

**Mr. Jean-Claude Juncker**  
**President of the Council of the European Union**

Our ref: b461  
5 April 2005

Dear Mr. Juncker,

Tomorrow, 6 April, Amnesty International will publish a report on the incidence of serious human rights violations by police officers in France over more than a decade: "*France – the Search for Justice: The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment*". The reason to address you on this matter as President of the Council of the European Union is that Amnesty International believes that serious infractions of human rights in a Member State, while the primary responsibility of that country, should also be of proper concern to the EU as a whole.

### **Human rights concerns in France**

After investigating cases of serious human rights violations for many years, Amnesty International has concluded that there is a pattern of effective impunity with regard to misconduct by police officers in France. Factors which contribute to creating a climate of impunity include gaps or flaws in legislation, such as the absence of a full definition of torture in the French Penal Code, or provisions denying detainees access to lawyers from the outset of police custody. Other factors include deficiencies in the implementation of the law, such as the failure, or reluctance, of police, prosecutors and courts to thoroughly investigate and prosecute human rights violations involving police officers.

The report refers to about 30 cases of young people who were subjected, or allegedly subjected, to serious human rights violations by police officers between 1991 and 2005. Such violations included unlawful killings, excessive use of force, torture or ill-treatment and racist abuse. Most of the complaints of police ill-treatment arose out of police identity checks which degenerated into violence and resulted, on the one hand, in charges of ill-treatment against the police, countered on the other hand by charges against the complainants of insulting or resisting a public official. Eighteen cases are described in detail in this report. All involve persons of foreign origin. Many of their complaints have only relatively recently been concluded or are still going through the judicial process.

Racism is a major element in many of the cases described in Amnesty International's report. Almost all the cases which came to its attention involved persons of non-European ethnic origin, who were most commonly of North African or sub-Saharan extraction. Amnesty International has discerned a pattern whereby police misconduct including ill-treatment occurs predominantly with regard to individuals perceived to be foreign, and points to an official perception that such persons may be a greater security risk, or more liable to commit offences, than white or non-Muslim French nationals or other Europeans. Discrimination can reinforce impunity for police officers who act in the knowledge that their behaviour will not be investigated thoroughly, if indeed at all.

As the number of complaints of ill-treatment by police officers continues to rise, with a steep increase reported for 2004, Amnesty International sets out a wide range of recommendations which it believes would, if implemented, eradicate the patterns of effective impunity which plague French institutions. Amnesty International advocates the establishment of an independent agency to investigate all allegations of serious human rights violations by law enforcement officers, which would ultimately replace the investigative functions of existing internal police complaints mechanisms in such cases. It also urges the French authorities to ensure that all detainees are granted access to lawyers from the outset of police custody; that all police interrogations are video-recorded; and that the procedures and guidelines for identity checks are closely reviewed to ensure that they are not carried out in a discriminatory manner.

## **Human rights concerns in Europe**

The key question for any government that is confronted with serious infractions of human rights on its territory is how it can effectively address them in order to correct such problems and ensure effective prevention in the future. That is the essence of Amnesty International's appeal and recommendations to the French government today. However, it is at the same time our strong belief that serious problems of fundamental rights within one Member State are not just the responsibility of that country but should also be the proper concern of the EU as a whole. In fact, the EU's commitment to human rights is flawed if and as long as there is no adequate accountability in case of serious problems within the own borders.

Amnesty International's regular biannual reports on human rights in Europe have consistently included the majority of EU Member States (as well as the candidate countries). Generally speaking, these reports show a pattern of abuse by law enforcement officials including torture or ill-treatment and excessive use of force, regularly allowed to go unpunished, and often directed at minorities and third country nationals. These and other reports from reputable sources constitute a clear and strong reason for the EU to confront human rights problems within the own region, and so live up to its domestic human rights commitment.

## **The EU's domestic human rights commitment**

Human rights have been placed at the heart of the EU's policies and are rightly regarded as a cornerstone in its external relations, yet the EU does not appear to have remedies when they are violated at home. The EU's domestic human rights commitment is strongly reflected in the current treaties, and has been reaffirmed by the incorporation of the Charter of Fundamental Rights in the new Constitution for Europe. However, the Council has remained persistently silent when confronted with serious human rights problems in its Member States.

