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Access to efficient and independent justice



The financial crisis kept access to justice in the spotlight in 2011. Budget reductions posed challenges for key institutions such as courts and bodies with a human rights remit. Still, efforts were made to improve the situation by reducing the length of court proceedings, broadening legal standing before courts and developing e-justice. Pressure for reform is driven by the need to improve access to justice and to further modernisation, with European Union (EU) legislation and criticism from Council of Europe and UN bodies helping spur the reform push.

The vast number of cases pending before the European Court of Human Rights (ECtHR), many of which stem from EU Member States, exemplify the challenges to access to justice in the EU. In the cases it concluded in 2011, the ECtHR found more than 500 EU Member State violations. Of these, approximately 100 concerned fair trial and 200 length of proceedings – both essential elements of access to justice. Some specifics of these ECtHR cases are dealt with in this chapter and additional details are provided in Chapter 10.

This chapter covers developments in the EU and its Member States related to core issues of access to justice in general as well as defence rights, but excludes victims' rights, as they are dealt with in Chapter 9. Additionally, Chapter 10, on obligations of states under international human rights law, discusses the complaints mechanisms under various treaties, which enhance access to justice at the international level. Chapters 5 and 6, dealing with equality and non-discrimination, offer supplementary overviews of equality bodies, which are relevant to understanding access to justice. The thematic Focus of this Annual report on the fundamental rights architecture of the EU is, likewise, closely connected to this chapter. The Focus illustrates the interrelatedness of the variety of bodies operating at national, EU, Council of Europe and UN levels and how this plays out in various areas, not the least in the area of access to justice.

Key developments in access to efficient and independent justice:

- in light of financial austerity, many EU Member States attempt to streamline various judicial and non-judicial mechanisms, potentially affecting fundamental rights guarantees;
- EU Member States continue work to reduce the length of court proceedings and bring about other court reforms;
- various EU Member States establish and reform independent institutions with a human rights remit that can support and/or provide access to justice; national equality bodies and National Human Rights Institutions (NHRIs) in particular gain further prominence;
- online technological developments that facilitate and modernise justice, known as e-justice, move further up the agenda in several EU Member States, linked both to the need to modernise judicial systems and to improve cost effectiveness;
- with the on-going development of the EU *Roadmap on criminal procedures*, procedures for the rights of the individual in criminal proceedings, particularly as regards access to justice in cross-border situations, are strengthened.

8.1. Developments of the concept of access to justice

The area of access to justice has developed through legislation, as well as judicial interpretation, in the EU over the years. The CJEU case law makes clear that justice systems have to be characterised by the principle of ‘effective judicial protection’, which is also reflected in Article 47 of the EU Charter of Fundamental Rights (right to an effective remedy and a fair trial; also referring to the concept of ‘access to justice’). An effective judicial protection includes a variety of elements ranging from appropriate legal aid to the imposition of effective sanctions. Consequently, this chapter does not only cover ‘access’ to the courts, but also offers a wider perspective on ‘access to justice’, which also includes non-judicial mechanisms.

Important ECtHR judgments in 2011, delivered by the Grand Chamber, dealt, for instance, with a conviction based on anonymous witnesses and an inadequately argued court decision which could not be appealed¹ and an Embassy official unable to bring an employment dispute before the French courts.² A third example concerns a French court that effectively prevented an applicant – a person with severe disabilities claiming sexual assault – from appealing by requiring an explicit reference to the grounds of appeal, which was not formally required under the law.³ In all three cases, violations of Article 6 on the right to fair trial of the European Convention on Human Rights (ECHR) were found.

More specifically related to the EU is the case of *Ullens de Schooten and Rezabek v. Belgium*.⁴ The ECtHR concluded that a national court must deliver a reasoned decision if it denies the request for a case referral to the Court of Justice of the European Union (CJEU), a ruling that clarifies the procedures around the preliminary ruling (Article 267 TFEU) within Article 6 of the ECHR. In this specific case, the ECtHR concluded that the national court’s reasoning was sufficiently argued and, therefore, no violation had taken place.

The CJEU also had the opportunity to elaborate on access to justice. In the *DEB* case, the CJEU ruled, for example, that Article 47 of the Charter of Fundamental Rights precluded a rule whereby advanced court fees were of such a cost as to effectively bar access to

justice.⁵ In the *Solvay* case, the CJEU dealt with the length of competition law procedures between the company Solvay and the European Commission.⁶ The CJEU has also continued its elaboration on Kadi-related cases (see FRA 2010 Annual Report, section 8.2.3), which deal with freezing funds on the basis of a UN Security Council resolution aimed at countering terrorism and the right to be heard, an essential aspect of effective judicial protection and of the concept of access to justice.⁷

8.1.1. International instruments and reports

In 2011, the United Nations (UN) further refined standards and provided guidance in the area of access to justice. For instance, the UN Commission on Crime Prevention and Criminal Justice (CCPCJ) convened an expert group that adopted a draft *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, which are to be revised and adopted by the CCPCJ.⁸ This draft defines legal aid as including “legal advice, assistance and representation for suspects, arrested, prosecuted and detained persons and for victims and witnesses in the criminal justice process” and that this should be “provided at no cost for those without means or when the interest of justice so requires”.⁹

The European Commission for the Efficiency of Justice (CEPEJ), a body of the Council of Europe, continued data collection and work on indicators for measuring the quality of justice in national court systems throughout Europe.¹⁰ CEPEJ also progressed on its Saturn Time Management Project to improve the efficiency of courts, as well as its scheme for evaluating judicial systems through a peer review mechanism, with the Netherlands and Austria scrutinised in 2011.¹¹ Another Council of Europe body, the Consultative Council of European Judges (CCJE), issued an Opinion on justice and information technologies, which will be explored in some detail

1 ECtHR, *Taxquet v. Belgium*, No. 926/05, 16 November 2010.

2 ECtHR, *Sabeh el Leil v. France*, No. 34869/05, 29 June 2011.

3 ECtHR, *Poirot v. France*, No. 29938/07, 15 December 2011, which is not final.

4 ECtHR, *Ullens de Schooten and Rezabek v. Belgium*, No. 3989/07 and 38353/07, 20 September 2011.

5 CJEU, C-279/09, *DEB Deutsche Energiehandels- und Beratungsgesellschaft mbH*, para. 59, 22 December 2010.

6 CJEU, joined cases C-109/10 and 110/10, *Solvay SA v. European Commission*, 25 October 2011.

7 CJEU, C-548/09, *Bank Melli Iran v. Council of the European Union*, 16 November 2011, para. 94, 103 and 104; CJEU, C-27/09, *French Republic v. People’s Mojahedin Organization of Iran*, 21 December 2011, para. 66. See also, CJEU, C-380/09, *Melli Bank v. Council*, 28 June 2011, para. 33.

8 UN, CCPCJ (2011) *UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems*, E/CN.15/2012/24, 16–18 November 2011.

9 *Ibid.*, Preambular para. 8 (as revised during the meeting).

