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# Accelerated asylum procedures in Council of Europe member states

Report
Committee on Migration, Refugees and population
Rapporteur: Mr Pedro Agramunt, Spain, Group of the European People's Party

*Summary*

In recent years, Council of Europe member states have witnessed an important increase in the number of asylum claims determined under accelerated procedures. While the expression "accelerated asylum procedures" may seem simple at first sight, it covers a variety of cases and consists of a variety of procedures.

The application of accelerated asylum procedures brings to light many refugee and human rights concerns, both in relation to domestic practices in member states of the Council of Europe and also at the level of the European Union, where an "Amended proposal for a Council Directive" on minimum standards on procedures in Member States for granting and withdrawing refugee status has been the focus of strong criticism.

There is an urgent need for the development of either overall guidelines, bringing together best practices on accelerated asylum procedures, or for the development of specific guidelines on particular aspects of accelerated procedures. Priority should be given to developing best practice guidelines on the use of the concepts of safe country of origin and safe third country, procedures adopted at the border for dealing with asylum seekers and the rights of appeal of asylum seekers under accelerated procedures. There is also a need to examine further the particular rights of asylum seekers in accelerated asylum procedures. Attention also needs to be paid to particularly vulnerable groups, such as children or victims of torture or sexual violence or trafficking, who should not, *a priori*, be subjected to accelerated procedures.

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## I. Draft resolution

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 application in a rapid and efficient manner, however, needs to be balanced by the obligation to provide access to a fair asylum determination procedure for those who are in need of international protection. A "balance", though does not mean a "compromise" as states cannot in any circumstances compromise over their international obligations, including under the Geneva 1951 Convention relating to the Status of Refugees (Refugee Convention) and its 1967 Protocol and the 1950 European Convention on Human Rights 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 in a faster way than others.

4. A first attempt to harmonise asylum procedures, including accelerated procedures, has been made by the European Union 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 by the UNHCR, NGOs and also in a draft report prepared for the European Parliament's Committee on Civil Liberties, Justice and Home Affairs. It has been said of the proposal that it brings together a number of restrictive and highly controversial practices, using as a base the lowest common denominators. At the heart of concerns is a fear that the proposal does not guarantee that every asylum application will be dealt with in a proper and fair examination 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 recognition, 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. Aspects of accelerated procedures, which are particularly problematic, are fourfold. They include the application of the notion of the safe country of origin, the application of the principle of 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. Linked to these four areas where accelerated procedures may be applied are a number of particular concerns. They include 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 obtain 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 corner-stone 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 level, 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 level 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 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 judgement 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 TI case against 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 applications for asylum;

8.3.2. ensure that the use of this concept be kept to a minimum and that each individual claim should be 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. ratification and implementation by the third country of the 1951 Refugee Convention and other relevant international human rights treaties, including the European Convention on Human Rights for European states;

8.3.2.ii. 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. 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. 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 undocumented applicants or applicants with 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 against 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 (2005) 5 of the Committee of Ministers to member states on exclusion from refugee status in the context of Article 1F 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 the vulnerability of the persons concerned and the complexity of the case, 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 should not be detained. If they are detained it should be the exception and for a minimal period;

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

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

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

8.13. as regards social conditions, to provide adequate social assistance, including medical assistance, for asylum seekers throughout the process 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.

## II. Draft recommendation

1. The Parliamentary Assembly refers to its Resolution ... (2005) on accelerated asylum procedures in Council of Europe member states.

2. The Assembly considers that there is an urgent need to develop overall guidelines which go beyond the minimal standards developed in the amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status.

3. Therefore, the Assembly recommends that the Committee of Ministers :

3.1. ask the relevant intergovernmental committee to work out, in co-operation with relevant bodies, policy guidelines and best practices for dealing with accelerated procedures. Or, in view of the extensive nature of accelerated procedures, to prioritise work by examining and developing policy guidelines and best practices in the following fields:

3.1.1. the use of the concept of safe country of origin;

3.1.2. the use of the concept of safe third country, including the concept of "super safe third country";

3.1.3. procedures adopted for dealing with asylum seekers at border-points;

3.1.4. rights of appeal, including the suspensive effect of appeals;

3.2. to expand Council of Europe training initiatives for those involved in refugee status determination in general, and those involved in accelerated procedures in particular, ensuring:

3.2.1. close co-operation with the UNHCR in all training programmes;

3.2.2. full account of the human rights standards of the Council of Europe, notably the European Convention on Human Rights and the case-law of the European Court of Human Rights relevant to refugee status determination;

3.2.3. full use of information, relevant for the refugee status determination process, arising from monitoring mechanisms of the Council of Europe, such as those established by the European Social Charter, the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, the Framework Convention for the Protection of National Minorities as well as the monitoring reports of the European Commission Against Racism and Intolerance (ECRI).

## III. Explanatory memorandum by Mr Pedro Agramunt

### 1. Introduction

1. In recent years, Council of Europe member states have witnessed an important increase in the number of asylum claims determined under accelerated procedures. Even if the expression "accelerated asylum procedures" can seem simple at first sight, it covers a variety of cases and consists of a variety of procedures. The first aim of this report is therefore to clarify what is meant by accelerated asylum procedures, by providing a comparative overview of relevant law and practice currently applied by Council of Europe member states and also being developed at the level of the European Union. The second aim is to highlight certain concerns from the view-point of refugee and human rights standards and propose recommendations.

2. This report recognises that it is necessary to strike a balance between the need for states to process asylum applications in a rapid and efficient manner and their obligation to provide access to a fair asylum determination procedure for those who are in need of international protection. A "balance" does not mean a "compromise", because states cannot in any circumstances compromise over their international obligations under the 1951 Convention relating to the Status of Refugees (Refugee Convention) and the 1950 European Convention on Human Rights by reason of the high number of asylum applications they receive. It is a fact, however, that the workload of the authorities in charge of processing asylum applications in many countries is so heavy that it adversely affects the quality of decision making. Furthermore, the backlog of undecided applications may result in prolonged detention, lack of access to basic services, undeclared work and, last but not least, a sense of insecurity for asylum seekers. This contributes to a lack of confidence in the asylum system not only by asylum seekers but also by the population at large in the receiving country.

3. In the paper "Fleeting refuge: the triumph of efficiency over protection in Dutch asylum policy" (April 2003)[1], the international NGO Human Rights Watch expressed concern over the compliance of the Dutch accelerated asylum procedure in reception centres (the so-called "AC procedure") with human rights and international refugee law standards. The Dutch government responded to these concerns by refuting the allegations and defining the "AC procedure" as an efficient and careful way of dealing with asylum applications within a relatively short time-frame.

4. The debate around the Dutch "AC procedure" has provided the starting point for the reflection contained in this report on accelerated asylum procedures in Council of Europe member states. The recent expulsion of migrants from the Italian island of Lampedusa to Libya carried out by the Italian authorities between October 2004 and March 2005, has served to raise further concerns over the use of accelerated procedures [2].

5. The issue of accelerated asylum procedures cannot be properly considered outside a discussion over the fairness and efficiency of asylum systems in general: Council of Europe member states need to improve the decision-making on asylum applications and reinforce the resources of the administrations which are responsible for it. At the same time, they need to devise asylum procedures which can be completed within reasonable time-limits, while providing all the guarantees and safeguards against return to countries where asylum seekers would be subjected to persecution or human rights violations.

6. The present report intends to be a contribution to direct the efforts of Council of Europe member states towards a more efficient way of processing asylum applications while ensuring full respect for international obligations. It builds on previous reports of the Committee on Migration, Refugees and Population and subsequent Assembly recommendations, including: Recommendation 1440 (2000) on restriction on asylum in the member states of the Council of Europe and the European Union, 1467 (2000) on clandestine immigration and the fight against traffickers, 1475 (2000) on the arrival of asylum seekers at European Airports, 1547 (2002) on expulsion procedures in conformity with human

[1] Human Rights Watch, Volume 15, No. 3 (D) – April 2003
[2] See European Parliament resolution on Lampedusa, Thursday 14 April 2005, P6-TA-PROV(2005)0138

rights and enforced with respect for safety and dignity, 1577 (2002) on the creation of a charter of intent on clandestine migration, 1596 (2003) on the situation of young migrants in Europe, 1624 (2003) on a common policy on migration and asylum and 1703 (2005) on protection and assistance for separated children seeking asylum.

7. The present report takes as a primary yard-stick the rights and obligations under the 1951 Refugee Convention as well as the 1950 European Convention on Human Rights.

8. This report will be structured as follows: Part 1 will provide an overview of accelerated asylum procedures in Council of Europe member states; Part 2 will cover relevant European Union developments, and in particular the Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (hereinafter referred to as the "proposal for a Council Directive")[3]; Part 3 will provide an analysis of accelerated asylum procedures in the light of relevant refugee and human rights standards; Part 4 will be devoted to conclusions and recommendations.

