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Ministry of Interior
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Ref: Director Mr. Kordatos

SUBJECT: Procedure suspension regarding the intake of asylum requests by the
Asylum Department of the Foreign Citizens Directorate of Attica

Dear Mr. Kordatos,

We would hereby like to convey our deep concern over the fact that, since late September, the Asylum Department of the Foreign Citizens Directorate abruptly decided to cease receiving asylum requests. We were apprised of this decision, much to our surprise, during an on site inspection of the aforementioned directorate carried out by the Greek Ombudsman on October 3rd. Our Authority's reservations and

objections concerning the decision not to accept asylum requests were conveyed during the inspection directly to the Director of the Foreign Citizens Directorate of Attica (FCDA).

Subsequently, as was reasonably expected, foreign citizens, as well as agencies participating in the communication and cooperation network of our Authority filed with the Greek Ombudsman numerous complaints some of which throw light in a dramatic way on the severe problems engendered by the decision not to accept asylum requests.

I. The Administration's stance

As you surely already know, throughout the last year the Asylum Department of the Foreign Citizens Directorate had been implementing a rather restrictive system for the intake of asylum requests, according to which only on Sundays and for a limited amount of time were foreign citizens allowed to access the premises on Petrou Ralli street in order to schedule a further appointment – usually within the following week – for revisiting the directorate in order to submit an asylum request.

However, during our aforementioned inspection at the Asylum Department we were informed by Messrs. Festas, Police Brigadier General, Director of the Foreign Citizens Directorate of Attica (FCDA), Paliouras, Police Lieutenant Colonel at the FCDA and Gavras, Chief of Asylum Department that they had decided to cease receiving further requests for an indefinite period of time due to the practical difficulty in processing the already submitted requests while still allowing the intake of new requests. The abovementioned officials informed us on that on September 21st they received approximately 2.000 asylum requests – i.e. they received in one day the number of asylum requests they expected to receive in the period of two months. Hence, according to police officials, the decision to cease receiving asylum requests for the next two months is offset by the fact that in the meantime they will be processing the number of requests they expected to receive during that period.

Nonetheless, the officials have stressed that the request intake suspension in question is not being applied uniformly since selective intake is allowed for foreign citizens belonging to “vulnerable” groups (e.g. pregnant women or minors) and those coming from countries in a state of war (mainly countries in East Africa). Moreover,

selective intake further extends over cases where the applicant is recommended by credible civil society organizations.

II. The overall problems regarding recourse to the asylum granting procedure

The GO has confirmed, following investigation of individual complaints, severe difficulties with the asylum request procedure. What primarily gives rise to problems are practices such as dismissing or selectively receiving requests as well as handing out to applicants continuously renewable service notes that do not set a specific date for the receipt of asylum requests. As it soon became apparent, such perplexing and informal practices reflect an underlying structural malfunction that is still manifest in cases regarding the conferral of political asylum, despite the fact that in the last 15 years there has been a massive influx of foreigners. By means of numerous inspections and written interventions, either of specific or of general content (see especially the relevant Special Report issued by our Authority for the year 2007 under the title “*Protection of persons applying for political asylum in Greece: problems in interpretation and implementation*”), the GO has repeatedly endeavoured to bring to the fore the intrinsic, primarily structural, difficulties of this issue and has shown perseverance in emphasizing the need for redrafting the strategic plan of the Vice-Ministry of Public Order for the control of the incremental influx of immigrants without travel documents in our country.

1. *The strictly procedural standpoint regarding the intake of asylum requests*

Nonetheless, since September 2006 a number of noteworthy efforts have been made in order to overcome the existing malfunctions in the access system, at least as far as the Athens Directorate for Foreign Citizens is concerned. However, recent events have shown that such improvements that are exclusively targeted towards procedural arrangements in the Asylum Department of the Athens Directorate for Foreign Citizens, and only secondarily to the equivalent Department in Thessaloniki, cannot be considered as substantially conducive either to the fulfillment of our country’s internal and international obligation to protect asylum seekers or to ease the

Greek Police's (EL. AS.) workload.

