

Meijers Committee

standing committee of experts on international immigration, refugee and criminal law

CM1607

Note on the Reform of the Common European Asylum System

In its communication of 6 April 2016 (COM(2016) 197 final), the European Commission announced reforms of EU legislation in respect of the qualification for international protection, asylum procedures and reception conditions. In this note the Meijers Committee would like to make the following comments with regard to the proposed reforms.

Harmonisation via EU regulations

The Meijers Committee welcomes the Commission's effort to ensure more equal treatment of asylum applicants and beneficiaries of international protection within the EU. It is the Committee's view that harmonisation of EU asylum law should guarantee a high level of protection, which at a minimum respects international human rights standards. While the introduction of a Qualification Regulation and an Asylum Procedures Regulation will lead to a set of rules which may achieve further harmonisation and have as effect that asylum seekers will be able to rely directly on the Regulation provisions, the Meijers Committee is concerned that the transposition in regulations at the same time entails that some of the EU Member States will be compelled to lower their standards. This concern is reinforced by the Commission's statement that EU asylum legislation should reduce pull factors. In the Committee's view, the Commission's priority should lie with the correct implementation of EU legislation currently in force and as a result the enhancement of the quality of international protection, asylum procedures and reception conditions in all EU Member States, with a focus on those Member States which currently are unwilling or unable to meet the agreed standards.

Temporary nature of international protection

The Commission states in its Communication that international protection should be offered on a temporary basis. It proposes that the EU Member States should check regularly whether protection is still needed, for example before granting a long-term residence permit.

One of the aims of the common approach in the asylum field was to 'ensure the integration into our societies of those third country nationals who are lawfully resident in the Union'. The Refugee Convention also envisages the integration of refugees into their host countries by granting them the right of access to the labour market, education and housing. Article 34 of the Refugee Convention states that States shall as far as possible facilitate the assimilation and naturalisation of refugees. The Meijers Committee is concerned that the temporary nature of the asylum status, and/or the fact that it will be granted for a shorter term, will negatively

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affect the integration of beneficiaries of international protection. These beneficiaries may be more hesitant to invest in their integration and employers may be more hesitant to employ them, knowing that there is a real possibility that the asylum status will be withdrawn.

If the Member States will be obliged to withdraw asylum statuses on a quite regular basis, it is crucial that the level of procedural protection in case of withdrawal be raised. Currently, Article 45 of the Procedures Directive provides a lower level of protection for procedures in which an asylum status is withdrawn than for procedures in which the asylum claim is first assessed. Member States, for example, are not required to offer a personal interview (a written statement is sufficient). This is even the case if the personal interview was omitted when the first application was made because the applicant was granted refugee status. Moreover, the authorities are not obliged to comply with the requirements regarding the conditions and content of the personal interview as laid down in Articles 15 and 16 of the Procedures Directive. As a result, the Directive does not guarantee that the person concerned will be able to submit all the elements that are relevant to the assessment of his/her (current) need for international protection. It should be kept in mind that, because of the great influx of asylum applicants, international protection may be granted on the basis of a brief and superficial personal interview.

Furthermore, other rights, such as the right to an interpreter and the right to information, are as important in a withdrawal procedure as they are in the application procedure. The Meijers Committee therefore advises the Commission to make the guarantees of Chapter II of the Procedures Directive explicitly applicable to the withdrawal of international protection. Only those provisions that are clearly not relevant to beneficiaries of international protection may be excluded (such as those related to access to the asylum procedure and the right to remain).

Differentiation between refugee status and subsidiary protection status

The Commission intends to differentiate the rights attached to the refugee status and the subsidiary protection status. When doing so, import elements of the higher level of protection achieved in the recast Qualification Directive will be revoked, namely approximation of the rights granted to refugees and persons in need of subsidiary protection. At the time, the Commission found that such approximation was necessary to ensure full respect for of the principle of non-discrimination as interpreted in the case law of the European Court of Human Rights (ECtHR) and the UN Convention on the Rights of the Child. Furthermore, it expected that the approximation would significantly simplify and streamline procedures and reduce administrative costs.

