



ΚΑΜΠΑΝΙΑ ΓΙΑ ΤΗΝ ΠΡΟΣΒΑΣΗ ΣΤΟ ΑΣΥΛΟ

<http://asylum-campaign.blogspot.gr>

PRESS RELEASE

Athens, 14 January 2018

THE ASYLUM CAMPAIGN CONDEMNS THE SERIOUS HUMAN RIGHTS VIOLATIONS CONCERNING THE ASYLUM CASES OF THE TURKISH MILITARY OFFICIALS

The arrest a few days ago of the Turkish refugee inside the building of the Asylum Service undoubtedly constitutes an unprecedented unlawful action against the very core of the rule of law. The Turkish refugee had been granted international protection by virtue of a decision of the Independent Appeals' Committee and he was subsequently put in administrative detention following the issuance of an interim order by the President of the Administrative Court of Appeal of Athens suspending the aforementioned decision.

This unlawful arrest and detention is part of a series of violations committed by the Executive against the rights of the 8 Turkish military asylum seekers and refugees and lies in contravention with fundamental principles of the rule of law, namely the presumption of innocence, the principle of confidentiality, the right to liberty. They also mark the continuous slippage of the Government and of the Minister of Migration Policy into policies, obviously, of expediency at the expense of legality.

In particular, the Asylum Campaign reports with concern:

1. The unprecedented action of the Ministry of Migration Policy to submit an application for the annulment of an institution's positive decision to grant international protection and the unacceptable political management that followed it, namely:

- The unacceptable hurry for the filing of the application at a police station (!) on a day when the public services were closed, during official holidays, which evidently does not have any legal effect and indicates consequently the anxious fulfillment of a commitment, the extent of which is not known.
- The unacceptable statement by the Minister of Migration Policy that "[...] *substantial indications show that these persons have been involved in the coup d'état [...]*"¹, expressing an estimation to which he is not entitled and which is not allowed for by his official capacity, given that the examination of the merits of an asylum application lies within the competency of the Asylum Service at first instance and of the Committees of the Appeals' Authority at second instance. It must be noted that the legislation surely allows the Minister of Migration Policy to submit an application for annulment against a decision issued by the Appeals' Authority Committees, which shall, nevertheless, be established only on arguments of legality (decision's form, reasoning etc.) and never on the findings on the merits of the case. As a result, these statements, which contravene with the jurisprudence of the Supreme Civil Court, constitute an interference not only in the justice system and in the asylum procedure, but also an evident violation of the presumption of innocence protected the ECHR, the latter forming an important *acquis* of the developed legal systems.
- The successive public statements by top government officials consisting of estimations on the issues of their extradition and

¹ I. Mouzalas, "Substantial indications show that these persons have been involved in the coup d'état", Naftemporiki, Wednesday, 10 January 2018 00:29 <http://www.naftemporiki.gr/story/1310469/g-mouzalas-yparxoun-basimes-endeikseis-oti-prokeitai-gia-praksikopimaties>

asylum, since the very arrival of the 8 Turkish asylum seekers² and while the asylum and extradition procedures of their cases were still pending; these statements violated and continue to violate the presumption of innocence, the principle of confidentiality and constitute an unacceptable interference of the Executive in the judicial and asylum procedure.

- The contradictory statements by top government officials regarding the legal nature of the Appeals' Committees, which were characterized as 'administrative', in view of the Minister's application for annulment; however, their establishment – with a hastened amendment³ – was justified by the Minister of Migration Policy on the need for enhancement of their judicial character, which was guaranteed, according to his opinion, by the participation of two judges in their composition. The same arguments were used by the Ministry in the context of the adjudication of the applications for annulment against the regulations and administrative acts concerning the constitution and composition of the Independent Appeals' Committees, and against the relevant administrative acts rejecting the international protection applications as inadmissible, without an in-merit examination, on the grounds of Turkey being a safe third country for the return and protection of Syrian appellant asylum seekers in Greece.⁴ The Council of State (Supreme Administrative Court), nevertheless, judged in favor of the judicial character of the Independent Appeals' Committees in its decisions no. 2347/2017 and 2348/2017, in contravention with its previous settled jurisprudence.

