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From: Presidency
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Subject: Outcome of the High-level Conference on Institutional Protection of
Fundamental Rights in Times of Crises on 20-21 April 2023 in Lund
(Sweden)

Delegations will find attached, the outcome of the Presidency High-level Conference on Institutional Protection of Fundamental Rights in Times of Crises which took place in Lund (Sweden).

Outcome of the High-level Conference on Institutional Protection of Fundamental Rights in Times of Crises

20-21 April 2023 in Lund (Sweden)

1. Executive Summary & Action Proposals

The High-level Conference on Institutional Protection of Fundamental Rights in Times of Crises explored the adverse impact that the current moment of polycrisis has on fundamental rights in the EU. Building on the lessons learnt from recent crises, the attendants identified and discussed proposals for actions that would enable institutional actors at all levels of government, as well as independent human rights bodies and civil society organisations, to increase their resilience to crises and reinforce the protection of fundamental rights for people at risk.

Overall, the conference highlighted the fact that the key to building crisis-resilient human rights structures entails: the empowerment of rights holders; their engagement with and trust in institutions and authorities; building partnerships; the use of effective communication and smart regulation. Smart regulation includes human rights impact assessments, human rights due diligence and reporting, as well as access to effective remedy for rights holders.

The following are the main action proposals that were identified and discussed:

1.1 Strengthening the legal framework

- Complete the EU's accession to the European Convention on Human Rights and other international human rights treaties, in particular the Council of Europe Convention on Preventing and Combating Violence Against Women and Domestic Violence (Istanbul Convention).
- Ensure independent human rights oversight when implementing EU legislation, for example for the Digital Services Act and the Artificial Intelligence Act, once adopted.
- Adopt the proposed Directive on strengthening equality bodies and consider legal recognition of NHRI in EU law to strengthen and protect national human rights structures.
- Protect civil society by adopting the proposed EU Directive on protecting persons who engage in public participation against manifestly unfounded or abusive civil court proceedings ("SLAPPs").

1.2 Enforcing the legal framework and the toolbox to uphold standards

- Promote the swift execution of judgements of the EU Court of Justice and the European Court of Human Rights.

- Draw systematically on human rights impact assessments for drafting legislation or adopting public budgets in order to determine the impact this would have on people's rights.
- Make use of the EU's toolbox to uphold rights, including the rule of law conditionality mechanism and the regulation establishing a horizontal obligation for Member States to comply with the EU Charter of Fundamental when using EU funds.
- Address disinformation through the Digital Services Act and the demonetisation of political advertising on online platforms.

1.3 Maintaining an enabling environment for human rights actors

- Promote and strengthen the civic space, including by nurturing and upholding freedom of expression and access to information, as well as media pluralism.
- Ensure effective investigation of any attack against human rights defenders and journalists and prosecute crimes against them.
- Facilitate civil society's access to funding, including for advocacy, monitoring and awareness-raising.
- Put in place UN Paris Principles-compliant, A-status national human rights institutions, providing them with adequate resources and a broad mandate to promote and protect human rights.
- Enlarge the group of human rights cities and promote the idea of upholding rule of law and human rights, also at local level.
- Publicly promote the independence of the judiciary and human rights structures as essential for the checks and balances in a democracy.

1.4 Engage rights holders in developing crisis responses

- Empower rights holders through investment in civic education, digital media literacy and targeted communication on rights.
- Develop and strengthen mechanisms for rights holders' participation in the design of policies, partnering up with non-governmental organisations (NGOs) to ensure an effective outreach to people at risk.
- Facilitate access to justice through low threshold access to remedy.
- Raise awareness on fundamental rights risks, by holding campaigns, events and national dialogues.

1.5 Promoting cooperation and building partnerships

- Coordinate between human rights actors – locally, nationally and internationally, developing joined-up approaches to crises.
- Develop new partnerships, such as with:
 - ministries of finance to mainstream human rights into public budgets;
 - ministries of ecology, the environment and sustainable development to address the human rights impacts of climate change;
 - health authorities to ensure rights-based responses to public health emergencies.

