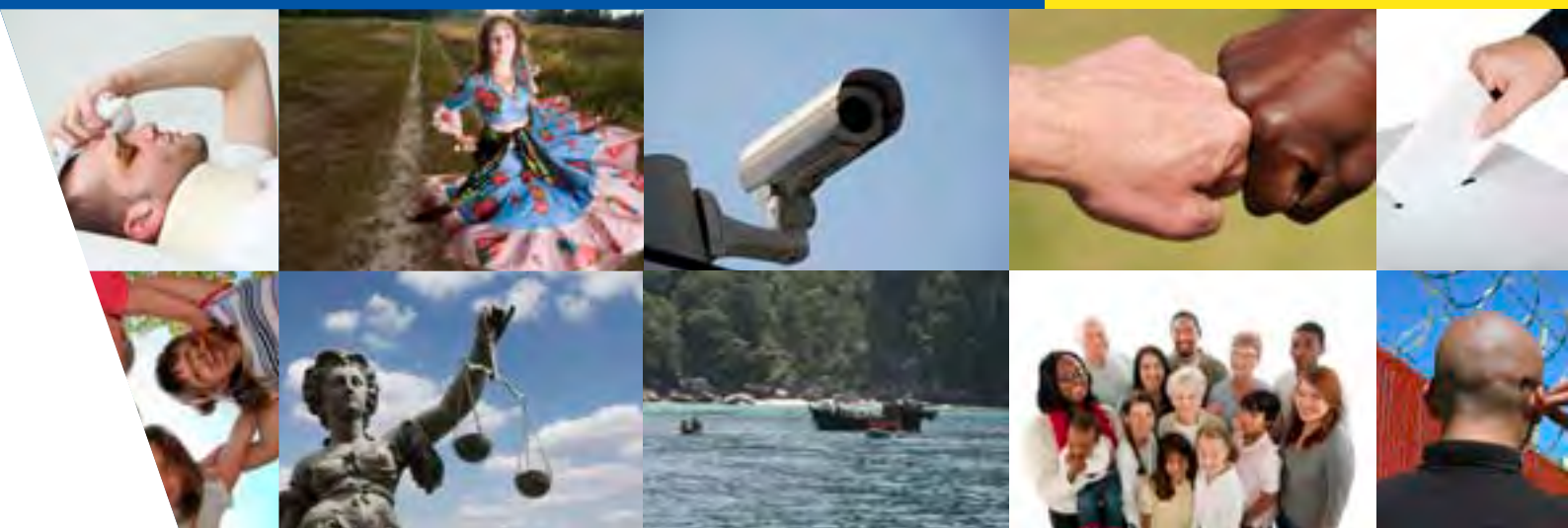


HIGHLIGHTS



Fundamental rights: key legal and policy developments in 2010



FRA

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Cataloguing data can be found at the end of this publication.

Luxembourg: Publications Office of the European Union, 2011

ISBN 978-92-9192-688-6

doi:10.2811/22704

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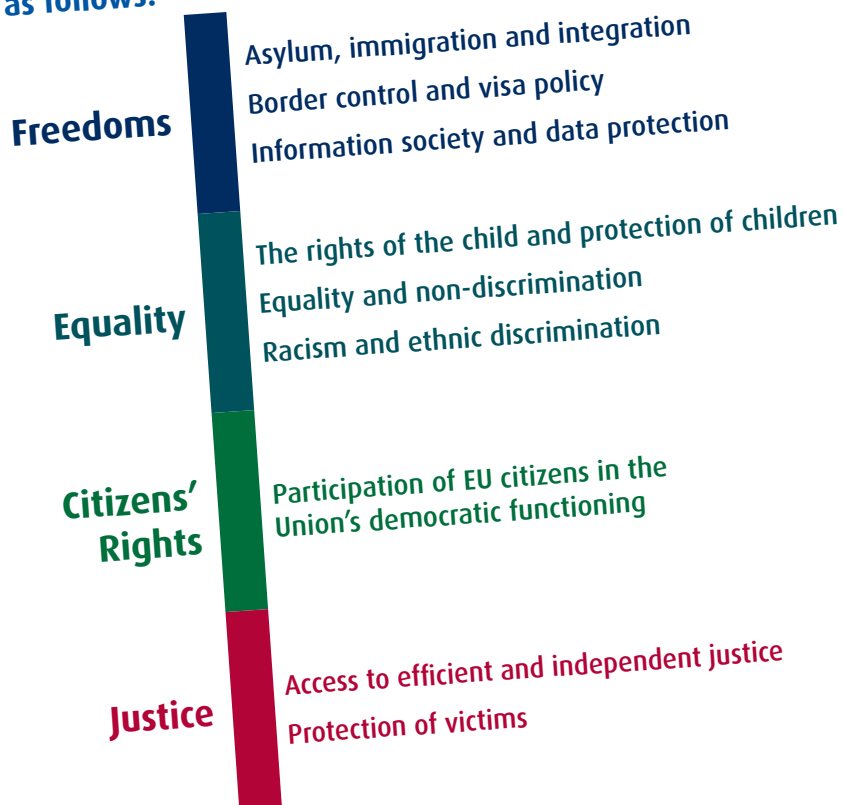
Printed in Luxembourg by Imprimerie Centrale

PRINTED ON ELEMENTAL CHLORINE-FREE BLEACHED PAPER (ECF)



**Fundamental rights:
key legal and policy
developments in 2010**

The summary of this year's FRA Annual Report covers several titles of the EU Charter of Fundamental Rights, colour coded as follows:



This summary puts the spotlight on selected key issues of the 2011 Annual Report of the European Union Agency for Fundamental Rights (FRA). In the margin throughout, it refers to relevant FRA publications from 2010, all of which can be accessed through the FRA website at fra.europa.eu.

This year's annual report covers challenges and achievements in the area of fundamental rights that took place between January and December 2010 (see Textbox). The full report's analyses of progress in the field of fundamental rights show that, while important developments took place in 2010, there is no room for complacency.

Various issues in the fundamental rights field concern the European Union (EU) and its Member States, notably: persistent and extreme poverty as well as social exclusion among Roma communities; deteriorating conditions of asylum seekers in certain Member States; the open challenge of integrating migrants; new questions in the area of data protection; violations of the rights of children; lack of equality for many in practice and continued instances of racism and discrimination; insufficient access to justice and underdeveloped protection of victims.

