

APPEALS COMMITTEE PD 114/2010¹

Decision 05/133782

17 May 2016

The decision of the Regional Asylum Office (RAO) of Lesbos was taken on 12 April 2016, declaring the application inadmissible.

By majority vote, the Appeals Committee annulled the decision of the Regional Asylum Office of Lesbos and deems the claim admissible. The Regional Asylum Office of Lesbos is called to examine the case on the merits. The minority vote was that of the President of the Committee, the Ministry official.

Cited authorities and documents

Cited authorities beyond the legal framework are the EU-Turkey statement, Commission implementation reports, as well as the letter of DG HOME dated 5 May 2016. The EASO Expert opinion is also cited.

Procedure

The appellant requested before the EASO expert to make an appeal. While this does not meet the procedural requirements, it was nevertheless taken as sufficient basis for the lodging of the appeal. The appellant was invited for a hearing, which took place via phone on 5 May 2016. Interpretation was provided by Metadrasi from Arabic.

Reasoning

a. First country of asylum

The Appeals Committee reasons that the inadmissibility criteria must be read giving logical priority to the “first country of asylum” ground, as it entails protection already granted to the individual, and then consideration of “safe third country” as prospective potential protection. On that basis, the **Committee held by majority that the “first country of asylum” examination has already been conducted and need not be assessed** in the case (p. 6). This is also supported by the general administrative principle of the prohibition on placing an individual’s case at more detrimental position on appeal than at first instance.

The dissenting opinion of the President of the Committee sought to examine the applicability of “first country of asylum” grounds as well.

b. Safe third country

By majority (President dissenting), the Committee held that the EU-Turkey agreement does not affect the application of the “safe third country” concept relating to Turkey, but only Turkey’s obligation to readmit all Syrians whose claims may be rejected on this ground. Any classification of Turkey as a safe third country would have to be made through a regulatory or

¹ These are the “backlog” Appeals Committees examining claims under the Old Procedure. The Committee is based in Vyronas, Athens.

other act, which can be amenable to judicial review and be assessed as to its compatibility with the safe third country principle (p. 9).

Accordingly, the Committee examined whether Turkey fulfils the criteria for being considered as a safe third country as per Article 38 of the recast Asylum Procedures Directive (p. 9 et seq.):

- (a) Persecution: the Committee noted that recent reports from human rights groups and state authorities on Turkey do not provide evidence of attacks, killings or physical violence against Syrian refugees. Here the judgment quotes the US State Department 2015 report, the Amnesty International 2015/2016 Turkey report and the Human Rights Watch World Report 2016. The Committee also referred to a UK Home Office report on Alawites.

This criterion is deemed fulfilled.

- (b) and (d) on *non-refoulement*: the Committee cited Article 4 of the Law on Foreigners and International Protection (LFIP) and Article 6(1) of the Temporary Protection Regulation. It also cites the AIDA Turkey report on the fact that the international protection procedure under the LFIP is applied in the same way for European and non-European applicants.

However, the Committee noted UNHCR Opinion on the extraterritorial application of non-refoulement which states that non-refoulement also applies to informal or “extraordinary” removals as well as rejection at the border. It cited reports by Amnesty International (1 April 2016) and Human Rights Watch (23 November 2015), BBC, Guardian, the AIDA Turkey report, the Independent, Reuters, providing evidence that Turkey is violating the non-refoulement principle for Syrian refugees, as incidents of violent rejection at the border and mass deportations to Syria are described as systematic.

The (b) criterion and possibly the (d) criterion are not fulfilled by **unanimous decision**.

- (c) Subsidiary protection: Given the Temporary Protection status received in Turkey, the Committee deemed this criterion fulfilled.

- (e) Possibility to seek refugee status and enjoy protection in accordance with the Convention (p. 13 et seq.): **By majority**, the Committee holds that the Convention provisions demonstrate a **core of protection, in the absence of which the protection provided to an individual is substantially different and may not be considered in accordance with the Convention**. This core must in any case include:

- i. **Individualised character of protection granted**, which does not preclude mass grants of status but sets limitations to the termination of protection, which must come about through **cessation** and not generalised withdrawal of protection from an entire population;
- ii. Integration of the refugee as a real possibility to live not only in safety but as a **member of the community**. This possibility presupposes a **residence permit for a specified period of time**. This cannot be guaranteed through permits

which may be withdrawn upon discretion or which have a very short duration, or by preventing the refugee from seeking a more secure residence status.

