



# Asylum procedures & Reception Conditions In Cyprus

May 2011

## **A. Profile of KISA**

KISA - Action for Equality, Support, Antiracism is a Non Governmental Organisation (NGO) registered as an association under the Associations and Foundations Laws of the Republic of Cyprus (Law No 57/1972). It is an independent, non profit organisation established in 1998, and its vision is the promotion of an all inclusive, multicultural society, free of racism, xenophobia and discrimination and where through the interaction and mutual respect of different cultures there will be equality of all, irrespective of race, nationality or ethnicity, colour, creed or gender, sexual preference or any other characteristic.

KISA's activities focus on the fields of Migration, Asylum, Racism, Discrimination and Trafficking. These activities, which are running on various levels, may be generally described as follows:

### **Social Intervention**

KISA organizes campaigns and other actions in order to inform and sensitise the Cypriot society and raise awareness about migration and asylum, discrimination, racism and trafficking. In parallel, KISA is systematically lobbying towards various authorities in order to influence the legal and structural framework, the policies and practices in these fields.

### **Operation of Migrant and Refugee Centres**

At its Centres, KISA provides free legal and social services, access to information, support, guidance and advice to migrants, refugees and ethnic minorities in general.

### **Empowerment of Migrant and Refugees**

KISA places great emphasis on the empowerment and self-organisation of migrants and refugees and it therefore supports and cooperates with them for the establishment, mobilization, and the democratic operation of the organizations of the various migrant and refugee communities.

KISA's combination of social intervention activities, the operation of Services through the Migrant and Refugee Centres, as well as the strong ties to the migrant and refugee communities, enable KISA to have a very accurate and updated perspective on the policies and practices, as well as on the ground realities related to the fields of action and the various migrant and refugee communities in Cyprus.

KISA's long established expertise on migration, asylum and anti-discrimination issues is also evident in its wide recognition as an independent organisation with credibility, professionalism and broad experience to implement European programs, such as the European Refugee Fund, Equal, Integration of migrants and others, as well as through its involvement with research projects implemented on behalf of and/or in cooperation with the Fundamental Rights Agency (FRA), the International Organization for Migration (IOM), the European Network Against Racism (ENAR), the British Council, and other bodies and agencies of the European Commission. The latter include the Network of Socio-Economic Experts in the Non-Discrimination Field under Progress, research on separated children, a

Pan-European mapping study on trade union practices to fight discrimination and/or promote diversity and on the Impact of the Racial Equality Directive.

KISA is a partner in European-wide integration of migrants projects, such as the Migrants, Rights and Integration Project (MRIP) and the Migrant Integration Policy Index (MIPEX). It is also the major partner of the international NGO Minority Rights Group (MRG) in a pioneering project that aims to give voice to the minority communities in Cyprus and to have their opinions voiced regarding the solution of the Cyprus problem.

In addition KISA cooperates closely with International and European human rights agencies and organisations such as the United Nations High Commissioner of Human Rights, the United Nations High Commissioner on Refugees, the European Commission against Racism and Intolerance (ECRI) and the Commission for the Prevention of Torture (CPT) of the Council of Europe, the Commissioner for Human Rights of the Council of Europe, the Organisation for Security and Cooperation in Europe (OSCE) and the EU Commission, through its work on reports, filing of complaints, and its participation at meetings, conferences, networks, etc.

KISA is a national NGO committed to partnership and coordinated action with other grassroots organisations at EU level. To this effect KISA participates actively in various European Networks, such as the ENAR – European Network Against Racism, which is committed to the fight against racism and discrimination, EAPN – European Antipoverty Network, which is active in the elimination of poverty and social exclusion in Europe, Migreurop which focuses in the area of detention and EU border control policies, PICUM which is dedicated to the work with undocumented migrants in Europe, ENPATES - European NGOs Platform against Trafficking, Exploitation and Slavery which focuses in the area of Trafficking and the EMNHR – Euro Mediterranean Network for Human Rights which focuses in the cooperation of NGOs from EU and Non EU countries of the Euro-Mediterranean area.

## **B. The current social and political environment around asylum**

For many years, and since Cyprus became an immigration and an asylum country<sup>1</sup>, any discussions or debates around these issues and the need to adopt a comprehensive migration and asylum policy as well as to address the needs of migrants and asylum seekers, have been limited and usually initiated by civil society organizations, mainly NGOs working in the field of antidiscrimination and asylum. For years, subsequent Governments, political parties and other stakeholders have been turning a blind eye to the situation of asylum in Cyprus and to the needs of asylum seekers and refugees.

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<sup>1</sup> Cyprus became an immigration country since the beginning of the 1990's when the Council of Ministers authorised for the first time the employment of migrant workers. Moreover, asylum seekers started arriving at the shores of Cyprus through smugglers around 1997 – 1998.

During 2006 – 2010, Cyprus experienced an unprecedented rise in asylum applications<sup>2</sup> due to various reasons, amongst which was its accession to the European Union that consequently made it one of the external borders of the EU. Quite a lot of asylum applicants came to Cyprus through the northern part of the country where the Government does not exercise effective control due to the de facto division of the island since 1974. At the same time, slowly but steadily, a negative and extreme narrative around migration and asylum has been developing by extreme and far right groups and organisations, which has become more visible in the Cypriot society during the last 3 years<sup>3</sup>.

