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THE EUROPEAN UNION**

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NOTE

from: Presidency
to: JHA Counsellors
on: 23 January 2012
No. Cion prop.: 11214/11 ASILE 46 CODEC 981
Subject: Amended proposal for a Directive of the European Parliament and of the Council laying down standards for the reception of asylum seekers

Delegations find in annex in **bold** the Presidency's compromise suggestions on recital 28 and the Articles 8, 9, 20, 22, 25 and 26 of above mentioned recast of the Reception Conditions Directive.

↓ 2003/9/EC

2008/0244 (COD)

Amended proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
laying down ~~minimum~~ standards for the reception of asylum seekers

(Recast)

(...)

↓ new

→ Council

(28) In accordance with → [...] ↔ Articles 1,2 and ← Article 4a(1) of Protocol No. 21 on the position of the United Kingdom and Ireland in respect of the Area of Freedom, Security and Justice, annexed to the Treaty on European Union, and to the Treaty on the Functioning of the European Union, and without prejudice to ~~paragraph 2 of that Article, so long as the United Kingdom has not notified its wish to accept this measure, in accordance with~~ Article 4 of that Protocol, **the United Kingdom is not taking part in the adoption of this Directive and it is not bound by it or subject to its application and continues to be bound by Directive 2003/9/EC.**

(...)

↓ new

↻ Council

Article 8

Detention

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for international protection in accordance with Directive [.../.../EU] [the Asylum Procedures Directive].
2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant, if other less coercive alternative measures cannot be applied effectively.
3. ↻ [...] ↻ An ↻ applicant may only be detained:
 - (a) in order to determine or verify his/her identity or nationality;
 - (b) in order to determine ↻ [...] ↻ the elements on which the application for international protection is based which could not be obtained in the absence of detention ↻ , in particular when there is a risk of absconding ↻ ;
 - (c) in the context of a procedure, to decide on the right to enter the territory;

(c1) when there is a risk of the applicant absconding in order to hamper or avoid the execution of a decision regarding his/her right to stay on the territory of the Member State;

➔ (d) when he/she is ➔ already ➔ detained ➔ subject to a return procedure ➔ in order to prepare the return and/or carry on the removal process and **there are reasonable grounds to believe that** ➔ [...] ➔ he/she makes ➔ the ➔ [...] ➔ application for international protection merely in order to delay or frustrate the enforcement of ➔ the ➔ [...] ➔ return ➔ decision ➔ [...] ➔ ; ➔

(➔ e ➔ [...] ➔) when protection of national security or public order so requires.

➔ (f) in accordance with ➔ Article 27 of ➔ Regulation (EC) No [...] [...] [Dublin Regulation] ➔ [...] ➔ . ➔

➔ [...] ➔ ➔ ➔ Grounds ➔ ➔ for detention ➔ shall be laid down in national law.

4. Member States shall ensure that ➔ any ➔ rules concerning alternatives to detention, such as regular reporting to the authorities, the deposit of a financial guarantee, or an obligation to stay at an assigned place, are laid down in national law.

Article 9

Guarantees for detained asylum seekers

1. Detention shall be for as short a period as possible and shall only be maintained for as long as the grounds set out in Article 8(3) are applicable.
Administrative procedures relevant to the grounds set out in Article 8(3) shall be executed with due diligence. Delays in the administrative procedures that cannot be attributed to the asylum seeker shall not justify a continuation of detention.

2. Detention shall be ordered by judicial or administrative authorities. Where detention is ordered by administrative authorities, Member States shall provide for a speedy judicial review of the lawfulness of detention conducted *ex officio* and/or on the request of the applicant. The review of the lawfulness of detention shall be decided on as speedily as possible from the beginning of detention in the case of the *ex officio* review. In the case of a review on the request of the applicant, the lawfulness of the detention shall be subject to a review to be decided on as speedily as possible after the launch of the relevant proceedings. To this end, Member States shall define in national law a [...] period within which the *ex officio* review and/or the review on request of the applicant shall be conducted.

