



## CONFERENCE “RIGHTS THAT MAKE US HUMAN BEINGS”

organised by the Foundation “Remembrance, Responsibility and Future”  
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Speech of Morten Kjaerum, Director of the EU Fundamental Rights Agency:  
“Human rights and their history from a European perspective.”

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Ladies and Gentlemen,

Thank you for inviting me to come here today. I have been asked to speak about human rights and their history from a European perspective, and about the responsibility of the EU for the protection of human rights. Well, I believe we could have a week’s seminars and lectures on these topics without being bored, but no worries I will take a bit less time than that.

Last weekend I read the first draft of the next report of my Agency on child trafficking in the EU. We know very little about this issue, but one thing we can register is that thousands of children enter officially and are taken care of in asylum centres or elsewhere. A few days later, they have left the centre with no trace. Where have they gone? They are most likely being sold to the sex industry, for work in the worst of the worst of European industry or farming, or maybe to be exploited as domestic workers. These are not stories from the time of Charles Dickens, but realities in Europe in 2008. And it does not seem to bother very many people. The protection of the human dignity is an issue today as it was in the past.

In my speech today I will concentrate on three key points:

- I. I will start with a look at the history of human rights in Europe, and recent developments.**
- II. Secondly, I will address some of the current human rights challenges in the EU.**
- III. And third, I would like to give you an overview of the EU’s efforts to protect and promote human rights.**

**I. The history of human rights in Europe** is already a long one. Let me just point out different tracks that have shaped human rights as we know them today:

- Development of democracy: The English revolution of 1640 under Oliver Cromwell, pushing for the right to political participation, the United States Declaration of Independence from 1776 which of course had great effects on Europe as well, the French Revolution 1789 and the revolutions of 1848 across Europe, pushing for more civil rights. These were some of the developments which created room for freedom of expression, freedom of assembly, freedom of association and of course the right to vote.
- Development of the Rule of Law – the “Rechtsstaat”: The English Magna Charta from 1215, granting for the first time the right to oppose unlawful imprisonment, Montesquieu and the division of powers laid the ground for the right to a fair trial, prohibition of torture and, coming back to the trafficking issue, the prohibition against slavery. Each person should be respected as a legal entity in his or her own right.
- Protection of Minorities: The Peace of Westfalia 1648 with its religious freedoms ended 30 years of religious wars and minority conflicts. But minority rights are not only about religious minorities, but also about prohibition against discrimination based on race and ethnicity. This consequently also includes the right to seek asylum due to persecution stemming from racial prejudices and ethnic conflict.
- As the last historical highlight I name social justice. In Denmark in the late 1800’s the average life expectancy was 55 years. In Copenhagen it was 35 years due to the appalling housing and health conditions. Thus social and economic rights were addressed: the right to housing, health and education.

All these elements were gradually from late 1700 hundred on incorporated into the new constitutions in European countries.

Being here in Nuremberg I could have started my expose with the modern history of human rights which starts with the tragedy and the crimes experienced during the Second World War. Never again!

The heinous atrocities and crimes committed before and during the Second World War pushed the international community to several important steps:

- The Nuremberg trials had a great influence on the development of international criminal law. They influenced proposals for a permanent international criminal court, which saw the light of the day in 2003, 55 years later.
- It was also the crimes against humanity during World War II that inspired the Universal Declaration of Human Rights from 1948. In a few weeks on 10 December, we will celebrate its 60 years anniversary.
- Already in 1950 the Council of Europe’s European Convention on Human Rights was adopted and the European Court of Human Rights became soon a reality.
- Also the creation of the European Communities was a direct political response to the war, and the Union is today an important guarantor of fundamental rights.

