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Accelerated asylum procedures in Council of Europe member states

Recommendation 1727 (2005)

Reply from the Committee of Ministers
adopted at the 967th meeting of the Ministers' Deputies (14 June 2006)

1. The Committee of Ministers notes Parliamentary Assembly Recommendation 1727 (2005) on accelerated asylum procedures in Council of Europe member states with interest. It has communicated the recommendation to the member states' governments and has requested comments from the Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), the Steering Committee for Human Rights (CDDH) and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT).

2. The Committee of Ministers is of the opinion that the use of accelerated procedures for certain categories of asylum claims, in particular clearly abusive cases, is justified and is advantageous for the state as well as for asylum seekers themselves. However, the use of accelerated procedures in Europe must not lead to a higher risk of *refoulement* or of other forms of violation of the rights of asylum seekers as defined by international law.

3. There are a number of internationally recognised standards that should apply to all asylum seekers irrespective of the type of procedure they are channelled through. The Committee shares the concern of the Assembly that any acceleration of asylum procedures must be implemented in full conformity with the international obligations resulting in particular from the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol as well as the European Convention on Human Rights and its Protocols.[1] Other standards are laid down in recommendations of the Committee of Ministers.[2]

4. The Committee of Ministers acknowledges that in the context of accelerated asylum procedures, these recommendations of the Committee of Ministers are not exhaustive and that there is a need to address a number of issues, *inter alia,* in connection with the handling of requests for asylum at the border and with access to an effective remedy. The Committee of Ministers sees the need to establish safeguards for asylum seekers in accelerated procedures and therefore finds merit in the proposal made by the Parliamentary Assembly for the drafting of policy guidelines and best practices. This work could constitute a useful source of inspiration also for those member states which are members of the European Union in the context of the recently adopted European Union Council Directive on minimum standards on procedures in member states for granting and withdrawing refugee status, which provides for the possibility to use accelerated procedures (Article 23, paragraph 3).

[1] Although the right to political asylum is not protected as such, the European Convention on Human Rights and its Protocols contain important substantial and procedural guarantees as regards in particular the expulsion and detention of aliens whose request for asylum has been rejected (see Articles 2, 3, 5, 8 and 13 of the Convention as well as Article 4 of Protocol No. 4 and Article 1 of Protocol No. 7).

[2] For example: Recommendation (97) 22 containing guidelines on the application of the safe third country concept, Recommendation (94) 5 on guidelines to inspire practices of the member states of the Council of Europe concerning the arrival of asylum-seekers at European airports, Recommendation (81) 16 on the harmonisation of national procedures relating to asylum, Recommendation (98) 13 on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights and the 20 Guidelines on Forced Return adopted by the Committee of Ministers on 4 May 2005.

5. In this context, it recalls that the Third UNHCR/Council of Europe Colloquy on the European Convention on Human Rights and the Protection of Refugees, Asylum-Seekers and Displaced Persons, which was held in Strasbourg on 14 October 2005, dealt with "The European Convention of Human Rights and the New Common European Asylum System". One of the conclusions of the colloquy was that appropriate guidelines were required to ensure that accelerated procedures, as provided for by the European Council Directive, are in line with the requirements of the Council of Europe's standards and the 1951 Geneva Convention. This could prevent an increase in the corresponding number of applications filed before the European Court of Human Rights.

6. The Committee of Ministers has given terms of reference to the CDDH to examine, in consultation with the CDCJ, the question of human rights protection in the context of accelerated asylum procedures and, as appropriate, to draft policy guidelines in this field. In this respect, the Committee agrees with the Parliamentary Assembly that full use should be made of information and standards emanating from the Council of Europe's human rights monitoring mechanisms.

