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Migrants' detention and ill treatment in Cyprus

1. Detention of migrants

According to the Aliens and Immigration Law migrants 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 decision¹. 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 immigrants². The decisions of the Migration Officer may be appealed before the Supreme Court as the only administrative Court in Cyprus, which however, has the power to annul the decision only on points of law. No examination is taking place of the merits of the case.

According to the Refugee Law, asylum seekers may be detained in very limited cases specifically defined in the Law³ and always on the basis of a Court decision and for a maximum period of 32 days. The detention of minors is prohibited. However, these procedures are circumvented by the authorities and are not applied anymore as arrest and deportation orders are issued by the Migration Officer under the general Aliens and Immigration Law as described above, because they are considered 'prohibited immigrants'.

¹ 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.

² 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.

³ 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.

2. Long Term Migrant Detainees

Since it is not possible for some of the migrants to be deported for the reasons explained below, one can expect that the Migration Officer should suspend also the detention order, otherwise detention may be considered illegal in the absence of any court decision as well as the absence of the possibility of deportation in reasonable time.

The main categories of Long Term Detainees

- a. 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 issuance of travel documents by their Embassy, asylum seekers without any travel documents whom no country accepts as their nationals, asylum seekers that are stranded in Cyprus because community rules on the member state responsible for examining an asylum application (the Dublin Regulation) were not applied correctly in their situation e.t.c.)
- b. Asylum seekers that entered the country irregularly (normally through the North) that they have been arrested and detained on the basis of arrest and deportation orders of the Migration Officer for illegal entry and then they seek asylum⁴.

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.

⁴ 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.

In other cases, where the examination of an asylum application of persons under detention is expedited, due to detention, it has led to rejection decisions without any proper and thorough investigation of their asylum claim and then to the deportation of the asylum seekers in countries where their life would be in danger.

- c. Asylum seekers that may have been convicted for a different offence, normally petty offences i.e. illegal work. These people may serve their time in prison as decided by a Court (normally a few months for such minor offences) but upon serving their time, instead of being released, they are immediately rearrested on the basis of arrest and deportation orders of the Migration Officer as, irrespective of the fact that they are asylum seekers, they are otherwise considered "prohibited immigrants" under the general Aliens and Immigration Law. This means that they are immediately taken to the detention centres. Although they cannot be deported because they are asylum seekers, the deportation order is suspended but not the detention order. They end up remaining in detention for the whole period their asylum application is processed which, including the Court procedures, may take a few years.

- d. Persons with international protection according to the Refugee Law that may have been convicted for a criminal offence and after serving their time in prison as decided by a Court they are rearrested and put in detention on the basis of arrest and deportation orders by the Migration Officer. They are usually put regularly under psychological pressure to sign a statement expressing their "wish" to return to their country, irrespective of the fact that they are under an international protection legal status.

- e. Other migrants against whom detention and deportation orders have been issued because they are in the county without papers⁵ or for many other reasons, but cannot be deported for some reasons i.e. migrants married with Cypriots if they have a court case pending e.t.c.
- f. Migrants appealing before the Supreme Court a decision of the Migration Officer (rejection of naturalisation or renewal of residence permits) or of the Refugee Reviewing Authority (rejection of their asylum claim on second instance). These persons, strictly speaking, under the general Aliens and Immigration Law they are considered as prohibited immigrants as they are considered to illegally remaining in Cyprus irrespective of the fact that they have a Court case pending. Upon filing an appeal to the Supreme Court, they are normally arrested and they may be detained on the basis of detention and deportation orders of the Migration Officer for the whole period of the Court procedures, if they manage in the meantime to secure suspension of deportation from the Court through a separate application, something the it is vary rare in all cases apart from asylum seekers.

3. The position of the Supreme Court on detention of migrants

In cases 1(b), 1(c) and 1(f) above the Supreme Court of Cyprus decided that the detention of asylum seekers is legal as they are not detained for the sole reason that they are asylum seekers but for other reasons, such as illegal entry or because they are considered prohibited immigrants. However their deportation,

⁵ The majority of migrants without papers in Cyprus is the result of the failure of the migration policies and model followed since the 1990' s from Cyprus which may be described as the 'guest workers' model followed by other European Countries decades ago.

According to the Cypriot migration model, migrants don't have the right to change employer or employment thus in case they loose their employer or are in serious difficulties with them they get in a vicious circle, either to return back to their countries or to stay in Cyprus without papers. In addition the salaries for regular migrants are often much lower that those earned out of irregular work.

Moreover, the systematic unwillingness of the authorities to implement the Long Term Residence Directive as well as the obstacles they have created in that respect, has led to big numbers of long term migrants remaining in limbo in Cyprus without the necessary documentation.

Finally, another reason are the policies of the Immigration Authorities regarding persons who would otherwise be entitled to a residence permit, remaining without one, such as persons applying for citizenship. In these cases the authorities assume that their citizenship applications will be rejected so they do not provide a residence permit in order for them to be deported as soon as their applications are rejected.

according to the Court, should be suspended as they are asylum seekers and their cases need to be examined.

It is our opinion that the Supreme Court misinterpreted the provisions of the Geneva Convention as well as the national Refugee law on the prohibition of punishment of refugees in case they enter the county illegally. Moreover the Supreme Court failed to take into account the special provisions applicable on the detention of asylum seekers under the Refugee Law.

It is also important to note the case law of the Supreme Court in the cases of habeas corpus applications (illegal detention) from migrants in long detention. The Court has basically rendered meaningless any habeas corpus application in the area of immigration as it only examines whether the detention and deportation orders were issued in accordance with the law and whether the facts of the case have been established correctly. It does not examine at all the period of detention and whether this may render the detention illegal in accordance with international human rights law and standards.

