

Barcelona symposium
HUMAN RIGHTS CHALLENGES IN EUROPE II
POPULISM, REGRESSION OF RIGHTS AND THE ROLE OF THE OMBUDSMAN
Organized by the Catalan Ombudsman (Sindic de Greuges de Catalunya)

Third Session

Case studies II. Regression of rights in situations of emergency and migration crisis: Ombudsman monitoring tools

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Thank you Mr Chairman,

Dear colleagues, Madame European Ombudsperson,

It is a pleasure to be among friends and colleagues; it is an honour and a privilege to be among distinguished Ombudspersons; and it is a real challenge to be invited to add to what has already been a highly interesting and fruitful discussion. I am particularly thankful to our Catalan colleague, Rafael Ribó, for organizing this symposium setting quality standards that all our future meetings will have to try hard to match.

Before addressing the subject of this third session, by focusing on the specific institutional monitoring tools available to the Greek Ombudsman, I would like to make use of the opportunity to offer some broader reflections on the general question posed to our symposium and say a few words about the work and the mandate of my institution. Tempted as I may be to shift the focus of my intervention on the migration/refugee crisis and its manifestations in Greece, spurred by the interventions that preceded me and the very informed presentation we were treated with yesterday, I must resist; there will soon be more opportune occasions to tackle the matter in depth, both when my institution will be presenting its findings and conclusions to a retrospective (2015-2017) report on the issue in late May as well as in June in Brussels, upon the invitation of Ms O' Reilly. Having said that, some general remarks are clearly unavoidable, and key conclusions may be identified.

The Greek Ombudsman does indeed look after best administrative practices as we mediate between public administration and citizens to help the latter exercise their rights effectively. That is the, so to speak, traditional part of our mandate and we still dedicate almost half of our staff to clear, straightforward mediation. It may not come as a total surprise to you that in times of severe and prolonged financial and social crisis such as the last eight years in Greece we have found out that our mediation has indeed offered a useful service to parts of the citizens that need it the most. But as I said, that is roughly half of our work.

Further to mediation, the Greek Ombudsman plays an all the more important role in promoting, protecting and guaranteeing human rights and fundamental freedoms. That amounts to the other half of our work, which focuses on human rights protection, promotion and safeguarding, and includes:

- defending individual, political and social rights, for example in cases of violations of personal freedom; discrimination on grounds of nationality or ethnic origin; violations of the rights of immigrants and the right to political asylum and aliens' rights to entry and residence,
- safeguarding and promoting children's rights; including monitoring of services and service-providers addressed to children, whether educational, health-related etc.
- promoting equal treatment and fighting discrimination in both the public and the private sector based on race, ethnicity, religious or other conviction, disability, age or sexual orientation etc
- monitoring and promoting the application of equal opportunities and equal treatment of men and women in employment and in the access to goods and services of both the public and the private sector
- national preventive mechanism (NPM) against torture and ill-treatment (OPCAT) since 2014.
- monitoring third country nationals returns and readmissions (Dir 2008/115/EC, art 8 par. 6, transposed into Greek legislation by L. 3907/2011, art. 23 par. 6).

Soon, in less than two months, we will be able to launch investigations that may lead to disciplinary actions against members of the police, port police/coast guard and prison guards.

Further, we are currently exploring expanding our remit on two areas that are directly linked to the assessment of the migration/refugee crisis:

- anti-corruption (in the frame of the open government initiative, with the technical assistance of the OECD); might prove extremely useful tool in reviewing in depth the management of the funds funnelled from the EC to Greece, whether to NGO's or the administration, or even international organisations such as the UNHCR;
- Legal standing; in both national and international courts.

I think it would be safe to conclude that as far as our existing mandate is concerned, the Greek Ombudsman is among the arguably very few Ombudsman institutions to have such a rich toolbox at our disposal.

Greece is no stranger to refugee/migration flows. Leaving aside the past exodus of Greeks to America, Australia or Germany, the latter part of the 20th century saw an influx of people in need – either of safety or of jobs. Hundreds of thousands of citizens from neighboring Balkan countries crossed Greece's northern borders looking for a job which would generate income for them and their families back home, in the early 1990s. Thousands of Asian citizens, primarily of Pakistan, have done the same since the 1980s. And, before 1989, the vibrant community of dissidents from eastern Europe made a sizeable part of the total migrant population, located especially in Athens. Greece has played host to people of a wide spectrum of nationalities who had to leave their countries from Central Asia to Northern Africa, for political, social or economic reasons. Despite the occasional adversities, economic or institutional, a considerable part of that population managed to “normalise” their stay in Greece and assume the right to indefinite residency or even citizenship as they had actually wanted to.

