

ECRE Proposals for Revisions to the EC Directive on the Reception of Asylum Seekers

1. Introduction

The *Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers*¹ is one of the five pieces of EU asylum legislation flowing from the agenda of the Amsterdam Treaty, the 1999 Tampere Conclusions² and The Hague Programme.³ Its purpose is to establish reception conditions ‘*that will normally suffice to ensure [asylum seekers] a dignified standard of living and comparable living conditions in all Member States*’ (Recital 7). The Directive applies to third country nationals or stateless persons who have made an application for asylum on which a final decision has not yet been taken, as defined in Article 2.c, as well as to their family members, if they are covered by such application for asylum according to the national law. Reception conditions are defined as the full set of measures that Member States grant to asylum seekers in accordance with this legal instrument (Article 2.i), including specific provisions on residence and freedom of movement, family unity, material reception conditions, schooling and the education of minors, employment and access to vocational training. Crucially, Member States may also introduce or retain more favourable conditions as long as they are compatible with the Directive (Article 4).

In 2003, ECRE welcomed the adoption of the Reception Directive as a significant milestone in the building of a Common European Asylum System (CEAS).⁴ However, it also expressed concern that the Directive allowed too much discretion to EU Member States for interpreting some of its key provisions. In June 2007 the European Commission confirmed that, indeed, the wide discretion left to national authorities had resulted ‘*in negating the desired harmonisation effect*’.⁵ A large number of Member States failed to transpose the Directive by the required date, 6 February 2005.⁶ In some cases this incurred in severe delays: Greece, for example, fulfilled this obligation only in November 2007.⁷ Moreover, the overview of the implementation of the Directive elaborated by the Odysseus Network at the European Commission’s request, evidences that significant gaps remain in many countries’

¹ OJ L 31, 6.2.2003, p. 18 (henceforth referred to as ‘the Reception Directive’ or ‘the Directive’).

² Article 63 of the Amsterdam Treaty sets the framework for the adoption of minimum standards on certain asylum issues. In turn, paragraph 14 of the Tampere Conclusions outlines the measures that the EU should adopt in the short term so as to establish a Common European Asylum System.

³ *The Hague Programme: Strengthening freedom, security and justice in the European Union*, November 2004 (2005/C 53/01).

⁴ *ECRE Information Note on the Council Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, June 2003.

⁵ *Green Paper on the Future of the Common European Asylum System*, COM (2007) 301 final, 6.6.2007, p. 5.

⁶ Reception Directive, Article 26. Denmark and Ireland have opted out of the Directive and are thus exempt from this obligation.

⁷ In this regard, the European Commission brought about cases against six Member States before the European Court of Justice, three of which were carried through. As a result, Austria and Greece have been recently found guilty of failing to fulfil their obligations under the Amsterdam Treaty (Cases C-102/06 and C-72/07 respectively), whereas the case against Germany is still pending.

reception systems.⁸ This impression is reinforced by the experiences of our Member Agencies and other relevant studies comparing reception conditions in different EU Member States.⁹ As the European Commission is due to publish revisions to the Directive for the consideration of the Council and European Parliament, ECRE takes this opportunity to make its suggestions for how the Directive could be improved and thus support the development of better and more harmonised reception conditions across the EU.

ECRE does not deny that the application of the Directive may have led to the adoption of more favourable measures in a number of Member States. Nevertheless, ECRE also believes that the provision of dignified and comparable living standards to asylum seekers is still far from being a reality in EU countries bound by the Directive. ECRE has repeatedly stressed that adequate reception standards are necessary to prepare applicants for both possible outcomes of the asylum procedure, namely return or integration, as well as a prerequisite for due process of law and a fair and efficient procedure.¹⁰ The reality is that, without appropriate reception standards, persons with protection needs often confront detention or are forced into destitution. In this regard, common European measures should be instrumental for improving the welcoming of asylum applicants in the Member States, as well as for reinforcing the legal framework of national reception policies. ECRE believes that, in the run-up to the completion of the second phase of the CEAS, the Reception Directive should be amended to address outstanding gaps in the current text and to promote further approximation in national reception conditions on the basis of higher standards. In addition, the European Commission should act promptly in those areas where problems of transposition and implementation have been identified at the national level in order to ensure that Member States fulfil their obligations under Community law.

What follows is an analysis of key provisions of the Reception Directive, grounded on the available comparative evidence of Member States' practices, and accompanied by a number of concrete proposals reflecting ECRE's view on the EU legislative changes needed to improve the standards for reception across the EU.

Recommendations

- 1) The Reception Directive should be amended to pursue further harmonisation of national reception conditions on the basis of higher standards.
- 2) The European Commission should act promptly to ensure that EU Member States implement the Reception Directive appropriately.

⁸ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming.

⁹ See, for example, ECRE, *The EC Directive on the Reception of Asylum Seekers: Are Asylum Seekers in Europe Receiving Material Support and Access to Employment in Accordance with European Legislation?* November 2005; European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *Asylum in European Union Member States: Reception of Asylum Seekers and Examination of Asylum Applications*, PE 365.968, November 2005; European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, PE 293.275, December 2007, p. 254, Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006.

¹⁰ ECRE, *Position on the Reception of Asylum Seekers*, November 2001; *The Way Forward - Europe's Role in the Global Refugee Protection System: Towards the Integration of Refugees in Europe*, July 2005; *ECRE's Views on the Reception Directive: One Year After the Deadline for Transposition*, presented at the European Open Forum on Reception and Health Care of Asylum Seekers, Vienna, 26 January 2006.

2. Scope of application

The Reception Directive applies to individuals who lodge an asylum claim under the 1951 Refugee Convention¹¹ and their family members as long as they are allowed to remain on the territory. Member States may decide to also include persons requesting subsidiary and/or humanitarian status (Article 3). In practice, a majority of the Member States has decided to apply the Directive to those asylum seekers involved in procedures connected with complementary forms of protection. As the concept of subsidiary protection is now ‘*an integral part of the EU legislative framework on asylum*’,¹² this should be duly reflected in all relevant legal instruments.¹³ On the other hand, the ambiguity of the Directive’s text may be used by Member States to derogate from their duties as regards certain categories of asylum applicants.

