EUROPEAN PARLIAMENT

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COMMITTEE ON CIVIL LIBERTIES AND INTERNAL AFFAIRS

Notice to members

Please find enclosed a survey drawn up by the Directorate-General for Research on the right of asylum in the Member States. This survey is available in German and English.

DIRECTORATE-GENERAL FOR
COMMITTEES AND DELEGATIONS

Annex

DIRECTORATE-GENERAL FOR RESEARCH
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KHO/ACL/ev
IV/WIP/91/09/085

Luxembourg, 1 October 1991

Survey of the right of asylum in the Community Member States

as at 1 October 1991

Introduction

All the Member States are signatory to the Geneva Convention relating the Status of Refugees of 28 July 1951, hence bound by Article 33 thereof prohibiting the expulsion or return of refugees. Under this article, no Contracting State shall expel or return a refugee to the frontiers of a territory where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion.

The various Member States have implemented this convention at national level in totally different ways.

1. Belgium

a. Legal basis

The Belgian Constitution contains no provisions on the right of asylum. Arrangements for asylum seekers are governed by the general legal provisions for aliens contained in the Act of 15 December 1980 on access to the territory and the residence, establishment, and removal of aliens (see Annex). The provisions on the right of asylum contained in this law were greatly tightened up in February 1988 (see Article 48 ff.).

b. Entry

Provisions on the right of asylum have been tightened up particularly in respect of entry. As a result, the Minister of Justice is empowered to refuse entry in the following cases (see Article 52):

- if the alien can be considered as constituting a danger to public safety and order,
- if application for asylum has obviously been for obviously other, inadmissible motives,
- if the applicant is in possession of a valid ticket for transport to a third country,

- if he has already been resident in a third country for more than 3 months,

- if he has already been expelled or returned.

As a rule, the decision to refuse entry must be taken within 24 hours. Various legal channels of appeal are available against such a decision, depending on whether the decision has been taken by the aliens' registration authorities or the Ministry of Justice.

c. Application for asylum

The decision on admissibility of an application for asylum is taken by the Minister of Justice. A General Commission for Refugees and Stateless Persons has recently been set up to assess refugees' motives in leaving their country. It reaches its decisions in accordance with the provisions of the Geneva Convention on Refugees (Article 48).

d. Appeal

Applicants for asylum can appeal against rejection of their application to the Standing Appeals Committee for Refugees (Commission permanente de recours des réfugies) (Article 57/11). An appeal against this body's decision can be lodged with the Council of State but does not justify a stay in proceedings.

2. **Denmark**

a. Legal basis

The Danish Constitution contains no provisions on the right of asylum. The legal basis for recognition as a refugee is Article 226 of the Aliens Act of 8 June 1983, which has since been amended and tightened up on several occasions.

b. Entry

Under rules introduced in 1986, foreigners may be refused entry if they are not in possession of the necessary documents.

c. Application for asylum

The Aliens' Registration Office is responsible for the recognition of refugees.

d. Appeal

An appeal against rejection leading to a stay in proceedings may be lodged with the Refugees' Office which proceeds along the same lines as a court of law. If the Aliens' Registration Office classifies the application as obviously unfounded, however, the appeal does not justify a stay in proceedings and it is even possible for the Aliens' Registration Office to rule out appeal. In practice, however, foreigners are tolerated in large numbers even in cases where applications for asylum have been rejected.

3. Germany

a. Legal basis

Under Article 16(2) of the German Basic Law 'persons persecuted on political grounds shall enjoy the right of asylum', granting foreigners a subjective right of asylum. The procedure for the granting of asylum is set out in the Asylum Procedure Act (AsylVfG; see Annex) of 6 July 1982.

b. Entry

An applicant for asylum can be refused entry if he has obviously established residence in a safe third country (Paragraph 9 of the Asylum Procedure Act).

c. Application for asylum

Applications for asylum must be made to the border or aliens' authorities (Paragraph 8 of the Asylum Procedure Act). If the application is no longer admissible because the applicant has obviously found protection elsewhere or because another application on the same substantive and legal grounds has already been rejected, the applicant is obliged to leave (Paragraph 7 of the Asylum Procedure Act). The applicant may lodge an appeal, which does not constitute a stay in proceedings. Request for a stay in proceedings must be made within a week (Paragraph 7(III) of the Asylum Procedure Act). The asylum procedure is referred by the authorities to the Federal Office for the Recognition of Foreign Refugees for further consideration.