² GNCHR Statement [in Greek] on the occasion of the examination of the eight Turkish military officials' applications for international protection, July 2016, http://www.nchr.gr/images/pdf/apofaseis/prosfuges_metanastes/dilosi_gia_toys_okto.pdf

³ Amendment 496/25/15.6.2016 Amendment of provisions concerning issues of the Asylum Service and the Appeals' Authority (L. 4375/2016) (in Greek) http://www.hellenicparliament.gr/Nomothetiko-Ergo/Katatethenta-Nomosxedia?law_id=9b433789-dc33-4a10-a454-a61901526035

⁴ Campaign for the Access to Asylum, Press release in light of the Council of State's Grand Chamber hearing about the applications for annulment of the legal provisions concerning the Independent Appeals' Committees' composition and the rejection of applications for international protection on the grounds of Turkey's consideration as a safe third country, 9/3/2017, <http://asylum-campaign.blogspot.gr/2017/03/09032017.html>

We would like to remind at this point that the Independent Appeals' Committees were established in their current composition by a hastened amendment of the newly at the time passed Law 4375/2016, which 'coincided' with decisions issued by the Appeals' Committees of the P.D. 114/2010 finding competently that Turkey could not be considered a safe 'third' country for the return of Syrian asylum seekers and therefore contradicted the EU-Turkey Statement's relevant presumptions of the opposite. The circumvention of the competency of a body by its immediate replacement was followed by provisions consisting of a series of violations against fundamental guarantees of access to international protection in Greece which clearly contravene with the Constitution.

In conclusion, regardless of whether the Appeals' Committees feature the guarantees of a judicial body – about which the Asylum Campaign has expressed its serious reservations, as well as about the related issue of their constitutionality – the aforementioned contradictions and maneuvers by top government officials and the Minister of Migration Policy cause serious concerns. It becomes evident from these actions that the characterization by the Ministry of Migration Policy of the legal nature and its respect to the function and decisions of the Appeals' Committees depends on the fulfillment of goals irrelevant to international protection. Thus, the characterization of the Appeals' Committees as "*a judicial body of elevated guarantees of independence*" is convenient in the case of the dismissed Syrians, but not at all convenient in the case of the recognized Turkish refugee; that is why, in this case, the Committee is characterized by the government officials merely as an administrative body.

- 2. The unlawful, unacceptable and scandalous arrest inside the building of the Asylum Service and subsequent administrative detention of the Turkish recognized refugee, who had been granted international protection by virtue of a decision of the**

Independent Appeals' Committee, after the issuance of an interim order suspending the aforementioned decision by the President of the Administrative Court of Appeal of Athens. It must be mentioned that the interim order of the President of the Administrative Court of Appeal of Athens does not annul the decision of the Independent Appeals' Committee, by virtue of which he was granted international protection, but suspends its legal effect temporarily. Following this interim order and just before he was arrested, the Turkish refugee received the international protection applicant's card, by virtue of which he should be allowed to reside in the country in a state of freedom.

- First of all, it is scandalous that a recognized refugee who had just received the international protection applicant's card, by virtue of which he should be allowed to reside in the country in a state of freedom until the completion of the pending judicial procedure, was arrested right outside the door of the Asylum Service's Director. The lack of reaction of the Asylum Service against this unlawful action that took place in its offices – right outside the door of the Director- against a person under its protection causes serious concern.
- This arrest and detention are manifestly unlawful and even criminal responsibility can be established for the person who ordered them as well as for those who gave the command, given that any legal provision does not provide for the arrest and administrative detention of an asylum seeker who has received the relevant asylum seeker's card which allows him a free residence in the country. As mentioned in the relevant press release of the Greek Council for Refugees,⁵ the current Greek legislation and especially art. 46 par. 2 of Law 4375/2016, clearly provides

