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Human rights in the European democracies:

*“Fear-mongering, xenophobia and austerity budgets
threaten the protection of human rights”*

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The number and nature of appeals to the European Court of Human Rights give an indication of the status of human rights on our continent today. The number of complaints has increased dramatically; about fifty thousand complaints will reach the Court this year.

The applicants go to Strasbourg as they feel they could not find justice at national level. Many complaints are not taken up, but still the Strasbourg Court has in its rulings identified a high number of shortcomings in the national systems of justice.

The Court decisions demonstrate that the European Convention has been violated, for instance through police brutality, unfair or delayed trials, non-implementation of judgments and inhuman conditions of detention.

In my own investigations I have observed that these problems are systemic in several countries and often the result of deep corruption combined with political interference in the judiciary. These flaws are most striking in the former Communist countries.

The more established democracies in Europe have also demonstrated weaknesses in the justice system. They failed to uphold basic human rights principles when under pressure from the Bush administration after the Nine-Eleven terrorist attacks.

European national security agencies co-operated with the CIA in operations *which facilitated torture and other human rights violations*. There was clearly not sufficient democratic - political or judicial - control of this cooperation.

Afterwards, governments have been very reluctant to investigate or provide facts on the nature of these activities. This has prolonged the problem of impunity.

Xenophobic tendencies

One consequence of the fear-mongering with which the 'war on terror' was promoted - also in Europe - has been the further increase of *islamophobia*.

I meet quite a number of Muslims nowadays, religious or not, who tell me about prejudices they have to confront in daily life.

We have had unfortunate discussions in several countries about mosques and minarets, about burqas and niqabs - often with an obvious undercurrent of islamophobia.

Two other groups tend to be particularly targeted by xenophobia and racism in today's Europe: Roma and migrants.

Large groups of *Roma* are living in deep poverty, adults meet difficulties in the labour market and children face bullying and other problems in schools. I have looked into the situation of Roma in country after country and found misery almost beyond description.

Racism against Roma (anti-Gypsyism or anti-Ziganism) is widespread and politicians in several countries have unfortunately contributed to such tendencies through prejudiced rhetoric.

Xenophobia is also directed against *immigrants*. Though Europe, at least in a longer perspective, needs immigration to protect the welfare system, not many politicians want to make that point.

Very few, also, want to refer to the days when people from their lands were welcome across the Atlantic and built a future there to the benefit of themselves and those at home.

Europe today wants to select the newcomers and only receive those who would immediately fit in and fill the gaps. So-called point systems are used to let through the highly educated and turn away the others. Denmark has now introduced this approach also to limit family reunification.

Asylum seekers, if they manage to reach European countries at all, are trapped in complicated procedures, partly as a consequence of the dysfunctional Dublin regulation which the northern countries refuse to change – putting most of the burden on countries like Greece and Malta.

Detention is frequently used to keep the applicants at hand during the asylum procedures and while preparing deportations to home countries. The EU has in one directive given room for up to 18 months detention of those to be sent away.

Migrants without permits are seen as “illegal” and there is a tendency to criminalise their entry and presence. Millions of migrants are today underground in Europe and vulnerable to exploitation by unscrupulous employers and landlords.

Poverty in Europe

The economic crisis appears to have contributed to these xenophobic trends. However, the crisis has also widened the gaps in society as a whole.

The burden of the budget cuts now being made all over Europe is to a large extent falling on vulnerable and already destitute people.

Inequalities have increased during the last three decades, with the effect that poverty has actually spread in recent years.

UNICEF has raised the issue of child poverty. In spite of some targeted efforts to remedy this problem, it remains deep (not only in the UK). These inequalities do certainly raise questions about how economic and social rights are respected.

Poverty is not only a question of economic standard, but also of *powerlessness*. There is a distance between key decision makers and the poor and the marginalised, including minorities and immigrants.

People in this “new underclass” have little voice in politics and tend not to take part in elections. Surveys demonstrate that they often do not know how and to whom to complain when their rights are violated.

