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*****I** **REPORT**

on the proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast) (COM(2008)0815 – C6-0477/2008 – 2008/0244(COD))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Antonio Masip Hidalgo

(Recast – Rule 80a of the Rules of Procedure)

Symbols for procedures

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission.)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. In the case of amending acts, passages in an existing provision that the Commission has left unchanged, but that Parliament wishes to amend, are highlighted in **bold**. Any deletions that Parliament wishes to make in passages of this kind are indicated thus: [...]. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). Suggested corrections of this kind are subject to the agreement of the departments concerned.

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

**on the proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast)
(COM(2008)0815 – C6-0477/2008 – 2008/0244(COD))**

(Codecision procedure – recast)

The European Parliament,

- having regard to the Commission proposal to the European Parliament and the Council (COM(2008)0815),
 - having regard to Article 251(2) and Article 63(1)(b) of the EC Treaty, pursuant to which the Commission submitted the proposal to Parliament (C6-0477/2008),
 - having regard to the Interinstitutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts¹,
 - having regard to the letter of 25 February 2009 from the Committee on Legal Affairs to the Committee on Civil Liberties, Justice and Home Affairs in accordance with Rule 80a(3) of its Rules of Procedure,
 - having regard to Rules 80a and 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Legal Affairs (A6-0285/2009),
- A. whereas, according to the Consultative Working Party of the Legal Services of the European Parliament, the Council and the Commission, the proposal in question does not include any substantive amendments other than those identified as such in the proposal and whereas, as regards the codification of the unchanged provisions of the earlier acts together with those amendments, the proposal contains a straightforward codification of the existing texts, without any change in their substance,
1. Approves the Commission proposal as adapted to the recommendations of the Consultative Working Party of the legal services of the European Parliament, the Council and the Commission and as amended below;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend the proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council and the Commission.

¹ OJ C 77, 28.3.2002, p. 1.

Amendment 1

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) Minimum standards for the reception of asylum seekers that will suffice to ensure them a dignified standard of living and comparable living conditions in all Member States ***taking into consideration the level of social assistance available for nationals in the hosting Member State,*** should be laid down.

Amendment

(11) Minimum standards for the reception of asylum seekers that will ***normally*** suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

Amendment 2

Proposal for a directive

Recital 16

Text proposed by the Commission

(16) Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection, notably in accordance with Article 31 of the Geneva Convention relating to the Status of Refugees of 28 July 1951. In particular Member States should not impose penalties on asylum seekers on account of illegal entry or presence and any restrictions to movement should be necessary. In this respect, detention of asylum seekers should only be possible under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard both to the manner and to the purpose of such detention. Where an asylum seeker is held in detention he/she should have a right to a judicial remedy before national court.

Amendment

(16) Detention of asylum seekers should be applied in line with the underlying principle that a person should not be held in detention for the sole reason that he/she is seeking international protection, notably in accordance with ***the international legal obligations of the Member States and particularly*** Article 31 of the Geneva Convention relating to the Status of Refugees of 28 July 1951. In particular Member States should not impose penalties on asylum seekers on account of illegal entry or presence and any restrictions to movement should be necessary. In this respect, detention of asylum seekers should only be possible under very clearly defined exceptional circumstances laid down in this Directive and subject to the principle of necessity and proportionality with regard both to the manner and to the purpose of such detention. Where an asylum seeker is held in detention he/she should have a right to a judicial remedy before national court.

Justification

The extra wording underlines the supreme importance of respecting international human rights standards within the framework of this Directive. Detention measures should respect not only the relevant national legislation but also the international legal obligations of the Member States.

Amendment 3

Proposal for a directive Recital 23 a (new)

Text proposed by the Commission

Amendment

(23a) In order to cover any improvements in minimum standards for the reception of asylum seekers, there must be a proportionate increase in the funds made available by the European Union in order to cover the costs of such improvements, especially in the case of Member States which are facing specific and disproportionate pressures on their national asylum systems, owing in particular to their geographical or demographic situation.

