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CHARTER '2020'

CONCERNING PRIVACY
AND CIVIL RIGHTS

CHARTER '2020'
Concerning Privacy
And Civil Rights

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PREAMBLE

During the first decade of the 21st century, in the flourishing days of neo-liberalism, an infrastructure was developed in order to control the population to an extent that had never been seen before. This has also occurred in Europe. Controlling states arose as a result of the coincidence of technological and digital revolution, the spirit of 9/11, the undemocratic course of events in the European Union and the financial and economic crisis.

1. Digital technology drastically changed society. It offers unknown possibilities as for knowledge, culture, opinions, and contacts for a comfortable, safe, and efficient society. Modern technology and communication encourage the desire of citizens to be involved in decision making and power.

This modern technology implies new threats for human rights. Technology as such is not the problem, but the way how it is used. It is also being applied to watch over unsuspecting citizens to an extent without precedent. As a result of the cumulative effect and proliferation of new surveillance technologies, authorities, companies and institutions are constantly watching us. Everyone has become a target and a suspect now.

2. This development comes together with a democratic crisis. Separation of power, human rights and the rule of law are affected. An evolution evoking parallels to the thirties from the 20th century, which could lead to fascistic regimes.

The executive power – government, ministers – obtained a dominating position at the cost of the legislative and judicial power. The police, the prosecutor's office and the secret services – repressive instruments of the executive power – saw their scope and power increasing. Institutional reforms complying with democratic principles are necessary, but even the most democratic Europe does not escape the fact that the community in Europe is actuated by the interests of multinationals and of companies. The more democratic organizations are working, the more possibilities the population has to defend its interests and to stand up for a better world.

3. The spirit of human rights was "almost" lost by the climate of 9/11. The war on terror was abused to knock down human rights. Exceptional laws were introduced but were never rescinded afterwards. The exception became the rule.

Apparently strongly anchored human rights such as prohibition of torture, privacy, but

also political freedoms (freedom of expression, press, organization) were in reality trampled on.

However, it is not all trouble and affliction for the realm of human rights. For instance, in the last few years the rights of oppressed and discriminated groups have been affirmed. The fundamental rights and freedoms were forged by previous generations. After the victory on fascism and under the influence of the anti-colonial battle, a series of progressive achievements were included in the international right. These were under pressure during the Cold War, after 9/11 and nowadays with the financial and economic crisis. We should not accept that further sacrifices are being required in this area. We should protect them, have them be respected, promote them and make them common property again.

4. Terrorists should be vigorously fought. But not only by means of repression and through the military, and certainly not by undoing human rights. The social-economic underdevelopment must be dealt with; world conflicts keeping terrorism alive should be resolved. We must fight for liberation and radically trade union and political opposition or no terrorism.

5. Safety is a right of all citizens. But safety has become a container concept, used to introduce general population control, at the cost of privacy and freedoms. Safety was also inappropriately quoted to act in a repressive way in common areas. True safety management pays attention to social and economic causes for unrest and street crime.

6. In 2008-2009, countries poured about 2.000 billion dollars into banks. An amount that was never seen before. The financial and economic crisis also caused an employment crisis. In two years time, about five million jobs disappeared in Europe. Social achievements are at risk. One European out of six is poor. The crisis made holes in the budgets of countries. The governments have draw up saving plans "without taboo", leading to a step back in social matters. It has been questioned if the social system is causing all of this. Resistance against this course of events is in crescendo.

The evolutions in the field of human rights, the control and the repression are not unlinked to social-economic problems. If the population does not readily accept these sacrifices, they may eventually be required to accept them unwillingly, through the strong hand of the law. The development of the controlling states has to be seen in this context as well.

7. After 9/11 the democratic movement has been paralyzed. Only few individuals had the courage accusing a policy that included torturing and decreasing human rights. The tide is turning. Awareness is growing that understands that things are going the wrong way for democratic rights. There is alertness and resistance not to willingly give up fundamental rights without a struggle. In Germany, the Constitutional Court nullified the controversial data retention law (the transposition of a European directive) after a complaint from 35,000 Germans.

We have to go back to the spirit from progressive times, characterizing the world of the fifties and sixties, after the victory on fascism and colonialism.

