



9	Access to justice	203
9.1.	Rule of law challenges and hurdles to justice continue to grow	203
9.2.	Advancing victims' rights	205
9.2.1.	Continuing efforts at EU, international and national levels	205
9.2.2.	Increasing victim-friendly initiatives at national level	206
9.2.3.	Improving rights of crime victims to financial compensation	206
9.2.4.	Positive steps to promote training of practitioners	207
9.3.	Violence against women and domestic violence	208
9.3.1.	Developments at EU level	208
9.3.2.	Developments at Member State level	209
9.3.3.	Implementation of the Istanbul Convention in practice	210
9.3.4.	Incidents highlight remaining hurdles	211
	FRA opinions	213

UN & CoE

January

February

March

7 March – the Council of Europe’s (CoE) Committee of Ministers adopts the Gender Equality Strategy for the years 2018-2023, which includes a Strategic objective on ensuring equal access of women to justice

23 March – CoE’s anti-corruption body, the Group of States against Corruption (GRECO), adopts its first ever ad hoc reports, triggered by exceptional circumstances in Poland and in Romania

April

3 April – CoE’s Group of Experts on Action against Trafficking in Human Beings publishes its annual report, identifying an increase in trafficking for labour exploitation, which has emerged as the main form of human trafficking in several European countries

May

3 May – GRECO publishes its annual report, expressing concern about the pace of the practical implementation of the measures introduced to fight corruption of Members of Parliament, judges and prosecutors

June

13 June – the Heads of the European Asylum Support Office (EASO), European Police Office (Europol), European Agency for the operational management of large-scale IT systems in the area of freedom, security and justice (eu-LISA), European Monitoring Centre for Drugs and Drug Addiction (EMCDDA), EU Judicial Cooperation Unit (Eurojust), European Institute for Gender Equality (EIGE), European Border and Coast Guard Agency (Frontex), EU Agency for Fundamental Rights (FRA), EU Agency for Law Enforcement Training (CEPOL), and the European Foundation for the Improvement of Living and Working Conditions (Eurofound) sign a Joint Statement to strengthen their commitment to a coordinated, coherent and comprehensive response to trafficking in human beings, including victims’ rights

18 June – CCJE issues a statement as regards the situation on the independence of the judiciary in Poland

July

4 July 2018 – CoE adopts a new counter-terrorism strategy for 2018–2022 based on prevention, prosecution and protection of victims

August

1 August – Protocol No. 16 to the ECHR enters into force, enabling the highest national courts and tribunals, as designated by the member States concerned, to ask the ECtHR to give non-binding advisory opinions (to be delivered by the Grand Chamber) on questions of principle relating to the interpretation or application of the convention or the protocols thereto

28 August – In *Somorjai v. Hungary* (No. 60934/13), ECtHR holds that the applicant’s complaint regarding the alleged lack of adequate reasoning with respect to a potential reference to the CJEU for a preliminary ruling was inadmissible. The applicant had not actually asked for such a reference to the CJEU in the relevant stages of the proceedings, and the domestic courts expressed their view that the Hungarian provisions and the EU law did not conflict. It also holds there had been a violation of the right to a fair trial (Article 6 (1) of the ECHR) owing to the length of proceedings

September

October

4 October – European Commission for the Efficiency of Justice of the CoE publishes its seventh evaluation report, on the main trends in the judicial systems of 45 European countries

16 October – Inter-Parliamentary Union and Parliamentary Assembly of the CoE publish a study showing alarming levels of acts of sexism, abuse and violence against women in parliaments

November

6 November – In *Ramos Nunes de Carvalho e Sá v. Portugal* (Nos. 55391/13, 57728/13 and 74041/13), Grand Chamber of ECtHR, in a case concerning the disciplinary penalties imposed on a judge, holds, among others, that the insufficiency of the judicial review and the lack of a hearing either at the stage of the disciplinary proceedings or at the judicial review stage meant that the applicant’s case had not been heard in accordance with the requirements of the right to a fair trial (Article 6 (1) of the ECHR)

December

3 December – European Commission publishes its second progress report on the situation in EU Member States on trafficking in human beings, including victims’ rights

21 December – CCJE issues an opinion following a request by the Judges’ Association of Serbia to assess the compatibility with European standards of the newly proposed amendments to the Constitution of the Republic of Serbia that will affect the organisation of judicial power

EU

January

February

7 February – European Parliament (EP) adopts a resolution on zero tolerance for female genital mutilation

27 February – In *Associação Sindical dos Juizes Portugueses (C-64/16)*, CJEU holds among others that Article 19 of the TEU, which gives concrete expression to the value of the rule of law stated in Article 2 of the TEU, entrusts the responsibility for ensuring judicial review in the EU legal order not only to the CJEU but also to national courts and tribunals; and that the guarantee of independence, which is inherent in the task of adjudication, is required not only at EU level as regards the Judges of the Union and the Advocates-General of the CJEU, as provided for in the third subparagraph of Article 19 (2) of the TEU, but also at the level of the Member States as regards national courts

March

1 March – EP adopts a resolution on the Commission's decision to activate Article 7 (1) of the TEU regarding the situation in Poland

13 March – In a plenary debate, the Members of the EP call on the 11 Member States that have not ratified the Istanbul Convention to do so

April

19 April – EP adopts a resolution on the implementation of Directive 2011/99/EU on the European Protection Order

May

2 May – Commission puts forward a proposal for a regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States

30 May – Commission proposes regulations for a Justice fund and a Rights and Values fund to contribute further to the development of a European area of justice

30 May – EP adopts a resolution on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime

June

5 June – Council adopts its Conclusions on Protection of Victims of Terrorism, calling for effective cooperation between the authorities and entities responsible for the protection of victims of terrorism to facilitate the rapid exchange of information and assistance in the event of a terrorist attack

July

4 July – EP adopts a resolution towards an EU external strategy against early and forced marriages

11 July – In *Abdul Wahed Shannan Al Rabbat v. European Commission (T-12818)*, CJEU dismisses as inadmissible the applicant's application for the court to declare that the Commission had failed to bring proceedings against the United Kingdom in relation to its alleged violation of the Victims' Rights Directive. It holds that individuals cannot bring proceedings against the Commission for refusing to bring proceedings against Member States that fail to fulfil their obligations, as such refusal cannot constitute direct concern to natural or legal persons