Despite the fact that asylum applications have dropped considerably during the last year and “illegal” entries in Cyprus through the North have been minimized, the emergence of far right and nationalistic groups with an outright racist speech and narrative that link “illegal immigration” with refugees and asylum seekers thus protracting a picture of asylum seekers as a danger to the society. Refugees and asylum seekers are portrayed to steal the jobs from the locals and to receive welfare benefits that should have been given to Cypriot nationals. These attitudes have created an explosive negative climate around issues of asylum seekers and the welfare benefits they are entitled to receive. These have been further exaggerated by the media that have been misinforming the public about the welfare benefits and the rights that asylum seekers are entitled to under the law. This has also led the majority of the political parties in the country to identify with these misperceptions around the whole matter in order to gain votes. Additionally, asylum seekers are portrayed as “pseudo political refugees”, allies to Turkey. According to them (to who????), they are guided to the areas of Cyprus which are under the control of the Cypriot Government by the Turkey with the aim to change the demography of the Island and create a Muslim minority which they can use for their aims to take over Cyprus.

Particularly during the last year, due to the economic crisis and the upcoming parliamentary elections, the whole issue around migration and asylum has taken an unprecedented negative turn with most politicians. This stance has also been taken by mainstream political parties, who are blaming all the problems of the Cypriot society, such as unemployment, low standard of living, criminality and others, to the so called “illegal migrants” amongst which they include asylum seekers and refugees or persons under international protection status.

Despite the fact that both the law and practice followed by the authorities in respect to the welfare benefits and the access to other social rights are very restrictive, asylum seekers and refugees have been portrayed by the media as “illegal migrants” who do not contribute but are living on the shoulders of the Cypriot taxpayers and that they are treated more favourable than Cypriots concerning benefits.

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<sup>2</sup> Asylum Levels and Trends in Industrialized Countries 2010, Division of Programme Support and Management 28 March 2011 “Based on the first indicator (national population), between 2006 and 2010 the two Mediterranean islands of **Cyprus** and **Malta** received, on average, the highest number of asylum-seekers compared to their national population; 24 and 19 applicants per 1,000 inhabitants, respectively.”

<sup>3</sup> Groups like ELAM (Ethniko Laiko Metopo), KEA (Kinisi Ellinikis Antistasis), Chrysi Avgi are self identified as nationalistic and as groups that are fighting for an ethnically clear Cyprus without any Turkish Cypriots, Turks and illegal immigrants.

### **C. Relevant legal framework, administrative practice and deficiencies of the Asylum Procedures System**

The Refugee legislation of Cyprus has been enacted in 2000 and subsequently amended several times in order to accommodate the relevant Council Directives<sup>4</sup> on asylum as well as to include the implementation of the Dublin II Regulation.

Under the Refugee Law<sup>5</sup>, an asylum seeker may be recognised as a refugee for the reasons and grounds provided in the 1951 Convention on the Status of Refugees, or as a person in need of subsidiary protection, which also includes an assessment of human rights violations under the European Convention of Human Rights and particularly Article 3<sup>6</sup>, as well as other international human rights treaties ratified by Cyprus. If none of the above legal statuses are granted to an individual, a temporary residence permit may be granted on humanitarian grounds. His or her application is otherwise rejected and there is no other form of protection or residence status that a person may be given.

An asylum seeker, a refugee, or a person under subsidiary protection may not be sent back to a country where he/she will be persecuted or their human rights will be violated. According to the law, an asylum seeker is defined as a person seeking asylum and whose claim's final decision is still pending. A final decision is defined as a decision against which all available judicial remedies are exhausted and more specifically a decision by the Supreme Court upon one's appeal. Despite these, no legal status is granted to asylum seekers during the period they appeal to the Supreme Court against the negative decision by the Refugee Reviewing Authority. Consequently, during this period of time asylum seekers do not have access to any social rights (employment, welfare benefits, public health care) and are running the risk of being arrested and detained.

The Refugee Law provides that persons seeking asylum, upon the submission of their application, should be informed in a language understood by them about the asylum procedures, their rights and their obligations under those procedures, and particularly their right to receive free access to interpretation services if necessary, to their right to legal representation, to advice from legal advisors, and to their right to contact the UNHCR. They should also be informed of the time they have to fulfilling their obligation to provide all the relevant information related to their claim.

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<sup>4</sup> Council Directive 2003/109/EC on the minimum reception conditions for asylum seekers, Council Directive 2004/83 on the minimum standards for the Qualification of persons as refugees or as persons with subsidiary protection and Council Directive 2005/85/EC on the minimum standards on asylum procedures in the member states

<sup>5</sup> Law 6(I)/2000 as amended

<sup>6</sup> However, the law provides for exclusion from the subsidiary protection status for the same reasons a person may be excluded from the refugee status. Taken the case law of the European Court of Human Rights Court on Article 3 as an absolute right which may not be qualified for any reason, there is therefore no procedure in the Cypriot law for a full examination of article 3 cases.

Upon submission of an application for Asylum, the Refugee law provides for a right to stay in the country only for as long as an application is pending before the Refugee Reviewing Authority<sup>7</sup>. This is because, despite the general right to challenge the decision of the Asylum Service/ Refugee Reviewing Authority before the Supreme Court and despite the fact that an asylum seeker retains this status until a final decision is taken on his/her asylum claim by the Court, the authorities interpret and implement the law as if the final decision is that of the Refugee Reviewing Authority after which they are free to issue detention and deportation orders.

Cyprus follows single asylum procedures for all the relevant protection status provided in the Refugee Law.<sup>8</sup> The authority responsible for status determination is the Asylum Service<sup>9</sup> at the first administrative level, a department under the Ministry of Interior. The Refugee Reviewing Authority is responsible for the second instance administrative level. When an application is rejected on both levels, there is then a right to challenge the Refugee Reviewing Authority's decision before the Supreme Court, which acting in its exclusive administrative jurisdiction under Article 146 of the Constitution of Cyprus.

