

Migrants' access to information on their rights

Recommendations to bridge theory and practice



Abstract

More than one million people applied for international protection in the Member States of the European Union (EU) in 2016, for the second year in a row. The number of arrivals, but also the management of migration flows both at the European Union's borders and across the wider European territory, brought new challenges – and exacerbated the existing ones – for protecting, respecting and fulfilling the fundamental rights of migrants¹ both at European and national level.

In 2017, National Human Rights Institutions (NHRIs) from 12 European countries (including countries of arrival, transit and destination² for migrants) have joined forces to monitor and improve the access to information on their rights, for migrants hosted in detention and reception centres in Europe.

NHRIs are trusted, expert and independent human rights state bodies, recognized internationally on their unique understanding of the implementation of human rights standards at national level. NHRIs also report on their findings, bridging national with regional and international human rights frameworks.

The importance of NHRI monitoring of Migrant detention has been confirmed by the Belgrade Declaration on the Protection and Promotion of the Rights of Refugees and Migrants (2015) and in the GANHRI Statement on the occasion of the United Nations Summit for Refugees and Migrants (2016). Indeed, many European NHRIs have access to places of detention without prior authorisation, including through the National Preventative Mechanism (NPM) mandate under the Optional Protocol of the Convention against Torture³, a mandate that 24 of the 41 ENNHRI members are holding.

Effective and efficient provision of information to migrants is decisive for migrants' access to procedures, international protection and remedies, but also for their future integration. The right to information is protected by international and regional human rights instruments⁴. It is, essentially, a gateway right, intrinsic to the fulfilment of many other rights, including the right to an effective remedy and a fair trial, as enshrined in Article 47 of the Charter of Fundamental Rights.

Without adequate information, a migrant will face difficulties in seeking, for example, medical and humanitarian services, or in filing asylum claims. Informing migrants on their rights also impacts on their empowerment and autonomy.

Data on how the migrant's right to information is applied in practice has been mostly collected over a 3 month period (February - July 2017⁵), during a number of 19 monitoring visits carried out in Belgium, Bulgaria, Croatia, Greece, Latvia, Lithuania, Netherlands, Slovenia and Armenia, Bosnia and Herzegovina, Kosovo and Ukraine.

The collection and analysis of this data enables ENNHRI, the European Network of National Human Rights Institutions, to provide national and European policy makers with an indicative, evidence-based overview of key human rights concerns in the region.

The results show that there is still some way to go before the reality of migrants' access to information on their rights matches the theory under the European legal framework. Lack of effective understanding of the information provided, poor quality of interpretation/translation, lack of identification of (and information on) the special needs of vulnerable individuals, as well as the lack of training and qualification of the staff in reception centres are the main obstacles found.

ENNHRI recommends the relevant authorities to secure professional interpretation; to diversify the communication channels with migrants and the supporting tools; and to invest in staff training. These recommendations should lead to further action and impact on the enjoyment of human rights across Europe, as they target policies at both the EU and the national level.

Comprehensive monitoring and awareness of the importance of efficient information provision for migrants, both at national and European level, are key to any progress towards increased respect for migrants' rights, and the National Human Rights Institutions across Europe, based on their broad mandate to protect and to promote human rights, stand ready to contribute to it.

¹ Asylum seekers, refugees, stateless persons, migrants and persons in need of international protection.

² Countries of destination – countries where migrants want to get, often different from the countries of arrival.

³ NPMs are set up within the Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and are mandated to conduct regular visits to all types of places where persons are deprived of liberty.

⁴ Art. 19 International Covenant on Civil and Political Rights, art. 10 European Convention on Human Rights, art. 5 Reception Directive, art. 19 Procedure Directive, art. 41 of the European Charter of Fundamental Rights (right to be heard).

⁵ With the exception of the visit carried out by the Ombudsperson Institution of Kosovo, which took place on 12th December 2016, and by the Greek NHR (GNCHR), who carried out visits to 4 open reception facilities and 1 hotspot area in 2016.



Introduction

1. National Human Rights Institutions and migrants' rights

More than one million people¹ applied for international protection in the Member States of the European Union (EU) in 2016, for the second year in a row. The high number of arrivals, but also the management of migration flows both at the European Union's borders and across the wider European territory, brought new challenges for protecting, respecting and fulfilling the fundamental rights² of migrants both at European and national level – or exacerbated the already existing ones.

Since the adoption of the European Agenda on Migration³ in May 2015, the European Commission

has been pushing for measures to complete the Common European Asylum System (CEAS)⁴ and, since April 2016⁵, to strengthen it. The differences in the treatment of asylum-seekers across Member States were identified as a weakness⁶ of the current system.