Ladies and Gentlemen,

Rightly, it is often underlined how important the Universal Declaration of Human Rights was and still is for the protection of human rights world wide. But what force does a political declaration have? And already prior to 1948, many countries, especially in Europe, had enshrined human rights in their national constitutions. So why was the Universal Declaration such a big step forward? I see two main dimensions:

- The Declaration was not just a political declaration as many others. It was an immensely powerful one, unseen before – because of its context, its content, and its impact. What is so revolutionary about this declaration is that it shifted for the first time human rights concerns from a national level and from national law to an international level and to international law. Going far beyond the status of a mere political declaration, most provisions of the Declaration have over time become a part of international customary law. That means that - unlike treaties which only bind a country once it has accepted the treaty obligations - all countries in the world are bound by it. Human rights became a legitimate international concern.
- The second revolution is the way in which human rights are for the first time not anymore seen as rights that a State is granting - or not - to its citizens. From the Universal Declaration and onwards, human rights are accepted as an underlying basic principle of mankind. The famous article 1 underlines, and I quote: “All human beings are born free and equal in dignity and rights.” This means: people are born free, and entitled to basic rights from the start, irrespective of whether a State will legally or in practice commit to this or not. Human rights are for all.

It is interesting to look at the context of the Declaration in 1948: The work on it began at a stage when the world, after the atrocities of the war, was ready for such a great leap forward in recognising and protecting human rights. But it was only a short window of opportunity, as the first signs of the Cold War already overshadowed the debate: while the West focused more on political rights, the East rather wanted to push for economic and social rights.

In this context it was fortunate that the drafting Commission had made the decision to separate the initial political declaration from the formally legally binding covenants. The declaration was endorsed in 1948 only with the abstention of the Soviet Union and affiliated countries. But the two covenants (the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights) that define the concrete obligations of each state, were only ready for ratification almost 20 years later. Since the mid 60ies, additional legally binding conventions were elaborated giving substance to the political statements in the declaration.

Parallel to the legal developments, human rights were used as tools in the Cold War. The West used them to point the finger at violations of political rights in other countries. Our human rights work - whether governmental or non-governmental - was throughout the 1950ies and until the 1980ies primarily about naming and shaming human rights violations that happened from China to Chile, from South Africa to the Soviet Union, or in other countries behind the iron curtain. So for decades, human rights were a part of our foreign policies in Western

Europe. At the same time, human rights were hardly ever mentioned or questioned in relation with our own domestic situations.

This foreign policy approach started to change in the early 1990ies, when human rights increasingly found their rightful place as integral part of democracy everywhere. They started becoming the core of domestic political debates and legal developments also in our own countries. In this way, human rights were at last coming home.

A landmark event in this process of domestication of human rights was the World Conference on Human Rights in Vienna in 1993. Over 150 countries re-affirmed their commitment to the Universal Declaration of Human Rights, and adopted an international programme of action, providing guidance and inspiration on how to move ahead with the implementation of human rights within the domestic legal order.

Shortly after the Vienna conference, we had the first democratic election in South Africa, again a milestone in the human rights progress. I remember when in my previous job we collaborated with the Danish police academy on the training of policemen in South Africa. One evening over dinner, a Danish policeman suddenly raised an obvious question, namely why is it that we teach human rights to the police in South Africa but not at home in Denmark? Shortly after, human rights became part of the curriculum in the general police training also in my country.

This domestication of human rights, and the increased awareness of the issue, also contributed to the drive to build independent national institutions working on human rights. The emergence and growth of these institutions shows how profound this new “domestication agenda” really is. In 1990 there were globally only five national human rights institutions. Today, there are more than 100. To move from 5 to 100 in just 18 years is a tremendous development.

These independent bodies are entrusted to monitor human rights developments domestically, and advise governments and other state institutions. They inform the public about human rights norms, and can introduce a human rights perspective in the different levels of educational systems. In some countries, they are also empowered to deal with individual complaints about human rights violations.

Another key indicator of the domestication is that important parts of the corporate sector are today integrating human rights in their business strategies. Just 10 years ago that was almost unthinkable.

Ladies and Gentlemen,

An important engine for the domestication of human rights in Europe was the inclusion of the new democracies in the Council of Europe and subsequently their accession to the European Union. After the fall of the iron curtain, those former Soviet block countries which are today EU Member States, incorporated human rights not only into their laws, but also into their societies at a tremendous speed.

