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## UN & CoE

January

February

28 March – United Nations (UN) General Assembly adopts Resolution 67/187 on the UN Principles and Guidelines on Access to Legal Aid in Criminal Justice Systems

March

April

May

14–15 June – Council of Europe's Venice Commission issues an opinion on the Fourth Amendment to the Fundamental Law of Hungary

24 June – UN Human Rights Council adopts a resolution on national institutions for the promotion and protection of human rights

June

July

August

September

21 October – In *Del Río Prada v. Spain*, the European Court of Human Rights (ECtHR) finds it unlawful to extend detention retroactively because of a change in case law

October

4 November – In *Anghel v. Italy*, the ECtHR finds a violation of the right to a fair trial when a legal representative is not appointed in a concrete and effective manner

21 November – UN General Assembly Third Committee adopts a resolution on national human rights institutions

November

4 December – Council of Europe Commissioner for Human Rights releases a research paper on the economic crisis's impact on human rights protection

December

## EU

17 January – Court of Justice of the European Union (CJEU) provides further guidelines on legal standing of individuals in direct actions for annulment of EU legislative acts in *Inuit Tapiriit Kanatami and Others*

29 January – In *Ciprian Vasile Radu*, the CJEU addresses the role of fundamental rights in the execution of the European arrest warrant

30 January – The European Commission issues a report on Romania under the Cooperation and Verification Mechanism

January

26 February – In *Stefano Melloni v. Ministerion Fiscal*, the CJEU elaborates on the role of fundamental rights in the execution of the European arrest warrant

26 February – In *Åklagaren v. Hans Åkerberg Fransson*, the CJEU confirms that imposing a combination of non-criminal tax penalties and criminal penalties is not contrary to the principle that no one shall be tried twice for the same offence

February

27 March – European Commission publishes the Justice Scoreboard

March

April

9–10 May – Irish Presidency of the Council of the European Union hosts a conference on 'A Europe of equal citizens: Equality, fundamental rights and the rule of law'

May

7 June – Justice and Home Affairs Council issues *Conclusions on fundamental rights and the rule of law*

June

17 July – European Commission submits a proposal for a regulation on the establishment of the European Public Prosecutor's Office (EPPO)

July

August

September

22 October – Measures D and C1 of the EU Criminal Procedure Roadmap – the right of access to a lawyer – are adopted

October

7 November – In *DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV*, the CJEU provides guidance on how to interpret the insured's right to choose a lawyer

21 November – European Commission publishes the Flash Eurobarometer Survey on Justice in the EU

27 November – European Commission adopts the 'Procedural Rights Package' including five legal measures to strengthen procedural safeguards for citizens in criminal proceedings (including part of Measure C2 of the EU Criminal Procedure Roadmap)

November

December

# 8

## Access to justice and judicial cooperation



*The need to improve the efficiency and transparency of national justice systems and enhance the implementation of existing fundamental rights instruments, the search for an effective rule of law mechanism, and further budget cuts extending beyond courts to non-judicial mechanisms – these were some of the main challenges in the area of access to justice and judicial cooperation in 2013. Positively, several EU Member States acted to modernise and further develop e-justice to tackle overly long proceedings. They also continued to reform non-judicial bodies with a human rights remit to strengthen their fundamental rights role. At the EU level, a specific tool – a ‘Justice Scoreboard’ – was introduced to boost the efficiency of national judicial systems, and the European Commission opened the debate on improvements in the area of justice needed in the next five years after the Stockholm Programme.*

### 8.1. EU and other international actors take steps to strengthen the rule of law and justice systems

International and European actors focused in 2013 on strengthening the rule of law, specifically on the quality, independence and efficiency of judicial systems (see also the [Focus](#) and [Chapter 10](#) on EU Member States and international obligations).

The EU’s Justice and Home Affairs Council adopted specific conclusions on fundamental rights and the rule of law on 7 June 2013. Drawing upon the related discussion at the Ireland’s EU Presidency conference ‘A Europe of equal citizens: Equality, fundamental rights and the rule of law’, jointly organised with FRA, the Irish Equality Authority and the Human Rights Commission,<sup>1</sup> the council emphasised that respecting the rule of law is a prerequisite for the protection of fundamental rights and that any work in this context shall “make full use of existing mechanisms and cooperate with other relevant EU and international bodies, particularly with the Council of Europe, in view of its

#### Key developments in the area of access to justice and judicial cooperation

- The rule of law and the issue of overall accessibility of justice for all persons in the EU, including a full understanding of one’s rights and the means to realise them in times of ongoing austerity measures, remain high on the EU agenda in 2013.
- The European Commission starts a debate on the shape of the EU’s justice policy after the Stockholm Programme in the area of justice and home affairs, which comes to a close at the end of 2014.
- The evolving ‘Justice Scoreboard’ tool, which aims to enhance the effective functioning of national justice systems across the EU, is introduced.
- The criminal procedure roadmap of the EU takes another step forward with the adoption of the Directive on the right of access to a lawyer.
- EU Member States continue to introduce initiatives to restructure national justice systems, including through the use of e-justice tools.
- The UN General Assembly takes a landmark step, issuing a resolution calling for a strengthened role for national human rights institutions within the UN system.

key role in relation to promotion and protection of human rights, democracy and the rule of law.”

## FRA ACTIVITY

### Promoting the rule of law

The 2013 FRA Symposium, which focused on promoting the rule of law, found that any potential assessment should look not only at available laws and institutions (structures) or policies (processes) but also, and especially, at the situation on the ground (outcome). Participants considered that the rule of law should be measured not only in EU Member States but also in the EU and its institutions. These and other conclusions from the symposium were also issued as a Council document to further inform the discussions of the Council of the European Union on the rule of law.

