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Committee on Civil Liberties, Justice and Home Affairs

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***I
DRAFT 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 (COM2008)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 acts[1],

– 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 (A6-0000/2009),

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 Commission.

[1] OJ C 77, 28.3.2002, p. 1.

Amendment 1

Proposal for a directive
Recital 11

Text proposed by the Commission	*Amendment*
(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.	(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, ***and the specific circumstances of the asylum seekers, with particular regard to their needs,*** should be laid down.

Or. es

Justification

There are great differences between the levels of social assistance provided by the Member States; even if the reception of asylum seekers meets material conditions equivalent to the assistance guaranteed to the hosting State's nationals, they may not be guaranteed a dignified standard of living, should they lack family or other forms of support in the hosting State.

Amendment 2

Proposal for a directive
Recital 13

Text proposed by the Commission	*Amendment*
(13) In view of ensuring equal treatment amongst all applicants for international protection as well as in order to guarantee consistency with current EU asylum acquis, in particular with Council Directive 2004/83/EC of 29 April 2004 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, it is appropriate to extend the scope of this Directive in order to include applicants for	(13) In view of ensuring equal treatment amongst all applicants for international protection as well as in order to guarantee consistency with current EU asylum acquis, in particular with Council Directive 2004/83/EC of 29 April 2004 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, it is appropriate to extend the scope of this Directive in order to include applicants for

subsidiary protection.	subsidiary protection. ***This Directive should apply at all stages and in all types of procedure concerning requests for international protection and in all places and in all installations where asylum seekers are received.***

Or. es

Justification

It needs to be stressed that the reception conditions should apply to asylum seekers waiting to be transferred under a Dublin-type procedure; asylum seekers whose procedures are at the admissibility stage; asylum seekers involved in border procedures or any other procedure; and asylum seekers who are detained or interned in any other way in a place of reception at a land border, an airport, a police station or anywhere else.

Amendment 3

Proposal for a directive
Recital 15 a (new)

Text proposed by the Commission	*Amendment*
	(15a) As a general rule, persons requesting international protection should not be placed in detention.

Or. es

Justification

The right not to be arbitrarily detained is a fundamental human right recognised in Article 5 of the European Convention on Human Rights. Article 31 of the UN Convention of 1951 acknowledges that penalties (including unnecessary detention) should not be imposed on refugees who enter or are present on a given territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Given that a request for asylum is a well-founded motive, detention should be used as a last resort.

Amendment 4

Proposal for a directive
Recital 16

Text proposed by the Commission	*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 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.	(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.

Or. es

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 5

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.

Or. es

Justification

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

Amendment 6

Proposal for a directive
Article 6 – subparagraph 1 – subparagraph 2

Text proposed by the Commission	*Amendment*
The holder of the document shall be granted access to the rights and benefits conferred on asylum seekers under this Directive.	***No additional documents shall be required in order*** be granted access to the rights and benefits conferred on asylum seekers under this Directive.

Or. es

Justification

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

Amendment 7

Proposal for a directive
Article 8 – paragraph 2 – first part

Text proposed by the Commission	*Amendment*
2. When it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant to a particular place in accordance with national legislation, if other less coercive measures cannot be applied effectively. An applicant may only be detained to a particular place:	2. ***In exceptional circumstances and*** when it proves necessary and on the basis of an individual assessment of each case, Member States may detain an applicant to a particular place in accordance with national legislation, if other less coercive measures cannot be applied effectively. An applicant may only be detained to a particular place:

Or. es

Justification

The right not to be arbitrarily detained is a fundamental human right recognised in Article 5 of the European Convention on Human Rights. Article 31 of the UN Convention of 1951 acknowledges that penalties (including unnecessary detention) should not be imposed on refugees who enter or are present on a given territory without authorisation, provided they present themselves without delay to the authorities and show good cause for their illegal entry or presence. Given that a request for asylum is a well-founded motive, detention should be used as a last resort.

Amendment 8

Proposal for a directive
Article 8 – paragraph 2 – letter a

Text proposed by the Commission	*Amendment*
a) in order to ***determine, ascertain or*** verify his identity or nationality;	a) in order to verify his identity or nationality ***if the asylum seeker refused to cooperate with the verification process***;

Or. es

Justification

As with all restrictions on a fundamental freedom or right, restrictions on the right to freedom should be described in a restrictive manner. It is therefore necessary to make this article even more specific, so as to clarify the scope of the reasons for placing asylum seekers in

detention.

