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**THE EU ENLARGEMENT FROM THE HUMAN RIGHTS
PERSPECTIVE. EU EFFICIENCY OF THE PROTECTION
OF FUNDAMENTAL RIGHTS:
THE ROLE THE EU FUNDAMENTAL RIGHTS AGENCY**

The first aim of the European Community legal order was not the protection of an individual's fundamental rights, but rather the construction of an internal market in order to create a common European future. Fundamental rights were only gradually recognized and only to limit the discretion of supranational institutions. However, after the Maastricht and Amsterdam Treaties added TEU articles 6 and 7¹, the concern for fundamental rights contributed to the determination of the Union's objectives and activities, and induced the development of a more constructive policy in that area. In 1993, the European Council set out the well-known Copenhagen criteria, which then the Central European applicant nations had to fulfil before they could join the EU in 2004 and 2007.² The first Copenhagen criterion required the

¹ The Treaty on European Union (TEU) confirmed in Article 6(1) the norm that the Union 'respects the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law'. A significant change to this norm came with the Treaty of Amsterdam in 1997, which amended Article 6(1) so that it read: 'the Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law'. Treaty on European Union OJEC C325/7 (TEU or 'Maastricht Treaty'), amended by the Lisbon Treaty to: 'The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union' (Article 6(1)). Note the commitment to upholding human rights standards made also in Article 6(2), which states that the Union shall accede to the ECHR.

² It is important to point out that the EU of the 21st century is clearly a very different beast (formation, creation) that of the 20th century. The euro is official currency in 15 countries and, thanks

applicants to be representative democracies with a respect for fundamental rights.³ This political policy requirement set by the European Council and enforced by the Commission during the pre-accession period indicated that the monitoring and enforcement of human rights was of a great importance.

It is significant to recognize, that like any important EU development, enlargement had its vociferous detractors as well as its ardent supporters. On 1 May 2004, with the accession of ten former communist states to the EU, many felt that geographical Europe had been finally reunited with political Europe after decades of separation by the iron curtain. Others, however, feared that a wave of cheap labour and people seeking benefits from the poorer accession countries would flood the 15 established member states. In the rapidly expanding area of cooperation on justice and home affairs, there were muttered fears about the security of Europe's expanded borders and the standards of justice and human rights protection in 'new' member states as well as scaremongering about waves of organised crime from Eastern Europe. Following the second enlargement on 1 January 2007, and 10 years after, the jury is still out on the EU itself. The possibility of further enlargement of the EU raises a number of questions.

At present, ten years after the enlargement, seems to be a fitting point to take a look at the EU's achievements through the prism of human rights. This paper highlights some of the key questions facing the EU regarding fundamental rights in the 21st century. It is important to point out, that normative notions, especially human rights and social considerations have come to the fore during the last decade. The broader political mandate of the EU, the EU Charter and the human rights references elevated by the Treaty of Lisbon, the remit of the FRA, and evolving case-law of the ECJ all indicate that human rights have received general application throughout the present decade. The pros and cons of membership of the EU, economic, social and political, are varied and complex, therefore, this paper will focus on a single aspect – what impact the EU enlargement had on human rights through its special agencies. For this purpose we will take a close look at the EU Fundamental Right Agency. This essay will address the main question: what role has the European Union Fundamental Rights Agency been playing as an advisory body, issuing opinions on various aspects of fundamental rights within the Union on EU's and member states' requests ?

The original proposal for an EU Fundamental Rights Agency (FRA) was met with scepticism, in particular from the Council of Europe. Discussions around

to the extended Schengen Agreement, people can travel freely through 24 nations without border controls. Enlargement of the EU has almost doubled its membership from 15 to 28 in the past ten years.

³ The monitoring activities of the agency have been based on the respect of the Copenhagen criteria and precisely on the political criteria *and the criteria on the implementation of the *acquis communautaire** as well: existence of stable institutions guaranteeing democracy, rule of law, human rights, respect for and protection of the rights of minorities (political criteria); The capabilities of the candidate country to take on the obligations and to comply with the objectives of the EU (criteria related to the implementation of the "*acquis communautaire*").