25 July – In *LM (C-216/18)*, CJEU holds that a judicial authority called upon to execute a European arrest warrant must refrain from giving effect to it after determining that there are substantial grounds for believing that the person concerned runs a real risk of suffering a breach of his fundamental right to a fair trial, as guaranteed by Article 47 of the EU Charter of Fundamental Rights, on account of deficiencies liable to affect the independence of the judiciary in the issuing Member State. According to CJEU, the requirement of independence also means, among others, that the disciplinary regime governing their members must display the necessary guarantees to prevent any risk of that regime being used as a system of political control of the content of judicial decisions

August

September

11 September – EP adopts a resolution on measures to prevent and combat mobbing and sexual harassment at the workplace, in public spaces, and in political life in the EU

12 September – EP adopts a resolution on a proposal calling on the Council to determine, pursuant to Article 7 (1) of the Treaty on European Union, the existence of a clear risk of a serious breach by Hungary of the values on which the Union is founded

October

19 October – In *Commission v. Poland (C-619/18 R)*, Vice President of CJEU provisionally orders that Poland must immediately suspend the application of the provisions of national legislation relating to the lowering for the retirement age for Supreme Court judges, pending the making of an order closing the interim proceedings

November

14 November – EP adopts a resolution calling for a comprehensive EU mechanism for the protection of democracy, the rule of law and fundamental rights

December

6 December – Council adopts the strategy and action plan on the development of e-Justice for the period 2019-2023, seeking to simplify and improve access to justice while digitising cross-border legal procedures

17 December – In *Commission v. Poland (C-619/18 R)*, Grand Chamber of CJEU grants Commission's request for interim measures, ordering Poland to immediately suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges

9

Access to justice



Judicial independence is an essential building block of the rule of law. Challenges to such independence continued to grow, underlining the need for effective coordination of efforts in this area. This prompted the European Parliament to submit, for the first time, a call to the Council for adoption of a decision under Article 7 (1) of the TEU, and the European Commission to submit a proposal for a regulation addressing, from a budgetary perspective, deficiencies in the rule of law. About two thirds of EU Member States adopted legislation to strengthen the application of the Victims' Rights Directive, increasing safeguards relating to participation in criminal proceedings. Recognising that the Istanbul Convention defines European human rights protection standards in the area of violence against women and domestic violence, the EU continued the process of ratifying the instrument.

9.1. Rule of law challenges and hurdles to justice continue to grow

In the EU, an independent judiciary is the *conditio sine qua non* for the effective functioning of the common, borderless area of justice based on mutual trust and mutual recognition. It is the cornerstone of the rule of law and of access to justice (Article 19 of the TEU and Article 47 of the EU Charter of Fundamental Rights). In addition, Target 16.3 of the 2030 Agenda for Sustainable Development expects UN Member States to promote the rule of law at the national and international levels and to ensure equal access to justice for all¹ (for more on the UN Sustainable Development Goals, see [Chapter 1](#)). In November 2018, the Commission published the first results of a Special Eurobarometer 'Future of Europe'. When respondents were asked to rank the 'main assets' of the EU, they most often mentioned 'The EU's respect for democracy, human rights and the rule of law', followed by 'The economic, industrial and trading power of the EU.'²

"If the EU judicial space needs to work, [...] then when you judge the extradition you have to be sure that the person facing justice in the other Member State has the right to a fair trial by an independent court. And if that is put into doubt because of the cumulative effect we see now in Poland of the executive and the legislative wanting to take control over the court, then of course other judges will wonder whether the verdict will be decided by an independent judge or by a phone call from a political party central. [...] And it is also a consequence of where we are now."

Frans Timmermans, First Vice-President, European Commission, Remarks at public hearing on the rule of law in Poland, at the European Parliament's Committee on Civil Liberties, Justice and Home Affairs, 20 November 2018

Developments in several EU Member States relating to independence of the judiciary, separation of powers, and corruption, and the triggering of Article 7(1) of the TEU (clear risk of a serious breach of EU values) have raised major concerns about the rule of law. On 20 December 2017, in the context of the rule of law situation in **Poland**, the General Affairs Council received a reasoned proposal from the Commission under Article 7 (1) of the TEU (see further in FRA's *Fundamental*

Rights report 2018). A first hearing under this procedure took place on 26 June 2018, during which the General Affairs Council heard the Polish authorities; the second and third hearings took place on 18 September 2018 and 11 December 2018, respectively.³ In addition, in its plenary resolution passed on 1 March 2018, the European Parliament called on the EU Council of Ministers “to undertake swift action in accordance with the provisions set out” in Article 7(1) of the TEU and asked that Parliament be fully informed of progress made and action taken at every step of the procedure.⁴ At the same time, the European Parliament’s LIBE Committee visited Warsaw to further examine the rule of law situation in Poland.⁵

Meanwhile, the Commission continued its efforts to address the rule of law concerns in Poland by initiating another infringement proceeding before the CJEU. On 2 October 2018, the Commission referred Poland to the CJEU due to the violations of the principle of judicial independence created by the new Polish Law on the Supreme Court, and asked the CJEU to order interim measures until it has issued a judgment on the case. The main concern of the Commission was that the Law on the Supreme Court – reducing the retirement age of Supreme Court judges and prematurely terminating the current mandate of the First President of the Supreme Court – undermined the principle of judicial independence, including the irremovability of judges, contrary to the obligations under Article 19 (1) of the TEU read in conjunction with Article 47 of the EU Charter of Fundamental Rights.⁶ On 17 December, the Grand Chamber of the CJEU granted the Commission’s request for interim measures, ordering Poland to immediately suspend the application of the provisions of national legislation relating to the lowering of the retirement age for Supreme Court judges. The infringement procedure is the second one against Poland for potential violations of the EU value of the rule of law (see FRA’s *Fundamental Rights Report 2018* for details of the previous infringement procedure).

