

COMMISSION OF THE EUROPEAN COMMUNITIES

SEC(91)1857 final

Brussels, 11 October 1991

Communication from the Commission to the Council
and the European Parliament
on the right of asylum

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1. Introduction

Common interest

1. The political and social importance of the right of asylum in the Community and in Member States has increased steadily, particularly over the last ten years.

In view of the fact that Member States are unable individually to respond in an appropriate manner to the challenge posed by the ever-swelling influx of asylum seekers, and given the deepening of the Community as part of the moves to complete the internal market and to lay the groundwork for political union, this issue has increasingly become a matter of common interest. The removal of controls at internal frontiers on 1 January 1993 makes it particularly important that there should be a common right of asylum. This has been confirmed by the Member States and by the European Parliament, notably in its Resolution of 13 September 1991, in which it adopted the Malangré Report.

Accordingly, the Commission intends, through this communication [and the attached discussion paper] and through the Communication on immigration, to help prepare for the answers which Member States must together find to the questions with which they are all confronted as regards the right of asylum and immigration and, in particular, for the response to be given to the report on the matter that the Ministers for Immigration will present to the Maastricht European Council.

Right of asylum and immigration

2. The issues of the right of asylum and immigration are dealt with in separate Commission communications. Although both matters are linked and interrelated, they are each governed by specific policies and rules which reflect fundamentally different principles and preoccupations.

- "Immigration" from third countries is - both from a historical perspective and in the present context - primarily an economic phenomenon: the economic situation in the country of immigration and/or in the country of origin is normally what triggers migratory movements. An indispensable component of such migration is immigration in connection with family regroupings. The domestic law of each Member State applies to such immigration from third countries and, depending on their socio-economic situation, the Member States are free to decide on their policy in this matter. They decide in a discretionary manner whether or not to admit economic refugees;
- By contrast, the right of asylum is first and foremost a right and a humanitarian challenge.

The starting point for all Member States is a fundamental common legal instrument: the Geneva Convention.

In ratifying this Convention, the Member States entered into basic humanitarian commitments aimed at affording protection to individuals who have good reason to fear persecution in their own country for political, ethnic or religious reasons (referred to below as "political refugees").

Starting from this common legal basis, the Member States have formulated national laws that remove the possibility of refusing in a discretionary manner to admit an asylum seeker to their territory.

At any event, economic considerations are not taken into account in making such an assessment; the only important criterion is whether or not the individual concerned satisfies the definition of refugee laid down in the Geneva Convention. The definition applied in Germany is actually broader than that laid down in the Geneva Convention.

Even where a Member State decides to put a stop to "economic" immigration, protection for asylum seekers and recognized refugees is guaranteed in accordance with the Geneva Convention and with domestic law.

In addition, alongside these two main categories of economic refugee and political refugee, there is a third important category of de facto refugee, that is to say a person who flees his country not in order to escape political persecution - which implies that he or she cannot enjoy the protection guaranteed by the Geneva Convention - but because his or her life is threatened, say, by civil war and who, for this reason, cannot be sent back.

On account of the major differences between immigration and the right of asylum, the challenge facing Member States in both areas calls for differing but coordinated responses.

II. Common measures and the right of asylum

A. Starting point: Full respect for the humanitarian principles embodied in the Geneva Convention

3. The Commission takes the view that no policy or measure in respect of immigration - including in the present situation, where new waves of immigrants are feared - should detract from the humanitarian achievements under the Geneva Convention as regards protection for those suffering political persecution.

This is, of course, also true for any harmonization measure taken by Member States in connection with the formal or substantive right of asylum. Such harmonization could not be used as an excuse for reducing the humanitarian commitments they have entered into under the Geneva Convention.

B. The two aspects of the common interest of the right of asylum

1. Preventing abuse of the right of asylum

4. There can be no denying that a relatively large and growing number of asylum seekers have in the past had recourse to the asylum procedure in an attempt to secure admittance to the territory of the Member States even though they do not satisfy the definition of political refugee as laid down in the Geneva Convention. This constitutes an abuse of the asylum procedure aimed at circumventing the restrictions on immigration for employment purposes which Member States have brought in over a number of years.

