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Rights of crime victims



With the adoption of the European Union (EU) directive establishing minimum standards on the rights, support and protection of victims of crime, which replaced a 2001 Framework Decision, the year 2012 witnessed a decisive step in the development of enforceable rights of victims of crime: for the first time, the European Commission was empowered to ensure the fulfilment of rights of crime victims by monitoring the transposition of the directive into EU Member States' national legislation and, if necessary, by bringing infringement proceedings to the Court of Justice of the European Union. The year also saw important progress in the field of victims' rights, particularly policies addressing labour exploitation and violence against women, while Member States continued in their efforts to ratify the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence.

9.1. EU and Member State developments

9.1.1. EU level: victims' package

On 25 October 2012, the European Parliament and the Council of the European Union adopted a directive establishing minimum standards on the rights, support and protection of victims of crime (*EU Victims' Directive*).¹ The directive entered into force on 15 November, replacing the Council Framework Decision on the standing of victims in criminal proceedings.

With the adoption of the new directive, which constituted Measure A of the Council of the European Union's *Roadmap for strengthening the rights and protection of victims*,² Measure B providing the EU Member States with guidance when implementing the directive is the roadmap's next step. It will recommend practical measures by taking stock of the existing best practices among Member States in the field of assistance and protection

Key developments in the area of the rights of crime victims

- The European Parliament and the Council of the European Union adopt a Directive establishing minimum standards on the rights, support and protection of victims of crime, replacing the 2001 Framework Decision on the standing of victims in criminal proceedings.
- The European Commission adopts the *EU Strategy towards the Eradication of Trafficking in Human Beings 2012-2016*, which identifies key priorities the EU should focus on to combat trafficking in human beings.
- EU Member States take steps to strengthen the protection of victims of violence against women as part of their preparations to ratify the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence (*Istanbul Convention*).

to victims of crime and building on them within the framework of the applicable legislative instruments.³

¹ Directive 2012/29/EU, OJ 2012 L 315.

² Council of the European Union (2011); for more information, see: FRA (2012a), Section 9.1.1.

³ Council of the European Union (2011), p. 6.

EU Member States have three years, until 16 November 2015, to adopt the necessary national provisions and measures. The United Kingdom and Ireland opted in to this directive. Denmark is not taking part and will neither be bound by nor subject to its application.

“The criminal justice systems of the EU Member States have sometimes been too focused on the criminal and not enough on the victim. With this new European law, we will strengthen the rights of victims. Nobody wants to fall victim to a crime, but if it happens, people should be safe in the knowledge they will have the same basic rights everywhere in the European Union. Every year, an estimated 15 % of Europeans or 75 million people in the European Union fall victim to a crime.”

European Commission, Vice-President and Commissioner for Justice, Fundamental Rights and Citizenship Viviane Reding, Press release, Luxembourg, 4 October 2012, available at: http://europa.eu/rapid/press-release_IP-12-1066_en.htm

9.1.2. National developments

Several EU Member States took concrete measures to strengthen victims’ rights over the course of 2012. This included enacting new legislation expanding the definition of victims and the rights of victims, both during the investigation of a crime and throughout criminal proceedings. Several countries also strengthened the rights of ‘indirect’ victims such as family members.

In early 2012, the **Czech** government thus strengthened the situation of victims by adopting⁴ an Act on the Victims of Crime.⁵ The lower house of the Czech Parliament passed the act in December 2012, which is expected to proceed through the upper house in 2013.⁶ The act organises and extends the rights of victims in criminal proceedings, increases state financial aid provisions and introduces a duty to provide information to victims on where they can access support.

A **Dutch** act extending the categories of persons entitled to speak in court during criminal procedures took effect on 1 September 2012.⁷ The Act on the extension of the right to speak in court for victims and next of kin during criminal procedures grants the right to speak to any family member with close family ties to the deceased victim. Parents or guardians of children under the age of majority who are not able or are too young to speak for themselves also now have the right to speak in court.⁸

4 Czech Republic, Government ruling No. 82, August 15, 2012.
5 The Chamber of Deputies refers to the act as print No. 617.
6 Czech Republic, The Chamber of Deputies, *Sněmovní tisk 617/0, část č. 1/5 N.z. o obětech trestných činů – EU*.
7 Netherlands, Act extending the categories of persons entitled to speak in court during criminal procedures, 12 July 2012.
8 Netherlands, Ministry of Security and Justice (2012).

Promising practice

Improving the quality of victim support services

The Capacity Building for EU Crime Support Project (CABVIS) is an EU-wide project supporting victims of crime. It aims at promoting the implementation of EU measures for supporting victims of crime and improving the quality of victim support services.

Partner organisations from several EU Member States are participating in the project, which is funded by the European Commission’s Criminal Justice Programme. It tackles difficulties arising from the lack of harmonised victim support services among EU Member States and from the legal implementation of EU measures. In this way, the project addresses the gap between the availability of and the need for victim support in the EU.

CABVIS focuses on a range of activities including:

- improving the networking and knowledge exchange of victim support organisations, with a special focus on cross-border victimisation issues;
- informing about EU Member States’ legal systems and access to justice within them;
- enhancing the training capacity of victim support organisations; and
- organising informative seminars for police officers, judicial practitioners and other stakeholders.

Victim Support Europe, the umbrella network for national victim support organisations in Europe, developed the project with financial support from the European Commission Directorate-General Justice. Germany, Hungary, the Netherlands, Portugal, and the United Kingdom are participating in the project, which is managed by the Portuguese Association for Victim Support (*Associação de Apoio à Vítima, APAV*).

Products under development include a leaflet on cross-border victimisation, which is being translated into around 30 languages, and a handbook on the European 116006 helpline. All publications will be made available on Victim Support Europe’s website.

For more information, see: <http://victimsupporteurope.eu/about/projects/cabvis>

A group of **Polish** Members of Parliament brought a legislative initiative⁹ to the lower house of the parliament (*Sejm*) in May that makes it possible for everyone whose rights have been violated to

9 For more information, see: <http://orka.sejm.gov.pl/Druk17ka.nsf/o/D568BEE75E885C22C1257A45003F738D/%24File/604.pdf>.



challenge a prosecutor's decision not to initiate or to discontinue preparatory proceedings. Under the current state of affairs, thousands of people harmed by an offence against the public interest depend upon the prosecutor to take action. Under the initiative, persons who are directly or indirectly harmed by the offender's conduct would be entitled to appeal against the prosecutor's decisions.

