

Control of immigration, illegal entrants, expulsion

19

Draft Recommendation regarding practices followed by Member States on expulsion

Introduction

Draft recommendation regarding practices followed by member states on expulsion (adopted London, 30 November and 1 December 1992 by the meeting of immigration ministers. SN 4678/92 WGI 1266, dated 16 November 1992). The first attempt to "harmonise" treatment of failed asylum-seekers, deportees and illegal entrants sets out the general rule, ie expulsion, normally to the country of origin, and legitimises the use of administrative detention pending expulsion and of fingerprinting to assist identification (and so issue of travel documents). Also encourages introduction of laws criminalising assistance to illegals, readmission agreements facilitating removal and exchange of information. Seminal in development of member states' domestic policies.

Draft Recommendation regarding practices followed by Member States on expulsion

Reference:

Adopted by meeting of Immigration Ministers on 30 November - 1 December 1992

Ad Hoc Group Immigration

16 November 1992

SN 4678/92 WGI 1266

CONFIDENTIAL

No. previous doc.: WGI 1258

Subject:

Draft Recommendation regarding practices followed by Member States on expulsion

DRAFT RECOMMENDATION

regarding practices followed by member states on expulsion

Ministers of the Member States of the European Communities responsible for Immigration, meeting in London on 30 November and 1 December 1992

WITH A VIEW to reflecting the best practices existing in Member States and to meeting the requirements of speed, efficiency, effectiveness and economy with regard to expulsion;

TAKING ACCOUNT of the need for effective means to identify, apprehend and expel those who are required to leave the territory of the Member States;

NOTING that this Recommendation does not affect the provisions of international conventions currently in force on extradition;

NOTING that this Recommendation is without prejudice to Community law;

NOTING that this Recommendation does not apply to people refused entry at the border or who are identified attempting to cross the border illegally;

ADOPTED THE FOLLOWING RECOMMENDATION

GENERAL POLICY

1. Member States will ensure that without prejudice to Community law, their policies and practice with regard to expulsion are fully consistent with their obligations under the 1951 Geneva Convention relating to the Status of Refugees and the 1967 New York Protocol. Account should also be taken of other relevant international instruments, including the 1950 Convention for the Protection of Human Rights and Fundamental Freedoms.
2. Subject to the above, the general rule should be that people found:
 - (A) to have entered or remained unlawfully in Member States (where their stay has not been regularised);
 - (B) to be liable to expulsion on grounds of public policy or national security; or
 - (C) to have failed definitively in an application for asylum and to have no other claim to remain, should be expelled, unless there are compelling reasons, normally of a humanitarian nature, for allowing them to remain. In addition, consideration should be given to the question whether, in appropriate circumstances, a person who has been working in breach of immigration/aliens or related provisions should be expelled.
3. In accordance with Article 15(2) of the draft External Frontiers Convention expulsion should be to the country of origin or to any other country to which the individual may be admitted. Where a person is being expelled on public policy or national security grounds this should not be to another Member State unless the individual has a right of residence there.
4. There should be provision for expulsion under either criminal or administrative law.
5. People being expelled should be notified in an appropriate manner of the reasons for the decision unless the interests of national security make such notification undesirable.
6. Whenever there is any doubt about a person's ability to understand the language in which an interview is being conducted, consideration should be given to the provision of an interpreter.
7. There should be a right to be represented and an appropriate means to challenge expulsion decisions.
8. Expulsion should take place as soon as possible after the decision to expel the individual has been taken.

RESTRICTIONS ON PERSONAL LIBERTY

1. There should be power in appropriate circumstances to restrict the personal liberty of people liable to expulsion.
2. Any restriction on liberty should be limited to the period necessary to effect expulsion, including identification, the making of any necessary arrangements and the provision of tickets, travel documents

and escorts.

3. Appropriate places of custody should be available, where possible providing accommodation separate from that used by prisoners.

4. People in custody with a view to expulsion should have reasonable access to legal advisers and others in accordance with the general rules relating to the place of custody.

DOCUMENTATION

1. Any necessary arrangements for the identification and documentation of the individual should be made at the earliest possible opportunity.

2. Insofar as legislation does not already so permit consideration should be given to the introduction of laws to allow the fingerprinting of those to be expelled, to assist identification.

3. With a view to minimising delays in obtaining necessary travel documents and/or visas, early contact should be established with the Embassy or Consular authorities of States to which expulsion is to be effected and/or through which transit will be necessary

4. Where a travel document is not held and cannot be arranged within a reasonable period, consideration should be given to the use of a "one-way" document similar to that referred to in paragraph 3.38 and Appendix 8 of Annex 9 to the Chicago Convention.

RE-ADMISSION AGREEMENTS

1. Insofar as re-admission agreements do not already exist, consideration should be given to establishing them with appropriate States. Where possible, such agreements should be multilateral, but where this is not possible bilateral agreements should be considered.

Consideration should be given to preparing agreements in a standard format and, in the case of multilateral agreements, these might be along the lines of that between Poland and the Schengen States, with such adaptations as appear necessary to take account of national situations and practical experience of that agreement.

2. When re-admission agreements have been concluded Member States should communicate details of them to Community partners.

3. Specific measures should be adopted bilaterally or multilaterally as required with a view to improving existing arrangements among Member States for re-admission.

