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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE  
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE  
COMMITTEE OF THE REGIONS**

**Effective legal protection and access to justice  
2023 Annual report on the application of the EU Charter of Fundamental Rights**

# **Effective legal protection and access to justice**

## **2023 Annual report on the application of the EU Charter of Fundamental Rights**

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## 1. Introduction

The Charter of Fundamental Rights of the European Union (the Charter) brings together the fundamental rights afforded to everyone in the European Union (EU). It emphasises the interconnectedness between fundamental rights and the founding values of human dignity, freedom, equality and solidarity, and the principles of democracy and the rule of law. As binding primary law, the Charter ensures the protection of fundamental rights throughout the EU.

### *When does the Charter apply?*

Since 2009, the Charter has the same legal status as the Treaties, the EU law on which EU legislation is based<sup>1</sup>. EU institutions must comply with it in all their activities, and Member States must also comply with it when they implement EU law<sup>2</sup>.

Member States implement EU law notably when they:

- give effect to EU legislation by adopting national implementing measures;
- adopt legislation where EU law imposes specific obligations, or allows for a derogation<sup>3</sup>;
- implement EU funding programmes in line with the EU funding rules.

As set out in the 2020 Strategy to strengthen the application of the Charter of Fundamental Rights in the EU (the Charter strategy)<sup>4</sup>, the Commission presents thematic annual reports on the application of the Charter focusing on areas of strategic relevance<sup>5</sup>. This year's Charter report is dedicated to effective legal protection and access to justice as a precondition for enjoying fundamental rights, in a manner that leaves no one behind<sup>6</sup>.

### *Progress in implementing the Charter strategy in 2022- 2023:*

- In December 2022, the Commission adopted its 2022 Annual report on the application of the Charter, dedicated to the role of civil society organisations and human rights defenders in upholding fundamental rights<sup>7</sup>.
- In 2023, the Commission organised **a series of seminars** with stakeholders on how the EU and the Member States can develop their role to protect, support and empower civil society organisations and human rights defenders. In November 2023, follow-up actions were discussed in a high-level event organised with the Spanish Council presidency.

<sup>1</sup> Article 6 TEU.

<sup>2</sup> Article 51(1) of the Charter.

<sup>3</sup> When Member States adopt laws in an area where the EU has no competence and when no EU law exists, they are not implementing EU law and the Charter is not applicable to them. However, many fundamental rights enshrined in the Charter are also set out in national constitutions and case law, as well as in the European Convention on Human Rights, to which all Member States are signatories.

<sup>4</sup> COM(2020) 711 final.

<sup>5</sup> See previous reports: [A thriving civic space for upholding fundamental rights in the EU](#) - 2022 Annual report on the application of the EU Charter of Fundamental Rights, COM/2022/716; [Protecting fundamental rights in the digital age](#) - 2021 Annual report on the application of the EU Charter of Fundamental Rights, COM/2021/819.

<sup>6</sup> Charter strategy, p. 1.

<sup>7</sup> COM(2022)716 final; COM(2021) 819 final.

- So far, 25 Member States have nominated a **Charter focal point** to boost cooperation and promote the effective application of the Charter in their Member State.
- The Commission also launched **training courses for EU staff** on applying the Charter in impact assessments. Training for justice professionals on the application of the Charter continues to be provided under the European judicial training strategy 2021-2024<sup>8</sup>. The European training platform of the European e-Justice portal<sup>9</sup> contains e-learning materials and training on fundamental rights directed at legal practitioners and justice professionals.
- In the context of the ‘horizontal enabling condition’ on the effective application of the Charter (Charter HEC)<sup>10</sup>, the Commission has assessed all financial programmes submitted by the Member States to check that effective arrangements are in place to ensure that the Charter is respected in the implementation of the relevant EU Funds. The Commission has so far assessed that the Charter HEC is fulfilled by all Member States, with three exceptions<sup>11</sup>. No relevant expenditure can be reimbursed until the conditions set out in the Charter HEC on the implementation of these programmes are met. The Commission also closely monitors the situation.
- The Commission has continued to uphold fundamental rights through **infringement proceedings**<sup>12</sup>.
- It has also raised awareness about fundamental rights and provided information through the **#RightHereRightNow campaign**<sup>13</sup>, the ‘Your rights in the EU’ section of the European e-Justice portal<sup>14</sup> and the Commission’s website<sup>15</sup>.
- The EU Agency for Fundamental Rights (FRA) has continued to update its Charterpedia database, which holds fundamental rights materials from across the EU<sup>16</sup>. The FRA has

<sup>8</sup> Ensuring justice in the EU — A European judicial training strategy for 2021-2024; COM(2020).

<sup>9</sup> [https://e-justice.europa.eu/european-training-platform/home\\_en](https://e-justice.europa.eu/european-training-platform/home_en)

<sup>10</sup> Article 9(1) of Regulation (EU) 2021/1060 (Common Provisions Regulation).

<sup>11</sup> Poland has itself declared that it does not fulfil the Charter HEC whereas the Commission has found that Hungary has not yet fulfilled the Charter HEC for all Funds covered by the Common Provisions Regulation. Following an initial declaration from Cyprus that it does not fulfil the Charter HEC for the Asylum, Migration and Integration Fund and the Border Management and Visa Instrument, the Commission is now assessing a new declaration that Cyprus fulfils the Charter HEC.

<sup>12</sup> See, for example, the infringement proceedings initiated in July 2022 over a Hungarian law which discriminates against people based on their sexual orientation and gender identity. The Commission considers the Hungarian law to violate in a systematic manner several fundamental rights. This includes the inviolability of human dignity, the right to freedom of expression and information, the right to private and family life, as well as the right to non-discrimination. Due to the gravity of these violations, the contested provisions also violate the common values laid down in Article 2 TEU; [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_2689](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_2689).

<sup>13</sup> The [#RightHereRightNow \(europa.eu\)](https://e-justice.europa.eu/512/EN/your_rights) campaign ran from December 2021 to December 2022 on social media and in media events. Partners included CSOs, NHRIs and equality bodies, FRA and other EU bodies and agencies.

<sup>14</sup> [https://e-justice.europa.eu/512/EN/your\\_rights](https://e-justice.europa.eu/512/EN/your_rights).

<sup>15</sup> [https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights\\_en](https://ec.europa.eu/info/aid-development-cooperation-fundamental-rights/your-rights-eu/eu-charter-fundamental-rights_en).

<sup>16</sup> This covers [a substantial amount of information on the Charter](#), including case law by national courts that refers to the Charter. FRA made this tool also available in a Charter-app.

also published ‘Charter case studies – Trainer’s manual’<sup>17</sup> that includes guidance on the organisation of Charter training workshops in ten EU languages.

The 2023 Charter report focuses on **effective legal protection and access to justice**, as these rights are vital to ensure the full application of the Charter and of EU laws that promote and protect the rights which the Charter enshrines. Without effective legal protection, individuals are not able to effectively assert their rights, including their fundamental rights.

Effective legal protection and access to justice moreover uphold a culture of fundamental rights and the rule of law, as emphasised in the Commission’s **annual Rule of Law Reports**<sup>18</sup>. It is for the national courts and tribunals and the Court of Justice of the European Union (CJEU) to ensure the full application of EU law in all Member States and the legal protection of the rights of individuals under that law<sup>19</sup>. In line with Article 19(1) TEU, Member States must provide sufficient remedies to ensure effective legal protection in the fields covered by EU law<sup>20</sup>.

The Charter report is therefore complementary to the Commission’s annual Rule of Law reports<sup>21</sup>, where the justice pillar addresses judicial independence, quality, and efficiency of national justice systems by focusing on **access to justice for all through judicial and non-judicial remedies**<sup>22</sup>. It provides a **fundamental rights perspective** on access to justice<sup>23</sup>, defined as the ability of everyone to seek and obtain a just resolution of legal problems through a range of legal and justice services, in a manner that complies with fundamental rights<sup>24</sup>. The report also complements other

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<sup>17</sup> <https://fra.europa.eu/en/publication/2022/charter-case-studies-trainers-manual>.

<sup>18</sup> See the [annual Rule of Law reports](#).

<sup>19</sup> See Opinion 1/09 (*Agreement creating a unified patent litigation system*) of 8 March 2011, EU:C:2011:123, para. 68; Opinion 2/13 (*Accession of the EU to the ECHR*) of 18 December 2014, EU:C:2014:2454, para 175; judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, para. 33; and judgment of 6 March 2018, *Achmea*, C-284/16, EU:C:2018:158, para. 36.

<sup>20</sup> Judgment of 27 February 2018, *Associação Sindical dos Juízes Portugueses*, C-64/16, EU:C:2018:117, para. 34.

<sup>21</sup> The annual Rule of Law reports examine developments in Member States under four key areas. Under the justice pillar, effectiveness and independence of justice systems are assessed as essential elements of legal protection and for upholding the rule of law. The Commission assesses developments regarding perceived judicial independence, appointment and dismissal of judges, autonomy and independence of prosecution services, and disciplinary procedures for judges and prosecutors. The assessment of the quality and efficiency of justice has covered the length of proceedings, the role of lawyers in the justice system, and investments in the physical and technical infrastructure of judicial authorities. These essential elements of safeguarding effective legal protection have been extensively addressed in the Rule of Law Report.

<sup>22</sup> See the OECD, Recommendation of the Council on Access to Justice and People-Centred Justice Systems (2023) and [OECD Framework and Good Practice Principles for People-Centered Justice](#) (2021). Contribution by the OECD, pp. 1-2.

<sup>23</sup> Access to justice allows individuals to protect themselves against infringements of their rights and requires governments to respect and protect the rights of those within their jurisdiction. It encompasses several fundamental rights, such as the right to a fair trial and the right to an effective remedy. FRA and Council of Europe, [Handbook on European law relating to access to justice](#) (2016), pp. 15-16. Also Contribution by the OHCHR, p. 1.

<sup>24</sup> Access to justice | Government at a Glance 2021 | OECD iLibrary (oecd-ilibrary.org).

relevant policy initiatives, such as the EU Justice Scoreboard<sup>25</sup>, the Union of equality strategies<sup>26</sup> and the European democracy action plan<sup>27</sup>.

This report aims to give an overview of the relevant legal EU framework in place by describing recent developments (2020-2023). It presents both achievements and challenges in the Member States by providing a snapshot of the elements identified by stakeholders. The examples of national measures are non-exhaustive and included for illustrative purposes only.

*What information is this report based on?*

The report relies on the Commission's and the FRA's qualitative assessment of the feedback from consultations, and of other sources, including:

- targeted consultations with: (i) Member States<sup>28</sup> and the Charter focal points<sup>29</sup>; (ii) international organisations<sup>30</sup>; and (iii) the European Network of National Human Rights Institutions (ENNHRI) and the European Network of Equality Bodies (Equinet) and their members;
- an online consultation through the FRA's civil society network, the Fundamental Rights platform<sup>31</sup>, to gather respondents' <sup>32</sup> experiences on measures for effective legal protection and access to justice, as well as a consultation contribution from the FRA;
- contributions for other Commission reports, such as the Rule of Law reports and the Justice Scoreboard.

## **2. EU law on effective legal protection and access to justice**

Following the entry into force of the Treaty of Lisbon in December 2009<sup>33</sup>, the EU has developed a comprehensive legal framework with judicial and non-judicial remedies, which individuals can seek when they believe their rights set out in EU law are breached. At the same time, several EU instruments go further and provide for minimum standards on effective legal protection and access

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<sup>25</sup> [Justice Scoreboard](#).

<sup>26</sup> [Union of Equality strategies](#).

<sup>27</sup> COM(2020)790.

<sup>28</sup> Member State contributions available at [Annual reports on the application of the Charter \(europa.eu\)](#).

<sup>29</sup> 23 of the 27 Member States responded to the targeted consultation.

<sup>30</sup> Council of Europe, United Nations and Office of Economic Co-operation and Development.

<sup>31</sup> <https://fra.europa.eu/en/cooperation/civil-society> (placeholder for FRA's online summary).

<sup>32</sup> The online consultation was addressed to non-governmental organisations and institutions of civil society active in the field of fundamental rights through the Fundamental Rights platform (which reaches 743 recipients) across the EU-27 and Albania, North Macedonia and Serbia, as well as other civil society organisations and judicial networks. This consultation collected a total of 115 responses from primarily CSOs operating at local, national, EU and international levels, along with NHRIs, ombudspersons, legal associations, law firms, researchers, and judicial training institutions.

<sup>33</sup> EU competence has widened in freedom, security and justice (Title V of the Treaty on the Functioning of the European Union (TFEU)).

to justice. The effective legal protection provided under EU law is an illustration of how the EU benefits people's daily lives in a wide range of situations by empowering people to enjoy their fundamental rights under the Charter. This chapter showcases the broad scope of the EU law on effective legal protection and access to justice. In practice, these EU rules often apply in conjunction with national rules<sup>34</sup>, which highlights the complementarity of the EU's and Member States' actions, as further described in Chapter 3.

## 2.1. Facilitating access to justice through digitalisation efforts

Access to justice can be facilitated by increasing the digitalisation of judicial proceedings, making justice more accessible. The possibility to make submissions and communicate with courts electronically and to participate in oral hearings through videoconferencing can improve access to an effective remedy within a reasonable time within the meaning of Article 47 of the Charter. The **proposal for a regulation on the digitalisation of judicial cooperation**<sup>35</sup> provides a legal basis for the use of remote communication technology for hearings in civil and commercial matters with cross-border implications, and for judicial cooperation procedures in criminal matters.

Digitalisation of justice must be rolled out carefully and needs to ensure respect for fundamental rights, including the right to a fair trial, to an effective remedy and to protection of personal data and the rights of defence in criminal proceedings<sup>36</sup>. To ensure accessibility of judicial services and proceedings for those without sufficient digital skills or access to digital tools, as well as for persons who may have difficulties in accessing digital justice environments, traditional channels of communication and personal participation should also be maintained<sup>37</sup>. **Artificial intelligence** applications can likewise support judicial decision-making, but it is important to ensure that they function properly and to mitigate the potential bias their use may entail, including based on sex, 'racial'<sup>38</sup> or ethnic origin, religion or belief, disability, age or sexual orientation<sup>39</sup>.

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<sup>34</sup> Charter strategy, p. 4.

<sup>35</sup> Proposal for a Regulation on the digitalisation of judicial cooperation and access to justice in cross-border civil, commercial and criminal matters, and amending certain acts in the field of judicial cooperation, COM(2021)759. The Regulation would establish a European electronic access point which natural and legal persons may use to communicate with courts and other judicial authorities in certain civil and commercial matters. Also Proposal for a Directive amending Council Directive 2003/8/EC, Council Framework Decisions 2002/465/JHA, 2002/584/JHA, 2003/577/JHA, 2005/214/JHA, 2006/783/JHA, 2008/909/JHA, 2008/947/JHA, 2009/829/JHA and 2009/948/JHA, and Directive 2014/41/EU of, as regards digitalisation of judicial cooperation, COM(2021)760.

<sup>36</sup> Digitalisation of justice in the EU. A toolbox of opportunities, COM(2020)710; Charter strategy, p. 13.

<sup>37</sup> Commission Communication on the digitalisation of justice, p. 2-3, 5, referring to the need to take into account older people, children and disadvantaged individuals, and to ensure the accessibility of digital technologies for persons with disabilities.

<sup>38</sup> The use of the term 'racial origin' in the Treaty of the Functioning of the EU and Council Directive 2000/43/EC does not imply any acceptance by the European Union of theories that attempt to determine the existence of separate human races.

<sup>39</sup> Commission Communication on the digitalisation of justice, pp. 10-11. Also FRA 2020, Getting the future right – artificial intelligence and fundamental rights; referring to access to justice in line with Article 47 of the Charter as a concern in the AI context; FRA 2022, 'Bias in algorithms – artificial intelligence and discrimination'.

## 2.2. Rights in criminal proceedings

In **EU criminal procedural law**, six directives set out minimum standards<sup>40</sup> on safeguards for suspects and accused persons<sup>41</sup>. They apply to people suspected or accused of having committed a criminal offence, and facilitate their legal protection. These standards cover, for instance, the right to interpretation and translation of essential documents for those who do not speak or understand the language of the criminal proceedings<sup>42</sup>; the right to be promptly informed of their rights and the charges and accusations under national law and to have access to the materials of the case<sup>43</sup>; the right of access to a lawyer, as well as to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty; the right to remain silent and not to incriminate oneself; and the right to legal aid<sup>44</sup>. These directives are complemented by three Recommendations on safeguards for vulnerable persons<sup>45</sup>; the right to legal aid for suspects or accused persons<sup>46</sup>; and the procedural rights of suspects and accused persons subject to pre-trial detention<sup>47</sup>.

The directives, in particular Directive 2016/343, enshrine fundamental principles of criminal procedural law like the **presumption of innocence**. EU rules<sup>48</sup> prohibit premature public references to the guilt of the suspect or accused person by authorities, provide that the burden of proof for establishing the guilt should be on the prosecution, and enshrine the right to remain silent and not to incriminate oneself, as well as the right to be present at trial<sup>49</sup>. Moreover, to cover the costs of legal assistance, suspects and accused persons who lack sufficient resources are entitled to **legal aid**<sup>50</sup>.

