



Jan-Paul Brekke and Vigdis Vevstad
**Reception conditions for asylum seekers
in Norway and the EU**

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Foreword

The asylum policies in the European Union are changing. Diverging national legislation is being coordinated. Common standards are being developed. By 2010 a Common European Asylum System shall be in place. Significant steps have already been taken. The changes made during the next few years will lay the premises for refugee and asylum policies in Europe.

Norway is a part of Europe, although not of the European Union. Formal ties through the Schengen and Dublin agreements demand that the developments in the Union are followed closely by Norwegian authorities. This study contributes to increased knowledge about reception conditions for asylum seekers both in Norway and the EU.

This study can be seen in isolation from or as related to a broad European comparative study of the EU Directive on Reception Conditions done by the Odysseus academic network for legal studies on immigration and asylum in Europe. The Directive itself has been included in an appendix for reference.

We would like to thank the informants in the Norwegian People's Aid and the Norwegian Organization for Asylum Seekers for their willingness to supply information to the study. We were met with openness and had interesting discussions at three accommodation centers. The managers of these centers were strongly engaged in creating a sound environment within the framework of a restrictive asylum policy.

In addition we got invaluable assistance on both legal and practice issues from several employees in the Directorate of Immigration.

Dobromira Ilkova Tjessem has conducted interviews and served as an assistant at various points in the study. Her contribution has been valuable.

Oslo, May 2007

Jan-Paul Brekke and Vigdis Vevstad

Towards a common European asylum system

Since the Tampere summit in 1999, the Member States of the European Union have been working towards establishing a Common European Asylum System (CEAS).¹ Over the last few years, this process has accelerated. The challenge has been and remains securing national and European interests while, at the same time, safeguarding the fair handling of asylum seekers coming to Europe. The ambition of the Union is to finalize this process by 2010.²

Norway is not a member of the EU but is still connected formally to the Member States and the Community through the Dublin cooperation agreement³ and the Schengen cooperation agreement.⁴ Norway also has a separate interest in gaining knowledge about legislation and policies in the surrounding countries. This is a prerequisite for making national policy adjustments on migration and asylum issues.

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1. Apart from the Directive on Reception Conditions, CEAS also consists of the Qualification Directive, the Directive on Procedures, the Directive on Temporary Protection, the Dublin Regulation and a European Refugee Fund. A number of related directives have been issued, e.g. Directive on Family Reunification, the Directive on the Status of Third Country Nationals Legal Stay in the EU, etc.
 2. The Hague Program, adopted by the European Council in November 2004, OJ C 53/1 of 3 March 2005.
 3. Agreement between the European Community and the republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in one of the Member States or in Iceland or Norway", signed 19. January 2001 (entered into force 6. of April 2001).
 4. The Agreement concluded by the Council of the European Union and the Republic of Iceland and the Kingdom of Norway concerning the latter's association with the implementation, application and development of the Schengen "acquis", signed on 18. May 1999 (entered into force 26. June 2000).

The relationship between policy development in the EU and conditions in Norway is rarely commented upon. In this report we seek to study this in detail using the Directive on Reception Conditions as the focal point.⁵

Because of its position outside the EU, Norway is not formally obliged to incorporate this Directive into its national legislation or policy. The content and norms included in the document will however serve as a measure stick for Norwegian Authorities' work with developing and adjusting reception conditions in the future.

The Directive includes provisions e.g. on information to asylum seekers, their access to employment and education, access to material conditions and health care, the use of sanctions and detention and the special attention to vulnerable groups.

This report is intended to be useful in two ways: Firstly it is a description and analysis of the reception conditions for asylum seekers in Norway compared to the EU. Secondly it can be used as a reference guide to the EU's Directive on Reception Conditions.

The adjustment and regulation of reception conditions for asylum seekers have been a topic of public discussion in Norway as well as in several of the EU Member States. In 2003 the EU agreed on a set of rules to regulate the standards on how asylum seekers are to be treated during their stay in the receiving countries while their applications are being processed. Three years later the EU Commission ordered an evaluation of how the Directive on Reception Conditions had been implemented in the Member States. The study was assigned to the Odysseus Academic Network, a network of lawyers with a secretariat based in Brussels. This report is intended to be part of the broader study of the 23 Member States⁶ which participated in the European comparative project. The broader study exposed the current conditions in the European states as well as the recent development. This provides a good opportunity for comparing Norwegian reception conditions to those of the other participating countries.

The process towards the creation of a Common European Asylum System (CEAS) is fueled by the goal of avoiding «asylum shopping», whereby asylum seekers move from one country to another in search of asylum. The philosophy is that all Member States act in a similar manner; there will be no incentive for asylum seekers to try and access different countries.

The creation of CEAS also intended to create a European burden sharing mechanism. The responsibility of processing and accommodating asylum seekers has over the past fifteen years been unevenly distributed across the

5. Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception conditions of asylum seekers, OJ L 31/18 of 2. February 2003.

6. Ireland and Denmark are not bound by the Directive and do not participate in the comparative study.

continent. Some countries receive a high number while others receive far fewer applicants. One reason for this is believed to be that some countries are considered more attractive than others. Reception conditions are seen by governments as being an important factor influencing the choice of destination country by those who seek refuge.

Another equally important rationale for the ongoing coordination of regulations in this field is to secure a minimum of individual rights for asylum seekers coming to Europe.

The Hague program has established that an assessment of the Common European Asylum system and other related directives is to take place during 2007. The Directive on Reception Conditions had to be transposed into national legislation of the Member States and implemented in practice by February 2005. At the time of the Odysseus report, all but two countries had done the necessary transposition and reformed their national asylum systems. Some had transposed the provisions of the Directive directly into national legislation, while other countries had adapted the Directive into already existing national law.

In addition to being politically relevant and important, this study is also a good opportunity to illuminate a series of academic questions. Handling reception of asylum seekers is a meeting point of supra-national regulations, national laws and practice, and individual rights. The existence of European standards for reception conditions may also point to a possible shift in the driving premise of Norwegian asylum policy. Until recently, regulations regarding reception conditions have been developed and altered with only a vague reference to international law and individual rights. The European asylum directives aim to constitute a core in the development of asylum law and practice in the Member States. They may have the same effect in Norway, albeit in an indirect fashion. In this report we comment on the possible shift in emphasis from State interest towards the rights of asylum seekers anchored in the European directives.

Before the Directive on Reception Conditions was adopted in 2003, the Member States had discussed what the consequences of such a cross national coordination would be. Since the agreement lays down minimum standards, there was concern that countries with higher standards would reduce the level of the national conditions which would be an unwanted consequence. The wanted outcome of the Directive was the opposite, namely that states with a lower starting point than the agreed standards would improve as a result of the process. As we shall see in this report, the overall conclusion is that the Directive has had a positive impact on the reception conditions in a number of Member States. The comparative European study found only one case where a national government had used the transposition process to lower its standards of reception conditions.

As Norway participates in the Dublin cooperation, it is important for Norway to be sure that the conditions for asylum seekers are above a certain minimum in the other participating countries. The reason is that the Dublin mechanism provides for the return of asylum seekers for processing in the other cooperating states. Over the past few years, cases have been exposed where asylum seekers have been returned to questionable conditions, for example in Greece. Malta also gives reason for concern, a situation having been reported on by various international bodies, the European Parliament included. The Odysseus study confirms these difficulties.

Research questions

The main question we ask in this study is: How does the Norwegian reception system stand when compared to the EU Directive on Reception Conditions? There are two aspects that can be at least analytically distinguished: Firstly, what are the legal sources on reception conditions in Norway and how do they correspond to the EU sources? Secondly: How do the factual reception conditions in Norway compare to the norms of the Directive and the practice in the Member States?

In order to answer these questions we have to know the outcome of the national transposition process in the Member States as well as the situation on the ground throughout the Union. We therefore also have to address the question: To what extent the Directive on Reception Conditions has been transposed and implemented in the Member States? This knowledge is provided in the Odysseus comparative study.

Other theoretical discussions will also be introduced in this report. One centers on the consequences of the level of regulation in the asylum field. Are the reception conditions regulated at a higher level - in the national legislation - or at a lower level, like secondary legislation or operative instructions? Another issue is subtracted from the discussions of the limitations of the Directive. What is the scope of the term «asylum seeker» who thereby is covered by this particular set of standards? A third discussion relates to the relationship between the EU and Norway. What does the field of asylum law teach us about Norway's position as an «insider» outside the EU?

Three central documents have been published that comment on the Directive on Reception Conditions over the past few years. The European Council on Refugees and Exiles (ECRE) issued a set of comments in June 2003 and then again in 2005 (ECRE 2003, 2005). Here both the Directive and the transposition process are scrutinized. The European Migration Network carried out what they called a «small scale study» on the reception systems in Europe (EMN 2006). In the UK, Anneliese Baldaraccini wrote «A practitioners'

guide to the EU Reception Directive» (2005). Her publication comments on the Directive and relates it to the legislation and practice in the UK.

In addition to these documents, several researchers have commented directly on the Directive on Reception Conditions (Vevstad 2005, 2006, Edström 2004, Handoll 2004). The United National High Commissioner for Refugees has also recently published their views on the EU document (UNHCR 2006).

Mandate

The aim of the study is to accomplish two things. For Norway as an outsider in Europe, this research offers valuable information on the recent developments in the content, practice and process towards a Common European Asylum System. And, since Norway takes part in the Dublin cooperation, there is a need for information and coordination with the cooperating partners.

Secondly, the study presents a concrete review of reception conditions in Norway compared to those in Europe. This opens up for possible reforms in the way reception conditions are regulated and implemented in Norway. Through pointing to certain diverging areas in Norwegian legislation and practice, this report may help decision makers to conform, or distance themselves from the European standard, an important task now at the wake of parliamentary discussion on a new Norwegian Act on Immigration after many postponements due to be introduced in the summer of 2007.

The present regulations of reception conditions are under near constant revision by the Directorate of Immigration. During 2006, one working group was in the process of evaluating the regulation of material standards. Another was reviewing the work being done in accommodation centers regarding ethical standards and the role of the employees at the centers.

Methodology

The research questions asked in this study are ambitious. The Norwegian reception regulations and practice are to be compared to the parallel situation in the EU Member States. A complete study of these broad questions would demand more time and more resources.

The comparative Odysseus study was also ambitious. With 23 participating Member States participating and a six month time frame, it is obvious that some stark choices had to be made. In order to make it manageable, it was decided within the network that only small glimpses into practice could be given. A thorough mapping of the actual reception conditions on the ground

was simply not possible, given the limitations in resources and the narrow time frame. The main focus was kept on the formal process of transformation of the directive into national legislation.

The Norwegian study followed the Odysseus example, but sought to balance the attention paid to the formal regulations with input from the everyday situation in Norwegian reception centers. In doing so, four different sources of data were used. The study of documents, laws and regulations was combined with interviews with three sets of informants. This methodological design was parallel to that of the broader comparative European study.

The three groups of informants were: Representatives of the Norwegian government in charge of the development of reception policies; managers of accommodation centers; and persons in charge of NGOs who are involved in the reception system.

Two NGOs were chosen as informants in Norway: the Norwegian Organization for Asylum Seekers (NOAS) and the Norwegian People's Aid (NPA). NOAS, traditionally an opinion-leader promoting the cause of the asylum seekers, is also in charge of informing newly arrived asylum seekers of their rights. The information provided by the organization was mainly about the asylum process, but also included what they could expect concerning reception conditions. The organization was presented with a questionnaire that was the same distributed to NGOs in the other countries participating in the Odysseus study. The questions were derived more or less directly from the reception directive.

The Norwegian People's Aid was selected for a different reason. This organization has a long history of functioning as active operator of several accommodation centers. In Norway, the operation of these centers is dominated by commercial companies. The second largest actor in this field is municipalities, with NGOs in third place. As an active operator NPA could provide the study with useful information about the strong and weak sides to Norwegian reception conditions.

After the questionnaire had been sent to the NGOs, we conducted a qualitative open interview with their leaders.

The second group of informants was employees at three accommodation centers. These were selected out of a total of around 70 centers operating during summer/fall of 2006. Together they covered the four main types of reception/accommodation centers. One of the centers had a so-called *fortified section* (*forsterket avdeling*) in a separate building. In addition this center had a large number of *ordinary* asylum seekers, i.e. people without established special needs, as well as a section for *unaccompanied minors*. The second center catered solely to minors that had arrived on their own. Finally we visited and made interviews in a center where the majority of the asylum seekers were awaiting expulsion. These were *Dublin cases* waiting to be returned to the

country that was responsible for the handling of their cases according to the Dublin Agreement.

In addition to the four groups of asylum seekers that were covered in our field work, there are two more that were not included in the study. One is the occupants of a «waiting center», where rejected asylum seekers – labelled *unreturnables* – stay with minimal support. The second of these are fortified centers where rejected asylum seekers are detained while waiting to be sent out of the country. These two last types of centers fall outside of the scope of the reception directive, which only encompasses asylum seekers until they receive a final rejection.

The third group we interviewed consisted of bureaucrats working with the development and implementation of reception policy. These were employed in the Ministry of Labour and Social Inclusion and in the Directorate of Immigration.

A possible methodological challenge in the interviews with all three groups of informants was that they may beautify the situation. It would, at least in the short term, be in their interest to portray the situation as functioning well. Our experience from the field work was that this did not pose a problem. On the contrary, our informants seemed eager to expose the challenges and dilemmas that are an inherent part of the reception system. It is no easy task to find a good balance between a reasonable standard and a sound existence for the asylum seekers, all within the framework of a restrictive asylum policy.

In addition to the interviews, a series of documents form the backbone of the study. At the European level, the central texts are the Directive of reception conditions, the other directives on asylum and immigration, the Schengen agreement, and the Dublin agreement. On the national level, the main texts are the Immigration Act (*Utlendingsloven*) and the secondary legislation to the Immigration Act (*Utlendingsforskriften*) along with a handful of documents regulating the relationship between Directorate of Immigration and the operators of the accommodation centers.

The pivotal document among these is the «Regulation for State Reception Center Operations» (English: Jan 1st 2003, Norwegian: Jan 1st 2006) (*Driftsreglementet*) with the adherent specifications in «Specifications of Requirements for the Operations Regulations» (*Kravspesifikasjonen*). The level of financial support to the asylum seekers is described in the «Fiscal Regulations» (*Pengereglementet*). This document also has a more specified addition in the «Intepretation adherent to the Money Regulations» (*Fortolkningskriv til pengereglementet*).

Additional political signals are transmitted in a letter from the Directorate to all operators of centers on a yearly basis. These letters are entitled «Guidelines» (*Føringer*), and contain new priorities and areas of special attention for the year to come.

Chapter outline

In the next chapter (chapter 2), we present Norway's special situation as an insider–outsider country with regard to the European asylum coordination. The cooperation regulated in the Dublin and Schengen agreements is discussed followed by an introduction to the Directive on Reception Conditions and sources of law that regulate the reception conditions for asylum seekers in Norway.

In chapter 3 we then present and discuss the different topics covered by the EU Directive on Reception Conditions. Here the EU regulations on access to education, to the labour market and to health service are discussed and compared to the Norwegian regulations. Other themes include the attention to vulnerable groups and the obligation to provide asylum seekers with information about reception conditions. This chapter constitutes the main body of the report.

In the final two chapters we sum up the major findings of the study. These include comments on the level of regulation of reception conditions in Norway. The main body of norms presently consists of bureaucratic instructions rather than primary and secondary legislation. The set of regulations is therefore vulnerable to political trends, more so than in the Member States. We also comment on the safeguarding of victims of violence and torture, whose rights seem to be less protected in Norway than elsewhere on the continent. But the conclusions do not paint an altogether gloomy picture when we compare the situation in Norway to the European minimum standards. The overall impression is a reception regime adherent with the EU standards of the Directive on Reception Conditions. The situation for unaccompanied minors in Norway is, for example, highlighted as positive compared to the situation in the rest of Europe.

The full text of the Directive on Reception Conditions is included at the very end of the report for practical reference.

Norway, on the outskirts of Europe

In spite of its non-membership in the EU, Norway is influenced by European developments in the area of *freedom, security and justice*⁷ due to formal cooperation agreements and for geopolitical reasons. The Schengen cooperation agreement between the EU and Norway and the Dublin-cooperation agreement⁸ are of fundamental importance and both agreements have consequences far beyond their individual scope. One could claim that they constitute a Norwegian «backdoor» into the EUs work on freedom, security and justice as these elements are defined in Title IV of the Amsterdam- treaty.

The Norwegian Ministry of Labour and Social Inclusion (*Arbeids- og Inkluderingsdepartementet, AID*) and the Directorate of Immigration acknowledge these links to EU developments in the field of asylum policies. One indicator of this is the support for this study, where the links between the rules and practices of reception conditions of the EU and Norway is discussed. The Directive on Reception Conditions is, as we noted earlier, a part of the Common European Asylum System (CEAS). CEAS equally includes the Qualification Directive, the Directive on Procedures, the Directive on Temporary Protection, the Dublin Regulation⁹ and the establishment of a European refugee Fund. The content of CEAS as defined in TEC by the Amsterdam Treaty was further instigated at the Tampere Summit meeting in 1999.

7. As defined in Title IV of the Treaty establishing the European Community (TEC) amended in the Treaty of Amsterdam of 2 October 1997, OJ 1997 C340/ (entry into force 1 May 1999) which consolidates the Treaty establishing the European Economic Community, adopted in 1957 (TEC) and the Treaty on European Union, adopted in 1992 (TEU or the Maastricht Treaty), Both published in OJ C 325 of 24 December 2002.

8. Agreement between the European Community and the republic of Iceland and the Kingdom of Norway concerning the criteria and mechanisms for establishing the State responsible for examining a request for asylum lodged in one of the Member States or in Iceland or Norway”, signed 19 January 2001 (entry into force 6 April 2001).

9. The Eurodac Regulation is in reality also a part of this as the fingerprinting system was established in order for the Dublin mechanism to function. Norway and Iceland’s cooperation includes the Eurodac Regulation.

As far as CEAS rules are concerned, Norway only participates directly in the Dublin Regulation. But while applying the Dublin Regulation, all cooperating states, EU Member States and Norway alike, have to abide by the international instruments by which they are bound e.g. the 1951 Convention on Refugees, the European Convention on Human Rights, etc. In addition, EU Member States are also bound by the other instruments of CEAS whereas Norway is not.¹⁰ Norway cannot, however, disregard the practice of its cooperating partners whether based on conventional international public law like the 1951 Refugee Convention or on EU law such as the Qualification Directive and the Directive on Reception Conditions. As a starting point, all cooperating partners, whether EU Member States applying the Dublin Regulation or Norway and Iceland (and soon Switzerland and Liechtenstein when the equivalent agreements with these countries enter into force), base their cooperation on a principle of mutual trust that common obligations of international law are respected by all. Nevertheless, the legal obligation undertaken by States, to for example ensure and uphold the principle of non refoulement, requires that each and every Dublin decision must be based on an individual assessment of conditions in the country an asylum seeker is returned to. Equally, an assessment of the individual asylum seeker's situation in relation to return to a third country has to be made. In spite of tremendous political and legal effort put into the establishment of common standards in asylum matters, State practice in Europe still varies and will for continue to do so in a foreseeable future. Entering into the second phase of CEAS, the implementation phase and the assessment phase, new developments may instigate European states further to approach each other more than what is the case at present.

Schengen cooperation

The basic philosophy of the Schengen cooperation is and has always been to ensure free movement on the entire Schengen territory by way of eliminating inner border control and introducing common external border control. This is regulated in the Schengen Implementation Convention.¹¹ This State cooperation originally developed outside the scope of the EU until the Amsterdam Treaty entered into force in 1999 and the Schengen acquis was incorporated

10. With the exception of the special situation of Denmark, the UK and Ireland as regards CEAS with their participation only if so decided on an individual basis. Ireland and Denmark are not bound by the Directive on Reception Conditions whereas the UK has "opted in".

11. The Schengen implementation convention was adopted in 1990 and entered into force in 1995.

into the EU. Many of the compensatory measures for free movement such as visa cooperation, consular cooperation, police cooperation, the Schengen Information System (SIS) were already initiated and highly developed when the Amsterdam Treaty entered into force and have since then been taken further. Border control measures are given considerable attention by the cooperating partners. This is also reflected in the Hague program and Action Plan which reflect the EUs long term work program in this area. As Norway's initial Schengen cooperation agreement dates back to 1996, the pre-Amsterdam era, a new agreement was required after the incorporation signed in 1999. Together with the other Nordic States, Norway became full Schengen implementing partner in March 2001.

