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Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers

Reply to Recommendation¹: Recommendation 1808 (2007)
Committee of Ministers

1. The Committee of Ministers has carefully examined Parliamentary Assembly [Recommendation 1808 \(2007\)](#) on “Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers”, as supplemented by [Resolution 1569 \(2007\)](#) on the same subject. It forwarded the recommendation to the member states and to the Steering Committee on Human Rights (CDDH), the European Committee on Legal Co-operation (CDCJ) and the European Committee on Migration (CDMG), whose comments are appended to this reply.
2. The Committee of Ministers points out that, as a matter of well-established international law, sovereign states have the right to control the entry and residence of aliens on their territory.
3. It notes that [Recommendation 1808 \(2007\)](#) was adopted in the context of mass arrivals of illegal immigrants and asylum seekers at a time of economic growth and rising employment in Europe and worldwide, and that these arrivals continued unabated also during the current economic crisis, whose depth and duration are unpredictable, and which is having serious adverse effects on employment. The type of transit and processing centre that the recommendation refers to is one of several possible ways of dealing with these mixed flows.
4. The Committee believes that in cases where the establishment of such centres were considered necessary, they should be set up and managed in full compliance with the relevant treaties, particularly the European Convention on Human Rights and the case law of the European Court of Human Rights.
5. In this connection, it points out that under Article 1 of the said Convention, member states “shall secure to everyone within their jurisdiction the rights and freedoms” defined in the Convention. More specifically, it considers that, if people are held in these centres, this should be in accordance with the law and in compliance with standards set by the relevant international conventions, in particular the European Convention on Human Rights. The Committee also recalls the role of the European Committee for the Prevention of Torture (CPT).
6. It further considers that the functioning of these centres should not infringe the rights of persons needing international protection to seek and enjoy such protection in full respect of their fundamental rights and in accordance with the 1951 Geneva Convention relating to the Status of Refugees and its 1967 Protocol.
7. Particular attention should also be paid to various recommendations by the Committee of Ministers which may have a bearing on the functioning of these centres.
8. The Committee of Ministers informs the Assembly that on 1 July 2009 it has adopted “Guidelines on human rights protection in the context of accelerated asylum procedures”, prepared by the CDDH.

1. adopted at the 1063rd meeting of the Ministers' Deputies (8 July 2009)



Appendix 1 – Comments of the Bureau of the European Committee on Legal Co-operation (CDCJ) on Parliamentary Assembly Recommendation 1808 (2007) adopted at its 80th meeting (13-14 December 2007)

1. Following the adoption by the Parliamentary Assembly of [Recommendation 1808 \(2007\)](#) “Assessment of transit and processing centres as a response to mixed flows of migrants and asylum seekers”, the Committee of Ministers decided to communicate it to the European Committee on Legal Co-operation (CDCJ), for information and possible comments by 31 December 2007.
2. The Bureau of the CDCJ took note of the recommendation of the Parliamentary Assembly and decided to comment on domains which are of particular interest to the CDCJ.
3. The Bureau of the CDCJ underlines the need to ensure that every migrant or asylum seeker has an effective access to justice and refers in this regard to [Resolution No. 1](#) on “Access to justice for migrants and asylum seekers”,² in which the European Ministers of Justice agreed “on the importance of securing the fundamental rights of, and facilitating their exercise by, migrants and asylum seekers, through access to information, to an effective remedy, to a fair trial and, where appropriate, to representation, interpretation and assistance”.
4. The Committee of Ministers was, in this respect, invited by the Ministers of Justice to entrust the CDCJ, in co-operation with the European Committee on Crime Problems (CDPC) and the Steering Committee for Human Rights (CDDH), to examine “access to justice for migrants and asylum seekers by identifying means and measures with a view to facilitating and ensuring this access, including the provision of legal aid and assistance”.
5. The Bureau of the CDCJ shares the concerns of the Parliamentary Assembly regarding the practical and legal implications for the viability and nature of transit and processing centres (paragraph 2 of the recommendation).
6. The report prepared by the Committee on Migration, Refugees and Population (Document 11304) sets out in its explanatory memorandum (paragraph 38) that the determination of jurisdictional responsibility for processing centres should be in conformity with the European Convention of Human Rights and its related jurisprudence.
7. The Bureau of the CDCJ furthermore notes that the case law of the European Court of Human Rights accords migrants and asylum seekers substantial guarantees (prohibition of torture, right to respect for private and family life, prohibition of collective expulsion of aliens) and procedural safeguards (*inter alia* developed on the basis of the right to an effective remedy).
8. The Bureau of the CDCJ recalls the “Twenty guidelines on forced return” adopted on 4 May 2005 by the Committee of Ministers further to their drafting by the Ad hoc Committee of Experts on Legal Aspects of Territorial Asylum, Refugees and Stateless Persons (CAHAR) and which concern procedures leading to the expulsion of non-nationals whose presence on the territory of a member state is illegal. Guideline 10 is more specifically dealing with conditions of detention pending removal and should be taken into consideration with a view to ensure that migrants enjoy the rights they are entitled to.
9. In the framework of the Memorandum of Understanding between the Council of Europe and the European Union, the Bureau of the CDCJ furthermore calls for full consideration of the Council of Europe standards in the current exercise of preparation of a “Common European Asylum System” by the European Union.
10. Considering the transversal nature of issues related to migration and asylum, currently dealt with by various Steering Committees in the Council of Europe, the Bureau of the CDCJ calls for a comprehensive and co-ordinated approach in this field, in order to ensure that the rights of this vulnerable group of persons be adequately considered.

2. 28th Conference of European Ministers of Justice “Emerging issues of access to justice for vulnerable groups, in particular: migrants and asylum seekers; and children, including children as perpetrators of crime”, held in Lanzarote (Spain) on 25 and 26 October 2007.

Appendix 2 – Comments of the Bureau of the European Committee on Migration (CDMG) on Parliamentary Assembly Recommendation 1808 (2007) adopted by written procedure on 20 December 2007

a. The European Committee on Migration (CDMG) welcomes the attention of the Parliamentary Assembly of the Council of Europe to the proposals to create transit and processing centres to manage the mixed flows of migrants and asylum-seekers. It fully agrees with the Parliamentary Assembly that all legal, practical and particularly human rights implications arising from the creation of such centres should be carefully examined and evaluated prior to their opening.

b. The CDMG also believes that should such centres be opened, an effective system of monitoring and control should be put in place with a view to assuring that the human rights of migrants and asylum-seekers in these centres are respected in accordance with Council of Europe standards.

Appendix 3 – Comments from the Steering Committee for Human Rights (CDDH) on Parliamentary Assembly [Recommendation 1808 \(2007\)](#) adopted at its meeting on 6 to 9 November 2007

The Steering Committee for Human Rights (CDDH) takes note of Parliamentary Assembly [Recommendation 1808 \(2007\)](#). It recalls its work in progress concerning the drafting of guidelines on human rights protection in the context of accelerated asylum procedures. This text notably handles in detail the question of material conditions in transit centres and the training of the personnel responsible for these centres. The guidelines were adopted by the Committee of Ministers in July 2009.