



COMMISSIONER FOR HUMAN RIGHTS

COUNCIL OF EUROPE



Strasbourg, 20 November 2008

CommDH(2008)5
Or. French

MEMORANDUM

by Thomas Hammarberg
Commissioner for Human Rights of the Council of Europe

further to his visit to the *Zones d'Attente* (waiting areas) at Roissy
Airport and the Mesnil-Amelot Administrative Holding Centre

Throughout December 2007 and early January 2008, the French and international media reported a sharp increase in the number of foreign travellers detained at the border by the French authorities at Roissy Airport, where they were held in precarious, difficult conditions. At the same time, representatives of Paris-based NGOs also drew the attention of the French public and the international organisations to this crisis situation. The Commissioner for Human Rights closely followed the development of the situation. On 10 January 2008 he sent a letter to Mr Brice Hortefeux, French Minister for Immigration, Integration, National Identity and Co-development, informing him of his concern. In order to improve understanding of the nature of the problem, ascertain the difficulties and pinpoint a means of solving the crisis, the Commissioner informed the French authorities that he wished to visit the airport. This request was dealt with rapidly and thoroughly. On 17 January 2008 the Commissioner visited Roissy Airport, where he was admitted to the *Zone d'Attentes pour Personnes en Instance* (special areas for persons awaiting clarification of their legal status) (hereafter "ZAPIs).

Furthermore, the Commissioner took advantage of the opportunity also to visit the Mesnil-Amelot Administrative Holding Centre, adjacent to the airport.

After this visit, the Commissioner met the Minister, Mr Brice Hortefeux, to report on his visit. After an initial exchange of views, it was agreed that the Commissioner would subsequently communicate to the French authorities his analysis of the situation and possible recommendations for improving it.

It should also be remembered that during his visit to France in September 2005, the first Commissioner for Human Rights, Mr Alvaro Gil-Robles, visited ZAPI 3 and the Mesnil-Amelot Administrative Holding Centre. His report of February 2006 on effective respect for human rights in France (hereafter "the 2006 Report") described these sites and set out recommendations on them. The Commissioner took account of his predecessor's conclusions during the visit, and will be referring to them below in what he sees as a continuing dialogue with the national authorities on the safeguarding and constant improvement of the level of respect for human rights.

1. Conditions of held foreigners at the border, notably at Roissy-Charles de Gaulle Airport

a) Background

Foreigners arriving in France without the requisite documents for admission to French territory are held in waiting areas pending consideration of their personal situation by the competent authorities. At Roissy Airport, the main holding area is ZAPI 3, a reception centre which has all the prerequisites for accommodating such foreigners. During the period in question, which in fact coincided with the festive season, a huge number of foreigners arrived in Roissy in the space of a few days. The great majority of them were Somali nationals and Russians of Chechen origin hoping to remain in France. ZAPI 3 very quickly reached its maximum occupancy level. The French authorities therefore decide to hold these foreigners first of all in the different police posts on the airport site and then in Departure Lounge B33.

Neither the police posts nor Departure Lounge B33 had been designed for accommodating people. They had none of the requisite amenities to ensure decent living conditions for several dozen individuals for more than a few hours. No beds, hot food or showers were available. Unfortunately, a number of persons were initially forced to remain there for several days, which was unacceptable.

Subsequently, faced with the difficulties of the situation and the continued influx of migrants, the authorities adopted a series of emergency measures, requisitioning a section of Terminal E as a new provisional waiting area, referred to as ZAPI 4.

During his visit on 17 January, the Commissioner visited both ZAPI 3 and ZAPI 4, as well as the police post in Terminal E. Despite the difficult situation in both material and human terms, the Commissioner noted the police authorities' determined efforts to provide a human response to the problems caused by the mass influx of migrants between December 2007 and mid-January 2008. Nevertheless, this situation undeniably led to extremely difficult holding conditions.

b) Material conditions in the waiting areas

ZAPI 3 is a perfectly satisfactory accommodation centre, as the 2006 Report rightly noted. The Commissioner accordingly appreciated the French authorities' efforts to move the women and children to this facility as quickly as possible. It was, however, regrettable that a large number of persons belonging to these two particularly vulnerable groups had had to spend a number of days in completely inappropriate conditions in Departure Lounge B33 and ZAPI 4.

