

## **Human dignity and human rights**

### **Culture of solidarity enhancing human rights**

#### **A) Introduction**

The **dignity of every human person** provides the basis for the rule of law. Dignity derives from the respect owed to oneself and to each other as human beings. Human rights constitute the legal expression of an ongoing process to protect, respect and guarantee life in dignity. As Christians, our commitment to human dignity stems from the recognition of the human person as created in the image of God and redeemed by Christ. This is the foundation on which all human rights rest.

The **legal guarantees of a life in dignity** have to be applicable in the same way for all people living within a given state. The compatibility of all legislation – existing and proposed – with human rights obligations needs to be continually assessed. In order to realise the rule of law, societies should foster solidarity with those who because of their ethnic, religious, political or any marginalised status are especially at risk of being impaired in their indivisible human rights.

A strong sense of **solidarity** with groups especially at risk of being discriminated is a defining characteristic of a truly free society. That same solidarity that dictates that we should all share the financial burdens of the social system – even if the personal risks of falling ill or becoming unemployed are different from one to another – needs to be applied in the context of the legal system. A culture of solidarity presupposes that people are not only concerned with their own rights, but are motivated by their concern for human dignity to speak out when the rights of other people are at stake. Currently there is evidence to suggest that this culture of solidarity is diminishing in the legal context, with increasing uncritical acceptance of infringements or limitations on the rights of certain groups within society, such as non-nationals.

The *European Conference of Justice and Peace Commissions* wishes to outline the implications of a solidarity founded on respect for human dignity in Europe today. The examples presented here are not intended as exhaustive, but rather are seen as illustrative of the potential dangers and consequences of a growing acceptance of discrimination and inequality in the area of human rights.

## B) Concrete Problems

### *(1) Unequal access to political, cultural and economic resources*

Since **social security** represents an elementary and fundamental need for all people, social security is a basic human right for reasons of social ethics. This fact is recognised and underlined in international human rights legislation. States are obliged to create a framework, which facilitates the development of a responsible, autonomous lifestyle for everyone – assisted by a system of social security. The UN Committee on Economic, Social and Cultural Rights declared the right to social security to be of central importance in guaranteeing human dignity for all persons, even when they are faced with circumstances that deprive them of their capacity to fully realise their rights.<sup>1</sup> The Committee expressed a particular concern for those working outside the formal economy, demanding that signatory States take steps, as far as is permitted by available resources, to ensure that the social security systems cover also those persons working in the informal economy. Nevertheless, social security benefits in most states remain bound to formal employment.

As a result of the rising dissociation of economic growth and employment the relation between social benefits and work is coming under increasing pressure. It needs to be recognised that problems of **social exclusion** cannot be tackled through a narrow political focus on employment alone. Contemporary social exclusion is the result of a complex combination of different factors, including: insufficient income from employment, reductions in social benefits or inability to access benefits and the rising diversity and instability of private households. As the capacity of existing social security systems to fully address social exclusion decreases, the risk of permanent exclusion for individuals or groups is rising. A truly inclusive society appreciates diversity, counter-acts tendencies toward growing disparities and enables upward social mobility. The Council of Europe refers to that wider understanding of inclusive society in the European Social Charter (revised) when it declares: “With a view to ensuring the effective exercise of the right to protection against poverty and social exclusion, the signatory states oblige themselves to take measures within the framework of an overall and co-ordinated approach to promote the effective access of persons who live or risk living in a situation of social exclusion or poverty, as well as their families to, in particular, employment, housing, training, education, culture and social and medical assistance.”<sup>2</sup> It should be mentioned that some members of the Council of Europe explicitly excluded this article in their ratifications.

The modern welfare state is obliged to provide all members of society with equal chances of access to the relevant cultural, political and economic resources through a system of equal basic rights. Existing judicial or *de facto* **barriers**, like the legal

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<sup>1</sup> UN Committee on Economic, Social and Cultural Rights, General Comment N° 19, E/C.12/GC/19 (2008), para 1.

