

# **Steering Committee for Human Rights**

## **Intervention by the Independent Person appointed by the Council of Europe**

**Rainer Hofmann**

**Strasbourg, 20 June 2019**

Dear Chairperson,

Distinguished Ambassadors,

Ladies and Gentlemen,

Allow me to start by thanking you for having invited me to this exchange of views with you as members of the CDDH on the work of common interest carried out or envisaged by the EU Fundamental Rights Agency (FRA), actually the first one for me in my capacity as ‘independent person appointed by the Council of Europe’ sitting in the FRA’s Management Board and Executive Board, a position I am holding since July 2015.

I should like to begin by briefly reminding us of the legal basis of the cooperation between the CoE and FRA and its main objectives and methods. Then, I shall equally briefly point out some of the areas where we have witnessed, over the last years, an ever-increasing fruitful cooperation between the two institutions. Finally, and most importantly, I shall identify three areas which I should like to present to you as possible areas of new – or at least re-newed or increased – cooperation.

## **I. The legal basis of the cooperation between CoE and its principal objectives and methods**

As you know, the cooperation between the CoE and FRA is based on the FRA Founding Regulation<sup>1</sup> and on the 2008 Agreement between the European Community and the Council of Europe on cooperation between FRA and the CoE.<sup>2</sup> It establishes a general cooperation framework with the aim of avoiding duplication and ensuring complementarity and added value to the work of both institutions.

The key objectives and strategic priorities of the cooperation relate to the promotion and protection of human rights throughout the European Union and mainly focus on: developing joint projects in areas of mutual concern; engaging in a continuous dialogue with all stakeholders in order to improve the situation of fundamental rights in Europe; coordinating communication activities to increase awareness regarding fundamental rights; informing each other on the results of the activities of each institution; and exchanging data and consulting each other at operational level.

## **II. Principal areas of cooperation**

From a thematic point of view, this cooperation mainly focuses on: Victims of crime and access to justice; Equality and non-discrimination mainly based on the six grounds prohibited by EU law ; Information society and respect for private life and protection of personal data; Judicial

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<sup>1</sup> Council Regulation (EC) No. 168/2007 of 15 February 2007, OJ L 53, 22.2.2007, 1.

<sup>2</sup> OJ L 186, 15.7.2008, 7.

cooperation, except in criminal matters; Migration, borders, asylum and integration of refugees and migrants; Racism, xenophobia and related intolerance; Rights of the child; Integration and social inclusion of Roma.

The best known and probably the most successful (and important) result of this cooperation are, of course, the Handbooks jointly produced by the CoE, the ECtHR and FRA. They relate to very diverse and at the same time crucially important areas such as Data Protection;<sup>3</sup> Asylum, Borders and Immigration;<sup>4</sup> Non-Discrimination Law;<sup>5</sup> Rights of the Child; and Access to Justice; furthermore, I should like to stress that the drafting of a new Handbook on European Law relating to Cybercrime and Fundamental Rights is well under way and its publication expected for next year.

I have chosen the example of the Handbooks as they most clearly show the high amount of complementarity in the work of the two institutions: The Agency is mainly tasked to collect reliable, evidence-based data to allow for a truly facts-based human rights policy. Such data, made available in the general annual Fundamental Rights Reports as well as FRA surveys such as the forthcoming Fundamental Rights survey, the Roma and migrants surveys and the LBGT survey and in issue-specific reports on, e.g. access to justice, discrimination and intolerance including antisemitism; rights of minorities, or domestic violence against women, assist a number of CoE bodies, such as the Court<sup>6</sup> and, in particular, treaty-monitoring

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<sup>3</sup> An updated version was published in 2018.

<sup>4</sup> An updated version will be published towards the end 2019.

<sup>5</sup> New language versions are being published throughout 2019.

<sup>6</sup> See e.g. ECtHR, *Bălșan v Romania* (Appl. No 49645/09), 25 May 2017 (on violence against women)

bodies such as the European Commission against Racism and Intolerance (ECRI), the European Committee of Social Rights (ECSR), the Group of Experts on Action against Violence against Women (GREVIO) but also the Advisory Committee on the Framework Convention for the Protection of National minorities (ACFC,) the European Commission of the Efficiency of Justice (CEPEJ), the Special Representative of the Secretary General on Migration and Refugees or the Venice Commission, to name just a few, in performing their duties of treaty interpretation, monitoring and implementation; for obvious reasons, the FRA reports are especially relevant if these bodies do not deal with single cases but seek to produce more general assessments such as, e.g., the existence of indirect discrimination in national education systems or systemic deficiencies in national detention facilities. Moreover, such data might assist the relevant CoE organs in their twofold task of effectively addressing, on a daily basis and by political means, human rights issues in Europe as well as seeking to protect and promote human rights by normative work, such as the drafting of treaties or the setting of standards in legally non-binding documents.

On the other hand, it is clear that FRA relies in its advisory work on draft EU legislation not only on the EU Fundamental Rights Charter and human rights related EU secondary legislation, its precise meaning identified and reflected in the pertinent jurisprudence of the CJEU, but also on standards set by both the ECtHR in applying the ECHR and the various CoE treaty-based monitoring bodies.

