Foreword

Political rhetoric on human rights in Europe is different from daily reality. Almost every politician is on record as favouring the protection of freedom and justice. Standards on human rights have been agreed at European and international level; many have been integrated into national law; but they are not consistently enforced. There is an implementation gap.

It is this implementation gap that this book seeks to address. It is built on a compilation of separate "viewpoints" or articles which I have written, and later updated, since beginning my mandate as Council of Europe Commissioner for Human Rights in April 2006. I have now visited almost all of the 47 member states of the Council of Europe. On each visit I have met victims of violations of human rights and their families, leading politicians, prosecutors, judges, ombudsmen, religious leaders, journalists and civil society representatives as well as inmates of prisons and other institutions, law enforcement personnel and others. The "viewpoints" written on the basis of these many visits summarise my reflections, conclusions and recommendations.

What I have seen and heard has made me deeply impatient. Of course, it takes time to develop a culture of respect for human rights and to establish institutions and procedures which turn human rights principles into reality. However, progress is too slow; and the disappointment felt by many is more than justified.

There are circumstances which can delay necessary reforms: war or political strife, natural disasters and economic crises. Less convincing are the excuses, which I have heard frequently, that public opinion resists reforms aimed at protecting and promoting human rights. On the whole, people want freedom and justice not only for themselves, but also for others. Politicians have a responsibility; the implementation of human rights is largely a question of political will.

All member states of the Council of Europe have ratified the European Convention on Human Rights, first agreed in 1950. Although this

treaty and other human rights standards have been agreed between governments, their far-reaching strength lies in the fact that they have proved so obviously relevant and essential across the decades and across this diverse continent. Whatever the intention was when they were drafted, they have taken on a life of their own.

Civil society groups, individuals and the media in country after country refer to them as decisive in matters perceived as important. For many individuals, they inspire hope and more and more people turn, for instance, to the European Court of Human Rights in Strasbourg. It is this extraordinary response to human rights which has made them special and given them a moral weight which no government can afford to ignore. This popular and moral dimension of human rights is of great import and must be protected.

It is therefore particularly unfortunate that attempts are made to hijack or distort the very meaning of these rights. Key concepts and the language of human rights have been politicised and demeaned in political discourse. Some governments belittle or cover up their own shortcomings while using human rights as a propaganda tool against other states.

It also happens that government politicians – and some media – object strongly when shortcomings in their own countries are exposed by mechanisms set up to verify realisation of agreed international human rights standards. National pride trumps the openness to consider steps to improve.

There is a need to counter hypocrisy and to be more serious about implementing human rights effectively. This requires responding to criticism in a constructive spirit and making a conscious effort to secure the broadest possible support for human rights. A heavy responsibility rests also on international organisations such as the Council of Europe. The fact that the field is so politically sensitive makes consistency and even-handedness even more crucial.

There can be little progress without honest, concrete monitoring. Non-governmental organisations play a pivotal role here, as do the mass

media. Ombudsmen and other independent national human rights structures exist nowadays in most European countries: when truly independent, they cast light on problems which have to be addressed.

Reporting about violations is of course insufficient. Monitoring must be followed up with measures of implementation. Three types of action are required of governments: that they themselves respect human rights standards, that they protect people from human rights violations perpetrated by others, and that they take the necessary steps to fulfil rights. All require pro-active efforts. Capacities must be built to ensure that human rights are made a reality in all walks of life.

What matters are results. I believe that we who are serious about human rights should reject simplistic notions. The discourse is not primarily about naming "good" and "bad" governments or establishing a sort of ranking list. There are shortcomings and problems in all countries; those responsible have in all cases an obligation to demonstrate the political will to address them.

The articles in this book are organised in 15 chapters. In the first, "Xenophobia and identity", I describe a sad and growing problem in Europe today: racism, xenophobia, Islamophobia, anti-Semitism, homophobia, transphobia and other phobias directed against others considered "different" by the majority group. Minorities are made targets of hate speech, violence and systematic discrimination.

Extreme right-wing parties promoting hatred against migrants and minorities are now represented in several national parliaments in Europe. In some countries they also directly influence government policies. Several of the established, mainstream political parties have begun to use the rhetoric of the extremists in order not to be outflanked by them – which has lent an unfortunate "legitimacy" to xenophobic positions. The consequence is continued discrimination, segregation, inter-communal tensions and, in some cases, friction with neighbouring countries.

These tendencies appear to have increased with today's global economic crisis: the high levels of unemployment have caused widespread uncertainty. Attempts by governments to initiate discussions about "national identity" have failed when based on a notion that their task was to identify one sole common identity. Instead governments should recognise and build upon the fact that all European states today are multicultural, and that diversity needs to be celebrated and protected through tolerance and positive understanding.

