8

Access to efficient and independent justice

The 27 European Union (EU) Member States were found in violation of the European Convention on Human Rights (ECHR) 270 times in 2010 because court cases at national level were taking too long to be adjudicated. The right to have a case decided within a reasonable time frame is just one aspect of the right of access to justice. Access to justice is pivotal to ensuring that human rights standards are actually enforced in practice. It is also essential to ensuring the rights of the accused and suspects subject to investigation and prosecution. Since the entry into force of the Treaty of Lisbon in December 2009 and the momentum created by the new justice strategy, the Stockholm Programme, there have been important developments in this area.

This chapter covers developments in EU and Member State policies and practices for the year 2010 in the area of access to justice including criminal law and civil law, insofar as these fall within EU competence. In order to gain a comprehensive overview of this area, it should be read together with Chapter 9 on Protection of victims, which focuses on the rights of victims of crimes, Chapter 5 on equality and non-discrimination, and Chapter 6 on racism and ethnic discrimination, dealing with the questions of rights awareness and equality bodies which are also relevant to access to justice.

To provide a wider context to the issues covered in this chapter, it is also worth noting three developments concerning European and international complaints bodies. First, the Treaty of Lisbon confers legally binding status on the Charter of Fundamental Rights of the European Union and dissolves the pillar structure of the EU, hence broadening the jurisdiction of the Court of Justice of the EU (CJEU). The Council of Europe has also developed new standards on judicial independence, length of proceedings and child-friendly justice.[1] Finally, ratification by Member States of the optional protocols to the Convention on Rights of Persons with Disabilities (CRPD) and the International Covenant on Economic, Social and Cultural Rights (ICESCR) allows individuals to take individual complaints to the relevant UN monitoring bodies.[2]

Key developments in the area of access to justice:

- an EU Directive on Translation and Interpretation[3] was adopted as a first step in the implementation of the EU Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (the 'Roadmap');[4]
- several EU Member States began reform of their courts, including measures to reduce the length of legal proceedings and increase independence;
- several Member States took steps to strengthen or create National Human Rights Institutions (NHRIs).

8.1. The concept of access to justice

The right of access to justice encompasses the right to a fair trial and the right to an effective remedy as guaranteed by Article 47 of the EU Charter of Fundamental Rights,[5] Articles 6 and 13 of the ECHR, and Articles 2 (3) and 14 of the International Covenant on Civil and Political Rights.[6] Access to justice includes not only the rights of the accused in the criminal process and respondents in the civil process, but

1 Council of Europe, Committee of Ministers, (2010a), (2010b) and (2010c).
2 For more information, see Chapter 10 on 'International obligations'.
3 Council Directive 2010/64/EU, OJ 2010 L 280/1. Ireland announced its wish to participate in the directive by using its opt-in option provided for in Protocol 21 of the Lisbon Treaty. The UK, which has the same option, has not yet decided to do so.
4 Council Resolution, OJ 2009 C 295/1.
5 CJEU, Joined cases C-154/04 and C-155/04, paragraph 126.
6 FRA (2010a).

also the rights of victims and claimants. It is not only a right in itself, but an enabling right in that it allows individuals to enforce their substantive rights and obtain a remedy when these rights are violated.

In an EU context, the right of access to justice is recognised by Article 47 of the EU Charter of Fundamental Rights, as well as in the case law of the CJEU and EU directives in the area of discrimination.[7] According to the CJEU, individuals should have remedies available in national law for breaches of rights derived from EU law which should be both effective and equivalent to procedures for similar rights under national law.[8]

> *"[T]he principle of equal treatment for men and women as regards access to employment [...] must be interpreted as precluding legislation of a Member State, such as [... where] an action is available to any other employee who has been dismissed, where such a limitation on remedies constitutes less favourable treatment of a woman related to pregnancy."*
>
> *CJEU, C-63/08,* Virginie Pontin v. T-Comalux S.A.*, judgment of 29 October 2009.*

While the focus of this chapter is on the EU and Member States, it should be noted that a substantial body of European and international supervisory mechanisms also exists, allowing individuals to make claims relating to human rights violations where such cases have not been successful at the national level. Further discussion of applicable international instruments in this area is available in Chapter 10 on International obligations and in a report by the FRA on access to justice.[9]

8.2. Developments at EU level

The following section will consider policy developments at the EU level relating to both criminal law and civil law. It will then move on to examine developments within the case law of the CJEU.

