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**Submission from the Jesuit Refugee Service in response to the Commission's  
Green Paper on the Future of the Common European Asylum System  
COM(2007) 301**

The Jesuit Refugee Service (JRS) is a Catholic non-governmental organisation, which was founded in 1980 and whose mission is to accompany, serve and defend the rights of refugees and forcibly displaced people regardless of their religious affiliations. The regional office of JRS in Brussels networks with staff members in 22 European countries. JRS personnel in Europe accompany *inter alia* asylum seekers held in detention.

JRS welcomes the recent publication of the Commission's Green Paper on the future of the Common European Asylum System (CEAS), as it puts refugee protection back on the European Union (EU) agenda and opens a wide debate on the second phase of the harmonisation of European legislations in the field of asylum. JRS takes up this opportunity to participate in such a broad debate. However, because of its experience in Europe, JRS has a more specific concern about the detention of asylum seekers in the EU and will therefore focus its contribution on question No. 9 of the Green Paper.<sup>1</sup>

Question 9: Should the grounds for detention, in compliance with the jurisprudence of the European Court of Human Rights, be clarified and the related conditions and its length be more precisely regulated?

## **I. Legal Grounds for the Detention of Asylum Seekers**

First and foremost, it is worth recalling the wording of Article 18 of the Council Directive 2005/85/EC of 1<sup>st</sup> December 2005 "on minimum standards on procedures in member States for granting and withdrawing refugee status" according to which: "*Member States shall not hold a person in detention for the sole reason that he/she is an applicant to asylum.*" This provision recalls that asylum seekers are not criminals. Their illegal entry or presence on the territory of a Member State should not lead to their automatic detention by the authorities of this State.

This is in line with Article 31(1) of the 1951 Refugee Convention, which states: "*The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened in the sense of article 1, enter or are present in their territory without authorization, provided*

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<sup>1</sup> JRS has also contributed to the response made by the European Council on Refugee and Exile in Europe (ECRE), as well as the one submitted by the Churches and Christian Organisations in Europe.

*they present themselves without delay to the authorities and show good cause for their illegal entry or presence.*” Paragraph 2 of Article 31 adds: *“The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary.”* It follows from this Article that detention should only be resorted to in cases of necessity. In its “Revised Guidelines on applicable criteria and standards relating to the detention of asylum seekers”<sup>2</sup>, UNHCR explains the notion of “necessity”. According to the UN agency, *“detention of asylum seekers may only be resorted to, if necessary, in order: (i) to verify identity; (ii) to determine the elements on which the claim for refugee status or asylum is based; (iii) to deal with cases where refugees or asylum seekers have destroyed their travel and/or identity documents or have used fraudulent documents in order to mislead the authorities of the State, in which they intend to claim asylum; or (iv) to protect national security or public order.”*<sup>3</sup>

Article 7 of the Council Directive 2003/9/EC of 27 January 2003 “laying down minimum standards for the reception of asylum seekers” provides an exception to the asylum seekers’ freedom of movement *“when it proves necessary, for example for legal reasons or reasons of public order, Member States may confine an applicant to a particular place in accordance with their national law.”* **Article 7 of the Council Directive 2003/9/EC should however specify what it means by “legal reasons” to detain asylum seekers. The grounds to detain asylum seekers should be detailed in light of UNHCR Guidelines.**

Similarly, Article 5 of the European Convention on Human Rights (ECHR) permits detention when it is *“in accordance with a procedure prescribed by law”* and only in exceptional cases. The European Court of Human Rights has ruled that *“a procedure prescribed by law”* implies the notion of fair and proper procedure which means a procedure conducted by an appropriate authority and free from arbitrariness, i.e. which specifies the grounds on which individuals may be deprived of their liberty.<sup>4</sup> If the country, which detains a person, meets these requirements, Article 5-1 (f) ECHR permits the detention of third-country nationals in exceptional circumstances *“to prevent [their] effecting unauthorized entry into the country.”* The other cases when detention is permitted according to Article 5-1 of ECHR do not apply to asylum seekers<sup>5</sup>, except if the asylum seeker has committed an offence. In this case, Article 5-1 (c), which allows the detention of a person *“for the purpose of bringing him before the competent legal authority of reasonable suspicion of having committed an offence or when it is reasonably considered necessary to prevent his committing an offence or fleeing after having done”*, applies. Similarly, an asylum seeker may be detained according to Article 5-1 (e) *“for the prevention of the spreading of infectious diseases.”*

