

EUROPEAN PARLIAMENT

2004



2009

Session document

FINAL
A6-0144/2005

11.5.2005

REPORT

on promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency (2005/2007(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Kinga Gál

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency (2005/2007(INI))

The European Parliament,

- having regard to the Constitutional Treaty signed by Heads of State and Governments on 29 October 2004, which includes the Charter of Fundamental Rights of the European Union as its second part,
- having regard to Articles 6 and 7 of the Treaty on European Union, and Articles I-2 and I-9 of the Constitutional Treaty,
- having regard to Article 13 of the Treaty establishing the European Community,
- having regard to the decisions of the Court of Justice of the European Communities and the European Court of Human Rights,
- having regard to the Communication from the Commission "Fundamental Rights Agency - Public consultation document" (COM(2004)0693),
- having regard to the decision of the Representatives of the Member States meeting within the European Council on 12-13 December 2003 in Brussels, stressing the importance of human rights data collection and analysis with a view to defining Union policy in this field, to build upon the existing European Monitoring Centre on Racism and Xenophobia and to extend its mandate to make it a Human Rights Agency,
- having regard to the outcome of the public seminar "Promoting EU fundamental rights policy: from words to deeds or how to make rights a reality ?" held on 25-26 April at the initiative of the Committee on Civil Liberties, Justice and Home Affairs,
- having regard to its resolution of 20 April 2004 on the Commission communication on Article 7 of the Treaty on European Union: Respect for and promotion of the values on which the Union is based¹ ,
- having regard to its resolution of 28 April 2005 on the Annual Report on Human Rights in the World 2004 and the EU's policy on the matter²,
- having regard to Rule 45 of its Rules of Procedure,

¹ Texts Adopted, P5_TA(2004)0309.

² Texts Adopted, P6_TA-PROV(2005)0150.

- having regard to the report of the Committee on Citizens' Freedoms and Rights, Justice and Home Affairs and the opinions of the Committee on Foreign Affairs, the Committee on Development and the Committee on Constitutional Affairs (A6-0144/2005),

The EU constitutional framework as a new impetus to fundamental rights

1. Considers that effective protection and promotion of fundamental rights is the basis of democracy in Europe and an essential condition for the consolidation by the European Union of the area of freedom, security and justice;
2. Points to the fact that the incorporation of the Charter of Fundamental Rights into the Constitutional Treaty and the EU's future accession to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) bring with them fundamental changes, substantially strengthening the Union's obligations to ensure that fundamental rights are actively promoted across all policy areas;
3. Considers that the European Union is establishing itself increasingly as a political community of shared values and is further broadening its initial objective, clearly focused on the market;
4. Considers that several Union objectives, such as those of developing the area of freedom, security and justice, combating discrimination, promoting transparency and protecting data protection, are already indissociable from the promotion of fundamental rights;
5. Notes the need for fundamental rights and individual freedoms to be fully asserted and observed following the broadening of the competences of the Union, and that the new form of terrorism has further increased the need to ensure collective security; is therefore of the opinion that a balance between individual freedoms and collective security has to be achieved through adequate policies in order to make these two objectives compatible;
6. Considers it essential to give effect to the values proclaimed in the founding Treaties and in the new Constitution;
- ;
7. Notes that transparency is a democratic principle which is essential for the relationship between the Union and its citizens, the Community judiciary and its legislature, the EU and its Member States, as well as the EU and the Council of Europe;
- 7.8. Notes that the European Union and Member States share competence for human

rights, and that therefore they are obliged to respect human rights and fundamental freedoms in their respective spheres of competence in accordance with the principle of subsidiarity, taking into account its abovementioned resolution of 20 April 2004; urges the Commission to take steps to guarantee all the cooperation and assistance required, even before it initiates any legal proceedings, with a view to enabling the Member States to overcome any problems they encounter in implementing Community law and Union measures; regards a special degree of transparency as essential when it comes to transposing Union measures which have a bearing on fundamental rights;

Towards an EU fundamental rights policy

9. Welcomes the signature of the Constitutional Treaty, insofar as it provides for the Court of Justice to be fully competent for the area of freedom, security and justice, the accession to the ECHR, the incorporation of the Charter of Fundamental Rights into the Treaty and more extensive use of the co-decision procedure, thereby enhancing the role of the European Parliament;

10. Considers that the implementation of fundamental rights is a goal of all European policies; to this end EU institutions should actively promote and therefore protect fundamental rights and fully take them and their relevance across borders into account when drafting and adopting legislation;

11.Regards it as politically essential to incorporate the notion of promoting fundamental rights among the objectives to be pursued in connection with the simplification and reorganisation of the Community and Union acquis; calls for any new policy, legislative proposal and programme to be accompanied by an impact assessment as regards respect for fundamental rights; that assessment should form part of the justification for the proposal;

12.Welcomes the establishment of a Group of Commissioners on "Fundamental Rights, anti-discrimination and equal treatment"; calls on the Commission and especially the Commissioners responsible for fundamental rights to work out a comprehensive and coherent strategy to ensure that fundamental rights are observed in all areas of Union policy;

