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UN & CoE

January

February

March

2 March – In *Talpis v. Italy* (No. 41237/14), the European Court of Human Rights (ECtHR) holds that the Italian authorities failed to protect a mother and son because they did not take prompt action on a complaint concerning conjugal violence, which resulted in violation of the right to life, inhuman or degrading treatment and discrimination (Articles 2, 3 and 14 of the European Convention on Human Rights (ECHR))

13 March – Council of Europe's Commission for Democracy through Law (Venice Commission) adopts its Opinion on questions relating to the appointment of judges of the Constitutional Court in Slovakia

April

26 April – Parliamentary Assembly of the Council of Europe (PACE) adopts Resolution 2159 on protecting refugee women and girls from gender-based violence

May

12 May – Committee of the Parties to the Council of Europe Convention on the protection of children against sexual exploitation and sexual abuse (Lanzarote Committee) adopts its 3rd activity report

19 May – Committee of Ministers of the Council of Europe adopts its revised Guidelines on the protection of victims of terrorist acts

June

29 June – PACE adopts resolution 2178 on the implementation of judgments of the ECtHR, stressing that the excessive length of judicial proceedings and lack of an effective remedy in this respect has remained an issue for more than ten years; this problem concerns, among others, Bulgaria, Hungary, Italy, Poland and Romania

PACE also adopts resolution 2177 on putting an end to sexual violence and harassment of women in public space

July

August

September

27 September – Monitoring mechanism GREVIO set out in the Istanbul Convention publishes the first evaluation report on the situation in Austria and its compliance with the convention

October

November

22 November – Austria, Bulgaria and Luxembourg sign the Council of Europe's Protocol amending the Additional Protocol to the Convention on the Transfer of Sentenced Persons

24 November – GREVIO (Istanbul Convention monitoring mechanism) publishes first evaluation report on the situation in Denmark and its compliance with the convention

30 November – European Network of National Human Rights Institutions (ENNHRI) adopts a statement highlighting the need for strong and independent national human rights institutions to uphold the rule of law and democratic space across Europe

December

8 December – Council of Europe's Venice Commission adopts two opinions on the judicial reforms in Poland, concluding that they enable the legislative and executive powers to interfere in a severe and extensive manner in the administration of justice, and thereby pose a grave threat to judicial independence

EU

January

February

March

7 March – EU adopts Directive (EU) 2017/541 of the European Parliament (EP) and of the Council of 15 March 2017 on combating terrorism and replacing Council Framework Decision 2002/475/JHA and amending Council Decision 2005/671/JHA

April

4 April – European Parliament (EP) adopts a recommendation following an inquiry into emission measurements in the automotive sectors, calling for the establishment of an EU-wide system of collective redress regarding emission measurements in the automotive sector

28 April – Based on decisions of the Court of Justice of the EU (CJEU), the European Commission adopts a Notice on Access to Justice in Environmental Matters on how national courts should address questions of access to justice related to EU environmental legislation

May

22 May – European Commission launches call for evidence on the operation of collective redress arrangements in the Member States of the EU within the meaning of Commission Recommendation 2013/396/EU

June

13 June – EU signs the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention)

July

August

September

12 September – EP issues a resolution asking the Council, the Commission and the Member States to speed up negotiations on ratification and implementation of the Istanbul Convention and to make sure that the Member States enforce the convention on national level

October

12 October – In *Frank Sleutjes (C-278/16)*, the CJEU clarifies which documents must be translated to ensure a fair trial

12 October – Council Regulation establishing the European Public Prosecutor's Office (EPPO) 2017/1939 is adopted by 20 EU Member States that are part of the EPPO enhanced cooperation

26 October – EP issues resolution 2017/2897 (RSP) on combating sexual harassment and abuse in the EU

November

14 November – In *Maximilian Schrems v. Facebook Ireland (C-498/16)*, Advocate-General Bobek observes that Regulation 44/2001 does not provide specific provisions for collective redress; the Opinion concluded that Article 16 (1) of the regulation, which deals with jurisdiction over consumer contracts, cannot be interpreted as allowing consumers to invoke at the same time as their own claim, claims on the same subject assigned by other consumers, irrespective of their domicile

December

4 December – European Commission publishes a Communication containing a list of concrete actions to better prevent trafficking in human beings

12 December – Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws and repealing Regulation (EC) No 2006/2004 is adopted

14 December – European Parliament adopts resolution on the implementation of Directive 2011/93/EU of the EP and of the Council of 13 December 2011 on combating the sexual abuse and sexual exploitation of children and child pornography (2015/2129(INI))

20 December – European Commission issues the Reasoned Proposal in accordance with Article 7(1) of the Treaty on EU regarding the Rule of Law in Poland accompanied by the Rule of Law Recommendation; it also refers the Polish Government to the CJEU for breach of EU law, concerning the Law on the Ordinary Courts and, specifically, the retirement regime it introduces

9

Access to justice including the rights of crime victims



Despite various efforts by the EU and other international actors, challenges in the areas of the rule of law and justice posed growing concerns in the EU in 2017, triggering the first-ever Commission proposal to the Council to adopt a decision under Article 7 (1) of the Treaty on European Union. Meanwhile, several EU Member States took steps to strengthen their collective redress mechanisms in line with Commission Recommendation 2013/396/EU, which potentially improves access to justice. Victims' rights also saw progress. About a third of EU Member States adopted legislation to transpose the Victims' Rights Directive; many implemented new measures in 2017 to ensure that crime victims receive timely and comprehensive information about their rights from the first point of contact – often the police. The EU signed the Istanbul Convention as a first step in the process of ratifying it. Another three EU Member States ratified the Convention in 2017, reinforcing that EU Member States recognise the instrument as defining European human rights protection standards in the area of violence against women and domestic violence. This includes sexual harassment – an issue that received widespread attention due to the #metoo movement.

