
FIDE CONGRESS DUBLIN 2–5 JUNE 2004

Topic 3: Migration and Asylum Law and Policy

QUESTIONNAIRE

Introduction

The aim of the Congress on this topic is to explore EU and Member States' law and policy on migration and asylum. It will consider the policies in the light of international obligations concerning refugees and migrants from third countries. It will explore the scope for improvement, taking account of the labour market requirements of the Member States. In addition, the topic will explore whether the policies of the Member States undermine or maintain EU-policy.

The topic of migration and asylum law and policy embraces a wide range of different subjects, such as: illegal entry; border control; relations with sending countries; integration issues; admission for labour and other purposes; reception of asylum seekers; asylum procedure; exclusive competence to process asylum claims; burden-sharing; re-admission agreements; return policies; etc. National reports should concentrate upon issues which relate to EU-migration and asylum policy as reflected in the directives and proposals for directives. Therefore, national reports may differ in their structures concerning the compatibility or incompatibility of national law with EU law. In some Member States some aspects will raise major problems while in other Member States such problems do not arise. It is quite obvious that the national reports cannot deal with all issues raised in this questionnaire in detail. It is not the intention of the questionnaire to provide the basis for a comprehensive comparative account of Member States' law and policy in migration and asylum issues. National reports may rely on a number of comparative studies which have been made in preparation for the Commission's Proposals on directives, for instance on the reception of asylum seekers, the legal status of third country nationals, the regularization of illegal aliens, Member States' law and policy on expulsion and deportation, the feasibility of single asylum procedures, etc. I suggest that national rapporteurs briefly review the outcome of these studies or refer to more details of these studies – provided they are correct – in answering the questionnaire if they consider it appropriate.

Cambridge University Press

052160558X - Migration and Asylum Law and Policy in the European Union: FIDE 2004

National Reports - Edited by Imelda Higgins

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The focus of the general report equally will not consist of a repetition of already existing comparative surveys, but on a critical examination of the state of national law and policies in relation to the EU. Therefore particular emphasis will be laid on the following points:

- Implementation of existing EU legislation in the field of migration and asylum law;
- Compatibility of national migration and asylum law and policies with pending EC directives and regulations, particularly on asylum procedure, legal status of third country nationals and definition of refugees;
- Prospects and conflicts concerning draft directives and communications of the European Commission on the future development of a European migration and asylum law on which no agreement has yet been achieved in council;
- Long term perspective of EU legislation in the field of migration and asylum law and policy.

The Questionnaire is divided into four major subjects:

- 1 Entry, visa regime and border control
- 2 Admission and residence of third country nationals
- 3 Asylum and refugee law
- 4 Termination of illegal residence, return and repatriation.

PART I (ENTRY, VISA REGIME AND BORDER CONTROL)

In this section each national rapporteur should give a brief account of the national law and policy concerning measures undertaken against illegal entry and stay of third country nationals (return and readmission will be dealt with under 4) relating to the EU-visa regime and the Schengen rules on border control and issuance of Schengen visas. It might also be useful to have a brief factual account of visa issuance and illegal entries, respectively arrests in relation to illegal border crossing.

- 1.1 What national authorities are competent to deal with visa applications (Schengen visas and long-term visas)? Are there any procedures to avoid duplication or successive visa applications at different EU-consulates? On what substantive criteria, other than the

Schengen minimum requirements, are visas granted or refused? How many visas have been issued or refused?

- 1.2 Is there a visa tracking procedure in order to identify visa overstayers? What data are collected from visa-applicants (fingerprints)? Admissibility of visa data to alien and police authorities?
- 1.3 Have courts ever decided on the refusal of a Schengen visa based upon Schengen blacklisting by other Member States?
- 1.4 What measures have been undertaken in the implementation of the action programme for administrative cooperation in the field of external borders, visa, asylum and immigration following the Council Decision of 13 June 2002?
- 1.5 What measures have been undertaken to implement the Directive 2001/51 EC supplementing the Schengen rules concerning carrier sanctions? How often have carrier sanctions been used?
- 1.6 In your judgement, does the visa law and policy of your country live up to EU standards or are adjustments needed? Do you consider that there is need for further EU-harmonization of visa policies concerning:
 - common criteria for granting visas aiming at harmonizing visa obligations among states participating in the Budapest Process;
 - establishment of a European visa identification system (VIS and SIS II)?