The situation in ZAPI 4 proved much more worrying. This large area had until recently been used as an airport departure hall. The glass-walled building faces the parking area for long-haul aircraft, which meant that there was incessant noise. Furthermore, there was a pervasive smell of kerosene. According to NGOs, beds were brought in and bedclothes and pillows provided the first few days ZAPI 4 was used. However, no shower or hot food facilities were available.

Substantial improvements had been made by the time the Commissioner visited the airport. For instance, four shower units had been installed the previous day, the heating had been adjusted, and hot meals were being served twice a day, which was welcome progress. At the same time, the situation was still very difficult. Beds were laid out side by side, with insufficient space between them, allowing no privacy for the persons being held, and no sheets were provided. The medical officers interviewed were alarmed about the health risks arising from such conditions of accommodation, and said that they were unable to offer medical services in the waiting area because of the lack of a separate room equipped for the purpose.

Once the numbers of persons held in ZAPI 3 had decreased, the authorities launched a major effort to move all the women and children there. However, at the time of the visit one woman and, reportedly, one minor were still being held in ZAPI 4. Moreover, it was reported that at the height of the crisis some families had had to be split up. Men accompanied by their wives and children could not always be placed in ZAPI 3 with their families, and remained without news of them, which had had serious psychological effects. It is true that as the influx of new arrivals subsided, the authorities endeavoured to place all families together, although they could not completely preclude future risks of temporary separation owing to lack of space in ZAPI 3. The Commissioner stresses the importance of keeping families together, and particularly of refraining from detaining children, especially unaccompanied minors.

c) Exercise of rights by persons held at the border

The Commissioner noted that the effective exercise of such essential rights as those to consult a lawyer, to receive visits from family and friends and to submit an asylum application were highly restricted in practice.

The waiting areas other than ZAPI 3 used for holding foreigners at the border lacked the prerequisites for the normal exercise of these rights. For instance, they had no separate rooms allowing free access for lawyers and voluntary associations. During the visit to ZAPI 4, it was noted that efforts were being made to create an area for interviews with lawyers. However, this

consisted solely of a screened-off area, rather than an actual separate room. Furthermore, lawyers and NGOs had great difficulty gaining access to ZAPI 3 owing to the strict airport security rules. No Internet access was provided, which complicated the associations' work.

Difficulties of communication were reported during the exchanges which the Commissioner and his staff held with detainees. The migrants interviewed did not seem to have been properly informed of their rights. For instance, they had great difficulty understanding their right to a whole day before any repatriation, even though this facility is explicitly mentioned on the notification form. Furthermore, the police also have trouble understanding the immigrants. This is worrying in the case of asylum applications or requests for interviews with lawyers.

Despite some efforts from the authorities, the Commissioner noted that communication was problematical. Language difficulties compounded problems with understanding the nature of the procedure being implemented. For instance, ethnic Chechens complained that the interpreters occasionally passed to them by the authorities on the telephone failed to understand their explanations and were unable to transmit them to the authorities. This was a particularly serious problem for asylum-seekers. No information was posted in Russian.

Another basic problem was the virtual impossibility for the persons being held to communicate with family or friends or with lawyers of their choice. Only two public phones were available in ZAPI 4, and access to phone cards was very limited, especially since foreigners who do not know the traditions of a new country find everything very unfamiliar and difficult to understand. This further highlights the need for better support.

Thought must clearly be given to reinforcing the presence of voluntary associations throughout the procedure. The Commissioner invites the French authorities to draw on the successful experiments conducted in a number of European countries, particularly Italy, where the Italian Commission on Refugees is present at all border points (the main ports and airports nationwide). A "permanent" presence would facilitate the work of the security forces by improving their relations with migrants held at the border and would reinforce respect for their rights. Such legal and human assistance throughout the holding procedure would also enable information to be provided to migrants, and especially to asylum-seekers, on their real or hypothetical chances of gaining access to French territory or of being sent back to their country of origin. It would also ease these individuals' justifiable anxiety caused by their difficulties in understanding the procedures and making themselves understood.

d) Interim measures to be considered

According to the information which the Commissioner received from the French authorities, the situation continued to stabilise in the days following his visit, and from 21 January ZAPI 4 was no longer needed, ZAPI 3 sufficing to meet immediate accommodation needs. However, the decision was taken not to dismantle ZAPI 4 until there was no longer any risk of a shortage of accommodation. ZAPI 4 could be reopened if necessary.

