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“The Fundamental Rights Agency and Human Rights in the EU”

Check against Delivery !
Seule le texte prononcé fait foi !
Es gilt das gesprochene Wort !

Madame Chair, Minister Mikkelsen, Ladies and Gentlemen,

Thank you for inviting me to this meeting here today. It is an honour for me to address such a distinguished group, especially in my home town of Copenhagen. I have been asked to report to you on my organisation, the EU Fundamental Rights Agency – and I will do this by placing our work in the wider human rights landscape. Let me first give you a few examples of why human rights are still so important to discuss in Europe.

- Racist attacks against the Roma are on the rise; for example last month one Roma man was murdered and a young family was badly injured; and just last weekend, again, shots were fired at a house occupied by Roma. In one particular Eastern European Member State alone, police are currently working on solving the cases of 18 different attacks against the Roma population, including assaults with guns, hand grenades and Molotov cocktails.
- Anti-Semitism is again on the rise;
- Homosexuals and in particular transsexual persons are brutally attacked, and sometimes even killed, just because of their sexual identity;

- Thousands of children are being trafficked into the EU every year to be exploited in farming, industry or prostitution;
- And so on.

These are shocking facts for Europe. Because Europe likes to see itself as the cradle and guarantor of human rights – and this is true when it comes to legislation or civil society engagement. But we have to realise that at the same time, there is still a long way to go.

Before coming to the concrete work of the Agency, let me start with an overview on recent history of human rights, and what this meant for Europe.

I. So, what concrete action has been taken to improve the human rights situation in Europe?

Firstly, there is of course the famous **Universal Declaration of Human Rights** from 1948. It was the atrocities of the Second World War that led the international community to take this major step forward in human rights protection. The declaration was endorsed at the UN by the vast majority of countries, and it firmly established the place of human rights in the post-war world.

The declaration is a highly important document, especially as it took the groundbreaking step of shifting human rights concerns from the national to the international level. With this, human rights became a legitimate international concern. In the years following 1948, the provisions of the Declaration were made legally binding through the various UN Conventions.

However, up until the end of the Cold War, the Conventions were primarily used in a foreign policy context - to draw attention to human rights violations throughout the world, from China to Chile, South Africa and the Soviet Union. This meant that for decades, human rights were rarely mentioned in a domestic context. This only started to change in the transition period of the early 90s when human rights increasingly found their rightful place at the heart of democratic states worldwide. And this ‘domestication’ of human rights was reconfirmed at the 1993 UN World Conference on Human Rights in Vienna.

Shortly after the Universal Declaration came the Council of Europe’s **European Convention on Human Rights**. This Convention provided for, amongst other things, a European Court of Human Rights to deal with petitions of individuals. Any person who believes that his or her rights have been violated under the Convention by a state party can take a case to the Court. The European Convention is still the only international human rights agreement providing such a high degree of individual protection. The importance of this is demonstrated by the fact that the European Court of Human Rights currently has over 100,000 cases pending!

But what about the EU? When the European Communities were founded, both safeguarding peace and stability in Europe was the main aim. Accordingly, today Article 6 of the Treaty Establishing the European Community states that *'The Union is founded on the principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law'*.

The EU has often been criticised as an economic giant but a humanitarian dwarf. Whilst a number of open issues remain, let me assure you that the European Union has made significant progress in the field of human rights and can no longer be considered a dwarf. Let me give you some examples:

- 1) The increased focus on human rights issues is clearly evident in the accession criteria applied over the years to candidate countries seeking to join the EU. We have moved from a position where democratic elections were cited as sufficient entry criteria for the accession of Greece, Portugal and Spain, to the requirement that legislation must be consistent with the basic principles of human rights prior to the 2004 enlargement.
- 2) 8 years ago, the EU declared its own Charter of Fundamental Rights. The Charter is expected to become legally binding under the Lisbon Treaty, but it is already being referred to by the European Court of Justice.
- 3) At the same time, the EU has successfully adopted, and is in the course of implementing, a series of pioneering anti-discrimination legislation. These directives have had a considerable impact on developing legislation and equality bodies within the Member States.

Today, EU citizens enjoy one of the highest levels of protection in the world. This legislation includes:

- **One, the Racial Equality Directive** (2000/43/EC), which prohibits discrimination on grounds of racial or ethnic origin, and includes areas such as access to jobs, conditions at work, access to education and training, social security benefits and healthcare, and rights to buy or rent goods and services, including housing.
- **Two, the Employment Equality Directive** (2000/78/EC), which establishes a general framework for equal treatment in employment and forbids discrimination on the grounds of a person's religion, disability, age or sexual orientation. These two Equality Directives have been transposed into domestic law in all EU Member States.
- **Three, the Council Framework Decision on Combating Racism and Xenophobia**, which seeks to ensure that, in the EU, racism and xenophobia are punishable by criminal penalties. This law has been adopted by the Council and is currently up for implementation in the Member States.
- **Four, the latest addition in this series is the so-called horizontal anti-discrimination directive**, which seeks to ensure equal protection from discrimination for different groups. This legislation was required, because under

the existing legislation, some groups are better protected than others in many Member States. For example, why should it be possible to sue a landlord for discriminating against a tenant on the basis of ethnicity or gender, but not on the basis of religion, age, disability or sexual orientation? This is only one example, but it clearly shows that protection from discrimination remains far from equal. The Fundamental Rights Agency was able to substantiate this inequality in several of its reports, such as our recent reports on Homophobia in the EU.