13.Takes the view that the Court of Justice has performed a decisive role in making the Community and the Union a 'Community' and a Union of law, in particular as a result of the fruitful dialogue between national and European judges in connection with the task of providing preliminary interpretations which the Treaties confer on the Court; supports the proposal put forward by the European Council in the programme adopted at The Hague to strengthen dialogue between the supreme courts of the Member States, and takes the view that such steps not only demonstrate the determination of the highest courts to share their experience, but also constitute the beginnings of a European public policy which finds its

rationale in the shared objective of protecting fundamental rights;

14. Points out that the Member States and the Union institutions enjoy a special right to bring actions before the Court in the interests of the law and takes the view that Parliament should, using that means, defend the rights of citizens in cases where fundamental rights might be affected by a Union act;

15. Regrets the fact that, in connection with the implementation of Community and Union law, the Member States are becoming more and more reluctant to accept the principle of mutual recognition, claiming that the level of protection of fundamental rights is inadequate in a given Member State; draws attention, in this connection, to the case law of the Court¹ and calls on both the public authorities of the States required to supply detailed information in order to justify their reluctance and the authorities of the States requesting such information to provide any clarifications necessary;

Cooperation with national human rights institutions and national parliaments

16. Notes that some Member States have established national institutions for the protection and promotion of fundamental rights, in particular with reference to the United Nations 'Paris principles'; calls on the other Member States to take steps to this end and to provide the national committees and institutes with adequate financial resources, bearing in mind, inter alia, that one of the functions of those bodies is to review governments' human rights policies to prevent shortcomings and suggest improvements, since efficiency lies in prevention and not only in solving problems;

17. Supports the establishment of an ongoing dialogue on fundamental rights with the national parliaments of the Member States;

-18. Is of the opinion that collecting data is a priority, as is methodological work to enable the data to be compared and analysed; considers that national institutions are key in this regard;

19. Remains convinced that fundamental rights can be protected all the more effectively if citizens themselves are made aware of their rights and are in a position to demand the protection thereof well before legal action becomes necessary, by encouraging their involvement in shaping and implementing decisions; is of the opinion that, with that aim, the establishment of national committees and institutes for fundamental rights can enable NGOs both to establish clearer standpoints and to target more effectively their calls for action and their exposure of treatment regarded as unlawful; restates its view that national governmental and non-governmental organisations should exchange best practice regarding human rights;

20. Considers that the Commission should pay attention to the repeated and continuous violations of human rights - in particular civil rights such as the active and passive right to participate in election processes - committed in some countries of the Union, which were the subject of reports by the Human Rights Commissioner of the Council of Europe, Mr Alvaro

¹ Joined Cases C-187/01 and C-385/01 Gözütok and Brügge [2003] ECR I-1345.

Gil-Robles;

Spreading the principle of the protection of fundamental rights outside the Union

21. Takes the view that the universality and indivisibility of fundamental rights must prompt the European Union and its Member States to encourage the spread of such rights in their relations with third countries, not least with a view to the conclusion of association agreements with third countries, and international organisations, such as the United Nations, which has embarked on a reform process which places particular emphasis on the protection of fundamental rights; stresses that the European Union as a body should play an active part in implementing such a reform by strengthening further its external action in this area and by contributing to the drafting of a United Nations report on this matter,

22. Proposes the drafting of an interinstitutional code of conduct, designed to confer greater coherence and fairness on the Union's external action in the field of democratisation and human rights – a step already approved in its resolution of 25 April 2002 on the Communication from the Commission to the Council and the European Parliament on the European Union's role in promoting human rights and democratisation in third countries¹; believes that the Code should govern relations between the Union and the more than 120 countries to which the democratic clause is currently applicable, as an essential element of all kinds of agreements which bind them;

23. Calls on the Commission to undertake and to present to Parliament, in conjunction with its position on this Agency, a thorough study on the need for a similar structure (inside or outside the Commission) dealing with the provision of relevant information on human rights and democracy concerns in countries which are not covered by this Agency;

Cooperation with international human rights organisations

24. Recalls the significant role of the various Council of Europe monitoring mechanisms and institutions in the human rights field; urges the EU institutions and the Agency to build on this experience, taking account of these mechanisms to incorporate them into a procedure for working in a network, and to make use of the standards developed by the Council of Europe and the other substantive results of its work; is adamant that this cooperation should not lead to any decline in EU standards;

25. Believes that a functional model of cooperation should be worked out and that there should be concrete proposals in the Commission's forthcoming legislative proposal on the Agency, including clear definitions of the competences of the Agency and of the various other agencies and an institutionalised link between the Council of Europe and the future Agency on Fundamental Rights, both to avoid duplication and to give the Agency all necessary input and to ensure its effectiveness;

¹ Texts Adopted, P5_TA(2002)0204.

