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UN & CoE

28 January – Council of Europe’s Parliamentary Assembly (PACE) adopts Resolution 2093 (2016) on recent attacks against women: the need for honest reporting and a comprehensive response

January

February

4 March – Acting on behalf of PACE, the Standing Committee adopts Resolution 2101 (2016) on the systematic collection of data on violence against women

March

21 April – Council of Europe (CoE) launches its 2016-2021 Action plan on strengthening judicial independence and impartiality

April

2 May – Czech Republic ratifies the Council of Europe’s Convention on Action against Trafficking in Human Beings

9-13 May – Sub-Committee on accreditation of the global alliance of national human rights institutions recommends that the Greek National Commission for Human Rights be downgraded to B status

May

19 June – In Resolution A/HRC/32/L.19, the UN Human Rights Council (UN HRC) welcomes the report of the UN High Commissioner for Human Rights on ‘Improving accountability and access to remedy for victims of business-related human rights abuse’ adopted on 10 May 2016

23 June – In *Baka v. Hungary* (No. 20261/12), the European Court of Human Rights (ECtHR) holds that the premature termination of the President of the Hungarian Supreme Court’s mandate on account of his criticisms of legislative reforms violated his right to a fair trial in form of access to court and the right of freedom of expression (Articles 6 and 10 of the ECHR)

June

July

August

13 September – In *Ibrahim and Others v. United Kingdom* [GC] (No. 50541/08), the ECtHR holds that the right to access a lawyer can be restricted to protect the rights of others and that the right to be informed on one’s defence rights is inherent in the right to a fair trial (Article 6 of the ECHR)

28 September – UN HRC adopts its annual resolution A/HRC/33/L.17/Rev.1, encouraging different bodies across the UN system to further enhance opportunities for NHRIs to contribute to their work

September

28 October – European Network of National Human Rights Institutions issues a statement to support the Commissioner for Human Rights, Polish NHRI, in its work to promote and protect human rights in Poland and urges all relevant actors to take prompt action to ensure that the commissioner has sufficient funding to support its independence and carry out its mandate in line with the UN Paris Principles

October

9 November – CoE’s Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) considers a state report submitted by Austria on implementation of the Istanbul Convention, under the evaluation procedure provided for under Article 68 (1)

19 November – CoE, the European Network of National Human Rights Institutions, the International Ombudsman Institute, the Office of the UN High Commissioner for Human Rights and the OSCE Office for Democratic Institutions and Human Rights issue a joint statement calling for support for strong and independent national human rights institutions in the OSCE region and highlighting the important role of NHRIs in times when human rights and fundamental freedoms are under threat

November

December

EU

January

February

4 March – European Commission proposes the EU's accession to the Council of Europe's Convention on Preventing and Combating Violence against Women and Domestic Violence (Istanbul Convention), alongside Member States that ratified the convention

9 March – Council of the EU and European Parliament (EP) adopt Directive 2016/343/EU on strengthening certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings

March

5 April – In the joined cases *Aranyosi (C-404/15)* and *Căldăraru (C-404/15)* and the Court of Justice of the European Union (CJEU) rules that the execution of a European arrest warrant must be deferred if there is a real risk of inhuman or degrading treatment because of the conditions of detention of the person concerned in the Member State where the warrant was issued

April

11 May – Council of the EU and EP adopt Directive 2016/800/EU on procedural safeguards for children who are suspects and accused persons in criminal proceedings

May

9 June – In *Criminal Proceedings against István Balogh (C-25/15)*, the CJEU clarifies the meaning of 'criminal proceedings' in Directive 2010/64/EU on the right to interpretation and translation

9–10 June – Justice and Home Affairs Council establishes an (informal) European Network on Victims' Rights based on Article 26 (1) of Directive 2012/29/EU, with the purpose of aiding, stimulating and recommending improvements on EU legislation regarding victims' rights; the European Commission will also be involved and other bodies and agencies can be invited

20 June – Council of the EU adopts Conclusions on business and human rights, reaffirming the EU's active engagement in preventing abuses and ensuring remedies worldwide, and to ensure implementation of the UN guiding principles on business and human rights

June

July

August

September

11 October – In *European Commission v. Italian Republic (C-601/14)*, the CJEU states that Article 12 of Directive 2004/80/EC relating to the compensation of crime victims guarantees all EU citizens appropriate and fair compensation for injuries suffered from violent intentional crimes, as this is corollary to freedom of movement

25 October – EP adopts a resolution with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights; this mechanism should include objective benchmarks and lay down a gradual approach to remedying breaches

26 October – Council of the EU and EP adopt Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings

October

24 November – EP adopts a motion for a Resolution on the EU's accession to the Istanbul Convention, calling on the Council of the EU and the Commission to speed up negotiations on the signing and conclusion of the convention

27 November – Transposition deadline for Directive 2013/48/EU on the right to a lawyer in criminal proceedings and the right to have a third party informed upon deprivation of liberty

November

13 December – EP adopts a resolution on the situation of fundamental rights in the EU in 2015, reiterating its call for the establishment of a Union Pact on Democracy, Rule of Law and Fundamental Rights; this should include an annual report with country-specific recommendations based on a variety of sources - including FRA, Council of Europe and UN reports, should incorporate and complement existing instruments such as the Justice Scoreboard, and replace the Cooperation and Verification mechanism for Romania and Bulgaria

December

8

Access to justice including rights of crime victims



The EU and other international actors tackled various challenges in the areas of rule of law and justice throughout the year. Several EU Member States strengthened the rights of persons suspected or accused of crime to transpose relevant EU secondary law, and the EU adopted new directives introducing further safeguards. Many Member States also took steps to improve the practical application of the Victims' Rights Directive to achieve effective change for crime victims, including in the context of support services. The final three EU Member States – Bulgaria, the Czech Republic and Latvia – signed the Istanbul Convention in 2016, underscoring that all EU Member States accept the convention as defining European standards of human rights protection in the area of violence against women and domestic violence. Meanwhile, the convention continued to prompt diverse legislative initiatives at Member State level.

8.1. Confronting rule of law challenges and hurdles to justice

Effective and independent justice systems play a key role in upholding the rule of law. Together with respect for fundamental rights and democracy, the rule of law is listed in Article 2 of the Treaty on European Union (TEU) as one of the core values on which the Union is founded. As in the previous year, the EU, Council of Europe and United Nations (UN) pursued numerous actions in 2016 to strengthen judicial independence and the rule of law more generally.

