



HELLENIC REPUBLIC
GREEK NATIONAL COMMISSION FOR HUMAN RIGHTS

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GNCHR REPORT
ON THE CONDITION OF RECEPTION
AND ASYLUM SYSTEM IN GREECE

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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. Its 32 members are nominated by institutions whose activities cover the field of human rights (NGOs, trade unions, independent authorities, universities, bar associations, political parties, Parliament and the Administration).

**Report of the Greek National Commission for Human Rights (GNCHR)
on the condition of reception and asylum system in Greece***

The Greek National Commission for Human Rights, an independent advisory body to the State as regards issues relating to the protection of Human Rights, in accordance with the powers conferred to it by its founding law, has a mandate to monitor human rights issues, to promote public information and to develop initiatives to raise public awareness, to examine the compliance of Greek legislation with the provisions of international law relating to the protection of human rights by submitting advisory opinions to the competent organs of the State. Furthermore, in accordance with the Belgrade Declaration of 25 November 2015, National Human Rights Institutions committed to condemn and publicly oppose any violation of the rights of immigrants and refugees.¹

The National Commission for Human Rights follows with increased concern the increasing number of reports regarding the further exacerbation of the problems faced by refugees and immigrants in Greece and particularly in the East Aegean islands: utterly inappropriate living conditions, failure in identifying vulnerable persons, significant deterioration of the mental health of people seeking international protection, considerable frequency of incidents of sexual abuse.² It has also been reported that *“the recent increase of arrivals of men, women and children has increased the pressure placed on the already overcrowded reception and identification centres, also known as hotspot... The situation is highly crucial in Samos and in Lesvos, where more than 8.300 asylum seekers and immigrants live in hotspots for only 3000 people ... The third winter since the beginning of the mass arrivals on the Greek islands, is coming and it is obvious that the Greek authorities cannot meet basic needs and protect asylum seekers for as long as they remain on the Greek islands.”*³ It should be highlighted that all reception and protection mechanisms in the country are under a significant amount of pressure, as numerous asylum seekers are trapped in Greece and particularly on the islands of the Eastern Aegean as a result of the Joint Statement by EU and Turkey, to which the GNCHR has repeatedly expressed its objections.⁴ Consistent with its standing position, the GNCHR follows with particular interest the transfer of 5000 asylum seekers from the East Aegean islands

* Adopted by the GNCHR Plenary at its session of 21 December 2017.

¹ Ombudsman/National Human Rights Institutions Declaration on the Protection and Promotion of the Rights of Refugees and Migrants: “5. Condemn and oppose publicly the violation of migrants’ or refugees’ rights and encourage the spirit of tolerance and compassion for refugees and migrants, including ensuring their protection in reception centers and other accommodation facilities”; http://www.nchr.gr/images/pdf/nea_epikairothta/belgrade_declaration_en.pdf

² Doctors without Borders, Mental health emergency on Samos and Lesvos, October 2017, available at https://msf.gr/sites/default/files/msfpublications//2017_10_mental_health_greece_report_lowres_spreads.pdf

³ Report of 19 organizations, ActionAid, AdvocatesAbroad, AmnestyInternational, Care, DanishRefugeeCouncil, InternationalFederationforHumanRights (FIDH), Greek Council for Refugees, Greek Forum of Refugees, Greek Helsinki Monitor, Hellenic League for Human Rights, HumanRightsWatch, InternationalRescueCommittee, JesuitRefugeeCouncil, LesbosLegalCenter, NorwegianRefugeeCouncil, Oxfam, Praksis, SolidarityNow, entitled: “Greece: in harsh conditions those seeking asylum in the islands”, available at: https://www.amnesty.gr/news/press/article/21019/_ellada-se-athlies-synthikes-oi-aitoyntes-asylo-sta-nisia (23 October 2017). These remarks seem to have been confirmed by the Minister for Migration Policy, http://www.immigration.gov.gr/article-details/-/journal_content/56_INSTANCE_qAPKlk32D3aH/20182/50333?back=press-releases (7 December 2017).

⁴ National Commission for Human Rights, Report on the EU-Turkey agreement of the 18th March 2016 regarding the refugee/migration issue in Europe in light of Greek Law No. 4375/2016, http://www.nchr.gr/images/English_Site/PROSFYGES/GNCHR%20Report%20EU-Turkey%20Agreement.pdf (25 April 2016).

in the beginning of December 2017⁵ and simultaneously points out the need to re-examine the policy of geographical limitation on the East Aegean islands, which on many occasions takes place without the appropriate rule of law guarantees.