However, the detention of asylum seekers should be avoided in all other cases. Detention might indeed have serious medical and psychological effects on asylum seekers.<sup>6</sup> In accordance with UNHCR Guidelines, alternatives to detention, in particular: *“monitoring*

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<sup>2</sup> Adopted in February 1999

<sup>3</sup> Guideline 3: Exceptional Grounds for Detention

<sup>4</sup> Judgment of 24 October 1979, *Winterwerp*. This was recalled in Judgment of 5 February 2002, *Conka v. Belgium*

<sup>5</sup> Namely cases mentioned in Article 5-1 (a), (b) and (d)

<sup>6</sup> To that extent, see for example: *“From Persecution to Prison: The Health Consequences of Detention of Asylum Seekers”*, Physicians for Human Rights and the Bellevue/NYU Program for Survivors of Torture, June 2003; or *“Psychiatric Assessment of Children and Families in Immigration Detention”*, Sarah Mares & Jon Jureidini, 2004. These two reports are available on: [www.idcoalition.org](http://www.idcoalition.org)

*requirements, provision of a guarantor/surety, release on bail and open centres*<sup>7</sup>, should be promoted. The EU legislation should be amended with provisions determining alternative measures to the detention of asylum seekers and listing the different alternatives.

In particular, asylum seekers detained under the application of the “Dublin II Regulation”<sup>8</sup> should not be detained for extended periods of time as happens in many EU Member States. In their cases, alternatives to detention should particularly be encouraged.

Moreover, asylum seekers, who are not criminals, should not be detained in prison facilities together with convicted inmates.

## **II. Conditions of Detention**

The conditions of detention of asylum seekers should respect human rights standards. Many of them are detailed in the Council Directive 2003/9/EC.

To that extent, as pointed out by the Commission in the Green Paper, serious problems have been encountered regarding the applicability of the Directive to detention centres. The Directive indeed does not state explicitly whether its provisions only apply to asylum seekers granted with a freedom of movement or also to asylum-seekers in detention.

### ***Applicability of the Reception Directive to Asylum Seekers in Detention***

On one hand, there is evidence showing that the Directive includes detained asylum-seekers. The Directive applies “*to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum seekers*”<sup>9</sup>, and it defines an “asylum-seeker” as “*a third country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken*”<sup>10</sup>. From this it can be concluded that, concerning the scope of this Directive, no distinction is made between asylum-seekers that can move freely and asylum-seekers in detention.

On the other hand, there is some evidence that this Directive does not apply to detained asylum seekers in general, but only when this is explicitly stated, such as in the context of Article 6 (Documentation)<sup>11</sup> and again in the context of Article 13 (General rules on material

<sup>7</sup> Guideline 4: Alternatives to Detention

<sup>8</sup> Council Regulation No 343/2003 of 18 February 2003 “establishing the criteria and mechanisms for determining the Member State responsible for examining an asylum application lodged in one of the Member States by a third-country national”

<sup>9</sup> Article 3 (Scope): “1. This Directive shall apply to all third country nationals and stateless persons who make an application for asylum at the border or in the territory of a Member State as long as they are allowed to remain on the territory as asylum-seekers, as well as to family members, if they are covered by such application for asylum according to the national law.”

<sup>10</sup> Article 2 (Definitions): “(c) ‘applicant’ or ‘asylum-seeker’ shall mean a third country national or a stateless person who has made an application for asylum in respect of which a final decision has not yet been taken (...)”