The Agency as an operational tool for the EU's human rights policy as a whole

26. Points out that establishing the Agency should make a contribution to further enhancing mutual confidence between Member States and constitute a guarantee of continued observance of the principles set out in Articles 6 and 7 of the Treaty on European Union and considers that the Agency should provide all the information required to develop the Union's legislative activity, monitoring role and policy on awareness raising for fundamental rights;

27. Takes the view that the Agency must have a strong mandate and the power to follow the development of the implementation of the Charter of Fundamental Rights within the European Union and accession countries; stresses that the Agency should also be able to cover third countries when they are involved in human rights issues affecting the Union, for example in cases where there are suspected violations of the democracy clause;

28. Believes that the Fundamental Rights Agency should have special standing among EU agencies; believes that the Agency will enjoy enhanced legitimacy if its management bodies are appointed by, and answerable to, the European Parliament and report to the competent parliamentary committees; is convinced that the independence and credibility of the Agency is a prerequisite for proper interaction between it and the European institutions;

29. Considers it essential for the Agency to be seen as fully independent in every respect; emphasises, therefore, that it should have sufficient staff and budgetary resources to allow it to fulfil its ambitious mandate and should be staffed with high-quality personnel with scientific expertise, unimpeachable integrity and personal credibility;

30. Considers that the key bodies of the Agency should be composed of independent experts (possibly including members of constitutional courts) of the highest professional repute from the Member States and high-level representatives of EU institutions, the Council of Europe and international NGOs; stresses that its head should enjoy an excellent record in the field of human rights and should be appointed by the European Parliament;

31. Takes the view that most of the recommendations set out in this resolution¹ seek to

¹ See, in particular, paragraphs:

11 - impact evaluation of every legislative and strategic EU initiative taking as model the approach on impact evaluation adopted by the Commission on April 27 2005;

13 - promotion of dialogue and cooperation between supreme courts;

16, 18 and 19: support for Member State Institutes for fundamental rights and "equality" commissions established under Directive 2000/43/EC, in so far as data collection is concerned;

17: establishment of a permanent forum with national parliaments on fundamental rights issues and establishment of the EU as an area of freedom, security and justice;

23: financing a study on the external factors which could affect EU policies as regards human rights and the possible consultative role to be played by a European Fundamental rights Agency;

24 and 25: structured operational cooperation and synergy with the Council of Europe;

49: EU Institutions' information and communication strategy in so far as EU policies affect fundamental rights;

26, 27, 28, 32, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 50: as a possible reference for the future Agency's tasks and mandate;

29, 30, 34, 35, 36, 38: for the governing bodies and organisational structure of the future Agency);

ensure that information is collected, analysed and processed with a view to the assessment of the impact of measures to protect human rights when the Community and the Union exercise their competences; moreover, they also seek to improve the organisation of administrative and legislative procedures and find their legal justification, in particular, in the policies which deal with measures to combat discrimination (Article 13 of the EC Treaty), freedom of movement (Article 18 EC), asylum (Article 63 EC), judicial cooperation in civil matters (Article 65 EC), data protection (Article 286 EC) and transparency (Article 255 EC);

32. Takes the view, in that connection, that the very act which defines the task of collecting information may constitute the legal basis for establishing the Fundamental Rights Agency, whose task is subsidiary to that of the institutions in the areas dealt with in this resolution; accordingly, the codecision procedure involving Parliament, and with the Council acting by a qualified majority, should apply;

33. Calls on the Commission, pursuant to Article 192 of the EC Treaty, to submit a legislative proposal on the basis of the indications given above, particularly as regards the European policies for which Parliament is co-legislator; considers that the main legal basis should be Article 13 of the EC Treaty, which, by preventing discrimination, serves to protect human dignity, which is the key element of any policy dealing with fundamental rights; leaves the Commission to judge whether a measure under the third pillar, and referring to the Community measure, would be necessary, in keeping with the initiatives linked to judicial and police cooperation on criminal law matters;

34. Considers that the Agency should operate as an umbrella organisation covering all human rights issues, so as to avoid having different structures doing the same work;

35. Considers that the Agency should be designed as a multi-layered structure ("network of networks"), a specialised body with horizontal competences, in which each of the layers must play a role and contribute to the development of a fundamental rights culture in the Union; believes that the Agency should gather all relevant information, analyses and experience available in European and national institutions, national parliaments, governments and human rights bodies, Supreme/Constitutional Courts, NGOs and existing networks, such as the Network on Independent Experts in Fundamental Rights, and especially the expertise of the European Monitoring Centre on Racism and Xenophobia (EUMC) and its information network, RAXEN;

36. Opines that existing European and national human rights institutions should be part of the "network of networks", the Agency being a tool to ensure the quality and coherence of the EU's human rights policy: there should be established a map of European, national institutions and operating networks to this end;

37. Sees this framework as an opportunity to establish an effective network linking existing bodies, instruments and procedures through the establishment of a Fundamental Rights Agency;

38. Considers that before new organisations are set up to defend fundamental rights, there is a need to study the consolidation of existing organisations and the possibility of merging

them in order to improve their operation; insists, therefore, that the future Gender Institute should be part of the Agency on Fundamental Rights, seen as a "network of networks", should work under its own name and could be situated in the same location, in order to follow a rational, cost-effective and consistent approach when creating new bodies to deal with fundamental rights;