d. Appeal

If an application for asylum is refused, the applicant may lodge an appeal which constitutes a stay in proceedings (Paragraph 30 of the Asylum Procedure Act). The applicant may only appeal against the judgment of the administrative court if the court, by way of exception, allows it (Paragraph 31 of the Asylum Procedure Act). However, if the Federal Office rules that the application is obviously unjustified, since it is clearly motivated by factors other than political persecution the applicant is obliged to leave. The applicant may lodge an appeal which does not constitute a stay in proceedings. A request for a stay may be made to the court within a week (Paragraph 11 of the Asylum Procedure Act).

Applicants for asylum in the Federal Republic are frequently allowed to stay for humanitarian reasons (Paragraph 55 of the Aliens' Act).

4. Greece

a. Legal basis

The Greek Constitution contains no provisions on the right of asylum. Right of asylum is decided on the basis of the Geneva Convention on Refugees. The procedure is not laid down by law but by decree.

b. Entry

An applicant for asylum may enter the country even if he does not possess the necessary documents. However, he may be refused entry if he is already recognized as a refugee in another country.

c. Application for asylum

The Aliens Division of the National Security Service is responsible for considering applications for asylum.

d. Appeal

An appeal may be made, after referral to an advisory committee, to the Minister of Public Order. The applicant may then lodge an appeal to the administrative court constituting a stay in proceedings. Those whose applications have been rejected and who are in danger of persecution in their home country because of the current situation are generally allowed to stay until they have found another country willing to take them.

5. Spain

a. Legal basis

The Spanish Constitution contains no provisions on the right of asylum. The legal basis for granting asylum is the 'Law of 26 March: Regulation of the Right of Asylum and the Status of Refugee' (see Annex). This is intended to complement the Geneva Convention on Refugees.

b. Entry

Entry may be refused if, for example, the applicant already enjoyed protection from persecution in another country. An appeal against refusal of entry may be made to the administrative court which does not justify a stay in proceedings (Article 5).

c. Application for asylum

The Minister of the Interior, with the help of other ministries (Article 6) decides on the request for asylum. In addition, there are special procedures for obtaining refugee status, where the decision also lies with the Ministry of the Interior (Article 22). While the right of asylum entitles the applicant to only temporary residence, refugee status entitles foreigners to permanent residence.

d. Appeal

An appeal against rejection of an application may be made to the Cabinet (Article 21). Legal proceedings may be taken against refusal to grant refugee status (Article 24). In addition, applicants may be allowed to stay for humanitarian reasons after their applications have been rejected.

6. France

a. Legal basis

The right to asylum is embodied in the French Constitution. The preamble to the French constitution of 28 September 1958 refers to the preamble of the French Constitution of 27 October 1946 which states:

'Any person persecuted because of his action in favour of freedom shall have the right of asylum on the territories of the Republic'.

The only relevant legislation is contained in Act No. 52-893 on the creation of a French Office for the Protection of Refugees and Stateless Persons (see Annex). Other provisions are contained in administrative decrees, for example Decree No. 53-377 of 2 May 1953 (see Annex). These decrees which are enacted by the Executive, can be adapted to the circumstances whenever necessary.

b. Entry

Foreigners may not be refused entry because they do not have the necessary documents. Entry may, however, be refused if a foreigner comes from a third country already able to offer him protection or in which he could have applied to the French foreign representation for permission to enter France.

c. Application for asylum

Asylum must be requested from the French Office for the Protection of Refugees and Stateless Persons, an autonomous office linked to the Foreign Ministry, which decides on the basis of the Geneva Convention on Refugees (Article 2 of Act No. 52-893).

d. Appeal

Appeals against rejection of application may be lodged with an appeals committee (Article 5, Act No. 52-893).

Appeals against the committee's decision on legal grounds may be lodged with the Council of State.

7. Ireland

a. Legal basis

The Irish Constitution contains no provisions on the right of asylum and no special provisions exist. They do not appear to be necessary, given the low number of applicants (57 in 1987). Applications are dealt with on the basis of the Geneva Convention on Refugees and no formal procedures exist.

b. Application for asylum

The Department of Justice is responsible for applications for asylum.

c. Appeal

No appeal against rejection is possible. The Department of Justice has discretion to decide whether foreigners without refugee status may remain in Ireland.

