



Strasbourg, 25 October 2007

GT-DH-AS(2007)005

**STEERING COMMITTEE FOR HUMAN RIGHTS  
(CDDH)**

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**WORKING GROUP ON HUMAN RIGHTS PROTECTION  
IN THE CONTEXT OF ACCELERATED ASYLUM PROCEDURES  
(GT-DH-AS)**

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**REPORT**

**2<sup>nd</sup> meeting  
Wednesday 17 – Friday 19 October 2007**

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**Item 1:        Opening of the meeting and adoption of the agenda**

1.        The Working Group on human rights protection in the context of accelerated asylum procedures (GT-DH-AS) held its 2<sup>nd</sup> meeting in Strasbourg from 17 to 19 October 2007, with Mr Michal BALCERZAK (Poland) as Chairperson. The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.

**Items 2-3:    Examination of the replies to the questionnaire on accelerated asylum procedures and identification of elements for inclusion in the future Guidelines on human rights protection in the context of accelerated asylum procedures**

2.        The Working Group welcomed the fact that 35 Member States replied to the questionnaire on accelerated asylum procedures and was of the view that these replies provided the additional information it had felt to require during its 1st meeting. The Group also took note of working and information documents submitted by the Secretariats of the Social Charter and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), by the Offices of the Commissioner for Human Rights and the UNHCR in Strasbourg and by NGOs (see the list in Appendix II). In the light of the analysis of the replies to the above mentioned questionnaire (GT-DH-AS (2007) 003) and on the basis of proposals prepared by the Secretariat (GT-DH-AS (2007) 004), the Group therefore started drafting preliminary elements to be included in the future guidelines (see Appendix III).

3.        Before doing so, the Group recalled that its terms of reference instructed it to prepare guidelines focusing on issues that were likely to threaten human rights in the context of accelerated asylum procedures. The Group agreed that the guidelines to be drafted had to be concise, limited to essential issues and seek to instruct.

4.        A discussion took place on the scope of the guidelines and the qualification of accelerated asylum procedures. The Group discussed at length whether or not it was advisable to define such procedures, how best to eventually word a definition of such procedures or alternatively how to refer to such procedures. A first approach would consist in defining accelerated asylum procedures by comparing them with regular asylum procedures, i.e. by identifying the characteristics which distinguish an accelerated procedure from a regular one. A second approach would consist in listing the grounds on which and/or reasons why a State could use such procedures. It was also highlighted that asylum procedures can be accelerated either within regular procedures, through the improvement of case management; or through the introduction of specific procedures, thus resulting in reduced time-limits and safeguards.

5.        In the framework of such discussions it was also questioned whether one should distinguish between procedures on admissibility issues and procedures on the merits. Attention was drawn to the fact that the Group's terms of reference were broad and did not indicate clearly what the notion of "accelerated asylum procedures" included. As a

consequence, procedures on admissibility issues could also be included within this notion and some reference to this (e.g. in an explanatory report or in comments accompanying the guidelines) might appear useful.

6. The lack of a common understanding of the term “accelerated asylum procedures” gave rise to diverging opinions in the Group when it attempted to list any possible exemptions to the use of such procedures. In particular, with regard to separated children and other vulnerable persons, some experts were of the view that minors should be exempted as accelerated asylum procedures entailed reduced procedural guarantees and rights for the asylum seeker. Others believed that minors and other vulnerable persons should be entitled to have their application processed through an accelerated asylum procedure as this would grant them a chance to have their case solved more rapidly. The majority of experts were however of the view, that the guidelines should focus on accelerated procedures, which may threaten asylum seekers’ human rights.

7. Apart from the questions raised in the paragraphs above, the Group decided that the following issues needed further consideration but should be included in the guidelines or in its explanatory report:

- double nationality;
- legal assistance;
- confidentiality of information;
- role of UNHCR and NGOs.

8. The Group also agreed that the following questions remained to be discussed at its next meeting:

- general structure of the guidelines and order in which they should be presented, including where to insert the reference to the protection against refoulement;
- format of the text accompanying the guidelines: i.e. explanatory memorandum, comments to each guideline (see forced return guidelines)<sup>1</sup> and/or texts of reference (see human rights and fight against terrorism guidelines)<sup>2</sup>;
- the wording of guidelines or paragraphs that raised reservations from members of the Group (such as Guideline III, section B) and which appear in square brackets in Appendix III.

9. The Group welcomed the contribution of the Secretariat of the CPT which drafted some proposals for the guideline on the issue of detention of asylum seekers (see Appendix IV). It decided to consider these suggestions at its next meeting.

