



DeutscherAnwaltVerein



By email
Mr. Didier Reynders
European Commissioner for Justice

Mr. Janez Lenarčič
European Commissioner for Crisis Management

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Legal Advice in Humanitarian Aid

Dear Commissioner Lenarčič and Commissioner Reynders,

Building on our experience as equal shareholders in the European Lawyers in Lesvos (ELIL) gGmbH, we very much welcome the EU's decision to adapt its humanitarian response to the challenging global environment exacerbated by COVID-19 in order to maintain and strengthen the EU's leading role as a principled donor of humanitarian aid. We believe that respect for International Humanitarian Law and in particular, unimpeded access to humanitarian aid is extremely important in these times. From our perspective, it appears very sensible for the Commission to address the issue as part of the 2021 work program.

Please allow us in this context to point out the need for individual and independent legal advice in humanitarian aid operations. While an international consensus exists on the need to provide assistance in humanitarian crises, currently, the vast majority of global humanitarian aid instruments do not explicitly include access to the provision of legal aid. This is unfortunately also the case as regards Council Regulation (EC) No. 1257/96 of 20 June 1996 concerning humanitarian aid.

Many practical examples, be it, for instance, after earthquakes in Pakistan and New Zealand or the devastating tsunami in the Indian Ocean¹, however emphasize the need for this kind of assistance on various levels. This also applies to the challenging situation in the refugee camps on the Greek islands, where the joint project ELIL of CCBE, CNB and DAV provides pro bono legal advice to refugees. Although ECHO generally only supports humanitarian aid measures outside the EU, DG ECHO funds have also been flowing to Greece since 2016. When life is falling apart, be it on grounds of military conflict, natural disaster or other causes, those affected must immediately be able to take informed decisions.

¹ In 2007, the Norwegian Refugee Council, for instance, has provided qualified and individual legal advice in Pakistan to approximately 100,000 refugees from Afghanistan with the help of pro bono lawyers. Thereby they achieved the release of hundreds of illegally detained refugees from Pakistani prisons [more information: <https://reliefweb.int/report/pakistan/pakistan-earthquake-victims-get-legal-aid>]. In the aftermath of the tsunami on 26 December 2004, the Swedish Bar Association convinced 270 law firms to give victims of this natural disaster legal advice free of charge. Likewise, the German Bar Association made legal advice available to survivors and to relatives of victims of the tsunami promptly and unbureaucratically through a telephone hotline. The latter gave 70 individuals the opportunity to seek for legal advice free of charge. The New Zealand Law Society took similar measures following the earthquake in the surroundings of Christchurch in 2011.



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Permanent fear and continuous uncertainty as to their own legal status and entitlements, administrative procedures and legal remedies or restrictions – in short, the legal framework determining their personal future – is going to negatively affect their mental health to a great extent. Additionally, our experience shows that legal advice can make essential contributions in practically all areas of humanitarian aid (e.g. education, health, asylum procedures, housing, etc.). Procedures can be carried out more effectively if all documents are available upon application. Decisions can be communicated more transparently by lawyers and become more comprehensible. Less frustration about an apparently hopeless situation also might contribute to reduce migration. Thus, legal advice helps not only the affected persons, but everyone involved in Humanitarian Aid procedures.

It is also crucial to add that legal aid in the context of access to protection procedures does not merely involve international humanitarian law but also international refugee law and international human rights law. The right to apply for asylum has been a fundamental principle of the international legal order for many decades. The right to protection where there is a well-founded fear of persecution involving a serious risk to life and bodily integrity engages non-derogable rights both in international and in European Union law. As such humanitarian aid must extend to ensuring that those in need of international protection can actually access effective legal aid to realise this right to protection in concrete form.

The EU is one of the major global actors in the field of humanitarian aid. Though ECHO has long considered legal aid as a natural component of basic humanitarian assistance, it still has not been explicitly and mandatorily integrated into the humanitarian aid program of the EU. Despite this a needs assessment contained in a document on operational priorities fortunately already noted in 2016 that a lack of information in their own language on future options risks creating misunderstandings, false hope and stress (ECHO-Dokument „Emergency Support Financing Decision – Operational Priorities“, Ref. Ares(2016)2834625). However, these findings were not reflected in the General Guidelines on Operational Priorities for Humanitarian Aid in 2017 – and have not been enacted to date.

We are in close exchange with various stakeholders in humanitarian aid who have explicitly supported our call. We would therefore be very pleased if you would include the above considerations in your current plans to adapt your humanitarian response to the challenging global environment.

I hope that you will not hesitate to contact us further in this respect and remain at your disposal for any questions that might arise.

Yours sincerely

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DAV
Lawyer and Notary

Margarete von Galen
President CCBE
Lawyer

Jérôme Gavaudan
President CNB
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