



GCR's comments on the draft bill "On International Protection"

The Greek Council for Refugees wishes to express its deep concern about the recent bill on "International Protection", as published on 15 October 2019, and to stress that it undermines significant fundamental rights of asylum seekers and refugees, in violation, inter alia, of the EU, International and Greek Law as well as the principle of non-refoulement.

First of all, we would like to point out that although the bill concerns the transposition of three EU Directives¹ and brings extremely significant changes in the international protection and reception system, the time allotted for public consultation was not sufficient (only 5 days); this fact practically negates any real possibility to comment on the provisions of the bill and also the participation, inter alia, of legal professionals and the civil society in said consultation.

The bill was made public at a moment of crisis² for the Greek reception system, in particular for the North-Eastern Aegean Islands, where approximately 30,000 people are trapped in facilities with intended capacity only for 6,178 people³, in extremely dangerous and unsuitable conditions, in the framework of the imposed geographical restriction according to the implementation of the EU-Turkey Statement. A crisis which is fed by the limited up to non-existent provision of medical and psychosocial services and the consequences in the operation of the identification system of persons belonging to vulnerable groups, the absence of new reception places in the mainland and the significant delays in the examination process of international protection applications all over the country.

As the content of the proposed bill demonstrates, the Greek State, instead of planning a policy to solve the real problems of the Greek asylum and reception system by staffing the competent services to examine asylum applications and also by implementing an effective inclusion policy that could significantly accelerate the asylum procedure and prepare a significant number of reception places in the mainland, chooses to handle the existing crisis with regulations that reduce fundamental guarantees of the asylum and reception system and are unilaterally directed towards the increase of returns.

The provisions of the bill transpose in the Greek Law the minimum standards of protection and guarantees of the EU law, and in quite a few points the proposed regulations do not guarantee even those minimum standards, raising issues of violations of the EU law and of incorrect transposition in the Greek legal system.

¹ Directive 2013/32/EU, Directive 2013/33/EU, Directive 2011/95/EU.

² See UN High commissioner for Refugees. Greece must act to end dangerous overcrowding in island reception centres, EU support crucial, 1 October 2019, <https://www.unhcr.org/gr/13070-i-ellada-prepei-na-drasei-amesa.html>, Press briefing of 12 organisations, The Aegean Islands again in the "red": When is this vicious cycle going to stop? 18 September 2019, <https://www.gcr.gr/el/news/press-releases-announcements/item/1257-ta-nisia-tou-aigaiou-kai-pali-sto-kokkino-os-pote-aftos-o-faylos-kyklos>

³ <https://infocrisis.gov.gr/6462/fwd-apatyposi-tis-ethnikis-ikonas-katastasis-gia-to-prosfygiko-metanasteftiko-zitima-tin-17-10-2019/>



Furthermore, despite the fact that the legislator's purpose, according to the explanatory memorandum, is the "*formulation of a ... compact, structured, clear, fair system*", in reality, the provisions of the bill introduce further complicated, fragmented and derogating procedures (see procedure of absolute priority, priority, simultaneous and supplementary to the fast-track procedure and the procedure at the borders), as well as they reduce procedural and substantive guarantees for the asylum seekers and refugees, even the most vulnerable ones (minors, victims of torture, victims of violence etc.), with extremely short deadlines, which are questionable whether they can be applied even by the Administration. Moreover, they introduce excessive procedural obstacles for the applicants for international protection, that obstruct the completion of the examination procedure, the possibility to reject an application for international protection without a prior fair and effective examination at first and second instance, the excessive extension of the persons that are deprived of the right to stay in the country during the examination procedure at the second-instance, including persons with obvious need for international protection, the restriction to the access to an effective appeal and judicial protection as well as provisions of questionable constitutionality.

Due to the extremely short time for consultation, the following are indicatively noted:

Article 24, par. 4: Violation of the right for family unity of beneficiaries of international protection

The proposed article 24, par. 4, retains the additional conditions for the issuance of a residence permit to family members of beneficiaries of international protection, which are not stipulated in the initial text of the Directive and are in contrast with article 23 of Directive 2011/95/EU, provided the family has been formed after the entry in Greece and into the Greek territory. However, article 8, ECHR is violated breaching the core of maintaining the family unity and the respect of family life. More specifically, the family member of a beneficiary of international protection must have a valid residence permit at the time of entry into marriage in order to qualify for a residence permit of the same duration with the one of his/her spouse. The proposed article also violates the right of no-discrimination of article 14, ECHR, as this condition is not required, if the family has been formed prior to the departure from the country of origin (Hode and Abdi vs. United Kingdom, Application number 22341/09, 6.11.2012).

