



ASYLUM SEEKERS ON HOLD

Aspects of the asylum procedure
in Greece

April 2017

SUMMARY



Preface

The present report was edited in the context of the Monitoring the Asylum Procedures Pilot Program that took place during the period of September 2016 – March 2017. It must be noted that it does not constitute an exhaustive presentation of the asylum procedures and the issues that arise in their context.

Introduction

During the period that fell under the scope of our research, the asylum framework in Greece was mainly determined by three parameters:

- The big influx of refugees that started in 2015 and continued until March of 2016
- The EU-Turkey Statement along with its implementation policy, also characterized by the controversial involvement of EASO
- The gradual increase of the capacity of the Asylum Service in terms of staff and Regional Offices, which however has not reached the point to adequately respond to the asylum seekers' needs.

The gradual closure of the Balkan Route that begun during the latest months of 2015 and was concluded in March 2016, combined with the entry into force of the EU-Turkey Statement on 20/3/2016, practically divided the asylum field in Greece in half creating, one could say, two different worlds, the one of the islands and the other of the mainland.

Despite the important differences between the procedure followed at the islands and the one implemented at the mainland, there is a common background composed of:

- the long delays at the commencement, the progress and the completion of the asylum procedure at first and second instance
- the lack of appropriate information concerning the asylum procedures
- the lack of adequate legal assistance at first instance.

These facts naturally cause uncertainty, insecurity and frustration to all the asylum seekers.

However, it is certain that those who were unlucky enough to arrive at the Greek islands after 20/3/2016 found themselves in an even more difficult situation. The reason is that a new policy of the European Union - which is unfortunately endorsed by the Greek authorities- is enforced on them in an experimental way. This policy has been condemned by several human rights organizations as violating international law

- The stranding of the asylum seekers on the islands is based on a highly controversial restriction of residence, which has by now exceeded one year in duration and has created toxic situations that threaten the cohesion of the local communities as well. However, not only are the competent authorities not showing any intention of revising this policy, but they have already:
- started implementing policies which are going to transform the stranding on the islands into a confinement in detention centers, until the goal of readmission to – the safe, as they claim – Turkey is reached
- announced - together with the European Commission - the Joint Action Plan, according to which they are going to include in the readmission procedure the only groups of asylum seekers that had been excluded until now, ie. the vulnerable persons and those entitled to the family reunification process

Findings and Recommendations

A. Findings

- **Access to the asylum procedure:**

The access to the asylum procedure remained problematic both at the islands and the mainland.

In particular, significant delays – of up to eight months – were observed at the islands until the lodging of the asylum applications as well as arbitrary prioritization of specific nationalities, which seemed to be serving the EU-Turkey Statement, without due consideration to the date of arrival, the expression of the will to apply for international protection and in many cases to the particular personal circumstances and the vulnerability of each third country national.

At the mainland, the submission by physical presence of an asylum application at the Regional Asylum Offices or the Asylum Units was almost impossible. The asylum seekers were referred in their largest majority to the problematic Skype procedure for the submission of their applications, while, at the same time, the selection of the pre-registration procedure (instead of an immediate full registration) led to long delays of up to 10 months until the lodging of the asylum applications.

- **Imposition of a restriction of residence on the islands:**

In the context of implementing the policy of the EU-Turkey Statement, the national authorities have chosen to pursue the practice of enforcing a restriction on asylum seekers to remain on the islands.

This restriction is imposed on the basis of decisions issued by the Hellenic Police which are subsequently adopted by the Asylum Service. However, the involvement of the Hellenic Police in these cases raises issues of competence and legality.

Furthermore, the implementation of the aforementioned measure for a time period of one year has caused a situation of a lasting restraining of the asylum seekers on the islands in circumstances that, in fact, are not only indecent but – as it was tragically evidenced – also endanger their physical integrity or even their lives. From this point of view, the enforcement of this restriction directly contravenes the constitutional principle of proportionality.