The Refugee Reviewing Authority (RRA), according to the law, is an independent authority consisting of three members of high moral and professional standards and with experience on refugee and asylum issues. They are appointed by the Council of Ministers, after a suggestion is made to that effect by the Minister of Interior, and they may be dismissed by the Council of Ministers only for limited reasons provided in the law. In most cases, the appointees are party members, with limited knowledge and experience on asylum issues.

Although not clearly stated, the Refugee Law empowers the Refugee Reviewing Authority to function as a quasi-judicial body as it has the competence to order hearings on asylum cases, to summon expert witnesses, or any other person it deems appropriate to examine. However, the RRA has never exercised such powers and acts merely as a second instance administrative authority. The RRA is has the obligation to make a fresh examination of the claim, to hear or take into account new evidence brought by the applicant on second instance and to examine both procedural aspects as well as the merits of the case<sup>10</sup>. According to the law, when an applicant submits new evidence, the Refugee Reviewing Authority is obliged to either invite the applicant for a second interview or to order a hearing.

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<sup>7</sup> These provisions are largely in line with the provisions of Council Directive 2005/85/EC on the minimum standards on asylum procedures but as the law failed to transpose the Directive correctly as regards the effective remedies, it allows for the violation of the rights of asylum seekers to an effective remedy as this will be discussed further down.

<sup>8</sup> According to the single procedure, an asylum application is always examined with regard to all possible protection statuses provided in the Refugee Law i.e. refugee status, subsidiary protection status, and temporary residence on humanitarian grounds status.

<sup>9</sup> This is in effect since the amendment of the Refugee Law in 2004, whereas before the Refugee Authority was responsible (2002 - 2004), and prior to that UNHCR in Cyprus determined asylum applications.

<sup>10</sup> According to Article 28F of the Refugee Law, the Refugee Reviewing Authority may follow either written or oral procedures, it has the power to call for a hearing of a case where they may hear any persons including the applicant, any expert in the field of asylum, the representative of the Asylum Service etc. The Law provides that the procedures of the Authority would be defined by internal regulations, but no such regulations have been issued up to date in relation either to the written or oral procedures.

The Refugee Reviewing Authority has the power to decide definitively who is entitled to refugee or subsidiary protection status, or to annul the decisions of the Asylum Service and to order the re-examination of the case at first instance level by the Asylum Service.

Both the decisions of the Asylum Service and the Refugee Reviewing Authority may be challenged before the Supreme Court with a recourse under a general right of Article 146 of the Constitution<sup>11</sup> to challenge decisions of the administration. The Supreme Court has exclusive jurisdiction to act as an administrative Court and reviews only the legality of administrative decisions. It does not examine the merits of the case. In its review of the legality of the act it merely examines whether the decision is flawed in fact or law. The Supreme Court cannot substitute the administration in its decision making powers, and according to Article 146, paragraph 4, it may only confirm in whole or in part the administrative decision or declare it null and void. Thus, in Article 146, the judicial review procedure does not guarantee the examination of the decision of the administration on its merits. Filing a case before the Supreme Court does not have automatic suspensive effect, therefore the decisions of the Asylum Service and/or the Refugee Reviewing Authority are immediately enforceable i.e. the asylum seeker is considered to reside illegally in the country and therefore a prohibited immigrant who is subject to detention and deportation measures.

This is because, despite the general right to challenge the decision of the Asylum Service/ Refugee Reviewing Authority before the Supreme Court, and despite the fact that an asylum seeker retains this status until a final decision is taken on his/her asylum claim by the Court, the Refugee law provides for a right to stay in the country only for as long as an application is pending before the Refugee Reviewing Authority<sup>12</sup>. The authorities interpret and implement the law as if the final decision is that of the Refugee Reviewing Authority after which they are free to issue detention and deportation orders.

Deportation orders for an “alien”, who are a prohibited immigrant, may be issued under the Aliens and Immigration Law (Cap 105), the general legal framework applying to all “aliens” and particularly third country nationals in Cyprus<sup>13</sup>. Any decision for the arrest and deportation of an “alien” may be only challenged before the Supreme Court under Article 146 of the Constitution. There is not a second instance body responsible for examining the correctness of detention and deportation orders of the Director with regard to the merits of the case, like in asylum cases. Filing a case to the Supreme Court against deportation orders does not bare an automatic suspensive effect of the deportation measure.

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<sup>11</sup> As Article 146 of the Constitution provides for a general right, there is no obligation to exhaust first the Refugee Reviewing Authority procedures before filing a case at the Supreme Court, but one can choose to bring a case before the Court against a decision of the Asylum Service.

<sup>12</sup> These provisions are largely in line with the provisions of Council Directive 2005/85/EC on the minimum standards on asylum procedures but as the law failed to transpose the Directive correctly as regards the effective remedies, it allows for the violation of the rights of asylum seekers to an effective remedy as this will be discussed further down.

<sup>13</sup> The issues of EU nationals are regulated under a special law on the Right of EU nationals and the members of their families and move and reside freely in the Republic, in line with community law obligations.

The relevant<sup>14</sup> articles of the Aliens and Immigration Law provide under Article 6, states the categories of persons who are prohibited immigrants and therefore their entry or residence to the Republic must be denied. These categories include *“any person who enters or resides in the Republic in violation of any prohibition, condition, restriction or reservation provided in this Law or in any Regulations issued on the basis of this Law or in any permit granted to or issued on the basis of this Law or any regulations thereof “* (Article 6(1)(k)). Detention and deportation orders may be issued against prohibited immigrants subject to the provisions of the Refugee Law.