what the scope and tasks of the FRA should be were characterised again by, on the one hand, the fear that the EU was dabbling in fields in which it had no business and duplicating the work of the Council of Europe and, on the other hand, the sense that the EU was not taking seriously enough its responsibilities with regard to fundamental rights within its borders. The result, launch in March 2007,⁴ has been an agency described by Amnesty International as: "based on a fragmented and minimalist conception of 'fundamental rights' that bars it from addressing the most pressing human rights challenges in the EU today".⁵

In the 1990s, the growing power of xenophobic parties in several member states⁶ as well as continuing structural problems in the treatment of minorities such as the Roma people in Central Europe⁷ drove the process for establishing a European Monitoring Centre for Racism and Xenophobia, which was created by EC Regulation 1035/97 of June 2, 1997.⁸ After the adoption of the Charter of

Fundamental Rights, the European Council, in December 2003, stressed in its conclusions the importance of human rights data collection and analysis with a view to defining Union policy in the field of human rights. The view that there is a need for active political and administrative promotion of fundamental rights, eventually led, after the adoption of the Charter of Fundamental Rights, to the creation of the Fundamental Rights Agency. On December 13, 2003 representatives of the member states announced their intention to establish a Human Rights Agency.⁹ From the beginning it was only natural to think of a future EU human rights body as being based on the already existing European Monitoring Centre on Racism and Xenophobia (EUMC) situated in Vienna.¹⁰ The European Council decided to broaden the mandate of EUMC to become a human rights agency. Public consultation launched by the European Commission on the basis of several issues and positions

⁴ Council Regulation (EC) No. 168/2007 of 15 February 2007 establishing a European Agency for Fundamental Rights, OJ L53?1, 22 February 2007.

⁵ 'Towards a comprehensive European human rights system', the speech that Amnesty International would have made at the inauguration of the EU Fundamental Rights Agency, Amnesty International EU Office, 1 March 2007.

⁶ Far-right xenophobic parties have achieved significant minorities in national and regional parliaments in Austria, Belgium, France, Germany, and the Netherlands since the mid-1990s.

⁷ See I. Pogány, *Minority Rights and the Roma of Central and Eastern Europe*, 6 HUM. RTS. L. REV. 1, 3 (2006) ("Nor have minority rights instruments reversed the escalation in anti-Roma sentiment and violence that has been a feature of the CEE region since the ousting of Communist administrations").

⁸ Council Regulation No. 1035/97, 1997 O.J. L 151. The Centre's prime task was to provide "objective, reliable and comparable data" on the phenomena of racism, xenophobia, and anti-Semitism at the European level. The Centre was mandated to examine the causes, consequences, and effects of these manifestations, and identify examples of successful counterstrategies.

⁹ See M. Heim, *Towards a European Area of Freedom, Security and Justice? The Conceptual Limits of the FRA* (2005).

¹⁰ See Regulation 1035/97 establishing a European Monitoring Centre on Racism and Xenophobia [1997] OJ L151/1.

highlighted in its Communication from 25th October 2004¹¹, by clarifying the definition of the Agency's field of action, its remit and its tasks as well as the minimum organisational conditions necessary for the accomplishment of these tasks.

The EU Agency for Fundamental Rights was established by Council Regulation 168/2007 of February 15, 2007 and commenced its work on March 1, 2007. The FRA is an independent body that cooperates with other national and international bodies and organisations, in particular with the Council of Europe.¹² Racism, xenophobia and related intolerance, resounding the earlier EUMC, are principal areas of activity, but also general discrimination¹³ (in terms of the EU Charter) falls within the Agency mandate.

FRA has developed a very dynamic cooperation with the EU institutions and a number of other EU agencies¹⁴. The data that FRA collects and analysis provides evidence that can aid agencies when they formulate operational responses by, for example highlighting the victim's view point. FRA also provides fundamental rights analysis and proposals for the integration or mainstreaming of a fundamental-rights dimension into a number of agencies' activities.¹⁵ While it develops its

¹¹ COM 2004 (693).

¹² FRA maintains close links with relevant institutions and organisations at all levels: the European Parliament, the Council of the European Union, the European Commission and EU agencies; national government authorities, particularly through its network of National Liaison Officers, who act as main contact points for FRA in Member States, and through thematic working groups on Roma and hate crime bringing together Member States' representatives to develop good practices for implementation nationally; international organisations, such as the Council of Europe, the United Nations and the Organization for Security and Cooperation in Europe (OSCE); civil society organisations, academic institutions, equality bodies and national human rights institutions.

