Address by Alan Shatter TD
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A Europe of equal citizens: equality, fundamental rights and the rule of law

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Whatever the challenges facing the European Union, we must not forget that the Union does not exist for economic purposes alone. The primary purpose of the original Single market was to create a new Europe that, in the words of Jean Monnet, “is indispensable for the preservation of peace”. The noble aspiration was – and remains - to create a zone of peace and prosperity and to bind the nations of Europe so closely together in ties of solidarity that the horrors of the past - wars and industrialised genocide - could not be repeated, because they had become unthinkable.

I thought I might start the afternoon’s work with that short reflection on the very serious purpose of this Conference, before I undertake the really pleasant task of welcoming you all to Dublin. I am delighted to see such a varied and distinguished group of speakers. I am particularly happy to hear of the generous cooperation from the Government Ministries in Lithuania and Poland in suggesting such eminent speakers for our event. Our links with Poland and Lithuania are recent in an historical timescale, but are very strong and very positive.

I see this Conference as a significant milestone in a debate that Europe needs to have with itself to rediscover its purpose, its historic mission and its soul. We need to stop a slide backwards and to counter the emergence of attitudes and actions towards minorities and towards the exercise of political power that we had thought had been thoroughly exorcised from the free half of our continent.

Last January’s Informal meeting of Justice and Home Affairs Ministers held in Dublin Castle afforded me the opportunity to put this important issue on our agenda. I tabled a paper for discussion on EU action to protect freedom of movement for EU Citizens and social integration by encouraging effective action and enhancing cooperation between justice systems in countering hate crime, racism, anti-Semitism, xenophobia and homophobia.

The paper I tabled recalled that the genesis of the European Union lies in the aftermath of the Second World War. The founding states determined that war and genocide should never happen again on European soil. We recalled that in the Holocaust the Roma, Slav and above all the Jewish populations of Europe were targeted in mass killings organised with an industrial efficiency. Sadly, intolerance, anti-Semitism and xenophobia still persist in
Europe. But memories are fading. And so a new generation must learn afresh about the
perils and injustice of prejudice. New generations must learn and understand the lessons of
Europe’s history and of the need to ensure that horrors of the past do not become the
present.

The paper also recalled that the protection of human rights within a system of government
based on the Rule of Law is a central element in the values that bind us with our partners as
members of the European Union and of the commitment that all member states sign up to
on accession. These foundational values are reflected in Article 2 of the Treaty on European
Union (TEU), which bases the Union on a community of indivisible and universal values of
respect for human dignity, freedom, democracy, gender equality, non-discrimination,
solidarity, the rule of law and respect for human rights and civil liberties, for all persons on
the territory of the EU. These are the common values of the Member States. They bind us all
to promote pluralism, non-discrimination, tolerance, justice, solidarity and equality between
women and men. Respecting and promoting these values is an essential element of the
European Union’s identity.

We have robust European legislation in the Council Framework Decision 2008/913/JHA of 28
November 2008 on combating certain forms and expressions of racism and xenophobia by
means of criminal law which defines a common EU-wide criminal law and criminal justice
approach to combating racism and xenophobia. This framework Decision aims to ensure
that similar outrageous behaviour constitutes an offence across EU Member States and that
effective, proportionate and dissuasive criminal penalties are provided.

We also have strong EU legislation in Council Directive 2000/43/EC of 29 June 2000
implementing the principle of equal treatment between persons, irrespective of racial or
ethnic origin, which is also relevant to this discussion. This Directive provides that there
shall be no direct or indirect discrimination based on racial or ethnic origin in employment,
the provision of goods and services, education and social protection. It further mandates
the establishment of a body or bodies for the promotion of equal treatment of all persons
without discrimination on the grounds of racial or ethnic origin. These bodies may form part
of agencies charged at national level with defending human rights.