4. Detention of Minors and Women

Minor and women migrants are particularly vulnerable groups and as such they should be treated differently and according to their needs, including in cases of detention. Even though, as mentioned above, the Refugee Law prohibits the detention of minor asylum seekers, we had cases of detention of minors, including unaccompanied minors, on the basis of arrest and deportation orders of the Migration Officer. The general Aliens and Immigration Law provides nothing with respect to the protection of minor migrants and particularly unaccompanied minor migrants. Minor asylum seekers when detained, depending on their age, may be detained together with their mothers, but sometimes also in the detention centres of male adults.

Moreover, minor asylum seekers and particularly unaccompanied asylum seekers, when finally released they are left with no support, no information and no

documents in order to be able to prove their legal residence in Cyprus. This of course creates a number of problems for those minors with regards to access to the rest of the reception conditions provided by the Law. And this irrespective of the provisions of the Refugee Law stating that unaccompanied minor asylum seekers should be immediately placed under the care of the Welfare Services who are obliged to act for the best interest of the minor.

The majority of women are detained in the Lakatamia Women Detention Centre in Nicosia, the only detention centre restricted to women detention. The Lakatamia detention Centre faces various problems, the most serious of which is the fact that there are no satisfactory places for common use and women end up remaining in their cells, which most of the times are particularly crowded, sometimes for 24 hours a day.

However, women may be also detained in the detention centres of police stations in the other districts of Cyprus, together with men. A good example is the Limassol Police Station detention Centre where women are detained with men and as a result women end up remaining in their cells for long hours so that men can use the common spaces of the detention centre.

5. Conditions of detention

Police detention centres are not designed for long term detention periods. There are therefore serious concerns as to the conditions of detention of migrants, which, according also to the Ombudswoman amount to inhuman and degrading treatment. Although migrants did not commit any crime, they are detained in the same places (especially in Limassol) with persons suspected or charged with criminal offences awaiting their trial.

The detention centres are more often than not overcrowded, whereas there are no possibilities for leave or taking up social work and returning to the detention centre, as it applies to prisoners. The food provided is mainly dry food which in long detention periods is harmful to the health of migrants.

The above conditions have led quite a few times asylum seekers and migrants in detention to protests, hunger strikes, burning their beds e.t.c. as well as police officers to ill-treat the detainees. There have also been-

- a number of suicide attempts
- cases of migrants in long detention that ended in the psychiatric hospital
- rape and sexual harassment of migrant women by police officers
- deaths of migrants while in detention

6. Other issues in relation to detention and ill treatment

➤ Health issues

Migrant detainees do not enjoy sufficient health care. Block 10, which is the best situation, is the only detention centre who has a regular doctor visiting, every now and then, detainees. However, we have found out that large quantities of psychotropic drugs are consumed by migrants in detention, which on the one hand may be prescribed by the doctor but on the other they are consumed without any controls. The rest of the detention centres do not have any doctors visiting regularly detainees whereas, when requested by the detainees, police officers do not always arrange to be taken to the hospitals.

➤ physical and psychological violence

There have been cases of physical violence, humiliating treatment, blackmailing and psychological pressure as interrogation methods or methods to abandon pending applications.

➤ Detention of persons without court or migration officer order

There have been very rare cases when migrants are detained in comunicado, neither under a detention and deportation order nor under a Court decision.

➤ Detention of victims (e.g. trafficking)

There have been cases of victims of serious exploitation who have been detained as collaborators to a crime instead of being protected as victims, e.g. migrant

women victims of sexual or labour exploitation where accused of violations of their terms of employment and residence permit.

➤ **Deportations in degrading conditions**

In the majority of the cases of deportation, migrants are exposed to unnecessary harm and humiliation. There have been cases of deporting people without their belongings or without appropriate dressing i.e. in cold places with summer cloths.

➤ **Violation of the right of communication**

Communication with friends and relatives and their right to have visits from them is not always respected.

7. Access of NGOs

Detainees, under the law have the right to see any person or organisation they wish. However, this right is not always respected by police officers in charge of the detention centre and not enough measures are taken to secure that their wish is respected.

In general NGO's have access to asylum seekers. However, there are cases when NGO's request permission to visit an asylum seeker that access is denied by the police on the basis that in order for an NGO to visit them, the detainee should ask for it first. There have also been cases where NGOs knew that persons were under detention but did not know where exactly were detained and the police denied information on the place of detention of the persons concerned. Moreover, a practice of the police has also been observed where detainees have been transferred from one detention centre to another so that NGOs could not have access. This has been observed in serious cases of ill treatment allegations as well as possible refoulement cases.

Access to other migrants in detention, apart from asylum seekers, is generally speaking more difficult. Finally, in cases of crisis, protests, hunger strikes of migrants in detention, access of NGO's was totally denied by the Police.

8. Independent Investigating Authorities

What is important to note is that although KISA has filed a lot complaints for ill-treatment by the police of asylum seekers and other migrants, the result, if investigated, was that the claims of the migrants were unfounded. KISA has filed complaints both to the Attorney General, asking him to appoint an independent criminal investigator, in some cases he actually did, but the result was always the one mentioned above. The same happens with the Independent Committee for Investigating Complaints against the Police. This Committee has been established since 2004, but up to now it has not shown any substantial results of its work. We don't get a report about the investigation which is very essential to us to compare the findings with the facts from the site of the victim or to know what kind of measures are taken as a consequent of the results of the investigation. On the contrary, the Office of the Ombudsman always provides us with a report that we can compare with the information from the site of the victim. However, the Ombudsman does not enjoy any substantial powers in order to be able to have an effective investigation procedure as well as to execute its decisions and reports.

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KISA Steering Committee