



From: Amnesty International EU Office
JUSTICE
Law Society of England and Wales
European Criminal Bar Association (ECBA)

To: Mrs Gertraud EPPICH
Chair
Council Working Group
on Substantive Criminal Law (DROIPEN)

3 March 2006

Dear Mrs Eppich,

Subject: Proposal for a Council Framework Decision on certain Procedural Rights in criminal proceedings throughout the European Union

On the eve of the Working Party on Substantive Criminal Law meeting on 6 and 7 March, Amnesty International, Justice, the Law Society of England and Wales, and the European Criminal Bar Association (ECBA) wish to draw your attention to our concerns, both on form and substance, on the negotiations of the Proposal for a Council Framework Decision on certain Procedural Rights in criminal proceedings throughout the European Union.

Our organisations have been active in the consultation leading up to the Commission's initial proposal for a Framework Decision on procedural rights for suspects and defendants in criminal proceedings (the proposal) in April 2004. We have welcomed the proposal as a first and important step towards addressing the rights of defendants within the context of the Area of Freedom, Security and Justice.

However, since then, we have grown increasingly concerned about the way the negotiations of the proposal have developed. Not only have the negotiations within DROIPEN reflected a dilution of the scope and level of standards contained in the initial proposal, but in the last months, the whole debate around EU standards for the protection of fair trial rights in criminal proceedings seems to have vanished from the political agenda. We particularly regret that the proposal was taken off the agenda of the February Justice and Home Affairs Council meeting, without any notice or explanation. Such lack of transparency and communication is particularly worrying when at the same time we hear that new proposals, completely disconnected from the original consultations, are being put on the table.

Our organisations are very concerned that the terms of the negotiations are changing and that the Council may be departing from the initial proposal of a binding legal instrument on procedural rights throughout the Union and envisaging to replace the proposal by a mere general statement or declaration recalling that EU Member States have to abide by their obligations under the European Convention on Human Rights and fundamental Freedoms (ECHR).

Amnesty International, Justice, the Law Society of England and Wales, and the ECBA wish to reiterate their call for the Council to adopt an instrument which covers the rights of suspects and

defendants in domestic criminal proceedings across the EU. We recall that if legislation in this field is to have added value to the ECHR and the EU Charter of Fundamental Rights, it must be binding on Member States, capable of enforcement and sufficiently precise as to ensure homogeneity of application across the EU. It must also be ensured that minimum standards agreed at EU level do not fall short of those provided by the ECHR and that such minimum standards are interpreted in the light of the evolving jurisprudence of the European Court of Human Rights to ensure that EU minimum standards do not undermine the level of rights protection afforded by the ECHR. We remind the Council that the Council of Europe's Committee of Ministers in 2004 urged the Council of Europe Member States to improve the effectiveness of domestic remedies for violations of the ECHR in order to alleviate the excessive case load the Strasbourg court is at risk of being overburdened by. An instrument fleshing out in greater detail than the ECHR the rights individuals should enjoy in criminal proceedings throughout the EU will be a much needed step to make the Convention rights more visible in the EU Member States and to ensure greater adherence to the standards laid down in the ECHR.

Today, terrorism related cases and specific national legislation aimed at combating terrorism, are a clear example that the limitation of fundamental rights such as the right to a fair trial, is not a theoretical problem in the EU. Our organisations believe that more than ever there is a pressing need for the EU to redress the balance between security led developments in EU justice and home affairs and measures designed to protect individual rights in this field. We urge the Council to live up to the Hague Programme promise "to guarantee fundamental rights, minimum procedural safeguards and access to justice", and to ensure that the negotiations around the Proposal for a Council Framework Decision on certain Procedural Rights in criminal proceedings throughout the European Union develop in line with international and European standards, thus leading to enhanced and effective protection of suspects and defendants in criminal proceedings throughout the Union.

We hope that the discussions in DROIPEN will reflect these objectives and look forward to your reply.

Your sincerely,



Dick Oosting
Director
Amnesty International
EU Office



Julia Bateman
JHA Policy Executive
Law Society of England
and Wales



Roger Smith
Director
Justice



Han Jahae
Chair
ECBA