
Resolution 1471 (2005)¹

Accelerated asylum procedures in Council of Europe member states

1. In recent years, member states of the Council of Europe have come under increasing pressure to process asylum claims in a rapid and efficient manner. This has led to the introduction of a variety of accelerated asylum procedures across Europe. While the expression “accelerated asylum procedures” may appear simple at first sight, it covers a variety of cases and consists of a variety of procedures.

2. The need for states to process asylum applications in a rapid and efficient manner must, however, be weighed against the obligation to provide access to a fair asylum determination procedure for those who are in need of international protection. This balancing of interests, however, does not imply in any circumstances that states may compromise with respect to their international obligations, including under the 1951 Geneva Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol and the 1950 European Convention on Human Rights (ETS No. 5) and its Protocols.

3. There is no common definition of “accelerated asylum procedures” at international or regional level. The expression simply indicates that some applications are processed faster than others.

4. The European Union has made a first attempt at harmonising asylum procedures, including accelerated procedures, and political agreement has been reached on an amended proposal for a Council directive on minimum standards on procedures in member states for granting and withdrawing refugee status. This proposal has, however, been heavily criticised by various sources, including the United Nations High Commissioner for Refugees (UNHCR), NGOs and the European Parliament. It has been said of the proposal that it brings together a number of restrictive and highly controversial practices, using the lowest common denominators as a base. At the heart of concerns is a fear that the proposal does not guarantee that every asylum application will be examined in a fair and proper manner and that an effective remedy will not be available in all circumstances. The fear is that this will lead to *refoulement* along with the risk of violations of the rights of asylum seekers under the European Convention on Human Rights and other European and international treaties.

5. The large variety of cases of accelerated procedures and the large number of different procedures applied in member states of the Council of Europe increases the risk of asylum procedures in Europe becoming a lottery for asylum seekers, with the level of protection and likelihood of acceptance of the application depending on the type of procedure applied in the country in which asylum is sought.

6. While the European Union has taken a first step in seeking to harmonise asylum procedures, including accelerated procedures, through its proposal for a Council directive, this has not gone far enough and urgent steps are needed to provide guidelines of best practice on the application of accelerated procedures in member states of the Council of Europe. These guidelines are needed

either on accelerated procedures as a whole or on particularly problematic aspects of accelerated procedures.

7. The particularly problematic aspects of accelerated procedures are fourfold. They include the application of the notion of the safe country of origin, the application of the principle of a safe third country, including the concept of "super safe third country", procedures adopted at the border for dealing with asylum seekers and the right of appeal with suspensive effect. These four areas raise a certain number of concerns, notably the danger of *refoulement*, the particular situation of vulnerable groups – such as children or victims of torture or sexual violence or trafficking – and the denial of access to basic procedural safeguards, such as the right to legal advice and representation, the right to a personal interview and the right to an interpreter.

8. Consequently, the Parliamentary Assembly invites the governments of the member states of the Council of Europe:

8.1. as regards the general use of accelerated procedures, to:

8.1.1. ensure a balance between the need to process asylum applications in a rapid and efficient manner and the need to ensure there is no compromise over international obligations including under the 1951 Refugee Convention and its 1967 Protocol and the 1950 European Convention on Human Rights and its Protocols;

8.1.2. ensure that the principle of *non-refoulement*, which is the cornerstone of international refugee protection, is ensured, namely that "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" (Article 33 of the 1951 Refugee Convention);

8.1.3. limit the use of accelerated procedures to cases which are clearly well founded, allowing a swift positive decision on the asylum application or those cases which are clearly abusive or manifestly unfounded;

8.1.4. take fully into account that acceleration of manifestly unfounded or clearly abusive cases could, in certain circumstances, most effectively occur at the appeal stage, through shorter but reasonable time limits for submitting an appeal;

8.1.5. apply minimum procedural guarantees equally for all asylum applications;

8.1.6. ensure the quality of decision making at first instance as one of the best ways of speeding up the asylum process;

8.2. as regards the concept of safe country of origin, to:

8.2.1. ensure that clear and demonstrable safeguards are adopted to guarantee an effective access to an asylum determination procedure which can lead to the granting of refugee status or other forms of international protection;

8.2.2. ensure that the burden of proof does not switch to the applicant to prove that a country is unsafe and that the applicant has an effective opportunity to rebut the presumption of safety;

8.2.3. take great caution in adopting, in the context of the proposal for a European Council directive, a list of safe countries of origin which may lead to a lowering of standards of protection for asylum seekers from the countries concerned and could undermine the underlying concept of refugee protection, which is based on the individual situation of the asylum seeker rather than a general analysis and judgment on the country;

8.2.4. ensure adequate safeguards are in place when designating a part of a country as safe, to ensure that this provides a reasonable flight alternative;

8.2.5. ensure that the use of the concept of safe country of origin should be kept to a minimum;

8.3. as regards the concept of safe third country, including the concept of “super safe third country”, to:

8.3.1. take note that the European Court of Human Rights has made it clear in the case of *T.I. v. the United Kingdom*, admissibility decision of 7 March 2000, application No. 43844/98, that the application of the concept of a safe third country does not release a country from its duties under Article 3 in relation to freedom from torture, inhuman or degrading treatment or punishment even under the Dublin Convention concerning the state responsible for examining asylum applications in one of the member states of the European Union;

8.3.2. ensure that the use of this concept is kept to a minimum and that each individual claim is examined with the following safeguards, thus building on Recommendation No. R (97) 22 of the Committee of Ministers to member states containing guidelines on the application of the safe third country concept:

