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Equality and non-discrimination



The European Union (EU) and its Member States took concrete steps in 2012 to promote equality and non-discrimination in the EU. Several EU Member States ratified the UN Convention on the Rights of Persons with Disabilities, and the Council of the European Union adopted a framework for EU-level monitoring of the convention's implementation. The 2012 Year of Active Ageing highlighted the challenges and obstacles faced by older persons, including those with a disability, and policies were initiated to address these challenges. The European Parliament repeated its call to the European Commission for more comprehensive action regarding the fundamental rights of lesbian, gay, bisexual and transgender persons. The proposed Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation, known as the Horizontal Directive, continued to be discussed. Finally, governments, civil society and equality bodies in many EU Member States continued their efforts to promote equality and non-discrimination despite the challenges of austerity measures.

5.1. Key developments: European aspects

Adoption and ratification of legal instruments

The Lisbon Treaty made the prohibition of discrimination an issue that cuts across all areas of EU legislation and policy. In this spirit, two EU directives were adopted explicitly recognising the cross-cutting relevance of equality and non-discrimination. Firstly, in December 2011, the Asylum Qualification Directive (recast) was adopted (see also **Chapter 1** on asylum, immigration and integration). This directive includes a greater acknowledgment of non-discrimination and gender-specific forms of persecution, including the inclusion of gender identity as an element to account for when defining a 'particular social group'.¹

Secondly, the Directive establishing minimum standards on the rights, support and protection of victims of crime was adopted in 2012 (see also **Chapter 9** on rights of

Key developments in the area of equality and non-discrimination

- The Council of the European Union adopts on 29 October 2012 the EU-level framework for the implementation and monitoring of the United Nations Convention on the Rights of Persons with Disabilities (CRPD), following the EU's ratification of the CRPD in December 2010. The framework comprises the European Commission, the European Ombudsman, the Petitions Committee of the European Parliament, FRA (European Union Agency for Fundamental Rights) and the European Disability Forum.
- Five EU Member States ratify the CRPD in 2012, bringing the total to 24 EU Member States, as well as Croatia. A large majority of Member States identify focal points under the CRPD and either extend the mandate of existing bodies or set up new bodies as CRPD monitoring mechanisms.
- The European Parliament Civil Liberties, Justice and Home Affairs Committee (LIBE) publishes a feasibility study on a possible Lesbian, Gay, Bisexual and Transgender (LGBT) persons Roadmap. At national level a variety of measures are adopted and case law continues to play an important role.

¹ Directive 2011/95/EU, OJ 2011 L 337, Art. 10.

- The European Commission proposes that women should fill at least 40 % of non-executive board member positions in publicly-listed companies. Some Member States address the gender pay gap in legislative and policy measures.
- The 2012 European Year of Active Ageing and Solidarity between Generations raises the visibility of the challenges and obstacles that an ageing society faces, as well as the opportunities to address such issues.

crime victims).² This directive provides for specialist support services, assistance and protection for victims of crime who “should be recognised and treated in a respectful, sensitive and professional manner without discrimination of any kind based on any ground such as race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age, gender, gender expression, gender identity, sexual orientation, residence status or health”.

This is the first time that an EU directive refers to gender expression or gender identity. This reference offers explicit legal protection to the manifestation of one’s gender identity.³

EU Member States also continued to sign and ratify existing international conventions with an equality dimension in 2012. Six additional Member States, namely **Belgium, Italy, Malta, the Netherlands, Poland** and the **United Kingdom**, signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention).⁴

Five EU Member States (**Bulgaria, Estonia, Greece, Malta** and **Poland**) ratified the CRPD in 2012, bringing the total ratifications to 24 EU Member States and Croatia, among which 19 have also ratified its Optional Protocol. Those EU Member States that have ratified the convention but not its Optional Protocol are: **Bulgaria, the Czech Republic, Denmark, Poland** and **Romania**. **Estonia** and **Poland** made formal declarations upon ratification with regard to Article 12 of the CRPD on equal recognition before the law, interpreting this article to allow restriction of a person’s legal capacity according to the provisions of existing national legislation.⁵ **Finland, Ireland** and the **Netherlands** have yet to ratify the CRPD, but they have indicated that they are

in the process of amending their legislation to ensure compliance before ratifying.⁶

In keeping with the EU’s obligations under Article 33 (2) of the CRPD, the Council of the European Union adopted a proposal in October 2012 designating the members of the EU-level framework to promote, protect and monitor the implementation of the Convention.⁷

The entities comprising the EU framework are the European Parliament’s Petitions Committee, the European Ombudsman, the European Commission, FRA and the European Disability Forum. In addition, a majority of EU Member States have established the bodies defined under Article 33 of the CRPD for implementing and monitoring the CRPD at the national level. An overview of these bodies is presented in Table 5.1.

Legislative initiatives under discussion in 2012

In 2012, several discussions continued on legislative initiatives with an equality dimension. In 2011, the European Commission submitted its proposal for the EU structural funds legislative package for 2014–2020.⁸ According to the proposal, at least a quarter of the cohesion budget should be dedicated to the European Social Fund, amounting to €84 billion. The aim is to combat youth unemployment, promote active ageing, social innovation and social inclusion, and support disadvantaged groups such as Roma.

The proposal contained seven general conditions that must be met before EU Member States can receive funding, namely: anti-discrimination, gender equality, disability, public procurement, state aid, environmental legislation, and statistical systems/result indicators. Discussions in the Council of the European Union under the Danish Presidency of the EU in 2012 resulted in the removal of the conditions on anti-discrimination, gender equality and disability.⁹

The European Commission, as well as civil society organisations, called upon the Council to reverse this decision, saying that removing these conditions could undermine the full participation of the most vulnerable

2 Directive 2012/29/EU, OJ 2012 L 315/57.

3 *Ibid.*, Recital 56.

4 Council of Europe, Istanbul Convention.

5 UN, CRPD, Declarations and reservations. For the Estonian explanatory note to the ratification act see: Estonia, Ministry of Social Affairs (2012).

6 For Finland: A working group on the ratification of the CRPD will present a proposal by December 2013, for more information see: http://www.hare.vn.fi/mHankePerusSelaus.asp?h_iID=17591&tVNo=1&sTyp=Selaus; for Ireland: Dáil Éireann Debate ‘Written Answers – Human Rights Issues’, 28 February 2012, available at: <http://debates.oireachtas.ie/dail/2012/02/28/00076.asp>; Netherlands, House of Representatives (2012a).

7 Council of the European Union (2012a), p. 20.

8 European Commission (2011).

9 Council of the European Union (2012b).



social groups in the EU and the attainment of the Europe 2020 goals.¹⁰

In November 2012 under the Cyprus Presidency of the EU, the Council agreed on a fourth partial general approach to the structural funds legislative package, which did not include the conditions on anti-discrimination, gender equality and disability.¹¹

Disagreements have hampered discussions on the draft Maternity Leave Directive proposed by the European Commission in 2008.¹² These disagreements arose from the Council's position¹³ in 2011 on the length of maternity leave and the amount of allowance foreseen in the European Commission proposal, following a 2010 Parliament resolution.¹⁴ The Commission is not planning to withdraw the proposal and rather aims at continuing to make efforts to achieve further progress.

The discussion on the proposed Horizontal Directive continued in the Council of the European Union in 2012.¹⁵ The main issues concerned the division of competences between the EU and the Member States, the overall scope of the directive and the principle of subsidiarity.¹⁶

The European Parliament made repeated calls that have been widely supported by civil society, to 'unblock' the decision-making process.¹⁷

Some EU Member States are already implementing aspects that would be required for adopting such a horizontal directive. The anti-discrimination legislation in place, for example, in **Belgium, Bulgaria, the Czech Republic, Ireland, Malta, the Netherlands, Spain** and the **United Kingdom** as well as **Croatia**, extends the duty to provide reasonable accommodation for persons with disabilities beyond the field of employment, such as to the provision of goods and services.¹⁸

FRA ACTIVITY

Launching joint European non-discrimination handbooks

FRA and the European Court of Human Rights (ECtHR) produced an update in English and French to its 2011 co-publication on European non-discrimination law. The handbook, which offers a comprehensive guide to non-discrimination law and relevant key concepts, is now available in 24 languages on both the FRA and the ECtHR websites. On 10 December 2012, FRA staff participated in the launch of the Swedish version of the handbook at an event organised by the Equality Ombudsman.

The handbook language versions and update are available at: <http://fra.europa.eu/en/publication/2012/handbook-european-non-discrimination-law> and at: www.echr.coe.int/ECHR/EN/Header/Case-Law/Case-law+analysis/Handbook+on+non-discrimination

Non-legislative initiatives introduced in 2012

The 2012 European Year for Active Ageing and Solidarity between Generations was designed to raise awareness of the contribution that older people make to society, and of the opportunities for strengthening solidarity between generations – building on previous EU and Council of Europe activities in this area. Active ageing has been defined as meaning growing old in good health and as a full member of society, feeling more fulfilled at work, more independent in daily life and more involved as a citizen.¹⁹

A Council of the European Union Declaration in 2012 incorporated the 'Guiding principles for active ageing and solidarity between generations adopted by the Employment and Social Protection Committees. These principles refer to specific areas of action, including vocational education and training, healthy working conditions, age management strategies, employment services for older workers and prevention of age discrimination.²⁰

The Age Platform Europe has also highlighted initiatives within the EU, and established a Roadmap beyond the European Year.²¹

The European Year has stimulated debate on the challenges created by an ageing society, as well as those involved in supporting the efforts of Member States, regional and local authorities, social partners,

¹⁰ Joint statement of a coalition of European NGOs, *Important provisions under threat in Council discussions on the Structural Funds legislative package for 2014–2020*, Brussels, 24 April 2012. For more information, see: http://www.edf-feph.org/Page_Generale.asp?DocID=13854&thebloc=29831.

¹¹ Council of the European Union (2012c).

¹² European Commission (2008a).

¹³ Council of the European Union (2011a), p. 10; see also Council of the European Union (2011b).

¹⁴ European Parliament (2010).

¹⁵ European Commission (2008b).

¹⁶ Council of the European Union (2011c).

¹⁷ European Parliament (2011).

¹⁸ For more information see: FRA (2011).

¹⁹ For more information, see: <http://europa.eu/ey2012/>.

²⁰ Council of the European Union (2012d), pp. 7–11.

²¹ For more information, see: EY2012 Stakeholder Coalition (2012).

civil society and the business community to promote active ageing and mobilise the potential of the rapidly growing older population.²² The European Year has also served as a framework to discuss the need to raise the participation of older people in the labour market.²³

Upon the occasion of the European Year, the European Commission published the report *Older workers, discrimination and employment*, produced by the Network of socio-economic experts in the anti-discrimination field. The report highlights the main issues faced by older people in accessing and progressing in employment.²⁴

Prime among these issues is the lack of prospects for career advancement. This lack of prospects especially affects men aged 50 to 59. Many believe that they will no longer be able to do the same job at age 60, a key belief that drives the intention to leave the labour market as soon as possible,²⁵ Eurofound discovered. This is against the background that the majority of Europeans reject the increase in retirement ages by 2030, according to the Eurobarometer special survey on active ageing. Only in **Denmark** (58 %), **Ireland** (53 %), the **Netherlands** (55 %) and the **United Kingdom** (51 %) did the majority of respondents recognise the need for the official retirement age to rise.²⁶

In parallel, the Council of Europe's Drafting Group on the Human Rights of Older Persons (CDDH-AGE) initiated the drafting of a reloaded instrument. CDDH-AGE decided to gear its initial work towards the adoption of a Recommendation on this topic. CDDH-AGE also discussed the definition of 'older persons' but postponed the matter as it did not reach an initial agreement.²⁷

The EU also continued to implement specific action plans, strategies and other instruments in 2012 to promote non-discrimination and equality in other areas of discrimination. The European Commission continued to implement the EU Strategy on equality between men and women 2010–2015, as well as the European Disability Strategy 2010–2020.²⁸

The implementation of the EU Strategy towards the eradication of trafficking in human beings 2012–2016²⁹ began in 2012 following the 2011 adoption of the

EU anti-trafficking directive, a directive that also includes a gender perspective. The strategy highlights that women and girls account for 79 % of victims of trafficking and underlines the gender differences in trafficking types and possible responses (see also ► **Chapters 1 and 4** of this Annual report). ◀

The Equality Summit 2012 provided evidence that equality and accessibility policies can help support growth, economic development and prosperity. The summit, co-organised by the Cyprus Presidency of the Council of the European Union and the European Commission in Nicosia on 22–23 November, highlighted the importance of equality policies and legislation for the most vulnerable groups in the current difficult financial context.³⁰

The Eurobarometer on Discrimination, published on the same occasion, showed that discrimination is still considered common in the EU. The three most widely perceived grounds are ethnic origin (56 %), sexual orientation (46 %) and disability (46 %). In the employment area, people over 55 years of age are seen as the most vulnerable group in terms of discrimination. This Eurobarometer explored for the first time perceptions on discrimination against transsexual and transgender people.³¹

The European Institute for Gender Equality noted an increase in the introduction of protection orders and the adoption of national action plans to tackle violence against women in 25 EU Member States.³²

Finally, several European Parliament resolutions called on the European Commission to take further action in the area of fundamental rights of LGBT persons. A feasibility study on an EU LGBT Roadmap requested by the European Parliament's LIBE Committee recommends envisaging an EU action plan that would draw together new laws and policies to strengthen equality and non-discrimination for LGBT people in the EU.³³ The call for more action was repeated in the European Parliament's annual report on the situation of fundamental rights in the EU.³⁴

22 Decision No. 940/2011/EU of the European Parliament and the Council, OJ 2011 L 246/5.

23 Although there is no clear definition of the concept 'older people', the Employment Committee and the Social Protection Committee in their 'Guiding Principles' refer to statistics relating to "people over 65".

