

SESSION II - THE CONTINENT OF FUNDAMENTAL RIGHTS

Background note

The protection of fundamental rights is a founding value of the European Union as is demonstrated by their prominence in the Treaties, where they precede even references to freedom and economic rights.

The elevation of the Charter of Fundamental Rights to the same level as the founding Treaties themselves added even greater weight to fundamental rights in Europe's system of law and governance, and, combined with the constitutional traditions of the Member States, ensure that our Continent has a pre-eminent international standing in this area. Europe can rightfully claim to embody a paradigm for the guarantee of fundamental rights. Consonant with the principle that the protection of human dignity is a matter of priority, Europe recognises the fundamental rights not only of its own citizens, but also and more generally of all people who find themselves inside its borders.

At a time of growing international conflicts and tension such as the present, it is particularly important to remain conscious of the special value of the European experience in this field.

The increasing prevalence of cross-border crime and international terrorism has led European citizens to demand greater security. The recent terrorist outrages in Europe were all the more heinous for how they attacked the very ideal of the freedom of expression.

The demand for greater security must be met with an adequate and timely response that does not, however, impinge upon the freedoms and fundamental rights whose special protection are such a distinguishing feature of the European Union.

Europe must respond to international and internal threats, while remaining true to its vocation as the Continent of fundamental rights. This requires a constant appraisal of whether the existing instruments and policies are suited to responding to problems as they arise.

For some time now, a debate has been going on concerning the effectiveness of the protection of fundamental rights within the Member States in the face of several egregious and systematic violations.

In fact, the European Union has been accused of paying far closer attention to the state of fundamental rights in third countries (either when verifying their

credentials for membership, or when entering into trade agreements with them) than examining its own internal record.

The objection have focused mainly on article 7 of the Treaty on European Union whose procedures for the monitoring and possible sanctioning of Member States that have committed serious breaches of fundamental rights are so vaguely worded that they are generally not applied.

This must be the context in which to continue the debate, which has been going on for some time now, on whether to put in place new mechanisms under the existing Treaties to reinforce the rule of law. For not only is the rule of law one of the values underpinning the European Union, but it is also a prerequisite for the effective protection of all fundamental rights.

Without question, the most important initiatives to be discussed further:

- The European Commission Communication on a new legal framework for matters related to the rule of law, setting out new powers of monitoring for the Commission to be exercised within the context of the procedures already set forth in article 7. The aim is to set up an early warning system with respect to cases in which the fundamental rights of a Member State are in danger.
- The undertaking of the Council of the European Union to dedicate a special annual session to appraise the state of health of the rule of law in Member States.
- The publication by the European Commission of a “Justice Scoreboard” quantifying the health of national judicial systems, which is one of the areas where respect for fundamental rights can be concretely measured.
- The start of the preliminary work for the preparation of a new Strategy of internal security that will strike a satisfactory balance between the needs of security and full respect for fundamental rights.
- The proposals currently under discussion on the strengthening of police and judicial cooperation to combat particularly serious crimes (including fraud against the EU budget), while still providing for effective systems of accountability that avoid prejudicing the legal rights of individuals.
- The definition of a new regulatory framework for the digital sphere, by which the fundamental right of data privacy is reconciled with the freedom of expression, market development, protection from unlawful intrusion into the private sphere and the construction of an environment safe from cybercrime.
- The announced preparation of an Agenda for Immigration that should thoroughly address the matter with reference to four priorities:

consolidating the common system for asylum; updating European policy on legal immigration; increasing efforts to combat irregular immigration and human trafficking; and controlling external borders.

- The enhancement of measures to combat discrimination and hate crimes.

The case law of the Court of Justice of the European Union has contributed to the progressive advancement and refinement of the EU law system. The Court has recently intervened in the matter of data protection and conservation, and adumbrated possible solutions that could be confirmed in law in the form of a new legislative package on personal data protection. The Court intervened in regard to the possibility of the European Union signing up to the European Convention on Human Rights, and underscored the need to respect the special nature and the value of the European Union.

In light of the foregoing observations, the session could focus upon the following salient points:

- a) Whether the recent initiatives taken at a European level can be considered appropriate and sufficient to guarantee the conditions for the full compliance of EU Member States with fundamental rights and the rule of law.
- b) Whether the measures already in discussion regarding police and judicial cooperation and the repression of particularly serious offenses may be considered sufficient, or whether they might be made even stronger, also in view of the forthcoming review of the European Internal Security Strategy, given the presence of the increasing threats from terrorism and cross-border crime.
- c) Which steps can be taken to ensure that the forthcoming Agenda for Immigration ensures the full enforcement of treaty principles relating to solidarity, the fair treatment of third-country nationals, the prevention and repression of human trafficking and the sharing of responsibilities among Member States.
- d) The extent to which the planned signing by the European Union of the Convention on Human Rights might strengthen the principle of the rule of law and the respect of fundamental rights while also safeguarding the special characteristics of the EU law system.
- e) Whether current policies on data protection are sufficient to bring about a secure digital environment that enables market development but also assures the protection of the rights of users.
- f) Whether the current anti-discrimination measures are adequate to counter the current rise in hateful phenomena such as racism, the

malice towards ethnic minorities and discrimination based on sexual orientation.