The GNCHR closely follows issues pertaining to international protection in Greece and has published throughout the last years a series of Decisions and Recommendations. The GNCHR, having examined the overall course of the system providing protection to refugee and migrant populations in Greece, considers two aspects of significant importance, as highlighted in the recent judgments of the plenary session of the Council of State (no. 2347/2017 and no. 2348/2017), which should be carefully reviewed by all Greek authorities.

1. The notion of a “safe third country” before the courts

The GNCHR in its “Report on the EU-Turkey Agreement of the 18th March 2016 regarding the refugee/migration issue in Europe in light of Greek Law No. 4375/2016” dated 25 April 2016, underlined that “*Possible characterization of Turkey as safe third country also collides with the Turkish geographical limitation to the ratification of the 1951 Geneva Convention (under which Turkey grants asylum only to people coming from Europe), as well as the European acquis and in particular Article 38 of Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection*”.⁶ Along the same lines, the United Nations High Commissioner for Refugees – UNHCR considered that the inclusion of a geographical limitation to the ratification of the Geneva Convention is incompatible with the characterization of Turkey as a safe third country⁷.

On 22 September 2017, the Council of State published judgments no. 2347/2017 and 2348/2017 decided on a plenary session: they rejected two petitions for judicial review (annulment) by Syrian nationals, who requested the annulment of regulatory and individual administrative acts rejecting their applications for international protection without an examination on the merits, as the competent administrative authorities recognised that Turkey fulfils the requirements of a “safe third country” under article 56 of the Law 4375/2016 (article 38 of the Directive 2013/32/EU). These cases were referred “due to the importance of the issue concerned” to the plenary session of the Council of State by decisions no. 445/2017 and 447/2017 of Section D.

According to article 56(1) of the Law 4375/2016, which corresponds to article 38 of the Directive 2013/32/EU, “*A country is considered as a safe third country for a person seeking international protection, when the following criteria are cumulatively fulfilled: a. life and liberty are not threatened on account of race, religion, nationality, membership of a particular social group or political opinion, b. this country respects the principle of non-refoulement in accordance with the Geneva Convention, c. there is no*

⁵As mentioned in the press, 1650 people were transported from Lesvos to hosting structures in Athens and the rest of Greece between the 1st and 17th of December 2017, available at: <http://www.kathimerini.gr/939737/article/epikairothta/ellada/1650-prosfiges-efygan-apo-thn-lesvo-apo-thn-arxh-toy-mhna-gia-a8hna-kai-hpeirwtikh-ellada> (18 December 2017). According to the statement of the Minister for Migration Policy “between the 16th of October and the 10th of December 5701 refugees were transported to continental Greece, 3589 of which were from Lesvos”, available at: <http://www.kathimerini.gr/939567/article/epikairothta/ellada/anamorfwnetai-h-nomo8esia-gia-to-asylo> 17 December 2017.

⁶ Ibid, 4.

⁷ UN High Commissioner for Refugees (UNHCR), *Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept*, 23 March 2016, <http://www.refworld.org/docid/56f3ee3f4.html>.

risk of serious harm as defined in article 15 of presidential decree 141/2013, d. this country prohibits removal to a country, in violation of the right to freedom from torture and cruel, inhuman or degrading treatment as laid down in international law, e. the possibility exists to request refugee status and, if found to be a refugee, to receive protection in accordance with the Geneva Convention and f. the applicant has a connection with the third country concerned, on the basis of which it would be reasonable for him to go to that country".

By a narrow majority, the Court (13 votes to 12) rejected the applicants' request for a preliminary ruling by the Court of Justice of the European Union regarding the interpretation of article 38 of the Directive 2013/32/EU, including the issue of the characterization as a "safe third country" of a country that has ratified the Geneva Convention with a geographical limitation (par. 63) and proceeded to the interpretation of the provision concerned.