This is the case for those asylum applicants subject to a procedure for determining which country is responsible for examining their applications under the Dublin II Regulation,¹⁴ e.g. in Austria, France and Spain.¹⁵ This is a cause for concern, since this procedure can be very lengthy and requires the confinement of the individual in the country refusing admission to their national asylum procedure and sometimes also in the Member State ‘taking back’ the asylum seeker, where reinitiating the application procedure can be difficult.¹⁶ ECRE believes that it should be clarified that, having lodged an asylum claim, these persons are to be fully entitled to the reception conditions specified in the Directive, irrespective of whether the receiving country has requested another Member State to take charge of their applications.

In addition, persons who are admitted into an accelerated asylum procedure are not always provided with reception conditions, e.g. in France where such persons are not legally admitted to the territory but simply tolerated and left with no support during the 15 day period foreseen for the completion of the procedure. In the Netherlands, however, asylum seekers in an accelerated procedure do receive material support but this is continued during appeal only if the judge confirms the right to remain on the territory. The scope of the directive should therefore be reviewed and expanded to ensure that all asylum seekers, regardless of the status being applied for and / or type of procedure, can access reception conditions while on the territory of Member States.

Another significant limitation lies in the fact that the Reception Directive only covers ‘applicants’, meaning that those persons who have expressed a wish to request asylum but who as yet have not presented a formal claim are not entitled to reception conditions. However, in Member States with long land borders with third countries or significant sea borders, such as Italy, Malta and Spain, reception facilities may not be close to where arrivals take place. In addition, domestic law sometimes requires asylum applications to be lodged at specific places or filed by personnel working for certain governmental agencies.¹⁷ Lack of minimum reception conditions at this stage or the initial placing of

¹¹ The Convention relating to the Status of Refugees of 28 July 1951.

¹² The concept of subsidiary protection became part of the EU *acquis* on asylum with the adoption of the Qualification Directive (Council Directive 2004/83/EC of 29 April 2004 on minimum standards for the qualification of third country nationals and stateless persons as refugees or as persons who otherwise need international protection and the content of the protection granted).

¹³ European Commission, *Report on the Application of the Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, COM (2007) 745 final, 26.11.2007, p.3.

¹⁴ Council Regulation (EC) No 343/2003 of 18 February 2003 establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national, OJ L 50, 25.02.2003, p. 1.

¹⁵ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 24.

¹⁶ ECRE, *Summary Report on the Application of the Dublin II Regulation in Europe*, March 2006; European Parliament, Policy Department Citizens’ Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, PE 293.275, December 2007, p. 254.

¹⁷ European Parliament, Policy Department Citizens’ Rights and Constitutional Affairs, *Asylum in European Union Member States: Reception of Asylum Seekers and Examination of Asylum Applications*, PE 365.968, November 2005, pp. 8 and 11.

the person in detention may actually compromise their ability to subsequently exercise their right to apply for asylum. The Comisión Española de Ayuda al Refugiado (CEAR), has reported that in Spain protection claims are often ignored or inadequately handled by security personnel lacking any expertise in the asylum field.¹⁸ According to the Greek Council for Refugees, the absence of screening mechanisms for those persons arrested at the borders causes similar problems in Greece.¹⁹

Finally, the European Commission has recognised that significant problems exist concerning the exclusion of certain locations, i.e. detention centres and transit zones, from the application of the Reception Directive.²⁰ A report by the Odysseus network indicates that seven Member States (UK, Belgium, Italy, the Netherlands, Poland, Luxembourg and Cyprus) do not apply the Directive in detention centres, while in three other countries (Spain, Greece and Portugal) the situation is unclear.²¹ Restrictive interpretations have been allowed by the ambiguity of the Directive on this crucial point,²² even though in its recent assessment the European Commission has taken the position that such exceptions are unlawful.²³ In any event, the Reception Directive should be amended to eliminate this 'grey zone' by spelling out that it applies to all asylum claimants regardless of where they are housed or held.

Recommendations

- 3) Any person requesting international protection in the EU should be included in the scope of the Reception Directive.²⁴
- 4) All asylum applicants, including those subject to an accelerated procedure or a procedure for determining which country is responsible for examining their application under the Dublin II Regulation, should have access to the reception conditions provided for in the Directive while they are allowed to remain on a Member State's territory.
- 5) The Reception Directive should apply to all asylum seekers from the moment when they express their wish to request protection in a Member State, irrespective of whether or not an asylum claim has been formally lodged.
- 6) The Reception Directive should be amended to ensure that it applies wherever asylum seekers are housed or held, including transit zones, airport waiting areas and detention centres. Member States' compliance with this obligation should be regularly monitored.

3. Material reception conditions and grounds for withdrawal

The Reception Directive requires Member States to ensure that material reception conditions are available for asylum seekers when they make an application for asylum (Article 13.1). Article 2 (j) defines material reception conditions as '*the reception conditions that include housing, food and clothing*'. Although national authorities may provide these in kind, for instance concerning housing under the modalities defined in Article 14.1, they may also decide to do so through financial

Moreover, the possibility to impose these kinds of requirements is explicitly allowed under EU asylum instruments such as the Dublin II Regulation or the Asylum Procedures Directive.

¹⁸ CEAR, *La Situación de los Refugiados en España*, 2007, p. 68.

¹⁹ Information provided to ECRE by the Greek Council for Refugees in March 2008.

²⁰ European Commission, *Report on the Application of the Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, COM (2007) 745 final, 26.11.2007, p. 3.

²¹ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 94.

²² *Ibid*, p.9.

²³ European Commission, *Report on the Application of the Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, COM (2007) 745 final, 26.11.2007, p. 3.

²⁴ International protection is defined here pursuant to Article 2 of the EU Qualification Directive.

allowances and vouchers (Article 13.1). In any case, material reception arrangements should ‘ensure a standard of living adequate for the health of the applicants and capable of ensuring their subsistence’ (Article 13.2). In addition, whenever housing is provided by national authorities, Member States shall take appropriate measures ‘to maintain as far as possible family unity as present in their territory’ (Article 8).