As it can be inferred from the data supplied by your service as well as from common experience (granted that this phenomenon has been intensely discussed by the national media), it is patently clear that the current borderline situation in the asylum requests management faced by the Asylum Department as a result of the rapid increase of workload (approximately 15.000 requests have been submitted within the first nine months of 2008) is directly congruous with the massively increased influx, during the last months, of foreigners fleeing into the country without travel documents from the eastern, continental and maritime borders (approximately 58.000 in the first semester of 2008). From this standpoint, it is no surprise that during the last period there has been a lamentable recurrence of endless queues outside the Department's premises at Petrou Ralli street from Sunday morning in order to be given the "magic little piece of paper", as it has been called lately, that sets the date for the actual submission of the asylum request. Equally predictable – and while the present letter was being prepared - were the extremely violent episodes that took place last Sunday in the surrounding area of the aforementioned premises and attracted the attention of national and global media thus compromising our country's credibility with respect to the treatment of asylum seekers.

2. The imperative character of an overall evaluation of the problem

Directing public attention merely towards the problems of administrative organization and public order observance in the centre of Athens, i.e. the queues and violent episodes, overshadows the fact that all these incidents are only part of a much broader and complex issue. At least as regards to the Greek Administration, these problems originate from the unprecedented and explosive situation that has arisen in the border areas, especially on the islands, due to the suffocating concentration of a constantly increasing number of foreigners without travel documents usually from countries where deportation is simply not feasible (Afghanistan, Iraq, Iran, Somalia). These people are being held under custody, often in dire living conditions, until their release. It should be noted that local police authorities have informally decided to cease the unreasonable and, in many instances, illegal practice of keeping these foreigners under administrative detention for the maximum period of three months

that the law allows.

At the port of Patras an even more explosive situation is unfolding since many of these foreigners, following months of wandering around the country and unsuccessful attempts to submit asylum requests, have settled in the port area, living under squalid conditions, in a desperate effort to flee illegally to some other EU country.

What is overlooked by merely focusing on the malfunction of the Attica Directorate for Foreign Citizens is that, in direct opposition to the purpose of political asylum per se, the evaluation as well as the simple intake of asylum requests is, but for some negligible exceptions, carried out exclusively by the administrative center of the country, namely Athens, and only secondarily in Thessaloniki. The number of asylum requests received at entry points across the country is practically zero (e.g. in Mytilene, among a total of 8.000 migrants until September 2008 only 10 asylum requests had been submitted). This phenomenon can be attributed to a series of factors pertaining to the practically discouraging stance of local police authorities (e.g. lack of information and interpretation services, deportation and detention orders in advance of administrative process, prolonged detention under gruesome conditions) as well as to the personal plans of foreigners (e.g. awareness of the troublesome procedure and the very few positive decisions granting asylum in our country, desire to move to another country). Moreover, after several months or even a whole year following the applicant's entry in the country, almost the totality of the innumerable pending asylum requests has been received in Athens in the vast majority of cases and to a much more limited extent in Thessaloniki (whence they are forwarded to the capital for evaluation).

Regardless how many foreigners without travel documents are fleeing nowadays into the country, the current severe problems of asylum seekers cannot be simply viewed as resulting from a sudden workload within the administrative mechanism. Instead it is the expected repercussion of the structural malaise in the overall asylum seeker's reception system, as clearly evidenced by the undoubtedly increasing pressure exerted on the system due to the large numbers of asylum seekers. As our Authority has repeatedly emphasized, due to the severity of these problems it is imperative to seek measures and solutions that are not merely targeted to partial improvements of the submission of asylum requests procedure in Athens but also to

extensive and coordinated reforms in the structure and personnel of the Greek Police (EL.AS.), the competent social support agencies of the central and regional administration, the local governments, as well as civic groups and the local public associations, such as the bar and medical associations.

III. The legal issues that arise from the suspension of acceptance of asylum requests

The Greek Administration is obligated by national, European and international law, to offer legal protection and care to those eligible for asylum and subsidiary protection. This obligation renders impermissible any attempt to translate the administrative problems, presumably faced by state officials into measures, even provisional ones, which result in canceling the legal protection and rights of asylum seekers. Therefore, the decision of the Asylum Department of the Foreign Citizens Directorate to cease receiving asylum requests for at least 2 months is highly problematic from a legal point of view.

1. *The request for universal, constant, and unimpeded access*

According to a pivotal principle of administrative law it is obligatory that the administrative bodies exercise the functions of their respective fields of competence in a consistent and unimpeded fashion. According to the national and international statutory provisions in force for the protection of political refugees this principle is further specified into a **postulate of universal, constant and unimpeded access** of those foreigners who wish to submit an asylum request to the competent authorities of the country of reception. Nevertheless, given the special obligation of increased protection and care posed by the law for persons that are being prosecuted in their countries for political, religious etc. reasons or are in danger of having their fundamental rights violated in case of repatriation, the postulate of universal, constant and unimpeded access to the asylum procedures is not simply a desirable end and principle of orientation of administrative action but an **nonnegotiable right of foreign citizens that the Administration in principle carries the burden of**

safeguarding. That is so a fortiori since the particular way of using this right might affect the judgment of whether to accept the asylum request.

