



Churches' Commission for Migrants in Europe

Commission des Eglises auprès des Migrants en Europe

Kommission der Kirchen für Migranten in Europa

Fair Treatment for Asylum Seekers

Caritas Europa position paper on key standards for the reception of asylum seekers and for asylum procedures, supported by C.E.A.R. - Spanish Commission for Refugee Assistance, European Network Against Racism (ENAR), La Commission Justice et Paix, International Catholic Migration Commission (ICMC), Jesuit Refugee Service Europe (JRS-Europe), Quaker Council for European Affairs (QCEA), Pax Christi International

1. Summary

The situation of asylum seekers looking for protection in Europe has changed in recent years. Assuming that reception conditions¹ were a pull-factor, many EU States have changed their legal framework on reception and the related practice. The misuse of reception conditions as a key method of deterrence has led organisations that assist refugees to fear that standards are being harmonised on the basis of the lowest common denominator. At the same time, Central and Eastern European countries, previously transit countries but now becoming countries of destination, have started to set up structures to respond to the needs of asylum seekers.

Europe's weak standards for reception of asylum seekers, as well as the undue length and poor quality of asylum procedures, are the object of continuing criticism. Replies to a questionnaire sent to all 48 Caritas Europa member organisations reveal the following main areas of concern:

- A. Persons in need of protection risk serious injury or death owing to the difficulty of obtaining legal entry, in particular to EU territory. Often, legal provisions and the manner of their implementation make it impossible to calculate the risk to a specific person of being refused entry into the territory. In addition, denial of legal entry often blocks access to a fair refugee status determination procedure.
- B. In most European countries accommodation is not guaranteed to all asylum seekers, and is often in poor condition. Many governments aim to deter people from seeking protection and from reaching their territory by deliberately limiting human rights and disregarding human dignity. Caritas organisations in various countries are attempting to fill the resulting gap in governmental assistance.
- C. The information provided on asylum procedures is inadequate almost everywhere. Although in some countries thorough written information is provided, experience shows that asylum seekers rarely understand the essential points. The information

¹ The definition of reception used by Caritas in elaborating this position is a very broad one. It includes reception in its narrow sense, as well as reception-related aspects of asylum procedure.

provided is formulated in overly technical language, or in difficult legal terminology. Legal counselling services are also inadequate almost everywhere. Generally, even in countries where there is government support for legal counselling services, only some asylum seekers benefit to a sufficient degree. Broadly there is a lack of high-quality, free legal aid from lawyers trained in human rights law.

D. Although efforts to train the personnel who decide asylum cases are appreciated, in most countries this has not led to an acceptable level of competence in the administrative body that makes the first determination. In many countries a significant problem is inadequate understanding of the skills required. Refugees facing a long and uncertain wait suffer from the length of determination procedures. Governmental and non-governmental agencies agree on the need to shorten asylum procedures.

The assessment above shows a wide range of severe weaknesses: there is a broad need for improvement.

Caritas Europa

○ **Promotes a policy of permitting legal entry to persons seeking protection at borders.**

○ **Is convinced that there is only one possible basis for formulating future minimum standards for reception conditions: today's best practice. Asylum seekers are to be welcomed and their dignity respected.**

○ **Promotes state action to safeguard the rule of law. The state must offer asylum seekers high-quality**

- **information,**
- **legal counselling and**
- **legal representation.**

○ **Promotes substantial investment in increasing the quality of asylum procedures.**

Governments fear that changing any one of these parameters would make asylum procedures more vulnerable to abuse. The counter-strategy would be to take a set of necessary measures at the same time, thus addressing the main weaknesses of European asylum systems as a whole. This would demand a great deal of time, money and effort.

Of course, it is possible that – in the short term – the number of people misusing the asylum procedure would increase. This and other negative impacts on the states' objective of immigration control can only be resisted or avoided if the standards demanded here are implemented together with measures to reduce substantially the duration of asylum procedures and – to a lesser degree – in coherence with provisions on subsidiary and temporary protection. All this must be accompanied by a transparent immigration policy.