The chapter "Roma rights" describes how the Roma population continue to be victimised as a result of a climate of intolerance. The Roma remain far behind majority populations in terms of education, employment, housing and health standards. They have virtually no political representation. Many Roma live in abject poverty and have little prospect of improving their lives or integrating within wider society.

Many of them lack even personal identity documents. In fact, thousands have no administrative existence at all. They have never obtained a birth certificate, and have not overcome the administrative obstacles placed in the way of being recognised by the state. They often live entirely outside any form of basic social protection or inclusion. Without personal ID they have no access to education and health services.

Racism against Roma people is widespread throughout Europe. In times of economic problems, it appears that the tendency to direct frustration against scapegoats increases – and the Roma appear to be an easy target. Instead of fishing in murky waters, national and local politicians should stand up for and speak out on behalf of principles of non-discrimination and respect for people from different backgrounds. At the very minimum, politicians must avoid anti-Roma rhetoric themselves.

One of my concerns is the need to disseminate information about the history of Roma in Europe since this would allow for a better understanding of what they have suffered in the past. Only a few

thousand Roma in Germany survived the concentration camps and the executions.

The survivors faced enormous difficulties when trying to build their lives again, having lost so many family members and relatives, and having had their properties destroyed or confiscated. Many had their health ruined. For years, when some tried to obtain compensation, their claims were rejected. Significantly, the mass killing of the Roma people was not an issue at the Nürnberg trial. The genocide of the Roma – *Samudaripe* or *Porrajmos* – has hardly been recognised at all in European public discourse.

In this chapter, I also quote the Swedish writer and Roma rights campaigner Katarina Taikon, who emphasised that these problems are human rights issues. She stressed that the Roma were not asking for privileges, only the same human rights as others enjoy. "We request the same legal protection against assault which others would get. And we do request that generations of Roma who have grown up without housing and schooling and who have been suffering abuse and discrimination by the state and the local authorities receive recognition and compensation."

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The chapter "Immigration and asylum policies" points to the failure of European countries to co-ordinate their approach on migration issues. Some are, for geographic reasons, overwhelmed by the many migrants coming, and "cost-sharing" across Europe has not functioned well. One consequence has been the breakdown of the asylum system in Greece: a fact which did not prevent other European countries from continuing to send asylum seekers to Athens, citing the obsolete Dublin II regulation, a practice which the Strasbourg Court in January 2011 found in conflict with the European Convention.

Governments have focused on measures to prevent people from coming. It is now more difficult for both refugees and economic migrants to reach our borders. In spite of this, men, women and children have continued to try, and thousands have drowned in recent years in the

Mediterranean Sea. The European reaction to these tragedies has been virtually non-existent.

Patrol boats along Europe's southern coasts are now used to intercept and turn back migrants from African countries. Airlines are put under pressure to refuse to take any passengers who risk being denied entry on arrival at their destination. My point is that these technocratic policies are undermining international standards on the right to seek asylum. Asylum seekers cannot even get to a place where they can formally request asylum. Among those stopped in this way have been individuals whose freedom or lives are under threat. A serious human rights deficit has been created.

Those who, in spite of all the obstacles placed in their way, do manage to find their way into European countries face further problems. Irregular migrants who lack the correct papers are termed "illegal" and in several countries are criminalised and often placed in detention. Certainly, states must manage their borders and decide who should be allowed to come and stay. However, there are agreed international standards which must be honoured. The right to seek asylum, followed by a fair adjudication procedure, constitutes a minimum.

It seems not to be fully understood or accepted that irregular migrants also have human rights. Everyone, whatever their legal status, has the right to primary and secondary education, emergency health care, reasonable working conditions and respect for their private and family life. Instead, the insecure legal status of irregular migrants makes them vulnerable to abuse, and when their rights are infringed by officials, employers or landlords, it is often difficult to claim those rights effectively.

The chapter on homophobia and transphobia addresses the problem that lesbians, gays, bisexuals and transgender persons (LGBT) have been the target of extremist violence for generations. Nazi Germany had some 100 000 people arrested because of their sexual orientation and more than 10 000 were sent to concentration camps. It is a bitter

irony that some of the old Nazi "arguments" against homosexuals are still heard in public discourse in Europe today.

The real problem is not an individual's sexual orientation, but the reaction of others. Whatever the psychological roots, many people still react aggressively against homosexuals and transgender persons. Sadly, some religious leaders and teachers have also given direct or tacit support to discrimination and homophobia; this further delays the attitudinal change that is so necessary in many countries.