The EU has also put in place specific safeguards for cases where the **suspect or accused person is a child**<sup>51</sup>. Member States are required to ensure that the child's best interests are considered in any decision affecting them throughout the proceedings in accordance with Article 24(2) of the

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<sup>40</sup> These rights build on the standards set out the Charter, the European Convention on Human Rights (ECHR) and related case-law.

<sup>41</sup> Directive 2010/64/EU, OJ L 280, 26.10.2010; Directive 2012/13/EU, OJ L 142, 1.6.2012; Directive 2013/48/EU, OJ L 294, 6.11.2013, p. 1–12; Directive (EU) 2016/343, OJ L 65, 11.3.2016; Directive (EU) 2016/1919 of 26 October 2016, OJ L 297, 4.11.2016, Directive (EU) 2016/800, OJ L 132, 21.5.2016, p. 1–20 ('**criminal procedural directives**').

<sup>42</sup> Directive 2016/343/EU.

<sup>43</sup> Directive 2012/13/EU.

<sup>44</sup> Directive 2013/48/EU and Directive (EU) 2016/1919.

<sup>45</sup> OJ C 378, 24.12.2013, p. 8.

<sup>46</sup> OJ C 378, 24.12.2013, p. 11.

<sup>47</sup> OJ L 86, 24.3.2023, p. 44–57.

<sup>48</sup> Directive (EU) 2016/343.

<sup>49</sup> Challenges have been identified in the implementation of the presumption of innocence in criminal proceedings in **Austria, Belgium, Bulgaria, Cyprus, Germany, Italy, Lithuania, Poland** and **Portugal** as regards the effectiveness of remedies if defendants are publicly referred to as guilty. Challenges have also related to the potentially prejudiced behaviour of authorities towards certain defendants, as well as their excessive presentation in the media. FRA (2021), [Presumption of innocence and related rights – Professional perspectives](#), pp. 51 – 52, 92.

<sup>50</sup> Directive (EU) 2016/1919, OJ L 297, 4.11.2016. Also Commission Recommendation on the right to legal aid for suspects or accused persons in criminal proceedings, OJ C 378, 24.12.2013, p. 11. In addition, Directive 2003/8/EC. Directive 2013/48/EU and Directive (EU) 2016/1919.

<sup>51</sup> Directive (EU) 2016/800 applies to persons under 18 years of age and provides for the extension of the safeguards enshrined therein beyond the age of 18, where the conditions established in Article 2(3) are fulfilled.



Charter. Member States must establish and apply more stringent standards than those applicable to adults with regards to key procedural rights, such as the right of access to a lawyer. Member States are also required to introduce targeted, child-specific safeguards and rights, taking into account children's needs and vulnerabilities, and their capacity to understand and to effectively participate in the proceedings<sup>52</sup>. Each child's situation should be individually assessed, has the right to be accompanied by a holder of parental responsibility<sup>53</sup>, their questioning should be recorded where appropriate; and they should receive specific treatment when deprived of liberty<sup>54</sup>. The Commission's assessment of the national transposition measures revealed great variation, in particular due to inherent differences between national justice systems and different standards on child-friendly justice<sup>55</sup>.

### 2.3. Judicial cooperation instruments in criminal matters

Judicial cooperation in criminal matters is regulated through several instruments, which aim to enhance the efficient administration of justice in cross-border cases and provide for the effective judicial protection of the individuals concerned. The **European Arrest Warrant**<sup>56</sup> (EAW) aims at avoiding prolonged detention of the person concerned by requiring Member States to swiftly process EAW decisions<sup>57</sup>. The Commission recently proposed common rules under which **criminal proceedings can be transferred from a Member State to another**<sup>58</sup>, which include provisions on the right to an effective remedy against the decision accepting the transfer. The **Regulation on electronic evidence**<sup>59</sup> will make it faster for law enforcement and judicial authorities to obtain electronic evidence. In line with Article 47 of the Charter, it grants any person whose data has been requested the right to an effective remedy.

### 2.4. Victims' rights

The EU has established comprehensive fundamental rights standards to support and protect victims of crime in the **Victims' Rights Directive**<sup>60</sup>, which requires Member States to ensure that victims of all crime are recognised and treated in a respectful, professional, and non-discriminatory manner. It facilitates their access to justice by obliging the Member States to provide information

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<sup>52</sup> Directive (EU) 2016/800.

<sup>53</sup> Or in specific circumstances by another appropriate adult nominated by the child and accepted as such by the competent authorities.

<sup>54</sup> A first preliminary reference (C-603/22) concerning the scope of application of the Directive (about who should be treated as a child for the purposes of the Directive) is pending before the CJEU.

<sup>55</sup> The evaluation of the compliance assessment's results is ongoing, including as regards the availability of effective remedies for the violation of children's procedural rights. An implementation report will be published in 2024.

<sup>56</sup> Council Framework Decision of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States (2002/584/JHA), OJ L 190 18.7.2002, p. 1. The procedural directives apply to persons sought under an EAW; [https://commission.europa.eu/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant\\_en](https://commission.europa.eu/law/cross-border-cases/judicial-cooperation/types-judicial-cooperation/european-arrest-warrant_en).

<sup>57</sup> Member States are also required to provide remedies against the recognition and execution of a freezing or confiscation order in cross-border cases. See Regulation (EU) 2018/1805, OJ L 303, 28.11.2018, p. 1–38.

<sup>58</sup> Proposal for a Regulation on the transfer of proceedings in criminal matters, COM/2023/185.

<sup>59</sup> Regulation (EU) 2023/1543, OJ L 191, 28.7.2023, p. 118–180.

<sup>60</sup> Directive 2012/29/EU, OJ L 315, 14.11.2012, p. 57.

on the proceedings and support and protect victims in line with their individual needs. Victims have, for instance, the right to be heard during criminal proceedings and to provide evidence, the right to access legal aid when they participate in criminal proceedings as parties and the right to a decision on compensation from the offender. To further strengthen the victims' rights<sup>61</sup>, the Commission adopted a proposal to amend the Victims' Rights Directive<sup>62</sup>, aiming to provide better information, support, and protection to victims through, for instance, access to e-justice, and to enable them to participate more effectively in criminal proceedings.

Specific EU legislation contains targeted rules safeguarding the rights of victims of certain types of crime<sup>63</sup>. The **Anti-trafficking Directive**<sup>64</sup> requires Member States to ensure that victims of trafficking in human beings are appropriately protected, including through witness protection programmes, and have access to legal counselling and representation. In addition, child victims are entitled to the appointment of a representative and to child-friendly measures during interviews and criminal proceedings. Following an evaluation of the Anti-trafficking Directive, the Commission proposed to modernise the anti-trafficking framework and address gaps in identification and referral for assistance and support of victims<sup>65</sup>. Moreover, the Commission continues to focus on the implementation of the EU Anti-trafficking Directive and the EU Strategy on Combatting Trafficking in Human Beings (2021-2025)<sup>66</sup>, notably when it comes to the protection of victims in criminal proceedings and access to compensation.

**Child victims of sexual abuse and exploitation** are protected under the Child Sexual Abuse Directive<sup>67</sup>, which encourages anyone with knowledge or suspicion of child sexual abuse or exploitation to report it. In May 2022, the Commission proposed<sup>68</sup> dedicated rules on online child sexual abuse and exploitation, including measures to report and remove abuse content, and to support victims with the removal of the material depicting their abuse.

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<sup>61</sup> In 2022, the Commission adopted [the evaluation of the Victims' Rights Directive](#). It shows that over the past ten years, the directive has contributed to improving the lives of victims. However, there are situations where not all victims can fully rely on their rights due to a lack of precision in the drafting of some of the rights in the Directive. Shortcomings were identified in relation to the five main rights. Furthermore, in some Member States, progress has remained slow in the provision of support services, the reporting of crime and ensuring that all victims can benefit from protection measures and have effective judicial remedies at disposal to challenge the measures to protect them from secondary and repeat victimisation. FRA (2023), [Underpinning victims' rights: support services, reporting and protection](#).

<sup>62</sup> Proposal for a directive amending Directive 2012/29/EU, and replacing Council Framework Decision 2001/220/JHA, COM (2023) 424. The revision follows up on the EU strategy on victims' rights (2020-2025), COM/2020/258, where the Commission noted the need to further empower victims of crime, so they can report crime, participate in criminal proceedings, claim compensation, and recover from the consequences.

<sup>63</sup> See for instance Directive 2011/99/EU, OJ L 338, 21.12.2011, p. 2. Regulation (EU) 606/2013, OJ L 181, 29.6.2013, p. 4. Council Directive 2004/80/, OJ L 261, 6.8.2004, p. 15.

<sup>64</sup> Directive 2011/36/EU, OJ L 101, 15.4.2011, p. 1–11.

<sup>65</sup> [https://home-affairs.ec.europa.eu/news/eu-proposes-new-rules-fight-trafficking-human-beings-2022-12-18\\_en](https://home-affairs.ec.europa.eu/news/eu-proposes-new-rules-fight-trafficking-human-beings-2022-12-18_en).

<sup>66</sup> COM(2021) 171.

<sup>67</sup> Directive 2011/93/EU, OJ L 335, 17.12.2011, p. 1–14. Also EU strategy for a more effective fight against child sexual abuse, COM/2020/607.

<sup>68</sup> Proposal for a Regulation laying down rules to prevent and combat child sexual abuse, COM/2022/209.

In addition, the proposal for a directive on **combating violence against women and domestic violence**<sup>69</sup> aims to strengthen access to justice of victims of gender-based violence and domestic violence by responding to their specific needs<sup>70</sup>. It also proposes the criminalisation of certain forms of violence that disproportionately affect women, such as rape based on the lack of consent, as well as female genital mutilation, and some forms of gendered cyber violence<sup>71</sup>.

## 2.5. Other situations of vulnerability

People who report illegal or immoral activities that they find out about in their workplace ('whistleblowers') are in a position of vulnerability vis-à-vis their employers. The **Whistleblower Protection Directive**<sup>72</sup> prohibits and requires sanctions for all forms of retaliation and provides whistleblowers with a strong set of legal actions, including reinstatement or compensation for damage suffered and interim relief to stop threats or acts of retaliation.

Journalists, human rights defenders and others involved in public debate in a matter of public interest are in a similarly vulnerable position when confronted with **strategic lawsuits against public participation**, known as 'SLAPPs'. A 2022 proposal<sup>73</sup> would enable judges to swiftly dismiss such manifestly unfounded lawsuits and establishes several procedural safeguards and remedies, such as the full award of costs, compensation for damages and penalties<sup>74</sup>. The Commission has also published Recommendations to Member States on **measures to protect journalists and media workers**<sup>75</sup>.

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<sup>69</sup> Proposal for a directive on combating violence against women and domestic violence, COM (2022)105.

<sup>70</sup> While most conducts of violence against women and domestic violence are criminalised at national level, gaps and divergences in national criminal law and at EU level remain, for instance, with regard to cyber violence against women and intimate partner cyber violence, such as ICT-facilitated stalking and non-consensual dissemination of private images. With regard to sexual violence, the use of force or threats as an essential element of rape is required in 16 Member States instead of focusing on lack of consent, which results in unequal protection for victims of sexual violence across the EU. Gaps also exist with respect to other forms of violence against women and domestic violence (e.g., female genital mutilation, forced marriage, forced abortion and forced sterilisation). For more information: Impact Assessment Report accompanying the proposal for a directive on combating violence against women and domestic violence, SWD(2022) 62 final. The proposal aims to ensure effective access to justice through EU-level approximation of criminal definitions and sanctions related to specifically serious forms of violence against women, as well as by ensuring gender-sensitivity and respect for the rights of child victims and witnesses.

<sup>71</sup> The EU is also party to the Council of Europe Convention on preventing and combating violence against women and domestic violence and therefore bound by its comprehensive standards on judicial cooperation in criminal matters, asylum and non-refoulement, as well as with regard to the EU's public administration.

<sup>72</sup> Directive (EU) 2019/1937, OJ L 305, 26.11.2019 p.17.

<sup>73</sup> Proposal for a directive on protecting persons who engage in public participation from manifestly unfounded or abusive court proceedings ("Strategic lawsuits against public participation"), COM/2022/177.

<sup>74</sup> The complementary Recommendation encourages Member States to provide for necessary safeguards to address SLAPPs also in domestic cases and all proceedings. The inclusion in the scope of the Anti-SLAPP Directive of environmental defenders who may possess valuable information concerning breaches of environmental law contributes to the implementation of the EU's international obligations under the Aarhus Convention.

<sup>75</sup> Commission Recommendation of 16.9.2021 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union, C(2021) 6650.

A recent proposal<sup>76</sup> aims to increase the **protection of adults** in cross-border situations and contribute to safeguarding their fundamental rights when, by reason of an impairment or insufficiency of their personal faculties, adults are unable to protect their own interests. The proposal aims at ensuring that measures concerning their protection or legal capacity are rapidly recognised and that wishes expressed in advance through ‘powers of representation’ are respected.

A 2022 proposal on the **recognition of parenthood**<sup>77</sup> between Member States aims to strengthen the protection of the **fundamental rights of children in cross-border situations**, such as their rights derived from parenthood in another Member State, including their right to parental representation on matters such as health and schooling. As such, the parents of a child in a Member State would continue to be the parents of the child in other Member States, which is not always the case today.

## 2.6. Victims of discrimination

The effective legal protection of victims of discrimination has been at the centre of EU law for decades, where several **equality directives**<sup>78</sup> provide for the right of access to legal procedures to complain about discrimination and the right of associations to intervene in court on behalf or in support of victims. The **Pay Transparency Directive**<sup>79</sup> empowers workers to claim their right to equal pay between women and men for equal work or work of equal value. Victims can be represented in administrative or court proceedings by associations, workers’ representatives, and bodies, such as equality bodies or trade unions. These can help victims to seek redress<sup>80</sup>, support strategic litigation<sup>81</sup>, or seek collective redress<sup>82</sup>, particularly as EU law also prohibits discrimination when there is no identifiable individual victim<sup>83</sup>.

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<sup>76</sup> Proposal for a Regulation on jurisdiction, applicable law, recognition and enforcement of measures and cooperation in matters relating to the protection of adults, COM(2023) 280.

<sup>77</sup> Proposal for a Council Regulation on jurisdiction, applicable law, recognition of decisions and acceptance of authentic instruments in matters of parenthood and on the creation of a European Certificate of Parenthood, COM/2022/695.

<sup>78</sup> Council Directive 79/7/EEC; Council Directive 2000/43/EC, OJ L 180, 19.07.2000, p. 22; Council Directive 2000/78/EC, OJ L 303, 2.12.2000, p. 16–22; Council Directive 2004/113/EC, OJ L 373, 21.12.2004, p. 37–43; Directive 2006/54/EC, OJ L 204, 26.7.2006, p. 23–36; Directive 2010/41/EU, OJ L 180, 15.7.2010, p. 1–6.

<sup>79</sup> Directive (EU) 2023/970, OJ L 132, 17.5.2023, p. 21–44. The evaluation of EU equal pay provisions conducted in 2020 concluded that the right to equal pay between women and men for the same work or work of equal value is not adequately applied nor enforced in practice and that pay transparency is lacking in many Member States, SWD(2020)50.

<sup>80</sup> Especially when they have legal standing, meaning that they have the right or ability to bring a legal action to a court of law or to appear in a court.

<sup>81</sup> Strategic litigation refers to the use of litigation strategies to elicit social, legal or policy change and is often carried out by civil society organisations and/or lawyers.

<sup>82</sup> 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 (OJ L 201, 26.7.2013, p. 60).

<sup>83</sup> Organisations acting in the public interest on their own behalf may bring *actio popularis* claims without a specific victim to support or represent. Judgment of 10 July 2008, C-54/07, *Feryn*, EU:C:2008:397, para. 15.

Following the equality directives, Member States have to provide for effective, proportionate and **dissuasive penalties** in cases of discrimination, such as a fine, compensation, an injunction for the wrongdoer to perform or refrain from certain action, publicising the wrongdoing, requiring an apology or imposing criminal sanctions<sup>84</sup>.

New legislative proposals aim to strengthen the role of **equality bodies**<sup>85</sup>, in particular their independence, resources and powers, so they can combat discrimination more effectively. Equality bodies are essential in assisting victims of discrimination and making sure that EU law on non-discrimination is implemented. Equality bodies would be mandated to receive complaints of discrimination, investigate, advise victims, offer alternative dispute resolution, issue opinions or decisions and act in court proceedings as experts, on behalf or in support of one or several victims, or in their own name<sup>86</sup>.

The EU is also a party to the **United Nations Convention on the Rights of Persons with Disabilities**, which lays down the obligation to ensure effective access to justice for persons with disabilities on an equal basis with others<sup>87</sup>, and has adopted the **European Accessibility Act**<sup>88</sup>.

The European Accessibility Act is complemented by the **Web Accessibility Directive (WAD)**<sup>89</sup>, which requires websites and mobile applications of public sector bodies, including judicial bodies, to be accessible to persons with disabilities and older people.

Hate speech and hate crime violate the victims' fundamental rights to dignity and to equality. To contribute to the effective legal protection of victims of hate speech and hate crime, the **Council Framework Decision on combating racism and xenophobia**<sup>90</sup> obliges Member States to criminalise the public incitement to violence and hatred on grounds of race, colour, religion, descent, national or ethnic origin, and to duly take into account racist motives when sentencing

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<sup>84</sup> [Commission report on the application of the Racial Equality Directive and the Employment Equality Directive](#), COM (2021)139, observed difficulties in the implementation of the provision on sanctions in discrimination cases. Also the '[Study to support the preparation of an EU initiative to address possible gaps in the legal protection against discrimination on grounds of racial or ethnic origin](#)' identified potential 'gaps' related to the implementation of the requirements on sanctions. The Commission will launch a study to support the Member States in the closer monitoring of the application of effective, proportionate and dissuasive sanctions.

