

NATIONS UNIES
HAUT COMMISSARIAT
POUR LES REFUGIES

*Délégation Régionale
pour le Benelux
et les Institutions Européennes*

Rue Van Eyck 11B
B – 1050 Bruxelles

Téléfax : 627.17.30
Téléphone : 649.01.53
Email : belbr@unhcr.org



UNITED NATIONS
HIGH COMMISSIONER
FOR REFUGEES
*Regional Office
for the Benelux
and the European
Institutions*

VERENIGDE NATIES
HOOG COMMISSARIAAT
VOOR DE VLUCHTELINGEN

*Regionale Vertegenwoordiging
voor de Benelux en de
Europese Instellingen*

Van Eyckstraat 11B
B – 1050 Brussel

Telefax : 627.17.30
Telefoon : 649.01.53
Email : belbr@unhcr.org

Background Note on the Protection of Asylum Seekers and Refugees in Cyprus

In the Republic of Cyprus – area under the control of the government of the Republic of Cyprus – the legislation of the Republic of Cyprus is in place, including the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, to which the Republic acceded in 1968. The occupied part of the Republic of Cyprus, the self-declared and non-recognized “Turkish Republic of Northern Cyprus” (hereinafter the “TRNC”) is not, and can not be, a signatory to any international instruments.

In the Government-controlled part of the island, the “Law to Provide for the Recognition of Refugees and for the better Implementation of the Convention Relating to the Status of Refugees” (hereinafter the Refugee Law), entered into force on 31 January 2000. Implementing rules and regulations were adopted in February 2001, along with amendments to the Law.

The authorities assumed responsibility for processing asylum applications on 1 January 2002. For this purpose, an Asylum Unit was established within the Migration Department of the Ministry of Interior. After conducting an interview with asylum-seekers, the eligibility officers of the Unit refer the cases (with an opinion) to the Refugee Authority, which takes the first instance decisions. Appeals can be lodged to the Reviewing Authority, an independent administrative body, composed of three legal officers of the Law Office of the Republic. UNHCR remains responsible for processing all applications received before 1 January 2002 and which remained pending a final decision.

The “TRNC” has not adopted legislation pertaining to refugees and asylum-seekers. UNHCR carries out its core mandate activities in the occupied areas by receiving asylum applications through a project with an NGO, the Humanitarian Relief Mission.

In accordance with the Treaty of Establishment of the Republic of Cyprus (1960), there are two British Sovereign Base Areas (SBAs) that remain under the sovereignty of the United Kingdom. Entry to and exit from the areas are controlled in accordance with the Immigration legislation of Cyprus. The 1951 Convention relating to the Status of Refugees has been extended by the United Kingdom to the SBAs but not the 1967 Protocol. Whereas during a period in the past applications for refugee status lodged in the SBAs were processed through the Home Office of the United Kingdom, in April 2001 the SBA administration stopped processing any claim for refugee status.

Republic of Cyprus

Legislative framework

While the amendments to the Refugee Law adopted in February 2002 were welcomed, further amendments were needed in order for the Refugee Law to fully comply with European and international standards. The main issues of concern were the following:

- Section 12 of the Refugee Law lists no fewer than twelve formal grounds for rejection of an application as “manifestly unfounded”. The number of grounds to declare an asylum application as manifestly unfounded must be reviewed and reduced in accordance with EU standards. Furthermore, no appeal possibility exists against a decision to reject an asylum application as manifestly unfounded. Such an appeal possibility with suspensive effect should be introduced.
- Section 17 of the Refugee Law stipulates that a person who is recognized as a refugee is granted a three-year (renewable) residence permit. However, the law, as well as the implementing regulations, are silent as to local integration of refugees as a durable solution.
- Section 19 provides for a complementary form of protection in case an applicant is not recognized as a refugee, while Section 20 provides for temporary protection to persons who “for other humanitarian reasons are considered to be in need of protection”. Neither in the Law nor in the implementing regulations, is there any further clarification of as to the interpretation and application of these concepts, which are quite separate. Whereas complementary protection as a status is the outcome of an individual examination, temporary protection is a practical device in response to a massive influx situation when individual processing is impractical and needs to be suspended for a defined period of time.