Croatia's new Criminal Code (*Kazneni zakon*), which entered into force in January 2013,¹⁰ expands the definition of victims. It adds that a victim of a criminal offence is not only a person who has suffered property damage or physical, mental or emotional pain because of an unlawful act but is also a person against whom a serious violation of human rights and fundamental freedoms has been committed.¹¹

9.13. Victim support

Article 8 of the EU Victims' Directive underlines the necessity of having strong victim support structures, whether they are provided by public or non-governmental organisations or organised on a professional or voluntary basis. The directive requires EU Member States to ensure that victims "have access to confidential victim support services, free of charge, acting in the interests of the victims before, during and for an appropriate time after criminal proceedings."¹² This includes taking measures to establish specialist support services in addition to, or as an integrated part of, general victim support services, or to enable victim support organisations to call on existing specialised entities providing such specialist support.¹³ Family members of victims should also have access to support services.

To meet the costs of developing a victim support services structure, some EU Member States have looked into alternatives to the state budget as funding sources. Several EU Member States, for example, raise money for generic victim support services through a victims' crime fund or the like, whereby persons convicted of an offence pay a fine to help fund crime victim services.

Article 9 of the EU Victims' Directive emphasises the special role that victim support services play in providing victims with information, advice and support related to: how to access compensation, their role in criminal proceedings and referral to specialist support services.

"Victim support services should (as a minimum) provide:

(a) information, advice and support relevant to the rights of victims including on accessing national compensation schemes for criminal injuries, and on their role in criminal proceedings including preparation for attendance at the trial;

(b) information about or direct referral to any relevant specialist support services in place;

(c) emotional and, where available, psychological support;

(d) advice relating to financial and practical issues arising from the crime;

(e) unless otherwise provided by other public or private services, advice relating to the risk and prevention of secondary and repeat victimisation, of intimidation and of retaliation."

Source: Directive 2012/29/EU of the European Parliament and the Council of 25 October 2012 establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ 2012 L 315, Art. 9 (1) a

A number of EU Member States reorganised victim support structures in 2012 to facilitate access to high-quality services.

In **Belgium**, the Flemish Minister of Welfare, Public Health and Family circulated a letter¹⁴ to general centres for social welfare in February announcing a restructuring between July 2012 and January 2014 to provide and facilitate access to affordable, high-quality social and care services.

In **France**, the Prime Minister signed a decree in May 2012 amending the Code of penal procedure and establishing a nation-wide structure of victim support offices (*Bureaux d'aide aux victimes*). These offices are located within the courthouse of each regional court (*Tribunal de grande instance*), managed by private associations and tasked with informing and advising victims throughout criminal proceedings and with regard to applying for compensation.¹⁵ The Ministry of Justice also published an online version of the guide of victims' rights, aimed at informing and helping victims to enforce their rights at all stages of criminal proceedings, including how to apply for legal aid or compensation. The guide also contains useful information for associations of victims and legal professionals.¹⁶

With the Police Reform and Social Responsibility Act 2011,¹⁷ the **United Kingdom** established the new posts of Police and Crime Commissioners (PCC) whose

¹⁰ Croatia, Criminal Code, 21 December 2012.

¹¹ *Ibid.*, Art. 87 (23) CC.

¹² Directive 2012/29/EU, OJ 2012 L 315, Art. 8 (1).

¹³ *Ibid.*, Art. 8 (3).

¹⁴ Belgium, Flemish Minister of Welfare, Public Health and Family (2012).

¹⁵ France, Ministry of Justice, Decree No. 2012-681 relating to the Offices for assistance to victims, 7 May 2012.

¹⁶ The eBook guide of victims' rights is available at: www.justice.gouv.fr/publications-10047/guides-professionnels-10048/parution-du-guide-les-droits-des-victimes-14413.html.

¹⁷ United Kingdom, Police Reform and Social Responsibility Act 2011, 15 September 2011.

responsibilities include assessing police response to victims. Elections for PCCs took place in November 2012 and the new commissioners took office on 22 November. They are also responsible for deciding and allocating the budget for most victim support, except where the government considers a national service is warranted, for example, to respond to terrorist attacks, homicide support and trafficking.¹⁸ The PCCs will now decide locally on both the provision of victim support and the funding for each area, replacing the previous system under which funding decisions were taken nationally and funds apportioned to local victim support schemes from within the same 'family'.

Under the reform, several different agencies could potentially deliver services. While not explicitly mentioned, it seems that the changes advocated in the consultation paper¹⁹ and the government response²⁰ will open the way for a further reduction in state funding. In contrast to the change in structure and funding of victim support, the government has made it clear that the Ministry of Justice²¹ will continue to fund witness support centrally. Figures suggest a slight decline in the numbers of witnesses receiving support: 240,000 in 2011–2012²² from 268,000 in 2010–2011.

In addition, the consultation paper and the government response advocate for Victim Support, the non-governmental organisation (NGO) currently responsible for generic victim support services in England and Wales, shifted emphasis towards victims most in need.

The EU Victims' Directive enshrines the importance of the availability of emotional and psychological support for victims in Article 9 (1) c. Across the EU the psychological needs of victims of crime are increasingly acknowledged, as evidenced by 2012 policy developments in several EU Member States, such as the development of psycho-social programmes and funds for financial and psychological aid, psycho-social court assistance and guidance on criminal procedures such as trials.

The **Slovenian** Ministry of Interior (*Ministrstvo za notranje zadeve*), for example, adopted a resolution to establish a national plan on the Prevention and Combating of Crime 2012–2016.²³ One of the goals of the resolution was to strengthen the protection and support to victims through mechanisms such as funds for financial and psychological aid. One of the strategies outlined in the resolution was the development

of psycho-social programmes and emergency accommodation for persons in distress.

In June, the Conference of the Ministers of Justice (*Konferenz der Justizministerinnen und Justizminister*) in **Germany** adopted a resolution on psycho-social court assistance. The ministers stressed the importance of this type of support for victims of violent crime and emphasised the need for targeted training for support staff. Ministers also agreed on the need for comparable and standardised national quality standards for psycho-social court assistance and support for witnesses and victims in criminal proceedings, and commissioned a working group to develop such standards.²⁴

In parallel with these developments, civil society organisations as well as some federal states (*Länder*) are designing guidelines on such assistance. The National Association of Women's Counselling and Rape Crisis Programmes (*Bundesverband der Frauenberatungsstellen und Frauennotrufe*), for example, published guidelines on psycho-social assistance for girls and women in criminal proceedings.²⁵

The Ministry of Justice of Lower Saxony (*Niedersächsisches Justizministerium*) developed – together with professionals from the justice system, police, victim support organisations and public healthcare – minimum standards for psycho-social court assistance in Lower Saxony and started a training scheme in psycho-social court assistance for support staff of the support organisation '*Niedersächsische Opferhilfe e.V.*' in Lower Saxony, to guarantee psycho-social court assistance all over Lower Saxony.²⁶

The umbrella organisation, Working Group of Victim Support in Germany (*Arbeitskreis der Opferhilfen in Deutschland e.V.*), published minimum standards for psycho-social assistance for victim and witnesses in criminal proceedings.²⁷

In **Austria**, the number of victims receiving psycho-social and legal guidance is trending higher, rising to 4,499 in 2012 from 2,829 in 2008. Victims have the right to the psycho-social and the legal guidance (*Prozessbegleitung*) necessary to guarantee their procedural rights, according to Section 66 (2) Criminal Procedure Act (*Strafprozessordnung*, StPO). Psycho-social guidance includes preparation for trial and accompaniment to interrogations. Legal guidance includes legal advice and representation by an attorney.