This is a human rights issue. There is a need for action against hate crime and hate speech; to protect freedom of expression, association and peaceful assembly (for example Gay Pride parades); to uphold the right to seek asylum; to ensure non-discrimination in employment, education and health care; as well to protect the right to respect for private and family life.

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There are more than 80 million persons with disabilities in Europe. The chapter "Rights of people with disabilities" underlines that their rights are recognised in international human rights treaties, not least in an important UN convention adopted in 2006. However, these rights are still far from being realised, and moving to concrete implementation has been slow. A change of attitude is required – from a charity approach to rights-based action.

There has been some progress in recent years – partly as a consequence of the UN convention and the Council of Europe action plan adopted in 2006 – but current policies still focus largely on institutional care, medical rehabilitation and welfare benefits. Such policies build on the premise that persons with disabilities are victims, rather than subjects able and entitled to be active citizens.

The key message here is equal opportunities: society should be open to everyone. This requires pro-active measures to make society accessible to the needs of persons with disabilities. It should, for instance, be possible for children who are blind or deaf or using wheelchairs to attend the school of their choice.

People with intellectual disabilities are still stigmatised and marginalised. They are rarely consulted or listened to. A great number of people with such disabilities continue to be kept in old-fashioned and inhumane institutions. Efforts to provide housing and other services for them in community-based settings have met with obstacles, and have been delayed.

It is important that people with disabilities can participate in all decisions affecting their lives, both at an individual level and through their representative organisations. Words like "inclusion" and "empowerment" are relevant in this context. Persons with mental health and intellectual disabilities still face problems when they want to take decisions for themselves. Even in important matters, their legal capacity is restricted or ignored.

There is a great difference between taking away from people with disabilities their right to make decisions about their lives, and providing "access to support". The first approach views people with disabilities as objects of treatment, charity and fear. The second places them at the centre of decision-making, respecting their autonomy, and viewing them as subjects entitled to the full range of human rights.

The chapter "Gender rights" recognises that myriad issues might fall under this rubric, but focuses on three systemic injustices against women: their under-representation in political bodies, discrimination in the labour market, including pay-scales, and violations of their bodily integrity.

There are great variations across Europe regarding female representation in politics. Spain and the Nordic countries are ahead of the others. This shows that, where honest efforts have been made to encourage the nomination of more women, the gender balance can be improved. Despite this experience, the argument is still heard in some countries that women are not interested in political power and direct representation. The truth is rather that male politicians have

little interest in challenging the status quo and prefer to protect their own positions of power.

The same tendency can be seen in the labour market: there is no excuse for the pay gaps between men and women in the same or very similar jobs. Moreover, women still face a glass ceiling when seeking promotion to higher positions, and job sectors dominated by women are typically paid less than those professions where men tend to predominate. Some of these stereotypical dividing lines are now being overturned – not least through advances in education – but there is a need to reassess the inherent importance of some professions, for example, in the health, childcare and education sectors.

In some parts of Europe, violence against women continues to be seen as solely a private matter. Such "privatisation" of responsibility should not be accepted. Domestic violence is today recognised as a human rights problem and authorities have a responsibility to take action to prevent and punish such abuses. Sexual assault must be seen as a very serious human rights violation. The fact that such abuses are largely hidden is not an excuse for ignoring their existence. On the contrary, it should be a political priority to protect women from this threat. The very first step should be to investigate why there are so few convictions in cases brought to court – and to remedy this failure.

Children make up a large section of the population and constitute the future of society – in more ways than one. However, their concerns are seldom given genuine priority in political terms. This is a key theme in the chapter "Rights of the child". Ministers responsible for children's affairs are often junior appointments and are kept outside the inner circle of power. Children's concerns are often seen as non-political and sometimes trivial.

My starting point is to stress the importance of implementing the UN Convention on the Rights of the Child, which all European countries have ratified. The convention has undoubtedly contributed to considerable progress for children, but problems remain. One relates to the

principle that the best interests of children should be considered when decisions affecting children are to be taken. This, in turn, requires that the views of children themselves are voiced and that their views are taken seriously.

Sexual abuse of children is widespread and corporal punishment is still permitted in several European countries. I argue that such treatment violates a child's physical integrity, demonstrates disrespect for their dignity, and undermines their self-esteem. This sense of deeper damage was described by the Polish paediatrician Janusz Korczak who once wrote that "there are many terrible things in the world but the worst is when a child is afraid of his father, mother or teacher".