Despite these clear legislative commitments, we still see a worrying incidence of racism and
intolerance. The Special Eurobarometer 393 Discrimination in the EU in 2012 undertaken at
the request of the Commission shows that discrimination on the grounds of ethnic origin
continues to be regarded as the most widespread form of discrimination in the EU. It is
notable that 56% of respondents reported it as ‘widespread’ (although this is down from
61% in 2009). 39% reported that discrimination on the basis of religion or beliefs is
widespread (no change since 2009). And 46% of respondents (down from 47% in 2009)
regard discrimination on grounds of sexual orientation to be widespread.

Recent reports by the Fundamental Rights Agency document the incidence and impacts of
hate crimes in Europe. The FRA concludes that crimes motivated by racism, xenophobia,
anti-Semitism, extremism and intolerance of the other remain a daily reality across the
European Union. The resurgence in anti-Semitic attitudes and statements in some quarters,
including by people in leadership positions, and the growth in anti-Semitic crimes from
within, but not confined to, migrant populations in Europe are particularly worrying. The
Agency recommends action to make hate crimes more visible and to acknowledge the rights
of victims at three levels: legislation, policy and practice.
Hate crimes have a particular impact not only on the victim, but on society as a whole. This is recognised in the case law of the European Court of Human Rights, in which the ECtHR has consistently argued that hate-crime victims have the right not only to be generally acknowledged as victims of crime, but also as having suffered victimisation specifically because of the biased attitudes of the offenders.

New legislation may not be required, but what we certainly require is more effective collection and analysis of data on hate crimes so that their true incidence and impact on society can be fully understood. At a practical level, measures to encourage victims to come forward with complaints and to support victims and witnesses to participate in the criminal justice process have had a significant impact in ensuring that crimes are reported and offenders punished. These also have a positive educative impact on the wider society, by showing that the authorities take such crimes seriously and that offenders will be prosecuted.

We also need to ensure that persons in a position of leadership, including political leadership, actively uphold European values and foster a climate of mutual respect for and inclusion of persons of different religious or ethnic background or sexual orientation.

From the start of our Presidency, I made it clear that promoting fundamental rights and enhancing the Rule of Law would be a key priority for me, and this is reflected in the choice of this topic for the January JHA discussion. The subject matter of the paper is at once very focussed. It expresses concern about the growth in Xenophobia, Anti-Semitism, Homophobia and other extreme forms of intolerance and how to take effective action at national and at EU level to combat these evils. But it is also very broad, in that it touches on fundamental questions about the Rule of Law and the effective functioning of political and public institutions and on the protection of the fundamental rights of citizens.

And essentially, this is the value-rich direction in which the discussion and the interventions by Ministers went.

The contributions by Ministers on the day illustrated the range of issues that arise in a discussion on protection of the fundamental rights of citizens. These include:

- Hate crimes and criminal law interventions to tackle hate crime.
- Xenophobia, anti-Semitism and homophobia as social phenomena, which also require interventions other than legislation to promote acceptance of the other
- Discrimination in employment and in provision of goods and services
- The effectiveness with which public institutions, particularly in the Justice and Home Affairs area, function.
- Migrant integration, particularly third country nationals; and
- Promotion of universal human rights and equality values.

A number of Ministers referred to the need to look at all the issues that arise in consideration of all these questions in a holistic way and suggested the Commission might be asked to look afresh at what needs to be done.

One specific theme of the discussion was that the solution is not just about legislation, but about getting into the minds of people and encouraging positive attitudes. The clear link between tackling hate crimes on one hand and promoting equality or fighting discrimination on the other was acknowledged. The freedom of movement all of our citizens enjoy is also
obviously accompanied by an expectation and a right to protection for their fundamental rights wherever they live in Europe.

I suggested that a mechanism to better support protection of fundamental rights and the Rule of Law in Member States by sharing best practice, benchmarking practice and outcomes in an objective way, and formulating appropriate recommendations and guidelines for action, would provide such a holistic framework for effective responses to these issues.

