

JHA 501
WPI-026

6727/1/94

REV 1
RESTREINT

ASIM 92

NOTE

dated: 3 May 1994

No. prev. doc.: 6727/94 ASIM 92

Subject: Examination of minimum guarantees for asylum procedure

At its meeting on 3 and 4 May 1994, the Working Group on Asylum examined minimum guarantees for asylum procedures, on the basis of a working document submitted by the Commission departments.

The outcome of proceedings is given in the Annex.

WORKING DOCUMENT FROM THE COMMISSION DEPARTMENTS

One of the areas identified in the Work Programme for 1994, adopted by the Justice and Home Affairs Council at its meeting in November 1993, concerns the development of minimum standards for asylum procedures. The Presidency submitted a proposal to the Council in the first half of 1994 on this subject, which was subsequently discussed by the Council's Subgroup on Asylum.

As a contribution to this discussion and in the light of questions raised by a number of delegations, the Commission thought it might be useful to circulate the attached information note on existing international standards in this area, including how they might relate to the special procedures that apply in cases of manifestly unfounded asylum applications and of asylum applications lodged at the border. In some cases, particular sentences have been added for the sake of coherence.

The document is presented in the form of a number of "principles" which have been based directly on the relevant international standards, principally the Conclusions of the Executive Committee of UNHCR, Recommendation R(81)16 of the Committee of Ministers of the Council of Europe and the Resolutions adopted by Ministers responsible for Immigration in London in December 1992.

I. Universal Principles concerning fair and efficient asylum procedures

1. Asylum procedures shall be applied in full compliance with international refugee and human rights law, including the 1951 Convention and 1967 Protocol relating to the Status of Refugees. In particular, the procedures shall comply fully with Article 1 of the 1951 Convention concerning the definition of a refugee, [Article 3 thereof on non-discriminatory treatment,] ⁽¹⁾ Article 33 relating to the principle of *non-refoulement* and Article 35 concerning co-operation with the Office of the United Nations High Commissioner for Refugees, including the facilitation of its duty of supervising the application of the provisions of the 1951 Convention.
2. In order to ensure effectively the principle of *non-refoulement*, no expulsion measure shall be considered, as long as no [initial] ⁽²⁾ decision has been taken on the asylum application or at least on its admissibility.
3. [Sufficient personnel and resources shall be allocated to the competent authorities so as to enable them to accomplish their task expeditiously.] ⁽³⁾
4. [Member States shall ensure priority treatment is given to those asylum applicants who are manifestly in need of protection to ensure that they are recognized without delay.] ⁽⁴⁾
5. In conformity with the Resolution adopted by Immigration Ministers at their meeting on 30 November/1 December 1992, Member States will aim to reach initial decisions on manifestly unfounded asylum applications as soon as possible and at the latest within one month and to complete any appeal or review procedures as soon as possible. [In all other cases, Member States will aim to reach initial decisions at the latest within ...] ⁽⁵⁾

II. Guarantees concerning the examination of asylum applications

6. The regulations on access to the asylum procedure, the basic features of the asylum procedure itself and the designation of the authorities responsible for examination of asylum applications should be incorporated in legislation.
7. Asylum applications shall be examined by a competent authority, fully qualified in the field of asylum and refugee matters. It shall take its decisions independently in the sense that all asylum applications shall be examined and decided upon individually, objectively and impartially. [The procedures shall be carried out without discrimination, for example, as to race, religion or country of origin.] ⁽⁶⁾
8. The authorities responsible for the examination of the asylum application shall be fully qualified in the field of asylum and refugee matters. To this effect, they shall:

COMMENTS

- (¹) The German delegation had doubts concerning the reference to Article 3 in this context.
- (²) The Netherlands delegation wanted the word "initial" inserted before the word "decision".
- (³) The United Kingdom delegation had doubts about including provisions of this kind. The French delegation would have preferred paragraph 3 to be placed after paragraph 7.
- (⁴) The United Kingdom and Greek delegations expressed reluctance at including a paragraph of this type.
- (⁵) The French and United Kingdom delegations felt that there was no need to set a time limit for taking a decision. At most, it could be stipulated that decisions would be taken as soon as possible.
- (⁶) The German delegation suggested that the last sentence in this paragraph be deleted.

- have at their disposal specialized personnel with the necessary knowledge and experience in the field of asylum and refugee matters, who have an understanding of an applicant's particular situation;
- have access to precise and up-to-date information from various sources concerning the situation in the countries of origin of asylum applicants;
- have the right to ask advice, whenever necessary, from experts on particular issues, e.g. a medical issue or an issue of a cultural nature.

