

Asylum: granting and withdrawing refugee status, minimum standards on procedures, Common European Asylum System

2000/0238(CNS) - 27/09/2005 - Text adopted by Parliament after reconsultation

The European Parliament adopted a resolution drafted by Wolfgang **KREISSL-DÖRFLER** (PES, DE) and voted by 305 votes to 302 to make amendments to the text. These amendments total 174. For a summary of the principal amendments, please see the document below dated 21/06/2005.

The most controversial issue was the adoption of lists of safe countries of origin that member states could use to reject asylum applications by a fast track procedure. Parliament felt that any such list adopted at EU level must be a harmonised one, not a minimum one to which each member state could add as Council proposes. In addition, Parliament stated that the list should be adopted and amended by co-decision, whereas the Council said it alone should adopt it, by qualified majority, after obtaining Parliament's opinion. Parliament deleted Article 30A, which would have enabled Member States to keep or to create national lists of safe countries. Furthermore:

- Member States may apply the safe third country concept only where the third country fulfils certain criteria. These now include ratification and implementation in practice of the Geneva Convention and other international human rights treaties, in particular with reference to the principle of non-refoulement: There must be meaningful link, rather than merely a connection, between the person seeking asylum and the third country concerned.
- Parliament deleted Article 35A allowing a Member State to deny access to the asylum procedure completely if an asylum applicant is seeking to enter or has entered illegally into its territory from a "safe third country";
- Parliament's text boosts asylum-seekers' right to a personal interview and is more generous on free legal aid, insisting asylum-seekers be treated the same as nationals of the member state.
- Each person who wishes to make an asylum application must promptly receive exhaustive information about the procedure and his/her rights and obligations, in his/her own language.
- under no circumstances shall it be permitted to make use of consulates or diplomatic missions representing the authorities of third countries of which applicants for asylum say they are or are established to be nationals for purposes of verifying the applicants' nationality.
- There are a number of amendments that strengthen the rights of children. Parliament rejected the idea that if asylum-seekers are 16 years or older or will "in all likelihood" have reached adult age when a decision is taken, they do not have to be provided with a special assistant to help them make their claim.
- Parliament made a distinction between "unaccompanied child" and "separated child". The former refers to a child who has been separated from both parents and other relatives or legal or customary guardians; "separated child" refers to a child who is accompanied by an adult who is unwilling or unable to assume responsibility for long-term care of the child.
- Member states should "in principle" not keep asylum-seekers in detention centres. This is stricter wording than Council, which says they should not be detained solely because they are asylum-seekers.

Parliament stated that alternatives to detention and non-custodial measures must always be considered before resorting to detention. Legal assistance must be made available and unaccompanied children may not be detained on the ground of their immigration status.

-There must be more human rights safeguards on detention. Detainees should have access to legal and medical assistance.

-Parliament felt that the same principles should apply to claims made at the borders as apply to those filed inside the territory, whereas the Council allowed for a more streamlined procedure for border applications.

-The Council's text stated that Member States shall ensure that an examination may be started to withdraw the refugee status of a particular person when new elements or findings arise indicating that there are reasons to reconsider the validity of the refugee status. Parliament has considerably softened the text by stating that Member States may begin to withdraw the refugee status of a particular person only under a list of prescribed circumstances.

-Finally, decisions taken on an application for asylum should be subject to an appeal consisting of an examination of both facts and points of law by a court of law. The applicant should be entitled not to be expelled until a court has ruled on the right to remain pending the outcome of that appeal. Applicants must be able to remain in the Member State in which the application for asylum has been made or is being examined until a final decision has been reached and the appeals procedure exhausted.