

Opinion of the Committee of the Regions on the 'Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States'

(2002/C 107/26)

THE COMMITTEE OF THE REGIONS,

having regard to the Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States [COM(2001) 181 final — 2001/0091 (CNS)];

having regard to the decision taken by the Council on 6 June 2001 to consult the Committee of the Regions on this matter, under Article 265(1) of the Treaty establishing the European Community;

having regard to the decision of the Bureau of the Committee of the Regions of 12 June 2001 to instruct Commission 7 — Education, Vocational Training, Culture, Youth, Sport, Citizens' Rights — to draw up the relevant opinion;

having regard to the draft opinion adopted by Commission 7 on 1 October (CdR 214/2001 rev. 2 — rapporteur: Mr Theodoros Georgakis);

having regard to Articles 61-63 of the Treaty of Amsterdam;

having regard to the conclusions of the European Council meeting held in Tampere in October 1999;

having regard to the Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (COM(2000) 578 final);

having regard to the Communication from the Commission to the Council and the European Parliament: Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum (COM(2000) 755 final);

having regard to the Committee of the Regions' Opinion of 11 March 1999 on the European action plan against racism (COM(98) 183 final) — CdR 369/98 fin (1);

having regard to the Committee of the Regions' Opinion of 18 November 1999 on the document on migratory flows in Europe — CdR 227/1999 fin (2);

having regard to the Committee of the Regions' Opinion of 18 November 1999 on the 'Proposal for a Council Decision establishing a Community action programme to promote the integration of refugees' (COM(98) 731 final) — CdR 347/1999 fin (3);

having regard to the Committee of the Regions' Opinion of 28 June 2000 on the 'Proposal for a Council Decision creating a European Refugee Fund' (COM(1999) 686 final) — CdR 80/2000 fin (4);

having regard to the Committee of the Regions' Opinion of 20 September 2001 on the Communication from the Commission to the Council and European Parliament: Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum (COM(2000) 755 final) and the Communication from the Commission to the Council and the European Parliament on a Community immigration policy (COM(2000) 757 final) — CdR 90/2001 fin (5);

having regard to the Economic and Social Committee's Opinions of 12 July 2001 on the Communication from the Commission to the Council and European Parliament: Towards a common asylum procedure and a uniform status, valid throughout the Union, for persons granted asylum (COM(2000) 755 final) and the Communication from the Commission to the Council and the European Parliament on a Community immigration policy (COM(2000) 757 final) (CES 938/2001 and CES 939/2001);

(1) OJ C 198, 14.7.1999, p. 48.

(2) OJ C 57, 29.2.2000, p. 67.

(3) OJ C 57, 29.2.2000, p. 71.

(4) OJ C 317, 6.11.2000, p. 4.

(5) OJ C 19, 22.1.2002, p. 20.

having regard to the comments of the United Nations High Commission for Refugees (UNHCR) on the Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States (UNHCR, Geneva, July 2001),

adopted the following opinion unanimously at its 41st plenary session on 14 and 15 November 2001 (meeting of 15 November).

1. The views of the Committee of the Regions on the draft directive

1.1. The Committee of the Regions endorses the European Commission's proposal for a directive which seeks to harmonise the legal framework and the conditions for reception of applicants for asylum in the Member States of the European Union, guaranteeing them a dignified standard of living and respect for their human rights throughout the time that they retain that status. Although the draft directive as a whole is acceptable, certain points still have to be clarified to ensure the directive is effective, in accordance with the principle of subsidiarity.

1.2. The Committee of the Regions also sees as an aim of the harmonisation of minimum standards on the reception of applicants for asylum the limitation of secondary movement of applicants for asylum encouraged by the diversity of the rules in Member States applicable to reception conditions. The present draft directive allows Member States considerable scope for manoeuvre in the implementation of minimum standards, and does not exclude the possibility of establishing supplementary or indeed more favourable conditions for reception. There is therefore a risk of failing to prevent secondary movement if the maintenance of minimum standards in all the Member States is not guaranteed and if the measures to improve the efficiency of the reception system are not strictly applied as envisaged in the text of the proposal for a directive.