Amendment 4

Proposal for a directive Recital 26

Text proposed by the Commission

Amendment

(26) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, 6, 7, 18, 24 and 47 of the said Charter and has to be implemented accordingly.

(26) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1, **4**, 6, 7, 18, 24 and 47 of the said Charter and has to be implemented accordingly.

Justification

A reference to Article 4 of the Charter, banning inhuman and degrading treatment, is appropriate in the context of this Directive.

Amendment 5

Proposal for a directive

Article 2 – point a

Text proposed by the Commission

(a) "application for international protection" means an application for international protection as defined in Directive 2004/83/EC;

Amendment

(a) "application for international protection" means an application for international protection as defined in **Article 2(g) of** Directive 2004/83/EC;

Justification

To align with other asylum instruments.

Amendment 6

Proposal for a directive

Article 2 – point c – point iii

Text proposed by the Commission

(iii) the married minor children of couples referred to in point (i) or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law, where it is in their best interests to reside with the applicant;

Amendment

(iii) the married minor children of couples referred to in point (i) or of the applicant, regardless of whether they were born in or out of wedlock or adopted as defined under the national law **and provided they are not accompanied by their spouses**, where it is in their best interests to reside with the applicant;

Amendment 7

Proposal for a directive

Article 2 – point c – point iv

Text proposed by the Commission

(iv) the father, mother or guardian of the applicant, when the latter is a minor and unmarried, or when he/she is a minor and

Amendment

(iiv) the father, mother or guardian of the applicant, when the latter is a minor and unmarried, or when he/she is a minor and

married but it is in his/her best interests to reside with his/her father, mother or guardian;

married **and not accompanied by his/her spouse** but it is in his/her best interests to reside with his/her father, mother or guardian;

Amendment 8

Proposal for a directive Article 2 – point c – point v

Text proposed by the Commission

(v) the minor unmarried siblings of the applicant, when the latter is a minor and unmarried, or when the applicant or his/her siblings are minors and married but it is in the best interests of one or more of them that they reside together;

Amendment

(v) the minor unmarried siblings of the applicant, when the latter is a minor and unmarried, or when the applicant or his/her siblings are minors and married **and not accompanied by his/her spouse** but it is in the best interests of one or more of them that they reside together;

Amendment 9

Proposal for a directive Article 2 – point c – point vi (new)

Text proposed by the Commission

Amendment

(vi) dependent adults with special needs.

Amendment 10

Proposal for a directive Article 5 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and, **as far as possible**, in a language that the applicants **are** reasonably **supposed** to understand. Where appropriate, this information may also be supplied orally.

Amendment

2. Member States shall ensure that the information referred to in paragraph 1 is in writing and in a language that the applicants **understand or may** reasonably **be presumed** to understand. Where appropriate, this information may also be supplied orally.

Justification

The Member States must ensure that all information provided to the asylum seeker is accessible, therefore it must be provided in a language that the applicant understands.

Amendment 11

Proposal for a directive

Article 6 – paragraph 1 – subparagraph 2

Text proposed by the Commission

The holder of the document shall be granted access to the rights and benefits conferred on asylum seekers under this Directive.

Amendment

No additional documents shall be required in order to be granted access to the rights and benefits conferred on asylum seekers under this Directive.

Justification

A single document should suffice to certify the status of asylum seekers and their rights and benefits.

Amendment 12

Proposal for a directive

Article 7 – paragraph 3 a (new)

Text proposed by the Commission

Amendment

3a. When it proves necessary, for example for legal reasons or reasons of public policy, Member States may confine an applicant to a specific place in accordance with their national law.

Amendment 13

Proposal for a directive

Article 9 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Detention shall be ordered for the shortest period possible. In particular detention pursuant to Article 8 (2) (a), (b) and (c) shall not exceed the time reasonably needed to fulfil the administrative procedures required in order to obtain information on the asylum seeker's nationality or on the elements on which his application is based or to carry out the relevant procedure with a view to deciding on his/her right to enter the

Amendment

1. Detention shall be ordered for the shortest period possible. In particular detention pursuant to Article 8 (2) (a), (b) and (c) shall not exceed the time reasonably needed to fulfil the administrative procedures required in order to obtain information on the asylum seeker's nationality *or identity* or on the elements on which his application is based or to carry out the relevant procedure with a view to deciding on his/her right to enter

territory.

the territory.

