

**Convention against Torture and Other Cruel Inhuman or Degrading
Treatment or Punishment**

Cyprus Review

Prepared by the Cyprus Refugee Council

November 2019



CYPRUS
REFUGEE
COUNCIL

Submission by the Cyprus Refugee Council

II. Overview of Issues

A. Asylum Procedures

i. Inadequate information on asylum procedures;

Information provided is extremely limited, often outdated or not available in languages that applicants comprehend.¹ Furthermore, negative asylum decisions do not include the reasons in detail and there is a lack of information on the procedures to submit an appeal and/or access legal aid.

ii. Lack of free legal assistance at first instance and ineffective access to legal aid and representation during the judicial examination

There is no free legal support or representation at *first instance* examination of asylum applications.

Legal aid is offered by the state only at the judicial examination of the asylum application before the Administrative Court. The success rate of legal aid applications is extremely low as the application is subject to a “means and merits” test. The ‘means’ leg of the test is in most instances satisfied; whereas the ‘merits’ is rarely satisfied as during submission and examination of the application the detainee is obliged, without the assistance of a lawyer, to convince the judge that there is a possibility the Court may issue a positive decision on the asylum application. In this process, the state legal counsel representing the Republic acts as an opponent by submitting reasons why legal aid should not be provided, and this leads to an extremely unequal process. Evidence of the lack of access to legal aid in asylum applications is the extremely low number of such applications being granted since it has been introduced².

iii. Unclear and delayed appeal procedures

Although Cyprus has received support from the European Asylum Support Office in order to deal with the increasing backlog of cases, there is still large backlog of unprocessed asylum applications at both first instance and second instance. Regarding the Refugee Reviewing

¹ AIDA, the Asylum Information Database, Cyprus Country Report 2017, p 51

² According to a search carried out on the Cylaw database, for 2010-2017, approximately 87 applications for legal aid submitted by asylum seekers were found, out of which 9 were granted. According to a search carried out on the Cylaw database for 2016, the first year of operations of the Administrative Court, 22 decisions were issued on legal aid applications to challenge the decision on the asylum application, out of which 2 were granted.

Authority, its operation has been terminated and is currently only processing the backlog. The International Protection Administrative Court started operating in July 2019 taking over from the Administrative Court and examines both points of law and substance. However there is still a substantial backlog and unclear procedures.

iv. Inadequate legal representation for unaccompanied children at first instance

Legal representation at first instance is carried out by the Social Welfare Services, yet the appointed officer does not have adequate knowledge or training on legal or asylum issues, rarely meets with the child before the interview and, even in cases where they do, often no information is provided on the purpose of the interview and possible consequences of it. It has been noted that the children are often taken to their interviews on the scheduled day, without prior notice. During the interview the representative is always present, but as they usually have no prior contact with the child and no knowledge about the specific case, they are not in a position to contribute in a substantial way. Regarding the Dublin procedure, there have been cases where the representative of the child did not inform the Asylum Service of the existence of relatives in other European countries, leading to the expiration of three month deadline to lodge a Dublin request.³

v. Lack of identification and assessment mechanisms to identify priority cases; inadequate procedural guarantees for vulnerable persons;

The Refugee Law acknowledges the need to timely identify and address the special reception and procedural needs of vulnerable persons and introduce a basic framework of operation. However, further elaboration is required in order for an effective mechanism to be set up. In the absence of specific legislative or procedural guidelines, the identification and assessment of special reception and procedural needs take place fragmentally, while the assessment tools and approaches to be used are neither defined nor standardised. Relevant to that, there is no provision for training of the staff engaged in the identification and assessment procedure, and the role of Social Welfare and Health Services – being the most competent state authorities in relation to evaluating the needs of vulnerable persons – is rather confined. No monitoring mechanism of the overall procedure is foreseen which could contribute to the efficient and timely coordination among the involved agencies.

³ AIDA, the Asylum Information Database, Cyprus Country Report 2017, p 46

Furthermore, although persons whose special reception needs and/or procedural needs are identified and assessed, should receive appropriate support within a reasonable time frame, the exact level, type or kind of support is not specified in the law.

Efforts are being made by the Asylum Service in collaboration with EASO, UNHCR and CYRC to set up a comprehensive vulnerability assessment at the First Registration Reception Center but the procedure have still not been concluded.

vi. Lack of formal and written policies, procedures and guidelines.