Article 24, par. 1: Reduction of residence permit period of a beneficiary of subsidiary protection from three to one year

The proposed article chooses the lowest protection limit, the shortest possible residence permit validity period of a beneficiary of subsidiary protection of only one year as set forth in Directive 2011/95/EU, and is in contrast with the aquis 3-year validity of the residence permit of beneficiaries of subsidiary protection under Presidential Decree (PD) 141/2013. In addition, the bill does not stipulate any transitional provisions for the persons with a residence permit issued based on a previous law. According to the explanatory memorandum of the bill, the differentiation regarding the validity period of the residence permits of the beneficiaries of subsidiary protection is necessary, in view of the fact that it is related to the volatile condition in the country of origin. This view overlooks the fact that in order to consider that a change has taken place in a country, this change must be fundamental and

durable, of fundamental importance in order to be effective and not just a formality Hathaway, J.C. 1991, *The Law of Refugee Status*, Butterworths, Toronto, p. 200-203).

Article 45: Restriction of free movement with a regulatory act

Paragraph 1 repeats the relevant provision of article 7, Law 4540/2018 stipulating the possibility of issuing a regulatory in nature decision on the restriction of free movement of asylum seekers in a specific geographical region. The issuance of such a decision, although allowed under the constitutional provisions and the provisions of Directives on the Reception, raises serious problems related to the violation of the rights set forth in the Reception Directives, in view of the conditions prevailing on the Greek islands, where this provision has been applied, and, in view of the special conditions of the islands themselves, where a lack of key services is identified (medical, psychosocial protection, sufficient education etc.), violating thus the obligation of fair sharing of responsibility regarding the reception of asylum seekers across the national territory. Furthermore, it does not deal with the issue of adhering to the principle of proportionality that has been raised in previous decisions of imposing geographical limitations, in view, furthermore, of the report and cooperation obligations of the asylum seekers with the authorities; and also it does not deal with the lack of individualized assessment of imposing such a restriction and the obligation of judicial review in case of imposing such restriction (explicitly stipulated in article 26, Directive 2013/33/EU). It is noted that, as under the previous legal status of Law 4540/2018 that transposed Directive 2013/33/EU, the possibility of an appeal under the Administrative Procedure Code, as set forth in article 112 of the proposed bill (former article 24 of Law 4540/2018, as amended with article 5, Law 4587/2018), versus a regulatory in nature decision is not possible, depriving thus the asylum seekers from the right of personal judicial review of their cases, in violation of the relevant Directive and article 13 of the ECHR.

Article 46: Possibility of generalized and prolonged detention against asylum seekers

The provision of Article 46 of the bill introduces in the Greek law the possibility of detention of an asylum seeker, who has already submitted an asylum application as a free person, for all the reasons of detention allowed in Directive 2013/33/EU.⁴ For this reason, the provision establishes a generalised insecurity regime and directly undermines the “presumption in favour of liberty”. Furthermore, the proposed provisions, due to their vague formulations and the recitals of the explanatory memorandum, can be considered to set forth the maximum detention period of 18 months stipulated in the Return Directive as allowed detention period of an asylum seeker and also explicitly differentiate detention due to asylum application examination from detention in the framework of removal (return/ extradition/readmission) which under Law 3907/2011 can last for a maximum period of 18 months.

At the same time, the asylum applications of detained persons are stipulated to be examined in the framework of “*absolute priority*” procedure, which practically means first instance examination within 15 days; furthermore, taking into account the particularly adverse

⁴ It is noted that even the preexisting law, which stipulated the possibility of detention of an asylum seeker having already submitted an asylum application in freedom, restricted the application of the provision exclusively in cases of national security/ public order reasons, see PD 113/2013, article 12(3).



position of a detained asylum seeker, it is obvious that the guaranteed rights of the asylum seekers in detention are impossible to be exercised.

