

8

Access to efficient and independent justice



Concerns for the rule of law – in particular judicial independence – in some European Union (EU) Member States cast a shadow on access to justice in 2012, a fundamental right that has been adversely affected by the financial crisis. Events in some Member States called into question the basic principle of the rule of law, tainting cross-border justice developments. In part as a reaction to this, EU Member States stepped up efforts to follow more closely the rule of law, ensure trust in justice systems and monitor developments where needed. More specifically, overly lengthy proceedings remained a major stumbling block for access to justice, but EU Member States took steps to remedy this and other shortcomings. To do so, they launched a number of initiatives, including: broadening legal standing, ensuring effective access to legal aid, enhancing e-justice and establishing and extending the mandates of non-judicial mechanisms.

8.1. Key EU and international policy developments and instruments

8.1.1. Under scrutiny: judicial independence and the rule of law

Access to justice – a central fundamental right, as well as an enabling right, for claiming other rights – can be sought through a range of mechanisms, from traditional courts to non-judicial mechanisms such as national equality bodies and National Human Rights Institutions (NHRIs), and from local level through national to EU and international levels.

Despite significant developments in non-judicial mechanisms across the EU, the spotlight remained on developments in EU Member States' justice systems as overall EU scrutiny on the rule of law heightened in 2012. For as judicial cooperation and integration in Europe grows, so too does the need for trust across EU Member States in their mutual appreciation of the rule of law. Some developments in 2012 underscored apprehension in this area.

Key developments in access to efficient and independent justice

- Doubts about the rule of law in some EU Member States lead to a European Union (EU) initiative aimed at monitoring developments in all Member States through a 'justice scoreboard'.
- Financial austerity takes a toll on access to justice through reductions in numbers of courts and mergers of non-judicial mechanisms.
- A sense of crisis spurs innovation and reform in some EU Member States, which modify court procedures and make more use of e-justice tools in order to reduce costs and shorten the length of proceedings.
- The criminal procedural roadmap of the EU takes a step forward with the adoption of a second instrument, Measure B – 'the letter of rights'.
- Focus at the Member State level remains on non-judicial mechanisms, such as National Human Rights Institutions and national equality bodies – with some strengthened and others weakened – as a number receive increased monitoring responsibilities under United Nations (UN) human rights conventions.

At the adoption of the Cooperation and Verification Mechanism reports for **Bulgaria** and **Romania** in 2012, the President of the European Commission, José Manuel Barroso, acknowledged Bulgaria's progress but voiced concern as to the rule of law in Romania:

"In every Member State of the European Union we need a well-functioning, independent judicial system, and respect for democratic institutions and the rule of law. The European Union is based on the principle of respect of the rule of law and democratic values. Events in Romania have shaken our trust. Challenging judicial decisions, undermining the constitutional court, overturning established procedures and removing key checks and balances have called into question the Government's commitment to respect the rule of law."

President of the European Commission José Barroso issues a statement following the adoption of the Cooperation and Verification Mechanisms Reports for Romania and Bulgaria on 18 July 2012, Speech/12/565, available at: http://europa.eu/rapid/press-release_SPEECH-12-565_en.htm?locale=en

The European Commission for Democracy through Law (Venice Commission), which advises the Council of Europe on constitutional matters, also raised concerns in relation to Romania. Its opinion focused on governmental and parliamentary decisions affecting the Constitutional Court and the Ombudsman or the Advocate of the People (see also the **Focus Section** of this annual report). The Venice Commission highlighted in particular its worry about the extensive recourse to government emergency ordinances – both by previous and present political majorities – which presents a risk for democracy and the rule of law in Romania. Other issues raised related to statements made by representatives of state institutions that demonstrated a worrying lack of respect for the status of other state institutions, including the Constitutional Court as the guarantor of the supremacy of the constitution.¹

Other EU Member States also came under increased scrutiny in 2012. The Venice Commission adopted four opinions that concerned the judiciary in **Hungary**, focusing on: the status of judges and court administration; the Constitutional Court; prosecution; and subsequent amendments to legislation related to the judiciary.

The first of these opinions examined various aspects of the judiciary and concluded that the overall effect of recent changes was not in compliance with European standards.² The opinion listed 16 problematic points, with the main cause for concern being the concentration of power to appoint judges in the hands of the President of the National Judicial Office, which supervises the central administration of the courts.

The second opinion, on the Constitutional Court, added another 10 detailed points of concern, which would require improved formulations in legislative documents to improve access to justice.³ The third opinion, on the Prosecution Service, highlighted insufficient checks on the powers of the Prosecutor General.⁴ The fourth and final opinion, released in October, takes revisions made since the first opinion was released in March into consideration, commenting positively on a long list of changes made.⁵ The early retirement age of judges and the procedure by which cases may be transferred were still causes of concern, with both issues having implications for judicial independence. By the end of 2012, the Venice Commission list on Hungary had a remaining 14 points of concern, including concentration of powers and the risk of undue political influence.

FRA ACTIVITY

Confronting challenges and finding opportunities for access to justice in times of austerity

In December 2012, FRA held its annual Fundamental Rights Conference on the topic of justice in austerity, focusing on the many obstacles to accessing justice resulting from the financial crisis. The conference, which brought together some 300 policy makers, including experts and practitioners from EU institutions and bodies, the Council of Europe, national administrations, associations of legal professionals, judiciary and civil society, also explored prospects for innovation and reform, triggered by the need to cut costs. The conference was held at the European Parliament under the auspices of the President of the European Parliament and with the support of the Cyprus Presidency of the Council of the European Union.

For more information, see: fra.europa.eu/en/event/2012/fundamental-rights-conference-2012-0

On 6 November 2012, on the basis of the European Commission's infringement proceedings against Hungary, the CJEU held that lowering the mandatory retirement age to 62 from 70 years of age for judges, prosecutors and notaries within a short transitional period was not necessary to achieve the objective of standardising the retirement age for public-sector professions and, therefore, constituted a disproportionate measure amounting to discrimination on the ground of age. Accordingly, the CJEU concluded that Hungary had failed to fulfil its obligations under the Employment

¹ Council of Europe, Venice Commission (2012a).

² Council of Europe, Venice Commission (2012b).

³ Council of Europe, Venice Commission (2012c).

⁴ Council of Europe, Venice Commission (2012d).

⁵ Council of Europe, Venice Commission (2012e).

Equality Directive.⁶ The EU also took other action in relation to developments in Hungary.⁷

Such developments underscored apprehension within the EU concerning mutual trust in the rule of law, which is growing increasingly important with the continued development of judicial cooperation and integration in Europe. In order to track the rule of law in the EU, the European Commission announced, in 2012, a plan to benchmark judicial strength, efficiency and reliability in the Member States through a 'justice scoreboard' (see also the **Focus Section** of this annual report).⁸

8.1.2. Opinions and instruments

Developments in 2012 were not limited to responses to evolving problems. A number of evaluations, opinions and instruments with close relevance for access to justice were adopted. The Council of Europe's European Commission for the Efficiency of Justice (CEPEJ) launched, on 20 September 2012, its evaluation report of European judicial systems, a biennial evaluation of the judiciaries in the 47 Council of Europe Member States.⁹ This report is the fifth in a series of evaluations that cover public expenditure on courts, prosecution and legal aid; various models of legal aid; court organisation; alternative dispute resolution; judges; execution of court decisions; and court reform. In evaluating the judicial systems, the CEPEJ report offers detailed analysis of patterns and trends across Europe. In relation to access to justice, for example, the Commission concluded that: there is a need to ease financial barriers for citizens who do not have sufficient means to initiate a judicial proceeding; geographical access to courts may be partly compensated by other measures, such as information technology tools; and that access to justice should be further facilitated through the promotion of alternative dispute resolution.

In 2012, the Consultative Council of European Judges (CCJE), an advisory body of the Council of Europe, adopted an opinion on the specialisation of judges. The opinion focused specifically on the advantages and limitations of having judges specialised in particular types of cases.¹⁰

The third optional protocol to the UN Convention on the Rights of the Child (CRC) opened for signature in 2012, making available an additional individual complaints instrument that makes it possible to access justice at

an international level through individual complaints.¹¹ For an overview of the status of the nine core UN human rights conventions, the extent to which EU Member States have accepted these and how many cases were submitted during 2012, see **Chapter 10** of this annual report.