¹³ Discrimination has unfortunately always been present, and still remains a problem. FRA has published several reports which show a bleak picture for many groups in the EU. For example, the report on homophobia proved that discrimination, harassment and even violence against LGBT (Lesbian, Gay, Bisexual and Transgender) persons are widespread throughout the EU. And its major Minorities and Discrimination Survey which interviewed 25,000 ethnic minority persons throughout the 27 Member States found that 37% of migrants and minorities surveyed say that they have personally experienced discrimination in the past 12 months, and 4% have personally experienced a racist violent crime. The highest levels of discrimination were reported by the Roma, followed by Africans. But, to make matters worse, over 80% do not report these incidents to a competent body or authority. This means that the dark figure is extremely high; it means that perpetrators go unpunished, that victims do not obtain justice, and that policy-makers are hampered in taking appropriate action. See European Agency for Fundamental Rights and European Court of Human Rights, *Handbook on European Anti-discrimination Law*, Strasbourg-Vienna 2010.

¹⁴ FRA cooperates with a number of the EU agencies on specific human rights topics, especially in the fields of Justice and Home Affairs, by approaching their work through the lens of non-discrimination; that is from a fundamental rights perspective. Agency works closely with the following agencies: European Agency for Management of Operational Cooperation at the External Borders (Frontex), European Institute for Gender Equality (EIGE), European Asylum Support Office (EASO), European Police Office, (EUROPOL), The European Union's Judicial Cooperation Unit (EUROJUST), European Centre for Disease Prevention and Control (ECDC), European Police College (CEPOL).

¹⁵ FRA has established cooperation with Frontex, EIGE, EASA and the European Foundation for the Improvement of Living and Working Conditions (Eurofound). The aim of cooperation

activity independently, FRA is in regular dialogue with the European Parliament, Council and Commission. FRA is mandated to provide the European Parliament with assistance and expertise relating to fundamental rights, either on its own initiative or at the request of the parliament itself¹⁶. The European Commission plays a key role in the agency's work and participates in its governing bodies¹⁷. Lately of particular importance has been FRA cooperation with the Commission's activities in implementing Action Plan on Unaccompanied Minors (2010–2014). FRA has also participated in the Commission's internal consultations and meetings of an EU expert group on unaccompanied minors, which involves all the key players engaged in the implementation of the action plan. Through its extensive research across the EU member states, the agency provides the EU bodies with fundamental rights expertise, analysis and advice. Other tasks of the Agency provide European institutions and member states with assistance and expertise, collecting and disseminating reliable and comparable information and data, and producing an annual report on fundamental rights. The Agency monitors civil and political rights as well as economic, social and cultural rights and environmental rights, without establishing any hierarchy *a priori* in its action.

The Agency constitutes a point of reference for civil society, promoting dialogue at European level and contributes to raising awareness of fundamental rights within the general public. FRA engages in structured dialogue with civil society through the Fundamental Rights Platform (FRP).¹⁸ In terms of the non-governmental organisation (NGO), the behaviour of these organisations is also closely observed. The FRA is required to cooperate with NGOs and 'other' bodies (for example, universities, trade unions) which together form FRP.

FRP is the agency's channel for cooperation and information exchange with almost 400 civil society organisations, working on numerous fundamental rights issues across the EU. The platform brings together a diverse group of actors on the European, national and local levels. It is a unique forum, meeting once a year, that allows for a truly European debate on fundamental rights.

agreement is to formalise close collaboration between the agencies and to ensure the work in areas of mutual interest is carefully coordinated and managed in order to avoid duplication.

¹⁶ The agency consults and cooperates with the EP primarily through its committees, in particular the Committee on Civil Liberties, Justice and Home Affairs (LIBE). FRA participates in committee meetings, hearings and public seminars, where it provides fundamental rights expertise to assist ongoing policy and legislative debates. It responds to queries by members and staff at the EP, and also presents the findings of its research to relevant intergroups, such as the Intergroup on LGBT rights, Disability or Anti-Racism and Diversity.

¹⁷ Commission representatives sit in FRA's Management Board. The Board is responsible for adopting the agency's work programme, approving its budget and monitoring its work. Through its participation in the Management Board's discussions and its right to deliver an opinion on each draft annual work programme, the Commission can help inform the Board about current EU legislative and policy processes, thus ensuring the agency's work focuses on issues of priority.