In light of this, it is not surprising that in 2010 the European Court of Human Rights (ECtHR) handed down 795 judgments against almost all 27 EU Member States and the candidate country Croatia – in 657 of these judgments, the Court found at least one fundamental rights violation (see Table 1). The majority of these cases do not fall within the scope of EU law. Nonetheless, court cases only reveal the 'tip of the iceberg' given the number of unreported incidents of fundamental rights abuses. It is also important to emphasise the international human rights obligations that the EU and its Member States have to respect since EU law stands in a close relationship with international fundamental rights law. In 2010, almost all of the EU Member States have been monitored under one or more

The FRA annual report *Fundamental rights: challenges and achievements in 2010* is structured along the Agency's main thematic areas of work for the period 2007-2012. It is divided into 10 chapters, in addition to a particular focus on Roma and their fundamental rights situation in Europe.

Focus: Roma in the EU – a question of fundamental rights implementation

1. Asylum, immigration and integration
2. Border control and visa policy
3. Information society and data protection
4. The rights of the child and protection of children
5. Equality and non-discrimination
6. Racism and ethnic discrimination
7. Participation of EU citizens in the Union's democratic functioning
8. Access to efficient and independent justice
9. Protection of victims
10. International obligations

This 27-page summary highlights selected issues of this year's FRA Annual Report. The full report, as well as its individual chapters, are available for download in English, French and German at: fra.europa.eu. Bibliographical references are all available at the end of each chapter in the main report.

European (Council of Europe) and international (United Nations, UN) treaty mechanisms. In fact, EU Member States were subject to more than 50 monitoring reports under the most important treaties in 2010 (see Table 3 on international monitoring activities in 2010).

The EU in 2010

2010 was the first year the EU operated on the basis of a legally binding bill of rights of its own – the Charter of Fundamental Rights of the European Union. The Treaty of Lisbon, which entered into force on 1 December 2009, forms the new legal backbone of the EU. Over time, it will provide for increased access to justice and greater democratic participation of the EU's citizens. While the EU Charter of Fundamental Rights does not extend the Union's competences, the European Parliament emphasised in its Resolution of 15 December 2010 on the situation and effective implementation of fundamental rights in the EU the need to take the Charter into account in decision-making processes as well as in the implementation of legislation.

“People’s interest in and expectations about the enforcement of the Charter are high. However, the Charter does not apply to all situations in which fundamental rights are at issue in the European Union. In 2010, the Commission received more than 4,000 letters from the general public regarding fundamental rights. Approximately three quarters of these concerned cases outside the remit of EU law. This reflects a frequent misunderstanding about the purpose of the Charter and the situations where the Charter applies or does not apply. [...] The Charter applies to actions by all EU institutions and bodies. It concerns in particular the legislative work of the European Parliament, the Council and the Commission. [...] The Charter applies to Member States only when they are implementing EU law.”

European Commission, 2010 Report on the Application of the EU Charter of Fundamental Rights, p. 3

On the basis of this new legal environment, the European Commission concluded in its Communication on the strategy for fundamental rights implementation in the autumn of 2010 that “[a]ll the components of an ambitious fundamental rights policy are therefore present” (COM(2010) 573 final). All EU institutions underlined and refreshed their commitment to fundamental rights in their respective spheres of competence in 2010.

For instance, it is noteworthy that since December 2009 the Council of the European Union has a new permanent Working Party on ‘Fundamental Rights, Citizens’ Rights and Free Movement of Persons’. The role of this new

group is to deal with matters relating to fundamental rights and citizens' rights including free movement of persons, negotiations on accession of the EU to the European Convention on Human Rights (ECHR) and the follow-up of reports from the FRA.

2010 is also a milestone marking the debut of a post-Lisbon EU on the international stage, as discussions paved the way for the EU's accession to two international human rights treaties, namely the Council of Europe ECHR and the UN Convention on the Rights of Persons with Disabilities (CRPD).

Table 1: ECtHR judgments in 2010 finding at least one fundamental rights violation, by country

Country	Number of judgments
Austria	16
Belgium	4
Bulgaria	69
Cyprus	3
Czech Republic	9
Denmark	0
Estonia	1
Finland	16
France	28
Germany	29
Greece	53
Hungary	21
Ireland	2
Italy	61
Latvia	3
Lithuania	7
Luxembourg	5
Malta	3
Netherlands	2
Poland	87
Portugal	15
Romania	135
Slovakia	40
Slovenia	3
Spain	6
Sweden	4
United Kingdom	14
Croatia	21
Total	657

Source: ECtHR, Annual Report 2010, Strasbourg, Council of Europe, 2011

Asylum, immigration and integration

Spotlight on migration flows and reception conditions

Difficulties in providing adequate reception conditions to asylum seekers have been reported, for instance, in relation to Belgium, Greece and Italy. As a result, states often take measures to limit the overall number of asylum seekers which, in turn, can have a negative impact on protection standards. Furthermore, living conditions may become difficult due to pressures of overcrowding, for example. This can be seen in relation to Greece, which has been criticised by various international bodies, including the Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Greece has been subject to significant pressure from migration inflows: some 75% of all arrests of irregular migrants at the land border of the EU took place in Greece in 2009 and almost 90% in 2010. Meanwhile, the asylum and migration management system in Greece is in its early stages of development, with limited border patrolling, detention and reception capacities. Against this background, some Member States decided to temporarily suspend transfers of asylum seekers to Greece.

Key developments in the area of asylum, immigration and integration:

- provisions of the Qualification Directive (2004/83/EC), relating to eligibility for, and the granting and withdrawal of refugee status, were clarified by judgments of the Court of Justice of the European Union (CJEU);
- Member States at the EU's external borders faced difficulties in guaranteeing fundamental rights where they experienced increased inflows of migrants, in particular regarding detention conditions of irregular migrants;
- transfers of asylum seekers to Greece under the Dublin II Regulation (343/2003/EC) were suspended in order not to pose risks to the fundamental rights of those transferred;
- detention conditions for irregular migrants, including for those whose asylum claims have failed, posed issues for the protection of human rights;
- protection practices under readmission agreements raised concerns as regards the principle of *non-refoulement*;
- more Member States introduced integration requirements as a condition of granting permanent residence permits;
- a few Member States discussed granting migrants greater political rights.

FRA PUBLICATIONS

Access to effective remedies: The asylum-seeker perspective, September 2010.

The duty to inform applicants about asylum procedures: The asylum-seeker perspective, September 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_asylum-seekers_en.htm

Spotlight on return procedures – detention of migrants

In 2010, the ECtHR found Romania, Greece and Malta responsible for unlawful detention and inhuman treatment of irregular migrants and asylum seekers. These ECtHR judgments signal that treatment of migrants in the context of detention and returns remains a sensitive area in the fundamental rights field. The Return Directive (2008/115/EC) provides for a maximum length of detention of six months, which can be prolonged under certain conditions to a period of up to 18 months in total. The directive required transposition to be completed by December 2010. As of November 2010, eight EU Member States had not laid down by law a maximum time limit for pre-removal detention or for certain types of such detention, including: Cyprus, Denmark, Estonia, Finland, Lithuania, Malta, Sweden and the UK.