To me, what we have witnessed in Europe on integrating human rights is a logical step in the development of democracy. Democracy without human rights is like a car without tires: it may

look like a car, but you definitely cannot drive it. Democracy without freedom of expression, without participation, without the right to education or the prohibition against discrimination is at best a crippled democracy. In this way human rights are neither something alien imposed from outside, nor are they above, beside or underneath the democratic institutions. They are an integral part of democracy.

I see it therefore as a very positive sign for our vibrant democracies that human rights have taken the centre stage in the domestic political debate in the EU and in its Member States. Some years ago we talked about the EU being an economic giant but a human rights dwarf. This has changed:

- the EU has 8 years ago declared its own EU Charter on Fundamental Rights;
- it has successfully started to adopt and implement anti-discrimination legislation; and
- one and a half years ago the EU set up its own body to monitor human rights and to advise on their implementation, namely the EU Fundamental Rights Agency. This is unique in the world.

**II. This brings me to the second part of my speech. Once we are aware that human rights do not only concern far away countries, but also us, we must examine more closely: which concrete human rights concerns can we identify in our Member States?**

From my experience I must say that actually more or less all human rights concerns are today still relevant for Europe. In my job at the EU Fundamental Rights Agency, I am dealing with these topics every day, and I see many bad and sad things happen in Europe. Let me just point to some of the human rights issues that I see as the most burning questions.

- We are confronted with racism, xenophobia, Islamophobia and anti-Semitism.
- In particular how our States and our societies are treating asylum seekers and immigrants raises serious human rights questions. I am for instance thinking of asylum seekers' detention centres where, according to recently agreed EU legislation, people can be detained for up to 18 months – without having committed any crime or whatsoever!
- Another very disadvantaged group are minorities such as the Roma, who are facing major problems for instance in housing, education or employment.
- There is also vast evidence of homophobia, and of unequal treatment of people with disabilities.
- There is still quite a lot to do on gender equality, I just mention two key words, namely domestic violence, and pay gaps.
- Other issues which have until now been far too much neglected, are the rights of the mentally ill, or the rights of child, or the issue of trafficking which is modern slavery.
- And more topics come to mind, such as the protection of sensitive personal data in relation with the fight against terrorism, the access to justice and the right to a fair trial.

Ladies and Gentlemen, all these facts should be a sounding alarm bell to all of us.

But if these facts are so obvious, why is then not more being done about them? I think one reason is ignorance, the other one is complacency. Another one is populism on the hand of politicians, who are afraid to defend vulnerable minorities for the fear of losing voters. Minorities are often vulnerable, exactly because important groups may be against them - and then they need the protection of politicians.

We have seen in many countries that racist political discourse is no longer the sole preserve of extremist political groups, but is found in the overall political environment. Such developments can lead to the legitimisation and trivialisation of this type of language. This may ultimately serve as a justification for discrimination, harassment or even violent assaults against minorities. This is a development which I find very worrying.

Sometimes human rights are difficult to deal with, in particular when we face dilemmas on how to apply human rights that may seem conflicting. Let me give you two examples of these dilemmas: the Mohammed cartoons, and the fight against terrorism after 9/11.

The cartoons have been widely and largely debated world wide, mostly as a dilemma between freedom of speech and freedom of religion. Which freedom should prevail, was the question? But I believe that the wrong questions were being asked. This was never about freedom of speech versus freedom of religion, which are both fundamental human rights. To me, the real question was rather: could the Mohammed cartoons be classified as hate speech? Should hate speech be forbidden? And, more generally speaking, where are the boundaries between freedom of speech and hate speech? This is a difficult question, but a question that must constantly be debated and considered in our democracies.

Indeed, we can see that all democracies choose to set some limits to freedom of expression: These limits are set to protect other fundamental rights of individuals, when acts of hate speech are committed intentionally and are constituting incitement to violence or hatred. But how to do this precisely? How can we balance protecting people against racist speech on the one hand, and make sure that freedom of expression is and remains one of they key pillars of our democracies on the other hand?

My second example relates to the fight against terrorism. 9/11 opened a new chapter in the fight against terrorism and had severe consequences for how we see human rights today. Security legislation has been amended or introduced, which would not have been accepted neither by parliaments, nor by the media, nor by public opinion before 2001.

