

European Union Agency for Fundamental Rights (FRA)
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FRA Annual Report 2009

Today, the European Union Agency for Fundamental Rights (FRA) releases its Annual Report 2009. The report covers information, events and developments on fundamental rights in the EU in 2008. It supplies material under the heading of 'racism, xenophobia and related intolerance', and adds to this an overview of developments in a range of other fundamental rights areas, consistent with the Agency's mandate. In addition, it contains a summary of FRA activities on fundamental rights in 2008.

KEY RESULTS

Member States must close gaps in legal protection and ensure that Equality Bodies can fulfil their mandates

Under the Racial Equality Directive of 2000, Member States are required to establish National Equality Bodies for the promotion of equal treatment.

The Annual Report notes that by 2008, 21 Member States had still not fully transposed the Racial Equality Directive into domestic law to the satisfaction of the European Commission, despite being legally obliged to do so.

The number of formal complaints recorded by Equality Bodies varies greatly between the Member States, which is clearly not simply a reflection of the differences in size of population. For example, in 3 Member States less than 10 complaints on discrimination on the grounds of ethnicity were registered in 2007 (Estonia, Malta and Slovenia), whereas in 4 Member States significantly higher numbers were registered: (Belgium (1691), France (1690), Sweden (905), and the UK (over 3,500 – this covers more than one year, 2006 -2007).

The FRA's recently published EU-MIDIS survey¹ also found evidence to suggest that awareness of the existence of an equality body or similar organisation is low in the

¹ <http://fra.europa.eu/eu-midis>

majority of the Member States, which could, in part, account for the low level of formal complaints filed. According to this major representative survey, at least 6 out of 10 respondents in each country were unable to name a single national organisation offering support or advice to people who have been discriminated against on any grounds.

The FRA calls on EU Member States to:

- urgently ensure the full transposition of the EU Racial Equality and Employment Equality Directives;
- ensure that national Equality Bodies can carry out their mandates and combat discrimination effectively;
- fulfil their obligation under Article 10 of the Racial Equality Directive to ensure that national provisions adopted under the Directive are 'brought to the attention of the persons concerned by all appropriate means throughout their territory', through awareness-raising activities;
- adopt the European Commission's proposal to extend the protection against discrimination for all different grounds ('horizontal anti-discrimination directive').

Poor data collection prevents effective policies

Data collection on hate crime is poor in most Member States, ranging from racist and related hate crime to other hate crimes, such as homophobic crimes. Insufficient or non-existent data collection leads to a situation where the true extent and nature of fundamental rights violations cannot be determined. However, understanding the nature and extent of fundamental rights violations is a precondition for developing effective, targeted policies at Member State level.

The Annual Report examines two areas of hate crime more closely, namely racist and homophobic crime.

Racist crime

Twelve EU Member States are recognised by the Agency as collecting sufficiently robust criminal justice data on racist violence and crime to allow for a trend analysis of the problem. This is a slight improvement on previous years, when only 11 Member States were recognised as such.

The Annual Report shows that for 2007, in 15 of the EU-27, there is either a total absence of any publicly available official criminal justice data on racist crime or limited reporting on a few court cases. Nine Member States are categorised as having 'good' data collection mechanisms for recording racist crimes, and data collection mechanisms on racist crime can be considered 'comprehensive' in only 3 Member States.

<p>TIER 1 Comprehensive</p> <p>Extensive data collection, with detail about victim and offender characteristics, place of victimisation etc.</p>	<p>TIER 2 Good</p> <p>A system exists to register incidents/crimes, and/or system focuses on <i>right-wing extremism*</i></p>	<p>TIER 3 Limited</p> <p>Limited reporting on investigations and court cases, with detailed information available often only on request, or focus on <i>general discrimination*</i></p>	<p>TIER 4 No official data available</p> <p>No official data collected or made readily available in the public domain</p>
<p>Finland Sweden UK</p>	<p>Austria* Belgium Czech Republic Denmark France Germany* Ireland Poland Slovakia</p>	<p>Bulgaria Cyprus Estonia Hungary Latvia Lithuania Luxembourg* Netherlands Slovenia</p>	<p>Greece Italy Malta Portugal Romania Spain</p>

During the 2000-2007 period, 11 of the 12 Member States that collected sufficient criminal justice data on racist crime experienced a general upward trend in racist crime recorded. However, when looking only at the most recent data - 2006-2007 - just 5 (Ireland, Austria, Poland, Sweden and the United Kingdom) of the Member States experienced an upward trend in recorded racist crime, while 7 (Belgium, Czech Republic, Denmark, Germany, France, Slovakia and Finland) of the 12 experienced a downward trend.