Amendment 14
Proposal for a directive
Article 9 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Delays in the *administrative* procedure that cannot be attributed to the asylum seeker shall not justify a continuation of detention.

Amendment

Such procedures should be processed with all due dispatch. Delays in the procedure that cannot be attributed to the asylum seeker shall not justify a continuation of detention.

Amendment 15

Proposal for a directive
Article 9 – paragraph 4

Text proposed by the Commission

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

Amendment

4. Detained asylum seekers shall immediately be informed of the reasons for detention, the maximum duration of the detention and the procedures laid down in national law for challenging the detention order, in a language they ***understand or may*** reasonably ***be presumed*** to understand.

Amendment 16

Proposal for a directive
Article 9 – paragraph 6 – subparagraph 1

Text proposed by the Commission

6. Member States shall ensure ***access to*** legal assistance and/or representation ***in cases of detention that shall be*** free of charge ***where the asylum seeker cannot afford the costs involved.***

Amendment

6. Member States shall ensure ***that the necessary*** legal assistance and/or representation ***is granted on request*** free of charge ***in accordance with Article 15(3) to (6) of Directive 2005/85/EC.***

Justification

The Member States shall ensure that asylum seekers enjoy real access to legal assistance and/or representation.

Legal assistance and/or representation shall be free. Asylum seekers shall not have to prove that they cannot cover the costs of legal assistance or representation. They shall always have the option of choosing private legal assistance or representation. Access to legal assistance and/or representation shall be governed by national law.

Amendment 17

Proposal for a directive Article 10 – paragraph 2

Text proposed by the Commission

2. Member States shall ensure that asylum seekers in detention have the opportunity to establish contact, including visitation rights, with legal representatives **and** family members. UNHCR and other relevant and competent national, international and non-governmental organisations and bodies shall also have the opportunity to communicate with and to visit applicants in detention areas.

Amendment

2. Member States shall ensure that asylum seekers in detention have the opportunity to establish contact, including visitation rights, with legal representatives, family members, **social workers and religious visitors**. UNHCR and other relevant and competent national, international and non-governmental organisations and bodies shall also have the opportunity to communicate with and to visit applicants in detention areas.

Justification

Including a reference to access to social workers and religious practitioners for detained asylum-seekers would bring Directive 2003/9/EC into line with the provisions of the ACNUR guidelines on the criteria and standards applicable to detention of asylum-seekers and Recommendation Rec(2003) 5 of the Committee of Ministers of the Council of Europe ('Measures of detention of asylum seekers').

Amendment 18

Proposal for a directive Article 10 – paragraph 2 a (new)

Text proposed by the Commission

Amendment

2a. Member States shall ensure that asylum seekers held in detention have access to appropriate medical treatment and psychological counselling where appropriate.

Amendment 19

Proposal for a directive Article 10 – paragraph 3

Text proposed by the Commission

3. Member States shall ensure that asylum seekers in detention are immediately provided with updated information on the rules which apply in the facility and set out their rights and obligations in a language they **are** reasonably **supposed** to understand.

Amendment

3. Member States shall ensure that asylum seekers in detention are immediately provided with updated information on the rules which apply in the facility and set out their rights and obligations in a language they **understand or may** reasonably **be presumed** to understand.

Justification

The aim of this amendment is to adopt a harmonised approach throughout several legal instruments with similar references to the required level of understanding of a language.

Amendment 20

Proposal for a directive Article 11 – paragraph 2

Text proposed by the Commission

2. Where minors are detained they shall have the possibility to engage in leisure-activities, including play and recreational activities appropriate to their age.

Amendment

2. Where minors are detained they shall have the possibility to engage in leisure-activities, including play and recreational activities appropriate to their age, **and open-air activities**.

Justification

Open-air activities need to be included in order to take account of the physical and psychological health of minors.

