



Commission of the European Communities
(Attn: Stefania Pasquetti, Acting Head of Unit
Directorate-General Home Affairs, Unit B2)
Rue de la Loi 200,
B-1049 Brussels
BELGIUM

13 January 2011

Dear Sir/Madam

Re: Concerns about the United Kingdom's Respect for EU Directives 2003/9, 2004/83 and 2005/85 resulting from failures at the UK's Asylum Screening Unit

We are writing to draw the Commission's attention to problems at the United Kingdom's Asylum Screening Unit, where third-country nationals seeking recognition as refugees or subsidiary protection in accordance with EU law are meant to lodge their asylum applications if they are already in the United Kingdom. We hope that this letter will produce the following outcomes:

- that the European Commission approach the UK authorities about these problems;
- that the Commission seek the UK's views on these issues and will seek data from the UK authorities to establish the prevalence of the problems discussed below; and
- that the Commission begin to monitor whether practices at the UK's Asylum Screening Unit are in accordance with EU law.

Our organisations

The Immigration Law Practitioners' Association (ILPA) is a professional association with some 900 members (individuals and organisations), the majority of whom are barristers, solicitors and advocates practising in all aspects of immigration, asylum and nationality law. Academics, non-governmental organisations and individuals with an interest in the law are also members. Established over 25 years ago, ILPA exists to promote and improve advice and representation in immigration, asylum and nationality law through an extensive programme of training and disseminating information and by providing evidence-based research and opinion. ILPA is represented on numerous Government, including UK Border Agency and other consultative and advisory groups.

The AIRE Centre (Advice on Individual Rights in Europe) is a UK-based NGO whose mission is to promote awareness of European law rights and assist marginalised individuals and those in vulnerable circumstances to assert those rights. The AIRE Centre provides free legal advice on EU law and the European Convention on Human Rights, with a particular focus on migration law. The AIRE Centre also

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represents asylum seekers before the European Court of Human Rights, and is involved in litigation as a third-party intervener in various cases involving the EU asylum acquis.

Problems at the Asylum Screening Unit

Third-country nationals who are already in the United Kingdom and who wish to seek asylum in the UK are required to attend in person at the Asylum Screening Unit in Croydon (London). More details can be found at <http://www.ukba.homeoffice.gov.uk/asylum/claimingasylum/howtoclaim/> .

In theory, they should be able to telephone in advance to make an appointment. The AIRE Centre and ILPA are concerned at a pattern of problems in the Asylum Screening Unit.

During the spring and summer of 2011 it was very difficult for individuals to make an appointment at the Asylum Screening Unit or lodge their applications on a 'walk-in' basis (i.e. without an appointment); the telephone appointment system lacked the capacity to deal with the number of individuals who wished to lodge an asylum application. In addition, those who attended the Unit in person were often not seen and not given a date on which to return. The consequences of this were grave: the vast majority of these persons did not have permission to work in the United Kingdom and until their asylum applications were lodged, they were unable to access those forms of welfare support that are made available to persons seeking asylum in accordance with EU law. As a result, many would-be asylum applicants were left destitute. We received numerous complaints about what was happening and brought them to the attention of the UK Border Agency from the springtime onwards.

Examples from legal practitioners of the difficulties during this period included:

E-mail - 18/05/2011

"I had four clients who have had problems trying to claim in recent weeks. Apparently the phone is permanently engaged or rings and rings. If clients go there in person they are told to keep ringing the booking line."

E-mail - 23/05/2011

"I had an urgent case in terms of accessing support; she has a baby and her social service accommodation was due to terminate last week. I called the appointments line for her around 15 times last Wednesday (18th); I reached a slight variety of recorded messages telling me that all the operators were busy."

E-mail - 23/05/2011

"I had a Somali client who went to claim asylum last Wednesday 18 May. He went to the ASU first thing in the morning, but was still sent away with a letter telling him to phone for an appointment. He has been phoning the line ever since but has been unable to get through, and cannot leave a message requesting a call back. The client ended up going in person to the ASU on morning on the 19th, where she was given an appointment to come back for the screening interview on 9th June. She asked for interim emergency support but was told this wasn't possible."

