

HELLENIC REPUBLIC
NATIONAL COMMISSION FOR HUMAN RIGHTS

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**Observations on the draft law of the Ministry for Migration Policy
“Transposition into Greek legislation of Directive 2013/33/EU of the European
Parliament and of the Council of 26 June 2013 laying down standards for the
reception of applicants for international protection (recast, L180/96/29.6.2013)
and other provisions, Amendment of Law 4251/2014 (Α΄ 80) regarding the
transposition into Greek legislation of Directive 2014/66/EU of the European
Parliament and of the Council of 15 May 2014 on the conditions of entry and
residence of third-country nationals in the framework of an intra-corporate
transfer, Amendment of asylum procedures and other provisions”**

[Excerpts]

May 7th 2018

The Greek National Commission for Human Rights (GNCHR) is the independent advisory body to the Greek State on matters pertaining to human rights protection. It was established by Law 2667/1998 and is functioning in accordance with the UN Paris Principles. Thirty-two institutions whose activities cover the field of human rights are currently represented in the GNCHR (independent authorities, departments of university-level educational institutions, trade unions, NGOs, political parties and ministries).

Observations on the draft law of the Ministry for Migration Policy “Transposition into Greek legislation of Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection (recast, L180/96/29.6.2013) and other provisions, Amendment of Law 4251/2014 (A’ 80) regarding the transposition into Greek legislation of Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, Amendment of asylum procedures and other provisions”*

[Excerpts]

Hearing of institutions of 20 February 2018: identifying problems in procedures of international protection and in the social integration of beneficiaries of international protection

The Greek National Commission for Human Rights (GNCHR), within its competence and aiming at the constant observation of the issues arising from the procedures of granting international protection, held anew, on 20 February 2018, a hearing of institutions and persons relating to issues of international protection procedures with subject: “Problems of applicants for international protection – refugees – migrants. Emphasis will be laid on problems met during procedures of international protection in the first and second instance, on the social integration of recognised refugees and beneficiaries of subsidiary protection and on employment problems of refugees”¹. It should be noted that, concerning issues of applicants

* This statement was adopted by the GNCHR’s Plenary on 26.4.2018. Rapporteurs: Spyridon Apergis and Eleni Spathana, GNCHR Members designated by SYRIZA, Alexandros Konstantinou and Vasilis Papadopoulos, GNCHR Members designated by the Greek Council for Refugees, Vasilios Chronopoulos, GNCHR Member designated by PASOK and Ioannis Lymveos, GNCHR Member, designated by the Greek National Confederation of Persons with Disabilities (GNCPD).

¹ During the hearing of persons and institutions, with discussion topic “Problems of applicants for international protection-refugees-migrants”, which was held, under joint meeting of the 2nd and 3rd Sub-Commissions of the GNCHR (the Sub-Commission for Social, Economic and Cultural Rights and the Sub-Commission for the Application of Human Rights to Aliens), at the GNCHR premises, on 20 February 2018, the following persons and institutions were invited: representatives of the Hellenic Ministry of Labour, Social Insurance and Social Solidarity-Minister’s Office, of the Ministry for Migration Policy-Minister’s Office, of the Ministry of Health-Minister’s Office, of the Ministry of Finance-Minister’s Office, the Director of the Unified Social Security Institution (EFKA), the Special Secretary of the Labour Inspectorate (SEPE), the Director of the Manpower Employment Organization, as well as representatives of the Asylum Service, the Appeals Authority, the Judicial

for international protection, as well as concerning the EU–Turkey Joint Statement, the GNCHR issued a recent statement², while it has also submitted proposals³. The institutions that participated contributed their knowledge and experience, as well as pointed out several problems, such as follows:

1. According to the United Nations High Commissioner for Refugees (UNHCR), the international protection procedures for recognition of the refugee status constitute legal obligations of the States and not a matter of policy. Following the large influx in Europe in 2015 and the implementation of the EU–Turkey Joint Statement, the Common European Asylum System has been tested on the whole and new practices and procedures which are implemented for the first time in Greece will determine to a significant extent the future of asylum procedures and the protection of refugees in Europe. UNHCR expresses its concerns about the priority of the promptness of the international protection procedure, which must be combined with the respect of the necessary procedural guarantees, otherwise it might lead to unfair judgments on applications for international protection.

