



ASYLUM SEEKERS ON HOLD

Aspects of the asylum procedure
in Greece



April 2017

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Abbreviations

A.M.K.A.: Αριθμός Μητρώου Κοινωνικής Ασφάλισης (Number of Social Security Registry)

EASO: European Asylum Support Office

ECRE: European Council on Refugees and Exiles

E.U.: European Union

FRA: European Union Agency for Fundamental Rights

GCR.: Greek Council for Refugees

L.: Law

N.C.H.R.: National Commission for Human Rights

P.D.: Presidential Decree

R.A.O.: Regional Asylum Office

R.I.C.: Reception and Identification Center

UN: United Nations

UNHCR: United Nations High Commissioner for Refugees

Preface

The present report was edited in the context of the Monitoring the Asylum Procedures Pilot Project 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.

The report was edited by Eirini Sovolou and Spyros Rizakos, with the contribution of Karaiskou Alexandra, Loukaidi Angeliki and Stathi Sotiria-Maria.

We would like to kindly thank all those who talked to us in the context of the research we conducted for their time and valuable contribution.

We would also like to thank the OAK Foundation for the support it has provided to our organization over the past two years, which has made it possible for the Monitoring the Asylum Procedures Project to take place.

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 Asylum Service's and of the Regional Offices' capacity in terms of staff, which however have 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 enactment of the EU-Turkey Statement on 20

March 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 March 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 local communities' cohesion 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 procedure

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 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 in the country before 20 March 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 procedural complexity, causes confusion to the asylum seekers and exacerbates 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 entry 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 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

Program activities for data collection

This report is based on data we obtained from:

- Investigation of asylum seekers' cases at Regional Asylum Offices and Asylum Units across the country¹
- Interviews we conducted with:
 - asylum seekers
 - representatives of organizations providing legal assistance (the Greek Council for Refugees, the Ecumenical Refugee Program, PROASYL, PRAKSIS, the Danish Refugee Council, Advocates Abroad) or humanitarian assistance (Non-profit Organization Lesvos Solidarity - former PIKPA, the Norwegian Organization Drop in the Ocean)

¹ Among these there are cases which our organization handled in the context of projects of legal assistance to asylum seekers, supported by the Danish Refugee Council.

- representatives of local solidarity organizations for refugees (Solidarity - Kos, Motion for the Defense of Refugees' and Immigrants' Rights -Patra, Movement for Human Rights-Solidarity to Refugees-Samos, Solidarity Teachers-Thessaloniki)
 - representatives of the UN High Commissioner for Refugees (in Athens, Thessaloniki, Kos, Rhodes, Chios and Lesbos)
- Meeting with the Ombudsman's Department for Rights
 - Participation in meetings of UNHCR Protection Working Groups
 - Published information (reports, statistics, announcements, publications)
 - Attending Public Events

We would like to point out that at the beginning of the program we submitted a written request to the Asylum Service in order to interview some of the heads of the Regional Asylum Offices and the Asylum Units. In our request, the Asylum Service responded as follows:

"Our public service receives daily dozens of visits from researchers, evaluators, international bodies, government representatives, etc. This creates enormous extra burden on our service, which for many months has become unmanageable. Since we believe that it is in the interests of the applicants and refugees being served that all our capacity focuses on the processing of their applications, we will not be able to contribute to your inquiry. "

Subsequently, on 20 October 2016, we submitted another written request to the Asylum Service to provide us with detailed statistics, since the published ones on the Service's website were not specific enough and did not therefore provide sufficient information. For example, the data that the Service posted on its website at that time contained in the same column cases of inadmissibility decisions, interruption decisions and withdrawals from asylum applications, so that the figures for each category were not clear².

² Even in the latest statistics posted (15 March 2017), the Asylum Service continues not to provide specific figures for cases of inadmissibility decisions, since it contains in the same column inadmissibility cases of (a) subsequent

However, the Asylum Service did not provide us with this information and on 23 March 2017 we requested for these statistics again. The Asylum Service replied to us as follows:

"We hope the abundance of statistics and other information we have posted on our website satisfies your need for information. Our Service makes every effort to respond to the multitude and extent of requests for statistical information, without this being possible in every case. Priority is always given to reports that are required by law (to the Hellenic Statistical Authority - HELSTAT, EASO, UN High Commissioner for Refugees, FRA, UN bodies, Council of Europe, deputies, co-competent services, etc.)".

Detailed presentation of findings

Access to the Asylum Procedure

c. Relevant provisions

According to Article 36 (Articles 6 and 7 of Directive 2013/32/EU of the European Parliament and the Council of the European Union “on common procedures for granting and withdrawing international protection - recast”) of Law 4375/2016:

“1. a. Any alien or stateless person has the right to apply for international protection. The application is submitted before the competent receiving authorities, which shall immediately proceed to register it fully.