Such abuse, which, for the rest, imposes a considerable financial burden, must be effectively stamped out. This can be done within the framework of the actual arrangements for granting the right of asylum. On the one hand, specific procedures could be introduced in the case of manifestly unfounded applications, and asylum seekers whose applications had been rejected could be deported. On the other hand, it would be necessary to examine whether the decision on an application for asylum could not be taken at the external frontier in the case of applicants from "safe" countries, with the result

that the asylum seeker would have to appeal against the decision from outside the country (see also point D).

Such measures to combat abuse dovetail with the joint efforts described in the Communication on immigration to control economic migration and to regularize the situation of immigrants.

2. Harmonization of the formal and substantive right of asylum

5. Moreover, the right of asylum should be set in the context of the moves to deepen the Community by completing the internal market and, in the longer term, by establishing political union.

As regards the formal right of asylum, an important initial step has already been taken.

The ad hoc Group on Immigration has drawn up the Dublin Convention determining the State responsible for examining applications for asylum lodged in one of the Member States. The Convention is designed among other things to prevent asylum seekers from becoming "refugees in orbit" and from lodging multiple applications within the frontier-free area.

However, harmonization confined to this aspect of the matter is not sufficient.

As indicated in the conclusions of the Luxembourg European Council, the Member States have realized that completion of the internal market already necessitates, and establishment of political union certainly will necessitate, harmonization of the formal (organization, length of procedures and means of redress) and substantive aspects of the right of asylum.

The point is that, for any application for asylum, the treatment afforded and the decision as to substance should be the same throughout the frontier-free area.

The decision by a Member State to vet an application must be recognized in accordance with the Dublin Convention by all the other Member States; the right to submit multiple applications in different Member States ought not to exist. This means that, from now on, no Member State should enter a reservation based on its domestic law.

C. Priorities

6. Priority has to be given to combating abuse of the right of asylum. A proper response to abuse will defuse the "asylum crisis," allowing a more considered approach to be adopted in the longer term to harmonization of the formal and substantive right of asylum and thereby avoiding the danger of unjustified downwards harmonization.

This is perfectly in line with the conclusions of the Luxembourg European Council drawing a distinction between measures for the formal and substantive harmonization of the right of asylum, which are to be taken in the longer term, and the practical preparatory and transitional measures, which are to cover the period between the signing of the amendments to the Treaty and the time when they enter into force.

But it is self-evident that this choice of priorities in no way prevents preparations for the formal and substantive harmonization of the right of asylum from being undertaken straight away.

D. Possible measures

7. In the paper attached to this Communication, the Commission provides a detailed review of the problems arising in connection with the right of asylum and the national and international measures already taken or being taken. It maps out several approaches which would allow general guidelines for the right of asylum to be established in conjunction with the guidelines for immigration policies outlined in the Communication on immigration.
8. Apart from immediate ratification of the Dublin Convention with a view to its entry into force, the measures which could be given joint consideration at this stage in order to respond to the influx of asylum seekers can be summarized as follows:
 - administrative and court procedures should be speeded up so that decisions can be taken more rapidly and the number of applications pending reduced; particular attention should be given to abridged procedures for dealing with applications which are manifestly unfounded, but these would have to be subject to safeguards to protect the rights of asylum seekers; there should be a common definition of

what constitutes a "manifestly unfounded" application in all the Member States;

- harmonization of the rules on refusal of admission at external borders, e.g. as regards the definition of the "first host country"; the definition of a "safe" country should also be examined with regard to "first host countries" and countries of origin; an asylum seeker coming from a "safe" country could, as a general rule, be sent back there; harmonization of these rules would ensure that asylum seekers were treated in identical fashion at all the external borders of the single market;
 - asylum seekers whose applications are turned down should be deported unless they can be allowed to stay under some other arrangement, and this means that contact must be maintained with the third countries most directly concerned;
 - a procedure should be established for consultation and the exchange of information in connection with the right of asylum, particularly as regards the situation in the countries of origin, the relevant legislation, and the practice in applying the Geneva Convention; this would also be a step in preparing for harmonization of the formal and substantive right of asylum.
9. The following measures could be taken for the harmonization of the right of asylum in the context of the single market:
- the Member States already have a common legal basis in the matter, namely the Geneva Convention, so that what is needed is mainly harmonization or coordination of the way in which the Convention is applied in the single market; in an area without internal frontiers the question whether a person should be accepted as a refugee should not depend on which Member State vets his application for asylum; harmonization of the rules and practices in the different Member States can be achieved if the competent authorities are able to exchange information in a thorough and institutionalized manner and if, at the same time, common judicial machinery can be established in order to ensure that the criteria laid down in the Geneva Convention are interpreted in a uniform fashion;
 - there should be harmonization of the rules on de facto refugees, who are not covered by the Geneva Convention; the question whether they can be allowed to stay in the Community - temporarily - on