This could result in a clear distinction between asylum seekers and other migrants; markedly shorter and much improved procedures; greater probability of achieving the "correct result" in determining the need for protection; and – mainly through shorter procedures – a decrease in the attractiveness of asylum to persons not in need of international protection. The result of fair, quick and thorough procedures, combined with other measures such as the right to work for asylum seekers, could

also bring a marked decrease in the total cost of reception and determination procedures.

The creation of a Common European Asylum system as envisaged in the Tampere Conclusions would justify such investment in the improvement of procedures.

2. Asylum seekers' legal access to a territory

(The Gordian knot of immigration control and international protection)

The **legal framework** of most European countries **formally (or in theory)** allows persons presenting themselves at the border who claim to be in need of protection and who fulfil specific requirements to enter their territory legally; in practice, however, even this limited access is often denied. The laws of Central and Eastern European countries, in particular, demand that asylum seekers lodge their claims at the border; otherwise there are time limits for presenting well-founded reasons why they were unable to do so.

However, there are major hurdles to overcome before an asylum seeker can reach the target country's border. Under the European Union's **non-arrival policy**, asylum seekers are prevented from gaining access mainly by visa requirements for citizens of refugee-producing countries and by carrier sanctions.

If an asylum seeker does succeed in reaching the border, other hurdles appear. In most states (mainly those in the European Union) additional legal criteria must be met before entry is permitted, for example, fear of persecution by the state from which the person is seeking entry, no safety in a third country, etc. The **safe third country notion**, although a legitimate legal provision, can become a means of deterrence² if understood and applied in an abstract way. In most states' practice, the application of this clause focuses on whether or not the person was safe before entry rather than on whether or not he/she will be safe upon return.

Finally, the **implementation of the legal provisions** hinders persons presenting themselves at the EU outer borders from gaining access to the territory. Although this argument cannot be proved with figures, the reality is clear: Only a very small proportion of asylum seekers choose the "legal path" – meaning application for asylum at an international airport upon arrival.

To conclude: legal provisions and implementation make it impossible to calculate the specific person's **risk of being refused entry** into a country. And often, the denial of legal entry blocks access to a fair refugee determination procedure. *"Such policies may ultimately result in exposing persons to risk of persecution, by means of blocking their flight either in the country of origin or in unsafe transit countries from which they may be forcibly returned to the home country."*³

Given the ways in which persons seeking protection are hindered from legally entering a territory, one can only conclude that the **fight against illegal immigration** has priority over the EU Member States' asylum policy. The *"logic*

² The safe third country concept is a way of shifting the burden, when implemented by simply citing a list of safe third countries without opening substantial proceedings for each individual case.

³ See Jens Vedstet-Hansen, "Europe's response to the arrival of asylum seekers: refugee protection and immigration control", May 1999, page 10.

seems to be that in order to prevent the asylum system from turning into a 'back door' to permanent immigration, it should rather be closed in the first place"⁴.

The message as the persons affected understand it can be put clearly as follows:

Ø It seems to be more risky to present oneself at the border than to expose oneself to traffickers.

Tens or even hundreds of thousands of people⁵ already put their fate in the hands of smugglers/traffickers in an attempt to escape their home country and seek protection in Europe.⁶

Many of these people are refugees. They are forced to flee because of persecution, of a real risk of being tortured or because they are in danger of grave inhuman treatment. It has to be noted *"that Europe's most smuggled and trafficked nationalities, such as Iraqis and Afghans, also happen to have a very high rate of recognition as refugees under Europe's own asylum procedures. It [is estimated that] between one-third and two-thirds of the most trafficked nationalities are eventually recognised"*⁷.

The current EU policy of preventing refugees from claiming protection at the border is **distinctly inhuman** in its consequences.

Migration policy fails to distinguish between persons according to their need for protection. Moreover, this policy is one of the factors leading to the **destruction of documents** and loss of **evidence about individuals' immigration history**, which makes it **impossible to return** them to the correct country when an application is rejected.

State practice ultimately contradicts its own interests and policy objectives in border control, public order and establishing the personal identity of asylum seekers.