The verification of identity and/or nationality is not an adequate reason for detention, unless the asylum seeker has refused to cooperate in good faith with the identification process.

Amendment 9

Proposal for a directive
Article 8 – paragraph 2 – letter b

Text proposed by the Commission	*Amendment*
b) in order to determine the elements on which his application for asylum is based which in other circumstances could be lost;	b) in order to determine***, within the framework of the preliminary interview,*** the elements on which his application for asylum is based which in other circumstances could be lost;

Or. es

Justification

As with all restrictions on a fundamental freedom or right, restrictions on the right to freedom should be described in a restrictive manner. It is therefore necessary to make this article even more specific, so as to clarify the scope of the reasons for placing asylum seekers in detention.

Exceptions to the general principle cannot be used to justify detention throughout the entire process of determining refugee status.

Amendment 10

Proposal for a directive
Article 8 – paragraph 2 – letter d

Text proposed by the Commission	*Amendment*
d) when protection of national security and public order so requires.	d) when protection of national security and public order so requires ***if there is evidence proving that the asylum seeker could pose a real, current risk to these principles.***

Or. es

Justification

As with all restrictions on a fundamental freedom or right, restrictions on the right to freedom should be described in a restrictive manner. It is therefore necessary to make this article even more specific, so as to clarify the scope of the reasons for placing asylum seekers in detention.

The national security exception should not constitute a general rule either and should therefore be restricted to the existence of proof of the real and immediate threat posed by the asylum seeker.

Amendment 11

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

Text proposed by the Commission	*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 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 territory.	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 the territory.

Or. es

Amendment 12

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

Text proposed by the Commission	*Amendment*
Delays in the administrative procedure that cannot be attributed to the asylum seeker shall not justify a continuation of detention.	***Such administrative procedures should be processed with all due dispatch.*** Delays in the administrative procedure that cannot be attributed to the asylum seeker shall not justify a continuation of detention.

Or. es

Amendment 13

Proposal for a directive
Article 9 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Detention shall be ordered by judicial authorities. In urgent cases it may be ordered by administrative authorities, in which case the detention order shall be confirmed by judicial authorities within ***72*** hours from the beginning of the detention. Where the judicial authority finds detention to be unlawful, or if there is no decision within ***72*** hours, the asylum seeker concerned shall be released immediately.	2. Detention shall be ordered by judicial authorities. In urgent cases it may be ordered by administrative authorities, in which case the detention order shall be confirmed ***promptly*** by judicial authorities within ***no more than 48*** hours from the beginning of the detention. Where the judicial authority finds detention to be unlawful, or if there is no decision within ***48*** hours, the asylum seeker concerned shall be released immediately.

Or. es

Justification

Asylum seekers are not criminals. On the contrary, their political commitment to freedom makes them, for many people in their countries of origin, examples to be followed. If we want Europe to be a worldwide reference in the struggle for freedom, they should receive privileged treatment, and the 72 hour deadline should be reduced. Article 5(3) of the ECHR lays down that the right to be brought before a judge must be implemented 'promptly' and this wording should be used, in order to indicate how circumstances are to be taken into account in each case, within the maximum period of 48 hours.

Amendment 14

Proposal for a directive
Article 9 – paragraph 4

Text proposed by the Commission	*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	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.	order, in a language they understand.

Or. es

Justification

Article 5(2) of the ECHR must be respected: it has been interpreted by the European Court of Human Rights as meaning that the individual concerned needs to be informed, in simple, non-technical language, of the reasons for his or her detention in such a way that he can challenge said detention before a court.

Amendment 15

Proposal for a directive
Article 9 – paragraph 5 – subparagraph 1

Text proposed by the Commission	*Amendment*
5. The ***continued*** detention shall be reviewed by ***a*** judicial authority at reasonable intervals of time ***either*** on request by the asylum seeker concerned ***or ex officio***.	5. The detention shall be reviewed ***ex oficio*** by ***the*** judicial authority at reasonable intervals of time ***and/or,*** on request by the asylum seeker concerned***, when there is a change of circumstances or fresh information becomes available which affects the grounds for the detention***.

Or. es

Justification

The detention needs to be periodically reviewed by the judicial authority with regard to its legality and necessity, independently of whether the asylum seeker has asked for this or not.

Furthermore, Article 5(4) of the ECHR lays down the right of everyone arrested or detained to challenge the lawfulness of his or her detention before a court. Asylum seekers being held in detention should be able to exercise this right.