humanitarian grounds other than those set out in the Geneva Convention should not depend crucially on the place where their application is examined;

- the treatment extended to asylum seekers while their application is being examined should be harmonized in order to prevent any diversion of the flow of asylum seekers, within the limits laid down by the Dublin Convention, towards the Member State with the most generous arrangements.

II. Conclusion

10. This Communication and the discussion paper attached are intended as a contribution to the discussion on the right of asylum in the run-up to the European Council meeting to be held in Maastricht.

The measures to be taken jointly in respect of the right of asylum would be aimed primarily at eliminating abuse of that right, while at the same time protecting the rights of asylum seekers. Measures to combat such abuse are linked to the wider problem of the need to control economic migration as described in the Commission Communication on immigration.

In the longer term, harmonization of the formal and substantive right of asylum will form part of the moves towards deepening the Community.

The point of reference for all these joint measures regarding the right of asylum, which should in any event be prepared in close cooperation with the United Nations High Commissioner for Refugees, must be full compliance with the humanitarian principles embodied in the Geneva Convention.

DISCUSSION PAPER ON THE RIGHT OF ASYLUM

INTRODUCTION

1. The number of people seeking asylum has shot up in recent years in almost every Member State of the Community. The phenomenon has become so acute in some Member States that it has sparked off fierce political wrangling, which, more often than not, has turned into an argument about immigration in general.

Growing awareness of the scale of the influx of asylum seekers and of the seriousness of its economic, social and financial consequences, coupled with more detailed analysis of the implications of the internal market, has caused the focus to shift from the question of determining the State responsible for examining applications for asylum, which has already been settled by the Convention signed in Dublin on 15 June 1990, to the asylum question as a whole, viewed not only from the formal, or procedural, angle but also from the substantive angle.

2. Although this paper forms part of a communication dealing specifically with the question of asylum, it is to be viewed against the background of the question of immigration in general, which forms the subject matter of a separate Commission communication to Parliament and the Council.

The link between the right of asylum and immigration is a real one. Since the ending of permanent immigration for employment purposes in the mid-1970s, lodging an application for asylum has become a means of entering a Community into which immigration has become impossible. The right of asylum has thus become gradually bound up with the immigration question as one by one the restrictions on permanent immigration introduced by the

Member States have been circumvented by recourse to the asylum procedure.

However, owing to the inherently different nature of the right of asylum (a humanitarian right for the protection of which countries have entered into international commitments) and immigration (an economic and social phenomenon to which countries may respond individually and over which they have discretion), it is appropriate that the question of the right of asylum as a whole should be dealt with in a separate communication.

3. The Luxembourg European Council of 29 and 30 June of this year gave fresh impetus to the study of the question of immigration and the right of asylum. In its conclusions on the free movement of persons the Council "agreed on the objectives underlying the German delegation's proposals as set forth in point B of Annex I". The German delegation's proposals regarding immigration and asylum, which had been drawn up with an eye to Political Union, were twofold:

- firstly, that the Member States should commit themselves under the Treaty on Political Union to harmonizing, both formally and substantively, their policies on asylum, immigration and aliens (point A);
- secondly, that the Ministers with responsibility for immigration should be asked to submit a report to the European Council in Maastricht in December defining and planning the preparatory work needed for harmonization (as provided for in point A), and containing proposals for concrete preparatory and transitional measures for the period between signature and entry into force of the amendments to the EEC Treaty (point B) (cf. Annex I).

The Commission has been invited to participate in the coordination of the preparatory work on all these questions.

