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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

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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 outcome of the public seminar held on 25-26 April at the initiative of the Committee on Civil Liberties, Justice and Home Affairs,

– having regard to Rule 45 of its Rules of Procedure,

– 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 (A****/2005),

The EU constitutional framework as a new impetus to fundamental rights

1. Considers that effective protection and promotion of fundamental rights is the backbone of democracy in Europe and an essential precondition to the establishment of the area of freedom, security and justice;

2. Notes that, following the entry into force of the Amsterdam Treaty, respect for fundamental rights was made a condition of application for membership of the European Union and was incorporated into the accession criteria ("the Copenhagen criteria"), sending a clear message to all the countries and peoples of Europe;

3. 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 institutional and constitutional changes and substantially increase the Union's legal obligation to ensure that fundamental rights are actively promoted across all policy areas;

4. Considers that the European Union is undergoing a process whereby its initial focus on the market is being progressively complemented with elements inherent to a political community;

5. Notes that the need for a balance to be struck between asserting individual freedoms and establishing and enhancing collective security has emerged in recent years as a priority for policy-making in the European Union, new forms of terrorism having further increased the need to strike a balance between these two objectives and find adequate ways to make them compatible;

6. Considers it essential to ensure legal certainty and coherence in human rights protection throughout Europe and to guarantee transparency and the full exercise of these rights;

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;

8. Considers it crucial to coordinate initiatives and maximise synergies when looking for ways of enhancing the EU's international cooperation in the field of protecting human rights;

9. Notes that the Union and the Member States share competence for human rights, while the principle of subsidiarity must be observed;

10. Points out that national human rights institutions have been established in several Member States, in particular with a reference to the United Nations "Paris principles", one of the functions of these bodies being to review governments' human rights policies to prevent shortcomings and to suggest improvements, since efficiency lies in prevention and not only in solving problems;

11. Holds that the EU's fundamental rights policy is a core element of the European legal order; expects the Agency on Fundamental Rights to play a key role in this respect and believes, therefore, that it must have a coherent mission and be adequately funded and staffed;

Towards an EU fundamental rights policy

12. Welcomes the signature of the Constitutional Treaty, which 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;

13. Considers that EU institutions should be aware that fundamental rights should be actively promoted and protected - two objectives of the European Union - and fully taken into account when drafting and adopting legislation;

14. Calls on the Council to promote a consistent EU policy on fundamental rights within and outside the Union;

15. Calls on the EU institutions to speed up the process of EU accession to the ECHR, avoiding double standards and taking full account of the specificity of EU law;

16. Draws attention to the fact that the emphasis on awareness raising and democratic participation can enhance the legitimacy of the EU institutions;

17. Welcomes the fact that, at Parliament's request, President Barroso has decided to set up a Group of Commissioners on "Fundamental Rights, anti-discrimination and equal treatment"; calls on the Commission and especially the Group of Commissioners on Fundamental Rights to work out a comprehensive and coherent strategy to address the extent to which effect is given to fundamental and human rights and to assess their impact;

18. Emphasises that, as part of this strategy, the Agency on Fundamental Rights should provide some input into the Commission's assessing of the impact of fundamental rights by bringing the various stakeholders together, thereby encouraging institutional learning and improving transparency and accountability;

Cooperation with national human rights institutions and national parliaments

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

20. Believes that all Member States should be in a position to benefit from the expertise and support of their own national human rights institutions; considers that cooperation among these bodies should be established or increased at the European level;

21. 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;

22. Opines that a systematic impact assessment of any new national legislation should be developed and that, in this regard, national assessment procedures should be harmonised and best practice exchanged;

Cooperation with international human rights organisations

23. 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, take account of these mechanisms and 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;

24. 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 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;

25. Notes that, when devising the Agency's mandate, reference should be made to cooperation with other organisations, such as the OSCE and the UN, active in the protection of human rights;

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

26. Points out that establishing the Agency should help to further enhance mutual confidence between Member States;

27. Considers that, once it has been demonstrated that it is absolutely necessary to create bodies in charge of monitoring specific aspects of human rights policy throughout the Union (such as the Gender Institute) in order to improve the implementation of EU policies in all these fields, these bodies should be formally connected to the Agency by their becoming part of the network of networks; urges the European Council, the Council and the Commission to follow a rational, cost-effective and consistent approach when creating new bodies to deal with fundamental rights;

28. Urges the Commission to give the Agency a strong mandate and the power to follow the development of the Charter of Fundamental Rights and human rights within the European Union and candidate countries with whom accession agreements have been signed;

29. 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;

30. 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;

31. 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, protecting fundamental rights and raising the awareness of the key players, the EU institutions and citizens) in order to meet the strategic needs of a common area of freedom, security and justice;

32. 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;

33. Considers that the main role of the Agency should be to monitor human rights in the EU with a view to drawing up an annual report, to be approved by the European Parliament,

on the situation as regards these rights, as requested insistently by the European Parliament over the past years;

34. Calls on the Commission and the Council to prepare the publication of a single EU annual report on fundamental rights;

35. Believes that the Agency should start by presenting an annual work programme to the EU institutions, which should include selected thematic priority issues;

36. 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;

37. 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;

38. 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;

39. Considers that the Agency's monitoring will have the added value of providing a horizontal, holistic view of protecting and promoting 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, however, that the Agency should be able to establish priorities in the form of a thematic focus, to be defined in its annual work programme;

40. Proposes that the Agency should be structured on the basis of various sectors dealing with the areas of concern of the Charter of Fundamental Rights - as a complement to the EUMC's remit to fight against racism and xenophobia - for example, the freedoms of expression, assembly and association and thought, the rights to education and liberty, solidarity and social rights, children's rights, gender equality, citizens' rights and justice, the Roma issue and minority rights;

41. Observes that protecting national minorities in an enlarged EU will be 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, for which reason a separate department of the Agency should deal with the question of national minorities;

42. Considers it essential for the Agency to be independent and to have sufficient staff and budgetary resources to allow it to fulfil its ambitious mandate and a management board with high-level representatives from Member States, Supreme/Constitutional Courts, human rights bodies, EU institutions and the Council of Europe;

43. Considers that the Agency should be staffed with high-quality personnel with scientific

expertise and unimpeachable credibility and that the head of the agency should enjoy, besides a high professional profile, an excellent record in human rights in one of the Member States or a European or international organisation;

44. 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 Handelsgesellshaft", Rec. 1125, C-4/73 "Nold" of 14th May 1974, rec. 491, C-44/79 "Hauer" rec. p.3727 and C-5/88 "Wachhauf" 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, subsequently endorsed by the UN Commission on Human Rights (*Resolution 1992/54 of 3 March 1992*) and the UN General

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 do awareness raising through objective and adequate information given to the

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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.

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 Network[1] 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 all EU policies and measures so that Europe is indeed referred to as a symbol of fundamental rights.

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