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Implementation in the EU of Directive 2003/9/EC on the minimum standards for the reception of asylum seekers: visits by the Committee on Civil Liberties 2005-2008

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► European Parliament resolution of 5 February 2009 on the implementation in the European Union of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008 (**2008/2235(INI)**)

The European Parliament,

- having regard to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers ("Reception Directive")⁽¹⁾,
 - having regard to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status ("Procedures Directive")⁽²⁾,
 - having regard to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national ("Dublin II Regulation")⁽³⁾,
 - having regard to the Commission report of 26 November 2007 on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (**COM(2007)0745**),
 - having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and in particular to Articles 5 and 8 thereof,
 - having regard to the United Nations Convention on the Rights of the Child,
 - having regard to the reports by the delegations of the Committee on Civil Liberties, Justice and Home Affairs to Italy (Lampedusa), Spain (Ceuta and Melilla, Canary Islands), France (Paris), Malta, Greece, Belgium, the United Kingdom, the Netherlands, Poland, Denmark and Cyprus,
 - having regard to its resolution of 14 April 2005 on Lampedusa⁽⁴⁾,
 - having regard to its resolution of 6 April 2006 on the situation with refugee camps in Malta⁽⁵⁾,
 - having regard to the proposal for the recasting of the Reception Directive (**COM(2008)0815**) ("the recasting proposal") and the proposal for the revision of the Dublin II Regulation (COM (2008)0820), submitted together by the Commission on 3 December 2008,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (**A6-0024/2009**),
- A. whereas the Reception Directive is one of the building blocks of the first phase of the Common European Asylum System,
- B. whereas the Reception Directive applies to asylum seekers and refugees,
- C. whereas fundamental rights, such as the right to live in dignity, the protection of family life, access to health care and the right of appeal, must be guaranteed at all times,
- D. whereas the Reception and Procedures Directives require Member States to provide asylum seekers with information in writing concerning their rights and the organisations providing assistance; and whereas it is essential - in view of the complexity of procedures and short deadlines, particularly in accelerated procedure cases - that asylum seekers receive appropriate legal advice, have access to an

interpreter when necessary and receive decisions concerning them in a language which they can be reasonably expected to understand,

E. whereas it is important to ensure that asylum procedures are clear (in particular the criteria for accepting or rejecting an application for asylum), fair, effective and proportionate, in order to guarantee effective access to asylum,

F. whereas Article 7 of the Reception Directive grants asylum seekers the right to move freely within the Member State in which they have applied for asylum, but whereas Member States may restrict that right,

G. whereas the Reception Directive applies to asylum seekers and refugees, but whereas in many of the centres visited asylum seekers and irregular migrants are held on the same premises,

H. whereas the Convention on the Rights of the Child protects the rights of all minors, including those outside their country of origin, and whereas the Reception Directive requires Member States to take into account the particular situation of minors and grants them specific rights, such as the right to education,

I. whereas not all Member States use reception centres for all or many asylum seekers, preferring alternatives based in the community and whereas the Committee on Civil Liberties has not yet investigated that aspect of Member State practice,

J. whereas for the purpose of this resolution "detention" means an administrative procedure of a temporary character,

K. whereas detention is a temporary administrative measure that differs from penal detention,

L. whereas, during some of their visits, the Members noted on several occasions, where this was necessary owing to the poor conditions in a particular centre, that the detention conditions in some centres were intolerable from the point of view of hygiene, overcrowding and the equipment available, and whereas the people detained were not systematically informed of the reasons for their detention, of their rights and of the progress in their case,

General comments and asylum procedures

1. Regrets that some visits revealed that the existing directives were being poorly applied, or were not being applied at all, by some Member States; calls on the Commission to take the necessary measures to ensure that the directives are transposed and complied with more than just formally;

2. Stresses that the principles of the Charter of Fundamental Rights of the European Union and the ECHR, such as the right to live in dignity, the protection of family life, access to health care and the right of effective recourse against detention, should be applied at all times and regardless of the status of the third-country national involved; therefore cannot accept that a person is not treated accordingly for the sole reason that he or she is an irregular immigrant;