<sup>2</sup> Council of Europe, European Social Charter (revised), CETS No. 163 (1996), para 30.

status of people seeking asylum or other migrants, and barriers within the structure of the national social security systems have to be reduced as much as possible. Social exclusion arising from a lack of opportunities to participate in social or political processes is a simultaneous violation of both human dignity and existing legislation. The risk of social exclusion varies throughout society, with certain groups more likely to be at risk, such as unskilled workers or migrants. Such marginalised individuals and groups often depend on solidarity from the wider society for a redesign of the social security system. A growing number of people today find themselves so marginalised within the society that they are not even able to avail of rights they are entitled to. These barriers are exacerbated by unequal access to legal mechanisms.

Governments, therefore, have to adopt a social policy that avoids stigmatisation and assists extensive reintegration and inclusion. We need a political debate within Europe about the fundamental structures of the welfare state from a perspective of human rights. This debate needs to reach far beyond issues such as the redistribution of taxpayer's money or the financial basis of the social system. The enlargement of informal working conditions and the expanding sector of insecure jobs sharpen the problem and range of social exclusion. The aim of social welfare needs to be more than the elimination of extreme material poverty, extending of the facilitation of full participation by all members of society.

## *(2) Danger of discriminatory patterns of behaviour by state authorities towards marginalised groups*

The comprehensive use of so-called **ethnic or racial profiling** in police work strengthens, consciously or unconsciously, stigmatisation of certain groups of the population, based on their ethnic or religious identity. In recent years states have expanded their powers to stop, question, search and identify individuals, while simultaneously reducing controls to prevent abuse of these powers, often in the context of anti-terror legislation. The European Commission against Racism and Intolerance (ECRI) has demanded the ability to monitor the activities of border control personnel and law enforcement officials in this context to eliminate discriminatory behaviour.<sup>3</sup> Members of the police forces alone are not entirely responsible for this practice. Behind the visible actions of police and other public agents a more fundamental changing pattern of policing can be found. The remit of police forces is changing as a result of political pressure developing all over Europe in the wake of events such as 9/11 2001 in New York, 11 March 2004 in Madrid and 7 July 2005 in the UK. The borders between police and intelligence services have become more permeable. There is a real danger that widespread use of ethnic profiling in anti-terror legislation could legitimate this practice, ultimately resulting in its extension to other policy areas and leading to increasing instances of discrimination.

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<sup>3</sup> European Commission against Racism and Intolerance (ECRI), General Policy Recommendation N°8: Combating racism while fighting terrorism, CRI (2004), 26.

### *(3) Infringements on migrants' rights*

The common practice of **detention of so-called irregular migrants** often does not correspond to the standards of European human rights policy. It has been pointed out that the conditions of detention of irregular migrants, asylum-seekers and refugees in overcrowded facilities are substandard and unacceptable and have a negative impact on the health of the detainees. These detention centres increase the risk of further violations of human rights, i.e. of social and cultural rights of the detainees.<sup>4</sup> Often there is insufficient regulation of key issues, such as the real duration of detention in such centres, the access to a lawyer or the concrete conditions of detention. Where detailed regulatory provisions exist, a large gap between regulations and practice can often be observed.

In Europe **detention before deportation** is practiced in various ways. The detainees, however, often do not see any difference between a punitive detention and a deportation detention. For many, there is a lack of transparency surrounding the circumstances of their detention. "The situation of detention itself is the biggest difficulty detainees described have to cope with. The mere imposition of detention and all of its consequences are an insurmountable difficulty for many detainees. Everyone, regardless of age, sex, legal status and duration of detention, is affected".<sup>5</sup> People are deprived of their independence and feel helpless in the face of detention conditions that intensify the feeling of being socially isolated. Their experience of deportation detention undeniably detracts from their human dignity.