On the other hand, Article 16 of the Directive specifies that Member States can reduce or withdraw reception conditions in several circumstances, e.g. when an asylum seeker abandons the place of residence assigned to him by the authorities without having informed them or requested permission, or does not comply with reporting duties. National authorities can also refuse to provide reception conditions when the asylum seeker fails to demonstrate that protection was requested as soon as reasonably practicable after arrival (Article 16.2). Sanctions can also be imposed for serious breaching of the rules of accommodation centres or on the ground of violent behaviour (Article 16.3).

Exploratory surveys carried out by ECRE and German NGO Pro Asyl evidence that asylum seekers do not always have access to material reception conditions in EU Member States.²⁵ In 2007 there were only 750 places in reception centres for asylum seekers in Greece, whereas the number of applications reached 25,113.²⁶ In France, while there are now 20,000 places in reception centres compared to 10,000 in 2002, more places are still needed.²⁷ Comparative research has also shown that Member States often fail to grant material benefits to those persons residing outside accommodation centres.²⁸ In Slovakia and Hungary, for example, the state provides asylum seekers hosted in collective reception premises with housing, food and health care. In contrast, those in private accommodation do not receive any form of assistance, thereby being forced to manage completely on their own.²⁹ The same occurs in Ireland and the Netherlands.³⁰ When still provided, the range of assistance is often restricted, such as in the Czech Republic where applicants not in centres will only receive essential support such as medical treatment,³¹ and financial allowances are usually significantly lower than the benefits granted to mainstream welfare recipients, and generally set below the minimum amount necessary for basic subsistence (e.g. in France, the UK, Austria and Germany).³² Considering that asylum seekers are less likely to have family and social support networks in the receiving country, the insufficient provision of material reception conditions leaves them especially vulnerable to destitution. An additional concern is that, even though Member States usually take into account family unity when allocating accommodation (a notable exception is Germany that does not take into account family unity when children are 16 or older), it is unclear to what extent collective housing arrangements provide an adequate environment for the development of family life.³³

ECRE is aware that as a general rule the standards of reception should reflect the context of the host country’s society and economy.³⁴ At the moment, however, even comparatively wealthy Member

²⁵ See ECRE, *The EC Directive on the Reception of Asylum Seekers: Are Asylum Seekers in Europe Receiving Material Support and Access to Employment in Accordance with European Legislation?* November 2005, and Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006.

²⁶ Information provided to ECRE by the Greek Council for Refugees in March 2008.

²⁷ Information provided to ECRE by France Terre d’Asile in May 2008.

²⁸ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, pp. 28-32.

²⁹ Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006, p. 15.

³⁰ European Migration Network, *Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the reception System in the EU Member States*, May 2006, p.17. As this policy was implemented in 2006 in The Netherlands, asylum seekers who were already living in private accommodation before 2006 can still receive an allowance.

³¹ *Ibid.*

³² See ECRE, *The EC Directive on the Reception of Asylum Seekers: Are Asylum Seekers in Europe Receiving Material Support and Access to Employment in Accordance with European Legislation?*, November 2005, p. 15; and European Parliament, Policy Department Citizens’ Rights and Constitutional Affairs, *Asylum in European Union Member States: Reception of Asylum Seekers and Examination of Asylum Applications*, PE 365.968, November 2005, Netherlands Country Report, p. 273; Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p.

³³ *Ibid.*

³⁴ ECRE, *Position on the Reception of Asylum Seekers*, November 2001, paragraph 16.

States offer rather limited levels of support to asylum seekers. As a necessary starting point, the notion of ‘adequate standard of living’ should be precisely defined with reference to poverty indicators or in parity with mainstream welfare provisions granted to nationals, as it has been proven that, without the specification of concrete obligations, national reception arrangements may risk compromising asylum seekers’ fundamental rights. In the case of countries with underdeveloped reception systems, the EU should promote the reinforcement of material assistance to asylum seekers through priority allocations from the European Refugee Fund.³⁵ In any case, Member States should abide by their obligation to ensuring that asylum seekers enjoy an adequate standard of living regardless of the form in which reception conditions are provided.

ECRE would like to reaffirm that Member States should support asylum applicants, families in particular, in finding alternative forms of accommodation to reception centres if they wish to do so. Following the Belgian example (where asylum seekers are moved out of collective reception centres into independent housing after four months), the EU should encourage the establishment of transitional arrangements that result in a shift from reception conditions in kind to financial allowances after a certain period of time³⁶ to help find independent housing and / or support persons wishing to live with family or friends. NGOs can play a role in supporting asylum seekers to find independent housing.³⁷

As regards the withdrawal of material reception conditions, national legislation in Greece, Malta, Cyprus and the UK allows authorities to refuse reception conditions if the asylum claim has not been lodged promptly.³⁸ In addition, Finland, Germany, the Netherlands and some Austrian ‘Länder’³⁹ provide for sanctions on grounds not included in the Reception Directive, i.e. when an asylum applicant does not attend a language course or does not help in the maintenance of the centre (Finland), refuses to attend programmes with information on mandatory return (the Netherlands) or to take charitable jobs at € 1,05 per hour (Germany).⁴⁰ In France, since 2007, asylum seekers have their material assistance withdrawn if they refuse a place offered in a reception centre.⁴¹

ECRE believes that Article 16.2 should be deleted from the text of the Reception Directive. In the UK, the policy of withholding reception conditions to asylum seekers failing to demonstrate that they had applied within three days of arrival was stopped due to a House of Lords ruling which held that it was incompatible with Article 3 of the European Convention of Human Rights.⁴² The reduction or withdrawal of basic reception conditions, such as food, housing and emergency health care, is similarly inconsistent with human rights and fundamental rights under international and European legal instruments. Member States that withdraw reception conditions on grounds not included in the Reception Directive should be made aware that they are breaching their obligations under EC law and required to reform their national legislation.

³⁵ For the period 2008-2013, the European Refugee Fund was established by the Decision 573/2007/EC of the European Parliament and of the Council, of 23 May 2007 (OJ L 144, 6.6.2007, p.1).

³⁶ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 12.