- Include human rights experts in crisis preparedness structures and foresight teams to move from hindsight to foresight on rights.

1.6 Supporting States in complying with fundamental rights in times of crisis

- Provide human rights training to civil servants involved in crisis management.
- Support States in better understanding the needs of rights holders through data collection at EU and national levels, particularly concerning people at risk.
- Promote good practices on effective and inclusive public participation and trust-building with civil society.
- Map existing national human rights structures in EU Member States, to identify potential gaps in the institutional protection of rights.
- Support States in generating a better understanding of harmful criminal hate speech and disinformation, by putting information out in the open and restoring public trust in the integrity of media.

2. Summary Report of the Conference Sessions

2.1 Introduction

On 20–21 April 2023, the Swedish Presidency of the Council of the EU in cooperation with the European Union Agency for Fundamental Rights, hosted a conference focusing on the institutional protection of fundamental rights in times of crises.

An important point of departure is the fact that the Union is founded on common values and that Member States have undertaken to guarantee the rights and freedoms enshrined in the Charter of Fundamental Rights of the EU for all people within their jurisdiction.

Unpredictable crises and developments, such as the Covid-19 pandemic and Russia's war of aggression against Ukraine, as well as events related to climate change, have severely affected the lives of people and communities in the EU and worldwide. Member States must anticipate and be prepared to address such crises. There is clear evidence that countries where human rights are respected and protected are less prone to conflict or crises and have increased resilience to withstand unexpected crises.

Provided below are the detailed conference notes.

2.2 Day One of the Conference

2.2.1 Summary of the opening session

Paulina Brandberg, Swedish Minister for Gender Equality and Working Life reminded participants that the EU is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, and that it is crucial to continue to work towards the common goal: a Union of equality. A union in which the equal value of all people, and equal access to rights and opportunities, are self-evident both in theory and in practice. Furthermore, she stressed that all EU-institutions share a responsibility to protect fundamental rights and to ensure equal treatment and equality for all.

The Minister stressed that EU Member States must anticipate and be prepared to address unpredictable crises and developments that are becoming more common. In this context, robust and resilient structures for the protection of fundamental rights are key. But it was also pointed out that the protection of rights requires an active stance, for example in the case of Russia's unprovoked and illegal aggression against Ukraine. The importance of civil society and human rights defenders in facilitating public debate, in upholding fundamental rights and in the reporting and monitoring of misconduct and other abuse was also highlighted.

Michael O'Flaherty, Director of the European Union Agency for Fundamental Rights (FRA), stated that the human rights system has been in development for the past seventy-five years, since the moment of the adoption of the Universal Declaration of Human Rights, followed by the establishment of a wide-ranging body of norms, overseen by courts and other monitoring bodies. The EU fundamental rights system has also continued to evolve, with the growth in the jurisprudence of the Court of Justice related to the EU Charter and the EU's forthcoming accession to the European Convention on Human Rights.

The Director highlighted the role of some specific actors within this system, namely the State, the local authorities and the judiciary – all duty bearers that in times of crises play a crucial role in upholding human rights in society. In addition, the importance of three other national-level actors was addressed: national human rights institutions (NHRI), equality bodies and civil society – all key pieces of the human rights system. A suggestion from the Director was that the EU should develop its own comprehensive fundamental rights action plan, and that the debate on the establishment of an equivalent of an NHRI for the EU should be reopened.

Finally, the Director concluded that there is a need for a resilient human rights system that is adaptable, with the capacity of the system to not only withstand challenges but to use adversity to evolve and improve, and to create new iterations that reflect the realities of the world.

2.2.2 Session I – How to ensure strong institutional protection of fundamental rights in times of crises

The session was introduced by **Katarina Barley**, Vice-President of the European Parliament and Rapporteur for the European Parliament report on the situation of fundamental rights in the European Union in 2022 and 2023. Barley pointed out that the recent challenging developments with the rise of illiberal democracies, using the democratic system to gradually limit fundamental rights, many times motivated by the event of a crisis used as a fig leaf, has made the tackling of rule of law violations more complicated.