At my suggestion—made following discussion in advance and agreement with Vice President Reding - Justice Ministers agreed to invite the Commission to give further consideration to this matter. They agreed to the initiation of a broad public debate, taking account of the Commission’s Annual Report on the EU Charter of Fundamental Rights, involving governments and public institutions in the Member States. Significantly, the debate should include national human rights and equality bodies and civil-society groups so as to raise awareness and understanding of the importance of the Rule of Law, common values and protection of the fundamental rights of all in Europe. This underscores the truth that promoting the democratic premises of equal status for all citizens must be pursued locally as well as centrally.

It seems to me that the Fundamental Rights Agency should have a role to play in providing expert and independent analysis. Such an engagement with Member States, civil society and dialogue with citizens could be very fruitful and should be given sufficient time. The Commission would 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 with specific suggestions about what next needs to be done to improve protection of fundamental rights in the Union.

Subsequently, during our Presidency, we have been in discussion with the Commission and with a number of Member States about how we could pursue the following steps:

- Contribute to such a public debate (which, as I have said, needs to be given time and will span the lifetime of several Presidencies)
- Start developing agreed understandings on the scope of a Rule of Law mechanism, including questions of definition and measurement, and what a future mechanism might look like
- Focus on shared values that are universal values, and not separate Europe standards, but identify the added value of EU action and coordination
- Start reflection on possible approaches that could be accepted by all Member States and that could have a real impact on the lives of ordinary citizens over the medium term, rather than being simply an academic or legal exercise.

Very clearly, this is something that needs to be carefully considered and crafted sensitively, in a way that is respectful of the different legal traditions of member states and of the division of competencies as between the Union and Member States. The Irish Presidency acknowledges that there are clearly sensitive issues at the heart of these questions for many, if not all, Member States.

I think we need a two-stage process. In my view, a process of debate, discussion and raising awareness is very important before we start to present particular models or particular mechanisms. This consultation process – in which national human rights institutions and
equality bodies need to have an active role and a real possibility of influencing the shape of a future mechanism - needs to be given time so that we can develop a consensus around a clear definition of the problems and possible solutions, including the value of action at EU level. At a very broad level, two overarching, and related, themes emerging in the discussions we have been having are (a) the importance of effective functioning of institutions in the JHA area and (b) the protection of the fundamental rights, including economic freedoms, of all, as a common value.

I believe also that we need to think in terms of an approach that acknowledges that the EU is a community of common values, but acknowledges that all of us have problems and room for improvement. I emphasise that we must not have a divisive approach - not ‘old’ Europe against ‘new’ Europe.

What we need is a mechanism to share best practice and benchmark ourselves in critical areas of institutional effectiveness and of fundamental rights. We also need to see an approach that involves willingness in the EU to:

- accept that all of us have imperfections, and
- Begin a collaborative and mutually respectful discourse that is grounded on factually and objectively-based assessments and methodologies.

A collaborative approach would enhance the legitimacy of the Union internally by helping us to address real issues for our citizens. It would also enhance our credibility in the external dimension, not least in discussions with our eastern neighbourhood and applicant or potential applicant countries.

Next steps
All the complexities and the different dimensions involved in this questioned careful consideration and debate. My stated ambition for our Presidency was to initiate a debate on this important topic. We started this at the January JHA meeting and this Conference is the next step. Subsequently, the FRA is organising an expert conference in June to look at development of Rule of Law indicators.

The Commission’s Annual Report for 2012 on the EU Charter of Fundamental Rights will be published later this month and I will bring the Report and the outcome of this Conference to my Justice colleagues at the June meeting of the Justice and Home Affairs Council under the Irish Presidency. This means that I will be here for these two days listening carefully, with my officials, to what you have to say. I will be actively looking for valuable ideas and insights that I can use to persuade my EU Justice colleagues of the value of putting something new in place to help us better deal with the very real problems and threats that exist.

Structure of the Conference
To that end, we have an array of impressive speakers for you and two opportunities for a plenary discussion. We have structured the Conference in a logical progression to generate and funnel ideas and contributions, over the two days, in the direction of agreeing what it is we are trying to achieve and practical ideas about how to do it.