7. As recommended by the Parliamentary Assembly, the Committee of Ministers would find it adequate to expand Council of Europe training initiatives for those involved in refugee status determination in general, and those involved in accelerated procedures in particular. It notes that under its assistance programmes for the promotion of European standards in the field of asylum and refugees, the Directorate General of Legal Affairs has organised training activities in this field on a regular basis.[3] It also notes the recent and planned awareness-raising and training initiatives organised by the Directorate General of Human Rights in partnership with the UNHCR. The above-mentioned guidelines will be a useful instrument for future training initiatives in this field.

Appendix 1 to the reply

Comments by the Bureau of the Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) on Parliamentary Assembly Recommendation 1727 (2005) on accelerated asylum procedures in Council of Europe member states

At its 943rd meeting (19 October 2005, item 3.1), the Committee of Ministers decided to communicate to the Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) the above-mentioned Parliamentary Assembly recommendation for information and possible comments. The CAHAR adopted the following comments on 25 November 2005.

The CAHAR took note with particular interest of Recommendation 1727 (2005), which should be considered in the light of Resolution 1471 (2005). The CAHAR is grateful to the Parliamentary Assembly for identifying in this document a number of difficulties that may arise in refugee status determination under accelerated procedures of asylum claims. The CAHAR is of the opinion that the use of accelerated procedures for certain categories of asylum claims, in particular in clearly abusive cases, is justified and is advantageous for the state as well as for asylum seekers themselves.

The increased use of accelerated procedures in Europe must not lead to a higher risk of *refoulement* and of violation of the rights of asylum seekers under international law. There are a number of internationally recognised standards that should apply to all asylum seekers irrespective of the type of procedure they are channelled through. Some of these standards stem directly from the European Convention on Human Rights, notably Articles 2, 3, 5, 8 and 13; others are laid down in existing recommendations of the Committee of Ministers. For instance, with respect to the concepts listed in Recommendation 1727 (2005), Article 3.1, the Committee of Ministers has adopted the following recommendations:

- As regards the concept of "safe third country": Recommendation (97) 22 containing guidelines on the application of the safe third country concept ;

[3] Recent examples of such activities include a seminar on "the role of the judge in examining asylum application in conformity with European standards" held in Predeal (Romania) on 13 and 14 May 2005 and a workshop on Council of Europe standards concerning the protection of asylum-seekers and IDPs held in Baku (Azerbaijan) on 28 and 29 September 2005 – both activities were co-organised with the UNHCR.

- With respect to procedures for dealing with asylum seekers at border points: Recommendation (94) 5 on guidelines to inspire practices of the member states of the Council of Europe concerning the arrival of asylum-seekers at European airports;

- Concerning rights of appeal, including the suspensive effect of appeals: Recommendation (81) 16 on the harmonisation of national procedures relating to asylum (paragraph 5, sub-paragraph 2: "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."); Recommendation (98) 13 on the right of rejected asylum seekers to an effective remedy against decisions on expulsion in the context of Article 3 of the European Convention on Human Rights (paragraph 2.4: "the execution of the expulsion order is suspended until a decision […] is taken" by the competent judicial or administrative authority), and the 20 Guidelines on Forced Return adopted by the Committee of Ministers on 4 May 2005 (Guideline 5, paragraph 3: "The exercise of the remedy should have a suspensive effect when the returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights as set out in guideline 2.1").

However, the CAHAR is of the opinion that, in the context of accelerated asylum procedures, the recommendations listed above are not exhaustive. In particular, they do not address a number of questions, *inter alia,* in connection with:

- The proper use of the concept of safe country of origin;

- The proper use of the concept of safe third country including that of "super safe third country";

- The proper use of border procedures.

The CAHAR sees the need to establish safeguards encompassing all rights and guarantees for asylum seekers in accelerated procedures.

The CAHAR is therefore of the opinion that, in the context of accelerated asylum procedures, additional work by the Council of Europe should be considered. It finds merit in the proposal made by the Parliamentary Assembly to the Committee of Ministers for the drafting of policy guidelines and best practices for dealing with accelerated procedures.

