

## Protecting and promoting human rights

Human rights are universal, indivisible and inalienable. They are an important part of what makes our society a civilisation. But human rights are permanently under pressure. Civil and political rights are being undermined by security threats and by the repressive policies that pretend to respond to those threats. A supposedly different understanding of human rights in other cultures is often misused to empty human rights of their meaning. Many social and economic rights have hardly been implemented.

Part of the 'European dream' is for the European Union to be a beacon of civilisation in the world, a role model in respecting human rights. That requires serious control mechanisms within the EU as well as a foreign policy that consistently promotes human rights beyond Europe's borders.

### Improving the institutional framework

The EU has so far no legal personality. It has therefore not signed the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) yet. However, the treaty of Lisbon sets two important steps forward in that it makes the Charter of Fundamental Rights binding – also for the Common Foreign and Security Policy – and that it allows the EU to join the ECHR. In addition, all member states are parties to the Convention. In article 6 and 7 of the current EU Treaty, the EU commits itself to respecting the rule of law, human rights and fundamental freedoms as laid down in the ECHR. To complement the ECHR, the EU has drawn up the Charter of Fundamental Rights.

The EU Treaty states that the respect of and promotion of human rights is not a goal that is limited to the European territory, but also a major objective of the Common Foreign and Security Policy (CFSP).

The Lisbon Treaty also widens access to the European Court of Justice (ECJ) in Luxembourg. In most cases, human rights issues are dealt with by the ECJ when national judges ask for clarification of European legislation. The court's judgments have tied the EU more firmly to human rights standards such as the ECHR. According to the Greens the CFSP should in the future also be brought under the jurisdiction of the ECJ, thus creating a way of legal redress for those whose human rights are violated by the EU's policies.

The European Commission is responsible for overseeing the implementation of EU law by the member states. However, it doesn't commit enough resources to ensuring that any violation is quickly and satisfactorily dealt with. Increasingly, member states resist the interference of the Commission. The Greens call on the next Commission to reaffirm its commitment to human rights and to establish a Commissioner for Human Rights in the next European Commission.

Since 2007, the EU has had an Agency for Fundamental Rights (FRA). Once a year, it draws up a report on the situation of fundamental rights in Europe. However, not all areas are touched. The Greens want the remit of the FRA to be widened in order to give it the competence to monitor all legislative proposals of the EU and assess the situation in the member states as well as their policies and their actions. Although the FRA's primary role is within the EU itself, it should also oversee foreign policy. The FRA should be able to assist all EU institutions in assessing the human rights situation in third countries, including the effectiveness of human rights clauses in the treaties the EU concludes with these countries.

The Greens propose furthermore that each Council presidency should organise a publicly accessible Forum on Human Rights, where civil society and the European institutions can hold in-depth discussions of human rights issues affecting member states and the EU as a whole.

### *Secondary law*

The EU's commitment to human rights is also demonstrated by the concrete pieces of legislation. The anti-discrimination directives set a worldwide example. The directive on equal treatment irrespective of racial or ethnic origin stipulates that member states should forbid discrimination both in the labour market and in the market for goods and services. Gender discrimination has been combated by European legislation for more than 30 years. Equal treatment irrespective of age, disability, religion, belief or sexual orientation is prescribed in the labour market. A draft directive that is currently under process would also stipulate this in other fields.

The directive on the protection of personal data sets important limits to governments' ever growing desire to violate the privacy of individuals. Its remit should be widened to include justice and home affairs.

However, the EU has also produced legislation that seems to limit the rights set out in international conventions. The directive on family reunification, for instance, permits member states to require that children from the age of 12 pass an integration exam before being allowed to join their parents.

While participating in European law-making, the Greens will always point out the EU's international obligations. They are prepared to take any legal steps necessary to challenge decisions that might violate human rights.

### *Council of Europe*

Individuals who believe that their rights, enshrined in the ECHR, are violated, can invoke the Convention before a national judge. When this does not appear sufficient and all possible national legal remedies have run out, an individual can file a complaint against the state at the European Court of Human Rights (ECtHR) in Strasbourg. The length of the procedure however undermines the effectiveness of human rights protection. The Greens believe it is of utmost importance that member states provide the finances necessary to speed up the procedures, and that Russia is pressured to give up its resistance to the reform of the ECtHR.