Asylum seekers, refugees, migrants and persons in need of international protection ("Migrants"), and asylum and migration issues in general are a priority for the work of many National Human Rights Institutions (NHRIs) across Europe, as well as for ENNHRI, the European Network of National Human Rights Institutions.

NHRIs are state bodies, independent of government, with a broad mandate to promote and protect human rights. They are expert monitors, researchers, and advisers to government and parliament on human rights issues. They report to international treaty bodies on migrants' situation nationally, they handle complaints, provide legal assistance, human rights education, training, and awareness raising. As a consequence, each NHRI is recognized at the international level as providing expert, independent and trusted information on the implementation of human rights standards at national level.

For several years, ENNHRI has prioritised work on migrant detention⁷. The importance of NHRI monitoring of migrant detention has been confirmed by the Belgrade Declaration on the Protection and Promotion of the Rights of Refugees and Migrants⁸ (2015) and by the GANHRI Statement on the occasion of the United Nations Summit for Refugees and Migrants in New York⁹ (2016). Indeed, many European NHRIs have access to places of detention without prior authorisation, including through the National Preventative Mechanism (NPM) mandate under the Optional Protocol of the Convention against Torture¹⁰, a mandate that 24 of the 41 ENNHRI's members are holding.

2. The right to access information on one's rights : a gateway right

When reporting on their visits to migrant reception and detention facilities over 2016, ENNHRI members raised different concerns, including regarding detention, ill treatment of migrants, and lack of access to free independent counselling as well as to information upon arrival to the EU.

Effective and efficient provision of information to migrants is decisive for migrants' effective access to procedures, international protection, remedies but also for their future integration.

This right is protected by international¹¹ and regional¹² human rights instruments. It is also, essentially, a gateway right, intrinsic to the fulfilment of many other rights, and ensuring the right to an effective remedy and a fair trial

enshrined in the Article 47 of the Charter of Fundamental Rights. It is crucial to migrants' access to international protection procedures and is also an important instrument in the process of their integration. Without localized information, a migrant will face difficulties in seeking for example medical and humanitarian services, and filing asylum claims. Last but not least, informing migrants on their rights also impacts on their empowerment and autonomy.

Access to information about their rights and about the options for legal assistance is particularly decisive for migrants' situation; therefore it has been considered throughout the European and international legal frameworks.

When individuals are in need of international protection, access to independent and accurate information about the asylum procedure and their rights and obligations is a key aspect of a fair asylum process.

Recently, the European Asylum Support Office (EASO) stated that “In order to be able to fully communicate their protection need and personal circumstances and to have them comprehensively and fairly assessed, persons seeking international protection need information regarding their situation.”¹³

At EU level, Both the Recast Reception Directive¹⁴ and the Recast Procedure Directive¹⁵, having asylum seekers as target group, provide for the right of access to information and legal assistance, insisting on the minimal requirement of providing information at the earliest stages of the administrative procedure. At national level, authorities in many Members States have taken their own initiatives regarding the provision of information to asylum seekers¹⁶.

Information provision to detained migrants is also crucial, irrespective of their need for international protection.

The decisiveness of providing information on the legal and factual reasons of detention, in a language that they understand, including on the available remedies to challenge the lawfulness of detention, have also been highlighted in the Guidelines adopted by the Committee of Ministers of the Council of Europe in 2009¹⁷.

The right of information is decisive for supporting essential procedural rights across Europe, such as the right to an effective remedy, enshrined in article 13 of the European Convention for Human Rights¹⁸, and the right to be heard, as stated by article 47 of the European Charter Fundamental Rights¹⁹.

Finally, informing migrants on their rights also impacts on their empowerment and autonomy. In the Action Plan on the integration of third-country nationals²⁰ adopted by the EU in 2016, it is clearly stated that it is the joint responsibility and in the common interest of the EU Members States to invest and work on integration.



2 Data collection

The data relating to migrants access to information on their rights has been gathered in 19 reception and detention facilities by NHRIs of 8 EU Member States: Belgium, Bulgaria, Croatia, Greece, Latvia, Lithuania, Netherlands and Slovenia and 4 non-EU states: Armenia, Bosnia and Herzegovina, Kosovo and Ukraine.

Over a period of 3 months and through the process of 19 monitoring visits, 83 migrants have been interviewed by European NHRIs. Most visits took place between February and July 2017, with the exception of the visit carried out by the Ombudsperson Institution of Kosovo, in December 2016. Additionally, Greece contributed with data from 4 open reception centres and 1 hot spot visited in 2016 and data available through the Asylum Information Database (AIDA).