The European Commission responded to this disparity by proposing more in-depth anti-discrimination legislation in July of last year, which would close these loopholes. The European Parliament recently approved the Commission's proposal, which is now up for decision in the Council.

- 4) And the last, but certainly not the least important, of the examples of the European Union as a human rights giant, is the existence of the EU Fundamental Rights Agency as such. It was established by the European Council in February 2007.

Now, why is the creation of this Agency such an important landmark? I am not underlining this simply because I am proud of my organisation and its work, but: **An organisation such as the EU Fundamental Rights Agency is unique in the world.** Of course, there are National Human Rights Institutions in a growing number of countries. In fact, their number has increased from 5 in 1990 to over 100 today, a tremendous development for human rights. However, that a supranational organisation such as the EU has created such a body is an absolute novelty, and shows how serious the EU is about protecting human rights, not only in a foreign policy context but also 'at home'.

II. And with this, I come to the second part of my presentation, namely the Fundamental Rights Agency and its tasks.

We see our overall objective as making human rights accessible for everyone in the EU. According to our founding regulation, the objective of the Agency is *'to provide the relevant institutions, bodies, offices and agencies of the Community and its Member States when implementing Community law with assistance and expertise relating to fundamental rights'*.

So our main task is to give sound advice to policy makers, on how to improve fundamental rights protection. For this, we need two main things:

1. First of all, an in-depth knowledge of the nature and extent of fundamental rights problems and violations, because without thorough knowledge it is difficult to develop targeted and effective policies.
2. Secondly, we need a broad network across all Member States, which can provide information on problems as well as on 'good practices', and which will also support us in disseminating these findings.

How do we get there?

1. In order to obtain in-depth knowledge of the problems, we carry out **studies and surveys**. To give you some examples, in the past three months we have published extensive reports on *anti-Semitism, homophobia, the Rights of the Child, and Discrimination against migrants and minorities in the EU*. We either conduct major surveys ourselves, or we provide the basic layout and then our partners in the EU Member States provide us with information on each country, which we then use as the basis for our reports.
2. Secondly, we see ourselves as a **network-based institution**. With the aim of creating, so to say, a “fundamental rights web” across the EU, we have a number of contact points and partners in every Member State: Our management board is composed of one independent person per country, who is always linked to national human rights institutions or similar statutory bodies. For the first time, there is a formal link between our regional human rights body and the national protection systems. We have so-called ‘liaison officers’ in the responsible ministries in each Member State. The Scientific Committee offers close ties to the European academic community.

And last but not least, many civil society organisations – the NGOs - co-operate with us. Here, the goal is to raise public awareness of fundamental rights issues and to promote dialogue with civil society, who is indeed a very important actor in the human rights field. Just last week we met with almost 100 civil society organisations at our ‘Fundamental Rights Platform’ to discuss current human rights issues and to see how we can best work together in order to promote human rights in our countries.

So far the structure of our work. Concerning the content, the Agency is asked to base its work on the EU Charter of Fundamental Rights – which means that we cover in principle all major human rights concerns mentioned in this document. The European Council then decides 5-year priorities for the Agency’s work. Currently, these priorities include, amongst others:

- racism,
- discrimination based on sex, ethnic origin, religion, disability, age or sexual orientation,
- the rights of the child,
- asylum, immigration and integration of migrants,
- visa and border control,
- right to privacy,
- data protection,
- access to efficient and independent justice for all.

Indeed, much remains to be done in all of these areas, but I would just like to offer you a few examples of our recent work.

Discrimination has unfortunately always been present and still remains a problem. Just in the last weeks we published several reports which show a bleak picture for many groups in the EU. For example, our report on homophobia proved that discrimination, harassment and even violence against LGBT (Lesbian, Gay, Bisexual and Transgender) persons are widespread throughout the EU. And our major Minorities and Discrimination Survey where we together with Gallup interviewed 25.000 ethnic minority persons throughout the 27 Member States found that 37% of migrants and minorities surveyed say that they have personally experienced discrimination in the past 12 months, and 4% have personally experienced a racist violent crime. The highest levels of discrimination were reported by the Roma, followed by Africans. But, to make matters worse, over 80% do not report these incidents to a competent body or authority. This means that the dark figure is extremely high; it means that perpetrators go unpunished, that victims do not obtain justice, and that policy-makers are hampered in taking appropriate action.