In previous years, and as discussed in past FRA Fundamental Rights Reports, various actors called for the European Commission to take action concerning possible violations of the rule of law in several EU Member States, including **Poland, Romania and Hungary**.¹ In 2016 the Commission decided – for the first time – to carry out an assessment of the situation in a Member State, namely **Poland**, on the basis of its Rule of Law Framework, adopted in 2014.² The Commission first issued a formal opinion³ setting out its concerns. These related to the failure to appoint lawfully nominated judges to the Polish Constitutional Tribunal; the lack of publication and full implementation of the tribunal's judgments; and the lack of safeguards to

ensure that any reform of the Law on the Constitutional Tribunal respects the judgments of the tribunal and makes sure that its effectiveness as a guarantor of the constitution is not undermined. This opinion was followed by the second step provided for in the Rule of Law Framework: concrete rule of law recommendations to the Polish authorities on how to address these concerns, giving the Polish government three months to take appropriate actions.⁴ The European Parliament joined the Commission's efforts to tackle these rule of law challenges and adopted resolutions calling on the Polish authorities to follow up on the Commission's Rule of Law Opinion and the recommendations.⁵

On 27 October, however, the Polish government rejected these recommendations as “groundless” and based on “incorrect assumptions”.⁶ In response to this rejection, and taking into account the latest developments in Poland, the Commission complemented its earlier recommendations with additional recommendations in December 2016, providing the Polish government with a two-month deadline to take appropriate actions.⁷ In the supplemental recommendations, the Commission recommended that Poland ensure that:

- the Constitutional Tribunal can as a matter of urgency effectively review the constitutionality of the Law on the status of judges, the Law on organisation and proceedings and the Implementing Law,

and that these judgments are published without delay and implemented fully;

- the appointment of the new President of the Constitutional Tribunal does not take place as long as the Constitutional Tribunal's judgments on the constitutionality of the new laws have not been published and implemented fully, and as long as the three judges who were lawfully nominated in October 2015 by the preceding Sejm (lower house of the Polish parliament) of the seventh term have not taken up their judicial functions in the tribunal;
- until a new President of the Constitutional Tribunal is lawfully appointed, he is replaced by the Vice-President of the tribunal, and not by an acting president or by the person appointed as President of the Constitutional Tribunal on 21 December 2016.

If no satisfactory follow up is carried out within the set time limit, the procedure laid down in Article 7 of the TEU could be triggered based on a proposal by the Commission, the European Parliament or one third of the Member States.

The Council of Europe's European Commission for Democracy through Law – the Venice Commission – also adopted opinions in 2016, in which it deemed incompatible with the requirements of the rule of law the legislative changes concerning the functioning of the Polish Constitution Tribunal and the independence of its judges.⁸ The Council of Europe's Commissioner for Human Rights, Nils Muižnieks, and the UN Human Rights Committee joined EU actors and the Venice Commission in urging the Polish government to find a solution to the country's current rule of law and human rights situation.⁹

Meanwhile, the European Parliament sought to enhance the effectiveness of different mechanisms available to the EU institutions to prevent and address rule of law concerns in Member States. It adopted a resolution in 2016 calling for a permanent mechanism on democracy, the rule of law and fundamental rights in the form of an agreement concluded among the EU institutions. It specified that such a mechanism should align with, and complement, existing mechanisms and end the current 'crisis-driven' approach to perceived breaches of democracy, the rule of law and fundamental rights in EU Member States.¹⁰ The resolution further stated that such a EU mechanism should ensure that all EU Member States respect the values enshrined in the EU treaties and set clear, evidence-based and non-political criteria for assessing their records on democracy, rule of law and fundamental rights in a systematic way and on an equal footing.

Acknowledging the key role national justice systems play in upholding the rule of law, the European Commission in 2016 continued to support EU Member State efforts to strengthen the effectiveness of their national justice

systems through its EU Justice Scoreboard, an informational tool via which it provides relevant data on an annual basis.¹¹ The scoreboard looks at civil, commercial and administrative cases, focusing on three main aspects: the efficiency of justice systems; quality indicators; and independence.

The Commission presented key findings from its 2016 EU Justice Scoreboard in April. It noted that some countries made progress in certain areas by shortening civil and commercial litigation processes and improving access to justice systems for citizens and businesses. This resulted particularly from allowing for the electronic submission of small claims and promoting Alternative Dispute Resolution methods. However, the findings also showed that there is still room for improvement in the availability of judgments online and in electronic communication between courts and parties. Moreover, training on judicial skills and the use of information and communication technologies in case management systems need to be improved.

The 2016 Scoreboard contained several new features. Its analysis for the first time referred to results of Eurobarometer surveys conducted to examine citizens' and businesses' perceptions of judicial independence. The scoreboard also used new indicators, in particular on judicial training, the use of surveys, the availability of legal aid and the existence of quality standards.

"Independent courts keep governments, companies and people in check. Effective justice systems support economic growth and defend fundamental rights. That is why Europe promotes and defends the rule of law."

Jean-Claude Juncker, President of the European Commission, *State of the Union 2016: Towards a better Europe – a Europe that protects empowers and defends*, 14 September 2016

The Council of Europe adopted a new 2016–2021 Plan of Action on strengthening judicial independence and impartiality in April 2016. This plan follows up on findings from a 2015 report by Thorbjørn Jagland – the Council of Europe's Secretary General – on the state of democracy, human rights and the rule of law in Europe.¹² It is based on three courses of action involving measures that aim to safeguard and strengthen the judiciary in its relations with the executive and legislature; protect the independence of individual judges and ensure their impartiality; and reinforce the independence of the prosecution service.

"It is vital that judicial independence and impartiality exist in practice and are secured by law. It is equally important that public confidence in the judiciary be maintained or restored. The measures proposed are designed to promote a culture of respect for judicial independence and impartiality, which is crucial in a democratic society based on human rights and the rule of law."

Thorbjørn Jagland, Council of Europe Secretary General, *Speech delivered at High-Level Conference of Ministers of Justice and representatives of the Judiciary, Sofia, 21 April 2016*



8.2. Protecting procedural rights in criminal proceedings

Protecting the human rights of individuals subject to criminal proceedings is an essential element of the rule of law. With freedom of movement resulting in increased mobility in the EU for study, travel or work purposes, and large movements of refugees and migrants continuing across the EU (see Chapter 5), there is a greater risk that people may find themselves involved in criminal proceedings in a country other than their own. Persons who are suspected or accused of crimes in countries other than their own are particularly vulnerable, so appropriate procedural safeguards are crucial. This reality prompted adoption of a Roadmap on procedural rights of suspects and accused persons in criminal proceedings in 2009 (see Figure 8.1), providing for various instruments that aim to make sure that individuals receive a fair trial anywhere in the EU.

This section provides an overview of developments in the implementation of the 2009 Roadmap. It first

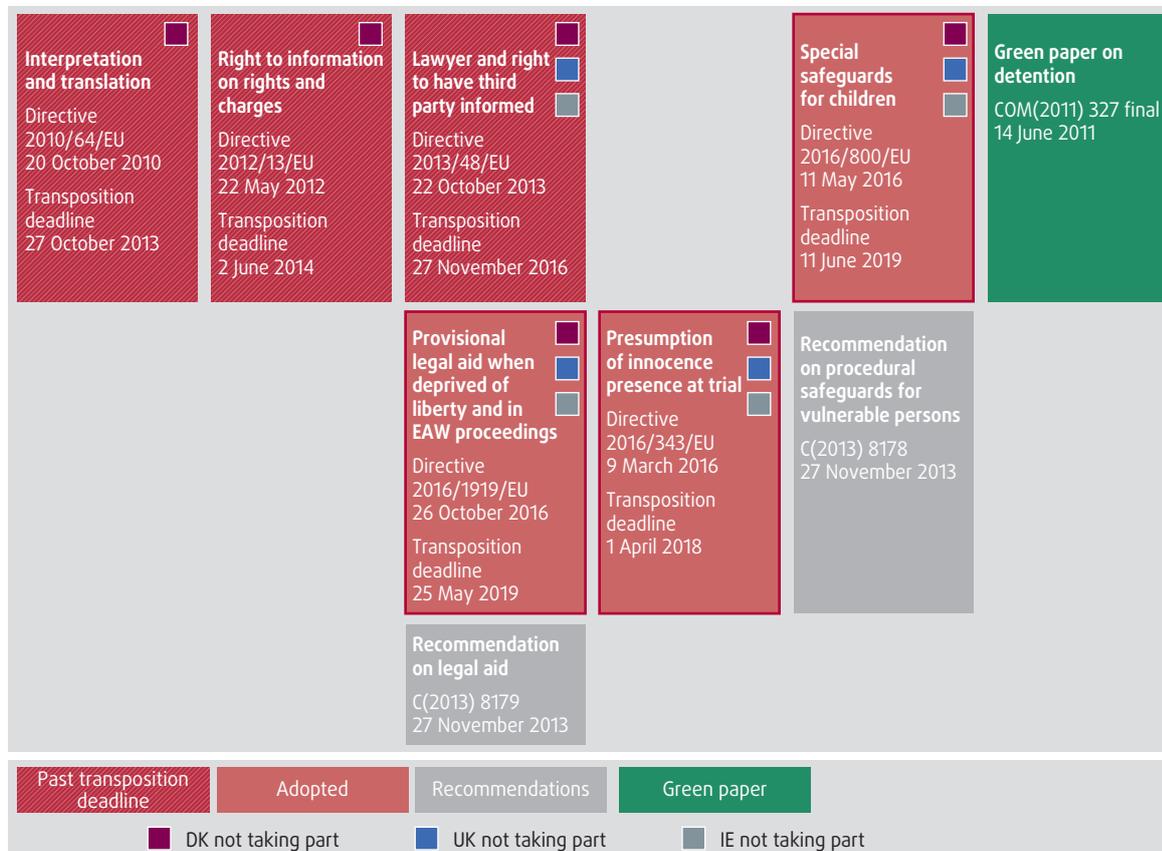
looks at new legislative developments at EU level, highlighting three directives adopted in 2016. It then focuses on directives whose transposition deadlines have already passed, presenting relevant European case law and reviewing pertinent developments at Member State level.

