

Athens, November 25, 2002
Protocol Reg.No: 14216.01.2.2

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MINISTRY OF PUBLIC ORDER
ALIENS DIRECTORATE
Asylum Department
Attention Mr. P. Giannoulas,
Head of Unit
P. Kanellopoulou 4
101 77 - Athens

Dear Sir,

The Ombudsman, by virtue of its competences as laid down by Law 2477/97, received a complaint by the Greek Council for Refugees (G.C.R.) (Prot. Reg. No. 14216/28.9.2001), asking for the intervention of our Office in order to allow access to the asylum procedure for sixty (60) aliens, of Afghani nationality and Hazara ethnic origin, who were assembled in front of the premises of GCR requesting to be granted political asylum and claiming that the competent authorities refused to receive their asylum applications. On the contrary, following their arrest in the island of Kos for illegal entry into the country, they had been released with orders to leave the country within 15 days. In a subsequent communication between our services and a member of the G.C.R. Legal Assistance Unit, we were informed that, given the refusal of the Ministry of Public Order to receive the asylum applications, these were finally served by the bailiff. Since these applications have finally been received by the Ministry, the Ombudsman filed the complaint (see letter addressed to GCR ref. No. 4216.01.2.1/4.2.2002) with the justification that the issue raised by GCR and for which our services were contacted, i.e. the refusal to receive the asylum applications, no longer existed. The Ombudsman did not examine whether or not the State Administration was obliged to examine, as being legally submitted, the applications served by bailiff, since the complainant did not raise this question in the course of the review of this complaint.

As it ensues, though, by the document (Prot. reg. No. 49/23.2.2002) addressed by GCR to the Asylum Department of the Ministry of Public Order and communicated for information to the Ombudsman, the State Administration seems to question the legality of asylum applications served through bailiff in view of the provisions of P.D. 61/99 - not only for the said aliens but rather as a general rule; the Ombudsman wishes, thereupon, to come back to the issue and observes the following:

According to the provisions governing the legal status of bailiffs, this latter is a non-paid public servant (article 1 para. 1 of Law 2318/1995 *Code of Courts' Bailiffs*). While exercising his duties, this person acts in his official capacity of a State organ and, in such a case, he is considered as a public official in the meaning of article 13 of the Criminal Code (article 25 para. 1 of the above mentioned Code). Though, according to the above, the bailiff is an organ conferred with public authority for certain acts, s/he cannot, nevertheless, be considered as an "authority" in the meaning of article 1, para. 2 of P.D. 61/1999 on the "*procedures for the recognition of an alien as a refugee, etc*". This being because, the term "authority", in the above mentioned provisions, refers to a non-police public administrative body and it is deemed to cover an organic institution of the Administration. These institutions are, in any case, bound by the general obligation stipulated in the provisions of the *Code of Public Administration* (L. 2690/1999, article 4, para. 1) to transmit to the competent authorities an application improperly or *extra vires* submitted. On the basis of the above mentioned, the Ombudsman considers that article 1 para. 2 of P.D. 61/99 does not apply in case the asylum application is served by bailiff rather than submitted to the competent for its examination police authorities, according to article 2 para 1. of the a/m P.D.

The issue, however, of the obligations arising for the Administration of an asylum application served by bailiff is distinct. Firstly, it is self-evident that the Administration is obliged to receive the application served; this obligation arises from the provisions of the *Code of Bailiffs* that indicate the public character of the actions undertaken by the bailiff and the obligation of public Administration to cooperate with him. The asylum application served by bailiff, though not fulfilling the requirement of an "in person" submission according to article 1 para. 3, of P.D. 61/1999, represents, nevertheless, the expression of the intent of a specific individual to apply for political asylum; this expression of the intent has taken the form of a public document and receives thus the increased force of evidence foreseen by the law for documents of such nature. As soon as the competent authority is informed, in the above mentioned way, of this declaration, it is obliged to invite immediately the asylum applicant in order for him/her to sign, in presence of the authority, the asylum application. The possible refusal of the Administration to take into consideration this expression of will or the rejection of the relevant application on the grounds that it was not legally submitted, because it was not submitted in person, would be abusive, stand against the principles of good administration and circumvent the essence of the provisions of the Geneva Convention. This being so, because these provisions, irrespective of the national procedures adopted by each signatory State for the recognition of the refugee status, lay down as a fundamental obligation of States to offer protection to all persons falling within the scope of the Convention. Such an interpretation leads to the conclusion that the obligation of submitting in person the asylum application, foreseen by P.D. 61/1999, should be considered to represent only a means of proof of the genuine intention of an asylum seeker rather than an essential procedural requirement, whose absence would suffice to justify the exclusion from the protection offered by the Convention of someone who has validly, albeit through another means, expressed his intention to receive such protection.

The above mentioned observations are valid in all cases that an asylum

application is served by bailiff with the order to notify it to the competent authority. They are even more so when the Administration refuses to receive the asylum application, as in the present case of the sixty (60) Afghans. In this case the asylum application served by bailiff appears to be the only possible way for someone to exercise the right of applying for political asylum; for this reason, every such application should be taken very seriously into consideration and examined appropriately.

In view of the above, the Ombudsman would kindly ask you to take into account the observations on the issue under examination, i.e. the legality of an asylum application submitted through serving by bailiff and to notify us, in any case, your opinions and actions in the matter.

Yours truly

George Kaminis
Deputy Ombudsman

For information

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