24 Van Balen, B. *et al.* (2011).

25 Eurofound (2012a), p. 80.

26 European Commission (2012a).

27 Council of Europe, Steering Committee for Human Rights, Drafting Group on the Human Rights of Older Persons (CDDH-AGE) (2012), p. 2.

28 European Commission (2010a).

29 European Commission (2012b).

30 European Commission and Cypriot EU Presidency (2012).

31 European Commission (2012c).

32 European Institute for Gender Equality (2012).

33 European Parliament (2012a).

34 European Parliament (2012b).



5.2. Key developments: national aspects

5.2.1. Legislative and non-legislative developments: cross-cutting aspects

Legislative developments aimed at combating discrimination in employment occurred in 2012 in **Latvia**, where a new law regulates the prohibition of discrimination in self-employment.³⁵ Latvia also adopted another piece of legislation with a view to implementing EU Directive 2010/41/EC³⁶ prohibiting unequal treatment of natural persons conducting independent paid activities in private or public. The law broadens the list of protected discrimination grounds by adding age, political and other belief, religion, sexual orientation, and disability to those areas covered by the law previously in force: sex, race and ethnic origin.

2012 also saw developments concerning equality legislation covering areas beyond employment. In **Slovakia**, the government approved a draft amendment to the Anti-discrimination Act, which extends the grounds upon which positive measures can be adopted to cover age, disability, 'race', nationality and ethnicity, sex and gender. The proposal also clarifies indirect discrimination as including the risk of discrimination arising from a provision appearing to be neutral.³⁷

In **Austria**, a draft amendment to the Equal Treatment Act was debated in 2012. The amendment would address unequal treatment in access to goods and services to include and expand the protection offered to further grounds of discrimination such as age, sexual orientation and religion.³⁸

Non-legislative actions were also initiated in several EU Member States. Some Member States set up, implemented and/or monitored programmes specifically related to combating discrimination in employment. **Germany**, for example, completed the pilot project Depersonalised application procedures³⁹ in 2012 (see **Chapter 6** on discrimination testing in this Annual report).

In other cases, programmes to combat discrimination in employment were part of more general strategies on non-discrimination and integration of vulnerable

groups. **Bulgaria**, for example, set up programmes to provide professional training aimed at ensuring better access to employment for Roma.⁴⁰ New **Slovenian** policies aimed at reducing differences in employment rates for members of groups that more often face discrimination and to combat harassment at the workplace.⁴¹

There were also initiatives that specifically addressed the monitoring process, for example in **Luxembourg**, where the Centre for Equal Treatment (*Centre pour l'égalité de traitement*) monitored job postings published in the press since April 2011 to raise awareness of possible infractions of discrimination legislation.

Some of these monitoring programmes have led to the publication of comprehensive reports: the report *Diversity barometer at work* in **Belgium**⁴² 'measured' discrimination based on age, disability and sexual orientation at work and in access to work, while the Ministry of Employment and the Economy in **Finland** published a research report that was based partly on a large-scale national survey.⁴³

Other EU Member States set up or further implemented national action plans. **Lithuania** produced the Inter-institutional *Action plan for the promotion of non-discrimination, 2012–2014 (Nediskriminavimo skatinimo 2012-2014 metų tarpinstitucinio veiklos planas)*⁴⁴ and the **Netherlands** announced the Action programme *Combat discrimination (Actieprogramma Bestrijding van discriminatie)*.⁴⁵ **Slovenia** produced guidelines for the integration of the principle of non-discrimination in relevant policies (*Smernice za integracijo načela nediskriminacije*), while the **United Kingdom's** government published on 22 May 2012 *The Equality Strategy – Building a Fairer Britain: Progress Report*.⁴⁶

5.2.2. Discrimination on the ground of religion or belief

Article 10 of the Charter of Fundamental Rights of the European Union confirms the right to freedom of thought, conscience and religion. Article 21 of the Charter prohibits any discrimination including on grounds of religion or belief.

35 Latvia, Law on Prohibition of Discrimination of Natural Persons Engaged in Economic Activity, 29 November 2012, entered into force on 2 January 2013.

36 Directive 2010/41/EU of the European Parliament and of the Council, OJ 201 L 181/1.

37 Slovakia, National Government (2012).

38 Austria, National Parliament (2012).

39 Germany, Federal Anti-Discrimination Agency (2012a).

40 Bulgaria, National Assembly (2012).

41 Slovenia, Office for Equal Opportunities (2011).

42 Belgium, Centre for Equal Opportunities and Opposition to Racism (2012).

43 Larja, L., et al. (2012).

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

45 Netherlands, Ministry of Security and Justice (2011).

46 United Kingdom, Home Office (2012a).

Key developments in national case law and other legislative aspects

In 2012, cases of alleged discrimination on the ground of religion or belief arose in several EU Member States. These issues often concentrated around highly publicised topics such as ritual slaughtering, wearing face-covering clothing and male circumcision.

On 6 December 2012, the **Belgian** Constitutional Court rejected a claim lodged to annul the ban on face coverings that came into force on 13 July 2011. In its judgment, the court concluded that the imposed ban does not violate fundamental rights provided that it does not apply to places of worship or their vicinity.⁴⁷ On 6 February 2012, the Minister of Interior and Kingdom Relations of the **Netherlands** submitted a legislative proposal to the Dutch Parliament establishing a general ban on the wearing of face-covering clothing,⁴⁸ but due to the collapse of the government the proposal was not further debated. The new government, after the general elections, has put in its coalition agreement that “clothing that covers the face will be banned in education, the care sector, public transport and in public-authority buildings”.⁴⁹

In the **Netherlands**, the Dutch Parliament debated the ritual slaughter of animals, leading a member of parliament of the Party for Animals (*Partij voor de Dieren*) to table a legislative proposal in 2011 to ban this practice. In 2012, however, the Senate rejected the proposed law.⁵⁰ In June, the State Secretary for Agriculture found a compromise with relevant stakeholders by means of a covenant. This covenant aims at allowing ritual slaughter under animal welfare conditions, thus avoiding an outright ban.⁵¹ On 27 November 2012, the **Polish** Constitutional Court ruled that the ritual slaughter of animals is illegal as of January 2013.⁵²

In **Finland**, the National Discrimination Tribunal did not consider as discriminatory the prohibition of Islamic prayers during breaks in common areas shared by all workers under the Non-Discrimination Act. It rejected the application.⁵³

The District Court of Cologne in **Germany**⁵⁴ found that, despite the the parents’ agreement, circumcision of an infant boy constituted bodily harm and should be penalised. This judgment sparked debates in a number of

countries on the legality of circumcisions. A wide range of actors expressed criticism on the topic, including several faith-based communities.

A **German** draft proposal clarifying legal questions on the matter was published in autumn and the law entered into force in December 2012.⁵⁵ The law says that parents are entitled in their care of a child, who is not sufficiently developed to understand and assess the issue himself, to agree to a circumcision even if it is not medically required, provided that it is carried out according to up-to-date medical standards and respects the child’s best interests. If a child opposes the circumcision then the procedure might not be in his best interests, depending on his state of development.

The **Slovenian** Human Rights Ombudsman issued a non-binding opinion stating that circumcision based solely on religious grounds is not allowed by law and that the child’s consent is necessary because of the interference with his bodily integrity. In the case of conflict between freedom of religion and children’s rights, the Ombudsman concluded that the latter prevails, relying on the constitutional provisions on the best interest of the child.⁵⁶

Registration requirements for faith communities also emerged as a fundamental rights matter in some EU Member States. A church law came into force in **Hungary** that significantly changes registration requirements for all existing churches.⁵⁷ Registration of a denomination now falls under the Parliament’s competence, which may deny registration even if the criteria set by church law have been met. More than 300 denominations lost their legal status in January 2012.

In February 2012, 84 Hungarian denominations submitted requests for their recognition, of which 66 were unsuccessful. The Council of Europe European Commission for Democracy through Law (Venice Commission) issued an opinion on this law, concluding that “The Act sets a range of requirements that are excessive and based on arbitrary criteria [which] can hardly be considered in line with international standards”.⁵⁸ The Hungarian Government said it plans to introduce amendments that bring the law into line with international standards.

A **Lithuanian** law regulating registration procedures of religious communities and associations and their real estate property for religious purposes came into

47 Belgium, Constitutional Court (2012).

48 Netherlands, Minister of the Interior and Kingdom Relations (2012).

49 Netherlands, Netherlands government coalition agreement.

50 Netherlands, House of Representatives (2011); Senate (2012).

51 Netherlands, Minister for Agriculture and Foreign Trade (2012).

52 Poland, Constitutional Tribunal (2012).

53 Finland, National Discrimination Tribunal (2011).

54 Germany, Regional Court Cologne (2012).

55 Germany, Civil Code, 27 December 2012; and Germany, Federal Parliament (2012a).

56 Slovenia, Human Rights Ombudsman (2012).

57 Hungary, Act CCVI of 2011 on the Right to Freedom of Conscience and Religion, and on the Legal Status of Churches, Religious Denominations and Religious Communities, 30 December 2011.

58 Council of Europe, Venice Commission (2012), paras. 108–110.



force on 1 July 2012.⁵⁹ This law simplifies registration procedures for religious communities and associations when privatising their properties, which were nationalised before independence but are still in use by religious communities.

On 4 September 2012, the ECtHR held a public hearing on the admissibility and merits of four religious discrimination cases originating in the **United Kingdom**. Four practising Christians claimed workplace discrimination, arguing that the national law did not sufficiently uphold their right to freedom of religion under Article 9 of the European Convention on Human Rights (ECHR).

In *Chaplin v. the United Kingdom*⁶⁰ and *Eweida v. the United Kingdom*,⁶¹ the complainants raised the issue of wearing crucifixes at work, as a manifestation of their faith. In *Ladele v. the United Kingdom*,⁶² the plaintiff, employed as a registrar, refused to officiate civil partnership ceremonies for homosexual couples, as homosexual relationships in her view are not compatible with God's law. For the same reason, in *McFarlane v. the United Kingdom*,⁶³ the applicant was unwilling to offer sex advice to homosexual couples in his role as an employee at the national counselling service. Judgments are expected in 2013.

Key developments in national policies and practices

In **Germany**, following the 2011 North-Rhine Westphalia Law on the introduction of Islamic religious education as a regular school subject (*Gesetz zur Einführung von islamischem Religionsunterricht als ordentliches Lehrfach*), Islamic religious education courses constituted part of the school curriculum in 44 primary schools. The law enables a committee, consisting of experts in Islamic theology and education, to act on behalf of a religious community.⁶⁴ In addition, centres of Islamic theology (*Zentren für Islamische Theologie*) have been established at four German universities. As part of a modern integration policy, the newly created courses will train teachers for Islamic religious education, religious studies and theology.⁶⁵

59 Lithuania, Law on the procedure for the restoration of the rights of religious communities to the existing real property, No. XI-1835, 21 December 2011.

60 ECtHR, *Chaplin v. the United Kingdom*, No. 59842/10, 4 September 2012.

61 ECtHR, *Eweida v. the United Kingdom*, No. 48420/10, 4 September 2012.

62 ECtHR, *Ladele v. the United Kingdom*, No. 51671/10, 4 September 2012.

63 ECtHR, *McFarlane v. the United Kingdom*, No. 36516/10, 4 September 2012.

64 Germany, Ministry of School and Further Education North-Rhine (2012).

65 Germany, Federal Ministry of Education and Research (2012).

The planning and construction of mosques has caused debates in a number of EU Member States, such as **Austria**.⁶⁶ In the **Netherlands**, the University of Amsterdam conducted a study on *Islamophobia and discrimination (Islamofobie en discriminatie)*,⁶⁷ which documents 117 incidents at Dutch Mosques between 2005 and 2010. The incidents include vandalism, daubing slogans on walls, arson, telephone threats and, in one instance, the hanging of a dead sheep from a building.⁶⁸

5.2.3. Discrimination on the ground of age

The economic crisis has brought to the fore inequalities in Europe, as different groups vary substantially in their perceptions of their financial security and their prospects of finding a job with a similar salary if they lose their current position, a Eurofound report showed. Workers aged 50 to 64 years old were most likely (60 %) to believe that they would not find a job with a similar salary. Older people were also more likely than younger people to expect that their households' financial situation would worsen in the next 12 months (38 % among 50–64 year olds; 35 % among people aged 65 and older).⁶⁹

The European Year for Active Ageing and Solidarity between Generations helped spotlight the challenges older persons face regarding retirement. Compulsory retirement, and the conditions under which it can constitute discrimination or justified differential treatment, is an important related debate.

Key developments in national case law and other legislative aspects

Following **Hungary's** adoption of a legislative scheme which entered into force on 1 January 2012, and required the compulsory retirement at age 62 of judges, prosecutors and notaries, the European Commission successfully filed an application before the Court of Justice of the European Union (CJEU) seeking to establish that the scheme breached the Employment Equality Directive. The CJEU ruled that the scheme did indeed breach the Directive (Articles 2 and 6 (1)) as it gave rise to a difference in treatment on the ground of age which was disproportionate to the objectives pursued.⁷⁰

In the CJEU's view, the persons concerned were obliged to leave the labour market automatically and definitively without having had time to take measures, particularly

66 *Kleine Zeitung* (2012).

67 Van der Valk, I. (2012).

68 *Ibid.*, pp. 62–63.