The UN Crime Prevention and Criminal Justice Commission adopted a global instrument on cost-free legal assistance – legal aid – in April 2012: *United Nations Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*. The UN General Assembly subsequently adopted this instrument in November 2012, lending weight to the recommendations.¹² It is a non-binding, or 'soft-law' tool, with 14 Principles and 18 Guidelines, recognising the right to legal aid, legal aid for victims of crime, the right to be informed and a special provision for vulnerable groups.

8.2. Selected cases from European-level courts

Significant court cases also dealt with access to justice in 2012. The Court of Justice of the European Union (CJEU) handled several cases during the year that focused on an effective remedy and fair trial, rights guaranteed in Article 47 of the Charter of Fundamental Rights of the European Union. Among these were cases dealing with judicial independence and 'equality of arms' between parties – essential aspects of access to justice – through having to consider the role of the European Commission in competition proceedings. Other important cases concerned mutual trust between judicial systems and access to justice in the context of countering terrorism.

In *Europeses Gemeenschap v. Otis NV and Others*, the CJEU decided that the European Commission was able to act as an independent decision maker in a competition process related to elevator manufacturers while also acting on behalf of the EU to claim compensation before a national court.¹³ A central element at stake was whether this dual Commission role was compatible with the Charter's fair trial provisions. The CJEU ruled that despite the European Commission's potentially conflicting tasks, the fair trial guarantees were upheld.¹⁴

Such a combination of roles would be more problematic in clear-cut criminal areas, where judicial independence must be more strictly upheld. After EU accession to the European Convention on Human Rights (ECHR), a future

6 Council Directive 2000/78/EC, OJ 2000 L 303 and CJEU, C-286/12 *Commission v. Hungary*, 6 November 2012.

7 European Commission (2012a).

8 Reding, V. (2012).

9 Council of Europe, CEPEJ (2012a).

10 Council of Europe, CCJE (2012).

11 United Nations, Office of the High Commissioner for Human Rights (2012).

12 United Nations (UN), Commission on Crime Prevention and Criminal Justice (2012).

13 CJEU, C-199/11, *Europeses Gemeenschap v. Otis NV and Others*, 6 November 2012.

14 *Ibid.*, paras. 37–67.

European Court of Human Rights (ECtHR) ruling would be able to assess the EU system in this regard.

In another CJEU preliminary ruling case, *Trade Agency Ltd. v. Seramico Investments Ltd.*,¹⁵ judicial cooperation in civil matters was at stake. The national court's questions addressed the mutual recognition and enforcement of judgments and, more specifically, whether it was possible to refuse to enforce a foreign judgment under the Charter's fair trial provision (Article 47). The question related to a case where judgment was given without the presence of the defendant who also argued that he had not received a request to appear. The CJEU ruled that a national court can refuse enforcement only when an overall assessment shows that there is a "manifest and disproportionate breach of the defendant's right to a fair trial", not merely on the basis of a judgment having been given in the absence of the defendant.¹⁶

In his October 2012 *Melloni* Opinion,¹⁷ the Advocate General addressed judicial cooperation in criminal matters on a related issue – whether a court can refuse to execute a decision by a court in another Member State on the basis of a fundamental rights concern, specifically looking at fair trial and effective remedy issues in relation to the European Arrest Warrant (EAW). While the EAW empowers an EU Member State to issue a warrant requiring another, 'executing', Member State to arrest and transfer a person to it for the purpose of conducting a criminal prosecution or executing a custodial sentence, this can be refused under some circumstances. The Advocate General suggests in response to this request for preliminary ruling that the execution cannot be made conditional on the person being entitled to a retrial in the issuing Member State, even when the person was not present during the trial and the decision was taken in their absence. For the executing authorities to require a retrial would undermine the very purpose of the EAW, the Advocate General argued. Such a condition would in effect enable the executing state to dictate requirements for safeguards and would run counter to an EU area of justice based on mutual trust.¹⁸ Nonetheless, to safeguard the person's rights, they would have needed to be aware of the original trial and to have retained a lawyer.

15 CJEU, C-619/10, *Trade Agency Ltd. v. Seramico Investments Ltd.*, 6 September 2012.

16 *Ibid.*, para. 62.

17 CJEU, (2012); More generally on the execution of the EAW and non-discriminatory application of the ground for optional non-execution, see CJEU, C-42/11, 5 September 2012.

18 UN, Office on Drugs and Crime (UNODC) (2012), also offers guidance on transferring persons and on a range of legal and practical aspects, of relevance to sentenced persons and suspects, paras. 88–145.

Promising practice

Increasing the accessibility of fair trial information

In a visual and accessible format, Fair Trials International created an overview in 2012 of ECtHR fair trial cases as well as several other sources by state, including practitioners' views on the fairness of trials. The interface of the map provides a comparative overview of the status of justice in Europe and also contains specific justice information on individual EU Member States.



Source: For more information on the Justice in Europe campaign, see: www.fairtrials.net/justice-in-europe

Turning to access to justice more directly: in previous annual reports, FRA reported on concerns about accessing justice in the EU linked to UN Security Council resolutions freezing funds in an attempt to counter terrorism.¹⁹ In 2012, the Grand Chamber dismissed an appeal by Bank Melli Iran and upheld the decision to freeze the funds.²⁰ It concluded that the restrictions occasioned by the fund-freezing measures on a bank's freedom to carry out economic activity, and on its right to property, were not disproportionate to the important ends sought: the preservation of international peace and security.

In 2012, the CJEU also dealt with issues related to sanctions against Myanmar (Burma). In a Grand Chamber judgment, *Tay Ze v. Council*, the CJEU set aside an earlier ruling, saying that evidence relied upon to impose such sanctions must be precise. The CJEU thus annulled the regulation that imposed the sanctions.²¹

To provide timely access to justice, the CJEU also made use of its urgent procedures to deal with a case related to irregular migration (see **Chapter 1** of this annual report).²² A Vietnamese national was facing criminal prosecution in Germany for "assisting illegal immigration".²³ Some two months elapsed between the German court's request for a preliminary ruling and

19 See FRA (2011), Section 8.2.3; and FRA (2012a) Section 8.1.

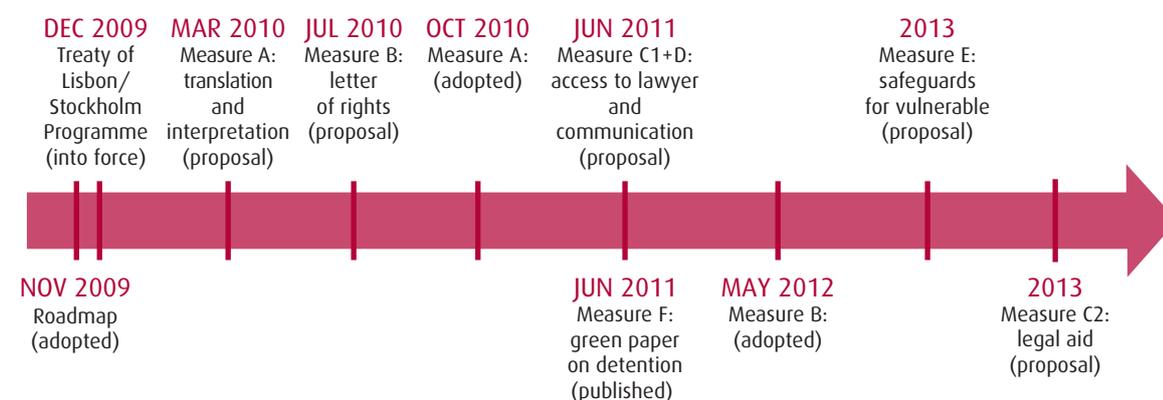
20 CJEU, C-380/09 P, *Melli Bank plc v. Council of the European Union*, 13 March 2012.

21 CJEU, C-376/10 P, *Tay Ze v. Council*, 13 March 2012.

22 CJEU, C-83/12 PPU, *Minh Koa Vo*, 10 April 2012.

23 *Ibid.*, para. 20.



Figure 8.1: Timeline of the Criminal Procedure Roadmap, 2009–2014

Source: FRA, 2012

a CJEU judgment, far less than the two-year average before a ruling.