The parliamentary assembly the Council of Europe also has a long track record of monitoring human rights. The EU institutions should draw on that experience, incorporate the monitoring mechanisms and use the standards developed by the Council of Europe.

### *OSCE*

The EU should step up its support for the human rights activities of the Organisation for Security and Cooperation in Europe. This concerns especially the High Commissioner on National Minorities and the Office for Democratic Institutions and Human Rights, which is strongly criticized and endangered by Russia.

### *United Nations*

The EU should conclude cooperation agreements with the international institutions and organisations responsible for the protection of human rights, and in particular with the Office of the United Nations High Commissioner for Human Rights and the other UN bodies which play a key role in implementing the Universal Declaration of Human Rights.

The EU should also conclude a framework agreement with the UN Human Rights Council in order to speed up the ratification and implementation of UN Conventions by EU member states. The Greens call in this regard for the ratification of the International Convention on the Protection of the

Rights of All Migrant Workers and Members of Their Families and of the International Convention for the Protection of All Persons from Enforced Disappearance. In the same spirit, the Greens deplore the fact that so far only 9 EU member states<sup>1</sup> have ratified the Optional Protocol to the Convention against Torture, which requires the establishment of independent and national monitoring mechanisms for places of detention. The ratification of this protocol by all member states would give more credibility to the EU's external policy against torture.

The Human Rights Council plays a crucial role in the overall UN architecture. Its mechanism of Universal Periodic Review has the potential to improve the universality of the monitoring of human rights commitments and practices, by subjecting all UN member states to equal scrutiny. The country recommendations made during the UN review should be systematically taken into consideration by EU institutions, whether in the framework of the political dialogue with a third country or in the elaboration of benchmarks to be reached by this country in exchange for trade and aid.

## **Taking a closer look at human rights**

### *Civil rights*

In public debate human rights are often opposed to security. The Greens believe this opposition is false. Human rights are the main guarantee of our security. Anyone who gives up human rights standards in the fight against terrorism and crime has already been defeated, because human rights are what make us strong, especially in times of crisis.

In the 'war on terror' governments have tried to legitimize human rights violations by labelling them part of the fight against terrorism. The Bush administration even permitted torture as an interrogation method. Human rights were and are being trampled on in Abu Ghraib, Bagram and Guantánamo. We Greens are decidedly opposed to this. A community committed to human rights cannot trade core individual freedoms for a – deceptive – sense of security. It will ultimately lose both. Fostering human rights, democracy and the rule of law is, in the long term, the soundest foundation for stability and peace. We welcome Barack Obama's decision to close Guantánamo. The EU must play an active part in finding a solution for those innocent prisoners that the US intends to release but who cannot return to their country, as they risk being tortured there or because they have become stateless. EU member states should consider and receive those persons in the EU.

If it wants to be a credible global actor for human rights, the EU cannot permit itself to turn a blind eye to human rights violations on its own territory. The prohibition of torture, as defined in Article 1 of the United Nations Convention against Torture, is absolute and allows no exceptions whether in times of war or threat, domestic political instability or any other emergency. Therefore, it is vital that the EU institutions and the member states should implement the recommendations contained in the European Parliament's 2007 resolution on the alleged use of European countries by the CIA for the transportation and illegal detention of prisoners. Only if light is shed on the role played by member states in the illegal practice of extraordinary rendition can we ensure that the EU and the member states never again become involved in similar breaches of human rights.

Our role in the debate on security policy remains that of the voice counselling a level-headed approach, the guardian of freedom and the guarantor of the rule of law. We will continue to remind our political opponents that international treaties set stringent criteria for any measure that limits civil rights, such as the right to privacy. It must be proven *legitimate, proportionate and necessary*; steps must be taken to avoid abuse. Most repressive measures of recent years, both on the national and European level, fail this legal test. Therefore they amount to a violation of human rights.

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<sup>1</sup> Czech Republic, Denmark, Estonia, Malta, Poland, Slovenia, Spain, Sweden and UK.

Freedom of expression is a cornerstone of a democratic society. This right also protects opinions that shock, disturb or offend, as long as they do not incite violence or hatred. However, the right to freedom of expression has come under pressure from various sides. Greens will continue to resist attempts to compromise the right of expression, even where it may clash with religious or other beliefs or the perceived security interests of states.