8.2.1. Legislation in the area of criminal law

Without minimum common standards to ensure fair proceedings, national judicial authorities may be reluctant to agree to the transfer of persons in their care to face trial in another Member State. This may obstruct the full implementation of measures based on mutual recognition such as the European Arrest Warrant,[10] and ultimately hinder the development of an EU area of justice as set out in the Stockholm Programme.[11]

In October 2009, the Justice and Home Affairs Council adopted a *Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings*,[12] later appended to the Stockholm Programme. The Roadmap requested the European Commission to introduce proposals based on a broad outline of five measures to enhance mutual trust between Member States that would facilitate mutual recognition in the area of criminal justice ('Measures A-E'). It also called for a Green Paper on pre-trial detention ('Measure F').

In October 2010, the Directive on Interpretation and Translation (Measure A) was adopted. The directive guarantees suspects and the accused the right to written translations of relevant parts of all essential documents, and interpretation of all hearings and questioning, as well as interpretation during meetings with lawyers. Their rights cannot be waived without first receiving legal advice or full information about the consequences of such an action. It is up to the judge in the individual case to determine if the quality and extent of interpretation and translation has been sufficient.

In July 2010, the European Commission adopted a proposal on a 'letter of rights' for criminal suspects ('Measure B'),

FRA ACTIVITY

Report on access to justice

In this report, the FRA highlights challenges and opportunities in the area of access to justice. It provides a comparative analysis of procedures available at the European and international levels and their relationship with national redress mechanisms. Its main focus is on national redress mechanisms, and the procedures and practices through which access to justice is delivered. On the one hand, the report identifies concrete obstacles such as strict time limits for lodging complaints, restrictive rules on legal standing, the complexity of legal procedures and excessive legal costs coupled with strict rules relating to legal aid. On the other, it highlights promising practices which may be used to overcome these obstacles to ensure access to justice for all.

For more information, see the FRA report on 'Access to justice in Europe: an overview of challenges and opportunities', *available at: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_access-to-justice_en.htm*

7 Council Directive 2000/43/EC, OJ 2000 L 180, Article 7, p. 22.
8 CJEU, C-78/98, *Preston v. Wolverhampton Healthcare*, [2000] ECR I-3201, 16 May 2000.
9 FRA (2010a).
10 Council Framework Decision 2002/584/JHA, OJ 2002 L 190, Article 1(1), p. 4.
11 European Council (2010), p. 1.
12 Council of the European Union (2009), OJ 2009 C 295, pp. 1-3.

to introduce common minimum standards on the right to information in criminal proceedings.[13] The further stages of the legislative programme are:[14]

- access to a lawyer ('Measure C', planned for 2011);
- communication with relatives, employers and consular authorities ('Measure D', planned for 2012);
- special safeguards for suspected or accused persons who are vulnerable ('Measure E', planned for 2013);
- a green paper on pre-trial detention ('Measure F' scheduled for 2014); and
- legal aid (scheduled for 2013).

In addition to the Roadmap, a Commission document is expected on definitions of crimes as well as sanctions aimed at ensuring proportionality between different types of crimes. A plan of action on mutual learning and exchange for judges, court staff and lawyers is also in the making.[15] In 2014, a green paper will open up discussion on a possible continuation of the Roadmap in areas other than those covered by previous legislative proposals.

Other instruments that have been proposed by groups of Member States include a European Investigation Order (EIO)[16] and a European Protection Order (EPO, see Chapter 9 on Protection of victims).[17] Both of these proposals are of interest from a fundamental rights perspective and also, to some extent, of concern to the area of access to justice. The EIO is particularly relevant since it aims to enhance access to justice by facilitating investigation measures across borders. While the EIO has the potential to strengthen the administration of justice, it also poses challenges. As with other EU instruments in the area of criminal justice, the EIO envisages the interaction of two Member States' legal systems in the criminal process. This creates the risk of lowering the level of human rights protection where cooperating States have different levels of safeguards.

