European Charter of Local Self-Government (ETS No. 122), even during the pandemic. It calls on the authorities of Council of Europe member States to:

- 10.1. address the recurring issues relating to the Charter's implementation which were compounded by the pandemic, as identified by the Congress, in particular with regard to limited local financial autonomy;
- 10.2. build the level of resilience and preparedness for future health emergencies or crises by striking the right balance between centralised and decentralised authorities within multi-level governance systems and ensuring that they interact effectively;
- 10.3. amend electoral legislation so that local elections may be held during emergencies or health crises.

11. Civil society organisations are a key part of any truly democratic system. They enable citizens to act collectively in many areas of common interest and are a key pillar of public life. The restrictions that authorities have imposed to curb the pandemic's spread have had a serious impact on the situation of civil society. However, many civil society organisations have pursued their role in promoting human rights, acting as watchdogs, monitoring government responses to the pandemic and holding policy makers accountable.

12. The Assembly considers that fostering a safe and vibrant civic space is vital for sustaining social cohesion, the rule of law and a healthy democracy. It refers to [Resolution ... \(2022\) "The impact of the Covid-19 restrictions for civil society space and activities"](#) and calls on the authorities of the member States to strengthen the protection of fundamental rights in all circumstances and help provide an environment in which civil society organisations may continue to perform their function.

13. Lastly, the Assembly calls on the authorities of the member States and observers of the Council of Europe and countries whose parliament has observer or partner for democracy status with the Assembly to carefully examine the lessons to be learned from managing the Covid-19 crisis and from its impact on respect

for human rights and fundamental freedoms and on the functioning of institutions which are pillars of democracy, with a view to ensuring that future public health crises and emergency situations do not undermine crucial aspects of democratic order. In particular, it stresses the importance of:

- 13.1. guaranteeing access to reliable information and ensuring freedom of expression, including on crisis management, is protected;
- 13.2. enhancing the protection of the most vulnerable population groups and minorities who have difficulties in accessing public services or asserting their rights, including their right to healthcare;
- 13.3. paying particular attention to personal data protection in the light of the increasing reliance on digitisation and data processing both online and in specialised information systems, including for healthcare.

B. Explanatory memorandum by Ms Marietta Karamanli, rapporteur

1. Introduction

1. The Covid-19 pandemic which swept the world from the start of 2020 was and is above all a public health crisis. Saving lives and protecting people's health has understandably been governments' top priority. At the same time, the pandemic has had a major impact on all aspects of our lives and societies, including the way democratic institutions work. The Parliamentary Assembly took stock of these effects for the first time in October 2020 by adopting [Resolution 2337 \(2020\)](#) and [Recommendation 2179 \(2020\)](#) "Democracies facing the Covid-19 pandemic".

2. In November 2020, I tabled a motion for a resolution on "Protecting the pillars of democracy during health crises"³ with the support of several colleagues. It called on the Assembly to closely monitor the impact of the ongoing health crisis, and of any future crises, on the pillars of the democratic system, particularly the functioning of parliaments and elections during emergency situations.

3. When the Committee on Political Affairs and Democracy appointed me as rapporteur in February 2021, I indicated my intention to include two additional aspects in my future report – the impact of the pandemic on local democracy and on civil society – and to organise hearings with experts. I also planned to work closely with national delegations to identify good practices for exercising parliamentary control over government action. However, the deterioration of international affairs following the Russian Federation's aggression against Ukraine radically altered our priorities.

4. In addition, the pandemic also made meeting up in person more difficult, so I was only able to hold online meetings, doing so with Mr Andreas Kiefer, Secretary General of the Council of Europe's Congress of Local and Regional Authorities, Mr Pierre Garrone, Head of Division in the Secretariat of the European Commission for Democracy through Law (Venice Commission), and Mr Filip Pazderski (Institute of Public Affairs, Poland), who led work to compile the report on the implications of the Covid-19 pandemic on fundamental rights and civic space⁴ for the European Economic and Social Committee. I should like to thank everyone I was in touch with for their helpful contributions and for providing some very useful documents.

5. In light of the recent uptick in the number of Covid-19 cases in many countries around the world, the emergence of new variants yet to be properly studied and other diseases in circulation, for example the monkeypox infections, a new report following up on [Resolution 2337 \(2020\)](#) is both pertinent and timely. New climate and environmental emergencies in the near future may prompt the public authorities to take fresh emergency measures putting democratic order at risk.