69 Eurofound (2012b).

70 CJEU, C-286/12, *European Commission v. Hungary*, 6 November 2012, para. 82.

of an economic and financial nature, required by such a situation. For, under the new legislation, the retirement pension would be at least 30 % lower than their remuneration. In addition, the final working dates did not take the contribution periods into account and therefore did not guarantee the right to a pension at the full rate.⁷¹ The CJEU also considered the provisions at issue as inappropriate to achieving the Hungarian government's stated goal of a more balanced 'age structure',⁷² since they led, in fact, to a deterioration in the prospects of young lawyers entering the professions of the judicial system.⁷³

Similarly, relevant cases brought before national courts on discrimination on the ground of age particularly concerned unequal treatment in the area of employment. The Supreme Court in the **United Kingdom** rendered a judgment establishing that it was indirectly discriminatory on the ground of age to require a law degree to obtain certain benefits, because certain age groups, such as those approaching compulsory retirement age, were no longer in a position to acquire such a degree.⁷⁴

National courts also examined a legal issue related to mandatory retirement at a certain age. A court in **Sweden** (*Södertörns tingsrätt*), for instance, requested for a preliminary CJEU ruling on Swedish national legislation providing for automatic termination of an employment contract on the sole ground that the employee had reached the age of 67, without taking into account the amount of retirement pension the person concerned would receive.

The CJEU, interpreting Article 6 (1) of the Employment Equality Directive, ruled that such legislation could be permitted if it was objectively and reasonably justified by a legitimate aim relating to labour-market policies and if it served as an appropriate and necessary means to achieve that aim.⁷⁵ In contrast to the Hungarian judicial mandatory retirement age legislation described earlier, the Swedish national legislation, which provided for automatic termination of an employment contract upon reaching the retirement age, was long-standing. It therefore allowed the person concerned sufficient time to take the necessary measures, in particular of an economic and financial nature. In this case, the CJEU found that the retirement age enabled retirement pension regimes to be adjusted to ensure that income received over the full course of a career was taken into account.⁷⁶

The **United Kingdom** Supreme Court adopted a similar approach in a case concerning the mandatory retirement of a partner in a law firm as he turned 65. The Supreme Court drew on CJEU jurisprudence regarding retirement ages when it noted that staff retention and workforce planning constituted legitimate aims for compulsory retirement, as they related to the legitimate social policy aim of fairly spreading out professional employment opportunities across generations.

Similarly, the court also considered legitimate the aim of limiting the need to expel partners by reason of performance management as this contributed to protecting a person's dignity.⁷⁷ This latter argument, however, may lead to a situation where older people are dismissed for age rather than performance reasons, which would amount to discrimination.

The Council Declaration on the European Year is relevant to these issues as it calls for preventing negative age-related stereotypes and discriminatory attitudes.⁷⁸ It also calls for ensuring equal rights for older workers in the labour market and refraining from using age as a decisive criterion for assessing whether or not a worker is fit for a certain job.

A parallel trend in some EU Member States has been to extend or eliminate the age of compulsory retirement. In the **United Kingdom**, the age of compulsory retirement was eliminated following the phasing out of the default retirement age at 65. If an employer wishes to dismiss an employee at the 'justified retirement age', he or she must be able to show that the retirement age is objectively justified, in other words that it is a proportionate means of achieving a legitimate end. The employee is free to retire voluntarily, subject to providing appropriate notice, but continues to enjoy the same protection against dismissal and other related rights after reaching pensionable age.⁷⁹

In addition to highlighting specific issues related to age discrimination in the area of employment, the Council Declaration on the European Year highlighted the key role that independent living plays in avoiding discrimination on the ground of age. Some EU Member States have adopted legislation to facilitate independent living.⁸⁰

However, legislation that tightens the criteria for receiving social services benefits in the promotion of independent living can make institutional care

71 *Ibid.*, para. 70.

72 *Ibid.*, para. 76.

73 *Ibid.*, para. 78.

74 United Kingdom, Supreme Court, *Homer v. Chief Constable of West Yorkshire Police*, 25 April 2012, para. 17.

75 CJEU, C-141/11, *Torsten Hörnfeldt v. Posten Meddelande AB*, 5 July 2012, para. 47.

76 *Ibid.*, paras. 26 and 33.

77 United Kingdom, Supreme Court, *Seldon (Appellant) v. Clarkson Wright and Jakes (A Partnership) (Respondent)*, 25 April 2012, para. 67.

78 Council of the European Union (2012c).

79 European Association of Labour Court Judges (2012); for more information, see: <http://www.ecu.ac.uk/law/age-key-legislation>.

80 Council of the European Union (2012c), p. 4.



unaffordable for a large proportion of the elderly. It can also cause a public stir, as in **Slovakia** in 2012.⁸¹

Key developments in national policies and practices

Some EU Member States have developed policies or practices to fulfil the aim of the European Year to raise the labour market participation of older people, enabling them to be active in society for longer. Only 41 % of Europeans believe that it should be compulsory for people to stop working at a certain age, according to the 2012 Eurobarometer Special Survey on Active Ageing.⁸²

In **Latvia**, the Ministry of Welfare in cooperation with the Ministry of Education and Science prepared a report on the involvement of persons above the age of 50 in life-long education and active labour market policy measures.⁸³ The level of employment among persons aged 50–64 in Latvia used to far exceed the EU average for the same age group, with 67.5 % in Latvia in 2008 against the EU's 56.5 %, according to the report. But the economic crisis brought the fourth-quarter 2011 Latvian rate of 60.1 % closer to the EU's 57.8 % for the same period.

In 2012, many unemployed persons above the age of 50 in Latvia were involved in various active labour market policy activities provided by the State Employment Agency (SEA). To encourage life-long learning – considered the main support measure for maintaining skills and prolonging labour market participation – pre-pension age persons, or those of 57-to-61 years of age, are exempt from providing a 30 % co-financing contribution to education expenses.

Several EU Member States also developed policies promoting independent living. In **Germany**, for instance, a demography strategy⁸⁴ includes goals such as the self-determined living of old persons. The strategy devotes one chapter to the independent living of older people and accessibility, including recommendations for specific steps and for involving civil society organisations and governmental actors on all levels.

In **Finland**, the Ministry of Environment led a broad-based working group that developed 16 proposals for promoting independent living for older people, including a plan for their implementation.⁸⁵

81 Slovakia, Act No. 50/2012 Coll. entered into force amending Law No. 448/2008 on Social Services), 31 January 2012, see Art. 35.1.1.

82 European Commission (2012a), p. 11.

83 Latvia, Ministry of Welfare (2012), *Informatīvais ziņojums 'Par personu, kuras vecākas par 50 gadiem, iesaisti mūžizglītībā un aktīvās darba tirgus politikas pasākumos'*, 6 August 2012.

84 Germany, Federal Ministry of Interior (2012).

85 Finland, Ministry of Environment (2012).

In March 2012, the Senate of **Ireland** published a Report on the Rights of Older People.⁸⁶

In **Poland**, the Council of Ministers adopted a *Governmental Programme on Social Activity of Elderly People 2012-2013*.⁸⁷ The programme aims at strengthening the integration of elderly people by providing wide access to all forms of education, promoting solidarity across generations as well as developing services designed for an ageing society. Polish people over 55 are little involved in public life and just 10 % declare their involvement in volunteer work. The programme therefore focuses on strengthening their civic participation, including in decision making.

5.2.4. Discrimination on the ground of disability

Although the CRPD relates to fundamental rights in a broad sense, this section focuses on developments related to discrimination on the ground of disability. Policy and legislative developments in 2012 reflect the paradigm shift marked by the CRPD from a medical to a human rights-based model of disability, and testify to the harmonising effect of the convention on national legislation in the EU.

Policy changes in EU Member States have focused on four key areas: equal recognition before the law; independent living and deinstitutionalisation; accessibility; and employment. These areas reflect key CRPD provisions as well as areas for action set out in the *European Disability Strategy 2010–2020*. While the topic of disability is central to this section, many of the issues discussed are also relevant to other areas such as discrimination on the ground of age.

Implementation of the CRPD

EU Member States continued to implement and monitor the CRPD during 2012. Article 33 of the convention sets out States Parties' obligations to: designate a focal point for matters related to the CRPD and to consider setting up a coordination mechanism to facilitate alignment between different sectors (paragraph 1); maintain, strengthen, designate or establish a framework including independent mechanism(s) to promote, protect and monitor the implementation of the CRPD (paragraph 2); and ensure that persons with disabilities and their representative organisations are involved and participate fully in the monitoring process (paragraph 3).

86 Ireland, Houses of the Oireachtas (2012).

87 Poland, Ministry of Labour and Social Policy (2012).

Table 5.1: Structures set up for the implementation and monitoring of the CRPD, by EU Member State and Croatia

EU Member State	Ratified in	Optional Protocol	Focal points within government for matters relating to the implementation of the CRPD – Article 33 (1)	Coordination mechanism – Article 33 (1)	Framework to promote, protect and monitor implementation of the CRPD – Article 33 (2)
AT	2008	Yes	Federal Ministry for Labour, Social Affairs and Consumer Protection (<i>Bundesministerium für Arbeit, Soziales und Konsumentenschutz</i>)		Monitoring committee (<i>Monitoringausschuss</i>)
BE	2009	Yes	Federal Public Service Social Security (sub-focal points designed by the seven independent entities)		Centre for Equal Opportunities and Opposition to Racism (<i>Centrum voor gelijkheid van kansen en voor racismebestrijding</i>)/ <i>Centre pour l'égalité des chances et la lutte contre le racisme</i>)
BG	2012	No	Ministry of Labour and Social Policy (<i>Министерство на труда и социална политика</i>)	not established/designated	not established/designated
CY	2011	Yes	Department for Social Inclusion of People with Disabilities	The Pancyprian Council for Persons with Disabilities	Office of the Commissioner for Administration (Ombudsman)
CZ	2009	No	Ministry of Labour and Social Affairs (<i>Ministerstvo práce a sociálních věcí</i>)	Ministry of Labour and Social Affairs in cooperation with Ministry of Foreign Affairs, the Government Board for People with Disabilities and the Czech National Disability Council	not established/designated
DE	2009	Yes	Federal Ministry for Labour and Social Affairs (<i>Bundesministerium für Arbeit und Soziales</i>) (16 federal states (<i>Länder</i>) designated their own sub-focal points)	Federal Government Commissioner for Matters relating to Persons with Disabilities	German Institute for Human Rights (<i>Deutsches Institut für Menschenrechte</i>)
DK*	2009	No	Ministry of Social Affairs and Integration (<i>Social- og Integrationsministeriet</i>)	Inter-ministerial Committee of Civil Servants on Disability Matters	Danish Institute for Human Rights (<i>Institut for Menneskerettigheder</i>), Danish Disability Council and Danish Parliamentary Ombudsman
EE	2012	Yes	Ministry of Social Affairs (<i>Sotsiaalministeerium</i>)		Estonian Chamber of Disabled Persons (<i>Festi Puuetega Inimeste Koda</i>)
EL	2012	Yes	not established/designated	not established/designated	not established/designated
ES	2007	Yes	Ministry of Health, Social Services and Equality (<i>Ministerio de Sanidad, Servicios Sociales e Igualdad</i>); Ministry of Foreign Affairs and Cooperation (<i>Ministerio de Asuntos Exteriores y Cooperación</i>)	National Disabilities Council (<i>Consejo Nacional de la Discapacidad</i>)	Spanish Committee of Representatives of People with Disabilities (<i>Comité Español de Representantes de Personas con Discapacidad</i>)
FR	2010	Yes	Ministry of Social Affairs and Health, together with Interministerial Committee for Disability (<i>Comité interministériel du handicap</i>)	Interministerial Committee for Disability, which consists of representatives of all concerned ministries	Defender of Rights (<i>Le Défenseur des Droits</i>); National Advisory Council for Human Rights (<i>Commission Nationale Consultative des Droits de l'Homme</i>) and National Advisory Council of Disabled Persons (<i>Conseil national consultatif des personnes handicapées</i>)
HU	2007	Yes	Ministry of Human Resources	National Council of Disability	National Council of Disability (<i>Országos Fogyatékosügyi Tanács</i>)
IT	2009	Yes	Ministry of Labour and Social Policies (<i>Ministero del Lavoro e delle Politiche Sociali</i>)		National Observatory on the Situation of Persons with Disabilities (<i>Osservatorio Nazionale sulla condizione delle persone con disabilità</i>)

EU Member State	Ratified in	Optional Protocol	Focal points within government for matters relating to the implementation of the CRPD – Article 33 (1)	Coordination mechanism – Article 33 (1)	Framework to promote, protect and monitor implementation of the CRPD – Article 33 (2)
LT	2010	Yes	Ministry of Social Security and Labour (<i>Socialinės apsaugos ir darbo ministerija</i>) (additional sub-focal points in other public authorities)		Council for Disability Affairs (<i>Neįgalųjų reikalų taryba</i>) at the Ministry of Social Security and Labour and the Equal Opportunities Ombudsman (<i>Lygių galimybių kontrolieriaus tarnyba</i>)
LU	2011	Yes	Ministry of Family Affairs and Integration (<i>Ministère de la Famille et de l'Intégration</i>)	Ministry of Family Affairs and Integration	Luxembourg Consultative Commission of Human Rights (<i>Commission consultative des Droits de l'Homme du Grand-Duché de Luxembourg</i>); Centre for Equal Treatment (<i>Centre pour l'égalité de traitement</i>); and the National Ombudsman (<i>Médiateur au service de citoyens</i>)
LV	2010	Yes	Ministry of Welfare (<i>Labklājības ministrija</i>)		Ombudsman of the Republic of Latvia (<i>Latvijas Republikas Tiesībsargam</i>)
MT	2012	Yes	Ministry for Social Policy (<i>Ministeru tal-Politika Soċjali</i>)		National Commission for Persons with Disability (<i>Kummissjoni Nazzjonali Persuni b'Dizabilità</i>)
PL	2012	No	not established/designated	not established/designated	not established/designated
PT	2009	Yes	Ministry of Foreign Affairs; and Ministry of Solidarity and Social Security	National Council for the Rehabilitation and Integration of the People with Disabilities (<i>Conselho Nacional para a Reabilitação e Integração das Pessoas com Deficiência</i>)	not established/designated
RO	2011	No	Ministry of Labour, Family and Social Protection (<i>Ministerul Muncii, Familiei și Protecției Sociale</i>)		not established/designated
SE	2008	Yes	Ministry of Health and Social Affairs (<i>Social- och hälsovårdsministeriet</i>)	High Level Interministerial Working Group	not established/designated
SI	2008	Yes	Ministry of Labour, Family and Social Affairs (<i>Ministrstvo za delo, družino in socialne zadeve</i>)	not established/designated	Council for persons with disabilities (not functional yet). Until it is set up, the Government Council for the Disabled (<i>Svet Vlade Republike Slovenije za invalide</i>) carries out its functions
SK	2010	Yes	not established/designated	not established/designated	not established/designated
UK	2009	No	Office for Disability Issues, Department of Work and Pensions		Equality and Human Rights Commission (England and Wales), Scottish Human Rights Commission, Northern Ireland Human Rights Commission and Equality Commission for Northern Ireland
HR	2007	Yes	not established/designated		not established/designated
EU	2010	No	European Commission	See provisions of the Code of Conduct between the Council, the Member States and the Commission setting out internal arrangements for the implementation by and representation of the EU relating to the United Nations Convention on the Rights of Persons with Disabilities	European Commission, European Parliament's Petitions Committee, European Ombudsman, European Union Agency for Fundamental Rights, European Disability Forum

Notes: * The Danish Disability Council and the Danish Parliamentary Ombudsman were not designated, however, the explanatory text to Parliamentary Decision B 15 of 17 December 2010 provides that they are to be part of the framework.