New directives further strengthen procedural rights in criminal proceedings

In 2016, the EU completed implementation of the 2009 Roadmap by adopting three directives. These three directives afford suspects and accused persons procedural protection in the course of criminal proceedings in line with established international standards, in particular those arising from Article 47 of the EU Charter of Fundamental Rights (right to an effective remedy and to a fair trial) and Article 6 of the European Convention on Human Rights (ECHR) (right to a fair trial).

On 9 March, the Council and the European Parliament adopted Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and the right to be present at trial in criminal proceedings.¹³

Figure 8.1: Roadmap on procedural rights of suspects and accused persons in criminal proceedings



Note: Roadmap for strengthening procedural rights of suspects and accused persons in criminal proceedings, adopted by the Council of the EU on 30 November 2009 and incorporated into the Stockholm Programme.

Source: FRA, 2016

It strengthens the right to a fair trial by laying down common minimum rules in these areas. The directive also affirms that the right to remain silent and the right not to incriminate oneself are important aspects of the presumption of innocence. Member States have to transpose this directive by 1 April 2018.

On 11 May, the Council and the European Parliament adopted Directive 2016/800/EU on procedural safeguards for children who are suspects and accused persons in criminal proceedings.¹⁴ The directive aims to make criminal proceedings more understandable and easier to follow for children who are suspected or accused of crime, and to prevent them from reoffending by fostering their social integration. The transposition deadline for this directive is 11 June 2019. For more information on FRA's work on children as victims and witnesses in criminal proceedings, see ► [Chapter 7](#) on the rights of the child.

The last directive envisaged in the roadmap – Directive 2016/1919/EU on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings¹⁵ – was adopted on 26 October. This directive aims to ensure the effectiveness of the right of access to a lawyer provided for under Directive 2013/48/EU by making legal aid available to accused persons in criminal proceedings and to persons who are the subject of European arrest warrant proceedings. Member States have until 25 May 2019 to transpose this directive.

European courts on right to interpretation and translation, to information, and to access a lawyer

The 2009 Roadmap includes three other directives – on the rights to interpretation and translation, to information, and to access to a lawyer – which Member States were required to transpose by 2013, 2014 and late 2016, respectively. Because of its specific opt-out regime, **Denmark** is not bound by any of the three directives,¹⁶ while **Ireland** and the **United Kingdom** are not bound by the directive on the right to access a lawyer.¹⁷

The Court of Justice of the European Union (CJEU) issued several decisions in 2016 that further clarified the scope of these directives. In June 2016, it delivered a preliminary ruling on the scope of Directive 2010/64/EU on the right to interpretation and translation.¹⁸ The *Balogh* case¹⁹ centred on the translation of a judgment in the course of a special procedure under Hungarian law used to recognise foreign convictions. The CJEU held that the special procedure did not constitute criminal proceedings and therefore did not fall within the scope of the directive. Given that the procedure's only purpose was to accord the foreign conviction the same status as convictions delivered by Hungarian courts, it did not form part of the main proceedings.

Translation was not necessary to protect the convicted person's right to a fair hearing. Moreover, in the course of the main criminal proceedings, the person had already obtained a translation of the foreign judgment.

The European Court of Human Rights (ECtHR) took into account Directive 2013/48/EU on the right of access to a lawyer²⁰ and Directive 2012/13/EU on the right to information²¹ in *Ibrahim and Others v. United Kingdom*.²² In that case, the police arrested the applicants in connection with the July 2005 explosions in London. They were interviewed urgently, without the presence of a lawyer, to obtain information about further planned attacks. The ECtHR found that the right to access a lawyer could in certain circumstances be restricted, referring to, among others, the similar approach taken in Article 3 (6) of Directive 2013/48/EU. According to the court, authorities are allowed to interrogate individuals without a lawyer present to protect the rights of potential or actual victims. It follows that, when the life or security of others is at stake, urgent interrogation without a lawyer's presence to obtain information that could help prevent damage can be justified. The ECtHR also stated that the right to be informed of one's defence rights is inherent in the right to avoid self-incrimination, the right to silence and the right to access a lawyer. It ruled that, when suspects are not notified of their rights or access to a lawyer is delayed, there is a presumption of unfairness, which the government then has to rebut.

National developments on right to interpretation and translation, to information, and to access a lawyer

EU Member States continued to adopt legislative measures to comply with Directives 2010/64/EU (on interpretation and translation) and 2012/13/EU (on information) after their transposition deadlines. As in 2015, they mostly did so to clarify certain mechanisms put in place or to address issues that arose from implementation. With the transposition deadline for Directive 2013/48 (access to lawyer) expiring in November 2016, Member States also adopted new laws to transpose this directive. However, as outlined below, EU Member States still need to address various issues, particularly by way of targeted policy measures such as concrete guidance, to ensure that all of these instruments work effectively in practice.