Dublin cooperation

One of the prerequisites for Norwegian participation in the Schengen cooperation, was to sign a parallel agreement to the then existing Dublin Convention¹² on which country should be responsible for an asylum request. In line with the Amsterdam Treaty, it was decided that a new instrument was to be adopted as part of CEAS and the Dublin Regulation was adopted in 2003. The question of responsibility for asylum requests was seen as part of the necessary compensatory measures required because of free movement ensured under the Schengen cooperation. Norway and Iceland thus signed a parallel agreement to the Dublin cooperation in 2001. The agreement had taken the coming Regulation into consideration. Since September 2003 the Dublin Regulation is decisive for the European Communities and Norway and Iceland.

The need for comprehensive consideration and application

Against this background of various instruments and various actors, inside and outside of the EU, the fundamental need to take a comprehensive approach at two levels appears. As far as CEAS and other EU instruments are concerned, focus must be given to the interrelationship between the various instruments. The fact that the Dublin Regulation allows return of an asylum seeker to another state obviously implies the need to assess the protection standards of that state. Individual application of the Qualification Directive thus matters. This is one example. Implementation of the Reception Conditions Directive

12. It was signed in 1990 and entered into force in 1998.

is another. When an asylum seeker is returned for examination by another State, it is important to know that the reception condition standards offered, are in line with what international obligations demand on adequate standard of living as well as in line with the standards adopted in the reception Conditions Directive.

Cooperation agreements with third countries such as Norway with the Dublin Regulation equally require that attention be given to a comprehensive approach. Norwegian practice matters. Norwegian practice should be assessed before asylum seekers are returned to Norway according to Dublin rules. And vice versa, the practice of EU countries should be assessed by Norwegian authorities before asylum seekers are returned to EU countries.

Norway is for example not bound by the Qualification Directive which defines who qualifies as a refugee and who is otherwise in need of international protection (subsidiary protection). A mutual understanding is essential for the good functioning of the Dublin system. But the fact remains at present, that in spite of the adoption of the Qualification Directive, the interpretation of the concept of «refugee» in accordance with Article 1A of the 1951 Refugee Convention on which the Qualification directive is based, EU Member States continue to have a varied understanding of the refugee concept.

One country should not return an asylum seeker to another country which has a totally different view of who qualifies for international protection. The non refoulement principle constitutes an absolute limitation to return. This implies that noone may be returned to an area where there is a risk of persecution or other serious harm.

The second phase of CEAS on implementation of the rules has just begun. At present, the many variations in practice between the Member States cannot be ignored by Norway while applying the Dublin rules. And equally, the question should also be assessed by Member States when they consider returning asylum seekers to Norway. The question is whether Norway applies the 1951 Refugee Convention in accordance with the purpose of the 1951 Convention. Although Norway is not bound by the Qualification Directive, EU States must nevertheless assure themselves that Norwegian practice is in line with international law.

The Norwegian reception system

The Directorate of Immigration, subordinate to the Ministry of Labour and Social Inclusion (AID), is in charge of reception conditions in Norway. Responsibility for the running of reception centers is contracted to operators, public and private (municipalities, commercial actors and NGOs), of which the majority are commercial actors. This implies that the operators include

both for profit and non profit actors. Reception centers are geographically dispersed across the entire country.

The system of reception centres in Norway varies with different degrees of «centralization». Some centres are ordinary reception centers organized as a campus where both families and single asylum seekers are accommodated. Other accommodation is more decentralized which implies that asylum seekers are accommodated individually either in houses or flats.

Upon arrival in Norway, asylum seekers are accommodated in a «transit reception center» for 2-10 days for screening. Following the initial screening, the majority of asylum seekers are then transferred to ordinary reception centers. According to special needs or characteristics, some are transferred to various «specialized reception centers», such as «Dublin cases», unaccompanied minors and persons with physical or mental problems.

Persons who are singled out for an accelerated asylum procedure (48 hour procedure assessment of the asylum claim to see whether the case should be handled in an ordinary manner or in a speedy manner), remain for a somewhat longer period in the first transit center. These constitute a minority of cases of fewer than 200 per year.

Persons who have received a negative decision on their asylum application, but who cannot be returned to their home country, are offered board and lodging in a reception center («tolerated stay»). The standard is low, but they are allowed to come and go freely. These persons are no longer regarded as asylum seekers by the Norwegian Government and are therefore given less favorable conditions than those applying in other centers.

Persons whose asylum request had been rejected, but who have remained illegally, may be detained in a closed detention center (Trandum) until expulsion has taken place. Some Dublin cases also stay in detention at Trandum before being returned to a Dublin cooperating country. The majority of Dublin cases however are located in ordinary accommodation centres, such as Dublin cases with children. Most Dublin cases are, however, placed in an open center with lower standards (Nordbybråten). Less favorable conditions for Dublin cases implies e.g. that they receive less monthly allowances. These asylum seekers are seen as supposedly the responsibility of another country. The Dublin Regulation sets rather short time limits for the processing of the asylum seekers. These time limits are not always respected which implies that some persons have difficulties because their conditions are poor in the temporary reception centre. Their difficulty is accentuated also by the fact that the actual processing of their case does not begin until the asylum seeker has been moved to another country or it has been decided that he will be allowed to remain in the country in which he has sought asylum. The Dublin mechanism is purely procedural.

Otherwise, differentiated reception conditions during different stages of the asylum procedure are in principle not foreseen. However, special positive

conditions are provided to some categories of asylum seekers. Special attention is given to persons in need, e.g. unaccompanied minors and women.

The Directive on Reception Conditions and legal aspects in Norway

Council Directive 2003/9/EC of 27 January 2003 laying down minimum standards for the reception of asylum seekers is one of the instruments referred to in Article 63 of the Amsterdam Treaty.¹³ It is part of the Common European Asylum System. Twenty three EU Member States are bound by the Directive which contains minimum standards. Ireland and Denmark have not opted in which implies that these two countries are not bound by the Directive.

The main purpose of the Directive is, as stated in Article 1, to «...lay down minimum standards for the reception of asylum seekers in Member States». Furthermore, its purpose, as it for all the rules adopted under CEAS, is to combat «asylum shopping». «Asylum shopping» implies that asylum seekers move from one country to another and seek asylum in more than one State. The philosophy is that if reception standards and other standards are the same in all cooperating countries, none of the countries will seem more attractive than the others and «asylum shopping» will no longer be of interest.

According to Article 4 of the Directive, Member States may introduce more favorable provisions than those contained in the Directive. Commentators have expressed fear that the Directive gives an incentive towards a «race to the bottom» of standards in the Member States. One of the positive findings in the comparative analysis is that the Directive does not seem to have resulted in a general lowering of standards, not even as far as Article 11 on employment. This provision caused one of the major difficulties during negotiations. It concerns access to the labour market during the asylum processing. Only one State has lowered its standard in this regard. This finding stands out in contradiction to the criticism often leveled at the Directive regarding the level of standards. The Odysseus study concludes that the Directive can rather be regarded as a first, but significant step towards the creation of a Common European Asylum System, as foreseen by The Hague program, to be in place by 2010.¹⁴

13. Adopted 2 October 1997, entry into force 1 May 1999, OJ C 340/1, 1997. The Treaty of Amsterdam consolidates the Treaty establishing the European Community (TEC) of 1957 and the Treaty on European Union (TEU or Maastricht Treaty) of 1992; OJ C 325, 24 December 2002 (consolidated text).

14. Adopted by The European Council on 5 November 2004, OJ C 53/1, March 3, 2005.

The Directive consists of 28 Articles and is divided into seven chapters covering the purpose of the directive and definitions and scope. Furthermore it contains provisions e.g. on information, documentation, detention, freedom of movement, medical screening, health care, family unity, education, employment, reduction or withdrawal of reception conditions and provisions on persons with special needs as well as procedural provisions.

From a legal point of view, Norway is not formally bound by the Directive on Reception Conditions, neither directly or through a separate agreement. The legal backbone in all matters pertaining to immigration in Norway is the Immigration Act of 1988 (*Utlendingsloven*)¹⁵ and secondary legislation adopted in accordance with this Act (*Utlendingsforskriften*)¹⁶. This law regulates all matters in connection with residence and visit, e.g. applications for work permits, asylum applications, family reunification applications, etc. Legal consequences of the Schengen- and Dublin cooperation agreements are also regulated by the Immigration Act.

According to article 4 of the Immigration Act this legislation is to be applied in accordance with international obligations by which Norway is bound provided the purpose of the obligations is to strengthen the position of the foreigner. This provision implies that Norway, in all its handling of applications, asylum cases included, must respect all of its obligations under international public law. This includes conventional international law such as the classical human rights instruments,¹⁷ and the specialized conventions.¹⁸ Norway is equally bound by international customary law, for example, the principle on the right to seek asylum. To which extent the provision also refers to other sources of international law, «soft law» instruments emanating for example from the Executive Committee of UNHCR or the general Assembly of the UN, is a matter of discussion. It is however beyond doubt that such «soft law» sources are, if not legally binding, both morally and politically binding. Given ample time and belief that they are bound by a sufficient number of States («*opinio juris*»), such sources may also develop into legally binding customary law. This leads to the following statement: Norway may not violate any of the principles contained in international public law by which Nor-

15. LOV 1988-06-24 nr 64: Lov om utlendingers adgang til riket og deres opphold her.

16. FOR 1990-12-21 n4 1028: Forskrift om utlendingers adgang til riket og deres opphold her.

17. For example, the Refugee Convention of 1951 with Protocol of 1967, the UN Covenants on Civil and Political Rights and on Economic, Social and Cultural Rights of 1966 and the European Convention for the Protection of Human Rights and Fundamental Freedoms of 1950 (with protocols).

18. For example, the International Convention on the Elimination of All Forms of Racial Discrimination of 1965, the Convention on the Elimination of All Forms of Discrimination against Women of 1979, Convention against Torture and Other cruel, Inhuman or Degrading Treatment or Punishment of 1984 and the Convention on the Rights of the Child of 1989.

way is bound while implementing its obligations according to the Dublin and Schengen cooperation agreements with the EU. If this were to happen, for example, if Norway were to return an asylum seeker to an area where his or her life is in jeopardy, Norway would be violating both its international obligations and its national legislation.

Another major aspect of the Act on Immigration and its secondary legislation is, as far as reception conditions are concerned, that very little is regulated by the law, neither the Immigration Act (*Utlendingsloven*) nor the secondary legislation (*Utlendingsforskriften*). Some provisions however exist. Article 33 of the Immigration Act is one example. According to this provision, a foreigner has the right to express himself orally or in writing. In asylum cases, this right specifically implies the right to communicate in a language he or she understands. Fulfilment of this obligation towards the asylum seeker should take place without delay and before the case has been decided upon. Article 34 of the same Act, provides asylum seekers the right to legal assistance. The police are in charge of providing the necessary information.

Article 41a on housing facilities for asylum seekers was added in February 2006. In practice, this new piece of legislation does not imply that the management of accommodating asylum seekers changes in view of this provision. Practice has remained the same more or less since reception conditions were introduced. The Directorate of Immigration would claim that it has acted as if this right existed already in spite of it not having been defined as a legal obligation until 2006. The novelty is that this area has not, by tradition, been regulated by law. With the introduction of Article 41a, however, the legislator (Parliament) also allowed for secondary legislation to be adopted in regard to accommodation arrangements for asylum seekers and the granting and withdrawal of such benefits. Proposals for secondary legislation in this regard have so far neither been introduced nor adopted. The upcoming discussion on a new Immigration Act could instigate the introduction of such secondary legislation.

The majority of regulations on reception conditions are specified in authoritative documents referred to as governmental guidelines or internal instructions, such as the «Regulation for [...] Operations» (*Driftsreglementet*), «Specifications of Requirements for the Operations Regulations» (*Kravspesifikasjonen*) «Fiscal Instructions» (*Pengereglementet*), etc. issued by the administrative authorities. These instructions and documents do not have the value of formal legislation and can be changed administratively. The Ministry of Labour and Social Inclusion (AID) have the power to decide on any changes made to the «Fiscal Instructions» (*Pengereglementet*) whereas the Directorate of Immigration has the power to instigate changes to the «Rules of Operations» on its own without the approval of the Ministry. The «Specifications of Requirements for the Operations Regulations» (*Kravspesifikasjonen*) is currently under revision. In addition to these basic documents, operators of

reception centers are bound by formal contracts with the immigration authorities (UDI) on how to operate. These contracts for example refer to the «Rules of Operations» (*Driftsreglementet*) and thus become part of the contractual content by which the operators are legally bound.

This lack of regulation in formal legislation is one of the points which this study raises as worth the while to study further in view of some of the positive results achieved in the EU Member States through transposition of the Directive on Reception Conditions. The problem of lack of legislation, or fragmented legislation is not necessarily detrimental to the asylum seekers well being at present. But, as a matter of principle and as a matter for precaution, legislative measures ensure the rights pertaining to the persons concerned in a transparent and predictable manner. These are important factors in relation to the legal security for asylum seekers. Legislation equally ensures that protection issues are not dependent upon political whims. And, the transparency ensured by legislation would enable Norway's cooperating partners to investigate on conditions in Norway. In conclusion here, we could say that it would seem advisable if issues relating to reception conditions in Norway be further legislated.

Certain elements regarding reception conditions can be identified as fragmented. Different parts of Norwegian legislation other than the Immigration Act contain provisions which are of relevance to asylum seekers' reception conditions. Pertaining to children, for example, it is worth noting that the Convention on the Rights of the Child has been incorporated into Norwegian legislation, the Human Rights Act of 1999 (*Menneskerettighetsloven*). All the principles contained in the Convention are transposed directly into Norwegian law and are applicable in the Norwegian legal system. Article 3 indicates the basic principle by which the authorities are bound to act stating: «In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration».

The European Convention on Human Rights and the two UN Covenants; on Civil and Political Rights as well as on Political, Social and Cultural rights, have equally been incorporated into the Human Rights Act of 1999. According to the same Act, in case one of these transposed legal norms is in contradiction with any other legislation, the Human Rights instruments of the Human Rights Act norms are to be regarded as superior to all other norms.

All matters in relation to education which equally cover the situation for asylum seekers are regulated in the Act on Training 1998 (*Opplæringslova*). Ten years of basic, elementary education for minor children is secured for all children in a non-discriminatory manner in this Act whether the child is of Norwegian or of foreign origin, with or without legal stay. The right pertains to all children to complete their education. Until the age of 18 they have the right and obligation to attend school until they have completed their tenth year

of basic education. The prerequisite is that the child will remain in Norway for a period exceeding three months. Municipalities are also requested to provide lessons in the mother tongue of the children. The same Act applies to secondary education for every person over the age of 15 who has finished the first 10 years of education. A prerequisite for secondary education according to the law is, however, that an asylum seeker has been granted residence permit. In practice and in reference to the «best interest of the child», the authorities have endorsed financial support for school material to asylum seekers at secondary level irrespective of a formal residence permit.

The Act on Social Services of 1991 (*Lov om sosiale tjenester*) regulates all matters regarding special needs because of illness, age, lack of ability to care for themselves, etc. for all persons on the territory. This legislation therefore in principle applies to asylum seekers. However, as long as asylum seekers are being cared for and given accommodation and economic support, these arrangements replace the said law except as regards its provisions pertaining to information to asylum seekers. Thus, the economic responsibility for the well being of asylum seekers is transferred from the municipal level to state level.

As a preliminary conclusion on legislation regarding reception conditions for asylum seekers, Norwegian legislation is applicable to Norwegian citizens and asylum seekers. Very little is specifically regulated by the Immigration Act itself in regard to reception conditions although certain provisions are of relevance, e.g. provisions on detention, information, work permits and travel documents.

The proposal for a new Act on Immigration does not contain proposals for a change in this situation. This is in line with the proposal of the expert committee in charge of drafting a proposal for a New Immigration Act in 2004, on which the Minister is still working.¹⁹ According to statements made by the Ministry of Labour and Social Inclusion, the new draft will be presented to Parliament and debated in the summer of 2007.

It would seem advisable for Norwegian legislation to be brought more in line with legislative measures in Europe. This question could be evaluated in connection with the Commission's evaluation process currently taking place. A Green paper on migration issues will be prepared in 2007, at the same time as the discussion on a New Norwegian Immigration Act will begin in Parliament. This debate should be influenced by European developments.

Further legislative efforts in this area could be profitable. In Norway it would mean that fragmented pieces of legislation and the filling in of gaps in the present legislation could bring about a better legal security for asylum seekers. Legislative measures taken by Norway could be profitable for the EU Member States as they could be assured that Norway operates in harmony

19. NOU 2004:20 *Ny utlendingslov* (New Immigration Act)

with EU standards as far as reception conditions are concerned. Thus, EU Member States would know what standards to expect when, for example, returning Dublin cases to Norway. At present, it is difficult for cooperating partners to judge Norwegian reception conditions. Instructions and documents which are not contained in legislation or secondary legislation are difficult to come by and may appear fragmented and difficult to interpret. Clarification and transparency through legislation would thus improve the situation not only for the legal security of asylum seekers, but indeed for Norway's cooperating partners. One further benefit would be for Norway to position itself better when it comes to being heard in the EU context on matters relating to reception conditions. Similar rights and duties in all of the cooperating States may further enhance avoidance of asylum shopping.

Reception conditions as a tool in regulating arrivals

The number of arrivals to Norway reached a peak in the year 2002 with 18 000 asylum seekers. Various political and other measures were adopted in order to reduce the incentive of seeking asylum in Norway (Brekke 2004). Information campaigns carried out in the media of traditional «asylum producing» countries was one measure. Introduction of restrictions on family reunification was another. A third example in regard to reception conditions, was that positive elements such as Norwegian lessons for all asylum applicants, disregarding the end result of their asylum application, were withdrawn.

Which measures worked and which did not is difficult to measure. Various measures may also have worked in combination. It was not clear what the effect of national policies was compared to a substantial decrease in the number of arrivals to Europe from 2002 and onwards. The number of asylum applications further decreased from the peak in 2002 to approximately 12 000 in 2003, approximately 8000 in 2004 (Brekke 2004). Since then, the number of asylum seekers has flattened out to 5000 per year.

One aspect worth noticing regarding the decrease of asylum seekers to Norway is that the decrease seems to be in relation to asylum seekers coming from areas where there is little persecution and general violence. Among the 5000 asylum seekers who do still arrive, the majority come from areas and countries of persecution, conflict and violence. According to statistics approximately 13 percent of these receive refugee status and asylum according to the 1951 Refugee Convention whereas approximately 20% receive protection on other grounds.²⁰

20. Statistics from UDI on 2006.

Topics of dispute regarding reception conditions

When asylum seekers started arriving in Norway in the mid-80s there was a dispute of whether the standard of accommodation facilities offered was good enough. One discussion concerned decentralised placement of asylum seekers in hotels, for example in mountain areas, sometimes far from urban centers. From a national economic point of view it made sense to hire and make use of hotels which were otherwise empty long periods of the year. From the opposite angle, it was argued that placing, for example, traumatized asylum seekers far from urban centers could add to their already in difficult situation. Consequences would be e.g. depression, suicide attempts, hunger strikes and sometimes violence. The use of hotels in the mountain areas was abandoned, but also today, immigration authorities maintain a principle of decentralization.

A second principled debate took place in public at the end of the 80s and the beginning of the 90s. This time the discussion concerned the use of barracks, for example old military barracks. It was argued, on the one hand that this did not represent an adequate standard of living. On the other hand, it was argued that a waiting period was not meant to last very long and that in view of this, it would be nonsensical, from an economic point of view, not to make use of a simple standard of housing. Barracks already existed. The number of asylum seekers fluctuates and it was considered wasteful to invest in very high standards. The result of the discussions was that such reception centers were seen as meeting the criteria for «adequate housing facilities» (*nøkttern standard*). This discussion was at its most heated during the reception of refugees from Bosnia in 1992-94. Since that debate, the norm of «adequate standard» has been upheld and applied to a great variety of buildings and former institutions that have been used

In more recent years (since the end of the 1990s), the discussion has been more focused on special topics. One such topic is security.

One example is the discussion which took place during the autumn of 2006 in connection with a reception center where the majority of the asylum seekers were Dublin cases. Although the residents were free to enter and leave, the center was situated in the countryside with limited possibilities of transportation. Weekly allowance is low for this group of asylum seekers (13 Euros), and getting to the nearest city centre was costly. Most of the residents were therefore restricted to the centre. Together with the special waiting situation for the Dublin-cases, this limited possibility to move outside the center contributed to instances of security problems during 2005 and 2006.

Reception conditions in Norway and the EU

In our initial queries on the Reception Directive in Norway, we expected to find a high degree of awareness about the instrument among civil servants. To some extent our expectations were fulfilled. However, only a handful of government employees were acquainted with the specific content of the Directive with only limited knowledge about the process of implementation in the Member states.

One should not be too surprised by this discovery as Norway is not under any obligation to transpose and implement the EU Directive. But we did meet a widespread interest in gaining knowledge about the EU instrument and its transposition into national legislation.

In this chapter we describe and analyze how the Norwegian law and softer norms stand when compared to the Directive on Reception Conditions. We also give examples from the Odysseus comparative study regarding the implementation in the Member States. The text is organized according to the Odysseus comparative study which will be published in 2007. Elements from the comparative study are introduced and related to the Norwegian position.