39. Proposes that the Agency should be structured on the basis of areas of concern of the Charter of Fundamental Rights - as a complement to the EUMC's remit to fight against racism and xenophobia - inter alia, the freedoms of expression, assembly and association and thought, the right to participate under equal conditions in election processes, the rights to education and liberty, solidarity and social rights, children's rights, gender equality, violence against women, trafficking in human beings, citizens' rights and justice, the right to asylum, the Roma issue and minority rights and respect for cultural, religious and linguistic diversity; where there is already a Union-wide body covering a particular area, the tasks of the Agency should be performed in that area by the specialised institute becoming an integral part of the Agency;

40. Notes that protecting national minorities in an enlarged EU is a major issue and that it will not be achieved simply by fighting against xenophobia and discrimination; points out that this complex problem must also be addressed from other angles and that the question of the protection of ethnic and national minorities should be one of the Agency's specific tasks;

41. Contends that, when designing this new instrument, special attention should be paid to the three main functions that such an institution must fulfil (promoting fundamental rights, monitoring the observance of fundamental rights and raising the awareness of the key players, namely, the Member States, the EU institutions and citizens) in order to meet the strategic needs of a common area of freedom, security and justice;

42.. Is of the opinion that, in order to fulfil its three main functions, the Agency should collect data through its networks and analyse them and should be empowered to deliver opinions and make recommendations to Parliament, the Council and the Commission;

43.. Considers that, as part of its task to promote fundamental rights, the future Agency should provide proactive support to human rights policy-making in two ways: by identifying where legislative improvements would be most welcome and by monitoring the implementation and enforcement of existing legislation;

44. Considers that the Agency, as a part of its work to protect fundamental rights, should draw up an annual report on the situation of those rights falling within its sphere of activity, to be delivered to the European Parliament, the Council and the Commission; further believes that the Agency, without having judicial competence, should answer directly and primarily to the European Parliament, on which basis the European Parliament can draw conclusions and adopt recommendations, and to the Council;

45. Considers that the Agency's monitoring will have the added value of providing a horizontal view of the protection and promotion of fundamental rights, for which reason all the rights contained in the Charter of Fundamental Rights and the relevant provisions of the first part of the Constitutional Treaty should be covered; holds that the Agency's annual work programme might have a thematic focus;
46. Stresses that there is no question of preparing the ground for anything equivalent to an EU Court of Human Rights; realises that dealing with individual violations of human rights is altogether different from monitoring a political system or its legal instruments which may not be living up to generally recognised human rights standards;
- 47.. Maintains that the Agency should be endowed with an advisory and consultative role regarding the provisions of Article 6 and Article 7 of the TEU, supporting the action of the Parliament and the Council and using the information, knowledge and expertise gathered from its networks;
- 48.. Asserts that concrete steps should be taken by the Agency to find the best ways of making the people of the European Union aware of the fundamental rights they enjoy and create a culture of fundamental rights within the EU, which can then be successfully promoted beyond the borders of the Union as one of its basic values;
49. Believes that an enhanced information and communication strategy is necessary if the objectives of promoting fundamental rights and raising awareness of fundamental rights issues (creating a culture of respect for fundamental rights) are to be attained; believes that the inclusion of a subject on the Member States' school curricula to cover both fundamental rights and the human rights recognised by the international community could help to attain these objectives;
- 50.. Takes the view that these concrete steps should include training measures organised by the Agency for those working in the field of human rights in Europe, whether representatives of civil society or professional organisations;

51. Instructs its President to forward this resolution to the European Council, the Council and the Commission, the governments and parliaments of the Member States, national human rights bodies, the Council of Europe, the OSCE and the UN.

EXPLANATORY STATEMENT

The EU context

1. In order to understand what the protection of fundamental rights within the European Union (EU) involves today, it is necessary to first decide whether a future agency dealing with the issue should be regarded as an aim or a tool in the process. Although, in this regard, the European Commission Communication explicitly specifies the aim of creating a Fundamental Rights Agency, the European Parliament should concentrate on undertaking an analysis of the situation to be brought about after the ratification of the Constitutional Treaty; paying special attention to the issue of protecting and promoting fundamental rights. As this “new legal order” may give another focus to the mission of the European Union, it is essential to examine the consequences of this shift with emphasis, an apparent process of evolution from an economic union to a political community. The promotion of fundamental rights requires a structured approach to this new context; a clear political will on its whereabouts needs yet to be expressed. This task will possibly be taken over by the Commission, within the framework of the Group of Commissioners dealing with Fundamental Rights, Anti-Discrimination and Equal Opportunities, chaired by President Barroso. Nonetheless, it is of utmost importance that the European Council elaborates guidelines in this field as well.
2. Since 1 May 1999 fundamental rights have been the “foundation” of the European Union, according to Art. 6 p.1 of the Treaty on the European Union (TEU)¹. The problem was (and is) that the existing treaties lack a clear description of these rights as they only refer to the European Charter on Human Rights and Fundamental Freedoms (ECHR) and to the common constitutional traditions of the Member States. An increase in the 'visibility' of these rights was the mandate given by the European Council to the Convention, which drafted the Charter. The objective of the second Convention which submitted the Constitution to the Intergovernmental Conference (IGC) was to make such a Charter binding. Now this objective has been reached and even if this exercise mainly aimed at making rights which were already part of the European Union “acquis” visible, such transparency will be an essential step forward in the relationship between the Union and its citizens, the EU judiciary and the legislature, the EU and its Member States, as well as the EU and the Council of Europe.
3. The Treaty of Amsterdam defined as an objective for the European Union the creation of an Area of Freedom, Security and Justice. The Tampere European Council made this aim a priority of the political agenda. The new Financial Perspectives also reflect this central policy aim. As a core component of reaching this aim, a balance must be ensured by simultaneously developing the three elements. Further enhancement of mutual confidence among Member States is still needed. Above all, the protection and promotion of fundamental rights is an essential precondition to the establishment of the Area of Freedom, Security and Justice.