It is not excluded that the policy resulting from this crisis will further affect democratic and social fundamental rights.

This charter wants to offer a framework, ideas and constructive proposals for mobilization to defend privacy and fundamental rights in the new decade.

SECTION 1

CHERISHING, DEFENDING AND EXPANDING HUMAN RIGHTS

Article 1

The democratic fundamental rights and freedoms of the citizens are inviolable.

Explanation

The rights and freedoms – the human rights – are written down in the constitutional law, in the European Convention on Human Rights (ECHR), in the European Social Charter of 1961 of the Council of Europe, in the United Nations Conventions of 1966 regarding civil, political, cultural and social rights and freedoms, and in the Charter of Fundamental Rights of the European Union. Reference is also made to the Stockholm Program, pointing out the lines for European policy regarding justice, police, state security, and migration.

However, an acute infringement of fundamental rights is still at stake. ‘The spirit of the Europe of the Human Rights was almost lost on September 11th 2001.’ (J.F. Leclercq, Procurator General at the Belgian Court of Cassation) ‘Fact is that the war on terrors has been misused for many years now, under the pretext of protecting citizens, knocking down the protection of human rights and the right to a defence.’ (Jo Stevens, president of the Order of the Flemish Bars)

What really matters now is restoring rights and freedoms, and demanding that the authorities to respect them. Human rights are fundamental guarantees that are always valid, and are valid for everyone. They are not a luxury for good times.

Article 2

The right to privacy and other fundamental rights have an information aspect. The authorities have the duty to inform citizens which fundamental rights are theirs and its real content is. Without this right for information, fulfilling fundamental rights is out of the question.

Citizens should consciously save their privacy. Awareness and understanding how the authorities and companies deal with these are both crucial.

Explanation

European citizens often don't know what is going on in the realm of privacy. They are not aware of decisions taken on the European and national level. They only have a faint idea about how technological control means are applied and how new technology threatens to realize full control on all citizens. They have no idea to what extent the controlling and repressive state has become reality and what is about to happen in this field. Knowledge of and consciousness about big brother must be increased.

Article 3

§1. Everyone has the right to have his private life, his family life, his house and his correspondence respected. An intrusion on one's privacy should be possible by exception only, and this should respect the criteria contained in article 8 of the European Convention on Human Rights (ECHR): established by law, necessary in a democratic society, and proportional with regards to its goal.

§2. Privacy is a right to counteract, with which citizen can defend themselves against the farfetched interference on the part of authorities and third parties into their private life.

§3. The right of privacy and the right of physical integrity are central freedoms. Generalized spying and the use of torture are unacceptable.

Explanation

Human rights are a restrictive framework for all governmental action. Certainly privacy is not an absolute right, but its restriction should be an exception, not the rule.

The right of privacy cannot be balanced against safety. The balance theory is wrong because it implies inevitably that both safety and freedom lose, because both of them are weakened by this compromise. Balancing freedom against safety has no judicial base, as they are no analogical fundamental rights weighing both the same and hence suited to be balanced against each other. Freedom is a central value at the core of all international conventions on human rights. The starting point must be a juridical pyramid, where privacy and other fundamental rights are the base for safety to be built on. The roof protects the house from rain and thunder, but without foundations neither house nor roof can be constructed.

Article 4

Respect for privacy is a required condition for making full use of political rights and freedoms. Freedom of expression, freedom of press, freedom of organization and the right to strike can only flourish when authorities, companies, associations and private persons respect the private life of citizens.

Explanation

The political and social life of citizens is paralyzed when the latter have to reckon that all one's actions are permanently watched by the government. Freedom of action and organization of the unions, of environmental protection associations, of peace activism, and of the civil midfield are levers for a democratic society.

Article 5

Technology can be applied only if it doesn't commit improper infringement on privacy and on other fundamental rights and freedoms.

Explanation

Fundamental rights are the standard for judging the introduction of new control technology, and not 'what is technically possible' or 'what permits a more efficient course of events'. New technologies make it possible to have a total impact on the privacy of citizens. Strict and drastic measures are needed to keep this control under control. Respect for personal privacy should be the rule once again; the exception should remain an exception. Thinking and acting in this field should be reversed completely.

