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RESTREINT

ASIM 9

NOTE

from : Presidency

dated: 5 January 1994

to : Group on Asylum

Subject: Defining minimum guarantees to be offered by national procedures for examining asylum applications

I. INTRODUCTION

- Pursuant to the instructions received from the European Council when it attached to the Treaty on European Union a Declaration on Asylum, the Council (Justice and Home Affairs), at its meeting on 29 and 30 November 1993, approved the action plan and the 1994 priority work programme for asylum.
- Inter alia, this programme stipulates that priority must be given to defining the minimum guarantees to be offered by procedures for examining asylum applications, with the aim, ultimately, of harmonizing the national laws of the Member States of the European Union.
- It should be noted that the Council meeting was the first occasion on which the Ministers had tackled this item and that as a result the Group on Asylum is asked to discuss the matter from the beginning.

- In view of the above, the Presidency is putting forward some ideas which, it hopes, will help the Group in its work by giving the Representations - which will have this note in good time and, what is more, in their own languages - the opportunity to study in greater detail the questions arising and to adopt, either orally or in writing, a position of principle with the aim of achieving just as positive a result, based on a constructive and fruitful dialogue.

II. EXISTING SITUATION

- As is well known, the legal status of refugees is regulated at international level by the 1951 Geneva Convention and the 1967 New York Protocol.
- True to their long-standing humanitarian tradition, the Member States of the European Union have long since ratified these two international legal texts.
- Article 1, Section A of the Geneva Convention, which defines the word "refugee", is of crucial importance.

It is of course for each Contracting State on whose territory the applicant lodges his application for refugee status to determine who is a refugee in accordance with the abovementioned Article and to take that decision completely independently.

- However, neither the 1951 Geneva Convention, nor the 1967 New York Protocol lays down the procedure for obtaining refugee status.

- Furthermore, the Dublin Convention of 15 June 1990 "determining the State responsible for examining applications for asylum" does not make any provision for such a procedure either, since, under Article 3(3) thereof, the Contracting Parties examine asylum applications in accordance with their national laws and international obligations.

It is therefore for the Contracting Parties to define the procedure they consider most suitable, taking into account the peculiarities of their national legal systems.

III. THE AIM IN VIEW

- In this context, taking into account the fact that, in accordance with Article K.1 of Title VI of the Treaty on European Union, asylum law is regarded by Member States as one of the matters of common interest for the purposes of achieving the objectives of the Union, in particular free movement of persons, and, in view of the recent instructions from the Council (Justice and Home Affairs), the Presidency considers that the Twelve should attempt to define among themselves a common base including those minimum guarantees to be granted to asylum-seekers under the procedure for examining their applications for refugee status, in accordance with Article 1, Section A, of the 1951 Geneva Convention.
- In the light of the above comments, certain points are listed below which, if generally accepted, could be regarded as minimum guarantees in this area. This attempt is based both on the existing international texts - in particular on Recommendation R(81) 16 of the Committee of Ministers of the Member States of the Council of Europe - and on the conclusions of the Executive Committee of the

United Nations High Commissioner for Refugees, and of course on the national laws of the Member States.

These guarantees could be summarized as follows:

- (a) the application for refugee status must be examined by a competent central authority;
- (b) the authorities responsible for border controls and the local authorities with which asylum applications are lodged must receive clear and detailed instructions so that applications are forwarded as quickly as possible to the central authority, together with all possible information and all written documents, to ensure that they are examined objectively and impartially;
- (c) the instructions must also mention the obligation to observe the principle of NON-REFOULEMENT, in accordance with Article 33(1) of the 1951 Geneva Convention;
- (d) until a final decision is taken on an application for refugee status, the applicant must be allowed to reside in the territory of the State to which the application is addressed;
- (e) there must be an opportunity to appeal against a decision to refuse the application at first instance. It must be possible to appeal to a higher administrative authority, or a judicial authority, depending on the system in force in each Member State;

(f) the applicant must be given all the necessary information relating to his rights as well as the means to submit his application freely to the competent authority.

In particular:

- (i) he must be able to call upon the services of an interpreter paid for from public funds;
 - (ii) he must be able to communicate freely with the Office of the United Nations High Commissioner for Refugees and contact and be contacted by voluntary organizations helping refugees;
 - (iii) the representative of the United Nations High Commissioner for Refugees or his authorized replacement must be permitted to be present at all stages of the procedure and take note of the decisions of the competent authorities;
- (g) decisions relating to each stage of the application for refugee status (at first and second instance) must be notified to the applicant in good and due form and full reasons supplied;
- (h) if refugee status is granted, the applicant must also be issued with a written certificate confirming such status, in accordance with Article 27 of the 1951 Geneva Convention;
- (i) the confidentiality of the application for refugee status, of the applicant's statements and of the other information in his file must be guaranteed without exception.

- (j) finally, in addition to the above, it should be self-evident that all asylum applications must be examined objectively, impartially and without any discrimination on grounds of race, religion, political convictions, nationality or the applicant's country of origin.

IV. CONCLUSION

- In conclusion, the Presidency does not believe that the above is an exhaustive list of the minimum guarantees to be offered by national procedures for examining asylum applications; it will certainly be possible to supplement it in the course of the Group's discussion.
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