2. Parliaments and Covid-19

2.1. The challenges of the pandemic

6. The Covid-19 pandemic has had a major impact on parliaments and all governmental institutions, which faced both political and operational challenges. At political level, governments wielded considerably more regulatory power during this period, putting parliamentary influence and scrutiny to the test. Parliaments had to strike a balance between continuing to fulfil their constitutional responsibilities to ensure the continuity of democratic governance, introducing and carefully overseeing emergency executive powers to combat the virus, adopting safe working practices to lead by example and protecting the health of parliamentarians, staff and visitors to their buildings.

7. Parliaments are places where people meet, deliberate on and pass public policies – they hold political leaders to account and provide a forum for national debate. By their very nature, they include a variety of members representing a wide range of views, with collegiality, as well as adversarial and public debate, as distinguishing features. First and foremost, however, they are inherently democratic bodies, in which all members elected by and on behalf of the people have an equal vote. By holding debates in public, they differ from many other governmental bodies. As representatives of society, they forge vital links between members

3. [Doc. 15176](#).

4. "The implications of the COVID-19 pandemic on fundamental rights and civic space", Report for the European Economic and Social Committee (EESC), 14 February 2022.

of the public and the policies that are carried out on their behalf. Together, these functions ensure that parliaments provide political and democratic accountability and strengthen public support and the legitimacy of the entire democratic system.

8. Several of these core functions were sorely tested by the pandemic. First, it immediately challenged the ability of parliaments, which bring together many different members and parties, to convene in the traditional fashion. Some responded by opening up debate and putting their activities online. Others chose to limit the number of members taking part. Some cut back on the number of meetings or the range of activities they would normally undertake. Others changed their voting procedures.

9. The pandemic also meant that governments had to make decisions quickly in a volatile context, as failing to act could result in even more adverse impacts on health. In many cases, this led to less parliamentary control and accountability. In the early days of the pandemic, such trade-offs were necessary, but over time there was a growing danger that governments would become accustomed to this policy-making arrangement and that ultimately, legislation would become the exclusive prerogative of the executive.

10. Governments clearly have an interest in getting their intended policies on the statute book as quickly and easily as possible. There are many good reasons, however, why parliaments traditionally serve to slow down this process. It is the basic principle of democracy that hearing many voices and different points of view makes for better outcomes.

11. There are many reasons why parliamentary scrutiny is vital. I will discuss this at more length in the next section. As a matter of principle, accountability is an inherent part of parliamentary democracy. There are also important reasons why it is needed in practical terms.

12. First of all, effective parliamentary scrutiny fosters good governance. Putting policy decisions on the table, giving people a public springboard to ask tough questions and forcing ministers to consider how they will respond all help to avoid misguided policy choices and lead to better political decision-making.

13. Secondly, parliamentary oversight in a public setting encourages transparent policy-making. Governments have the chance to explain the rationale behind their policies in public and if these arguments hold water even under close scrutiny, it reinforces public trust in their decisions.

14. Evading scrutiny must by no means become a habit in the post-pandemic era – for it will lead to both poor quality policies and lousy politicians. Even when parliaments have been able to scrutinise law-making, their efforts have been seriously compromised by the impact of Covid-19 measures on house business.

15. Measures to tackle the pandemic that have restricted parliamentarians' ability to participate and make a contribution have seriously undermined the principle of equality that is central to any parliamentary democracy. Sometimes the number of members attending sittings was reduced out of necessity. In some parliaments, voting was also restricted to specific members via proxy voting agreements.

16. These developments are a problem in themselves and were compounded by the fact that they tended to act as a power boost for party leaderships. The leaders of parliamentary groups often decided who could take part – keeping participation and voting rights for themselves while excluding "ordinary members of parliament".

17. Restricting participation undermines equality as well as diversity, and therefore endangers the fundamental principles of democratic representation. While party leaderships may find this situation convenient, it ultimately weakens parliamentary democracy and the sharing of political responsibility.

18. The introduction of electronic participation for debates and votes in some parliaments helped to preserve equality and diversity. Some might even argue that these mechanisms contribute to reinforcing these principles and should therefore be kept in place. But the utmost caution is required here.