<sup>85</sup> [COM/2022/688 final](#) and [COM/2022/689 final](#).

<sup>86</sup> <https://www.consilium.europa.eu/en/press/press-releases/2023/06/12/standards-for-equality-bodies-council-agrees-its-positions/>.

<sup>87</sup> United Nations Convention on the Rights of Persons with Disabilities, Article 13.

<sup>88</sup> Directive (EU) 2019/882, OJ L 151, 7.6.2019, p. 70–115, which sets out EU-wide accessibility requirements for certain products and services. These requirements are referenced in the proposal to amend the Victims' Rights Directive to ensure that the electronic means of communication to be used in judicial proceedings, as well as procedures, support services and protection measures, are accessible for persons with disabilities. Proposal for a directive amending Directive 2012/29/EU, Article 26c.

<sup>89</sup> Directive (EU) 2016/2102.

<sup>90</sup> Council Framework Decision 2008/913/JHA.

perpetrators of criminal acts<sup>91</sup>. National authorities must investigate, prosecute, and try cases of alleged hate-motivated crime or speech. Moreover, the Commission proposed in 2021<sup>92</sup> **to add hate speech and hate crime to the areas of ‘EU crimes’** laid down in Article 83(1) TFEU. Upon the adoption of the decision by the Council, the Commission would have the possibility to propose legislation to ensure a robust EU level criminal law response to hate speech and hate crime on other grounds than racism and xenophobia.

## 2.7. Environmental protection

In environmental protection, access to justice has been significantly strengthened<sup>93</sup> by the amended **Aarhus Regulation**<sup>94</sup>, which enables environmental organisations and other members of the public to request EU institutions to ensure that their decisions comply with EU environmental law<sup>95</sup>. Environmental organisations have already used this avenue by asking for a review relating to pesticides, fisheries, taxonomy, national climate and energy plans, renewable energy, and agricultural plans under the Common Agricultural Policy<sup>96</sup>.

The Commission has also published guidance on access to justice in environmental matters<sup>97</sup> and e-Justice fact sheets<sup>98</sup> on the applicable rules in each Member State<sup>99</sup>, and mapped how legal

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<sup>91</sup> The Commission monitors the transposition and implementation of this instrument by the Member States. It also works together with national law enforcement and judicial authorities to enhance their capacity to recognise, investigate and prosecute hate crimes or hate speech and support victims. The EU High Level Group on combating hate speech and hate crime developed relevant guidance and standards in collaboration with the EU Agency for Law Enforcement Training (CEPOL), the OSCE Office for Democratic Institutions and Human Rights (ODIHR) as well as the EU Agency for Fundamental Rights (FRA).

<sup>92</sup> COM/2021/777.

<sup>93</sup> Following the findings of the Aarhus Compliance Committee in case ACCC/C/2008/32 against the EU, the scope of application of the Aarhus Regulation was extended and aligned with the Convention and its Article 9. The Compliance Committee found that the EU failed to comply with Article 9, paras 3 and 4, with regard to access to justice by members of the public because neither the Aarhus Regulation, nor the jurisprudence of the CJEU implemented or complied with the obligations arising under those paragraphs.

<sup>94</sup> Regulation (EU) 2021/1767. In 2022, the first Special Rapporteur for environmental defenders was elected to protect any person experiencing, or at imminent threat of, penalisation, persecution, or harassment for seeking to exercise their rights under the Convention.

<sup>95</sup> This can be done by requesting an internal review from the EU institution or body that adopted the administrative act or, in the case of an alleged administrative omission, should have adopted such an act, on the grounds that such an act or omission contravenes environmental law. The same applicants which made the request for internal review pursuant to Article 10 of the Aarhus Regulation may institute proceedings before the Court of Justice once the decision of the Union’s institution on the internal review is made known to them.

<sup>96</sup> Regulation (EU) 2021/2116, OJ L 435, 6.12.2021, p. 187, Article 59(7) requires Member States to set up a complaint mechanism for the programming period 2023-2027 and ensure the effective examination of complaints within the scope of common agricultural policy strategic plans.

<sup>97</sup> Commission communication on improving access to justice in environmental matters in the EU and its Member States, COM/2020/643.

<sup>98</sup> [https://e-justice.europa.eu/300/EN/access\\_to\\_justice\\_in\\_environmental\\_matters](https://e-justice.europa.eu/300/EN/access_to_justice_in_environmental_matters).

<sup>99</sup> The Communication on Environmental Implementation Review 2022, Turning the tide through environmental compliance. (COM/2022/438) found that ‘(...) there is still room for improvement in most Member States in terms of improving the public’s access to courts in order to challenge decisions, acts or omissions, particularly in the areas of planning relating to water, nature and/or air quality.’

protection is provided in each Member State's legislation implementing the Aarhus Convention<sup>100</sup>.

Furthermore, a **proposal for an environmental crime directive**<sup>101</sup> provides for assistance and support to people who report environmental crimes. The proposals for an **industrial emissions directive**<sup>102</sup>, a **directive on air quality**<sup>103</sup> and a **directive on waste**<sup>104</sup> would grant access to compensation for health problems caused by breaches of the relevant provisions. The proposals on air quality, waste, soil monitoring<sup>105</sup>, nature restoration<sup>106</sup> and the **green claims directive**<sup>107</sup> would likewise strengthen the right to an effective remedy by introducing the right to seize judicial remedies whenever there is a breach of the relevant provisions of EU law<sup>108</sup>.

## 2.8. Consumer rights and alternative dispute resolution mechanisms

A **collective redress mechanism**<sup>109</sup> enables designated consumer organisations and public bodies to launch representative actions before national courts, including cross-border actions concerning several Member States, on behalf of groups of consumers. These collective actions can seek to stop illegal practices and to claim redress, such as compensation, replacement, or repair. An online tool moreover facilitates cooperation between Member States, judges and consumer interest representatives in the enforcement of EU consumer rights<sup>110</sup>. The **Unfair Contract Terms Directive**<sup>111</sup> also requires consumers to be granted effective remedies against the use of unfair contract terms by traders.

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<sup>100</sup> [https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review\\_en](https://environment.ec.europa.eu/law-and-governance/environmental-implementation-review_en). Additional provisions on access to justice are included in the Deforestation-free products Regulation (Regulation (EU) 2023/1115, OJ L 150, 9.6.2023).

<sup>101</sup> Proposal for a Directive on the protection of the environment through criminal law and replacing Directive 2008/99/EC, 15.12.2021 COM(2021) 851.

<sup>102</sup> Directive 2010/75/EU, OJ L 334 17.12.2010, p. 17. For the revised framework, see COM/2022/156 final/3.

<sup>103</sup> Proposal for a Directive on ambient air quality and cleaner air for Europe (recast), COM/2022/542

<sup>104</sup> Proposal for a Directive concerning Urban Wastewater Treatment (recast), 26.10.2022, COM(2022)541.

<sup>105</sup> Proposal for a Directive on Soil Monitoring and Resilience (Soil Monitoring Law), 5.7.2023, COM/2023/416.

<sup>106</sup> Proposal for a Regulation on nature restoration, 22.6.2022, COM (2022)304.

<sup>107</sup> Proposal for a Directive on substantiation and communication of explicit environmental claims (Green Claims Directive), COM(2023)166.

<sup>108</sup> Based on the joint interpretation of the Aarhus Convention and Article 47 of the Charter, the Court of Justice in a recent ruling confirmed that an environmental association, authorised to bring legal proceedings in line with national law, should be able to challenge before a national court an administrative decision granting or amending EC type-approval which may be contrary to Article 5(2) of Regulation (EC) No 715/2007 of the European Parliament and of the Council of 20 June 2007 on type approval of motor vehicles with respect to emissions from light passenger and commercial vehicles (Euro 5 and Euro 6) and on access to vehicle repair and maintenance information. Judgment of 08 November 2022, *Deutsche Umwelthilfe (Réception des véhicules à moteur)*, C-873/19, EU:C:2022:857.

<sup>109</sup> Directive (EU) 2020/1828 of 25 November 2020, OJ L 409, 4.12.2020, p. 1–27, [https://commission.europa.eu/law/law-topic/consumer-protection-law/representative-actions-directive\\_en](https://commission.europa.eu/law/law-topic/consumer-protection-law/representative-actions-directive_en). Also Directive (EU) 2019/2161, OJ L 328, 18.12.2019, p. 7–28. Directive 2013/11/EU, OJ L 165, 18.6.2013, p. 63.

<sup>110</sup> <https://representative-actions-collaboration.ec.europa.eu/>.

<sup>111</sup> Council Directive 93/13/EEC of 5 April 1993 on unfair terms in consumer contracts (OJ 1993 L 95, p. 29). Proposal for a directive on consumer credits, COM/2021/347, also ensures that consumers are not discriminated against when requesting, concluding or holding a credit agreement.



Out-of-court dispute resolution for consumers will also be made quicker and easier by the recent **proposal on amending the Alternative Dispute Resolution (ADR) Directive**<sup>112</sup>, which would improve the availability of personalised support to consumers, especially vulnerable ones. Contact points in the Member States can facilitate communication between consumers and traders, assist with the ADR process, and provide information on consumer rights and redress.

In addition, SOLVIT, an EU problem-solving network for businesses and consumers provides an alternative approach to solving disputes without the need to consult a lawyer or go to court<sup>113</sup>. In transport, the initiative ‘**Better protection for passengers and their rights**’ seeks to ensure better information to passengers about their rights, a more effective complaint-handling system, better enforcement of passenger rights as well as the extension of passenger rights to multi-modal journeys (when a passenger uses different transport modes during the same journey)<sup>114</sup>.

## 2.9. Online content regulation and data protection

The continuous developments in digitalisation highlight the importance of ensuring effective legal protection in connection with online activities. On online content moderation, the **Digital Services Act (DSA)**<sup>115</sup> provides redress for recipients of online intermediary services. The DSA establishes a notice and action mechanism that enables users to signal and request to take down illegal content. It requires online platforms to establish an internal complaint-handling system for users to lodge complaints electronically and free of charge, and an out-of-court dispute settlement mechanism<sup>116</sup>. It also establishes a right to complain against service providers in the Member State where the recipient of the service is located or established. Users can mandate a body, organisation or association to exercise this right on their behalf. Users can seek compensation from providers of

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<sup>112</sup> Proposal for a directive of the European Parliament and of the Council on amending Directive 2013/11/EU, as well as Directives (EU) 2015/2302, (EU) 2019/2161 and (EU) 2020/1828, COM(2023) 649. According to the [2023 Consumer scoreboard](#), a quarter of consumers experienced a problem worthy of complaint but a third of them did not launch a complain due to lengthy procedure times, small amounts involved, or low confidence in a satisfactory solution to the problem.

<sup>113</sup> Commission Staff Working Document, ‘SOLVIT’s Helping Hand in the Single Market: celebrating 20 years’, SWD(2022) 325. National SOLVIT centres are well-placed to address matters of Charter compliance. To assist them with this role, the Commission intends to provide in 2024 tailored training for SOLVIT Centres on the Charter.

<sup>114</sup> <https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/13290-Travel-better-protection-for-passengers-and-their-rights>.

<sup>115</sup> Regulation (EU) 2022/2065 amending Directive 2000/31/EC (Digital Services Act), OJ L 277, 27.10.2022, p. 1–102. In the impact assessment, ensuring fair governance and empowering users to exert their rights was considered one of DSA’s biggest impacts. All three regulatory options included a redress mechanism in two steps: obligation to offer the possibility to make and to process complaints by the service providers, and availability of out of court dispute settlement, expected to absorb escalated issues and to resolve them in a faster and less resource intensive manner than court proceedings. Users would always be able to appeal to courts, in line with national law. Enhanced transparency provisions, aimed at making users aware of policies applied to hosted content, goods, or services, and the provision of information to users on corrective action taken against them, were likewise considered essential elements of effective remedies. All policy options also sanctioned systematic failure from service providers to provide redress. Enhanced supervisory powers for authorities regarding very large online platforms, where users’ rights can be most severely affected, were considered to additionally support users’ right to effective remedy.

<sup>116</sup> See [Paper on the DSA’s out-of-court dispute settlement mechanism](#). Already the so-called “Platform-to-Business (P2B)” provided for redress for business users of online service providers: Regulation (EU) 2019/1150, OJ L 186, 11.7.2019, p. 57–79.



intermediary services for any damage or loss suffered due to an infringement by those providers of their obligations under the DSA. The **e-Commerce Directive**<sup>117</sup> contains procedural guarantees for out-of-court dispute settlement and judicial remedies as regards information society services.

The **Terrorist Content Online Regulation**<sup>118</sup> requires hosting service providers to inform content providers if their content is removed or access blocked following a removal order sent by a national competent authority. Hosting service providers are required to establish effective complaint mechanisms for users whose content has been removed or access blocked in the EU.

The **General Data Protection Regulation (GDPR)**<sup>119</sup> gives data subjects the right to complain against a data controller or processor to the national supervisory authority or a competent court, if they think their personal data have been processed in breach of GDPR rules. Data subjects can also mandate a non-profit body, organisation or association to complain on their behalf, and they have a right to receive compensation for material or immaterial damage caused by a violation. The GDPR grants national supervisory authorities robust powers to investigate breaches and undertake corrective measures, including by imposing administrative fines.

Without prejudice to the powers of those supervisory authorities and building on the rights safeguarded under the GDPR, the **proposal for a European Health Data Space**<sup>120</sup> creates the right to complain to digital health authorities, public bodies to be set up by Member States.

## 2.10. Asylum and migration

EU law on **asylum and migration** provides a range of safeguards to ensure legal protection of those arriving in the EU seeking asylum or residence status. Within the scope of the Common European Asylum System, Directives and Regulations foresee the possibility for asylum applicants to challenge decisions taken by administrative authorities.

Under the **Asylum Procedure Directive**<sup>121</sup>, asylum seekers who lodge an appeal against the rejection of their application generally have the right to remain on the Member State's territory pending the outcome of the appeal, or until a court or tribunal has ruled. Member States must ensure applicants' right to an effective remedy against any decision taken on their application for international protection, as well as refusals to reopen the examination of a discontinued application and decisions to withdraw international protection. Additionally, applicants who have been recognised as eligible for subsidiary protection can appeal the decision that considered their application unfounded in relation to the refugee status. Finally, procedural guarantees must be guaranteed for appellants, which are equivalent to those applying during first instance

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<sup>117</sup> Directive 2000/31/EC, Articles 17 and 18.

<sup>118</sup> Regulation (EU) 2021/784, OJ L 172, 17.5.2021, p. 79–109.

<sup>119</sup> Regulation (EU) 2016/679 repealing Directive 95/46/EC, OJ L 119, 4.5.2016, p. 1–88. Complaints can be made to an independent national supervisory authority or to a court. Complaints can also be lodged on behalf of the data subject by a non-profit body, organisation or association, either on data subject's request or based on national law. In case a data subject suffers a material or non-material damage, they have a right to receive compensation from the controller or processor.

<sup>120</sup> Proposal for a Regulation on the European health data space, COM(2022)197, 3.5.2022.

<sup>121</sup> Directive 2013/32/EU, OJ L 180, 29.6.2013, p. 60–95.

examinations, such as free legal assistance and representation provided by persons competent to provide them under national law. The **Dublin III Regulation**<sup>122</sup> also provides applicants who have been issued a transfer decision with the possibility to an appeal or review, ensuring several procedural safeguards, including the right to remain in the territory of the Member State in which the applicant is present, the suspension of the transfer until the appeal or review is concluded and access to free legal and linguistic assistance throughout the appeal or review procedure.

All directives on **legal migration** require Member States, whilst retaining a significant margin of discretion, to ensure that decisions rejecting an application, withdrawing an authorisation, or rejecting the renewal of an authorisation are open to legal challenge or appeal<sup>123</sup>. In addition, the **Return Directive** enables non-EU nationals that are not entitled to stay in a Member State to seek review of the decisions concerning their return before a competent judicial or administrative authority, or a body composed of impartial and independent members<sup>124</sup>. Also, in the context of the **European Integrated Border Management**, the Commission has recommended that ‘Member States should develop and sustain operationally a national fundamental rights monitoring mechanism in relation to border management and return’, which should ‘oversee or contribute to existing redress mechanisms’<sup>125</sup>, such as incident reporting or complaints mechanisms<sup>125</sup>.

In the employment of non-EU nationals, the **Employer Sanctions Directive**<sup>126</sup> grants non-EU nationals that are not entitled to stay in a Member State the right to claim unpaid wages and file complaints against employers in cases of exploitation<sup>127</sup>. The **Seasonal Workers Directive**<sup>128</sup> includes provisions to enable seasonal workers from non-EU countries to submit complaints against their employers. A proposal to extend this right to all non-EU workers is included in the **proposal to revise the Single Permit Directive**<sup>129</sup>. The Commission has also revised the **Blue**

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<sup>122</sup> Regulation (EU) 604/2013, OJ L 180, 29.6.2013, p. 31–59.

<sup>123</sup> See: Council Directive 2003/86/EC, OJ L 251, 3.10.2003; and Directive (EU) 2016/801, OJ L 132, 21.5.2016.