Before we start the more detailed discussions of the Directive, a few introductory remarks have to be made about the transposition process in the Member States.

The Directive was implemented into the national legal systems by the adoption or adjustment of one or several laws or other regulations. An exception to this was the Netherlands where the EU standards were transposed by a Ministerial Decree (Odysseus 2006:1). Some countries simply copied the whole Directive into domestic legislation. Several of these belonged to the group of newly joined Member States. Most countries, however, inserted the articles of the Directive into national legislation already in existence.

In most countries the Directive was adopted by the central governments. There were however some exceptions. In Germany and Austria, the regions play an important role in the development and implementation of asylum law and following reception conditions. Also Italy and Belgium have similar sys-

tems with strong regional influence, however not with the same autonomy as Germany and Austria.

As a preparatory exercise to the transposition of the Directive, several Member States conducted studies regarding the legal situation on reception conditions as well as evaluating the conditions on the ground. In Sweden both of these areas were covered in a preparatory report. Here the investigators concluded that only minor changes had to be made in the national legislation.

Very limited jurisprudence existed emanating from European courts mentioning the articles of the Directive until the summer of 2006, when the comparative study was carried out. The majority of these cases then concerned the question of who were entitled to the reception conditions listed in the EU instrument. Court cases included references to the various paragraphs of article 16 of the Directive which regulates the «reduction or withdrawal of reception conditions». The rulings included the exclusion of asylum seekers from the listed benefits in cases where the person was a second time applicant (The Netherlands), and the inclusion of persons that had resided in the country before applying for asylum (UK). Other cases included detention and fine print decisions relevant for Article 13 second paragraph, which asks the Member States to secure an adequate standard of living (e.g. Sweden) (Odysseus 2006:8).

In Norway as in many of the EU countries, the Ministries in charge of the asylum policy have shifted over the past fifteen years. In Norway, the responsibility has been with the Ministry of Justice, Ministry of Municipalities and Regional Development and finally now with the Ministry of Labour and Social Inclusion. In Sweden, similarly, a handful of ministries have been involved since the beginning of the 1990s. The asylum portfolio again shifted in the fall of 2006, being transferred from the Ministry of Foreign Affairs to the newly established Ministry of Migration. Within the EU, the Member States are split into two groups on this issue. In half of the countries the Ministry of the Interior is in charge, while the rest has Ministries otherwise concerned with Social, Family, Labour Affairs (Q10).

In some countries the level of the reception conditions varied with the stages of the asylum procedure. The Norwegian norm on this is that full benefits are not given until the applicants leave the transit/arrival centers and are transferred to ordinary accommodation centers. This intermediate period is however meant to be very short, a rule which is followed up in practice. The transfer takes place within a couple of days, and rarely more than ten days.

Special conditions apply for asylum seekers during the very initial stage of the process also in other European countries. In the Netherlands the first two to three weeks are spent in special reception centers awaiting a first screening of their cases. Here the standards of the Directive are not applied (Odysseus 2006:9). In Lithuania, which processes only a very low number of applica-

tions, the government was in the process of reorganizing their initial screening centers, which had sub-level conditions.

However, there is a differentiation in benefits during what could be called the end game of the asylum procedure. By this we mean, the findings show there is a substantial reduction in benefits following a second rejection. Whether these groups, that still may have appeals pending, fall within the scope of the Directive is a discussion we will return to. What should be noted at this point is the low level of benefits that is granted to the asylum seekers falling within the Dublin Regulation (Dublin II) who are awaiting deportation. Details of their situation will be given later in this chapter.

This special treatment of the «Dubliners» is not unique to Norway. In Austria these individuals are placed in detention and excluded from the benefits required by the Directive. In Slovenia the Dublin cases are being returned from other Member States and are de facto «subjected to reception conditions substantially inferior to normal ones reception conditions, e.g. limited access to health care and NGOs» (Odysseus 2006:11)

The countries that keep newly arrived asylum seekers confined or detained at airports and border posts under minimal conditions, may invoke Article 14 paragraph 8. Austria and the Czech Republic are among the Member States that have done so. The limit to this practice is given in the same article which states that these exceptional conditions should be allowed «for a reasonable period which shall be as short as possible» (Directive OJEU 6.2.2003:14.8).

The situation for applicants being detained – i.e. kept in closed centers without the freedom of movement – is given special attention in Article 16 and other places in the Directive. There were however two Member States that detained asylum seekers upon arrival as part of their normal procedure during the summer and fall of 2006. In the Czech Republic the new arrivals are kept in closed centers during the initial phase of the process. They were later transferred to open centers. In Malta all applicants were detained. After a short period of time especially vulnerable groups – i.e. pregnant women, minors, elderly people, traumatized persons and people with disabilities were released. The same practice is applied for seekers that are deemed to have good chances at receiving a refugee status (Odysseus 2006:12). Apart from these groups, the asylum seekers remained in detention for six to seven months during the time which the process normally lasted. It is unclear to what extent the Directive on Reception Conditions applies to asylum seekers in detention.

In general the question of combining differentiated condition levels with various subgroups of applicants is a topic of controversy within the EU. Another related area of discussion is the link between the EU Directive on Asylum Procedures (OJEU 343/2003 EC), and the Directive on Reception Conditions. It could be argued that neither of the instruments is sufficiently explicit regarding their application (Odysseus 2006:13).

With these introductory remarks, a backdrop has been developed that will allow us to move freely in our more detailed discussions on the list of articles in the Directive on Reception Conditions.

The presentation is organized according to the structure of the Odysseus comparative study. It starts with the *general rules on reception conditions* – mainly a discussion about Article 13 and what material standard is expected and how it is supplied by the receiving countries. The next part considers *procedural aspects* of the reception conditions. Here we look at the changes in conditions depending on various stages in the processing of applications. The provision of information and the access to making a complaint against reductions in reception conditions are topics that are also discussed here. The next theme is a section on the *Rights and obligations of asylum seekers*. In this section we discuss the standards on family life, accommodation issues, the availability of health care and the access to the labour market. The following section deals with the issue of protecting the rights of *vulnerable groups*. The situation for minors, elderly, women and victims of torture and violence is given special attention in the Directive on Reception Conditions. After this we comment on the *exceptional modalities of reception conditions*. Here we discuss the use of detention, among other topics. Finally in this chapter, a few answers are given to questions regarding the *organization of the system of reception conditions*.

General rules on reception conditions

The material standard is central to the reception conditions. How housing, food, clothes and pocket money is supplied to the asylum seekers varies across Europe.

Article 2 (j) of the Directive allows for material reception conditions to be provided in kind, through financial allowances or by the use of vouchers

In Norway housing is mainly provided in kind. The vast majority of asylum seekers live in accommodation centers. A small minority live outside the centers. These receive no financial support except in cases where special needs necessitate the special housing arrangement.

In the accommodation centers food is often financed through a monthly allowance. Some centers have the facilities necessary to supply the inhabitants with food in kind. There has been a discussion within the reception system about the pros and cons of providing food in kind. It has been argued that most asylum seekers prefer to be able to make their own meals.

The Norwegian system is in line with the majority of EU Member States with regard to housing. A handful of countries support accommodation outside accommodation centers when their capacity is exhausted. Apart from that

housing is supplied in kind. Food is also served and not meant to be covered by the financial aid in most EU countries. Exceptions are Sweden, Latvia, Estonia, UK and Finland.

In Norway, clothing is covered by the financial support (apart from clothes provided in kind to those in need upon arrival). This is in line with a slight majority of the Member States. In Belgium all three possible supplies of clothes are represented. In some accommodation centers asylum seekers are offered clothes in kind, while others give the inhabitants money. A third solution is used in yet other centers where special agreements are made with local second hand shops. Here the asylum seekers can go and pick out clothes twice a year.

Like in Norway, the vast majority of the Member States also provide the applicants with a daily expenses allowance in addition to the provision of material reception conditions. This is mandatory according to the Directive (Article 2 j). In many states it is hard to distinguish whether a daily expense allowance is actually provided. When parts or the total amount meant to cover the material conditions is paid in cash, it is hard to tell if such expenses are actually included (Odysseus 2006:27).

Two Member States had a practice that did not comply with the Directive on this point during the autumn of 2006. In Malta, no system was in place for providing pocket money and it was only handed out in exceptional cases. In one central European country this extra expense for the state had recently been dropped in order to save money (Odysseus 2006:27).

Where the material conditions – housing, food, clothes and pocket money – deemed to be adequate in Norway and in the member states? In the Directive the conditions are expected to «ensure a standard of living adequate for the health of applicants and capable of ensuring their subsistence» (Article 13 §2).

According to the conclusions of the Odysseus questionnaire, the material conditions in the EU were in line with the Directive in cases where it was provided in kind. Housing and food were for the most part deemed sufficient. The supply of clothes was however problematic in several of the new Member States (Odysseus 2006: 28). Here NGOs help out with the supply of clothing to asylum seekers, but not in a sufficient manner to comply fully with the requirements of the Directive. In several other Member States, the material conditions in closed centers are questionable with regard to the Directive. It is however unclear to what extent the Directive applies to asylum seekers being detained or temporarily imprisoned. We will return to this question below.

The comparative study also revealed insufficient provision of material conditions in open centers in two cases. In one of the new Member States – which received a very low number of asylum seekers – these were partly exposed to the same meager conditions as illegal aliens. These were sub-standard and especially ill suited for asylum seekers with special needs. In

Greece, the applicants will normally not have access to reception conditions for the initial period of the processing of their cases. This period may well exceed one year. In addition to this, several centers do not supply adequate conditions at all (Odysseus 2006:29).

Where the material conditions were provided through financial support, the general situation was different among the Member States. In the comparative report, nine cases of insufficient allowances were found among the Member States. In these countries the financial aid was either too low to secure particularly the health of asylum seekers or took too long to get access to (UK, Cyprus). We will return to the question of how high a standard one can demand of the Member States given the formulation in the Directive. One part of this is to consider how the situation of the asylum seekers compares to national social welfare benefits. Do they get the same level of support as the indigenous population? The short answer to this is no. Their financial support is lower in most Member States as it is in Norway. But the relation to national social benefits is only one criterion which has to be used when considering the level of payments to asylum seekers as we shall see below.

Procedural Aspects

Even though the EU has produced a separate Directive regulating and coordinating the processing of asylum applications within the Union (Directive 2004/83/EC), related questions have an impact in relation to the Directive on Reception Conditions.

The primacy of applications for Convention status

For example Article 2 b in the Reception Directive states the primacy of the Geneva Convention. An application in a Member State shall be considered as an application for Convention status unless the request is made for another status by the applicant. The comparative study found that this was the case either implicitly or explicitly in the majority of countries. Convention status was set as «default» in all but four Member States, and only two were found to not having transposed Article 2 b. Norway considers an application for asylum to be for Convention status. If this is not the case, the asylum application will be examined on a subsidiary protection basis (residence permit for protection reasons). The Immigration Act is thus in conformity with the Directive on this issue. According to the Hague program the Commission is to issue a proposal for a directive on one single procedure for people seeking protection. This should be established by 2010.

Same conditions for all applicants?

In line with this, Norwegian authorities have a one procedure policy. Reception conditions remain the same for all asylum seekers until they receive a permanent residence permit. Some additional benefits are provided to those who are granted Convention status, for example with regard to pension rights. These rights lie outside of the Directive.

Some Member States refuse to expand the reception conditions of the Directive to groups applying directly for subsidiary status. They did this despite the Article 3 §4 which allows for using the common conditions also for individuals applying for «other kinds of protection» (Directive OJEU 6.2.2003:3, 4).

Other EU members chose instead to widen the use of the conditions laid down in the Directive not only to subsidiary groups, but also to people receiving temporary protection (Germany, Estonia and Luxembourg) (Odysseus 2006:34).

Immediate access to reception conditions?

Another question concerning the coordination of the reception conditions during the processing of cases in the EU is how quickly the applicants are entitled to these benefits after their arrival. Most countries apply the conditions under the Directive on the first day, thereby adhering to Article 13 § 1. This article states that reception conditions shall be available to «applicants when they make their applications for asylum» (Directive OJEU 6.2.2003). In Norway this is the case both in accordance with the Immigration Act and in practice.

Some of the Member States have divergent legal arrangements and practice according to the Odysseus report (2006:35). In one country new arrivals must first register at two special centers. Here the applicants make appointments for the actual presentation of their application for asylum. The waiting period is normally between 2 and 3 weeks during which they live under temporary and very basic conditions. These are considered by the Odysseus report to be below standard and the whole arrangement to be in violation Article 13 §1 of the Directive. The authorities cannot refer to Article 14 § 8, which opens up for exceptional situations where states do not have to apply the Directive (Odysseus 2006:35).

Two of the old Member States also have systems that do not seem to comply with the EU regulations on this point. Before entering the normal procedure, and thus falling under the Directive, applicants have to wait for two months in the first case and up to a year. In addition to these countries, two other countries have practical hindrances that block immediate access to reception conditions.

Who are covered by the Directive?

This question was discussed and disputed in the preparatory discussions leading up to both the Directive on Asylum Procedures (Directive OJEU 2005/85 EC) and the Directive on Reception Conditions (Directive OJEU 6.2.2003). The matter disputed was when rejected asylum seekers stop being just that and enter into another category. In our discussion here, this is directly relevant, because as asylum seekers they would qualify for the rights and reception conditions stated in the Directive. In Article 3 of the Directive states:

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 [...] (Directive OJEU 6.2.2003).

This leads us to ask when applicants cease to be asylum seekers. When can they no longer be said to belong to that category? After they receive their first rejection, after their second, or at an even later stage? When is the decision to be considered as definite?

The interpretation used by the Odysseus network was that a «negative decision becomes definite only from the point where it *can* no longer be the object of a suspensive appeal» (Odysseus 2006:36). There is no coordination as to what the countries can consider to qualify for such a delay in the implementation of return of the rejected applicants.

The consequence of the Odysseus interpretation of the scope of the Directive would seem to be that all those that lodge appeals who may even have only a very slight possibility of leading to a decision postponing forced return, would qualify for the category of asylum seekers. Following this, they would also be entitled to reception conditions in accordance with the Directive. In this academic interpretation, the word *can* stands out as important. The meaning of the sentence is changed by this term and includes everyone that actually lodges an appeal that *may* lead to a postponement of their (forced) return. In the meantime the persons in question apparently are entitled to the same conditions as other applicants at an earlier stage of the process.

The European discussion on the cessation of reception conditions has had a parallel in the Norwegian debate. In Norway the responsible Ministry of Labour and Social Inclusion (AID) has made an effort to distinguish between asylum seekers and those that have received final rejections. The persons in question have gotten two negative answers. The first one issued from the Directorate of Immigration (UDI), and the second from the Appeals Board (*UNE*). Persons in this situation that do not cooperate and return «voluntarily» are labeled «foreigners residing illegally in the country» (Brekke and Søholt 2005).

Over the past three years this practice has had consequences in particular for a group of former applicants who have remained in the country long after their second negative decision. These persons fall into two overlapping categories; either they have unclear identity or they come from countries where a forced return is not possible (see Brekke and Søholt 2005). The so-called unreturnable former asylum seekers were subjected to sub-standard reception conditions in a center especially established for this group. The low level of support was an attempt by the Norwegian Government to provoke «voluntary» returns.

The procedural element that makes this group interesting with regard to the Directive is that many of them have lodged secondary appeals (*omgjøringsanmodninger*) on their second negative decision. These appeals will typically be left on the table for later processing in the Appeals Board (UNE). When they, for various reasons, are picked up and looked at, (normally within a time frame of one month), this may be interpreted as suspensive effect having been given, i.e. the applicants are allowed to remain on the territory while their appeal is being processed. This is an issue the Ministry of Labour and Social Inclusion is concerned with and has signalled an interest in clarifying with the Appeals Board (UNE). In these cases it would seem that they would clearly fall under the Directive on Reception Conditions.

If we again return to the word *can* in the Odysseus interpretation of Article 3 above, the situation of the so-called unreturnables, the question is if they could be said to qualify for the label of asylum seekers and thereby to reception conditions. Would only applicants that had in fact lodged their complaint on the second rejection be considered as asylum seekers, or would the situation apply to everyone with a double negative decision? We will continue this discussion on the next chapter. Here it will suffice to say that even the Odysseus network appeared to be uncertain in their work leading up to the comparative study. Here it was stated that all former asylum seekers with a final rejection fell outside of the Directive and thereby also outside of the study. But who are these people? They are the unreturnables, the tolerated or the not yet returned. With the lenient interpretation mentioned above, none of the rejected applicants in Norway waiting to return or to being forced out of the country would fall outside the Directive. The practice in Norway is that reception conditions are reduced after the second rejection. Sometimes reception conditions are removed altogether, leaving former asylum seekers – except women, children and other vulnerable groups – to live under minimal conditions.

In the discussion preceding the Directive on Asylum Procedures, (Directive OJEU 2004/83/EC), some voices were raised that wanted to coordinate the use of the suspension of return during appeals. Instead the opposite position gained support and the use of this instrument is now largely up to the individual Member State (Odysseus 2006:36).

The Member States vary in their practice with regard to the end of reception conditions. Some countries make cuts ahead of a definitive or final decision. Others continue to provide for the applicants for shorter or longer periods after their rebuttal. (Q15)

Information about reception conditions

The Article 5 of the Directive on Reception Conditions states that the Member States shall inform the asylum seekers about their rights and obligations regarding reception condition within 15 days. Information shall also be given about organizations that can help them with legal assistance and guidance with regard to access to benefits and health care. The information shall be in writing and preferably in a language that the asylum seekers understand (Article 5 § 1, 2).

In Norway the information is intensive during the first period after the asylum seekers launch their applications. During the first week they are informed orally by employees at the transit centers who speak the languages that cover three out of four of the newly arrived. The rest are informed with the help of interpreters. Some information is however only given orally in English. Within ten days they are presented with information on DVD, information meetings and a brochure printed in 30 languages. The materials they receive inform and comment on the legal procedure as well as elementary information about the reception conditions.

An NGO has been engaged to inform the asylum seekers of procedural issues. The Norwegian Organization for Asylum Seekers (NOAS) also gives basic advice about the individual asylum cases.

Once the applicants arrive and are installed in ordinary accommodation centers, they are again informed about their rights and obligations regarding reception conditions. The responsible organization, municipality or commercial company, is responsible for securing that the asylum seekers are informed. A centrally developed frame work called «Information programs in state reception centers» (*Informasjonsprogram i statlige mottak*) contains the guidelines for the operators (UDI 2002:15). Compulsory elements for this program are «information on arrival and ordinary information». The program does however not specify that information has to be given on the rights and obligations of the residents (UDI 2002/2004, Specification of requirements for the operations regulations). According to one of our informants in the Directorate, however, the module II in the information program states that «the residents shall acquaint themselves with their rights and obligations with regard to their stay at the reception centre [...]».

In our interviews with operators and NGOs, they maintained that in practice the asylum seekers were informed about the reception conditions. The Norwegian government has a practice that conforms to the standards of the

Directive. The information is given in writing, efforts are made to adapt to the different language groups, and it is all done inside of the 15 day limit. It is however unclear whether the information given during this period in a sufficient way is focused on the reception conditions. The guidance on procedural aspects of their stay seems to be well covered.

Most Member States were found to comply both in law and in practice with the Directive on this point. Exceptions included Malta where insufficient information was given and Cyprus where the authorities did not inform asylum seekers about the reception conditions despite having a law obliging them to do so. In Germany and Austria the federal structure gave central authorities particular challenges with the coordination of information efforts.

In most of the EU countries the information was given in a written form. Some countries stressed the importance of flexibility in cases with illiterate or poorly educated asylum seekers. Here oral or DVD presentations may be good alternatives (Odysseus 2006:39).

The translations of the information showed a great deal of variety across the Member States. A lot of the countries did not have a specific number of languages that the information was available in. The numbers that were given ranged from 3 in Malta, 5 in Italy and 7 in Sweden, to 34 in Austria. The 15 day rule did not pose any problems in the Member states.

Norway's 30 languages used in the brochure would have ranked second highest on the list provided in the comparative report (Odysseus 2006:40). (Q16)

In Norway no list of organizations is systematically made available to the asylum seekers. Such a list is requested by Article 5 in the Directive. Given that NOAS does information work in the accommodation centers, the asylum seekers are implicitly informed about them. This organization, however, only provides legal and procedural assistance. The Directive also asks for NGOs to be listed that also may provide the applicants with information about reception conditions and health care.

In Sweden such local lists were being developed during the fall of 2006. Four other countries did not provide lists of organizations.

Other countries had developed detailed lists and had systems in place to secure updated information. The countries with good practice in this area were the Czech Republic, the Netherlands and Slovakia (Odysseus 2006:41).

