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**Decision 419/2014 of the Administrative Court of Appeals,
regarding international protection, on the grounds of fear of
Female Genital Mutilation.**

It is the first decision of the Greek Courts in response to a request for international protection (in accordance with the Geneva Convention of 1951) dealt with the genital mutilation of women (Female genital mutilation, FGM).

The Administrative Court of Appeals has temporarily suspended the decision of return of a Kenyan woman along with her three minor children in her homeland, based on the highly likely possibility of suffering irreparable harm, "consisting in exposure to risk their physical integrity."

Specifically, the Kenyan woman entered the country on 3.9.2002 and immediately requested international protection, according to the Geneva Convention, by the Department of Asylum of the Athens Directorate of Aliens - for herself and her three minor children.

She stated that she does not wish to return to her country, because she belongs to the Kikuyu tribe, that traditionally operates the practice of FGM. She also claimed that the same risk posed by the Mungiki organization operating in many parts of Kenya.

Her application was rejected though by the competent authorities on the grounds that the Kenyan and her children did not meet the conditions for granting the status of refugee according to the Geneva Convention.

After that, she filed an appeal to the competent committee of the Ministry of Public Order, requesting a review of her initial application.

The Committee of the Ministry of Public Order, in turn, rejected the appeal, on the ground that she did not submitted "compelling evidence that the declared fear of the risk to undergo the practice of FGM by the Mungiki organization, can be considered reasonable and based on objective data suggesting that there is an imminent and inevitable danger for her life or her physical integrity in case of returning back to her homeland"

Moreover, as the Committee added:

"from official and updated sources, legislation in Kenya despite the longstanding problems, provides safeguard to women against the practice of F.G.M and the Government of the country has extensively attempted to suppress criminal activity of this organization. "

The abovementioned Committee also stressed that:

"in case of return to her country, there is no risk to suffer serious harm, that is death penalty or torture, while in Kenya, and particularly in Nairobi (last place of residence), no international or internal armed conflict exists that can result in serious injuries due to indiscriminate violence. "

Thus the Committee concluded that the asylum seeker and her children do not meet the requirements so as to be granted the refugee status or the subsidiary protection, in accordance with the existing law.

Against the abovementioned decision, the Kenyan woman filed an appeal to the Administrative Court of Appeals.

She claimed before the judges, that if she goes back to Kenya, she will be at serious risk to suffer irreparable damage, torture or inhuman or degrading treatment and each of her children to face: the compulsory recruitment in a criminal organization (the first), a possible abduction by criminal organization (the second) and risk of prosecution as it is a child of a U.S. citizen (the third).

The Administrative Court of Appeals stated that their return to Kenya contains the highly liked possibility of suffering irreparable harm, "consisting in exposure to risk their physical integrity", thus temporarily suspended the decision of their return. Additionally, the Court ordered the state authorities to refrain from any action which would result in "forced return" of them back to their homeland.

Finally, the Court ordered the "particular asylum seeker's card" to be returned- if it had been removed- and to be renewed, if it had been expired.

Guidelines for the handling of asylum claims in cases of female genital mutilation, UNHCR,

It should be noted that UNHCR has issued specific guidelines for the handling of asylum claims in cases of female genital mutilation (FGM)¹. Based on these guidelines, the girl or the woman who was forced to undergo, or fear that it will suffer genital mutilation can be recognized as refugee within the meaning of the 1951 Convention.

Following are briefly presented the main requirements to be fulfilled by the applicants for asylum on grounds of amputation, as described in these guidelines

A. Well-founded fear of persecution

According to UNHCR, the female genital mutilation is a form of violence based on sex / gender² and cause serious damage both mental and physical that constitutes persecution. All forms of mutilation violate human rights of

¹ "Guidelines for the handling of asylum claims in cases of female genital mutilation," UNHCR, GENEVA May 2009

² GUIDELINES ON INTERNATIONAL PROTECTION: Gender-Related Persecution within the context of Article 1A(2) of the 1951 Convention and/or its 1967 Protocol relating to the Status of Refugees

girls and women, including the right to non-discrimination, protection from physical and mental violence and under specific circumstances, the right in life. Moreover, in accordance with international law and case-law³ the FGM constitutes torture and cruel, inhuman or degrading treatment.

B. Reasons for persecution according the Convention

A well-founded fear of persecution must be due to one or more of the reasons set out in the 1951 Convention, relating to the Status of Refugees, that is "*race, religion, nationality, membership of a particular social group or political opinion*"⁴. The states now have widely recognized that amputation is a form of persecution which threatened a girl, or a woman, because of the involvement in a particular social group, or because of their political beliefs and religion.

C. Option of relocation to another part of the country or domestic protection

To determine the relocation in another part of the country should be assessed whether internal protection is feasible and reasonable solution⁵. When the practice of amputation is generally applicable, movement to another area of the same country can not be considered as a real possibility. In countries where the practice is not generally applicable, relocation to another area of the country, should be thoroughly examined for the risk existing in this particular area. Protection by the state authorities is not given, even in countries that have criminalized the amputation, as the existing law may be waived or not applied consistently across the country.

Finally, any proposed relocation area should be fair and give the person concerned, an opportunity to live there in a relatively normal life. Decisive evidence for this assessment is the personal circumstances of the person concerned, any past persecution suffered, personal integrity and security, respect for human rights and the possibility of economic survival.

In view of the above, the final decision of the competent court is expected with great interest, as it will create case-law tools for handling -in future- asylum claims relating to this sensitive topic.

³ see eg "*Report of the Special Rapporteur on Torture, 15.1.2008 (A/HRC/7/73)*, *Emily Collins and Ashley Akaziebie v. Sweden, European Court for Human Right, no23944/05,83.2007*

⁴ Article 1A(2) of the 1951 Convention

⁵ UNHCR "GUIDELINES ON INTERNATIONAL PROTECTION : Internal Flight or Relocation Alternative" Within the Context of Article 1A(2) of the 1951 Convention and/or 1967 Protocol Relating to the Status of Refugees.