Amendment 16

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

Text proposed by the Commission	*Amendment*
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***.	6. Member States shall ensure ***effective*** access to legal assistance and/or representation in cases of detention free of charge***. In all cases, asylum seekers shall be entitled to opt for private legal assistance or representation if they so wish***.

Or. es

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 3

Text proposed by the Commission	*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 ***are reasonably supposed to*** understand.	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. es

Justification

Article 5(2) of the ECHR must be respected: it has been interpreted by the European Court of

Human Rights as meaning that the individual concerned needs to be informed, in simple, non-technical language, of the reasons for his or her detention in such a way that he can challenge said detention before a court.

Amendment 18

Proposal for a directive
Article 11 – paragraph 2

Text proposed by the Commission	*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.	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***.

Or. es

Justification

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

Amendment 19

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

Text proposed by the Commission	*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.	5. Persons with special needs shall not be detained unless an individual examination 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.

Or. es

Justification

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

Amendment 20

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

Text proposed by the Commission	*Amendment*
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.	2. Access to the education system ***shall be guaranteed as soon as possible once the application for international protection has been made and, at all events,*** 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.

Or. es

Justification

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

Amendment 21

Proposal for a directive
Article 15 – paragraph 1

Text proposed by the Commission	*Amendment*
1. Member States shall ensure that applicants have access to the labour market no later than 6 months following the date when the application for international protection was lodged.	1. Member States shall ensure that applicants have ***effective*** access to the labour market ***as soon as possible and, at all events,*** no later than 6 months following the date when the application for international protection was lodged.

Or. es

Justification

It is important that asylum seekers be able to seek employment as soon as possible. The right to work is essential to protect asylum seekers against social exclusion, promote their self-sufficiency and facilitate their reintegration when they return to their countries of origin, while restricting access to the labour market imposes additional social costs on the hosting state and contributes to an increase in undeclared work.

Amendment 22

Proposal for a directive
Article 15 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national legislation, without ***unduly*** restricting asylum seekers' access to the labour market.	2. Member States shall decide the conditions for granting access to the labour market for the applicant, in accordance with their national legislation, without restricting ***or delaying*** asylum seekers' ***effective*** access to the labour market.

Or. es

Justification

The margin of discretion which the Directive allows the Member States with regard to establishing additional conditions to be met by asylum seekers who have already secured access to the labour market presupposes a restriction to such access in practice. Such restrictions include, for example, establishing the requirement that work permits need to be sought; restricting access to specific sectors of the economy; or reducing working hours. Furthermore, reducing national differences could help to reduce secondary movements.

Amendment 23

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.***	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.

Or. es

Justification

There are great differences between the levels of social assistance provided by the Member States; even if the reception of asylum seekers meets material conditions equivalent to the assistance guaranteed to the hosting State's nationals, they may not be guaranteed a dignified standard of living, should they lack family or other forms of support in the hosting State.

Amendment 24

Proposal for a directive
Article 21 – paragraph 1

Text proposed by the Commission	*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, 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 .	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

Or. es

Justification

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

Amendment 25

Proposal for a directive
Article 21 – paragraph 2

Text proposed by the Commission	*Amendment*
2. Member States shall establish procedures in national legislation with a view to identifying, as soon as an application for international protection is	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.	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.***, independently of when such needs are identified***.

Or. es

Justification

The identification of people with special needs is crucial, since asylum seekers cannot enjoy the conditions of reception laid down in the Directive if they are not identified as 'persons with special needs'. It is equally crucial in order to prevent pathologies which could appear later during the procedure, and to improve the asylum seekers' ability to work and also their feelings of security and self-sufficiency. Furthermore, prompt identification of such pathologies would avoid later requests for asylum in other countries..

Amendment 26

Proposal for a directive
Article 24 – paragraph 2

Text proposed by the Commission	*Amendment*
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.	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.

Or. es

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 27

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

Text proposed by the Commission	*Amendment*
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.***	2. Member States shall ensure ***effective*** access to ***free*** legal assistance and/or representation in the cases referred to in paragraph 1. ***In all cases, asylum seekers shall be able to opt for private legal assistance or representation if they so wish.***

Or. es

Justification

Asylum seekers shall not have to prove that they cannot cover the costs of legal assistance or representation. They may always opt for private legal assistance or representation.

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 2003/09/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 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.