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

Secretariaat
postbus 201, 3500 AE Utrecht/Nederland
telefoon 31 (30) 297 42 14/43 28
telefax 31 (30) 296 00 50
e-mail cie.meijers@forum.nl
http://www.commissie-meijers.nl

To Ms Cecilia Malmström
Commissioner for Home Affairs
EUROPEAN COMMISSION
B-1049 BRUSSELS

Reference CM1102
Regarding Redraft of Commission proposals recasting the Reception Conditions Directive (COM(2008)815) and the Asylum Procedures Directive (COM(2009)554)
Date 24 March 2011

Dear Commissioner Malmström,

Please find attached a note of the Standing Committee of experts on international immigration, refugee and criminal law regarding the pending redraft of the Commission proposal recasting the Reception Conditions Directive, introduced in 2008, and the proposal recasting the Asylum Procedures Directive, introduced in 2009.

We hope you will find these comments useful. In case any question should arise, the Standing Committee is prepared to provide you with further information on this subject.

Yours sincerely,

Prof. dr. C.A. Groenendijk
Chairman

Note on the amended Commission proposals recasting the Reception Conditions Directive and Asylum Procedures Directive

Introduction

The Meijers Committee (Standing Committee of experts on international immigration, refugees and criminal law) understands that the Commission is currently preparing a redraft of its recast proposals on the Reception Conditions Directive and the Asylum Procedures Directive of respectively December 2008 and October 2009.[1] The Committee is aware of the political context and the opposition against certain recast proposals during the Council negotiations. However, in this light, the Committee has concerns about the possible reduction of the level of fundamental rights protection. The initial recast proposals did in fact improve the EU asylum acquis on procedures and reception considerably and brought it more in line with international legal standards and jurisprudence.

The Committee therefore would like to draw your attention to a number of key issues, which in its opinion should be maintained in the recast proposals or even further improved on the basis of the current standards of international law. The issues addressed here are the most crucial ones according to the Committee. However, this does not exclude other provisions in both directives from the need for careful reconsideration.

The Committee hereby also would like to refer to its comments and remarks made in its two previous notes of March 2009 (CM0902) and February 2010 (CM1004) on the EU asylum acquis, send to the European Commission, in which the Committee has indicated its appreciation for the recast proposals.[2]

Reception Conditions Directive

Human dignity

The Committee would like to reiterate the fundamental principle of human dignity, as laid down in Article 1 of the EU Charter of Fundamental Rights: '*Human Dignity is inviolable. It must be respected and protected.'*[3] This principle is a cornerstone of the European human rights system, as confirmed by the standing European case law. Among others, Article 3 of the European Convention on Human Rights (ECHR) requires the State to ensure that detention conditions are compatible with respect for human dignity.[4] The European Committee of Social Rights states that living conditions in a reception camp or temporary shelter should be such as to enable living in keeping with human dignity.[5] With respect to living and reception conditions the European Court of Human Rights (ECtHR) also refers to the duty to respect a person's dignity.[6] The principle of respect for human dignity should remain the underlying parameter of the amended recast on reception conditions. In particular when taking into consideration that asylum seekers are particularly vulnerable.[7]

Access to labour market and to adequate reception

The Meijers Committee would like to make reference to its remarks on access to the labour market and access to adequate reception facilities throughout the asylum procedure in its note of 18 March 2009 on the proposals to amend the Dublin Regulation COM(2008)820 final and the Reception Conditions Directive COM(2008)815 (CM0902).

The current recast proposal on granting *access to the labour market* after a period of maximum six months after lodging an application for international protection still meets full agreement by the Meijers Committee and is in conformity with actual practice in many Member States. The Committee is aware

[1] Respectively COM(2008)815 and COM(2009)554.
[2] Note of 18 March 2009 on the proposals to amend the Dublin Regulation, COM(2008) 820 final of 3.12.2008 and the Reception Conditions Directive, COM(2008) 815 (CM0902) and Note of 4 February 2010 on the proposals for recasting the Qualification Directive (COM(2009) 551) and the Procedures Directive (COM(2009) 554)(CM1004).
[3] Article 1, Charter of Fundamental Rights of the European Union (2000/C 364/01), 18 December 2000.
[4] See for example ECtHR 26 October 2000, Kudla v. Poland (GC) no 30210/96, para 94.
[5] European Committee of Social Rights 20 October 2009, *Defence for Children International v. the Netherlands*, no 47/2008, para 62.
[6] ECtHR 21 January 2011, M.S.S v. Belgium and Greece, no 30696/09, para 262. See also ECtHR 18 June 2009, Budina v. Russia, no 45603/05.
[7] ECtHR 21 January 2011, M.S.S v. Belgium and Greece, no 30696/09, para 232.