The relationship between the two relevant laws regarding the legality of the Immigration authorities to issue detention and deportation orders against asylum seekers who have not yet received a final decision on their asylum claim has been decided by the Supreme Court sitting in full bench in the case of ***Asad Mohammed Rahal v. the Republic***, judgment of the 30<sup>th</sup> of December 2004. The Supreme Court held that the Immigration Officer has the power to issue detention and deportation orders against an asylum seeker pending the determination of his claim, only if the circumstances relating to the issuance of detention and deportation orders fall outside the scope of the Refugee Law and the protection afforded by that law to the asylum seekers<sup>15</sup>. The Court concluded that *«We are of the opinion that the Director had the power to issue detention orders even though the determination of his asylum claim was pending. The reservation in Article 14(1) of the Aliens and Immigration Law means that the Refugee Law is superior in relation to its scope, affording to asylum seekers, under the conditions provided, protection from the consequences and penalties provided in the Aliens and Immigration Law. As for the rest, the regulatory role of the Aliens and Immigration Law, which aims at the protection of the Cypriot territory and goes beyond the scope of the Refugee Law, is not changed or minimized. We do not accept that when the Refugee Law is invoked, the Aliens and Immigration Law cannot be applied as a whole, under circumstances such as those in front of us.*»

It thus accepted that it is possible for the Director (Immigration Officer) to issue detention and deportation orders against asylum seekers pending the determination of their case before the Supreme Court, as they do not have the right to stay in the Republic and therefore the Aliens and Immigration law applies and are so considered prohibited immigrants.

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<sup>14</sup> Article 13 of the Aliens and Immigration Law is also relevant (orders to prohibited immigrants to abandon the Republic) but it is never used by the Immigration Officer who issues deportation orders only on the basis of Article 14 of the Law. The fact that Article 13 provides for the possibility of detention orders, just as Article 14 does, but only for the limited period of 8 days, after which detention may be only continue on the basis of a Court decision may be one of the reasons it has not been used by immigration authorities.

<sup>15</sup> In said case the applicant was arrested by the Police in the context for his involvement in a traffic accident were it was discovered that the he submitted an asylum application under a different name and different nationality than his real one. After his conviction to one month's imprisonment by the District Court he was declared an illegal immigrant on the basis of the Article 6 (1)(d) of the Aliens and Immigration Law (persons convicted for a criminal offence) and detention and deportation orders were issued. Deportation orders were suspended from the Immigration Officer in order for his asylum claim to be examined but not the detention orders.

The Refugee Law does not provide for legal aid to be provided to asylum seekers during administrative procedures before the Asylum Service and the Refugee Reviewing Authority. The Legal Aid Law provides that legal aid is provided to asylum seekers only during the Supreme Court procedures if certain conditions are met, the main one of which is that of good possibilities of success for the case.

Access to the asylum procedures is generally respected and there is no more a pattern of denying access to the procedures from the Police. However, KISA had to deal with specific cases where access to asylum procedures was restricted one way or another, by the authorities, particularly in applications submitted at the airports and where asylum seekers were denied access. In some cases KISA witnessed an indirect violation of the right to access to the asylum procedures. Asylum seekers who got arrested before the submission of their application and held in detention, with detention and deportation orders due to illegal entry and stay, even after the submission of their application, despite the fact that the application was filed within the timeframe provided by the Refugee Law. The deportation orders are suspended due to the asylum application but not the detention orders which they use in order to exercise pressure on the detainee to withdraw his/her application for Asylum. Asylum procedures in Cyprus are thus evidently poor and should not be considered as fair and just for the following reasons:

- a. Asylum seekers are not properly informed of their rights and obligations in the asylum procedures. The Immigration authorities used to provide a general leaflet with information on the procedures in the main languages of asylum seekers. In the majority of the cases this is no longer provided. Moreover, the specific leaflet has not been updated so as to inform applicants of their rights and obligation after the amendment of the Refugee Law to transpose the Asylum Procedures Directive, particularly on the means they have at their disposal to provide information about their claim as well as their right to legal aid and the conditions thereof, as well as the procedures to be followed before the Court.
- b. Despite the fact that the determination on first instance by the Asylum Service is now accelerated in general, there is a constant pattern of poor interviews with the Asylum Service, with no trained interpreters on asylum issues. KISA has often received complaints by asylum seekers on the intimidation perpetrated by the officers as they abuse their power and they tend to threaten applicants and mock their case. Moreover, KISA has been following many cases of asylum seekers with serious asylum claims that have been pending, often for more than 8 years before they were finally determined. This is also obvious by the very low recognition rate in Cyprus, which for 2010 only comes up to 0.01 of full refugee status and 0.16 subsidiary protection status from the Asylum Service, and 0.5 refugee status and 0.24 subsidiary protection status from the Refugee Reviewing Authority.<sup>16</sup>

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<sup>16</sup> According to UNHCR Cyprus statistics.

