



sous le patronage
du Parlement européen

the **charta** of Volterra

New roads for a refugee policy

VOLTERRA

GRONINGEN

The European Union is founded on the principles and values of the Universal Declaration of Human Rights. The European Union must ensure the respect of human rights in all its cooperation agreements, partnerships and relationships. The Member States of the European Union have a duty to implement these principles and values, as they evolve with time. To this end, 'CHARTA OF VOLTERRA' is intended to be a common instrument to help improve internal and external political cohesion, in order to face the challenges of the new millennium - from the gap between the north and the south of the world, to the subsequent immigration of people escaping conflicts, dictatorships, hunger, poverty and natural disasters.

The Charter of Volterra is not aimed at answering all the questions posed by the complex issue of asylum policy, but at addressing a limited number of concerns and formulating them into themes and proposals, which should consequently provide a starting point from which to develop a comprehensive and unified asylum policy amongst EU Member States.

Towards a common EU asylum policy

A common asylum policy would put an end to the remaining differences between EU Member States regarding practices of admittance, treatment and assessment of asylum seekers, and overall practice implementation. Thus, the serious inequality of justice within the EU caused by the existing range of practices can be avoided or rectified.

A responsible EU asylum policy requires the formulation of basic starting points. Fundamental requirements include a set of concrete proposals regarding the harmonisation of standards, legally safeguarded procedures, conditions of residency, return policy and safeguards for meticulous parliamentary supervision of policy development and compliance with this policy. These requirements are incorporated in a number of proposals, which are outlined below.

- 1) The countries in the European Union should unequivocally guarantee the enforcement of rights under the international human rights treaties (ECHR, ICCPR, CRC and the Geneva Refugee Convention) when implementing their respective (national) asylum policies. Practice shows that several EU Member States are inclined to deviate from them. The European Parliament should, therefore, in addition to the Council of Europe, have independent responsibility for supervising the correct implementation of asylum policy within the EU. Harmonisation must be based on the highest standards.
- 2) An "EU Responsibility Sharing System" should be implemented to prevent the national interests of individual Member States from becoming the paramount criteria for EU policy making. In this way, the system will divide the responsibility equally, respecting the views which the EP has been expressing for two decades, as well as the general harmonisation objectives of the EU.

- 2a) The system for Responsibility Sharing should be proportionately based.
- 3) The role of the EP will have to be widened, since the asylum policy will also increasingly be determined within an EU framework. With the further development of a common EU asylum policy, the parliamentary supervisory role will have to be defined in terms of policy-making for, and control of, all EP operations.
- 4) EU Member States should create a common testing framework, and thus a consistent admittance policy, on the basis of common country reports outlining the consequences of return. Situations have to be avoided where the airport of arrival determines whether the application of the asylum seeker is treated as that of a refugee, as defined by the Convention, or as that of an economic migrant. This makes a common EU database of country information crucial. Information input from NGOs should be included in the system, in order for it to be taken into consideration in the assessment procedure.
- 5) For parliamentary and democratic reasons, as well as to ensure accuracy and consistency, the EP will require authority to gain permanent access to, and supervision of, a country information database. Governments, international institutions and NGO's will provide to the database relevant information and country reports. The use of this database, which will include all the necessary information on which decisions can be based, will make the unjust Safe Third Country List superfluous.
- 6) In view of the need to enhance the role of the EP with regard to the development and supervision of asylum policy, an inventory needs to be drawn up as soon as possible, to include all the requirements necessary to achieve improved co-operation on EU asylum matters.
- 7) International standards on rescue-at-sea, including border patrols, should be respected and protected by European institutions.

Combating root causes

Before addressing the 'entry and application for asylum' stage, there should be discussion regarding all the possible causes or influences which lead to forced migration from countries of origin.

- 1) Combating the root causes which compel people to migrate should be one of the spearheads of EU policy.
- 2) The absence of legal safeguards, Rule of Law and individual security in the countries of origin constitute important reasons for people to flee. Policies aimed at developing

independent legal safeguards, in line with international standards, in the countries of origin should be stimulated and actively supported by the EU Member States.

- 3) The EU should give active support to government initiatives in countries of origin that fulfil the conditions of UN human rights conventions and standards.
- 4) Where government initiatives fail to comply with international standards or are lacking, the EU should offer active moral and material support for civil initiatives that actively pursue these standards.
- 5) The EU should give active political and material support, as well as protection, to NGO's which provide emergency help in crisis areas to (civil) victims (including refugees, war victims and IDP's).
- 6) The EU should implement effective policies which enable migrants to contribute to the development of their countries of origin.
- 7) The aid and trade policies of the EU should be transparent and aimed at furthering global development, environmental sustainability and human rights. The EU Member States should work towards WTO treaties on free trade, reflecting the above.