Spotlight on transfers under the Dublin regime

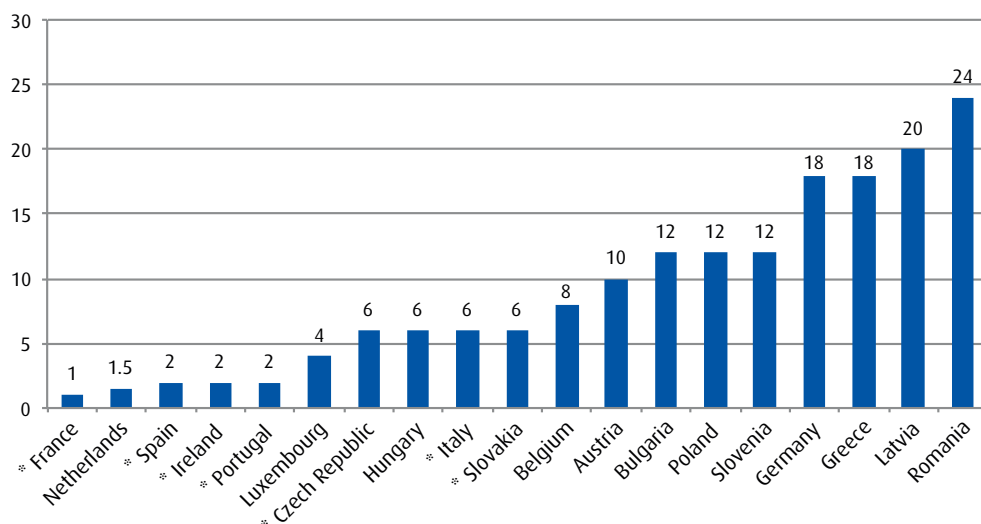
Member States transferring asylum seekers under the Dublin II Regulation back to overburdened states for the processing of their applications may risk exposing the applicants to breaches of their rights. The Dublin II Regulation, as with all EU instruments, must be applied in line with fundamental rights. The regulation itself provides Member States with the

FRA PUBLICATIONS

Detention of third-country nationals in return procedures, September 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_detention_en.htm

Figure 1: Maximum length of detention, by country (month)



Note: * Lengths of detention expressed in days or weeks in national legislation are provided in months in the graph. In countries where more than one time limit exists, the longest possible period of detention has been selected. Countries that have an upper time limit only for certain situations of pre-removal detention have been included in the list – this is the case in the Netherlands and Romania.

Source: FRA (2010), Detention of third-country nationals in return procedures, Vienna, FRA

possibility to individually suspend transfers to the responsible Member States. This possibility should be used in cases where such a transfer would not be in line with human rights obligations.

At the beginning of 2011, the ECtHR Grand Chamber delivered its judgment in the case of *M.S.S. v. Belgium and Greece*. The case concerned the return of an Afghan asylum seeker by Belgium to Greece in application of the Dublin II Regulation. The ECtHR found both Greece and Belgium in violation of Articles 3 (prohibition of degrading or inhuman treatment) and 13 (right to an effective remedy) of the ECHR. By the end of 2010, 1,000 cases concerning the application of the Dublin II Regulation to asylum seekers were pending before the ECtHR. They mostly concerned claims against Belgium, Finland, France and the Netherlands contesting transferral back to Greece and Italy.

FRA PUBLICATIONS

Coping with a fundamental rights emergency – The situation of persons crossing the Greek land border in an irregular manner, February 2011.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2011/pub_greek-border-situation_en.htm

Border control and visa policy

Spotlight on the revision of Frontex's mandate

Following the entry into force of the Lisbon Treaty, a number of steps were taken to enhance respect for fundamental rights during joint operations of several EU Member States undertaken at the EU's external borders under the coordination of the European Agency for the Management of Operational Cooperation at the External Borders (Frontex). In February 2010, the European Commission proposed amendments to the founding regulation of Frontex (COM(2010) 61 final). These amendments include explicit references to human rights, particularly as regards training of border guards and the conduct of joint operations. In the area of forced removals, for instance, it requires the establishment of a code of conduct to guide the implementation of joint return flights. Following a request from the Council of the European Union, the proposal was amended to allow Frontex to process the personal data of individuals returned in joint operations. The European Data Protection Supervisor (EDPS) indicated that this would require articulation of a clear legal basis in the regulation, as well as data protection safeguards. The proposal remained under discussion at the end of 2010 in the European Parliament and the Council.

Key developments in the area of border control and visa policy:

- cooperation agreements between EU Member States and third countries, which allow for interception and return of migrants at maritime borders, risked preventing those in need of international protection from claiming asylum;
- steps were taken to ensure respect for fundamental rights in the context of operations under the coordination of Frontex at the EU's external borders;
- for the first time, Frontex deployed Rapid Border Intervention Teams (Rabits) at the land border with Turkey, at the request of Greece;
- visa-free travel was granted to holders of biometric passports from Albania, Bosnia and Herzegovina and holders of Taiwanese passports.

Spotlight on the reform of the Schengen Borders Code

In April 2010, the Council of the European Union adopted a decision that supplemented the Schengen Borders Code and provided for rules and guidelines for maritime surveillance operations coordinated by Frontex (2010/252/EU). The guidelines concern issues relating to search and rescue operations and disembarkation of any persons rescued or intercepted, with priority to be given to disembarkation in the state from which those persons departed. Where it would be impossible to disembark rescued or intercepted persons in the state of departure, disembarkation should occur in the state hosting the operation. This new set of rules that are under review by the CJEU led Malta to announce that it would not host joint Frontex operations.

Information society and data protection

Spotlight on the implementation of the Data Retention Directive

In 2010, the debate continued on the fundamental rights compliance of the Data Retention Directive (2006/24/EC). The directive, which was adopted in 2006, compels phone and Internet companies to collect data about all of their customers' communications. In a joint letter on 22 June 2010, more than 100 organisations from 23 EU Member States asked the EU Commissioners Malmström, Reding and Kroes to "propose the repeal of the EU requirements regarding data retention in favour of a system of expedited preservation and targeted collection of traffic data". National campaigns against the implementation of the directive took place in Member States such as Austria, Belgium, Bulgaria and Germany. In October 2009, the Romanian Constitutional Court (*Curtea Constituțională*) declared national legislation implementing the directive unconstitutional in its Decision No. 1258. In March 2010, a ruling of Germany's federal Constitutional Court (*Bundesverfassungsgericht*, BVerfG) annulled German legislation implementing the Data Retention Directive, stating in its ruling BvR 256/08 that it posed a "grave intrusion" to personal privacy rights. Meanwhile, the European Commission announced that the 2006 data retention directive is under review.