FRA ACTIVITY

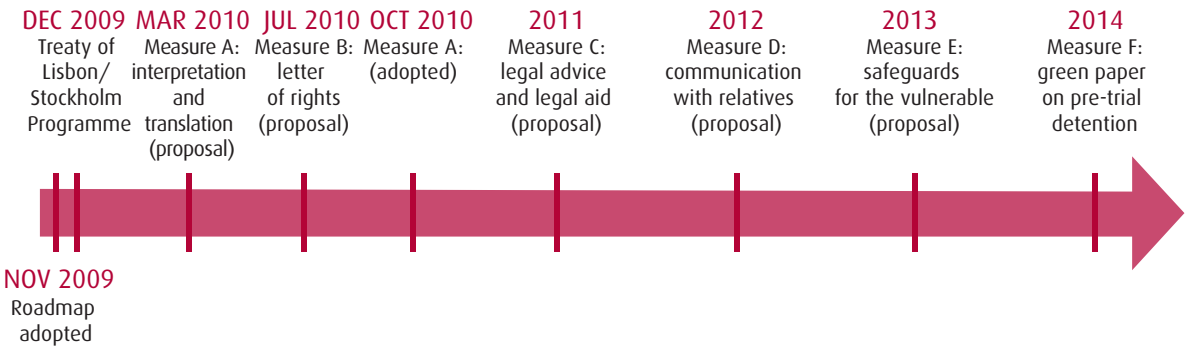
Opinion on the European Investigation Order

The European Parliament asked the FRA to provide an opinion on the draft directive establishing a European Investigation Order (EIO) in January 2011. The FRA opinion was transmitted in February 2011 and highlights potential challenges to fundamental rights protection arising from the draft text.

For more information, see 'FRA Opinion on the draft Directive regarding the European Investigation Order', *available at: http://fra.europa.eu/fraWebsite/research/opinions/op-eio_en.htm*

The following timeline sets out the key stages of the Roadmap's projected development:

Figure 8.1: Timeline of the Roadmap



13 European Commission (2010a).
14 European Commission (2010b), pp. 33-34 and 67; and speech by Vice-President Viviane Reding.
15 *Ibid.*
16 Initiative regarding the European Investigation Order in criminal matters, OJ 2010 C 165/22.
17 Initiative with a view to the adoption of a Directive of the European Parliament and of the Council on the European Protection Order, OJ 2010 C 69/5.

8.2.2. Legislation in the area of civil law

The Stockholm Programme also calls for a number of initiatives in the area of civil law, some with relevance to access to justice. Noteworthy developments in the last year include the European Commission proposal to recast the 'Brussels I' Regulation on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters into 'Brussels II'.[18] The overall objective of this revision is to remove obstacles to the free movement of judicial decisions. More specifically, the proposal seeks to improve access to justice in a specific context that includes the creation of a forum for claims of rights *in rem* (property) at the place where moveable assets are located. The proposal also includes the possibility for employees to bring actions against multiple defendants in the employment area, as well as the possibility to conclude a choice-of-court agreement for disputes concerning the tenancy of premises for professional use. Moreover, the proposal intends to extend the regulation's jurisdiction rules to defendants in third States.[19]

Similarly, with the introduction of a Regulation on Divorce and Separation, individuals exercising the right to free movement will now enjoy more efficient access to justice.[20] It has been acknowledged that this regulation will protect vulnerable or weak partners during divorce and separation proceedings as well as "improve legal certainty, predictability and flexibility for citizens".[21]

8.2.3. Developments in CJEU case law

In 2010, the CJEU issued several judgments concerning restrictive measures adopted in the context of the fight against terrorism. Such measures may lead to violations of the fundamental rights recognised among the general principles of EU law. In particular this may affect the right of access to justice when persons who are targeted by restrictive measures have no possibility to challenge such measures before a court.

> *"[T]he Community judicature must [...] ensure the review [...] of the lawfulness of all Community acts in the light of the fundamental rights forming an integral part of the general principles of Community law, including review of Community measures which [...] are designed to give effect to the resolutions adopted by the Security Council."*
>
> *CJEU, Case T-253/02,* Hassan *and* Ayadi, *judgment of 3 December 2009, paragraph 71.*

The cases of *Hassan* and *Ayadi*, which the CJEU considered jointly in a judgment of 3 December 2009, are noteworthy in this context.[22] The Court of Justice expressed its disagreement with the position adopted by the Court of First Instance (now General Court) in relation to which regulations could not be scrutinised by the CJEU for their compatibility with EU fundamental rights standards. The regulations in question had been designed to give effect to a resolution adopted by the Security Council under Chapter VII of the Charter of the United Nations.

