Asylum: common procedure and internal security. 1st report

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At the Extraordinary Justice and Home Affairs Council on 20 September 2001 the Council requested the Commission to consider the relationship between safeguarding the internal security of the EU whilst at the same time respecting its international obligations on the protection of individuals. In the aftermath of the terrorist attacks in America on 11 September EU Member States have tightened up their policies on terrorism in order to minimise the internal security threat they pose to the EU as a whole. One important, though slightly more ambiguous issue, is how to prevent persons with terrorist intentions from taking advantage of international human rights. The need to prevent the infiltration of terrorists in the EU needs to be weighed against the need to respect international legal provisions, most notably the UNHCR Convention on Refugees. The Commission working document tackles this question by examining four central issues. 1) it analyses what provisions already exist for Member States to legally suspend persons from international protection (i.e. those not deserving of such protection due to terrorist attacks.). 2) it considers which legal steps can be taken by governments confronted with a person who is excluded from international protection regimes. 3) it elaborates on what action can be initiated at a European level. 4) it assesses the adequacy of internal security related provisions in EU legislation as well as expanding upon Commission proposals for Directives in the asylum and immigration field. The central policy of the working document is to assume that bona fide refugees and asylum seekers should not become victims of recent events. Nor, however, should those supporting or committing terrorist acts, be allowed access to the EU. Taking this as a basis the Commission cautions against a major reform of existing provisions relating to refugees. Rather, it urges a scrupulous application of the "exceptions" to refugee protection available under existing provisions. Since the events of 11/09 the UNHCR has stated that the purpose of the Convention is not to grant a "safe haven" to criminals, nor is it designed to protect them from criminal prosecution. Its aim is to protect "the persecuted from persecutors". Within the context of these parameters the Working Document begins by examining such concepts as, inter alia, the definition of a "terrorist act", "access to asylum procedures", "suspension of the examination of an asylum procedure" etc. In conjunction with these ideas it sets out how EU legislation already deals with such questions, where there is scope for improved provisions and lastly what sort of legislation should, in future, deal with such improvements. The second chapter of the working document seeks to establish the position of persons whose rights have been suspended under Article 1(F) f the UNHCR convention. Whilst some Member States seek to prosecute those alleged to have committed a crime, the high burden of proof required for a criminal prosecution, combined with the difficulty of finding credible witnesses, renders such procedures all too often futile. On the other hand, the European Court of Human Rights has repeatedly prohibited Member States from extraditing persons falling under the exclusion provisions of the Convention on Refugees. In caseswhere torture, inhuman or degrading treatment or punishment can be expected, the Court forbids extraditing persons whose basic human rights could be violated. Given the limited options open to Member States in cases where a person falls outside the scope of refugee/international protection provisions the Working Document acknowledges that this issue is urgently in need of further examination and eventual resolution at European level. It suggests that it may be necessary to harmonise the basic rights granted to this category of "excludable" but "non-removable" persons and to assess the different means for dealing with these persons if they pose a security risk. In its third chapter, the working document relates relevant legislation, regulations and administrative practices against the background of a "Common European Asylum System". This part of the paper seeks to suggest ways in which the EU could work more efficiently on common procedures, such as a more convergent interpretation and application of exclusion provisions as well as alternatives to detention. Similarly, it examines ways in which terrorist could face comparable treatment in all Member States. The final chapter of the working document is an analysis of "internal security" related provisions in EC legislation and future Commission proposals for EC legislation in the asylum and immigration field. It concludes that current EC legislation or on-going

Commission proposals for such legislation currently contain sufficient standard provisions to allow for the exclusion of any third country national who may be perceived as a threat to national security from the right to international protection, residency or benefits. Nevertheless, this needs to be viewed and examined within the context of changing circumstances.