Address by Minister for Justice, Equality and Defence, Alan Shatter, TD to a reception at the European Academy of Law, Brussels Office

Thursday, 7th March 2013

CHECK AGAINST DELIVERY

Colleagues:

The principle of respect for human or fundamental rights is a foundational element of European law. I thank you for the opportunity to speak to this bedrock theme.

Three propositions triangulate the Union’s principle of respect for human rights. First, the exercise of political power is constrained by the obligation to respect human rights. Articles 2 and 7 of the Treaty on European Union (TEU), allied to the Preamble, tell us that the Union is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities.

Second, the TEU translates human rights into jural guarantees that are intended to secure the conditions of equal citizenship throughout the Union. According to Article 6 TEU, the cardinal document is the Charter of the Fundamental Rights of the European Union, which has the same value as the Treaties. Moreover, the fundamental rights catalogued in the European Convention for Human Rights constitute ‘general principles of the Union’s law’.

Third, the European Court of Justice (ECJ) has the power to enforce fundamental rights in appropriate cases. Thus, the Union’s institutions are subject to judicial review of the compatibility of their acts with the Treaty and with the general principles of law that include fundamental rights. The fundamental rights that the ECJ has recognised include the fundamental human rights that characterise liberal and democratic polities, for example, freedom of expression, freedom of association, the prohibition of discrimination based on nationality, and the prohibition of discrimination based on sex. The ECJ has emphasised that the power to engage in international relations may in no circumstances permit any challenge to the judicial protection of fundamental rights.

The Union’s human-rights architecture has another important feature – a crucial bridge between the Union and civil society. In 2007, the Union set up the European Union Agency for Fundamental Rights (FRA) as a specialised agency to provide expert advice to the EU institutions and the Member States on human-rights issues. It also does the crucial work of ensuring that the fundamental rights of people living in the EU are protected.
Clearly, the principle of respect for human rights is a fixed star in the Union’s constellation of fundamental values. The anchoring value of human rights is human dignity. The ECJ has ruled that ‘the Community legal order undeniably strives to ensure respect for human dignity as a general principle of law.’ This judicial pronouncement raises the question: What are the elements of respect for human dignity?

Respect for human dignity means recognising, first, that each person has objective or intrinsic value, and, second, that each person has a sovereign responsibility and autonomy for realising what kind of life would be worthwhile for him or her, consistent with others having a similar right. It is with reference to this foundational value that the Irish Presidency is pursuing important contemporary human-rights themes. Here are those themes:

- first, countering hate crime on a Union-wide basis
- second, developing effective protective measures for the victims of crime
- third, fashioning common criminal due-process rights

**Hate Crime**

At the informal Justice and Home Affairs meeting in January, Ministers had a very useful discussion on the important theme of countering hate crime, racism, anti-Semitism, xenophobia and homophobia. There was a consensus of conviction that the review of the 2008 Framework Decision on racist and xenophobic crime is an opportunity to look at the effectiveness of Member States’ actions in relation to tackling hate crime. The Framework Decision itself remains a robust and appropriate instrument.

Ministers agreed on the need for better and more informative data collection in relation to incidents of hate crime so that we can make more visible the harms that hate crimes cause to individual victims and the community. Having more reliable data will also enable us to select more effective responses to the problem. We touched on the wide range of interventions at EU and national level required for an effective response and agreed that all these issues can only be addressed effectively in a holistic way.

The Justice and Home Affairs Council realises that there is a wider agenda that needs to be addressed here. The re-emergence of extreme forms of intolerance and the rise of racist and anti-Semitic incidents in Europe gives us serious cause for concern. The problem requires a sensitively calibrated response. The ongoing efforts at Roma integration and the need to strengthen our efforts at combating discrimination against a range of vulnerable and excluded groups also need our continued attention. We stressed the pressing need for leaders and opinion makers at European and at national level to stand firmly behind the values on which the Union is founded. We simply cannot be bystanders in the face of corrosive social prejudice.

Ministers acknowledged the clear link between tackling hate crimes and promoting equality. The freedom of movement all of our citizens enjoy is accompanied by an expectation that their fundamental rights will be vindicated wherever they live in Europe. The Justice Ministers share the view that a mechanism to better support protection of fundamental rights and the Rule of Law in Member States by sharing best practice, monitoring standards and formulating appropriate recommendations and guidelines for action will provide an effective holistic framework.
Obviously, our response must be crafted with sensitivity and in a way that is respectful of both the different legal traditions of Member States and the division of competencies between the Union and Member States. Ministers endorsed my suggestion to invite the Commission to give further consideration to this matter and to initiate a broad public debate taking account of the Commission’s Annual Report on the EU Charter of Fundamental Rights. That debate should include governments and public institutions in Member States, national human rights institutions, equality bodies, and civil-society groups, so as to heighten awareness and enhance understanding of the importance of the Rule of Law, common values and protection of the fundamental rights of all citizens.

We agreed that the Fundamental Rights Agency should have a role to play in providing expert and independent analysis. I expect that the engagement with Member States, civil society, and citizens, will be fruitful. The process must be given sufficient time. The Commission might then come back during the course of 2014 with the results of this process and with an appropriate package of recommendations on a mechanism to promote the Rule of Law and improve the protection of fundamental rights.

Since I have the privilege of speaking in an academy I would like to examine, briefly, the principled basis for legal restrictions on hate speech.

Some critics of criminalising hate speech invoke the fundamental right of freedom of expression. Freedom of expression protects human dignity because it protects the independence of the human mind. It secures two distinct rights; your right to express yourself and your right to be the target of another’s expression. But freedom of expression is not absolute.