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<sup>1</sup> [http://www.coe.int/t/e/legal\\_affairs/legal\\_co-operation/foreigners\\_and\\_citizens/asylum\\_refugees\\_and\\_stateless\\_persons/texts\\_and\\_documents/2005/Twenty%20Guidelines%20on%20forced%20return%202005.pdf](http://www.coe.int/t/e/legal_affairs/legal_co-operation/foreigners_and_citizens/asylum_refugees_and_stateless_persons/texts_and_documents/2005/Twenty%20Guidelines%20on%20forced%20return%202005.pdf)

<sup>2</sup> [http://www.coe.int/t/E/Human\\_Rights/h-inf\(2002\)8eng.pdf](http://www.coe.int/t/E/Human_Rights/h-inf(2002)8eng.pdf)

10. The first preliminary elements for possible inclusion in the draft guidelines are set out in Appendix III. These elements are the basis for further work and are therefore still subject to possible amendments. Other elements, not yet discussed and appearing in document GT-DH-AS (2007)004, should also be dealt with during the next meeting.

**Item 4: Other business and adoption of the conclusions of the meeting**

11. Mr Gagik YEGANYAN (Armenia) was elected Vice-Chairperson to replace Ms Camilla BUSCK-NIELSEN (Finland) who informed that she could no longer participate in the Group's meetings.

12. The Group took note that its next meeting would be on 5-7 December 2007 and requested the Secretariat, if possible, to convene in the same meeting room.

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Appendix I**List of participants****MEMBERS / MEMBRES****ARMENIA / ARMÉNIE**

Mr Gagik YEGANYAN, Head of Migration Agency, Ministry of Territorial Administration of the Republic of Armenia, 4 Hr. Kochar St., Yerevan 375033

**FINLAND / FINLANDE**

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**LATVIA / LETTONIE**

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**POLAND / POLOGNE**

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**ROMANIA / ROUMANIE**

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**SWEDEN / SUÈDE**

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Mr Lars-Erik FJELLSTRÖM, Desk Officer, Ministry of Justice, 103 39 STOCKHOLM

**SWITZERLAND / SUISSE**

M. Frank SCHÜRMANN, Agent du Gouvernement devant la CEDH, Office fédéral de justice et police, Chef de l'Unité droit européen et protection internationale des droits de l'homme, Bundesrain 20, CH-3003 BERNE

M. Christian ZUMWALD, Adjoint juridique, Département fédéral de justice et police DFJP, Office fédéral des migrations ODM, Domaine de direction procédure d'asile, Quellenweg 6, 3003 Berne-Wabern

**UNITED KINGDOM / ROYAUME-UNI**

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Mr Nick BANKS , Head of Non-Suspensive Appeals (NSA) process, Border and Immigration Agency, 14<sup>th</sup> Floor Lunar House

Ms Sarah MUTTON, Senior Executive Officer for Oakington, Home Office, Borders and Immigration Agency, IND, Building 14, Longstanton, Near Cambridge, Cambs, CB4 5EJ

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#### **PARTICIPANTS**

**Secretariat of the European Committee for the Prevention of Torture / Secrétariat du Comité européen pour la prévention de la torture et des peines ou traitements inhumains ou dégradants**

M. Fabrice KELLENS

Mr Kristian BARTHOLIN

**Office of the Commissioner for Human Rights / Bureau du Commissaire aux Droits de l'Homme du Conseil de l'Europe**

Mr Julien ATTUIL

Tous les autres « participants » : excusés.

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#### **OTHER PARTICIPANTS / AUTRES PARTICIPANTS**

**United Nations High Commissioner for Refugees (UNHCR) / Haut Commissariat des Nations Unies pour les Réfugiés**

Mr Samuel BOUTRUCHE, Legal Assistant, UNHCR Representation to the European Institutions, Council of Europe, Palais, Office 1.018-1.020, F-67075 STRASBOURG Cedex

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Tous les « autres participants » : excusés.

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#### **OBSERVERS / OBSERVATEURS**

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**European Group of National Human Rights Institutions / Groupe européen des institutions nationales des droits de l'homme**

Mme Stéphanie DJIAN, Chargée de mission, Commission Nationale Consultative des Droits de l'Homme (CNCDH), 35 rue Saint-Dominique, 75700 Paris

**Migration Division / Division des migrations**

Mr Piotr WALCZAK, , Integration, Migrants' rights, Migration flows / Intégration, Droits des migrants, Flux migratoires

Tous les autres observateurs : excusés.