Key developments in the area of information society and data protection:

- new technologies raised new fundamental rights concerns and led to calls for a modernisation of EU data protection legislation;
- consensus grew that data protection forms a key concern in international agreements, especially in the case of those dealing with Personal Name Records (PNR) and Swift;
- concerns were raised at political and legal levels in relation to the rise in compulsory retention of communication data (telephone and Internet) by private companies;
- the independence of data protection authorities became an issue that was dealt with before the CJEU;
- political debate continued on the implications of the use of body scanners as security devices at airports;
- the balance between data protection concerns and the right to information emerged as a topic and was addressed before the CJEU.

Spotlight on new technologies and related concerns

The implications of new technologies were addressed in various declarations of the Council of Europe. Google Street View is an example of a development that raised certain concerns. It offers panoramic views from various positions along streets in many cities worldwide. For this purpose, Google sends specially adapted cars through cities. This led to discussions and, in several EU Member States including Austria, Germany, Spain, Slovenia and Italy, to proceedings. In Germany, the federal Commissioner on Data Protection and Freedom of Information (*Bundesbeauftragter für den Datenschutz und die Informationsfreiheit, BfDI*) demanded a central register for complaints regarding the publication of personal data on the Internet, including services such as Google Street View. The *Bundesrat* adopted a draft bill amending the federal Law on Data Protection (*Bundesdatenschutzgesetz, BDSG*) to ensure improved protection of personal data with regard to geographical information services on the Internet like Google Street View.

At EU level, the topic of body scanners was discussed in detail. On 15 June 2010, the European Commission published its Communication on the use of security scanners at EU airports (COM(2010) 311). It argued that only a common European approach can provide harmonisation, taking into account the EU fundamental rights standards concerning the use of such scanners.

FRA PUBLICATIONS

The use of body scanners: 10 questions and answers, July 2010.

See: http://fra.europa.eu/fraWebsite/research/opinions/op-bodyscanner_en.htm

Spotlight on the status of data protection authorities

The independence, powers and resources of data protection authorities in EU Member States emerged as a concern in 2010. In the case of *Commission v. Germany (C-518/07)*, the CJEU expressed itself on the independence of data protection supervisory authorities for the first time. It established strict criteria and found that German data protection institutions at federal states' level (*Länder*), responsible for monitoring the processing of personal data by non-public bodies, were not sufficiently independent because they were subject to state oversight. In June 2010, the European Commission requested the United Kingdom to strengthen the powers of its national data protection authority, the Information Commissioner's Office (ICO), to comply with EU law. In December 2010, the European Commission referred Austria to the CJEU over a lack of independence at its data protection authority. According to data collected by the FRA, in France, Germany and Spain the data protec-

FRA PUBLICATIONS

Data protection in the EU: the role of National Data Protection Authorities, May 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_data_protection_en.htm

tion authorities were allocated a significant increase in human and financial resources over the period 2007-2010. A significant decrease in this regard was observed in Estonia, Ireland, Latvia, Lithuania and Slovakia.

The rights of the child and protection of children

Spotlight on the fight against sexual abuse and exploitation of children

In March 2010, the European Commission adopted, with a view to revise the existing framework, a proposal for a directive on combating sexual abuse, sexual exploitation of children and child pornography (COM(2010) 94 final). It covers criminal law including the criminalisation of serious forms of child sexual abuse and exploitation currently not covered by EU legislation; criminal investigation and initiation of proceedings; and developments in the information technology environment including the criminalisation of new forms of sexual abuse and exploitation facilitated by Internet use. In addition, the proposal includes the establishment of national mechanisms to block access to websites with child pornography, together with action to delete content at source under the supervision of judicial services or the police.

In July 2010, the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual

Key developments in the area of children's rights:

- the European Commission adopted in early 2011 an EU Agenda for the rights of the child, including 11 action points;
- agreement was reached at EU level on the final text of a directive on preventing and combating trafficking in human beings and protecting victims, which devotes particular attention to child protection;
- the Council of Europe adopted Guidelines on child-friendly justice and a recommendation on de-institutionalisation and community living of children with disabilities;
- the European hotline for missing children, 116 000, was in operation in only 13 EU Member States;
- worrying results emerged from inquiries in different EU Member States into child abuse committed in institutions or by their staff members;
- FRA findings underlined that separated children in a migration or asylum context are often not appropriately housed, medical screening upon arrival is not always accessible, asylum determination procedures are often not child friendly, and the quality of guardianship varies significantly among EU Member States;
- there remained a lack of comprehensive disaggregated data regarding child trafficking for sexual or labour exploitations; where they are recorded, the number of victims of trafficking identified remained very low.

Abuse entered into force (Council of Europe Treaty Series (CETS) No. 261). This convention is the first international instrument to tackle all forms of sexual violence against children. The convention also covers sex tourism and the solicitation of children for sexual purposes through information and communication technologies (also known as 'child grooming'). Denmark, France, Greece and the Netherlands were the only EU Member States which had ratified the convention by the end of 2010.

Spotlight on the rights of unaccompanied and separated children

Children separated from both parents or primary care givers are particularly vulnerable, especially in a migration context. The Commission's Action Plan on Unaccompanied Minors for the years 2010-2014, adopted on 6 May 2010, identifies several problems and proposes solutions (COM(2010) 213 final). The main strands for action include: the prevention of unsafe migration and trafficking; the reception and procedural guarantees in the EU – also encompassing age assessment and family tracing issues; and the identification of durable solutions – including family reunification issues. These actions are to be implemented by a series of measures that are not limited to immigration policies, but also aim to address the root causes of migration. The Action Plan supports the adoption of common standards for guardianship and legal representation and recommends that a decision on the future of each unaccompanied minor be taken by the competent authority as soon as possible, preferably within six months. The decision should take into account the obligation for Member States to try to trace the families and explore other possibilities for a child's reintegration in their country of origin, assessing which solution is in the best interests of a child. This could include the granting of international protection status and resettlement in the EU. The Commission Communication observes that the return of children is only one of the options "because the issue is much more complex and multidimensional and there are clear boundaries to the Member States' freedom of action when dealing with unaccompanied minors".

FRA PUBLICATIONS

Separated, asylum-seeking children in European Union Member States, Summary Report, April 2010.