To what extent will the EU enlargement process present an opportunity or challenge for tackling issues of illegal entry and border control?

PART II (ADMISSION AND RESIDENCE OF THIRD COUNTRY NATIONALS)

In this section national rapporteurs should identify the basic rules of admission and residence of third country nationals as compared with:

- Proposal for a Directive on conditions of entry and residence of third country nationals for the purpose of paid employment and self-employed activities, COM 2001, 386 final
- Proposal for a Directive on the conditions of entry and residence of third country nationals for the purpose of studies, vocational training or voluntary service, COM 2002, 548 final

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- Proposal for a Directive concerning the status of third country nationals who are long-term residents, COM 2001, 127
- Amended Proposal for a Council directive on the right to a family reunion, COM 2002, 227 final, as agreed upon by Council in a modified version on June 5, 2003 (Council Doc 10214/03).

The focus should be upon a description of the differences between the approach taken by the European Commission and the national approaches as reflected in the law and policy of your country.

It will not be necessary to describe in detail the national laws and procedures on admission of third country nationals. It would however be useful to identify major “philosophical” differences concerning the admission of third country nationals. As to the Family Reunion Directive, national rapporteurs may wish to engage in a debate on the constitutional and public international law issues relating to the standards required under the family Reunion Directive as agreed upon by Council in June 2003.

Concerning the status of third country nationals with long-term residence, national rapporteurs should identify problems relating to the definition of long-term residents, the conditions under which such nationals may take residence in your home country and issues relating to the loss of status, renewal or deportation and the possibility of naturalization.

2.1 What are the basic principles in your country concerning:

- admission of third country nationals for labour purposes or self-employed activities;
- admission of third country nationals for study and vocational training;
- legal status of third country nationals in possession of a long-term residence permit of another Member State?

To what extent do these principles differ from the European Commission’s proposals?

2.2 What are the legal requirements and procedures for obtaining a residence permit for third country nationals for the purpose of employment? Which procedures are used in maintaining the preferred access of EU-citizens and Turkish nationals (association agreement) to the labour market? Do special programmes exist for highly qualified professionals facilitating access to the labour market? To what extent are trade unions and employers involved in such programmes? Is there a procedure to calculate the demand for foreign labour? How is the EU-enlargement taken into consideration? To what extent has the

recent economic recession and unemployment influenced the concepts on admission of third country nationals?

- 2.3 To what extent do existing national laws and practices differ substantially from the approach taken in the Commission's Proposal on admission for the purpose of paid employment and self-employed activities relating to:

- admission of third country nationals for study and vocational training;
- on legal status of third country nationals in possession of a long-term residence permit of another Member State?

To what extent do these principles differ from the European Commission's proposals?

- 2.4 What measures have been taken to implement the Directive of 29th June 2000, implementing the principle of equal treatment between persons irrespective of racial or ethnic origin and Council Directive 2000/78/EC of 27th November 2000, establishing a general framework for equal treatment in employment and occupation? Have legislative changes been undertaken? To what extent is "affirmative action" considered as necessary to promote equal opportunities for migrant workers from third countries?

- 2.5 Concerning the proposal for a directive on the right to family reunion agreed upon by the Council in February 2003:

- Do you consider the proposed standards below the principles of family reunification applicable in your country?
- Will the implementation of the directive, once it is adopted, lead to changes in the national law on family reunification downgrading the standard of protection? If so, what changes are envisaged?

- 2.6 The proposal for a directive on the rights of long-term third country nationals as agreed upon by the Council on 5 June 2003, provides for a number of rights approximating the situation of long-term residents to the status of EU-citizens. Will the implementation of the directive involve major legal and policy changes in your country? What are the major points of concern if any, concerning the approximation concept of the directive relating to:

- non-discrimination in social rights;
- the concept of "civic citizenship" (see also extended impact assessment on the Communication on Integration of June 11, 2003);
- family reunification and access of family members to the labour market;
- security of stay?

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- 2.7 Considering the perspective of a future common migration policy as developed by the Commission in the Open Coordination Communication (COM 2001, 387) and the Communication on a Migration policy of the European Union (COM 2000, 757 final), how do you assess the role of the Community organs in determining a European migration policy in terms of competences of the Member States to decide on residence rights and admission to the labour market and integration? Should harmonization of legislation go further, and if so, in what respect?