10 Council of Europe, CEPEJ (2010), CEPEJ (2011a). See also, CEPEJ (2011b).

11 For more information, see: on CEPEJ SATURN Centre for judicial time management, www.coe.int/t/dghl/cooperation/cepej/Delais/default_en.asp; on the CEPEJ Meeting reports of the Working party on the evaluation of judicial systems, www.coe.int/t/dghl/cooperation/cepej/WCD/GTEVALReports_en.asp#



later in the chapter.¹² The CCJE also adopted the *Magna Carta of Judges*, which is a compilation of key principles related to judiciaries – judicial independence, ethical aspects, access to justice¹³ – and issued an Opinion on the role of judges in the enforcement of judicial decisions, including those of the ECtHR.¹⁴

FRA ACTIVITY

Report identifies various obstacles to access to justice

The FRA published its first report on access to justice in March: *Access to justice in Europe: an overview of challenges and opportunities*. In a comparative analysis of access to justice across EU Member States, the report finds that there are many obstacles that make it difficult for individuals to enforce their rights. These obstacles appear in areas ranging from time limits, legal standing and length of proceedings, to legal costs, procedural formalities and requirements and complexity of legislation. The report focuses on civil and administrative procedures available to victims of discrimination, but its findings are more broadly relevant. The report also offers an analysis of access to justice at UN, Council of Europe and EU levels, pointing out both opportunities and challenges. The report was presented at a conference in Budapest on 'Protecting victims in the EU: the road ahead', hosted by the Hungarian Presidency of the Council of the European Union, with the support of the FRA.

The FRA also completed research on access to justice through national equality bodies in 2011. This report focuses on the experiences of complainants, national equality bodies and intermediaries – lawyers and NGOs, for instance, that support complainants in accessing justice. This qualitative study looks at access to justice in cases of discrimination through equality bodies in eight selected EU Member States (**Austria, Belgium, Bulgaria, the Czech Republic, Finland, France, Italy** and the **United Kingdom**). On 26 September, the FRA held a stakeholder consultation to discuss the preliminary findings of this research, which was attended by representatives from equality bodies, judges and lawyers' associations, as well as legal aid services. The report, which will be presented in 2012, points out the challenges in EU Member States, such as the often complex systems through which a person must navigate to seek redress in cases of discrimination. The report also suggests possible improvements.

For more information, see: FRA (2011a)

¹² Council of Europe, CCJE (2011).

¹³ CCJE (2010a).

¹⁴ CCJE (2010b).

8.2. Legislative developments at EU level

EU-level developments in both criminal and civil law strongly affected access to justice in 2011. These developments range from enhanced protection of rights in criminal proceedings to further attempts to facilitate 'free movement' of judicial decisions, which aim at ensuring that justice can be accessed irrespective of borders.

8.2.1. Criminal law

The Action Plan of the Stockholm Programme required several measures to be taken in 2011, including some with a clear link to access to justice.¹⁵ Among those, substantial progress and improvements were made in the area of the rights of the individual in criminal proceedings, particularly in access to justice in cross-border situations.

Following up on the 2009 *Criminal Procedure Roadmap*¹⁶ (for the parallel roadmap on victims' rights, see Chapter 9) and the Directive touching on the roadmap's first measure – A – regarding interpretation and translation,¹⁷ the European Commission has proceeded to further consider the remaining five measures – B-F – of the Roadmap. In 2010, the Commission proposed a Directive on the right to information in criminal proceedings, reflective of measure B, the 'letter of rights'.¹⁸ The Council of the European Union agreed upon this in mid-November 2011 and the European Parliament voted in favour of the measure on 13 December 2011.¹⁹ The letter of rights Directive will facilitate the understanding of essential rights for suspects and accused at the earliest stage of a criminal investigation.

Further, in 2011, the European Commission proposed a Directive on the right to access a lawyer in criminal proceedings and on the right to communicate upon arrest, which jointly encompasses roadmap measures C and D, with D proposed earlier than originally planned.²⁰ These measures would guarantee the right to communicate with relatives or an employer at the time of arrest (Article 5) and the right to a lawyer as soon as possible, at the latest upon the deprivation of liberty (Article 3). Under a European Arrest Warrant (EAW), an arrest warrant valid in all EU Member States, an arrested person has the right to a lawyer both where the warrant is carried out and in the state requesting the warrant (Article 11). The Council of Europe was

¹⁵ European Commission (2010a).

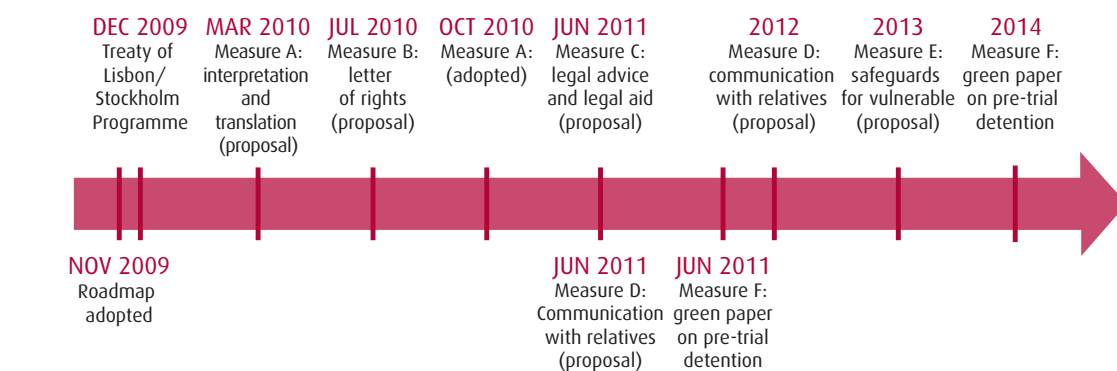
¹⁶ Council of the European Union (2009), pp. 1-3.

¹⁷ Directive 2010/64/EU.

¹⁸ European Commission (2010b).

¹⁹ European Commission (2011a).

²⁰ European Commission (2011b).

Figure 8.1: Timeline of the Criminal Procedure Roadmap, with revisions from original plan

Source: FRA, 2011

regularly consulted on the Roadmap and on the draft measures at the Secretariat level, at different stages of their elaboration, and on the basis of ECtHR case law, provided its opinion on the compatibility of the drafts with the ECHR standards, pointing out where the language might be too vague or fall short of the minimum standards.²¹

Unlike measures A-D, measure E, on safeguards for vulnerable persons, is yet to be presented in detail. Measure F, which was tentatively scheduled for presentation in 2014, was already made public in 2011.²² This green paper aimed at soliciting comments through a round of public consultations on subsequent legislation related to, in particular, detention conditions in cross-border settings, such as under an EAW. The consultations were concluded in late November 2011.²³

The European Commission also issued a Communication entitled *Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law*.²⁴ The Lisbon Treaty, the Communication underscores, provides the explicit legal basis not only for adopting legislation on criminal procedural law but also for the substance of criminal law itself. Such measures would aim at strengthening trust in criminal law in cross-border situations. A more uniform approach to various types of crimes would ensure easier cooperation among Member States and a smoother application of several cross-border instruments which are either in place or in development. More importantly, the Communication recognises the important role of fundamental rights in this area (Paragraph 2.1. – ‘General principles to respect’).

