



**GNCHR's Observations on Draft Law of Ministry for Migration and Asylum
"Improvement of migration legislation, amendments of provisions of Laws
4636/2019, 4375/2016, 4251/2014 and other provisions"**

Summary in English

The Greek National Commission for Human Rights (GNCHR), in its dual role as an independent advisory body to the State on all matters pertaining to human rights protection and promotion and the National Human Rights Institution in Greece has the primary competence to provide its expert views on taking of legislative or other measures concerning human rights issues and/or with an impact on them. Despite the specific prior request made by the GNCHR's President to the Ministry for Migration and Asylum for a timely notification on the content of the Draft Law under preparation, the GNCHR was first informed of its specific provisions once the Draft Law opened for public consultation. Following the above, the GNCHR decided to invite the Minister, who came to the next Plenary Meeting to present the Draft Law and answer relevant questions from the GNCHR's Members.

The GNCHR would like to emphasize that the effective functioning of an independent NHRI is an indicator when evaluating the level of democracy, rule of law and respect for human rights in a State. The Council of Europe's Commissioner for Human Rights has recommended that "NHRIs enjoy adequate access to policy makers, including timely consultations on draft legislation and policy strategies with human rights implications".¹ In this respect, the earlier notification of the Draft Laws with an impact on human rights is a precondition for the effective exercise of the GNCHR's

¹ Council of Europe/Commissioner for Human Rights, Human Rights Comment: [Paris Principles at 25: Strong National Human Rights Institutions Needed More Than Ever](#), 18.12.2018

consulting and monitoring mandate. The GNCHR, fully aware of its mission, which is called upon to perform under any circumstances, decided to proceed, even at this time, in the processing of the Draft Law, drawing the State's attention to specific provisions that it considers problematic, while proposing alternatives, in line with international and European human rights law. The GNCHR notified its Observations to the Ministry for Migration and Asylum and after an invitation by the Greek Parliament, participated in a hearing before the Standing Committee on Public Administration, Public Order and Justice where it was consulted by Members of the Parliament on the proposed amendments to migration legislation.

In principle, the GNCHR stressed the non-timely introduction of amendments to L. 4636/2019 which came into force on 1.1.2020, just 4 months ago, codifying all existing asylum legislation and introducing new asylum procedures which have not yet been tested. Furthermore, it is noted that the proposed legislative changes take place while urgent measures have been taken to address Covid-19 in Greece, with an impact on the functioning of the Services, access to the asylum procedures and the reception and accommodation conditions for applicants for international protection. Last, common sense and prior administrative practice in Greece show that successive changes in the organization and operation of reception and asylum services inevitably will lead to further delays in the very procedures that the Draft Law wishes to accelerate.

On the specific provisions of the Draft Law, the GNCHR has raised mainly the following concerns:²

1) Registration of international protection claims (articles 5 and 6 of Draft Law amending articles 63 and 65 of L. 4636/2019)

With the suggested amendment, in explicitly mentioned cases, the Reception and Identification Service may proceed also with the full registration of the foreigner's asylum application, i.e. two separate “registration procedures” are merged into one. The benefits of speeding up asylum procedures from the above early registration of asylum claims are self-evident, in particular in Dublin family reunification cases. However, the GNCHR would like to emphasize that the taking over by the Reception and Identification Service of this additional competence must be accompanied by all

² For the full text of comments (in Greek) see: GNCHR, [Observations](#) on Draft Law of Ministry for Migration and Asylum “Improvement of migration legislation, amendments of provisions of Laws 4636/2019, 4375/2016, 4251/2014 and other provisions, April 2020. Relevant to the amended provisions of the Draft Law are also the GNCHR’s [Observations](#) in L. 4636/2019 (in Greek) and the GNCHR’s [Recommendations on Refugee Protection](#) (in English).

substantive and procedural guarantees applied on asylum procedures, such as the use of adequately trained staff for the registration of asylum applications, the provision of appropriate interpretation services, receiving prior information from the UNHCR or EASO and providing adequate preparation time prior to registration.

2) Interpretation (art. 7 par. 1 and 10 of Draft Law amending art. 69 and par. 12 of art. 77 of L. 4636/2019)

With the proposed amendment, *“if it is proven impossible to provide interpretation in the applicant's language of choice, interpretation services are offered in the official language of the applicant's country of origin or in a language that he is reasonably supposed to understand”*. Offering interpretation services in the “official language” of the applicant’s country of origin is an arbitrary choice, contrary to EU law provisions and factual demographic data. Article 69 incorporates Article 12 of Directive 2013/32/EU into the Greek legal system, which does not mention the “official language” as an option rather “a language understood by the applicant or reasonably supposed to understand”. Furthermore, the equation of a "language understood" by an applicant with the "official language of his/her country of origin" is a logical leap as it is based on an erroneous fact that all citizens of a state speak and understand the official language of the state satisfactorily. The Greek legislator has not taken into account the linguistic varieties in several countries and the profile of applicants for international protection, which often claim persecution due to their belonging in an ethnic, religious or linguistic minority, the members of which might not speak the official language. Last, the GNCHR would like to draw special attention to article 10 of the Draft Law which allows for the interpretation services during an interview to be offered in a language presumably understood by the applicant, whereas the text of the art. 15 par. 3c of Directive 2013/32/EU is clear on that. *“The communication shall take place in the language preferred by the applicant unless there is another language which he or she understands and in which he or she is able to communicate clearly”*.