- **Arbitrary deprivation of the right to be included in the relocation program:**

Asylum seekers that evidently entered the country before the 20/3/2016, date of entry into force of the EU-Turkey Statement, were arbitrarily deprived of the right to be included in the relocation program due to their belated registration in the EURODAC system and the denial of the Hellenic Police to correct this registration.

- **Providing legal information:**

A lack in providing legal information is observed. This insufficiency combined with the complexity of the procedures causes confusion to the asylum seekers and exacerbate their agony. This problem is particularly intense at the islands.

- **Providing legal assistance:**

At the first instance examination of the asylum requests, the legal assistance provided is extremely limited and it is provided exclusively by civil society organizations. This is highly problematic considering the importance of the first instance procedure in the Greek asylum system, where the second instance examination is now mainly conducted on the basis of the evidence of the administrative file.

At the second instance, notwithstanding that the state provided system of free of charge legal assistance has not yet been organized, this gap, however, is filled by a UNHCR program in cooperation with the Greek organizations Metadrasi and Greek Council for Refugees.

- **Service of asylum seekers and their lawyers by the Asylum Service:**

Despite the fact that the Asylum Service's personnel try to respond to the existing needs - sometimes under difficult circumstances- the provision of services to the asylum seekers and their lawyers generally presents problems, the latter being caused by several factors, such as the complexity of the procedures, the frequent changes in the followed practices, the lack of personnel, the insufficient training of the existing personnel, the structural deficiencies. The problems are even more acute on the islands where, apart from the above, certain asylum offices have been forced to stop functioning because of the violent incidents that occur in the First Reception and Identification Centers.

We would also like to stress as highly problematic the fact that both at the islands and at the mainland, the entering in the Regional Asylum Offices and the Asylum Units is controlled by private security companies and not by specifically trained personnel of the Asylum Service that could evaluate each and every case of asylum seeker that comes to them.

- **Family reunification procedure:**

Despite the fact that the fast processing of the family reunification cases under the Regulation 604/2013 (Dublin III) could result in the transfer of the asylum seekers to the responsible Member State for the examination of their applications in a timeframe of few months and consequently to the alleviation of the pressure from the reception conditions, this didn't constitute a priority for the Greek state.

There were long delays until the registration of the asylum seekers, which in turn resulted in their belated entry in the family reunification procedure.

Furthermore, the Asylum Service exhausts the allotted time provided for in the Regulation regarding the family reunification procedures.

- **First instance asylum procedure:**

The Asylum Service has not yet managed to maintain a uniform and satisfactory level of examination of the asylum applications, so that significant deviations in the quality of the interviews and decisions are observed from one another.

The implementation of the EU-Turkey Statement resulted in limiting the asylum procedure at the islands in an admissibility evaluation of the applications on the basis of whether Turkey constitutes a safe country; the latter was found to be the case for almost 2/3 of the examined cases. Highly indicative of the quality of this procedure and the correctness of these decisions is the fact that the Appeals Committees of the P.D. 114/2010 overturned the largest majority of the decisions examined.

In this procedure EASO personnel was largely involved conducting interviews and making recommendations to the Asylum Service. This involvement raises issues of competence in relation to the relevant EU Regulation.

- **Second instance asylum procedure:**

The adoption of an administrative file dependent procedure at second instance with the gradual limitation of the possibility of conducting a personal interview doesn't guarantee a thorough examination. This opinion is further corroborated if we take into account the quality issues of the first instance procedure we mentioned earlier.

At the same time the repeated and successive modifications of the legal framework and function of the Appeals Authority's committees since September 2015 until today (some of which have been brought before the Council of State under claims of unconstitutionality) resulted in the non-functioning or sub-functioning of these committees for significant periods of time. This situation had severe consequences for those asylum seekers that had submitted appeals, thousands of which are still pending.

B. Recommendations

To the Ministry of Migration Policy:

- Revision of the legislation allowing EASO staff to be involved in the procedure for the examination of asylum applications.
- Reestablishment of personal interviews at second instance
- Establishment of Appeals Committees in the example of the P.D. 114/2010, which has proven admittedly successful.

