

## CHECK AGAINST DELIVERY

ANNUAL LECTURE IN HONOUR OF KRZYSZTOF SKUBISZEWSKI

‘PROTECTING HUMAN RIGHTS IN TODAY’S EUROPE’

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Good afternoon dear colleagues, friends,

As someone who has worked in the field of human rights for close to 30 years, it is with a sense of humility that I visit Poland. The history and the people of this country have taught us so much about the values that underpin European identity. I hope that I can do justice to that proud legacy in my remarks today.

Let me begin by quoting a Pole who spent his life in the service of freedom, and who remembered a time when humanity appeared to have plumbed the depths of degradation. Władysław Bartoszewski said in an address to the Millennium Session of the UN General Assembly:

*“I remember the joy and the hope with which we greeted the United Nations Charter and the Universal Declaration of Human Rights. They gave me strength when I found myself having to survive the ordeal of years of incarceration in Communist jails.”*

Earlier still, the great Polish jurist Rafael Lemkin contributed to the shaping of international human rights law when he conceptualised the crime of genocide. And the Genocide Convention will forever remain his legacy. Kofi Annan described Lemkin as having waged *“a lifelong campaign for every human being’s right to live in dignity”*, and whose *“lifework offers an inspiring example of moral engagement”*.

The courage of the leaders and activists of the Solidarity movement has impressed me since the dark days of martial law. Indeed, I had the privilege of supporting the late Prime Minister Tadeusz Mazowiecki during his time as United Nations Special

Rapporteur for the former Yugoslavia. I recall Mazowiecki's humanity and heartfelt wish to protect those caught up in the conflict. Above all, I recall his integrity, moral clarity and determination.

There are many other great Poles whom I might mention, including, of course, Professor Krzysztof Skubiszewski, whom we honour today. But suffice it to acknowledge the array of Polish humanist champions, from poets through to a pope, from shipyard workers to secretaries of state. We are in their debt.

[The human rights framework at EU and national level]

Dear Friends,

Just now I referred to the welcome given in 1948 to the Universal Declaration of Human Rights. And it is always worthwhile revisiting the content of the declaration. Its first article remains as thrilling and challenging as ever, with the great statement: *"All human beings are born free and equal in dignity and in rights"*.

The story since 1948 is a remarkable one, with the development of a more or less comprehensive corpus of rights recognised in international law and a framework – albeit an imperfect one – for their international oversight. The global achievements were paralleled or further developed at the regional level.

Here in Europe we slowly elaborated the most sophisticated of all the international human rights legal frameworks. This was further strengthened by the embrace by the European Union of strong human rights commitments – including in the form of the European Charter of Fundamental Rights.

The Charter of Fundamental Rights, the drafting of which drew directly on the Universal Declaration, does not meddle in countries' internal affairs. It simply lays out the inalienable rights of each person living in the EU. These are rights that everyone is glad to have for themselves and their families, although some are less generous at the thought of them being applied to others. But – as not only the Charter but also national

constitutions stipulate – all people are equal before the law. There is not and cannot be any hierarchy of rights holders.

Each individual in the European Union has a claim to the rights of the Charter, and can invoke these rights before local courts wherever EU law applies. In this sense, the Charter and EU law in general are very much instruments of empowerment.

We have then in the EU an impressive human rights framework, which co-exists with the constitutional traditions and institutions of its Member States. It also of course draws on the European Convention of Human Rights, to which all EU Member States are party. Respect for this framework and all it entails is a condition for membership of the EU.

It is the primary role of my Agency, the European Union Agency for Fundamental Rights, to assist the EU and its Member States to uphold their fundamental rights commitments. In so doing we have a unique mandate – the only regional body of its kind in the world. Operating independently of the EU institutions we deliver evidence based advice and analysis to our law and policy makers. We also play a significant role in supporting civil society and promoting awareness of and respect for rights across the EU member states.

In our work at the national level we are well aware of how human and fundamental rights commitments must be applied in acknowledgement of and respect for the diversity of national identities. In fact, the Treaty on European Union stipulates clearly that the EU must respect *“the national identities of the Member States”*. In this context it is my view that the Union provides an additional source of identity to be proud of, in the same way that one is proud of one’s own country.

Colleagues, friends,

No country or continent, however great its legacy, can afford to rest on its laurels. It was in 1998 that Pope John Paul II said: *“It is not enough to possess freedom; it must be constantly achieved and recreated. It can be used for good or for ill...”* His words

can be transposed directly to the context of the global and European human rights protection systems.

[Threats to human rights in Europe]

Across the globe, human rights are in contention. In too many countries, the rights themselves and the systems that uphold them are questioned, challenged, ignored, or undermined. Sometimes it seems that human rights serves as a proxy battleground for political or ideological disputes. Respect for rights is compromised by patterns of myth-making – one such being that rights are only for some people – which of course overlook the foundational principle that rights are not just for one minority or even many minorities. Human rights are for everyone.