In a judgment of 30 September 2010 in the case of *Kadi v. European Commission*, the General Court noted that there is a "risk that the system of sanctions put in place by the United Nations in the context of the fight against international terrorism would be disrupted if judicial review of the kind advocated by the applicant in the light of the judgment of the Court of Justice in Kadi were instituted at national or regional level".[23] The General Court adds that "certain doubts may have been voiced in legal circles as to whether the judgment of the Court of Justice in Kadi is wholly consistent with, on the one hand, international law [...] and, on the other hand, [the EU treaties], as well as declaration No. 13 of the Conference of the Representatives of the Governments of the Member States concerning the common foreign and security policy annexed to the Treaty of Lisbon, which stresses that 'the [EU] and its Member States will remain bound by the provisions of the Charter of the United Nations and, in particular, by the primary responsibility of the Security Council and of its members for the maintenance of international peace and security'".[24]

The main concern of the General Court is that, by reviewing a measure adopted by the EU that simply implements a sanction decided by the UN Security Council, the courts of the EU would in fact be reviewing the legality of resolutions adopted by the Security Council itself. However, the implication of the rulings in the joined cases *Hassan* and *Ayadi* is that, 'as long as' the re-examination procedure operated by the Sanctions Committee established by the UN Security Council clearly fails to offer guarantees of effective judicial protection, the EU courts should review whether the implementing measures adopted by the EU complies with fundamental rights. This remains a contentious issue and due to a lack of clarity in the General Court, it would be difficult to predict future developments in this case law.

18 Council Regulation (EC) No. 44/2001, OJ 2001 L012; European Commission (2010c).
19 *Ibid.*, p. 3.
20 Council Regulation (EU) No. 1259/2010, OJ 2010 L 343.
21 Council of the European Union (2010).
22 CJEU, Joined cases C-399/06 P, *Faraj Hassan v. Council of the EU and European Commission* and C-403/06 P, *Chafiq Ayadi v. Council of the EU*, 3 December 2009. The case essentially reiterated the position adopted in CJEU, Joined cases C-402/05 P and C 415/05 P, *Kadi and Al Barakaat International Foundation v. Council and Commission*, 3 September 2008.
23 CJEU (GC), Case T-85/09, *Yassin Abdullah Kadi v. European Commission*, 30 September 2010, paragraph 113.
24 *Ibid.*, paragraph 115.

8.3. Access to justice at Member State level

The following section will consider developments at Member State level in the area of access to justice. It will examine issues relating to the length of proceedings, court reform and NHRIs.

A series of trends related to access to justice can be identified in EU Member States. Positive developments include attempts to address the length of proceedings, reform of the judiciary in order to strengthen independence and the strengthening or creation of NHRIs. However, there are also court reforms that risk undermining the independence and credibility of the judiciary. Overall a number of challenges remain with regard to ensuring efficient and effective access to justice. Statistics from the ECtHR show that in 2010 alone the Court found violations in 636 cases against 26 EU Member States, 115 of which involved violations of the right to a fair trial.[25]

FRA ACTIVITY

Persons with disabilities – accessing justice

One component of the FRA disability project 'Fundamental Rights of persons with intellectual disabilities and persons with mental health problems' focuses on access to justice. In particular, it looks at legal standing and how persons with disabilities can be accommodated in court proceedings.

For more information, see: http://fra.europa.eu/fraWebsite/research/projects/proj_disability_en.htm.

8.3.1. Length of proceedings

Perhaps the greatest problem affecting access to justice in the Member States is the excessive length of legal proceedings. Recognising the scale of the challenge, the Committee of Ministers of the Council of Europe adopted a Recommendation on effective remedies for excessive length of proceedings.[26] A Guide to Good Practice accompanies the recommendation.[27]

> *"[Member States should …] take all necessary steps to ensure that all stages of domestic proceedings […] are determined within a reasonable time; […] ensure that mechanisms exist to identify proceedings that risk becoming excessively lengthy as well as the underlying causes; [provide …] specific forms of non-monetary redress, such as reduction of sanctions or discontinuance of proceedings."*
>
> *Recommendation CM/Rec(2010) 3 of the Committee of Ministers to the Council of Europe Member States on effective remedies for excessive length of proceedings.*

Table 8.1 shows that some Member States have a particularly acute problem with the length of proceedings, resulting in a high number of findings of violations as well as constituting a high proportion of judgments issued against them.

Some Member States have taken concrete measures to try to address this problem. In **Bulgaria**, a system of 'reserve advocates' has been introduced for serious crimes. These advocates will act on behalf of a defendant, even without consent, if a lawyer fails to appear during pre-trial or trial activities without good reason.[28] This appears to have the potential to speed up trials – where delay is due to absence of a lawyer – but could also pose risks to the right to a fair trial if the reserve advocate is not sufficiently familiar with specific cases.

