

Report for policy makers from FRA's civil society Fundamental Rights Platform meeting

'Future fundamental rights priorities in the area of freedom, security and justice – The contribution of civil society'

10-11 April 2014, Vienna

1) Introduction

The Fundamental Rights Platform (FRP) is the network for cooperation between the European Union Agency for Fundamental Rights (FRA) and over 400 civil society organisations. Each year, the platform meets in Vienna, bringing together some 200 civil society organisations from across the EU – ranging from grassroots to EU umbrella organisations – with FRA experts and EU policy makers.

At the 2014 meeting, FRP participants were invited to give their opinion both about the current EU discussions on the area of freedom, security and justice, and the future work of the new European Parliament and new European Commission, both expected to be in place in the second half of 2014.

The outcomes aim to provide policy makers at EU level with practical suggestions on how to move forward in the area of freedom, security and justice.

2) Key suggestions from the meeting

- **The European Union should develop an EU-internal Human Rights Strategy.**
- **The European Union and its Member States should ensure that existing EU legislation is actually implemented and monitor that implementation more closely.**
- **The European Union should ensure that human rights are mainstreamed into the development of all EU policies and EU legislation, and that they are taken into consideration in all preparatory bodies and not only those that are specifically tasked with fundamental rights (like e.g. the Council working group FREMP)**
- **The European Union and its Member States should make sure that civil society is invited to the discussion – both with regard to upcoming legislation as well as to reviewing (the implementation of) existing legislation and policies.**
- **The European Union should consult civil society not only for the sake of enhancing the EU's accountability and transparency, but also in order to make efficient use of their expertise and experience.**
- **Civil society supports a stronger mandate for the FRA.**

3) Key messages

for consideration by the Council of the European Union and other policy makers when outlining the strategic guidelines for the area of freedom, security and justice

Participants defined the topics discussed at the FRP meeting, so the headings listed below already reflect the priorities of civil society.

A) Structural and horizontal issues

Enhancing cooperation, coordination and sharing of practices between human rights players

- In order to be able work jointly on improving the human rights situation, consider creating and funding local and national “Fundamental Rights Platforms” (structured platforms of dialogue between *all* actors in the area of human rights). This would overcome working on human rights issues in ‘silos’.
- It is the citizens that are the foundation of the Union. EU institutions and bodies should be in service of the citizens and therefore should put people first: involve, hear and listen to the needs and concerns of people on the ground. Decision makers use civil society to get better informed.
- Civil society has knowledge and expertise on how policies function on the ground. Therefore, it is essential that civil society is invited to the discussion – not just for reasons of accountability and transparency, but also to make use of these organisations’ expertise.
- To this end, public authorities could, among others, create permanent consultative platforms with civil society organisations. (Consider whether the model of the Frontex Consultative Forum – or an adaptation of it – would be useful in national systems.)

Rule of law

- The EU should develop an EU-internal Human Rights Strategy that would mirror the Human Rights and Democracy Strategy that EU has adopted for its external policies.
- The European Parliament and Council should react to the new Framework on the rule of law as launched by the Commission in order to present their views and proposals with regard to such a framework and how the different actors could interact and relate to each other.
- The EU should extend the Framework on the rule of law explicitly to all Article 2 values, including fundamental rights as listed in the Charter.

- EU Member States should monitor extremist parties and make sure that they are not receiving public funds where such parties violate shared constitutional values.
- Existing instruments (like monitoring cycles under international and European fundamental rights treaties), institutions (like the FRA, Venice Commission, NHRIs etc.) and standards (like the Charter of Fundamental Rights of the EU, operationalised through the use of fundamental rights indicators) should be fully used. Existing data could be brought together in an overarching EU-wide information system.

