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Immigration and Asylum Unit – "Green Paper on Asylum"  
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**Submission from the Counselling Centre for Refugees Czech Republic on the Commission Green Paper on the Future of the Common European Asylum System**

SECTION I.

Introduction of the Counselling Centre for Refugees

The Counselling Centre for Refugees (CCR) was founded in 2002 as the successor of the Counselling Centre for Refugees of the Czech Helsinki Committee, which has been in existence since 1993. It offers legal, social and psychosocial assistance to asylum seekers and migrants in the Czech Republic. CCR has been active in legislative process concerning migration laws in the Czech Republic and has been participating in discussions about asylum and migration policy since it was established. The Counselling Centre for Refugees is a founding member of the Consortium of non-governmental organizations dealing with refugees, member of the European Council on Refugees and Exiles (ECRE) and The Separated Children in Europe Programme (SCEP).

SECTION II.

Key Recommendations of Counselling Centre for Refugees in Response to the Commission's Green Paper

The Commission must ensure in preparing the CEAS in cooperation with Member States:

- thorough, specific, and meaningful consultations with civil society – particularly NGOs directly working with asylum seekers in all member states
- active participation of asylum seekers and recognized refugees so that the lack of protection in current system is identified and needs of people in question are addressed.

The CEAS should provide improvements and common minimum standards procedures in respect to following issues that CCR has identified as the most crucial lacks of protection:

#### Legislative instruments

Processing of asylum applications:

- the CEAS should establish full implementation of the Geneva Convention, Convention against torture, inhuman and degrading treatment or punishment, Convention on the Rights of the Child and other Human rights Convention. Principle of non-refoulement has to be always respected. Best interest of children must be followed.
- Commission should ensure that asylum seekers have access to fast and effective judicial review of decisions concerning rights set by Conventions. Special attention should be paid to the expedite procedures conducted at the international airports and special border procedures.
- All asylum seekers should have access to free and professional legal representation financed from ERF and administered by a state agency different from the decision making agency
- CEAS should introduce common guidelines in respect to the interviews during asylum procedure – common compulsory training of interviewers and interpreters in psychology, specific needs of vulnerable groups etc.
- and common approach to separated children – age assessment, best interest, guardianship, family tracing and reunification, no detention.

Reception conditions for asylum seekers:

- the EU should introduce principle of no detention of children and detention of adults for the minimum time period. Grounds for detention should be clarified and harmonized in all EU member states
- Commission should ensure that all children and youth have access to education under the same conditions as EU citizens during all stages of asylum procedures. Best interest criteria should be applied.
- the CEAS should approximate conditions of the access to labor market and set three to six months period to limit access to labor market of asylum seekers

Granting of protection:

- the CEAS should introduce a single uniform status and set minimum standards concerning rights and duties arising from this status.

- Rights of persons not eligible for international protection but nonetheless protected from removal should be protected within the CEAS' legal instruments so that they are not subjected to unlimited removal detention

### SECTION III.

#### Legislative instruments, Processing of asylum application:

CCR emphasizes that when designing the CEAS European Commission should focus on harmonization in the area of legislative instruments concerning processing of asylum applications. CCR identified several lacks in protection needs and ongoing resignation on human rights standards set by international human rights convention. The CEAS should introduce common asylum procedure based on 1961 Geneva Convention and other human rights conventions so that the minimum legal safeguards are imposed and people in need of protection are not overlooked.

1. Common asylum procedure is necessary to be implemented primarily in respect to the fundamental rights set by conventions. These rights should be secured by EU legislation without a possibility of derogation. Specifically CCR has identified during its practice resignation from the principle of non-refoulement during expedite asylum procedures and asylum procedures conducted at the borders. Non-refoulement is the principle that was repeatedly emphasized in the jurisprudence of the European Court of Human Rights as one of the elements of protection of people from violation of their rights. As such it has to be protected by EU legislation without the possibility of derogation from EU Member States.
2. Implementation of international standards of protection of human rights and setting safeguards in EU legislation has to be followed by the effective and accessible judicial review of decisions issued in asylum procedures. Again CCR is very concerned in respect of expedite and special border procedures. Judicial appeal in these cases is often conducted after the person has been removed from the territory meaning that these people are denied possibility of independent judicial review. Especially, border regions as Malta, Lampedusa, Canary Islands, where the situation is very complicated raises questions to which extent are basic standards set by Geneva Convention upheld. In the view of this practice institutes of the safe third country and first country of asylum need to be reconsidered and obligatory safeguards have to be imposed.
3. Requirement of the effective and accessible judicial review has to be accompanied by a full access to free and professional legal representation. Asylum seekers are facing procedure that they do not know, do not understand and that is governed by the legal principles and legislation that is completely different from their life experience. Free and professional legal representation is fundamental condition for ensuring fair administrative and judicial procedure. A legal representation should be provided for free, by professionals financed by state agency different from the decision making agency so that the independence of the legal counselling is protected. A situation when ERF funds are distributed by the state agency that administers the whole asylum procedures, makes the

decisions about international protection, administrators of refugee facilities do raise questions to which extent the legal representation or counselling is independent and unconditional.