It goes without saying that **trafficking in human beings** is a business of the worst type, shamelessly exploiting people in need and disregarding human dignity. According to the European Commissioner Antonio Vitorino, nearly every day border police find the bodies of people who died attempting to enter the EU⁸. Traffickers convert other humans' hardship into their profit. This is to be condemned.

Standards for a future European policy on permitting legal entry to persons seeking protection at the border

Persons addressing themselves to border guards and asking for asylum are to be allowed entry to the territory of a state and their asylum application is to be forwarded to the competent authority.

An asylum application should be examined in the country where it is first lodged. In countries where there is a safe third country rule, it is only to be applied when the

⁴ Jens Vedstet-Hansen, page 17: *"One of the main reasons posited for reinforcing immigration control by means of non-admission policies is that, due to official halts on immigration, the asylum system is the only channel for non-citizens into industrialized states, and therefore becomes abused."*

⁵ Compare John Morrison, "The trafficking and smuggling of refugees: the end game in European asylum policy?" July 2000, page 25.

⁶ States acknowledged that their policy drives persons on to the "illegal" track. In 1997, UNHCR and the Inter-Governmental Consultations on Asylum, Refugee and Migration Policies in Europe, North America and Australia (IGC) assumed that a certain proportion of asylum seekers have been "diverted from the open channel of asylum to the closed channel of clandestine immigration"; and "difficulties faced both by economic migrants and refugees to reach the industrialized world in a legal manner have fostered the emergence of a huge underground industry involving the illegal movement of people across borders" – quoted according to Jens Vedstet-Hansen (see footnote above).

⁷ Quotation from the press release on the presentation of the report "The trafficking and smuggling of refugees: the end game in European asylum policy?" by John Morrison with the assistance of Beth Crosland; July 2000.

⁸ Interview with Commissioner Vitorino "Europa braucht eine gemeinsame Asylpolitik"; Süddeutsche Zeitung, 6 July 2000, page 6.

third country in question guarantees access to a fair refugee determination procedure and there is no risk of *refoulement*⁹.

No asylum claim can be refused because of delay. In fixing reasonable time limits for applying for asylum, countries should consider asylum seekers' language difficulties, their access to information and legal advice and also the special circumstances of asylum seekers who suffer acute physical and mental illness (for example, torture victims).

Countries should provide for extra-territorial asylum at their embassies and missions, and in certain situations for "in country" processing of asylum applications.

Carrier sanctions should be removed for countries where there are grave human rights violations, war or civil war, as should visa restrictions for the nationals of those countries.

Visa restrictions should not be used to prevent asylum seekers from accessing the territory of a state.

3. Conditions of reception of asylum seekers

(Considering reception conditions as a pull-factor limits human rights and leads to disregard for human dignity)

The term "conditions of reception" is used in this section to refer to accommodation, social assistance, access to health care, access to the labour market, access to education, special provisions for minors and contact with the local population.

Some governments consider high standards of reception an important **pull-factor** influencing the asylum seeker's choice of target country. Some of these countries limit the support offered or even remove all access to help. The persons affected are condemned to live a bitter life in difficult conditions; some lack even a bed, food, hygiene facilities and medical treatment.

For various reasons, most asylum seekers are unable to support themselves. Having spent their last resources on fleeing, they are usually needy. In Europe standards of **accommodation and social assistance** vary greatly. Some countries provide asylum seekers with social care comparable to that available to their own citizens in need; some reduce this "normal" allowance; others set limits on how long asylum seekers can receive public care. Some governments provide basic help only to a proportion of all asylum seekers – selection depends on additional criteria such as the ability to prove identity by presenting valid documents or belonging to specific countries of origin. Some countries exclude assistance if another country might be held responsible for considering the asylum application.

Therefore in Europe, at least some asylum seekers are completely cut off from any kind of state assistance. Persons affected are denied government help to cover basic needs such as a place to sleep, food and hygiene facilities.

⁹ Refoulement means to return an asylum seeker to the country of origin, or another country where he or she may be in danger. The standard requested in this paragraph can also be found in ECRE guidelines on fair and efficient procedures for determining refugee status, September 1999.

Asylum seekers' **access to health care** differs widely from one country to another.