- c. The majority of the asylum applications rejected by the Asylum Service are closed files on procedural grounds i.e. failure to notify change of address. Even if the asylum seekers provide an explanation for their failure to conform with procedural rules later on, the Asylum Service may not reopen the files, resulting thus in prohibited refoulement of asylum seekers as the application was never examined in substance. The other most commonly used reason for the rejection of the applications is the credibility of the applicant which is following a very poor interviews that do not comply with internationally accepted interview standards described in the Handbook on asylum procedures of UNHCR.
- d. The Refugee Reviewing Authority, in KISA's view, should not be considered independent, despite the provisions of the law. KISA had to deal with cases where the cooperation amongst the Asylum Service and the Refugee Reviewing Authority in rejecting an asylum claim was obvious. At the same time, the members of the Authority are appointed on the basis of their political affiliation to political parties in power at that time, rather than their expertise and knowledge on refugee and asylum matters. As such, they are not independent from political influences, which in the context of the overall negative political environment around asylum issues prevailing in Cyprus, as described previously, cannot rule out the possibility of subjective decision making.
- e. The Refugee Reviewing Authority has never functioned as a quasi-judicial body but rather as an administrative body, which in the majority of cases simply reconfirms the decisions of the Asylum Service. The RRA does not carry out second interviews in the vast majority of the cases it examines, even if new pieces of evidence are brought forward by the applicant, nor does it carry out any hearing procedures.
- f. In the vast majority of the cases the RRA does not conduct fresh investigation on the claim but is relying on the findings of the Asylum Service, including the information about the country of origin of the applicants. The RRA merely reviews whether the procedure followed by the Asylum Service was correct.
- g. Recently, the Refugee Reviewing Authority changed its practice and does not allow any more access to the files of the asylum seekers to submit the reasons of their appeals, despite the clear provisions of the Refugee Law as well as the Asylum Procedures Directive. As a result, asylum seekers do not have the possibility to submit substantial reasons on their appeal.

As legal aid is not provided during the administrative procedures, asylum seekers may only seek basic legal advice provided free of charge by two NGOs, namely KISA and the Future Worlds Centre. These two NGOs however are not funded by the Government to provide such services and therefore have limited capacity. They only offer very basic legal advice and support to asylum seekers. At the same time there are only limited number of lawyers specializing on refugee law whereas at the same time a lot of lawyers with no knowledge of refugee law take advantage of asylum seekers and financially exploit them by convincing them that they can

handle their cases, which means that people's application are rarely successful and the representation they receive is not in any way professional and appropriate.

- h. Legal aid, before the Supreme Court, is in theory supposed to be granted under the law. Until today, out of the 280 legal applications submitted to the Supreme Court, only 2 have been successful. The vast majority are rejected as the Court finds that there is no possibility of success, in line with the generally negative decision-making of the Supreme Court in asylum cases. It is very difficult for asylum applicants to prove that they have a possibility of success on grounds of legality because they are not represented by lawyers during this procedure. They can explain the substance and the merits of their asylum claim but not the legal grounds for the review and therefore they fail. The two cases asylum seekers that have been granted legal aid were cases that KISA supported indirectly to defend their application.
- i. Legal aid is not granted in respect to deportation cases.

### **Right to an effective remedy**

The right to an effective remedy is provided in the Asylum Procedures Directive 2005/85/EC, in the Charter of Fundamental Rights of the European Union and in Article 13 of the European Convention of Human Rights. The right to an effective remedy has been interpreted by the European Court of Human Rights (*Gebremehdin v. France* (no. 25389/05, § 66, *Čonka v. Belgium* (no. 51564/99, § 79)) and by the Court of Justice of the European Union (CJEU) (*Case C-136/03, Durr and Ünal*, ECR 2005 Page I-04759, paras 51-57).

All the above are legally binding to Cyprus as a member of the European Union and a signatory to the European Convention on Human Rights. However, Cyprus did not transpose the relevant provisions of the Asylum Procedures Directive (Article 39), and asylum applicants do not have the right to an effective remedy in relation to their asylum applications and deportation from Cyprus.

The recourse to the Supreme Court does not entail automatic suspensive effect. Suspension of the decision may be only granted if an intermediate (*ex parte*) application is made which can only succeed if the applicant proves that the decision suffers from blatant illegality and he/she will suffer irreparable harm. In practice it is very rare that the Supreme Court grants such orders, either in asylum cases or in general deportation of migrants. Despite the fact the in cases of asylum seekers the immigration officer may suspend deportation *ab initio* until the outcome of the case, it does not simultaneously suspend detention. This results in the long and unlawful detention of asylum seekers as defined within the meaning of Article 5 of the European Convention on Human Rights.

Moreover, whereas the practice of the Immigration Officer up to recently was to wait until the outcome of at least the *ex parte* application before proceeding with the deportation of an asylum seeker, recently this started to change as KISA had to deal with cases that the Immigration Officer

proceeded with deportation despite ex parte applications pending before the Court for determination.

The CJEU requires that an effective remedy entails an automatic suspensive effect as well as examination of the merits of the case by an independent Court of Tribunal. This does not take effect in Cyprus. Not only does recourse at the Supreme Court not entail automatic suspensive effect of the deportation, but the Court cannot examine the substance of the case. As it was mentioned above, the Supreme Court only reviews the legality of the decision of the administration.

Currently, there are 38 applications by Kurds from Syria against whom detention and deportation orders were issued in June 2010, despite the fact that some of them had cases pending before the Refugee Reviewing Authority or before the Supreme Court, or some of them had their files closed on procedural grounds. The ECtHR granted an interim measure under Rule 39 of the Rules of Procedure of the Court and deportation was suspended since. One of the main issues of review by the Court, apart from Article 3 is the rights to an effective remedy.

### **Detention of asylum seekers**

According to the Aliens and Immigration Law, prohibited immigrants are detained for the purpose of deportation on the basis of administrative decisions (detention and deportation orders) of the Migration Officer, and not on the basis of any court decision<sup>17</sup>. The Migration Officer can issue arrest and detention orders only for the purpose of deportation when migrants are considered 'prohibited immigrants'. However, the Law provides ample discretionary powers to the Migration Officer to consider migrants as prohibited immigrants<sup>18</sup>. A detention decision of the Migration Officer issued for the purpose of the deportation may not be challenged before the Supreme Court separately. It may be only challenged together with the deportation order. Cyprus has not yet transposed the Council Directive 2008/115/EC regarding the common standards for the return of illegally residing migrants, despite the lapse of the transposition deadline.