The provision abolishes key guarantees as regards the imposition/ continuation of the detention measure. Hence, the automatic judicial examination of the decision of imposing/ prolonging the detention of an asylum seeker “to relieve the burden of administrative authorities and courts” is abolished according to the explanatory memorandum, without taking into account that due to the nature of the detention measures (custodial measures), the obligation of a Court to impose/ approve a detention measure constitutes an obligation directly arising from the Rule of Law and the constitutional obligation of respecting and protecting the value of a human being.⁵ Furthermore, the recommendation of the Asylum Service on the continuation of a detention measure of asylum seekers is abolished and is stipulated that the detention decision is taken “*following the provision of information to the Head of the Competent Receiving Authority*”.

It is once again highlighted that the Greek authorities do not abolish the possibility of detaining unaccompanied minors and minors accompanied by family members despite the fact that their detention, in the framework of the law on the asylum and immigration, is in contrast to the best interest of the child.⁶

Article 53: Restriction of access to the labour market

The provision restricts access to the labour market of asylum seekers, allowing it only after the period of 6 months from the submission of an international protection application and, as a result, the asylum seeker, during the said period, strictly depends on the welfare benefits and the provision of reception conditions (article 53), while the possibility of integration in the country is not allowed, in view of the high recognition rate of the asylum seekers.

Article 61: Victims of torture and violence

Regarding the certification of the victims of torture, the law still provides that they are certified by medical opinion given by public bodies, although there are no trained physicians in the Greek Health System that can provide a relevant certification based on the international standards (Istanbul Protocol).

At the same time, with regards to the consequences of torture, it provides only the access to appropriate medical and psychological treatment or care without taking into account the complexity of the needs of the people subjected to torture and the obligation of Greece to provide them with comprehensive rehabilitation services, according to the UN Committee against Torture.

⁵ Article 2(1) of the Constitution, See *mutandis mutandis* Supreme Special Course, 1/2010, also see UN Working Group on Arbitrary Detention, Revised Deliberation No. 5 on deprivation of liberty of migrants, 7 February 2018, par. 13 “Any form of detention, including detention in the course of migration proceedings, must be ordered and approved by a judge or other judicial authority.”

⁶ Joint general comment No. 4 (2017) of the Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families and No. 23 (2017) of the Committee on the Rights of the Child on State obligations regarding the human rights of children in the context of international migration in countries of origin, transit, destination and return, 16 November 2017, § 5.



On Article 62: on procedures for granting and withdrawing international protection status

Procedural obstacles and the abolition of substantial and procedural safeguards for the examination of asylum applications enter into force.

The proposed bill introduces additional procedural obstacles which impose disproportional barriers for asylum seekers and burden excessively the vulnerable status of these people who according to the European Convention of Human Rights are identified as members of “a particularly underprivileged and vulnerable population group in need of special protection”.

Thus, the following are indicatively noted:

Article 67: Applicants in need of special procedural guarantees

The proposed bill brings a radical change in the management of vulnerable groups, namely the persons in need of special procedural guarantees under article 24 of Directive 2013/32/EU. In particular, apart from the semantic limitation of the vulnerable group categories set forth with article 68 of the proposed bill, which excludes people with post-traumatic disorder, especially the survivors and relatives of shipwreck victims (included in article 14, par.8, Law 4375/2016), the proposed provisions place members of vulnerable groups in the category of accelerated examination procedure of their applications; furthermore, they are not exempted from the border procedure or the special procedure of article 90, par. 3 (accelerated border procedure - former article 60, par.4, Law 4375/2016). The proposed provision includes the reservation of the Directive (article 24, par. 3, Directive 2013/32/EU) that “Where such adequate support cannot be provided within the framework of the procedures referred to in Article 31(8) (Article 83, par.9 of the proposed bill - accelerated procedure) and Article 43 (article 90 of the proposed bill - procedure at the borders), in particular where Member States consider that the applicant is in need of special procedural guarantees as a result of torture, rape or other serious forms of psychological, physical or sexual violence”, Member States shall not apply, or shall cease to apply, Article 31(8) and Article 43 of the Directive. However, in contrast with the legal framework of Article 60, par.4, Law 4375/2016, the proposed bill does not exempt vulnerable groups from the accelerated border procedure, which is now included in article 90, par. 3 of the proposed bill; furthermore, in contrast to article 50, par. 2, Law 4375/2016 (determining that applicants in need of special procedural guarantees fall in the category of the regular and not the accelerated procedure), the bill can put them in the accelerated procedure of article 83, par. 9.

