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Joint comments on the Amended Commission Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status COM (2002) 326 final/2

Introduction

As Christian-based organisations, we welcome the effort to harmonise asylum procedures across the European Union Member States and see it as an integral part of creating a Common European Asylum System. A fair, transparent and efficient procedure is an essential element in providing for refugees the international protection that they are dependent on and entitled to.

As a preliminary remark and before speaking about the procedures themselves, we must again raise our deep concerns about the way access to the territory and therefore to asylum procedures is becoming increasingly restricted. Persons in need of protection risk serious injury or death owing to the difficulty of obtaining legal entry, in particular to EU territory. Having the best and most generous asylum system is of little use if barriers and obstacles are placed in the path of asylum seekers fleeing persecution. The current regime of visas (including the imposition of visas requirements on countries in turmoil), carrier liabilities and interdiction makes it almost impossible for asylum seekers to legally seek asylum in the EU. Denial of entry can block any access to a fair refugee status determination procedure.

It has been a feature of recent years that problems have been caused by differing interpretations by several EU Member States of the term 'refugee' as per the 1951 Refugee Convention. It would seem sensible to reach agreement about this, before agreeing on asylum procedures especially because it impacts on such concepts as 'safe third country', 'safe country of origins' and 'manifestly unfounded' claims.

Executive Summary

With respect to asylum procedures, our experience drives us to be profoundly concerned particularly as regards the following main areas[1]:

- There is a real risk of refugees being deported after the first decision due to the **lack of general suspensive effect in normal appeal procedures**. We are very much concerned by the fact that persons could be removed in cases where the first decision is based on grounds of national security and public order (Article 39 para 4).
- There is even a much higher risk of refugees being deported in the **accelerated procedure**. In several cases Member States may provide an exception from waiting for a decision of the court of law on an application for suspensive effect (Article 40 para 3).
- As a general rule asylum seekers should not be put in **detention**. Asylum applicants should only be detained as a very last resort in exceptional cases when non-custodial measures have proven on individual grounds not to achieve the lawful and legitimate purpose.
- We are seriously concerned that the **safe third country notion** as chosen in the proposal puts an unfair burden of proof on the asylum seeker.
- We are deeply concerned that too many applications are referred to **accelerated procedures** that, which is an additional point of concern, can last up to 6 months.
- There is insufficient cognisance shown of the **role of UNHCR and NGOs** in the text.

We point out one crucial minimum requirement regarding the decision-making procedures to be that "decisions are taken by authorities qualified in the field of asylum and refugee matters" and that **personnel responsible for examination of applications** receives appropriate training (Art 7 (1c)).

Finally, we are concerned that there is too much room in the Directive for "derogation" and "discretion" allowed to Member States to apply uniform procedures, and the use of concepts such as accelerated procedures, 'safe third country', and 'country of origin' claims. See for example: Art 39, Para 4 and Art 40, Para 3 (re: suspensive effect); Art 20 (re: procedural guarantees to the withdrawal or cancellation of refugee status).

Background observations

In Europe undue length of asylum determination procedures is a real concern. This is especially so since States are more and more restricting the movement and curtailing the rights of asylum seekers during the determination process. Coupled with this we have a concern about poor quality of asylum procedures. We believe that current flaws in the procedures are a significant factor why persons in need of protection fail to get recognition. We believe that the following concerns and recommendations are essential[2]:

- The information provided on asylum procedures is inadequate almost everywhere. Although in some countries thorough written information is provided, experience shows that asylum

[1] Compare: "Caritas Europa comments on the Commission proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (2000) 578 final", May 2001

[2] Compare: "Fair treatment of asylum seekers - Caritas Europa Position Paper on key standards for the reception of asylum seekers and for asylum procedures", February 2001

seekers rarely understand the essential points. The information provided is formulated in overly technical language, or in difficult legal terminology.

- Legal counselling services are also inadequate almost everywhere. Generally, even in countries where there is government support for legal counselling services, only some asylum seekers benefit to a sufficient degree. Broadly there is a lack of high-quality, free legal aid from lawyers trained in human rights law.
- Refugees face and suffer from a long and uncertain wait because of the length of determination procedures. Both governmental and non-governmental agencies agree on the need to shorten asylum procedures.
- Decision-makers must be fully trained and competent to deal sympathetically with asylum-seekers of different educational, cultural and social backgrounds, and able to understand the psychological complexities that may be involved, for example in dealing with traumatized persons.
- Decision-makers must have adequate time and resources to make good decisions, in particular access to high quality and up-to-date country of origin information. There is a need for transparency as regards the information on which asylum decisions are made; asylum-seekers and their representatives must have access to this data. UNHCR and non-governmental organisations have a role to play in gathering and evaluating this information.
- Proper interpretation services are vital, as is access to high-quality state-funded legal counselling and representation; in order to safeguard the rule of law, governments are obliged to enable persons under their jurisdiction to enjoy their rights.