Several times in the recent past, in some EU member states, peaceful gatherings or marches usually called gay prides or gay festivals have been threatened by attackers without authorities reacting to protect the participants. Sometimes authorities even cancelled the events for alleged security reasons. This is a clear breach of the civil rights of participants and Greens will always fight to make sure such events can take place wherever in the EU (and to put pressure on states outside the EU to allow such events).

### *Social rights<sup>2</sup>*

The Universal Declaration of Human Rights does not only contain *civil and political rights* (CP-rights), like the right to freedom of expression and the right to be free from torture, but also so-called *economic, social and cultural rights* (ESC-rights). The CP-rights are elaborated upon in the legally binding International Covenant on Civil and Political Rights and the ESC-rights in the International Covenant on Economic, Social and Cultural Rights. In line with this structure the Council of Europe also has a document on CP-rights, the famous ECHR, as well as a document on ESC-rights, the European Social Charter. This document protects rights such as right to work, to just conditions of work, to safe and healthy working conditions, to freedom of association, to social security, to benefit from social welfare services, to housing, etc. This Charter differs from its global counterpart to the extent that it focuses on rights related to work and working conditions, whereas the International Covenant on ESC-Rights has a broader remit.

The EU's Charter of Fundamental Rights brings together in a single text, for the first time, civil, political, economic and social rights of European citizens and all persons resident in the EU. However, the Charter seems to be more generous with respect to civil and political rights than with respect to ESC-rights. It also shows a tendency to stress the rights of workers. The Greens, being committed to social justice, want to start a debate on the extension of economic, social and cultural rights in the Charter once the current document has become binding.

Social rights should not be seen as simply aspirations of governments. Governments will have to justify choices that affect these rights, even in court. Social rights cover the right to an adequate standard of living, the right to food, the right to adequate housing, the right to health, right to education, the right to water, the right to necessary social services and the right to social security. Since human rights are indivisible, these rights need to be respected just as much as civil and political rights. On a global scale, they are of vital importance for the achievement of the Millennium Development Goals. ESC-rights aim to create socio-economic and cultural conditions that enable people to lead a dignified life. In 2008, the UN General Assembly adopted by consensus an optional protocol to the International Covenant on ESC-rights. Once ratified, this protocol will give individuals whose rights - such as the right to food - have been violated, access to a complaint procedure in the UN system. The Greens will work for speedy ratification of this protocol by the EU member states. The protocol will enhance the enforceability of ESC-rights

### *Cultural and ethnic minorities*

All European countries are multicultural. Two patterns of multiculturalism can be distinguished, i.e. multi-nationality and poly-ethnicity. Multi-nationality denotes the coexistence of more than one national group within a state. These groups live in areas which are territorially well defined, and have lived in their territories for a long time, for instance ethnic Hungarians in Rumania, the Sami in Scandinavia or the Welsh and Scottish in the United Kingdom. Poly-ethnicity refers to the situation in which immigrants from abroad have settled in a state and usually live scattered all over the

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<sup>2</sup> See also 'A green vision for a social Europe', EGP policy paper, 2008.

country, for instance Turks and Moroccans in Germany and Holland, Pakistani and Indians in England, North Africans in France.

Greens are at the forefront of the struggle for equal rights for both categories of cultural minorities. Moreover, they strongly believe that the 'politics of equality' which emphasises individual, equal rights, has to be complemented by the 'politics of difference', which can be described as a policy that is aimed at the acknowledgement of everyone's cultural identity and particularity in the public domain. It protects cultures insofar as, for their members, they are a condition for a dignified life.

The politics of difference can be integrated into the politics of equality by ensuring a voice for those who up to now have been excluded from the theoretical and political development of human rights. But that need not lead to special group-rights, to rights that are held only by some people. It may lead to a reinterpretation or transformation of existing rights or the introduction of new rights, which although they have been introduced from the experiences of cultural groups or women, can now be considered to be equal, universal rights. For instance, the question whether employees should be allowed to pray at the workplace is usually connected with the Islamic precept of praying five times a day. However, the right to pray or meditate at the workplace should not be confined to Muslims, but given to all workers.

