



Churches' Commission for Migrants in Europe

Commission des Eglises auprès des Migrants en Europe

Kommission der Kirchen für Migranten in Europa

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Comments

Joint comments on the Commission Proposal for a Council Directive on minimum standards for the qualification and status of third country nationals and stateless as refugees, or as persons who otherwise need international protection ([COM\(2001\)510 final](#))

Introduction

As Christian-based organisations, we welcome the efforts made by the European Commission to provide the European Asylum Policy with its cornerstone: the qualification of refugee and subsidiary protection. It is especially important nowadays, when indifference and animosity against displaced people is being perceived increasingly within the European Union.

We reaffirm our commitment with a conception of asylum based on human dignity and the rights inherent to that dignity; we also consider that those values constitute a fundamental part of the common heritage of the peoples and countries conforming the European Union.

In spite of the principle of solidarity that should guide the State behaviour concerning displaced people, certain countries are showing a restrictive policy based on the reduction of the number of total entries rather than to favour a comprehensive solution for the root causes of the migratory movements and to provide effective protection for fundamental rights. We consider that a fair asylum policy should not be based on ephemeral perspectives of exclusion, but on the individual need of a person looking for protection.

On the other hand, having in mind the differentiation made by the proposal of the Commission and the different international agreements and treaties, we nevertheless stress the need for protection of certain human group, as the victims of armed conflicts, natural disasters or wrong economic policy. All these groups fled involuntarily their countries due to peremptory reasons and should be taken into account. We hope that the principles established in this proposal will be contemplated as the first step towards a new perspective about people in need of protection.

Summary

We appreciate the improvements made by the proposal especially with respect to:

- The consideration of the Geneva Convention as a general basis and reference for the proposal;
- the application of the principle of non-refoulement to persons under subsidiary protection;
- the inclusion of non-State actors as sources of harm and persecution;
- the expressed will to protect unaccompanied minors;
- the support of successful integration of refugees into the society.

Nevertheless, we express our concerns about the narrowness of the definition and qualification of subsidiary protection: on the one hand, persons covered by the subsidiary protection status might deserve the refugee status. A clearer connexion with the Geneva Convention should be established, through the consideration of the subsidiary protection only when no connection to a Convention ground is possible. The principle of non-refoulement should be granted to persons enjoying subsidiary protection without restrictions.

On the other hand, we are also worried about the narrowness of the concept of family. We consider that the concept of family should be extended in order to cover the different realities related to the various models of family.

Concerning *de facto* authorities and international organisations and effective protection, their lack of capacity to provide that protection as a general rule has been shown both empirically and theoretically: they do not enjoy the prerequisites of sovereignty or they are not subject to international obligations.

With respect to the differentiation of rights between persons enjoying refugee status and those under subsidiary protection, we find the differences related to residence permits and access to labour market as not reasonable. A differentiation based on time is not a solid argument for the clear identification of both statuses, above all if we take into account that the access to labour market and the residence permit are key issues for the normalisation of the life of a displaced person and the beginning of integration in the receiving society.

Comments on the Articles

Article 2: Definitions

Article 2. c) Although we recognise that a EU citizen is unlikely to be covered by the Geneva Convention, the wording of this article, defining a refugee as a “third

country national”, does not take into consideration the situation of the person in need of protection, who might be a European Union citizen. Therefore, we urge for the consideration of individual situations rather than geographical concepts.

Article 2. j) We are deeply concerned about the limitations of the definition of family provided by this article. We consider that the concept of family depends on the various socio-cultural backgrounds of that family outside and inside the European Union. Therefore, we urge the inclusion of an extended family definition:

-On the one hand, the definition provided by this article does not cover collaterals (sisters, brothers), which could be the only family applicants might have, or even considered at the same level as direct line relatives. We urge the inclusion of this category into the family definition.

-On the other hand, taking into account that the rigidity of legislation is unable in certain cases to cover the different realities related to the various core families, we consider that this provision should include a more flexible definition based not only in the legislation of the Member States, but also on jurisprudence or common practice. Therefore, we recommend replacing the word “*legislation*” by “*legislation, jurisprudence or practice*”.

-Thirdly, this article does not include the children of the applicant’s spouse or stable partner. We urge the inclusion of this category. At the same time, we consider that minors should have a permanent right to join their parents, regardless of the degree of dependence.

Nevertheless, if the groups mentioned above are not taken directly into consideration, we urge the formal recognition of the right to ask for the inclusion of a member of the family.

Article 5: The elements of international protection

Article 5. 2 We subscribe the UNHCR approach¹ concerning the qualification for subsidiary protection, whose wording may lead to confusion with the refugee definition itself. We accept that, for the sake of differentiation, the core concept for the qualification subsidiary protection lies on a “fear of suffering serious and unjustified harm”, as differentiated from the refugee concept related to a “fear of being persecuted”. Nevertheless, the expression “*availment of protection*” is linked specifically to the concept of “*well-founded fear of persecution*”; the qualification for subsidiary protection should stress the fact of the inability or unwillingness to return to the country of origin.

