

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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Recommendations for an Effective Protection Framework for Refugees in Greece

I. General Observations

The legislative and practical framework for the protection of refugees and asylum-seekers in Greece, in spite of the positive developments of the years 1998 and 1999, shows weaknesses which have to do with the lack of a modern, long-term refugee policy, with which the protection of refugees and asylum-seekers (although not directly subject to it) is linked. The protection of refugees in Greece is at present in the first stages of its 'coming of age'. Until the early 1990s, Greece was effectively a state which facilitated the resettlement of refugees, a state, that is, through which refugees passed on their way, with the help of international organisations, to countries of the 'Western world' with developed programmes for the resettlement of refugees. In addition, up to January 1990, the status of refugee could be recognised by the Greek State, but also by the Athens Bureau of the UN High Commission for Refugees. The United Nations, up to 1990, played an ancillary, but particularly substantive, role in the field of the recognition of the status of refugee and especially in the provision of effective legal and social protection for refugees.

The first formal law of the Hellenic Republic which foresaw by special provisions the legal and social protection for alien refugees was Law 1975/1991 (Official Journal of the Hellenic Republic A' 184, Articles 24-25). However, the provisions on asylum in this law were chiefly delegatory, referring to the issuing of presidential decrees and ministerial

decisions on the substantive regulation of asylum: a regime of unfinished legislative practice which continues up to the present. The contemporary state of refugee protection in Greece, as concerns chiefly the relevant state practice has repeatedly been the object of particularly sharp criticism by international and national human rights and refugee protection organisations (including the UN High Commission for Refugees, the Danish Council for Refugees, Amnesty International and the Greek Section of Amnesty International). This criticism was and remains well-founded as regards fundamental features of Greek practice in connection with the legal and social protection of asylum-seekers and refugees.¹

It should be stressed that the phenomenon of refugee migrations particularly since the early 1990s has taken on a different, particularly complex, character, as compared with the 1950-1990 decades (period of the 'classic refugees'). This is due to socio-political changes in Europe and in the new international technological and economic facts of life, which have contributed to much greater ease in cross-border movements of populations and individuals. States such as Greece which have not so far developed an integrated legal, material and technical framework for the protection of refugees necessarily malfunction when faced with these new realities. The Greek State, within the context of its obligations which stem from international and Community law (which is in a constant process of development), should proceed immediately to a radical review and the creation of a modern legal and practical framework for the protection of refugees and asylum-seekers. The malfunctioning of the institution of asylum can be eliminated in Greece if the Greek State formulates a *comprehensive policy on asylum* which is based on a modern legislative framework and at the same time on an administration which is made up of adequate and capable human resources with a sound material and technical infrastructure. The observations and proposals below are based

¹ See UN High Commission for Refugees, Representation in Greece, *Annual Report on the Protection of Refugees, 2000*, March 2001.

on the remarks and observations made at the meeting of the 3rd Sub-commission of the NCHR on 16 November 2000.²

II. Specific Observations and Proposals

1. Undertaking of responsibility for asylum by the Ministry of the Interior. Given the undertaking of the management of matters concerning the immigration of aliens by the Ministry of the Interior by Law 2190/2001 (OJHR A' 91), the future transfer of matters of asylum to this Ministry (from the Ministry of Public Order) is judged to be advisable, as is the case in all the member states of the European Union. Although of a different nature, foreign immigrants and refugees have much in common and a similar approach to problems, a fact which calls for making matters which concern these two categories of aliens subject to the competence of one ministry only (that of the Interior). It is considered necessary that this transfer of responsibility should be accompanied by the setting up of a special *consolidated Asylum Bureau*, assisted by a *Scientific Research Department*, to be staffed by experts, thus ensuring constant updating, improvement and, above all, effectiveness of action on the part of the Greek Administration in the field of protection of refugees. The creation of this scientific department could be accompanied by the inauguration of the 'Centre for the Study of Immigration', for which provision is made by Article 73 of Law 2910/2001.