Last year’s Annual Report reported on the European Parliament’s request to the FRA for an Opinion on the draft Directive on the European Investigation Order (EIO), designed to facilitate the gathering and transfer of evidence between Member States.²⁵ Some of the issues raised by the FRA, such as the grounds for refusing the execution of an EIO, were under debate at the Council of the European Union at the time of writing. During 2011, agreement was largely reached.²⁶ Instruments like the planned EIO seek to simplify exchanges among EU Member States in order to create a justice system that ‘stumbles’ less at border crossings. However, differences in ways legal systems operate, not necessarily differences in levels of fundamental rights protection, create challenges. In *Stojkovic v. France and Belgium*, for instance, the ECtHR found a violation of the right to legal assistance (Article 6 (3) (e) of the ECHR), in a cross-border case where Belgian police questioned a suspect by request of a French investigative judge without permitting him legal counsel. This exemplifies the problems faced in cross-border cases, with legal safeguards in one Member State not fully matching the implementation of measures in another.²⁷

The Council of Europe Commissioner for Human Rights also expressed concerns related to cross-border issues over the application of the European Arrest Warrant (EAW). He criticised, among other things, the absence of effective remedy against an EAW, the impossibility of having an EAW cancelled when proven innocent, the long duration between an alleged crime and issuance of an EAW and the misuse of an EAW for minor crimes.²⁸

²¹ Council of Europe (2011a).

²² European Commission (2011c).

²³ For more information on the green paper, see: http://ec.europa.eu/justice/newsroom/criminal/opinion/110614_en.htm.

²⁴ European Commission (2011g). Also see: comments on the Communication by the European Data Protection Supervisor, 24 October 2011: www.edps.europa.eu/EDPSWEB/webdav/site/mySite/shared/Documents/Consultation/Comments/2011/11-10-24_EU_criminal_policy_EN.pdf.

²⁵ European Union Agency for Fundamental Rights (FRA) (2011a). Also see: Eurojust opinion on Council document 6812/11, 4 March 2011: <http://register.consilium.europa.eu/pdf/en/11/sto6/sto6814.en11.pdf>.

²⁶ Council of the European Union (2011a). Also see: Council of the European Union (2011b).

²⁷ ECtHR, *Stojkovic v. France and Belgium*, No. 25303/08, 27 October 2011 (not final).

²⁸ Council of Europe, Commissioner’s Human Rights Comments (2011a). Also see: European Commission (2011e).

FRA ACTIVITY

Cooperation among EU agencies: Together against trafficking in human beings

The FRA cooperates to various degrees with the EU's Justice and Home Affairs Agencies (JHA) – such as Europol, Frontex, Ceuol and Eurojust – to enhance the fundamental rights dimension of their policing, border and judicial activities. The FRA, drawing on its research and analysis, provides a rights-based perspective to the operational work of the JHA agencies through advice as well as input for training curricula. In October 2011, directors of seven EU agencies, including the FRA, committed to creating a Europe-wide approach to the eradication of human trafficking. The joint statement of the Heads of the EU Justice and Home Affairs Agencies says that the fundamental rights of victims of human trafficking are central to EU policy in this field. Efforts to address trafficking would be made in partnership with EU Member States, EU institutions and other partners, including civil society organisations. The October event featured a debate between the directors of the EU agencies, moderated by the EU Anti-Trafficking Coordinator.

For more information, see: http://fra.europa.eu/fraWebsite/news_and_events/2011-events/evt11_1810_en.htm

8.2.2. Civil law

Already in 2010, the European Commission proposed recasting the *Brussels I* regulation, which seeks to remove obstacles to the free movement of judicial decisions.²⁹ This measure will improve access to justice by enabling cross-border applicability of decisions. The recasting is still under discussion, in particular the proposed abolition of the intermediate procedure for recognition and enforcement of judgment, which would make a judgment directly applicable across borders. This is especially difficult with regard to issues that differ among Member States, such as defamation.³⁰ Rulings on defamation are particularly sensitive, and, according to the European Commission, it is premature to presume the required level of trust exists among legal systems in order to move beyond the status quo on this matter. Therefore an exception is envisaged for defamation.³¹ Critics argue that there would be other areas where exceptions would be reasonable, such as disputes involving property.³²

29 Council of the European Union (2001), p. 1. See also FRA (2011b).

30 European Commission (2010c), p. 6.

31 *Ibid.*, p. 7.

32 United Kingdom, Ministry of Justice (2010), p. 9.

The European Commission has also proposed legislation related to alternative dispute resolution (ADR). ADR mechanisms, such as mediation, may help to ensure access to justice by providing claimants with faster and cheaper alternatives even though some of the benefits of more formal procedures are lost. The majority of EU Member States have recently reformed legislation with respect to mediation, in part to align domestic law with the 'Mediation Directive', which aims to ease access to justice by addressing key aspects of civil procedure in cross-border disputes.³³ The European Commission initiated action against six Member States in late 2011, by sending them reasoned opinions³⁴ on their failure to notify national bodies of the need to implement this directive.³⁵ The European Parliament has called on the Commission to explore providing a harmonised legal framework for some aspects of ADR across sectors, while developing existing schemes and encouraging Member States to increase funding to ADR-related matters.³⁶ In November, the European Commission, moreover, proposed reinforced ADR mechanisms related to consumer disputes, including a platform for online disputes. Austria followed up on this proposal, with an act on mediation procedures in cross-border civil and commercial law disputes.³⁷

8.3. Institutional developments at European and Member State levels

Across Europe efforts are underway to adopt measures specifically aimed at reducing the length of proceedings at both European level, with the courts in Strasbourg and Luxembourg, as well as at national level, with courts in EU Member States. Additionally, 2011 witnessed court reforms aimed at increasing judicial independence and overall justice efficiency through restructuring and modernisation. Some of these reforms, however, might compromise access to justice by curtailing legal aid. Progress was made during the year in promoting e-justice. An additional trend that is visible in Member States is the continued development of National Human Rights Institutions (NHRIs).

8.3.1. Length of proceedings

The length of proceedings continued to represent one of the main obstacles to effective access to justice in the whole EU. Table 8.1 shows the number of judgments finding at least one violation of any

33 Directive 2008/52/EC, OJ 2008 L 136.

34 See Focus Section.

35 European Commission (2011f).

36 European Parliament Committee on Legal Affairs (2011).

37 Austria, Act on Cross-border Mediation in Civil Law in the European Union.

Table 8.1: Number of ECtHR judgments in 2011 finding at least one violation, violations of the right to a fair trial and violations of length of proceedings, by country

Country	Judgments finding at least one violation	Right to a fair trial	Length of proceedings
AT	7 (-9)	0 (-6)	5 (-4)
BE	7 (+3)	2 (-1)	0 (no change)
BG	52 (-17)	2 (-4)	21 (-10)
CY	1 (-2)	0 (no change)	1 (+1)
CZ	19 (+10)	13 (+10)	2 (+1)
DE	31 (+2)	0 (-2)	19 (-10)
DK	1 (+1)	0 (no change)	0 (no change)
EE	3 (+2)	1 (+1)	0 (no change)
EL	69 (+16)	6 (-2)	50 (+17)
ES	9 (+3)	4 (no change)	1 (+1)
FI	5 (-11)	0 (-2)	2 (-7)
FR	23 (-5)	11 (+1)	2 (+1)
HU	33 (+12)	4 (+3)	19 (+5)
IE	2 (no change)	0 (no change)	2 (+1)
IT	34 (-27)	7 (-2)	16 (-28)
LT	9 (+2)	3 (no change)	5 (+2)
LU	1 (-4)	1 (-1)	0 (-3)
LV	10 (+7)	0 (-1)	1 (+1)
MT	9 (+6)	3 (+3)	3 (+3)
NL	4 (+2)	1 (+1)	0 (no change)
PL	54 (-33)	14 (-6)	15 (-22)
PT	27 (+12)	1 (-1)	13 (+7)
RO	58 (-77)	9 (-21)	10 (-6)
SE	0 (-4)	0 (-1)	0 (-1)
SI	11 (+8)	1 (+1)	6 (+4)
SK	19 (-21)	2 (no change)	5 (-24)
UK	8 (-6)	3 (+3)	1 (no change)
HR	23 (+2)	8 (+2)	3 (-5)
Total	529 (-128)	96 (-25)	202 (-76)

Note: The difference in the number of cases to 2010 is in parentheses.