9.1. Rule of law challenges and hurdles to justice pose growing concerns

“The rule of law means that law and justice are upheld by an independent judiciary. Accepting and respecting a final judgment is what it means to be part of a Union based on the rule of law ... To undermine [the judgments of the Court of Justice], or to undermine the independence of national courts, is to strip citizens of their fundamental rights. The rule of law is not optional in the European Union. It is a must.”

Jean-Claude Juncker, President of the European Commission, Speech on the State of the Union, 13 September 2017

An independent judiciary is the cornerstone of the rule of law, which Article 2 of the Treaty on European Union (TEU) lists as one of the core values on which the Union is founded. The European area of justice can only work if all EU Member States adhere to the rule of law. An independent judiciary is also – as outlined in a study by the EU's Joint Research Centre – intrinsically linked to a country's prosperity and international standing.¹ According to Goal 16.3 of the 2030 Agenda for Sustainable Development, UN member states are

expected to promote the rule of law at the national and international levels and ensure equal access to justice for all.²

The rule of law situation in **Poland** continued to cause growing concern. In 2017, for the first time in the history of the EU, the European Commission recommended that the Council adopt a decision under Article 7 (1) of the TEU.³ The main concerns related to Poland's executive and legislative branches interfering with the composition, powers, administration and functioning of the judicial branch. The situation worsened despite continued efforts to address these fundamental rights challenges by the EU, including the European Parliament⁴ and the Council,⁵ as well as various international actors. These included the Council of Europe – particularly its Venice Commission and Commissioner for Human Rights⁶ – and the United Nations (via the Special Rapporteur on the independence of the judges and lawyers).⁷

The European Commission's reasoned proposal under Article 7 (1) was accompanied by the specific Rule of Law Recommendation, which identified justice-related laws that negatively affect the Supreme Court and the National Council for the Judiciary.⁸ In addition to

activating Article 7 and issuing the recommendation, the Commission decided to take the next step in its infringement procedure. It referred Poland to the Court of Justice of the EU for breaches of EU law, based on the legislation that introduced different retirement ages for female and male judges and provided the Minister of Justice with discretionary powers to prolong the mandates of judges who have reached the retirement age and to dismiss and appoint court presidents.⁹

EU and international actors in 2017 also called for looking into the rule of law situation in the area of access to justice in three additional EU Member States: **Bulgaria**, **Malta** and **Romania**. In the case of **Malta**, the European Parliament adopted a resolution calling on the Commission to start dialogues on the functioning of the rule of law in the country.¹⁰ According to the European Parliament, this was due to the specific circumstances of the investigation into the assassination of Daphne Caruana Galizia, an investigative journalist, and the country's worsening track record in prosecuting financial crimes.

The Council of Europe's Parliamentary Assembly (PACE) adopted a resolution on 11 October 2017, calling on several Council of Europe member states to fully implement the principle of the rule of law.¹¹ In relation to justice systems in **Bulgaria** and **Poland**, the assembly expressed concerns about, among others, the tendency to limit the judiciary's independence through attempts to politicise the judicial councils and the courts. Regarding **Romania**, PACE called for ensuring that the government and the judiciary respect the separation of powers as regards the competences of the parliament, especially by avoiding the excessive use of emergency ordinances.¹²

In its reports on progress in Romania and Bulgaria under the Co-operation and Verification Mechanism of November 2017, the European Commission – while welcoming the considerable progress made – concluded that more work was still needed in relation to the judicial independence benchmark. In relation to **Romania**, it stressed the need to, among others, safeguard the practical application of the newly introduced codes of conduct for parliamentarians as well as ministers, which include a broad provision on respect of the separation of powers.¹³ As for **Bulgaria**, the Commission pointed out, among others, the need to eliminate any doubts regarding possible undue influence on judges through the Supreme Judicial Council, as such influence could undermine the impression of an independent decision-making process within this key institution.¹⁴

The European Commission in 2017 continued to support EU Member States' efforts to strengthen the efficiency, quality and independence of their national justice systems through its EU Justice Scoreboard, underlining

the crucial role of the national justice systems in upholding the rule of law.¹⁵ The EU Justice Scoreboard contributes to the European Semester process by bringing together data from various sources and helping to identify justice-related issues that deserve particular attention for an investment, business- and citizen-friendly environment.

The 2017 Scoreboard looked into new aspects of justice systems – for example, how easily consumers can access justice and which channels they can use to submit complaints against companies. For the first time, it also showed the length of criminal court proceedings relating to money-laundering offences. The 2017 Scoreboard highlights improvements achieved regarding the length of civil and commercial court proceedings since last year's Scoreboard. However, the findings also show that the length of administrative proceedings and judicial review varies a lot depending on the country; that citizens whose income is below the Eurostat poverty threshold do not receive any legal aid in some types of consumer-related disputes; and that the use of ICT tools in justice systems is still limited in some countries.



