

## **Final report**

**Ludwig Boltzmann Institute of Human Rights**

**Study: „A new Asylum Policy for Europe?!“**

**Project-ID: 991**

## **Final report in general**

### **Conceptual phase**

The first phase of the project included the development of the format, research questions and identification of the most recent developments of European asylum policies from a human rights perspective. Three internal workshops/meetings to exchange knowledge and views between different experts took place during this phase:

*(1) 25 February 2016: Workshop with experts of the Ludwig Boltzmann Institute of Human Rights*

Participants: Katharina Häusler, Hannes Tretter, Julia Planitzer, Anna Müller-Funk, Stephanie Krisper, Giuliana Monina, Fiona Steinert, Katrin Wladasch, Dorothea Keudel-Kaiser. Two main aspects emerged from this discussion which were taken up in the study:

- The current political public discourse is mainly problem-based, only shows limits of the EU and its member states and rarely takes human rights obligations towards refugees into account. Human rights increasingly become the status of an ideal instead of being understood as a common standard on the EU- as well as the national level.

In reaction to this tendency, the study takes a “positive” approach, starting from the „obligation to protect“. Thus, it changes perspective to the point of view of the protection seeker.

- The second conclusion was the fact that in current discussions only individual aspects of the so called „migration crisis“ are analysed, fragmentation which doesn't allow for a holistic approach looking into causalities and drawing an overall picture which looks into obligations of the EU from root causes to migration routes, access to the EU to integration.

Within the limited time frame a comprehensive analysis of all these aspects was not feasible. However, the study shows the overall picture in its introduction and then focuses on three main topics which are at the core of current discussions and central for a human rights based approach: legal entry channels, an alternative to the Dublin system and the establishment of a common European system through joint processing of asylum applications and a Europe-wide decision body.

*(2) 06. April 2016: Discussion with Christoph Pinter, Head of UNHCR Austria*

On 6 April 2016 a discussion of these central points and the draft recommendations took place with the head of UNHCR Austria, Christoph Pinter. The meeting reflected then current

developments such as the EU-Turkey-Deal, UNHCR's role in the so called "hotspots" considering the fact that they had developed into detention facilities and the impact of further restrictions of Austrian asylum laws. Alternatives were discussed, specifically focusing on legal access, „responsibility sharing mechanisms“ among the EU member states and a strengthened role of EASO in supporting them.

*(3) 12 April 2016: Feedback session with Manfred Nowak, director of the Ludwig Boltzmann Institute of Human Rights*

Central topic of this discussion was the question of a common supranational European asylum authority and a Europe-wide asylum status allowing for free choice of residence for refugees, compensation between member states being organised via an EU fund.

Based on literature research and the extensive discussions mentioned above the first draft of the study was presented to a focus group of invited experts.

### **Focus Group Discussion, 26 April 2016, 13:30-17:30**

Exchange with external experts for the purpose of additional input and feedback took place in the format of a focus group discussion, bringing together experts from theory and practice, facilitated by the BIM researcher Katrin Wladasch. The format was chosen to allow for a focused, non-polarised and facts-based and results-oriented exchange (as opposed to a most likely more emotional public discussion). The results were taken up in the study and this way disseminated to the public. Participants were: Wolfgang Bogensberger (European Commission - Representation in Austria), Ulrike Brandl (Department of International Law, University of Salzburg), Torsten Moritz (Executive Secretary, Churches' Commission for Migrants in Europe CCME, Brüssel), Kris Pollet (Senior Legal and Policy Officer, European Council on Refugees and Exiles ECRE, Brüssel), Violeta Moreno-Lax (EU Asylum Law Coordinator, Refugee Law Initiative, University of London), Bernhard Schneider (Head of Migration and Legal Affairs, Austrian Red Cross, Vienna), Adriano Silvestri (Head of Section Asylum, Migration, Border, European Agency for Fundamental Rights, Vienna), Philipp Sonderegger (human rights consultant, Vienna), Bettina Scholdan (human rights consultant, Wien, co-author) and Shana Kaninda (Senior Policy Officer, UNHCR Office for Europe, Brussels). Further participating study authors: Giuliana Monina and Dorothea Keudel-Kaiser. Katharina Glawischnig of the Austrian NGO Asylkoordination unfortunately had to cancel last minute.

The discussion identified the following focus points with particular human rights relevance: differences in the implementation of the EU asylum acquis and models how these could be harmonised, such as *joint processing*, *a – controversially discussed – EU asylum authority and a uniform asylum status*.

Participants emphasized the importance of involving civil society in all areas of asylum policy, amongst others by models of *private sponsorship*, already established in other countries (e.g. Canada, resettlement-programme). Strengthening of family reunification mechanisms was mentioned as being of specific importance in future developments.

As follow-up to the focus group discussion results were incorporated in the study draft, the final version was copy-edited and proof-read and prepared for printing. In parallel, a folder

was drafted summarizing the main points of analysis and recommendations in German and English.