<sup>11</sup> Article 6 (Documentation): “2. Member States may exclude application of this Article when the asylum-seeker is in detention (...)”

reception conditions and health care)<sup>12</sup>. However, Article 6 states an exception to documentation rules resulting from the special situation created by detention. Thus Article 6 does not contradict a scope generally including detained asylum-seekers. Equally, this time in the context of the “*standard of living*”, Article 13 refers to a “*specific situation*”, which needs special attention, i.e. “*to the situation of persons who are in detention*”. So this provision, too, does not speak against the legal fact that this Directive applies to detainees as well. Consequently it must be concluded that the provisions of this Directive apply to asylum-seekers in detention.<sup>13</sup>

### ***Should International “Transit Zones” Be Considered as “Places of Detention”?***

Another question is whether international zones, where asylum seekers are held upon their arrival in airports and ports, should be considered as places of detention.

The European Court on Human Rights gave a clear answer to this question in its Judgment of 25 June 1996, *Mahad Lahima, Lahima, Abdelkader and Mohamed Amuur v. France*<sup>14</sup>. In this particular case, the question was whether an asylum-seeker who has reached the territory of a State Party to the ECHR, but there detained in an international or transit zone, is protected by the provisions by Article 5 ECHR. Is it a “deprivation of liberty”, when an asylum-seeker is detained in order to check if his claim is founded and when he could be sent to another country considered to be a “safe country”? The Court ruled that the existence of a so-called “safe third country” does not mean that detention in an international airport zone would not constitute a deprivation of liberty. According to the Court, the possibility of the asylum-seeker going to another country “becomes theoretical if no other country offering protection comparable to the protection they expect to find in the country where they are seeking asylum is inclined to take them in”. So, in this case, the Court considered the fact that these asylum-seekers were detained in the international airport zone of Paris Orly as a deprivation of liberty with view to Article 5 ECHR.

**Therefore, EU legislation should apply in transit zones such as in detention centres. To that extent, derogations from basic procedural standards for procedures at borders, provided by Article 35(2) of the Council Directive 2005/85/EC, should be deleted.**

### ***Rights of Asylum Seekers in Detention***

#### **(i) Information about Detention**

<sup>12</sup> Article 13: “2. Member States shall make provisions on material reception conditions to ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence. Member States shall ensure that that standard of living is met in the specific situation of persons who have special needs, in accordance with Article 17 (General principle for the specific situation of vulnerable persons), as well as in relation to the situation of persons who are in detention.”

<sup>13</sup> This conclusion is in accordance with the EU Commission’s point of view. In its Proposal for this Directive, the EU Commission stated, that “premises set up for the specific purpose to house applicants and their accompanying family members during the examination of their application within the context of a procedure to decide on their right to legally enter the territory of a Member State as well as accommodation centres in situations where applicants for asylum and their accompanying family members are not allowed, in principle, to leave the centre, can be defined as detention centres under the meaning of the Directive.” [EU Commission Proposal for a Council Directive laying down minimum standards on the reception of applicants for asylum in Member States, COM (2001) 181 final]

<sup>14</sup> Judgment of the European Court of Human Rights No 17/1995/523/609

According to Article 5(2) ECHR, “everyone who is arrested shall be informed promptly, in a language which he understands, of the reasons for his arrest and the charge against him”.

Similarly, Article 5(1) of the Council Directive 2003/9/EC provides detainees with the right to be informed “within a reasonable time not exceeding fifteen days after they have lodged their application for asylum with the competent authority, of at least any established benefits and of the obligations with which they must comply relating to reception conditions. Member States shall ensure that applicants are provided with information on organisations or groups of persons that provide specific legal assistance and organisations that might be able to help or inform them concerning the available reception conditions, including health care.” Paragraph 2 of Article 5 adds: “Member States shall ensure that the information referred to in paragraph 1 is in writing and, as far as possible, in a language that the applicants may reasonably be supposed to understand. Where appropriate, this information may also be supplied orally.”

The question whether fifteen days is a “prompt” delay is worth being discussed. In particular, when asylum seekers are held in detention centres, they should be informed upon their arrival in the centre about their right to challenge the detention order taken against them.<sup>15</sup> The EU legislation should be revised in that sense.