Source: Council of Europe/ECtHR, Annual Report 2011, published in 2012, pp. 155-157

right of the ECHR, as well as the number of judgments generally related to the right to fair trial and, more specifically, to the length of proceedings. The data underscore the problems related to length of proceedings across Europe.

In 2011, several EU Member States undertook specific legislative measures to address the persisting problem of over-lengthy proceedings. In **Austria**, for example, the civil procedural law was amended to abolish summer and winter recess periods.³⁸ **France** reformed its criminal courts, dropping the number of jurors in the first instance to six from nine and on appeal

to nine from 12³⁹ to enable criminal courts to try more cases per session. In response to a 2010 pilot judgment delivered by the ECtHR (*Rumpf*) **Germany** adopted a new law in December 2011. It addresses excessive length of proceedings in two stages: those affected by lengthy proceedings must first file a complaint against the lengthy proceedings, giving by that an opportunity to the judges to accelerate them. If the proceedings continue to be delayed, compensation may be granted.

Several legal provisions aimed at speeding up judicial proceedings have been adopted around Europe. **Greece**, for example, gave lower first-instance courts in civil cases

38 Austria, Draft Budget Consolidation Act – Justice 2011-2013.

39 France, Decree No. 2011-939 of 10 August 2011.



a broader mandate by upping the sums of money which may be handled at this level. They also curtailed the flexibility courts have in postponing criminal proceedings.⁴⁰ In **Romania**, judges may now set shorter terms for hearings and take active measures to compel parties to present evidence and fulfil their obligations without unnecessary delays, and documents may be communicated by fax or e-mail, including subpoenas.⁴¹ The **Slovenian** National Assembly adopted two acts introducing specific measures to accelerate proceedings before courts. These include a mechanism to lower the remuneration of court experts if they cause delays, and the option for judges to schedule and hear trials after regular business hours.⁴²

8.3.2. Court reform

Similarly, steps were taken across Europe to make access to justice more effective. Developments include increasing judicial independence and overall justice efficiency, as well as restructuring and modernising court systems. Some changes, however, suggest that access to justice has been compromised.

The ECtHR, the CJEU and many EU Member States all dealt with court reform during the year. The Council of Europe convened the Izmir Conference on the future of the ECtHR, a follow-up to the 2010 Interlaken Conference,⁴³ with the twin goals of dealing more effectively with urgent and relevant cases and of resolving more issues at national level. The ECtHR itself also sought improved practices, such as making its interim measures more effective in preventing a situation from deteriorating pending possible trial.⁴⁴ Other measures include issuing a practical guide on admissibility criteria and establishing an ECtHR section to filter out inadmissible cases, efforts designed in particular to reduce cases from the highest case-count States.⁴⁵ The ECtHR also institutionalised a pilot-judgment procedure – in which one judgment addresses several cases – in an effort to identify systemic problems and reduce the number of pending and repeat cases.⁴⁶ At the national level, the **Latvian** Parliament in June adopted amendments to the administrative procedure law, introducing an ‘experimental judgment procedure’.⁴⁷ Under this procedure, the chairperson of the court may assign ‘experimental status’ to one or several cases of similar factual and legal circumstance

if there is no well-established case-law to deal with the question at hand. All court instances review experimental cases on a priority basis. Only once the final decision of the experimental case comes into force are the other, similar, cases reviewed.

The CJEU has kept up with the constantly increasing number of cases it receives each year, although its case-load growth is far smaller than that experienced by the ECtHR.⁴⁸ The CJEU received 1,406 cases in 2010, against 60,000 new applications at the ECtHR.⁴⁹ The CJEU is also to undergo reform: both the Statute of the Court and its Rules of Procedures are up for revision.⁵⁰ One major issue relates to the composition of judges’ panels. Some suggest increasing the number of judges in the Grand Chamber composition to 15 from 13 and dropping the requirement that all four Chamber Presidents must sit in the Grand Chamber simultaneously. Another important change relates to improving case processing. Decisions on legal aid would be simplified, and chambers would be able to use expedited approaches to speed up procedures in particular cases and to grant anonymity to parties to protect privacy. The CJEU would also be able to pursue judgment in some cases, even if a requested referral for a CJEU ruling is later withdrawn, to ensure that determinations are made on important points of law.

Several areas of reform have, however, caused concern, including plans to: discontinue publishing the written arguments submitted to the CJEU prior to an oral hearing, called ‘report for the hearing’ documents; discontinue translations, except for translations of parties’ written observations and oral arguments; and the CJEU’s new power to reject a hearing, even if a request was made by one of the parties.⁵¹ These efficiency-boosting measures will affect the overall access to justice, both positively and negatively.

At the national level, a majority of EU Member States and **Croatia** took steps to reform and re-organise national judicial systems to enhance their effectiveness. The **Netherlands**, for instance, will reduce the number of courts of appeal (*Gerechtshoven, Hof*) to four from five, and the number of courts (*rechtbanken*) to 10 from 19.⁵² **Romania** has reorganised its courts by closing or merging some smaller courts with low activity courts and by re-allocating some staff to busier courts.⁵³ The **Irish** parliament is seeking to reduce judicial pay, but questions have arisen about the implications of reduced pay on judicial independence.⁵⁴ Early in 2012, the European

40 Greece, Law 3994/2011 Streamlining and improving the administration of civil justice and Greece, Law 3904/2010 Consolidation and improvement to the grant of criminal justice.

41 Romania, Law 202/2010 regarding some measures for accelerating judicial proceedings. Similar changes are also introduced in Romania, Law 134/2010 of the Civil Procedure Code, and Romania, Law 135/2010 on the Criminal Procedure Code.

