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RIGHTS

FUNDAMENTAL RIGHTS CONFERENCE 2014

Fundamental Rights and Migration to the EU



Presidenza Italiana
del Consiglio
dell'Unione Europea
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Conference Conclusions

Background

On 10-11 November, the European Union Agency for Fundamental Rights (FRA), together with the Italian Presidency of the Council of the EU, held its annual Fundamental Rights Conference, which was this year dedicated to the topic of fundamental rights and migration to the EU.

The event brought together over 300 EU and national decision makers, members of national parliaments, the judiciary, law enforcement agencies, and experts from international organisations, as well as national human rights bodies, civil society bodies and academics involved with migration issues on a daily basis. Speakers included EU Migration, Home Affairs and Citizenship Commissioner **Dimitris Avramopoulos**, Speaker of the Italian Chamber of Deputies **Laura Boldrini**, Italian Undersecretaries of State Senator **Benedetto della Vedova** and **Domenico Manzione**, MEP and Vice-Chair of the Committee on Civil Liberties, Justice and Home Affairs, **Iliana Iotova**, German Minister of State, Commissioner for Immigration, Refugees and Integration, **Aydan Özoguz**, FRA Director **Morten Kjaerum**, and Swedish Minister for Public Administration at the Ministry of Finance, **Ardalan Shekarabi**.

Conference Summary

The *Strategic Guidelines for legislative and policy planning in the area of freedom, security and justice*, adopted by the European Council in June 2014, identified the need for “an efficient and well-managed migration, asylum and border policy” in the EU, underpinned by “full respect for fundamental rights”¹. In October 2013, the European Parliament adopted a resolution that called for a more holistic approach to migration to ensure that such issues are dealt with in a comprehensive manner². A further consideration in the run-up to the conference were calls by Commission President Jean-Claude Juncker for close cooperation to better manage migration, as well as a strong common asylum policy to protect those in need.

Participants agreed that the EU and its Member States should develop a more holistic approach to their migration and asylum policy. It was emphasised that fundamental rights are not just one element of such policies, but on the contrary form the normative framework in which they must be situated.

It was emphasised at many points throughout the conference that the EU and its Member States need a comprehensive and sustainable migration policy, and that a new and positive narrative is necessary to counter the current negative image of migrants and migration that stresses the benefits of migration both to migrants themselves and to the countries hosting them. This is particularly true at present, as projected demographic trends in the EU mean that many areas of the economy may face an increasing shortage of labour in the coming years. Specific and practical measures are needed to promote equal

¹ http://www.consilium.europa.eu/uedocs/cms_data/docs/pressdata/en/ec/143478.pdf

² <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+TA+P7-TA-2013-0448+0+DOC+XML+V0//EN>

treatment, increase the political participation of migrants, and mainstream fundamental rights into integration policies at national, regional and local level.

Conference Conclusions

The Conclusions below contain suggestions and concerns voiced by participants at the conference, from plenary speakers and panellists through to members of the thematic working groups.

A fundamental rights-based approach to border surveillance, including cooperation with third countries

The European Union and its Member States have committed themselves to upholding fundamental rights, and in particular the principle of *non-refoulement*, in the management of the EU's external borders. At the same time, the International Organization for Migration has estimated that over 3,000 people have died so far this year while trying to cross the Mediterranean.

- An effective search and rescue mechanism based on solidarity, which can respond to the current challenges in the Mediterranean, is needed to reduce the risk to people's lives at sea.
- A system to monitor the recording and identification of deaths at sea should be set up.
- While the principle of *non-refoulement* is universal, grey areas remain where more legal clarity is needed, for example as regards disembarkation of people rescued at sea by commercial vessels.
- Independent monitoring at borders would enhance accountability and reduce the risk of fundamental rights violations.
- Cooperation with third countries in the field of border management must respect fundamental rights, and practical guidance to support Member States in this regard could be considered.
- More transparency about agreements (even if technical or operational in nature) concluded with third countries would prevent the blurring of responsibilities.
- The use of EU funding for activities in third countries, especially with regards to the management of migratory flows and their impact on fundamental rights, should be monitored more systematically. In this context, Immigration Liaison Officers present in the countries of origin and transit could also play a role.

A fundamental rights-based approach to combating smuggling

The EU is stepping up its fight against smuggling. However, there is a risk that laws in place to combat smuggling punish not only criminal networks, but also people helping or engaging with migrants in an irregular situation. A rights-based approach to fighting smuggling should therefore be developed. While focusing on the abusive and exploitative networks that make a livelihood from smuggling, the fundamental rights of those who have been smuggled must be ensured.

- In line with the UN Smuggling of Migrants Protocol, legislation to fight smuggling at EU and Member State levels should always include financial and material benefit as a requirement for punishment, or explicitly exclude punishment for humanitarian assistance for entry and stay.
- Renting accommodation cannot be legally interpreted as an act carried out with the intention of facilitating stay; however, the legal system should ensure that those people who rent accommodation under exploitative conditions are punished.
- Legislation punishing smuggling should remind all those concerned of the duty to rescue, as laid down in the law of the sea.

Legal ways to access the EU for people in need of protection

With over 50 million displaced persons globally, the world is experiencing the largest forced displacement since the Second World War. Legal ways for people in need of international protection to reach Europe are limited, forcing them to resort to smugglers. Member States should consider all options to allow people needing protection to enter the EU. This would reduce the number of lives lost at sea, and decrease the risk of exploitation by smugglers.