As regards the draft Directive we welcome the reference that the Commission makes to the Council Conclusions of 7 December 2001, revised 18 December 2001, which underline the need for provisions "ensuring that applicants for asylum receive substantial guarantees with regard to the decision-making process and that decisions are of optimum quality"[3]. We agree entirely with the view of the Commission "asylum procedures should not be so long and drawn out that persons in need of international protection have to go through a long period of uncertainty before their cases are decided"[4].

In general our view of this draft Directive is that it portrays an anxiety on the part of Member States to protect themselves from false asylum claims, but it does not provide adequate protection for genuine refugees to protect themselves against poor decision-making by Member States.

Although there is a clear need to harmonize the application of concepts and practices in EU Member States we have serious doubts with regard to some provisions in the proposal concerning 'accelerated procedures, 'manifestly unfounded claims' and the 'safe third country' notion. We would like to warn against the danger of reducing this proposal to the lowest common denominator that will defeat the purpose of harmonisation and of the search for best practice.

[3] Preamble, pt. 6
[4] Preamble, pt. 10

SPECIFIC COMMENTS

Chapter 1: Scope and definitions

We point out that under international refugee law (Art 1(a) of the 1951 Refugee Convention) refugee status is not granted but recognised (see for example Para 28 of the Handbook on Procedures and Criteria for Determining Refugee status).

As set out in previous comments put forward by the signing organisations, we recommend strongly to make the standards for asylum procedures also applicable for procedures designed to determine the need for complementary forms of protection. We would like to see one single procedure being designed within which both, the refugee status as well as the complementary protection would be determined.

Chapter II: Basic principles and guarantees

Article 5: Access to the procedure: Access to the territory and therefore to the procedure is one central weakness of the current asylum system. The first stage in this is border procedures. These have to be transparent and accountable. We therefore recommend that a specific provision be included which mandates ongoing evaluation of border procedures by an independent agency, such as for example UNHCR. In addition, the Directive should be more specific about continuous training of border personnel and suggest areas where training is needed such as human rights, international protection and intercultural competence.

Article 5(4): Consistent with support by the European Union for principles of family unification, Member States should provide by law derivative asylum status for family members of the principle applicant. If the family members are accompanying the principle applicant in the Member State, they should be included in the application – if they so desire – and be granted derivative asylum status. If they are not physically in the Member State, a procedure should be created by the Member State permitting them to join the principle applicant -- should he or she be granted asylum-- and enter the Member State as refugees.

Article 6: Right to stay pending the examination of the application: We are very concerned that the right to stay pending the examination of the application only refers to the decision of the "determining authority" competent for taking the decision at first instance. Our organizations hold the position that a right is only substantial if the person enjoying it

a. has the opportunity to lodge an appeal,
b. which needs to be decided on by a competent authority and
c. which has a suspensive effect.

This means the right to stay needs to be guaranteed also during the review or appeal procedure as will be pointed out in more detail in our comments on Articles 39 and 40.

Article 7: Right to individual decisions: we welcome the provision that decisions on asylum should be taken on an individual basis on the objective circumstances of that person. However, our concern remains, regarding the apparent building up elsewhere in these proposals of the principles of "safe third countries" or "safe countries of origin" (Art's. 27, 28 30, 31 and Annexes 1 and 2).

Efforts to train the personnel who decide asylum cases are appreciated. However, in most countries the level of competence in the administrative body that makes the first determination is not acceptable. In many countries a significant problem is inadequate understanding of the skills required. One crucial minimum requirement regarding the decision-making procedures is that "decisions are taken by authorities qualified in the field of asylum and refugee matters" and that personnel responsible for examination of applications receive appropriate training (Art 7 (1c)).

However, we feel that current flaws in the procedures are a significant factor why persons in need of protection fail to get recognition. This is why we would welcome a harmonized high-level profile of decision-makers in asylum cases throughout Europe. In particular: Decision-makers must be fully trained and culturally competent to deal with asylum-seekers of different educational, cultural and social backgrounds, and able to understand the psychological complexities that may be involved, for example in dealing with traumatized persons. Regular training and access to information should be provided. Research and documentation centres should be created, to compile country of origin information and asylum-related jurisprudence. Where additional expertise is necessary, asylum authorities should be able to consult expert opinion. We, further on, recommend pooling the information available on international level that should be much more cost efficient.

