

HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

Neofytou Vamva 6 (3rd floor), GR 106 74 Athens, Greece, Tel: +30 210 7233221-2;
fax: +30 210 7233217; e-mail: info@nchr.gr, website: www.nchr.gr

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| <p>Observations regarding Asylum Procedure and Implementation of the Relevant Legislation</p> |
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The NCHR, closely following the developments regarding the interpretation and implementation of the legislation regulating asylum and taking into account studies of the Greek Ombudsman, the Greek Council for Refugees and the United Nations High Commission for Refugees proceeded to the following observations:

1) Pending applications: in 2006 the overall percentage of granting refugee status and subsidiary protection was 1,22%. Until September 2007, 20,052 asylum applications had been filed. So far asylum has been granted in 23 cases, whereas humanitarian status in 59 cases. It is noteworthy that in 2006 out of the 3,248 decisions concerning applicants from Iraq, Sudan, Afghanistan, Somalia and Sri Lanka subsidiary protection was granted only in 20 cases. Furthermore, during the first trimester of 2007 out of the 1,915 decisions regarding applicants from the abovementioned countries no one was granted asylum status or subsidiary protection. As a consequence of those low numbers almost 21,000 applications are pending, in second instance, before the Asylum Committee which meets twice a week and examines almost 150 applications per session.

The NCHR recommended: a) granting asylum at the first instance in more cases if the minimum requirements are fulfilled; b) the modification of the composition of the Asylum Committee (from six members to three) and its daily sitting until all 21,000 applications are examined.

2) Interpreters: Whereas the law provides that in all procedural stages asylum seekers are to be assisted by interpreters, it has been noted that the number of interpreters is not sufficient so as to cover all the needs of asylum seekers. The Ministry of Public Order published a pamphlet in 5 languages with instructions for asylum seekers. However, this is not sufficient since a lot of asylum seekers are illiterate or speak dialects and they need oral clarifications. The NCHR considers the problem of interpreters to be fundamental and the Ministry needs to take the necessary measures to resolve it.

3) Access to asylum procedures: The NCHR would like to draw the competent authorities' attention to the following practices: a) There have been allegations concerning refoulement at the entrance points of Evros and Northern Aegean and rejection of registering asylum applications by police authorities; b) Delays in receiving applications at the entrance points invoking the implementation of Re-admission Protocol concluded by Greece and Turkey; c) Third countries nationals who apply for asylum are detained for three months, whereas those who do not are released after ten days. This practice raises legality issues when the grounds for detention are not defined given that deportation is suspended pending examination of the asylum application; d) Several asylum applicants withdrew their applications so as to fall under the provisions of Law 3386/05 and acquire residence permits as immigrants. When they realized that they do not fulfill the requirements they requested to make use of asylum procedures. The Ministry has not resolved this issue comprehensively and examines the applications on a case-by-case basis.

4) Asylum Procedure: a) The Asylum Department of the Aliens Directorate while examining asylum applications applies the accelerated procedure. On the contrary, the normal procedure is applied at the entrance points, despite the opposite provision of presidential decree 61/1999. This practice combined with detention of asylum applicants constitutes a deterrent mechanism for applying for asylum. b) The decisions of the Ministry of Public Order rejecting asylum applications

both at first and second instance do not contain facts and the reasoning is not sufficiently detailed. This practice is in violation of the Code of Administrative Procedure and **Conseil d'Etat's** jurisprudence which requires full registered evaluation of each case and transcripts of the hearing before the Committee. c) In the context of accelerated procedure it is not examined whether the applicants fall under the status of subsidiary protection. As far as normal procedure is concerned, the Ministry does not examine the fulfillment of the conditions for subsidiary protection at the first instance. It does so following recommendation of the Committee only after the application for asylum has been rejected at the second instance. Moreover, since 2002 no autonomous applications for subsidiary protection, after rejecting the asylum application, has been examined. d) Regarding non-state actors of persecution, Greece has adopted the non-prevailing view according to which State's participation in persecution is required. This position entails rejecting asylum applications when an individual risks persecution by non-state actors and the State is unable to provide protection. It needs to be noted that the Conseil d'Etat has held that persecution by non-state actors constitutes persecution for the Refugee Convention purposes. The review of the case files at second instance has demonstrated that in some cases non-state actors of persecution were recognized as such. However, in all those cases the representative of the Ministry in the Committee recommended granting humanitarian status arguing that the allegations of the applicant concerning his persecution do not establish refugee status. e) There have been allegations concerning omissions while notifying the applicants in relation to the rejection of their application, such as the absence of interpreter or non-notification regarding the possibility and the deadline to appeal. f) The applications of unaccompanied minors are rarely examined by the Committee. This is due to the long duration of the procedure resulting in the fact that in the meantime the applicants become adults and, therefore their application is rejected. Furthermore, due to the fact that their detention is not permitted, they are released or

referred to NGOs without keeping track of them. The establishment of a special Social Service the director of which would be responsible for the judicial protection of minors never came into force. This situation results in their becoming 'prayer' for human traffickers. The NCHR recommends to the Ministry to issue clarifying orders to those officials dealing with asylum issues re-iterating the provisions they need to rigorously implement.

5) Aliens' detention centres: The detention conditions are appalling. The Ministry is about to create new detention centres and hire specialized personnel. However, the creation of new units will not resolve the problem given that the number of persons detained is constantly rising. The NCHR recommends the general study and re-consideration of asylum practices in a comprehensive manner and considers that the mentality surrounding asylum issues needs to be revisited.

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