Progress in meeting human rights obligations is too slow

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All member states of the Council of Europe have ratified the European Convention on Human Rights, first agreed in 1950. The far-reaching strength of this treaty lies in the fact that it has proved so obviously relevant and essential across the decades and across this diverse continent. Whatever the intention was when it was drafted, it has taken on a life of its own.

Yet progress made by member states in meeting their human rights obligations is too slow. After visits to almost every member state of the Council of Europe, I am aware of the disappointment felt by many when human rights have not become a reality in their everyday lives. Too often the rights agreed to in European and international instruments fall into an implementation gap and fail to materialise.

Politicians have a responsibility and most of them are on record as favouring the protection of freedom and justice. But political rhetoric on human rights in Europe has a different tone. Key concepts and the language of human rights have often been politicised and demeaned in political discourse.

Some governments belittle their own shortcomings while using human rights as a tool against other states. They also tend to object strongly when deficiencies in their own countries are exposed by mechanisms monitoring the implementation of agreed standards. National pride trumps the openness to consider steps to improve.

Yet those responsible have in all cases an obligation to demonstrate the political will to address the identified problems. This requires responding to criticism in a constructive spirit and making a conscious effort to secure the broadest possible support for human rights. What matters are results.

There can be little progress without honest and concrete monitoring. Nongovernmental organisations play a pivotal role here, as do the critical 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. Naturally, the European and international treaty mechanisms bear a heavy responsibility as well.

I believe that those 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. The fact that the field is so politically sensitive makes consistency and even-handedness even more crucial.

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.

We are not short of human rights problems in Europe. Racism and xenophobia remain alarming causes for concern. Minorities considered "different" from the majority are made targets of hate speech, violence and systematic discrimination. Extreme populist 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.

Many established, mainstream political parties have also begun to use the rhetoric of the extremists in order not to be outflanked by them. This 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.

European countries have failed to co-ordinate their approach on migration issues. Some are, for geographic reasons, overwhelmed by the many migrants coming, and burden sharing in Europe has not functioned well. The obsolete Dublin II regulation, which was found fundamentally flawed by the Strasbourg Court in January 2011, has exacerbated the failure to respect the rights of asylum-seekers. In spite of this, men, women and children have continued to try, and thousands have drowned in recent years in the Mediterranean Sea. The official European reaction to these tragedies has been virtually non-existent.

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 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.

The discrimination and victimisation experienced by Roma in Europe is also particularly severe. My experience is that anti-Roma political discourse perpetuates anti-Gypsyism. By setting the example for prejudice and discrimination in society, politicians effectively prevent Roma and Travellers from enjoying their rights on an equal footing with others. In such a hostile context, all efforts made by the Roma communities themselves to break out of their marginalisation and relate positively to the rest of society are jeopardised.

These racist and xenophobic tendencies appear to have increased with today's global economic crisis and widespread uncertainty. Several governments have also initiated discussions about "national identity" although such attempts have failed when aimed at identifying 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.

There are more than 80 million persons with disabilities in Europe. Despite the gradual ratification of the UN Convention on the rights of persons with disabilities, their human rights are still far from being realised. Too often current policies continue to focus 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 made accessible to everyone. It is essential that people with disabilities can participate in all decisions affecting their lives. Persons with mental health problems and intellectual disabilities can still face problems when they want to take decisions for themselves. Even in important matters, their legal capacity is restricted or ignored. Instead, we have to focus on individual capacity and the availability of support for assisted decision making. This would place the individuals at the centre of decision-making, respecting their autonomy, and viewing them as subjects entitled to the full range of human rights.

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. The mistake was in 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 information began to emerge about systematic torture, secret prisons, indefinite detention without trial and extra-judicial executions carried out in the name of countering terrorism. This approach was a flagrant defiance of the core principles of justice and it has seriously harmed the international system for human rights protection without providing greater security for our societies.

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. One lesson from these sad experiences is the vital necessity of establishing effective democratic control over the activities of security agencies. Another lesson from this period is to review the human rights implications of the surveillance technologies which are now developing at breathtaking speed. Everyone should be protected from intrusions into their private lives, and from the improper collection, storage, sharing and use of such data.

While pointing out a few of the areas where Europe has failed to honour its human rights obligations, we should also acknowledge some areas of progress over time. For example, Europe is the continent where the death penalty has been abolished with the exception of Belarus – in the Russian Federation there is a moratorium in place for the death penalty. However, we need to remain vigilant as a return to the death penalty is sometimes proposed in populist political rhetoric. There has also been considerable progress regarding the rights of children and Europe has seen more than half of the countries abolishing corporal punishment and denouncing violence against children. The United Kingdom would still need to make extra steps in this direction.

The national institutional architecture for human rights protection has clearly grown stronger in recent decades. Most European countries now possess a network of ombudspersons, human rights commissions and equality bodies which can take up

individual complaints and promote human rights and equality in an active manner. A new generation of equal treatment legislation is also emerging in Europe which has given duties to a wide range of authorities and actors to implement and mainstream equality. I hope that the economic crisis, which has also impacted on the budgets and mandates of these human rights bodies, will not diminish their positive role.

It is also significant that the European Union has made binding human rights commitments. The UN Convention on the rights of persons with disabilities was the first international human rights treaty to which the EU became a party as an institution. Currently, the arrangements for EU accession to the European Convention on Human Rights are being finalised under the UK chairmanship of the Committee of Ministers of the Council of Europe. When ratified by member states, the EU institutions will be subjected to the human rights control mechanism of the Strasbourg Court.

The Lisbon Treaty was a milestone in confirming the role of fundamental rights among the principles underpinning the functioning of the EU. The respect for fundamental rights, non-discrimination and minorities are basic values of the EU. The Charter of Fundamental Rights is now a binding treaty when EU law is applied. The jurisprudence of the Court of Justice of the European Union has already started applying the new fundamental rights framework in key judgments.

At the same time, we should not be blind to the limits of EU competences in the field of human rights. While it is essential that EU actions are subjected to robust fundamental rights guarantees, the restrictions and subsidiarity placed on EU competences result in an uneven system of protection. Therefore it is absolutely necessary that the Council of Europe and UN standards for human rights protection are applied alongside with the EU fundamental rights order to bring about comprehensive coverage and coherence.

This will require close cooperation among the organisations concerned and keen awareness, by member states, of their human rights obligations in their entirety. Only then can the implementation gap of agreed human rights standards be bridged in a systematic manner.