19. Although replacing physical procedures with virtual ones may seem to be an effective solution and preserves parliaments' public-facing role, the groundwork for some crucial decisions is actually laid beforehand and in parallel discussions – some would say it all takes place behind the scenes. Meeting online makes any kind of informal interaction much less likely. When parliaments switch to electronic procedures, parliamentarians find it harder to gauge the mood and the various views within their own parties, preventing them from building alliances and holding any sway over party leaders. Virtual procedures also make it much more difficult for members to network informally with those in other parties. Such channels of communication are all vital to holding governments and leaders to account, however.

20. Members of government also miss being able to sense the “mood in the room” when half the seats are empty or when many of those attending are scattered around the country and are only pixels on a computer screen. Debates lack spontaneity, which again weakens accountability. In this environment, relations are likely to be more fragile and become polarised along party lines.

21. These are all reasons why it is vital to ensure parliaments can continue operating in normal conditions during times of crisis. We must make sure that we break any bad habits that may have formed during the pandemic, especially when they give the executive power over the legislature or party leaders control over members. We also need to be wary of any changes – even those seen as modernising how we work – that undermine the informal channels of communication and opportunities to connect that are the key to making our parliaments work.

22. Parliamentary democracy is a fragile and precious asset built up gradually over the centuries that must be cherished. We must be extremely careful not to inadvertently weaken it further through urgent alterations made during the pandemic.

2.2. Scrutiny of government action to deal with the crisis

23. Our colleague Ian Liddell-Grainger’s report on “Democracies facing the Covid-19 pandemic”⁵ set out the key roles of parliamentary oversight of government action and it is worth noting them here:

- transparency and openness: parliament should shed light on the operations of government. It provides a public arena in which government’s policies and actions are debated, exposed to scrutiny and held up to public opinion;
- delivery: parliamentary oversight should test whether the government’s policies have been implemented, and whether they are having the desired impact;
- value for money: parliament needs to approve and scrutinise government spending. It should highlight waste within publicly funded services, and aim to improve the economy, efficiency and effectiveness of government expenditure, therefore ensuring that every penny is put to the best and most effective use;
- tackling corruption and misuse of power: parliament should protect the rights of citizens by detecting and preventing abuse of power, arbitrary behaviour and illegal or unconstitutional conduct by government and deterring excessive and improper behaviour.

24. The legal rules introduced during the public health emergency to scrutinise government action tackling the crisis should be questioned, paying particular attention to the role of parliament and the courts along with the existing and new institutional players involved in the management of this unprecedented situation (for example, the executive, independent authorities and scientific authorities).

2.3. The nature of the public health crisis and the setting up of a special legal framework

25. The public health crisis is consistent with a state of emergency where powers that go beyond ordinary law are given to the executive in order to deal with exceptional and temporary situations and circumstances. The scale of the Covid-19 crisis has revealed that the existing legal tools are somewhat unsuitable.

26. The creation of legal rules that are sufficiently versatile to deal with various types of public health crises or emergencies of another kind (for example, climate, environmental and energy crises, etc.) on a large scale must therefore be considered, as required by the principles of legality, necessity and proportionality.

27. A distinction must be made between “threats to public health” and “public health crisis” so that infringements of fundamental freedoms and rights are justified and proportionate. In the same way, the scientific authorities set up during the Covid-19 crisis must be made permanent on terms that ensure their independence and safeguard public trust in them.

28. It must be possible to create such legal rules under established constitutional law, or by revising the national Constitution, or by establishing overarching rules applicable to states of emergency (whether security-, health- or climate-related).

29. However, the enactment in ordinary law of measures adopted during the public health crisis must be ruled out.

5. [Doc. 15157](#).

