

## Meijers Committee

Standing committee of experts on international immigration, refugee and criminal law

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**To (by email)** European Parliament  
Civil Liberties, Justice and Home Affairs Committee  
Rue Wiertz  
B-1047 BRUSSELS

**Reference** CM1305  
**Regarding** Letter Meijers Committee on the recast of the Procedures Directive (COM 2011 319 final)  
**Date** 11 February 2013

Dear members of the Civil Liberties, Justice and Home Affairs Committee,

The Meijers Committee has taken note of the state of the negotiations with regard to the recast proposal of the Procedures Directive. The negotiations on the recast of the Procedures Directive currently concentrate on Articles 24 and 25 regarding applicants in need of special procedural guarantees and unaccompanied minors. The Meijers Committee wishes to make a few comments on these articles which will be discussed during the next trilogue.

### **Article 24: Applicants in need of special procedural guarantees**

#### *Burden of proof*

The proposed text of Article 24 (4) prohibits Member States to apply certain special procedures, if there is a 'consistent set of evidence' that an applicant has been subjected to torture, rape or other serious forms of violence wherefrom special procedural needs result. This evidence should result from the Member State's assessment required by Article 24 (1) of the proposal. The Meijers Committee is concerned that the requirement of a 'consistent set of evidence' of past ill-treatment will result in a very high burden of proof for the asylum applicant. It must be recognised that past torture or violence usually cannot be 'proven' by a medical examination. Forensic experts will only indicate the degree of consistency between a lesion and the attribution given by the applicant.<sup>1</sup> It should therefore be sufficient that the medical report concludes that there is consistency between the applicant's statements on past torture or other trauma and the physical or psychological sequelae found. The Meijers Committee also advises to make a reference in Article 24 (4) to Article 18 of the proposal which deals with medical examinations. Such medical examination (arranged by the Member State or the applicant) may also support the applicant's claim that he has psychological or physical problems resulting from past torture or ill-treatment which warrant special procedural guarantees.

#### *Psychological problems not related to asylum grounds*

The Committee notes that the central issue is whether the applicant has physical or psychological problems which interfere with his ability to bring forward his asylum motives. The emphasis in the assessment should therefore be placed on the nature of the applicant's psychological or physical problems and the procedural guarantees necessary to ensure a careful asylum procedure for this applicant. It is irrelevant whether the ill-treatment which caused these problems are linked to the applicant's asylum grounds.

<sup>1</sup> See para 187 of the Istanbul Protocol referred to in para. 24 of the Preamble to the recast proposal.

### *Accelerated procedures and border procedures*

In several Member States time-limits in accelerated and border procedures are very short, often only several days. Such short time-limits may undermine the asylum applicant's ability to substantiate his asylum claim.<sup>2</sup> This particularly applies to applicants suffering from psychological trauma, who need time to gain trust in the authorities of the receiving Member State and their legal representative in order to make statements on their experiences in their country of origin.<sup>3</sup>

### **The Meijers Committee proposes the following amendment:**

#### **Article 24 (4)**

**In cases where the determining authority considers, as a result of the assessment in paragraph 1, on the basis of consistent statements of the applicant or a medical examination in the meaning of Article 18, that an applicant has been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, and where special procedural needs result therefrom or where there is a link between the torture or violence suffered and the grounds for requesting international protection, Article 31(6), Article 32(2), Article 43 and Article 46(6) shall not apply.**

### **Article 25: Applying accelerated procedures in cases of unaccompanied minors**

In accordance with Article 24 of the EU Charter of Fundamental Rights the best interests of the child should be a primary consideration when assessing the asylum claims of unaccompanied minors. The short time-limits and lower level of procedural guarantees which are often applied in accelerated or border procedures may prevent unaccompanied minors to fully explain their asylum claim. This also undermines the frontloading of asylum systems which is one of the key principles underlying the Commission's proposal. The Committee on the Rights of the Child<sup>4</sup> and the Committee on the Elimination of Discrimination against Women<sup>5</sup> have expressed their concerns with regard to accelerated processing of the claims of minors. The Meijers Committee therefore considers it important that the accelerated processing of asylum claims of unaccompanied minors will be prohibited or otherwise restricted to a very limited number of clearly defined cases. The Committee is of the opinion that also with regard to such asylum claims it should be assessed on an individual basis whether an accelerated or border procedure can be applied.

**The Meijers Committee recommends that accelerated procedures and border procedures only be applied in cases of minors who come from a safe country of origin, provided that this is in the minor's best interest.**

### **Articles 24 and 25: Automatic suspensive effect of the asylum appeal**

A final point of discussion is whether Article 46 (6) should be applicable in cases of applicants in need of special procedural protection and cases of unaccompanied minors. This provision allows Member States to derogate from the right to a remedy with automatic suspensive effect in certain situations, such as manifestly unfounded and inadmissible cases. The Meijers Committee notes that the ECtHR has made it clear in the case of *M.S.S.* that a system in which automatic

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<sup>2</sup> European Court of Human Rights 2 February 2012, *I.M. v. France*, Appl. No. 9152/09.

<sup>3</sup> UNHCR Handbook on Procedures and Criteria for Determining Refugee Status under the 1951 Convention and the 1967 Protocol relating to the Status of Refugees, para 198.

<sup>4</sup> ComRC Observations Finland, 30 September 2005, CRC/C/15/Add.272 at 48 and 50 and the Netherlands, 30 January 2004, CRC/C/15/Add.227 at 53-54.

<sup>5</sup> CEDAW Concluding Observations the Netherlands, 5 February 2010, CEDAW/C/NLD/CO/5

suspensive effect is attached to a (separate) request for interim relief should provide for important safeguards.<sup>6</sup> Time-limits for preparing the request for interim relief should be reasonable, the rights of the defence should be respected, the burden of proof may not be set unreasonably high and the court reviewing the request for interim relief should perform a close and rigorous scrutiny of the claim of *refoulement*.<sup>7</sup> Such procedural safeguards are particularly important in cases of vulnerable asylum applicants such as persons suffering from psychological trauma and unaccompanied minors.

The EU right to an effective remedy laid down in Article 47 of the Charter is based on Article 13 ECHR and its interpretation is inspired by the ECtHR's case-law. It may be assumed that this fundamental right requires the same safeguards as those following from the M.S.S. judgment. Similar safeguards should thus be offered in a system in which interim relief should be requested as in procedures in which automatic suspensive effect is attached to the appeal. The Member States will thus not be able to process asylum cases more expeditiously by making use of the exception allowed by Article 46 (6).

**The Meijers Committee advises to exclude cases of applicants in need of special procedural guarantees and unaccompanied minors from the application of Article 46 (6) of the proposal.**

We hope you will find these comments useful. Should any questions arise, the Meijers Committee is prepared to provide you with further information on this subject.

Yours sincerely,



Prof. dr. C.A. Groenendijk  
Chairman

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<sup>6</sup> Some of these safeguards are (partly) reflected in Article 46 (7) which applies to border procedures in which the appeal lacks automatic suspensive effect.

<sup>7</sup> European Court of Human Rights 21 January 2011, *M.S.S. v. Belgium and Greece*, Appl. No. 30696/09, paras 387-390, where the ECtHR ruled that the Belgian extremely urgent procedure did not comply with the requirements of Article 13 ECHR.