

Speech of Mr. **Jose Manuel BARROSO**,

President of the European Commission

Public seminar:

Promoting EU Fundamental Rights Policy: from words to deeds or how can rights be made a reality?

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Thank you chairman.

President of the European Parliament,
Honourable members,
Ladies and Gentlemen,

This seminar for the last 2 days has been debating the situation of fundamental rights in the European Union, the current position, future challenges and the role of the Community institutions. The quantity and quality of the specialists who have taking part in this forum is well - known. And I feel certain that the ideas voiced here will provide us with the major bases for our future thinking on this extremely pertinent issue.

For my own part, I can guarantee to you that the Commission will take full account of the outcome of the seminar as we prepare our future work. I would like to this point to congratulate the European Parliament and in particular this Committee for taking this initiative and I am also grateful to you for extending an invitation to the European Commission in taking part in your work. The speakers and the other participants in this seminar have already been able to hear speeches from the Vice-President of the Commission, Mr. Frattini as well as Commissioner Spidla on the Commission's vision on the specific areas within their own portfolios. I would like it now to give you a broader picture of this problem but also as well as general principles I will try to focus on some very specific examples of ideas that the Commission is working on.

Ladies and Gentlemen,

As I had the opportunity to emphasise when presenting my Commission to the European Parliament last autumn, the respect and the enforcement of fundamental rights, the fight against discrimination and the promotion of equal opportunities are essential priorities. Moreover, these questions are not confined to specific sectors alone, but arise across sectors and portfolios. This is why I decided to create a Group of Commissioners on "Fundamental Rights, Anti-discrimination and Equal Opportunities". Given the importance of the matter, I decided to chair this group personally. Vice-President Frattini is the Vice-Chairman of the Group. So this, following your motto of your conference, this shows that we are translating our words into deeds that not only we announced it at the beginning of our mandate but we are really working on that matter.

The task of this group is to make sure that issues of a clearly horizontal nature are dealt with in a co-ordinated and coherent manner, without replacing the work carried out in the different portfolios in the framework of their competencies. For horizontal issues, the group shall define the general orientation before detailed work starts at portfolio level. Latter on in the process, it will ascertain that all relevant elements are effectively taken into consideration, notably as far as impact assessments are concerned. So this goes directly to the concern that you have expressed so that we should look not only in the field, the strict field of fundamental rights but how can we put all the concerns of fundamental rights in the different legislation of the European Commission and the European Union.

So far, the group has met three times already, and is going to meet again tomorrow. In order to structure its work, it has adopted a road map identifying the issues most in need of horizontal co-ordination. The initial version of the road map covers the next two years, but it will be updated on a regular basis.

The main items on which the Group has been working so far are the following:

First of all, the elaboration of a methodology for a systematic and rigorous check of all Commission legislative proposals against their compatibility with the Charter of Fundamental Rights;

Secondly, the assessment of the work needed to prepare a possible EU accession to the European Convention of Human Rights;

Thirdly, the proposals for a Fundamental Rights Agency and for an Institute for the Equality between Men and Women;

Fourth, the preparation of proposals for an anti-discrimination strategy and a European Year for equal opportunities for all;

Finally, the preparation of an initiative on the protection of children and children rights.

In this short presentation, I would like to elaborate in particular on the methodology for a systematic and rigorous check of all Commission legislative proposals against their compatibility with the Charter of Fundamental Rights. I think that this initiative is a flagship example for the principled approach that my Commission has embraced when it comes to taking fundamental rights seriously, and to match intentions with deeds. It is also an example that is of direct relevance to you and the works of the European Parliament since it is destined to feed directly into the legislative process. I understand that Commissioner Spidla and Vice-President Frattini have already informed you about most of the other issues I have mentioned. In any event, you will be kept informed about the progress of the Commission's work on these issues through the regular dialogue between the members of the Commission responsible and yourselves.

