

TO:

Refugee Air

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2015-09-14

REFUGEE AIR - SUMMARY OF LEGAL ASPECT CONCERNING ASSISTANCE TO REFUGEES ENTERING SWEDEN.

Refugee Air is a network of individuals seeking to establish secure and legal ways to assist persons in distress located outside the area of Schengen countries to lawfully enter Sweden through air transport, in order for those assisted persons to seek asylum there as refugees. Refugee Air is a non-profit initiative.

Pursuant to the Swedish Aliens Act (2005:716), which is based on EU legislation, intentionally assisting an alien to enter, or pass through, a Schengen member state without the relevant authorisation is punishable under law as human smuggling. In addition, the planning or organization of human trafficking is also punishable under the same law.

However, it is clear from the legislation that the measures therein to combat for profit human trafficking shall apply without prejudice to the protection afforded to refugees and asylum seekers in accordance with international law on refugees or other instruments relating to human rights.

The question now arises how Refugee Air members can provide assistance to asylum seekers wishing to seek asylum in Sweden without infringing the provisions of Human Smuggling and Organisation of Human Smuggling laid out in the Aliens Act.

The goal of Refugee Air is to provide safe routes to Schengen states in order to mitigate the need for asylum seekers to risk their lives taking dangerous ocean crossings and long risky journeys over land. Such a goal would inevitably involve It is clear that Refugee Air members intend to voluntarily assist unauthorized aliens to seek asylum in Sweden when they arrive from countries outside the Schengen area. However, in order for the Aliens Act to be applicable and an offense committed, non-nationals must first have "entered" Sweden.

The Supreme Court of Sweden has through a ruling (NJA 2010 s.237) established that asylum seekers that have arrived, from a destination outside the Schengen area, at an airport in Sweden that is considered a so called external border, have in fact not "entered" Sweden before they have crossed the border control. Consequently, such asylum seekers may seek asylum with authorized personnel at border control at such airports immediately on their arrival. That would in turn mean that persons having helped the asylum seekers to the border control, but not beyond that point, have not assisted them in "entering" Sweden, and thus have not breached the prohibition of Human Smuggling as stated in the Alien Act.

It is thus essential that the air transport is initiated from outside the group of Schengen Countries, that the point of entry into Sweden is at one of the airports in Sweden that handles air travel from non-Schengen countries (an "external border"), that the persons providing assistance, including members of Refugee Air, ensure that it is indisputable to all relevant parties that the assistance provided ends at, and does not go beyond, the point of entry into Sweden (the border control). What has been said about the act of providing assistance also applies to instigation and attempts to provide assistance.

Additional provisions exist in the Aliens Act that deal with planning and organizing assistance to unauthorized persons who seek to enter Sweden. However, those provisions only cover such planning and organizing that is done with the purpose to seek profit. As regards Refugee Air, the purpose is non-profit, meaning that such non-profit activities are legal.