EUROPEAN PARLIAMENT

2004 *2009*

Committee on Civil Liberties, Justice and Home Affairs

2008/2235(INI)

22.10.2008

DRAFT REPORT

on the implementation in the European Union of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008
(2008/2235(INI))

Committee on Civil Liberties, Justice and Home Affairs

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on the implementation in the European Union of Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers and refugees: visits by the Committee on Civil Liberties 2005-2008
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The European Parliament,

– having regard to Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers[1] ('Reception Directive'),

– having regard to Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status[2] ('Procedures Directive'),

– having regard to Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national[3] ('Dublin II Regulation'),

– having regard to the Commission report of 26 November 2007 on the application of Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers (COM(2007)0745),

– having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR), and in particular to Articles 5 and 8 thereof,

– having regard to the United Nations Convention on the Rights of the Child,

– having regard to the reports by the delegations of the Committee on Civil Liberties, Justice and Home Affairs to Italy (Lampedusa), Spain (Ceuta and Melilla, Canary Islands), France (Paris), Malta, Greece, Belgium, the United Kingdom, the Netherlands, Poland, Denmark and Cyprus,

– having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs (A6-0000/2008),

A. whereas Directive 2003/9/EC on minimum standards for the reception of asylum seekers is one of the building blocks of the first phase of the Common European Asylum System,

B. whereas the Reception and Procedures Directives require Member States to provide asylum seekers with information in writing concerning their rights and the organisations providing assistance; and whereas it is essential - in view of the complexity of procedures

[1] OJ L 31, 6.2.2003, p. 18.
[2] OJ L 326, 13.12.2005, p. 13.
[3] OJ L 50, 25.2.2003, p. 1.

and short deadlines, particularly in accelerated procedure cases - that asylum seekers and immigrants receive appropriate legal advice, have access to an interpreter and receive decisions concerning them in a language they understand,

C. whereas it is important to ensure that asylum procedures are clear (criteria for accepting or rejecting an application for asylum), fair, effective and proportional, in order to guarantee effective access to asylum,

D. whereas Article 7 of Directive 2003/9/EC grants asylum seekers the right to move freely within the Member State in which they have applied for asylum, but whereas Member States may limit that right,

E. whereas the Convention on the Rights of the Child protects the rights of all minors, including those outside their country of origin, and whereas the Reception Directive requires Member States to take into account the particular situation of minors and grant them specific rights, such as the right to education,

F. whereas, during their visits, the Members noted on several occasions that the detention conditions were intolerable from the point of view of hygiene, overcrowding and the equipment available, and whereas the people detained were not systematically informed of the reasons for their detention, of their rights and of the progress in their case,

General comments and asylum procedures

1. Regrets that the visits revealed that the existing directives were still being poorly applied, or not at all, by the Member States; calls on the Commission to take the necessary measures to ensure that the directives are transposed and complied with;

2. Deplores the considerable discretionary power left to the Member States by Directive 2003/9/EC, particularly as regards the level and form of material reception conditions and access to employment and healthcare, to the detriment of the harmonising of their legislation;

3. Calls on the Member States to show more solidarity - not limited to technical and/or financial solidarity - with the countries most affected by the challenges of immigration; calls on the Commission to study the possibility of proposing a European burden-sharing instrument to improve efficiency for the Member States and afford a high level of protection for asylum seekers;

4. Calls on the Commission to establish a permanent system of visits and inspections; hopes that the LIBE Committee can continue its visits with a view to ensuring compliance with Community law concerning reception conditions;

Reception

5. Regrets that the open accommodation centres set up by certain Member States have low capacity and do not appear to meet the needs;

6. Calls for priority to be given to the reception of asylum seekers and immigrants in open reception centres; considers that asylum seekers are especially vulnerable and should not be subject to measures which deprive them of their liberty;

7. Reminds the Member States of their obligation to guarantee access to asylum application procedures;

8. Considers it necessary to find a balance between speedy procedures, reducing the backlog and fair treatment of each individual case, particularly in accelerated procedure cases;

Access to information and right to interpretation

9. Notes that the information about procedures is largely in writing and that the deadlines are very short, which poses a problem of understanding and constitutes an obstacle to asylum seekers effectively exercising their rights when they submit an application; calls for brochures explaining all the rights of asylum seekers and immigrants to be made available to them in several languages; calls on the Member States also to provide information by other means, including orally and televisually;

10. Expresses its concern over the lack of interpreters, including at official interviews; urges the Member States to provide a public interpreting service free of charge, if necessary by telephone;

11. Encourages the Member States to make use of financial assistance under the European Refugee Fund in order to improve access to information and, in particular, to increase the number of languages, or media, in which the information is made available;

Legal assistance

12. Regrets that access to free legal aid appears limited for asylum seekers and immigrants and amounts sometimes to no more than a list of lawyers' names, resulting in people without sufficient funds being left without assistance;

13. Notes that it is particularly difficult for people in detention to find appropriate legal assistance given the difficulties of external communication;

14. Notes that continuity of access to lawyers is made more difficult when detainees are moved between different reception or detention centres;

15. Appreciates the legal assistance provided by the UN High Commission for Refugees and non-governmental organisations (NGOs), but believes that this cannot be a substitute for the responsibilities of the Member States;