of the political discussions on the issue and is familiar with the fact that several Member States strongly oppose this amended provision. According to the Committee it is of great importance that this provision is nevertheless maintained in the amended recast proposal. Access to lawful employment after the asylum procedure has lasted for more than half a year is important, since it reduces illegal employment and exploitation of asylum seekers, reduces the costs of their reception, diminishes the perception that asylum seekers want to live on the public purse, reduces idleness and hospitalization of asylum seekers and is in conformity with the right to asylum guaranteed by Article 18 of the EU Charter of Fundamental Rights. However, the Committee is not convinced that by this new provision all undue restrictions in Member States will be abolished. The reference in Article 15(2) to the national legislation of the Member States will continue to condone national practices that exclude asylum seekers from lawful employment. The Committee therefore deems it important for the directive to clarify more precisely its intent to provide applicants for international protection with fair opportunities for access to lawful employment in the Member State once the asylum procedure has lasted for more than six months.

The Meijers Committee emphasises that *access to adequate reception* should be given throughout the asylum procedure, and that only in very clear cases this access can be denied. The Committee therefore appreciates the recast proposals on article 16 and 20, which should be maintained in the amended recast proposals. In addition, the Committee recommends that withdrawal of reception only takes place in case a subsequent application can be seen as a repeated request, as described in Article 32(4)(h) of the Procedures Directive and may reasonably be considered to be lodged for the sole purpose of receiving reception.

Detention

With respect to provisions regarding detention in the recast proposal (Articles 8-11), the Committee would like to refer to its remarks made on this subject in the abovementioned note on the recast proposals (CM0902), which are still valid.[8] In relation to the failed negotiations in the Council on these proposals, the Committee emphasises the importance of maintaining the improved provisions on detention, in particular on procedural guarantees and safeguards as well as adequate standards on detention conditions, in conformity with international law and jurisprudence, and in coherence with the current Returns Directive 2008/115/EC.

In addition the Committee refers to the recent judgment of the ECtHR in the case of *M.S.S. v. Belgium and Greece*. We would like to point out certain aspects of the case which are deemed to be relevant in respect to the amendment of the recast proposals on detention provisions. Firstly, the ECtHR confirms that Article 3 of the Convention requires Member States to ensure that detention conditions are compatible with respect for human dignity, that the manner and method of the execution of the measure do not subject the detainees to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, their health and well-being are adequately secured.[9] Furthermore, the ECtHR takes into consideration, when assessing whether the detention conditions are indeed in violation of Article 3 of the Convention, the systematic placement of asylum seekers in detention without informing them of the reasons for detention.[10] It also states that the duration of the detention, four days and one week respectively, are not regarded as insignificant. Particular emphasis is put on the fact that it concerns detention of an asylum seeker, who is particular vulnerable due to everything he or she already endured before and during the flight.[11] According to the Committee, the *M.S.S v. Belgium and Greece* judgement should be taken into account when amending the recast proposals on detention, in particular with regard to procedural guarantees, duration and conditions.

Level of material reception conditions

The discussion with respect to the recast proposal on material reception conditions focused on the benchmark for these conditions. The recast proposal suggests an equivalent to the amount of social assistance granted to nationals requiring assistance. Apparently, for some Member States, this benchmark was unacceptable.

[8] Meijers Committee, *Note on the proposals to amend the Dublin Regulation (COM2008) 820 final and the Reception Conditions Directive, COM(2008)815* d.d. 18 March 2009, p. 3-4.
[9] ECtHR 21 January 2011, *M.S.S v. Belgium and Greece*, Appl.No 30696/09, para 221.
[10] Ibid., para 226.
[11] Ibid., para 232.

