

5100/98

LIMITE

ASIM 4

OUTCOME OF PROCEEDINGS

of: Asylum Working Party with migration experts

on: 12 December 1997

1. Adoption of the agenda

The agenda set out in telex no 5174 of 8 December 1997 was adopted, with several items added under "Other business" (see 4 below).

As the Netherlands delegation wanted to bring to the Working Party's attention questions regarding the interpretation of Articles 5, 8 and 10 of the Dublin Convention, it was decided to deal with them under Item 2 on the agenda.

2. Application of the Dublin Convention

Since the question whether the Asylum Working Party was empowered to deal with questions regarding the application of the Dublin Convention had been raised, the Presidency pointed out that the matter of the Working Parties of the Dublin Convention Article 18 Committee had already been examined ⁽¹⁾ and the conclusion had been that the Asylum Working Party would examine the various questions regarding the application of the Dublin Convention and the statistical data exchanged each quarter between the Member States.

The Netherlands delegation suggested that in future the Asylum Working Party's agendas be worded in such a way as to make a clear distinction between its responsibilities regarding the application of the Dublin Convention and its traditional responsibilities.

(¹) Meetings of the Asylum Working Party on 10 and 11 July 1997 and of the K.4 Committee on 24 and 25 July 1997.

(a) *Responsibility of a Member State in the event of unlawful transit through one of its airports*

12611/97 ASIM 231

The Austrian delegation referred to the Working Party the question of the extent to which unlawful transit through an airport of a Member State might constitute grounds for that Member State to be held responsible under the Dublin Convention (ASIM 231). The Austrian delegation proposed as a uniform solution that illegal transit through a Member State should indeed result in that Member State being responsible, pursuant to Article 6 (irregular crossing of a border) and, conversely, of an interpretation of Article 7(2) (visa-free transit authorization) of the Convention. Such a solution would moreover comply with the solution applied in the Schengen context.

The large majority of delegations entered scrutiny reservations and asked to be given the opinion of the Council Legal Service.

The German delegation said that it could not agree to the Austrian delegation's proposal. In particular, it felt that it might result in Member States which required an airport transit visa being penalized. Moreover, it emphasized the differences which existed between Schengen and Dublin and which meant that it was not always possible to argue in the same way in the two cases.

This position was supported by several other delegations. Some delegations also wanted to look more closely at whether passing through the transit area amounted to "entry" under the Dublin Convention.

The Chairman concluded that the question would be examined again at the next meeting, in the light of the opinion to be delivered by the Council Legal Service.

(b) *Withdrawal of an asylum application: consequences for the application of the Convention*

13304/97 ASIM 246

The United Kingdom delegation explained the difficulties caused for application of the Dublin Convention by cases of withdrawal of an asylum application, which were dealt with in its note (ASIM 246). It suggested adopting the general principle that a person who withdrew his application for asylum no longer came under the

Dublin Convention except in the case, explicitly provided for in Articles 3(7) and 10(1)(d) of the Convention, where he requested asylum in another Member State. In the case where a person withdrew his asylum application and sought a form of subsidiary protection, the United Kingdom delegation suggested that it would be open to Member States to agree amongst themselves that the Dublin Convention should continue to apply if they considered that the protection requested might amount to asylum.

Most delegations wanted to go into this question in more detail and entered scrutiny reservations at this stage.

By way of initial reaction, the majority of delegations agreed that the Dublin Convention should no longer apply once the asylum application had been withdrawn and no subsidiary protection requested.

On the other hand, the idea that the Dublin Convention should apply in cases where the asylum application had been withdrawn and subsidiary protection requested gave rise to considerable misgivings. Some delegations and the representative of the Commission Legal Service felt that the Dublin Convention could apply only to asylum applications based on the Geneva Convention and that to apply it to requests for subsidiary protection would constitute an extension of its scope which, in the Commission representative's view, would require it to be amended.

In conclusion, the Presidency proposed that this matter be examined in more detail at the next meeting, on the basis of the United Kingdom paper.

