

Situation of fundamental rights in the European Union 2004-2008

2007/2145(INI) - 14/01/2009 - Text adopted by Parliament, single reading

The European Parliament adopted by 401 to 220 with 67 abstentions, a resolution on the situation of fundamental rights in the European Union (2004-2007).

The own-initiative report had been tabled for consideration in plenary by Giusto **CATANIA** (GUE/NGL, IT) on behalf of the Committee on Civil Liberties, Justice and Home Affairs.

Firstly, the resolution recalls that the effective protection and the promotion of fundamental rights form the basis of democracy in Europe and are prerequisites for the consolidation of the European area of freedom, security and justice. However, a genuine 'culture of fundamental rights' in the Union calls for the development of a comprehensive system for monitoring the application of those rights. That is why MEPs deplore the fact that the Member States continue to refuse EU scrutiny of their own human rights policies and practices and endeavour to keep protection of those rights on a purely national basis.

Fight against terrorism: Parliament expresses concern at the fact that international cooperation in the fight against terrorism has often served to diminish the level of protection of human rights and fundamental freedoms, notably the fundamental right to privacy, data protection and non-discrimination. It states that the EU should act with greater resolve at international level to promote a genuine strategy based on full compliance with international standards and obligations in the area of human rights and the protection of personal data and privacy. As regards CIA activities in Europe, Parliament urges the EU institutions and the Member States to implement the recommendations contained in its resolution of 14 February 2007 on the alleged use of European countries by the CIA (Central Intelligence Agency) for the transportation and illegal detention of prisoners. It welcomes the statement by the US President-Elect on closing the Guantanamo Bay detention facility and bringing the inmates to trial. Member States are invited to declare their readiness to jointly find solutions for remaining inmates.

General recommendations: overall, MEPs take the view that the practical application of fundamental rights must be **an objective of all European policies**. In this context, MEPs welcome the setting-up of the Agency for Fundamental Rights, even though its remit remains very limited. MEPs consider, in particular, that the Commission and the Council, working with the Agency, should first of all seek to gain an **overview** of concerns in the area of human rights in the Member States beyond the strict framework of European rules, without confining themselves to topical issues in the European Union or specific legal and political instruments. MEPs call on the Commission and the Council to use the information available as a result of the monitoring carried out within the European Union by the Agency, the Council of Europe and United Nations monitoring bodies. MEPs stress that the Parliament should reserve the right to address human rights issues which fall outside the Agency's remit.

MEPs recall that an active rights policy cannot be confined to those cases that receive the greatest public exposure and the fact that serious rights violations are not subject to critical public scrutiny in closed institutions for juveniles, the elderly and the sick or in prisons. They stress that the Member States and the European Union should ensure expert monitoring of living conditions in such closed institutions.

At the same time, Parliament calls on the Council to incorporate in its future annual reports on human rights in the world an analysis of the situation in the world and in **each Member State**, which would

highlight the Union's equal commitment to protecting human rights both inside and outside its borders. In this context, it stresses how important it is for the European Union's credibility in the world that it **should not practise double standards in external and internal policy**.

In part 2 of the resolution, each of the fundamental rights are considered, with the following points being made:

Human rights, freedom, security and justice: in an amendment adopted in plenary, Parliament believes that the development of a European judicial area based on the application of the principle of mutual recognition must be based on **equivalent procedural safeguards** across the EU. They call for the swift adoption of an adequate legislative measure on rights of individuals in criminal procedures and call on Member States to make sure that the **European Arrest Warrant** and other mutual recognition measures are applied in conformity with EU human rights standards. MEPs emphasise **the right of any arrested person to be provided with full legal safeguards** and, where appropriate, assistance from the diplomatic representation of the country of which he or she is a national.

Discrimination: Parliament deplores the ongoing discrimination against women, migrants (particularly the Romani community) but also against minorities and homosexuals. In this context, MEPs recall that **equality of opportunity is a fundamental right** for all individuals, and not a privilege, and not only for the citizens of a particular Member State. They therefore take the view that all forms of discrimination must be combated equally resolutely and call on those Member States which have not yet done so to ratify Protocol No 12 to the ECHR, given that it provides for a general ban on all forms of discrimination.