On the other hand, from our perspective we stress the need for broader grounds for the definition and qualification of subsidiary protection, based on the existence of persons who are obliged to flee their country of origin or residence, and the lack of protection of these persons.

Article 8: International protection needs arising sur place

Article 8. 2 The content of this article is aimed to provide an exception clause where the fear of persecution or suffering serious unjustified harm are based on activities engaged in by the applicant for the sole purpose of creating the conditions

¹ UNHCR’s Observations on the Commission Proposal, number 19 (November 2001)

for making an application for international protection. We consider that the main question to be assessed in an application for international protection lies on whether or not the “fear for being persecuted” or “of suffering a serious and unjustified harm” has been established, and it is part of such an assessment to take into account all relevant facts concerning an individual case. There is no need for this exception clause, and consequently we urge the deletion of art. 8. 2.

Article 9: Sources of harm and protection

Article 9.1 We welcome the formal inclusion of non-State actors as sources of harm and persecution.

Article 9.3 This provision specifies that State protection can be provided by international organisations and stable quasi-State authorities controlling a defined territory. Nevertheless, de facto authorities and international organisations should not be considered able to provide effective protection, as a number of examples provided by contemporary history have shown. State legitimacy to provide protection is based on two main points: they are subject to international obligations and hold the State sovereign power. States are the only international actors entitled to provide effective protection, since international organisations and quasi-State authorities lack one of those legitimacy prerequisites. We urge the deletion of this provision.

Article 10: Internal protection

Article 10. 2 We are seriously concerned about the possibility that the concept of internal protection may be used as a basis for avoiding the recognition of the status of refugee. Therefore, we consider that there is a need for the inclusion of certain additional provisions related to the stability of the conditions supporting the alternative of internal protection in a specific territory. Those protection conditions should be effectively provided by a State, and well established enough to indicate a long-lasting situation.

Article 12: The reasons for persecution

Article 12 We welcome the development of the reasons for persecution contained in the Geneva Convention, as a broad guideline for the definition of nexus or connections to a Convention reason for persecution.

Article 14: Exclusion from refugee status

Article 14.1 (a) See art. 9.3.

Article 15: The grounds of subsidiary protection

Article 15 As stated in art. 5.2, we are concerned about the narrowness of the definition and qualification of subsidiary protection, and worried about the possibility that persons covered by the subsidiary protection status under this article deserve in fact the refugee status as stated in the Geneva Convention. We urge for the inclusion of the death penalty as one of the qualifications for “serious and unjustified harm”. At the same time, we recommend the specific mention of the application of this article only when no connection to a Convention ground or reason (race, religion, nationality, etc.) has been established.

Article 16: Cessation of subsidiary protection status

Article 16.1 We are deeply concerned that the wording of this provision could lead to a weak system of subsidiary protection based on short-term schemes. We consider that the subsidiary protection status should not preclude integration in the host country. Therefore, we urge the inclusion of a guarantee for the stability of the complementary protection status in similar terms than those provided for the cessation of the refugee status, including a list of specific reasons for cessation.

Article 19: Protection from *refoulement* and expulsion

Article 19 We welcome the application of the principle of non-*refoulement* to be extended to persons enjoying subsidiary protection. Nevertheless, the mention of “international obligations” as an implicit limitation of the principle, and the Commentary of the Commission, leads to the differentiation between three categories: refugees, people under the protection of the European Convention of Human Rights (victims of torture or inhuman or degrading treatment or punishment), and the rest (to whom Member States “are required” not to expel). For the sake of clarification, we urge the deletion of the second part of the article.

Article 21: residence permits

Article 21 We consider there is no reason for the differentiation of the duration of the residence permits granted to refugees and to persons enjoying subsidiary protection (five and one year respectively), once their respective status has been determined: the duration of the residence permits granted to persons under complementary protection should be the same than those granted to refugees (five years).

Article 24: Access to employment

Article 24 Although we welcome that the proposal establishes a deadline for the access to the labour market to persons enjoying subsidiary protection, we consider that there is no valid reason for the differentiation with respect to the beneficiaries of the refugee status. The beneficiaries of subsidiary protection should have access to the labour market, employment-related education opportunities and vocational training immediately after their status has been granted.

Art. 28: Unaccompanied minors

Art. 28 We welcome the provisions related to the protection of unaccompanied minors. The interest of the minor and the need for additional support are to be underlined as very positive principles.

Art. 31: Access to integration facilities

Art. 31 We consider positively integration activities based on facilitating access to the labour market and to the education system, and also the efforts to eradicate all forms of discrimination. The promotion of an independent life for displaced persons should be the cornerstone of a fair asylum policy.

Art. 32: Voluntary return

Art. 32 We welcome the voluntary return schemes back to countries of origin. A real return policy must take into account the circumstances of the countries of origin and should provide financial support for reintegration of returnees.

Brussels, June 2002