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THE COUNCIL**

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**NOTE**

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**from: Presidency**

**to : Asylum Group**

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6727/1/94 ASIM 92 REV 1, 8270/94 ASIM 136**

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**Subject: Minimum guarantees for asylum applications**

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Delegations will find annexed a revised document incorporating the outcome of the proceedings of the Asylum Group on 5 and 6 September 1994.

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**I. Universal principles concerning fair asylum procedure**

1. Asylum procedures shall be applied in full compliance with the 1951 Geneva Convention and the 1967 New York 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 33 relating to the principle of *non-refoulement* and Article 35 concerning cooperation 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 Convention. <sup>(1)</sup>
2. [In order to ensure effectively the principle of *non-refoulement*, no removal measure shall be carried out, as long as no decision has been taken on the asylum application or at least on its admissibility.] <sup>(2)</sup>

**II. Guarantees concerning the examination of asylum applications**

3. 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 laid down in the individual States' legislation.
4. Asylum applications shall be examined by a competent authority, fully qualified in the field of asylum and refugee matters. Decisions shall be taken independently in the sense that all asylum applications shall be examined and decided upon individually, objectively and impartially.

- 5. 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**
- 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.**
- 6. 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.**
- 7. In the case of a negative decision, provision shall be made for an appeal to a court or an independent review authority <sup>(3)</sup>.**
- 8. Member States shall ensure that the competent authorities are adequately provided with staff and equipment, so that they can discharge their duties promptly and under the best possible conditions.**

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

- 9. An asylum seeker must have an effective opportunity to present his asylum application as early as possible.**
  
- 10. Declarations made by the asylum applicant and other details of his application are very sensitive data, requiring protection. National law shall therefore provide adequate data protection guarantees, particularly as against the authorities of the asylum seeker's country of origin. <sup>(4)</sup>**
  
- 11. 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. <sup>(5)</sup>**
  
- 12. 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 an interpreter for submitting their case to the authorities concerned, whenever necessary. These services shall be paid for out of public funds;**
  
  - they shall be given the opportunity, at all stages of the procedure, to communicate with the Office of the United Nations High Commissioner for Refugees (UNHCR) or with other refugee organizations which may be working on behalf of the UNHCR in the Member State concerned, and vice versa. In addition, asylum seekers may enter into contact with other refugee organizations under procedures laid down by the Member States;**

- the applicants may call in a legal adviser as permitted under the rules of the Member State concerned or other 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 his observations.
13. Before a final 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.
  14. The decision on the asylum application shall be communicated to the applicant in writing. [If the application is rejected, the applicant shall be informed of the reasons and of any possibility of having the decision reviewed.] <sup>(6)</sup>
  15. 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 lodging an appeal. This time limit shall be communicated to the asylum applicant together with the negative decision itself.
  16. Until a decision has been taken on the appeal, the general principle shall apply that the applicant shall be allowed to remain in the territory of the Member State concerned. Where the national law of a Member State permits a derogation from this principle under particular circumstances, the asylum applicant should at least be able to apply to the bodies referred to in paragraph 7 (court or independent review authority) for leave to remain in the territory of the Member State temporarily during procedures before those bodies, on the grounds of the particular circumstances of his/her case.

## **Convention on responsibility**

- 16a. [Member States may provide for exceptions to principles 4, 5 and 16 in the process of determining the State responsible for examining the application for asylum where those exceptions are applied on the basis of an international treaty, in particular the Dublin Convention.] (7)

## **Manifestly unfounded asylum applications**

17. Under the Resolution adopted by Immigration Ministers at their meeting on 30 November and 1 December 1992, the Member States are required to take decisions on manifestly unfounded asylum applications as rapidly as possible, and within one month at the latest, and to conclude all appeal or review procedures as speedily as possible.
18. Appeal or review procedures may be simplified to a greater extent than those generally applicable in the case of other rejected asylum applications. Member States may exclude the possibility of lodging an appeal against a decision to reject an application, if instead an independent body which is distinct from the examining authority has already confirmed the decision.