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**SECRETARIAT**

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Mme Michèle COGNARD, Assistant / Assistante, Human Rights Intergovernmental Cooperation Division/Division de la coopération intergouvernementale en matière de droits de l'homme

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**Interpreters / Interprètes**

M. Nicolas GUITTONNEAU

Ms Cynera JAFFREY

M. Remy JAIN

## Appendix II

### **Agenda**

#### **Item 1: Opening of the meeting and adoption of the agenda**

##### Working documents

- Draft agenda GT-DH-AS(2007)OJ001
- Report of the 64<sup>th</sup> meeting of the CDDH (10-13 April 2007) CDDH(2007)011
- Report of the 1<sup>st</sup> GT-DH-AS meeting (6-8 December 2006) GT-DH-AS(2006)003

#### **Item 2: Examination of the replies to the questionnaire on accelerated asylum procedures**

##### Working documents

- Questionnaire on accelerated asylum procedures GT-DH-AS(2007)001
- Compilation of replies to the questionnaire GT-DH-AS(2007)002rev Bil
- Table of replies received by the UNHCR UNHCR synopsis
- Analysis of replies prepared by the Secretariat GT-DH-AS(2007)003

#### **Item 3: Identification of elements for inclusion in the future Guidelines on human rights protection in the context of accelerated asylum procedures**

##### Working documents

- Report of the 1<sup>st</sup> GT-DH-AS meeting (6-8 December 2006) GT-DH-AS(2006)003
- Amnesty International observations AI Index: IOR 61/019/2007
- Social Charter Secretariat observations Email of 17 April 2007
- Note on relevant case-law of the European Court of Human Rights in UNHCR contribution  
the context of accelerated asylum procedures

##### Information documents

- Manual on Refugee Protection and the ECHR UNHCR publication  
<http://www.unhcr.org/publ/PUBL/3ead312a4.html>
- UNHCR Response to the European Commission's Green Paper on the UNHCR paper  
Future Common European Asylum System (September 2007)
- Green Paper on the future Common European Asylum System (presented COM(2007)301 final  
by the Commission on 6 June 2007)  
[http://ec.europa.eu/justice\\_home/news/intro/doc/com\\_2007\\_301\\_en.pdf](http://ec.europa.eu/justice_home/news/intro/doc/com_2007_301_en.pdf)
- Surveys on Detention of Asylum Seekers and Alternatives in the EU (The regional coalition 2006 – projects supported by the European Commission, Directorate-General for Justice, Freedom and Security  
[www.alternatives-to-detention.org](http://www.alternatives-to-detention.org))
- Secretariat Memorandum on Parliamentary Assembly Recommendation CDDH(2006)011  
1727 (2005) of the Accelerated asylum procedures in Council of Europe member states
- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status  
<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML>
- UNHCR, ExCom Conclusions No. 8 (XXVIII) - 1977 on the Determination of Refugee Status (<http://www.unhcr.org/excom/EXCOM/3ae68c6e4.html>)
- UNHCR, ExCom Conclusions No. 30 (XXXIV) - 1983 on the Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum (<http://www.unhcr.org/excom/EXCOM/3ae68c6118.html>)

#### **Item 4: Other business and adoption of the conclusions of the meeting**



### Appendix III

#### **Elements for possible inclusion in the draft guidelines<sup>3</sup>**

*As discussed by the Group during its 2<sup>nd</sup> meeting (17-19 October 2007)*

##### **I. Recourse to accelerated asylum procedures**

[The use of accelerated asylum procedures should be limited to situations that appear to be manifestly well founded cases and manifestly unfounded cases.]

and/or

[Accelerated asylum procedure is an asylum procedure derogating from regularly applicable procedural time scales and/or safeguards with the view to expedite decision making in defined categories of cases.]

and/or

[1. Regular asylum procedures should in principle remain the rule and accelerated asylum procedures the exception.

2. Accelerated asylum procedures should be used solely in specifically defined situations such as [manifestly well-founded cases and] manifestly unfounded cases.]

##### **II. Exemptions from accelerated cases**

Some categories of persons such as separated children and victims of torture, sexual violence [or trafficking], should be exempted from accelerated asylum procedures owing to their vulnerability [and the complexity of their case], [or because they fall under the exclusion clauses of the 1951 Refugee Convention.]

##### **III. Application of the safe country of origin and safe third country concepts**

Determination of the asylum application shall be based on the asylum-seeker's individual situation and not solely on general analysis and evaluation of a given country.