The ECtHR also dealt with key issues related to access to justice during 2012. To mention one case only, in *C.A.S and C.S. v. Romania*, the issue at stake was court proceedings in the rape case of a seven-year-old boy. The ECtHR concluded that despite the gravity of the allegations and the particular vulnerability of the victim, the criminal investigation had been neither prompt nor effective and was, as such, “devoid of meaning”.²⁴

► (See also **Chapter 4** of this annual report.)

8.3. Developments related to EU legislation

A number of EU legislative initiatives on criminal and civil law progressed during 2012 with significance for access to justice.

8.3.1. Criminal law

Prominent among criminal law initiatives is the criminal procedures roadmap and its progress (see Figure 1 below; for the ‘parallel’ roadmap on the rights of victims of crime; see Chapter 9 of this annual report).²⁵ Of the six measures envisaged (A–F) in the criminal procedure roadmap, which aims at ensuring minimum EU standards for the rights of suspects and the accused, the first (A), a directive on the right to interpretation and translation in criminal proceedings, was adopted in 2010 and is to be transposed by 27 October 2013.²⁶ Measure B, a directive providing for basic rights to information in criminal proceedings, was adopted in May 2012.²⁷ Once

these measures are transposed, suspects and accused persons in criminal proceedings will be issued “a letter of rights” to ensure that they are properly informed of their rights in the proceedings and the accusations against them in a language they understand.

As for the remaining measures of the Roadmap, in 2011 the European Commission proposed an instrument on the right of access to a lawyer and to communicate upon arrest, merging components originally intended as D and parts of measure C (C1).²⁸ The Justice and Home Affairs Council reached a general agreement in June 2012 on a draft text on this merged instrument.²⁹ The European Parliament held its orientation vote on the matter in July 2012³⁰ and negotiations between institutions began in September 2012. One remaining element of measure C on legal aid (C2) has been delayed.

Measure E, on safeguards for vulnerable persons and on legal aid (C2), and an additional instrument on the presumption of innocence, are scheduled to be proposed as a package in the second half of 2013.³¹ 2012 saw the publication of the results of a 2011 public consultation on a green paper on the application of EU criminal justice legislation in the field of detention (measure F, standards for pre-trial detention).³² EU Member States mostly opposed introducing EU rules in the area and instead favoured promoting good practices; while civil society mainly preferred minimum rules.³³

²⁴ ECtHR, *C.A.S. and C.S. v. Romania*, No. 26692/05, 20 March 2012, para. 83.

²⁵ Council of the European Union (2009) Resolution, 30 November 2009, OJ C 295/1.

²⁶ Directive 2010/64/EU, OJ 2010 L 280/1.

²⁷ Directive 2012/13/EU, OJ 2012 L 142/1.

²⁸ Proposal for a directive of the European Parliament and of the Council, COM (2011) 326 final, 8 June 2011.

²⁹ Council of the European Union, Press release 10760/12, 8 June 2012.

³⁰ European Parliament, status updates on the draft Directive on Judicial cooperation in criminal matters: the right of access to a lawyer in criminal proceedings and the right to communicate upon arrest, available at: www.europarl.europa.eu/oeil/popups/ficheprocedure.do?id=592050.

³¹ European Commission (2012b), p. 25.

³² European Commission (2011a).

³³ European Commission (2012c).

One particularly noteworthy 2012 development relates to the EAW. The five Nordic countries (three of which are EU Member States: **Denmark, Finland and Sweden**) issued a statement on a common Nordic procedure to regulate the handing over of a suspect or accused person to the authorities in another state – a surrender procedure.³⁴ The statement followed up the entry into force on 16 October 2012 of a Convention on surrender procedures between the Nordic countries (Nordic Arrest Warrant, NAW). Since the NAW requires closer cooperation than the EAW, the Nordic EU Member States will rely on the NAW instead of the EAW.

FRA ACTIVITY

Confiscating the proceeds of crime – fundamental rights concerns

The European Commission issued a proposal for a Directive on the freezing and confiscation of the proceeds of crime in the EU on 12 March 2012. In response to a European Parliament request, the FRA issued an opinion in December 2012, highlighting, for example, aspects of presumption of innocence and the right to property in the freezing and confiscation of assets. The FRA opinion specifically points to the right to access justice, for victims of crime as well as for suspects, as important related fundamental rights considerations.

For further information, see: <http://fra.europa.eu/en/opinion/2012/fra-opinion-confiscation-proceeds-crime>

8.3.2. Civil law

The reform of the EU regulation that sets out common rules on jurisdiction, recognition and enforcement of judgments in civil and commercial matters, Brussels I, was adopted in December 2012.³⁵ The reform abolished the procedure under which Member States obliged to enforce another Member State's ruling were first required to revalidate it, known as the 'exequatur' procedure, which had caused bureaucratic delays.

In 2012, the EU and its Member States further developed the use of mediation, which is generally understood as a cost-efficient and more effective tool than court proceedings for certain types of cases, such as those related to consumers' rights. The European Parliament, the European Commission and the Council of the European Union reached provisional agreement for an EU initiative reinforcing alternative dispute resolution

for consumer disputes alongside a regulation concerning online dispute resolution.³⁶

8.4. Developments related to European and national courts

8.4.1. Length of proceedings

The right to a fair trial and to have one within a reasonable time frame are established fundamental rights forming part of access to justice. For the EU, the Charter of Fundamental Rights provides for these through Article 47 (2) on effective judicial protection within a reasonable time and through Article 41 (1) on the right to have affairs handled impartially, fairly and within a reasonable time frame.³⁷

Judicial efficiency and the need to reduce the length of court proceedings remained an overarching need for most EU Member States in 2012,³⁸ as in previous years. The number of cases related to length of proceedings, as well as to fair trial more generally, continued to decline, falling to 151 in 2012 from 202 in 2011 (see Table 8.1). Nonetheless, these violations continued to constitute a third of all violations, and the most frequent, that the ECtHR found.

As to violations among EU Member States, length of proceedings emerges as the one main pattern from the case law of the ECtHR.³⁹

In response, **Belgium**⁴⁰ for example, endeavoured to speed up trials by having single judges rather than panels deal with some criminal case appeals, unless the defendant requested otherwise. **Greece**⁴¹ reinforced that same procedure for civil courts and **Croatia**⁴² for administrative proceedings.

34 Council of the European Union, Notification by Finland according to Art. 31 (2) of the Council Framework decision of 13 June 2002, 14440/12, 2 October 2012.

35 Regulation (EU) 1215/2012, OJ 2012 L 351/1.

36 European Parliament, 2011/0373(COD), 10 December 2012, available at: <http://www.europarl.europa.eu/oeil/popups/summary.do?id=1238899&t=e&l=en>.

37 See, for example, CJEU, *Imperial Chemical Industries Ltd v. European Commission*, T-214/06, 5 June 2012, paras. 284 and 285.

38 Council of Europe, CEPEJ (2012a), Chapter 9; see also Council of Europe, CEPEJ (2012b).

39 Data extracted from ECtHR Annual Report 2012, pp. 152–153. For monitoring the execution of judgments, see Council of Europe, Committee of Ministers (2012), regarding Italy, Greece or Romania.

40 Belgium, Proposal for a law amending Art. 109bis.

41 Greece, The Act on fair trial and reasonable duration, *Δίκαιη δίκη και εύλογη διάρκεια αυτής*, 12 March 2012.

42 Croatia, Official Gazette No. 143, 20 December 2012.

Table 8.1: Number of ECtHR judgments in 2012 and fair trial-related violations, by EU Member State and Croatia

	ECtHR judgments finding at least one violation*		Violations of the right to a fair trial		Violations of length of proceedings	
AT	10	(7)	0	0	3	(5)
BE	6	(7)	1	(2)	1	0
BG	58	(52)	8	(2)	17	(21)
CY	0	(1)	0	0	0	(1)
CZ	10	(19)	2	(13)	0	(2)
DE	11	(31)	1	0	0	(19)
DK	0	(1)	0	0	0	0
EE	2	(3)	1	(1)	0	0
EL	52	(69)	1	(6)	35	(50)
ES	8	(9)	3	(4)	1	(1)
FI	2	(5)	0	0	0	(2)
FR	19	(23)	3	(11)	0	(2)
HU	24	(33)	0	(4)	9	(19)
IE	2	(2)	0	0	2	(2)
IT	36	(34)	3	(7)	16	(16)
LT	7	(9)	2	(3)	1	(5)
LU	1	(1)	0	(1)	1	0
LV	10	(10)	1	0	2	(1)
MT	1	(9)	0	(3)	0	(3)
NL	5	(4)	2	(1)	0	0
PL	56	(54)	1	(14)	6	(15)
PT	22	(27)	5	(1)	17	(13)
RO	70	(58)	13	(9)	10	(10)
SE	4	0	0	0	0	0
SI	20	(11)	0	(1)	13	(6)
SK	21	(19)	1	(2)	11	(5)
UK	10	(8)	0	(3)	1	(1)
HR	19	(23)	2	(8)	5	(3)
Total	486	(529)	50	(96)	151	(202)

Notes: The number of cases in 2011 is in parenthesis.