Amendment 21

Proposal for a directive Article 11 – paragraph 5 – subparagraph 1

Text proposed by the Commission

5. Persons with special needs shall not be detained unless an individual examination

Amendment

5. Persons with special needs shall not be detained unless an individual examination

of their situation by a qualified professional certifies that their health, including their mental health, and well-being, will not significantly deteriorate as a result of the detention.

of their situation by a qualified **and independent** professional certifies that their health, including their mental health, and well-being, will not significantly deteriorate as a result of the detention.

Justification

The professional needs to be independent in order to guarantee an independent assessment.

Amendment 22

Proposal for a directive

Article 14 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Access to the education system shall not be postponed for more than three months from the date the application for international protection was lodged by the minor or the minor's parents.

Amendment

2. Access to the education system **shall be guaranteed as soon as possible once the application for international protection has been made and, in any event,** shall not be postponed for more than three months from the date the application for international protection was lodged by the minor or the minor's parents.

Justification

The schooling of minors needs to be guaranteed as soon as possible so as to ensure them a decent education.

Amendment 23

Proposal for a directive

Article 17 – paragraph 4 a (new)

Text proposed by the Commission

Amendment

4a. Material reception conditions may be provided in kind or in the form of financial allowances or vouchers or in a combination of these elements. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles laid down in this Article.

Justification

It should be left to Member States to decide how to ensure an adequate standard of living as already prescribed in Article 17(2). The option of choosing between making provision in kind or in money must remain open. Provision in kind may ensure an adequate standard of living just as provision in money may. A requirement to make provision in the form of money is a significant pull factor, which would be likely to cause additional illegal immigration.

Amendment 24

Proposal for a directive Article 17 – paragraph 5

Text proposed by the Commission

Amendment

5. In calculating the amount of assistance to be granted to asylum seekers Member States shall ensure that the total value of material reception conditions to be made available to asylum seekers is equivalent to the amount of social assistance granted to nationals requiring such assistance. Any differences in this respect shall be duly justified. *deleted*

Amendment 25

Proposal for a directive Article 19 – paragraph 2

Text proposed by the Commission

Amendment

2. Member States shall provide necessary medical or other assistance to applicants who have special needs, including appropriate mental health care when needed, *under the same conditions as nationals.*

2. Member States shall provide necessary medical or other assistance to applicants who have special needs, including appropriate mental health care when needed.

Amendment 26

Proposal for a directive Article 19 a (new)

Text proposed by the Commission

Amendment

Article 19a
Victims of torture

Member States shall ensure that victims of torture are quickly directed to a care centre appropriate to their situation.

Justification

Victims of torture who are seeking asylum must receive care appropriate to their medical condition.

Amendment 27

Proposal for a directive

Article 21 – paragraph 1

Text proposed by the Commission

1. Member States shall take into account the specific situation of persons with special needs in the national legislation implementing this Directive. Vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking, persons with mental health problems and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, shall always be considered as persons with special needs.

Amendment

1. Member States shall take into account the specific situation of persons with special needs in the national legislation implementing this Directive. Vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of trafficking, ***victims of female genital mutilation***, persons with mental health problems and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, shall always be considered as persons with special needs.

Justification

Particular attention needs to be paid to the victims of female genital mutilation.

Amendment 28

Proposal for a directive

Article 21 – paragraph 2

Text proposed by the Commission

2. Member States shall establish procedures in national legislation with a view to identifying, as soon as an application for international protection is lodged, whether the applicant has special needs and indicating the nature of such

Amendment

2. Member States shall establish procedures in national legislation with a view to identifying, as soon as an application for international protection is lodged, whether the applicant has special needs and indicating the nature of such

needs. Member States shall ensure support for persons with special needs throughout the asylum procedure and shall provide for appropriate monitoring of their situation.

needs. Member States shall ensure **adequate** support for persons with special needs throughout the asylum procedure and shall provide for appropriate monitoring of their situation.

Justification

Support should be adequate.

Amendment 29

Proposal for a directive Article 23 – paragraph 1

Text proposed by the Commission

1. Member States shall ***as soon as possible*** take measures to ensure the necessary representation of unaccompanied minors by legal guardianship ***or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation.*** Regular assessments shall be made by the appropriate authorities.