We might well ask if we are facing a crisis of human rights. It will take me a little while before I answer this question, but please bear with me.

Here in Europe we are definitely seeing increasing intolerance, illustrated by rising hate crime and hate speech, particularly online.

We are also seeing a lack of solidarity. This is illustrated by the fact that EU Member States are failing to offer meaningful support to Italy and Greece in responding to the needs of tens of thousands of migrants. Within countries it can be observed in the toleration of ever-increasing levels of inequality.

Perhaps of greatest concern, though, is that we are seeing a growing tendency to question the very basics of Europe's human rights framework.

Allow me to go into a little more detail.

**First: discrimination and hatred.** A society can only flourish when all its members have the same opportunities and enjoy the same rights, from education and career development through to freedom of conscience and freedom of religion.

Although we have made great strides in combating racism, xenophobia and hate crime, both legally and institutionally, we are seeing increasingly open and direct

demonstrations of intolerance. Sometimes it seems as though the hatred is all-encompassing.

The patterns of hate speech and hate crime are to be found across the EU. The incidence of attacks is on the rise. Numerous groups are targeted. These include Jews and Roma. They also increasingly include foreigners – especially people who may look or dress differently. People perceived to be Muslims are often the target. We have been closely following these developments over the last year, including in the context of the migrant crisis. Each month we publish an account of the situation in 14 EU Member States, including Poland. The story – including here – is sobering and disturbing. I applaud the initiative of the Conference of Rectors of Academic Schools, who on 25 November issued a strong statement repudiating violence against foreigners, and calling for firm action by the authorities.

Beyond identifying attacks, another important test of whether the rights of a particular community are adequately protected is the level of fear among its members. Surveys carried out by the Fundamental Rights Agency show that this level of fear is high. Fear drains people's strength, preventing them from living their lives openly, as each of us has the right to do. So hate crime does not only affect one individual victim. It does lasting damage to entire communities.

Unacceptably, we see much evidence of communities wounded by hate crime and discrimination. 62% of Roma in a survey by the Fundamental Rights Agency said they had been discriminated against because of their ethnic background. 62%! And we must not forget that racism does not just affect minorities, but concerns us all. Our societies are made up of everyone within them, and intolerance – whether racial or any other kind – has the potential to destroy these societies from the inside.

To foster cohesive societies based on mutual respect, it is vital that all those with a public voice are fully aware of their responsibility not to incite hatred. In a recent study by my Agency in which we interviewed more than 200 experts, we were told by one victim support service in Poland:

*“It is extremely important for public figures, I am mostly talking about the people in power, to clearly, unambiguously and publicly talk about the topic of hate crime and to unequivocally express disapproval and criticism. This message has to reach the masses.”*

Of course, not only politicians are public figures. In this regard we see increasingly intolerant discourse in traditional and social media, often in the form of incitement to discrimination, hatred or violence. The growing reliance on the internet as the main source of information enables unverified statements to go viral almost instantly, making them difficult to challenge. At the same time, the internet facilitates the development of ‘information bubbles’ in which people only receive information that coincides with their own opinions. This then threatens to turn public debate into blocs of contradicting views in which rational arguments are ignored.

**My second concern: freedom of speech.** I have just spoken of criminal speech, which must be fought decisively. At the same time, however, I would like to make clear that I absolutely oppose the muzzling of freedom of expression. A free and pluralistic media play an essential role in ensuring our societies are based on democracy, human rights and the rule of law – the values upon which the EU is founded. This means that journalists, publishers, editors, and bloggers must be able to carry out their tasks without fear of intervention or reprisals.

A study by the Fundamental Rights Agency published just two months ago shows that ensuring the safety of those working in journalism in the broadest sense is – or should be – a matter of serious concern for the EU and its Member States. State and non-state actors alike were found to exert direct and indirect pressure on journalists and media outlets.

For example, state authorities sometimes justify surveillance of journalists on the grounds of national security. This makes it more difficult for journalists to maintain confidential sources. In one case we cite in the study, a pre-trial investigation in one EU Member State revealed that the secret services had been authorised by a district

court judge to wiretap 17 journalists in order to discover the source of a leaked government report.

**This brings me, thirdly to: security concerns.** At EU and national level, we need to discuss ways of increasing our capacity to combat terrorism and radicalisation, while remaining true to the rule of law and our human and fundamental rights commitments.

In the modifications to intelligence and surveillance legislation undertaken by many Member States in 2015, we see the perennial challenge of delivering national security in a manner that is respectful of rights – and especially that the inevitable infringements on rights comply with the non-negotiable principles of legality, necessity and proportionality. It helps when law-makers recall that a purpose of security policies in a modern state governed by the rule of law is to create a space for the realisation of fundamental rights.

Ensuring the safety of everyone in the EU is of critical importance. However, security must never be invoked as an excuse for the repression of democratic freedoms. Neither is it a zero-sum game between different groups, whereby the safety of one community can only be achieved at the expense of another community. Security measures can only work if they are respectful of human rights and work with and not against all the communities that make up European societies.