In **Finland**, the Ministry of Justice (*Oikeusministeriö*) submitted a report to the Constitutional Law Committee of Parliament regarding delays in the judicial procedure. This

Table 8.1: Number of ECtHR judgments finding at least one violation, violations of the right to a fair trial and violations of length of proceedings, by EU Member State and Croatia

	Judgments finding at least one violation	Right to a fair trial	Length of proceedings
Austria	16 (+3)	6 (+5)	9 (+3)
Belgium	4 (-4)	3 (-1)	0 (-2)
Bulgaria	69 (+8)	6 (-5)	31 (-10)
Cyprus	3 (no change)	0 (no change)	0 (-3)
Czech Republic	9 (+6)	3 (+2)	1 (+1)
Denmark	0 (-3)	0 (no change)	0 (-3)
Estonia	1 (-3)	0 (no change)	0 (-1)
Finland	16 (-12)	2 (-7)	9 (-10)

25 Council of Europe (2011a), pp. 130-131.

26 Council of Europe, Committee of Ministers (2010c).
27 *Ibid.*, Guide to Good Practice, CM (2010)4 add1.
28 Amendment with effect from 28 May 2010, Bulgaria, Наказателно-процесуален кодекс (Criminal Procedure Code), Chapter 10, Article 94 (4) to (6).

	Judgments finding at least one violation	Right to a fair trial	Length of proceedings
France	28 (+8)	10 (+5)	1 (-1)
Germany	29 (+11)	2 (-2)	29 (+15)
Greece	53 (-16)	8 (-8)	33 (-8)
Hungary	21 (-7)	1 (-2)	14 (-6)
Ireland	2 (+2)	0 (no change)	1 (+1)
Italy	61 (no change)	9 (-2)	44 (+32)
Latvia	3 (-3)	1 (+2)	0 (no change)
Lithuania	7 (-1)	3 (+3)	3 (-4)
Luxembourg	5 (+3)	2 (no change)	3 (-3)
Malta	3 (-1)	0 (-1)	0 (no change)
Netherlands	2 (+2)	0 (no change)	0 (no change)
Poland	87 (-36)	20 (-1)	37 (-13)
Portugal	15 (-2)	2 (no change)	6 (+3)
Romania	135 (-18)	30 (-26)	16 (no change)
Slovakia	40 (+2)	2 (-2)	29 (no change)
Slovenia	3 (-3)	0 (-1)	2 (-2)
Spain	6 (-5)	4 (-1)	0 (-3)
Sweden	4 (+3)	1 (no change)	1 (+1)
United Kingdom	14 (no change)	0 (-1)	1 (-1)
Croatia	21 (+5)	6 (-1)	8 (+2)
Total	**657 (-62)**	**121 (-43)**	**278 (-14)**

Note: The figures in brackets represent the change in statistics based on figures from 2009.

Source: Council of Europe/ECtHR, Annual Report 2010, January 2011 (provisional version), pp. 130–131.

report deals with the ways in which the duration of judicial procedures could be shortened.[29] Moreover, the parliament required the government to draw up an overall plan to improve the efficiency of preliminary investigations and consideration of charges, and speed up judicial proceedings. The Ministry of Justice and the Ministry of Interior will set up a working group to look for efficient ways to shorten the duration of the judicial proceedings.[30] A further proposed measure is the introduction of plea-bargaining, a procedure in which confession of a crime at an early stage of the proceedings could, while observing the transparency of procedures, lead to a reduced punishment in comparison to that which would be handed down were the trial to run its course and the defendant be found guilty.[31]

In **Latvia**, amendments to the criminal law in October 2010 now give courts the power to issue lower sentences – including going below the normal minimum prescribed sanctions – where proceedings have not been completed within a reasonable time.[32] Similar amendments allowing mitigation of sentences in cases of undue delay have also been introduced in **Spain**.[33]

FRA ACTIVITY

Stakeholder meetings on access to justice

In 2009, the FRA launched a project focusing on a Member State-level assessment of access to justice. This 'legal' research is based on a set of indicators with a view to assessing country-specific situations and it will be followed by 'social' research initiated in 2010. The latter will be a qualitative survey on access to justice through equality bodies in eight selected EU Member States. Meetings were held in November 2009 and October 2010 with a variety of stakeholders, including European bar associations, judges' associations, Ombuds institutions and legal aid services. Outcomes included raised awareness of forthcoming projects and existing FRA findings as well as input into the framing of future research.

For more information, see: http://fra.europa.eu/fraWebsite/access_to_justice/access_to_justice_en.htm.