Shortly, you will hear from Dr. Stasys Stacioka, of Mykolas Romeris University of Law; former Judge of the Constitutional Court of the Republic of Lithuania, who will speak on the subject of Lithuania’s successful transition from the Soviet era. His contribution will stress the importance of a society and political class that recognised the importance of respecting
the rule of law and fundamental rights of the citizen in making that transition a successful one.

After coffee this afternoon, Prof. Christopher McCrudden, from Queen’s University Belfast in Northern Ireland, will map for us the landscape that needs to be traversed as we seek to address fundamental rights and Rule of Law issues. His contribution will look at institutions, problems and the process of generating ideas.

This will be followed by a panel discussion, with Douglas Wake, First Deputy Director of ODIHR (Organization for Security and Co-operation in Europe); Markus Jaeger, Directorate of Human Rights and Anti-Discrimination, Council of Europe; Vincent Depaigne, European Commission; David Joyce BL, European Roma Rights Centre; and Shannon Pfohman, Deputy Director of Policy, European Network Against Racism (ENAR). They will be asked, on your behalf, to reflect on what they have heard and to focus on the universality of human rights and equality standards and on what the EU’s role and perspective should be. I am delighted that Ms Kinga Gönz, member of the European Parliament, Vice-Chair of the LIBE Committee and former Foreign Minister of Hungary and daughter of one of Hungary’s national heroes and former President of the Republic Arpad Gönz will take charge of moderating that discussion. Aside from all her other achievements and responsibilities, she is currently negotiating the EU Rights, Equality and Citizenship Programme with the Irish Presidency and understand that a successful outcome to those negotiations can be expected shortly.

And you all will have an opportunity to share your views, personal experiences and suggestions on the afternoon’s interventions in the plenary session that follows. This is a very important part of the Programme and I look forward to the interaction.

The Rule of Law and protection of fundamental rights requires legislation, including equality legislation and legislation to criminalise hate speech and hate crime. But it is not just a matter of legislation. It also requires positive attitudes in society and public bodies – not least Justice institutions – that work effectively and are responsive to the needs and the rights of citizens. To conclude today’s formal proceedings, we have a learned exposition on the Belov case from Judge Andreas Ó Caoimh of the European Court of Justice. I am looking forward to his insights on what lessons this case may have for the protection of equality and fundamental rights in practice. As a lawyer I understand that if there were no problems in society, if nothing ever went wrong, we - and our judicial colleagues on the bench - would be out of a job. But I also recognise the frustration expressed, on occasion, by judges when the same problem issues keep occurring or when issues arise that relate, not to an absence of legislation or legal protection, but to the difficulties in instilling values of equality and respect for the rights of all in society- or embedding changed practices in public and corporate bodies to reflect those values. I am not even going to mention the country in which thecae originated, because it could have originated anywhere. In discussing the promotion of the Rule of Law and protection of fundamental rights, all Member States need bring a degree of humility to the debate, which should take place in an atmosphere of mutual respect, while not avoiding difficult issues. This is not a division as between ‘old’ Europe and ‘new’ Europe and – reflecting on the transformation in Irish society over the past 30 to 40 years - one needs to temper the demand that European values and European standards are met with an understanding of the difficulty in bringing about actual reforms and a willingness to offer assistance and solidarity.

What I would like you to do, as you enjoy our hospitality later this evening, is to reflect not only on the legal issues arising in this case, but also on the wider question of how, as
members of the European Union, we can help each other and learn from each other in building that zone of peace and prosperity that is inclusive of all and respects the rights of all. That is the direction our Programme will, I hope, take us tomorrow morning in the session that will be chaired by my colleague in the Department of Justice and Equality, Minister of State Kathleen Lynch.

You will hear from Prof. Miroslaw Wyrzykowski, a Bureau Member of the European Commission against Racism and Intolerance (ECRI); and former Constitutional Tribunal judge, Poland, who will speak to us on what precisely the concept of the Rule of Law in the EU and the protection of equality and fundamental rights means.