Some governments ensure that asylum seekers can benefit from health insurance. In other countries only limited medical treatment is available to asylum seekers. Some asylum applicants are excluded, formally or in fact, from any treatment except in case of emergency. Some asylum seekers – although needy – do not have access to medical treatment free of charge. The persons affected obtain the necessary treatment only by appealing to doctors' Hippocratic oath.

Only very few governments make an effort to ensure that asylum seekers who need psychological help receive adequate treatment. In most countries only private institutions provide the necessary psychological back-up, which makes access yet more difficult.

The legal frameworks of several countries formally allow asylum seekers to seek employment, either from the moment the claim is lodged or after a specific period of time. In fact, only a few applicants gain **access to the labour market**. In some countries asylum seekers do not have the right to seek employment. Finally, most applicants stay dependent on assistance virtually throughout the procedure.

The inability to find any kind of occupation while awaiting a decision on their status brings great suffering to many asylum seekers. It causes desperation and a loss of prospects. No country seems to have established adequate programmes aimed at alleviating this sense of worthlessness.

With regard to **access to education**, most countries allow minors among asylum seekers to receive primary education. Some governments also provide for secondary education; others would have to undertake considerable efforts to facilitate satisfactory educational standards.

Some countries have developed a set of measures to treat **minors** according to their special needs; other countries make no special provision to meet the needs of young asylum seekers. Only in a few countries do unaccompanied children benefit from adequate assistance, for example, legal representation by a guardian, adequate accommodation, etc.

In some countries asylum seekers do not receive any language training.

Only very few countries have developed ways to facilitate **contact of asylum seekers with the local population**. Efforts to increase understanding of the particular situation of persons seeking protection in these countries have included socio-cultural activities held in reception centres; and provision of information to the local community to promote a positive attitude and to help asylum seekers join clubs and associations. Most countries have not developed such activities.

Often the families of asylum seekers are spread around various countries. The existing legal framework does not allow reunification of these families while their application for asylum is pending. According to these countries' laws, only persons granted refugee status have the right to family reunification.

International organisations and non-governmental organisations, including many Caritas organisations, often find themselves compensating for the unacceptable consequences of this lack of governmental assistance to safeguard the survival

and welfare of asylum seekers. It is clear that these organisations are carrying a heavy burden caused by seriously inhuman policies.

In conclusion, these governments aim to deter people who are seeking protection from gaining access to their territory by consciously **limiting human rights** and by doing so in **disregard of human dignity**.

Excluding asylum seekers from adequate social assistance is a **breach of international legal obligations**. The intolerable situation these asylum seekers find themselves in has considerable impact on the **fairness of asylum procedures**. Moreover, some of the persons affected are refugees according to the 1951 Geneva Convention.

Asylum seekers are often represented to the public in the context of abuse of the system by persons leaving home for economic reasons and in the context of illegal immigration. Some members of the public develop the idea that asylum seekers are criminals.

Standards for the reception of asylum seekers

In formulating future minimum standards for reception, the basis should be today's best practice. The rights enjoyed by asylum seekers should be clearly defined and reception conditions must not be left to the discretion of officials. These rights should remain in effect throughout the procedure until a final decision is taken.

The standards established for asylum seekers should also apply to persons requesting other forms of protection.

Asylum seekers should enjoy the right to free movement. Detention should be allowed only under the conditions mentioned in Article 5 of the European Convention on Human Rights. The minimum requirements of detention centres are that they should be "open detention centres" with provision for social contact facilities. Detention is not punishment for a crime. It needs a system of regular monitoring to give opportunity to persons held in detention to complain about their situation.

Asylum seekers must be provided with documents giving proof of their status.

Every asylum seeker unable to meet the cost of living should be given accommodation, social assistance and access to full medical care. In countries where a social assistance system exists, asylum seekers should enjoy the same benefits as other residents do.

Governments should provide for special assistance to persons who need it. They should ensure that women provide legal and social counselling to female asylum seekers; interviewers and interpreters should be women, wherever possible. Special treatment should be made available for asylum seekers suffering from trauma and other psychological problems.

