



ΣΥΝΗΓΟΡΟΣ ΤΟΥ ΠΟΛΙΤΗ
ΑΝΕΞΑΡΤΗ Η ΑΡΧΗ

Conference

«Asylum in Greece and the transposition of EU Directives»
3 July 2007

Conclusions

On 3/7/2007, UNHCR (Office for Greece) and the Greek Ombudsman organised a conference titled "Asylum in Greece and the transposition of EU Directives". Two specialised lectures were presented in this conference, namely one by the Alternate Professor of International Law of the University of Bristol, Mr. Achilles Skordas, titled "EU Asylum Directives: Problems of Interpretation and Implementation", and one by the Counsellor of State Mr. Dimitrios Gratsias, titled "Council of State: the Jurisprudence Acquis on Asylum". Interpretational guidelines on specific legal aspects of the Directives were also provided by the EU Commission, through its representative of the Asylum Department of the General Directorate of Civil Liberties, Security and Justice, Ms. Zeta Georgiadou. At the inauguration of the conference, the Secretary General of the Ministry of Public Order, Ambassador Costis Ailianos, and the heads of the co-organising agencies (UNHCR/Ombudsman) made introductory opening speeches. The conference was attended, among many others, by the President of the Greek Council of State, Mr. Panayotopoulos. The Ministry of Public Order was represented by a significant team of officials, responsible on asylum and aliens' matters, while other ministries were also represented. The open discussion was attended by a wide range of members of agencies and non-governmental organisations, as well as by judges of the Council of State. The general conclusions, as drawn from the conference, were the following:

- The national legislator who examines the transposition of EU Directives ought to take into account that the legislation under adoption must be **in conformity with the international obligations of the state, as these derive from the international and European conventions which the latter has ratified**, and particularly in the asylum field the 1951 Convention on the Status of Refugees and the European Convention for Human Rights and Fundamental Freedoms.

- EU Directives are legislative texts different from national laws. Their interpretation does not necessarily follow the interpretative rules which apply in the national legislation. They include provisions which may either pose an obligation on the state to adopt regulations with a specific content, or leave to Member States a discretionary power to adopt or not to adopt certain provisions. In the latter such case, in which the Directive's rule includes the potential of the wording "may", the application of this discretionary power must not always lead to the adoption of a lowest common denominator, as this would entail **a serious danger to violate conventional obligations** for respect of human rights. The Member State is not altogether free to decide on any content during the adoption of pertinent national legislation. It is bound by the international and European conventions and covenants which it has ratified.
- Both the **1951 Convention on the Status of Refugees** and the **European Convention on Human Rights and Fundamental Freedoms** supersede the derivative European law, according to article 28 of the Constitution. National courts, insofar as they determine a **deviation of the applicable national law**, which is set to transpose a Community law, from the provisions of international texts that are binding on Greece, are obliged to seek for a **preliminary ruling** by the Court of the European Communities. The clarification of such legal interpretational issues, already at the stage of the formulation of the law provision, through the efforts of the national legislator to **compromise binding -for the country- provisions**, is imperative not only for the clarity and precision of the regulations, but also for the economy of future administrative and judicial action.
- Even if the burdening of the asylum systems by migratory movements does not support the below-mentioned goal, the **distinction between migrants and refugees** must be constantly taken into account, by both the legislator and the administration. This distinction enables referral to different legislative frameworks, and notably, to different state obligations. Member States maintain the **right** to regulate the status of migrants, but have a **conventional obligation** to provide protection to refugees. In this context, the **institutionalization of screening mechanisms**, which will enable the identification of refugees from among mixed migratory groups and the guaranteeing of **unhindered access of asylum seekers to the asylum procedure**, gain paramount importance.
- In today's reality, the provision for the granting of **subsidiary/complementary protection**, which is granted to persons who do not fulfill the criteria of their recognition as refugees according to the 1951 Convention, has gained particular importance. The conditions for granting subsidiary protection must be clearly defined, particularly in the cases where **article 3 of the ECHR** becomes applicable, as the binding nature of this provision to contracting states is of **absolute nature**. A living example of today as to the unquestionable right to seek subsidiary protection is the case of **Iraqis**, who should be protected against any deportation or refoulement to their country, where generalized violence and mass violations of human rights prevail.

- Notwithstanding the fact that the deprivation of liberty constitutes a fundamental issue of human rights protection, the issue of **detention of asylum seekers** is not sufficiently regulated with appropriate guarantees by the European Directives. The few rules imposed by the 1951 Convention concern (a) the obligation of States to abstain from imposing the measure of detention to asylum seekers on the basis only of his/her illegal entry in the country, as applied by migration policies, and (b) the obligation of Member States to impose the measure of detention only exceptionally and to have it specifically justified. The continuous referral to those rules appears to become necessary in the case of Greece, so far as the detention of asylum seekers has become a generalized phenomenon, applied **indiscriminately** to all illegal entrants in the country.
- One of the **main guarantees of the Asylum Procedures Directive** is the obligation of Member States to grant asylum seekers the possibility for a **true and effective remedy to a judicial organ**, in cases where his/her asylum application has been rejected. The compliance with these rules and guarantees by the national law and order will be assessed in the framework of the administrative and judicial system of each Member State, **viewed as a whole**, and taking into account, inter alia, the means of effective remedy provided for by the national legislation, and the competences and the composition of involved administrative and judicial organs. In this respect, and as far as the refugee status recognition procedure in Greece is concerned, the issue of the **independence of the Appeals' Committee** from the first instance decision makers remains paramount.
- The **Council of State**, through its evolving jurisprudence, has become a primary warrantor for the protection of refugee rights in Greece. It has provided guiding comments for the interpretation of basic rules of refugee law, such as, for example, the issues of "agents of persecution" or "particular social group". It has also developed in such means the mechanism to grant a **temporary judicial protection** to cases deemed to be of serious nature, so as to enable analysers to talk about an effective protection guarantee to the majority of cases brought before the Council and benefiting from its action.
- One of the basic rights guaranteed by the Asylum Procedures Directive is the **right of asylum seekers to legal aid and representation**. Despite the fact that members states are not explicitly, and in principle, obliged to secure and provide free legal aid for administrative appeals procedures, **their refusal to provide for free legal aid** must not lead to an **impediment to effective access to a legal counselor**. Particularly in the Greek reality, and because of the increase in the numbers of asylum seekers, the problem of an **insufficient legal aid system** during the administrative stages of the asylum procedure, is still very much identified.
- As far as the **transposition process** of European directives into Greek law is concerned, the **substantial consultation** on the various drafts of the imminent Presidential Degree for adoption, with a number of agencies of the Greek society which are mobilized in refugee protection in Greece, is deemed to be of

great importance, in order for the future legislation to correspond, effectively, to the needs of the Greek asylum system, as these are documented in practice.

3.8.2007, *Kalliopi Stefanaki, Protection Officer, UNHCR Athens*