

EUROPEAN UNION



**Committee of the Regions**

# **Multilevel Protection of the rule of law and fundamental rights – the role of local and regional authorities and of the Committee of the Regions**

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# Introduction

Following Order Form 5150 on ‘Multilevel Protection of the rule of law and fundamental rights – the role of local and regional authorities and of the Committee of the Regions (CoR)’<sup>1</sup> ordered in the context of Framework Contract CDR/DE/95/2011/1, the Leuven Centre for Global Governance Studies produced the following File note.

The File note consists of three parts of which the second part is the most extensive. The first part provides an overview of the policy field at EU level. It focuses on the current legal framework, its shortcomings and critical assessment of the ‘new EU framework’. In the second part, the File note focuses on what local and regional authorities (LRAs) do and can do to safeguard the rule of law and fundamental rights. This is elaborated on the basis of a number of examples/mini-case studies which take geographical diversity, diversity of competences and diversity of issues (rights and rule of law) into account. The File note presents seven brief case studies. These case studies were prepared by experts from different countries. Each prepared a briefing note on the case study. These examples illustrate different roles LRAs can play in protecting fundamental rights. Part 2 starts off with an identification and general discussion of roles. Part three builds on the second part and develops recommendations, both for LRAs and the CoR.

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<sup>1</sup> In this file note we will not engage in a conceptual discussion on the differences and similarities between the concepts rule of law, human rights and fundamental rights. For a conceptual discussion on the concepts of rule of law and human rights see the FRAME ‘State-of-the-art literature review human rights, democracy and the rule of law’ (A. Timmer) available at <http://www.fp7-frame.eu/wp-content/materiale/reports/01-Deliverable-3.1.pdf> Important to note is that modern definitions of the rule of law include the protection of fundamental rights, and therefore through their action in favour of fundamental rights, LRAs are also rule of law actors. Conversely, rule of law components are included in the Charter of Fundamental Rights, most notably in chapter VI on Justice.

Concerning the difference between fundamental rights and human rights we refer to the approach by the FRA and consider them similar in substance as is supported by comparing/ a comparison of the content of the Charter and the European Convention. As a result, in the context of this briefing note the concepts of fundamental rights, human rights and rule of law are considered as a whole and approached as one. For ease of reference we will mainly refer to the term fundamental rights.



# Part 1: Overview of the policy field at EU level – current legal framework - ‘new EU framework’

Human rights and the rule of law are among the foundational values of the European Union, as is made clear by article 2 TEU, which also states that these values are common to the Member States. Member States, at least since 1993, have to implement those values prior to their accession as per the so-called ‘Copenhagen Criteria’.<sup>2</sup> The Union has a number of legal and procedural mechanisms at its disposal to make sure that those ‘values’ are made operational in the EU, notably in regard of Member States. Part 1 reviews those mechanisms and assesses whether the EU is well-equipped to maintain these values in its Member States. We start with judicial mechanisms.

Originally, the review of Member States acts against fundamental rights was entrusted to the European Court of Human Rights. Fundamental rights have however progressively developed as legal standards in the EU legal order,<sup>3</sup> and as a result have become grounds for the review of Member States’ acts by the European Court of Justice (ECJ) through infringement actions under current articles 258-260 TFEU, and through preliminary references under current article 267 TFEU, although within certain limits.<sup>4</sup> Judicial review against fundamental rights has since 2009 been further formalised with the new binding status of the encompassing Charter of Fundamental Rights of the European Union.<sup>5</sup> However, the scope of the Charter as it applies to EU Member States is limited, by virtue of article 51, to situations in which the latter are ‘implementing Union law’. This reduces quite drastically the reach of the Charter, as it evacuates entirely the competence of the ECJ to review acts of Member States which, even though they could be considered

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<sup>2</sup> See also article 49 TEU, which states: ‘Any European State which respects the values referred to in Article 2 and is committed to promoting them may apply to become a member of the Union.’

<sup>3</sup> Fundamental rights first entered the EU legal order as general principles of law ‘inspired by the constitutional traditions common to the Member States’ (see e.g. ECJ, 17 December 1970, *Internationale Handelsgesellschaft*, Case 11-70, paras 3-4), and then as standards explicitly enacted in EU legislations proper.

<sup>4</sup> See e.g. ECJ, 11 July 1985, *Cinéthèque*, Joined cases 60 and 61/84, para. 26. See also A. von Bogdandy *et al.*, ‘Reverse Solange – Protecting the Essence of Fundamental Rights against EU Member States’, 49 *Common Market Law Review* 489 (2012), pp. 492-500..

<sup>5</sup> [2010] O.J. C 83/1.

contrary to the principles contained in the Charter, do not have a sufficient link with EU law.<sup>6</sup>

With regard to the role of the ECJ to safeguard the rule of law, the situation is even more complex, given the fact that the value of the rule of law, unlike fundamental rights, was never spelled out in a list of litigable ‘rights’ or ‘principles’. The ECJ has however insisted for a long time that the EU is a ‘Community/Union based on the rule of law’ and has used the notion of rule of law as an overarching principle justifying the judicial review of acts of institutions.<sup>7</sup> In this vein, the ECJ has also taken upon itself to review acts of the Member States in regard of general principles of law which have been considered germane to the notion of rule of law, such as legal certainty and the protection of citizens’ legitimate expectations.<sup>8</sup> However, certain rule of law principles have over the years been interpreted as fundamental rights and litigated as such rather than as pure expressions of the rule of law. Eventually, many rule of law components found their way into the Charter of Fundamental Rights, like citizens’ equality (equality before the law and non-discrimination, articles 20-21 Charter), non-arbitrariness and absence of abuse of power (right to good administration, article 41 Charter), independence of the judiciary and due process (right to an effective judicial remedy and to a fair trial, article 47 Charter).

This rapid and piecemeal analysis indicates that the ability of the ECJ to implement fundamental rights and the rule of law within Member States is limited by the Court’s jurisdiction and by the fragmentation of these values into variegated grounds for judicial review. Therefore, the principles constituting the flesh of the values of fundamental rights and rule of law may be quite effective in redressing individual instances of violations of particular rights or general principles of law, but are not meant to tackle general deviations in the protection of fundamental rights or the rule of law in a given Member State. In short, the ECJ is not the place

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<sup>6</sup> See ECJ, 27 November 2012, *Pringle*, Case C-370/12, paras 179-180; ECJ 15 November 2011, *Dereci et al.*, Case C-256/11, paras 72-73; ECJ 8 November 2012, *Iida*, Case C-40/11, paras 76-77, 79-82; ECJ, 26 February 2013, *Åkerberg Fransson*, Case C-617/10, paras 27-30; ECJ, 8 May 2013, *Ymeraga and Ymeraga-Tafarshiku*, Case C-87/12, paras 42-44.

<sup>7</sup> See the landmarks: ECJ, 23 April 1986, *Parti écologiste "Les Verts"*, Case 294/83, para 23, or more recently, ECJ, 18 July 2013, *Commission and United Kingdom v. Kadi*, Joined Cases C-584/10 P, C-593/10 P and C-595/10 P, para 66.

<sup>8</sup> ECJ, 3 December 1998, *Belgocodex*, Case C-381/97, para 26: ‘the principle of protection of legitimate expectations and the principle of legal certainty form part of the Community legal order and must be observed by the Member States when they exercise the powers conferred on them by Community directives.’

to reverse a pervasive deterioration of EU values in a Member State, or even to ensure that a Member State generally lives by their ethos.<sup>9</sup>

For those situations, the Union and its Member States may rely on article 7 TEU, which foresees non-judicial mechanisms of a preventive nature (recommendations made to the Member State in question) in case ‘there is a clear risk of a serious breach [...] of the values referred to in Article 2’, or of a punitive nature (suspension of rights of the concerned Member State) when such a breach has been determined to exist and persist. Article 7 TEU has been characterised as a ‘nuclear option’<sup>10</sup> given the quite heavy procedures (and demanding majorities) it entails, and the potentially grave consequences it may give rise to. It is thought that pointing the finger too accusingly may antagonise populations and erode support for the EU (and its values).<sup>11</sup> Probably for those reasons, article 7 has never been applied so far, even though calls for it to be triggered have been made in certain instances.<sup>12</sup>

A number of alternatives to article 7 TEU have been put forward,<sup>13</sup> and in response to recent concerns in certain Member States, the Commission has very recently published a Communication entitled ‘A new EU Framework to strengthen the Rule of Law’.<sup>14</sup> This new framework is meant to fill a gap between diplomatic demarches toward a Member State, and the hard mechanism of article 7 TEU. It makes clear that safeguarding the rule of law also means addressing breaches in fundamental rights or democracy. The framework is finally meant to complement judicial mechanisms when the threat to the rule of law goes beyond individual cases.<sup>15</sup>

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<sup>9</sup> It could however be argued that Art. 2 was binding on the Member States and that a breach of the values contained therein by a Member State could be judicable before the ECJ.

<sup>10</sup> See J. M. Durão Barroso, President of the European Commission, ‘State of the Union 2012 Address’, 12 September 2012, available at [http://europa.eu/rapid/press-release\\_SPEECH-12-596\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-12-596_en.htm)

<sup>11</sup> E.-M. Poptcheva, ‘Breach of EU values by a Member State’, Library Briefing, *Library of the European Parliament*, 15 October 2013, p. 4, available at

[http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130633/LDM\\_BRI\(2013\)130633\\_REV2\\_EN.pdf](http://www.europarl.europa.eu/RegData/bibliotheque/briefing/2013/130633/LDM_BRI(2013)130633_REV2_EN.pdf)

<sup>12</sup> Most recently, the European Parliament asked its ‘Conference of Presidents to assess the opportuneness of resorting to mechanisms foreseen by the Treaty, including Article 7(1) TEU, in case the replies from the Hungarian authorities appear not to comply with the requirements of Article 2 TEU.’ See European Parliament resolution of 3 July 2013 on the situation of fundamental rights: standards and practices in Hungary 2012/2130(INI), para 87.

<sup>13</sup> E.-M. Poptcheva, *supra* note 11, pp. 4-6.

<sup>14</sup> European Commission, ‘A new EU Framework to strengthen the Rule of Law’, Communication to the European Parliament and the Council, 11 March 2014, COM(2014) 158 final.

<sup>15</sup> The Framework however does not interfere with the Commission’s competence to incept infringement procedures where appropriate. See for example, in parallel to the other non-judicial actions directed at Hungary, the recent judgments of the ECJ, finding that by lowering the retirement age of judges, prosecutors and notaries in an attempt to

The Framework is designed as a ‘three-stage process’ based on *dialogue* after a *thorough assessment* of the situation and envisions *swift and concrete remedial actions*, while ensuring *equal treatment* of all Member States. It will be triggered in case of a ‘systemic threat’ to the rule of law, which is lower than the threshold required to activate article 7 TEU. The first stage is that of the assessment, at the end of which the Commission will issue an opinion after having examined the situation, notably on the basis of information received from relevant bodies (e.g. EU Fundamental Rights Agency, Council of Europe). The Member State is invited to cooperate with the process, and may respond to the opinion. The second stage is that of the recommendation, if one is warranted following the assessment phase. The recommendation may include specific suggestions for reform. Finally, the third stage is that of the follow-up to the recommendation. If the situation has not been satisfactorily addressed by the Member State according to the recommendation, the Commission may then turn to article 7 TEU.

