



28th CONFERENCE OF EUROPEAN MINISTERS OF JUSTICE

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**“Emerging issues of access to justice for
vulnerable groups, in particular:
- migrants and asylum seekers;
- children, including children perpetrators of crime”**

Address by

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Minister of Justice of Spain, Deputy Secretary General, Ministers and Heads of Delegations, Ladies and Gentlemen,

We all know that access to justice already can be a thorny issue for the ordinary citizen. It is not hard to imagine how much more difficult it may become for the vulnerable groups we have in mind. And yet they are entitled to it as a fundamental right.

My Organization, therefore, highly welcomes that this Conference of European Ministers of Justice has set its focus on the access to justice for vulnerable groups with a particular emphasis on migrants, asylum-seekers and children.

I would like to join speakers before me in the appreciation of the underlying Report by Spain for the excellent description of the issues at stake. We are also grateful to the rapporteur and to the Conference for the inclusion of refugees, internally displaced and stateless persons in the Report and in the draft Resolution No. 1.

There are many different types of situations in which these vulnerable groups may be deprived of their rights and find it difficult to seek redress. Very often, these do not just relate to access to a court. I appreciate, therefore, the broad approach taken by the rapporteur and the Conference.

When we speak about access to justice for asylum seekers, we have to bear in mind that absence of justice may already have been the reason for their displacement and the source of their vulnerability. Persons deprived of justice and thereby of protection in their own country or region may need to flee in order to find that protection elsewhere.

Access to justice for these people means that justice systems take full account of their vulnerabilities in all aspects, but in particular as they may hinder them to make full use of their rights. Most procedural safeguards to ensure that their protection needs can be tabled and assessed in a fair and effective manner have already been brought to our attention in earlier contributions.

I will, therefore, make only a short reference to UNHCR's views in this context:

Access to justice for asylum seekers to determine their protection needs should include:

- Access to the territory and protection against *refoulement* as obvious pre-requisites to ensure access to the asylum procedure.

UNHCR remains concerned that restrictive border management and external immigration control measures may hinder access to the territory and thus access to the asylum process.

- Adequate reception facilities and conditions, as they are not only essential to meet the humanitarian needs of migrants and asylum-seekers seeking access to the Council of Europe member states, but also to facilitate the submission and processing of asylum claims.

Detention is on the rise as an asylum management tool, also for separated children, sometimes in inadequate conditions, in overcrowded facilities not suitable for persons with special needs.

As a rule, detention should normally be avoided to the extent possible and, if there is no alternative, be kept within strict limitations and under judicial review. Children should not be detained at all.

- To be fair and effective, asylum procedures need to observe a minimum of the safeguards elementary to access to justice, with yardsticks provided by international protection standards, standards set by the Council of Europe and the evolving interpretation of the European Convention of Human Rights by the Strasbourg Court.

I would like to refer to some of them:

- Information about justice instruments and procedures, in a language the asylum seeker understands,
- Adequate facilities which allow for the proper preparation of a claim and access to legal aid,
- Free legal aid within the asylum procedure, and if need be in the pursuit of other rights,
- Reasonable time lines for claim submission and appeals,
- Effective guardianship for separated children,
- Qualified interpretation, and
- Most importantly, an effective legal remedy, which has to have suspensive effect, especially when the consequences involve exposure to an irreparable harm, such as a human rights violation under Art. 3 of the ECHR.

There is a particular danger that, in accelerated asylum procedures which are increasingly becoming standard practice, the system may fail to fully deliver on these safeguards to ensure access to justice.

In this context, UNHCR very much appreciates the work in progress under the CDDH regarding the protection of human rights in the context of accelerated asylum procedures.

UNHCR also welcomes paragraph 16 c of the Draft Resolution No. 1:

The asylum procedure and its results have to have a bearing on other procedures involving the asylum-seeker, in particular extradition procedures, in order to ensure full compliance with the *non-refoulement* principle.

UNHCR has been observing substantial discrepancies between law and practice in the interpretation of international refugee law standards at national level as well as astonishing variations between CoE member States in the recognition rates of international protection.

These are indicators that, Europe-wide, there is a need to improve the consistency and the quality of the asylum decision-making process.

All procedural guarantees to ensure access to justice, as we have been discussing them, will not be of much help, if the decision itself fails to deliver justice.

In this vein, and if given the opportunity, I would have recommended to include, in an additional line, an invitation to the Committee of Ministers to entrust the concerned Committees to also examine:

- the human rights protection offered by the justice systems available to migrants and asylum seekers, with an aim to ensure that justice in all Council of Europe Member States reflects international protection and European human rights standards in an effective and consistent manner.

But even if it is not feasible to enter such provision at this late stage, I would hope that the consensus and the spirit of the Resolution will allow the Committee of Minister to engage the concerned Committees in this direction. This would take due account of the legacy the Council of Europe has established in this field and the added value it can provide.

This also would tally well with the proposed cooperation activities of the Council of Europe in paragraph 17 of the Draft Resolution No. 1, an area where UNHCR is already closely engaged with the Council of Europe in the joint organization of such training activities together with interested Member States.

Thank you for your attention.