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

19 *Ibid.*

20 Response to the consultation process was published in July; see: United Kingdom, Ministry of Justice (2012b).

21 *Ibid.*

22 United Kingdom, Victim Support (2012), p. 31.

23 Slovenia, Resolution on the national plan on the prevention of and combating crime 2012–2016, 12 July 2011.

24 Germany, 83rd Conference of the Ministers of Justice (2012).

25 Bürner, S. (2012).

26 Germany, Ministry of Justice of Lower Saxony (2012).

27 Germany, Working Group of Victim Support in Germany (2012).



Croatian support offices were established between 2008 and 2011 as part of an overall institutional structure to provide victim/witness support. This included the setting up of ministerial departments that supply information to victims, a National Committee for the Support of Victims/Witnesses and seven county court offices for victims and witnesses of crime.²⁸ This model was praised and recommended as a promising practice to be emulated across southeast Europe.²⁹

FRA ACTIVITY

Assessing victim's rights in practice

FRA carried out research in 2012 on the support services available in all 27 EU Member States and Croatia. A key objective of the project, *Victim Support Services in the EU: An overview and assessment of victims' rights in practice*, is to present promising practices in victim support services.

The project focuses on measures, projects and other initiatives in victim support services that have proven particularly effective and/or innovative and can serve as models for implementation across the EU in line with the requirements of the Victims' Roadmap, especially Measure B, concerning recommendations on practical measures and best practices in relation to the Victim's Directive.

The project provides the first independent overview of targeted victim support services in the EU's 27 Member States and Croatia, including a review of current practices and gaps in provision at the national and regional level. The project will look at the services that both states and NGOs provide with a view to developing an overview of the various models and features of victim support in existence across the EU.

FRA will finalise an initial report on generic victim support provisions in the EU-27 and Croatia in 2013.

For more information, see the project page and the project factsheet, available at: <http://fra.europa.eu/en/project/2012/victim-support-services-eu-overview-and-assessment-victims-rights-practice>

9.1.4. Compensation

While EU Member State data show that the number of victims applying for compensation across the EU continues to be low, caution should be exercised when interpreting why this is so. In addition to a lack of information and the complexity of procedures and paths to claim compensation, it is possible that many victims

either do not consider compensation a main concern or they have insurance. In addition, in many Member States, victims of crime must first exhaust the possibility of receiving compensation from the offender before being able to apply for state compensation.³⁰

In 2011 in **Germany**, a mere 10.4 % of all victims of crimes involving violent acts applied for compensation under the Crime Victim's Compensation Act (*Gesetz über die Entschädigung von Opfern von Gewalttaten*, OEG) and less than 40 % of the applications were granted, according to data collected by the victim's association the white ring (*Weißer Ring*). Compared to the total number of victims of reported crime, these figures show that less than 4 % of victims receive compensation under the OEG.³¹

The amount of money paid in compensation in **Poland** has increased from €14,500 in 2006 to €57,250 in 2008 and €102,938 in 2011 (seven times the amount in 2006), however it still remains very low. Incomplete absorption of financial assets is linked to the low number of applications lodged, due mostly to victims' lack of awareness of their rights. The Ministry of Justice has taken a number of measures to disseminate information and raise awareness of victims' rights.

The number of victims of crime in **Romania** applying for and receiving financial compensation remained consistently low from 2010 to 2012. Eight victims out of 13 who applied obtained financial compensation in 2012, against seven out of 12 in 2011 and eight out of 21 in 2010, according to information from the Romanian Ministry of Justice. The total amount of compensation paid was roughly €10,120 (RON 45,538). The data also show regional differences, with fewer than half the courts – 15 of 40 – receiving applications for compensation from 2010 to 2012.

Several EU Member States amended the regulation and conditions of compensation claims and increased efforts to raise awareness among victims about how to claim compensation.

The National Council for Support and Compensation of Victims of Crimes of **Bulgaria** (NCSCVC) produced an updated brochure providing information to victims of crime about the procedure to apply for compensation.³² The brochure is available on the council's website in Bulgarian and English.³³ Following complaints about law enforcement officers' failure to provide timely information to victims of crime on their rights to compensation, an obligation under the Support and Financial

²⁸ For more information, see: FRA (2012a), p. 220.

²⁹ Council of Europe, Parliamentary Assembly (PACE) (2011), para. 15.

³⁰ Directive 2012/29/EU, OJ 2012 L 315, Art. 16.

³¹ Germany, *Weißer Ring* (2012).

³² Bulgaria, NCSCVC (2012a), point 3.1.

³³ Bulgaria, NCSCVC (2012b).

Compensation of Victims of Crime Act (Article 6), the NCSCVC is taking measures to ensure that they fulfil this obligation. In an effort to make the compensation mechanism clearer and more accessible, the NCSCVC approved a model application for financial compensation and a list of required documents for its consideration.³⁴

Measures are also under way in **Estonia** to simplify the procedure for victims seeking compensation for damages,³⁵ and the Ministry of Justice (*Justiitsministeerium*) has said it intends to amend the Criminal Procedure Act (*Kriminaalmenetluse seadustik*).³⁶ The draft law attempts to address the concerns revealed by a University of Tartu study on victims and witnesses in criminal procedures conducted in 2011.³⁷

The system is causing so-called ‘secondary’ victimisation – a recognised problem in research on victims – under which inappropriate treatment during criminal proceedings, for example, subjects victims to additional or “re-victimisation at the hands of the criminal justice system itself”, the study showed.³⁸ It attributed this phenomenon to victims having insufficient information about their rights during the criminal procedure or of the possibility to demand compensation from the perpetrator. Victims also lack information concerning available support from the state, including state legal aid and compensation mechanisms.

9.2. Rights of victims of domestic violence and violence against women

Domestic violence against women in Europe remains widespread and under-reported and victims of violence are not effectively supported by public services, according to research conducted by the European Institute for Gender Equality (EIGE) in 2011 and 2012.³⁹

Insufficient specialised services for women victims of violence and the absence of mandatory gender-sensitive training for professional helpers of victims and perpetrators are only a few of the reasons put forward in EIGE’s 2012 report, *Review of the Implementation of the Beijing Platform for Action in the EU Member States: Violence against Women – Victim Support*. It also highlights shortcomings in state funding of specialised services for women victims of violence. The report points out that while all 27 EU Member States

have counselling centres/services for victims of violence, EIGE’s research shows that only eight Member States (**Cyprus, Germany, Ireland, Luxembourg, Malta, Slovenia, Sweden** and the **United Kingdom**), as well as **Croatia** fulfil the Council of Europe’s recommended ratio of one counselling centre/service per 50,000 women.⁴⁰

FRA ACTIVITY

Surveying violence against women

FRA conducted the first EU-wide survey on gender-based violence against women in 2012, interviewing a random, representative sample of more than 40,000 women in the 27 EU Member States and Croatia. The research will for the first time provide comparable data on the extent, nature and consequences of gender-based violence against women in the EU – including physical, sexual and psychological violence, sexual harassment and stalking, involving acts committed by both intimate partners and other persons.