This Framework indeed fills the gap between bland exhortations and potential overreaction under article 7 TEU, while ensuring a comprehensive assessment of the situation, beyond case-specific judicial review. It may be questioned whether this ‘structured process of naming and shaming’ will really be of any added value<sup>16</sup> and is of such nature that it can, for instance, carry much more weight than a resolution by the European Parliament, such as the one taken in respect of Hungary, which already contains a thorough assessment and lists very detailed recommendations.<sup>17</sup> Additional concerns were voiced, notably the fact that the Framework is mainly reactive and does not include proactive monitoring of the rule of law situation of all Member States, or the fact that much of the process will be kept behind closed doors, despite publication of the reasoned opinion.<sup>18</sup> Additionally, the FRA, although the Framework is meant to apply in cases of systemic threats to the protection of fundamental rights (see above), is also advocating a more targeted, encompassing and inclusive mechanism for these

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behead notably the constitutional court, Hungary had violated equal treatment legislation (ECJ, 6 November 2012, *Commission v. Hungary*, C-286/12); or that by terminating the office of its Data Protection Supervisor prior to its term, Hungary had violated the principle of independence that this function entails (ECJ, 8 April 2014, *Commission v. Hungary*, C-288/12). It is interesting to note that, although these two cases were considered emblematic of a generalised assault on the rule of law in Hungary, these two decisions only reason in terms of specific breaches of specific EU legislations and do not mention the rule of law.

<sup>16</sup> J.-W. Müller, ‘The Commission gets the point – but not necessarily the instruments’, Eutopia Law Blog Post, 17 March 2014, available at <http://eutopialaw.com/2014/03/17/the-commission-gets-the-point-but-not-necessarily-the-instruments/>

<sup>17</sup> See *supra* note 12.

<sup>18</sup> I. Butler, ‘EU Still Failing to Protect Fundamental Rights’, *Open Society European Policy Institute*, 12 March 2014, available at <http://www.opensocietyfoundations.org/voices/eu-still-failing-protect-fundamental-rights>.

situations. For this purpose, the FRA is proposing, in a very recent report, the establishment of an ‘EU internal strategic framework for fundamental rights’ to complement the rule of law Framework.<sup>19</sup>

Therefore, while it remains to be tested in practice, the new Framework confirms a mostly top-down and reactive approach to preserving EU values within Member States. However, there is no guarantee that a government determined to systematically undermine the rule of law will buy into the Framework, engage in a *bona fide* dialogue with the Commission and act on its recommendations. There is therefore a need also to ensure that EU values are also upheld from the grassroots, and this is why it is important to strengthen the awareness and potential of LRAs and civil society for preserving the rule of law and fundamental rights. In this respect, the proposed FRA framework may be a source of inspiration as it specifically recognises the multilevel dimension of fundamental rights protection and insists on the necessity to associate regional and local actors in a ‘joined up’ manner.<sup>20</sup>

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<sup>19</sup> Fundamental Rights Agency (2014) *Fundamental Rights: challenges and achievements in 2013: Annual Report*. Luxembourg: Publications Office of the European Union.

<sup>20</sup> *Id.*, p. 11 and 14.



## **Part 2: Roles of LRAs in protecting fundamental rights and strengthening the rule of law**

### **2.1. European and national authorities protecting fundamental rights and strengthening the rule of law**

The EU has been increasingly active in monitoring the protection of fundamental rights and rule of law and occupies a prominent place in the global multi-level human rights protection regime.<sup>21</sup> The Charter of Fundamental Rights of the European Union, which has been accorded the status of primary Union law with the entry into force of the Lisbon Treaty,<sup>22</sup> forms the cornerstone of human rights law within the EU. A member of the European Commission has been assigned specifically to be in charge of fundamental rights, and the European Union Agency for Fundamental Rights (FRA), established in 2007, advises EU institutions and the Member States on the implementation of EU law with full respect for fundamental rights.<sup>23</sup> Other EU institutions and bodies, such as the European Parliament and its Committees, also pursue monitoring and reporting of human rights-related issues and have at their disposal a range of instruments of a range of instruments to do so.

States with a long tradition of constitutional fundamental rights protection have charged their national Constitutional Courts with monitoring the implementation of obligations imposed by human rights treaties. Additionally, civil courts play a role in providing compensation to victims of human rights violations, and criminal courts are responsible for bringing perpetrators to justice. Besides courts, many states have quasi-judicial bodies, such as National Human Rights Institutions (NHRIs), Ombuds Institutions and Equality Bodies, with the competence to receive individual complaints, issue binding or non-binding decisions and carry out other monitoring functions.

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<sup>21</sup> G. de Búrca, 'The Road Not Taken: The EU as a Global Human Rights Actor', *American Journal of International Law*, Vol. 105, No. 4, 2011, pp. 649-694, p. 649-650

<sup>22</sup> Art. 6(1) TEU.

<sup>23</sup> Council Regulation (EC) No 168/2007 of 15 February 2007 establishing a European Union Agency for Fundamental Rights, [2007] O.J. L53/1, article 2.

## 2.2. The importance of LRAs in protecting fundamental rights and strengthening the rule of law

Despite its continued proliferation, international human rights law typically suffers from a lack of national compliance, and international human rights obligations are not easily legally enforced. The legal human rights framework continues to grow and states increasingly ratify treaties, but the gap between international norms on the one hand, and local realities on the other, continues to expand.<sup>24</sup> The academic literature refers in this context to the enforcement gap which is also recognised in many policy documents.<sup>25</sup> In order to address this enforcement gap attention is increasingly turning to the idea of *localising human/fundamental rights*, i.e. strengthening local institutions for the protection of human rights. The role of local actors and authorities in human rights protection has been increasingly recognised. The CoR has emphasised the role LRAs play in human rights protection, especially as service providers of human-rights related services such as education and health care.<sup>26</sup> This point was reiterated in the Opinion of the CoR on the *Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union* (CDR 406/2010, adopted on 11-12 October 2011). In addition, the Charter for Multilevel Governance in Europe explicitly refers to the commitment to “ensuring maximum **FUNDAMENTAL RIGHTS PROTECTION** at all levels of governance.”<sup>27</sup>

In order to further involve LRAs in fundamental rights enforcement, the CoR and FRA have established, in 2009, Annual Dialogues to discuss fundamental rights issues which are relevant for LRAs and share knowledge on fundamental rights practices. In total, five Annual Dialogues have been organised so far focusing on the Rights of the Child (2009), implementing Fundamental Rights after Lisbon (2010), rights of irregular migrants (2011), impact of the economic crisis on access to justice (2012) and hate crime (2013).

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<sup>24</sup> See for example: E. Hafner-Burton, *Making Human Rights a Reality*, Princeton University Press, 2013; O. A. Hathaway, ‘Do Human Rights Make a Difference?’, *The Yale Law Journal*, Vol. 111, No. 8, pp. 1935-2024.

<sup>25</sup> See for example the recommendations by the Council of Europe Commissioner for Human Rights on implementing human rights nationally (2009).

<sup>26</sup> See Accardo, Grimheden, Starl; James Michael/Geraldine Van Bueren (CEPS), Local and Regional Cooperation to Protect the Rights of the Child in the EU, March 2010, report written for the EU Committee of the Regions; Committee of the Regions (2010), White Paper on Multi-level Governance, adopted 17/18 June 2009.

<sup>27</sup> Committee of the Regions, Resolution on the Charter for Multilevel Governance in Europe, 106<sup>th</sup> plenary session, 2 and 3 April 2014, point 1.5) available at <http://cor.europa.eu/en/activities/governance/Documents/mlg-charter/en.pdf> (EN) Emphasis in original text.

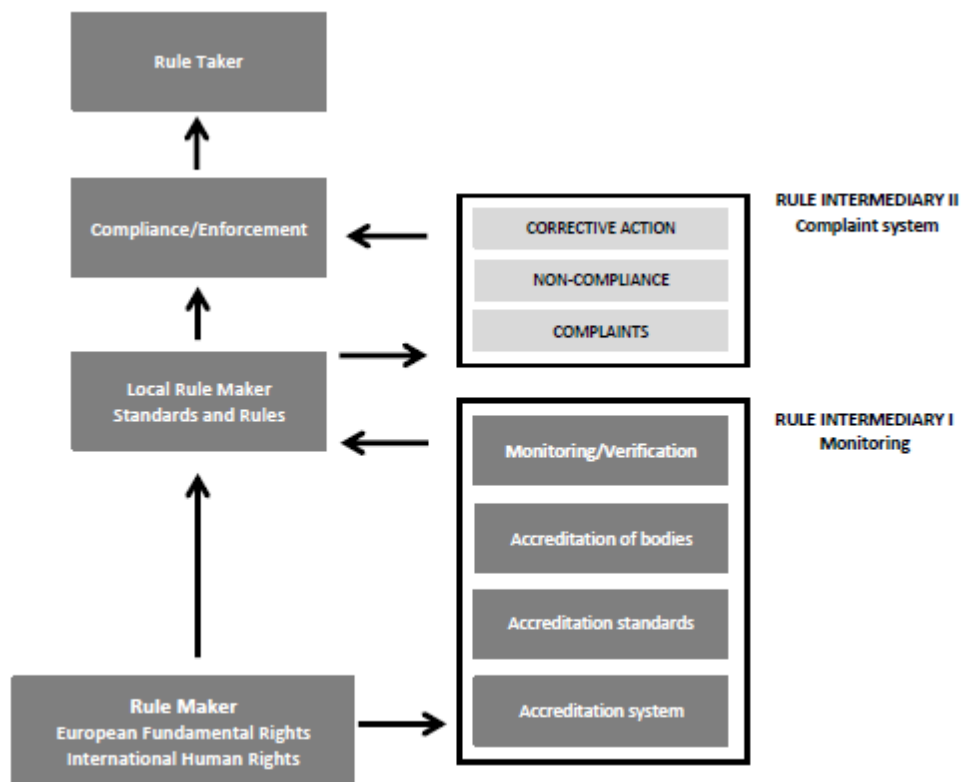
## 2.3. The role of LRAs in protecting fundamental rights and strengthening the rule of law

FRA has established a specific project, in 2010, called the *Joined-Up Governance project* which aims to analyse and develop methods to enhance fundamental rights implementation across various levels of governance. This project launched in November 2013 a toolbox which focuses on strengthening the capacity of LRAs. This toolbox offers a first insight into the different roles LRAs can play in human rights protection. The toolbox identifies five roles:

1. Understanding fundamental rights
2. Coordination and leadership
3. Communicating Fundamental Rights
4. Participation and Civil Society
5. Planning, Monitoring and Evaluation

Building on this classification and based on more general approaches to the role of LRAs in policy-making this File note identifies several distinct roles in the implementation of fundamental rights. These include:

- 1. LRAs as rule-maker and rule-enforcer.** LRAs are important actors in the enforcement process of international human rights and European fundamental rights and integrating human rights in local policies. These roles are captured in figure 1. Figure 1 shows that in the governance process of the protection of human rights, from a governance perspective several roles can be identified. First there are rule-makers (i.e. international, European and national human rights law) and rule-takers (i.e. those who have to abide by the rules as individuals, organisations, states). In between, other roles are identified, which focus on translating international and national rules into local rules and standards (local rule-makers, i.e. operationalising the implementation of human rights law) and enforcing rules (rule intermediaries). Concerning the latter, two types are distinguished, namely monitors and complaint bodies.



