



Malta-EU Steering & Action Committee

JUSTICE AND HOME AFFAIRS



08.05.09

COM (2009) 205 – Report on the practical operation of the methodology for a systematic and rigorous monitoring of compliance with the Charter of Fundamental Rights

This is a report on the methodology which was designed to ensure that Commission departments check systematically and thoroughly that all the fundamental rights concerned have been respected in all draft proposals.

The conclusions of this report are that experience since 2005 has shown that the methodology is well conceived as regards the objective sought but that its practical application needs to be reinforced. The elements outlined in this report, the revision of the Impact Assessment Guidelines, the better targeting of recitals and the harnessing of the Agency, all have their role to play in the better application of the methodology. However, the most important element which needs to be worked upon is the human element. The fundamental rights reflex has to be promoted in the services of the Commission where proposals and initiatives are created and a "fundamental rights culture" fostered from the earliest stages of the conception of a Commission proposal. Lastly, the commitment to the respect for fundamental rights must be a common goal of all the Institutions involved in the legislative process.

Human rights: An update from the European Parliament

Arrest of Roxana Saberi, authoritarianism in Venezuela, coup in Madagascar

In three resolutions on human rights and democracy adopted at the end of this Parliament's final plenary session, which was held this week on Monday, Tuesday



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and Wednesday, MEPs condemn the arrest in Iran of journalist Roxana Saberi and the political persecution of opposition figures in Venezuela, and issue a call for a return to constitutional order in Madagascar following the *recent coup d'état*.

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Moldova: MEPs condemn grave violations of human rights

European Parliamentarians have strongly condemned the massive campaign of harassment, grave violations of human rights and all other illegal actions carried out by the Moldovan Government in the aftermath of the parliamentary elections which were held in April. MEPs have called for a special investigation to be conducted into the cases of those who died during the demonstrations and urged the Council to consider sending a Rule of Law Mission.

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Human rights in the world in 2008: Parliament's report

The gradual retreat of the death penalty round the world and the progress made on women's and children's rights are among positive developments noted in the EP's 2008 annual report on human rights which was adopted this week by an overwhelming majority of MEPs. The report indicates that the European Union could promote human rights more effectively. Another question is whether the EU always lives up to its own principles, for example when dealing with terrorism and immigration.

The report argues that "in the eyes of large segments of public opinion worldwide, immigration policy represents a challenge for the credibility of EU's external action in the field of human rights". In addition, the report urges all EU Member States to ratify all UN and Council of Europe human rights conventions. For example, a number of Member States have failed to ratify the Optional Protocol to the Convention against Torture.

The draft report stresses that human rights also include rights to food, adequate housing and other basics. Furthermore, on Thursday's vote, the House adopted an amendment stating that "international human rights protections include sexual orientation or gender identity". However, MEPs rejected an amendment condemning recent declarations by the Pope against the use of condoms in connection with the fight against HIV/AIDS.

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JUDGEMENT OF THE EUROPEAN COURT OF JUSTICE

CASE 420/07 - Meletis Apostolides v. David Charles Orams & Linda Elizabeth Orams

In this judgement the Court held that a judgement of a Court in the Republic of Cyprus must be recognised and enforced by the other Member States even if it concerns land situated in the Northern part of the island.

Mr Apostolides, a Cypriot national, brought an appeal before the Court of Appeal (England and Wales), in the course of a dispute between himself and a British couple, the Orams, seeking the recognition and enforcement of two judgments from a court in Nicosia. That court, sitting in the southern part of Cyprus, ordered the Orams to vacate land situated in the northern part of the island and to pay various sums. The Orams had purchased the land from a third party in order to build a holiday home on it. According to the findings of the Cypriot court, Mr Apostolides, whose family was forced to leave the north of the island at the time of its partition,¹ is the rightful owner of the land. The first judgment, given in default of appearance, was confirmed by another judgment ruling on an appeal brought by the Orams.

The national court referred to the Court of Justice a number of questions concerning the interpretation and application of the Brussels I Regulation². It asked the European Court whether the suspension of Community law in the northern part of Cyprus and the fact that the land concerned is situated in an area over which the Government of Cyprus does not exercise effective control have an effect on the recognition and enforcement of the judgment, in particular in relation to the jurisdiction of the court of origin, the public policy of the Member State in which recognition is sought and the enforceability of the judgment.

The European Court declared that the suspension provided for in the Act of Accession of Cyprus is limited to the application of Community law in the northern area. However, the judgments concerned, whose recognition was sought by Mr Apostolides, were given by a court sitting in the Government-controlled area. The fact that those judgments concern land situated in the northern area does not preclude that interpretation because, first, it does not nullify the obligation to apply the regulation in the Government-controlled area and, second, it does not mean that that regulation must thereby be applied in the northern area. The Court thus concluded that the suspension of Community law in the northern area provided for by the protocol annexed to the Act of

¹ This followed the intervention of Turkish troops in 1974

² Council Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters



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Accession, does not preclude the application of the Brussels I Regulation to a judgment which is given by a Cypriot court sitting in the Government-controlled area, but concerns land situated in the northern area.

Furthermore, the Court held that the dispute at issue in the main proceedings falls within the scope of the Brussels I Regulation and that the fact that the land concerned is situated in an area over which the Government does not exercise effective control and, therefore, that the judgments concerned cannot, as a practical matter, be enforced where the land is situated does not preclude the recognition and enforcement of those judgments in another Member State.

The Court also held that, as regards the public policy of the Member State in which recognition is sought, a court of a Member State cannot, without undermining the aim of the Brussels I Regulation, refuse recognition of a judgment emanating from another Member State solely on the ground that it considers that national or Community law was misapplied. The national court may refuse recognition only where the error of law means that the recognition or enforcement of the judgment is regarded as a manifest breach of an essential rule of law in the legal order of the Member State concerned.

Furthermore, as regards the enforceability of the judgments concerned, the Court stated that the fact that Mr Apostolides might encounter difficulties in having the judgments enforced cannot deprive them of their enforceability. Therefore, that situation does not prevent the courts of another Member State from declaring such judgments enforceable.

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