When looking at official criminal justice data on racist crime, direct comparisons between Member States should not be made, because information is reported and recorded differently in each country. However, examining fluctuations in recorded crime within a Member State can serve to highlight trends in both manifestations of racist crime and changes in recording practices.

Homophobic crime

Official statistical data on police reports and court procedures regarding homophobic hate crime and hate speech are scarce. Only 4 Member States have any kind of reporting on homophobic hate crime. Regarding court cases on hate speech, only Lithuania has official data (in 2007 a total of 15 criminal court cases were initiated, of which one resulted in a conviction). Regarding prosecutions on hate crime, only the United Kingdom has official data. In 2007 a total of 988 criminal court cases were initiated, of which 759 resulted in convictions. Official data on incidents of hate speech and hate crime reported to the police are produced in Sweden, where 723 police reports in 2007 were related to homophobic incidents. In the period 1 January to 30 June 2008, 150 homophobic incidents (violence, abuse or harassment) were reported by the police in the Netherlands.

The lack of official statistics in other Member States results partly from the fact that hate speech and hate crime offences are either not considered a crime or an aggravating factor, or the complaints collected do not identify the motive (it is therefore impossible to distinguish between, for example, racist and homophobic motives in the statistics).

Some countries have developed excellent tools for hate crime reporting, e.g. self-reporting forms and 'third party reporting' internet sites, giving the public the ability to report at locations other than police stations, through a partnership of relevant specialist agencies, which can be done without revealing the victim's personal details.

The FRA calls on all EU Member States to:

- start collecting data on racist crime as well as other hate crime incidents (such as homophobic crime), in particular those Member States where no official data is being collected;
- Those who are already collecting data on racist crime and other hate crime incidents are encouraged to improve their standards of data collection, widening the scope of their data;
- encourage alternative reporting mechanisms, such as self-reporting forms and 'third party reporting'.

Other fundamental rights developments in the EU - overview

European Commission proposal for new horizontal anti-discrimination directive

At the EU level, one of the more significant developments in 2008 was the publication of the European Commission's Proposal for a Council Directive to extend the protection against discrimination (on grounds of religion, belief, disability, age, and sexual orientation) currently covered by the Employment Framework Directive, to areas such as social security, healthcare, education and access to and supply of goods and services. This would ensure that protection matched the level of the Racial Equality Directive².

Improved compensation for victims of violent crime

There were fundamental rights related developments on some issues at both national and European level. For example, in a number of Member States, measures were improved for compensating victims of violent crime, and at EU level the introduction of the Directive on Compensation of Crime Victims facilitates access to compensation for victims of violent crimes in cross-border situations.

Protection of children

² COMM(2008)0426

Some Member States have improved national initiatives to prevent children from sexual exploitation and sex offences, and at the European level the Council of Europe Convention on the Protection of Children against Sexual Exploitation and Sexual Abuse is awaiting ratification³.

Use and abuse of video surveillance and personal data

In many Member States there were developments in 2008 regarding the use and abuse of video surveillance and personal data, with some initiatives by national authorities criticised by ombudsmen and human rights bodies. At European level, the European Court of Human Rights delivered two unfavourable judgements against one Member State for failure to provide sufficient independent review or guarantees regarding the implementation of surveillance⁴.

Fundamental rights issues covered by FRA research activities⁵

Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States

- *Homophobia and Discrimination on Grounds of Sexual Orientation in the EU Member States Part I – Legal Analysis* (June 2008). The report examines the legal situation in the EU Member States, identifying national differences in the level of protection against discrimination for LGBT people.
- *Homophobia and Discrimination on Grounds of Sexual Orientation and Gender Identity in the EU Member States: Part II - The Social Situation* (March 2009). This report draws together data sourced from 27 sociological national reports, field trips encompassing meetings with LGBT NGOs, National Equality Bodies and Public Authorities in all 27 EU Member States, and incorporates the results of an electronic questionnaire sent out to stakeholders.

