



## **Euroopa Ombudsmani otsus juhtumi 1139/2018/MDC kohta, mis käsitles ekspertide käitumist Euroopa Varjupaigaküsimuste Tugiameti korraldatud vestlustel varjupaigataotlejatega**

Otsus

**Juhtum** 1139/2018/MDC - **Alguskuupäev:** {0} 23/07/2018 - **Otsuse kuupäev:** {0}

30/09/2019 - **Asjassepuutuvad institutsioonid** Euroopa Varjupaigaküsimuste Tugiamet ( Tuvastatud on haldusomavoli ) |

Kaebuse esitaja teatas ekspertide väidetavast väärkäitumisest Euroopa Varjupaigaküsimuste Tugiameti (EASO) korraldatud vestlustel varjupaigataotlejatega Kreekas.

Ombudsman leidis, et EASO suutmatuse nõuetekohaselt ja õigeaegselt käsitleda raskeid vigu, mida ta oli avastanud seoses konkreetse juhtumiga enne asjaomase varjupaigataotleja väljasaatmist, oli haldusomavoli. Et kahjuks ei ole haldusomavoli võimalik praeguses etapis heastada, ei teinud ombudsman soovitud. Sarnaste probleemide vältimiseks tulevikus soovitas ombudsman siiski, et EASO püüaks viivitamata ja süstemaatiliselt teatada riigi ametiasutustele, kui ta avastab, et vestlustel varjupaigataotlejatega on tehtud olulisi vigu.

Ombudsman kiitis heaks EASO avalduse, et EASO töötab praegu välja kaebuste esitamise mehhanismi, ja soovitas võtta selle prioriteediks. Lõpuks palus ombudsman EASO-l selgitada, kuidas ta lahendab juhtimis tuvastatud probleemid seoses tõlkide tegevuse ja järelevalvega.

Background to the complaint

- 1.** The complainant, Advocates Abroad, is an American and Greek non-governmental organisation (NGO). It assists refugees and asylum seekers throughout the world in, among other things, preparing their asylum interviews and drafting their appeals.
- 2.** On 25 April 2018, the complainant sent three letters to the head of operations of the European Asylum Support Office (EASO). In the first letter, it criticised the behaviour of several EASO interviewers and interpreters in interviews with asylum seekers in Greece since 2016. It claimed the interviewers had been abusive and/or poorly prepared. It also took issue with the lack of a complaint mechanism for asylum seekers who wish to complain about the behaviour of interviewers or interpreters. The complainant also criticised the fact that asylum seekers do not always receive transcripts of their interviews.
- 3.** The second and third letters related to a two-day interview attended by a lawyer who works for the complainant, in her capacity as a representative of an asylum seeker, 'Mr X' [1]. The second letter criticised a number of irregularities by the Arabic interpreter during the



interview. The third letter concerned the conduct of the EASO expert who carried out the interview with Mr X and who, according to the lawyer, “ *conducted the interview in a hostile and adversarial manner, appeared confused about the facts and ignorant on issues related to sexual orientation and gender identity, and at times impatient, aggressive and insensitive with [Mr X]*”. In the lawyer’s view, the interview was conducted “ *outside the bounds of EASO’s standards of professionalism* ”.

**4.** Since the complainant did not receive a reply from EASO, it turned to the European Ombudsman.

The inquiry

**5.** The Ombudsman opened an inquiry into EASO’s failure to reply to the complainant’s correspondence. She informed EASO that, once she received its reply, she would consider whether it would be necessary to inquire further into the substantive aspect of the complaint, concerning the alleged misconduct of the interviewers and interpreters deployed by EASO.

**6.** In the course of the inquiry, EASO replied to the complainant and expressed regret for the delay. The Ombudsman subsequently received the comments of the complainant on EASO’s reply.

**7.** After carefully examining EASO’s reply and the complainant’s comments, the Ombudsman decided to inquire further [2] into the substance of the complaint.

**8.** She received an additional reply from EASO, and the complainant’s comments thereon. Alleged misconduct in the case of Mr X

## Arguments presented to the Ombudsman

**9. EASO** stated that it had thoroughly examined Mr X’s case in the context of a ‘quality feedback report’ [3] , which is an internal evaluation document. EASO considered that the quality feedback report showed that the interviewer pursued a line of questioning that was inappropriate for the case, and displayed a misunderstanding of the complainant’s situation. Consequently, the case officer had “ *made a severe error of judgment when dealing with [that] case* ”, and this should not have been approved by his manager. EASO also acknowledged that there were problems with the work of the interpreter.

**10.** However, EASO clarified that its role is to provide support to the national authorities only, and it is therefore not in a position to influence the final decision of the Greek Asylum Service (GAS) on asylum applications. EASO claimed that the system of quality feedback reports was set up to ensure EASO does not overstep its mandate. These reports are intended to improve the overall quality of EASO’s work, and not to intervene in individual ‘open’ cases. EASO informed the Ombudsman that it has been sharing its quality feedback reports with the Greek authorities since the beginning of 2019.

