

# 9

## Rights of crime victims



*The year 2011 marked the 10th anniversary of the EU Framework Decision on the standing of victims in criminal proceedings. The year witnessed progress in the area of victims' rights in the European Union (EU), driven by European Commission and Council of the European Union initiatives. The adoption of the Council of Europe Convention on preventing and combating violence against women and domestic violence in April 2011 complemented these reforms. Victims' rights were also addressed in the context of the protection of children and the fight against trafficking.*

This chapter explores key changes in EU and Member State legislation, policies and practices in the area of the rights of victims of crime in 2011. The chapter will first look at developments concerning all crime victims and then turn to groups of victims of particular forms of crime, namely: domestic violence, trafficking and severe forms of labour exploitation and hate crime. For key developments in the area of rights of child victims, see Chapter 4 on 'The rights of the child and protection of children', specifically for key developments in the area of the rights of child victims.

### 9.1. Developments at EU and Member State level

Since 1989 when the Court of Justice of the European Union (CJEU) ruled in the *Cowan* case<sup>1</sup> that the provision of compensation to victims of crime should not discriminate on grounds of nationality, the EU has striven to set common minimum standards for crime victims across all EU Member States. To date, the most important legislative instruments are the Council Framework Decision on the standing of victims in criminal proceedings<sup>2</sup> and the Council Directive relating to the compensation of crime victims.<sup>3</sup> These legal instruments, however, have

#### Key developments in the area of the rights of crime victims:

- at the EU level various measures are proposed that aim to grant victims a uniform level of rights across the EU both in the area of civil law as well as in the area of criminal law and a *Roadmap for strengthening the rights and protection of victims* is adopted;
- a new European Pact for gender equality for the period 2011-2020 reaffirms the EU's commitment to combating all forms of violence against women and some EU Member States carry out reforms relevant for protection against domestic violence;
- while several EU Member States make significant progress in their efforts to combat violence against women, complaints surface about the lack of sufficient resources for victim support services for women victims of domestic violence;
- the EU steps up efforts to combat trafficking in human beings and protect its victims; policy development at national level shows a tendency to look beyond trafficking for sexual exploitation and to pay more attention to other areas of exploitation.

had little impact, which is due in part to the cautious approach taken by the legislation itself and in part to a lack of determination by EU Member States as to its implementation.<sup>4</sup> More specifically, under the pre-Lisbon regime, the European Commission was not legally entitled to undertake legal proceedings to compel

<sup>1</sup> CJEU, Case C-186/87, *Ian William Cowan v. Trésor public*, 2 February 1989.

<sup>2</sup> Council Framework Decision 2001/220/JHA, OJ 2001 L 82.

<sup>3</sup> Council Directive 2004/80/EC, OJ 2004 L 261.

<sup>4</sup> Pemberton, A., Rasquete, C. (2009), p. 10.

Member States to meet the obligations flowing from Framework Decisions. A European Commission assessment in 2009 revealed that national legislation at that time largely reflected the situation prior to the adoption of the Framework Decision.<sup>5</sup> The Lisbon Treaty has, in Article 82 paragraph 2 of the Treaty on the Functioning of the European Union (TFEU), since provided a new legal basis that allows for the adoption of directives – for instance on the rights of victims of crime – in accordance with the ordinary legislative procedure which enhances the role of the European Parliament. The year 2011 thus marks the launch of the post-Lisbon era in the field of victims’ rights.

*“Protecting victims, wherever they find themselves across the Union, is and must remain a crucial element of our action. Exercising one’s freedom of movement and residence should not result in a loss of that protection.”*

*European Commission Vice-President and Commissioner for Justice, Fundamental Rights and Citizenship Viviane Reding, Press release, Brussels, 13 December 2011*

The most fundamental right of victims is the right to access justice, as provided for in Article 47 of the Charter of Fundamental Rights of the European Union. This right has several aspects:

- to effectively protect victims, there must be definitions in criminal law that brand severe fundamental rights violations as criminal offences and include dissuasive and proportionate penalties;
- when a claim of victimisation appears legitimate, victims must have the right to a thorough and effective investigation;
- victims must have the right to participate in criminal proceedings; and
- the right to redress, covering rights to compensation and to proportionate criminal sanctions.

### 9.1.1. EU-level: victims’ package and victims’ roadmap

The European Commission, on 18 May, submitted a victims’ package, which seeks to grant victims a uniform level of rights across the EU, and covers access to justice, protection, support and recompense. It emphasises the needs of specific groups of victims, including child victims and victims of terrorism. The victims’ package consists of a Communication on strengthening victims’ rights,<sup>6</sup> a proposal for a Directive establishing minimum standards for victims’ rights<sup>7</sup> and a proposal for a Regu-

lation on the mutual recognition of protection measures in civil matters.<sup>8</sup> In the area of criminal law, the European Protection Order (EPO), which will complement this last measure on mutual recognition, was initiated by several EU Member States under the auspices of the Council of the European Union and was adopted by the European Parliament on 13 December.<sup>9</sup>

#### FRA ACTIVITY

### Protecting victims in the EU: the road ahead

An international conference on the future of victim protection in the EU took place in March, preceding the Council of the European Union’s adoption of the *Roadmap for strengthening the rights of victims*. The twin objectives of the conference, organised by the Hungarian Ministry of Public Administration and Justice with the support of the FRA, were to identify the problems of victim support and to suggest a long-term strategy to enhance the protection of victims’ rights in line with the EU’s overarching policy guidelines in the field, the Stockholm Programme. In his opening statement, FRA Director Morten Kjærsum stressed the importance of empowering victims to enforce their rights and of helping them to come forward and report incidents. The conference took place in Budapest on 23 and 24 March.

*For more information, see: [http://fra.europa.eu/fraWebsite/news\\_and\\_events/news-archive/news-archive-2011/infocus11\\_23-2403\\_en.htm](http://fra.europa.eu/fraWebsite/news_and_events/news-archive/news-archive-2011/infocus11_23-2403_en.htm)*

The Council of the European Union, building on the European Commission’s victims’ package, adopted in June the *Roadmap for strengthening the rights and protection of victims*.<sup>10</sup> The *roadmap* has five components:

- **Measure A** – the European Commission has drafted a proposal for a directive replacing the Council Framework Decision on the standing of victims in criminal proceedings;
- **Measure B** – a recommendation or recommendations on practical measures and best practices that would provide guidance to EU Member States when implementing the new directive as outlined in Measure A;
- **Measure C** – the European Commission has proposed a regulation on mutual recognition of protection measures for victims in civil matters; which would complement the Directive on the European Protection Order;

5 European Commission (2009), p. 9; Aa, S. van der et al. (2009), p. 11.

6 European Commission (2011a).

7 European Commission (2011b).

8 European Commission (2011c).

9 Council of the European Union (2011a).

10 Council of the European Union (2011b).

- **Measure D** – a review of the Council Directive 2004/80/EC on compensation to crime victims, with a view to simplifying procedures for compensation requests;
- **Measure E** – recommendations, similar to Measure B, relating to the specific needs of certain groups of victims, such as victims of trafficking in human beings, child victims of sexual exploitation, victims of terrorism and victims of organised crime.

