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**CONCLUSIONS
BY MR ALVARO GIL-ROBLES,
COMMISSIONER FOR HUMAN RIGHTS,**

**ON THE SEMINAR CONCERNING
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**

Strasbourg, 20-22 June 2001

Following the meeting held in Paris in mid-December 2000 between the Council of Europe Commissioner for Human Rights and NGOs particularly committed to promoting respect for human rights, it was agreed to hold a further meeting in order to examine this theme of considerable common concern.

The Commissioner would like to thank the representatives of national and international NGOs for taking such an active part in the debate and making it possible to take account of the concerns expressed by those with a permanent presence in the field. Thanks also go to the government experts who agreed to contribute to the debate, thus ensuring a better understanding of the difficulties faced in this area by the governments of member states.

The Commissioner is especially pleased to observe that representatives of the United Nations High Commission for Refugees actively participated in the seminar. Lastly, the event benefited greatly from the support of all Council of Europe departments with a close interest in the subject. The Commissioner is particularly grateful to the rapporteur and the secretary of the Parliamentary Assembly Committee on Migration, Refugees and Demography, the Registry of the European Court of Human Rights and the secretariats of the Directorate General of Legal Affairs and the CPT.

1. The seminar started with a number of observations. To wit, there is no “right” in international law to enter and stay in a country other than one’s own, it being at the discretion of states whether to authorise any foreigner to enter and stay on their territory.

Foreigners wishing to enter a Council of Europe member state may include asylum-seekers, whose situation is governed chiefly by the 1951 United Nations Convention relating to the Status of Refugees. However, they may also include illegal immigrants, so-called “economic” migrants or others considered “inadmissible” for lack of valid identification papers or visas.

While the 1951 Convention applies only to refugees, the European Convention for the Protection of Human Rights (ECHR) extends to everyone within the jurisdiction of member states. Consequently, by virtue of its Article 1, the rights and freedoms defined in Section I of the ECHR are also guaranteed to aliens presenting themselves at a national border. The Charter of Fundamental Rights of the European Union also secures to “everyone” a certain number of rights.

Some participants expressed concern at the practice, which is apparently on the increase, whereby officials (liaison officers) are seconded to airports from which immigration is common in order to prevent potential immigrants from taking flights to the seconding countries. Although this may permit airlines to escape penalties for allowing passengers without valid travel documents to board flights, it also carries the risk that states will be able to avoid having to apply fundamental guarantees in international law, especially those relating to the right of asylum.

2. Discussion showed that all the participants agreed in principle with the statement that 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.

On arrival, individuals whose right of entry is disputed must be informed in a language which they understand of the reasons for any decision taken by the authorities in their regard and the possibilities of challenging that decision. They must also be given the right to contact a person of their choice. Restrictions may be placed on this right when a person is sought by the police.

In some cases, for example when a person is refused entry without explanation despite having presented a valid visa, he or she must be entitled to effective remedy against the decision not to grant entry or to turn him or her back.

On arrival, everyone must be given a hearing, where necessary with the help of an interpreter whose fees are met by the country of arrival, in order if appropriate to lodge a request for asylum. This must entail the right to open a file after being duly informed, in a language which the person understands, about the procedure to be followed. The practice of *refoulement* "at the arrival gate" thus becomes unacceptable.

3. Pending the authorities' decision, it is desirable that the individuals concerned should be permitted to make telephone contact with a person of their choice. As a rule there should be no restrictions on freedom of movement. Wherever possible, detention should be replaced by other supervisory measures, such as the provision of guarantees or surety. Should detention remain the only way of guaranteeing an alien's physical presence, he or she may on no account be held at a police station or in prison unless there is no practical alternative, and in such a case detention must last no longer than a few hours.

4. Where the competent authorities decide to detain foreigners, the persons concerned must enjoy not only the rights guaranteed at Article 5 ECHR but also a number of other rights, namely the right to contact family members or any other person to inform them of the situation, the right to be apprised of their situation in a language which they understand and, where necessary, the right of access to a lawyer, legal assistance or an NGO. They must be held in a place where they are fed and lodged in accordance with the principles of human dignity. Moreover, it is essential to ensure that all detainees, however long they are held, have the right to emergency medical care as required by their state of health.

It is also important to strengthen the role played by NGOs at each stage of proceedings. Member states are strongly urged to conclude framework agreements with NGOs, with a view in particular to allowing them a permanent presence in all places where the authorities may detain foreigners (airport waiting and transit areas, holding centres, police and *gendarmerie* stations and prisons). Offering aliens free access to NGOs will encourage transparency and respect for human rights.

