

QUESTIONS OF LIBE MEMBERS TO VICE-PRESIDENT REDING

Further to the LIBE committee meeting of 25 May 2011

Questions by Axel Voss

"Sehr geehrte Frau Vizepräsidentin,
liebe Frau Reding,

aufgrund des Zeitmangels heute im LIBE-Ausschuss möchte ich von dem Angebot Gebrauch machen, mich schriftlich zu melden.

Zunächst möchte ich Ihnen für Ihre Anwesenheit im Ausschuss danken. Ich habe zwei Anmerkungen zu Ihren Ausführungen und eine Bitte am Ende.

1) Datenschutz

Ich freue mich, dass das EP und die KOM in den wesentlichen Grundzügen übereinstimmen.

a) In Ihren Erläuterungen bezeichneten Sie die Datenschutzbehörden als "zahnlos" (so jedenfalls in der Übersetzung). Für mein Land (Deutschland) kann ich das so nicht bestätigen, hier liegt eher wohlmöglich manchmal ein "zuviel" vor. Meines Erachtens sollte deshalb die "Stärkung der Datenschutzbehörden" kein Selbstzweck sein, sondern mehr zu einem durchdachten Kontrollsystem mit klarer Aufgabenbeschreibung werden.

b) "Safe Harbor": Bislang erhalte ich nur Rückmeldungen, dass Safe Harbor nicht wirklich gut funktioniert bzw. die US-Firmen dies nur als "Feigenblatt" nutzen, was zu einem Wettbewerbsunterschied führt. Eventuell wäre es in dieser Frage hilfreich, - sofern nicht schon geschehen - eine Bewertung von Safe Harbor vorzunehmen und daraus weitere Schlüsse zu ziehen.

2) Bitte zum Spanischen Küstenschutzgesetz

Ich kenne die rechtlichen Schwierigkeiten mit dieser Problematik. Ich halte das Vorgehen der spanischen Regierung/Behörden für offensichtlich rechtswidrig und grundrechtsverletzend (Enteignung ohne Entschädigung), welches über 100.000 (bis 1.Mio.?) Unionsbürger betrifft. Bis die betroffenen Bürger ihr Recht bei dem EuGHMR (Menschengerichtshof) in Straßburg bekommen werden, vergehen im spanischen Rechtssystem ca. 10-15 Jahre. Was das für viele Ältere und für viele Arme bedeutet, kann man sich gut vorstellen. Keiner der Betroffenen hat natürlich Verständnis dafür, dass die EU tatenlos zusieht, wenn ein Mitgliedstaat offensichtlich gegen den Geist der Europäischen Grundrechtecharta und den daraus abzuleitenden politischen und moralischen Handlungsverpflichtungen verstößt.

Aus diesem Grund bitte ich Sie, zumindest zu mehr politischen Beistand für die Bürger.

Auch bin ich der Überzeugung, dass die Kom. in dieser Extremsituation "rechtlich kreativer und risikoreicher" vorgehen sollte und notfalls auch ein Verfahren vor dem EuGH anstrengen sollte, mit dem Risiko, diesen zu verlieren.

Ich danke für Ihre Aufmerksamkeit.

Mit freundlichen Grüßen

Ihr
Axel Voss
MEP (EVP, DE)"

Question by Sylvie Guillaume

"Madame la Commissaire,

Je vous remercie de trouver ci-après les questions que je souhaitais vous poser lors de la rencontre organisée le 25 mai en commission LIBE au Parlement européen et qui, faute de temps, n'ont pas pu être abordées.

Tout d'abord, je tenais à vous féliciter pour la rédaction du plan d'action sur les Roms avec toutefois un bémol : je regrette en effet que les parties prenantes autres que les institutions ne semblent pas avoir été suffisamment associées à ce processus. Ce qui devrait pouvoir être corrigé au moment de l'évaluation, je l'espère.

D'autre part, j'aimerais vous faire part d'une inquiétude : ce plan d'action repose essentiellement sur la volonté des Etats Membres de mettre en place leur plan d'action et de consommer les fonds mis à leur disposition. Or comment résoudre cette équation quand on sait que nombreux sont les Etats membres qui accueillent des Roms qui ne veulent pas que ceux-ci s'installent sur leur territoire ?

Enfin, je souhaitais saisir l'occasion de votre présence pour vous interroger sur un aspect de ce que je considère comme un droit fondamental : la presse s'est faite l'écho d'une campagne d'information lancée par le gouvernement hongrois, officiellement sur la famille et l'équilibre entre travail et vie familiale. Or cette campagne comprend une facette qui veut dissuader le recours à l'avortement par le biais d'un message que je juge écœurant de culpabilisation à l'égard des femmes. Autre problème : il apparaît sur ces affiches que cette campagne serait financée pour une grande partie par l'UE (via le fonds "progress"). Pourriez-vous me donner votre point de vue sur le sujet ?

Dans l'attente, je vous prie d'agréer, Madame, l'expression de ma considération distinguée.