29 Finland, Ministry of Justice (2009a).
30 Finland, Ministry of Justice (2010a).
31 Finland, Ministry of Justice (2010b).
32 Latvia, Likumprojekts Grozījumi Krimināllikumā (Amendments to the Criminal Law), No. 1704/Lp9, 21 October 2010, Section 49.1 1)1-3.
33 Spain, Ley Orgánica 5/2010, Article 21, No. 6 of the Criminal Code.

In Italy, the slow pace of justice remains a significant problem. Legislation introduced in late 2009 aims to improve the procedure for obtaining compensation as a consequence of excessively lengthy trials and stipulates a maximum limit of two years for the legal process.[34] Italy has also introduced a mandatory alternative dispute resolution procedure in selected areas of private law.[35] The ECtHR stressed that broader reforms are required.[36] In Cyprus, new legislation has been introduced, namely a Law Providing for Effective Remedies for Exceeding the Reasonable Time Requirement for the Determination of Civil Rights and Obligations.[37] The law applies to complaints regarding length of procedure at all levels in civil and administrative cases, and allows for complaints to any district court, at any stage of the proceeding.

In August 2010, the German federal government adopted a draft bill to introduce better remedies in the case of unreasonable delays in court proceedings and preliminary investigations in criminal cases.[38] The bill provides for a specific compensation claim in the case of an unreasonable delay of proceedings. The regular amount of non-material damages shall be EUR 1,200 for each year of delay. Compensation for material damages is also provided for and may be higher than 'regular damages'. However, compensation can only be granted if an objection was raised against the undue delay at an earlier stage of the proceedings and would thereby have a preventive effect, giving the courts the opportunity to proceed with more speed.[39] With the draft bill the federal government intends to comply with the case law and guidelines of the ECtHR and the federal Constitutional Court (*Bundesverfassungsgericht*).

8.3.2. Court reform

Court reform is underway in almost half of all Member States. There is a discernible trend towards increasing judicial independence, which is an essential criteria for genuine access to justice. In **Greece**, a new law involves the parliament in the appointment of the highest judicial posts through hearings with the candidates.[40] In **Sweden**, the independence of the courts has been strengthened by constitutional amendments. This has included moving provisions relating to the judiciary to a separate chapter to underscore its independence from the government. Rules on the independence of judges were also introduced, along with further measures aimed at improving independence.[41]

In Latvia, a judicial council was established in 2010 after a decade of debate.[42] These changes include the greater budgetary independence of the judiciary.[43] Slovakia has taken measures to increase the independence and transparency of its judicial council by, for instance, opening sessions to the public.[44] The UK has established a Judicial Appointments Commission to improve independence and transparency.[45] There are also proposals to unify the existing framework of courts and tribunals under a single organisation.[46]

In contrast, in Hungary a law was adopted in December 2010 that, among other things, transfers powers to appoint court presidents from the National Council of Justice (*Országos Igazságszolgáltatás Tanács*, OIT) to the President of the OIT.[47] There is a risk that moving this power from a collective body to a single person may reduce judicial independence.

At EU level, it should also be noted that appointment procedures for judges and advocates general of the CJEU have been modified so that a conference of representatives of governments of the Member States becomes the appointing authority. The conference, however, takes its decision after consulting a panel consisting of seven persons – one of which is appointed by the European Parliament – including judges and advocates general, members of national supreme courts and senior lawyers.[48]

Promising practice

Public awareness to facilitate access to justice

In **Ireland**, the Irish Council for Civil Liberties (ICCL) launched a public information programme entitled *Know Your Rights*. The project is designed to inform people about their rights in plain language by publishing a series of information booklets and creating a specific website for the project. The first in the series of booklets *Know Your Rights: Criminal Justice and Garda Power* was published in January 2010, together with *Know Your Rights: Privacy* and *Know Your Rights: European Convention on Human Rights*. The booklets are also available on the ICCL website.

For more information on the ICCL Know Your Rights campaign, see: www.knowyourrights.ie.

