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Item reference: Action plan (11/04/2018)

Communication from Greece concerning the case of B.A.C. v. Greece (Application No. 11981/15)

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Réunion : 1318<sup>e</sup> réunion (juin 2018) (DH)

Référence du point : Plan d'action

Communication de la Grèce concernant l'affaire B.A.C. c. Grèce (Requête n° 11981/15)  
**(anglais uniquement)**

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DGI

11 AVR. 2018

SERVICE DE L'EXECUTION  
DES ARRETS DE LA CEDH



**HELLENIC REPUBLIC  
PRESIDENT OF THE LEGAL COUNCIL  
OF THE STATE  
AGENT OF THE GOVERNMENT**

Ms. Geneviève Mayer  
Head of the Department  
for the Execution of Judgments  
of the European Court  
of Human Rights  
DGI, Council of Europe

Reg. No: 57833/595481, 682421

Athens, 11 April 2018

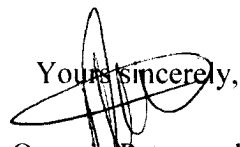
**Re: Case B.A.C. v. GREECE (application no 11981/15, judgment of 13.10.2016, final on 13.01.2017).**

Dear Madam,

I have the honour to submit hereinafter the action plan on the execution of the judgment of the European Court of Human Rights mentioned above.

As it concerns the general measures already adopted by the Greek Authorities, it is obvious that the Greek asylum system has been radically reformed to expedite the procedure without jeopardizing the quality already attained, while, at the same time, the principle of non-refoulement is fully respected. Regarding the individual measures, the Greek Authorities will provide the Committee of Ministers with updated information in due time.

Yours sincerely,

  
Ourania Patsopoulou  
Delegate of the Agent of the Greek  
Government before the ECtHR

**Cc: Permanent Representation of Greece  
to the Council of Europe**

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## **ACTION PLAN ON THE EXECUTION OF THE JUDGMENT OF THE EUROPEAN COURT OF HUMAN RIGHTS IN THE CASE OF**

**B.A.C. v. GREECE (application no 11981/15, judgment of 13.10.2016, final on 13.01.2017)**

### **I. DESCRIPTION OF THE CASE.**

The case concerned the failure by the Greek authorities to decide on an asylum application lodged on 15.1.2002 by the applicant, a pro-communist and pro-Kurdish political activist of Turkish nationality. On 18.2.2002 the General Secretary of the Ministry of Public Order, adjudicating at first instance, rejected that application, giving summary reasons. On 21.3.2002 the applicant appealed to the Ministry of Public Order against that decision. On 29.1.2003 the Advisory Board on Asylum issued a favorable opinion in respect of the applicant. The Minister for Public Order had not taken any decision and therefore had neither ratified nor rejected the Board's opinion. On 12.3.2013 the applicant was arrested in Patras. On 26.3.2013 the indictment division of Patras Court of Appeal examined the extradition request of the Turkish Interpol Office and unanimously decided to reject it. The division based its decision on the risk run by the applicant of suffering ill-treatment on account of his political opinions, should he be extradited. On 26.4.2013 the Court of Cassation upheld the impugned decision. The applicant's asylum application is still pending before the Minister for Public Order – already the Minister for the Citizen Protection.

The European Court held that the above failure had hindered the applicant from working legally, enrolling to university and in general leading a normal life. Therefore, in the circumstances of the present case the competent authorities failed in their positive obligation under Article 8 of the Convention to establish an effective and accessible procedure to protect the right to private life by means of appropriate regulations to guarantee that the applicant's

asylum request is examined within a reasonable time in order to ensure that his situation of insecurity is as short-lived as possible. The Court also concluded that there has been a violation of Article 13, in combination with Article 8 of the Convention, on the grounds that there was no effective remedy for the applicant to denounce this situation of uncertainty. The Court also held there would be a violation of Article 3, in combination with Article 13 of the Convention, if the applicant would be returned to Turkey without an assessment *ex nunc* by the Greek authorities of his personal situation in the light of the criteria set out in the Court's decision. The authorities were also requested to proceed to the examination of his asylum application.