This means that people in need of special procedural guarantees and special care, both in terms of reception as well as in terms of examining their applications for international protection, face the risk of being placed in the category of accelerated procedure (30 days according to article 89, par.10 of the proposed bill or the even more tight deadlines of article

90) during which the suspensive effect of the appeal under article 104 is subject to restrictions.

We believe that the situation in reception and accommodation facilities and the general conditions and possibilities of supporting persons in need of special support mainly prevailing on the Greek islands is deterrent for the application of such procedures.

It is noted that Directive 2013/32/EU states in article 31, par. 7, case b, that Member States may prioritise an examination of an application of persons belonging to vulnerable groups (provision included in the proposed article 81, par.7 of the bill) in order to timely provide to such persons the appropriate care, support and sufficient time to document their applications for international protection and not to speedily examine, within incredibly tight deadlines, their applications or to provide them with completely inappropriate reception conditions.

Article 90: Accelerated border procedure – Deletion of exemptions of vulnerable people and people falling under the Dublin Regulation on family reunification procedure

While the provision of a special accelerated border procedure, applied as a means to facilitate implementation of the European Union - Turkey Statement of 18-3-2016 (procedure of article 60, par.4, Law 4375/2016) is repeated in the proposed provision, people belonging to vulnerable groups or the ones falling under the Dublin Regulation on family reunification and the possibility of their applications being examined by other European countries, are not exempted. This shall result in the even worse deterioration of the living conditions on the Greek islands by trapping there people belonging to vulnerable groups and people whose application is stipulated to be examined by other European countries in accordance with the Dublin Regulation. Till now, the above exemptions have acted as a safeguard limiting the dramatic impacts of trapping a huge number of people on the Greek islands by at least transporting these categories to the mainland.

Article 97: Obligation of the applicant to appear on his or her own behalf before the Independent Appeals Committees

In addition to the obligation of the applicants to regularly come before the authorities for the renewal of their applicant card (on penalty of rejection of their application), to provide details etc., article 97 (2) of the bill in conjunction with article 78 (3) of the bill is also describing the obligation of the applicant to personally appear before the Independent Appeals Committee at the day of the examination of their appeal even if they have not been called for an oral hearing on penalty of rejection of their appeal as “manifestly unfounded” without examining their claims on the substance. Particularly for those applicants who do not live in Reception and Accommodation Centres, a confirmation by the Centre Supervisor is also required, and for those cases that have received restrictions on their movement or are obliged to stay in a specific location out of Attica, the applicant is required to submit confirmation by the competent Police station or Citizens Service Centre (KEP) again on penalty of rejection of their appeal as “manifestly unfounded”. The extent to which applicants and the



Administration itself (Reception/Accommodation Centre Supervisor) will be able to comply with these procedures is questionable, considering the living conditions of a great number of asylum applicants on the island and the mainland, but also the fact that the majority of these centres lack any administrative structure (the First Reception and Identification Service is responsible for the administration of Reception and Identification Centres as well as the Elaionas, Schisto and Diavata Thessaloniki Open Accommodation Facilities, while all other accommodation facilities are operating under unclear legal frameworks, while compliance with the respective provision for accommodation facilities - apartments - hotels operating under the care of the UN High Commissioner for Refugees and the International Organisation for Migration is also questionable). Moreover, this provision imposes an unnecessary administrative obligation (in-person appearance of the applicant) without, in the overwhelming majority of the cases, this being necessary, considering the provision of the law on written procedures and examination of the respective appeal based on the information provided in the file.

Article 71: Special type of authorisation

Article 71(1) of the bill stipulates that private documentation (authorisation) with original-signature certification is required for the authorisation to the lawyer that will represent the applicant. However, considering that according to article 70 (5) of the bill, on receipt of a primary rejection decision, the International Protection Applicant card is removed, it becomes impossible for the applicant to authenticate their signature before the public authority and as a result the access of applicants to legal representation for the second instance of the examination of the asylum application, the receipt of a copy of the file by the authorised lawyer etc., are all obstructed. Besides, according to the Code of Lawyers, the mandate to the lawyer is oral, so that the proposed provision adds a procedural obstacle, which is not justified by any objective for the facilitation of the smooth operation of the administration.