Ethnic Discrimination and Victimization

- *EU-MIDIS survey*
EU-MIDIS is the first EU-wide survey to interview selected immigrant and ethnic minority groups, using the same translated questionnaire in all Member States. This means that the results are comparable between different minority groups and across the individual Member States.
- *Racism and social marginalisation*
This project explores the experiences of and attitudes towards racism, discrimination and social marginalisation amongst young people aged 12 to 18

³ This was underpinned by two recent policy proposals, which the European Commission adopted on 25 March 2009 for new rules to step up the fight against trafficking in human beings and child sexual abuse, sexual exploitation and child pornography. The new proposals will provide better assistance for victims and tougher action against criminals responsible for child sexual abuse and trafficking.

⁴ The FRA was asked by the EU Presidency to deliver an opinion concerning the proposed Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes.

⁵ The Annual Report covers FRA projects that started in 2008 or were continued from previous years. Some of the activities undertaken were not part of the FRA's 2008 Work Programme but are a result of specific requests for data, research or opinions from the European Institutions

from Muslim and non-Muslim backgrounds in 3 EU Member States. It also examines the links between the attitudes and experiences of Muslim and non-Muslim youth along with their attitudes towards and activities in support of anti-social behaviour, violence and crime.

- *Addressing Discriminatory Ethnic Profiling: An EU Good Practices Handbook*
In line with the Agency's mandate to identify 'good practices' in the field of non-discrimination and fundamental rights, the research has developed a Handbook documenting existing good practices in the EU that recognise and respond to the problem of discriminatory ethnic profiling and its negative consequences for individuals, communities and law enforcement agencies that work with populations that are subject to profiling.

Rights of the Child

- *Developing indicators for the protection, respect and promotion of the rights of the child in the European Union (Summary report) (March 2009)*
In 2007 the European Commission asked the FRA to develop indicators measuring how child rights are implemented, protected, respected and promoted throughout the EU. As the FRA is neither a standard setting nor a treaty monitoring body, these indicators are not intended to monitor compliance with international standards and conventions, but to guide the FRA's own data collection and research, allowing it to develop evidence based opinions supporting the Community's institutions and its Member States when they take measures or formulate actions.
- *Child Trafficking*
Building on the generic study carried out by the FRA in 2008 to develop indicators for children's rights, the Agency launched this study to examine comparatively the relevant legal instruments at EU and national level, as well as relevant judicial data and case law, with the aim of developing a robust body of evidence regarding the situation across the European Union. This report will be published on 7 July 2009.

Pilot Media Project

- The aim of the *FRA Pilot Media Project* was to study the prevalence and portrayal of minority groups and issues, such as racism, discrimination, diversity, integration and migration, in the press.

Incident Reports and Opinions

- *Violent attacks against Roma in the Ponticelli District of Naples, Italy: Incident report (August 2008)*
Following the violent anti-Roma disturbances which occurred in the Ponticelli district of Naples in May-June 2008, the FRA produced this "incident report" in August 2008 and made it available to the European Parliament.
- *PNR Opinion*
An Opinion was requested from of the FRA by the Presidency of the European Union in September 2008 regarding the proposed Council Framework Decision on the use of Passenger Name Record (PNR) data for law enforcement purposes, COM (2007) 654.

Other recent FRA reports:

- Community Cohesion at local level: Addressing the needs of Muslim Communities (March 2008)
- Annual Report 2008 (June 2008)
- Consultation on FRA work on Roma and Travellers - Final consultation report (February 2009)
- Anti-Semitism Summary overview of the situation in the European Union 2001-2008 (updated version: February 2009)

The FRA Annual Report 2009 is available from: <http://fra.europa.eu>

For further questions please contact the FRA Media Team:

E-mail: media@fra.europa.eu

Tel.: +43 1 58030-642