2. Creation of an integrated legislative framework on asylum. The Greek legislation dealing with the protection of refugees at the moment consists of a series of provisions to be found in various formal laws and presidential decrees. It is considered desirable that a formal law should be drafted, on the model of other European States with long experience in this connection, to incorporate, *in a revised form*, all the existing, fragmentary, legislation on refugees. This new law should create an integrated, modern legislative framework for the legal and social

² See National Commission for Human Rights, *Report 2000*, Athens 2001, p. 48.

protection of refugees, on the basis of Greece's international and European legal obligations.

3. Technical legal defects of Presidential Decree 61/1999 (OJHR A' 63): Presidential Decree 61/1999 on the procedure for the recognition of an alien refugee, etc., in Article 2, para. 6, and Law 2452/1996 (OJHR A' 283), in Article 1, which revised Article 25 of Law 1975/1991, set, probably through a technical oversight, as a criterion for the recognition of the status of refugee the fulfillment by the refugee of the conditions of Article 1A of the Geneva Convention on the Legal Status of Refugees (Legislative Decree 3989/1959, OJHR A' 209), as amended by the New York Protocol, Law 389/1968, OJHR A' 125). On the other hand, Law 1975/1991, in Article 24, para. 1, sub-para. (a) (on recognition of the status of refugee) refers to Article 1 of the above Convention, *which is more correct*, thus taking into account the exclusion clauses of the Convention (Article 1, D, E, F). Of particular importance is the provision of Article 1, F, which excludes from protection as refugees persons about whom there are serious reasons for believing that they have committed crimes, *inter alia*, against peace, war crimes or against humanity, or a serious crime in common penal law. It would be advisable to correct this technical legal defect in the immediate future.

4. Freedom of circulation of refugees and detention of asylum-seekers:

(a) Greece has not yet withdrawn its reservation as to Article 26 of the Geneva Convention of 1951 on the Legal Status of Refugees. According to this provision, the contracting states should, in principle, allow refugees who are lawfully resident in their territory to circulate freely and recognise to them the right to choose their place of residence. In practice, no restriction on the freedom of movement of recognised refugees in Greece has been observed. *Nevertheless, it is considered desirable that the above reservation should be withdrawn by the Greek State.*

(b) The administrative detention of asylum-seekers (in most cases these are aliens awaiting deportation who submit an application for

asylum after the issuing of the administrative decision on deportation) is one of the thorny problems of asylum practice in Greece, chiefly because of the conditions which prevail in the places of detention in this country and the long duration of the detention of these individuals.³ The High Commission has described the conditions of detention as "wretched"⁴ and has protested to the Greek authorities about the question of the "wretched conditions of detention with a view to the deportation of aliens entering and remaining in Greece illegally, among whom asylum-seekers are included".⁵ It should be stressed that asylum-seekers, like refugees, *by definition* are not to be identified with the general category of alien immigrants and require special treatment by the host state.⁶ Asylum-seekers in principle should not be kept in detention. *The NCHR proposes the legislative safeguarding of the expedition of the examination of the applications for asylum of individuals being detained.*

5. 'Safe third countries' in the procedure for the rapid examination of applications for asylum: Article 4, para.1 of Presidential Decree 61/1999, in conjunction with Article 25, para. 2 of Law 1975/1991 and Article 2 of Law 2452/1996, provides for a priority procedure for the examination of an application for asylum if, *inter alia*, the applicant comes from a safe third country of reception on the territory of which he/she is not in danger of suffering persecution on one or more of the grounds of Article 1A.2 of the Geneva/New York Convention, nor of being deported to the country of his/her nationality or usual residence.

³ See Report in this connection of the 1st and 3rd Sub-commissions of the NCHR to the Plenum of the NCHR, 08.06.2001.

⁴ *Op. cit.*, p. 9.

⁵ *Idem.* See also Ombudsman, *Annual Report 2000* (in Greek), Athens 2001, pp. 76-77.