9. The authorities responsible for border controls and the local authorities with which asylum applications are lodged must receive clear and detailed instructions so that the applications, together with all other information available, can be forwarded without delay to the competent authority for examination.

10. [In the case of a negative decision, provision shall be made for an appeal to a court or a review authority enjoying the same degree of independence as a court.] ⁽¹⁾

III. Rights of asylum applicants during examination, appeal and review procedures

11. An asylum seeker must have an effective opportunity to present his asylum application as early as possible.

12. Declarations made by the asylum applicant and other details of his application [shall be treated as confidential information] ⁽²⁾. National law should therefore offer adequate data protection guarantees.

13. As long as the asylum application has not been decided on, the general principle shall apply that the applicant shall be allowed to remain in the territory of the state to which his application is addressed. ⁽³⁾

14. Asylum applicants shall be informed of the procedure to be followed and their rights and obligations during the procedure, in a language they understand. In particular, they:

- shall be given the services of a competent interpreter for submitting their case to the authorities concerned, whenever necessary. These services shall be paid for out of public funds;
- shall be given the opportunity, at all stages of the procedure, to communicate [freely] ⁽⁴⁾ with the Office of the United Nations High Commissioner for Refugees and, [whenever necessary] ⁽⁵⁾, [with other refugee organizations, and vice versa] ⁽⁶⁾. The applicants may call in a counsellor to assist them during the procedure;
- the representative of the Office of the UNHCR must be given the opportunity to be informed of the course of the procedure, to learn about the decisions of the competent authorities and to submit its observations.

15. Before a decision on the asylum application is taken, the asylum applicant shall be given the opportunity of a personal interview with an official qualified under domestic law. ⁽⁷⁾

COMMENTS

- (¹) Several delegations expressed misgivings about this paragraph. In particular, the Danish delegation suggested making provision for a solution which complied with existing procedures at national level.
- (²) The German delegation said that reference should be made only to personal data. As an alternative, it would be able to agree to such information being treated as sensitive data.
- (³) The Netherlands delegation said that this paragraph jeopardized recently adopted Netherlands legislation. In particular, it would be against specifying that the individual would be authorized to remain in the territory of the Member State.
- (⁴)(⁵)(⁶) The German delegation thought that
- the word "freely" should be deleted;
 - the words "whenever necessary" should be replaced by "if need be".
- The United Kingdom delegation expressed misgivings regarding the phrase "with other refugee organizations, and vice versa".
- (⁷) The French delegation suggested completing this paragraph by adding the phrase "before a final decision is taken".

16. The decision on the asylum application shall be communicated to the applicant in writing in a language which he/she understands. If the application is rejected, the applicant shall be informed of the reasons and of any possibility of having the decision reviewed. ⁽¹⁾
17. The asylum applicant shall be given an appropriate time limit within which to prepare his/her case when requesting the review of his/her application or when filing an appeal. This time limit shall be communicated to the asylum applicant together with the negative decision itself.
18. The asylum applicant shall be permitted to remain in the Member State concerned while such an appeal is pending, unless in a specific case the court or review authority denies the applicant the suspensive effect of the appeal proceedings. ⁽²⁾

manifestly unfounded asylum applications

19. In case of manifestly unfounded asylum applications, as defined in the Resolution adopted by Immigration Ministers at their meeting on 30 November/1 December 1992, Member States may operate accelerated procedures, under which applications may be rejected very quickly on objective grounds.
20. Appeal procedures may be simplified by comparison with those generally available in the case of other rejected asylum applications. Against this background, Member States may provide for the following exceptions to principle 18: ⁽³⁾
 - If the rejection of the application is based on the fact that it has been established that another state is responsible for carrying out the asylum procedure on the basis of an international treaty, suspensive effect of any appeal procedures may be denied by law.
 - Although in case of other manifestly unfounded asylum applications, appeal procedures may, as a general rule, not have suspensive effect, applicants should at least have the opportunity to ask the court or review authority to grant such suspensive effect on the basis of the particular circumstances of their case.

asylum applications at the border

21. Member States shall adopt administrative measures ensuring that no asylum seeker arriving at their frontiers is refused admission without being afforded an opportunity to file an asylum application.
22. [By way of exception to principle 9,] ⁽⁴⁾ Member States may authorize border control officials to consider whether the host third country concept, as defined in the Resolution adopted by Immigration Ministers at their meeting on 30 November/1 December 1992, is applicable, provided that Member States have taken the necessary steps in order to ensure that the fundamental requirements mentioned in that Resolution are fully met.

