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"I"/"A" ITEM NOTE

from: Permanent Representatives Committee (Part 2)

to : Council (Justice and Home Affairs)

No. prev. doc.: 10300/93 ASIM 19

Subject: Implementation of the Dublin Convention

- Means of proof

1. At its meeting on 29 and 30 November 1993, the Council (Justice and Home Affairs) reached agreement in principle on the text set out in the Annex hereto, subject to the Netherlands withdrawing a parliamentary scrutiny reservation and Spain withdrawing a general reservation.

2. At the meeting of the Council (Justice and Home Affairs) on 23 March 1994, the Netherlands delegation stated that the above reservation had been withdrawn.

3. In a letter dated 7 March (see 5450/94 ASIM 55), the Spanish delegation stated that it was withdrawing the general reservation on asylum which had been entered at the Justice and Home Affairs Council on 29 and 30 November 1993.

4. It is therefore suggested that the Committee recommend that the Council adopt the text annexed hereto at one of its forthcoming meetings.

Means of proof in the framework of the Dublin Convention

I. Principles regarding the collection of evidence

The way in which examples of proof are used to determine the State responsible for examining an asylum application is fundamental to the implementation of the Dublin Convention.

Responsibility for processing an asylum application should in principle be determined on the basis of as few requirements of proof as possible.

If establishment of proof carried excessive requirements, the procedure for determining responsibility would ultimately take longer than examination of the actual application for asylum. In that case, the Convention would fail totally to have the desired effect and would even contradict one of its objectives since the delays would create a new category of "refugees in orbit", asylum-seekers whose applications would not be examined until the procedure laid down under the Dublin Convention had been completed.

Under too rigid a system of proof the Member States would not accept responsibility and the Convention would be applied only in rare instances, while those Member States with more extensive national registers would be penalized since their responsibility could be proved more easily.

A Member State should also be prepared to assume responsibility on the basis of indicative evidence for examining an asylum application once it emerges from an overall examination of the asylum applicant's situation that, in all probability, responsibility lies with the Member State in question.

The Member States should jointly consider in a spirit of genuine co-operation on the basis of all the evidence available to them, including statements made by the asylum-seeker, whether the responsibility of one Member State can be consistently established.

Lists A and B are drawn up on the basis of those considerations.

II. General considerations regarding lists A and B

It was considered necessary to draw up two lists of means of proof: probative evidence as in list A and indicative evidence as in list B (see Annex).

The first (list A) sets out the means of probative evidence. These as in list A conclusively prove responsibility under the Dublin Convention, save where rebutted by evidence to the contrary (e.g. showing documents not to be genuine).

The second (list B) is not exhaustive and contains means of proof consisting of indicative elements to be used within the framework of the Dublin Convention. These are means of proof having indicative value. Indicative evidence as in list B may be sufficient to determine responsibility, depending on the weighing-up of evidence in a particular case. It is by nature rebuttable.

These lists may be revised in the light of experience.

It seems useful to indicate that the weight of proof of these elements may vary according to the circumstances of each individual case. Items will be classified as probative evidence or indicative evidence according to the point to be proved. For instance, a fingerprint may provide probative evidence of any asylum-seeker's presence in a Member State, yet form only indicative evidence as to whether the asylum-seeker entered the Community at a particular external frontier.

This distinction made it necessary to draw up two separate lists of probative evidence (list A) and indicative evidence (list B) for each point to be proved under the Dublin Convention; thus, annexed hereto is a breakdown of means of proof according to the point to be proved.

By the same token, the degree of probative force of official documents is not always the same from one Member State to another. The same document can be drawn up for different purposes or by different authorities, depending on the Member State concerned.

(a) **List A**

The probative evidence in list A provides conclusive proof of a Member State's responsibility for examining an asylum application, save where rebutted by evidence to the contrary (e.g. showing a document to be forged).

For this purpose, Member States will provide examples of the various types of administrative documents, on the basis of a version of list A. Specimens of the various documents will be reproduced in the joint handbook for the application of the Dublin Convention. This will make for greater efficiency and help the authorities to identify any false documents produced by asylum-seekers. Some of the items of proof in list A constitute the best possible instruments to be used for the application of Articles 4, 5(1), 5(2), 5(3) and 5(4) of the Dublin Convention.