The centres visited by the NHRIs include:

- Formal Migrants' Reception Facilities,
- Migrants' Detention Centres,
- Prison,
- A centre with a combined function: migrant detention centre, prison and police station
- Centres of a diverse nature: a Facility for undocumented families with children, a Restricting Freedom Centre, a Detention Centre for Border Procedure, and a Foreigners Registration Centre with two units: one for asylum seekers who have initiated a procedure and a unit for detained foreigners awaiting expulsion.
- A Center for temporary detention of irregular foreigners and stateless persons (outside the EU.)

During the monitoring visits, the interviews were conducted face to face and were based on a set of open and closed questions prepared by ENNHRI

and peer reviewed by OHCHR and members of ENNHRI's Working Group on Asylum and Migration.

The results of this small scale data collection are to be considered as indicative. However, their validity is strong as they include data collected through face to face interviews conducted with migrants. The findings and recommendations presented here are also congruent with the standards of quality set out in the EASO guidance on reception conditions²¹, and in particular with the operational standards and indicators on provision of information and counselling, on identification, assessment and response to special needs and staff training.

However, the scope of these recommendations goes beyond the scope of the EASO Guidance on reception conditions: operational standards and indicators. Indeed, **NHRIs address the human rights issue of information provision to all type of migrants (migrants, asylum seekers, refugees and persons in need of international protection) and not only to asylum seekers or recognized refugees and beneficiaries of subsidiary protection status.**

Data collection focused on the following key aspects in relation to the provision of information to migrants: the intake interview, written and oral information.

- The intake interview is the migrants' first contact with the authorities in charge of the management of the centers where there are accommodated. Information is provided orally, with or without the support of written documentation such as leaflets, brochures etc. It is also a decisive moment for the staff to identify possible special needs and migrants in vulnerable position the information displayed.

- Written information is displayed in the center via posters. It is important that this information is easy to read, useful, up to date, and accessible to all migrant categories (men, women, and children).

- Oral information is sometimes provided by dedicated staff or external actors.

- ENNHRI also gathered data on the availability of interpretation, the content of the information provided and to the special needs of persons/groups in situations of vulnerability (gender sensitive information etc.)

A standard questionnaire was elaborated in consultation with the NHRIs and other experts²². The questionnaire was suitable for use during monitoring visits in all types of places where migrants and refugees are accommodated: (in) formal reception facilities, detention facilities, police stations and at the border. NHRIs with no mandate to enter migrants' detention and reception facilities have gathered information via their trusted partners, including Ombuds institutions, NGOs etc.

However, in practice, all data presented here was collected first-hand by participating NHRIs.

NHRIs were instructed to meet, to the extent possible, with at least one staff member in charge of providing information to migrants, and with one migrant who had already received information. The length of stay of migrants interviewed has been recorded. At the end of the interviews, open questions were asked, relating to what migrants themselves experienced as the main challenges regarding access to information and allowing for an assessment on the usefulness of information provided.



General recommendations

ENNHRI recommendations include:

- Improving the quality of the intake interview, as it is decisive for detecting special needs and vulnerable profiles and for the timely provision of key information related to the procedure;
- Improving the content and quality of information, as complete and up to date information is crucial for migrants' effective access to procedures, international protection and remedies; and
- Verify the migrant's understanding of information, as effective reception of the information provided is crucial.

The intake interview is decisive for effective access to all legal procedures, including the international protection procedure, and for the detection and management of the possible vulnerabilities. As such, it should always be conducted in a

structured, clear manner. However, it is important that migrants have additional opportunities to access information other than the intake interview. According to research, traditional information channels, such as leaflets or brochures, often have "limited impact and that information provided through social media or web-based tools, formulated in non-technical language, may be more effective and reach more people (...). Such information should be provided in the language of the applicant and preferably by non-governmental actors, including refugee communities present in the host state, in order to increase, as much as possible, trust of the applicant or potential applicant in the system"²³. It's essential to combine the various types of information: oral information during intake, leaflets and displays, and ensure availability of staff to further explain and discuss implications of information at hand.

Recommendation No. 1

Enhance the quality of the intake interview

The intake interview is decisive for detecting special needs and vulnerable profiles and for the timely provision of key information related to the procedure.

The data collected show that most of the reception centres within the EU provided migrants with key information upon conducting the intake interview. During the interview, migrants receive information about their rights in the facility, the reasons for their presence in the facility, the length of their stay in the facility, and their right to seek asylum or other forms of international protection. In addition, migrants are informed about the legal procedures accessible to them, as well as the

modalities for starting these procedures, and their possible consequences. They also receive information on the modalities to access legal counsel, assistance, or aid, the ways to access interpretation, and the right to lodge a complaint. In turn, detention facilities provided migrants with information about their rights in the facility, the reasons for their presence in the facility, and the length of their stay in the facility.

1.1. Take the time to share the information

• Key NHRI findings

The duration of the intake interview across the 19 facilities monitored is varying significantly, from 15 minutes to unlimited duration.