8. Italy

a. Legal basis

The right to asylum is embodied in the Italian Constitution.

'A foreigner to whom the practical exercise in his own country of democratic freedoms, guaranteed by the Italian Constitution, is precluded, is entitled to the right of asylum within the territory of the Republic under the conditions laid down by law.'

The Geneva Convention on Refugees has force of law in Italy. There is no other law encompassing the right of asylum. However, because of Italy's reservations, the Convention is applied only to refugees of European origin.

b. Entry

While Italy has introduced entry restrictions in the form of visas, in practice no regular border controls take place.

c. Application for asylum

Applications from European refugees are decided upon by a special commission. Other refugees are allowed to stay for humanitarian reasons until another host country is found.

d. Appeal

Procedures exist for appeal against rejection, which may be lodged with the administrative courts.

9. Luxembourg

a. Legal basis

There are no provisions on the right of asylum in the Constitution of Luxembourg, where the Geneva Convention on Refugees has force of law. No other particular provisions apply to the right of asylum.

b. Entry

In recent years, the Government has taken a number of restrictive measures, in particular concerning the introduction of visa requirements for certain countries.

c. Application for asylum

The Foreign Ministry, with the help of the Minister of the Interior and the Public Security Service is responsible for deciding on applications for asylum. Applications are rejected if applicants have been expelled from a country, if the justification given does not meet the minimum legal requirements or if the application is made too late.

d. Appeal

Appeals against rejection of applications may be made to the arbitration committee of the Council of State without justifying a stay in proceedings.

10. Netherlands

a. Legal basis

No provisions on the right of asylum are contained in the Constitution. The legal basis is the Aliens' Act of 1985 embodying provisions of the Geneva Convention on Refugees.

b. Entry

Since 1987, an accelerated procedure has existed to decide on entry for those seeking asylum in a Netherlands airport. If entry is refused, the applicant may request provisional legal protection.

c. Application for asylum

Applications for asylum are decided upon by the Minister of Justice in cooperation with the Foreign Minister (Article 15). In 1987, the law was amended to provide for an accelerated procedure for the rejection procedure of unjustified or improper applications.

d. Appeal

Appeals against rejection of applications lodged with the Minister of Justice, and subsequently to the Administrative Court, in which case the matter is referred to the representative of the UN High Commissioner for Refugees for an opinion.

11. Portugal

a. Legal basis

Article 33(6) of the Constitution states that:

'The right of asylum shall be secured to aliens and stateless persons who are persecuted or seriously threatened of persecution as a result of their activities on behalf of democracy, social and national liberation, peace among the peoples or individual freedom and human rights'.

The right of asylum is set out in the Act on Asylum and the Status of Refugees of 1 August 1980.

b. Entry

Entry may be refused if the applicant has already been rejected and expelled by a third country or the justification for the application for asylum does not meet the minimum legal requirements.

c. Application for asylum

Application for asylum must be made within 60 days of arrival or submission of the relevant facts to the aliens' registration authorities. The application is then decided on by the Ministry of Justice and the Ministry of the Interior.

d. Appeal

An appeal may be lodged against rejection of application for asylum.

12. United Kingdom

a. Legal basis

There are no constitutional provisions on the right of asylum or special legal provisions on asylum procedures. Entry conditions are laid down in the Immigration Act of 1971.

Under the immigration rules, applications for asylum are decided on with reference to the UNHCR in Geneva.

b. Entry

Under the immigration rules, applicants for asylum have no right of entry if they have already entered a safe third country where they can obtain refuge. No right of appeal or legal protection exists against a refusal of entry (by the Home Office).

c. Application for asylum

Applications for asylum are decided on by the Refugee Section of the Immigration Department with reference to the Geneva Convention on Refugees.

d. Appeal

Appeal against rejection of application for asylum is only possible on legal grounds.

Further reading:

1. Darwig/Lörcher/Schumacher (publishers), Right of Asylum in the Internal market, the European Dimension of the Right of Asylum, 1989

2. Frowein/Stein (publishers), Legal Status of Foreigners under National and International Law, 1987

3. Hailbronner, Kay: Possibilities and Limits of European Coordination of the Right of Entry and Asylum, 1989.