

Athens, November 28, 2002
Protocol Reg.No: 12393.02.2.1

For info: Ioannis Moschos
Haris Simopoulos
Chrysa Hatzi

Tel: 210-7289617, 24, 38
Fax: 7289643

TO

- M.P.O. DIVISION OF PUBLIC ORDER AND SECURITY
- M.P.O. ALIENS DIRECTORATE

RE: Non-governmental Organizations (NGOs)' access to aliens' detention centers.

The Office of the Ombudsman received the following complaints with the following protocol registration numbers: 12393/14.06.2002, 14447/15.07.2002, 14793/18.07.2002, 17493/10.09.2002 and 17533/10.09.2002 lodged by the Greek Helsinki Monitor (G.H.M.) concerning the access of the above-mentioned organization to aliens' detention centers. Greek Helsinki Monitor maintains that the competent police authorities have repeatedly denied the organization access to detention centers for aliens, often delay considerably in answering its requests on the same subject and that, finally, they interrupted, without justification, a visit paid by its members, last June, to the detention premises of the Athens Airport.

Greek Helsinki Monitor, based on the above-mentioned points of conflict, requests finally the intervention of the Ombudsman so as to clarify "what is the meaning, according to the State authorities, of unimpeded NGO access to detention centers". It points out, further to this, that in the U.N. 4th periodical Report on the Prevention of Torture, Greece noted that the Ministry of Public Order pays particular attention to the rights of detainees, among which are included the rights to receive visits by, and to make contact with relatives, organizations and authorities (see page 10 of the Report).

The Ombudsman, while reviewing the a/m complaint, contacted orally the Aliens Directorate of the Ministry of Public Order and was informed that Greek Police Force (EL.AS.) intended, in order to respond to G.H.M.'s request to visit detention centers, to clarify the framework for NGOs' access to aliens' detention centers.

The Aliens' Directorate did indeed reply by letter (with Prot. Reg .No: 6634/1-529583/23.09.2002 } to G.H.M.'s request to visit four aliens' detention centers. This letter was transmitted for communication to the Ombudsman. According to the Aliens' Directorate:

- a) access of organizations for the protection of human rights to aliens' detention centers, besides other problems, raises serious security issues for detention centers,
- b) unlimited access to aliens or asylum seekers' detention centers is provided to organizations set up by virtue of international conventions or acting in the framework of international organizations and
- c) though no legal obligation to this respect exists, NGOs' requests to visit aliens or asylum seekers' detention centers are granted, to the extent of the possible, after balancing out the detainees' rights and public order and security imperatives.

Finally, by the same letter, the Aliens' Directorate allowed G.H.M. to visit one of the four specific detention centers requested (i.e. the alien women detention center of Amygdaleza report No.14749/18-7-02).

The Ombudsman, taking into consideration the above, deems appropriate to observe the following:

1. NGO activity has often enriched the content of the Rule of Law and contributed to the development of modern, more inclusive and socially sensitive institutions. As a result of this positive evaluation of the role of NGOs in a State abiding by the rule of law, we witness both an increase in the cooperation between State administration and NGOs and a recent trend to institutionalize NGO participation in State consultative organs. In the field of Human Rights protection, in particular, a remarkable example of NGO participation in the shaping of public policy is the participation, in the quality of members, of representatives from 4 NGOs (Amnesty International, Hellenic Commission for Human Rights, Marangopoulos Foundation and the Greek Council for Refugees) in the National Commission for Human Rights, put directly under the Prime Minister's authority. Good cooperation between State administration and NGOs contributes to the development of good administration and a society under the rule of law. On the contrary, excessive mistrust of NGOs and, even more, their consideration as potential opponents by the State authorities, denotes a secluded, opaque and potentially authoritarian administration, fearful, for these reasons and attempting to limit publicity about its activity. The Ombudsman considers that even when certain NGOs do not honestly desire cooperation, Greek Administration, with the exception of cases considered as confidential, should be open and abide by the principle of transparency, because after all, in this way, it improves its own efficiency. Applying precisely this principle of "maximum transparency", the Council of Europe recommends that both the right of communication of detained aliens with any person of their choice and the access of NGOs to their place of detention be secured.¹
2. Greek administration is legally bound to allow unimpeded access to detention centers only to authorized organs of Human Rights protection organizations whose creation and functioning as controlling institutions are laid down by virtue of international conventions ratified by Greece (European Committee for the Prevention of Torture - C.P.T., U.N. Committee against Torture -C.A.T.-), or in the framework of international organizations in which Greece is a member or, finally, on the basis of national legislation (e.g. the Office of the Ombudsman).
3. Both national legislation (Presidential Decree.61/1999) and Community legislation (currently the E.U. Council of Ministers resolution of June 20, 1995, OJ C 274,19.09.1996, paragraph 13,) make a distinction between the detention status of asylum seekers and that of other aliens. As regards the controversial in principle, issue of the conditions under which, and in exceptional circumstances, a person falling under protection on the grounds of the Geneva Convention can be detained, the Ombudsman has already forwarded to you other relevant documents (Prot. Reg. Nos 12280/01/2.2/12.11.01, 12280/01/2.3/13.11.01). In the case of access to detained asylum seekers, the above mentioned provisions stipulate *expressly* the right of access and not only of legal counseling of representatives of the U.N. High Commissioner