34 Italy, Disegno di Legge (Bill) (2009).
35 Italy, Decreto legislativo (Legislative Decree) No. 28.
36 ECtHR, *Gaglione and others v. Italy*, No. 45867/07, 21 December 2010 (not final).
37 Cyprus, Law providing for effective remedies for exceeding the reasonable time requirement for the determination of civil rights and obligations, Law 2(I)/2010, 5 February 2010.
38 Germany, Gesetz über den Rechtsschutz bei überlangen Gerichtsverfahren und strafrechtlichen Ermittlungsverfahren, 12 August 2010.
39 *Ibid.*, Article 1, p. 5, see also p. 31.
40 Greece, Law 3841/2010.
41 The changes came into force 1 January 2011. Law (2010:1408) amending the Instrument of Government, chapter 11.
42 Latvia, Latvijas Republikas Augstākā (Supreme Court of Latvia), Press release, 1 October 2010.
43 Latvia, Likums par tiesu varu (Law on Judicial Power).
44 Slovakia, Zákon 185/2002.
45 UK, Judicial Appointments Commission.
46 See www.publications.parliament.uk/pa/ld201011/ldhansrd/text/101005-wms0001.htm and www.justice.gov.uk/latest-updates/announcement160910b.htm.
47 Hungary, Law 2010 CLXXXIII.
48 CJEU (2009).

Other Member States have established or granted increased powers to independent judicial councils responsible for the administration of the judiciary. In **Estonia**, legislative reforms are pending before the parliament that would introduce a major overhaul with a new independent court administration.[49] The Higher Council of the Judiciary (CSM) in **France** was reformed in June 2010 with a view to strengthening judicial independence. For example, from 2011 onwards, the President of the Republic will no longer be the Council chair, with the position held instead by the chair of the Court of Cassation.[50]

FRA ACTIVITY

Access to justice for asylum seekers

Two separate expert meetings were organised by the FRA in early 2010 to prepare for field research with asylum seekers on: the quality of information on the asylum procedure; and the accessibility of remedies against negative first-instance decisions. Following the field work, which included interviews with 877 individuals in the asylum-seeking process, the FRA published two reports in 2010, *Access to effective remedies: The asylum seeker perspective* and *The duty to inform applicants about the asylum procedure: the asylum-seeker perspective*.

For more information, see Chapter 1 on asylum, immigration and integration.

8.3.3. National Human Rights Institutions

National Human Rights Institutions (NHRI), together with national equality bodies (discussed in Chapter 5 on equality and non-discrimination), can significantly facilitate or provide direct access to justice. They can do this in several different ways by providing information on substantive and procedural rights; providing, overseeing or referring individuals to mediation services; engaging in settlement of disputes themselves as well as assisting and supporting victims in taking cases to court.

There is a discernible movement among EU Member States towards establishing NHRIs in compliance with the Paris Principles. The Paris Principles, adopted by the United Nations (UN) General Assembly in 1993, provide authoritative guidance on the required powers and characteristics of independent and effective institutions with the role of protecting and promoting human rights at the national level.[51] In this sense, UN treaty monitoring bodies systematically encourage Member States, which are party to human rights treaties, to establish institutions in compliance with these standards.[52]

With the NHRI in Scotland receiving A-status in 2010, the total number of A-status institutions within the EU reached 12, in 10 different Member States (the **UK** having three). In at least two of those Member States with B-status NHRIs, specifically **Belgium**[53] and the **Netherlands**[54], reform is underway with the aim to achieve A-status. For **Belgium**, recent developments appear few and far between while in the **Netherlands** the NHRI is on track to be established in the coming year. **Italy** also recently committed to establishing a NHRI in line with the Paris Principles.[55]

In four of the Member States without accredited institutions (**Cyprus**, **Finland**, **Italy** and **Sweden**), decisive steps have been taken to establish NHRIs that have the potential to receive A-status. In **Finland**, the government proposed in October 2010 to set up a NHRI that would be administratively associated with the existing Parliamentary Ombudsman.[56] In **Sweden**, an inquiry committee, namely the Human Rights Delegation, which was appointed by the government to support human rights efforts, proposed in late 2010 reforms, including the establishment of an NHRI

FRA ACTIVITY

Strengthening human rights institutions

In May 2010, the FRA launched a report entitled *National Human Rights Institutions* in the EU Member States. It formed part of a series of four reports aimed at strengthening the fundamental rights architecture in the EU. The reports looked at institutions with a fundamental rights remit at national level. The NHRI report concluded, among other things, that institutions are not sufficiently independent and effective. It also found that stronger cooperation and coordination among the multiple EU bodies would help address gaps and overlaps in activities.

For more information, see: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_national_hr_inst_en.htm

49 On stages of proceeding available at: www.riigikogu.ee/?page=en_vaade&op=ems&eid=866881&u=20100422101349.

50 France, Act No.2001-539 on the status of magistrate and the CSM.

51 'Principles relating to the status of national institutions: Competences and Responsibilities', defined at the first International Workshop on National Institutions for the Promotion and Protection of Human Rights in Paris 7-9 October 1991, adopted by the Commission on Human Rights, Resolution 1992/54, in 1992 and by the General Assembly Resolution 48/134, in 1993; for further information, see FRA (2010b).