The five highest numbers of violations in each category are highlighted in red.

*ECtHR judgments finding at least one violation by an EU Member State, or concerning two EU Member States: Italy & Bulgaria (2012), Greece & Germany (2012).

Source: Council of Europe/ECtHR, Annual Report 2012, p. 152

The **Czech Republic** also adopted an amendment introducing single judges in some decisions on appeal.⁴³ The Public Defender of Rights in the Czech Republic reported in March 2012 that lengthy procedures were threatening the right to a fair trial within a reasonable time frame and even noted that some courts had refused to hear complaints on length of proceedings.⁴⁴

43 Czech Republic, *Zákon č. 404/2012 Sb., kterým se mění zákon č. 99/1963 Sb., občanský soudní řád, ve znění pozdějších předpisů, a některé další zákony.*

44 Czech Republic, Public Defender of Rights (2012).

In preparation for EU accession, the EU monitored **Croatia** in relation to a number of issues, including the judiciary and fundamental rights, looking in particular at increasing efficiency.⁴⁵

The difficulties some EU Member States, such as **Bulgaria**,⁴⁶ **Latvia**⁴⁷ and **Slovenia**,⁴⁸ experience with

45 Croatia (2012a) and (2012b).

46 European Commission (2011b), pp. 8–9.

47 Latvia, Cabinet of Ministers (2009).

48 Slovenia, Ministry of Justice and Public Administration (2012).

length of proceedings stem from problems in distributing cases evenly. These Member States therefore took steps to address the issue by facilitating the shifting of judges and cases among courts and by clarifying the respective roles of levels of courts, with positive effects. In the **United Kingdom**, England and Wales are seeking the same improvements through a proposed unification of local (county) courts.⁴⁹

Ireland shortened the period for some requests for judicial review from six to three months and also took steps to reduce the length of oral proceedings in superior courts.⁵⁰ Ireland will also hold a referendum on constitutional changes in late autumn 2013 that would enable the Supreme Court to speed up its procedures.⁵¹

To reduce its length of proceedings, **Italy** is limiting appeals in civil proceedings by restricting the types of legal actions that can be referred to its supreme court, the Court of Cassation.⁵² Italy also revised the Pinto act – which was originally introduced to address the systemic delays from length of proceedings issues – particularly as regards a reasonable trial duration, beyond which the right to compensation arises.⁵³ **Finland** drew up plans to introduce two new options in court proceedings to make these more efficient.⁵⁴ It plans to allow: plea bargaining, under which the prosecution negotiates with a defendant for a guilty plea to a lesser offence than the one charged; as well as an option of non-prosecution, which would reduce the number of investigations going to court.⁵⁵

Promising practice

Making length of court proceedings public

The United Kingdom makes court performance targets and statistics about case handling times in England and Wales publicly available, including the average length of cases by geographic location and subject area. This feature provides for transparent comparison that can contribute to making courts more efficient.

For more information, see: United Kingdom, Open justice: Making Sense of Justice, available at: <http://open.justice.gov.uk/courts/>

49 United Kingdom, Crime and Courts Bill, HL Bill 4.

50 Ireland, Rules of the Superior Courts (Judicial Review), Statutory Instrument No. 691 of 2011.

51 Denham, S. (2012).

52 Italy, Law 134/2012 amending Art. 360 of the Code of Civil Procedure.

53 Italy, Law No. 89 of 24 March 2001, Official Gazette General series No. 78, 3 April 2001 revised by Decree 83/12 (converted into Law 134/12).

54 Finland, Ministry of Justice (2012).

55 *Ibid.*

Estonia,⁵⁶ among others, introduced simplified procedures, such as hearing witnesses by telephone or through written statements, rather than requiring them to appear in court, avoiding the resulting delays if they failed to appear. Such procedures are allowed in criminal cases if the accused and the prosecutor have agreed on how the case should be concluded.⁵⁷ **Slovenia** adopted a revised act that provides for stricter time limits for court proceedings.⁵⁸

The **Netherlands** instituted a system whereby certain questions on civil law from lower courts can be put to the Supreme Court to resolve the issue – a system similar to EU Member State courts' requests for preliminary rulings from the CJEU.⁵⁹ It also introduced a new court procedure for administrative law cases that aims at finding solutions by the judge for the parties rather than legal elements for a verdict – a system that is believed to improve the efficiency of justice through less legal rigidity.⁶⁰

Many EU Member States have also introduced various e-justice measures to reduce the length of proceedings (see Section 8.5.3 on e-justice).

The pace of execution of ECtHR judgments at national level further exacerbates the overall issue of length of proceedings. Data from 2012 show that several EU Member States suffered from excessive delays in execution of key cases – non-repetitive cases that relate to a general or structural problem that only legislation can address, which are known as 'leading pending cases'. **Bulgaria, Greece, Italy, Poland** and **Romania** were the five EU Member States, as well as Croatia, that had the highest number of leading cases pending execution after five years (see Tables 8.2; and ► Table 10.7 in **Chapter 10** of this annual report).⁶¹

8.4.2. Reform of the CJEU and the ECtHR

The Charter of Fundamental Rights of the European Union ensures access to justice through the right to an effective remedy before a tribunal in Article 47 (1).

► As for court proceedings, see also **Chapter 4.3.** of this annual report on child-friendly justice.

56 Estonia (2012), Code of Administrative Court Procedure, RT I, 56.

57 Estonia, Criminal procedure Law, RT I, Art. 239–250.

58 Slovenia, Act amending protection of right to trial without undue delay act, 15 May 2012.

59 Netherlands, Law Gazette of the Kingdom of the Netherlands, Volume 2012, No. 166.

60 Netherlands, Council for the Judiciary (2012).

61 Council of Europe (2013).



Table 8.2: Number of leading cases pending execution in 2011 and 2012, five EU Member States with the most cases pending execution for more than five years

EU Member States	Average execution time Leading cases pending > 5 years	
	2011	2012
BG	27	32
EL	15	20
IT	31	33
PL	15	27
RO	20	28

Note: The table includes data only on the top five EU Member States where implementation is delayed by more than five years. For a full EU Member State and Croatia list, see Table 10.7 in Chapter 10.

Source: The data are extracted from the Council of Europe's Draft of the Annual Report 2012, *Supervision of the execution of judgments and decisions of the ECtHR*, April 2013

The CJEU's statute was revised in 2012 to make the court more efficient and adapt it to the enlarged EU.⁶² Seventeen judges now constitute a full court in contrast to 15, with similar adjustments made in the smaller constellations. The Grand Chamber was enlarged from 13 to 15 judges, but the former requirement of having all five Chamber Presidents present for a Grand Chamber decision has been relaxed to stipulate a minimum of three of the five. The revision also reduced some written documentation in favour of oral procedures.

The CJEU also adopted new rules of procedure in September 2012 to streamline its work and handle a heavier workload.⁶³ The increase in cases and the types of cases stem from the transition into a more integrated Union, resulting in a consistent rise in requests for preliminary rulings over recent years. The changes to the rules of procedure also made it possible for the CJEU to deal with a file case without an oral hearing. The new rules extended defence submission deadlines to two months from one, clarified rules on legal aid and introduced the possibility of keeping the parties for preliminary rulings anonymous.⁶⁴ The new rules of procedure have themselves been made more user-friendly through clearer clustering and headings.⁶⁵

62 Protocol No. 3 of the European Parliament and of the Council, as amended by Regulation (EC) No. 741/2012, OJ 2012 L 228/1, Art. 16, 17 and 20.

