



## **AEDH calls on members of European parliaments to vote “no” to the draft directive on the returning of illegally staying third-country nationals**

Brussels, 14 January 2008

**AEDH is asking European members of Parliament not to approve the draft directive “on common standards and procedures in Member States for returning illegally staying third-country nationals”, that will be proposed to their vote.**

By seeking a European common ground, rather than basing itself on best practices, this directive will likely encourage tougher procedures to be adopted in countries with currently less repressive legislation. This compromise, even if it improves upon the initial draft proposed by the Commission in 2005, remains unsound and reflects a policy of repression. It flouts the principle of proportionality and is not representative of a law respectful of human rights. Furthermore, one cannot fail to observe that adopting a text targeting “illegally staying nationals”, when the legal foundations for legal immigration have yet to be defined and harmonized, is rash and incoherent.

AEDH wishes to recall the existence of international law on the rights of migrants, refugees, and asylum seekers and that no return policy may depart from it. In that regard, certain measures falling under the draft directive are unacceptable. And others create more confusion than progress with regard to international standards, because they are limited to taking them up even though no specific provision guarantees their implementation in operational terms. Is it necessary to recall the international principles which are already enforced in all Member States? The prohibition of collective expulsion of aliens (ECHR Protocol 4, Art. 4), the principle of “non-refoulement” (prohibition of expulsion or return) of asylum seekers (Convention relating to the Status of Refugees, Art. 33), the best interests of the child (CRC, Art.3), the right to respect for private and family life (Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 8; ICCPR, Art. 24), and the right to an effective remedy (Convention for the Protection of Human Rights and Fundamental Freedoms, Art. 13). Furthermore, on several points, the draft directive does not observe the “*Twenty Guidelines on Forced Return*” of the Council of Europe. These guidelines must continue to be a reference with regard to the removal procedure for illegally staying foreign nationals.

AEDH is totally opposed to the:

**Possibility of extending the duration of detention to 18 months.** Granted, in some Member States, the duration of detention is currently unlimited. However, experience has shown that States with a duration currently limited to one month will leap at the chance to extend theirs. In that sense, detention would no longer be designed to detain illegally staying people in exceptional situations so as to effectively organize their removal; rather, detention would make it possible to set these people apart and thus control populations considered undesirable. Such a measure is contrary to the principle of proportionality, unless these people are to be considered delinquents, children included!

**Re-entry ban valid throughout the European Union,** which can be extended to 5 years and can accompany any removal order. This “double penalty” can only lead to absurd and unacceptable situations. What is more, it is counterproductive as those people having settled in Europe will be forced to become clandestine in order to come back.

**Possibility of the detention of minors** on the pretext of promoting family unity!

**Lack of precaution in selecting transit or return States.** Not a single article in the directive provides for assessing the risks involved in the return of the persons concerned, including the risk of being returned to a dangerous country from a transit country.

**AEDH cannot accept:**

**A “particular” treatment of vulnerable persons, who are limited to a restrictive list.** Only two categories of persons appear to enjoy some protection: the sickly – who must receive a residence permit for treatment – and unaccompanied minors. However, there has yet to be agreement on the definition of an unaccompanied minor, which can differ from one country to another.

**The establishment of a European mediator on return policy.** Rather than institute an ombudsman, who would have difficulty effectively tackling all cases of abuse, the Parliament should pride itself on strictly analyzing the proposed measures with as a reference the respect of dignity and the rights of the persons concerned.

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Above all, by paving the way for the routine internment of migrants through the lack of sufficiently high standards of protection, the draft directive makes detention a common tool for managing migration. As already mentioned, by positioning itself all too often below international rules and in creating confusion with regard to the application of these rules, the directive that is to be voted on by European members of Parliament cannot be accepted as is. Even if it is amended, its reason for being and the philosophy behind it are heavily questionable.

**Therefore, AEDH calls on European members of Parliament not to approve the directive, which is founded on repression rather than on the respect and dignity of the treatment every human being deserves.**

AEDH does not call into question the legitimacy of European members of Parliament to legislate on illegal immigration; however, it believes that Parliament should wait until 1<sup>st</sup> January 2009 to be able to legislate under the codecision process within the framework of a coherent legislative packet on all aspects of European migration policies. Then they will truly be able to assert their decisions in terms of migration policy. This is a further reason not to vote now on the return directive as it stands.

**Contact person:**

**Pierre Barge, President**

AEDH, European Association for the Defense of Human Rights

33, rue de la Caserne. B-1000 Brussels, Belgium

Tel: +32(0)25112100 Fax: +32(0)25113200 Email: [aedh@aedh.eu](mailto:aedh@aedh.eu)

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