

Letter by members of the Asylum Appeals Committees of Greece (Presidential Decree 114/2010), regarding the latest developments in the asylum claims review process.

By the present, the undersigned wish to make a statement, as members of the Asylum Appeals Committees of Greece (Presidential Decree 114/2010), regarding the latest developments in the asylum claims review process.

An Asylum Appeals Committee is a three-member quasi-judicial body, consisting of a Civil Servant as Chairman, a member indicated by the United Nations High Commission for Refugees and a member selected by the Ministry of Interior from a list drawn up by the National Commission on Human Rights (E.E.D.A.), an independent advisory body to the state. Their mandate is to examine on second administrative (and final) instance appeals on asylum applications submitted by June 6, 2013 and rejected at the first instance by the hitherto indicated Ministry of Public Order (Greek Police officials). Since January 2011, when the Committees started to function, to this date, only a minimal number of their decisions have been challenged before the Administrative Appeals Court (as provided by national legislation). Shortly after the joint EU-Turkey statement, the Committees were temporarily entrusted to examine appeals of asylum seekers who had entered the country from March 20, 2016 onwards - the date of application of the, legally non-binding, Joint Turkey - EU Statement. These asylum requests were deemed inadmissible at first instance examination, based on recommendations of the European Support Office (EASO) representatives who conducted interviews in English. Law 4375/2016 appointed the Committees as the competent body to examine appeals on the inadmissibility decisions until the establishment of a Standing Appeals Authority.

After assuming their additional responsibilities the Committees responded with speed and professionalism to the requirements of this new procedure, in compliance with the extremely abridged deadlines stipulated by new law. During two meetings of the Committees held by consultants of the Migration Policy Minister (the first) and with the participation of Mr. Mouzalas (the Migration Policy Minister) himself (the second), a number of legal issues were raised, concerning unlawful, in the opinion of some members, aspects of the process in the first instance, but also a series of questions about the proceedings before the Committees. Besides procedural issues, which are anything but secondary to legal issues on substance, the most critical issue was the individual judgment for each applicant as to whether Turkey may be considered a safe third country. In this matter also lies the crucial contradiction between the wording of the Joint Declaration that "all will be returned to Turkey" and the asylum system and the safeguards provided for each applicant himself. In this respect, it was pointed out emphatically by both the consultants and by Mr. Mouzalas himself that being an independent second instance decision making body, the Committees' independence would be undisputable and their decisions would in no way be influenced directly or indirectly, adding however the political intentions of the government to rigorously comply with the Joint Statement. In spite of those assurance, the Ministry communicated to the Committees a letter by the European Commission which acknowledged briefly and without legal reasoning, Turkey as being a safe third country, in contrast to most international organizations reports (which were never

communicated to the Committees), placing in question the political leadership's declarations to not interfere with the independence of the Committees.

Roughly two months following the publication of Law 4375/2016 and by virtue of an amendment voted by the Parliamentary majority of the government on 16.06.2016, the Committees ceased to be responsible for these actions, the examination of which was assigned to new "Independent Appeals Committees", each of which will consist of two magistrates (members of the Greek judiciary) and one member indicated by the UNHCR, or in case of the latter's inability to indicate a member on time, by the E.E.D.A. In fact, as explicitly stated in the amendment "the upcoming modification will enhance the judicial character of the Committees and maximize the proper legal protection of the applicants, as their requests will be judged by the new committees with increased impartiality and independence."

What elapsed, then, and suddenly it was considered that the examination of asylum appeals should be passed to "other hands", suggesting that PD 114/2010 Committees had reduced impartiality and independence? What intervened was a fully substantiated legal reasoning had been cited in dozens of judgments by the PD 114/2010 Committees, after careful consideration of individual appeals, something that was not in line with the objective of mass returns of asylum applicants to Turkey, as expressed in the non-legally binding Turkey - EU Statement. These decisions of the Committees had not been reached because their members acted according to a certain "ideology" as written in the press, or because members of the Committees were not sufficiently "neutral", since they emanated from a "civil society" (let us recall here that the final selection of members from the E.E.D.A. list is made by the responsible Minister and the UNHCR is an international organization which recommends members specialized examinations). The Committees and their members, having examined thousands of cases since 2011, based their judgment on this occasion, as always before, on published reports of international bodies and organizations such as the Parliamentary Assembly of the Council of Europe, UNHCR, ECRE, Human Rights Watch, Amnesty International and others, which are taken into account also in the ratio of judgments of European courts such as the European Court of Human Rights and the European Court of Justice.

It becomes then apparent from the urgency and the invoked (defamatory) grounds of the amendment that the Ministry preferred to wrest the responsibility which two months ago had chosen to confer on the Committees, because the Committees' decisions were not harmonized with the framework of the Joint EU-Turkey Statement. This constitutes an affront and insult to our professional status as legal and social scientists, specialized academically and professionally in the field of asylum and human rights. Indeed, since the publication of the very first decisions by the Committees, indicative is the statement of the Migration Policy Minister in the international press, that these decisions contravene all UNHCR guidelines for refugees (The Guardian, 20/05/2016). If this is the view of the Ministry, it is really surprising that it has not brought a request to quash the Committees' decisions before the Administrative Appeals Court, as expressly provided by the law. Changing the composition of the Committees through expedited legislation, rather than judicial examination and resolution of serious legal issues of international law (something which would be

binding upon any future committees, regardless of their composition) confirms that this move was not made because the grounds of the Committees' decisions were incomplete or unjustified, but because these decisions placed in question the political plans of the Ministry-government.

Managing legal issues by use of political priorities raises many questions about the future of the asylum system in Greece, the protection of human rights and the rule of law. For us, it is apparent that the implementation of the EU-Turkey Statement is incompatible with the guarantees of the existing asylum system and the level of protection of human rights which has been achieved within the international and European legal framework. Unfortunately, the Ministry's orchestrations indicate that whenever any decision making body, old or new, is not in line with the objective of mass returns to Turkey, such law amendments and wresting of authorities and responsibility will not be in the future the exception but rather the rule.

This document reflects the views of the following members of the PD 114/2010 Committees:

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