*1 b. When, for any reason, it is not possible to proceed to the full registration as per point (a) above, the receiving authorities may, following a decision by the Director of the Asylum Service, proceed, **no later than three (3) working days after the application is made**, to a simple*

requests, (b) resulting from acceptance of other Member States to take charge requests (Relocation Program – Dublin Regulation), (c) resulting from returns to Safe Third Countries (Readmission Procedures)

registration of the minimum necessary elements and proceed to the full registration, as per point (a) above, as soon as this is rendered possible and by priority. **c. The application for international protection is deemed to have been lodged as of the date of the full registration as per point (a) above and from that date shall count the relevant time limits for its examination as per article 51 below. In case the alien or stateless person who has lodged an application for international protection does not appear for registration, although duly invited for according to the provisions of the present part, the case shall be filed by decision of the Head of the competent Regional Asylum Office.**

2. The competent receiving authorities shall ensure the exercise of the right to lodge an application for international protection on condition that the applicant appears in person before them, without prejudice to article 42 paragraph 1 case (a) below

5. Where simultaneous applications for international protection by a large number of third country nationals or stateless persons make the registration, as provided in paragraph 1 or in paragraph 3, very difficult, **the registration of an application may take place within 10 working days.”**

d. Findings

The access to the asylum procedure remained problematic both at the islands and the mainland. More specifically, significant delays were observed at the islands until the lodging of the asylum requests. At the mainland, the submission by physical presence of an asylum application at the Regional Asylum Offices or the Asylum Units was almost impossible, while, at the same time, the selection of the pre-registration procedure led to long delays of up to 10 months until the lodging of the asylum applications.

As the **UN High Commissioner for Refugees** mentions in its latest recommendations to Greece³:

“Six months after their arrival on the Greek islands many asylum-seekers are still waiting for the full registration and processing of their asylum claims. Discriminatory practices, which delay the registration of claims of some nationalities (such as Afghans and Iraqis), are not in line with EU and Greek standards. On the mainland, first instance decisions for those pre-registered during the summer of 2016 will take approximately two years. The lack of capacity to fully process asylum claims within a reasonable timeframe needs to be addressed. It directly contributes to the significant tensions in many of the asylum-seeker sites, generates onward movement and prevents working towards the implementation of solutions.”

b.1. Access to the asylum procedure at the islands

During the first two months after the enactment of the EU-Turkey Statement, we observed delays in the registration of the expressed will to apply for international protection within the first reception procedures. After these two months, the registration has been taking place over a period of a few days. However, during the period of our visits to the islands, significant delays were observed - of up to eight months – until the full lodging of the applications, as well as arbitrary prioritization of specific nationalities. This seemed to serve the implementation of the EU-Turkey Statement without due consideration to the dates of arrival and of expression of the will to apply for asylum and, in many cases, the personal circumstances and the vulnerability of each third-country national.

Specifically, it was noted that in most islands the lodging and examination of asylum applications of Syrian nationals and applicants from countries with low recognition rates were prioritized.

³ UNHCR Recommendations for Greece for the year 2017, February 2017, <http://www.unhcr.org/58d8e8e64.pdf>

We note that in 2017 the Asylum Service started to take action towards the completion of the lodging and examination of the applications of the other nationalities as well.

Below is the relevant evidence from the interviews we conducted at the end of 2016.

According to **Eleni Velivasaki, lawyer of the RSPA (Refugee Support Programme Aegean) of Proasyl organization:**

“By the middle of autumn of 2016 there was not even sufficient access to the procedure for a large number of asylum seekers, and that is still the case today. There are people who have been staying for more than seven months on the island (Lesvos) and have not yet been registered. Following the EU-Turkey Statement, only Syrians were being registered, without any prioritization being made on the basis of the vulnerability criteria being provided for by the law. There are family reunification cases that have not been registered for four months. (..) Until the beginning of the summer, few vulnerable non-Syrian cases managed to get registered. (..) There are people waiting for registration since April. A couple of Afghan nationals with health problems, who arrived in Greece in early April, were subjected to the first reception procedures at the end of May and have not yet been registered.”⁴

Natassa Strachini, lawyer of Proasyl’s Refugee Support Program Aegean (RSPA)⁵, told us about one of her cases in Chios, which concerned an Afghan woman who had escaped a forced marriage. She arrived in Greece in the end of March 2016, she expressed her will to submit an asylum application in early April and was eventually registered in late September after a lot of pressure. Her interview, initially scheduled for October, was postponed.

⁴ Interview conducted with Eleni Velivasaki, lawyer of the RSPA (Refugee Support Programme Aegean) of the Proasyl organization on 1/12/2016 at the island of Mytilene

⁵⁵ Interview conducted with lawyer of Refugee Support Program Aegean (RSPA) of the Proasyl organization on 4/11/2016 in Chios

Dimitra Ippeiotis, nurse at the former childrens' camps PIKPA of Lesbos, now administered by the non-for profit organization "Solidarity of Lesbos"⁶ told us about the case of a Syrian woman married to a Palestinian who, despite being pregnant, waited for six months to get registered. Specifically, she came into the country in late March, she was registered in late October and received the asylum seeker's card at the end of November: *"We were addressing the Asylum Service and they were replying, "We are not examining Palestinians, that's an order by the central offices."*

In one AITIMA case, a single-parent family consisting of an Afghan national and her four minor children, arrived at Lesbos at the end of August 2016. Although she had expressed the will to apply for asylum and we had repeatedly addressed it writing the Asylum Service concerning her registration from mid-October, she had not been registered until 1st December 2016, at which point we visited R.A.O. of Lesbos. On that day, we were given a registration date scheduled for a few days later.