How do you feel about the fact that your data on where and when you are flying somewhere, are recorded and stored? How do you feel about the right of the police to record and store everyone's phonecalls? How do you feel about knowing that governments who have legally renounced any forms of torture have been proven to torture people? How do you feel about the fact that people are being detained, sometimes for years, without trial, without proofs, without access to a lawyer – and all that in countries which call themselves democracies?

The delicate balancing between justified security concerns on the one hand and protecting fundamental freedoms on the other has dominated many parliamentary debates, scholarly

discussions and reports by human rights bodies. Politicians keep telling me that they find it difficult to find a balance between security on the one hand, and freedoms for the individual on the other. But this is a fundamental misunderstanding from the start. To me this is not purely a question of balancing human rights with security measures. Human rights are the basic principles, and they must be central to what we do. Security must therefore always operate on a human rights basis and within a human rights framework. And this basis is even enshrined in our constitutions. With Abu Ghaib and Guantanamo we are now learning the same lessons as the French learned during the war in Algeria and many before them: violating human rights in a conflict just adds fuel to the enemy. Human rights are for all - we may not want to hear it, but they are even for our enemies and for nasty offenders.

These two examples, the freedom of speech and the fight against terrorism, show that there are no easy solutions and no quick fixes. There is a great need for further vibrant debates on human rights. Human rights are still evolving, and there is a need for an open debate on the complexities. Conferences such as the one today are an important step on this way.

Ladies and Gentlemen,

Human rights are like a precious plant that requires constant attention and care, without which it will dry out. We have to remain vigilant and cannot be complacent. But what's the water and what's the fertiliser so that our human rights plant can flourish and bloom? I will try to answer this question in the third and last part of my speech.

### **III. So, how can the EU protect and promote human rights?**

We have quite a nice plant already, but in my view there is a lot of water and several fertilizers needed if we want it to further bloom and flourish.

#### **1) The basis, let's say the water, is: good legislation and adequate implementation!**

Europe has much to be proud of in the field of human rights: The European Court of Human Rights is a beacon for the legal development of human rights throughout the world. The EU's anti-discrimination directives have had a massive impact on developing national legislation and equality mechanisms, and are certainly good practice models to share with other parts of the world. Also, the EU Charter of Fundamental Rights will help further the protection of human rights. With the Lisbon Treaty, the Charter would even become legally binding.

So generally, people in the EU enjoy a high level of protection and there is much to build on.

However, there are still some major gaps. Currently, in many Member States, some groups are better protected by legislation than others. Why is it – rightly - possible to sue a landlord for discrimination because of ethnicity or gender, but not for discrimination because of age, disability or sexual orientation? Why are disabled people protected from discrimination in employment, but not to the same degree in education? Etc.

This inequality is not right. Human rights are for all, and all humans must have equal rights to equal treatment - unless there are very good reasons to differentiate. The European Commission has proposed new and more far-reaching anti-discrimination legislation in July, which would close parts of this gap. The Fundamental Rights Agency strongly supports this new initiative.

However, even the best legislation is useless if it is not properly implemented, or if people are not aware of it.

2) This brings me to one important “fertilizer”: it is indispensable to make people aware of their rights!

According to a recent Eurobarometer survey, only one third of EU citizens say that they know their rights, should they be a victim of discrimination. This shows that there is clearly a lot to do. At every airport you find posters with passengers’ rights. Why don’t we give the same visibility to the right to equality - in town halls, companies, schools or at the local post office?

Knowing your rights should also become part of government campaigns, of school curricula, and of the media debate. Also politicians, lawyers and judges, the police, teachers, service deliverers and providers, they all need to understand human rights. They are crucial to making the system of promotion and protection work. I still see a deficit between the knowledge of the human rights community on the one side, and the knowledge of those who have the task to apply human rights in their daily work on the other side, for example the nurse at the hospital for people with mental illness.

Once there is sufficient legal protection guaranteed, and a person has understood that he or she has been discriminated against and has the right to redress, the next question is of course: where can I go for help?

3) Therefore the next important point is that we need competent bodies where victims of human rights violations can go!