There are no formal Standard Operating Procedures or screening methods to determine claims that may be prioritized or accelerated, and no method to identify specific procedural needs.

Recommendations:

- Provide consistently up-to-date information on all aspects of the asylum procedure and ensure effective advice and counselling.
- Ensure access to free legal assistance at first instance and effective access to legal aid and representation during the judicial examination.
- Ensure timely examination of asylum applications and all instances.
- Create and implement an effective mechanism for the identification and assessment of vulnerable persons; define roles and content of special reception and procedural needs; build up capacity among staff engaging with vulnerable person at all stages of the procedure.
- Issue written policies, procedures and guidelines. Introduce an internal quality assessment mechanism on asylum decisions.

B. Immigration Detention

i. Examination of asylum claims in detention: At the end of 2017 the fast-track examination of asylum applications of persons in detention was terminated leading to an increase in the number of persons in detention, currently 91 detainees, whereas the average throughout 2017 was 40. The duration has increased from an average of 1.5 months to more than 3 months. Some detainees, including asylum seekers, are released whereas others are not. There are no indications on the criteria used to release or continue to detain.

ii. Detention Center: The main Detention Center for immigration detention is considered to have satisfactory conditions, however, the recent termination of the fast track examination of asylum claims of detainees, as well as the lack of alternatives to detention has led to an increase in the number of detainees in the Detention Center in Menoyia. This has led to the re-opening of a wing, as well as persons being detained in holding cells around the country, a practice which had ceased. Based on international standards the holding cells are not appropriate for long term stays.

iii. Detention Orders

All detention orders that have been reviewed include only the articles of the law based on which they are detained and in brief the remedies available. There is no justification on the individual reasons or facts, or on procedures to access the available remedies.

iv. Legal Basis of Detention

There is a lack of consistency in the legal basis upon which asylum seekers and migrants are detained and these include combinations of national law (articles 6&14 Aliens and Immigration Law) and the Returns Directive (18ΠΣΤ Aliens and Immigration Law), and at other times under the Refugee Law. In 2019 most asylum seekers were detained under the refugee law and had access to legal aid which carries only a means test. For the remaining detainees most are detained under provisions of the law that are excluded from access to legal aid and do not carry a maximum time limit of detention, leading to indefinite detention.

v. Detention of Vulnerable Persons.

Detention of vulnerable persons is not prohibited by law and survivors of torture, trafficked persons, LGBTI persons and persons with disabilities and other special needs are detained with no special safeguards in place. Indeed, due to the lack of an effective identification mechanism, lack of individual assessment and reluctance to implement alternatives to detention, vulnerable persons including asylum seekers are often identified in detention. Positively, children are not detained under any circumstances.

vi. Access to Legal Remedies & Legal Aid for Detainees

Detainees have a right to submit a recourse before the Administrative Court against detention, or a Habeas Corpus before the Supreme Court, however in most cases they are

not able to effectively exercise this remedy due to the lack of resources required to cover the expenses of this procedure (e.x. Court fees, lawyers' fees). The only option for free legal assistance before judicial proceedings in Cyprus are the instances provided for under the Legal Aid Law. However, the majority of detainees are detained under provisions that are exempted from legal aid. Even detainees who are held under provisions that can apply for legal aid rarely attempt to access legal aid due to the lack of information and/or guidance.

NGOs are not permitted to appear before Court, therefore the assistance they may provide is limited to legal advice and not representation before the Court. In limited cases, NGOs may collaborate with lawyers in order to bring cases before the Court; however, the capacity and means to do so is extremely low.

Effective access to legal aid: The success rate of legal aid applications is extremely low as the application is subject to a "means and merits" test. The 'means' leg of the test is in most instances satisfied; whereas the 'merits' is rarely satisfied as during submission and examination of the application the detainee is obliged, without the assistance of a lawyer to convince the judge that there is a possibility the Court may issue a positive decision on the lawfulness of detention. In this process, the state legal counsel representing the Republic acts as an opponent and submits reasons why legal aid should not be provided, which leads to an extremely unequal process. Indicative of the lack of access to legal aid in order to challenge detention is the extremely low number of such applications being granted since it has been introduced⁴.

vii. Alternatives to Detention

The decision to detain is not based on an assessment of the individual circumstances or the risk of absconding, and the responsible authority issues and renews detention and deportation orders simultaneously, without considering less restrictive alternatives to immigration detention. This applies for all detainees, including asylum seekers whose case is still pending.

