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*Committee on Civil Liberties, Justice and Home Affairs*

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# **DRAFT REPORT**

on the Situation of fundamental rights in the European Union (2010 - 2011)  
(2011/2069(INI))

Committee on Civil Liberties, Justice and Home Affairs

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## MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

### on the Situation of fundamental rights in the European Union (2010 - 2011)

(2011/2069(INI))

*The European Parliament,*

- having regard to the preamble of the Treaty on European Union, notably its second and its fourth to seventh indents,
- having regard to Articles 2, 3(3) second indent, 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'), as proclaimed on 12 December 2007 in Strasbourg,
- having regard to the Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR),
- having regard to the 2010 and 2011 Commission Reports on the Application of the EU Charter of Fundamental Rights (COM (2011)0160 and COM(2012)0169),
- having regard to the Commission Communication on the EU Citizenship Report 2010: Dismantling the obstacles to EU citizens' rights (COM (2010)0603),
- having regard to the Commission's Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union (COM(2010)0573) and the Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments (SEC(2011)0567),
- having regard to the Council conclusions on the Council's actions and initiatives for the implementation of the Charter of Fundamental Rights of the European Union, adopted at the 3092nd General Affairs Council meeting in Brussels 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 bodies<sup>1</sup>,
- having regard to the body of United Nations conventions on human rights to which all Member States are party, and to the conventions and recommendations of the Council of Europe, as well as the decisions, guidance and judgments of specialised monitoring and judicial bodies,
- having regard to the decisions and case law of the Court of Justice of the European Union (CJEU) and of the European Court of Human Rights (ECtHR),
- having regard to the jurisprudence of the national constitutional courts, which refers to the Charter of Fundamental Rights as term of reference for interpreting national law as well,

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<sup>1</sup> Council document 10140/11 of 18 May 2011.

- having regard to the reports by the bodies of the Council of Europe, in particular the reports on the human rights situation drawn up by the Parliamentary Assembly and the Commissioner for Human Rights,
  - having regard to the Stockholm Programme – An open and secure Europe serving and protecting citizens,
  - having regard to the activity, annual reports and studies of the Fundamental Rights Agency of the European Union (FRA),
  - having regard to NGO reports and studies on human rights,
  - having regard to its resolutions on fundamental rights and human rights, notably 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 Lisbon<sup>1</sup>,
  - 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 Women’s Rights and Gender Equality and the Committee on Petitions (A7-0000/2012),
- A. whereas Article 2 of the Treaty on European Union (TEU) founds the Union on a community of indivisible and universal values of respect for human dignity, freedom, democracy, equality, solidarity, the rule of law and respect for human rights, for all persons on the territory of the EU, including those belonging to minorities,
- B. whereas Article 6(3) of the TEU confirms that fundamental rights, as guaranteed by the ECHR and as arising from the constitutional traditions common to the Member States, constitute general principles of Union law,
- C. whereas, with the entry into force of the Treaty of Lisbon, the Charter has become legally binding on the institutions, bodies and agencies of the EU, as well as the Member States when implementing EU law,
- D. whereas the obligations incumbent on candidate countries under the Copenhagen criteria continue to apply to the Member States after joining the EU by virtue of Article 2 of the TEU, and whereas in light of this all Member States should be assessed on an ongoing basis in order to verify their continued compliance with the EU’s fundamental values of respect for fundamental rights, democratic institutions and the rule of law,

### **General recommendations**

1. While welcoming steps by the Commission to ensure that legislative proposals comply with the Charter, notes that there remains considerable room for improvement, as proposals continue to emerge that fail to consider at all, or fail to consider adequately, the

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<sup>1</sup> Texts adopted, P7\_TA(2010)0483.

impact of proposed measures on fundamental rights; urges the Commission to take tangible steps towards improving the verification of its proposals with the Charter;