Identity papers and documentation

Article 6 in the Directive on Reception Conditions is meant to secure that asylum seekers are provided with a document that certifies her or his status. The document does not need to include the identity of the individual and it should be issued within three days after the application has been handed in. The Directive also opens up for the issuing of additional travel documents in cases

where the asylum seekers have to leave the country for serious humanitarian reasons (Directive OJEU 2003/9/EC:6,3).

The Norwegian authorities issue a document that certifies the individual's status as an «asylum seeker» (*asylsøkerbevis*). This is done immediately upon registration and within the three day limit set in the Directive. Asylum seekers that have their national passports hand these over to the police in exchange for the new document. They get the passport back when a final decision has been made in their case (Norwegian Immigration Act §17, 4). The new document is valid for 6 months and is renewable. Special travel documents (*Reisebevis/Utlendingspass*) can be issued (Immigration Act §19 and secondary legislation §§ 65-75). These have limitations with regards to time and the number of countries that the person can travel to. The applicant is not allowed to visit his or her home country.

The practice in this field varies enormously within the Union. All states issue documents. Some seek to certify the individuals' identity when issuing the documentation. This last practice has obvious advantages. In Norway asylum seekers have complained about problems they encounter when having to deal with private and public institutions. Without an identity card it is difficult to for example open a bank account.

This is confirmed by the Odysseus study which also suggests that Article 6 § 3 – which says that the states do not have to issue documents identifying the asylum seekers – should maybe be reformulated (Odysseus 2006:42). On the other hand one could argue that a large percentage of the asylum seekers enter Europe or Scandinavia without an undisputed identity. Establishing the identity may in many cases take time, something that indicates that a compulsory issuance of identity papers in the first phase after arrival may be over ambitious. (Q19a)

Residence of asylum seekers

In the discussions leading up to the final text of the Directive, Germany was particularly interested in safeguarding their practice regarding restrictions of movement within the Länder. During the asylum processing, asylum seekers have to remain within the particular region of the country where their application is being tried. Article 7 § 1 opens for this practice. The only other Member State that has a similar arrangement is Austria.

Some countries do have other less obvious restrictions on the asylum seekers' movement. In a handful of new Member States, for example, all asylum seekers have to be inside their allocated accommodation centers during the night. In practice this puts heavy limitations on their freedom to move. In the reception centers in the Netherlands the situation is the reverse, but with identical consequences. There the asylum seekers have to stay inside during the day (Odysseus 2006:45).

One Member State had chosen to encourage actively the free movement within the territory. In Luxembourg all public transportation was free for asylum seekers.

In Norway the asylum seekers are in principle free to move inside the country. The policy is therefore in line with the Article 7 § 1 of the Directive. If the asylum seekers want to move to an accommodation center in another part of the territory, they have to make a specified application. The Immigration Authorities have a policy of spreading the centers throughout Norway. Therefore not all such applications are granted. In exceptional cases the national Immigration Act § 37, paragraph 7 opens for limitations on movement for the asylum seekers. This provision is seconded in the proposal for the new legislation as it was proposed by the expert law committee in 2004 in the draft new Immigration Act § 137 and § 117.²¹

According to the Norwegian system the asylum seekers may choose to live outside the centers. If they choose to live outside their allotted accommodation center, however, they will not receive compensation for housing, clothes or other benefits. In special cases housing outside of the centers is approved due to for example health reasons or disability. However, the Directorate of Immigration tries its utmost to accommodate asylum seekers in centres nearby for example relatives and others if they make a wish for this during their stay in the transit centres.

The Norwegian system of not letting the asylum seekers choose accommodation centers has its parallel in several of the EU countries (The Netherlands, Germany, Luxembourg, Austria and Greece).

Also in the UK, asylum seekers that do not find accommodation among friends or family do not get to choose where to reside (Odysseus 2006:46). Other countries have mixed systems where the state offers housing, but where applicants may choose to live outside the centers. In some Member States the freedom to choose comes at a prize. In Finland, Estonia, Lithuania, France and Poland the applicant loses his or her social welfare benefits in these cases. It is not obvious that the states are not obliged to provide the reception conditions in cases where the applicant chooses to live outside the allotted center.

In Norway there has been a discussion about granting an economic compensation to asylum seekers who manage to arrange for accommodation themselves as is the case in Sweden. Norwegian authorities have so far been reluctant. The asylum seekers that live elsewhere have accepted that this requires them to support themselves. The result has traditionally been that very few make this choice. Those that do, do so knowing that they do not lose their right to schooling or health services.

21. NOU 2004:20 *Ny utlendingslov* (New Immigration Act).

According to Article 7 § 5 of the Directive, asylum seekers shall have the possibility to be granted temporary permission to leave the place of residence. In Norway there is such a possibility. Permissions can be granted by the reception centers, a maximum of 14 days leave. Those who wish to prolong their stay outside of the centre need to apply to the Directorate of Immigration. Rejected asylum seekers who, as a matter of principle, are not allowed to leave the centre temporarily, may also make such a request to the Directorate of Immigration. This right is regulated in § 59 cf. § 60 in the secondary legislation to the Immigration Act (*Utlendingsforskriften*). If permission is granted, the right to money allowances is maintained (Immigration Act § 41 a. paragraph 3). The asylum seekers do not have the right to appeal a negative decision in these cases. Reasons are however expected to be given. There is no system for securing the impartiality of these decisions.

The possibility of moving from where the asylum seekers live varies greatly throughout the EU. Some states are liberal and have no particular regulation on this point (Cyprus, France, Luxembourg, Malta, Poland, Portugal and Sweden). The applicants do not, however, receive benefits outside their place of residence in these countries. Another group of countries have a similar practice as Norway. Here the management of the accommodation centers is authorized to decide and approve the requests for leave from the applicants (Odysseus 2006:49). A third group of countries have stricter regulations in this area. They use time limits for the permissions, a system of having to report to local authorities or severe systems of control where a breach of the rules may even lead to expulsion (Austria).

Reduction of reception conditions

How should the administration at accommodation centers react when asylum seekers do not behave according to the regulations? One type of sanctions that the Directive allows for is the reduction or withdrawal of reception conditions. Article 16 provides a list with legitimate reasons for invoking this set of sanctions. It includes leaving the place of residence without notice, not showing up for interviews, having concealed personal financial resources, unnecessary delay of handing in the application and seriously breaching the rules of the accommodation centers. If the person has already filed an application in the receiving country, this may also serve as a reason for reducing or withdrawing the conditions.

In Norway, all asylum seekers are offered accommodation. This offer is valid even if they abandon their place of residence or do not comply with duties and obligations (Immigration Act § 41a). Benefits can however be reduced in accordance with internal instructions from the Directorate of Immigration. The right to food, housing and health care can not be reduced as long as a final rejection has not been issued. Even after a second negative decision,

basic housing, food and emergency health care is being offered as of winter 2006. In serious cases, reduction of benefits would typically mean, for example, a cut in the weekly allowance.

Other less serious forms of sanctions include the exclusion of individuals from activities or material benefits based in the accommodation centers. These can be the response by center administration to acts of vandalism, failure to clean facilities, no-shows for interviews or information meetings. Sanctions would typically include not being allowed to go on organized trips, being denied access to internet or exclusion from sport activities.

The decision to inflict sanctions is taken by the administration at the centers and can be appealed. The Directorate of Immigration would, in principle, consider any communication from the residents of the centres. Normally decisions on reduction in benefits are taken by the management at the accommodation centers. There have been cases where reductions in reception conditions have been forwarded and appealed. Ultimately it is the Ministry of Labour and Social Inclusion that has the final say. This is according to the before mentioned «Fiscal Regulation for accommodation centers», chapter 6 (*Pengereglativet*), and secondary legislation.

Our informants mentioned a challenge regarding the relative autonomy of the accommodation centers. There is an inherent risk in the management of the centers losing sight of the asylum seekers' rights and needs and that they end up administrating at will. This is a well known aspect of the running of what one could call dense or *total institutions* (Goffmann 1991). The attitude that can prevail in such cases is that «the asylum seekers must know their place». Some instances were reported to us where employees held groups of asylum seekers responsible for the actions of one or a few from the groups. This type of collective punishment is explicitly prohibited in the *Regulation for state reception center operations* (*Driftsreglementet*). A typical example is when damage to property inside a center results in groups of people with a certain nationality being excluded from activities or access to facilities. The extent of this practice in accommodation centers is however not known, and is fortunately believed to be minimal by our informants.

To sum up the Norwegian case on this point: The regulations open for a reduction or withdrawal of reception conditions. Apart from internal minor sanctions within the centers, the use of sanctions is not common. A final end to the granting of all benefits (withdrawal) would only occur in connection with an asylum seeker being expelled from the reception centre and thus no longer having the right to reside there. This could, for example, be if the asylum seeker has been granted the right to reside in another municipality or at another reception centre. A basic amount of money «pocket money» cannot be withdrawn. The person in question must be in a position to pay for food. No reduction is allowed in a basic amount in case of children.

The situation in the Member States is similar to that in Norway. The legislation opens up for a use of sanctions. In most countries the decision to impose sanctions is taken by the administrative authority responsible for reception conditions. One country did inform the Odysseus study about the need for such decisions to be put in writing. The reason for this was that when the reduction in conditions is only communicated orally and often without any set procedure, this reduces the possibility for the asylum seeker to appeal the decision. Such practice would also risk violating the Article 16 § 4 of the Directive, which states that such decisions «shall be taken individually, objectively and impartially and reasons shall be given» (Directive OJEU 2003/9/EC).

In the final report from the Odysseus study, the authors mention two examples of *good practice* in this area.

In France a council with a base in the local community and with representatives from the asylum seekers takes decisions in matters of reduced reception conditions. These decisions are to be in accordance with a set of regulations that is also put up by the same so-called *social council*.

In Luxembourg the Minister in charge of asylum policies notifies the individual asylum seeker about the reduction of conditions eight days in advance. The applicant then has the possibility to appeal the decision before it takes effect. The opportunity to appeal is common in the majority of the Member States.

The Norwegian system has a parallel to the French social councils. Each accommodation center shall, according to the regulations, establish a *council of residents*. This council is meant to represent the asylum seekers and have a voice in decisions concerning the institution.

According to established practice (not regulated by law), the asylum seekers can complain about the quality of reception conditions to this council. The council is meant to function as a channel for complaints and suggestions. Other options include complaining directly to the employees of the center or directly to the Directorate of Immigration. When the Directorate of Immigration evaluates the situation at the individual centers, these councils serve as important sources of information.

Rights and obligations of asylum seekers

In this section we discuss among other things, topics standards on securing the asylum seekers' family life, housing issues and conditions in accommodation centers, the availability of health care and the access to the labour market.

Protection of family life

One important right of the asylum seekers is the right to family unity and the protection of family life. In the Directive on Reception Conditions, this is regulated in Article 2d and Articles 8 and 14, §2. The Odysseus report found the definition of what constitutes a family to be restrictive. Spouses or optionally steady couples and their minor children (under 18) were included. This minimal definition of a family meant that most Member States could easily fit it into their legislation (Odysseus 2006:57). According to Article 2 of the Directive, it is left to the states to decide whether to include unmarried couples in «stable relationships» into the family concept. (Q23)

Norwegian Law is also in line with the narrow definition of what constitutes a family, stated in the Directive. In Norway a family is primarily understood as married couples over 18 and their children younger than 18 (Secondary Legislation (*Utlendingsforskriften*) § 23, 1a, 2). Registered same-sex partners have the same rights as hetero married couples (Law on Registered Partners, April 30th 1993, No. 40 § 3). Registered partners are not mentioned in Article 2d in the Directive. Here the Norwegian legislation is broader than the European definition. Unmarried couples are also included in cases where they have been living together for more than two years and intend to continue living together (Secondary Legislation § 23, 1b). Same sex relationships are again treated equally. There is a condition that none of the involved parties is married to a third party.

The family as defined in Article 2d in the Directive is secured common housing in Article 8. Effort shall be made by the state to keep families housed together during the application period.

In Norway, the unity of the family seems to have been respected in practice. None of our informants have noted that for example the housing of families has posed a problem. However, legislation and regulations have not included an explicit reference to the considerations of the family. This is clear from the recently proposed changes (November 2006) in the *Requirements Specifications* (*Kravsspesifikasjonen, UDI*). In the earlier and still operative version, family unity is not taken into consideration, for example, when it comes to housing. Under Chapter 1.1 (Living conditions (*boforhold*)), the word family does not occur in the 2006 edition. The proposal from the working group with civil servants from the Directorate of Immigration includes specifications of what families are entitled to. Under this heading, the regulations state that:

Families with children shall have separate living quarters with bedrooms, a bath room and eating facilities that are suited for the number of family members and the age of the children (Directorate of Immigration 2007:4, Proposal for renewal of the Requirements Specification)

This is specified even more in detail under the next heading in the regulations, which deal with requirements for the common areas in the accommodation centers. Here it is stated that:

All [...] family units shall have at their disposal a refrigerator and a storage room for food. These shall be situated within the living unit or have a lock if they are placed within the common area (Directorate of Immigration 2007:4, Proposal for renewal of the Requirements Specification).

The explicit focus on the *family* as a unit instead of the more general *residents*, signals an increased focus on the rights of the family.

If these new paragraphs are included in the Norwegian *Requirements Specification*, this would bring Norwegian norms more in line with the Directive. Article 14 § 2, states that «Member States shall ensure that applicants provided with the housing [...] are assured (a) protection of family life». By securing families separate living quarters, the Directorate of Immigration would fulfil the European standards. In its current form, the Norwegian *Requirements Specifications* lacks explicit statements about the protection of family life.

Housing

The Norwegian system of reception and accommodation centers has been described briefly earlier in this report (Chapter 2). In print, there were four types of centers that house asylum seekers – with pending or rejected applications – in operation as of fall 2006. These were the transit centers that handled the newly arrived, ordinary centers and centers for rejected asylum seekers that for various reasons were hindered from returning. The fourth type was centers for unaccompanied children. (Q24, 25)

In practice, however, several centers had specialized in niches of the reception market. One example was a center where the residents were Dublin-cases waiting to be returned to the country that would process their applications. Another was centers that had sections with capacity to handle so-called difficult cases, i.e. persons with mental problems that did not qualify for a full institutionalization, or persons in need of comprehensive care. Some of the larger centers had several specialized sections.

The Directorate of Immigration is responsible for the centers, but does not operate any of them itself. Instead the daily running of the centers is left to commercial companies, municipalities and NGOs. The centers are often located as local campuses. Some of them are organized in a different manner where rooms or apartments are spread out across a municipality or city.

The Directive on Reception Conditions opens up for a wide range of solutions for accommodating asylum seekers. Solutions including or combining

accommodation centers, private housing, hotels or other premises are all welcomed in principle (Article 14 § 1).

The general picture derived from the comparative European study was that most countries organized the accommodation in communal centers. In some states the system was highly diversified, like in the Netherlands. The one country that did not have accommodation centers at all, the United Kingdom, relied instead on other facilities such as private houses, apartments or hotels (Odysseus 2006:58). A small group of Member States practiced a solution which combined accommodation centers with individual housing (Belgium, Italy, Germany and Sweden).

Article 14 of the Directive also opens up for states to supply the asylum seekers with monetary assistance when no places are available in accommodation centers or organized private housing. Only France and Belgium reported that they had this solution as an option. In one country the financial compensation meant to cover the expenses for housing in the private market were seen as insufficient. This could give the authorities a problem with

Article 13 § 2 and its imperative on providing an adequate standard of living for asylum seekers (Odysseus 2006:58). The situation is even more delicate in Cyprus where asylum seekers that do not get a place in an accommodation centers are left on their own to find housing.

The capacity of the national housing systems are of interest when one compares reception conditions in Europe. It is however not an easy task to find equivalent volumes to compare. The national solutions vary and the number of asylum seekers that come each year also varies greatly across the continent. Countries like Germany, United Kingdom and Sweden house a majority of their asylum seekers outside of traditional accommodation centers. Looking at the places in ordinary accommodation centers, one does however get a certain impression about the volumes and capacities of the national reception systems. The list below was printed in the report from the Odysseus study (2006:59). Here we have added the numbers for Norway and organized the ranking in descending order.

Table 1. Number of places in reception/accommodation centers (as of summer 2006). Decreasing order

STATES	Number of places
Netherlands	30 764
Austria	Approx. 30 000
Sweden	18 800. (Same number live with relatives or friends)
France	17 710
Belgium	Approx. 15 500
Germany	11 431
Norway	8 500
Poland	3 500
Malta	Approx. 1 200 in closed centers and 1 360 in open centers
Italy	2 350
Czech Republic	467 places in the reception centers and 1 808 places in the accommodation centers
Spain	2079
Finland	1934
Hungary	1 850
Luxembourg	1 150
Slovakia	774
Greece	770
Lithuania	400
Slovenia	202
Latvia	200
Cyprus	80 to 100
Estonia	35
Portugal	26
United Kingdom	Housing places from the government contracts with private housing providers, plus self initiated accommodation

From table 1 we can see that there is extreme variation in the number of places of the Member States. The Netherlands is on top of the list with more than 30 000 places available in their reception system. This number is almost matched by Austria. In Sweden the number was a bit less than 19 000 as of spring 2006. In addition to these, the number of asylum seekers living in individual housing (*eget boende*) was about as high. Over the last few years the number of asylum seekers waiting for a final decision has varied between 30 000 and 40 000 in Sweden with approximately 50 percent staying in accommodation centers (Integrationsverket 2005).

These countries are followed by other major receiving countries in Western Europe. France, Belgium and Germany all had more than 10 000 places available. And again, all three countries had an arrangement where asylum seekers in certain situations were housed outside of the registered accommodation centers. The United Kingdom is placed at the very end of the list. As we have mentioned earlier, the arrangement of accommodation here is based on individual housing. Their relatively high number of arrivals pr. year is therefore not mirrored in the bottom position they have on this ranking.

In seventh place on the list we find Norway with 8500 places available in the accommodation system in June 2006. Following the trend of fewer arrivals to Europe, the capacity of the Norwegian reception centers had been reduced over the past few years. At the start of 2005 the number was approximately 15 000. A year later it was down 15 percent.

Two comments can be made from the ranking in table 1. The first is the pattern that the first seven countries on the list all belong to Western and Northern Europe. The new Member States are found further down on the list. Of these countries Poland has the highest ranking.

The second comment that emerges from the reading of table 1 is the remarkable difference between the top and the bottom countries. The countries with the fewest accommodation places are also countries with few applications pr. year. Slovenia, Lithuania, Latvia, Estonia and Portugal all have less than 400 places available. The last two states had less than 40 places available in 2006. Compared to the countries at the top of the list, the difference is immense. Cyprus reported 80 – 100 places in the same year. The *Odysseus* report expresses worry that the demand outsizes the capacity ten to one in this country (2006:60). The question is how this stands up to the Article 24 §2 of the Directive.

The report also expresses worries about Italy where 8000 applications were filed in 2005. With less than 2500 registered accommodation places, the capacity seems to be inadequate indeed. (*Odysseus* 2006:60).

The Member States differ in the types of centers they operate. In some countries, the distribution of asylum seekers is not dependent on where in the process they find themselves or the time that has elapsed since they applied. Some of these countries have only one accommodation facility (Portugal, Latvia, Lithuania, Hungary and Cyprus). Others have more elaborate arrangements, but do not couple housing with different stages in the process (Sweden, Luxembourg, Greece and France) (*Odysseus* 2006: 62). (Q25)

Another group of countries does make clear distinctions between asylum seekers in different phases of the process. The most fine tuned of these is the Netherlands. In this country there are four types of centers in operation. Before an application is made the asylum seekers are referred to a *Temporary emergency center*. The applicant is then directed to a *Registration center* where his or her request can be forwarded. Here it is decided whether the person can be dealt with within the accelerated procedure (48 hours). If not, the asylum seeker is placed in a *Center for orientation and integration* and the case follows the ordinary process. In case of a first rejection, the asylum seeker is transferred to a fourth type of center called *Center for return*. Here the person is expected to prepare for a return to the country of origin. This structure does not in itself pose a violation of the Directive. However, the Dutch Government holds that the Directive does not apply in the *Temporary emergency center* and in the *Registration Centers*. The conditions for not pro-

viding the reception conditions described in the Directive (Article 14 § 8) do not include the Dutch situation.

A third group of countries have accommodation arrangements that varies according to the time elapsed in the processing of the individual case. In Belgium the asylum seeker may be offered private housing after a certain period. Austria and Germany are other examples where accommodation conditions change as time passes (Odysseus 2006:63).

Most Member States have regulations in their accommodation centers that specify the rights and obligations of the asylum seekers. Some countries have made special efforts to communicate these rules to the newly arrived. France is one such example. Here the individuals that file their application are provided with a booklet that explicitly lists their rights and duties. In the United Kingdom we find a similar practice. The new arrivals are given a information sheet which states what are expected of them and what they in turn have a right to get from their surroundings (Odysseus 2006:64).