Another project which might create tangible results based on cooperation not only between FRA and the CoE, but also with UN and other human rights actors, is the European Union Fundamental Rights Information System (EFRIS) that will be released at the end of 2019. However, due to the limited time available, I shall limit myself to only mentioning this initiative as a promising example of quite a number of activities involving both the CoE and FRA.

### **III. Suggestions for new Areas of Cooperation**

Let me now turn to three areas which I should like to suggest as new areas of cooperation, or, in any case, of highly intensified cooperation: Artificial Intelligence (AI) and its (potential) Impact on Human Rights; Protection of Civil Society Actors in Culturally Diverse Societies; and Methods of Alternative Dispute Resolution (ADR) and its Impact on Human Rights.

It is a truism that AI is on everybody's mind. However, maybe not everybody is as much concerned with AI's potential impact on human rights as the CoE. It is well-known that the Finnish Presidency of the CoE Committee of Ministers and the CoE jointly organized, on 27 and 28 February 2019, a high-level conference on the impact of AI on human rights, democracy and the rule of law; among the panelists was FRA Director Michael O'Flaherty who spoke on the impact of AI-powered techniques on such human rights as privacy and freedom of expression. It is equally well-known that, as a kind of follow-up to this conference, the Foreign Ministers of CoE

member states agreed, at their meeting in Helsinki on 17 May 2019, to examine the feasibility and potential elements of a legal framework for the development, design and application of artificial intelligence. It might be less known that, on 5 June 2019, FRA published a paper on ‘Data quality and artificial intelligence – mitigating bias and error to protect fundamental rights’. This is only the most recent outcome of a number of activities carried out by FRA in the field of AI; I might add that a senior representative of FRA has been a member of and consistently attending the meetings and participating in the work of the EU High-level Expert Group on Artificial Intelligence which presented, on 8 April 2019, their ‘Ethics Guidelines for Trustworthy AI’. So, I think it goes without saying that the issue of AI and its impact on human rights literally calls for cooperation between the CoE and FRA as there are highly qualified persons available in both institutions to work on implementing relevant projects in this field of a truly shared interest. I trust that such projects would considerably benefit from the already on-going cooperation at the operational level: FRA staff members participate in meetings of the MSI-AUT Committee, there are joint sessions at RightsCon (the most recent one in Tunis on 12 June 2019) and in November 2019 there will be the Internet Governance Forum.

It is also a truism to state that, in an alarmingly increasing number of states in Europe, civil society actors involved in the protection and promotion of human rights have come under siege. This applies all the more in culturally diverse societies where there seems to be increasing pressure on such activists

to refrain from publicly requesting full respect for international obligations in the field of human rights in general, and as concerns freedom of speech and related rights essential for a truly diverse and integrated society, in particular. On the other hand, there is a truly alarming increase of instances of hate speech and other expressions of violent intolerance challenging the very foundations of such diverse and integrated societies; this development is additionally aggravated by the ever-increasing use of fake news disseminated through social media, both by state and private actors. It is clear that the large amount of data already collected by FRA as part of its activities in various fields such as racism, xenophobia and intolerance as well as equality and non-discrimination would be a most useful tool for continued and new activities of the CoE in this field. In a 2018 report, FRA has documented challenges facing civil society organisations working on human rights in the EU. Addressing those challenges could be another area of mutual concern and cooperation. Finally, as an example of already existing links in this field of activities, I should like to mention that the CoE Conference of INGOs is a member of the FRA Advisory Panel.

My final comments are also related to a truism, namely that there is, throughout Europe, increased concern relating to the well-functioning of the respective national judicial systems as indispensable preconditions for societies based on the rule of law and capable of effectively protecting and promoting human rights. This assessment resulted in an increased interest in various mechanisms of Alternative Dispute Resolution

(ADR), in civil, criminal and public law. Such ADR mechanisms might indeed contribute to lowering the case-load faced by many judicial systems and, thus, contribute to the restoration of truly functional judicial systems. Moreover, they might also assist in combating corruption within the judicial system if they result in legally correct solutions as such mechanisms would offer an alternative way to achieve such solutions. It is clear, however, that in all branches of the law, such ADR mechanisms must not result in violations of human rights, both procedural and substantive ones. Again, if the CoE was to continue its involvement in this area, it might be useful to consider ways and means how to engage FRA with its unequalled capacity of data collection to provide the factual basis for assessing the existing national systems with a view to identify best practices.

#### **IV. Concluding Remarks**

I hope this overview over the existing – and I should like to stress: well-functioning – fields of cooperation between the CoE and FRA as well as my suggestions on three areas for future (increased) cooperation between the two institutions will serve as an adequate basis for our ensuing exchange of views. Obviously, these are only suggestions for topics which might be discussed between the two institutions in order to see whether joint activities on them are at all feasible and might produce tangible results.

On a more personal note, I should like to conclude by using this opportunity to stress that, based on some four years of



relatively close insights into the cooperation mechanisms – and their implementation – between the two institutions, CoE and FRA, I do not think that there is any need to amend the existing legal framework for this cooperation as it is functioning well.

I thank you for your kind attention and am looking very much forward to your questions and comments.