Source: FRA, 2012



As a first step, a large majority of Member States have identified focal points, with the Ministry responsible for social affairs typically assuming this role. About a third of those Member States that have specified a national focal point have also given it the role of coordination mechanism (see Table 5.1).

Secondly, EU Member States typically take one of two approaches regarding mechanisms set up to promote, protect and monitor the implementation of the CRPD: either extending the mandate of existing bodies to incorporate this role, or setting up new bodies tasked specifically with CRPD monitoring.

Reflecting the first approach, National Human Rights Institutions (NHRIs) in **Belgium, Denmark, Germany, Luxembourg** and **Great Britain** (England, Scotland and Wales) have been designated as the independent mechanism required under Article 33 (2) of the CRPD. Three of these, in Belgium, Denmark and England and Wales, are both NHRIs and equality bodies. In **Cyprus, Latvia** and **Lithuania**, respective national equality bodies were designated as independent monitoring bodies, while in **France, Luxembourg** and in Scotland and Northern Ireland (**United Kingdom**) both the respective national equality body and the NHRI are included in the monitoring frameworks.

Seven EU Member States, namely **Austria, Estonia, Hungary, Italy, Malta, Slovenia** and **Spain**, adopted the second approach and created new mechanisms dedicated to monitoring CRPD implementation. Many of these new mechanisms also systematically involve persons with disabilities through their representative organisations.

A further eight Member States (**Bulgaria**, the **Czech Republic, Greece, Poland, Portugal, Romania, Slovakia** and **Sweden**, as well as **Croatia**) are in the process of establishing monitoring mechanisms. The **Bulgarian**,⁸⁸ **Polish**⁸⁹ and **Slovakian**⁹⁰ proposals involve NHRIs, equality bodies and ombudsman institutions. In **Sweden**, the government commissioned a delegation to examine which institution should be designated as monitoring body. The delegation concluded that Sweden should establish an NHRI with this mandate.⁹¹ The national Equality Ombudsman and the Swedish Agency for Disability Policy Co-ordination can, within their mandate, take on the monitoring role until an independent mechanism is set up.

In some cases, civil society organisations, including disabled persons organisations, have expressed concerns

regarding the national frameworks set up or proposed under Article 33 (2) of the CRPD. For instance, the **Hungarian** Disability Caucus, a national network of disabled persons organisations and human rights organisations, submitted a shadow report to the CRPD Committee. The report expressed the view that the designated monitoring body in Hungary, the National Disability Council (*Országos Fogytékösügyi Tanács*), was not independent according to the criteria of the Paris Principles:⁹² the body is chaired by the responsible Minister and 13 out of 27 members are government representatives.⁹³

The caucus also questioned the lack of effective civil society participation in policy and decision making. The Office of the Commissioner for Fundamental Rights (*Alapvető Jogok Biztosa Hivatalának*), the independent Hungarian NHRI, is mandated to pay “special attention to promoting, protecting and monitoring the implementation of the CRPD” and plays an important role in monitoring CRPD implementation but is not part of the Article 33 (2) framework.⁹⁴ The CRPD Committee, in its concluding observations, called upon Hungary to designate an independent mechanism and ensure the involvement of civil society.⁹⁵

Concerns have also been raised about the lack of effective participation of persons with disabilities and their representative organisations in CRPD monitoring. NGOs in **Lithuania**, for example, reported a lack of effective communication and cooperation between civil society and the Ministry of Social Security and Labour (*Lietuvos Respublikos socialinės apsaugos ir darbo ministerija*).⁹⁶

In **Belgium**, a report presented to the Flemish Minister of Equal Opportunities concluded that there is no structure in place in Flanders for including the participation of persons with disabilities in CRPD implementation.⁹⁷

Key developments in national case law and other legislative aspects

New legislation and policies adopted at the national level following CRPD ratification, reflects the potential for the convention to drive the harmonisation of the rights of persons with disabilities across the EU. The **German** Passenger Transport Act (*Personenbeförderungsgesetz*), for example, entered into force on 1 January 2013,

88 Bulgaria, Council of Ministers (2012a). The plan envisages the setting up of a national monitoring body by December 2013.

89 Poland, Ministry of Labour and Social Policy (2012).

90 Slovakia, Bill to amend Law No. 575/2001 on the Organization of Government and Central State Administration Organs as amended, 31 May 2012. See also: European Commission (2012d).

91 Sweden, Delegation for Human Rights (2010).

92 The Paris Principles are the primary source of standards required for NHRIs to be able to effectively protect and promote human rights. For more information, see: FRA (2012a).

93 Hungary, Hungarian Disability Caucus (2012), p. 4.

See also: UN, OHCHR, Regional Office for Europe (2012), p. 7.

94 Hungary, Act CXI of 2011 on the Commissioner for Fundamental Rights, Article 1 (3).

95 UN, Committee on the Rights of Persons with Disabilities (CRPD Committee) (2012a).

96 Lithuania, Committee on Human Rights of *Seimas* (2012).

97 Belgium, Equal Opportunities Flanders (2012).



implementing Regulation (EC) No. 1370/2007 on public passenger transport services by rail and by road.⁹⁸ The act obliges city councils to ensure barrier-free local public transport by January 2022.⁹⁹

“The [CRPD] Committee recommends [...] [the] move from substituted decision-making to supported decision-making, which respects the person’s autonomy, will and preferences and is in full conformity with Article 12 of the Convention, including with respect to the individual’s right, on their own, to give and withdraw informed consent for medical treatment, to access justice, to vote, to marry, to work, and to choose their place of residence.”

Committee on the Rights of Persons with Disabilities (2012), Concluding Observations on Hungary, CRPD/C/HUN/CO/1, 27 September 2012, paragraph 26

Legal capacity – the law’s recognition of the decisions that a person makes¹⁰⁰ – is one particular area of focus for legislative reform, reflecting that “the right of persons with disabilities to make choices about their lives and enjoy legal capacity on an equal basis with others is one of the most significant human rights issues in Europe today”.¹⁰¹ On 29 November 2012, the **Latvian** Parliament approved amendments to the Civil Law and Civil Procedure Law, which took effect from 1 January 2013. The new laws abolish full guardianship of persons with disabilities and introduce two forms of guardianship: provisions for a person and guardian to make decisions together; and partial restriction of legal capacity under which a guardian is entitled to make decisions alone in certain areas of life. The amendments also require the review of all pre-existing cases of persons deprived of legal capacity.

Additionally, the **Maltese** Civil Code was amended in December 2012 to introduce a system of guardianship providing that “a major [adult] who has a mental disorder or other condition, which renders him incapable of taking care of his own affairs may be subject to guardianship”.¹⁰²

Legislative changes are also under way in **Bulgaria**,¹⁰³ **Finland**,¹⁰⁴ **Ireland**,¹⁰⁵ and **Poland**¹⁰⁶ as governments seek to bring existing legislation in line with CRPD standards.

Recent ECtHR case law concerning equal recognition before the law has made reference to the CRPD,¹⁰⁷ reflecting the ECtHR’s acknowledgment of “the growing importance which international instruments for the protection of people with mental disorders are now attaching to granting them as much legal autonomy as possible”.¹⁰⁸

In *Stanev v. Bulgaria*,¹⁰⁹ the ECtHR considered an applicant’s complaint that he had been partially deprived of his legal capacity and placed in a psychiatric hospital. The court found in its judgment that the applicant’s long-term institutionalisation violated the right to liberty set out in Article 5 (1) of the ECHR, which was the first time it had reached such a conclusion.

Moreover, the ECtHR ruled that the applicant’s inability to directly access the court for review of the measure taken on his legal incapacitation marked a violation of Articles 5 (4) and 5 (5) of the ECHR. The court also judged that the applicant had been subject to degrading treatment in violation of Article 3 of the ECHR, which was the first case in which the court found a violation of this article in a social care setting.

Following this judgment, the Ministry of Justice in Bulgaria formed a working group on the implementation of Article 12 of the CRPD, composed of experts from the Ministries of Justice and Labour and Social Policy, as well as representatives of NGOs and academia. The working group published a concept paper that recognises that the *Stanev* judgment requires the “amendment of Bulgarian legislation in its entirety to reflect the standards of the Convention”¹¹⁰ and envisages the replacement of substituted decision-making, where a guardian is authorised by a court to take decisions on an individual’s behalf, by supported decision-making, in which individuals are assisted in the decision-making process by a person of their own choosing.¹¹¹

98 Regulation (EC) No. 1370/2007, OJ 2007 L 315/1.

99 Germany, Passenger Transportation Act, 26 September 2012.

100 For more information, see: FRA (forthcoming).

101 Council of Europe, Commissioner for Human Rights (2012), p. 4.

102 Malta, XXIV of 2012 – Code of Organization and Civil

Procedure and the Civil Code (Amendment) Act, Art. 188A.

103 Bulgaria, Ministry of Justice (2012).

104 Finland, Finnish Government’s register of projects (2010).

105 Ireland, The Law Reform Commission (2005).

106 Poland, Helsinki Foundation for Human Rights (2012a).

107 See for example: ECtHR, *Stanev v. Bulgaria*, No. 36760/06, 17 January 2012, para. 244; *D.D. v. Lithuania*, No. 13469/06, 14 February 2012, para. 84; *Sýkora v. the Czech Republic*, No. 23419/07, 22 November 2011, para. 41; *Lashin v. Russia*, No. 33117/02, 22 January 2013, para. 66.

108 ECtHR, *Stanev v. Bulgaria*, No. 36760/06, 17 January 2012, para. 244.

109 ECtHR, *Stanev v. Bulgaria*, No. 36760/06, 17 January 2012.

110 Bulgaria, Ministry of Justice (2012), p. 3.

111 *Ibid.*

FRA ACTIVITY

Realising equal recognition before the law for persons with disabilities

Article 12 of the CRPD is based on equal recognition of persons with disabilities before the law and includes a specific obligation for states to provide access to the support persons with disabilities may require to exercise their legal capacity. FRA will publish a comparative report in October 2013 analysing the current legal situation across the 27 EU Member States regarding the legal capacity of persons with disabilities.

For more information, see: FRA (forthcoming)

Key developments in national policies and practices

Austria,¹¹² **Bulgaria**,¹¹³ **Lithuania**,¹¹⁴ **Luxembourg**,¹¹⁵ and **Spain**¹¹⁶ introduced national action plans to develop policies in the area of disability. The Austrian National Action Plan for persons with disabilities sets out 250 measures, including provisions on accessibility, personal assistance and employment, to be implemented in the period to 2020. Similarly, the Luxembourg plan, which was elaborated in collaboration with persons with disabilities and their representative organisations, addresses awareness-raising, employment, education and non-discrimination among other issues.

A number of EU Member States have introduced legislation and policies regarding independent living and deinstitutionalisation, the transition from institutional to community-based care and support.

In July 2012, the **United Kingdom** government published a draft Care and Support Bill¹¹⁷ designed to implement reforms outlined in the policy paper *Caring for our future: reforming care and support* in England.¹¹⁸ The draft bill would oblige local authorities to ensure that a person receiving care and support can move to another local authority without interruption to the support they receive. The **Finnish** government has continued to implement programmes to provide individual housing and community services for persons with intellectual disabilities and has set a deadline of 2020 for the full deinstitutionalisation of persons with disabilities.¹¹⁹

112 Austria, Federal Ministry of Labour, Social Affairs and Consumer Protection (2012).

113 Bulgaria, Council of Ministers (2008).

114 Lithuania, National Government (2012).

115 Luxembourg, Ministry of Family Affairs and Integration (2011).

116 Spain, Ministry of Health, Social Services and Equality (2011).

117 United Kingdom, Draft Care and Support Bill, July 2012.

118 United Kingdom, Home Office (2012b).

119 Finland, Ministry of Social Affairs and Health (2012a).

Civil society organisations and bodies responsible for monitoring CRPD implementation also focused on the issue of independent living. The German Institute for Human Rights (*Deutsches Institut für Menschenrechte*), addressed the cost reservation clause in the German Social Code (*Sozialgesetzbuch*). The clause provides that municipalities may refuse requests to finance independent flats for persons with disabilities if the costs of independent living exceed those of living in an institution.¹²⁰ The institute repeated its view that this clause is contrary to Article 19 of the CRPD.¹²¹

In Croatia, seven NGOs working in the area of disability formed a coalition, Platform 19 – Coalition for the right to live in a community (*Platforma 19 – Koalicija za pravo na život u zajednici*), which contacted the relevant persons in municipalities and cities to raise awareness of deinstitutionalisation at the local level in 2012.¹²²

Promising practice

Supporting the transition from institutional to community-based care

The European Expert Group on Transition from Institutional to Community-based Care, a coalition of European stakeholder organisations active in the field of social inclusion, non-discrimination and fundamental rights, ran a joint project that resulted in the Common European guidelines and a toolkit on the transition from institutional to community-based care. The guidelines and toolkit target officials and organisations working with the EU's Cohesion Policy to promote the use of EU structural funds for the transition from institutional to community-based and family-based care and support.