Source: <http://fra.europa.eu/sites/default/files/fra-2013-4th-annual-symposium-report.pdf>

In the follow-up report on the rule of law recommendations made to Romania under the Co-operation and Verification Mechanism in 2012,<sup>2</sup> the European Commission welcomed steps taken to restore respect for the constitution and the decisions of the Constitutional Court, yet noted that the “lack of respect for the independence of the judiciary and the instability faced by judicial institutions remain a source of concern”.<sup>3</sup>

In June 2013, the Council of Europe expert body, the Venice Commission, issued an opinion on **Hungary** on the compatibility of constitutional amendments with the principle of the rule of law. The Venice Commission examined the Fourth Amendment to the Fundamental Law of Hungary, adopted in March 2013<sup>4</sup> – an adoption preceded by a critical statement issued jointly by the President of the European Commission and the Secretary General of the Council of Europe, raising concerns about just that compatibility. The Venice Commission opinion raises new concerns with respect to the rule of law and independence of the judiciary.<sup>5</sup> It pointed in particular to the dominant position of the President of the National Judicial Office compared with the National Judicial Council, to the court case transfer system and to the limitations imposed on the role of the Constitutional Court. The European Parliament<sup>6</sup> and the UN High Commissioner for Human Rights,<sup>7</sup> among others, subsequently reiterated these concerns and urged the Hungarian government to address all of the issues the Venice Commission had raised over the last few years. The Hungarian Parliament responded by adopting the Fifth Amendment to the Fundamental Law of Hungary on 16 September 2013 to address some of the controversial elements of the previous amendment. It repealed, for example, the rules on court case transfers.<sup>8</sup>

According to the European Commission 2013 Flash Eurobarometer Survey on Justice in the EU,<sup>9</sup> public perceptions about justice and the rule of law across the EU are consistently low in the **Czech Republic, Greece, Italy and Spain**. Most respondents think there are large differences between national judicial systems in terms of quality (58 %), efficiency (58 %) and independence (52 %). Majorities in **Bulgaria** (71 %), **Slovenia** (70 %) and **Romania** (69 %) think their justice system is worse than others in the EU.

In addition to the rule of law discussion, the issue of overall accessibility of justice for all persons in the EU, including a full understanding of one’s rights and the means to realise them in times of ongoing austerity measures, also continued to be high on the agenda in 2013. A trend of cutting legal aid or justice budgets in general continued across the EU Member States, including **Ireland**,<sup>10</sup> **Portugal**<sup>11</sup> and the **United Kingdom**.<sup>12</sup>

*“[Calls] on governments to pursue all the necessary measures to ensure access to justice for all, with a particular focus on people living in poverty, who need to have a full understanding of their rights and the means to realise them.”*

*European Parliament (2013), Resolution on the impact of the financial and economic crisis on human rights, 18 April 2013*

On 4 December 2013, the Council of Europe Commissioner for Human Rights pointed out that national decisions on austerity measures should not have a disproportionate impact on the human rights protection system. The commissioner stressed the need to grant effective access to justice to all during economic downturns by maintaining an effective and independent judiciary and a legal aid system.<sup>13</sup>

‘Justice for growth’ issues aim to support the economy and its growth. They include the effectiveness of justice systems, the independence of justice and the European area of justice based on mutual trust. Such issues and the rule of law were at the heart of discussions on the future of EU justice policy. These discussions, held at the ‘Assises de la Justice’<sup>14</sup> hosted by the European Commission in November 2013, are meant to feed into the European Commission’s new plan for EU justice policy, after the present EU programme for justice and home affairs, the Stockholm Programme, concludes. FRA contributed to the discussions by submitting a paper and following up the ensuing consultation process with a more detailed document on the future role of fundamental rights in EU justice and home affairs policies.

### EU and Member States move to enhance effectiveness of national justice systems

In the context of its ‘justice for growth’ agenda, the European Commission – drawing mainly on the expertise

of the Council of Europe Commission for the Efficiency of Justice<sup>15</sup> – also introduced its new tool, the ‘Justice Scoreboard’ (see also the [Focus](#)). Through this tool, the European Commission aims to enhance the effective functioning of EU national justice systems. It will do so by regularly bringing together a variety of data – in particular, data available about civil and commercial cases – to identify any shortcomings and hence support reforms in national justice systems.<sup>16</sup> The 2013 Justice Scoreboard’s data include the business-friendliness of each country’s justice system; justice resources, including budget allocation, human resources, workload, use and accessibility of justice such as length and cost of proceedings; and the use of simplified and alternative dispute resolution procedures. The EU Justice Scoreboard is intended to be a tool that will gradually extend over more areas.

### 8.1.1. EU adopts new laws to facilitate access to justice and judicial cooperation

Progress on the criminal procedures roadmap continued, with new instruments adopted or proposed.<sup>17</sup> In 2013, the Council of the EU adopted a directive on the right of access to a lawyer (originally intended as Measure D and a part of Measure C (C1) of the roadmap).<sup>18</sup> The directive sets out minimum rules on the rights: to access a lawyer in criminal proceedings and in European arrest warrant (EAW) proceedings from the earliest stage until proceedings conclude; to have a third party informed upon deprivation of liberty; and to communicate with third persons and with consular authorities while deprived of liberty. Member States have three years to implement this instrument.

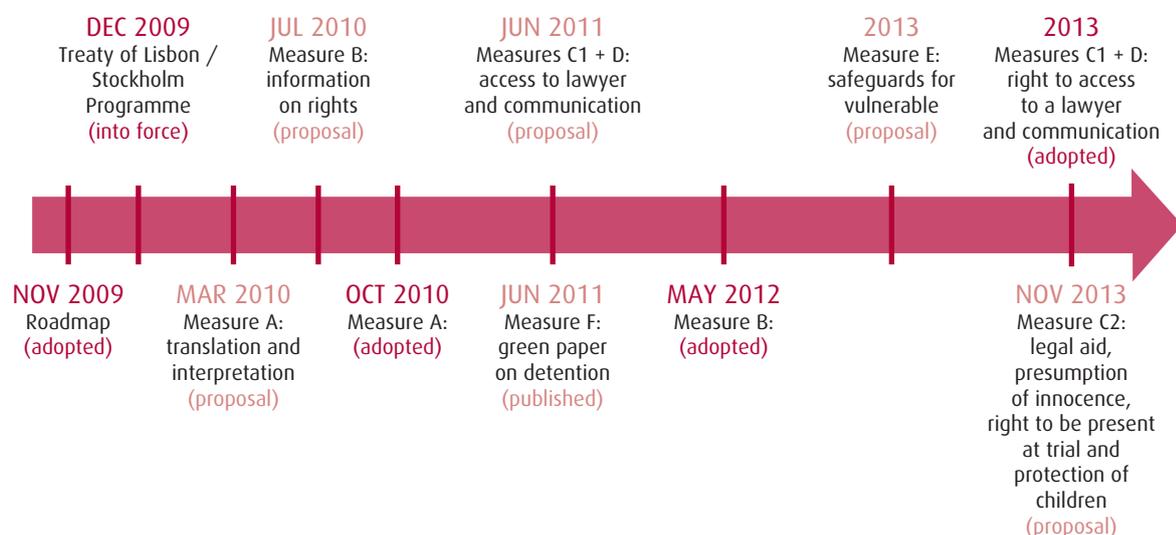
In November 2013, the Commission presented a package of five legal measures to strengthen the procedural safeguards for citizens in criminal proceedings, including part of Measure C2 on legal aid. It consists of three proposals for directives on:

