(Convention signed between Member States)

DECISION No 1/2000

of 31 October 2000

of the Committee set up by Article 18 of the Dublin Convention concerning the transfer of responsibility for family members in accordance with Article 3(4) and Article 9 of that Convention

(2000/677/CMS)

THE COMMITTEE set up by Article 18 of the Convention determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities, signed in Dublin on 15 June 1990 [1], hereinafter referred to as the 'Dublin Convention',

Having regard to Article 18(1) and (2) of the Dublin Convention,

Whereas:

(1) The Member States confirm their obligations in the field of international law under Article 8 of the European Convention on Human Rights, namely to ensure respect for private and family life.

(2) Pursuant to Article 3(4) and Article 9 of the Dublin Convention, a Member State may examine an application for asylum submitted to it by an alien even if such examination is not its responsibility under the criteria defined in that Convention. In order to ensure harmonised and effective implementation of these provisions in the case of family members, it is necessary to adopt provisions for their interpretation and application.

(3) In this respect, the scope of this Decision is determined by the rules of the Dublin Convention. The following provisions therefore concern only the transfer of responsibility for applicants for asylum on family grounds,

HAS DECIDED AS FOLLOWS:

Article 1

Family members

1. For the purposes of this Decision, 'family members' shall mean the spouse of an applicant for asylum or his or her unmarried child who is a minor under 18 years of age, or his or her father or mother where the applicant for asylum is himself or herself an unmarried child who is a minor under 18 years of age.

2. This Decision shall also apply to a close relative of an applicant for asylum other than those mentioned in paragraph 1, if the Member States concerned are satisfied that either the applicant for asylum or that close relative wholly or mainly depends on support from the other who will effectively provide that support and that the persons concerned were living together as a family unit before they left their country of origin.

3. For the purposes of family reunification or of maintenance of the family group, this Decision shall apply only to applicants for asylum.

Article 2

Conditions for family reunification and for maintenance of a family group

1. Responsibility for dealing with applications for asylum by family members shall in principle be determined in accordance with the criteria laid down in Articles 4 to 8 of the Dublin Convention.

2. Where several Member States would accordingly be responsible for dealing with applications for asylum by family members present in different Member States or where members of the applicant's family are present in another Member State, family reunification may take place if there are humanitarian reasons within the meaning of Article 9 of the Dublin Convention. Judgment shall be exercised on the basis of individual aspects of each case. Depending on the situation, the following factors for example may be taken into account:

— the fact that the family members have lived in the same household in the country of origin up to the time of departure or flight,

— the reasons which have led to divided responsibility for family members or a separation of the family,

— progress of the individual asylum proceedings as well as proceedings relating to the law on aliens in the Member States.

Families shall normally be reunited in cases where

— a family member is a minor under 18 years of age and would otherwise remain behind unaccompanied in a Member State,

[1] OJ C 254, 19.8.1997, p. 1.

— a family member is dependent on support on account of situations such as
  — pregnancy,
  — a newborn child,
  — a serious illness,
  — a serious handicap,
  — advanced years.

3. Where all family members are present in a Member State and one or more of them has submitted an application for asylum which another Member State or several Member States are responsible for processing, the desirability of maintaining the family group should, in exercising the judgment referred to in paragraph 2, be particularly taken into consideration.

Article 3

Procedure

1. If the prerequisites for family reunification or for maintaining a family group exist pursuant to Article 2, the Member States in which the persons concerned are present, and the other responsible Member States shall determine by mutual agreement, taking into account Article 3(4) and Article 9 of the Dublin Convention, and provided that the persons concerned agree to this procedure, which State will take responsibility for dealing with the applications for asylum.

2. Member States shall seek to reach agreement, within one month of a request to that effect being made, on the transfer of responsibility for dealing with the applications for asylum.

Article 4

Factors in determining the Member State responsible

Where the Member States concerned consider a transfer of responsibility in accordance with Article 3, the following factors may be taken into account in particular, depending on the circumstances:

— number of family members for whom a Member State is responsible pursuant to Articles 4 to 8 of the Dublin Convention,
— the place of abode if all the members of the family are present in the same Member State,
— in the case of unaccompanied persons who are minors, the place where the father or mother is present in a Member State,
— number of family members already legally present in one of the Member States concerned;
— examinations already under way in the Member States concerned with regard to applications for asylum by the family members,
— where it is ascertained that the applicant refers solely to the reasons for asylum alleged in the application for asylum by a member of his family, responsibility for dealing with the application for asylum by that member of the family (principal subject).

Article 5

Cooperation in cases of shared responsibility for family members

Where asylum proceedings are conducted by family members in different Member States, the Member States concerned should, if they are aware of the conduct of such asylum proceedings,

— cooperate by means of the earliest possible exchange of information,
— notify each other without delay of the completion of the respective asylum proceedings, insofar as this is necessary for the purposes of Article 15 of the Dublin Convention.

Article 6

Entry into force

This Decision shall enter into force on the day of its publication in the Official Journal.

Done at Brussels, 31 October 2000.

For the Committee

The Chairman

D. VAILLANT