

Justice and Home Affairs (EPIN, 26 June 2002).

The area of freedom, security and justice established by the Treaty of Amsterdam as a new objective of the European Union constitutes without any doubt a very important step in the way of a deeper European integration. Basically, the idea is to create a single common European territory where people can circulate freely. This idea implies a development of a secured territory, as well as a single territory of justice in order not to jeopardise freedom of movement. Without security and justice, freedom is not possible.

However, the system established by the Treaty of Amsterdam seems to have shown its own limits in the recent years, due to three different kinds of problem : coherency, efficiency and weakness of judicial and political control.

1. One problem of the system designed by the European Treaty in order to create an area of Freedom, Security and Justice is certainly lack of coherence. It could even be said “lacks” of coherence.
- Indeed, concerning the area of freedom, three different groups of rules in the Treaty on European Community deal with “freedom of movement of persons”. First, article 18 (one of the main provisions of the Second Party of the TEC called “European Citizenship”) recognises a general right of freedom of movement to European citizens. Still Title III deals with freedom of movement of workers and services (as if there were not persons) and then Title IV, on “Visas, asylum, immigration and others policies related to free movement of persons”, refers more specifically to third country nationals. All of these rules relate of course to the concept of “person”. That means that although there is a single objective, which is to create an “area of freedom”, there are still different kinds of rules spread in the Treaty on European Community. May be one solution in order to obtain more coherence could be to put all of theses rules in a single title called “free movement of persons”.
 - Another lack of coherence is due to the division between the first and the third pillars of the Treaty on European Union. The problem in that case is not only a problem of coherence but also a problem of readability.

- In one of the documents of the European Convention, the lack of coherence concerning a clear sharing of competence between Member States and European Union was also mentioned. Indeed, although the EU is normally competent to adopt rules dealing with international crime, it is not always easy to find valid criteria in order to define this kind of crime.
2. Besides the lacks of coherence, the system established by the European Treaty could also suffer from a lack of efficiency, due to the legal instruments and to the procedure it refers.
- Indeed, for example, Title IV, although in the first pillar, refers to procedure which resembles intergovernmental procedure (at least, in a first time). The Commission has to share its right of initiative with Member States, the Council has to adopt rules by unanimity and the European Parliament is only consulted. This kind of procedure is known to be very heavy and to delay the decision-making.
 - Concerning the third pillar, one of the critiques made by the European Convention is that the legal instruments mentioned in it were inefficient and not adapted to so ambitious goal assigned to it. For example, legal norms like “convention” require unanimity to be taken by the Council and to be ratified in every Member States in order to come into force. Just an example : The Dublin Convention on asylum took seven years in order to come into force.
 - In addition to that, legal norms from the third pillar do not have “direct effect”, That means , among other things, that people can not claim its application at the ECJ and that, at last instance, it could be difficult to oblige Member States to comply with their legal obligations.
3. Another critique addressed to the system established by the European Treaty is the weakness of the political and judicial control. The European Parliament plays a very limited role in the decision-making of all this norms. It means that European

Member States through the Council adopt rules that could affect seriously people's life without any efficient control from the European Parliament, the only European institution elected directly by citizens.

The weakness of the judicial control is also very difficult to justify in that context.

4. In conclusion, two remarks can be done.

- First, as said President Aznar in the European Council of Seville, all of these problems, lack of coherence and efficiency, could affect the image of the European Union in the World. Everybody knows how important it is for the European Union to speak with one only voice in a globalized world. In as much Europe could not show a coherent image of its immigration and security policies, it could be very difficult to take it seriously in the World. It is very important not only for the image it projects to its own citizens but also to the rest of the World. That is may be why Member States decided in Seville to integrate migration policy in a more global foreign policy.
- As the Spanish Presidency has shown in the last six months (with the Framework Decision on terrorism and the European Arrest and Surrender Warrant), the European Union is aware of the need to have a strong security policy. Citizens ask for it every day. Having said that, Member States do not have to forget that it is also very important to enhance the policy of integration of the immigration population. For two reasons : first of all, for internal political reasons, promoting a good and coherent European migratory policy which facilitates the integration of migratory population could also be a good way to prevent radical and racist movements in Europe. Second, from a very utilitarian and economical point of view, it is known that Europe needs immigrants. We do not have to forget it.

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