Belgium adopted legislation transposing Directive 2010/64/EU only in November 2016.²³ Meanwhile, several other Member States amended existing implementing laws. For example, **Hungary** introduced a requirement for interpreters and translators to observe confidentiality regarding their services.²⁴ In **Italy**, new legislation partly reformed the 2014 implementation law by introducing the possibilities of interpretation via video-conference in criminal proceedings and of replacing written translations with oral translations. It also set up an

official national list of translators and interpreters and limited assistance from state-funded interpreters during conversations between clients and lawyers.²⁵

Legislative proposals to amend the existing implementing laws were put forth in **Ireland** (on conditions for using Irish Sign Language in courts in a Private Members Bill)²⁶ and the **United Kingdom** (provision of live-link interpretation).²⁷ Additionally, **Cyprus** introduced some non-legislative measures. The Chief of Police issued circulars to all police stations to instruct members of the police on the procedure for appointing interpreters when investigating cases involving foreign witnesses or suspects.²⁸ The list of interpreters has also been posted on the police central portal, and the duties of the interpreter are now spelled out in a circular letter used during police investigations.²⁹

Meanwhile, national courts in 2016 continued to provide guidance on interpreting the relevant implementing laws. In **Finland**, for example, the Supreme Court clarified that the obligation stemming from Directive 2010/64/EU requires the state to meet the costs of interpreting communications between suspects and their legal counsel when lodging an appeal, irrespective of the outcome of the proceedings and irrespective of the suspect's financial situation.³⁰

The Appeals Penal Court of Athens in **Greece** confirmed that, in line with the directive, a bill of indictment is an essential document that has to be officially and fully translated and served to the defendant in a language that he or she understands; the procedure is otherwise absolutely null.³¹ The Kaunas Regional Court in **Lithuania** also clarified the definition of 'essential documents'. It reiterated that there is no statutory obligation to translate all procedural documents; only those that have to be served on parties pursuant to the Criminal Code must be translated. The code does not require serving the accused with a prosecutor's appeal against a court's decision to refer the case back to the prosecutor to supplement the pre-trial investigation. Therefore, there is no statutory obligation for the prosecutor to provide a translation of such an appeal.³² Courts in **Ireland** had the opportunity to examine the need for sign-language interpretation services in criminal proceedings; in one case, they allowed for an appeal because no sign-language interpreter was present.³³

Finally, as part of an infringement procedure, the European Commission adopted a reasoned opinion requesting **Lithuania** to fully implement procedural rights on interpretation and translation during criminal proceedings. Lithuania was given two months to notify the Commission of measures taken to remedy the situation; otherwise, its case may be referred to the CJEU.³⁴ Some measures were already taken in December, with a draft amendment to the Criminal Procedure Code introduced that month.³⁵

EU Member States in 2016 also continued their efforts to ensure the effective application of the rights set out in Directive 2012/13/EU (right to information), following the expiry of its transposition deadline in 2014.

A new law adopted in **Latvia** deals with proposals to remand persons in custody. It provides that, as soon as such a proposal is received and before the measure is actually applied, accused persons have the right to become familiar with the details on which the proposal is based.³⁶

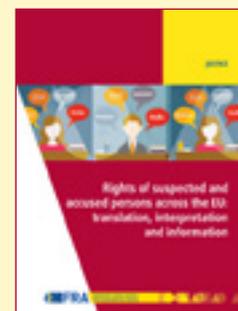
Member States also pursued pertinent non-legislative initiatives. **Cyprus** introduced a simplified version of the letter of rights, which is now available in 19 languages.³⁷ The Ministry of Justice in **Malta** launched a Quality Service Charter for persons accessing court services, which includes information on rights of accused persons who have been arrested.³⁸

National courts provided further guidance on interpreting the right to information in light of relevant fundamental rights standards. For example, the Court of Cassation in **France** ruled on the right to remain silent in a case involving an event that took place before the law implementing Directive 2012/13/EU came into force. The court instead referred to Article 6 (3) of the ECHR. It declared that any person placed in police custody should be informed of their right to remain silent and be able to benefit from a lawyer's assistance. The case concerned a man convicted of sexual assault based on his own statements, which the police obtained without informing the suspect of his right to remain silent. It should be noted that there were additional procedural and material shortcomings in the case; the violation of the rights to remain silent and to assistance of a lawyer did not serve as the only basis for the judgment's annulment. The Court of Cassation remitted the case back to the Court of Appeal of Versailles.³⁹

FRA ACTIVITY

Highlighting opportunities to bolster rights in criminal proceedings

The vast majority of EU Member States have adopted legislation transposing Directives 2010/64/EU and 2012/13/EU. FRA's 2016 report on the rights protected by these two directives outlines progress made in their implementation. Its findings identify concrete opportunities to further bolster protection of the rights to translation, interpretation and information.



For more information, see FRA (2016), *Rights of suspected and accused persons across the EU: translation, interpretation and information*, Publications Office of the European Union, Luxembourg

The deadline for transposing Directive 2013/48/EU (right to access a lawyer) passed on 27 November 2016. Many Member States adopted the necessary measures to do so: **Belgium**,⁴⁰ **Finland**,⁴¹ **Hungary**,⁴² **Italy**,⁴³ **Latvia**,⁴⁴ **Malta**,⁴⁵ **Slovakia**,⁴⁶ **Sweden**,⁴⁷ the **Netherlands**⁴⁸ and **Romania**.⁴⁹

Draft legislative measures to transpose the directive are currently pending before the national parliaments of several other Member States: **Cyprus**,⁵⁰ the **Czech Republic**,⁵¹ **Germany**,⁵² **Greece**,⁵³ **Luxembourg**⁵⁴ and **Lithuania**.⁵⁵ In the **Netherlands**, the Public Prosecution Service published policy guidance on how to implement suspects' right to the assistance of a lawyer during questioning by the police or the Public Prosecution Service.⁵⁶

8.3. Member States shore up victim support services

Several Member States continued to work towards adopting legislation to transpose the Victims' Rights Directive (2012/29/EU) in 2016, even though its transposition deadline already passed on 16 November 2015. However, the majority of Member States concentrated on applying national laws transposing the directive. They focused on issues such as improving victim support services, training, the provision of information, and individual assessments of victims.

The European Parliament's and Council's agreement on the Directive on combating terrorism in November 2016 was a notable development.⁵⁷ The directive was adopted on 7 March 2017. In addition to strengthening the EU's legal framework for preventing terrorist attacks, it reinforces the rights of victims of terrorism. Victims will have the right to immediate access to professional support services providing medical and psycho-social treatment, to receive legal or practical advice, and to receive assistance with compensation claims. It will also strengthen emergency response mechanisms following attacks. At the national level, **Belgium** and **France** stepped up support services to victims of terrorism in 2016 in response to the terrorist attacks that occurred in those countries. For example, victim support services in Brussels organised specific support for victims of terrorist attacks,⁵⁸ while France set up an Information and Accompaniment Centre to support victims of terrorism, led by the victims' assistance association *L'Institut national d'aide aux victimes et de méditation* (INAVEM).⁵⁹

8.3.1. Reinforcing generic victim support services and reaching more victims

Developments in the provision of support to crime victims in 2016 related both to victims in general ('generic') and specifically to child victims. Throughout

the year, Member States worked towards addressing gaps in their victim support infrastructures to meet the demands of the Victims' Rights Directive, improving the information provided to victims; reaching out to more victims and encouraging them to report; providing for the required individual assessment of victims by police to identify particularly vulnerable victims; and boosting the capacity and funding of victim support services.