Sylvie Guillaume, Députée européenne"

Questions by Renate Weber on behalf of ALDE Members

"The duties of the EU and of the Commission in the promotion of fundamental rights do not only stem from the Charter of Fundamental Rights, but also from articles 2, 6 and 7 of the Treaty on the European Union, as well as other relevant articles in TFEU related to anti-discrimination, citizenship, etc. These articles imply that the Commission has a role - as well as the Council and the EP, in making sure that Member States comply with democracy, rule of law, human rights and fundamental freedoms. The Commission has consequently a political, institutional and constitutional mandate to ensure the EU is a democratic area, where fundamental rights are respected and promoted, at EU and MSs level. ***How does the Commission intend to comply with the duties and obligations stemming from these TEU and TFEU articles?***

The Commission has repeatedly recalled that the Charter of Fundamental Rights applies only to EU institutions and EU law and to Member States when they implement EU law, as foreseen by article 51 of the Charter¹. ***How does the Commission interpret its duty to apply the Charter in relation to the powers it has of guardian of the Treaties and of EU values and principles, as enshrined in articles 2 and 6 TEU and TFEU articles?***

The Commission yearly report states in substance that the Commission is not following up most of citizens' letter, sometimes suggesting them to other bodies, institutions or courts. The Commission stated that it intends to create a network to ensure that a follow up is made. ***When will the Commission propose the creation of such Network and how does it envisage it to operate? Doesn't the Commission think that in the application of its obligations and duties ref. inter alia to articles 2, 6, 7 TUE, it should look into the letters that citizens send to it and evaluate if issues can be raised in bilateral meetings with MSs or if further action should be taken at EU level?***

The Commission has clarified that it ensures through impact assessments the compliance of Commission proposals with fundamental rights. ***How does it intend to strengthen the compliance of EU law in all the other phases, such as the amending, adoption and national implementation phases?***

The EP (under the impulsion of ALDE that took over a proposal by CEPS) has proposed to create a "freezing mechanism"(interim measures/orders) in the Gal report². The Commission stated that it would have carried "on looking for a

¹ Article 51 - Scope: 1. The provisions of this Charter are addressed to the institutions and bodies of the Union with due regard for the principle of subsidiarity and to the Member States only when they are implementing Union law. They shall therefore respect the rights, observe the principles and promote the application thereof in accordance with their respective powers. 2. This Charter does not establish any new power or task for the Community or the Union, or modify powers and tasks defined by the Treaties.

² see par. 40: "Believes that EU action should not only address violations of fundamental rights after they have happened, but should also seek to prevent them; consequently calls for a reflection on mechanisms for early detection of potential violations of fundamental rights in the EU and in its Member States, temporary freezing of the measures which constitute such violations, accelerated legal procedures for determining if a measure is contrary to EU fundamental rights and for sanctions in the

*mechanism that could be used without changing the Treaty so as to deal with the most pressing issues"*³. ***At what point is the Commission in its internal evaluation of such EU internal and preventive fundamental rights mechanisms? Would it be ready, shall it be necessary, to propose a Treaty change to deal with possible democratic or fundamental rights crisis in the EU?***

ALDE is only partially satisfied with the current operation of the Fundamental Rights Agency, as 2 requests of the EP for FRA opinions - originating from ALDE - were turned down for different and debatable reasons. ***Will the Commission propose modifications to the FRA mandate to ensure it can reply to any specific requests related to fundamental rights that other institutions will address to it and to further develop its independence and autonomy in issuing opinions, recommendations, including on its own initiative and on urgent and topical issues that are debated at EU level?***

ALDE MEPs had requested information to the Commission and the FRA on reports concerning the participation of some NGOs to the FRA NGO platform that did not really exist or that did not promote EU fundamental values and principles, including non-discrimination; the FRA had stated that it would have established internal rules to ensure that only real and representative NGOs, respectful of human rights and non-discrimination, could be selected to the FRA NGO platform. ***Were measures taken to ensure that only real NGOs, respectful and promoting fundamental rights and non-discrimination, can take part in the FRA platform?***

On the expulsion of Roma from France, the Commission had stated that it had obtained from French authorities a change in the law. ***Can it illustrate how the law was changed in conformity with the EU free movement directive and transmit the relevant documents to the EP?***

The Commissioner had also referred to the violation of the Race directive in relation to the same issue, but it seems it has not yet opened an infringement proceeding on this, notwithstanding NGOs have provided the Commission and MEPs with material, including the expulsion copy-paste orders of the FR authorities, that prove such violation. ***Can the Commission illustrate at what point it is with this dossier? Will it open infringement proceedings?***

While the EU is working on the Framework for National Strategies for Roma Integration, which incites Member States to take inclusion and integration measures

event that these measures are nonetheless implemented contrary to EU law"

<http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//TEXT+REPORT+A7-2010-0344+0+DOC+XML+V0//EN&language=EN>

