

Proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status

(2001/C 62 E/16)

(Text with EEA relevance)

COM(2000) 578 final — 2000/0238(CNS)

(Submitted by the Commission on 24 October 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular point (1)(d) of the first paragraph of Article 63 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas:

- (1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of establishing progressively an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.
- (2) The European Council, at its special meeting in Tampere on 15 and 16 October 1999, agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as complemented by the New York Protocol of 31 January 1967, thus ensuring that nobody is sent back to persecution, i.e. maintaining the principle of non-refoulement.
- (3) The Tampere Conclusions provide that a Common European Asylum System should include in the short term common standards for fair and efficient asylum procedures in the Member States and in the longer term Community rules leading to a common asylum procedure in the Community.
- (4) Minimum standards on procedures in Member States for granting or withdrawing refugee status are therefore a first measure on asylum procedures without prejudice to any other measures to be taken for the purpose of implementing point (1)(d) of the first paragraph of Article 63 of the Treaty and the objective of a common asylum procedure agreed on in the Tampere Conclusions.
- (5) Asylum procedures should not be so long and drawn out that persons in need of protection have to go through a long period of uncertainty before their cases are decided, and persons who have no need of protection but wish to remain on the territory of the Member States see an application for asylum as a means of prolonging their

stay by several years. At the same time, asylum procedures should contain the necessary safeguards to ensure that those in need of protection are correctly identified.

- (6) The minimum standards laid down in this Directive should therefore enable Member States to operate a simple and quick system that swiftly and correctly processes applications for asylum in accordance with the international obligations and constitutions of the Member States.
- (7) A simple and quick system for procedures in Member States could, provided the necessary safeguards are in place, consist of an initial review of the decision and the possibility of further appeal.
- (8) The necessary safeguards should include that, in the interests of a correct recognition of those persons in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, every applicant has effective access to procedures, the opportunity to cooperate with the competent authorities to present the relevant facts of his case and sufficient procedural guarantees to pursue his case at and throughout all stages of the procedure.
- (9) On the other hand, in the interests of a system of swift recognition of those applicants in need of protection as refugees within the meaning of Article 1(A) of the Geneva Convention, provision should be made for Member States to operate specific procedures for processing applications for which it is not necessary to consider the substance and those that are suspected to be manifestly unfounded.
- (10) Member States are at liberty to decide whether or not to operate these procedures for inadmissible and manifestly unfounded cases, but if they do, they should abide by the common standards laid down in this Directive as regards the definition of these cases and the other requirements to apply the procedures, including time-limits for the decision-making process.
- (11) It is essential that these procedures contain the necessary safeguards to ensure that earlier doubts can be set aside so that those who are in need of protection can still be correctly identified. In so far as is possible, they should therefore contain, in principle, the same minimum procedural guarantees and requirements regarding the decision-making process as regular procedures. However, given the nature of the cases involved, decision making can and should be prioritised in both instances and further appeal may be restricted.

- (12) As minimum procedural guarantees for all applicants in all procedures should be considered, *inter alia*, the right to a personal interview before a decision is taken, the opportunity to communicate with the UNHCR, the opportunity to contact organisations or persons that provide legal assistance, the right to a written decision within the time-limits laid down and the right of the applicant to be informed at decisive moments in the course of his procedure, in a language he understands, of his legal position in order to be able to consider possible next steps.
- (13) In addition, specific procedural guarantees for persons with special needs, such as unaccompanied minors, should be laid down.
- (14) Minimum requirements regarding the decision-making process in all procedures should include that decisions are taken by authorities qualified in the field of asylum and refugee matters, that personnel responsible for examination of applications for asylum receives appropriate training, that decisions are taken individually, objectively and impartially, and that negative decisions state the reasons for the decision in fact and in law.
- (15) In order to enable every applicant to effectively pursue his case with the competent authorities of the Member States, the right to appeal should entail for all applicants in all procedures the opportunity for a review on both facts and points of law and should as a rule suspend enforcement of an adverse decision.
- (16) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for persons who ask for international protection from a Member State, where such a request is understood to be on the grounds that the person concerned is a refugee within the meaning of Article 1(A) of the Geneva Convention.
- (17) In this spirit, Member States are also invited to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees.
- (18) The Member States should provide for penalties in the event of infringement of the national provisions adopted pursuant to this Directive.
- (19) The implementation of this Directive should be evaluated at regular intervals.
- (20) In accordance with the principles of subsidiarity and proportionality, as set out in Article 5 of the Treaty, the objectives of the proposed action, namely to establish minimum standards on procedures in Member States for granting or withdrawing refugee status cannot be attained by the Member States and, by reason of the scale and effects of the proposed action can therefore only be achieved by the Community. This Directive confines itself to the minimum required to achieve those objectives and does not go beyond what is necessary for that purpose,

HAS ADOPTED THIS DIRECTIVE:

CHAPTER I

SCOPE AND DEFINITIONS

Article 1

The purpose of this Directive is to establish minimum standards on procedures in Member States for granting and withdrawing refugee status.