³⁷ See the example of support provided by the Dutch Council for Refugees in the Netherlands in ECRE, *Policy briefing on housing for refugees and migrants in Europe*, March 2007.

³⁸ European Commission, *Report on the Application of the Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, COM (2007) 745 final, 26.11.2007, p.6.

³⁹ These are administrative regions.

⁴⁰ European Commission, *Report on the Application of the Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, COM (2007) 745 final, 26.11.2007. See also ECRE, *The EC Directive on the Reception of Asylum Seekers: Are Asylum Seekers in Europe Receiving Material Support and Access to Employment in Accordance with European Legislation?*, November 2005, p. 12.

⁴¹ Décret n°2006-1380 du 13 novembre 2006 relatif à l’allocation temporaire d’attente.

⁴² See *R (Q) v Secretary of State for the Home Department* [2004] QB 36, confirmed by the Opinion of the Lords of Appeal for Judgment in the case *Regina v Secretary of State for the Home Department* [2005] UKHL 66.

Recommendations

- 7) The notion of ‘adequate standard of living’ should be properly defined in the Reception Directive, e.g. with reference to poverty indicators or to domestic parity benchmarks.
- 8) Member States should be required to ensure appropriate standard of living for asylum seekers whether they are accommodated in collective reception centres or not. As a starting point, the financial assistance provided to asylum seekers should be in line with the benefits granted under mainstream welfare systems.
- 9) The reinforcement of reception capacities in Member States with underdeveloped reception systems should be a priority for the allocation of the European Refugee Fund.
- 10) National authorities should support asylum seekers, families in particular, in finding alternative forms of accommodation to reception centres if they wish to do so.
- 11) Article 16.2 providing for the possibility of refusing reception conditions when an application is not lodged as soon as possible should be deleted from the text of the Reception Directive.
- 12) Basic reception conditions, such as food, housing and emergency health care should never be withheld, since their withdrawal may violate asylum seekers’ fundamental rights.
- 13) Member States providing for the withdrawal of reception conditions on grounds not included in the Reception Directive are breaching their obligations under EC law and should be required to correct this through reform of their legislation.

4. Freedom of movement and detention

At the moment, the Reception Directive establishes a strongly qualified right to freedom of movement for asylum seekers. Article 7 provides that applicants ‘*may move freely within the territory of the Member State or within an area assigned to them by that Member State*’. The provision of material reception conditions may also be subject to actual residence by the applicant in a specific place (Article 7.4), e.g. in a particular reception centre. In any case, when restricting asylum seekers’ freedom of movement Member States should ensure that they allow ‘*sufficient scope for guaranteeing access to all benefits*’ specified in the Directive (Article 7.1).

The European Commission’s assessment reports that the German practice of imposing territorial residence obligations has so far not been imported by other Member States.⁴³ It also claims that no significant problems have arisen in the application of these provisions, if only because of ‘*the broad discretion of Member States in limiting the right to free movement and residence*’.⁴⁴ Nevertheless, in a number of countries these rights are in fact restricted through the imposition of stringent reporting obligations or curfews (e.g. the Netherlands, Slovakia, Slovenia, Hungary, the Czech Republic, Lithuania and Estonia).⁴⁵ Some Member States also make access to reception benefits dependent on the place of residence (e.g. Portugal, Finland, Estonia and Lithuania).⁴⁶ Considering that many reception centres are located in remote areas, in practice this can make it difficult for asylum seekers to access other entitlements specified in the Reception Directive, such as the right to employment or education.⁴⁷

⁴³ European Commission, *Report on the Application of the Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, COM (2007) 745 final, 26.11.2007, p.7.

⁴⁴ Ibid.

⁴⁵ Ibid.

⁴⁶ Ibid.

⁴⁷ See e.g. Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006, p. 13.

ECRE emphasises that Member States should be required to guarantee the right of free movement to asylum seekers within the whole of the host country in accordance with the 1951 Refugee Convention.⁴⁸ Restrictions to this right should never be used as a deterrence measure or as a means of increasing national authorities' control and surveillance powers.⁴⁹ Therefore, ECRE strongly recommends eliminating the possibility of imposing territorial limitations to settlement from the text of the Directive. In addition, conditions linking the provision of reception benefits to a particular place of residence should be made flexible, so as to allow asylum seekers to find employment and access public services more easily. In particular, applicants should have the possibility of refusing housing in collective accommodation centres without having to renounce other material reception conditions included in the Directive.

However, the absence of formal restrictions to move freely within the territory of the receiving country has a rather limited significance for the many asylum seekers who are held in detention. Several provisions of the Reception Directive touch on this issue. Article 7.3 establishes that '*Member States may decide to confine an applicant to a particular place in accordance with their national law*' when it proves necessary, e.g. for legal reasons or reasons of public order. Article 14.8 provides that Member States may '*exceptionally*' and '*for a reasonable period which shall be as short as possible*' set modalities of reception conditions which differ from ordinary ways of housing, for instance when reception conditions are not available in a particular area or when the asylum seeker is held in detention or at a border post. In any case, these conditions must cover asylum applicants' basic needs (Article 14.8). The Reception Directive also states explicitly that the required standards of living should be met in relation to persons who are in detention (Article 13.2).

In practice, Member States often enforce restrictions on applicants' freedom of movements that approximate or amount to detention.⁵⁰ Deprivation of liberty is common during the first stages of the asylum procedure, when asylum seekers are held at special border facilities pending a decision on their admission to the territory or to the procedure for determining their status, for example in Austria, Belgium, France, Germany, Luxembourg and Sweden.⁵¹ This is a cause for concern, since centres at the borders have been reported as being insufficiently equipped, lacking material comfort and even hygienic sanitation.⁵²

Nevertheless, the widespread use of detention is not limited to the early stages of the asylum procedure. *De facto* detention is particularly common in countries with insufficient reception facilities, such as Malta, Italy and Greece, and many Member States detain asylum seekers on the grounds of irregular entry and keep them in confinement even after an asylum claim has been lodged.⁵³ In some countries (e.g. Czech Republic, Hungary), it is up to police authorities to decide whether or not an asylum seeker should be placed in detention.⁵⁴ The length of detention also varies widely, ranging from 7 days (in Portugal) to indefinite periods (e.g. in the UK).⁵⁵

⁴⁸ Article 26 establishes that '[e]ach Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence and to move freely within its territory subject to any regulations applicable to aliens generally in the same circumstances'.