Asylum Service

- Ensuring an unimpeded access to the asylum procedure with the physical presence of someone at the competent authorities
- Removal of the restriction of residence on the islands
- Granting the right to be included in the relocation program for all the eligible ones
- Ensuring legal information at all stages of the procedure
- Establishment of a system of free of charge legal assistance at first instance and fast completion of a system of free of charge legal assistance at second instance
- Adoption of measures so that asylum seekers and their lawyers are better serviced
- Control of the asylum seekers' entering in the Asylum Offices by specifically trained personnel of the Asylum Service and not by private security guards
- Fast processing of the family reunification cases
- Improvement in the quality of both interviews and decisions
- Fair and efficient examination of the asylum applications on the sole basis of a firm commitment to international, European and national law

Reception and Identification Service

- Referral to the Asylum Service of all those that have expressed the will to apply for international protection, according to the provisions of the L. 4375/2016

To the Ministry of Public Order and Citizen Protection:

Hellenic Police

- Revocation of the deportation decisions and those imposing the restriction of residence on the islands for the asylum seekers; revocation of the deportation decisions for those that fall in the scope of Article 78A of the L. 3386/2005
- Correction of the incorrect entries in the EURODAC system

To the European Commission:

European Asylum Support Office (EASO)

- Provision of assistance to the national authorities as provided by the relevant EU Regulation

Indicative Examples

Testimony of a minor asylum seeker stranded in Chios:

“They always tell us to wait, they don’t give us any answer and thus, we end up waiting for months, being frustrated and helpless. Sometimes they let us enter in the Asylum Unit, sometimes they don’t, sometimes, without even looking at the file, they tell us that we have to wait. If you protest, you will get arrested, you will wait even longer, there’s no solution (...) The service isn’t organized.” **Kurdish national from Syria, 17 years old, Souda Chios, 4-11-2016**

Asylum procedure at the islands – Admissibility examination – Consideration of Turkey as a safe country:

According to Natassa Strachini, lawyer for PROASYL Refugee Support Programme Aegean (RSPA): *“At the admissibility examination interview, if the asylum seeker doesn’t mention any personal issues (ex. that he/she has been a victim of violence by the police), Turkey is considered a safe country without due consideration for the legal framework and the reality there. EASO personnel focus only on that part. Usually the questions are identical and targeting at specific*

answers.” (...) “Many people without legal assistance at first instance get rejected.” (...) “The first instance decisions are similar. It is evident from the content of the decision that they want to implement the Joint Statement. They want to dismiss the applications as inadmissible and take the asylum seekers out of the procedure. The opinions of the EASO personnel are endorsed in the majority of the cases by the Asylum Service. The examiners issue the decision without having ever seen the asylum seeker. The procedure is largely automated. (...) it depends on a document edited in English by a person that is not an employee of the Asylum Service in violation of the procedural requirements and they are all going around it”

A Syrian national, during the admissibility examination of her asylum request by an EASO expert, mentioned that she had been deported to Syria many times by the Turkish authorities, that she had attempted five times to cross the borders until she finally made it and that she had been sexually attacked three times during her stay in Turkey. The opinion of the EASO expert reads as follows: “(...) there is no evidence from the interview that the applicant’s life and liberty are threatened in Turkey on account of race, religion, nationality, membership of a particular social group or political opinion; that there is no risk of serious harm for her in Turkey; (...) If she should ever experience any more attempts of sexual abuse in Turkey, she could be advised to seek protection at the Turkish authorities. Regarding her statements concerning being deported to Syria before 12 January 2016, she can be advised about the guarantee made by the Turkish authorities at 18 March 2016 in connection with the agreement between EU and Turkey.” It becomes evident from the above quotation that the EASO expert found that three incidents of sexual abuse are not sufficient to establish a danger of serious harm of the applicant. Furthermore, with regard to her deportation by the Turkish authorities to Syria, it is found that, since Turkey agreed with the EU that it will respect the *non-refoulement principle*, the fears of deportation of the Syrian nationals and the serious and multiple relevant allegations cannot in any case establish a well-founded fear of deportation. With reference to the decision issued by the Asylum Service, the asylum seeker’s claim regarding the three incidents of sexual abuse against her during her stay in Turkey is not mentioned at all in the content of the decision and is not, therefore, taken into consideration. Finally, her allegation of deportation to Syria is mentioned in the decision, but not evaluated nor taken seriously into account, because it is considered in all probability dismissed because of the reassurances of the Turkish authorities and therefore not valuable enough for evaluation.