In Norway the staffs of the accommodation centers are obliged to inform the new arrivals of their rights and obligations. However, to what extent this information in practice is comprehensive regarding rights and obligations, is unclear.

User influence in accommodation centers

The Directive on Reception Conditions encourages that asylum seekers are involved in the managing of accommodation facilities. Article 14 § 8 states:

Member states may involve applicants in the managing the material resources and non-material aspects of life in the center through an advisory board or council representing residents.

This clause is optional. The European comparative study concluded that this Article had not been embraced with enthusiasm by the governments of the Member States (Odysseus 2006:65). Only France has a formalised regulation that secures the influence of the residents in accommodation centers. Minor efforts have been made in a few other EU countries.

With regard to this Article of the Directive, the Norwegian regulations and practice is ahead of their European neighbors. The *Requirements specifications* give specifics on the functioning and also the composition of such an advisory board, or *cooperation council* (*samarbeidsråd*).

In these instructions from the Directorate of Immigration to the operators of the centers, it is confirmed that all facilities have to establish and maintain a cooperation council. This board shall secure user influence on decisions that are of direct relevance to the residents. At least two thirds of the representatives in the council shall be asylum seekers. At least one seat shall be occupied by a woman. The council shall have a written mandate and have a budget at their disposal. The council shall also be heard in the periodical evaluations

that are made by the Directorate of Immigration. In the regulations there is an opening for other local ways to secure user participation and influence. This however presupposes that the intentions of the regulations are maintained.

The activity of these councils varies from one center to the next and over time. One reason for this is the high turnover in many centers. Often a well functioning cooperation council will depend on one or a few individuals that seize this opportunity to have influence. This may contribute to making the system fragile and vulnerable to changes in the composition of residents. According to our informants though, the arrangement was an important contribution to the social dynamics of the accommodation centers, even given the weaknesses connected to instability of the representatives.

Health care

Two major aspects on health care are mentioned in the European Directive. One is the Member States right to conduct *medical screening* from a public health perspective (Article 9). The other is included to protect the access to at least basic care for asylum seekers (Article 15). Let us start by commenting briefly on the first aspect.

Asylum seekers that come to Norway are put through a brief medical screening while still in transit centers. Here they are presented with a test for tuberculosis, which is obligatory, and an optional HIV-test. At a later stage, the perspective is changed and the applicants are examined by ordinary doctors. It has been argued that the first medical screening could be a good opportunity to seek information about a possible history of violent abuse and torture. We will return to this question below. When the asylum seekers are transferred to ordinary centers, they are appointed to a local medical doctor. This then remains their point of reference within the national public health system. They have the same access to this system of doctors, consultations and hospitals as Norwegian nationals. In other words, it is not the reception centers themselves that are responsible for securing a proper health service for the residents.

The Norwegian health authorities have developed a «guide» (*veileder*) to be used by local medical personell that are responsible for the health of asylum seekers (Directorate for Health and Social Affairs (DHS) 2003). According to our informants the level of health services that the asylum seekers received varied greatly, despite the national norms set in the «guide». The problem was, they said, that the guide had a status as only that – a guide. The health personell were not obliged to follow the advice and suggestions given by the Directorate for Health and Social Affairs. The result was that the health services provided in some reception centers were excellent, while they were less good in others, according to our informants. Special attention and methods are required for example to detect and document signs of torture and sex-

ual violence. By giving insufficient attention and treatment to asylum seekers with mental and physical health problems, they will be a potential risk to themselves and their surroundings (Norwegian Board of Health Supervision, Oppland 2005:3). The handling of these types of special cases was not part of the general knowledge of Norwegian health personnel (DHS 2003:18). In order to secure predictability and equal access to health services for asylum seekers across the country, it was suggested that the guide from the Directorate of Health and Social Affairs may serve as a starting point. For the time being, there is an ongoing debate about how best to organize the psychiatric and psychosocial health services for asylum seekers and refugees in Norway.

In the Directorate of Immigration, the attention to these issues is increasing. In a *proposal* for new directions from the Directorate of Immigration to the centers, this responsibility is included and stressed (The Requirements Specification 2007:21). Accordingly, the accommodation centers shall «facilitate the contact between residents with physical or mental health problems and public health authorities». Their responsibility also stretches further in that the centers shall «inform the Directorate of Immigration if local responsible health authorities do not provide a sufficient level of treatment» (The Requirements Specification 2007:21). These paragraphs are listed in the Norwegian regulations under the heading of «special needs». As of spring 2007, it is important to note that these additions have not yet been approved.

In the European Directive, health is discussed separately under Article 15, and then again in a more specified manner under Article 17 dealing with «Provisions for persons with special needs» (OJEU 9/2003). It is then repeated under Article 20 which states the rights of «Victims of torture rape and sexual violence» and finally in the Article on «Medical screening» (Article 9). We will return to the explicit focus in the Directive on the needs of special groups. This focus finds resonance in the Norwegian legislation, where we found, however, an absence of measures to secure the systematic detection and treatment of victims of torture and violence.

The Norwegian practice of testing for tuberculosis has its parallel in most EU Member States. Some states have obligatory testing also of HIV. A handful of countries present the screening as optional for the asylum seekers. The authors of the Odysseus report hold that this is one of the areas where a harmonization should be reached, even though Article 9 is not mandatory (Odysseus 2006:68).

The general access to health care for asylum seekers, which is generous in Norway, was more varied in the Member States.

On the one hand, the United Kingdom has a level of access to health services parallel to that in Norway. In the UK, the law states that there shall not be any difference with regard to the access to the National Health Service between asylum seekers and nationals. Some other countries were coming

close to having this parity in access according to the Odysseus' report; the Czech Republic, the Netherlands, Poland (2006:68).

On the other hand there are countries that were closer to the low minimum level stated in the Directive in Article 15 § 1. According to this provision, states are obliged to ensure that asylum seekers receive «at least emergency care and essential treatment of illness». All EU Member States had the provision of emergency care as a baseline in their legislation and practice. This is however not the tricky formulation in Article 15. The question is what the expression «essential treatment of illness» really entails. In for example Slovenia and Lithuania the practice is to provide only very basic health services. So what should be considered an essential treatment of illness?

Should for example chronic health problems be included? Even for the Member states that provided good access to national health services, the treatment – or lack of treatment, of chronic health problems posed a challenge. In the Odysseus report this was reported as a concern from Germany. This has also been a topic among people within the reception system in Norway (Brekke and Sørholt 2005, Brunvatne 2006).

In Norway, no clear guidelines have been worked out on this particular issue. Medical personnel may encounter situations where a sub optimal course of treatment has to be chosen because it is uncertain for how long the patient will remain in the country. A similar dilemma occurs when patients have needs of correctional treatment, like for example the correction of walking disabilities or results of prior maltreatment. These are often expensive and stretch out in time.

The difficult decisions regarding long term treatment of asylum seekers are amplified when there is a mental health problem. There is a saying within the reception system with regard to this. It states that the psychiatric ward in Norway does not want to open books it cannot close. This means that psychologists and other personnel that come into contact with asylum seekers will be vary of starting a relationship and a treatment that they can not see through to the end (Brekke og Sørholt 2005). We will return to this in the section under the heading of «special needs» and the discussion of victims of torture.

Access to doctors and health personnel in Norway is mainly outside the centers. Access within the centres is rare. According the Odysseus report both these solutions were widespread across the continent.

Access to the labour market

One of the major discussion points in the preparatory discussions leading up to the final Directive on Reception Conditions was rights regarding access to the labour market. Three years after the rules were approved; two different trends had evolved according to the Odysseus report.

According to Article 11, Member States shall decide on a time period after arrival where the applicant shall not have access to the labour market. Given certain conditions, a one year time frame is set as a maximum. If the asylum seeker cannot be blamed for the delay, the Member State is obliged to state the terms for the individual's access to employment. The Article also states that such access shall not be withdrawn in case of appeals, when these have suspensive effects (Article 11 § 3).

There were two trends of adaptation identified in the European study. One was in line with the Directive and one had more favorable conditions. The first group of countries had adapted to the one-year norm of the Directive. The second group included Greece (which gives immediate access), Portugal (less than one month), Austria and Finland (3 months), Sweden (4), Italy and Spain (6) and Luxembourg (9 months). In the Netherlands access is given after six months, however with one limitation. During the application process the individual is only allowed to work for 12 weeks pr. year (Odysseus 2006:70).

An Eastern European country is the only Member State that is listed as a problem case in the comparative report. This country does not allow asylum seekers access to their labour market.

Although the Directive only requires that states *consider* access to work after one year, a majority of them have incorporated the one year rule into their legislation. Thereby they have gone beyond the minimum standard of the Directive in this area.

In Norway the issue of time limits is regulated in a different manner. The higher level of legislation – the Immigration Act – only states that the asylum seeker may be given work and residence permits until a final decision is made in the case. It is regulated more in detail in the secondary legislation (*Utlendingsforskriften*) §§ 61 and § 62. Here it is stated that asylum seekers may obtain a temporary work permit without a time limit being set. Several conditions are mentioned; the application has to be forwarded after an asylum interview has taken place, there has to be no doubt about the person's identity and the asylum seeker cannot be in line for a forced return.

In order to find what the more detailed practice is, administrative regulations and instructions must be examined. Access to work is not regulated in the directions given to the accommodation centers by the Directorate of Immigration, but indications can be found in an internal memo from the Directorate. The following procedure is described as the standard on how to handle access to the labour market: During the asylum interview (normally within two weeks after arrival), the applicant is asked whether she or he is interested in a work permit. If the answer is «yes», and the person has an established identity, then this is sufficient to be considered as an application also for a work permit. However, this automatic request is not processed before the asylum case in its entirety is opened. There is no time limit set in the memo. If

the asylum case is rejected in the first instance by the Directorate of Immigration, and the decision is given suspensive effect, then a work permit is given.

If the applicant makes an additional request at an earlier date, before a first decision has been made, then the regional offices of the Directorate of Immigration may forward this to the central office. The exact rate of approval to these requests is not known. What we do know is that a very low percentage of the asylum seekers are part of the stable work force. The number that do «hurry» their application for work permits are believed to be very low. Supposedly, asylum seekers are not aware of this possibility and consider an application given when they answer «yes» in the interview.

One could therefore ask whether the Norwegian practice does not send mixed signals to the asylum seekers applying for a work permit. For her or him, the dual response of rejection on the asylum request and the simultaneous permission to work, may cause uncertainty about their future in Norway. It can be understood as the authorities both «want» and «do not want» the person to stay on in Norway.

When asked about this practice, the employees of the Directorate defended the system from a practical point of view. By stalling the processing of the application for work permits until the handling of the asylum case, the authorities save time and money. Normally they are thereby spared the extra work related to having to open the files twice in order to issue permits or rejections.

The Norwegian internal, administrative regulation does not have a time frame set for when a request for a work permit has to be considered. Instead the obligation is connected to a stage in the asylum process. Formally, it is therefore not clear how the Norwegian rules stand up to the one year rule if no especial request is being made. As we have seen, though, the Authorities do process applications for work permits that are forwarded ahead of the «automatic» follow up to the asylum interview. In practice the first instance processing of the asylum cases will also fall well within the one year set in the Directive.

So how was the impact of the one year norm on the legislation and practice of issuing work permits in the Member States? The Directive had an overall positive effect on this part of reception conditions. In a handful of countries no changes needed to be made as their legislation already conformed to the new standard. Germany was among these countries. It had been one of the strong defenders of the one-year limit in the discussions leading up to the final formulation of the Directive (Odysseus 2006:73). Several Member States changed their legislation in favor of the asylum seekers. In seven countries new arrivals had not been allowed to work at all during the application process (Luxembourg, Italy, France, Slovakia, Poland, Estonia and Latvia). These countries had changed their legislation and policy in accordance with the EU standard. Two Member States improved the conditions from already accept-

able levels. In Hungary and Portugal the implementation of the Directive lead to a shorter waiting period for the asylum seekers than previously (Odysseus 2006:73).

Outside of the regular labour market, the asylum seekers in Norway are often asked to participate in the maintenance of the accommodation centers. Painting, gardening and minor repair work is normally not paid for and sometimes it is mandatory to take part. Even more common is that residents are asked to clean the common areas and their own rooms. These tasks are normally considered obligatory. Some centers issue confirmation on qualification stemming from work done inside the centers which may help the applicants in the regular labour market. Q25 F

The Member States of the EU have different practices on in-center contributions. Some countries do not have any regulations (France Italy, Latvia, Portugal, Sweden and Greece). Others have rules and offer a minor compensation (Austria, Belgium, the Czech Republic, Germany, Hungary, Poland, Slovenia and Estonia). Here the asylum seekers are expected to perform certain tasks like washing their facilities and normal maintenance (Odysseus 2006:66). The extra benefits for the participants in these activities may stretch from an increase in the pocket money or bus tickets (Slovenia).

Four Member States do not offer compensation for the work they do (Finland, Lithuania, Luxembourg and Spain).

If the Norwegian practice should be compared to these three positions, where would it fit in? According to our informants there is not room to compensate the residents individually for work they do in the facilities. Typically though, extraordinary maintenance or other bigger tasks are compensated collectively. This may be in form of provision of material objects to the common areas or food and drink for a social gathering. Persons that do not participate in the work may receive reduced benefits. (Q29)

Vocational training

Article 12 of the Directive opens for the Member States to give access to vocational training (*yrkesrettet opplæring*), even in the first period where they are not entitled to a work permit. The exact wording is that the EU countries may «allow asylum seekers access to vocational training irrespective of whether they have access to the labour market». Contracts that involve an employer may however be made dependent on whether the individual is qualified for a work permit (Article 12, 2).

In Norway, there are in principle no barriers against vocational training for asylum seekers. At the same time no efforts are made from the Authorities to provide such training. Education is provided up until the age of 18. For pupils aged 16-18, schooling or parallel activity is the responsibility of the municipi-

palties (Ministry of Education and Research 1998). This can be vocational training, but the municipalities are not obliged to offer such training.

In the Member States, a distinction was drawn on whether the vocational training was linked to work or not. More than half of the Member States were open to allowing vocational training not related to employment (Odysseus 2006:72).

Asylum seekers with special needs

In the Directive on Reception Conditions, a chapter is dedicated to the situation for vulnerable groups. Article 17 (§1) holds that states shall take into their legislation «the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence» (OJEU 9/2003). In the second paragraph of the Article, a much discussed qualification is stated: «Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation». It is not specified what type of process that is expected or required by the Member States in order to secure that such the special needs are detected.

The chapter then continues with specifying the needs of some of the vulnerable groups; minors (Article 18); unaccompanied minors (19) and victims of torture and violence (20). The needs of these groups are also regulated by Article 15 § 2 in the Directive, which states that «Member States shall provide necessary medical or other assistance to applicants who have special needs». In other words, these groups should be well covered by the Directive, given that their special needs are (legally) identified.

In Norway these vulnerable groups are specified neither in the Immigration Act nor in secondary legislation. Instead the people with special needs are covered in instructions provided by the Directorate of Immigration and the operators of accommodation centers. The Requirements Specifications (*Kravspesifikasjonen*), chapter 4 lists vulnerable groups and the conditions that they are entitled to. The categories of persons are, however, not identical to the groups mentioned in the Directive.

The conditions for minors and unaccompanied minors are regulated in detail. In the proposed revised version of the Requirements Specifications (*Kravspesifikasjonen*), several points are added to an already extensive list. Whether this is sufficient for covering the needs of children in practice, is a topic for continuous discussion in the Norwegian media. Our visit to an accommodation center where all the residents were unaccompanied minors left us with the impression that the best interest of the children was served, to bor-

row a phrase from the Article 18 § 1 of the EU Directive and the Convention on the Rights of the Child..

Women are also singled out as a group with special needs in the Norwegian regulations. The administration and employees are to be especially aware of women's rights and needs. Special attention shall also be directed towards abuse and violence towards women during the accommodation period.

The elderly are also paid attention to in the regulations. They are to be secured influence over decisions that have consequences for their situation and are entitled to special information programs (Requirements Specifications Chapter 4.5).

A fourth group mentioned in the proposed reformed Requirements Specifications; were persons living in the «fortified sections» of accommodation centers. They are persons with special needs whether they are physically or mentally sick, but not to such a degree that they are hospitalized. Also disabled people may be asked to live in such a section which attracts more resources and personnel.

The final group mentioned in the Norwegian regulations is people who have mental or physical health problems, but who live in ordinary accommodation centers. Also disabled people are included in this category. The group is to be the focus of special attention regarding for example information and serve as a point of contact towards the health system.

If we compare the list of vulnerable groups listed in the Directive with the list from the Norwegian regulations, a few comments can be made.

The parity of the two lists depends on how one is to understand the Directive. One interpretation is to see the categories of persons with special needs that are listed here as being only examples. The phrase «[...] vulnerable groups *such as* minors» (our emphasis), would indicate this. But the phrase could also be interpreted as meaning that *at least* the groups mentioned should be included in the national legislation and in practice.

If we embrace the second interpretation of Article 17, the Norwegian list of special needs appears to be incomplete. The Directive explicitly mentions «persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence» in this Article. In the Norwegian Immigration legislation and regulations, this group is not singled out.

Against this one could argue that this group is implicitly included in the category «residents with physical or mental health problems» (Requirements Specifications 2007:4.4). There is however nothing in the Norwegian text that indicates that there is an implicit focus and special attention paid to people who have experienced inhuman treatment and torture. There seems to be a missing paragraph in the Norwegian regulations on this point.

If one were to defend the Norwegian position, one could state that this group was left out of the old and the proposed new version of the Requirements Specifications because these individuals are protected in other parts of

the Norwegian legislation. This would be correct to a certain point. Although categories with special needs are not directly covered by neither primary nor secondary legislation on immigration, they may come under the protection of international legislation under which Norway is bound, e.g. the European Convention on Human Rights and the International Convention on the Rights of the Child. These human rights instruments were transposed into Norwegian legislation in 1999 and they are referred to in the Immigration Act § 4. Norway is also bound by the UN's Convention on Torture. The argument that this vulnerable group is sufficiently covered by the link to international legislation may seem a bit weak.

What is certain is that this legislative coverage seems far away for the practitioners who have their daily occupation in accommodation centers.

An additional comment is necessary regarding the lack of attention to this group in the Norwegian reception system. The EU Directive on Reception Conditions points to the problem and the need for individual evaluation of the special needs. The types of damage caused by torture and inhuman treatment in many cases require specific methods in order to be detected. Both physical and mental effects of these experiences may elude an untrained eye. In Norway the shortcomings of the first obligatory consultation that the asylum seeker has with the health personnel, has been the topic of discussion (Brunvatne 2006, Sveaas 2005). The Directorate of Immigration, and thereby the accommodation centers appear to hold questions concerning this group outside of its area of responsibility. It is left to the general health service where the knowledge needed to detect and treat these patients is unevenly distributed, according to critics (Interview expert, October 2006).

A suggestion that has been informally discussed in the Norwegian context is to combine the first obligatory health screening of asylum seekers with a check for signs of torture and abuse. Another alternative would be to improve the knowledge of the general physicians that have the first ordinary consultation at the accommodation centers. A list of guiding instructions has been developed by the Directorate of Health and Social Matters (*Sosial og Helsedirektoratet*). This so-called «yellow list» includes questions about possible abuse and inhuman treatment. These can be posed during the first screening – in transit – or at the first consultation after placement in centers. The questions and the check for signs of physical abuse could be done in the very first contact with health personnel in connection with the tub-test. A leading Norwegian psychiatrist on torture and refugees has suggested questions and check ups for signs should be provided for at the first instance. Then the results from this can lead to an early detection of special needs and a more efficient treatment. An additional benefit of early detection of signs of torture is that this may have an impact on the individual's asylum case. One problem here is the reluctance among health personnel against entering into situations where the proper treatment would extend beyond the probable time their patient will

reside in the country. The *Odysseus* report also suggests the initial screening as a suitable opportunity to identify persons with special needs, be it victims of torture or one of the other categories (2006:78).

In the Member States practice and legislation vary regarding how special needs are identified. As we have seen, the Directive on Reception Conditions does not give a guideline on how or when these are to be detected. Ten countries do not have any procedure to detect special needs (United Kingdom, Germany, Austria, Belgium, Luxembourg, Greece, Italy, Latvia, Slovakia, Slovenia). This leaves it up to the persons and professionals that come into contact with the vulnerable asylum seekers to identify and establish the existence of special needs. Four countries have set up procedures for identification of vulnerability at the first screening, two at the time of lodging, two at the time of the first asylum hearing and the rest have only procedures for the handling of unaccompanied minors.

In Norway, the identification of special needs is a continuous process. The employees at the transit and accommodation centers are instructed to identify persons with special needs. For the groups with mental and physical problems stemming from torture and inhuman treatment, the absence of a specific procedure may pose a problem.

If we leave the question of finding a suitable process to detect special needs, we may ask whether the treatment that is given to victims of torture and violence once detected is sufficient in Norway and the Member States.