Separated, asylum-seeking children in European Union Member States, Comparative report, December 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_sep_asylum_en.htm

Equality and non-discrimination

Key developments in the area of equality and non-discrimination:

- negotiations on the 'horizontal' directive remained ongoing in the Council of the European Union;
- EU Member States continued to introduce new legislation, as well as amending existing ones, to transpose the equality directives, namely the Racial Equality Directive (2000/43/EC), Employment Equality Directive (2000/78/EC), Gender Goods and Services Directive (2004/113/EC) and Gender Equality Directive (recast) (2006/54/EC);
- levels of complaints received by equality bodies remained varied across the EU. Despite an increase in complaints reported in 12 EU Member States, overall numbers appeared low. The mandates of some equality bodies were broadened to include more grounds of discrimination;
- directives on parental leave (2010/18/EU) and on equality between self-employed men and women were adopted (2010/41/EU), as well as a five-year strategy promoting equality between men and women covering the period 2010-2015. Negotiations on the Pregnant Workers Directive remained ongoing;
- the European Institute for Gender Equality (EIGE) was formally opened;
- the EU ratified the United Nations Convention on the Rights of Persons with Disabilities (CRPD), as did a further four Member States in 2010, bringing the total to 16 Member States having ratified the convention. The European Commission launched its European Disability Strategy (COM(2010) 636 final) and some Member States moved towards the implementation of independent living and inclusive education for persons with disabilities;
- the Council of Europe Committee of Ministers adopted a far-reaching Recommendation on sexual orientation and gender identity discrimination ((CM/Rec(2010) 5), while the Parliamentary Assembly adopted a recommendation and a resolution on the topic (Recommendation 1915 and Resolution 1728). ECtHR case law and measures among some Member States prompted developments in the rights of same-sex couples, transgender rights and the carrying out of Pride marches;
- discrimination on the basis of religion received consideration in judicial decisions relating to the display of religious symbols at work and religious classes in schools;
- promotion of the participation of both older persons and young persons in the labour market received attention in initiatives of the European Commission;
- progress towards dealing with discrimination on multiple grounds was seen among some Member States' courts and equality bodies.

Spotlight on (un)equal levels of protection and the reform of equality bodies

At EU level, negotiations on the 'horizontal' directive remained ongoing in the Council. Such a directive would extend the level of protection currently granted by EU law against ethnic discrimination to all other forms of discrimination. At national level, the 'hierarchy' that affords racial and ethnic origin better protection than other grounds was abolished in various Member States. As a result, as of 2010 only nine Member States maintained different levels of protection based on different types of discrimination. With regard to equality bodies, important developments could be noticed in 2010. Twelve out of 21 Member States, where data for 2010 was available, experienced an increase in the number of complaints or requests for assistance. Institutional reform of existing mechanisms, including a widened mandate to cover other grounds of discrimination, took place in Denmark, Estonia and France. Equality bodies have also come under increasing scrutiny from UN treaty bodies, notably the Committee on the Elimination of Racial Discrimination (CERD), during the process of periodic review.

FRA PUBLICATIONS

EU-MIDIS Data in Focus 3: Rights awareness and equality bodies, May 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/pub_dif3_en.htm

Spotlight on the enhanced fight against discrimination based on disability

In December 2010, the EU became party, for the first time, to a UN human rights treaty, alongside its Member States: the UN Convention on the Rights of Persons with Disabilities (CRPD). A further four Member States ratified the Convention in 2010, namely France, Latvia, Lithuania and Slovakia, bringing the total number of ratifications to 16 out of 27 Member States. Discrimination on the basis of disability continued to be reported at national level. This also reflects the position adopted in February 2010 in the Recommendation of the Committee of Ministers of the Council of Europe on de-institutionalisation and community living of children with disabilities (CM/Rec(2010) 2).

Spotlight on new developments regarding sexual orientation and transgender rights

In 2010, the Council of Europe Committee of Ministers adopted a Recommendation on measures to combat discrimination on grounds of sexual orientation or gender identity, which provides the most far-reaching political commitment at the intergovernmental level to date for the protection of LGBT rights (CM/Rec(2010) 5). At judicial level, the ECtHR underlined in the case of *Schalk and Kopf v. Austria* that the question of whether or not to allow same-sex marriage is left to states. At the same time, the Court recognised that there was a "rapid evolution of social attitudes towards same-sex couples" and that

a cohabiting same-sex couple living in a stable *de facto* partnership falls within the notion of 'family life'.

Important developments also occurred in the area of transgender rights in 2010. In France, transsexuality was removed from the list of 'long-term psychiatric conditions'. In Portugal, a new law was adopted on legal recognition of gender reassignment. And in Germany, following a judgment by the federal Constitutional Court (*Bundesverfassungsgericht, BVerfG*), the requirement to divorce was abolished as a precondition to altering the recorded sex in official documents. In Austria, the courts found that surgery cannot be imposed as a precondition for changing an individual's name and sex in the relevant documents. Finally, in Malta, a judgment of the Constitutional Court found that the absence of the right for a transgender woman to marry her male partner violated Article 12 of the ECHR on the right to marry. With regard to asylum law, six EU Member States – Finland, Latvia, Malta, Poland, Portugal and Spain – extended protection to lesbian, gay and bisexual (LGB) victims, bringing the total number of Member States explicitly affording protection to LGB victims of persecution to 23 countries.

FRA PUBLICATIONS

Homophobia, transphobia and discrimination on grounds of sexual orientation and gender identity, 2010 Update – Comparative legal analysis, November 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub-lgbt-2010-update_en.htm

Racism and ethnic discrimination

Spotlight on ethnic discrimination and the need for data collection

It appears that in various EU Member States awareness of the need for data collection is increasing. In France, for instance, the census does not include any ethnic data, despite a recommendation by CERD, repeated in August 2010. However, the French Commissioner for Diversity and Equal Opportunities (*Commissaire à la diversité et à l'égalité des chances*), established a Committee for measuring and evaluating diversity and discrimination (Comedd). The committee published its findings in February 2010 making several recommendations, including to foster research and experimental surveys using alternative means to measure discrimination, such as relying on family names, on-site observations and possibly questions on self-identified ethnicity. Important data can also be collected through discrimination testing. The results of the first systematic discrimination testing study in Germany since the mid-1990s were published in February 2010, showing that applicants with a Turkish-sounding name face discriminatory barriers in access to the labour market. The researchers tested 528 publicly advertised student internships and discovered that the chances of applicants with a Turkish name of receiving a call back by the employer were 14% lower than the chances of the 'German' testers, with the discrimination rate significantly higher in small companies.