63 CJEU (2012a). New rules of procedure adopted on 25 September 2012, came into force on 1 November, replacing a set originating from 1991.

64 See also CJEU (2012b), reflecting innovations introduced by those rules which may affect both the principle of a reference for a preliminary ruling to the CJEU and the procedure for making such a reference.

65 CJEU (2012a); See also CJEU (2012b).

Further reforms were initiated during 2012 concerning the ECtHR in Strasbourg. One of the principal aims of the Brighton Declaration of April 2012 was to match the capacity of the ECtHR with the number of incoming cases (see Section 8.6 related to NHRIs).⁶⁶ The member states of the Council of Europe, through its Steering Committee for Human Rights (CDDH), have been preparing two new draft protocols, Nos. 15 and 16, to the ECHR in part to diminish the number of applications and make the court more efficient.⁶⁷

Draft Protocol No. 15 would introduce a number of changes to the ECHR, by:⁶⁸

- Stressing in the preamble the subsidiary relationship between the ECtHR and the States Parties and the role of the margin of appreciation in applying certain ECHR rights. This measure aims at clarifying the respective roles of national authorities and the ECtHR.
- Requiring judges at the ECtHR to be under 65 when taking office. This measure aims at replacing an upper-age limit and ensuring that highly qualified judges may serve the full term of office.
- Removing the right of parties to a case to object to a Chamber's proposal to relinquish a case to the Grand Chamber. This measure aims at accelerating proceedings in important cases and thereby helping to maintain consistency in case law.

66 United Kingdom, Ministry of Justice (2012a).

67 Council of Europe, Steering Committee for Human Rights (CDDH) (2012a) and (2012b).

68 Council of Europe, CDDH (2012c).

- Reducing the time limit for submitting an application from six to four months after the final decision at domestic level.
- Allowing applications in which an applicant had not suffered 'significant disadvantage' to be deemed inadmissible even if not previously considered by a domestic tribunal. These last two measures aim at rationalising and updating certain admissibility criteria.

Promising practice

Checking admissibility for the ECtHR – a model for national courts

In an effort to reduce the large number of inadmissible cases it receives, the ECtHR produced a video in 2012 setting out the criteria it uses to assess the admissibility of cases, which include the exhaustion of a domestic remedy and the lapsing of the six-month time for lodging an application.



It also made available a supplementary Practical Guide on Admissibility Criteria in a range of languages to clarify what types of applications are admissible. Such an admissibility checklist could be useful in many national settings as well, for courts as well as for non-judicial mechanisms (see the FRA project entitled CLARITY in this regard).

For more information, see: ECtHR, Press release, 27 January 2012, <http://hudoc.echr.coe.int/sites/eng-press/pages/search.aspx?i=003-3822504-4385502>

For details on the EU accession to the ECHR, see Chapter 10 of this annual report.

Draft Protocol No. 16, though optional, would expand the competence of the ECtHR to give advisory opinions.⁶⁹ The highest courts and tribunals (as specified by each ratifying state) would be empowered to ask the ECtHR to deliver an advisory opinion on questions of principle as to interpretation or application of the rights and freedoms contained in the ECHR and its protocols, arising in the context of a case pending before that court.

69 Council of Europe, CDDH (2012d).

Such an advisory opinion by the ECtHR would not be binding. The proposal would allow, similar to the rules in contentious proceedings, for friends-of-the-court (*amicus curiae*) submissions by the Council of Europe Commissioner for Human Rights. The protocol would seek to underscore the importance of national courts as the first port of call for human rights cases and to promote effective resolution of complaints at the national level.

8.4.3. Reforms in EU Member States' national court systems

EU Member States also engaged in major restructurings of their judiciaries in 2012, mainly reducing the number of local courts. While this measure may increase effectiveness by pooling resources in fewer locations, it may also run the risk of reducing physical access to justice because courts are located further away from one another. **Italy**, for instance, decided to close 220 local courts and merged the offices of courts and public prosecutors offices in 2012.⁷⁰

8.5. Facilitating access to justice

Access to justice not only refers to the availability of courts and procedures, a number of factors provide obstacles or create incentives for actual access to justice: court fees may discourage the use of courts; legal aid will have the opposite effect. Information and communication technologies can enhance court efficiency and other complaint mechanisms. Effective non-judicial redress systems likewise facilitate access to justice. The EU witnessed a number of developments in these respects in 2012 in the EU (for developments in non-judicial mechanisms, see Section 8.6).

8.5.1. Court fees and legal aid

The 2012 CEPEJ report notes that an increasing number of states rely on court fees to finance their court systems while allocating a larger amount of legal aid to fewer cases, resulting in an overall budget increase.⁷¹ Legal aid developments occurred in many EU Member States during 2012. Bulgaria took noteworthy steps towards broadening the scope of persons who can qualify for legal aid as well as towards introducing a related needs-based assessment.⁷² The Constitutional Court in **Hungary** found discriminatory a provision that excluded legal aid in cases of constitutional complaints

70 Italy, Legislative Decree No. 155/2012, 7 September 2012.

71 Council of Europe, CEPEJ (2012a), pp. 82–83.

72 A draft amendment was published in 2012 and the law published as Bulgaria, Law amending the Legal Aid Act, Official Gazette No. 1514, March 2013, see in particular para. 22.

and annulled it.⁷³ **Spain** adopted an act in November 2012 that aims at doubling funds drawn from court fees to discourage the unjustified use of the court system and, at the same time, at financing an expansion of legal aid.⁷⁴ Other EU Member States, such as **Lithuania**,⁷⁵ have sought to improve access to legal aid by simplifying application procedures.

Several EU Member States either proposed or implemented reductions in legal aid. **Germany** proposed major savings on federal legal aid spending,⁷⁶ but, at the same time, opened the door to legal aid for third parties in ECtHR proceedings.⁷⁷ In the **United Kingdom**, new legislation is coming into effect for England and Wales, which will reduce the availability of legal aid in civil cases.⁷⁸ Scotland also introduced new legislation with similar effect.⁷⁹

In the second half of 2011, **Ireland** introduced cost-cutting measures to its criminal legal aid scheme, including a 10 % reduction in fees and rates payable for such aid, which were expected to result in savings in 2012.⁸⁰ Expenditure on criminal legal aid fell to €50.5 million in 2012 from €56.1 million in 2011, while expenditure on civil legal aid services through the Legal Aid Board⁸¹ fell marginally in both 2011 and 2012.⁸² Overall demand for civil legal aid services increased by 93 % between 2006 and 2011, according to the Legal Aid Board's 2011 Annual Report, which was published in December 2012. The Legal Aid Board links this increase directly to the economic crisis – both in terms of individuals requiring greater financial assistance and certain areas – such as family law, debt and unemployment – seeing increased need.⁸³

8.5.2. Legal standing

The rules that regulate who is allowed to bring a claim before courts and non-judicial redress mechanisms are known as 'legal standing'. A claim relating to several person or entities may be referred to as collective redress or a collective interest action. Where legal standing provisions are broader, a claim for actions

for general or public interests can be referred to as public interest actions.⁸⁴

Building on its public consultation, Towards a coherent European approach to collective redress, the European Commission included an initiative for an EU approach to collective redress in its 2012 Work Programme. The proposal, possibly legislative, would be a cross-cutting measure covering several policy areas with the aim to improve the enforcement of EU law and access to justice for citizens and companies.⁸⁵

The European Parliament passed a resolution at the first reading of the European Commission initiative on 2 February 2012, supporting the introduction of an EU-wide collective redress mechanism and providing guidance as to the shape of such a mechanism, including specific safeguards in order to prevent its misuse.⁸⁶ The European Parliament also published two related studies on legal standing (*locus standi*) in June and August 2012: a study on *Collective Redress in Antitrust*; and a study on *Standing Up for Your Rights(s) in Europe: A Comparative Study on Legal Standing* before the EU and Member States' courts.