## FRA ACTIVITY

### Exploring models of victim support structures

At the request of the European Commission, the FRA initiated in 2011 a project on the rights of victims, which aims to explore various models of victim support structures and to assess the important role of support services in making victims' rights a reality. The goal of the project, which will run from 2012 to 2013, is to identify and highlight promising practices, enabling EU Member States to improve the implementation of the rights of crime victims at national level. The project was launched in November with a stakeholder meeting, which brought together some 60 representatives of victim support services, European institutions, governments and academia.

In its September Communication *Towards an EU Criminal Policy: Ensuring the effective implementation of EU policies through criminal law*, the European Commission presented its vision of a framework for a coherent EU criminal policy by 2020, placing victims' rights in the wider context of criminal justice.<sup>11</sup> According to the communication, effective criminal law provisions protect the rights of defendants just as they protect the rights of victims.

### 9.1.2. National examples

Several EU Member States strengthened victims' rights. In **Croatia**, the new Criminal Procedure Act, which was endorsed by the Croatian parliament in 2008, entered into force in September.<sup>12</sup> The new code strengthens victims' procedural rights in line with the Council Framework Decision on the standing of victims in criminal proceedings.

In **Denmark**, the parliament adopted a bill in April that extended the right to pre-notification of an offender's release to a larger group of victims.<sup>13</sup> Similarly, the

**Netherlands** announced plans to strengthen the right of victims to notification of prison releases. Under the plan, victims will also be consulted about pardons for long-term offenders and furloughs for mentally disabled offenders.<sup>14</sup>

According to its Programme for Government 2011–2016, **Ireland** plans to enact legislation strengthening the rights of victims of crime and their families. Commitments include an initiative to introduce legislation to ensure that aggravating factors, which relate to the violation of rights of victims, are considered in sentencing. The legislation should include a mechanism whereby the criminal prosecution service can draw the court's attention to aggravating factors that relate to the crime. The programme also pledges to introduce a series of post-imprisonment restraint orders for violent and sexual offenders, including electronic tagging and other restrictions, which may be imposed at the time of sentencing. Violent and sexual offenders may earn early release only through good behaviour, participation in education and training, completion of addiction treatment programmes and, where appropriate, sex offender programmes.<sup>15</sup>

### 9.1.3. Victim support

Article 13 of the Council Framework Decision on the standing of victims in criminal proceedings underlines the necessity of having strong victim support structures in place, provided either by specialised public services or by non-governmental organisations. Progress in this area has, however, been modest. A comparative study on 'Victims in Europe', carried out jointly by the Dutch International Victimology Institute at Tilburg University (Intervict) and the Portuguese Association for Victim Support (*Apoio à Vítima*) and published in 2009, listed eight EU Member States that lacked a national victim support organisation. Another seven EU Member States had victim support organisations, but these did not cover the entire country.<sup>16</sup>

Given the impact of the financial crisis on budgetary policies, the need to fund robust and reliable victim support structures became a matter of public debate in 2011 in, for example, **Latvia** and **Lithuania**. In Latvia, state-funded social rehabilitation services are provided only to child victims of violence and to victims of human trafficking. Although the Latvian parliament adopted amendments in 2009 to the Law on Social Services and Social Assistance, which entitle all victims of violence to social rehabilitation services, in practice the situation has not yet improved. The amendments were originally due to enter into force

<sup>11</sup> European Commission (2011d).

<sup>12</sup> Croatia, Criminal Procedure Act (2008).

<sup>13</sup> Denmark (2011).

<sup>14</sup> Van Dijk, J. (2011).

<sup>15</sup> Ireland, Department of the Taoiseach (2011), p. 17.

<sup>16</sup> Aa, S. van der et al. (2009), p. 123.

by 1 January 2011; however, their implementation was delayed in October 2010 due to the financial crisis. They are now expected to enter into force by 1 January 2013. In **Lithuania**, resources available to non-governmental victim support organisations are limited and have fallen further recently. Some non-governmental organisations (NGOs), including those specialised in supporting child victims, have been forced to reduce or discontinue their services.<sup>17</sup>

Along with the new Act on Criminal Procedure, **Croatia's** National Programme for the Protection and Promotion of Human Rights prioritises the situation of victims and triggered a corresponding improvement in the situation of victims between 2008 and 2011. The Ministry of Justice, assisted by the United Nations Development Programme (UNDP), set up an institutional structure to provide victim support in Croatia. This structure includes ministerial departments that supply information to victims, a National Committee for the Support of Victims/Witnesses and the establishment of seven county court offices for victims and witnesses of crime. These court offices operate as part of the court administration and report to the president of the court. They are staffed by two public servants per office, volunteers from the Association for Support to Victims and Witnesses as well as students from the Law Clinic of the University of Zagreb's Law Faculty. Although much has been achieved, the Croatian Human Rights Office still sees room for improvement in the training of the police and the judiciary.<sup>18</sup>

In **France**, the Commission on Constitutional Law, Legislation and General Administration of the Republic (*Commission des lois constitutionnelles, de la législation et de l'administration générale de la république*) is tasked with reviewing access to justice. In a report issued in April 2011, it called for improvements to the organisation and funding of victim support services.<sup>19</sup> **Hungary** launched new victim support initiatives in nine counties under the Tett Programme for Victims and Offenders (*Program az áldozatokért és a tettesekért*).<sup>20</sup>

<sup>17</sup> Vaiky linija (2011).

<sup>18</sup> Croatia, Human Rights Office (2010).

<sup>19</sup> France, Commission on Constitutional Law, Legislation and General Administration of the Republic (2011).

<sup>20</sup> For more information about the Tett Programme, see: [www.tettprogram.hu/Aldozatsegites](http://www.tettprogram.hu/Aldozatsegites).

## Promising practice

### 'May I help you?' – meeting the needs of victimised tourists

In August 2011, the Portuguese Victim Support Association (*Apoio à Vítima*, APAV) launched a campaign entitled 'May I help you?'. This campaign aims to improve information and support provided to tourists who fall victim to crime in Portugal. Tourists as victims of crime may feel particularly vulnerable as language and cultural barriers make it especially difficult to seek information and support.

As a second component, APAV is carrying out training for foreign embassies to allow them to better meet the specific needs of tourists who have become victims of crime. Foreign embassies and consulates have an important role to play as they are often the preferred contact point for tourists when they fall victim to a crime.

For more information, see [www.apav.pt/portal\\_eng/index.php?limitstart=8](http://www.apav.pt/portal_eng/index.php?limitstart=8)

## 9.1.4. Compensation of victims

Several EU Member States changed, or considered changes, to the terms and conditions of compensation claims in 2011.

In **Denmark**, the bill mentioned earlier that extends the right of pre-notification of an offender's release to a larger group of victims, relaxed reporting requirements. Prior to the bill's adoption, a victim needed to report a criminal offence to the police within 24 hours to be entitled to claim compensation. The bill extended the time limit to 72 hours.

In the **Netherlands**, the Law on strengthening the position of victims in criminal proceedings entered into force in January.<sup>21</sup> One of the law's main innovations provides for the government to advance payment to the victim when the perpetrator fails to pay the full compensation ordered within eight months of sentencing. At that point, the Central Fine Collection Agency will grant an advance and then collect the payment from the offender. In September, the first victims received compensation from the collection agency. In June, the Senate approved an amendment to the Law on the criminal offences compensation fund which entered into force in January 2012.<sup>22</sup> The amendment allows family members of deceased victims to claim compensation, even if they were not financially dependent on the victim.