The type of facility (reception, detention or mixed) does not appear to be decisive in this regard. The duration of the interview was unlimited in 5 and limited in 8 of the centers. The shortest duration of interview was found in Bulgaria (15 minutes)

and the longest in the Netherlands (unlimited) with an average of one hour.

- **Promising practice:** In Slovenia, the duration of the interview is extended to 1 hour for children.

• Recommendation for action at national level

Allow enough time for the interview, which should not be limited in time under 1 hour; its duration should be extended in the case of children.

1.2. Ensure professional interpretation / translation

• Key NHRI finding

The assistance of a professional interpreter is not always ensured during the intake interview. Staff, friends, relatives or fellow migrants are most often the solution.

The issue of language and interpretation / translation is of importance for an efficient provision of information. 9 of the 19 facilities monitored are carrying out intake interview in their state's official language. In 12 facilities, the assistance of an interpreter is ensured during the intake interview. 3 centres have declared that the intake interview takes place in a language that the migrant understands (Slovenia, Lithuania and Croatia).

The main shared challenge is the difficulty to find interpreters for rare languages. In addition, one NHRI indicated that, in one of the centres (Lithuania²⁴), interpretation was available only on request, and would take place “with the

help of friends, relatives or Google translate”. In Croatia, in a detention centre, a translator is available “if necessary”, which is potentially problematic because it leaves open who decides on the necessity of the translation: the staff of the reception or detention or the migrant?

• Recommendation for action at national level

Provide access to professional translation/ interpretation during the interview. Professional translation / interpretation should be accessible on the spot – as soon as possible - or remotely. Involving family, friends or fellow migrants should be avoided as much as possible as it can be detrimental to the quality of the effective communication of information (examples from the practice include abused parents refraining from telling their full story when the translator is their own child, LGBTI persons concealing their situation when translator is a fellow national, mistrust towards translators from the same country but from different ethnic minorities etc.)

1.3. Ensure appropriate qualification and training of information providers

• Key NHRIs findings

There is a variety of professional profiles among staff members of reception and detention centres.

The level of staff training varies, from a legal background to unspecified higher education diploma. Some countries (i.e. Lithuania) employ professionals with a background in law that have

undergone specialised training in refugee law and interview methodology. In the case of Greece, the Greek National Commission for Human Rights (GNCHR) notes that the level of staff training varies, and that interpreters are normally recruited by NGOs. This brings up the question of the type of formal or informal credentials required in this process.

- **Promising practice:** in Belgium the staff profile is adjusted according to the type of interview (administrative/medical/social), and all professionals must undergo a three days ad hoc training. The asylum fact finding interview is conducted separately, by the asylum authorities, not by the reception or detention staff.

- **Recommendation for action at national level**

Develop a mandatory module of training for staff from reception, detention and mixed facilities, for the purpose of the intake interview, with a focus on the

detection of vulnerable situations and provision of information ensuring timely access to international protection. Furthermore, it is important to ensure that the person who provides legal information either has a legal background or is given a special training. It is recommended to make use of the available standards, such as the EASO “Guidance on reception conditions: operational standards and indicators”²⁵ and the OHCHR “Principles and Guidelines on the human rights protection of migrants in vulnerable situations within large and/or mixed movements”²⁶.

1.4. Improve the gender specificity of the information provided

- **Key NHRI findings**

Gender specificity of information is ensured in reception facilities but not equally in detention facilities.

The data collected during the interviews conducted at reception and mixed facilities showed that in most of the cases, staff members used gender-neutral measures to share information with migrants, and brochures or other publications are written in the most frequently used languages.

The information provided to migrants is not always gender-specific (i.e. there is no additional information on protection against sexual/gender-based violence).

- **Recommendation for action at national level**

Include gender mainstreaming in the assessment of migrants and arrange for the provision of gender-specific information by the state authorities, including in the migrants’ detention centres.

Recommendation No. 2

Improve the content and quality of the information provided

Complete and up to date information is crucial for migrants' effective access to procedures, international protection and remedies.

2.1. Verify regularly the quality of the information provided

• Key NHRIs findings

Information provided to the migrants is often outdated, inaccurate or incomplete. In Belgium, it was found that the information displayed was not always up to date or was inaccurate (for instance, one poster on the duration of detention for irregular migrants mentioned that, if the migrant does not accept to return he/she can be detained for an unlimited period, which the law does not foresee such a thing).

• Recommendation for action at national level

Regularly check on the quality of the information provided to migrants. This can be done by staff but also by involving external actors as NHRIs and NGO visitors, who report back to state authorities. The operation of updating, translating, adapting the written information material should be carried out by State authorities.