The findings of the survey will be released in 2014.

For more information, see: <http://fra.europa.eu/en/project/2012/fra-survey-womens-well-being-and-safety-europe>

The EU Victims’ Directive reinforces the rights of women who are victims of gender-based violence. The directive also holds that such victims and their children often require special support and protection because of the high risk of secondary and repeat victimisation, of intimidation and of retaliation connected with such violence and also because they are disproportionately affected by violence in close relationships.⁴¹ The directive calls for specialist support services (referred to in Article 8 (3)) to develop and provide “targeted and integrated support for victims with specific needs, such as victims of sexual violence, victims of gender-based violence and victims of violence in close relationships, including trauma support and counselling.”⁴²

The directive requires that EU Member States implement a number of other special measures determined on the basis of individual needs assessments. Such protective measures would ensure, for example, that those conducting interviews with victims of sexual violence, gender-based violence or violence in close relationships be of the same sex as the victim, if the victim so wishes. Other measures include avoiding unnecessary questioning, holding private hearings or using communication technology so that the victim need not be physically present during a trial.⁴³

34 Bulgaria, NCSCVC (2012a) and (2012c), point 3.

35 Estonia, Ministry of Justice (2012).

36 Estonia, Criminal Procedure Act, 9 July 2012.

37 Estonia, University of Tartu, Centre for Applied Social Sciences (2012).

38 Hucklesby, A. and Wahidin, A. (2009), p. 363.

39 EIGE (2012a), p. 2.

40 EIGE (2012b).

41 Directive 2012/29/EU, OJ 2012 L 315, Recitals 17 and 18.

42 *Ibid.*, Art. 9 (3) b.

43 *Ibid.*, Art. 22 and 23.

In addition, the directive asks Member States to “take appropriate action, including through the internet, aimed at raising awareness of the rights set out in this Directive, reducing the risk of victimisation, and minimising the negative impact of crime and the risks of secondary and repeat victimisation, of intimidation and of retaliation, in particular by targeting groups at risk such as children, victims of gender-based violence and violence in close relationships. Such action may include information and awareness-raising campaigns and research and education programmes, where appropriate in cooperation with relevant civil society organisations and other stakeholders.”⁴⁴

In December, under the Cyprus Presidency of the Council of the European Union, the Council of Ministers of Justice and Internal Affairs adopted conclusions on *Combating Violence Against Women, and the Provision of Support Services for Victims of Domestic Violence*.⁴⁵ The Council conclusions call on EU Member States and the European Commission to strengthen action plans and programmes to prevent and combat violence against women. The document proposes several areas for further development, such as: developing a European Strategy for preventing and combating all forms of violence against women; improving the handling of complaints at Member State level; providing or strengthening appropriate training; and considering establishing a European helpline. They also call on the European Parliament, the European Commission and Member States to consider signing, ratifying and implementing the Council of Europe Convention on Preventing and Combating Violence against Women and Domestic Violence.

Following the adoption of the Council of Europe’s Convention on Preventing and Combating Violence against Women and Domestic Violence (*Istanbul Convention*) on 11 May 2011, EU Member States continued to make efforts to ratify the convention in 2012. Seventeen Member States had signed the convention by December 2012 (for the situation on signatures and ratifications as of 31 December 2012, see [Chapter 10](#)).⁴⁶

A number of Member States implemented national policies and other measures in 2012 as they prepared to ratify the Istanbul Convention. As part of its preparations, the **Slovakian** Ministry of Labour, Social Affairs and Family, for example, drafted amendments throughout the year to laws on the labour code, social

services, equal treatment, socio-legal protection of children and social guardianship.⁴⁷

Slovakia also worked on improving the regional availability of assistance and services provided to women and children who are victims of domestic violence. The project’s ambition is to develop a nationwide network of facilities that specialise in helping victims of domestic violence. An emergency hotline available 24/7 to provide free counselling to victims of domestic violence will be an integral part of the network. The project, which received financial support from the European Social Fund, also plans to establish the Coordination and Methodological Centre for Violence against Women and Domestic Violence (*Koordináčné a Metodické centrum prevencie a eliminácie násilia na ženách a domáceho násilia*)⁴⁸ to help eliminate such violence altogether. The government began elaborating a legal analysis and is to propose necessary legislative changes in 2013 with a view to implementing and ratifying the Istanbul Convention.

Romania amended Law No. 217/2003 on the prevention and combating of domestic violence⁴⁹ in March 2012. The law establishes multi-agency teams to help prevent and combat domestic violence at a local level.⁵⁰ The team is composed of representatives of police, local health authorities, social welfare and child protection authorities, probation services, NGOs, forensic services as well as any other institution with a relevant mandate. The role of the team is to ensure cooperation between the institutions involved in preventing and combating domestic violence and to suggest measures to improve interventions in cases of domestic violence. The ministries and other bodies of the central public administration will elaborate a national strategy in order to prevent and fight domestic violence. The strategy will be accompanied by an internal mechanism to coordinate and monitor the measures taken for its implementation.⁵¹

Croatia took into account relevant convention provisions when drafting its new Criminal Code, with a view to the signature and ratification of the Istanbul Convention. The amended code marks a change in Croatia’s approach to domestic violence, as it no longer criminalises a specific criminal offence,⁵² but instead explicitly treats several

44 *Ibid.*, Art. 26 (2).

45 Council of the European Union (2012)

46 EU Member States that had signed the convention by 31 December 2012: Austria, Belgium, Finland, France, Germany, Greece, Italy, Luxembourg, Malta, the Netherlands, Poland, Portugal, Slovakia, Slovenia, Spain, Sweden and the United Kingdom. Croatia signed the convention on 22 January 2013.

47 Information provided upon request by the Ministry of Labour, Social Affairs and Family.

48 This section is based on information provided upon request by the Ministry of Labour, Social Affairs and Family on 23 August 2012.

49 Romania, Law No. 217/2003 on the prevention and combating of domestic violence, 22 May 2003.

50 *Ibid.*, Art. 13, para. 4.

51 Romania, Law No. 25/2012 amending Law No. 217/2003 on the prevention and combating of domestic violence, 9 March 2012, Art. 5.

52 Croatia, Criminal Code, 21 December 2012.

factors as aggravating circumstances warranting more severe punishment. These include: an offence against a family member (for example, bodily injury); or a family member whom the perpetrator had already abused (aggravated murder); or a person who is especially vulnerable due to certain particular circumstances, such as age or pregnancy.

