

# SEMDOC

Statewatch European Documentation &  
Monitoring Centre on justice and home  
affairs in the European Union

PO Box 1516, London N16 0EW, UK  
tel: 0181 802 1882 (00 44 181 802 1882)  
fax: 0181 880 1727 (00 44 181 880 1727)

11217/94

RESTREINT

JAI 61

## NOTE

---

from: Coreper

to : Council

---

No. prev. doc.: 8713/5/94 REV 4 ASIM 152

---

Subject: Minimum guarantees for asylum procedures

---

## I. INTRODUCTION

On 29 and 30 November 1993, the JHA Council took the view that minimum guarantees for asylum procedures should be one of the priorities in the asylum field for 1994.

On the basis of preparatory work, the Permanent Representatives Committee considered the annexed draft Resolution. After its discussions, the following issues have still to be resolved:

## II. ISSUES TO BE EXAMINED

### 1. Asylum applications by nationals of Member States

The Spanish delegation called for the insertion of the following new paragraph in the section on manifestly unfounded asylum applications:

"19a. The simplified procedure provided for in this section 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 Refugee Convention is manifestly unfounded in all the Member States [, where human rights, fundamental liberties and judicial review by an independent judiciary are guaranteed]."

Alternatively, it could agree to amend the Resolution on manifestly unfounded applications for asylum adopted on 30 November and 1 December 1992 by adding the following subparagraphs (d) and (e) to paragraph 6 of that Resolution:

- (d) "the applicant is a national of a State in which both the fundamental rights and public freedoms and effective judicial protection by independent judicial bodies are fully observed and guaranteed".
- (e) "the applicant is a national of a Member State of the European Union".

In that event the amendment would have to be adopted at the same time as the Resolution on minimum guarantees.

Failing acceptance of one of those two proposals, the Spanish delegation entered a general reservation on the entire draft Resolution on minimum guarantees.

## 2. Other issue

### Refusal of admission at the border where the request is manifestly unfounded (paragraph 23)

The Spanish delegation entered a scrutiny reservation on the penultimate sentence of paragraph 23 which reads as follows:

"(...) However, it must at least be ensured that the decision on the refusal of admission is taken by a ministry or comparable central authority and that additional sufficient safeguards (for example, prior examination by another central authority) ensure the correctness of the decision (...)."

(<sup>1</sup>)

## III. ACTION TO BE TAKEN

The Permanent Representatives Committee submits the matter as it stands to the Council with a view to examining the possibility of

- adopting the attached draft Resolution, in the event of it being likely that the reservations set out in Section II of this report could be waived;
- agreeing that the Resolution be forwarded to the European Parliament for information once the Council has approved it.

---

---

(<sup>1</sup>) In connection with this new wording of paragraph 23, the United Kingdom delegation reserved the option of returning in the Council to paragraph 20 of the draft Resolution.

Draft

RESOLUTION

**on minimum guarantees for asylum procedures**

**THE COUNCIL,**

at its meeting in ..... on .....,

**HAVING REGARD TO** 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,

**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, and 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 State's legislation.
4. Asylum applications will be examined by an 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 of the case and to prove them. For his part the applicant must present all the 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.

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, including 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 a review authority which gives an independent ruling on individual cases under the conditions laid down in paragraph 4. <sup>(1)</sup>
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.

#### **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 in which his application has been lodged or is being examined.
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 can understand. In particular:
  - they must be given the services of an interpreter, whenever necessary, for submitting their case to the authorities concerned. These services must be paid for out of public funds, if the interpreter is appointed by the competent authorities;

---

(<sup>1</sup>) The Irish delegation will be making the following statement in the Council minutes when the Resolution is adopted:  
"In relation to the appeal against a decision referred to in paragraphs 8 and 17, in the Irish context the appeal is against the recommendation of the examining authority to the Minister for Justice."

- 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;
- 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 opportunity for an asylum-seeker to communicate with the UNHCR and other refugee organizations need not necessarily prevent implementation of a decision;

- 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. The asylum-seeker must have the opportunity, inasmuch as national law so provides, to acquaint himself with or be informed of the main purport of the decision and any possibility of appeal, in a language which he understands.
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.

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 in certain cases, 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. <sup>(1)</sup>

#### **Manifestly unfounded asylum applications <sup>(2)</sup>**

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

---

<sup>(1)</sup> See page 4.

<sup>(2)</sup> The Spanish delegation suggested inserting a new paragraph, reading as follows:

"19a. The simplified procedure provided for in this section 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 Refugee Convention is manifestly unfounded in all the Member States [ , where human rights, fundamental liberties and judicial review by an independent judiciary are guaranteed].".

Alternatively, it could agree to amendment of the Resolution on manifestly unfounded asylum applications, adopted on 30 November and 1 December 1992. Failing acceptance of one of those two proposals, the Spanish delegation entered a general reservation on the whole Resolution (see above).

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 two independent authorities have reached the same decision. <sup>(1)</sup>

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 adopted by the Immigration Ministers at their meeting on 30 November and 1 December 1992. 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, where necessary, be informed that the asylum application was not examined as to substance.

#### **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.

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 appeal (paragraph 17). However, it must at least be ensured that the decision on the refusal of admission is taken by a ministry or comparable central authority and that

---

<sup>(1)</sup> The United Kingdom delegation wanted this last part of the text to reflect the penultimate sentence of paragraph 23.

additional sufficient safeguards (for example, prior examination by another central authority) ensure the correctness of the decision <sup>(1)</sup>. Such authorities must be fully qualified in asylum and refugee matters.

24. In addition, where, under national law, the host third country concept is applicable in accordance with the Resolution adopted by the Immigration Ministers at their meeting on 30 November and 1 December 1992, Member States may provide for exceptions to the principles in paragraphs 7 and 17. 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 the cases referred to in the first sentence may be carried out before the decision on admission has been taken. In such cases, admission may be refused.

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

### **Unaccompanied minors**

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 that adult or representatives of that 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.

---

<sup>(1)</sup> Scrutiny reservation by the Spanish delegation.

## **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. Member States will take account of these principles in the case of all proposals for changes to their national legislation. In addition, Member States will 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. 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.

---

# SEMDOC

Statewatch European Documentation &  
Monitoring Centre on justice and home  
affairs in the European Union

PO Box 1516, London N16 0EW, UK  
tel: 0181 802 1882 (00 44 181 802 1882)  
fax: 0181 880 1727 (00 44 181 880 1727)

11217/94

ADD 1  
RESTREINT

JAI 61

## NOTE

---

from: General Secretariat of the Council

---

Subject: Draft Resolution on minimum guarantees for asylum procedures

---

The Council (JHA) on 30 November and 1 December agreed on the following wording of principle 20 of the draft Resolution on minimum guarantees for asylum procedures:

"Member States may provide for exceptions to principle 17 in limited cases, under national law, when in consideration of objective criteria extraneous to the application itself, an application is manifestly unfounded in accordance with points 9 and 10 of the Resolution adopted by the Immigration Ministers on 30 November and 1 December 1992. However, in such cases it should at least be guaranteed that the decision on the application is taken at a high level and that additional sufficient safeguards (e.g. the same appreciation before the execution of the decision, by another authority which shall be of a central nature and have the necessary knowledge and experience in the field of asylum and refugee law) ensure the correctness of the decision."