## PART 1: OVERVIEW OF ACCELERATED ASYLUM PROCEDURES IN COUNCIL OF EUROPE MEMBER STATES[4]

9. There is no common definition of "accelerated asylum procedures", at international or regional level. The expression simply indicates that some applications are processed in a faster way than under ordinary procedures. This chapter will be devoted to describing the various cases which can fall under accelerated asylum procedures in Council of Europe member states, as well as the main features of such procedures.

10. Your Rapporteur would like to raise a preliminary issue. Accelerated procedures are currently applied in a host of different circumstances and not only when they are clearly abusive (i.e. clearly fraudulent), or manifestly unfounded, (i.e. not linked to grounds for granting international protection). They are applied to cases involving the notions of safe county of origin, safe third country, including "super safe third country", and first asylum country as well as in the application of the so called Dublin Regulation II, which facilitates the return of asylum applicants to countries of transit, primarily in the European Union sphere. They are also applied to undocumented applicants, applicants with forged documentation, applicants not complying with time-limits for lodging an asylum application, applicants not complying with other procedural standards, border applicants, etc. They are also, on occasion, applied to manifestly well-founded applications. In certain countries, the entire admissibility procedure is treated as an accelerated procedure. In one country the only criterion is that the case can be decided on within a fixed number of hours.

### 1. Cases falling under accelerated procedures

#### *1.1. Manifestly unfounded claims*

11. Most Council of Europe member states provide for accelerated procedures for what may be termed manifestly unfounded claims (see for example, Austria, Bulgaria, Cyprus, Hungary, Ireland, Poland, Romania, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom).

12. The notion of manifestly unfounded however varies from country to country and is generally given a wider meaning than being unrelated to the grounds for granting international protection.

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[3] Amended proposal for a Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status, Brussels, 9 November 2004, 14203/04, Asile 64.

[4] In preparing this report the Rapporteur would like to acknowledge the important information provided in the form of answers to a questionnaire by UNHCR Branch Offices. Answers to the questionnaires were received in relation to the following countries: Austria, Bulgaria, Cyprus, Hungary, Ireland, Moldova, Poland, Romania, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom. A copy of the questionnaire is attached as an appendix. The Rapporteur would also like to acknowledge the useful information obtained during meetings with representatives of UNHCR and with the European Commission in Brussels on Tuesday, 22 March 2005.

### *1.2. Safe country of origin*

13. Most Council of Europe member states provide for accelerated procedures where the asylum applicant comes from a safe country of origin. This is the case, for instance, in the United Kingdom, Austria, Bulgaria, Cyprus, Hungary, Ireland, "the former Yugoslav Republic of Macedonia", Poland, and Romania, but not in relation to Moldova and Spain.

14. Some Council of Europe member states have adopted a list of safe countries of origin (for instance Austria, Bulgaria, Hungary, Ireland, the Netherlands, Romania and the United Kingdom while in others, the decision whether a country is safe is made on an *ad hoc* basis (Cyprus, where the notion has not yet been used, Poland and "the former Yugoslav Republic of Macedonia"). When there is a list, this is sometimes established by law (as in Austria, the Netherlands and the United Kingdom), while other times it is established directly by the government through a ministerial order (for instance in Bulgaria, Ireland and Romania). The list can generally be changed in the same way in which it is established, i.e. through law or through ministerial order.

15. Criteria for considering a country of origin as safe vary considerably from country to country. Certain countries, such as Austria do not have criteria. Other countries use criteria which include some of the following elements: numbers of asylum seekers from the countries concerned, functioning of a democracy, independence of the judiciary, state of rule of law, observance of the 1951 Refugee Convention and human rights treaties including the European Convention on Human Rights. The possibility for a state to designate a part of a country as safe is provided for under 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. It is also allowed for under the proposal for a Council Directive.

16. The actual countries listed vary. Bulgaria for example had 72 countries on its list and in 2003 reduced this list to 15 countries. The United Kingdom, for example has, in terms of countries outside of the European Union, the following countries on its list: Albania, Bulgaria, Jamaica, "the former Yugoslav Republic of Macedonia", Moldova, Romania, Serbia and Montenegro, Bangladesh, Bolivia, Brazil, Ecuador, South Africa, Sri Lanka and the Ukraine. Where lists exist they are however generally short in terms of non European Union states.

17. The qualification of some countries of origin as safe has been strongly affected by the development of a common EU asylum and migration policy. Since the entry into force of the Amsterdam Treaty, all EU member states are to be considered as safe countries of origin for other EU countries. The same applies to new accession countries as of the date of their accession. As to non-EU member states, it should be noted that there is a lively debate within the European Union about whether a list of countries should be established by the EU itself, or whether it should be left to determination by member states. As a result of a lack of consensus, any decision on the adoption of a minimum common list of safe countries of origin has been postponed by the Council of the European Union to after the adoption of the proposal for a Council Directive.

### *1.3. Safe third countries*

18. Nearly all Council of Europe member states provide for accelerated procedures where the asylum applicant has travelled via a safe third country (see for example, Austria, Bulgaria, Cyprus, Hungary, Moldova, Netherlands, Poland, Romania, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom).

19. Some Council of Europe member states have drafted a list of safe third countries, while others take *ad hoc* decisions. In most cases these lists are public, although in the case of Hungary the list is not public. Likewise, the qualification of some third countries as safe has been strongly affected by EU developments. Since the entry into force of the Dublin Convention, all the states party are to be considered as safe. The present Regulation (so-called "Dublin II"), replacing the Dublin Convention,

retains the same principle for all EU member states, excluding Denmark, but including Iceland and Norway.

20. Criteria for including a country in the list of safe third countries varies from country to country although the following elements are often included: protection against refoulement, protection of human rights, including the right to life, freedom from torture or inhuman or degrading treatment or punishment, possibility to apply for protection and enjoy protection, agreement by the state to receive the persons in question, etc.

21. The proposal for a Council Directive includes the principle of safe third countries and provides for the adoption by the Council of a list of safe third countries that should be regarded as safe by EU member states. The proposal for a Council Directive also includes the so called principle of "super safe third country" which provides that no, or no full, examination of the asylum application and the safety of the applicant is required if the applicant has entered illegally from a designated country ("super safe third country").

22. The principle of safe third country is also laid down in a number of readmission agreements, concluded by member states at bilateral or multilateral level, as well as by the EU with third countries.

### *1.4. First country of asylum*

23. Other cases which are often treated under accelerated procedures are those of the first country of asylum (see for example in Austria, Bulgaria, Cyprus, Hungary, Spain, "the former Yugoslav Republic of Macedonia" and the United Kingdom). In the practice of Council of Europe member states this principle is sometimes treated the same as the principle of safe third country. From a legal point of view, a distinction should be made: a safe third country is *a country which could be considered to be responsible for examining an asylum request because of a connection or close links between the applicant with that country* whereas a country of first asylum is a country where the asylum seeker *did find* protection prior to his or her arrival to a new country where he or she wishes to apply for asylum. The concept is found in the proposal for a Council Directive.

### *1.5. Undocumented applicants or applicants with forged documents*

24. A number of countries apply accelerated procedures to undocumented applicants or applicants with forged documents (Austria, Bulgaria, Cyprus, Hungary, Poland Romania and "the former Yugoslav Republic of Macedonia"), although certain states will only apply accelerated procedures if there has been an element of deception by the applicant towards the authorities (Austria, Cyprus, Romania and "the former Yugoslav Republic of Macedonia"). In a number of countries accelerated procedures are not provided for in relation to undocumented applicants or applicants with forged documents (Ireland, Spain and the United Kingdom). Rather than apply accelerated procedures, certain countries treat the arrival without valid documentation as a criminal offence (see in this respect the United Kingdom). The Proposal for a Council Directive allows for accelerated procedures in these circumstances.

### *1.6. Time-limits*

25. A few Council of Europe member states have introduced short time-limits to lodge an asylum application after entry (as an example 72 hours in the case of Bulgaria). In most countries however failure to comply with time limits does not trigger accelerated procedures (see for example Austria, Hungary and Poland), although the delay may be taken into account in the assessment or it may be an aggravating factor such as in the Netherlands where an applicant who does not have a document for legal entry fails to lodge an application without any delay, those could be grounds, among others, to reject the claim. In some cases there may be an exception to this if the application is submitted with the sole purpose of forestalling an impending deportation (Cyprus). In the United Kingdom a consequence of failing to apply as soon as possible could lead to disqualification from National Asylum Support Services, although this consequence has been challenged in domestic courts as being contrary to Article 3 of the European

Convention on Human Rights[5] Under the Proposal for a Council Directive, the failure to comply with time limits can trigger accelerated procedures.

26. Some states apply accelerated procedures to border applicants (Austria, Bulgaria, Romania and Spain) while for others the place where the application is presented is irrelevant for the purposes of determining which procedure should apply (Cyprus, Ireland, Netherlands, Poland, "the former Yugoslav Republic of Macedonia" and the United Kingdom). The Proposal for a Council Directive provides for procedures which would allow for accelerated procedures and restricted guarantees for border applicants.

### *1.7. Other circumstances*

27. A number of other circumstances may also trigger accelerated procedures. These include repeat applications (Austria), flagrantly failing to comply with obligations (Cyprus), failure to fulfil reporting obligations (Poland), posing a danger to national security or public order (Romania) and the applications of exclusions under the 1951 Refugee Convention (Spain).

