



## **Human Rights must be the cornerstone, and not just a reference, of the Stockholm Programme**

*Brussels, October, 7<sup>th</sup> 2009*

The European Association for the Defense of Human Rights (AEDH) welcomes the adoption for the upcoming 5 years of a Programme on the “freedom, security and justice area” which will succeed the Hague Programme. AEDH wishes for a more global and balanced Programme, in the vein of the 1999 Tampere Programme. The Hague Programme took a security-based and sectoral approach that tended to confuse security, criminality and migration. This led to discriminative legislative content that often infringed on Fundamental Rights. AEDH took a position many times on the topic through its reports and press releases.

Hence, AEDH welcomes the framing of a more comprehensive and horizontal new European policy, the so-called Stockholm Programme, for the next 5 years. This is an opportunity to improve European policies, so that a simple declaration of Rights takes a concrete meaning for everyone who lives, moves, wants to work and seeks protection and asylum anywhere in the EU territory. This exemplary Europe will have the legitimacy to refer to fundamental rights in its relations with third-countries.

On the Communication from the Commission on: “an area of freedom, security and justice serving the citizen”, June, 10<sup>th</sup>, 2010.

- AEDH welcomes the reference to Fundamental Rights and EU values as defined in the Treaties and the Lisbon Treaty. But the reference to the Charter of Fundamental Rights and the accession of the Union to the European Convention of Human Rights should not remain symbolic. The EU must find the resources to guarantee that its legislation and actions comply with Human Rights obligations.

The Fundamental Rights Agency (FRA) is perceived as an expert institution, but its role must be increased and go further than its initial mandate. The opinions of the European Data Protection Supervisor should be taken into more consideration and his competences should be broadened.

More generally, it is necessary that an independent entity should give an opinion on Fundamental Rights whenever needed, both during the legislative process and the implementation. Whenever Human Rights are violated by the Union or by one Member State, this entity should be able to act.

- AEDH strongly supports the central position of the “Human Being” in the area of freedom, security and justice, as the Vice President of the European Commission Jacques Barrot said<sup>1</sup>. But “Human Being” does not only mean “citizen”. Indeed, it concerns anyone living in the “prosperous and peaceful” EU, which respects their rights and protects their security. The use of the word “citizen” is too restrictive and discriminatory towards the 26.5 million third-country nationals who are living in the Union

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<sup>1</sup> Speech of Mr Jacques Barrot, Vice President of the European Commission, “Préparer le programme de Stockholm”, Collège d’Europe in Bruges, March 4, 2009

(18.5 million legally staying and 8 million undocumented third-country nationals). As proclaimed in the Universal Declaration of Human Rights, Fundamental Rights are universal. The word “citizen” is thus inappropriate, as was taken into account in drafting the Charter of Fundamental Rights.

## **Freedom of movement and residence**

The full implementation of freedom of movement must be effective, without any consideration for linguistic barriers. It shall concern all EU residents. Membership in a minority or being considered stateless, even when residing for several years in the EU, should not constitute an excuse for restricting freedom of movement.

Over the past few years, Roma populations have been the first victims of such discrimination, which led to an infringement of their freedom of movement and residence.

Moreover, anyone who has been granted rights in one Member State should be able to enjoy the use of those rights in any other Member State where he or she would like to settle in. In particular, this includes the recognition of homosexual marriages.

**The fight against discrimination, racism, anti-Semitism, xenophobia and homophobia** must be pursued with determination. The new European Directive on racism and xenophobia has to be adopted according to the position of the European Parliament. The Union also needs effective and coercive tools to condemn Member States that, through their behaviour or laissez-faire attitude, breach the principles they adhered to beforehand.

## **Personal Data and Privacy Protection**

The Stockholm Programme rightly points out that personal data and privacy protection is enshrined in the Charter of Fundamental Rights, and the stated desire to reinforce this is welcome. It is important to reaffirm principles such as the principle of finality, proportionality and legitimacy of treatment, limited retention period, security and confidentiality, the respect of Human Rights and the monitoring by an independent entity. But it is even more important that these principles do not go unheeded, and are emphasised within the legislation, in the constitution, use and practices of personal databases. This is particularly true regarding the databases currently set up in the frame of border control policies or the fight against terrorism and criminality.

Data interoperability at the European level and the use of such files should be strictly monitored by an independent European body. Member States cannot monitor the databases they set up themselves.

Biometric data must be used only when it is necessary, in accordance with an appropriate and proportional method, and when there is a clear, specific and legitimate purpose defined by law or legal decision.