Article 2

For the purposes of this Directive:

- (a) 'Geneva Convention' means the Convention relating to the status of refugees done at Geneva on 28 July 1951, as complemented by the New York Protocol of 31 January 1967;
- (b) 'Application for asylum' means a request whereby a person asks for protection from a Member State and which can be understood to be on the grounds that he is a refugee within the meaning of Article 1(A) of the Geneva Convention. Any application for protection is presumed to be an application for asylum, unless the person concerned explicitly requests another kind of protection that can be applied for separately;
- (c) 'Applicant' or 'applicant for asylum' means a person who has made an application for asylum in respect of which a final decision has not yet been taken. A final decision is a decision in respect of which all possible remedies under this Directive have been exhausted;
- (d) 'Determining authority' means any judicial, quasi-judicial or administrative body in a Member State responsible for examining the admissibility and/or substance of applications for asylum and competent to take decisions in first instance in these cases. Any authority responsible for controlling the entry into the territory cannot be considered as a determining authority;
- (e) 'Reviewing body' means any judicial, quasi-judicial or administrative body in a Member State which is independent of and different from the relevant determining authority in that Member State and responsible for review of the decisions of this determining authority on facts and points of law;
- (f) 'Appellate Court' means a judicial body in a Member State independent of the government of the Member State in question and responsible for further appeal against the decision of any reviewing body;
- (g) 'Decision' means a decision by a determining authority or reviewing body in a Member State on the admissibility or substance of an application for asylum;
- (h) 'Refugee' means a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

- (i) 'Refugee Status' means the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;
- (j) 'Unaccompanied minor' means a person below the age of eighteen who arrives on the territory of the Member States unaccompanied by an adult responsible for him whether by law or by custom, and for as long as he is not effectively taken into the care of such an adult;
- (k) 'Detention' means confinement of an applicant for asylum by a Member State within a restricted area, such as prisons, detention facilities or airport transit zones, where his freedom of movement is substantially curtailed;
- (l) 'Withdrawal of refugee status' means the decision by a determining authority to withdraw the refugee status of a person on the basis of Article 1(C) of the Geneva Convention or Article 33(2) of the Geneva Convention;
- (m) 'Cancellation of refugee status' means the decision by a determining authority to cancel the refugee status of a person on the grounds that circumstances have come to light that indicate that this person should never have been recognised as a refugee in the first place.

Article 3

1. This Directive shall apply to all persons who make an application for asylum at the border or on the territory of Member States without prejudice to the Protocol on asylum for nationals of Member States of the European Union.

The provisions of this Directive shall also apply where examination of an application for asylum takes place within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State.

2. This Directive shall not apply to requests for diplomatic or territorial asylum submitted to representations of Member States.

3. Member States may decide to apply the provisions of this Directive to procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for persons who are found not to be refugees.

CHAPTER II

BASIC PRINCIPLES AND GUARANTEES

Article 4

1. The filing of an application for asylum shall not be subject to any prior formality.

2. Member States shall ensure that the applicant for asylum has an effective opportunity to lodge an application as early as possible.

3. Member States shall ensure that all authorities likely to be addressed by the applicant at the border or on the territory of

the Member State have instructions for dealing with applications for asylum, including the instruction to forward the applications to the competent authority for examination, together with all relevant information.

4. Where a person has made an application for asylum also on behalf of his dependants, each adult among these persons shall be informed in private of his right to make a separate application for asylum.

Article 5

Applicants for asylum shall be allowed to remain at the border or on the territory of the Member State in which the application for asylum has been made or is being examined as long as it has not been decided on.

Article 6

Member States shall ensure that decisions on applications for asylum are taken individually, objectively and impartially.

Article 7

With respect to all procedures provided for in this Directive, Member States shall ensure that all applicants for asylum enjoy the following guarantees:

- (a) They must be informed, prior to examination of their application for asylum, of the procedure to be followed and of their rights and obligations during the procedure, in a language which they understand.
- (b) They must be given the services of an interpreter, whenever necessary, for submitting their case to the competent authorities. These services must be paid for out of public funds, if the interpreter is called upon by the competent authorities.
- (c) They must be given the opportunity to communicate with the United Nations High Commissioner for Refugees (UNHCR) or with other organisations that are working on behalf of the UNHCR at all stages of the procedure.
- (d) They must be communicated decisions on applications for asylum in writing. If an application is rejected, the reasons for the decision in fact and in law shall be stated and information given on the possibility for review of the decision and, where applicable, on how to file an appeal and the relevant time-limits.
- (e) In the event of an adverse decision, they must be informed of the main purport of the decision and the possibility for review of the decision and, where applicable, of how to request an appeal and the relevant time-limits, in a language which they understand.
- (f) In the event of a positive decision, they must be informed of the decision and of any mandatory steps, if any, they should take as a result of this decision, in a language which they understand.