42 Slovenia, Act amending the Courts Act, Slovenia, Act Amending the Judicial Service Act.

43 Council of Europe (2011b).

44 ECtHR (2011a).

45 ECtHR (2011b).

46 ECtHR (2011c).

47 Latvia, Draft law on amendments to the Administrative Procedure Law.

48 CJEU (2011a).

49 ECtHR (2011d).

50 CJEU (2011b).

51 United Kingdom, Law Society of England and Wales (2011a).

52 The Netherlands, House of Representatives (2011).

53 Romania, Law 148/2011.

54 Ireland, 29th Amendment to the Constitution (Judges’ Remuneration) Bill 2011.

Commission launched legal procedures against **Hungary** on issues related to the independence of its judiciary, specifically on the mandatory retirement age of judges.⁵⁵

Promising practice

Measuring public trust in justice: justice indicators

EURO-JUSTIS, a justice indicator project co-financed by the EU's seventh framework programme (FP7) research programme, is designed to provide EU institutions and Member States with new indicators for assessing public confidence in justice, such as trust in court effectiveness, court distributive fairness and court procedural fairness. These indicators are designed to help policymakers at both EU- and Member State-levels to understand how to adjust policies to address areas where there may be problems in perceptions of or experience with courts. In June, the final project report was published, entitled *Trust in justice*.

For more information, see: www.eurojustis.eu

Bulgaria and **Romania** undertook judicial reform commitments upon EU accession.⁵⁶ Budget cuts also stimulated additional court reforms in Europe. **Greece**, for example, introduced court reforms that included ensuring the enforcement of judicial decisions, improving judges' management skills and eliminating backlogs in addition to the reforms mentioned.⁵⁷

8.3.3. Court fees and legal aid

High costs associated with legal proceedings, such as court and lawyers' fees, may deter individuals from pursuing remedies through the courts. Adequately resourced legal aid systems are therefore crucial for access to justice to be effective. According to ECtHR case law under Article 6 (1) of the ECHR, states are to provide free legal assistance in civil matters when such assistance proves indispensable for effective access to the courts, either because legal representation is mandatory under domestic law or because of the complexity of the procedure or case.⁵⁸

Court fees – paid to the court by a claimant on commencement of the proceedings – were reviewed in several EU Member States during 2011. The **Czech Republic** raised court fees, in some cases by up to 50%.⁵⁹ **Lithuania** introduced new court fees in relation to, for

instance, a request for interim measures and for appeal against a decision by a first instance court adopted in absentia, while abolishing fees for other types of cases, such as those related to consumer rights.⁶⁰ The **Netherlands** is also considering a fee increase.⁶¹ **Austrian** legal professionals criticised the high cost of photocopying documents from case files, as such charges considerably raised the overall costs of court proceedings.⁶²

The demand for legal aid has been increasing in some Member States. **Bulgaria** provided legal aid in a substantially higher number of cases, due largely to amendments to the Criminal Procedure Code allowing for a 'reserve counsellor' – a back-up lawyer, growing awareness of legal aid among the population and many people's financial situations.⁶³ In **Ireland**, those seeking legal services for non-asylum civil matters rose to 17,000 in 2010 from 10,000 in 2007. The figure continued to climb in 2011, nearly reaching the 2007 total in the first six months of the year. Inevitably, this has created huge pressure on the Irish Legal Aid Board's law centres and its capacity to deliver legal services within a reasonable period of time.⁶⁴

In a broader context, several EU Member States introduced legislative reforms of existing legal aid systems (see also Measure C of the roadmap on criminal procedures in Figure 8.1, which, to some extent, deals with legal aid). **France** adopted a law in July on the right to see a lawyer when in police custody, customs and 'excise' detention.⁶⁵ The reform includes state contributions towards payment of court-appointed lawyers, and provides a grant to the bar associations to cover all or part of the cost of providing such lawyers. **Austria** amended a Law Relating to Aliens in September, which requires obligatory legal counselling for asylum seekers in the admission, first instance and appeals procedures before the asylum court (*Asylgerichtshof*).⁶⁶ (For further information on asylum-related issues, see Chapter 1). **Slovakia** reformed its legal aid to expand eligibility to a wider segment of society.⁶⁷

Other EU Member States, have, however, introduced more restrictive measures. The Minister for Immigration and Asylum Policy of the **Netherlands** announced new policies to shorten asylum procedures.⁶⁸ Legal aid will be reduced or cut when asylum seekers submit further applications without presenting new facts.⁶⁹ An expert group

55 European Commission (2012).

56 Council of the European Union (2011c).

57 European Commission Directorate-General for Economic and Financial Affairs (2011).

58 See e.g. ECtHR, *Mirosław Orzechowski v. Poland*, No. 13526/07, 13 January 2009, para. 20.

59 Czech Republic, Act No. 549/1991, 1 September 2011.

60 Lithuania, Seimas Law of the Republic of Lithuania amending and supplementing the Code on Civil Procedure, No. XI-1480, 21 June 2011.

61 The Netherlands, Council of State (2011).

62 Austria, Recht.extrajournal.net (2011).

63 Bulgaria, Ministry of Justice (2011) p. 5.

64 Ireland, House of the Oireachtas (2011).

65 France, Decree n° 2011-810 of 6 July 2011.

66 Austria, Amending Act to the Law Relating to Aliens.

67 Slovakia, Law 332/2011 amends the Act no. 327/2005 Coll.

68 The Netherlands, Minister for Immigration and Asylum Policy (2011).

69 *Ibid.*



has already pointed out that this policy will conflict with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status as well as Article 47 of the Charter of Fundamental Rights of the European Union and Article 6 of the ECHR, both of which guarantee the right to a fair trial.⁷⁰ In the **United Kingdom**, the Legal Aid, Sentencing and Punishment of Offenders Bill appears to be controversial,⁷¹ given substantial reductions in the availability of legal aid and changes to funding methods for civil litigation.

At national level, new legislative developments took place in 2011 also in relation to legal assistance in the area of criminal law. In light of the precedent created by the ECtHR in the 2008 judgment of *Salduz v. Turkey*⁷² in Belgium, for example, the federal Parliament adopted in August 2011 a 'Salduz law' conferring the right to access to a lawyer from the first police interrogation (i.e. Law amending the Criminal Procedure Code and the Law of 20 July 1990 on the preventive detention as to confer certain rights, amongst which the right to consult and be assisted by a lawyer, to each person interrogated and deprived from his freedom).

8.3.4. Legal standing

Legal standing – the legal possibility to bring a case before a court – is obviously central to accessing justice. Legal standing can be improved in several ways, such as broadening the scope of those eligible to bring a case, or reducing procedural obstacles. On a parallel issue of cases before institutions other than courts, FRA research has shown that cases of discrimination are rarely reported to the competent authorities.⁷³ Ongoing research supports the view that complainants avoid accessing justice since the individual stigma of bringing a case is too great.⁷⁴ Changing legal standing to allow for collective complaints might be a way forward at both courts and other institutions such as National Equality Bodies. Collective complaints, also referred to as 'class action' or 'collective redress', allow for the aggregation of several individual claims into one shared case.