⁴⁹ ECRE, *Position on the Reception of Asylum Seekers*, November 2001, paragraph 28.

⁵⁰ European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *Asylum in European Union Member States: Reception of Asylum Seekers and Examination of Asylum Applications*, PE 365.968, November 2005, pp. 9 and 26.

⁵¹ *Ibid.*, pp. 26-7.

⁵² European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, PE 293.275, December 2007, p. 215.

⁵³ European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *Asylum in European Union Member States: Reception of Asylum Seekers and Examination of Asylum Applications*, PE 365.968, November 2005, pp. 27-8 and Country Reports on Greece, Italy and Malta.

⁵⁴ Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006, p. 17.

⁵⁵ European Commission, *Report on the Application of the Directive 2003/9/EC of 27 January 2003 Laying down Minimum Standards for the Reception of Asylum Seekers*, COM (2007) 745 final, 26.11.2007, p.7.

In summary, the decision to detain is all too often not decided on an individual basis following a thorough examination of the facts on a case by case basis as the use of detention is not confined to exceptional circumstances or for short, ‘reasonable’ periods of time. As the European Commission has rightly observed, this contravenes Member States’ obligations under the Reception Directive.⁵⁶ Moreover, it significantly impairs asylum applicants’ ability to access all their rights and risks causing serious physical and psychological harm to persons who are very often already quite vulnerable.⁵⁷ It is also clear that the terrible reception conditions that have been reported in a number of Member States⁵⁸ do not meet even basic needs.

ECRE reiterates its position that, as a general rule, asylum seekers should not be detained.⁵⁹ It is surely debatable whether the Reception Directive is the right instrument to address an issue which involves aspects, e.g. of procedural nature, which would be better dealt with in other instruments of Community law, such as the Asylum Procedures Directive. Nevertheless, it is apparent that systematic detention goes against the spirit of this Directive and undermines its aim of providing asylum seekers with a dignified standard of living. Accordingly, ECRE strongly recommends that the Directive be amended so as to explicitly rule out this practice. Concerning the holding of asylum seekers in closed facilities at the borders and in transit zones, ECRE’s view is that such deprivation of liberty amounts to detention.⁶⁰ When resorted to by Member States such practices should always be on an exceptional basis and asylum applicants should be moved within a short period of time to a facility where fully-fledged reception conditions are available.⁶¹

Recommendations

14) The Reception Directive should ensure that asylum seekers enjoy the right to move freely within the whole territory of the Member State, which is processing their claims by removing the possibility of imposing territorial residence obligations.

15) Conditions linking the provision of reception benefits to a particular place of residence should be flexible, so as to allow asylum seekers to access employment and public services or to get private accommodation without losing other entitlements.

16) Confinement at border posts should be maintained only for the shortest possible period. If unduly prolonged, applicants should be transferred to adequate reception facilities.

17) The Reception Directive should be amended so as to rule out the practice of detaining asylum seekers.

18) Considering that generalised detention is often linked to the lack of sufficient facilities, the development of adequate national reception systems should again be a priority for the European Refugee Fund, particularly in countries with extensive external borders.

⁵⁶ Ibid.

⁵⁷ European Parliament, Policy Department Citizens’ Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, PE 293.275, December 2007, p. 253.

⁵⁸ The reports of the LIBE Committee Delegations on their visits to holding centres in Greece, Lampedusa and Malta illustrate this problem thoroughly. They can be accessed at: <http://www.no-fortress-europe.eu/showPage.jsp?ID=2506> [10 March 2008].

⁵⁹ ECRE, *Position on the Detention of Asylum Seekers*, April 1996, paragraph 1.

⁶⁰ ECRE, *Position on the Reception of Asylum Seekers*, November 2001, paragraph 26.

⁶¹ Ibid., paragraph 25.

5. Families

In Article 8 of the Reception Directive the requirement to maintain family unity is qualified by ‘*as far as possible*’ and ‘*if applicants are provided with housing by that Member State*’. The Directive does not commit Member States to assist the upholding of family unity for applicants who are not provided with housing by the Member State. Furthermore, the definition of family members in the Directive is limited to spouse (or partner) and children who are minor, dependent and unmarried (Article 2.d). The restrictive definition of family unit leaves Member States a wide margin of discretion. Some Member States have included a broader definition in their national legislation.⁶² However, Italy and Germany, for example, have a reduced notion of family of an asylum seeker, in a way that is contrary to the Directive, by requiring respectively that the family members are all present at the moment of the introduction of the asylum application and even that the asylum applications are introduced simultaneously for the entire family.⁶³

Recommendation

19) The definition of a family unit should be flexible and not limited to the nuclear family: it should include those who normally reside together and those who are dependent upon other family members.

6. Schooling and education of minors

Article 10.1 of the Reception Directive establishes that minors should have access to education in similar conditions to nationals. The provision of schooling can be organised in accommodation centres. Access to education should be granted within three months after the application has been lodged or within one year where specific education is provided in order to facilitate access to the regular schooling system (Article 10.1). When such access is not possible due to the specific situation of the minor, Member States have the possibility to offer alternative educational arrangements (Article 10.3). The Directive also specifies that the right to attend secondary education shall not be withdrawn automatically when the beneficiary reaches the age of majority (Article 10.1).

ECRE welcomes the fact that many Member States allow access of asylum seekers to education in conditions that are equivalent to those of nationals.⁶⁴ The right to attend primary and secondary schools is generally recognised, although in some countries (Germany and Poland) this right ceases to exist when minors turn 18, irrespective of whether secondary education has been completed.⁶⁵ Schooling takes place either in state schools or in the accommodation centres themselves.

