

8069/94

RESTREINT

ASIM 132

NOTE

from: German Presidency

to : Migration Working Party (Expulsion)

Subject: Draft questionnaire examining the situation of persons who for one reason or another cannot be expelled

Draft questionnaire:
Examining the situation of persons who for one reason or
another cannot be expelled

A. Introduction

In the area of immigration, the work programme of the Council of the European Union includes as a priority action examination of the situation of persons who for one reason or another cannot be expelled. This questionnaire deals in particular with political and legal obstacles to expulsion. It does not cover technical obstacles which rule out expulsion (= implementation of expulsion measures).

In 1991 under the Netherlands Presidency the Subgroup on Asylum drafted a questionnaire on the expulsion of asylum-seekers whose applications have been rejected. That questionnaire deals primarily with practical obstacles to expulsion:

- factors in the alien's personal situation
 - unwillingness on the part of diplomatic or consular representations to co-operate in establishing nationality in order to obtain a laissez-passer
 - technical obstacles
 - lack of co-operation on the part of the alien
- and whether and on what conditions expulsion can take place after the obstacles have been removed.

In contrast, this questionnaire concentrates on obstacles to expulsion linked with the situation in the country of origin.

B. Legal provisions

1. International law

Which treaties of international law guaranteeing protection against torture or inhuman or degrading punishment has your State ratified?

2. National legal provisions

Which obstacles to expulsion are provided for in your national law?

3. Residence status

(a) Legal residence status

What legal residence status is granted in your country to individuals who cannot be expelled for legal or political reasons?

– Reuniting of families

Do the individuals in question have a right to be reunited with their families?

(b) other rights

– Work permit

Can individuals who cannot be expelled for legal or political reasons be granted a work permit?

– state benefits such as welfare, unemployment benefit

Is an individual in need who cannot be expelled entitled to state benefits such as unemployment benefit, welfare or other state support? If so, on what conditions?

5. Legal remedies

Can the alien in question lodge an appeal against threatened expulsion? If so, do appeals have suspensory effect?

C. Various categories of political and legal obstacles to expulsion and temporary waiver of expulsion

1. Measures by the State

(a) Death penalty

Can expulsion and return also take place to a country in which the alien concerned is threatened with the death penalty? If not, is imposition of the death penalty sufficient in itself or must there also be a likelihood of enforcement?

Can an alien be expelled and returned to a country if it guarantees that the death penalty will not be carried out? What form must such a guarantee take?

Does the threat of imprisonment on "death row" constitute an obstacle to expulsion?

Is expulsion/non-expulsion also dependent on the way in which the death penalty is carried out?

What is the relationship in your country between an obstacle to expulsion because of a threat of the death penalty and non-extradition to a country in which there is a threat of a death penalty?

Does non-judicial execution – i.e. execution which is not ordered by the State – constitute an obstacle to expulsion?

(b) Torture

How is torture defined in your country? Can you list practical examples?

How specific must the threat of torture be to justify its use as an obstacle to expulsion?

Under what conditions does expulsion not take place because of a threat of torture in the State of origin?

(c) inhuman or degrading treatment or punishment

Can an alien be expelled to a country in which the courts can legally order corporal punishment to be inflicted on him?

Can an alien be expelled to a State where there is a real danger that a punishment under Islamic law will be imposed on him?

Is an alien expelled to a State where he is threatened with an extremely disproportionate, but in itself admissible, punishment?

Is the alien in question expelled, despite the threat of particularly harsh conditions of imprisonment, such as unjustified isolation or withholding of medical or psychological care?

Can an alien be expelled if there is a danger that he will be subject to particularly harsh interrogation methods?

On what other conditions is expulsion waived because of inhuman or degrading treatment or punishment?

2. Measures taken by third parties

(a) Blood feuds

(b) Anarchy

Is expulsion waived where there is a threat of persecution by third parties, for example in the case of blood feuds or anarchy, not attributable to the State?

3. Civil war as a special case

On what conditions is there a waiver of expulsion to countries in a state of civil war? Can you give instances? Must there be a specific threat to the person, life or liberty of the alien concerned in such cases?

4. Political and economic conditions

Can, under certain circumstances, expulsion to countries in which there are unfavourable political, economic or other special circumstances (for example natural catastrophes, famine) be waived? Can you give practical instances? Must there be a specific threat to the person, life or liberty of the alien concerned in such cases?

5. General ban on expulsion

On what conditions can expulsion of particular groups of foreigners be waived? Please give practical examples.

D. Limitation of a ban on expulsion for reasons of national security

Must expulsion also be stopped in cases where, although obstacles to expulsion exist, the continued presence of the alien in the country would constitute a danger to public order and national security?