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DRAFT REPORT

on the situation of fundamental rights in the European Union (2012)
(2013/2078(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Louis Michel

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United in diversity

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on the situation of fundamental rights in the European Union (2012) (2013/2078(INI))

The European Parliament,

- having regard to the preamble of the Treaty on European Union ('EU Treaty'), notably its second and its fourth to seventh indents,
- having regard in particular to Article 2, Article 3(3), second indent, and Articles 6 and 7 of the Treaty on European Union,
- having regard to the Charter of Fundamental Rights of the European Union of 7 December 2000 ('the Charter'), proclaimed on 12 December 2007 in Strasbourg, which entered into force with the Treaty of Lisbon in December 2009,
- having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), the case law of the European Court of Human Rights, the conventions, recommendations, resolutions and reports of the Parliamentary Assembly, the Committee of Ministers, the Human Rights Commissioner and the Venice Commission of the Council of Europe,
- having regard to United Nations conventions on the protection of human rights and fundamental freedoms,
- having regard to the Communications from the Commission on Article 7 of the Treaty on European Union on 'Respect for and promotion of the values on which the Union is based' (COM (2003) 0606), on a 'Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union' (COM (2010)0573), and on 'Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments' (SEC (2011)0567),
- having regard to the conclusions on the Council's actions and initiatives for the implementation of the Charter of Fundamental Rights of the European Union, adopted by the Council on 23 May 2011, and to the Council's Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council's preparatory bodies¹,
- having regard to the 2013 Commission Report on the Application of the EU Charter of Fundamental Rights (COM(2013)0271), and to the accompanying staff working documents,
- having regard to the EU Citizenship Report 2013: EU citizens: your rights, your future (COM(2013)0269),

¹Council Document 10140/11 of 18 May 2011.

- having regard to the ‘Stockholm Programme – an open and secure Europe serving and protecting citizens’¹,
- having regard to the Communication from the Commission on ‘Steps forward in implementing national Roma integration strategies’ (COM (2013)0454), and to the proposal for a Council Recommendation on ‘Effective Roma integration measures in the Member States’ (COM (2013)0460),
- having regard to Council Framework Decision 2008/913/JHA of 28 November 2008 on combating certain forms and expressions of racism and xenophobia by means of criminal law²,
- having regard to Council Directive 2000/43/EC of 29 June 2000 implementing the principle of equal treatment between persons irrespective of racial or ethnic origin³, Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation⁴ and the proposal for a Council Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation (COM(2008)0426),
- having regard to Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data⁵,
- having regard to Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents⁶,
- having regard to the decisions and case law of the Court of Justice of the European Union, and the case law of national constitutional courts, which use the Charter as a reference for interpreting national law,
- having regard to the State of the Union address by Mr Barroso to the European Parliament on 11 September 2013 and the speech by Mrs Reding on the European Union and the rule of law on 4 September 2013 at the Centre for European Policy Studies (CEPS) in Brussels,
- having regard to the letter of 6 March 2013 sent by the Ministers of Foreign Affairs of Germany, Denmark, Finland and the Netherlands to the Commission President, Mr Barroso, calling for the establishment of a mechanism to foster compliance with fundamental values in the Member States,

¹ OJ C 115, 4.5.2010.

² OJ L 328, 6.12.2008, p. 55.

³ OJ L 180, 19.7.2000, p. 22.

⁴ OJ L 303, 2.12.2000, p. 26.

⁵ OJ L 281, 23.11.1995, p. 31.

⁶ OJ L 145, 31.5.2001, p. 43.

- having regard to the Council conclusions of 6 and 7 June 2013 on fundamental rights and the rule of law and on the 2012 Commission Report on the Application of the Charter of Fundamental Rights of the European Union,
- having regard to the conclusions of the conference on ‘A Europe of equal citizens: equality, fundamental rights and the rule of law’, organised by the Irish Presidency of the Council on 9 and 10 May 2013,
- having regard to the fourth annual symposium of the European Union Agency for Fundamental Rights (FRA) of 7 June 2013 on ‘Promoting the rule of law in the EU’,
- having regard to the draft Council conclusions on the evaluation of the European Union Agency for Fundamental Rights of 13 September 2013,
- having regard to the activities, annual reports and studies of the European Union Agency for Fundamental Rights,
- having regard to NGO reports and studies on human rights and to the relevant studies requested by the Committee on Civil Liberties, Justice and Home Affairs,
- having regard to its resolutions on fundamental rights and human rights, in particular its resolution of 15 December 2010 on the situation of fundamental rights in the European Union (2009) – effective implementation after the entry into force of the Treaty of Lisbon¹ and its resolution of 12 December 2012 on the situation of fundamental rights in the European Union (2010-2011)²,
- having regard to its resolution of 22 April 2004 on the risks of violation, in the EU and especially in Italy, of freedom of expression and information (Article 11(2) of the Charter of Fundamental Rights)³,
- having regard to its resolution of 8 June 2005 on the protection of minorities and anti-discrimination policies in an enlarged Europe⁴,
- having regard to its resolution of 26 April 2007 on homophobia in Europe⁵,
- having regard to its resolution of 10 July 2008 on the census of the Roma on the basis of ethnicity in Italy⁶,
- having regard to its resolution of 17 September 2009 on the Lithuanian Law on the Protection of Minors against the Detrimental Effects of Public Information⁷,

¹ Texts adopted, P7_TA(2010)0483.