PROSECUTION OF FACILITATORS OF ILLEGAL ENTRANTS AND THOSE WHO HARBOUR PEOPLE WHO HAVE ENTERED OR REMAINED UNLAWFULLY AND ACTION AGAINST THOSE WHO EMPLOY ILLEGAL ENTRANTS

1. Insofar as legislation does not already exist, Member States should consider the introduction of laws which would provide for the prosecution of people who knowingly facilitate or attempt to facilitate the entry or transit of illegal entrants, and, subject to appropriate safeguards, of those who knowingly harbour those who have entered or remained unlawfully. It will be particularly appropriate to provide for the prosecution of those who commit such acts for reward or in an organized way. It is also recommended that appropriate measures should be taken to combat the employment of those known to have entered or remained in breach of the immigration or aliens provisions or who are not authorised to work under immigration/aliens or related provisions.

2. Consideration should also be given to the question whether it would be appropriate to have power to expel people subject to immigration/aliens provisions who have been involved in the facilitation, harbouring or employment of illegal immigrants.

3. The European Convention on Mutual Assistance in Criminal Matters provides a cooperative framework between countries enabling those signatory to it to obtain and supply evidence for use in criminal proceedings, both in their own country and in others, and to facilitate the appearance of individuals from one country, in criminal proceedings to another. Insofar as national policy permits, Member States are encouraged to enter into arrangements which would enable them to assist their Community partners, for example in obtaining evidence, or service of summonses or other judicial documents on suspects or witnesses.

CONFISCATION OF MODES OF TRANSPORT USED BY THOSE WHO FACILITATE ILLEGAL ENTRANTS

1. Insofar as legislation does not already exist, Member States should consider the introduction of laws which would permit a court, which had convicted a person of knowingly facilitating or attempting to facilitate unlawful entry, to order that the vehicle, ship or aircraft used should be forfeited. However, such legislation might specify limits on the exercise of the power to order confiscation, relating, for example, to the knowledge of the owners and to the size and nature of the vehicle, ship or aircraft involved.

TRANSIT DURING THE COURSE OF EXPULSION

1. Where a person who is being expelled cannot be sent direct to his point of destination, arrangements for the expulsion should be in accordance with the guidelines set out in WGI 1110.

ESCORTS

In order to ensure that a person being expelled reaches the intended destination, consideration should always be given to the question whether an escort is required. Escorts may be necessary either for those who require assistance or those who are likely to resist expulsion and may be a potential danger to themselves or others. Early consultation with the carrier is recommended in cases in which an escort may be necessary.

SELECTION, TRAINING AND EQUIPMENT OF THOSE INVOLVED IN EXPULSION

1. All staff charged with the duty of expulsion should be appointed for the purpose and should receive appropriate training.

2. Staff should be properly trained and equipped to tackle the problems of illegal immigration and traffickers. In considering Forgery Detection Training it will be particularly appropriate to take account of the evaluation of the Pilot Course for Training Instructors from Member States.

3. Bearing in mind that costs of investigation, detention and removal can be reduced if illegal immigrants can be prevented from entering Member States, there are benefits to be gained from providing appropriate technical equipment, for example for the detection of forged and falsified documents.

4. Account should be taken of initiatives already underway in other fora on which Member States are represented.

EXCHANGES OF INFORMATION

1. With a view to combating the unlawful trafficking of illegal immigrants, Member States should arrange for appropriate exchange of information with their Community partners, perhaps through CIREFI, if established.

2. With a view to encouraging appropriate exchanges of information the principles set out in the Appendix to this paper are commended to Member States.

3. It is acknowledged that in considering the exchange of personal information States will have to take account of relevant national Data Protection legislation. It is noted that the need for an international agreement containing an appropriate standard for data protection should be considered.

4. Subject to the need to comply with national legislation and data protection requirements, where fingerprints have been taken for the purpose of documenting a person liable to be expelled, Member States should be prepared to make them available to another Member State, if this will assist in making arrangements for expulsion and the individual does not have an acceptable travel document.

APPENDIX

EXCHANGES OF INFORMATION

1. Contacts for exchange of information

1.1 It is desirable to have broad exchanges of information, which might involve exchanges of operational experience. These present an opportunity for discovering the practices used by traffickers of illegal immigrants and to take action to prevent them.

1.2 In addition, there is value in having personal contacts for the exchange of information, and the value of such contacts could be increased by countries exchanging officers for training or other purposes. This is relevant not only in neighbouring countries but elsewhere also.

1.3 The Presidency proposes to circulate a questionnaire designed to supplement and up-date existing information about useful points of contact in other Member States.

2. Exchange of non-personal information

2.1 Exchanges of non-personal factual information have a most important part to play in combating illegal immigration. These exchanges might be of both an informal, albeit structured nature, and of a formal nature.

2.2 The speed of exchanging information is most important.

2.3 Information should be exchanged about the routes and the methods of illegal entry that were used; about the transit points that illegal entrants and their traffickers used; about the nationalities involved; and in particular about emerging trends concerning those nationalities.

- 2.4 It is also important to have information about the main types of vehicle used and to consider what could be done to deter people from trying to travel illegally, for example by the use of publicity when traffickers are caught and in particular when traffickers are sentenced to imprisonment or are otherwise punished, for example by confiscation of the ship, aircraft or vehicle used.
- 2.5 Account should be taken of arrangements already in force, for example those which have been reached within groups such as the Schengen Group and TREVI, in order that those planning exchanges of information might benefit from the experience already gained.

3. Exchange of personal information

Arrangements for the exchange of information about those known or suspected of involvement in organized illegal entry may assist considerably in combating it. It is of particular importance that the information passed should be sufficient to enable the individual to be readily identified, and that it should be passed speedily to the competent authorities in other Member States.