

**VERY URGENT – BY EMAIL**

10 June 2014

To: KISA – Action for Equality, Support, Antiracism

**Re: Legal Opinion on naturalisation of Refugees in Cyprus and available remedies**

I have been instructed by KISA- Action for Equality, Support, Antiracism to provide an expert<sup>1</sup> legal opinion on the legal framework relating to the naturalisation of refugees in Cyprus and its implementation in practice as well as available remedies, with reference, in particular, to the negative decisions of the Director of the Civil Registry and Migration Department/ Minister of Interior given to specific refugees, namely Mr Asadollah Panahimer, Mrs Mehrangiz Hematmand, both Iranian nationals and Mr Muhammad Altaf, from Kashmir. Another recognised Palestinian refugee Mr Salah A.Q. Ghanim, initially rejected as well on grounds of not fulfilling the application criteria, he submitted representations to the authorities with supporting documents that he fulfils the residency criteria and his application is under reconsideration.

According to the facts provided, Mr Asadollah Panahimer and Mrs Mehrangiz Hematmand are married and arrived originally in Cyprus in 2000 to seek asylum, their applications were examined and rejected on both instances and in 2006 were actually threatened with deportation back to Iran as a result of which Mr Panahimer went on hunger strike, after which their file was reopened and they were finally recognised as refugees in 2008. Mr Altaf arrived in Cyprus as an asylum seeker in 2003, and after eight years in the asylum procedure, he was finally recognised as a refugee in 2011 on first instance.

Mrs Hematmand's application was rejected on the ground that there is no substantial reason for her naturalisation, after taking into account that she remained irregularly in Cyprus after the rejection of her first asylum application<sup>2</sup>, it was not established beyond reasonable doubt that she intends to stay for ever in the Republic, on the contrary the reason she has applied for naturalisation was to be able to go to another member state of the EU and lastly, that she has not been satisfactorily integrated in the Cypriot society, without explaining why. Mr Panahimer's application was rejected in addition to the same above mentioned reasons, because the security services of the Republic

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<sup>1</sup> The writer of this legal opinion is one of the experts on the EUDO Observatory of Citizenship of the European University Institute and the Robert Schuman Centre of Advance Studies and a refugee, immigration and citizenship advocate with specialisation on EU law, practicing and litigating before national and European courts on such matters. Also a member of KISA and Vice Chair of European Network Against Racism (ENAR)

<sup>2</sup> It does not seem to be taken into account that the reason that the applicant and her husband remained irregularly was because the authorities rejected their asylum applications and were ready to actually deport them to Iran, only to finally reopen their files in 2006 and recognise them as refugees.

have information that he is involved in illegal activity (smuggling of prohibited substances and cigarettes through the non – government controlled areas of the Republic<sup>3</sup>). Mr Altaf's application was rejected on the grounds that there is no substantial reason to be naturalised, because he has no links with Cyprus as he is not working, he does not owe any property and he does not have any sufficient means of resources, whereas, in addition it was not established that he will remain for ever in the Republic, as he stated that if naturalised, he will go abroad for employment.

A detailed analysis of the naturalisation laws and policies and the naturalisation procedures in Cyprus can be found on EUDO citizenship website<sup>4</sup>, which includes also a detailed database on legislation, policies and administrative practice as well as relevant case law on naturalisation by country. For the purposes of this legal opinion, the following may be summarised:

- i. The law<sup>5</sup>, provides for the eligibility criteria only to apply for naturalisation and not for granting citizenship;
- ii. Granting of citizenship is purely discretionary, the only condition being on the basis of settled case law of the Supreme Court, that applications should be examined in good faith and in accordance with the general principles of administrative law. Moreover, naturalisation criteria in the exercise of discretionary powers, are not transparent so that possible applicants are in a position to know whether they fulfil those or not, or what do they need to do in order to eventually fulfil them;
- iii. Eligibility criteria to apply for naturalisation, are-
  - a. as a rule, a total of five years residence in the Republic during the last seven years preceding the application for naturalisation, out of which the last twelve months should be continuous and exceptionally for certain categories of migrants, not including refugees, a seven year period of residence out which the last twelve months should be continuous,
  - b. Good character
  - c. Intention to reside in the Republic<sup>6</sup>.

