

## Statement on the need to provide legal assistance in EU Asylum and Migration procedures

Building on the experience of European Lawyers in Lesvos (ELIL)<sup>i</sup>, the Supervisory Board of ELIL wish to express their serious concerns about the lack of access to legal assistance in asylum and migration procedures in the EU, as well as about the limitations of the proposed New Pact on Asylum and Migration in addressing this issue.

The right to asylum is guaranteed under the Geneva Convention on the Status of Refugees of 1951, the EU Charter of Fundamental Rights, the Treaty on the Functioning of the European Union and the relevant provisions of the common European Asylum System. This right can only be effectively ensured by providing adequate access to legal assistance to all people seeking international protection.

Through ELIL's work and consultations with lawyers, NGOs and other relevant stakeholders, it has become clear that access to legal assistance in asylum and migration procedures at the EU borders is currently not being provided effectively and consistently.

In particular, the following challenges have been identified by ELIL over the past year in Greece:

- *The extreme speed of the asylum procedure may result in denial of justice.* This is particularly pronounced on the Greek Aegean islands, where asylum seekers currently often undergo their asylum interview within one week of them leaving quarantine following arrival. Moreover, asylum seekers are called for interview at very short notice, often just a few days in advance. This is compounded by an increase in the use of remote interviews, which result in a large number of asylum seekers to be interviewed in a very short timeframe. Whilst it is important to have an efficient asylum system, this emphasis on speed effectively denies people the opportunity to consult with a lawyer before their interview.
- *The increasingly complex and restrictive asylum procedure increases the need for legal assistance.* On 7 June 2021, the Greek government issued a Joint Ministerial Decision designating Turkey as a Safe Third Country for people from Syria, Afghanistan, Somalia, Pakistan and Bangladesh. This creates a new stage in the procedure and reverses the burden of proof. Nationals of these countries must now go through an admissibility interview in which they must overturn the assumption that Turkey is safe for them. Only if they are able to do so will their substantive asylum application be examined. These nationalities make up over 65% of the asylum seeker population in Greece, meaning that the majority of asylum seekers arriving to Greece are at risk of being denied a substantive assessment of their claim. Such changes to the legal procedure, combined to new practical challenges (such as the requirement for applicants to use a complex online platform), increase the need for legal assistance and information throughout the asylum process.
- *The lack of meaningful access to legal assistance.* No legal aid is provided by the state to asylum seekers before their asylum interview. Legal aid is theoretically provided at the appeal stage, but is often not available due to lack of capacity. In the past year, this situation has been compounded by large-scale transfers of people from the islands to often remote locations on the mainland and the restrictions of movement enacted in response to Covid-19.

Many asylum seekers in Greece attend their asylum interview without having been able to speak to a lawyer. This compromises the asylum procedure and undermines the rule of law, as it means asylum seekers may not understand their rights, their obligations and the legal process they are going through.

Similarly, in Italy, Spain and at the border with Belarus<sup>ii</sup>, a lack of human and financial resources, restrictions on lawyers' access to camps and/or the inadequacy of the laws governing asylum mean that meaningful access to legal assistance is not always guaranteed and, in some cases, explicitly denied.

The current proposals relating to the migration and asylum procedures in the New Pact on Asylum and Migration are unlikely to address these issues. This is owing in particular to the fact that the Pact does

not provide for the setting up of sufficient material and human resources for adequate access to legal assistance provided lawyers.<sup>iii</sup>

We are concerned that many of the proposals will only serve to exacerbate the challenges identified on the ground, as follows:

