Parliamentary Assembly
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COUNCIL OF EUROPE
CONSEIL DE L'EUROPE

Resolution 1427 (2005)[1]

Plans to set up a Fundamental Rights Agency of the European Union

Parliamentary Assembly

1. At the Brussels European Council of 12 and 13 December 2003, the representatives of the member states of the European Union (EU) "stressing the importance of human rights data collection and analysis with a view to defining Union policy in this field, agreed to build upon the existing European Monitoring Centre on Racism and Xenophobia and to extend its mandate to become a Human Rights Agency to that effect."

2. On 25 October 2004, the Commission of the European Communities (EC) published a communication containing a public consultation document on the establishment of a fundamental rights agency of the EU (Document COM (2004) 693 final), setting out detailed ideas, options and questions regarding the field of action of such an agency, the tasks to be entrusted to it, its relations with civil society, the Council of Europe and other bodies, and its operational structures.

3. The Parliamentary Assembly, as an organ of a European organisation having a statutory mission and unparalleled expertise in the area of the promotion and protection of human rights, the rule of law and pluralist democracy, feels it must make a timely and substantial contribution to the debate on the definition of the EU agency's remit, tasks, modus operandi and working structures.

4. In stating its views on this subject, the Assembly is mindful of the considerable human rights acquis developed by the Council of Europe over the past fifty-five years, encompassing not only standards on civil and political rights, social rights, minority rights, treatment of persons deprived of their liberty and the fight against racism, but also active European monitoring of compliance with these standards by its member states. Such monitoring is carried out by several well-established independent human rights bodies with recognised expertise and professionalism, both on a country-by-country basis (including through country visits and on-the-spot investigations) and, increasingly, also thematically. Through these mechanisms, the Council of Europe monitors compliance with all the human rights obligations of its member states (including the twenty-five member states of the European Union), identifies issues of non-compliance, addresses recommendations to member states and, in the case of the European Court of Human Rights, issues judgments binding on states parties whenever these standards are not respected.

5. The Assembly also recalls the considerable volume of intergovernmental work carried out by the Council of Europe on various human rights themes, leading to the adoption of reports and new legal instruments (treaties, recommendations, guidelines, etc.) by the Committee of Ministers, as well as the latter's political monitoring procedure. In addition, significant human rights achievements have been made as a result of the practical assistance work designed to facilitate attainment of the requisite standards, and of the work of Council of Europe institutions having a broader remit. Linked to this are numerous activities in the field of human rights education and awareness-raising which seek to develop a genuine human rights culture in European societies.

1. Text adopted by the Standing Committee, acting on behalf of the Assembly, on 18 March 2005 (see Doc. 10449, report of the Committee on Legal Affairs and Human Rights, rapporteur : Mr McNamara).

6. The Assembly itself, in its own work, attaches the highest importance to human rights questions – both thematic issues and country-specific questions – as is witnessed by the frequent resolutions and recommendations adopted on such questions. Finally, the Congress of Local and Regional Authorities of the Council of Europe and the European Commission for Democracy through Law (Venice Commission) also regularly address human rights-related issues.

7. In no small part thanks to the effectiveness of its human rights mechanisms, the work of the Council of Europe results in innumerable practical improvements in the area of compliance with human rights in its member states, including in the member states of the European Union. All these achievements and the underlying statutory mission of the Organisation demonstrate the pre-eminence of the Council of Europe in the protection and promotion of human rights in Europe.

8. As regards the European Union, the Assembly considers that, given the supranational nature of EC/EU integration and EC/EU law and the recent expansion of EC/EU competencies including in such broad and human-rights-sensitive areas as justice and home affairs, it is not only legitimate and understandable but also desirable and necessary that human rights be given their rightful place in the EU's legal order.

9. The various steps taken so far to strengthen human rights protection within the EU – in particular the incorporation of the Charter of Fundamental Rights in the Constitutional Treaty and the latter's provisions committing the EU to accession to the European Convention on Human Rights (ECHR) – are therefore welcomed by the Assembly, as is, by the same token, any further step that presents added value by contributing to ensuring respect for human rights in the EU's decision-making processes.

10. Against this background, the Assembly considers that the creation of a fundamental rights agency within the EU could make a helpful contribution, provided that a useful role and field of action is defined for it and that the agency therefore genuinely "fills a gap" and presents irrefutable added value and complementarity in terms of promoting respect for human rights. Defining such a role presupposes careful reflection within the EU about the aims, content, scope, limits, and instruments of its own internal human rights policy. Conversely, there is no point in reinventing the wheel by giving the agency a role which is already performed by existing human rights institutions and mechanisms in Europe. That would simply be a waste of taxpayers' money.