4. Such is the context surrounding this discussion paper. At a time when the deliberations of the Intergovernmental Conference on Political Union are under way, it is right that the Commission should state its views on a subject such as the right of asylum and make, as of now, a positive contribution to the debate.

It must be made clear in this connection that the Commission attaches the utmost importance to respect for the humanitarian principles enshrined in the Geneva Convention. This concern is shared by Parliament, as can be seen from its resolution of 13 September 1991 adopting the Malangré report.

5. The layout of this paper is as follows:

- I. Factual aspects and legal framework of the right of asylum.
 - . the influx of asylum seekers
 - . the Geneva Convention: persons covered, scope and difficulties of implementation.
- II. Recent initiatives in the sphere of the right of asylum:
 - . at national level;
 - . at the level of the Twelve.
- III. The outlook:
 - . the institutional context;
 - . joint measures confined to dealing with the problem of the influx of refugees;
 - . more general harmonization measures.

I. FACTUAL ASPECTS AND LEGAL FRAMEWORK OF THE RIGHT OF ASYLUM

A. The influx of asylum seekers

6. More than 40 years after the Second World War and the ensuing disruption, the continued existence across the world of numerous instances of political, religious and ethnic persecution explains why humanitarian law, through the instrument (Geneva Convention) and the institution (Office of the United Nations High Commissioner for Refugees) introduced in 1951, continues to play an essential role in assisting refugees. While this context illustrates the need to preserve the humanitarian law already in place, attention has been turning in recent years in Europe more and more from the refugee drama itself towards means of controlling the influx of asylum seekers. Now that the asylum procedure is being used by a growing number of economic migrants to circumvent the various restrictive measures which the European countries have introduced since the first oil crisis in order to stop permanent immigration for employment purposes, the right of asylum is viewed against the background of the immigration question.

However, it must not be forgotten that this situation is prejudicial to bona fide asylum seekers, whose existence cannot be ignored. The London European Council of 1986 was unambiguous in its determination to counter only "abuse", making clear that there was no intention to call in question

the principle itself. On the contrary, it is by adopting in good time the measures necessary to combat abuse that any backlash - which might result in the very principle of asylum, which is a fundamental human right, being ultimately called in question - can be prevented.

7. Since the mid-1970s the countries of Western Europe and in particular those of the EEC have had to cope with an increasing number of persons seeking to be recognized as refugees within the meaning of the 1951 Geneva Convention. In the mid-1980s the trend gathered momentum. For example, requests for asylum in France rose from 1 800 in 1975 to 28 800 in 1985 and 60 000 in 1989, while in the United Kingdom they went up from 2 159 in 1988 to 11 647 in 1989 and 25 327 in 1990. The influx of asylum seekers is spread unevenly from one Member State to another: in 1988, 1989 and 1990, of all the applications lodged in the Community, some 80% were submitted in two countries, Germany (60%) and France (20%) (Annex II contains a table of applications for asylum recorded in the Member States in 1988, 1989 and 1990).

At the same time as there has been an increase in the number of applications for asylum, there has been a noticeable reduction in the rate of recognition of refugee status (falling in Germany from 15.94% in 1986 to 8.61% in 1988 and 4.38% in 1990).

This influx of asylum seekers poses serious social, financial and economic problems. Most European countries still have heavy unemployment and have frozen permanent immigration for employment purposes. However, one must keep a sense of proportion as, on a world scale, Europe receives only 5% of all refugees. The vast majority of refugees seek shelter in neighbouring States, which places a heavy responsibility on the States concerned, many of which are developing countries. Any discussion should therefore also cover the assistance that might be given towards improving the reception of refugees in the region.

The specificity of asylum seekers should be maintained both for political reasons to do with the principles involved and for legal reasons. Whereas Member States have a free hand when it comes to admitting or excluding economic migrants, their freedom of action vis-à-vis asylum seekers is

limited owing to their obligations under the Geneva Convention. Any confusion as to the extent of Member States' powers might call in question the specificity of asylum seekers.