## II. INDIVIDUAL MEASURES

The applicant was awarded just satisfaction of €4,000 for non-pecuniary damage which has been paid by the Greek authorities in 22.03.2017.

His asylum application is still being examined by the Minister for the Citizen's Protection. Further information on the developments in this case is awaited as regards, in particular, the possibility of granting a residence permit on the basis of humanitarian protection, as it was the case for the pending old applications according the provisions of *article 22 of the Law 4375/2016* (see below), as well as on the applicant's current situation (if he is still in Greece, if he has renewed his asylum card etc). However, regarding the amendment of the relevant legislation in 2016 (see below) the applicant, as an asylum seeker, has onwards free access to the labor market without any further, special requirement.

Yet, according to the law, there is no risk of deportation or refoulement while the asylum application is pending. Article 5 *par. 1 of presidential decree no 114/2010*, as in force, reads as follows: "*i. Applicants are allowed to remain in the country until the conclusion of the procedure of the examination of the application and they are not removed by any means. ii. The previous paragraph does not apply in cases where the competent authorities either surrender the applicant to another Member State of the E.U. in accordance with a European arrest warrant pursuant to the provision of law 3251/04 (A 127), or extradite him to a third country with the exception of the country of origin of the applicant concerned or to international criminal courts or tribunals, pursuant to the international obligations of the country. The surrender or extradition must not lead to direct or indirect refoulement of the applicant concerned, in breach*

*of article 33 par. 1 of the Geneva Convention, or to a risk of suffering serious harm, according to article 15 of presidential decree no 96/2008. No one is extradited before a final decision on the application is taken, as long as he invokes a fear of being persecuted in the requesting State.*

*iii. The right of the applicant to remain in the country, according to paragraph 1, shall not establish any entitlement to a residence permit". Similar are the provisions of the new article 37 Law 4375/2016.*

### **III. GENERAL MEASURES**

#### *Translation and dissemination of the Court's judgment*

The judgment at issue was translated into Greek. The Agent's Office sent the judgment to the Ministry of the Interior, to the Hellenic Police Headquarter/Directorate for Aliens and Borders Protection and to the Directorate-General of Police of Attica/ Aliens Section/Department of Administrative Measures in order to be disseminated to all competent authorities and avoid, in future, delays in the processing of asylum applications. The translation into Greek of the judgment is also accessible to the public through the website of the Legal Council of the State ([www.nsk.gov.gr](http://www.nsk.gov.gr)).

#### *Legislative and other measures*

The cause of the violation in the present case was the ineffectiveness and the deficiencies within the framework of the asylum procedure, resulting to a prolonged situation of insecurity for the asylum seeker. Yet, since the time of the facts and the delivery of the judgment at issue, a new legal framework governing the asylum procedure came into effect. The Committee of Ministers is already aware in the frame of the supervision of the group of cases *MSS and Rahimi v. Greece* that the Greek asylum system has been completely restructured after 2010 with the creation and operation since June 2013 of the Asylum Service and the Appeal Authority processing respectively at first and second instance the applications for international protection. Yet, as we have already communicated in paragraphs *C.I.1*, *C.II.* and *C.III.* of the document *DH-DD(2017)324, 15 March 2017 ( Updating of the Action Plan on the MSS and Rahimi group of cases v. Greece)*, by *Law 4375/16* the provisions of the recast *Directive 2013/32/EU* about the

asylum procedures were transposed into the national legislation. This Law also reformed the Asylum Service.

The most substantial reform regarding the case under consideration is that under the *article 22* of the Law 4375/2016 as amended by *article 86 par. 11* of the Law 4399/2016 and *article 96 par. 2* of the Law 4485/2017, all the applicants for international protection holding a valid card as asylum seekers and whose applications had been introduced up to five years prior to the entry into force of the Law 4375/2016 and are still pending at second instance are granted a residence permit for humanitarian reasons. The residence permits are issued for a period of two years and can be renewed. In such a case the application is not any more processed under the regime of the Presidential Degree 114/2010 and the administrative asylum procedure is ended.