3. Deplores the number of deficiencies regarding the level of reception conditions which mainly results from the fact that the Reception Directive currently allows Member States a wide margin of discretion concerning the establishment of reception conditions at national level; therefore welcomes the above-mentioned recasting proposal;

4. Expresses its satisfaction with the Commission's recasting proposal, and welcomes the fact that the stated objective is to ensure higher standards of treatment for asylum seekers in order to ensure a decent standard of living and to permit greater harmonisation of the national rules governing reception conditions;

5. Expresses its satisfaction with the Commission's proposal to expand the scope of the Reception Directive to cover subsidiary protection in order to ensure that the same level of rights attaches to all forms of international protection;

6. Calls on the Member States to show more solidarity - not limited to technical and/or financial solidarity - with the countries most affected by the challenges of immigration; calls on the Commission to study the possibility of proposing an EU solidarity instrument aimed at relieving the burden posed by the high number of refugees received by Member States with external borders, which would be based on the principle of respect for the wishes of asylum seekers and would afford a high level of protection;

7. Calls on the Commission to establish, in cooperation with Parliament, a permanent system of visits and inspections; hopes that the Committee on Civil Liberties can continue its visits with a view to ensuring that Community law concerning reception conditions and return procedures is complied with and that an annual debate is held on the outcome of these visits at a plenary Parliamentary sitting;

Reception

8. Regrets that the open accommodation centres set up by certain Member States have low capacity and do not appear to meet migrants' needs;

9. Calls for priority to be given to the reception of asylum seekers and immigrants in open reception centres, along the lines of those which already exist in certain Member States, rather than in closed units;

10. Reminds the Member States of their obligation to guarantee access to asylum application procedures;

11. Urges the Member States to apply the Reception Directive to all asylum seekers from the moment when they express their wish to

request protection in a Member State, even if the asylum claim has not been formally lodged;

12. Urges the Commission to remind Member States that withdrawal or reduction of reception conditions on grounds not included in the Reception Directive is or should be strictly prohibited;

13. Considers that basic reception conditions, such as food, housing and emergency health care should never be withheld, since their withdrawal may violate the fundamental rights of asylum seekers;

14. Considers it necessary to strike a fair balance between speedy procedures, reducing the backlog and fair treatment of each individual case, particularly in accelerated procedure cases;

Access to information and right to interpretation

15. Notes that the information about procedures is largely in writing and that the deadlines are very short, which poses a problem of understanding and constitutes an obstacle to asylum seekers effectively exercising their rights when they submit an application; calls for brochures explaining all the rights of asylum seekers to be made available to them in the main international languages and in the languages spoken by a significant number of asylum seekers and immigrants in the Member State concerned; calls on the Member States also to provide information by other means, including orally, on television and via the Internet;

16. Expresses its concern over the frequent lack of adequately trained interpreters in some of the centres visited, including at official interviews; urges the Member States to provide a public interpreting service free of charge, if necessary by telephone or via the Internet;

17. Encourages the Member States to make use of financial assistance under the European Refugee Fund in order to improve access to information and, in particular, to increase the number of languages, or media, in which the information is made available; calls on the Commission to send the Member States information on the financial instruments available for that purpose and on the current best practices relating to their use;

Legal assistance

18. Regrets that access to free legal aid appears limited for asylum seekers and detained irregular immigrants and amounts sometimes to no more than a list of lawyers' names, resulting in people without sufficient funds being left without assistance;

19. Notes that it is particularly difficult for people in detention to find appropriate legal assistance given the difficulties of external communication and the specific nature of the relevant legislation;

20. Notes that continuity of access to legal assistance is made more difficult when people in detention are moved between different reception or administrative detention centres;

21. Appreciates the legal assistance provided by the UN High Commissioner for Refugees and non-governmental organisations (NGOs), but believes that this cannot be a substitute for the responsibilities of the Member States;