2.4. Ensuring the continuity of parliamentary work

30. To this end, parliaments, which must continue to play their threefold role of representing, legislating and scrutinising, could use a toolkit designed specifically to enable them to continue to go about their business. This could include targeted operational adjustments in relation to:

- deliberation, substantive and procedural rules on law making (for example changing parliaments' rules regarding the physical or hybrid presence of their members; adjusting voting arrangements);
- scrutiny by parliamentarians of decisions taken by the executive (for example simplifying the procedures for putting questions [oral or written] to the government; initiating thematic monitoring, fact-finding missions and regular hearings of government members in committee) in order to provide legal safeguards against possible infringements of fundamental rights and freedoms;
- involving parliamentarians in the work done by scientific authorities, in particular with regard to countering misinformation;
- involving parliamentarians in the co-ordination work between State services and local authorities in order to check whether measures implemented at local level are necessary and proportionate;
- subsequent parliamentary scrutiny of the crisis management through parliamentary committees of inquiry or parliamentary missions;
- the power to bring cases before judicial bodies in the event of emergencies (constitutional courts or councils or high courts).

2.5. The need for greater judicial scrutiny

31. Because certain measures clash with rights and freedoms and due to the risks of abuse and arbitrary decisions, full access to the courts must be guaranteed, or even increased, so that judicial scrutiny of regulatory and individual measures may be carried out.

- This scrutiny should systematically be carried out by the constitutional court by way of an *ex ante* or *ex post* review when a matter is referred to it in order to confirm that the health-related state of emergency is fully compatible with the rule of law.
- Scrutiny by the administrative courts of all adopted regulations which have not yet been transposed into law, insofar as they are administrative decisions, must be guaranteed and strengthened.
- The administrative courts and the ordinary courts should also be able, as courts with responsibility for freedoms, to carry out unhindered judicial reviews that are stricter and more meticulous than normal in relation to individual situations that arise (for example by rebutting the presumption of urgency where a state of emergency has been decreed); to do this, they must have adequate material and working resources to ensure the effectiveness of their interventions.
- The courts must also identify the “essential” tasks to be performed so that they can continue to act in a swift and co-ordinated manner, and practical arrangements to this end.

3. Public health crises and elections

32. The rapid spread of the Covid-19 pandemic in 2020 resulted in the postponement or suspension of elections and referendums in several countries. The adoption of measures outside ordinary law also affected freedom of movement and freedom of assembly, which are vital to any electoral process.

33. However, elections must be held in a context that gives citizens time and the means to find out about the different political options available and their respective merits so that they can understand the reasons why each party advocates the political plan that it offers.

34. The above-mentioned report on “Democracies facing the Covid-19 pandemic” of October 2020 already pointed out the parameters to be considered when holding or postponing elections during a public health emergency.

35. During my videoconference meeting with Mr Pierre Garrone on 11 April 2022, we reviewed the Venice Commission's main recommendations for holding elections in crisis situations, including pandemics, as set out in two documents⁶ drawn up by this body, which is an internationally renowned authority on electoral matters. Its recommendations will continue to apply to any future health crises.

36. It should be noted that Article 3 of the Additional Protocol (ETS No. 9) to the European Convention on Human Rights (ETS No. 5) provides for a fundamental right to participate at regular intervals in free elections on the choice of the legislature.⁷ However, this right is not absolute and should be considered in conjunction with other rights, primarily the right to life enshrined in Article 2 of the European Convention on Human Rights. Holding elections during a pandemic, civil unrest or natural disasters may put voters' lives at risk. In addition, similar protection may be derived from the right to health guaranteed by Article 11 of the revised European Social Charter (ETS No. 163), which is broader than that of Article 2 of the Convention, and to the right to (physical) security, which it derives from Article 5 of the Convention on the right to liberty and security.⁸

37. In addition, legislation on elections during emergencies should be adopted in advance. This is in keeping with the principle of stability of electoral law, which is a guarantee of legal certainty. Implementing this recommendation ensures that emergencies are not used by ruling majorities to amend electoral legislation to their benefit shortly before elections, without such amendments being objectively linked to the emergency situation.

38. Moreover, the electoral framework that applies during emergencies should govern not only any decision to postpone elections, but also the conditions for holding them, including campaigns, voting procedures and public health measures to ensure that votes may be cast, etc. The scope of the thinking should be widened by considering practical arrangements that would enable the electoral process to continue. It should focus on the need to make procedural changes to the Electoral Code during health crises in relation to the following aspects:

- new campaigning methods (for example use of public or private media; use of the internet and social media);⁹
- increasing the number of voting methods: extending the right to vote by proxy; introducing e-voting;¹⁰ voting by correspondence;
- increasing the limits on election spending for periods beyond the initial election deadline;
- the need to ensure effective electoral competition by enabling media which are not usually required to reflect a plurality of opinions to hold local debates;
- implementing public health measures and taking other steps to ensure that votes can be cast and that observation exercises can take place.