1.3. As regards the definition of the concept of applicants for asylum who are covered by the scope of the draft directive and are entitled to the conditions envisaged for reception, the Committee of the Regions supports the broad interpretation of the term in accordance with the Geneva Convention on refugee status, as specified also in the draft Directive on the procedure for granting and withdrawal of refugee status. In other words, asylum seekers should benefit from the reception conditions from the moment when the application for asylum is submitted at any point in the country of reception (even at the border or in the international area of an airport) up to the final decision on their application.

1.4. The Committee of the Regions regards it as justifiable and normal to issue to asylum seekers a special identity card indicating their status and recognising their right to legal movement within the country of reception.

1.5. The Committee of the Regions agrees with the ban on detention of applicants for asylum, and the possibility of

imposing detention only exceptionally and on a limited basis, while it supports first and foremost the right to free movement for asylum seekers who are legally present on the territory of each Member State. Careful thought should however be given to whether asylum seekers should have completely free choice as to where they live in the meantime. Experience has demonstrated that processing applications for asylum is much faster when the asylum seekers live near to where the decision-making authorities are located.

1.6. As regards the period of time during which the Member States must guarantee to applicants for asylum and the accompanying members of their family the material conditions of reception (i.e. housing, food, clothing, subsistence allowance) the Committee of the Regions takes the view that it should cover the whole period which elapses between their recognition as applicants for asylum and the final decision on their application. The draft directive allows the Member States to choose between provision in kind and provision in the form of financial assistance or coupons. Uniform application of the rules in all the Member States would prevent applicants for asylum being treated differently in different parts of the European Union; at the same time, it would constitute a means of pressure on the national governments to expedite the consideration of applications for asylum within a reasonable timescale — also in accordance with the relevant draft directive. In so far as a financial contribution can be required of an asylum seeker under Article 19, no additional payment should be required. It would make more sense only to pay out the allowances due to an asylum seeker on a supplementary, subsidiary basis from the outset, in line with his or her financial resources.

1.7. The Committee of the Regions takes the view that the provision of the material reception conditions should not be cancelled after the granting of access to the labour market. The granting of the right to work does not automatically mean that the applicant for asylum and his family will find sufficient work to provide a dignified standard of living for them. It therefore thinks that first and foremost only a reduction in the material reception conditions should be envisaged, and their cancellation should be allowed only after a suitable assessment of the living conditions of the applicant for asylum, and in every case not until six months after the submission of the application. It points out that, under the present draft directive, the Member States cannot prohibit access to the labour market and vocational training for asylum seekers for a period greater than six months from the submission of the application for asylum. Since access to work varies considerably among the Member States, the Committee of the Regions supports the idea of applying it as uniformly as possible.

1.8. The draft directive allows the Member States the possibility to choose between a number of options the way in which the material reception conditions are provided. Thus, provision of housing, for example, can mean housing applicants in specially adapted premises, reception centres, private dwellings and hotels, or the provision of financial assistance. Similar arrangements would apply to the food, clothing and daily subsistence allowances. At the same time an assessment must be made of the potential of the region and the local authorities in the community where applicants for asylum are placed and have their residence.

1.9. The Committee of the Regions endorses the Commission proposals on the provision of primary health and psychological care during regular and appeal procedures, and on access to emergency health and psychological care during admissibility and accelerated procedures. Similarly, it agrees with the obligatory access for minors to the public education system until any deportation order against them is enforced.

1.10. Article 22 of the draft directive provides for cases of reduction or withdrawal of reception conditions following negative behaviour by the applicant for asylum. The Committee of the Regions wishes to stress the need for strict and exact application of this specific provision in the spirit of the Geneva Convention, the European Social Charter and other relevant international texts which protect fundamental rights, prohibit racial discrimination, and cover minorities and vulnerable groups.

1.11. As regards the provisions on people with special needs, the Committee of the Regions endorses the individual assessment of each applicant for asylum to determine whether he or she belongs to this category (the inclusion of unaccompanied minors, elderly people, pregnant women etc. is not limitative), while the rehabilitation and re-integration of those who have been tortured, ill-treated, subjected to inhuman behaviour, victims of violence etc. must be entrusted to special centres with specialised staff.

