EUROPEAN PARLIAMENT

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Committee on Legal Affairs

3.6.2005 PE 359.913v01-00

AMENDMENTS 118-133

Draft report **(PE 357.887v01-00)**
Viktória Mohácsi
Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

Proposal for a directive (14203/2004 – C6-0200/2004 – 2000/0238(CNS))

Text proposed by the Council	Amendments by Parliament

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 118
Recital 9

(9) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.	(9) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit ***all forms of*** discrimination.

Or. fr

Justification

It needs to be stated explicitly that all forms of discrimination are prohibited in the application of the Directive.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 119
Recital 14

(14) In addition, specific procedural guarantees for unaccompanied minors should be laid down, because of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States.	(14) In addition, specific procedural guarantees for unaccompanied minors should be laid down, because of their vulnerability. In this context, the best interests of the child should be a primary consideration of Member States ***throughout the procedure in which the application for asylum is examined and decided***.

Or. fr

Justification

Member States must take account of the interests of the child throughout the procedure in which the asylum application is examined by making appropriate arrangements in respect of access to procedures, communication with the relevant authorities, the child's housing, etc. Furthermore, the relevant authorities must take into account the child's best interests when they decide whether or not to grant asylum.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 120
Recital 21

(21) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe in his/her particular circumstances, the designation of the country as safe can no	(21) The designation of a third country as a safe country of origin for the purposes of this Directive cannot establish an absolute guarantee of safety for nationals of that country. By its very nature, the assessment underlying the designation can only take into account the general civil, legal and political circumstances in that country***, including adherence to the rules of international law on human rights, fundamental freedoms and refugee protection,*** and whether actors of persecution, torture or inhuman or degrading treatment or punishment are subject to sanction in practice when found liable in the country concerned. For this reason, it is important that, where an applicant shows that there are serious reasons to consider the country not to be safe

longer be considered relevant for him/her.	in his/her particular circumstances, the designation of the country as safe can no longer be considered relevant for him/her.

Or. fr

Justification

Adherence to the rules laid down in international law on human rights, fundamental freedoms and refugee protection should be included among the basic criteria used in assessing whether to designate a third country as a safe country (see Annex II of the Directive).

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 121
Recital 22

(22) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, except where this Directive provides otherwise, in particular where ***it can be reasonably assumed*** that another country would do the examination or provide sufficient protection. Especially, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.	(22) Member States should examine all applications on the substance, i.e. assess whether the applicant in question qualifies as a refugee in accordance with Council Directive 2004/83/EC on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted, except where this Directive provides otherwise, in particular where ***they are satisfied*** that another country ***which is regarded as safe*** would do the examination or provide sufficient protection. Especially, Member States should not be obliged to assess the substance of an asylum application where a first country of asylum has granted the applicant refugee status or otherwise sufficient protection and the applicant will be readmitted to this country.

Or. fr

Justification

Member States should satisfy themselves that another country which is regarded as safe will examine the asylum application or will provide sufficient protection before taking a decision not to examine an application on the substance. The wording proposed by the Council leaves too much room for uncertainty.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 122
Recital 23

(23) Member States should also not be obliged to assess the substance of an asylum application where the applicant, due to a connection to a third country as defined by national law, ***can reasonably be expected to seek*** protection in that third country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In the interest of avoiding secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.	(23) Member States should also not be obliged to assess the substance of an asylum application where ***they are satisfied that*** the applicant, due to a connection to a third country as defined by national law, ***is seeking*** protection in that third country. Member States should only proceed on this basis where this particular applicant would be safe in the third country concerned. In the interest of avoiding secondary movements of applicants, common principles for the consideration or designation by Member States of third countries as safe should be established.

Or. fr

Justification

Member States should satisfy themselves that another country which is regarded as safe will examine the asylum application or will provide sufficient protection before taking a decision not to examine an application on the substance. The wording proposed by the Council leaves too much room for uncertainty.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 123
Article 3, paragraph 1 a (new)

	1a. This Directive shall be applied without discrimination of any form in accordance with Article 13 of the EC Treaty and international conventions on human rights and refugee protection.

Or. fr

Justification

In applying the Directive, Member States must take account of the principle of non-

discrimination as laid down in Article 13 of the EC Treaty and in international conventions on human rights and refugee protection.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 124
Article 7, paragraph 2, point (b)

(b) precise and up-to-date information is obtained from various sources, such as information from the United Nations High Commissioner for Refugees (UNHCR), as to the general situation prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;	(b) precise and up-to-date information is obtained from various sources, such as information from the United Nations High Commissioner for Refugees (UNHCR), as to the general ***civil, legal and political*** situation, ***particularly with regard to respect for human rights and fundamental freedoms,*** prevailing in the countries of origin of applicants for asylum and, where necessary, in countries through which they have transited, and that such information is made available to the personnel responsible for examining applications and taking decisions;

Or. fr

Justification

Asylum applications must be examined on the basis of information which makes it possible to assess the civil, legal and political situation prevailing in the applicant's country of origin, including respect for human rights and fundamental freedoms. Such information must be obtained in order to allow the relevant authority to act objectively and impartially.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 125
Article 15, paragraph 5, point (a)

(a) unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they may reasonably be supposed to understand, about the possibility of age determination by a medical examination. This shall include information on the method of examination and the possible consequences of the result	*(Does not affect English version)*

of the medical examination for the examination of the application for asylum, as well as the consequences of refusal on the part of the unaccompanied minor to undergo the medical examination.

