



Strasbourg, 19 September 2001

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**RECOMMENDATION
OF THE COMMISSIONER FOR HUMAN RIGHTS**

CONCERNING

**the rights of aliens wishing to enter a Council of Europe
member State and the enforcement of expulsion orders**

CommDH(2001)19

The Commissioner for Human Rights, acting in accordance with Resolution (99) 50 of the Committee of Ministers on the Council of Europe Commissioner for Human Rights adopted on 7 May 1999 (“the Resolution”),

Having noted during his various trips and visits to Council of Europe member States that a problem common to most of them is the precarious legal and humanitarian situation of aliens wishing to enter their territory;

Recalling that this problem has already been the subject of many studies at the Council of Europe and, in particular, several recommendations of the Committee of Ministers;

Noting, however, that there has been no significant improvement in the situation since the adoption by the Committee of Ministers of Recommendation R(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”;

Recalling that the conditions in which asylum-seekers and other people are held in airport waiting areas have been the subject of a number of surveys carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (“the CPT”);

Bearing in mind the work currently being carried out by the Parliamentary Assembly’s Committee on Migration, Refugees and Demography to produce a report on “Rendering more humane the procedures for expelling illegal immigrants and rejected asylum seekers”;

Recalling the seminar organised by the Commissioner for Human Rights on “Human rights standards applying to the holding of aliens wishing to enter a Council of Europe member State and to the enforcement of expulsion orders”, which took place from 20 to 22 June 2001 in Strasbourg;

Recalling that the seminar was attended by representatives of national and international NGOs, government experts, representatives of professional trade unions, including the *Association belge des pilotes de lignes* (Belgian association of airline pilots), representatives of the United Nations High Commission for Refugees, as well as members of the Council of Europe’s Parliamentary Assembly, the Registry of the European Court of Human Rights, and the Secretariat of the CPT;

Recalling that during the seminar the participants studied the legal framework and practice with respect to foreigners arriving at the border of a member State, particularly in relation to the European Convention for the Protection of Human Rights (“the ECHR”), the 1951 Convention relating to the Status of Refugees, and the relevant provisions of the Charter of Fundamental Rights of the European Union;

Considering that Article 3e of the Resolution states that the Commissioner for Human Rights shall “identify possible shortcomings in the law and practice of member States concerning the compliance with human rights as embodied in the instruments of

the Council of Europe, promote the effective implementation of these standards by member States and assist them, with their agreement, in their efforts to remedy such shortcomings”;

Bearing in mind Article 8-1 of the Resolution,

Would like to issue the following recommendations:

I. *Rights of aliens on their arrival at the border of a member State*

1. Everyone has the right, on arrival at the border of a member State, to be treated with respect for his or her human dignity rather than automatically considered to be a criminal or guilty of fraud.

2. On arrival, everyone whose right of entry is disputed must be given a hearing, where necessary with the help of an interpreter whose fees must be met by the country of arrival, in order to be able, where appropriate, to lodge a request for asylum. This must entail the right to open a file after having being duly informed, in a language which he or she understands, about the procedure to be followed. The practice of *refoulement* “at the arrival gate” thus becomes unacceptable.

3. As a rule there should be no restrictions on freedom of movement. Wherever possible, detention must be replaced by other supervisory measures, such as the provision of guarantees or surety or other similar measures. Should detention remain the only way of guaranteeing an alien’s physical presence, it must not take place, systematically, at a police station or in a prison, unless there is no practical alternative, and in such case must last no longer than is strictly necessary for organising a transfer to a specialised centre.

4. Detained foreigners must be given the right to contact anyone of their choice in order to notify that person of their situation.

II. *Detention conditions*

5. As far as possible, member States should bring their national legislation into line in terms of the procedural guarantees available to foreigners being held and the maximum period of detention permitted at each stage of the proceedings.

6. Member States should avoid holding unaccompanied minors, pregnant women, mothers with young children, the elderly, and people with disabilities in waiting areas. Where appropriate, unaccompanied minors must be placed in specialised centres, and the courts immediately informed of their situation. Members of the same family should not be separated.

7. Aliens held pending authorisation of entry must be placed in a specialised centre, and under no circumstances during their detention must they be placed with ordinary prisoners. The same applies to aliens awaiting enforcement of an expulsion order except, of course, in the case of persons expelled on having served their sentence and persons detained at the border with a view to being extradited.

8. All detainees, however long they are held, must have the right to emergency medical care as required by their state of health.

9. On no account must holding centres be viewed as prisons.

10. Governments must guarantee maximum transparency in respect of how holding centres operate, by ensuring at least that independent national commissions, ombudsmen and NGOs, lawyers and close relatives of detainees have access to them. In particular, their operation must be regularly monitored through the courts.

11. It is essential that the right of judicial remedy within the meaning of Article 13 of the ECHR be not only guaranteed in law but also granted in practice when a person alleges that the competent authorities have contravened or are likely to contravene a right guaranteed by the ECHR. The right of effective remedy must be guaranteed to anyone wishing to challenge a *refoulement* or expulsion order. It must be capable of suspending enforcement of an expulsion order, at least where contravention of Articles 2 or 3 of the ECHR is alleged.

III. Implementation of expulsion measures

12. Where forced expulsion is unavoidable, it must be carried out with complete transparency in order to ensure that fundamental human rights have been respected at all stages.

13. The best way to avoid using methods which might traumatise both those being expelled and those responsible for enforcing expulsion orders is to have the person concerned agree to return voluntarily.

14. When expulsion orders are to be enforced, it is crucial at every stage of the procedure to inform the persons concerned of what lies ahead so that they can prepare themselves psychologically for their return. In accordance with Article 4 of Protocol No 4 to the ECHR, collective expulsion is prohibited.

15. Threats must not be used to persuade persons subject to an expulsion order to board any form of transport. The wearing of masks making it impossible to identify staff executing forced expulsion orders must be banned outright.

16. Holding centre staff and immigration and expulsion officers must receive proper training so as to minimise the risk of violence.

17. The following must be prohibited outright:

- use of any means which may cause asphyxia or suffocation (adhesive tape, gags, helmets, cushions etc) and use of incapacitating or irritant gas; use of restraints which may induce postural asphyxia must also be avoided;
- use of tranquillisers or injections without prior medical examination or a doctor's prescription;

18. For safety reasons, the use during aircraft take-off and landing of handcuffs on persons resistant to expulsion should be prohibited.

The Commissioner for Human Rights invites the authorities of the member States of the Council of Europe to take account of these recommendations when drawing up and applying their legislation and practices in this field.