I have noticed various human rights shortcomings in Europe during my four and a half years as a travelling observer. My conclusion is that there are no grounds for complacency.

Of course I have also seen considerable progress. Human rights are now enshrined in constitutional and other law, and ombudsman offices and other monitoring and complaints bodies have been established.

However, some of these institutional improvements are only partly benefiting those who need the protection most.

Human rights seen as an obstacle

I have had to conclude that the *political backing* for human rights has weakened. It is sometimes said that Universal Declaration or the European Convention would not have been adopted if proposed today. That may well be the case.

The principled idealism which earlier underpinned the human rights cause is no longer as strong. When confronted with security or economic interests, human rights tend now to be seen just as idealism – or even as *obstacles*.

During the “war on terror” the total ban on torture was ignored and undermined with arguments about effectiveness. Social rights have been treated as an impediment to economic growth. Human rights clauses in foreign policies have been seen as a problem for trade agreements and desired investments.

The result is that the discourse on human rights has changed; their absolute nature is questioned.

One symptom is that human rights proponents are now pushed to *prove* that if the laws are respected, the struggle against terrorism can be more effective; that economic development is in fact promoted by equality; and that trade without legal regulations is in fact economically short-sighted.

These arguments can be made, but the universal rights were supposed to be respected even when in conflict with some other ambitions and concerns.

That the political support for human rights has weakened may not be seen on the surface; the political rhetoric is full of references to human rights – not least in the foreign policy discourse.

However, a critical analysis would show that these discussions are too often shallow and very seldom self-critical. Though many politicians appear to understand that there is a moral, ethical dimension of human rights, this has had strikingly little impact on concrete politics. One example is the muted reaction to violations in China, not least after the Oslo Nobel decision to reward Liu Xiaobo.

Several of the problems I have sought to define here relate to *basic attitudes*: respect for others, including minorities and foreigners; sense of the importance of equality and non-discrimination; support for fundamental principles of justice, such as equality before the law and the presumption of innocence.

Sadly, established politicians seldom take the time to explain the fundamental importance of these principles.

In fact, there appears to be a widespread perception in political circles that a large portion of the voters is narrow-minded and even reactionary. Even midstream politicians when faced with low popularity figures tend to exploit islamophobia, anti-Gypsyism and/or anti-migrant prejudices in order to gain political backing.

This, in turn, tends to give a boost to extremist groups who use this high-level ‘support’ to intensify their hate speech.

Several European countries have been drawn into this vicious cycle – and one reason is that the established mainstream parties have not stood up for justice and tolerance.

Extremist political parties are now represented in several national parliaments in Europe and this has had an impact on the human rights discourse.

Atmosphere of fear and insecurity

The peaceful, affluent Europe appears to feel insecure. The high unemployment and the accelerating movement to larger population centres are contributing factors, but can hardly explain why extremist political groups manage to recruit more and more sympathisers.

It is urgent to analyse and address in today’s Europe the reasons for this trend. It is urgent to consider why Europe today appears to lack moral political leadership.

I mentioned the distance between the elected politicians and minority groups. The problem is broader – popular participation in political decision-making is generally minimal.

People at large are treated more as consumers than as participating citizens. At the same time surveys in several countries show that the respect for those elected is low and decreasing even further. Communication between politicians and their electorate mainly goes via the media.

The role played by the media in the public discourse is nowadays enormous; they set the agenda for most discussions. A certain counter-balance has been created by bloggers in the ‘social media’, but the traditional mass media continue of course to be dominant.

Though the media landscape differs considerably between European countries there are some worrying trends which could be seen in several of them.

- There are monopoly tendencies which allow the state or big business to emerge as dominating media owners (sometimes in combination, as in Italy).
- Public service media are under-resourced and unable to offer an alternative.
- The self-regulation system is in several countries not functioning well or at all; political or economic interests tend to be stronger.

One result is that the quality of political reporting has gone down, including on human rights. Serious journalists, including investigative reporters, are given little space. On the newspaper market it is the tabloids which sell, not the quality journals.