<sup>124</sup> Directive 2008/115/EC, OJ L 348, 24.12.2008, p. 98–107, Article 13.

<sup>125</sup> Communication from the Commission to the European Parliament and the Council establishing the multiannual strategic policy for European integrated border management, [COM/2023/146](#), “Component 13(3)”.

In addition, in line with the European Border and Coast Guard Regulation (2019/1896), all Frontex Fundamental Rights Monitors have been recruited, bringing their number to 46 (EBCG Regulation calls for 40 Monitors). The EBCG Regulation allows Monitors the same access to all Frontex operations as is granted to all other Frontex deployed staff.

<sup>126</sup> Directive 2009/52/EC, OJ L 168, 30.6.2009, p. 24–32.

<sup>127</sup> Commission Communication on the application of Directive 2009/52/EC of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals, COM(2021)592. Also FRA, 2021, Protecting migrants in an irregular situation from labour exploitation – Role of the Employers Sanctions Directive. Together with the FRA, the Commission develops a training manual for labour inspectors on the protective elements of the directive.

<sup>128</sup> Directive 2014/36/EU of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers, OJ L 94, 28.3.2014, p. 375–390. The Commission has also launched a study to identify gaps and shortcomings in the protection of third-country seasonal workers in the EU.

<sup>129</sup> Proposal for a directive on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State (recast), COM/2022/655.

**Card Directive** to require that Member States should provide an effective judicial remedy for all negative residence and work permit decisions issued to highly qualified workers<sup>130</sup>.

### 3. Member States' measures to provide for effective legal protection

Member States have a duty to ensure that fundamental rights are applied in practice by the various actors in the Charter's enforcement chain for the benefit of all<sup>131</sup>. In line with Article 19 TEU, they are in charge of providing effective legal protection within their territories, be it through court systems or non-judicial bodies. All Member States who participated in the consultations preparing this report referred to a variety of judicial and non-judicial remedies being available. This chapter gives an overview of the recent developments referred to by several Member States.

#### 3.1. Facilitating access to justice through digitalisation efforts

Several Member States consider e-justice solutions as central in improving access to justice. They enable users to exercise their rights more quickly and easily<sup>132</sup>. Digital justice services are modern and enable the greater accessibility and even customisation of justice services, as well as their continuous provision during crises<sup>133</sup>.

Many Member States make efforts to improve the digital accessibility of justice<sup>134</sup>. For example, in **Romania**, the digitalisation of the judicial system was accelerated during the COVID-19 pandemic<sup>135</sup>. **Slovakia** is funding actions to advance the digitalisation of justice under the Recovery and Resilience Facility, which prepares the country for joining the eCodex system<sup>136</sup>.

Lack of digital skills, issues relating to the interoperability of IT systems, and digital safety are mentioned as the main challenges in this regard<sup>137</sup>. **Sweden** also considers that certain aspects of

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<sup>130</sup> Directive (EU) 2021/1883, OJ L 382, 28.10.2021, p. 1–38, Article 11(3).

<sup>131</sup> Charter strategy, p. 19.

<sup>132</sup> See 2023 Justice Scoreboard, pp. 31-37.

<sup>133</sup> Contribution by **Slovenia**, p. 6-7 and contribution by **Lithuania**, pp. 7-8; Contribution by the Council of Europe.

<sup>134</sup> 2023 Rule of Law Report, pp. 9-10, noting that initiatives to improve digitalisation have continued and Member States are taking further steps in this respect. The digitalisation of the justice system continues to be overall very advanced in **Estonia, Germany, Latvia, Poland, Spain, Slovakia, Lithuania, Hungary** and **Austria**. Recommendations to continue improving the digitalisation of justice through ongoing efforts have been issued to **France, Italy** and **the Netherlands**. As regards ongoing efforts, the consultation contribution by **Luxembourg**, p. 5, refers to certain information being provided digitally and a paperless justice mechanism in administrative matters entering into force after a pilot project on urgent procedures. Contribution by **France**, pp. 6-7, refers to strengthening networks, improving business software, and recruiting IT technicians. Contribution by **Greece**, pp. 10-12, refers to supporting the digital recording of court cases in the first instance and appeal courts of Athens, Piraeus, and Thessaloniki. Also contribution by **Croatia**, pp. 7-8. Contribution by **Finland**, pp. 5-6. Contribution by **Poland**, pp. 17-18. Contribution by **Hungary**, pp. 10-12. Contribution by **Latvia**, pp. 6-7.

<sup>135</sup> Contribution by **Romania**, p. 10. Also Contribution by the Council of Europe, referring to the situation in general.

<sup>136</sup> Contribution by **Slovakia**, p. 4, referring to the eCodex system, through which European Investigation Orders can be sent, requests for legal assistance made and electronic evidence shared.

<sup>137</sup> As regards challenges, the contribution by **Romania**, p. 10, refers to the simultaneous availability of four versions of the courts' e-file, and the need to ensure compatibility, cyber security, the modernisation of the IT infrastructure at the local level; Contribution by **Spain**, p. 1, 5, refers to the need to safeguard sufficient digital skills. The 2023 Rule

digitalisation, such as video hearings, may not be suitable in all cases<sup>138</sup>.

The consultations also show the various functions being set up under the e-justice initiatives<sup>139</sup>. In **Germany**, sending documents through an online tool is mandatory for lawyers, authorities, and public entities. Everyone else may use electronic legal transactions voluntarily<sup>140</sup>. In **France**, a mobile application helps the public to find courts, lawyers and notaries<sup>141</sup>. However, some respondents to the **Fundamental Rights Platform survey** commented on the complexity and partial inaccessibility of digital tools, for example, due to increased costs for lawyers and clients, system failures or because availability has been limited to certified lawyers<sup>142</sup>.

### 3.2. Procedural rights

As noted in Chapter 2, the **availability of sufficient information** on judicial and non-judicial remedies and on how these can be seized is central for facilitating everyone's access to justice. In terms of informing the public about the judicial system and the available remedies, all Member States refer to information on a dedicated official website of the judicial administration or of a relevant ministry<sup>143</sup>. For instance, in **Luxembourg**, information on legal aid, court fees, procedural rights, and published judgments are made available online, together with contact forms or emails for inquiries by the public<sup>144</sup>.

The replies to the Fundamental Rights Platform survey show that information is mostly provided to the parties to criminal proceedings (59 out of 115 respondents) and administrative proceedings

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of law report, p. 9, refers to the importance of ensuring that digital tools can be effectively used in practice, including through sufficient training.

<sup>138</sup> Contribution by **Sweden**, p. 6-7.

<sup>139</sup> In addition to information provision, these include the online filing of police reports and court applications, administration of digital case files to view and download court documents and submit documents and court hearings in a videoconferencing format and audio-video recordings of proceedings. For instance, contribution by **Belgium**, p.p. 6, 20, refers to the digital filing of documents, online court files, online solutions in the administration of vulnerable persons, and in finding an approved translator, interpreter or expert. In the future, it should also be possible to initiate legal proceedings digitally, file applications, communicate online with the courts and consult judgments digitally.

<sup>140</sup> Contribution by **Germany**, p. 8.

<sup>141</sup> Contribution by **France**, p. 7.

<sup>142</sup> Online consultation through the Fundamental Rights Platform, Question 3: Are digital tools used in your Member State to facilitate access to justice through judicial and non-judicial remedies? Also, the 2023 Rule of Law report, pp. 9-10, referring to the further increase in the use of the electronic communication system and most remaining courts' integration into a unified system in **Croatia**. Significant efficiency and quality issues related to digitalisation of justice nevertheless remain. In **Italy**, the digitalisation of the civil justice system has progressed significantly, while the amended procedural rules allowing digitalisation in the criminal justice system remain to be fully implemented.

<sup>143</sup> Contribution by **Slovakia**, p. 4, referring to a dedicated Supreme Court website; Contribution by **Bulgaria**, p. 19, referring to an e-Justice portal with free, direct and permanent electronic access; Contribution by **Spain**, p. 1, 5, referring to information provided online on the justice administration and the judicial and non-judicial remedies; Contribution by **Austria**, pp. 14-15.

<sup>144</sup> Contribution by **Luxembourg**, p. 5. The Commission has however issued a recommendation to Luxembourg related to the pending reform to make legal aid more accessible in the 2023 Rule of Law Report (p. 10).

(45), but markedly less to parties to civil proceedings (36) or people trying to access non-judicial remedies (31)<sup>145</sup>.

Access to **interpretation and translation** is also essential to avoid creating barriers to access to justice for those with insufficient knowledge of the official language of the country concerned. Several Member States who participated in the consultations provide free interpretation and translation for suspected and accused persons in criminal proceedings<sup>146</sup>.

The scope of this right however varies between the Member States. Beyond criminal proceedings, interpretation and translation of relevant court documents is available in certain Member States also in civil cases, or for civil parties to criminal proceedings<sup>147</sup>. Some Member States extend the availability of interpretation and translation to crime victims<sup>148</sup> and to administrative proceedings<sup>149</sup>. In this regard, some refer specifically to immigration cases<sup>150</sup>, or unaccompanied minors and their guardians<sup>151</sup>. In **Croatia**, the Ombudswoman has recommended that interpretation and translation be made available in several languages in cases concerning worker's rights or international protection<sup>152</sup>.

In civil cases, Member States usually require non-native speakers to cover interpretation and translation expenses themselves. Depending on the financial situation, it may be possible to cover these costs with **legal aid**, depending on the conditions set out in national legislation. Legal aid is generally available to cover the interpretation and translation costs of those without means<sup>153</sup>. In **Finland**, a preliminary calculation of entitlement and applications for legal aid can be made through a legal aid case management system<sup>154</sup>.

In the Fundamental Rights Platform survey, 82 respondents out of 115 confirmed that interpretation and translation services are the most-widely used measures to remove barriers for

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<sup>145</sup> Online consultation through the **Fundamental Rights Platform**, Question 2: "In your experience, is information provided in practice in your Member State on available remedies, and the steps to be taken during a judicial process/when accessing non-judicial remedies?".

<sup>146</sup> Contribution by **Austria**, p. 16; Contribution by **Belgium**, p. 28; Contribution by **Croatia**, p. 7; Contribution by **Finland**, p. 6-7; Contribution by **France**, p. 8; Contribution by **Germany**, p. 9; Contribution by **Greece**, pp. 12-14; Contribution by Hungary, p. 12; Contribution by **Ireland**, p. 2; Contribution by **Latvia**, p. 7; Contribution by **Lithuania**, pp. 8-9; Contribution by **Luxembourg**, p. 5; Contribution by **the Netherlands**, p.3; Contribution by **Poland**, p. 18; Contribution by **Focal point of Portugal**, p. 6; Contribution by **Romania**, p. 11; Contribution by **Sweden**, p.7; Contribution by **Slovakia**, pp. 4-5; Contribution by **Slovenia**, p. 7. Nonetheless, infringement proceedings are currently ongoing against four Member States for incorrect transposition of Directive 2010/64/EU.

<sup>147</sup>Contribution by **Greece**, pp. 12-14. Contribution by **France**, pp. 3-4. Contribution by **Belgium**, p. 28. Consultation contribution by **Finland**, p. 6-7.

<sup>148</sup> Contribution by **France**, pp. 3-4, referring to the right of a victim who does not understand French to have an interpreter and a translation of the information necessary for the exercise their rights. Victims are entitled to request translations or oral summaries of court hearings; Contribution by **Austria**, p. 16.

<sup>149</sup> Contribution by **Hungary**, pp. 12-13.

<sup>150</sup> Contribution by **the Netherlands**, p.3.

<sup>151</sup> Contribution by **Croatia**, p. 7.

<sup>152</sup> Contribution by **the Ombudsperson of Croatia**, p. 7.

<sup>153</sup> Contribution by **Finland**, p. 6-7 Contribution by **Latvia**, p. 7; Contribution by **Belgium**, p. 21.

<sup>154</sup> Contribution by **Finland**, pp. 5-6, also mentioning that lawyers, defence counsels, interpreters and translators can use the system to apply for state funds, submit invoices, and access remote services relating to legal aid.

people accessing judicial and non-judicial remedies in their Member States, followed by legal aid (79/115)<sup>155</sup>.

### 3.3. Victims' rights

In the consultations conducted to inform this report, most Member States referred to new measures having been taken to protect victims of crime. For instance, in **Romania**, the targeted Crime Victim Support Services provide victim support services through a country-wide network of 47 offices<sup>156</sup>. Two of **Slovenia's** largest first instance courts have specialised victim support departments bringing together judges and victims (of mostly gender-based or domestic violence) to avoid unnecessary contact with the alleged perpetrator and to decide on protection measures<sup>157</sup>.

**Austria** provides free of charge psychosocial support to victims during criminal and civil proceedings<sup>158</sup>. In **Germany**, the Code of Criminal Procedure requires courts to provide psychosocial assistance. Victims of severe violent or sexual crime can also request that a psychosocial assistant is appointed to their case, free of charge<sup>159</sup>. In **Sweden**, counsel can also be appointed free of charge to protect the victims' interests and bring a claim of damages in criminal cases<sup>160</sup>. In **Greece**, psychosocial support is only available to victims of human trafficking<sup>161</sup>. In **Croatia**, the Ombudswoman has recommended targeted training sessions on victims' rights and the establishment of dedicated departments for victims' and witness' support in all courts<sup>162</sup>.

In addition, almost a third of the respondents of the Fundamental Rights Platform survey (31/115) agreed that fast-track proceedings are available to vulnerable parties<sup>163</sup>. In **Cyprus** and **Germany**, for instance, cases involving sexual violence or children can be processed as a priority<sup>164</sup>. In

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<sup>155</sup> Online consultation through the Fundamental Rights Platform, see Question 1.

<sup>156</sup> Contribution by **Romania**, p. 11. In Lithuania, a cooperation procedure between the first responders and victim support providers was established in 2021. Contribution by **Lithuania**, p. 9.

<sup>157</sup> Contribution by **Slovenia**, p. 10.

<sup>158</sup> Contribution by **Austria**, pp. 1-2.

<sup>159</sup> Contribution by **Germany**, pp. 12-13.

<sup>160</sup> Contribution by **Sweden**, pp. 8-15.

<sup>161</sup> Contribution by **Greece**, pp. 15-16.

<sup>162</sup> Contribution by **Croatia**, pp. 12-15. Also ENNHRI, p. 3, refers to gaps identified by NHRIs in ensuring the rights of victims of crime (regarding victims of hate crime and domestic violence in **Germany**, the right to compensation for trafficking victims in **Luxembourg**, and non-national victims in **Slovenia**).

<sup>163</sup> Online consultation through the **Fundamental Rights Platform**, Question 1: Which measures are used in your Member State to remove language/cultural/physical/financial/other barriers for people accessing judicial and non-judicial remedies? a. Interpretation and translation services (82 positive answers); b. Measures to facilitate access by persons with disabilities, such as measures relating to the physical accessibility of court houses (60); c. Legal aid (79); d. Arrangements to refer vulnerable victims, such as victims of domestic or gender-based violence, to support services (65); e. Fast-track proceedings available for vulnerable parties, such as in cases involving sexual violence or children (31); f. Other measures (8).

<sup>164</sup> Contribution by the **Focal point of Cyprus**, p. 3. Contribution by **Germany**, pp. 4, 14, 18, referring also to a simplified procedure for accused persons who are juvenile. According to the Contribution by **Lithuania**, p. 10., pre-trial investigation can be prioritised when the suspect or victim is a juvenile or when the suspect is in custody. In **Latvia**, criminal proceedings involving violence or sexual violence, including against children, are processed as a priority. Contribution by **Latvia**, p. 7.

**Belgium**, the Judicial Code provides for an accelerated measure in cases concerning cross-border parental responsibility and child protection (such as in international child abduction cases)<sup>165</sup>.

As regards **tackling gender-based and domestic violence**, some Member States have recently enabled law enforcement authorities to share victims' contact information with a support centre, which contacts the victim on its own initiative to offer support after the reporting of the crime<sup>166</sup>. Some efforts to ensure the availability of targeted support have also been made. **Finland** for instance has established a network of 24 support centres for victims of sexual violence across the country<sup>167</sup>. In **Sweden**, special care units are available for victims of sexual violence and abuse<sup>168</sup>. In **Croatia**, the Office for Gender Equality has produced guidelines for law enforcement and judicial professionals on the processing of sexual crime<sup>169</sup>.

As noted in the Charter strategy and the 2022 Charter report, also **civil society organisations** (CSOs) are central partners in the Charter's enforcement chain. In the consultations conducted for the Charter strategy, 80% of the responding CSs confirmed that people turn to them for information concerning their rights. An overwhelming majority (85%) of CSOs also carried out awareness raising activities on fundamental rights<sup>170</sup>. In the consultations conducted to inform this report, several Member States referred to the central contribution of CSOs in providing legal and other assistance to those in need<sup>171</sup>. For instance, in **Germany**, authorities have cooperation agreements in place with counselling centres run by CSOs, which provide support in cases of human trafficking in nearly all federal states<sup>172</sup>.

*The provision of regular, targeted training sessions to legal professionals*

In most Member States, judicial training is available on how to communicate with various victim groups, or persons from different cultural, religious, racial, ethnic, or linguistic backgrounds, as well as on protection measures in particular in cases of violence against women and domestic violence, or gender-sensitive practices in judicial proceedings<sup>173</sup>. For instance, in **Hungary**,

<sup>165</sup> Contribution by **Belgium**, p. 26. Consultation contribution by **the Netherlands**, p.5. refers to a project introducing an abridged legal procedure to contribute to reducing the number of conflicts between parents during divorces and preventing harm to children.