19. Member States may provide for exceptions to principles 6 and 16 where, under national law, the third host country concept is applicable in accordance with the Resolution of 30 November/1 December 1992 of the Immigration Ministers of the Member States of the European Union. [In these cases Member States may also provide, by way of exception to principle 14, that the decision rejecting the application, its underlying reasons and the applicant's rights may be communicated to him orally instead of in writing. Upon his request, the decision shall be confirmed in writing.] <sup>(8)</sup>

#### **Asylum applications at the border**

20. Member States shall adopt administrative measures ensuring that no asylum-seeker arriving at their frontiers is refused admission before being afforded an opportunity to file an asylum application.
21. Where, under national law, the third host country concept is applicable in accordance with the Resolution of 30 November/1 December 1992 of the Immigration Ministers of the Member States of the European Union, principle 20 shall apply mutatis mutandis. In these cases admission may be refused.
22. In addition, where provision is made to that effect under national law, Member States may, in cases of manifestly unfounded asylum applications, use special procedures in which the asylum application is examined before admission is granted. In such cases, admission may be refused if it is established that the application for asylum is manifestly unfounded. <sup>(9)</sup>
23. [By way of exception to principle 14, in the event of rejection of an asylum application at the border, the decision, its underlying reasons and the applicant's rights may be communicated to him orally instead of in writing. Upon his request, the decision shall be confirmed in writing.] <sup>(10)</sup>

#### **IV. Additional safeguards for unaccompanied minors and women**

##### **Unaccompanied minors**

24. Provision must be made for unaccompanied minors seeking asylum to be represented by a specifically appointed adult or institution if they do not have legal capacity under national law. During the interview, unaccompanied minors may be accompanied by the aforementioned adult or representatives of the institution. [These persons are to protect the child's interests.] <sup>(11)</sup>
25. When examining an application for asylum from an unaccompanied minor, his/her mental development and maturity shall be taken into account <sup>(12)</sup>.

##### **Women**

26. Member States shall endeavour to involve skilled female employees [and female interpreters] <sup>(13)</sup> in the asylum procedure where necessary, particularly where female asylum applicants find it difficult to present the grounds for their application in a comprehensive manner owing to the experiences they have undergone or to their cultural origin.

#### **V. Residence where the criteria for definition as a refugee are met <sup>(14)</sup>**

27. An individual meeting the criteria for the definition of a refugee should be granted residence in the Member State which has accorded him/her refugee status. Residence may be refused, in particular if:
  - the individual is entitled to effective protection against "refoulement" in a safe third country;

- Article 33(2) of the 1951 Geneva Convention is applicable, or
- the exclusion clauses under Article 1D or 1F of the 1951 Geneva Convention are applicable,

where national law so provides.

- 28. In accordance with Articles 27 and 28 of the 1951 Geneva Convention, Member States shall issue identity papers to persons to whom they have accorded refugee status.**

**COMMENTS**

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- (1) The Commission wanted to include a reference to Articles 3 and 31 of the Geneva Convention.
- (2) **Alternative suggestion by the Presidency:**  
"In order to ensure effectively the principle of non-refoulement, no removal measure shall be carried out, as long as no decision has been taken on the asylum application. For the purposes of this (document) decisions on the asylum application shall be deemed to include all decisions concerning the content or admissibility of the asylum application or another State's responsibility for examining the application."
- (3) The Austrian delegation had misgivings as to the formulation "independent review authority".
- (4) A number of delegations entered scrutiny reservations.
- (5) The Irish delegation wanted a reference to the Dublin Convention. The Austrian delegation had misgivings as to the term "allowed to remain".
- (6) **Suggestion by the Netherlands and United Kingdom delegations and the Commission:**  
"If the application is rejected, the applicant shall be informed, in a language which he understands, of the main purport of the decision and of any possibility of making an appeal."  
The Irish delegation would be making a statement in due form on the interpretation of the concept "decision" with regard to Irish law.
- (7) Suggestion by the Presidency.
- (8) **Suggestion by the Presidency.**  
The Netherlands and United Kingdom delegations and the Commission wanted an addition made to the second sentence to the effect that the applicant should be informed, in a language which he understands, of the main purport of the decision and of any possibility of making an appeal. A number of delegations entered scrutiny reservations.
- (9) The Belgian delegation wanted an express statement that principle 11 did not apply.
- (10) The Presidency suggested deleting this principle.  
A number of delegations entered scrutiny reservations on the grounds of its link with principle 19.
- (11) **Suggestion by the Netherlands delegation.**  
Scrutiny reservations by the Belgian and Portuguese delegations.
- (12) The Portuguese delegation entered a scrutiny reservation.
- (13) Proposal by the United Kingdom delegation.
- (14) The Presidency would be submitting an alternative formula for the next meeting.