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In the context of the existing recommendation by the European Parliament on the creation of an EU mechanism on democracy, the rule of law and fundamental rights, the Commission in 2017 followed up on the European Parliament resolution recommending that the variety of existing data and reports on human rights issues by diverse actors – such as the UN, the Organization for Security and Co-operation in Europe (OSCE), the CoE and the EU – become more accessible and visible, including at national level. In its follow up, the Commission referred to FRA's role in "making easily accessible a clear overview of existing information and reports relating to Member States or particular themes".¹⁶

9.2. Facilitating access to justice through collective redress mechanisms

EU developments

Collective redress mechanisms allow individuals to jointly request unlawful business practices to be stopped or prevented, or to obtain compensation for the harm caused by them.¹⁷ In 2011, the Flash Eurobarometer on 'Consumer attitudes towards cross-border trade and consumer protection' found that

79 % of European consumers agree that they would be more willing to defend their rights in court if they could join other consumers complaining about the same issue. Allowing individuals to join claims that concern breaches of law that affect identical or similar interests belonging to more than one legal or natural person improves access to justice. Such mechanisms allow multiple claimants to share the cost of judicial proceedings, reducing the financial burden on individuals; and expedite the resolution of their cases. They make remedies more accessible and so help fulfil EU citizens' rights to an effective remedy and to a fair trial – as protected under Article 47 of the Charter and Articles 6 and 13 of the ECHR – in practice.

The European Commission in 2017 declared that it will assess the practical implementation of Recommendation 2013/396/EU, which aims to establish national collective redress mechanisms (to request cessation of illegal behaviour and to obtain compensation for harm done) based on a set of common principles.¹⁸ The recommendation requires such an assessment.¹⁹ The Commission aims to assess the impact of the common principles, which Member States were supposed to have implemented by 26 July 2015, on access to justice.

FRA ACTIVITY

Promoting collective action for better rights protection

In 2017, FRA issued an Opinion on business and human rights, calling for the enactment of procedural rules to allow victims to “join forces to overcome obstacles” or so that “organisations may act on behalf of victims”, thereby making effective their access to a remedy for human-rights abuses caused by businesses.

As emphasised in the Opinion, which is also based on the 2016 Council of Europe recommendations and 2016 UN guidance, broad collective action has to be put in place with clear criteria and consistently applied to allow entities to bring claims on behalf of alleged victims. As it notes, a “uniform approach to criteria applied across the EU Member States would facilitate access to remedy in cases of business-related human rights abuse”.

See FRA (2017), Opinion on Improving access to remedy in the area of business and human rights at the EU level, Vienna, 10 April 2017, pp. 6-7; Council of Europe, Committee of Ministers (2016), Recommendation CM/Rec(2016)3 to member States on human rights and business, 2 March 2016, para. 42; UN, Human Rights Council (2016), Business and human rights: improving accountability and access to remedy for victims of business-related human rights abuse, 10 May 2016, para. 15.3; UN Human Rights Office of the High Commissioner, The OHCHR Accountability and Remedy Project – Illustrative examples for guidance to improve corporate accountability and access to judicial remedy for business-related human rights abuse, 5 July 2016, p. 30.

Progress at Member State level

The vast majority of EU Member States have some form of collective redress mechanism in place. These mechanisms vary widely. Some EU Member States establish collective mechanisms with a wide scope, while others restrict collective forms of relief to certain areas – for example, consumer protection. Throughout the year, while the European Commission began assessing the impact of Recommendation 2013/396/EU on access to justice, a number of related developments took place at national level.

A few Member States adopted new legislation to introduce collective redress mechanisms in line with the recommendation. In **Slovenia**, a new law that aims to implement the recommendation entered into force in 2017. The Class Action Act²⁰ for the first time introduced a wide mechanism for collective action, the provisions of which by and large mirror the common principles of Recommendation 2013/396/EU. In **Hungary**, Act CXXX of 2016 on Civil Procedures was adopted in 2017, and will enter into force on 1 January 2018; it introduces a mechanism enabling collective action.²¹ Legislators referred to the recommendation while drafting this law, showing that it played a role in the law's development.²²

Several other Member States amended their legal frameworks to improve or reinforce existing collective redress mechanisms. For example, **Belgium** and **Poland** did so, making reference to Recommendation 2013/396/EU. In **Belgium**, with the Law of 6 June 2017, violations of rules applying to undertakings – particularly the prohibitions concerning practices or activities that affect trade between Member States or the functioning of the internal market, as described in Articles 101 and 102 of the Treaty on the Functioning of the EU (TFEU) – will join the list of grounds that can lead to collective action.²³ In **Poland**, an amendment of the Act on group redress mechanisms aimed to eliminate issues relating to the length of proceedings, legal certainty and the costs of the process.²⁴ According to the rationale of the draft act, this was necessary to ensure that collective redress mechanisms as described in Recommendation 2013/396/EU are fair, equitable, timely and not prohibitively expensive.²⁵

Other Member States tabled draft bills on collective redress in their national parliaments. At the stage of parliamentary consultation, following the “Plan of Legislative Work of the Government for 2017”,²⁶ the Ministry of Justice in the **Czech Republic** tabled a draft bill on collective actions.²⁷ In **Italy**, the Senate conducted informal hearings to assess the impact of, and reforms introduced by, Draft Law No. 1950²⁸ on “Dispositions Concerning Class Actions”. Notably, in one of the hearings, civil society organisations proposed changes

to the draft law based on the common principles of Commission Recommendation 2013/396/EU.²⁹

Other Member States – such as **Austria**³⁰ and **Germany** – continued their efforts to develop draft bills in 2017. In **Germany**, a discussion paper prepared by the Federal Minister of Justice and for Consumer Protection proposed a draft bill that introduces a model declaratory procedure, which was explicitly based on Recommendation 2013/396/EU.³¹

