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REV 3
RESTREINT

ASIM 152

NOTE

from: Asylum Working Party

to : Steering Group I

No. prev. doc.: 8713/2/94 ASIM 152 REV 2

Subject: Minimum guarantees for asylum procedures

Delegations will find annexed a revised document incorporating the outcome of proceedings in the Asylum Working Party on 31 October 1994.

The French delegation believes that the appropriate means of defining minimum guarantees for asylum procedures is joint action, not a Resolution. It therefore suggests replacing the preamble by the text in 10565/94 ASIM 218.

The Spanish delegation wishes to introduce a new paragraph in the Chapter dealing with manifestly unfounded asylum applications (points 18 to 21), failing which it will enter a general reservation on the whole document (cf. Footnote (*) page 7).

Draft
RESOLUTION (*)

on minimum guarantees for asylum procedures

THE COUNCIL

at its meeting in on

BY VIRTUE OF Article K.1 of the Treaty on European Union, which includes asylum policy as a matter of common interest,

DETERMINED, in keeping with the common humanitarian tradition of the Member States, to guarantee adequate protection to refugees in need of such protection in accordance with the Geneva Convention of 28 July 1951 relating to the Status of Refugees, as amended by the New York Protocol of 31 January 1967,

NOTING that under national legislation, Member States may exceptionally allow aliens to stay for other compelling reasons not covered by the 1951 Geneva Convention,

AFFIRMING the intention of Member States to apply the Dublin Convention of 15 June 1990 determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities,

CONVINCED that this requires decisions on asylum applications to be taken on the basis of equivalent procedures in all Member States and common procedural guarantees to be adopted for asylum-seekers to that end, taking into account the conclusions of the Executive Committee of the United Nations High Commissioner for Refugees and Recommendation R(81) 16 of the Committee of Ministers of the Council of Europe,

(*) France: reservation. The French delegation favours joint action instead of a Resolution and suggests the text in 10565/94 ASIM 218.

HEREBY ADOPTS THIS RESOLUTION:

- I. The guarantees provided for in this Resolution will apply to the examination of asylum applications within the meaning of Article 3 of the Dublin Convention, with the exception of procedures to determine the Member State responsible under the said Convention. The guarantees applicable to those procedures will be determined in a separate text.

- II. Universal principles concerning fair asylum procedure
 1. Asylum procedures will be applied in full compliance with the 1951 Geneva Convention, the 1967 New York Protocol relating to the status of refugees and other obligations under international law in respect of refugees and human rights. In particular, the procedures will 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 Convention.

 2. In order to ensure effectively the principle of non-refoulement, no expulsion measure will be carried out as long as no decision has been taken on the asylum application.

III. 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 are to be laid down in the individual States' legislation.
4. Asylum applications will be examined by a competent authority fully qualified in the field of asylum and refugee matters. Decisions will be taken independently in the sense that all asylum applications will be examined and decided upon individually, objectively and impartially.
5. When examining an application for asylum the competent authority must, of its own initiative, take into consideration and seek to establish all the relevant facts and give the applicant the opportunity to present a substantial description of the circumstances relevant to the case and to prove them. For his part the applicant must present all the relevant facts and circumstances known to him and give access to all the available evidence.

Recognition of refugee status is not dependent on the production of formal evidence. The overriding principle is that refugee status can be recognized on the basis of adequate presumption, given all the circumstances. ⁽¹⁾

⁽¹⁾ German delegation: Scrutiny reservation.

6. The authorities responsible for the examination of the asylum application must be fully qualified in the field of asylum and refugee matters. To this effect, they must
 - 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, in particular to information from the UNHCR, concerning the situation prevailing in the countries of origin of asylum seekers and in transit countries;
 - 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.
7. 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.
8. In the case of a negative decision, provision must be made for an appeal to a court or an independent review authority. (1^a)
9. Member States must 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.

(1a) The Danish delegation suggests replacing point 8 by the following text:

"In case of a negative decision, there must be provision for appeal to a court or a review authority, the decisions of which are taken independently in the sense that all appeals are examined and decided upon individually, objectively and impartially".