In the meantime, in November 2018, the Polish Parliament adopted a law that eliminates the contested prolongation regime and sets the retirement age of Supreme Court judges at 70 (as was the case in the previous regime) for judges appointed to the Supreme Court before entry into force of the amending law. According to the law, judges who were retired pursuant to the contested provisions will return to their posts and their service will be considered as having been uninterrupted.⁷

The Polish Supreme Court itself also referred to the CJEU – in early August 2018, within the preliminary ruling mechanism under Article 267 of the TFEU. Since August 2018, the Supreme Court has referred six requests for preliminary rulings.⁸ The requests relate mostly to the interpretation of the principle of judicial independence in the light of EU primary law

(Article 2, Article 4 (3) and Article 19 (1) of the TEU, and Article 47 of the Charter of Fundamental Rights); and the interpretation of Directive 2000/78 as regards the abrupt lowering of the retirement age of judges and subjecting their remaining in office to arbitrary decision of the executive. In the context of the preliminary ruling questions that the Polish Supreme Court addressed to the CJEU, Poland’s Prosecutor General, who is also Minister of Justice, submitted in October 2018 a request to the Polish Constitutional Tribunal to examine the compliance of Article 267 of the TFEU with the Polish Constitution, so far as it allows the referral of preliminary questions regarding the organisation of the national judiciary.⁹

The European Network of Councils for the Judiciary unites the national councils of judiciary in the Member States of the E that are responsible for supporting the judiciary in the independent delivery of justice. Against the background of all these developments, the network decided to suspend the membership of the Polish National Council for the Judiciary on 17 September 2018. The network based this decision on the fact that the Polish Council no longer meets the requirements of ENCJ to be independent of the executive and legislature so as to ensure the independence of the Polish judiciary.¹⁰

The rule of law situation in the area of justice and judicial independence raised or continued to cause concerns in several other EU Member States in 2018. In particular, the European Parliament took the unprecedented step of calling on the Council to adopt a decision under Article 7 (1) of the TEU against **Hungary** and determine the existence of a clear risk of a serious breach by Hungary of the EU’s founding values. This was the first time that the European Parliament had taken the initiative of recommending that Article 7 be activated, in view of a serious threat to the rule of law, democracy and fundamental rights in a Member State.¹¹ The European Parliament’s key concerns relate to several aspects of the rule of law, including the functioning of the constitutional system, the independence of the judiciary, and corruption. In response to the European Parliament’s action, Hungary lodged an application to initiate proceedings before the CJEU on 17 October 2018, challenging the European Parliament’s resolution to trigger the procedure against Hungary.¹² In particular, the Hungarian government is challenging the result’s validity, claiming that abstentions should have been counted in the vote but were not. The case before the CJEU is still pending.¹³

Because of legislative reforms and their impact on judicial independence, the rule of law situation in **Romania** continued to pose growing concerns in 2018. In a resolution of 13 November 2018 on the situation of the rule of law in Romania, the European Parliament expressed deep concern about the reforms of the Romanian judicial and criminal laws, which risk undermining the separation of powers and the fight



against corruption.¹⁴ On the same day, the Commission published its report on progress in Romania under the Cooperation and Verification Mechanism, confirming concerns about the rule of law situation in the country, and recommending that it suspend the implementation of the new criminal and judicial laws.¹⁵

The Council of Europe echoed these concerns. On 23 March 2018, its anti-corruption body, the Group of States against Corruption (GRECO) adopted an ad hoc report expressing serious concern about certain aspects of the laws on the status of judges and prosecutors, on the judicial organisation and on the Superior Council of Magistracy, and about draft amendments to the criminal legislation in Romania.¹⁶ On 20 October 2018, the Council of Europe's Commission for Democracy through Law (the Venice Commission) published two opinions, expressing concern that the cumulative effect of the laws was likely to undermine the independence of Romanian judges and prosecutors.¹⁷ The opinions came out just a few days after Romania's own Constitutional Court established that over 60 articles (out of 96) of the draft law amending the Criminal Law Procedure were unconstitutional.¹⁸ On 25 October 2018, it also held that amendments to the Romanian Criminal Code were unconstitutional.¹⁹ Dunja Mijatović, the Council of Europe Commissioner for Human Rights, also highlighted the importance of Romania maintaining the independence of the judiciary and giving effect to the recommendations of the Venice Commission and GRECO, in her conclusions after her visit to Romania on 16 November 2018.²⁰

In June 2018, the LIBE Committee of the European Parliament decided to set up a working group with the general mandate to monitor the situation as regards rule of law and the fight against corruption within the EU, and to address specific situations, in particular **Malta** and **Slovakia**.²¹ This followed the assassinations of the investigative journalists Daphne Caruana Galizia (Malta) in 2017, and Ján Kuciak (Slovakia) together with his fiancée Martina Kušnírová in 2018. Fact-finding missions concluded, among other things, that challenges to the rule of law and fundamental rights should be monitored regularly, so the Commission and the Council could support setting up an EU monitoring mechanism along the lines that the European Parliament proposed in its resolution of 25 October 2016.²²

The European Parliament reiterated its call for an EU mechanism on democracy, rule of law and fundamental rights in a resolution adopted on 14 November. It asked the Commission to consider linking such a mechanism with a proposed regulation on the protection of the Union's budget in case of generalised deficiencies as regards the rule of law in the Member States.²³ The Commission proposal published on 2 May addresses, from a budgetary perspective, generalised deficiencies as regards the rule of law, including threats to the independence of the judiciary, arbitrary or unlawful

decisions by public authorities, limited availability and effectiveness of legal remedies, failure to implement judgments, or limitations on the effective investigation, prosecution or punishment of breaches of law.²⁴ The proposed new tools would allow the Union to suspend, reduce or restrict access to EU funding in a manner proportionate to the nature, gravity and scope of the rule of law deficiencies. The Commission would propose such a decision and the Council would adopt it through reverse qualified majority voting. For further information, see [Chapter 1](#).

In 2018, the European Commission continued to support EU Member States' efforts to strengthen the efficiency, quality and independence of their national justice systems through its EU Justice Scoreboard, underlining the crucial role of the national justice systems in upholding the rule of law.²⁵ The EU Justice Scoreboard contributes to the European Semester process by bringing together data from various sources and helping to identify justice-related issues that deserve particular attention.²⁶ The 2018 Scoreboard further developed the different indicators, and strengthened in particular the section on judicial independence. It looks in greater detail at the councils for the judiciary, at the involvement of the executive and the parliament in appointments and dismissals of judges and court presidents, and at the organisation of prosecution services. It also presents, for the first time, data on the length of proceedings in all court instances. Its findings on judicial independence are based on the data from Eurobarometer surveys, among others.²⁷ The general perception of independence has improved or remained stable in about two thirds of Member States, compared with the previous year or since 2010, but it also has decreased in some countries. Both citizens and companies see interference or pressure from government and politicians as a main reason for the lack of independence of courts and judges.