Apart from the aforementioned difficulty in accessing the asylum procedure, the authorities' practice has caused other problems as well, such as tensions between third-country nationals due to nationality based discrimination, difficulties in accessing health care, labor market and education. Thus, those arriving on the islands were stranded in circumstances that not only constitute indecent living conditions, but in some cases even endanger their life and physical integrity, causing them feelings of despair.

Ina Sohus, Coordinator of the Volunteers of the Norwegian Organization, Drop in the Ocean⁷ at the Souda camp of Chios, points out:

⁶ Interview conducted with Dimitra Ippeiotis, nurse, at the accommodation structure of former childrens' camps PIKPA of Lesbos, administered by AMKE "Solidarity of Lesbos" on 30/11/2016 in Mytilene

⁷ Interview conducted with Ina Sohus, Coordinator of the Volunteers of the Norwegian Organization, Drop in the Ocean, on 5/11/2016 at Chios

"There are some Syrians who came to Chios a month ago and have already been registered, while there are families from Afghanistan waiting since March and not yet registered. This creates problems among them and tensions. People are pushed to their limits because of these conditions; they are frustrated. It's not fair that some have to wait for so many months, while others bypass the line. Even refugees themselves think it's a racist practice."

According to **Dimitra Ippeiatis**⁸: *"Many people who are in danger in their own countries and could be granted asylum, cannot bear this anymore. They say 'I'll go back even if they'll kill me.' There is no coordinated action. There are too few people in the service. They keep them in desperation eight months now. You can't make a person stand idly without doing anything."*

(...) The woman died⁹ in her effort to meet her basic needs. In Moria, there is no heating. All the shipwrecks were managed by the team. We've lived through so many deaths, so many funerals, so much misery. They arrive here and they die in their effort to cook. "

(...) They cannot get AMKA (social security number). We donated 1200 euros for vaccines because the children do not have AMKA. For someone in need of insulin, the cost of the medicines is 600 euros. If they don't have AMKA, they have to pay. If they don't take the medication, they may suffer from ketoacidosis and need hospitalization in an Intensive Care Unit, which will have a much higher cost. "

Finally, **Médecins Sans Frontières** highlighted in their report published in March 2017¹⁰ concerning the impact of the living conditions on refugees that:

"The living conditions in the camps at the islands are not only inhospitable but also unsafe. Since April 2016, a month after the signature of the EU-Turkey agreement, the media have

⁸ Interview of the 30/11/2016, supra note 6

⁹ The Huffington Post, Serious Incidents in Moria. Dead a 66 year old woman and her 6 year old grandchild, 25/11/2016, http://www.huffingtonpost.gr/2016/11/25/eidiseis-metanasteytiko-koinwnia-sovara-epeisodia-sth-moria_n_13211908.html

¹⁰ Médecins Sans Frontières, One Year on From the EU-Turkey Deal: Challenging the EU's Alternative Facts, March 2017, https://msf.gr/sites/default/files/msfpublications//report_euturkeydeal_en.pdf, p. 13

recorded about 100 serious security incidents in camps throughout Greece, some of which have been recorded at the islands. In mental health sessions, patients of Médecins Sans Frontières say that they feel unsafe in the Greek islands. In Lesvos, patients told us about large alcohol consumption and drug use in Moria's camp, as well as everyday incidents of sexual harassment and violence. Such places are not safe for anyone, even more for the most vulnerable.

Médecins Sans Frontières psychologists noted an increase in the percentage of patients with symptoms of anxiety and depression by 150%, as well as a threefold increase in the percentage of patients with post-traumatic stress disorder over the last year. There is also an increase in symptoms of psychosis, and, at the same time, our teams meet with more patients with severe traumas, more cases of self-harm and more suicide attempts”.

b.2. Access to the asylum procedure at the mainland

Unfortunately, at the mainland the long-standing problems of access to the asylum procedure still remain. The legally provided possibility of submission of an asylum application by physical presence at the Regional Asylum Offices is extremely limited in practice, as the overwhelming majority of applicants are referred to the problematic Skype procedure, launched by the Asylum Service in 2015.

Vulnerable people also face a similar problem; the Asylum Service, however, has implemented in this case a specific procedure, in an attempt to address the problem.

We note that, since the closure of the northern borders of the country, the number of people wishing to apply for asylum in Greece has multiplied. The Asylum Service, in cooperation with UNHCR and EASO, at that point chose the pre-registration of the asylum applications (instead of an immediate full registration). This resulted in long delays in the lodging and, subsequently, in the processing of the applications, family reunification and relocation.

Access to the asylum procedure at the Regional Asylum Offices

- *Inability to submit an asylum application by physical presence – Skype Procedure*

The possibility of submitting an asylum application by physical presence at the Regional Asylum Offices is extremely limited, since the Asylum Service refers the applicants to the Skype procedure. However, the use of Skype as nearly the only means to access the asylum procedure is inefficient and, in practice, deprives those concerned of their right to effective access to the asylum procedure.

Many of the people seeking assistance from our organization complain about unsuccessfully trying for three or four months to have a Skype appointment.