Although the Aliens and Immigration Law provides for alternatives to detention and states that detention is used as a last resort, and the Refugee Law includes a non-exhaustive list of

⁴ According to a search carried out on the Cylaw database, throughout 2017 only 2 applications for legal aid to challenge detention were submitted and none were accepted.

recommended alternatives to detention, neither have been implemented. Furthermore, there are no guidelines or procedures in law or policy or practice to examine the necessity and proportionality of detention in order to determine if detention is indeed the last resort. Due to this it is not clear how and if alternatives are implemented and, even though detention orders issued under the Refugee Law make reference to an individualised assessment, at the time of writing there are no cases where such assessment has been provided.

Recommendations:

- Implement in practice and give priority to alternatives to detention and ensure detention is indeed used as last resort, for least time possible.
- Ensure all detainees have access to effective legal remedies and legal aid.
- Introduce effective screening and assessment procedures and cease the detention of vulnerable persons.
- Issue a written policy on the non-detention of all children to reflect the current practice.

C. Reception Conditions – Living Conditions for asylum seekers

i. Reception Center for asylum seekers

The only state Reception Center in Cyprus is located in a remote area of the village of Kofinou, away from services and local amenities and with limited transport links. Its capacity was expanded from 80 to 400 persons in September 2014, however the services provided generally remain at the same level and have decreased in some areas. Plans made in 2015 to increase staffing levels and establish efficient management, in line with suggestions made by UNHCR and under the European Asylum Support Office's Special Support Plan, have not materialized. In addition, the increasingly deteriorating conditions at the centre have led to unusable and unsafe kitchens and bathrooms and an overflowing sewage system. Primary applicants who are residents at Kofinou receive a monthly allowance of €40 and €10 for each dependent and residents are thus unable to meet basic needs, such as, access to sanitary/hygiene materials, clothing (especially for school-age children), and school materials, without assistance of donations. The location, layout and infrastructure of Kofinou Reception Centre is not conducive to effectively protecting vulnerable persons with specific needs and this places residents at an increased risk of sexual and gender based violence. The

limited social services and psychosocial counselling have impeded the transition of the residents to the community, including upon the grant of protection status.

Following a recent policy change by the Asylum Service, the Kofinou Reception Centre for asylum seekers is no longer accepting single male asylum-seekers. With the Kofinou Centre presently hosting only 265 persons and another 130 unaccompanied asylum-seeking children housed at the four special shelters in Nicosia, Larnaca and Limassol, the vast majority of asylum-seekers (app 4000) live in the community.

ii. Living conditions of asylum-seekers.

Asylum seekers face extremely difficult living conditions, which is due to the very restrictive employment policy preventing asylum-seekers from becoming self-reliant, and remains unchanged despite the longer waiting period for receiving an asylum decision. Moreover, the material reception conditions are not adequate to ensure a dignified standard of living to protect their physical and mental health, especially given the increasing rent prices. This also affects transition to the community from both the Kofinou Reception Centre and the children's shelters.

iii. Access to Employment: Asylum-seekers can work after a one month waiting period from the lodging of their asylum application and only in certain unskilled jobs, regardless of their academic qualifications or professional experience. This type of employment is typically at the lower end of the pay scale and often requires constant separation from family members as it is usually in remote areas. As a consequence, many asylum-seekers, including highly qualified individuals, find themselves unemployed for many years leading to frustration, demoralization, and a compromised ability to integrate in the long term. There are also serious problems with the job referral system. Asylum seekers cannot refuse a job offered by the Labour Office without a risk of being considered willingly unemployed and having their benefits terminated, even if the job is inadequate or inappropriate or if the pay is below national minimum rates. While the national minimum wage is over €800 per month, asylum seekers are sent to jobs with pay as low as €200 per month. In cases where employers do not pay at all, there is no procedure to force compliance with basic labor practices.

iv. Social Assistance for Asylum seekers

Level of social assistance asylum-seekers receive from the state: Asylum-seekers are excluded from the national Guaranteed Minimum Income scheme and are instead provided with a special 'material reception assistance'. The assistance is provided by means of vouchers and a small cash allowance to be used for utilities and other expenses. A very small rent allowance is paid directly to the landlords after a signed contract has been submitted to (and acknowledged by) Social Welfare. The level of assistance provided is less than half of that which nationals receive under the Guaranteed Minimum Income. It is in fact below the national risk-of-poverty threshold and does not meet the minimum standards of the EU Reception Conditions Directive.