Asylum seeker families spread around various countries should be reunified and their cases treated as a unit.

In general, asylum seekers should be able to live an autonomous life as soon as possible. To ensure this autonomy, asylum seekers should have access to the labour market – without a waiting period or with no more than 6 months of waiting.

With regard to young asylum seekers, the status of minor or adult should be determined in the same way and on the same basis as it is for citizens. Schooling

should not finish at the end of the compulsory period, but on completion of an education leading to a career.

Psychosocial support, especially in the first period after arrival, basic language and occupational training should be provided for asylum seekers. Support should be provided to self-help groups within the refugee community.

More attention should be paid to the cultural and spiritual needs of asylum seekers. It must be realised that asylum seekers can have a very positive impact on our societies.

Mass media must assess critically their representation of asylum seekers to the public. Instead of linking them to criminality, they should stress that these people are guests and have suffered human rights abuses. Governments should facilitate contacts between asylum seekers and the local population, with a view to increasing public awareness and understanding of asylum seekers' situation.

In the experience of Caritas, NGOs play an important role in the reception of asylum seekers. Since they are in direct contact with the persons concerned, they are able to function as a monitoring and dialogue partner of government. NGOs can also act as an implementing partner funded by government to run reception facilities and provide other reception-related services.

All uprooted persons enjoy the right to humane and dignified treatment. A large proportion of asylum seekers need protection; many are refugees according to the Geneva Convention; some need protection according to human rights standards; and others need protection because of humanitarian concerns. Therefore, for as long as there is no final decision on an asylum claim according to international obligations, the person concerned must be treated as a refugee in a way that respects his/her dignity.

4. Access to high quality information and to legal counselling free of charge

(States lack awareness of the action needed to safeguard the rule of law)

Asylum seekers generally do not speak the reception country's language, they are not familiar with the legal system of the country they live in and they do not know their rights and duties. They are unable to represent themselves adequately and are therefore in danger of failing to obtain the rights to which they are entitled. Asylum seekers **depend on competent assistance**.

All countries where Caritas organisations are active provide information about the asylum procedure to asylum seekers. The **quality of information provided differs** widely. In some countries information leaflets are offered; in others, brochures or information packages.

Some countries provide the information only in the country's own language, others in the languages of the main countries of origin. Some governments have established independent refugee counselling services, provided free of charge and located at asylum offices which are accessible throughout the procedure.

Although in some countries thorough written information is provided, experience shows that asylum seekers often do not understand the essential points. The information is formulated in overly technical language or mainly in legal terminology.

In many countries **asylum seekers lack awareness of their own legal position**. Often applicants do not know the current status of the proceedings affecting them and what information they must contribute at specific stages in the procedure. They do not understand sufficiently the procedural steps and decisions taken. In consequence, they are often unable to take sound decisions on their legal status and well-being.

Most countries provide for **legal assistance free of charge** to their own citizens who are unable to defend their rights before the authorities (owing to the importance or legal complexity of the issue being decided) or who cannot afford a professional legal representative. Although these regulations may also be applied to non-citizens, they are generally limited to procedures before the courts. Most asylum seekers defending their rights before administrative bodies are not represented, although the complexity of the legal questions and the language barrier would demand this.

A few countries have established independent **legal services specialising in asylum procedures**. These services are provided free of charge as a kind of legal accompaniment through the administrative procedure that applicants can access when lodging the claim and at any other stage of the process. On the other hand, some governments declare explicitly that they are not willing to provide or support legal counselling services. These governments consider legal representation of asylum seekers to be against the interests of the state.

In these countries international organisations such as the UNHCR and non-governmental organisations provide competent legal counselling services – compensating in part for the failure of governments. Caritas organisations in many countries are performing this function.

Generally, even in the countries where there is governmental support for legal counselling services, only some asylum seekers benefit to a sufficient degree.

Finally, it must be stressed that it is a leading principle of democratic systems that governments should **safeguard the rule of law**. This means that governments are obliged to enable persons under their jurisdiction to enjoy their rights.

Standards on access to high quality information and to legal counselling free of charge

The asylum seeker should be free to use his/her own language to lodge the application or he/she should be assisted by an interpreter to fill in the application for asylum.