Article 8

1. Before a decision is taken by the determining authority, the applicant for asylum must be given the opportunity of a personal interview on the admissibility and/or substance of his application for asylum with an official competent under national law.
2. At the end of a personal interview as referred to in paragraph 1, the official must at least read out a transcript to the interviewee in order to be able to request his agreement with its contents.
3. Where a person has made an application for asylum also on behalf of his dependants, each adult among these persons must be given the opportunity to express his opinion in private and to be interviewed on the admissibility and/or substance of the application.
4. A personal interview on the substance of the application for asylum shall normally take place without the presence of family members.
5. Member States may permit the competent authorities to refrain from conducting a personal interview on the substance of the application for asylum in the case of persons who are not capable of attending this interview for psychological or medical reasons and minors below an age stipulated by national law or regulation, as long as this does not negatively affect the decision by the determining authority. In these cases, each person must be given the opportunity to be represented by a legal guardian, counsellor or adviser as appropriate.
6. In the regular procedure referred to in Articles 24, 25 and 26, hereinafter 'the regular procedure', each applicant for asylum must be given an opportunity, within a reasonable time-limit, to consult the transcript of a personal interview on the substance of his application for asylum and to make comments on it.
7. Member States shall ensure that an official and an interpreter of a sex chosen by the interviewee is involved in the personal interview on the substance of the application for asylum if there are reasons to believe that the person concerned finds it otherwise difficult to present the grounds for his application in a comprehensive manner owing to the experiences he has undergone or to his cultural origin.

Article 9

1. Member States shall ensure that all applicants for asylum have the opportunity to contact in an effective manner organisations or persons that provide legal assistance at all stages of the procedure.
2. In closed areas designated for the examination of applications for asylum, Member States may regulate the access of organisations providing legal assistance, provided such rules either serve the legitimate purpose of ensuring the quality of legal assistance or are objectively necessary to ensure

an efficient examination in accordance with the national rules pertaining to the procedure in these areas and do not render access impossible.

3. In the regular procedure, the applicant's legal adviser or counsellor shall have the opportunity to be present during the personal interview on the substance of the application for asylum. Member States shall provide for rules on the presence of legal advisers or counsellors at all other interviews in the asylum procedure, without prejudice to this paragraph and Articles 8(5) and 10(1)(b).

4. Member States shall ensure that all applicants for asylum have the right to a legal adviser or counsellor to assist them after an adverse decision by a determining authority. The assistance must be given free of charge at this stage of the procedure if the applicant has no adequate means to pay for it himself.

Article 10

1. With respect to all procedures provided for in this Directive, Member States shall ensure that all unaccompanied minors enjoy the following guarantees:

- (a) A legal guardian or adviser must be appointed as soon as possible to assist and represent them with respect to the examination of the application;
- (b) The appointed legal guardian or adviser must be given the opportunity to help prepare them for the personal interview on the admissibility and/or the substance of the application for asylum. Member States shall allow the legal guardian or adviser of an unaccompanied minor to be present at the personal interview and to ask questions or make comments.

2. Member States shall ensure that the personal interview on the admissibility and/or the substance of the application for asylum of an unaccompanied minor is conducted by an official trained with regard to the special needs of unaccompanied minors.

3. Member States shall ensure that:

- (a) The competent organisations that carry out medical examinations to determine the age of unaccompanied minors shall use methods that are safe and respect human dignity;
- (b) Unaccompanied minors are informed prior to the examination of their application for asylum, and in a language which they understand, about the possibility of age determination by a medical examination. This shall include information on the method of examination and the possible consequences of the result of the medical examination for the examination of the application for asylum, including the consequences of refusal on the part of the unaccompanied minor to undergo the examination.

Article 11

1. Member States shall not hold an applicant for asylum in detention for the sole reason that his application for asylum needs to be examined. However, Member States may hold an applicant for asylum in detention for the purpose of taking a decision in the following cases, in accordance with a procedure prescribed by national law and only for as long as is necessary:

- (a) to ascertain or verify his identity or nationality;
- (b) to determine his identity or nationality when he has destroyed or disposed of his travel and/or identity documents or used fraudulent documents upon arrival in the Member State in order to mislead the authorities;
- (c) to determine the elements on which his application for asylum is based which in other circumstances could be lost;
- (d) in the context of a procedure, to decide on his right to enter the territory.