The first study analyses the EU's systems of collective redress for breach of competition law, discussing the legal basis for a legislative initiative at EU level. The publication also assesses the advantages of, and limits to, different policy options regarding procedural rules applying generally to collective actions and specifically to collective redress in antitrust.⁸⁷ The second study provides an in-depth comparative analysis of legal provisions, doctrine and case law on legal standing before the civil, criminal and administrative courts of selected national legal systems, including nine EU Member States – **Belgium, France, Germany, Hungary, Italy, the Netherlands, Poland, Sweden** and the **United Kingdom** (England and Wales) – and before the EU courts.⁸⁸

At national level, there were several new legislative and other developments or proposals related to collective redress in 2012. **Belgium**⁸⁹ and **Malta**

73 Hungary, Constitutional Court (2012), Decision 42/2012. (XII. 20.) in relation to Act LXXX of 2003, Art. 3 (3) (c).

74 Spain, Law 10/2012 of 20 November 2012.

75 Lithuania, *Seimas* No. XIP-4364, 27 April 2012.

76 Germany, Federal Ministry of Justice, Draft law amending the law on legal aid, 2 May 2012.

77 Germany, Federal Council, BR-Drs. 462/12, 21 September 2012.

78 United Kingdom, Legal Aid, Sentencing and Punishment of Offenders Act 2012.

79 United Kingdom, Scottish Government, (2011), pp. 1–18; United Kingdom, Scottish Government (2012), pp. 1–18.

80 Ireland (2011).

81 See: www.legalaidboard.ie/.

82 See: House of the Oireachtas, Written Answer No. 444.

83 Ireland, Legal Aid Board (2012).

84 FRA (2012b) emphasised access to justice and effective redress mechanisms in cases of data protection breaches by such measures as broadening the rules on legal standing. It specifically advocated the possibility of lodging public interest actions before data protection authorities and courts subject to specific conditions. See Chapter 3 for details.

85 See: www.ec.europa.eu/atwork/pdf/forward_programming_2012.pdf.

86 European Parliament (2012), *Resolution Towards a Coherent European Approach to Collective Redress*, 2 February 2012. On the same day, the Parliament also adopted a resolution on collective redress in the area of competition, 2 February 2012.

87 European Parliament, Directorate-General for Internal Policies (2012a).

88 *Ibid.*

89 Belgium, Doc. parl. Chamber, 2011–12, No. 2035/001/.

introduced or strengthened such mechanisms.⁹⁰ In **Hungary**, NGOs were given a wider legal standing in consumer interest cases.⁹¹

As a further example of such public interest actions, in the **United Kingdom**, the High Court granted legal standing to an individual so that she could ask a court to review a local authority's decisions on public library provision. Although she neither lived nor worked within the local authority's area, she had a genuine interest in education, particularly for minority and disadvantaged groups.⁹² In another case, the United Kingdom Supreme Court permitted the parents of a voluntary psychiatric patient who had killed herself whilst on home leave to assert legal standing as victims of the hospital's negligence in releasing their daughter.⁹³

8.5.3. E-justice

Information and communication technologies can enhance access to justice by providing justice-related services, such as: online information on jurisprudence; online case and file management; electronic forms and e-handling of individual complaints by complaint mechanism bodies; and video technology to make procedures accessible at long distance.

"[Information and communication technologies] can be used to [...] reinforce the safeguards laid down in Article 6 ECHR: access to justice, impartiality, independence of the judge, fairness and reasonable duration of proceedings," CEPEJ said in its 2012 report. Such tools often provide quicker and cheaper solutions than traditional paper-based systems, a shift that is of particular relevance in times of austerity. The ECtHR revamped in 2012 its search engine for cases – HUDOC – to make it easier to find a case.⁹⁴

At the same time, e-justice may alienate those lacking access or adverse to such technology so it is important to see e-justice as supplementing rather than replacing traditional systems.

90 Malta, Chapter 520 of the Laws of Malta, Act VI of 2012.

91 Hungary, Act LV of 2012 on the Amendment of Act CLV of 1997, Art. 24.

92 United Kingdom, High Court (2012), *R (on the application of Williams) v. Surrey County Council* [2012] EWHC 516 (Admin).

93 United Kingdom, Supreme Court (2012), *Rabone v. Pennine Care NHS Foundation Trust* [2012] UKSC 2.

94 ECtHR (2012), pp. 64–66.

Promising practice

Enhancing the European e-justice portal

The European e-justice portal had further features added in 2012. These included revised European Payment Order (EPO) online forms pursuant to Commission Regulation (EU) No. 936/2012 of 4 October 2012 as well as various new content topics, such as information on the property effects of marriage, and translated factsheets on victim and defendant rights.

The portal also introduced information on the European Case Law Identifier (ECLI). Through a minimum set of uniform metadata for case law, the ECLI aims to facilitate easy access to national and European case law. The system is open to any state. The state can also tailor its scope, applying it to, for example, just the Supreme Court level or to all courts. It will also apply retroactively to historical records.

For more information, see: <https://e-justice.europa.eu>

FRA ACTIVITY

Charter 4 Mobile – an EU application replicable at national level

FRA's new Charter 4 Mobile, a fundamental rights hub for mobile devices, makes it possible for anyone interested in EU fundamental rights to access the text of the Charter of Fundamental Rights of the European Union in all 23 official EU languages.

Launched at FRA's Fundamental Rights Conference on 6–7 December 2012, Charter 4 Mobile provides additional practical and regularly updated information. This includes explanations of the legal provisions, academic commentary, related international and EU law, EU case law and related FRA publications provided on an article-by-article basis.

For more information, see: <http://fra.europa.eu/charter4mobile/>

At EU Member State level, a general trend of launching new e-justice technologies continued throughout 2012. Several Member States introduced computerised databases with court records, which replaced paper-based systems or provided the possibility of e-filing individual complaints in certain areas.

In **Hungary**, as of 1 January 2013, parties will be able to submit documents online both in criminal and civil law cases as well as to follow developments in their cases online. It is expected that such systems will speed up court procedures and internal case management.⁹⁵

95 Echo Television (Hungary) (2012).

Similarly, in **Lithuania**, where the amended Civil Procedural Code entered into force in January 2013,⁹⁶ parties to judicial proceedings will be able to submit procedural documents to the court electronically.

Strides were also made in making technology available in the courtroom. Video conferencing, for example, aims at assisting parties in presenting their case to the court, while others, such as digital audio recording, seek to directly assist judges and court clerks, thereby making the existing system more efficient and less costly. **Slovenia** tested a new system in 2012 that would allow courts to abandon written transcriptions of hearings in favour of sound recordings, which would be accessible with a digital certificate through a dedicated website.⁹⁷

Latvia⁹⁸ introduced video conferencing to allow courts to hold remote hearings with persons residing abroad, witnesses, court experts, children, patients in hospitals or elderly homes, prisoners and other participants. The use of such equipment in courts is designed to: reduce costs by saving on transport of detained persons to court or parties' personal travel costs; ensure timely contributions by parties to case hearings; and enhance court accessibility, such as for persons with disabilities who could opt not to physically attend hearings. Such a system could also enable hearings for crime victims who do not wish to confront the perpetrator (for more ► on victims of crime, see **Chapter 9** of this annual report).

In 2012, in the **United Kingdom**, the English and Welsh courts initiative, which allows defendants in criminal proceedings to appear in early hearings by video link, expanded, adding a virtual court.⁹⁹ A new website also allows the public to track crime data and police response by geographical area in England and Wales – a tool that supports access to justice through increasing transparency of basic data but also poses some risks in terms of privacy and data protection.¹⁰⁰

Starting in 2012,¹⁰¹ the **Dutch** Council for the Judiciary prepared to launch cantonal e-courts¹⁰² (*e-kantongerechten*) to make it easier for citizens to submit complaints and to shorten the overall length of procedures. In a digital procedure, courts have six-to-eight weeks to reach a decision on complaints. If this project is successful, the Council for the Judiciary will use it as a model to simplify civil procedures for the whole judiciary.