<sup>21</sup> Netherlands, Decision of 13 July 2010.

<sup>22</sup> Netherlands, Act of 6 June 2011 amending the Law on the criminal offences compensation fund (2011).



The **German** Federal Social Court ruled on 7 April that stalking does not per se constitute violence and therefore does not in all cases entitle victims to claims of compensation. Rather, it has to be examined on a case-by-case basis to see whether in a given context of stalking any particular act can be singled out that in itself constitutes an intentional violent assault.<sup>23</sup>

## 9.2. Rights of victims of domestic violence and stalking

### 9.2.1. European level

In March, the Council of the European Union adopted a new European Pact for gender equality for the period 2011–2020. The pact reaffirms the EU's commitment to combating all forms of violence against women. It urges the EU and its Member States to take measures to “strengthen the prevention of violence against women and the protection of victims, and focus on the role of men and boys in order to eradicate violence.”<sup>24</sup>

The following month, the European Parliament adopted a non-legislative resolution on a new EU policy framework to fight violence against women,<sup>25</sup> which is in line with the 2010 Council Conclusions on improving prevention in order to tackle violence against women.<sup>26</sup> The Parliament emphasised the need to deal with gender-specific crimes, such as domestic violence and crimes directed against migrant women. It rejected any references to cultural relativism when it comes to violence against women, including so-called ‘crimes of honour’ and female genital mutilation. The Parliament also called on the EU to become a party to the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), which would require the amending of the Convention to allow this.<sup>27</sup> Recalling that the FRA has begun a project to survey a representative sample of 40,000 women from all EU Member States regarding their experiences of violence, the European Parliament asked that “the focus be placed on examining the responses women receive from the various authorities and support services when reporting”. In addition, the European Parliament called “on the EU Fundamental Rights Agency and the Gender Institute to carry out research which looks at the pervasiveness of violence in teenage relationships and the impact this has on their welfare.”<sup>28</sup>

<sup>23</sup> Germany, Federal Social Court (2011).

<sup>24</sup> Council of the European Union (2011c).

<sup>25</sup> European Parliament (2011a).

<sup>26</sup> Council of the European Union (2010).

<sup>27</sup> UN CEDAW (1979).

<sup>28</sup> European Parliament (2011a), pts. 13 and 16.

### FRA ACTIVITY

#### EU-wide survey on gender-based violence

In 2011–2012, the FRA is conducting an EU-wide survey on gender-based violence against women. This is the first survey of its kind to randomly sample and interview more than 40,000 women across all EU Member States and Croatia. The survey looks in particular at experiences of violence in different settings, such as the home or the workplace. It includes questions regarding the frequency and severity of violence, the physical, emotional and psychological consequences of violence, use of healthcare and other services, satisfaction with the services received, as well as questions on women's experiences in contacting the police. The survey also asks women about experiences in childhood and collects data on women's background to explore the interplay of gender-based violence with age, educational level, employment status and other factors. The results of the survey will assist states in shaping policies combating violence against women and, in particular, adopting measures needed to conform to the Council of Europe Convention on preventing and combating violence against women and domestic violence (the ‘Istanbul Convention’).

*For more information, see Chapter 5 of this Annual Report and the factsheet on the survey: [http://fra.europa.eu/fraWebsite/research/publications/publications\\_per\\_year/2011/pub-vaw-survey-factsheet\\_en.htm](http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub-vaw-survey-factsheet_en.htm)*

The Council of Europe Convention on preventing and combating violence against women and domestic violence,<sup>29</sup> the ‘Istanbul Convention’, which was adopted in Istanbul on 11 May, is a landmark international treaty. It lays down an all-encompassing definition of violence against women that includes all acts based on gender if they result, or are likely to result, in sexual, physical, psychological or economic harm or suffering to women. The term ‘gender-based violence’, which is used throughout the Convention, refers to violence that targets women because of their gender or violence that affects women disproportionately.

The Istanbul Convention also sets up a monitoring mechanism to ensure effective implementation. A group of experts on action against violence against women and domestic violence (GreVio), to be set up once the convention enters into force, will monitor implementation of the convention, following a procedure outlined in its Article 68. As a first step, parties submit a report on legislative and other

<sup>29</sup> Council of Europe, Convention on preventing and combating violence against women and domestic violence (‘Istanbul Convention’) (2011).



implementation measures, based on a questionnaire prepared by Grevio. Grevio may also receive information from NGOs, national human rights institutions (NHRIs), national parliaments and other international bodies. If the information collected appears insufficient or should a particular issue require immediate attention, Grevio may organise a country visit. Based on the information at its disposal, Grevio may adopt reports and conclusions with the aim of helping the state party to better fulfil its obligations under the convention.

By April 2012, 18 states had signed the Istanbul Convention, including 11 EU Member States: **Austria, Finland, France, Germany, Greece, Luxembourg, Portugal, Slovakia, Slovenia, Spain and Sweden** (for more information, see Chapter 10 on EU Member States and international obligations). Several EU Member States, including **Austria, Finland, France and Germany**, report that they are working toward a swift ratification of the convention. The convention is open to ratification not only by EU Member States but also by the EU. It will enter into force following its 10th ratification (Article 75 of the convention). To raise awareness and encourage Council of Europe member states to sign and ratify the convention, the Council of Europe organised two international conferences in 2011 on effective ways to prevent and combat violence against women and domestic violence. One of these was held outside the EU Member States, the other took place in Bratislava, Slovakia, in cooperation with the Ministry of Justice of **Slovakia** and Norway Grants.<sup>30</sup> It was attended by government and NGO representatives from 16 EU Member States and Norway as well as by a FRA representative.<sup>31</sup>

## 9.2.2. Violence against women: a high priority at Member State level

The issues of violence against women and domestic violence sparked debates and political action in many EU Member States in 2011.

For instance, in **France**, the government adopted an inter-ministerial action plan to combat violence against women (*Plan de lutte contre les violences envers les femmes*) in April.<sup>32</sup> It addresses domestic violence, forced marriage, polygamy, genital mutilation, violence at work, rape and prostitution. This action plan responds to 2010 events, particularly the October murder of a 17-year old girl, stabbed by her boyfriend. Following this crime, the French government issued a decree establishing a protection order for victims of domestic

violence. This decree was part of the implementation of Law No. 2010-769 on violence against women, violence within couples and their impact on children, voted on in the French parliament in July 2010. This law created the legal basis for protection orders, introduced a definition of bullying and facilitated the filing of complaints.<sup>33</sup>

In **Portugal**, the Council of Ministers passed in December 2010 the fourth Action Plan against Domestic Violence, covering the years 2011 to 2013.<sup>34</sup> The plan introduces measures in five areas: information, awareness raising and education; protection of victims; preventing repeat victimisation by intervening against the offender; training of professionals; and research and monitoring.

In November 2010, the government of the **United Kingdom** published its 'Call to end violence against women and girls strategy (England and Wales)', outlining its view and guiding principles in this area until 2015. The call was followed on 8 March 2011 by a cross-government Action Plan setting out 88 actions to tackle all aspects of violence against women and girls. The Action Plan allocates over GBP 28 million of funding through 2015 for specialist services in this area, including GBP 900,000 for national domestic violence helplines and GBP 3.5 million a year to establish new rape support centres. An update of the plan in November 2011 showed that a quarter of the 88 actions had already been taken; a further updated version of the Action Plan, which will also comprise new measures, will be published close to the International Women's Day on 8 March 2012.