Barley argued that there has been a shift of power from parliaments to governments, and rules adopted by decree have recently become more common. The development in communication and disinformation has been growing steadily, and the rapid emergence of artificial intelligence (AI) is also to be considered. Changes in the structure of media also plays a role, with more concentration of media and more political influence on the media. At the same time, quality media outlets have been experiencing increasing financial difficulties which makes these weaker. Furthermore, she argued that it is essential to promote a culture of open mindedness, critical thinking, media literacy, civil discourse and to regulate social media platforms as well as AI. In this context, the role of law makers and controlling bodies has become more important than ever. These entities need to act more firmly and in a more timely way to safeguard the rights of civil society, an independent judiciary and media, and to protect the rule of law.

In the following **panel discussion**, several trends were highlighted. For example, it was argued that migration needs special attention since it is an area where society finds itself in a constant mode of crisis. It was argued that migration is used in many countries as a reason for restricting human rights. Moreover, civil society and advocates working for the rights of migrants and asylum seekers are targeted by States and governments in many countries. A similar backlash regarding the rights of the LGBTIQ-community was also mentioned. In this vein, it was pointed out that there is a lack of focus on social rights in the midst of the financial crisis. These rights need to be considered in the context of an increase in poverty and homelessness.

The role of national human rights institutions and equality bodies was discussed. These can be found in all Member States, but the mandate of these bodies is too diverse and, in many cases, these bodies do not have enough resources and independence. The proposal of the European Commission on standards for equality bodies is very important in this regard. The two proposed directives would make it more difficult for Member States to interfere in the work of these bodies or reduce their resources in a punitive way.

The increasing lack of trust in democratic institutions, in particular the judiciary, was identified as a worrying trend that was even more accentuated by the pandemic. Examples of governments trying to interfere in the work of judges, courts and prosecutors were mentioned, as well as of government measures aimed at restricting fundamental rights, such as the freedom of assembly and freedom of association.

The panel formulated some ideas for the way forward. One was the need for international organisations to cooperate more closely, something that became clear during the pandemic. States, governments, and local authorities were encouraged to recommit and show political will on a daily and practical basis to adhere to international standards and obligations. In this aspect, peer review among different countries is a good way forward. It was recognised that the EU should swiftly accede to the ECHR. The need for tools to enforce the rule of law in a faster and clearer way at EU-level was also proposed. The support and protection of civil society was identified as being key to protecting the human rights system.

2.2.3 Session II – Lessons learnt from crises in the EU: challenges and counteraction

Morten Kjaerum, Director of the Raoul Wallenberg Institute of Human Rights and Humanitarian Law in Sweden opened the session arguing that three main requirements need to be fulfilled to strengthen the human rights structure in Europe: more collaboration at all levels; stronger preparedness and planning of policies moving from response to a state of resilience; and efficient implementation. Building trust in institutions by implementing and applying a human rights-based approach, along with clear political will were highlighted as key elements, along with a better understanding of the needs and legal obligations among Ministries of Finance and EU financial bodies.

In the **panel discussion**, the local example of how the municipality of Warsaw responded to the substantial arrival of migrants from Ukraine was highlighted. Key success factors in this crisis were cooperation between authorities and collaboration with civil society that had the capacity to mobilise volunteers, who are essential in such a situation. It was stressed that more and efficient collaboration is the solution since a crisis cannot be handled by a single actor on its own. In addition, the need for the funding of institutions at all levels and for civil society to secure sustainability and long-term resilience was identified. In this collaborative process, NHRIs play an important role to make sure that fundamental rights are taken into account in the handling of crises.

2.3 Day Two of the Conference

2.3.1 Opening session

Fredrik Malmberg, Director of the Swedish Institute for Human Rights stressed that institutional protection of human rights in times of crises is as important as ever. He stated that this year marks the 30th anniversary of the Paris Principles – aimed at strengthening the institutional protection of human rights at national level. Independent NHRIs with a broad human rights mandate are key players in institutional human rights protection across Europe and must be supported. This was confirmed recently by EU Member States under the ongoing Swedish Presidency, with the adoption of Council Conclusions that encourage all States to: establish NHRIs in accordance with the Paris Principles; adopt a legal framework enabling them to carry out their role independently; provide them with adequate mandate and appropriate resources to carry out their tasks effectively.