Article 6

New technologies should not give occasion for alienation. They should only be applied if there are no good human alternatives.

Explanation

The use of new control technologies also requires a consideration of its impact on human relations each time. Control by machines and instruments contain the risk of dehumanizing people and reducing them to objects.

Cameras used in public transport, for instance, are acceptable only if their purpose cannot be reached by means of normal human intervention. It is alienating that machines decide who is a danger for society by means of profiling based on software programs.

Article 7

The freedom to stand up for alternative, democratic social structures. Respect for the right of people to choose their political status and the economic, social and cultural structures of society in all freedom.

No criminalizing of those who stand up for another world.

Explanation

The right to self-determination implies that people decide on the society they want to live in.

Anti terrorism laws also criminalize movements standing up for different models of society. There are also specific anti communistic laws and resolutions decreeing invariability of the existing social order.

In Europe, today – as was the case in times of McCarthyism and the Berufsverbot – organizations criticizing system excesses, standing up for socialistic forms of society or postulating that the class struggle is a reality, are being persecuted and forbidden.

Article 8

§1. Restoration of the international right to stand up against tyranny and oppression.

Respect for the distinction, in international right, between terroristic groups on the one hand, and liberation movements and warring parties on the other hand.

§2. Effective punishing of terroristic deeds and aggressive war, war crimes, genocide and acts against mankind.

Explanation

The international right that was established in the aftermath of the Second World War formulated the framework of the right to opposition in, amongst others, the

Universal Declaration of Human Rights, the Conventions of Genève, the United Nations' Conventions on Human Rights of 1966, and the Resolution of the United Nations of 1970. It allows making a distinction between what is a terroristic group and what is a legitimate resistance movement. Respecting this distinction allows a more efficient fight against terrorism and prevents misuse.

The international right created a framework for punishing serious crimes committed by countries and their leaders in an effective way. Whilst judging, respect should be yielded to the sovereignty of nations, the independence of the courts and the political impartiality of the prosecutions. The international criminal court of Den Haag and the universal jurisdiction of the countries must be evaluated in view of these principles.

SECTION 2

DEMOCRATIC INSTITUTIONAL MEASURES

Article 9

The European Union should respect and apply the institutional rules of the democratic state-building. The legislative power should be exclusively and completely in the hands of the European Parliament and of the parliaments of member states. The executive power should not make up the laws, but execute them. The judicial power controls and interprets the application of these laws, but should not act as legislator.

Explanation

Since the conventions of Maastricht and Amsterdam, the executive power (the European Commission, the European Council) has taken control of legislation in the European Union. Through the Lisbon convention, the legislative competence of the European Parliament and of the parliaments of the member states has increased, however, they continue to not have any right to take the initiative for creating new laws.

The separation of powers – legislative, executive, and judicial power – should be respected, because this trias politica is a condition for a democratic balance of power in a state. The full legislative power should be returned back into the hands of parliaments, they are the only institutions elected directly by the population.

The European Court of Justice puts the four dogmas of the free market (free movement of goods, capital, persons and services) above the fundamental rights, such as the right to strike, in its jurisdiction. In this way, the fundamental rights and freedoms have become subordinate to the four so-called economic freedoms that are incorporated in the EU-convention.

Article 10

§1. On European scale, it is essential to take appropriate institutional measures in order to comply with the democratic principle that 'all power comes from the people'. This implies that the European structures have to be set up and controlled by the population and with respect for the rights of the member states. This framework offers the best guarantee for a respect of the fundamental rights.

§2. The outlines of these institutional measures can be stipulated as follows:

- The European Parliament consists of two chambers. The first chamber is the direct representative of the population; the second chamber represents the member states of the European Union. Both chambers are elected by citizens on separate lists.

The first chamber of the European Parliament exercises the legislative power, including the right to take the initiative to propose new laws. The second chamber has an advising role for new legislation and can exercise their veto against any new legislation from the first chamber with a two-thirds majority.

- The national parliaments and member state parliaments are responsible for all matters that belong to their competence according to the rule of subsidiary.