52 On applicable UN standards binding the EU Member States, see Chapter 10 on International obligations.

53 Centre for equal opportunities and opposition to racism (2011). See also, for example, the proposal Commission Justice et Paix, *La Commission Belge des Droits Fondamentaux: présentation et projet d'accord.*

54 On 20 August 2010, the Dutch cabinet decided to propose legislation to parliament for the creation of an institute for Human Rights. The existing Equal Treatment Commission (*Commissie Gelijke Behandeling*) will be integrated into the new institute. See The Netherlands, Rijkoverheid, Wetsvoorstel College voor de rechten van de mens (BZK).

55 UN General Assembly (2010), paragraph 7. A draft law was approved in April 2007 by the Chamber of Deputies but remains to be endorsed by the Senate. A draft was introduced in the Senate in late 2009 and discussed in February 2010.

56 Finland, Ministry of Justice (2010c).

Table 8.2: NHRIs in EU Member States and Croatia, by accreditation status

Status	Country
A	Denmark, France, Germany, Greece, Ireland, Luxembourg, Poland, Portugal, Spain, United Kingdom*, Croatia
B	Austria, **Belgium**, **Netherlands**, Slovakia, Slovenia
C	Romania
Not accredited	Bulgaria, **Cyprus**, Czech Republic, Estonia, **Finland**, Hungary, **Italy**, Latvia, Lithuania, Malta and **Sweden**

*Notes: * The Equality and Human Rights Commission shares the UK seat at the International Coordinating Committee of NHRIs with the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission.*
Countries shown in bold indicate a planned change in the NHRI's accreditation status in the near future.

Source: International Coordinating Committee of NHRIs, Chart of the Status of National Institutions, 1 January 2010, www.nhri.net/2009/Chart_of_the_Status_of_NIs__January_2010.pdf), updated as of December 2010.

in compliance with the Paris Principles.[57] In **Cyprus**, efforts are underway to strengthen the functions of the Commissioner for Administration (Ombudsman) and transform the office into a 'Commissioner of Human Rights'.[58]

Outlook

Continuing reforms of judicial systems in the Member States, particularly regarding the excessive length of proceedings, remain necessary. This should be seen in the context of reforms taking place at the ECtHR to deal with an excessive backlog of cases.[59] These reforms include the introduction of the 'pilot' procedure for recurrent findings of violations, which allows the ECtHR to select one or more of them for priority treatment where it receives a significant number of applications deriving from the same root cause.[60] It is only by ensuring that national judicial systems are adequate that it will be possible to place less stress on the ECtHR. At the same time, strengthening other national mechanisms, in particular Equality Bodies and NHRIs, can help to address systematic problems at the national level. Whether Member States will continue to move towards strengthening NHRIs in light of prevailing austerity measures remains to be seen.

57 Sweden, Slutbetänkande av Delegationen för mänskliga rättigheter i Sverige (2010), *Ny struktur för skydd av mänskliga rättigheter*.
58 Bill prepared by the Attorney-General and approved by the Council of Ministers on 22 October 2010, presently pending before the legislature.
59 For more information, see: 'Interlaken Declaration' of the High level conference on the future of the European Court of Human Rights, 19 February 2010.
60 For more information, see: ECtHR, *The Pilot-Judgment Procedure*. For 'pilot case' relating to excessive length of proceedings see also, ECtHR, *Vassilios Athanasiou and others v. Greece*, No. 50973/08, 21 December 2010 (not final). The pilot judgment procedure was applied for the first time in the case of ECtHR, *Broniowski v. Poland*, No. 31443/96, 22 June 2004.

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UN & CoE

20 January – CoE Committee of Ministers issues recommendation on probation rules

January

24 February – CoE Committee of Ministers issues recommendation on effective remedies for excessive length of proceedings

February

March

April

May

June

July

August

September

October

17 November – CoE Committee of Ministers issues recommendation on judges: independence, efficiency and responsibilities

30 November – in the *Ahmadou Sadou Diallo* case the International Court of Justice recognises the weight that is to be given to the findings of the human rights treaty bodies

November

December

EU

January

February

March

April

May

June

20 July – European Commission proposes a directive on the right to information in criminal proceedings ('letter of rights')

July

August

September

20 October – EU adopts a directive on the right to interpretation and translation in criminal proceedings

October

November

December