¹ As modified by the Amsterdam Treaty which codified the ECJ jurisprudence since the C-29/69 « Stauder » of 12th November 1969 (Rec.419) in C-11/70 “Internationale Handelsgesellschaft”, Rec. 1125, C-4/73 “Nold” of 14th May 1974, rec. 491, C-44/79 “Hauer” rec. p.3727 and C-5/88 “Wachauf” of 13th July 1989)

4. The Hague programme welcomed the results achieved in accomplishing the objectives of the Tampere European Council: the foundations of a common asylum and immigration policy being established, the harmonization of border controls prepared, police cooperation improved, the basis for judicial cooperation established. However, coordination and coherence between the external and internal dimensions of Union policies still has to be ensured. The existing Treaties provide the legal basis for action in this field and will continue to constitute a legal obligation, even if the Constitutional Treaty is not ratified.
5. Although the Charter is not yet legally binding, it carries a powerful political impact. The incorporation of the Charter on Fundamental Rights into the Constitutional Treaty and the EU's future accession to the European Charter on Human Rights and Fundamental Freedoms (ECHR) will in fact create a legal obligation for the Union to ensure that fundamental rights are actively promoted across all policy areas.

The role of national institutions

6. Empowering and integrating the existing national human rights institutions into the "network of networks" an Agency may be envisaged as a political tool to ensure the quality and coherence of the EU human rights policy.
7. The national human rights institutions established in almost all Member States with the encouragement of the United Nations can be grouped into three categories: the human rights commissions, the ombudsmen and the specific institutions protecting the rights of a particular vulnerable group. One of their functions is to systematically review governments' human rights policy to prevent shortcomings and to suggest improvements, since prevention is much easier than detecting problems and finding remedies. Their responsibility in raising awareness on human rights is also significant. Identifying cases of maladministration and finding ways of redress is also among their duties, as well as acting as consultants or advisors to the legislative and the executive. Their role is clearly complementary. These national institutions focusing on the protection and promotion of human rights are neither judicial, nor law-making; they only have advisory authority. They see the creation of an Agency as an excellent opportunity to fill the gaps in the present system of protecting human rights within the EU.
8. It is desirable that a more formalized link be established between these bodies and the Agency. In this process it is essential to harmonize national assessment procedures. In the individual Member States, progress and regression have to be equally measured by the existing human rights standards. No quality compromise should be made with respect to the outcome of the work of the Agency.
9. The Agency should develop mechanisms that help Member States achieve progress in developing national standards of action on human rights and fundamental freedoms on the basis of the Paris Principles.¹

¹ At a 1991 UN-sponsored meeting of representatives of national institutions held in Paris, a detailed set of principles on the status of national institutions was developed – these are commonly known as the Paris Principles. These principles,

Cooperation with international bodies

10. When looking for ways of enhancing the EU's international cooperation in this sensitive field, the key words are coordinating initiatives and maximizing synergies. It is important that legal certainty and coherence is assured in fundamental rights protection all over Europe.
11. The European Union cannot afford not to take into account the Council of Europe (CoE) achievements in the field of human rights protection and promotion, where the EU lacks sufficient legal basis (the protection of national minorities is one of the best examples of such fields). However, by no means should we allow for the setting of standards whose inconsistency creates confusion and therefore destroys the credibility of the basic standards.
12. Exchange of information and data would clearly not be sufficient to ensure meaningful cooperation between the Agency and the Council of Europe. It is of utmost importance that a functional model of cooperation will be worked out that an institutionalized link is established between the two bodies.
13. Apart from the Council of Europe, there are several other organizations active in the human rights field, such as the Organisation for Security and Cooperation in Europe (OSCE) and the specialized agencies of the United Nations. In designing the mandate of the Agency a new reference could be made to these institutions, and there should be a living and structured link developed with civil society as well. The Agency should be a crossroad, which facilitates contacts between the various stakeholders so that synergies are established.