Then we will hear from Dr. Sarah Spencer of the University of Oxford who will look at the role of equality bodies and national human rights institutions and the case for synergy. We are in the process, here in Ireland, of merging our Equality Authority and the Human Rights Commission, to create a stronger and more effective body with enhanced powers, both to assist individuals to seek redress when they consider their rights have been infringed, and to have a stronger influence on public policy and the practices of public sector bodies. Aside from the value of having independent Commissions at national level, I think that these bodies could have a really important role in working with Member State Governments, with the Commission and with the Fundamental Rights Agency in an EU mechanism to protect fundamental rights and promote the Rule of Law by identifying real problem areas and devising implementable solutions that can be put in place.

We have Article 7 of the Treaty on European Union to deal with severe crisis situations and that can be invoked if all else fails. A mechanism of mutual support and peer review by the Commission and other Member States to help tackle emerging problems or problems of transition needs to be politically sensitive – politically with a small ‘p’. It needs to be seen as helpful and supportive, rather than being seen as an outside imposition. It also needs objectivity and to be based on real evidence which can be analysed, debated and agreed.

Dr. Gabriel Toggenburg, Equality and Citizens’ Rights Department, of the Fundamental Rights Agency will look at what it is we are trying to measure and how to measure it. The development of Rule of Law and Fundamental Right indicators is an important task. The challenge for the EU is to find a way of doing so that measures objectively, that gives Member States an opportunity to verify and respond, and that builds on and creates synergies with – but does not duplicate – the work of other relevant international institutions such as the Council of Europe, the OSCE and the UN.

On the basis of all the contributions to the Conference to that point tomorrow morning, you will be asked to consider what the EU needs to do and how. Again, the plenary session in which you will have an opportunity to comment and make suggestions from the floor will be preceded by a panel discussion. The panel members will again be asked to reflect on your behalf on what they have heard and to pull some of the strands together. We will have contributions from Evelyn Collins CBE, member of the Board of Equinet and Chief Executive of the Equality Commission for Northern Ireland; Professor Alan Miller, Chair of the Scottish Human Rights Commission and Chair of the European Group of National Human Rights Institutions; Iverna McGowan, Amnesty International, European Institutions Office; and Dr. Jana Gajdošová, Freedoms and Justice Department, Fundamental Rights Agency and one of our partners in organising this event.
The discussion will be moderated by Anastasia Crickley, of the National University of Ireland, Maynooth, a member of the UN Committee on the Elimination of Racial Discrimination and a person who needs no introduction in equality circles in Ireland given her long personal involvement – particularly on Traveller and community development issues – in working for social justice here.

And finally, Paul Nemitz, Director for Fundamental Rights and Citizenship in DG Justice, European Commission, will have the easy job of setting out how the EU will engage with the people of Europe in an agenda for change in the course of this debate and consultation process we have been discussing with Vice President Reding and with my colleagues in the Justice and Home Affairs Council.

Having spoken to you about why I put this matter on our Presidency agenda; about how this Conference fits in that process of debate; about what I intend to do next and the real opportunity that exists for you all to influence that, I should conclude.

Before I sit down and hand over to our chair, can I make one final point. Ireland is a small Member State that has managed to develop good relationships with all other Member States, and has proved a warm and welcoming home for many mobile workers from other Member States. We opened our labour market immediately in 2004 to the then accession states. Weave no specific national interest in a narrow sense in the discussion on issues of the Rule of Law and fundamental rights and values. But it is in all our national interests as EU Member States to recall the values on which the Union is founded and to make it work – even when the economic crisis seems to overwhelm our capacity to deal with anything else – for all our people. We have a good reputation in punching above our weight impervious Presidencies. In raising a topic that involves sensitive issues for Member States and in some cases difficult issues, we are, consciously, attempting to make a real contribution to the future of Europe by putting the renewal of that original European vision and mission that I started with this afternoon at the centre of public discourse in the Union. Justice Ministries, national human rights institutions and equality bodies all have critical roles in that renewal and in protecting the rights of all in our societies, so it is no accident that these are the three constituencies that we most canvassed in relation to attendance at this event. I am greatly looking forward to your thoughts and contributions and thank you again for being here with us today and for the opportunity to speak to you on such important issues for Europe.

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