<sup>166</sup> Contribution by **Lithuania**, p. 9; Contribution by **Austria**, p. 20; Contribution by **Belgium**, pp. 24-25; Contribution by **Slovakia**, pp. 4-5.

<sup>167</sup> Contribution by **Finland**, p. 7.

<sup>168</sup> Contribution by **Sweden**, pp. 9-10. Also, contribution by **Portugal**, pp. 6-7, referring to support offices for victims of gender-based have been or are being established in eight cities.

<sup>169</sup> Contribution by **Croatia**, pp. 5-6, referring to the Procedure in Cases of Sexual Violence.

<sup>170</sup> Charter strategy pp. 10, 18, referring to the supporting stakeholder consultations analysis, p. 31.

<sup>171</sup> **16 Member States** provide as a specific arrangement for access to justice of persons at risk of discrimination and older person the right for civil society organisations and/or equality bodies to initiate or participate in judicial proceedings on behalf or in support of one or several victims. 2023 Justice Scoreboard, p 25. Various CSO in **Slovenia** work to combat discrimination and support victims, including from vulnerable groups. They provide legal advice, advocacy, and assistance in pursuing remedies for discrimination cases. Contribution by Slovenia, pp. 3-4. Contribution by **Focal Point of Slovenia**, p. 3.

<sup>172</sup> Contribution by **Germany**, pp. 12-13.

<sup>173</sup> 2023 Justice Scoreboard, pp. 24-25, 31.

training on responding to the needs of vulnerable groups are led by psychologists under the annual court training programme<sup>174</sup>. In **Spain**, new legislation requires bar associations to provide training on children's rights in the light of the Convention on the Rights of the Child and violence against children<sup>175</sup>. In **Sweden**, prosecutors who handle cases involving children receive targeted training and represent the child during proceedings<sup>176</sup>. Moreover, some Member States referred to efforts made to improve effective legal protection of victims by providing targeted training to other relevant professionals. Little information was however given on when relevant training is provided (when taking up functions, or continuous on the job training), and whether it is compulsory. Training may also only be available in the largest courts or cover one vulnerable group or one type of crime.

### 3.4. Child-friendly justice

The consultations show that Member States are increasingly taking dedicated measures to guarantee legal protection in a manner that is specifically adapted to children<sup>177</sup>. Recent child-friendly justice initiatives have focused on the establishment of dedicated hearing rooms for children, the availability of legal aid and presentation to children, as well as the provision of specialised training to justice professionals to ensure that child suspects, accused persons, victims and witnesses can effectively participate in proceedings in a manner corresponding to their maturity. In most Member States<sup>178</sup>, courts are required to inform a child about the proceedings and explain their consequences in a manner adapted to the child<sup>179</sup>.

Some Member States have also established specialised courts or prosecutor's roles for cases involving children. In 2021, **Cyprus** amended legislation to prioritise non-judicial procedures for

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<sup>174</sup> Contribution by **Hungary**, pp. 16-17, referring to 932 judges, 601 assistant judges and 102 trainees participating. The vulnerable groups covered include children, older people, persons with disabilities, and victims of domestic violence and human trafficking. Also, contribution by **Lithuania**, pp. 8, 13, referring to training and targeted recommendations made available for advocates who provide legal assistance covered by legal aid; Contribution by **Bulgaria**, p. 19, referring to the National Institute of Justice of Bulgaria organising training for magistrates on effective protection against discrimination.

<sup>175</sup> Contribution by **Spain**, pp. 2,4, also referring to training to professionals at the victims of crime assistance offices, on the needs of persons with disabilities, which includes a session on accessibility. Contribution by **France**, p. 9, referring to the provision of inter-regional training on receiving persons with disabilities; Contribution by **Lithuania**, pp. 8, 13, referring to training for judges on communicating with persons with disabilities.

<sup>176</sup> Contribution by **Sweden**, pp. 11-12.

<sup>177</sup> Referring to justice that is accessible, age appropriate, speedy, diligent, adapted to and focused on the needs and rights of the child. See: Guidelines of the Committee of Ministers of the Council of Europe on child friendly justice (adopted by the Committee of Ministers on 17 November 2010 at the 1098th meeting of the Ministers' Deputies); 17/11/2010.

<sup>178</sup> 2023 Justice Scoreboard, Figure 32, p. 28.

<sup>179</sup> Contribution by **Slovakia**, p. 7; Contribution by **Luxembourg**, p. 8.



juvenile offenders and established specialised children's courts<sup>180</sup>. In **Germany**, youth courts and prosecutors ensure that cases involving juveniles are dealt with by legal professionals with appropriate education and training<sup>181</sup>.

Initiatives to improve children's opportunities to report a crime have also been taken in the recent years. In **Spain**, early detection measures to identify violence against children have been put in place, including a reinforced obligation for those in contact with children to report suspected abuse. The role of a Welfare and Protection Coordinator has furthermore been made compulsory in schools<sup>182</sup>.

Similarly, many Member States have strengthened the ability of children to report crime and participate in legal proceedings assisted by a legal representative appointed by a court<sup>183</sup>. Assistance from a neutral third party is particularly important when the suspect or accused is the parent. In **Austria**, a child advocate is appointed to enable children to participate without burdening them and to reduce loyalty conflicts<sup>184</sup>. Similarly, in **the Netherlands**, a child curator can be appointed under the Civil Code to safeguard the child's best interest or at the child's request<sup>185</sup>.

Several Member States refer to providing dedicated children's rooms in courts<sup>186</sup>. In **Slovakia**, family rooms are being set up to facilitate interviews with children or other vulnerable individuals<sup>187</sup>. In **France**, interviews with child victims can be carried out by investigators in civilian uniforms in a room equipped with toys, microphones and cameras. A child psychiatrist monitors and interprets the child's behaviour from a control room<sup>188</sup>.

Member States are also increasingly taking children's needs into account when organising victim support services. In **Spain**, criminal proceedings involving violence against a child or adolescent,

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<sup>180</sup> Contribution by the **Focal point of Cyprus**, p. 4, noting that the detention of children is the sanction of last resort. The children's courts may also impose alternative punishments, such as reprimands, fines, community service for children over 16 years, referral to a substance abuse treatment center, etc.

<sup>181</sup> Contribution by **Germany**, pp. 6, 14, 16, referring to the Youth Courts Act. The OHCHR in its contribution, pp. 5-6, however refers to the Concluding observations of the UN Committee on the Rights of the Child, where the Committee recommended Germany to ensure that all children, including children under 14 years of age, can express their opinions and be heard in decisions affecting them, and to establish legal standards for ensuring that proceedings are child-friendly. The Committee also noted with appreciation the measures taken to bring its child justice system in line with the Convention, including through the transposition into national law of Directive (EU) 2016/800 (CRC/C/DEU/CO/5-6, para. 17 (a)).

<sup>182</sup> Contribution by **Spain**, p. 3.

<sup>183</sup> 2023 Justice Scoreboard, Figure 31, p. 28.

<sup>184</sup> Contribution by **Austria**, pp. 21-25; Contribution by **France**, p. 12, noting that children can be accompanied to court by their legal representative, an adult of their choice, or a certified victim support association.

<sup>185</sup> Contribution by the **Netherlands**, p. 7; Contribution by **Sweden**, p. 12, referring to the Act on Special Representatives for Children. Also Contribution by **Finland**, p. 9, referring to ongoing legislative review that contains proposed amendments to child trustee appointments.

<sup>186</sup> 2023 Justice Scoreboard, Figure 31, p. 28. For example, in Luxembourg, children must be heard in a child-friendly setting, Consultation contribution by **Luxembourg**, p. 8.

<sup>187</sup> Contribution by **Slovakia**, p. 7.

<sup>188</sup> Contribution by **France**, p. 12, stating that interviews of children must take place in the presence of a psychologist, paediatrician, family member, ad hoc administrator, or a person mandated by the child judge.

the child victim must be referred to a Victims' Assistance Office<sup>189</sup>. In partnership with the FRA, **Romania** has launched a project to ensure accessible criminal justice for child victims<sup>190</sup>. Similarly, in cooperation with UNICEF<sup>191</sup>, **Poland** has developed stand-by legal call services for children, including for refugee children from Ukraine<sup>192</sup>.

In addition to these positive examples, however, some respondents to the consultation also referred to a lack of child-friendly information and age-appropriate accommodation to facilitate children's participation in proceedings; specialised courts or legal professionals; and protection for unaccompanied foreign minors<sup>193</sup>. Suggested improvements include better monitoring of the implementation of child-friendly laws, strengthening children's right to file complaints, and providing protocols for judicial professionals handling cases involving children<sup>194</sup>.

Migrant children face particular challenges in accessing complaint mechanisms<sup>195</sup>. The UN Committee on the Rights of the Child highlighted that asylum-seeking, refugee and migrant children, including undocumented and separated children, need free legal aid, interpretation and other assistance to ensure that their views are duly taken into account in decisions concerning them<sup>196</sup>. There also needs to be training and availability of lawyers, in particular for children living in camps and reception centres, to ensure access to age appropriate, child-friendly justice mechanisms and remedies to challenge all decisions related to their migration status<sup>197</sup>.

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<sup>189</sup> Contribution by **Spain**, p. 4.

<sup>190</sup> Contribution by **Romania**, p. 13; Contribution by **Focal Point of Portugal**, pp. 10-12, referring to plans to equip 117 buildings with child reception and hearing rooms.

<sup>191</sup> United Nations International Children's Emergency Fund, <https://www.unicef.org/>.

<sup>192</sup> Contribution by **Poland**, p. 27.

<sup>193</sup> Online consultation through the FRA's Fundamental Rights Platform, Question 4: "In your experience, have arrangements been made in your Member State to facilitate access to justice by children through judicial and non-judicial remedies?". Contribution by ENNHRI, p. 3, similarly refers to gaps identified by NHRIs in the legal protection of all asylum-seekers and migrants in **Belgium, Czechia, Greece and Latvia**.

<sup>194</sup> Contribution by **Focal Point of Slovenia**, pp. 5-6.

<sup>195</sup> Contribution by ENNHRI, p. 3, referring to gaps identified by NHRIs in family law proceedings and proceedings involving children in **Bulgaria, Germany, Ireland, Luxembourg, and Slovenia**.

<sup>196</sup> Contribution by OHCHR, p. 4, referring to CRC/C/HRV/CO/5-6; pp. 17, 25, 41.

<sup>197</sup> Contribution by OHCHR, p. 6, referring to CRC/C/GRC/CO/4-6, para. 40 (f-g). Contribution by **Greece**, pp. 19-20, referring to the entitlement to legal aid for child victims of sexual abuse, exploitation, and child pornography, as well as procedural safeguards for suspects or accused persons in criminal proceedings. Also (CRC/C/CYP/CO/5-6, paras 19-20 and 37-38), where the Committee recommended **Cyprus** to ensure that the right of the child to be heard in legal proceedings is enshrined in legislation and implemented. It also recommended that separated and unaccompanied children are represented by competent lawyers in asylum proceedings, and that a formal procedure for the determination of the child's best interest is established.

### 3.5. Rights of victims of discrimination

**National Human Rights Institutions (NHRIs), equality bodies and ombudspersons** promote fundamental rights<sup>198</sup> and are often the first points of contact with victims of discrimination<sup>199</sup>. They provide guidance and free legal assistance to individuals who allegedly have experienced discrimination, monitor the application of equality and non-discrimination law and of the Charter, and conduct awareness-raising<sup>200</sup>. They may also investigate discrimination cases and conduct training activities<sup>201</sup>. In a third of Member States, equality bodies are mandated to take binding decisions in discrimination cases<sup>202</sup>. Most NHRIs and equality bodies furthermore have legal standing to support or represent victims in court<sup>203</sup>. Some NHRIs are also mandated to undertake strategic litigation in courts and intervene before constitutional courts to challenge the constitutionality of legal acts<sup>204</sup>.

In 2022 and 2023, **ENNHRI** identified barriers to accessing justice for vulnerable groups in the EU, including for people with low income, children, women, victims of domestic violence, trafficking and labour exploitation, migrants and applicants for international protection, as well as ethnic minorities<sup>205</sup>. Underreporting is a major concern; victims are often reluctant to bring cases to court due to the cost of litigation, complexity of procedures and time constraints<sup>206</sup>.

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<sup>198</sup> Charter strategy, pp. 11-12.

<sup>199</sup> Defined as public institutions established under the relevant Directives to combat discrimination based on race, ethnic origin and gender. In many Member States, equality bodies' mandates also cover other prohibited grounds, such as age, disability, religion and belief, sexual orientation or other grounds. Contribution by Equinet, p. 1.

<sup>200</sup> Contribution by ENNHRI, p. 4, referring to awareness-raising campaigns on access to justice by NHRIs from **Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Latvia, Luxembourg, Portugal, Romania, Slovakia, Slovenia and Spain**.

<sup>201</sup> Contribution by Equinet, pp. 1-3, 5, Contribution by ENNHRI, pp. 1-2, 5. On the powers of equality bodies to help victims of discrimination. Also **2023 Justice Scoreboard, Figure 19**, reflecting which powers the equality bodies, or in certain cases other specific bodies, hold in each Member State to resolve cases of discrimination. These are, among others, offering the parties the possibility to seek an alternative resolution to their dispute (for example mediation or conciliation procedures), issuing binding decisions in discrimination cases, acting in court in cases of discrimination either on behalf of victims or in its own name, or submitting observations to the court as *amicus curiae* or expert in cases of discrimination.

<sup>202</sup> Contribution by Equinet, p. 4.

<sup>203</sup> Contribution by Equinet, p. 2, referring to its survey "Litigation powers of Equality Bodies", 2023, according to which 34 out of the 47 surveyed equality bodies had some legal standing before courts. Out of them, 23 could act as *amicus curiae* (an expert third party permitted to assist the court by offering information or insight), 18 could bring anonymised complaints to courts with the victim's consent, 13 were able to initiate *actio popularis* in their own name, and 8 could initiate collective complaints.

<sup>204</sup> Contribution by ENNHRI, p. 2.

<sup>205</sup> Contribution by ENNHRI, pp. 2-3, referring to ENNHRI's State of the rule of law in the European Union 2022 and 2023 reports. In line with the UN Paris Principles, NHRIs are also in charge of reporting and advising governments and relevant authorities on human rights.

<sup>206</sup> Contribution by Equinet, p. 3, referring to Vincenzi Tudisco, Emma Lantschner, Preventing and reacting to discrimination through sanctions and remedies; and Marie Mercat-Bruns, A comparative study of collective redress in France, Norway and Romania: the challenges of strategic litigation. *European Equality Law Review – Issue 1 / 2020*, p. 21; Equinet 2013, p. 13. Other reasons for not reporting discrimination may include doubt that there are serious chances of success; unawareness of rights and/or of the existence of equality bodies; difficulties to provide evidence; uncertainty of the outcome of the case, the prospect of low levels of compensation and/or fear of retaliation; [COM \(2021\)139](#).

Some Member State referred to recent measures having been taken to improve the accessibility of remedies<sup>207</sup>. For instance, in **Bulgaria**, regional offices for Protection against Discrimination have been established help public become better informed on protection and legal aid<sup>208</sup>.

Certain Member States have established **collective redress** mechanisms in the field of anti-discrimination. For instance, in **France**, representative trade unions and anti-discrimination associations can bring group actions against discriminatory practices<sup>209</sup>. In **Hungary**, civil society and interest representation organisations may request an investigation into potential breaches of equal treatment<sup>210</sup>.

#### *Efforts to ensure effective legal protection for persons with disabilities*

Access to justice also means the accessibility of proceedings for persons with disabilities. Around half of the respondents to the Fundamental Rights Platform survey reported that measures to facilitate access to judicial and non-judicial remedies for persons with disabilities are in place in their Member State. The respondents however also indicated that further improvements are needed<sup>211</sup>.

A central element in this regard is the physical accessibility of buildings. In **Slovenia**, the Urban Planning Institute visited all judicial buildings for an accessibility analysis, which provides the basis for future investments and gives advice to persons with disabilities visiting the courts<sup>212</sup>.

In several Member States however, court buildings are not fully accessible. In **Germany**, some federal states have enacted regulations on barrier-free access to continuously improve access, including through elevators, accessible toilets, multi-sensory intercom systems, high contrast walking surfaces or step markings, tactile signage, and induction loop systems<sup>213</sup>. **Belgium** reports that while a significant number of public buildings have been adapted to the legislation on accessibility, not all courthouses comply with the rules. In many cases, this is due to building works needing to be aligned with the preservation of listed buildings<sup>214</sup>. In **Poland**, a project on ensuring access to justice for persons with disabilities includes adaptations and construction work in 35 court buildings<sup>215</sup>. In **Hungary**, accessibility works to court buildings are being financed through support from the EU<sup>216</sup>. In 2022 however, the UN Committee on the Rights of Persons with Disabilities noted with concern that barriers to the access to justice by persons with

<sup>207</sup> For other examples of good practices at national level, see *ibid*, page 6.