According to the opinion of the majority of the Court, for the fulfilment of the criterion no. e. of the aforementioned article "*it is not necessary for the third country to have ratified the Geneva Convention (and even more so without a geographical limitation) or to implement through its legislation a system of protection of aliens, which establishes not only the principle of non-refoulement, but also other rights provided for in the aforementioned Convention*" (par. 54). It is worth-mentioning in this point, that the Vice-President and a Councillor of the Council of State delivered a dissenting opinion, according to which Turkey cannot be considered as fulfilling the aforementioned criterion inasmuch as, among others, the Turkish legislation does not provide the right to aliens of Syrian nationality to request refugee status due to the geographical limitation, under which the Republic of Turkey signed the Geneva Convention and, furthermore, temporary protection status cannot be considered to constitute "protection in accordance with the Geneva Convention" as it is collective, non-individualized and revocable at any instance by a decree of the Council of Ministers, and this legal status does not recognize to its holders all the rights and benefits provided for in the Geneva Convention (par. 60). In addition, the majority ruled that "*a third country can be characterized as safe, concerning the satisfaction of criterion no. e of article 38 paragraph 1 of the Directive 2013/32/EU (56 paragraph 1(e) of the Law 4375/2016), as long as it offers 'adequate' protection of certain fundamental rights of refugees like, among others, the right to access to healthcare and the labour market*" (par. 54 *in fine*). It should be noted that, despite the fact that the obligation to protect human rights must be fulfilled effectively in practice and not in theory,⁸ as well as the fact that domestic legislation is not in principle capable of ensuring adequate protection, as long as its effective application is

⁸ UN High Commissioner for Refugees (UNHCR), *Legal considerations on the return of asylum-seekers and refugees from Greece to Turkey as part of the EU-Turkey Cooperation in Tackling the Migration Crisis under the safe third country and first country of asylum concept*, 23 March 2016, <http://www.refworld.org/docid/56f3ee3f4.html>.

not secured,⁹ the Court did not consider e.g. the fact that the exercise of the right to work of Syrian refugees who live in Turkey seems to be completely inadequate, because, according to credible statistical data,¹⁰ the percentage of Syrians who have acquired a work permit is extremely low.

Moreover, the new situation in Turkey, especially after the failed coup attempt of July 2016 and its impact on the respect for fundamental human rights, is not taken into consideration by the decisions of the plenary session of the Council of State. It should be recalled that, in the aftermath of the coup, the Turkish government declared Turkey in a state of emergency, which has been repeatedly extended and remains in force until today;¹¹ and, on that basis, it started to legislate by urgent legislative decrees. As Mr. Nils Muižnieks, Commissioner for Human Rights of the Council of Europe, observes, these legislative decrees have granted almost unlimited powers to administrative authorities and the executive by derogation from general principles of rule of law and human rights safeguards ordinarily applicable in a democratic society.¹² According to the Council of Europe European Commission for Democracy through law (Venice Commission), the Turkish Government interpreted its extraordinary powers too extensively and took measures that went beyond what is permitted both by the Turkish Constitution and by international law.¹³ Throughout the state of emergency, guarantees of independence and impartiality of the Courts of the country were seriously undermined, as members of the judiciary “are under strong political pressure”, with apparent consequences to the right to effective judicial protection under the rule of law.¹⁴ In this direction it should be underlined that, following settled case law, the Supreme Court of Greece has found that Turkey does not uphold fundamental guarantees of rule of law, including respect for articles 3 and 6 of the ECHR, and it has rejected claims requesting the extradition of Turkish citizens to Turkey. The GNCHR welcomed

⁹ <http://www.asylumineurope.org/reports/country/greece>, page 79

¹⁰ UNHCR Representation in Greece, GREAT/HCR/973, 23 December 2016, <http://www.statewatch.org/news/2017/jan/unhcr-letter-access-syrians-returned-turkey-to-greece-23-12-16.pdf>, where it is mentioned that of the 2.7 million Syrian Refugees who live in Turkey only 10.000 have acquired a work permit (December 2016)

¹¹ European Commission for Democracy through Law (Venice Commission), Opinion No. 888/2017, *Opinion on the Provision of the Emergency Decree Law No 674 of 1 September 2016 which concern the exercise of local democracy in Turkey*, adopted by the Venice Commission at its 112th Plenary Session (Venice, 6-7 October 2017), 9 October 2017, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2017\)021-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2017)021-e).

¹² Council of Europe, Commissioner for Human Rights, *Memorandum on the human rights implications of the measures taken under the state of emergency in Turkey*, CommDH(2016) 35/07 October 2016, <https://rm.coe.int/16806db6f1>, § 11.

¹³ European Commission for Democracy through Law (Venice Commission), Opinion No. 865/2016, *Opinion on Emergency Decree Laws nos. 667-676 adopted following the failed coup of 15 July 2016*, adopted by the Venice Commission at its 109th Plenary Session (Venice, 9-10 December 2016), 12 December 2016, [http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD\(2016\)037-e](http://www.venice.coe.int/webforms/documents/default.aspx?pdffile=CDL-AD(2016)037-e), §226.