- a. **Rule-maker:** LRAs are rule-makers (legally binding rules). There is a huge diversity in this competence across LRAs, but all do share some degree of rule-making capacity. In their capacity as rule-makers LRAs can strengthen the protection of fundamental rights. Putting fundamental rights as a priority in policy-making can further strengthen their enforcement potential. For example, the Regional Government of Flanders (Belgium) has put the protection of human/fundamental rights as a transversal theme in its policy declaration, mainstreaming the protection of fundamental rights across *all sectors* of Flemish policy making. There is, for instance, a comprehensive human rights strategy for Flemish foreign policy which is put forward in the policy memorandum ‘Human Rights and Flanders’ International Policy’ (2012) in which the Flemish government affirms that human rights provide the legal framework for Flanders’ external action, and it underlines that human rights provide the overall framework in the formulation of policies and initiatives. Human rights are a transversal, cross-cutting issue to be integrated in every domain of foreign policy, including development cooperation, promotion of export and foreign investment.

b. **Rule Intermediary:** LRAs typically enforce higher order human/fundamental rights. Due to their close proximity to the local level they perform an important role in **monitoring** and in interpreting the application of rules (i.e. **handling complaints**). Concerning monitoring, LRAs can develop several initiatives to monitor the enforcement of fundamental rights which can feed into other higher-level monitoring instruments. Concerning complaint systems, LRAs can create mechanisms enabling citizens to notify fundamental rights violations. These roles are in line with what the FRA toolkit identifies as Planning, Monitoring and Evaluation.

2. **LRAs service provision role.** Besides making rules, LRAs have a second strong policy instrument with which they can influence the protection of human/fundamental rights. Through budget allocation and service provision they can encourage initiatives and actors to strengthen the protection of fundamental rights. LRAs provide several services which are directly relevant in the context of fundamental rights such as housing, health care, education, etc. Through service provision LRAs can promote or inhibit the protection of fundamental rights. In addition, LRAs can support and fund non-governmental organisations, human rights defenders and human rights campaigns.

3. **LRAs policy supporting role.** Fundamental and human rights are a quintessential example of a cross-cutting, complex and multilevel policy objective. As a result, often an ‘**awareness gap**’ emerges. Accardo, Grimheden and Starl<sup>28</sup> note that often several issues which are related to fundamental rights violations are not recognised as such since citizens are not aware that they constitute fundamental rights violations. The latter is not surprising since the Charter covers a lot of different (broad) rights. **In awareness raising**, education and provision of information LRAs can play an important role, especially since they are often service providers of many services which directly relate to fundamental rights issues ranging from housing to political rights such as participation in elections. This role relates to what the FRA identifies as understanding fundamental rights and communicating fundamental rights.

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<sup>28</sup> Accardo, A., Grimheden, J. & K. Starl (2012) ‘The Case of Human Rights at the Local Level: More than an Obligation?’, in Benedek, W., Nowak, M. et al *European Yearbook on Human Rights*.

4. **LRAs policy coordination role.** On the local and regional level several public and private actors are involved in the protection of fundamental rights. These include ombudspersons, NGO's, individual human rights defenders, academics, etc. LRAs can play a coordinating role to bring these actors together in order to ensure a stronger enforcement of fundamental rights, pooling of resources, sharing of knowledge and mediating between actors. This role is in line with what the FRA toolkit identifies as coordination and leadership.

These roles can overlap in the context of specific initiatives. In the different examples/mini-cases we will further illustrate and exemplify these roles. The cases will focus on the human rights/fundamental issue/problem addressed, a description of the initiative of the LRA, an assessment of the impact and the lessons learned. With these cases we aim to further illustrate how LRAs take up different roles in the protection of human rights.

The following cases are presented illustrating different roles LRAs can perform.

1. Municipal Human Rights Council monitoring of local elections on violations of human rights in political campaigns in Graz (Austria) as an illustration and discussion of roles 1 and 3.
2. Protection of Children's/Childs Rights (especially child sexual exploitation) via an Action Plan in the United Kingdom involving LRAs as an illustration and discussion of roles 3 and 4.
3. Discrimination Reporting Desks in Flanders (Belgium) as an illustration and discussion of roles 1, 3 and 4.
4. Promotion of rights of migrants to be integrated in political decision-making in Dublin (Ireland) as an illustration and discussion of roles 3 and 4.
5. Provision of urgent medical care for all undocumented migrants and broader access to health care for undocumented children and pregnant women at the normal client fees in Helsinki (Finland) as an illustration and discussion of role 2.
6. Monitoring of LGBT rights via regional Basque Ombudsman's action (Spain) as an illustration and discussion of role 1 and 3.
7. Involvement of LRAs in Constitutional review in Poland as an illustration and discussion of role 1.

## 2.4. Case Studies of Involvement of LRAs in the Protection of Fundamental Rights and Rule of Law

The following seven cases highlight and present the different roles LRAs can play in the protection of fundamental rights and strengthening the rule of law and what impact this can generate.

### 2.4.1. Municipal Human Rights Council monitoring of local elections on violations of human rights in political campaigns in Graz (Austria)

#### 2.4.1.1. Introducing the Issue

A first example of an LRA which performs *monitoring tasks* in a context of *awareness raising* is the city of Graz. Since 2006-2007, the city of Graz has assigned the Municipal Human Rights Council the task to monitor the municipal election campaigns with the motto “no election campaign at the expense of humans”. The aims of this initiative are twofold, monitoring (role 1) and awareness raising (role 2). The intention of the monitoring task is to publicly oppose violations of fundamental rights. By doing this the initiative aims to raise awareness and to stimulate citizens as well as political parties to engage more actively with the human rights aspects of political programmes and speech.

#### 2.4.1.2. Describing the initiative

The election authority (*Wahlbehörde*) of the city of Graz assigns the Human Rights Council with the monitoring of political campaigns and provides financial resources for this task. The monitoring committee members are recruited among the municipal Human Rights Council members who work *pro bono*. Members represent the judiciary, the children’s rights ombudsperson, the women’s rights ombudsperson, the foreigners’ council and other stakeholders at local level.<sup>29</sup>

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<sup>29</sup> The Municipal Human Rights Council was officially established by the Mayor in 2007 (started its work in 2006). It is an advisory board for the government and the City Council on human rights related issues. It has its own statute, a president and an executive office. It decides on its work programme annually. The work programme is carried out in working groups. Its main task is to make a compilation of the city’s annual human rights report. See: <https://www.graz.at/cms/ziel/3722867/DE/> - reports available: <https://www.graz.at/cms/ziel/3722883/DE/>

The City's Human Rights Council committee collects all election campaigning material, press reports and statements of all parties. Applying legal and discourse analysis, it evaluates the collected material against human rights standards enshrined in relevant human rights law and developed by national and international jurisprudence, and compiles its assessment and findings in a report.<sup>30</sup> The report is subdivided in racism/hate speech, women rights/gender equality, children's rights, religious rights/minority rights, and rights of persons with disabilities. The report is published by the Council in a press conference and on the official website of the city.<sup>31</sup> This report subsequently constitutes the basis for two follow up actions: awareness raising to the larger public and sanctioning in case of violation. Concerning awareness raising towards the public at large (city citizens), topics are marked with traffic lights: red for 'no go', yellow for problematic statements or views, and green for campaigning that respects or promotes human rights. Concerning sanctioning, the findings of the report are subject to an independent arbitration committee, chaired by the president of the appellate court, which recommends an eventual impact on the subsidies of political parties (this can lead to a reduction of subsidies for the respective parties up to €30,000).<sup>32</sup> 'Red lights' are foreseen to be sanctioned. The final decision on sanctioning is taken by the city's parliament.

#### **2.4.1.3. Impact of the Initiative**

This initiative impacted four dimensions. First, monitoring has led to an improvement in political discourse. The first monitoring led to the conviction of a politician because of incitement to discrimination because of the provided body of evidence by the monitoring committee.<sup>33</sup>

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<sup>30</sup> On the methodology see: <http://www.graz.at/cms/beitrag/10231174/3723035>. The methodology is based on Siegfried Jäger: *Kritische Diskursanalyse. Eine Einführung*. Münster: Unrast 2004. A detailed description of the critical discourse-analyses of election campaigning as hegemonial discourse and the relation to legal analysis in the election campaign monitoring can be found at: [http://www.wahlkampfbarometer-graz.at/cms/fileadmin/user\\_upload/wahlkampfbeobachtung\\_grundsatzdokument.pdf](http://www.wahlkampfbarometer-graz.at/cms/fileadmin/user_upload/wahlkampfbeobachtung_grundsatzdokument.pdf), IV – Methodik der Grazer Wahlkampfbeobachtung, pp 4-13.

<sup>31</sup> The latest report on the election campaign 2012: [http://www.graz.at/cms/dokumente/10231173\\_3723035/adbd3ec4/Wahlkampfbeobachtung\\_MRBwkm2012gesamt.pdf](http://www.graz.at/cms/dokumente/10231173_3723035/adbd3ec4/Wahlkampfbeobachtung_MRBwkm2012gesamt.pdf)

<sup>32</sup> See also ECRI REPORT ON AUSTRIA (fourth monitoring cycle), adopted on 15 December 2009, para. 76: "ECRI reiterates its call for the adoption of ad hoc measures to combat the use by political parties or their representatives of racially inflammatory or xenophobic discourse and, in particular, of legal provisions allowing for the suppression of public financing for parties which promote racism or xenophobia. In this respect, it draws the authorities' attention to the relevant provisions of its General Policy Recommendation No. 7 on national legislation to combat racism and racial discrimination."

<sup>33</sup> Criminal Court decision: OLG Graz 11 Bs 146/09t of 30 June 2009.

Second, the monitoring had a process-related impact on the initiative itself. The first pilot monitoring led to several amendments in the method. The sanction mechanism was introduced after the experiences of the first pilot monitoring.

Third, the monitoring combined with the awareness raising led to a broad public discussion and to higher awareness of human rights issues at local level. Freedom of speech was discussed in local newspapers. Furthermore, schools invited the members of the monitoring committee to present their reports and findings to share their views with students.

Finally, the example is now diffusing to other cities. The example was followed by Salzburg (fully), Vienna (partly), London (similar), Botkyrka (partly), Barcelona (only discriminatory messages monitored).

## **2.4.2. Protection of Children's/child Rights (especially child sexual exploitation) via an Action Plan in the United Kingdom involving LRAs**

### **2.4.2.1. Introducing the Issue**

A second case combines the role of LRAs as *service providers*, *coordinators* and *awareness raisers*. In 2011, the UK government identified the need to address the vulnerability of children and young people to sexual exploitation by outlining an Action Plan aimed at tackling this particular form of abuse - *Tackling Child Sexual Exploitation – Action Plan 2011*. The Action Plan brings together actions by the UK government and a range of national and local partners to protect children – including local safeguarding children boards (LSCBs), law enforcement agencies, criminal justice agencies, health services (sexual health services and mental health services), victim support services, schools and local authorities (including representatives from children, adult, legal, housing, education services).<sup>34</sup> The Action Plan emphasises the important role of LSCBs as the central focus for multi-agency initiatives to help and protect children and young people.<sup>35</sup> LSCBs are

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<sup>34</sup> Department for Education (2011) *Tackling Child Sexual Exploitation – Action Plan 2011*, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/180867/DFE-00246-2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180867/DFE-00246-2011.pdf).