The Committee would like to point out that according to the ECtHR the Reception Directive contains a positive obligation to provide accommodation and decent material conditions to asylum seekers.[12]
In this context, the Meijers Committee would like to make some general remarks on the applicable framework with respect to material reception conditions and assistance. First of all, the general principle of non-discrimination in EU law, Articles 8 and 14 ECHR, Article 1 of its XIIth Protocol, Article 21 of the EU Charter of Fundamental Rights and Article 26 ICCPR, require a sufficient justification for a level of material reception conditions below the level granted by the national legislation on destitute citizens. Furthermore, the Meijers Committee would like to point out that the European Committee of Social Rights has stated that living conditions in a shelter should be such as to enable living in keeping with human dignity.[13] The Commissioner for Human Rights of the Council of Europe recommended with respect to the right of housing that the requirement of dignity means that even temporary shelter (for people who are unlawfully present at a state's territory) must fulfil the demands for safety, health and hygiene, including basic amenities such as clean water, sufficient lighting and heating, and security of the immediate surroundings.[14] These requirements relate to the right to shelter for persons unlawfully present on a state territory. According to the Meijers Committee the level of living conditions for asylum seekers who have indeed a legal right to remain pending the decision on their asylum request on the state territory should thus be higher.[15]

Asylum Procedures Directive

The right to an effective remedy
Article 41 of the recast proposal addresses the right to an effective remedy. This remedy should according to the proposal:

- include a full examination of both facts and points of law, including an *ex nunc* examination of the international protection needs pursuant to the Qualification Directive;
- in principle have suspensive effect. In certain categories of cases no suspensive effect is required. However in those cases the court or tribunal shall have the power to rule whether or not the applicant may remain on the territory of the Member State. The Member States shall allow the applicant to remain in the territory until such ruling has been given; and
- be accessible in the sense that Member States shall provide for reasonable time-limits and other necessary rules for the applicant to exercise his/her right to an effective remedy.

Furthermore Article 19(1)(a) and (b) of the recast proposal requires Member States to disclose information relevant for the asylum decision at least to a legal adviser or counsellor who has undergone a security check and the court or tribunal in the meaning of Article 41 of the proposal. Such information may be withheld from the asylum applicant and his legal adviser or counsellor on several grounds among which the national security of the Member States.

The Meijers Committee argues that all these proposals are required by the case-law of the European Court of Justice (ECJ) and the ECtHR. It is important to note that Article 41 of the proposal as well as Article 39 of the current Procedures Directive reflect the right to an effective remedy laid down in Article 47 of the EU Charter of Fundamental rights and recognized by the ECJ as a fundamental right. The right to an effective remedy applies to any negative asylum decision.[16] This right thus offers broader protection than the right to an effective remedy provided by Article 13 ECHR, which is limited to persons who have an arguable claim that their expulsion would lead to a violation of the prohibition of *refoulement.*

[12] Ibid., para 249.
[13] European Committee of Social Rights, 5 December 2007, FEANTSA v. France, Complaint No 39/2006, paras 108-109.
[14] See European Committee of Social Rights, Defence for Children International v. the Netherlands, complaint no 47/2008, 20 October 2009, para 62.
[15] This follows also implicitly from the Recommendation of the Commissioner for Human Rights of the Council of Europe on the implementation of the right to housing, June 2009: '*Temporary housing need not be subject to the same requirements of privacy, family life and suitability as are required from more permanent forms of standard housing'.*
[16] See also Art. 39 (1) Procedures Directive.

Full and ex nunc examination of the facts
The proposal to include the requirement of a full and ex nunc examination of the facts in Article 41 is fully in line with the ECtHR's case law under Article 3 and 13 ECHR. The ECtHR has held that such examination is called for as the situation in a country of destination may change in the course of time.[17] This case-law informs the right to an effective remedy included in Article 47 of the EU Charter of Fundamental Rights.[18]

Automatic suspensive effect[19]
It follows from the case-law of the ECJ[20] and the ECtHR that a remedy cannot be considered effective when irreparable harm may be done before the final judgment has been reached. In asylum cases expulsion of the asylum seeker before the court has reached a final judgment against the expulsion order or negative asylum decision may lead to such irreparable harm: death, torture or inhuman treatment of the applicant. The remedy is also rendered ineffective by the real chance that asylum seekers who are expelled to their country of origin lose contact with their lawyers and disappear or face difficulties substantiating their case. Granting interim protection against expulsion during the proceedings before the court is therefore essential.