This additional work would constitute a useful source of inspiration also for those member states which are members of the European Union in the context of the recently adopted European Union Council Directive on minimum standards on procedures in member states for granting and withdrawing refugee status, which provides for the possibility to use accelerated procedures (Article 23, paragraph 3).

In this context, the CAHAR refers to the Third UNHCR/Council of Europe Colloquy on the European Convention on Human Rights and the Protection of Refugees, Asylum-Seekers and Displaced Persons entitled "The European Convention of Human Rights and the New Common European Asylum System" which was held in Strasbourg on 14 October 2005. One of the conclusions of the colloquy was that appropriate guidelines were required to ensure that accelerated procedures, as provided for by the European Council Directive, are in line with the requirements of the Council of Europe's standards and the 1951 Geneva Convention. This should prevent an increase in the corresponding number of applications filed before the European Court of Human Rights.

The CAHAR would be willing to contribute directly to this work, in co-operation with other relevant bodies of the Council of Europe, as it did with regard to the drafting of the Guidelines on forced return.

As recommended by the Parliamentary Assembly, the CAHAR would find it adequate "to expand Council of Europe training initiatives for those involved in refugee status determination in general, and those involved in accelerated procedures in particular, ensuring: […] full account of the human rights standards of the Council of Europe, notably the European Convention on Human Rights and the case law of the European Court of Human Rights relevant to refugee status determination". In this respect, it notes that under its assistance programmes for the promotion of European standards in the field of asylum and refugees, the Directorate General of Legal Affairs has organised training activities in this field on a regular basis. Recent examples of such activities include a seminar on "the role of the judge in examining asylum application in conformity with European standards" held in Predeal (Romania) on 13 and 14 May 2005 and a workshop on Council of

Europe standards concerning the protection of asylum-seekers and IDPs held in Baku (Azerbaijan) on 28 and 29 September 2005 – both activities were co-organised with the UNHCR.

Appendix 2 to the reply

Opinion of the Steering Committee for Human Rights (CDDH) on Parliamentary Assembly Recommendation 1727 (2005) on accelerated asylum procedures in Council of Europe member states

1. The Steering Committee for Human Rights ("the CDDH") notes with interest Parliamentary Assembly Recommendation 1727 (2005) and Resolution 1471 (2005) on accelerated asylum procedures in Council of Europe member states. It shares the concern of the Assembly that any acceleration of asylum procedures must be implemented in full conformity with the international obligations resulting in particular from the 1951 Geneva Convention relating to the Status of Refugees ("the Refugee Convention") and its 1967 Protocol as well as the European Convention on Human Rights ("the Convention") and its Protocols.

2. The CDDH agrees with the Assembly that the establishment of accelerated asylum procedures raises important issues under the Convention and its Protocols. Although the right to political asylum is not protected as such, the Convention and its Protocols contain important substantial and procedural guarantees as regards in particular the expulsion and detention of aliens whose request for asylum has been rejected (see Articles 2, 3, 5, 8 and 13 of the Convention as well as Article 4 of Protocol No. 4 and Article 1 of Protocol No. 7).[4]

3. Article 2 and 3 of the Convention imply, *inter alia*, the obligation not to expel any person to a country, where substantial grounds have been shown for believing that the person concerned faces a real risk of being executed or subjected to torture or to inhuman or degrading treatment or punishment in the receiving country. The protection afforded by Article 3 is of absolute character and supplements that provided by Article 33 of the Refugee Convention. Article 8 of the Convention guarantees respect for private and family life. It applies to recognised refugees and persons enjoying temporary protection and offers protection against expulsion measures which would unlawfully or disproportionately interfere with their family life. Article 4 of Protocol No. 4 prohibits collective expulsions of aliens. Article 1 of Protocol No. 7 contains important procedural safeguards relating to the expulsion of aliens.