- Member States should increase pledges for resettlement and humanitarian admissions, with financial support from the EU. It would also be of benefit if they involved local communities when developing national responses to such requests for pledges.
- Ways of expanding legal avenues to reach the EU should be explored by building upon previous experiences, such as the humanitarian evacuation programmes developed during the Kosovo crisis.
- Member States should generously and broadly apply rules on family reunification for people in need of protection, for example by extending the definition of 'family'.
- Member States' experiences in applying protected entry procedures and issuing humanitarian visas according to Article 25 of the Visa Code³, based for example on individual sponsorships, should be evaluated with a view to offering alternative channels for legal entry.
- Immigration schemes such as those for students, highly skilled or seasonal workers, should be generously applied to people in need of international protection. In the case of students, it would be advisable to involve the partnership of universities.
- Feasibility studies concerning diplomatic channels for processing asylum claims should be continued.

Protection of children in the context of migration and asylum

All children have rights and are entitled to special protection and assistance independently of their migration status. Children should not be addressed as mere objects of protection based on their vulnerability, but as people with the rights enshrined in the UN Convention on the Rights of the Child. According to the Convention and the Charter of Fundamental Rights of the European Union, the principle of the best interests of the child must be of primary consideration in any action taken that concerns them. Member States have a duty to ensure the respect and promotion of the right of the child to be heard, be protected and receive the care necessary for their well-being.

- Comparable data on migrant children needs to be collected by all Member States in order to develop appropriate policies.
- Practical guidance for border guards to operationalise the best interests of the child could be developed, building on work currently being carried out by Frontex.
- Effective cooperation between border guards and child protection authorities should be encouraged to facilitate the appointment of an independent representative for children at risk before any decision affecting the child is taken. Combined with the training of border guards in child protection, this would improve referral of children at risk to bodies charged with their protection and well-being.
- Full implementation of existing EU legal standards is necessary to protect children effectively during first reception. The forthcoming guidelines by the European Commission on integrated child protection systems will assist Member States in upholding national, European and international child protection standards for all children without discrimination.
- Promising practices that promote the protection of children, for example as regards alternatives to detention, a child's safety, inter-agency cooperation, child participation and training on risk assessment to prevent disappearances, should be disseminated and where possible replicated.
- When a decision is taken to transfer or return a child to another country, clarity is needed concerning the responsible country, as well as the roles of individual agencies to determine the best interests of the child. Procedures that address all cases in which such decisions are required should be standardised, including those that involve the transfer of EU nationals. Practical guidance on establishing such procedures should also be developed.
- Transnational cooperation of child protection authorities within EU Member States and also with third countries needs to be enhanced. This could build on existing networks, such as those set up in the context of related EU legislation and instruments of private international law like the 1996 Hague Convention⁴.

³ [Regulation \(EC\) No 810/2009](#)

⁴ http://www.hcch.net/index_en.php?act=conventions.text&cid=70

Ensuring respect for fundamental rights in migrant integration and social inclusion policies

Throughout the conference, the need was emphasised for a comprehensive and sustainable migration policy. There was discussion of demographic projections that show migration may be the most appropriate response to future labour shortages. In this context, the EU and Member States need to develop concrete and practical measures to promote equal treatment and immigrants' participation in social and political life, within a broader framework of respect for fundamental rights.

- To improve the integration of migrants and particularly their descendants into EU society, access to citizenship is of vital importance.
- A majority of Member States (17) have granted migrants the right to vote in local elections. This example could be followed by others, as political and social participation of migrants and their descendants is key to successful integration. This is particularly important for young people who are descendants of migrants, but were born and raised in an EU Member State. Consideration could be given here to the Council of Europe Convention on the Participation of Foreigners in Public Life at Local Level.
- In order to develop effective migrant integration policies, independent monitoring based on robust common indicators that reference fundamental rights standards is needed. The current gaps in data need to be filled by complementing existing figures and indicators in the areas of social inclusion and social cohesion, participation and active citizenship.
- Greater interaction, coordination, monitoring, closer cooperation and regular exchange of experiences and codification of common best practices is important to achieve successful integration policies.
- A stronger framework is needed that would enact and enforce the EU directives for legal migration more coherently, while recognising Member States' need for both highly skilled and essential workers. The exploitation of migrants through irregular or informal working conditions should be combated, and workers' social rights upheld and prioritised. Policy recommendations at EU level can be operationalised through processes such as the European Semester.
- The gender dimension should be mainstreamed across all migrant integration policies. It should be acknowledged that migrant women face particular challenges and also contribute significantly to society and the economy in ways that are not always recognised.

Changing the narrative on migration to achieve more inclusive and pluralist societies

In order to improve the inclusion and participation of migrants in society, it was agreed that a change is needed to the negative narratives and images of migrants and migration by highlighting their contribution to their host countries. Member States need to confront misinformation and negative stereotypes, as racism and intolerance are major barriers to successful integration policies and inclusive societies.

- As civic and citizenship education is vital, the mainstreaming of migrant integration through education is needed in order to help young people learn how to live in a society with people from different cultures and religions. Member States are encouraged to better reflect the diversity of society through their educational systems and curricula.
- FRA could support Member States in developing and monitoring integration policies that include activities tackling discrimination and hate crime, including measures to combat racism, intolerance and xenophobia and misinformation of the public.
- Investment is crucial in policies that are designed by and for migrants to increase their participation, as well as top-down political leadership which tackles the intolerance and stereotypes that still abound.
- The media needs to be actively engaged and encouraged to help increase the participation and visibility of migrants, contributing to a more positive overall narrative.