For more information see:
www.deinstitutionalisationguide.eu

Policy developments across the EU Member States addressed the accessibility of buildings, public transport and communication and information technology, mirroring some of the target areas of the European Disability Strategy. A 2012 Eurobarometer survey on accessibility found that more than a third of respondents who said that they or a member of their household have a disability experienced difficulties entering a building or public space, and using public transport. A fifth of respondents experienced difficulties using official authorities' websites.¹²³

120 Germany, XII Social Code, Section 13, para. 1; Germany, Federal Parliament (2012b).

121 Germany, German Institute for Human Rights (2012).

122 For more information about Platform 19, see the website of the Croatian Association for Promoting Inclusion (*Udruga za promicanje inkluzije*) at: <http://inkluzija.hr/>.

123 European Commission (2012e).

In **Estonia**, the Ministry of Social Affairs published a handbook including guidelines on how to improve the accessibility of buildings and other facilities for persons with disabilities and older people,¹²⁴ while plans to promote accessibility are ongoing in several municipalities in **Portugal**.¹²⁵

In **Germany**, the Federal Anti-Discrimination Agency (*Anti-Diskriminierungsstelle des Bundes*) developed a 'Signing Question and Answer Tool' allowing persons with hearing impairments to communicate with the agency in sign language using a webcam.¹²⁶

In September 2012, the **French** Minister in charge of disability issues announced that France would not be able to fulfil a 2005 law¹²⁷ which requires all public buildings to be fully accessible to people with disabilities by 1 January 2015. A report by the General Inspectorate of Social Affairs estimated that 15 % of public buildings fulfilled the objectives at the end of 2011.¹²⁸

The employment of persons with disabilities remains a key issue for policy makers, particularly in light of the economic crisis. The Institute of Labour and Family Research, an organisation subsidised by the Labour Ministry in **Slovakia**, conducted a study that found more compensation policy tools, such as benefits, than active integration and pro-employment policies and linked this to an employment rate of just 10 % for persons with disabilities.¹²⁹

Many EU Member States including **Bulgaria**,¹³⁰ the **Netherlands**¹³¹ and the **United Kingdom**¹³² recognised that employment was an issue and set up policies to increase the participation of persons with disabilities in the labour market. The Access to Work scheme in the United Kingdom, for example, aims to enable under-represented groups, such as persons with intellectual disabilities or psychosocial disabilities, to enter and remain in employment through the provision of grants for specialist equipment, support workers, disability awareness training for colleagues or transport to work if the person is unable to use public transport.

To live independently and participate in community life, persons with disabilities may require reasonable accommodation, that is: "necessary and appropriate

124 Levald, A., et al. (2012).

125 See, for example, Portugal, Procedure Announcement 2473/2012; and www.sulinformacao.pt/2012/04/tavira-prepara-plano-municipal-de-promocao-da-acessibilidade.

126 Germany, Federal Anti-Discrimination Agency (2012b).

127 France, Law No. 2005-102 for equal rights and opportunities, for participation and for citizenship of persons with disabilities, 11 February 2005.

128 France, General Inspectorate of Social Affairs (2011).

129 Repková, K. and Kešelová, D. (2012).

130 Bulgaria, Council of Ministers (2012b).

131 Netherlands, National Government (2012).

132 United Kingdom, Department for Work and Pensions (2012).

modification and adjustments [...] to ensure to persons with disabilities the enjoyment or exercise on an equal basis with others of all human rights and fundamental freedoms" (Article 2 of the CRPD).

FRA ACTIVITY

Making choice and control a reality for persons with disabilities

The 2012 FRA report *Choice and control: the right to independent living* examines how persons with mental health problems and persons with intellectual disabilities experience the principles of autonomy, inclusion and participation in their day-to-day lives. Interviews were conducted in nine EU Member States (**Bulgaria, France, Germany, Greece, Hungary, Latvia, Romania, Sweden** and the **United Kingdom**), and the report found that barriers and disabling systems often exclude persons with mental health problems and persons with intellectual disabilities from the mainstream of community life.

While most efforts to date have focused on deinstitutionalisation, the report shows that achieving true independent living also requires a range of social policy reforms in the areas of education, healthcare, employment, culture and support services. The report concludes by identifying key initiatives in policy, law and practice that can facilitate progress towards realising the right to independent living of persons with disabilities throughout the EU.

This report on independent living was launched alongside a second FRA report on *Involuntary placement and involuntary treatment of persons with mental health problems* at a major conference organised by FRA together with the Danish Ministry of Social Affairs and Integration and the Danish Institute for Human Rights in Copenhagen in June 2012.

For more information, see: FRA (2012b), FRA (2012c) and the dedicated conference page at: <http://fra.europa.eu/en/event/2012/conference-autonomy-and-inclusion-people-disabilities>

In addition to those EU Member States where such provisions are already in place, **Denmark** and the **Netherlands** extended or indicated an intention to extend the duty to provide reasonable accommodation set out in the Employment Equality Directive beyond the labour market.

In the Netherlands, the Act on equal treatment on the grounds of disability or chronic illness¹³³ was extended

133 Netherlands, *Besluit van 19 april 2012, houdende vaststelling van het tijdstip van inwerkingtreding van de artikelen 7 en 8 van de Wet gelijke behandeling op grond van handicap of chronische ziekte en inwerkingtreding van het Besluit toegankelijkheid van het openbaar vervoer*, 19 April 2012.

to housing and public transport.¹³⁴ The State Secretary for Health, Welfare and Sport also commissioned a study on the procedural and financial impact of further extending the act to other fields, including access to goods and services.¹³⁵

Moreover, the Danish CRPD monitoring body, the Danish Institute for Human Rights, recommended that the government introduce a legal act that goes beyond the labour market in ensuring protection against discrimination on the grounds of disability.¹³⁶

5.2.5. Discrimination on the grounds of sexual orientation and gender identity

This section examines developments and trends in legislation, policy, practice and case law relating to the fundamental rights of LGBT persons in 2012. It highlights changes in the areas of hate crime, non-discrimination, asylum and civil law.

Key developments in national case law and other legislative aspects

Poland had two related cases of discrimination in employment. The first concerned a shop manager who harassed an employee by repeatedly using insulting terms and publically offending him. Both the first and second instance courts referred to the anti-discrimination provisions of the Polish Labour Code which prohibit discrimination on the ground of sexual orientation and underlined the importance of respecting the human dignity of employees.¹³⁷ The second case concerned the dismissal of a university employee following her gender reassignment; the Court dismissed the complaint.¹³⁸

A similar case with a different outcome arose in **Finland**, where a newly appointed Head of Division at the Financial Supervisory Authority was removed from office after communicating her intention to identify herself in her preferred gender. The court found the employer's conduct to be in violation of the Act on Equality between Women and Men (*Laki miesten ja naisten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och män*, No. 609/1986). This was the

first court ruling on discrimination against a transgender employee based on this Act.¹³⁹

Following a preliminary ruling lodged by a Romanian court, a case on discrimination based on sexual orientation under the Employment Directive 2000/78 is now pending before the CJEU.¹⁴⁰ The case concerns a discriminatory statement a shareholder managing a football club made to the media, saying that a homosexual player would never be accepted on the team.

Regarding discrimination and the right to access goods and services, the Advocate of the Principle of Equality in **Slovenia** found discrimination on the ground of sexual orientation in a case concerning information in a tourist catalogue negatively affecting same-sex couples.¹⁴¹ Both **Portugal** and **Hungary** reported instances of refusal to provide services. An advertising¹⁴² instance was reported in Portugal while the Hungarian example referred to access to a campsite.¹⁴³

In 2012, new or amended legislation in 2012 with respect to combating hate crimes and hate-motivated violence now covers sexual orientation and/or gender identity under 'bias-motivated crime' in **Malta** (both grounds included),¹⁴⁴ **Austria** (sexual orientation)¹⁴⁵ as well as **Croatia** (gender identity).¹⁴⁶

In **Poland**, three draft laws on hate crimes and hate speech motivated by sexual orientation or gender identity were submitted to the Parliament and are under discussion.¹⁴⁷ In **Estonia**, a bill was introduced which envisages an amendment to the Penal Code (*Karistusseadustik*) that would allow hate motivation to be an aggravating circumstance for a crime and would include sexual orientation and gender identity as protected grounds (see also **Chapters 6** and **9** in this Annual report).¹⁴⁸

¹³⁴ Netherlands, Ministry of Health, Welfare and Sport (2012).

¹³⁵ Netherlands, State Secretary for Health, Welfare and Sport (2011).

¹³⁶ Denmark, Danish Institute for Human Rights (2012).

¹³⁷ Poland, District Court in Słubice, 4th Department of Labour, IVP 30/11, 18 June 2012; and Poland, Regional Court in Gorzów Wielkopolski, VI Pa 56/12, 27 November 2012.

¹³⁸ Poland, Regional Court in Warsaw, 21st Department of Labour and Social Social Insurance, XXI P 291/11, 15 October 2012. Case not reported yet.

¹³⁹ Sweden, District Court of Helsinki, Dnro 10/44974, 20 December 2011.

¹⁴⁰ CJEU (2012), C-81/12, *Asociația ACCEPT v. Consiliul Național pentru Combaterea Discriminării*, reference for a preliminary ruling from the *Curtea de Apel București* (Romania) lodged on 14 February 2012.

¹⁴¹ Slovenia, Advocate of the Principle of Equality (2012).

¹⁴² Soares, A. (2012).

¹⁴³ Hungary, Equal Treatment Authority (2012). More details on the case are available at: www.egyenlobanasmod.hu/jogesetek/hu/107-2012.pdf.

¹⁴⁴ Malta, Act VIII of 2012 entitled the Criminal Code (Amendment) Act, 26 June 2012.

¹⁴⁵ Austria, Criminal Code.

¹⁴⁶ Croatia, Criminal Code, 21 December 2012; and Gender Equality Act, 15 July 2008.

¹⁴⁷ See drafts of the Act on amendments on Criminal Code dated 7 March 2012, 20 April 2012, and 27 November 2012.

¹⁴⁸ The public database of draft laws includes the first version of the law. The first version of the draft was changed following a consultation with relevant stakeholders organised by the Ministry of Justice.



On a policy level, some EU Member States took measures to tackle violence and abuse targeting LGBT persons. The Council of Ministers in **France**, for example, adopted a *Government programme of action against violence and discrimination on grounds of sexual orientation and gender identity*.¹⁴⁹

NGOs denounced violence and abuse in **Belgium** following the murders of two gay men in homophobic crimes¹⁵⁰ and in **Poland**.¹⁵¹ and in **Bulgaria**, an attack after a pride march was allegedly not reported due to lack of trust in the police – a problem Amnesty International also identified in a 2012 report on the issue.¹⁵²

Courts in **Belgium** and the **United Kingdom** convicted defendants for abusive behaviour targeting people on the ground of their sexual orientation. In Belgium, one teenager was convicted for beating up a gay man in a pub but the court did not apply the aggravating circumstance of homophobic motivation.¹⁵³

In another case, a Belgian court applied aggravating circumstances to a case concerning the assault of a young man seen in the company of a cross-dresser in a nightlife district where LGBT persons have been targeted in the past.¹⁵⁴ In a United Kingdom case related to ‘hate speech’, three men were convicted for distributing a series of leaflets in Derby County that referred to gay sex and condemned such practices. This was the first conviction in Britain for the offence of stirring up hatred on the grounds of sexual orientation.¹⁵⁵

In a landmark ECtHR ruling, *Vejdeland v. Sweden*,¹⁵⁶ four people convicted under Swedish law for homophobic speech invoked Article 10 of the ECHR on freedom of expression. The applicants claimed that the Swedish Supreme Court’s decision to convict them of agitation for leaving homophobic leaflets in pupils’ lockers at an upper secondary school constituted an illegitimate interference with their freedom of expression.

The ECtHR found no violation of Article 10, noting that even if the applicants’ conviction amounted to an interference with their freedom of expression as guaranteed by Article 10 (1) of the ECHR, such an interference served

a legitimate aim, namely “the protection of the reputation and rights of others”. The national authorities could therefore reasonably regard this as a necessary interference in a democratic society.

Promising practice

Reporting homophobic violence via mobile devices

‘Bashing’, a smartphone application developed by the Belgian LGBT movement, enables victims to report incidents of homophobic violence. Victims wishing to report a homophobic incident indicate on a map the location where the incident took place and whether the violence was verbal or physical. An incident can also be reported anonymously.

The so-called ‘Bashmap’ collects all complaints, with an overview available at www.bashing.eu. The ‘Bashing’ application also offers information about equality bodies. The application was conceived as an awareness-raising tool and therefore does not serve as an entry point for formal complaints, which must be lodged with competent bodies.

For more information, see: <http://bashing.eu>

The Supreme Court found that the leaflets were “unnecessarily offensive” and contained serious and prejudicial allegations that could induce homophobic attitudes.

