Common procedures for granting and withdrawing international protection. Recast

2009/0165(COD) - 26/06/2013 - Final act

PURPOSE: to recast Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status.

LEGISLATIVE ACT: Directive 2013/32/EU of the European Parliament and of the Council on common procedures for granting and withdrawing international protection (recast).

CONTENT: Parliament and the Council adopted a Directive to recast the 2005 Directive with a view to updating procedures in the Member States for granting and withdrawing international protection and to establish common Union asylum procedures.

The Directive is part of the package of revised texts on asylum and the setting in place of a common European asylum system.

The main aspects covered by this revision may be summarised as follows:

Objective: the Directive lays down common standards on procedures for granting and withdrawing refugee status that the Member States shall apply to ensure that applications for international protection are treated in the same way irrespective of the Member States in which they are examined.

The recast of the Directive aims to make EU standards more protective for applicants for international protection and to achieve greater harmonisation of national asylum procedures.

Scope: the Directive shall apply to all applications for international protection made in the territory, including at the border, in the territorial waters or in the transit zones of the Member States, and to the withdrawal of international protection.

More extensive training requirements for personnel dealing with asylum applications: the Directive provides for more extensive training requirements for personnel of authorities that examine applications for international protection. To this end, people responsible for interviewing applicants will be required to have a general knowledge of the problems that could adversely affect the applicants ability to be interviewed, such as indications that the applicant may have been tortured in the past.

These training requirements also apply to personnel of another authority responsible for interviews where there are simultaneous applications for international protection by a large number of third-country nationals or stateless persons. The personnel of authorities likely to deal with asylum applications (e.g. the police, border guards, immigration authorities and personnel of detention facilities) shall receive the necessary training which is appropriate to their tasks and responsibilities.

Basic guarantees: new provisions have been introduced to strengthen asylum applicants procedural guarantees:

- access to the procedure: new standards have been introduced to ensure easy and timely access to the asylum procedure taking into account the specific characteristics of national systems.

The following have been revised:

- the deadlines for the presentation and registration of applications particularly when there is a large number of persons applying simultaneously;
- the type of information to be provided to asylum applicants placed in detention centres or at border crossing points, emphasising the fact that this information must be provided in a language that the applicants are reasonably supposed to understand;
- access to an interpreter at detention centres or border crossing points to facilitate access to the asylum procedure.

- individual interview: the principle of a personal interview is maintained between the asylum applicant and a person who is competent to assess the application. New provisions have been introduced in regard to the recording of interviews and their reporting. In particular, Member States must reflect the asylum interview in a report containing all substantial elements or in a transcript, inform the applicant on the content thereof and allow him, under certain conditions, to make comments. Member States may also provide for an audio or audiovisual recording of the interview. The applicants are entitled to have access to the report, the transcript and the recording.

Moreover, with a view to ensuring substantive equality between female and male applicants, examination procedures should be gender-sensitive. In particular, personal interviews should be organised in a way which makes it possible for both female and male applicants to speak about their past experiences in cases involving gender- based persecution.

- medical examination: where the determining authority deems it relevant for the assessment of an application for international protection, arrangements may be made for a medical examination of the applicant concerning signs that might indicate past persecution or serious harm. Rules have been introduced governing this medical examination to ensure that it is undertaken by competent professionals and to define the cases of when its cost shall be covered by the applicant and when it shall be paid for out of public funds.

Time limits for the examination of an application: in principle, the examination procedure shall be concluded within six months of the lodging of the application. In the event of complex issues, delays due to the lack of cooperation of the applicant or where there are large numbers of applicants, Member States may extend the time limit for a period not exceeding a further nine months. By way of exception, a supplementary extension by a maximum of three months may be granted in duly justified circumstances.

Other derogations to the time limits are provided for if the situation in the applicants country of origin is uncertain. In any event, Member States shall conclude the examination procedure within a maximum time limit of 21 months from the lodging of the application.

Provision is made for exceptions in the case of unprecedented numbers of applications at a border. In this case, a Member States may derogate from the above-mentioned time limits and inform the Commission accordingly.

In line with the objective of setting in place more harmonised asylum procedures, accelerated or border procedures may only be used for specific reasons; only in well-defined circumstances, where an application is likely to be unfounded or where there are serious national security or public order concerns, may Member States accelerate the examination procedure.