3) E-service of decisions (art. 14 of Draft Law amending art 82 of L. 4636/2019)

With the suggested amendment *“the decision may also be sent by e-mail to an address given by the applicant to the First Reception Service or to the Asylum Service or to an address provided by his attorney or authorized counselor or representative or to an electronic app managed by the Asylum service and to which the applicant has access through an account he maintains. The decision to be served electronically to the*

applicant's e-mail address stated above shall be deemed to have been served after the lapse of forty eight (48) hours from its electronic transmission." The present Draft Law brings about a series of changes, modernizing the Administration and improving the provision of services to asylum seekers mainly, through the use of new technologies. Although several of the provisions are positively assessed, such as the replacement of the asylum card in paper by a plastic card with electronic registration and renewal, the service of administrative decisions from which stem legal consequences in an e-mail address given by the applicant or in an electronic app of the Asylum Service raises doubts as to its compatibility with the right to appropriate notification of a decision and of the reasons for that decision in fact and in law, which is one of the minimum guarantees for a fair and efficient asylum procedure (see art. 25 Preamble of Directive 2013/32 / EU) and determines decisively whether the applicant has understood the content and legal effects of the decision and may, therefore, lodge an effective remedy. Based on GNCHR's research there are a few states and few instances that apply e-service of court judgments, however the models differ and they are accompanied with extra guarantees to secure the identification of the applicant and the actual receipt of the document. Therefore, the GNCHR is of the opinion that the adoption of an option for an e-service of first and second instances decisions to applicants is premature and insecure. However, in the event that the legislator proceeds with such a choice, the law itself should provide a safety net for proof of receipt of the decision by the applicant and not arbitrarily set a time limit period after which it is presumed that he became aware (as in this case "after 48 hours").

4) Referral for humanitarian reasons (art. 60 (d) of Draft Law abolishing art. 67 of L. 4375/2019)

Article 60 (d) of the Draft Law removes the option of Independent Appeals Committees, in the event of a rejection of an application for international protection and certain conditions of Article 19A of the Migration Code are met, to refer the case to the competent Department of the Ministry for Migration and Asylum to decide on the granting or not to the foreigner of a residence permit in Greece for humanitarian reasons. This provision was beneficial both for the foreigners, who were given a referral with a set deadline to submit the relevant application to the Migration Department and did not risk a removal from the country, and the Administration, to which the cases were referred in a structured manner together with a first reasoning on the acceptance of the respective applications for humanitarian visas. It is equally important to note that this provision covered other protection gaps, for instance

regarding the stay of unaccompanied minors in Greece, whose application for international protection was rejected and, for reasons of best interests of the child, could not be returned to the countries of origin. Finally, Article 19A (c) of the Migration Code itself, although not an integral part of EU law or part of an international treaty, nevertheless harmonizes domestic law with a number of international obligations, such as those arising from Article 3 of the UN Convention against Torture or Article 3 of the ECHR. In view of the above, the GNCHR proposes that the Independent Appeals Committees retain the competence to refer cases for humanitarian reasons to the Migration Department.

5) Granting of residence permit for humanitarian reasons (art. 39 of Draft Law amending art. 19 A of L. 4251/2014)

With the suggested amendment, among others, the Legislator included discrimination based on gender as falling within the notion of “particularly exploitative working conditions” which provides a legal base for the granting of a residence permit on humanitarian reasons. At this point, the GNCHR considers it important to expand the reasons for discrimination with an explicit reference to all forms of discrimination as provided in L. 4443/16, i.e. to prohibit discrimination on the grounds of gender or identity, color, national or ethnic origin, genealogical background, religious or other beliefs, disability or chronic illness, age, marital or social status, sexual orientation. The addition will ensure the fullest possible application of the principle of equal treatment, in the light of enhancing the effectiveness of the provision and with a focus on deconstructing social prejudice and negative stereotypes in accordance with the Explanatory Memorandum to the Draft law.

6) Detention (art. 50 of Draft Law amending art. 30 of L. 3907/2011)

The proposed provisions introduce a deviation from the minimum level of protection provided by Directive 2008/115/EC on Returns, introducing amendments that undermine the rule of exceptional application of the detention measure and limit the control of the legality of administrative detention. The proposed amendment of par. 1 of article 30 of Law 3907/2011, proceeds to rephrase the relevant paragraph, attempting to reverse the rule of exceptional application of detention measures. Respectively, the amendment of the first paragraph of paragraph 3 of article 30 and paragraph 5 of article 30 of Law 3907/2011, attempts to reduce the obligation to fully control the legality of detention in a "necessity" review. At this point it should be recalled that according to EU law "the use of detention for the purposes of removal

constitutes a serious violation of the fundamental right of persons to liberty and is therefore subject to severe restrictions",³ and in particular the fact that "the Return Directive provides for a rating of the measures to be taken in order to enforce the return decision, a gradation which goes from the measure which allows the person concerned the most liberty, namely granting a period for his voluntary departure, to measures which restrict that liberty the most, namely detention in a specialised facility".⁴ At no point is the national legislator allowed to introduce an exception to these rules. In view of the above, the GNCHR suggests the withdrawal of the proposed amendments.

The GNCHR expresses its satisfaction that certain of its comments (i.e. presumption of minority, restrictions to legal aid, omission of personal interviews due to lack of interpretation services) were already taken into consideration by the legislator and the relevant problematic provisions were withdrawn.

³ European Commission, Return Handbook, p. 90.

⁴ C-61/11, Hassen El Dridi, alias Soufi Karim, Request for a preliminary ruling, Judgment of the Court (First Chamber) of 28 April 2011, par. 41