The asylum seeker should have the opportunity to communicate with a member of the UNHCR or other organisations working on his/her behalf throughout the procedure.

Asylum seekers have the right to receive information. Information should be freely available in the asylum seeker's mother tongue. This includes information on asylum procedure, on the possibility to appeal and on the legal services available.

Every asylum seeker should have access to **information services** funded by governmental sources. There must be sufficient personnel to ensure that these services are accessible at any stage of the procedure.

A future policy on access to quality information must ensure **personal interactive communication** between asylum seekers and a counsellor. It will be the task of the latter to ensure that the asylum seeker fully understands the information provided, taking into account *inter alia* different levels of education, different cultural background, etc.

Governments should provide access to **legal counselling** and adequate and competent translation, both free of charge and accessible to every asylum seeker. Legal counselling must be operated by an independent agency. There is a need for specific training for lawyers representing asylum seekers.

Each asylum seeker should have a right to the re-evaluation of a rejection of his/her asylum claim by a lawyer. If there are grounds for appeal, the asylum seeker should have a right to legal support for this.

Decisions on applications for asylum are written in the language of the decision-maker, because it is very important for it to be written in precise terms. It must be ensured that these decisions are translated – at least orally and preferably in writing – into a language the asylum seeker understands. Appropriate training for interpreters should be provided.

There is a need for intercultural training for all persons giving social and legal counselling to asylum seekers.

5. Improving asylum procedures and making them shorter

(Length and poor quality are the main weaknesses)

Concrete and measurable figures on the **average duration of asylum procedures** are not available. However, it can be stated that the length of procedures varies from case to case – from several days to many years. Generally speaking, procedures in Central and Eastern European countries seem to be shorter than those in Western Europe. But procedures in nearly every country can be considered unduly prolonged.

Admissibility procedures and accelerated procedures were intended to make the application process shorter. Instead, these measures, especially those seeking to determine the state responsible for considering an asylum application, have prolonged it. Governments and organisations representing refugees' interests have criticised the application of the Dublin Convention for prolonging applications by several months.

In some countries, the application of the safe third country concept alone results in procedures that last more than a year. In other countries – and this is the worst-case scenario – the concept results in deadlock, with no country examining the asylum seeker's presentation on its merits.

With regard to the "normal procedure", the main reason for unacceptable length is – from a Caritas point of view – to be found in the **quality of the administrative**

procedure. In many countries, it is particularly the administrative bodies that first deal with asylum requests that are inadequately designed and equipped to meet the need of a fast procedure of high quality.

The **asylum authorities' staff are** often underqualified. Generally, decision-makers at this level are rarely able to grasp the different educational, cultural or social backgrounds of asylum seekers and therefore they cannot sufficiently understand the complexity of the issue they are dealing with.

Thus the first interview with the asylum seeker – which is the main source of information for proceeding further and the most important basis for the first decision – is often conducted in an **uncomfortable atmosphere**. This does not give asylum seekers confidence in the procedure and in many cases prevents them from making an adequate presentation.

Government representatives as well as non-governmental organisations have noted that often, insufficient effort is taken to research the background of an individual asylum seeker's presentation. Instead of attempting verification by studying the available **country of origin information** and requesting expert opinions, decisions are often based on guesswork. This unsatisfactory situation is caused by lack of ready access to relevant documentation, as well as by time pressure on decision makers.

Finally it must be stated that **decisions**, especially those of the first administrative bodies to consider a claim, frequently fail to meet the criteria of a proper juridical argument. This is often due to the inadequate education and qualifications of the decision makers.

Consequently, considerable time is often lost in this part of the asylum procedure, without establishing sufficient basis for a substantial review by a higher body or court as to whether the facts of the case were examined correctly.¹⁰

It must be acknowledged that in recent years some countries have made efforts to train the personnel dealing with asylum applications, with a view to improving the quality of procedures and decisions. However, although these efforts are appreciated, they have not led to an acceptable level of competence among the decision-makers. In many countries, a significant problem is an **inadequate understanding** of the skills and resources required. It must be stressed that these critical remarks are not made with the intention of blaming decision-makers for personal failure – we are well aware that some of them do their best and also become emotionally involved in cases.