Our impression is that in Norway the treatment of asylum seekers varies. When detected and the person comes into contact with the ordinary mental health system, the treatment is said by experts to be good if sometimes insufficient. But, the expertise on the consequences of inhuman treatment today has an unclear institutional platform. A few years back a national focus point – the Psycho Social Center for Refugees – was closed down. It was meant to be replaced by regional centers of competence. To what extent this reform has been carried through to an operational stage, and with what effects, lies beyond this study to consider.

The Member States have divergent practice on treating victims of torture. A report has been drafted by an NGO *International Rehabilitation Council for Torture Victims*. Here the organization reveals weaknesses in the nations' treatment of this vulnerable group. Germany, Poland, Italy, Slovenia and the UK are all mentioned with critical comments by the NGO. Some of these countries also appear on the positive list with examples of good practice. In Italy for example, 19 centers are especially fitted for vulnerable groups (*Odysseus* 2006:79).

Within the EU, two documents serve as guidelines to the detection and documentation of inhuman treatment; the so-called *Istanbul Protocol* and a document entitled *Examining Asylum Seekers*. The last guide is published by an NGO named Physicians for Human Rights.

Exceptional modalities to reception conditions

The provisions in the Directive concerning modalities for material reception conditions are contained in Article 14. Apart from the main rules on the forms of accommodation facilities, the article equally contains specifications regarding minor asylum seekers, the principle of family unity, etc. In addition, the provision allows for exceptional measures different from those otherwise provided by the article. But, exceptional measures can only be for a «reasonable period» which «shall be as short as possible». Furthermore, the provision states that if different conditions are applied, they must nevertheless always cover basic needs.

Exceptional measures may, according to the listing in the Directive, be adopted when:

- An initial assessment of the specific needs of the applicant is required
- Material reception conditions, as provided for in this Article, are not available in a certain geographical area
- Housing capacities normally available are temporarily exhausted
- The asylum seeker is in detention or confined to border posts

According to the Odysseus study, Member States have not explicitly made use of this provision to adopt exceptional modalities of reception conditions to assess the possible, specific needs of applicants (alternative number one). One remark made in the study in this regard, is reference made to Chapter IV of the Directive which regulates the principles relating to persons «with special needs». Article 14 speaks of persons with «specific needs» indicating it would be strange if Article 14 would allow for exceptional lowering of standards towards the persons in need of special attention, the ill, the children, pregnant women, etc. This first exception alternative therefore, as it is quoted in the Odysseus report, «somewhat mysterious». As far as Norway is concerned, an exemption on reception conditions while assessing the needs of an asylum applicant would not take place to the detriment of the applicant.

In European practice, the second indent of exemption possibilities which covers non availability of reception conditions in certain areas, has only been reported in one country. This alternative does not seem to pose any problems. The solution seems to be to transfer asylum seekers to another part of the country immediately. This part of the provision is not applicable in the Norwegian context.

When accommodation capacities which are normally available are temporarily exhausted, only some Member States report making use of different modalities. Making use of for example military camps or hotels are two examples. In other instances temporary exhaustion may cause more limited so-

cial assistance, but only for a very short period of time. In the Norwegian context making use of temporary accommodation is rare. When the arrival of asylum seekers reached a peak in 2002, some asylum seekers were accommodated in military tents for a short period of time. Norwegian authorities always have such exceptional accommodation possibilities at hand, but they have only been used this once. It is however, not unusual to make use of rehabilitated military camps as reception centres.

Being detained or confined to a border post is not an unusual setting in the Member States. And it is not unusual that special modalities of reception conditions apply. One such modality relates to airport procedures. But, according to the *Odysseus* study, all measures are carried out within the Directive's requirement of «within a reasonable time». One country does not specify the amount of time material reception conditions may exceptionally be derogated from. This is possibly a problem in regards to Article 14§8. In relation to Norway, there is no use of confinement in relation to border posts.

Detention

The *Odysseus* study does not cover the case of rejected asylum seekers who are detained before return. The Directive covers a number of situations allowing for exceptional measures on reception conditions in cases where an asylum seeker is detained. This does not answer the question of whether the Directive applies to persons in detention although the exemptions imply that it does. Some legal discussion on this point has, nevertheless, been raised and it is a fact that a number of Member States do not consider that the Directive applies during detention. On this point there is a need for clarification by Member States and the Commission, alternatively, by the Court of Justice.

Article 6§2 allows Member States to deviate from the obligation to ensure that within three days after an asylum application is lodged, the applicant shall be provided with a document issued in his or her name certifying the status as an asylum seeker. This derogation applies to asylum seekers in detention.

Article 7§3 allows Member States to detain an asylum seeker for legal reasons in accordance with national law. Article 13§2, 2nd indent ensures that an adequate standard of living is provided for to asylum seekers who are detained whereas 14§8 permits exceptionally set modalities for material reception conditions for a reasonable period of time.

Member States' practice regarding detention is divergent. One of the countries requires that asylum seekers may only be detained for reasons of criminal investigation, criminal conviction or by virtue of a penal sanction in the case of unauthorised work. Another country practices systematic detention of all asylum seekers who enter in a manner defined as «illegal». And there are countries which enumerate a number of different reasons allowing for detention of asylum seekers, e.g. non-compliance with the conditions of entry into

the territory (for example non-possession of documentation), grounds of a procedural nature (for example accelerated procedure or filing of application late), existence of an expulsion order from the territory previous to the application for asylum, behavioural reasons of the asylum seeker (for example refusal to reveal identity, destruction of travel documents, reasons of public health, obstruction of taking of fingerprints, etc.) or modalities of the claim being lodged at the border (for example the asylum seeker has been arrested by the police or by border guards).

On Article 7§3 allowing detention of asylum seekers, the *Odysseus* study concludes by stating that the provision allows for a broad interpretation and national discretion regarding the need to detain an asylum seeker for reasons of national interest. The provision reads: «...Member States may confine an applicant to a particular place in accordance with their national law».

One national viewpoint is that «the government cannot afford to allow undocumented and unscreened irregular migrants roaming about freely on the streets» (Maltese comment on a follow-up report of the Commissioner for Human Rights of the Council of Europe).

However, it is also known that after a detention period of 12 to 18 months, the same persons are freed and few are repatriated from Malta. The question is therefore raised as to whether Maltese practice is in contradiction with the Directive and with other legally binding European instruments. The European Court of Human Rights, however, leaves States a wide margin of appreciation regarding detaining immigrants for the purpose of preventing unlawful entry. However, the question of arbitrariness of detention on account of length remains questionable. The principle of proportionality under Article 5 of ECHR has not been tried vis-à-vis Malta where the detention period sometimes exceeds 12 months. Most Member States have legislation allowing for less than 12 months. A few do not mention any maximum time limit.

In some Member States restrictions on freedom of movement like for asylum seekers being obliged to stay in a defined area during the asylum application period is not considered as «detention». The location of an asylum seeker in a specific place is seen as necessary for the effectiveness of the examination of the case. Public interest is another reason for designated areas for asylum seekers. The alternative to detention is personal reporting to the authorities, confiscation of travel documents and deposit of financial guarantees by the asylum seeker. In nine Member States there are no such alternatives, only detention.

Asylum seekers may be detained in different places: police stations, transit zones at the border, centres for foreigners, centres of administrative detention, deportation centres, and identification centres and centres of temporary stay. In a number of countries detention of asylum seekers can be at the same place as illegal immigrants. In principle, UNHCR and NGOs have access to detention localities. According to the *Odysseus* study this may in some instances

imply a tedious and bureaucratic procedure in order for such access to be granted.

In case of detention it is reported that in practice, reception conditions vary. In line with Article 14§ 8, the requirement is that the time of detention should be as short as possible. In fact, one Member State requires that the asylum procedure should be as quick as possible so as to reduce the detention period. This is an example of good practice.

In line with Article 13§2, an adequate standard of living shall be ensured by the Member States. Restrictions imposed while asylum seekers are detained may include reduction in pocket money, no possibility to work, no activities available during free time, supervision on telephone conversations, not always easy access to interpreters and less health care facilities. In a number of Member States there is no access to education for minors when in detention. This is one area where the study calls for improvement if detention of minors is not abandoned altogether. Some Member States do not permit detention of minors, but the majority of States do. Only two States seem to separate minors from adults. In this connexion, the report also points to the UN Convention on the Rights of the Child which, according to its Article 37 provides that the detention of a child must be «of as short a duration as possible».

There are also Member States which do not allow detention of victims of torture, rape or other serious forms of psychological, physical or sexual violence. Some States pay similar attention to single women, disabled persons and other vulnerable persons. They are, for example, released quickly in some of the countries where detention is the rule rather than the exception. In one State, systems have been created whereby a person suffering from a mental illness is transferred to a hospital for psychiatric care.

In the Norwegian context, freedom of movement of asylum seekers may be limited to a specific area and with a duty to report to the police according to Article 37§6 of the Immigration Act. The provision applies if the person concerned refuses to reveal his or her identity or if there is reason to believe that the person operates under false identity. In case such limitations are not respected or are inadequately carried out by the asylum seeker, he or she may be detained according to Article 37d of the Immigration Act in the specialised centre for foreigners, referred to as «National Detention Trandum» (*Politiets Utlendingsinternat*). Total amount of time in detention may, as the main rule, not supersede 12 weeks. Through a court order, the time span may be prolonged. In practice this happens mainly in cases where the identity of an asylum seeker remains unclear or is regarded as a threat to society.

Detention is otherwise used in connexion with rejected asylum seekers before they are deported or expelled. In accordance with Article 37d of the Immigration Act, they are placed in the National Detention Centre at Trandum.

In addition to detention, an asylum seeker may also be fined for having given false information to the authorities, for example about his or her identity (Article 47) and such behaviour may equally result in expulsion from the country (Article 29 of the Immigration Act).

In addition to the Immigration Act, the Penal Act, the Police Act and Police instructions may also have a bearing on the treatment of asylum seekers. If, for example, an asylum seeker is regarded as a danger to the public interest or public order, he may be detained according to the Penal Act and not the Immigration Act. The police may detain a person for 24 hours before he or she has to be presented before a court (Immigration Act Article 37c§3). Renewal before the courts is necessary every 14 days.

It is also important to note that an important principle relates to Article 170a of the Act on Penal Procedures and the Police Act, which require that when authorities make use of coercive measures, practice shall be guided by making use of the least coercive measure first. New secondary legislation on the use of coercive measures is due in March 2007 in relation to Article 37d of the Immigration Act. Apart from this clarification; the proposal for new legislation (Article 113 in NOU 2004:20) suggests a continuation of the present regime.

Organization of the system of reception conditions

The majority of the EU Member States have centralised systems on Reception Conditions. Some have created specialised agencies for the reception of asylum seekers with links to several ministries e.g. Home Affairs, Employment, Social Affairs, Health, Immigration and Integration. Centralisation does not prevent local authorities from playing a role. Three Member States have a decentralised system (Germany, Austria and Italy).

Most Member States have chosen a mixed system where centres are managed by public authorities alongside private centres managed by NGOs. Certain countries have public centres only and some have privately run centres only.

The Norwegian system is centralised under the responsibility of the Directorate of Immigration. As we described in chapter 2, there are both public and private and public centers run by commercial companies, non-profit NGO and municipalities. In 2006, seventy centres were in operation in Norway. Six centres were run by NGOs, fourteen by municipalities and fifty by commercial companies.

Like in most EU countries, reception centres in Norway are spread all over the country in order to avoid concentration. The cost is provided by the central government. A few Member States take special characteristics of the asy-

lum seekers into consideration before deciding on which reception centre would be adequate. Considerations taken could e.g. be in regard to ethnicity, nationality and social situations.

Article 23 of the Directive says that Member States shall ensure that appropriate guidance, monitoring and control of the level of reception conditions is established. In spite of this provision being of a mandatory nature, the majority of Member States have not established such a system. States rely on their general administrative inspection system to carry out this function for the reception conditions of asylum seekers. It has been noted in the Odysseus study that there are even a few countries which do not offer control mechanisms at all.

In Norway, the law does not contain any specific reference to control systems for reception conditions. Responsibility for control matters is nevertheless a part of the Directorate of Immigration's tasks as it is the authority in charge of the management of reception centres. It is also the Directorate which issues rules pertaining to the centres.

Administratively, the Ministry of Labour and Social Inclusion (AID) is the appeal instance in case an asylum seeker complains against decisions made by the Directorate. Mostly, the Directorate would, however, be the appeal instance against complaints regarding measures decided upon by the operators at the centres. There has been some discontent expressed about the Directorate being «omnipotent» in the sense that the Directorate gives the rules and instructions and the Directorate supervises the well functioning of its own rules.

The instructions are issued on the basis of delegated authority to the Directorate through primary and secondary legislation. In addition to administrative means of complaints, an asylum seeker may also enter into a process before the courts in which case ordinary procedural legislation (*Tvistemålsloven*) applies. This is, however, more of a theoretical possibility.

Article 41b of the Immigration Act regulates decisions on the right to move from one reception centre to another, on settlement in municipalities and on loss of accommodation. A decision in all these instances is regarded as a decision by a public authority (*enkeltvedtak*) which, according to the Act on Public Administration (*Forvaltningsloven*) allows for an appeal to a higher administrative instance. However, according to the same Act, Article 2, a decision regarding a move cannot be considered as such. The enumeration in Article 41b thus seems to be contrary to the Administration Act on this point. Decisions on settlement in municipalities and decisions on loss of accommodation, however, would rightly be considered as decisions against which there would be a possibility of administrative appeal. This area would profit from a clarification or change either in the upcoming primary legislation (New Immigration Act) or in secondary legislation.

Until now, no specific quality standards for housing services have been introduced other than those which exist in general terms in the instructions on the running of the reception centres «Rules of Operations» (*Driftsreglement*) issued by the Directorate of immigration. A working group established by the Directorate, is currently considering whether a set of more specified and qualifying standards should be introduced. At present the existing standards of the «Rules of Operations» (*Driftsreglementet*) are referred to as a set of «goals» which the operators of the centres are obliged to work towards the fulfilment of. Another question which still remains unanswered is whether secondary legislation adopted in accordance with the Immigration Act, will contain provisions on more specific standards relating to housing. Such a set of secondary legislation, based on Article 41a, has not yet been drafted and it remains unclear if it will be drafted. If this will be the case, the question remains as to when and which content it may end up having. (Such secondary legislation is possibly put on hold awaiting the discussion on a new Immigration Act.

This situation does not differ much from the systems provided in the EU Member States. Only a few of these have clear standards in place applicable to the entire reception system. The form itself varies. In some countries, standards are indicated in a handbook, sometimes in guidelines and sometimes as contractual conditions with operators of reception centres. One feature which stands out as regards the EU is that UNHCR seems to be more involved, with or without association with NGOs, in the control procedures of the newest Member States. Most Member States produce reports, generally on an annual basis, about the level of reception conditions in their country.

In the Norwegian context, the contract signed between the operators of the reception centres and the Directorate of Immigration contains the conditions which the operators are expected to fulfil. Such conditions include for example «goals» relating to minors, women, information to be given to asylum seekers, participation by asylum seekers in questions related to their life at the reception centre, etc. As far as women are concerned, the goals of the «Rules of Operations» (*Driftsreglement*) state that the centre should focus on women's needs and rights, but it does not qualify how this should be done or which particular rights the Directorate has in mind. This is left up to the operators' interpretation. In practical terms, this implies that if for example a reception centre has a lot of space available, special care will be taken in order to separate women from men – for security reasons and for convenience. On the other hand, if the centre is full, such considerations will not necessarily be taken and men and women are placed together on the same floor, sharing common facilities. It is therefore difficult to assess whether sufficient care is taken, at all times, to ensure the safety and welfare of women at the centres. This may therefore be seen as one of the conditions which should be further explored in relation to more specific conditions to be spelled out by the Direc-

torate and/or which could be further explored through secondary legislation to Article 41a of the Immigration Act.

Contracts between the Directorate of Immigration and the operators of the reception centres are renewed every 3-4 years and the reception centres are inspected by representatives of the Directorate of Immigration minimum once a year. The goals contained in the «Rules of Operations» (*Driftsreglementet*) include annual reporting. The operators of the accommodation centres report to the Directorate of Immigration on programmes which have been carried out and on results achieved. Furthermore, the report should contain information on health issues, on environmental issues and on security issues. The «Rules of Operations» even state that residents should be involved in the making of the annual report. Nothing further is specified on who and how and under which conditions this shall take place.

According to Article 14§5 of the Directive, Member States have the responsibility to see to it that persons working in accommodation centres are adequately trained. The provision says they «shall» be adequately trained and bound by the confidentiality principle as defined in national law. Legally speaking, the majority of Member States have transposed the Directive accordingly. Some have inserted an obligation for training in the law itself although this is not requested by the Directive. The principle is, however, not always abided by in practice. Training related to the special needs of women and minors is the most frequently administered training. Few Member States have reported that specific training is provided for dealing with victims of torture.

Several Member States benefit from support by external bodies when it comes to training of their personnel (UNHCR, NGOs, sometimes funded by the European Refugee Fund). Further need for linguistic training and for more translators has been reported in the Odysseus study.

In Norway, the situation is to a large extent left open. There are no clear legislative rules on training of staff neither general training, nor training for persons who are working with applicants with special needs. By contract with the operators of the accommodation centres, it is the duty of the operators to ensure adequate competency and training of staff. Further, in accordance with the «Rules of Operations» (*Driftsreglementet*), at least one person on duty shall, during daytime, have educational background in social training or health education. Accommodation centres with fortified sections (*forsterket avdeling*), the same rules require person minimum one medical person (nurse) with psychiatric training is present during daytime.

Numbers and budgets

Some of the Member States (four countries) have an extremely low number of asylum seekers (less than 150). In a second group of ten countries, the recep-

tion conditions cover between 803 and 6365 asylum seekers. Four Member States receive a more substantial number of asylum seekers (between 15.000 and 30.000 persons) and the last group of Member States receives a very substantial number of asylum seekers (three countries).

According to Article 23§2 of the Directive, the Member States shall allocate the necessary resources in connection with the national provisions in order to ensure that the Directive is respected. According to the Odysseus study, the minimum considered sufficient by the Member States is not considered sufficient in reality. The problem relates more to allocation of the money than the budget itself, it seems. Another problem indicated relates to lack of sources at the local level and control of the use of the allotted money.

There is a lack of funding in some few countries provided for some particular conditions such as food rations in one country and lack of education facilities in two countries. An overall lack of resources is found in two Member States. These deficiencies relate to the accommodation centres themselves and scarcity of qualified personnel. There is also a scarcity of accommodation places in these two countries.

The situation in some of the Member States has shown itself difficult to assess in relation to adequate resources being allocated to reception conditions. This may be improved during the general evaluation of all the Directives which is scheduled for 2007.

Discussion

According to EU's present work program and long term plan of action (the Haag Program and Action Plan), the Common European Asylum System (CEAS) shall be in place by 2010. The next few years will in other words be crucial for setting the frame for the future of asylum policy and protection in Europe. The Directive on Reception Conditions is part of CEAS and has been scrutinized in this report.

This study focuses on reception conditions for asylum seekers and it is a comparison between legislation and regulations in the EU and Norway. Norway is not directly bound by this Directive, but is influenced by the development in the Member States because of the Schengen and Dublin cooperation agreements.

In this study we describe and discuss reception conditions in legislation, but we also comment on the practice in the EU Member States and Norway. EU Member States are under the obligation to transpose the principles contained in the Directive into their national legislation and put them into practice. Norway has to keep a close eye on this process.

Our main impression from looking at the legislative aspect of the reception conditions in Norway, and comparing this with the situation within the EU, is that there seems to be a lack of formal primary and secondary legislation. In Norway, reception conditions are regulated in the form of lower level instructions and contracts between the responsible authority, the Directorate of Immigration, and the operators of the accommodation centers.

Within the EU, the practice on reception conditions vary, even if the transposition of the 2003 Directive already has been transposed into national legislation. Before the Directive was introduced, critics said that the introduction of minimum standards could lead to states lowering their standards down to a minimum. However, the Odysseus comparative study found that this had not been the result. There had been no such «race to the bottom» of European standards. This negative outcome had only occurred in one Member State. In other words, the trend was that states either maintained their standards or improved their level of reception conditions.

Findings from the Odysseus comparative EU study

From a legal point of view, it was noted that the Directive generally led to an improvement in reception conditions for asylum seekers.

Among the interesting findings on transposition of the Directive into national legislation in the Member States, was that most of the States had certain legislation on reception conditions already in place. The new Member States from 2004 had had to legislate on reception conditions in the run-up to their accession to the European Union.

Yet another major finding was that for some countries, transposition meant that legal texts relating to reception conditions had to be unified in a coherent manner. It has led to clarification and precision in the legislation of the Member States. Some States had, for example, clarified the right of children of asylum seekers to education. In other states the Directive led to a revision of the social welfare system. Legal aid, access to healthcare as well as information to asylum seekers regarding their rights and duties, have in the same manner been improved as a consequence of the Directive.