9.2. Advancing victims' rights

9.2.1. Continuing efforts at EU, international and national levels

At the EU level, the European Parliament adopted a resolution of 30 May 2018 on the implementation of Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crimes.²⁸ The resolution reiterates the need for the Commission to submit a report on the application of the Victims' Rights Directive, pursuant to Article 29 of the directive.²⁹ The European Parliament identified significant progress in the implementation of certain provisions of the Victims' Rights Directive by some Member States, such as the right to interpretation and translation, the right to be heard, and the protection of child victims.³⁰

The key shortcomings identified relate to the complexity of procedures for accessing support services; insufficient access to legal aid and compensation; lack of financial support and coordination between support services, and inconsistent referral mechanisms; and the absence of measures to ensure that the lack of, or uncertainty about, residence status poses no barrier to victims' ability to assert their rights under this directive in cross-border cases.³¹

At the international level, the Council of Europe's Gender Equality Strategy 2018-2023 was adopted in March 2018. Its key objectives include ensuring the equal access of women to justice, as a pre-condition for ensuring real equality between women and men.³²

At the national level, during 2018, legislative measures were adopted or entered into force in almost two thirds of the Member States. They were largely to better implement and reflect the Victims' Rights Directive (2012/29/EU). These Member States are **Belgium**,³³ **Croatia**,³⁴ **Czechia**,³⁵ **Estonia**,³⁶ **Greece**,³⁷ **Hungary**,³⁸ **Ireland**,³⁹ **Italy**,⁴⁰ **Lithuania**,⁴¹ **Malta**,⁴² the **Netherlands**,⁴³ **Portugal**,⁴⁴ **Romania**,⁴⁵ **Slovakia**,⁴⁶ **Slovenia**,⁴⁷ **Spain**⁴⁸ and **Sweden**.⁴⁹ Advances and developments include, among others, improving the rights of crime victims to participate in proceedings (e.g. the victim's right to be heard); enhancing victims' rights to financial compensation (e.g. by enlarging the scope of crimes for which financial compensation is available); and facilitating victims' rights to information (e.g. through awareness-raising initiatives and training).

9.2.2. Increasing victim-friendly initiatives at national level

In a notable positive trend, a significant number of Member States focused on victim-friendly initiatives in 2018. Article 19 of the Victims' Rights Directive states that Member States shall ensure the avoidance of contact between victim and offender in criminal proceedings. In accordance with this, a number of Member States have started to establish victim-friendly waiting areas to enhance the rights of victims to participate in proceedings and to avoid secondary or further victimisation. For example, in September 2018, the **United Kingdom** published a Victims Strategy,⁵⁰ which includes a new court design guide introducing requirements that new courts, and other buildings where criminal and family cases will be heard, must have separate entrances and waiting areas for victims and witnesses. Five sites in England and Wales have already introduced model waiting rooms to ensure that victims who attend court will not have to encounter the defendant, or the defendant's associates, outside the courtroom.⁵¹

Romania also amended the Law on Victims' Rights in 2018, with new legislation envisaging the building of separate waiting rooms for victims and defendants

in courts.⁵² This obligation applies to all courthouses built after 1 June 2018, and from 1 January 2019 onwards, special waiting rooms will be established in existing courthouses.⁵³

Portugal and **Slovakia** have also continued to introduce victim-friendly initiatives in law enforcement, particularly taking into consideration the vulnerability of some categories of victims. **Portugal** has begun building victim support rooms – specific rooms intended for welcoming victims, namely the most vulnerable ones, including victims of domestic violence – at certain police facilities. Between 2018 and 2021, Portugal expects to create 49 new victim support rooms as part of an investment of more than € 100 million in police infrastructure.⁵⁴ **Slovakia**, pursuant to the new legislation on victims of crime, also initiated a national project co-funded by the Internal Security Fund of the European Commission. It aims to build 15 special hearing rooms for child victims and other vulnerable victims at police facilities by the end of 2021 to avoid secondary or further victimisation.⁵⁵

9.2.3. Improving rights of crime victims to financial compensation

In 2018, several Member States took particular steps to enhance victims' rights to financial compensation, including enlarging the scope of crimes for which, or the scope of persons to whom, compensation is available.

Greece also took measures to adapt its national legislation regarding compensation of victims of criminal acts. The legislative framework stipulating that victims of violent crimes committed with intent as well as victims of human trafficking and related crimes might be awarded compensation, if they submit an application to the Hellenic Compensation Authority, was amended. Most importantly, the amendment extends the expenses that compensation covers to include mental and psychological support of the victim if they reside in an area with no public access to such services, or expenses for relocation to a safe environment away from the perpetrator. Pursuant to the amendment, the Compensation Authority shall decide within six months from the submission of application whether or not to award compensation. The decision of the Compensation Authority is appealable.⁵⁶

In April 2018, the **Netherlands** passed a bill amending its national legislation concerning victims' rights to compensation. It provides for compensation for emotional distress arising from serious accidents and crimes.⁵⁷ It compensates the next of kin of victims who have died, and the dependents of victims who have sustained severe and permanent injuries, if certain conditions are met.⁵⁸ The new amendment takes effect on 1 January 2019.⁵⁹



On 1 January 2018, legislation on victims of crimes entered into force in **Slovakia**. The new legislation regulates financial compensation of victims of violent crimes. It lays out conditions under which the State may award compensation. According to the legislation, the Ministry of Justice decides whether or not to award compensation based on a written request by the victim. This request is not required in cases of a health injury caused by a crime of trafficking in human beings, rape, sexual violence or sexual abuse.⁶⁰

Although **Denmark** is not bound by the Victims' Rights Directive,⁶¹ on 1 April 2018 new legislation improving the rights of victims of sexual violence entered into force there.⁶² The legislation removes the statutory limitation for criminal liability in cases of sexual abuse of children, and abolishes the time limit for claims for compensation based on breaches of statutory obligations by public authorities towards persons under the age of 18 in connection with a sexual offence. In addition, the legislation increases compensation of victims in cases of sexual crimes by a third, and two thirds in rape cases. It also introduced a requirement of a minimum of DKK 150,000 in compensation in cases of severe sexual abuse.⁶³