Despite the lack of direct EU competence in the area of family and private life, observing developments in this field helps in understanding the application of the EU right to free movement for all, including same-sex couples wishing to move between Member States. Some EU citizens have claimed that there are obstacles to the right of free movement as a result of either the absence of provisions on legal recognition of same-sex couples or the lack of harmonisation throughout the EU.

A case pending in **Poland** concerns the refusal to grant entry to Poland to the third-country national partner of a Polish citizen after their civil partnership was concluded in the United Kingdom.¹⁵⁷ The case is similar to that of a claim filed by a Polish couple to the ECtHR in September 2012 with respect to a possible violation of their ECHR rights.¹⁵⁸

By contrast, the Immigration Office in **Latvia** granted residence rights to the third-country national spouse of a Latvian citizen. The couple married in Portugal in 2012

149 France, Ministry of Women’s Rights (2010).

150 ILGA Europe (2012a) and (2012b).

151 Makuchowska, M. and Pawłęga, M. (2012).

152 Amnesty International (2012).

153 Belgium, Court of First Instance Antwerp, AN43.L6.4237-10, 18 January 2012. A youth court judgment in the same case against two minors also prosecuted for the crime, sentenced them to community service but did not apply the aggravating circumstance.

154 Belgium, Court of First Instance Dendermonde, DE. 43.1.4.7810/11/7, 2 April 2012.

155 United Kingdom, Derby Crown Court, *R v. Ihjaz Ali, Razwan Javed and Kabir Ahmed*, 10 February 2012.

156 ECtHR, *Vejdeland and others v. Sweden*, No. 1813/07, 9 February 2012.

157 The case was submitted to the Province Governor Administrative Court in Warsaw. More information about the case is available at: Poland, Helsinki Foundation for Human Rights (2012b).

158 Poland, Helsinki Foundation for Human Rights (2012c).

and applied for residence rights in Latvia under EU law, namely the freedom to provide services throughout the EU granted to the Latvian citizen.¹⁵⁹

In **Estonia**, a claim submitted to the Chancellor of Justice (*Õiguskantsler*) is under assessment. It concerns the current Aliens Act (*Välismaalaste seadus*) with respect to the alleged unequal treatment of same-sex partners of Estonian citizens.¹⁶⁰ The applicant said that the Aliens Act does not list the existence of a long-term same-sex registered partnership with an Estonian citizen as among the grounds for issuing a temporary residence permit, putting it in conflict with Article 27 of the Constitution of the Republic of Estonia (*Eesti Vabariigi Põhiseadus*), as well as with the Citizen of European Union Act (*Euroopa Liidu kodaniku seadus*) and relevant provisions of the ECHR.

Some EU citizens have also filed petitions regarding another EU Member State not recognising a civil partnership contracted in a person's country of origin.¹⁶¹ As noted in the Commission's *Green Paper on mutual recognition of civil status*,¹⁶² the absence of a common understanding among EU Member States on the legal recognition of same-sex couples may affect national efforts.

In **Luxembourg**, for example, a bill to open up marriage to same-sex couples was introduced in 2010, but a parliamentary committee in 2012 amended the bill to make marriage conditional upon both future spouses fulfilling the conditions for marriage under the law of their countries of nationality.¹⁶³

But the growing number of EU Member States introducing registered partnership schemes may reduce the potential obstacles to free movement. While **Denmark** was the only country during the reporting period to adopt an act to open marriage to same-sex couples,¹⁶⁴ a legislative motion in **Finland** pertaining to the amendment of the Marriage Act (*Avioliittolaki/äktenskapslag*, Act No. 234/1929), which would open marriage to same-sex couples, was submitted to the government and the Legal Affairs Committee is currently considering it.¹⁶⁵

In addition, the legislatures in **Cyprus, France, Malta and Croatia**¹⁶⁶ drafted or introduced bills in 2012 to afford rights to cohabiting couples, set up registered partnership schemes and/or eliminate any differential treatment remaining between registered partnerships and marriage.

Luxembourg and the **United Kingdom** took steps in the same direction. In Luxembourg, a draft bill on marriage and adoption was introduced,¹⁶⁷ while in the United Kingdom, a consultation was launched.¹⁶⁸ In contrast, a referendum held in **Slovenia** in March 2012 rejected the draft Family Code (*Družinski zakonik*, DZ), which contained several provisions on same-sex families. In **Poland**, a parliamentary committee found the draft bill on registered partnerships to be unconstitutional.¹⁶⁹

Higher national courts have also dealt with the topic of same-sex partnerships. The Constitutional Court in **Austria** stressed that the differences in the institutional settings for the marriage of a heterosexual couple and the registered partnership of a same-sex couple do not violate the principle of non-discrimination. They also do not violate Articles 9 and 21 of the Charter of Fundamental Rights of the European Union, which can only be invoked when EU law is applied. The difference in treatment, according to the Austrian court, lies within the legislators' margin of appreciation.¹⁷⁰

Other national courts have instead played a proactive role in equalising the treatment of same-sex couples with that of heterosexual couples. In **Germany**, a Constitutional Court decision prompted the equalisation of registered partnerships and marriage.¹⁷¹ The Spanish Constitutional Court recently upheld an existing law on same-sex marriage in **Spain** by rejecting a challenge filed in 2005 by the conservative Popular Party against the law authorising such unions.¹⁷²

In **Hungary**, the Constitutional Court annulled Articles 7 and 8 of the Family Protection Act¹⁷³ because of the 'excessively narrow' definition of 'family' as based on

159 CJEU, C-60/00, *Carpenter v. Secretary of State for the Home Department*, 11 July 2002, ECR I-6279.

160 Estonia, Chancellor of Justice (2012); and Estonia, Ministry of Social Affairs (2012).

161 European Parliament, Committee on Petitions (2011).

162 European Commission (2010b).

163 Luxembourg, Ministry of Justice (2012).

164 Denmark, Act No. 1288 of 19 December 2012 and Act No. 1383 of 23 December 2012.

165 Finland, *Lakialoite 2/2012 vp*, 8 February 2012.

166 See respectively: France, Bill opening marriage to couples of the same sex, 7 November 2012; Cyprus, Ministry of Interior, Draft law introducing a civil partnership for both different and same sex couples; Croatia, Ombudsperson for Gender Equality (2012); Malta, Bill 120 of 2012 – Civil partnerships and rights and obligations of cohabitants act.

167 Luxembourg, Ministry of Justice (2012).

168 United Kingdom, Government Equalities Office (2012).

169 See drafts of the Act on the registered partnerships, from 16 February 2012 (No. 552) and 22 May 2012 (No. 554). The debate on the legislation introducing registered partnerships is still ongoing.

170 Austria, Constitutional Court, B 121/11-113, 9 October 2012; see also previous rulings 17.098/2003 and 19.492/201.

171 Germany, Federal Constitutional Court, 2 BvR 1397/09, decision, 19 June 2012.

172 Spain, *Tribunal Constitucional* (2012).

173 Hungary, Act CCXI of 2011 on Family Protection, 23 December 2011.



marriage between a man and a woman, which limits the same-sex partner of the deceased from full enjoyment of inheritance rights.¹⁷⁴ In **Italy**, higher courts are taking a proactive role in filling the gaps in the existing legal framework and in prompting the legislature to remedy the lack of provisions on legal recognition of same-sex couples.¹⁷⁵

EU Member States continued to combat discrimination by introducing gender identity or gender expression as autonomous protected grounds in national equality legislation, expanding the protection offered. In the framework of the adoption of a national plan to combat homophobia, foreseen for 2013, **Belgium** is expected to soon introduce gender identity and gender expression as protected grounds in federal antidiscrimination law and regional and community decrees,¹⁷⁶ while in **Finland** a draft bill on the renewal of the Equality Act between women and men (*laki naisten ja miesten välisestä tasa-arvosta/lag om jämställdhet mellan kvinnor och män*) was circulated. The Finnish bill includes a new prohibition against discrimination on the basis of gender identity and gender expression, and new obligations for authorities, employers and educational institutions to promote the equality of transgender persons.¹⁷⁷

Securing legal gender by modifying official documents was also a trend in 2012. A draft bill in the **Netherlands** would allow transgender people to change their gender markers in official documents without undergoing sterilisation or genital surgery.¹⁷⁸ The requirement of sterilisation to change legal sex should soon be removed, according to a Dutch government agreement of October 2012.¹⁷⁹

In **Ireland**, the government renewed its commitment to finalise a bill on gender reassignment and legal recognition. It is expected to be published in 2013¹⁸⁰ despite criticism from NGOs and human rights experts on the proposed conditions for legal gender recognition.

The Swedish parliament adopted a law banning the forced sterilisation of transgender people that will enter into force on 1 July 2013.¹⁸¹

In 2012, at both national and EU level there was case law in 2012 related to the legal recognition of transgender persons, in particular their right to marry, given the 'divorce requirement', which requires transgender persons to divorce before their gender is legally recognised. In **France**, for example, the Appeals Court in Rennes accepted a gender change on the civil registrar of a married transsexual woman and parent to three children.¹⁸² French courts usually require dissolution of an existing marriage before legal recognition of a new gender can be obtained. At the time of drafting this report, French law does not allow the marriage of same-sex couples, but in this case the court maintained that the applicant could not be denied recognition of her reassigned gender because she was married.

In a similar case, *H v. Finland*,¹⁸³ the ECtHR examined a situation in which the applicant refused to accept that her marriage to a woman would be turned into a civil partnership after she underwent male-to-female gender reassignment surgery and applied to have her female gender indicated in her official documents. In its judgment, the court agreed with the applicant that this could constitute an illegitimate interference with her right to private life as set out in Article 8 of the ECHR read in conjunction with Article 14 which lays out a non-discrimination clause in the enjoyment of rights and freedoms guaranteed by the ECHR.

The court, however, ultimately rejected the applicant's claim, stressing that civil partnerships for same-sex couples in Finland had "almost identical" implications as marriages and that the "rights and obligations arising either from paternity or parenthood would not be altered". Another pending ECtHR case is against **Malta**. It concerns the right to marry of post-operative transgender persons who have changed their names and gender in official documents.¹⁸⁴

Some EU Member States continued efforts to establish shorter and simpler procedures for legal gender recognition. In **Poland**, a draft law is under parliamentary scrutiny,¹⁸⁵ while in **Lithuania**, a legislative proposal is going through the government and parliamentary approval processes.¹⁸⁶

Further legislative initiatives include a new bill introduced in **Malta** on the modification of sex and name markers in official documents,¹⁸⁷ which makes it

174 Hungary, Constitutional Court, No. II/3012/2012, 7 December 2012.

175 See for example: *Corte di Cassazione, sez. I civile*, 15 March 2012, decision No. 4184, *Tribunale di Reggio Emilia, X c. Ministero dell'Interno*, 13 February 2012, *Corte di Appello di Milano, sez. lavoro*, 31 December 2012, decision No. 407.

176 European Commission (2012f).

177 Finland, Ministry of Social Affairs and Health (2012b).

178 Netherlands, Ministry of Security and Justice (2012).

179 Netherlands, House of Representatives (2012b).

180 Ireland, Department of the Taoiseach, Gender Recognition Bill, 18 September 2012.

181 Sweden, *Lag (2012:456) om ändring i lagen (1972:119) om fastställande av könstillhörighet i vissa fall*.

182 France, Court of Appeal in Rennes, Case No. 11/08743, decision of 16 October 2012.

183 ECtHR, *H.v. Finland*, No. 37359/09, 13 November 2012.

184 ECtHR, *Joanne Cassar v. Malta*, No. 36982/11, 18 June 2012.

For further details on the case, see European Centre for Law and Justice (2012).

185 Poland, Draft act on gender recognition, 9 May 2012.

186 Lithuania, Bill on Civil Status Acts Registry.

187 Malta, Act XV of 2012 – Civil Code (Amendment) Act, 24 July 2012.

possible to present sworn medical records as proof of 'irreversible gender reassignment' rather than undergoing a medical examination by court experts.

The **Croatian** legislature is considering a draft of the Act on Amendments to the State Registry Act.¹⁸⁸

A number of recent cases drew attention to the granting of asylum or refugee status to applicants seeking protection on grounds of persecution due to sexual orientation or gender identity (see also **Chapter 2** in this Annual report). The matter concerns the interpretation and application of relevant EU law, particularly the Qualification Directive.¹⁸⁹

In **Luxembourg**, protection was denied a gay Serbian applicant,¹⁹⁰ while **Poland** granted refugee status for the first time specifically to a gay applicant.¹⁹¹ In backing the Ugandan applicant's case for Polish refugee status, the Refugee Council underlined that homophobic laws in Uganda raised well-founded fears of persecution on account of sexual orientation or gender identity. The council also stressed that the credibility of the applicant's sexual orientation should be based on his statement rather than on checks by medical experts.

The Refugee Council in Poland has another case pending concerning a gay Ugandan asylum seeker,¹⁹² after the Province Governor Administrative Court in Warsaw revoked a dismissal by the first instance administrative bodies.¹⁹³

In **Belgium**, sexual orientation and gender identity were among the main motives put forward in 2011 in gender-related asylum applications.¹⁹⁴ In **Italy**, the Supreme Court ruled that the mere existence of provisions criminalising homosexual acts constitutes a deprivation of the fundamental right to respect for private life.¹⁹⁵ The CJEU also has a case pending; the **Netherlands** Council of State requested a preliminary ruling. The Dutch case concerns the interpretation of the Qualification Directive as well as the definition of acts of persecution and the elements to be taken into

account when assessing the reasons for persecution within the meaning of the directive.¹⁹⁶

Key developments in national policies and practices

Public administrations in at least six EU Member States have strengthened their institutional capacity to combat discrimination on grounds of sexual orientation and gender identity.