Stop "drifting" in the EU

The drifting of rejected asylum seekers within the EU is an undesirable phenomenon that is difficult to control and has far-reaching consequences for all supervising and executive services. In order to minimize this transient population within the EU, it is important that Member States that have de facto jurisdiction in line with the principle of the Dublin Agreement should also remain responsible for the handling of the rejected foreigner's safe return.

- 1) EU Member States should never stimulate rejected asylum seekers to leave for other EU Member States in any other way than that based on official responsibilities and agreements.
 - 1a) There must be a protection programme for people who are the victims of human trafficking.
 - 2) The EU Member States should actively stimulate a voluntary return or departure to a safe country that is responsible for the rejected asylum seeker as a result of his nationality, previous legal status or long-term residency. The cooperation of the relevant parties can be encouraged by offering them support for taking advantage of opportunities in their country of origin, resettlement through education and training, and economic and financial support for themselves, as well as the region of origin.

- 3) In cases where the voluntary return or departure of rejected asylum seekers who have not been granted access (to one of the EU Member States) does not take place, the Member State that has jurisdiction should organize the departure, if necessary involuntarily, but with safeguards in line with the international human rights standards (including the ECHR) and with the utmost care.
- 4) Allowing rejected asylum seekers to roam about without any provisions such as housing, social benefits or medical care, rather than enforcing their return, will stimulate many of them to travel around within the EU in violation of various treaties, for example, in the case of children, the CRC. This is wholly undesirable and should be avoided. The EU Member States should continue to have responsibility for keeping in touch with rejected asylum seekers in such a way that the drifting of people is prevented.
- 5) The period of time given to asylum seekers who need to replace travel documents in order to leave a Member State voluntarily and independently should be equal to the period of time needed by the authorities of the receiving state to provide these documents and the time needed to make the repatriation possible.
- 6) If the competent authorities in a Member State have ascertained that, within the given time period for departure, the rejected asylum seeker has done everything possible to leave the country, but (for technical reasons) has not been able to do so, a temporary residency permit will be issued within three months on the basis of 'circumstances beyond control', and will be valid for six months. This will help prevent people staying illegally and travelling within the EU. Whilst the temporary permit is valid, the holder will work together with the competent authorities to effect departure. This period may be extended twice, after which time, either the departure will be effected, or the authorities must accept that the asylum seeker may stay legally.

Note: Best practices will be presented to the Supervisory Board to prepare for the next phase of the decision-making process.

Procedures and terms

Over the last few decades, we have learnt that migration can be called “temporary”, but that does not mean that migration is temporary. The longer one stays in a country, the more one integrates and becomes interwoven with the society and culture and detached from one’s country of origin. Children who grow up in the EU, therefore, become blended with EU society and culture, and the basic fundamental principles of the EU (human rights, justice and equality). A return to countries of origin where these rights are not respected, or only to a very limited degree, becomes more and more problematic. Moreover, it has become clear in recent years that long term uncertainty has a very negative and long-lasting effect on the ability of migrants to live and function normally, even when they do eventually obtain a permanent residency permit.

Furthermore, when one has struggled and waited for years to obtain the right of residency, it is very difficult to accept a negative response. Long procedures and a long “temporary” stay also bring with them, besides medical and economic problems, the high costs associated with accommodation, legal procedures and the long term supervision of foreigners.

It is therefore necessary, for the sake of the individual asylum seeker as well as for the host country, to strive for swift decision-making and to agree on maximum waiting times.

- 1) The asylum procedure needs to include high level legal guarantees and should be covered by the Human Rights Conventions.
- 2) Interviews should be recorded on tape to ensure a factual record of the conversation and to exclude any interpretations arising from differences of opinion.
- 3) A reasoned decision about an application for asylum should take place within a maximum term of six months (with the possibility of extension for another six months if an investigation into the circumstances in the country of origin needs to be conducted). In the event that the application is refused, the asylum seeker should have the opportunity to lodge an appeal with an independent judge. The original decision should then be suspended pending the outcome of the appeal. This time scale should make it possible in the majority of cases to conclude procedure within the term of one year.
- 4) Applications for asylum where a reasoned final decision, including an independent verification by a judge, has not been made within two years (leading to situations where asylum seekers live in uncertainty for long periods and in the meantime integrate) – should automatically result in a residency permit, on the grounds of time spent.
- 5) This residency permit can then only be withdrawn if the recipient constitutes a (serious) danger to public order.

