

Mr. Alfredo Pérez Rubalcaba
Minister for the Interior
Presidency of the Council of the European Union

Brussels, 31 May 2010
Ref. B970

Dear Minister,

Subject: Justice and Home Affairs Council meeting, 3 and 4 June 2009

The forthcoming Justice and Home Affairs Council meeting on 3 and 4 June – the last JHA Council under your Presidency – is expected to agree Conclusions on the follow up to the European Pact on Immigration and Asylum, adopted by the European Council in October 2008. We understand it will also approve Conclusions on the Commission's Action Plan implementing the Stockholm Programme, which the European Council adopted in December 2009. Both documents are important in setting out orientations and principles which guide the EU's policy in the field of immigration and asylum. We would, therefore, like to use this opportunity to reiterate our views and express our concerns on the main commitments made by the European Council, particularly with regard to the construction of a Europe of asylum and in respect of irregular migration and cooperation with third countries.

A Europe of asylum

Both the European Pact on Immigration and Asylum and the Stockholm Programme acknowledge the protection gap which currently exists in the EU and clearly restate the aim of constructing a common area of asylum. The Commission presented recast legislative proposals on asylum to address the disparities in Member States' asylum systems, improve coherence between EU asylum instruments and align EU standards with developing case-law.

We are aware that Council discussions on the recast asylum proposals have been difficult, particularly, it seems, with regard to the proposed safeguards against detention, more inclusive family member definition, provisions for legal assistance and appeal rights. However, we regret that we are not in a position to gauge what progress has been made during your Presidency and what compromises might have been proposed, given the lack of transparency in the negotiations. We find this difficult to reconcile with attempts at enhancing the democratic legitimacy of the Union and making it more accountable in the interests of the citizens and other people who might be affected by its actions. Equally, we share the concerns expressed recently in the European Parliament by the UN High Commissioner for Refugees, Antonio Guterres, about Member States' resistance in making progress with these proposals which, he said, represent important steps forward in coherence and consistency in building up a truly common asylum system.

We believe the JHA Council should make achieving consensus in this area a clear priority and that the Presidency should lead in renewing efforts towards the establishment of a Common European Asylum System (CEAS) in line with international refugee and human rights standards. This objective will not be achieved unless disparities between Member States with regard to reception conditions, procedural guarantees and status determination are reduced. Recent studies, amongst others by UNHCR, have clearly demonstrated the need for better and uniform standards and highlighted that, currently, in various areas the minimum requirements of EU standards are not fully met in Member States' law or practice. A report by Amnesty International, also recently published, has further produced evidence that in the absence of better and uniform standards across the Union, a rigid application of the Dublin criteria can expose asylum seekers

to serious human rights violations in Member States which receive a disproportionate caseload and where the asylum system is underdeveloped.¹

Responses to inadequacies with Member States' asylum systems should not be limited to the development of capacity building through practical cooperation measures under the aegis of the soon to be established European Asylum Support Office (EASO). We urge the Council also to look at the development of the legal framework of protection holistically and question the underlying principles of the Dublin system in view of the current level of harmonization of protection standards in the EU and non-EU states participating in the arrangements.

Irregular migration and cooperation with third countries

Amnesty International continues to note the immediate and ongoing focus on prevention and reduction of irregular immigration, whilst there is no policy to address the situation of those who cannot be removed and who are vulnerable to exploitation, denied basic social and economic rights and unable to access justice to enforce basic rights. The lack of response by the Union to what is a prevailing phenomenon in Europe leaves one of the most vulnerable groups invisible and unprotected. We believe that this matter deserves urgent attention and welcome the European Commission's commitment to carry out a study on the treatment of this vulnerable group and the need for harmonization in this field. We also note that cooperation with countries of origin and transit is increasingly at the centre of the EU's policy on migration control.

Amnesty International has consistently argued that in their dialogue and cooperation with third countries on migration aspects, Member States must safeguard the dignity and human rights of migrants, and particularly ensure respect for the principle of non-refoulement. In order to ensure proper accountability, such cooperation should also include mechanisms to monitor the impact on the human rights of migrants of the whole range of measures implemented in this area. Despite compelling evidence that such cooperation has in specific circumstances directly or indirectly given rise to human rights violations of migrants, there has not yet been any attempt by the EU or its Member States to assess the implications of cooperation with third countries of origin and transit.

Research published by Amnesty International in 2008 documented that the Spanish Government policy of cooperation with Mauritania, an important transit country for irregular migration to Spain, gave rise to violations of fundamental rights of refugees and migrants in Mauritania, such as arbitrary detention, denial of protection and forcible return.² Serious violations, including refoulement, were also documented with regard to Italy's cooperation with Libya by other human rights organizations and Amnesty International has added its concerns with regard to the Libyan authorities' treatment of individuals believed to be irregular migrants and their forcible return of refugees and asylum seekers.³ We recommend, therefore, that the Council review the coherence of the EU's approach towards Libya in the context of current negotiations on an EU-Libya Framework Agreement on cooperation and partnership, which includes cooperation on migration issues.

We renew our call to the EU and its Member States to put fundamental rights and the respect for EU's values of human dignity and solidarity at the heart of their approach with third countries. With regard to the ongoing efforts to negotiate and conclude readmission agreements with relevant third countries, we are concerned that these efforts are directed particularly at countries where the prevailing situation is such that returns are unlikely to be safe and sustainable and risk breaching human rights. Relevant action on EU readmission negotiations with Turkey should be reviewed in the light of Turkey's practice of unlawful detention of refugees, asylum seekers and migrants, and inhuman and degrading conditions in immigration detention centres, as documented by Amnesty International⁴ and highlighted by recent judgments of the

¹ The Dublin II Trap: Transfers of Asylum-seekers to Greece, AI Index: EUR 25/001/2010.

² Mauritania: "Nobody wants to have anything to do with us". Arrests and collective expulsions of migrants denied entry into Europe, AI Index: AFR 38/001/2008.

³ Libyan Arab Jamahiriya, Submission to the UN Universal Periodic Review, AI Index: MDE 19/005/2010.

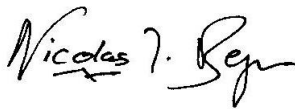
⁴ Stranded: Refugees in Turkey denied protection, AI Index: EUR 44/001/2009.

European Court of Human Rights against Turkey.⁵ With regard to ongoing discussions on the EU-Pakistan readmission agreement, consideration should be given to the fact that Pakistan not only has not acceded to the main human rights instruments, but has over a million people within its borders who remain displaced and that, therefore, returnees' prospects of reintegration are limited.

We believe that the EU should review its strategy on readmission to ensure coherence and consistency with the values it stands for. Any further agreement should be subject to the Commission undertaking an effective evaluation, including vis-à-vis the rights guaranteed by the EU Charter of Fundamental Rights, of existing agreements, some of which have been in place for many years. The EU's readmission policy must also explicitly be linked to relevant human rights obligations and the procedural guarantees envisaged for the return process under EU law, including the requirement that removal decisions be "taken on a case-by-case basis and be based on objective criteria, implying that consideration should go beyond the mere fact of irregular stay."⁶

We hope these concerns and observations will be taken into account and inform discussions in the Council during your last month of Presidency. We look forward to hearing from you as to the outcome of discussions, and remain at your disposal to discuss these issues further.

Yours sincerely,



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⁵ *Charahili v Turkey* and *Tehrani and Others v Turkey*, judgments of 13 April 2010.

⁶ Recital 6, Directive 2008/115/EC.