39. In any event, the legal framework for elections must be unambiguous, comprehensible and transparent, and its implementation must be impartial and unbiased. These decisions, and all those that affect these extraordinary electoral processes, must be taken in a transparent manner and, if possible, by consensus, giving detailed consideration to the precise circumstances (for an epidemic: public health information, the country's capacity to react, rates of spread of the disease, etc.). They must be subject to independent review, preferably by a court.

4. The pandemic's impact on local democracy

40. The pandemic has had a major impact on the way local and regional democracy works. Through their public-facing role, elected local and regional authorities are on the front line. Mayors and local elected representatives are expected to be on hand to respond to public concerns and come up with practical solutions.

41. The Covid-19 pandemic brought about a shift in the balance of power at local, regional and national levels in many countries, in some cases even putting local democracy "on hold".

6. Venice Commission, "Respect for democracy, human rights and the rule of law during states of emergency – reflections", CDL-AD(2020)014, paragraphs 19-120; "Interim Report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights". CDL-AD(2020)018, paragraphs 101-142.

7. "Article 3 – Right to free elections: The High Contracting Parties undertake to hold free elections at reasonable intervals by secret ballot, under conditions which will ensure the free expression of the opinion of the people in the choice of the legislature".

8. CG-Forum(2020)01-05final, paragraphs 16 to 19.

9. Recommendation [CM/Rec\(2007\)15](#) of the Committee of Ministers to member States on measures concerning media coverage of election campaigns.

10. Recommendation [CM/Rec\(2017\)5](#) of the Committee of Ministers to member States on standards for e-voting; E-Democracy Handbook of the European Committee on Democracy and Governance ([CDDG\(2020\)6](#)).

42. Particularly when the pandemic first broke out, there was a tendency in several Council of Europe member States to centralise crisis management at national government level on the one hand, while on the other, to put local authorities in charge of dealing with the pandemic's impact without providing the necessary resources or giving them the opportunity to take part in drawing up and determining crisis response policies.

43. Local governments have been at the frontline of efforts to mitigate the pandemic's effects. They were called on to deal with the public health emergency on the one hand, while limiting as much as possible its social and economic impacts. Despite sweeping layoffs after the economy ground to a halt, local authorities had to keep basic services running and find solutions to this unprecedented crisis. They also played a crucial role in fostering the solidarity of communities and enabled civil society to come together and contribute to community resilience.

44. When I met online with Mr Andreas Kiefer, Secretary General of the Council of Europe's Congress of Local and Regional Authorities, we discussed some aspects of Covid-19's impact on local democracy.

45. I would first like to congratulate the Congress of Local and Regional Authorities on providing a hub for local authorities¹¹ to pool their pandemic experiences and responses. On the hub's homepage, the Congress has stressed the importance of all authorities joining together throughout Europe to tackle the Covid-19 crisis in a spirit of solidarity that must be felt at all levels: European, national, local and regional. Efforts should also be united to support local and regional authorities which, because of their specific responsibilities and public-facing role, are on the front line of the response to the major Covid-19 crisis.

46. As part of monitoring of the European Charter of Local Self-Government (ETS No. 122) and its Additional Protocol on the right to participate in the affairs of a local authority (CETS No. 207), the areas of the Charter which member States found most challenging to comply with were already pinpointed by the Congress in 2017. It identified the following recurring issues:

- inadequacy of financial resources for local and regional authorities (Article 9 of the Charter);
- restricted definition, allocation and exercise of local competences (Article 4 of the Charter);
- lack of consultation by central government (Articles 4.6 and 9.6 of the Charter);
- absence of direct applicability of the Charter in domestic legal systems (singled out as a root cause of the recurring problems).

47. In January 2021, in the throes of the Covid-19 crisis, the Congress reassessed member State compliance with the Charter.¹² It found that these recurring issues had worsened during the coronavirus pandemic. The coronavirus outbreak had seen a number of countries disproportionately – and in violation of the Charter – recentralise finances and competences assigned to the local level of government, justifying these actions by the need to stop the spread of Covid-19. The failure to comply with the principles enshrined in the Charter is a worrying development since democratic and open societies should respond to and combat the pandemic while continuing to uphold democratic principles.