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<sup>3</sup> According to the information provided, Mr Panahimer, denies such allegations as absolutely not true whereas he was never given the right to be heard about such allegations. He was never prosecuted and never convicted for any offence in the Republic.

<sup>4</sup> <http://eudo-citizenship.eu/country-profiles/?country=Cyprus>

<sup>5</sup> The Civil Registry Law of 2002

<sup>6</sup> Also relevant is section 113 (4)(b) of the Civil Registry Law, according to which residence of naturalised citizens in foreign countries for a continuous period of seven years, may lead to loss of citizenship with an order of the Council of Ministers, unless the person concerned notifies the consular authorities of the Republic abroad his/her intention to retain Cypriot citizenship.

The reasoning in the above mentioned negative decisions, proves not only that the particular applications were not examined in good faith, but that the measure and criteria against which naturalisation applications were examined in the context of wide discretionary powers in these particular applications, are excluding in essence not only those particular refugees, but the vast majority of refugees in the country, if they were to be applied in the same manner. Most of the refugees are or have been in the same or similar situation as those particular refugees. The vast majority of refugees do not owe property<sup>7</sup>, are currently unemployed<sup>8</sup>, no particular integration measures were ever implemented by the Government<sup>9</sup>, they are trying to find ways to leave Cyprus in order to find employment elsewhere in Europe due to high unemployment and discrimination against refugees prevailing in the country<sup>10</sup>, most of them entered or remained irregularly in the country even for a few days et.c..

The applicants, may challenge the negative decisions of the authorities before the Supreme Court in accordance with Article 146 of the Constitution. It may be also said that there are *prima facie* strong possibilities of success of those cases as the decisions look arbitrary and unjustified. The scope of judicial review however, is limited, as the Supreme Court does not examine the merits of the case. Judicial review is limited only to a legality review. Moreover, according to settled case law the discretion of the state to exclude any foreigner is very wide, and even more wide when it comes to naturalisation. There is a presumption in favour of the authorities acting in good faith, until this is proven otherwise and the subjective evaluation of the facts from the authorities is not subject to the review of the Court. The Court may only interfere if, after taking all relevant facts into account, it considers that the findings of the administration are not reasonable or they are flawed in fact or in law or that the decision was taken without proper investigation<sup>11</sup>.

Assuming, moreover, that the applicants are successful in their recourses at the Supreme Court, this would only entail an obligation of the authorities to re-examine and not necessarily to naturalise. A successful recourse would only annul the decision and oblige the authorities for a re-examination of the case on the basis always of the findings of the Court. This does not prevent the authorities from reaching the same negative decision on other grounds that were not part of the litigation procedure

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<sup>7</sup> Purchase of property by foreigners is also subject to the approval of the Council of Ministers

<sup>8</sup> There is also no system in place for the recognition of professional qualifications

<sup>9</sup> The Needs of Refugees and the Integration Process in Cyprus, May 2013, Report commissioned by the Cyprus Office of UNHCR and conducted by INDEX: Research & Dialogue. KISA – Action for Equality, Support, Antiracism, International Convention on the Elimination of All Forms of Racial Discrimination. Alternative Report, August 2013

<sup>10</sup> They cannot leave Cyprus however, without becoming citizens or at least securing a long term residence status, as their temporary three years residence permit is automatically cancelled under the Aliens and Immigration Law and Regulations, if they stay abroad for a period of more than three months. Therefore if they would leave Cyprus for more than three months, they will not be able to enter again, whereas they will not have the protection they are entitled as refugees either in the country of residence or in Cyprus.

<sup>11</sup> Nabil MohamedAdel Fattah Amer v. Republic, Revisional Appeal No 74/08, 26/1/11 Decision of 26.1.2011

provided that the *res judicata* is respected<sup>12</sup>. This judicial review system often leads to a cycle of decisions of the Minister and subsequently Court decisions that never reach a concrete outcome as to the right of the applicants eventually to be naturalised<sup>13</sup>. What is of a more serious concern however, is that there is not any mechanism for the enforcement of the decisions of the Supreme Court under Article 146 of the Constitution. Although the executive is in theory under obligation to respect Court decisions, there is no enforcement mechanism if the administration simply refuses to re-examine after the annulment of its decision from the Court. The only remedy available in cases such as this is to file a lawsuit for damages against the Government for failure to comply with the decision of the Court under Article 146.4 of the Constitution. Although one could eventually be compensated for such failure, this procedure will not lead to a final decision on naturalisation as such<sup>14</sup>.