Amendment

1. Member States shall take measures to ensure the necessary representation of unaccompanied minors by legal guardianship. ***A guardian should be appointed to advise and protect the child and to ensure that all decisions are taken in the child's best interests. A guardian should have the necessary expertise in the field of childcare so as to ensure that the interests of the child are safeguarded and that the child's legal, social, health, psychological, material and educational needs are appropriately met. Agencies or individuals whose interests could potentially conflict with those of the child's shall not be eligible for guardianship.*** Regular assessments shall be made by the appropriate authorities.

Justification

This is an additional safeguard to ensuring that the State's child protection system reaches out to these children.

Amendment 30

Proposal for a directive Article 24 – paragraph 2

Text proposed by the Commission

2. Those working with victims of torture shall have had and 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.

Amendment

2. Those working with victims of torture, ***rape or other serious acts of violence*** shall have had and 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.

Justification

That those working with victims of torture, and those working with victims of rape or other serious acts of violence (groups also referred to in point 1 of this Article) should have had and should continue to receive, appropriate training is self-evident. Furthermore, the explanatory memorandum states that it is deemed important to guarantee that those working with victims of torture and violence shall have had and continue to receive appropriate training, as provided for in the Directive with regard to unaccompanied minors.

Amendment 31

Proposal for a directive Article 25 – paragraph 2 – subparagraph 1

Text proposed by the Commission

2. Member States shall ensure ***access to*** legal assistance and/or representation ***in the cases referred to in paragraph 1. Such legal assistance and/or representation shall be*** free of charge ***where the asylum seeker cannot afford the costs involved.***

Amendment

2. Member States shall ensure ***that the necessary*** legal assistance and/or representation ***is granted on request*** free of charge ***in accordance with Article 15(3) to (6) of Directive 2005/85/EC.***

Justification

EXPLANATORY STATEMENT

'The State (Mexico) is taking these (Spanish Republican) children into its care, and surrounding them with affection and education, so that tomorrow they may be worthy defenders of your country's ideals' (Letter from Mexican President Lázaro Cárdenas to Manuel Azaña, his Spanish counterpart).

The European Union is above all a community of values shared by its Member States and brought together in its Charter of Fundamental Rights (hereinunder the Charter), the European Convention on Human Rights and the jurisprudence of the European Court of Human Rights. These rights include the right of asylum, Article 18 of the Charter, as set out in the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 on the Status of Refugees, and the right to subsidiary protection, Article 19 of the Charter, which prohibits collective expulsions.

Asylum is a fundamental and at the same time transitory right, enjoyment whereof depends on persecution in the country of origin. Recognition of asylum needs to guarantee the full personal development of asylum-seekers, as President Cárdenas said to President Azaña, so that, for example, children being looked after today can be tomorrow's defenders of the ideals of freedom, by means of their provisional integration into the hosting country.

The right to asylum unites democratic countries in protecting and promoting their values.

Following the Tampere European Council, during the first stage of the Common European Asylum System (CEAS) (1999-2005), the objective was to harmonise Member States' legal frameworks on the basis of common minimum standards. The second phase aims to put into operation a common asylum procedure and a uniform statute for beneficiaries of asylum or subsidiary protection.

It was in this context that Council Directive 2003/9/EC laying down minimum standards for the reception of asylum-seekers was adopted, leaving the Member States a significant margin of discretion.

Some years further down the line, the assessments by the Commission and visits by the European Parliament's Committee on Civil Liberties (LIBE) reveal that the procedures and conditions of reception of asylum seekers are still highly problematic and disparate, a fact which leads to secondary movements of asylum-seekers and runs counter to the principles of equal access to protection in the Union.

Parliament has had occasion to denounce unacceptable suffering on the part of these asylum-seekers within the European Union, and has also pointed out the unequal burden borne by the Member States. Although funding has improved, the European Refugee Fund is inadequate to the challenges facing us.

While this first package of codecision reports on asylum represents a qualitative leap in the role played hitherto by Parliament, we must not lose sight of the fact that the goal is to create a common regulation on asylum.