2. Member States shall provide by law for the possibility of an initial review and subsequent regular reviews of the order for detention of applicants for asylum detained pursuant to paragraph 1.

Article 12

Member States shall take appropriate measures to ensure that all competent authorities are adequately provided with staff and equipment so that they can discharge their duties as laid down in this Directive.

Article 13

1. Member States shall take appropriate measures to ensure that determining authorities are fully qualified in the field of asylum and refugee matters. To that end, each Member State shall ensure that its determining authorities have:

- (a) at their disposal specialised personnel with the necessary knowledge and experience in the field of asylum and refugee matters;
- (b) access to precise and up-to-date information from various sources, including information from the UNHCR, concerning the situation prevailing in the countries of origin of applicants for asylum and in transit countries;
- (c) the right to ask advice, whenever necessary, from experts on particular issues, for example, a medical or cultural issue.

2. Upon request of their reviewing bodies, Member States shall grant them the same treatment as determining authorities with respect to access to the part of the information mentioned at paragraph 1(b) that is considered public information. Member States may decide to grant them access to the part of the information mentioned at paragraph 1(b) that is

considered confidential information, if they abide by the same rules as the determining authorities with respect to the confidentiality of this information.

Article 14

1. Member States shall ensure that:

- (a) personnel likely to come into contact with persons at the stage where they may make an application for asylum, such as border officials and immigration officers, have received the necessary basic training to recognise an application for asylum and how to proceed further in accordance with the instructions referred to in Article 4(3);
- (b) personnel interviewing applicants for asylum have received the necessary basic training for this purpose;
- (c) personnel interviewing persons in a particularly vulnerable position and minors have received the necessary basic training with regard to the special needs of these persons;
- (d) personnel examining applications for asylum have received the necessary basic training with respect to international refugee law, national asylum law, relevant international human rights law, this Directive and the assessment of applications for asylum from persons with special needs, including unaccompanied minors;
- (e) personnel responsible for orders of detention have received the necessary basic training with respect to national asylum law, relevant international human rights law, this Directive and national rules for detention.

2. Upon request of their reviewing bodies, Member States shall grant their personnel the same treatment as the personnel of determining authorities with respect to the training mentioned at paragraph 1(c), where necessary, and (d).

Article 15

1. Member States shall take appropriate measures to ensure that information regarding individual applications for asylum is kept confidential.

2. Member States shall not disclose or share the information referred to in paragraph 1 with the authorities of the country of origin of the applicant for asylum.

3. Member States shall take appropriate measures to ensure that no information for the purpose of examining the case of an individual applicant shall be obtained from the authorities of his country of origin in a manner that would result in the fact of his having applied for asylum becoming known to those authorities.

4. This Article does not affect the UNHCR's access to information in the exercise of its mandate under the Geneva Convention in accordance with Article 17 of this Directive.

Article 16

1. In the event of a voluntary withdrawal of the application for asylum by the applicant, the determining authority shall enter a notice in the file discontinuing the examination of the application.
2. If an applicant for asylum has disappeared, the determining authority may discontinue the examination of the application if, without reasonable cause, the applicant has not complied with reporting duties or requests to provide information or to appear for a personal interview for at least 30 working days.
3. If the applicant places himself at the disposal of the authorities for the purpose of the examination of his application for asylum after the examination of the application has been discontinued pursuant to paragraphs 1 or 2, his request may be considered a new application for asylum.

Article 17

Member States shall take appropriate measures to enable the UNHCR or other organisations that are working on behalf of the UNHCR:

- (a) to have access to applicants for asylum, including those in detention and in airport transit zones;
- (b) to have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, provided that the applicant for asylum agrees;
- (c) to be able to make representations, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.

CHAPTER III

ADMISSIBILITY*Article 18*

Member States may dismiss a particular application for asylum as inadmissible if:

- (a) another Member State is responsible for examining the application, according to the criteria and mechanisms for determining which Member State is responsible for considering an application for asylum submitted by a national of a third country or stateless person in one of the Member States;
- (b) pursuant to Article 20, a third country is considered as a first country of asylum for the applicant;
- (c) pursuant to Articles 21 and 22, a third country is considered as a safe third country for the applicant.

Article 19

When a Member State requests another Member State to take the responsibility for examining a particular application for asylum, the requesting Member State shall inform the

applicant as soon as possible of the request, its content and the relevant time-limits in a language which he understands.