EU legislation obliges Member States to create bodies in relation to discrimination, but not human rights violations in general. By the end of 2007, three Member States had not even installed any anti-discrimination body at all. And in many Member States, such equality bodies – though existing - have been rather invisible in tackling discrimination. We need national institutions and mechanisms to protect and promote human rights. They must be independent, adequately funded, and empowered to do their job effectively.

Up until now, often it has been NGOs which have been a great support to victims of human rights violations. That brings me to the next point, another “fertilizer” for our plant, which is:

4) active civil engagement, and an active civil society.

It is said that silence always nourishes oppression. The civil society organisations are the eyes, the ears and the voice for protecting and promoting human rights. The importance of NGOs can therefore not be overstated. Civil society and NGOs have a key role in holding European



governments, public institutions and also businesses accountable. They carry out research and lobby work, they raise public awareness and they give people a forum to express their views. And very often they come forward with good proposals.

I firmly believe that civil society organisations are best to assess the reality of fundamental rights implementation on the ground, not the least because they are closest to the victims of violations of these rights. I am therefore personally very pleased that one part of the official mandate of the Fundamental Rights Agency is the constant dialogue with civil society organisations. For this purpose, we have set up a specific structure, the Fundamental Rights Platform, which we launched just over a month ago. This Platform is the Agency's network for cooperation and information exchange with civil society. Here we have for the first time a big European platform of different groups working together on a wide range of fundamental rights concerns. I see this comprehensive approach as a great opportunity to jointly promote fundamental rights in a novel and effective way.

Ladies and Gentlemen,

I see it as the role of the EU Fundamental Rights Agency to push on all these points – legislation, implementation, awareness raising, supporting the creation of competent equality bodies, and dialogue with civil society. Or to keep using the image of the plant, to ensure that our human rights plant will further grow, flourish and bloom.

We can ensure this task thanks to our analytical and advisory capacity. But the single most important precondition is our networks, which involve human rights experts and civil society across the EU, and our relations to all who bear responsibility for human rights protection in Europe – EU institutions, Member State governments, and local authorities.

Let me give you an example of how the Agency can play this role. One of our first reports dealt with homophobia in Europe. We examined the legal status in the EU countries, and demonstrated that the Member States had not fully respected non-discrimination principles when implementing Community law, for instance in relation to freedom of movement or family reunification. Our report is now playing a role in ensuring Member State support to the new anti-discrimination directive that I mentioned earlier. The report is furthermore actively used in Member States by NGOs discussing the national situation.

Before coming to an end, let me at this point also add a comment on Europe's engagement on human rights in the world: The EU has a long history of pushing for human rights world wide, and this responsibility has of course not ceased just because we also started looking at our own records. The EU has a leading role in the human rights dialogue with other regions and countries, such as China, Russia and India. Let me underline: the better our own internal human rights record, the more credible we are in this dialogue. And, I am not a great fan of naming and shaming. I believe that naming is important, however bridges have always lead further than trenches. Only if you are not pointing the finger at someone in a patronizing way, they can start changing without losing their face.

Ladies and Gentlemen,

**Let me summarise:**

Many burning questions on human rights are on the agenda in the EU still today. This goes from how we treat minorities, to the rights of vulnerable groups such as children or the disabled, to human rights issues that affect everyone such as age discrimination or the protection of our personal data. We must ensure that human rights violations and discrimination have no place in our democracies. There is still a need for more and better legislation, for increased awareness-raising, and for installing competent bodies where victims of human rights violations can go. The fact that the EU has declared its own Charter of Fundamental Rights, and that it has set up a specific Agency on Fundamental Rights, shows how important human rights are for the EU.

In conclusion I would like to make a giant loop: I would like to finish with a quote by the so-to-say “mother” of the Universal Declaration of Human Rights, Eleanor Roosevelt - a great human rights defender. She said: “Human rights exist to the degree that they are respected by people in relations with each other, and by governments in relations with their citizens.” This was in 1948. Now let’s jump to 2013 where hopefully the human rights defenders will be also the nurse at the hospital for the mentally ill, and children will no longer be trafficked.

Let us all work together to ensure the real existence of human rights for all.

Thank you for your attention.