- strengthening certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings;<sup>19</sup>
- special safeguards for children suspected or accused in criminal proceedings (see [Chapter 4](#) on the rights of the child and the protection of children);<sup>20</sup>
- provisional legal aid (at the early stages of the proceedings and until the competent authority has made a final decision on the application for legal aid) for suspects or accused persons deprived of liberty and legal aid in EAW proceedings.<sup>21</sup>

These directives would apply both to domestic and cross-border proceedings. Two European Commission recommendations accompany the three proposals for directives and focus on:

- procedural safeguards for vulnerable persons suspected or accused in criminal proceedings,<sup>22</sup> aiming to contribute to raising standards on the procedural rights of vulnerable adults and to enhancing mutual trust;
- the right to legal aid for suspects or accused persons in criminal proceedings, aiming to provide common objective criteria to be taken into account when assessing eligibility for legal aid.<sup>23</sup>

**Figure 8.1: Criminal procedures roadmap**



Source: FRA, 2013

The proposal for a regulation on the establishment of the European Public Prosecutor's Office (EPPO) presented a novel development in the area of criminal law in 2013. The proposal envisages a decentralised EU prosecution office with exclusive competence to investigate, prosecute and bring to judgment crimes against the EU's financial interests.<sup>24</sup> European Parliament discussions focused on the proposal's safeguards to guarantee the rights of individuals involved in EPPO's investigations as laid down in national law, Union law and the Charter of Fundamental Rights of the European Union.

#### FRA ACTIVITY

### Establishing the European Public Prosecutors' Office – fundamental rights concerns

In response to a European Parliament request of 20 December 2013, FRA examined the European Commission's proposal for a regulation to establish a European Public Prosecutor's Office. FRA looked at the proposal's compatibility with the EU Charter of Fundamental Rights, in particular with the rights to an effective remedy and to a fair trial (Article 47); presumption of innocence and right to defence (Article 48); legality and proportionality (Article 49); and the provision that no one shall be tried twice for the same offence, or double jeopardy (Article 50). FRA's opinion analysed the substantive provisions of the proposal, focusing on five main issues:

1. judicial review and other safeguards;
2. defence rights;
3. victims' rights;
4. legal clarity;
5. regular assessment and trust.

It raised a number of fundamental rights concerns, particularly with regard to the complex and at times unclear interaction between the national and EU levels. The opinion underlined the importance of judicial review of EPPO activities, and raised the question of where the responsibility for such reviews should lie.

*Source: FRA (2014), Opinion of the European Union Agency for Fundamental Rights on a proposal to establish a European Public Prosecutor's Office, FRA Opinion – 1/2014, Vienna, available at: <http://fra.europa.eu/en/opinion/2014/fra-opinion-proposal-establish-european-public-prosecutors-office>*

Another 2013 development aimed to improve access to justice in civil proceedings by expanding the scope of those who are allowed to bring a claim before a court or other redress mechanisms, known as broadening legal standing. The European Commission adopted on 11 June 2013 a series of common, non-binding

principles for a collective redress mechanism, under which a single court action in an EU Member State addresses many individual claims relating to the same case collectively.<sup>25</sup> National redress mechanisms should be available in different areas where EU law grants rights to citizens and companies, notably in consumer protection, competition, environmental protection and financial services.

In addition, on 21 May 2013 the Council adopted two new binding EU instruments allowing disputes over online transactions to be settled faster and at less cost than through the courts: a Directive on alternative dispute resolution for consumer disputes (ADR)<sup>26</sup> and a Regulation on online dispute resolution for consumer disputes (ODR).<sup>27</sup> The directive is expected to give all EU consumers the chance to resolve domestic and cross-border disputes without going to court, regardless of product or service type or place of purchase. To address the particular needs of online consumers, the regulation will create an EU-monitored online platform which will allow disputes to be resolved online and within a set period of time. Member States are required to implement the new rules by July 2015, after which the ODR platform is expected to be introduced within six months by January 2016.

The European Commission proposed a regulation to make individuals' access to justice easier, by harmonising and simplifying procedure for small civil and commercial claims disputes. The proposed regulation would also raise the claim threshold to €10,000 from €2,000, enabling a greater number of cases to be handled under the procedure.<sup>28</sup> The procedure would predominantly apply to cross-border cases and not to those where a single Member State covers several elements of the case, such as when the court's jurisdiction and the parties' domicile are in the same Member State. In addition, the European Commission held a public consultation on options for improving access to justice at Member States level in environmental matters.<sup>29</sup>

Table 8.1 summarises the main features of EU secondary legal instruments discussed in this section that aim to improve access to justice.

### 8.1.2. ECtHR and CJEU provide guidance on effective access to justice

Both the CJEU and the ECtHR delivered rulings on numerous access to justice-related cases in 2013. The rulings included cases, as in 2012, addressing various fair trial aspects and defence rights in relation to criminal proceedings. The courts also provided important guidance on safeguarding the right of