An excellent Commission proposal

Your rapporteur warmly welcomes the proposal recasting Directive 2003/9/EC laying down minimum standards for the reception of asylum-seekers and firmly supports the spirit of the text submitted by the Commission.

The new Directive will contribute to harmonising and improving the rules on reception and to limiting secondary movements.

He believes the following proposals to be essential:

1. Scope of the Directive

- The inclusion of applicants for subsidiary protection, so as to ensure consistency with the rest of the Community *acquis* (the 'qualification' directive which introduces the concept of 'subsidiary protection', whose parallels with asylum are recognised in the recent Elgafaji ruling of 17 February 2009).

- The application of the directive to all asylum procedures, geographical areas and reception centres for applicants, including borders and transit areas.

2. Access to the labour market, which is beneficial both to the asylum-seeker and the Member State: the idea is to grant simplified, better-harmonised access to the labour market, no later than six months after the submission of an application for international protection.

Effective access to employment must not be hampered by administrative restrictions.

Access to the labour market is the best way of guaranteeing the autonomy and wellbeing of persons who have been obliged to abandon their own countries due to well-founded fears of persecution on the grounds of race, religion, nationality, political opinions or membership of a social group. It prevents social isolation and situations of chronic dependence. Paid work contributes to greater awareness within the host society of the circumstances of the asylum-seekers and the contribution they can make to society. Access to the labour market is essential to their being able to contribute, Cárdenas said, to bringing to an end repression in their countries of origin.

The establishment of additional obligations incumbent on asylum-seekers in order to gain access to the labour market, such as demanding work permits, should under no circumstance whatever lead to any extension of the established deadline of six months.

3. Access to material reception conditions with a view to guaranteeing a living standard for the asylum-seekers which is conducive to their health and will guarantee subsistence: the proposal obliges the Member States to use as a yardstick the level of social assistance the Member States provide for their own nationals.

4. Detention: your rapporteur recalls the principle whereby nobody should be held in detention simply because they have requested international protection, and likewise, the need to include rigorous procedural guarantees when it comes to provisional detention.

Someone being pursued by regimes hostile to freedom cannot be placed in detention in Europe, let alone imprisoned on the grounds that they are fleeing such persecution.

In accordance with European law (the Charter) and international law (ECHR and the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the 1989 UN Convention on the Rights of the Child), the Commission proposal guarantees that detention may be authorised for exceptional reasons, always in accordance with the principle of necessity and proportionality, and subject to individual assessment in every case.

Situations involving public security and/or data verification and/or the circumstances of the case, which make administrative measures on provisional extraordinary detention appropriate, do indeed exist; the procedure established in the original Commission proposal reduces these situations to acceptable minima with reasonable deadlines and strict guarantees. Judicial supervision and regular review are guaranteed.

5. Legal assistance. From the first moment, the asylum-seeker has to have the right to enjoy maximum legal guarantees; they need to be able to count on high-quality legal assistance which will help them to understand their rights.

Legal assistance needs to be guaranteed in less than the 72 hours envisaged, as the European Council of Human Rights notes in its much-quoted ruling on *Saadi v UK*, deeming any period longer than 48 hours a violation of Article 5(2) of the ECHR.

The UNHCR and other specialist NGOs should have the right to visit the facilities where persons in provisional detention are being held, and the latter should never be mixed in with ordinary prisoners.

6. Vulnerable groups: the intention is to guarantee the specific needs of vulnerable individuals such as minors, the disabled, the elderly, victims of trafficking in human beings, of torture and of genital mutilation, the sick, etc. so that they can be identified at the outset, as well as at any later stage in the asylum procedure, so that they can be provided with the requisite care.

This early attention to their needs will help to speed up the processing and prevent deceit.

It is important that the Member States, when assessing the best interests of minors, should take particular account of the following:

- (a) the possibility of family reunification;
- (b) the ethnic, religious, cultural and linguistic backgrounds of minors;
- (c) the risk that they may be prey to trafficking in children;
- (d) the opinion of the minors concerned, with due respect to their age and maturity.