2.2. Ensure the provision of information on international protection procedures and on access to interpretation / translation

• Key NHRI findings

Information is not systematically provided on certain aspects of individuals rights, such as: how to lodge an asylum request, how to lodge a complaint, how to get external/NGO assistance or how to access translation services or support. A variety of practices exists.

In Belgium, the right to seek asylum is only discussed if the migrant expresses his fear to go back home or asks about asylum. The modalities to access interpretation/translation are not explained, as discovered during a monitoring visit in Belgium: *"during our visit we have observed that*

during the first intake - the administrative intake - no translators were used, although one of the migrants clearly did not understand properly the information that was given to him. This is problematic because during this intake the migrant is asked - with a certain persistence- if he/she would like to renounce to the right to appeal against the return decision, in order to be sent back as fast as possible".

In Greece, on the other hand, there is a lot of confusion, as various actors are engaged in providing information on the procedures to be followed, including the Greek police, Frontex, Reception and Identification Services, UNHCR and IOM officers.

- **Promising practice:** In Lithuania (in a detention centre for the registration of foreigners), each newly arrived individual is allocated to an officer who is responsible to follow the migrant's

status and actions, to initiate actions related to the asylum application properly and timely, to receive the requests for asylum and carry out the intake interview. The officer fills in the interview protocol, creates the personal file of each individual and examines the documents on their detention and expulsion.

- **Recommendation for action at national level**

Information on international protection procedures and on access to interpretation /translation should be ensured systematically during the intake interview, even in the detention centres. Renunciation to procedural rights should never happen under circumstances where professional translation and legal assistance are not guaranteed.

The appointment of individual case managers should be considered and explored.

2.3. Provide information on special needs

Providing information on as well as identifying special needs are key aspects in the intake phase.

- **Key NHRI Finding**

In the majority of the detention and reception centres monitored, the staff addresses orally, during the intake interview, different aspects of vulnerabilities and possible special needs, in combination with the handing over of some supporting brochures. However, the practice varies: for example in Latvia, the information on special needs is only provided orally, while in Belgium is exclusively provided through a brochure.

- **Promising practice:** Bulgaria and Slovenia provide both oral and written information when addressing migrants on vulnerability issues.

- **Recommendation for action at national level**

Provide information, in line with article 21 of the Reception Condition Directive, by means of different channels - including oral information, supporting brochures in easy to read language, leaflets and displays/notice boards. Staff should be available to explain and discuss the implications of the information at hand.

In addition, it is recommended to monitor the person throughout his/hers stay in detention and reception centres, especially because some traumatic events are not recognizable initially at the intake phase (especially for victims of sexual abuse and trafficking in human beings). It would be beneficial for staff to be also trained in recognizing signs of trauma.

Recommendation No. 3

Ensure that migrants receive and understand the information provided.

Efficient provision of information means a good understanding of the information provided on the part of the migrants

• Key NHRIs findings:

Migrants experience difficulties related to access to interpretation/translation and report that they do not always understand fully the information provided.

Accessing the services of an interpreter is cited as the most common issue faced by migrants. In one case, only one in ten persons interviewed expressed satisfaction with the information received on this issues. The rest of them did not fully understood the information received, or it was not provided at all. Beyond the general concerns related to translation and interpretation, the migrants' most frequent doubts concerning the information received were the issues of: length of detention, duration of procedure, and access to medical assistance. Migrants speaking rare languages or dialects face a higher threshold

to effective understanding of their situation. Additional issues identified refer to general lack of access to an interpreter for everyday communication - in some cases migrants would have to wait for two days. In terms of usefulness of information provided to migrants, in majority of cases migrants thought that it was sufficient.

• Recommendation for action at national level

Regularly check on migrants' self-assessment of the information provided to the migrants. This can be done by staff but also by involving external actors as NHRIs and NGO visitors, who report back to state authorities. The operation of updating, translating, adapting the information provision process should be carried out by State authorities on regular basis.



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Recommendations for action at European level

Early 2016, the European Commission set out its priorities for a structural reform of the European asylum and migration framework²⁷ outlining “the different steps to be taken towards a more humane, fair and efficient European asylum policy as well as a better managed legal migration policy”. Immediately after that, the Commission then presented a first set of proposals to reform the Common European Asylum System (CEAS) delivering on reform of the Dublin system²⁸, reinforcing the Eurodac system²⁹ and establishing a genuine European Agency for Asylum³⁰. The Commission then completed the reform of the CEAS by adopting four additional proposals (the second package): a proposal replacing the Asylum Procedures Directive with a Regulation³¹; a proposal replacing the Qualification Directive³² with a Regulation and a proposal revising the Reception Conditions Directive³³.