- *The pre-entry screening<sup>iv</sup>, accelerated procedure<sup>v</sup> and border procedure<sup>vi</sup> prioritise speed at the expense of legal safeguards.* ELIL's experience in Greece over the past year demonstrates that the very short timescales often make it impossible for asylum seekers to access legal assistance. New arrivals on the Greek islands, are often unaware of the process, lack time and are disorientated and traumatised following their journey.
- *Differential treatment of asylum seekers according to nationality.* As part of the proposals, asylum seekers from countries with a less than 20% recognition rate will have their case considered under the accelerated procedure.<sup>vii</sup> Individuals originating or arriving from 'safe countries' will also follow this procedure and may be deemed inadmissible and excluded from the asylum process.<sup>viii</sup> ELIL has assisted more than 13,000 individuals from over 50 different countries since 2016. We have noted that individuals from lower recognition rate countries often have highly complex cases, meaning they are particularly in need of legal assistance and procedural safeguards. In this context, rather than seeking to expedite such applications, a full individualised assessment of each case, with legal support, is of paramount importance.
- *Explicit restrictions on access to legal assistance.* The Pact includes an obligation on member states to provide free legal assistance during the asylum application and appeal stages.<sup>ix</sup> This is a positive development and must be preserved. However, it is excluded in two important situations: if the application is considered as 'not having any tangible prospect of success' or is a 'subsequent application' (a new asylum application based on new grounds).<sup>x</sup> ELIL's experience has shown that a full assessment of each application, with the support of legal assistance, is necessary to determine the case's merits. Moreover, subsequent applications are often made on valid grounds and so should enjoy the same rights in terms of access to legal assistance. For example, ELIL is assisting with over a hundred subsequent applications filed by Afghans following the events of this summer. We believe these exclusions should be removed and that the requirement for free legal assistance must be supported by sufficient financial and logistical resources to make it a reality.
- *Practical restrictions on access to legal assistance.* Under the proposed screening and border procedures, asylum seekers would be held in an area that is not considered to be within the territory of the arrival country (the 'fiction of non-entry'), deprived of their liberty and potentially detained.<sup>xi</sup> The screening process decides which asylum procedure they enter, whilst the border procedure involves substantive determination of their asylum case. However, under these conditions – in which restrictions may be imposed on asylum seekers' freedom of movement - it may not be possible to access legal assistance. The impact of similar restrictions has already been seen in the new Multi-Purpose Reception and Identification Center on Samos, where new arrivals and people who have lodged subsequent applications are not permitted to leave the site, meaning that their access to legal assistance is limited.

We believe that individuals should have meaningful access to legal support in all legal procedures. This is particularly critical in the asylum process, where issues of safety and fundamental human rights are at stake. We call upon the EU to ensure that this principle is at the heart of all legislative reform in the field of asylum and migration and ask EU member states to enshrine it in their laws, policies and procedures.



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<sup>i</sup> ELIL was established in 2016 in order to provide free, independent legal assistance to asylum seekers on the Greek island of Lesbos. Since then, it has also opened offices on Samos and in Athens and, in total, has provided support to over 13,000 people. ELIL's work is inspired by belief in the fundamental importance of upholding the rule of law, defending human rights and ensuring meaningful access to legal assistance. ELIL was founded by the Council of Bars and Law Societies of Europe (CCBE) and the German Bar Association (DAV). It is now also supported by the French Bar Association (CNB).

<sup>ii</sup> In this regard, the CCBE recently published a statement urging the EU and its MS to ensure an effective, humane and dignified access to the right to asylum, including effective access to legal assistance, without exception:

[https://www.ccbe.eu/fileadmin/speciality\\_distribution/public/documents/MIGRATION/MIG\\_Statement/EN\\_MIG\\_20211215\\_CCB\\_E-Statement-on-Situation-at-the-EU-border-with-Belarus.pdf](https://www.ccbe.eu/fileadmin/speciality_distribution/public/documents/MIGRATION/MIG_Statement/EN_MIG_20211215_CCB_E-Statement-on-Situation-at-the-EU-border-with-Belarus.pdf)

<sup>iii</sup> For more information in this regard, see:

- 1) CCBE positions on the New Pact on Asylum and Migration:
  - [CCBE position on the amended proposal for a Regulation establishing a common procedure for international protection in the Union \(14/04/2021\)](#)
  - [CCBE position on the Proposal for a Regulation introducing a screening of third country nationals at the external borders \(14/04/2021\)](#)
- 2) CNB position on the New Pact on Asylum and Migration: <https://www.cnb.avocat.fr/fr/actualites/le-cnb-sinquiete-de-certaines-dispositions-du-nouveau-pacte-migration-et-asile>
- 3) DAV position on the New Pact on Asylum and Migration: <https://anwaltverein.de/de/newsroom/sn-08-21-zu-vorsch%C3%A4gen-der-eu-kommission-zur-reform-des-geas>

<sup>iv</sup> Proposal for a Regulation introducing a screening of third country nationals at the external borders (Proposed Screening Regulation)

<sup>v</sup> Article 40 of the amended proposal for a Regulation establishing a common procedure for international protection in the Union (APPR)

<sup>vi</sup> Article 41 – 41(i) APPR

<sup>vii</sup> Article 40(1)(i) APPR. For such cases, if the conditions in Article 41(1) are met, the border procedure will also apply

<sup>viii</sup> Article 40(1)(e) and Article 36(1a) APPR. For such cases, if the conditions in Article 41(1) are met, the border procedure may also apply

<sup>ix</sup> Article 15(1) APPR

<sup>x</sup> Article 15(3) and (5) APPR

<sup>xi</sup> Article 41 APPR and Proposed Screening Regulation