



Strasbourg, 25 June 2008

GT-DH-AS(2008)003

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

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

REPORT

**4th meeting
18-20 June 2008**

Summary :

The meeting was devoted to finalisation of the draft Guidelines on Human Rights protection in the context of accelerated asylum procedures.

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 4th meeting in Strasbourg from 18 to 20 June 2008, with Mr Michal BALCERZAK (Poland) as Chairperson. The list of participants appears at Appendix I. The agenda, as adopted, appears at Appendix II.

2. The Group took note that the CDDH, during its 66th meeting (25-28 March 2008), had expressed its appreciation for the work already undertaken and had decided to request the Committee of Ministers to extend the mandate of the Group until 31 December 2008, in order that the Steering Committee should be able to examine and adopt the draft guidelines at its plenary meeting in November. At their 1025th meeting (30 April 2008), the Ministers Deputies approved the extended ad hoc terms of reference of the Working Group as they appear at Appendix III.

Item 2: Continuation of the drafting of the draft Guidelines on human rights protection in the context of accelerated asylum procedures

3. On the basis of the work undertaken during its 3rd meeting (CDDH(2007)007, Appendix IV) as well as, in particular, the comments submitted by some Member States and the UNHCR (GT-DH-AS(2008)002rev.), the Group continued its drafting of the draft guidelines. The draft as adopted by the Group at the end of the meeting appears in Appendix IV. The following aspects of the discussions should in particular be noted:

(i) Definitions – The Group finally decided not to include a definition of the concept of asylum, which had no clear definition in international law and whose interpretation was evolving as a result of case-law. It chose, instead, to clarify the definition of the concept of accelerated asylum procedures, specifying that they covered inadmissibility procedures, i.e. procedures whereby the State did not examine the merits, whilst underlining that the minimum procedural guarantees set out in the guidelines must apply *mutatis mutandis*. The Group also discussed the use of the concept of international protection, which it finally decided to employ in Guideline VI (iii).

(ii) Vulnerable persons – In order to respond to the concerns expressed by certain member States, it was decided to recommend not that vulnerable persons be exempted from accelerated asylum procedures but that due account should be taken of their vulnerability when applying these procedures.

(iii) Procedural guarantees – The Group reworked the whole of the guideline concerning procedural guarantees. Notable points included:

- the right to be registered as an asylum seeker and to lodge an asylum application, wherever the asylum seeker was located within the territory of the State, including at borders or in detention, was preferred over the right to be admitted to the territory of the State.

- with respect to confidentiality, it was notably specified that “No information which could be harmful for the asylum seeker should in any circumstances be disclosed”.
- as regards the question of language, the Working Group decided to use the terminology of article 6 paragraph 3 of the European Convention on Human Rights.

(iv) Detention – The Group based itself on the CPT’s proposed guidelines on detention, which it decided to incorporate for greater clarity and impact. A single guideline now covers all the concerns relating to detention.

(v) The use of “shall/should” – Finally, in a general sense, the Group chose the practice used in the Twenty Guidelines on forced return: when the guidelines make use of the verb “shall,” this indicates only that the obligatory character of the standards corresponds to already existing obligations of member states. In certain cases however, the guidelines go beyond the simple reiteration of existing binding standards. This is indicated by the use of the verb “should” to show where the guidelines constitute recommendations addressed to the member states. This allows the concerns expressed by certain member States to be taken into account and to lighten the wording of the relevant provisions, such as those relating to the concept of safe third country. It remains to be decided whether these explanations should be included in the text of the guidelines or in their Explanatory Memorandum.

4. Several proposals for additional guidelines were submitted to the Working Group during the meeting. They concerned increased protection, the role of the UNHCR, the quality of interpretation and the right to respect for private and family life, and appear in Annex V. The members of the Group are invited to examine these and to address their possible comments to the Secretariat (alfonso.desalas@coe.int) by 25 August.

