Implementation report on Article 43 of Directive 2013/32/EU on common procedures for granting and withdrawing international protection

2020/2047(INI) - 10/02/2021 - Text adopted by Parliament, single reading

The European Parliament adopted by 505 votes to 124, with 55 abstentions, a resolution on the implementation of Article 43 of Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection.

Article 43 of Directive 2013/32/EU on common procedures for granting and withdrawing international protection (Asylum Procedures Directive) establishes border procedures as a possibility Member States can use as part of the functioning of the Common European Asylum System. When an asylum application is made at the border or in a transit zone, Member States can under certain conditions examine the application at these locations.

Purpose of the resolution

Border procedures play a key role in the proposal on the Pact on Migration and Asylum. However, despite its legal obligation to provide information, the Commission has never presented a report on the implementation of the Asylum Procedures Directive.

This resolution is not intended to replace the full report on the implementation of the Asylum Procedures Directive that the Commission should have produced, nor to assess the impact of the Commission's new proposals. Rather, it aims to shed light on the implementation by Member States of border procedures under the Asylum Procedures Directive and on existing problems and gaps.

Reaffirming the importance of an evidence-based approach to guide policy-making, Parliament requested Member States to collect statistical data on: (i) the number of applications considered in border procedures and the category of applicants concerned; (ii) the types of grounds applied for using the border procedure and their frequency; (iii) the outcomes of border procedures, both at first instance and appeal, and (iv) the number and categories of persons not channelled into the border procedure.

Ill-defined border procedures

Parliament recalled that border procedures currently constitute exceptions to the legally defined rule that asylum applicants have the right to enter the territory of a Member State. The transposition and application of border procedures under the Directive vary from one Member State to another, leading to a lack of uniformity across the Union and raising concerns about their application, in particular with regard to fundamental rights and procedural safeguards.

Recalling that the application of procedures at the border remains at the discretion of Member States, Members reiterated that if Member States apply procedures at the border, they should provide for conditions ensuring a fair and adequate procedure, as well as prompt and clear information to applicants for an international procedure on its outcome.

Detention as a rule in border procedures

Border procedures are often based on the legal fiction of no entry, assuming that the procedure takes place before or in connection with a decision on an applicant's right to enter the territory of a Member State. However, Members noted that all Member States examined by the European Parliament's research service (EPRS) in its evaluation of EU implementation place asylum seekers in detention in the context of border procedures.

Parliament reiterated that, in accordance with the Reception Conditions Directive, Member States may not hold a person in detention for the sole reason that he or she is an applicant and that applicants may only be held in detention only under very clearly defined exceptional circumstances. Parliament is also concerned that some Member States detain asylum applications in border procedures without a relevant legal basis, as this may lead to insufficient safeguards with regard to fundamental rights. Member States are encouraged to take the necessary measures to ensure that alternatives to detention are available.

Refusal of entry

The recent findings of the Fundamental Rights Agency (FRA) show that the number of alleged violations of fundamental rights at the external borders has increased considerably in recent years. This includes many cases of refusal of entry without registration of the asylum application, including in the context of border procedures.

To prevent such illegal practices and to ensure that Member States comply with EU and international law at external borders, Parliament suggested that independent monitoring mechanisms should be set up. For example, Member States should be obliged to grant monitoring bodies access to border facilities in order to ensure the effective protection of fundamental rights and the systematic reporting of violations. Independent monitoring should also verify the quality of the decision-making process and its outcome, as well as detention conditions and compliance with procedural safeguards.

Vulnerable applications

Parliament called on Member States to ensure that all applicants requiring special procedural safeguards are effectively identified and have full access to such safeguards and support. Particular attention should be paid to victims of torture, rape or other serious forms of psychological, physical, sexual or gender-related violence and to children, including victims of trafficking. Unaccompanied minors should be exempted from border procedures.

Procedural safeguards and fair border procedures

Parliament insisted on the need to:

- regulate NGOs' access to the border procedure so that they can provide assistance to applicants;

- provide for effective procedural deadlines to minimise the temporary deprivation of freedom of movement of persons in detention;

- provide applicants with access to assistance, representation and information on procedures, and ensure the services of an interpreter in person, at all stages of border procedure;

- ensure that applicants are given sufficient time to prepare for individual interviews so as to enable them to present the reasons for their application and the key elements for the examination procedure.