In particular, the human rights of the Roma community need to be protected. Since the enlargement of the Union, it has become one of the largest minorities in the EU. Social marginalisation and discrimination of Roma are widespread, especially in crucial areas such as access to education, housing and employment. The Greens call for an all-encompassing, human rights based European strategy to improve the conditions for Roma.

### *Migrants and refugees<sup>3</sup>*

The biggest task in terms of human rights policy in Europe at the moment is the protection of refugees. Thousands of people die on Europe's external borders every year: they starve to death, die of thirst, drown or suffocate.

The opportunities for migrants and asylum-seekers to reach the EU are ever more restricted. The European Commission wants borders to be monitored by unmanned aircraft and satellites, and would like to record the fingerprints of all travellers entering the EU and track all trips they make. Fortress Europe would set up a virtual new wall. The Greens are opposed to these plans. The EU should see itself instead as a pioneer for a refugee policy guided by human rights. We have a duty to ensure that people who need protection are given access to the EU. Instead of closing itself off, the EU needs a grand strategy which combines its refugee and immigration policy with its development, foreign trade and human rights policy. Active and lasting support must be provided not just for economic and ecological development in the countries of origin or transit, but also for development in terms of democracy and human rights – we must help to ensure that people in these countries have secure and meaningful living prospects.

Every individual has the right to leave his country of residence or of origin and to seek asylum in another country. Every person who needs shelter according to the Geneva Convention relating to the Status of Refugees must have the possibility to get access to a fair procedure in the EU. Therefore a reform of the EU Agency for the management of external borders, Frontex, is strongly needed. Frontex should establish structured cooperation with the United Nations High Commissioner for Refugees so as to facilitate rescue operation for migrants who risk their lives trying to enter the EU. Frontex should never violate the non-refoulement principle and always ensure a proper access to the lodging of an asylum claim.

It is unacceptable to deport rejected asylum seekers to unsafe countries, including countries of origin and transit countries, against their will. Individuals should not be repatriated until after fair and comprehensive consideration of their application within the EU. Where return would be impossible or inhumane because of human rights violations - including strong discrimination and

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<sup>3</sup> See also 'Europe is a continent of migration', EGP policy paper, 2008.

persecutions based on sexual orientation and gender identity - in the country of origin, individuals should receive a residence permit. Member states should monitor the living and integration conditions of recognized refugees as well as of individuals repatriated to their country of origin or transit and take measures to provide those individuals with appropriate assistance.

There is no such thing as 'illegal migrants'. Being 'sans papiers' is nothing more than an administrative situation and cannot be regarded as a crime. Therefore, the Greens condemn the stigmatization of irregular migrants. Migrants without legal documents must have access to primary health care and social care, as well as free legal assistance. Their children, within the age limits of compulsory education, have the right to go to school. The EU's return directive, which allows irregular migrants to be detained for up to 18 months, has cast a large shadow over the EU's reputation as a champion of human rights. As long as detention is the norm in the EU, the Greens will strive for a detention as short as possible and in the best conditions possible (as regards to respect of human dignity, recreation, hygiene and privacy). Minors and vulnerable migrants should never be detained. Detention centres should be made accessible to media, NGOs, politicians and international organisations.

### *Women's rights*

Women's rights are human rights, but still deserve special mention, because of the extent and nature of the violations of women's rights. In many countries women cannot own property or decide about their own lives. Maternal death rates are unnecessarily high. Even if the equality of men and women is included in the Millennium Development Goals, not much progress is made. The Greens are convinced that the empowerment of women is indispensable to fight poverty. The EU should step up its efforts and appoint an Envoy for Women's Rights.

Within the EU, despite several anti-discrimination directives, progress must be made in the field of employment and remuneration of women. Equal pay must be guaranteed. Measures must be taken to combat sexual and psychological harassment at the workplace. Special attention must be given to women belonging to ethnic minorities and immigrant women.

We call on the member states to take the necessary measures to tackle and forbid domestic violence and the sexual exploitation of children.