<sup>35</sup> Department for Education (2011) *Tackling Child Sexual Exploitation – Action Plan 2011*, Page 3, available at [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/180867/DFE-00246-2011.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/180867/DFE-00246-2011.pdf).

statutory agencies that must be established within every local authority.<sup>36</sup> They are mandated to develop local safeguarding policy and procedures and to scrutinise local arrangements. For Child Sexual Exploitation (CSE) safeguarding, LSCBs must adhere to the guidance outlined in the *Working Together Guidance on CSE*.<sup>37</sup>

#### 2.4.2.2. Describing the initiative

In 2013, the Office of the Children's Commissioner (OCC) for England<sup>38</sup> developed the new *See Me Hear Me* evidence-based framework for the protection of children and young people from sexual exploitation as part of the final report of a two-year inquiry into CSE in Gangs and Groups.<sup>39</sup> The OCC report stresses the importance of the role of LSCBs.<sup>40</sup> The OCC has issued a number of recommendations directed at LSCBs, including *inter alia* : (1) ensuring that all necessary steps are taken to be fully compliant with the current *Working Together guidance on CSE* (2009), (2) reviewing their strategic and operational plans and procedures, (3) develop information sharing protocols and (4) problem-profiling of victims, offenders, gangs, gang-associated girls, high risk businesses and neighbourhoods.<sup>41</sup>

In this context, the report outlines promising practices by several LSCBs who have undertaken initiatives, in accordance with the *See Me Hear Me Framework* to better protect children. One example is highlighted.

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<sup>36</sup> Children Act 2004, sections 13-16, available at: <http://www.legislation.gov.uk/ukpga/2004/31/part/2/crossheading/local-safeguarding-children-boards>; The Local Safeguarding Children Boards Regulations 2006, available at:

<http://www.legislation.gov.uk/uksi/2006/90/contents/made>; The Local Safeguarding Children Boards (Review) Regulations 2013, available at: <http://www.legislation.gov.uk/uksi/2013/2299/contents/made>.

<sup>37</sup> Department for Education (2011) Safeguarding Children and young people from sexual exploitation – supplementary guidance to Working Together to Safeguard Children, Pages 23-28, available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/278849/Safeguarding\\_Children\\_and\\_Young\\_People\\_from\\_Sexual\\_Exploitation.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/278849/Safeguarding_Children_and_Young_People_from_Sexual_Exploitation.pdf).

<sup>38</sup> Office of the Children's Commissioner (OCC), available at: <http://www.childrenscommissioner.gov.uk/>.

<sup>39</sup> OCC (2013), If only someone had listened: Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups Final Report, Page 6, available at: [http://www.childrenscommissioner.gov.uk/content/publications/content\\_743](http://www.childrenscommissioner.gov.uk/content/publications/content_743)

<sup>40</sup> OCC inquiry research findings suggest that only 6% of all LSCBs are adhering to the guidance which leads to large unacceptable variations in local practice around the identification of/response to victims of CSE. *Id.*, p. 4.

<sup>41</sup> OCC (2013), If only someone had listened: Office of the Children's Commissioner's Inquiry into Child Sexual Exploitation in Gangs and Groups Final Report, Page 95, available at: [http://www.childrenscommissioner.gov.uk/content/publications/content\\_743](http://www.childrenscommissioner.gov.uk/content/publications/content_743)

### 2.4.2.3. Impact of the Initiative

The example concerns the participation of Children and Young People in Rochdale. In 2012, a high profile CSE case led to two serious case reviews being completed by the Rochdale Borough Safeguarding Children Board.<sup>42</sup> In response to the criticism of local agencies by the reviews and the need for a more appropriate response to the issue of CSE in the area, Rochdale Council initiated a large scale ***awareness raising campaign*** of the entire community by implementing a number of CSE awareness-raising training programmes, including:

1. A face to face training workshop delivered to councils, police, schools, health and the voluntary and community sector. A total of 6,000 have completed this programme.
2. A compulsory e-learning package for all professionals working with children and families. A total of 14,000 have completed the e-learning package.
3. Sessions in schools delivered to a total of 9,000 pupils using an interactive presentation.
4. Specially designed parents' evenings were held in all the borough's secondary schools.
5. Sessions have also been held with the Muslim community and other residents of Rochdale.<sup>43</sup>

This initiative generated impact. As a result of the awareness raising sessions in Rochdale's secondary schools, children noted that they would consider telling their parents if they suspected or knew about exploitation. In 2013, the Local Government Association held two regional CSE awareness raising events for professionals who work with children and families. Both events included speakers from the Greater Manchester area including Executive Director, Children's Services, Rochdale Metropolitan Borough Council, and Senior Advisor for Safeguarding in Education, Stockport Metropolitan Borough Council who were able to discuss and share their experiences of communicating such a sensitive issue

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<sup>42</sup> Rochdale Borough Safeguarding Children Board (2013) The Overview Report of the Serious Case Review in respect of Young People 1,2,3,4,5 & 6, available at: <http://www.rbscb.org/UserFiles/Docs/YP1-6%20SCR%20RBSCB%2020.12.13.pdf> ; Rochdale Borough Safeguarding Children Board (2013) The Overview Report of the Serious Case Review in respect of Young Person 7, available at: <http://www.rbscb.org/UserFiles/Docs/YP%207%20SCR%20RBSCB%2020.12.13.pdf> (font size 8 used here, whereas font size 10 is used elsewhere)

<sup>43</sup> Local Government Association (2013) How councils are raising awareness of child sexual exploitation: Case study report, page 7 and 8, available at: [http://www.local.gov.uk/c/document\\_library/get\\_file?uuid=fd8a2a91-bb11-4710-9641-97e8eefa44a8&groupId=10180](http://www.local.gov.uk/c/document_library/get_file?uuid=fd8a2a91-bb11-4710-9641-97e8eefa44a8&groupId=10180)

with local communities and lessons learned.<sup>44</sup> The National Society for the Prevention of Cruelty to Children (NSPCC) website, a vital tool for all local authorities and professionals engaging with CSE, provides resources aimed at professionals who work with young people affected by or at risk of CSE. One of the resources is a case study of the improvements to the local response in Rochdale to CSE outlining the key developments since the Serious Case Review in 2012.<sup>45</sup>

### 2.4.3. Multi-Level Non-Discrimination Policy in the EU: the Case of discrimination reporting desks in Flanders (Belgium)

#### 2.4.3.1. Introducing the Issue

A third case shows the combined action of an LRA as *monitor* and *coordinator* and also provides an example of how local initiatives can strengthen the rule of law and facilitate access to justice through providing assistance to victims in pursuing their discrimination complaints. The struggle against discrimination in the European Union is pursued through a variety of interconnected measures on multiple policy-levels; from the most central to the very local level. Only through such simultaneous multi-level action, can the value of non-discrimination (art. 2 TEU) become reality on the ground throughout the EU. This example focuses on how this multi-level policy is translated in the context of the Belgian federal state with a specific focus on the region with legislative power: or - Flanders. Transposing the EU Equality Directives, the Flemish government elaborated the Decree of 10 July 2008 concerning a Framework for the Flemish Equal Opportunity and Equal Treatment Policy.<sup>46</sup>

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<sup>44</sup> Local Government Association (2013) Child sexual exploitation: awareness raising resource, available at: [www.local.gov.uk/safeguarding-children/-/journal\\_content/56/10180/3790391/ARTICLE#sthash.vAhmVE0E.dpuf](http://www.local.gov.uk/safeguarding-children/-/journal_content/56/10180/3790391/ARTICLE#sthash.vAhmVE0E.dpuf)

<sup>45</sup> National Society for the Prevention of Cruelty to Children (2013) 'It is absolutely behind us': Councils reveal new approach to safeguarding after grooming scandals, available at: [http://www.nspcc.org.uk/Inform/resourcesforprofessionals/sexualabuse/sexual\\_exploitation\\_practice\\_wda85129.html](http://www.nspcc.org.uk/Inform/resourcesforprofessionals/sexualabuse/sexual_exploitation_practice_wda85129.html).

<sup>46</sup> Decree of 10 July 2008 Regarding a Framework for Flemish Equal Opportunity and Equal Treatment Policy [*Decreet van 10 juli 2008 houdende een kader voor het Vlaamse gelijkekansen- en gelijkebehandelingsbeleid*], further referred to as the Flemish Equality Decree. Note that the Decree also purports to implement UN treaties against racial discrimination (CERD) and discrimination against women (CEDAW), and has a scope that reaches beyond the mere transposition of the EU Directives.

### 2.4.3.2. Describing the initiative

The Flemish Decree provides an important tool to link up governmental action with discrimination problems faced by citizens: the recognition and subsidisation of equal opportunity reporting desks in Flemish cities.<sup>47</sup> As a result, 13 reporting desks have been recognised in the 13 central cities of Flanders<sup>48</sup> and one in Brussels. In order to be recognised, prior agreement is needed of the city council where the local reporting desks are established. The local reporting desks function thus not only under the auspices of the Flemish government, but are also embedded in the city administration and often also profit from city resources.<sup>49</sup> The main chunk of work goes to the provision of assistance to potential victims of discrimination that file a complaint.<sup>50</sup> In addition, the reporting desks undertake local preventive publicity campaigns, and organise educational activities. Performing a local networking and coordination function, reporting desks often organise activities in cooperation with other local actors, including from the private sector (like civil society organisations or local business).

When dealing with complaints, the reporting desks play merely a mediating role. If complaints fall within the scope of work of other entities within the administration (for example when legal proceedings are required), the local desks refer the complainants to the competent bodies. The Centre for Equal Opportunities and Opposition to Racism (CEOOR)<sup>51</sup> offers expertise and support to the local reporting desks,<sup>52</sup> and also linked up the local desks with its central registration system (“Metis”) where all Belgian discrimination complaints are filed<sup>53</sup> This registration system ensures a standardised approach regarding the handling of complaints and their fluent referral, and also serves as a monitoring tool to assess structural discrimination problems. Until the end of 2013, the local registration desks functioned under the auspices of the Flemish ministry for Equal Opportunities. Since 2014, however, they have been integrated under the CEOOR

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<sup>47</sup> Art. 42 Flemish Equality Decree.

<sup>48</sup> These are: Aalst, Antwerp, Bruges, Genk, Gent, Hasselt, Kortrijk, Leuven, Mechelen, Oostende, Roeselare, Sint-Niklaas and Turnhout.

<sup>49</sup> The local registration desk in Antwerp, for example, is located in the same building as the city ombudsman with which it intensely cooperates.

<sup>50</sup> A full overview of the activities of the local registration desks can be found in their annual reports.

<sup>51</sup> This is the Belgian institution with a broad mandate to combat discrimination (with regard to racism, religion, disabilities, age, sex) and to promote equal opportunities.

<sup>52</sup> See for example the Annual Report 2013 of the Leuven Registration Desk, p. 2.

<sup>53</sup> The local registration desks in Wallonia (*Les Espaces Wallonies*) are also included in the Metis registration system.

that became an “interfederal” entity, competent for discrimination matters with regard to both competences of the federal and federalised governments.<sup>54</sup>

### 2.4.3.3. Impact of the Initiative

Centrally embedded local discrimination reporting desks like those in Belgium have the potential to link up discriminative practices detected by citizens and local stakeholders on the local level with policies and remedies that are often articulated at a more central level of policy-making. In the Belgian federal state, where anti-discrimination remedies are spread over many different actors, local reporting desks play an essential role in ensuring easily accessible complaint mechanisms for citizens. The cataloguing of complaints through the centralised registration system “Metis” enables coordination and easy referral between different entities that are competent to follow-up discrimination cases. In addition, Metis allows policy-makers to get a more coherent view on discrimination issues, and detect priority areas for prevention. As the local reporting desks note themselves, however, their reputation is limited;<sup>55</sup> while one thousand complaints within one year is a significant number, many potential cases of discrimination are not reported. Tight resources have prevented the reporting desks to substantially invest in local publicity campaigns, especially in local communities beyond the city where the registration desks are located. The current integration of the local registration desks under the CEOOR, however, creates potential to better publicise the work of the local registration desks through a centrally steered publication campaign.