⁶ See Article 11 of the Proposal of the European Commission for the issuing of a Directive of the Council of the European Union on the minimum specifications for the procedures by which member states grant and revoke the status of refugee (Doc. 500PC0578, 03.11.2000). Article 11 expressly prescribes the prohibition of the detention of an asylum-seeker on the grounds that his/her application for the granting of asylum must be examined (see also in this connection para. 4 of the Draft Findings of the Council of the European Union on the conditions of reception of asylum-seekers, Doc. 11585/00, 04.10.2000). See also UN ECOSOC, Sub-commission on Human Rights, Resolution 2000/21, *Detention of asylum-seekers*, UN Doc. E/CN.4/SUB.2/RES/2000/21, 18 August 2000, UNHCR, *Guidelines on applicable criteria and standards relating to the detention of asylum-seekers*, 10.02.1999.

This is a provision of *vital procedural importance* for asylum-seekers, but one which is at the same time *particularly unclear* because its implementation in practice is based on the assessment on the part of the Administration of a series of legal and political facts concerning third countries of reception, which the law does not determine, but refers to the relevant Resolutions of 1992 of the Ministers of Immigration of the European Union and to Findings Nos 30 and 58 of the Executive Committee of the UN High Commission for Refugees. It is desirable, in the interests of the security of law, that *objective criteria* should be expressly formulated in the law on the basis of which a third country can be described as safe for an asylum-seeker. It should be noted that relatively new, detailed criteria have already been proposed by the European Union in the Proposal of the European Commission on the issuing of a Council Directive in connection with the minimum guarantees of member states for the recognition and withdrawal of the status of refugee.⁷

6. Asylum-seekers in port or airport transit zones: Although Article 4, para. 6 of Presidential Decree 61/1999 provides for a super-rapid procedure for the examination of applications for asylum of individuals in transit zones of ports or airports, in practice this procedure in many cases is long drawn-out. This fact renders essential the setting up by the Administration of special premises in transit zones with accommodation conditions for asylum-seekers consistent with human dignity, so that there can be in reality a rapid but fair examination of the relevant applications.⁸ Furthermore, the authorities who accept applications for asylum in these areas, *as in all border regions*, should be suitably trained and have been fully informed of the legal procedure for asylum to be applied.⁹ Because of the crucial nature of this initial stage of the asylum procedure, the Administration must devote particular attention to the

⁷ Doc. 500PC0578, 03.11.2000, Articles 18, 21 and Annex I.

⁸ See paras 9, 16 and 17 of Recommendation R (94) 5, 21.06.1994 of the Committee of Ministers of the Council of Europe, where it is stressed, *inter alia*, that the reception of asylum-seekers at a country's frontiers should take place under the best possible conditions.

⁹ Para. 6 of the above Recommendation R (94) 5.

education and in-service training of all the personnel who come for the first time into contact with asylum-seekers. More particularly, and in accordance with Recommendation R (98) 15 (15.12.1998) of the Committee of Ministers of the Council of Europe, the Administration must provide special training of the personnel who have the *competence to refer asylum-seekers* to the appropriate authority. This personnel should be trained, *inter alia*, in matters which concern the national and international legislation on the protection of refugees and in the rules on the international protection of human rights (para. 1, Recommendation R (98) 15). As to the personnel who are *responsible for receiving and examining* applications for asylum, these must be trained in the fields cited above, *but also* in matters which concern, *inter alia*, the technique of interviewing individuals of a different culture and the state of human rights in the countries of origin of aliens (para. 2, Recommendation R (98) 15).

7. Reception centres for asylum-seekers: For decades now Greece had only one, entirely inadequate, reception centre for asylum-seekers, at Lavrio, which, since 1999 (PD 266/1999, OJHR A' 217) has been subject in administrative terms to the Ministry of Health and Welfare. The maximum capacity of this centre is **300** asylum-seekers. Applications for asylum in Greece in the years 1996, 1997, 1998, 1999 and 2000 numbered **1,640, 4,380, 2,953, 1,528** and **3,083**, respectively.¹⁰ The result of this state of affairs is that thousands of asylum-seekers in Greece remain *homeless* each year. As can be logically concluded from these data, there is an *imperative need* for the setting up of other reception centres to ensure dignified living conditions for asylum-seekers in Greece.

