



ORGANISATION MONDIALE CONTRE LA TORTURE
WORLD ORGANISATION AGAINST TORTURE
ORGANIZACION MUNDIAL CONTRA LA TORTURA

The World Organisation Against Torture
urges the EU Council
to strengthen the European Fundamental Rights Agency
by including in its mandate
the economic, social and cultural factors that affect the enjoyment of
fundamental rights

Analysis and recommendations

The World Organisation Against Torture (OMCT) calls on the Council of the European Union (EU) to strengthen the mandate of the EU Fundamental Rights Agency (the Agency) by agreeing to key recommendations of the European Parliament (the Parliament).

The European Parliament, the institution that represents the citizens of the European Union, in a Legislative Resolution dated 17 January 2008 made a number of important recommendations to the EU Council aimed at strengthening the mandate and the work of the Agency. Unfortunately, in a number of key areas for the future, the EU Council did not adopt the Parliament's recommendations. In particular, the Council failed to include in the Agency's mandate consideration of the *economic, social and cultural factors, including extreme poverty and social exclusion, that contribute to or undermine the enjoyment of fundamental human rights*.

The EU Fundamental Rights Agency was created as an EU independent body, in order to provide assistance and expertise to the European Union and its Member States. At an early stage of its development, Justice Commissioner and Vice-President Franco Frattini declared that Fundamental Rights ought to be promoted in order to achieve "a Europe of which we can all be proud". Mr Frattini also referred to a model of Europe where people would be integrated and inequalities would be overcome.¹

OMCT regards the failure of the Council to agree to key Parliament recommendations as a *missed opportunity* for the EU to successfully address human rights violations within its borders and to strengthen its voice internationally. The Parliament's recommendations are particularly important since the new Lisbon Treaty, upon entry into force, will require the EU to address a number of important issues covered by the Parliament's resolution but neglected by the Council.

¹ <http://news.bbc.co.uk/2/hi/europe/6407985.stm>



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The European Parliament's recommendations dealing with discrimination and other human rights violations deriving from economic and social origins.

OMCT regrets the failure of the Council to endorse the Parliament's recommendation that "*the Agency shall seek to identify the economic, social and cultural factors that contribute to respect for the human rights in the thematic areas or which may constitute root causes of violations of those rights*", as well as its refusal to include in the Agency's mandate concern for "*extreme poverty and social exclusion*".

OMCT years of experience shows that the fight against discrimination requires action on economic, social and cultural rights and that the principle of non-discrimination enshrined in the Agency's mission cannot be adequately addressed without also addressing extreme poverty, social exclusion and the imperative of substantial equality among European citizens.

The poorest strata of society are regularly exposed to discrimination and marginalisation. Poverty and inequality are key challenges that the enlarged EU-27 must address. Millions of EU citizens, residents, migrant workers, refugees and asylum seekers live in extremely poor conditions and are subject to violence, harassment, and other human rights violations due to their economic conditions and social origins. Thus, addressing poverty and inequality - and other denials of social and economic rights - is crucial to ensure the full enjoyment of fundamental rights, including the right to non-discrimination.

The legal basis of the Agency's thematic areas: the economic and social dimensions of discrimination.

The Fundamental Rights Agency is primarily based on art 6 of the Treaty on European Union² and on the EU Charter of Fundamental Rights. Unfortunately, the mandate of the Agency as it now exists reflects only partially the major human rights concerns that EU is currently facing. Indeed, by virtue of these legal instruments, the Agency should include in its thematic areas the dimensions of discrimination based on social origins, along with the fight against social exclusion and poverty, as clearly provided by articles 21³ and 34⁴ of the EU Charter of

² Treaty on The European Union: Article 6

1. *The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States.*

2. *The Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as general principles of Community law.*

3. *The Union shall respect the national identities of its Member States.*

4. *The Union shall provide itself with the means and necessary to attain its objectives and carry through its policies.*

³ EU Charter on Fundamental Rights : Article 21 - Non-discrimination:

1. *Any discrimination based on any ground such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation shall be prohibited.*



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Fundamental Rights. In this respect, OMCT notes that, while the Agency's Multiannual Framework Programme borrows most the wording of art 21, it clearly omits to cite the expression of "social origin" as a cause of discrimination. This is a crucial omission and OMCT calls for this term to be reintroduced.

Furthermore, OMCT believes that the activity of the Agency should also be consistent with the principles enshrined in the new Treaty of Lisbon. In this respect, under the new Treaty, the Charter of Fundamental Rights will become legally binding and will have equal rank with other EU Treaties and thus the above-mentioned articles 21 and 34 will also become legally binding.

Upon entry into force of the Treaty of Lisbon, a new horizontal 'social' clause will also ensure that, in the definition and implementation of its policies, the EU will be required to take into consideration certain requirements such as the promotion of a 'high level of employment', 'adequate social protection', the 'fight against social exclusion' and a 'high level of education, training and protection of human health'. It is thus essential that the mandate of the Agency be revised so as not to fall behind the Treaty of Lisbon.

Recommendations

OMCT calls on the EU Council to review its position and to reconsider the recommendations that the European Parliament adopted on 17 January 2008.

OMCT calls on EU Member States, on the EU Council, on the current and forthcoming EU Presidencies, on the President of the European Commission and on its Justice Commissioner to:

- ensure that the Agency fully complies with the principles of the Treaty of Lisbon and with those enshrined in the EU Charter of Fundamental Rights;
- take steps to fill the current gaps in the Agency's mandate and activities, so that the institution will be able to handle adequately the key challenges facing the enlarged EU-27, including discrimination and inequality based on economic and social origins;
- address the marginalisation faced by millions of EU citizens, residents, migrant workers, refugees and asylum seekers who live in extremely poor conditions and are, for this reason, exposed to inequalities, discrimination, harassment, as well as other violations of human rights.

2. Within the scope of application of the Treaty establishing the European Community and of the Treaty on European Union, and without prejudice to the special provisions of those Treaties, any discrimination on grounds of nationality shall be prohibited.

⁴ EU Charter on Fundamental Rights : Article 34 - Social security and social assistance

3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

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OMCT also calls on the European Parliament and in particular on its Committee on Civil Liberties, Justice and Home Affairs, to:

- encourage the Council to review its position and to reconsider the recommendations that the European Parliament adopted on 17 January 2008;
- closely monitor the activity of the Agency by organising, on a regular basis, hearings and debates with the Director of the Agency and with technical staff;
- encourage the Agency, Member States and the EU Council to take into consideration the notion of economic and social root causes of discrimination, as well as the criteria of social origin, extreme poverty and social exclusion.

Ultimately, OMCT calls on the Director of the EU Fundamental Rights Agency to widen the scope of the activities of the Agency and to enhance the cooperation between the Agency, the European Parliament and civil society.

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