After incorporating the Victims' Rights Directive into national law, the Ministry of Justice in **Bulgaria** reported on fulfilling the objectives of expanding the scope of crimes for which financial compensation is provided.⁶⁴ The Supreme Cassation Court of Bulgaria (SCC) addressed the question of which categories of victims may receive non-material damages as a result of wrongful death, in a landmark decision in June 2018. Previous decrees had found that only children, parents, children cared for but not adopted, carers or cohabitants were entitled to compensation. The SCC kept the restrictive approach of previous decrees, only adding the category of the deceased's siblings, and the deceased's relatives in the descending and ascending line in the second degree, to the categories of victims entitled to receive compensation.⁶⁵

9.2.4. Positive steps to promote training of practitioners

The year 2018 brought advances in promoting practical measures to strengthen the rights of crime victims. In particular, various Member States adopted measures in line with Article 25 of the Victims' Rights Directive to ensure the provision of appropriate training for practitioners that focuses on developing individual approaches and increasing their awareness of the special needs of victims. The majority of the Member States that organised such training paid particular attention to vulnerable groups of victims, such as victims of domestic violence.

The Ministry of Justice of **Finland** funded an NGO initiative called 'Senja – Sensitiveness model for professionals of jurisprudence'. This project combines victim-sensitive training for legal professionals (judges, prosecutors, police, legal counsels and guardians) by Rape Crisis Centre Tukinainen with maintenance of a website that offers information and guidance on the consequences of suffering domestic and sexual violence. The aim is to make professionals aware of the needs of vulnerable victims.⁶⁶

Estonia also focused on training practitioners to increase their ability to recognise the special needs of victims. The Ministry of Justice has financially supported a project to train multi-agency teams on how to help victims of sexual and partner violence, with the aim of improving cooperation and referral mechanisms between medical services and law enforcement.⁶⁷

In 2018, **Italy** created a support service for crime victims at the local level. The Dafne Italian Network (*Rete Dafne Italia*)⁶⁸ aims to empower crime victims. Besides providing information for victims to know their rights and the services they are entitled to, it also offers training and awareness-raising activities designed for police officers, judicial authorities, and health and social care professionals. Although currently the support services are only provided in Turin and Florence, the network hopes to enlarge the geographical coverage.

In **Ireland**, as part of an EU-funded training programme for lawyers, the Irish Council on Civil Liberties published a *Guide for lawyers on the Victims' Directive and the Irish Criminal Justice (Victims of Crime) Act 2017*.⁶⁹ In addition, several non-governmental organisations made submissions to the Commission on the Future of Policing, including multiple recommendations on victims' rights and the directive.⁷⁰ All the NGOs stressed the need for officers to receive proper training in the complexities of victims' needs, and the manner in which victims respond to – and cope with – violent crime. Rape Crisis Network Ireland and Women's Aid pointed to the need for specialist training in developing and implementing risk-assessment matrices.

Hungary also organised special training courses throughout 2018. The Deputy State Secretariat for Judicial Methodology-based Governance published a handbook on Victim Support in Practice, which provided a separate chapter on victims of trafficking, as a special clientele, and a detailed guide on how to use the recently launched online-based Identification, Assistance and Support Service for Victims of Trafficking in Human Beings. Subsequently, various training sessions, such as the course on Victim Support in Human Trafficking organised by the Hungarian National Police, were held to promote the use of this online-based service. The Education and Training Centre for Police also provided practical training for

members of the police on the procedure to follow when investigating crimes related to partner violence.⁷¹

Promising practice

Employing online tools to help victims of crime

MyTutela* has been developed and launched in Italy to help victims of crime, paying particular attention to victims of harassment, stalking, bullying and other crimes against the person. The app is designed to tackle the difficulties victims often face in providing evidence when filing a report.

Victims often have to remember all the details of their harassment and be physically present at a police station to report and describe the circumstances of the events and to report text messages or emails, for example. This often places the victim in a difficult situation. In addition, for any digital evidence such as voice messages, images, text messages and emails, etc., to be valid in judicial proceedings, the integrity of the data must be proven. Given that there is often a high risk of alteration of data stored or exchanged on devices, it can sometimes be very difficult to prove the chain of custody.

The application serves to avoid these issues by providing somewhere to store proof in a forensically sound manner, even when your phone is lost or damaged. The app then produces a report containing all of this evidence, which can be printed and attached to a police complaint.** Thus it encourages and supports victims to report crimes.

* See the MyTutela website.

** See the article available on the website of the UK Law Societies; Joint Brussels Office.

FRA ACTIVITY

Supporting the fight against severe forms of labour exploitation

In June 2018, FRA published a focus paper on migrant women exploited in domestic work, and in September a report on workplace inspections. The reports are based on interviews conducted with 237 exploited workers across eight Member States (Belgium, Germany, France, Italy, the Netherlands, Poland, Portugal and the United Kingdom) and focus on work situations that deviate so significantly from standard working conditions that the legislation of EU Member States considers them criminal.

The Victims' Rights Directive is applicable to situations of severe labour exploitation. It confers rights, such as the right to access support services under Article 8, on all workers regardless of their residence status or whether they are EU nationals or not. Both reports highlight the importance of strengthening access to such services for victims of severe labour exploitation and emphasise the important role such services can play in encouraging and supporting workers to report instances of severe labour exploitation.

In June 2019, FRA will publish its main comparative overview of severe labour exploitation as experienced by the 237 migrant workers.

For more information, see FRA (2018), [Out of sight: Migrant women exploited in domestic work, June 2018](#); FRA (2018), [Protecting migrant workers from exploitation in the EU: Boosting workplace inspections](#); and FRA (2019), [Protecting migrant workers from exploitation in the EU \(to be published in June 2019\)](#).

9.3. Violence against women and domestic violence

9.3.1. Developments at EU level

The EU signed the [Council of Europe Convention on preventing and combating violence against women and domestic violence](#) (the Istanbul Convention) in 2017. On 25 April 2018, the European Parliament's Committee on Women's Rights and Gender Equality (FEMM) and the LIBE Committee held a joint meeting to discuss an opinion on the EU's accession to the Istanbul Convention that the European Parliament's legal service had issued.⁷²

The EU's accession to the Istanbul Convention will ensure that the EU is accountable at the international level, as FRA's *Fundamental Rights Report 2018* mentioned, as it will have to report to the Group of Experts on Action against Violence against Women and Domestic Violence (GREVIO), the convention's monitoring body. This will reinforce the EU's commitment to combating violence against women and domestic violence.

