

To:
EU Agency for Fundamental Rights
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From:
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Policy area and main activities: Human Rights in EU policies
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Subject: Comments on the FRA 2009 Annual Report

Dear Sir, Madam

Commenting on last year's annual report, Amnesty International (AI) noted that the report had failed to fully achieve what we believe should be the main objective of the EU Fundamental Rights Agency (the Agency): **analyse and shape into remedial action at EU level all the information** on the human rights situation in the EU. We find the 2009 report to be more in line with this objective and welcome such development.

By translating into the EU framework key European human rights issues and trends, the Agency will provide a useful tool to assist human rights NGOs in their advocacy work towards EU institutions. The main challenge however remains to ensure the **follow-up of FRA's recommendations at EU and national executive level.**

AI welcomes the **broadening of the thematic areas** covered by the Agency, to include in particular work on migrants' rights. Such broadening of the scope complements the more traditional work on discrimination and contributes to shaping a more comprehensive EU internal human rights policy across the spectrum of EU policies. In this context, AI welcomes that FRA has commented on the draft **Stockholm programme** on EU's future priorities for justice and home affairs.

With regards more immediate responses to human rights violations within the EU, we regret that there was no other **incident report** on the model of the one on the attacks against Roma in the *Ponticelli* district. This would be important notably in the context of continuing attacks against Roma in the EU.

AI agrees that the Agency should build on its expertise in the area of racism and discrimination and continue to develop further its research and policy-oriented surveys and reports. The report on homophobia is critical to inform the debate on the **new anti-discrimination directive** and we believe that more studies are crucial to further remind the EU of its competence and obligations to fight discrimination in Europe.

We note the efforts of the Agency in terms of communication around its reports and activities. We also welcome its clear stance in some of the EU legislative debate (see anti-discrimination directive above but also its support for amendments of the anti- trafficking legal framework).

We also welcome joint calls with the Council of Europe human rights Commissioner. We believe this sends a strong signal of the independence of the Agency and that human rights in the EU cannot be divided around the institutional lines of “Council of Europe v. EU”, but need a common approach building on each of the systems’ strengths and added-value.

We call for more interaction of the Agency with EU institutions, including debate with EU policy makers in the European Parliament, the Council and European Commission – to ensure **accountability of EU institutions**.

PART I – Key developments in 2008

1) Racism and discrimination in the EU

We welcome a more systematic approach compared to the last report, and highlights on significant data - including data obtained through specific research and not mere statistics. The information provided in this chapter is important considering the current EU debates on the asylum directives and Roma social inclusion, the ongoing reports of racist violence throughout the EU, and the emerging EU immigration policy, which so far fails to address the rights of migrants as an issue in itself. However, we believe that the report could be more analytical, focus less on raw statistical data, and analyse more in depth the links between the data and the EU legal and policy framework.

In particular, we believe that further analysis of the interaction between EU’s action in the area of judicial cooperation and in the area of anti-discrimination would be useful to address racist violence and discrimination by law enforcement authorities and within the criminal justice system. Further guidance on the implementation of the Framework Decision 2008/913/JHA would also be interesting. The reference made to relevant jurisprudence by the ECJ is very useful. As stated above, such guidance is key to assist civil society in its human rights advocacy work toward the EU institutions.

We welcome the information relating to racism and discrimination in areas of social life but note that it is fragmented and descriptive (examples/best practices). While it provides some useful data, we call for a more comprehensive analysis in a human rights and EU perspective. As stated in previous comments to the Agency, we believe that the former EU networks of independent experts’ reports represent a very valuable model in this regard. In particular, we found striking the lack of reference to the EU anti-discrimination legislation (current and proposed) and international human rights law when looking at discrimination in education for example (see *inter alia* issues of segregation and religious symbols).

- AI has engaged in advocacy work on forced evictions of Roma in Europe and continued research and analysis of the Agency on this topic is useful.
- Considering the consequences and potential impact on the rights of migrants and Roma in particular, the Italian security package would have deserved special attention. We call on the FRA to continue researching on how immigration/criminal policies can affect the economic, social and cultural rights of migrants. Further analysis on how to apprehend discrimination on the basis of immigration status and/or nationality would be also very interesting.

2) Fundamental rights developments in the EU

The chapter devoted to **developments at national level** regarding implementation of EC law provides useful information on the state of play. Moreover, the broadening of the scope of the Agency’s work provides quite a comprehensive picture of the increasing interplay between EU law and human rights.

However, more consistent critical assessments of trends, positive developments or gaps – as well as highlights of particularly significant developments - would be important to complement the data.

The chapter on **developments at an EU level** is also very relevant to assess the contribution of EU law and policies to protection of human rights in Europe. AI welcomes that this section aims to also monitor the relevant developments which took place at Council of Europe and wider international level. We have indeed consistently argued that EU human rights policy cannot be restricted to EC law *stricto sensu*, and must take full account and build on the obligations of member states under European and international law. This approach also highlights the contribution of EC law to the international debate, as noted in the case of the *Feryn* judgment. Like we already noted above, the reference to the landmark rulings of the ECJ are very useful. However, we would welcome more systematic insights on the linkages between the various developments (at EU, Council of Europe, and international levels) and how these can strengthen human rights protection in the EU. For instance, it would be interesting for the Agency to explore the added-value of the EU becoming a party to the Council of Europe Convention against Trafficking. In addition, we believe that some developments could be exploited further (for example the issues of *non refoulement*, diplomatic assurances, or “terrorist” lists), including also broader policy developments in the analysis.

Some analysis by the Agency on how future EU institutional reform could influence the EU human rights framework could be interesting to respond to queries and adapt already advocacy strategies.

PART II. Fundamental rights issues covered by Agency activities

AI has used as a valuable source the study on homophobia and the EU MIDIS survey on discrimination and victimisation. We also welcome the work on ethnic profiling, children rights and trafficking. These different activities provide useful quality information and analysis for advocacy work on the various subjects covered. It would be interesting to later evaluate *if/how/ with what impact* they were used by policy makers and enforcement authorities at national and EU level.

Opinions

The case of the newly adopted Lithuanian “Law on the Protection of Minors against the Detrimental Effects of Public Information” raises serious issues with regards the right not to be discriminated against on the ground of sexual orientation, the right to education and freedom of expression. We call on the Agency to follow-up the call from the European Parliament to “give an opinion on the law and the amendments in the light of the EU Treaties and EU law”. (P7_TA-PROV(2009)0019)