- free legal assistance and representation: provisions were introduced to ensure that, in certain conditions, legal and procedural information shall be provided to applicants at first instance free of charge. This information may be provided by means non-governmental organisations or professionals from government authorities or specialised services of the State. In certain cases, in appeals procedures, subject to certain conditions, applicants shall be granted free legal assistance and representation.

- special procedural guarantees: in certain specific cases stipulated in the Directive, procedural guarantees may be granted to applicants who are, for example, victims of torture, rape or other serious forms of psychological, physical or sexual violence. Those applicants should be provided with adequate support.

- guarantees for unaccompanied minors: with a view to avoiding any possible misuse, provision is made for specific guarantees for minors and unaccompanied minors. Interviews with minors shall be conducted by a person who has the necessary knowledge of the special needs of minors and measures have been introduced stipulating the conditions under which their application may or may not be subject to an accelerated procedure. Member States shall ensure they provide legal and procedural information for procedures for the withdrawal of international protection. Thus, unaccompanied minors and their representatives shall be provided, free of charge, with a form of legal support in the context of all the procedures that fall within the scope of the Directive (first instance, appeal, withdrawal).

Procedural guarantees shall be provided for, such as interpretation and free legal assistance, if applicants request to remain on the territory of a Member State during the appeal procedure following a negative decision on their asylum application.

If, during the asylum procedure, the competent authorities observe that a person is an unaccompanied minor, the Member States may apply certain procedures to process the application taking into account the origin of the applicant if he/she comes from a safe country of origin.

It should be noted that unaccompanied minors may not be kept in detention except in exceptional circumstances, which shall be assessed taking into account the best interest of the child.

Appeals procedure and withdrawal of applicant status:

- appeal with suspensive effect: in a limited number of cases (e.g. border procedures) and provided that certain conditions are fulfilled, a Member State may provide cases in which an appeal does not have automatic suspensive effect leaving it to a court or tribunal to rule whether or not the applicant may remain on the territory, either upon request of the applicant or acting on its own motion. In these cases, the applicant is allowed to remain on the territory pending the outcome of the procedure to rule whether or not the applicant may remain on the territory. Furthermore, in all cases, the principle of non-refoulement applies.

- rejection of an application: provisions have been introduced whereby Member States shall have the possibility to remove from their territory, asylum seekers who have not made contact with the competent authorities within a time limit of at least nine months.

- subsequent applications: new procedural rules have been introduced concerning subsequent applications. Unlike the variety of procedures that allow the application of Directive 2005/85/EC to these applications, a subsequent application will now be considered to be inadmissible when a preliminary examination shows that no new elements or findings have arisen or have been presented by the applicant. Member States shall ensure that such a person is not removed contrary to the principle of non-refoulement and sent back to a country where he/she may be in danger.

Other related provisions:

- safe third countries: the Directive allows Member States to apply the concept of safe countries of origin, safe third countries and safe European third countries, while recognising that further harmonisation may be required in the future. Member States are therefore called upon to facilitate the regular exchange of information about the national application of the concepts of safe country of origin, safe third country and European safe third country and to involve the European Parliament in this.

The Directive also clarifies the conditions for the application of those concepts as it provides that Member States must allow applicants to challenge the application of the European safe third country concept on the grounds that the country is not safe in their particular circumstances.

- national security considerations: in the context of appeals, in case of national security considerations and with a view to ensuring equality of arms, Member States must provide access to the information or sources in question available to the courts and tribunals in appeal and establish in national law procedures guaranteeing respect of the applicant's rights of defence.

Report: no later than 20 July 2017, the Commission shall report to the European Parliament and the Council on the application of the Directive in the Member States and, if appropriate, propose any amendments that are necessary. In the context of this first report, the Commission shall also report on the application of the rules in relation to the reporting of the personal interview.

Territorial measures: Denmark, Ireland and the UK do not take part either in the adoption of this Regulation or in its application, in accordance with the relevant provisions of the Treaty.

ENTRY INTO FORCE: 19 July 2013.

TRANSPOSITION: a certain number of provisions enter into force on 20 July 2015 and others on 20 July 2018.

Directive 2005/85/EC is repealed.