¹⁸ Pursuant to Council Regulation 168/2007/EC, Art. 10.

Interestingly, the FRA lists ‘participation criteria’ for participation in the Platform. These are a set of ‘basic criteria... for ensuring a structured and efficient work’. The FRA invites NGOs and other institutions of civil society active in the field of fundamental rights at the national, European and international levels to become participants in the Fundamental Rights Platform. The criteria include, for instance, that organizations are committed to work and have a proven record of work for the advancement of fundamental rights; organizations show a specific and proven expertise and engagement in matters within the remit of FRA; and organizations are representative in the field of their competence on national, regional, European or international level. These criteria represent observational techniques which condition the NGO into always being a ‘suitable participant’ in the FRA’s processes.

As underlined above, the Fundamental Rights Agency has been established as a European Union body in charge of monitoring the correct implementation of fundamental rights throughout the Union. The mandate of the FRA is limited strictly to European Community Law.¹⁹ What this means, in concrete terms, is that many of the EU’s activities will be excluded, in particular those with the greatest potential to impact on human rights and those with the most limited judicial oversight through the European Court of Justice. So, for example, the FRA is not able to deal with: counter-terrorism; the EAW; police cooperation, including the exchange of personal data in the context of criminal investigations; exchange of evidence in criminal proceedings under the European Evidence Warrant (EEW) – all areas where developments in the EU have potentially serious consequences for the fundamental rights of those concerned. Neither, FRA is able to address issues related to the EU’s external activities, whether involving police or the military, nor with the external dimension of asylum and immigration questions, such as interception on the high seas or cooperation agreement with third countries – issues of increasing concern to human rights groups. This limitation, to act ‘only within the scope of the application of Community law’²⁰, a significant but arguably necessary limitation which forms a niche for the Agency distinct from the comprehensive machinery of the Council of Europe, although the outline of competencies is not entirely clear.²¹ In brief, Agency provides assistance and expertise to the EU and its member states, when they are implementing Community Law, on fundamental rights matters.

It must be pointed out that the narrow mandate of the FRA has been truly an opportunity lost for the advancement of human rights in the EU. It was no doubt facilitated by the defensive posture of the Council of Europe, articulated by Jean-Claude Juncker, that:

¹⁹ To the founding treaties (primary legislation) and the provisions of instruments enacted by the Community Institutions by virtue of them (secondary legislation such as regulations, directives etc.).

²⁰ Council Regulation 168/2007, Article 2.

²¹ See: *ibidem*, Article 3, and the comments by G. Toggenburg, *The role of the new EU Fundamental Rights Agency: debating the “sex of angels” or improving Europe’s human rights performance?*, “European Law Review” 2008, Vol. 33, p. 385–398.

the future Agency must be strictly complementary to the Council of Europe's human rights observation and monitoring instrument. It is essential that its mandate be limited to human rights issues which arise in connection with the implementation of Community law, i.e. strictly within the EU's internal legal system. It may never be extended to general observation, using its own procedures and resources, of the human rights situation in Council of Europe member states.²²

One may conclude here, that for those who do not want to see 'more Europe', this was clearly a perfect opportunity to restrict the possible expansion of EU activity in fundamental rights. Nevertheless, a multi-annual framework shaping the agenda of the FRA²³ indicates an impressive range of thematic areas. These spheres include: child protection, asylum and immigration, and access to justice and information rights, areas of self-evidently beyond the original remit of the Communities.

The fears expressed in relation to duplication and the lack of coherence in the European human rights framework, were short-sighted and unimaginative. It is obvious that there has been no need for the EU to duplicate the work of the numerous Council of Europe human rights bodies in relation to standard-setting and monitoring of the human rights situation in Europe. The care has been taken to avoid overlap with other spheres of regional activity, hence documentary resources and activities of the OSCE and Council of Europe are examined.²⁴ Nevertheless, it is also clear that the EU could take the work of those bodies and build upon it in a way that reflects the particular nature of the EU, as opposed to the Council of Europe, and that the FRA was thought of as the ideal body to translate the work of the Council of Europe, into advice and proposals that are relevant for the EU institutions and member states alike. The creation of the Agency was an important landmark in the expansion of the EU activities in human rights protection field after the EU enlargement. There is no doubt that an organisation such as the EU Fundamental Rights Agency is unique in the world. Of course, there are National Human Rights Institutions²⁵ in a growing number of countries. In fact, their number has increased from 5 in 1990 to over 100 today, a tremendous development for human rights.²⁶

²² Council of Europe – European Union: 'A Sole Ambition for the European Continent', Report by Jean-Claude Juncker, Prime Minister of the Grand Duchy of Luxembourg to the attention of the Heads of states or Governments of the member states of the Council of Europe, 11 April 2006.