Reaching more victims

To improve outreach to victims, **Croatia** (through the Association for Support to Victims)⁶⁰ and **Latvia** (through the non-governmental organisation Skalbes)⁶¹ began providing support and information to victims through free helplines on 116 006, the free Europe-wide number for helplines for victims of crime.⁶² The **French** Justice Ministry launched a website in May 2016 to help crime victims find the right court, obtain information on how to access justice, and assess their entitlement to legal aid.⁶³

In an attempt to also reach out to victims from other countries, and to encourage reporting of crime, the Minister for the Interior in **Bulgaria** approved forms to assist people (including non-Bulgarians) to report 'typical' crimes to the police – for example, theft, injury or fraud.⁶⁴ These forms are available in five languages: Bulgarian, English, French, German and Russian.⁶⁵

Some Member States registered an increase in the numbers of victims requesting support. For example, since January 2016, the police in **Croatia** have been providing victims with information on their rights and contact details of available support services, including court departments and local civil society support organisations. The cooperation resulted in an increase in the number of people contacting services. Victim Support **Finland** reported a clear increase in the number of support relationships – longer-term relationships, where the crime victim is in need of extended support⁶⁶ – in 2016. (As is further discussed below, funding to the organisation increased significantly in 2016.⁶⁷) The number of longer-term support relationships was 3,572 in 2016, compared with 2,590 in 2015. Similarly, the number of contacts – for example, one-off queries from crime victims – was 44,046 in 2016, compared with 35,638 in 2015.⁶⁸ The **Czech Republic** also reported a higher number of victims supported in 2016 than in 2015.⁶⁹ Finally, in the hope that more victims will benefit from and make use of services, **Poland** extended the scope of victim support services in 2016 – for example, to cover help from interpreters, help in getting payments for medication refunded, and increasing vocational training.⁷⁰

Promising practice

Providing online support for crime victims

In April 2016, Victim Support **Malta** launched a website called 'Victim Support Online' to provide professional support to crime victims in a confidential and anonymous manner. Providing online support is a way to encourage more victims to seek support and receive information relevant to their cases. The website also aims to raise awareness of rights.

For more information, see the website of Victim Support Online

Germany's largest victim support organisation, Weisser Ring, launched an online helpdesk in August 2016. A total of 17 trained support workers advise and assist crime victims who email them seeking help. They provide online advice in writing – currently in German only. Victims can remain anonymous if they wish.

For more information, see Weisser Ring, 'Onlineberatung des Weissen Rings'; Weisser Ring, 'Weisser Ring: Online helpdesk starts'

Providing for individual assessments of victims

As noted in the *Fundamental Rights Report 2016*, most EU Member States still need to adopt measures to ensure that victims are assessed individually to identify specific protection needs, as required by Article 22 of the Victims' Rights Directive. The directive specifies that such assessments are to be provided in accordance with national procedures; in practice, police often carry these out. There were several positive developments at Member State level regarding such assessments in 2016.

In **Ireland**, Police Victim Service Offices were put in place across all areas of the state in 2016. These offices provide a central point of contact for crime victims in local areas, and are staffed by specially trained police members and civilian personnel. **Bulgaria** formed a civic council and a working group to make proposals on guaranteeing vulnerable victims' rights to individual assessments and special protection measures in accordance with the directive. **Croatia** implemented a 'Targeted Early Victim Needs Assessment and Support' project from January 2016 to June 2017.

Boosting victim support services' capacity and funding

In a notably positive trend, a significant number of Member States increased state funding for victim support services in 2016. These include **Croatia, Finland, France, Ireland, Luxembourg, Malta, the Netherlands, Sweden** and the **United Kingdom**. In some Member States, such increases came about in direct response to obligations

under the Victims' Rights Directive, or expectations – for example, in Ireland⁷¹ – that more victims would seek assistance once the directive came into force.

In **France**, the budget for victim support has almost doubled – from € 10.2 million in 2012 to € 20 million in 2016. It increased by 18 % from 2015 to 2016.⁷² There was also a substantial increase in the funds for victim support generated by the Council administering the **Danish** Victims Fund in 2016.⁷³ These funds are not subject to economic or political considerations but stem from victim payments made by, for example, persons who have been sentenced under criminal legislation or have violated the Danish Road Traffic Act. Many other Member States have similar schemes to ensure steady funding for victims of crime, as FRA has found previously – for example, **Belgium, Estonia, Finland, France, Lithuania, Poland, Portugal, Sweden** and the **United Kingdom**.⁷⁴ Similarly, the Ministry of Justice of **Croatia** in 2016 for the first time received lottery funds to finance civil society organisations that provide support to victims and witnesses in counties with no established offices for such support at courts.⁷⁵ Increased funding enabled Victim Support **Finland** to increase its staff by almost 40 %. This has made it possible for the organisation to focus more on advertising services and developing online chat services. 'RIKUchat' is an online service for victims, their families or others to ask questions (anonymously if they wish) and receive guidance and advice on crime victim issues from trained persons. The service began in 2012, and is increasingly being used, with the number of chat discussions more than doubling between 2015 and 2016.⁷⁶

However, challenges remained with regard to the implementation of the Victims' Rights Directive. For example, while **Cyprus** incorporated the directive into national law in April, few structures were reportedly in place for its implementation. No services have been offered to victims under the incorporating legislation, nor has any budget been allocated for the services planned.

Finally, notwithstanding the important progress made in many Member States in 2016, not all Member States have yet set up effective victim support services that are available to all victims of crime, despite the obligation in Article 8 of the Victims' Rights Directive to establish such services.⁷⁷

Establishing effective victim support services is among the most important provisions of the Victims' Rights Directive (Articles 8 and 9), as they enable victims to access other rights under the directive in practice. Previous Fundamental Rights Reports, as well as FRA's 2015 report on *Victims of crime in the EU: The extent and nature of support for victims*, make this point, and FRA evidence on hate crime published in April 2016 reinforces it. FRA's report on *Ensuring justice for hate crime victims: professional perspectives*⁷⁸ offers insights

into the reporting and recording of hate crimes from the perspective of professionals: courts, public prosecutors, police officers and victim support organisations. It analyses the specific factors that affect how and why hate crime victims do or do not seek justice and the barriers and drivers to victims' success in being acknowledged as victims of severe discrimination. The Victims' Rights Directive provides that all crime victims should have access to professional support services. This includes victims of hate crime, whom the directive recognises as a category of victims in need of special protection. However, the actual situation clearly falls short of this goal; of all the experts FRA interviewed, six in 10 highlighted a lack of such services. For more information on hate crime, see [Chapter 3](#) on Racism, xenophobia and related intolerance.

8.3.2. Trends in support services for child victims

Taking account of the Victims' Rights Directive's special focus on child victims, Member States made efforts to increase support for such victims. This included working both on reaching more victims – for example, by increasing funding to victim support services – and on improving the quality of support – for example, by training more professionals.

In Denmark and Ireland, the number of child victims who received assistance substantially increased, according to their most recent statistics. The Department of Justice and Equality in **Ireland** indicated that the large increase (in 2016) was partly due to extra funding provided for a programme run by the organisation Children at Risk in Ireland (CARI).⁷⁹ **Denmark** has five specialised 'children's houses' – established in 2013 – to support child victims of violence or sexual abuse. In 2015, 27 % more children received support from these than in 2014. The increase reflects the rise in referrals from municipalities to the children's houses.⁸⁰

Bulgaria initiated a project on child-friendly justice and training of professionals. Among other objectives, it aims to strengthen the participation of prosecutors and police officers in the coordination mechanisms for child victims and to improve the facilitation of child-friendly hearings for child witnesses and victims.⁸¹ The State Agency for Child Protection (SACP) and the Bulgarian Paediatric Association (BPA) are planning to train paediatricians in recognising violence against children, as evidence shows that very few doctors report such cases. The SACP has recommended that such training become part of medical students' regular training.⁸²

The Association for Victim Support (APAV) in **Portugal** launched a specialised support network for children and young people who are victims of sexual abuse (CARE network) in January 2016.⁸³ During the first half of 2016, the network supported an average of

17 children per month. Police in **Cyprus** established a special unit for investigating cases of child sexual abuse in December 2016. The unit, supported by specialised personnel, aims to provide professional child-centred services to protect and support victims.⁸⁴ The Commissioner for the Protection of the Rights of the Child issued a public statement applauding this decision, highlighting the prospect of conducting interviews with children who are victims or witnesses in the safe and child-friendly environment of the 'House for the Child', in collaboration and coordination with other public services and in line with international standards for investigating cases of sexual abuse.⁸⁵

In the **United Kingdom**, the **Northern Ireland** Department of Justice launched a consultation on a new Witness Charter. It will state that witnesses and victims under the age of 18 are entitled to receive help from a Victim and Witness Care Unit to access support; be automatically considered eligible for special measures; and receive therapy/counselling from a trained person.⁸⁶ The effort includes a child-friendly version of the Witness Charter, entitled 'A guide for young people by young people'.⁸⁷

Scotland held a consultation from March to June 2016 on raising the minimum age of criminal responsibility from eight to 12.⁸⁸ In its contribution, Victim Support Scotland highlighted the importance of maintaining support for young victims of crime regardless of the age of the offender – of particular concern because "a substantial proportion of offences committed by young people are perpetrated against another young person".⁸⁹ For further information on the rights of children, see [Chapter 7](#); [Section 7.2](#) discusses the rights of children accused or suspected of crime.