This implies that all European bills preceding national parliaments are proposed for subsidiary control. If one half of national parliaments plus one are convinced that the bill is not a matter to be decided upon on a European scale, this counts as a veto. European legislation should respect the principle of non-regression; no new laws can be imposed implying a regression as for fundamental rights or as for social achievements of the member states.

- The European Council and Council of Ministers are no longer institutional organs of the European Union. A European government, whose president becomes the European president, should have the approval of the two chambers of the European parliament. The budget for this government is voted by the first chamber.

The European government executes the laws of the European Parliament, but has no legislative power of its own. However, it can propose bills to the European Parliament.

- All changes to basic EU conventions are proposed for approval or disapproval to the EU citizens by way of referendum. These and other forms of direct democracy must be developed.

- Lobbying at EU institutions must be strictly regulated and controlled. Any institutional lobbying role within the EU framework should be abolished. Advice from independent experts should be given greater importance.

- The principles of transparency apply to European agencies and institutions. A special commission of the European Parliament is watching over this.

All assemblies of the Parliament are normally public.

Full public access, and the right to inspection all documents of the European Parliament and of the European government, must be given in order to achieve citizen involvement.

Explanation

The states that came into being after the civil revolutions of the 18th century have chosen a parliamentary democracy, where elected representatives of the people constitute the laws. This democratic principle has been eroded and can be restored by the proposed measurements.

Subsidiary is a (difficult) democratic principle, implying that decisions are made by the elected organ which is more closely involved and most competent to make decisions in this matter, taking into account the case on which a decision has to be made.

Article 11

§1. Police, public prosecutor and secret services should not become a state within the state.

§2. The European agencies and institutions of police, justice, secret services and migration should become under direct control of the Parliament, with contribution of the national parliaments. Also the special methods used by these services should resort under a mixed parliamentary-judicial control. The estimates of these agencies must be approved of by the first chamber of the Parliament.

§3. Independent control organs should offer specific monitoring for the protection of personal data and databases, especially monitoring compliance with the principles of purpose limitation and purpose linking. Positive advice from the European Data Protection Supervisor is mandatory for all new laws and measures which impact personal data.

Explanation

By means of the so-called BIM-laws (laws regulating special information methods, BIM is the abbreviation of 'Bijzondere Inlichtingen-Methoden') and BOM-laws (laws regulating special investigation methods, BOM is the abbreviation of 'Bijzondere Opsporings-Methoden'), the possibilities for action and the power of the police and the state security have increased substantially in Belgium.

In the field of police, justice and intelligence services, the European state machinery is worked out without any type of control worth speaking of. This control is essential to avoid that 'states within the state' come into being with their own agendas.

The national privacy commissions and the European Supervisor should have more space for action and more means.

SECTION 3

SPECIFIC PROPOSALS FOR PROTECTING PRIVACY AND COUNTERING A CONTROLLING STATE

Article 12

§1. New control technologies should receive a mandatory privacy label from the European Supervisor. This label should be accompanied by a privacy impact assessment. A commission of the European Parliament must check this and, if necessary, issues this label.

§2. New control technologies should be developed according to the rule of privacy by design, meaning that privacy should count as central focus from the very start of designing these technologies.

§3. As for the internet, it is essential to take urgent juridical measures protecting privacy.

§4. Nobody should be excluded from the internet, except in case of penal code infringement, and only by judicial order.

Explanation

Stimuli are necessary in order to give priority in technological research towards the development of new technologies that protect the privacy.

More precisely, rules are needed for deleting internet data permanently, in view of the civil right on forgetfulness, the right to be forgotten.

Article 13

The citizens have the right to have full access – through an easy, costless and quick procedure – to all of their data contained in databases of the authorities and of third parties. Exceptions to this can only be made for specific reasons in connection with public security, public order and protection of fundamental rights of other citizens.

This access should lead to mandatory correction of incorrect data and to a permanent deletion of data which does not correspond with purpose limitation and purpose linking.

Explanation

It is crucial that the citizen himself is able to obtain information about and can exercise an effective control on what is saved about his person by whoever, and that this data can be deleted if it should not belong in that database.

Data deletion should take place within strict periods of time, when they are no longer necessary for the purpose for which they were saved.