Some analysts claim that the **costs of care and maintenance** of refugees and asylum-seekers in the reception system account for more than 90% of total state costs, while less than 10% of total state costs are spent on processing asylum applications. The latter amount includes the cost of returning rejected asylum-seekers.

It is the aim of governments and non-governmental organisations to reduce the **duration of asylum procedures** while retaining safeguards to ensure the correct identification of persons in genuine need of protection. Refugees facing a long,

¹⁰ This position does not include any comments on European states' interpretation of the 1951 Geneva Convention for refugees.

uncertain wait, suffer from the length of determination procedures. Shorter procedures are less attractive to people who do not need protection.

From a Caritas point of view, the greatest contribution to the achievement of a higher standard of asylum procedures would be a **European-wide initiative** to increase the number of decision-makers, to improve the qualifications of staff, to reconsider management requirements, to intensify training and to increase substantially the funds for information technology and external expertise, etc. These measures would strengthen existing safeguards and also shorten the procedures.

Standards to shorten and improve procedures

All European States should share minimum standards on asylum procedures.

Only one single procedure should be started when a person claims to be in need of protection. The purpose of this procedure is to examine asylum requests, to consider subsidiary forms of protection, to safeguard the principle of non-*refoulement* and to order expulsion.

An asylum application should be examined in the country where the application is lodged. This would reduce administrative efforts, prevent duplication of procedures (by deciding on both state responsibility and merit) and would thus be less expensive. It would also make allowances for the various reasons a refugee might have for seeking refuge in a specific country. This system should be extended to enable states other than the one where the application was lodged to "opt in" for reasons of existing family ties or cultural relations, on the basis of the principle of double voluntary action¹¹.

An independent actor should take the decision in the body of first instance. This could be achieved by introducing a double decision system – the authority makes a decision and an independent actor, such as the UNHCR or a non-governmental organisation, also makes a decision. If the decisions are identical, the procedure could be shortened.

Administrative bodies dealing with asylum claims should be developed to become highly qualified to meet the requirements of complex asylum procedures. Their capacity in terms of time and quality of decisions should be increased, and in particular the required qualifications of staff must be newly defined: asylum decision-makers should have extensive skills in dealing with persons of the different cultural backgrounds involved; they should also have high competence in communication. The new salaries of the staff must be defined according to the professional skills required. Regular training and access to information technology should be provided. Research and documentation centres should be created, to compile country of origin information and asylum-related jurisprudence. Where additional expertise is necessary, asylum authorities should be able to consult expert opinion.

Asylum procedures should be conducted free from any discrimination. It is necessary to establish confidence and trust in asylum procedures.

¹¹ This principle allows for reallocation of asylum seekers only if both the government affected and the asylum seeker concerned agree to it.

Caritas Europa argues for a substantial investment in improving the quality of asylum procedures.

In this connection, research is needed to determine whether investing two or three times the amount spent on asylum procedures today to improve their quality would lead to a tremendous decrease in the costs of social care and maintenance, etc., of asylum seekers. The hypothesis to be examined is: investing in a high quality procedure will shorten its duration, safeguard the rule of law, decrease the costs of reception and deter persons who do not need protection from abusing the asylum process.

6. Background

It is generally accepted that the creation of an area of “freedom, security and justice” must include the creation of a Common European Asylum System. With the aim of creating a fair and efficient asylum procedure as part of such a system, the EU Commission has been elaborating a proposal for a Council directive¹² on the “Definition of common minimum conditions for reception of asylum seekers (with a particular attention to the situation of children)”.

After the French Delegation presented a discussion paper on reception conditions in October 2000, the Council of the European Union agreed on conditions for the reception of asylum seekers¹³. These Council conclusions provide guidelines for the future Community instrument on reception conditions, focusing particularly on its scope, on information, stay, residence, financial and material assistance, work, health care, family unity, schooling of minors, vulnerable individuals and coordination with non-governmental organizations.