DNA information must be very strictly used. They should only be retained in the case of convictions for the most serious crimes. Interoperability between databases of different natures shall not be authorised. More generally, databases must not be used for profiling purposes.

Information collected for commercial purposes, and then retained for police investigations, should be used within the frame of a “push” and not a “pull” system. This information shall be strictly limited with a short retention period.

Personal data exchange with non-EU countries requires an appropriate level of protection, at least equal to the one imposed in the Union.

## Asylum and Migration

AEDH acknowledges the Commission's proposals on asylum and immigration. A long-term approach has been chosen, with a perspective of integrated implementation within the Member States. However, AEDH finds it disappointing that the Programme does not break with previous positions that have reinforced the situation where Member States are more and more suspicious towards migrants, going against the goal of guaranteeing them equal treatment in any part of the EU territory and improving their integration in our society.

**Concerning asylum,** the Programme recommendations broadly take up the project of the Common European Asylum System. The Commission notices wide discrepancies between EU Member States and the inequality of treatment among protection seekers. It seems that the only solution the Commission is able to offer is the renewal or reinforcement of measures that only compensate these discrepancies but do not resolve them, solutions such as the creation of the European support office and the development of relocations. AEDH is concerned that despite the obvious inequalities it created, the Dublin System will not be completely reformed or abolished, due to the opposition of some EU Member States. In this context, there is an urge to legalise the principle of mutual recognition for decisions granting protection. AEDH is also worried about the development of the “external dimension” of the asylum policy, supposedly “in solidarity” with third-countries. This policy can lead to a minimum investment from the EU Member States into the implementation of an open and high-level European system of international protection.

**Concerning immigration,** AEDH regrets, once again, that the Commission programme aims at strengthening the previous positions. Even if, in its defense of more integrated border management, the Commission states that “it must go hand in hand with the respect of Human Rights and international protection”, one can notice that the priority is actually given to the technical efficiency of the system. In this respect, it is important to point out that the system has demonstrated its inability to guarantee the respect of rights for vulnerable protection seekers.

**FRONTEX,** as an agency from the 1st pillar, must respect the Fundamental Rights of people who have been saved or intercepted at sea. It must integrate in its mandate the rescue of migrants and asylum seekers in difficulty or at risk of death. It must respect the principle of non-refoulement. In this vein, the development of a border guards training programme should be among the top priorities.

**According to AEDH, a common immigration policy,** which respects the EU founding principles and the Charter of Fundamental Rights, must set out to promote the respect of family life and the respect of third-country nationals' rights, without any discrimination. Legal immigration cannot simply be based on changes in the economic needs of the EU. The Stockholm Programme must put an end to the increasing tendency of criminalising the undocumented migrants by placing them in detention and returning them by force. The fight against illegal employment has the wrong target when it treats those who are actually its first victims as guilty. The EU will only be able to benefit from immigration when it gives legal documents and integrates those who have offered their labour, sometimes for many years, their skills, and therefore, social, economic and cultural wealth.

## European Judicial area

AEDH welcomes the will to create a European judicial area and to make justice accessible to all. But this implies that there is a need to go beyond considering only the police aspect and the technical coordination of organs of prosecution. Meanwhile, individual freedoms must be ensured. One cannot be satisfied with only a reference to the European Convention on Human Rights or to the Charter of Fundamental Rights. We need harmonisation of charges and guarantees for defendants. This is the reason why, at this stage, AEDH has condemned the European arrest warrant. Making justice accessible to all requires new means and a political will from the Member States in this direction.

There can be no genuine security in Europe without guaranteeing minimum standards of living for all its residents. There cannot be any security without social cohesion and this requires a proactive policy which will bring down social inequalities and the precariousness of society. Economic and social rights, as stated in the Charter of Fundamental Rights and in the International Conventions, must be the cornerstone of European social cohesion. As proposed by some parliamentary political groups, a “Declaration for social progress” should be implemented and added to the Stockholm Programme. There cannot be any security without social progress in Europe, without respect for rights, including economic, social and cultural rights and without social citizenship.

### Contact:

AEDH, European Association for the defense of Human Rights

33, rue de la Caserne. B-1000 Bruxelles

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

**The European Association for the defense of Human Rights (AEDH)** is an umbrella organisation gathering leagues and associations defending Human Rights in EU countries. It is an associate member of the International Federation for the defense of Human Rights (FIDH). For further information: [www.aedh.eu](http://www.aedh.eu)