2. There are two different procedures and, respectively, two different speeds concerning the procedure of international protection. The regular procedure of the mainland and the fast-track border procedure of Article 60(4) of Law 4375/2016 for the Eastern Aegean islands, from which the latter is in compliance with the provisions of the EU Turkey Joint Statement, resulting in the applicants being assessed under different procedures, guarantees and deadlines. As far as the fast-track border procedure is concerned, no protocol number is provided for the documents supplied by the applicants for international protection, the decisions of the Asylum Service concerning Syrians do not take into consideration the legal and factual situation of each case but are rather identical rejection decisions, while the lists of FRONTEX for permitting readmission to Turkey are non-accessible to any third party. Especially in the island of Lesbos, some low-quality decisions have been noticed concerning

Officers of the Independent Appeals Committees and the designated members by the UNHCR in the Independent Appeals Committees, of the United Nations High Commissioner for Refugees in Greece and of the Racist Violence Recording Network (RVRN). In particular, the following civil society organisations were invited representing the RVRN: "AITIMA" NGO, ARSIS – Association for the Social Support of Youth, Doctors of the World, Amnesty International, Network for Children's Rights, Hellenic Action for Human Rights – Pleiades, Hellenic League for Human Rights, Greek Council for Refugees, Greek Forum of Migrants, Greek Forum of Refugees, Support Center for Repatriates and Migrants – Ecumenic Refugee Program (KSPM-ERP), METAdrasi – Action for Migration & Development, United Afghan's community, Greek Transgendered Support Association, Colour Youth - Athens LGBTQ Youth Community, Generation 2.0 RED, Melissa Network, PRAKSIS, Solidarity Now, Refugee Support Aegean.

² See GNCHR, *Report on the Condition of Reception and Asylum System in Greece*, 22.12.2017, available at: http://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/Dilosi_EEDA_Asylo.pdf.

³ GNCHR, *Report on the Living Conditions of Refugees and Migrants in Reception Centers*, December 2016, available [in Greek] at: http://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/Dilosi_EEDA_Asylo.pdf and *Report on the EU-Turkey Agreement of the 18th of March 2016 regarding the refugee/migration issue in Europe in light of Greek Law No. 4375/2016*, 25.4.2016, available at: http://www.nchr.gr/images/pdf/EKTHESI_PROSFYGIKO.pdf.

transgender applicants for international protection because of presumptive prejudice and ignorance on the matter. Lastly, the interviews conducted by European Asylum Support Office (EASO) staff members often include closed-ended questions, to which the applicants' answers in one word, while incidents of ignoring applicants' allegations which necessitate medical and psychosocial evaluation for vulnerability have been noticed. Lastly, the decisions are delivered by Greek employees who have not heard the applicants in person, since the interview has been carried out, quite often, by an EASO staff member.

3. A reduction of the Asylum Service staff in the mainland and long delays in issuing judgments in the mainland are also observed. Appointments for the interviews of the applicants for international protection are made from one to two years away from the date their request was registered. Issues of quality of the first instance decisions have been raised. The Asylum Service has mentioned that there were 40.300 applications for international protection in the first instance pending for examination or delivering decision until 31 March 2018.

4. The geographical restriction on the Eastern Aegean islands causes serious problems concerning the provided services and the reception centers, which are seriously degraded while people's access to key services and amenities is not ensured. According to the UNHCR, the measure of geographical restriction must be revised in a way that its implementation does not result in disproportionately arduous conditions for the migrants and refugees, which are in violation of fundamental rights of the applicants for international protection. On the other hand, the Asylum Service considers that the geographical restriction is in full compliance with the European law and, in particular, with Article 7(1) of Directive 2013/33/EU, which provides the possibility for the Member State to adopt a legislative act concerning the limitation of free movement, without setting any other prerequisites. Nevertheless, the relevant administrative act of the Asylum Service (No 10464/31.5.2017) was annulled by the Council of State, by judgment No 805/2018, following the submission of an appeal. It should be noted that, at the time of drafting the present GNCHR report, the Asylum Service issued, within its competence, its decision No 8269/20.4.2018, which reintroduces the measure of geographical restriction with specific reference to the aforesaid ruling of the Council of State.