Of primary importance is also the obligation to inform asylum seekers – either they are detained or not – about their rights in a language they understand. This right is guaranteed by ECHR and recalled in the UNHCR Guidelines<sup>16</sup>. The Council Directive 2003/9/EC, for its part, is much more vague in its formulation. According to it, asylum seekers should be informed “as far as possible, in a language that the applicants may reasonably be supposed to understand.” Article 5(2) of the Council Directive 2003/9/EC should therefore be revised in order to guarantee that asylum seekers are informed about their rights and the reception conditions in every case in a language they fully understand.

## (ii) Access to Judicial Remedies

Article 5(4) ECHR states, that “everyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings by which the lawfulness of his detention shall be decided speedily by a court and his release ordered if the detention is not lawful.”

The appeal must be “effective”, too. This was confirmed by the European Court on Human Rights’ Judgement, *Amuur v. France*. The obligation of effectiveness implies that a number of procedural rights have to be granted to the foreigner. Among those rights are: the right to free linguistic assistance, the right of access to the case file and the right to legal aid.<sup>17</sup>

As regards EU legislation, Article 18 (2) of the Council Directive 2005/85/EC provides: “Where an applicant is held in detention, Member States shall ensure that there is a possibility of speedy judicial review.” In light of the European Court on Human Rights’ jurisprudence, this provision should be amended in order to include rights such as the

<sup>15</sup> In application of Article 5(4) of ECHR and Article 18(2) of the Council Directive 2005/85/EC

<sup>16</sup> Guideline 5: Procedural Safeguards, (i)

<sup>17</sup> Judgment of 25 June 1996, *Mahad Lahima, Lahima, Abdelkader and Mohamed Amuur v. France*

right to free legal aid and free linguistic assistance (if needed) ensuring the effectiveness of the judicial review.

**(iii) Access to Health Care**

Article 3 ECHR prohibits “torture” and “inhuman or degrading treatment or punishment”. With regards to health care while being in detention, detainees may invoke the prohibition of ill treatment to have access to medical assistance if needed.

Article 9 of the Council Directive 2003/9/EC allows Member States to require medical screening for asylum applicants on public health grounds. Article 15(1) states that Member States “*shall ensure that applicants receive the necessary health care, which shall include, at least, emergency care and essential treatment of illness*”, and Article 13(2) provides that “*Member States shall provide necessary medical or other assistance to applicants who have special needs.*”

However, this last provision does not provide any psychological assistance for detained asylum seekers. UNHCR Guidelines emphasise the possibility for detainees to receive “psychological counselling when appropriate”<sup>18</sup>. Given the psychological harm caused by detention, the EU legislation should be amended in that sense. In particular, victims of torture, degrading treatment and sexual violence, who apply for asylum, should have access to psychological care<sup>19</sup>.

**(iv) Visits**

According to Article 14(2)(b) of the Council Directive 2003/9/EC, Member States shall ensure “*the possibility of communicating with relatives, legal advisers and representatives of the United Nations High Commissioner for Refugees (UNHCR) and non-governmental organisations (NGOs) recognised by Member States.*” Moreover, “*Legal advisors or counsellors of asylum-seekers and representatives of the United Nations High Commissioner for Refugees or non-governmental organisations designated by the latter and recognised by the Member State concerned shall be granted access to accommodation centres and other housing facilities in order to assist the said asylum-seekers. Limits on such access may be imposed only on grounds relating to the security of the centres and facilities and of the asylum-seekers.*”<sup>20</sup>

These provisions are confirmed by the Council Directive 2005/85/EC. Article 16 (2) of this Directive states: “*Member States shall ensure that the legal adviser or other counsellor who assists or represents an applicant for asylum has access to closed areas, such as detention facilities and transit zones, for the purpose of consulting that applicant.*” In addition, Article 21 (a) enjoins Member States “*to allow the UNHCR to have access to applicants for asylum, including those in detention and in airport and port transit zones.*”

