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REV 4
LIMITE

ASIM 90

NOTE

from: the Presidency

to : K.4 Committee

No. prev. doc.: 6575/96 ASIM 61

Subject: Draft recommendation on conditions for the reception of asylum seekers

Following the K.4 discussion on 7-8 October 1996 (see doc. 10556/96 CK4 30), herewith is the revised text on conditions for the reception of asylum seekers.

COUNCIL RECOMMENDATION

of

on conditions for the reception

of

asylum seekers

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union, and in particular Article K.3(2)(a) thereof ;

Whereas, within the meaning of Article K.1(1) of the Treaty, asylum policy is regarded as a matter of common interest for the Member States;

Stressing the importance of the Member States, true to their common humanitarian tradition, granting refugees appropriate 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, hereinafter referred to as "the Geneva Convention";

Bearing in mind the objective of harmonizing Member States' asylum policies, set by the European Council in Strasbourg on 8 and 9 December 1989 and further developed by the European Council in Maastricht on 9 and 10 December 1991, and the European Council in Brussels on 10 and 11 December 1993;

Bearing in mind the Commission Communication of 23 February 1994 to the Council and the European Parliament on immigration and asylum policies;

Bearing in mind that unaccompanied minor asylum seekers should be regarded as a particularly vulnerable group needing special safeguards and care relating to their conditions which, therefore, will be set out in a separate instrument;

Mindful of the Council Resolution on Minimum Guarantees for Asylum Procedures adopted on 20 June 1995;

Mindful of the need, if the rights of refugees are to be protected, to ensure appropriate conditions for the reception of asylum seekers;

Whereas progress should be made on the process of harmonizing asylum policy with regard to the conditions under which asylum seekers may stay in their host country pending a decision on their application, so as to avoid any imbalances as a result of the diversity of the reception systems provided for in each Member State;

Mindful of the Member States' obligations under the European Convention for the Protection of Human Rights and Fundamental Freedoms of 4 November 1950;

Bearing in mind that it is desirable to promote an adequate degree of public awareness in order to foster better understanding of the asylum issue in all its dimensions.

Hereby RECOMMENDS that the Member States should take the following guidelines into account when determining reception conditions and should communicate them to the competent authorities responsible for the reception of asylum seekers which are hereby invited to take them as a basis.

I. GENERAL PRINCIPLES

1. These guidelines concern conditions for the reception of asylum seekers until a decision on the application has been made⁽¹⁾. They do not, therefore, concern the formal aspects of asylum procedures which are laid down in national legislations or the minimum guarantees which will apply to the examination of asylum applications which are set out in the Council Resolution of 20 June 1995 ;
2. Any implementation of these guidelines will not be subject to any form of discrimination.

II. INFORMATION

3. Each Member State should ensure that asylum seekers are informed in good time of the practical arrangements for their reception and of any other useful information. Such information may be provided by the competent authorities of the Member State concerned. Similar information may also be provided by non-governmental organizations or by private institutions. It may be given in writing and/or orally.
4. Asylum seekers should also be informed of the existence of any repatriation programmes.

⁽¹⁾ German reservation: The German delegation wishes the time period comprehended to be more precisely defined.

III. RECEPTION FACILITIES

5. (1) On first contact :

Member States should ensure that those officials who have such contacts with persons seeking asylum :

- are adequately informed of the asylum process ;
- are in a position to direct such persons to the appropriate agencies which are in a position to cater for the immediate needs which they might require ;
- are in a position to inform an applicant of relevant services or agencies, such as the UNHCR, which may be in a position to provide further material assistance as necessary;

6. On entry into formal procedures :

Member States should ensure that State officials who deal with asylum seekers, insofar as this is necessary for the performance of their duties :

- are fully informed of the asylum process and trained in asylum procedures ;
- have suitable waiting/interview facilities to ensure confidentiality of the interview ;
- are in a position to call on the services of an interpreter, if necessary ;
- have relevant information, e.g. information leaflets, available to give to the asylum seekers.

(1) German scrutiny reservation.

IV. CO-ORDINATION

7. Member States should consider the adoption of measures necessary to co-ordinate the activities of the competent services or authorities involved in the reception of asylum seekers.
8. This could be implemented by encouraging communications between relevant government and voluntary agencies and by arranging appropriate training for persons who assume responsibilities in the area in order that they understand the needs of asylum-seekers, perhaps with UNHCR assistance.
9. The significant contribution which NGOs, local communities together with the UNHCR can make in the area of reception conditions of asylum seekers and in assistance towards asylum seekers is recognised. Member States are encouraged to continue and to develop existing cooperation with such bodies.

V. FREEDOM OF MOVEMENT

10. In principle, asylum seekers may move freely within the territory of the host country. The place of residence of an asylum seeker may, however, be determined by the relevant competent authorities. In order to assure that asylum procedures are carried through quickly, Member States may limit the freedom of movement on parts of their territory ⁽¹⁾
11. Asylum seekers should not be detained solely because they are asylum seekers. They should only be detained for other reasons and in circumstances as permitted by law. Any detention should be only for such period as deemed necessary and reasonable and be subject to the possibility ⁽²⁾ of a judicial review.

(1) Scrutiny reservation by the Italian delegation which wants to add "They shall inform the relevant authorities, as instructed, of their current address and communicate them immediately of any change of address".

(2) Belgian reservation.

VI. APPLICATIONS FOR ASYLUM PRESENTED AT THE BORDER

12. Asylum seekers who present their applications at border posts and who under national provisions must stay in special places pending a decision as to whether or not they are to be admitted to the territory should⁽¹⁾ be given all necessary material assistance and provision of basic necessities of life such as food, shelter, and basic sanitary and, where necessary, basic health facilities.

VII. RECEPTION ARRANGEMENTS

13. ⁽²⁾ In accordance with national provisions, asylum seekers should ⁽¹⁾ receive necessary support such as board, lodging and care. To that end, they may be housed in centres or lodgings organised by the State. The management of such centres may be the direct responsibility of the State or be placed in the hands of other institutions or agencies present in the territory, including NGOs or other organisations. Alternatively, they may in appropriate circumstances receive adequate means of subsistence sufficient to cover board, lodging and care.
14. In accordance with national provisions, Member States may review the provisions of material support to certain asylum seekers. For example, where the laws of the host country authorise asylum seekers to enter the job market, the competent authorities in determining the level and nature of support arrangements should take due account of the possibilities for asylum seekers who are in receipt of income to provide for their own subsistence.⁽³⁾
15. With regard to educational facilities, children of asylum seekers or minor asylum seekers of school age should have access to the regular public education facilities on the same basis as nationals or, alternatively, appropriate special educational facilities should be offered to them. ⁽¹⁾

⁽¹⁾ Belgian reservation.

⁽²⁾ United Kingdom reservation on § 15 and 16.

⁽³⁾ Austrian scrutiny reservation.

16. Asylum seekers should receive appropriate medical treatment to meet immediate needs. Specialised assistance should be provided for asylum seekers who have suffered torture, rape or other serious physical or sexual violence.
17. Facilities should be adequate to meet the educational, medical, psychological and other special needs of particularly vulnerable persons seeking asylum. In this context, it may be necessary to give particular consideration to the specific needs of women and children and to the particular requirements of handicapped persons.
18. Special provision should be made for the protection and care of unaccompanied minors as far as necessary. Upon arrival, adequate accommodation should be provided pending a decision on their case.

VIII. More favourable provisions

19. The guidelines herein are without prejudice to the powers of Member States to grant asylum seekers more favourable conditions generally or in accordance with the stage of the asylum process.
