



## Statewatch

### Does the EU need a “Fundamental Rights Agency”?

***Tony Bunyan, Statewatch editor, looks at the proposal and wonders if it will be just another “figleaf” for inaction***

In June 1997 - during the "European Year on Racism" - the EU set up the European Monitoring Centre on Racism and Xenophobia (EUMC) [1]. But at the EU Summit (meeting of the prime ministers), just two days later on 13 December 2003, it was decided "in the margins" of the Summit meeting that the EUMC should "extend its mandate to make it a Human Rights Agency". "In the margins" means that this decision was taken outside of the formal proceedings (in the "corridors of power" as it were). There had been no public demand for such an agency - rather calls by civil society for the EU to act in accordance with standards on fundamental rights and international conventions, and that racism be tackled seriously.

From 1997 when the EUMC was set up it was placed under the Commission's Directorate-General for Employment, Social Affairs and Equal Opportunities. So if there was to be a "Fundamental Rights Agency" which Commission DG would it come under, which one would set the terms and parameters and then be responsible for running it? The answer did not take long, it is to be the DG for Justice and Home Affairs, or as it likes to call itself now the DG for "Justice, Freedom and Security" - when it would be better defined as the DG for "Law, Order and Security". DG JHA (as it then was) put out a consultation document in October 2004. Then in a little noticed decision by the full Commission on 2 March 2005:

*"the Commission decided to transfer responsibility for the European Monitoring Centre on Racism and Xenophobia from Employment, Social Affairs and Equal Opportunities DG to Justice, Freedom and Security DG, which would become the parent Directorate-General for the Centre. This decision would take effect immediately."*

In 1997 it was recognised that racism and xenophobia presented a real and tangible threat to people and their communities in the EU - now it is proposed that these issues be placed under “human rights” in general.[2] Racism is no less a problem now than it was then - indeed under the “war on terrorism” racism on the ground and institutionalised state racism have reached new, and more dangerous, levels.

## The consultation document

The Commission's consultation document (October 2004 - COM 693) proposes the setting up of a EU "Fundamental Rights Agency" to replace EUMC. It sets out the general context as Art 6.1. of the TEU, Charter of Fundamental Rights and the ECHR. As a "given" it says the "Agency" will monitor rights "by area" (issue) and "not prepare reports by country" as it would be "strictly" limited to areas of Community competence. The Commission's attitude to the Network of Independent Experts, set up in 2002, is ambiguous asking whether having both structures adds "value". Given the excellent work of this Network it is amazing that the Commission does not envisage a precise role for them. Moreover, as the Secretary-General of the Council of Europe, Terry Davis, said in an interview that: "I cannot understand what it [FRA] is going to do" and that there was a real danger of proliferation.

The Commission is uncertain whether the Agency should involve itself in the Community's remit regarding member states under Article 7 (TEU) where action is needed against a member state for a "serious breach" of fundamental rights - the Commission's own proposal for the enforcement of Article 7 says that because all EU governments adhere to the Union's "core values" (which seem to be shifting inexorably to the right in the name of the "war on terrorism") then it cannot ever imagine taking action against a member state.

On the Agency's "geographic scope" the Commission is adamant that it should not cover non-EU countries/issues:

*"The Commission considered itself to have complete sources of information and advice on the matter and did not consider it convenient to create an implementation agency for the development of projects with regard to third countries"*

But fundamental rights are surely indivisible, the principles (and monitoring of) should be the same whether inside and outside the EU. And surely there is a responsibility for the effect of EU's policies that are propagated and financed under the "Neighbourhood Policy" (the ring of countries that border the EU)?

The Commission says that the Agency's role should be "data collection and analysis and the drafting of opinions" and ensure that they are "objective and reliable".

Crucial of course is where power and control lies. The Agency must be "independent" but have a:

*"lightweight structure in terms of staff and budget"*

and as to management:

*"A measure of the importance attributed to the Agency would be if representatives appointed by the Commission, the European Parliament, the Member States and the Council of Europe were to participate in its management bodies"*

Which begs the question of how "independent" could it ever be?