8. Briefing of asylum-seekers on the procedure for the examination of applications for asylum: Article 1, para. 6 of PD 61/1999 expressly provides that an asylum-seeker should be given an information pamphlet by the service unit responsible for examining his/her application in a language which he/she understands in connection with the asylum procedure and his/her rights and obligations. *In practice*,

¹⁰ Statistics from the High Commission, Athens.

however, failure on the part of the Administration to observe this procedure has been reported. The competent ministry should give particular attention to the *observance in practice* of this *substantive* briefing procedure, which must also include the informing of the asylum-seeker in a language which he/she understands, before the procedure for the examination of the application begins, of the existence and functioning of the UN High Commission for Refugees in Greece and of the non-governmental organisations which work with the High Commission, *or of other experienced non-governmental organisations specialising in the provision of legal assistance to asylum-seekers and refugees.*¹¹

9. Lack of state, trained interpreters at all levels of the procedure for the examination of applications for asylum: A further chronic and particular negative factor in Greek asylum practice is the lack of *official state interpreters* in the procedures for the examination of asylum applications. This violates the most elementary procedural principles of a rule of law and fundamental principles of international human rights law. The competent ministry should undertake immediately the creation of a body of *specialist state asylum interpreters*, available throughout Greek territory.¹²

10. Setting up of a specialist immediate action asylum team: The Greek Administration often finds itself faced with situations where there is a large influx of asylum-seekers, chiefly in the provinces, without being able to take immediate action and examine the relevant applications. It is desirable that a specialist team able to take immediate action should be set up by the ministry responsible in order always to ensure the speedy, effective and fair examination of asylum-seekers in cases of mass arrivals of these individuals.

¹¹ See also Article 7, sub-paras (a) and (c) of the Proposal of the European Commission, *op. cit.*, Doc. 500PC0578, 03.11.2000, and para. 2 of the Draft Findings on the conditions of reception of asylum-seekers, Council of the European Union, Doc. 11585/00, 04.10.2000.

¹² See also in this connection Article 7, sub-para. (b) of the Proposal of the European Commission, Doc. 500PC0578, *op. cit.*

11. The rule of three-year service of Ministry of Public Order personnel at aliens' bureaus: In accordance with the legislation in force until November 2000, personnel of the aliens' bureaus of the Ministry of Public Order were transferred to other departments on the expiry of the three years' service at the aliens' bureaus. This was a rule which unfavorably affected the effectiveness of the personnel dealing with asylum-seekers and refugees, a special category of aliens making extra demands upon the knowledge and capabilities of the relevant personnel of the Administration. For as long as the management of asylum remains within the competence of the Ministry of Public Order, it would be advisable that exception **in practice** from this in-service rule should be established in the case of all the personnel of the Ministry of Public Order dealing with asylum.

12. Setting up of Training Department for Asylum Personnel: The personnel of the Ministry who examine applications for asylum, at a central and regional level, in the first and second instance, must be *specialised and subject to constant in-service training and briefing*.¹³ It is desirable that a special Training Department for Asylum Personnel should be set up by the competent ministry in order to ensure the constant existence of capable and effective personnel dealing with the examination of applications for asylum and the protection of refugees.¹⁴ This Training Department should specialise in matters of psychology and the examination of applications for asylum, refugees' and aliens' law and international law on the protection of human rights and be capable of providing constant training for administrative personnel.

13. The legal status of asylum-seekers with 'in-service notes' of the Ministry of Public Order: This is a special, *exceptionally problematic*, category of asylum-seekers of the '*res nullius*' type in Greece because the Greek legislation prescribes *nothing* as to the legal status of these persons. These individuals do not have the asylum-seeker's card

¹³ See Recommendation R (98) 15, 15.12.1998 of the Committee of Ministers of the Council of Europe.