FRA PUBLICATIONS

Racism, ethnic discrimination and exclusion of ethnic minorities in sport: a comparative view of the situation in the European Union, October 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub-racism-in-sport_en.htm

Key developments in the area of racism and ethnic discrimination:

- discrimination in the area of employment remained prevalent, with cases relating to discrimination in job advertisements, recruitment processes, working conditions and dismissals;
- access to healthcare remained dependent on efforts to overcome language barriers and accommodate cultural diversity. In the case of irregular migrants, access hinged upon whether healthcare personnel were required to report undocumented persons to the authorities;
- although formal legal and administrative barriers to accessing social housing were present in only a few Member States, available evidence suggested that minorities continue to live in lower-quality housing resulting from both direct and indirect discrimination;
- segregation in education appeared to remain a problem affecting mainly Roma children in some Member States. Barriers to access to education remained for children of undocumented migrants in some Member States where school authorities are obliged to collect information and report on the legal status of students and their parents;
- a number of Member States were beginning to move towards the collection of data broken down by race or ethnicity, which is an important development in an effort to record and identify potentially discriminatory practices;
- most Member States that collect data on racially motivated crime showed an increase in recorded numbers.

Spotlight on the Council Framework Decision on Racism and Xenophobia

By 28 November 2010, the EU Member States had to transpose this EU measure that provides for the approximation of laws of the Member States on offences involving racism and xenophobia (2008/913/JHA). Racist and xenophobic behaviour must constitute an offence in all Member States and must be punishable by effective, proportionate and dissuasive penalties of a maximum of at least one to three years of imprisonment. At the end of 2010, Member States were in the process of notifying their implementing measures. As soon as this process is complete and translations are available, the European Commission will start its analysis of the transposition of the Framework Decision.

FRA PUBLICATIONS

Experience of discrimination, social marginalisation and violence: A comparative study of Muslim and non-Muslim youth in three EU Member States, October 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub-racism-marginalisation_en.htm

FRA PUBLICATIONS

Understanding and preventing discriminatory ethnic profiling: A Guide, October 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_ethnic-profiling_en.htm

EU-MIDIS Data in Focus 4: Police stops and minorities, October 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_dif4_en.htm

FRA PUBLICATIONS

The impact of the Racial Equality Directive – Views of trade unions and employers in the European Union, November 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_racial_equal_directive_en.htm

Participation of EU citizens in the Union's democratic functioning

Spotlight on the limitation of voting rights of persons with disabilities

Research conducted by the FRA showed that in a majority of Member States persons with disabilities, who have lost their legal capacity, are deprived of their voting rights. These findings raise an issue of compatibility with UN standards as guaranteed in Article 29 of the UN Convention on the Rights of Persons with Disabilities. Similar concerns were raised before the ECtHR. In the case of *Alajos Kiss v. Hungary* (No. 38832/06), the Court found that the automatic disenfranchisement of a person under guardianship due to a mental health problem constitutes a violation of Article 3 of Protocol No. 1 to the ECHR. According to the Constitution of Hungary, a person placed under guardianship does not have the right to vote. The ECtHR rejected the validity of an absolute ban on voting being imposed on any person under partial guardianship irrespective of his or her actual faculties. The ECtHR judges considered that only an individualised judicial evaluation could have legitimised the restriction on the applicant's voting rights.

Spotlight on the European Citizens' Initiative

With the European Citizens' Initiative, the Lisbon Treaty introduced a new form of public participation in the EU. Article 11(4) of the Treaty on European Union (TEU) provides that "not less than one million citizens who are nationals of a significant number of Member States may take the initiative of inviting the European Commission, within the framework of its powers, to submit any appropriate proposal on matters where citizens consider that a legal act of the Union is required for the purpose of implementing the Treaties". The details for operating this new direct democracy instrument are outlined in a regulation of the European Parliament, to which the Council of

Key developments in the area of participation:

- as a result of the low participation rates of non-national EU citizens in municipal and European Parliament elections, discussions on electoral reform in this area began;
- the ECtHR extended its case law on the right to free elections (Article 3 of Protocol No. 1 to the ECHR);
- following political consensus on the Citizens' Initiative Regulation at the end of 2010, the regulation was formally adopted in February 2011 and can be applied as of 1 April 2012.

FRA PUBLICATIONS

The right to political participation of persons with mental health problems and persons with intellectual disabilities, November 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub-vote-disability_en.htm

the European Union agreed at the end of 2010. The regulation was officially adopted on 14 February 2011. It stipulates that the required one million signatures should come from at least one quarter of all Member States.

Access to efficient and independent justice

Spotlight on new EU initiatives in the area of criminal procedures

With the entry into force of the Lisbon Treaty, the former third pillar – police and judicial cooperation in criminal matters – was submitted to the ordinary legislative procedure and, most importantly, to the CJEU jurisdiction. Various legislative initiatives were tabled in 2010, which have a certain relevance for access to justice at national level. In October 2010, the Directive on Interpretation and Translation was adopted (2010/64/EU). It guarantees suspects and the accused the right to written translations of relevant parts of all essential documents and interpretation of all hearings and questioning, as well as interpretation during meetings with lawyers. Their rights cannot be waived without first receiving legal advice or full information about the consequences of such an action. It is up to the judge in the individual case to determine if the quality and extent of interpretation and translation has been sufficient. In July 2010, the European Commission adopted a proposal on a 'letter of rights' for criminal suspects, to introduce common minimum standards on the right to

Key developments in the area of access to justice:

- an EU Directive on Translation and Interpretation (2010/64/EU) was adopted as a first step in the implementation of the EU Roadmap for strengthening procedural rights of suspected or accused persons in criminal proceedings (the 'Roadmap');
- several EU Member States began reform of their courts, including measures to reduce the length of legal proceedings and increase independence;
- several Member States took steps to strengthen or create National Human Rights Institutions (NHRIs).

FRA PUBLICATIONS

FRA Opinion on the draft Directive regarding the European Investigation Order, February 2011.

See: http://fra.europa.eu/fraWebsite/research/opinions/op-eio_en.htm

information in criminal proceedings (COM(2010) 392 final). Other proposals include an initiative by seven Member States for a European Investigation Order (JAI(2010) 3).

Spotlight on access to justice as a major fundamental rights concern

Access to justice is a right in itself and important as a means to realise other important fundamental rights. However, access to independent and efficient justice is not always guaranteed. In 2010, the ECtHR found violations in 636 cases against 26 EU Member States, 115 of which involved violations of the right to a fair trial. Recognising the scale of the challenge, the Committee of Ministers of the Council of Europe adopted a Recommendation of the Member States on effective remedies for excessive length of proceedings (CM/Rec(2010) 3); a *Guide to good practice* accompanies the recommendation. The FRA Annual Report identifies measures addressing this problem in various Member States, including: Bulgaria (establishment of 'reserve advocates'), Cyprus (complaints regarding the length of procedures are possible at all judicial levels), Germany (draft law providing compensation for material and immaterial damages due to delays) and Latvia (Courts were allowed to issue lower sentences where proceedings have not been completed within a reasonable time). Moreover, it highlights various examples of measures taken in Member States that aim to strengthen judicial independence.