At the same time, according to the **Greek Ombudsman**¹¹ Annual Report for 2016:

"The Greek Ombudsman has previously made an extensive report (Annual Report 2015, p. 37) about the accessibility problems created by the exclusive use of Skype, where this practice is evaluated as a restrictive system appearing to contradict the principle of universal, constant and unimpeded access to the asylum procedure. Thus, this problem has intensified in 2016 and the Ombudsman receives many complains about the inability to access the asylum procedure in Athens and Thessaloniki, despite repeated attempts to make a connection."

- *Access to the asylum procedure by vulnerable groups*

When it comes to vulnerable cases, the Asylum Service has implemented a particular procedure. The Asylum Service's relevant department accepts referrals from civil society organizations and usually registers the applicants within a period of 15-30 days. We highlight as positive the fact that medical certifications from NGOs are accepted by the Attica R.A.O, given that

¹¹ The Greek Ombudsman, Annual Report for 2016, available in Greek at <https://www.synigoros.gr/resources/ee2016-04-prosfigiko.pdf>, p. 32

in many cases the access to health care services at public hospitals by undocumented migrants is extremely difficult.

However, if a vulnerable person tries to get registered at the Asylum Service without the intervention of an organization or a lawyer, it is very difficult to be successful. As mentioned below (under section 5.b), the entry into the Asylum Service is controlled by a private security company and not by the Service's specialized officers. In addition, the Asylum Service's special office for vulnerable people is located at the Athens Solidarity Center at Larissa Station (former Frouarchio), and it is not known to the asylum seekers. This office is also not accessible to people with limited mobility, given the fact that it does not have an elevator.

- *Pre-registration procedure*

In addition to the aforementioned problems in accessing the asylum procedure, since late 2015 the country's northern borders were gradually being closed to many nationalities of refugees and they were finally sealed to all nationalities on 9 March 2016. Thus, thousands of refugees were stranded in the country without access to the asylum procedure.

After six months, in June 2016, the Greek authorities in cooperation with UNHCR and EASO decided to conduct a pre-registration operation for the estimated approximately 49.000 refugees who remained in Greek mainland at that time¹². The completion of this process was announced on 1st August 2016¹³. According to the Asylum Service's initial plan, the lodging of all the pre-registered asylum seekers' applications was expected to be over by April 2017. In January 2017, the Asylum Service announced that the lodging of all the pre-registered applications was going to be completed in February due to a rescheduling of all the appointments initially planned to take

¹² Joint Press Release by the Greek Asylum Service, UNHCR and EASO, 8 June 2016, http://asylo.gov.gr/en/wp-content/uploads/2016/06/JPR-Pre-registration-8-June-2016_en.pdf

¹³ Joint Press Release/Announcement of the Greek Asylum Service, UNHCR and EASO "End of large scale pre-registration on mainland Greece", 1 August 2016, <http://asylo.gov.gr/en/wp-content/uploads/2016/08/EN-01.08.2016-Press-Release-end-pre-registration.pdf>

place after 1st February.¹⁴ However, until the end of March the completion of this process has not been yet announced.

It is evident from the above that the decision to pre-register the applicants resulted in further delays of up to 10 months before the beginning of the asylum procedure (given that this starts with the lodging of the asylum applications), the processing of the relocation and family reunification requests and the in-merit examination of the asylum cases.

Let's take the typical example of persons who had arrived in Greece since January 2016. If they applied for family reunification they could have already been transferred to the member state responsible for the examination of their application in a maximum timeframe of eleven months, according to the relevant timeframes of Dublin III Regulation. Instead, they were forced to stay in Greece, separated from their family members in extremely unsafe conditions.

As the **Greek Ombudsman** mentions in its Annual Report for 2016¹⁵: *"the pre-registration of 25.692 persons resulted in the granting of a one year asylum seeker's card as a residence permit in the country without this ensuring the full rights of the asylum seekers, with significant delays being observed especially for those wishing to apply for family reunification."*

Moreover, the implemented practice of not replacing the pre-registration asylum seekers' cards in case of loss created other problems. This was pointed out in our relevant document to the Mobile Asylum Unit of Southern Greece, which was sent to the Attica Regional Asylum Office as well. In response to this document, we received a letter from the Attica Regional Asylum Office, dated 4 August 2015, stating that: *"(..) According to the Asylum Service's instructions, the replacement of the pre-registration asylum seeker's card is not possible in case of loss or theft. (...) The non-possession of a card does not impede in any way the access to the competent Asylum*

¹⁴ Press Release of the Asylum Service "Full registration of 2500 asylum seekers to be concluded sooner than initially scheduled", 21 January 2017, <http://asylo.gov.gr/en/wp-content/uploads/2017/01/Press-Release-Rescheduling-of-Full-Registrations-February2017.pdf>

¹⁵ The Greek Ombudsman, Greek Report for 2016, supra note 11

Office or Unit at the date of lodging of their asylum application.” However, the lodging of the applications does not take place on that day, as it can be understood from the Asylum Service’s informational document, but, instead, a new registration appointment is given to the applicants at a later date¹⁶.

