



Strasbourg, 10 March 2007

GT-DH-AS(2007)007

**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**

**3rd meeting  
5 – 7 December 2007**

**Summary :**

The meeting was devoted to the continuation of elaboration of the draft Guidelines on Human Rights protection in the context of Accelerated Asylum Procedures for transmission to the CDDH for consideration at its next meeting (25-28 March 2008).

**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 3<sup>rd</sup> meeting in Strasbourg from 5 to 7 December 2007, with Mr Michal BALCERZAK (Poland) as Chairperson. The list of participants appears in Appendix I. The agenda, as adopted, appears in Appendix II.
2.        The Group welcomed the participation of Mrs Nuala MOLE, representing the AIRE CENTRE, and decided to invite her to its future meetings.
3.        The Group took note that the CDDH, during its 65<sup>th</sup> meeting (6-9 November 2007), had expressed unanimously its appreciation of the work already undertaken and had decided to request the Committee of Ministers to extend the mandate of the Group until 30 September 2008.
4.        The Chairperson invited all members of the Group to devote their best efforts towards elaborating the draft guidelines in the course of the current meeting, in order that the CDDH would be able to examine them during its next meeting (25-28 March 2008). In the light of any possible comments and guidance given by the Steering Committee, the Group would be able subsequently to finalise the text and prepare the explanatory report, with a view to transmitting them to the CDDH for final examination and adoption during its autumn 2008 meeting.

**Item 2:        Continuation of identification of elements for inclusion in the future Guidelines on human rights protection in the context of accelerated asylum procedures**

5.        On the basis of the work undertaken during its 2<sup>nd</sup> meeting (CDDH(2007)005, Appendix III) as well, in particular, as the text presented by the CPT (CDDH(2007)005, Appendix IV), the Group continued its drafting of the draft guidelines.
6.        At the end of the meeting, the Group adopted the draft guidelines as they appear in Appendix III and decided to transmit them to the CDDH for examination.

**Item 3:        Calendar of next meetings**

7.        Subject to the Ministers' Deputies agreeing to the CDDH's proposal to prolong the terms of reference of the group until 30 September 2008, the group proposed to hold its 4th meeting from 18 to 20 June 2008 and that, in the event, a final meeting could take place in September 2008.

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

Mr Gagik YEGANYAN, **Vice-Chair / Vice-Président**, 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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Ms Jutta GRAS, Senior Adviser, Ministry of the Interior  
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**LATVIA / LETTONIE**

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**POLAND / POLOGNE**

Mr Michal BALCERZAK, **Chair / Président**, Assistant Professor, Nicholas Copernicus University, Faculty of Law and Administration, ul. Gagarina 15, 87100 TORUN  
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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 SCHÜRMAN, 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**

Mr Andrew DAVIS, Advice on Asylum Policy, Border and Immigration Agency, 3<sup>rd</sup> floor, Apollo House, 36 Wellesley Road, CROYDON, CR9 3RR

## PARTICIPANTS

### **Parliamentary Assembly / Assemblée parlementaire**

Mr Mark NEVILLE, Secretary to the Committee on Migration, Refugees and Population /  
Secrétaire de la Commission des migrations, des réfugiés et de la population

### **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, Deputy Executive Secretary / Secrétaire Exécutif adjoint

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

Apologised / Excusé

### **Migration Division / Division des migrations**

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

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## OTHER PARTICIPANTS / AUTRES PARTICIPANTS

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

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Ms Polina ATANASOVA, UNHCR Representation to the European Institutions, Council of Europe, Palais, Office 1.156, F-67075 STRASBOURG Cedex

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## OBSERVERS / OBSERVATEURS

### **Amnesty International**

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### **AIRE Centre**

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

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**European Council on Refugees and Exiles (ECRE) / Immigration Law Practitioners' Association (ILPA)**

Apologised / Excusé

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**SECRETARIAT**

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Mme Virginie FLORES, Lawyer / Juriste, Human Rights Intergovernmental Cooperation Division/Division de la coopération intergouvernementale en matière de droits de l'homme  
Secretary of the GT-DH-AS / Secrétaire du GT-DH-AS

Ms Zeynep AKÇAY, Study Visitor / Visiteuse d'étude, Human Rights Intergovernmental Cooperation Division/Division de la coopération intergouvernementale en matière de droits de l'homme

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**

Mme Remy JAIN (Chef d'équipe)