¹⁴ See in this connection Article 14 of the Proposal of the European Commission, *op. cit.*

since they have not yet been interviewed by the competent authority; they have simply been informed by the in-service note of the date of an interview. They are left in practice with the in-service note of the Ministry of Public Order for months without *any protection of their elementary - chiefly social - rights*, in violation of elementary rules of modern international human rights law. This problem is directly linked in practice with the *malfunctioning of the asylum procedure*, particularly at the Athens Aliens' Sub-Directorate,¹⁵ which results in many months of waiting on the part of asylum-seekers until they undergo an asylum interview and many months of waiting on the part of asylum-seekers in a state of impasse because of the 'in-service notes', in violation of fundamental rules on the protection of refugees and of human rights. There is an *urgent need* for the phenomenon of 'in-service notes' to be eliminated. *Since, however, this is not feasible for reasons having to do with the malfunctioning of certain service units of the Ministry of Public Order, the Legislator should fill this legal lacuna which exists in asylum practice in Greece and stipulate the provision of all the civil and social rights of asylum-seekers for these individuals who are staying in Greece with the 'in-service notes' of the Ministry of Public Order.*

14. Second-instance examination of applications for asylum: According to Article 3, para. 5 of PD 61/199, a (quasi-judicial) recourse against a decision rejecting an application for asylum is examined by the Minister of Public Order, following the delivery of an opinion by a six-member refugees' committee, consisting of the Legal Advisor of the Ministry of Public Order, as Chair, and one staff-member of the Diplomatic Branch of the Ministry of Foreign Affairs, a Legal Advisor of the Ministry of Foreign Affairs, a senior officer of the Greek Police, a representative of the Athens Bar Association, and the Legal Protection Advisor of the UN High Commission for Refugees as members. Although this committee examines the *substance* of the asylum-seeker's case, the Minister of Public Order has by law the right to take a decision on the

¹⁵ See High Commission, *Report 2000, op. cit.*, pp. 6-7.

appeal which is contrary to that of the committee. This is a legislative regulation which it would be desirable to replace with a provision stipulating, *in principle*, the binding force of the refugees' committee on the Minister's decision. Furthermore, given the heavily-weighted representation of the Administration and, moreover, of the Ministry of Public Order, which also pronounces on the application for asylum in the first instance, it is considered desirable that, in the interests of the authority and objectivity of the decisions of the above committee, a representative of a Greek non-governmental organisation specialising in asylum matters and a *senior* judge, to have the position of chair of the refugees' committee, should serve on the committee.

15. Institution by statute of re-examination of asylum applications: It is considered necessary that, on the European juristic models, the possibility of lodging an appeal on the part of the asylum-seeker before a special judicial organ (e.g., an administrative court of first instance - an administrative appeal court) should be instituted by statute in Greece. This judicial authority (which would replace the refugees' committee above) should be competent to examine this application *in substance, as is the case in many European countries*.¹⁶ The institution of such a judicial organ, specialising in the law of asylum, would make the greatest possible contribution to the creation of a *homogeneous, stable (and publicly accessible - in contrast to what occurs today) Greek case law on asylum*, as is the case in all the countries of the European Union with a developed legislative and jurisdictional asylum framework.

16. Legal assistance of asylum-seekers at the administrative stages of the examination of asylum applications: It is considered desirable that the existence of legal assistance for asylum-seekers should

¹⁶ See in this connection Article 38, paras 1-2 of the Proposal of the European Commission, *op.cit*, Doc. 500PC0578, 03.11.2000: 1. *The member states shall take care that in all cases asylum-seekers have the right to a further appeal to a second-instance court.* 2. *If the re-examination organ is an administrative or quasi-judicial organ, the member states shall take care that the second-instance court is competent to examine the decisions as to both factual and legal issues. If the re-examination organ is a judicial organ, the member states may decide that the second-instance court must confine its examination to legal issues.*

be instituted, *from the beginning of the asylum procedure before the administrative authorities*, provided by lawyers of the bar associations of the area in which the application for asylum is lodged and by lawyers of the Athens Bar Association in Athens, where refugees are examined in accordance with Article 3, paras 3 *et seq.* of PD 61/1999.¹⁷