In view of this fact, the Commissioner considers that major improvements should be made if ZAPI 4 were to reopen. For instance, the sanitary block should be enlarged and refitted. The number of shower units should be increased, and showers should be separate from the toilets. The beds should be set out further apart, and separations, even in the form of screens, should be provided. Sheets should be supplied and bedclothes washed after every change of user. Health and hygiene measures should be reinforced, including ensuring the material conditions for medical interventions.

Women and children should not be held in ZAPI 4, nor should families be split up.

Proper premises should be set aside for lawyers and associations, with Internet facilities. Access to telephones should be improved, as should facilities for contacting family and friends.

The efforts in terms of communication should continue. In particular, access must be provided to reliable interpretation, and documents should be available, as far as possible, in languages which the foreigners in question understand. Consideration should be given to stepping up the presence of associations capable of providing legal advice to the persons being held.

2. Conditions in the Mesnil-Amelot Administrative Holding Centre and the problem of annual expulsion quotas

The Commissioner had asked to visit the Mesnil-Amelot Administrative Holding Centre in order to assess changes since the publication of the 2006 Report. This wish had been reinforced by information from a whole series of human rights associations expressing their concern about the increasing numbers of expulsions and the tightening up of conditions of expulsion following the recent decision by the French authorities to set an annual expulsion quota.

a) Material conditions of detention

In view of the previous findings, the Commissioner stresses the extent of the material efforts that have been undertaken to improve living conditions in this Centre. At the time of his visit the number of persons held corresponded to the number of places available. So there is no longer any overcrowding, as there had been during the previous visit. The Centre now only houses men. The Commissioner considers that it would be useful to retain this non-mixed approach in the interests of both those held and Centre staff.

The psychological atmosphere seemed to have improved since 2005. Tribute should be paid to the Gendarmerie forces, which have the difficult task of ensuring security as well as protecting the foreigners held. The officers interviewed showed great professionalism, seemed to have received appropriate training, and above all had a human(e) approach to their work. This attitude had clearly been conducive to a serene climate in the Centre.

Additional efforts might, however, be made to run more activities for the persons held. Furthermore, the Commissioner stresses the need to preserve and reinforce the climate of mutual trust and respect between the latter and the authorities.

b) Overcrowding and lack of privacy

During the visit, the authorities told the Commissioner that the presence in the same Centre of persons transferred directly from prison for repatriation to their countries of origin and of persons with clean criminal records was causing a number of difficulties. The fact of holding on the same premises foreigners who have committed no criminal offences with former prisoners who have experienced the trauma, or indeed the violence, of prison led to obvious tension, as well as problems in the day-to-day management of the Centre. The Commissioner considers that this practice should change. He therefore invites the French authorities to stop the practice of moving persons from prisons to Holding Centres, establishing a separate administrative expulsion procedure for them.

c) Length of administrative detention

According to Gendarmerie statistics for 2007, the average length of stay in the Mesnil-Amelot Centre did not exceed 12 days that year, which is much less than the 32-day maximum period laid down in law. However, this period has been steadily increasing since 2004, when it stood at 9 days.

During the Commissioner's talks with the authorities in charge of the Centre, the latter confirmed that extensions of the holding period would have no effect on the number of expulsions. The Commissioner considers that excessive length of detention is pointless and inexpedient. He accordingly feels that it would be highly undesirable to change the existing legislation with an eye to increasing detention periods, which would unfortunately seem to be the trend in Europe. Asylum-seekers should only be deprived of their freedom in very exceptional cases.

d) The effect of pre-established numbers of irregular foreigners to be expelled from France on the situation in the Holding Centres

The policy of setting an annual total number of persons irregularly resident in the territory to be apprehended and expelled would seem to be creating an attitude of unnecessary, indeed inhumane, haste on the part of some of the authorities responsible for achieving these objectives.

During his visit the Commissioner gained an insight into a number of individual situations thanks to talks with some of the persons being held. They also described the circumstances of their arrest. It is clear that personal tragedy lurks behind a great many of the stories which the Commissioner heard.

