

José Manuel Barroso
President of the European Commission

27 October 2009, Brussels
Ref: B910

Dear Mr Barroso,

Subject: Creation of a Commissioner for Justice, Fundamental Rights and Civil Liberties

On 15 September, you announced before the European Parliament the creation of a “Commissioner for Justice, Fundamental Rights and Civil Liberties including citizens’ and minority rights”. You specified that this new position was to serve “as a reflection that the EU is a community of rights and values”. At the same time, you also announced the creation of a “Commissioner for Internal affairs and Migration”.

Amnesty International welcomes this initiative as a potential way to propel justice and human rights to the forefront of the EU’s political agenda. We further take this opportunity to submit a number of observations for your consideration when developing the new position of Commissioner for Justice, Fundamental Rights and Civil Liberties.

Preliminary remarks on the proposed distribution of portfolios within the field of Justice, Liberty and Security

Amnesty International has consistently criticized both the marginalization of human rights throughout EU activities, and EU’s reluctance to shape an overall human rights policy. The limited mandate of the Fundamental Rights Agency and the lack of vision for the EU’s human rights policy contained in the Commission’s draft Stockholm programme have confirmed our concerns in this regard. In this context, a potential scenario that would create a portfolio exclusively for human rights would risk isolating human rights further from within the political debate. We therefore welcome the proposal to include human rights within a wider substantial Justice portfolio.

The split between “Justice, Fundamental Rights and Civil Liberties” and “Internal Affairs and Migration” does however raise concern. Such a split between justice and security (including migration) could indeed serve to reinforce the misconceived dichotomy between the need to protect the human rights of all people and the need to guarantee their security. Amnesty International is particularly concerned that with regard to migration policy, the key task of the Commissioner is defined as “to develop a truly common approach to migration in line with the political guidelines - promoting the integration of legal migrants, fighting illegal migration and related criminal activities, and ensuring solidarity between Member States”. We believe that such an approach is inadequate to respond to the urgent need to develop a rights based approach to migration that explicitly addresses and effectively protects the human rights of all migrants, whatever their legal status.

The new Justice, Fundamental Rights and Civil Liberties Commissioner should hold the primary responsibility in order to prevent human rights being side-tracked in the security debate, by ensuring that human rights and the rule of law are actively incorporated within both justice and internal affairs policies. Accordingly, the new Commissioner will need to pay particular attention to EU policies to fight irregular migration and terrorism.

In addition, Amnesty International submits the following considerations as relevant benchmarks to help define, and later evaluate the impact of the new position of Commissioner for Justice, Fundamental Rights and Civil Liberties:

A community of rights and values

Beyond justice and home affairs policies, a strong voice on justice and human rights should seek to impact more widely on how the EU is able to stand up for its “common values”, as defined in article 6 of the Treaty of the European Union (TEU).

Amnesty International recommends that ensuring EU accountability for human rights protection lies at the heart of the new Commissioner’s role - in line with the Commission’s role as guardian of the treaties which includes a strong and decisive role in the enforcement of EU law.

This implies particular responsibility and vision to ensure that effective access to, and protection of human rights without discrimination is guaranteed in all EU policies. The new Commissioner for Justice, Fundamental Rights and Civil Liberties should therefore bear responsibility to lead, coordinate and oversee human rights impact assessments of all EU internal policies. The evaluation processes should be efficient and transparent, and should allow solid input of external expert bodies specialised in the area of human rights protection.

Ensuring EU accountability for human rights also implies leadership and vision to ensure that the EU endorses collective responsibility to address and remedy human rights problems that persist in Member States. According to article 7 TEU, the Council is not only enabled to react to a “serious and persistent breach” of EU Member States’ human rights obligations, it is also empowered to determine whether there is a “clear risk of a serious breach” of the Union’s basic principles and to make “appropriate recommendations”. Such a preventive system implicitly relies on the possibility to monitor and assess human rights situations within Member States. Amnesty International believes that the newly appointed Commissioner for Justice, Fundamental Rights and Civil Liberties should play a key role in this regard.

Non-discrimination

The principle of non-discrimination in access to human rights will be an important benchmark for the Commissioner’s work. In this area the EU has a clear and distinct competence to act. It can therefore be argued that the main responsibility for EU action against discrimination should be taken over by the new Commissioner for Justice, Fundamental Rights and Civil Liberties - in addition to justice and home affairs. Amnesty International suggests that a consultation is launched with key stakeholders active in the field of non-discrimination to reflect further on the advantages and disadvantages of such a transfer of competence.

Indivisibility of human rights

The new Commissioner for Justice, Fundamental Rights and Civil Liberties should strive to promote the indivisibility of human rights throughout his/her work. This implies building comprehensive EU responses that take full account of the need to enforce the social, economic and cultural rights of all. The example of Roma is particularly relevant in this regard. Despite strong EU legislation against racial discrimination on the one hand and specific efforts to foster the social inclusion of Roma on the other, the causes of the discrimination faced by the Roma in accessing their rights to housing, employment or education for example are still not addressed, leading to an ineffective patchwork of policies lacking a strong common human rights framework. Building bridges and coherent strategies to address human rights at all levels of EU policy making processes should be a key concern for the new Commissioner.

Internal and external coherence

Amnesty International has consistently highlighted the lack of coherence between the EU's approach to human rights outside of its borders and how it addresses human rights violations on its own territory. This directly affects the EU's credibility as a human rights "champion" and thus its effectiveness when confronting third countries over their human rights violations. The use of diplomatic assurances by some Member States to transfer "terrorist" suspects to countries where they would be at risk of torture and other ill-treatment is one example of the incoherence of EU policies. Such bilateral agreements sought from countries including Algeria, Tunisia and Syria with a well known record of torturing exactly this type of detainee, are in flagrant contradiction of EU efforts to fight torture in these countries (as set in EU's operational guidelines on torture developed in the framework of its Common Foreign and Security Policy). The need for the EU to launch an overall review of its human rights policy both in its internal and external dimensions should be a key issue for the new Commissioner to address.

Resources, expertise and authority

To enable the new Commissioner for Justice, Fundamental Rights and Civil Liberties to make a significant contribution to the European justice and human rights debate, it will be absolutely essential to allocate substantial financial and human resources to the post.

There will also be a need to reflect carefully on the coordination and oversight role of the new Commissioner in relation to the other Commissioners, EU institutions and agencies, as well as regional and international bodies working on human rights and the rule of law, including notably the Council of Europe. In addition, regular and transparent dialogue with independent experts, NGOs and civil society involved in justice and human rights will also have to be put in place.

The expertise and authority of the new Commissioner for Justice, Fundamental Rights and Civil Liberties will be a decisive factor to ascertain his/her legitimacy and influence. Amnesty International therefore calls on you and Member States to nominate a candidate of the highest calibre, with practical experience in human rights and a high degree of expertise relevant to the post.

As a final remark, Amnesty International would like to stress that the establishment of a new Commissioner for Justice, Fundamental Rights and Civil Liberties will not in itself remedy the lack of accountability for domestic human rights problems at EU level. Amnesty International holds the position that if the new Commissioner for Justice, Fundamental Rights and Civil Liberties is to work effectively to implement its work program and contribute to the development of a comprehensive European human rights system, the EU's accountability deficit needs to be addressed simultaneously at the executive level.

We thank you for your attention and look forward to your proposition. Amnesty International remains at your disposal for a meeting to exchange further ideas on the new post of Commissioner for Justice, Fundamental Rights and Civil Liberties.

Yours sincerely,



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