### **The "Paris Principles" and national Commissions**

All EU member states are signed up to the European Convention of Human Rights and most have adopted national Human Rights Acts. However, it is remarkable how few have followed up by creating a national Human Rights Commission - according to an annex in the Commission document, out of 25 EU member states only five have been set up - in Denmark, France, Greece, Ireland and Northern Ireland (a Scottish Human Rights Commission and a UK Commission for Equality and Human Rights are being proposed).

The "Paris Principles" (UN General Assembly, December 1993) set out standards for national human rights bodies which should be based on "independence and pluralism" and that the composition should be comprised of NGOs and people from civil society, universities and other experts, and parliaments. They expressly state that government representatives (both national and EU in the context of this proposal) should "participate in the deliberations only in an advisory capacity" - not on the management bodies as the Commission proposes.

Another critical factor establishing "independence" under the "Paris Principles" is "in particular, adequate funding". Of the five existing Human Rights Commissions in the EU most do not receive "adequate funding" and the Commission's notion of a "lightweight structure in terms of staff and budget" is utterly contrary to establishing an "independent" body.

If human rights are to be taken seriously in the EU what is required is not an "Agency" but a package of measures and a change of direction in the political culture.

Specifically the package might include:

- 1] A Directive on the creation of national Human Rights Commissions in every member state abiding by the "Paris Principles";
- 2] powerful national "Ombudsman's";
- 3] meaningful non-judicial complaints authorities covering abuses by state agencies (like the police, immigration and security services);
- 4] data protection supervisory bodies with the power to order institutions to enforce changes in practices and initiate new legislation and,

5] obligatory parliamentary post-legislative scrutiny of implementation (the practice).

This package, of course, leaves aside the problem of making EU institutions accountable for their human rights record. The need to do this is clear but the record of the Council and Commission in creating external supervisory bodies which have real “teeth” and power to hold them to account is very poor. This is perhaps an issue where the European Parliament could take the lead in putting forward a proposal.

What makes a culture of human rights work is the depth of the “democratic culture”. Thus the best protection for human rights is a healthy, diverse, argumentative and pluralistic civil society - for this is the best way to guard against the misuse and abuse of state power and the best guarantee of the restoration and maintenance of human rights.

Instead we are heading for monoculturalism in place of multiculturalism, security being put before rights and liberties at every turn, and the marginalisation of civil society on the ground who are poorly funded outside of Brussels - this is especially so as they try to monitor and resist the swathe of attacks on fundamental rights and the rule of law in the name of the “war on terrorism”.

### **Human rights depend on two factors**

If the EU seriously wanted to enforce “human rights” it would not be actively “aiding and abetting” the USA in the “war on terrorism” through the creation of an EU-US “axis” on policing, judicial cooperation, border controls and wholesale surveillance measures. It would not be pursuing policies on immigration and asylum which seek to exclude and deport (by force if necessary) refugees and asylum-seekers - and justifying the measures with racist rhetoric. It would not be placing the people of the EU under surveillance (through biometric documents, data retention of telecommunications, and monitoring travel). And it would not be giving in to just about every demand from the law enforcement and security service agencies.

In the end peoples’ rights and the accountability of the state, its agencies and officials depend on laws and how they are put into practice at national and EU levels and whether these practices are consistent with human rights - not on a Commission funded agency.

If the EU really cared about fundamental rights it would change the direction of its policies and practices. It seems a cynical move to create a new agency to deal with the symptoms when many of the causes are rooted in the policies that have emerged on justice and home affairs which place security and the “war on terrorism” above the rights, liberties and privacy of the individual at every opportunity.

Note [1]: EUMC, not to be confused with “EUMC” - the European Union Military Committee.

Note [2]: In 197 the Council's Working Party on Terrorism was charged with compiling reports on the scale of racist attacks at national level. No reports were ever published - and those that were "obtained" were pathetic.

*Reference: Commission Communication on The Fundamental Rights Agency: Public consultation document*