RESOLUTION ON A HARMONISED APPROACH TO QUESTIONS CONCERNING HOST THIRD COUNTRIES

Introduction

Resolution on a harmonised approach to questions concerning host third countries (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers. SN 4823/92 WGI 1283 AS 147). One of two resolutions attempting to tackle the issue of inter-continental asylum-seekers, this resolution applied the "safe country of transit" principle enunciated in the Dublin Convention to all transit countries, and allowed member states summarily to return asylum-seekers to any transit country deemed safe by them. It contained the novel idea that asylum-seekers were acting illegally by leaving a transit country where they could have claimed asylum. Member states were to revise their national law to adopt these principles.

RESOLUTION ON A HARMONISED APPROACH TO QUESTIONS CONCERNING HOST THIRD COUNTRIES

Reference:

SN 4823/92 WG 1283 AS 147

Ministers of the Member States of the European Communities responsible for immigration, meeting in London on 30 November to 1 December 1992;

DETERMINED to achieve the objective of harmonizing asylum policies as it was defined by the Luxembourg European Council in June 1991 and clarified by the Maastricht European Council in December 1991;

TRUE to the principles of the Geneva Convention of 28 July 1951, as amended by the New York Protocol of 31 January 1967, relating to the Status of Refugees and in particular Articles 31 and 33 thereof;

CONCERNED especially at the problem of refugees and asylum seekers unlawfully leaving countries where they have already been granted protection or have had a genuine opportunity to seek such protection and CONVINCED that a concerted response should be made to it, as suggested in Conclusion No. 58 on Protection adopted by the UNHCR Executive Committee at its 40th session (1989);

CONSIDERING the Dublin Convention of 15 June 1990 determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities and in particular Article 3(5) thereof, and WISHING to harmonize the principles under which they will act under this provision;

ANXIOUS to ensure effective protection for asylum seekers and refugees who require it;

MAKE THE FOLLOWING RESOLUTION

Procedure for application of the concept of host third country

1. The Resolution on manifestly unfounded applications for asylum, adopted by Ministers meeting in London of 30 November 1 December 1992, refers in paragraph 1(b) to the concept of host third country. The following principles should form the procedural basis for applying the concept of host third country:

(a) The formal identification of a host third country in principle precedes the substantive examination of the application for asylum and its justification.

(b) The principle of the host third country is to be applied to all applicants for asylum, irrespective of whether or not they may be regarded as refugees.

(c) Thus, if there is a host third country, the application for refugee status may not be examined and the asylum applicant may be sent to that country.

(d) If the asylum applicant cannot in practice be sent to a host third country, the provisions of the Dublin Convention will apply.

(e) Any Member State retains the right, for humanitarian reasons, not to remove the asylum applicant to a host third country.

Cases falling within this concept may be considered under the accelerated procedures provided for in the aforementioned Resolution.

Substantive application : requirements and criteria for establishing whether a country is a host third country

2. Fulfilment of all the following fundamental requirements determines a host third country and should be assessed by the Member State in each individual case:

(a) In those third countries, the life or freedom of the asylum applicant must not be threatened, within the meaning of Article 33 of the Geneva Convention.

(b) The asylum applicant must not be exposed to torture or inhuman or degrading treatment in the third country.

(c) It must either be the case that the asylum applicant has already been granted protection in the third country or has had an opportunity, at the border or within the territory of the third country, to make contact with that country's authorities in order to seek their protection, before approaching the Member State in which he is applying for asylum, or that there is clear evidence of his admissibility to a third country.

(d) The asylum applicant must be afforded effective protection in the host third country against refoulement, within the meaning of the Geneva convention.

If two or more countries fulfil the above conditions, the Member States may expel the asylum applicant to one of those third countries. Member States will take into account, on the basis in particular of the information available from the UNHCR, known practice in the third countries, especially with regard to the principle of non-refoulement before considering sending asylum applicants to them.

Dublin Convention

3. The following principles set out the relationship between the application of the concept of the third host country, in accordance with Article 3(5) of the Dublin Convention, and the procedures under the Convention for determining the Member State responsible for examining an asylum application:

(a) The Member State in which the application for asylum has been lodged will examine whether or not the principle of the host third country can be applied. If that State decides to apply the principle, it will set in train the procedures necessary for sending the asylum applicant to the host third country before for examining the application for asylum to another considering whether or not to transfer responsibility Member State pursuant to the Dublin Convention.
(b) examining an application for asylum, pursuant to the Dublin Convention, by claiming that the requesting Member State should have returned the applicant to a host third country.
(c) Notwithstanding the above, the Member State responsible for examining the application will retain the right, pursuant to its national laws, to send an applicant for asylum to the host third country.
(d) The above provisions do not prejudice the application of Article 3(4) and Article 9 of the Dublin Convention by the Member State in which the application for asylum has been lodged.

Future action

4. Ministers agreed to seek to ensure that their national laws are adapted, if need be, and to incorporate the principles of this resolution as soon as possible, at the latest by the time of the entry into force of the Dublin Convention. Member States will from time to time, in cooperation with the Commission and in consultation with UNHCR, review the operation of these procedures and consider whether any additional measures are necessary.