

CCBE Statement on recent developments and upcoming EU actions in the field of asylum

21/11/2024

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 46 countries, and through them more than 1 million European lawyers.

Having observed the recent developments in the European Union (EU) in relation to asylum, the CCBE fears a general backsliding with regard to a fundamental rights compliant asylum policy. **The CCBE is notably concerned about the envisaged “new ways” or “innovative solutions” (such as “return hubs”¹) in the field of asylum** that have been subject of recent discussions and announcements at EU level² and wishes to express its doubts about their conformity with the EU Charter of Fundamental Rights (EUCFR), the European Convention on Human Rights (ECHR), and international laws and principles regarding international protection.

At this juncture, the CCBE expresses its strong concerns as a matter of principle if closed centres were to be opened outside the territory of EU Member States. These centres would raise serious questions regarding the fundamental role of and ensuring respect for the Common European Asylum System in terms of jurisdiction, applicable law and access to justice. Consideration must therefore be given to the effective feasibility of guaranteeing the right to legal counselling, assistance and representation, as part of a broader principle of access to justice, and the right to effective remedy, anchored in EU and international law obligations for Member States, in such circumstances.³

The CCBE is equally concerned by declarations contesting the duty of Member States to apply international and European law in force (e.g. New Pact) and the case law of the Court of Justice.⁴

The CCBE recalls that the right to apply for international protection in the EU and therefore at its frontiers is a fundamental right guaranteed by Article 18 of the EUCFR, by EU secondary law through its asylum acquis, and under the Geneva Convention on the Status of Refugees of 1951.

¹ Letter of the President of the Commission, Ursula von der Leyen, to the European Council, 14.10.2024, available here:

<https://www.politico.eu/wp-content/uploads/2024/10/15/October-2024-EUCO-Migration-letter.pdf>

² See ref. 1. See also European Council Conclusions of 17 October 2024, available here:

<https://www.consilium.europa.eu/en/press/press-releases/2024/10/17/european-council-conclusions-17-october-2024/>

³ See also the CCBE comments about the concept of landing/disembarkation platforms and legal assistance, 19.10.2024, available here:

https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Statement/EN_MIG_20181019_State_ment-on-the-need-to-guarantee-legal-assistance-to-all-persons-requesting-international-protection.pdf

⁴ “Dutch government to ask opt-out clause from EU asylum rules ‘as soon as possible’”, Euronews, 13.09.2024, available here:

<https://www.euronews.com/my-europe/2024/09/13/dutch-government-to-ask-opt-out-clause-from-eu-asylum-rules-as-soon-as-possible>

“Polish PM says he won't respect EU right to asylum if it threatens his country's security”, Euronews, 12.10.2024, available here: <https://www.euronews.com/my-europe/2024/10/12/polish-pm-says-he-wont-respect-eu-right-to-asylum-if-it-threatens-his-countrys-security>

Referring to the legal framework and the case law of the Court of Justice of the EU and the European Court of Human Rights (ECtHR) with regards to the right to asylum, the principle of non-refoulement, the prohibition of collective expulsions and the right to an effective remedy, it should be stressed that the right to asylum can only be effectively ensured by providing adequate access to legal assistance to all people potentially in need of international protection.

The CCBE reiterates that the right to asylum and the principle of non-refoulement are fundamental rights that cannot be simply suspended and have to be preserved even in situations of significant pressure on Member States. Member States shall ensure that asylum seekers are able to exercise in an effective manner the right to make an application for international protection including at their borders, as stated by the CJEU. A systemic avoidance of applications for international protection would deprive the Geneva Convention of its essential effect and impossibility to make an application for international protection at the border would deprive those persons of the effective enjoyment of their right to seek asylum.⁵

The CCBE also insists on the need for EU law to maintain full compliance with the ECHR. So far, the ECtHR considers that the provisions of the EU asylum system clearly embrace the principle of non-refoulement, as guaranteed by the Geneva Convention, and also applies it to persons who are subjected to border checks before being admitted to the territory of one of the Member States. Those provisions (i) are clearly aimed at providing all asylum seekers with effective access to the proper procedure by which their claims for international protection may be reviewed and (ii) oblige the State to ensure that individuals who lodge applications for international protection are allowed to remain in the State in question until their applications are reviewed.⁶ It is crucial for the consistency of the European legal system, and for the effectiveness of the rights of those concerned, that the EU does not stray from the ECtHR's case law.

The CCBE wishes to recall that in the landmark ruling in *M.S.S. v Belgium and Greece*, the ECtHR considered that **the lack of information concerning access to organisations which offer legal advice and guidance combined with the shortage of lawyers on the list drawn up for the legal aid system may also be an obstacle hindering access to a remedy and falls within the scope of Article 13 ECHR, particularly where asylum seekers are concerned.**⁷ Taking note of the above, the CCBE fears that organising closed centres outside the borders of the Member States would, in effect, deprive applicants of access to effective information, advice, and legal representation.