Item 3: Further work

5. Since the Group has not yet finished its drafting work, it asked the CDDH to authorise a 5th meeting from 2 to 5 September 2008. This four day meeting would enable the Group also to finalise the draft Explanatory Memorandum.

6. The Secretariat proposed to address to members of the Group, by 25 July, a draft Explanatory Memorandum, to be elaborated in consultation with the Chairperson. The experts would thereafter be invited to send their possible additions/ comments to the Secretariat (alfonso.desalas@coe.int) before 25 August, in order that they could be distributed in time for the next meeting.

7. The Group took note that its secretary, Mrs Virginie FLORES, would no longer be able to participate in its work. The Group thanked her most warmly for her excellent work and wished her every success in her future activities.

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

Apologised / Excusé

DENMARK / DANEMARK

Mr Jacob BECH ANDERSEN

Danish Ministry of Refugee, Immigration and Integration Affairs

FINLAND / FINLANDE

Mr Arto KOSONEN, Government Agent, Director, Legal Department, Ministry for Foreign Affairs, PO Box 176, FIN 00161 Helsinki

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LATVIA / LETTONIE

Mr Emils PLAKSINS, Lawyer, Office of the Representative of the Government before the International Human Rights Institutions, Brivibas bulvaris 36, Riga, LV 1395

POLAND / POLOGNE

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

Ministry of Foreign Affairs, Legal and Treaty Department, Aleja Szucha 23, WARSAW 00950

ROMANIA / ROUMANIE

Mr Silviu TURZA, Asylum Legal Expert, Romanian Immigration Office, Lt. Col. C-Tin Marinescu, nr 15A, sector 5, BUCAREST

SWEDEN / SUÈDE

Mr Bengt SJÖBERG, Ministry of Foreign Affairs, SE-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

Apologised / Excusé

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PARTICIPANTS

Parliamentary Assembly / Assemblée parlementaire

Mrs Marianna RESTAINO

Mrs Dana KARANJAC

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

Mr Kristian BARTHOLIN

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

Mr Nikolaos SITAROPOULOS, Advisor / Conseiller

Migration Division / Division des migrations

Apologised / Excusé

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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, Associate European Affairs Officer, UNHCR

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Ms Anne WEBER, Legal Assistant, UNHCR Representation to the European Institutions, Council of Europe, Palais, Office 1.018-1.020, F-67075 STRASBOURG Cedex

Ms Polina ATANASOVA, Intern, 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

Mr Kris POLLET, Executive Officer, Amnesty International EU Office, rue de Trèves, 35 B-1040 Brussels

AIRE Centre

Ms Nuala MOLE, Director of AIRE Centre, Third Floor, 17 Red Lion Square, London WC1R 4QH

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

Ms Ruth WEINZIERL, Legal Services, Policy and Research Migration – internal security – Europe

Zimmerstr. 26/27, D-10969 BERLIN

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

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SECRETARIAT

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M. Alfonso DE SALAS, Head of the Human Rights Intergovernmental Cooperation Division / Chef de la Division de la coopération intergouvernementale en matière de droits de l'homme, Secretary of the CDDH / Secrétaire du CDDH

Mr David MILNER, Administrator / Administrateur, Human Rights Intergovernmental Cooperation Division / Division de la coopération intergouvernementale en matière de droits de l'homme

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

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 Julia TANNER

M. Christopher TYCZKA

M. Nicolas GUITTONNEAU

Appendix II

Agenda

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

Working documents

- Draft agenda GT-DH-AS(2008)OJ001
- Report of the 66th meeting of the CDDH (25-28 March 2008) CDDH(2008)008
- Report of the 3rd meeting of the GT-DH-AS (5-7 December 2007) GT-DH-AS(2007)007

Item 2: Continuation of drawing up the draft Guidelines on human rights protection in the context of accelerated asylum procedures