2. Urges the Commission to ensure that the impact on fundamental rights of EU legislation and its implementation by the Member States form systematically part of the Commission's evaluation reports on the implementation of EU legislation, as well as its annual report on monitoring the application of EU law;
3. Calls on the Council to ensure effective implementation of its commitment to check both its proposed amendments to Commission proposals and proposals put forward on its own initiative with the Charter;
4. Highlights that the European Parliament should also strengthen its autonomous impact assessment on fundamental rights in relation to legislative proposals and amendments under examination in the legislative process in order to make it more systematic;
5. Regrets
  - the lack of transparency in the Commission's dialogue with Member States when fundamental rights or the interests of European citizens are at stake; considers that such a lack of transparency with regard to the transposition of EU law could be extremely prejudicial for the other EU countries, for EU citizens and for the other institutions, particularly when social and economic rights of the citizens are at stake;
  - the lack of transparency in the EU agencies, which makes it difficult to ascertain whether or not their actions comply with the principles of transparency, good administration, data protection and antidiscrimination, as well as of necessity and proportionality;
6. Deplores the unacceptable delays and blockages in the EU's accession to the ECHR, which are mainly due to specific Member States, and urges the Commission to conclude the procedure;
7. Recalls the Commission's commitment to give priority to those infringement proceedings which raise issues of principle or which have a particularly far-reaching negative impact on citizens<sup>1</sup>;
8. Regrets the weak reaction of the Commission to specific violations of fundamental rights in Member States and calls on the Commission to ensure that infringement proceedings secure the effective protection of human rights, rather than aiming for negotiated settlements with Member States;
9. Calls therefore on the Commission to come up with a detailed proposal for a monitoring mechanism and early warning system, building on the provisions of Article 7 of the TEU and Article 258 of the TFEU;
10. Reiterates its call to the Commission for a swift revision of the EU acquis in police and criminal matters in compliance with the Lisbon Treaty and the Charter before the deadline

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<sup>1</sup> COM(2010)573 final.

of 1st December 2014;

11. Calls for the parliamentary evaluation of FSJA-related policies in compliance with Article 70 of the TFEU through the creation of a permanent link between the EP's LIBE Committee and national parliamentary committees dealing with fundamental rights in order to assess the relevant legislation at EU and national level;
12. Calls on the Member States to properly fulfil their obligations under international law, which they have so far failed to do, to investigate serious human rights violations carried out in the context of cooperation with the CIA counter-terrorism programme, and to afford full redress to victims;
13. Considers unacceptable
  - that the EP, the only directly elected EU institution and EU co-legislator for most EU policies, was not permitted to define the thematic areas for the multi-annual framework (MAF) of the FRA;
  - that police and judicial cooperation in criminal matters, which has become standard EU policy, as well as social and economic rights, which are essential elements of the Charter, are still excluded from the mandate of the FRA; asks the Council to include the above matters in the next multi-annual framework of the FRA;
14. Is concerned about the opt-outs of some Member States, which will risk affecting the rights of their citizens who will suffer more from discrimination than other EU citizens;

### **Discrimination**

15. Stresses that the principles of human dignity and equality before the law are foundations of democratic society; deems incomprehensible the current blockage of Council negotiations on the Commission's proposal for a horizontal directive extending comprehensive protection against discrimination on all grounds, including religion or belief, disability, age or sexual orientation, and urges efforts to ensure adoption as soon as possible;
16. Calls on Member States to establish complaints procedures that ensure that a victim of multiple discrimination can lodge a single complaint addressing more than one ground of discrimination; considers appropriate to support the activities of human rights defenders and the development of collective actions by marginalised people and communities;

### **Protection of Individuals belonging to Minorities**

17. Stresses that the situation of stateless persons permanently resident in Member States needs to be addressed and calls on all the Member States concerned to ratify the relevant United Nations conventions;
18. Underlines that, owing to divergences in the implementation of EU law and complex administrative procedures, some categories of persons encounter discriminatory obstacles in the exercise of their right to free movement and residence; calls on the Commission to

bring infringement procedures against Member States violating Directive 2004/38/EC;

19. Calls on the Commission to evaluate the tangible results of the EU Framework for National Roma Integration Strategies and the progress achieved in each Member State;
20. Calls on Member States to provide an effective response to Roma exclusion by developing integrated policies in cooperation with representatives of the Roma population and ensuring their full participation, and by making use of all available EU financial resources;

### **Equal opportunities**

21. Regrets the limited impact of EU and national initiatives in the area of inequality between men and women, particularly in the context of employment;
22. Urges the EU and the Member States to step up efforts to achieve the objectives of the European Pact for Equality between women and men 2011-2020 and to take measures to tackle the gender pay gap, occupational segregation, and all forms of violence against women;