Moreover, in light of recent reports, **the CCBE finds it unacceptable that lawyers assisting migrants and refugees in compliance with the law are under increased pressure and receive threats** mostly from far-right groups.⁸ The CCBE recalls that in a society governed by the rule of law, everyone's rights need to be protected and lawyers must be able to freely and independently protect those rights. According to the UN basic principles on the role of lawyers: "16. Governments shall ensure that lawyers (a) are able to perform all of their professional functions without intimidation, hindrance, harassment or improper interference; (b) are able to travel and to consult with their clients freely both within their own country and abroad; and (c) shall not suffer, or be threatened with, prosecution or administrative, economic or other sanctions for any action taken in accordance with recognized professional duties, standards and ethics."

⁵ CJEU, *Commission v. Hungary*, C-808/18, par. 106, 17.12.2020; CJEU, *Commission v. Hungary*, C-123/22, par. 108, 13.06.2024.

⁶ ECtHR, *Case of M.K. and others v Poland*, 23.07.2020, par. 179 & 181.

⁷ *Case of M.S.S. v. Belgium and Greece*, 21.02.2011, par. 319,

⁸ See for example the statement of Deutscher Anwaltverein (DAV) following threats against a lawyer after the Solingen attack: <https://anwaltverein.de/de/newsroom/pm-39-24-solingen-angriffe-auf-anwaeltin-nicht-hinnehmbar>. See also an article spreading disinformation and targeting the work of the Irish Immigration Lawyers Association (IILA), available here: <https://gript.ie/who-are-the-irish-immigration-lawyers-association/>. See also attempts to attack immigration lawyers in UK in the context of August riots, available here: <https://www.lawgazette.co.uk/news/society-sounds-alarm-as-solicitors-named-as-potential-targets-for-violent-protest/5120563.article>.

Due to these developments and in the light of the upcoming new mandate of the European Commission:

- The CCBE urges the next Commission and Commissioner for Migration and Home Affairs to make sure that Member States **implement the New Pact while putting in place all the safeguards that it contains, including effective access to high-quality legal counselling and legal assistance and representation provided by lawyers**. The European Commission should put pressure on the Member States and use the leverage it has, for example as a guardian of the treaties, to take measures to incentivise the Member States to comply with their obligations in EU and international law. The rule of law in the EU, including at EU borders, must be preserved and respected.
- **The CCBE encourages Member States to consult Bars in the preparation of the implementation plans, notably with regard to legal counselling and legal assistance and representation** and, due to the fact that the concept of legal counselling is new, urges the adoption of a cautious approach and that the approach should be adopted in close coordination and consultation with the legal professions. The term “counselling” must not serve as an excuse for providing asylum seekers with advice of lower quality by persons or bodies who are not independent, not qualified lawyers, and who do not have the experience or qualification necessary for the task.
- The CCBE urges the EU authorities as well as the national authorities of the Member States to **ensure the adequate provision of material and effective human resources** so as to duly guarantee the effective application of procedural safeguards and the effective application in practice of fundamental rights which all persons arriving at the borders are entitled to, **including the right to access a lawyer and legal aid if required**.⁹
- The CCBE calls on the Commission, the European Parliament and the Council, when working on the **proposed Anti-Smuggling Directive, to include a mandatory, explicit, unambiguous and broad-in-scope solidarity clause covering lawyers** to prevent this law being used as an instrument of pressure against them and to avoid legal advice being criminalised and the directive having a chilling effect with regard to access to justice.¹⁰
- The CCBE urges the Commission, if it presents a new proposal for a **Return Directive**¹¹, **to include proper safeguards with regard to effective remedies and access to legal assistance** and avoid lowering the safeguards and standards that this act contains.¹²

⁹ See also CCBE statement on the situation at the EU border with Belarus, 15.12. 2021, available here : https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Statement/EN_MIG_20211215_CCBE-Statement-on-Situation-at-the-EU-border-with-Belarus.pdf

¹⁰ See also the CCBE position paper on the proposal for a Directive laying down minimum rules to prevent and counter the facilitation of unauthorised entry, transit and stay in the Union, 17.05.2024, available here: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Position_papers/EN_MIG_20240517_CCBE-position-paper-on-the-proposal-for-a-directive-laying-down-minimum-rules-to-prevent-and-counter-the-facilitation-of-unauthorised-entry-transit-and-stay-in-the-Union.pdf
https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Position_papers/EN_MIG_20240517_CCBE-position-paper-on-the-proposal-for-a-directive-laying-down-minimum-rules-to-prevent-and-counter-the-facilitation-of-unauthorised-entry-transit-and-stay-in-the-Union.pdf

¹¹ European Council conclusions, 17 October 2024, available here: <https://www.consilium.europa.eu/en/press/press-releases/2024/10/17/european-council-conclusions-17-october-2024/>

¹² See also the CCBE position paper on the proposal of 2018, available here: https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Position_papers/EN_MIG_20190329_CCBE-Comments-on-the-Commission-proposal-for-a-directive-on-common-standards-and-procedures-in-Member-States-for-returning-illegally-staying-third-country-nationals.pdf