⁵ GCR, Legal Clarifications regarding the impossibility to detain an international protection applicant in a state of freedom, according to national and EU legislation (in Greek) <http://www.gcr.gr/index.php/en/news/press-releases-announcements/item/775-nomikes-diefkriniseis-sxetika-me-ti-mi-dynatotita-kratisis-eleytherou-aitoyntos-diethni-prostasia-kata-to-ethniko-kai-enosiako-dikaio>

the circumstances where a third country national who applies for international protection can be exceptionally detained. In particular, according to Art. 46 par. 2 of L. 4372/2016: *“An alien or a stateless person who submits an application for international protection while in detention according to the relevant provisions of Laws 3386/2005 (O.G. A’ 212) and 3907/2011 (O.G. A’ 7) as in force shall remain in detention, exceptionally and if this is considered necessary after an individual assessment under the condition that no alternative measures [...] can be applied[...]”*. The clear phrasing of this provision demonstrates that there is only one case where a person who has applied for international protection can be detained. That is when a third country national who has already been arrested and detained for the purpose either of deportation (L. 3386/2005) or of return to his country of origin (L. 3907/2011), submits an application for international protection. That is the only case of a person being *“kept”* in detention, as is explicitly mentioned in the provision, and exceptionally as well, only if the other requirements of the law are met.

- The decision of the competent Police Director ordering his re-arrest and detention, regardless of its in principle unlawful character, contains arbitrary justifications in its reasoning exceeding the competency of the police services that issued it, contradict the findings of the Supreme Civil Court and refer to anachronistic patterns of police operation outside its framework of legitimacy, proceeding to "evaluation" and "judgment" of ideas and intentions as well as to patterns of "punishment" for exemplification and deterrence *“[...] given that the legal procedure of detention is activated in order to address the resulting serious threat to the public order and national security of the country, as the only appropriate for these circumstances measure [...]. Besides, the occasion of his case causes serious risks by*

other foreigners, either like-minded or not, who pose a threat to the security and peace of the country and of its citizens because of their own aspirations.”

These actions and maneuvers are following a series of decisions and regulation by the Government and the Minister of Migration Policy in the field of international protection and raise serious concerns regarding compromises of legitimacy in favor of expediency: the insistence of the Ministry of Migration Policy with regard to the characterization of Turkey as a safe third country for the asylum seekers, its interventions with the aim of the EU-Turkey Statement implementation at all cost, the circumvention of an institution's competency – of the previous Appeals' Committees – by its immediate replacement after the issuance of decisions that contradicted the characterization of Turkey as a safe third country, demonstrate the slippage of Hellenic Society's stance vis-à-vis the protection of human rights.

The respect of human rights in a democratic society cannot tolerate neither conditions nor derogations.

We expect the self-evident judicial protection of the Turkish refugees and the unimpeded implementation of the law during the adjudication in front of the Administrative Court of Appeal of Athens of the application for annulment against the decision issued by the Independent Appeals' Committee which granted international protection to this particular Turkish refugee.

We highlight that, according to the aforementioned decision of the Independent Appeals' Committee, if he is returned to Turkey, there is a serious risk of being submitted to torture and inhuman and degrading treatment as well as of being tried by a court without the necessary guarantees for an independent and impartial judgment; there is, therefore, a well-founded and reasonable fear of persecution in Turkey.

We remind that the Supreme Court has ensured an important framework of protection by rejecting the Turkish authorities' request for extradition against this Turkish refugee, justifying the decision on the grounds that he would be in danger of facing inhuman and degrading treatment and a unfair trial, if he was returned to Turkey, especially because of the vague description of charges by the Turkish authorities.

The recognition of international protection is an act of application of a legal provision, according to the 1951 Geneva Convention relating to the status of refugees, and not a political decision.

The protection of the human rights of the Turkish refugees, the protection of the refugees in general and the protection of the human rights of every person in this country is a matter of democracy and not political decisions. We urge the Government to respect them and uphold them as it should.

Signing Organisations (in alphabetic order):

AITIMA <http://www.aitima.gr>

ARSIS - Association for the Social Support of Youth arsis.gr | arsis

Network of Social Support for Refugees and Migrants

<http://migrant.diktio.org>

Greek Council for Refugees <http://www.gcr.gr>

Greek Forum of Refugees <http://refugees.gr/>

Greek Helsinki Monitor

<https://greekhelsinki.wordpress.com>

Initiative for the Rights of Detainees - <http://www.tokeli.gr>

“Lathra?” Committee for Solidarity to Refugees in Chios

<http://www.lathra.gr>

Network of Social Support for Refugees and Migrants

<http://migrant.diktio.org>

Refugee Support Aegean <http://rsaegean.org/>

World without Wars and Violence <http://www.kosmosxorispolemous.gr>