Article 20

A country can be considered as a first country of asylum for an applicant for asylum if he has been admitted to that country as a refugee or for other reasons justifying the granting of protection, and can still avail himself of this protection.

Article 21

1. Member States may consider that a third country is a safe third country for the purpose of examining applications for asylum only in accordance with the principles set out in Annex I.

2. Member States may retain or introduce legislation that allows for the designation by law or regulation of safe third countries. This legislation shall be without prejudice to Article 22.

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe third countries and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulations designating countries as safe third countries after the adoption of this Directive, as well as any subsequent relevant amendments.

Article 22

A country that is a safe third country in accordance with the principles set out in Annex I can only be considered as a safe third country for a particular applicant for asylum if, notwithstanding any list:

- (a) the applicant has a connection or close links with the country or has had the opportunity during a previous stay in that country to avail himself of the protection of its authorities;
- (b) there are grounds for considering that this particular applicant will be re-admitted to its territory; and
- (c) there are no grounds for considering that the country is not a safe third country in his particular circumstances.

Article 23

1. If a personal interview on the admissibility of the application for asylum with regard to Article 18(b) or (c) is conducted with an applicant, Member States shall ensure that the competent authorities conduct this personal interview within 40 working days after the application of the person concerned has been made.

2. Member States shall ensure that the determining authority takes a decision dismissing an application for asylum as inadmissible by virtue of Article 18(b) or (c) within 25 working days following the personal interview.

3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be 65 working days.

4. Non-compliance with the time-limits in this Article shall result in the application for asylum being processed under the regular procedure.

5. When implementing a decision based on Article 22, Member States may provide the applicant with a document in the language of the third country informing the authorities of that country that the application has not been examined in substance.

CHAPTER IV

SUBSTANTIVE DETERMINATION PROCEDURES

Section 1

The regular procedure

Article 24

1. Member States shall adopt by law or regulation a reasonable time-limit for examination of applications for asylum by the determining authority.

2. In cases in which the determining authority has not taken a decision within the time-limit referred to in paragraph 1, applicants shall have the right to request a decision from the reviewing body. Member States shall determine by law whether the decision of the reviewing body on this request is to be on the merits of the case or be a decision setting a time-limit for a decision by the determining authority. The Member States shall ensure that the reviewing body takes a decision in these cases as soon as possible.

3. The time-limit in paragraph 1 can be extended for six months if there is reasonable cause. Reasonable cause is, *inter alia*, assumed if the determining authority is awaiting clarification by the reviewing body or the Appellate Court on an issue that could affect the nature of the decision on the application.

If the time-limit is extended, the determining authority must serve written notice on the applicant. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

Article 25

1. Member States shall take appropriate measures to ensure that an applicant for asylum is given the opportunity to cooperate with the competent authorities in order to present the relevant facts of his case as completely as possible and with all available evidence.

2. An applicant for asylum shall be considered to have sufficiently put forward the relevant facts of his case if he has provided statements on his age, background, identity, nationality, travel routes, identity and travel documents and

the reasons justifying his need for protection with a view to helping the competent authorities to determine the elements on which his application for asylum is based.

3. After the applicant has made an effort to support his statements concerning the relevant facts by any available evidence and has given a satisfactory explanation for any lack of evidence, the determining authority must assess the applicant's credibility and evaluate the evidence.

4. Member States shall ensure that if the applicant has made a genuine effort to substantiate his claim and the examiner finds the applicant's statements to be coherent and plausible, while not running counter to generally known facts, the determining authority gives the applicant the benefit of the doubt, despite a possible lack of evidence for some of the applicant's statements.

Article 26

1. Member States shall ensure that the determining authority may start an examination to withdraw or cancel the refugee status of a particular person as soon as information comes to light indicating that there are reasons to reconsider the validity of his refugee status.

2. Each cancellation or withdrawal of refugee status shall be examined under the regular procedure in accordance with the provisions of this Directive.

3. Member States may provide for derogation from Articles 7 and 8 in cases where it is impossible for the determining authority to comply with the provisions for reasons specifically relating to the grounds for withdrawal or cancellation.

Section 2

The accelerated procedure

Article 27

Member States may adopt or retain an accelerated procedure for the purpose of processing applications that are suspected to be manifestly unfounded pursuant to Article 28.

Article 28

1. Member States may dismiss applications for asylum as manifestly unfounded if:

- (a) the applicant has submitted, without reasonable cause, an application containing false information with respect to his identity or nationality;
- (b) the applicant has produced no identity or travel document and has not provided sufficient or sufficiently convincing information to determine his identity or nationality, and there are serious reasons for considering that the applicant has in bad faith destroyed or disposed of an identity or travel document that would help determine his identity or nationality;

- (c) a person has made an application for asylum at the last stage of a procedure to deport him and could have made it earlier;
- (d) in submitting and explaining his application, the applicant does not raise issues that justify protection on the basis of the Geneva Convention or Article 3 of the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms;
- (e) the applicant is from a safe country of origin within the meaning of Articles 30 and 31 of this Directive;
- (f) the applicant has submitted a new application raising no relevant new facts with respect to his particular circumstances or to the situation in his country of origin.