48. The provisions that seem to have been most widely disregarded during the pandemic are those on the "financial resources of local authorities" set out in Article 9.¹³ The report shows that most local budget revenues are found to cover only own and delegated "mandatory" tasks and functions, leaving little funding for local authorities' own spending priorities.

49. The report notes, among other things, recurring issues relating to limited local financial autonomy which worsened during the pandemic:

- inadequate and undiversified financial resources available to local authorities;
- limited own income and low proportion of own revenues in local budgets;
- mismatch between delegated tasks and attributed (concomitant) funding;
- overwhelming financial dependency of local government on State transfers, grants and subsidies;
- inefficiency of the equalisation system and lack of clarity in the distribution of State grants;
- lack of appropriate consultation on allocation of financial resources;

11. www.covid-congress-hub.org/.

12. "Recurring issues based on assessments resulting from Congress monitoring of the European Charter of Local Self-Government and election observation missions (reference period 2017-2020)", CG(2021)40-10final, 21 January 2021.

13. [European Charter of Local Self-Government](#), Article 9 – Financial resources of local authorities.

- over-regulation in certain areas which increases the cost of provision of services for local authorities that they must finance from their own resources;
- limited access to capital markets.

50. The other key Charter provision that was compromised during the public health crisis was the principle of consultation between all levels of government. Some local elected representatives complained that their council meetings were nothing more than emails being sent back and forth, and in some cases, this was only to rubber-stamp decisions already made at other levels of government anyway, even for issues that warranted a genuine debate. Very few, if any, local political meetings were held during the pandemic and citizen participation also decreased significantly.

51. It should also be noted that some local government authorities limited access to public debates by refusing or being slow to make deliberations, debates and minutes available to the general public, despite the availability of tools like videoconferencing and the internet. The need to ensure public trust requires the greatest possible transparency. New practices could be introduced in this area as well, supplementing existing rights rather than limiting them.

52. The Congress also noted that the pressure on local elected representatives went as far as their being targets of violence and hate speech, a trend which emerged well before the pandemic but considerably picked up during the health crisis. As they were on the front line, local government representatives had to take a stand on restrictive measures decided at national level, defend them in their constituencies and implement them.

53. The pandemic also had an impact on the holding of local and regional elections. Experience in this regard varied from country to country, with some simply postponing elections, while others went ahead with them despite the public health crisis. Although the right to free elections (Article 3 of the Additional Protocol to the European Convention on Human Rights) has no bearing on local elections, as it only applies to those at national level, it is enshrined in the European Charter of Local Self-Government and its Additional Protocol on the right to participate in the affairs of a local authority. A balance therefore needs to be struck between protecting the public and ensuring local government is legitimised by voters.

54. The Congress also stressed that the contribution by local self-government has undoubtedly benefited the global response to the pandemic and should remain an important part of the concerted effort to address the pandemic impacts in the long-term and ensure collective recovery.

55. With this in mind, it should be noted that the Congress made the issue of “Resilient societies: Effective local and regional responses to public health crises” one of its priorities for 2021-2026.¹⁴ It aims to promote effective solutions for tackling public health crises and emergencies and dealing with their fallout by improving emergency planning to strike the right balance between centralised and decentralised authorities within multi-level governance systems and ensure they interact effectively.

56. The Congress also carries out vital work to disseminate best practices and ensure that local elected representatives are better prepared for future crises. For example, it has drawn up a series of handbooks on human rights for local and regional authorities. The second volume¹⁵ focused on social rights and includes a chapter on these rights during the Covid-19 pandemic.

57. In my view, the Assembly and the Congress must increase co-operation on these issues in order to ensure the sustainability and proper functioning of democracy at all levels and in all circumstances, even during public health crises. These efforts should also be publicised more widely through appropriate social media messaging and communication via mainstream newspapers and more specialist media.

5. The pandemic’s impact on civil society organisations and individual freedoms

58. This part of my report follows on from my online meeting with Mr Filip Pazderski (Institute of Public Affairs, Poland), who led work to compile a report on the implications of the Covid-19 pandemic on fundamental rights and civic space¹⁶ for the European Economic and Social Committee, and draws heavily on the main findings of this survey of a significant number of civil society organisations. Although the study

14. [Priorities of the Congress 2021-2026](#).

