



Strengthening **Asylum**



Report on the Asylum Procedure in Cyprus – 2012

Comments on the asylum procedure in Cyprus prepared by the NGO
Future Worlds Center

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I. Future Worlds Center

Future Worlds Center (FWC) is an independent non-governmental and non-profit organization that works to build inter-linked, socio-techno-cultural worlds through science and dialogue. The Humanitarian Affairs Unit of the organisation has been implementing a UNHCR funded project “Strengthening Asylum for Refugees and Asylum-seekers in Cyprus” for the 6th year. The project offers free legal and social advice to asylum seekers and persons under international protection and its main objective is to ensure that beneficiaries have access to a fair and efficient asylum procedure and their rights based on national, European and International law. The project is implemented by two legal advisors and one social advisor who offer individual consultation to the beneficiaries, as well as a public information officer. The scope of the project also includes raising awareness within the community on refugee and asylum issues, promoting the increase of rights of this population, as well as supporting and encouraging the integration of refugees into the society.

The present report is based on information provided by the advisors implementing the abovementioned project.

II. Cyprus Asylum Procedure

The Government of Cyprus took over its responsibilities from UNHCR in 2002 and although the asylum procedures have been in place since then, the relevant authorities still lack standard operations procedures on a number of issues. The following are the main issues identified in the procedure that are considered problematic:

1. Screening Procedure

At present there is no screening process, or other process in Cyprus, by which to identify vulnerable persons upon application or at an early stage in the procedure. The majority of cases are identified during the interview for the examination of the asylum claim (RSD) which takes an average of 1.5 - 2 years from application. Due to this any special provisions provided in the law for such persons cannot be applied or are applied with great delays. Having in mind that these persons include unaccompanied minors, minors who have suffered violence, abuse or torture, victims of torture and trafficking and persons with special needs it is crucial

that they receive the necessary support and treatment the soonest. However even if the authority receiving asylum applications, which in Cyprus is the police, identifies such a person there are no adequate procedures in place to refer them to the proper authorities, for social, medical, legal or other assistance.

2. RSD Examination

The status determination procedures are considered by FWC as not sufficiently fair or efficient for the following reasons:

- The number of examiners has risen in recent years at both first and second administrative instances, however as they are pressurized to make recommendations very quickly this has not had a positive effect on the quality of the decisions.
- Applicants are not given sufficient and updated information regarding the procedures, including information on the rights and obligations, which may often lead to the rejection of their application based on procedural issues. This also affects the applicants' adequate preparation for the examination of their asylum application, including the submission of relevant evidence both at first and second administrative instance (at the level of the Refugee Reviewing Authority) and reviewing their file in order to prepare an appeal.
- The interpretation services (at RSD and in other asylum related sectors) remain unprofessional (no examination/accreditation, no comprehensive training and accountability systems). Due to this the quality of the examination of asylum claims is questionable and is often raised in the second examination at the level of the Refugee Reviewing Authority of the case, and has often been pointed out in appeals prepared by FWC. To date this argument has not been accepted by the RRA.
- There is limited access to asylum files in order to prepare for the second instance examination by the Refugee Reviewing Authority (see below).
- The vast majority of cases are rejected based on procedural issues or credibility and the Reviewing Authority merely re examines and usually reconfirms the first decision without carrying out its own examination (limited second interviews and research).

- There are extremely long delays in cases that have merit; this delay has often reached 5-8 years (in some cases just for the 1st instance decision), which is mirrored in the extremely low recognition rate. In 2010 there was a significant rise in the number of subsidiary status granted due to the cases of Palestinians of Iraq and Iraqis that had been pending, however as the Government of Cyprus had decided to cease the policy to grant subsidiary protection to these two groups as well as a long standing policy to grant Palestinians from the West Bank subsidiary protection, it is expected that in 2011 the numbers will go back to the previous low. Recently, the Refugee Reviewing Authority issued the first decision on a cessation case of an Iraqi overturning the AS decision based on the ongoing unsafe situation in Iraq. (*Up to date the AS has not commented whether they will cease the practice of cessation*).
- There is lack of effective legal aid and lack of effective remedy, which is analysed below.