In particular, as it is clearly stipulated by the legislation in force, “*every third country citizen or non-citizen has the right to submit an asylum request. The authorities designated for receiving and examining the request take care so **that every adult person can exercise the right to submit a request** provided that she will appear in person in front of the aforementioned authorities*” (Article 4, para. 1 of Presidential Decree 90/2008 “*on the minimum requirements regarding the procedures by which member states grant or revoke refugee status*”). Furthermore, “*Requests are not dismissed merely on the ground that they have not been submitted the soonest possible*” (Article 6, para. 1 of Presidential Decree 90/2008), “*Applicants must appear in person in front of competent authorities without delay*” (Article 9, para. 1 section a of the aforementioned Decree) or “*Requests are regarded as manifestly unfounded if the applicant has illegally entered the country or has illegally prolonged her stay without reasonable cause, has not appeared in front of the authorities nor has she submitted a request the soonest possible...*” (Article 17, para. 3 section ia of the aforementioned Decree).

Consequently, the competent officials carry the obligation of taking the necessary measures so as to **constantly** materialize the right of asylum request submission **for all persons without exception** who wish to be granted political asylum. On the other hand, the time by which foreigners wish to submit an asylum request becomes a crucial factor to the result of the overall procedure. The obligation to submit an asylum request without delay self-evidently implies that competent officials are ready to receive the request at any time and hence the Administration is constantly obliged to secure the request’s unimpeded intake.

2. The issue of selective access

Equally problematic is the practice of selective acceptance of asylum requests –i.e. in the case of applicants that belong to vulnerable groups or come from countries that are in a state of war, as well those with recommendations from credible civil society organizations. Despite their undoubtedly benign intent, practices of this kind unavoidably result in violating the postulate of universal access to the asylum

procedures. More specifically:

- a) “Social” or “humanitarian” criteria (such as physical ailments, pregnancy or other capacities in virtue of which a person is to be classified as belonging to a “vulnerable” group) are of crucial importance in terms of defining the priority by which some asylum seekers instead of others are to be helped. They cannot, however, provide criteria of selection among the persons who will finally submit a request and those who will not, since the intended legal protection is offered not because of membership to one “socially vulnerable” group but because the applicant may satisfy the requirements for refugee status or subsidiary protection. Otherwise, an asylum seeker who may not fall within one of the above mentioned categories, e.g. being pregnant or ill, would be in danger of losing a fundamental right.
- b) In the same way deciding whether an asylum request is well-founded based on informal evaluation criteria such as the applicant’s country of origin, does not justify the selective intake of requests. Apart from the unreliability of using such criteria in deciding whether to accept one request before another (e.g. an asylum request from a Somalian national is considered worthy of being received prior to that of an Iraqi or Afghanistan national), the law only permits the use of such criteria in the examination of the soundness of a request. However, in no case whatsoever can the country of origin constitute a criterion for the permissibility of request submission without violating the principle of universal access. Otherwise, a person potentially entitled to protection who comes from a presumably safe country (always in the opinion of the judging official) ends up being completely deprived of her fundamental right.
- c) A further issue of concern is raised by the priority status bestowed upon foreigners that have been referred to by civil society organizations. The GO appreciates the cooperation of the Asylum Department of the Foreign Citizens Directorate with these groups and the recognition of the important complementary role they can play in the overall procedure. However, it

remains a practice which is not provided for by the law and harbors the danger of compromising the impartiality displayed by the relevant service officials.

On the other hand, such dangers could be minimized should the Asylum Department decide to address an open invitation for assistance to reliable organizations, conferring on them a substantial role in the asylum request intake procedure, as well as in keeping the applicants informed.

3. Danger of arrest and deportation

Finally, the decision in question to suspend the acceptance of asylum requests has severe repercussions to foreigners who, despite their efforts, cannot submit their application. This may result in the arrest and deportation of asylum seekers that have been denied access despite their numerous appearances in front of the authorities. By their very visit to the Asylum Department, these foreigners have implicitly manifested their intention to submit the relevant request even though the Administration cannot receive it by its own fault. In that way these persons become “quasi asylum applicants” thus increasing the danger of violating the principle of non-refoulement in case of deportation.