In response to a report on domestic violence statistics from 2010,<sup>35</sup> which was published by a national organisation representing domestic violence services in **Ireland**, Safe Ireland, the Minister of Foreign Affairs said:

*"The Government is committed to implementing the national strategy on domestic, sexual and gender-based violence for the five-year period from 2010 to 2014. One of the main aims of that strategy is to respond to the needs of victims of domestic violence. The HSE (Ireland's Health Service Executive) is currently undertaking a national and regional review of domestic violence service provision. The aim of this review is to ensure that funding is allocated according to need and that the areas of high demand are appropriately resourced."<sup>36</sup>*

In **Germany**, public attention focused on the topic of so-called 'honour killings'.<sup>37</sup> Research commissioned by the Federal Criminal Police Office (*Bundeskriminalamt*) and carried out by the Max Planck Institute for Foreign and International Criminal Law (*Max-Planck-Institut*

30 For more information on the Norway Grants refer to [www.eeagrants.org](http://www.eeagrants.org).

31 More information on this conference is available at: [www.coe.int/t/dghl/standardsetting/convention-violence/Seminars/bratislava2011/default\\_en.asp](http://www.coe.int/t/dghl/standardsetting/convention-violence/Seminars/bratislava2011/default_en.asp).

32 France, Ministry for Solidarity and Social Cohesion (2011).

33 France, Law No. 2010-769 (2010).

34 Portugal, Council of Ministers (2010).

35 Safe Ireland (2011a).

36 Kildarestreet.com (2011).

37 Der Spiegel (2011).



für ausländisches und internationales Strafrecht) lent a factual underpinning to the discussion. On the basis of the research findings, the authors refuted a number of assumptions surrounding the phenomenon of honour killings. Honour killings, they said, do not occur in population groups of all social and educational levels but only among the most disadvantaged and poorly educated groups. No evidence was found suggesting an increase in the number of honour killings in recent years.<sup>38</sup>

The issue of (in)sufficient legislation and policies aimed at combating violence against women and domestic violence is a recurrent feature within the UN Universal Periodic Review (UPR) (for more information, see Chapter 10 'EU Member States and international obligations'). In May, **Belgium, Denmark and Hungary** were reviewed. In the case of **Belgium**, eight recommendations urged the stepping up of efforts to combat violence against women and domestic violence; all of which Belgium accepted.<sup>39</sup> **Denmark** received 10 related recommendations.<sup>40</sup> The UPR recommended, in particular, that Denmark launch an action plan to combat domestic violence in Greenland and the Faroe Islands. In response to UPR recommendations to guard against impunity in cases of marital rape, Denmark asked an expert committee to carry out a thorough review of the criminal code. The committee is expected to finish its work in 2012.<sup>41</sup> For **Hungary**, nine related recommendations were made, which Hungary largely accepted.<sup>42</sup>

Severe complaints surfaced about the lack of sufficient resources in the area of specific victim support for women as victims of domestic violence, particularly in **Finland, Germany, Ireland and Latvia**. In Germany, a parliamentary debate in November raised the issue of insufficient funding of women's shelters.<sup>43</sup> Safe Ireland published its annual statistics on domestic violence in September. The statistics show that in 2010 domestic violence services provided support to 7,235 women of whom 1,545 women and 2,355 children lived in refuges for various periods of time. Still, on more than 3,000 occasions in 2010, up 38 % from 2,300 in 2009, women and children looking for safety could not be accommodated, because shelters were either full or unavailable in a given area. An upwards trend is now developing into what support services perceive as an accommodation crisis. With budget cutbacks, new refuges are not opening and existing ones are finding it more difficult to maintain their services.<sup>44</sup>

38 Oberwittler, D., Kasselt, J. (2011).

39 UN Human Rights Council (2011a).

40 UN Human Rights Council (2011b).

41 UN Human Rights Council (2011c).

42 UN Human Rights Council (2011d).

43 Germany, German Bundestag (2011a), p. 16601.

44 Safe Ireland (2011b).

## Promising practice

### Youth4Youth – Preventing gender-based violence through peer education

In March, the Mediterranean Institute of Gender Studies in Cyprus kicked off a project that provides adolescents with a safe space to reveal their attitudes towards violence and to reassess their tolerance towards it. The project encourages them to become involved in developing an environment free from violence for themselves as well as for their peers. One of the project's aims is to help young people explore their attitudes towards and the links between gender stereotypes and gender-based violence. Another aim is to empower young people to develop attitudes of self-respect and self-worth.

For more information, see: [www.medinstgenderstudies.org/current-projects/youth4youth-empowering-young-people-in-preventing-gender-based-violence-through-peer-education](http://www.medinstgenderstudies.org/current-projects/youth4youth-empowering-young-people-in-preventing-gender-based-violence-through-peer-education)

### 9.2.3. Effective protection against repeat violence

While the Council Framework Decision on the standing of victims (as well as the proposed Directive on victims' rights) covers the rights of all victims, it also recognises the specific rights of especially vulnerable victims. This includes, in particular, the rights of victims of domestic violence under Article 8 to effective protection against repeat violence. The Istanbul Convention spells out what this obligation implies to date: a professional risk assessment and risk management (Article 51), emergency barring orders (Article 52), restraining or protection orders (Article 53) and other measures ensuring the victims' and their families' protection against repeat victimisation (Article 56).

As one important step in this direction, the European Parliament adopted the Directive on the European Protection Order (EPO) in December. This measure aims at extending the protection granted by a 'protection measure' – which restricts the movements of a person who is endangering a victim – in one Member State to victims who move to another Member State. The directive applies to protection measures taken in criminal matters and aims to protect the victim against a criminal act which may endanger, for example, her dignity. The authority issuing a protection measure need not be criminal, however, but can also be administrative or civil; the state carrying out the order may apply criminal, administrative or civil measures according to its national law.

Under the EPO directive, a judicial (or equivalent) authority in an EU Member State in which a protection

measure has been implemented may issue an EPO on the request of the protected person. This means that if the protected person chooses to reside or stay in another Member State, the EPO enables an authority in that Member State to assume the responsibility of safeguarding the protected person. The directive thus forestalls a situation in which a victim would have to restart the entire legal process of obtaining protection measures when moving to another Member State.

As the directive does not oblige EU Member States to adopt legislation on protection measures, it can only be as powerful as the measures available under Member State laws. That said, in several Member States, the lack of effective means of disrupting the cycle of domestic violence remains an issue of particular concern.