15. Human rights [handbook](#) for local and regional authorities.

16. “The implications of the Covid-19 pandemic on fundamental rights and civic space”, EESC, op. cit.

examines the pandemic's impact on civil society organisations working in EU member States, the observations made and conclusions of this consultation exercise are undoubtedly relevant to all Council of Europe member States.

59. Civil society organisations are a vital part of any truly democratic system and they play a crucial role in our societies. Being independent from the State and the market, and by allowing citizens to act collectively in many areas of common interest, they are a key pillar of public life. They are often the first to act or respond to people's needs given the various constraints that central public authorities have to work within and their slower reaction times.

60. The pandemic has affected all aspects of our lives, resulting in many restrictions on fundamental rights and the rule of law. In some cases, these restrictions were introduced using fast-track procedures and without any parliamentary scrutiny, underscoring the democratic backsliding and authoritarian trends we face today.

61. Like all sectors of society, civil society organisations faced disruptions to their operations and missions. They were, however, at the forefront of efforts to support local communities by providing emergency assistance and essential healthcare services. They also sought to pursue their role in promoting human rights, acting as watchdogs, monitoring government responses to the pandemic and holding policy makers accountable. Fostering a safe and vibrant civic space is therefore vital for sustaining social cohesion, the rule of law and a healthy democracy.

62. On a positive note, civil society organisations have proved to be extremely flexible during the pandemic. Many of them were the first to be able to reorganise their activities to respond to the needs of local communities. Organisations have usually done this much faster than public administration or the private sector. The pandemic has also changed the way many civil society organisations operate. Being obliged to move their activities online led to an acceleration of the digitisation of the sector. All of this has allowed many civil society organisations to reach out to new audiences or to carry out their work more effectively on a wider scale. It also became easier to build coalitions of organisations, to exchange experiences and develop common positions on the measures taken by the authorities. In addition, it has increased the public visibility of civil society organisations and public understanding of their role in daily life. This is a very important asset on which organisations can build their standing in future.

63. At the same time, however, civil society organisations have also been directly affected by blows to fundamental rights and the rule of law. Although their public image has improved thanks to their swift responses during the first waves of the pandemic, almost all of the organisations reported a deterioration in their operating environment. They also highlighted the reduced access to and sustainability of funding, reduced access to decision-makers, as well as outright threats and attacks.

64. The pandemic also had an adverse effect on the functioning of civil society organisations. It is important to note that the vast majority of these organisations said the pandemic had had a negative impact on civil society as a whole in their country. Many organisations, especially smaller ones and those operating outside big cities, suspended their activities. The same happened to organisations bringing together specific social groups with a higher proportion of digitally excluded people – for example, the elderly or people with disabilities. Despite the importance of their role for vulnerable groups, some were unable to benefit from practical support measures (for example masks) to meet with those affected.

65. A significant proportion of these civil society organisations had not resumed their activities by the time the study was drafted (at the beginning of 2022). Many people working in this field had to deal with additional demands on their mental health, fatigue from working remotely and growing uncertainty about the future, exacerbated by long-term social isolation. Work-life balance was often difficult to maintain, with work being carried out at irregular hours.

66. The pandemic was also often an opportunity for several EU governments to reduce the transparency of their operations and obstruct public scrutiny of their actions. Moreover, sometimes, under the pretext of counteracting the effects of the pandemic, governments introduced measures which restricted fundamental rights – above all, freedom of assembly and freedom of expression. They also sought to silence critical voices, particularly those of journalists and civil society activists. Several governments also lowered standards for civil dialogue in law-making.

67. Civil society organisations, especially foundations and associations, were not even involved in consultations on key laws aiming to address the impact of the pandemic. Many laws were introduced in parliaments without public consultation. Even when the social partners received these documents to present their opinion, it was at the last moment and with extremely tight deadlines.

68. The pandemic also hit many civil society organisations financially. Foundations and associations were most affected, as the solutions proposed by some governments to mitigate the impact of the pandemic were usually not tailored to their needs. Some trade unions and employers' organisations managed to get through the pandemic period with much less economic impact. However, particularly when it comes to organisations representing workers, their financial situation depends very much on the sector in which they operate. The situation of those working in the sectors most affected by the pandemic, particularly in countries where there was a lack of adequate forms of support guaranteed by the State, was decidedly poor.