Furthermore, the refusal to accept asylum applications deprives them from the rights derived from the temporary permit granted to asylum seekers, such as provisional employment and social benefits.

IV. Conclusions – Proposals

In light of the above remarks it becomes evident that suspending the request intake, instead of resolving any workload problems, endangers the fundamental rights of asylum seekers and further aggravates the already burdened and troublesome system of reception of asylum seekers in our country. Moreover, the recent episodes of violence highlight the manifold impact this practice may have even on public order. Mostly, though, the fact that the decision in question violates the principle of universal, constant, and unimpeded access to asylum procedures is a sufficiently crucial reason for its immediate revocation. As it has been noted above, the presence

of several well respected and experienced social organizations in Athens active in the field of asylum seeker's protection – many of which have successfully cooperated with the Asylum Department and Police Authorities in general– is a valuable asset that should not be underestimated by the services of the Vice-Ministry of Public Order; especially when there is an increased workload that the competent authorities admit are unable to handle.

It is, however, self-evident that the recommencement of the suspended procedure will not solve the serious structural problems of the Greek Administration in this field. On the contrary, as it has been previously stated, actually tackling with these problems requires a strategic reformation of administrative structures and their functions. The planning and realisation of this project extends beyond the competences of our Authority and requires the involvement of the executive power.

Nevertheless, as the GO has already stated in response to the recent ad hoc measures taken to deal with the influx of foreigners in the city of Patras, any future initiative should be premised on the recognition of the overall dimension and nature of the problem. In particular, it should be recognized that the continuous massive influx of foreigners without travel documents amounts to a mild yet worsening **humanitarian crisis**. This is further intensified by the confusion this situation has created and the structural shortcomings of the Greek Administration in dealing with it, endangering our country's credibility and the quality of life of affected populations, both foreign and Greek.

The mere act of recognizing the nature and the dimensions of the problem already implies that any initiative must be undertaken as pertaining to an **emergency situation** rather than to the establishment of a regular procedure.

However, the duration and possible escalation of the present situation - taking into consideration the international dimension of the problem– as well as the pressing need for an overall reform of the asylum seekers reception procedure according to EU directives, seem to necessitate the **decentralization of asylum procedures**, following the model employed by many other European countries. Such decentralization should include the establishment of administrative services with specialized personnel on a regional level, particularly at the basic entry points across the country. Moreover, it is necessary to **make the most out of already existing legal instruments** (e.g. the fast tracking procedure) taking also into consideration the **substantial and procedural**

guarantees provided for the protection of asylum seekers by national and an international law.

In order to secure the efficiency of the asylum procedure as well as the rights of the asylum seekers, as it has been previously noted, the **active and coordinated mobilization** of all key actors within the administration and civil society is necessary. This is especially needed in border and insular areas, in order to provide **social support** to undocumented foreigners but also to guarantee the **supervision of the procedure and accountability of the administration**.

Finally, it must be noted that an essential aspect of this problem, that falls within the competence of the Minister of Interior, especially in relation to the tremendous pressure exerted on the administrative mechanisms for the reception of asylum seekers, consists in the fact that the asylum procedure is followed almost all undocumented foreigners without actually belonging, in their vast majority, to the class of refugees. This is understandable since for most of these people this is the only procedure that will secure a rudimentarily safe provisional stay and the right to employment.

In addition to the above the problem is further aggravated by the fact that the majority of undocumented foreigners cannot be deported to their country of origin, nor can they move to other EU member states since this is explicitly prohibited by the Regulation “Dublin II”. This results in many of them being “trapped” on Greek territory for months, or even for years, as “illegal” foreigners, deprived of the legal protection and care provided for by the law, socially marginalized and exposed to all kinds of exploitation. Hence one could reasonably expect that any future initiative must be aimed at the drastic reform of the asylum procedure, actively caring for the humane treatment of these people and preventing reactive responses guided by fear on the part of the local population. In particular, what should be ensured is the legality of their temporary stay and their right to employment until they can leave the country or be deported.

The GO does not have the ability to mobilize public administration towards the abovementioned direction, but remains at your disposal for any further clarification and committed to assisting you, within the scope of our mandate, in identifying and implementing solutions that while fully respecting human rights are also conducive to the reduction of your workload.

Yours sincerely,

Andreas Takis
Deputy Ombudsman

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