28. Apart from the above listed cases falling under accelerated procedures, the Proposal for a Council Directive also provides for further grounds, including filing of another application for asylum, stating other personal data, making an application merely in order to delay or frustrate enforcement of an earlier or imminent decision, unlawful entry into the country or prolongations of a stay unlawfully in certain circumstances, refusal to have fingerprints taken, application by an unmarried minor where parents have been rejected and there are no relevant new elements.

## 2. Specific features of accelerated procedures

29. There is a great diversity in the application of accelerated asylum procedures in Council of Europe member states.

### *2.1. Duration of the procedure*

30. The duration of accelerated asylum procedures varies considerably in Council of Europe member states. The shortest procedures are found in the Netherlands (48 working hours (which in practice means 5 to 6 days)), Bulgaria (3 days), Spain (4 days at the border, in-land 60 working days), Romania (decisions to be taken within 10 days, but the delays are apparently not always respected), United Kingdom (aim at less than 14 days), Hungary and "the former Yugoslav Republic of Macedonia" (15 days), Poland (30 days).

### *2.2. Examination of the application within an admissibility procedure*

31. Some countries, such as Spain have introduced an admissibility procedure which, for the purposes of the present report, will be considered as an accelerated asylum procedure since it aims at reducing the pressure on the asylum system by filtering applications which appear to be manifestly unfounded.

### *2.3. Examination of the application on its merits without an interview*

32. In nearly all countries the examination of the application on the merits takes place with an interview. There may be instances where the examination of an application takes place without an interview and such a possibility is provided for in limited circumstances under the proposal for a Council Directive.

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[5] Court of Appeal: Case No: C2/2003/0378/A/B Neutral Citation Number [2003] EWCA CIU 364

### *2.4. Examination of the application on its merits but with limited rights of appeal*

33. In all the countries examined in this report a right of an appeal is guaranteed following a decision under an accelerated procedure.

34. In a number of countries there are a number of limitations to the right of appeal. In certain countries appeals on asylum decisions have no suspensive effect (unless the appeal is for example on the expulsion and its compatibility with the European Convention on Human Rights) and the asylum seeker can be returned before the appeal is heard. This is the case in the United Kingdom and also, under certain circumstances, in Austria. It should be noted that in Austria the lack of suspensive effect of an appeal has been challenged in domestic law as a violation of Articles 3, 8 and 13 of the European Convention on Human Rights[6]. In Spain the appeal does not have a suspensive effect unless it is requested and granted by the court in a separate hearing. An exception to this can be at the border, if UNHCR recommends admission in opposition to the authorities' decision not to admit. In the Netherlands it has been reported that on appeal, Courts have not been prepared to permit asylum seekers bringing forward information not raised before the earlier instance[7].

35. In certain countries it is possible to appeal against a decision to accelerate procedures (Bulgaria, Poland, Romania, United Kingdom) in others it is not (Austria, where there is no formal decision to accelerate procedures, Cyprus, Hungary, Ireland, Spain and "the former Yugoslav Republic of Macedonia"). This appeal is sometimes to a court or a tribunal (Bulgaria to the District Court, Romania to the first instance courts), but not always (see United Kingdom where it is to the Secretary of State). The time limits can be quite short for the appeal to be lodged (2 days in the case of Romania and 7 days in the case of Bulgaria). The requirements for being able to lodge an appeal differ from country to country (in the United Kingdom, if the case is unsuitable for the fast track system, in Bulgaria if there is a lack of competency to process the application in the case of a minor and in Poland if there are no reasons for accelerated procedures).

36. The grounds for lodging an appeal following a decision differs from country to country. In certain countries there are no formal requirements / grounds (Hungary). The time limit varies from country to country. It is 24 hours in the case of the Netherlands, 2 days in the case of the United Kingdom and Romania, 3 days in the case of "the former Yugoslav Republic of Macedonia" and Poland, seven days in the case of Bulgaria, ten days in the case of Cyprus, ten days in the case of Ireland (although a four day time-limit could be introduced for certain appeals following a Ministerial Directive), two weeks in Austria, although for the airport procedure it is seven days, 15 days in the case of Hungary , two months in the case of Spain, although it is 24 hours in border procedures. The nature of the bodies examining the appeal also differs from country to country. In some countries the appeal is to a specialised body and in other cases it is to the domestic courts. (In Austria it is to the Independent Federal Asylum Review Board, in Bulgaria it is to the District Court, in Cyprus it is to the Reviewing authority, in Hungary it is the Municipal Court in Budapest, in Ireland it is to the Refugee Appeals Tribunal, in "the former Yugoslav Republic of Macedonia" it is to the Government Appeals Commission, in Poland it is to the Refugee Board, in Romania it is to the first instance court, in Spain it is to the Central administrative Court and in the United Kingdom it is to the Immigration Appellate Authority).

37. The proposal for a Council Directive provides for an effective remedy before an independent and impartial tribunal or body. It does not provide that the appeal must have a suspensive effect and leaves it open for the country to provide for rules to challenge the lack of suspensive effect.

### *2.5. Exemptions from accelerated procedures*

38. Most countries appear not to apply exemptions, such as for separated children, victims of torture, cases implying complex legal or factual issues, cases which might fall under the "exclusion clauses" laid down in the 1951 Refugee Convention, from accelerated procedures. This is the case for example in

[6] Judgement of the Austrian Constitutional Court, 15 October 2004
[7] Human Rights Watch, Volume 15, No. 3 (D) – April 2003, page 13.

Cyprus, Hungary, Ireland and Poland. Austria is however an example of a country which provides for exemptions in the above circumstances. In certain other countries there are no exemptions in law although in practice cases raising complications will not be dealt with in an accelerated fashion (see for example the United Kingdom and "the former Yugoslav Republic of Macedonia"). Some countries do provide however for separated children to be exempted from accelerated procedures (Romania and Spain).

39. The proposal for a Council Directive does not provide for exemptions such as those listed above.

### *2.6. Accommodation and detention facilities*

40. Accommodation arrangements may include options such as accommodation within the private market or public sector, open reception centres provided by the authorities or detention facilities.

41. Where detention takes place this can be in specific facilities (for example removal centres in the United Kingdom, and centres for illegal migrants in Bulgaria and Romania) or in prisons or police jails. If detention is in prisons or in police jails then persons are generally held separately from sentenced prisoners (such as in Austria) although in certain countries no special detention facilities are provided as there is no policy of detention unless the persons concerned are a threat to national security or to public order (in Ireland for example).

42. Where detention is ordered, the time limit varies. In the United Kingdom the aim is to detain persons for no longer than 14 days, in Ireland the period is 21 days with a possible extension, in Poland the period is 30 days to be extended to 90 days by the Court in a guarded centre or when the person is arrested for expulsion purposes. In Austria the detention is to be as short as possible but not to exceed 6 months. In Bulgaria there is no time limit.

43. The Proposal for a Council Directive provides that a person should not be held in detention for the sole reason that he or she is an applicant for asylum. It also provides for the necessity for a speedy judicial review.

### 2.7. Employment and social conditions

44. In most cases asylum seekers dealt with under accelerated procedures are unable to work (see for example, Austria, Bulgaria, Ireland, "the former Yugoslav Republic of Macedonia", Poland, Spain and the United Kingdom). In some countries, such as in Cyprus, asylum seekers can work.

45. Health care is generally made available in all countries. Social benefits may be available (such as in Austria, Bulgaria, Cyprus, Hungary, Ireland, Romania and the United Kingdom), although a distinction as to entitlement may be drawn between those in detention and those not in detention (the United Kingdom, Hungary and Poland) and may be at a reduced rate to normal social benefits (United Kingdom). In certain countries social assistance is in practice provided by UNHCR ("the former Yugoslav Republic of Macedonia"). In Spain social assistance is not provided except for persons considered to be in a vulnerable situation. In the Netherlands asylum seekers rejected in accelerated procedures and asylum seekers who have filed a second or third application are not granted any kind of reception support.

46. Education is generally made available to children, although this may be limited due to the length of stay of the children (in Austria access is granted to school only after three months of residence) and depending on whether the children concerned are detained. In certain countries education is only made available until the end of primary level (Austria).

### *2.8. Immigration authorities, workload, training and information*

47. The workload of immigration officers varies from country to country and varies from year to year. In a number of countries immigration officers handle in the region of 100 cases a year (Austria 85, Cyprus 100-120, "the former Yugoslav Republic of Macedonia" 100 and Poland 80, Romania 70. This figure is

markedly higher in certain countries such as the United Kingdom where the average is 300 and Bulgaria where the average is between 150 and 200.

48. Immigration officials generally receive compulsory training although in some cases there may also be voluntary training, or training as and when needed. Training generally includes training on interviewing victims of torture and rape, training on separated children, training on national refugee law, international refugee law and human rights law, and training on countries of origin and on the political and human rights situation in third countries. In certain countries, however, no training is provided on the political and human rights situation in third countries (Austria, Ireland, and "the former Yugoslav Republic of Macedonia").