But how can this continue to be the case, with the new anti-discrimination legislation and all the efforts in criminal law? Well, because good laws are important, but they are not enough – they must be known, and they must be applied. How can it be that 80% of migrants and minorities do not know any organisation where they can report their discrimination? What does it say about the level of confidence in our law enforcement structures, when two thirds of migrants and minorities say that ‘nothing would happen by reporting’ these racist incidents? And how can it be that in most countries there are still only a few court cases on discrimination, with only a handful of sanctions applied? Why do only three EU Member States collect in-depth data on racist crime? How do our politicians and administrations expect to produce informed policies and actions, if they do not know the true nature and extent of the problems in the first place?

My second example is on **child trafficking**. It is a well-known fact that thousands of children enter the EU legally or illegally every year, and are initially taken care of in asylum centres or elsewhere. But a few days later they disappear without a trace, most likely going into prostitution or working as modern day slaves in sweatshops or on farms, or even being killed for their organs, and very little is being done about this. The Agency will soon publish a report on this, and we hope that we can trigger an open debate and stimulate policy-makers to do more about this unacceptable problem.

Finally, I want to mention the **protection of personal data** as my third example. We entered a new chapter on data protection with the fight against terrorism. 9/11 had severe consequences for how we perceive human rights today. Security legislation has been amended or introduced, which would probably not have been accepted by parliaments, the media, or public opinion prior to 2001.

How do you feel for example about the fact that data on when and where you are flying is recorded and stored? Let me mention in this context that the Agency was asked by the former French EU Presidency to give our expert advice on the draft directive on the Passenger Name Record. Similarly, we have been asked by the EU Commission for input on the question of Body scanners.

It is often stated that it is difficult to find a balance between security on the one hand and individual freedoms on the other. In this we need to recall that security and fundamental rights are two sides of the same coin, being both integrated parts of our democracies. We also need to remind ourselves that human rights are based on the collective experience of humankind on what profoundly challenges the dignity of the human being. They are adopted in order to avoid doing the same mistakes and atrocities again and again. We can learn from our forefathers and from global experiences. They are there to offer guidance and a strong framework in situations where difficult decisions need to be made. Finally, it should be recalled that human rights are for all.

These three examples, on discrimination, child trafficking and data protection, show that there are no easy solutions. Human rights violations are still evolving, and there is a need for an open debate and for concerted action. Speaking of concerted action – I am sometimes asked if I am not worried about duplication of work between the Fundamental Rights Agency and other actors in the field, such as the Council of Europe, the UN or the OSCE. No! Quite on the contrary. There is so much work to do out there, that we should welcome as many organisations and people as possible working on human rights. Of course, at the same time we must be careful to be, all together, as effective as possible – meaning good coordination and joint actions. We do that with regular working meetings, with frequent exchange of information, with joint public statements, and by supporting each other's work and building on each other's knowledge. To give you a concrete example, the Council of Europe is currently taking up the results of our recent studies on Homophobia and on ethnic Discrimination, to develop new policies and standards.

Ladies and Gentlemen,

The Council of Europe and The Agency are only two of many actors in the human rights field. It goes without saying that you as lawyers play a crucial role in ensuring the implementation of human rights. Lawyers are often at the forefront of human rights issues, with their clients. And so, the lawyers know best, where some of the key concerns and problems are. We are pleased with the collaboration which we have with some of you in the Fundamental Rights Platform, but I hope that this collaboration can be expanded in the years to come. In particular, it would be interesting for us to get ideas for new surveys building on your experience from the field.

In addition, I think it would be most useful if you could help to ensure that EU legislation would be swiftly enacted within Member States once it has been agreed. And then, once this legislation is in place, it will be important to raise awareness of it and to ensure that it is used effectively.

Ladies and Gentlemen, let me conclude.

In July 1940, prior to the Universal Declaration of Human Rights, the former US First Lady, Eleanor Roosevelt, famously asked whether “*we shall ever grow up in our politics and say definite things which mean something, or whether we shall always go on using generalities to which everyone can subscribe, and which mean very little*”. Well, it is my firm belief that Europe has much to be proud of in the field of human rights.

Throughout the last 60 years Europe has said many things ‘which mean something’ and we have gone far beyond the ‘generalities’ to which Eleanor Roosevelt refers.

This can and must of course not hide the fact that there are still many open human rights problems in Europe, and I foresee that the Fundamental Rights Agency will have more than enough work in the years to come! The Agency will continue to collect and analyse data on the different human rights issues affecting all 27 EU Member States, because the in-depth knowledge of the nature and extent of the problems is vital for an intelligent debate and for informed decision-making. At the same time, the Agency will continue to draw on its networks to identify best practices and promote their implementation.

Let us work together to eradicate discrimination and ensure human rights standards throughout the European Union. Or, returning to Eleanor Roosevelt: Let us continue to say and do “*definite things which mean something*”.

Thank you for your attention. I wish you a successful meeting.