5. The participants agreed that, in cases where detention lasts longer than a few days, it is essential to house those concerned in a specialised centre. Under no circumstances must aliens held pending authorisation or refusal of entry or enforcement of an expulsion order be placed together with ordinary prisoners.

The participants were especially concerned about the use of waiting areas to hold unaccompanied minors and mothers with young children. It is vital to eliminate situations of this kind. More particularly, unaccompanied minors must be placed in specialised centres and the courts must immediately be informed of their situation.

6. On no account must holding centres be viewed as prisons, and governments must guarantee absolute administrative transparency, chiefly by ensuring that independent national commissions, ombudsmen and NGOs have access to these centres and by regularly monitoring their operation through the courts.

In the same spirit of transparency, the competent authorities must also keep a register of all those entering the country who are detained or expelled, as the case may be. The register must contain all information relevant in this regard so that the courts, whose role as guardians of personal freedoms needs to be strengthened, are able to take action where appropriate. Lastly, in order to prevent the fragmentation of responsibility, it would be advantageous to set up a monitoring system capable of following each applicant from the date of arrival to that of his or her return or expulsion.

7. The participants stressed the need for access in practice (rather than merely by law) to the right of judicial remedy within the meaning of Article 13 ECHR, when allegations are received that the competent authorities have contravened or are likely to contravene a right guaranteed by the ECHR. The right of effective remedy must be open to everyone 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 ECHR is alleged.

8. The participants agreed that countries should ascertain whether those expelled are genuinely readmitted into the receiving country and whether their fundamental rights, especially those set out in Articles 2 and 3 ECHR, are respected there. Grave doubts were expressed about the concept of safe countries of origin and the practice of returning aliens to third countries on the grounds that they could have sought asylum there. There is no basis for this practice in international law, still less refugee law. Other matters of considerable concern were the implementation of summary proceedings and the practice of automatic return.

9. In discussing the enforcement of expulsion orders, all the participants stressed that the best way in all cases to avoid using methods which might traumatise both those being expelled and those responsible for enforcing expulsion orders was to have the person concerned agree to return voluntarily.

It was emphasised that when expulsion orders are to be enforced it is crucial at every stage of proceedings to inform the persons concerned of what lies ahead so that they can prepare themselves psychologically for the idea of return. It is unacceptable to use physical coercion or threats in order to persuade persons subject to an expulsion order to board any form of transport. Programmes providing assistance with return, which come in various forms, are to be encouraged.

It was also proposed that pressure be brought to bear on the competent authorities in member states to ensure that holding centre staff and immigration and expulsion officers receive proper training so as to minimise the risk of ill-treatment. The wearing of masks making it impossible to identify staff executing forced expulsion orders must be banned outright.

10. Where forced expulsion is unavoidable, it must be carried out with complete transparency in order to ensure that fundamental human rights are respected at all stages. The use of force must be limited to what is absolutely necessary given the circumstances.

The following should be prohibited outright:

- use of any means which may cause asphyxia or suffocation (such as adhesive tape, gags, helmets and cushions) 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;
- for safety reasons, the use in aircraft of handcuffs or restraints on persons resistant to expulsion, at least during take-off and landing.

The use of geriatric incontinence pads for the sole purpose of preventing the person concerned from leaving his or her seat during the flight should be seen as an assault on human dignity. Deportees must have the same right as all other passengers to food and drink.

Persons returned to a holding centre following their resistance to forced expulsion should be subjected to no form of punishment, especially of a disciplinary nature. On readmission to the centre, such persons must be given a medical check-up if they so wish.

11. All the participants agreed that it was necessary, as far as possible, to bring national legislation into line in terms of the procedural guarantees on offer to foreigners being held and the determination of a maximum period of detention at each stage of proceedings.

OFFICE OF THE COMMISSIONER FOR HUMAN RIGHTS**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****Seminar organised by the Office of the Council of Europe's Human Rights Commissioner****Strasbourg, 20 – 22 June 2001****Programme of the seminar****Wednesday 20 June 2001**

9.00 - 13.00 Arrival and accommodation of participants

14.00 - 15.00 Registration of participants

15.00 - 18.00 **Part 1**

Rights of aliens held at border points whilst awaiting a member State's decision either authorising or refusing their admission to its territory;

18.30 Welcome reception;

Thursday 21 June 20019.30 - 12.30 **Part 2**

Rights of aliens awaiting the enforcement of an order to leave the territory of a member State following the latter's refusal of their admission and/or stay;

14.30 - 17.30 **Part 3**

Conditions and modalities of forced return;

Friday 22 June 2001**9.00 - 12.00 Part 4**

Continuation of the previous session;

14.30 - 16.00 Part 5

Final discussion and the Commissioner' synthesis.