There are certain well-defined and limited categories of speech that democracies have an obligation to prevent and punish. For example, democracies consider it justifiable to exclude speech intended to incite violence against other citizens from legal protection. The rationale for criminalising such speech is that the expression involved is more a lever of violent action than a key of reasoned persuasion. The speech does not appeal to judgment and evaluation. It can set fire to reason and violate the right to physical and psychological integrity of its victims.

But a more controversial question is whether it is consistent with guaranteeing freedom of expression to shut down hate speech because of the message it conveys even if we cannot say that it will produce overt acts of violence. The question boils down to this: Are there words that by their very expression inflict moral injury, psychic injury, and a felt disempowering sense of exclusion?

The instrumental defence of free speech claims that free speech is a fundamental right because of its consequences for democracy. It holds that we should tolerate even the speech we think repulsive because truth or rational policies are most likely to emerge in the marketplace of ideas from which no opinion has been excluded. John Stuart Mill offered an argument along those lines. But this rationale for free speech cannot do the heavy lifting required to clear hate speech from the need for legal regulation. Racist opinions hardly provide material to any marketplace of ideas. And racist fanatics are not interested in constructive debate, for hate speech is not designed to engage its audience in rational argument or to pursue truth.
The principled defence of free speech claims that respect for human dignity justifies protecting hate speech that does not incite others to imminent violence. This argument turns on the idea that every citizen must have a voice in the democratic process, which means that even racists must be free to appeal for attention to their hatred and to inflict it on their victims.

My argument is that the principled defence of free speech requires legal control of hate speech. We protect people in the workplace, for example, from hate speech because we know that it can drive them out of employment. In the broader communal setting, hate speech preaches the inferiority of the groups it singles out. It inherently advocates discrimination and exclusion against the members of those groups. It aims to plant in the minds of the public the odious message that the members of those groups do not count as intrinsically valuable human beings and that they are not worthy of the right to pursue a life of value. It denies them a voice. Thus, the real-life problem is that the long-term, cumulative effects of hate speech can drive citizens who are targeted from the democratic floor just as it can drive an employee from the shop floor. This silencing exclusion harms human dignity, which is the very value that human rights depend upon.

I add this, however. Whatever limitations are justified they must be fitted into a sensible and reasonable scheme that does not undermine our system of freedom of expression. Protecting the status of equal citizenship from corrosion by hate crime is a pressing and substantial objective in a free and democratic society. But the means used to protect the equal status of citizens must be proportional to the objective to be achieved. So there must be reasonable grounds for expecting the legislation involved to be effective in achieving its objective. The legislation must limit the right to free speech no more than is necessary to realise its objective. And the cost of the legislation must not exceed the benefits to be gained from achieving the objective.

**Protective Measures for the Victims of Crime**

On the agenda for my Justice colleagues tomorrow will be our final discussions on the proposed Regulation on mutual recognition of protection measures in civil matters. On foot of the successful conclusion of our negotiations with the European Parliament two weeks ago, I will present my colleagues with the final text of this important measure. This text will be voted on by the Parliament later this month and should be in force within two years.

The European Protection Order is part of the Commission’s victims’ package. It will enable victims of domestic violence, for example, to travel around Europe in safety. Thus, a woman who has been the victim of an abusive partner and found the courage to seek protection from the authorities will now be able to enjoy the safety of that protection in other Member States. This will give her the freedom go on holiday, visit family abroad, or even relocate, without further risking her safety or having to go through additional court procedures in other countries. I am sure that this measure will make a real difference to the lives of victims of domestic abuse and their families.

The European Protection Order is part of a package of measures aimed at improving the protection of victims of crime. Agreement was reached on the Directive on Victims’ Rights by the Cypriot Presidency, another valuable measure that specifies minimum standards for the rights, support and protection of victims of crime throughout the Union. In the next phase of action on victims’ rights the Commission will review existing rules on compensation of crime victims and carry out further studies to assess the needs of victims in specific areas.
I look forward to the development of these initiatives because they put victims at the heart of the Union’s criminal-justice agenda.

Last June, the Commission adopted a European Strategy towards the Eradication of Trafficking in Human Beings. The Strategy comprises concrete and practical measures that will be implemented over the next five years. The measures will support and complement the implementation of EU legislation on trafficking in human beings. The Irish Presidency has brought forward an initiative to support victims in this area, which, I intend, will form part of Council Conclusions at the Justice and Home Affairs Council in June.

Criminal Due Process

There are other areas where the EU must continue to improve rights and the Rule of Law. In 2009 the Justice and Home Affairs Council adopted a roadmap on procedural rights in the criminal process. The objective is to establish common minimum standards of procedural rights in criminal proceedings to ensure that the basic rights of suspects and accused persons are sufficiently protected. Directives on the right to interpretation and translation and the right to information have already been adopted.

Under the Irish Presidency the proposed Directive on the right of access to a lawyer in criminal proceedings is making progress. This proposal seeks to improve the rights of suspects and accused persons in criminal proceedings by ensuring, as a common minimum standard, the right to a lawyer and to communicate upon arrest with a third person. The Council reached agreement on this file last June and I am hopeful that the Irish Presidency will successfully conclude negotiations with the European Parliament on this important instrument.

I look forward the publication of the next measure on the roadmap which will aim to establish special safeguards in criminal procedures for suspected or accused persons who are vulnerable and who cannot understand the proceedings.

Colleagues:

Europe has a commendable record on human rights. It is a free and safe place for most of us who live, work and travel within the European Union. But there are still many improvements needed to ensure that everyone can enjoy the rights and freedoms that most of us take for granted. Getting to the Rule of law and respect for fundamental rights does not simply mean paying lip service to the ideal. We must ensure that the Rule of Law and respect for fundamental rights makes the sort of difference that matters in the lives of our citizens. It must be a cultural achievement, a social fact of universal and local practical significance throughout the Union.