

A rights-based approach

As long as the European Union project does not bring shared social progress, the question of public policies for access to rights for all in Europe should be central, rather than an opposition between the respective presumed virtues of the European Union versus the nation states*.

Jan Robert SUESSER, member of the executive board of French Ligue des droits de l'Homme (LDH)

In a few weeks' time, elections for the European Parliament will be held. The electoral debate about the crisis of the European project is once again a confrontation between those saying that «there is not enough Europe» and those calling for a «return to the national space». Is this the debate that should be held? Why would topics dealt with at European level be better addressed if they were repatriated to national level? Conversely, why would public policies presently decided at national level benefit from being dealt with at European Union level?

For this debate to be meaningful, at least one of the following two questions should be answered with a «yes». Is there any reason for public policy directions to be different by nature depending on whether topics are addressed at one level or the other? Is it possible that institutions respond differently by nature to aspirations and expectations according to their geographical scope of responsibility? The answer to both questions is “no”.

During the electoral debate, proposals to withdraw or extend European responsibilities are based on dissatisfaction. The complexity of the institutional functioning, with its European and national levels, its executive and legislative functions, allows for all kinds of misinformation and

* This article is adapted from the original French version published in *Hommes & Libertés* #185 – April 2019.

demagoguery potentially coming from all political horizons.

The LDH does not put at the heart of its thinking the question «where are the decisions made?», as we see day after day the similarity of what is decided either nationally or at European level. Its primary concern is the very content of the policies that are discussed and implemented. No «good guys» on one side and «bad guys» on the other, both are everywhere!

Single market before human rights

For decades, the EU has pursued a single central objective, which is of an economic nature: to organise «the four freedoms of movement», covering goods, services, capital, and people (with many regulations concerning manpower).

The rules established over time have aimed to maximise gains resulting from a large unified area of production and trade (the «internal market»). With the successive European treaties, this unification gradually covered the entire field of what makes up the economy (including a single currency, even if some countries remain outside it). The discussions around Brexit show how intertwined the rules are. No request from the United Kingdom was accepted when it asked to keep the benefits of the EU single market while being

allowed to escape compliance for any aspect of the four freedoms (such as the free movement of workers). The single market is an intrinsic whole. The heart of the EU's engine is there. It can rotate only with all its parts.

That said, European policies are not decided nor implemented without any protest and resistance. In recent years, we have seen many mobilizations, always in reference to one or more human rights threatened by some measures taken in the name of the «four freedoms». Most of the interventions with which the LDH has been associated implied confrontations with the French and European authorities simultaneously, as the European policies at stake corresponded to national policies, and vice versa.

Since the last European elections, there have been many topics, from migrants and posted workers to personal data and free trade agreements, where the proposed application of the “four freedoms of movement” came into conflict with the rights-based approach.

The mobilizations had various strengths depending on the countries and the topics. They yielded results on the protection of personal data. Less on arbitral tribunals set up within free trade agreements. For environmental protection to take precedence



© DR

over free trade and for the welcome of migrants, no results, and even setbacks. Here too, the results are mixed as they are mixed for the level of mobilizations at the national level.

An undersized social Europe?

Just as economic and financial regulations are the responsibility of the European level, social policies are a national responsibility. Treaty after treaty, several countries vetoed any extension for unifying social rules at European level in parallel with what was being done for the economy. It was the United Kingdom leaders that led the battle against the very principle of unified social rules, considered as obstacles to their vision of «free and undistorted» competition. Other countries supported the UK, not wanting financial transfers in relation with unified social rules. They are essentially the same that also consistently opposed a convergence of tax levels that would have hindered tax competition (the «tax dumping»). As a result, while there are some

***A minute of silence for migrants who died crossing the Mediterranean
Sabir Festival,
Palermo, May 2018***

European social policies, their total funding amounts to a few tenths of one percent of the annual wealth created in Europe, while the redistribution carried out under national responsibility is between 20% and 30% of national GDPs. As a result, rich countries (the ones that benefit the most from the extended opportunities resulting from the single market) treat the socially negative effects of the functioning of the market economy with their rich country means, and poor countries with theirs. The institutional separation between those who set the economic rules unifying the EU and those who set the social rules at

national level is a setback to the states' practices that have been built since the end of the 19th century. The emergence of capitalist nation-states was accompanied by a unification of the spaces where economic and social policies were decided and applied. A large part of the legitimacy of institutions came from their ability to articulate decisions in both social and economic spheres. This was particularly important after the Second World War, when economic and democratic reconstruction would not have been possible without social progress. The debate between political forces within nation states was about how to articulate both