³ see whole debate on <http://www.europarl.europa.eu/sides/getDoc.do?pubRef=-//EP//NONSGML+CRE+20101214+SIT+DOC+PDF+V0//EN&language=EN>: Reding: "...There is this idea of a 'freezing mechanism', as the rapporteur called it, this prevention system where one would intervene with regard to a measure being taken in a Member State up to the point at which it is implemented. I have asked my experts to analyse this, and the institutional issues that such a mechanism raises are very complex. For the time being, although we will have to continue the analysis and see what is really happening, it seems to me that there is no legal basis to act in such a way and that a change in the Treaty would be needed to activate such a prevention mechanism. It is an attractive idea. We will carry on looking for a mechanism that could be used without changing the Treaty so as to deal with the most pressing issues".

also through the provision of EU funds, NGOs and media report about very serious incidents of persecution of Roma in Hungary and evictions of Roma in Italy. ***Did the Commission take any initiative on this issue? Will the Commission ensure that the Framework and the national strategies include also the protection of fundamental rights of Roma, the promotion of equality and anti-discrimination measures?***

The Commission has reported in LIBE about the dialogues it is holding with MSs to ensure the full and correct application of the free movement directive in the EU. ***Can the Commission provide the EP with more information and documents on the issue, including with which MSs it has met, which laws have been changed and how, etc?***

The anti-discrimination directive is blocked in the Council due to the resistance of some Member States. ***Can the Commission illustrate what it has done to try to unblock the situation and what is its plan for the future?***

Racism and xenophobia are on the rise in the EU and its MSs, with leaders making populist remarks and using the racism card against gypsies, foreigners, homosexuals, jews. Even sexism against women is back. The incitation to hate and discrimination creates social tensions, where everything seem to become legitimate and normal if those who are "different" are the target. The Italian Prime Minister Silvio Berlusconi stated on 23.5.2011: "Milan cannot turn into an Islamic city, a zingaropoli [Gypsytown] full of Roma camps, besieged by foreigners to whom the left wants to give the right to vote...A city like this will surely not want to hand itself over to the far left with the risk of becoming a disorderly, chaotic and unsafe city...a Stalingrad". ***Can the Commission illustrate if it intends to ensure a more vocal and political role in relation to racist, xenophobic, homophobic, etc declarations by leaders, at what point is the implementation of the anti-racism directive and of the Framework Decision on racism and xenophobia, and if it intends to strengthen them via new legislative proposals and implementation measures? Why while the Commissioner for Human Rights of the Council of Europe criticised these declarations, the EU Commission did not do the same?***

ALDE and EP requested the Commission to issue a Roadmap against Homophobia and on LGBT rights with legislative and non-legislative measures, with a calendar, exactly like the Commission did on women's rights for instance, as well as in other areas. ***Will the Commission follow up this request and if not, why?***

The Commissioner has stated in plenary that she believed the Treaties and Charter prohibition of discrimination on the basis of sexual orientation in connection with the right to free movement implies that a person in a same-sex couple shall carry its civil status from "State A to State B", which ALDE agrees with. This statement is mirrored as one of the options illustrated in the Green Paper on "Less bureaucracy for citizens: promoting free movement of public documents and recognition of the effects of civil status records". ***Will the proposal that a person shall keep its civil status when moving in the EU be contained in the Commission proposal foreseen for 2013?***

The ALDE leader has written to the President of the Commission and to Commissioner Reding to ask for an evaluation on the Hungarian Constitution and its conformity with EU values and law. The request has not been answered. Previously, the Commission had entrusted the Hungarian media law dossier to Kroes, who also

appeared in front of the EP, dealing only with issues related to the ADVS directive and not with the EU Treaties, values and principles. ***When will the Commission answer to the ALDE leader letter? Does it intend to make the requested evaluation of the Hungarian Constitution and will it follow the process of implementation of the Constitution through constitutional cardinal laws and their conformity with EU values and laws, ex art. 2, 6 and 7 TEU?***

On the rights of victims of crime, the Commission has issued a regulation and a directive on victims, dealing with civil measures and the standing of victims in criminal procedures, that do not contain specific targeted measures for victims of organised crime and terrorism, and the Commission promised it will evaluate the issue in the future. ***When does the Commission plan to start working on the issue and propose legislative measures and how?***

EU works related to the EU adhesion to ECHR focused for now on the institutional aspects and not on the internal aspects of how the EU shall ensure the application of ECtHRs judgments; that citizens are not deprived of the right to appeal to the ECHR (such as when a national court does not ask for a prejudicial judgment on human rights issues to the ECJ, which could lead to a delay in the procedure as the ECtHR could be blocked from judging in cases related to human rights where the ECJ has not been previously involved); that the EP is fully involved with powers on the selection of the EU judge; and that more transparency and information is ensured. ***Will the Commission address also these issues and how does it intend to solve them?***

The Commissioner for Human Rights of the Council of Europe is doing an extremely useful work for fundamental rights in the EU. Also the Council of Europe Secretary General had in the past promoted enquiries on extraordinary renditions and secret prisons in the EU. The EU seems to lack powers, visibility and instruments to address a potential fundamental rights, democracy or rule of law crisis that could happen in one of its Member States. ***How does the Commission intend to address and solve these issues?"***