



Ref.: AI Index: IOR 61/024/2006

## **Council of Europe: Briefing to the Working Group on Human Rights Protection in the Context of Accelerated Asylum Procedures (GT-DH-AS)**

6 December 2006

Amnesty International welcomes that the Committee of Ministers of the Council of Europe has mandated the CDDH to examine the issue of the human rights protection in the context of accelerated asylum procedures. This is true in particular given the organisation's view that the provisions of the Council Directive on minimum standards on procedures in Member States for granting and withdrawing refugee status (2005/85/EC of 1 December 2005; hereafter the Council Directive) fall below the protection standards set out in international refugee law and standards. Therefore Amnesty International welcomes the opportunity to contribute to the discussions about the human rights protection in the context of accelerated asylum procedures.

Amnesty International notes that the Council Directive lists 16 criteria in which States may prioritise or accelerate asylum procedures. In such circumstances, the regular procedure becomes the exception and the accelerated procedure the rule. Given the breadth of these criteria it is likely that the vast majority of asylum applications will be examined under a procedure that foresees for the asylum seeker lesser procedural guarantees than a regular one.

With regard to the "fields" about which the Parliamentary Assembly of the Council of Europe has raised the main concerns, Amnesty International has taken the following positions:

1. **The use of the concept of safe country of origin:** Amnesty International strongly opposes the use of lists of safe countries of origin to restrict access to asylum procedures. Such lists constitute discrimination among refugees that is strictly prohibited by Article 3 of the Refugee Convention. The decision about which countries to include on the "safe country of origin" list may be the result of political bargaining influenced by national interests, rather than human rights considerations. Amnesty International is also concerned that the Council Directive does not foresee adequate provisions regarding reliable and independent monitoring of the human rights situation in the countries listed as safe. The situation in the particular countries should be assessed regularly and impartially on the basis of a wide variety of sources, including reports from non-governmental organisations. UNHCR and other human rights monitors, such as committees set up by the Council of Europe, should be closely associated to an EU mechanism.<sup>1</sup> Efforts should therefore be continued to establish a common independent country

<sup>1</sup> Aide-memoire in view of the 21-22 February 2006 JHA Council. Amnesty International's concerns regarding an EU list of safe countries of origin, [http://www.amnesty-eu.org/static/documents/2006/b525-aide\\_memoire\\_safe\\_countries\\_of\\_origin-Feb\\_06.pdf](http://www.amnesty-eu.org/static/documents/2006/b525-aide_memoire_safe_countries_of_origin-Feb_06.pdf)

of origin information database at EU level, a necessary precondition to phase out existing information gaps and discrepancies among EU Member States.<sup>2</sup> Amnesty International reminds that decision on asylum claims must be taken on the basis of an individual assessment of the case.

2. **The use of the concept of safe third country:** Amnesty International recalls that the protection offered by a safe third country should not be merely transient or subject simply to the discretion of border, immigration or police officials. It has to be effective and durable. Under international refugee law, it is the country where a refugee applies for asylum which is obliged to consider the application substantively and to ensure that the refugee is not directly or indirectly returned to persecution. A transfer of such responsibility can only be envisaged where a meaningful link exists between an asylum applicant and a third country which makes a transfer reasonable, and where the third country is determined to be safe in the individual circumstances of the applicant. Moreover, a transfer can only take place if the third State gives its consent to admit or readmit the asylum applicant and to provide him/her with full access to a fair and satisfactory determination procedure. The burden of proof regarding the safety of the third country for the particular applicant should lie entirely with the country of asylum and the presumption of safety must be rebuttable by the applicant.<sup>3</sup>
3. **Super safe third countries:** The exceptional application of the safe third country concept set out in the Council Directive allows EU Member States to deny access to the procedure to all asylum seekers “illegally” arriving from designated countries in the European region and strips them of any rights to rebut this presumption. A border guard without knowledge of international refugee law or national asylum provisions could be given the sole power to decide on the removal of an asylum applicant even before the competent authority has had the chance to examine the claim in a fair and satisfactory procedure. Under the Council Directive, EU Member States are not required to obtain agreement from such European countries. This may lead to refugees-in-orbit situations and to chain-*refoulement*.<sup>4</sup>
4. **Procedures adopted for dealing with asylum seekers at border points:** AMNESTY INTERNATIONAL shares UNHCR’s view 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. Amnesty International believes that such discrimination is contrary to minimum standards defined in the Recommendation No. (94) 5 of the Committee of Ministers to member states on guidelines to inspire practice of the Member States of the Council of Europe on the arrival of asylum seekers at European airports. The European Court of Human Rights ruled clearly that the European Convention on Human Rights and Fundamental Freedoms fully applies in transit zones and that the latter should be considered as an integral part of their territory (*Amuur v. France*, 25/6/1996).<sup>5</sup>
5. **Rights of appeal:** Amnesty International believes that the exceptions allowing EU Member States to implement deportation orders without waiting for the final decision constitute a violation of international law and standards. In the case *Jabari v. Turkey* (11/7/2000) the European Court of Human Rights ruled 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 vigorous 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

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<sup>2</sup> Amnesty International’s recommendations ahead of the Informal JHA Ministerial Meeting in Tampere 20-22 September 2006, [http://www.amnesty-eu.org/static/documents/2006/JHA\\_Tampere\\_AI\\_briefing\\_180906.pdf](http://www.amnesty-eu.org/static/documents/2006/JHA_Tampere_AI_briefing_180906.pdf)

<sup>3</sup> Amnesty International, ECRE and other NGOs: Letter to Mr. Antonio Vitorino, Member of the European Commission, Call for withdrawal of the Asylum procedures Directive. [http://www.ecre.org/files/Vitorino\\_call\\_for\\_withdrawalpdf.pdf](http://www.ecre.org/files/Vitorino_call_for_withdrawalpdf.pdf)

<sup>4</sup> See footnote No. 2.

<sup>5</sup> Amnesty International’s Comments on the Amended Proposal for a Council Directive on Minimum Standards on Procedures in Member States for Granting and Withdrawing Refugee Status COM (2002) 326 final, February 2003.

measure impugned”. See also *Conka v. Belgium* (5/2/2002).<sup>6</sup> Furthermore, in the case *Agiza v. Sweden*, the Committee Against Torture ruled that “... the right to an effective remedy contained in article 3 (Convention Against Torture) requires...an opportunity for effective, independent and impartial review of the decision to expel or remove, once that decision is made, when there is a plausible allegation that article 3 issues arise. The Committee’s previous jurisprudence has been consistent with this view of the requirements of article 3, having found an inability to contest an expulsion decision before an independent authority, in that case the courts, to be relevant to a finding of a violation of article 3”. The Committee Against Torture also added that an individual must have a reasonable period of time before execution of a final decision to consider whether, and if so in fact seize the Committee<sup>7</sup>.

Like the Parliamentary Assembly, Amnesty International believes that there is an urgent need to go beyond the minimal standards developed in the Council Directive and hopes that the points raised in this paper will be taken into consideration in the discussions of the Working Group on human rights Protection in the context of accelerated asylum procedures.

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<sup>6</sup> See footnote No. 2.

<sup>7</sup> Committee Against Torture, Communication No. 233/2003: Sweden. 24/05/2005, CAT/C/34/D/233/2003, para. 13.7 and 13.9. In that case, the Committee concluded that the State party was in breach its obligations under article 22 of the Convention to respect the effective right of individual communication conferred thereunder.