<sup>18</sup> Guideline 10 (v)

<sup>19</sup> It would complement Article 20 of the Reception Directive, which states: “*Member States shall ensure that, if necessary, persons who have been subjected to torture, rape, or other serious acts of violence receive the necessary treatment of damages caused by the aforementioned acts.*”

<sup>20</sup> Article 14(7) of the Council Directive 2003/9/EC

However, none of these provisions provide detained asylum applicants with the right to receive regular visits from “*from friends, relatives*<sup>21</sup> (...) *and religious counsel*” as recommended by the UNHCR Guidelines<sup>22</sup>. **The EU legislation should be amended to allow relatives, friends and religious counsels to have regular access to detained asylum seekers.** This will help preserve their psychological balance hampered by the conditions of life in detention. Such a measure will also ensure that the EU legislation respects on one hand Article 8 of ECHR which guarantees the right to family life and, on the other hand, Article 9 of ECHR which provides for the right to observe religious beliefs.

#### **(v) Protection of Minors**

The Council Directive 2003/9/EC recognises in its Chapter IV that there are “*persons with special needs*” and minors among them. Article 10 provides for “*schooling and education of minors*”, and Article 18 requests that the “*best interests of the child*<sup>23</sup> *shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.*”

As far as unaccompanied minors are concerned, Article 19(1) of the Council Directive 2003/9/EC states: “*Member States shall as soon as possible take measures to ensure the necessary representation of unaccompanied minors by legal guardianship or, where necessary, representation by an organisation which is responsible for the care and well-being of minors, or by any other appropriate representation. Regular assessments shall be made by the appropriate authorities.*” In addition, unaccompanied minors applying for asylum may be placed “*in accommodation centres with special provision for minors.*”<sup>24</sup> By “*accommodation centres*”, the Directive means: “*places for collective housing*”.<sup>25</sup> These places should be understood as open centres as they do not fall under the definition of “*detention*” given by the Directive, namely: the “*confinement of an asylum seeker by a Member State within a particular place, where the applicant is deprived of his or her freedom of movement.*”<sup>26</sup> Consequently, **unaccompanied minors should not be detained.**

Article 5(1) of ECHR, for its part, allows the detention of minors only “*by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority*”. This provision limits considerably the possibility of detaining minors. The majority of minor asylum seekers in the EU are not covered by one of the cases provided by ECHR to detain minors. In addition, according to Article 37 of the International Convention on the Rights of the Child which EU Member States are parties to, **minors should be detained in very last resort and for the shortest appropriate period of time.** All appropriate alternatives to detention should be considered in the case of minors applying for asylum. If this proves impossible, **they should be separated from adults, unless there are accompanied by family members. In that case, family sections should be created in detention facilities.**<sup>27</sup>

<sup>21</sup> The Council Directive 2003/9/EC only speaks about the possibility for detained asylum seekers to “communicate” with relatives.

<sup>22</sup> Guideline 10: Conditions of Detention, (iv)

<sup>23</sup> The “best interest of the child” is also guaranteed by Article 3 of the Convention on the Rights of the Child

<sup>24</sup> Article 19(2) (c) of the Council Directive 2003/9/EC

<sup>25</sup> Article 2 (l) of the Council Directive 2003/9/EC

<sup>26</sup> Article 2 (k) of the Council Directive 2003/9/EC

<sup>27</sup> Article 9 of the Convention on the Rights of the Child grants children the right not to be separated from their parents against their will

### (vi) Protection of Families

Article 8 of the Council Directive 2003/9/EC provides that “*Member States shall take appropriate measures to maintain as far as possible family unity as present within their territory, if applicants are provided with housing by the Member State concerned. Such measures shall be implemented with the asylum-seeker's agreement.*”

Article 8 of the ECHR states that the right to family life must be respected. Thus, if an individual is detained, the competent public authorities must ensure that the right to respect family life can be exercised by the detainee. **If two or more family members are detained, Member States must avoid separating them.**