### *Sexual diversity*

If the Treaty of Lisbon comes into effect, the EU Charter of Fundamental Rights becomes binding for the EU institutions and for the member states insofar as they act within the field of EU law. This includes the prohibition of discrimination on the basis of sexual orientation. It will place the EU once more at the forefront of the struggle for equal rights for gay, lesbian, bisexual and transgender people. Still, a lot needs to be done before the Warsaw Pride march becomes a gay festival rather than a protest. To better equip sexual minorities with legal instruments to combat discrimination and show the EU is at their side, the draft directive stipulating equal treatment in the market for goods and services, social security, education and health care must be adopted. The Greens fought hard for this directive and will continue to do so. Also, the gender directive will soon be revised. The Greens aim to include gender identity among the grounds for which discrimination is prohibited. Furthermore, an EU official recognition and promotion of the Yogyakarta principles (a set of principles on implementation of international standards of human rights in sexual orientation and gender identity matters) would be a great sign of the EU's proactive fight for equal rights for all. We will also press the Council to adopt legislation ensuring that member states apply the principle of mutual recognition for same-sex couples, whether they are married or living in a registered civil partnership.

### *Disability rights*

The entry into force, in 2008, of the United Nations Convention on the Rights of Persons with Disabilities was a milestone. The Greens urge the EU and its member states to implement it without delay in their legislation, guaranteeing access to services and non-discrimination for people

with disabilities. Key to this is the speedy adoption of the aforementioned draft EU directive on equal treatment.

### *Foreign policy*

Human rights are a key element in crisis and conflict prevention. They are the core of a modern security and peace policy. After all, today's human rights violations are tomorrow's wars. Security policy must always be human rights policy as well. In combating violent conflicts, the EU must ensure that human rights violations do not occur, in order to prevent a new spiral of conflict and violence from ensuing.

The EU should mainstream human rights in all its external policies, including trade. It should act with greater resolve at international level to promote full compliance with international human rights standards. It should work for the 'humanization' of the law of nations, whereby human rights take precedence over the sovereignty of states and the international community is better equipped to respond to serious violations of human rights. Continuing support for the International Criminal Court is an exemplary part of this endeavour.

Already, in agreements with third countries, the EU incorporates a human rights and democracy clause. It initiates human rights dialogues. All EU agreements, including sectoral ones, should include such provisions. Currently, however, not enough is done to give serious weight to these clauses and to check the progress in human rights. A more effective policy needs more clearly defined mechanisms for the implementation of the human rights and democracy clauses. In particular, the Action Plans in the framework of the European Neighbourhood Policy must contain clear benchmarks and objectives for enabling effective evaluation. The EU should leave no doubt that the development of aid and trade relations with its neighbours depends to a large extent on progress in human rights and democracy. Scrutiny needs to be more stringent, of course, for countries which want to become members of the EU.

### **Conclusion**

The establishment of a genuine 'culture of human rights' in the EU calls for the development of a comprehensive system for monitoring the application of those rights, encompassing the member states, the Council of Ministers and decisions taken under intergovernmental cooperation. The protection of human and fundamental rights does not consist solely in formal compliance with rules, but above all in their active promotion and in intervention in cases where rights are violated or enforced in an unsatisfactory way. To this end, the Greens call on the new Commission, to be set up in 2009, to appoint a Commissioner for Human Rights instead of the current working group of Commissioners in which responsibility is diluted.

This special Commissioner should call to account both the member states and her colleagues. She should set up a mechanism whereby the Commission offers a swift response to individual complaints. She should urge the Commission to go back on erroneous legislation, such as the return directive and the data retention directive, which obliges telecoms providers to invade the privacy of their clients. She should make sure that the protection of human rights keeps up with new technologies: digital rights are civil rights.

If the Lisbon Treaty comes into effect, the High Representative for Foreign Affairs and Security Policy will also be vice-president of the Commission. In that capacity, the vice-president will be accountable before the European Parliament. This constitutes a clear improvement in the parliamentary control of the EU's external action. The challenge for parliament will be to ensure that human rights will effectively guide foreign policy and that parliament will be more fully involved, for instance in the human rights dialogues with third countries. This calls for a full committee on Human Rights in the European Parliament, instead of a sub-committee. At a time when human rights run the risk of being sidelined and trampled upon by the increasing rivalry between world powers, it would be an encouraging sign if the EU reinforced its capacity to act in their defence.