Article 13 ECHR requires a remedy with automatic suspensive effect, if there is an arguable claim that the prohibition of *refoulement* will be violated upon expulsion.[21] Consequently current Article 39(3) Procedures Directive, which states that domestic rules concerning interim protection be in accordance with international human rights law, must be considered to demand already that interim protection be granted in the case of such an arguable claim. It is an absolute minimum requirement that either the remedy as referred to in Article 39(1) Procedures Directive or a request for interim protection automatically suspend the expulsion of the asylum applicant. The ECtHR's case law and therefore also the right to effective judicial protection require that suspensive effect be guaranteed by legislation or clear policy rules, not only on the basis of practical arrangements.[22]

Access to court
The right to an effective remedy, laid down in Article 47 of the EU Charter of Fundamental Rights, not only requires the *existence* of such remedy. It also demands that the remedy be *accessible* for the individual.[23] The right of access to court potentially has far reaching implications for national procedural rules or practices which directly or indirectly affect the accessibility of the appeal against the asylum decision. It demands amongst others that time limits for filing the appeal must be reasonable.[24] Article 41 of the recast proposal rightly makes this existing obligation of the Member States more visible.

The right to adversarial proceedings and the use of secret information
The Member States' authority to derogate from the right of the legal adviser or other counsellor who assists or represents the asylum applicant of access to the file, is limited to a significant extent by the rights of the defence and the right to an effective remedy granted by EU law. It is generally accepted that under certain conditions limitation - but not a total lack - of these rights may be justified: there must be a legitimate reason for the limitation and it should be necessary. Furthermore the importance of keeping evidence secret must be balanced against the procedural rights of the person concerned. In all cases, the procedural rights must be sufficiently guaranteed, if necessary by counterbalancing limitations to these rights.[25] Limitations can be counterbalanced for example by using non-confidential

[17] ECtHR 11 January 2007, *Salah Sheekh v. The Netherlands*, Appl. No. 1948/04, para 136, ECtHR 17 July 2008, *NA v. United Kingdom,* Appl. No. 25904/07, para 112.
[18] Art. 52 (3) Charter on Fundamental Rights.
[19] See more extensively on this subject: Marcelle Reneman, An EU Right to Interim Protection during Appeal Proceedings in Asylum Cases?, *European Journal of Migration and Law*, 12, Number 4, 2010 , pp. 407-434
[20] Case C-213/89, *Factortame I* [1990] ECR I-2433 and Case C-432/05, *Unibet* [2007] ECR I-2271.
[21] ECtHR 26 April 2007, *Gebremedhin v. France,* Appl. No. 25389/05, ECtHR 21 January 2011, M.*S.S v. Belgium and Greece*, Appl.No 30696/09.
[22] ECtHR 5 February 2002, *Čonka v. Belgium*, Appl. No. 51564/99.
[23] See for example Case C-50/00, *Union de Pequeños* [2002] ECR I-6677, para. 42. Also the ECtHR has explicitly accepted that the remedy required by Article 13 ECHR must be accessible for the individual. See for example ECtHR 12 April 2005, *Shamayev and others v. Georgia and Russia,* Appl. No. 36378/02, para. 447.
[24] This may be derived from the ECJ's case-law national regarding time-limits in cases, in which the applicants claimed a certain right, such as repayment of taxes levied contrary to EU law. The ECJ concluded in a few cases that such a time-limit was contrary to EU law. See for example Case C-78/98, *Preston and Fletcher* [2000] ECR I-03201.
See also ECtHR 23 March 2006, *Albanese v. Italy,* Appl. No. 77924/01, para 74.
[25] Joined Cases C-402/05 P and C-415/05 P, *Kadi and Al Barakaat* [2008], para 344, T□85/09, *Kadi* [2010], para 173 and

summaries of documents[26] or a security cleared legal adviser or counsellor who can examine the confidential documents on behalf of the person concerned.[27]

The possibility mentioned in Article 16(1) Procedures Directive to withhold relevant information to the national court deciding on the appeal against the asylum decision on national security grounds, must according to the Meijers Committee be considered incompatible with the right to effective judicial protection. Therefore the deletion of this possibility in the recast proposal should be deemed necessary. It clearly follows from the case-law of both the ECJ and the ECtHR that it is not solely up to the administrative authorities, but also to the national court to decide whether non-disclosure of evidence pursues a legitimate aim and is necessary.[28] In sanction cases the EU Courts have found numerous violations of the right to effective judicial protection because of the EU Institutions' refusal to disclose material to them for national security reasons.[29] In competition cases the ECJ explicitly held that national courts should receive all relevant evidence, including confidential information.[30] Furthermore it should be derived from the ECtHR's case-law under Article 3 ECHR that this court should be able to review rigorously whether there is a risk of *refoulement*.[31] This cannot be done when relevant documents are not disclosed to this court.