In **Malta**, the Commission for Domestic Violence (CDV) commissioned research that found that one in four women reported having experienced violence at least once in their lifetime. Half of these reported that the violence was still taking place during the year the survey was carried out. Despite this, court protection orders are rarely implemented, nor do police have the power to remove suspected offenders from their homes.<sup>45</sup>

Since the 2005 adoption of the Law on Protection against Domestic Violence, **Bulgaria** has been implementing annual national programmes on the prevention of and protection against domestic violence. In 2011, it allocated state funds of BGN 500,000 (€254,800) for such projects. Information for victims is published on the Ministry of the Interior's internet site. Standard request forms on lodging complaints with the police and the courts are available. As a result, legal proceedings and protection orders issued by the courts have increased markedly, running at about 1,300-1,400 annually in recent years.<sup>46</sup> Still, a number of organisations, including the United Nations CEDAW monitoring body, the Committee on the Elimination of Discrimination against Women, and the Bulgarian Gender Research Foundation,<sup>47</sup> have criticised what they consider a situation of pervasive impunity of domestic violence. According to these bodies, victims are not sufficiently encouraged to report incidents, the effectiveness of investigations is limited and courts apply an overly narrow approach to domestic violence. In August 2011 the CEDAW Committee presented its views in the context of the *V.K. v. Bulgaria* case, asking Bulgaria to amend the Law on Protection against Domestic Violence, to ensure that a sufficient number of state-funded shelters are available to victims of domestic violence and to provide

mandatory training on the issue to judges, lawyers and law enforcement personnel.<sup>48</sup>

Looking at the **United Kingdom**, in England and Wales more than one in four women have experienced domestic abuse since reaching the age of 16; in Scotland, the figure is one in seven.<sup>49</sup> At the end of June, three police force areas in England and Wales piloted Domestic Violence Protection Orders. These orders give the police and courts the power to protect victims of domestic violence by preventing the perpetrator from returning to a residence and from having contact with the victim for up to 28 days. By the end of 2011, courts had issued 232 such orders.

Domestic violence continues to stir debate in **Finland**. A man who killed his former wife, their 13-year-old son and himself in southern Finland in April put Finnish gun laws on the political agenda. In this case, police had earlier confiscated the man's weapons, but later returned them to him when the former wife withdrew her complaint. The Finnish Ministry of Social Affairs and Health elaborated an Action Plan to reduce violence against women, identifying a number of issues to be addressed. The Action Plan foresees that in situations with an obvious and immediate threat of violence, the police should have the power not only to remove the offender from the scene but also to impose a temporary restraining order.<sup>50</sup> Proposed measures include conducting a comprehensive review of the effectiveness of restraining orders and issuing guidelines for the authorities (police, prosecutors, social welfare authorities) on the use of restraining orders.<sup>51</sup>

In **Estonia**, the decision to discontinue criminal proceedings against a successful businessman who was charged with repeated physical attacks against his wife and son prompted a major public controversy. The public prosecutor requested the case be dropped due to a lack of compelling public interest, given that the case concerned violence within a family and the proceedings had lasted an unreasonably long time.<sup>52</sup> On another topic, NGOs report that protection measures often lack effectiveness. A restraining order is available under the Code on Criminal Procedure, for example, but there are no means of enforcing the order if it is breached.<sup>53</sup>

45 Fsadni et al. (2011); Laiviera (2011).

46 Information provided by the Bulgarian government in February 2012.

47 Bulgarian Gender Research Foundation (2011).

48 UN, Committee on the Elimination of Discrimination against Women (2011).

49 For more information, see Equality and Human Rights Commission, *How fair is Britain? The first Triennial Review*, available at: [www.equalityhumanrights.com/key-projects/how-fair-is-britain/full-report-and-evidence-downloads](http://www.equalityhumanrights.com/key-projects/how-fair-is-britain/full-report-and-evidence-downloads).

50 Finland, Ministry of Social Affairs and Health (2011), p. 41.

51 Finland, Ministry of Social Affairs and Health (2011), p. 42.

52 Ratt (2011); Sulbi (2011). See also, Estonia, Parliament of Estonia (*Riigikogu*) (2011).

53 Information based on e-mail communication with Järva Women's Shelter.





The **Lithuanian** Parliament took a crucial step on 26 May, adopting the Law on Protection against Violence in Close Relations.<sup>54</sup> The law envisages the temporary eviction of offenders from their residence coupled with an order to refrain from contacting the victim. The court of pre-trial investigations must decide upon these protective measures no later than 48 hours after a complaint is filed. Before the law's adoption, violence in the private sphere was often conceived of as a private matter and cases were thus pursued solely as private prosecutions. The new law clearly establishes that prosecution in cases of domestic violence is a matter of public concern, a change which is expected to lead to a considerable rise in the number of cases taken to court.<sup>55</sup>

**Poland** adopted legislation in August amending several laws. The changes now make it possible to evict an alleged offender from his home even when the municipality is not in a position to provide a temporary residence.<sup>56</sup>

In **Germany**, the national parliament (*Bundestag*), unanimously adopted a law on 1 December establishing an emergency telephone number for women victims of violence (*Hilfetelefongesetz*). The helpline will provide support and advice to 700 women per day and will require a staff of some 80-to-90 persons. It will be available 24 hours per day cost-free. As of January 2012, the bill was pending in the second chamber of the German Parliament (*Bundesrat*).<sup>57</sup> The new law is expected to be implemented by the end of 2012.

The **Irish** Civil Law (Miscellaneous Provisions) Act 2011, which came into force in August, provides a number of important reforms to the 1996 law on domestic violence. The 2011 Act broadens the definition of 'applicant', allowing individuals to apply for protection when, for example, they have a child in common with the alleged abuser. The applicants no longer need to be living with a violent partner in order to be eligible to apply for protection. The Minister for Justice has promised further reform of domestic violence law through more comprehensive legislation.<sup>58</sup>

### Promising practice

#### Mobile-phone based emergency signalling to speed up police response to domestic violence cases

In July 2011, the Hungarian Women's Rights Association (*Nők a Nőkért Együtt az Erőszak Ellen*, NANE) and the Budapest police have teamed up with Vodafone to launch a pilot programme to speed up police response in cases of domestic violence. The programme introduces a mobile-phone based emergency signalling technology. A matchbox-sized device sends out an emergency signal through the push of a button, pinpointing the victim's exact location for the police operation's centre. NANE, which has been involved in supporting women victims of violence since 1994, developed the programme and trained the police.

For more information, see: [www.nane.hu/english/index.html](http://www.nane.hu/english/index.html) and at EU level [www.wave-network.org/start.asp?ID=23527](http://www.wave-network.org/start.asp?ID=23527)

#### 9.2.4. Mediation in domestic violence cases: conforming to victims' rights?

Several EU Member States, including **Estonia, Finland, Hungary, Lithuania and Malta**, experienced debates in 2011 that called into question the appropriateness and admissibility of victim-offender-mediation in cases of domestic violence. Critics underline, for example, that court hearings – in contrast to mediation – allow for public recognition of the crime and the victim.

The **Estonian** Ministry of Justice, for example, reported that of the 319 mediations in criminal cases in 2010, 60 % related to domestic violence. Women's organisations raised concerns that this practice fails to take into account the particularities of domestic violence, such as the vulnerability of its victims.<sup>59</sup>

In **Lithuania**, the inclusion of mediation in new legislation on domestic violence stirred controversy. The Parliament's Committee on Human Rights argued that mediation should not apply in domestic violence cases; therefore, the proposal to allow for mediation in such situations was rejected.<sup>60</sup> In **Malta**, the chief executive of the Foundation of Social Welfare Services called for a revision of the Mediation Act, which forces couples to go through mediation, even if there is abuse involved.<sup>61</sup>

54 Lithuania, Seimas (2011).

55 *Ibid.*

56 Poland, Act on the protection of tenants' rights, municipal housing stock, the Civil Code and Civil Procedure Code (2011).

