

DIDIER REYNDERS

Commissioner for Justice in charge of Rule of Law and Consumer Protection at the European Commission

Ali Aslan, International TV Presenter and journalist

Hello everyone, ladies and gentlemen. My name is Ali Aslan and I am an international television presenter and journalist. I have the great pleasure and privilege to moderate this upcoming session, which promises to be very interesting and timely because we have none other than the European Commissioner for Justice, Didier Reynders, with us. Lovely to have you here, Commissioner. We have been talking a lot about democracy in the previous 24 hours, privacy, human rights, values, all these labels have been going around and been mentioned throughout the sessions here. However, there are some worrisome tendencies. As a matter of fact, the National Endowment for democracy is saying that democratic countries are more susceptible to authoritarian tendencies today than at any other time in the post-Cold War era. It is troubling and worrisome that Europe, which for many years if not decades, has been a bulwark of democracy, is not exempt from that. On the contrary, there are countries like Hungary, Poland, Slovenia and even Austria these days, where we are seeing some authoritarian tendencies. As the European Commissioner for Justice, how concerned are you?

Didier Reynders

We try to deliver at the EU level on that and so, we try to be sure that it is possible to continue to organize a rules-based system. If you want to do that you need to pay attention to the rule of law, to the democratic process and to human rights. Of course, we try to do the job at home in the EU, first to protect the EU but also to be credible outside. When you mentioned some member states, what we try to do is first to engage in dialogue with the member states. For the first time last year we published a Rule of Law report on the 27 member states and I must say that we have received many positive reactions to improve the situation in the different member states. However, sometimes you have a more systemic issue and you have mentioned some member states, and there we need to use other tools. In brief, one, we have the possibility to go to the Court of Justice, the highest court in Europe, to ask for a decision and to impose some evolutions in different member states. This is the case, and we have received a positive reaction from the Court of Justice in the last months, but if this is not enough, then we also try to make a link between the funding of different policies and the protection of the rule of law. If there are some breaches of the rule of law, it is possible to suspend or to stop some funding. For example, in the last years we have seen attacks against the LGBTIQ community, so we have suspended some funding and we will continue to do so, with success. We have had a huge mechanism since the beginning of this year, which is a so-called conditionality that means if we have a real breach to the rule of law in one member state, it will be possible to suspend or stop all funding, not just specific funding but the MFF

and all the recovery and resilience facility. To finish on this, you may have seen in the last few days that we have been discussing the Recovery and Resilience plan we have proposed to start the recovery in Europe. If it is impossible to see reforms on the independence and quality of the justice system or the fight against corruption, it is possible to not fund the Recovery and Resilience plan in some member states. You mentioned Poland and Hungary and we are still in discussion about that because we have put some country-specific recommendations in our analysis of the budget of the so-called European semester in Europe and we link it; if it is impossible to implement reforms in relation to that, we do not want to fund new developments in those countries

Ali Aslan

You have already mentioned some of the measures in your toolbox as European Commissioner. However, there are some European politicians who have said after the European Commission released its latest annual Rule of Law report, that the report is toothless because at the end of the day there is an absence of recommendations against violators, and actual real-life tools that you can use against these countries. I take it that you disagree.

Didier Reynders

Yes, I disagree because the conclusions of the two first reports in September last year and July this year, were very clear and that may be the reason you have seen concrete reforms. In Italy, they are voting now for reforms to the justice system on the basis of our conclusions. However, to be clearer we have decided that we will provide concrete recommendations next year, as was said by President of the Commission in a speech to the European Parliament, because it will be a symbol to say that we recommend something, and the follow-up may then be more evident. Again, do not have any doubts about that, in a very large majority of member states, the report from the Commission is an important tool to start discussions about reforms. It creates real pressure because there are real intentions to improve the rule of law. However, it is not enough in some countries and we need to use all the tools, as I said the Court of Justice or discussion of the funding. We have the same discussion with the Council of Europe or the World Bank, or candidate countries, because we ask them before their access to the European Union to fulfil all the criteria on the rule of law, human rights and democracy but it is always the neighboring countries. We do the same with our dialogue with all our partners and we have started a new partnership with Africa, and I have asked that the same approach to the rule of law is included in that.