Many of those interviewed had been apprehended having lived permanently in France for several years, working (often in well-known industrial companies), providing for their needs and at no point considering themselves as a threat to society. The stories recorded during this visit echo others repeated in the press or recounted by CIMADE, an association which is well-known for its work of assisting foreigners.

The Commissioner is convinced that the determination to combat irregular immigration should not prevent the French authorities from taking account of the personal history, experience and integration of each individual when deciding to invite them to leave the national territory. A personalised approach should be introduced, considering each case individually, so that persons apprehended and threatened with expulsion can remain in France legally, notably for humanitarian reasons, where they exercise occupational activities or where families and children are involved .

Furthermore, some individuals complained to the Commissioner that they had been arrested for reasons of "turnover". In such a tense situation, even if these concerns turned out to be mere unfounded fears, the Commissioner senses a risk that the setting of specific annual figures will lead to arbitrary decisions and hasty action, particularly where the subordinate bodies are worried about failing to achieve the objectives set. He therefore calls on the authorities to show even greater vigilance and humane concern in order to ensure that human beings rather than statistics are the main concern in the cases dealt with.

APPENDIX

French reply to the memorandum by the Commissioner for Human Rights of the Council of Europe, Mr Thomas Hammarberg, further to his visit to the *Zones d'Attente* (waiting areas) at Roissy Airport and the Mesnil-Amelot Administrative Holding Centre

The situation of non-admitted persons at Roissy

France notes the situation of an exceptional influx of asylum-seekers at the end of December 2007 in Roissy and the emergency measures adopted in Departure Lounge B33, whose unsuitability for long-term accommodation the Commissioner has quite rightly stressed. However unsatisfactory they were, these conditions nonetheless represented progress over the previous situation in the airport police posts. The suddenness of the influx of asylum-seekers forced the police department at the Roissy borders to improvise accommodation directly on police premises, asking the Red Cross to supply fifteen or so camp beds. This being the case, the transfer to Departure Lounge B33 from 26 December onwards provided the non-admitted persons with a large living area with a regulated temperature, sufficient seating for all and free access to water and toilets.

We should add that when this first facility was provided, hygiene kits were distributed, complemented with towels from 3 January 2008 onwards. The non-admitted persons were also supplied with blankets. Lastly, information posters were displayed in all five UN languages.

The Commissioner's report also mentioned that the main building housing the "ZAPI 3" special area for persons awaiting clarification of their legal status is "a perfectly satisfactory accommodation centre" and that the priority use of the area for woman and children during this period of high-pressure entry into French territory was, as the Commissioner put it, "a sound administrative measure", although he noted the reported presence of a minor in ZAPI 4. Checks were carried out, and the minor in question, who proved to be 17½ years old, was rapidly transferred to ZAPI 3, as soon as it was confirmed that a place was available.

In connection with the building requisitioned for accommodation purposes and referred to, for convenience' sake, as "ZAPI 4", the Report rightly mentions the smell of kerosene and the noise, which phenomena stem from the location of this Departure Lounge in the reserved security zone. The decision to use this building was taken in an emergency context.

Measures were also taken to remedy the lack of privacy rightly highlighted in the report. For example, following the Commissioner's visit tents were set up in the Departure Lounge. Where bedding is concerned, single-use sheets have been distributed, and there are now sufficient blankets for all the individuals concerned, all bedclothes being washed on their return.

In connection with the right to speak to a lawyer, the Commissioner notes the efforts expended in situ to guarantee the exercise of this right and to protect the confidentiality of legal interviews. The arrangement is not yet satisfactory, but it was merely a response to a sudden, unexpected need. It would have developed had the situation persisted. Similarly, a proper medical consultation unit would have been installed.

The Commissioner noted interpreting difficulties during his visit. At the time the procedural phase of refusal of admission was still conducted in the airport police posts, where the main problems of limited police interpreting resources at the Roissy borders were encountered.

In conclusion, with regard to accommodation for non-admitted persons, the situation in Roissy in December 2007, which was one of the reasons for the Commissioner's visit, shows how difficult it is to maintain commonly accepted standards for accommodating asylum-seekers during crisis periods. Only the accommodation of non-admitted persons in the ZAPI 3 facility was compatible with the common quality standard upheld by both France and the Council of Europe, which is why France will be considering expanding the capacity of these amenities, should this type of crisis ever occur again in future.