



IMPLEMENTATION OF THE DUBLIN CONVENTION: SOME UNHCR OBSERVATIONS

Introduction

The Office of the United Nations High Commissioner for Refugees (UNHCR) generally favours the adoption between States of agreements aimed at identifying the country responsible for examining an asylum request, as such agreements may constitute the most satisfactory way to address the problem of “refugees in orbit” and provide guarantees that an asylum request will be examined in substance.

UNHCR welcomes the entry into force, on 1 September 1997, of the Convention Determining the State Responsible for Examining Applications for Asylum Lodged in one of the Member States of the European Communities (Dublin Convention) in the twelve initial signatory Member States in so far as the Convention establishes a mechanism, throughout the European Union (EU), to allocate responsibility for the examination of each individual asylum application. UNHCR would welcome the adoption of additional guidelines to address matters of procedure and interpretation of some of the provisions of the Convention, which the Office has identified while monitoring its implementation.

Fair and transparent application of procedures

According to Article 3 (2) of the Convention, the criteria to determine responsibility for dealing with an asylum request (Articles 4 - 8) are to be applied in the order in which they appear in the text. This means that, *inter alia*, the family reunion criterion (Article 4) prevails over the criteria related to issuance of a visa (Article 5), illegal border crossing (Article 6), first entry into the common territory (Article 7 para. 1) or transit situations (Article 7 para. 3). UNHCR understands that the Convention is to be applied to every asylum applicant who is physically present in the territory of a Member State, including those who are in transit zones.

It therefore is important to provide, at all stages of the procedure, timely and sufficiently detailed information to the applicant and his or her legal counsel as regards the application of the Dublin provisions, including those which may result in a transfer of the applicant to another EU Member State. Asylum-seekers should also receive sufficient counselling on the Dublin procedures and the relevance of evidence required for the procedure to determine responsibility.

Furthermore, UNHCR would welcome it if Member States adopt guidelines stipulating that

- the decision concerning the allocation of responsibility, including possible transfer, should be issued in writing; and
- the applicant should be offered an opportunity to request a review of the decision on a Member State’s responsibility, in so far as the applicant can forward further elements relevant to the application of the Dublin criteria and procedures in his or her particular case.

The “safe third country” notion

One of the objectives of the Convention is to ensure the examination, by at least one Member State, of each asylum request, thereby avoiding the risk of “orbit” situations. However, Article 3 (5) of the Convention allows for removal by the responsible State of the asylum-seeker to a third country, as long as the principle of *non-refoulement* is respected. UNHCR is concerned that, in the absence of appropriate guidance for the evaluation of safety conditions in the third country, application of this Article by the State determined to be responsible may result in chain deportations and, ultimately, instances of *refoulement*.

Given that there is not yet a harmonized application of the “safe third country” notion, UNHCR suggests that Member States adopt the following guidelines as regards the application of Article 3 (5) of the Convention:

- in case of a removal from a EU Member State to a third country, based on Article 3 (5), the sending State should seek the consent of the third country: (i) to readmit the asylum-seeker; (ii) to consider the merits of the claim; and (iii) to provide effective protection as long as required;
- the sending State should inform the third country in writing that the rejection of the application was based purely on formal grounds and that no decision on the substance of the claim had been made;
- the responsible State, in considering removal to a third country, should provide the applicant with an opportunity to request a review of the removal decision. Such a review should be normally granted by an independent and specialized judicial or administrative body, in an individual procedure with suspensive effect.

Spouses and family members

UNHCR notes that a strict application of the relevant provisions of the Convention (Articles 5 - 8) can result in different Member States examining asylum applications lodged by members of the same nuclear family. Such, for instance, can be the case when, due to the circumstances of the flight, members of the same family have been separated and have entered the common territory by crossing the borders of different Member States.

In such situations, Member States can apply Article 9 of the Dublin Convention, which allows Member States to bring family members together on the territory of one of the Member States which accepts responsibility for examining the applications jointly - provided that the applicants so desire. This will normally be in the interest not only of the asylum-seekers concerned, but also of the Member States, since asylum applications of members of the same family are often related, which renders joint processing easier and more effective.

UNHCR suggests that Member States adopt guidelines on family reasons allowing for the application of Article 9, taking inspiration from a decision taken by the Schengen Executive Committee in April 1997, which, it is understood, suggested applying a similar provision in the Schengen Agreement (Article 36) at least in cases where

- a family member is gravely ill, has a serious handicap, or is of old age;
- one of the applicants is pregnant or has a new-born child;

- minors risk being separated and left unattended.

UNHCR notes that Article 4 limits the concept of the “family” to spouses and minor children. UNHCR hopes that Member States will consider a broader notion of the “family” by including dependants who are living in the same household, as suggested by paragraph 185 of the UNHCR *Handbook on Procedures and Criteria for Determining Refugee Status*. According to Conclusion 24 (XXXII) on Family Reunification adopted by the UNHCR Executive Committee “every effort should be made to ensure the reunification of separated refugee families” and criteria for the identification of eligible family members need to be applied in a liberal manner, with a view to “ a comprehensive reunification of the family”.

- UNHCR therefore would welcome the adoption of guidelines which, in referring to Article 9, would encourage Member States to apply, whenever possible, a broader notion of “family” than has been laid down in Article 4.

Sovereignty clause

In the view of UNHCR, special humanitarian grounds or family reasons may justify processing of an asylum application under Article 3 (4), taking into account the requirement of explicit consent of the asylum applicant, even if another Contracting Party is formally responsible pursuant to the criteria of the Convention.

Reception

UNHCR proposes that, with regard to access to reception facilities and welfare benefits, pending determination of which country is responsible for examining the asylum request, the asylum-seeker and his family will be treated in the same manner as asylum-seekers admitted to the determination procedure.

Also, asylum-seekers who are waiting for a decision on responsibility for the processing of their claim should not normally be kept in detention.

- UNHCR would welcome the adoption of a policy statement by which Member States undertake to ensure that asylum-seekers who are waiting for a decision on responsibility for the processing of their asylum request, will be provided with adequate reception facilities and receive basic assistance, and will not normally be kept in detention.

(UNHCR Geneva)
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