Funding of civil society organisations and their work

- Proper functioning of civil society organisations requires stable financial basis that allows the organisation to carry out its core tasks. However, most funding is project funding only. Core funding must also be made available, so that NGOs can keep running their office.
- EU funding needs to focus on stimulating NGOs' work at the grassroots level – not only 'big projects' and big actors. For instance, a percentage of the European Social Fund to human rights should be allocated to NGOs, which would enable also smaller national NGOs to apply for funding.
- In order to ensure that project funding indeed supports projects that address people's real needs, donors (such as public authorities) should involve NGOs in the basic (structural) design of funding.
- Artificial partnerships between NGOs in countries that have structurally little in common should not be requested – if cross-border partnerships are required, focus instead on neighbouring countries.
- EU internal human rights funding structures toned to learn from EU development funding.

Access to justice

- Standards for guaranteeing the independence of courts and judges must be developed for all bodies dealing with individual complaints (courts + non-judicial bodies).
- All EU Member States should be party to all the nine core UN human rights treaties, as well as all the main Council of Europe conventions and optional protocols – also to tackle the internal vs. external dilemma.
- In order to improve the situation, judges, lawyers and civil society organisations need training. Public authorities should develop or support the development of training materials, handbooks, and guidance.
- Civil society needs to engage more in collective complaints and as third-party intervention (*amicus curiae*) in judicial proceedings at both national and European levels. EU to provide for the possibility of *amicus curiae* interventions before the CJEU.

Monitoring and data collection

- Public authorities can profit from the trust that civil society organisation have among potential victims. Civil society can therefore support monitoring and data collection.
- Public service agencies should build up partnerships with civil society organisations so as to increase capacity to collect and disseminate data.
- Civil society organisations should be involved in the process of official data collection, as equal partners (for instance on hate crime).
- Civil society organisations are often expected to fill the gaps that official bodies cannot or will not address, and these organisations should therefore be provided with the means to carry out these tasks.
- The EU should fund programmes on access to education/capacity building for victims/civil society organisation to increase their professionalism.

Rights awareness, capacity building and human rights education

- Rights awareness training should also target professional groups other than magistrates and judges (e.g. medical staff, police officers and teachers).
- It is necessary to lay down clear EU-wide standards on Equality Bodies and their role in rights awareness by the EU Commission and the Member States.
- The general lack of awareness on human rights should be addressed by integrating fundamental rights education into formal and compulsory school curricula.

Equality Bodies

- Development of EU standards concerning the effectiveness and independence of Equality Bodies and monitoring of this.
- Expansion of the mandate of Equality Bodies to cover a full range of protected categories.
- Expansion of the protected grounds at European level by amending the scope of equal treatment legislation at EU level (e.g. Horizontal Directive).

B) Thematic issues

Hate crime

- Overall, there is still a need to clarify the basic concept of hate crimes (or bias-motivated crime) and hate speech, and to raise awareness of the necessity to address such crimes.
- The full and timely implementation of the EU Victims' Directive (2012/29/EU) with regard to victims of crimes committed with a discriminatory motive would be a very significant next step.
- In order to promote the trust of victims in the ability and resolve of police services to deal with hate crimes in a respectful and sensitive manner, safeguards against any discriminatory attitudes on the part of police officers need to be reviewed and strengthened.
- Prosecutor offices specialised in hate crime and discrimination should be established.

Roma integration and anti-Gypsyism

- Mainstreaming Roma inclusion into general social inclusion, starting with housing: moving Roma from segregated ghettos to social housing.
- Promoting rights awareness and a human rights-based approach to Roma inclusion.
- Making sure that there are indicators and funding for transversal issues in National Roma Integration Strategies, such as combating forms of discrimination.
- Applying anti-discrimination law.
- Addressing the situation of slums and ghettos, and especially of Roma and children living in these communities, has to be included in the EU and Member States social inclusion policies.
- Not making Roma integration a 'Roma issue', but one that addresses both Roma and non-Roma. Engaging the general population in getting to know the Roma through sustained interaction and dialogue.
- Not doing things for the Roma, but giving Roma a real chance to act for themselves. Encouraging Roma self-organisation.

Rights of victims of crime

- The implementation at national level of the EU Victims' Directive (2012/29/EU) establishing minimum standards on the rights, support and protection of victims of a crime should be monitored.
- Victims who are under guardianship should be ensured legal personality (*persona iuris*).