Parliament welcomes the adoption of Council framework Decision 2008/913/JHA on combating certain forms and expressions of racism and xenophobia by means of criminal law further to the political agreement of December 2007. It calls on the Commission, after consulting the Agency, to propose similar legislation to **combat homophobia**.

MEPs consider that, over and above legislative tools and the scope for appeals, the fight against discrimination must be based on education, promoting best practice and information campaigns targeting the general public and the areas and sectors where discrimination takes place. They also stress the impact of the notion of affirmative action, which may make it possible to restore balance where it has been seriously compromised regarding discrimination (although this policy cannot be reduced to the notion of quotas).

Minorities: MEPs stress that, while the protection of minorities is a part of the Copenhagen Criteria, **there are neither common criteria nor minimum standards for national minorities' rights in Community policy** and that there is no common EU definition either of membership of a national minority. MEPs therefore recommend that such a definition be laid down at European level on the basis of Council of Europe Recommendation 1201 (1993). At the same time, they call on all Member States that have not yet done so to sign and ratify the Framework Convention for the Protection of National Minorities. Moreover, they recall their commitment to multilingualism as an element of respect for the least widespread languages.

The Roma: following enlargement of the Union, the Romani community has become one of the largest minorities in the EU. MEPs consider that the Romani community needs **special protection**, since the social marginalisation of, and discrimination against, Romani communities is an established fact in spite of the legal, political and financial instruments introduced at European level to combat this. MEPs deplore, in particular, the lack of a global and integrated EU policy specifically targeting discrimination against the Roma and reiterate that it is the collective responsibility of the Union to provide a response to these problems. MEPs therefore call for a European Union framework strategy for Roma inclusion. Discrimination problems to be tackled include police's racial profiling (inter alia by taking fingerprints or other forms of data collection).

Equal opportunities: once again, Parliament calls on Member States and the EU to combat through efficient measures direct and indirect discrimination against women in all spheres (including marriage, partnership and other family relations). It calls for special attention to be given to the situation of women belonging to ethnic minorities and to immigrant women. Several measures are therefore envisaged to better defend the rights of women, including those who are victims of domestic violence, who do not receive all of the care that they should be entitled to in relation to sexual and reproductive health, as well as in terms of employment, salary and positions of responsibility at work. MEPs call on the Member States to disallow the invoking of custom, tradition or any other religious consideration to justify any form of discrimination, oppression or violence against women. A European legal framework to ensure the physical integrity of young girls from Female Genital Mutilation should be adopted.

Sexual orientation: Parliament calls on those Member States who have adopted legislation on same-sex partnerships to recognise provisions with similar effects adopted by other Member States. It takes the view that discriminatory comments against homosexuals by religious, social and political leaders fuel hatred and violence, and calls on the relevant governing bodies to condemn them. In this regard, Parliament wholeheartedly endorses the French initiative, which is supported by all the Member States, for the universal decriminalisation of homosexuality (as in 91 countries homosexuality is still a criminal offence, and in some cases even a capital offence). It calls on those Member States to propose **guidelines for mutual recognition of existing legislation between Member States** in order to guarantee that the right of free movement within the European Union for same-sex couples applies under conditions equal to those applicable to heterosexual couples. It also calls on those Member States who have not yet done so, and in application of the principle of equality, to take legislative action to overcome the discrimination experienced by some couples on the grounds of their sexual orientation. Moreover, the Commission should make sure that Member States grant asylum to persons fleeing from persecution on the grounds of their sexual orientation in their country of origin.

The youth, elderly and disabled people: Parliament calls on Member States to implement resolute measures to defend the rights of young people, the elderly and disabled persons. They call on the Member States to eliminate discrimination on grounds of disability or age and to radically improve access for young people, the elderly and disabled to the labour market and to training programmes. The Commission is urged to ensure that funding provided to Member States for the provision of facilities for people with disabilities meets the criteria of the UN Convention on the Rights of Persons with Disabilities, with funding being provided for appropriate community/family based services and options for independent living.