The Agency on Fundamental Rights

14. Taking as starting point the general context described above, some reflections will now be made on the future Agency on Fundamental Rights. As there are three political objectives set in the strategy, there should be three main functions of this new community instrument:
 - a. Promotion of fundamental rights
 - b. Protection of fundamental rights
 - c. Raising awareness between the actors (EU institutions and citizens)
15. The Agency can be best envisaged as a “network of networks”, a specialized agency with horizontal competencies, applying different tools, utilizing all the relevant experience gathered on the various levels of the field of protecting human rights and fundamental freedoms. It should act as a focal point for synthesizing all this knowledge.
16. The Agency should be empowered to give consultancy, opinions, recommendations and

subsequently endorsed by the UN Commission on Human Rights (*Resolution 1992/54 of 3 March 1992*) and the UN General Assembly (*Resolution 48/134 of 20 December 1993, annex*) have become the foundation and reference point for the establishment and operation of national human rights institutions.

do awareness raising through objective and adequate information given to the Commission, Parliament and Council, supporting all the three institutions. It is essential that the body remains independent, free from the influence of any stakeholders, genuinely autonomous (comprising notions such as independence, responsibility, authority). There are two main components in ensuring this independence: the Agency has to have a budget that allows for the accomplishments of its ambitious mandate and a management board that encompasses high-level representation from Member States and EU institutions. These two elements will establish the credibility of the Agency from the very start and provide it with enough authority to be useful and not to be a waste of money. The budget and staffing has to be appropriate to the task.

17. As for the dilemma of which rights need to be protected, it is of utmost importance that all rights in the Charter on Fundamental Rights and relevant provisions of the first part of the Constitutional Treaty are covered, but priorities could be established among them. It is important to allow for some flexibility in setting the priorities: it would be counterproductive to fix them at the start, since the sensitivity of the field might require an occasional altering of focus. This can be done on the level of settling the work programme of the Agency, perhaps on an annual basis and priorities could be established both in terms of thematic focus and geographical scope. The latter should primarily concentrate on EU Member States, but also include the accession states, after the signature of the Accession Treaty. The Agency might be given competence in raising awareness on situations evoking Article 7 of TEU, since the relevant expertise will already be located there.
18. The expertise of the EUMC (European Monitoring Centre on Racism and Xenophobia) and its RAXEN Network¹ should be used by maintaining the fight against racism and xenophobia as one of the areas of concern for the Agency. However, other focuses should be considered as well.
19. The protection of national minorities upon EU enlargement will constitute a significant issue, and their promotion cannot be assured exclusively through the fight against xenophobia. This complex problem has to be addressed from different angles as well - therefore a separate sector of the Agency should deal with the question of national minorities based on the experience of existing European and national institutions and networks in this field, such as the European Center for Minority Issues or the COMIR network.
20. The Agency on Fundamental Rights and the relevant EU policy will be a core element of a future European legal order, therefore its designation cannot be a mere political declaration.
21. To reflect on the implementation of the existing legislation and to find a balance between the assertion of individual rights and the enhancement of collective security is an extremely sensitive task. Therefore the Agency should be the centre of the European movement towards better protection of fundamental rights and any existing experience must be used in this process. The ambition is to place fundamental rights at the heart of

¹ European Racism and Xenophobia Network, created in 2000 by the EUMC.

all EU policies and measures so that Europe is indeed referred to as a symbol of fundamental rights.

26.4.2005

OPINION OF THE COMMITTEE ON FOREIGN AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency
(2005/2007(INI))

Draftswoman: Baroness Nicholson of Winterbourne

SUGGESTIONS

The Committee on Foreign Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

1. Fully supports the conclusions of the European Council of 13 December 2003 that the Commission should be asked to make concrete proposals for the establishment of an EU Human Rights Agency;
2. Refers to the motion for a resolution on the Annual Report on Human Rights in the World 2004 and the EU's policy on the matter adopted by its Committee on Foreign Affairs on 30 March 2005;
3. Points out that promotion and protection of fundamental rights, on the one hand, and the existence of democracy and the rule of law, on the other, are indissolubly linked;
4. Calls on the Commission to propose that this Agency should cover not only the Member States of the European Union but also any states with candidate status;
5. Reminds the Commission that, at a time when citizens have justified concerns about the proposed extension of the community of values on which the European Union is based, it would be inconceivable not to include these countries within the remit of the Agency, and also the process of democratisation, having regard also to the statements of the EU

concerning the importance of democracy and human rights in the sphere of CFSP;

6. Considers that the Agency should be concerned with data collection and analysis, the monitoring and evaluation of the situation regarding human rights and the response to be given to that evaluation, with appropriate recommendations for improvements at EU level and, if necessary, at Member State level;
7. Strongly emphasises the need for the Agency to report to Parliament regularly;
8. Insists that the Agency must have proper resources and staff and should have clear links and close working relationships with other agencies and organisations active in the field (e.g. the OSCE, UN, and in particular, the Council of Europe) and with civil society. stresses that care must be taken to prevent duplication of roles with these agencies, organisations and other networks of experts, so as to provide a genuine added value within the EU;
9. Calls on the Commission to undertake and to present to Parliament, in conjunction with its position on this Agency, a thorough study on the need for a similar structure (inside or outside the Commission) dealing with the provision of relevant information on human rights and democracy concerns in countries which are not covered by this Agency.