8.3.2.i. the ratification and implementation by the third country of the 1951 Refugee Convention and other relevant international human rights treaties, including, for European states, the European Convention on Human Rights;

8.3.2.ii. the existence of an effective asylum procedure in law and in practice in the third country;

8.3.2.iii. genuine and close links between the applicant and the third country;

8.3.2.iv. the express agreement of the third country to accept the applicant and to provide a full and fair determination procedure and protection from *refoulement*;

8.3.2.v. the burden of proof regarding the safety of a third country for an individual asylum seeker should be on the country of asylum and there should be the possibility for the asylum seeker to rebut the presumption of safety;

8.3.2.vi. the exclusion of vulnerable persons, including separated children and persons suffering from trauma as a result of torture or other ill-treatment, including sexual and gender-based violence, from the application of the safe third country concept;

8.4. as regards border applicants, to:

8.4.1. ensure, in accordance with the principle of non-discrimination, that all asylum seekers are registered at the border and given the possibility of lodging a claim for refugee status;

8.4.2. ensure that all asylum seekers, whether at the border or inside the country, benefit from the same principles and guarantees in terms of their request for refugee status;

8.4.3. ensure adoption of clear and binding guidelines on treatment of asylum seekers at border points, in accordance with international human rights and refugee law and standards;

8.5. as regards the right of appeal with suspensive effect: to ensure that the right to an effective remedy under Article 13 of the European Convention on Human Rights is respected, including the right to lodge an appeal against a negative decision and the right to suspend the execution of measures until the national authorities have examined their compatibility with the European Convention on Human Rights;

8.6. as regards applicants who fail to present any documents or who present forged documents: to ensure that the lack of documentation or the use of forged documentation does not, in itself, make a claim fraudulent or bring about a rejection of the claim;

8.7. as regards time limits: to refrain from automatic and mechanical application of short time limits to lodge an application, taking into account the findings of the European Court of Human Rights in the case of *Jabari v. Turkey*, judgment of 11 July 2000, application No. 40035/98, in which it was held that the automatic and mechanical application of a short time limit of five days for submitting an asylum application was at variance with the fundamental value embodied in Article 3 of the Convention;

8.8. as regards the duration of the procedure: to ensure that speed is not given priority over fairness, and that a reasonable time frame is established that guarantees access to essential procedural safeguards;

8.9. as regards the use of accelerated procedures for applicants representing a danger to national security or to public order, or where consideration is given to the application of the exclusion clauses under Article 1.F of the Refugee Convention: to ensure that such cases are exempted from accelerated procedures, and to ensure access to procedural guarantees taking due note of the Guidelines on human rights and the fight against terrorism adopted by the Committee of Ministers of the Council of Europe on 11 July 2002, as well as Recommendation Rec(2005)6 of the Committee of Ministers to member states on exclusion from refugee status in the context of Article 1.F of the Convention relating to the Status of Refugees of 28 July 1951.

8.10. as regards the individual determination and interview of all asylum seekers, to:

8.10.1. respect the well-established principle that asylum seekers have the right to an individual determination of refugee status;

8.10.2. ensure the right of all asylum seekers to a personal interview in a language they understand, together with the possibility of free legal aid at the first instance hearing and throughout the appeal process;

8.11. as regards exemptions from accelerated procedures: to ensure that certain categories of persons be excluded from accelerated procedures due to their vulnerability and the complexity of their cases, namely separated children/unaccompanied minors, victims of torture and sexual violence and trafficking, and also cases raising issues under the exclusion clauses of the 1951 Refugee Convention;

8.12. as regards detention:

8.12.1. to ensure that in general asylum seekers are not detained. Detention should be an exceptional measure to be implemented only for the shortest of periods;

8.12.2. if asylum seekers are to be detained, to ensure that they are kept apart from those facing criminal conviction or having been convicted of criminal offences; furthermore, access to effective legal assistance at all stages of the procedure and access to the services of competent and qualified interpreters should be systematically granted;

8.12.3. to ensure that grounds for detention are limited and exhaustively listed with appropriate safeguards, including those under Article 5 of the European Convention on Human Rights;

8.12.4. to allow the monitoring of places of detention, including international transit zones, by independent organisations;

8.13. as regards social conditions, to provide adequate social assistance and medical assistance for asylum seekers at all stages of their claim, including during the appeal stage;

8.14. as regards the decision-making process, to ensure that all officials dealing with asylum seekers receive relevant training and access to sources of information and research in order to carry out their work in a gender- and age-sensitive manner and with due consideration to the particular situation of victims of torture and ill-treatment, including victims of sexual or other forms of gender-based violence;

8.15. as regards the UNHCR's role, to facilitate its monitoring and capacity-building activities with respect to the asylum procedure in general, and the accelerated asylum procedures in particular, and to ensure access by UNHCR to key areas, including border areas.

9. The Assembly also invites the Council of the European Union to take into account the above-mentioned concerns in relation to the use of accelerated procedures when discussing further the adoption of an amended proposal for a Council directive on minimum standards on procedures in member states for granting and withdrawing refugee status. The Assembly also invites the Council of the European Union to take into account the relevant comments and criticisms raised by the European Parliament, the UNHCR and NGOs in relation to the proposal for a Council directive.

10. The Assembly furthermore invites the UNHCR to continue its important monitoring and capacity-building work, in line with its supervisory role, including its activities in training officials dealing with asylum seekers at national and regional level.

1. *Assembly debate* on 7 October 2005 (32nd Sitting) (see Doc. 10655, report of the Committee on Migration, Refugees and Population, rapporteur: Mr Agramunt).

Text adopted by the Assembly on 7 October 2005 (32nd Sitting).