17. Unaccompanied juvenile refugees and asylum-seekers: This is a particularly vulnerable category of refugees / asylum-seekers as to whom the Greek Legislator should introduce specific provisions to provide for the special treatment and legal and social protection of unaccompanied juvenile refugees, as stipulated, *inter alia*, by Article 4 of the Resolution of the Council of the European Union of 26 June 1997 on unaccompanied juveniles from third countries¹⁸ and by Article 10 of the Proposal of the European Commission.¹⁹ The only relevant provision in the Greek asylum legislation is that of Article 1, para. 4 of PD 61/1999 and this is defective since it provides simply for the appointment of the Prosecutor of Juveniles as Special Temporary Guardian of a juvenile asylum-seeker until such time as a final judgment is given on the relevant application for asylum. The serious lack of state infrastructure for the reception and care of unaccompanied children seeking asylum (whose numbers increased in 2000) in Greece has also been noted by the High Commission.²⁰ It is desirable that there should be a new, detailed, integrated legislative regulation of this matter, on the basis of the above positions of the competent organs of the European Union, for the provision of full, effective protection to juvenile asylum-seekers and refugees.²¹

18. Social support of refugees and asylum-seekers: According to the High Commission, "*a significant number of refugees [in Greece] live*

¹⁷ See also in this connection Report of the 1st and 3rd Sub-commissions to the Plenum of the NCHR, 08.06.2001.

¹⁸ *OJC* 221, 19.07.1997, pp. 23-27.

¹⁹ *Op. cit.*, Doc 500PC0578, 03.11.2000. See also in this connection special paras. 213-219 of the *Handbook of the UN High Commission for Refugees on the Procedure and Criteria for the Determination of the Status of Refugees*, Geneva 1979.

²⁰ See *Report 2000, op. cit.*, p. 15.

²¹ See also European Union, *Annual Report on Human Rights - 2000*, Doc. 11317/00, DG E IV, p. 20.

*near or below the poverty line ... The needs of refugees without shelter are met by ... charitable non-governmental organisations ... The authorities invoke lack of resources to explain this state of affairs. It is clear, however, that they hesitate to adopt measures in this connection in the fear that an improvement in living conditions of refugees will prove an attraction for more asylum-seekers. Because of the harsh living conditions which refugees have to face in Greece, large numbers attempt to reach other states in Western Europe in the hope of finding a more favourable environment".*²²

Article 23 of the UN Convention on the Status of Refugees 1951/1967 imposes in the contracting states the obligation of according to refugees on their territory the same treatment as that accorded to the subjects of these countries in terms of the welfare and assistance provided by the State.²³

In Greece, the State has never granted financial assistance to refugees without means, contrary to the above provision (of augmented formal force in accordance with Article 28, para. 1 of the Constitution). It is considered desirable also that asylum-seekers and refugees should enjoy *on a permanent basis* the protection stipulated by Article 18 of Law 2646/1998 (OJHR A' 236), which concerns the taking of special measures of protection for vulnerable groups of the population and of groups which have emergency needs. Sub-para. (b) of the above 'programmatic' provision provides for the inclusion of refugees and asylum-seekers in the above groups and their provision with financial, social and other support.²⁴

19. Education in and teaching of the language to juvenile and adult refugees and asylum-seekers: The under-age children of refugees and asylum-seekers have direct access to primary and secondary education in Greece. This is one of the basic rights of the child in

²² See *Report 2000, op. cit.*, pp. 10-11.

²³ See also para. 5 of the Draft Findings of the Council of the European Union on the conditions of reception of asylum-seekers, 04.10.2000, *op. cit.*

²⁴ The special issue of the social support of refugees and asylum-seekers in Greece is being examined by the 2nd and 3rd Sub-commissions of the NCHR, which are jointly responsible.

accordance with modern international human rights law.²⁵ In most (if not all) cases of refugees and asylum-seekers, they do not know the Greek language. For this reason, a special legislative provision on the support by the Ministry of Education of special Greek language teaching groups for the under-age children of refugees and asylum-seekers is called for. It would also be desirable for there to be legislative provision for the teaching of Greek to adult refugees in the interests of assisting their adjustment and creative integration into Greece as their country of reception and protection.²⁶

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²⁵ See Article 28 of the International Convention on the Rights of the Child, UNO, 1989, Law 2101/1992, OJHR A' 192 and para. 9 of the Draft Findings of the Council of the European Union on the conditions of reception of asylum-seekers, 04.10.2000, *op. cit.*

²⁶ See in this connection Para. 4 of the Preamble to the Decision of the Council of the European Union on the setting up of the European Refugees' Fund, *OJ L 252/12*, 06.10.2000.