Children with disabilities have traditionally been put into institutions. This policy is changing, also in former communist countries. The process of deinstitutionalisation must continue, but it must be pursued with care and in the best interests of each child. The same goes for institutions established for children who are orphaned or have been rescued from dysfunctional families. Suitable alternatives must be developed to create a family-based environment for these children, so that the initial tragedy experienced is not further compounded.

I suggest a similar approach to be taken regarding minors who have committed offences. During my visits to various European countries, I have met juvenile inmates in prisons and detention centres. Many have suffered neglect and violent abuse within their own families and have received little support from society at large. Understanding the origins of violence and serious offending in children does not mean condoning such behaviour. Rather such understanding emphasises the importance of early intervention aimed at prevention and clarifies that mere punishment after the fact by way of imprisonment will never be the solution.

Child poverty has increased as a result of the economic crisis. About one quarter of the children in South-Eastern Europe and the former Soviet countries still live in absolute poverty and also in richer countries an increasing number if children grow up in destitute families.

This is a profound problem, affecting a great number of children, and with negative consequences far into the future.

The chapter "Social and economic rights" is wide-ranging, pointing to the large number of people who are poor and marginalised in Europe. They lack influence and opportunities for making their voices heard. They often feel ignored by political parties and elites and, in general, have little confidence in the authorities.

Studies have shown that people who are poor are the most frequent victims of crime, yet they have little confidence that the police will address these crimes. When they are the perpetrators of crime, or alleged perpetrators of crime, they are disadvantaged in the courts when compared to those who can afford skilful lawyers. The poor are over-represented in the prisons.

One category of people who have been victimised by the economic crisis is the elderly. Their needs and rights have often been ignored and sometimes totally denied. Older people often also suffer from a widespread perception that they are non-productive, and therefore somehow worthless in modern society.

Studies show that there is a clear link between human rights and the extent of equality in society. A more equal society is better for everyone, not only for the most vulnerable. Equal societies have less mental and other illnesses, and longer life expectancy than those marked by inequality. Facts about social problems and crime rates demonstrate that inequalities even, or especially, in the most affluent societies create widespread insecurity: everyone is harmed.

In this chapter I have also included articles about the right to health (in the context of HIV/Aids) and the right to housing, as well as about the threats to our economic and social rights which are linked to climate change. The daily lives of many are already affected by the consequences of global warming: desertification, droughts, flooding or cyclones. Basic human rights – such as the right to life, health, food, water, shelter or property – are jeopardised.

The chapter is brought to a close with an article about the importance of enforcing social rights. Only one third of states have shown their genuine commitment to implementing socio-economic rights by signing up to the collective complaints procedure which was introduced in 1995. It is important for trade unions, employers' groups and other civil society organisations to make this valuable mechanism, and the European Social Charter, better known within their communities.

It is not enough for parliaments and governments to ratify international treaties and enact laws for the protection of human rights. These treaties and laws must be given practical effect. Incompetence, corruption and political interference in the system of justice undermine the rule of law and deny rights – that we still have such problems in Europe is highlighted in the chapter "Police, courts and prisons".

Torture and cruel, inhuman and degrading treatment have not ended. There are reports of such violations of human rights in several countries, most often during arrest, transport to police stations or interrogation sessions. The more "sophisticated" methods such as electric shocks and water boarding are nowadays unusual; the pattern is rather one of brutal beating and kicking, combined with serious harassment and threats.

Unfortunately, European governments have also taken decisions to deport migrants to their home countries in spite of a real risk of detention and torture.

The good news is that Europe today is almost entirely a death-penalty-free zone. Russia has not yet abolished this punishment in law, but has consistently enforced a moratorium for more than a decade. The unfortunate exception to this trend is the only country on the continent which is not itself a member of the Council of Europe – Belarus – where death sentences have been passed and carried out, even recently.

Several cases of contract killings of independent journalists, human rights activists or other campaigners have not been properly investigated. While the gunmen in some cases have been identified, those

behind the crimes have not been brought to justice. Doubts about the seriousness of these investigations have not been convincingly answered.

Many of the complaints to the European Court of Human Rights relate to excessively slow procedures and to failures of member states to enforce Court decisions. Domestic courts themselves are not functioning as they should in a great number of states, and former communist countries have also been slow to develop a truly independent and competent judiciary. Corruption and political interference are undermining public trust in the system.

In a number of countries, sentences are extremely severe even for minor crimes. Added to that, conditions in prisons and other places of detention are frequently inhuman and degrading. Almost all over Europe I found overcrowding; lack of mental health care; little attention paid to rehabilitation – and consequently, a high level of recidivism. Had it not been for the excellent work of the European Committee for the Prevention of Torture (CPT), the situation would have been even worse.

