



COMMISSIONER FOR HUMAN RIGHTS
COMMISSAIRE AUX DROITS DE L'HOMME



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Mr. Mihalis CHRYSOCHOIDIS
Minister for Citizen Protection of Greece

Strasbourg, 8 March 2010

Dear Minister,

Further to our meeting in Athens on 10 February 2010, I should like to take this opportunity to follow up on the constructive dialogue I had with you and the other authorities during my visit to Greece from 8 to 10 February 2010.

In particular, I would like to address the protection of the human rights of migrants, especially asylum seekers, and the conduct of members of law enforcement forces.

I warmly welcome your willingness to introduce important changes in these areas, both of which have given rise to long-standing human rights concerns, and to act quickly and effectively to this end.

Changes in the field of protecting the rights of migrants, especially asylum seekers, are particularly urgent. As you know, in the report following my last visit to Greece in December 2008, I highlighted very serious shortcomings in Greece's asylum policies and practices. Regrettably, since then the situation appears to have further deteriorated, with enormous difficulties reportedly faced by asylum seekers in accessing the asylum procedure, a real risk of them being returned to countries where they may face serious human rights violations, widespread use of detention and in many cases, non-enjoyment of basic procedural safeguards such as interpretation and legal aid in practice. Therefore, I am particularly pleased to note your commitment and the first steps taken towards the establishment of a fair, accessible and swift asylum claim processing system which would guarantee compliance with international and European law and take into account best practice in this field.

I have noted that according to current plans, draft legislation establishing a new asylum procedure should be ready by May 2010. Central to the new procedure is the setting up of a new Asylum Agency, institutionally distinct from the police and other security services. It was pointed out to me, however, that at present there is rather limited expertise in Greece for efficiently running a system of asylum determination. I believe that the establishment of meaningful and ongoing contacts with functioning asylum services in place in other European countries could contribute significantly to the success of the new Asylum Agency. I have noted UNHCR's readiness to organise such international contacts and I would encourage you to continue to make the most of UNHCR's specialist advice, including on this particular issue.

Another important feature of the new system is the establishment of centres at entry points around the country where migrants will be screened on arrival, with a possibility of applying for asylum. They will then, as necessary, be accommodated in reception facilities around the country. I have noted that the first such centre is to be established in Mytilini, Lesbos, in June 2010.

In order to maximise the chances of these reforms turning into a success, I would like to stress the need for preparations to accompany the legislative changes underway so that, by the time the new

legal framework is in place, there will be enough implementing tools for it to start functioning properly. Thus, for instance, attention should already be paid now to the availability of properly trained interpreters and staff responsible for conducting asylum interviews and for refugee status determination. In addition, the provision of suitable reception conditions, as also required by the EU 'Reception Directive', should be prioritised. This includes the provision of accommodation, as well as the establishment of legal aid and social support structures that would ensure the proper treatment of asylum seekers, with a special focus on vulnerable individuals, including unaccompanied minors and victims of torture, trafficking or other traumatic treatment.

I have also noted with interest your plans to deal with, on the one hand, the backlog of cases currently pending at first and second instances and, on the other, new applications submitted from now until the entry into force of the new asylum framework (interim period).

As concerns pending applications, which will be dealt with under the procedure currently in force, I understand that the Asylum Division at Petrou Ralli Street will examine the unprocessed first instance claims and that an *ad-hoc* three-member Committee will examine applications pending at second instance. During my visit, however, different interlocutors highlighted that the situation there is currently blocked in practice, with an inadequate number of officers dealing with the registration of applications and interviews, asylum claims only being registered on Saturdays at a rate of 50-60 per week and the Advisory Refugee Committees responsible for the examination of asylum applications not functioning properly.

Considering that the above Asylum Division will also be involved in the interim period processing new asylum applications - although through procedures that will yet again be different - there is an urgent need to address the institutional capacity to deal with this impending asylum work in an efficient manner. This includes an adequate number of qualified persons responsible for interviews and examination of first and second instance claims and, crucially, qualified interpreters, both at Petrou Ralli and in other Police Directorates around the country.

In any event, I would like to reiterate the view I already expressed at our meeting: that those who are already in the asylum procedure and new applicants should have their cases dealt with fairly, without further delays, while migrants' detention should be in principle avoided.

During our discussions at the meeting, I was also pleased to note indications of a new approach to the use of detention in respect of migrants. In this connection, I would like to draw your attention to two recent judgments delivered by the European Court of Human Rights (the Court) in respect of Greece, in the cases of an asylum seeker (*S.D. v. Greece*, judgment of 11 June 2009) and an irregular immigrant (*Tabesh v. Greece*, judgment of 26 November 2009) respectively. Apart from violations of Article 3 (prohibition of inhuman or degrading treatment) of the European Convention on Human Rights (the Convention) because of the conditions of detention, these judgments have found Greece in violation of Article 5 (right to liberty and security) of the Convention. I trust that you will be able to ensure the adoption of further measures in order to guarantee the full conformity of migrants' detention practice with the Council of Europe standards, and especially the case law of the Court.

The second major issue addressed at our meeting on which I would like to follow up concerns the conduct of members of the police and other security forces. I am pleased to note that draft legislation establishing an Office to deal with complaints of misconduct by the security forces (the Hellenic Police, the Fire Brigade and the Coast Guard) will be ready soon.

I welcome the determination you expressed, in our recent exchange of correspondence on this subject, for ensuring the effectiveness of the new mechanism, notably in the light of the principles set out in the Opinion concerning independent and effective determination of complaints against the police, which I published in April 2009, and a copy of which you already have.

As we discussed, the institutional and practical independence of the mechanism and adequacy of its investigation powers are key to the effective determination of complaints against the police. In a number of European countries, this has been achieved through the establishment of specialised ombudsman institutions or standing commission structures. As mentioned at our meeting, my Office can facilitate, if necessary, exchanges between your Ministry and these institutions in order to share experiences and gain insight into challenges and issues relating to the effective determination of complaints against the police.

I look forward to receiving your reply and to continuing our constructive dialogue on the above questions.

Yours sincerely,

Thomas Hammarberg