In practice, however, young asylum seekers face significant problems to access full-time education in some Member States: non-enforceability when attendance is not obligatory (e.g. Germany and Slovakia); negative approach of the local schools or local admission authorities (e.g. Hungary and the UK); inability of the parents to meet the costs of travel, meals and school books without public support (e.g. Hungary and Slovenia); restrictions to late incorporation in the curriculum (e.g. France and Poland); remoteness of the accommodation centres (e.g. Poland) etc.⁶⁶ The provision of language classes and specific educational arrangements for the beginning of the minors’ schooling, although in place in some countries,⁶⁷ is not systematically organised, despite being necessary to enable children

⁶² Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 57.

⁶³ *Ibid*, p.7.

⁶⁴ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 79.

⁶⁵ Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006, pp. 12-3.

⁶⁶ See, for example, Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006, pp. 12-3.

⁶⁷ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 81.

to adapt to their new educational context.⁶⁸ Lack of linguistic competence might also hinder parental involvement in school life, which is crucial for educational achievement.⁶⁹ Furthermore, in many Member States minors lack access to education when they are held in detention.⁷⁰ For example, it has recently been estimated that around 1,600 asylum-seeking and refugee children lack any access whatsoever to schooling in the UK alone.⁷¹

Recommendations

20) Member States should take the appropriate measures to guarantee that *all* asylum-seeking children have access to education in practice. Compliance with the Reception Directive specifications on this issue should be subject to regular monitoring by the European Commission.

21) The Reception Directive should state that as a rule education should be provided in local schools and only exceptionally at the reception centres themselves, so as not to hinder the integration prospects of refugee children.

22) Language training should be provided on a general basis and be accessible also to adults.

23) The Reception Directive should include support for transport costs, meals and schoolbooks among the material reception conditions provided to asylum seekers.

24) Member states should respect Article 10 (1) of the Directive and not withdraw asylum-seeking children from secondary education just because they have turned 18, thus preventing them from completing secondary education.

7. Employment

Differing practices by Member States have meant that in some countries asylum seekers have the right to work within months while in others this is only after one year and sometimes even then bureaucratic procedures prevent this from happening. In addition in some Member States asylum seekers can only do certain types of work for limited periods, e.g. in the Netherlands only 24 weeks of work per year is allowed.⁷² The Reception Directive implicitly recognises asylum seekers' right to employment by providing that Member States shall determine a period of time during which they will not have access to the labour market, which in any case should not exceed one year (Article 11.1 and 11.2). The enjoyment of this right is subject, however, to the conditions laid down in national legislation (Article 11.2). In addition, Member States may give priority to other categories of non-nationals, such as EU citizens, nationals of the states participating in the European Economic Area, as well as legally resident third country nationals (Article 11.4). Article 12 provides that Member States may allow asylum seekers access to vocational training independently of whether they have access to employment or not.

In 2003 ECRE argued that the discretion provided by the Directive to individual Member States to impose additional conditions on access to the labour market would substantially undermine efforts to harmonise standards in this area and, ultimately, the capacity of refugees to integrate into the host

⁶⁸ European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, PE 293.275, December 2007, p. 259.

⁶⁹ Information provided by the Irish Refugee Council.

⁷⁰ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 97.

⁷¹ 'Refugees Need Lessons for Life', *Financial Times*, 24 January 2008.

⁷² Information provided by the Dutch Council for Refugees.

society.⁷³ A 2005 ECRE study reported significant obstacles that asylum seekers faced in trying to exert their right to work in several member states, which in many cases were linked to ‘conditions’ set down in national legislation.⁷⁴ Severe restrictions to the economic sectors (e.g. in Austria and Cyprus) and to the amount of time that asylum seekers can work (e.g. in the Netherlands and Slovenia), administrative obstacles (e.g. in Austria, the Czech Republic, France, Hungary and the UK), and the remoteness of accommodation centres make participating in the labour market almost impossible for asylum seekers.⁷⁵ According to the Odysseus Network, it is evident that some of the restrictions imposed by Member States foster underground employment.⁷⁶ In turn, this makes asylum seekers vulnerable to ‘exploitation as cheap labour force’, as the Cyprus’ Ombudswoman has recently denounced.⁷⁷

ECRE strongly recommends the reduction of the waiting periods for access to employment up to a maximum of six months. Some Member States, e.g. Austria, Finland, the Netherlands, Poland,⁷⁸ Sweden and Spain already allow asylum seekers to work before the deadline of one year established in the Directive.⁷⁹ Moreover, in Finland, Poland and Spain this right is recognised automatically and without the imposition of further conditions, such as the need to apply for a work permit.⁸⁰ ECRE supports the generalisation of this practice through an amendment to the Reception Directive removing the discretion that Member States currently possess to impose additional requirements.

Concerning professional training, almost half of the Member States have opened this out to the participation of asylum seekers irrespective of their status as regards employment.⁸¹ Nevertheless, those who cannot benefit from education and training are still many in the EU.⁸² Combined with restrictions to employment, lack of access to vocational training may prevent asylum seekers from maintaining and developing their skills,⁸³ thus harming their integration prospects and even their health and well-being.⁸⁴

The results achieved through the projects financed by the EQUAL Initiative evidence the high motivation of asylum seekers to participate in education and training, particularly in language courses.⁸⁵ They also show significant increases not only in their skills but also in their self-esteem and knowledge of the receiving country.⁸⁶ ECRE thus urges Member States to open up new education opportunities during the reception phase, as an essential means to enhance the quality of life of asylum

⁷³ ECRE, *Information Note on the Council Directive 2003/9/EC of 27 January Laying down Minimum Standards for the Reception of Asylum Seekers*, June 2003, p. 5.

⁷⁴ ECRE, *The EC Directive on the Reception of Asylum Seekers: Are Asylum Seekers in Europe Receiving Material Support and Access to Employment in Accordance with European Legislation?*, November 2005.

⁷⁵ *Ibid.*, p. 15; see also Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006, p. 13; and European Parliament, Policy Department Citizens’ Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, PE 293.275, December 2007, p. 258.

⁷⁶ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 71.

⁷⁷ ‘Ombudswoman blasts cheap labour ‘exploitation’ of asylum seekers’, *Cyprus Mail*, 23 January 2008. Available at: http://www.cyprus-mail.com/news/main.php?id=37158&cat_id=1 [accessed on 27 February 2008].

⁷⁸ This is provided no decision on the application has been issued at first instance.