49. Immigration authorities rely on a range of materials from the internet, from their diplomatic missions, from UNHCR and other sources. The US State Department Reports are frequently cited as a source for information, along with the UK Home Office reports. Immigration officials often have access to documentation and research structures, but not always (for example in Cyprus).

50. The Proposal for a Council Directive provides that the personnel dealing with refugee status issues should have appropriate knowledge or receive the necessary training. They should also have information from various sources, such as information from the UNHCR.

## PART 2: THE AMENDED PROPOSAL FOR A COUNCIL DIRECTIVE ON MINIMUM STANDARDS ON PROCEDURES IN MEMBER STATES FOR GRANTING AND WITHDRAWING REFUGEE STATUS

51. After four years of negotiations, political agreement has finally been reached over the Amended proposal for a Council Directive on minimum standards on procedures in member states for granting and withdrawing refugee status. As the Directive sets out a minimum framework, member states have the power to introduce more favourable provisions as appropriate.

52. The proposal for a Council Directive will be adopted by the unanimous vote of the Council once the consultation procedure of the European Parliament has been completed. It is anticipated that this will be completed in the course of 2005.

53. The proposal for a Council Directive, in Chapter II, provides for basic principles and guarantees, including:

- an effective access to procedures
- the right to remain in the member state pending the examination of the application
- requirements for the examination of applications
- requirements for a decision by the determining authority
- guarantees for applicants for asylum
- obligations of the applicants for asylum
- invitation to a personal interview
- report of a personal interview
- right to legal assistance and representation
- guarantees for unaccompanied minors
- guarantees in relation to detention
- procedures in the case of withdrawal of applications
- the role of UNHCR
- safeguards for the collection of information on individual cases

54. The proposal for a Council Directive has particular provisions allowing member states to prioritise or accelerate proceedings without specific grounds, but in accordance with the basic principles and guarantees laid out above, including when:

- the application is likely to be well founded or where the applicant has special needs

- the applicant only raised issues that are not relevant or of minimal relevance
- the applicant clearly does not qualify as a refugee
- the application is unfounded:
  - because the applicant is from a safe country of origin
  - because the country which is not a member state is considered to be a safe third country
- the applicant has misled the authorities by presenting false information or documents or withholding relevant information
- the applicant has filed another application for asylum stating other personal data
- the applicant has not produced information establishing his/her identity
- the applicant has made inconsistent, contradictory, unlikely or insufficient representations
- the applicant has submitted a subsequent application raising no relevant new elements
- the applicant has failed to make his/her application earlier
- the applicant has made the application to delay or frustrate an earlier or imminent decision
- the applicant has failed to report or hand over relevant documents
- the applicant has entered the territory unlawfully or prolonged his/her stay unlawfully
- the applicant is a danger to the national security or the public order
- the applicant refuses to comply with an obligation to have his / her fingerprints taken
- the application was made by an unmarried minor who applies after the application of his / her parents has been rejected and there are no relevant new elements.

55. The proposal for a Council Directive provides for the possibility of derogating from the basic principles and guarantees in certain circumstances, including:

- in cases of subsequent applications
- in cases of border procedures
- in the application of the so called "super safe third country" principle

56. The proposal for a Council Directive provides specific provisions for cases of inadmissible applications, the application of the concept of first country of asylum, the safe third country concept and cases of unfounded applications. The proposal for a Council Directive also provides for the establishment of a minimum common list of third countries as safe countries of origin and the national designation of third countries as safe countries of origin. The proposal has provisions on dealing with cases of subsequent applications as well as provisions dealing with border procedures. There are particularly controversial provisions relating to the application of the concept of so called "super safe third country" and the establishment of a list of what should be regarded as "super safe third countries". The Directive also has provisions on the withdrawal of refugee status and the appeals procedure.

57. As can be seen, the Directive provides a first step towards providing for a number of basic principles and guarantees. It does, however, at the same time, provide for the use of accelerated procedures in a wide range of cases.

58. It should be noted that a large number of concerns have been raised in relation to the proposal for a Council Directive by UNHCR[8], in the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament[9] and also by civil society actors[10]. At the heart of these concerns is a fear that not every asylum application will be dealt with in a proper and fair examination and that an effective remedy will not be available in all circumstances. The danger of *refoulement* has been expressed 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. Concerns have been particularly strong in relation to the possibilities that exist for derogating from the basic principles and guarantees laid down in the proposal.

[8] See UNHCR Provisional Comments on the Proposal for a European Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status, 10 February 2005.

[9] European Parliament, Committee on Civil Liberties, Justice and Home Affairs, Working Document on Asylum: minimum standards on procedures for granting and withdrawing refugee status, Rapporteur Wolfgang Kreissl-Dörfler. DT\558296EN.doc, PE 355.489v01-00

[10] See Comments from the European Council on Refugees and Exiles on the Amended proposal for a Council Directive on minimum standards (CO1/03/2005/ext/CN)

59. As the concerns under the proposal for a Council Directive tie in with the general concerns raised in terms of accelerated procedures it is proposed to examine these together in an examination in the next chapter of accelerated asylum procedures in the light of international refugee and human rights standards.

## PART 3: ACCELERATED ASYLUM PROCEDURES IN THE LIGHT OF INTERNATIONAL REFUGEE AND HUMAN RIGHTS STANDARDS: MAIN CONCERNS

60. From the foregoing evaluation it is clear that member states of the Council of Europe use accelerated procedures in a wide range of different circumstances and ways. This is also reflected in the proposal for a Council Directive which provides wide latitude for the use of accelerated procedures in terms of prioritised or accelerated proceedings.

61. The use of accelerated procedures needs to be accompanied by a range of guarantees if refugee and human rights standards are to be fully met. In this context the use of accelerated procedures raises a number of general and specific refugee and human rights issues which are explored below.

### 1. General issues

62. Accelerated procedures come with a number of attendant risks linked to the possibility of *refoulement* and the diminution of safeguards ensuring fair and accurate refugee status assessments.

63. The principle of *non-refoulement* is the corner-stone of international refugee protection. It provides 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"[11]. The protection afforded to asylum seekers under the 1951 Refugee Convention is complemented – for Council of Europe member states - by the European Convention on Human Rights and in particular Article 3[12]. Such an article can ensure protection for a wider spectrum of cases, since nobody can be excluded from its personal scope (unlike the Geneva Convention which provides for exclusion clauses), it applies irrespective of the agent inflicting torture and inhuman or degrading treatment (state or non-state agents) and does not require the existence of a reason for such actions being inflicted (unlike the Geneva Convention).

64. As a consequence of the complementarity between the Refugee Convention and the European Convention on Human Rights, your Rapporteur wishes to assess the compatibility of accelerated asylum procedures with both instruments.

65. In his opinion, accelerated asylum procedures as applied at present in Council of Europe member states may result, *inter alia*, in a violation of the principle of *non-refoulement* and/or Article 3 of the European Convention on Human Rights. The reason is that accelerated procedures privilege speed over fairness and often even fail to guarantee effective access to the asylum procedure or an impartial and fair assessment of the claim.

66. As it is not possible to consider accelerated asylum procedures as a single notion, your Rapporteur would like to mention some aspects which in his opinion give rise to most concern.

67. Your Rapporteur is concerned about the wide use of accelerated procedures both in current practice and also as allowed for under the proposal for a Council Directive. In this context he would like to draw attention to UNHCR Executive Committee Conclusion No. 30 (XXXIV) of 1983. While this provides for the possibility of special procedures for dealing with cases in an expeditious manner, it limits these to cases that are "clearly abusive" (i.e. clearly fraudulent), or "manifestly unfounded" (i.e. not related to the

[11] Article 33 of the 1951 Refugee Convention.
[12] No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

grounds for granting international protection). Practice and the proposal for a Council Directive clearly go beyond this.

68. A mention should be made in this introduction of the situation of particularly vulnerable persons, including separated children / unaccompanied minors, victims of torture or sexual violence and trafficking, cases implying complex, legal or factual issues and cases which might fall under the "exclusion clauses" laid down in the 1951 Refugee Convention. In your Rapporteur's view these cases are not suitable for accelerated procedures and should be treated in the course of regular procedures.

69. In relation to the proposal for a Council Directive your Rapporteur is compelled to reflect the concerns raised and referred to earlier by UNHCR, civil society and those raised in the Committee on Civil Liberties, Justice and Home Affairs of the European Parliament, that the standards contained in the proposal for a Council Directive are so low as to allow fundamental breaches of refugee and human rights law. This is particularly so in relation to the lower level of guarantees provided for in the Directive for certain cases, such as those of cases of border procedures and so called "super safe third countries". Your Rapporteur notes in particular that there is concern that the proposal for a Council Directive could be challenged by the European Parliament before the European Court of Justice on the grounds of fundamental breaches of refugee and human rights law.