With limited resources,<sup>56</sup> the local registration desks have been assigned a wide range of functions encompassing the handling of discrimination complaints, but also prevention, education, as well as local networking and coordination (i.e. awareness raising). Obviously, the capacity to carry out preventive and awareness raising functions is currently rather limited, and resources are insufficient to undertake systematic activities in these areas. Notably, the registration desks look

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<sup>54</sup> Art. 6 §1 Cooperation agreement between the federal government, the Regions and Communities regarding the establishment of an interfederal Centre for equal opportunities and opposition to racism [*Samenwerkingsakkoord tussen de federale overheid, de Gewesten en de Gemeenschappen voor de oprichting van het interfederaal Centrum voor gelijke kansen en bestrijding van discriminatie en racisme onder de vorm van een gemeenschappelijke instelling zoals bedoeld in artikel 92bis van de bijzondere wet van 8 augustus 1980* 12 juni 2013], B.S. 30 January 2014.

<sup>55</sup> See for example: Annual Report 2012 of the Antwerp Registration Desk, p. 1; Annual Report 2013 of the Leuven Registration Desk, p. 6.

<sup>56</sup> The local registration desk in Antwerp, for example, has resources for 1.5 employees. Before 2012, the capacity was limited to one employee.

for synergies with other (public and private) actors from the local community to carry out small-size activities in these areas of competence.<sup>57</sup>

## **2.4.4. Promotion of rights of migrants to be integrated in political decision-making in Dublin (Ireland)**

### **2.4.4.1. Introducing the Issue**

One challenge to national and local governments is how to promote and protect migrant rights so that immigrants can enjoy them in their new land. The Irish Central Statistics Office reported the approximate number of immigrants in Ireland at 554,500 in 2013. In Dublin County (1,273,069 inhabitants), more than 15 percent of the population is comprised of non-nationals.<sup>58</sup> With the increased ethnic, cultural and linguistic diversity in the city come challenges for inclusion of new residents in city life. This case examines the issues of migrant rights and the right to equal treatment, focusing on how migrants are integrated into Dublin political decision-making through local voter registration initiatives led by local authorities and grassroots migrant community groups.

### **2.4.4.2. Describing the Initiative**

Within the Dublin City Council, the Office of Integration has promoted *One City One People*, an effort to empower immigrant populations, including an initiative in 2014 that encouraged migrants to register for the May 2014 local and European elections. These voter registration initiatives (launched in 2009 and conducted in both 2009 and 2014), coupled with the establishment of an integration forum, an intercultural liaison of volunteers and stepped up efforts toward economic integration of migrants, are supported by the Office for the Promotion of Migrant Integration,<sup>59</sup> the national Irish authority that coordinates integration activities in the public sector.

Achieving higher levels of voter participation within immigrant populations has its own unique challenges and obstacles. This right is not extended to migrants in

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<sup>57</sup> For example: the Leuven desk created an ad hoc working group consisting (inter alia) out of people from the catering sector to organise campaigns to prevent discrimination in this sector.

<sup>58</sup> Dublin City Council, *Towards Integration: A City Framework*, 5.

<sup>59</sup> Dublin.ie, *One City One People Campaign 2014*; Dublin.ie, *Launch of Migrant Voters Campaign 2013*,.

many other EU countries.<sup>60</sup> Indeed, Ireland has one of the least restrictive voting laws for non-migrants involving merely two steps – (1) completion of a standard form and (2) witnessing of the signature before a local Garda (police) officer.<sup>61</sup> Notwithstanding this easy procedure, participation remains rather low. In order to address this, the four local authorities of Dublin<sup>62</sup> have launched activities designed to “promote inclusion, integration and to combat racism and discrimination”.<sup>63</sup>

On November 4, 2013, a voter registration campaign for migrants was launched by the Dublin City Council for the upcoming local and European elections in May 2014. The initiative relies on the active participation of local grassroots immigrant groups (many organised as charitable associations under Irish law) and has used several strategies to raise voter awareness, including the distribution of flyers, posters and advertisements in local newspapers, as well as the promotion of a website link to sign up to vote or to check whether an individual is already registered to vote.<sup>64</sup> A second initiative, organised by the South Dublin County Council in March 2014 to register migrant voters, assisted many migrants in completing voter registration forms for the 2014 elections.<sup>65</sup> At that event, people could do a one-stop registration because while they were being assisted in completing the form, a garda officer was available to witness their signature.<sup>66</sup>

#### **2.4.4.3. Impact of the Initiative**

These campaigns were held in two successive local elections – 2009 and 2014. As a result, some outcomes are available about the impact on migrant voter participation. These impacts are measured in the way the voter registration campaign met an immediate need in the city and in the numbers who came to register to vote. The migrant voter registration initiatives of 2009 and 2014 met an immediate need to increase the number of migrants that participate in political decision-making by voting in local elections. The low percentage of migrants registered to vote is demonstrated by the following statistics: 15 percent of

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<sup>60</sup> Kees Groenendijk, *Local Voting Rights for Non-Nationals in Europe, What We Know and What We Need to Learn*, <http://www.migrationpolicy.org/research/local-voting-rights-non-nationals-europe-what-we-know-and-what-we-need-learn>.

<sup>61</sup> Register of Electors, *Check the Register*, [http://www.checktheregister.ie/appforms/RFA\\_English\\_Form.pdf](http://www.checktheregister.ie/appforms/RFA_English_Form.pdf)

<sup>62</sup> (1) the Dublin City Council, (2) Dun Laoghaire Rathdown County Council, (3) Fingal County Council, and (4) South Dublin County Council.

<sup>63</sup> Dublin.ie, *One City One People Campaign 2014*; Dublin.ie, *Launch of Migrant Voters Campaign 2013*.

<sup>64</sup> Dublin.ie, *Launch of Migrant Voters Campaign 2013*, <http://www.dublin.ie/arts-culture/migrant-voters-campaign.htm>.

<sup>65</sup> It should be noted that the 2014 campaign itself was scaled down due to budget constraints.

<sup>66</sup> South Dublin County Social Inclusion Officer interview 6 May 2014.

Dublin's population is comprised of non-nationals. Nonetheless, of the 323,000 people registered to vote in the sector of the city served by the Dublin City Council, only 16,000 are migrants. That constitutes roughly 7 percent of the population, a low figure by any standards.<sup>67</sup>

Statistics on the overall impact for the 2014 initiative are not yet available; however, some information is available from the first voter registration campaign of 2009. One Dublin City Council official described the 2009 campaign as “wildly successful”,<sup>68</sup> referring to the training given to local government officials about interaction with migrant communities and training of community migrant groups on the history and culture of Ireland.<sup>69</sup> The same official indicates that the city had collaborated with some 16 immigrant leaders from the community and trained around 100 people in how to carry out small voter registration campaigns at the community level.<sup>70</sup>

There is also some evidence that the 2014 initiative held by the South Dublin County authority is working. The South Dublin County Social Inclusion officer reports that some 100<sup>71</sup> new voters were added in its one-day registration event on a Saturday in March 2014 and that newly-formed partnerships with migrants, other than those from Africa (migrants from Nepal and the Philippines), gave hope of a continued vitality of the initiative.<sup>72</sup> The Social Inclusion officer also opined that the process served to foster more positive relationships between gardaí and the migrant population.<sup>73</sup>

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<sup>67</sup> Dublin.ie, *Launch of Migrant Voters Campaign 2013*, <http://www.dublin.ie/arts-culture/migrant-voters-campaign.htm>.

<sup>68</sup> Dublin City Council official interview 6 May 2014.

<sup>69</sup> New Communities Partnership, *A Practical Guide for Assisting Integration Through Local Authorities*, 3, available at [http://www.newcommunities.ie/download/pdf/a\\_practical\\_guide\\_to\\_integration\\_for\\_local\\_authorities\\_2013.pdf](http://www.newcommunities.ie/download/pdf/a_practical_guide_to_integration_for_local_authorities_2013.pdf).

<sup>70</sup> Dublin City Council official interview 6 May 2014.

<sup>71</sup> The Senior Officer for the Register of Electors for South Dublin County Council confirmed 95 new registrants for local elections. E-mail dated 30 May 2014 (on file with the author).

<sup>72</sup> South Dublin County Social Inclusion Officer interview 6 May 2014.

<sup>73</sup> South Dublin County Social Inclusion Officer interview 6 May 2014.

## 2.4.5. Access to health care for undocumented Migrants, children and pregnant women in Helsinki (Finland)

### 2.4.5.1. Introducing the Issue

This case addresses the right to health (fundamental rights) and access to health care services of undocumented migrants in Finland and illustrates how LRAs are important **service providers** for services directly related to fundamental rights. In Finland – mainly in Helsinki and the capital area – there are approximately three thousand persons considered as undocumented migrants.<sup>74</sup> Due to their legal status, they constitute a group of people with very limited access to health care services in Finland. In the Finnish system, a person is subject to the administration of the municipality in which his/her residence is located<sup>75</sup> and municipalities are obliged to organise (i.e. arrange and fund) primary health care and specialised medical care for their residents.<sup>76</sup> However, undocumented migrants are only entitled to urgent medical care.<sup>77</sup> They still have to pay for the urgent treatment, if they do not have a municipality of residence in Finland or are not entitled to public health care services due to EU law or an international social security agreement, but the payment is not required before the urgently needed treatment has been provided and municipalities can decide to waive charging the costs of the treatment either partly or wholly.<sup>78</sup>

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<sup>74</sup> Following Keskimäki, Ilmo; Nykänen, Eeva; Kuusio, Hannamaria. Health care services for undocumented migrants in Finland. National Institute for Health and Welfare, Report 11/2014. Helsinki 2014 (hereafter *Report 11/2014*). This Report defines an ‘undocumented migrant’ as a person: 1) who stays in Finland without a residence permit (person’s residency permit has expired or entry/residency in the country is not legal), having arrived from a country other than an EU or EEA Member State or Switzerland; 2) who has arrived from a country other than an EU or EEA Member State or Switzerland and whose residence permit or visa is contingent or having private health insurance but whose insurance cover has expired or is not comprehensive (however, a person is not automatically considered as an undocumented migrant, if he or she does not have a residency municipality or health insurance coverage in Finland); or 3) an EU citizen whose temporary residence in Finland is legal as such but who has no health insurance or medical insurance coverage. The report is available in Finnish at: [http://www.julkari.fi/bitstream/handle/10024/114941/THL\\_RAP2014\\_011web.pdf?sequence=3](http://www.julkari.fi/bitstream/handle/10024/114941/THL_RAP2014_011web.pdf?sequence=3)). Note short-term tourists or persons on business trips (max.3 months) are not considered as undocumented migrants. For more on the issue readers can consult Ministry of Social Affairs and Health, web-pages in English (health care of undocumented persons): [http://www.stm.fi/en/social\\_and\\_health\\_services/health\\_services/health-care-of-undocumented-persons](http://www.stm.fi/en/social_and_health_services/health_services/health-care-of-undocumented-persons)

<sup>75</sup> Pursuant to the Municipality of Residence Act (No. 201/1994).