- iii. **Exercise of the rights to free movement and establishment and employment** under conditions similar to those applicable to other non-nationals.

In the absence of those conditions, the protection status is not in accordance with the Convention but resembles temporary statuses granted on mass basis. Such statuses may only be considered in accordance with the Convention where they provide clear guarantees of transition, within reasonable time, from temporary protection to protection in accordance with the Convention.

The Committee went through the establishment of the Turkish procedure under the LFIP and the Temporary Protection Regulation. It cited the AIDA Turkey report relating to the sluggish operationalisation of the DGMM offices and relating to the clarification that **temporary protection is not defined as a form of international protection** but a complementary measure where the individual assessment of the right to international protection cannot be implemented.

It cited Article 25 of the Regulation which excludes temporary protection beneficiaries from long-term integration in Turkey, notably as the **right to remain on the territory is not a residence permit and does not open up possibilities for long-term residence**. It also cited Article 15, which provides for the possibility of temporary protection to be suspended or limited indefinitely by the Council of Ministers for public order grounds.

The Committee also found that the temporary protection regime manifestly falls short of the legal guarantees offered by the Convention relating to freedom of movement, naturalisation and right to employment.

- On freedom of movement, Article 33 of the Regulation requires beneficiaries to comply with administrative requirements or face sanctions. These requirements can mean stay in a designated province or centre, while in August 2015 the DGMM introduced a specific order for movement restrictions vis-à-vis Syrians, signed by the Minister. This order was circulated across the provinces. The AIDA Turkey report is also quoted here.
- As regards access to employment, the Committee cited an EESC report explaining that an employer must hire 10 nationals for each Syrian employed, but only 5 nationals for each non-Syrian foreigner.

On the relationship between first country of asylum, safe third country and European safe third country, the Committee reasoned that Article 38 is placed in the middle of a continuum, where European safe third countries offer the highest level of protection since they have no geographical limitation to the Convention (p. 20).

The Committee held that **the safe third country must offer substantially similar protection to the Convention, without necessarily ratifying it without limitations. This protection must be refugee protection and go beyond non-refoulement, by covering the core of rights foreseen by the Convention.**

This criterion is not met.

- (st) Connection and reasonableness: the Committee cited UNHCR's Legal Considerations on safe third countries of 23 March 2016. It held that transit is often

the result of luck factors and does not necessarily amount to an important connection. Examples of a connection include family links or distant relatives, community ties, previous residence in the country, linguistic and cultural ties (p. 21)

The Committee did not interpret this criterion as the previous conditions were not met.

Dissenting opinion on points (e) and (st)

The President of the Committee based her opinion that the criteria were met on the following elements among others:

- Individualised character of protection granted by the Convention, which does not preclude mass grants of status;
- Possibility to consider temporary status as in accordance with the Convention where they offer guarantees of transition to a status in accordance with the Convention;
- Temporary protection under the Regulation as complementary to international protection;
- Right to reside in Turkey, protection from deportation;
- Number of persons granted temporary protection;
- Adoption of Regulation in April 2016 on work permits of international protection status holders and applicants;
- Information on practice in Turkey predates the adoption of new legislation;
- European Commission letter of 5 May 2016 and diplomatic assurances in Turkish letters of 12 April 2016 and 24 April 2016, which the ECtHR takes into account, as well as Commission Communication on the necessary measures to be adopted by Turkey. The Commission mentions that the protection afforded to Syrians is in accordance with the Convention;
- The EU-Turkey statement;
- Commission progress report on EU-Turkey statement;

On the sufficient connection criterion, the President found that the individual had spent 10 months in Turkey and was working for 30 lira per 12 hours, with a view to saving money for the trip to Europe. The appellant did not seek temporary protection before the authorities and has developed a sufficient link with Turkey.