Ali Aslan

Interestingly enough, it was only 30 years ago that Francis Fukuyama wrote *The End of History*, implying that liberal democracy was going to triumph and, of course, he mentioned Europe as one of the places that would lead the way. Now, we have countries in the heart of Europe that are deeply undermining the independent judiciary, freedom of the press, sexual orientation, all these things on a daily basis. You are a very experienced politician who has been around for a long time, including as a Belgian minister for 20 years. What are your sentiments? Are you surprised, shocked, dismayed, disappointed at the events that have unfolded in previous years?

Didier Reynders

I am sometimes disappointed at the evolution and certainly the determination to undermine the justice system to be concrete. However, I am not that surprised because for many years we have paid attention in Europe to the budgetary situation, the economic and social conversion, but not so much the values. After the accession to the European Union, we said it was done and they fulfilled all the political criteria, so there was no need to verify that. For a number of years, maybe since 2016, I was in the Council at that time and we started discussing a possible verification of the values and respect for the values, like we have for the budgetary situation. Since the banking crisis and sovereign debt crisis 10 years ago, we have enhanced controls on the budget. Now maybe with the evolution in some member states to authoritarian regimes, we are also paying more attention to values and that is very new. However, as I said, it is not just about paying attention to that in the EU, it is also so that we are more credible when we discuss it with other countries. We want to have common standards in Europe, sharing the same values, but we also want to have an influence on the rest of the world. Let me just give you some examples. I listened to the previous discussions about health and when you try to protect privacy and personal data you need to put regulations in place, which in Europe is the GDPR. In the three years since its implementation, we have seen that privacy laws and the same kind of regulations have been implemented in many parts of the world, not just California or South Korea, but also Kenya. We are increasingly moving to standardization on the basis of the same values with some likeminded partners. It is the same on consumers and I am in charge of consumer protection. Of course, we need to protect product safety and make sure that consumers get safe products, which is the reason why we are engaged with a dialogue about that with China. You know that 70% of the unsafe products in the open market come from abroad and not from European companies but we also need to protect consumers' data when they are doing more and more shopping online, as you know was the case with the pandemic. Then we also try to establish new regulations for the protection of the environment, fighting climate change and protecting biodiversity, the protection of human rights, in order to organize corporate governance in the companies. In the next few weeks, I will come with a proposal about sustainable corporate governance, which means the obligation to put into place a due diligence process on the company's own operations but also the supply chain, to verify possible negative impacts on the environment and human rights. For example, we have listened to a lot of comments about China in the last couple of days, but we want to fight against forced labor and ban the introduction onto the open market of products that include forced labor. That means that when you speak about rule of law and fundamental rights, it is important to deliver at home in the European Union and to take care of it in different fields, so that we can have an influence with likeminded partners on standardization at a global level. That is very important and the GDPR was a good example. I am hoping that we will have the same impact with sustainable governance as the Paris Agreement has had on climate.

Ali Aslan

Indeed. You have mentioned that the credibility of the European Union is very much at stake in what you are trying to do. When you go around the world and talk to other ministers or commissioners and try to point out, for lack of a better term, the deficiencies in democracy and human rights, how often do they suggest you get your own house in order first?

Didier Reynders

Well, first of all we explain that we are now monitoring the situation in all the member states but, if necessary, we take action. In practical terms, you mentioned the independence of the justice system and I have asked the Commission to go to the Court of Justice to impose daily financial sanctions against Poland concerning the independence of the justice system. It is not just a question of talking; it is about taking concrete action. We have asked for the same things in other parts of Europe, maybe with candidate countries or Eastern partnerships, but also in the world. I have had many discussions with the World Bank about that and we also try to link that with the funding of different policies and at least the respect for human rights and fundamental rights of citizens. Of course, it is probably easier to discuss it with our likeminded partners, but we also need very strong discussions with them too. I just want to say that first, if we want to be strong, we have to deliver at home and increasingly, we need so-called strategic autonomy so that we can manage our development in some fields ourselves. This was very clear during the pandemic with vaccination; we are the first continent to provide vaccines to the rest of the world and we have real capacities in the vaccination process. We have had discussions over the last few hours about AUKUS and different evolutions in the security field and we need to continue to invest in our own security so that we can be more autonomous and able to have real discussion in alliance with partners on an equal footing.