Other substantial amendments aiming at a more effective and in due time administration of the procedure and the merits of the applications for international protection are the follow:

- a)* Article 44 par. 3 of the Law 4375/2016 regulated the provision of free legal assistance at the appeal stage at second instance.
- b)* Article 60 par. 4 of the Law 4375/2016 provides for the exceptional application of special procedure at the borders, in case of arrivals of a large number of citizens of third countries, who introduce international protection applications at the borders or in transit zones of ports or airports of the country or while they remain in Reception and Identification Centers. The relevant Joint Ministerial Decision (*no 13257/Government Gazette Issue 3455/B/26.10.2016*) for the application of the provisions of par. 4 of article 60 of the Law 4375/2016, was published on 26.10.2016.
- c)* Article 71 of the Law 4375/2016 provides for the asylum seekers whom the applications are pending –even old applications under the Presidential Degree no 114/2010 - to have direct access to the labor market as employees or free lancers without any further or special requirement.

The number of regional asylum offices and autonomous asylum units was increased, as was the staff of the Asylum Service. By the end of 2016 the Asylum Service was operating at 17 places in Greece whilst, by the end of 2017 the places of operation were increased at 22. By the end of 2017 the Asylum Service counted 650 agents of which over hundred persons in the islands of North- East Aegean Sea. This staff is supported by 176 agents of the EASO, 20 police officers, 20 agents of the UNHCR and NGOs. For 2018 the Asylum Service envisages to recruit 218 new employees.

Under Law 4399/2016 (*Government Gazette A117/22.6.2016*) which amended provisions of the Law 4375/2016, new Appeals Committees were established (Independent Appeals Committees) and are competent for the examination of the appeals against decisions at first instance (Asylum Service), which were submitted since 20.7.2016. By the same Law 4399/2016, the composition of the Appeal Committees was also amended (*article 86 par. 1-5 of the Law 4399/2016*) and the possibility of conducting the interviews by the staff offered by the European Asylum Support Office was provided (*article 86 par. 13 of the Law 4399/2016*).

The Asylum Service ability of processing applications for international protection has also increased. Between 7 June 2013, when the Asylum Service started operating, and March 2018, **145,970 asylum applications were registered**, of which 51,091 were submitted in 2016 and 58,661 in 2017. **109,551 applications have been processed, of which 40,2% of the applicants were granted international protection.** 38,651 applications were pending at first instance at 08.03.2018. The average time for processing an application at first instance is 6 months, this time is reduced to 2 months in the islands of North-East Aegean Sea and in case of detention.

In 2017 the Asylum Service in cooperation with Charokopion University, Athens and the funding from the national program of the Asylum, Migration and Integration Fund 2014-2020, has created a free application for the persons they have applied or wish to apply for international protection in Greece, the “*Asylum Service Application*”, which is available in 8 languages: Greek, English, French, Arabic, Farsi /Dari, Urdu, Amharic and Tigrinya.

Significant progress has been made as well in the processing of applications for international protection under the old regime (Presidential Decree no 114/2010), as regards applications filed before 7.6.2013; **until 3 March 2017, 94.04% of the backlog cases have been processed; today there is no pending case to be processed at first instance**, whilst, as of 3.3.2017, there was 4,976 pending cases to be examined at second instance. Until 3.3.2017, the Appeals Committees have processed at second instance in the framework of the old asylum regime 78,741 asylum applications, out of which 11,250 were accepted; Procedure was discontinued in 26,311 cases, as the applicants have not renewed their card as asylum seekers (within the deadlines set by article 18 par. 7 of the Law no 4058/2012 and by article 7 par. 1 of the Presidential Decree no 167/2014, as amended by article 24 of the Law no 4375/2016).

According to the information provided by the police authorities, the remaining backlog (5,96%) is due to be settled soon.

#### **IV. CONCLUSION.**

Having regard to the above, the Greek Government consider that this case is a single, unique case and that the Greek Authorities have taken all the necessary measures in order to avoid potential similar violations in the future; therefore there is no place for the adoption of any further general measure. The Government however is aware that it will be needed to provide updated information relating to the applicant's current situation and the processing of its asylum application and express its intention to do so in due time.