**11.** In reply to the Ombudsman’s question as to what action could be taken in a case such as this, where serious errors have been identified but the asylum seeker has been deported



following the rejection of his application, EASO stated that it has no mandate to seek or facilitate the return of asylum seekers in such a situation.

**12.** The **complainant** considered that EASO should have proactively informed the Greek authorities of the errors it had made in Mr X's case. It claimed that Mr X had been deported to his home country as a consequence of these errors, and that he was now presumed dead. [4] Moreover, the complainant argued that EASO's failure to inform the Greek authorities about the errors committed cannot be justified by the fact that quality feedback reports are intended for future improvement only. The complainant claimed that EASO should immediately inform the Greek authorities of any serious procedural or substantive errors it identifies. Simply because a case is 'closed' from EASO's point of view does not mean that the case is closed for the asylum seeker or the national authorities.

## The Ombudsman's assessment

**13.** As set out in the Ombudsman's request for a reply in this case, the errors identified by EASO may have contributed to the fact that Mr X was deported. The Ombudsman also expressed her concern in that request about the fact that EASO sent its (delayed) reply to the complainant and the Ombudsman the very day Mr X was deported. According to the complainant, Mr X is now feared dead. While it is difficult to see what could be done at this stage to correct the mistakes that were made in his case, it is of the greatest importance to determine what lessons might be learned for the future.

**14.** It is true that ultimate legal responsibility for decisions on individual asylum applications rests with the Greek authorities. [5] However, EASO conducts interviews with asylum seekers and drafts the related opinions. Although those opinions are not binding on the national authorities, they can help inform their final decision. As such, EASO should see to it that its work is of the highest possible quality, that mistakes its experts make are identified, and that, to the extent possible, corrective action is taken.

**15.** The Ombudsman appreciates that the system of quality feedback reports was set up to ensure EASO does not overstep its mandate, to improve the overall quality of EASO's work, and not to intervene in individual 'open' cases. However, if through that system a serious error is identified, the Ombudsman believes that EASO should do its utmost to remedy it.

**16.** The Ombudsman acknowledges that EASO does not have the power to ask the national authorities to take specific action if it identifies serious errors after having transferred a case file to them. Nonetheless, the Ombudsman considers that EASO could seek to inform the national authorities, immediately and systematically, when significant errors are identified. The national authorities can then decide whether any remedial action needs to be taken, particularly if a final decision has not yet been taken or the asylum seeker has not yet been deported.

**17.** In the normal course, one would expect such errors to be identified by the national authorities, once they have seen the interview transcript. [6] However, given the seriousness



of the matter and the human consequences of mistakes in this area, the Ombudsman believes that it would be reasonable for EASO to consider this measure as an additional safeguard.

**18.** The Ombudsman therefore finds that EASO's failure to address adequately and in a timely way the serious errors committed in Mr X's case constituted maladministration.

**19.** EASO has stated that it is **now** sharing its quality feedback reports with the GAS. The Ombudsman welcomes this step and encourages EASO to share the reports in a timely way so that, if necessary, the national authorities can take remedial action. However, since quality feedback reports are anonymised, sharing them with the national authorities is potentially insufficient. If a quality feedback report reveals that a serious error occurred during an interview, EASO should consider informing the national authorities not only of the error but also of the identity of the asylum seeker concerned.

**20.** Since, regrettably, the maladministration identified by the Ombudsman in Mr X's case cannot be remedied at this stage, the Ombudsman will not make a recommendation but will make a corresponding suggestion for improvement below.

Alleged misconduct during interviews

## Arguments presented to the Ombudsman

**21. EASO** outlined the measures it has put in place to prevent, reduce and respond to mistakes made during interviews. It stated that it needs to strengthen these measures. [7] At the same time, EASO reiterated that it has a supporting role only, since final decisions on all applications are taken by the national authorities.

**22.** EASO argued that the complainant's criticism of the behaviour of several EASO interviewers and interpreters between 2016 and 2018 was "*made in isolation, irrespective of the full context of the interview or the case*" [8] and does not reveal a systemic problem. The complainant had not indicated if or to what extent the issues highlighted led to an incorrect decision by the GAS. In any event, during the appeal stage, all applicants may raise any issues encountered during the interview, which they feel have negatively impacted their application.

**23.** With regard to the supervision of interpreters, EASO clarified that case officers have the lead over the interview. They have the authority to issue direct instructions to interpreters during the process. In case of persisting difficulties, the case officer can request assistance from their managers. [9] If it is apparent from the interview transcript that the case officer did not take the necessary measures to address shortcomings by the interpreter, this is included in the quality feedback report.

**24.** EASO noted that there are proposals to set up a complaint mechanism in the draft regulation establishing a European Union Agency for Asylum (EUAA), [10] which is still in the legislative process. In this context, EASO is currently discussing how to set up a complaint mechanism to cover its activities. In the meantime, complaints received through different channels continue to be registered and addressed accordingly.