However, a critical discussion about the problems in the media world is not easy to initiate; the requests for ethical journalism or more diversity in the media can be interpreted as attacks against media freedom. I will return to the role of the media in a moment when trying to give some suggestions.

What we also should discuss is the lack of transparency in government administrations (as well as in inter-governmental bodies). Though the principle of access to information is nowadays widely recognised, the practise is flawed. Authorities know more and more about citizens and citizens have greater and greater difficulties to see through what their elected representatives are doing. This is of course one reason why the Wikileaks material has been seen as sensational.

Addressing the shortcomings

Have I now exaggerated the problems and the shortcomings? Of course, one could add many nuances to what I have said, but I would insist that the problems are there. The more important challenge is to try to identify the counter-weighting forces and discuss options for genuine improvements.

The conclusion is *not* that the traditional work for human rights - for instance, through law-making and other standard-setting or through the establishment of complaints offices and monitoring bodies - has been mistaken.

The existing institutions and agreed procedures for the national protection of human rights have been and are very much needed.

Also, the European and international human rights procedures are clearly useful and should be developed rather than dismantled – in fact, their shortcomings have largely been caused by resource limitations and lack of cooperation from governments.

The basic justice system can certainly be improved. In several European countries there is indeed a need to protect the independence of the judiciary; to ensure professionalism in law enforcement; to humanise the penitentiary system; and to update the legislation in the spirit of international human rights standards.

Institutions versus result

Amartya Sen refers in his “The Idea of Justice” to the two concepts of justice in old Sanskrit: *nita* and *nyaya* -- *nita* focusing on institutions and arrangements, *nyaya* on processes and results.

The distinction is useful also for this discussion: it is important to protect the institutions we have created for the defence of human rights (*nita*) and at the same time to ensure that the procedures result in genuine protection of everyone (*nyaya*).

Implementation is about concrete measures by governments to ensure that rights are indeed respected, protected and fulfilled. This does require a systematic, well-planned approach which becomes even more essential when budgetary resources are limited.

Already the UN Conference on Human Rights in Vienna in 1993 recommended that governments develop a *national plan for the full implementation of human rights*.

Such planning would require, as a first step, a comprehensive mapping and analysis of the overall human rights situation in the country – a baseline study which would define the key gaps and shortcomings.

For this, the input from non-governmental human rights organisations would be particularly valuable.

Indeed, every government interested in the “*nyaya*” dimension of justice should think through its relationship with the “human rights community” – primarily the *non-governmental groups*.

Many of them have been immensely important when reporting about facts and setting moral standards. Their independence and integrity should be respected also when they, as often is the case, are inconvenient for the governmental authorities.

The approach to the *media* should be similar. Respect for the freedom of expression requires a ‘hands-off’ policy. Libel and defamation should be de-criminalised and fines in civil law cases limited, especially in ‘political’ cases.

However, proactive measures are needed to ensure diversity in the media landscape and the open possibility for different voices to be heard. It is important that public service media are not politicised.

Hopefully, the media themselves would make further attempts to make the self-regulation system function – with, for instance, ethical codes and complaints boards.

Another priority should be to encourage meaningful *human rights education*. It could be seen as a right in itself to know one’s human rights and how to claim them. Indeed, such knowledge is one of the main conditions for the realisation of those rights.

The education on this is, however, still inadequate in most countries and at all levels.

More needs also to be done to ensure that professional groups such as policemen, judges, teachers, social workers and journalists obtain a solid education and training on human rights.

Political leadership

I would also hope that responsible politicians begin to take more seriously their potential role as opinion-makers and teachers.

- The xenophobic tendencies should be countered upfront and with more energy and determination.
- More attention should be given to the rights of minorities and migrants.
- Social rights should be put much higher on the agenda and equality should no longer be seen a threat against economic stability and growth.

This requires *political will*. It also requires a principled approach to human rights: stressing that the standards are treaty based and universal; that they are relevant regardless of culture, religion or political system; that they apply to everyone without discrimination; and – that they *must be implemented*.

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