The Commission does not explain in its communication why different treatment of refugees

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and persons in need of subsidiary protection would be justified. Such differentiation may therefore violate Article 21 of the Charter of Fundamental Rights of the European Union as well as Article 14 of the European Convention on Human Rights . The ECtHR has considered that ‘where a measure results in the different treatment of persons in analogous positions, the fact that it fulfilled the State’s international obligation will not in itself justify the difference in treatment’.

Refugees and persons in need of subsidiary protection find themselves in analogous positions. They were forced to leave their country because they feared becoming the victim of serious violence. The ground on which the asylum status is granted is often rather arbitrary, in particular when simplified asylum procedures are applied to groups of applicants with high chances of success. Eurostat data reveal considerable differences between Member States in granting asylum in the form of either refugee status or subsidiary protection status. In the last quarter of 2015, for example, Germany granted refugee status in 71,420 cases and subsidiary protection in 520 cases. In the Netherlands, in the same period, refugee status was granted in 2,230 cases and subsidiary protection status in 4,395 cases. A further differentiation between the two statuses is therefore likely to result in more divergent protection standards in the Member States instead of more approximation.

If the Qualification Regulation is to differentiate between refugee status and subsidiary protection status, effective remedies should be offered to persons denied refugee status and granted only subsidiary protection status. This will lead to longer procedures and higher costs, in particular in those Member States that currently have a uniform status for both categories.

Finally, the Meijers Committee advises the Commission to clarify in the Qualification Directive that the absolute prohibition of refoulement applies to both refugees and persons in need of subsidiary protection. At present, Article 21(2) of the Directive seems to allow refoulement of refugees for reasons of public order or national security. This is in conformity with Article 33(2) of the Refugee Convention. However, almost all refugees will (also) fulfil the criteria for subsidiary protection laid down in Articles 2(e) and 15 of the Qualification Directive and therefore cannot be expelled to their country of origin under Articles 4 and 19 of the Charter and Article 3 ECHR. The Qualification Directive should provide that refugees shall also enjoy the absolute protection of those Articles.

Accelerated procedures

The Commission proposes a wider use of accelerated procedures, in particular to applicants who failed to remain in the Member State responsible under the Dublin Regulation or for which there is a high risk of absconding, and applicants originating from a safe country of

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origin. Harmonisation of the use of accelerated procedures can only be achieved if the Procedures Directive defines what an accelerated procedure is. Without such a definition (which is currently lacking), Member States can differentiate in the guarantees offered in their asylum procedure, or apply very short time limits without designating the procedure as an 'accelerated' asylum procedure.

The Meijers Committee wishes to stress that the CJEU has ruled that the acceleration of asylum to applicants of a certain nationality is only possible if it 'allows in full the exercise of the rights that that directive confers upon applicants for asylum' [...]. In particular, the latter must enjoy a sufficient period of time within which to gather and present the necessary material in support of their application, thus allowing the determining authority to carry out a fair and comprehensive examination of those applications and to ensure that the applicants are not exposed to any dangers in their country of origin'.

Furthermore, the ECtHR has indicated that automatic referral to an accelerated procedure for reasons unrelated to the content of the asylum application may be problematic in the light of Articles 3 and 13 ECHR. This is particularly the case where short time limits are combined with a detention measure and lack of access to legal assistance and the services of an interpreter may violate these Articles.

The Meijers Committee therefore advises that the automatic application of an accelerated procedure on the basis that the applicant has travelled to another Member State should not be employed. If an applicant is subjected to a (closed) accelerated procedure, then access to free legal assistance and interpretation services should be guaranteed.

Safe countries of origin

The Commission wishes to develop a common approach to the use of safe country mechanisms. It intends to harmonise the procedural consequences of using the safe-country-of-origin mechanism. The Meijers Committee refers in this respect to its comments and recommendations in its 'Note on an EU list of safe countries of origin' of 5 October 2015. In this note the Committee recommends inter alia applying the concept of safe country of origin only after an individual examination involving a personal interview and a right to legal assistance, and to codify the right to appeal with automatic suspensive effect against adverse decisions for the reason that a person has come from a safe country.

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About

The Meijers Committee is an independent group of legal scholars, judges and lawyers that advises on European and International Migration, Refugee, Criminal, Privacy, Anti-discrimination and Institutional Law. The Committee aims to promote the protection of fundamental rights, access to judicial remedies and democratic decision-making in EU legislation.

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