The Government of Cyprus acknowledged that the Refugee Law needed further amendments and this drafting process commenced in summer 2002. UNHCR was consulted in this process and its comments and suggestions were taken duly into account. The Bill adequately addressed the above noted concerns, as well as a number of other important issues previously raised by UNHCR.

Unfortunately, the finalization of the proposed amendments took much longer than planned, resulting to the Bill only being submitted to the Parliament for adoption on 17 March 2003. The amendments have been adopted by the Parliament on 5 June 2003 and are expected to soon be published in the Official Gazette, at which time they will enter into force. The adoption of these amendments is an important step forward in establishing an adequate legal framework for the protection of asylum-seekers and refugees in Cyprus.

Implementation of the Refugee Law in the Republic of Cyprus

In the course of 2003, the Government of Cyprus took steps to address the implementation of the provisions of the Refugee Law. However, a number of issues remain of concern, which need to be addressed and implemented in order to have a functioning national asylum system in Cyprus. The Government is also benefiting from a Twinning Light Project with Greece, which comes to an end in June 2003. It is expected that this project may also highlight a number of issues, which need further follow up. Please find below a number of issues of concern:

- The Refugee Law allows for the lodging of an asylum application at every police station, point of entry and the Migration Department. As the Migration Department is not equipped to take fingerprints of the asylum-seekers, the Chief Migration Officer decided to temporarily suspend the possibility of lodging an asylum application at the Migration Department. Therefore, as of mid April 2003, asylum-seekers can ‘only’ lodge an asylum application at a police station and/or district immigration police office. Reports are being received that asylum-seekers in some cities have major problems in lodging an application at the police stations. They are being interrogated by the police on the substance of their claim, are being denied the possibility to formally apply for asylum, are being kept in custody, etc. Similar problems occurred early 2002, which were partly

addressed by the authorities but were mainly avoided by the asylum-seekers by lodging their application at the Asylum Unit. With the latter possibility having been suspended, it is feared that many will have difficulties and/or not be able to lodge an asylum application.

- The staffing level of the Asylum Unit does not allow it to cope in an adequate and expedient manner with the processing of asylum claims received. In addition, two of its four eligibility officers have recently left the Asylum Unit, further reducing its capacity. The staffing level of the Unit will need to be increased significantly to allow the timely processing of the asylum applications and to avoid a further increase of the cases pending a first instance decision. Such new eligibility officers will be in need of a comprehensive and adequate training on Refugee Status Determination (RSD) matters.
- The Refugee Authority rendered 126 decisions as at end March 2003. In all but one decision it decided to reject the asylum applications as manifestly unfounded and therefore, in line with the current Refugee Law, no right of appeal was granted to the asylum-seekers. Although UNHCR did not study all the files of the asylum-seekers whose applications were rejected as manifestly unfounded, it is considered that in practice the difference between the accelerated procedure [applied under the current Law in case an application is considered to be manifestly unfounded] and the regular procedure may have become blurred, with all cases but one being considered as manifestly unfounded. It would appear that in case of a rejection, the Refugee Authority per definition considers it as manifestly unfounded. In addition, the delay in the adoption of the necessary amendments to the Refugee Law, which would *inter alia* afford a right of appeal in an accelerated procedure, jeopardizes the protection of the asylum-seekers whose claims were rejected as manifestly unfounded.
- The Reviewing Authority has not become functional yet. Its procedures are unclear and its members have not received adequate and appropriate training or necessary equipment.
- Asylum-seekers lack access to free legal advice in the refugee status determination procedures. Advice on such legal matters is currently provided free-of-charge by a local NGO, located in the capital, Nicosia. However, the capacity of this NGO is extremely limited (one legal counsellor), with the project being solely funded by UNHCR. While according to the provisions of the Refugee Law, asylum-seekers have the right to access and retain legal advice and services while in the refugee status determination procedure, the Legal Aid Law does not include free legal assistance to asylum-seekers. In addition, in criminal procedures, the law requires that the relevant offence should carry a penalty of more than one year imprisonment, which leaves cases of illegal entry / stay [for which asylum-seekers are often prosecuted] out of its spectrum. As a result, the great majority of asylum-seekers effectively remain without legal assistance.
- The construction of a reception center for asylum-seekers has been concluded since late 2002. However, the Reception Center is still not operating, as the modalities for its structural and functional organization, remain to be finalized and implemented. The fact that the Center is located in a remote rural area is one of the impediments to making the Center operational.
- Cyprus lacks adequate medical and counselling services for the rehabilitation of traumatized asylum-seekers and refugees. Persons in need of such specialized care have access to psychiatric/psychological treatment at public hospitals and out-patient wards, albeit no specialized center for victims of torture or abuse exists. The lack of specialized training of the medical practitioners and the social welfare counsellors, the lack of interpreters and adequate personnel for follow-up home visits and domestic assistance and the overwhelming workload of these practitioners inhibits the timely identification and effective care and rehabilitation of such patients. Following a seminar on Victims of Torture and Violence in May 2003, the authorities are

now considering the creation of such a center, in collaboration with a relevant institution in Greece.

