

Brigitte Zypries
Minister for Justice
President of the Justice and Home Affairs Council

Brussels, 13 April 2007
Our ref: B652

Dear Ms Zypries,

Subject: JHA Council on 19-20 April - Proposal for a Council Framework Decision on certain procedural rights in criminal proceedings throughout the European Union, DROIPEN 76 of 22 December 2006

Amnesty International welcomes the German Presidency's declaration to make the adoption of the Framework Decision on procedural safeguards in criminal proceedings a priority in its Presidency Programme.

The European Union urgently needs to end its one-sided approach to judicial cooperation and catch up on the rights-based initiatives vis-à-vis the series of legal texts based on mutual recognition of decisions and judgments. As Amnesty International has repeatedly highlighted, mutual trust for the recognition of such decisions can only be built on solid common human rights standards for the judicial proceedings on which they rest. Since the adoption of the Hague Programme in December 2004, the European Council has yet to deliver on its promise to create a common area of freedom, security and justice by equally guaranteeing the rights of individuals no matter which Member State's jurisdiction they may be under.

Amnesty International therefore calls on the European Council to adopt the Framework Decision on certain procedural rights as a crucial first step to put judicial cooperation in the EU on a sound basis of consistent rights protection. In doing so, however, it is appropriate to express concern that the current proposal only reflects an absolute minimum of safeguards.

These concerns are aggravated by suggestions to limit the scope of the Framework Decision even further to cover only "cross-border crimes". The consequence would be that EU procedural safeguards would only apply to suspects and defendants accused of a crime considered to transcend borders and exclude suspects and defendants alleged of "inner-border" crimes. Such an approach would result in unacceptable and discriminatory double standards, contrary to the very concept of human rights and equality before the law. In addition the term "cross-border crimes" is bound to cause ambiguity about the scope of the Framework Decision and risk legal uncertainty which is contrary to the object and purpose of this initiative.

As for the current draft text of the Framework Decision Amnesty International calls on the Council to remedy some serious shortcomings before adoption:

- The Framework Decision justifies restrictions on procedural safeguards for certain types of crimes (Preamble para. 5), which are moreover imprecisely referred to as "crimes aimed at destroying the foundations of the rule of law, in particular terrorism". It should be stressed that fair trial rights are either non-derogable, or can be restricted only in a manner that is strictly proportionate to their aim and does not undermine the substance of procedural rights. Exempting procedural safeguards as such for particular crimes, however heinous, is not acceptable. In the case of terrorism this would also be in flagrant contradiction to express commitments made post-9/11 in 2001.

- Application of the Framework Decision for extradition and transfer of an arrested person is restricted to cases dealt with by an international court. Amnesty International considers that the basic safeguards enshrined in the Framework Decision should be applicable to extradition procedures, to which the full range of protections pursuant to Article 6 ECHR does not apply according to international case law, not only in case of surrender to an international court.
- Confidential consultation of a suspect/defendant with his/her lawyer results from the principle of equality of arms, constituting a basic precondition of a fair trial. However, the current proposal incorporates this safeguard only in cases where criminal charges result in arrest of the suspect (Article 3 (2) (b)), while persons charged with a criminal offence (but not arrested) are excluded from this safeguard pursuant to Article 3 (1) of the draft FD (e. g. with regard to admissibility of telephone surveillance).
- With regard to the right to interpretation, the Framework Decision should clarify that this safeguard equally applies to pre-trial proceedings, including interrogations by the police (Article 4 of the draft FD). It should also be noted that the right to legal assistance can only be effective if interpretation is available for consultation of the suspect/defendant with his/her legal representative.
- The lack of a provision to provide for recording of interrogations is disappointing. Such a provision is regularly recommended by the European Committee for the Prevention of Torture as a key safeguard against ill-treatment and as a protection for police officers facing unfounded allegations of ill-treatment during questioning, both of which undermine mutual trust. Amnesty International calls on the Council to use the opportunity and implement this routine recommendation of the CPT.

The draft Framework Decision on procedural safeguards covers procedural safeguards enshrined in human rights conventions only to a very limited extent (right to information, the right to defence and the right to interpretation and translation). Furthermore, a number of safeguards, amongst them the duty to inform a suspected person of his/her rights in writing ("Letter of rights"), access to medical examination and specific safeguards for persons entitled to specific attention like minors, have been removed since the Commission presented its draft on 28 April 2004 (COM(2004)328 final).

Amnesty International therefore urges the European Council to adopt the Framework Decision on procedural safeguards and to intensify its efforts with regard to the outstanding rights of individuals, including those that have been withdrawn since the initial draft of this Framework Decision. Procedural safeguards such as the presumption of innocence, admissibility of evidence or the right against self-incrimination equally require homogenous application throughout the European Union, elaboration in greater detail and in a language that EU citizens can understand.

Yours sincerely,



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