² Texts adopted, P7_TA(2012)0500.

³ Texts adopted, P5_TA(2004)0373.

⁴ Texts adopted, P6_TA(2005)0228.

⁵ Texts adopted, P6_TA(2007)0167.

⁶ Texts adopted, P6_TA(2008)0361.

⁷ Texts adopted, P7_TA(2009)0019.

- having regard to its resolution of 9 September 2010 on the situation of Roma and on freedom of movement in the European Union¹,
 - having regard to its resolution of 19 January 2011 on violation of freedom of expression and discrimination on the basis of sexual orientation in Lithuania²,
 - having regard to its resolution of 9 March 2011 on the EU strategy on Roma inclusion³,
 - having regard to its resolution of 10 March 2011 on media law in Hungary⁴,
 - having regard to its resolution of 21 May 2013 on the EU Charter: standard settings for media freedom across the EU⁵,
 - having regard to its resolution of 14 March 2013 on strengthening the fight against racism, xenophobia and hate crime⁶,
 - having regard to its resolution of 12 June 2013 on the deadlock on the revision of Regulation (EC) No 1049/2001⁷,
 - having regard to its resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary (pursuant to its resolution of 16 February 2012)⁸,
 - having regard to working documents I and II on the situation of fundamental rights in the European Union in 2012 (rapporteur Louis Michel),
 - having regard to Rule 48 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinions of the Committee on Employment and Social Affairs, the Committee on Women's Rights and Gender Equality and the Committee on Petitions (A7-0000/2013),
- A. whereas the European Union has developed a fundamental *acquis*, which aims to ensure that fundamental rights are respected, protected and promoted, including through the development of the ‘Copenhagen criteria’, the inclusion of Articles 2, 6 and 7 in the EU Treaty, the Charter of Fundamental Rights and the obligation to accede to the European Convention on Human Rights;
- B. whereas Article 2 of the EU Treaty affirms the European values which must be respected by the European Union and by the Member States, and whereas any crisis in respect of these values in one Member State has a negative impact on other Member States and on the European Union;

¹ Texts adopted, P7_TA(2010)0312.

² Texts adopted, P7_TA(2011)0019.

³ Texts adopted, P7_TA(2011)0093.

⁴ Texts adopted, P7_TA(2011)0094.

⁵ Texts adopted, P7_TA(2013)0203.

⁶ Texts adopted, P7_TA(2013)0090.

⁷ Texts adopted, P7_TA(2013)0271.

⁸ Texts adopted, P7_TA(2013)0315.

- C. whereas the European Union is going through a period of economic and financial crisis, and also a democratic and constitutional crisis, as demonstrated by recent events in certain Member States, and whereas these tensions have highlighted the lack of appropriate instruments to cope with this crisis, as well as the difficulties in applying the mechanisms provided for in the existing treaties, in particular Article 7 of the EU Treaty;
- D. whereas Parliament has repeatedly called for a strengthening of the mechanisms to ensure that the values of the Union set out in Article 2 of the EU Treaty are respected, protected and promoted, and for crisis situations in the Union and in the Member States to be addressed, and whereas a debate is under way on the creation of a 'new mechanism', in which the Commission, Council and Member States are finally joining Parliament and NGOs;
- E. whereas the Commission has indicated its desire to strengthen the rule of law in the European Union and whereas it could propose the use of letters of formal notice under Article 7(1) of the existing EU Treaty; whereas it has also spoken of the need to amend the treaties and has announced that it might propose amendments before the end of 2013, or in early 2014;
- F. whereas any decision on the matter should guarantee, as soon as possible, the proper application of Article 2 of the EU Treaty and ensure that every decision is taken on the basis of objective criteria and an objective evaluation, in order to address criticisms of a lack of indicators and evaluation criteria, of differential treatment and of political bias;
- G. whereas numerous fundamental rights violations are still occurring in the European Union and in the Member States, as detailed in (annual and special) reports by the Commission, NGOs and the Council of Europe, in UN documents, etc.;
- 1. Stresses that as a political, historical and ethical project, the European Union endeavours to bring together countries which share and together promote common European values, such as those laid down in Article 2 of the EU Treaty and in the Charter of Fundamental Rights, including democracy, the rule of law, fundamental rights, equality and protection of minorities, which are closely linked and are mutual preconditions, and believes therefore that a fundamental pillar of the European identity is, and must be, the internal and external promotion of these European values;