Each of these legislative instruments, including the Return Directive, do address separate items relevant to migrants’ access to information on their rights : information on reception conditions and on possible special needs (in the Reception Conditions directive), information on procedural steps and legal assistance, services of an interpreter to submit their case to the authorities (in the Asylum Procedure Directive/Regulation), information on the Dublin system, on transfers, on minor’s rights, on procedural steps (in the Dublin Regulation), and information on return decision including legal remedies, information on rights and obligations when in detention (in the Return Directive). As was mentioned earlier, the right to effective remedy (article 13 of the European Convention of Human Rights) and the right to be heard (article 41 of the European Charter of Fundamental Rights) are both intrinsically linked to an adequate provision of information.

The progress of the institutional negotiations under the second package on CEAS opens up a possible strengthening of the European legal framework with regard to migrants' rights to information on their rights³⁴. Significant improvement of the European legislative framework regarding information provision to asylum seekers is already made possible by the language included in the amendments the European Commission proposal to recast Article 5 of the Reception Condition Directive adopted by the European Parliament³⁵.

Based on that language and on the recent findings by European NHRIs, ENNHRI recommends to consolidate the following elements in the EU legislation:

Ensure provision of information at the earliest possible

EU legislation should mention that States have responsibility to inform migrants at the earliest possible stage of their rights and obligations when applying for asylum.

Secure free legal assistance

EU legislation should mention that States have the responsibility to ensure that asylum applicants are

provided with information on the organizations that can provide free legal assistance and might help their situation.

Use multiple channels to provide migrants with information and allow for professional interpretation/translation

When information is provided in writing it should be in a concise, accessible, intelligible and easy to read form, in a language that the applicant understands. Where necessary information should be supplied orally with the support of a professional interpreter and in a visual form. Information should be adapted according to gender, and take into account needs of minors and persons with specific needs as well as individual circumstances.

ENNHRI finally also recommends that when reporting to the European Parliament and to the Council on the Reception Conditions Directive under its Article 30³⁶, and on the Asylum Procedure Regulation under its Article 60³⁷ **the European Commission scrutinizes the implementation of all the provisions relating to information provision to asylum seekers.**



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Conclusions

Data collected by National Human Rights Institutions in Europe show that there is still some way to go before the reality of migrants' access to information on their rights matches the theory. Access to professional interpretation, detection of and information on special needs as well as training and qualification of reception staff have been found to be the main obstacles. Effective and efficient provision of information should be

monitored closely at European level as complete and up to date information is indeed decisive for migrants' effective access to procedures, international protection and remedies.

Comprehensive monitoring and awareness at European level are key leverage to any progress in this matter, and National Human Rights Institutions stand ready to contribute to it.

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ANNEX

ENNHRI members involved in the data collection on migrants' access to information on their rights

Country	National Human Rights Institution	NPM mandate	Type of facility visited
Armenia	Human Rights Defender's Office	Yes	Prison
Belgium	MYRIA, Federal Migration Centre	No	Detention (Caricole and Merksplas)
Bosnia and Herzegovina	The Institution of Human Rights Ombudsman of Bosnia and Herzegovina	No	Migrants' Detention Centre
Bulgaria	Ombudsman of the Republic of Bulgaria, "National Preventive Mechanism" Directorate	Yes	Mixed (Reception, Detention and Police Station)
Croatia	Croatian Ombudsman Office	Yes	Detention (Migrants' Detention Centre)
Greece	Greek National Commission for Human Rights	No	Reception and hotspots (Elaionas, Schisto, Skaramagkas and Kos Island)
Kosovo	The Ombudsperson Institution of Kosovo	Yes	Migrants' Detention Centre
Latvia	Ombudsman's Office, Republic of Latvia	No	Reception (Asylum Seekers Centre Muceniki) and Detention (Migrants' Detention Centre)
Lithuania	The Seimas Ombudsmen's Office of the Republic of Lithuania	Yes	Detention (Foreigners' Registration Centre)
Netherlands	Netherlands Institute for Human Rights	No	Reception • Migrants' Reception Facility and Detention • Facility for Undocumented Families and Children • Restricting Freedom Location • Detention Centre for Border Procedure • Migrants' Detention Centre
Slovenia	The Human Rights Ombudsman of the Republic of Slovenia	No	Reception (Formal Migrants' Reception Facility)
Ukraine	• Secretariat of the Ukraine Parliament • Commissioner for Human Rights • Office of the Ukrainian Parliament Commissioner for Human Rights • Office of the Ombudsman of Ukraine	No	• Refugees Accommodation Centre • Migrants' Detention Centre • Migrants' Detention Centre/Centre for Temporary Detention