It becomes evident from the above response that the Asylum Service does not consider the fact that in such cases the asylum seekers are left undocumented and are consequently exposed to the danger of arrest, being also deprived of access to health care. As a characteristic example, we mention the case of an unaccompanied Afghan minor who lost his pre-registration card issued in the middle of July 2016, was arrested at the end of August and transferred to the Aliens’ Division of Attica, where he was detained as adult for more than one month. If it wasn’t for our intervention, he wouldn’t have been released.

Imposition of 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 the asylum seekers to remain on the islands. Furthermore, the implementation of the aforementioned measure for a time period of one year has restrained 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.

¹⁶ see the posted document (in greek) on the official Asylum Service’s website “Frequently Asked Questions and Answers”, October 2016, , http://asylo.gov.gr/wp-content/uploads/2016/11/Qandanswers_ENG_OCT_V4a--25-10-2016-Greek_V2.pdf, p. 7, Q 21

This situation, however, also takes its toll on the local communities of the islands; as noted in the Campaign's for the Access to Asylum Press Release on 31 January 2017¹⁷, it has *"increased the tensions and created incidents of intolerance to the local communities, which were until recently standing in solidarity with the refugees, exposing them to the influence of the racist rhetoric and its followers"*.

The same press release also points out that this practice has at the same time strengthened *"the smuggling mechanisms (...) at the expense of refugees and in favor of those taking advantage of them"*.

A growing number of asylum seekers uses illegal networks and abandons the islands in violation of the restriction of residence. Apart from the issue of their exploitation by these networks, since the examination of their cases by the competent authorities is interrupted, they consequently find themselves in a legal void concerning the legality of their residence in the country and are often arrested by the police. This fact in turn leads them to face criminal charges for violation of Article 182 of the Penal Code, concerning the non-compliance with restrictive measures.

e. Relevant provisions (and further analysis)

Article 26 of the Geneva Convention of 1951 provides that:

"Each Contracting State shall accord to refugees lawfully in its territory the right to choose their place of residence to move freely within its territory, subject to any regulations applicable to aliens generally in the same circumstances." and Article 31 (2) that *"The Contracting States shall not apply to the movements of such refugees restrictions other than those which are necessary and*

¹⁷ Campaign for the Access to Asylum Press Release "No more dead refugees - Immediate transportation of the asylum seekers from the Aegean islands to the mainland for a fair examination of the merits of their asylum applications in a context of freedom and decent living conditions", 31 January 2017, <http://www.statewatch.org/news/2017/feb/greece-asylum-ngos-statement.pdf>

such restrictions shall only be applied until their status in the country is regularized or they obtain admission into another country.”

According to Article 7 of the EU Directive 2013/33 laying down the standards for the reception of applicants for international protection (recast) and concerning their residence and freedom of movement:

“1. Applicants may move freely within the territory of the host Member State or within an area assigned to them by that Member State. The assigned area shall not affect the unalienable sphere of private life and shall allow sufficient scope for guaranteeing access to all benefits under this Directive. 2. Member States may decide on the residence of the applicant for reasons of public interest, public order or, when necessary, for the swift processing and effective monitoring of his or her application for international protection.”

Paragraph 2 of Article 83 of the L. 3386/2005, as amended by Article 121 of L. 4249/2014, mentions that:

“The commander of the police or coast guard shall, upon writing a relevant arrest report, lead directly and hand over the third-country national to the competent administrative authority for the first reception procedures, in accordance with Law 3907/2011”.

Article 9 para. 1 of L. 4375/2016 provides that:

“1. All third-country nationals and stateless persons who enter without complying with the legal formalities in the country shall be submitted to reception and identification procedures. Reception and identification procedures include: a) the registration of their personal data and the taking and registering of fingerprints for those who have reached the age of 14, b) the verification of their identity and nationality, c) their medical screening and provision any necessary care and psycho-social support, d) informing them about their rights and obligations, in particular the procedure for international protection or the procedure for entering a voluntary return program, e) attention for those belonging to vulnerable groups, in order to put them under the appropriate, in each case,

procedure and to provide them with specialized care and protection, f) referring those who wish to submit an application for international protection to start the procedure for such an application, g) referring those who do not submit an application for international protection or whose application is rejected while they remain in the RIC to the competent authorities for readmission, removal or return procedures”.

In accordance with Article 14 of L. 4375/2016:

“7. The information unit or the Reception and identification Center shall inform third country nationals or stateless persons of their rights and obligations as well as of the procedures to receive international protection status and the procedures for voluntary repatriation. Applicants for international protection shall be referred to the competent Regional Asylum Office, a unit of which may operate inside the Centre. At any stage of the proceedings, the request for international protection shall entail the separation of the applicant from the remaining persons in the Center, if this is feasible, and his/her referral to the appropriate procedures and/or reception facilities. Receipt of applications and interviews of applicants may be carried out within the premises of the Centre, in a place that ensures confidentiality. Applicants for international protection may remain in the premises for the duration of the application examination procedure, up to a period of twenty-five days from their arrival at the centre. If, after the expiry of that period, the examination of the application is not completed, the competent Regional Asylum Office shall issue the applicant the relevant card for applicants for international protection in application of the provisions in part three of this law. Subsequently, the applicant shall be referred by the Reception and identification Center to the appropriate reception structures. If the application and any appeal lodged are rejected while the applicant remains in the Reception and Identification Center, s/he shall be referred to the competent authority in view of his/her return, readmission or removal procedures.