**25.** The **complainant** expressed concern that, despite the measures EASO has in place, breaches of fundamental rights persist and those individuals responsible are not held to account.

**26.** The complainant also expressed concern at how EASO supervises interpreters. It claimed that, in its experience, no supervision takes place in practice and that it is often the interpreters who provide the case officers with advice or guidance. Moreover, the complainant argued that it is difficult, if not impossible, for the case officer to ensure that the interpreter adheres to the expected standards of conduct if the interpreter is speaking in a language that the case officer does not understand.

**27.** In addition, the complainant considered that EASO had failed to provide any specific information on the future complaint mechanism. In particular, it claimed that EASO did not mention when and how this complaint mechanism would be made available to the public, nor did it state how it currently registers and addresses complaints.

## **The Ombudsman's assessment**

**28.** This is the second complaint the Ombudsman has received alleging shortcomings in the conduct of experts who carry out or facilitate interviews with asylum seekers and who are deployed by EASO in Greece. In her decision in case 735/2017/MDC, the Ombudsman pointed out that any shortcomings in the interview process (and in the GAS's decisions) are best addressed in the course of individual appeals, rather than in the context of an Ombudsman inquiry [11].

**29.** What an Ombudsman inquiry in this area can help identify is where systemic improvements can be made. To this end, the Ombudsman welcomes EASO's initiative to set up a complaint mechanism, and she encourages EASO to treat this as a priority. She will make a suggestion for improvement to that effect, inviting feedback within three months. In its reply to the suggestion, the Ombudsman expects EASO to address the complainant's concerns set out in paragraph 27.

**30.** The Ombudsman notes that for this future complaint mechanism to be effective, EASO should, in line with her first suggestion, systematically and immediately seek to inform the national authorities of any significant errors it identifies following a complaint. Moreover, the Ombudsman understands from her previous inquiry [12] that EASO does not have interview transcripts or other related documents as all files from admissibility interviews are returned to the national authorities. It will thus be important, in this context, to reflect on how the complaints mechanism can conduct a proper review.

**31.** Finally, the Ombudsman takes note of the complainant's concerns as regards the work and supervision of interpreters. She will therefore make a third suggestion to EASO on this matter.

Conclusion



Based on the inquiry, the Ombudsman closes the case with the following conclusion:

**EASO's failure to address adequately and in a timely way the serious errors committed in Mr X's case constituted maladministration.**

The complainant and EASO will be informed of this decision.

Suggestions for improvement

**If EASO discovers [13] that significant errors have occurred at interview stage, it should seek to inform the national authorities, immediately and systematically.**

**EASO should follow up on its commitment to set up a complaint mechanism and do so as a matter of priority.**

**EASO should explain how it overcomes the challenges identified in this case in relation to the work and supervision of interpreters.**

Emily O'Reilly

European Ombudsman

Strasbourg, 30/09/2019

[1] Mr X sought asylum in Greece because of fear of persecution on the basis of sexual orientation in Algeria, his home country.

[2] The questions which the Ombudsman put to EASO in her further inquiry letter may be consulted at: <https://www.ombudsman.europa.eu/en/correspondence/en/115125>

[3] Every month, EASO carries out " *detailed revisions of a batch of 10 anonymised cases* ". At least two members of the relevant department review and discuss each case. EASO stated that this *ex post* quality control takes place after the opinion has been shared with the Greek Asylum Service. The quality feedback reports are addressed to all the case officers. They contain concrete examples of both errors in and commendable aspects of the interviews and opinions. The quality feedback report in question was issued on 27 March 2018.

[4] The complainant informed the Ombudsman that Mr X's asylum application was rejected and he was deported. He then went missing.

[5] See the decision of the European Ombudsman in case 735/2017/MDC, paragraph 46.

[6] As set out in the Ombudsman's abovementioned decision, the Greek authorities may, once they have seen an interview transcript, determine whether there were shortcomings



which require that the interview be repeated; or it is open to them to disagree with the EASO expert's opinion. Moreover, under Greek law, the applicant can appeal the GAS's decision to the relevant Appeals Committees.

[7] EASO listed a number of measures it was taking or planned to take in order to further enhance the quality of examination procedures.

[8] By way of example, EASO referred to issues raised by the complainant about the refusal to grant breaks at certain points in certain interviews. It argued that, without the full context of the interviews (duration, whether there had been earlier breaks, previous requests), it could not be determined whether the refusal to agree to the request for a break was problematic.

[9] The team leader and the EASO coordinator, who oversee the performance of the interpreters.

[10] The European Parliament has proposed to include in the draft regulation a provision obliging that the agency to set up a complaint mechanism to monitor and ensure respect for fundamental rights in all its activities.

[11] See the decision of the European Ombudsman in case 735/2017/MDC, paragraph 46.

[12] See the decision of the European Ombudsman in case 735/2017/MDC, paragraph 38.

[13] Significant errors may be detected through a number of means, for example through quality feedback reports, EASO's 'quality assurance methodology' and also its future complaint mechanism.