In 2018, Eurostat invited EU Member States to pilot a survey on gender-based violence. The pilot survey will interview women and men concerning their experiences, including physical, sexual and psychological violence by an intimate partner. The Eurostat pilot survey is similar to and builds on a survey that FRA conducted, which collected, for the first time in the EU, comparable data on violence against women (2014).⁷³ The Eurostat pilot will inform the development of the full-scale surveys in Member States, which are planned to be carried out in 2020–2021.

9.3.2. Developments at Member State level

In its *Fundamental Rights Report 2018*, FRA called upon all EU Member States to ratify and effectively implement the Istanbul Convention. In 2018, **Croatia**, **Greece** and **Luxembourg** ratified the Istanbul Convention, bringing

to 20 the number of EU Member States that had ratified it by the end of 2018. The convention entered into force in **Croatia**,⁷⁴ **Germany**,⁷⁵ **Greece**⁷⁶ and **Luxembourg**.⁷⁷ Nonetheless, in the European Parliament’s plenary debate of 13 May 2018 on the state of play, the Commission’s Vice President, Frans Timmermans, noted that there was strong opposition to the convention in some countries; stressed that the convention was about protecting women against violence, not about challenging traditional families or imposing “gender ideology”; and reported that the Commission was opening a dialogue to combat misconceptions about its scope. The European Parliament’s rapporteurs (Anna-Maria Corazza Bildt and Christine Revault d’Allonnes Bonnefoy) stressed that the convention was about building a culture of respect for women and girls and that the European Parliament’s legal opinion found that concerns about its scope were unfounded.⁷⁸

Table 9.1: Istanbul Convention: signature, ratification and entry into force in the EU Member States

EU Member State	Signature	Ratification	Entry into force
Austria	11/05/2011	14/11/2013	01/08/2014
Belgium	11/09/2012	14/03/2016	01/07/2016
Bulgaria	21/04/2016		
Croatia	22/01/2013	12/06/2018	01/10/2018
Cyprus	16/06/2015	10/11/2017	01/03/2018
Czechia	02/05/2016		
Denmark	11/10/2013	23/04/2014	01/08/2014
Estonia	02/12/2014	26/10/2017	01/02/2018
Finland	11/05/2011	17/04/2015	01/08/2015
France	11/05/2011	04/07/2014	01/11/2014
Germany	11/05/2011	12/10/2017	01/02/2018
Greece	11/05/2011	18/06/2018	01/10/2018
Hungary	14/03/2014		
Ireland	05/11/2015		
Italy	27/09/2012	10/09/2013	01/08/2014
Latvia	18/05/2016		
Lithuania	07/06/2013		
Luxembourg	11/05/2011	07/08/2018	01/12/2018
Malta	21/05/2012	29/07/2014	01/11/2014
Netherlands	14/11/2012	18/11/2015	01/03/2016
Poland	18/12/2012	27/04/2015	01/08/2015
Portugal	11/05/2011	05/02/2013	01/08/2014
Romania	27/06/2014	23/05/2016	01/09/2016
Slovakia	11/05/2011		
Slovenia	08/09/2011	05/02/2015	01/06/2015
Spain	11/05/2011	10/04/2014	01/08/2014
Sweden	11/05/2011	01/07/2014	01/11/2014
United Kingdom	08/06/2012		

Source: FRA, 2019 [based on Council of Europe’s *Chart of signatures and ratifications of Treaty 210*]

Bulgaria's Constitutional Court stopped the process of ratification in July 2018, stating that ratification was unconstitutional.⁷⁹ While it admitted that the objectives of the convention are in harmony with Bulgaria's main constitutional principles, the court deemed the convention inherently contradictory because of, among other factors, the interplay between the concepts of sex and gender. The court proclaimed the gender dimension counterproductive to protecting women against violence, and found that the convention would oblige Bulgaria to create procedures to recognise 'genders' different from the biological sexes.⁸⁰

9.3.3. Implementation of the Istanbul Convention in practice

As noted, States Parties to the Istanbul Convention submit themselves to the monitoring mechanism GREVIO. Together with the Committee of the Parties to the Convention, it is responsible for monitoring the convention's implementation. In 2018, monitoring proceedings for Finland, France, Italy, the Netherlands, Portugal and Sweden were pending. All those states submitted their reports during 2018 and the GREVIO experts visited some of them.⁸¹

Two main issues emerged from the first GREVIO reports, published in 2017, and the following recommendations, published in 2018. One is the scope of sexual violence; the other is aggravating circumstances, such as the perpetrator being an intimate partner. The first – crucially important – issue concerns comprehensive criminalisation of sexual violence, in line with the Istanbul Convention. Article 36 of the Istanbul Convention does not require the victim to express opposition for the act of sexual violence to be punishable; rather, it suffices that the act was committed without the consent of the victim.⁸² In other words, what is decisive is not that the victim dissented, but that they did not consent. Thus the Istanbul Convention adopts an approach that highlights and reinforces a person's unconditional sexual autonomy. GREVIO points out that Member States need to ensure that their legislation reflects this approach.⁸³

In 2018, several Member States took measures to align their legislation with the convention requirements. The following Member States have adopted wider definitions with a view to bringing their legislation in line with the convention: **Belgium**,⁸⁴ **Bulgaria**,⁸⁵ **Croatia**,⁸⁶ **Ireland**,⁸⁷ **Malta**,⁸⁸ **Sweden**⁸⁹ and the **United Kingdom**.⁹⁰ Relevant legislative initiatives are currently pending in **Denmark**⁹¹ and **Finland**.⁹²

Another crucial aspect concerns criminalisation of and increased punishment for acts of violence committed against a partner, in line with Article 46 (a) of the convention. The following Member States already

specify that committing a violent act against a partner or ex-partner is an aggravating circumstance: **Austria**,⁹³ **Belgium**,⁹⁴ **Estonia**,⁹⁵ **France**,⁹⁶ in some cases – **Italy**,⁹⁷ **Latvia**,⁹⁸ **Malta**,⁹⁹ **Portugal**,¹⁰⁰ **Slovakia**¹⁰¹ and the **United Kingdom**.¹⁰²

Referring to the Istanbul Convention in judicial holdings

In Finland, A. was prosecuted for aggravated assault of B., his former partner. While assessing the aggravating circumstances, the Appeal Court noted that as of 1 August 2015 the Istanbul Convention was in force in Finland and, in light of obligations under Article 46 (a) thereof, the fact that A and B were former partners must be considered. In its judgment of 5 December 2017, the court made explicit reference to Article 46 and concluded that, as a whole, the aggravating factors clearly outweighed the extenuating circumstances. The accused was found guilty of aggravated assault, sentenced to one year and eight months of imprisonment, and ordered to pay € 2,700 in damages for mental suffering. The judgment became final on 5 February 2018.