¹⁴ European Commission, *Turkey 2016*, Report annexed to the Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on *EU Enlargement Policy*, COM(2016), 715 final, 9.11.2016, SWD(2016) 366final, https://ec.europa.eu/neighbourhood-enlargement/sites/near/files/pdf/key_documents/2016/20161109_report_turkey.pdf.

the position of Greek Justice: “[...] According to the decisions of three formations of the Supreme Court, the possibility of annulment or constraint of the rights of all the requested persons, regardless of the degree of guilt or gravity of criminal offences, does not permit the implementation of provisions regulating their extradition, as they recede over the most overriding rules which protect human rights. Human value and dignity as protected under the principle of fair trial and the prohibition of torture pertain to the core of our legal culture, and that constitutes a non-negotiable principle of all European and international texts protecting human rights. The GNCHR emphasizes the significance of the aforementioned texts with regard to this unfavourable situation, which entails international features and during which the domination of threats, fear, uncertainty, and decline of fundamental values and rules protecting human rights is pursued [...]”.¹⁵

It is true that the Court’s judgment is limited to the factual and legal circumstances with regard to the specific applicants and does not prejudice any decision concerning the same criteria, including a ruling regarding Turkey as a safe third country, in other cases which will be adjudicated before the competent courts. The GNCHR draws the attention of all national judicial authorities to the important findings of Mr. Tomáš Boček, Special Representative of the Secretary General of the Council of Europe on migration and refugees, following his mission to Turkey before the attempted coup had taken place,¹⁶ during which he ascertained the systematic restriction of access of Syrian refugees even to the status of temporary protection,¹⁷ restriction of access of the UNHCR and NGOs to detention centres,¹⁸ the practice of de facto and arbitrary detention of Syrian refugees who are returned from Greece within the framework of the readmission process¹⁹ and expressed his concern regarding the compliance of the Turkish authorities with the principle of non-refoulement.²⁰ The GNCHR also underlines that, according to the constant case law of the European Court of Human Rights, even when national Authorities provide diplomatic guarantees, it is to be examined whether such assurances provide effective protection in practice²¹ on the basis of reliable information, acquired also *proprio motu*.²²

II. Issues relating to the enactment and establishment of the Independent Recourse Committee

¹⁵ NCHR, *Statement regarding the decisions of Areios Pagos (Supreme Civil and Penal Court of Greece) on the eight Turkish military officers*, 30 January 2017, http://www.nchr.gr/images/pdf/apofaseis/dikaih_dikh/AP_8.pdf

¹⁶ Council of the Europe, *Report of the fact-finding mission to Turkey by Ambassador Tomáš Boček, Special Representative of the Secretary General on migration and refugees*, 30 May-4 June 2016, 10 August 2016, SG/Inf(2016)29, <http://www.refworld.org/docid/58de48524.html>.

¹⁷ Ibid, p. 7-8.

¹⁸ Ibid, p. 9.

¹⁹ Ibid, p. 27-28.

²⁰ Ibid, p. 29.

²¹ ECtHR, *Saadi v. Italy*, app. 37201/06, 28 February 2008, §147-148; *Othman (Abu Qatada) v. the United Kingdom*, app. 8139/09, 17 January 2012, §187.

²² ECtHR, *Auad v. Bulgaria*, app. 46390/10, 11 October 2011, §99.

In its public statement on 17 July 2016, the GNCHR had expressed its concern and its reflection on the then hastily introduced amendment on the change of the composition of the Independent Appeal Boards,²³ noting that the proposed changes to Law 4375/2016 coincided with the adoption of positive decisions of the operational, then, Independent Committee (as regards their decision on the admissibility), which, in the context of an individual examination of recourses, ruled that Turkey was not safe third country for the specific applicants. At the same time, the GNCHR also expressed its concerns regarding the composition of such Recourse Committees, as the provision for the participation of two administrative judges in every three member Recourse Committee raises issues of compatibility with the Constitution.

The judgments with Nos. 2347/2017 and 2348/2017 of the plenary session of the Council of State conclude that the Recourse Committees, as introduced and ultimately legislated by the submitted amendment, constitute a judicial body within the meaning of Article 86 par.2 of the Constitution; choosing not to apply its previous firm relevant jurisprudence, according to which these Committees do not constitute a judicial body, given the fact that they decide administrative recourses against administrative acts without elements similar to the performance of judicial task and exercise of competence of a judicial body, such as the publicity of the hearings and the obligation to guarantee adversarial proceedings²⁴. In the present case, issues are raised in respect of procedural guarantees as regards the publicity, the adversarial proceedings as well as the applicant's right to be heard, which is significantly limited compared to the Administration's, as his personal presence is now possible only under exceptional circumstances.²⁵

The GNCHR follows the latest information on the reform of the asylum law "on the acceleration of procedures in cases of requests to be granted international protection".²⁶ If this information is confirmed, it will be the fourth amendment to the asylum law since the implementation of the Joint EU-Turkey Declaration of 18 March 2016.²⁷ The GNCHR, in anticipation of its full and timely briefing on these proposals in order to be able to contribute in an overall and effective way to their final formation, recalls the need for strict observance of the requirements of rule of law, as outlined in the Constitution and the European Convention on Human Rights.