(b) **List B**

List B contains indicative evidence the probative value of which in determining responsibility for examining an asylum application will be weighed up on a case-by-case basis.

These indications could be very useful in practice. They could not, however, irrespective of their number, constitute items of proof of the kind laid down in list A, in order to determine the responsibility of a Member State.

While not proof, such items could nonetheless determine towards which Member State the search for the State responsible within the meaning of the Convention might justifiably be directed.

The Member State in question would consult its various records to determine whether its responsibility was involved.

Where more than one Member State is responsible, the Member State which first received an application for asylum will ascertain which had the greater responsibility under the Dublin Convention, in accordance with the principle laid down in Article 3(2) whereby criteria for responsibility apply in the order in which they appear.

This approach would prevent asylum-seekers being passed successively from one State to another, complicating the procedures and creating delay.

In particular, where an asylum-seeker passes through several Member States before submitting an application in the last one, the State applied to must not simply assume that responsibility lies with the State through which the applicant last passed.

Where there are specific reasons to believe that more than one State may be responsible, it is for the State in which the application was submitted to attempt to ascertain which of the States in question is required to examine the asylum application, having regard to the order of criteria for determining responsibility laid down in the Dublin Convention.

LIST A

A. MEANS OF PROOF

I. Process of determining the State responsible for examining an application for asylum

1. Legal residence in a Member State of a family member recognized as having refugee status (Article 4)

   Probative evidence

   - written confirmation of the information by the other Member State;
   - extracts from registers;
   - residence permits issued to the individual with refugee status;
   - evidence that the persons are related, if available;
   - consent of the persons concerned.

2. Valid residence permits (Article 5(1) and (3)) or residence permits which expired less than 2 years previously [and date of entry into force] (Article 5(4))

   Probative evidence

   - residence permit;
   - extracts from the register of aliens or similar registers;
   - reports/confirmation of information by the Member State which issued the residence permit.

3. Valid visas (Article 5(2) and (3)) and visas which expired less than 6 months previously [and date of entry into force] (Article 5(4))

Probative evidence

- visa issued (valid or expired, as appropriate);
- extracts from the register of aliens or similar registers;
- reports/confirmation by the Member State which issued the visa.

4. Illegal entry (first paragraph of Article 6) and legal entry at an external frontier (Article 7(1))

Probative evidence

- entry stamp in a forged or falsified passport;
- exit stamp from a country bordering on a Member State, bearing in mind the itinerary taken by the asylum seeker and the date the frontier was crossed;
- tickets conclusively establishing entry at an external frontier;
- entry stamp or similar endorsement in passport.

5. Departure from the territory of the Member States (Article 3(7))

Probative evidence

- exit stamp;
- extracts from third-country registers (substantiating residence);
- tickets conclusively establishing entry at an external frontier;
- report/confirmation by the Member State from which the asylum seeker left the territory of the Member States;
- stamp of third country bordering on a Member State, bearing in mind the itinerary taken by the asylum seeker and the date the frontier was crossed.

6. Residence in the Member State of application for at least six months prior to application (Article 6(2))

Probative evidence

Official evidence showing, in accordance with national rules, that the alien was resident in the Member State for at least six months before submitting an application.

7. Time of application for asylum (Article 8)

Probative evidence

- form submitted by the asylum seeker;
- official report drawn up by the authorities;
- fingerprints taken in connection with an asylum application;
- extracts from relevant registers and files;
- written report by the authorities attesting that an application has been made.

II. Obligation on the Member State responsible for examining the application for asylum to re-admit or take back the asylum seeker

1. Procedure where an application for asylum is under examination or was lodged previously (Article 10(1)(c), (d) and (e))

Probative evidence

- form completed by the asylum seeker;
- official report drawn up by the authorities;
- fingerprints taken in connection with an asylum application;
- extracts from relevant registers and files;
- written report by the authorities attesting that an application has been made.

2. Departure from the territory of the Member States (Article 10(3))

Probative evidence

- exit stamp;
- extracts from third-country registers (substantiating residence);
- exit stamp from a third country bordering on a Member State, bearing in mind the itinerary taken by the asylum seeker and the date on which the frontier was crossed;
- written proof from the authorities that the alien has actually been expelled.