Working documents

- Report of the 3rd meeting of the GT-DH-AS (5-7 December 2007) GT-DH-AS(2007)007
- Comments submitted by Austria, Belgium, France, Germany, Norway and Sweden GT-DH-AS(2008)001 bil.
- Draft Guidelines on human rights protection in the context of accelerated asylum procedures with comments submitted by Austria, Belgium, Finland, France, Germany, Norway, Sweden, the United Kingdom and the UNHCR GT-DH-AS(2008)002 rev.
- Compilation of Recommendations of the CM and the PACE GT-DH-AS(2007)006
- 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 UNHCR publication
<http://www.unhcr.org/publ/PUBL/3ead312a4.html>
- 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) COM(2007)301 final
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
- 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
<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 3: Other business and adoption of the conclusions of the meeting

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Appendix III

Extended ad hoc terms of reference of the Working Group on human rights protection in the context of accelerated asylum procedures (GT-DH-AS)

(Adopted by the Committee of Ministers at the 984th meeting of the Ministers' Deputies (17-18 January 2007, item 4.1b) and amended at the 1017th meeting of the Ministers' Deputies (6 February 2008, item 4.1h))

1.	Name of Group:	WORKING GROUP ON HUMAN RIGHTS PROTECTION IN THE CONTEXT OF ACCELERATED ASYLUM PROCEDURES (GT-DH-AS)
2.	Type of Group:	Ad hoc Advisory Group
3.	Source of terms of reference:	Committee of Ministers, upon proposals of the Steering Committee for Human Rights (CDDH)
4.	Terms of reference:	
		Having regard to:
-		the Declaration and the Action Plan adopted at the Third Summit of Heads of State and Government of the Council of Europe member states (Warsaw, 16-17 May 2005); CM(2005)80 final , 17 May 2005);
-		the Road map for the implementation of the Action Plan (974th meeting of the Ministers' Deputies – 27 September 2006, item 1.6), Chapter I.2;
-		Decision No. CM/868/14062006, adopted by the Ministers' Deputies at their 967th meeting (14 June 2006), giving ad hoc terms of reference to the Steering Committee for Human Rights (CDDH) with a view to examine the question of human rights protection in the context of accelerated asylum procedures and, as appropriate, to draft guidelines in this field;
-		the Convention for the Protection of Human Rights and Fundamental Freedoms (1950, ETS No. 5).
		Under the authority of the Steering Committee for Human Rights (CDDH) and in relation with the implementation of Project 2008/DGHL/1409 "Substantive legal analysis of human rights issues and input in the development of Council of Europe policies on such issues", the Group is instructed to:
i.		examine the question of human rights protection in the context of accelerated asylum procedures and, as appropriate, to draft guidelines in this field;
ii.		in this context, to take into account the information and standards emanating from the Council of Europe and other international mechanisms, such as relevant recommendations of the Committee of Ministers, reports of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT), the case law of the European Court of Human Rights,

	documents developed within the framework of the UNHCR and the International Law Commission.
5.	Composition of the Group:
5.A	Members <p>The Group shall be composed of 8 specialists with the relevant qualifications in issues concerning the right of asylum, appointed by the governments of the following member states: Armenia, Finland, Latvia, Poland, Romania, Sweden, Switzerland and United Kingdom.</p> <p>The Council of Europe budget will bear their travel and subsistence expenses. The above-mentioned states may send (an) additional representative(s) to meetings of the Group, at their own expense. Other countries may send (a) representative(s) to meetings of the Group, at their own expense.</p> <p>Each member state participating in the meetings of the Group has the right to vote.</p>
5.B	Participants
i.	The European Committee on Legal Co-operation (CDCJ) may send (a) representative(s) to meetings of the Group, without the right to vote and at the expense of correspondent budgetary articles of the Council of Europe.
ii.	The European Committee on Migration (CDMG) may send (a) representative(s) to meetings of the Group, without the right to vote and at the expense of correspondent budgetary articles of the Council of Europe.
iii.	The European Commission against Racism and Intolerance (ECRI) may send (a) representative(s) to meetings of the Group, without the right to vote and at the expense of its administrative budget.
iv.	The Parliamentary Assembly may send (a) representative(s) to meetings of the Group, without the right to vote and at the expense of its administrative budget.
v.	The Congress of Local and Regional Authorities of the Council of Europe may send (a) representative(s) to meetings of the Group, without the right to vote and at the expense of its administrative budget.
vi.	The Registry of the European Court of Human Rights may send (a) representative(s) to meetings of the Group, without the right to vote and at the expense of its administrative budget.
vii.	The Council of Europe Commissioner for Human Rights may send (a) representative(s) to meetings of the Group, without the right to vote and at the expense of its administrative budget.
viii.	The Conference of INGOs of the Council of Europe may send (a) representative(s) to meetings of the Group, without the right to vote and at the expense of the body that (s)he (they) represent(s).
5.C	Other participants
i.	The European Commission and the Council of the European Union may send (a)