See Finland, Vaasa Court of Appeal (Vaasan hovioikeus/Vasa hovrätt), VaahO 2017:10, 5 December 2017.

In 2018, Member States took measures to implement other aspects of the Istanbul Convention, such as the prohibition of female genital mutilation. A new **Belgian** law coming into force on 1 September 2019¹⁰³ introduces an obligation for doctors to break confidentiality and report all cases of female genital mutilation, rather than solely those of minors or vulnerable persons, as was previously the case. The **Danish** legislature amended the Danish Criminal Code¹⁰⁴ to require courts to increase sanctions by a third in cases of female genital mutilation. This amendment came in the wake of a controversial case in which the High Court of Western Denmark imposed a sentence of nine months' imprisonment on parents who had arranged the circumcision of their daughters. On 2 May 2018, the Supreme Court increased the punishment to one-and-a-half years' imprisonment.¹⁰⁵

Other Member States have also instigated legislative proceedings to implement the Istanbul Convention. For example, in **Cyprus**, two bills are currently pending, one on harassment and stalking and one on non-consensual sexual acts.¹⁰⁶ **Czechia**¹⁰⁷ is enlarging the scope of what constitutes the crime of abduction by also addressing the problem of luring a person to or from another country for the purpose of forced marriage. **Greece**¹⁰⁸ has begun a legislative initiative to incorporate the convention into national law by criminalizing forced marriages as an emerging type of human trafficking, and **Malta** has adopted the Gender-Based Violence and Domestic Violence

Act, harmonising definitions and including a new definition of rape.¹⁰⁹ In **Ireland**, the enactment of the Domestic Violence Act 2018 realised a major part of the government's implementation strategy.¹¹⁰ The Minister for Justice and Equality has indicated that only one issue remains before Ireland can formally ratify the Istanbul Convention:¹¹¹ extra-territorial prosecution of offences. To that end, the government has approved the introduction of new legislation to deal with this issue, and in May the Department of Justice and Equality published a bill to that effect.¹¹²

In 2018, the parliament in **Romania** adopted three new laws modifying existing legislation on violence against women. One introduces a definition of gender-based violence to the Romanian legal order;¹¹³ another criminalises any form of harassment, including sexual and psychological harassment in public or in private.¹¹⁴ The third law expands the definition of domestic violence to also include psychological, physical, spiritual and social violence, and it explicitly states that religion, culture or custom cannot justify any form of domestic violence.¹¹⁵ The most important measure that **Spain** took in 2018 to address violence against women within the scope of the Istanbul Convention was the adoption of Royal Decree 9/2018 on emergency measures for the development of the State Pact on Gender-Based Violence.¹¹⁶ This standard includes several initiatives: it modifies the Basic Law of Local Government to devolve to the municipalities those powers necessary for promoting equality and discouraging gender violence; and it increases access for victims of gender violence to social security benefits without a court order or prosecutor's report.

In the **United Kingdom**, legislative initiatives are also ongoing. In Scotland, the Scottish Domestic Abuse Act 2018¹¹⁷ came into force. With this new legislation, abusing a partner or an ex-partner becomes an offence. It also sets out rules of criminal procedure for that offence and for offences for which being a partner or ex-partner is a statutory aggravating circumstance. In England and Wales, the government is currently working on a Draft Domestic Abuse Bill, which aims to "enshrine a definition of domestic abuse in law, introduce a new protection order to better protect victims from their abusers, recognise the harm domestic abuse inflicts on a child and create a Domestic Abuse Commissioner in law".¹¹⁸

Member States also continued with a number of initiatives to implement the convention in practice. The **Austrian** National Council agreed on the need for the expansion of shelters and created an additional 100 places for women affected by violence.¹¹⁹ **Germany** has continued the implementation process, developing a number of initiatives and an action plan.¹²⁰ The first round table of the federation, the states and the municipalities on violence against women took place

on 18 September 2018. Among other announcements, it stated that the Federal Government aims to provide around € 35 million by 2020 to expand and support the 350 women's crisis centres, 100 shelter apartments and around 600 counselling and support services.¹²¹

Slovakia started to implement a national project called 'Prevention and elimination of gender discrimination'.¹²² The European Social Fund funds the project within Slovakia's Human Resources operational programme. This project secures the continuation of two institutional measures: the Coordinating-Methodical Centre for gender-based and domestic violence¹²³ and a national hotline for women experiencing violence.¹²⁴ Under the ESF project, the operation of the hotline is guaranteed until February 2022.¹²⁵

Promising practice

Using an app to identify high-risk neighbourhoods

The Brussels Region of **Belgium** initiated an awareness and prevention campaign on sexual violence and intimidation. The region funded the development of an app, 'Touche pas à ma pote', that allows women to report any instance of sexual violence or intimidation. The objective is to pinpoint high-risk neighbourhoods, thus helping the police to monitor such neighbourhoods or facilitate intervention. The campaign and accompanying app launched in March 2018.

For more information, see the articles on rtbf.be's website (French) and radio1.be's website (Dutch).