7. Right to be properly informed in a language the applicants understand. It is essential, in order to guarantee that asylum-seekers properly understand what their rights are, that these be made available to them in a language which they understand, so that, as the European Court of Human Rights observes, these rights can be explained to them in simple, non-technical language, so that they can request that these rights be defended before a court.

Conclusions

Your rapporteur identifies wholeheartedly with the basic aim of the Commission proposal, namely 'to ensure higher standards of treatment for asylum-seekers with regard to reception conditions that guarantee a dignified standard of living, in line with international law'.

Aware that many of the shortcomings in the reception conditions for asylum-seekers are due to disparities in interpretation and application between the different Member States, your rapporteur supports the stepping up of the Commission's monitoring powers. The exchange of good practice between Member States should likewise contribute to greater convergence in the way these reception standards are applied. Parliament, through its LIBE Committee, should establish a timetable for visiting detention centres.

Any proposal seeking to limit the guarantees put forward by the Commission and those contained in the amendments put forward by your rapporteur should be rejected by a humanitarian majority within Parliament; the goal is to improve the text.

Your rapporteur is aware that enhancing the privileged treatment of asylum-seekers vis-à-vis immigrants wishing to enter the EU may give rise to multiple applications without any grounds whatever. It is technically complex to establish administrative sanctions against people who make underhand or abusive use of the procedure; however, asylum-seekers duly and legally assisted, who are asking for international protection without being the objects of any persecution whatever, should have to be answerable and face prejudice or negative consequences of some kind in their administrative relations with the EU. Those who assess asylum-seekers should endeavour to put across the principle of procedural good faith. This would also contribute effectively if indirectly to swifter processing of well-founded applications for asylum. Recent case-law, moreover, confirms the thesis put forward in the Commission proposal as to the appropriateness of simultaneously dealing with individuals seeking asylum and those seeking subsidiary protection.

ANNEX: LETTER FROM THE COMMITTEE ON LEGAL AFFAIRS

COMMITTEE ON LEGAL AFFAIRS
CHAIRMAN

Ref.: D(2009)19544

Mr Gérard DEPREZ
Chairman
Committee on Civil Liberties, Justice and Home Affairs
ASP 09G206
BRUSSELS

Subject: Proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers (recast)
(COM(2008)815 - C6-0477/2008 - 2008/0244(COD

Dear Chairman,

The Committee on Legal Affairs, which I am honoured to chair, has examined the proposal referred to above, pursuant to Rule 80a on Recasting, as introduced into the Parliament's Rules of Procedure by its Decision of 10 May 2007.

Paragraph 3 of that Rule reads as follows:

"If the committee responsible for legal affairs considers that the proposal does not entail any substantive changes other than those identified as such in the proposal, it shall inform the committee responsible.

In such a case, over and above the conditions laid down in Rules 150 and 151, amendments shall be admissible within the committee responsible only if they concern those parts of the proposal which contain changes.

However, amendments to the parts which have remained unchanged may be admitted by way of exception and on a case-by-case basis by the chairman of the above committee if he considers that this is necessary for pressing reasons relating to the internal logic of the text or because the amendments are inextricably linked to other admissible amendments. Such reasons must be stated in a written justification to the amendments".

Following the opinion of the Legal Service, whose representatives participated in the meetings of the Consultative Working Party examining the recast proposal, and in keeping with the recommendations of the draftsman, the Committee on Legal Affairs considers that the proposal in question does not include any substantive changes other than those identified as such in the proposal and that, as regards the codification of the unchanged provisions of the earlier acts with those changes, the proposal contains a straightforward codification of the existing texts, without any change in their substance.

In conclusion, after discussing it at its meeting of 31 March 2009, the Committee on Legal Affairs, by 17 votes in favour and no abstentions¹, recommends that your Committee, as the committee responsible, proceed to examine the above proposal in keeping with its suggestions and in accordance with Rule 80a.

Yours faithfully,

Giuseppe GARGANI

Encl.: Opinion of the Consultative Working Party.

