

APPEAL TO EU INSTITUTIONS: ENSURE RESPECT FOR ASYLUM-
SEEKERS' RIGHT TO LIBERTY IN RECAST RECEPTION CONDITIONS
DIRECTIVE AND DUBLIN REGULATION

**NOT CROSSING RED LINES – A NEGOTIATORS' CHECKLIST ON
MINIMUM DETENTION SAFEGUARDS**

The European Parliament, the Council and the Commission are entering a decisive stage in the negotiations on the Commission proposals recasting the Directive laying down standards for the reception of asylum seekers and the Dublin Regulation. An important part of these proposals deals with the detention of asylum seekers during the examination of their asylum application and during Dublin procedures and includes provisions with regard to grounds of detention, procedural safeguards, detention conditions and detention of vulnerable asylum seekers, including children.

The importance of this standard-setting exercise at EU level cannot be overstated also in light of its likely repercussions on detention practices in other regions of the world. Today, 166 organisations call on the EU institutions to seize this opportunity to adopt standards that fully endorse the presumption against detention of asylum seekers and protect asylum seekers from arbitrary detention as required under international refugee and human rights law. The protections afforded by international refugee and human rights law presuppose that, as a general rule, **asylum seekers should not be detained** and that detention may only be used in exceptional cases, and only with full procedural safeguards in place. The latter must, in particular, reflect the standard laid down in Article 52(1) of the Charter of Fundamental Rights of the European Union providing that any limitation on the exercise of the rights guaranteed by the Charter, including the right to liberty under Article 6, must be necessary and subject to the principle of proportionality. Article 52(3) of the EU Charter of Fundamental Rights also explicitly allows for Union law to include more extensive protection than guaranteed under the European Convention on Human Rights.

In order to ensure that EU asylum legislation properly reflects these important principles, we¹ call on the EU institutions to refer to the 'negotiating checklist' below representing the essential safeguards on detention of asylum seekers which **as a minimum** must be upheld in the recast EU Reception Conditions Directive and the recast Dublin Regulation:

- A person shall not be detained for the sole reason that he/she is an asylum seeker. Seeking asylum is not an unlawful act and asylum seekers should not be penalised for irregular entry in line with Article 31 of the 1951 Refugee Convention.

- Asylum seekers may only be detained as a measure of last resort and, if considered necessary in the individual case, and only if alternatives to detention cannot be applied effectively. Alternatives to detention must be laid

¹ This list reflects the undersigning organisations' shared positions on the standards and guarantees that need to be included as a minimum in EU law to prevent arbitrary detention of asylum seekers. This is without prejudice to the position of individual organisations on the need for additional guarantees on detention in their respective national contexts.

down in national law. In the exceptional case that detention is considered necessary it shall always be for the shortest possible period.

- Grounds for detention must be narrowly and explicitly defined and exhaustively established in EU asylum law and in national law. These grounds must be clearly distinguished from detention for the purpose of removal
- Detention must be ordered by judicial authorities. Asylum seekers shall in all circumstances be promptly informed, in a language they understand, of the reasons of their detention, their rights in detention and the procedures available to challenge their detention.
- Effective access of specialised NGOs, UNHCR and legal representatives to all places of detention, including in transit zones and at the border, must be ensured.
- Asylum seekers must have a right to independent and free legal assistance and representation to challenge the lawfulness of their detention before a court. Detention of asylum seekers must be subject to automatic and periodic review by a court.
- Asylum seekers shall never be detained in prison accommodation.
- Vulnerable asylum seekers, in particular children, elderly, pregnant women, persons with physical or mental disabilities, victims of torture and ill-treatment and traumatised persons should not be detained. In the truly exceptional case that detention of vulnerable asylum seekers is considered necessary as a last resort, it must be established by an independent qualified expert that their health will not deteriorate as a result of detention. In such truly exceptional cases, conditions of detention and procedural safeguards must take into account their specific vulnerability.
- Unaccompanied asylum-seeking children must never be detained.
- In addition to the safeguards listed above the recast Dublin Regulation must uphold the principle that detention may only be applied to asylum seekers in the Dublin procedure once the applicant has been notified of a decision to transfer to the responsible Member State and that the actual transfer will take place promptly.

Signing Organisations

European-level Organisations

- Amnesty International European Institutions Office
- Caritas Europa
- Churches' Commission for Migrants in Europe (CCME)
- European Council on Refugees and Exiles (ECRE)
- Jesuit Refugee Service Europe

- Red Cross - EU Office
- World Communion of Reformed Churches - Europe, steering committee

International-level Organisations

- Association for the Prevention of Torture (APT)

- Global Campaign to End Immigration Detention of Children
- Human Rights Watch
- Human Rights without Frontiers International
- International Catholic Migration Commission (ICMC)
- International Commission of Jurists
- International Detention Coalition
- International Rehabilitation Council for Torture Victims (IRCT)
- Jesuit Refugee Service International
- Terre des Hommes International Federation (TDHIF)

Armenia

- Foundation Against Violation of Law

Austria

- Amnesty International Austria
- Asylkoordination Österreich
- Austrian Diakonie
- Austrian Red Cross
- Caritas Austria

Belgium

- Amnesty International Belgium
- Belgian Red Cross
- Belgian Refugee Council (CBAR-BCHV)
- CIRÉ
- Flemish Refugee Action
- Jesuit Refugee Service Belgium