96 Lithuania, *Seimas* (2012), No. IX-743, 26 June 2012.

97 For more information, see: <http://obravnavne.mp.gov.si>.

98 Latvia, Court Administration (*Tiesu administrācija*) (2012).

99 United Kingdom, Ministry of Justice (2012b) and (2012c).

100 See: www.police.uk/.

101 Netherlands, Council for the Judiciary (2012a).

102 This initiative is not to be confused with the private initiative e-court reported on in the FRA 2011 Annual report.

Several EU Member States, including **Austria**,¹⁰³ **Belgium**,¹⁰⁴ **Bulgaria**,¹⁰⁵ **Denmark**,¹⁰⁶ **Italy**,¹⁰⁷ **Poland**¹⁰⁸ and **Slovakia**¹⁰⁹ created web portals and other web tools in 2012 to raise legal awareness and educate the public, providing easily accessible and barrier-free information on the functioning of court proceedings, downloadable forms and relevant case law. In the **United Kingdom**, the Crime and Courts Bill 2012¹¹⁰ further developed proposals to permit broadcasting certain aspects of court proceedings in England and Wales, with a view to increasing public understanding of court proceedings.¹¹¹

Promising practice

Reporting discrimination by mobile application

In October 2012, the **Dutch** Minister of Immigration, Integration and Asylum launched a mobile phone application, *Discrimination Report (Discriminatie melden)*, that aims at facilitating reporting discrimination at work.

With the help of this free application, an individual can use a smartphone to report discrimination instantly. Through a simple interface, the tool makes it possible to: select the ground of discrimination; describe the situation and add a photo of the incident; fill in one's name, email and postcode, the latter to determine which regional Anti-Discrimination Bureau can provide the most relevant support; and file the incident.

For more information, see: www.discriminatie.nl/

8.6. Non-judicial mechanisms

Access to justice is not limited to traditional courts but encompasses non-judicial mechanisms. At the national level, equality bodies and NHRIs facilitate access to justice either directly by addressing individual

103 Austria, Web portal for court information, available in German at: www.justiz.gv.at/justizinfo.

104 Belgium, Web portal for court information, available in Dutch at: www.hervormingjustitie.be and in French at: www.reformejustice.be.

105 Bulgaria, BILL, Web portal for TJA1 court information, available at: <http://judicialprofiles.bg/en/pages/methodology/>.

106 Denmark, Web portal for court information, available in Danish at: www.domstol.dk/om/Nyheder/oevrigenyheder/Pages/Klogpaadomstolene.aspx.

107 Italy, Web portal for court information, available at: www.pst.giustizia.it/PST/it/homepage.wpp.

108 Poland, Ministry of Justice (*Ministerstwo Sprawiedliwości*) (2012), 'Ruszyły internetowe portale orzeczeń', Press release, 1 August 2012, available at: <http://ms.gov.pl/pl/informacje/news,4173,ruszyly-Internetowe-portale-orzeczen.html>.

109 Slovakia, Law No. 33/2011, including Law No. 38/1993, 1 May 2011.

110 United Kingdom, Crime and Courts Bill 4.

111 United Kingdom, Ministry of Justice (2012d), pp. 1–26.

complaints or indirectly through their advisory and awareness-raising functions.

NHRIs are bodies established by national law to protect and promote human rights in a state. They provide access to justice in a variety of ways, depending on their mandates, by, for example, hearing individual complaints; undertaking research; raising awareness of human rights standards to prevent the need to access justice from arising; or, by monitoring a state's compliance with its international human rights treaty obligations and engaging in the work of international mechanisms (for more on the role of NHRIs as monitoring bodies under international treaties, see [Chapter 10](#) of this annual report).

The main 2012 NHRI-related developments in **Finland** and **Lithuania** concern the process of establishing such institutions; in addition, five Member States – **Belgium**, **Denmark**, **Hungary**, **Ireland**, the **Netherlands** – and **Croatia** made changes to institutional settings and powers of existing NHRIs.

Austerity measures taken in EU Member States also resulted in budget and staff cuts in some NHRIs in 2012. The Equality and Human Rights Commission in the **United Kingdom**, for example, faced major budget cuts which may undercut its financial stability and hence its effectiveness in adhering to its mandate.¹¹²

The year 2012 also witnessed developments regarding the status of NHRIs as a result of the accreditation process by the International Coordinating Committee of National Human Rights Institutions (ICC). These developments are ► further discussed in [Chapter 10](#) of this annual report.

Finland established a Human Rights Centre in early 2012 with responsibilities for the promotion, implementation and monitoring of fundamental and human rights. The NHRI encompasses the Human Rights Centre and two additional components: a newly established Human Rights Delegation and the existing Parliamentary Ombudsperson Institution.¹¹³

In 2012, **Lithuania** initiated the establishment of an NHRI. It decided, however, given its existing institutional system and the financial situation, not to create a new human rights institution but rather to improve the current legal basis and increase the competence of the Parliamentary Ombudsmen's Office (*Seimo kontrolierijų įstaiga*), ensuring

compliance with the Paris Principles in an effort to obtain accreditation from the ICC.¹¹⁴

Some states made changes to institutional aspects of existing NHRIs. **Croatia** adopted a new Ombudsman Act in July 2012,¹¹⁵ strengthening the status of the ombudsman. The new legislation granted the ombudsman limited authority to intervene before courts (they may request an explanation from a president of a competent court in cases where it is apparent that the proceedings are being unnecessarily delayed or that powers are manifestly abused) as well as access to classified data without a security vetting certificate.¹¹⁶ A merger between the Office of the Ombudsman and the Human Rights Centre (*Centar za ljudska prava*) also enhanced the Ombudsman's capacity to promote fundamental rights. On 29 May 2012, the **Danish** Parliament adopted a new act governing the country's NHRI, the Danish Institute for Human Rights (DIHR, *Institut for Menneskerettigheder*). This act, which takes effect on 1 January 2013, clarifies the role of the DIHR as Denmark's NHRI in accordance with the Paris Principles.¹¹⁷

Other institutional reforms related to NHRIs that also serve as national equality bodies under EU law. Many national equality bodies, whose role it is to promote equal treatment, were established as part of pre-existing NHRIs or have since been or are expected to be merged with NHRIs.

Structural changes introduced by the **Netherlands** and **Hungary** in 2011 became effective in 2012. The **Dutch** NHRI, which was established in 2011 and integrated the B-status Equality Treatment Commission, opened officially on 2 October 2012.¹¹⁸ The **Hungarian** law on the Commissioner for Fundamental Rights (CXI/2011) came into force on 1 January 2012.¹¹⁹

Negotiations on creating a **Belgian** NHRI, begun in 2006, continued, leading to the creation of an inter-federal task force to prepare for an NHRI's creation by 30 June 2013. The new NHRI would integrate three institutions: the reformed Equality Body (the future Interfederal Centre for Equal Opportunities and Opposition to Racism); the existing Centre for the Equality of Men and Women; and a newly created Federal Centre for the Analysis of Migratory Flows, the Protection of the Fundamental Rights of Non-citizens and the Fight against Human Trafficking.¹²⁰

112 United Kingdom, Equality and Human Rights Commission (2012), p. 22.

113 For more information on the Parliamentary Ombudsperson, see: www.oikeusasiamies.fi.

114 Lithuania, *Seimas* (2012), No. XIP-4638(2), 24 September 2012; and, for the Paris Principles, see UN, General Assembly (1993), Resolution A/RES/48/134, 20 December 1993.

115 Croatia, Ombudsman's Act, Official Gazette No. 76, 9 July 2012.

116 Croatia, Official Gazette No. 86, 27 July 2012.

117 Denmark, Act No. 553 of 18 June 2012.

118 Netherlands, Netherlands Institute for Human Rights (2012).

119 Hungary, Fundamental Law of Hungary, Art. 30 (1)–(2); Act No. CXI. on the Commissioner for Fundamental Rights (2011. évi CXI. törvény az alapvető jogok biztosáról), 26 July 2011.