Article 9: Guarantees for applicants for asylum: we are concerned that Article 9 (1c) stipulates only that asylum seekers "must not be denied the opportunity to communicate with the UNHCR or with any other organisation working on behalf of the UNHCR". This is far too weak. Relationships with UNHCR and NGOs need to be encouraged and proactively promoted.

We fail to grasp the reason why "if a legal adviser or other counsellor is legally representing the applicant, Member States may choose to notify the decision to him instead of to the applicant for asylum". This seems unnecessarily confusing. Surely it would be better to notify the legal representative in any case; in some countries it would even be mandatory to proceed in this way according to the procedural rules in place for administrative law. Optimally, the decision could, in addition, also be sent to the asylum seeker.

Article 10: Persons invited to a personal interview: In para. 2b the determining authority is allowed to be the sole judge of the fitness for interview of the applicant. Procedural safeguards are needed here and a medical or psychological certificate should be mandatory.

Where the personal interview is omitted and in cases where the applicant is offered the opportunity to make comments, the assistance of a legal adviser or other counselor is a positive point, but should not be discretionary.

Article 10(2)(c): Failure to obtain a competent interpreter should not be the basis to forego a personal interview. This prejudices certain categories of persons speaking certain languages where it is difficult to obtain interpreters.

Article 11: Requirements for a personal interview: As regards para. 2b our view is that the personal interview should take place in the language preferred by the applicant. Only if interpretation services are unavailable should it be conducted in another language "which [the asylum seeker] may reasonably be supposed to understand".

Our experience on the ground shows that protocols and guidelines for interpreters are urgently needed and we urge some reference to this.

Gender is an important issue in generating trust. Article 11 (2 a) should include a reference to gender. As a rule, female asylum seekers should have female interviewers and interpreters and male asylum seekers should have male interviewers and interpreters. A woman, for example, would find it very hard to talk about rape in the presence of a male interviewer or interpreter.

Article 12: Status of the transcript of a personal interview in the procedure: In para. 3 we urge a rewording from "Member States *may* request the applicant's approval on the contents of the transcript" to "Member States *shall* …"

In the case of an applicant's refusal to approve the contents of the transcript of his/her personal interview and if the determining authority decides to proceed, safeguards are needed such as the possibility of making personal explanatory comments in addition to the personal interview. The provision of assistance from a legal adviser or other counselor should be obligatory.

Article 13: Right to legal assistance and representation: It is a positive point that the draft Directive envisages that asylum seekers will have the right to legal assistance. However, this right needs to be more strongly proposed. In para 1, instead of allowing applicants for asylum the opportunity to consult, Member States should undertake to facilitate and promote the access of applicants to legal advice.

Article 13 (2) only provides for a right to free legal assistance at the appeal stage - this is inadequate. Good decision-making can only be ensured through properly presented cases and this requires legal assistance at all stages of the process and in all types of case. Legal assistance should be compulsorily made available to all persons who intend to lodge an asylum claim, wherever the place from which they wish to introduce the request (also at international zones or in transit zones of airports).

We agree that the availability of free legal assistance should be conditional on lack of sufficient resources on the part of the asylum seeker (Para 2 a). However, we do not agree with the addition of the phrase "and insofar as such assistance is necessary to ensure their effective access to justice", as we believe this adds a subjective dimension which cannot be easily evaluated.

While it may be necessary to restrict free legal assistance to a designated group of legal advisers or other counsellors care should be taken to ensure that there is a sufficient number of these and that they are adequately trained and supervised by an independent agency and by the UNHCR.

Article 14: Rights of legal adviser or counsellor: We strongly urge that any legal adviser or counsellor assisting or representing an asylum applicant should have unrestricted access to otherwise restricted areas. We do not believe that either the security of the area or the need to ensure an efficient examination of the application can justify limitations of this right.

Article 15: Guarantees for unaccompanied minors: we welcome the safeguard of the appointment of a representative for unaccompanied minors, but feel this should be "forthwith" or "immediately" rather than "as soon as possible" (Art15 (1a).