11. Avoiding duplication is not only a matter of upholding the pre-eminent role of the Council of Europe in the protection and promotion of human rights in Europe : it is first and foremost about the vital interest of hundreds of millions of individuals in Europe in the effective enjoyment and protection of human rights. A multiplication of European institutions in the field of human rights will not necessarily mean better protection of those rights. On the contrary, creating institutions with mandates which overlap with those of existing ones can easily result in the dilution and weakening of their individual authority, which in turn will mean weaker, not stronger, protection of human rights, to the detriment of the individual.

12. Finally, the existence of such parallel mechanisms (one for the twenty-five member states of the Union and one for the forty-six member states of the Council of Europe) would be a serious blow to the principle that there should be no dividing lines in Europe, especially in an area – human rights – where, more than anywhere else, Europe should be united by the same common standards and values. All this argues in favour of giving the EU agency a well-defined, focused and complementary role.

13. Bearing in mind, on the one hand, the significant development and substantive expansion of the legal order of the EU and, on the other, the broad arsenal of existing human-rights mechanisms of the Council of Europe and the need to avoid overlap with their roles and competences, the Assembly takes the view that the role of the agency should be that of an independent institution for the promotion and protection of human rights within the legal order of the EU, along the lines of similar national institutions that exist in several member states. The agency should collect and provide to the EU institutions information about fundamental rights that is relevant to their activities, and thus contribute to mainstreaming human rights standards in the EU decision-making processes.

14. The Assembly therefore recommends that the European Union and its member states :

reflect carefully, before setting up the agency, on the aims, content, scope, limits, and instruments of the EU's own internal human rights policy, taking into account the role played by the Council of Europe in the promotion and protection of human rights in Europe and considering the need for a stronger, more structured and better defined relationship between the two organisations, bearing in mind the forthcoming 3rd Summit of Heads of State and Government of the Council of Europe ;

give the future agency a well-defined mandate, which presents added value in terms of promoting respect for human rights within the legal order of the European Union and at the same time avoids any duplication with the competences of the human rights mechanisms and institutions of the Council of Europe, in particular by :

a. *determining that the scope of the agency should correspond to that of EC/EU law, its role being to promote compliance with fundamental rights in both Community law and policies, and their implementation by the EU member states, but not in areas outside EC/EU competence, where member states act autonomously – subject to supervision by the European human rights bodies set up by the Council of Europe ;*

b. *determining that the agency should, following the model of the current European Monitoring Centre on Racism and Xenophobia, work on a thematic, not a country-by-country basis, focusing on certain specified themes having a special connection with EC/EU policies ;*

c. *ensuring, in order to guarantee that the information given by the agency is consistent with existing European instruments in the field of human rights and with a view to the future accession of the EU to the ECHR, that both the EU Charter of Fundamental Rights and the ECHR are among the main reference instruments to be used by the agency, along with the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment and the Framework Convention for the Protection of National Minorities ;*

d. *bearing in mind that action by EU member states at the national level in areas within the scope of EU law is already covered by the human rights monitoring conducted by the Council of Europe bodies, the findings of which are addressed directly to those member states individually and, consequently, ensuring that the agency's thematic reports are addressed to the relevant institutions of the Union only (Commission, Council, Parliament) ;*

e. *deciding that the agency shall be independent and that its tasks will be to collect, record and analyse information about human rights issues and to provide such information to the EU institutions with a view to mainstreaming and promoting human rights in EU decision making ; this task will be especially useful in helping those institutions examine the compatibility of draft EU legislation with human rights standards ;*

ensure, building on the example of the provisions of the regulation setting up the European Monitoring Centre on Racism and Xenophobia, that the future regulation setting up the agency also provides that the activities of the agency do not duplicate those of the Council of Europe but, on the contrary, be conducted in close co-ordination and co-operation with the Council of Europe, in particular by :

a. *including provisions establishing the rule of non-duplication with the role, functions and activities of the institutions and mechanisms of the Council of Europe and setting out a duty of co-operation and co-ordination with the Council of Europe, in particular as regards the drawing up and implementation of the agency's programme of activities ;*

b. *making mandatory provision for the full participation of the Council of Europe in the management structures of the agency ;*

c. *ensuring that the Community enters into an agreement with the Council of Europe for the purpose of establishing close co-operation between the Organisation and the agency.*