In line with the Istanbul Convention's requirements, the new Criminal Code also introduces several offences that explicitly aim at protecting women against violence and discrimination, including female genital mutilation, stalking, sexual harassment and forced marriage. The new code amends some existing gender-neutral offences that disproportionately affect women in order to further strengthen their protection. The Croatian government adopted a decision to initiate the procedure for signing the convention in December 2012.

In **Italy**, the Sicily and Lombardy regions approved regional laws against gender-based violence in 2012.⁵³ The two texts provide operative measures to help women and formally set up regional and local anti-violence networks. Following a country visit to Italy in January 2012, however, the UN Special Rapporteur on violence against women – despite acknowledging the evolution of the Italian legal framework and judicial protection measures to combat violence against women in recent years – characterised the actual structure as being fragmented and not allowing for effective redress for women victims of violence, thus contributing to “the silencing and invisibility surrounding violence against women, its causes and consequences.” She also identified a lack of a coordinating government policy, and stressed the necessity of effectively investing in victim support. As part of her recommendations, she cited the need for the government to improve support services and the provision of legal aid, and specifically, “enhance coordination and exchange of information among the judiciary, police and psychosocial and health operators who deal with violence against women.”⁵⁴

In **Germany**, the draft of the Federal Government for an Act of Strengthening the Rights of Victims of Sexual Abuse is still pending before the German Parliament (*Deutscher Bundestag*). The proposal suggests changes to the criminal procedure code, reducing multiple interviewing of victims in court proceedings and improving access to specialised lawyers for adult victims. It supplements provisions excluding the public from hearings with victims who are minors and extends the rights of

victims to receive information.⁵⁵ The law of 1 December establishing an emergency telephone number for women victims of violence (*Hilfetelefongesetz*) entered into force on 14 March.⁵⁶

In some EU Member States, debates emerged over domestic violence and the question of how to effectively protect women against violence, also in relation to measures outlined in the convention, sparking heated debate in some cases.

In **Lithuania**, for example, several organisations including the National Association of Families and Parents (*Nacionalinė šeimų ir tėvų asociacija*), the Lithuanian Family Centre (*Lietuvos šeimos centras*) and the Centre of Marriage and Family Studies of Vytautas Magnus University (*VDU Santuokos ir šeimos studijų centras*) issued an address to the government and the head of parliament stating that Lithuania should not adhere to the Istanbul Convention because it “promotes gender ideology”.⁵⁷

The Istanbul Convention also sparked controversy in **Poland**, leading to an ideological division within the government. The Government Plenipotentiary for Equal Treatment supported the convention, but the Minister of Justice opposed it. The Minister of Justice declared that ratification would threaten the Polish family model because it obliges state parties to eliminate traditional gender roles.⁵⁸ The Minister claimed that the convention “generates diverse interpretations, while its final interpretation will not depend on the Polish government or Parliament, so in result it is limiting the national sovereignty”.⁵⁹

Banning the perpetrator from the home is a cornerstone of any effective policy on supporting and protecting the rights of victims of domestic violence. The European Protection Order (EPO), which was adopted by the European Parliament on 13 December 2011, reflects the importance of this measure. The EPO, which relates to criminal matters, will be complemented by an instrument with regard to protection orders decided by civil courts.

EIGE's report, *Violence against Women – Victim Support*, also highlights EU Member States' increasing acknowledgment that imposing physical distance between the perpetrator and the victim is key to protecting victims of domestic violence from further violence. EIGE's research

53 Italy, Sicily Region (Regional Law No. 3, Rules for the contrast and the prevention of gender-based violence, 3 January 2012; Italy, Lombardy Region, Regional Law No. 47, Measures of prevention, enforcement and support of women victims of violence, 26 June 2012.

54 United Nations, General Assembly (2012).

55 Germany, Federal Parliament, Draft of the Federal Government for an Act of Strengthening the Rights of Victims of Sexual Abuse, 22 June 2011.

56 For more information about the details about the helpline, see: FRA (2012a), p. 225.

57 Bernardinai.lt (2012).

58 Gazeta Wyborcza (2012).

59 Polish Press Agency (2012).



shows that the police in 10 Member States can expel perpetrators from the residence and forbid them from approaching or contacting the victim for a set period of time: **Austria**, the **Czech Republic**, **Denmark**, **Finland**, **Germany**, **Hungary**, **Luxembourg**, the **Netherlands**, **Slovakia** and **Slovenia**.⁶⁰

Promising practice

Assisting migrants who are experiencing domestic violence

The Irish Naturalisation and Immigration Service published guidelines in August 2012 that set out how it deals with victims of domestic violence who are foreign nationals and whose current immigration status hinges on their relationship to the perpetrator of the violence. It explains how victims of domestic violence whose relationships have broken down can apply for independent immigration permission in their own right, thus ensuring that migrants who are victims of domestic violence are not compelled to remain in abusive relationships for fear of losing their immigration status.

Source: Ireland, Irish Naturalisation and Immigration Service (2012), Victims of Domestic Violence – Immigration Guidelines, August 2012, available at: www.inis.gov.ie/en/INIS/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf/Files/Victims%20Of%20Domestic%20Violence%20-%20Note%20for%20Web.pdf

In **Spain**, the police power to arrest has been extended to protect victims until a court order can be issued. In the **United Kingdom**, powers to ban the perpetrator from the home for up to 28 days have been piloted in three police areas in England. Courts in **Finland**, **France**, **Greece**, **Ireland**, **Italy**, **Lithuania**, **Malta** and **Sweden** can issue rapid injunctions to expel perpetrators and ensure non-contact, or prosecutors can issue interim protection orders.

Belgium enacted a law on the temporary banning of a violent partner from the home in case of domestic violence. The public prosecutor can oblige the violent partner to immediately leave the residence for a maximum of 10 days.⁶¹

Romania amended Law No. 217/2003 on the prevention and combating of domestic violence⁶² in March 2012. Among other things, victims of domestic violence may now petition the court for a restraining order, compelling perpetrators to leave the common domicile, to maintain

a minimum distance from victims or their families and workplace, and cease any contact with the victim.⁶³ The application will be tried via a fast track procedure and a lawyer must assist the applicant.⁶⁴

In **Denmark**, Act No. 112 of 2012⁶⁵ is expected to strengthen the protection of persons against persecution, harassment and violation of privacy, including stalking. Until 3 February 2012, several different statutes had provisions regulating stalking. This new act, however, combines these provisions into a single act and strengthens the possible measures that can be taken against stalkers. Under the act, any contact is now considered a violation of a restraining order – not just contact that is considered a violation of the victim's peace. Breaches of restraining orders, exclusion orders and expulsion are punishable by fines and up to two years of imprisonment, and any violation that amounts to stalking will be considered an aggravating circumstance.⁶⁶

The **Lithuanian** Ministry of Social Security and Labour (*Socialines apsaugos ir darbo ministerija*), in cooperation with NGOs, began to regulate the activities of specialised domestic violence assistance centres (*specializuotu pagalbos centru veiklos aprasas*).⁶⁷ Such centres are created in accordance with the Law on Protection against Domestic Violence.⁶⁸ Centres must employ "consultants with social science education. Priority is given to psychologists, social workers or jurists."⁶⁹ A body to coordinate the assistance centres is to be established.⁷⁰

In addition, a new amendment to the Lithuanian law on protection against domestic violence was submitted in November 2012, which provides more thorough regulation on financing and implementation of preventive measures. One suggested change is that the municipalities must provide "preventative measures aimed at victims of domestic violence" in their strategic planning documents.⁷¹

In the **Czech Republic**, the new Civil Code adopted on 3 February 2012, which will become effective on

63 *Ibid.*, Art. I PCT. 27.