Problems identified

One of the major problems revealed in the study was challenges connected to detecting and identifying persons with special needs (Odysseus 2006:6-8).

Another point made in the study is that Member States diverge regarding the applicability of the reception Directive in closed centers. Problems connected with detention have been identified in seven Member States. The study concludes by pointing to the need for further clarification on this point.

In three Member States freedom of geographical movement is restricted due to the organization of the national reception conditions.

The conditions for minor asylum seekers pose a problem in a number of Member States with regard to education, counseling, mental health etc.

There are problems regarding access to health care in only four Member States. It is important to note that this concerns access to basic health care. Member States have been criticized by NGOs in several countries. On this point there is discrepancy between legal standards and implementation in practice.

Problems with the implementation of the right to appeal decisions regarding reception conditions have been identified in eight Member States.

Access to the labour market is denied in only one Member State. Two thirds of the states require work permits in a way which may undermine the right to work.

Non-implementation of the Directive in the beginning of the asylum procedure poses a problem in five Member States.

With regard to financial means, there seems to be a tendency of only offering the theoretical minimum to asylum seekers and even to reduce sums which have been allocated. Certain reception conditions are therefore difficult to guarantee in seven Member States. This relates in particular to medical monitoring of vulnerable persons as this is more difficult than for other asylum seekers.

Another difficulty relates to the confusion which exists in some countries in the identification of asylum seekers and others who are considered «illegal immigrants». This sometimes results in detention by border guards and police of asylum seekers who, in principle, would have the right to go to open accommodation centers.

Inadequate capacity of full reception centers poses another difficulty in some Member States where also the problem of long term accommodation of asylum seekers in buildings designated for short term stays is a problem. Bad location of centers adds to the difficulties in some countries. Asylum seekers end up isolated.

Positive effects identified

The general positive effect of the transposition of the Directive was that it led to more favorable provisions in the majority of the Member States. For example, the adoption of Article 11 on access to the labour market resulted in increased possibilities for obtaining work in approximately ten countries. This positive trend is more reflected in the new Member States than in the old.

To sum up, the Odysseus study concludes its study by indicating that the Directive on Reception Conditions for asylum seekers is a «small but first step towards the creation of a Common European Asylum System by 2010 as foreseen by the Hague program» (Odysseus 2006:10).

The definition of the precise standards applicable to accommodation, food and benefits is indeed an improvement in some of the Member States.

Access to employment is another benefit where the situation has changed for the better in some countries.

Findings in the Norwegian context

Norwegian legislation is fragmented in relation to reception conditions for asylum seekers and it is quite poor in content. Conditions in Norway are to a large extent regulated through instructions issued by the central authority, the Directorate of Immigration and regulated in the contracts entered into with the operators of the accommodation centers. Furthermore, there seems to be

minimal initiative for change in this situation even now, at the wake of negotiations in Parliament on a New Immigration Act, expected to start in February or March 2007.

Formalization and upgrading of the regulations of the reception conditions would have a series of advantages. Firstly moving into primary or secondary legislation would serve as a guarantee warranting security and transparency for the persons concerned. Secondly it would install predictability for the civil servants and the operators whose task it is to implement good reception conditions. Thirdly such an improved system of legislation would serve as a guarantee also for the cooperating Dublin partners who are returning asylum seekers to Norway. A reform would make it easier for them to know under what conditions Norway receives the persons they return to Norway.

Despite this, the Norwegian reception system in practice seems, in general terms, to maintain adequate reception standards. It is our view that an upgraded and more coherent legislation could further improve the situation.

On this background, two particular problematic areas have been defined. Firstly, compared to the Directive on Reception Conditions, Norwegian legislation does not seem to sufficiently cater to the special needs of particularly vulnerable asylum seekers (victims of torture and violence, under certain conditions women, elderly people, etc.). Secondly, the conditions prevailing for Dublin cases pose a particular problem. Asylum seekers waiting to be moved to another responsible country do not receive the same benefits as other asylum seekers whereas their needs in the waiting period are no different than those of other asylum seekers.

A selection of findings

In the following, we present some selected findings from the Odysseus study and the Norwegian study. We have organized these comments according to the list of articles as they appear in the Directive on Reception Conditions. This should simplify the identification of the findings and the points of reference in the Directive. Articles 1 and 2 comment on the purpose of the document and supplies a set of necessary definitions.

Articles 3 – 4: Scope and more favorable provisions

Scope

As we have seen, there has been a great deal of discussion about who falls in under the scope of the Directive. One of these relates to the situation for asylum seekers in closed centers. In some countries the benefits in the Directive is applied to this group and in others it is not.

We also pointed to the possible implications for the group of so-called unreturnable former asylum seekers in Norway. These are subjected to conditions lower than the Directive. One liberal interpretation of the Article 3 on who is of concern to the Directive one could argue that they would be entitled to full reception conditions. The reason is that their second appeal (*omgjøringsbegjæring*) may have suspensive effect. According to the Odysseus network, they qualify for being considered asylum seekers and are covered by the Directive. A more narrow interpretation would consider them as having final rejections and thereby leave them outside the scope of the Directive.

More favorable provisions

The Directive on Reception Conditions is a set of minimum standards. According to Article 4 of the Directive, however, Member States may introduce or retain more favorable provisions in the field of reception conditions for asylum seekers than those enshrined in the Directive which are minimum standards. The Odysseus study confirms that all but one Member State have not lowered their standards. In other words, one of the concerns expressed over the possible «race to the bottom» and degradation of standards has so far not materialized.

On most of the issues included in the Directive, the Norwegian reception system holds a higher standard than the minimum norms agreed on by the Member States.

Articles 5 – 8: Information, documentation and movement

Information

The EU suggests practical cooperation and coordination of national information programs to asylum seekers. In Norway there was a lack of explicit information about NGOs and others that may inform and guide them on reception conditions. Information shortly after arrival was however given by an NGO, the Norwegian Organization for Asylum Seekers (NOAS), which promotes asylum seekers' rights.

Documentation

According to Article 6 of the Directive, «...Member States shall ensure that within three days after an application is lodged...», the asylum seeker is provided with a document issued in his or her name certifying the status as asylum seeker. According to Article 6§2, Member States may deviate from this principle when the asylum seeker is in detention. In Norway the three day rule is normally abided by.

Freedom of movement and detention

The use of detention in accordance with Article 7§3 of the Directive is not unusual in the EU Member States. The provision states that «when it proves necessary, for example for legal reasons of public order, Member States may

confine an applicant to a particular place in accordance with their national law».

One discussion emanating from the Odysseus study is whether or not the material reception conditions provided for by the Directive, apply to asylum seekers who are in detention. (The study does not cover asylum seekers whose case has been finally rejected). It would seem logical that the Directive applies, as it also contains rules on exceptions in the case where an asylum seeker is detained. The principle of issuance of documentation can be derogated from in case of detention (Article 6§2) and the main principles on modalities for material reception conditions may also be derogated from if an asylum seeker is detained (Article 14§8). And, according to Article 13§2, Member States are under the obligation to provide an adequate standard of living for persons in detention. Nevertheless, a number of Member States do not consider that the Directive applies for asylum seekers in detention. The Odysseus study therefore suggests that this point be clarified by the Commission and the Member States. The Court of Justice could also determine the scope of the Directive in relation to this point.

The study equally calls for improvement in relation to detention of minors, indicating that it should be abandoned altogether. The majority of States permits detention of minors. A few countries do not. Only two states separate minors from adults in detention.

The practice in the Member States is divergent. One country would only detain an asylum seeker for reasons of criminal investigation, criminal conviction or by virtue of a penal sanction in case of unauthorized work. Another State practices systematic detention. One country detains all asylum seekers for a period of 12-18 months. According to the Odysseus study, the Directive allows for a broad interpretation and national discretion regarding the need to detain an asylum seeker for reasons of national interest.

The study points to the fact that European Convention on Human Rights has not been tried in relation to Maltese practice where the detention period sometimes exceeds 12 months. Most Member States have legislation allowing for detention less than 12 months. One Member State has legislation stating the period of detention should be as short as possible. Some Member States prohibit detention of victims of torture, rape or other serious forms of psychological, physical or sexual violence.

Nine Member States do not provide legislation on alternative measures to detention such as restrictions on freedom of movement to a designated area, obligations to report to the authorities, etc.

In Norway there is no automatic detention of asylum seekers. According to the Immigration Act, detention may be applied for reasons of unclear identity, lack of cooperation in this regard or for reasons of threat to national security. Detention may not exceed 12 weeks, but as a rule it can be renewed. Reasons of unknown identity represent the majority of such renewals. In March 2007,

new secondary legislation on the use of coercive measures in accordance with the Act on Immigration is to be adopted. Article 8 of the Directive is devoted to securing family unity. The signers are obligated to seek to hold families together during processing of their cases.

In the Norwegian immigration regulations, the protection of family unity has been absent. It is however present in a proposal for a new Requirement Specifications (*Kravspesifikasjonen*) from the Directorate of Immigration.

Article 9: Medical Screening

In the preceding chapter we discussed the possibility of expanding the content of the first contact between health personnel and the asylum seekers in Norway. In addition to the obligatory tuberculosis test and the optional HIV test, there could be a physical and oral check for signs of torture and serious violence. As the system is now, this identification is left to the ordinary consultations with health personnel after the applicant arrives at the accommodation center. According to critics these are not always qualified to detect the signs of inhuman treatment.

The Directive on Reception Conditions puts emphasis on the situation for vulnerable groups and the obligation of the receiving state to identify the individuals that are entitled to special protection and benefits (Articles 15, 17, 20).

Articles 10 – 12: Access to schooling, employment and training

Access to schooling

The Norwegian practice and legislation on access to schooling for children and adolescent asylum seekers is similar to the requirements of the EU Directive and the practice in the Member States. There is however one exception; the right to schooling for the age group 16–18. The access to schooling for this group is not guaranteed in Norwegian legislation. In the Operations Regulations (*Driftsreglementet*) from the Norwegian Directorate of Immigration, the employees at the accommodation centers are encouraged to facilitate access to local schooling for this group. This is insufficient when compared to the EU Directive. Article 2 and 10 of the Directive state that those aged 17 or younger are to be considered minors and therefore are entitled to special rights. The access to schooling for asylum seekers aged 16-18 is better secured in the Directive than in Norwegian legislation.

Employment

In Norway there is no specific timetable that regulates the access to employment the Norwegian legislation. The Member States have now dedicated themselves to a maximum of 12 months before they have to supply a plan for the individual's introduction on the labour market. Although the Article 11, which regulates this, may seem vague, it did result in an improved access to the labour market in approximately 10 Member States.

In Norway an asylum seeker must repeat her or his application for a work permit in order for it not to have a prolonged processing time. Despite this, a formal access to the labour market is normally given well within the one year limit set in the EU Directive.

If the asylum seeker states the wish to work during the waiting period, this is interpreted as an application for a permit. Unless this wish is repeated explicitly, the question of a work permit is put aside until the asylum case is processed. If the result is a rejection, a work permit is often approved at the same instance. Although this may be an efficient way of treating the applications, it may send double messages to the asylum seeker. A rejection is accompanied by an invitation to work while appealing the decision.

Vocational training

Access to vocational training is not regulated in the Norwegian legislation. In the EU, there is a differing practice, where most states let this access follow the regulation for work permits.

The Odysseus study regarded access to the labour market as an area where Member States may benefit from exchanging experience and the spreading of good practice.

Articles 13 – 15: Material reception conditions and health care

Material reception conditions

Most EU countries have similar ways of arranging accommodation and financial allowances as Norway. In some Member States more of the asylum seekers are lodged outside of centers. The responsible agents for operating accommodation centers varied across Europe. No country seems to have a high percentage of these facilities run by commercial companies as Norway, where approximately seven out of ten centers were based on for-profit agents.

Health care

The Directive on Reception Conditions is primarily set to secure the asylum seekers a minimum of health services. Despite this most Member states allowed the applicants access to their national health services. NGOs have criticized the lack of access to these benefits within the EU. The treatment of chronic and mental health problems has been mentioned as challenges both inside the EU and in Norway. In Norway the organizing of the mental health care for traumatized asylum seekers has been a matter of discussion (Article 15).

Exceptional modalities for material reception conditions

In accordance with Article 14§8, exceptional measures may be adopted «for a reasonable period» when an initial assessment of the specific needs of the applicant is required. Legislative initiatives in this regards have not been taken by the EU Member States.

When material reception conditions are not available in a certain geographical area exceptional measures may equally be adopted «for a reasonable period». This has only been reported in one country. Rather than adopt lower standards, the EU States tend to move asylum seekers to areas of the country where adequate standards may be offered.

In the case of housing capacities being temporarily exhausted, Member States may also impose exceptional measures «for a reasonable period». Making use of hotels or military camps are examples detected in some Member States. In the Norwegian context, military camps have in several cases been rehabilitated and regarded as providing adequate standard.

Use of detention is not an unusual «exceptional measure» in a number of EU States. One example is airport procedures. However, according to the Odysseus study, in all but one country, exceptional measures of detention are carried out within a «reasonable time». This one country does not specify the amount of time material reception conditions may be exceptionally derogated from. This is seen as a problem by the study in relation to the implementation of the exceptional conditions provided for in Article 14§8.

Article 16: Sanctions and reductions of reception conditions

The Directive has an opening for national authorities to install sanctions in cases when asylum seekers do not fulfill certain obligations (Article 16).

The Directive states that sanctions shall be taken individually, objectively and impartially. There should also be a possibility to appeal such sanctions. There is an opening for such appeals in Norwegian regulations.

The material conditions for so-called Dublin cases in Norway are lower than for other applicants waiting for a decision. Surrounded by an environment suitable only for very short term stays, this group suffers in cases of prolonged waiting. The benefits that the Dubliners receive are substantially lower than other asylum seekers. It is doubtful whether this would be in accordance with the EU Directive on Reception Conditions (Article 14 and 16).

The inferior treatment of the Dublin cases in some countries is commented upon by the authors of the Odysseus report.

In Norway a concern was mentioned by some informants regarding possible instances of collective punishment. By this is meant that a group – e.g. a nationality – is given a reduced level of reception conditions because one or a few have violated the rules of accommodation centers. Employees from the Directorate of Immigration did not know of any concrete instances of such sanctions being imposed by operators and made clear that the Directorate did not accept such punishment.

Article 17 – 21: Vulnerable groups

The Directive stresses the importance of securing special benefits to vulnerable groups such as minors, unaccompanied minors, elderly, pregnant women, single persons with children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence. As we already mentioned, identifying these and other vulnerable groups is seen as essential. Of the examples mentioned here, detecting the individuals that have suffered from inhuman treatment may be the most difficult.

In the Norwegian regulations, this group is not mentioned explicitly. Even in the proposal for new Requirement Specifications, it is absent as a vulnerable category.

Women are given explicit treatment in the Norwegian regulations. Several of the paragraphs in the Specifications Directive are however vague. One example is that centers are to «help provide recreational programs for women adapted to their interests and needs» (Directorate of Immigration (English version) 2002:22).

One of the larger private operators of accommodation centers have hired extra health personnel in addition to the ones provided by the public health system to secure the well being of their residents.

Minors and unaccompanied minors seem to be well covered in Norwegian legislation and regulation when compared to the standards set in the Directive.

Article 22 – 26: Efficiency of the reception system

Training of staff working in accommodation centers

In accordance with Article 14§5 of the Directive, Member States have the responsibility to ensure that persons working in accommodation centers are adequately trained. In legal terms, the majority of Member States have transposed this provision into national legislation. According to the findings in the Odysseus study, insertion into national law on the matter does not ensure that this is carried out in practice. However, training related to the special needs of women and minors, is the most frequently administered training. Few Member States have reported on specific training for dealing with victims of torture.

The situation in Norway equally seems to rely on the general goals of the «Rules of Operation» (*Driftsreglement*) and there are few specific demands on training. In one reception centre we visited, inexperienced staff had to handle difficult cases.

Guidance, monitoring and control

In accordance with Article 23 of the Directive, Member States shall ensure that appropriate guidance, monitoring and control of the level of reception conditions are established. However, the majority of Member States have not established a system and one Member State have not transposed the rule into national legislation. States rely on their general, administrative system to carry out this function. And some countries do not offer any kind of control.

In Norway, the legislation does not contain any specific reference to control systems. The Directorate of Immigration is however responsible. The Directorate may appear as «omnipotent». It sets the standards, implements these and has the control function regarding its own rules. The power to do so is delegated to the Directorate by the Ministry of Labour and Social Inclusion. External evaluation would be the task of the Office of Auditor General of Norway. This independent public institution would however only become involved under extraordinary circumstances.

With UNHCRs universal protection mandate, their involvement in the regional context is a positive trend and in line with the intentions expressed by UNHCRs Executive Committee on a number of occasions. Similarly, a further

UNHCR engagement in relation to reception conditions in Norway ought to be welcomed. Lessons could be learned.

Concluding remarks

The next four years will lay the premises for European asylum legislation and policy for years to come. A radical harmonization process is well underway. Coordinating mechanisms and common Directives have been put into place during the last ten years. The establishment of a Common European Asylum System, with the adoption and implementation of EU legislation, constitutes the core in this process and will be fully operational by 2010. The next few years represent a unique window of opportunity for European authorities and politicians.

Although Norway is excluded from having direct influence on this development in many respects, the Dublin and Schengen cooperation formally links the country to aspects of the harmonization. Only by paying close attention to the development of the common asylum and migration policy within the EU and active participation in available fora, will the Norwegian authorities be able to have their opinion heard.

Norway is also dependent on knowing about changes in the EU when making adjustments in the national legislation and policy.

Formally, the country is obliged, because of the Dublin cooperation agreement, to know what the security, as well as reception conditions are in partner-countries when returning asylum seekers. Likewise the member countries need to know that conditions in Norway are satisfactory.

Through this report we wish to contribute to this flow of information about reception conditions in Norway and the EU.

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Appendix: The EU Directive on Reception Conditions

The Official Journal of the European Union, L 31/18 – 06/02/2003

COUNCIL DIRECTIVE 2003/9/EC of 27. January 2003

Laying down minimum standards for the reception of asylum seekers

THE COUNCIL OF THE EUROPEAN UNION,
Having regard to the Treaty establishing the European Community, and in particular point (1)(b) of the first subparagraph of Article 63 thereof,
Having regard to the proposal from the Commission ⁽¹⁾,
Having regard to the opinion of the European Parliament ⁽²⁾,
Having regard to the opinion of the Economic and Social Committee ⁽³⁾,
Having regard to the opinion of the Committee of the Regions ⁽⁴⁾²²,

Whereas:

(1) A common policy on asylum, including a Common European Asylum System, is a constituent part of the European Union's objective of progressively establishing an area of freedom, security and justice open to those who, forced by circumstances, legitimately seek protection in the Community.

(2) At its special meeting in Tampere on 15 and 16 October 1999, the European Council agreed to work towards establishing a Common European Asylum System, based on the full and inclusive application of the Geneva Convention relating to the Status of Refugees of 28 July 1951, as supplemented by the New York Protocol of 31. January 1967, thus maintaining the principle of nonrefoulement.

(3) The Tampere Conclusions provide that a Common European Asylum System should include, in the short term, common minimum conditions of reception of asylum seekers.

²² (1) OJ C 213 E, 31.7.2001, p. 286.

(2) Opinion delivered on 25 April 2002 (not yet published in the Official Journal).

(3) OJ C 48, 21.2.2002, p. 63.

(4) OJ C 107, 3.5.2002, p. 85.

(4) The establishment of minimum standards for the reception of asylum seekers is a further step towards a European asylum policy.

(5) This Directive respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union. In particular, this Directive seeks to ensure full respect for human dignity and to promote the application of Articles 1 and 18 of the said Charter.

(6) With respect to the treatment of persons falling within the scope of this Directive, Member States are bound by obligations under instruments of international law to which they are party and which prohibit discrimination.

(7) Minimum standards for the reception of asylum seekers that will normally suffice to ensure them a dignified standard of living and comparable living conditions in all Member States should be laid down.

(8) The harmonisation of conditions for the reception of asylum seekers should help to limit the secondary movements of asylum seekers influenced by the variety of conditions for their reception.

(9) Reception of groups with special needs should be specifically designed to meet those needs.

(10) Reception of applicants who are in detention should be specifically designed to meet their needs in that situation.

(11) In order to ensure compliance with the minimum procedural guarantees consisting in the opportunity to contact organisations or groups of persons that provide legal assistance, information should be provided on such organisations and groups of persons.

(12) The possibility of abuse of the reception system should be restricted by laying down cases for the reduction or withdrawal of reception conditions for asylum seekers.

(13) The efficiency of national reception systems and cooperation among Member States in the field of reception of asylum seekers should be secured.