The recommendation has also been used as an instrument of interpretation by national courts. For example, in **Belgium**, a new law was adopted in 2017 following a ruling of the Constitutional Court.³² In this ruling, the court held that excluding representative entities from other Member States of the EU and European Economic area from the possible entities that can represent a group of people breaches Article 10 and 11 of the Constitution in conjunction with Article 16 of the Services Directive.³³ The court relied on, among other things, Recommendation 2013/396/EU to determine whether the difference in treatment was justified by an objective criterion, since the aim of the impugned law and the recommendation were aligned as they both dealt with consumer protection.³⁴

9.3. Advancing victims' rights

EU developments

About one third of Member States adopted legislation in 2017 to transpose the Victims' Rights Directive (2012/29/EU) and thus improve the rights of crime victims across the EU. These included Bulgaria,³⁵ Croatia,³⁶ the Czech Republic,³⁷ Estonia,³⁸ Greece,³⁹ Ireland,⁴⁰ Luxembourg,⁴¹ the Netherlands⁴² and Slovakia.⁴³ FRA has reported on Member States' actions to implement the Victims' Rights Directive since 2015, and the past few years have seen steady progress in terms of many Member States putting into practice new laws and measures to ensure that crime victims can access their rights under the directive. However, while the deadline for transposing the Victims' Rights Directive passed in November 2015, the European Commission has yet to evaluate full compliance with the directive.⁴⁴

At the EU level, the European Commission placed effective compensation for crime victims high on the agenda by appointing, in October 2017, Joëlle Milquet as Special Adviser to President Jean-Claude Juncker for the compensation of victims of crime. The Special Adviser is mandated to promote better enforcement of existing laws on compensation, including advancing cooperation between national authorities responsible

for compensation and expediting victims' access to compensation across the EU.⁴⁵

Other key developments at EU level focussed on specific categories of crime victims. The year saw considerable political and policy-level interest in different categories of victims, such as victims of terrorism; victims of trafficking in human beings; victims of gender-based violence (dealt with in [Section 9.4.](#)); and victims of hate crime (see [Chapter 4](#) on Racism, xenophobia and related intolerance for developments in this area). These are all categories of victims to which the Victims' Rights Directive pays particular attention.

Eight EU Member States reported 142 failed, foiled and completed terrorist attacks in 2016 alone.⁴⁶ To strengthen the EU's response to terrorism, the European Parliament and Council adopted Directive (EU) 2017/541 of the European Parliament and of the Council of 15 March 2017 on combating terrorism (Directive on Combating Terrorism). In addition to strengthening the EU's legal framework for preventing terrorist attacks, it outlines a number of rights for victims of terrorism, such as the right to receive immediate access to professional support services, to receive legal and practical advice, as well as help with compensation claims. Member States must transpose the directive by 8 September 2018.

To support Member States in ensuring an effective legislative and policy response that safeguards the rights and needs of terrorism victims, the European Parliament commissioned and published a study on responses to the needs of victims of terrorism in Belgium, France, Germany, Hungary, Spain and the United Kingdom. It contains recommendations and best practices for Member States to follow to empower and support victims of terrorism and allow them effective access to justice.⁴⁷ The research and findings focus on the two main EU instruments in this field: the Victims' Rights Directive and the Directive on Combating Terrorism.

Building on the EU Strategy towards the eradication of trafficking in human beings 2012-2016, the European Commission published a Communication in December 2017, containing a list of concrete actions for the EU and its Member States to better prevent trafficking in human beings.⁴⁸ Key areas that require immediate action from the EU and the Member States include: providing better access to and realising rights for victims; disrupting the business model that trafficking in human beings depends on; and ensuring that EU internal and external actions provide a coordinated and consistent response. The communication stresses the need for all actions to follow a human rights-based, gender-specific and child-sensitive approach.



Promising practice

Supporting the fight against severe forms of labour exploitation

In 2017, FRA followed up on its 2015 report on 'Severe labour exploitation' by extending the evidence beyond the views of professionals who deal with labour exploitation to interview foreign workers themselves about their experiences with criminal forms of such exploitation.

The agency – through face-to-face interviews and focus groups in selected EU Member States – reached 250 workers from diverse EU and third countries, covering sectors such as agriculture, construction, domestic work, manufacturing, transport and hotel/food services. Findings will be published in 2018 and 2019, and will provide a rich base of evidence concerning the main risk factors for severe labour exploitation from exploited workers' perspectives and experiences.

For more information, see FRA's webpage on the project.

Ireland introduced specialist 'Protective Services Units' within the police that will specialise in the investigation of sexual and domestic violence and human trafficking, and will provide victims of these crimes with better support. The first four divisional units were operational on 2 June 2017. Further units will be established in other police divisions throughout the country by early 2018. The move has been welcomed by several national victims' groups.⁵¹

A new regulation introduced in the **Netherlands** in 2017 mandates police to inform victims about their rights at the start of criminal proceedings.⁵² Finally, a 'Victim Support Unit' within the **Maltese** Police Force, providing a single point of contact for crime victims after they report to police, began operating in 2017.⁵³ The police will provide crisis counselling services to victims; facilitate effective and timely referrals to other support services; and monitor the number of victims that are accessing their rights and victim support services.

Implementing the Victims' Rights Directive

EU Member States introduced new legislation and practical measures to implement the Victims' Rights Directive. This included introducing protection measures (for example, when interviewing victims/witnesses with specific protection needs); enhancing the possibilities for victims to access support services; and facilitating victims' rights to information in a language they understand.