Article 77: Abolition of the provision that grants time for the preparation of the applicant before the interview

The provision that grants reasonable time to the applicant before the interview to ensure they have time to advise a lawyer or other legal advisor is abolished and is only and exclusively restricted to individuals who belong to vulnerable groups on the condition that the interview has been fixed within 15 days from the date of submission of the application (article 77(4) of the bill).

Article 68 and 104: Restriction of the right to stay in the country during the examination of the asylum application and abolition of the automatic suspensive effect of the appeal for expanded categories of applicants.

The provisions of article 68 stipulate restrictions on the right to stay in Greece until the completion of the first stage of the examination of the asylum application, while article 104 introduces exemption of the automatic **suspensive effect** of the appeal for expanded categories of applicants. For these categories, the provision stipulates the right of the applicant to submit an application, before the Appeals Committees, with which they are



asking to stay in the country until the second-instance appeal decision is issued. However, and considering the total lack of an adequate system for the provision of free legal aid, the extent to which the applicants who are exempted from the right to stay in the country will be actually able to submit the relevant request, is questionable.

Moreover, it is highlighted that the respective provisions are stipulating the withdrawal of the automatic **suspensive effect** of the appeal, during the second-instance procedures, even for these cases where the applicant does not fall under the extremely broad term of article 78 of the bill about the “cooperation duty”. In this case, “the violation of the obligatory duty of cooperation with the competent authorities...entails the examination of the international protection application or appeal in accordance with paragraph 3 of article 88 - manifestly unfounded applications (Article 78 (9) of the bill”, and, in accordance with article 104 (2) of the bill : in case where: ... c) the international protection application has been rejected as manifestly unfounded as per paragraph 2 of article 88, the possibility of the applicant to stay in the country is decided by the Independent Appeals Committee upon submission of the relevant request to the Committee”. This particular section introduces an exceptionally disproportional restriction on the right to stay in the Greek territory by putting at serious risk of violation of the principle of non-refoulement even persons in obvious need of international protection.

Finally, and particularly for even first subsequent asylum application that is rejected as inadmissible, not only the exercise of the appeal against the negative decision lacks the **suspensive effect** , but according to article 104 (2), the application itself to the Appeals Committee with which the applicant is entitled to ask to stay in the country until the examination of the appeal is also not having a **suspensive effect**, which means that the applicant is subjected to removal from the country even before the Appeals Committee issues a decision on the application for staying in the Greek territory.

In any case, it must be noted that, according to the settled case-law of the European Court of Human Rights, regarding articles 3 and 13 ECHR and the absolutely minimum limit of protection against removal from the country, in case of exercising appeals or other legal remedies, and regardless of the respective regulations of the national legislation, in cases where an arguable claim is made for the violation of article 3 ECHR, the ECHR demands that the interested parties must hold an appeal that automatically has a **suspensive effect**. Also, according to the Court, these demands are “pertaining to the safeguard, not the goodwill or the practical resolution. It is one of the consequences of the supremacy of the law, one of the fundamental principles of a democratic society, which consents with all articles of the Convention”.

Article 81: Ability to reject the asylum application as unfounded on the substance without thorough checks even in cases where a personal interview has not taken place – Abolition of the right to apply for maintaining the proceedings

The provision of article 81 of the bill stipulates the rejection of the application for international protection as unfounded on the substance “upon complete examination” even if there has not been examined on the substance, in case that the competent authority finds out

that there is a reasonable cause to believe that the applicant has implicitly withdrawn their application even in cases where the personal interview of the applicant has not taken place and subsequently the applicant did not have the opportunity to explain the reasons for which they are seeking international protection.

This provision introduces an exceptionally disproportional restriction on international protection since it stipulates the rejection of the application as substantially unfounded for reasons that are not linked with the conditions for granting international protection, and it contradicts, at the same time, the letter and the spirit of Directive 2013/32/EU and the principle of non-refoulement.