- 6) A minimum term of four weeks needs to be observed in which to lodge an appeal with an independent judge against the refusal of the application for asylum within the legal framework of “equality of arms”. The original decision should then be suspended pending the outcome of the appeal.
- 7) The various possibilities for admittance (asylum, humanitarian, medical) need to be tested as far as possible within one streamlined procedure, in order to avoid successive procedures and long term uncertainty for all parties involved.
- 8) If there is new evidence, facts or circumstances that have not been taken into consideration in the first procedure, the applicant will be allowed to start a new procedure, within the framework of the Geneva Refugee Convention and the European human rights convention.
- 9) All actions taken not only during admission, but also during expulsion procedures, should be tested against national law and human rights treaties. Precise codes of conduct (do’s and don’ts) should be laid down in guidelines.

The position of children

- 1) The EU Member States party to the Convention on the Rights of the Child (CRC) will guarantee to children who are within their jurisdiction (due to their stay in the relevant EU Member State) their rights as assigned to them under the Convention, irrespective of the status or origin of themselves or their parents.
- 2) No child shall be detained on the grounds of their immigration status. Detention is for the shortest possible period of time, according to Article 37 CRC. In General Comment 6, the Committee on the Rights of the Child states: “Detention may not be justified solely (...) on their migratory or residence status.”
- 3) Family reunion should be allowed without obstacle. Applications for the purpose of family reunion should be dealt with by the states party to the Convention in a positive, humane and expeditious manner, in accordance with Article 10 CRC.
- 4) Accommodation should be provided to all children, regardless of their immigration status, for example, in accordance with Articles 2 and 27 CRC.
- 5) Unaccompanied minors should be provided with a permanent residency permit in the receiving countries - if this is in their best interests - within the shortest possible period of time. An independent organisation should determine what is in the best interest of the child.
- 6) Migrant and refugee children accompanied by their parents and unaccompanied minors should be provided with a permanent residency permit after a fixed period of

time, e.g. five years when the children are rooted and integrated in the receiving country.

Unaccompanied minors

Unaccompanied minors are an especially vulnerable group amongst asylum seekers. All minors should learn what the basic human rights are. In view of this, additional measures directed towards this group should be taken, as follows:

- 1) The CRC is to be applied to the letter and in full to unaccompanied asylum seekers under the age of eighteen.
- 2) During the interview that takes place as part of the asylum procedure, the age and vulnerable position of unaccompanied minors should be taken into account. Minors should be given time in a safe environment to disclose their story. A psychologist should in all cases be consulted.
- 3) During the asylum procedure any existing humanitarian reasons for admission should be investigated.
- 4) A guardian is to be appointed to the unaccompanied minor in order to look after his/her interests. Independent NGO's should organise integral coaching for both the official guardian and the immigration officer.
- 5) If an unaccompanied minor is not allowed access to an EU Member State, he/she is to be carefully and adequately cared for during the entire period of his/her further stay in that country.
- 6) Unaccompanied minors falling into the hands of human traffickers should be prevented.
- 7) Unaccompanied minors should not be allowed to vanish without trace as a result of their illegal status. This must be the central policy objective of the EU Member States.
- 8) On reaching the age of eighteen, unaccompanied minors should have access to a programme which includes social benefits.

Medical circumstances

When processing asylum requests, the authorities should always pay attention to any medical issues. This could be administered in line with the Istanbul Protocol, dated 9 August 1999 (Manual on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment). This means that:

- 1) The need for medical care should be recognised in good time.
- 2) The question as to whether an asylum seeker is able, from a medical point of view, to undergo an interview regarding his asylum request (because of possible trauma-related problems) must always be considered.
- 3) The asylum seeker involved should be given the opportunity to indicate any torture or trauma he may have suffered, in order that these circumstances may be taken into account during the asylum procedure.
- 4) Medical care within the EU should be available to all asylum seekers; necessary medical care should also be made available to all illegal immigrants who are in such a condition that a loss of vital functions is imminent.

The position of women

Female asylum seekers encounter more difficulties than male asylum seekers in obtaining refugee status. Statistics show that most women gaining admission are not recognized as political refugees but instead are given a residency permit for humanitarian reasons or on the grounds of Art. 3 ECHR, because of the general situation in their country of origin.