### **Sexual orientation and gender identity**

23. Calls on Member States to register and investigate hate crimes against gay, lesbian, bisexual and transgender people (LGBT) and adopt criminal legislation prohibiting incitement to hatred on grounds of sexual orientation and gender identity;
24. Calls on the Commission to propose a recast of the Council Framework Decision on combating certain forms and expressions of racism and xenophobia by means of a criminal law including other forms of bias crime, including on grounds of sexual orientation, gender identity and gender expression;
25. Calls on Member States to adopt the national legislative framework to address discriminations experienced by LGBT people and same-sex couples on grounds of their sexual orientation or gender identity, and urges them to guarantee effective implementation of the existing EU legal framework and CJEU case-law;
26. Calls on Member States who have adopted legislation on same-sex partnerships to recognise provisions with similar effects adopted by other Member States;
27. Considers that LGBT people's fundamental rights are more likely to be safeguarded if they have access to legal institutions such as cohabitation, registered partnership or marriage; welcomes the fact that 16 Member States currently offer these options, and calls on other Member States to consider doing so;

### **The youth, elderly and disabled people**

28. Calls on the Member States to tackle age discrimination in employment, in line with the case law of the CJEU on the recruitment and dismissal of elderly workers;
29. Calls on the Member States to ensure the integration of younger workers, particularly

those affected by the economic crisis, into the labour market;

30. Welcomes the decision to make 2012 the European Year of Active Ageing and Solidarity between Generations; calls on the Member States to enhance the quality of elderly people's lives by providing adequate social services, combating abuse against them and promoting their independence by supporting the renovation and accessibility of housing;

### **Data Protection**

31. Reaffirms that the right of self-determination over personal data and the right to privacy constitute fundamental elements of a person's personality, human dignity and liberty;
32. Stresses that the reform of the EU's data protection regime should increase transparency and awareness of data protection rights and make remedies and sanctions more effective; stresses that lowering existing standards and reducing national competences, including those of constitutional courts, is out of the question;

### **Migrants and refugees**

33. Calls on the Member States to set up a procedure for more coordinated rules governing asylum seekers, in compliance with the case law of the CJEU and the ECtHR;
34. Calls on the Member States to focus on effective legal migration policies and to ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families;
35. Calls on the Member States to ensure that the completion of the Common European Asylum System (CEAS) is achieved by the end of 2012 as planned;
36. Stresses its commitment to ensuring full parliamentary scrutiny of the EU's JHA Agencies, notably Europol, Frontex, Ceuol, Eurojust, and the Agency for the operational management of large-scale IT systems; calls on those agencies to enhance the fundamental rights dimension of their activities;
37. Strongly criticises proposals relating to the reintroduction of Schengen border controls, as this would undermine free movement within the EU and the functioning of Schengen cooperation;
38. Stresses the importance of an evaluation and monitoring mechanism to verify the application of the Schengen acquis in line with fundamental rights principles;

### **Rights of the Child**

39. Calls on all EU institutions to effectively address challenges such as the removal of children from the custody of one or both parents, missing children, sexual exploitation of children and child pornography, protection of unaccompanied migrant children and the situation of institutionalised disabled children;
40. Welcomes the Commission's EU Agenda for the Rights of the Child, the Commission's efforts to ensure respect for, and promotion of, the rights of the child in judicial



proceedings, and the fact that the Directive on victims of crime ensures a higher level of protection of children as vulnerable victims;

### **Victims' Rights and Access to Justice**

41. Regrets that EU citizens resident in a Member State other than their own are not effectively informed about their rights and urges Member States to improve their information systems;
42. Stresses that both the ECtHR and the CJEU highlighted in their rulings obstacles to access to justice such as the length of proceedings, the lack of effective remedies, and the right to a fair hearing;
43. Calls on the Member States to address remaining barriers, such as time limits, legal standing, length of proceedings, legal costs, and procedural formalities;

### **Citizenship**

44. Calls on the Commission to make a comparative study on electoral rights at national and EU level in order to identify divergences that have an unfair impact on certain categories of persons in the EU, and to accompany it with appropriate recommendations on overcoming discrimination;
45. Calls on Member States to launch information campaigns to inform EU citizens about their right to vote and stand in elections; calls for the necessary reforms of the European election procedures to be carried out in all Member States in order to promote active EU citizenship;
46. Instructs its President to forward this resolution to the European Council, the Council and the Commission, the governments and parliaments of the Members States and the candidate countries, the United Nations, the Council of Europe and the Organisation for Security and Cooperation in Europe.