5. The vulnerability of the applicants for international protection has turned into a tool for the political handling of migrant flows. In particular, according to the recently adopted classification for the assessment of the vulnerability of the applicants for international protection in the Eastern Aegean islands, asylum seekers are registered into two distinct categories: "medium" vulnerability, which, in practice and without relying on any scientific or other criteria, does not lead to vulnerability under law and "high" vulnerability, which leads to vulnerability under law. Besides, there are serious deficiencies and long delays in identifying and recognising vulnerable persons on the Eastern Aegean islands. It has been noticed that

different assessments have been made by the Reception and Identification Service and by the Asylum Service. The computer systems of the Reception and Identification Service and the ones of the Asylum Service are not inter-connected to each other, thereby resulting in omissions and problems in the procedure of the timely identification and recognition of vulnerable persons, who are often recognised when the case is pending in the second instance. Unfortunately, there have been incidents of refugees' deaths in the Reception and Identification Centers of Eastern Aegean, while it is not known whether any official or legal actions have been taken in order to establish potential liability for these deaths. It should be noted that vulnerable applicants for international protection are exempt from the fast-track border procedure of examining applications for international protection and proceed to the mainland, where their request is examined under the regular procedure. According to statistics of the Ministry for Migration Policy, almost 27.500 applicants for international protection were transferred from the Eastern Aegean islands to the mainland in 2017, as they were classified as vulnerable. However, it is noted that the number of recorded aliens who have entered into the Eastern Aegean islands amounted to 27.944 in 2016, after the implementation of the Agreement, and to 29.718 in 2017, while it is estimated that 6.745 aliens have entered the Country until 12 April 2018⁴.

6. It is observed that access to electronic registration of international protection applications in the mainland through Skype is extremely difficult, especially in Athens and Thessaloniki, a fact which impedes international protection applications' registration. As a result, asylum seekers are exposed to the risk of arrest on the grounds of illegal residence and are denied access to the rights of applicants for international protection.

7. Delays occur in unaccompanied minors' registration as well. As a result, they remain homeless and exposed to risks. The subsequent failure of finding appropriate accommodation results in them remaining in detention, a fact which is not in compliance with both national and international human rights standards. According to the Ministry for Migration Policy, there were 300 places available in accommodation structures while, at the present time (20.2.2018), there are 2.100 places available in accommodation structures and hotels. At the same time, the number of unaccompanied minors in detention amounts to 44 instead of 149 in June 2017, while there is a large number of unaccompanied minors whose whereabouts are unknown.

⁴ See UNCHR Statistics, available at: <http://data2.unhcr.org/en/situations/mediterranean/location/5179> , 15 April 2018.

8. Serious delays in family reunification of refugees with their families in Member States of the EU have been noticed. Serious concerns are raised by the fact that the required documents need to be translated, which the services or the aliens themselves fail to do.

9. It is also observed that the number of applicants for international protection in the 8 detention centers of the mainland has increased, with relevant reports by the Asylum Service recommending the detention, contrary to the legislation, which provides for the detention of applicants for international protection, only as a derogatory measure imposed for specific justified reasons. At the same time, the Reception and Identification Centers have practically turned into detention centers after the EU-Turkey Joint Statement.

10. During the second instance procedures of examination of the applications for international protection, long delays in delivering decisions have also been observed, as well as the existence of quality issues of the decisions. There are no documents on vulnerability, nor documents regarding unaccompanied minors in the administrative files of the applicants to support their claims. Hearings of the applicants are rarely being held. The members of the Appeals Committees do not have direct access to the electronic database “Alkioni”, where documents concerning procedures of international protection are displayed, but only through the secretaries of the Committees, nor can they access the respective electronic database of the Reception and Identification Service. At the same time, no computers are provided for the members of the Committees, therefore almost all members work on their personal computers. The workload is extremely heavy and there is a lot of pressure for delivering decisions. It is also observed that the decisions of age determination of the applicants for international protection issued by the Reception and Identification Service in the Eastern Aegean islands are not served to the applicants, leading to the deprivation of their statutory right to submit an administrative appeal. Besides, although there are decisions of the Committees ordering, within the Committees’ competence, either the police force or the Reception and Identification Service to proceed to official acts, those acts are delayed or never even implemented, increasing, thus, the delay in delivering decisions. The Appeals Authority mentions that, since its establishment (21.7.2016) and until 31.3.2018, 18.336 applications have been lodged, 12.819 have been heard and the proceedings have been concluded with the adoption of a decision in 9.237 cases. At the same time, there is a fixed date for 5.386 applications to be heard before the Independent Appeals Committees. Lastly, there is a backlog of almost 3.000 cases from the previous Appeals Committees (before April 2016), which have not been examined since then, as there is yet no legislation regarding the jurisdiction over their examination. There are difficulties in ensuring the adequate staffing of the Appeals Authority, as well as its adequate and timely financial assistance by the Ministry for Migration Policy. Lastly, statistics of the Appeals Authority are not publicly displayed, as

occurs in the case of the Asylum Service. They are, however, available, if requested, and it is shortly expected that they will be displayed on the website of the Asylum Service.