In **Slovakia**, a proposal was adopted for the establishment of a Committee for the Rights of LGBTI and Intersex (LGBTI) persons (*Výbor pre práva lesbiab, gejo, bisexuálnych, transrodových a intersexuálnych osôb*); the committee is to be a permanent expert body of the Government Council and a platform for discussing ways to improve LGBTI persons' statuses and the observance of their human rights.¹⁹⁷

A **Finnish** network of contact persons for fundamental and human rights, comprised of representatives from all the Finnish ministries, was set up.¹⁹⁸ The network will focus on cross-administrative issues not assigned to a particular ministry, including questions concerning the rights of LGBT people.

The State of Berlin in **Germany** nominated a focal point for homophobic hate crimes which should harness the Public Prosecutor Office's ability to prosecute crimes committed with a homophobic intent.¹⁹⁹

In the **United Kingdom** a governmental Action Plan on transgender equality was adopted.²⁰⁰ The Human Rights Centre, a national NGO in **Estonia**, finalised a report that analyses the situation of LGBT people in Estonia with respect to the implementation of the Council of Europe Recommendation CM 2010(5).²⁰¹

A working group was established at the **Italian** Council of Ministers Department for Equal Opportunities as part of a national programme of activities drafted in collaboration with the Council of Europe. The group includes both civil society representatives and governmental

188 Croatia, Act on Amendments to the State Registry Act, July 2012.

189 Council Directive 2004/83/EC, OJ 2004 L 304.

190 Luxembourg, Administrative Court of the Grand Duchy of Luxembourg, Third Court, Case No. 30447, 13 June 2012.

191 Poland, Office for Foreigners, DPU-420-4-/SU/2011, 6 April 2012; and Refugee Council, RdU-178-1/S/12, 25 July 2012.

192 Poland, Province Governor Administrative Court in Warsaw, V SA/WA/1048/12, 29 August 2012.

193 Poland, Office for Foreigners, DPU-420-3062/SU/2009, 3 October 2011; Refugee council, RdU-495/2/S/11, 12 March 2012; Province Governor Administrative Court, V SA/WA 1048/12, 20 November 2012.

194 Belgium, Office of the Commissioner General of Refugees and Stateless Persons (2011), pp. 12-13.

195 Italy, *Corte di Cassazione, sez. VI civile*, order No. 15981, 20 September 2012.

196 Netherlands, Reference for a preliminary ruling from the *Raad van State* (Netherlands) lodged on 27 April 2012, *Minister voor Immigratie en Asiel v. X*, Case C-199/12; *Minister voor Immigratie en Asiel v. Y*, Case C-200/12; and *Z v. Minister voor Immigratie en Asiel*, Case C-201/12; available at: <http://eur-lex.europa.eu/JOHtm1.do?uri=OJ:C:2012:217:SOM:en:HTML>.

197 Slovakia, Ministry of Foreign Affairs (2012).

198 Finland, Ministry of Justice (2012).

199 For more information, see: www.berlin.de/sen/justiz/ansprechpartnerin-homophobe-hasskriminalitaet/startseite.php.

200 United Kingdom, Home Office (2011); for more information, see also the Home Office website, available at: <https://www.gov.uk/government/organisations/home-office>.

201 Estonia, Human Rights Centre (2012).



bodies and aims at elaborating guidelines for combating discrimination on the grounds of sexual orientation and gender identity in key areas of life.²⁰²

These developments testify to the growing number of initiatives undertaken by public authorities to respect and promote the fundamental rights of LGBT persons, thus giving practical follow up to the adoption of the Council of Europe CM Recommendation 2010(5).

One of the most vocal expressions of this trend took place in a March 2012 governmental conference organised by the United Kingdom Chairmanship of the Council of Europe.²⁰³ Ministers from **Finland**, the **Netherlands**, the **United Kingdom**, Albania and Montenegro, among others, participated in the conference. The Council of Europe works closely with six member states – partners in the project aimed at the implementation of the recommendation: **Italy**, **Latvia**, **Poland**, Albania, Montenegro and Serbia.²⁰⁴

Various initiatives concerned discrimination beyond employment. In the **Netherlands**, education on sexual diversity, including homosexuality and gender identity, became obligatory on 1 December 2012 for all students in primary and secondary education. Such issues will be integrated into the Core Goals (*Kerndoelen*).²⁰⁵ In both **Finland** and **Greece** special government-supported youth initiatives have strived to provide support for LGBT teenagers and students: there is a Child and Youth Policy Programme in Finland²⁰⁶ and a hotline in Greece²⁰⁷. In the **United Kingdom**, the government adopted a charter against homophobia and transphobia in sports.²⁰⁸

Reported episodes of violence or obstacles to LGBT events or marches in 2012 in **Lithuania**,²⁰⁹ **Poland**,²¹⁰ **Romania**,²¹¹ and **Slovenia**²¹² affected LGBT people's right to freedom of assembly and freedom of expression.

Similarly, in **Hungary**, police banned the Budapest Pride parade, but on 13 April 2012, the Metropolitan Tribunal (*Fővárosi Törvényszék*) overruled and repealed the

decision. The tribunal established that there was no legal reason to prohibit Budapest Pride.²¹³

Conversely, in **Croatia**, the government expressed its support for the Pride parade, and peaceful demonstrations took place.²¹⁴ Some promising initiatives on freedom of expression of LGBT people were identified: in **Latvia**, the Baltic Pride did not encounter the obstacles faced in previous years; in **Croatia**, the governmental Office for Gender Equality welcomed the International Day against Homophobia and Transphobia;²¹⁵ in the **Czech Republic**, a festival addressing horizontal equality issues was organised.²¹⁶

FRA ACTIVITY

Surveying LGBT people in the EU and Croatia

On 2 April 2012, FRA launched its European LGBT survey, in response to a European Commission request. More than 93,000 respondents participated in the survey, which aimed at recording the experiences of discrimination and violence of those who identify themselves as LGBT and reside in the EU and Croatia.

The overall picture that emerges from the survey results is one of serious obstacles to LGBT persons' enjoyment of their fundamental rights. The results show that a large number of respondents had experienced discrimination in various areas of social life. Many respondents had also been victims of violence and serious harassment. They rarely, however, reported the discrimination or incidents of violence or serious harassment to the authorities. Almost half of respondents had experienced discrimination or harassment on the ground of sexual orientation in the 12 months preceding the survey.

The European Parliament's annual report on fundamental rights calls on the European Commission to use the FRA survey results to follow up on the European Parliaments' repeated calls for an EU Roadmap for equality on the grounds of sexual orientation and gender identity.

For more information, see: <http://fra.europa.eu/en/survey/2012/european-lgbt-survey>

202 Italy, National Office Against Racial Discrimination (2012).

203 Council of Europe, Committee of Ministers (2011); see also United Kingdom, Home Office (2012c).

204 For more information about the Council of Europe LGBT project, see: http://www.coe.int/t/dg4/lgbt/Project/Description_EN.asp.

205 Netherlands, Minister of Education, Culture and Science (2011).

206 Finland, Ministry of Education and Culture (2012).

207 Greece, General Secretariat for Youth (2012), pp. 27–28.

208 United Kingdom, Home Office (2012d).

209 Lithuania, Informal communication with the Human Rights Committee of *Seimas*, 30 July 2012.

210 Poland, Dean of the Warsaw University Law and Administration faculty (2012).

211 Romania, ACCEPT Association (2012).

212 Slovenia, Narobe (2012).

213 Hungary, Metropolitan Tribunal, 27.Kpk.45.385/2012/2, 13 April 2012.

214 Croatia, National Government (2012), p. 26.

215 Croatia, Office for Gender Equality (2012).

216 Czech Republic, Prague Pride (2012).

5.2.6. Discrimination on the ground of sex

The policy and legislative developments in 2012 related to the ground of sex addressed in this section focus on gender equality, political and economic decision-making positions and the gender pay gap. These are only a few elements of this topic; other chapters of this Annual report have mainstreamed gender aspects: gender inequality in political decision-making still constitutes

- ▶ a reality in many EU Member States (see **Chapter 7**);
- ▶ violence against women remains a concern in the EU (see **Chapter 9**); and many victims of trafficking are
- ▶ women and young girls (see **Chapter 1**). The European Institute for Gender Equality (EIGE) also works on other issues of gender-based discrimination.

Key developments in national case law and other legislative aspects

Several discrimination cases on the ground of sex due to pregnancy or maternity were reported in 2012. In **Malta**, an employee's contract was terminated a week after she informed the company of her pregnancy. The Industrial Tribunal awarded compensation to the claimant on the grounds that the law does not give a company the right to dismiss an employee during pregnancy.²¹⁷

In a similar case, the Supreme Court of **Latvia** ruled that "less favourable treatment due to maternity should always be regarded as direct discrimination; worse working conditions, including a reduction in pay, will be direct discrimination based on sex". The court cited several CJEU judgments on the reversal of the burden of proof in cases of alleged discrimination based on sex.²¹⁸

Key developments in national policies and practices: gender pay gap

The gender pay gap is the relative difference of the average gross hourly earnings of women and men in the economy as a whole. It is one of the main indicators of gender discrimination and of inequalities in the labour market.²¹⁹

The EU's average gender pay gap is estimated at 16.4 %, according to the most recently available data, which cover the year 2010.²²⁰ The European Parliament called upon the European Commission to measure and

217 Malta, Industrial Tribunal (2012), *Tracey Camilleri v. John's Garage Ltd & Travel Smart Ltd.*, No. 28877/FM, No. 2159, 9 May 2012.

218 Latvia, Supreme Court, No. SKC-84/2012, 6 June 2012.

219 See European Commission, DG Justice, *Gender pay gap – The situation in the EU*, available at: http://ec.europa.eu/justice/gender-equality/gender-pay-gap/situation-europe/index_en.htm.

220 *Ibid.*

tackle the gender pay gap more effectively.²²¹ In 2012, **Austria** and **Belgium**²²² enacted legislative measures in this area. In Austria, for example, an amendment to the Equal Treatment Act introduces financial sanctions for omitting the salary on offer when advertising employment.²²³ **Estonia**²²⁴ and **Finland**,²²⁵ introduced 'softer' measures in the context of their national action plans in the area of equality, including raising awareness, analysing the gender pay gap as well as the effects of taxation and transfer payments on the economic equality of women and men.

The gender pay gap can also result in poverty for older women.²²⁶ In June 2012, **Estonia** adopted legislative measures which aim to compensate a parent's decrease in future pension due to child rearing.²²⁷ Since women are more likely to take parental leave than men, this measure is expected to particularly improve women's future pensions.²²⁸

Similarly, a CJEU decision ruled that **Spain** (indirectly) discriminates against women in terms of pension rights by penalising part-time jobs, since women hold more part-time jobs than men due to their greater share of domestic responsibilities. The CJEU calculated that, to receive a pension, part-time workers would need to work a significantly greater number of years than full-time workers – specifically 100 more years in the complainant's case.²²⁹

5.2.7. Multiple and intersectional discrimination

This section presents legal and policy developments that took place in the area of multiple discrimination in 2012. At the end of the section, the main findings of the new FRA report *Inequalities and multiple discrimination in access to and quality of healthcare* are presented.

Key developments in national case law and other legislative aspects

Discrimination based on more than one ground is addressed in legislation in six EU Member States:

221 European Parliament (2012c).

222 Belgium, Law to fight the pay gap in Belgian companies, 8 March 2012.

223 Austria, Equal Treatment Act BGBl. I Nr. 66/2004 last modified by BGBl. I Nr. 7/2011, Art. 9 (2) in conjunction with Art. 10 (2).

224 Estonia, National Government (2012).

225 For more information on the 'Equal pay programme', see: www.stm.fi/en/gender_equality/equal_pay.

226 European Parliament (2012c).

227 Estonia, Act on Changing the Funded Pensions Act, State Pension Insurance Act and Other Related Laws, 6 June 2012.

228 Estonia, Ministry of Social Affairs (2012).

229 CJEU, C-385/11, *Isabel Eibal Moreno v. Instituto Nacional de la Seguridad Social (INSS) and Tesorería General de la Seguridad Social (TGSS)*, 22 November 2012.



Austria, Bulgaria, Germany, Greece, Italy, Romania and in **Croatia**.²³⁰ No legislative developments, however, were observed in 2012. **Finland** alone had discrimination cases involving more than one ground brought before a national court.²³¹

In 2012, national equality bodies in **Bulgaria, the Czech Republic, Estonia, Ireland, Luxembourg, the Netherlands, Slovakia and Slovenia** processed complaints on more than one ground, according to informal communications with those bodies. The equality body in **Finland** announced that it would start processing such claims in 2013.

In July 2012, for example, the Equality Ombudsman of **Sweden** reached a settlement with a taxi company regarding a woman of African origin employed in a group service home for people with disabilities. A taxi driver harassed the woman while she accompanied a resident, and the Equality Ombudsman determined that the harassment was based on the grounds of ethnicity and sex.²³²

While the ECtHR has not explicitly pronounced itself on the issue of multiple discrimination, several cases, including on forced sterilisation, have raised the issue of vulnerability based on multiple grounds. In June 2012, the ECtHR case, *NB v. Slovakia*,²³³ involved the forced sterilisation of a Roma woman in a public hospital and her subsequent failure to obtain redress. Although the applicant complained that she was discriminated against on more than one ground, race/ethnic origin and sex, the court did not make any explicit reference to multiple discrimination.

The ECtHR did, however, state that “the practice of sterilisation of women without their prior informed consent affected vulnerable individuals from various ethnic groups” and that the State failed “to secure to the applicant a sufficient measure of protection enabling her, as a member of the vulnerable Roma community, to effectively enjoy her right to respect for her private and family life in the context of her sterilisation”.²³⁴ The ECtHR found violations of three articles of the ECHR: Article 3 on the prohibition of torture, Article 7 on no punishment without law and Article 9 on the freedom of thought, conscience and religion.