More specifically:

- in opposition to article 28 (1) of Directive 2013/32/EU which stipulates that when the applicant has implicitly withdrawn their application, the member states shall ensure that the determining authority “takes a decision either to discontinue the examination or, provided that the determining authority considers the application to be unfounded on the basis of an adequate examination of its substance in line with Article 4 of Directive 2011/95/EU, to reject the application”, the provision of article 81 of the bill incorporates only the second subparagraph of article 28 (1) of Directive 2013/32/EU, which may however apply only in cases of “adequate examination of its substance” and not for all implicit withdrawals and

- to the degree that the provision of article 81 enables the rejection of the application for international protection as substantially unfounded even when the personal interview has not taken place, it contradicts article 14 (1) of Directive 2013/32/EU according to which “before a decision is taken by the determining authority, the applicant shall be given the opportunity of a personal interview”.

After all, the provision withdraws the right to submit an application for maintaining the proceedings which is stipulated in paragraph 2 of article 28 of Directive 2013/32/EU which was incorporated into Greek legislation with paragraph 4 of article 46 of l. 4375/2016. It is noted that this last provision was amended in contradiction to the Directive, which does not stipulate specific reasons for re-examination, with paragraph 8 of article 28 of l. 4540/2018, but with the proposed provision the ability to submit an application for maintaining the proceedings is being withdrawn completely, thus contradicting the principle of non-refoulement.

Article 82: Fictitious services which limit excessively the possibility for effective remedy/judicial protection.

The proposed article 82 (5) provides for the fictitious service of decisions regarding applications for international protection, to a number of persons, i.e. lawyers (who in case of a non-written revocation of mandate with a relevant declaration by the applicant with an authenticated signature remain the procedural representatives, regardless of the actual representation of the applicant at the time of the fictitious service - see article 72 (7) bill), the Head of the Regional Asylum Office/Independent Asylum Unit where the application was submitted or the Head of the Reception or Accommodation Centre, in the event where the



applicant is not found. From the day following the fictitious service, the deadline for lodging an appeal or a legal remedies action shall begin.

On that subject, an older remark of the Greek Ombudsman should be reminded, according to which the provisions of fictitious service “effectively limit the access of asylum seekers to judicial protection” and even if “the need to streamline procedures is understandable ... in a state governed by law, it cannot restrict fundamental democratic guarantees, such as judicial protection”.

Article 86: Safe third countries

The proposed article attempts to incorporate into Greek law the decision of the Plenary Session of the Council of State No 2347-2348/2017 which ruled on the resignation of Turkey as a safe third country for Syrian citizens. However, in view of the strong minority of 12 members out of a total of 25 advocating for the referral of a preliminary question to the Court of Justice of the European Union, the judgment of the majority of the Plenary Session of the Council of State cannot be regarded as a reliable case-law at a national as well as European and International level, so as to be integrated in Greek law. It should be noted that among the issues raised in the Plenary Session, the issue of the applicant's safe connection with the third country was of particular concern as well as whether the applicant's simple transit through that country was sufficient in this respect, in combination with certain circumstances, such as the duration of their stay there and the proximity to their country of origin. The proposed provision adopts uncritically the rationale of the majority of the Plenary Session, despite the strong minority and despite the fact the question is already pending before International Courts (see among other the Ilias and Ahmed v Hungary case application No 47287/2015, which is already pending before the Grand Chamber of the ECtHR, and where the judgment of the 14-3-2017 Chamber held that Serbia, FYROM and Greece cannot be considered safe third countries for asylum seekers that arrived in Hungary and then were returned to Serbia, in accordance with a list of safe third countries that was amended in order to include Serbia as a transit country)⁷.

The provision of the proposed bill regarding the identification of Third Countries that may be designated as safe third countries “*for certain categories of asylum seekers, depending on their characteristics*” pursuant a decision of the Ministers of Citizen Protection is even more premature and dangerous, due to the lack of legal certainty. It is noted that European Union countries have abstained from designating countries as safe third countries (the case of designating countries as safe countries of origin is different) with the serious but problematic exception of Hungary to which the above case before the ECtHR relates.