Following the National Asylum Stakeholder Forum (a group of NGOs, Government representatives and others working in the field of asylum in the UK convened by the UK Border Agency) meeting of 4 August 2011, ILPA was informed by the UK Border Agency that they were aware of the difficulties and assured that the screening review programme implemented on 11 July 2011 and a further increase in the number of telephone operators from 24 August 2011 would provide a solution. However, despite the Agency's various assertions that the appointment system would improve, we continued to receive complaints throughout August and September, with several resulting in judicial review pre-action protocol letters (that is, the preliminary step before lodging an administrative-law action before the High Court of England and Wales to challenge allegedly unlawful action by State authorities, when there is no right of appeal provided under domestic law).

ILPA wrote to Sonia Dower, Deputy Director of the UK Border Agency South East region,

on 12 August 2011, describing these problems:

“Those who have drawn problems to our attention include legal representatives based in Bournemouth, Cambridge, various locations in the Greater London area, Leicester and Somerset. In July, one legal representative arranged for a volunteer rota spanning a fortnight so that they could [sit] solidly on the ASU phone, but without being able to get through. Another records having made ‘over 200 calls’ in July trying to get through to make appointments for several clients, but all without success.”

The Law Society of England and Wales also raised its concerns, including in the press. Steps were taken in the autumn to increase the capacity of the telephone appointment system and these now appear to be working.

Those who now get through on the telephone appointment line are required to receive a call back and a telephone interview before they are given an appointment to attend the screening unit. The appointment at the unit may be for several weeks after the initial call, during which time their asylum claim is not registered and they are thus not in a position to apply for support as a person seeking asylum. Thus, although it is now possible to get through on the telephone, the UK's continues to fail promptly to register applications for asylum and to provide support to persons seeking asylum. While the UK Border Agency has informed ILPA that appointments may be made during the call back to as to address any urgency (e.g. where a person is destitute and/or homeless), it has been reported by non-governmental organisations assisting persons seeking asylum that destitute and homeless persons are not having their needs addressed in this way. This may be because the call back and telephone interview does not provide an adequate or appropriate opportunity for these persons to identify their needs. Although these non-governmental organisations are identifying some cases, we (and they) are concerned that many others may not present to these organisations or legal advisers and may therefore be without any or any adequate support or accommodation for several days or weeks.

We are concerned that groups such as children, trafficked persons and older people, are not receiving a response from the Asylum Screening Unit that is appropriate to their special needs. Below are just some of the many examples of the failure of the Asylum Screening Unit adequately to deal with members of these groups. These examples are from practitioners.

Children

Fax sent by a lawyer - 13/09/2011

“Ms A attended Lunar House on 31/08/11 to claim asylum. She was given the ‘red’ letter with the telephone number to call to claim asylum. She has been ringing this number constantly since this date but it is constantly engaged. On 05/09/11 she returned to Lunar House being unable to make an appointment to claim asylum by telephone. The UKBA officer she spoke to took Ms A’s mobile telephone number and said that she would call her. To date our client has not received a call from the UKBA to enable her to claim asylum. Ms A was told to leave Lunar House otherwise security would be called. Ms A and her 11 year old son are destitute and have been staying with people they have met and for two nights slept rough.”

E-mail - 23/05/2011

“Waiting times are a concern even when an appointment has been made for a child to attend. I recently had a case where we had an appointment between 8.30 - 10.30am, and yet the client was not screened until 3pm.”

“My main problem though with the children's section at the ASU is that they refuse to allow the legal rep's interpreter to attend the screening interview. The LSC pays for a legal representative and an interpreter to attend, but the UKBA states that only one person (which will be the legal rep) can attend. Therefore there are no safeguards if an interpreting problem arises at the screening interview.

“I made a formal complaint about this last year and also spoke to the head of the ASU, Brindha Selva, as well as the various Metropolitan police child protection officers they have there, but it got me nowhere.”

E-mail - 20/07/2011

“A second client, her husband and young baby were turned away from the ASU and given the number which of course we called regularly and constantly engaged. The family have been refused s98 support [a form of support the UK provides in order to fulfil its obligations under Article 13(2) of Directive 2003/9] because they have not yet claimed asylum and so are in emergency shelters.”