In July 2000 the UNHCR presented the findings of a recent study on reception conditions for asylum seekers in the 15 Member States of the European Union and recommended reception standards for asylum seekers in the European Union.¹⁴ The UNHCR pointed out that *“asylum seekers are entitled to benefit from the protection afforded by various universal and regional human rights instruments, as well as applicable refugee law standards, all of which provide the basic framework for standards and norms of treatment in the area of reception.”*¹⁵ *It is essential that states ensure that the fundamental rights and basic needs of asylum seekers are met during the asylum procedure, and in particular that special efforts are made to reduce the length of the procedures.”*

Throughout Europe, Caritas – and other non-governmental organisations – have become increasingly involved in reception-related services, sometimes in co-operation with the authorities and to some extent filling basic gaps in

¹² The European Commission “Scoreboard to review progress on the creation of an area of ‘freedom, security and justice’ in the European Union” originally foresaw the adoption of this directive in April 2001.

¹³ JHA Council 30 Nov/1 Dec 2000.

¹⁴ UNHCR: Reception Standards for asylum seekers in the European Union, Geneva, July 2000.

¹⁵ See in particular the 1948 Universal Declaration of Human Rights, the 1966 International Covenant on Civil and Political Rights, the 1966 International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of all Forms of Discrimination against Women, the Convention on the Rights of the Child and the European Convention on Human Rights.

governmental assistance. By providing material assistance, running reception facilities and counselling services, Caritas has gained large-scale grass-root experience in this area of work.

Against this background Caritas Europa has decided to make reception a priority issue in its migration and asylum work. The aim is to define standards from a Caritas point of view. This position will be used as a guideline within Caritas, for the taking of positions at national level as well as for lobbying at the international level.

7. Caritas Europa: Assistance to persons in need

Caritas Europa, as one of the seven regions within Caritas Internationalis, is currently composed of 48 national member organisations from 44 European countries. Caritas Europa member organisations provide a broad range of services for people in need and people endangered by social exclusion such as the elderly, the handicapped, unemployed families, foreigners and other groups. Services include offering care and assistance, the running of qualified counselling services, professional education of staff, etc.

Caritas Europa has identified and is committed to work on four major spheres of urgent activity:

- The great social differences between the individual European nations and the process of European unification;
- The growing poverty and social inequality within individual countries and the future shaping of social policies;
- Migration and asylum issues;
- The growing gap between rich industrialised nations and the poor countries of the “Third World”, the accelerated process of impoverishment in many of these countries, and a development policy which combats the causes of impoverishment.

In addressing these issues Caritas Europa is motivated by the Gospel and by Catholic social teaching. In particular:

We are led by fundamental Gospel convictions that it is the duty of all Christians to give food and drink to the hungry and thirsty, to give shelter to strangers and the homeless, to clothe the naked and to visit the sick and prisoners (cf. Mt 25, 31-46). We also believe, as the Gospel impresses upon us, that we encounter God in every one of these “least of my brothers and sisters”. This means that the truthfulness and credibility of our Christian existence will be seen and measured by our practice of justice and mercy. It is especially for this reason that the insights of the 1971 Bishops’ Synod “On Justice in the World” provide us with decisive guidance: “For us the commitment to justice and participation in reshaping the world are fundamental elements of proclaiming the Gospel, the Church’s mission to redeem humankind and to liberate it from all forms of oppression”.¹⁶

¹⁶ Shaping Europe's future: The Caritas Europa Strategy, January 1999.

Most Caritas Europa member organisations are active on asylum and immigration. The main aim of Caritas' work in this field is to offer realistic solutions to people who, for whatever reason, need assistance because they are resident in a country other than their home country. Caritas' programmes include projects for the reception of asylum seekers, provision of legal and social counselling services, facilitation of processes for integration of refugees and permanent residents as well as resettlement and voluntary return programmes. While filling the gaps in governmental assistance, Caritas stresses states' responsibility to ensure dignified treatment of asylum seekers, refugees and other migrants, one of the most vulnerable groups in Europe's societies. On the basis of our direct practical experience, Caritas conducts policy and advocacy work with the aim of changing structural weaknesses.

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