<sup>76</sup> Report 11/2014, p. 24. NB: A person insured in another EU member state is entitled to health care in Finland without discrimination.

<sup>77</sup> Section 50 of the Health Care Act (No. 1326/2010), available in English at: <http://www.finlex.fi/fi/laki/kaannokset/2010/en20101326.pdf>. Urgent cases include cases involving an injury, a sudden onset of an illness, an exacerbation of a long-term illness, or a deterioration of functional ability where immediate intervention is required and where treatment cannot be postponed without risking the worsening of the condition or further injury.

<sup>78</sup> Report 11/2014, p. 24.

Undocumented migrants may also have a need for non-urgent health care services. According to the Finnish legislation and in spite of the binding human rights conventions,<sup>79</sup> an undocumented migrant is not entitled to non-urgent public health care services if he or she does not have a municipality of residence in Finland, or EU legislation or an international social security agreement does not apply. If an undocumented migrant receives non-urgent health care, he or she is obliged to pay the full costs of the given treatment.<sup>80</sup>

#### **2.4.5.2. Describing the Initiative**

At the end of 2013, both the City of Helsinki Social Services And Health Care Committee and the Helsinki City Board decided to provide access to urgent medical care for all undocumented migrants and broader access to health care for undocumented children and pregnant women at the same client fees as for citizens of Helsinki.<sup>81</sup> According to the city board decision, children that are entitled to health care services are to be defined as “every human being below the age of eighteen years” as per in the Convention on the Rights of the Child (1989).<sup>82</sup>

#### **2.4.5.3. Impact of the Initiative**

It is too early to assess the costs of the above-mentioned decision and to analyse how undocumented migrants use those health care services.<sup>83</sup> Pursuant to a 2014 report of the National Institute for Health and Welfare on health care services for undocumented migrants residing in the country without a residency permit or health insurance, the best compliance with human rights conventions binding upon Finland and with the Finnish Constitution would be achieved by offering undocumented migrants the same health care services at the same client fees as local residents.<sup>84</sup>

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<sup>79</sup> E.g. article 12 of the International Covenant on Economic, Social and Cultural Rights (1966); articles 11 and 13 of the European Social Charter (1996, revised).

<sup>80</sup> Health care of undocumented persons, Ministry of Social Affairs and Health web-page at: [http://www.stm.fi/en/social\\_and\\_health\\_services/health\\_services/health-care-of-undocumented-persons](http://www.stm.fi/en/social_and_health_services/health_services/health-care-of-undocumented-persons).

<sup>81</sup> The official record of the Social Services and Health Care Committee meeting 26.11.2013 available at (in Finnish): [http://www.hel.fi/static/public/hela/Sosiaali- ja\\_terveyslautakunta/Suomi/Paatos/2013/Sote\\_2013-11-26\\_Sotelk\\_18\\_Pk/AA0D645C-24B1-4F09-B2A9-14D520B60A56/Sosiaali- ja\\_terveyslautakunta\\_poytakirja\\_26112013.pdf](http://www.hel.fi/static/public/hela/Sosiaali- ja_terveyslautakunta/Suomi/Paatos/2013/Sote_2013-11-26_Sotelk_18_Pk/AA0D645C-24B1-4F09-B2A9-14D520B60A56/Sosiaali- ja_terveyslautakunta_poytakirja_26112013.pdf).

<sup>82</sup> The official record of the Helsinki City Board meeting 9.12.2013 available at (in Finnish): [http://www.hel.fi/static/public/hela/Kaupunginhallitus/Suomi/Paatos/2013/Halke\\_2013-12-09\\_Khs\\_44\\_Pk/9E97E676-C7F2-435E-8B5E-F383BA638BB2/Kaupunginhallitus\\_poytakirja\\_09122013-44\\_julkinen.pdf](http://www.hel.fi/static/public/hela/Kaupunginhallitus/Suomi/Paatos/2013/Halke_2013-12-09_Khs_44_Pk/9E97E676-C7F2-435E-8B5E-F383BA638BB2/Kaupunginhallitus_poytakirja_09122013-44_julkinen.pdf).

<sup>83</sup> Phone interview with chief medical administrator Jukka Pellinen on the 9th of May 2014.

<sup>84</sup> Report 11/2014, p. 63–64.

## 2.4.6. Monitoring of LGBT rights via regional Basque Ombudsman's action (Spain)

### 2.4.6.1. Introducing the Issue

The sixth case focuses on a local ombudsman not only as a *monitor* but as an active participant in *awareness raising*, and *coordinating* with a specific focus on Lesbian, Gay, Bisexual and Transgender (LGBT) rights. There is no national body or agency in charge of monitoring or combating discrimination on grounds of sexual orientation or gender identity, neither is there a national anti-discrimination policy, plan or strategy concerning LGBT rights. The lack of anti-discrimination policies and the weakness of institutional development of national protection agencies are generally considered as major drawbacks for the effective enjoyment of their rights by members of discriminated groups, in this case, LGBT persons.<sup>85</sup>

### 2.4.6.2. Describing the initiative

The *Ararteko* (Basque Ombudsman Office)<sup>86</sup> is a delegate of the Basque Parliament in charge of defending the rights of individuals in their relations with the Basque Public Administration. The main remit of the institution consists in receiving and handling complaints, requests and enquiries regarding incorrect or irregular actions by the Basque Public Administration. Moreover, the *Ararteko* carries out diagnosis of public policies of the Basque Administrations through the elaboration of reports and recommendations in order to improve the protection of fundamental rights, especially of the most vulnerable groups in society.

The *Ararteko* initiated actions in the field of discrimination on grounds of sexual orientation and gender identity with three objectives: (a) to attain that Basque public administrations mainstream respect for equality and non-discrimination on grounds of sexual orientation in all their actions;; (b) to promote a culture of non-discrimination on grounds of sexual and gender diversity within Basque society; and (c) to combat any form of homophobia or transphobia in the Basque Country.

In 2011, the Basque government set up an initiative for LGBT people(persons) (called BERDINDU) and produced, together with LGBT associations, a Working

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<sup>85</sup> FELGTB and COGAM 2013; European Union LGBT Survey 2013, available at <http://fra.europa.eu/en/publication/2013/eu-lgbt-survey-european-union-lesbian-gay-bisexual-and-transgender-survey-results> (EN).

<sup>86</sup> Established by the Basque Parliament Act on the Ombudsman Office (*Ararteko*) 3/1985, of 27th February.

Plan 2011-2013. One of the issues identified in the Working Plan was the necessity of raising social awareness and improving education from an early age so that sexual diversity and diversity regarding gender identity were fully accepted. The *Ararteko* has contributed to this action by its participation in two European projects of DG Justice (European Commission). The projects aim to analyse and improve the level of enjoyment of LGBT rights in an educational context. These projects were project Rainbow (2011-2012)<sup>87</sup> and Rainbow Has (2013-2014)<sup>88</sup>. The first project resulted in pedagogical tools consisting of a DVD with 8 films and one educational guidebook. This resource has been sent out to schools and associations in the whole Basque Country. The second project, coordinated by the *Ararteko*, intended to scale up the results of the previous one, by also reaching families and parents' associations in the alliance of stakeholders.

### 2.4.6.3. Impact of the Initiative

Although it is still too soon to make a balanced assessment of the impact of the projects, it can be retained that the initiative of the *Ararteko* has contributed to targeted action for the protection of on LGBT rights in the field of education, with the production and dissemination of educational materials, teachers' trainings and support and awareness raising workshops for families and school parents' associations. Moreover, the activity of the *Ararteko* in this field can also be linked to initiatives at the policy level. In 2013, the Basque Parliament<sup>89</sup> urged the Basque Government (Education Department) and the educational communities to integrate a gender and sexual diversity approach when planning school's activities. Following this call, the Education Department of the Basque Government has approved a Directive on co-education and prevention of gender violence in the school system.

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<sup>87</sup> <http://www.rainbowproject.eu/>.

<sup>88</sup> <http://blog.rainbowhas.eu/about/>.

<sup>89</sup> Institutional Declaration on 17<sup>th</sup> of May (International Day against Homophobia and Transphobia).

## 2.4.7. Involvement of LRAs in Constitutional review in Poland

### 2.4.7.1. Introducing the Issue

This final case is an example of how LRAs can act as **rule-enforcers** in the context of fundamental rights and rule of law. The Constitution of Poland establishes a general principle of decentralisation of the state:<sup>90</sup> both legislative and executive bodies are present at each of the three decentralised levels of government (communes, counties, *voivodships*). The principle of decentralisation is reinforced by a general assumption that any public tasks fall within communal competence, unless stated otherwise, whereas the other levels have attributed competences.

Decentralisation in Poland notably aims to empower local communities and to avoid power accumulation by central state authorities as experienced during the communist era. In order to safeguard this balance of power and ultimately the rule of law, LRAs have the power to bring acts of law for constitutional review before the Constitutional Tribunal of Poland when such laws are considered to infringe on LRAs' legal status and competences.<sup>91</sup>

### 2.4.7.2. Describing the Initiative

This power is vested exclusively in LRAs' legislative bodies at every level and the laws challenged must be relevant to the status or competences of the LRA at hand.<sup>92</sup> This criterion allows to litigate issues related to the rule of law and the division of powers within the state. Concerning fundamental rights, the Constitutional Tribunal has clearly stated that LRAs cannot initiate constitutional review in cases of individual human rights violations.<sup>93</sup> However, several explicit areas of LRAs' competences directly relate to human rights (e.g. health care, education, legal oversight over associations and assemblies) and hence may be subject to judicial review. For example, in one case fusing issues both regarding rule of law and fundamental rights within the sphere of LRAs, the City Council of Gorzow Wielkopolski was able to successfully challenge, for breach of the

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<sup>90</sup> Z. Kędzia, A. Hauser, J. Jabłońska, J. Jaraczewski *An Introduction to Polish Constitutional Law*; S. Popławski *Administrative Law* [in:] W. Dajczak, A. J. Szwarc, P. Wiliński (eds.) *Handbook of Polish Law* Park 2011.

<sup>91</sup> Art. 191 sec.1 subs. 3 of the Constitution.

<sup>92</sup> M. Zubik *Legitymacja procesowa jednostek samorządu terytorialnego przed Trybunałem Konstytucyjnym* [in:] R. M. Czarny, K. Spryszak (eds.) *Państwo i prawo wobec współczesnych wyzwań. Zagadnienia prawa konstytucyjnego. Księga jubileuszowa Profesora Jerzego Jaskierni* Wydawnictwo Adam Marszałek 2012

<sup>93</sup> L. Garlicki *Komentarz do art. 191 Konstytucji RP* [in:] L. Garlicki (ed.) *Konstytucja Rzeczypospolitej Polskiej. Komentarz, tom V* Wydawnictwo Sejmowe 2007

constitutional division of competences, a piece of central legislation allowing for the revocation of subsidies aimed to compensate for communal income loss due to tax breaks enjoyed by disabled persons.<sup>94</sup>

### **2.4.7.3. Impact of the Initiative**

The competence of LRAs to bring acts of law to constitutional review in Poland is employed frequently, primarily by communes given the scope and importance of their activities. In the years 1997-2013, the Constitutional Tribunal has delivered over 150 rulings on merits in such cases, making LRAs one of the most active constitutional review initiators in Poland. The sheer variety and importance of cases brought forth by LRAs, indicates that vesting them with a power to bring laws concerning their status and activity for judicial review is both warranted and in principle, effectively implemented. As such, it adds a very important layer of protection of the legal order, rule of law and, indirectly, fundamental rights. Specifically, the narrow focus of such review, combined with the sheer number of LRA units in Poland, results in a relatively high probability that laws encroaching on division of powers will be challenged before the Constitutional Tribunal.