¹ Commissioner for Human Rights in the "Recommendation concerning the rights of aliens wishing to enter a Council of Europe member State and the enforcement of expulsion orders", point I para.4 and point II para.10 respectively (CommDH/Rec (2001) 1, Strasbourg, 19.9.2001).

for Refugees and organizations mandated by the latter, that is, for Greece, the Greek Council for Refugees.²

4. In principle, NGO access to aliens' mass detention centers is legally founded on existing Greek legislation. NGOs, by their statutes' specified remit (e.g. humanitarian aid, medical care, human rights protection), have the legal right to request access to detention centers and communication with the detained aliens. Visits and communication are allowed following permission granted by the organ responsible for the detention premises. This procedure is founded, by analogy, on the application of article 52 § 2 of the Prisons Code³ (Law. 2776/1999), regulating the conditions for the enforcement of prison sentences and other security measures restricting freedom. These guarantees for the communication of prisoners detained in penitentiary institutions with the wider social environment should apply a fortiori in case of detention by the Police, since, in such cases, deprivation of freedom does not ensue either from a sentence issued by a Court or from the execution of a warrant for temporary custody.
5. The organ responsible for the detention, abiding to the principles of good administration and transparency in its activities, must examine relevant requests, using as a criterion the impact of the visit – on the basis of the objectives and the activity of the specific NGO - on the improvement of detention conditions and the protection of the human rights of detained aliens, in conjunction with the security conditions of the detention premises. It should be noted that denying access on the grounds of security in the detention premises should have a specific and unambiguous justification.
6. The examination of the request should take place within reasonable time. Given that the circumstances that lead to the visit request are usually urgent, this reasonable time can be defined, in principle, as consisting of 10 days. A rejection of the request should be handed in written and be duly justified. An unjustified or inadequately justified rejection is abusive.
- 7.

In the light of the above remarks, the Ombudsman considers necessary to lay down a framework of rules for the communication of detained aliens with the wider social environment, using, by analogy, the relative provisions of the Penitentiary Code.

We therefore ask you to take over this initiative and let us know your opinion.

Thanking you in advance for the cooperation

Yours sincerely

George Kaminis

² The draft Directive on “minimum standards for the reception of asylum seekers” stipulates that Member States allow access to asylum seekers' detention centers to all NGOs recognized by the said State.

³ «...Representatives of social institutions, members of scientific societies, cultural, religious or other associations visit prisoners following permission by the Prison Council. The Prison Council informs of this the Minister of Justice who, within 3 days, allows or denies the permission. In case this period elapses without reply, it is deemed that permission is granted...»

FOR COMMUNICATION:

- MINISTER OF PUBLIC ORDER, M. M..CHRYSOCHOIDIS
- General Secretary of Ministry of Public Order, M.. D. EUSTATHIADIS
- Chief of the Greek Police Force, M. F. NASIAKOS
- Greek Helsinki Monitor