There are significant problems with the present voucher system. The vouchers can be used only in a few designated small shops in each town, where a number of essential items are not available. Prices in these shops are apparently much higher than the larger supermarkets. Furthermore, asylum-seekers receive their vouchers with significant delays, often only a few days before their expiry. Asylum-seekers also need to make numerous visits to the welfare services office, often on foot, to receive their vouchers. Every month there is a number of asylum seekers who do not receive vouchers at all. In such cases, there is no compensation even when the Social Welfare office is found to be at fault. Finally, there are particular societal sensitivities to shopping with vouchers that leads to the stigmatization of asylum-seekers, subjecting them to further prejudice and discrimination.

The small cash allowance is given to asylum seekers in cheques. Often asylum seekers cannot open bank accounts. As a result, they can neither deposit nor cash these cheques. Currently, there is only one shop in the whole of Cyprus that will exchange these government cheques for cash. Asylum seekers from all over the country travel to the shop every month to be able to cash their cheques.

Further, cheques can be delayed by 2-3 months. Some months they do not arrive at all. The system of payment of cheques is untraceable (it is impossible to identify which cheque for which month was not received). As a result it is impossible to claim compensation when payments are missed.

v. Housing

The amount that asylum-seekers receive for rent is incredibly low for the current market prices. The rental allowance for a single person is €100. The inadequacy of the allowance

forces asylum-seekers, including families with young children, to find shelter in unsuitable premises, often without electricity and water and thereby exposing themselves to serious health risks. Moreover, the woefully inadequate rental allowance, including the irregularity with which it is paid, has led to a growing problem of homelessness.

Irregularity of rent payments and delays lead to evictions of those who manage to secure accommodation in the first place.

vi. Asylum seekers with special needs

There is no formal procedure in place to identify and assess the specific reception needs of asylum-seekers. The authorities do not afford any special needs benefits to vulnerable asylum seekers, including disabled persons and they do not have access to disability schemes, which were extended to persons under international protection in March 2017.

Recommendations:

- Ensure emergency accommodation to all asylum-seekers in need, who would otherwise be forced to live in substandard conditions or would be homeless. Existing EU funds can be utilized for subsidizing housing costs;
- Increase the level of subsistence assistance for asylum-seekers - providing cash instead of vouchers - and to remove the cap on the assistance provided to families to ensure a dignified standard of living in accordance with Cyprus' international and EU legal obligations;
- Process applications for social assistance swiftly in order to prevent instances of destitution and homelessness;
- Reduce the period of prohibition of access to the labour market and expand the economic sectors where asylum-seekers are permitted to work so that they become self-sufficient and further contribute to the society and the economy; it is further recommended to subsidize the income of employed asylum-seekers on low wages in order to encourage access to the labour market;
- Put in place appropriate structures and procedures for the early and systematic identification of asylum-seekers with specific needs and to grant them access to tailored assistance, including special reception conditions and disability allowances;
- Institute transitional measures to assist unaccompanied children with independent living once they attain the age of majority.

- Ensure asylum seekers with special needs are promptly identified and their special needs addressed, and extend disability schemes to all persons with disabilities regardless of status.

D. Integration of Migrants and Persons under International Protection

i. Integration

Integration remains a serious challenge due to the lack of a national integration policy, as well as limited and ineffective programmes to facilitate integration. Fast track Greek language training, vocational training, recognition of previous studies and qualifications, affordable housing, access to long-term residence, supporting family reunification, and facilitated naturalization all require further strengthening and development. The concern and focus of the authorities have largely been to ensure the refugees' basic survival by either encouraging them to take up unskilled, low-paying jobs or providing access to the national welfare system and health care. No visible efforts have been made to reduce their marginalization, encourage and support sustainable self-sufficiency, and to provide the structures and services necessary to facilitate effective integration.