Similar to making asylum decisions, the Supreme Court does not examine the merits of the case but only its legality.

According to the Refugee Law, a person cannot be detained for the sole reason that he or she is an asylum seeker and may be only detained in very limited cases that are specifically defined by the

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<sup>17</sup> As a matter of fact the law does not provide for any cases where a Court decision is necessary for the expulsion or deportation of migrants.

<sup>18</sup> It has to be noted that the Aliens and Immigration Law is dated back to the 1930's and therefore it was never adjusted to the modern realities of the global migration and asylum situation.

Law<sup>19</sup>, and always on the basis of a Court decision for a maximum period of 32 days. The detention of minors is prohibited.

The above provisions are not used by the authorities anymore, for the detention of asylum seekers is circumvented by the authorities through the issuance of arrest, detention and deportation orders under the general Aliens and Immigration Law as described above, because they are considered 'prohibited immigrants'.

In such cases, if the determination of their case is pending before any authority or the Supreme Court, the Director (Immigration Officer) may suspend the deportation, but not the detention order, until the case is reviewed by the Court,.

This has been found to be legal in the **Rahal Case** mentioned above, by the Supreme Court, which held that *«The deportation order was issued legally. With this conclusion, the legality also of the detention order is confirmed, as an administrative measure on the basis of the Aliens and Immigration Law, aiming to protect the possibility of the execution of the deportation order - if this is finally necessary. There is no relation between this detention and the detention on the basis of article 7(4) (b) of the Refugee Law, as the applicant, in this case, is not detained for the « sole reason of being an asylum seeker» so as for the prohibition of Article 7(4) (a) of the Refugee Law to apply. »*

There is still no legal framework in Cyprus regulating detention of asylum seekers or persons under deportation. The Immigration Officer has the power to detain indefinitely a person, for the purpose of deportation. Cyprus did not transpose the Return Directive 2008/115/EC. The Minister of Interior adopted a policy according to which any person detained for the purpose of deportation will be in detention for a maximum period of six months, irrespective to the grounds for the detention, unless that person has committed a crime and then the detention will be indefinite or (until deportation is eventually enforced)- unclear statement?

There is still no special detention centres built for asylum seekers or migrant returnees therefore; people are still detained in Police Detention Centres.

The main categories of long term Detainees in Police detention centres are the following:

- a. Asylum seekers rejected from the Refugee Reviewing Authority who have their cases pending before the Supreme Court. Deportation orders issued may be suspended but not the detention orders. People therefore remain in detention for as long as the procedure before the Court takes to finalize, unless the Minister decides otherwise.
- b. Rejected asylum seekers that for various reasons may not be deported (i.e. Iranians without passports that cannot be accepted back to Iran unless they agree to the issue of travel

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<sup>19</sup> Only for the establishment of their identity and nationality in case they have destroyed their travel documents on purpose in order to mislead the authorities as to their real identity or in case the asylum application is rejected and the applicant has been arrested for the purpose of deportation and he/she brings forward new elements that need to be examined.

documents by their Embassy, or asylum seekers without any travel documents whom no country accepts as their nationals)

- c. All Dublin returnees are issued with detention and deportation orders upon their return to Cyprus.
- d. Some asylum seekers that entered the country irregularly (usually through the North of Cyprus) and who have arrested and detained on the basis of arrest and deportation orders of the Migration Officer for illegal entry and who then they seek asylum<sup>20</sup>.
- e. Asylum seekers convicted by the Court for committing a crime (usually petty crimes and crimes related to their status as asylum seekers i.e. fake passports etc), who after serving their sentence are issued with detention and deportation orders.

In these cases, although the deportation order is suspended so that the asylum application can be examined, the detention is not, thus leading to particularly long detention periods without a court decision. We had reports from such persons, that they have been threatened and blackmailed by police authorities to withdraw their asylum application otherwise they would remain in detention for years.

In other cases, where the examination of an asylum application of persons under detention is expedited, due to detention, it has led to the rejection of decisions without any proper and thorough investigation of one's asylum claim.

Police detention centres are not designed for long term detention periods but only for a short stay. There are therefore serious concerns as to the conditions of detention, which according also to the Ombudswoman, can amount to inhuman and degrading treatment. There have been many reports, from various international organizations such as the CPT<sup>21</sup>, the Commissioner of Human Rights of the Council of Europe<sup>22</sup>, and ECRI<sup>23</sup> about the detention conditions at the Police detention centres in Cyprus that describe how people detained are exposed to inhumane and degrading treatment. These conditions have not changed since those reports were published.

Although asylum seekers have not committed any crime, they are detained in the same places together with persons suspected or charged with criminal offences awaiting for their trial. The detention centres are most of the time overcrowded, whereas there are no possibilities for leave or

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<sup>20</sup> There have been lots of cases however that asylum seekers tried to apply for asylum within reasonable time but, irrespective of the Geneva Convention provisions, they were charged for illegal entry and arrest and deportation orders have been issued against them. This is the case with the majority of Turkish Kurds who are most of the times detained immediately upon appearing to submit an asylum application without any reasonable explanation as to their different treatment, apart, we assume from their national or racial origin.

<sup>21</sup> Report to the Government of Cyprus on the visit to Cyprus carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 8 to 17 December 2004, Strasbourg, 15 April 2008

<sup>22</sup> Report by Thomas Hammarberg, Commissioner for Human Rights of the Council of Europe, following his visit to the Republic of Cyprus on 7-10 July 2008

<sup>23</sup> ECRI, Third report on Cyprus Adopted on 16 December 2005, Strasbourg, 16 May 2006

taking up social work and returning to the detention centre, as it applies to prisoners. The food provided is mainly dry food which during long detention periods can be harmful to the detainees' health.