In article 15 (3) that refers to medical examination to determine age, we point out that such examinations can be in error by about two years. The principle 'in dubio pro minoritate' should be followed in these cases. Also, the representative or tutor of the minor should be informed about the examinations, so that he/she can follow the result/conclusions and have the possibility to question them during the procedure.

Article 16: Establishing the Facts in the Procedure: Article 16(2) refers to the applicant's responsibility to provide information on travel routes in order for the application to be considered complete (to include all relevant facts). Often times, applicants for asylum are either helped to enter a country illegally by family members or friends or they pay smugglers. In the first case, they may be reluctant for reasons of loyalty to provide information on "travel routes." In the second case, they may be afraid to do so. Therefore, the phrase "where reasonable" should be included in this section.

Article 17: Detention pending a decision by the determining authority: Our organisations believe as a general rule that asylum seekers should not be put in detention. Asylum applicants should only be detained as a very last resort.

We welcome the proposal (Art 17 (1) that excludes the detention of asylum seekers "for the sole reason that his application for asylum needs to be examined". We welcome that there is foreseen an initial judicial review and subsequent regular reviews – this is a real procedural safeguard against arbitrary or unnecessarily prolonged detention. But we would emphasise that this review should be mandatory in all cases (Art 17 (1) and Art 17 (2)) on Member States, not merely "as a possibility" as provided in the proposal. The review of the decision, including the review the lawfulness of the detention, should be mandatory at the latest every two weeks.

According to Art 5 ECHR everyone has the right of a review of detention by a judge. We propose establishing the principle that any decision on detention should be issued by a judge as well.

We are opposed to detention of asylum applicants in order to achieve a more efficient processing of the claim (Article 17 para. 1) or for a quick decision to be made (Article 17 para. 2) – we believe that there are many other means for achieving such efficiencies. We observe that detention is not a mean to make a decision more effective but, on the contrary, to minimise the quality of the decision as persons are intimidated by the detention and have less possibilities to access counselling during the procedure.

In addition, clear criteria and a maximum time frame should be set out for exceptional detention of asylum seekers. We would like to point out that any grounds for detention should be harmonised with EXCOMM Conclusion 44 (XXXVIII). Any EU legal basis regarding detention should comply with international law and standards. In addition, procedural safeguards are needed, in the case of detention for the purpose of verifying the identity, to review whether the authority did and does everything to come as quickly as possible to conclusions as regards the identity. We would wish to recommend that personnel involved in the interviews about identity of asylum seekers are better trained, that a real effort is made to create an atmosphere that reflects authentic respect for the asylum seeker – which at the moment often is not the case, but suspicion palpable and incomprehension striking – and that legal counsellors are involved in these interviews whom the asylum seeker can trust.

Article 18: Detention after agreement to take charge under Council regulation …: We are very concerned by the provision in Article 18 that Member States may detain for a period up to one month an asylum seeker after another Member State has already agreed to take responsibility for the processing of his/her claim. This is an unnecessarily long time frame. A maximum of 3 days should be sufficient to arrange the transfer. This would also safe costs.

Article 19: Procedure in case of withdrawal of the application: we are concerned at the opportunity for Member States to reject the application subsequent to its withdrawal by the asylum seeker. Often decisions to withdraw a claim are based on poor advice, pressure of circumstances and other reasons. We

believe that a rejection could unnecessarily complicate the procedure – a genuine applicant could even end up without any substantial hearing of his/her case. This Article should provide that any decision for withdrawal of an application must be done without prejudice to the applicant, if he or she chooses to present an application for asylum in the future.

Article 20: Procedure in case of implicit withdrawal or abandonment of the application: We are deeply concerned at the possibility to interpret many scenarios as an "implicit withdrawal" of the asylum application in Article 20. Communication between asylum authority and asylum seeker can often be difficult, for reasons as varied as a lack of fixed residence, lack of adequate financial means to present oneself at the administrative body, negative influence or pressure from smugglers or traffickers. This interpretation could lead to rejection of the application (see Article 19), consequent difficulties in lodging a renewed application (see Article 40) and subsequent removal after a decision in the accelerated procedure, despite a real risk in the country of origin.

Where it is reasonable to believe an application has been abandoned, any decision by a Member State withdrawing the application should be taken without prejudice to the applicant to pursue the claim in the future. In the case of implicit withdrawal or abandonment, a Member State should not be permitted to make a decision based on the merits of the case at that point. Cases should simply be administratively closed.