Mme Nadine KIEFFER

## Appendix II

### **Agenda**

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

##### Working documents

- |  |                     |
|--|---------------------|
| - Draft agenda   | GT-DH-AS(2007)OJ002 |
| - Report of the 65 <sup>th</sup> meeting of the CDDH (6-9 November 2007) | CDDH(2007)023       |
| - Report of the 2 <sup>nd</sup> GT-DH-AS meeting (17-19 October 2007)    | GT-DH-AS(2007)005   |

#### **Item 2: Continuation of 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 2 <sup>nd</sup> GT-DH-AS meeting (17-19 October 2007)   | GT-DH-AS(2007)005         |
| - Elements for possible inclusion in the draft guidelines   | GT-DH-AS(2007)004         |
| - 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         |
| - 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 the context of accelerated asylum procedures | UNHCR contribution        |

##### Information documents

- |  |                    |
|--|--------------------|
| - Manual on Refugee Protection and the ECHR<br><a href="http://www.unhcr.org/publ/PUBL/3ead312a4.html">http://www.unhcr.org/publ/PUBL/3ead312a4.html</a>   | UNHCR publication  |
| - UNHCR Response to the European Commission's Green Paper on the Future Common European Asylum System (September 2007)   | UNHCR paper        |
| - Green Paper on the future Common European Asylum System (presented by the Commission on 6 June 2007)<br><a href="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</a>  | COM(2007)301 final |
| - 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<br><a href="http://www.alternatives-to-detention.org">www.alternatives-to-detention.org</a> )                                      |                    |
| - Secretariat Memorandum on Parliamentary Assembly Recommendation 1727 (2005) of the Accelerated asylum procedures in Council of Europe member states  | CDDH(2006)011      |
| - Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status<br><a href="http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML">http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2005:326:0013:01:EN:HTML</a> |                    |
| - UNHCR, ExCom Conclusions No. 8 (XXVIII) - 1977 on the Determination of Refugee Status ( <a href="http://www.unhcr.org/excom/EXCOM/3ae68c6e4.html">http://www.unhcr.org/excom/EXCOM/3ae68c6e4.html</a> )  |                    |
| - UNHCR, ExCom Conclusions No. 30 (XXXIV) - 1983 on the Problem of Manifestly Unfounded or Abusive Applications for Refugee Status or Asylum ( <a href="http://www.unhcr.org/excom/EXCOM/3ae68c6118.html">http://www.unhcr.org/excom/EXCOM/3ae68c6118.html</a> )   |                    |

#### **Item 3: Other business and adoption of the conclusions of the meeting**

### Appendix III

#### **Draft guidelines on human rights protection in the context of accelerated asylum procedures**

*As discussed by the GT-DH-AS during its 3<sup>rd</sup> meeting (5 – 7 December 2007)  
and reviewed by the Chair and the Secretariat*

The Committee of Ministers,

- (a) Reaffirming that asylum-seekers enjoy the guarantees set out in the European Convention on Human Rights in the same way as any other person under the jurisdiction of States Parties, in accordance with Article 1 of the latter;
- (b) Reaffirming the obligation of states, whatever asylum procedure they use, to comply with European standards in this field, including those identified by the case-law of the European Court of Human Rights and by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ;
- (c) Recalling the importance of the full and complete implementation of the 1951 Convention and the 1967 Protocol relating to the status of refugees and the principle of “non-refoulement”, according to which *“no Contracting State shall expel or return (“refouler”) a refugee in any manner whatsoever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion”*;
- (d) With specific reference to Resolution 1471 of the Parliamentary Assembly on accelerated asylum procedures in the member States of the Council of Europe, Recommendation 1727 (2005) on accelerated asylum procedures and the report by the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe;
- (e) Bearing in mind the Resolution No. 1 on access to justice for migrants and asylum seekers adopted at the 28<sup>th</sup> Conference of the European Ministers of Justice (Lanzarote, Spain, 25-26 October 2007);
- (f) Recalling Recommendations adopted by the Parliamentary Assembly and the Committee of Ministers of the Council of Europe in the field of asylum procedures, notably Recommendation 1327 (1997) of the Parliamentary Assembly on the protection and reinforcement of the human rights of refugees and asylum-seekers in Europe, Recommendation R (97) 22 of the Committee of Ministers containing guidelines on the application of the safe third country concept, Recommendation R (98) 13 of the Committee of Ministers of 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 Recommendation R (2003)5 of the Committee of Ministers on measures of detention of asylum seekers;
- (g) Bearing in mind European Union legislation, particularly EU Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status, and Council Regulation No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member states responsible for examining an asylum application lodged in one of the member states by a third-country national;

adopts the following guidelines:

### **I. Definitions**

Asylum [...]