The Director highlighted the work of the newly established Swedish Institute for Human Rights and illustrated how different crises have affected human rights in Sweden: an increase in poverty affecting vulnerable groups such as elderly persons, persons with lower education, persons with disabilities and/or health problems and asylum seekers; an increase in polarised, racist and xenophobic rhetoric among politicians and the public; the effects of climate change on people already exposed to discrimination or living in fragile ecosystems, in particular the Sami people; the decisions taken in Sweden that restricted human rights during the pandemic. The Director concluded by referring to the current situation in Sweden. The Director stated that human rights in general are being challenged in the public debate and that the existence of the Swedish NHRI is being questioned.

2.3.2 Session III – Discussion regarding the outcome of the breakout groups

In this session the rapporteurs from the conference's three breakout sessions reported back to the plenary on the results of the discussions. A summary of the discussions in these breakout sessions is set out below.

Breakout session 1: How to strengthen institutional protection for fundamental rights in times of crises for persons in vulnerable situations

The discussion during the session focused on challenges and solutions. Among the challenges, it was mentioned that rights of vulnerable groups are often forgotten, and the lack of information to these groups when dealing with crises is also a serious problem. The significance of political will was raised as a key aspect, and the importance of sanctions and remedies was emphasised. Other highlighted challenges were legal structures and gaps in the protection that need to be remedied. Mention was made of the inclusion of stakeholders, preferably before crises, as well as of the need to be better prepared.

With regard to solutions, the following were highlighted: the need for strong reliable institutional and legal framework; the importance of a continued, ongoing dialogue with civil society; funding for human rights defenders. There is a need to ensure shared responsibility and to provide an enabling space for civil society and media. In addition, emphasis was placed on the importance of international norms and standards that can be used for support. Finally, the session came up with a number of proposals in relation to action that can be undertaken by a range of different actors. These included funding, strategic foresight, common standards for equality bodies, use of sanctions, strategic litigation, targeted and variable communication, basic training of civil servants, as well as monitoring and data collection. Other important aspects were awareness raising and the empowerment of vulnerable groups.

Breakout session 2: Tackling disinformation against our democratic values and structures with a human rights lens

In the discussion, the focus was on the restrictive impact that abuse of disinformation may have on the civic space. The development of generative AI was considered a complex issue. Human rights sectors need to prepare for the advent of sophisticated technology, e.g. quantum computing. They also need to stress the need for algorithmic transparency and focus on prebunking rather than debunking.

Another issue discussed was the importance of safeguarding freedom of expression to counter disinformation, while also making sure that online hate speech is tackled. The discussion also covered the importance of providing reliable information sources, with a view to helping citizens to make informed decisions.

Among the challenges raised in the discussions were grey zones in relation to hate speech and how legal frameworks can make it complicated for citizens to engage in discussions and public debates. Another challenge mentioned was how to best educate in the context of disinformation, especially with regard to creating entertaining content on disinformation and coming to terms with the fact that digital media has become the gateway to news. Furthermore, it was recognised that one challenge was the spread of State control of the media as well as the issue of media oligarchs. In this regard, money is a key imperative. Ownership transparency was considered as being extremely important in this context.

Among the ideas for solutions mentioned were the building of partnerships and strengthening measures for the freedom of expression and opinion, and freedom of the media. One suggested path was not solely to focus on regulation, but rather on the empowerment and education of young people and children in the context of digital behaviour. The participants highlighted the need to teach and empower by using the common ideology of human rights movements, empowering rights holders and civil society, while also making information locally and contextually relevant.