### **Acknowledgments**

We would specifically like to thank the participants of the focus group discussion who joined us also from London and Brussels to share their expertise with us in times of especially tight schedules due to the dramatic developments in their area of expertise.

### **Structure of the study**

The research phase (literature research, workshops) resulted in the following structure of the study:

I.

- Description of the EU's obligations towards protection seekers with regard to international and EU law as a basis for the following parts dealing with the EU asylum acquis

II.

- Legal entry channels to the EU to prevent protection seekers risking their lives on dangerous routes of flight
  - Resettlement programmes
  - Right to family reunification
- Human rights based alternatives to the failed Dublin system
- Ways to reduce the divergence of national asylum systems
  - "Joint" and "supported processing of asylum applications
  - A joint European asylum authority providing for a Europe wide asylum status

III.

- Reception conditions inside the EU

Current developments such as the EU-Turkey deal, the situation in the so called „hotspots“ and the tendency to close borders in different EU member states are taken into account as integral part of the above chapters.

### **Challenges**

One of the major challenges were the constant new political developments regarding the topic with at times weekly new proposals and guidelines issued by the European Commission and daily news on human rights violations. The study tries to take those developments on board and at the same time keep to the basic questions as not to be outdated immediately.

The original ambitious plan to complete the study within 4 months to quickly react to the ongoing discussion turned out not to be feasible. Due to the dynamic of the political debate and the complexity of the topic the research as well as the final revisions took more time and

resources than expected. In addition, a change of staff at the institute led to additional efforts in the initial phase, so the study finally came off printing at the beginning of July instead of May.

### **Which sociopolitical purpose has the project fulfilled?**

The study shows in a comprehensive way which human rights obligations towards protection seekers the EU as well as its member states have to comply to. It also analyses compatibility of the currently discussed approaches towards a solution in the different areas (legal access, European asylum system etc.) in relation to international and EU law. The recommendations developed as part of the study are intended to serve as reference for a substantive and profound political discussion – to be used by political representatives as well as civil society.

As such the study addresses several socio-political levels:

- **Policy makers:** Recommendations are meant as guiding principles for politicians and policy consultants on the national as well as European level to counter the increasing ignorance towards legal obligations resulting from human rights and refugee law and should support a return to human rights standards in policy making.
- **Civil society:** NGOs should be able to use the study as a reference for argumentation in the political debate.  
The study is being distributed to the scientific community engaged with the research topics of asylum and migration.
- **General public:** Results of the study are made available to the public via the BIM's different communication channels (BIM Info Newsletter, BIM CIRCLE Newsletter, Social Media, Website) as well as via the newsletter of *Zentrums Polis – Politik Lernen in der Schule*<sup>1</sup>, reaching teachers and thus indirectly pupils.
- Ultimately, pointing out human rights violations and discussing human rights based approaches to solutions is intended to result in an improvement of the situation of those seeking protection.

Addressing multipliers supports the aim of raising awareness for human rights violations in the area of asylum policy and at activation to disagree with policies implying such violations. In a broader sense, the study is understood as a contribution to the ongoing discussion of the project „Europe“ as a community of values. Raising awareness for a human rights perspective as basis of this project seems essential.

### **What were the reactions of others to this project?**

Considering its topicality and relevance work on the study was perceived with high interest:

- As described above, we were very happy about the readiness of a group of high-level experts from think tanks, NGOs, academia and EU institutions to participate in our focus group in times of specific engagement of this group of experts.
- Continuous media and institutional requests for information regarding Austrian and European asylum policy show the urgent need for fundamental human rights based information on the topic. Study results are presented at conferences such as the Alumni-Salon of the Heinrich-Böll-Foundation on „Strategies of a sustainable refugee policy“ on 29 October in Berlin.

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<sup>1</sup> Dissemination will take place in autumn 2016 at the beginning of the new school year

- Last, but not least the support from donors (individuals as well as organisations) who are active in the legal and asylum-related field confirmed the timeliness and relevance of the study.

#### What was the donated money spent for?

	Total	Budget
<b>Staff costs</b>		
Research, drafting	€ 19.614,69	€ 19.100,00
Project coordination, coordination of expert team	€ 3.028,83	€ 2.700,00
Dissemination	€ 3.873,01	€ 3.700,00
Round Table – Preparation and organisation	€ 3.779,84	€ 3.800,00
<b>Staff costs total</b>	<b>€ 30.296,37</b>	<b>€ 29.300,00</b>
<b>Other costs Round Table</b>		
Other costs Round Table	€ 2.724,94	€ 2.700,00
<b>Total Round Table</b>	<b>€ 2.724,94</b>	
<b>Other costs study</b>		
Printing, Layout etc	€ 2.796,20	€ 3.800,00
<b>Total study</b>	<b>€ 2.796,20</b>	
<b>Total</b>	<b>€ 35.817,51</b>	<b>€ 35.800,00</b>

Deviations of costs in relation to the budget were minor, since costs for publishing of the study were slightly lower than assumed the higher effort for human resources could be compensated.