⁷⁹ ECRE, *The EC Directive on the Reception of Asylum Seekers: Are Asylum Seekers in Europe Receiving Material Support and Access to Employment in Accordance with European Legislation?*, November 2005, p. 16. Information on this issue has also been provided by member agencies in response to a written questionnaire. See also European Migration Network, *Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the reception System in the EU Member States*, May 2006, p.18.

⁸⁰ ECRE, *The EC Directive on the Reception of Asylum Seekers: Are Asylum Seekers in Europe Receiving Material Support and Access to Employment in Accordance with European Legislation?*, November 2005,

⁸¹ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 72.

⁸² European Commission, *Advice, Education and Training for Asylum Seekers*, 2007, p. 1. Available at: http://ec.europa.eu/employment_social/equal/data/document/etg5-policybrief-aet07_en.pdf [13 March 2008].

⁸³ Information provided by the Irish Refugee Council

⁸⁴ European Commission, *Advice, Education and Training for Asylum Seekers*, 2007, p. 1.

⁸⁵ *Ibid.*, p. 3.

⁸⁶ *Ibid.*

seekers, promote self-sufficiency and their long-term integration into the host society or re-integration upon return.

Recommendations

25) The Reception Directive should not allow Member States to establish delay periods of more than six months for asylum seekers to be able to access the labour market of their host Member State.

26) Member States should not be allowed to introduce supplementary requirements for the participation of asylum seekers in the labour market. Article 11.2 should be amended so as to ensure the granting of the right to work automatically and unconditionally after the maximum delay period. To this end Article 11.4 should be deleted.

27) Member States should recognise the right of asylum seekers to take part in vocational training, irrespective of whether they have access to employment. This participation could be based on the establishment of systems of portfolio building to assess asylum seekers' skills and competences.

28) Member States should be required to grant asylum seekers access to language training.

8. Health care

Under the Reception Directive, asylum applicants are entitled to receive the necessary health care, including at least emergency care and essential treatment of illness (Article 15.1). As the Odysseus network notes, '*the exact meaning of the second notion [essential treatment of illness] is difficult to determine*'.⁸⁷ Nevertheless, most Member States recognise asylum seekers the right to health care in similar conditions to nationals (an exception is Germany, where only cases of acute illness and pain are covered),⁸⁸ notwithstanding obstacles for the exercise of this right in practice.⁸⁹

On the other hand, lack of access to psychological care is particularly disturbing considering the extent to which mental disorders, such as depression are common among asylum seekers residing both in open and closed centres.⁹⁰ In this regard, it should be noted that the Reception Directive only provides for mental treatment and counselling for certain categories of individuals with special needs. Some Member States have set up counselling services, some of those focusing on specific vulnerable groups. These include Germany, Greece, the UK, and the Netherlands where there are specialised centres for traumatised asylum seekers.⁹¹ There are specific centres for asylum seekers suffering from psychological disorders e.g. in Austria and in Belgium, where there is a pilot programme but demand still far outstrips the support available. Some countries have added psychologists and/or psychiatrists to the medical teams working in some reception centres or make such services available externally (e.g. Finland and Poland).⁹² But unfortunately the provision of such services is still inadequate and not

⁸⁷ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 68.

⁸⁸ Pro Asyl, *Information and Cooperation Forum: Final Report*, 28 February 2006, p. 16.

⁸⁹ Ibid. See also Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, pp. 68-9.

⁹⁰ European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, PE 293.275, December 2007, pp. 243 and 262.

⁹¹ European Migration Network, *Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the reception System in the EU Member States*, May 2006, p.17.

⁹² European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus*

available to all asylum seekers within those countries: access can be limited for example to only certain centres or regions and only during specific short time slots. The provision of such services is also not general practice in other Member States.

ECRE recommends that the Reception Directive be amended so as to grant asylum seekers access to health care in conditions comparable to those of nationals. In any case, this right should include the provision of psychological treatment and counselling to all applicants who need it, irrespective of their categorisation as vulnerable persons. Active monitoring would be necessary to ensure that these rights are guaranteed in practice.

Recommendations

29) The Reception Directive should grant asylum seekers access to health care on equal terms to nationals.

30) The right to health care should include access to psychological treatment and counselling for all asylum seekers who need it.

9. Persons with special needs

Chapter IV of the Reception Directive lays down Member States' obligations as regards persons with special needs. It establishes that national authorities should take into consideration '*the specific situation of vulnerable persons*' as regards the provision of material reception conditions and health care (Article 17.1). This should apply to those persons found to have special needs after an individual examination (Article 17.2). In addition, victims of torture, rape or other forms of violence should have access to the '*necessary treatment*' (Article 20).

Significant problems have emerged with regard to the reception of vulnerable groups in the Member States. One issue that deserves attention concerns the definition of vulnerability, which has been described as 'overly limited' by some observers.⁹³ The Reception Directive sets down six pre-defined categories of vulnerable persons, identified mainly on the basis of their personal specifications – i.e. gender, age, and special needs.⁹⁴ Other factors, such as the physical and psychological impact of the journeys undertaken prior to arrival, or the negative effect that life in the reception phase or in detention might have in itself, are systematically ignored despite the fact that they often lead to situations of vulnerability.

Another major difficulty is linked to the identification of vulnerable asylum seekers. Article 17.2 of the Directive constitutes a key provision, as individual assessment would determine access to the rights recognised.⁹⁵ But this clause has been described as 'questionable', in that it does not explicitly require national authorities to put in place a specific procedure to identify persons with special needs.⁹⁶ As a result, ten Member States have not established any formal assessment system, and identification mechanisms differ widely in those countries, which have them in place.⁹⁷ Concerning minors, for example, some countries regularly resort to bone scans to undertake age assessments whereas others consider that this method constitutes 'improper application of medical means or even bodily injury'

on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States, PE 293.275, December 2007 pp. 262-3.

⁹³ Ibid, p. 252.

⁹⁴ Ibid, p. 29-30.

⁹⁵ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 76.

⁹⁶ Ibid.

⁹⁷ Ibid.