8. The influx of asylum seekers has first of all an impact on the administrative processing of applications. The departments responsible for considering applications are unable to cope with the increased case-load. As a result, applications are taking longer and longer to process, which is regrettable both from the point of view of the countries concerned (financial burden) and from that of political refugees, who are left for a long time in a state of uncertainty pending recognition of their status. The lengthening of procedures also has the effect of attracting even more asylum seekers who, while their case is being considered, enjoy a legal status which carries with it various social security benefits. Lastly, the influx of asylum seekers makes it impossible to draw the legal consequences from decisions not to grant refugee status reached after excessively long procedures. It is difficult to expel an applicant who, in the meantime, has become socially and economically integrated.

The political debate in the Member States on the right of asylum has in some instances entered a critical, not to say controversial, phase. At the same time as the authorities have become aware of the need to combat without delay abuse of the right of asylum, opposition groups have been formed and are making themselves increasingly heard. The authorities have to take this into account, particularly because these pressure groups campaign under the banner of the safeguarding of fundamental rights.

B. The Geneva Convention

9. The persons covered are refugees as defined by the Convention.

Article 1 of the Convention stipulates that the status of refugee applies to any person who "... owing to well-founded fear of being persecuted for reasons of race, religion, nationality, membership of a particular social group or political opinion, is outside the country of his nationality and is unable, or owing to such fear, is unwilling to avail himself of the protection of that country".

A striking feature of this definition is the importance of the criterion of persecution. An asylum seeker cannot be recognized as a refugee if his

only reason for fleeing his country is the existence of political disturbances or tensions there.

A study of asylum requests shows that most requests are not based on any of the motives provided for in the Convention. This has led some people to talk about a "crisis of the right of asylum".

Applicants for refugee status are increasingly, on the one hand, refugees who have left their country of origin because of war, civil war or domestic disturbances, and, on the other, economic migrants who are seeking to escape from poverty, famine, chronic under-employment or the lack of prospects in their country. In many countries there is a tendency for factors of the latter type to worsen owing to population pressure. The procedure of requesting asylum is used in these circumstances as a means of circumventing Member States' restrictive laws on permanent immigration.

In view of the legal framework of the Geneva Convention, a clear distinction must be drawn between different categories of person: asylum seekers awaiting a decision, recognized refugees and persons whose application for refugee status has been definitively rejected and who, administratively speaking, may find themselves in a variety of situations (cf. Annex III).

10. The definition of refugee in the Geneva Convention may give rise to different interpretations.

A preliminary examination of the available data indicates that certain elements of the concept of refugee as defined by the Convention give rise to different, not to say divergent interpretations by the national authorities responsible for examining asylum requests and by the courts hearing appeals against negative decisions of those authorities. These differences or divergences of interpretation relate, for example, to the assessment of the facts subsequent to the flight from the country of origin (refugees on the spot), the effect of a stay in a first host country and the assessment of certain measures taken by the persecuting State. The Member States' replies to the questionnaire that was sent to them with a view to drawing up the inventory of asylum policies called for by the Strasbourg European Council contain valuable information, which will have to be carefully evaluated, on the differences between Member States' practices.

There is no international judicial body responsible for ensuring uniformity of interpretation of the concept of refugee.

11. The Geneva Convention covers a limited number of fields.

Some fields are entirely outside the ambit of the Convention. It is silent about the procedure for examining asylum requests. As a result, Member States apply a wide variety of procedures ranging from a non-appealable decision of an independent committee to a highly formalized procedure subject to very strict judicial controls. There are also marked differences in the material situation of asylum seekers during the investigation of their case (cf. in particular the position regarding access to employment, the right to social assistance and housing conditions). Lastly, Member States' practices differ when refugee status is definitively withheld: expulsion, grant of a right of residence to de facto refugees.

As regards the position of recognized refugees, the Geneva Convention merely lays down a common minimum standard: Member States' laws may go further and grant refugees more rights than are provided for in the Convention.

12. Determining refugee status is the major practical difficulty in applying the Geneva Convention.

The hardest part is establishing the facts. In many cases, applicants no longer have any identity papers and it is difficult to establish their identity. The authenticity of identity papers or other documents submitted often has to be verified in order to establish the validity of the application. As far as the political and economic situation in the country of origin is concerned, the authorities do have information but it is not coordinated at the level of the Twelve. As it is an individual request that is being examined, the authorities and the courts are faced with the problem of having to verify specific facts adduced by the applicant. To that end, reliance is mostly placed on the information furnished by the diplomatic services.