The so-called "war on terror" created a challenge for Europe. Strong and co-ordinated action was obviously needed to prevent and punish terrorist acts. As I propose in the chapter "Fighting terrorism while respecting human rights", the mistake after 11 September 2001 was not the determination to respond, but the choice of methods: terrorism must not be fought by illegal or "terrorist" methods.

While European governments stayed silent or even co-operated with this "war", more and more detailed and shocking information began to emerge about systematic torture, secret prisons, indefinite detention without trial, extra-judicial executions and other serious human rights violations – all in the name of countering terrorism.

This approach was a flagrant defiance of the core principles of justice on which human rights are built: protection against torture; presumption of innocence; no deprivation of liberty without due process; the

right to a fair trial; the right of appeal; and the right to reparation. This policy has seriously harmed the international system for human rights protection; and has not ensured greater security for those supposedly being protected against attack.

I argue that European governments must initiate credible investigations into what went wrong. It is absolutely necessary that the facts about rendition flights and secret places of detention are discovered through proper democratic procedures. The Lithuanian Parliament conducted an investigation which found that the national security service had indeed co-operated with the CIA in preparing a place of detention for terrorist suspects. A prosecutor in Poland is investigating reports of torture in a secret CIA prison, but the authorities in Romania continue to deny that any CIA prisoners were kept on their soil.

An obvious obstacle to uncovering the facts, and therefore making plans to avoid such problems in the future, has been the tradition of confidential co-operation between the security services of different countries. European agencies are afraid that if they reveal what went on previously, they might lose the benefits derived from regular information exchange with their US and other intelligence colleagues. This fear has unfortunately meant that crucial issues about human rights violations have remained hidden.

One lesson from these sad experiences is the vital necessity of establishing effective democratic control over the activities of security agencies. These agencies must not be allowed to operate without oversight – nor, as they have sometimes been described, as a state within the state. The European approach to the "war on terror" exposed double standards but also ineptitude as well as confusion about what human rights standards require.

Another lesson from this period is the need to take care with surveillance technology which is now developing at breathtaking speed. Sophisticated equipment can help in the struggle against terrorism and organised crime, but also raises questions about the right to privacy. Everyone should be protected from intrusions into their

private lives, and from the improper collection, storage, sharing and use of such data.

Addressing and establishing an honest account of violations of human rights committed in the past is absolutely crucial, and essential to subsequent efforts to build or re-build the rule of law, bring those responsible to justice, compensate the victims and take action to prevent the recurrence of such crimes. This is discussed in the chapter, "Gross violations in the past".

To establish and acknowledge the truth is also important in a longer-term perspective. Those killed were human beings, not numbers. Individuals who survived, as well as the children and grandchildren of the victims, have the right to know what happened, and to grieve with dignity. The opportunity to remember and commemorate must be ensured.

Coming to terms with history is always important, but it is particularly necessary when massive atrocities and gross human rights violations have taken place. Such crimes cannot be ignored without risking severe consequences. Prolonged impunity or a lack of acknowledgement, especially over several generations, creates bitterness among the victims and those who identify with them. This in turn poisons relations between people who were not even born when the events in question took place.

Historic accounts of mass atrocities have in several cases been extremely controversial and sometimes deeply injured national pride. Facts about what happened, real or distorted, have been made use of as part of a propaganda battle between states or political parties. The truth has been suspended and held hostage during such controversies.

One-sided interpretations or distortions of past events have led to discrimination against minorities, xenophobia and even the resurgence of conflict. New generations must not be blamed for what their forefathers did, or are thought to have done. What is important is an honest search for the truth, sober discussion based on facts, and an

understanding that different versions of history exist and must be acknowledged. Only then can the right lessons be learned.

The purpose of journalism is not to please those who hold power or to be the mouthpiece of governments. Instead, I argue in the chapter "Media freedom and the right to demonstrate" that the media have an important role as a "public watchdog". The media's role is to inform the public about relevant developments in society, even when that information may embarrass.

In recent years leading investigative journalists have not only found their sources scared into silence, they themselves have fallen victim to the most brutal harassment and even murder: Hrant Dink in Turkey, Georgiy Gongadze in Ukraine, Elmar Huseynov in Azerbaijan and Anna Politkovskaya in Russia. No effort can be spared in apprehending and bringing to justice the actual killers, as well as those who ordered these appalling crimes.