(14) Appropriate coordination should be encouraged between the competent authorities as regards the reception of asylum seekers, and harmonious relationships between local communities and accommodation centres should therefore be promoted.

(15) It is in the very nature of minimum standards that Member States have the power to introduce or maintain more favourable provisions for third-country nationals and stateless persons who ask for international protection from a Member State.

(16) In this spirit, Member States are also invited to apply the provisions of this Directive in connection with procedures for deciding on applications for forms of

protection other than that emanating from the Geneva Convention for third country nationals and stateless persons.

(17) The implementation of this Directive should be evaluated at regular intervals.
L 31/18 EN Official Journal of the European Union 6.2.2003

(18) Since the objectives of the proposed action, namely to establish minimum standards on the reception of asylum seekers in Member States, cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of the proposed action, be better achieved by the Community, the Community may adopt measures in accordance with the principles of subsidiarity as set out in Article 5 of the Treaty. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve those objectives.

(19) In accordance with Article 3 of the Protocol on the position of the United Kingdom and Ireland, annexed to the Treaty on European Union and to the Treaty establishing the European Community, the United Kingdom gave notice, by letter of 18. August 2001, of its wish to take part in the adoption and application of this Directive.

(20) In accordance with Article 1 of the said Protocol, Ireland is not participating in the adoption of this Directive. Consequently, and without prejudice to Article 4 of the aforementioned Protocol, the provisions of this Directive do not apply to Ireland.

(21) In accordance with Articles 1 and 2 of the Protocol on the position of Denmark, annexed to the Treaty on European Union and to the Treaty establishing the European Community, Denmark is not participating in the adoption of this Directive and is therefore neither bound by it nor subject to its application,

HAS ADOPTED THIS DIRECTIVE: CHAPTER I

PURPOSE, DEFINITIONS AND SCOPE

Article 1

Purpose

The purpose of this Directive is to lay down minimum standards for the reception of asylum seekers in Member States.

Article 2

Definitions

For the purposes of this Directive:

- (a) "Geneva Convention" shall mean the Convention of 28 July 1951 relating to the status of refugees, as amended by the New York Protocol of 31. January 1967;
- (b) "application for asylum" shall mean the application made by a third-country national or a stateless person which can be

understood as a request for international protection from a Member State, under the Geneva Convention. Any application for international protection is presumed to be an application for asylum unless a third-country national or a stateless person explicitly requests another kind of protection that can be applied for separately;

(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;

(d) "family members" shall mean, in so far as the family already existed in the country of origin, the following members of the applicant's family who are present in the same Member State in relation to the application for asylum: (i) the spouse of the asylum seeker or his or her unmarried partner in a stable relationship, where the legislation or practice of the Member State concerned treats unmarried couples in a way comparable to married couples under its law relating to aliens; (ii) the minor children of the couple referred to in point (i) or of the applicant, on condition that they are unmarried and dependent and regardless of whether they were born in or out of wedlock or adopted as defined under the national law;

(e) "refugee" shall mean a person who fulfils the requirements of Article 1(A) of the Geneva Convention;

(f) "refugee status" shall mean the status granted by a Member State to a person who is a refugee and is admitted as such to the territory of that Member State;

(g) "procedures" and "appeals", shall mean the procedures and appeals established by Member States in their national law;

(h) "unaccompanied minors" shall mean persons below the age of eighteen who arrive in the territory of the Member States unaccompanied by an adult responsible for them whether by law or by custom, and for as long as they are not effectively taken into the care of such a person; it shall include minors who are left unaccompanied after they have entered the territory of Member States;

(i) "reception conditions" shall mean the full set of measures that Member States grant to asylum seekers in accordance with this Directive;

(j) "material reception conditions" shall mean the reception conditions that include housing, food and clothing,

provided in kind, or as financial allowances or in vouchers, and a daily expenses allowance;

(k) "detention" shall mean 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;

(l) "accommodation centre" shall mean any place used for collective housing of asylum seekers.

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.

2. This Directive shall not apply in cases of requests for diplomatic or territorial asylum submitted to representations of Member States.

3. This Directive shall not apply when the provisions of Council Directive 2001/55/EC of 20 July 2001 on minimum standards for giving temporary protection in the event of a mass influx of displaced persons and on measures promoting a balance of efforts between Member States in receiving such persons and bearing the consequences thereof²³ are applied.

4. Member States may decide to apply this Directive in connection with procedures for deciding on applications for kinds of protection other than that emanating from the Geneva Convention for third-country nationals or stateless persons who are found not to be refugees.

Article 4

More favourable provisions

Member States may introduce or retain more favourable provisions in the field of reception conditions for asylum seekers and other close relatives of the applicant who are present in the same Member State when they are dependent on him or for humanitarian reasons insofar as these provisions are compatible with this Directive.

CHAPTER II

GENERAL PROVISIONS ON RECEPTION CONDITIONS

Article 5

Information

1. Member States shall inform asylum seekers, 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.

2. 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.

Article 6

Documentation

1. Member States shall ensure that, within three days after an application is lodged with the competent authority, the applicant is provided with a document issued in his or her own name certifying his or her status as an asylum seeker or

²³ (1) OJ L 212, 7.8.2001, p. 12.

testifying that he or she is allowed to stay in the territory of the Member State while his or her application is pending or being examined. If the holder is not free to move within all or a part of the territory of the Member State, the document shall also certify this fact.

2. Member States may exclude application of this Article when the asylum seeker is in detention and during the examination of an application for asylum made at the border or within the context of a procedure to decide on the right of the applicant legally to enter the territory of a Member State. In specific cases, during the examination of an application for asylum, Member States may provide applicants with other evidence equivalent to the document referred to in paragraph 1.

3. The document referred to in paragraph 1 need not certify the identity of the asylum seeker.

4. Member States shall adopt the necessary measures to provide asylum seekers with the document referred to in paragraph 1, which must be valid for as long as they are authorised to remain in the territory of the Member State concerned or at the border thereof.

5. Member States may provide asylum seekers with a travel document when serious humanitarian reasons arise that require their presence in another State.

Article 7

Residence and freedom of movement

1. Asylum seekers may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive.

2. Member States may decide on the residence of the asylum seeker for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application.

3. 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.

4. Member States may make provision of the material reception conditions subject to actual residence by the applicants in a specific place, to be determined by the Member States. Such a decision, which may be of a general nature, shall be taken individually and established by national legislation.

5. Member States shall provide for the possibility of granting applicants temporary permission to leave the place of residence mentioned in paragraphs 2 and 4 and/or the assigned area mentioned in paragraph 1. Decisions shall be taken individually, objectively and impartially and reasons shall be given if they are negative. The applicant shall not require permission to keep appointments with authorities and courts if his or her appearance is necessary.

6. Member States shall require applicants to inform the competent authorities of their current address and notify any change of address to such authorities as soon as possible.

Article 8

Families

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 9

Medical screening

Member States may require medical screening for applicants on public health grounds.

Article 10

Schooling and education of minors

1. Member States shall grant to minor children of asylum seekers and to asylum seekers who are minors access to the education system under similar conditions as nationals of the host Member State for so long as an expulsion measure against them or their parents is not actually enforced. Such education may be provided in accommodation centres. The Member State concerned may stipulate that such access must be confined to the State education system. Minors shall be younger than the age of legal majority in the Member State in which the application for asylum was lodged or is being examined. Member States shall not withdraw secondary education for the sole reason that the minor has reached the age of majority.

2. Access to the education system shall not be postponed for more than three months from the date the application for asylum was lodged by the minor or the minor's parents. This period may be extended to one year where specific education is provided in order to facilitate access to the education system.

3. Where access to the education system as set out in paragraph 1 is not possible due to the specific situation of the minor, the Member State may offer other education arrangements.

Article 11

Employment

1. Member States shall determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market.

2. If a decision at first instance has not been taken within one year of the presentation of an application for asylum and this delay cannot be attributed to the applicant, Member States shall decide the conditions for granting access to the labour market for the applicant.

3. Access to the labour market shall not be withdrawn during appeals procedures, where an appeal against a negative decision in a regular procedure has suspensive effect, until such time as a negative decision on the appeal is notified.

4. For reasons of labour market policies, Member States may give priority to EU citizens and nationals of States parties to the Agreement on the European Economic Area and also to legally resident third-country nationals.

Article 12

Vocational training

Member States may allow asylum seekers access to vocational training irrespective of whether they have access to the labour market. Access to vocational training relating to an employment contract shall depend on the extent to which the applicant has access to the labour market in accordance with Article 11.

Article 13

General rules on material reception conditions and health care

1. Member States shall ensure that material reception conditions are available to applicants when they make their application for asylum.
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, as well as in relation to the situation of persons who are in detention.
3. Member States may make the provision of all or some of the material reception conditions and health care subject to the condition that applicants do not have sufficient means to have a standard of living adequate for their health and to enable their subsistence.
4. Member States may require applicants to cover or contribute to the cost of the material reception conditions and of the health care provided for in this Directive, pursuant to the provision of paragraph 3, if the applicants have sufficient resources, for example if they have been working for a reasonable period of time. If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.
5. Material reception conditions may be provided in kind, or in the form of financial allowances or vouchers or in a combination of these provisions. Where Member States provide material reception conditions in the form of financial allowances or vouchers, the amount thereof shall be determined in accordance with the principles set out in this Article.

Article 14

Modalities for material reception conditions

1. Where housing is provided in kind, it should take one or a combination of the following forms:
 - (a) premises used for the purpose of housing applicants during the examination of an application for asylum lodged at the border;
 - (b) accommodation centres which guarantee an adequate standard of living;
 - (c) private houses, flats, hotels or other premises adapted for housing applicants.

2. Member States shall ensure that applicants provided with the housing referred to in paragraph 1(a), (b) and (c) are assured:

(a) protection of their family life;

(b) 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.

Member States shall pay particular attention to the prevention of assault within the premises and accommodation centres referred to in paragraph 1(a) and (b).

3. Member States shall ensure, if appropriate, that minor children of applicants or applicants who are minors are lodged with their parents or with the adult family member responsible for them whether by law or by custom.

4. Member States shall ensure that transfers of applicants from one housing facility to another take place only when necessary. Member States shall provide for the possibility for applicants to inform their legal advisers of the transfer and of their new address.

5. Persons working in accommodation centres shall be adequately trained and shall be bound by the confidentiality principle as defined in the national law in relation to any information they obtain in the course of their work.

6. Member States may involve applicants in managing the material resources and non-material aspects of life in the centre through an advisory board or council representing residents.

7. 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.

8. Member States may exceptionally set modalities for material reception conditions different from those provided for in this Article, for a reasonable period which shall be as short as possible, when:

— an initial assessment of the specific needs of the applicant is required,

— material reception conditions, as provided for in this Article, are not available in a certain geographical area,

— housing capacities normally available are temporarily exhausted,

— the asylum seeker is in detention or confined to border posts.

These different conditions shall cover in any case basic needs.

Article 15

Health care

1. Member States shall ensure that applicants receive the necessary health care which shall include, at least, emergency care and essential treatment of illness.

2. Member States shall provide necessary medical or other assistance to applicants who have special needs.

CHAPTER III

REDUCTION OR WITHDRAWAL OF RECEPTION CONDITIONS

Article 16

Reduction or withdrawal of reception conditions

1. Member States may reduce or withdraw reception conditions in the following cases:

(a) where an asylum seeker:

- abandons the place of residence determined by the competent authority without informing it or, if requested, without permission, or
- does not comply with reporting duties or with requests to provide information or to appear for personal interviews concerning the asylum procedure during a reasonable period laid down in national law, or
- has already lodged an application in the same Member State.

When the applicant is traced or voluntarily reports to the competent authority, a duly motivated decision, based on the reasons for the disappearance, shall be taken on the reinstatement of the grant of some or all of the reception conditions;

(b) where an applicant has concealed financial resources and has therefore unduly benefited from material reception conditions. If it transpires that an applicant had sufficient means to cover material reception conditions and health care at the time when these basic needs were being covered, Member States may ask the asylum seeker for a refund.

2. Member States may refuse conditions in cases where an asylum seeker has failed to demonstrate that the asylum claim was made as soon as reasonably practicable after arrival in that Member State.

3. Member States may determine sanctions applicable to serious breaching of the rules of the accommodation centres as well as to seriously violent behaviour.

4. Decisions for reduction, withdrawal or refusal of reception conditions or sanctions referred to in paragraphs 1, 2 and 3 shall be taken individually, objectively and impartially and reasons shall be given. Decisions shall be based on the particular situation of the person concerned, especially with regard to persons covered by Article 17, taking into account the principle of proportionality. Member States shall under all circumstances ensure access to emergency health care.

5. Member States shall ensure that material reception conditions are not withdrawn or reduced before a negative decision is taken.

CHAPTER IV

PROVISIONS FOR PERSONS WITH SPECIAL NEEDS

Article 17

General principle

1. Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, in the national legislation implementing the provisions of Chapter II relating to material reception conditions and health care.

2. Paragraph 1 shall apply only to persons found to have special needs after an individual evaluation of their situation.

Article 18

Minors

1. The best interests of the child shall be a primary consideration for Member States when implementing the provisions of this Directive that involve minors.
2. Member States shall ensure access to rehabilitation services for minors who have been victims of any form of abuse, neglect, exploitation, torture or cruel, inhuman and degrading treatment, or who have suffered from armed conflicts, and ensure that appropriate mental health care is developed and qualified counselling is provided when needed.

Article 19

Unaccompanied minors

1. 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.
2. Unaccompanied minors who make an application for asylum shall, from the moment they are admitted to the territory to the moment they are obliged to leave the host Member State in which the application for asylum was made or is being examined, be placed:
 - (a) with adult relatives;
 - (b) with a foster-family;
 - (c) in accommodation centres with special provisions for minors;
 - (d) in other accommodation suitable for minors.Member States may place unaccompanied minors aged 16 or over in accommodation centres for adult asylum seekers. As far as possible, siblings shall be kept together, taking into account the best interests of the minor concerned and, in particular, his or her age and degree of maturity. Changes of residence of unaccompanied minors shall be limited to a minimum.
3. Member States, protecting the unaccompanied minor's best interests, shall endeavour to trace the members of his or her family as soon as possible. In cases where there may be a threat to the life or integrity of the minor or his or her close relatives, particularly if they have remained in the country of origin, care must be taken to ensure that the collection, processing and circulation of information concerning those persons is undertaken on a confidential basis, so as to avoid jeopardising their safety.
4. Those working with unaccompanied minors shall have had or receive appropriate training concerning their needs, and shall be bound by the confidentiality principle as defined in the national law, in relation to any information they obtain in the course of their work.

Article 20

Victims of torture and violence

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.

CHAPTER V

APPEALS

Article 21

Appeals

1. Member States shall ensure that negative decisions relating to the granting of benefits under this Directive or decisions taken under Article 7 which individually affect asylum seekers may be the subject of an appeal within the procedures laid down in the national law. At least in the last instance the possibility of an appeal or a review before a judicial body shall be granted.
2. Procedures for access to legal assistance in such cases shall be laid down in national law.

CHAPTER VI

ACTIONS TO IMPROVE THE EFFICIENCY OF THE RECEPTION SYSTEM

Article 22

Cooperation

Member States shall regularly inform the Commission on the data concerning the number of persons, broken down by sex and age, covered by reception conditions and provide full information on the type, name and format of the documents provided for by Article 6.

Article 23

Guidance, monitoring and control system

Member States shall, with due respect to their constitutional structure, ensure that appropriate guidance, monitoring and control of the level of reception conditions are established.

Article 24

Staff and resources

1. Member States shall take appropriate measures to ensure that authorities and other organisations implementing this Directive have received the necessary basic training with respect to the needs of both male and female applicants.

2. Member States shall allocate the necessary resources in connection with the national provisions enacted to implement this Directive.

CHAPTER VII

FINAL PROVISIONS

Article 25

Reports

By 6 August 2006, the Commission shall report to the European Parliament and the Council on the application of this Directive and shall propose any amendments that are necessary. Member States shall send the Commission all the information that is appropriate for drawing up the report, including the statistical data provided for by Article 22 by 6 February 2006. After presenting the report, the Commission shall report to the European Parliament and the Council on the application of this Directive at least every five years.

Article 26

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by 6 February 2005. They shall forthwith inform the Commission thereof. When the Member States adopt these measures, they shall contain a reference to this Directive or shall be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such a reference is to be made.

2. Member States shall communicate to the Commission the text of the provisions of national law which they adopt in the field relating to the enforcement of this Directive.

Article 27

Entry into force

This Directive shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Article 28

Addressees

This Directive is addressed to the Member States in accordance with the Treaty establishing the European Union.

Done at Brussels, 27 January 2003.

For the Council

The President

G. PAPANDREOU

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Rapport 2007:4

<i>Forfatter/Author</i> Jan-Paul Brekke and Vigdis Vevstad
<i>Tittel/Title</i> Reception conditions for asylum seekers in Norway and the EU
<p>Asylfeltet er i rask endring i Europa. Det pågår en prosess der EU landenes politikk og lovgivning på dette området samkjøres. Målsetningen er å ha en et felles asylsystem (Common European Asylum System) på bena innen år 2010. Gjennom en serie med direktiver innføres et sett med mininormer som alle landene må forholde seg til. Dette er ment å sikre en byrdefordeling mellom landene, men også å sikre asylsøkernes individuelle rettigheter.</p> <p>Norge er en del av Europa, men ikke av Unionen. Likefullt er vi formelt bundet opp til EU gjennom Schengensamarbeidet og Dublinavtalen. Dette medfører at norske myndigheter må følge med på utviklingen i EUs medlemsland. Arbeidet som pågår i retning av en felles EU-lovgivning og politikk på dette området vil imidlertid også virke inn på Norge på andre måter. Det kan for eksempel være viktig for Norge å ikke føre en for avvikende politikk i forhold til nabolandene og Unionen forøvrig.</p> <p>I denne studien ser vi på hvordan norsk lovgiving og praksis står i forhold til utviklingen i Unioen på dette området. Vi ser på EUs direktiv som regulerer forholdene for asylsøkere under mottaksperioden. Vi spør: Hvordan er forholdene i medlemslandene? Er dette direktivet innført i landenes lovgivning og praksis i tråd med forventningene? Hva er situasjonen på dette feltet i Norge sammenlignet med EU-landene? De komparative elementene i denne studien er basert på en bred undersøkelse av 23 medlemsland. Denne er gjennomført av «Odysseus Academic Network of Lawyers» i Brussel. Vevstad og Brekke har også deltatt i denne studien.</p> <p>Den norske studien tar utgangspunkt i norsk og internasjonal lovgiving på feltet. Utlendingsforskriften og lavere styringsdokumenter står sentralt for å forstå reguleringen i Norge. I tillegg ligger intervjuer med offentlige tjenestemenn, mottaksledere og ansatte i NGOer til grunn for studien.</p> <p>Det generelle bildet som tegnes er at forholdene i Norge er i tråd med de nye normene i EU. Noen unntak finnes likevel. Noen eksempler er: Mange sider ved mottaksforholdene i Norge er ikke regulert i lov og forskrift, men i styringsdokument fra UDI til de som driver mottakene. I Norge har ikke asylsøkere som er mellom 16 og 18 rett til skolegang. Det har de nå i EU. Ofre for vold og tortur vies oppmerksomhet som spesielt sårbar gruppe i EU-direktivet. I Norge nevnes ikke denne gruppen spesielt. Det er også et spørsmål om det gjøres nok for å oppdage hvem som hører til denne gruppen etter ankomst til Norge.</p>
<i>Emneord</i> Asylsøker, flyktning, lov, EU, mottak, lovgivning, Norge
<i>Summary</i> <p>The next four years will lay the premises for European asylum legislation and policy for years to come. A radical harmonization process is well underway. Coordinating mechanisms and common Directives have been put into place during the past ten years. Adoption and implementation of EU legislation constitutes the core in this process and will be fully operational by 2010.</p> <p>During 2006, the EU Directive on Reception Conditions was evaluated by the Odysseus academic network of lawyers on behalf of the European Commission. The current report is compatible with this European comparative study and relates closely to the outcomes of the Odysseus evaluation.</p> <p>The main research questions are: How does the Norwegian reception system stand when compared to the EU Directive on reception conditions? There are two aspects that can be at least analytically distinguished: Firstly, what are the legal sources on reception conditions in Norway and how do they correspond to the EU sources? Secondly: How do the factual reception conditions in Norway compare to the norms of the Directive and the practice in the Member States.</p>

Different source of data were used to answer these questions. The study of documents, laws and regulations was combined with interviews with civil servants, managers of accommodation centers NGO personell.

The general picture that is presented shows that the reception conditions in Norway are in line with the new norms in Europe. Some exceptions include; insufficient formal regulation of reception conditions in legislation; no right to access education for asylum seekers aged 16-18; and insufficient attention payed specifically to the rights of vicitms of violence and torture.

Index terms

Asylum seeker, refugee, law, reception conditions, EU, policy, Norway