###### **A. The safe country of origin concept**

[1. The automatic application of accelerated procedure to asylum-seekers coming from safe countries of origin shall be prohibited.]

2. The fact of coming from a safe country of origin shall be only one element among others to be taken into account in reaching a decision on whether to grant or refuse asylum.

3. The safe country of origin concept shall be used with due diligence, in accordance with sufficiently specific criteria. Up-to-date information is needed from a variety of reliable and objective sources, which should be analysed.

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<sup>3</sup> The Group is encouraged to send the Secretariat ([virginie.flores@coe.int](mailto:virginie.flores@coe.int)) any suggestion to clarify and improve these preliminary elements.

4. All asylum-seekers shall be given an effective opportunity to rebut the presumption of safety of their country of origin [in a personal interview].

[5. For applicants holding dual or multiple nationalities, the receiving state should check the individual countries of origin to see whether they are possible destinations.]

### **B. The safe third country concept**

1. Application of the safe third country concept shall be strictly limited and every asylum application shall be examined in the light of the [criteria] set out below, drawing on Recommendation No. R (97) 22 of the Committee of Ministers to member States containing guidelines on the application of the safe third country concept:

- (i) the ratification and implementation by the third country of the 1951 Refugee Convention and other relevant international treaties in the human rights field, and, in the case of the application of this concept among the Council of Europe member states, the European Convention on Human Rights;
- (ii) the legal and actual existence of a full and fair assessment procedure accessible to the asylum seeker in the third country as well as protection from refoulement;
- [(iii) a genuine, close link between the asylum-seeker and the third country];
- (iv) The [readiness] of the third country to admit the applicant and provide him or her with access to the asylum system and protection from refoulement;
- (v) [Burden of proof] that the third country is safe for the asylum-seeker under the responsibility of the country of asylum, and an effective opportunity for the asylum seeker to rebut the presumption of safety;
- [(vi) exemption of vulnerable persons, particularly [separated children] and [traumatised persons], victims of torture inhuman or degrading treatment (or other ill-treatment [such as sexual or gender-based violence]), from implementation of the safe third country concept.]

2. Furthermore, application of the safe third country concept does not dispense a country from its obligations under Article 3 of the European Convention on Human Rights prohibiting torture and inhuman or degrading treatment or punishment, even by virtue of the Dublin Regulation (EC) No 343/2003 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Communities.

### **IV. Procedural guarantees**

1. Where accelerated asylum procedure apply, the asylum seeker shall enjoy the following minimum procedural guarantees:

- (i) [the right to be admitted in the territory of the state from which they are seeking asylum];

or

[the right of access to asylum procedure in the state from which they are seeking asylum]

[the right of access to asylum procedure to enjoy the same rights and procedural guarantees in cases where the asylum application was lodged at borders, including airports and transit areas]

- (ii) the right to be registered on arrival and submit an asylum application whatever the location of submission of the application
- (iii) the right to be informed explicitly and without delay, in a language that they understand, of the different stages of the procedure being applied to them, of their rights, and of the remedies available to them;
- (iv) the right to an individual interview in a language which they understand;
- (v) [right to submit additional written or oral observations]
- (vi) the right to individual assessment of the asylum application [by competent/relevant authorities];
- (vii) the right to access legal assistance and to be represented throughout the procedure, whether at first instance or during appeal proceedings.
- (viii) the right for all applicants to receive a reasoned decision in writing of the outcome of the decision
- (ix) all information shall be treated confidentially / the right to keep all information confidential

[2. Authorities shall appoint without delay a representative of the interests of a separated or unaccompanied minor throughout the whole proceedings.]

[3. Submitting an asylum application at borders, including airports and transit areas should not entail an automatic recourse to accelerated procedures.]

[4. Lack of documents or use of forged documents should not entail an automatic recourse to an accelerated procedure.]

## **V. Quality of the decision-making process**

1. Decisions taken throughout the proceedings should be taken with [due diligence].
2. Accordingly, officials responsible for examining asylum applications should receive appropriate training and have access to the requisite information and research sources to carry out their task, having due regard to the gender and age of the persons concerned and the specific situation of the more vulnerable asylum-seekers.

## **Appendix IV**

### **Draft proposal submitted by the CPT**

#### **IX. Detention**

Detention of asylum-seekers during the accelerated asylum procedure should be the exception. Unaccompanied minors should, as a principle, not be placed in detention, but should be provided with special supervision and support.