16. Urges the Member States to provide free and effective public legal aid to all asylum seekers and immigrants;

Access to health care

17. Regrets that in most of the detention centres visited, asylum seekers and migrants complained systematically about insufficient and inadequate medical care, the difficulties

of consulting or communicating with doctors and the lack of specific care (in particular, for pregnant women and victims of torture) and medicines;

18. Calls on the Member States to extend the medical cover currently offered so that it is not limited solely to emergency care, and to also provide mental health care;

Access to employment

19. Calls on the Commission to propose an amendment to Article 10 of Directive 2003/9/EC with a view to improving access to the employment market;

20. Calls on the Member States not to impose legal or administrative constraints amounting to obstacles to employment access;

Assistance provided by NGOs

21. Recognises the considerable work done by various associations in providing assistance to asylum seekers and 'irregular migrants';

22. Calls on the Member States to ensure that these associations have access without legal or administrative obstacles to asylum seekers and irregular migrants, including those in detention centres;

Detention

23. Regrets that the Member States are making increasing use of detention; points out that detention must be a measure of last resort to be used when all other non-detention measures have not had the desired result, must have a defined objective (e.g. expulsion) and must be limited in duration to the achievement of that objective;

24. Points out that the right to contest a detention measure is laid down in Article 5 of the ECHR; calls for all third-country nationals placed in detention to be able to exercise that right;

25. Is concerned at the prison conditions in which irregular migrants and asylum seekers are kept even though they have committed no crime; calls for such persons to be detained in separate buildings in order to ensure their protection;

26. Is concerned by the dilapidated state of, and lack of hygiene in, certain detention centres; points out that the obligation to provide a dignified reception also applies to people in detention; calls for all centres not complying with standards to be closed as soon as possible;

27. Notes that access to health care, and particularly to psychological care, is often made difficult by the prison conditions; calls on the Member States to provide appropriate, independent medical attention in detention centres, including psychological care, day and night;

28. Calls on the Member States to improve contact with the outside world, including by allowing regular visits, increasing telephone access and making internet access available in all the centres;

Unaccompanied minors and families

29. Points out that all decisions and measures taken with regard to a minor must be based on the best interests of the child, in accordance with the Convention on the Rights of the Child;

30. Calls for the detention of migrant minors and asylum seekers to be prohibited in principle, and for the detention of minors with their parents to be exceptional and having the objective of ensuring that the best interests of the child are served;

31. Calls on those Member States that have not yet done so to sign and ratify unreservedly the Convention on the Rights of the Child;

32. Points out that all minors have the right to education, whether or not they are in their country of origin; calls on the Member States to guarantee that right, including when minors are in detention; calls for access to education to be provided in the community, without any form of administrative restriction having the effect of separating foreign minors, so as to ensure the best possible integration of children and their families;

33. Points out that minors have the right to leisure activities appropriate to their age, and calls on the Member States to guarantee that right even when children are in detention;

34. Calls on the Member States to guarantee that unaccompanied minors and families are housed in separate centres, including when they are in detention, so as to prevent mixing with other adults and ensure access to a protective environment;

35. Expects that everyone working with minors and unaccompanied minors will receive specialist training appropriate to the children's situation;

Unaccompanied minors

36. Calls for an independent legal guardian to be appointed for each unaccompanied minor to ensure his or her protection; calls for the powers and role of the legal guardian to be clearly defined;

37. Calls on the Commission to lay down the obligation to identify and search for a family member in the European Union so as to ensure that unaccompanied minors can join a family member where that is in their interest;

38. Is concerned at the phenomenon of unaccompanied minors disappearing; calls on the Commission and the Member States to put in place a harmonised system for gathering data and statistics concerning the identification of, and provision of assistance to, unaccompanied minors in order to combat this phenomenon;

39. Calls on the Commission and the Member States to put in place a harmonised and reliable mechanism for identifying unaccompanied minors, and common rules concerning age disputes; points out, in this regard, that during an age dispute procedure the person concerned must, as a precaution, be considered a minor until the end of the procedure and therefore treated as such;

Families

40. Points out that Article 8 of the ECHR guarantees respect for private and family life; calls on the Member States to protect the family unit;

41. Calls on the Member States to consider all appropriate measures other than detention and to demonstrate that those measures are not effective before detaining families which include minors;

42. Calls for families seeking asylum to have access to family services, child services and medical consultations by child protection specialists;

Vulnerable persons

43. Calls on the Commission to lay down mandatory common standards for identifying vulnerable persons, particularly victims of torture or human trafficking;

44. Considers that no vulnerable person, given their particular circumstances, should be placed in detention as that would have serious repercussions for their wellbeing;

45. Urges the Member States to provide specialist assistance to vulnerable persons and victims of torture and trafficking, particularly psychological assistance, to ensure their protection; calls for all staff having contact with vulnerable persons, including the officials responsible for asylum applications, to receive specialist training;

Dublin System

46. Is concerned at the increased number of people detained under the Dublin System and at the near systematic use of detention measures by certain Member States; expects people not to be placed in detention if the Member State has not demonstrated a risk of their absconding;

47. Regrets that certain Member States limit the access of persons under the Dublin System to reception standards; calls on the Commission to establish clearly that Directive 2003/9/EC also applies to such persons, in order to ensure that they are able to exercise their full rights;

48. Instructs its President to forward this resolution to the Council and the Commission.