COMMENTS

- (¹) One delegation thought it would not be necessary to supply a written reply in every case. Moreover, several delegations stressed the difficulty of having the reply translated every time. The French delegation suggested informing the applicant of his rights and the procedural rules by means of a form.
- (²) The Netherlands delegation pointed again to the problems this paragraph might raise inasmuch as it would jeopardize the new Netherlands legislation on the suspensive effect of an appeal. Other delegations expressed much the same view.
- (³) This paragraph should be reviewed in the light of the discussion on questions concerning an appeal.
- (⁴) A number of delegations thought that a bald reference to principle 9 was inadequate. The Resolution on the host third country would have a wider scope. In addition, the measure suggested here would have no connection with asylum applications made at the border. Furthermore, one delegation thought the possibility of entering the territory of the Member State should be clarified.

23. By way of exception to principle 13, Member States may set up, by law, special procedures under which the applicants may be required to stay in special, [extraterritorially located,] ⁽¹⁾ reception centres while it is being determined whether the application [is manifestly unfounded] ⁽²⁾. The applicant may be refused admission to the territory, if it is established that his/her application is manifestly unfounded.
24. By way of exception to principle 16, in the case of rejection of an asylum application at the border, the decision, its underlying reasons and the rights of the applicant, may be communicated to him/her orally instead of in writing, [in a language he/she understands]. ⁽³⁾ Upon his/her request, however, the decision shall subsequently be communicated to the applicant or his/her legal representative in written form.

IV. Additional Safeguards in Special Cases

unaccompanied minors

25. The question of how to determine whether an unaccompanied minor qualifies for refugee status will depend on the child's degree of [mental development and maturity] ⁽⁴⁾. [An expert with sufficient knowledge of the psychological, emotional and physical development and behaviour of children shall be called upon to make the necessary assessment.] ⁽⁵⁾
26. Provision must be made for an unaccompanied minor applying for asylum to be represented by a designated responsible adult or institution whose task it would be to promote a decision that will be in the child's best interests. ⁽⁶⁾
27. During the interview, unaccompanied minors shall be accompanied by the designated adult referred to in principle 26. ⁽⁷⁾

women

28. Member States shall provide, whenever necessary, skilled female interviewers in procedures for the determination of refugee status. ⁽⁸⁾
29. Women who are victims of abuse shall have access to professional and culturally appropriate gender-based counselling. ⁽⁹⁾

COMMENTS

- (¹) A number of delegations expressed misgivings regarding the phrase "extraterritorially located".
- (²) One delegation thought the concept "manifestly unfounded" would attenuate the effect. The reference should be to the admissibility of the application.
- (³) Several delegations thought the translation of the texts would cause problems. The Spanish delegation thought this paragraph should be amended to take account of the fact that all decisions had to be notified to the applicant, with reasons, and signed by him.
- (⁴) According to the Italian delegation, the most important factor in this connection was the individual's ability. In the Netherlands there was an institution which would submit applications on behalf of minors. In Denmark a minor could make an application for asylum.
- (⁵) A number of delegations thought a requirement of this type would be excessive.
- (⁶) One delegation suggested inserting this point before point 25.
- (⁷) The Commission representative suggested adding that the representatives of certain institutions could submit applications in the same capacity as adults.
- (⁸) One delegation pointed out that while a measure along these lines might well be acceptable, provision should be made for exceptions.
- (⁹) In the German delegation's view this would be a sound principle, but it should be placed in the context of the aspects concerned with residence conditions.

**ANNEX: RELATIONSHIP BETWEEN INTERNATIONAL STANDARDS
AND PRINCIPLES OF THE WORKING DOCUMENT**

1. 1951 Convention relating to the status of refugees;
2. 1951 Convention relating to the status of refugees; EXCOM Conclusions Nos 6 and 8;
3. EXCOM Conclusion No 30;
5. 1992 Resolution on manifestly unfounded asylum applications;
7. UNHCR Handbook, paragraph 190; 1951 Convention relating to the status of refugees;
8. UNHCR Handbook, paragraphs 190 and 205; EXCOM Conclusion No 8;
9. EXCOM Conclusion No 8;
10. EXCOM Conclusion No 8;
13. EXCOM Conclusion No 8;
14. EXCOM Conclusion No 8;
15. EXCOM Conclusion No 30;
16. EXCOM Conclusion No 8;
17. EXCOM Conclusion No 8;
18. EXCOM Conclusion No 8;
19. 1992 Resolution on manifestly unfounded asylum applications;
21. Universal Declaration on Human Rights; 1951 Convention relating to the status of refugees;
22. 1992 Resolution on the host third country principle;
25. UNHCR Guidelines for Refugee Children;
26. UNHCR Guidelines for Refugee Children;
27. UNHCR Guidelines for Refugee Children;
28. EXCOM Conclusion No 64;
29. EXCOM Conclusion No 64.