**Table 8.1: EU secondary law proposed, adopted or revised in 2013, aiming to facilitate access to justice**

Instrument	Status	Main issues facilitating access to justice
Directive on alternative dispute resolution (ADR) for consumer disputes (2013/11/EU)	Adopted on 21 May 2013	<ul style="list-style-type: none"> <li>• Make flexible and less costly out-of-court settlement procedure, ADR, available for all contractual disputes in every market sector (except for health and education) and in every Member State</li> <li>• Introduce quality criteria for all ADR entities to guarantee that they operate in an effective, fair, independent and transparent way</li> <li>• Require traders to inform consumers about ADR and require Member States to ensure that consumers can obtain assistance when they are involved in a cross-border dispute</li> </ul>
Regulation on online dispute resolution (ODR) for consumer disputes (No. 524/2013)	Adopted on 21 May 2013	<ul style="list-style-type: none"> <li>• Establish EU-wide dispute resolution platform (ODR platform) as a single entry point free of charge and in all EU official languages, enabling ADR online in relation to disputes arising from online purchases</li> <li>• Require a network of online dispute resolution facilitators consisting of one contact point in each Member State to provide support to the resolution of disputes submitted via the ODR platform</li> <li>• Require traders to inform consumers about the ODR platform</li> </ul>
Commission Recommendation on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union law (2013/396/EU)	Adopted 11 June 2013	<ul style="list-style-type: none"> <li>• Require collective redress mechanism in place for injunctive and compensatory relief in a case of infringement of rights granted under Union law, which would be fair, equitable, timely and not prohibitively expensive</li> <li>• Determine requirements that entities representing claimants should meet to ensure appropriate representation of claimants</li> <li>• Recommend establishment of publicly available registers, which would set information dissemination rules and allow potential claimants to join collective actions</li> </ul>
Directive on the right of access to a lawyer (2013/48/EU)	Adopted on 6 November 2013	<ul style="list-style-type: none"> <li>• Provide for minimum rules on the right of access to a lawyer in criminal proceedings from the first stage of police questioning and throughout criminal proceedings</li> <li>• Provide for the right of an individual subject to a EAW to legal advice in both the country where the arrest is carried out and the one where it was issued (dual legal representation)</li> <li>• Provide for the right to have a third party (such as a family member) informed upon deprivation of liberty as well as to communicate with consular authorities while deprived of liberty</li> </ul>
Proposal for a regulation amending regulation establishing a European Small Claims Procedure and regulation creating a European order for payment procedure	Proposed on 19 November 2013	<ul style="list-style-type: none"> <li>• Raise threshold of cases defined as 'small claims' from €2,000 to €10,000, allowing a much wider range of disputes to be resolved through a small claims procedure</li> <li>• Widen definition of 'cross-border' cases to enable a greater number of cases with a cross-border dimension to be solved through a small claims procedure</li> <li>• Require better information for individuals on court fees related to the small claims procedure, on where to obtain assistance in filling in the application and on how to apply for a review of the judgment in special circumstances</li> </ul>
Proposal for a directive on the strengthening of the presumption of innocence and of the right to be present at trial in criminal proceedings	Proposed on 27 November 2013	<ul style="list-style-type: none"> <li>• Guarantee that guilt cannot be inferred by any official decisions or statements before a final conviction</li> <li>• Guarantee that the burden of proof is placed on the prosecution and any doubt benefits the suspect or accused person</li> <li>• Guarantee that the right to remain silent is maintained and not used against suspects to secure conviction and that the accused has the right to be present at the trial</li> </ul>

Table 8.1: (continued)

Instrument	Status	Main issues facilitating access to justice
Proposal for a directive on procedural safeguards for children suspected or accused in criminal proceedings	Proposed on 27 November 2013	<ul style="list-style-type: none"> <li>• Guarantee mandatory access by children to a lawyer at all stages</li> <li>• Guarantee that children cannot waive their right to be assisted by a lawyer</li> <li>• Introduce special procedural safeguards, such as the right of children to be promptly informed about their rights, to be assisted by their parents (or other appropriate persons), not to be questioned in public hearings, to receive medical examination and, if deprived of liberty, to be kept apart from adult inmates</li> </ul>
Proposal for a directive on provisional legal aid for suspects or accused persons deprived of liberty and legal aid in European arrest warrant proceedings	Proposed on 27 November 2013	<ul style="list-style-type: none"> <li>• Guarantee access to a lawyer from the very beginning through the form of 'provisional legal aid', until the competent authority has made a final decision on the application for legal aid</li> <li>• Guarantee access to legal aid by suspects at the early stages of criminal proceedings (when accused citizens are particularly vulnerable, especially if deprived of liberty in police custody or pretrial detention)</li> <li>• Guarantee legal aid for people arrested under a European arrest warrant in the light of the need to guarantee dual legal representation</li> </ul>

Source: FRA, 2013

access to courts through effective access to legal aid and legal representation.

In the *Radu* judgment,<sup>30</sup> the CJEU provided further guidance in the area of judicial cooperation in criminal matters under the EAW procedure, specifically on the person's right to be heard in line with the standards of the Charter of Fundamental Rights on judicial remedy and fair trial. The CJEU confirmed that a violation of the requested person's right to be heard is not among the grounds available to Member States to refuse to execute an EAW. This does not render the Framework Decision incompatible with the fundamental rights as set out in the Charter, in particular the right to an effective judicial remedy and to a fair trial. Articles 47 and 48 of the Charter do not *require* "that a judicial authority of a Member State should be able to refuse to execute a European arrest warrant issued for the purposes of conducting a criminal prosecution on the ground that the requested person was not heard by the issuing judicial authorities before that arrest warrant was issued". According to the CJEU, such a conclusion would run counter to the objective of the EAW system to simplify and speed up extradition proceedings between EU Member States. In any case, executing Member States observe the right to be heard.

The CJEU maintained the same line of thought in its *Melloni* judgment.<sup>31</sup> According to the CJEU, the judicial authorities cannot make the execution of an EAW conditional upon a fresh hearing just because the

warrant was issued without the accused's presence at court. Although the right of the accused to appear in person at the trial is an essential component of the right to a fair trial, this right is not absolute. The accused may waive this right, provided such waiver meets required safeguards and does not run counter to any important public interest. The EAW framework decision therefore disregards neither the right to an effective judicial remedy and to a fair trial nor the rights of the defence guaranteed by Articles 47 and 48 (2) of the Charter, respectively.

In the *Åklagaren v. Hans Åkerberg Fransson* case, Swedish tax authorities accused Mr Åkerberg Fransson of breaching his tax declaration obligations, which resulted in a loss of state revenue from various taxes.<sup>32</sup> The CJEU was asked if criminal charges must be dismissed on the ground that the accused had already faced tax penalties for the same acts. The CJEU concluded that the principle preventing a person from being punished twice under the Charter does not preclude an EU Member State from imposing, for the same acts of evading declaration obligations in the field of value-added tax, a combination of criminal penalties and non-criminal penalties.