Several issues however stymie the effectiveness of this mechanism. Firstly, the standing limited to laws directly relevant to LRAs causes many cases to be declared inadmissible by the Constitutional Tribunal. This requirement has so far been strictly interpreted, notably where competences of LRAs and central authorities intersect, or where the default assumption of communes' competences is brought into question. A second issue is of economic nature. Legal expertise necessary for Constitutional cases is scarce and costly, and only few LRAs may afford an extensive in-house legal department, with smaller communes often relying upon as much as a single person. Furthermore, the relatively low income of LRA employees discourages lawyers from pursuing this career. As a result, many LRAs are poorly equipped to exercise their Constitutional review prerogative.<sup>95</sup> Possible solutions to this issue include actions (trainings, courses) aimed at providing specialised legal knowledge and skills in the field of constitutional law to employees and officers of LRAs.

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<sup>94</sup> Judgment of the Constitutional Tribunal dated 30 April 2009, file reference U 2/08, publ. **OTK** ZU nr 4/A/2009

<sup>95</sup> One peculiar example of issues faced by the local self-government in ensuring professional legal representation was the case K 24/10 which arose from an application by the City Council of Twardogóra. The Constitutional Tribunal was forced to discontinue the proceeding when the representative of City Council failed to physically appear at a hearing.



## Part 3: Recommendations

The framework and cases presented in this File note show that LRAs play a crucial role in protecting fundamental rights in a multi-level governance system. The latter is also highlighted in the recent annual report of the Fundamental Rights Agency in which it recognised the importance of regional and local actors (pp. 11 and 14). The importance of *localising* fundamental rights and rule of law is also recognised in the academic literature<sup>96</sup> which emphasises that involving local actors in the enforcement of fundamental rights contributes to closing the enforcement gap<sup>97</sup>.

The File note confirms the importance of the components identified in the FRA toolbox<sup>98</sup> and identifies different roles LRAs can play in the protection of fundamental rights and strengthening the rule of law. Next the File note presents several cases/examples of these roles. In this section some lessons are drawn and recommendations are suggested. After a general assessment, a number of specific issues are further examined.

### 3.1. From isolated initiatives to a coherent legal and policy framework

As underlined in the 2014 Annual Report of the FRA and as operationalised in the proposed strategic internal framework, fundamental rights are a matter of multilevel governance. This is also recognized in the Charter for Multilevel Governance in Europe<sup>99</sup>. Right now, this too often means that the different levels of government will take ‘initiatives’ to address specific issues of direct interest to them, in isolation of other initiatives and outside of any clear and coherent legal, policy or budgetary framework. However laudable these initiatives are, they suffer from weaknesses as a result of this isolation. First, their authoritativeness can be limited by the lack of a clear legal mandate explicitly defining their role in the

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<sup>96</sup> See note 24.

<sup>97</sup> The enforcement gap refers to the fact that many international treaties and conventions related to fundamental rights are signed and ratified by countries but that one also can still observe significant violations of these rights in these countries (see Hafner-Burton, note 24).

<sup>98</sup> Understanding fundamental rights, coordination and leadership, communicating fundamental rights, participation and civil society; and planning, monitoring and evaluation.

<sup>99</sup> Committee of the Regions, Resolution on the Charter for Multilevel Governance in Europe, 106<sup>th</sup> plenary session, 2 and 3 April 2014, especially point 1.5) available at <http://cor.europa.eu/en/activities/governance/Documents/mlg-charter/en.pdf> (EN)

protection of fundamental rights and the strengthening of the rule of law. Second, their impact can be limited by the lack of mutual reinforcement and synergies with the initiatives taken by other levels of government or by a lack of budget.

In respect of LRAs' roles and responsibilities with regard to fundamental rights and the rule of law, central state authorities should make sure to adopt clear legal, policy and budgetary framework so that LRAs' initiatives can find their place in a coherent pattern of multilevel governance, for example through the allocation of cascading responsibilities and specific mandates, inclusion and participation of LRAs in national plans for protecting fundamental rights and the rule of law, and the adoption of structural budgetary measures allowing LRAs to discharge their role effectively. The latter is partially illustrated by the Polish case.

**Recommendation 1:** Streamline and reinforce legal and policy framework to ensure coherence and effectiveness of LRA initiatives.

### **3.2. From piecemeal action to mainstreaming fundamental rights and rule of law.**

The protection of fundamental rights and strengthening the rule of law encompass a wide range of rights and commitments which form a coherent package. Several LRAs are developing initiatives but often on very specific issues or rights. Some of the examples included in this report illustrate this focused attention. A broader challenge is to integrate fundamental rights and rule of law in *all* aspects of policy-making in which LRAs play a role. In other words, how can we mainstream fundamental rights and rule of law as transversal policy objectives in local and regional policy-making? The concept of 'mainstreaming' fundamental rights can be defined as a strategic process of incorporating fundamental rights into processes or organizations which are not explicitly mandated to deal with fundamental rights<sup>100</sup>. A key focus can be on strengthening initiatives for 'internally' mainstreaming fundamental rights in LRAs. This includes ensuring organisational capacity and coherence through establishing standard procedures, investing in hiring and training staff for human rights and rule of law-related functions, and fostering an internal 'human rights culture', etc. The FRA toolbox referred to above is a good

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<sup>100</sup> Benoit-Rohmer, F., et al. 'Human Rights Mainstreaming in EU's External Relations', European Parliament, Directorate-General for External Policies of the Union, Directorate B, Policy Department, EXPO/B/DROI/2008/66 (2009), 15.

first step in this direction. However, these toolboxes are work in progress and several other toolboxes, which can feed into and strengthen the existing toolbox, are currently being developed both by other actors<sup>101</sup>.

**Recommendation 2:** Further strengthen the existing FRA toolbox by benchmarking it to other initiatives.

**Recommendation 3:** Further implement the toolbox via dissemination and training. Train a significant number of consultants or coaches on mainstreaming fundamental rights for LRAs and accredit these consultants/coaches so that they can coach other LRAs. The CoR could intervene at that stage to support this process, either by organising these training sessions in order to improve the understanding of the concept of mainstreaming fundamental rights or by providing documentation and support to the LRAs in this regard.

**Recommendation 4:** Provide incentives to LRAs to mainstream fundamental rights. Incentives can include provision of consultants/coaches. The funding of these incentives is an issue which needs to be addressed in more detail. A possible way forward is to establish a fund, either public, private, or public-private which provides funds to LRAs, especially smaller ones, to hire consultants or coaches to mainstream fundamental rights.

### 3.3. From Mainstreaming to Strengthening: Benchmarking and Peer Learning

Initial mainstreaming initiatives would be able to lay the ground work, i.e. set LRAs on the path to a more comprehensive integration of fundamental rights and rule of law. In order to further strengthen the mainstreaming process, follow up initiatives could be developed. Enhanced mainstreaming can be followed up with continuous monitoring and peer-to-peer learning initiatives. In this context the CoR can develop a (voluntary) *open method of coordination* (OMC) on measuring the implementation of fundamental rights and strengthening the rule of law. Such a method would be able to generate (positive) dynamics to further strengthen the integration of fundamental rights in LRAs and facilitate the implementation. This does not in any way replace the existing legal obligations states have concerning

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<sup>101</sup> See for example the European Commission Staff working document: Tool-Box: a Rights-Based approach, encompassing all human rights for EU development cooperation (SWD 2014) 152 final Brussels, 30.4.2014.

the protection of fundamental rights but is a policy mechanism that could be used to close the enforcement gap. There are several variants of the open method of coordination but key is that benchmarks concerning fundamental rights and strengthening rule of law are developed on a more central level through consultations and negotiations, while competition for best practice would take place at a decentralised level. This concretely can be translated into a four step process<sup>102</sup>.

1. A committee can be established to overview the commitment and activities agreed upon (this could be a joint inter-institutional committee combining several institutions). This committee can in principle take three forms. First, it would be established within the CoR and be composed by the CoR following the procedures for CoR Commissions<sup>103</sup>. Alternatively, the tasks of the committee could be attributed to the CIVEX Commission. Second, the CoR network procedure<sup>104</sup> would be used to set up a fundamental rights and rule of law monitoring network (akin to the subsidiarity monitoring network<sup>105</sup>). Third, an inter-institutional committee would be established with other institutions such as the European Parliament.
2. This committee would develop quantitative and qualitative indicators and benchmarks to compare progress and best practices.
3. Regular monitoring and joint evaluation would then take place to maintain peer pressure and mutual learning.
4. The committee would also report to LRAs on progress, best practices and facilitate peer-to-peer learning.

In this context it is important to clearly define the policy-level in which the initiative is implemented: municipality, region, etc. This strategy can be translated in multiple initiatives for multiple levels.

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<sup>102</sup> Tholoniati, L (2010) The Career of the Open Method of Coordination: Lessons from a “Soft” EU Instrument, in *West European Politics*, 33, 1, pp. 93-117

<sup>103</sup> <http://cor.europa.eu/en/activities/commissions/Pages/commissions.aspx>

<sup>104</sup> <http://cor.europa.eu/en/activities/networks/Pages/about-networks.aspx>

<sup>105</sup> As with the subsidiarity monitoring network, one could imagine establishing a ‘Fundamental Rights and Rule of Law’ Steering Group. See the parallelism with the Subsidiarity Steering Group. Pursuant to the New Subsidiarity Strategy for the Committee of the Regions adopted on 2 May 2012, the Subsidiarity Steering Group ‘ensures the proper coordination and political follow-up of subsidiarity monitoring activities throughout the year. In particular, it is responsible for highlighting annual subsidiarity priorities and making proposals on the use of the most appropriate tools and procedures of the Subsidiarity Monitoring Network in order to support the work of CoR rapporteurs in the legislative process’. For further information, see [https://portal.cor.europa.eu/subsidiarity/Publications/Documents/SMN%20Report%202011/A8782\\_summary\\_subsi\\_strategy\\_EN\\_modif1\\_final.pdf](https://portal.cor.europa.eu/subsidiarity/Publications/Documents/SMN%20Report%202011/A8782_summary_subsi_strategy_EN_modif1_final.pdf) (EN).

The process is expected to produce the following outcomes:

- Enhanced mutual learning and peer review between LRAs on the protection of fundamental rights and strengthening the rule of law in order to fully comply with all obligations.
- Identification of good practices and their potential of transferability.
- Development of joint policy initiatives among LRAs to further strengthen the protection of fundamental rights.

A key component in this strategy, to really foster learning, is the development of (network-based) knowledge management tools to disseminate information, exchange knowledge and create mutual learning. Several of these network-based knowledge management tools are already available and include ‘After Action Reviews’, Knowledge Fairs, Knowledge Management Audits with regard to Fundamental rights, the creation of Knowledge Repositories and online Collaboration platforms, peer-coaching or World Café types of interaction.<sup>106</sup>

An example of how this can concretely work, although through a private initiative, concerning specific fundamental rights can be found in the US in the Municipal Equality Index (MEI). MEI examines the laws, policies, and services of municipalities and rates them on the basis of their inclusivity of LGBT persons who live and work there. The 2013 MEI rates a total of 291 cities from every state in the United States. It produces city scoreboards, enables peer-learning, it features success stories, etc.<sup>107</sup>

**Recommendation 5:** Set up a taskforce to develop an OMC on the protection of fundamental rights and strengthening the rule of law in LRAs led by the CoR. The taskforce should (1) assess the feasibility of the idea and (2) develop concrete proposals concerning the establishment of a committee (different forms possible), procedures, reporting, peer-learning and should develop a pathway to the effective roll-out and implementation of the initiative.