	representative(s) to meetings of the Group, without the right to vote or defrayal of expenses.
ii.	States with observer status of the Council of Europe (Canada, Holy See, Japan, Mexico, United States of America) may send (a) representative(s) to meetings of the Group, without the right to vote or defrayal of expenses.
iii.	The Organisation for Security and Co-operation in Europe (OSCE) / the Office for Democratic Institutions and Human Rights (ODIHR) may send (a) representative(s) to meetings of the Group, without the right to vote or defrayal of expenses.
iv.	The Office of the United Nations High Commissioner for Human Rights may send (a) representative(s) to meetings of the Group, without the right to vote or defrayal of expenses.
v.	The Office of the United Nations High Commissioner for Refugees may send (a) representative(s) to meetings of the Group, without the right to vote or defrayal of expenses.
5.D	Observers The following non member state: - Belarus;
	and the following non-governmental organisations: - Amnesty International; - International Commission of Jurists (CIJ); - International Federation of Human Rights (FIDH);
	- European Co-ordinating Group for National Institutions for the Promotion and Protection of Human Rights; - European Roma and Travellers Forum; may send (a) representative(s) to meetings of the Group, without the right to vote or defrayal of expenses.
6.	Working methods and structures:
	In order to carry out its tasks, the Group may, where necessary, seek advice of external experts, have recourse to consultants and consult with relevant non-governmental organisations and other members of civil society. The CDDH is entitled to invite other participants and/or observers to the Group, without the right to vote or defrayal of expenses.
7.	Duration:
	These terms of reference will expire on 31 December 2008.

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

(as adopted at the 4th meeting of the GT-DH-AS (18-20 June 2008))

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 Convention;

(b) Bearing in mind notably Article 14 of the 1948 Universal Declaration on Human Rights and reaffirming the obligation of States, whatever asylum procedure they use, to comply with international and European standards in this field, such as the right to seek and enjoy asylum, as well as 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 full and effective implementation of the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol and the obligations of Contracting States under these instruments, in particular regarding the prohibition of 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 (2005) and Recommendation 1727 (2005) of the Parliamentary Assembly on accelerated asylum procedures in the Member States of the Council of Europe and the report by the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe;

(e) Reaffirming Resolution No. 1 on access to justice for migrants and asylum seekers, adopted at the 28th Conference of the European Ministers of Justice (Lanzarote, Spain, 25-26 October 2007);

(f) Recalling the 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 Directives 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers and 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,

1. Adopts the following guidelines.
2. [Notes that none of the guidelines imply any new obligations for Council of Europe Member States. When the guidelines make use of the verb “shall” this indicates only that the obligatory character of the norms corresponds to already existing obligations of member states. In certain cases however, the guidelines go beyond the simple reiteration of existing binding norms. This is indicated by the use of the verb “should” to indicate where the guidelines constitute recommendations addressed to the member states.]