In *DAS Nederlandse Rechtsbijstand Verzekeringsmaatschappij NV*, the CJEU provided guidance on how to interpret an insured person's right to choose a lawyer on legal expenses insurance under Article 4(1) of Directive 87/344. In this case, Jan Sneller was dismissed from his job. He wanted

to bring an unfair dismissal claim in the Netherlands against his employer using his DAS legal expenses insurance. The CJEU held that the insured's freedom to choose legal representation took precedence over the insurance contract's restrictions, which attempted to impose the use of the insurance company's own staff lawyers over that of an outside lawyer chosen by the insured person.<sup>33</sup>

The ECtHR also provided guidance on states' obligations regarding access to justice under the ECHR. In *Anghel v. Italy*, the applicant complained that delays in granting him legal aid had infringed his right to appeal against the decision of the national court, denying him an effective remedy as required by the ECHR.<sup>34</sup> The ECtHR held that the deficient and contradictory information given by the Council of the Bar Association and the Ministry of Justice about which remedy was available and which time limit was applicable contributed substantially to the applicant's unsuccessful attempt to appeal. As for the errors made by the appointed legal aid lawyers in respect of procedural formalities, the ECtHR held that "such errors may, when critical to a person's access to court, and when incurable in so far as they are not made good by actions of the authorities or the courts themselves, result in a lack of practical and effective representation which incurs the State's liability under the Convention". The ECtHR concluded that the applicant was effectively prevented from exercising his right of access to a court through a legal representative appointed under the national legal aid system. There was accordingly a violation of Article 6 of the ECHR.

Another case brought before the ECtHR, *Del Río Prada v. Spain*, concerned the postponed release of a prisoner convicted of terrorist offences. Based on a new approach adopted by the Spanish Supreme Court (*Tribunal Supremo*), under which reductions in sentences were applied to individual offences rather than to the entire time served,<sup>35</sup> the applicant's release was postponed by nine years. The ECtHR (Grand Chamber) considered that the applicant could not have foreseen either that the Supreme Court would depart from its previous case law in February 2006, or that this change in approach would be applied to her and would result in the postponement of her release by almost nine years. Accordingly, there was a violation of the right to no punishment without law (Article 7 of the ECHR) as well as a violation of unlawful detention (Article 5 of the ECHR).

In addition to these case law developments, the ECtHR amended the Rules of Court on 6 May 2013 to help the court deal with its workload as efficiently as possible, thus enhancing access to justice at a procedural level.<sup>36</sup> The new Rule 47 introduces more stringent admissibility criteria on the form and content of initial complaints and requires that a complaint be lodged within

a maximum of six months after the national court's final decision. Rule 47 will come into force as of 1 January 2014, that is, before Protocol 15 to the ECHR, which will further amend the ECtHR's admissibility criteria, enters into force (see [Chapter 10](#) on EU Member States and international obligations).

## 8.2. Member States reform court procedures to facilitate access to justice

### 8.2.1. Member States tackle length of proceedings

EU Member States took steps to improve court procedures, focusing in particular on overly long procedures, an issue of long standing which bedevils many national systems. They pursued a variety of methods to address the problem, turning to legislation and non-legislative solutions as well as improving the implementation of previously introduced measures. They also innovated court procedures through developing e-tools, in part to streamline procedures as well as to cut costs.

Article 47 of the Charter of Fundamental Rights of the European Union provides for the right to a hearing within a reasonable time. The reasonable time guarantee underlines the importance of rendering justice without delay. Although EU Member States adopted several measures to speed up trials in previous years (see, for example, the FRA Annual report 2012), the relevant data from 2013 ([Tables 8.2](#) and [8.3](#)) confirm that much more time and effort will be needed, with all justice sector actors working in synergy, to overcome this structural problem.

Table 8.2 provides information on the number of judgments related to the length of proceedings as well as to fair trial (Article 6 of the ECHR) in general. Table 8.3 provides more specific data on the number of cases under Article 6 of the ECHR concluded by friendly settlements between the government and the applicant or government declarations unilaterally acknowledging the actual violation.

Several EU Member States continued to experience excessive delays of over five years in executing the ECtHR's judgments ([Table 8.4](#)). In 2013, as in 2012, Bulgaria, Greece, Italy, Poland and Romania had the largest numbers of pending leading cases, or non-repetitive cases that relate to general or structural problems that only legislation can address (see FRA Annual report 2012, [Table 8.2](#) and [10.7](#)).

**Table 8.2: Number of ECtHR judgments in 2013 and fair-trial-related violations, by EU Member State**

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR
<b>ECtHR judgments finding at least one violation</b>	10 (10)	6 (6)	25 (58)	1 (0)	8 (10)	3 (11)	0 (0)	5 (2)	32 (52)	7 (8)	3 (2)	28 (19)	22 (19)
<b>Violations of the right to a fair trial</b>	4 (0)	1 (1)	9 (8)	0 (0)	4 (2)	0 (1)	0 (0)	3 (1)	2 (1)	5 (3)	0 (0)	5 (3)	10 (2)
<b>Violations of length of proceedings</b>	2 (3)	0 (1)	3 (17)	0 (0)	0 (0)	0 (0)	0 (0)	0 (0)	12 (35)	0 (1)	0 (0)	0 (0)	3 (5)

Notes: The numbers in the first row correspond to the number of judgments in which the ECtHR found at least one violation of the ECHR. The second row shows how many of these judgments concerned violations of Article 6 of the ECHR in general and the third row shows the number of violations of Article 6 of the ECHR due to excessive length of proceedings in particular. The number of judgments in 2013 can be compared with the number of judgments from 2012, which are in parentheses.