Monsieur le Président,

Mesdames, Messieurs les Membres du Parlement,

Dans sa réunion de demain, la Commission va décider de la proposition présentée par moi-même, en accord avec le Vice-président Frattini, et préparée dans le cadre du Groupe de commissaires d'une communication sur une méthodologie pour un contrôle systématique et rigoureux du respect de la Charte des droits fondamentaux dans les propositions législatives de la Commission. Ce sera le premier résultat concret des travaux du Groupe des commissaires. Cette mesure souligne le sérieux de nos efforts de mettre en œuvre sans délai les engagements pris lors de notre investiture.

Pour bien comprendre cette proposition, il me semble utile de brièvement rappeler l'origine de la Charte des droits fondamentaux qui a été conçue afin de pallier à une lacune dans les traités - celle du manque d'un catalogue complet de libertés et de garanties fondamentales liant directement les institutions de l'Union européenne. Il est vrai que l'Union européenne au fur et à la mesure de son développement a construit un acquis considérable de droits citoyens non seulement dans le domaine - qui est peut être le plus visible - de la libre circulation, mais aussi dans des domaines tels que l'anti - discrimination et l'égalité des chances. Et le Président Borrell l'a dit à juste titre: c'est dans le Code génétique de la Communauté européenne cette attention donnée aux droits de l'homme. Et ce n'est pas dans le même plan d'autres dispositions. Ça fait partie de l'essence, de la culture même de notre Europe. Mais l'étendue actuelle des activités de l'Union européenne a comme conséquence le fait que de plus en plus d'initiatives ont un impact direct sur les personnes, au-delà des domaines où les traités offrent des libertés et des garanties spécifiques, en ne concédant pas seulement des droits, mais en constituant également des obligations.

De plus en plus, l'Union européenne était donc confrontée à la critique que si bien qu'elle prenait très au sérieux la promotion des libertés et des garanties spécifiquement consacrées par les traités, elle ne tenait pas toujours compte de manière suffisante des droits civiques classiques garantissant la protection des citoyennes et des citoyens contre l'intrusion des pouvoirs publics dans leurs affaires, de la liberté d'expression et d'information au droit à la propriété ou à la liberté professionnelle et d'entreprise. Ce qui plus est, de nouvelles questions sont apparues avec la mise en œuvre de l'espace de liberté, de sécurité et de justice. Pour ne citer qu'un seul exemple, l'objectif politique de la lutte contre la criminalité et le terrorisme demande une réflexion permanente sur le degré indispensable de respect des droits civiques même à l'égard des besoins et des impératifs du travail de la police et du pouvoir judiciaire.

La Charte des droits fondamentaux, en tant qu'instrument de contrôle, voire d'auto- contrôle, répond à ces préoccupations. Ce ne sera qu'avec l'adoption de la Constitution qu'elle deviendra pleinement contraignante et opérationnelle, plus particulièrement sur le plan juridictionnel. Mais en la proclamant de façon solennelle, les institutions s'y sont soumises. Votre institution, mon institution aussi, la Commission. Nous avons tous proclamé la Charte des Droits Fondamentaux. Désormais, les citoyennes et les citoyens peuvent et doivent juger les actes des institutions sur la

base de la Charte. Pour que le processus présent et futur d'intégration puisse réussir, le respect de la Charte doit devenir une réalité vécue.

Dès son adoption en 2001, la Commission avait donc décidé que toute proposition législative ferait l'objet d'un contrôle préalable de compatibilité avec la Charte. La proposition soumise à la réunion de la Commission de demain vise à rendre cette décision pleinement applicable. Elle met les instruments de préparation des propositions législatives dont la Commission s'est dotée depuis lors à la hauteur de cette tâche. Elle doit établir une pratique d'excellence dans l'analyse et la prise en compte des droits fondamentaux dans les propositions législatives. Aussi, elle peut nourrir un débat politique et de société en pleine transparence tout au long du processus législatif, ce qui ne peut que renforcer la crédibilité et la légitimité des décisions de l'Union européenne vis-à-vis des citoyennes et citoyens à qui ces décisions doivent servir.