Effective sanction must be imposed on persons and organs transgressing the rules of purpose limitation and purpose binding, and the rules for correction and deleting personal data.

Article 14

All supervising cameras that are found to be redundant, or against the rules of privacy, should be removed. New supervising cameras should only be installed upon approval of locally elected bodies (municipal council, regional parliament, committee for security and protection ...) upon consultation of the citizens involved and after a consideration of the criteria contained in article 8 of the ECHR.

Explanation

About 90% of all supervising cameras are useless in the struggle against crime, terrorism or disturbances.

Article 15

Withdrawal of the biometrical passports with RFID chips.

Withdrawal of agreements concerning exchange of data on airplane passengers, which are not respecting the privacy.

No RFID chips with personal data contained in public transport tickets.

Explanation

Biometrical data saved in RFID chips contained in passports puts privacy at risk. General identity controls of airplane passengers are justified, but should be restricted to specific identification data, and should not be broadened to other personal data. Laws and projects exchanging data that is not purely for identification (PNR-data), mandatory for flights from Europe to the US and flights inside the European Union, should be absolutely forbidden.

Article 16

Withdrawal of the European directive concerning data retention. All blacklists and databases of social and political activists should be forbidden.

Explanation

This directive compels the member states of the EU to create legislation making it mandatory for providers and telecom companies to keep a general storage of telecom and internet data for a period of six months up to two years. This directive goes counter to the rule contained in article 8 of the ECHR, according to which a general storage of personal data not intended for a specific purpose is forbidden. The constitutional courts of Germany, Romania and Bulgaria nullified the laws of data retention in these countries as being against privacy.

Article 17

Withdrawal, or at the least an amendment, of the legislations for the execution of the Framework Decision of 2002 of the European Union in combating terrorism. Cancelling the supplementary EU Framework Decision of 2008 in combating terrorism and the broadening of the terrorism notion to 'extremism' and 'radicalism'.

Abolition of all lists and sanctions made up by the executing power. Sanctions such as blocking finances of terrorists should be imposed by the judicial power.

The removal of all organizations from the administrative terrorist lists who, as for their activities, comply with the definition of liberation movement or warring party.

Explanation

These legislations create a danger to freedom of expression, freedom of religion, the right for free association, press freedom, and solidarity with the third world. The EU Decision Framework in 2002 introduced a large political offence under the flag of war on terror. This has led to excesses focusing on all kinds of political opponents who have nothing to do with the classical notion of terrorism. 'Extremism' and 'radicalism' are notions that are so very large and subject to so much interpretation so that political and social movements that are not following the mainstream are now pursued under the logic of war on terror.

Broadening the definition of terrorism to include inducing it and the rendering recruiting and training of terrorists a criminal offence, has increased the danger of abuse substantially.

The administrative terrorist lists are compiled by the executive power, which in this way plays the role of legislator and judge at the same time. This is leading to misuse. An independent judicial power should take over this matter.

Article 18

Privacy is also at stake in the workplace. Sanctions are given to employers who infringe specific collective labour agreements. A ban on the so-called track and trace systems and of the use of private detectives to shadow employees.

Explanation

Controls on the shop floor are not only at odds with privacy, they are also an important cause of employee stress.

Track and trace systems, an application combining gps and mobile phone through a box contained in vans, so as to know at any moment of the day where a company vehicle is, infringes privacy rules.

CONCLUSION A LARGE UNITED FRONT

Defending fundamental rights must also take place at the European level. Within the member states of the EU there is a need for consultation and for exchange of experiences. Joint projects and programs are needed, within and outside of the parliaments, in politics, in trade union, and in the cultural and social field. A large united front for the protection of fundamental rights in Europe must be the order of the day.

DUTCH

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This Charter “2020” appeared in the book “Big Brother in Europe” by Raf Jaspers, published in 2010 by EPO, Antwerp, Belgium. The author is a lawyer from the Progress Lawyers Network. The book analyses the evolution of Europe towards a Big Brother society through the conjunction of the digital and technological revolution, the 9/11 climate and the authoritarian grip of the European Union on decision making. The Charter gives expression to the legal and political perspectives for resistance against these dangerous developments which threaten citizens’ rights and democracy.

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