Service of asylum seekers at the mainland:

Thessaloniki Regional Asylum Office *“(...) At the day the asylum seekers go to the Asylum Service for their full registration, they must be there at 7.00 in the morning and wait for about one hour and a half at the entrance before they can get inside. During the winter, there was a heated tent but not enough chairs. Some have to sit on the floor for many hours. They don’t even go to the bathroom because they are afraid that they might get called while they are not there. They wait there all day, maybe 10 or 11 hours in total with no food provided. In any case they have to wait until the UNHCR van leaves to go back to the camp.”* the volunteer lawyers of the organization Advocates Abroad stress.

Quality of the first instance examination:

According to Aliko Karavia, lawyer, coordinator of the GCR legal team FLA of Northern Greece: *“The interviews take place with tele-interpretation. The whole procedure when it comes to unaccompanied minors is mostly automated” (...)* Lately certain decisions of the Asylum Unit of Fylakio are published extremely fast. *(...) The decisions of the Fylakio Asylum Unit concerning asylum requests of minors are identical. All the decisions in their entirety (even if they concern asylum applications of minors) use standard reasoning, such as “(the asylum seekers) didn’t manage to describe credibly the conditions they faced, their involvement in the incidents and the subsequent danger”, “(the asylum seeker’s claims) do not present sufficient coherence, but logical gaps, and in some cases they do not give a solid and truthful picture of the situation she allegedly faced during her stay in the country”. They base the rejection of the application solely on credibility grounds. Sometimes claims regarding the existence of a particular problem in the applicant’s country of origin are accepted (ex. interreligious marriages), but the applicant is considered as not credible. That’s where the problem is. The claims of the asylum seekers or any contradictions thereof could be explained by common sense, but this isn’t reflected in the reasoning of the decision.”*

A Cameroon national during her interview at the Attica Regional Asylum Office in September 2016 mentioned that she had been beaten with sticks and raped by a group of men, who also killed her 12 years old daughter in her house in front of her eyes. She claimed that she had scars all over her body, that this attack caused her memory problems and that after this incident she thought many times to commit suicide, that she lived in fear and psychologically traumatized. The decision issued rejects her request for international protection on the grounds that the applicant was “too

general in her descriptions, vague, indeterminate and incoherent". The examiner didn't refer the applicant for a psychiatric/psychological or medical screening in order to assess the very serious incidents she described. At this point, we would like to note that our organization referred her to the Greek organization Metadrasi which certified that she was a victim of torture.

Second instance procedure:

We would like to mention the very typical case of a national of Guinea, who submitted a subsequent application for international protection in May 2014 at the Attica Regional Asylum Office, which was later rejected at first instance. He appealed against this decision in late September 2015 and his appeal was scheduled for examination in early December 2015. This appeal, however, has not been examined until today.

In September 2016, he filed a request for the expedition of the examination of his appeal on the grounds that:

- he is a victim of torture, as certified by the NGO Metadrasi
- he does not possess an asylum seeker card (since this card is not granted to those who file appeals against the rejection of a subsequent application for international protection).

This particularly vulnerable asylum seeker for all this period has been and still is without an asylum seeker's card. Therefore, he cannot exercise his fundamental rights and he is constantly in danger of being arrested.

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