²³⁰ FRA (2012d) and Croatia, Anti-discrimination Act, enacted 15 July 2008, amendments entered into force on 28 September 2012.

²³¹ Aaltonen, M. (2012), *Tasa-arvolain ja rikoslain työ syrjintäsääntöksen soveltaminen oikeuskäytännössä vuosina 2008–2011*, Helsinki, Ihmisoikeusliitto.

²³² Sweden, Equality Ombudsman (2012), Case NB ANM 2010/1289, 12 July 2012.

²³³ ECtHR, *N.B. v. Slovakia*, No. 29518/10, 12 June 2012.

²³⁴ *Ibid.*, paras. 121–122.

The ECtHR decision in *B. v. Romania* shed light on the intersectional vulnerability of women with disabilities and the positive obligations of the state.²³⁵

The case concerned a woman with a psycho-social disability who had been repeatedly involuntarily confined in hospital due to her mental state. The applicant reported that she had been subject to an attempted rape, but she was not heard during the criminal proceedings. After the case was dismissed, the applicant filed with the ECtHR.

The court based its interpretation on the positive obligations set out in Article 3 of the ECHR on the prohibition of torture and ill-treatment, which requires EU Member States to provide adequate protection and carry out prompt and effective investigation of any claim related to alleged ill-treatment of which the authorities had or ought to have had knowledge, in particular of vulnerable persons. The ECtHR found that the national authorities’ actions were affected by the prejudice that the applicant’s allegations were unreliable due to her mental health state, affecting the effectiveness of their actions and in turn violating Article 3 of the ECHR. The court also found that the positive obligation to ensure special protection to the victim in light of her vulnerable condition had not been fulfilled.

In July 2012, the ECtHR delivered another relevant judgment in *B.S. v. Spain* where the claimant alleged that she had been discriminated against on the grounds of her profession, skin colour and sex. The ECtHR found a violation of Article 3 of the ECHR in conjunction with Article 14 of the ECHR on non-discrimination. Although the court did not explicitly acknowledge multiple discrimination, it found that the national courts had not taken into account the special vulnerability inherent in the applicant’s situation as an African woman working as a sex worker. The court also stated that the authorities had not taken all measures to ascertain whether a discriminatory attitude might have played a role in the incident.²³⁶

Key developments in international, EU and national policies and practices

In 2012, the Council of Europe Committee of Ministers adopted a recommendation on the protection and promotion of the rights of women and girls with disabilities which called for member states to adopt appropriate legislative measures and positive actions likely to encourage the participation of women and girls with disabilities in all areas of life.²³⁷

²³⁵ ECtHR, *B. v. Romania*, No. 42390/07, 10 January 2012.

²³⁶ ECtHR, *B.S. v. Spain*, No. 47159/08, 24 July 2012.

²³⁷ Council of Europe, Committee of Ministers (2012), p. 4.

FRA ACTIVITY

Exploring multiple discrimination in healthcare

The FRA report on *Inequalities and multiple discrimination in access to and quality of healthcare* focuses on how multiple discrimination, or the interplay of the protected grounds of age, sex, ethnic origin and disability, prevents access to healthcare services. The report explores the barriers, the experiences of discrimination and the healthcare needs of different groups of migrant and ethnic minority healthcare users.

Respondents face unequal treatment in relation to access to and quality of healthcare, the report shows. They experience this either as a form of direct discrimination, including multiple discrimination, or as barriers to accessing healthcare, such as when they were treated equally, but inappropriately, for their specific situation.

The report builds draws on more than 300 interviews conducted with healthcare users, healthcare professionals, legal experts and policy makers in five EU Member States (**Austria**, the **Czech Republic**, **Italy**, **Sweden** and the **United Kingdom**).

Language barriers are one example of the obstacles faced, particularly by migrant women, older migrants and children with intellectual or psycho-social disabilities belonging to migrant/ethnic minorities. Linguistic barriers may keep them from being diagnosed in an appropriate and timely way.

The report shows that the factors that can discourage service use are a lack of consideration for and accommodation to the cultural practices of specific groups which share more than one protected characteristic. More than any other form of discriminatory practice, healthcare users have emphasised that they might experience treatment lacking in dignity and respect when communicating and interacting with healthcare staff. Recurrent stereotypes linked to specific intersectional groups, compounded by failures in communication and trust between patients and medical staff, surfaced in different countries.

Based on this evidence, the report suggests introducing EU legislative provisions to prevent and combat multiple and intersectional discrimination. It also calls on EU Member States to adopt specific measures to further the right to health on an equal basis, including positive actions for persons belonging to groups at risk of intersectional discrimination.

Such measures could include: accommodating the needs of women belonging to ethnic minorities who want to be treated by female healthcare professionals; funding community-based mobile outreach programmes targeting different ethnic communities and groups – including elderly people, women and persons with various disabilities – to promote healthcare and raise awareness of entitlements and available health services; and allocating more time for medical consultations with persons belonging to these groups to address special needs.

For more information, see: FRA (2013), *Inequalities and Multiple discrimination in access to and quality of healthcare*, available at: <http://fra.europa.eu/en/publication/2013/inequalities-discrimination-healthcare>

In June 2012, the Council of Europe Parliamentary Assembly adopted a resolution²³⁸ and a report on *Multiple discrimination against Muslim women in Europe: for equal opportunities*,²³⁹ which finds that Muslim women face discrimination on the multiple grounds of sex, religion and, at times, ethnic origin. The resolution calls on Member States to introduce legal provisions against multiple discrimination in their legislative frameworks. The same opinion was expressed in the FRA report, *Inequalities and multiple discrimination in access to and quality of healthcare*.

Several EU Member States addressed the situation of more vulnerable groups of women and Roma women in their national action plans on gender, social inclusion and/or Roma. In **Hungary**, for example, the *Action Plan of the Strategy for Social Inclusion 2012–2014* contains one measure specifically targeting Roma women by

promoting their employment in institutions providing social and child welfare.²⁴⁰ In **Finland**, the *Government Action Plan for Gender Equality 2012–2015* aims to pay wider attention to discrimination on multiple grounds by monitoring the experiences of women and men of immigrant origin and other persons liable to encounter multiple discrimination. In **Greece**, the General Secretariat for Gender Equality established a Working Group on Migration Policy in order to develop a policy for combating multiple discrimination against migrant women.²⁴¹

Research and policy papers on multiple discrimination published in 2012 included a policy paper on older LGBT persons by the European region of the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) and AGE Platform Europe. The lack of recognition

²³⁸ Council of Europe, Parliamentary Assembly (2012a).

²³⁹ Council of Europe, Parliamentary Assembly (2012b).

²⁴⁰ Hungary, National News Agency – Ministry for Human Resources (2012).

²⁴¹ Greece, General Secretariat for Gender Equality (2012), p. 30.

of same-sex couples is a particular challenge, because it undermines their financial security and makes it more difficult for them to access social protection, the paper said. This becomes particularly worrying when people get older and cannot ensure that their partner will have access to their pensions and assets.²⁴²

Research conducted in the **Czech Republic**²⁴³ looked into the specific situation of men and women with disabilities. In the **United Kingdom**,²⁴⁴ a parliamentary inquiry into the unemployment of female ethnic minorities found that Pakistani, Bangladeshi and black women are far more likely to be unemployed than either white men or white women.

Discrimination based on both sex and ethnicity takes place in job interviews, the inquiry found. Muslim women who wear the hijab reported discrimination, and women from all three ethnic groups reported questions asked about their intentions regarding marriage and children, based on the assumption that these women would want to stop working after having children.

The Equality Authority conducted research in **Ireland**²⁴⁵ on national population census data. Analysis related to gender and disability showed that membership in two disadvantaged groups does not necessarily result in 'double disadvantage'. For example, both people with disabilities and women have a higher risk of being outside the labour market. Men with a physical disability, however, are more likely than women with a physical disability to be outside the labour market other things being equal, the results of the analysis show. The report suggests that this may arise because physical disabilities limit men's participation in less-skilled manual occupations – jobs men tend to fill more than women. The report findings highlighted the need to consider how the processes involved may interact for each particular group.

Outlook

Intense debate on the EU equality and non-discrimination legal and policy framework in 2012 and in 2013 is expected to yield important developments. The European Parliament,²⁴⁶ which has repeatedly called for the adoption of the proposed Horizontal Directive, will draft its own initiative report on the implementation of the Employment Equality Directive.²⁴⁷ The European Commission plans to publish a report in October 2013 on the implementation of the Racial Equality Directive and the Employment Equality Directive. Discussions will also continue on the Commission's proposal for the EU structural funds legislative package for 2014–2020.

There will also be discussions in 2013 on gender-based discrimination, including a proposed revision of the Pregnant Workers Directive.²⁴⁸ With particular regard to the issue of violence against women, EU Member States have until 6 April 2013 to put into place all the legal and administrative provisions necessary to give full effect to the Directive on preventing and combating trafficking in human beings and protecting its victims.²⁴⁹ In addition, following a European Parliament resolution,²⁵⁰ the European Commission is expected to review and propose amendments to the Gender Recast Directive²⁵¹ at the latest by 15 February 2013, focusing in particular on the gender pay gap issue. With regards to 'women in decision-making', the European Parliament and the Council of the European Union are expected to review the European Commission's legislative proposal in 2013.²⁵²

The European Accessibility Act will be published in 2013. This is expected to ensure the equal treatment of persons with disabilities and the elderly. The act will complement existing EU legislation by providing clarity on what accessibility means for the provision of goods and services in the EU.

²⁴⁶ European Parliament (2011).

²⁴⁷ Impact Assessment of the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008) 0426) as well as of amendments 37 (Multiple Discrimination) and 41 (Discrimination based on assumptions) of the European Parliament to this proposal as adopted in plenary on 2 April 2008.

²⁴⁸ European Commission (2008c).

²⁴⁹ Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA, OJ 2011 L 101/1, 15 April 2011.

²⁵⁰ European Parliament (2012d).

²⁵¹ Directive 2006/54/EC of the European Parliament and of the Council of 5 July 2006 on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast), OJ 2006 L 204, 26 July 2006.

²⁵² European Commission (2012g).

²⁴² ILGA and AGE Platform Europe (2012).

²⁴³ Healthy Parenting Association (2011).

²⁴⁴ United Kingdom, All Party Parliamentary Group on Race and Community (2012).

²⁴⁵ Watson, D. *et al.* (2012).

Regarding discrimination based on sexual orientation and gender identity, ongoing debates in the area of family life which are linked to the Stockholm Programme and the 2013 European Year of Citizens may result in developments at EU level. The report on the evaluation of the Free Movement Directive may affect the issue of free movement of same-sex couples.²⁵³ The European Commission is expected to launch the report in May 2013, in light of the European Parliament's renewed calls for the need to ensure freedom of movement for all EU citizens and their families, without discrimination on, among others, the ground of sexual orientation.²⁵⁴

In 2013, a European Commission proposal is expected to amend the existing regulation on jurisdiction and the recognition and enforcement of judgments in matrimonial matters and matters of parental responsibility.²⁵⁵ In addition, the European Commission is expected to make two legislative proposals in 2013 that tackle the issue of civil status documents, as envisaged by the Green Paper of 2010 on promoting free movement.²⁵⁶

253 Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States, OJ 2004 L 158, 30 April 2004.

254 European Parliament (2012e).

255 Council Regulation (EC) No. 2201/2003 of 27 November 2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility, OJ 2003 L 338.

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UN & CoE

January

1 February – Council of Europe Committee of Ministers adopts a Declaration on the Rise of Anti-Gypsyism and Racist Violence against Roma in Europe

21 February – European Commission against Racism and Intolerance (ECRI) issues conclusions on the implementation of the recommendations in respect of Hungary subject to interim follow-up

21 February – ECRI issues conclusions on the implementation of the recommendations in respect of Bulgaria subject to interim follow-up

21 February – ECRI issues its fourth reports on Italy, on Latvia and on Luxembourg

27 February – Council of Europe Commissioner for Human Rights publishes report on Human Rights of Roma and Travellers in Europe

February

9 March – United Nations Committee on the Elimination of Racial Discrimination (CERD) issues its Concluding Observations on Italy and on Portugal

March

April

22 May – ECRI issues its fourth report on Denmark

22 May – ECRI issues conclusions on the implementation of the recommendations in respect of Belgium, of the Czech Republic, of Germany, and of Slovakia subject to interim follow-up

May

16 July – United Nations Human Rights Council issues the *Report of the Working Group of Experts on People of African Descent on its eleventh session*

June

July

3 August – United Nations Human Rights Council issues the *Report of the Working Group of Experts on People of African Descent on its eleventh session – Addendum: draft programme of action for the decade of people of African descent*

13 August – United Nations Human Rights Council issues the *Report of the Working Group of Experts on People of African Descent on its eleventh session – Addendum: Mission to Portugal*

31 August – CERD issues its Concluding Observations on Austria and on Finland

August

12 September – Council of Europe Committee of Ministers adopts a recommendation to Member States on mediation as an effective tool for promoting respect for human rights and social inclusion of Roma

25 September – ECRI issues its fourth reports on Croatia and on Sweden

25 September – ECRI issues conclusions on the implementation of the recommendations in respect of Greece subject to interim follow-up

September

October

November

December

EU

January

2 February – European Parliament adopts a resolution on the European dimension in sport, which also relates to combating racism

February

15 March – European Parliament adopts a resolution on discriminatory internet sites and government reactions, which also relates to combating racism and xenophobia

March

April

10 May – European Parliament issues a declaration on support for the establishment of a European Day of Remembrance of the Righteous

21 May – European Commission issues a communication on National Roma Integration Strategies: a first step in the implementation of the EU Framework

May

June

July

August

September

October

November

December