The GNCHR, turning back to its earlier recommendations to the Greek Government, considers that, given the current conditions, it is necessary to eliminate the entrapment of applicants for international protection in the Greek islands and support the orderly and efficient operation of the receiving and examining international protection requests framework.

In parallel, regarding the state of the accommodation conditions of applicants for international protection inland, the GNCHR recommends the following steps in order to alleviate the problems of applicants for international protection:

1. Speeding up refugee movement processes, particularly those belonging to vulnerable groups within a residential web, by strengthening apartment rental programs.

²³ NCHR, Public Statement on the amendment that changes the composition of the Independent Appeal Boards, 17 July 2016, http://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/Dimosia%20dilwsi%20EEDA.pdf

²⁴ Cf. CoS 3503/2009 (Pl.) and CoS 717/2011 (Section II), CoS 449/2012 (Section VI), CoS 629/2012 (Section IV), CoS 1770/2012 (Section VI), CoS 99/2015 (Section V).

²⁵ See. CoS 3503/2009 (Pl.) and CoS 99/2015 (Section V).

²⁶ See <http://www.kathimerini.gr/939567/article/epikairothta/ellada/anamorfwnetai-h-nomo8esia-gia-to-asylo>, 17 December 2017.

²⁷ Amendments in Act 4375/2016 (Government Gazette A' 51 / 03.04.2016), which was published a few days after the launch of the EU-Turkey Joint Declaration, introduced by Article 86 of Law 4399/2016 (Government Gazette A' 117 / 22.6.2016), Article 101 of Law 4461/2017 (Government Gazette A' 38 / 28.3.2017) and article 96 of Law 4485/2017 (Government Gazette A' 114 / 08.04.2017).

2. To ensure full and effective operation of accommodation centres, in particular through the reinforcement of medical and paramedical staff, administrative care staff (interpreters, cultural mediators, plumbers, electricians, cleaning staff and staff supporting the proper functioning of the installations), as well as police personnel for their safety.
3. To immediately upgrade the Authentication and Reception Service of the Ministry for Migration Policy with adequate staff and resources, in order for this Service to undertake as soon as possible the full command and overall administrative care of all operating accommodation centres with a corresponding disengagement of armed forces from their administration, in accordance with Law 4375/2016, which remains practically inapplicable to this point.
4. The issuance as soon as possible of the establishment and operation statutes of all Accommodation Centres.
5. The examination and implementation of alternative detention measures, when there is a lawful reason for detention, and termination of detention of unaccompanied children, families and vulnerable persons.
6. The urgent restoration of the vacancy and the substantial regulation of jurisdiction over unaccompanied minors, which is still pending since the adoption of Law 4375/2016 until today. We would like to point out that this law provided for the transfer of competence from the Ministry of Labour, Social Security and Social Solidarity to a special department of the Ministry for Migration Policy, which has not taken up this competence to date. The ambiguity regarding the competence of public bodies in such a sensitive and demanding field which deals with the protection of minors, creates serious problems and dramatic delays, both in practical day-to-day management issues (referral of children from entry points, detention facilities, escorts etc.) as well as on institutional issues, which are in absolute need of direct regulation, namely the adoption of a legislative initiative on the institution of Guardianship, the adoption of a regulatory framework for accommodating structures, the designing and planning of funding.

The GNCHR is closely following the discussions on amending the asylum and migration policy in the European Union and reiterates its concern regarding the content and the implementation of the EU-Turkey Joint Declaration of 18 March 2016. It invites the Greek and European authorities to re-examine the implementation of the EU-Turkey Joint Declaration of 18 March 2016 with the aim of replacing it with an integrated agreement between the European Union and the countries of origin as regards the reception and relocation of refugees proportionately in member states, to adopt the highest international standards for the international protection of refugees, their non-refoulement in countries, which do not provide international protection in accordance with the Geneva Convention and fair consideration of their requests for international protection, and in the meantime to pay particular attention in order to ensure that the relevant procedures do not lead to the violation of fundamental rights of refugees and migrants, as traditionally enshrined in European and international law and interpreted by international and European judicial bodies.

Athens, 22 December 2017