Article 93: Excessive restriction on the right to an effective remedy and the practical possibility for the applicants to lodge an appeal

Article 93 (e) provides that the administrative appeal against a negative first-instance decision should “state the specific reasons on which the appeal is based”; otherwise, the appeal shall be rejected as inadmissible, without an in-merit examination. In addition to the question of examining the compatibility of the provision per se with regard to the positive

⁷ Ilias and Ahmed v Hungary case application 47287/2014 dated 14-3-2017 par. 120-125.



obligation of the Member States to provide applicants with “an effective remedy that provides for a full and *ex nunc* examination of both facts and points of law, including, where applicable, an examination of the international protection needs” which arises directly from the EU Charter of Fundamental Rights and the Directive on procedures, the exercise of which cannot be rendered “practically impossible or excessively difficult” due to procedural - obstacles pursuant to the principle of effectiveness, it should also be noted that in the Greek context this provision renders any appeal to the second instance impossible - for a significant number of applicants. These applicants risk seeing their asylum claim being dismissed at the second instance and being returned, without their international protection application having ever been examined in its merits neither at the first nor second instance due to the systemic deficiencies of the Greek asylum system, in violation of Directive 2013/32/EU as well as the obligations under Articles 3 and 13 of the European Convention on Human Rights.

More specifically, for obvious reasons lodging an appeal that states “specific reasons” requires it to be drafted by a lawyer. However, despite the positive obligation of the Greek authorities to provide free legal assistance at the second instance, it has been proven many times that the Greek free legal aid program at the second instance (Lawyers’ Register) remains significantly inefficient; only a small number of asylum seekers benefit from it, while, for example, on the North-eastern Aegean islands, there is absolutely no lawyer providing free legal aid in the context of the Lawyers’ Register. For example, it is reported that in 2018 only one in five asylum seekers received free legal aid in the context of the Lawyers’ Register (3,351 or 21.8% cases out of a total of 15,355 appeals), while in the North-eastern Aegean islands this number was significantly lower, e.g. at the end of 2018, there were no free legal aid services in Lesbos and Samos - the islands with the largest population of applicants, as well as in Kos and Leros. Due to the lack of compliance of the Greek authorities with their positive obligations under the Directive 2013/32/EU and the aforementioned systematic deficiencies, a significant number of asylum seekers risks being unable without access to legal assistance and without any fault on their part, to comply with the obligation to “state in the appeal specific reasons”, as set out in the proposed provision of Article 93(e). As a result, the asylum applications are dismissed as inadmissible without an in-merit examination at second instance and asylum seekers are subjected to return procedures, without a fair and efficient examination of the international protection claim, in violation, *inter alia*, of the principle of *non-refoulement*. It is additionally stressed that according to the settled case-law of the European Court of Human Rights “in order to be effective, the remedy ... must be available in practice as well as in law, in particular in the sense that its exercise must not be unjustifiably hindered by the acts or omissions of the authorities”.

Articles 108 and 115: Transfer of jurisdiction for the petitions of annulment, after a negative second-instance decision, from the Administrative Courts of Appeal to the Administrative Courts of First Instance, and curtailing of the general 60-day deadline for the petitions of annulment to 30 days, specifically for asylum cases.

The proposed provisions provide *inter alia* for:

- the curtailing of the deadline for submitting a petition of annulment against a negative second-instance decision regarding an international protection application in just 30 days, in



comparison with the 60-day deadline provided in general by Greek law for a petition of annulment; this amendment should be assessed in light of the principle of non-discrimination; - and the transfer of jurisdiction over these judicial remedies from the Administrative Courts of Appeal to the Administrative Courts of First Instance and in particular to two of them, i.e. the Courts of Athens and of Thessaloniki.

In addition to the novelty of the transfer of jurisdiction to the Administrative Courts of First Instance for the examination of judicial remedies against decisions issued by the Appeals' Committees, formed by Appellate Judges, it should also be noted that the curtailing of the deadline, in combination with the centralisation of their territorial jurisdiction in two Administrative Courts of First Instance, those of Athens and Thessaloniki, creates a significant accumulation of cases in these Courts, the possibility of additional delays and for exceeding the reasonable time of proceedings and undermines the possibility of access to the constitutionally guaranteed right to a fair trial. It is noted that the European Court of Human Rights, in recent repeated judgments in respect of asylum seekers who were on the island of Chios and could, under national law, submit judicial remedies before the Administrative Court of First Instance, located on a different island, and in this case in Mytilene, found a violation of the right to a fair trial, stressing that "even if the aforementioned appeals were efficient, the Court cannot understand how the applicants could exercise them. It holds that under these specific circumstances the applicants did not have access to the appeals in question".