The EU undertook a public consultation in 2011 on the introduction of a collective redress mechanism,⁷⁵ designed in part to identify related common legal principles. The consultation should also help to examine

how such common principles could fit into the legal systems of the EU and the 27 EU Member States. The consultation also explores in which fields, such as compensation versus halting a situation, collective redress would have added value for improving the enforcement of EU legislation or for better protecting the rights of victims. The intention with collective complaints is to improve the ability to hinder unlawful practices and to seek compensation for breaches of EU law harming large groups of persons or businesses.⁷⁶

Collective complaints are also closely associated, but should not be confused with what could be called 'public interest actions'. International environmental law has for many years required states to allow complaints from a directly affected person as well as from the general public with a sufficient interest in the matter. "What constitutes a sufficient interest and impairment of a right shall be determined [...] with the objective of giving the public concerned wide access to justice [...]. To this end, the interest of any non-governmental organization [promoting environmental protection] shall be deemed sufficient [...]."⁷⁷ The EU has implemented this part of international law via the Environmental Impact Assessment (EIA) Directive, which deals with public participation in environmental planning.⁷⁸ The CJEU clarified that national procedural law is trumped by the requirement to allow such NGOs to bring cases.⁷⁹

Promising practice

Filing a complaint via webcam

Police are also employing innovative approaches to the submission of complaints. The Rotterdam-Rijnmond Police Department in the Netherlands introduced in April a pilot scheme whereby citizens can report a crime via webcam. A person who wants to file a complaint: enters a virtual room on the police department's website and, using the private webcam there, shows the camera his or her identification papers and answers the questions of a police officer who then completes the required forms. The virtual reporting room is open from 8.00 to 22.00. Some complaints, such as violent and sexual crimes and crimes committed by family members of the person filing, cannot be filed in this manner.

For more information, see: www.politie-rotterdam-rijnmond.nl/online-service/aangifte/aangifte-via-webcam.aspx

70 The Standing Committee of Experts on International Immigration, Refugee and Criminal law, also known as the Meijers Committee, available at: www.commissie-meijers.nl/commissiemeijers/pagina.asp?paginaam=english.

71 Hale, B. (2011); United Kingdom, Law Society of England and Wales (2011b); United Kingdom, Bar Council of England and Wales (2011); United Kingdom, Law Centres Federation (2011); United Kingdom, Liberty (2011).

72 ECtHR, *Salduz v. Turkey*, No. 36391/02, 27 November 2011.

73 FRA (2009), p. 50.

74 See FRA activity box, p. 199.

75 European Commission (2011g).

76 *Ibid.*, para. 3.

77 UN, Economic Commission for Europe (UNECE), Art. 9.; see also: FRA (2011c), pp. 39-40.

78 Council Directive 85/337/EEC of 27 June 1985, amended by Directive 2003/35/EC.

79 CJEU, C-115/09, *Bund für Umwelt und Naturschutz Deutschland, Landesverband Nordrhein-Westfalen eV v. Bezirksregierung Arnsberg*, 12 May 2011, para. 50 *et seq.* See also CJEU, C-128/09, *Antoine Boxus et al v. Région wallonne*, 18 October 2011.

Several EU Member States took steps in 2011 to broaden the group of those eligible to bring complaints by allowing collective actions in areas where such mechanisms did not exist before. In **Belgium**, the Flemish Bar Association (*Orde van Vlaamse Balies*) is working on a bill to allow a 'class action' procedure under Belgian law. The law would create the possibility for several complainants, or 'supportive plaintiffs' who are not individually identified, to join forces behind one representative plaintiff.⁸⁰ In **Estonia**, the new Code of Administrative Procedure (*Halduskohtumenetluse seadustik*), effective from 1 January 2012, includes legal standing for environmental NGOs and groups of activists who represent the opinions of a significant number of local residents.⁸¹ The government in **Lithuania** adopted a resolution approving of collective complaints.⁸² Similar developments are also underway in **Croatia**.⁸³

8.3.5. E-justice

E-justice, the use of information technology to simplify access to justice, is developing rapidly in the EU, bringing with it both good and bad implications for fundamental rights. E-justice allows a broader and speedier access to justice for all but poses risks to rights to privacy of personal data as well as reduced physical access to various legal services. The European e-Justice Portal, launched in 2010, is a 'one-stop-shop' for EU-justice-related issues.⁸⁴ As the FRA report *Access to justice in Europe* (2011) explains, the portal provides details on, for instance, judicial systems and legal aid in all Member States. In late 2011, the CJEU launched a new online feature, e-curia, allowing parties to deposit, receive and consult procedural documents in electronic format.⁸⁵

Electronic tools may provide various e-services and effectively bridge geographical distance to a court, although there are limits to the reach of such tools, because not all segments of society have access to the internet nor are they sufficiently proficient or willing to make use of it. The CCJE Opinion on justice and information technologies, mentioned earlier, underscores the importance as well as the pitfalls in using information technology for justice.⁸⁶ The Opinion calls, for instance, for improved access to justice through e-filing and by making case law available. The CCJE says "that the judiciary should make case law, or at

least landmark decisions, available on the internet i) free of charge, ii) in an easily accessible form, and iii) taking account of personal data protection."⁸⁷

Promising practice

Enhancing the e-justice portal

The European e-justice portal is continuously expanding its features. The Council of Bars and Law Societies of Europe (CCBE) provided data for a 'find-a-lawyer' function that enables searches by country, practice area and languages spoken. This was piloted in 2011 and will be made available in 2013. A similar function for notaries was developed by the CNUE (Council of the Notariats of the European Union), which will also be integrated in the portal in 2013. Direct electronic exchanges between individuals and courts in the Member States in European small claims procedures and European payment orders will be piloted in 2012, as part of the e-Codex project. Factsheets on the rights of suspects and defendants in criminal proceedings in the respective EU Member States, prepared by the Commission, together with the CCBE, will be uploaded in 2012. It is anticipated that these developments will inspire similar moves at national level.

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

Similar developments relating to e-justice took place at EU Member State level in 2011, in particular in relation to electronic exchange of documents and e-filing at courts. The EU's Internal Market Directive has helped push Member States to improve e-justice.⁸⁸ In **Austria**, as of 2011, documents can be submitted electronically to courts in all legal proceedings. The Federal Ministry of Justice (*Bundesministerium für Justiz*) has prioritised further e-justice enhancements to promote access to justice and reduce the length of proceedings.⁸⁹ The latest available data, from 2010, shows that some 95 % of summary proceedings and more than 65 % of applications to enforce a court decision were transmitted electronically.⁹⁰ In June, **Finland's** judicial administration opened an electronic service that allows individuals and businesses to perform some judicial matters online, including filing for legal aid and taking action on an undisputed debt, provided there is only one debtor.⁹¹

France introduced an e-bar (*e-barreau*) platform that enables electronic communication between parties and the courts of appeal. As of 1 September, appeals

80 Belgium, Flemish Bar Association (2011).

81 Estonia, Code of Administrative Court Procedure. Also see: Estonia, Code of Civil Procedure.

82 Lithuania, Resolution approving the collective complaint concept.

83 Croatia, Civil Procedure Act.

84 For more information, see: <https://e-justice.europa.eu>; FRA (2011a), p. 21; Council of the European Union (2011d), p. 1.