9.3.4. Incidents highlight remaining hurdles

There have also, however, been some setbacks. The Federal Ministry of the Interior in **Austria** stopped the project 'MARAC' on violence against women in Vienna. This project had held conferences on high-risk cases of violence against women that the police, the judiciary and intervention agencies had investigated.¹²⁶ An evaluation of the pilot project revealed that the hoped-for benefits had not been achieved, according to the ministry.¹²⁷ The Domestic Abuse Intervention Centre Vienna and opposition parties criticised the decision to end this project.¹²⁸

Certain negative developments outraged the public in a number of Member States. In **Denmark**, on 14 September 2018, the district court in Herning acquitted four men of rape (appeal pending).¹²⁹ The woman who reported the rape claimed that she had been drugged and abused; however, the jury was unable to conclude that the men knew she did not consent. The Danish Criminal Code, section 216, currently criminalises intercourse forced by use of

violence, threats of violence or coercion, rather than on the basis of a lack of consent. Various actors have argued that the provision currently leads to too many acquittals, and should be reformed.¹³⁰

In **Portugal**, a court case inspired a public debate on sexual violence. The case concerned the rape of a young woman by two staff members of a disco in 2016. They raped the woman inside the premises while she was drunk and unconscious. The inquiry confirmed the facts and the court acknowledged them. However, on 27 June 2018, the Court of Appeal in Oporto upheld the lower instance's suspended sentence.¹³¹ The decision of the Court of Appeal was met with public disapproval and criticised for undermining the seriousness of the crime with its finding that "unlawfulness is not high" since "there is no physical damage (or it is minimal), nor is there violence".

In **Spain**, the 2018 'wolf pack' case, in which five men were cleared of gang rape charges, was widely reported.¹³² Also of note, however, is the Juana Rivas case. A woman who was a victim of gender-based violence was sentenced to five years' imprisonment for child abduction, and six years' loss of parental rights for refusing to release her children to their father, claiming that the children suffered from violence in their father's home. The case is still pending. This case provoked a major backlash in the national and international media, and protests took place in the village of La Macarena (Granada), where Juana Rivas and her children resided. The Municipal Centre for Women in La Macarena plans to submit this judgment to the Monitoring Centre for Gender and Domestic Violence of the General Council of the Judiciary, for it to assess whether or not any structural violence (harm caused by institutions) has occurred as a result of her treatment.¹³³



FRA opinions

The EU and other international bodies continued to face growing challenges in the area of justice at the national level in 2018, in particular regarding judicial independence. An independent judiciary is the cornerstone of the rule of law and of access to justice (Article 19 of the TEU and Article 47 of the EU Charter of Fundamental Rights). Despite continued efforts of the EU and other international actors, the rule of law situation in some EU Member States – especially in terms of judicial independence – caused increasing concern. For instance, for the first time in the history of the EU, the European Parliament called on the Council to adopt a decision under Article 7 (1) of the TEU (determination of a clear risk of a serious breach by a Member State of the common values referred to in Article 2 of the TEU), and on the European Commission to submit a proposal for a regulation that addresses, from a budgetary perspective, generalised deficiencies as regards the rule of law. Such deficiencies include threats to the independence of the judiciary; arbitrary or unlawful decisions by public authorities; limited availability and effectiveness of legal remedies; failure to implement judgments; and limitations on the effective investigation or prosecution of, or sanctions for, breaches of law.

FRA opinion 9.1

The EU and its Member States are encouraged to further strengthen their efforts and collaboration to maintain and reinforce independent judiciaries, an essential component of the rule of law. The existing efforts should be stepped up to develop criteria and contextual assessments to guide EU Member States in a regular and comparative manner to recognise and tackle any possible rule of law issues. Such regular assessments would also be instrumental in the context of the proposed EU regulation aiming to address generalised deficiencies as regards the rule of law. In addition, the EU Member States concerned should act on recommendations such as those issued by the European Commission as part of its Rule of Law Framework procedure, as well as under the Cooperation and Verification Mechanism process, to ensure compliance with the rule of law.

Positive developments in 2018 included more EU Member States adopting legislation to implement the Victims' Rights Directive (2012/29/EU). Evidence

at the national level in some Member States shows that victims still encounter obstacles to reporting crime and that their rights are not effectively implemented at different levels, including procedural aspects. Positive developments aimed at preventing further or secondary victimisation took place in a number of Member States. The European Parliament on 30 May 2018 adopted a resolution on the implementation of the Victims' Rights Directive, in which it criticised the Commission for failing to deliver its report on the directive's implementation in line with Article 29 of the directive.

FRA opinion 9.2

EU Member States should continue their efforts to effectively implement victims' rights to ensure rights awareness, access to appropriate support services and effective remedies available to all victims of crime.

In 2018, the European Union worked towards ratifying the Council of Europe Convention on preventing and combating violence against women and domestic violence (the Istanbul Convention). Another three EU Member States ratified it, bringing to 20 the total number of EU Member States that had ratified the convention by the end of 2018. In determining European standards for the protection of women against violence, the Istanbul Convention is the most important point of reference. In particular, Article 36 obliges States Parties to criminalise all non-consensual sexual acts and adopt an approach that highlights and reinforces a person's unconditional sexual autonomy. In 2018, some Member States took measures to align their legislation with this convention requirement.

FRA opinion 9.3

All EU Member States that have not yet done so and the EU itself are encouraged to ratify the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention). FRA encourages Member States to address protection gaps in national legislation and consider the criminalisation of all non-consensual sexual acts as laid down in Article 36 of the Istanbul Convention.

Index of Member State references

AT	209, 210, 211, 219, 221
BE	206, 208, 209, 210, 211, 216, 219, 220
BG	207, 209, 210, 219
CY	209, 210, 218, 220
CZ	206, 209, 216, 220
DA	210, 211
DE	208, 209, 211, 219, 221
DK	207, 209, 210, 211, 218, 219, 220, 221
EL	206, 209, 217, 218, 219, 220
ES	209, 211, 212, 217, 220, 221
ET	206, 207, 209, 210, 217, 218, 219
FI	207, 209, 210, 218, 219
FR	208, 209, 210, 211, 220
HR	206, 209, 210, 216, 219
HU	200, 204, 206, 207, 209, 215, 217, 219
IE	206, 207, 209, 210, 211, 217, 218, 219, 220
IT	206, 207, 208, 209, 210, 217, 220
LT	206, 209, 217
LU	209, 219
LV	209, 210, 220
MT	205, 206, 209, 210, 215, 217, 219, 220
NL	206, 208, 209, 210, 211, 217, 218
PL	200, 203, 204, 208, 209, 215
PT	200, 206, 208, 209, 210, 212, 217, 218, 220, 221
RO	200, 204, 205, 206, 209, 211, 215, 217, 218, 220
SK	205, 206, 207, 209, 211, 215, 216, 217, 218, 220, 221
SL	206, 209, 217
SV	206, 209, 210, 217, 218, 219
UK	200, 206, 208, 209, 210, 211



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