### *(4) Misconceptions surrounding the Relationship between Freedom and Security*

The question that connects some of the problems noted above is the relationship between freedom and security. The security of society as a whole is often advanced as an argument to justify limitations on the freedom of individuals. This suggests that there is a choice to be made between freedom and security. In this perspective increased security will be achieved through diminishing freedoms. Sometimes this right to security is presented in the context of the human rights framework. But such a perspective misunderstands the relationship between freedom and security: Free societies evolved during a process of centuries in Europe where governments first took control of populations through a monopoly on the use of force and then subjected themselves and their subjects to the rule of law. States thereby created the necessary spheres of security where freedom, respect and protection of human rights could unfold. States are thus bound by the rule of law which provides a necessary precondition for freedom. But if security is declared to be an aim in itself, the foundation of government and state fundamentally changes. The state itself, rather than the people and their needs, becomes the core focus of political activity and the preservation of the state will be the main objective of governments.

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<sup>4</sup> UN Working Group on Arbitrary Detention, A/HRC/13/30 (2010), para 65.

<sup>5</sup> Becoming vulnerable in detention, The DEVAS Project, Jesuit Refugee Service (ed.), 2010.

Recent anti-terrorism legislation in many countries effectively illustrates how, when governments are excessively preoccupied with security, they often fail to realise that they are infringing on the values of the freedom they claim to defend. Broad definitions of offences related to terrorism within different laws often have impacts on human rights that harm specific groups more than others. A key example is the right to privacy where some groups are more likely to come under surveillance than others. The report from the UN Special Rapporteur “On protection of human rights while countering terrorism” has assessed the impact of broad interpretations of anti-terrorism legislation on men and women. He concludes his report: “However, countering terrorism is not a trump card that automatically legitimates any kind of interference [...] Every instance of interference needs to be subject to critical assessment.”<sup>6</sup>

### **C) Recommendations**

The examples have shown the necessity of solidarity to enhance the implementation of the human rights framework. What is clear for social systems has to be made clear for the rule of law. Human dignity gives rise to solidarity when rights of individuals or groups are at stake, as we mentioned above. Human dignity cannot be applied in varying degrees, but must apply to all people in the same way according to the law. The dignity of the individual is universal and the ensuing rights are to be guaranteed without any restrictions.

Therefore we recommend

*(1) To overcome Unequal chances of access to political, cultural and economic resources:*

- Existing judicial or de-facto barriers within the structure of the national social security systems have to be reduced as much as possible.
- Access to the benefits of the welfare state needs to be provided on the basis of need.
- Equal access to the law for all social groups and individuals is an important guarantee of an independent lifestyle and must be protected.
- Governments have to adopt a social policy that avoids stigmatisation and assists extensive reintegration.
- § 30 must be included in the ratification of the European Social Charter (revised).

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<sup>6</sup> Report of the Special Rapporteur on the promotion and protection of human rights and fundamental freedoms while countering terrorism, Martin Scheinin, A/HRC/13/37 (2009), para 13.

(2) To reduce the *Danger of discriminatory patterns of behaviour by state authorities towards marginalised groups*:

- It has to be emphasised that police work should be based fundamentally on individual actions and not on *ethnic or racial profiling*.
- It has to be made clear that the use of *ethnic profiling* by state authorities could be perceived as legitimating its use in others spheres, thereby increasing discrimination against particular groups.

(3) To end *Infringements on migrants' rights*

- Organise accommodation of so-called irregular migrants that corresponds to the standards of European human rights policy.
- Shorten the real duration of detention in centres; seek to achieve best practice in Europe and facilitate mutual aid between governments in Europe to deal with so-called irregular migrants.
- End the criminalisation and criminal detention of irregular migrants and asylum seekers.

(4) To combat *Misunderstandings of the Relationship between Freedom and Security*

- States have to create the necessary spheres of security for freedom, or in other words, where respect and protection of human rights can unfold. States are bound to laws that provide the necessary precondition for freedom and security must not be used as an argument to impair rights and freedom.
- Laws and other measures against terrorism have to be carefully scrutinised in order to ensure that they do not infringe on the values of the freedom that they pretend to defend.

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The Conference of European Justice and Peace Commissions (Justice and Peace Europe or CEJPC) is a European network that today regroups 31 national Justice and Peace commissions. Each one is established or recognized by its Catholic bishops' conference. The secretariat of CEJPC is currently situated in Paris (France).