[Preconditions for human rights protection]

Colleagues, friends,

Human rights are often regarded as an abstract concept. But as my remarks to you have shown, the threats to those rights in Europe are very specific and concrete. In the same way, their protection depends on actions that are analogously prosaic. If you will allow, I shall list some of the most essential elements of effective human rights protection – for Poland as for any other EU Member State.

(1) **First and foremost is the importance of the rule of law.** To quote Nils Muižnieks, the Council of Europe's Commissioner for Human Rights: *"There can be no real human rights protection without mechanisms guaranteeing the rule of law, in particular by ensuring checks and balances among the different state powers."*

Nonetheless, we are seeing an increasing challenge to the rule of law in many places around the EU.

One crucial aspect of the rule of law is the independence of the judiciary and of the institutions that go to make up the overall human rights framework. The checks and balances that ensure no one branch of government can become over-powerful are a precondition for democracy. And each Member State in the European Union can be proud to be a fully-fledged democracy; particularly those states that have so recently struggled against and surmounted totalitarian rule.

Constitutional courts and ombudsmen must be seen as vital to the lifeblood of our States – such courts and institutions are strengths to be nurtured and not problems to be solved. Constitutional courts are especially crucial in that they are the final arbiters on constitutional matters – other actors in the political and legal system should have the greatest respect for the independence needed to fulfil this role. Furthermore, challenges to the independence and impartiality of the judiciary may also lead to a breakdown in public trust in the fairness and quality of the justice system.

Human rights and the economy are not the subject of my remarks today, but I would add as an aside that governments as well as local authorities must fully understand and take advantage of the fact that a strong judicial system fosters the investment the economy so much needs. From this perspective, respect for the rule of law should be regarded as a key element of sustainable economic growth. Businesses need to have certainty and guarantees of fairness in order to invest; and where these may be lacking, they put their money elsewhere.



**(2) Also vital for the protection of human rights is a thriving and vibrant civil society.**

For a number of years now, civil society organisations in the EU and beyond have reported that the space in which to carry out their work is shrinking. They mention a reduction in access to financial resources, burdensome regulation, and fewer opportunities to access decision makers. In some places they tell of violent attacks and the harassment of human rights defenders. These issues will be the subject of close attention by the Fundamental Rights Agency in 2017 whereby the protection of civil society will be seen as much an internal as an external concern for the EU.

**(3) Civil courage.** I know it is not easy, but it is nonetheless vital: if you see hatred or discrimination, do not look away. Sometimes it is possible to intervene directly; sometimes it is a matter of perseverance. Whom should I put the victim in touch with; what legislation is contravened by this action; whom do I turn to if I am a victim myself? Ask yourselves these questions, and don't give up until you have an answer, however partial. The State must be held to account for the human rights obligations to which it has committed.

Of one thing you can be sure: the EU Agency for Fundamental Rights stands ready to support you. In arguing your case for human rights, make use of our analysis, data and advice. Also, make the best possible use of the resources, recommendations and findings of United Nations and Council of Europe bodies.

**(4) I would like to make one last point on the protection of human rights, and that is: learn from history, and learn it well.** To quote yet another great Pole, the Nobel-prize winning poet Czesław Miłosz: *"The living owe it to those who no longer can speak to tell their story for them."* Poland's rich and often tragic history gives its people a keen sensitivity to the past. This must be harnessed for the present. School pupils and the general public alike need to receive a nuanced teaching of the past. This knowledge provides an opportunity to reflect on contemporary problems with a greater understanding, thus ensuring that history is used to heal and not divide. No country is

composed entirely of heroes, and to reinterpret history as though this were the case does an acute disservice to all those who lived – and died – for their country.

Dear colleagues, friends,

You have listened to me for almost half an hour now, and you are perhaps surprised that I have made little direct mention of the current circumstances in Poland. But rather than reiterating the authoritative commentary and recommendations of the Venice Commission, the United Nations Human Rights Committee, the European Commission and others, I have sought to examine the situation in a broader context. And as I hope I have made clear, there is no EU country in which human rights are not at risk.

Let me close by answering the question I posed earlier. Do we have a crisis of human rights? No, I don't think we do. But we do have a major crisis of commitment. Human rights cannot be viewed as an optional extra that can be sacrificed. They are the cornerstone of our identity. Europe will have failed if we fail on this issue, which is so close to the values on which the EU was founded.

We must have the courage of our convictions, the courage to speak out against human rights violations, and the courage to act. With this courage, with energy and with good will, we can overcome this crisis to ensure that human rights protection does not become a hollow shell, but remains at the beating heart of our societies.

I will leave the final words to Pope John Paul II, who said so powerfully during his address to the UN General Assembly in 1979:

*“Although each person lives in a particular concrete social and historical context, every human being is endowed with a dignity that must never be lessened, impaired or destroyed but must instead be respected and safeguarded...”*

It is our challenge, as individuals and societies to honour that lofty vision.

Thank you.