¹ The following Members were present: Giuseppe Gargani (Chairman), Carlo Casini, Bert Doorn, Klaus-Heiner Lehne, Hartmut Nassauer, Eva-Riitta Siitonen, Jaroslav Zvěřina, Tadeusz Zwiefka, Lidia Joanna Geringer de Oedenberg, Neena Gill, Manuel Medina Ortega, Aloyzas Sakalas, Diana Wallis, Francesco Enrico Speroni, Monica Frassoni, Jacques Toubon, Véronique Mathieu.

ANNEX: OPINION OF THE CONSULTATIVE WORKING PARTY OF THE LEGAL SERVICES OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION



GRUPE CONSULTATIF
DES SERVICES JURIDIQUES

Brussels,

OPINION

**FOR THE ATTENTION OF THE EUROPEAN PARLIAMENT
THE COUNCIL
THE COMMISSION**

Proposal for a directive of the European Parliament and of the Council laying down minimum standards for the reception of asylum seekers

Having regard to the Inter-institutional Agreement of 28 November 2001 on a more structured use of the recasting technique for legal acts, and in particular to point 9 thereof, the Consultative Working Party consisting of the respective legal services of the European Parliament, the Council and the Commission met on 17 December 2008¹ for the purpose of examining, among others, the aforementioned proposal submitted by the Commission.

An examination of the proposal for a directive of the European Parliament and of the Council recasting Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (COM(2008) 815 final/2 of 9.12.2008 - 2008/0244 (COD)) resulted in the Consultative Working Party's concluding, without dissent, that the proposal does not comprise any substantive amendments other than those identified as such. The Working Party also concluded, as regards the codification of the unchanged provisions of

¹ At that meeting the Consultative Working Party had at its disposal the English, French and German language versions of the proposal and worked on the basis of the English version, being the master-copy language version of the text under discussion.

the earlier act with those substantive amendments, that the proposal contains a straightforward codification of the existing text, without any change in its substance.

C. PENNERA
Jurisconsult

J.-C. PIRIS
Jurisconsult

C.-F.DURAND
Director General

PROCEDURE

| | | | | |
|---|---|--------------|-----------|-----------|
| Title | Minimum standards for the reception of asylum seekers (recast version) | | | |
| References | COM(2008)0815 – C6-0477/2008 – 2008/0244(COD) | | | |
| Date submitted to Parliament | 3.12.2008 | | | |
| Committee responsible Date announced in plenary | LIBE 15.1.2009 | | | |
| Committee(s) asked for opinion(s) Date announced in plenary | JURI 15.1.2009 | | | |
| Not delivering opinions Date of decision | JURI 31.3.2009 | | | |
| Rapporteur(s) Date appointed | Antonio Masip Hidalgo 20.1.2009 | | | |
| Discussed in committee | 20.1.2009 | 16.3.2009 | 16.4.2009 | 27.4.2009 |
| Date adopted | 27.4.2009 | | | |
| Result of final vote | +: -: 0: | 33 1 1 | | |
| Members present for the final vote | Emine Bozkurt, Mihael Brejc, Michael Cashman, Carlos Coelho, Panayiotis Demetriou, Gérard Deprez, Bárbara Dührkop Dührkop, Claudio Fava, Armando França, Kinga Gál, Roland Gewalt, Jeanine Hennis-Plasschaert, Magda Kósáné Kovács, Roselyne Lefrançois, Claude Moraes, Vladimir Urutchev | | | |
| Substitute(s) present for the final vote | Simon Busuttil, Elisabetta Gardini, Sophia in 't Veld, Sylvia-Yvonne Kaufmann, Jean Lambert, Antonio Masip Hidalgo, Nicolae Vlad Popa, Charles Tannock, Johannes Voggenhuber | | | |
| Substitute(s) under Rule 178(2) present for the final vote | Margrete Auken, Mariela Velichkova Baeva, Panayiotis Demetriou, Carmen Fraga Estévez, Anne E. Jensen, Helmuth Markov, Manolis Mavrommatis, Alexandru Nazare, Markus Pieper, Willem Schuth, Gabriele Zimmer | | | |
| Date tabled | 29.4.2009 | | | |