

CCBE SECOND DECLARATION ON MIGRATION

26/06/2015

The Council of Bars and Law Societies of Europe (CCBE) represents the bars and law societies of 32 member countries and 13 further associate and observer countries, and through them more than 1 million European lawyers. The CCBE is recognised as the voice of the European legal profession by the national Bars and Law Societies on the one hand and by the EU institutions on the other. It acts as the liaison point between the EU and Europe's national Bars and Law Societies.

The CCBE notes that according to the International Organisation for Migration as at June 8 2015 approximately 101,900 migrants had arrived in Europe by way of smuggler's vessels principally arriving in Italy and Greece. Of these about 7,000 people were rescued near Sicily between 6 and 8 June by a flotilla of international ships. Tragically some 1865 persons are reckoned to have lost their lives in attempting to travel to the European Union across the Mediterranean Sea between 1 January and 8 June 2015.

As a result of the very large numbers of persons travelling clandestinely to the European Union at present and the worsening in the public discourse surrounding the perception of migrants in some Member States, the CCBE has noted the concerns expressed by some of its national delegations about the pressures being placed on the national legal systems and in particular the resources available to the national legal systems by the large numbers involved and the ongoing economic difficulties experienced by many Member States. In this regard the CCBE welcomes recent European Commission initiatives and welcomes the focus on saving lives and ensuring protection for those in need contained in the Agenda on Migration adopted by the Commission on 13 May 2015.

In the context of the initiatives now presented to consolidate the Common European Asylum System, the CCBE believes it timely and of importance to reiterate certain fundamental principles applicable in the field of migration law regardless of the present difficulties undoubtedly faced by Member States. These principles include the defence of the rule of law, the protection of fundamental rights and freedoms including the right of access to justice and protection of the client and the protection of the democratic values inextricably associated with such rights. It should also be added that these matters, which are all objectives protected by the Statutes of the CCBE, must always prevail over any political or economic consideration. These fundamental principles of the rule of law and the protection of fundamental rights must always prevail over any political, economic or security consideration. In particular the CCBE notes the obligation placed on all Member States and the European Union itself to treat all asylum seekers in a humane and dignified manner.

It is also timely to recall that Article 18 of the EU Charter on Fundamental Rights recognises the right to asylum in European Union law in accordance with the Geneva Convention of 28 July 1951 and its Protocol of 31 January 1967 relating to the status of refugees. Article 19 of the EU Charter establishes protection in the event of removal, expulsion or extradition and Article 47 of the EU Charter (as well

as Article 13 of the European Convention on Human Rights) provides for the right to an effective remedy and to a fair trial.

The CCBE notes that part of the essential functions of a lawyer providing services in the area of migration law includes advocacy on behalf of those who seek protection in the European Union, thus ensuring the guarantee of fundamental human rights regardless of the nature of the migration concerned. Having regard to the role of lawyers in society and given genuine concerns regarding recent developments in migration in Europe and elsewhere that have the potential to seriously affect human rights, the CCBE wishes to emphasise that the European Union and its Member States are obliged to vindicate and guarantee the rights and dignity of migrants. This includes the entitlement of migrants to readily access courts and tribunals with the benefit of legal aid and legal representation in order to ensure the right to an effective remedy is guaranteed.

The challenges posed by migration law and the response of the European Union and its member states to increased migration caused largely by displacement owing to war, instability and persecution mean that lawyers and their national bars have a specific interest in this regard in protecting the core principles of the legal profession in Europe as articulated in the Charter of Core Principles of the Legal Profession adopted by the CCBE on 24th November 2006. The principles engaged include but are not limited to the freedom of lawyers to pursue their clients' cases, the right and duty of lawyers to keep their clients' affairs confidential and to ensure respect for professional secrecy as well as respect for the rule of law and the fair administration of justice.

In 2014, the CCBE also adopted declaration on migration stressing that the rule of law and the protection of fundamental human rights and freedoms must always prevail over any political or economic consideration. It also published guidelines aiming to assist lawyers practising in the field of migration law by highlighting some of the issues and concerns that should be taken into consideration.

Accordingly the CCBE wishes to emphasise certain principles and rights that should be taken into consideration by the institutions of the European Union and the Member States at the present time when dealing with increased inflows and in connection with all initiatives seeking to consolidate the Common European Asylum System and in the proposed debate on a common Asylum Code:

DECLARATION:

I – Protection of fundamental rights

1. Persons in need of international protection must have access to quality asylum and reception systems throughout the Union;
2. Proposals should be advanced to ensure refugees should have legal avenues to reach safety in the European Union;
3. Protection capacity and systems should be supported in third countries to ensure that standards applied regarding the assessment of protection seekers are equivalent to those protected by European Union law and that all persons working in the protection system of those third countries are trained to an equivalent level to their counterparts in the European Union;
4. Any emergency response mechanism, resettlement and relocation programmes introduced by the Member States must ensure that asylum seekers are treated in a human and dignified manner and in particular that effective mechanisms are ensured for the identification and legal protection, of unaccompanied and separated children, survivors of sexual and gender-based violence and survivors of torture;
5. National procedures regarding asylum and practice of relevant national authorities should comply with international standards on human rights and rights of asylum seekers as well as have to assure in practice the protection of fundamental rights.

II – Access to justice/Legal aid

6. EU funding should be provided in order for national authorities to ensure comprehensive legal aid for migrants and that there is effective access to such aid at all stages of the relevant migration procedure. In this regard it is essential to note that all detainees in migration matters are entitled to have access to a qualified lawyer to advise and assist them in relation to both the detention itself as well as in relation to relevant protection and/or immigration procedures.
7. Adequate legal aid is provided in removal centres including in the cases of voluntary return especially to determine whether the will of the migrant is being exercised voluntarily.
8. The right of access to justice and the right to an effective remedy includes the right of access to a fully qualified interpreter who is independent in the performance of his or her duties in order to effectively communicate their instructions. This right also encompasses the right to have sight of documentation in a language which the client can understand in order to facilitate effective advice being given by the lawyer.
9. All accelerated procedures must respect the basic rights of migrants to justice and to an effective legal remedy and must ensure that in all these procedures the access to the international protection has been guaranteed. Appropriate safeguards must be maintained in all asylum systems particularly for manifestly unfounded applications.
10. Migrants must be entitled to access all necessary remedies before the domestic courts on an equivalent basis to nationals of the host Member State.

III – Access to a lawyer

11. Initiatives must be introduced to ensure the ongoing provision of an adequate number of lawyers in all Member States who are expert in the field of migration law and asylum law and who can provide a comprehensive service in all matters related to entry, residence and departure.
12. Access to a lawyer must be guaranteed once a migrant is detained whether at EU borders or otherwise and/or where an expulsion is intended.
13. Member States must also ensure that the removal of individuals without access to a lawyer does not occur and that there are no summary removals.
14. Migrants are entitled to privately consult and communicate with their lawyer in accordance with the principle of confidentiality and the respect of professional secrecy.

IV – Training of lawyers

15. Sufficient resources must be provided to ensure that special training can be provided to lawyers practicing in the field of migration and asylum law. It is of grave importance that the training should ensure that the lawyers concerned are adequately equipped to identify protection requirements for their clients having regard in particular to the relevant legal provisions on gender based protection, trafficking of persons, sexual slavery, unaccompanied migrant children and other vulnerable persons.