10. Upon the completion of the reception and identification procedures, third-country nationals or stateless persons who do not fall under the provisions of international protection or other forms of protection and who possess no legal residence title in Greece, shall be referred, by decision of the

Manager of the Center, to the competent police authority for the return, readmission or expulsion procedures, in accordance with the relevant provisions.”

Under the provision of Article 34 of L. 4375/2016:

“d. “Applicant for international protection” or “applicant for asylum” or “applicant” is the alien or stateless person, who declares orally or in writing before any Greek authority, at entry points of the Greek State or inland, that s/he is asking for asylum or subsidiary protection (...)”

Furthermore, according to Article 41 par. 1 el. d (iii) of L. 4375/2016:

“The Card may restrict the applicant’s movement to a part of the Greek territory after a decision by the Director of the Asylum Service.”

In accordance with the relevant UNHCR Guidelines¹⁸, in each case, before any restriction of the freedom of the asylum seekers’ movement, it should be taken into account “the fact that asylum-seekers have often experienced traumatic events”¹⁹ and/or “whether the situation has particular effects on the individual, including any physical discomfort or mental anguish.”²⁰

Given that *“the fundamental rights to liberty and security of person and freedom of movement are expressed in all the major international and regional human rights instruments, and are essential components of legal systems built on the rule of law”²¹*, any restriction of these rights must be imposed after a necessity and proportionality evaluation of this restriction to its purpose.

The **principle of proportionality** is expressly enshrined in Article 25 (2) of the Constitution, according to which *“restrictions of any kind which, according to the Constitution, may be imposed*

¹⁸ UN High Commissioner for Refugees, Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention, 2012, <http://www.refworld.org/docid/503489533b8.html>

¹⁹ UNHCR, Guidelines on the Applicable Criteria..., p. 12, para 11

²⁰ European Union Agency for Fundamental Rights, Handbook on European law relating to asylum, borders and immigration, 2014, <http://fra.europa.eu/en/publication/2013/handbook-european-law-relating-asylum-borders-and-immigration>

²¹ UNHCR, Guidelines on the Applicable Criteria..., p. 13, para 12

upon these rights, should be provided either directly by the Constitution or by statute, should a reservation exist in the latter's favour, and should respect the principle of proportionality."

f. Problems arising from the enforcement of the restriction of residence on the islands

Although these persons have expressed their will to apply for asylum during the first reception procedures and are therefore asylum seekers in the meaning of Article 34 of L. 4375/2016, the restriction of residence is not imposed by the Asylum Service but by the Hellenic Police, which – according to the relevant administrative guidelines no. 1604/16/1195968 dated 18/6/2016²² – treats these asylum seekers as detainees to whom alternative measures to detention are to be imposed!

Specifically, for those who have expressed the will to apply for asylum the Hellenic Police issues deportation decisions based on readmission procedures and, subsequently, suspension of the deportation decisions with an immediate imposition of the restriction of residence on the islands.

However, according to the legal framework concerning the reception and the identification procedures of asylum seekers (art. 14 of L. 4375/2016) there is no legal foundation for the involvement of the Hellenic Police to these cases. Given that these persons are submitted to first reception procedures and have expressed the will to apply for asylum, the Reception and Identification Center should refer them to the Asylum Service. Nevertheless, a particular case fell to our attention, in which the Reception and Identification Center issued a decision for the referral of an asylum seeker to the Hellenic Police as the competent authority (see below for indicative cases).

Apart from the above, L. 3386/2005 and especially Article 78A provides that in cases where a possible expulsion may violate the principle of *non-refoulement*, the competent police

²² Available in Greek at: <https://www.synigoros.gr/resources/docs/egkyklios-elas-ths-18-6-2016.pdf>

authorities shall not issue an expulsion decision but shall provide them with a postponement of removal decision. It is also obvious that for the largest part of the refugees arriving to the islands a possible deportation contravenes the principle of *non-refoulement*. It is indeed for this particular reason that the competent police authorities were issuing postponement of removal decisions on the basis of Art. 78A until 19/3/2016.

The Asylum Service, on its part, adopts the restriction that the Hellenic Police has imposed and writes it on the asylum seekers' cards.

Regarding a particular case, we inquired the Asylum Service whether the relevant decision of the Director of the Asylum Service, provided for by Article 41 of the L. 4375/2016, has been issued; we received the following answer (no. 55776/30-3-2017) from the Legal Department:

"In response to your letter, we would like you to know that, according to the provisions of Article 41 par. 1 el. d (iv) of L. 4375/2016 in combination with the provisions of the Decision no our ref/8097/25.5.2016 of the Asylum Service's Director (published in Greek Official Gazette 1542/B') titled "Duration of asylum seekers' cards", a restriction of movement in a part of the Greek Territory can be written on an asylum seeker's card. In particular, in the aforementioned decision it is mentioned that "4. In cases where the Hellenic Police has imposed to an asylum seeker the obligation to remain on a specific part of the Greek Territory as an alternative measure to detention, according to the provisions of Article 22 par. 3 of L. 3907/2011, the relevant restriction of movement is written on the asylum seeker's card as well. In cases of revocation of the aforementioned alternative measure, the restriction of movement may be removed as well". The aforementioned restriction of movement aims at an efficient and appropriate examination of the applications for international protection and the management and reasonable distribution of the asylum seekers' population throughout the territory and the respective applications among the competent Regional Asylum Offices."