Despite positive developments, some Member States still need to make considerable progress to ensure adequate and effective victim support for children. The UN Committee on the Rights of the Child pointed out deficiencies in dealing with child victims of violence in **Slovakia**, especially with regard to the reporting of suspected physical or sexual abuse and the absence of exact data and monitoring of the quality of crisis centres for child victims.⁹⁰ The Coalition for Children Slovakia, a network of non-governmental organisations promoting the rights of children, also points to a lack of funding of facilities that provide support to child victims.⁹¹

8.4. Violence against women and domestic violence

The Istanbul Convention strongly influenced developments relating to violence against women at EU and national levels. While the EU moved towards ratifying the convention, there was also progress at

national level, with Member States either ratifying it or implementing its provisions.

8.4.1. Developments at EU level

In November 2016, the European Commission released the results of a Eurobarometer survey on gender-based violence.⁹² Respondents – women and men – were asked about their opinions, perceptions and awareness concerning domestic violence, as well as their views on appropriate legal responses to different forms of gender-based violence.

A clear majority of respondents across the EU considers rape by an intimate partner to be wrong. Nevertheless, under 30 % of respondents in **Bulgaria, Italy, Lithuania, Portugal, and Spain** deemed it ‘wrong and already against the law’, while about half of the respondents in these countries said that rape by an intimate partner is wrong but they believe that it is not illegal.

About two in five respondents in **Malta** (47 %), **Cyprus** (44 %), **Lithuania** (42 %) and **Latvia** (39 %) agree with the statement that ‘women often make up or exaggerate claims of abuse or rape’. Latvia, Lithuania and Malta are also the three countries with the highest percentages of respondents who agree with the statement that ‘violence against women is often provoked by the victim’ (57 %, 45 % and 40 %, respectively).

Awareness of support services listed in the survey ranged from close to 100 % of respondents in **Germany, Malta, and Sweden** to under 30 % in the **Czech Republic and Romania**.

The data were released as part of the Commission’s launch of the year of focused actions to combat violence against women.⁹³ It aims to connect all efforts across the EU and engage and support all stakeholders – Member States, relevant professionals, and NGOs – to collectively combat violence against women. The focused actions involve local, national and EU-level action, with funding for national authorities and grassroots initiatives and complementary and supportive action at the EU level.

Meanwhile, on 24 November 2016, the European Parliament issued a resolution calling on the Council and the Commission to speed up negotiations on the signing of the Istanbul Convention and to ensure that the parliament would be fully engaged in the monitoring process following the EU’s accession to the convention.⁹⁴

In its *Fundamental Rights Report 2016*,⁹⁵ FRA highlighted the importance of recognising that violence against women constitutes a fundamental rights abuse and supported the Commission’s initiative towards the EU’s accession to the Istanbul Convention. In March 2016, the Commission proposed that the EU ratify the convention within its competences, and alongside the Member

States that have already ratified it.⁹⁶ The EU’s accession to the convention would ensure accountability for the EU at the international level because it would have to report to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the convention’s monitoring body. It would also reinforce the EU’s role in fighting gender-based violence.

The European Institute for Gender Equality (EIGE) in 2016 published selected good practices aimed at improving the quality of data on violence against women in the areas of police and criminal justice, health and social services, and on female genital mutilation.⁹⁷ In addition, EIGE published an analysis of the Victims’ Rights Directive from a gender perspective.⁹⁸

8.4.2. Improvements at Member State level

Last year saw significant progress in establishing the monitoring mechanism set out in the Istanbul Convention. In March 2016, the Group of Experts on Action against Violence against Women and Domestic Violence – GREVIO, the independent expert body responsible for monitoring the convention’s implementation – adopted the questionnaire that serves as the measure applied when assessing the legislation and implementation measures that already exist as a baseline in countries that are parties to the convention. GREVIO envisages carrying out an initial round of baseline evaluation procedures from 2016 to 2020. As the first EU Member State evaluated and visited by GREVIO, **Austria** submitted a report in September 2016,⁹⁹ which Austrian NGOs followed up with a shadow report.¹⁰⁰ GREVIO plans to draw up and adopt its evaluation report on the relevant situation in Austria by the summer of 2017.¹⁰¹

Domestic violence can affect both women and men. It is mostly women who fall victim, but there is also recognition of the needs and rights of male victims. An example comes from **Portugal**, where a shelter for male victims of domestic violence opened in September 2016.¹⁰² In the **Czech Republic**, a government working group conducted research on men and violence. The findings indicate that men perpetrate domestic violence in 90–95 % of cases, and that women are victims in 90 % of cases. The authors recommend introducing a sustainable, gender-sensitive educational system, which should enable people to identify gender-based and sexually motivated violence and take appropriate steps when facing it.¹⁰³

In its *Fundamental Rights Report 2016*, FRA called on Member States to sign, ratify and effectively implement the Istanbul Convention. In this respect, 2016 was a good year. The last three Member States signed the convention (**Bulgaria, the Czech Republic and Latvia**) and two Member States ratified it (**Belgium and Romania**).¹⁰⁴ Several Member States – including **Bulgaria**,¹⁰⁵ **Croatia**,¹⁰⁶ **Greece**,¹⁰⁷ **Luxembourg**¹⁰⁸ and **Romania**¹⁰⁹ – established

working groups to identify the precise legislative reforms needed to meet the requirements of the Istanbul Convention, and in **Cyprus** the government has commissioned studies to the same end.¹¹⁰

Article 36 of the Istanbul Convention requires that any non-consensual act of a sexual nature be criminalised. **Austria, Germany** and **Malta** took initiatives to adapt national legislation to this requirement. In **Austria**, a new criminal law provision entered into force in January 2016, aiming to fill gaps left by previously existing provisions.¹¹¹ In **Germany**, as of November 2016, any significant sexual act undertaken against the apparent will of an affected person is treated as a crime.¹¹² In addition, an offence of 'sexual harassment' was introduced, criminalising bodily contacts for sexual purposes that are unwanted by the affected person. The new provision aims to criminalise, for instance, groping women in public transport.¹¹³ In **Malta**, the government tabled a bill in parliament in November 2016 with the aim of bringing legislation up to the standards of the Istanbul Convention.¹¹⁴

Belgium amended its Criminal Code by criminalising the act of indecent assault. Previously, it was punishable only when accompanied by violence or threats.¹¹⁵

In **Spain**, parliament approved the establishment of a Subcommittee within the Equality Commission to form a 'State Pact on Gender-Based Violence'. One of the main objectives is to get all political actors involved in combating gender-based violence to agree that they need to take the standards of the Istanbul Convention into account seriously.¹¹⁶

A rather singular development happened in **Poland**. The government considered denouncing the Istanbul Convention, motivated by concerns that the convention's definition of 'gender' would run counter to the preservation of the traditional concept of the family. Such concerns already made ratification of the convention difficult.¹¹⁷ This led to a public debate. The newspaper *Gazeta Wyborcza* reported that the Minister for Family, Labour and Social Policy pronounced herself in favour of denouncing the convention, and the ministry confirmed discussions of this matter.¹¹⁸ However, on 10 January 2017, the Government Plenipotentiary for Equal Treatment informed the Commissioner for Human Rights that the government does not intend to denounce the convention.