57 Germany, German Bundestag (2011b).

58 Ireland, Joint Oireachtas Committee on Justice (2011).

59 Information based on e-mail communication with Järva Women's Shelter.

60 Lithuania, Human Rights Committee (2011).

61 Calleja (2010).

The Istanbul Convention addresses the controversy around mediation in domestic violence cases and prohibits any form of mandatory mediation or alternative dispute resolution in domestic violence cases and cases concerning other forms of violence covered by the convention, such as stalking, sexual harassment, sexual violence, forced marriage and female genital mutilation (Article 48).

When asked for a preliminary ruling by a Spanish court, the CJEU made it clear that the Framework Decision on the standing of victims in criminal proceedings does not prevent a Member State from excluding mediation from domestic violence cases. This ruling allows for an exception to Article 10, which, in general terms, requires Member States to seek to promote mediation in appropriate criminal cases.

*“Article 10(1) of Framework Decision 2001/220 must be interpreted as permitting Member States, having regard to the particular category of offences committed within the family, to exclude recourse to mediation in all criminal proceedings relating to such offences.”*

CJEU, Case C-1/10, Gueye, judgment of 15 September 2011

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

Throughout the EU, trafficking in human beings remains at the top of the political agenda on criminal justice. Still, the numbers of court cases remain low – ample proof of persistent difficulties in identifying victims and prosecuting offences. This situation is reflected in the findings of the Council of Europe’s Group of Experts on Action against Trafficking in Human Beings (Greta), which evaluated the first 10 countries that became parties to the Convention on Action against Trafficking in Human Beings (entry into force 2008). The evaluation covered a number of EU Member States: **Austria, Bulgaria, Cyprus, Denmark, Romania, Slovak Republic**, as well as **Croatia**. In its September report on **Cyprus**,<sup>62</sup> for example, Greta welcomed authorities’ assurances that trafficking is considered a human rights violation in Cyprus, but noted that, four years after the entry into force of the relevant legislation, there had not yet been a single conviction for this offence. The first civil action initiated by a victim was also still pending, it said. **Croatian**<sup>63</sup> courts convicted three in 2010, six in 2009 and eight in 2008, the report on Croatia said, while **Danish**

courts convicted 11 in both 2010 and 2009 against seven in 2008, the report on Denmark said.<sup>64</sup>

The Greta reports show that the main reason for the lack of effectiveness of investigations and prosecutions is an inadequate consideration of the fundamental rights of victims, who may instead be criminalised as migrants in an irregular situation. The report on **Slovakia**,<sup>65</sup> for example, suggests that developing a human rights-based concept of victimisation would significantly contribute to a more effective implementation of the Anti-Trafficking Convention. This would entail: improving the identification of victims of trafficking; introducing a recovery and reflection period with the corresponding assistance and protection measures to allow victims to consider whether to assist police in their investigations; and providing victims with adequate protection in criminal proceedings.

At the level of EU legislation, the most important achievement was the adoption of the Directive on preventing and combating trafficking in human beings and protecting its victims, which EU Member States are to transpose by 6 April 2013 (for more information on children’s rights, see Chapter 4).<sup>66</sup> The Directive is based on a victim-centred approach and a gender perspective.

#### FRA ACTIVITY

##### Cooperating to combat trafficking in human beings

In October 2011, directors of seven EU agencies, including the FRA, committed to creating a EU-wide approach to the eradication of human trafficking. The joint statement of the Heads of the EU Justice and Home Affairs Agencies says that the fundamental rights of victims of human trafficking are central to EU policy in this field. Efforts to address trafficking would be made in partnership with EU Member States, EU institutions and other partners, including civil society organisations. The October event featured a debate between the directors of the EU agencies, moderated by the EU Anti-Trafficking Coordinator.

For more information, see: [http://fra.europa.eu/fraWebsite/news\\_and\\_events/infocus11\\_1810\\_en.htm](http://fra.europa.eu/fraWebsite/news_and_events/infocus11_1810_en.htm)

On 14 December 2010, the European Commission appointed an EU anti-trafficking coordinator who is responsible for ensuring the coordination and coherence of EU anti-trafficking policies and activities, and for providing an overall strategic orientation in this

62 Council of Europe, Committee of the Parties to the Convention on Action against Trafficking in Human Beings (2011a).

63 Council of Europe, Group of Experts on Action against Trafficking in Human Beings (Greta) (2011a).

64 Council of Europe, Greta (2011b).

65 Council of Europe, Committee of the Parties to the Convention on Action against Trafficking in Human Beings (2011b).

66 Directive 2011/36/EU.

area. On 21 December 2010, the European Commission launched its website on trafficking in human beings, including information about EU policies and legislation, developments at EU Member State level, recommendations from EU expert groups and publications from a large number of sources.<sup>67</sup>

## FRA ACTIVITY

### Rights of migrants in domestic work at risk

In its report on *Migrants in an irregular situation employed in domestic work: Fundamental rights challenges for the European Union and its Member States*, published in 2011, the FRA highlighted one important sector of extreme labour exploitation: domestic work, which is dominated by women. The report shows that the rights of migrant domestic workers in an irregular situation, as well as their access to these rights, vary across the 10 countries examined. Access to fundamental rights by such migrants is currently largely at the discretion of their employers. Consequently, employment issues that may appear clear for regular workers – such as sick leave and sick pay, prior notice for dismissal and severance payments – are, for migrants in an irregular situation, luxuries to which they often have no access.

For more information, see: [http://fra.europa.eu/fraWebsite/attachments/FRA-report-domestic-workers-2011\\_EN.pdf](http://fra.europa.eu/fraWebsite/attachments/FRA-report-domestic-workers-2011_EN.pdf)

While policies relating to trafficking to date have tended to focus on trafficking for sexual exploitation, there is a clear tendency recently to pay more attention to other areas of exploitation. **Austria**, for example, has not only included the objective to enhance the identification of potential victims of labour exploitation in its second Action Plan but also includes other actors in its implementation such as labour inspectorates and fiscal authorities.<sup>68</sup> The Austrian Federal Ministry of Labour, Social Affairs and Consumer Protection has set up regional initiatives jointly with the Austrian Institute for International Affairs (oiip) and the International Organization for Migration (IOM). In September, a regional round table on trafficking in human beings for the purpose of labour exploitation, including domestic servitude, was organised in Vienna.<sup>69</sup>

67 For more information on the European Commission anti-trafficking website, see: <http://ec.europa.eu/anti-trafficking/index.action>.

68 The second National Action Plan Against Human Trafficking prepared by the Task Force on Combating Human Trafficking and covering the period from 2009–2011 can be accessed at: [www.bmeia.gv.at/fileadmin/user\\_upload/bmeia/media/2-Aussenpolitik\\_Zentrale/Menschenrechte/TFM\\_Aktionsplan\\_engl\\_V20091007\\_LAYOUT\\_FINAL.pdf](http://www.bmeia.gv.at/fileadmin/user_upload/bmeia/media/2-Aussenpolitik_Zentrale/Menschenrechte/TFM_Aktionsplan_engl_V20091007_LAYOUT_FINAL.pdf).

