



Guidelines on human rights protection in the context of accelerated asylum procedures

*(Adopted by the Committee of Ministers on 1 July 2009
at the 1062nd meeting of the Ministers' Deputies)*

The Committee of Ministers,

Reaffirming that asylum seekers enjoy the guarantees set out in the Convention for the Protection of Human Rights and Fundamental Freedoms (ETS No. 5) in the same way as any other person within the jurisdiction of states parties, in accordance with Article 1 of the Convention;

Bearing in mind notably Article 14 of the 1948 Universal Declaration of Human Rights and reaffirming the obligation of states, whatever asylum procedure they use, to comply with the international and European standards in this field, such as the right to seek and enjoy asylum;

Recalling the relevant case law of the European Court of Human Rights and the relevant recommendations of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) and the United Nations Committee Against Torture (CAT);

Recalling the importance of full and effective implementation of the 1951 Geneva Convention relating to the Status of Refugees ("Geneva Convention") and the 1967 New York Protocol to this convention, and the obligations of states under these instruments, in particular Article 33.1 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";

Recalling 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);

Recalling recommendations adopted by the Committee of Ministers and the Parliamentary Assembly of the Council of Europe in the field of asylum procedures, notably:

- Recommendation No. R (97) 22 of the Committee of Ministers containing guidelines on the application of the safe third country concept;
- Recommendation No. R (98) 13 of the Committee of Ministers on 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;
- Recommendation Rec(2003)5 of the Committee of Ministers on measures of detention of asylum seekers; and
- Recommendation 1327 (1997) of the Parliamentary Assembly on the "Protection and reinforcement of the human rights of refugees and asylum seekers in Europe";

Referring specifically to:

- Parliamentary Assembly Resolution 1471 (2005) on "Accelerated asylum procedures in Council of Europe member states";
- Parliamentary Assembly Recommendation 1727 (2005) on "Accelerated asylum procedures in Council of Europe member states"; and the related report by the Committee on Migration, Refugees and Population of the Parliamentary Assembly of the Council of Europe (Doc. 10655);

Recalling European Union legislation, particularly:

- Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers;

- Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in member states for granting and withdrawing refugee status;
- Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification and status of third country nationals or stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted; and
- Council Regulation No. 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the member state responsible for examining an asylum application lodged in one of the member states by a third country national (“Dublin Regulation”).

1. Adopts the attached guidelines and invites member states to ensure that they are widely disseminated amongst all national authorities involved in the implementation of the various stages of accelerated procedures, including those responsible for the return of aliens;
2. Notes that none of the guidelines imply any new obligations for Council of Europe member states.¹

I. Definition and scope

1. An accelerated asylum procedure is one that derogates from normally applicable procedural time scales and/or procedural guarantees with a view to expediting decision making.
2. Procedures whereby a state may declare an application inadmissible without considering the merits of the claim also fall *mutatis mutandis* within the scope of the guidelines.

II. Principles

1. States should only apply accelerated asylum procedures in clearly defined circumstances and in compliance with national law and their international obligations.
2. Asylum seekers have the right to an individual and fair examination of their applications by the competent authorities.
3. When procedures as defined in Guideline I are applied, the state concerned is required to ensure that the principle of *non-refoulement* is effectively respected.

III. Vulnerable persons and complex cases

1. The vulnerability of certain categories of persons such as unaccompanied and/or separated minors/children, victims of torture, sexual violence or human trafficking and persons with mental and/or physical disabilities 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. International human rights obligations as regards the rights of specific vulnerable groups shall be duly taken into account when applying accelerated asylum procedures and in the manner of application.
3. When it becomes apparent that a case is particularly complex and that this complexity falls to be addressed by the state where the application was lodged, it should be excluded from the accelerated procedure.

IV. Procedural guarantees

1. When accelerated asylum procedures are applied, asylum seekers should enjoy the following minimum procedural guarantees:
 - a. the right to lodge an asylum application with state authorities, including but not limited to, at borders or in detention;

¹ 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.