4. Under Article 13 of the Convention, any person who has an "arguable complaint" that any of his or her rights and freedoms under the Convention have been violated is entitled to an effective domestic remedy to deal with the substance of the complaint and to grant appropriate relief. In this context, the European Court of Human Rights has stressed the importance of having remedies with suspensive effect.[5] The notion of an effective remedy under Article 13 requires a remedy capable of preventing the execution of measures that are contrary to the Convention and whose effects are potentially irreversible. Consequently, it would be inconsistent with Article 13 for such measures to be executed before their compatibility with the Convention has been assessed by the competent national authorities. The Guidelines on forced return adopted by the Committee of Ministers in May 2005 also provide that appeals against removal orders should have a suspensive effect when the returnee has an arguable claim that he or she would be subjected to treatment contrary to his or her human rights. In this regard the CDDH is of the opinion that it is important to ensure a proper follow-up of the Guidelines.

5. The CDDH considers that the need for additional work by the Council of Europe in this field can only be seriously evaluated once the draft EU Council Directive on minimum standards on procedures in member states for granting and withdrawing refugee status has been finalised and adopted. While recognising the role and work of the Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR), the CDDH expresses its willingness to contribute, from a human rights perspective, to any future activity in this field, notably in the light of the situation when activities of the CAHAR may be discontinued.

[4] See the UNHCR Manual on Refugee Protection and the ECHR (Updated March 2005), available at http://www.unhcr.ch/cgi-bin/texis/vtx/publ/opendoc.htm?tbl=PUBL&page=home&id=3ead312a4.

[5] *Mamatkulov and Askarov v. Turkey, judgment of 4 February 2005, § 124; Čonka v. Belgium*, judgment of 5 February 2002, § 79.

6. Like the Parliamentary Assembly, the CDDH supports Council of Europe training initiatives for those involved in refugee status determination in general, and those involved in accelerated procedures in particular. It notes with satisfaction that recent and planned awareness-raising and training initiatives carried out by the Directorate General of Human Rights on issues related to the rights of refugees and asylum seekers, including status determination, have been or will be carried out in partnership with the UNHCR.

7. The CDDH welcomes the recent Colloquy on 14 October 2005 at the Council of Europe in Strasbourg on the European Convention on Human Rights and the Protection of Refugees, Asylum-Seekers and Displaced Persons. The event examined the case law of the European Court of Human Rights, the protection offered by the UN instruments, and the EU Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted.

8. Finally, the CDDH agrees with the Parliamentary Assembly that full use should be made of information emanating from the Council of Europe's human rights monitoring mechanisms. Such information and standards established by these mechanisms are relevant not only for training initiatives in this field, but also for the development of policy guidelines and best practices.

Appendix 3 to the reply

Opinion of the European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT)

Strasbourg, 31 January 2006

Dear Chairman,

The European Committee for the Prevention of Torture and Inhuman and Degrading Treatment or Punishment (CPT) is very grateful to the Committee of Ministers for having given it the opportunity to make comments on Parliamentary Assembly Recommendation 1727 (2005) on accelerated asylum procedures in Council of Europe member states.

A number of issues dealt with in the Recommendation are central to the CPT's mandate. Indeed, on many occasions, visiting delegations encountered asylum-seekers, who were deprived of their liberty while their asylum application was being processed in an accelerated procedure.

The CPT shares the concerns expressed by the Parliamentary Assembly about the situation of asylum-seekers who are subject to an accelerated asylum procedure und fully supports the text of Recommendation 1727 (2005). In particular, it welcomes the fact that the Recommendation takes account of the relevant standards set out by the Committee in its 7th General Report (CPT/Inf (97) 10) and further developed in subsequent visit reports.

Yours faithfully,
Silvia CASALE

Mr Gheorghe MAGHERU
Ambassador Extraordinary and Plenipotentiary
Chairman of the Ministers' Deputies
Permanent Representative of Romania to the Council of Europe