69 Information provided by the Austrian government by note from 17 February 2012.

The **Danish** government held a parliamentary hearing on human trafficking in February which focused on trafficking for labour exploitation.<sup>70</sup> The **Finnish** parliament, in response to the report of the Finnish National Rapporteur on *Trafficking in human beings*, requested the government to take action to counteract trafficking for labour exploitation.<sup>71</sup>

Recently, research projects have focused on the topic of labour exploitation even beyond trafficking. The qualitative report entitled *Trafficking for Forced Labour and Labour Exploitation in Finland, Poland and Estonia*, stressed that the low visibility of forced labour is in part due to “the belief that forced labour is equal to enslaving people to work at gunpoint and/or in chains, or imprisoned in sweatshops”. By carefully studying the environment in which forced labour takes place the report convincingly demonstrates how hidden information can be ‘mined’ from existing sources and combined to furnish an overview of the phenomenon.<sup>72</sup> Similar in outcome, in December 2010 the Migrant Rights Centre in **Ireland** published a report on *Trafficking for Forced Labour in Ireland and the United Kingdom: Issues and Emerging Good Practice*. The report concluded that “considerable weaknesses in addressing forced labour remain. [...] Legislators, policymakers, crime prevention officers and practitioners now face the challenge of expanding the trafficking framework to incorporate victims of forced labour and afford them the same rights and protections.”<sup>73</sup>

In **Germany**, it has become clear that it is more difficult to protect and support non-trafficked victims of labour exploitation than trafficked victims, because the former are not covered by trafficking definitions. They therefore do not enjoy the same amount of support or protection and may not be entitled to compensation even though the consequences of the exploitation may be similar to that faced by those who have been trafficked. The fact that public attention and policies focus on certain types of crime carries the risk that the rights of certain victims receive more recognition than the rights of others. While it is an undisputed achievement that the rights of victims of trafficking or the rights of children who are victims of sexual exploitation receive all the attention they deserve, the fact remains that victims of equally severe crimes do not receive similar attention. This applies, for example, to non-trafficked victims of severe forms of labour exploitation.

70 United States, Department of State (2011).

71 Finland (2010), Parliamentary communication 43/2010.

72 Jokinen *et al.* (2011), pp. 9–10.

73 Coghlan (2010), p. 3; Jokinen *et al.* (2011).

In response to these deficiencies in protection, legislation such as the Directive providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals<sup>74</sup> – the so-called ‘Employers’ Sanctions Directive’ – play an important role. Article 9 of this directive states that EU Member States are obliged to ensure that illegal employment combined with particularly exploitative working conditions constitute a criminal offence. Article 13 of the directive, entitled ‘facilitation of complaints’, provides that Member States should define the conditions under which they grant permits of limited duration to third-country nationals. The article explicitly refers to the Council Directive on the issuance of residence permits to third-country nationals who are victims of trafficking in human beings.<sup>75</sup> Member States were required to comply with the Employers’ Sanctions Directive by 20 July 2011. By July 2014, the Commission will report to the European Parliament and the Council of the European Union concerning the directive’s implementation.

**Slovenia**, for example, took legislative steps to ensure implementation. It amended Article 50 of the Aliens Act in light of the Employers’ Sanctions Directive, extending the level of protection offered victims of trafficking to include victims of illegal employment. Temporary residence permits are now issued for the duration of criminal proceedings but for no less than six months or more than one year. The permit may be extended until criminal proceedings are concluded. Similarly, the **Czech Republic**, in implementing the Employers’ Sanctions Directive, included residence permits of victims of illegal labour exploitation in the Act on the Residence of Aliens in the Territory of the Czech Republic.

## 9.4. Rights of victims of bias-motivated crime

Bias-motivated crime is often referred to as ‘hate crime’. Evidence suggests, however, that any definition insisting on ‘hate’ constituting ‘hate crime’ would exclude a high percentage of offences motivated by bias or prejudice.<sup>76</sup> European Court of Human Rights (ECtHR) case-law makes clear that EU Member States’ criminal justice systems are obliged to demonstrate when a crime is motivated by bias against the victim. As the section on ‘racist crime’ in Chapter 6 shows, however, convictions for racist crimes are infrequent, even non-existent, in some Member States.

### 9.4.1. Racist crime

High on the agenda of EU Member States is the need to improve the protection against racially motivated violence of vulnerable groups.

This concern was one of the main focuses of the Universal Periodic Review (UPR) when it issued an evaluation of the situation in **Hungary** in May. The recommendations from 14 states include: training and capacity-building of law enforcement and judicial authorities; establishing guidelines to identify and promptly and effectively investigate racist crime, encouraging victims to report incidents of racist crime and ensuring their protection from reprisal when they do so; as well as ensuring that victims of racist crime have access to assistance and protection, including counselling and legal assistance. Hungary supported all these recommendations.<sup>77</sup>

In the course of the same session, **Belgium** was reviewed. Again, several states voiced concerns with regard to racist crime, in particular relating to organisations and political parties inciting racial hatred. It was recommended that Belgium consider discontinuing public funding of such organisations.<sup>78</sup>

The main EU legislative instrument to protect the rights of victims of offences motivated by discriminatory attitudes is the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of criminal law.<sup>79</sup> This framework decision obliges EU Member States to enact criminal law definitions covering certain forms of conduct inciting violence or hatred (Article 1), and to ensure that racist and xenophobic motivation is considered an aggravating factor (Article 4). EU Member States were obliged to comply with this Framework Decision and notify the European Commission as to what implementing measures they had taken as of 28 November 2010. By February 2012, 23 Member States had notified the Commission of their implementing measures; **Belgium, Estonia, Greece** and **Spain** had yet to do so. Once all Member States have reported, the Commission will analyse the transposition of the Framework Decision, reporting back in 2013. On the basis of this report, the Council of the European Union will have until November 2013 to review the Framework Decision and its implementation by Member States.

From a victims’ rights perspective, the Framework Decision focuses on criminalising discriminatory conduct. Otherwise it hardly touches on victims’ rights, disregarding, for example, the right to competent support services or to respectful and compassionate treatment by trained personnel who carefully avoid any secondary

74 Directive 2009/52/EC, p. 24.

75 Council Directive 2004/81/EC, p. 19.

76 Garland, J., Chakraborti, N. (2012), p. 40.

77 UN Human Rights Council (2011d).

78 UN Human Rights Council (2011a).

79 Council Framework Decision 2008/913/JHA, OJ 2008 L 328/55.





victimisation. Article 8 of the Framework Decision alone can be interpreted as considering victims, for it prohibits investigations or prosecutions of relevant offences from depending on a victim's report, an important exception as victims often refrain from reporting incidents unless they are encouraged and advised by skilled and reliable victim support services or police.

Victim support requires sufficient training and an appropriate level of specialisation as well as regulations safeguarding victims against secondary victimisation. Significantly lower rates of reporting occur when bias-motivated offences against vulnerable groups or individuals coincide with victims' low confidence in the willingness or ability of the criminal justice system to effectively investigate, prosecute and sanction these crimes. The response of the police, public prosecutors and judges, therefore, serves not only to reassert society's condemnation of racism and other forms of discrimination but also to build and maintain the trust of disadvantaged persons or communities in the ability and determination of authorities to fully recognise their victimisation and to reassure them of the effective protection of their rights.

#### Promising practice

### Cooperation between county police and the Lesbian, Gay, Bisexual and Transgender (LGBT) community

The Stockholm Police set up a specialised hate crime unit that carries out police training and serves as a point of contact in cooperating with LGBT groups. One focus of the unit's work is to make sure that police do not overlook a bias motivation when investigating offences directed at LGBT persons. This model of cooperation is seen to have increased public confidence in the police.