<sup>208</sup> Contribution by **Bulgaria**, p. 3, 17. Also Contribution by **Spain**, p. 5, referring to municipal justice offices assisting citizens in their relations with the administration of justice in general; Contribution by **Luxembourg**, p. 2, referring to the ‘*Centre d’égalité de traitement*’, which provides advice on victims’ rights, legislation, case law and remedies.

<sup>209</sup> Contribution by **France**, pp. 3-4.

<sup>210</sup> Contribution by **Hungary**, pp. 4-6.

<sup>211</sup> Online consultation through the Fundamental Rights Platform, Question 1 (60 positive responses out of 115).

<sup>212</sup> Contribution by **Slovenia**, pp. 8-9.

<sup>213</sup> Contribution by **Germany**, pp. 9-10.

<sup>214</sup> Contribution by **Belgium**, p. 21; Contribution by **Focal point of Portugal**, p. 6.

<sup>215</sup> Contribution by **Poland**, pp. 20-21.

<sup>216</sup> Contribution by **Hungary**, pp. 12-13. Also Contribution by **Poland**, pp. 20-21.

disabilities continued to exist due to various reasons, including the inaccessibility of buildings<sup>217</sup>.

Member States have also put in place solutions to ensure that visually impaired, hearing impaired and low- or illiterate members of the public receive judicial information on an equal footing with others<sup>218</sup>. For instance, in **Ireland**, the Criminal Injuries Compensation Tribunal makes available free interpretation into Irish sign language upon request<sup>219</sup>. In **Bulgaria**, most courts use a speech synthesis software to translate court documents into natural speech<sup>220</sup>. The **Supreme Court of Spain** recently required two judgments to be adapted to an easy reading format so that they can be understood by the persons with intellectual disabilities involved in the case<sup>221</sup>.

### 3.6. Consumer rights and alternative dispute resolution

In **consumer legislation**, Member States refer to the availability of a mix of civil, criminal, and administrative remedies from courts and consumer protection services<sup>222</sup>, as well as to the important role of consumer associations and civil society organisations<sup>223</sup>. For instance, in **Germany**, consumer organisations can file a model case against a trader to determine the core factual or legal issues, when these are the prerequisites for claims of several consumers<sup>224</sup>. In **France**, group actions are open to victims of the same harm<sup>225</sup>. In **Latvia**, an Economic Court has been established to address complex commercial disputes, economic and financial crimes, and corruption cases<sup>226</sup>.

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<sup>217</sup> Contribution by OHCHR, p. 6, referring to CRPD/C/HUN/CO/2-3, pp. 26-27.

<sup>218</sup> Contribution by **Germany**, p. 9; Contribution by **Lithuania**, pp. 8-9; Contribution by **the Netherlands**, p.3; Contribution by **Croatia**, pp. 11-12; Contribution by **Hungary**, pp. 12-13.

<sup>219</sup> Contribution by **Ireland**, p. 2.

<sup>220</sup> Contribution by **Bulgaria**, p. 11, mentioning that training on the software is provided to most court officials.

<sup>221</sup> The court referred to the UN Convention on the Rights of Persons with Disabilities and national legislation on equal treatment and non-discrimination, which require reasonable adjustments of the procedure to optimise the rights of participation and information of people with disabilities. The adaptation of the judicial language so that it could be understood was a requirement for the justice system. the need to inform the applicants of the judgment followed from the Victims' Rights Directive. [C.G.P.J - Judicial News \(poderjudicial.es\)](#), Consultation contribution by Spain, p. 5.

<sup>222</sup> Contribution by **Cyprus**, p. 1, Contribution by **Germany**, p. 4, Contribution by **Greece**, pp. 5-6, Contribution by the **Netherlands**, p. 1. 2023 Justice Scoreboard, pp. 17-18. Also Contribution by the Council of Europe, referring to European Commission for the Efficiency of Justice (CEPEJ): Promoting mediation to resolve administrative disputes in Council of Europe member states - December 2022.

<sup>223</sup> Contribution by **Slovenia**, p. 5.

<sup>224</sup> Contribution by **Germany**, pp. 18-19.

<sup>225</sup> Contribution by **France**, pp. 3-4; Contribution by **Luxembourg**, p. 3, noting that a draft bill is expected to introduce a collective recourse mechanism to allow a large number of consumers to jointly file a case if they have been harmed in the same or similar way; Contribution by **Sweden**, p. 2, referring to the right of a consumer group to file representative actions against a trader.

<sup>226</sup> Contribution by **Latvia**, pp. 1-2.

**Alternative dispute resolution mechanisms** (ADR) have been established or improved through recent legislative reforms in some Member States<sup>227</sup>. ADR methods are promoted through dedicated incentives, such as by providing information on ADR on government websites or in media campaigns, providing partial or full legal aid for costs of ADR, and using technology to facilitate the submission and resolution of disputes<sup>228</sup>. In **Luxembourg**, in criminal cases, the Restorative Justice Service seeks to initiate a dialogue between the victim and the perpetrator on all material and emotional consequences of the offence<sup>229</sup>. In **Sweden**, while judges have procedural discretion on ADR, seeking an amicable dispute settlement is a mandatory unless it is considered inappropriate for the case<sup>230</sup>. As of March 2023, in **the Netherlands**, the first two and a half hours of mediation are free of charge for litigants who are ineligible for legal aid while those eligible for legal aid receive mediation free of charge<sup>231</sup>.

*Assessing impacts of national legislation on effective legal protection*<sup>232</sup>

In the Charter strategy, the Commission invited Member States to use impact assessments to ensure that initiatives implementing EU law comply with the Charter<sup>233</sup>. While some examples exist on how the fundamental rights impacts of legislative proposals relating to effective legal protection have been assessed, in most cases, the need to take fundamental rights into account has been underlined by actors other than Member State governments.

In **Finland**, the Parliamentary Constitutional Law Committee noted that since the bill amending the Aliens Act implemented EU law, compliance with fundamental rights required several elements of the bill to be defined in more detail. It also drew attention to the need to ensure the compatibility of the bill with EU law from the perspective of applying the border procedure to minors<sup>234</sup>. In **Lithuania**, amendments were proposed to national legislation implementing

<sup>227</sup> Contribution by **Luxembourg**, p. 2, Contribution by **Germany**, p. 4, Contribution by **Belgium**, pp. 6-7, Contribution by **Lithuania**, pp. 3-5, Contribution by **the focal point of Portugal**, pp. 1-4, Contribution by **Finland**, pp. 1-3, Contribution by **Austria**, pp. 8, 12-13.

<sup>228</sup> 2023 Justice Scoreboard, p. 24.

<sup>229</sup> Contribution of **Luxembourg**, p. 2. In civil matters, mediation is available at the “*Centre de Médiation*”, which appoints a mediator in line with the dispute and the parties’ wishes.

<sup>230</sup> 2023 Justice Scoreboard, p. 24. Similarly, in **Slovenia**, ADR in bodies other than courts is not widely used, but its importance is growing. Courts present ADR as an option, except when the judge considers it to be inappropriate. Consultation contribution by **Slovenia**, p. 3. The Arbitration Act enables civil parties to mandate an arbitration board to deliver a binding decision equivalent to that of a court. Mediation is regulated under the Mediation in Civil and Commercial Matters Act. The Act on Alternative Dispute Resolution in Judicial Matters enhances the use of alternative dispute resolution in corporate, labour, family, and other civil law-related relationships regarding claims which may be freely disposed of and settled by the parties. Funds to finance ARD programs are provided from court budgets.

<sup>231</sup> Consultation contribution by **the Netherlands**, p.1; 2023 Justice Scoreboard, p. 24, noting that in **Slovakia**, the use of ADR for administrative purposes is not supported and that in **Spain**, ADR is mandatory in labour law cases.

<sup>232</sup> See 2023 Justice Scoreboard, pp. 31-37.

<sup>233</sup> Charter strategy, p. 5, referring also to the low use and awareness of the Charter in parliaments.

<sup>234</sup> Contribution by the FRA referring to the Statement of the Constitutional Law Committee of Parliament of **Finland** (PeVL 44/2022) regarding Government bill 103/2022 on the amendment of the Aliens Act. The Committee called for

Directive (EU) 2016/680, as it did not sufficiently ensure the right to an effective remedy enshrined in Article 47 of the Charter. The national parliament considered that the existing remedies were too complicated, making the right to a legal remedy unenforceable in practice, and created unequal procedural rights<sup>235</sup>.

#### 4. Provision of effective legal protection through courts

The CJEU and national courts apply and interpret EU law and therefore have a central role in safeguarding effective legal protection. Through the preliminary ruling mechanism<sup>236</sup> and the infringement procedure<sup>237</sup>, the CJEU has also clarified relevant EU law, often interpreting the rights laid down in secondary EU law in light of Articles 47 and 48 of the Charter.

However, as follows from Article 47 of the Charter, effective judicial protection is more than the individual right to judicial review. In line with Article 19(1) second subparagraph TEU, Member States must ensure sufficient guarantees for the national courts and tribunals to provide effective judicial protection, without requiring new legal remedies. Through an overview of cases on effective legal protection, this chapter highlights the essential role of the CJEU and national courts in ensuring effective legal protection and access to justice under EU law. **CJEU case-law on effective legal remedies**

The right to effective legal protection has often been the focus of preliminary ruling requests relating to different fields of EU law, including the requirement that Member States must fully comply with EU law and the case-law of the CJEU for having the right to a fair trial before an independent and impartial court established by law<sup>238</sup>. Well-functioning and fully independent justice systems are crucial to ensure that justice works to the benefit of individuals and businesses<sup>239</sup>, as they should be able to enforce all rights conferred upon them by EU law through effective legal protection.

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more precise provisions on the possible national margin of discretion in implementing Directive 2013/32/EU, the restrictions of the freedom of movement and the right to challenge a decision on a request for permission to leave the reception centre. Also contribution by the FRA referring to the Proposal of the Government of **Estonia** on amendments to the Aliens Act (right to appeal against a decision on a visa challenge), 328 SE (*Välismaalaste seaduse muutmise seaduse (viisavaide otsuse kohtukaebedõigus) eelnõu* 328 SE), 8 February 2021.

<sup>235</sup> Contribution by the FRA referring to the [Explanatory note of the Seimas of the Republic of Lithuania](#) on the amendment of Article 5 and Paragraph 2 of Article 22 of the Criminal Intelligence Law of the Republic of Lithuania No. XI-2234 and the Amendment of Article 10 of the Law on State and Official Secrets of the Republic of Lithuania.

<sup>236</sup> Article 267 TFEU.

<sup>237</sup> Article 258 TFEU.

<sup>238</sup> See: Judgment of 18 May 2021, *Asociația “Forumul Judecătorilor Din România” and Others*, C-83/19, C-127/19, C-195/19, C-291/19, C-355/19, EU:C:2021:393; judgment of 20 April 2021, *Repubblika*, C-896/19, EU:C:2021:311; judgment of 2 March 2021, *A.B. and Others (Appointment of the Supreme Court judges – Appeal)*, C-824/18, EU:C:2021:153; judgment of 19 November 2019, *AK (Independence of the Disciplinary Chamber of the Supreme Court)*, C-585/18, C-624/18 and C-625/18, EU:C:2019:982; and judgment of 27 February 2018, *Associação Sindical dos Juizes Portugueses*, C-64/16, EU:C:2018:117.

<sup>239</sup> 2023 Rule of Law Report, p. 3.

The CJEU has consistently held that in the absence of precise EU rules, it is for each Member State to establish procedural rules to safeguard the rights granted by EU law in line with the principle of procedural autonomy. However, in doing so, they must ensure that those rules are no less favourable than rules governing similar situations under domestic law (principle of equivalence), and do not render the exercise of EU legal rights practically impossible or excessively difficult (principle of effectiveness)<sup>240</sup>. In assessing whether Member States have provided an effective remedy for the rights granted by EU law, the CJEU has commonly referred to the essence and purpose of those rights in relation to Article 47 of the Charter.

In the context of the preliminary ruling procedure, questions regarding the interpretation of the right to effective legal protection have emerged in various fields of EU law<sup>241</sup>.

A substantial part of the CJEU's case law on the right to effective legal protection concerns the interpretation of the procedural rights directives in criminal matters and clarifying the safeguards set out in the directives. For instance, preliminary ruling questions have concerned the interpretation of:

- the right to a fair trial in criminal proceedings, including the ban on public references to guilt<sup>242</sup>, the right to be present at trial in the context of hearings via videoconferencing technology<sup>243</sup>, and derogations from the right to be present at trial<sup>244</sup>;
- procedural rights of persons affected by *in rem* confiscation proceedings<sup>245</sup>;
- the right of children to effective assistance by a lawyer in criminal proceedings<sup>246</sup>;
- the right to translation of essential documents for a suspect or accused person who does not understand the language of the criminal proceedings<sup>247</sup>, including the time frame within which such right applies<sup>248</sup>, which documents are considered essential to the purpose of ensure an

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<sup>240</sup> Judgment of 2 March 2021, *Prokuratuur (Conditions d'accès aux données relatives aux communications électroniques)*, C-746/18, EU:C:2021:152, para. 42. Also judgment of 6 October 2020, *La Quadrature du Net and Others*, C-511/18, C-512/18 and C-520/18, EU:C:2020:791, para.223 and the case-law cited.

<sup>241</sup> Also Charter strategy, p. 5 and the sources cited therein, noting that the growing body of EU law demonstrates how the Charter applies in an increasing number of cases and areas. This is illustrated in particular by the CJEU's case law on the enforcement of the right to an effective remedy in areas such as taxation, asylum and migration or equal treatment in employment.

<sup>242</sup> Judgment of 19 September 2018, *Milev*, C-310/18, EU:C:2018:732.

<sup>243</sup> Pending case C-760/22, *FP and Others*.

<sup>244</sup> Judgment of 13 February 2020, *Spetsializirana prokuratura (Hearing in the absence of the accused person)*, C-688/18, EU:C:2020:94; judgment of 23 November 2021, *IS (Illégalité de l'ordonnance de renvoi)*, C-564/19, EU:C:2021:949; judgment of 19 May 2022, *Spetsializirana prokuratura*, C-569/20, EU:C:2022:401; judgment of 15 September 2022, *HN (Procès d'un accusé éloigné du territoire)*, C-420/20, EU:C:2022:679. Also, judgment of 19 May 2022, *Spetsializirana prokuratura*, C-569/20, EU:C:2022:401.

<sup>245</sup> Pending cases C-767/22 and C-49/23, *1Dream and Others*, and pending case C-265/23, *Volieva*.

<sup>246</sup> Pending case C-603/22, *M.S. and Others (Droits procéduraux d'une personne mineure)*.

<sup>247</sup> Judgment of 1 August 2022, *TL () and de traduction*, C-242/22 PPU, EU:C:2022:611.

<sup>248</sup> Judgment of 9 June 2016, *Balogh*, C-25/15, EU:C:2016:423.



effective defence, to which the right to translation applies<sup>249</sup>, and when breaches of this right can be raised<sup>250</sup>;

- the right to not be tried or punished twice for the same crime (principle of *ne bis in idem*)<sup>251</sup>;
- the effectiveness of remedies for breaches of the suspect or accused person's rights, including the possibility for a court to raise breaches of the rights of defence on its own motion<sup>252</sup>;
- the right to access a lawyer and the derogations from that right<sup>253</sup>; and
- the right to information in criminal proceedings<sup>254</sup>, including the time when information on the charges should be provided to enable the suspect or accused person to effectively prepare their defence<sup>255</sup>.

The CJEU has also addressed effective legal protection in European judicial cooperation, where **the European Investigation Order ('EIO')**<sup>256</sup> and the **EAW**<sup>257</sup> are prime examples. In order to ensure the availability of effective legal remedies, it is essential to ensure that Member States have remedies available that are equivalent to those available in similar domestic cases.

The CJEU has also confirmed that the Framework Decision on EAW provides for comprehensive safeguards on effective judicial protection. For instance, on the available remedies in the issuing Member State and access to the materials of the case after the surrender<sup>258</sup>. Further, in a series of cases on the rule of law, the CJEU clarified the criteria for refusing or suspending the execution of an EAW in situations where the requested person's right to a fair trial is claimed to be at risk in a situation of systemic or generalised deficiencies concerning judicial independence in the issuing Member State<sup>259</sup>.

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<sup>249</sup> Judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686; judgment of 12 October 2017, *Sleutjes*, C-278/16, EU:C:2017:757; judgment of 1 August 2022, *TL () and de traduction*, C-242/22, EU:C:2022:611.

<sup>250</sup> Judgment of 1 August 2022, *TL*, C-242/22, EU:C:2022:611.

<sup>251</sup> See: Judgment of 14 September 2023, *Bezirkshauptmannschaft Feldkirch*, C-55/22, EU:C:2023:670, and judgment of 19 October 2023, C-147/22, EU:C:2023:790.

<sup>252</sup> Judgment of 22 June 2023, *K.B. and F.S. (Relevé d'office dans le domaine pénal)*, C-660/21, EU:C:2023:498.

<sup>253</sup> Judgment of 12 March 2020, *VW (Right of access to a lawyer in the event of non-appearance)*, C-659/18, EU:C:2020:201. The CJEU has also clarified that the directive applies to judicial proceedings authorising the committal to a psychiatric hospital and permits obligations to dismiss a lawyer against the will of the defendant in cases of conflict of interests, as defined by national law (judgment of 5 June 2018, *Kolev & Others*, C-612/15, EU:C:2018:392).

