Amnesty International
EU Office

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Michael Mac Dowel
Minister of Justice, Equality and Law Reform

Tuesday 20 January 2004

Dear Sir,

I am writing to you in your capacity as the President of the JHA Council of the European Union in order to express Amnesty International concerns regarding the draft Council Directive on Asylum Procedures and the potential far-reaching impact of the "safe third country" concept on the principle of non-refoulement. In the memorandum recently presented to the incoming Presidency, Amnesty International has stated its concerns regarding the actual protection of human rights within the European Union[1]. Amnesty International's regular biannual reports on human rights in Europe have consistently included the majority of EU Member States (as well as the majority of candidate countries). These reports show a pattern of abuse by law enforcement officials, including torture or ill-treatment and excessive use of force which may occur in particular during expulsion or deportation of foreign nationals.

Amnesty International's repeated call to the European Union and its Member States to effectively implement their domestic human rights commitments is all the more relevant within the context of the common European asylum policy. Although it is aware of the political pressure that EU Member States are facing in meeting the deadlines set up by the EC treaties, Amnesty International is very concerned that such pressure may lead Member States to adopt common standards that would breach the Geneva Convention and other relevant instruments of international refugee and human rights law.

Amnesty International understands that the definition of the "safe third country" concept will be debated again at the forthcoming Informal JHA Council. A detailed analysis of the questions to be raised is set out in the annexed aide-mémoire[2]. In recent months, this issue has been at the centre of protracted and arduous negotiations. Despite repeated warnings by UNHCR and NGOs such as ECRE, no positive evolution occurred and Amnesty International remains seriously concerned that the Member States may compromise on provisions that are legally flawed, and which would allow them to shift their responsibility to third countries, regardless of meaningful links the applicants may have with such countries and the existence of durable solutions in the third State[3].

Of particular concern to Amnesty International are amendments put forward by some delegations to the

[1] Amnesty International, Human Rights Begin at Home, Recommendations to Ireland's EU Presidency, 12 January 2003.

[2] See Amnesty International, Aide-mémoire on Articles 28 and 28 A of the Commission's Amended Proposal for a Council Directive on Minimum Standards for Granting and Withdrawing Refugee Status before the Informal Justice and Home Affairs Council 22-23 January 2004.

[3] UNHCR's letter to the Italian Presidency, JHA Council 27-28 November 2003; ECRE, "Appalling flaws in directive on asylum procedures still not addressed", press release, 26 November 2003.

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effect that close connection with the readmitting State and readmission of the applicant are alternative rather than cumulative grounds for application of the "safe third country" principle. Amnesty International is highly concerned by these attempts to weaken the safeguards regarding the actual link with a third State. Indeed, it seems that this principle could be applied in situations where a person has actually never been in the third country, the only condition would be the consent of the third State to admit. The adoption of such provisions would be in contradiction with UNHCR standards, which clearly state that the asylum seekers must have had *meaningful links* with the third State. Within that context, it should be reminded that, in May 2002, the UN Committee against Torture raised serious concerns that alleged cases of deportation of asylum seekers by *Sweden* to a country where they have no significant ties and declared that it could lead to a breach of article 3 UNCAT[4].

In Amnesty International's view, the potential danger of breaching of the principle of non-refoulement is further exacerbated by the use of the "safe third country" principle coupled with readmission agreement. In a May 2003 report on the protection of refugees and asylum seekers in *Greece*, UNHCR raised strong concerns regarding potential breach of the non-refoulement principle under the June 2002 Readmission Protocol between Greece and Turkey. Although the organisation could not document any concrete case, UNHCR was concerned that interception measures or the implementation of that readmission protocol may have led indirectly to refoulement, especially in the case of Kurdish asylum seekers[5]. Similar concerns were voiced by the Greek National Commission for Human Rights, and civil society organisations. In Amnesty's view, the competent authorities of the "safe third country" must be in a position to give *effective and reliable guarantees on these points in each individual case*, regardless of readmission agreements. Amnesty International believes that it is not enough to consider that there are grounds to believe that the applicant will be admitted to the territory of a third State. Legal security is a key element of effective protection, which includes the possibility of having a *recognised legal status, and therefore having their claim processed through a fair and efficient procedure.*
Considering requirements mentioned above, Amnesty International is seriously concerned that Member States could extend to non-EU "neighbouring safe third countries" the responsibility-sharing mechanism that is in force within the EU territory known as the Dublin II mechanism (article 28 A). It shall be reminded that the actual notion of "neighbouring safe third country" is not related to any international standard and seems to be a diversion (if not a perversion) of the original "safe third country" concept. Amnesty International is concerned that Member States could endorse a concept, which is based on the assumption that the level of protection available in countries neighbouring the European Union is comparable, if not equivalent, to standards in force in Member States.

While a comparable level of protection may be available in neighbouring countries that are already taking part in Schengen and/or EFTA agreements, the idea of further extending the Dublin II mechanism is seriously questionable given the shortcomings of the asylum system is some neighbouring countries, including Romania and Bulgaria. Amnesty International is also seriously concerned by the ambiguity of the language used in article 28 A, which may allow Member States to maintain derogatory procedures or even to deny access to the territorry and to asylum procedure altogether. Given that these "neighbouring safe third countries" have no obligation to actually process the asylum claim, the implementation of such a concept may lead to refugees-in-orbit situations, and chain-refoulement, which are clearly in breach of the jurisprudence of the European Court of Human rights.

Amnesty International reiterates its call for a cautious implementation of the "safe third country" concept in line with the above-mentioned safeguards. In particular, the individual assessment of whether a particular country can be considered as safe for a particular asylum seeker should comply with minimum procedural safeguards. In any case, the applicant should be heard by competent authorities and should have a right of suspensive appeal against a decision inadmissibility. In its April 2003 observations concerning *Estonia*, the UN Human Rights Committee called for the suspensive appeal procedure regarding inadmissibility procedures[6]. The UN Committee Against Torture took a similar line in its May 2003 recommendations to

[4] Conclusions and Recommendations of the Committee against Torture, Sweden, CAT/C/XXVIII.CONCL.1, 7 May 2002.

[5] UNHCR, The Protection of refugees and asylum seekers in Greece in 2002, UNHCR Athens, May 2003.

[6] UN Human Rights Committee, Concluding Observations on Estonia, 15/04/2003, CCPR/CO/77/EST.

Belgium, where it pointed out that so-called 'extreme urgency' appeals for asylum and also appeals for annulment of deportation orders should have a "suspensive character"[7].

Amnesty International strongly believes that these recommendations should be reflected by the current proposal in the case of return to a "safe third country" as well as in the case of return to the country of origin.

Amnesty International urges the Presidency and the EU Member States to take international standards and pertinent jurisprudence into due consideration when reaching a final agreement on the relevant provisions of the draft directive.

Yours Sincerely,

Dick Oosting
Director

[7] Conclusions and recommendations of the Committee against Torture, Belgium, 14/05/2003 (UN Doc. CAT/C/CR/30/6).