This and other projects have received notice and evolved further in the context of the International Lesbian and Gay Association's European project entitled 'Working with the police and challenging hate crimes in Europe'. The project held its closing conference in the Hague in December.

For more information, see: [www.ilga-europe.org/home/news/for\\_media/media\\_releases/closing\\_conference\\_hate\\_crime\\_2011](http://www.ilga-europe.org/home/news/for_media/media_releases/closing_conference_hate_crime_2011) and <http://www.polisen.se/en/Languages/Victims-of-Crime/Hate-crime-victims>

## 9.4.2. LGBT persons as victims of bias-motivated crime

When **Latvia**, like **Hungary** and **Belgium**, underwent a UPR in May, the United States recommended considering legislative and administrative measures to recognise violence on the basis of gender identity or sexual orientation as a hate crime. Norway recommended amending

Latvian criminal law to recognise hate speech against LGBT persons, as did Brazil.<sup>80</sup>

Although the Framework Decision on hate crime covers racist and xenophobic discrimination only, many EU Member States have extended criminal law definitions to cover other protected characteristics.

As concerns definitions of incitement to violence or hatred, some EU Member States, including **Denmark, Ireland, Sweden** and the **United Kingdom**, have over time introduced definitions covering sexual orientation, as has Croatia. A number of other EU Member States – **Austria, Belgium, Estonia, Finland, Lithuania, Luxembourg, the Netherlands, Portugal, Romania, Slovenia and Spain** – have enacted definitions that cover an even wider range of protected grounds, evidence that the majority of Member States recognise some form of 'hate speech' beyond racism and xenophobia.

This trend to including a larger number of characteristics in criminal law provisions protecting individuals from severe forms of discrimination, and in particular against bias-motivated violence, corresponds to emerging political consensus and legal parameters. This is most evident with regard to the protection of LGBT groups and individuals. In recent resolutions, the European Parliament has asked EU Member States to ensure that LGBT persons are protected from homophobic hate speech and violence. In these resolutions, the Parliament has also called on the European Commission to combat homophobia through legislation similar to the Council Framework Decision on racism.<sup>81</sup> In December, the Parliament adopted a resolution with regard to **Croatia's** application to become a member of the EU. This resolution expresses deep concerns about the violence against participants in the LGBT pride march in Split in June and the inability of the Croatian authorities to protect participants. The resolution calls on Croatia to firmly address cases of hate crime directed against LGBT minorities.<sup>82</sup>

The Council of Europe Commissioner for Human Rights published a report in 2011 entitled *Discrimination on grounds of sexual orientation and gender identity in Europe*, which takes an in-depth look at violence against LGBT persons and at legislation aimed at combating that violence. It concludes that violence against LGBT persons is rarely addressed specifically in national legislation. This contributes to a climate in which bias-motivated incidents occur without strong public condemnation. Therefore, EU Member States should step up efforts to combat hatred against LGBT persons (for more

<sup>80</sup> UN Human Rights Council (2011e).

<sup>81</sup> European Parliament (2006a), (2006b), (2007), and (2009).

<sup>82</sup> European Parliament (2011b), pts. 14 and 15.

information on discrimination against LGBT persons, see Chapter 5 on Equality and non-discrimination).<sup>83</sup>

#### FRA ACTIVITY

### Large-scale surveys on the victimisation of LGBT persons and of Jews

FRA reports have continuously pointed to limitations of victims' access to justice stemming from low numbers of victims who are aware of their rights, have confidence in the police and are sufficiently supported and encouraged to report.<sup>84</sup> For a more complete picture, the FRA will conduct two large-scale surveys on the discrimination and victimisation of LGBT Persons and of Jews. The 'European Union Survey of discrimination and victimisation of Lesbian, Gay, Bisexual and Transgender Persons' responds to a 2007 European Parliament request. Reports published by FRA in this area have highlighted the serious absence of robust and comparable data on discrimination against and victimisation of LGBT persons. The survey will build on former research conducted by the FRA with regard to violence against LGBT persons and their right to protection.<sup>85</sup> The 'Survey: Discrimination and hate crime against Jews' will collect comparable data in nine Member States on the experiences, perceptions and views of persons who self-identify as Jewish. This survey will also assist policy makers in tackling bias-motivated crime.

to improve the situation of victims in difficult working conditions.

The political relevance of bias-motivated crimes and relevant case law will challenge legislators at both the EU and Member State levels. Differences among Member States as to the scope of criminal law provisions are likely to remain considerable, despite common obligations under the European Convention on Human Rights to highlight the bias-motivation aspect of crimes in criminal proceedings.

Legal and practical measures will need to be taken to encourage victims to report their victimisation to the authorities and to build trust in these authorities. Individuals and groups at risk of victimisation must feel confident that authorities are able and willing to react in a respectful and professional manner to reports of crimes. Otherwise, difficulties will persist in closing the gap between what is penalised in law and what is investigated and prosecuted in practice.

The future directive establishing minimum standards on the rights, support and protection of victims of crime, which will replace the existing Council Framework Decision on the standing of victims in criminal proceedings, should make important progress at EU level, thereby fostering legal developments on the participation of victims in criminal proceedings at EU Member State level.

## Outlook

The swift ratification of the Council of Europe Convention on preventing and combating violence against women and domestic violence, or the Istanbul Convention, by EU Member States would constitute an important step in addressing persisting challenges in tackling violence against women, particularly domestic violence.

Ratification of this convention will require that EU Member States enact legislation to ensure effective and immediate protection of women against repeat victimisation. Many EU Member States, for instance, currently lack an adequate definition of stalking, which is necessary to tackle it effectively, as per Article 34 of the convention.

The Anti-Trafficking Directive, which must be transposed into national law by 6 April 2013, is likely to bring improvements to the situation of victims of forced labour and severe forms of labour exploitation, while the Employer's Sanctions Directive is expected

<sup>83</sup> Council of Europe (2011), p. 124.

<sup>84</sup> FRA (2010), pp. 71-74; and FRA (2009), pp. 43-45.

<sup>85</sup> FRA (2011); for a summary, refer to Chapter 2.

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## UN & CoE

January

February

March

7 April – Council of Europe Committee of Ministers adopts the Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

April

11 May – Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) opens for signature and is signed by 11 member states on the same day

May

June

July

August

12 September – Council of Europe Group of Experts on Action against Trafficking in Human Beings publishes its first report

September

October

November

December

## EU

January

February

March

5 April – European Parliament adopts a Resolution on priorities and outline of a new EU policy framework to fight violence against women

15 April – European Parliament and the Council of the European Union adopt a Directive on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

April

18 May – European Commission issues a proposal for a directive of the European Parliament and of the Council on establishing minimum standards on the rights, support and protection of victims of crime

May

10 June – Council of the European Union adopts a Resolution on a roadmap for strengthening the rights and protection of victims, in particular in criminal proceedings

June

July

August

September

October

November

13 December – European Parliament and Council of the European Union adopt a Directive on combating the sexual abuse and sexual exploitation of children and child pornography, and replacing Council Framework Decision 2004/68/JHA

13 December – European Parliament endorses the European Protection Order for crime victims

December