From this response, it follows that the Asylum Service:

- fully endorses the treatment of asylum seekers remaining at the islands as detainees to whom alternative measures to detention are to be imposed (see further below for a relevant case)
- still maintains that – one year after the enforcement of this restriction and the consequent stranding of the asylum seekers on the islands with its devastating consequences and the serious problems it causes to the registration and the examination of the asylum applications, as we mentioned earlier – this restriction aims at *“an efficient and appropriate examination of the applications for international protection and the management and reasonable distribution of the asylum seekers’ population throughout the territory and the respective applications among the competent Regional Asylum Offices.”*

We would further like to notice that, as highlighted by the **Chios Bar Association** relevant opinion, *the reason or the justification of the restriction of movement is not mentioned anywhere, neither the maximum duration period of this restriction of movement nor a possible right of appeal against this restriction*²³.

Apart from the above, this restriction is obviously in contradiction with the proportionality principle.

The first reason relates to its duration. For most asylum seekers, a year since the enactment of this restriction has either already passed or is about to be completed. This duration obviously exceeds a reasonable duration.

A second reason concerns the living conditions of the asylum seekers at the islands. The deaths of asylum seekers inside the Moria camp at the island of Lesbos tragically evidence the fact that, as already highlighted, the living conditions at the islands are unsafe and endanger the life and physical integrity of the asylum seekers. Indeed, several reports have substantiated that the

²³ Chios Bar Association, Opinion, (in Greek)
http://www.politischios.gr/sites/default/files/dsh_eu_turkey_statement_gnomodotisi.pdf

living conditions at the islands in many cases cannot be considered decent. Finally, as mentioned in the latest report of the Médecins Sans Frontières, the long-lasting entrapment in these conditions undermines the physical and mental health of the asylum seekers.

Relevant Cases

- To the practices of the First Reception and Identification Centers and of the Hellenic Police

An Iraqi national arrived in Greece in September 2016 at Lesvos. As follows from the evidence of his administrative file, on his registration day at the Reception and Identification Center of Moria, Lesvos, the authority issued three decisions at the same time: a decision for the Restriction of Movement, until the completion of the first reception procedures; a Referral decision to the Hellenic Police as the competent authority; a Referral Note to the Asylum Service, where it was noted that the aforementioned Iraqi national expressed the will to apply for asylum.

We underline that the legal framework referred to by the RIC in the above decisions is L. 3907/2011 and not L. 4375/2016, who is currently in force.

Subsequently, the Police Directorate of Lesvos issued a decision for his detention, a deportation decision for readmission and a suspension of deportation decision with a simultaneous imposition of a restriction of residence.

A Syrian national entered Greece in the mid-December 2016 from the region of the Megisti Port of the island of Kastellorizo. A deportation decision for readmission was issued by the Police Directorate of Dodekanese, by virtue of which he was detained in order to be directly readmitted to Turkey. Point 17 of the aforementioned decision states that this Syrian *“has been submitted to the legal first reception procedures”*. The following day the suspension of the above decision was decided by virtue of a decision of the General Regional Police Directorate of Southern Aegean. In our document to the Dodecanese Police Directorate’s relevant office we requested their opinion about the non-implementation of Article 78A of L. 3386/2005, as

amended by Article 18 of L. 4332/2015, as well as clarifications concerning the first reception procedures to which this Syrian was submitted. In response to our document, the competent authority replied as follows: *“1. In response to your document, we would like you to know that our department issued an Administrative decision for deportation on the basis of readmission procedures, given that in the framework of L. 4375/2016 and the EU-Turkey Statement of 18 March, in combination with a relevant order of the Hellenic Police’s Headquarters, the administrative procedures of detention and further processing of third country nationals entering Greece illegally were determined. The decision for non-removal for humanitarian reasons, mentioned in Article 18 of L. 4332/2015, by which the provision of Article 78A of L. 3386/2005 was added after the enactment of the EU-Turkey Statement, is issued only in relation to persons meeting specific criteria, and are excluded permanently or temporarily from the readmission procedure. 2. Finally, with reference to point 17 of the aforementioned decision, we would like you to know that it refers to an alien’s registration procedure which is handled by the arresting authority”.*

- To the practice of the Asylum Service

We notice the case of a Syrian national whose asylum application was registered while submitted to the reception and identification procedures; it becomes evident from this case that he was treated by the Asylum Service as a detainee.