FRA PUBLICATIONS

Access to effective remedies: The asylum-seeker perspective, September 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_asylum-seekers_en.htm

Spotlight on National Human Rights Institutions and equality bodies

National Human Rights Institutions (NHRIs), together with national equality bodies, have significant potential to facilitate or provide direct access to justice. NHRIs that fully comply with the Paris Principles – that is, those with A-status – are better placed to fulfil this role. The Paris principles, adopted by the UN General Assembly in 1993, provide authoritative guidance on the required powers of independent and effective institutions with the role of protecting and promoting human rights at national level.

FRA PUBLICATIONS

National Human Rights Institutions in the EU Member States, May 2010.

See: http://fra.europa.eu/fraWebsite/research/publications/publications_per_year/2010/pub_national_hr_inst_en.htm

In 2010, with the NHRI in Scotland receiving A-status, the total number of A-status NHRIs within the EU reached 12 institutions in 10 different Member States, with the United Kingdom having three NHRIs. In four of the Mem-

Table 2: NHRIs in EU Member States and Croatia, by accreditation status

Status	Country
A	Denmark, France, Germany, Greece, Ireland, Luxembourg, Poland, Portugal, Spain, United Kingdom*, Croatia
B	Austria, Belgium , the Netherlands , Slovakia, Slovenia
C	Romania
Not accredited	Bulgaria, Cyprus , the Czech Republic, Estonia, Finland , Hungary, Italy , Latvia, Lithuania, Malta and Sweden

Notes: * The Equality and Human Rights Commission shares the UK seat at the International Coordinating Committee of NHRIs with the Northern Ireland Human Rights Commission and the Scottish Human Rights Commission. Countries shown in bold indicate a planned change in the NHRI's accreditation status in the near future.

Source: International Coordinating Committee of NHRIs, *Chart of the Status of National Institutions*, 1 January 2010.

ber States without accredited institutions – Cyprus, Finland, Italy and Sweden – decisive steps were taken in 2010 to establish NHRIs that have the potential to receive A-status.

Protection of victims

Spotlight on the development of victim rights' standards at European level

At the end of 2010, the European Parliament and the Council of the European Union discussed the Human Trafficking Directive as proposed by the European Commission. This directive adopts the 'three-P' response to trafficking – prevention, protection and prosecution – and seeks to increase elements of assistance and support to victims. This holds true for three specific articles related to child victims. In addition, the draft European Protection Order as initiated by 12 Member States (JAI(2010) 2) is currently under negotiation. It focuses on inter-personal violence and aims to provide victims with protection in EU transborder cases. The draft passed the European Parliament's first reading in December 2010. Finally, discussions were also underway in 2010 to identify how existing EU legislation could be amended or replaced to better meet the needs of victims. Victims' needs are currently covered by the Framework Decision on the standing of victims in criminal proceedings (2001/220/JHA) and the Directive on compensation to crime victims (2004/80/EC). In relation to Council of Europe standards, in 2010 a number of EU Member States ratified the Council of Europe Convention on Action against Trafficking in Human Beings (CATHB) of 2005, including Ireland, Italy, the Netherlands and Sweden. The Committee of Ministers of the Council of Europe also adopted Guidelines on child-friendly justice; the guidelines serve to protect the rights of the child in the context of legal proceedings.

Key developments in the area of victims' protection:

- initiatives were taken at EU level to improve legislative protection of victims, such as the Human Trafficking Directive (COM(2010) 95 final), the proposed European Protection Order (JAI(2010) 2) and discussions on a new Victims Directive;
- stronger standards were set for the protection of victims, such as the adoption by the Council of Europe of Guidelines on child-friendly justice, and several Member States' ratification of the Convention on Action against Trafficking in Human Beings;
- developments took place at national level to improve the position of victims, including access to compensation and information on their rights in the context of legal proceedings;
- efforts were made to address violence against women by both the Council of the European Union and the European Commission;
- measures were taken to improve data collection on victims at EU as well as national level.



Spotlight on the information and compensation of victims at national level

This year's FRA Annual Report identifies a number of developments at national level, including the establishment of a Nationwide Victim Assistance Network (Poland), the establishment of easier and more transparent procedures in the context of compensation of victims (Germany), the introduction of an obligation of the offender to contribute to a crime victim fund (Finland) and the establishment of the opportunity to apply for compensation online (Sweden). In Ireland, a Victims Charter and Guide to the Criminal Justice System was publicly launched. The Internet also plays a role in this context: Sweden published an English language version of its didactic online introduction to courts for crime victims.

Outlook

The Agency's annual report on *Fundamental rights: challenges and achievements in 2010* identifies various challenges for the immediate future on an array of topics.

In the **area of asylum**, the Common European Asylum System is to be completed by 2012. Therefore, significant progress will be required in the coming year. Following the ECtHR judgment in the *M.S.S.* case, Member States that have not already suspended transfers of asylum seekers to Greece in application of the Dublin II Regulation are likely to do so in 2011. Whether further initiatives in this area based on solidarity and collective responsibility will emerge remains unclear. The fundamental rights challenges in the context of returns will crystallise as Member States continue to adopt the Return Directive into their national law and implement it.

With regard to **border control**, evaluation of the first deployment of Rapid Border Intervention Teams (Rabits) in Greece will provide useful lessons for future operations of this nature. Close cooperation between Frontex, the FRA and the European Asylum Support Office, as well as greater prominence of fundamental rights in Frontex's mandate, open the door to making fundamental rights an integral element of border management.

In the area of **data protection**, the implications of new technical developments are likely to remain on the agenda in the near future and will probably contribute to the ongoing overarching debate about the modernisation of the EU data protection framework be it in relation to body scanners, Passenger Name Records, databases or other contexts. Against the backdrop of the Lisbon Treaty, two issues will be central in the near future: compliance with fundamental rights standards (for example, in the context of data retention) and the extension of the scope of the general data protection framework to include areas of police and justice cooperation in criminal matters.

Regarding the **rights of children**, the situation of children who are in vulnerable situations represents a key challenge. These challenges include children that go missing from home, children with disabilities, Roma children, separated children in a migration or asylum context and child victims of trafficking for sexual and labour exploitation. EU measures to enhance the protection of these children must have as a primary consideration the children's best interest. Their views and opinions should be heard and assessed taking due account of their psychological and physical well-being as well as their legal, social and economic interests. The Commission's Agenda for the Rights of the Child provides an ambitious work plan in this regard.