69. The authors of the study note that the Covid-19 pandemic did not really create so many new problems, but rather highlighted or compounded existing ones. It is therefore crucial to strengthen the protection of fundamental rights in all circumstances and help provide an environment in which civil society organisations may be heard and may continue to perform their function.

70. While an exhaustive study of the key aspects of democracy in times of crises and emergencies is beyond the scope of this report, three issues should be considered more closely.

71. Firstly, access to reliable and verifiable information must be guaranteed; the public has faced difficulties in getting hold of reliable information, data and statistics produced and vetted by the academic community. As a result, information that is vital for managing the Covid-19 pandemic and future crises and emergencies is hard to find and share.

72. Particular attention should therefore be paid to ensuring that mechanisms are established to protect freedom of expression, especially to enable people, journalists, civil society organisations, decision makers, politicians, academics and scientists to freely share their views and report on crisis management without any particular restrictions, and without those involved having any fear for their personal or professional livelihood. Any government support shall take account and respect the diversity of media coverage.

73. On the other hand, many studies have shown that the most vulnerable groups and minorities and those whose rights may be affected (for example, women, children, the elderly, people with disabilities, migrants, ethnic, religious and sexual minorities) have experienced far greater difficulties in accessing services or asserting their rights, including their right to health care. Targeted measures and appropriate action should be taken to ensure that existing restrictions do not affect them further and that they receive the same protection as others.

74. Lastly, while the pandemic has accelerated digitisation and personal data processing both online and in specialised information systems, including for healthcare, tracking of personal data may only be conducted in accordance with the wishes of individuals and their rights with regard to confidentiality and on the understanding that they may not be used during or after the crisis for any purpose other than prevention and protection measures.

6. Conclusions

75. The Covid-19 pandemic has put all aspects of life in our societies under strain, including the way democratic institutions work. [Resolution 2337 \(2020\)](#), adopted in the heat of the moment, warned Council of Europe member States against any attempt to use the public health emergency to undermine the fundamental principles of democracy.

76. Uncertainty about the nature and effects of Covid-19 and part of the population's consequent wish to be protected at all costs may have served to further exacerbate the situation. Desire for certainty may drive the emergence of authoritarian or even totalitarian regimes.

77. Overall, pandemic management by member States ensured the resilience, the continuity and proper functioning of democratic institutions and mechanisms, including the democratic system of checks and balances, parliamentary work and the holding of elections, even at the most difficult times of the crisis, and paved the way for a gradual return to normal. The Assembly provided key input by drawing attention to the relevant Council of Europe standards. Reference should also be made to the Secretary General's highly valuable contribution in the form of a "toolkit" for member States in April 2020¹⁷ and to the outstanding work carried out by the Venice Commission¹⁸ and the Congress of Local and Regional Authorities.¹⁹

17. [SG/Inf\(2020\)11](#).

78. Dealing with the challenges arising from emergencies may present opportunities to consolidate individual and collective rights in new forms, they can be an opportunity to think about new risks and anticipate the occurrence of new inequalities, to fight against existing ones by protecting particularly vulnerable population groups, strengthening democracy and the responsiveness of public authorities at all levels.

79. However, while the worst of the pandemic seems to be behind us, we must remain vigilant to prevent any new crises and emergencies from undermining democracy. The Assembly should therefore continue to be mindful of these issues and, in co-operation with other Council of Europe entities and with observer and partner national parliaments in member States, ensure that our institutions, as pillars of democracy, are able to weather public health and other crises and play their roles.

80. An accessible and transparent review of any progress made and any restrictions imposed would raise public awareness of these issues and feed into discussions.

18. See the work of the [Observatory of situations of emergency in Venice Commission member States](#); the “Interim Report on the measures taken in the EU member States as a result of the Covid-19 crisis and their impact on democracy, the Rule of Law and Fundamental Rights” (CDL-AD(2020)018-e); or the [conclusions](#) of the 17th European Conference of Electoral Administrations.

19. Congress of Local and Regional Authorities’ report on “[Local and regional elections in major crisis situations](#)”.