Les éléments principaux de la communication - qui sera bien évidemment transmise aux autres institutions, notamment au Parlement européen et au Conseil - sont les suivants:

Afin de permettre une décision en pleine connaissance de cause à la Commission, et aussi une information en toute transparence des co- législateurs, des autres institutions et de la société civile, les services veillent dès le départ des travaux préparatoires à la prise en compte de tout élément susceptible d'avoir un impact sur un ou plusieurs droits fondamentaux. Au stage de la consultation interservices, le Service juridique de la Commission, chargé du contrôle général de la légalité, examine en particulier le respect des droits fondamentaux vis-à-vis de cet impact. De plus, la direction générale de la liberté, sécurité et justice est associée à la préparation de toute initiative soulevant des questions de principe dans l'application de la Charte, et les Directions générales et les services faisant partie de la "famille Relex" sont associés à la préparation de toute initiative soulevant des questions de respect des droits de l'homme en dehors du territoire de l'Union européenne.

Ensuite, les instruments- clés de mise en œuvre de ce processus sont les évaluations d'impact et les exposés des motifs des propositions législatives. Les évaluations d'impact doivent désormais inclure un aperçu aussi complet et précis que possible des différents effets sur les droits individuels. Les exposés des motifs doivent désormais inclure, le cas échéant, une section consacrée à la motivation juridique des solutions choisies par rapport à des droits fondamentaux affectés.

Enfin, le Groupe des commissaires va suivre de près le fonctionnement de cette méthodologie et de ses principaux résultats, ainsi que leur prise en compte tout au long du processus législatif.

Je suis persuadé que cette approche va permettre de renforcer sensiblement la "culture des droits fondamentaux", au sein de nos institutions en particulier, et de l'Union européenne en général. Et là, j'insiste sur ce terme, "culture des droits fondamentaux". Parce que une grande partie revient notamment à la législation précise que nous allons adopter mais plus important parfois que ces normes précises c'est la culture que l'on respire dans le dialogue entre nos différentes institutions. La Commission dressera un premier bilan dès 2007. Il est clair que je reviendrai vers vous pour en rediscuter à la lumière de vos propres expériences. Mais là, je crois avoir répondu dans une large mesure aux préoccupations que j'ai vues lorsque vous aviez redressé les trois conclusions de votre séminaire; c'est à dire, comment réorienter l'activité législative des institutions, notamment de la Commission, dans le sens de la conservation des droits de l'homme d'une part, d'autre part comment donner plus d'impulsion politique à cet agenda au niveau communautaire?

For the sake of linguistic diversity, I will come back now to English.

In this context, let me also touch briefly upon the issue of the accession of the European Union to the European Convention of Human Rights, which is going to be addressed by the Group of Commissioners tomorrow.

The Commission welcomes the provisions of the Constitution providing for the Union's accession to the Convention, as well as the recent adoption of Protocol 14 to the Convention, which pave the way for such an accession.

It is obvious that accession cannot be negotiated before the Constitution enters into force. It would be inappropriate to anticipate the ratification of the Constitution, which is a matter for decision by the Member States. However, it does seem appropriate to commence exploratory, technical talks with the Member States in Brussels and the Council of Europe in Strasbourg to assess the issues which are raised by a possible accession already now, if only to guarantee that the provisions of the Constitution can be implemented as soon as possible once adopted. Two examples of issues for which solutions need to be considered in case of accession are the

participation of an EU judge in the Court of Human Rights on the one hand, and the participation of the EU in the Committee of Ministers, on the other. In order to ensure full transparency, the Commission is considering the possibility of presenting in the course of 2005 a Communication to the European Parliament and to the Council on this kind of technical questions in view of starting exploratory talks with the Member States.

Before that, the possible accession of the EU will undoubtedly be raised at the summit of the Council of Europe in Warsaw on 16 and 17 May 2005.