*“A related problem is the excessively slow implementation of the judgments of the European Court of Human Rights. This is a phenomenon in several countries where some judgments of the Court are still not implemented several years later. ‘Cherry-picking’ and disregarding judgments of the European Court of Human Rights have a disruptive effect not only on our system of human rights protection, but on the very essence of those European values on which our Organisation is built.”*

Nils Muižnieks, Council of Europe Commissioner for Human Rights (2013), Annual activity report 2012, 10 April 2013, CommDH(2013)5, p. 4, available at: <https://wcd.coe.int/com.instranet.InstraServlet?command=com.instranet.CmdBlobGet&InstranetImage=2307313&SecMode=1&DocId=2026500&Usage=2>

EU Member States took three main approaches in 2013 to reduce the length of proceedings, opting to pursue legislative and non-legislative solutions and enhance the implementation of previously introduced measures:

- Croatia,<sup>37</sup> Hungary,<sup>38</sup> Latvia,<sup>39</sup> Lithuania,<sup>40</sup> the Netherlands,<sup>41</sup> Portugal<sup>42</sup> and Slovakia,<sup>43</sup> for example, introduced new legislative regimes or amended existing laws to tackle undue delays.

- The second group turned to a variety of non-legislative solutions: **Malta** launched public consultations<sup>44</sup> while **Bulgaria** created a specific methodology to regulate courts' workloads.<sup>45</sup> In **Poland**, new jurisprudence clarified a period that courts will have to look at when assessing the overall length of proceedings at a particular stage of the case.<sup>46</sup> In **Slovenia**, different justice sectors committed to working jointly to reduce the length of proceedings.<sup>47</sup>
- Finally, **Finland**,<sup>48</sup> **Greece**,<sup>49</sup> **Ireland**,<sup>50</sup> **Italy**<sup>51</sup> and the **United Kingdom**,<sup>52</sup> for example, mainly continued to pursue measures, which they had introduced in 2012, aimed at shortening the length of judicial proceedings (FRA Annual report 2012). In **Denmark**, some criticised a suggestion to shorten the length of proceedings by limiting access to appellate courts in civil cases, arguing that this would disproportionately impede individuals' access to justice.<sup>53</sup>

**Table 8.3: Number of friendly settlements and unilateral declarations concerning length of proceedings under Article 6 of the ECHR in 2013, by EU Member State**

	AT	BE	BG	CY	CZ	DE	DK	EE	EL	ES	FI	FR	HR
<b>Friendly settlements in total (in relation to length of proceedings)</b>	1 (1)	3 (0)	8 (5)	0 (0)	9 (5)	1 (0)	1 (1)	1 (0)	14 (14)	0 (0)	3 (0)	1 (0)	30 (25)
<b>Unilateral declarations in total (in relation to length of proceedings)</b>	0 (0)	0 (0)	6 (4)	0 (0)	8 (7)	3 (0)	0 (0)	1 (1)	0 (0)	1 (1)	1 (1)	0 (0)	3 (3)

Notes: The first row shows the number of friendly settlements and the second row shows the number of unilateral declarations in relation to complaints concerning excessive length of proceedings under Article 6 of the ECHR. The four highest numbers in each row are highlighted in blue.

Table 8.2: (continued)

HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
40 (24)	1 (2)	34 (36)	10 (7)	1 (1)	10 (10)	5 (1)	0 (5)	14 (56)	11 (22)	83 (70)	3 (4)	24 (20)	16 (21)	8 (10)	410 (486)
1 (0)	0 (0)	7 (3)	2 (2)	1 (0)	2 (1)	0 (0)	0 (2)	2 (1)	0 (5)	19 (13)	0 (0)	2 (0)	1 (1)	0 (0)	80 (50)
25 (9)	1 (2)	16 (16)	2 (1)	0 (1)	1 (2)	1 (0)	0 (0)	3 (6)	6 (17)	11 (10)	0 (0)	20 (13)	12 (11)	0 (1)	118 (151)

The five highest numbers of violations in each row are highlighted in blue.

(For a full EU Member State list, see Table 10.5 in Chapter 10 on EU Member States and international obligations.)

Sources: Data extracted from ECtHR Annual report 2013 (as well as from earlier Annual reports)

### Promising practice

#### Supporting access to justice through guidelines on the creation of judicial maps

The Council of Europe Commission for the Efficiency of Justice published guidelines in June 2013 designed to maximise the service level of justice while optimising operational costs and investments. Policy makers can use the guidelines to undertake reforms and take operational decisions to redesign the judicial map of an entire country or a part of it. The document, *Guidelines on the creation of judicial maps to support access to justice within a quality judicial system*, includes factors that should be taken into account when deciding the size and location of a particular court to achieve the optimum level of efficiency and quality.

Source: [www.coe.int/t/dghl/cooperation/cepej/quality/2013\\_7\\_cepej\\_judicial\\_maps\\_guidelines\\_en.pdf](http://www.coe.int/t/dghl/cooperation/cepej/quality/2013_7_cepej_judicial_maps_guidelines_en.pdf)

As reported last year, various e-justice tools are expected to help reduce procedure length and facilitate access to justice, including those introduced for the first time in 2012 in **Belgium, Croatia, Germany** and **Sweden** (for more on e-justice, see [Section 8.2.2](#)).

### 8.2.2. Member States innovate with e-justice tools

The use of information and communication technology (ICT) can help to facilitate access to justice, but ICT should supplement, not replace, traditional systems, to avoid alienating those who cannot or do not wish to access such technology.

In 2013, e-justice developments continued to expand, by making:

- electronic communication and information exchange possible between the courts and the parties (individuals and their legal representatives) and

Table 8.3: (continued)

HU	IE	IT	LT	LU	LV	MT	NL	PL	PT	RO	SE	SI	SK	UK	Total
73 (64)	3 (3)	2 (1)	0 (0)	0 (0)	0 (0)	0 (0)	2 (0)	92 (14)	4 (4)	17 (4)	0 (0)	0 (0)	21 (21)	2 (0)	288 (162)
3 (2)	0 (0)	0 (0)	1 (0)	0 (0)	0 (0)	0 (0)	1 (1)	36 (8)	4 (4)	13 (10)	0 (0)	0 (0)	4 (4)	4 (2)	89 (48)

The numbers of friendly settlements and unilateral declaration in 2013 can be compared with the number of judgments in 2012, which are in parentheses.

Source: [www.hudoc.echr.coe.int](http://www.hudoc.echr.coe.int)

**Table 8.4: Leading cases pending execution in 2012 and 2013 for those five EU Member States with the most cases pending execution for more than five years**

EU Member State	Average execution time			
	Leading cases pending > 5 years			
	2012		2013	
	Number of cases	Per 10 million inhabitants	Number of cases	Per 10 million inhabitants
IT	33	5.43	34	5.70
BG	32	43.67	32	43.93
RO	28	13.11	26	12.96
EL	20	17.71	26	23.50
PL	27	7.01	17	4.41

Note: The table includes data only on the top five EU Member States where implementation is delayed by more than five years. (For a full EU Member State list, see Table 10.6 in Chapter 10 on EU Member States and international obligations.)