The above conditions have in several occasions led asylum seekers and migrants in detention to organize protests, to go on hunger strikes, to burn their beds etc, and in response as police officers have very often resolved to ill-treat of detainees.

Detainees do not have access to sufficient health care. Although according to the law, they are entitled to access to health care, this right is denied to them by the authorities who only provide emergency health care. Block 10, which is the best out of the worst detention centres, is the only detention centre that has a regular doctor visiting detainees. The rest of the detention centres do not have any doctors regularly visiting detainees whereas, when requested by the detainees, police officers do not always arrange for the detainee to be taken to hospitals, even in emergency situations.

There have been cases of physical violence reported to KISA, of humiliating treatment, blackmailing and psychological pressure used as interrogation method or a method to persuade detainees to withdraw their pending application. Most recent examples include the ripping off by Police officers of the Koran in an effort to upset Muslim asylum seekers, confine them to their cells and not allowing them to go in bigger and collective spaces during their detention.

#### **D. Dublin Returnees**

The Refugee law does not include any special provisions regarding Dublin returnees. It merely states that the Asylum Service is the competent authority to implement the Dublin Regulation.

As a result, all the above apply also to Dublin returnees. As a matter of administrative practice **all Dublin returnees upon their return to Cyprus are detained in Police Detention Centres**, on the basis of detention and deportation orders issued by the Immigration officer.

The duration of detention varies depending on each individual case, but in general the following can be taken as a rule:

- a. The general duration is six months on the basis of the policy followed by the Ministry of Interior.
- b. If the Dublin returnee is taken to the Court for forged passport or illegal exit from the Republic, depending the circumstances of their departure from Cyprus they may be held longer because they committed a criminal offence.

- c. The duration also depends on the stage the asylum procedure for examining the application i.e. if the returnee was at an initial stage of his application before he/she left Cyprus then the procedure and therefore the file will be reopened, and detention will be applied for the maximum of six months. If however, the procedure was at a later stage i.e. before the Refugee Reviewing Authority, the applicant may stay in detention until the Authority issues a decision and possibly until the deadline of 75 day for the submission of recourse to the Supreme Court lapses.
- d. If the application was rejected at both instances and the deadline for the filing recourse to the Supreme Court has lapsed, then the applicant is subject to deportation, unless he can bring new evidence to his claim.

For Dublin returnees, there is a danger of refoulement if their application was rejected on all instances before they left Cyprus and they do not any longer have the possibility to file their case to the Supreme Court as well as in case they never officially filed an asylum application in Cyprus. There is a serious risk that in such cases access to the asylum procedure may be restricted from the Police and/or the immigration authorities so as to allow for an immediate deportation of the person, as he or she is considered an illegal migrant and detention and deportation orders are issued upon his/her return. An applicant who never filed an asylum application before in Cyprus and is a Dublin returnee faces a serious risk of refoulement. KISA is aware of at least one case when access to the asylum procedure to a Dublin returnee was restricted by the Police and the asylum seeker was to be deported. Access to the procedure was only made possible after the intervention of KISA.

#### E. Facilities for asylum-seekers who have been victims of torture

The Cypriot authorities do not have any facilities or special programs running in relation to asylum seekers who are victims of torture. A few years back, Future Worlds Centre, an NGO in Cyprus, was operating a specialized centre for victims of torture and for their rehabilitation, funded under the European Refugee Fund program. The Asylum Service decided to stop funding it and the only available torture rehabilitation centre in Cyprus was forced to close down.

Asylum seekers that claim that they have been victims of torture are referred to the Medical Board, a government body which provides opinion on the health situation of persons who claim benefits or are incapable of working. This Board has no specialization on victims of torture and does not under any circumstances follow the Istanbul principles that should govern those specialized centres.

In the majority of the cases examined by the Medical Board, the report includes the findings of the examination but concludes that the Board cannot establish whether those findings are the result of torture. These reports are then used by the Asylum Service to justify rejecting one's asylum claim on grounds of credibility, as the applicant cannot prove that he or she has been a victim of torture.

## **F. Reception Conditions of asylum seekers**

Under the Refugee (Reception Conditions of Applicants) Regulations of 2005, asylum seekers are entitled to the reception conditions provided in Council Directive 2003/9/EC on the minimum reception conditions of asylum seekers.

These include the covering of material reception needs which include food, housing, a small allowance for every day needs and clothes. It also includes access to the necessary medical care free of charge, in case people do not have enough means of subsistence. Proof of not having enough means of subsistence is immediate if asylum seekers are recipients of welfare benefits, otherwise they have to prove that they do not have enough means of subsistence through the submission of their entitlements and property, even at the country of origin where they have fled from.

Also, the Regulations provide that access to employment is allowed only in specific fields of employment limited to unskilled or low skilled sectors of the economy; such as farming. People are only eligible to seek work after the first six months of the date of their asylum application. This is also the case for the access to education of minor asylum seekers.

Material reception conditions are covered through the provision of welfare allowances from the Social Welfare Department of the Ministry of Labour and Social Insurance. Allowances are on the same scale as those granted to Cypriot recipients of welfare benefits. However, these are granted only for the first six months of one's stay in Cyprus, after which asylum seekers are meant to seek for employment. The specific field in which asylum seekers are eligible to seek work in allow people to gain very low wages that are in most cases less than what their welfare benefit would amount for. Moreover, after the first six months, if an asylum seeker cannot find a job, a person is only entitled to benefits if she or he can prove that they are not voluntary unemployed i.e. they have not been sent for employment and refused. In practice this leads to the majority of asylum seekers being left without employment and receiving no welfare benefits.