4. Common guidelines concerning conducting interviews in respect to the role of interviewers, guardians and interpreters should be prepared and implemented. Regional cooperation in the form of exchange of best practice, respecting needs of vulnerable asylum seekers, close cooperation with NGO workers should be introduced. Present EU documents and legislation are very general in respect to requirements on professionals involved in procedural acts and decision making. CCR from its practice acknowledges the crucial impact that interpreters and interviewers have on the procedure as such and consider the lack of guidelines, education requirements and professional codes as important cause of denied protection.
5. The CEAS should focus on the need of children especially separated and unaccompanied children. In this respect the Convention of the Rights of the Child should be fully implemented and best interest of the child has to be respected in all decisions concerning children. CCR considers necessary to strengthen the concept of best interest in European legislation. In this respect CCR as a member of Separated Children in Europe Programme fully supports Submission form Save the Children Europe Group on the Commission Green Paper on the Future of the Common European Asylum System (COM (2007) 301)

#### Legislative instruments, Reception conditions for asylum seekers:

CCR calls for introducing principle of no detention of children with or without families irrespective of their status. Children should never be victimized due to their migration experience. Detention of adults should be applied only as the last resort if any other legal instrument cannot be applied and for the minimum necessary time. Criminalization of asylum seekers is a danger that has to be addressed in European legislation. Furthermore, access to labor market to asylum seekers needs to be approximated so that asylum seekers can enjoy their right to work and provide for their families. All children and youth have to have access to education and training in all stages of procedure.

6. CCR emphasizes the necessity to fully implement the Convention of the Right of the Child in respect to detention of children. Children should be understood all children to the age of 18. Position of children in migration is already very difficult and should not be even complicated by detention. Children in detention are in the higher risk of exploitation, they do not have access to education or training, i.e. to rights that are protection by the Convention. Legal instruments concerning detention of children are adopted in each state and standards vary substantially. The need of the CEAS regulation in respect to no detention of children is high and protection of children in migration should be one of the pillars of the CEAS.

7. Harmonization of reception conditions needs to be introduced by the CEAS. Primarily by setting minimum standards of rights that asylum seekers shall enjoy in all member states. One of the CCR's key requirements in this area is full access of asylum seeking children and youth to education and training. There should not be imposed any limits concerning to the access to education and the CEAS should introduce obligation of states to ensure such access through providing financial and material means. CCR wants to especially highlight situation of children and youth in detention and refugee facilities where there is almost no possibility to access valuable schooling or training. Receiving education and training for children and youth is one of the most powerful tools how to protect them from exploitation and trafficking in human being. It empowers them either for their stay in a host country if the international protection is provided or for their return to the country of origin. In such a case it could work as a prevention from further migration and strengthening potential of countries of origin.
8. The CEAS should approximate conditions of an access to labor market and set three to six months period to limit access to labor market of asylum seekers. In this respect CCR fully agrees with Constructive Suggestions on the Green Paper submitted by Think Thank working group realized within the project of the Consortium of Non Governmental Organizations working with Refugees in the Czech Republic called *Why Should They Stay Apart – Comprehensive Strengthening of the Work Potential of Asylum Applicants*, supported by the Initiative of the Equal Community, where CCR is a member.

#### Legislative instruments, Granting of protection:

9. CCR supports the idea of a single uniform status of international protection irrespective of the nature of the protection. People with subsidiary protection are in the same situation and in need of the international protection as recognized refugees. The CEAS should set mandatory minimum standards for a single uniform status where basic social rights and securities would be protected. Free access to labor market, access to social benefits, access to public health care system under the same conditions as EU citizens. Recognizing social rights and needs of people with subsidiary protection could, based on our professional experience, lead to the decrease of appeals against decision granting subsidiary protection and as well as decrease of illegal migration of asylum seekers within EU member states.
10. CCR welcomes the idea of Commission to regulate status and provide safeguards for persons not eligible for international protection but nonetheless protected from removal. CCR strongly recommends to regulate status of these persons so that their protection from removal is supported by EU legislation and respected in all EU member states. CCR has experienced situation when such person was protected at the territory of the Czech Republic however, after traveling to Germany was removed to the country of origin. Under the current

legislation these persons are facing constant insecurity concerning their protection from removal, they are often subjected to the long and ongoing removal detention. Common EU regulation of their status should provide basic safeguards and protection of their internationally recognized rights.

#### SECTION IV.

##### Implementation, Accompanying measures:

When introducing the CEAS the European Commission will be setting new standards and strengthening current system of European asylum policy. The Commission should consider possibility of regularization based on common standards so that the new CEAS is not burdened by illegal migrants using asylum procedure for legalization of their stay. European union is every year experiencing growing number of illegal migrants. They either stay because of economical reasons or because they cannot return to their country of origin. Only a very small percentage of them is removed from the territory of EU. Some illegally staying migrants use asylum procedure as a way how to legalize their stay. This possibility however, does not provide any solution to their situation. It is a short term solution when most of these persons in a very short time face the very same situation as they were facing in the beginning. Their asylum application is denied and they are staying at the territory without legal permission to stay. These people are subsequently facing difficult, degrading conditions and situations that do not correspond with principles of human rights and democracy.

Possible solution of this situation is introducing some kind regularization program, either general for all illegal migrants or specific only for specific group of illegal migrants such as long term asylum seekers, persons with temporary stay etc. Regularization programs are currently introduced solely by member states without any European regulation or standards. However, such a step has serious impact on the situation in other EU countries. Therefore, regularization should be regulated by common standards concerning group of migrants to be involved and legal tools to be used. Such step could enable smooth introduction of the CEAS.

Counselling Centre for Refugees is prepared for further discussion about its submissions with the European Commission and for further cooperation on preparation of the CEAS.

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