I. Definition

1. An accelerated asylum procedure is an asylum procedure that derogates from regularly applicable procedural time scales and/or procedural safeguards with a view to expeditious decision making.
2. Inadmissibility procedures, i.e. procedures whereby the State does not consider the merits of the claim, are also considered as accelerated procedures in the sense of the first paragraph. Guidelines that appear below apply *mutatis mutandis*.

II. Principles

1. Regular asylum procedures should in principle remain the rule and accelerated asylum procedures the exception. States should only apply accelerated procedures in cases precisely prescribed by law and in compliance with their international obligations.
2. Asylum seekers have the right to an individual and fair examination of their applications by competent authorities.
3. When inadmissibility procedures are applied, the State concerned is still required to ensure that the principle of non refoulement is effectively respected.
4. The submission of an asylum application at borders, including airports and transit areas, or the lack of documents or use of forged documents should not entail an automatic recourse to accelerated procedures.

III. Vulnerable persons and complex cases

1. The vulnerability of certain categories of persons, such as unaccompanied and/or separated minors/children and victims of torture, sexual violence or human trafficking, should be duly taken into account when deciding whether to apply accelerated asylum procedures. In the case of children, their best interests are paramount.
2. Complex cases, including cases falling under the exclusion clauses of the 1951 Geneva Convention relating to the Status of Refugees should, in general, be excluded from accelerated asylum procedures.

IV. Procedural guarantees

1. Where accelerated asylum procedures apply, an asylum seeker should enjoy the following minimum procedural guarantees:

- (i) the right to be registered as an asylum seeker and to lodge an asylum application whatever the location of the asylum seeker within the territory of the State, including at borders or in detention;
- (ii) the right to be informed explicitly and without delay, in a language which he/she understands, of the different stages of the procedure being applied to him/her, of his/her rights and duties as well as remedies available to him/her;
- (iii) the right to an individual interview in a language which he/she understands in all cases where the merits of the claim are being considered and, in cases of inadmissibility procedures, the right to be heard, as a minimum, on the grounds of inadmissibility;
- (iv) the right to submit documents and other evidence in support of the claim;
- (v) the right to access legal advice and to be represented throughout the procedure, whether at first instance or during appeal proceedings, it being understood that legal assistance should be provided free of charge according to domestic law;
- (vi) the right to receive a reasoned decision in writing on the outcome of the proceedings;
- (vii) the right to have information regarding the asylum application, including the fact that such an application has been made, treated confidentially particularly with respect to the country of origin. No information that could be harmful for the asylum seeker should in any circumstances be disclosed.

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

V. The safe country of origin concept

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

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 the merits of the claim.

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.

VI. The safe third country concept

1. The following criteria should be taken into account when applying the safe third country concept:

- (i) the third country has ratified and implemented the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol or equivalent legal standards and other relevant international treaties in the human rights field, including the acceptance of the right of individual petition and international monitoring of detention;
- (ii) the principle of non refoulement is effectively 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 asylum procedure with a view to determining his/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 link between the particular asylum seeker and the third country.

2. [The country seeking to apply the safe third country concept has the responsibility to satisfy itself that the third country is safe for the particular asylum seeker. All asylum seekers shall be given an effective opportunity to rebut the presumption of safety.]

3. Application of the safe third country concept does not dispense a State 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 N° 343/2003 determining the State responsible for examining applications for asylum lodged in one of the Member States of the European Union.

VII. Non refoulement and return

1. The State receiving an asylum application shall ensure that any return of the asylum seeker to his/her country of origin or any other country will not expose him/her to a real risk of the death penalty, torture or inhuman or degrading treatment or punishment, [persecution,] [or other serious harm].

2. Collective expulsions are prohibited.

3. In all cases, the return shall be enforced with respect for the moral and physical integrity and human dignity of the person concerned, avoiding any torture or inhuman or degrading treatment or punishment.