Trafficked persons

E-mail - 25/05/2011

“I have had a recent unpleasant experience at the ASU attending in person with a minor client who is a victim of trafficking for domestic servitude. She was taken to the ASU by social services on 22/2/11 but was turned away as they were too busy, and given an appointment to return on 28/2/11. She duly returned with a social worker on that date. From the general ASU she was sent to the children's ASU where she was appallingly treated by an I[mmigration] O[fficer] who accused her of lying about her age and identity because the Home Office had a copy of the documents on which she entered (or rather was trafficked!) into the UK and these made her 25 with a different name. They lodged her claim in the false identity instead of her correct identity and told her that they would contact

her traffickers to check up on her. No screening interview was conducted and she was given a further appointment to return on 11/3/11. On 11/3/11 I attended the adult ASU with the client and her foster mother. The appointment was for 8.30am. I had an age assessment from social services confirming client's age as 15 which I handed in. We stayed there until 3.30pm when we were told that no screening interview would take place that day."

Older Persons

E-mail - 25/05/2011

"A senior lady (60+), attended ASU having caught bus at 3.30am to be there for 8.30ish a few weeks ago. She was about fifth in queue, but told on the standard letter she was too late to be seen that day."

It is possible to lodge judicial review proceedings in the High Court of England and Wales to challenge the authorities' refusal to admit these asylum applications. This is an administrative-law action to challenge action or inaction by the State authorities as unlawful. Judicial review proceedings in individual cases have to date resulted in the problem being solved for that individual: in such cases, to avoid litigation, the UK authorities will usually agree to accept that asylum seeker's application forthwith. Individual litigation cannot solve systemic problems, however. For this reason, we are asking that the Commission seek further information from the UK Border Agency about the barriers to claiming asylum in the UK.

Potential violations of EU law

The right to asylum is now protected by Article 18 of the EU Charter of Fundamental Rights. The right to asylum is rendered illusory when it is not possible to lodge an asylum application and for the period for which it is not possible to do so. While the Charter itself only applies to the Member States 'only when they are implementing Union law' (Charter of Fundamental Rights, Article 51(1)), failure to provide for the acceptance of applications violates several provisions of EU secondary law, particularly when those are interpreted in the light of the right to seek asylum.

Article 6(2) of Directive 2005/85 states: 'Member States shall ensure that each adult having legal capacity has the right to make an application for asylum on his/her own behalf'. One of the key principles underpinning the Directive is: 'It is in the interest of both Member States and applicants for asylum to decide as soon as possible on applications for asylum' (recital (11)).

Directive 2003/9 is also in point, for example:

- Article 6(1), the right to documentation as an asylum seeker, the three-day deadline for which is predicated on the assumption that asylum claims will be received within a reasonable time;
- Article 11(2), the right to work if an asylum application has not been considered within one year, as in these cases asylum seekers will see the possibility of being allowed to work delayed for longer than this; and
- Article 12(1), the right to material reception conditions, meant to be available 'when [asylum seekers] make their application for asylum'.

So is Article 3(1) of Regulation 343/2003, which states that ‘Member States shall examine the application of any third-country national who applies at the border or in their territory to any one of them for asylum’. See also ‘the objective of the rapid processing of asylum applications’, (recital (4)) a fundamental aspect of this Regulation and the entire Common European Asylum System.

Homelessness and destitution which result from the failure of the authorities of an EU Member State to receive asylum applications speedily have serious implications for fundamental rights. In addition to Article 18 of the Charter, Article 4 (which corresponds to Article 3 of the European Convention on Human Rights, see Charter of Fundamental Rights Article 52(3)) is implicated, as the European Court of Human Rights made clear in its judgment in *M.S.S. v Belgium and Greece* (Grand Chamber, 2011, Application number 30696/09). In that case, the Greek authorities’ failure to fulfil their obligations under the EU asylum acquis, particularly the obligation to register asylum claims and provide adequate reception conditions, resulted in a violation of Article 3 of the European Convention on Human Rights (which constitutes, *ipso facto*, a violation of Article 4 of the Charter). See *M.S.S.*, paragraphs 249-264.

PREVIOUS APPROACHES TO THE UK AUTHORITIES

ILPA wrote to the UK Border Agency about these problems on 13 June 2011, 12 August 2011 and 22 September 2011. We received a reply to the first two of those letters on 30 September 2011. There has been no written response to the letter of 22 September although ILPA has subsequently met with Agency, most recently on 13 December 2011. The correspondence is appended hereto.

We hope the information in this letter will enable the Commission to approach the UK authorities about these matters and obtain more information about whether the practices of the UK’s Asylum Screening Unit are in compliance with Union law.

Yours faithfully,

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Chair
ILPA

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The AIRE Centre