- There should be a uniform approach to all victims of crime – not a ‘categorisation of victims’ and a hierarchy of victimhood (e.g. victims of terrorism or domestic violence have a strong voice through pressure groups etc., while victims of other types of crimes remain invisible and underrepresented).
- As victims of crime do not always recognise themselves as such, awareness of rights and procedures among victims is needed.

Implementing laws and policies to address irregular migration in line with fundamental rights

- Revise the role of borders in the EU, which should not only serve security purposes, but also facilitate access to international protection. There is a need for safe and effective legal avenues to access international protection in the European Union. Rules on protected entry and humanitarian visas should be developed.
- EU solidarity through the distribution of asylum seekers and refugees should be promoted.
- Regularisation across the EU should be discussed.
- There is a negative public attitude to irregular migration which leads to restrictive laws, policies and practices; these measures may in turn strengthen the perception among the public that irregular migrants would be ‘criminals’. Therefore terminology should abandon criminalising language (for instance, never ‘illegal’ migrant, always irregular migrant); there should be a change the ‘narrative’ to acknowledge the need for a migrant work force, and the economic and cultural contribution migrants make.
- The scope of legal standing (*locus standi*) for NGOs in legal and complaints procedures should be enlarged.
- Clear channels and formats of communication should be set up for NGOs to contribute to the European Commission evaluations on the implementation of EU law.

Children

- The rights of all migrant children to be equally protected must be promoted. This means that every child is treated first and foremost as a child, irrespective of social or ethnic background, gender, ability or migration status, whether unaccompanied or accompanied by their parents or other caregivers.
- The mandate of the European Commission’s child coordinator should be broadened.
- Data needs to be collected and awareness raised about the situation of children living in ghettos in the EU.
- The inclusion of a strategic framework on children in different areas needs to be promoted to develop a comprehensive approach.

- A rights-based and child-sensitive complaints mechanism ensuring effective access to justice for children (also accessible for children deprived of their liberty) must be developed.
- A non-violent juvenile justice system should be created, in which changes the approach of dealing with children in conflict with the law. Social, economic and psychological support should be offered as an alternative to policing, prosecuting and incarcerating children.

Children at EU borders

- Currently there is a lack of experts' involvement, and low priority given to the issue of children at borders. Special monitoring bodies need to be set up to develop synergies with other existing monitoring mechanisms and bodies. Their mandate should be used to access centres at which children are detained. The number of visits to airports should be increased.
- A comprehensive child protection system and long-term strategy should be developed.
- State authorities need to develop and increase training for all actors who come into contact with children at borders (border guards, guardians, etc.).
- The EU needs to develop 'best interest' determination guidelines for border guards. A safe clause on 'best interests of the child' should be included in the Schengen Border Code.
- Guidance should be developed to improve interagency cooperation for preventing and responding to the disappearance of unaccompanied children.
- Child detention must be ended. This should be included as a priority in the next EU agenda for children's rights

Age

- Currently, the impact of ageing is missing in Post-Stockholm process. A strategy on ageing should be included in future EU priorities on fundamental rights to fill the existing protection gap and ensure mainstreaming across all EU policies. (The Council of Europe Recommendation on the promotion of human rights of older persons could be used as a reference document).
- Age discrimination should be covered beyond employment; to this end the horizontal non-discrimination directive should be unblocked.
- Increase multi-stakeholder dialogue by organising meetings with civil society, Council working groups (FREMP, COHOM, SQWP), Commission services and FRA to ensure the voice of older people is heard and that EU policies take age discrimination and the rights of older people into account.

Women – violence and security

- Violence against women should be recognised as a fundamental rights abuse that needs to be addressed by means of criminal law.
- Concerning victims' support services: sustainable funding is required for specialist services for women and children that are free, geographically distributed, multilingual and disability-friendly.
- Regarding policy reviews: the European Commission needs to review the implementation of the EU Victims' Directive (2012/29/EU) to ensure it meets the needs of victims in practice.
- Policies and plans should be based on the experiences of women. As there is high underreporting, more data collection exercises should be funded.
- A victim-centred and rights-based approach is needed, which would move violence against women from the private into the public sphere.