Breakout session 3: Rule of law and fundamental rights in times of crises

Among the challenges raised in the discussions were autocratisation and undermining of the judiciary. These often go together with attacks on civil society and statutory human rights and equality bodies as well as on independent research and public service media. Focus was also placed on the need to have a broad support for and understanding of human rights and the rule of law within society and among citizens, in order to create engagement and strengthen resilience. Equally, the focus was on the need for civic and human rights education, starting at school. Lack of dialogue between authorities and civil society was mentioned. This also took into consideration the lack of awareness of rule of law and human rights issues among policy makers. The discussion also covered the lack of resources for civil society organisations, both in relation to funding and adequate capacities in different areas, such as strategic litigation. Not sufficiently strong mandates and functions of NHRIs were mentioned, for example as regards access to confidential information and lacking powers to make own-initiative third-party interventions before courts.

Among the ideas for solutions mentioned were: more EU funding for human rights education for the general public; increased transparency and simplification of the EU funding processes for civil society. Other issues raised included: constitutional protection; more effective monitoring; better co-operation, partnership and communication at different levels, for example between authorities and civil society organisations, NHRIs, Equality Bodies. The aim of this is to better achieve common objectives and to stop working in silos. The discussion also covered the importance of creating a commitment and engagement broadly on human rights issues, so that they can be discussed widely in society and not only on seminars with like-minded. Strong competences for NHRIs regarding the right to information and of own initiative was highlighted and the idea that the FRA should have more powers to review EU legislation and right of own initiative. Other proposals of solutions involved increased use of amicus curiae briefs, for example in the Court of Justice of the European Union, and the idea that both EU law and national law should undergo fundamental rights impact reviews.

2.3.3 Closing Session

This session was initiated with commentaries on the way forward by two participants from Spain: **María Teresa Verdugo**, Special Prosecutor and **Almudena Darias de las Heras**, Justice Counsellor and representative of the upcoming Spanish Presidency of the Council of the European Union.

Special Prosecutor **Verdugo** stressed the important role of prosecutors and other representatives of the judiciary in upholding the values of fundamental rights and rule of law in their functions. Recent changes in the Spanish legislation in this area were described, with a focus on how the judicial authorities are working to apply these changes. For example, a network of prosecutors specialised in hate crime has been created, and a significant increase of cases being handled has been seen. A result of this is a higher degree of trust in the judiciary among vulnerable groups. Special Prosecutor Verdugo also gave an example on the role of prosecutors in times of crisis, in the Spanish case how prosecutors are investigating possible flaws in the care of elderly during the pandemic. She emphasised that a strong independent and effective judicial system is needed to enforce laws successfully, and that there is a need to empower civil society in relation to upholding respect for human rights and in relation to engaging with those actors who apply human rights in their daily work.

Counsellor **Darias de las Heras** stated that there is a need to strengthen the democratic and fundamental rights structures of society to confront unprecedented developments. Extraordinary policies can be adopted, as during the pandemic. At the same time the guarantees of the system, such as parliament or the ombudsman, play a central role in safeguarding the fundamental rights of the citizens. Crises are becoming more complex, which indicates that the fundamental rights system needs to be strengthened. A human-centred approach on how crises affect the most vulnerable groups needs to be applied with a socioeconomic perspective. In this vein, the Spanish presidency will focus on strengthening the area of freedom, security and justice, especially promoting initiatives aiming at reacting to critical situations, such as Russia's war of aggression against Ukraine or other crises.

Several initiatives will be given special attention, for instance, gender-based violence and trafficking of human beings, but also the enhancement of the digital skills of legal practitioners and the citizens. The rule of law dialogue within the Council will be supported, and a special priority will be given to the process of accession of the EU to the ECHR. The advances of the previous presidencies in these areas would be important points of departure for Spain.

The session was ended by concluding remarks from Minister **Paulina Brandberg**. She emphasised that the conference will contribute to the continued work to ensure that the protection of human rights in the EU is made more robust and resilient for times of crises. As a representative of the Council of the EU, the Minister affirmed that the Council stands ready to take its responsibility to ensure that the EU continues to be characterised by respect for fundamental rights and freedoms – a union living up to its motto as united in diversity. Finally, Minister Brandberg stated that, in all work aiming to guarantee people their human rights, it is always important to think long-term and be persistent, and she welcomed Spain's willingness to continue strengthening the protection of fundamental rights during its upcoming Presidency of the Council of the EU.