The institutional separation between those who set the economic rules unifying the EU and those who set the social rules at national level is a setback to the states' practices that have been built since the end of the 19th century.

spheres' decisions, more socially or more economically oriented. There is no doubt that the legitimacy of political authorities has shrunk among entire segments of the population, due to the very fact that institutional responsibilities have fragmented social and economic spheres. An aggravating factor has been the consequence of the neoliberal rise since the 1980s, resulting in both the growth of wealth produced and the rise in inequality. The near absence of social redistribution between countries proved to be a devastating factor for the reputation of governments of countries in crisis that supported such a European construction. And in rich countries where fears of social downgrading are high, it is the very idea of solidarity at European level that has been called into question. Three decades of under-privileging the social dimension of the European project are now dearly paid for in the national as in the European electoral fields and in the legitimacy of representative democracy.

Democratic legitimacy of institutions

The LDH intervenes on multiple subjects that are dealt with at EU level, within a French or European unitary framework. It does so in its own name, or through the European networks of which it is an active member, in particular the European Association for the Defence of Human Rights (AEDH), the European Civic Forum (ECF) and EuroMed Droits⁽¹⁾.

In the debate for the European elections, the human rights approach is all the more necessary as there is a general negative feeling about the question of democratic functioning. The discussion is all the more confusing since, on the one hand, the rejection of the institutions is also made at national level and, on the other hand, political offers call into question the very relevance of democracy in several European countries.

The legitimacy of democracy, a tool for confrontation of visions and proposals and of decision-making in a society, is first and foremost linked to the capacity of institutions to provide the responses in terms of effective access to social, economic and environmental rights.

(1) Formerly the Euro-Mediterranean Human Rights Network (EMHRN).

The legitimacy of democracy, a tool for confrontation of visions and proposals and of decision-making in a society, is first and foremost linked to the capacity of institutions to provide the responses in terms of effective access to social, economic and environmental rights. With the number of people left behind and the resulting social fears, how do public policies reflect needs in terms of equality and solidarity? If democratic processes do not provide answers, it is democracy itself that is being called into question.

Democratic processes must enable institutions to take into account the ways in which, at various times and circumstances, citizens can intervene and be listened to, through representation or direct involvement. To this end, there is no single «model» that can be used in all situations. On the contrary, the diversity of citizens' willingness to be involved over time requires direct consultations, dialogues with associations and trade unions, ad-hoc representations... all along the processes involved in public decision-making. At the European level, the European Civic Forum, in which the LDH is very involved, has called since 2009 for a multi-modal civil dialogue given the promise of Article 11 of the Lisbon Treaty, never implemented, neither in its spirit nor in its letter.

Emblematic topics for a rights-based approach

On the occasion of the European elections, there are emblematic topics to illustrate the Europe we need, one built around the values of equality, solidarity and inclusion of all its inhabitants without discrimination. The protection of the environment against destructive market behaviours, the welcome of asylum seekers, the respect for privacy against the (mis)use of personal data... have been and are all topics for which European policies have an

immediate responsibility. In the conflict between investor protection and environmental protection, the timid advances obtained do not guarantee the predominance of the latter over the former. The involvement of private investors in the elaboration of health and social regulations, with the pretext that such rules are related to the profitability of investments, is now a major concern for the respect of human rights.

Similarly, with the migration phenomenon of 2015, we have seen the deregulation of the «Dublin Regulation» and a rising trend of disrespect for asylum rights in Europe. The refusal to welcome migrants is only one of the symptoms of the decline of «solidarity» between EU Member States, in all the fields of application of European policies. The solidarity challenge migrants are confronted to is obviously of a more general nature in today's EU reality.

The protection of personal data is also an issue with many ramifications. We have seen this with the request by the American authorities to get extended passenger information. Security and respect for privacy and personal liberties should not be set in opposition. Yet we see a proliferation of legislation passed by EU Member States attacking civil liberties in the name of security.

In the European debate some argue that the national space should be the primary space for the defence of rights. In our globalised world, this is certainly simplistic. In fact, the struggle for securing rights concerns the whole public decision-making space with, each time, solidarity and inclusion of all being issues at stake.

The assertion of the values and objectives presented in Articles 2 and 3 of the EU Lisbon Treaty recalls, in its own way, the legitimacy of the struggle for making access to rights effective. The societal forces in the EU that share this fight are a decisive factor in order to achieve them.. ●