Media culture is considerably affected by the attitude of the authorities towards journalists asking for information, especially on sensitive matters. The media have a legitimate interest in obtaining and disseminating information about government decisions and actions. The role of the media is vital in ensuring that citizens can exercise their right to know how their elected leaders act on their behalf, and to hold them properly to account. Open access to government information is a democratic principle of the first order.

Defamation is still criminalised in several parts of Europe. Laws are in place making it a criminal offence to say or publish true or false facts or opinions that offend a person or undermine his or her reputation. The mere existence of such laws could intimidate journalists and cause unfortunate self-censorship.

The way frequencies for television and radio are allocated is a test which some governments have failed. State agencies determining these allocations should work according to agreed and objective criteria

and not discriminate against applicants whose sympathies they do not share.

Publicly funded media should operate in an impartial manner in the interest of the population as a whole, and as an essential counterweight to the business-driven entertainment media. The "public service" media – often financed from tax money or other common resources – should, of course, not be used as propaganda instruments for those in power. Independence and impartiality are of paramount importance and ought to be protected through agreed guidelines and appropriate procedures when appointing senior staff.

Journalists are not perfect and mistakes are made. Some of these mistakes may harm individuals. There is clearly a tension between ensuring that the media behave responsibly and ensuring that any regulatory controls to monitor their conduct are not exploited to influence content improperly. There have been encouraging results in countries where media representatives have developed codes of ethics and designed their own procedures to enforce professional standards, for instance, through press councils or press ombudsmen.

In such countries, media practices have matured, the right to reply has been enhanced and the public has benefited from better protection against all forms of abuse and media misuse. However, there are also examples where such efforts have not managed to protect the ethics of journalism – commercial interests have been too strong. This is a problem for democracy as a whole.

The final article in this chapter is about obstacles which some local or national authorities raise to prevent public rallies. Though freedom of assembly is well protected in international treaties and also in national legislation, I have received frequent reports about police interventions to hinder peaceful demonstrations.

Parliamentarians, local politicians and authorities, as well as ombudsmen at national and regional levels, can contribute much to ensuring a deeper respect for human rights principles and standards – many of

them do but others do not. This is discussed in a chapter I have called "Actors for human rights".

Parliaments adopt laws, ratify international treaties, decide on national budgets, review key strategies and action plans and monitor the performance of the executive powers: they clearly have a major role in implementing human rights. In too many cases this potential is not fully used.

Provincial and local political bodies are also important for protecting and promoting human rights. In many countries, key decisions relating to social welfare, schooling and health care are at least partly taken at the local level. There is a risk that these actors may not be fully informed about the nature and implications of the international human rights agreements which the central governments are under an obligation to uphold. Decentralisation and the localisation of power should provide an opportunity not for diminishing, but rather for strengthening, the protection and promotion of rights.

All European governments now have institutions which receive complaints from the public and monitor issues of fairness and justice in society, including cases of abuse allegedly committed by public authorities. The names and mandates of these institutions differ, but they play an important role as quasi-judicial mechanisms protecting the rights of individuals. Unfortunately their budgets gave been reduced during the economic crisis – when their contributions would have been particularly needed.

Civil society non-governmental actors are crucial for developing a culture of respect for human rights. However, organisations working for human rights, especially those which also monitor and report on human rights violations, are not always well regarded by the authorities. Indeed, some have been persecuted. This has led to initiatives to protect such "human rights defenders".

When the United Nations declaration for their protection was adopted in 1998, the then UN Secretary-General, Kofi Annan, stated the obvious but important truth: "When the rights of human rights defenders

are violated, all our rights are put in jeopardy, and all of us are made less safe".

Andrei Sakharov was one of the most important human rights defenders of our time. Even when he was exiled and isolated in an apartment in the closed city of Gorky, he continued to write appeals for prisoners of conscience in the Soviet Union and other countries of the world. He gave Russians and others a strong moral message and leadership, the consequences of which continue to be felt today.

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Informed human rights discourse does not only focus on whether a government respects the standards but also on what measures it takes to ensure that rights are protected and fulfilled. There should be a systematic, well-planned approach; this is the key message in the chapter "Systematic measures for human rights implementation".

Progress cannot always be immediate and the fulfilment of many rights also depends on human and financial resources. However, there is a growing realisation that human rights can only be ensured through a consistent policy of "institution building" and through programmes such as developing an independent and competent judiciary, training a professional police force that upholds and respects the law, regularly reviewing legislation and encouraging active independent non-governmental groups to ensure routine scrutiny of those programmes. In other words, a systematic, comprehensive and well-planned methodology is required.