(e.g. Germany and Ireland).⁹⁸ In any case, examinations should always be culturally and gender appropriate.⁹⁹ In general, the relevant authorities seem to enjoy a high degree of discretion in determining the age of the asylum seekers concerned, without always granting them the benefit of the doubt (e.g. Greece, Spain and the UK). This results in minors being excluded from reception facilities and services which have been set up for them and placing them in facilities with adults. This indicates that the best interest of the child is not necessarily being upheld as a primary consideration in the implementation of the Directive, as Article 18.1 requires. Similar problems exist for the identification of asylum seekers whose vulnerability is less 'visible', such as persons with psychological disorders or victims of trafficking.¹⁰⁰ There is also a need for greater attention to be paid to persons at greater risk of becoming vulnerable, such as single women at risk of sexual violence or accompanied women at risk of domestic violence.

Apart from establishing that the reception of vulnerable asylum seekers should be especially designed to meet their needs, the Directive does not include specific provisions on this matter.¹⁰¹ As a result, even when persons are identified as vulnerable, appropriate measures are not systematically implemented.¹⁰² For example, older persons and disabled persons often do not have access to measures or facilities to provide for their specific needs. The insufficient mental health care provisions also represent a major concern. There is a need for support to deal with pre-existing conditions but also to address the worsening mental state of many asylum seekers while their asylum claim is being assessed.¹⁰³

In Belgium prolonged stays in centres and lack of autonomy have led to an increase in mental health problems.¹⁰⁴ Studies have highlighted the negative impact that residing in accommodation centres has on children's development due to the lack of appropriate activities, erosion of parental authority and a generally negative environment, as well as the fact that unaccompanied children do not always benefit from the reception facilities put in place for them.¹⁰⁵ All the same, a large majority of Member States allow the detention of minors, even those who are alone.¹⁰⁶ Alternatives to the confinement of other vulnerable persons are also lacking in many countries.¹⁰⁷ ECRE wishes to emphasise that the needs of vulnerable groups can never be met in detention and that their confinement should be thus avoided at all costs. Unaccompanied children should never be detained.¹⁰⁸

Recommendations

31) The definition of vulnerable groups should be broadened in order to include not only persons with special needs but also those suffering from other forms of vulnerability, including those derived from the asylum experience in the host country itself.

⁹⁸ European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *Asylum in European Union Member States: Reception of Asylum Seekers and Examination of Asylum Applications*, PE 365.968, November 2005, pp. 32.

⁹⁹ Separated Children in Europe Programme, *Statement of Good Practice*, Third Edition, 2004, p.18.

¹⁰⁰ European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *Asylum in European Union Member States: Reception of Asylum Seekers and Examination of Asylum Applications*, PE 365.968, November 2005, p. 268.

¹⁰¹ European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, PE 293.275, December 2007, p. 271.

¹⁰² *Ibid.*

¹⁰³ *Ibid.*, p. 272.

¹⁰⁴ European Migration Network, *Reception Systems, their Capacities and the Social Situation of Asylum Applicants within the reception System in the EU Member States*, May 2006, p.15.

¹⁰⁵ European Parliament, Policy Department Citizens' Rights and Constitutional Affairs, *The Conditions in Centres for Third Country Nationals (Detention Camps, Open Centres as well as Transit Centres and Transit Zones) with a Particular Focus on Provisions and Facilities for Persons with Special Needs in the 25 EU Member States*, PE 293.275, December 2007, p. 264.

¹⁰⁶ Odysseus Academic Network, *Comparative Overview of the Implementation of the Directive 2003/9 of 27 January 2003 laying down minimum standards for the reception of asylum seekers in the EU Member States*, forthcoming, p. 96.

¹⁰⁷ *Ibid.*, p. 95.

¹⁰⁸ Children with families should also not be detained unless it is the only way to maintain family unity and in the best interests of the child which will be extremely rare. See ECRE *Position on Refugee Children*, 1996, para. 21.

32) The Reception Directive should require Member States to put in place specific procedures for the identification of people with special needs and people who are vulnerable or at greater risk of becoming vulnerable.

33) With regard to the identification of minors, the Directive should establish that in case of doubt during age assessments the lower age should apply.

34) The detention of vulnerable persons should not be allowed in the Directive. In particular unaccompanied children should never be detained.

35) A system of regular monitoring which allows for the exchange of Member States' best practices concerning vulnerable groups should be established.

10. Ensuring the appropriate operation of national reception systems

Chapter VI lists a series of actions whose purpose is '*to improve the efficiency of the reception system in the Member States*'. It specifies that national authorities should ensure the establishment of mechanisms for the appropriate guidance, monitoring and control of reception conditions (Article 23). Member States shall also guarantee that staff in charge of reception matters have received basic training on the needs of asylum applicants, and that sufficient resources are allocated to the implementation of the Directive.

The Odysseus Network report casts a doubt on the satisfactory application of these provisions.¹⁰⁹ Most Member States have relied on their general administrative inspection systems instead of creating specific control mechanisms, and only a few have developed clear quality standards to be applied to the reception system in its entirety. In addition, only in a minority of countries is there a central body representing the different stakeholders involved in reception conditions, such as NGOs and municipalities. Concerning resources, a majority of NGOs has reported that the amount allocated by Member States to the reception of asylum seekers is not sufficient. Finally, the training of the relevant personnel varies widely across countries, with the lack of qualified staff being highlighted as a key concern.

ECRE believes that more specific monitoring and control mechanisms should be created in order to ensure the proper application and implementation of the Reception Directive. Such a system could include the development of guidelines and benchmarks at the EU level, as well as the establishment of regular reporting obligations for national authorities. In any case, Member States should be required to establish coordination bodies in which NGOs with relevant expertise are represented, due to the key role they play in the reception process. Finally, a common curriculum could be developed for the training of staff working in reception facilities, with a focus on addressing the situation of vulnerable groups.

¹⁰⁹Ibid, pp. 101-110.

Recommendations

36) An amended Reception Directive should provide for more specific control mechanisms, possibly including benchmarking at the EU level and regular reporting obligations for Member States.

37) Member States should be required to create coordinating bodies in the area of reception that are open to the participation of relevant NGOs.

38) A common curriculum for the training of the staff working on reception should be developed.

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