## 2. Specific issues

70. Concerns over accelerated procedures can be raised both in terms of the type of accelerated procedures used, as well as some of the features of accelerated procedures. These may be summarised as follows:

### *2.1. Types of accelerated procedures used*

#### *2.1.1. Safe country of origin*

71. Your Rapporteur is aware that the principle of "safe country of origin" has been criticized on the grounds that it is discriminatory on account of nationality – and therefore contrary to Article 3 of the 1951 Refugee Convention – and represents a geographic limitation. Your Rapporteur does not agree with such a position, provided that all asylum seekers – whatever their country of origin – are given effective access to an asylum determination procedure which can lead to the granting of refugee status, even if accelerated. If, by contrast, the nationality of an asylum seeker is used as an argument, in itself, to exclude him or her from an asylum determination procedure, this represents a discrimination on the grounds of nationality, which in addition to Article 3 of the Refugee Convention may be contrary to Article 14 of the European Convention on Human Rights, and is potentially in violation of the principle of *non-refoulement*.

72. It should however be said that the notion of safe country of origin to a certain extent contradicts 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. Notwithstanding that certain checks and balances can be built into national systems, the danger is that with accelerated procedures for applicants from safe countries of origin that these checks and balances are weakened and furthermore that the burden of proof that the country is not safe may effectively become insurmountable for the asylum seeker.

73. Your Rapporteur notes that there is diverging practice between European states over recognising countries as safe countries of origin outside of the European Union.

74. The United Kingdom for example recognises Albania, Bulgaria, Jamaica, "the former Yugoslav Republic of Macedonia", Moldova, Romania, Serbia and Montenegro, Bangladesh, Bolivia, Brazil, Ecuador, South Africa, Sri Lanka and Ukraine. Austria by contrast recognises Australia, Canada, Iceland, Liechtenstein, New Zealand, Norway and Switzerland. Romania as a third example recognises Bulgaria,

Australia, New Zealand, the United States of America, Andorra, Croatia, Switzerland, Liechtenstein and San Marino.

75. Concern should be raised over the fact that states have very different lists of safe countries. It should also be noted that EU member states in seeking to negotiate the proposal for a Council Directive could not agree on a common list. The danger exists that should the European Union go ahead and adopt a list of safe countries following the adoption of the proposal for a Council Directive, it could lead to a diminution in the level of protection of asylum seekers in countries that do not currently have a list. This would be a retrograde step as not only would States have to dilute their standards as a result of the proposal for a Council Directive, but they would then be precluded from applying higher standards if they so choose in the future.

76. Your Rapporteur therefore expresses strong concerns about the use of the safe country of origin concept without there being shown to be clear and demonstrable safeguards, including adequate possibilities for the applicant to rebut general presumptions of safety made by the authorities. These concerns are echoed with regard to plans to extend the concept to the adoption of a common list within the European Union. They also extend to the practice of designating a part of a country as safe as this does not necessarily provide a reasonable internal flight alternative. Applications raising the issue of the 'internal flight alternative' involve a number of complex questions, and no international consensus exists as to its precise relevance for the determination of refugee status. In most instances, it will require an in-depth examination to establish whether the persecution faced by the applicant is clearly limited to a specific area and that effective protection is available in other parts of the country.

77. Your Rapporteur considers that as a matter of urgency European guidelines should be developed on the application of the principle of safe country of origin which include the appropriate safeguards required not just in setting up the lists, but also applying the principle in practice and covering the rights of those affected by the application of the principle. Such guidelines could also address the concerns raised in relation to the proposal for a Council Directive.

*2.1.2. Concept of safe third country*

78. Under international law, primary responsibility to provide protection lies with the state where the claim is lodged.

79. There should be very strict criteria if a third country is to become responsible.

80. The European Court of Human Rights has made this clear in the TI case against the United Kingdom (Application No. 43844/98) that the application of safe third country procedures does not release a country from its duties under Article 3 of the European Convention on Human Rights (in relation to torture or inhuman or degrading treatment or punishment) even under the Dublin Convention.

81. Concern can be raised over the general lack of agreement over which countries can be considered to fall within the concept of safe third country. Current practice of European states indicate differing positions in relation to different countries. Bulgaria for example considers Bosnia and Herzegovina, "the former Yugoslav Republic of Macedonia", Romania, Russia, Serbia and Montenegro and Ukraine as safe third countries in Europe. Most other countries in Europe do not however consider these countries as falling within the scope of the safe third country concept.

82. Your Rapporteur is particularly concerned about the plans in the proposal for a Council Directive to adopt a common list of third countries as safe countries of origin (the so called super-safe third countries) and the possibility that exists to derogate from even the minimal basic principles and guarantees listed in the proposal for a Council Directive. In practice there is a real danger of no individual assessment being made, thus bringing into question the compatibility of the application of the concept with international refugee law and basic human rights standards.

83. In the light of this your Rapporteur considers that the use of this concept must be kept to a strict minimum. If it is to be used it should allow for each individual claim to be examined with the following safeguards:

- ratification and implementation by the third country of the 1951 Geneva Convention and other relevant international human rights treaties, including the European Convention on Human Rights for European states
- existence of an effective asylum procedure in law and in practice in the third country
- genuine and close links between the applicant and the third country
- express agreement of the third country to accept the applicant and to provide a full and fair determination procedure
- 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
- exclusion of vulnerable persons, including separated children[13], from the application of the safe third country concept.

84. Your Rapporteur considers that as a matter of urgency Recommendation No. R (97) 22 of the Committee of Ministers to member states containing guidelines on the application of the safe third country concept should be expanded upon further, including reference to all appropriate rights and safeguards to which applicants should be entitled when states apply the principle of safe third country of origin. These guidelines should cover relevant issues such as procedures for establishing that a country is safe, procedures for ensuring that the presumption can be rebutted, the rights of the individuals concerned (ranging from legal assistance, interpretation, rights of appeal, accommodation and social security, etc.) and possible exemptions such as for vulnerable persons, including separated children. The guidelines should also cover training and sources of information to be used by the persons involved in the process of the application of the principle of safe third country.

*2.1.3. Undocumented applicants or applicants with forged documents*

85. The very nature of asylum seeking often requires asylum seekers to flee without documentation or with forged documentation. While the lack of documents or the use of forged documents may be used as indication to be taken into account when examining the credibility of the applicant, it should not in itself lead to a conclusion that a claim is fraudulent or bring about a rejection of the claim.

*2.1.4. Time limits*

86. As noted earlier, a number of member states have introduced short time limits for lodging an asylum application. In this respect it is important that due regard is given to what may be circumstances outside the control of applicants, such as where the fear of persecution only arises during the applicant's stay in the country. Asylum seekers are often in a traumatic state on arrival, they may not be in a fit state to comply with short time delays and may not be able to gather together the information to substantiate their claim in the short time available to them. Concern should thus be raised at overly short time periods triggering accelerated procedures which in themselves may also be reduced in length of time. It can be noted that the proposal for a Council Directive does not introduce time limits for lodging the application for asylum.

87. Your Rapporteur recalls that the refusal to examine the factual basis of an asylum claim on the grounds that tight time-limits to lodge the asylum application have elapsed may raise an issue of compatibility with the European Convention on Human Rights. According to the European Court of Human Rights, "the automatic and mechanical application of such a short time-limit [five days] for

[13] See in this respect Assembly Recommendation 1703 (2005) on protection and assistance for separated children seeking asylum

submitting an asylum application must be considered at variance with the protection of the fundamental value embodied in Article 3 of the Convention'"[14].

### *2.1.5. Border applicants*

88. Your Rapporteur wishes to mention the well known fact that in the case of border applicants who come from safe countries of origin, or have travelled through safe third counties, a barrier to the access to the asylum procedure is sometimes posed by border authorities who enforce immediate return without a formal procedure. The claim or the presence of the asylum seeker is not recorded anywhere (sometimes despite an obligation to register undocumented or illegal aliens, as it is the case in the Schengen Information System) with the result that the person concerned cannot lodge any appeal against the refusal of admission to the asylum procedure.

89. This is a practice which violates national as well as international law but is very difficult to prove: by its very nature it is not documented by any official record and the few cases which come into public knowledge have been reported by NGOs. Your Rapporteur believes that Council of Europe member states should adopt clear and binding guidelines to discontinue such behaviour and should take action against officials who authorise return outside any legal procedure.

90. Your Rapporteur is strongly in agreement with UNHCR's view[15] that there is no reason for requirements of due process of law in asylum cases submitted at the border to be less than for those submitted within the territory. Furthermore, the principle of non-discrimination requires that all asylum-seekers, whether they apply at the border or inside the country, benefit from the same principles and guarantees. On a practical note one should recognise that differences in safeguards could compel asylum seekers to enter and stay illegally in order to benefit from higher standards in the asylum procedure contributing further to the process of illegal trafficking into and between member States of the Council of Europe.

91. Taking these comments into account and bearing in mind that the proposal for a Council Directive, notwithstanding that it provides for a number of specific guarantees, provides for the possibility to derogate from the basic principles and guarantees put forward in the proposal for a Council Directive itself, your Rapporteur is particularly concerned by the possibilities of violation of refugee rights and human rights at border points. This incites your Rapporteur to also call for the adoption of clear guidelines on treatment of asylum seekers at border points taking into account, *inter alia*, the need to ensure that the respective competences of border officials and determining authorities are clearly divided.