3. Expulsion from the territory of the Member States (Article 10(4))

Probative evidence

- written proof from the authorities that the alien has actually been expelled;
- exit stamp;
- confirmation of the information regarding expulsion by the third country.

LIST B

B. INDICATIVE EVIDENCE

I. Process of determining the State responsible for examining an application for asylum

1. Legal residence in a Member State of a family member recognized as having refugee status (Article 4)

Indicative evidence ([1])

- information from the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR.

2. Valid residence permits (Article 5(1) and (3)) or residence permits which expired less than 2 years previously [and date of entry into force] (Article 5(4))

Indicative evidence

- declaration by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by the Member State which did not issue the residence permit;
- reports/confirmation of information by family members, travelling companions, etc.

3. Valid visas (Article 5(2) and (3)) and visas which expired less than 6 months previously [and date of entry into force] (Article 5(4))

Indicative evidence

- declaration by the asylum applicant;

([1]) This indicative evidence must always be followed by an item of probative evidence as defined in list A.

- reports/confirmation of information by international organizations, such as UNHCR;

- reports/confirmation of information by the Member State which did not issue the residence permit;

- reports/confirmation of information by family members, travelling companions, etc.

4. Illegal entry (first paragraph of Article 6) and legal entry at an external frontier (Article 7(1))

Indicative evidence

- declarations by the asylum applicant;

- reports/confirmation of information by international organizations, such as UNHCR;

- reports/confirmation of information by another Member State or a third country;

- reports/confirmation of information by family members, travelling companions, etc.;

- fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
In such cases, they constitute probative evidence as defined in list A;

- tickets;

- hotel bills;

- entry cards for public or private institutions in the Member States;

- appointment cards for doctors, dentists, etc.;

- information showing that the asylum applicant has used the services of a courier or a travel agency;

- etc.

5. Departure from the territory of the Member States (Article 3(7))

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by another Member State;
- re Article 3(7) and Article 10(3): exit stamp where the asylum applicant concerned has left the territory of the Member States for a period of at least 3 months;
- reports/confirmation of information by family members, travelling companions, etc.;
- fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
  In such cases, they constitute probative evidence as defined in list A;
- tickets;
- hotel bills;
- appointment cards for doctors, dentists, etc.;
- information showing that the asylum applicant has used the services of a courier or a travel agency;
- etc.

6. Residence in the Member State of application for at least 6 months prior to application (second paragraph of Article 6)

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by family members, travelling companions, etc.;
- declaration issued to permitted aliens;
- fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
  In such cases, they constitute probative evidence as defined in list A;
- tickets;
- hotel bills;
- appointment cards for doctors, dentists, etc.;
- information showing that the asylum applicant has used the services of a courier or a travel agency;
- etc.

7. Time of application for asylum (Article 8)

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by family members, travelling companions, etc.;
- reports/confirmation by another Member State.

II. Obligation on the Member State responsible for examining the application for asylum to re-admit or take back the asylum seeker

1. Procedure where an application for asylum is under examination or was lodged previously (Article 10(1)(c), (d) and (e))

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by another Member State.

2. Departure from the territory of the Member States (Article 10(3))

Indicative evidence

- declarations by the asylum applicant;
- reports/confirmation of information by international organizations, such as UNHCR;
- reports/confirmation of information by another Member State;
- exit stamp where the asylum applicant concerned has left the territory of the Member States for a period of at least three months;
- reports/confirmation of information by family members, travelling companions, etc.;
- fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
  In such cases, they constitute probative evidence as defined in list A;
- tickets;
- hotel bills;

- appointment cards for doctors, dentists, etc.;

- information showing that the asylum applicant has used the services of a courier or a travel agency;

- etc.

3. Expulsion from the territory of the Member States (Article 10(4))

Indicative evidence

- declarations by the asylum applicant;

- reports/confirmation of information by international organizations, such as UNHCR;

- exit stamp where the asylum applicant concerned has left the territory of the Member States for a period of at least three months;

- reports/confirmation of information by family members, travelling companions, etc.;

- fingerprints, except in cases where the authorities decided to take fingerprints when the alien crossed the external frontier.
  In such cases, they constitute probative evidence as defined in list A;

- tickets;

- hotel bills;

- appointment cards for doctors, dentists, etc.;

- information showing that the asylum applicant has used the services of a courier or a travel agency;

- etc.