Going back to our first issue, when we discuss data protection, of course we have the GDPR, but we want to see if it is possible for the protection to accompany the data. That is, when you travel with data to the US, you need to be sure that the protection is going too. I am currently in discussions with our US colleagues on a success for the so-called privacy shield, so that it will be possible to organize the transport of data to the US, as we have organized with Japan and South Korea, with the same protection of personal data. Of course, there is industrial data and that, by contrast, is better to exchange and to open access for start-ups, researchers and developers. However, your personal data is very important and what I have seen in some member states, as well as the world, is that there is a real conflict between some of the goals. I have sometimes listened to comments saying that of course privacy and protecting personal data is important but we have a security issue, and we need access and data retention. Others say it is important to have economic development, so you need to protect the data but also exchange and use it, but if it is your personal data you need to protect it. We have just listened to the discussion on health, and it is the same; you want to be sure that your personal data is protected but there are many actors asking for access. You probably have your smartphone with you and that was why we organized the digital Covid certificate just before the summer. I was in the Parliament and Council to get agreement on new legislation in two months' time, which is very quick at the EU level, but with the major condition that there is a limited amount of data. We do not need to know whether or not you are sick with another disease, we need to know if you are vaccinated, have had a test or recovering from the disease and that is all. There is no information about your brother or any other issues. That is important and we are now in discussion with numerous partners to see if it is possible to implement the same system with the same protection.

Ali Aslan

You mentioned the procedures the European Union has started against some member states, including Hungary and Poland. In return, some of these countries are verbally threatening to leave the European Union. They are saying that if you push us too hard to take European Law over our national law, there could be consequences. The European Union has already lost Great Britain, how concerned are you? As the Minister for Justice, how delicate is it to strike the right balance between ensuring that values, human rights and the rule of law are being guaranteed, without expelling or losing other members?

Didier Reynders

In fact, there are two elements in discussion with some countries and that is the first one. Of course, it is possible to disagree with the European Commission. It is a political body so if you put in place legislation in one member state that we are sure is discriminatory or a breach of the rule of law and the independence of the justice system, then it is possible to explain, no, we have other goals. However, if we disagree it is possible to go to the Court of Justice and when it delivers a decision, that is a binding decision. We try to explain to all those member states that they signed a treaty where Article 2 explains the values and we share the same values. We have a charter for fundamental rights and different laws, and if in the end it is possible to have a binding decision of the Court of Justice, then it needs to be applied. That is the first answer. Of course, we may disagree but not again, like in the United States when you have a decision of the Supreme Court, like at the national level. Now we need to put pressure on different member states to maintain certain principles because there is a risk of a spillover effect from one country another one, maybe from Germany in some case to others. If we challenge the decision of the Court of Justice, it is our highest jurisdiction. If you disagree with European law, you do not need to attack the highest court of justice, you need to change the law. For example, we have a lot of debates about migration, and we have tabled a new Migration Pact. We are changing the law, so there is no need to attack the authority of the Court of Justice. Another comment I have often heard in discussions with some member states is that they are elected. They are explaining that democracy is the only answer and if you are elected and form a government, then you can change the rules. No, there are some limits because that is the rule of law. I come from a country where it is sometimes very difficult to form a government, not the only one because there are others in Europe, but if you are able to form a government with only one party there are some limits on your possible action. The limits are in your own constitution, the EU treaties and also international rules in relation to rule of law, democracy and fundamental rights. We do not need the same system everywhere. We have 27 different electoral systems, and the system in my country is very difficult to understand, as well as yours, and there will be a presidential election in France next year. Therefore, we have different systems, but we are quite sure they are democratic, and it is the same for the justice system and various other elements. We do not expect them to be the same, and I understand comments about different culture and history, but they need to comply with the values and that is the main issue. Again, if we do that at home, it is possible to discuss it with other partners and try to form a group at international level that is going in the same direction. Of course, some are easier than others and I want to repeat that even with the many difficulties we may have had with the United States in the last weeks and months, we are allies. We are likeminded and share the same values and we try to convince them to work together with us at international level, though it may be more difficult with some others.