But that was nothing like what has happened in the last two and a half years. The main difference is rather obvious: The hundreds of thousands of people that have been making

the dangerous, sometimes deadly, passage from the shores of Turkey to the islands of eastern Aegean (Lesvos, Chios, Samos, Leros and Kos) have had no intention whatsoever to stay and start a new life in Greece. Aware of the economic crisis, the scarcity of benefits and the poor quality of services, refugees from Syria and Iraq as well as migrants from Afghanistan, Northern Africa and Pakistan have all had a common destination: Northern Europe, more often Germany, Sweden or the United Kingdom where their information, or simple hearsay, assured them of better chances to lead a normal life and raise their families. Greece has been considered as nothing more than a transit country.

This perception was not surprisingly welcomed by all parties involved. Indeed, almost everyone (refugees/migrants included) was more than happy to welcome the refugees/migrants as long as, a few days later, they were gone. That was strangely possible until the beginning of 2016 when the so called “Balkan corridor” was eventually sealed. Until that time, all three aspects of the title of our session were valid. There was a crisis, it was perceived by the Greek authorities as an emergency situation and certain rights of the refugees/migrants indeed suffered. The all too familiar scenes of rain soaked tents, mud and desperate people looking for a trafficker to get them through the borders to their next transit stop will always be a stain in our history, both the Greek one and our common European one.

March 18, 2016 was thought to be the beginning of a new era in the management of the mixed flows from Turkey to Greece and to Europe. The sealing of the “Balkan corridor” was soon followed by the so-called EU-Turkey statement, a rather extraordinary document, which from the very first moment raised serious concerns as to the legal validity, real content, even as to the parties involved. As the EU was putting the new policy in place aiming to “normalise” the situation in the Southeastern external borders of the Union, both refugees and migrants were being effectively prevented from entering the EU.

To achieve this, the Greek authorities have been, to put it mildly, “encouraged” to apply a series of extraordinary measures: geographical restrictions were put in place thus preventing all newcomers from leaving the Aegean islands of Lesvos, Chios, Samos, Leros

and Kos to the mainland. Reception and registration centres were built in the said islands surrounded by razor blade fences and equipped with detention facilities. Detention - pre-departure centres followed soon. Unofficial camps were set up where responsibility was not clear, and management was substituted with improvisation. "Fast track" asylum procedures were foreseen, and cases were found inadmissible merely on the grounds of nationality. And tens of camps were built in the mainland to accommodate citizens of third countries that arrived before March 20 but did not make it to Northern Europe and now found themselves belonging to a completely different category that no one could really define.

At the same time Turkey agreed to accept migrants from third countries and asylum seekers from Syria readmitted from Greece (but, strangely, only from the islands) and in exchange for every Syrian citizen readmitted to curiously have another Syrian citizen "resettled" to the EU. Extraordinary categorization of citizens, extraordinary rules, all based on an extraordinary statement - and a commitment that the EU will offer staff and cover most of the expenses.

The European Ombudsperson has voiced her concerns on the effect on human rights' protection and the need for an impact assessment by the Commission. Yet, recently, the General Court opined that irrespective of the fact that the joint statement may be a political agreement with legally binding effects, it cannot be attributed to any of the EU institutions and cannot be challenged before the EU Court.

Allow me to concentrate on a more practical question: does the situation on the ground really demand all that extraordinary talk and action? A bit more than a year after the EU Turkey statement, with approximately 60,000 refugees/migrants blocked in the Greek islands and the mainland, Greek authorities continue to treat the situation as an emergency. And they talk camps and tents instead of houses and flats, even though the UNHCR has already successfully hosted approximately 27,000, that is, close to half of the registered refugees/migrants, in ordinary houses, rooms and hotels. At the same time, the public, both in Greece and the rest of Europe, is getting used to a normality of camps where an unknown number of third country nationals stay in unspecified conditions until

they miraculously disappear or are forcibly deported either to some place in the North or back to Turkey. Needless to say, “integration” is not high on the agenda, not even as a distant prospect. Jean Claude Juncker asked a few months ago: “Is that the best we can do?” I fully share the question. I cannot, however, but share with you my deep concern that such queries are not posed only by civil society or the public at large, but also reiterated by key actors who should be focusing on drafting and implementing policies to address them.

The Greek Ombudsman has addressed and will continue to address the shortcomings of the Greek authorities as well as the shortsightedness of certain European policy makers, be it at national or EU level. I have listed the tools the Greek law has entrusted us with. I can assure you that we have used them to the best of our abilities despite the harsh economic realities.

Making optimal use of scarce resources (our budget has been reduced to 1/3 of what it was 8 years ago), my investigators have visited practically all the refugee/migrant facilities in the islands, several times each, have inspected most of the facilities in the mainland and paid surprise visits to detention centres, asylum service centres and police stations across Greece. In order to achieve this, we have relied on both our general mandate as protector and monitor of the respect of human rights and fundamental freedoms, as well as on our special competences as the Greek NPM, when investigating and inspecting –usually without prior notice- detention and pre-departure centres (hotspots). The Greek Ombudsman has put human rights monitors in approximately 50% of returns and readmission operations in 2016 and, as we speak, we are monitoring readmission operations to Turkey from Lesbos.