- 1 In 2016, 1 204 300 first time asylum seekers applied for international protection in the Member States of the **European Union** (EU), a number slightly down compared with 2015 (when 1 257 000 first time applicants were registered) but almost double that of 2014 (562 700). <http://bit.ly/2wigjQb>. By way of an indication, the number of persons seeking asylum from non-EU countries in the EU-28 during the first quarter of 2017 reached 164 500. <http://bit.ly/1A4Ljx8>
- 2 "Managing migrations well is a challenge to Europe as a whole (...) We have a shared responsibility to live up to our international obligations to protect people fleeing war and persecution and treat them fairly and with dignity", First Vice President Timmermans (2015) http://europa.eu/rapid/press-release_IP-15-4545_en.htm , <http://fra.europa.eu/en/publication/2016/asylum-and-migration-european-union-2015>
- 3 European Agenda on Migration 13 May 2015, COM(2015) 240 final, https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/background-information/docs/communication_on_the_european_agenda_on_migration_en.pdf
- 4 https://ec.europa.eu/home-affairs/sites/homeaffairs/files/library/docs/ceas-fact-sheets/ceas_factsheet_en.pdf
- 5 On 6 April 2016 the European Commission presented a communication on the CEAS COM(2016) 197 final https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/proposal-implementation-package/docs/20160406/towards_a_reform_of_the_common_european_asylum_system_and_enhancing_legal_avenues_to_europe_-_20160406_en.pdf
- 6 In order to address those differences and improve the functioning of the CEAS, the Commission adopted two packages of legislative proposals, including a revision of the Reception Conditions Directive.
- 7 Including statements in 2014 and 2017 to underline that detention of Migrants should be a measure of last resort, to be avoided in the case of children, and should always comply with international human rights standards. See <http://ennhri.org/ENNHRI-calls-for-alternatives-to-detention-in-its-submission-to-the-open>
- 8 http://ennhri.all2all.org/IMG/pdf/belgrade_declaration_en.pdf
- 9 http://ennhri.org/IMG/pdf/ganhri_statement_summit_migration_19_sep_ny_final.pdf
- 10 Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, 18 December 2002, Article 3: "Each State Party shall set up, designate or maintain at the domestic level one or several visiting bodies for the prevention of torture and other cruel, inhuman or degrading treatment or punishment (hereinafter referred to as the national preventive mechanism)".
- 11 Art. 19 International Covenant on Civil and Political Rights, art. 10 European Convention on Human Rights.
- 12 Art. 5 Reception Directive, art. 19 Procedure Directive. This right also relates to the right to be heard under Art. 41 of the European Charter of Fundamental Rights, one of the European Union General Principles of Law.
- 13 EASO Annual report 2016 on the Situation of Asylum in the European Union, p. 91.
- 14 European Parliament Report on the proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) (COM(2016)0465 – C8-0323/2016 – 2016/0222(COD)), Article 5, paragraph 1 sub-paragraph 1
- 15 "It is in the interests of both Member States and applicants to ensure a correct recognition of international protection needs already at the stage of the administrative procedure by providing good quality information and legal support which leads to more efficient and better quality decision-making." (<https://ec.europa.eu/transparency/regdoc/rep/1/2016/EN/1-2016-467-EN-F1-1.PDF> Proposal for a regulation of the European Parliament and of the Council establishing a common procedure for international protection in the Union and repealing Directive 2013/32/EU, Recital 14)
- 16 For a description of the main initiatives, see EASO Annual Report 2016, p. 91.
- 17 Committee of Ministers, Twenty Guidelines on forced return, Guideline 652, Committee of Ministers, Guidelines on human rights protection in the context of accelerated asylum procedure adopted by the Committee of Ministers on 1 July 2009 at the 1062nd meeting of the Minister's Deputies, §XI.5
- 18 Article 13 of the European Convention on Human Rights establishes the right to an effective remedy, stating that "everyone whose rights and freedoms as set forth in this Convention are violated shall have an effective remedy before a national authority notwithstanding that the violation has been committed by persons acting in an official capacity". This is one of the key provisions underlying the Convention's human rights protection system, along with the requirements of Article 1 on the obligation to respect human rights and Article 46 on the execution of judgments of the European Court of Human Rights.
- 19 See also article 10, 12 and 15 of the Asylum Procedure Directive.
- 20 7 June 2016, COM(2016) 377 final
- 21 In particular with Standard 30 (information on reception conditions is received and understood), Standard 31 (information is provided on organisations that provide specific legal assistance and organisations that might be able to help or inform applicants concerning the

