Vedr. Udkast til rådskonklusioner om genbosætning af flygtninge fra Irak og udsendelsesdirektivet

Hermed Dansk Flygtningehjælps kommentarer til høringen. Vi har ingen kommentarer til spørgsmålet om EU's samlede migrationsstrategi:

Dansk Flygtningehjælp skal bemærke, at organisationen gerne så, at Danmark supplerede den nuværende kvote med en særlig kvote for irakiske flygtninge fra nærområdet (Syrien og Jordan). Det bemærkes tillige, at Danmark i det seneste år kun har taget et meget lille antal kvoteflygtninge fra Irak, og at der ikke er planer om at foretage en udvælgelsesrejse til nærområdet til Irak.

Med hensyn til udsendelsesdirektivet henvises til vedhæftede kommentar udarbejdet af ECRE (European Council on Refugee and Exiles). Flygtningehjælpen kan tilslutte sig ECREs bemærkninger.

Med venlig hilsen

Anne

Anne la Cour Vågen

Afdelingschef/Head of Department
Asyl og repatriering/Protection and repatriation
Dansk Flygtningehjælp/Danish Refugee Council
Tel. +4533735200
anne.lacour@drc.dk

>>> "Dorthe Kania" <dka@inm.dk> 19. maj 2008 >>>
Hermed fremsendes yderligere kommenterede 3 dagsordenener forud for rådsmødet (retlige og indre anliggender) den 5.-6. juni i skriftlig høring i Specialudvalget for Asyl- og Indvandringssamarbejdet, som nævnt på mødet den 15. maj.

Frist for eventuelle bemærkninger er torsdag den 22. maj kl. 9.00.

Venligst
Dorthe Kania

Ministeriet for Flygtninge, Indvandrere og Integration
Internationalt kontor
Holbergsgade 6
1057 København K
Telefon: 3392 3117

26-05-2008

E-mail: dka@inm.dk

Amnesty International EU Office

ECRE
EUROPEAN COUNCIL ON REFUGEES AND EXILES

Brussels, 13 May 2008

Dear Member of the European Parliament,

Re: Forthcoming plenary vote on the proposal for a directive on return of illegally staying third country nationals (Returns Directive)

After a long and difficult negotiation process, the *proposal for a directive of the European Parliament and of the Council on common standards and procedures in Member States for returning illegally staying third country nationals* is due to be presented to the plenary session of the European Parliament (EP) for adoption at first reading agreement. This Directive presented a unique opportunity to guarantee and improve the necessary human rights safeguards in the return procedures of the majority of EU Member States. This instrument is also the first opportunity for the European Parliament to ensure that EU asylum and immigration legislation fully respects fundamental rights by effectively using its mandate in the co-decision procedure.

Amnesty International and ECRE therefore urge all MEPs not to accept this provisionally agreed compromise text and to ensure that its serious flaws are properly addressed. The EP should ensure that the common standards and procedures laid down in this EU legislative instrument guarantee that the return of irregularly staying third country nationals takes place in safety and dignity and in full respect of their fundamental rights.

Amnesty International and ECRE have closely followed developments since the Commission presented its proposal in 2005. We have reiterated on several occasions our serious concerns from a human rights perspective on a number of its provisions, such as the obligatory use of re-entry bans (renamed entry-bans) as well as the excessive maximum detention periods and the lack of sufficient guarantees with regard to vulnerable categories of third country nationals, such as unaccompanied minors. Unfortunately, the compromise provisionally reached by the Council and the European Parliament in April 2008 does not remedy these flaws, and in fact introduces a number of extremely problematic provisions.

While there are many provisions presenting concerns with regards to safeguarding human rights, Amnesty International and ECRE would like to draw your attention to three areas of major concern in the compromise text:

1. Excessive and disproportionate maximum duration of detention of adults, families and unaccompanied children (Articles 14, 15 and 15a)

The compromise text allows detention for the purpose of removal for up to 18 months. Amnesty International and ECRE consider such a long period of detention to be excessive, disproportionate and therefore unacceptable as a common EU standard. Such a standard risks encouraging Member States to lengthen or maintain long detention periods for removal purposes rather than to reduce them. Amnesty International and ECRE also oppose the

detention of unaccompanied minors, which is also allowed under the compromise text within the same excessive time limits of up to 18 months. In addition, detention in ordinary prison accommodation, including for unaccompanied minors and families with children, is allowed. This would particularly apply in "*emergency situations*" which are extremely vaguely defined. We acknowledge that the compromise text reaffirms to some extent the presumption against detention through the use of a 'may' provision in Article 14, 1 and the fact that detention can only be maintained as long as removal arrangements are in progress and executed with due diligence. However, this is undermined by the use of extremely vague criteria, such as the delay in obtaining documents from the country of return, to allow prolonged detention up to 18 months in Article 14, 5.