[...] The applicant concerned shall be released immediately if the detention is not lawful.

3. Detention shall be ordered in writing. The detention order shall state the reasons in fact and in law on which it is based.

Detained asylum seekers shall immediately be informed of the reasons for detention and the procedures laid down in national law for challenging the detention order [...], in a language they understand [...] or are [...] reasonably supposed to understand. [...].

4. Detention shall be reviewed by a judicial authority at reasonable intervals of time, [...] *ex officio* and/ or on request by the asylum seeker concerned, in particular whenever it is of a prolonged duration or relevant circumstances arise or new information becomes available which may affect the lawfulness of detention.

5. ⇒ In cases of ⇒ [...] ⇄ a ⇄ review of the detention order **provided for in paragraph 2**, Member States shall ensure that asylum seekers have access to free legal assistance and representation ⇒ . This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.

Free legal assistance and representation shall be provided by such persons as admitted or permitted under national law.

6. Member States may also provide that free legal assistance and representation are granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants for international protection. ⇄

⇒ [...] ⇄

⇒ [...] ⇄

⇒ 7 ⇄ ⇒ [...] ⇄. Member States may also: ⇄

⇒ (a) impose monetary and/or time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to the provision of legal ⇒ ~~and procedural information and legal~~ ⇄ assistance and representation; ⇄

⤷ (b) provide that, as regards fees and other costs, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance ~~⤷ and representation~~.

⤷ 8. Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant.

⤷ 9. Procedures for access to legal assistance and representation in ~~⤷ [...]~~ such cases as referred to above ~~⤷ [...]~~ shall be laid down in national law. ~~⤷ [...]~~

CHAPTER III

REDUCTION OR WITHDRAWAL OF ~~⊗~~ MATERIAL ~~⊗~~

RECEPTION CONDITIONS

Article ~~20~~ 16

Reduction or withdrawal of ~~⊗~~ material ~~⊗~~ reception conditions

1. Member States may reduce or withdraw ~~⊗~~ material ~~⊗~~ reception conditions ~~in the following cases:~~

~~(a)~~ where an asylum seeker:

- (a) = abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or
- (b) = does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or
- (c) = has ~~already~~ lodged ⇒ a subsequent application as defined in Article 2(q) of [...]/.../EU] [the Asylum Procedures Directive] ⇐ ~~an application in the same Member State~~ , or
- (d) has concealed financial resources and has therefore unduly benefited from material reception conditions.

In relation to cases (a) and (b), ~~W~~when the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstatement of the grant of some or all of the material reception conditions withdrawn or reduced .

~~(b) where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions.~~

~~If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.~~

~~2. Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.~~

2. Member States may reduce or withdraw material reception conditions in clearly abusive cases, particularly when the applicant has entered the territory of the Member State unlawfully or prolonged his/her stay unlawfully and, without good reason, has not filed an application for asylum as soon as possible. Member States shall continue to provide a dignified standard of living for these applicants.

3. ~~2~~ Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.

4. ~~3~~ Decisions for reduction, withdrawal or refusal of ~~the~~ material ~~reception~~ reception conditions or sanctions referred to in paragraphs 1, ~~2~~ and ~~3~~ ~~2~~ shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article ~~21~~ ~~17~~, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to ~~emergency~~ health care ~~in accordance with Article 19~~.

5. ~~4~~ Member States shall ensure that material reception conditions are not withdrawn or reduced before a ~~negative~~ decision is taken ~~in accordance with paragraph 3~~.

(...)