Accelerated asylum procedure is an asylum procedure derogating from regularly applicable procedural time scales and/or safeguards with the view to expedite decision making.

### **II. Principles**

Regular asylum procedures should in principle remain the rule and accelerated asylum procedures the exception. The exception should only be applied in cases precisely defined by law.

[Every asylum seeker has the right to full and fair examination of his or her asylum application.]  
(procedural guarantees)

### **III. Exemptions**

Some categories of vulnerable persons such as unaccompanied and/or separated minors/children and victims of torture, sexual violence or human trafficking, should be exempted from accelerated asylum procedures. Nevertheless, where such procedures would be in the best interests of the child, these interests are paramount.

Complex cases such as cases falling under the exclusion clauses of the 1951 Refugee Convention should also be exempted.

### **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 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) 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. 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.
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**

(For the sake of clarity, the Secretariat and the Chair proposed the following presentation.)

1. When examining every asylum application, the "safe third country concept" shall be applied in a strict limited way, in the light of the following criteria :

- (i) the third country has ratified and implemented the 1951 Convention relating to the Status of Refugees or equivalent legal standards and other relevant international treaties in the human rights field, including the acceptance of the right to individual petition and international monitoring of detention;
  - (ii) the non refoulement principle is respected;
  - (iii) there is the possibility in law and in practice in the third country for the particular asylum seeker to access a full and fair assessment procedure with a view to determining his or her need for international protection;
  - (iv) the third country is ready to admit the particular asylum seeker and provide him or her with access to the asylum system and protection from refoulement;
  - (v) there is a specific link between the particular asylum seeker and the third country.
2. The country seeking to apply the “third country concept” has the responsibility to satisfy itself that the third country is safe for the particular asylum seeker. The latter shall be entitled to rebut the presumption of safety.
3. Vulnerable persons such as unaccompanied and/or separated minors/children and traumatised persons such as victims of torture, sexual violence or human trafficking, shall be exempted from implementation of the safe third country concept.
4. 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.

## **VI. Refoulement and expulsion**

1. The state receiving an asylum application is required to ensure that any refoulement of the asylum-seeker to his/her country of origin or any other country will not expose him/her to the death penalty, torture or inhuman or degrading treatment or punishment. The same applies to expulsion.
2. Collective expulsions are prohibited.
3. In all cases, the expulsion or refoulement must be enforced with respect for the physical integrity and human dignity of the person concerned, avoiding any inhuman or degrading treatment.

## **VII. 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.

## **VIII. Time-limits**

### **A. Time-limit for submitting asylum applications**

Any asylum seeker shall have a reasonable time-limit to lodge his or her application. Automatic and mechanical implementation of short time-limits for submitting an application shall be prohibited.

### **B. Time taken for consideration of asylum applications**

1. The time taken for considering an application shall be sufficient in order to allow its fair examination, with due respect to the minimum procedural guarantees of the applicant.
2. The time should not however be so lengthy as to raise doubts as to the expediency of an accelerated procedure.

## **IX. Right to an effective remedy with suspensive effect**

1. Any rejected asylum-seeker shall have the right to have the decision reviewed by means of an effective remedy.
2. This remedy shall have a suspensive effect if the asylum seeker submits an arguable claim that the execution of the negative decision could lead to a violation of international human rights and refugee law.

## **X. Detention**

*(as proposed by the CPT)*

1. Detention of asylum-seekers should be the exception. Unaccompanied minors should, as a principle, not be placed in detention, but should be provided with special supervision and support.
2. An asylum-seeker may only be deprived of his/her liberty, 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.
3. 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.
4. A detained asylum-seeker shall have ready access to an effective remedy against the decision to detain him / her, including legal aid.

**XI. Conditions of detention**

*(as proposed by the CPT)*

[Asylum-seekers detained 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.]

**XII. Children and families**

*(as proposed by the CPT)*

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

2. Families detained should be provided with separate accommodation guaranteeing adequate privacy. ]

**XIII. Social and medical assistance**

[1. All asylum-seekers must be provided with social and medical assistance, particularly emergency treatment.

2. Social assistance should consist of housing aid, support in cash or in kind for basic material needs, access to schooling for minors and psychological assistance.]

**XIV. Protection of private and family life**

[All asylum-seekers are entitled to respect for their private and family life in accordance with Article 8 of the European Convention on Human Rights.]