Detention is an extreme sanction for people who have committed no crime. Although European governments often state that detention is the only way to ensure an effective removal policy, reports show that longer detention periods do not directly lead to more effective removals. They are therefore unnecessary and they are also inhumane. The prolonged detention of persons in often appalling conditions in Europe, such as those witnessed by members of the EP LIBE Committee on their visits to detention centres in various EU Member States, should never be sanctioned by Community law.

2. Insufficient guarantee of the principle of voluntary departure over forced return (Article 6a)

While the priority of voluntary departure over forced return is the intended underlying principle for this directive, this is seriously undermined throughout the compromise text. The period of voluntary departure to be granted by Member States ranges between only seven and thirty days, in contrast to a *minimum* of four weeks proposed by the LIBE Committee in its adopted report of September 2007. Member States may even only grant such a period if a third country national actually applies for voluntary departure. We acknowledge that the provision whereby such a period must be extended when this is necessary, taking into account the specific circumstances of the individual case, is to be welcomed. However, Member States may refrain from granting such a period of voluntary departure to start with if there is a 'risk of absconding' or if an application for a legal stay has been dismissed as 'manifestly unfounded or fraudulent'. This will allow Member States to exclude for instance asylum seekers whose application for asylum has been rejected as 'manifestly unfounded' from being granted a period of voluntary departure. In light of the widespread practice in Member States to reject asylum claims on this basis, this may lead to a large group of persons having EU entry bans of up to five years imposed on them.

3. Obligatory use of entry bans valid throughout the EU (Article 9)

The proposed directive sets out an obligation for Member States to issue an entry ban together with a return decision if no period of voluntary departure has been granted or if the obligation to return has not been complied with. Such an entry ban, which would have to be included in the Schengen Information System, would prevent the third country national concerned from entering the territory of EU Member States for a period which should not exceed five years but could be unlimited when the third-country national represents a serious threat to public policy, public security or to national security. No effective guarantees are provided with regard to safeguarding access to protection in the EU, which may lead to violations of the *non-refoulement* principle. Amnesty International and ECRE oppose the use of entry bans as blunt instruments that may in practice create an insurmountable obstacle for the individual who may have a need to re-enter the territory of a Member State in search of protection. Furthermore, entry bans may also interfere with the right to family life, and risk encouraging the use of irregular migration channels in order to reach EU territory.

In addition to these major concerns, the compromise text allows the Member States to exclude potentially large groups of irregularly staying third country nationals from **the scope of the directive (Article 2)**. Persons "*refused entry at the border*" as well as those

"*apprehended or intercepted in connection with the irregular crossing of the external border of a Member State and who have not subsequently obtained an authorisation or a right to stay*" may be excluded from the scope of the directive and from safeguards with regard to legal remedies against return decisions (Article 12) or the provision with regard to detention, including the safeguards on judicial review (Article 14). Such broad derogations raise questions with regard to discriminatory treatment of certain groups of irregularly staying third country nationals.

For persons who have not been able to gain admissibility to an asylum procedure at the border, excluding them from the abovementioned crucial safeguards under this Directive could be particularly problematic in terms of upholding the *non-refoulement* principle. It is known that in some Member States asylum seekers are in certain cases not able to effectively lodge a claim at the border, e.g. in Slovakia where some persons seeking asylum are re-accompanied across the border to Ukraine without any individual examination of their identity and status, and in Greece where people are regularly turned back at the border with their fear of persecution on return ignored.

We urge you to take these considerations into account in your deliberations.

Yours sincerely,

Nicolas Beger
Director
Amnesty International EU Office

Bjarte Vandvik
Secretary General
ECRE