3. Lack of Access to Asylum Files for Lawyers and Legal Representatives

There is limited access to asylum files in order to prepare for the second instance examination by the Refugee Reviewing Authority (RRA). After the 2009 amendment of the Refugee Law, with transposed the Asylum Procedures Directive (APD) (Directive 2005/85/EC), the Asylum Service and the Reviewing Authority restricted access to the files of asylum applications in general for all applications, of both the applicants and legal representatives/lawyers. At present after the first decision is issued the applicant or the legal representative/lawyer have access only to the recommendation prepared by the examiner of the Asylum Service upon which the decision is based. There is no access to the transcript of the interview, nor any other documents in the file, including Country of Origin Information that was used, as well as documents submitted by the applicant or other authorities. FWC considers this a violation of the APD (articles 14, 16) as well as the national administrative law (article 43). As the RRA is the only body responsible for reexamining on second administrative instance, the asylum application on both procedural aspects as well as on the merits of the case, the restrictions imposed on the access to the file deny asylum applicants and their legal representatives the right to fair asylum procedures, an important component of the right to asylum as this is enshrined in the Charter of Fundamental Rights of the EU.

4. Lack of Effective Remedy

The asylum procedure in Cyprus consists of the first instance examination by the Asylum Service, which is an administrative department of the Ministry of Interior; the second instance examination by the Reviewing Authority of Refugees (RRA), which is also an administrative appeal body that follows an administrative procedure and not a judicial. Despite the fact that the Refugee Law provides for the competence of the RRA to act as a quasi judicial body i.e. examination of witnesses, hearings etc, these powers have never been used by the RRA up to date and therefore functions merely as an administrative body. Finally a recourse can be submitted before the Supreme Court against the decisions of the RRA. The recent amendment to the Cyprus Refugee Law considers the recourse before the Supreme Court as the remedy described under Chapter V of the Asylum Procedures Directive. This constitutes a violation of the Directive for the following reasons;

- The recourse before the Supreme Court has no automatic effect of suspense, therefore an asylum seeker may face refoulement before the case is decided. This point was confirmed in the recent case of *LEONIE MARLYSE YOMBIA NGASSAM v Republic of Cyprus* in which the Supreme Court examined the issuance of a deportation order and a detention order in relation to an asylum seeker who had filed recourse before the Supreme Court re the negative decision on her asylum claim. The Court considered that the lack of effect of suspense and the lack of other safety measures before a final decision is taken on the case by the Supreme Court, as this is provided by the Refugee Law, when submitting a recourse to the Supreme Court against a negative decision of the RRA posed a risk of refoulement and was in violation of the Directive.
- The Supreme Court examines points of law and not substance; therefore it cannot be considered an effective remedy as described in Article 39 of Chapter V, which is entitled “the Right to an Effective Remedy”. The legal term ‘effective remedy’ refers to a review of both facts and point of law, which is confirmed by the Preamble 27 of the Asylum Procedures Directive and the case law of the Court of Justice of the EU (CJEU) as well as Article 47 of the Charter of Fundamental Rights of the EU. The

Supreme Court cannot examine relevant facts and the merits of the case and although it can refer questions to the ECJ, it can only refer points of law.

5. Lack of effective Legal Aid

The Legal Aid Law has been amended to transpose the corresponding articles of the APD, however the transposition has been made at the lowest possible standard, allowing access to legal aid only at the Supreme Court level. For the procedures before the Asylum Service and Reviewing Authority, the only legal aid in the country at this moment is facilitated by the two legal advisors of FWC. Also the provision of legal aid that may be applied for at the Supreme Court stage has been subjected to a “means and merits” test, rendering the asylum seekers unable to argue before the Supreme Court the possibility of success of their cases and the legal flaws relating to the decisions on their claims, without expert legal advice. Since the amendment very few cases have been awarded legal aid. In fact out of the more than two hundred legal aid applications submitted, only 3-4 were granted.

- The asylum procedure at present in Cyprus is an administrative procedure on both first and second instance (Asylum Service and Reviewing Authority of Refugees) and neither stage is entitled to legal aid.
- Asylum Seekers are not eligible to legal aid in order to challenge other decisions that affect them such as decisions that deny them of their rights as asylum seekers such as access to health or welfare, putting them in a very vulnerable situation as they are mainly considered “illegal” in the country during Court procedures.
- An asylum seeker who is arrested for illegal stay or entry is not eligible for legal aid as the Legal Aid Law covers criminal cases that carry a sentence of over a year imprisonment whereas the sentence for illegal entry or illegal stay is monetary.
- Irregular migrants and asylum seekers may be held in detention pending deportation for any length of time (in the past this has reached 3 years in several cases). Amendments of the law in February 2011, these persons now have access to legal aid. However, this has also been subjected to a “means and merits” test and there is no effective awareness to detainees of this right. Following the transposition of the Returns Directive, detainees are supposed to be released upon completion of 6

months unless one of the exceptions apply. However there is no set procedure to examine how and when the exceptions apply. Detainees are released arbitrarily.

