

COUNCIL OF EUROPE

COMMITTEE OF MINISTERS

RECOMMENDATION No. R (81) 16

OF THE COMMITTEE OF MINISTERS TO MEMBER STATES ON THE HARMONISATION OF NATIONAL PROCEDURES RELATING TO ASYLUM

*(Adopted by the Committee of Ministers on 5 November 1981
at the 339th meeting of the Ministers' Deputies)*

The Committee of Ministers, under the terms of Article 15.b of the Statute of the Council of Europe,

Considering that the aim of the Council of Europe is to achieve a greater unity between its members ;

Having regard to the Convention relating to the status of refugees of 28 July 1951 and the Protocol relating to the status of refugees of 31 January 1967 ;

Recalling the liberal and humanitarian attitude of member states of the Council of Europe with regard to asylum seekers and in particular their commitment to the principle of non-refoulement, as evidenced by Resolution (67) 14 on asylum to persons in danger of persecution and the Declaration on Territorial Asylum of 1977 ;

Having regard to Recommendation 787 (1976) of the Consultative Assembly on harmonisation of eligibility practice ;

Bearing in mind the basic requirements on this subject set out by the Executive Committee of the Programme of the United Nations High Commissioner for Refugees ;

Taking into consideration also the general principles on the protection of the individual in relation to the acts of administrative authorities set out in Resolution (77) 31 ;

Desirous to define the guarantees which national procedures for examining asylum requests should offer to applicants and for this purpose to establish common principles,

Recommends the governments of member states to apply the following principles in their law and administrative practice :

1. All asylum requests shall be dealt with objectively and impartially.
2. The decision on an asylum request shall be taken only by a central authority.
3. Clear instructions for dealing with asylum requests with a view to their being forwarded to the central authority shall be given to the authorities responsible for frontier control, as well as to local authorities called upon to deal with such requests. These instructions shall in particular :
 - i. draw the attention of the said authorities especially to the obligation to respect the principle of non-refoulement ;
 - ii. require these authorities to provide the central authority with all possible information with a view to the examination of the request ;

iii. emphasise the need to take into consideration the particular situation in which the asylum seeker finds himself, including, as the case may be, difficulties he might experience in presenting his request.

4. As long as the central authority referred to in paragraph 2 has not taken a decision on the asylum request, the applicant shall be allowed to remain in the territory of the state, unless the competent central authority has established that the request is manifestly based on grounds having no connection with asylum, in particular that it is fraudulent or is related neither to the criteria for the granting of refugee status laid down in Article 1.A(2) of the 1951 Geneva Convention nor to other criteria justifying the granting of asylum.

5. There shall be provision for appeal to a higher administrative authority or to a court of law against the decision on an asylum request. Failing that there shall at least be an effective possibility of having the decision reviewed.

The applicant shall be allowed to remain in the territory while an appeal or review is pending unless facts come to light in the course of the appeal or review procedure which, if they had been known at the time of the initial examination of the request by the central authority, would have led the latter to decide that the request was manifestly based on grounds having no connection with asylum.

6. The applicant shall receive the necessary guidance as to the procedures to be followed and shall be informed of his rights. He shall enjoy the guarantees necessary for presenting his case to the authorities concerned and shall have the right to be heard, when necessary with the assistance of an interpreter ; the intervention of a lawyer shall be permitted at an appropriate stage of the procedure, including procedures on an appeal, as well as the possibility to communicate freely with the office of the United Nations High Commissioner for Refugees and to approach a voluntary agency working for refugees.

7. The decision on an asylum request shall be notified to the applicant ; in the event of an unfavourable decision, he shall be informed in an appropriate manner of the reasons on which the decision is based and of the possibilities of appeal or review open to him.

8. When the applicant is recognised as a refugee, he shall be issued with documentation certifying his refugee status.

9. The confidential character of the asylum request, of declarations made by the applicant and of the other elements in his file shall be protected.

10. States shall seek through appropriate means to co-operate with the office of the United Nations High Commissioner for Refugees with regard to matters concerning asylum requests.