Right to a personal interview

Article 13 of the recast proposal deletes some of the exceptions laid down in Article 12 Procedures Directive to the right to a personal interview. Furthermore, it requires Member States to give dependant adults the opportunity to express their opinion in private and to be interviewed on their application. According to the Meijers Committee these changes are necessary to ensure the effective protection of the right to asylum and the principle of *non-refoulement*, as guaranteed by Articles 18 and 19 of the EU Charter of Fundamental Rights.

The right to a personal interview should be considered essential to ensure an appropriate examination of the asylum claim.[32] The claim of *refoulement* must be assessed on an individual basis. This means that the individual position and personal circumstances of the applicant, including factors such as background, gender and age, should be taken into account in the assessment whether, on the basis of the applicant's personal circumstances, the acts to which the applicant has been or could be exposed would amount to persecution or serious harm.[33] In most cases, the applicant himself is the most important source of information, at least with regard to the personal risk of persecution or serious harm. This is particularly the case when this person does not have sufficient evidence supporting his claim. Moreover a personal interview may be necessary to allow the applicant to clarify any discrepancies, inconsistencies or omissions in an initial (written) account[34] or to rebut the presumption of safety of his country of origin or a third country[35]. Finally an interview is necessary to test the credibility of the applicant's account. As was stated in the explanation to the amended proposal for the Procedures Directive:

'since in most if not all asylum cases the determining authorities must assess the credibility of statements and/or of the applicant on the basis of all available facts, it is imperative for a proper

further.

[26] See for example T-36/91, *Imperial Chemical Industries* [1995], para 102 and Case T-410/03, *Hoechst* [2008], para 154.

[27] ECtHR 19 February 2009, *A. and others v. UK*, Appl. no. 3455/05.

[28] See for ECtHR case-law for example: ECtHR 10 July 1998, *Tinnelly & sons Ltd and others and McElduff and others v. UK*, Appl. No. 20390/92 and 21322/92, para 75, ECtHR 8 June 2006, *Lupsa v. Romania*, Appl. no. 10337/04, para 41 and ECtHR 6 December 2007*, Liu and Liu v. Russia*, Appl. No. 42086/05, para 61 and 63, where the ECtHR considered that 'the domestic courts were not in the position to assess effectively whether the decision had been justified, because the full material on which it had been based was not made available to them'.

[29] See for example Case T-228/02, *Organisation des Modjahedines du people d'Iran* [2006], para 155, where the CFI held that it must be able to review the lawfulness and the merits of the measures to freeze funds 'without it being possible to raise objections that the evidence and information is secret or confidential.

[30] Case C450/06 *Varec* [2008] and Case C-438/04, *Mobistar* [2006].

[31] See for example ECtHR 21 January 2011, *M.S.S v. Belgium and Greece*, Appl.No 30696/09, para 293.

[32] An appropriate examination is required by Art. 8 (2) Procedures Directive and 9 (3) of the recast proposal.

[33] Art. 8 (2) (a) Procedures Directive and Art. 9 (3) (a) of the recast proposal, Art. 4 (3) Qualification Directive.

[34] C. Costello, UNHCR New issues in Refugee Research, Research Paper No. 134, The European asylum procedures directive in legal context, p.24. See also UNHCR Handbook para 109.

[35] Battjes, H., *European Asylum Law and International Law*, Leiden: Martinus Nijhoff Publishers/Brill Academic, 2006, p. 313.

assessment that applicants have, as much as possible, the opportunity to bring these forward in a personal manner, i.e. in an interview.'[36]

The ECtHR has recognised the importance of a personal interview in several asylum cases.[37] When assessing the quality of the national decision-making process the ECtHR takes into account whether the applicant was interviewed by the national authorities or was granted '*ample opportunity to state his case and to submit whatever he found relevant for the outcome*'.[38] Moreover, when examining the risk of refoulement under Article 3 the ECtHR has in a few cases relied heavily on the opinion of UNHCR, stressing that UNHCR interviewed the person concerned and thus had the opportunity to test the credibility of his fears and the veracity of his account of the circumstances in her home country.[39] The ECtHR thus recognises the importance of a personal interview for the assessment of the credibility of the claimant's account. The significance of the personal interview is finally recognised in several views of authoritative international human rights monitoring bodies.[40]