Article 114: Obligation of persons with recognised status of international protection to leave reception and accommodation facilities

Under the above transitional provision, in order to meet the emergency reception needs arising from mass arrivals and the sharp increase in the flows of persons seeking international protection, recognised refugees and subsidiary protection beneficiaries are obliged to leave reception and accommodation facilities immediately. This provision attempts the institutionalisation of administrative practices of the former Ministry of Migration Policy, which obligated beneficiaries of international protection to leave these facilities, despite the lack of special protection programmes required in view of their vulnerable position. The operation of the HELIOS project under the auspices of the International Organisation for Migration providing specialised protection to recognised beneficiaries of international protection has just begun. Thus, the consecration of the aforementioned obligation seems premature and socially unjustifiable, in view of the enhanced obligation of the Greek State to provide conditions of protection to the recognised beneficiaries of international protection in comparison with those seeking international protection.

Article 116: Composition of the Independent Appeals Committees solely of Judges

The provision of paragraph 3 amends the composition of the Independent Appeals Committees and provides that they shall consist of three (3) Judges. In addition, it is envisaged that the Independent Appeal Committees may operate in a single or three-member composition. The provision raises serious questions of compliance with the provisions of the Constitution regarding the principle of the separation of functions (Article 26), the

prohibition of operation of judicial committees (Article 8 in conjunction with Article 87) as well as the guarantees of independence of the judiciary (Article 89 in conjunction with Article 87) in so far as it concerns the establishment of the aforementioned administrative committees composed in their entirety by members of the judiciary. In respect of the envisaged single-member composition of the Independent Appeals Committees, the Council of State (Supreme Administrative Court) has already ruled that it is not constitutional. More specifically, according to the Supreme Court of Cassation “it is not permitted to delegate to a member of the judiciary the administrative functions of a single-member body, regardless whether or not that body has a disciplinary, supervisory or judicial character. This is due to the fact that in the case of a single-member body, the responsibility becomes personal to the maximum extent and as a result there is a risk for the member of the judiciary to be challenged in a court of law in respect of their decisions as a single-member body”.

In addition, the provision of paragraph 9 of the same article that provides for the establishment of a three-member unpaid committee formed by the members of the independent committees with the longest term in office, exacerbates the issues raised by the principle of the separation of functions and the guarantees of independence of the judiciary and the establishment of justice by ordinary courts, as it assigns purely administrative tasks. The provision of the representation of the Appeals Authority even for matters relating exclusively to its decision-making power, the participation, in cooperation with the Department of Legal Assistance, Training and Documentation of the Asylum Service in ensuring the quality of the procedures and decisions of the Committees are administrative tasks that put at risk the authority and the independence of the judiciary in violation of constitutional provisions.

Article 116 and 39: Creation of Closed Reception Centres

A provision that will be added to the Law 4375/2016 (article 39 (7) (c) and Article 116 (8) and (13)) provides that the Reception and Identification Service can establish and operate “closed Temporary Reception Facilities for third-country citizens or stateless persons who have applied for international protection and against whom a detention decision is issued” and which “shall be organised like the Pre-removal Detention Centres”. In essence, this is a provision for the creation of new detention centres, given that the restriction of the freedom of a person within a specific location, with no right to leave, following a detention and restriction of freedom decision, is equivalent to detention.

Article 118: Issuance of Aliens’ Health Care Cards (KYPA) for categories of aliens

Article 118 attempts to regulate the issue created from the implementation of the Law 4368/2016 and the denial to provide a Social Security Number (AMKA) to categories of aliens. The issue was recently partly resolved regarding certain categories of aliens, as well as of Greek citizens (non-resident Greeks, European citizens, holders of residence permits under the Immigration Code etc.), without however regulating, inter alia, the category of asylum seekers and of unaccompanied minors who are international protection beneficiaries. In addition to technical legal problems (inclusion of persons - international protection beneficiaries with a right to work and a condition of acquiring the right to work pursuant to provision - Article 15 of Law 4540/2018 – abolished by the proposed bill), a solution to a



major social issue is attempted (access to the healthcare system for certain categories of aliens), by creating an additional burden for the Asylum Service, which is already under a lot of pressure and will be additionally burdened with the proposed provisions regarding the asylum procedure. In addition, the Service is entrusted with a mission that goes beyond its purpose, as it is not the competent Service for recognising and providing social protection.