PROCEDURE

Title	Promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency
Procedure number	2005/2007(INI)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	AFET 24.2.2005
Draftsperson Date appointed	Baroness Nicholson of Winterbourne 1.2.2005
Discussed in committee	31.3.2005 9.4.2005 26.4.2005
Date suggestions adopted	26.4.2005
Result of final vote	for: 48 against: 6 abstentions: 2
Members present for the final vote	Angelika Beer, Bastiaan Belder, Monika Beňová, André Brie, Elmar Brok, Philip Claeys, Simon Coveney, Giorgos Dimitrakopoulos, Anna Elzbieta Fotyga, Jas Gawronski, Maciej Marian Giertych, Alfred Gomolka, Anna Ibrisagic, Toomas Hendrik Ilves, Ioannis Kasoulides, Bogdan Klich, Joost Lagendijk, Vytautas Landsbergis, Armin Laschet, Cecilia Malmström, Emilio Menéndez del Valle, Francisco José Millán Mon, Annemie Neyts-Uyttebroeck, Vural Öger, Cem Özdemir, Justas Vincas Paleckis, Tobias Pflüger, João de Deus Pinheiro, Mirosław Mariusz Piotrowski, Paweł Bartłomiej Piskorski, Michel Rocard, Raül Romeva i Rueda, Libor Rouček, José Ignacio Salafranca Sánchez-Neyra, Jacek Emil Saryusz-Wolski, György Schöpflin, Gitte Seeberg, Ursula Stenzel, István Szent-Iványi, Konrad Szymański, Charles Tannock, Ari Vatanen, Jan Marinus Wiersma, Karl von Wogau, Josef Zieleniec
Substitutes present for the final vote	Laima Liucija Andrikienė, Alexandra Dobolyi, Árpád Duka-Zólyomi, Michael Gahler, Georg Jarzembowski, Jaromír Kohlíček, Alexander Lambsdorff, Erik Meijer, Pasqualina Napoletano, Janusz Onyszkiewicz, Aloyzas Sakalas
Substitutes under Rule 178(2) present for the final vote	

21.4.2005

OPINION OF THE COMMITTEE ON CULTURE AND EDUCATION

for the Committee on Civil Liberties, Justice and Home Affairs

on promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency (2005/2007(INI))

Draftsman: Manolis Mavrommatis

SUGGESTIONS

The Committee on Culture and Education calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

The Fundamental Rights Agency

1. Believes that an enhanced information and communication strategy is necessary if the objectives of promoting fundamental rights and raising awareness of fundamental rights issues (creating a culture of respect for fundamental rights) are to be attained; believes that the inclusion of a subject on the Member States' school curricula to cover both fundamental rights and the human rights recognised by the international community could help to attain these objectives;
2. Considers that the structure of the proposed Agency should reflect its objectives and the structure of the Charter of Fundamental Rights; believes that specific sections of the Agency should be responsible for monitoring adherence to the Charter in the *area* of education (Article 14), respect for cultural, religious and linguistic diversity (Article 22), and the media (Article 11);
3. Believes that collaboration between the Agency and other international organisations, notably the Council of Europe, should not be confined to exchanges of information, but rather should assume an institutional form; considers that ratification by all Member States of the relevant Council of Europe instruments is a necessary prerequisite for the effective operation of the Agency;

Signature and ratification of Council of Europe instruments

4. Welcomes the entry into force in the Czech Republic in March 2004 of the Council of

Europe Convention on Transfrontier Television and the Protocol amending the Convention; notes that the Convention and Protocol are now in force in all ten of the Member States which acceded to the European Union in May 2004; calls on Belgium, Denmark and Ireland to sign and ratify the Convention and Protocol; calls on Greece, Luxembourg and Sweden to ratify these instruments;

5. Recalls its resolutions of 20 November 2002 and 22 April 2004 on media concentration; expresses its concern at the potential threat to freedom and pluralism in the media posed by concentration of media ownership;
6. Calls on France to sign the Council of Europe Framework Convention for the Protection of National Minorities; urges Belgium, Greece, Latvia, Luxembourg and the Netherlands to ratify the Convention in the light of consultations with those concerned within their own communities and the need to heighten public awareness regarding the effective implementation of the provisions of the Convention upholding the interests of minorities;
7. Calls on Belgium, Estonia, Greece, Ireland, Latvia, Lithuania and Portugal to sign the European Charter for Regional or Minority Languages; urges the Czech Republic, France, Italy, Luxembourg, Malta and Poland to ratify it, in the light of consultations with those concerned within their own communities and the need to heighten public awareness regarding the effective implementation of the provisions of the Charter upholding the interests of regional or minority languages;

Education

8. Urges Member States to do their utmost to ensure the effective integration in education systems of the children of refugees, asylum-seekers and immigrants;
9. Expresses its concern that, as a consequence of inadequate facilities and practical support, would-be students with disabilities are often unable to participate in post-compulsory and higher education; considers that this situation is contrary to the freedoms set out in Article 14(1) of the Charter; urges the Member States to address this problem;
10. Urges the Member States to continue their efforts to improve the situation of the Roma/Sinti minorities by acting against discrimination in employment and housing and by taking account of the particular educational requirements of Roma/Sinti children.