Or. fr

Justification

Does not effect English version.

Amendment by Viktória Mohácsi

Amendment 126
Article 17, paragraph 1

1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum.	1. Member States shall not hold a person in detention for the sole reason that he/she is an applicant for asylum. ***Permissible exceptions may only be resorted to, if necessary:***
	(a) to verify identity;
	(b) to deal with cases where refugees or asylum-seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State in which they intend to claim asylum;
	(c) to protect national security or public order.

Or. en

Justification

UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers, which outline permissible exceptions to the general rule that detention of asylum-seekers should be avoided and used only as a last resort. Further, as outlined in Amuur v. France by the ECHR, grounds for detention must be clearly outlined.

Amendment by Viktória Mohácsi

Amendment 127
Article 17, paragraph 2

2. Where an applicant for asylum is held in detention, Member States shall ensure that there is the possibility of speedy judicial review.	2. Where an applicant for asylum is held in detention, Member States shall ensure that***:***
	(a) there is the possibility of speedy judicial review***;***
	(b) the applicant has access to legal, medical and social assistance;
	(c) the applicant is informed promptly about the grounds of the detention in a language he/she understands;
	(d) the applicant has the right to visits by legal representatives, representatives from the UNHCR and other organisations specifically working with asylum applicants.

Or. en

Justification

This amendment is to ensure there is no violation of Article 31 of the 1951 Convention and to ensure compatibility with ECHR and ICCPR requirements of 'legality' for deprivations of liberty. Subparagraph (b), see Amuur v. France 0019776/92, 1996-III, No 11, 25 June 1996. Subparagraph (c) refers to Article 5(2) of the ECHR: 'Everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him'.

Subparagraph (d) refers to the UNHCR Revised Guidelines on Applicable Criteria and Standards Relating to the Detention of Asylum Seekers.

Amendment by Viktória Mohácsi

Amendment 128
Article 17, paragraph 2 a (new)

	2a. In the case of detention, exceptions are to be made:
	(a) in relation to children in accordance with the Convention on the Rights of the Child;
	(b) in relation to survivors of torture or sexual violence and traumatised persons.

Or. en

Justification

Subparagraph (a) is in line with the Convention on the Rights of the Child, which states, 'the arrest, detention or imprisonment of a child shall be in conformity with the law and shall be used only as a measure of last resort and for the shortest appropriate period of time'. Subparagraph (b) refers to the UNHCR Revised Guidelines (No 7 Detention of Vulnerable Persons).

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 129
Article 23, paragraph 4 a (new)

4a. Member States may provide for exceptions from the application of paragraph 4 for humanitarian reasons, particularly in situations involving trafficking in human beings, political reasons or for reasons of public international law.

Or. fr

Justification

Member States should lay down exceptions from the application of paragraph 4 which provide for asylum applications to be subject to a priority or accelerated examination procedure, particularly for humanitarian or political reasons or for reasons of public international law. The same provisions are also contained in Article 35a(4) of the Directive.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 130
Article 27, paragraph 1, point a

(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion; and	(a) life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion ***in conformity with the provisions of international law on human rights and refugee protection***; and

Or. fr

Justification

The decision to designate a third country as a safe country must, without fail, take into account the way in which the provisions of international law on human rights and refugee protection are applied in the country concerned.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 131
Article 30 a, paragraph 2, introductory part

2. By derogation ***to*** paragraph 1, Member States may retain legislation in force at the time of adoption of this Directive that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are ***generally*** neither subject to:	2. By derogation ***from*** paragraph 1, Member States may retain legislation in force at the time of adoption of this Directive that allows for the national designation of third countries, other than those appearing on the minimum common list, as safe countries of origin for the purposes of examining applications for asylum where they are satisfied that persons in the third countries concerned are neither subject to:

Or. fr

Justification

For a Member State to designate a third country as a safe country of origin it is absolutely essential for it to ensure that the third country concerned does not engage in persecution or torture or carry out inhuman or degrading treatment or punishment.

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 132
Article 30 a, paragraph 4

4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation, the application of the law and the general political circumstances in the third country concerned.	4. In assessing whether a country is a safe country of origin in accordance with paragraphs 2 and 3, Member States shall have regard to the legal situation***, respect for human rights and fundamental freedoms***, the application of the law and the general political circumstances in the third country concerned.

Or. fr

Justification

Adherence to the rules laid down in international law on human rights, fundamental freedoms and refugee protection should be included among the basic criteria used in assessing whether to designate a third country as a safe country (see Annex II of the Directive).

Amendment by Marie Panayotopoulos-Cassiotou

Amendment 133
Article 35 a, paragraph 4

4. Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement under the Geneva Convention including providing for exceptions from the application of this Article for humanitarian or political reasons or for reasons of public international law.	4. Member States concerned shall lay down in national law the modalities for implementing the provisions of paragraph 1 and the consequences of decisions pursuant to those provisions in accordance with the principle of non-refoulement under the Geneva Convention including providing for exceptions from the application of this Article for humanitarian ***reasons, including situations involving trafficking in human beings,*** or political reasons or for reasons of public international law.

Or. fr

Justification

Victims of trafficking in human beings most often enter a country illegally through clandestine immigration channels, and frequently they cross transit countries that are among those regarded as safe. Consequently, Member States should provide for measures which make it possible to carry out a comprehensive examination of asylum applications from victims of this serious crime.