Our general, mediating skills and competences have also been put to good use for bringing to the fore administrative shortcomings relating to the management of the migrants’/refugees’ waves, both at the first stage, that of registering, screening and identifying third country nationals upon entry and at the latter stages, of submitting asylum applications and having their applications processed and assessed.

Our relatively new mandates, that of the external control mechanism to return and readmission operations, and that of the national preventive mechanism have helped us immensely to enrich our experience from the field. At the same time we have developed new fields of fruitful interaction both with the Greek authorities and the civil society, and the various types of solidarity movements. I strongly recommend to colleagues to work towards assuming such mandates if they have not already.

This does not go to say that we have not been faced with difficulties in exercising fully and effectively the monitoring tools available to the Greek Ombudsman. It is not uncommon that we are de facto restricted from exercising to the best of our ability our mandate to monitor forced returns and re-admissions; last minute notification by the relevant police authorities prevent us from effectively reviewing conditions at the pre-departure centres as well as confirming respect of all legal procedures for freely exercising the right to asylum protection and verifying correct and complete, in compliance with the relevant legislative provisions, upholding of asylum application processes.

Further, we have had to resolve with the relevant authorities in situ disputes relating to the Greek Ombudsman's monitor right to take part in all briefings and debriefings of deportation operations, notwithstanding the fact that the said right is explicitly stated in both the return manual of the European Commission of 2015, the 2015 code of conduct and the new Frontex Regulation of September 2016.

Be that as it may, the Greek Ombudsman has noted and highlighted a series of shortcomings, even failings, in both the administrative as well as the rights' based and humanitarian aspect of the management of the migrants'/refugees' populations, their treatment and living conditions.

Turning my focus to a more recent development, the early March Recommendation of the European Commission on enhancing effectiveness of returns¹ presents new challenges by shifting even more attention and weight to detention practices. Detention was already

¹ https://ec.europa.eu/home-affairs/sites/homeaffairs/files/what-we-do/policies/european-agenda-migration/20170302_commission_recommendation_on_making_returns_more_effective_en.pdf

high on the European Commission's agenda. I am fully aware of the Commissioner Muiznieks' concerns with respect to the Recommendation², and I fully share them.

But at the same time I would like to emphasize the importance of safeguarding our independence. And warn against a new trend, currently at EU level of, so to speak, "internalization of external controls". Take for example the new European Border and Coastguard (Frontex) Regulation where an EU pool of monitors of joint returns operations is foreseen. As we speak, the regulation has been applied so that national external control mechanisms propose monitors, i.e. members of their staff, to be included in the EU pool of monitors and operate in joint returns operations coordinated by Frontex. The individual monitor (member of the pool) for every such operation is then appointed by Frontex, and reports to Frontex executive director and its fundamental rights officer. This is where the provisions of the Regulation end. There are certain questions regarding independence, accountability and effective protection of rights to be asked here. And even though I have contributed ten of my monitors to the EU pool, I am not much wiser as to what the replies to those questions are. As with other issues in the past, I am counting on your cooperation to develop a comprehensive response to such challenges.

During all this time, one main pattern emerged in the actions of the Greek as well as the EU authorities: the lack of a clear, comprehensive policy. As early as 2013 the Greek Ombudsman was warning that a thorough strategic plan was needed as a basis of operational plans and procedures which would enable the administration to prepare. Policy makers both at national and at European level seem to have been reluctant to plan ahead, prepare solid roadmaps and effectively address the various aspects of refugee/migrant flows which were then left to evolve as major problems. While the EU authorities concentrated on mainly spending money, the Greek authorities continued to treat the situation as an everlasting emergency which required constant reaction instead of carefully planned action. Meanwhile the lack of a plan resulted to the Greek as well as the international public being offered only a blurred narrative as to the causes of the situation on the ground, and were left prey to speculation by the heralds of intolerance. Was that lack of policy deliberate; was it simply a mistake due to oversight and miscalculation; or a

² <http://www.coe.int/en/web/commissioner/-/europe-s-duty-to-avoid-detaining-migrants>

symptom of a yet bigger problem? I am afraid it will still be some time before we may know the answer to that question. But we surely need to keep asking.

In conclusion, allow me to stress that none of the remarkable achievements I described would have been possible without the tireless efforts and dedication of my staff, the support of European and international human rights institutions and the cooperation of my fellow Ombudsmen for which I am grateful.

I am thankful for your patience and look forward to an exciting discussion.