2. Member States shall not consider the following to be grounds for the dismissal of applications for asylum as manifestly unfounded:

- (a) the applicant has not sought refuge in a part of his country of origin or, if he is a stateless person, in a part of the country of former habitual residence, in which he can reasonably be expected not to be persecuted in the sense of the Geneva Convention;
- (b) there are serious reasons for considering that the grounds of Article 1(F) of the Geneva Convention apply with respect to the applicant.

Article 29

1. If a personal interview on the substance of the application for asylum is conducted with an applicant, Member States shall ensure that the competent authorities conduct this personal interview within 40 working days after the application of the person concerned has been made.
2. Member States shall ensure that the determining authority takes a decision dismissing an application for asylum as manifestly unfounded in accordance with Article 28 within 25 working days following the personal interview with the applicant.
3. If no personal interview with the applicant has been conducted, the time-limit for taking a decision shall be 65 working days.
4. Non-compliance with the time-limits in this Article shall result in the application for asylum being processed under the regular procedure.

Article 30

1. Member States may consider a country as a safe country of origin for the purpose of examining applications for asylum only in accordance with the principles set out in Annex II.
2. Member States may retain or introduce legislation that allows for the designation by law or regulation of safe countries of origin. This legislation shall be without prejudice to Article 31.

3. Member States which, at the date of entry into force of this Directive, have in force laws or regulations designating countries as safe countries of origin and wish to retain these laws or regulations, shall notify them to the Commission within six months of the adoption of this Directive and notify as soon as possible any subsequent relevant amendments.

Member States shall notify to the Commission as soon as possible any introduction of laws or regulation designating countries as safe countries of origin after the adoption of this Directive, as well as any subsequent relevant amendments.

Article 31

A country that is a safe country of origin in accordance with the principles set out in Annex II can only be considered as a safe country of origin for a particular applicant for asylum if he has the nationality of that country or, if he is a stateless person, it is his country of former habitual residence, and if there are no grounds for considering the country not to be a safe country of origin in his particular circumstances.

CHAPTER V

APPEALS PROCEDURES

Article 32

Applicants for asylum have the right to appeal against any decision taken on the admissibility or the substance of their application for asylum.

Appeal may be on both facts and points of law.

Article 33

1. Appeal shall have suspensive effect. The applicant may remain in the territory or at the border of the Member State concerned awaiting the outcome of the decision of the reviewing body.
2. Member States may derogate from this rule:
 - (a) in cases where a country which is not a Member State is considered as a safe third country for the applicant pursuant to Articles 21 and 22;
 - (b) in cases that are dismissed as manifestly unfounded pursuant to Article 28;
 - (c) in cases where there are grounds of national security or public order.

3. If the suspensive effect of appeal is denied, the applicant shall have the right to apply to the competent authority for leave to remain on the territory or at the border of the Member State during the appeals procedure. No expulsion may take place until the competent authority has taken a decision on this request, except in cases where a country which is not a Member State is considered as a safe third country for the applicant pursuant to Articles 21 and 22.

4. Member States shall ensure that the competent authority processes the request as soon as possible.

Article 34

1. Member States shall lay down by law or regulation reasonable time-limits for giving notice of appeal and for filing the grounds of appeal. The time-limit for filing the grounds of appeal in regular cases shall in no case be less than 20 working days.

2. Member States shall lay down all other necessary rules for lodging appeal, including rules to extend the time-limit for filing the grounds of appeal for a reasonable cause.

3. Member States shall decide that the reviewing body either has the power to confirm or nullify the decision of the determining authority or that it must take a decision on the merits of the case.

4. Member States shall ensure that, if the reviewing body nullifies a decision, it remits the case to the determining authority for a new decision.

5. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may provide for the reviewing body to take a decision on appeal within seven working days.

Article 35

1. Member States shall ensure that, in cases where an application has been found to be inadmissible or manifestly unfounded, the reviewing body takes a decision within 65 working days after notice of appeal has been given in accordance with Article 34(1).

2. Member States may adopt by law or regulation time-limits for examination by the reviewing body in other cases.

3. A time-limit in paragraph 1 or 2 may be extended if there is reasonable cause. Reasonable cause is, *inter alia*, assumed if the reviewing body is awaiting clarification by the Appellate Court on a point of law that could affect the nature of its decision.