Ali Aslan

There is also development we are seeing on a global scale, that is of democratic countries being increasingly susceptible to authoritarian tendencies. For example, there is the storming of the Capitol in America and a President who did not acknowledge the results of the election. These are setting bad examples for the rest of the world, so it is probably becoming more difficult to set a different example and insist on democratic values and human rights across the globe.

Didier Reynders

Of course, and the events on Capitol Hill are why the new President, Joe Biden, decided to try to organize a summit on democracy. However, it is not the challenge to the internal democracy in one country, it is the fact that it is combined with bilateral actions and no more multilateral actions. If I look at the difference between the previous administration and the new one, in the last few days we have seen that there are common approaches on some specific issues in the world. The main difference is a real willingness to take part in multilateral discussions and of course, we will see if this is the reality. However, to be able to take part in multilateral discussions again with a real capacity to defend our positions as Europeans, we need to be strong in Europe again on democracy, human rights, etc. We also increasingly need to build our own strategic autonomy. That does not mean that we are against other countries, but we want to be sure that we are discussing things on an equal footing with different partners. When it comes to health policy, I saw in the Commission that we did not have any competence in health systems at the EU level because it is a national competence. Due to the pandemic, we have built a new policy day after day and now, there is a common agreement in the member states that we need a European health policy. I am hoping that security and defense, control of external borders and various other issues will be the same. If we do not do that, we will have more turbulence in the EU and we will use our credibility in discussions with other countries. We are not going against other partners, but we need strategic autonomy in the EU, and we need to do the job at home. I try to do that on democracy and human rights, and it is also important to pay attention to what is said in the electoral debates in many member states. We need to repeat that we have to work together with some principles. As I said, the principles are the primacy of EU law when the opinion is competent, but also the fact that you must apply the binding decisions of a high jurisdiction such as the European Court of Justice, like the highest courts at national level.

Ali Aslan

Being Commissioner for Justice with 27 member states cannot be easy by any stretch of the imagination and I cannot imagine getting everyone onboard. In fact, if we look around the world, put on global glasses and look beyond, you see different alternative models. During dinner yesterday we had President Kagame of Rwanda, which some might argue is an imperfect democracy, but it is a functional system and the same is true in other parts of the world. Is democracy the be all and end all it used to be, at least on paper? Or is it a slippery slope if we say there is an argument to be made on democracy versus efficiency? Sometimes to be efficient and get things done you may have to compromise on some democratic elements.



Didier Reynders

I would say that my first priority is the rule of law, that we want to work with a rules-based system and be sure that there are some rules. Of course, it is clear that we promote democracy, but more than that we promote human rights. It is very important in all the systems around the world that we can discuss the protection of human rights with leaders. The lack of a democratic system does not make violations of human rights possible, even though it may be a tendency and I do not want to separate the two. However, it is very important to continue discussions about human rights, dignity of individuals and the results of a real democratic system. That is very important at worldwide level and in the last discussions we had with the African Union, I would say that it has all the components. It is not about giving lessons, but more about sharing common values and full respect for human beings and you have to pay attention to that even if it may be possible to say that they have different systems. Just to give a last example, you know that we have the Istanbul Convention at the European level but more the EU, to do a lot of things. I completely understand that it is possible to have a different concept of the family and we have that in Europe, but violence against women or children is a crime. We have said at the EU level that if a country does not want to ratify the Istanbul Convention, we will organize our own process on crimes against women and children. It is also possible to explain that in many countries in the world where they do not have a democracy, it is still not normal to have violence against women or children.

Ali Aslan

You are saying that some elements and rights are non-negotiable, they are fixed and should be respected and upheld.