### *2.1.6. Repeat applications, failure to comply with reporting obligations, national security concerns and other triggers for accelerated procedures*

92. As indicated in Part I and II of the report there are a range of other circumstances that can trigger accelerated procedures ranging from repeat applications to failure to fulfil reporting obligations and also covering national security and public order concerns as well as other issues.

93. As a general comment these may be matters to take into account in assessing the applicant's case and certain of them may contribute, for example, to assessing the applicant's credibility. It should be noted however that the behaviour of the applicant in itself does not exclude that he or she may have a well founded fear of persecution[16].

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[14] Case of *Jabari v. Turkey*, Judgement of 11 July 2000, Application No. 40035/98, para. 40.

[15] (see UNHCR Provisional Comments on the Proposal for a European Council Directive, comments on Article 35).

[16] The European Court of Human Rights in the Case of Bahaddar v. the Netherlands (Judgement of 19 February 1998 (145/1996/764/965)para. 45) while finding it permissible for national legislation to set formal requirements and time limits held "It should be borne in mind in this regard that in applications for recognition of refugee status it may be difficult, if not impossible, for the person concerned to supply evidence within a short time, especially if – as in the present case – such evidence must be obtained from the country from which he or she claims to have fled. Accordingly, time-limits should not be so short, or applied so inflexibly, as

94. Your Rapporteur is particularly concerned about the possibility of accelerating procedures where the applicant represents 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. This desire may be understandably linked to concerns over, for example, preventing terrorism. Procedural guarantees however in these circumstances should not be limited, and your Rapporteur makes reference to 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 at the 804th meeting of the Ministers' Deputies as well as Recommendation (2005) 6 of the Committee of Ministers to member states on exclusion from refugee status in the context of the Article 1F of the Convention relating to the status of Refugees of 28 July 1951.

### *2.2. Features of accelerated procedures*

#### *2.2.1. Duration of procedures*

95. The length of accelerated procedures can vary considerably. As mentioned earlier in Part 1, the shortest procedures are found in the Netherlands (48 working hours, which in practice means 5 to 6 days), Bulgaria (4 days at the border, although 60 days in-land), Romania (decisions to be taken within 10 days and the United Kingdom (where the aim is to treat cases in less than 14 days). In the process of refugee status determination, speed should not be the primary concern. The primary concern is to establish whether the applicant has a well founded fear of persecution. Your Rapporteur is therefore concerned that tight time deadlines can further contribute to the processing of claims without full procedural guarantees being observed in practice.

#### *2.2.2. Individual determination and interview*

96. It is a well-established principle that asylum seekers have the right to an individual determination of refugee status under the Refugee Convention. To reach such determination, the relevant authorities should consider the 'subjective' element of fear of persecution, which can only be established case by case. As a result, any procedure leading to the automatic rejection of asylum applications on the grounds that the applicant comes from a safe country of origin, or has travelled via a safe third country or a first country of asylum without considering the facts of the case should be considered as contrary to international standards. In this respect your Rapporteur recalls Recommendation No. R (97) 22 of the Committee of Ministers to member states containing guidelines on the application of the safe third country concept which sets criteria for states to determine whether a country is safe and clarifies that these criteria should be examined in each individual case (see also above under 2.1.2. Concept of safe third country).

97. Concern has been raised about the possibilities that exist for limiting the right to a personal interview under the Proposal for a Council Directive. The testimony of an individual is often the central element and the deciding factor in the asylum process. Allowing exceptions, apart from on the grounds of the applicant being unable or unfit to attend an interview due to reasons beyond the persons control, risk undermining the fairness of the procedure and the accuracy of the decision and can be considered as contrary to international standards, including under Article 6 of the European Convention on Human Rights.

98. Linked to the individual determination and interview is the right to free legal aid, which should be available at first instance and not just in the event of a negative decision as provided for under the Proposal for a Council Directive. Access to an effective legal assistance at all stages of the procedure is essential as is access to an interpreter. Asylum seekers should receive information in a language they actually understand rather than "in a language which they may be reasonably expected to understand" which is the weaker requirement of the Proposal for a Council Directive.

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to deny an applicant for recognition of refugee status a realistic opportunity to prove his or her claim."

### 2.2.3. *The right to an effective remedy*

99. As a general point, your Rapporteur considers that the aim ought to be to ensure good quality decisions at the first instance, and that there should not be an over-reliance on effective remedies at appeal stage. The greater the use of accelerated procedures, however, the more likely it is that recourse to effective remedies at the appeal stage will be required. This is particularly so as many refugees are only recognised as such during the appeal stage. It is clear that if there is no suspensive effect of asylum appeals, the danger of *refoulement* is real. If an applicant cannot remain pending the outcome of an appeal against a negative first decision, then the remedy against a decision is ineffective.

100. The right to an effective remedy is enshrined in Article 13 of the European Convention on Human Rights and therefore binding upon all Council of Europe member states[17]. It is also laid down in Recommendation R (98) 13 of the Committee of Ministers to member states 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, as well as in a number of recommendations of the Parliamentary Assembly, including Recommendation 1236 (1994) on the right to asylum and Recommendation 1327 (1997) on the protection and reinforcement of the human rights of refugees and asylum seekers in Europe.

101. The remedy will be considered as "effective" where it is exercised before an authority having the power to suspend the execution of an expulsion order and the person concerned is given a realistic opportunity to challenge the expulsion decision.

102. Your Rapporteur notes that under the proposal for a Council Directive some discretion is left to member states to determine the type of appeal available and whether it is to have a suspensive effect and that the Court of Justice in Luxemburg may decide whether national remedies qualify as effective remedies.

103. Taking the aforementioned into account, your Rapporteur believes that accelerated asylum procedures which do not foresee a right of appeal, or set an unreasonably tight-limit to lodge the appeal, or establish a right of appeal without suspensive effect, to be at variance with relevant international standards.

### 2.2.4. *Exemptions from accelerated procedures*

104. An analysis of country practices reveals that few countries provide exemptions for particularly vulnerable groups, such as separated children / unaccompanied minors, victims of torture or sexual violence or trafficking, cases implying complex, legal or factual issues or cases which might fall under the "exclusion clauses" laid down in the 1951 Refugee Convention. Your Rapporteur considers that such cases are manifestly unsuitable for accelerated procedures and all attempts should be made to restrict accelerated procedures in relation to them in view of the difficulties and complexities of these cases and the consequences of errors in procedures and decisions for the persons concerned.

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[17] The notion of effective remedy in relation to asylum seekers has been clarified by the European Court of Human Rights in a number of important cases. In Jabari v. Turkey (Application No. 40035/98, Judgement, 11 July 2000, para. 50) the Court stated that "given the irreversible nature of the harm that might occur if the risk of torture or ill-treatment alleged materialised and the importance which it attaches to Article 3, the notion of an effective remedy under Article 13 requires independent and rigorous scrutiny of a claim that there exist substantial grounds for fearing a real risk of treatment contrary to Article 3 and to the possibility of suspending the implementation of the measure impugned". This ruling was further developed in the case of Conka vs. Belgium (Application No. 51564/99, Judgement, 5 February 2002, para. 79), where the Court held that "it is inconsistent with Article 13 for such measures to be executed before the national authorities have examined whether they are compatible with the Convention". Given the absolute nature of the non-refoulement principle, the Court held in Chahal v. UK (Application No. 22414/93, Judgement, 15 November 1996, para 151) that "this scrutiny must be carried out without regard to what the person may have done to warrant expulsion or to any perceived threat to the national security of the expelling State".

105. Your Rapporteur is particularly concerned by the fact that most Council of Europe member states do not provide for separated children/unaccompanied minors to be exempted from accelerated procedures and do not provide for special safeguards on their behalf during accelerated procedures, despite the fact that all Council of Europe member states have ratified the 1989 UN Convention on the rights of the Child and should therefore ensure the primacy of the principle of the best interests of the child in their legislation and administrative procedures. Your Rapporteur in this respect highlights Assembly Recommendation 1703 (2005) on protection and assistance for separated children seeking asylum.

106. Your Rapporteur also recalls Assembly Recommendation 1596 (2003) on the situation of young migrants in Europe and in particular its paragraph 7, laying down special safeguards on behalf of separated children/unaccompanied minors during ordinary or accelerated asylum procedures and asking member states to ensure the primacy and binding character of the principle of the best interests of the child in all laws, regulations or administrative guidelines concerning migration or asylum.

*2.2.5. Detention*

107. Your Rapporteur highlights that the general principle ought to be that asylum seekers should not be detained. Furthermore, asylum seekers should, if detained, be kept apart from those facing criminal conviction or having been convicted of criminal offences. In the view of the European Committee for the Prevention of Torture (CPT)[18] "in those cases where it is deemed necessary to deprive persons of their liberty for an extended period under aliens legislation, they should be accommodated in centres specifically designed for that purpose, offering material conditions and a regime appropriate to their legal situation and staffed by suitably-qualified personnel."