↓ new

→ Council

Article 22

Identification of the special reception needs of vulnerable persons

1. Member States shall assess through an individual evaluation whether applicants belonging to vulnerable categories pursuant to Article 21 have special reception needs. In such cases, Member States shall establish the nature of those needs and the necessary support to be provided. The assessment [...] For an applicant who is a vulnerable person, Member States shall assess after an individual evaluation whether he/she [...] has special reception needs. If he/she has special reception needs, Member States shall [...] also indicate [...] the nature of such needs. This [...] shall be initiated within a reasonable time after an application for international protection is made. Member States shall ensure that these special reception needs are also addressed, in accordance with the provisions of this Directive, if they become apparent at a later stage in the asylum procedure.

Member States shall ensure that the support provided to such persons takes into account their [...] special reception needs throughout the duration of the asylum procedure and shall provide for appropriate monitoring of their situation.

2. The identification [...] provided for in paragraph 1 shall be without prejudice to the assessment of international protection needs pursuant to Directive [...] /EU] [the Qualification Directive].

Article 25 ~~20~~

Victims of torture and violence

1. Member States shall ensure that, ~~if necessary,~~ persons who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts \Rightarrow , in particular access to ~~rehabilitation services that should allow for obtaining relevant~~ medical and psychological treatment or care \Leftarrow .

\Downarrow new

2. Those working with victims of torture, rape or other serious acts of violence shall have had and shall continue to receive appropriate training concerning their needs, and shall be bound by the confidentiality rules provided for in the relevant national law, in relation to any information they obtain in the course of their work.

↓ 2003/9/EC (adapted)

⇒ new

CHAPTER V

APPEALS

Article ~~26~~

Appeals

1. Member States shall ensure that ~~negative~~ decisions relating to the granting ⇒, withdrawal or reduction ⇐ of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review ⇒, in fact and in law, ⇐ before a judicial body shall be granted.

↓ new

⇒ Council

2. **Member States shall ensure that free legal assistance and representation is granted on request, in the procedures referred to in paragraph 1. This shall include, at least, the preparation of the required procedural documents and participation in the hearing before the judicial authorities on behalf of the applicant.**

Free legal assistance and representation shall be provided by such persons as admitted or permitted under national law.

~~In relation to the cases of an appeal before a judicial body referred to in paragraph 1, Member States shall ensure that asylum seekers have access to free legal assistance and representation, where they lack sufficient resources [...] and in so far as it is necessary to ensure their effective access to justice.~~

3. Member States may also provide that free legal assistance and representation is granted:

(a) only to those who lack sufficient resources; and/or

(b) only through the services provided by legal advisers or other counsellors specifically designated by national law to assist and represent applicants for international protection

~~Member States may provide that free legal assistance and representation not be granted if the appeal or review is considered applicant's appeal is considered by a court or tribunal to have no tangible prospect of success. In such a case, Member States shall ensure that legal assistance and representation is not arbitrarily restricted and that the applicant's effective access to justice is not hindered.~~

~~Legal assistance and representation shall include at least preparation of the required procedural documents and representation before the judicial authorities.~~

~~⇒ Member States may provide that the legal assistance and representation are provided by nongovernmental organisations, government officials or specialised services of the State. ⇐~~

~~Legal assistance and representation may be restricted to legal advisers or counsellors specifically designated by national law to assist and represent asylum seekers.~~

↓ 2003/9/EC

⇒ new

⇒ Council

42. — ~~Procedures for access to legal assistance ⇒ and representation ⇐ in such cases shall be laid down in national law.~~

~~⇒ Member States may also: ⇐~~

~~⇒ (a) impose monetary and time limits on the provision of free legal assistance and representation, provided that such limits do not arbitrarily restrict access to the provision of legal and procedural information and legal assistance and representation; ⇐~~

➤ (b) provide that, as regards **free legal assistance and representation fees and other costs**, the treatment of applicants shall not be more favorable than the treatment generally accorded to their nationals in matters pertaining to legal assistance. ◀

➤ Member States may demand to be reimbursed wholly or partially for any expenses granted if and when the applicant's financial situation has improved considerably or if the decision to grant such benefits was taken on the basis of false information supplied by the applicant. ◀