Barring orders: protecting victims from repeat victimisation

In line with the Istanbul Convention and the Victims' Rights Directive, Member States are obliged to ensure that measures are available to protect victims from repeat victimisation. FRA's EU-wide survey on violence against women highlighted both the prevalence and the repetitive nature of intimate partner violence

against women. Some of the results underline the importance of providing effective measures against domestic violence. One woman in five who has or has had a partner has experienced physical and/or sexual intimate partner violence since the age of 15, according to the survey.¹¹⁹ Repeat incidents are also a widespread feature of intimate partner violence. Roughly half of women who have experienced physical or sexual violence by their current partner say that the partner used a particular form of physical or sexual violence more than once.¹²⁰

By now, court orders are available in all Member States.¹²¹ Where court orders are dealt with by civil law courts, specialised family courts are often responsible – for example, in **Austria, Belgium, Germany** and **Luxembourg**. In **Malta**, it appears that court protection is limited to divorce and separation cases. In July 2016, the Commission issued a reasoned opinion officially urging **Belgium** to communicate the national measures adopted to allow courts to recognise protection orders for victims of domestic violence issued by other Member States, as required by the Directive on the European Protection Order.¹²²

Complementing court orders, emergency barring orders issued by the police are a means of immediately protecting victims against domestic violence. The requirement to provide them has gradually developed as a recognised standard and core element of a policy to counter violence against women. Five years after adoption of the Istanbul Convention, it is worth taking stock of what has been achieved in this regard. To date, 15 Member States have adopted relevant legislation enabling the police to swiftly remove a suspected violent offender from the victim's residence.

On closer inspection, the pertinent provisions enacted by Member States reveal significant differences. The time span covered by police barring orders ranges from 72 hours in **Hungary** up to several weeks (for example, in **Austria, Denmark, Germany** and **Slovakia**). Several Member States provide two time limits: one restricting the power of the police to issue a barring order without asking for the victim's consent; and a longer time limit for a barring order based on the victim's consent. For instance, in the **Czech Republic**, without the victim's prior consent, the police can remove an offender from the victim's home for 10 days. If the victim applies for a court order within this time period – thereby signalling the victim's wish to extend the time span of the protection granted by the barring order – the order stays in place until the court's decision. In **Slovenia**, the criminal court can extend the barring order from two to 10 days, and for another 60 days at the victim's request.

Table 8.1 maps Member State legislation on emergency barring orders, as required under Article 52 of the Istanbul Convention.¹²³

Table 8.1: Emergency barring orders issued by police in cases of domestic violence

| Member State | Legislation | Duration (in days) | Year(s) of significant law reform (since 1997) |
|--|------------------|-------------------------|--|
| Austria | Yes | 14/28 ^a | 1997, 2009 |
| Belgium | Yes ^b | 10 | 2012 |
| Bulgaria | No | | |
| Croatia | No | | |
| Cyprus | No | | |
| Czech Republic | Yes | 10/until court decision | 2008 |
| Denmark | Yes ^c | 28 | 2004, 2012 |
| Estonia | Yes | ("temporary") | |
| Finland | Yes | (7) ^a | 1998 |
| France | No ^d | | |
| Germany | Yes | 7-14/20-28 ^e | 2002 |
| Greece | No | | 2006 |
| Hungary | Yes | 3 | 2009 |
| Ireland | No | | |
| Italy | Yes ^b | 10 | 2013 |
| Latvia | Yes | Until court decision | 2014 |
| Lithuania | No | | |
| Luxembourg | Yes ^b | 14 | 2003 |
| Malta | No | | |
| Netherlands | Yes ^c | 10/28 | 2009 |
| Poland | No | | |
| Portugal | No | | |
| Romania | No | | |
| Slovakia | Yes | 10/until court decision | 2008, 2016 |
| Slovenia | Yes | 2/10/72 ^a | 2005, 2008, 2013 |
| Spain | No | | 2003, 2004 |
| Sweden | Yes | No explicit limitation | 2015 |
| United Kingdom (England and Wales, Northern Ireland) | Yes ^c | No explicit limitation | 2014, 2015 |

Notes: ^a In several Member States, the duration of the emergency barring order is more or less automatically extended if the victim applies for a court order, to ensure the victim's protection until the court decides. In Finland, the duration of the emergency barring order is not restricted. However, the court is to decide within seven days. If the court cannot decide within that time, it must determine whether or not it remains in force. In Slovenia, the barring order issued by the police lasts for two days, but a judge can extend it to 10 days. If the victim applies for a court order, the duration is extended by another 60 days.

^b In Belgium, Luxembourg and Italy, an emergency barring order requires authorisation by a public prosecutor. However, in Italy, the police can issue the barring order, which is then to be validated by the public prosecutor within 48 hours.

^c In the Netherlands, the mayor, who has authority over the police, issues a temporary restraining order. In Denmark, the police commissioner decides on the emergency barring order. The police have powers to arrest a suspect for up to 24 hours to protect the victim until the police commissioner makes a decision. In England and Wales and in Northern Ireland, a Domestic Violence Protection Notice, issued by a police officer of the rank of superintendent or higher, can prohibit a person from entering premises or coming within a certain distance of premises. A police constable must then apply to the courts for a Domestic Violence Protection Order within 48 hours. As concerns Scotland, see the Joint Protocol between Police Scotland and Crown Office and Procurator Fiscal Service.¹²⁴

^d In France, the police are not authorised to issue a barring order, but other protection mechanisms have been introduced, including authorisations of the public prosecutor and the court to evict the violent spouse.

^e In Germany, police legislation is dealt with by the federal states (Länder). Hence, various models exist.

Source: FRA, 2016

Regarding the actual use of barring orders, figures from **Belgium** concerning incidents of partner violence indicate that police are hesitant to ask the public prosecutor to issue a barring order. In 2013 and 2014, 98,093 incidents of domestic violence were reported to the police, but only 65 of these incidents resulted in temporary barring orders.¹²⁵ As concerns **Estonia**, it has been

claimed that the relevant police powers are rarely used in domestic violence cases.¹²⁶ In comparison, in **Austria**, police issued 8,466 barring orders in 2014 and 8,261 in 2015 (with some 8.6 million inhabitants, this amounted to about one barring order issued per 1,000 inhabitants).¹²⁷ In **Luxembourg**, 327 barring orders were issued in 2014 (0.6 barring orders per 1,000 inhabitants).¹²⁸ In

Hungary, police issued 1,792 barring orders in 2014, and 1,552 in 2015; hence, 0.2 barring orders per 1,000 inhabitants in 2015. However, as the protection offered by the police barring order in Hungary lasts for only 72 hours, NGOs have challenged the effectiveness of this regulation.¹²⁹

Instead of introducing a barring order issued immediately by the police, a small group of Member States allow the police to arrest the potentially violent offender with a view to enabling the court or a public prosecutor to issue a protection order while the defendant is detained. A practice of this type exists in **Bulgaria, France, Ireland, Lithuania, Poland** and **Spain**.