It is important that each country develop a national plan for the genuine implementation of human rights. Such systematic planning ought to be based on consultation which allows non-governmental groups and activists to take part, and includes a focus on efforts at regional and municipal levels.

The first step is to undertake a baseline study to identify existing problems. Domestic non-governmental groups, ombudsmen and international bodies can usually provide information for such a study, as can the media and a wide range of expert authorities. Such data

must be collated and analysed in a structured manner for the purpose of planning.

The second step is to draw up an action plan or strategy where the main human rights concerns are identified and appropriate measures to address these problems are put in place.

Thereafter come the crucial stages of implementation and evaluation.

One key aspect of the action plan should be to promote knowledge of human rights. Everyone is entitled to know their rights and how to claim them. Such knowledge is one of the main conditions for the realisation of human rights. However, human rights education in schools is still inadequate in most countries, at all levels. More also needs to be done to ensure that professional groups such as the police, judges, teachers, social workers and journalists obtain a solid education and professional training in human rights. A deeply embedded culture of human rights is needed to effectively operationalise the oft-stated political rhetoric – ensuring that human rights are truly protected and promoted as they must be.

The last chapter, "International action", emphasises that governments must uphold the values enshrined in international human rights treaties in their external relations as well. The United Nations Charter makes clear that the protection of human rights is not only a national but also an international concern and responsibility. This principle has been further confirmed in international and regional human rights treaties, and the European Convention on Human Rights includes the option of bringing inter-state complaints.

There is a compelling, principled argument for acting on human rights concerns in countries beyond one's own. People who are oppressed and silenced – and therefore unable to defend their rights – should be able to count on the solidarity of those in societies other than their own to help protect them. I have met individuals in such situations who have testified to the enormous importance of knowing that people or

authorities in other countries are concerned about their fate and will take action on their behalf.

However, for governments to raise human rights issues in international fora, or bilaterally, is often seen as controversial and even provocative. This is partly because the concept of human rights has a moral dimension: those who violate the standards are seen not only as having made a mistake, but as being responsible for unacceptable, unethical acts.

This is why it is so important that governments are sincere and consistent when they criticise others.

It is necessary to record where more needs to be done, and I have tried to do this in the separate articles in this volume. My primary purpose is to suggest remedies for the shortcomings that exist in Europe today, and to put forward practical recommendations which I hope will provoke constructive discussion.

In the course of my work I have met many people – some themselves victims of inhuman violations, or their families – for whom human rights represent still a hope. For them the Universal Declaration and the European Convention have a significant meaning.

The awareness has spread. I have met civil society activists, ombudsmen, journalists, lawyers, teachers, social workers and other professionals who are deeply committed to the betterment of this world and who see human rights standards as a key instrument in this struggle.

Also, I have met leading politicians and government officials who do take their human rights obligations seriously, sometimes under difficult political pressure.

The human rights vision articulated in the ashes of the Second World War is as relevant as ever. There has been great progress but also disappointing setbacks. Human rights express ideals – but these are not unrealistic. They establish core values and standards that are essential to a peaceful, decent and just society in Europe and the world today.

Thomas Hammarberg
Strasbourg, 1 April 2011

Chapter 1: Xenophobia and identity

Europe today is not free from racism, xenophobia, Islamophobia, anti-Semitism, homophobia, transphobia and other phobias directed against others. Minorities are made targets of hate speech, violence and systematic discrimination. The response from mainstream political parties and other majority representatives has often been meek and confused. They have left the political initiative to extremists and lent an unfortunate "legitimacy" to their positions. This is dangerous.

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Respecting the other

Europe today is not free from racism, xenophobia, Islamophobia, anti-Gypsyism, anti-Semitism, homophobia, transphobia and other phobias directed against others. Intolerance has been exacerbated by and found fertile ground in the current global economic crisis. Extremist groups and parties have become increasingly active and threatening, and have succeeded in recruiting supporters from amongst the disaffected, not least amongst young unemployed men.

Minorities are made the targets of hate speech, violence and systematic discrimination. The response from mainstream political parties and other majority community representatives has often been meek and confused. In this way, they have left the political initiative to extremists, and lent an unfortunate "legitimacy" to the claims they make.

This is dangerous. It is crucial to take a clear stand against such hatred and discrimination. However, the root causes of the fear and confusion which extremists manage to exploit must also be analysed and addressed.

The threat of growing unemployment in many European countries is certainly a major factor. Increased migration across countries and borders, as well as the electronic revolution, has contributed to feelings of insecurity among many. The consequences of "globalisation" are difficult to fathom. More and more people appear to feel the need to define their own identity – sometimes aggressively – in a world which is changing so rapidly.