²³ Council Decision of 28 February implementing Regulation (EC) No 168/2007 as regards the adoption of a Multi-annual Framework for the European union Agency for Fundamental Rights for 2007–2012, OJ L63/14, 7 March 2008.

²⁴ Regulation 168/207, Article 6 (2).

²⁵ National Human Rights Institutions (NHRIs) are independent institutions established by law and in compliance with the United Nations endorsed 'Paris Principles. NHRIs are mandated to protect and promote human rights at the national level in accordance with international human rights norms and standards. FRA cooperates with NHRIs with the Chair of the European Group of NHRIs (currently the Scottish Human Rights Commission) and through direct bilateral cooperation. Annual meetings also take place between FRA and the NHRIs.' See; FRA report Handbook on the establishment and accreditation of National Human Rights Institutions in the European Union (October 2013).

²⁶ A general typology of National Human Rights Institutes (NHRI) distinguishes between an advisory committee model (to be found, e.g. in France, Greece or Luxembourg), an institute model

However, that a supranational organisation such as the EU has created such a body is an absolute novelty, and shows how serious the EU is about protecting human rights, not only in a foreign policy context but also ‘at home’.

And with this, I come to the second part of my presentation, namely to the tasks of the Agency. In 2007, in the middle of the debate over the draft EU Constitutional Treaty and while the Charter on Fundamental Rights was still a legally unenforceable anomaly, a new body was founded. The FRA was charged with tasks related to the protection and promotion of fundamental rights of the Union. However, its powers are not equal with those of other international human rights bodies.²⁷ According to the founding regulations, the objective of the Agency is

to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights in order to support them when they take measures to formulate courses of action within their respective spheres of competence to fully respect fundamental rights.²⁸

One can state that the Agency sees its overall objective as making human rights accessible for everyone in the EU. Therefore, its main task is to give sound advice to policy makers, on how to improve fundamental rights protection. For this, two main things are needed:

1. Firstly, an in-depth knowledge of the nature and extent of fundamental rights problems and violations, because without thorough knowledge it is difficult to develop targeted and effective policies.
2. Secondly, there is a necessity of a broad network across all Member States, which can provide information on problems as well as on „good practices“, and which will also support agency in disseminating these findings. In order to obtain in-depth knowledge of the problems, studies and surveys have been carried out. The Agency has been publishing extensive reports on “anti-Semitism, homophobia, the Rights of the Child, and Discrimination against migrants and minorities in the EU”. The major surveys are either conducted by the Agency itself, or Agency provides the basic layout and then its partners in the EU member states provide it with information on each country, which FRA then use as the basis for the reports.

Furthermore FRA has been considered as a network-based institution. With the aim of creating, so to say, a ‘fundamental rights web’ across the EU, it has a number of contact points and partners in every member state: Its management board is composed of one independent person per country, who is always linked to national human rights institutions or similar statutory bodies. For the first time, there is a formal link between FRA’s regional human rights body and the national protection systems. Agency has so-called „liaison officers” in the responsible

(Denmark and Germany), an Ombudsman model (Poland, Portugal, Spain and Sweden) and a Commission model (Ireland).

²⁷ Established by Council Regulation (EC) 168/2007, OJ L53/1 (22 February 2007).

²⁸ Council Regulation 168/2007, Article 2.

ministries in each member state. The Scientific Committee offers close ties to the European academic community.

And last but not least, many civil society organisations – the NGOs – co-operate with FRA. Here, the goal is to raise public awareness of fundamental rights issues and to promote dialogue with civil society, who is indeed a very important actor in the human rights field.