If the time-limit is extended, the reviewing body must serve written notice on the applicant. An extension of the time-limit in a particular case is not valid unless notice is served on the applicant.

Article 36

1. Member States may introduce a procedure that provides for automatic review by a reviewing body of decisions by determining authorities finding cases to be inadmissible or manifestly unfounded.

2. If a Member State chooses to introduce such a procedure, it shall provide for reasonable time-limits for the applicant to submit written comments.

3. In a procedure providing for automatic review, the provisions of Articles 32(2), 33 and 34(3), (4) and (5) shall apply.

Article 37

Member States may provide that the reviewing body shall decide a case in accordance with the procedure in Article 35 or Article 36 if:

(a) the applicant has, without reasonable cause and in bad faith, withheld information at an early stage of the procedure which would have resulted in the application of Articles 18 or 28;

(b) the applicant has committed a serious offence on the territory of the Community;

(c) there are manifestly serious reasons for considering that the grounds of Article 1(F) of the Geneva Convention apply with respect to the applicant;

(d) there are reasonable grounds for regarding the applicant as a danger to the security of the Member State in which he is located;

(e) the applicant, having been convicted by a final judgment of a particularly serious crime, constitutes a danger to the community of the Member State in which he is located;

(f) the applicant is held in detention.

Article 38

1. Member States shall ensure that in all cases applicants for asylum have a right to further appeal to the Appellate Court.

2. If the reviewing body is an administrative or quasi-judicial body, Member States shall ensure that the Appellate Court has the power to examine decisions on both facts and points of law. If the reviewing body is a judicial body, Member States may decide that the Appellate Court has to limit its examination of decisions to points of law.

3. Member States may provide that in cases where an application has been found to be inadmissible or manifestly unfounded, the Appellate Court is able to decide whether or not to give leave to appeal and, in cases in respect of which leave to appeal is granted, to examine the decisions in an abbreviated or accelerated procedure.

4. Member States may provide that in cases in which the reviewing body has not taken a decision within the time-limits provided for in Article 35(1) or (2), applicants and/or determining authorities shall have the right to request a decision from the Appellate Court setting a time-limit for a decision by the reviewing body. Member States may provide for a decision to be taken by the Appellate Court in these cases as soon as possible.

5. Member States shall lay down by law or regulation reasonable time-limits for giving notice of further appeal and for filing the grounds of further appeal. The time-limit for filing the grounds of further appeal shall in no case be less than 30 working days.

6. Member States shall lay down all other necessary rules for filing further appeals, including rules extending the time-limit for filing the grounds of further appeal for a reasonable cause.

Article 39

1. Member States shall lay down rules by law on suspensive effect pending the ruling of the Appellate Court.

2. In all cases in which suspensive effect is denied, the applicant for asylum shall have the right to apply to the Appellate Court for leave to remain on the territory or at the border of the Member State during further appeal. No expulsion may take place until a decision has been taken by the Appellate Court on this request.

3. Member States may provide for a decision to be taken by the Appellate Court in the cases referred to in paragraph 2 as soon as possible.

4. For the purposes of an expeditious procedure for legal entry to the territory in accordance with Article 3(2), Member States may require the Appellate Court to rule on the request pursuant to paragraph 2 within seven working days.

Article 40

Member States may decide that determining authorities also have the right to further appeal.

CHAPTER VI

GENERAL AND FINAL PROVISIONS

Article 41

Member States shall apply the provisions of this Directive to applicants for asylum without discrimination as to sex, racial or ethnic origin, religion or belief, disability, age, sexual orientation or country of origin.

Article 42

The Member States shall lay down the penalties for infringements of the national provisions adopted pursuant to this Directive and shall take all the measures necessary to ensure that they are enforced. The penalties laid down must be effective, proportionate and dissuasive. The Member States shall notify the Commission of these provisions by no later than the date specified in Article 44(1) and without delay of any subsequent amendments affecting them.

Article 43

No later than two years after the date specified in Article 44(1), the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States and shall propose any amendments that are necessary. The Member States shall send the Commission all the information that is appropriate for drawing up this report not later than eighteen months after the date specified in Article 44(1).

After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive in the Member States at least every five years.

Article 44

1. The Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 31 December 2002 at the latest. They shall forthwith inform the Commission thereof.

When the Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field covered by this Directive.

Article 45

This Directive shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Communities*.

Article 46

This Directive is addressed to the Member States.

ANNEX I

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE THIRD COUNTRIES

I. Requirements for designation

A country is considered as a safe third country if it fulfils, with respect to those foreign nationals or stateless persons to which the designation would apply, the following two requirements:

- A. it generally observes the standards laid down in international law for the protection of refugees;
- B. it generally observes basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation.