Article 21: The role of UNHCR: We support the thrust of this article and we urge that NGOs should also be included in it. The UNHCR´s role should be recognized in a more significant way than is currently envisioned under this article. Member States should be required to respond to the UNHCR´s comments and criticisms of the application of asylum procedures. Additionally, the UNHCR should be permitted to accompany patrols currently in the Mediterranean as part of Operation Ulysses. Potentially hundreds of persons seeking entry from the South in "pateras" have asylum claims. However, under current procedures in the Operation, "pateras" are returned without inquiry.

Article 22: Data Protection: This provision should be edited to state that disclosure of information regarding individual applications for asylum to authorities in the country of origin should only be done with the consent of the applicant.

Chapter III: Procedures at first instance

Article 24: Time limits for an accelerated procedure: We are deeply concerned that accelerated procedures can last up to 6 months. Our view is that even normal procedures should be conducted within such a time limit. In general, we do not think that a separate procedure for the cases mentioned (i.e. fast-track/accelerated) contribute to a "simple and quick" system. They simply add unnecessary hurdles and layers of complexity. A single procedure where good quality decisions are made on all facts of an individual's case at the first stage would ensure a smooth and rapid appeals process, including a fair and efficient system.

Article 27 and 28: Designation of countries as safe third countries:

We are seriously concerned that the safe third country notion as chosen in the proposal puts the burden of proof unjustly on the asylum seeker. It should be emphasised again that all cases should be examined and decided on the individual's own circumstances, regardless of the fact that readmission agreements exists. We believe that there are no safe countries in any blanket sense. It is totally unacceptable for our

organisations that the Directive allows to "retain or introduce legislation that allows the designation by law or regulation of safe third countries".

We also believe that the right of appeal against 'safe third country' removals has to be suspensive - the right to appeal from another country is ineffective, a token right that is virtually impossible to exercise. This is particularly important in the context of the observation above (i.e. refugee definition) that agreements on procedures and referrals should come after basic agreements about who is or is not a refugee otherwise there is the clear risk of *refoulement.*

We welcome the suggestion that referral to a 'safe third county' should reflect the applicant's needs and links. We believe that the provision in Article 28 (1b) should be strengthened to say that referral should only take place where there are guarantees of re-admittance, not simply "grounds for considering that the applicant will be readmitted."

Equally, the onus should be on the sending State to show that that country is safe for that individual and confirm that they will be admitted to an asylum process that will assess their claim without danger of *refoulement*. We believe that the *non-refoulement* obligation is best met by Member States by the provision of a full and satisfactory asylum procedure at first instance, where all asylum claims are thoroughly examined by a competent authority.

Finally, in the case where the applicant has family ties with someone legally resident in the country that is considering applying the safe third country clause, or in the case that there are other social or cultural links connecting him to this country, or for vulnerable persons (such as unaccompanied minors or traumatized persons) the safe third country notion should not be applied.

Article 30 and 31: Safe countries of origin: We believe that there are no safe countries in any blanket sense. It is not acceptable for our organisations that the Directive allows States to "retain or introduce legislation that allows the designation by law or regulation of safe countries of origin". We are seriously concerned that the safe country of origin notion as chosen in the proposal puts the burden of proof on the asylum seeker. It should be emphasised again that all cases should be examined and decided on the individual's own circumstances.

This is of serious concern as it is clearly contrary to the basic requirement to consider each individual case on its own merits and there is a wealth of documentation from previous experiences of "lists" of supposedly safe countries that are, in reality, far from safe for some individuals. The right to asylum is an inalienable and basic human right enshrined in Article 14 of Universal Declaration of Human Rights and this is not dependent on nationality or country of origin. To restrict access to a fair, just and efficient process on the basis of such blanket definitions is inherently unsafe and contrary to international law.

Article 32: Other cases under the accelerated procedure: We are concerned about the criteria suggested for identifying these cases. In particular with regard to Article 32 (a) it has to be stated that applicants commonly have no, or false documentation. This should not being used against them in relation to their asylum claim unless it can be clearly shown that documents were destroyed in order to deliberately mislead authorities concerning their identity. Since legal entry is very limited for asylum seekers, the use of false documents often is result of the "non-arrival"-policy implemented by Member States.

As to Art 32 (b): To require explanations to have serious reasons for considering they have acted in bad faith seems an extremely subjective and discriminatory basis on which to implement accelerated procedure. This seems to be a vicious circle: first access to the territory on legal grounds of asylum seekers is made practically impossible; this drives them into the hands of traffickers and smugglers who usually advise them to destroy documents and perhaps to present a fictionalised versions of their histories. Finally, the asylum seeker's claim will be looked upon with suspicion from the outside and the claim will fall under the conditions for accelerated procedure.