PART III (ASYLUM AND REFUGEE LAW)

In this section national rapporteurs should describe primarily the impact of EU asylum legislation adopted or pending upon national laws and practices. Three major topics arise from the directives that have been adopted or are about to be adopted:

- reception of asylum seekers
- asylum procedure
- exclusive competence and burden sharing.

Again, one may rely upon the EU-commissioned studies in order to characterize the present legal situation in Member States. The focus should be on an implementation of EU legislative action and the prospects of a further development of a common European asylum procedure including matters like external processing.

- 3.1 Have the Dublin Rules worked satisfactorily and what is expected of the Dublin II Regulation No. 343, 2003 of 18 February 2003?
- 3.2 Has the Eurodac Regulation No. 2725/2000 of 11th December 2000, concerning the establishment of Eurodac for the comparison of fingerprints for an effective application of the Dublin Convention, operative since 15 January 2003, resulted in an increase of Dublin cases? Has Eurodac become effective in your country or is it expected to become effective eventually?
- 3.3 What major changes, if any, will the implementation of the amended proposal for a directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, on which the Council has reached political agreement on most points in June 2003, bring for the legislation and practice in your country in particular relating to:

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- rights of applicants in the procedure;
 - administrative and judicial appeal procedures;
 - the use of safe third country and safe country of origin concepts;
 - detainment of asylum seekers;
 - airport and border procedures?
- 3.4 What measures have been undertaken to implement Directive 2003/9 of 27 January 2003, on reception of asylum seekers in your country relating to
- the flexibility clauses in the Directive;
 - restriction of free movement;
 - access to the labour market;
 - rights of migrant workers under Article 11 § 2 of the Directive?
- 3.5 What steps have been undertaken to implement the Directive on temporary protection, COM 2001, 55 in national law? Are there any procedures for burden sharing arrangements? Is there a legal basis for the admission of refugees for the purposes of receiving temporary protection in a mass-movement situation?
- 3.6 The Council has reached political agreement on the principles for a Directive on minimum standards for the qualification and status of third country nationals as refugees or persons who otherwise need international protection, COM 2001, 510 final (see Council documents of June 2003). What measures are envisaged to implement the Directive, once it is adopted, in your country relating to:
- the definition of refugee;
 - the definition of persons entitled to subsidiary protection;
 - status of persons entitled to subsidiary protection;
 - the issue of internal flight alternative as defined by the Directive;
 - exclusion clauses, particularly issues of terrorism?
- To what extent are the refugee policies as reflected in the law and jurisprudence of your country in accordance with the proposal for the directive?
- 3.7 In the Commission's Communication of 22 November, 2000, COM 2000, 755 (see also 2nd Commission Report COM 2003, 152 final) the Commission's concept of a common European asylum procedure and a uniform status for those who are granted asylum valid throughout the Union is set out. Do you consider that the concept is generally in line with your country's asylum policy? Are the concerns of refugee organizations, such as Amnesty International and other organizations, of an undermining of the international regime for the protection of refugees shared in the political circles responsible for decision-making of your country?

- 3.8 The open coordination-mechanism, as suggested by the Commission, provided for first stage and second stage legislation in which the flexibility provisions in some of the directives on migration and asylum are to be replaced by full harmonization. Is this concept discussed in your country and what are the perceptions relating to the gradual establishment of a European asylum policy which might eventually replace national procedures and national decision-making?
- 3.9 The Communication of June 2003, towards a more accessible, equitable and managed asylum system – in reaction to the UK paper – develops some ideas on new approaches to pursue an orderly and managed arrival of persons in need of international protection. What is the political reaction in your country to the concept of an outside accessed asylum procedure, distribution of refugees and responsibility-sharing and other new concepts and ideas in coping with mass refugee movements?

PART IV (TERMINATION OF ILLEGAL RESIDENCE, RETURN AND REPATRIATION)

In this section national rapporteurs should provide information on national measures concerning sanctions against illegal entry, other measures against illegal trafficking, problems related to the termination of residence of third country nationals, not disposing of a valid residence permit, cooperation with other EU Member States in return and expulsion issues (common return programmes; enforcement of expulsion decisions and efforts to cooperate with sending countries in curbing illegal immigration (efficiency of bilateral re-admission agreements, typical problems of enforcement). It may also be useful to give a brief description of the crucial issues of enforcement and the actual situation (number of deportations, typical reasons of failure; lack of documentation, residence, etc.) It may not be necessary to give a detailed description of the existing laws on expulsion and deportation. However, remarks on the major gaps and deficits for an efficient return policy may be useful as well as ideas and suggestions on further harmonization needed in enforcement procedures and human rights implications of return procedures.

