



Check against delivery!

**Conference FR and the RoL – trends in the EU from a civil society perspective**  
**EESC – 5 November 2019**

**Amb. Z. Taubner, Head of Council of Europe Office in Brussels**

**Thanks for the invitation.**

I'd like to contribute to the discussion according to the following **structure**:

- CoE and RoL
- CoE interaction with the civil society
- FR and RoL trends as we see them from SXB
- CoE-EU cooperation in FR/RoL matters

**CoE and the RoL**

1. CoE has, over its 70 years, developed a **rich body of legal standards** on HR and the RoL. Over 200 conventions have been adopted as well as hundreds of Recommendations addressed to our 47 member States on various aspects of our shared European values.
2. It is progressively, over time, that the **constitutive elements of the RoL** have been identified and defined through our conventions, primarily the ECHR, and through their application and interpretation, primarily by the European Court of Human Rights. In this context think of the independence and functioning of the judiciary, principles of fair trial and issues related to elections, for example.
3. In addition to our Court of HR, the CoE has also set up several **monitoring** bodies, which oversee the ways in which our Member States do apply and respect, or not, the existing FR and RoL standards. I can mention the GRECO on corruption matters, the CPT on conditions of detentions, the GREVIO on the violence against women, or the Moneyval on money laundering, as a few examples.

4. One of our most important body addressing RoL questions as they relate to the constitutional architecture of States is the **Venice Commission**. Many States turn to the Venice Commission's expert advice on key constitutional questions having an impact on the protection and respect for our fundamental rights.
5. On the basis of this experience, the Venice Commission has put together all the constitutive elements of what is generally referred to as the "**RoL checklist**". This is a very practical tool when assessing the RoL situation in any state. The checklist is referred to in many EU documents, such as the RoL communication from last July, several EP Resolutions, etc. As I understand that your Committee is visiting EU countries to discuss various RoL matters, I can certainly recommend the use of the checklist as a reference.

### **CoE and civil society**

6. Since your committee and indeed this conference address the RoL from a civil society perspective, let me also introduce in a few words how we see our interaction with the civil society.
7. The Council of Europe's work benefits extensively from contacts and co-operation with the civil society and the NGOs. One of the main challenges currently facing the Organisation is to strengthen them and to develop participatory democracy on a pan-European basis, or, at least, prevent and counter negative trends.

To that end, our relations with NGOs can be resumed as follows:

- I. **Relations with international NGOs (INGOs):** considering the important role played by INGO's, the CoE decided to step up the INGOs involvement in the CoE and set up a new CoE consultative body, called the Conference of INGOs, which gathers today the 320 INGOs having consultative status in the organisation. The Conference of INGOs actively contributes to the decision-making process at the Organisation and to the implementation of its programmes, thus ensuring their relevance to the expectations of Europeans.
- II. **Civil society programmes with partner NGOs:** civil society co-operation programmes in specific countries or groups of countries, aim at strengthening the role of civil society in a pluralist democracy, in

particular promoting public participation in decision making. Such large scale involvement of civil society in our programmes is for instance foreseen in our joint programmes with the EU in the Western Balkans and Turkey as well as in the Eastern Partnership countries.

8. I should like to underline also that the involvement of the civil society in the CoE working processes is, as a matter of fact, guaranteed at the different following levels of the CoE activities:

– at the level of the **drafting and negotiating new standards** (new convention or new Recommendations), the civil society representatives are invited to follow the discussions held in Strasbourg and to contribute;

- at the level of **monitoring** the respect of these standards by our monitoring groups, the civil society representatives can for instance intervene in the ECtHR proceedings as well as through the collective complaint mechanism before the Committee on Social rights. The other monitoring committees that I mentioned earlier (GRECO, CPT, Moneyval, ECRI, GREVIO, etc) also cooperate with the civil society, both in preparation of visits and reports, but also in the conduct of on sight visits and in the follow-up to the publication of a country report. Our HR Commissioner, Ms Mijatovic, who also conducts country visits, enjoys a privileged relationship with the HR NGOs, HR defenders and equality bodies in the countries;

- as I said also , civil society is closely associated in the implementation of our “**cooperation programmes**” helping our members to step up their legal and institutiponal framework on democracy, HR and the RoL.