In examining the FRA as an important EU player in the field of human rights we need to address the most important areas of its activity. The FRA has been used to analyse the reports of the European Committee for Prevention of Torture and the European Commissioner for Human Rights, along with the European Court of Human Rights case-law in relation to EU member states, in order to identify issues which might undermine the smooth functioning of judicial cooperation in criminal matters²⁹ If prisons in some EU member states are found by the Council of Europe bodies to systematically fall below internationally accepted standards, this makes it difficult for other member states to return people to those countries in compliance with their own human rights obligations, both nationally and under the ECHR, thus threatening the effectiveness of the EAW system. In such circumstances the FRA may be able to provide advice to EU institutions and to member states as to how to address the problem within the EU framework. This could be done, either through technical assistance or advice or through additional legislation or policy development which would ensure the coherence of the EU's approach to judicial cooperation. In addition, the FRA provides an invaluable resource to the EU in its increasingly active involvement in both military aspects of crisis management, and engagement with third countries in the fields of police cooperation and agreements on managing asylum and immigration. These developments are continuing and are at the heart of human rights concerns about the EU and the lack of accountability for actions taken by the EU outside the Community framework. The FRA has been one way of casting light on these difficult issues, where the credibility of the EU in terms of human rights rests on accountability and clarity as to the human rights framework in which these highly sensitive activities are being carried³⁰.

In order to bring closer the broad field of FRA's activity as a EU independent body providing assistance and expertise relating to fundamental rights it is necessary to make a short review of the most important organisation's annual reports, summaries and surveys. We will take a closer look at FRA's latest, wide survey on gender-based violence. In March 2014 FRA launched their findings from the world's largest survey on violence against women on their launch conference: 'Violen-

²⁹ European Committee on the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2011) General Report 2008–2009, *CPT Standards*, CPT/Inf/E (2002) 1 – Rev. 2011, para. 75–95: *Safeguards for irregular migrants deprived of their liberty*.

³⁰ For a comprehensive review of the jurisprudence of the ECHR and CJEU in this domain see: European Union Agency for Fundamental Rights and Council of Europe (2013) *Handbook on European law relating to asylum, borders and immigration*, p. 135–161.

ce against women across Europe: abuse at home, work, in public and on line'.³¹ The analyzed survey is the first of its kind and presents EU-wide data for the first time on the extent, nature and consequences of violence against women in all 28 member states. It was based on face-to face interviews with 42,000 women across the EU's member states. Women were asked about their experiences of physical, sexual and psychological violence, including incidents of intimate partner violence (domestic violence), childhood victimisation, sexual harassment and stalking, including new mediums for abuse such as the internet. The survey results show the impact of various forms of violence on women across the EU. Violence against women undermines women's core fundamental rights such as dignity, access to justice and gender equality. For example, one in three women (33 %) has experienced physical and/or sexual violence since the age of 15. One in five women (18 %) have experienced stalking; every second woman (55 %) has been confronted with one or more forms of sexual harassment. Given this, violence against women cannot be seen as a marginal issue that touches only on some women's lives.

This is the first survey of its kind on violence against women across the EU's 28 member states. Based on the detailed findings, FRA has drafted a number of opinions that suggest courses of action in different areas that are touched by violence against women. These opinions go beyond the narrow confines of the criminal law, ranging from employment and health to the medium of new technologies. They build on earlier calls by bodies such as the UN and the Council of Europe to take action to combat violence against women, but are primarily based, as was mentioned earlier, on evidence gathered from face-to-face interviews with 42,000 women across the EU.

What is unique with respect to FRA's findings is that they are based on EU-wide data. In this regard, the online data explorer tool that accompanies this report allows everybody to use and produce information from the survey dataset in ways that are most useful to them. In this way, therefore, the dataset can be effectively used at the member state level, and can encourage further action at the level of the EU.

To sum up, for years intergovernmental organisations and civil society have called for robust and comparative data on violence against women, on which to base policy and courses of action to address this fundamental rights abuse. With the publication of the FRA survey results on violence against women, data are now available for the 28 EU member states. If action is to be taken to address violence against women, as reported in the survey, the time is now.

³¹ The conference took place in Brussels, March 5, 2014 and was organised by FRA in cooperation with the Hellenic Presidency of the Council of the EU. The conference brought together decision makers and practitioners to discuss the findings and their importance for EU and national policy makers. About 250 representatives from EU institutions and bodies, international organisations, national governments and parliaments, national human rights bodies and civil society attended it.