We also point out that there is evidence that a sizeable minority of those who could claim asylum is often afraid to do so owing to the negative publicity about border policies of member States. Should these then be penalised and viewed with suspicion when at last they do present a claim?

Article 35: Cases of border procedures: we welcome that the Directive foresees that some guarantees of the normal procedure should also be applied in the border procedure. However, we urge that the procedure at borders should comply with

- Art 8 (1) which obliges Member States to ensure that decisions on applications for asylum are giving in writing
- Art 9 setting out guarantees for applicants for asylum
- Art 10 and 11 regarding personal interviews
- Art 12 on the status of the transcript of a personal interview
- Art 13 (2) ensuring access to legal assistance.

The enormously wide discretion given to member States in para 3 is contrary to the Directive's goal of harmonising asylum procedures. The borders are one of the most sensitive elements in fair and efficient asylum procedures. Leaving the design of these procedures solely to the Member States means falling at the first hurdle. The border procedures as laid out in the proposal are impractical and offer no safeguards

We are deeply concerned by para 2 saying that "this procedure may also be applicable for applicants for asylum arriving in airport and port transit zones. We do not see any reason for treating asylum seekers differently depending on whether they arrive at the land border or at an airport or port. We urge to make this procedure obligatory at all borders.

Article 37: Withdrawal or annulment of refugee status - procedural rules: We are deeply concerned that para 2 allows Member States to derogate from Articles 9 to 12 "when it is technically impossible for the competent authority to comply with the provisions of those Articles". In fact this is undermining the whole range of guarantees foreseen for the procedures although the very sensitive act of withdrawing or annulling the refugee status requires specific safeguards. Member States should be expected to live up to the guarantees that they themselves consider as crucial.

Chapter IV: Appeals procedures

Article 39: Review and appeal proceedings against decisions taken under the regular procedure: There is a real risk of refugees being deported after the first decision due to the lack of a general suspensive effect in normal appeal procedures. We are very much concerned by the fact that persons could be removed in cases where the first decision is based on grounds of national security and public order (Article 39 para 4).

We are also concerned about the necessity to apply for suspensive effect if Member States derogate from the general suspensive effect (in maintaining present legislation – Article 39 para 2). We point out that asking a court to rule on the granting of suspensive effect is lower standard than providing for a general suspensive effect and it is additional procedural burden.

Article 40: Review and appeal proceedings against decisions taken in the accelerated procedure: we very much regret that the proposal of the original draft Directive as regards the three tier system of decision-making, reviewing and Appellate Courts was dropped in the amendment.

In the accelerated procedure there is an even higher risk of refugees being deported since in several cases Member States may be exempt from waiting for a decision of the court of law on an application for suspensive effect (Art 40 para 3). These cases include inadmissible applications, renewed application without new facts, subsequent applications, and national security.

We are particularly concerned about Art 40 para 3 d because of the potentially wide and unjustified interpretation of the grounds of national security. Accelerated procedures need higher procedural safeguards than normal procedures – the Directive does not live up to this requirement. Accelerated procedures may turn out to be automatic removal.

Any deportation carried out before the final decision puts in question the value of the review procedure and causes serious risk of refoulement. In this regard this provision may violate Art 33 of the Geneva Convention and Art 3 and 13 ECHR. We urge of the view that the suspensive effect to appeals should be in all cases, without discrimination.

Article 41: Time limits and scope of the examination in review or appeal: this provision is not clear enough when stating in para 1 a that "these time limits may be shorter for giving notice of appeal and requests for review in respect of decisions taken under the accelerated procedure". We promote including concrete time limits. This would make sure that remedies are designed in a way to be used effectively.

As to para 2 allowing Member States to lay down the conditions under which it can be assumed that an applicant has implicitly withdrawn or abandoned his review or appeal together with the rules on the procedure to be followed in these cases, we refer to our comments made above under Articles 19 and 20 that should be applied here as well.

Conclusion

Additionally, our organisations recommend the European Union should establish an independent quality assessment of asylum procedures and asylum decisions in Member States. This would ask for defining criteria and agree on indicators.

Our organisations would like to reiterate that since all EU Member States are parties to the 1951 Geneva Convention, the UN Convention against Torture and the European Convention on Human Rights, their respect for human rights obligations is not a matter of choice, but of duty.

Brussels, 12 May 2003