IV. Rights of asylum-seekers during examination, appeal and review procedures

10. An asylum-seeker must have an effective opportunity to lodge his asylum application as early as possible.
11. Declarations made by the asylum-seeker and other details of his application are very sensitive data, requiring protection. National law must therefore provide adequate data protection guarantees, particularly as against the authorities of the asylum-seeker's country of origin.
12. As long as the asylum application has not been decided on, the general principle applies that the applicant is allowed to remain in the territory of the state which is examining his application. ⁽²⁾
13. Asylum-seekers must be informed of the procedure to be followed and of their rights and obligations during the procedure, in a language which they understand. In particular:
 - they must be given the services of an interpreter for submitting their case to the authorities concerned, whenever necessary. These services must be paid for out of public funds, if the interpreter is appointed by the competent authorities; ⁽³⁾
 - in accordance with the rules of the Member State concerned, they may call in a legal adviser or other counsellor to assist them during the procedure;

⁽²⁾ German and Spanish delegations: scrutiny reservations.

⁽³⁾ Text suggested by the Presidency in view of the discussions of the Working Party on 17 and 18 October 1994.

- they must 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 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.

14. Before a final decision is taken on the asylum application, the asylum-seeker must be given the opportunity of a personal interview with an official qualified under national law.
15. The decision on the asylum application must be communicated to the asylum-seeker in writing. If the application is rejected, the asylum-seeker must be informed of the reasons and of any possibility of having the decision reviewed. ⁽⁴⁾ The asylum-seeker must have the opportunity, inasmuch as national law so provides, to be informed of the main purport of the decision and of any possibility of appeal, in a language which he understands. ⁽⁵⁾
16. The asylum-seeker must be given an adequate period of time within which to appeal and to prepare his case when requesting review of the decision. These time limits must be communicated to the asylum-seeker in good time. ⁽⁶⁾

⁽⁴⁾ The Irish delegation will make a statement in due form on the interpretation of "decision" with regard to Irish law.

⁽⁵⁾ Text suggested by the Presidency in view of the discussions of the Working Party on 17 and 18 October 1994.

⁽⁶⁾ Text suggested by the Presidency in view of the discussions of the Working Party on 17 and 18 October 1994.

17. Until a decision has been taken on the appeal, the general principle will apply that the asylum-seeker may 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] ⁽⁷⁾ the asylum-seeker should at least be able to apply to the bodies referred to in paragraph 8 (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 case; no expulsion may take place until a decision has been taken on this application.

Manifestly unfounded asylum applications ^(*)

18. Manifestly unfounded asylum applications within the meaning of the Resolution adopted by Immigration Ministers at their meeting on 30 November and 1 December 1992 will be dealt with in accordance with that Resolution. Subject to the principles laid down therein, the guarantees laid down in the present Resolution will apply.
19. By way of derogation from paragraph 8, 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.
20. Member States may, in certain limited cases provided for in national law, make provision for exceptions to paragraph 17 where, according to objective criteria unrelated to the application itself, an application is clearly unfounded within the meaning of paragraphs 9 and 10 of the Resolution adopted by the Immigration Ministers at their meeting on 30 November and 1 December 1992 and where

⁽⁷⁾ The Netherlands delegation wishes to delete this phrase.

^(*) The Spanish delegation wishes to insert a new paragraph, reading as follows:

"19a. The simplified procedure provided for in this chapter will in any case apply to nationals of Member States of the European Union who apply for asylum in another Member State, as fear of persecution within the meaning of the 1951 Geneva Convention on refugees is manifestly unfounded in all the Member States [where human rights and fundamental liberties and legal control by independent judicial bodies are guaranteed]".

If the above paragraph is not included the Spanish delegation will enter a general reservation on the whole Resolution. Several delegations believe that the appropriate place for such a text would be in the London Resolution on manifestly unfounded asylum applications.

two independent authorities have reached the same decision.

21. Member States may provide for exceptions to paragraph 17 with respect to asylum applications, where, under national law, the host third country concept is applicable in accordance with the Resolution of 30 November and 1 December 1992 of the Immigration Ministers of the Member States of the European Union. ⁽⁸⁾ In such cases Member States may also provide, by way of derogation from paragraph 15, that the decision rejecting the application, its underlying reasons and the asylum-seeker's rights may be communicated to him orally instead of in writing. Upon request, the decision will be confirmed in writing.