A notable trend in 2017 was that police services in several Member States focussed on systematically providing better information to crime victims – to ensure that they can access their rights under the Victims' Rights Directive to receive information from their first contact with a competent authority (Article 4) and to access victim support services (Article 8). For example, police authorities in **Cyprus** issued instructions to police regarding their duties arising under the law transposing the directive. In addition, a new awareness leaflet comprehensively sets out the rights of victims (including the right to lodge a complaint against the police and contact details for support organisations in the private and public sectors). It is available in six languages (Greek, English, Turkish, Arabic, French and Russian).⁴⁹

The European Public Law Organisation – supported by the Greek Ministry of Citizens' Protection and the Hellenic Police – published a guide for police officers on services across **Greece** for crime victims, as police are often uncertain as to what to advise victims concerning their right to support.⁵⁰

Promising practice

Improving the police's response to crime victims

The Human Rights Monitoring Institute, together with the **Lithuanian** Police School, began a project in 2017 that aims to equip law enforcement officers with the knowledge and tools necessary to effectively respond to victims of crime. The project also seeks to improve victims' access to information and raise public awareness on victims' rights. It is funded by the Justice Programme of the EU.

A toolset for officers will be produced, consisting of a handbook, dissemination material for victims, and professional training modules. More than 300 officers and lecturers will be trained in 10 regions of the country. A website for crime victims will also be launched, comprising information on victims' rights, available support services and what happens during criminal proceedings.

For more information, see the Human Rights Monitoring Institute's webpage on the project.

Assessing victims' satisfaction with treatment received

Article 26 (2) of the Victims' Rights Directive states that Member States shall take action to raise awareness of the rights set out in the directive, among other things "reducing the risk of victimisation, and minimising the negative impact of crime and the risks of secondary and repeat victimisation". Meanwhile, Article 28 obliges Member States to report to the Commission every three years on how victims have accessed the

rights set out in this directive. Several Member States took action in this area throughout the year.

In November 2017, **Estonia** published a report on victims' experience and treatment. It concluded that, although 60 % of victims are satisfied with the way they have been treated by the criminal justice system, the system is still not considered 'victim-friendly'.⁵⁴ Findings show that information about victims and their cases is not passed smoothly from one institution to another, causing secondary victimisation to the victim.

The Ministry of Justice in **Denmark** published the findings of a study of 58 victims who reported sexual assaults to the police. Around one third of the victims found that the police handled their case in a "dissatisfactory" or "very dissatisfactory" way. A third of victims also experienced difficulties in reporting – for example, stating that the police doubted their statements or asked them to reconsider their report. One third of the victims also claimed that they were not properly informed about the proceedings of their case.⁵⁵ In a separate development, the Director of Public Prosecutions established an expert group of investigators and prosecutors and a consultancy forum (of police officers and organisations working with victims of sexual assaults) to exchange views and discuss new initiatives to improve responses to victims of sexual assaults.⁵⁶

In **Finland**, the Ministry of Justice appointed a working group (comprised of representatives of relevant ministries, other relevant authorities and civil society) to advance best practices in respecting victims' rights in criminal proceedings – with a focus on victims of sexual offences and child victims.⁵⁷ The working group will assess criminal proceedings from the victim's perspective with particular attention to how victims are treated and how they access information about their rights and possibilities of support and protection. The group will then advise on how to improve the situation in line with victims' rights.⁵⁸

The **Italian** Ministry of Justice released a Circular Letter in June, announcing the creation of a permanent monitoring mechanism on the implementation of the directive. It asked relevant public stakeholders, such as courts' presidents and public prosecutors, to regularly provide data and statistics concerning the applications of the instruments aimed at providing information and judicial protection to victims.⁵⁹

Finally, in the **United Kingdom**, the Ministry of Justice started an online survey of crime victims in 2017. It looks into victims' views of the Code of Practice for Victims of Crime,⁶⁰ with the aim of improving services for victims.

FRA ACTIVITY

Collecting evidence to support the implementation of the Victims' Rights Directive

FRA carried out field research in 2017 for a project on victims' rights, collecting information on the state of play of the rights of adult victims of violent crime under the Victims' Rights Directive. The project was carried out in seven Member States (Austria, France, Germany, the Netherlands, Poland, Portugal, and the United Kingdom). Some 240 interviews were conducted with practitioners and victims, including 50 interviews with victims of domestic (partner or ex-partner) violence.

The agency will publish two reports in 2019. One will focus on victims' access to justice and their role and participation in proceedings. The other will focus specifically on effective protection of women as victims of domestic violence against repeat victimisation and their situation in criminal proceedings.

For more information, see FRA's webpage on the project.

Trends in support services for child victims

Throughout the year, various Member States introduced initiatives to protect child victims in line with their obligations under the Victims' Rights Directive – such as addressing child victims' specific protection needs during criminal proceedings (Article 24). For other 2017 developments relating to child rights, see **Chapter 8** on the Rights of the child.

In **Germany**, as of January 2017, children who have been victims of serious sexual or violent acts are now entitled to professional psychosocial support and care free of charge before, during and after criminal proceedings. This also applies to adult victims or witnesses of serious crimes deemed to be particularly vulnerable.⁶¹

Finland published a guide containing information on the different stages of the criminal procedure for parents and guardians of child victims of violent or sexual offences. It provides information on practical arrangements during criminal proceedings, includes answers to the most typical questions that parents/guardians have, and directs them to sources of help and support.⁶²

Malta integrated existing child-related regulations into one coherent legislative framework by enacting 'The Child Protection (Alternative Care) Act, 2017'.⁶³ The law introduces the concept of mandatory reporting of 'significant harm' to the Director responsible for Child Protection or the Executive Police. The reporting

requirement applies to ‘any person’ who, in the context of their work, comes into contact with a child suffering or likely to suffer harm, including professional workers and volunteers. Failure to report such cases can result in four to twelve months’ imprisonment, a fine not exceeding € 5,000, or both. Upon receipt of such a report, the Director is obliged to conduct an investigation and assessment to determine whether the child is in need of care and protection, and to subsequently take action to protect the child.