6. Subsequent Applications

Access to the asylum procedures is problematic in the case of subsequent / repeated applications, even when the sur place element is evident by the general security situation in the PoC's country of origin. The problem mainly lies on the disagreement between the Asylum Service / Attorney General and the Reviewing Authority on the authority responsible for the review of the subsequent claim. There is no relevant provision in the Refugee Law, and the relevant procedures envisaged in the APD have not been transposed. Pending examination of whether new elements are indeed submitted with the repeated application, asylum seekers remain without a formal asylum status and at risk of detention and deportation. Asylum seekers who file subsequent applications while in detention for deportation purposes are not released and remain detained for the whole of the RSD process. FWC considers this a violation of the (APD) (Directive 2005/85/EC) as the right to submit a subsequent applications and for it to be examined in the regular procedure is confirmed in the preamble paragraph 15 as well as in articles 32 of the Directive

7. Victims of Torture

As mentioned above no procedure exists in Cyprus for the identification of victims of torture. Therefore even if an applicant states or implies in their asylum application that they have been subjected to torture the authorities will not be aware of this usually until the person is already being examined by the Asylum Service, during the personal interview. This means delays regarding rehabilitation, medical and psychological assistance but also no psychological or legal support or preparation for the asylum examination, which is detrimental for victims of torture.

In addition persons dealing with victims have not received adequate training including welfare officers and eligibility officers of the Asylum Service carrying out the personal interviews that will determine the asylum cases of the victims. The manner in which these are carried out has often been described as interrogatory.

At the end of 2006 Future Worlds Center created a specialized Unit in Cyprus for torture victims. The Unit for the Rehabilitation of Victims of Torture (URVT) has been the only institution in Cyprus, governmental or non, offering services to victims of torture. The Unit was initially funded 80% by the European Refugee Fund and 20% by the Cyprus Government. It also receives supportive funds from the United Nations Fund for Victims of Torture. Since the 2008 ERF programming year the authorities have not released an ERF call related to victims of torture and at present URVT is operating at a lesser capacity than in the past but continues to address the beneficiaries' needs through co-operations with professionals working outside the organisation and promoting pro-bono work by professionals. FWC considers the administration of the national ERF by the authorities problematic, as it includes financial terms crippling for non-profit organizations, as well as large delays in releasing funds and gaps in the implementing periods.

URVT's aim is to support and promote the empowerment and rehabilitation of refugees and asylum seekers who have been subjected to torture, inhuman and degrading treatment, or punishment in their country of origin. It has followed an integrated treatment approach that encompasses a full range of services including medical examination and evaluation of medical needs; psychological support and rehabilitation; legal counseling and assistance throughout the asylum procedures; and social counseling during their rehabilitation process. URVT has always worked closely with a network of service providers, medical professionals, interpreters, and all involving government authorities, in order to help victims to recover from their traumas and integrate into society. At present besides the limited capacity of URVT there are no rehabilitation services for victims of torture in Cyprus.

Regarding the examination of torture claims within the asylum procedure, article 15 of the Refugee Law requires for all asylum applicants who claim torture, or infer torture to be sent for an examination to a special doctor. During 2006 – 2008 this examination was undertaken by URVT as part of its contractual obligations under the ERF project as designed by the local authorities. In 2009 this examination was appointed to the Government Medical Board. A similar Board had operated for this purpose prior to 2006 for a short period but its

operations were ceased due to the lack of expertise after a complaint was made to the national Ombudsman and a recommendation was issued by the Ombudsman regarding the incompetence of competence of the Board. The current Board is also problematic in regards to the procedures/methodology followed and its make up. Specifically the Board is consisted by the same doctors as the initial Board, a pathologist and a forensic examiner, who do not have sufficient training on such issues and do not follow specific methodology or procedures for the examination of victims of torture such as the Istanbul Protocol or any other internationally accepted procedures. In addition the victims are not sent for a psychiatric or psychological evaluation, nor are they sent to any other medical specialists in accordance to their symptoms, there is no interpreter at any part of the examination and the entire examination averages at 20 minutes. A clear indication of the incompetency of the specific Board is the fact that to date all reports issued conclude that 'the Board is not in a position to determine the cause of the findings'. This is stated even in cases where there are clear physical findings. FWC has filed a complaint to the national Ombudsman which has not been examined to date.

8. Reception Conditions

Asylum Seekers are not permitted to work for the first 6 months from application. After this period they are limited to jobs in specific areas such as agriculture and farming, were there are extremely limited vacancies. In addition employment for asylum seekers is problematic due to the insufficient structures, systems and methods used by the authorities and this has become worst with the current economic crisis striking Cyprus and the unemployment level being at its highest ever. The alternative, welfare payments, remains dysfunctional, with asylum seekers needing to wait 6 months to start receiving a payment, with the payments being interrupted at any moment, with special needs being refused consideration in the calculation. Difficult access to employment, delayed, erratic and incomplete welfare payments leave IC destitute and indebted.

