

TO EUROPEAN UNION HEADS OF STATE AND GOVERNMENT

2 November 2004

On the occasion of the EU Summit 4-5 November 2004 adopting the Hague Programme "strengthening freedom, security and justice" in the EU

Amnesty International takes this opportunity to address the European Council with a critical reflection on the human rights content of the Hague Programme due to be adopted this week as a five-year policy framework designed to "strengthen freedom, security and justice" in the European Union.

The first listed objective of the Hague Programme is "the improvement of the common capability of the Union and its Member States to guarantee fundamental rights, minimum procedural safeguards and the access to justice...". It is significant that fundamental rights now appear to be firmly placed at the heart of the EU's ambition to strengthen freedom, security and justice. The recent pledge of the new Commission President to make civil rights and action to combat discrimination a top priority for the Commission provides further reinforcement

However, Amnesty International has become increasingly concerned that despite the intentions and appropriate references to fundamental rights there is too much of a vacuum in the substance of the programme as to how the stated ambition is to be realized. There is a lack of coherence when it comes to the instruments and structures needed to safeguard fundamental rights, and a lack of resources to match. The fact that asylum is principally a human rights issue seems to be lost amid all the discourse surrounding migration management. With the EU's justice and home affairs agenda driven by counter-terrorism and the fight against "illegal immigration", there is a growing risk of a one-sided emphasis on "security" at the expense of the elements of "justice" and "freedom".

Over the past five years we have seen an unwillingness on the part of the Council in particular to acknowledge and address human rights problems within the EU's own borders. This complacency contrasts more and more sharply with the scrutiny of the human rights performance of the candidate countries in the ongoing enlargement process. The sudden move to set up a Human Rights Agency does not prove that there is a real willingness yet to engage in self-reflection, and the Commission's suggestion that the agency should be "a lightweight structure in terms of staff and budget"¹ does not inspire confidence. Negotiations over procedural safeguards still lag behind the drive to intensify judicial cooperation, while the mutual recognition which is to underpin such cooperation cannot hide the lack of basic mutual trust given the significant differences in the standards of justice across the EU.

In the field of asylum we have witnessed the adoption of a very low common denominator of minimum standards that allow Member States to continue competing with their restrictive policies and that in some respects breach international law. At the same time there is a marked shift to counter "illegal immigration" through engaging with third countries in ways that blur the fine line between cooperation

¹ The Fundamental Rights Agency, Public consultation document, 25 October 2004, COM(2004) 693 final

and pressure. It is remarkable that the United Nations High Commissioner for Refugees has seen the need on more than one occasion to caution the EU not to forego its refugee obligations and risk undermining the international protection system.

It is against this background that Amnesty International has put forward a series of observations and proposals regarding the way the human rights dimension should be strengthened in the next multiannual programme for the area of freedom, security and justice². In this final appeal we remind the European Council of our main concerns and recommendations.

Fundamental rights

The inclusion of a reference to a proposal for the creation of ‘a Human Rights Agency in order to develop a human rights data collection and analysis with a view to defining Union policy in this field’ is not sufficient to demonstrate that this objective will be taken seriously in practice and adds nothing to the status quo. The EU must face up to the issue that, at Council level, there is no forum to address issues relating to fundamental rights within the EU. The creation of an ad hoc mechanism to deal with the immediate question of a proposal for a Human Rights Agency does not answer the pressing question of collective responsibility at EU level for actual and potential human rights violations in Member States – in particular, the failure of the Council to respond to the 2003 Commission Communication on the application of Article 7 TEU³.

Procedural safeguards

The initial orientations from the Presidency⁴ referred to the fact that ‘with specific regard to criminal procedure, the development of a shared set of procedural safeguards could help strike the necessary balance between the need to fight crime effectively and the need to protect individuals’ fundamental rights’. It is disappointing to see that in the final programme this balance has been abandoned in favour of ‘due respect for the legal traditions of Member States’, once more demonstrating that the EU is unwilling to take on board its collective responsibility for the respect of fundamental rights within its borders and instead hides behind political arguments on sovereignty.

Access to justice

Amnesty International is pleased to see that the Hague Programme institutes a new system ‘for objective and impartial evaluation of the quality of justice, whilst fully respecting the independence of the judiciary and consistent with all the existing European mechanisms’. However, there is reason to be concerned about the effectiveness of such an evaluation without a mechanism to address any shortcomings that are found, for example through technical assistance or, in extreme circumstances, through the possible application of Article 7 TEU. The absence of consideration in the Hague Programme for EU resources for funding of practical aspects of access to justice such as, for example legal aid or free interpreting also calls into question the practical value of the programme in terms of improving access to justice across the EU.

The implied link between ‘terrorism’ and migration

Amnesty International is particularly concerned about the perceived link between migration control and ‘terrorism’ or other forms of serious and organised crime. The Hague Programme places a high priority

² “More justice and freedom to balance security”: Amnesty International’s recommendations to the EU, 27 September 2004

³ Insert ref. October 2003

⁴ Preparation of the political orientations for the multiannual programme building the area of freedom, security and justice, Brussels, 9 July 2004, Council Doc. 11122/04, JAI 258 at p. 5

on combating racism and xenophobia yet the creation of a link between migrants and terrorism risks exacerbating this very problem and is unjustified – there is no reason to differentiate between EU nationals and third country nationals in the context of counter-terrorism.

Common European asylum system

EU Member States have now formally adopted or agreed the building blocks that were required by the Amsterdam Treaty to achieve a first phase of establishment of a common European asylum system. These instruments set out minimum standards and leave a wide margin of discretion. Amnesty International holds that Member States should go beyond the lowest common denominator and ensure that national legislation is in full compliance with standards of international human rights and refugee law. In the same vein, while welcoming the commitment to a single asylum procedure Amnesty International is concerned that the common asylum system is to be based on the low standards agreed so far and urges Member States to amend the directive on asylum procedures in order to ensure that basic guarantees are fully available in fast track, admissibility and border procedures.

While the Hague Programme makes suggestions to facilitate practical cooperation, the framework for such cooperation remains essentially inter-governmental. It is defined in very vague terms as to the specific means and resources, and leaves remaining protection and solidarity gaps notably in the context of enlargement unaddressed.

The external dimension of asylum and migration

The Hague Programme marks a decisive shift in the EU's ambition to take the fight against "illegal immigration" into the domain of external relations. "Partnership" with third countries has become a principal focus in efforts to stop people from entering the EU. However, as we have seen in the recent discussions over 'reception facilities' in neighbouring countries, there is a mass of questions to be answered in regard to the stated ambitions to control immigration, provide humanitarian assistance and support capacity building if protection obligations are to be fully respected. It is significant to note that the conditions on third countries for such cooperation have been watered down from "fulfilling the obligations under the Geneva Convention" to "demonstrating a genuine commitment to fulfil the obligations".

The external dimension of asylum and immigration opens up a highly complex area in which it will be extremely important:

- to ensure strict adherence to standards of international human rights and refugee law and in particular to the principle of non-refoulement;
- to safeguard the possibility for those in need of protection to access safety and have their claims properly processed; and
- to prevent "solutions" in the sphere of reception in regions of origin and more generally migration management prejudicing the right to seek asylum spontaneously and having the effect of undermining the international protection system.

Amnesty International expresses the hope that the European Council will take its concerns and recommendations into account in setting out the next multiannual programme for the area of freedom, security and justice, and that they will contribute to closing the gap between rhetoric and practice in regard to the realization of fundamental rights in the European Union.

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