1.12. Of special importance are the provisions concerning measures to be taken to improve the effectiveness of the reception system (Articles 27-31 of the draft Directive). The Committee of the Regions stresses the leading role of the regions and the local authorities, which value the knowledge and experience of the UN High Commission for Refugees and non-governmental organisations, and will take on the

responsibility for ensuring harmonious relations between the ethnic communities and the centres for reception of asylum seekers, so as to prevent acts of racism and xenophobia and facilitate the procedure for examining their applications.

2. **The Committee of the Regions' recommendations on the reception of applicants for asylum in the Member States**

2.1. The Committee of the Regions supports the principle that applicants for asylum must be guaranteed a dignified standard of living, and welcomes the Commission's initiative to implement measures to prevent the secondary movement of asylum seekers which is due to the lack of homogeneity of reception conditions in the various Member States.

2.2. The Committee of the Regions would call for close cooperation with the European Commission in implementing this proposal for a Directive (e.g. exchange of views and experience between local communities in different countries, and the drawing-up of reports on the problems and conditions encountered in the regions of the Member States where there are reception centres for asylum seekers, etc.).

2.3. The Committee of the Regions is in favour of a uniform procedure for granting refugee status, to be completed rapidly — or at any rate within a reasonable timescale. It attaches great importance to the question of reception conditions for asylum seekers, and strongly urges that it be followed up systematically and continuously at regional, national and European levels.

2.4. The reception of applicants for asylum is the direct concern of the local communities and the reception centres located in their areas. For this reason the European Commission, the European Parliament and the national parliaments must focus their attention on the best practice found in local and regional integration policies. Another useful contribution to this end would be the announcement by the European Commission of international programmes for cooperation between local and regional bodies on the subject of best practice in conditions and procedures for reception of asylum seekers.

2.5. The Committee of the Regions takes the view that the various questions relating to asylum which form the subject of a number of draft directives should in the near future be examined together — because of the unity of the subject, and the overlaps and complementary features noted.

2.6. The Committee's detailed comments on the draft directive are as follows:

2.6.1. A number of points in the draft provide for the possibility of asylum seekers appealing to courts (e.g. in the case of restrictions imposed on freedom of movement — Article 7 of the draft directive; in the case of a financial contribution from applicants for asylum — Article 19 of the draft directive; and in the case of provision of health and psychological care which is not free of charge — Article 20 and others). The Committee of the Regions regards as essentially correct the planned legal protection for asylum seekers against individual decisions of the administration, which must of course also be fully reasoned. However, it has reservations on the subject of the rapidity with which cases are judged by the regular courts of each Member State. It therefore proposes a formal provision in the text of the directive to the effect that the courts shall judge the relevant appeals within a reasonable period in each case. This provision will help to ensure that the possibility of legal appeal does not become void because of a delay in issuing the decisions — in view of the limited duration of the applicability of material conditions of reception — and to ensure that the uncertainty of applicants for asylum is not prolonged, with all the accompanying problems.

2.6.2. The independent office described in Article 18 of the draft is empowered to hear complaints and resolve disputes concerning the material reception conditions. The matters

covered by the proposal in question fall to a large extent within the responsibilities of the regional and local authorities. The Committee of the Regions proposes a specific provision allocating these responsibilities to an independent body in which the local authority could participate. Disputes concerning the material reception conditions must take into account each country's national system. The body in question would examine complaints independently and objectively, while respecting the right to diversity and non-discrimination, as provided for in Article 32 of the draft directive.

2.6.3. The Committee of the Regions maintains that an obligation will need to be imposed on the Member States to supply the necessary resources to the regional authorities and to those local government bodies which are involved in the procedure and which from their very nature and mode of operation are to a large extent the bodies responsible for making possible the implementation of the national provisions enacted to implement the draft directive in question (see Article 31 of the draft).

2.7. The Committee of the Regions backs access for asylum seekers to appropriate support services which could include training and which would help to improve their reception conditions, and would facilitate their integration in national society if their request for asylum is accepted.

Brussels, 15 November 2001.

The President
of the Committee of the Regions
Jos CHABERT