108. It should be noted that the CPT considers that the keeping of persons in transit and "international" zones at airports can, depending on the circumstances, amount to a deprivation of liberty. The judgement delivered on 25 June 1996 by the European Court of Human Rights in the case of Amuur v. France[19] can be considered to support this view.

109. Your Rapporteur considers that in the exceptional circumstances where it is necessary to resort to detention, this should be provided for by law, must be to achieve a legitimate purpose, be proportionate to the objectives to be achieved and be applied in a non discriminatory manner for a minimal period. In all cases there must be an individual examination of the case including an examination of other alternative options such as reporting requirements. This follows directly UNHCR's views on this matter[20].

110. Your Rapporteur considers that it is important for states to provide for an exhaustive listing of grounds for detention in national law, taking full account of the standards under the European Convention on Human Rights, namely Article 5, and other relevant international provisions, such as Article 9 of the International Covenant on Civil and Political Rights and Article 5 of the Convention on the Rights of the Child. It can be noted that the proposal for a Council Directive while providing that a member state shall not hold a person in detention for the sole reason that he/she is an applicant for asylum and that where an applicant for asylum is held in detention, member states shall ensure that there is the possibility of speedy judicial review, does not provide for an exhaustive listing of grounds where detention may be permissible. This is to be regretted.

111. Your Rapporteur also considers that independent organisations play an important role in monitoring places of detention, including international transit zones. He considers that member states should provide access to these places of detention by independent organisations.

[18] see 7th General Report [CPT/Inf (97) 10].
[19] Case of Amuur v. France, Judgement of 25 June 1996, Application No. 19776/92.
[20] See UNHCR Provisional Comments on the Proposal for a European Council Directive, comments on Article 17.

*2.2.6. Employment and social conditions*

112. It can be noted that the right to work is generally not made available to asylum seekers and in particular to those being processed under accelerated procedures. It is consequently necessary to guarantee adequate social assistance, including medical assistance for asylum seekers throughout the process of their claim. There are concerns that the very low levels of assistance in certain countries may be motivated by the desire to discourage asylum applications. Your Rapporteur is concerned that these levels of assistance should not fall below a level dictated by the current economic and social standards called for under the European Social Charter and other international standards and should not be at such a level as to adversely impact on the dignity of the persons concerned.

*2.2.7. Decision making*

113. Your Rapporteur firmly believes that the best way to speed up the asylum process is by improving the quality of decision-making rather than by channelling as many applications as possible in fast-track procedures characterised by admissibility barriers and limited remedies. In this respect, your Rapporteur recalls Assembly Recommendation 1309 (1996) on the training of officials receiving asylum-seekers at border points which underscores the importance for these authorities to be fully "cognizant of international and domestic legal instruments and regulations concerning the reception of asylum-seekers". Your Rapporteur further recalls in this respect Recommendation No. R (98) 15 of the Committee of Ministers to member states on the training of officials who first come into contact with asylum-seekers, in particular at border points.

114. Your Rapporteur notes that the workload of persons processing asylum claims varies considerably from country to country and that not all persons concerned have access to full training, including on the political and human rights situation in third countries. Certain officials can rely on research structures others cannot. Your Rapporteur notes the reliance of persons dealing with refugee claims on a range of materials, including from UNHCR, Diplomatic missions, the US State Department Reports, the UK Home Office Reports, from NGO sources and from the internet generally. Your Rapporteur is surprised that Council of Europe materials are not more prominently mentioned by states as sources of information. In your Rapporteur's view this raises the question as to whether the different human rights monitoring bodies need to make their materials more relevant for the process of refugee status determination or whether there is a need for greater training of officials dealing with refugee issues on the relevant human rights standards of the Council of Europe. The answer is almost certainly that both are required.

## PART 4: CONCLUSIONS AND RECOMMENDATIONS

115. Accelerated asylum procedures can be a useful instrument to improve the efficiency of the asylum system, but only if recourse to such procedures is subjected to strict legal requirements and is accompanied by a considerable effort towards enhancing the quality of decision-making on asylum applications.

116. The recourse to accelerated asylum procedures is not to be objected to as such. What is to be objected to, is if they are used by states to discourage potential asylum seekers from applying for asylum or to exclude genuine refugees from recognition of their status. In fact, asylum procedures which can be completed within short and reasonable time-limits are advantageous not only for states, which avoid overloading their asylum systems, but also for genuine refugees, who can rapidly achieve safety and protection in the country where they seek asylum.

117. Accelerated asylum procedures are particularly suited to cases, which do not require particular factual or legal research since they are manifestly unfounded or manifestly founded. The acceleration of manifestly unfounded or clearly abusive cases could most effectively occur at the appeal level, through shorter but reasonable time limits for submitting an appeal.

118. If they are to contribute to the efficiency of the asylum system, accelerated asylum procedures should also be fully consistent with refugee law and human rights standards. Council of Europe member states should ensure that accelerated asylum procedures fulfil the following minimum requirements:

i. all cases of aliens wishing to lodge an asylum application, at the border or in-country, should be registered by the authorities. Nobody should be returned at the border or in-country outside a formal procedure and without any record;

ii. it should not be possible for states to set an unreasonably tight time-limit for asylum applications to be lodged after which the asylum applicant will not have a substantive examination of the facts of his or her claim. A delay in lodging the asylum application, however, could be an aggravating factor for having the application processed under an accelerated procedure;

iii. it should not be possible for states to refuse to examine the facts of an asylum application on the grounds that the applicant comes from a safe country of origin, has travelled via a safe third country, comes from a first country of asylum or is not in possession of proper documentation to prove his identity;

iv. all asylum applicants should be given the opportunity of making out their case in an oral interview with the relevant authorities, in a language they understand. Exceptions from this requirement should not be admitted apart from on the grounds of the applicant being unable or unfit to attend an interview due to reasons beyond the person's control, even where there is evidence that the asylum applicant has travelled through a third safe country or comes from a first country of asylum or a safe country of origin;

v. each asylum claim should be processed individually;

vi. asylum applications should always be examined and decided by a central authority, even if the responsibility of conducting the interview could be left to non-central authorities;

vii. asylum seekers whose application has been decided under an accelerated procedure should have the right to lodge an appeal against a negative decision on their claim, both on the merits and the legality of the decision. The appeal should have a suspensive effect. The time-limit to lodge the appeal should be reasonable;

viii. the examination of an asylum application under an accelerated procedure should be concluded within a reasonable time. Once this time has elapsed, the application should be treated under an ordinary procedure, unless it can be proved that the delay is due to the asylum applicant acting in bad faith;

ix. some categories should be excluded from accelerated procedures due to the vulnerability of the person concerned or the complexity of the case, namely: separated children/unaccompanied minors, victims of torture and sexual violence and trafficking, and cases raising an issue under the exclusion clauses of the 1951 Geneva Convention.

119. Your Rapporteur reminds Council of Europe member states which are also EU Members that the Proposal for a Council Directive sets only minimum standards and that they are free and entitled to maintain or introduce more favourable provisions, including those recommended above.

120. Since the issue of accelerated asylum procedures cannot be addressed properly outside an analysis of the functioning of asylum systems in general, your Rapporteur recommends that national administrations responsible for receiving and/or processing asylum applications, as well as courts having competence in asylum cases, receive more resources and better training. Your Rapporteur is aware that UNHCR training programmes for immigration authorities, conducted on a national or regional basis, play an important role in improving the knowledge of the 1951 Refugee Convention and other relevant international instruments. Your Rapporteur believes that the Council of Europe should continue to support

such initiatives in all the member states. Besides, your Rapporteur calls for the organisation of further joint UNHCR and Council of Europe sessions aimed at training immigration authorities (including border officers, central authorities and judicial authorities) as well as members of the legal profession on the European Convention on Human Rights as an instrument to ensure the protection of refugees and asylum seekers. Your Rapporteur also recommends that the different monitoring bodies of the Council of Europe examine their working practices and reports in order to ensure that sufficient focus is given to issues relevant to refugee status determination and that this is easily accessible to those persons who need to use this information.

121. As a final remark, your Rapporteur considers that the solution to the slowness of the asylum procedure does not lie in curtailing the rights of asylum seekers or establishing tight time-limits for the asylum seeker to apply for asylum. The solution rather lies in improving the quality of the decision-making and setting reasonable but firm time-limits for the authorities to reach a decision.

## APPENDIX

## ACCELERATED ASYLUM PROCEDURES IN COUNCIL OF EUROPE MEMBER STATES

**Questionnaire**

1. Does your country have an **accelerated asylum procedure or an admissibility procedure**?

**CASES**

2. To what cases does it apply?

| Cases | Yes/No | Additional information |
|---|---|---|
| Manifestly unfounded applications | | |
| Applicants coming from safe countries of origin | | |
| Applicants having travelled via third safe countries | | |
| Applicants coming from a first asylum country | | |
| Undocumented applicants | | |
| Applicants with forged documentation | | |
| Applicants not complying with time-limit for lodging an asylum application | | Please indicate the time-limit: |
| Applicants not complying with other procedural standards | | Please indicate which ones: |
| Border applicants | | |
| Manifestly 'founded' applications | | |
| Others | | Please explain: |

3. Does you country apply the principle of the **safe country of origin**?
3.1. Is there a list of safe countries of origin?
3.2. How is the list established?
3.3. Is it public?
3.4. How can it be modified?
3.5. What are the criteria to consider a country of origin as safe?
3.6. What countries are considered as safe at this moment?
3.7. What happens when an alien comes from a safe country of origin?