64 *Ibid.*

65 Denmark, Act No. 112 of 3 February 2012 on restraining orders, exclusion orders and expulsion, 30 June 2009.

66 *Ibid.*, Section 21.

67 Lithuania, Ministry of Social Security and Labour (2012), Order of the Minister of Social Security and Labour on approval of the description of specialised assistance centres' activities, 10 May 2012.

68 Lithuania, Law on protection against domestic violence, 26 May 2011, Art. 8, part 3 provides that the centres are established "with priority given to non-governmental organisations".

69 Lithuania, Ministry of Social Security and Labour (2012).

70 *Ibid.*

71 Lithuania, Ministry of Interior, Draft law on amendment of Article 4 of the Law on protection against domestic violence, 2011.

60 EIGE (2012a), p. 24.

61 Belgium, Act on the temporary ban in case of domestic violence of 15 May 2012. The law entered into force on 1 January 2013.

62 Romania, Law 217/2003 on the prevention and combating of domestic violence, 22 May 2003.

1 January 2014 (Law No. 89/2012 Coll.),⁷² introduces in Section 751 a special provision on protection against domestic violence.

9.3. Rights of victims of trafficking and severe forms of labour exploitation

The European Commission adopted the *EU Strategy towards the Eradication of Trafficking in Human Beings 2012–2016* on 19 June 2012.⁷³ The strategy identifies five priorities that the EU should focus on in order to address the issue of trafficking in human beings:

- identifying, protecting and assisting victims of trafficking;
- stepping up the prevention of trafficking in human beings;
- increasing prosecutions of traffickers;
- enhancing coordination and cooperation among key actors and policy coherence;
- increasing knowledge of and an effective response to emerging concerns related to all forms of trafficking in human beings.

Besides its five core priorities, the strategy also outlines a number of actions the European Commission proposes to implement between 2012 and 2016 together with other actors, including EU Member States, the European External Action Service, EU institutions, EU agencies, international organisations, third countries, civil society and the private sector.

The strategy also makes reference to the role of EU agencies in coordinating and carrying out its priorities and action points. Under priority A, for example, 'Identifying, protecting and assisting victims of trafficking', Action 3 on 'Protection of Child Victims of Trafficking', the strategy states that: "[i]n 2014, together with the European Union Agency for Fundamental Rights, the Commission intends to develop a best practice model on the role of guardians and/or representatives of child victims of trafficking."⁷⁴

The Irish High Court, in *Hussein v. the Labour Court*, held on 31 August 2012, that national employment

legislation does not cover undocumented migrant (non-EU/non-EEA) workers because of their illegal status.⁷⁵ The case concerned an undocumented worker whose employer paid him as little as 55 cents an hour while he worked 77 hours a week over a prolonged period of time. The judge expressed deep concern that this exclusion of undocumented migrant workers could cause serious injustice, and he had a copy of his decision transmitted to the parliament so that it could consider the policy implications for the Employment Permits Act of 2003 as manifested in his judgment.

Promising practice

Training labour inspectors to identify potential trafficking victims

Portuguese authorities coordinated two awareness-raising programmes on human trafficking, aiming to improve labour inspectors' ability to identify potential trafficking situations. The Observatory on Trafficking in Human Beings (*Observatório do Tráfico de Seres Humanos*, OTSH), the Commission for Citizenship and Gender Equality (*Comissão para a Cidadania e Igualdade de Género*) and the Authority for Working Conditions (*Autoridade para as Condições de Trabalho*) in Portugal jointly coordinated the programmes for labour inspectors, delivering sessions in Lisbon and Porto to some 100 labour inspectors.

In April 2012, in partnership with the United Nations Office on Drugs and Crime in Vienna, the OTSH organised a Trainers' Training Programme for national experts. The main goal was to provide these professionals with training skills, with which they could then provide training in their own organisations in Portugal, as well as in their organisational counterparts in all Portuguese-speaking countries.

The OTSH also organised a training week for criminal justice practitioners in Portuguese-speaking countries from 17 to 21 September.

For more information, see: Portugal, Observatório do Tráfico de Seres Humanos (OTSH) (2012), available at: www.otsh.mai.gov.pt/?area=203&mid=000&sid=1&sid=000&cid=CNT4b605e9175313

On reaching his conclusions, the judge said: "While this conclusion seems [...] to be inescapable on the application of established legal principles, it is not a result which yields much satisfaction. If [*the complainant's*] account is correct – and let it be recalled that both the Commissioner and the Labour Court found that it was – then he has been the victim of the most appalling exploitation in respect of which he has no effective recourse."

⁷² Czech Republic, Civil Code, Law No. 89/2012, 3 February 2012.

⁷³ European Commission (2012).

⁷⁴ For FRA reports on human trafficking, see: <http://fra.europa.eu/en/publications-and-resources>.

⁷⁵ Ireland, High Court, *Hussein v. the Labour Court*, 31 August 2012, paras. 22–24.



The Council of Europe's Group of Experts on Action against Trafficking in Human Beings (GRETA) recognised that there is insufficient outreach work and a lack of proactive approach in the identification of trafficking victims, in particular as regards labour exploitation cases and children.⁷⁶ GRETA's findings also show that despite the fact that trafficking for the purpose of labour exploitation is on the rise, inadequate training and intelligence gathering hinders the relevant professionals (in particular labour inspectors) from identifying victims.

One recommendation by GRETA to several EU Member States and Croatia is the adoption of a proactive approach to the identification of victims of trafficking for the purpose of labour exploitation, for example by organising regular visits by labour inspectors to work sites commonly using migrant workers.⁷⁷

Cooperation between government actors or public services and NGOs and outreach to victims is rather limited in the area of labour exploitation. Nevertheless, a number of EU Member States such as **Denmark, Germany** and **Slovenia** moved beyond focusing solely on victims of trafficking for the purposes of sexual exploitation in 2012 to implement measures for labour exploitation victims.