22. Urges the Member States to ensure access to legal assistance and/or representation free of charge in all cases where the asylum seeker cannot afford the costs involved;

Access to health care

23. Regrets that in most of the detention centres visited, asylum seekers and migrants complained systematically about insufficient and inadequate medical care, the difficulties of consulting or communicating with doctors and the lack of specific care (in particular, for pregnant women and victims of torture) and of appropriate medicines;

24. Calls on the Member States to extend the medical cover currently offered to asylum seekers and migrants so that it is not limited solely to emergency care, and to also provide psychological counselling and mental health care; points out that the right to health and medical treatment are among the most fundamental human rights;

Access to employment

25. Welcomes the Commission proposal to tackle the obstacles to access to the labour market and to allow access to employment after a period of six months from the lodging of an application for international protection;

26. Calls on the Member States not to impose legal or administrative constraints amounting to obstacles to employment access;

Assistance provided by NGOs

27. Recognises the considerable work done by various associations in providing assistance to asylum seekers and irregular migrants;

28. Calls on Member States to learn from the good practice developed within the asylum seeker strand of EQUAL concerning effective preparation for the labour market;

29. Calls on the Member States to ensure that asylum seekers and irregular migrants have access to aid – from players independent of the national authorities – in defending their rights, including during detention; calls on the Member States to guarantee civil society a legal right of access to places of detention for foreign nationals without any legal or administrative constraints;

30. Calls on Member States not to resort to the detention of asylum seekers under any circumstances, since they are *per se* vulnerable people in need of protection;

Detention

31. Regrets that a number of Member States are making increasing use of detention; stresses that a person should not in any event be held in detention for the sole reason that he/she is seeking international protection; stresses that detention must be a measure of last resort, proportionate, for the shortest period possible and only in cases where other less coercive measures cannot be applied, and on the basis of an individual assessment of each case;

32. Points out that the right to contest a deprivation of liberty is laid down in Article 5 of the ECHR; calls for all third-country nationals placed in detention to be able to exercise that right;

33. Is concerned at the prison conditions in which irregular migrants and asylum seekers are detained even though they have committed no crime; calls for such persons to be detained in separate, preferably open, buildings in order to ensure their protection and provision of assistance;

34. Is concerned by the dilapidated state of, and lack of hygiene in, certain detention centres; points out that the obligation to provide a decent reception also applies to people in detention; calls for all centres not complying with standards to be closed as soon as possible;

35. Notes that access to health care, and particularly to psychological care, is often made difficult, since some detention centres are located in prison establishments; calls on the Member States to provide appropriate medical attention in detention centres, including psychological care, round-the-clock;

36. Calls on the Member States to improve contact between persons in detention and the outside world, including by allowing regular visits, increasing telephone access and making free internet access (under certain conditions) and mass media access available in all the centres;

37. Calls on the Member States to publish an annual report on the number and location of closed detention centres, on their operation and on the number of persons held there;

38. Calls on the Member States to ensure the regular inspection of closed detention centres and of the conditions in which people are held there by creating a national detention centres ombudsman;

Unaccompanied minors and families

39. Points out that all decisions and measures taken with regard to a minor must be based on the best interests of the child, in accordance with the Convention on the Rights of the Child; stresses the need to take the measures and adopt the means required to protect unaccompanied minors, whether or not they are refugees;

40. Calls on Member States to consider setting up independent official bodies to monitor standards and conditions in closed centres as well as implementing an official inspection system which will publish its reports;

41. Calls for the detention of minors to be prohibited in principle, and for the detention of minors with their parents to be exceptional and having the objective of ensuring that the best interests of the child are served;

42. Calls on those Member States that have not yet done so to sign and ratify without reservations the Convention on the Rights of the Child;

43. Calls on the Member States to enforce General Comment No 8(2006) of 2 March 2007 of the UN Committee on the Rights of the Child on children's rights to protection from corporal punishment and other cruel or degrading forms of punishment, including within the family, especially when minors are in detention;