President Sarkozy of France initiated a country-wide debate on the issue of national identity. There have also been calls for national "identity" to be defined in other European countries. Such discussions can of course be helpful – if they avoid promoting one single identity to the exclusion of all others. A definitional process which only manages to define who is included –and, by extension, leaves others to be excluded – is problematic.

The widely respected historian Tony Judt contributed to this discussion in his *The Memory Chalet*:

> *Being "Danish" or "Italian", "American" or "European" won't just be an identity; it would be a rebuff and a reproof to those whom it excludes. The state, far from disappearing, may be about to come into its own: the privileges of citizenship, the protections of card-holding residency rights, will be wielded as political trumps. Intolerant demagogues in established democracies will demand "tests" – of knowledge, of language, of attitude – to determine whether desperate newcomers are deserving of British or Dutch or French "identity". They are already doing so. In this brave new century we shall miss the tolerant, the marginals: the edge people…*

Despite its sad history of discrimination and oppression of minorities and vulnerable groups, Europe has always been and benefited from being an inherently pluralist, multifaceted continent. Our ability to continue to interact positively with one another will surely influence Europe's future. Multiculturalism is a value which must be actively protected.

In this discussion we should avoid equating "multiculturalism" with segregation or the creation of parallel communities without inter-relationship. Such definitions appear to be introduced with the purpose of promoting a policy of assimilation – one identity.

I would encourage those taking part in the soul-searching talks on national identity to read (or re-read) a particularly relevant book: Amartya Sen's *Identity and violence.*

Professor Sen observes that the world is increasingly seen as a global federation of religions or civilisations. In this scenario, we ignore all the many other ways in which individuals define themselves. He questions the presumption that people can be categorised into a single overarching system of partitioning.

He is of course right. In reality, we each belong to a number of different categories depending not only on our ethnicity, nationality or faith, but also on our local roots, gender, sexual orientation, parenthood,

language, education, profession, social class, politics, age-group, state of health, leisure interests, organisational membership and many other distinctive attributes.

The relative importance of belonging to any one particular group or having any one particular identity can only be determined by the individual him or herself. Though nationality or religion could, for example, be of utmost importance to some, this is not the case for many others.

We know from experience that the imposition by the state or other authorities of one allegedly unique identity – such as that of a particular civilisation or a particular religion – creates a basis for, and can actively encourage, sectarian confrontation.

Sen stresses the risk that a fostered sense of identity within only one group can be manipulated into a powerful weapon with which to brutalise another. Solidarity within any particular group can, and often does, feed discord between groups.

What concrete challenges does respect for others hold for national human rights policies?

– states should actively promote fundamental principles of pluralism, tolerance and broad-mindedness on which democracy itself is based;

– guided by these key values, states should show greater receptiveness to diversity in their own societies and take appropriate measures to allow, and indeed encourage, members of existing minority groups to determine and express their own identities;

– states should create consultative mechanisms, at national, regional and local levels. These mechanisms would initiate and maintain an institutionalised, open, sincere and continuous dialogue with representatives of all non-dominant groups, such as minorities. These consultative bodies should have a clear legal status and be inclusive and representative;

– the defence of social rights is absolutely crucial in order to avoid widening gaps, growing inequalities and further injustice.

Minorities suffer disproportionally as a result of societal inequalities and tend, moreover, to be made into scapegoats when other sections of the population feel alienated or disillusioned;

– practical measures are needed to address discrimination (both direct and indirect) in public and private employment policies. More efforts should be made to recruit minority representatives into key professions like teaching and policing, as well as into political leadership positions;

– greater priority should be given to the role the school system can play in developing tolerance and communal accord. Primary and secondary education should not be segregated, but inclusive. Respect for others should be part of the curriculum, as required by the United Nations Convention on the Rights of the Child;

– human rights should be the cornerstone of policies on migration;

– hate speech and discrimination of all kinds should stop. The marginalisation of Roma deserves special attention (see separate chapter devoted to this particular theme). The problems faced by the Roma remain scandalous and indicate that European governments are not seriously promoting human rights for everyone. An official acknowledgement and apology for past violations would be a good place to start;

– comprehensive anti-discrimination legislation should be adopted and monitoring bodies established to guarantee equality for all;

– positive achievements in promoting equality should be made known. Our dependence on one another, including migrants, needs highlighting.

Different groups should be allowed to fully integrate into society and, over time, demonstrate what they and their culture have to contribute to the diversity of the whole. Curiosity and open-mindedness, instead of fear and suspicion, should be encouraged – alongside a positive and dynamic vision of the future.