PROCEDURE

Title	Promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency
Procedure number	200452007(INI)
Committee responsible	LIBE
Committee asked for its opinion Date announced in plenary	CULT 24.2.2005
Enhanced cooperation	No
Drafts(wo)man Date appointed	Manolis Mavrommatis 25.11.2004
Discussed in committee	14.3.2005 21.4.2005
Date suggestions adopted	21.4.2005
Result of final vote	for: 31 against: 0 abstentions: 1
Members present for the final vote	María Badía i Cutchet, Christopher Beazley, Giovanni Berlinguer, Guy Bono, Marie-Hélène Descamps, Jolanta Dičkutė, Věra Flasarová, Milan Gaľa, Claire Gibault, Vasco Graça Moura, Lissy Gröner, Luis Francisco Herrero-Tejedor, Ruth Hieronymi, Manolis Mavrommatis, Marianne Mikko, Zdzisław Zbigniew Podkański, Miguel Portas, Christa Prets, Karin Resetarits, Nikolaos Sifunakis, Helga Trüpel, Henri Weber, Thomas Wise, Tomáš Zatloukal
Substitutes present for the final vote	Ivo Belet, Michael Cramer, András Gyürk, Małgorzata Handzlik, Gyula Hegyi, Ignasi Guardans Cambó, Nina Škottová, Witold Tomczak
Substitutes under Rule 178(2) present for the final vote	

20.4.2005

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency
(2005/2007(INI))

Draftsman: Ignasi Guardans Cambó

SUGGESTIONS

The Committee on Constitutional Affairs calls on the Committee on Civil Liberties, Justice and Home Affairs, as the committee responsible, to incorporate the following suggestions in its motion for a resolution:

- having regard to its resolution on the Commission communication on Article 7 of the Treaty on European Union: respect for and promotion of the values on which the Union is based¹,
- 1. believes that the existing international, European and national instruments provide satisfactory means for protecting fundamental rights within the EU and recognizes the fact that the European Commission already scrutinizes all proposals for legislation and all draft instruments for compatibility with the Charter of Fundamental Rights as part of the normal decision-making procedures; notes, however, that it would be possible to achieve a general improvement in standards in the EU as a whole by sharing know-how and experience to a larger extent;
- 2. sees this framework as an opportunity to establish an effective network linking existing bodies, instruments and procedures through the establishment of a Fundamental Rights Agency;

¹ Parliament resolution of 20 April 2004, P5_TA(2004)0309, on the basis of the AFCO report, rapporteur: Johannes Voggenhuber.

3. emphasises, however, in that connection, that any duplication of existing bodies, instruments and procedures must be avoided at all costs, as must any excessive bureaucratisation of the concept of the protection of fundamental rights;
4. stresses that there is no question of preparing the ground for anything equivalent to an EU Court of Human Rights; realizes that dealing with individual violations of human rights is altogether different from monitoring a political system or its legal instruments, which may not be living up to generally recognized human rights standards.

PROCEDURE

Title	Promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency			
Procedure number	2005/2007(INI)			
Basis in Rules of Procedure	Rule 45			
Committee responsible Date authorisation announced in plenary	LIBE 24.2.2005			
Committee(s) asked for opinion(s) Date announced in plenary	AFCO 24.2.2005	CULT 24.2.2005	AFET 24.2.2005	DEVE 24.2.2005
Not delivering opinion(s) Date of decision	DEVE 16.3.2005			
Enhanced cooperation Date announced in plenary				
Motion(s) for resolution(s) included in report				
Rapporteur(s) Date appointed	Kinga Gál 25.11.2004			
Previous rapporteur(s)				
Discussed in committee	1.2.2005	16.3.2005	30.3.2005	
Date adopted	26.4.2005			
Result of final vote	for: 42 against: 3 abstentions: 1			
Members present for the final vote	Alexander Nuno Alvaro, Edit Bauer, Mario Borghezio, Mihael Brejc, Maria Carlshamre, Michael Cashman, Giusto Catania, Charlotte Cederschiöld, Fausto Correia, Rosa Díez González, Antoine Duquesne, Kinga Gál, Patrick Gaubert, Elly de Groen-Kouwenhoven, Livia Járóka, Ewa Klamt, Magda Kósáné Kovács, Barbara Kudrycka, Romano Maria La Russa, Henrik Lax, Edith Mastenbroek, Jaime Mayor Oreja, Claude Moraes, Martine Roure, Inger Segelström, Frank Vanhecke, Ioannis Varvitsiotis, Manfred Weber, Tatjana Ždanoka			
Substitutes present for the final vote	Panayiotis Demetriou, Camiel Eurlings, Jeanine Hennis-Plasschaert, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Jean Lambert, Antonio Masip Hidalgo, Javier Moreno Sánchez, Vincent Peillon, Herbert Reul, Marie-Line Reynaud, Antonio Tajani, Kyriacos Triantaphyllides, Rainer Wieland			
Substitutes under Rule 178(2) present for the final vote	María del Pilar Ayuso González, Véronique Mathieu, Manolis Mavrommatis			
Date tabled – A6	11.5.2005		A6-0144/2005	