The importance of this FRA EU – wide survey consists in responding to a request for data on violence against women from the European Parliament in 2009, which was reiterated by the Council of the EU in its March 2010 conclusions on the eradication of violence against women in the European Union.³² Namely, the European Parliament called for

the collection and compilation by the FRA of reliable, comparable statistics on all grounds of discrimination [...], including comparative data on violence against women within the EU.³³

In conclusion it is necessary to point out that the FRA is part of the new governance trend that has swept through the EU in recent years. As a human rights agency, the FRA's potential 'monitoring' function was considered as 'observatory monitoring' and has now been replaced by 'assistance and expertise', or 'collective learning and guidance'. The agency's role has not been confined to that of a complementary administrative body. It has been operating principally with the required independence, impartiality, pluralism and transparency. The agency's establishing regulation referred to the 'Paris principles' adopted by the UN General Assembly in 1993³⁴, despite the fact that these principles already concern the statute of national human rights institutions. As it can be seen nearly a decade after its inception, the Agency operates with a degree of independence as regards European institutions as well as member states. This implies that its members themselves already benefit from guaranteed independence and have been designated on the basis of transparency and pluralism

The geographical scope of the mandate of the European Agency for Fundamental Rights has not exceeded that of the other existing European agencies. Following this logic, it is confined to the territory of the Union composed by the territory of the 28 member states. Nevertheless, taking into consideration the ac-

³² Council of the EU, Council conclusions on the eradication of violence against women in the European Union, 3000th Employment and social policy meeting, Brussels, 8 March 2010.

³³ European Parliament (2009), Resolution on the Communication from the Commission to the European Parliament and the Council – An area of freedom, security and justice serving the citizen – Stockholm programme, Brussels, P7_TA(2009)0090, para. 29.

³⁴ The Paris Principles, a set of international standards which inform and guide the work of National Human Rights Institutions, were drafted at an international NHRI workshop in Paris 1991. Subsequently they were adopted by the UN General Assembly in 1993. The UN defined a national human rights institution as a governmental body established under the constitution or by law, whose functions are specifically designed to promote and protect human rights. While the Paris Principles were a good starting point as normative principles, it is significant that over the decade after their endorsement by the UN General Assembly, their limitations are best illustrated through an examination of the record of activities of human rights commissions. It is certainly true that compliance with Paris Principles, many of which set a high standard, will augment the chances of ensuring an active and serious human rights commission. But, as it has been illustrated in various reports, even compliance with these principles in a founding statute has not ultimately guaranteed a robust commission without commissioners who are committed to making respect for human rights a reality and are willing to stand firm in the face of inevitable resistance from other government departments.

cession of the new candidate countries and the Copenhagen criteria, the mandate of the agency should be extended to the candidate countries in future. This extension should not be conceived as a substitute for the established international procedures or for the activities of independent NGOs. Moreover, and in compliance with the international procedures, the investigation of the respect of fundamental rights in and by the member states of the EU should not ignore the relations of the EU and its member states with third countries.

Ochrona praw podstawowych w rozszerzonej Unii Europejskiej.

Rola Agencji Praw Podstawowych

Politykę UE w zakresie praw człowieka można podzielić na skierowaną do wewnątrz i tę skierowaną na zewnątrz. Tę pierwszą realizuje w swoich działaniach Agencja Praw Podstawowych, można tu także zaliczyć rezolucje Parlamentu Europejskiego oraz w pewnym zakresie akty prawne. Ta druga urzeczywistnia działania Parlamentu Europejskiego, przede wszystkim Komisji Spraw Zagranicznych i jej Podkomisji Praw Człowieka, a także przez Radę UE i Komisję Europejską.

Celem niniejszej publikacji było ukazanie roli i znaczenia Agencji Praw Podstawowych w kształtowaniu systemu ochrony praw człowieka. Z kontekstu powyższych rozważań należy uwypuklić to, że mimo braku wyposażenia FRA w aparat administracyjno-prawny oddziałujący władczo zarówno na organy wspólnotowe, jak i organy krajów członkowskich, istnieje realna potrzeba jej współistnienia w strukturze instytucjonalnej na poziomie wspólnotowym. Dzięki swojej apolityczności zapewnia bowiem dostęp do należytej, ustandaryzowanej obiektywnej informacji z zakresu praw i wolności obywatelskich zarówno na poziomie poszczególnych krajów członkowskich, jak i na poziomie struktury paneuropejskiej.

słowa kluczowe: Agencja Praw Podstawowych, ochrona praw człowieka, społeczeństwo obywatelskie, system prawny Unii Europejskiej, organizacje pozarządowe