Source: Data extracted from ‘Supervision of the execution of judgments and decisions of the European Court of Human Rights’, draft of the Annual report 2013, Council of Europe, April 2014 (as well as from earlier Annual reports)

- judges’ work more efficient through the use of computerised databases for registration and management of cases.

#### Promising practice

##### Using Twitter to raise awareness about case law and existing standards

In April 2013, the CJEU started sharing information concerning its decisions as well as certain institutional events through the social network Twitter.

Source: <http://curia.europa.eu/jcms/upload/docs/application/pdf/2013-04/cp130045en.pdf>

The Supreme Administrative Court of **Lithuania** likewise opened its Twitter account in 2013, using it to inform the public on its latest decisions and activities.

Source: [https://twitter.com/LVAT\\_info](https://twitter.com/LVAT_info)

EU Member State are increasingly deploying electronic communication and information exchange between the courts and the parties; this trend continued in 2013. In **Austria**, since January 2013, electronic entries may be filed at courts and the public prosecutor’s office, using the citizen card (*Bürgerkarte*) and online forms, through the website [www.eingaben.justiz.gv.at](http://www.eingaben.justiz.gv.at). In **Croatia**, a new amendment to the Civil Procedural Act provides for the possibility of electronic communication between the court and parties in proceedings before commercial courts. Electronic communication is bilateral, allowing both the parties and the court to send documents by electronic means.<sup>54</sup> Similarly, in

**Lithuania**, since January 2013, parties to civil judicial proceedings are able to submit procedural documents to the courts electronically.<sup>55</sup> In **Estonia**, individuals increasingly made use in 2013 of the existing online tool ‘public e-file’ to initiate court proceedings. One of the system’s advantages was the lower court fees for civil court proceedings initiated through the e-file system. The Supreme Court, however, held this to be discriminatory and declared the relevant parts of the law on court fees unconstitutional.<sup>56</sup> In **Slovakia**, a newly adopted law introduced electronic mailboxes as the means of communication among public administration organs as well as between them and citizens.<sup>57</sup> Every person in possession of an electronic mailbox will be able to file legal actions, complaints and other court motions electronically.

#### Promising practice

##### Enhancing accessibility: the European e-Justice Portal goes mobile

From 19 December 2013, mobile devices can be used to consult the European e-Justice Portal. The portal dynamically adapts to the resolution of the given device whether it is a smartphone, a tablet or a phablet, which is essentially a combination of the first two.

Source: <https://e-justice.europa.eu/sitenewsshow.do?plang=en&newsId=87>

As for the e-registration and management of cases, on 4 September 2013, the **Cypriot** government decided

to create an electronic platform to facilitate the courts' work. Through this platform, the government aspires to implement the e-justice approach and make court processes more accessible and efficient.<sup>58</sup> Sweden initiated an electronic information flow in criminal procedures to shorten the length of criminal proceedings. It also improved citizen's e-services, making it possible, for example, for parties to litigation to follow their cases through the proceedings more effectively.

### Promising practices

#### Accessing services of non-judicial bodies online

Online reporting seems not uncommon when approaching non-judicial bodies to provide testimony, lodge a complaint or request assistance. Complaints to the **Hungarian** Commissioner for Fundamental Rights (*Alapvető jogok biztosa*) can, for example, be submitted online, by filling out an interactive online questionnaire on the website. They can also be submitted via the central state website for online administrative case management (*Ügyfélkapu*), which requires users either to register or to provide an e-signature.

Source: [www.ajbh.hu/forduljon-a-biztoshoz\\_intelligens\\_form](http://www.ajbh.hu/forduljon-a-biztoshoz_intelligens_form), [www.ajbh.hu/forduljon-a-biztoshoz\\_ugyfelkapu\\_nelkul](http://www.ajbh.hu/forduljon-a-biztoshoz_ugyfelkapu_nelkul) and <https://ugyfelkapu.magyarorszag.hu/>

In **Portugal**, the Ombudsperson (*Provedor de Justiça*) website provides an electronic tool for the presentation of complaints within the realm of its competence and responsibilities.<sup>60</sup> The Portuguese Commission for Equality and against Racial Discrimination (*Comissão para a Igualdade e contra a Discriminação Racial*) also provides an electronic tool on its website for the presentation of complaints pertaining to racial discrimination.

Source: [www.acidi.gov.pt/\\_cfn/51b1doc36fod9/live/Formul%C3%A1rio+Queixa](http://www.acidi.gov.pt/_cfn/51b1doc36fod9/live/Formul%C3%A1rio+Queixa)

Overall, by 2013 more than half of the EU Member States had made it possible to initiate judicial proceedings through online tools, be it through email or a special portal using electronic signature or e-ID. Yet, in the majority of cases, this possibility is still limited to specific types of proceedings, mostly in the area of civil and/or administrative law. For criminal proceedings, police in fewer than half the Member States accept online reports from individuals during the investigation phase. These online filings are possible only when they relate to certain types of criminal activity, usually those linked to property damage. In **France**, it has been possible to file complaints online about police misconduct since 2 September 2013. The statement cannot be anonymous, and the internet user is notified that false allegations can be prosecuted. During the first half of 2013, France extended the existing system of online pre-reporting to all of

France from a few regions. Online pre-reporting enables individuals who are victims of theft or fraud, and who do not know the offender, to make an initial report online. They can then make an appointment with the police or gendarmerie station of their choice, where the online pre-report must be signed in order to be official.<sup>59</sup>

### FRA ACTIVITY

#### Developing an online tool to enhance access to justice by means of non-judicial bodies: CLARITY project

A major obstacle to efficient remedies, according to FRA research, is the difficulty victims of fundamental rights violations face in finding the correct path to have their grievance addressed effectively. Many such victims favour non-judicial paths, whose proceedings are seen as less expensive, swifter and more expert, the research shows. In 2013, FRA, together with a group of national human rights bodies, started developing a pilot online tool to help victims of fundamental rights violations gain better access to non-judicial remedies. The pilot online tool is designed to help identify the most appropriate non-judicial EU Member State body with a human rights remit for a particular fundamental rights issue. The tool will cover different fundamental rights areas, including the area of non-discrimination. It will principally target intermediaries, such as NGOs guiding victims of fundamental rights violations to a relevant body, as well as the victims themselves. The launch of the first prototype of this tool is planned for 2014.