Finally, although not bound by the Victims’ Rights Directive, **Denmark** in 2017 took an important step for the realisation of the rights of child victims of sexual crime. It published a draft bill (to enter into force in spring 2018) abolishing all current Danish rules regarding statute-barre in future cases concerning sexual abuse of minors. The bill also abolishes, with retroactive effect, statute-barre for compensation claims in cases involving a municipality’s omission and passivity on notifications about neglect or abuse.⁶⁴

9.4. Violence against women and domestic violence

The Victims’ Rights Directive aims to protect all victims of criminal offences, but also notes that women victims of gender-based violence often require special support and protection. In 2017, the EU signed the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention) – the first step in the process of ratifying the convention. The instrument continued to strongly influence developments relating to combating violence against women and domestic violence at EU and national levels, with several Member States taking steps towards ratifying or implementing its provisions throughout the year.

9.4.1. Developments at EU level

In June 2017, the EU signed the Istanbul Convention as a first step in the process of the EU joining the convention.⁶⁵ As mentioned in FRA’s *Fundamental Rights Report 2017*, the EU’s accession to the Istanbul Convention will ensure accountability for the EU at the international level as 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. This would reinforce the EU’s commitment to combating violence against women and domestic violence.

The European Parliament issued a resolution on 12 September 2017, asking the Council, the Commission and the Member States to speed up negotiations on

the ratification and implementation of the Istanbul Convention and to make sure that the Member States enforce the convention at national level.⁶⁶

As part of the Gender Equality Index 2017, the European Institute for Gender Equality (EIGE) published a methodology for assessing the extent of violence against women in the EU in terms of the prevalence, severity and level of disclosure of violence against women.⁶⁷ Several of the indicators used in the satellite domain on violence, which is included in the Gender Equality Index, are based on data provided by FRA’s 2014 *Violence against Women survey*.

9.4.2. Improvements at Member State level: legislation, policy and data collection

GREVIO is part of the monitoring mechanism set out in the Istanbul Convention, and is responsible, together with the Committee of the Parties to the Convention, for monitoring the convention’s implementation. The Istanbul Convention obliges State Parties to report to GREVIO on the legal and policy measures they have adopted to fulfil their obligations under the convention. On the basis of this reporting, GREVIO publishes evaluation reports assessing the legislative and other measures taken by states.

In 2017, GREVIO adopted and published its first evaluation reports on the situation in **Austria**,⁶⁸ **Monaco**,⁶⁹ **Albania**⁷⁰ and **Denmark**.⁷¹ One – crucially important – issue addressed in the reports of Austria and Denmark concerns the failure of criminal codes to comprehensively criminalise sexual violence in line with the Istanbul Convention. Article 36 of the Istanbul Convention does not require the victim to express an opposing will for the act of sexual violence to be punishable; rather it suffices that the act was committed without the consent of the victim. In other words, what is decisive is not that the victim dissented, but that they did not consent. Thus the Istanbul Convention adopts an approach that highlights and reinforces a person’s unconditional sexual autonomy.

This challenge has been discussed in other EU Member States, as well. In December 2017, the Government of **Sweden** presented a proposal to the Council on new sexual offence legislation based on lack of consent, and the obvious: sex must be voluntary. Convicting a perpetrator of rape will no longer require that violence or threats were used, or that the victim’s particularly vulnerable situation was exploited. The Government also proposed introducing two new offences, ‘negligent rape’ and ‘negligent sexual abuse’. The negligence aspect focuses on the fact that the other person did not participate voluntarily.

In its *Fundamental Rights Report 2017*, FRA called upon all EU Member States to ratify and effectively implement the Istanbul Convention. **Cyprus**, **Estonia** and **Germany** ratified the Istanbul Convention, bringing to 17 the number of EU Member States that had ratified it by the end of 2017. In addition, several other EU Member States took measures towards ratifying or implementing the convention's provisions. **Latvia**⁷² and **Lithuania**⁷³ proposed draft legislation to ratify the Istanbul Convention. In addition, **Luxembourg**⁷⁴ introduced a bill foreseeing its ratification, while **Bulgaria**⁷⁵ began discussions on how to harmonise national legislation with the convention's requirements. In **Greece**,⁷⁶ a draft law introducing the Istanbul Convention to the national legal system is under public consultation.

In line with the Istanbul Convention and Victims' Rights Directive, EU Member States should collect statistical data on violence against women at national level. In 2017, Eurostat set up a Task Force to develop a new survey on gender-based violence to be carried out in EU Member States. FRA's EU-wide survey on violence against women served as a benchmark for the development of this survey. Ten EU Member States have expressed their willingness to pre-test the survey, which is planned to interview both women and men concerning their experience of gender-based violence. The countries are expected to submit their final pilot results by January 2019. In addition, several EU Member States, including **Belgium**,⁷⁷ **Finland**⁷⁸ and **France**,⁷⁹ among others, conducted surveys or published statistics on violence against women. Furthermore, in 2017 a majority of EU Member States took initiatives to conduct research or collect data on violence against women, indicating EU Member States' willingness to address the issue.