- b. the right to be registered as asylum seekers in any location within the territory of the state designated for this purpose by the competent authorities;
 - c. 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;
 - d. the right, as a rule, to an individual interview in a language which he/she understands where the merits of the claim are being considered and, in cases referred to in Guideline I.2, the right to be heard on the grounds of admissibility;
 - e. the right to submit documents and other evidence in support of the claim and to provide an explanation for absence of documentation, if applicable;
 - f. the right to access legal advice and assistance, it being understood that legal aid should be provided according to national law;
 - g. the right to receive a reasoned decision in writing on the outcome of the proceedings.
2. Authorities shall take action to ensure that a representative of the interests of a separated or unaccompanied minor is appointed throughout the whole proceedings.
3. Authorities shall respect the confidentiality of all aspects of an asylum application, including the fact that the asylum seeker has made such an application, in as much as it may jeopardise protection of the asylum seeker or the liberty and security of his/her family members still living in the country of origin. Information on the asylum application as such which may thus jeopardise protection shall not be disclosed to the country of origin.

V. The safe country of origin concept

1. The examination of the merits of the asylum application shall be based on the asylum seeker's individual situation and not solely on general analysis and evaluation of a given country.
2. The fact that the asylum seeker comes 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 for considering a country of origin as safe. 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 must be satisfied when applying the safe third country concept:
 - a. the third country has ratified and implemented the Geneva Convention and the 1967 Protocol relating to the Status of Refugees or equivalent legal standards and other relevant international treaties in the human rights field;
 - b. the principle of *non-refoulement* is effectively respected;
 - c. the asylum seeker concerned has access, in law and in practice, to a full and fair asylum procedure in the third country with a view to determining his/her need for international protection; and
 - d. the third country will admit the asylum seeker.
2. All asylum seekers shall be given an effective opportunity to rebut the presumption of safety of the third country.

3. Application of the safe third country concept does not relieve a state of its obligations under Article 3 of the European Convention on Human Rights prohibiting torture and inhuman or degrading treatment or punishment.

VII. *Non-refoulement* and return

1. The state receiving an asylum application is required to ensure that 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 serious violation of other fundamental rights which would, under international or national law, justify granting protection.

2. In all cases, the return must be enforced with respect for the integrity and human dignity of the person concerned, excluding any torture or inhuman or degrading treatment or punishment.

3. Collective expulsion of aliens is prohibited.

VIII. Quality of the decision-making process

1. Throughout the proceedings, decisions should be taken with due diligence.

2. Officials responsible for examining and taking decisions on asylum applications should receive appropriate training, including 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, ethnicity, 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 have a reasonable time to lodge their application.

2. The time taken for considering an application shall be sufficient to allow a full and fair examination, with due respect to the minimum procedural guarantees to be afforded to the applicant.

3. The time should not however be so lengthy as to undermine the expediency of the accelerated procedure, in particular when an asylum seeker is detained.

X. Right to effective and suspensive remedies

1. Asylum seekers whose applications are rejected shall have the right to have the decision reviewed by a means constituting an effective remedy.

2. Where asylum seekers submit an arguable claim that the execution of a removal decision could lead to a real risk of persecution or the death penalty, torture or inhuman or degrading treatment or punishment, the remedy against the removal decision shall have suspensive effect.

XI. Detention

1. Detention of asylum seekers should be the exception.

2. Children, including unaccompanied minors, should, as a rule, not be placed in detention. In those exceptional cases where children are detained, they should be provided with special supervision and assistance.

3. In those cases where other vulnerable persons are detained they should be provided with adequate assistance and support.

4. Asylum seekers may only be deprived of their liberty if this is in accordance with a procedure prescribed by law and if, after a careful examination of the necessity of deprivation of liberty in each individual case, the authorities of the state in which the asylum application is lodged have concluded that the

presence of the asylum seekers for the purpose of carrying out the accelerated procedure cannot be ensured as effectively by another, less coercive measure.

5. Detained asylum seekers shall be informed promptly, in a language which they understand, of the legal and factual reasons for their detention, and the available remedies. They should be given the immediate possibility of contacting a person of their own choice to inform him/her about their situation, as well as availing themselves of the services of a lawyer and a doctor.

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

7. Detained asylum seekers should normally be accommodated within the shortest possible time 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

Asylum seekers shall be provided with necessary social and medical assistance, including emergency treatment.

XIII. Protection of private and family life

Asylum seekers and their family members within the state's jurisdiction are entitled to respect for their private and family life at all stages of the accelerated asylum procedure in accordance with Article 8 of the European Convention on Human Rights. Whenever possible, family unity should be guaranteed.

XIV. Role of the United Nations High Commissioner for Refugees (UNHCR)

Even when accelerated asylum procedures are applied, member states shall allow the UNHCR to:

- a. have access to asylum seekers, including those in detention and border zones such as airport or port transit zones;
- b. 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;
- c. 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.

XV. Increased protection

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