4. Does your country apply the principle of **safe third country**?
4.1. Is there a list of safe third countries?
4.2. How is the list established?
4.3. Is it public?
4.4. How can it be modified?
4.5. What are the criteria for including a country in the list?
4.6. What countries are in the list at this moment?

4.7. What happens when an alien has travelled via a safe third country?
4.8 Does your country require any evidence that an alien has travelled via a safe third country?

5. Does your country apply the notion of '**manifestly unfounded asylum applications**'?
5.1. Is there any definition of the notion of manifestly unfounded asylum application, provided by the law, immigration rules or jurisprudence?

**DURATION**

6. What is the duration of an accelerated asylum procedure and namely:
6.1 Is there a minimum duration for such a procedure?
6.2 Is there a time-limit for the authorities to decide whether to process the asylum claim in an accelerated procedure or not?
6.3 How long do the authorities have to make a decision over an asylum claim under accelerated procedure?

**AUTHORITIES**

7.a) What authorities can make a decision to process an asylum claim under accelerated procedure? Please indicate whether it is any immigration authority or only a central authority.
7.b) What authorities can make a decision over an asylum claim under accelerated procedure? Please indicate whether it is any immigration authority or only a central authority.

**PROCEDURES**

8. What does an accelerated asylum procedure consist of in your country?

| Procedure | Yes/No | Further information |
|---|---|---|
| Examination of the facts of the case with shorter time-limits | | |
| Examination of the facts of the case without an oral interview of the asylum seeker | | |
| Examination of the facts of the case but with limited rights of appeal | | |
| No examination of the facts of the case | | |
| Immediate return without examination of the claim | | |

**APPEALS**

9.a) Is it possible to appeal against the **decision to process an asylum claim under accelerated procedure**?
9.1 Before what authorities is it possible to appeal?
9.2 What are the requirements/grounds to lodge an appeal?
9.3. What are the time-limits to lodge an appeal?
9.b) Is it possible to appeal against a **negative asylum decision taken under accelerated procedure?**
9.4 Before what authorities is it possible to appeal?
9.5 What are the requirements/grounds to lodge an appeal?
9.6 What are the time-limits to lodge an appeal?
9.7 Does the appeal have suspensive effect?

## EXEMPTIONS

10. Does your country apply exemptions from the applicability of accelerated asylum procedures?
10.1 If so, for what categories?

| Categories | Yes/No | Further information |
|---|---|---|
| Separated children/unaccompanied minors | | |
| Victims of torture | | |
| Cases implying complex legal or factual issues | | |
| Cases which might fall under the 'exclusion clauses' laid down in the 1951 Refugee Convention, for instance because of involvement in terrorist activities | | |

## ACCOMMODATION AND SOCIAL CONDITIONS

11. During an accelerated asylum procedure, where are asylum applicants accommodated?
11.1 Is the principle of family unity respected?
11.2 Is there specific accommodation for separated children/unaccompanied minors?
11.3 Can asylum seekers whose application is processed under an accelerated procedure receive benefits? Please give details.
11.4 Do asylum seekers whose application is processed under an accelerated procedure have access to health care, education, work, etc.? Please give details.
11.5 What happens if the asylum claim is refused and the asylum applicant appeals against such refusal? (Is accommodation still provided? And benefits?

## DETENTION

12. Can asylum seekers whose application is processed under an accelerated asylum procedure be detained?
12.1 Where are they detained? Please specify whether in special centres, immigration detention centres or common prisons.
12.2 If they are detained, are the applicable rules the same as for other asylum seekers?
12.3 What is the maximum duration of detention?
12.4 Is there judicial oversight on detention? Please give details.

## TRAINING AND INFORMATION OF IMMIGRATION AUTHORITIES DECIDING OVER ASYLUM APPLICATIONS

13. How many immigration staff – approximately- have the task of processing asylum applications in your country?
13.1 How many asylum cases does an immigration officer process every year (approximately)?
13.2 Do they receive training on how to process asylum claims?
13.3 If so, is this training compulsory or voluntary?
13.4 What does this training cover? Please specify the following:

| **Training/information** | **Yes/No** | **Further information** |
|---|---|---|
| How to interview victims of torture/rape | | |
| How to interview separated children/unaccompanied minors | | |
| National refugee law and jurisprudence | | |
| International refugee law | | |
| Human rights law, including the European Convention on Human Rights | | |
| Information on the political and human rights situation in countries of origin | | |
| Information on the political and human rights situation in third countries | | |
| Others | | |

13.5 What are the main sources of country information that immigration authorities use to decide asylum applications? For instance, reports from diplomatic representations, reports by NGOs, reports by the US State Department, etc.

13.6 Do immigration authorities have access to a documentation/research structure to assist them in processing asylum claims?

13.7 Please give one or more examples of training/information sessions that immigration authorities of your country have received in the last three years, including those organised in co-operation with international agencies.

*Doc. 10655*

*Reporting Committee*: Committee on Migration, Refugees and Population

*Reference to Committee*: Doc. 9871, Reference 2865 of 8 September 2003

*Draft resolution and draft recommendation* unanimously adopted by the Committee on 23 June 2005

*Members of the Committee:* Mr John **Wilkinson** (Chairperson), Mrs Tana de Zulueta (1st Vice-Chairperson), Mr Doros Christodoulides 2nd Vice-Chairperson), Mr Jean-Guy **Branger** (3rd Vice-Chairperson), Mr Pedro **Agramunt**, Mrs Lale Akgün, Mr Gulamhuseyn Alibeyli (alternate: Mr Bakhtiyar **Aliyev**), Mr Akhmed Bilalov, Mrs Oksana Bilozir, Mrs Mimount Bousakla, Mr Paul Bradford, Mr Ivan Brajović, Mr Márton Braun, Mr Mevlüt **Çavuşoğlu**, Mr Boriss **Cilevičs**, Mrs Minodora Cliveti, Mrs Elvira Cortajarena, Mr Franco Danieli, Mr Joseph Debono Grech, Mr Taulant Dedja, Mr Nikolaos **Dendias**, Mr Abilio **Dias Fernandes**, Mr Karl Donabauer, Mrs Lydie **Err**, Mr Mats Einarsson, Mr Valeriy Fedorov, Mrs Daniela Filipiová (alternate: Mr Miloš **Kužvart**), Mr Karl Theodor Freiherr von und zu Guttenberg, Mr Andrzej Grzesik, Mr Andrzej Grzyb, Mr Ali Riza **Gülçiçek**, Mr Michael Hagberg, Mr Michael **Hancock**, Mrs Jelena **Hoffmann**, Mr Ilie **Ilaşcu**, Mr Tadeusz Iwiński, Mrs Corien W.A. Jonker, Lord Franck Judd (alternate: Mrs Ann **Cryer**), Mr Oleksandr Karpov, Mrs Eleonora **Katseli**, Mr Tibor Kékesi, Mr Evgeni Kirilov, Mr Dimitrij Kovačič, Mr André Kvakkestad, Mr Petr Lachnit, Mr Geert **Lambert**, Mr Jean-Marie Le Guen, Mr Younal Loutfi, Mr Tito Masi, Mr Jean-Pierre Masseret, Mrs Ana Catarina **Mendonça**, Mr Morten Messerschmidt (alternate: Mr Morten **Østergaard**), Mr Xhevdet Nasufi, Mr Giuseppe Naro, Mr Gebhard **Negele**, Mr Pasquale Nessa, Mr Kalevi Olin, Mr İbrahim **Özal**, Mr Gheorghe Popa, Mr Cezar Florin Preda, Mr Alojz Přidal, Mr Gabino Puche, Mr Milorad Pupovac, Mr Martin Raguž, Mr Anatoliy Rakhansky, Mr Marc **Reymann**, Mr Branko Ružić, Mrs Katrin Saks, Mrs Naira **Shakhtakhtinskaya**, Mr Össur **Skarphéðinsson**, Mr Luzi Stamm, Mrs Terezija Stoisits, Mr Michael Stübgen, Mrs Elene Tevdoradze, Mr Tigran Torosyan, Mrs Ruth-Gaby Vermot-Mangold, Mr Arno Visser, Mr James Wray (alternate: Mr Bill **Etherington**), Mr Akhmar Zavgayev, Mr Emanuelis Zingeris, Mr Vladimir Zhirinovsky (alternate: Mrs Vera **Oskina**).

N.B.: The names of the members who took part in the meeting are printed in **bold**

*Secretariat of the Committee:* Mr Halvor Lervik, Mr Mark Neville, Mr David Ćupina