44. Points out that all minors have the right to education, whether or not they are in their country of origin; calls on the Member States to guarantee that right, including when minors are in detention; calls for access to education to be provided directly in the community, in an appropriate manner corresponding to the assessment of the level of the child's knowledge, while at the same time developing transitional models allowing the acquisition of the necessary linguistic competences for a normal education, so as to ensure the best possible integration of children and their families;

45. Points out that minors have the right to leisure activities appropriate to their age, and calls on the Member States to guarantee that right even when children are in detention;

46. Calls on the Member States to guarantee that unaccompanied minors and families are housed in separate accommodation even in detention, so as to guarantee adequate private and family life as provided for by Article 8 of the ECHR, as well as a protective environment for children;

47. Expects everyone working with minors and unaccompanied minors to receive specialist training appropriate to the children's situation; considers that NGOs specialising in that field could make a major contribution to it;

Unaccompanied minors

48. Calls for an independent legal guardian to be appointed for each unaccompanied minor to ensure his or her protection both in waiting areas such as airports, railway stations and throughout the territory of the Member States; calls for the powers and role of the legal guardian to be clearly defined;

49. Calls on the Commission and the Member States to introduce a proactive duty to trace family members, including for organisations such as the Red Cross and Red Crescent;

50. Is concerned at the phenomenon of unaccompanied minors disappearing; calls on the Member States to gather data and statistics pursuant to Article 4(3)(a) of Regulation 862/2007/EC⁽⁶⁾ concerning the identification of, and provision of assistance to, unaccompanied minors in order to combat this phenomenon; believes that the best way to discourage the disappearance of minors is to provide suitable reception facilities for them, where they may also receive an education appropriate to their age (schooling, vocational training, etc.);

51. Calls on the Commission and the Member States to put in place a harmonised and reliable mechanism for identifying unaccompanied minors – by making use of the latest technologies such as the use of biometric data – and common rules concerning age disputes; points out, in this regard, that during an age dispute procedure the person concerned must, as a precaution, be considered a minor until the end of the procedure and therefore treated as such, and that whenever there is reasonable doubt as to the age of the minor, this must be to the benefit of the minor;

Families

52. Calls on the Member States to consider alternative measures to detention and, where appropriate and before detaining families which include minors, to demonstrate that the alternatives considered are not effective;

53. Calls for families seeking asylum to have access to family services, child services and medical consultations by child protection specialists;

Vulnerable persons

54. Calls on the Commission to lay down mandatory common standards for identifying vulnerable persons, particularly victims of torture or human trafficking, people requiring special medical treatment, pregnant women and minors;

55. Considers that no vulnerable person, given their particular circumstances, should be placed in detention as that would have serious repercussions for their wellbeing;

56. Urges the Member States to provide specialist assistance to vulnerable persons and victims of torture and trafficking, particularly psychological assistance, to ensure their protection; calls for all staff having contact with vulnerable persons, including the officials responsible for asylum applications and the police, to receive specialist training;

Dublin System

57. Is concerned at the increased number of people detained under the Dublin System and at the near-routine use of detention measures by certain Member States; expects people not to be placed in detention if the Member State has not demonstrated a risk of their absconding;

58. Regrets that certain Member States limit the access of persons under the Dublin System to reception standards; calls on the Commission to establish clearly that the Reception Directive 2003/9/EC also applies to such persons, in order to ensure that they are able to exercise their full rights;

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59. Instructs its President to forward this resolution to the Council, the Commission, and the governments and parliaments of the Member States.

⁽¹⁾ OJ L 31, 6.2.2003, p. 18.

⁽²⁾ OJ L 326, 13.12.2005, p. 13.

⁽³⁾ OJ L 50, 25.2.2003, p. 1.

⁽⁴⁾ OJ C 33, 9.2.2006, p. 598.

⁽⁵⁾ OJ C 296 E, 2.12.2006, p. 301.

⁽⁶⁾ Regulation (EC) No 862/2007 of the European Parliament and of the Council of 11 July 2007 on Community statistics on migration and international protection (OJ L 199, 31.7.2007, p. 23).