In **Germany**, specialised support services working with victims of sexual exploitation are thus in part expanding services to victims of labour exploitation. Trade unions are also becoming increasingly active in work to prevent the labour exploitation of central and eastern European workers.

At the end of 2011, the German Federation of Trade Unions (*Deutscher Gewerkschaftsbund*) launched a three-year 'fair mobility' project (*Faire Mobilität*) to support migrant workers from central and eastern European countries to achieve fair wages and working conditions. The Federal Ministry of Labour and Social Affairs (*Bundesministerium für Arbeit und Soziales, BMAS*) organised a conference in March 2012 on labour exploitation, with representatives from all relevant ministries of the states, social welfare organisations, national and international NGOs working in the field and other relevant actors taking part. The conference aimed at exchanging experiences and working towards the development of support structures for victims of labour exploitation.⁷⁸

As part of a national action plan against trafficking in human beings, **Austria** set up a working group on labour exploitation composed of experts from relevant ministries, the Chamber of Labour, the Trade Union Federation, universities and NGOs.

In April 2012, **Slovenia** adopted an Action plan of the Interdepartmental Working Group for the Fight against Trafficking in Human Beings 2012–2013.⁷⁹ The action plan says that labour exploitation is increasing, especially in the construction, hospitality, agriculture and entertainment industries, exacerbated by the economic crisis.

The Slovenian 2011 Aliens Act was harmonised with the Directive of the European Parliament and Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals.⁸⁰ Provisions include protection measures for victims of illegal employment who can now receive a temporary residence permit.⁸¹

"An estimated 10,000 people in Ireland work in the domestic work sector performing essential caring and cleaning services. The isolation and invisibility of domestic workers, many of whom live in their employers' homes, creates a fertile ground for exploitation. This is a sector that has high incidences of exploitation and forced labour. Common complaints reported to (the Migrant Rights Centre of Ireland) include long hours of work, pay below national minimum wage, no days off, no sick pay, no holiday pay, harassment, bullying, retention of identity documents and physical and mental abuse."

Ireland, Migrant Rights Centre Ireland (MRCI) (2012), available at: www.mrci.ie/press-centre/domestic-workers-launch-week-of-action-to-call-on-the-government-to-end-their-exploitation

The number of persons officially identified as victims of trafficking for labour exploitation in **Denmark** has risen over the last few years. National action plans and the Danish Centre against Human Trafficking (CMM) have helped to sharpen the focus on this problem. Establishing contact with victims of trafficking for labour exploitation in places such as building sites, restaurants and in the agricultural sector is difficult. To increase access to potential victims of trafficking, CMM has established partnerships with Danish authorities, such as the authorities responsible for the working environment, the tax authorities and police, and trade unions in the labour market. The Centre has also held seminars for authorities and for trade unions and has established various working groups. The purpose is to share knowledge on human trafficking, maintain a focus on the problem and 'train the trainers' so that relevant organisations can train and implement procedures in their own organisations.

⁷⁶ Council of Europe, GRETA (2012), p. 14.

⁷⁷ Such recommendations have been made in the GRETA reports on Austria, Cyprus, Denmark, Slovakia and Croatia, see: *Ibid.*, p. 15.

⁷⁸ For more information on the conference, see: <http://www.bmas.de/DE/Themen/Soziales-Europa-und-Internationales/Meldungen/arbeitsstagnung-studie-menschenhandel.html>.

⁷⁹ Slovenia, Action plan of the Interdepartmental Working Group for the fight against trafficking in persons 2012–2013, 12 April 2012.

⁸⁰ Directive 2009/52/EC, OJ L168/24.

⁸¹ Slovenia, Aliens act, 15 June 2011, Art. 50.

FRA ACTIVITY

Addressing severe forms of labour exploitation

FRA hosted an expert meeting in November 2012, to exchange ideas and discuss research planned on severe forms of labour exploitation, particularly of migrants.

The expert meeting, *Allowing victims of severe forms of labour exploitation to have access to justice in EU Member States*, brought together about 15 experts from national government agencies and specialised bodies, international and non-governmental organisations and universities to prepare the project's launch.

A key focus of the project will be on what factors allow victims of criminal forms of labour exploitation to access civil and criminal justice and what factors impede such access. The project will also look at victim support, assessing existing networks and their potential for reaching out to victims.

The project will be linked to other FRA research, in particular the reports on migrants in an irregular situation employed in domestic work and child victims of trafficking, as well as the victim support services project. Research will be carried out throughout 2013.

For more information, see: FRA (2009) and FRA (2011)

9.4. Rights of victims of hate crime

Several EU Member States took steps to protect against bias-motivated violence and support victims of such violence (see also Chapter 6). Member States are increasingly developing hate crime definitions to cover a wide range of protected characteristics.

Croatia's new Criminal Code specifies that a hate crime means a criminal offence committed on account of a person's race, colour, religion, national or ethnic origin, disability, sex, sexual orientation or gender identity (Article 87 (20) CC). In line with Article 4 of the Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, the same provision provides that unless a more severe penalty is explicitly prescribed – as is the case with a number of offences including aggravating murder, female genital mutilation and serious/bodily injury – such conduct should be taken as an aggravating circumstance.

FRA ACTIVITY

Acknowledging victims of (hate) crime

FRA launched a report in November 2012 that makes the case for increasing the visibility of hate crime, emphasising the responsibility of criminal justice systems to identify and highlight cases of hate crime. *Making hate crime visible in the European Union: acknowledging victims' rights* also argues for collecting and publishing related data, whether on police investigations, prosecutions, convictions or sentencing.

On the same day, FRA launched a report on minorities as victims of crime, including their experiences of racially motivated crime. The European Union Minorities and Discrimination Survey (EU-MIDIS) report, *EU-MIDIS Data in Focus Report 6: Minorities as Victims of Crime*, presents data, which are based on interviews with 23,500 people, on respondents' experiences of victimisation across five crime types.

The average rate of criminal victimisation for all groups surveyed in EU-MIDIS was 24 %, in other words every fourth person from a minority group said that they had been a victim of crime at least once in the 12 months preceding the survey. Across the five crime types in the 12 months preceding the survey, Sub-Saharan Africans, closely followed by Roma, experienced, on average, the highest overall victimisation levels, at 33 % and 32 %, respectively, the report showed.

The report also reveals that 60 % of Sub-Saharan Africans, 54 % of Roma and 43 % of North Africans indicated that 'racist' or religiously offensive language was used during incidents of assault and threat or serious harassment, in comparison with 23 % of Central and East Europeans and 27 % of Russians.

For more information, see: FRA (2012b) and FRA (2012c)

In **Malta**, the Criminal Code was amended to include further victims of bias-motivated crime, such as crimes for which the pretext is sex, gender identity, sexual orientation, race, colour, language, ethnic origin, religion or belief or political or other opinion.⁸²

On the basis of three proposals to amend the Criminal Code, the **German** Parliament discussed ways to implement Article 4 of the Framework Decision on Racism and Xenophobia, which concerns Member States taking

⁸² Malta, Act VIII of 2012 to amend the Criminal Code, 26 June 2012.

