



*The implementation of the EU Charter of Fundamental Rights two years after the Lisbon Treaty's entry into force*

**LIBE hearing, European Parliament: 10 November 2011**

**Speech by Dr Nicolas J Beger, Director, Amnesty International European Institutions Office**

Members of the European Parliament, ladies and gentlemen, I'm Nicolas Beger, director of Amnesty International's European Institutions Office here in Brussels. But today I'm also speaking on behalf of the Human Rights & Democracy Network and the Social Platform. In a joint letter to this Committee, more than a hundred NGOs denounced the inadequacy of the EU's action on human rights.

I'm delighted to be taking part in this hearing. I'm also honoured to be sitting next to the Council of Europe's great expert representative on human rights.

Just two years ago, Viviane Reding, at her hearing before this Parliament, amid great fanfare, presented the charter as the vanguard of a new era for European human rights.

One month ago, the Commission and the Parliament's Committee of Petitions held a seminar on applying the Charter of Fundamental Rights, and handling citizens' complaints.

That seminar's objective could not have been more revealing about the Commission's true approach to the charter. All the EU's ambitions seem to have somewhat nose-dived over the last couple of years. All the EU can now muster is a feeble desire to dispel 'the misunderstanding' over where and when the charter applies, to avoid people 'knocking on the wrong (EU) door', thereby avoiding the risk of citizens becoming 'disenchanted'. This is more than a little Kafkaesque!

Disenchantment is all around us! The human rights policy crisis has hit the EU big time. The people of Europe have in no way 'misunderstood' the charter. They've understood it only too well. Let me assure you, human rights are going to continue knocking at the EU's door, and so they should!

In a recent Eurobarometer survey, members of this distinguished house were given a clear message: over 60% of your constituencies want you to be active in protecting human rights. That's twice the figure for any other issue mentioned. Are you MEPs willing to take up this challenge? Or do you prefer to keep on swallowing the feeble excuses whole?

### **Disenchantment**

Much has already been said about the contrast between the publicity surrounding the charter's launch and the "anti-climax" (in Professor Giuseppe Tesauro's words) which we see today.



The disappointing reality is that nothing has changed when we raise cases with the EU. Whether it's the forced eviction of Roma in Italy, Romania and the UK, racially-motivated attacks in Hungary and Bulgaria, widespread xenophobia, secret CIA prisons in Lithuania and Poland, or asylum-seekers being transferred to Greece and treated abysmally, the answer is the same: "This is bad but there's nothing the EU can do."

We're basically being told that the charter, although it's now legally binding, is in reality worthless since none of these human rights violations in member states actually involves EU responsibility.

How has this happened?

You might not be surprised to hear that Article 51 of the Charter of Fundamental Rights is the most widely quoted. And which human rights does it protect? None, I'm afraid. In fact it restricts rights.

Article 51 states that the charter only applies within the remit of EU competence and to member states only when they are implementing EU law. It adds that the charter confers no new power or task on the EU. In practice this boils down to telling us that the charter only applies in cases which directly relate to existing EU directives, ignoring the wider body of EU and human rights law.

Ironically, referring to the charter has thus become a way of restricting the EU's competence to tackle human rights abuses in the EU. This is more than a mere 'misunderstanding' Mrs Reding. It's a case of using the charter to attack precisely the values it's intended to promote. This is a case of hijacking, pure and simple.

Let's remind ourselves that the charter wasn't created just two years ago. In fact it was first drafted all of 12 years ago, in 1999. It's been the source of law in the Court of Justice and the EU for the entire past decade.

It's in the nature of a bill of rights for it to be a 'living', or evolving, instrument, beginning as an aspirational entity, and acquiring flesh as the courts interpret its provisions. Concentrating on Article 51 will steadily destroy this instrument instead of investing it with life. And this despite the clear fact that the EU already has the competence to protect human rights, both nationally and at EU level. Neither the charter nor the treaties need be seen as deficient. We're knocking on exactly the right door!

### **Knocking on the wrong door**

Article 2 of the Treaty of the European Union actually mirrors the Copenhagen criteria for EU accession, and obliges the EU and its member states to respect human rights within the Union, even after an accession state is formally welcomed into the fold. Human rights most



emphatically do not stop at the EU's external borders.

Our message to the EU is crystal clear: Don't limit the competences you already have!

Let me give you three examples.

- On discrimination, the principle is enshrined in both the charter and the Treaty on the Functioning of the EU. The EU has in fact adopted a remarkable legally-binding instrument, the Race Directive, banning discrimination based on ethnic origin. What's preventing the EU from applying this directive to cases of forced eviction and the deportation of citizens on the basis of ethnicity? And what's stopping the Council from extending it to all grounds for discrimination covered by the treaties? Failing to act undermines the charter.
- Looking at asylum, the EU already has full competence. EU laws and policies are member states' policies too. The fact that the right of asylum was enshrined in the charter was celebrated as progress for human rights. What's stopping the EU from enforcing the rights enshrined in the charter in this field in every EU country?
- Look at the lack of accountability for European complicity in the CIA rendition and secret detention programmes. The Commission and Council simply buried their heads in the sand. Despite a European Parliament report listing EU and member states' obligations to investigate alleged violations and reform their systems to avoid future similar abuse, despite the glaring facts, there's no reference to the allegations of grave human rights violations (torture, enforced disappearances, unlawful detention) resulting from European complicity in the Commission's detailed activity report on the effective application of the charter, under Article 4 on the prohibition of torture and other ill-treatment.

Article 7 of the Treaty on European Union provides for a political mechanism to prevent serious human rights violations by member states and penalises grave abuse. But it is seen as the 'nuclear option', and hence no option at all. This leaves Article 2 of the TEU (which makes human rights and the rule of law the EU's foundation) as a mere declaration of intent which cannot be legally enforced.

This is a misconception. Articles 2 and 7 of the TEU in fact grant the EU institutions the power to assess human rights in member states, to politically engage with the countries concerned, to prevent and redress violations.

As Professor Jean-Paul Jacqué of the College of Europe reminded all EU institutions at last month's seminar: Article 7 of the TEU is not about "humiliating member states". Instead, it

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is a tool for the EU to ensure its own members respect the human rights rules they collectively agreed to take.

EU institutions needn't reinvent the wheel or grant themselves extraordinary new powers. The EU has the unique privilege of being able to rely on the Council of Europe, the European Courts, its own Fundamental Rights Agency and active organisations throughout Europe to make its assessment and engage with member states.

The EU can act now to halt forced evictions and racist attacks against Romani people, or the transfer of asylum-seekers to inhuman conditions! It's time we were honest about what the EU can and must do to defend human rights. The time for making excuses is over. It's time for you all to stand up and be counted!

Thank you.