In the area of **equality**, the coming years provide the Member States with a fresh opportunity to strengthen protection against discrimination on the grounds of religion or belief, sexual orientation, disability and age beyond the sphere of employment. Developments such as the ratification of the CRPD, the Council of Europe Recommendation on measures to combat discrimination on the grounds of sexual orientation or gender identity and the EU five-year

strategy on promoting equality between men and women provide guidance in this regard. Moreover, multiple discrimination remains a reality that is largely not reflected in the EU's legal framework and that of its Member States, or in the approach of courts and equality bodies. Increasing understanding and awareness of multiple discrimination and integrating these insights into the legal process is a challenge in the coming years.

With regard to **racism and ethnic discrimination**, some Member States have successfully used discrimination testing as a means of monitoring the prevalence of discrimination and of proving discriminatory practices in the employment and housing sectors. As a result of past successes, such testing is expected to become more common across the EU. Moreover, the collection of data broken down by racial or ethnic origin, in line with the recommendations of the Council of Europe's European Commission against Racism and Intolerance (ECRI) and the UN Committee on the Elimination of Racial Discrimination (CERD), remains an open challenge for many Member States. Also, in the area of criminal law, given that racist crime continues to be a problem throughout much of the EU, many Member States still need to commit to addressing racist crime in line with the EU Framework Decision and the Council of Europe's Convention on Cybercrime.

Coming to the **participation of EU citizens** in the democratic functioning of the EU, the adoption of the regulation on the European Citizens' Initiative was a major breakthrough. With the regulation in place, EU Member States need to organise structures and procedures at national level to facilitate the gathering of one million signatures needed to launch the Citizens' Initiative. However, the Citizens' Initiative should help make EU citizens more aware of the important issues of European integration.

In the area of **access to justice**, continuing reforms of judicial systems remain necessary in the Member States, particularly as regards the excessive length of proceedings. This should be seen in the context of reforms taking place at the ECtHR to deal with an excessive backlog of cases. It is only by ensuring that national judicial systems are adequate that it will be possible to relieve the workload at the ECtHR. At the same time, strengthening other national mechanisms, in particular equality bodies and NHRIs, can help to address systemic problems at national level. Whether EU Member States will continue to move towards strengthening NHRIs in light of prevailing austerity measures remains to be seen.

Finally, in the area of **victims' protection** there are promising developments at EU and national level. Initiatives on the rights of suspects and the accused (in particular 'the Roadmap'), would benefit from a parallel development in the area of victims' rights so as to allow for clearer and more comprehensive legislation addressing the rights of suspects and accused persons as well as those of victims and witnesses. The forthcoming 'European Safety Survey', together with the FRA survey on Violence against Women, which includes violence in childhood, and patterns of reporting among victims, will shed light on victims' enjoyment of their rights in practice.

Table 3: Overview of monitoring reports released on EU Member States and Croatia under UN and Council of Europe monitoring procedures in 2010, by country

	CERD	HRC	CESCR	CEDAW	CAT	CRC	CRC-OP-SC	UPR	ECPT	ECRML	FCNM	ECRI	Total
Austria					✓				✓			✓	3
Belgium		✓				✓	✓		✓				4
Bulgaria								✓	✓		✓		3
Cyprus											✓		1
Czech Republic				✓					✓				2
Denmark	✓									✓			2
Estonia	✓	✓					✓						3
Finland											✓		1
France	✓				✓							✓	3
Germany											✓		1
Greece													0
Hungary		✓							✓		✓		3
Ireland													0
Italy								✓	✓		✓		3
Latvia													0
Lithuania													0
Luxembourg									✓	✓			2
Malta				✓									1
Netherlands	✓		✓	✓									3
Poland		✓										✓	2
Portugal													0
Romania	✓								✓				2
Slovakia	✓								✓		✓		3
Slovenia	✓							✓					2
Spain						✓		✓					2
Sweden								✓					1
United Kingdom												✓	1
Croatia*								✓		✓	✓		3
Total	7	4	1	3	2	2	2	6	9	3	8	4	51

Note: * According to Article 28 of the FRA Founding Regulation (EC) No. 168/2007, Croatia, as a candidate country to the EU, is allowed to participate in the Agency's activities.

✓ = Monitoring report adopted in 2010

CERD	Committee on the Elimination of All Forms of Racial Discrimination
HRC	Human Rights Committee (Monitoring body of the International Covenant on Civil and Political Rights, ICCPR)
CESCR	Committee on Economic, Social and Cultural Rights
CEDAW	Committee on the Elimination of Discrimination Against Women
CAT	Committee Against Torture
CRC	Committee on the Rights of the Child
CRC-OP-SC	Committee on the Rights of the Child (Monitoring the Optional Protocol on the Sale of Children)
UPR	Universal Periodic Review
ECPT	European Convention for the Prevention of Torture
ECRML	Committee of Experts on Regional and Minority Languages
FCNM	Advisory Committee on National Minorities
ECRI	European Commission against Racism and Intolerance

European Union Agency for Fundamental Rights
Fundamental rights: key legal and policy developments in 2010

2011 — 27 p. — 21 × 29.7 cm

ISBN 978-92-9192-688-6

doi:10.2811/22704

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HELPING TO MAKE FUNDAMENTAL RIGHTS A REALITY FOR EVERYONE IN THE EUROPEAN UNION

2010 marked the first year the European Union (EU) operated on the basis of a legally binding bill of rights – the Charter of Fundamental Rights of the EU. This year’s summary of the annual report of the European Union Agency for Fundamental Rights puts the spotlight on selected key political and legal developments in the EU and its Member States as they strive to inject robust life into their fundamental rights commitments. Steps forward in 2010 included, among many, the reinforcement of a fundamental rights check of EU legislative proposals and the adoption of the regulation on the Citizens’ Initiative – an important new EU participatory democracy tool. Moves by several Member States to strengthen or create National Human Rights Institutions and the EU’s ratification of the United Nations Convention on the Rights of Persons with Disabilities (CRPD) complemented this picture.

Still, there is no room for complacency. The EU continues to face various issues of concern in the fundamental rights field, such as persistent and extreme poverty as well as social exclusion among Roma communities and deteriorating conditions of asylum seekers in certain Member States. In 2010, the European Court of Human Rights delivered over 600 judgments for violations of human rights, with rulings against almost all 27 EU Member States.

This summary highlights selected key issues in the fundamental rights field, covering the following topics: asylum, immigration and integration; border control and visa policy; information society and data protection; the rights of the child and protection of children; equality and non-discrimination; racism and ethnic discrimination; participation of EU citizens in the Union’s democratic functioning; access to efficient and independent justice; and victims’ protection.



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ISBN 978-92-9192-688-6



9 789291 926886