In 2017, several EU Member States took measures to criminalise and combat violence against women, especially with regards to Female Genital Mutilation (FGM) and stalking. The Istanbul Convention requires states to criminalise various forms of violence through establishing criminal offences in national legislation. Article 38 of the Istanbul Convention requires State Parties to take measures to ensure the criminalisation of FGM, and Article 34 requires them to take measures to ensure the criminalisation of stalking. In **Belgium**, amendments to the criminal code are currently under discussion to allow physicians to report risks of FGM.⁸⁰ Belgium also adopted a new policy to enhance prosecution of FGM, forced marriage and so-called honour related violence and to improve collaboration between relevant actors for this purpose.⁸¹ **Estonia**⁸² and **Latvia**⁸³ also made changes to their penal codes to criminalise FGM. In addition, **Sweden** adopted legislation increasing the penalty scale for the crime of FGM.⁸⁴ In 2017, several EU Member States, such as **Estonia**,⁸⁵ **Germany**⁸⁶ and **Latvia**,⁸⁷ also introduced

or improved legislative measures to combat stalking by criminalising stalking and adopting protection measures for victims of stalking.

Protecting victims of domestic violence

Several EU Member States introduced new laws specifically addressing domestic violence. For instance, **Croatia** enacted a new law on protection from domestic violence.⁸⁸ In the **United Kingdom**, the Domestic Abuse (Scotland) Bill was passed on 1 February 2018, with a similar bill planned to be introduced in England and Wales. This latter bill focuses on early intervention and prevention and will ensure victims feel safe and supported, both to seek help and to rebuild their lives. In **Portugal**, the civil code was amended to allow for the public prosecutor to consider imposing protection orders due to domestic violence when initiating and deciding on parental responsibilities.⁸⁹ **Ireland** also introduced a Domestic Violence Bill as part of its strategy to implement the Istanbul Convention.⁹⁰

In its *Fundamental Rights Report 2017*, FRA also called upon EU Member States to ensure immediate and reliable protection from domestic violence in line with Article 52 of the Istanbul Convention, allowing the police to effectively adopt emergency barring orders in cases of domestic violence. **Ireland's** Domestic Violence Bill allows for the award of emergency barring orders even in cases where the victim has no legal or beneficial interest in the property in question.⁹¹ **Croatia's** newly adopted law on protection against domestic violence introduced provisions on emergency barring orders and other measures of protection.⁹² **Malta** also proposed legislation that includes provisions on emergency barring orders and the issuing of protection orders.⁹³ In **Romania**, legislation including several amendments in the field of protection orders is under public consultation.⁹⁴

GREVIO's first report on the relevant situation in **Denmark** expressed criticism concerning the implementation of emergency barring orders. GREVIO called on Denmark to step up efforts to implement the full range of emergency barring and protection orders available under the Act on Restraining Orders and to ensure their vigilant enforcement.⁹⁵ Meanwhile, GREVIO's report on the situation in Austria acknowledged "the strong leadership Austria has shown in the past 20 years in introducing a system of emergency barring and protection orders for victims of domestic violence. Today, this system is well established and is widely considered a success."⁹⁶



Promising practice

Improving the protection of domestic violence victims

The MARAK method aims to improve the security of persons who are victims of domestic violence or at risk of such violence. It was designed in **Finland** based on experiences in the United Kingdom, where it was originally developed. The method comprises a risk assessment of an individual at risk of domestic violence through a questionnaire and an evaluation of the case in a multi-professional team at municipality level.

The multi-professional team is composed of representatives from relevant sectors, such as the police, social services, health services, child protection and victim support services. The team, based on the questionnaire and their evaluation, establishes a security plan and a support person for the victim in question. In addition to improving security for the victim, the team also plays an important role in sharing information between relevant authorities.

In 2017, a study was conducted to measure the impact of the MARAK method, which showed a significant improvement in the protection of victims of domestic violence.

For more information, see the website of the National Institute for Health and Welfare.

Countering sexual harassment

The recent global #metoo movement has drawn attention to the extent of sexual assault and harassment worldwide – which significantly affects women as victims, and also some men – and has sparked discussion about what is being done to prevent and combat this problem in Europe. FRA data have long highlighted the extent of sexual assault and harassment against women and girls in the EU. The agency's 2014 report on *Violence against women: An EU-wide survey* found that one in three women have been victims of physical and/or sexual violence during their lifetimes, and 55 % of women have experienced sexual harassment. In December 2017, the European Parliament issued resolution 2017/2897 (RSP) on combating sexual harassment and abuse in the EU, condemning all forms of sexual violence and physical or psychological harassment and recognising that such acts constitute a systematic violation of fundamental rights.⁹⁷

Article 40 of the Istanbul Convention requires states to take necessary legislative or other measures

to ensure that sexual harassment is subject to criminal or other non-criminal legal sanctions. Directive 2006/54/EC recognises that sexual harassment in matters of employment and occupation are contrary to the principles of equal treatment between men and women and could constitute discrimination on grounds of sex. It also obliges EU Member States to take effective measures to prevent sexual harassment in the workplace. However, reports assessing the directive's implementation indicate that it has not had any major impact on EU Member State efforts in preventing and combating sexual harassment.⁹⁸

Several EU Member States took action in 2017 to combat sexual harassment. **Austria** amended the criminal code to criminalise the intentional gathering of persons with the purpose of perpetrating sexual harassment in a group.⁹⁹ Furthermore, one of the major trade unions in **Cyprus** prepared a draft code of conduct for addressing sexual harassment at the workplace.¹⁰⁰ In **Denmark**¹⁰¹ and **Sweden**,¹⁰² measures were discussed to criminalise and combat non-consensual distribution of intimate images and videos, including through improvements relating to case administration by the police and public prosecutors.