- available reception conditions), Standard 33 (social counselling), Standard 34 (identification and assessment of special reception needs), Standard 37 (reception staff is sufficiently trained), Standard 38 (training is provided to reception staff), EASO guidance on reception conditions: operational standards and indicators, September 2016.
- 22 The Office of the High Commissioner for Human Rights peer reviewed the questionnaire.
- 23 See <https://www.ecre.org/wp-content/uploads/2017/04/Policy-Papers-02.pdf>
- 24 This is the case in the Foreigners' Registration Centre (detention). "The interview with asylum seeker is take place with the assistance of an interpreter from the Migration department; communication with other foreigners takes place in English or Russian; Google translator is used for other languages
- 25 <https://www.easo.europa.eu/sites/default/files/EASO%20Guidance%20on%20reception%20conditions%20-%20operational%20standards%20and%20indicators%5B3%5D.pdf>
- 26 <http://www.ohchr.org/Documents/Issues/Migration/PrinciplesAndGuidelines.pdf>
- 27 in its Communication 'Towards a reform of the Common European Asylum System and enhancing legal avenues to Europe' COM(2016) 197 final.
- 28 COM(2016) 270 final.
- 29 COM(2016) 272 final.
- 30 COM(2016) 271 final
- 31 OJ L 180, 29.6.2013, p. 60
- 32 OJ L 337, 20.12.2011, p. 9.
- 33 OJ L 180, 29.6.2013, p. 96–116
- 34 The Trilogue negotiation between the European Council, the European Commission and the European Parliament under the co-decision procedure have been launched on 19 July 2017, on a regulation regarding the qualification standards, status and protection granted to refugees and persons eligible for subsidiary protection. The decision to enter into interinstitutional negotiations on the Reception Condition Directive, which are likely to start in autumn 2017, was confirmed during the May 2017 plenary session.
- 35 European Parliament Report on the proposal for a directive of the European Parliament and of the Council laying down standards for the reception of applicants for international protection (recast) (COM(2016)0465 – C8-0323/2016 – 2016/0222(COD))
Article 5, paragraph 1 sub-paragraph 1: "Member States shall inform applicants, at the time the person concerned makes an application or at the latest prior to the moment of registration, of any established benefits and of the obligations with which they must comply relating to reception conditions. They shall as a minimum point out in the information provided which reception conditions the applicants are entitled to, the consequences of absconding, the grounds for detention, the grounds for replacement, reduction or withdrawal of any material reception conditions and the applicant's right to appeal against detention or decisions relating to the replacement, reduction or withdrawal of material reception conditions. The minimum information shall also include any information relevant to an applicant's personal circumstances that may result in that applicant being considered an applicant with specific reception needs or in need of special procedural guarantees as provided for in this Directive and [the Procedure Regulation] respectively."
Article 5, paragraph 1 subparagraph 2 "Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance, **free legal assistance and representation** and organisations that might be able to help or inform them concerning the available reception conditions, including health care".
Article 5 paragraph 2 "2. Member States shall ensure that the information referred to in paragraph 1 is in writing in a concise, transparent, intelligible and easily accessible form, using clear and plain language on the basis of a standard template which shall be developed by the European Union Agency for Asylum and in a language that the applicant understands or is reasonably supposed to understand. Where necessary, this information shall also be supplied orally and in a visual form through videos or pictograms, shall be adapted to the needs of minors or persons with specific reception needs and shall take into account the applicant's individual circumstances."
- 36 The Commission shall report on the application of this Directive to the European Parliament and to the Council within three years from its entry into force and every five years after that and propose any amendments that are necessary. The Member States shall provide the Commission with the necessary information for fulfilling its reporting obligation. In accordance with the Commission's proposal for a Regulation on the European Union Agency for Asylum, the Agency will also monitor and assess Member States' asylum and reception systems", article 30.
- 37 "By [two years from entry into force of this Regulation] and every five years thereafter, the Commission shall report to the European Parliament and the Council on the application of this Regulation in the Member States and shall, where appropriate, propose any amendments. Member States shall, at the request of the Commission, send it the necessary information for drawing up its report not later than nine months before that time-limit expires."

About ENNHRI

ENNHRI, the European Network of National Human Rights Institutions, brings together 41 National Human Rights Institutions (NHRIs) from across wider Europe. ENNHRI's mission is to promote and protect human rights across the European region. ENNHRI supports the development of European NHRIs by: advising on the establishment and accreditation of NHRIs; coordinating the exchange of information and good practice between members; organising capacity building and training on NHRI methodologies and human rights; building solidarity between European NHRIs; providing support for NHRIs under threat and facilitating NHRIs' engagement with regional and international mechanisms.

About NHRIs

NHRIs are state bodies, independent of government, with a broad mandate to promote and protect human rights. They are expert monitors, researchers, and advisers to governments and parliaments on various human rights issues, including those in the area of asylum and migration. NHRIs report to international treaty bodies on migrants' situation at national level, they handle complaints, provide legal assistance, human rights education, training, and awareness raising. As a consequence, NHRIs are recognized at the international level as providing expert, independent and trusted information on the implementation of human rights standards at national level.

Notes

Dotted lines for note-taking.



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