(c) Differences in the interpretation of Articles 5, 8 and 10 of the Dublin Convention

The Netherlands delegation mentioned two cases which had occurred and which had led to different interpretations by Member States:

1. Article 5(1):

A person holding a residence permit in another Member State had applied for asylum in the Netherlands. The Netherlands had asked that Member State to take the person back pursuant to Article 5(1) of the Dublin Convention. The Member State had rejected the Netherlands request, considering that since the person had been given refugee status the Dublin Convention no longer applied.

2. Articles 8 and 10:

Asylum proceedings had been initiated in the Netherlands and in another Member State. They had ended in the other Member State and were still continuing in the Netherlands. The Netherlands felt that responsibility lay with the other Member State on the basis of Article 8 of the Dublin Convention. The other Member State was of the view that Article 10 of the Convention was applicable in this case (illegal stay). In the Netherlands, the applicant's stay was not considered illegal.

In the two cases mentioned above, in the absence of confirmation that the other Member State had agreed to the request to take the person back, the asylum application had had to continue to be processed in the Netherlands pursuant to Dutch law. The Netherlands delegation felt that this was contrary to the spirit of the Dublin Convention, which stipulated that an application should be examined by a single Member State.

Regarding application of the Dublin Convention to persons already recognized as refugees in a Member State, the representative of the Council Legal Service said that this question had already been discussed both by the Asylum Working Party and the Eurodac Working Party and that the Legal Service had issued an opinion on the *ratione personae* scope of the Dublin Convention (see 8999/97 JUR 215 ASIM 128).

The Netherlands delegation said it might come back to this question.

3. Commission proposal for a joint action concerning temporary protection of displaced persons

7042/97 ASIM 64

10391/97 ASIM 164

13006/97 ASIM 242

The outcome of discussions on this item on the agenda is given in 5069/98 ASIM 2.

4. Other business

- *Joint handbook for the common application of the Dublin Convention (specimens of administrative documents of the Member States)*

The Presidency recalled that at the meeting of the Asylum Working Party on 3 November it had been agreed that the Schengen Presidency would ask the Schengen Secretariat to forward to the General Secretariat of the Council the specimens of the administrative documents of the Schengen States in its possession. This question had been on the agenda of the Schengen asylum meeting on 11 December and it had been noted that only three States had sent these specimens to the Schengen Secretariat. Consequently, the Presidency asked all Member States to forward the specimens directly to the General Secretariat of the Council as soon as possible.

- *Quarterly statistics on the Dublin Convention*

The Presidency pointed out that Article 14 of the Dublin Convention stipulated that the Member States should exchange statistical data every three months. Since the Convention had entered into force on 1 September 1997, it asked Member States to send the General Secretariat of the Council their statistics for the first quarter of application of the Convention.

- *Amendments to legislation*

The Belgian delegation said that according to the press an amendment to the law on asylum involving a new obligation for asylum seekers to prove their identity, was being debated in the Netherlands. It asked whether similar discussions were being held in other Member States.

The Netherlands delegation confirmed that a bill was at present being debated by the Netherlands Parliament, the purpose of which would be to reverse the burden of proof of identity of asylum seekers, whose applications might be rejected where there were not good reasons justifying the absence of documents.

The Danish delegation said that the particular problems which arose regarding asylum seekers without documents were also a subject of concern in

Denmark. This issue was referred to in the note which it had sent

to CIREA regarding the processing times for asylum applications (12114/97 CIREA 91). It pointed out that the future United Kingdom Presidency had also produced a note on the swift processing of asylum applications (12824/97 ASIM 239) and suggested that the question of asylum seekers without documents be dealt with in that framework.

- *Future United Kingdom Presidency timetable*

The United Kingdom delegation announced that the first Asylum Working Party meeting under the UK Presidency would be held on 9 January 1998. The timetable for subsequent meetings would be distributed to delegations shortly. It said that in the United Kingdom Presidency's work programme priority would be given to the practical questions of the application of the Dublin Convention.