Table 9.1: Classification of official data collection mechanisms pertaining to hate crime, by EU Member State

Limited data	Good data	Comprehensive data
<i>Few incidents and a narrow range of bias motivations are recorded Data are usually not published</i>	<i>A range of bias motivations are recorded Data are generally published</i>	<i>A range of bias motivations, types of crimes and characteristics of incidents are recorded Data are always published</i>
Bulgaria Cyprus Estonia Greece Hungary Ireland Italy Latvia Luxembourg Malta Portugal Romania Slovenia	Austria Belgium Czech Republic Denmark France Germany Lithuania Poland Slovakia Spain	Finland Netherlands Sweden United Kingdom

Notes: Information as of January 2013.

'Official data' is understood here as those data collected by law enforcement agencies, criminal justice systems and relevant state ministries.

There is a broad range of bias motivations covered by the 27 EU Member States and Croatia. These include: racism, xenophobia, religious intolerance, antisemitism, Islamophobia/anti-Muslimism, anti-Roma, sexual orientation, gender identity, disability and extremism, as well as any other bias motivations covered by national legislation.

Source: FRA, 2012b

necessary measures to ensure that racist and xenophobic motivation is considered an aggravating circumstance.⁸³

The debate also touched on the question of whether it would be sufficient to introduce a crime committed due to a bias motivation as an aggravating circumstance or whether police might overlook a mere aggravating circumstance in investigations.⁸⁴ The latter argument is in line with FRA's opinion that merely including bias motivation in a list of aggravating circumstances is neither the most effective way to acknowledge victims nor to ensure public visibility of hate crime.⁸⁵

In March 2012, the **British** government launched its 2012–2014 plan to tackle hate crime,⁸⁶ which seeks to encourage the reporting of hate crimes by victims and sets out an agenda for dealing with hate crime at a local level, thereby enabling "hate crime strategies that reflect local needs".⁸⁷ In October 2012, the Equality and Human Rights Commission of Great Britain published *Out in the open: a manifesto for change*. The report examines various agencies' plans to identify and eliminate disability-related harassment over the coming

years, and sets out recommendations.⁸⁸ *Out in the Open* is a follow-up to the 2011 report *Hidden in plain sight* which highlighted systemic failures in organisations' work to prevent disability-related harassment.⁸⁹

The same report highlighted the importance of acknowledging victims of hate crime and emphasised the need for comprehensive and reliable data. To date, official data collection mechanisms pertaining to hate crime in the 27 EU Member States can be classified into three categories, based on their scope and transparency:

- 1 *Limited data*: data collection is limited to a few incidents and to a limited range of bias motivations. The data are not usually published.
- 2 *Good data*: data are recorded on a range of bias motivations and are generally published.
- 3 *Comprehensive data*: a broad range of bias motivations, types of crimes (such as assault, threat, etc.) and characteristics of incidents are recorded. The data are always published.

83 Council Framework Decision 2008/913/JHA, OJ 2008 L 328.

84 Germany, Federal Parliament (2012), p. 5.

85 FRA (2012b), pp. 11 and 27.

86 United Kingdom, Home Office (2012).

87 *Ibid.*, p. 8.

88 United Kingdom, EHRC (2012).

89 United Kingdom, EHRC (2011).

EU Member States are struggling to find the right balance between protecting against hate speech and freedom of expression. In **Poland**, coinciding with the foiled bomb attack on the constitutional organs of the state on 9 November 2012, the Minister of Administration and Digitalisation⁹⁰ intensified efforts against hate speech.⁹¹ The Minister announced the reactivation of the Council for Prevention against Hate Speech (*Rada ds. Przeciwdziałania Mowie Nienawiści*) within the ministry. The Council currently operates under the name Council for the Prevention of Racial Discrimination, Xenophobia and related Intolerance (*Rada dospraw Przeciwdziałania Dyskryminacji Rasowej, Ksenofobii i związanej z nimi Nietolerancji*) within the Chancellery of the Prime Minister. The Council includes representatives from several ministries and its tasks will include activities to stop hate speech.⁹²

The Human Rights Defender in Poland addressed a general statement to the Minister of Justice in July concerning the implementation of its guidelines on the prevention of racially motivated violence.⁹³ The guidelines suggest creating a database with a registry of all discriminatory offences accompanied by acts of violence and the conducting of surveys and research, which would make it possible to estimate the scale of racially motivated violence. They also call for training for public officials, in particular the police, and awareness-raising activities. The Human Rights Defender emphasised the state's obligation to provide protection against violence to all individuals, regardless of their race, ethnic origin or nationality. The Minister of Justice confirmed that this area is of special interest.⁹⁴

On 8 June, the Supreme Court of **Finland** delivered a judgment in a landmark case on the limits of freedom of expression. The court ruled that a member of the Finnish Parliament was guilty of inciting hatred against an ethnic group, because, in his blog posts, he had compared Islam to paedophilia and insinuated that immigrants from Somalia were predisposed to stealing and living off welfare. The court emphasised that hate speech does not fall under the protection afforded to freedom of speech. It ordered the parliamentarian, who chaired the Parliament's Administration Committee which deals with immigration issues, to pay a fine and to remove the blog posts.⁹⁵ The judgment led to a fierce debate on whether a parliamentarian convicted of a hate crime was a suitable choice to chair

the committee. The parliamentarian finally resigned from his position as chair.

Outlook

2012 saw the adoption of the EU Victims' Directive (Measure A of the Roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings). The upcoming year will see the adoption of recommendations on practical measures and best practices for the implementation of the directive in practice. These recommendations are expected to provide guidance to the Member States and take stock of the existing practices in the field of assistance and protection to victims (Measure B).

The Council of the EU is expected to adopt a regulation on mutual recognition of protection measures taken in civil matters upon request of the person at risk in the first half of 2013. This measure will complement the European Protection Order relating to criminal matters. The regulation is due to enter into force later in 2013 and shall apply from 11 January 2015.⁹⁶

Under Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law, EU Member States must take the necessary measures to comply with the provisions of the Framework Decision by 28 November 2013. By this date, the Council will have reviewed the Framework Decision and assessed the extent to which Member States have complied with it.

90 Poland, Minister of Administration and Digitalisation (2012).

91 Gazeta Prawna (2012).

92 Poland, Minister of Administration and Digitalisation, *Protokół z 35. posiedzenia Komisji Wspólnej Rządu i Mniejszości Narodowych*, 26 November 2012.

93 Poland, Human Rights Defender (2012), p. 81.

94 Poland, Ministry of Justice (2012).

95 Finland, Supreme Court, KKO:2012:58 (R2010/1101), 8 June 2012.

96 For more information, see: www.consilium.europa.eu/uedocs/cms_Data/docs/pressdata/en/jha/135890.pdf.



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