Institutional questions

- 2. Points out that it is essential for the European Union and the Member States to guarantee respect for the common European values set out in Article 2 of the EU Treaty, that all the instruments currently provided for in the treaties in this regard urgently need to be applied and implemented, and that where necessary amendments to the treaties should be prepared;
- 3. Believes that in order to make full use of the potential of the treaties, there is a need to:

- (a) complete the process of acceding to the European Convention on Human Rights and immediately put in place the necessary instruments to fully accomplish this obligation, which is enshrined in the treaties;
 - (b) ensure that the drafting and transposition of European law which affects and develops fundamental rights are strengthened and are correct, by following a rigorous policy of evaluation, monitoring and bringing violations before the Court of Justice of the European Union;
 - (c) plan ambitious policies and action programs for fundamental rights and common European values;
 - (d) cooperate in a more systematic and coordinated fashion with the Council of Europe and other international institutions based on their specialised expertise in order to avoid any duplication;
 - (e) establish a new mechanism to ensure that the fundamental rights and the values of the Union referred to in Article 2 of the EU Treaty and in the Charter of Fundamental Rights are respected, protected and promoted;
4. Stresses that this new mechanism could be activated immediately, on the basis of a Commission decision, and that it should:
- (a) set indicators (FRA and Commission);
 - (b) monitor the situation in the EU, as well as in the Member States (FRA, Commission, Council, Parliament);
 - (c) carry out objective and comparative assessments, for each fundamental right or subject and for each Member State individually, of all instruments relating to human rights, such as the ECHR, Council of Europe and UN documents, NGOs, etc. (FRA reports, Commission annual reports, Parliament annual reports, Council annual reports);
 - (d) establish a European policy cycle on the application of Article 2 of the EU Treaty (democracy, rule of law, fundamental rights, equality) to provide an annual and multiannual framework, and an open annual interinstitutional forum on these European values, in particular the protection of fundamental rights;
 - (e) develop and adopt a set of recommendations and penalties (e.g. the temporary suspension of Fund commitments, the application of certain acts, etc.) to deal with violations of Article 2 and Article 7 of the EU Treaty;
 - (f) incorporate an early-warning system, political and technical dialogue, letters of formal notice and a 'freezing procedure';
5. Calls on the Commission, in collaboration with the FRA, to adopt a decision establishing this new mechanism, as it did for the monitoring of corruption in the EU and in the

Member States, and to revise the rules of the Fundamental Rights Agency to give it enhanced powers and competences;

6. Recommends the opening of a dialogue between the European institutions and a Member State where there is a risk of a serious breach of the values of the Union, as well as the possibility for the European institutions to make recommendations as provided for in Article 7(1) of the EU Treaty; fully supports the Commission's proposal to use letters of formal notice in this context;
7. Calls on the Commission to propose the announced amendments to the treaties with a view to strengthening fundamental rights and revising Article 7 of the EU Treaty, drawing on Article 121 of the Treaty on the Functioning of the European Union, the extension of the possibilities for redress and the powers of the Commission and the Court of Justice, a revision of the unanimity rule for amending the rules of the FRA and the deletion of Article 51 of the Charter; calls, also, for Article 7 of the EU Treaty to be substantially revised, with the addition of an 'application of Article 2 of the EU Treaty' stage, separating the 'risk' stage from the 'violation' stage, with different thresholds for the majorities provided for, a strengthening of the technical and objective (not only political) analysis, enhanced dialogue with the Member States' institutions and a wider range of detailed and predictable penalties which are applicable throughout the procedure; calls for Parliament to be able to launch these procedures on an equal footing with the Commission and the Council; asks for the FRA to be able to contribute its necessary specialised support to the procedure;

Specific rights based on the Charter of Fundamental Rights

Dignity

8. Expresses its concern about the instances of violation of human dignity which are still occurring in the Union and in certain Member States, whose victims particularly include minorities, asylum-seekers, migrants, people suspected of having links with terrorism and people who are deprived of their freedom; stresses that the public authorities must abide by the absolute prohibition on torture and inhuman or degrading treatment, carry out swift, effective, independent in-depth investigations into any breach and prosecute those responsible;
9. Expresses its concern about the numerous instances of ill-treatment by police forces, particularly in relation to the disproportionate use of force against peaceful participants and journalists in connection with demonstrations;
10. Reiterates its call for a full investigation into collaboration by European States in the 'extraordinary rendition' programme of the United States and the CIA, flights and secret prisons within the territory of the Union, and insists that Member States must perform effective, impartial, in-depth, independent and transparent investigations and that there is no place for impunity; reminds the Member States that the ban on torture is absolute and, therefore, that State secrecy cannot be invoked to limit the obligation on States to investigate serious human rights violations;