### (vii) Other Standards

The other standards that should be guaranteed to asylum seekers held in custody are related to living conditions in detention centres. To that extent, **Article 13(2) of the Council Directive 2003/9/EC provides: “Member States shall ensure that standard of living is met in the specific situation (...) of persons who are in detention.” This provision remains too vague. The “standard of living” it refers to should be detailed. To that extent, the UNHCR Guidelines give relevant information.**

First and foremost, as recalled in the UNHCR Guidelines, “*the use of prison [to detain asylum seekers] should be avoided.*”<sup>28</sup> People seeking asylum in the EU are not criminals. However, when prison facilities are exceptionally used, “*asylum seekers should be accommodated separately from convicted criminals or prisoners on remand. There should be no co-mingling of the two groups.*”<sup>29</sup>

Similarly, single women should be accommodated separately from male asylum seekers, unless they are close family relatives.<sup>30</sup> In particular, women should use hygiene facilities (shower, toilets) separate from men.

More generally, asylum seekers kept in detention should have “*access to basic necessities, i.e. beds, shower facilities, basic toiletries etc.*”<sup>31</sup> To maintain their health condition, they should also be provided with regular meals free of charge, eight-hour sleeping and “*the opportunity to conduct some form of physical exercise through daily indoor and outdoor recreational activities.*”<sup>32</sup>

Moreover, asylum seekers should have “*the opportunity to exercise their religion and receive a diet in keeping with their religion.*”<sup>33</sup>

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<sup>28</sup> Guideline 10 (iii). This Guideline is confirmed by the 1988 UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment. Principle 8 states: “Persons in detention (...) shall, whenever it is possible, be kept separate from imprisoned persons.”

<sup>29</sup> *Idem*

<sup>30</sup> UNHCR Guideline 8: Detention of Women

<sup>31</sup> Guideline 10 (ix)

<sup>32</sup> Guideline 10 (vi)

<sup>33</sup> Guideline 10 (viii)

In case the proper standards of living are not met in detention centres, asylum seekers shall have the opportunity to officially complain about it before the detaining authorities. To that extent, the UNHCR Guideline 10 (x) provides asylum seekers in detention with “*access to a complaints mechanism (grievance procedures), where complaints may be submitted either directly or confidentially to the detaining authority. Procedures for lodging complaints, including time limits and appeal procedures, should be displayed and made available to detainees in different languages.*”

Last but not least, authorities and staff working in detention centres should be properly trained to respond to asylum seekers’ needs and treat them humanly. In particular, they should be aware of International and European human rights standards applying in detention. They should be introduced as well to intercultural and interracial issues and trained to identify and answer to psychological concerns of detainees.

### III. Length of Detention

The Council Directive 2003/9/EC does not provide any time limit of detention. Similarly, Article 5 ECHR does not explicitly set a maximum duration of detention.

However, concerning the prohibition of arbitrariness of detention, the European Court of Human Rights ruled in the *Bozano Case*<sup>34</sup>, referring to Article 5(1)(f) ECHR, that the detention of a foreigner which is justified by the fact that proceedings concerning him are in progress can cease to be justified if the proceedings concerned are not conducted with due diligence. Moreover, combined with poor detention conditions, excessive length of detention may also constitute an inhumane and degrading treatment according to Article 3 ECHR (Prohibition of torture and inhumane and degrading treatments). This was judged in the *Dougoz v. Greece Case*<sup>35</sup>.