Despite the provisions of the Refugee (Reception Conditions for Applicants) Regulation of 2005, the material reception conditions of asylum seekers are far from satisfactory as there is in practice a denial to allow people's access to those rights.

### **Welfare Benefits**

Upon the submission of an application for asylum, the asylum seeker has the right to public assistance in order to cover the material reception conditions as provided by the regulations and which are the same as in the ones provided in Directive 2003/9/EC.

For the first six months asylum seekers do not have any access to the labour market. Upon the submission of the application for welfare, the asylum seeker has the right to an immediate cash

payment if he or she does not have enough money to cover one's very immediate needs (housing, nutrition, etc.) until his or her application is examined.

In reality, Asylum Seekers hardly ever get any cash payment upon the submission of the application. There is a serious delay in the examination of their application for welfare benefits (3-6 months). Asylum seekers are not compensated for the whole amount of their monthly rent payment. The monthly payment system for Asylum seekers is different than that applied to Cypriot beneficiaries (not on a payroll basis) resulting in delayed payments. Asylum seekers with special needs and requirements are not given the additional subsidies they are entitled to as stated by the law and they are usually not granted the special payments for Christmas and Eastern time as those are granted to Cypriots. Asylum seekers are often «encouraged» by the welfare services to take up even unregistered employment in order to become independent from public assistance. Asylum seekers in full time employment are not paid supplementary benefits even if the income from their work doesn't exceed 30% of the amount as foreseen by the public assistance Law as the minimum amount for the particular person/family to secure a dignified standard of living.

### **Housing**

Upon the submission of an application for asylum, the government of Cyprus has, according to the Refugee Regulations (Conditions of Reception of Asylum-seekers) of 2005, the obligation to provide asylum seekers with housing throughout the period that his or her application for asylum is being processed and examined by the relevant Authorities (Asylum Services and Review Authority).

In reality these rights are not accessible for the vast majority of the asylum seekers due to the fact that the government of Cyprus has neither an efficient policy nor an official body responsible for the implementation of this obligation to which an asylum seeker can be referred to in order to find accommodation.

Officially the government of Cyprus declares that the housing rights of asylum seekers are guaranteed, since asylum seekers can get a "rent supplement" through their welfare benefits. In reality, the vast majority of asylum seekers face tremendous difficulties in securing either the welfare benefit or adequate accommodation (only 300 – 500 cases out of the 10, 000 asylum seekers get at the moment welfare benefits).

According to the policy of the Cypriot government, single women and families can be referred to the Kofinou Reception Centre. Due to the difficulties prevailing with regards to accommodation at the Centre, the majority of the people turn down an offer to move to Kofinou, without knowing that this will be used by the Welfare Office to reject their application for welfare benefits.

In the cases where that the Authorities do not refer an asylum seeker to the Kofinou Reception Centre, he or she is responsible to find accommodation on their own and then apply for a rent

supplement within his or her welfare application. In practice, this has become more and more difficult for a number of reasons:

- a. Firstly, the Welfare Services will approve the rent benefit only if the asylum seeker can provide the Services with a valid copy of the officially stamped lease agreement, as well as a copy of the receipt of the last payment of rent. This is very difficult for the majority of asylum seekers as they usually do not have enough money to make this payment in advance or because they may not have a lease agreement on their name as usually they share accommodation with other asylum seekers.
- b. Secondly, the reality is that it has become more and more difficult to find proper accommodation since property owners and dealers are increasingly unwilling to accommodate asylum seekers due to racist and discriminatory attitudes.
- c. Thirdly, the majority of the property owners and dealers are not willing to provide asylum seekers with a valid, officially stamped lease agreement, as they are often avoiding tax.

### **Employment**

The Cypriot Government does not allow Asylum Seekers to take up employment for the first six months after the submission of one's asylum application. After the first six months Asylum Seekers have access only to jobs in the Farming and Agriculture Sector.

This policy is not in accordance with the provisions of Article 11 of the 2005 Regulations, as it ultimately results in the exclusion of asylum seekers from the labour market, even after the initial 6 month period. A report by the office of the Ombudsman (21.12.2007) considers the decision of the Government to limit the employment of Asylum seekers in the Farming and Agriculture Sector as unlawful, and calls on the government to revise it. A second report by the office of the Ombudsman (21.12.2007) considers the collective agreement between the trade unions and the employers for this sector as a violation of the anti-discrimination legislation.

### **Healthcare**

An asylum seeker has free and full access to the Health Services. In order to access these rights she or he needs a medical card which can be acquired by submitting an application, either at the Ministry of Health or at the General Hospital of the city she or he resides.

The application for medical card must be accompanied by a copy of the Confirmation of Submission of Application for Refugee Status and a copy of the Alien Registration Certificate ("alien book"), if issued.

In the event that the asylum seeker does not receive a welfare benefit (these are the majority of the cases), which according to their rules is a presumption that the persons concerned does not have the

means of subsistence, the Ministry of Health does not provide the medical card even if the asylum seeker is not able to provide proof for any income.

### **Education**

Children under 18 years who are asylum seekers or members of a family of asylum seekers have free and full access to primary and high school education.

There is lack of integration or special introductory programmes for minor asylum seekers in public schools. The only integration measure adopted is the provision of Greek language as an extra class which is only provided at primary schools. Children attending secondary schools are normally placed at a grade much lower than their age and they are sitting in the class as observers leading to high rates of dropping out from school.

**19 May 2011**