Source: <http://fra.europa.eu/en/project/2013/clarity-complaints-legal-assistance-and-rights-information-tool-you>

## 8.3. Member States turn attention to non-judicial mechanisms

It is well established that independent and strong non-judicial bodies with a human rights remit have a role in facilitating access to justice, and hence an important place within the fundamental rights landscape (see FRA Annual report 2012, Section 8.6., as well as the FRA Annual report 2011 Focus). These bodies include national human rights institutions (NHRIs), equality bodies, ombudsperson institutions, ► data protection authorities (see Chapter 3 on information society, respect for private life and data protection) and international treaty-monitoring bodies (see ► Chapter 10 on EU Member States and international obligations). The UN General Assembly reiterated the role of these institutions in strengthening the rule of

law in its resolution adopted on a German initiative in December 2013.<sup>61</sup>

### Promising practice

#### Safeguarding pluralism in a non-judicial body's composition

The **Dutch** national human rights institution safeguards pluralism in its composition, in line with the Principles relating to the Status of National Institutions (the Paris Principles), by engaging with other non-judicial bodies. An advisory council supports the work of the Netherlands Institute for Human Rights (*College voor de Rechten van de Mens*), which opened its doors in October 2012 (see FRA Annual report 2012). Standing members of this council include the National Ombudsman (*Nationale Ombudsman*), and the chairpersons of the Dutch Data Protection Agency (*College bescherming persoonsgegevens*) and the Justice Administration Council. The advisory council issues annual policies and submits recommendations to the Minister of Security and Justice on the appointment of commissioners and deputy commissioners to the institute. Between four and eight advisory council members are also drawn from civil society organisations concerned with the protection of human rights, organisations of employers and employees, and academia.

Source: Netherlands, Netherlands Institute for Human Rights (2013), Annual Report 1 October 2012 – 1 October 2013, available at: <https://mensenrechten.nl/publicaties/detail/18902>

Some EU Member States cut non-judicial bodies' budgets, a reflection of the continuing austerity trend (see also FRA Annual report 2012).<sup>62</sup> Budget cuts, which may force non-judicial bodies to provide reduced services and hence undercut their ability to adhere to their mandate, were reported in 2013 in, for example, **Bulgaria**,<sup>63</sup> **Ireland**,<sup>64</sup> **Slovakia**<sup>65</sup> and **Spain**.<sup>66</sup>

Merging various non-judicial bodies represents another trend. **Ireland** took further steps in 2013 towards merging the Equality Authority and the Human Rights Commission (see FRA Annual report 2012).<sup>67</sup> In **Finland**, a new draft proposal was made in 2013 to merge two distinct national equality bodies into one with a mandate covering all forms of discrimination.<sup>68</sup> The general aim of the reform is to address all forms of discrimination with a coherent set of remedies and sanctions.

### Promising practice

#### Launching an online case digest: European Ombudsman

To inform the public regularly and more effectively about its inquiries into possible maladministration by EU institutions, bodies, offices and agencies, the European Ombudsman launched a digest of case law on its website in September 2013. The digest contains the key findings of the Ombudsman's inquiries, searchable through a variety of categories, with links to the texts of the full decisions, and other documents where relevant.

Source: [www.ombudsman.europa.eu/cases/digests.faces](http://www.ombudsman.europa.eu/cases/digests.faces)

### FRA ACTIVITY

#### Cooperating to strengthen fundamental rights protection in an evolving human rights landscape

National and international human rights bodies met for the first time in 2013, reiterating their commitment to work together to strengthen human rights protection in Europe. The October 2013 meeting brought together national human rights institutions, equality bodies and ombudsperson institutions from across Europe with the Council of Europe, FRA, the UN and the OSCE's Office for Democratic Institutions and Human Rights. The meeting was therefore an important step in strengthening the European human rights and equality architecture and promoting concerted action for individuals' human rights throughout the region. It will also help ensure that the EU's decision makers receive coordinated input to help shape the EU's fundamental rights in Europe.

Source: [www.fra.europa.eu/sites/default/files/meeting\\_report\\_7-8\\_oct\\_2013\\_en.pdf](http://www.fra.europa.eu/sites/default/files/meeting_report_7-8_oct_2013_en.pdf)

Finally, some EU Member States continued to restructure their non-judicial bodies in 2013, as reported in the FRA Annual report 2012. The **Belgian** central government, regions and communities took the first step in their agreement to convert the current equality body into an inter-federal Centre for Equal Opportunities and Opposition to Racism (*interfederaal Centrum voor gelijke kansen en bestrijding van discriminatie en racisme/Centre inter-fédéral pour l'égalité des chances et la lutte contre le racisme*) with a mandate to address issues in the area of racism at those three levels.<sup>69</sup> This agreement, reached on 23 July 2013, entered into force on 15 March 2014. Initiatives in **Lithuania**<sup>70</sup> to transform the Ombudsman office into an NHRI continued in 2013 (see FRA Annual report 2012).

## Outlook

Many new legislative and standard setting measures in the area of access to justice and judicial cooperation are expected to be adopted in 2014 at both the EU and national levels, including measures to finalise the criminal procedures roadmap or the currently pending proposal for a creation of the European Public Prosecutor's Office. The main focus of EU policy, however, will undoubtedly be on the implementation of existing measures.

This implementation problem, that is how to ensure that existing legislation and case law in the area of justice are effective and function well in practice, will represent one of the biggest challenges for the EU in the post-Stockholm period. Another challenge will be to develop an effective rule of law mechanism for the EU in close collaboration with national, European and international actors.

EU Member States will continue searching for the right balance between the need to restructure national justice systems and cut unnecessary costs and ensuring that remedies are accessible in practice to everyone, including through effective and independent non-judicial structures or innovative e-tools. The overall role of national human rights structures is expected to be further enhanced beyond the national level by their increased integration in the work of all UN organs.

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