

Meijers Committee

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

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To European Parliament
Civil Liberties, Justice and Home Affairs Committee
Rue Wiertz
BE-1047 Bruxelles

Reference CM1118
Regarding Proposal to introduce a safeguard clause to suspend visa liberalisation (COM (2011) 290 final)
Date 19 December 2011

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

Please find attached a note of the Meijers Committee on the proposal to introduce a safeguard clause to suspend visa liberalization (COM (2011) 290 final).

In this note the Meijers Committee expresses its understanding for the concerns of Member States who are confronted with a large number of unsuccessful asylum applications, but it has doubts about the necessity of the proposal and observes that the proposal may place human rights at risk. Unfortunately the Draft report and the explanatory memorandum of the Rapporteur are silent on the human rights effects of the proposal. The Meijers Committee recommends that these effects are explicitly taken into account in the debate and vote on the proposal which probably will take place in January.

Should the Members of the European Parliament remain of the opinion that the proposal is necessary, the Meijers Committee advises to implement the amendments mentioned in the last paragraph of this note.

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

CC The European Commission, Permanent Representatives of the Member States, The Dutch Senate, The Dutch House of Representatives and the Dutch Minister for Immigration and Asylum and various NGO's.

Note on the proposal to introduce a safeguard clause to suspend visa liberalisation (COM (2011) 290 final)

The background for introducing the visa safeguard clause for suspending visa liberalisation is the increase of asylum applications in several Member States in 2010 (especially Germany, Sweden, Belgium) after the granting of visa liberalisation to nationals of Serbia, Montenegro and the former Yugoslav Republic of Macedonia in December 2009. The Meijers Committee understands the concerns of Member States who are confronted with a large number of unsuccessful asylum applications, but i) doubts the necessity of the current proposal and ii) observes that the proposal may place human rights at risk since, although phrased in neutral terms, the proposal in practice is likely to especially affect ethnic minorities. The Meijers Committee notes that the explanatory memorandum and the draft report of the European Parliament Rapporteur¹ are silent on the human rights effects of the proposal and recommends the Parliament to take these explicitly into account.

1) Human rights effects

It is reported that the current pressure exerted by the European Commission and Member States on Western Balkan countries to stop asylum-seekers from making use of the visa waiver primarily affects people of Roma origin, since they are most likely to (unsuccessfully) apply for asylum in the EU.² The Council of Europe Commissioner for Human Rights and the Roma organization Chachipe observe that: i) exit controls of Western Balkan countries are being conducted on the basis of ethnic profiling, primarily targeting persons of Roma origin, ii) Western Balkan countries have introduced penalties on returned failed asylum-seekers such as the temporary confiscation of their passports; and iii) Western Balkan countries have been asked by the European Commission to strengthen exit controls, including the verification of whether the exiting person complies with entry conditions under the Schengen Borders Code.³

The Meijers Committee wishes to underline that these types of measures are contrary to, or risk undermining, fundamental rights. Firstly, as regards racial profiling, the House of Lords in 2004 found border controls that specifically targeted Roma asylum-seekers of Czech nationality, who were more intensively questioned than non-Roma, in order to prevent them from claiming asylum in the United Kingdom, to amount to racial discrimination prohibited by the International Convention on the Elimination of all Forms of Racial Discrimination.⁴

The effect of the measures are also contrary to the European Parliament recommendation to the Council of 24 April 2009 on the problem of profiling, notably on the basis of ethnicity and race, in counter-terrorism, law enforcement, immigration, customs and border control

¹2011/0138(COD).

²The Commission reports that 80% of the asylum applicants from Serbia and Macedonia are people of Roma origin: Commission Staff Working Paper on post-visa liberalisation monitoring for the Western Balkan countries in accordance with the Commission Statement of 8 November 2010, SEC(2011) 695 final, p. 15.