In addition to the ongoing problems in December 2010 after pressure from right winged politicians and the media, in view of the upcoming parliamentary elections, the parliament decided to monitor the release of any funds granted from welfare services to asylum seekers

and refugees on a monthly basis. The competent parliamentary committee receives the payment instructions prepared by Welfare Services and decides each and every month whether money will be released or not. Given the fact that the parliament will not have access to the actual files, just the final payment instructions questions are raised on the criteria used in order to determine if funds are to be released or not. This decision has deteriorated the quality of the services even more and has increased the existing delays. In addition this practice has also increased the already heavy workload of the officers due to additional paperwork. It has also led to the termination of an electricity discount, which was given by the Electricity Board to approximately 1700 households. On the whole it has led to a much stricter approach in the provision of benefits to the refugee population.

9. Persons with special needs

The Reception Conditions Regulations, which is the national transposition measure of the EU Directive on reception conditions, has adopted very similar articles and wording to the Directive regarding persons with special needs. In accordance with the Directive the Regulations determine who are considered as vulnerable persons and stipulate that the authorities must take into account the special situation of these persons in order to ensure a standard of living adequate for the health of applicants and sufficient to ensure their subsistence”.

Regardless of the specific provision referring to persons with special needs at present the above legislation is interpreted by the Welfare Services to mean that only the basic needs of all asylum seekers, including persons with special needs can be met and no additional needs are taken into consideration. According to the authorities the only ‘preferential’ treatment that may be given to persons with special needs is that their application for public allowance could be given priority.

10. Children

Unaccompanied minors – The lack of screening procedures obviously affects the detection of unaccompanied minors and as a result the special procedures provided for the examination of their asylum case as well as their welfare are not implemented or are delayed. Even when identified, long delays have been noticed in the examination of their claims, many times up

to 18 months resulting in the minor becoming 18 before the examination begins and therefore the special procedures for unaccompanied minors not followed. Since November 2009 the status determination procedure for children has been put on hold, following the transposition of the Asylum Procedures Directive (APD), requiring the legal representation of children; the refugee law provides that this representation shall be undertaken by the Commissioner for the Rights of the Child, Cyprus, however has not been allowed by the competent authorities to do so through retaining the services of private lawyers.

Welfare practices are generally characterized by a lack of flexible and effective strategies in order to efficiently cover psychological and material needs of the children. This includes long waiting periods before the responsible officer actually handles the case, non-uniform practices across the country, poor coordination between departments, late induction to school, poor monitoring and guidance of the children. In 2010, the social welfare services have increasingly placed unaccompanied teenagers in shelters, rather than foster families, from where teenagers frequently leave and the authorities do not pursue their tracing. There have been instances of teenaged unaccompanied minors living on their own without timely access to welfare benefits.

Minors victims of abuse, violence, trafficking, torture - Due to lack of screening they are not identified. As a result they are not referred for psychological or medical support. There are no specialised rehabilitation services for victims of torture or violence, for minors or adults.

Minors with special needs - As mentioned above under persons with special needs, the same applies for children with special needs; no additional needs are taken into consideration including necessary equipment. This includes both the various governmental schemes of financial or technical aid, and welfare services as well. A recent example includes a minor with severe developmental delay, where the early evaluation of the case by welfare services was achieved only after our intervention, and where there is still no coverage of the extra costs of living. The only exceptions can be found within the educational system where minors with special needs have the same access to services as nationals.

In addition, minor asylum seekers have been denied specialized operations that are not carried out in Cyprus, but the state provides for these abroad. The authorities claim that the law provides only for Cypriot citizens and EU national ignoring the fact that the Reception Conditions Regulations stipulates that the state must provide the necessary medical care and assistance to asylum seekers with special needs as well as the antidiscrimination legislation of Cyprus. Any cases that have been sent abroad have been the result of intervention from an organisation or individual and are considered as 'special favours'. On a practical level, there has been some progress recently, but this is not reflected in the official level, therefore is subject to change.

11. Homeless

Homeless asylum seekers are not entitled to apply for welfare benefits, as they are not in the position to include an address in their application. The authorities have explained the obligation to provide an address with their application, as the only way to examine whether the applicant is residing in the areas under the control of the Government of Cyprus, regardless of the fact that asylum seekers are not able to move back and forth freely between the Republic and the occupied areas. The only other option for homeless asylum seekers are 3 reception centres on the island, but as capacity is limited in all centres this is not always an actual option (Kofinou Centre – 80 persons, Larnaca Centre 300 persons, Paphos 70 persons).

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