8.4.3. Violence against asylum-seeking women

The ongoing reform of the Common European Asylum System includes a Commission proposal to strengthen the provisions on vulnerable applicants. This includes more ambitious provisions for assessing vulnerability and an obligation for Member States to take into account the specific needs of women applicants who have experienced gender-based harm. The strengthened provisions also aim to ensure that asylum applicants have access to medical care, legal support, appropriate trauma counselling and psycho-social care. The proposal for the new Asylum Procedure Regulation advocates gender-sensitive international protection. Women, for instance, should be given an effective opportunity to have a private interview, separate from their spouse or other family members. Where possible, they should be assisted by female interpreters and female medical practitioners, especially if they may have been victims of gender-based violence.¹³⁰

In 2016, FRA provided evidence to GREVIO, focusing on the agency's findings concerning violence against female asylum seekers, both women and girls. That issue is covered in Article 60 of the Istanbul Convention, according to which parties to the convention shall – among others – develop gender-sensitive reception and asylum procedures. A recent field assessment of risks for refugee and migrant women and girls, carried out by the United Nations Refugee Agency (UNHCR), United Nations Population Fund (UNFPA) and the Women's Refugee Commission in Greece and the Former Yugoslav Republic of Macedonia, identified instances of sexual and gender-based violence in the country of origin and during the journey to Europe in 2016. They included early and forced marriage, transactional sex, domestic violence, rape, sexual harassment and physical assault.¹³¹ The report identifies sexual and gender-based violence as both a reason why refugees and

migrants are leaving countries of origin, and a reality for women and girls along the refugee and migration route. The report concludes that “the response to the European refugee and migrant crisis is currently not able to prevent or respond to survivors of sexual and gender-based violence in any meaningful way”.

In the same vein, Amnesty International reported in June 2016 that women staying in refugee camps in Greece continue to raise fears of not feeling safe. These fears are due to the mixed populations in the camps, the mixing of men and women in tents, in some cases, and the lack of proper lighting at night.¹³² Similarly, the European Women's Lobby published a report indicating that “women and girls fleeing conflicts and travelling to or settling in Europe are at higher risk of suffering from male violence”. The report calls for gender-sensitive asylum policies and procedures to help women and girls to escape male violence.¹³³

Despite this evidence, there is a significant lack of data at the national level on the extent of violence against women and girls who are newly arrived or are in need of international protection. This lack of data may fuel the perception that violence against women is not a major feature of this crisis.

FRA ACTIVITY

Highlighting gender-based violence in the migration context

A number of factors contribute to migrant women and girls not being in a position to report abuse, notes FRA's thematic focus on gender-based violence, published alongside its June 2016 monthly report on the current migration situation in the EU. These include a lack of information on how to report such incidents, a lack of effective procedures to identify cases, and insufficient training of staff in charge of recognising gender-based violence. FRA noted that these shortcomings not only result in underestimation of this phenomenon but also prevent a coordinated and comprehensive response that addresses victims' needs.

Women and girls are also vulnerable to gender-based violence at reception centres and other facilities once they arrive in the EU. While governments, humanitarian actors, EU institutions and agencies, and civil society organisations are making efforts to address these issues, FRA's findings indicate that far more could be done to prevent and address continuing abuses against women and girls.

For more information, see FRA (2016), [Thematic focus: gender-based violence, June 2016](#)

FRA opinions

EU and other international actors in 2016 continued to tackle ongoing challenges in the area of justice and, in particular, the rule of law. The rule of law is part of and a prerequisite for the protection of all values listed in Article 2 of the Treaty on European Union (TEU). Developments implicating the rule of law and fundamental rights in Poland for the first time prompted the European Commission to carry out an assessment of the situation in a Member State based on its Rule of Law Framework. This resulted in a formal opinion, followed by recommendations on how the country should address the noted rule of law concerns. After the Polish government rejected these recommendations, the European Commission issued complementary recommendations, taking into account the most recent developments in Poland.

FRA opinion 8.1

All relevant actors at national level, including governments, parliaments and the judiciary, need to step up efforts to uphold and reinforce the rule of law. They all have responsibilities to address rule of law concerns and play an important role in preventing any erosion of the rule of law. EU and international actors are encouraged to strengthen their efforts to develop objective comparative criteria (like indicators) and contextual assessments. Poland should consider the advice from European and international human rights monitoring mechanisms, including the Commission's recommendations issued as part of its Rule of Law Framework procedure.

Many EU Member States continued to propose legislative amendments to comply with the requirements of Directives 2010/64/EU and 2012/13/EU – on the right to translation and interpretation, and to information in criminal proceedings – after the directives' transposition deadlines. Member States also adopted new laws to transpose Directive 2013/48/EU on the right to access to a lawyer. FRA's evidence from 2016 shows, however, that EU Member States still have work to do concerning these directives, particularly in adopting policy measures – such as concrete guidance and training on protecting the rights of suspected and accused persons. There is also untapped potential

for the exchange of knowledge, good practices and experience concerning the three directives. Such exchanges could contribute to building an EU system of justice that works in synergy and respects fundamental rights.

FRA opinion 8.2

EU Member States – working closely with the European Commission and other EU bodies – should continue their efforts to ensure that procedural rights in criminal proceedings are duly reflected in national legal orders and effectively implemented across the EU. Such measures could include providing criminal justice actors with targeted and practical guidance and training, as well as increased possibilities for communication between these actors.

In 2016, many EU Member States focused on fulfilling the obligations imposed by the Victims' Rights Directive – such as reaching out to more victims and reinforcing the capacity and funding of victim support services, including specialised services for especially vulnerable victims such as children. A notable positive trend was that over a quarter of Member States increased funding to victim support services, leading to the expansion and improvement of services. Despite progress, one clear gap remains in several EU Member States: the lack of generic victim support services – meaning that not all crime victims across the EU can access support that may be vital for them to fulfil their rights.

FRA opinion 8.3

EU Member States should address gaps in the provision of generic victim support services. It is important to enable and empower crime victims to enjoy effectively their rights, in line with the minimum standards laid out in the Victims' Rights Directive. This should include strengthening the capacity and funding of comprehensive victim support services that all crime victims can access free of charge. In line with the directive, EU Member States should also strengthen specialised services for vulnerable victims, such as children and victims of hate crime.

In 2016, the final three EU Member States (Bulgaria, the Czech Republic and Latvia) signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). Meanwhile, in another Member State (Poland) statements were made on the possible renouncement of its commitments to the convention. When it comes to determining European standards for the protection of women against violence, the Istanbul Convention is the most important point of reference. In particular, Article 52 on emergency barring orders obliges parties to ensure that competent authorities are granted the power to order a perpetrator of domestic violence to leave the premises at which the victim resides. This is in line with the Victims' Rights Directive, which requires EU Member States to ensure that victims are protected against repeat victimisation. However, to date, only about half of the EU Member States have enacted legislation implementing this option in line with the Istanbul Convention. In addition, in Member States that have relevant legislation, assessments concerning its effectiveness are lacking.

FRA opinion 8.4

All EU Member States should consider ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) and implementing it. In line with Article 52 of the Istanbul Convention, and to ensure the immediate and reliable protection of domestic violence victims against repeat victimisation, EU Member States should enact and effectively implement legal provisions allowing the police to order a perpetrator of domestic violence to vacate the residence of a victim and stay at a safe distance from the victim. EU Member States that have such legislation should examine its actual effectiveness on the ground.



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