It is not for want of information about such problems. They are documented not only by NGOs like Amnesty International, but also by reporting through the relevant mechanisms of the Council of Europe and the United Nations, and by national human rights institutes. Within the EU system itself, the European Parliament has developed its annual report on human rights within the EU into an examination of Member States' human rights compliance, and in the few years of its existence the Network of Independent Experts set up by the Commission has become an important element in monitoring human rights within the EU.

Against this background, the Communication from the Commission on the application of Article 7 TEU, in situations of a serious and persistent threat to the Union principles set out in Article 6 TEU, is a start in recognising the need to monitor and assess Member States' human rights compliance. The Council has so far failed to respond to this Communication. There has also been no response to Amnesty International's repeated call for a dedicated Council mechanism in the form of a working group for human rights within the EU that would enable the Council to deal properly with domestic human rights issues.

## **The Fundamental Rights Agency**

Instead, the Council decided in December 2003 to set up an EU human rights agency. Discussion so far on what is now commonly referred to as the Fundamental Rights Agency shows a convergence of views that the agency should have the EU itself as its geographical remit. Regarding its substantive mandate, the majority view appears to be that the agency's scope should be determined by Union law, and to understand this in such a way as to exclude the general human rights situation in Member States where they act autonomously (although some leave open the possibility that the agency might be involved in respect of situations covered by Article 7 TEU). Amnesty International believes this approach to be too narrowly conceived, on two grounds.

First, EU law and policy increasingly extend into precisely those areas that Member States as well as other interested parties try to shield. With the recently agreed "Hague Programme Strengthening Freedom, Security and Justice in the EU", the Council aims to give new impulses to developing the Area of Freedom, Security and Justice (AFSJ), which is to encompass the functioning of the European

Arrest Warrant and similar instruments of judicial cooperation, the rights of suspects and defendants in criminal proceedings, the conduct of police cooperating across borders and alternatives to pre-trial detention. It is impossible to divorce these developments from the actual practice in Member States. The AFSJ is built upon mutual trust and as it develops, it needs to take a careful look at whether or not that trust is justly founded. Here we have key areas where the rights of the Charter to provide individual protection meet the collective interests of the Union, and of all of us, to provide effective security.

Second, it is precisely for that reason that we need an agency that is empowered to identify weaknesses in the way these systems operate, and that does not have to wait until things are so out of hand as to require bringing in the nuclear option of Article 7 TEU. There is indeed plenty of monitoring, by the Council of Europe, by United Nations treaty bodies, by the Network of Independent Experts, by national human rights institutes and by NGOs. But there is very little in the way of analyzing and shaping all that information into remedial action or of translating it into the EU framework. Precisely that function is missing in the system, and it is precisely that function that we believe the agency should fulfill. Surely, the real value of an EU Fundamental Rights Agency would be to help build a comprehensive system of national and collective mechanisms that can ensure mutual recognition and mutual trust.

### **Commitments into practice**


The case for the EU taking human rights compliance by its Member States more seriously is overwhelming:

- to acknowledge the plight of victims and the need for individual protection;
- to guarantee adequate national and collective systems to correct abuse and ensure prevention;
- to underpin mutual recognition and mutual trust;
- to avoid double standards in relation to the enlargement process;
- to avoid undermining the legitimacy and credibility of the EU's external human rights policy.

**In conclusion therefore, we urge you in your capacity as President of the Council of the European Union to instigate a process of developing a system of proper accountability at EU level for human rights abuse within the own borders. Specifically, we call on you:**

- 1. to ensure a Council response to the Commission's Communication on Article 7 TEU;**
- 2. to set up a Council working group for human rights within the EU;**
- 3. to empower the Fundamental Rights Agency to address human rights compliance by Member States in the context of strengthening the area of freedom, security and justice.**

Yours sincerely,



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Enclosure:

Amnesty International report: *“France – the Search for Justice: The effective impunity of law enforcement officers in cases of shootings, deaths in custody or torture and ill-treatment”*