85 CJEU (2011c); See also, http://curia.europa.eu/jcms/jcms/P_78957/?hlText=e-curia.

86 CCJE (2011).

87 CCJE (2010a) Art. 24. The Opinion also notes the need to comply with the ECLI-standards, see above.

88 Council Directive 2006/123/EC, OJ 2006 L 376, p. 36 and Art. 8.

89 Austria, Ministry of Justice (2011), p. 4.

90 *Ibid.*

91 Finland, Act on the amendment of the Parliamentary Ombudsman Act 20.5.2011/535.



are only admissible if submitted via the e-bar platform: electronic appeals have thereby replaced paper appeals.⁹² **Germany** saw three major e-justice developments. The act on de-mail, an e-government communications service that makes it possible to exchange legal documents electronically among citizens, agencies and businesses, entered into force in May.⁹³ Germany also instituted e-filing in courts at the federal and regional level.⁹⁴ And, by the end of 2011, Germany was expected to have set up a system allowing all federal courts and federal prosecutors to handle all written communication electronically.⁹⁵ Court orders in **Lithuania** can be applied for via the TJEUS online system, which also provides continuously updated information on an application's status.⁹⁶ Lithuania has also made standard forms for refusal and acceptance of a claim available, reducing the need for legal assistance.⁹⁷

The **Netherlands** launched a Digital Procedures for Administrative Law project (*Digitaal Procederen Bestuursrecht*), which includes a component enabling citizens to launch legal proceedings electronically.⁹⁸ In the area of criminal law, the Rotterdam Court piloted a fully digital process in 2011.⁹⁹ The Ministry of Justice in **Slovakia** introduced an e-portal with an e-actions (*ežaloby*) section through which citizens may file an action or a motion to on-going civil court proceedings. The section includes the relevant forms along with instructions on how to fill them in.¹⁰⁰ **Slovenia** established e-filing for land registry in May, prompting the filing of a large number of cases in the following months. Under its e-justice strategy, an additional set of e-projects are being prepared.¹⁰¹

Promising practice

Visualising sentencing: you be the judge

The **United Kingdom's** Ministry of Justice was recognised at the International Visual Communications Awards for an interactive guide to help people understand sentencing – 'you be the judge'. This type of tool facilitates access to justice by allowing people to become accustomed to the procedures of courts outside the actual courtroom.

For more information, see: <http://ybtj.justice.gov.uk>

The **United Kingdom** announced a work programme in September to modernise and improve the efficiency

of the criminal justice system in England and Wales.¹⁰² Two components are: streamlined digital working and increased use of video technology, which includes the use of a 'virtual court', where first hearings in magistrates' courts are held via video link with the defendant remaining in the police station following charge. A United Kingdom research project also discusses the use of a video link between a police station and court for early hearings in criminal cases.¹⁰³ Electronic disclosure – parties making information available and manageable electronically – became obligatory in civil cases in England and Wales late in 2010.¹⁰⁴

8.3.6. National Human Rights Institutions

National Human Rights Institutions (NHRIs), bodies established to protect and promote human rights at the national level, play an important role in providing access to justice. How they do so varies greatly by institutional mandate. Some NHRIs, for instance, are focused on monitoring compliance with human rights, conducting research or actually hearing complaints. Others seek to raise awareness of human rights and thereby prevent the need to access justice from arising.

In June 2011, the UN Human Rights Council in Geneva passed a resolution that affirmed the important role of NHRIs in promoting and protecting human rights at the national and UN levels.¹⁰⁵ The resolution encouraged UN Member States to establish NHRIs that are compliant with international standards and likewise encouraged states to strengthen their established NHRIs. This was the Human Rights Council's first resolution to focus specifically on the work of NHRIs.¹⁰⁶ The Council of Europe Human Rights Commissioner issued in 2011 an opinion on national structures for promoting equality. This opinion aims to assist member states in enacting equal treatment legislation, establishing independent and effective equality bodies and enabling these structures to discharge their functions in an independent and effective way. It underlines the importance of strong equal treatment legislation as well as independence and effectiveness as two core factors for assessing national structures for promoting equality.¹⁰⁷

The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights' (ICC) accreditation process, conducted by its Sub-Committee on Accreditation in line with the Paris Principles, is central to the status of these institutions, because it guarantees greater effectiveness and

92 France (2011).

93 Germany, De-Mail Act, 3 May 2011.

94 *Ibid.*

95 *Ibid.*

96 *Ibid.*

97 Lithuania, Ministry of Justice (2011).

98 Netherlands (2011a).

99 Netherlands (2011b).

100 Slovakia, Ministry of Justice (2011).

101 Slovenia, Ministry of Justice (2011).

102 United Kingdom, Ministry of Justice (2011).

103 Terry, M., *et al.* (2010).

104 United Kingdom (2010).

105 UN, Human Rights Council Resolution.

106 Asia Pacific Forum (2011a).

107 Council of Europe, Commissioner for Human Rights (2011a).

independence. 2011 reforms relating to NHRIs and their accreditation status took place.¹⁰⁸ NHRIs in two Member States, **Denmark**¹⁰⁹ and **Portugal**,¹¹⁰ were assessed and found to be in full compliance with the Paris Principles, thus maintaining their A-status. Both Member States have put forward legislative amendments to restructure the existing NHRIs to streamline the existing system of human rights protection and to strengthen the role of NHRIs. **Croatia** is also restructuring its NHRI.¹¹¹

NHRIs in **Bulgaria**, **Hungary** and **Sweden** applied for ICC accreditation status in the same period. The ICC reviewed their compliance with the Paris Principles, awarding all the institutions B-status for incomplete compliance. The two **Bulgarian** institutions received B-status: the Ombudsman and the Commission for the Protection against Discrimination. **Hungary** replaced the four existing rights-related commissioners with a Commissioner of Fundamental Rights (*Alapvető jogok biztosa*), who, under the new law on the Commissioner for Fundamental Rights (CXI/2011), monitors and analyses the situation of fundamental rights and prepares a related statistical study. The Commissioner also receives and collects statistical data from the Equal Rights Commission, the National Data Protection Authority, the Police Complaints Body and the Educational Rights Commissioner.

Since 2010, the number of accredited NHRIs in EU Member States has reached 22: twelve NHRIs with A-status

located in 10 different Member States (the **United Kingdom** having three), nine with B-status in eight different Member States (**Bulgaria** having two) and one NHRI with C-status (see Table 8.2).

In at least three of the Member States with accredited NHRIs, namely **Austria**, **Belgium** and the **Netherlands**, reforms are underway that might lead to an upgrade to A- from B- status. For example, **Austria's** amended National Ombudsman Board Act (*Volksanwaltschaftsgesetz*, 1982) will come into force on 1 July 2012. In Belgium, negotiations launched in December 2006 to transform the Centre for equal opportunities and opposition to racism (*Centre pour l'égalité des chances et la lutte contre le racisme*) into an inter-federal centre and aim for A- status continued.¹¹² The **Netherlands** formally established a new NHRI in November, which is expected to become operational in mid-2012.¹¹³ In **Italy**, new draft legislation has been proposed to establish an NHRI, with a view to seeking ICC-accreditation.¹¹⁴ **Cyprus**,¹¹⁵ **Finland**¹¹⁶ and **Lithuania**¹¹⁷ have all taken steps to strengthen existing non-accredited institutions, also with an aim to apply for ICC accreditation. The **Cypriot** change consists of amendments making the Ombudsman Commissioner for the Protection of Human Rights, including a mandate to fulfil monitoring commitments under the Optional Protocol to the UN Torture Convention (OP-CAT). In **Sweden**, as reported in last year's Annual Report (p. 148), a government-appointed inquiry