- 1) Interviews which are of a gender-sensitive nature should be carried out only by immigration officers who are adequately trained and qualified in this area.
- 2) Country reports should give more emphasis to the position of women and to the cultural reality. This includes the possibility for women to ask government authorities for protection. Reports should not only encompass the purely legal situation (whether it is possible to report a crime), but should also describe the effects of reporting a crime. Gender-specific information relevant to the situation in the countries of origin, human trafficking and reception procedure in the host country should be included in the database mentioned under point 4 of the paragraph "Towards a common EU asylum policy".
- 3) In addition to the normal compliance with the Geneva Convention and other relevant conventions, applications for asylum filed by female refugees should be tested against special guidelines in which policies are set out with regard to female-specific

circumstances e.g. fleeing sexual violence, forced marriage, honour related threats, forced prostitution, trafficking, threat of genital mutilation of daughters, position of women without a family they can rely on etc. Asking for 'special attention' will not suffice if these guidelines are not laid down in writing.

Note: The Supervisory Board will be asked to consider the proposal that the EU should adopt and follow guidelines on the processing of applications from female asylum seekers, in line with those followed in Canada.

- 4) Female asylum seekers should be offered the possibility of talking to female officials, interpreters and other professionals involved in the case during all interviews in their asylum procedure.
- 5) It should be made possible to present facts with regard to sexual violence (or other events that are considered shameful) at a later stage of the asylum procedure.
- 6) It should be made possible to report in confidence to the official responsible, incidences of sexual violence (or other events that are considered shameful) which can be evaluated without family members or third parties being informed.
- 7) Guidelines and codes of conduct with regard to all actions taken not only during admission, but also during expulsion procedures (as mentioned in point 9 of the paragraph on Procedures and terms) should pay special attention to gender-related problems.
- 8) Immigration authorities should give due consideration to the need to protect women who have been victims of traffickers or who are witnesses for the prosecution against traffickers. In many cases they may qualify for refugee status on the grounds that they have been subjected to sexual exploitation in their country of origin or risk such treatment upon return.

Additional points

The following points will be forwarded to the Supervisory Board to be taken into consideration.

1. *After investigation, the Supervisory Board will be informed on how the existing European rules are implemented and executed at a national level within each Member State.*
2. *If a Member State operates outside international conventions, the possibility of sanctions should be considered.*
3. *A separate chapter to be added on the issue on human trafficking before the next meeting in Groningen.*
4. *A preamble is to be created to ensure that the quality of the whole procedure is of a high standard and in line with international laws and conventions.*
5. *The Supervisory Board has to decide on the following proposal in relation to privacy protection regulations:*

'In the first instance, a separate interview should take place with the female asylum seeker, during which she can report in confidence to the (female) official responsible, incidences of sexual violence (or other events that are considered shameful). Following this, a second interview may take place in the presence of the husband/partner, subject to the explicit permission of the female asylum seeker.'

6. *The Supervisory Board has to decide on the following proposal:*

'Any person is entitled to apply for political asylum and humanitarian refugee status at any time, in any part of the world where there are official representatives of the European Union, Member States, the United Nations (humanitarian protection document), at any border or on community territory. If a person meets the requirements, even if he/she is outside the European Union, the relevant authorities must issue the appropriate travel documents (safe passage).'

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chartaofvolterra@gmail.com

INLIA

Charter of Groningen Coordination

John van Tilborg (Groningen, The Netherlands)
tel+31.503138181

teatro di nascosto HIDDEN THEATRE

Annet Henneman (Volterra, Italy)
tel +39.058881182
tel +39.3355794909



Comitato per la promozione e protezione
dei diritti umani

Maurizio Gressi (Roma, Italy)
tel+ 3382478680

Appendix

Names and abbreviations of human rights conventions referred to above:

- Universal Declaration of Human Rights
- United Nations Convention on the Rights of the Child (CRC)
- UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)
- International Covenant on Civil and Political Rights (ICCPR)
- (UN) Convention Relating to the Status of Refugees (The 1951 Geneva Convention)
- (UN) Protocol Relating tot the Status of Refugees (1967)
- Convention for the Protection of Human Rights and Fundamental Freedoms (European Convention on Human Rights, ECHR)
- United Nations Convention against Torture and Other Inhuman and Degrading Treatment or Punishment (UNCAT)