<sup>254</sup> Judgment of 15 October 2015, *Covaci*, C-216/14, EU:C:2015:686; judgment of 13 June 2019, *Moro*, C-646/17, EU:C:2019:489.

<sup>255</sup> Judgment of 5 June 2018, *Kolev & Others*, C-612/15, EU:C:2018:392; judgment of 19 September 2019, *Rayonna prokuratura Lom*, C-467/18, EU:C:2019:765.

<sup>256</sup> Directive 2014/41/EU.

<sup>257</sup> Council Framework Decision 2002/584/JHA of 13 June 2002 on the European arrest warrant and the surrender procedures between Member States, OJ L 190, 18.7.2002, pp. 1–20.

<sup>258</sup> Judgment of 28 January 2021, *Spetsializirana prokuratura (Déclaration des droits)* C-649/19, EU:C:2021:75.

<sup>259</sup> Judgment of 25 July 2018, *Minister for Justice and Equality (Deficiencies in the system of justice)*, C-216/18 PPU, EU:C:2018:586, and, judgment of 17 December 2020, *Openbaar Ministerie (Indépendance de l'autorité judiciaire d'émission)*, C-354/20 PPU, EU:C:2020:1033 and C-412/20 PPU, L and P. Also, judgment of 13 January 2021, *MM*, C-414/20 PPU, EU:C:2021:4 where the CJEU noted that Framework Decision 2002/584, read in the light of Article 47 of the Charter requires that the requesting court must be able to carry out a review of the conditions under which the EAW was issued.

**Anti-discrimination** is also an area where questions regarding the interpretation of the right to effective judicial protection have been raised. Sanctions must guarantee real and effective judicial protection<sup>260</sup> and ensure a genuinely deterrent effect to prevent further discrimination. This involves imposing penalties even in the absence of an identifiable victim<sup>261</sup>. A purely symbolic sanction cannot be considered sufficient<sup>262</sup>.

In **public procurement**, the CJEU has held that in cases where a public procurement procedure has been launched without the publication of a contract notice, Member States cannot require a litigant to identify the procedure or decision in their application for review or interim measures under Directive 89/665/EC<sup>263</sup>. Member States may however require that tenderers, who participated in a public contract procedure, cannot challenge a judgment of the highest administrative court by means of an appeal before the highest judicial court, regarding compliance with EU law<sup>264</sup>. In addition, in national proceedings regarding potential false statements made by a successful tenderer, the contracting authority is required to weigh the applicant tenderer's right to an effective remedy against the competing tenderer's right to protection of its confidential business information and trade secrets<sup>265</sup>. Judicial review must be available against a contracting authority's decision to not initiate a procedure to check whether the tenders have been abnormally low<sup>266</sup>.

The **Unfair Contract Terms Directive**<sup>267</sup> has led to the development of a rich body of case law protecting against unfair contract terms, which also implies a requirement for effective judicial protection<sup>268</sup>. For instance, the obligation for national courts to assess of their own motion the fairness of the contract terms underlying consumer disputes<sup>269</sup>, the existence and starting point of

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<sup>260</sup> See, judgment 31 May 2013, *Asociația Accept*, C-81/12, EU:C:2013:275, para. 63.

<sup>261</sup> See *Feryn* judgment, para. 38; *Asociația Accept* judgment, para. 62. In several Member States (e.g. **Austria, Belgium, Czechia, Italy, Latvia, Lithuania, Luxembourg, Romania and Slovenia**), national legislation permits penalties to be imposed in the absence of a specific victim under certain conditions.

<sup>262</sup> See *Asociația Accept* judgment, para. 64.

<sup>263</sup> Judgment of 14 July 2022, *EPIC Financial Consulting*, C-274/21 and C-275/21, EU:C:2022:565. Council Directive 89/665/EEC, OJ L 395, 30.12.1989, p. 33–35.

<sup>264</sup> Judgment of 21 December 2021, *Randstad Italia*, C-497/20, EU:C:2021:1037.

<sup>265</sup> Judgment of 7 September 2021, *Klaipėdos regiono atliekų tvarkymo centras*, C-927/19, ECLI:EU:C:2021:700.

<sup>266</sup> Judgment of 15 September 2022, *Veridos* C-669/20, EU:C:2022:684 referring to proceedings under Directive 2009/81/EC, OJ L 216, 20.8.2009, p. 76–136.

<sup>267</sup> Council Directive 93/13/EEC, OJ 1993 L 95, p. 29.

<sup>268</sup> Judgment of 22 April 2021, *Profi Credit Slovakia*, C-485/19, EU:C:2021:313, para. 54; judgment of 4 June 2020, *Kancelaria Medius SA*, C-495/19, EU:C:2020:431, para. 32; judgment of 17 May 2022, *Ibercaja Banco*, C-600/19, EU:C:2022:394, para. 45; judgment of 17 May 2022, *SPV Project 1503 Srl and Banco di Desio e della Brianza SpA*, C-693/19 and C-831/19, EU:C:2022:395, para. 61; 17 May 2022, *Unicaja Banco*, C-869/19, EU:C:2022:397 para. 29; judgment of 17 May 2022, *Impuls Leasing România IFN SA*, C-725/19, EU:C:2022:396, para. 46; judgment of 10 June 2021, *BNP Paribas Personal Finance SA*, C-776/19 to C-782/19, EU:C:2021:470 para. 29; judgment 29 April 2021, *Bank BPH S.A.*, C-19/20, EU:C:2021:341, para. 92; judgment of 8 September 2022, *D.B.P. (Crédit hypothécaire libellé en devises étrangères)* C-80/21 to C-82/21, , para. 88; judgment of 22 September 2022, *Servicios Prescriptor y Medios de Pagos EFC SAU*, C-215/21, EU:C:2022:723, para. 36.

<sup>269</sup> *Impuls Leasing România IFN SA* Judgment; judgment of 22 September 2022, *Vicente (Action en paiement d'honoraires d'avocat)*, C-335/21, EU:C:2022:720, ; judgment of 4 June 2020, *Kancelaria Medius SA*, C-495/19, EU:C:2020:431.

limitation periods for consumers' claims based on unfair terms<sup>270</sup>, the obligation for courts to assess the fairness of a specific contract term in a reasoned manner in order to preclude a subsequent examination of the same term based on the principle of *res judicata*<sup>271</sup>, and the allocation of costs<sup>272</sup>.

Similarly, in **migration and asylum**, effective judicial protection plays an important role, and the CJEU has ruled that Member States need to comply with certain safeguards in decisions on returns, entry bans, removals and detention orders, such as the right to be heard and the right to have access to the case file<sup>273</sup>.

## 4.2. National case-law on effective legal remedies

In addition to the CJEU, national courts and tribunals have the responsibility to ensure judicial protection in the EU under Article 19 TEU<sup>274</sup>.

As such, Member States apply the Charter in cases which concern the implementation of EU law<sup>275</sup>. The Charter has been most often cited in cases decided by supreme administrative courts, related in particular to taxation, confiscation of property, employment discrimination, energy and competition, access to information, data retention, asylum, as well as the EAW and mutual recognition of custodial sentences<sup>276</sup>. The following highlights some relevant recent cases where national courts have referred to the Charter, often in combination with provisions of constitutional or international law.

In the absence of national provisions explicitly implementing the procedural guarantees of the Charter, fundamental rights claims in cases involving EU law have been based directly on the Charter. In this regard, Article 47 of the Charter has been granted direct effect by the CJEU, which allows individuals to directly rely on this right before the national court<sup>277</sup>.

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<sup>270</sup> *BNP Paribas Personal Finance SA* judgment; *Profi Credit Slovakia* judgment; *D.B.P. (Crédit hypothécaire libellé en devises étrangères)* judgment.

<sup>271</sup> *Ibercaja Banco* judgment; *SPV Project 1503 Srl and Banco di Desio e della Brianza SpA* judgment.

<sup>272</sup> *Servicios Prescriptor y Medios de Pagos EFC SAU* judgment.

<sup>273</sup> Judgment of 10 September 2013, *G. and R.*, C-383/13 PPU, EU:C:2013:533 and judgment of 11 December 2014, *Boudjlida*, C-249/13, EU:C:2014:2431.

<sup>274</sup> See: *Randstad Italia* Judgment, para. 46; *Repubblica* judgment, para. 49; and *A.B. and Others (Appointment of the Supreme Court judges – Appeal)* judgment, para. 108.

<sup>275</sup> In line with Article 51(1) of the Charter.

<sup>276</sup> FRA, Fundamental rights report 2023, pp. 48-50. Also Fundamental rights report 2022, pp. 33-34, and 37, Fundamental rights report 2021, p. 46.

<sup>277</sup> In its judgment of 17 April 2018, *Egenberger*, C-414/16, EU:C:2018:257, para. 78, the CJEU established the direct effect of Art. 47 CFR, which has been confirmed for instance in: judgment of 6 October 2020, *État luxembourgeois (Judicial protection against requests for information in tax law)*, C-245/19 and C-246/19, EU:C:2020:795, para. 55; *AK (Independence of the Disciplinary Chamber of the Supreme Court)* judgment, para. 162; judgment of 29 July 2019, *Torubarov*, C-556/17, EU:C:2019:626, para. 56.

For instance, in two cases, the **Constitutional Court of Austria**<sup>278</sup> found that the asylum applicants' right to an effective remedy and in particular their right to a hearing under Article 47(2) of the Charter had been breached. In another example related to VAT proceedings, the **Supreme Administrative Court of Austria**<sup>279</sup> held that in the absence of national provisions implementing the right to effective legal protection, including the right to legal aid, the applicant could argue a breach of their fundamental rights on the grounds of Article 47 of the Charter.

The Charter has also been applied in cases where domestic courts have reviewed the legality of national laws. Referring to Articles 7 and 47 of the Charter, **the Constitutional Court of Belgium** found several provisions of the national Act on the prevention of money laundering and terrorist financing to be contrary to the professional secrecy of lawyers, which it considered protected by essential parts of the rights to privacy and to a fair trial. That Act, which implements Directive (EU) 2015/849<sup>280</sup>, was partially annulled<sup>281</sup>.

Similarly, the **Supreme Court of Estonia**<sup>282</sup> reviewed the legality of the national Aliens Act, according to which decisions on the premature termination of visa-free stay could not be challenged in court. The right of non-EU nationals to enter and stay in Estonia without a visa stems from Regulation 2018/1806, and guaranteeing the right to judicial appeal was therefore a matter of protecting a subjective right of EU law. Article 32 (3) of the EU Visa Code read in conjunction with Article 47 of the Charter required Estonia to provide a procedure to challenge decisions refusing visas. Referring to the principles of equivalence and effectiveness, the court held that the same interpretation should apply to visa-free stay.

## 5. EU funding for effective legal protection

Funding to build stakeholders' capacities is an essential part of the EU's and its international partners' efforts to support effective legal protection. The European Commission contributes to the strengthening of judicial protection through the Justice programme and the Citizens, Equality, Rights and Values programme (CERV).

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<sup>278</sup> Contribution of FRA, referring to Constitutional Court of Austria, E4359/2021, decision of 17.3.2022, and E4123/2020, decision of 8.6.2021. In the first case, the Federal Administrative Court had not heard the applicant and had wrongly assumed the applicant to belong to the Shiite faith. The decision of the Federal Administrative Court was annulled. In the second case, the waiving of the oral hearing had been arbitrary, as it had not been possible to establish the facts of the case sufficiently precisely. The Constitutional Court set aside the decision.

<sup>279</sup> Contribution of FRA, referring to Supreme Administrative Court of Austria, decision of 23.6.2021, Mag. B; Federal Finance Court, Ra 2019/13/0111.

<sup>280</sup> Directive (EU) 2015/849.

<sup>281</sup> Contribution of FRA, referring to Constitutional Court of Belgium, 114/2020, decision of 24.9.2020, Order of Francophone and Germanophone Bars, Order of Flemish Bars and the Institute of Accountants and Tax Consultants and others.

<sup>282</sup> Contribution of FRA, referring to Supreme Court of Estonia, judgment of 20 April 2021, Chancellor of Justice, Minister of Justice, Minister of the Interior, Minister of Foreign Affairs, Police and Border Guard Board, *Rostyslav Polishchuk, Mykola Ishchenko, Tulundusihistu Loreta, Hobulane OÜ*.

## 5.1. The Justice programme

Through the Justice programme<sup>283</sup>, the European Commission supports a European area of justice based on **effective and independent justice systems**<sup>284</sup>. Funding<sup>285</sup> is granted to tackle cross-border challenges, such as lack of trust between the judicial systems in mutual recognition and judicial cooperation, gaps in digital communication, procedures and the transmission of legal information, and scarcity of resources for training on EU law. One of the three strands of the programme<sup>286</sup> is aimed at facilitating the **effective and non-discriminatory access to justice and redress for all**<sup>287</sup>, including by **electronic means**, with priority areas such as the rights of all victims of crime and the procedural rights of suspected and accused persons in criminal proceedings<sup>288</sup>.

*Project examples from the Justice programme:*

Led by civil society organisations, the ‘**Pioneering anti-SLAPP** training for freedom of expression’ project provides training for 200 lawyers who are likely to represent journalists and rights-defenders targeted by strategic litigation against public participation in 11 Member States<sup>289</sup>. The project ‘**Effective e-access to court decisions**’ improves access to national and EU caselaw in Lithuania<sup>290</sup>. The project ‘**Improving GBV victims’ support services and access to justice through trauma-informed care**’ strengthens support services to traumatised victims and raises awareness of a trauma-informed approach in five Member States<sup>291</sup>.

Operating grants are provided to European networks working on access to justice and judicial cooperation in civil and criminal matters, as well as to the **European Judicial Training Network**.

<sup>283</sup> Regulation (EU) 2021/693 repealing Regulation (EU) 1382/2013.

<sup>284</sup> <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/programmes/just2027>.

<sup>285</sup> The available budget for 2021-2027 is approximately EUR 305 million. The budget for 2023 is EUR 41 125 000 and for 2024 EUR 40 691 000, with the following distribution between the programme strands: judicial cooperation in civil and criminal matters (27%), judicial training (36%), and access to justice (27%) (percentage allocations based on the programme legal basis).

<sup>286</sup> The other two strands aim at 1) facilitating judicial cooperation in civil and criminal matters and promoting the rule of law, the independence and impartiality of the judiciary ([Call for proposals for action grants to promote judicial cooperation in civil and criminal matters](#), including by supporting efforts to improve the effectiveness of national justice systems and the effective enforcement of decisions), and 2) supporting judicial training to foster a common legal, judicial and rule of law culture, and to support the consistent and effective implementation of EU law [Call for proposals for action grants to support transnational projects on training of justice professionals covering civil law, criminal law or fundamental rights](#).

<sup>287</sup> [Call for proposals for action grants to support transnational projects in the fields of e-Justice, victims’ rights and procedural rights](#).

<sup>288</sup> [https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/rights-suspects-and-accused\\_en](https://commission.europa.eu/strategy-and-policy/policies/justice-and-fundamental-rights/criminal-justice/rights-suspects-and-accused_en).

<sup>289</sup> <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/org-details/999999999/project/101051559/program/43252386/details>.

<sup>290</sup> <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/org-details/999999999/project/101087157/program/43252386/details>.

<sup>291</sup> <https://ec.europa.eu/info/funding-tenders/opportunities/portal/screen/how-to-participate/org-details/999999999/project/101056671/program/43252386/details>.

The programme also funds the **European e-Justice Portal**<sup>292</sup>, which provides information on national justice systems in 23 languages to ease access to justice across the EU. The Justice programme is also used to fund the EU's cooperation activities with the **Council of Europe**, including activities on **child-friendly justice**<sup>293</sup>.

*The HELP programme*

Developed in cooperation between the Council of Europe, the European Commission and the FRA, a **new e-learning course on the interplay between the Charter and the European Convention on Human Rights**<sup>294</sup> trains judges, prosecutors and other lawyers on European fundamental rights standards and their application at the national level.

The course seeks to raise the protection of fundamental rights and rule of law in the EU by increasing legal professionals' knowledge on fundamental rights and rule of law. The online training courses bring together legal professionals from several Member States, which creates opportunities for exchanges between practitioners and builds mutual trust.

## 5.2. Citizens, equality, rights and values (CERV) programme

Through its CERV programme<sup>295</sup>, the Commission promotes the implementation of the rights and values enshrined in the Treaties, the Charter, and international conventions, by funding activities to support rights-based, democratic, equal and inclusive European societies based on the rule of law.

*The Union values strand*

The 2021-2027 CERV programme is organised around four strands, namely on 1) Union values; 2) Equality, rights and gender equality; 3) Citizen's engagement and participation; and 4) Fighting gender-based violence and violence against children.

To promote the values enshrined in Article 2 TEU, the 2023-2024 CERV work programme covers a range of activities to build the capacity of civil society organisations to ensure that the Charter is upheld. Funding from the Union values strand can be used to support activities related to fundamental rights, including to uphold the **rule of law** and strengthen **judicial independence**;

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<sup>292</sup> <https://e-justice.europa.eu/home.do?plang=en&action=home>.

<sup>293</sup> The Council of Europe will also develop guidance and training for judicial professionals on the Commission Recommendation on the procedural rights of suspects and accused persons subject to pre-trial detention and on material detention conditions, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_22\\_7570](https://ec.europa.eu/commission/presscorner/detail/en/ip_22_7570).