The third country authorities must generally be informed that the asylum application was not examined as to substance before the alien concerned was expelled. ⁽⁹⁾

Asylum applications at the border

22. Member States will adopt administrative measures ensuring that any asylum-seeker arriving at their frontiers is afforded an opportunity to lodge an asylum application.
23. Member States may, inasmuch as national law so provides, apply special procedures to establish, prior to the decision on admission, whether or not the application for asylum is manifestly unfounded. No expulsion measure will be carried out during this procedure. ⁽¹⁰⁾

Where an application for asylum is manifestly unfounded, the asylum-seeker may be refused admission. In such cases, the national law of a Member State may permit an exception to the general principle of the suspensive effect of the

⁽⁸⁾ The Danish delegation wishes to include the following: "In such cases, Member States may, in accordance with paragraph 1c of the abovementioned Resolution, refuse to examine an asylum application. The opportunity given to the asylum-seeker to communicate with the UNHCR and other refugee organizations mentioned in paragraph 13 will not necessarily prevent implementation of such a decision.

⁽⁹⁾ France: scrutiny reservation.

If this sentence is deleted, the Netherlands delegation and the Commission will maintain their requests that the asylum-seeker be informed, in a language which he understands, as to the essential purport of the decision and the possibility of appeal.

⁽¹⁰⁾ Belgium: reservation. The Belgian delegation is willing to examine the possibility of including a statement in the minutes of the Council stipulating that Belgian law is compatible with the principle stated in paragraph 23.

appeal (paragraph 17). However, it must at least be ensured that the decision on the refusal of admission is taken at ministry level and that an examination has previously been conducted by another authority at a comparable level, independently of the first, such authority being fully qualified in asylum and refugee matters. ⁽¹¹⁾

24. In addition, where, under national law, the host third country concept is applicable in accordance with the Resolution of 30 November and 1 December 1992 of the Immigration Ministers of the Member States of the European Union, Member States may provide for exceptions to paragraphs 7 and 17. ⁽⁸⁾. Member States may also provide, by way of derogation from paragraph 15, that the decision rejecting the application, its underlying reasons and the asylum-seeker's rights may be communicated to him orally instead of in writing. Upon request, the decision will be confirmed in writing.

The procedure in cases referred to in the first sentence may be carried out before the decision on admission/entry has been taken. In such cases, entry may be refused.

V. Additional safeguards for unaccompanied minors and women

Unaccompanied minor

25. Provision must be made for unaccompanied minors seeking asylum to be represented by a specifically appointed adult or institution if they do not have 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.
26. When examining an application for asylum from an unaccompanied minor, his mental development and maturity will be taken into account.

⁽¹¹⁾ Spain: reservation. The Spanish delegation considers that the wording at the end of paragraphs 23 and 20 should be the same.
Scrutiny reservations by the Portuguese and Austrian delegations.

Women

27. Member States must endeavour to involve skilled female employees and female interpreters in the asylum procedure where necessary, particularly where female asylum-seekers 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.

VI. Residence where the criteria for classification as a refugee are met

28. A Member State which, notwithstanding national provisions on application of the host third country concept, has examined an asylum application must grant refugee status to an asylum-seeker fulfilling the criteria of Article 1 of the Geneva Convention. Member States may provide, in accordance with their national law, that they will not make full use of the exclusion clauses contained in the Geneva Convention.

The refugee should in principle be granted the right of residence in the Member State concerned.

VII. Other cases

29. This Resolution does not affect the national legal provisions of the various Member States regarding the cases covered in paragraph 11 of the Resolution on manifestly unfounded asylum applications adopted by the Immigration Ministers at their meeting on 30 November and 1 December 1992.

VIII. Further action

30. The Council has agreed to take account of these principles in the case of all proposals for changes to national legislation. Member States will continue to strive to bring their national legislation into line with these principles by 1 January (1996). In conjunction with the Commission and in consultation with the UNHCR, they will periodically review the operation of these principles and consider whether any additional measures are necessary.

IX. More favourable provisions

31. The Council emphasizes that Member States have the right to enact national provisions on the status of asylum-seekers which are more favourable than those contained in the common minimum guarantees.
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