A. The standards laid down in international law for the protection of refugees

1. A safe third country is any country that has ratified the Geneva Convention, observes the provisions of that Convention with respect to the rights of persons who are recognised and admitted as refugees and has in place with respect to persons who wish to be recognised and admitted as refugees an asylum procedure in accordance with the following principles:

- The asylum procedure is prescribed by law.
- Decisions on applications for asylum are taken objectively and impartially.
- Applicants for asylum are allowed to remain at the border or on the territory of the country as long as the decision on their application for asylum has not been decided on.
- Applicants for asylum have the right to a personal interview, where necessary with the assistance of an interpreter.
- Applicants for asylum are given the opportunity to communicate with the UNHCR or other organisations that are working on behalf of the UNHCR.
- There is provision for appeal to a higher administrative authority or to a court of law against the decision on each application for asylum or there is an effective possibility to have the decision reviewed.
- The UNHCR or other organisations working on behalf of the UNHCR have, in general, access to asylum applicants and to the authorities to request information regarding individual applications, the course of the procedure and the decisions taken and, in the exercise of their supervisory responsibilities under Article 35 of the Geneva Convention, can make representations to these authorities regarding individual applications for asylum.

2. Notwithstanding the above, a country that has not ratified the Geneva Convention may still be considered a safe third country if:

- it generally observes the principle of non-refoulement as laid down in the OAU Convention governing the specific aspects of refugee problems in Africa of 10 September 1969 and has in place with respect to the persons who request asylum for this purpose a procedure that is in accordance with the abovementioned principles; or
- it has followed the conclusions of the 19-22 November 1984 Cartagena Declaration of Refugees to ensure that national laws and regulations reflect the principles and criteria of the Geneva Convention and that a minimum standard of treatment for refugees is established; or
- it nonetheless generally observes in practice the standards laid down in the Geneva Convention with respect to the rights of persons in need of international protection within the meaning of this Convention and has in place with respect to the persons who wish to be so protected a procedure which is in accordance with the abovementioned principles; or
- it complies in any other manner whatsoever with the need for international protection of these persons, either through cooperation with the Office of UNHCR or other organisations which may be working on behalf of the UNHCR or by other means deemed in general to be adequate for that purpose as evinced by the Office of the UNHCR.

B. The basic standards laid down in international human rights law

1. Any country that has ratified either the 1950 European Convention for the Protection of Human Rights and Fundamental Freedoms (hereinafter referred to as the 'European Convention') or both the 1966 International Covenant on Civil and Political Rights (hereinafter referred to as the 'International Covenant') and the 1984 Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (hereinafter referred to as the 'Convention against Torture'), and generally observes the standards laid down therein with respect to the right to life, freedom from torture and cruel, inhuman or degrading treatment, freedom from slavery and servitude, the prohibition of retroactive criminal laws, the right to recognition as a person before the law, freedom from being imprisoned merely on the ground of inability to fulfil a contractual obligation and the right to freedom of thought, conscience and religion.
2. Observance of the standards for the purpose of designating a country as a safe third country also includes provision by that country of effective remedies that guarantee these foreign nationals or stateless persons from being removed in breach of Article 3 of the European Convention or Article 7 of the International Covenant and Article 3 of the Convention against Torture.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of designating a country as a safe third country in general or with respect to certain foreign nationals or stateless persons in particular must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports. Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.

ANNEX II

PRINCIPLES WITH RESPECT TO THE DESIGNATION OF SAFE COUNTRIES OF ORIGIN

I. Requirements for designation

A country is considered as a safe country of origin if it generally observes the basic standards laid down in international human rights law from which there may be no derogation in time of war or other public emergency threatening the life of the nation, and it:

- A. has democratic institutions and the following rights are generally observed there: the right to freedom of thought, conscience and religion, the right to freedom of expression, the right to freedom of peaceful assembly, the right to freedom of associations with others, including the right to form and join trade unions and the right to take part in government directly or through freely chosen representatives;
- B. allows monitoring by international organisations and NGOs of its observance of human rights;
- C. is governed by the rule of law and the following rights are generally observed there: the right to liberty and security of person, the right to recognition as a person before the law and equality before the law;
- D. provides for generally effective remedies against violations of these civil and political rights and, where necessary, for extraordinary remedies;
- E. is a stable country.

II. Procedure for designation

Every general assessment of the observance of these standards for the purpose of designating a country as a safe country of origin must be based on a range of sources of information, which may include reports from diplomatic missions, international and non-governmental organisations and press reports. Member States may in particular take into consideration information from the UNHCR.

The report of the general assessment shall be in the public domain.