Bosnia & Herzegovina

- Foundation of local democracy (FLD)
- Vasa Prava BiH
- Vive Žene - Center for Therapy and Rehabilitation

Bulgaria

- Bulgarian Council on Refugees and Migrants (BCRM)
- Bulgarian Helsinki Committee

- Bulgarian Red Cross
- Caritas Bulgaria

Croatia

- Center for Peace Studies
- Croatian Law Centre (HPC)
- Rehabilitation Centre for Stress and Trauma

Czech Republic

- Amnesty International Czech Republic
- Consortium of Migrants Assisting Organisations in the Czech Republic:*
- Association for Integration and Migration (SIMI)
 - Association of Citizens Assisting Emigrants (SOZE)
 - Counseling and Information Center for Young Migrants (META)
 - Counseling Centre for Integration (PPI)
 - InBáze Berkat
 - Multicultural Center Prague (MKC)
 - Organization for Aid to Refugees (OPU)
 - People in Need

Denmark

- Amnesty International Denmark
- Bedsteforældre for Asyl
- Borgere for Asyl til Flygtninge i Fare
- Danish Red Cross
- Danish Refugee Council
- Indvanderrådgivningen
- Refugees Welcome
- Rehabilitation Centre for Torture Victims (RCT)

Finland

- Amnesty International Finland
- Finnish Red Cross
- Finnish Refugee Advice Centre

France

- Amnesty International France

- Forum réfugiés
- France terre d'asile
- French Red Cross
- Jesuit Refugee Service France
- Parcours d'Exil

Georgia

- RCT/EMPATHY

Germany

- Amnesty International Germany
- Arbeiterwohlfahrt
- Behandlungszentrum für Folteropfer
- German Red Cross

Greece

- Amnesty International Greece
- Association for the social support of youth (ARSIS)
- Ecumenical Refugee Programme
- Greek Council for Refugees
- Greek Helsinki Monitor
- Information and Documentation Centre (ANTIGONE)
- Integration Centre for Migrant Workers (KSPM)
- Network for Children's Rights
- PRAKSIS
- United Methodist Church in Germany

Hungary

- Amnesty International Hungary
- Cordelia Foundation
- Hungarian Helsinki Committee
- Menedék
- Reformed Church of Hungary-Refugee Mission

Ireland

- Amnesty International Ireland

Italy

- Amnesty International Italy
- Federation of the Protestant churches in Italy- Refugees and Migrants Service

- Italian Refugee Council (CIR)

Kosovo²

- Civil Rights Program Kosovo
- Kosova Rehabilitation Centre for Torture Victims

Luxembourg

- Amnesty International Luxembourg
- Caritas Luxembourg

Malta

- aditus

The Netherlands

- Amnesty International The Netherlands
- Cordaid
- De Evenaar
- Defence for Children
- Dutch Council for Refugees
- Johannes Wier Foundation
- Justitia et Pax
- Phoenix, ProPersona
- Psychotrauma Centrum Zuid Nederland
- Stichting LOS
- University Assistance Fund

Norway

- Amnesty International Norway
- Caritas Norway
- Church of Norway, Council on Ecumenical and International Relations
- International Cities of Refuge Network (ICORN)
- Norwegian Helsinki Committee
- Norwegian Organisation for Asylum Seekers (NOAS)
- The Norwegian Centre against Racism

Poland

- Amnesty International Poland

² Kosovo remains part of Serbia under UN Resolution 1244/99

- Caritas Poland
- Helsinki Foundation for Human Rights
- Polish Red Cross

Portugal

- Portuguese Red Cross
- Portuguese Refugee Council

Romania

- ICAR Foundation
- Romanian National Council for Refugees (CNRR)

Serbia

- Grupa 484
- International Aid Network - Centre for Rehabilitation of Torture Victims

Slovakia

- Amnesty International Slovakia
- Slovak Humanitarian Council

Slovenia

- Slovene Philanthropy (Slovenska filantropija)

Spain

- ACCEM
- Amnesty International Spain
- Caritas Spain
- ONG RESCATE Internacional
- Spanish Commission for Refugees (CEAR)

Sweden

- Amnesty International Sweden
- Caritas Sweden
- Christian Council of Sweden
- Church of Sweden
- Swedish Red Cross

Switzerland

- Amnesty International Switzerland
- Swiss Refugee Council

Turkey

- SOHRAM-CASRA

- Human Rights Foundation of Turkey (HRFT)

Coordination for Refugee Rights:

- Amnesty International Turkey
- Association of Solidarity with Refugees (Mülteci-Der)
- Helsinki Citizens' Assembly (hCa)
- Human Rights Agenda Association (İHGD)
- Human Rights Association (IHD)

Ukraine

- Caritas Ukraine
- Hebrew Immigrant Aid Society (HIAS) Ukraine

United Kingdom

- Amnesty International United Kingdom
- Asylum Aid
- Bail for Immigration Detainees (BID)
- Bristol Refugee Rights
- British Red Cross
- British Refugee Council
- Detention Action
- Dover Detainee Visitor Group
- Embrace UK Community Support Centre
- Immigration Law Practitioners' Association (ILPA)
- Jesuit Refugee Service UK
- Kent Refugee Help
- Migrant Rights Centre Bristol
- Refugee Action
- René Cassin
- Scottish Refugee Council
- Terrence Higgins Trust
- UK Lesbian & Gay Immigration Group (UKLGIG)
- Welsh Refugee Council
- Yarl's Wood Befrienders