A detailed list of expenditure can be found in the annex.

The study can be downloaded at:

<http://bim.lbg.ac.at/en/story/news/study-new-asylum-policy-europe-opting-rights-based-approach>



#### Annex

- Invitation and participants Focus Group Discussion
- Photos Focus Group Discussion



## Übersicht eingeladene ExpertInnen Focus Group Discussion am 26.04.2016

<p>Bogensberger, Wolfgang</p> 	<p>Institution: European Commission – Representation in Austria</p> <p>Former research staff of the European Parliament in Brussels and Strasbourg, member of the Legal Service of the European Commission in Brussels.</p>
<p>Brandl, Ulrike</p> 	<p>Institution: University of Salzburg, Department of International Law</p> <p>Focus: Refugee, asylum and migration law, human rights protection, International Organisations, sanctions and means to implement international legal obligations</p>
<p>Glawischnig, Katharina</p> 	<p>Institution: Asylkoordination Österreich, Vienna</p> <p>Focus: Legal expert concerning unaccompanied minor refugees, member of the board of Network Childrens' Rights, member of the steering committee of the Separated Children in Europe Programme</p>

## Übersicht eingeladene ExpertInnen Focus Group Discussion am 26.04.2016



<p>Dr. Moritz, Torsten</p> 	<p>Institution: Churches' Commission for Migrants in Europe (CCME)</p> <p>Focus: Protection of refugees, trafficking in human beings, labour migration, migration and development</p>
<p>Pollet, Kris</p> 	<p>Institution: European Council on Refugees and Exiles (ECRE)</p> <p>Focus: Coordination and development of ECRE's policy and legal work, former work on asylum and migration at the Amnesty International EU Office, EU asylum and migration law, detention, procedural guarantees, reception conditions for asylum seekers</p>
<p>Dr. Moreno-Lax, Violeta</p> 	<p>Institution: University of Liverpool and University of London</p> <p>Focus: Lecturer at the legal department of the University of Liverpool and EU asylum law coordinator of the refugee law initiative at the University of London, Expert consultant at the European Parliament and the European Commission as well as NGOs and governmental institutions, member of the Centre for Law and Society in a Global Context, research on border control, international protection and migration management.</p>

Übersicht eingeladene ExpertInnen Focus Group Discussion am 26.04.2016

<p>Dr. Schneider, Bernhard</p> 	<p>Institution: Austrian Red Cross</p> <p>Focus: Overall legal expertise relevant for the Red Cross (medical and health, humanitarian, labour and social law), migration focus in the Red Cross network PERCO, Red Cross policy development to support rights of asylum seekers and migrants at EU level</p>
<p>Silvestri, Adriano</p> 	<p>Institution: European Agency for Fundamental Rights (FRA) in Wien</p> <p>Focus: Head of Head of Section Asylum, Migration, Border, contributor to the development of UNHCR guidelines (on child protection and internally displaced persons)</p>



Übersicht eingeladene ExpertInnen Focus Group Discussion am 26.04.2016

<p>Sonderegger, Philipp</p> 	<p>Institution: Consultant and independent human rights expert, former representative of SOS Mitmensch, OS'T : Network for organisational consulting, social research, supervision and training</p> <p>Focus: Human rights, democracy, politics, networking</p>
<p>Kaninda, Shana (right)</p> 	<p>Institution: UNHCR Office for Europe, Brussels</p> <p>Focus: Policy development, legal issues, führende Politikverantwortung (Recht), operations management in Botswana</p>



left to right: Kaninda Shana, Philipp Sonderegger, Adriano Silvestri



left to right: Bettina Scholdan, Giuliana Monina, Katrin Wladasch, Dorothea Keudel-Kaiser

left to right: Ulrike Brandl, Torsten Moritz, Violeta Moreno-Lax, Giuliana Monina, Katrin Wladasch, Dorothea Keudel-Kaiser, Bernhard Schneider, Kaninda Shana, Philipp Sonderegger, Adriano Silvestri, Wolfgang Bogensberger



left to right: Moritz, Torsten, Bernhard Schneider, Kaninda Shana, Philipp Sonderegger, Adriano Silvestri, Wolfgang Bogensberger

left to right: Giuliana Monina, Katrin Wladasch,  
Dorothea Keudel-Kaiser



Wolfgang Bogensberger

Kris Pollet, Ulrike Brandl





Ludwig Boltzmann Institute  
Human Rights

Ludwig Boltzmann Institute  
of Human Rights  
Research Association

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## A NEW ASYLUM POLICY FOR EUROPE?!

Opting for a rights-based approach  
and what this would mean

by

Dorothea Keudel-Kaiser, Giuliana Monina,  
Bettina Scholdan, and Katrin Wladasch

Respekt.  
net