Finally, one other factor that should be taken into account is that the judicial review process is a long process that takes approximately from one and a half to two years, and in case of success it would take some years again for the authorities to re-examine. In the best case scenario that the authorities do re-examine during some years, if the decision is still negative, then there is another round of judicial review. Lastly, no legal aid is provided to refugees for such cases.

In conclusion, I am of the opinion that the refugees do not have at their disposal an effective remedy to challenge the negative decisions of the authorities on their naturalisation applications.

According to Article 34 of the 1951 Refugee Convention *“The contracting states shall as far as possible facilitate the assimilation and naturalisation of refugees. They shall in particular make every effort to expedite naturalisation proceedings and to reduce as far as possible the charges and costs of such proceedings.”* Even though Article 34 does not entail an obligation of contracting states to naturalise refugees, it imposes a duty to consider applications of refugees favourably and to take all necessary procedural measures to facilitate naturalisation<sup>15</sup>.

It is argued that the Republic of Cyprus, does not implement the 1951 Geneva Convention in accordance with its obligations and therefore is in breach of the Convention towards, not only

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<sup>12</sup> In a very recent case however, of a third re-examination of a negative decision on naturalisation of a long term migrant (24 years in the country), after two successful recourses to the Supreme Court, the authorities blatantly violated the *res judicata* and rejected once again on the same grounds as those already examined and rejected by the Supreme Court as unlawful, showing an unprecedented contempt to court decisions, against which unfortunately no remedy exists.

<sup>13</sup> Indicative of the above problems are three cases relating to the same family DEEPA THANAPPULI HEWAGE v. Republic, Case No 869/2002, Decision of 31.3.2004, DEEPA THANAPPULI HEWAGE v. The Republic, Case No 26/2008, Decision of 18.10.2010, NIMAL JAYAWEERA v. Republic, Decision No 27/2008, Decision of 23.2.2010

<sup>14</sup> Indicative of this problem is also the situation of the applicants in the case of AYOTUNDE A. EDU and JOSEFINA L. EDU v. Republic, Case No 1492/2006, Decision of 29.10.2008 who despite their successful application at the Supreme Court are still waiting for re-examination of the naturalisation application.

<sup>15</sup> See also the decision of the Supreme Court of Ireland in *Mallak v. Minister for Justice*, [2012] IESC 59.

refugees<sup>16</sup>, but also the other contracting parties, and in particular member states of the European Union. Contrary to the majority of the member states of the European Union, which eventually naturalise recognised refugees, Cyprus follows a very restrictive policy which amounts to an almost total denial of naturalisation of refugees as a durable solution. As the 1951 Refugee Convention is the cornerstone of the Common European Asylum System (Article 78 TFEU), even if the European Union Directives do not provide anything about facilitating naturalisation of refugees, they do provide for the integration of refugees, whereas the Convention explicitly provides for facilitation of naturalisation, as a means of durable solutions to refugees. Cyprus could be therefore considered to act contrary the principles of sincere cooperation between member states as provided in the Treaty of the European Union (Article 4(3)TEU) in carrying out tasks which flow from the Treaties, amongst other the integration of refugees, which could involve naturalisation as an integration measure giving full access to refugees to all civil, social, economic and political rights as well as freedom of movement and residence in the EU.

In view of all the above, I am of the opinion that on the basis of the current legal framework and policies followed by the Republic of Cyprus, refugees cannot fully enjoy their refugee rights and do not have any serious possibility to have access to naturalisation and durable solutions or to any effective remedy in pursuing their rights.

I remain at your disposal for any clarifications



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<sup>16</sup> According to Cypriot case law, international conventions may be invoked directly from individuals before courts, provided that their provisions are directly applicable and do not need any implementing measures to be enforced.