Table 8.2: NHRIs, by institution and ICC-accreditation status

Status	Countries
A	<u>Denmark</u> , France, Germany, Greece, Ireland, Luxembourg, Poland, Portugal, Spain, United Kingdom (Scotland, <u>England and Wales</u> , and Northern Ireland) and Croatia
B	<i>Austria</i> , <i>Belgium</i> , Bulgaria (two institutions), Hungary , <i>Netherlands</i> , <i>Slovakia</i> , Slovenia, Sweden
C	Romania
No accredited NHRI	<i>Cyprus</i> , Czech Republic, Estonia, <i>Finland</i> , <i>Italy</i> , Latvia, <i>Lithuania</i> , Malta

Notes: NHRIs in Member States in bold were accredited by the ICC in 2011. Italicised Member States indicate changes underway that could affect the NHRI's accreditation status. Underscored Member States have NHRIs that also serve as a National Equality Body under EU law. Source: FRA, 2011

108 Asia Pacific Forum (2011b).

109 Denmark, *Regeringsgrundlag* (2011).

110 Portugal, Amendment of the Organic Law on the Portuguese Ombudsman Services.

111 Croatia, Ombudsman Act. See also: Carver, R. et al.

112 Belgium, Centre for equal opportunities and opposition to racism (CEOOR) (2012).

113 Netherlands, Dutch Senate draft bill on the establishment of a National Human Rights Institute.

114 Italy, Draft Bill for the creation of a National Commission for the promotion and protection of human rights.

115 Cyprus, Law 158(I)/2011 strengthening the functioning of the Ombudsman in respect to Human Rights protection amending the Commissioner of Administration (Ombudsman) Law (Law 36(I) 2004) so as to provide a mandate also for the protection of human rights.

116 Finland, Act on the amendment of the Parliamentary Ombudsman Act 20.5.2011/535. See also Finland, Government Bill to amend the Parliamentary Ombudsman Act; and Finland (2010).

117 Lithuania, Human Rights Committee of the Seimas (2011).



committee proposed the establishment of an NHRI in compliance with the Paris Principles.¹¹⁸ In 2011, another government-appointed inquiry delivered its findings, concluding that, among other things, a new NHRI should be established. Its mandate should be broader than the present one which addresses equality; the aim should be to seek A-status.¹¹⁹

FRA ACTIVITY

Handbook on establishing and accrediting National Human Rights Institutions in EU Member States

The FRA has prepared a practical handbook on guidance for establishing NHRIs in the EU, particularly with regard to the accreditation process. The FRA consulted NHRIs in 2011 on the structure and content of the handbook resulting in major improvements as well as concrete examples from NHRIs around the EU. Along with outlining the accreditation process, the handbook provides practical accreditation examples from EU Member States, as well as information on how to maintain or improve ICC-status once accredited. It primarily targets national governments, parliaments and existing bodies with a human rights remit that are considering an NHRI or are seeking to encourage existing institutions to get accreditation. The handbook may also serve as a practical tool for civil society actors who advocate and support developments in this area. It will be published in 2012.

In 2011, **Ireland** announced that its existing NHRI would merge with its National Equality Body – an entity required under EU law to promote equality.¹²⁰ This would increase the number of accredited NHRIs in EU Member States that also serve as National Equality Bodies to seven: three with A-status and four with B-status. Among those, the **Netherlands**, is integrating its existing Equal Treatment Commission, which holds B-status, with the recently established NHRI mentioned earlier.

Under the requirements of the OP-CAT, **Austria**¹²¹ appointed its ICC-accredited NHRI as the required National Preventive Mechanism (NPM). **Croatia** did the same.¹²² Of the 14 EU Member States, plus Croatia, that had appointed an NPM by the end of 2011, four were also NHRIs (**Croatia**,

Hungary, Poland and Slovenia).¹²³ Similarly, in 2011, the A-status NHRI in **Denmark**¹²⁴ and the B-status NHRI in **Belgium**¹²⁵ were entrusted with a mandate to monitor the UN Convention on the Rights of Persons with Disabilities (CRPD). Of the 19 EU Member States which are Parties, six have appointed an accredited NHRI as part of the monitoring framework under the CRPD.¹²⁶ See further Chapter 5.

Outlook

Reforms initiated in 2011 merit commendation for striving to tackle lengthy judicial proceedings as well as to streamline court systems, both of which will make access to justice at European and national levels more practical and effective. However, some measures taken risk reducing access to justice by introducing or increasing obstacles to access courts or other redress mechanisms.

The search for increased efficiency has driven pioneering work in the use of e-justice tools. EU Member States are expected to expand and develop their work in the area, though caution is needed to avoid marginalising those without access to the internet. The area of legal standing also saw progress in 2011, with the scope of those eligible to make a claim widening. The development of institutions with a human rights remit is also helping to make justice more accessible. And, as EU law continues to evolve, the judicial systems of EU Member States will need to adapt and harmonise in order to effectively handle cross-border issues and ensure that fundamental rights are sufficiently guaranteed.

Looking ahead, 2012 will be the year that the EU adopts the Criminal Procedure Roadmap's Measure B – the letter of rights – and substantial progress is also expected on other measures. The financial situation will likely continue to play a major role in priorities and efforts to make the justice system more effective. A trend towards strengthening NHRIs and their roles as non-judicial 'access to justice' mechanisms will most likely continue in the coming period, as will the role of the monitoring mechanisms under international human rights conventions.

118 Sweden, National action plan for human rights (2010), pp. 343, 346-347.

119 Sweden, Delegation for Human Rights (2011), pp. 252-269.

120 Ireland, Department of Justice and Equality (2011a); Ireland, Department of Justice and Equality (2011b).

121 Austria, Federal Act on the Implementation of the Optional Protocol of 18 December 2002 to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, Art. 17.

122 Croatia, Act on a preventive mechanism for the suppression of torture and other cruel, inhuman or degrading treatment or punishment.

123 Association for the prevention of torture (APT) (2012).

124 For more information on Denmark's NHRI mandate, see: www.humanrights.dk/who+we+are/dihr's+mandate.

125 Belgium, CEOOR (2011).

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EU

January

January

February

14 February – European Union Agency for Fundamental Rights issues an Opinion on the draft Directive regarding the European Investigation Order

13 March – Council of Europe European Commission for the Efficiency of Justice publishes a comparative report on courts in EU Member States

February

March

March

April

April

31 May – Council of Europe issues guidelines on child-friendly justice

May

May

8 June – European Commission presents a proposal for a directive on the right to access to a lawyer in criminal proceedings and on the right to communicate upon arrest

June

14 June – European Commission launches a consultation on Strengthening mutual trust in the European judicial area – A Green Paper on the application of EU criminal justice legislation in the field of detention

July

June

August

July

20 September – European Court of Human Rights, in the *Ullens de Schooten and Rezabek v. Belgium* case, rules that national courts need to provide a reasoned opinion when refusing to refer a case to the Court of Justice of the European Union

August

20 September – European Commission adopts a Communication to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions 'Towards an EU criminal policy: Ensuring the effective implementation of EU policies through criminal law'

September

September

October

October

18 November – UN Commission on Crime Prevention and Criminal Justice adopts draft UN principles and guidelines on access to legal aid in criminal justice systems

29 November – European Commission proposes Alternative Dispute Resolution mechanisms, including a platform for online disputes

November

November

December

13 December – European Parliament adopts a legislative Resolution on the proposal for a directive of the European Parliament and of the Council on the right to information in criminal proceedings

December