Liberty

11. Stresses that democracy and the rule of law are based on respect for fundamental rights and freedoms and that any action or measure against terrorism, or international cooperation with this aim, must not breach European fundamental rights standards but must strictly comply with them;
12. Expresses its concern about the revelations concerning the flagrant breach of the right to private life and protection of personal data committed in the secret programmes of mass surveillance of European citizens, without case-by-case judicial authorisation and without appropriate parliamentary control, established by European and non-European States;
13. Welcomes the fact that a growing number of Member States are respecting the right to found a family through marriage, civil partnership or registered cohabitation and adoption, without discrimination on grounds of sexual orientation, and calls on the Commission and all Member States to adopt legislation and policies to combat homophobia, transphobia and hate crimes; reiterates its calls for the Commission to draw up a European roadmap against homophobia and discrimination on grounds of sexual orientation and gender identity;
14. Recalls that freedom of expression, information and the media are fundamental with a view to ensuring democracy and the rule of law, and reiterates its call for the Commission to revise the audiovisual media services directive along the lines indicated by Parliament in its report on the subject; strongly condemns violence, pressure or threats against journalists and the media, including in relation to the disclosure of information about breaches of fundamental rights by governments and States;
15. Expresses its concern about the numerous breaches of the right of asylum and of the obligation to extend protection in the event of removal, expulsion and extradition of any migrant; stresses the obligation to comply with international human rights conventions, particularly the Geneva Convention and the principle of non-refoulement, and the obligation to come to the assistance of people at sea who are risking their lives to reach the European Union, and to arrange for reception conditions and procedures which respect their dignity and fundamental rights; welcomes the adoption of the ‘asylum’ package; deplores, however, the fact that minors can still be placed in detention and calls for them to be systematically excluded from expedited procedures; calls for the establishment of common minimum standards for the reception of unaccompanied minors;

Equality

16. Considers that the Union and Member States should step up their measures to promote equality, combat discrimination and protect cultural, religious and linguistic diversity, and their measures relating to gender equality, the rights of the child, the rights of older persons, the integration of people with disabilities and the rights of LGBT persons; reiterates for the umpteenth time its call for the Council to adopt the Directive on implementing the principle of equal treatment between persons irrespective of religion or belief, disability, age or sexual orientation;

17. Expresses its concern about the situation of the Roma in the European Union and the numerous instances of persecution, violence, stigmatisation, discrimination and expulsion, contrary to fundamental rights and European Union law; calls for more vigorous action to promote integration, particularly in the field of protection of fundamental rights, and calls for an end to illegal expulsions and to segregation of Roma children in schools;
18. Condemns racist, anti-Semitic, homophobic and xenophobic violence and violence against migrants, which have reached alarming levels in certain Member States, in the absence of strong action by the authorities;
19. Calls on Member States to ensure equality between women and men and to combat all forms of violence against women;

Solidarity

20. Stresses that the financial and economic crisis and the measures taken to tackle it have had a greater impact on the poorest and most deprived sections of the population, in some cases affecting them very seriously, and calls for particular attention and appropriate, more incisive measures to remedy this situation;

Citizenship

21. Stresses that the entry into force of the Lisbon Treaty makes it necessary to increase transparency and openness in the Union; deplores the interinstitutional blockage of the revision of Regulation (EC) No 1049/2001 on the right of access to documents and information; calls on the Council and Commission to resume their work on the revision of this Regulation, on the basis of the proposals by Parliament;
22. Stresses that the right to freedom of movement and residence of European citizens and their families laid down in the Treaties and guaranteed by the Directive on freedom of movement is one of the fundamental rights of European citizens; condemns any attempt to review this *acquis*, and calls for any breach of the rules to result in action before the Court of Justice, particularly in cases where the principle of non-discrimination on grounds of nationality, ethnic or racial origin or sexual orientation is breached;

Justice

23. Stresses that the independent, equitable, effective, egalitarian and just administration of justice, within reasonable time limits, is fundamental to democracy and the rule of law and to their credibility; expresses its concern about the numerous breaches which have occurred in this context, as demonstrated by the number of cases in which the European Court of Human Rights has found against States; stresses that any impunity on grounds of a position of power, force or influence over persons or the judicial or political authorities cannot be tolerated in the European Union;
24. Notes the roadmap issued by the Commission with regard to civil justice, and calls for it

to be developed so as also to cover criminal justice; stresses that it should be incorporated into the new procedure which also extends to democracy, the rule of law, fundamental rights and equality, in the European policy cycle on the application of Article 2 of the Treaty on European Union;

25. Instructs its President to forward this resolution to the Council, the Commission, the governments and parliaments of the Member States and the candidate countries, the United Nations, the Council of Europe and the Organisation for Security and Cooperation in Europe.