Migrants and refugees: Parliament expresses shock at the tragic fate of those who lose their lives in an attempt to reach European territory or who fall into the hands of smugglers or traffickers of human beings. Parliament deplores the many types of discrimination of which migrants are victims, whether they are legally or illegally in the country. It calls on the Commission and the Member States to introduce effective, long-term legal migration policies, as well as to guarantee genuine access to EU territory. It calls for several measures to be taken for these people. Firstly, in terms of reception, MEPs recall that migrants who do not submit an application for asylum must also be received in specific, suitable facilities. They ask that particular attention be paid to the situation of **refugee children**. Special attention to be given to unaccompanied minors and minors separated from their parents who arrive on EU territory and special assistance should be provided to them. Moreover, MEPs call for greater coordination of national policies for integrating third-country nationals.

As regards FRONTEX, Parliament calls on the Council to clarify the respective roles of the European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (FRONTEX) and the Member States with a view to ensuring that border checks are carried out in a manner consistent with respect for human rights. It takes the view that there is an urgent need to amend FRONTEX's remit to incorporate rescue at sea. It calls for democratic oversight by

Parliament of the conclusion by FRONTEX of agreements with third countries, particularly as regards joint organisation of returns.

In terms of the issue of the **detention** of asylum seekers in **detention centres**, MEPs note that, for several years, there has been an increase in the number of such centres for foreign nationals in Member States and at their borders, while it appears that there are frequent violations of human rights. MEPs therefore ask that specialist NGOs be granted access to these centres and call for the setting up of an independent verification body at European level with responsibility for supervising detention centres.

Overall, the Parliament is concerned that the **lack of effective integration policies** is causing the exclusion of hundreds of thousands of non-nationals and stateless persons from working life, society and politics, which also undermines the EU's aim of increasing labour mobility in order to enhance competitiveness and economic prosperity. It acknowledges the risk that exclusion may put those persons in a vulnerable position, opening the way to radicalisation, trafficking and other forms of exploitation.

Freedom of expression: Parliament recalls that freedom of expression is a fundamental value of the European Union and must be preserved and defended. It regards freedom of opinion and the independence of the press as universal rights which may not be compromised by any individual or group.

Rights of the child: Parliament condemns all forms of violence against children, and stresses in particular the need to combat the forms of violence most frequently encountered in the Member States: paedophilia, sexual abuse, domestic violence, corporal punishment in schools and other forms of abuse in institutions. It calls on Member States to implement effective measures to forbid the various forms of exploitation of children, put an end to the practice of unofficial marriage of minors and eliminate child labour in all its forms. MEPs recall that almost 20% of children in the EU live below the poverty line and that the most vulnerable of them come from single-parent families and/or have parents who were born abroad. In terms of young offenders, MEPs take the view that detention of young offenders should only be a measure of last resort, lasting for the shortest time possible. They call for alternatives to imprisonment to be provided for minors.

Poverty: Parliament stresses that extreme poverty and social exclusion constitute **a violation of fundamental rights as a whole**. They therefore hope for genuine integration of the social dimension and fundamental rights into all EU policies. One of most symbolic elements of poverty is homelessness, which must be tackled by the Commission through a European framework definition. They call, in particular, on Member States to devise '**winter emergency plans**' as part of a wider homelessness strategy.

Workers: Parliament considers the rights of workers and asks that their rights be defended resolutely, in terms of a decent income, recruitment policy, professional development, etc. and that all form of discrimination be rejected. It calls on the Commission and the Member States to support social inclusion of people who are furthest from the employment market and to tackle the reality of 'poor workers'. It also calls on the European institutions and Member States to stop using the term 'illegal immigrants', which has very negative connotations, and instead to refer to 'irregular/undocumented workers/migrants'.

Elderly: lastly, Parliament asks those Member States who have not yet done so to introduce legislation on living wills to ensure that, according to the Oviedo Convention on Human Rights and Biomedicine, "the previously expressed wishes relating to a medical intervention by a patient who is not, at the time of the intervention, in a state to express his or her wishes shall be taken into account" and to ensure the right to dignity at the end of life.