Let me emphasize that the possible accession by the EU must be seen within the wider context of the developments in the field of fundamental rights in the EU, in particular within the context of the Charter of Fundamental Rights. Both the incorporation of the Charter into the Treaties and the EU's accession to the Convention as foreseen by the Constitution should be regarded as complementary steps for ensuring full respect of fundamental rights within the EU. The existence of the Charter does not in any way diminish the benefits of extending the control of the Convention to cover the Union's acts. Moreover, accession does not reduce the significance of the EU's own catalogue of fundamental rights. These measures are good news for our citizens because they underscore and render more effective the EU's essential character as an Union under the rule of law, where the power entrusted by the People to public authority is not at the authority's discretion, but exercised in the respect of citizens' rights - because it is them we must serve.

Finally, allow me also a word about the very important question of the Fundamental Rights Agency that President Borrell just now addressed.

Vice-President Frattini has explained the Commission's proposal in detail earlier today in this seminar, I do not need to repeat what he said, I will not do it.

Regarding the request to base the Commission's proposal on a legal base allowing for co-decision of the European Parliament, it is clear that the Commission will examine this request in the most constructive way. We think that the involvement of the European Parliament is both necessary and beneficial. At the same time, we will need to make sure that the legal base allows for the future Agency to be provided with a useful mandate.

That is another reason, and a very important one, again, to have the Constitution ratified. Because we need the Constitution ratified to have a legal basis, to have an Agency that is not only an Agency against discrimination but a general Agency for fundamental rights to be in the co-decision procedure. So, that is in that direction, I can assure you Mr. President, that we are wishing very much to work with you, European Parliament. But we need that legal base to have a real, broad scope, as you have said, Agency.

Mr. President,

Ladies and Gentlemen,

Let me conclude.

In this short or not so short presentation, I can of course not give an exhaustive overview of all the initiatives of the Commission already underway or planned in the field of fundamental rights, anti-discrimination and equal opportunities. To name but two examples of further initiatives we will consider over the coming months, I would like to mention the issue of children's rights and protection of children where myself and Vice-President Frattini are working together very closely. Vice-President Frattini is currently preparing a systematic analysis of an inventory of the measures already existing in order to assess the need for complementary action, and the reflection over our possibilities to contribute to a better empowerment of our citizens also against racist phenomena, notably against anti-semitism, but also against islamophobia and others. For instance, the very important issue of the Roma minorities is also being considered. I am convinced that as in the past, the European Parliament will be an active and constructive interlocutor in all of these initiatives, and that we will be able to also count on the support of the Council and the other institutions.

In the field of fundamental rights, Europe has a heritage to protect and promote. And let me tell you that, as the President Borrell also mentioned, this is not only for Europe. This is important in the dialogue we have with other countries. And let me tell you now in a more political basis, that, for instance, in same dialogue we have and had recently with some leaders, in other countries where their standards of fundamental rights are not exactly ours, we have been discussing with them very frankly about those issues. Sometimes is better to discuss them privately, in a very, let's say, deep way. I have told some of my interlocutors recently for instance that if they reach to fight corruption in their countries, the best option is not always going through repression but it is much more efficient by the free press and independent

judiciary. Only with the free press and independent judiciary we can really fight corruption. And that is completely present in our dialogues with, at the highest political level, with some of our interlocutors.

So, I consider that this task, in terms of fundamental rights, is important for us, between ourselves, in our institutions, in our countries, but also in the very important political dialogue with others. Not in the sense of the imposition of a concept of some political correctness or of social engineering. But rather in the sense of the respect of the concept of freedom and justice which are the true basis of the solidarity that allows us to live in peace with each other, united in our diversities. So thank you again for the invitation to come here today to participate in the closing session of this seminar - as I said, the Commission is looking forward to your conclusions with the utmost interest and very much looking forward to co-operate closely with European Parliament on these issues.