9. (*Exemples of INGO Conference activities to enhance the role of civil society in the democratic process include:*

- *Setting of relevant standards (e.g., guidelines and codes) for meaningful civil participation in political decision-making;*
- *Capacity-building and support to civil society projects in member states;*
- *Research on the legal framework for NGO functioning and its implementation;*
- *Assistance to member states for improving the environment for effective functioning of NGOs;*
- *Asistance to civil society and the authorities towards creating sustainable mechanisms for dialogue and cooperation between the two groups of stakeholders.)*

## **CoE on FR RoL trends**

10. As to the main **trends** on FR and on the RoL, I think we all share a perception that the general trend is worrying, with the words “*backsliding*” and “*shrinking space*” being the most commonly used in this context.

11. I would like to offer some remarks taken by the latest **annual report** from the CoE Secretary General on the state of HR, Democracy and the RoL in Europe.

In the introduction of his report, published in April 2019, actually his last report since he finished his 10 years mandate last summer, the SG states that:

*It starts with a basically positive statement: Over the past 70 years our Convention system has replaced conflict with co-operation. It is the bedrock of our democratic security and a success story for modern multilateralism. Its importance endures.*

*But then it continues on less happy notes: However, this report describes worrying trends in Europe. Attempts are being made to bring courts under political control. Media and NGOs are under increasing pressure and journalists are sometimes physically attacked. Meanwhile the supremacy of the European Court of Human Rights is also being challenged by populist and nationalist forces. After 10 years as Secretary General, it is clear to me that in the current environment our Organisation must be more proactive if we hope to uphold our legal standards. European law and institutions must be used to the maximum*

12. The report further describes the current trends and challenges posed to our HR convention system, to the judicial system in several states, to the freedom of expression, media freedom and protection of journalists. As to the **work of the civil society**, the report notes that

*“Unfortunately, NGOs and civil society actors in Europe face increased verbal attacks and are subjected to restrictive legislation that undermines their freedom of expression and association. This results in a shrinking civic space.*

*In recent years, a significant number of countries have increased the regulatory framework concerning the financial resources of non-governmental organisations. According to a study conducted by the Venice Commission, in many member states specific obligations have been imposed on associations receiving funds from abroad... In several instances, it was noted that this type of regulatory framework is selectively enforced, leading to further concerns that the legislative and regulatory power of the state is being misused to hamper, restrict, silence or frighten specific civil society actors. Although this kind of “legal uncertainty” is not limited to NGOs, it can greatly undermine the trust of citizens in the rule of law.”*

### **CoE and EU on FR/RoL**

13. Since these observations call for action by all stakeholders who believe that our founding common values need to be upheld and respected, let me conclude by a few words on the CoE–EU **cooperation** in these matters.

14. Since both our Organisations share the same values and the same commitment to have these values better promoted and respected, the CoE and the EU concluded a **MoU** in 2007. This MoU confirms the role of the Council of Europe as **the benchmark** for human rights, the rule of law and democracy in Europe, stipulates the need for **coherence** between the two Organisations' legal norms in the fields of human rights and fundamental freedoms, and encourages the Council of Europe and the European Union to work together even more closely in the future.
15. We welcome the increased efforts that the **EU institutions**, including the EESC, have given to promote the respect for the FR and the RoL throughout its own membership. I refer in particular to the Commissions's RoL framework, the Art 7 procedures in the Council, the annual "RoL dialogue" in the Council, the infringement at the Court of Justice, the various EP resolutions, and many others. More recently, last July, the **Commission** has published a **comprehensive communication on the RoL** in the EU.
16. This **Communication** foresees notably that, in its RoL review cycle, it will refer extensively to the work and reports from the CoE. In addition, the European Commission intends to "strengthen co-operation" with the Council of Europe and "explore further support to [the Council of Europe] in relation to EU priorities on the rule of law". There is also a will to "increase EU participation in the Council of Europe bodies, making co-operation at service level stronger and more systematic". The Communication also refers to the EU obligation to accede to the European Convention on Human Rights (ECHR), which would ultimately guarantee the coherence of the HR protection system in Europe

## **Conclusion**

17. The challenges posed to our common values call for greater cooperation among all actors of good will in Europe. The initiatives from the EU institutions, including the attention given by the EESC to this issue provide with concrete opportunities for closer relationship and mutually enriching cooperation. I look forward to pursuing this cooperation with you and with the Committee's transversal group on FR and the RoL which was established last year. My Office in Brussels and I remain fully committed to continuing working together.
18. I wish you very fruitful discussions etc etc