FRA ACTIVITY

Challenges to women's human rights in the EU

FRA published a paper in 2017 underlining the need for EU institutions and Member States to maintain their commitment to safeguarding the dignity of all women and girls in the EU. This paper was highlighted during the 2017 Annual Fundamental Rights Colloquium, which focused on "Women's rights in turbulent times".

Evidence collected by FRA confirms that women and girls in the EU experience persistent gender discrimination and gender-based violence. This severely limits their ability to enjoy their rights and to participate on an equal footing in society. The paper highlights concrete areas of intervention, such as gender inequality contributing to persisting discrimination, hate speech and violence against women, where the EU and its Member States could work actively to turn commitment into reality.

For more information, see FRA (2017), [Challenges to women's human rights in the EU: Gender discrimination, sexist hate speech and gender based violence against women and girls](#), November 2017.

FRA opinions

The EU and other international actors in 2017 continued to be confronted with growing challenges in the area of justice at the national level and, in particular, regarding the issue of judicial independence. An independent judiciary is the cornerstone of the rule of law and of access to justice (Article 19 of the TEU, Article 67 (4) of the TFEU and Article 47 of the EU Charter of Fundamental Rights). Despite continued efforts of the EU and other international actors, the rule of law situation in one of the EU Member States caused increasing concern, particularly in terms of judicial independence. This prompted the European Commission to submit, for the first time in the history of the EU, a proposal to the Council for adoption of a decision under Article 7 (1) of the TEU.

FRA opinion 9.1

The EU and its Member States are encouraged to further strengthen their efforts and collaboration to reinforce independent judiciaries, an essential rule of law component. One way forward in this context is to depart from the existing approach of tackling rule of law emergencies in individual countries in an ad-hoc manner. Instead, the existing efforts should be stepped up to develop criteria and contextual assessments to guide EU Member States in recognising and tackling any possible rule of law issues in a regular and comparative manner. In addition, existing targeted advice from European and international human rights monitoring mechanisms, including the remedial actions set out in the European Commission's recommendations issued as part of its Rule of Law Framework procedure, should be acted on to ensure compliance with the rule of law. All EU Member States should always stand ready to defend the rule of law and take necessary actions to challenge any attempts to undermine the independence of their judiciary.

Collective redress mechanisms enhance access to justice, which is paramount to secure the effectiveness of Union law and ensure respect for fundamental rights, as required by Article 47 of the EU Charter of Fundamental Rights. For this purpose, European Commission Recommendation 2013/396/EU on common principles for injunctive and compensatory collective redress mechanisms in the Member States concerning violations of rights granted under Union Law has sought to facilitate access to justice and to that end recommended a general collective redress mechanism based on the same basic principles throughout EU Member States. In 2017, the Commission initiated its assessment of the implementation of Recommendation 2013/396/EU and several Member States took steps to directly implement it. Nevertheless, legislation at national level still

significantly diverges among Member States, creating different forms and levels of collective action.

FRA opinion 9.2

EU Member States – working closely with the European Commission and other EU bodies – should continue their efforts to ensure that Commission Recommendation 2013/396/EU on collective redress mechanisms is fully implemented to enable effective collective action and access to justice. The collective redress mechanisms should be wide in scope and not limited to consumer matters. The European Commission should also take advantage of the assessment of the implementation of Commission Recommendation 2013/396/EU, initiated in 2017, to provide the necessary support to EU Member States to introduce or reform their national mechanisms for collective redress in line with the rule of law and fundamental rights in all the areas where collective claims for injunctions or damages in respect of violations of the rights granted under Union law would be relevant.

The year 2017 saw positive developments in terms of more EU Member States adopting legislation to transpose the Victims' Rights Directive, including efforts to ensure that victims are informed about the rights they have under new legislation. Evidence at national level in some Member States shows that victims still encounter obstacles to reporting crime and that victims do not always receive comprehensive information about their rights. This can negatively affect the victims' opportunity to access their rights in practice.

FRA opinion 9.3

Following positive legal developments to transpose the Victims' Rights Directive up until 2017, EU Member States should focus on the effective implementation of the directive. This should include the collection of data disaggregated by gender on how crime victims have accessed their rights; such data should be used to address gaps in institutional frameworks to enable and empower victims to exercise their rights. Further data collection at national and at EU level will shed light on this and highlight gaps that need to be filled to ensure that victims of crime have access to rights and support on the ground.

In 2017, another three EU Member States ratified the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), bringing to 17 the total number of EU Member States that had ratified the convention by the end of the year. 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 36 obliges State parties to criminalise all non-consensual sexual acts and adopt an approach that highlights and reinforces a person's unconditional sexual autonomy. However, the 2017 evaluation reports by the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO) revealed gaps in national legislation regarding the criminalisation of non-consensual sexual acts, which is not in line with the convention's requirements.

FRA opinion 9.4

All EU Member States and the EU itself should consider ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). EU Member States are encouraged to address gaps in national legislation regarding the criminalisation of all non-consensual sexual acts. EU Member States should – in line with Article 36 of the Istanbul Convention – unambiguously and unconditionally criminalise the respective acts.

The stark realities brought to the surface by the global #metoo movement underline FRA's findings from its 2012 Violence against Women survey, which showed that violence against women – including sexual harassment – remains widespread. Hence, there is a clear need for renewed emphasis in this area at both EU and Member State level.

FRA opinion 9.5

EU Member States should reinforce their efforts and take further measures to prevent and combat sexual harassment. This should include necessary steps towards effectively banning sexual harassment as regards access to employment and working conditions in accordance with Directive 2006/54/EC on the implementation of the principle of equal opportunities and equal treatment of men and women in matters of employment and occupation (recast).

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