<sup>294</sup> [European Programme for Human Rights Education for Legal Professionals in the European Union](#) (HELP in the EU III). The course covers the European Convention on Human Rights, the (revised) European Social Charter, the EU Charter, and other relevant EU and Council of Europe law, as well as relevant jurisprudence.

<sup>295</sup> Regulation (EU) 2021/692. The estimated programme budget for 2021-2027 is EUR 1.5 billion.

protect fundamental rights in the **digital age**; build capacity on **whistle-blower protection**; empower the civic space; and combat **hate speech and hate crime**<sup>296</sup>.

As noted in the Charter strategy, effective judicial protection includes strategic litigation, which can contribute to a more coherent implementation and application of EU law and to the enforcement of rights<sup>297</sup>. The Union values strand also covers funding to build capacity for **strategic litigation to ensure the protection of Charter rights**<sup>298</sup>, for instance by improving the knowledge and litigation ability of practitioners, legal professionals, independent human rights bodies, and civil society.

Projects funded under the Union values strand can also be aimed at promoting **capacity building and awareness-raising on the Charter** through training and train-the-trainer activities (such as for experts, lawyers and legal advisers, communicators, policy and advocacy advisers), and practical guidance and learning tools<sup>299</sup>.

Under the **Daphne** strand, financial support is granted to projects on preventing and combating gender-based violence, including in the migration context as well as violence against children<sup>300</sup>.

As part of cooperation with international organisations, the Commission also grants financial support from the CERV programme to the **OSCE / ODIHR** for their knowledge-sharing and standard-setting work on hate crime<sup>301</sup>.

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<sup>296</sup> Funded actions facilitate the implementation of EU priorities in the area of fundamental rights, the rule of law and democracy as highlighted in the Rule of Law reports, the Communication on ‘A more inclusive and protective Europe: extending the list of EU crimes to hate speech and hate crime’, EU Citizenship Reports, the European democracy action plan, the Commission Recommendation on protecting journalists and human rights defenders who engage in public participation from manifestly unfounded or abusive court proceedings and the Charter strategy.

<sup>297</sup> Charter strategy, p. 11.

<sup>298</sup> [Annex](#) to the Commission Implementing Decision on the financing of the Citizens, Equality, Rights and Values programme and the adoption of the 2023-2024 work programme. [Call for proposals to promote civil society organisations’ awareness, capacity building and implementation of the EU Charter of Fundamental Rights](#).

<sup>299</sup> [Call for proposals to promote capacity building and awareness on the EU Charter of Fundamental Rights and activities on strategic litigation relating to democracy, the rule of law and fundamental rights breaches](#). See projects ‘[Making the EU Charter a leading human rights litigation tool in Hungary](#)’, ‘[Strategic Litigation as a Gateway to address the rights of Persons with Disabilities in the European Union](#)’, ‘[Developing Information, Guidance, and Interconnectedness for \(Charter\) Rights Integration in Strategies for Enforcement](#)’.

<sup>300</sup> [Call for proposals to prevent and combat gender-based violence and violence against children: call to intermediaries](#).

<sup>301</sup> [Annex](#) to the Commission Implementing Decision on the financing of the Citizens, Equality, Rights and Values programme and the adoption of the 2023-2024 work programme. These activities include funding to improve the support available for victims of hate crime, and justice structures’ responses to hate crime.

### 5.3. Support under other EU funding programmes

Funding to advance effective legal protection is also available under other funding programmes. Projects funded from the **Digital Europe programme**<sup>302</sup> include projects on e-justice<sup>303</sup>, which have focused on the maintenance and development of IT systems, digitalisation of the service of documents and taking of evidence in civil and commercial matters, and the digitalisation of judicial cooperation in civil, commercial, and criminal matters<sup>304</sup>. Similarly, as part of the funding granted to equip the public with the knowledge needed in a digital society, projects on effective judicial protection<sup>305</sup>, alternative dispute resolution<sup>306</sup> and child-friendly justice<sup>307</sup> have received funding from the **Erasmus+ programme**<sup>308</sup>. In addition, the **Internal Security Fund**<sup>309</sup> finances actions against terrorism and radicalisation, serious and organised crime, cybercrime, and the protection of victims.

#### *Improving legal protection with funding from the Recovery and Resilience Facility*

Several Member States have used funding from the **Recovery and Resilience Facility (RRF)**<sup>310</sup> to increase the efficiency of their justice systems, reform civil and criminal justice, and promote the digitalisation of justice.

Satisfactorily fulfilled milestones and targets from the 2022-2023 Semester cycle include initiatives on promoting the accessibility, effectiveness and predictability of the justice system in **Bulgaria**; increasing judicial efficiency in **Croatia**; supporting the digitalisation of the justice system in **Czechia** and **Malta**; reforming the criminal and civil justice in **Italy**; strengthening the integrity and independence of the justice system in **Slovakia**; and to boost the rule of law and the efficiency of the justice system in **Spain**<sup>311</sup>.

In addition to the RRF, Member States reforms have been supported by the **Technical Support Instrument** “to increase the efficiency of judicial systems”<sup>312</sup>. The funded projects have sought to improve access to courts, support the independence of judicial systems, and increase the efficiency of judicial systems by reducing the length of proceedings and redesigning the allocation of cases in courts. Several projects have focused on **strengthening child-friendly justice through the**

<sup>302</sup> [DIGITAL Europe Work Programme 2023-2024 \(.pdf\)](#).

<sup>303</sup> [Call for proposals for Digital transformation](#). An example of funded project is ‘[Continued management, development and maintenance of the e-CODEX system](#)’ used by several Member States for the digital exchange of case-related data in civil, commercial and criminal matters.

<sup>304</sup> [DIGITAL Europe Work Programme 2023-2024 \(.pdf\)](#).

<sup>305</sup> Project ‘[Access to Justice in a Multilevel European Constitutional System](#)’.

<sup>306</sup> Project ‘[EU Studies for Human Rights Protection and Alternative Dispute Resolution](#)’.

<sup>307</sup> Project ‘Child-Friendly Justice in Action’ funded under Erasmus+ key action Cooperation for innovation and the exchange of good practices.

<sup>308</sup> <https://erasmus-plus.ec.europa.eu>.

<sup>309</sup> [https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/internal-security-fund\\_en](https://commission.europa.eu/funding-tenders/find-funding/eu-funding-programmes/internal-security-fund_en).

<sup>310</sup> [https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility\\_en](https://commission.europa.eu/business-economy-euro/economic-recovery/recovery-and-resilience-facility_en).

<sup>311</sup> [https://ec.europa.eu/economy\\_finance/recovery-and-resilience-scoreboard/milestones\\_and\\_targets.html?lang=en](https://ec.europa.eu/economy_finance/recovery-and-resilience-scoreboard/milestones_and_targets.html?lang=en).

<sup>312</sup> With an overall budget of EUR 864 million for the period 2021-2027, under the Technical Support Instrument, the Commission has supported 20 projects in the area of judicial reforms in 14 Member States for a total amount of EUR 10 580 000.



**Barnahus model**<sup>313</sup>, improving the inclusion of children with disabilities in **Slovakia**<sup>314</sup>, the quality of the education system in **Romania**<sup>315</sup>, and the strengthening of juvenile justice in **Slovenia**<sup>316</sup>. Other projects focus on the modernisation of the justice sector<sup>317</sup>.

Under its **external action funding instruments**, the EU funds projects to bring judicial practices in non-EU countries into line with best practices from the EU and international human rights standards, and to advance the technical capacities of the judiciary<sup>318</sup>. In addition, promoting rights-based and gender-responsive justice as well as access to justice and legal assistance are among the priorities of the **EU action plan on human rights and democracy 2020-2024**<sup>319</sup>. The Action plan is implemented through multilateral, global, regional as well as bilateral cooperation and global cooperation<sup>320</sup> with partner countries and international and regional organisations. In this context,

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<sup>313</sup> The Barnahus (children’s houses) work as a service point where law enforcement, criminal justice, child protection services, and social and health workers cooperate under one roof. The project “[Ensure child-friendly justice through effective operation of the Barnahus-units in Finland](#)” contributes to improving the access to and quality of the justice system for child victims of violence. The operation of five Barnahus are improved to respond to child sexual abuse cases. Similarly, “[Strengthening child-friendly justice through effective co-operation and coordination among different Barnahus-type services in the regions of Spain](#)” aims at drafting recommendations and developing a strategy and an action plan for scaling up Barnahus operations in the participating regions. In **Slovenia**, the project “Barnahus Slovenia: Supporting child victims of violence” led to the opening of a Barnahus following initial training. The project helped to design the operations and prepare a draft law on child-friendly justice, adopted in June 2021. It included a nation-wide communication campaign and involved children in the design of the Barnahus. The aim of the project “Implementing the Barnahus model in **Croatia**” is to strengthen the legal framework, including by strengthening the capacities of professionals.

<sup>314</sup> The aim of the project is to better integrate children with disabilities in society and to enhance the quality of the services they receive from the Social and Legal Protection of a Child and Social Guardianship system and allied services.

<sup>315</sup> This project promote unitary, inclusive and quality early-childhood education.

<sup>316</sup> This project aims to reduce the backlog in criminal courts and the length of criminal proceedings for cases involving young people. It also supports the improvement of young prisoners’ treatment and reintegration through training to prison personnel.

<sup>317</sup> In **France**, the “FranceJustice” project aims at improving access to justice by establishing an IT tool for consultations between citizens and legal professionals, including representatives of services providing information on fundamental rights and justice, and victim support associations. The project “Modernising the Civil Procedure Rules in **Cyprus**” supported the Supreme Court in modernising the civil procedure rules in 2021. Likewise, the project “[Support to the implementation of e-communication in Croatian judiciary](#)”, co-funded with the Council of Europe, supports the Ministry of Justice in assessing the current system in light of stakeholder feedback and best practices, and provides recommendations for further improvement.

<sup>318</sup> For example, under a call for tenders NEAR/SJJ/2023/EA-OP/0056 for Provision of equipment and technical capacities for the judicial institutions, five contracts were signed in 2023 for a total value of EUR 3.94 M for specialised police vehicles to transport persons deprived of liberty; a specialised police bus to transport detainees; anti-diversion equipment; technical protection systems for judicial buildings; and servers for judicial institutions in Bosnia and Herzegovina.

<sup>319</sup> [https://www.eas.europa.eu/eas/eu-action-plan-human-rights-and-democracy-0\\_en?s=264](https://www.eas.europa.eu/eas/eu-action-plan-human-rights-and-democracy-0_en?s=264).

<sup>320</sup> Bilateral cooperation with several partner countries, including, for example Mongolia, Nigeria, the Philippines, Colombia, Gambia, Guinea-Bissau and Angola. The [Team Europe Democracy \(TED\)](#) is a global thematic Team Europe Initiative involving 15 Member States, launched in 2021 to promote democracy and human rights worldwide. Accountability and Rule of Law are key priorities, with a working group dedicated to access to justice and people-centred justice.

the EU also promotes **dialogue on transitional justice** with the African Union<sup>321</sup> and implements a bi-regional cooperation programme on **citizen security and justice** in Latin America<sup>322</sup>.

Ensuring an effective remedy and taking measures to promote access to justice likewise constitute an important aspect for **the monitoring of EU candidate countries** and potential candidates<sup>323</sup>. The Commission encourages them to establish effective mechanisms for ensuring judicial protection through EU funded programmes<sup>324</sup>.

Supporting partner countries' judicial systems and promoting the rule of law is also covered by the common foreign and security (CFSP) funds allocated to **civilian common security and defence policy (CSDP) missions**<sup>325</sup>, as well as by the mandate of some **EU Special Representatives**<sup>326</sup>, which are funded through the CFSP budget. Certain civilian CSDP missions also support authorities in strengthening justice systems and advancing access to justice, among other tasks<sup>327</sup>.

As regards funding provision in support of effective legal protection by other international organisations, the **EEA and Norway Grants** promote partnerships to tackle challenges faced by European judicial systems<sup>328</sup>.

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<sup>321</sup> This is done by supporting the implementation of the African Union Transitional Fund by the EU Delegation to the African Union with a consortium of specialised agencies.

<sup>322</sup> <https://www.elpaccto.eu/en/>. The second phase, to start in 2023, will be the largest programme supporting the implementation of the [Team Europe Initiative for Justice and Security](#), which focuses, for example, on supporting actions related to access to justice and people-centred justice.

<sup>323</sup> The enforcement of judicial decisions and the implementation of judgments of the ECtHR are, for instance, reported in the [country reports](#) as part of the annual Enlargement Package.

<sup>324</sup> Examples of actions under the EU-Council of Europe joint programmes are (i) **the Partnership for Good Governance for Eastern Partnership countries**, aiming at combatting discrimination and protecting the rights of vulnerable groups and women through capacity building and dissemination of tools/guidance in accessing justice in Georgia, Moldova and Ukraine; (ii) the **Horizontal Facility in the Western Balkans and Türkiye**, which addresses gender inequalities in the judicial systems in Albania, Montenegro and North Macedonia, (iii) **the South Programme**, which adapted 31 editions of the above-mentioned HELP programme to the national legal contexts and gathered in July 2023 HELP tutors and national focal points from the Southern Mediterranean region to discuss common priorities for the region and ways to enhance cooperation.

<sup>325</sup> [https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/programme-performance-statements/common-foreign-and-security-policy-performance\\_en](https://commission.europa.eu/strategy-and-policy/eu-budget/performance-and-reporting/programme-performance-statements/common-foreign-and-security-policy-performance_en).

<sup>326</sup> For example, the European Union Special Representative for Human Rights.

<sup>327</sup> EULEX Kosovo, EU Advisory Mission for Civilian Security Sector Reform Ukraine (EUAM Ukraine), European Union Police Mission for the Palestinian Territories (EUPOL COPPS), and the European Union Capacity Building Mission in Mali (EUCAP Sahel Mali).

<sup>328</sup> <https://eeagrants.org/topics-programmes/justice-and-home-affairs/judicial-cooperation>. [List of grants awarded by the Council of Europe within the scope of EU/COE joint programmes and voluntary contributions](#).

## 6. Conclusion

Effective legal protection and access to justice are an essential part of democratic checks and balances and instrumental in upholding the EU's founding values. Effective judicial and non-judicial remedies enable individuals to enforce their rights under EU law, including fundamental rights, and prevent those rights from becoming illusory. While accessing justice is important for individuals, their cases also make a significant contribution to the interpretation of EU and national law. Successful litigation outcomes have potential to shape the legal landscape, and ensure that courts and legislators interpret laws in a manner that is compliant with fundamental rights.

This report has highlighted the numerous judicial and non-judicial remedies available in EU law and the recent efforts made to strengthen effective legal protection through the adoption of several pending legislative proposals. Such EU law contributes to ensuring effective legal protection and access to justice for all and highlights the need to continue the joint efforts of the EU and the Member States in this field. In this regard, the Commission calls on the European Parliament and the Council to ensure that high standards in effective legal protection are maintained in these proposals.

The Commission also continues to build the capacity of judicial professionals, civil society organisations and other stakeholders to apply the Charter in their daily work through funding, maintains regular dialogues with experts and stakeholders and continues to monitor the availability of effective legal protection under the Rule of Law reporting cycle.

As also noted by the Council<sup>329</sup>, the role of Member States in safeguarding fundamental rights in effective legal protection and access to justice is central. They are required to provide remedies sufficient to ensure effective legal protection in the fields covered by Union law<sup>330</sup>. The domestic measures and case-law highlighted in this report demonstrate the essential importance of national judges and competent authorities in that regard. National authorities ensure that legal protection measures are in place at the national level, but at the same time, challenges persist. Although the sample used in the consultations is not large enough for drawing any definitive conclusions, stakeholders refer to various remaining barriers, in addition to the challenges to effective judicial protection described in the 2023 Rule of Law report. These barriers, such as the insufficient provision of information in particular on non-judicial remedies, practical difficulties in using e-justice solutions, insufficient arrangements to monitor the rights of the child in judicial proceedings, and varying degrees of inaccessibility of justice to vulnerable groups, including on economic grounds<sup>331</sup>, can prevent interested parties from seizing legal remedies.

Furthermore, while increasing references to the Charter in the case-law of both the CJEU and national courts show considerable interest in framing effective legal protection through the lens of

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<sup>329</sup> Council conclusions on strengthening the application of the Charter of Fundamental Rights in the European Union of 8 March 2021, 6795/21.

<sup>330</sup> Article 19(1) second subpara. TEU.

<sup>331</sup> See FRA 2023, Civil society consultation on access to justice. Summary of replies to an online survey carried out between 30 June and 21 August 2023.

fundamental rights, there could be more cases brought to the courts where the Charter is applied to strengthen the legal protection of an affected individual. This highlights the need to ensure that legal professionals receive regular training on fundamental rights and effective legal protection<sup>332</sup> and to enable civil society organisations and human rights defenders to bring strategic litigation cases at national and EU level.

The Commission welcomes the active engagement and contributions from stakeholders and the Fundamental Rights Agency in preparing this report. It encourages legal practitioners, national authorities (including the Charter focal points), civil society organisations, human rights defenders and other stakeholders to use this report as part of their efforts to improve the effectiveness of legal protection from a fundamental rights perspective in their Member States. The Commission also invites the European Parliament and the Council to organise dedicated discussions on the report and is available to support these exchanges.

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<sup>332</sup> See the Charter strategy, p. 12-13, which refers to knowledge of the Charter remaining low among national justice practitioners despite its increasing use by national courts.