

CCBE Statement on the need to guarantee legal assistance to all persons requesting international protection

19/10/2018

The Council of Bars and Law Societies of Europe is a membership organisation uniting the Bars and Law Societies of 45 countries from the European Union, the European Economic Area, and wider Europe. Recognised as the voice of the European legal profession, the CCBE represents, through its members, more than 1 million European lawyers.

The regulation of the profession, the defence of the Rule of Law, human rights and democratic values are the most important missions of the CCBE. Areas of special concern include, amongst others, the right of access to justice, the development of the Rule of Law, and the protection of the individual citizen.

The Summits of European Union Heads of State and Government held in June and September 2018 raised the issue of migration policy and, in particular, the policy on the reception of migrants applying (or not applying) for international protection.

There was discussion around the creation of (closed) controlled centres where asylum seekers would be screened on EU soil, or even landing/'disembarkation' platforms in third countries (mainly North African countries bordering the Mediterranean Sea) whose role would also be to ensure the screening of arrivals to separate asylum seekers from migrants arriving for other reasons.

The CCBE, without taking a final position on the legality of these solutions especially in advance of concrete and comprehensive proposals being available for consideration, recalls that the determination of refugee status is accompanied by legal safeguards set out especially in Directive 2013/32/EU of the European Parliament and the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (Recast).

In concrete terms, the determination of refugee status requires that the authority responsible for determining whether to grant or refuse asylum receives the most accurate information from the applicant regarding their situation and the reasonableness of the fears they have regarding the authorities in their country of origin.

This requires that the applicant provide a complete and accurate account of the reasons that led them to leave their country.

However, in many cases, even if the asylum seeker is aware of the fears of persecution that have caused them to leave their country, they are unaware of the criteria which will allow them to be recognised as a refugee.

This may lead them, in good faith, to fail to explain or adequately explain elements which are essential from the perspective of the protection officer but to the applicant are either so minor or so obvious that they do not see the need to explain them.

It is for these reasons that Directive 2013/32/EU (as well as Council Directive 2005/85/EC of 1 December 2005 on minimum standards on procedures in Member States for granting and withdrawing refugee status) provide for the right of asylum seekers to receive legal or procedural information relating to the asylum procedure from NGOs or professionals from government authorities or specialised State services (see recital 22 and Articles 8(2) and 19). Similarly, Directive 2013/32/EU provides for the right of asylum seekers to benefit from legal advice at all stages of the asylum procedure (Article 22) as well as the right to free legal assistance and representation before a court of first instance on behalf of the applicant when a decision is taken at the border (Article 20).

Article 22 of Directive 2013/32/EU provides for the right to legal assistance at the applicant's expense at all stages of the procedure.

In order to provide free legal assistance to people in need of international protection, the "European Lawyers in Lesvos" (ELIL) initiative was launched by the CCBE and the German Bar Association in 2016 (<https://www.europeanlawyersinlesvos.eu/>). This initiative, now managed by an independent non-profit charitable organisation, provides free and independent legal assistance to asylum seekers on the Greek island of Lesvos. The on-site team includes, among others, highly experienced asylum lawyers from Greece and other EU/EEA Member States (plus Switzerland), who provide their services on a strictly voluntary basis.

These services have proved indispensable given that asylum seekers who have benefitted from their advice and assistance before a hearing by Greek asylum authorities have had a much higher rate of recognition of refugee status than asylum seekers who had not received their assistance.

However, the CCBE recalls that this initiative is neither organised nor subsidised by national or European authorities, and that thus far they are only sustained by volunteer lawyers and by funding from Bars and Law Societies, lawyers' organisations and NGOs.

Generally, the number of lawyers present in the "hotspots" in Greece is currently insufficient to allow every asylum seeker to benefit from the rights guaranteed by the Asylum Procedures Directives.

The CCBE reiterates the essential need for legal assistance to be granted to asylum seekers throughout all stages of the procedure under the Asylum Procedures Directives.

At this juncture the CCBE expresses its strong concerns as a matter of principle if closed controlled centres were to be opened in one or more EU Member States, and especially if landing platforms and screening platforms were to be created at the borders but outside the territory of EU Member States.

The CCBE recalls that any structure thus created should at the same time provide the means, in particular the financial means, to ensure that all asylum seekers can benefit from the aforementioned guarantees.

The magnitude of the task of building controlled centres would make it impossible for migration lawyers from only one Member State to deal with the workload this entails. As regards the possible creation of landing platforms, the CCBE notes that the legal assistance contemplated by the Asylum Procedures Directives is provided by legal practitioners qualified and practising in the law of one or more Member States. Similarly, the CCBE notes that the right to an effective remedy provided for by those Directives (and more fundamentally by Article 47 of the EU Charter on Fundamental Rights) is a right of appeal or review to or by a tribunal or court established under the law of a Member State where the member or judge concerned is appointed by the Member State. The CCBE awaits sight of any proposal which respects this right to an effective remedy as provided for by the Asylum Procedures Directive and the Charter, noting that the right to apply for asylum in the European Union is itself a fundamental right recognised by Article 18 of the Charter.

The CCBE therefore calls on the Parliament, the Council and the Commission, in any consideration being given to the creation of these asylum structures, to ensure the adequate provision of material and effective human resources so that the essential legal support provided for in the aforementioned Directives are duly guaranteed.