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<sup>106</sup> For more on this see UNIDO/Leuven Centre for Global Governance Studies (2011) *Networks for Prosperity*.

<sup>107</sup> More information is available at: <http://www.hrc.org/campaigns/municipal-equality-index>. Note also that in Europe several cities such as Graz (case 1), Utrecht and others are promoting themselves as human rights cities and also are developing dynamics in this context of a comprehensive approach towards mainstreaming fundamental rights.

### 3.4. Strengthening Monitoring and Awareness Raising

The recommendations above constitute a broad approach to strengthening the protection of human rights and rule of law. This File note also identifies specific initiatives which generate more recommendations concerning particular roles LRAs can play. We focus in this context on monitoring and peer-learning.

**Monitoring.** LRAs play a specific and important role in monitoring the protection of fundamental rights and rule of law. In essence one can distinguish two forms of monitoring, top-down (auditing) and bottom-up (enabling individuals to lodge complaints) throughout the examples.

The example of Graz provides an illustration of top-down monitoring in which a committee audits communication (written and verbal) from political parties. Monitoring can become complex and requires very specific knowledge. The example of Graz shows that in case of election monitoring one also has to respect the freedom of speech. Hence, experts involved need to know exactly the point where a limitation of the rights is in danger to violate the freedom of speech. This has repercussions on how one designs monitoring committees. The monitoring committee should thus involve practitioners and academics with experience in human rights related issues. This can require additional training or setting up of committees for a number of municipalities in case the municipalities are small.

Monitoring should be followed up with action if violations are identified. The case of Graz shows that it is important to respect the boundary line with the judiciary. The monitoring committee can analyse the discourse and evaluate it in respect to fundamental rights, but can never take a decision whether statements made by politicians would be a breach of the law, which is the task of regular courts only.

**Recommendation 6:** When setting up top-down monitoring create an LRA based committee which consists of at least one legal expert in the field of fundamental rights.

**Recommendation 7:** When setting up top-down monitoring ensure follow-up steps in terms of accountability (through courts or other mechanisms) which are independent of the monitoring committee.

The example of local registration desks (the case of discrimination reporting desks in Flanders – Belgium) provides an illustration of how bottom-up systems can contribute to monitoring. The example showed that local registration desks with a

broad competence regarding discrimination are vital in order to offer a comprehensive and easily accessible complaint mechanism to citizens that face discrimination. The establishment of easily accessible mechanisms at a local level is important in order to capture violations. Local reporting desks can, next, refer citizens to the appropriate mechanism when further follow-up of a case is required. Similar roles are played by ombudspersons (case 6), local safeguarding children boards (case 2) or local authorities in constitutional review (case 7). The initiative also showed that embedding local registration desks in a more centralised structure generates added value. The integration of (the work of) local desks into centralised structures is important in order to enable mutual interaction between central policy-making and problems faced by local actors on the ground. In this regard, the fusion of the local registration desks in the CEOOR opens up important avenues to further strengthen mutually beneficial synergies. Moreover, local registration desks exist in other EU countries. It could be beneficial to establish a European cooperation network in order to exchange best practices between these local actors.<sup>108</sup>

**Recommendation 8:** Bottom-up monitoring via complaint systems complement top down monitoring in order to guarantee easily accessible contact points for individuals that suffer fundamental rights violations. The further establishment of bottom-up monitoring systems, which guarantees anonymity, on the local level is recommended.

**Recommendation 9:** Promote the development of a multi-level system of reporting in which local actors report to higher levels of policy-making which in turn can report to CoR. The CoR can use the information in consultation with EU institutions and bodies as well as the FRA. This importance of this mechanism is also highlighted in the annual report of the FRA<sup>109</sup>.

**Awareness Raising.** CoR can play an important role in awareness raising. The FRA annual report notes that awareness on fundamental rights is low. Hence, the development of a more comprehensive approach to awareness-raising targeted to LRAs and citizens is advisable. The latter is especially relevant in a context in which LRAs have limited budgets especially for information campaigns (see case of Dublin and case of Belgium) and economies of scale can be developed.

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<sup>108</sup> Note that the registration desk of Leuven refers to best practice examples of France and the Netherlands to enhance the reporting of complaints by citizens. See: Annual Report 2013 Registration Desk Leuven, p. 18.

<sup>109</sup> Fundamental Rights Agency (2014) *Fundamental Rights: challenges and achievements in 2013: Annual Report*. Luxembourg: Publications Office of the European Union.

**Concerning awareness raising to citizens**, and especially vulnerable groups in the context of fundamental rights and rule of law, centrally led initiatives can complement local initiatives. The case of Dublin shows that limited budgets can threaten the most carefully planned awareness strategies. Several initiatives were initiated in 2009. In 2013 some of these programmes came to an abrupt halt when the funding from the European Integration Fund (EIF), administered through the Irish foundation, Pobal, came to an end.<sup>110</sup> Some local authorities and their migrant network partners were unsuccessful in their application for new EIF funding in 2013.<sup>111</sup> In addition to the EIF funding, the Irish Office for the Promotion of Migrant Integration had also provided funding as part of the fight against racism, while matching funds were provided by the four local authorities.<sup>112</sup> The resulting severe cutbacks in programmes and services translated into 2014 voter registration initiatives that were essentially only poster campaigns, a shadow of the training and capacity-building done in 2009.<sup>113</sup> This Dublin initiative is a fine example of a local authority strategy to enhance and promote fundamental rights. Nevertheless, there is a related cautionary tale because continued survival of these initiatives depends upon available resources. Not all of these initiatives can be run or coordinated on a more central level or compensated by more centrally-led initiatives, but a more central-led comprehensive awareness-strategy can complement these initiatives.

Concerning **awareness raising to LRAs** it is important to focus on the role of LRAs as service providers in the context of fundamental rights and rule of law. The case of Helsinki shows that the human rights framework binds LRAs when developing rules on service provision and granting access to key services such as health care, education, etc.

**Recommendation 10:** Develop a comprehensive awareness-raising package on fundamental rights and rule of law which can be used by LRAs in order to enhance citizen's awareness of fundamental rights.

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<sup>110</sup> New Communities Partnership, A Practical Guide for Assisting Integration Through Local Authorities, 2, available at

[http://www.newcommunities.ie/download/pdf/a\\_practical\\_guide\\_to\\_integration\\_for\\_local\\_authorities\\_2013.pdf](http://www.newcommunities.ie/download/pdf/a_practical_guide_to_integration_for_local_authorities_2013.pdf);

Pobal, *About Us*, available at <https://www.pobal.ie/AboutUs/Pages/Who%20We%20Are.aspx>

<sup>111</sup> South Dublin County Social Inclusion Officer interview 6 May 2014

<sup>112</sup> New Communities Partnership, A Practical Guide for Assisting Integration Through Local Authorities, 3, 30-31, available at

[http://www.newcommunities.ie/download/pdf/a\\_practical\\_guide\\_to\\_integration\\_for\\_local\\_authorities\\_2013.pdf](http://www.newcommunities.ie/download/pdf/a_practical_guide_to_integration_for_local_authorities_2013.pdf)

<sup>113</sup> See <http://www.integration.ie/website/omi/omiwebv6.nsf/page/managingdiversity-strategies-local-en>

**Recommendation 11:** Develop a comprehensive awareness-raising campaign on the duties of LRAs in the context of the protection of fundamental rights and rule of law.

### 3.5 Strengthening Institutional Cooperation

Focusing on these recommendations can further position the CoR as a key partner and coordinator in the protection of fundamental rights and rule of law at the level of LRAs. In addition, the CoR may organise structured dialogues between associations of local and regional authorities and the European Commission in order to discuss possible mechanisms for coordination on all levels of European governance to achieve a better protection of fundamental rights and a strengthening of the rule of law. Such structured dialogue could be established following the lines of the 10th structured dialogue between the European Commission and European associations of local and regional authorities, including representatives of all major EU stakeholders representing views of sub-national authorities.<sup>114</sup>

The cooperation between the CoR and the FRA may also be intensified and lead to additional intermediary meetings between the annual dialogue procedure. For instance, specific working groups can be established including members of both EU bodies on specific fundamental rights issues within LRAs.

Moreover, the Memorandum of Understanding between the European Union and the Council of Europe suggests to establish a pan-European consensus on multilevel governance between the EU and the Council of Europe based on a European model of protection of fundamental rights and the strengthening of the regional and local dimension of the subsidiarity principle. The CoR is helping to implement this Memorandum<sup>115</sup> and the Congress of Local and Regional Authorities noted in its *Opinion on the White Paper of the Committee of the Regions on Multilevel Governance*, that this initiative was welcomed. The Congress suggested to make a reference to the cooperation agreement between FRA and the Council of Europe, which could lead to ‘a strategic triangle for the strengthening of human rights between the Congress, the Committee of the Regions

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<sup>114</sup> For further information, see <http://cor.europa.eu/en/activities/structured-dialogue/Pages/structured-dialogue-27nov-meeting.aspx> (EN).

<sup>115</sup> See White Paper on Multilevel Governance, available at [http://cor.europa.eu/en/activities/governance/Documents/mlg-white-paper/0387\\_inside-en-last.pdf](http://cor.europa.eu/en/activities/governance/Documents/mlg-white-paper/0387_inside-en-last.pdf) (EN), p. 13.

*and the Agency for Fundamental Rights*'.<sup>116</sup> This strategy could reinforce the cooperation between the CoR, the FRA and the Congress of Local and Regional Authorities in order to avoid duplications and foster synergies in the protection of fundamental rights and the strengthening of the rule of law.

In a similar vein, the Charter for Multilevel Governance in Europe<sup>117</sup> recently approved by the CoR through its Resolution of 2 and 3 April 2014 reiterates the 'need to mobilise all levels of governance to increase democratic accountability in Europe and ensure the effectiveness, coherence and complementarity of their action' and 'invites the associations of local and regional authorities, together with their networks and political figures wishing to support this process, to declare their support'. This Charter was sent to the Member States, to the Presidents of the European Commission, the European Parliament and the European Council, and to the President of the Congress of Local and Regional Authorities of the Council of Europe. It constitutes an additional indication that synergies are possible and should be pursued.

**Recommendation 12:** Develop a structured dialogue between associations of local and regional authorities and the European Commission.

**Recommendation 13:** Intensify the cooperation between the CoR and the FRA on specific fundamental rights issues within LRAs through additional meetings or working groups.

**Recommendation 14:** Reinforce the cooperation between the CoR, the FRA and the Congress of Local and Regional Authorities in order to avoid duplications and foster synergies in the protection of fundamental rights and the strengthening of the rule of law.

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<sup>116</sup> See <http://cor.europa.eu/en/activities/governance/documents/a37f6f91-2521-4e3f-b26a-a708a294625f.pdf> (EN).

<sup>117</sup> Committee of the Regions, Resolution on the Charter for Multilevel Governance in Europe, 106<sup>th</sup> plenary session, 2 and 3 April 2014, especially point 1.5) available at <http://cor.europa.eu/en/activities/governance/Documents/mlg-charter/en.pdf> (EN)