VIII. Quality of the decision-making process [and training]

1. Decisions taken throughout the proceedings should be taken with due diligence.

[The procedure should be conducted with due care and diligence.]

2. Officials responsible for examining and taking decisions on asylum applications should receive appropriate training including training on applicable international standards. They should also have access to the requisite information and research sources to carry out their task, taking into account the [cultural background,] gender and age of the persons concerned and the situation of vulnerable persons.
3. [Where the assistance of an interpreter is necessary, States should ensure that interpretation is provided to the standards necessary to guarantee the quality of the decision-making.]

IX. Time for submitting and considering asylum applications

1. Asylum seekers shall be allowed a reasonable time within which to lodge their application. [Automatic and mechanical application of short time-limits for submitting an application shall be prohibited.]
2. The time taken for considering an application shall be sufficient to allow for its fair examination, with due respect to the minimum procedural guarantees of the applicant.
3. The time should not, however, be so lengthy as to undermine the required expediency of the accelerated procedure, in particular when an asylum seeker is detained.

X. Right to an effective remedy with suspensive effect

1. Asylum seekers whose applications are rejected 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 real risk of the death penalty, torture or inhuman or degrading treatment or punishment.

XI. Detention

1. Detention of asylum seekers should be the exception. Children, including unaccompanied minors, should not, as a matter of principle, be placed in detention. In those exceptional cases where unaccompanied minors are detained, they should be provided with special supervision and support.
2. Asylum seekers may only be deprived of their liberty in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in the 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. Detained asylum seekers shall be informed promptly, in a language which they understand, of the legal and factual reasons for their detention, and the possible remedies; they should be given the immediate possibility of contacting a lawyer, a doctor, and a person of their own choice to inform that person about their situation.

4. Detained asylum seekers shall have ready access to an effective remedy against the decision to detain them, including legal assistance.

5. Detained asylum seekers should, within the shortest possible time, be accommodated in facilities specifically designated for that purpose, offering material conditions and a regime appropriate to their legal and factual situation and staffed by suitably qualified personnel. Detained families should be provided with separate accommodation guaranteeing adequate privacy.

XII. Social and medical assistance

1. Asylum seekers shall be provided with [necessary] 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.]

XIII. Protection of private and family life

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

Appendix V
**Proposals submitted at the 4th meeting of the GT-DH-AS
 and not yet discussed by the Working Group**

Increased protection
(Proposal submitted by Latvia)

Nothing in these Guidelines should restrain the States from adopting more favourable measures and treatment than described in these Guidelines.

Role of the UNHCR
(Proposal submitted by the UNHCR)

1. Even where accelerated asylum procedures apply, Member States shall allow the UNHCR:
 - (1) To have access to asylum seekers, including those in detention and border zones such as airport or port transit zones;
 - (2) To have access to information on individual applications for asylum, on the course of the procedure and on the decisions taken, as well as to person-specific information, provided that the asylum seeker agrees thereto;
 - (3) To present its views, in the exercise of its supervisory responsibilities under Article 35 of the Geneva Convention, to any competent authorities regarding individual applications for asylum at any stage of the procedure.
2. Paragraph 1 shall also apply to an organization which is working in the territory of the Member State concerned, including on behalf of UNHCR.

Interpretation (to be included in Quality of the decision-making process)
(Proposal submitted by Mrs Nuala Mole)

Where the assistance of an interpreter is necessary, States should ensure that interpretation is provided to the standards necessary to guarantee the quality of the decision-making.

Right to respect for private and family life
(Proposal submitted by the European Group of National Human Rights Institutions)

1. The decisions taken throughout the whole procedure should be taken with due regard to the right to respect for private and family life. Whenever possible, family unity should be guaranteed.
2. Personal data of asylum seekers (applicants for international protection) have to be protected in accordance with international standards. Especially, as a principle, personal data should only be used and processed for the purpose of the asylum procedure. The asylum seeker shall have the right to be informed, on request, of any data that is processed concerning him.