- 4.1 How many third country nationals without a valid residence permit are currently, according to estimates, staying in your country? How many deportations have actually been made in previous years? Is the whole enforcement process considered as acceptable?

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- 4.2 What has been undertaken to implement the Directive of 28 November 2002, dealing with the facilitation of unauthorized entry, transit and residence?
- 4.3 How many illegal applicants have been apprehended at or near the border? How many criminal procedures for human trafficking have been instituted in the last year?
- 4.4 What efforts have been undertaken in your country regarding the Budapest June 2003 recommendations concerning the harmonization of penalty scales with regard to the crime of the smuggling of migrants and trafficking of persons, in line with Council Directive 2002/90 of 28th November 2002? Did your country sign the relevant UN protocols on the smuggling of migrants?
- 4.5 What measures have been taken to implement the Council Directive of 28 May 2001, on the mutual recognition of decisions on the expulsion of third country nationals? What, if any shortcomings or gaps of the Directive should be corrected in a further directive on cooperation on expulsion or deportation of third country nationals?
- 4.6 Do readmission agreements or other international treaties or arrangements with the aim of controlling and curbing illegal immigration and facilitating return exist in your country? Have they functioned satisfactorily?
- 4.7 To what extent have EU-standards and recommendations influenced your country's return policy? Have efforts been undertaken to cooperate with other EU Member States in enforcing return decisions by common deportation actions, exchange of information, facilitation of air and land transit, common principles on flight security, etc.?
- 4.8 Do you consider that there is a need to elaborate a common legal regime for air deportations (legal status of armed guards on board of the aircrafts, rights of the aircraft commander, legal rules in case of transit stops, applicability of national police law on board of aircraft on flight, etc.)?

FIDE KONGRESS DUBLIN 2.–5. JUNI 2004

Thema 3: Auswanderungs- und Asylrecht und -politik

FRAGEBOGEN

Einleitung

Das Ziel des Kongresses für dieses Thema ist es, das Recht und die Politiken der Gemeinschaft und der Mitgliedstaaten zu erforschen. Die Politiken werden im Licht der internationalen Verpflichtungen in Bezug auf Flüchtlinge und Migranten aus Drittländern betrachtet. Die Verbesserungsmöglichkeiten werden erforscht werden, wobei die Arbeitsmarktbedingungen von Mitgliedstaaten in Betracht gezogen werden. Zusätzlich wird dieses Thema erforschen, ob die Politiken der Mitgliedstaaten die Politik der Gemeinschaft untergraben oder unterstützen.

Das Thema des Migrations- und Asylrechts und -politik umschließt eine Bandbreite von verschiedenen Dingen, z.B. illegale Einreise, Grenzkontrolle, Beziehungen mit Versandländern, Integrationsfragen, Zugang zur Arbeit und anderen Zwecken, Aufnahme von Asylbewerbern, Asylrichtlinien, die ausschließliche Befugnis Asylanträge zu bearbeiten, das Teilen von Belastungen, Wiederaufnahmeverträge, Rücksenderichtlinien, etc. Nationale Berichte sollten sich auf die Dinge konzentrieren, welche in Bezug zu der Migrations- und Asylpolitik der Gemeinschaft, die in den Richtlinien und Vorschlägen von Richtlinien wiedergespiegelt ist, stehen. Nationale Berichte können sich daher in deren Struktur unterscheiden im Hinblick der Vereinbarkeit oder Unvereinbarkeit mit dem Recht der Gemeinschaft. In manchen Mitgliedstaaten werden manche Aspekte große Probleme bereiten, während solche Probleme in anderen Mitgliedstaaten nicht entstehen.

Es ist offensichtlich, dass die nationalen Berichte sich nicht mit allen Dingen, die in diesem Fragebogen genannt werden, im Detail befassen können. Es ist nicht die Absicht dieses Fragebogens, eine Basis für einen vollständigen vergleichenden Bericht des Migrations- und Asylrechts- und der -politik in den Mitgliedstaaten darzustellen. Nationale Berichte können sich auf eine Anzahl von vergleichenden Studien stützen, welche in der Verfassung von Kommissionsvorschlägen für Richtlinien hergestellt