120 Bribosia, E., European network of legal experts in the non-discrimination field (2012).



The **Irish** Minister for Justice announced the government's intention to merge the Equality Authority and the Irish Human Rights Commission into a single body in 2012.¹²¹ The Bill is scheduled for publication in mid-2013, according to the government's legislative programme.¹²²

Some EU Member States carried out reforms of their national equality bodies, including those that are not also NHRIs, reflecting the need to reduce costs amid

austerity measures. The Office for Equal Opportunities in **Slovenia**, the main public institution for promoting equal opportunities and gender equality, was closed down in April 2012. Its staff, including the Advocate of the Principle of Equality, the Slovenian equality body, transferred to the Equal Opportunities and European coordination service, a newly created organisational unit under the authority of the Ministry of Labour, Family and Social Affairs.¹²³

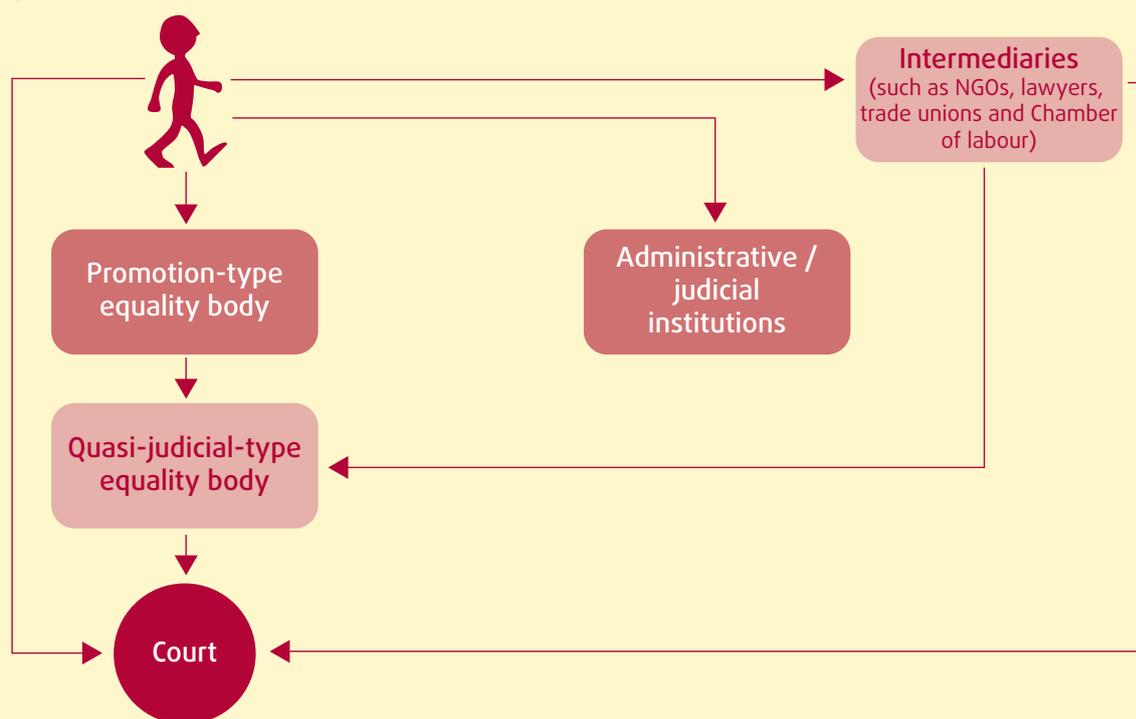
FRA ACTIVITY

Enhancing access to justice

FRA launched a report looking into some of the practical barriers that people who have been discriminated against face when accessing justice via equality bodies at its Fundamental Rights Conference, held at the European Parliament in Brussels in December 2012.

The analysis is based on interviews conducted with persons who brought a complaint of discrimination and with persons who had decided not to pursue a complaint further, as well as with lawyers and representatives of NGOs that provide advice and support to complainants and representatives of equality bodies in eight EU Member States: **Austria, Belgium, Bulgaria, the Czech Republic, Finland, France, Italy** and the **United Kingdom**. The study looked into the various options of accessing justice, as per Figure 8.2, and how interviewees perceived them.

Figure 8.2. How to access justice



The report concluded that three changes in particular would enhance access to justice via equality bodies: reducing complexity and increasing accessibility; strengthening the power of mechanisms; and boosting support to accommodate diversity and ensure a fundamental rights-based context.

This report supplements a 2011 FRA legal report, which analysed access to justice through judicial avenues.

For more information, see: <http://fra.europa.eu/en/publication/2012/access-justice-cases-discrimination-eu-steps-further-equality>

¹²¹ Ireland, Irish Human Rights and Equality Commission Bill 2012.

¹²² Ireland, Department of the Taoiseach (2012).

¹²³ Slovenia, Act amending public administration act, 19 March 2012.

The **Italian** government cut resources allocated to the National Office against Racial Discrimination (UNAR), prompting the Commissioner for Human Rights of the Council of Europe to express fears that the cuts could jeopardise UNAR's capacity to fulfil its role in the fight against discrimination.¹²⁴

In **Poland**, parliament was presented with a draft act envisaging the establishment of a new independent Defender for Protection against Discrimination mandated to tackle discrimination on the grounds of gender, race, ethnic origin, religion or belief, disability, age and sexual orientation.¹²⁵ The Parliamentary Legislative Committee,¹²⁶ however, declared the draft act unconstitutional.

Rhineland-Palatinate, one of **Germany's** 16 federal states (*Länder*), established a new governmental equality body incorporating the department of Anti-discrimination and Diversity into the State Ministry of Family Affairs;¹²⁷ in addition, the three ruling parties of the State of Schleswig-Holstein announced a coalition agreement on the foundation of a new State Anti-Discrimination Agency.¹²⁸

Some EU Member States extended the remit of national Equality Bodies. **Malta** expanded the mandate of the National Commission for the Promotion of Equality, following amendments to the Equality for Men and Women Act, to cover the promotion of equality on the basis of sexual orientation, age, religion or belief, racial or ethnic origin, and gender identity in employment, financial institutions and education.¹²⁹

Italy expanded UNAR's competence to cover not only discrimination based on race and ethnic origin but discrimination based on all the grounds covered in Council Directive 2000/78.¹³⁰

Outlook

The adverse effect of the economic crisis on access to justice, as with many other areas, continued in 2012, including by restricting legal aid to a more limited number of cases or decreasing the number of local courts. However, as was explored during the FRA's 2012 Fundamental Rights Conference, Justice in austerity – challenges and opportunities for access to justice, there are also numerous initiatives, some well under way and some burgeoning, that give reason for optimism in 2013 and beyond. 2012 also generated a reinvigorated debate on the need to underpin the rule of law across the EU and this will see developments during 2013.

While the main concern over the excessive length of proceedings persists, several EU Member States took action that not only reduced the time it takes to access justice but also helped to modernise justice systems in a way that should increase the quality, independence, efficiency, transparency and ultimately trust in these institutions. Various types of non-judicial bodies with a human rights remit, such as NHRIs and equality bodies, are increasingly viewed as cost-efficient and accessible bodies. Legal standing is receiving increased attention, boosted by EU action in the area of collective redress.

As for EU cross-border justice, 2013 will witness the proposal of two outstanding measures of the criminal procedure roadmap, namely on legal aid and safeguards for vulnerable persons (measures C2 and E) in a package that includes an initiative on the presumption of innocence. Court decisions in civil matters will be expedited by the late 2012 developments on the Brussels I regulation that simplifies the cross-border enforcement of judgments, and the promotion and application of mediation as an alternative to justice will be furthered.

124 Council of Europe, Commissioner for Human Rights (2012).

125 Poland, Draft act on the Defender for Protection against Discrimination.

126 Poland, Parliamentary Legislative Committee (2012).

127 Germany, Ministry for Integration, Family, Children, Youth and Women of Rhineland-Palatine (2012).

128 Germany, Act IX of 2012.

129 Malta, National Commission for the Promotion of Equality (2012).

130 Council Directive 2000/78/EC, OJ 2000 L 303; and Italy, Decree 31 May 2012.



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UN & CoE

January

February

14 March – Turkey becomes the first Council of Europe member state to ratify the Convention on Preventing and Combating Violence against Women and Domestic Violence (*Istanbul Convention*)

March

April

May

June

July

August

September

4 October – Council of Europe Group of Experts on Action against Trafficking in Human Beings (GRETA) publishes Second General Report on its activities

October

November

December

EU

10 January – European Protection Order for crime victims (EPO), endorsed by the European Parliament on 13 December 2011, enters into force

January

February

March

April

May

19 June – European Commission adopts the *EU strategy towards the eradication of trafficking in human beings 2012–2016*

June

July

August

September

25 October – European Parliament and the Council of the European Union adopt a directive on establishing minimum standards on the rights, support and protection of victims of crime in the EU (*EU Victims' Directive, 2012/29/EU*)

October

November

6 December – Council of the European Union adopts Conclusions on combating violence against women, and the provision of support services for victims of domestic violence

14 December – Portugal becomes the first EU Member State to pass in parliament the bill of ratification of the Convention on Preventing and Combating Violence Against Women and Domestic Violence (*Istanbul Convention*)

December