³Council of Europe Commissioner for Human Rights Thomas Hammarberg, Human Rights Comment: 'The right to leave one's country should be applied without discrimination', 22 November 2011, <http://commissioner.cws.coe.int>; Letter of Chachipe a.s.b.l. to Mrs. Cecilia Malmström of 26 October 2011, 'Ongoing human rights concerns in relation with your requests to the countries of the Western Balkans to stop the influx of asylum seekers in the European Union'. The European Commission confirms that exit controls include the checking of return tickets and requesting evidence for possessing sufficient financial means for stay in the Schengen zone, SEC(2011) 695 final, p. 15.

⁴*R (European Roma Rights Centre) v Immigration Officer at Prague Airport* [2004] UKHL 55, par. 98-104, per Baroness Hale.

(2008/2020(INI)).⁵ The European Parliament stated in this recommendation “whereas unjustified travel restrictions and intrusive control practices could negatively affect vital economic, scientific, cultural and social exchanges with third countries; accordingly, underlines the importance of minimising the risk of certain groups, communities or nationalities being subject to discriminatory practices or measures that cannot be objectively justified” (H).

Secondly, the penalizing of ethnic minorities for wishing to escape social difficulties, discrimination and threats to their personal security, may contribute to stigmatisation and prejudices. The European Roma Rights Center has reported frequently about these kind of problems of the Roma community in the countries of the Western Balkan.⁶

Thirdly, the tightening of exit controls with a specific view to prevent asylum-seeking runs counter to the generally recognized rights to seek asylum and to leave any country, including his own.⁷ The exercise of these rights should not be made dependent on the successfulness of obtaining residence in the receiving country. If a person fulfills the exit conditions of his own country, and is refused from leaving his country on the basis only of entry conditions laid down in EU law, that measure lacks the domestic legal basis required under human rights law.⁸ Verification of Schengen entry conditions is therefore a matter of the EU Member States alone, and should not be transferred to third countries.

Fourthly, the right to seek asylum would be rendered nugatory if third country border guards are specifically instructed to stop persons who are likely to request asylum. It is appropriate to point out in this respect that, although the recognition rate of asylum-seekers from Balkan countries is indeed low across the EU Member States, it is not negligible. In 2010, 310 out of 12.600 positive decisions were taken in respect of Serbian applicants (2.5%) and 60 out of 4.535 in respect of Macedonian applicants (1.3%). Further, the recognition rates among Member States vary considerably.⁹ It is also reported that the recognition rate of Roma asylum-seekers originating from Europe, is considerably higher in the non-EU country Canada.¹⁰

In light of the right of everyone to seek asylum and the right guaranteed under EU law for every third-country national to apply for asylum, and in view of the Roma background of the persons seeking asylum, the Meijers Committee would caution against classifying asylum applications lodged by nationals of Balkan countries as ‘abuse’ or ‘misuse’ of visa free travel – as is done by Commissioner Malmström and in the report of the EP rapporteur.¹¹ The Meijers Committee observes that the strong stance on Roma asylum-seekers reflected in the proposal contrasts with Resolution 1768 (2010) of the Parliamentary Assembly of the Council of Europe, which urged the member states of the Council of Europe to ‘ensure that all asylum

⁵ P6_TA(2009)0314.

⁶ See ERRC news <http://www.errc.org/cikk.php?cikk=3596> and <http://www.errc.org/cikk.php?cikk=3570>.

⁷ Article 14 Universal Declaration of Human Rights, Article 2(2) Protocol No. 4 ECHR, Article 12 (2) ICCPR.

⁸ See Human Rights Committee general comment no. 27 (freedom of movement), CCPR/C/21/Rev.1/Add.9, par. 12.

⁹ SEC(2011)695 final, p. 22-24

¹⁰ J. Tóth, ‘The Incomprehensible Flow of Roma Asylum-Seekers from the Czech Republic and Hungary to Canada’, CEPS working paper 2010, reporting a recognition rate of Roma asylum-seekers from the Czech republic in Canada in 2008 of 43%.