ii. Family reunification

As of 2014, the right to family reunification for beneficiaries of subsidiary protection was removed from the law and only in extremely rare and exceptional cases has such a request been granted on humanitarian grounds. The restriction is absolute regardless of the number of years in the country. As the majority of Syrian refugees receive subsidiary protection this has had a direct impact on them. Furthermore, in view of the obstacles for more permanent residency (naturalization and long-term residency) in most cases, they will never enjoy this right. This has resulted in many Syrian refugees attempting to bring their families through irregular routes including boat arrivals.

iii. Long-term residency

The requirements for applying for long-term resident status for all eligible persons, including persons under international protection, refugee status and subsidiary protection, are stringent and the majority of persons are not able to meet these. This is evident from the low number of persons that apply and receive the status.

iv. Naturalization

There has been an improvement in the numbers of persons receiving nationality in recent years however the naturalization policy remains largely discretionary and non-transparent.

Recommendations:

- Extend the right to family reunification to persons with subsidiary protection;
- Adopt a national plan for integration and facilitate social and economic integration
- Introduce transparent criteria for naturalization and effective access to long term residency.

E. Statelessness

Cyprus has yet to ratify the conventions on statelessness. Furthermore, no policy or regulation is in place and there is no status determination procedure. The only option for regularization of stateless persons is through the asylum system where they may be granted refugee status. Nevertheless, there are disparities in the policies adopted with regards to granting refugee status to stateless persons so for instance, since 2014 Palestinian refugees ex Syria receive refugee status as stateless persons under article 1d of the 1951 Geneva Convention whereas Palestinians formerly residing in Gaza do not, nor do stateless Kurds formerly residing in Syria.

Moreover, due to the reluctance of Cyprus to grant nationality, many stateless persons will remain without nationality including children born and raised in the country and persons who have lived in the country for many years.

Recommendations:

- Accede to the *1954 Convention relating to the Status of Stateless persons* and the *1961 Convention on the Reduction of Statelessness*;
- Ensure the right to nationality for children born to parents who are beneficiaries of international protection, asylum-seekers or stateless.

F. Independent Authorities

Very limited action has been taken to facilitate the functioning, capacity, independence and effectiveness of independent authorities and supervising mechanisms of the Independent Authorities.

Recommendations:

- Ensure the independent authorities are provided with adequate resources and support in order to carry out their mandate.

G. Racial stereotyping, discrimination, hate speech and hate crimes

Efforts have been made in recent years to tackle issues of racial stereotyping, discriminatory attitudes, hate speech and hate crimes through legislation as well as trainings. However, these issues are still strongly prevalent in all areas of public life and the majority of migrants and refugees face marginalization and discrimination on a daily basis, including when accessing public authorities.

Recommendations:

- Adopt a comprehensive strategy and plan to combat issues of racial stereotyping, discriminatory attitudes, hate speech and hate crimes.
- Carry out systematic trainings as well as monitoring, especially in education and state authorities;
- Provide the Independent Authorities with adequate resources to carry out their mandate on such issues;
- Ensure enforcement of legislation related to hate speech law and hate crimes.

H. Undocumented Migrants

i. There are a sufficient number of undocumented migrants, including children in the country, yet there is no official data or statistics.

ii. Undocumented children of irregular status enjoy full access to basic education; access to tertiary education is often limited due to socioeconomic obstacles.

iii. The Ministry of Health provides that there is access to public health care for all children; Nevertheless, in practice it is often not accessible to children of an irregular status as they will be turned away by the admissions staff at public hospitals as they will not have documentation for registration, with the exception of the emergency care. Furthermore, the lack of knowledge or fear on behalf of the parents to access such care acts as a deterrent.

iv. There is no access to health care for undocumented adults, including non-removable persons who have been in the country for many years. There is a possibility to apply to the

Minister of Health who may give access to public health care for a limited period; however, this is not always granted and rarely requested.

iv. There are no policies or procedures or guidelines in place to regularize undocumented migrants, including families with children who were born in the country or came at a young age and have lived most of their lives in Cyprus, or for non-removable persons even where they have been in the country for many years. The only options are ad hoc interventions which are heavily discretionary and non-transparent on the criteria applied.

Recommendations:

- Ensure all children regardless of status have effective access to basic rights.
- Ensure children who have lived the majority of their life in Cyprus have access to legal stay.
- Provide a comprehensive and transparent procedure for undocumented migrants to regularize their stay.

Nicosia, Cyprus

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