- Although the Refugee Law of January 2000 foresees the right of a refugee to receive a refugee travel document, the authorities have not started yet to issue such documents. As a result, refugees in Cyprus, amongst which some residing in Cyprus already for many years, are unable to travel abroad. No confirmed information is available as to when the authorities will be able to implement this provision.

“TRNC”

As indicated above, there is no existing legal framework in the “TRNC” for the protection of asylum-seekers and refugees. Persons seeking asylum and arriving in an irregular manner are sentenced for ‘illegal entry’ and, after having served their prison term, are deported to their country of origin through Turkey. While they are allowed to complete refugee application forms and UNHCR has access to them while in detention, they are not allowed to remain until the outcome of the assessment of their asylum claims, and are without exception deported to their countries through Turkey.

SBA

Since January 2000, asylum-seekers have mainly arrived in the SBAs through the “TRNC”. The SBA Administration has refused to accept responsibility for these persons, claiming that they should be the responsibility of the Government of Cyprus, as the only recognized State authority on the island and *de jure* responsible for the occupied territories. The authorities of the Republic responded that *de facto* they cannot exercise control over those areas, thus the SBA should be responsible as the first legal authority approached by the asylum-seekers. This longstanding issue was partly solved through the signing of an Memorandum of Understanding between the UK Government and the Government of Cyprus. The latter agreed to assume responsibility for asylum-seekers who entered the SBAs, other than by entering directly the SBA. In addition, those asylum-seekers who arrive directly in the SBA will remain the responsibility of the UK, through the SBA Administration. Their claims will be processed by the Cyprus Refugee Authority, on behalf of the SBA Administration, while they also will have freedom of movement and residence throughout the island of Cyprus, as well as the right to work, education and health care in the Republic of Cyprus. However, this agreement only enters into force upon accession of Cyprus to the EU. Therefore, the asylum-seekers and refugees already residing in the SBA are not covered by this MoU. However, the SBA continues its efforts to bring forward the provisions of the MOU to cover the residual caseload, something that has reportedly already been agreed in principle.

In accordance with the MoU, the SBA Administration has finalized a Refugee Ordinance in March 2003. The Ordinance has been published in the SBA Official Gazette in late May 2003. The Ordinance reflects the provisions of the Cyprus Refugee Law of 2000 and therefore has the same flaws as pointed out above. Beyond this, a number of issues relating to the administrative ramifications of the provisions were noted. Despite the provisions of the MoU indicating that the Refugee Authority shall carry out refugee status determination on behalf of the SBA Administration, the Ordinance provides that the Refugee Authority shall issue and communicate these decisions directly to the asylum-seekers, leaving a gap into how this would legally be made possible. In addition, even if such a method is found, the Refugee Authority’s decisions are considered to be decisions of the Republic’s Administration and therefore may be legally reviewed by the Supreme Court of Cyprus, under the relevant Constitutional provisions. However, the Supreme Court would not have jurisdiction to review a decisions issued under the provisions of an SBA law.

The MoU and Refugee Ordinance have only recently been shared with UNHCR and a further analysis needs to take place, which may lead to further comments from UNHCR.

Conclusion

The main points for consideration could be summarized as follows:

- Increased capacity of the Refugee Authority to process in an adequate and expedient manner asylum requests.
- The Reviewing Authority becomes a fully functioning appeal body, with trained members and with the necessary equipment and administrative support.
- With having adopted amendments to the Refugee Law, the challenge will be the actual implementation in practice. It is suggested that a comprehensive approach is being adopted, involving all Ministries and Departments concerned.
- Some long-outstanding issues, such as the issuance of travel documents to refugees, will be addressed as a matter of priority.

UNHCR
June 2003