¹¹ Blog of Cecilia Malmström, ‘Visa regulation and migration’, 24 May2011; 2011/0138(COD), p. 18.

applications of Roma are considered on the basis of their individual merits according to fair and efficient refugee status determination procedures' and to 'consider the plight of Roma sympathetically and seek ways in which to accommodate those who are citizens of one European Union member state and who are refused asylum in another European Union member state'.¹²

In conclusion, the Meijers Committee is concerned that EU pressure on third countries to prevent Roma from entering the EU in order to claim asylum, which the proposal seeks to formalise into EU law, interferes with the human rights to leave one's country and to seek asylum, that it may result in discriminatory practices of border control, and that it may contribute to a climate of stigmatisation and repression of ethnic minorities in Balkan countries.

2) *Necessity*

The number of asylum applications lodged by nationals of Serbia and Macedonia peaked in 2010, but dropped in the first half of 2011 (Serbia -44%; FYROM -20%¹³). The European Commission further notes that detections of illegal stays of nationals from the visa-exempt Western Balkan countries dropped by 45% in 2011 compared to the same period in 2010.¹⁴ It remains unclear to what factors these drops should be attributed. It may be due to the intensification of controls, but another explanation is the deterrent effect of low recognition rates and the success of voluntary and forced returns as reported by the Commission. The sudden rise in asylum applications may therefore be a temporary phenomenon which only manifests itself in the immediate aftermath of visa liberalisation. The Meijers Committee has some concern about the speed with which this proposal had been introduced, which does not seem to take these later developments into account and is not based on a long-term assessment of the effects of visa liberalisation. Neither does the proposal recognise that, as transpires from the post-visa liberalisation monitoring conducted by the Commission, there are other policy alternatives, such as information campaigns in the Balkan countries and better implementation of readmission agreements, which may address the concerns of the Member States without it being necessary to make visa liberalisation conditional on the number of asylum applications as a matter of EU law.

3) *Should it nonetheless be considered necessary to maintain the visa safeguard clause, the Meijers Committee proposes the following amendments.*

3.1. As a matter of principle, it is suggested to maintain only the provisions relating to illegal stays (Article 1a, paragraph 1(a)) and rejected readmission applications (Article 1a, paragraph 1(c)) and thus to delete the provision on asylum applications (Article 1a, paragraph 1(b)). This would be consistent with the fact that visa waivers have never been expressly linked in EU law to the question of asylum but are instead conditioned on considerations of illegal immigration, public policy and public security (see point 5 of the preamble of Reg. EC No. 539/2001).

3.2. The six month period referred to in the three criteria of Article 1a, paragraph 1, coupled with the three month assessment period of the Commission may be too short to take account

¹² Resolution 1768 (2010), Roma asylum seekers in Europe, para. 12.1, 12.2.

¹³ UNHCR, Asylum Levels and Trends in Industrialized Countries First Half 2011, 18 October 2011.

¹⁴ SEC(2011)695 final, p. 16.

of temporary peaks in influxes. It scarcely allows time for reflection on factors explaining migration and assessing longer-term migration trends. It is suggested therefore, to extend the period mentioned in Article 1a, paragraph 1 to at least one year and to extend the assessment period of the Commission to six months (Article 1a, paragraph 3). This would also allow for the putting into place and examining the effectiveness of alternative policy measures taken by the EU and/or the country of origin.

3.3. Should the provision on asylum applications (Article 1a, paragraph 1(b)) be maintained, it is suggested, in view of the discrepancy between recognition rates of Member States, that the Commission should examine the notification also in the light of recognition rates in other Member States and in the EU as a whole. An explicit reference to this effect can be included in Article 1a, paragraph 3. The Meijers Committee agrees with the remark of the Rapporteur that percentages should be used only to initiate the assessment process, while the decision to suspend the visa waiver should ultimately depend on a full assessment of all relevant circumstances and their impact on the EU as a whole.

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