The European Court of Human Rights also judged in the *Amuur v. France Case*<sup>36</sup> that the prolongation of detention “*requires speedy review by the courts, the traditional guardians of personal liberties*”.<sup>37</sup>

Therefore, the duration of the detention of asylum seekers should not be excessive. It remains a measure of last resort and consequently should not last for long periods of time. A period exceeding six months can be considered as a long period of time. As stated by the European Court of Human Rights, any prolongation of detention should be conditioned to a speedy judicial review with access to free legal and linguistic assistance to be effective.<sup>38</sup>

<sup>34</sup> Judgment of 18 December 1986

<sup>35</sup> In this Case, the Court considered that the conditions of detention of the applicant in the Alexandras Police Headquarters and the Drapetsona detention centre, in particular the serious overcrowding and absence of sleeping facilities, combined with the inordinate length of his detention, amounted to degrading treatment contrary to Article 3

<sup>36</sup> Judgment of the European Court of Human Rights No 17/1995/523/609 of 25 June 1996, *Mahad Lahima, Lahima, Abdelkader and Mohamed Amuur v. France*

<sup>37</sup> The Court recalled this principle in the *Al Nashif* Judgment of 20 May 2002

<sup>38</sup> See section above concerning legal remedies

## SUMMARY OF JRS' RECOMMENDATIONS

1. Grounds for detention must be set out clearly. To that extent, Article 7 of the Council Directive 2003/9/EC should specify what it means by “legal reasons” to detain asylum seekers and should list these reasons in light of UNHCR Guidelines.
2. The EU legislation should be amended with provisions encouraging alternative measures to the detention of asylum seekers and listing the different alternatives in light of UNHCR Guidelines.
3. In particular, asylum seekers detained under the application of the “Dublin II Regulation” should not be detained for extended periods of time. In their cases, alternatives to detention should be particularly encouraged.
4. Asylum seekers, who are not criminals, should not be detained in prison facilities together with convicted inmates.
5. EU legislation should apply in transit zones such as in detention centres. To that extent, derogations from basic procedural standards for procedures at borders, provided by Article 35(2) of the Council Directive 2005/85/EC, should be deleted.
6. When asylum seekers are held in detention centres, they should be informed, at least upon their arrival in the centre, about their right to challenge the detention order taken against them.
7. Article 5(2) of the Council Directive 2003/9/EC should be revised in order to guarantee that asylum seekers are informed about their rights and the reception conditions in every case in a language they fully understand, and not only “as far as possible” in a language that they “*may reasonably be supposed to understand*” as it is currently worded in the Directive.
8. In light of the European Court on Human Rights’ jurisprudence, Article 18 (2) of the Council Directive 2005/85/EC should be amended in order to include rights such as the right to free legal aid and free linguistic assistance, which ensure the effectiveness of the judicial review.
9. UNHCR Guidelines emphasise the possibility of detainees to receiving “*psychological counselling when appropriate*”. Given the psychological harm caused by detention, the EU legislation should be amended in that sense. In particular, victims of torture, degrading treatment and sexual violence, applying for asylum, should have access to psychological care.
10. The EU legislation should be amended in accordance with UNHCR Guidelines and Articles 8 and 9 of ECHR to allow relatives, friends and religious counsels to have regular access to detained asylum seekers.
11. Unaccompanied minors applying for asylum should not be detained. Other minors applying should be detained as a very last resort and for the shortest appropriate period of time. If they are, they should be separated from adults, unless there are accompanied by family members. In that case, family sections should be created in detention facilities.

12. More generally, if two or more family members are detained, Member States should not separate them.

13. Article 13(2) of the Council Directive 2003/9/EC, which provides: “*Member States shall ensure that standard of living is met in the specific situation (...) of persons who are in detention*”, remains too vague. The “standard of living” it refers to should be detailed in light of UNHCR Guidelines.

14. Detention remains a measure of last resort and consequently should not last for long periods of time. A period exceeding three months can be considered as a long period of time. As stated by the European Court of Human Rights, any prolongation of detention should be conditioned to a speedy judicial review with access to free legal and linguistic assistance to be effective.

15. Finally, JRS advocates for the setting up of a EU system and body, which monitors and periodically reports on the development of national legislation on detention and detention practices in the EU Member States as well as in the EU Candidate Countries and their non-EU neighbour countries. Such a body would report on best practices, but also on the cost of detention and would give information about the institutions paying for the detention centres, their administration and their maintenance. In countries like the United Kingdom, where detention facilities are run by private companies, benefits made by these firms (for example by selling phone cards to asylum applicants) should be know publicly.