Right to legal aid

Article 18 of the recast proposal clearly reflects the standing requirements under the right of access to court guaranteed by Article 47 EU Charter of Fundamental Rights, which states that legal aid shall be made available to those who lack sufficient resources in so far as such aid is necessary to ensure effective access to justice. According to the ECtHR's case-law under Article 6 ECHR, which inspires this right[41], the refusal of a request for free legal assistance must be motivated. The burden on the applicant of proving that he lacks financial resources to pay for legal assistance may not render the right to free legal aid illusory. According to the ECtHR it is essential for a legal aid system to offer individuals substantial guarantees to protect those having recourse to it from arbitrariness.[42]

Status of medico-legal reports

Article 17 of the recast proposal addresses the role of medico-legal reports in the asylum procedure. It requires Member States to allow asylum applicants to have a medical examination carried out in order to support statements in relation to past persecution or serious harm and to grant them a reasonable period to submit a medical certificate. Furthermore, Member States shall ensure that a medical examination is carried out with the consent of the applicant, where there are reasonable grounds to consider that the applicant suffers from post-traumatic stress disorder. Finally, it states that the medico-legal report should be taken into account by the decision-making authority. Recital 21 of the preamble of the recast proposal rightly considers that medical examinations in asylum procedures should be based on the Istanbul Protocol, which provides for important guidelines for the impartial and objective documentation of torture.

Article 17 is in line with the requirements set by the case-law by the ECtHR and the views of the Committee against Torture. Both bodies attach significant weight to medico-legal reports supporting the account of an asylum seeker. They accept that medico-legal reports can, at least to a certain extent, establish a link between a person's medical condition and torture or ill-treatment suffered by him in the past.[43] The ECtHR made clear in *RC v. Sweden* that medico-legal reports, even those not written by an

[36] Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, 18 June 2002, COM (2002) 326 final, p. 7-8. Council resolution of 20 June 1995 on minimum guarantees for asylum procedures provides that, before a final decision is taken on the asylum application, the asylum-seeker must be given the opportunity of a personal interview with an official qualified under national law.
[37] See for example ECtHR 9 March 2010, *R.C. v. Sweden*, Appl. No 41827/07, para 52.
[38] See for example ECHR 16 March 2004, *Nasimi v. Sweden*, Appl. No. 38865/02, ECtHR 13 April 2010, *Charahili v. Turkey*, Appl. No. 46605/07, para 57, See also ECtHR 15 June 2010, *Ahmadpour v. Turkey*, Appl. No. 12717/08, para 38.
[39] See for example ECtHR 22 September 2009, *Abbdolkhani and Karimnia v. Turkey*, Appl. No. 30471/08, para 82.
[40] See for example UN Committee against Torture, Concluding Observations and Recommendations France, 3 April 2006, CAT/C/FRA/CO/3, Committee of Ministers of the Council of Europe, Guidelines on human rights protection in the context of accelerated asylum procedures, 1 July 2009, under IV 1.d and Parliamentary Assembly of the Council of Europe Resolution 1471 (2005)1 on accelerated asylum procedures in Council of Europe Member States, para 8.10.2. ExCom conclusion No 30 (1983) on the problem of manifestly unfounded or abusive applications for refugee status or asylum.
[41] C-279/09, *DEB* [2010], para 37.
[42] ECHR 22 March 2007, *Sialkowska v. Poland*, Appl. No. 8932/05, para 107. In particular when free legal assistance is refused on a merits test, certain guarantees must be in place.
[43] According to paragraph 8 (c) of CAT's 'General Comment no 1' medical or other independent evidence to support a claim by the author that he/she has been tortured or maltreated in the past should be taken into account when assessing

expert specialising in the assessment of torture injuries, must be taken into account. Furthermore the ECtHR made clear that in cases in which there are rather strong indications that the applicant's scars and injuries may have been caused by ill-treatment or torture, the burden of proof should shift to the decision-making authorities. They must '*dispel any doubts that might have persisted as to the cause of such scarring*'. According to the ECtHR in the case of *RC v. Sweden* the authorities ought to have directed that an expert opinion be obtained as to the probable cause of the applicant's scars in circumstances where he had made out a *prima facie* case as to their origin.[44] Member States are thus required under Article 3 ECHR to ensure that a medical examination is carried out by an expert, when there are strong indications that medical problems are caused by past torture or ill-treatment.

o-0-o

the claim under Article 3 CAT.' See also CAT 17 December 2004, Enrique Falcon Ríos v. Canada, Appl. No. 133/99, para 8.4.

[44] ECtHR 9 March 2010, *R.C. v. Sweden*, Appl. No. 41827/07, para 53.