##### **A. Grounds, duration and supervision of detention**

1. An asylum-seeker may only be deprived of his/her liberty with a view to ensuring his/her presence for the purpose of carrying out the accelerated asylum procedure, if this is in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the state in which the asylum application is lodged have concluded that the presence of the asylum-seeker for the purpose of carrying out the accelerated procedure cannot be ensured as effectively by resorting to another, less coercive measure.
2. The detained asylum-seeker shall be informed promptly, in a language which he/she understands, of the legal and factual reasons for his/her detention, and the possible remedies; he/she should be given the immediate possibility of contacting a lawyer, a doctor, and a person of his/her own choice to inform that person about his/her situation.
3. Detention shall be justified only for as long as the accelerated asylum procedure is in progress. If the procedure is not carried out with due diligence, the detention will cease to be permissible.
4. Any detention of asylum-seekers for the purpose of carrying out an accelerated asylum procedure shall be for as short a period as possible. In every case, the need to detain the asylum-seeker shall be reviewed at reasonable intervals of time. In the case of prolonged detention periods, such reviews should be subject to the supervision of a judicial authority.
5. An asylum-seeker arrested and/or detained for the purposes of ensuring his/her presence during an accelerated asylum procedure shall be entitled to take proceedings by which the lawfulness of his/her detention shall be decided speedily by a court and, subject to any appeal, he/she shall be released immediately if the detention is not lawful. This remedy shall be readily accessible and effective, and legal aid should be provided for in accordance with national legislation.

##### **B. Conditions of detention**

1. Asylum-seekers detained with a view to ensuring their presence for the purpose of an accelerated asylum procedure should normally be accommodated within the shortest possible time in facilities specifically designated for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably qualified personnel.

2. Such facilities should provide accommodation which is adequately furnished, clean and in a good state of repair, and which offers sufficient living space for the numbers involved. In addition, care should be taken in the design and layout of the premises to avoid, as far as possible, any impression of a “carceral” environment. Organised activities should include outdoor exercise, access to a day room and to radio/television and newspapers/magazines, as well as other appropriate means of recreation.

3. Staff in such facilities should be carefully selected and receive appropriate training. Member states are encouraged to provide the staff concerned, as far as possible, with training that would not only equip them with interpersonal communication skills but also familiarise them with the different cultures of the detainees. Preferably, some of the staff should have relevant language skills and should be able to recognise possible symptoms of stress reactions displayed by detained persons and take appropriate action. When necessary, staff should also be able to draw on outside support, in particular medical and social support.

4. Asylum-seekers detained with a view to ensuring their presence for the purpose of an accelerated asylum procedure should, in principle, not be held together with ordinary prisoners, whether convicted or on remand. Similarly, Men and women should be separated from the opposite sex if they so wish; however, the principle of the unity of the family should be respected and families should therefore be accommodated accordingly.

5. National authorities should ensure that the asylum-seekers detained in these facilities have access to lawyers, doctors, non-governmental organisations, members of their families, and the UNHCR, and that they are able to communicate with the outside world, in accordance with the relevant national regulations. Moreover, the functioning of these facilities should be regularly monitored, including by recognised independent monitors.

6. Detainees shall have the right to file complaints for alleged instances of ill-treatment or for failure to protect them from violence by other detainees. Complainants and witnesses shall be protected against any ill-treatment or intimidation arising as a result of their complaint or of the evidence given to support it.

7. Detainees should be systematically provided with information which explains the rules applied in the facility and the procedure applicable to them and sets out their rights and obligations. This information should be available in the languages most commonly used by those concerned and, if necessary, recourse should be made to the services of an interpreter. Detainees should be informed of their entitlement to contact a lawyer of their choice, the competent diplomatic representation of their country, international organisations such as the UNHCR and the International Organization for Migration (IOM), and non-governmental organisations. Assistance should be provided in this regard.

### **C. Children and families**

1. Children shall only be detained as a measure of last resort and for the shortest appropriate period of time.

2. Families detained with a view to ensuring their presence for the purpose of an accelerated asylum procedure should be provided with separate accommodation guaranteeing adequate privacy.

3. Children, whether in detention facilities or not, have a right to education and a right to leisure, including a right to engage in play and recreational activities appropriate to their age. The provision of education could be subject to the length of their stay.
4. Separated children should be provided with accommodation in institutions provided with the personnel and facilities which take into account the needs of persons of their age.
5. The best interest of the child shall be a primary consideration in the context of the detention of children.