The Asylum Unit of Chios issued a recommendation for the continuance of the detention of this Syrian national at the end of August 2016. The recommendation had the following content:

“The Coordinator of the Asylum Unit of Chios, taking into account

- a) the provisions of Art. 12 of P.D. 113/2013 “Establishment of a common procedure for the determination of the refugee status or the status of beneficiary of subsidiary protection to aliens and stateless persons, in accordance to the Council Directive 2005/85/EC “on minimum standards on procedures in Member States for granting and withdrawing refugee status” (L. 326/13.12.2005) and other provisions”,*
- b) the application for international protection of the above person, dated, which was*

submitted to the Asylum Unit of Chios,

c) all the evidence of his administrative file,

for all these reasons, if considered that alternative measures cannot be imposed, such as those referred to in Article 22 par. 3 of L. 3907/2011, we recommend the continuance of his detention because it is established that well-founded reasons exist in order to consider that the applicant has submitted the application for international protection with the aim of delaying or impeding the execution of the decision for return according to Art. 46 par. 2 el. c of L. 4375/2016, for the time period provided for by Article 46 par. 4 (b), the total duration of which not being possible to last longer than eighteen (18) months with the lack of appropriate space and the difficulties in ensuring decent living conditions of the detainee taken into consideration, in accordance with Article 46 par. 7 of L. 4375/2016”.

In relation to this recommendation, we would like to point out the following:

- it refers to Article 12 of P.D. 113/2013 which is already abolished by L. 4375/2016
- it states in relation to the asylum application of the Syrian national that *“well-founded reasons exist in order to consider that the applicant has submitted the application for international protection with the aim of delaying or impeding the execution of the decision for return according to Art. 46 par. 2 el. c of L. 4375/2016”.*

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

The European Union Council’s Decisions no. 1523/2015 and 1601/2015 provided the possibility of relocation from Greece and Italy of asylum seekers originating from countries with international protection recognition rate of over 75%.

Later on, the EU-Turkey Statement provided, with a punitive or rather counter-motivating reasoning, that all those entering Greece after 20 March 2016 will not have the right to be included in the relocation program.

However, our organization noticed cases of Syrian nationals who, despite entering the Greek islands before 20 March 2016, were deprived of the right to be included in the relocation program due to their belated registration to the EURODAC system by the police authorities.

The handling of these cases by the competent authorities resembles the theater of the absurd.

The aforementioned Syrian nationals – we assume there might be many others like them – were considered to have entered the Greek islands after 20 March 2016 and were submitted to the border procedure, which was implemented after the EU-Turkey Statement. Therefore, the admissibility of their applications was examined and first instance decisions were issued, finding their applications inadmissible on the grounds that Turkey constituted the first country of asylum for them.

These decisions were appealed before the Appeals' Committees, established by P.D. 114/2010, which by virtue of L. 4375/2016 examined them at second instance. These Committees issued two types of decisions:

- some of them found that the applicants entered the Greek islands before 20 March 2016 and were thus wrongly submitted to the particular procedure, declaring themselves incompetent to rule on the appeals brought before them;
- others annulled the first instance decisions on the grounds that Turkey could not be considered as the first country of asylum.

In both cases the Appeals Committees referred the cases to the competent authority for their in-merit examination.

However, instead of this, the Appeals' Committees' Coordinator assigned these cases to other Appeals' Committees for their in-merit examination! In one of our cases, we had to intervene so that it was finally referred to the first instance procedure.

Our main concern, though, which we submitted in writing to the competent authorities, was that these asylum seekers were arbitrarily denied the right to be included in the relocation program, while they should have been included in it, even with delay.

Notwithstanding the fact that their entry before 20 March 2016 is proven with certainty by the police documents themselves, the police authorities replied to us that it was impossible to correct their false registration to the EURODAC system. The Asylum Service on its part, given that it is responsible for the processing of the relocation claims, maintains that it cannot start the relocation procedure for these cases since there is this false registration in the EURODAC system.

We underline that according to Article 27 of the Regulation 603/2013 of the European Parliament and the Council of the European Union concerning the establishment of “Eurodac”, Greece, as the member state that entered the data in the main system, has the competence to correct them. In particular: Article 27 par. 1 *“The Member State of origin shall have access to data which it has transmitted and which are recorded in the Central System in accordance with this Regulation.”* (..) par. 3 *“Only the Member State of origin shall have the right to amend the data which it has transmitted to the Central System by correcting or supplementing such data, or to erase them, without prejudice to erasure carried out in pursuance of Article 12(2) or 16(1).”*

Relevant Cases

A Syrian national entered in Greece on 19 March 2016, as proven by the Lesvos Police Directorate’s decision dated 19/3/2016. However, his asylum application was rejected as inadmissible by the Regional Asylum Office of Lesvos, which found that the applicant could be accepted anew by Turkey on the basis of the EU-Turkey Statement from 18 March 2016, rejecting his claim that he entered Greece on the 19th of March 2016. The asylum seeker appealed against this decision; the Appeals’ Committee issued an Incompetence Decision accepting that the appellant entered in the country before the 20th of March 2016 and did not fall, consequently, in the scope of application of the EU-Turkey Statement, and referred the case to the competent authority for further examination. Despite the fact that the case should have

been referred to the first instance procedure, the Appeals' Committees' Coordinator assigned the case anew to another second instance committee. After our intervention, the second Appeals' Committee considered itself incompetent to rule and returned the file to the competent authority.

In the beginning of October we filed a request to the Attica Regional Asylum Office in order to take into account the aforementioned decision of the Lesvos Police Directorate and include the aforementioned asylum seeker to the relocation program, as he is entitled to. They replied to us by email that: *"we inform you that the exact date of his entrance in our country, according to the Eurodac European database, is the 23.3.2016 (GR2). This particular date does not correspond to the written one on the applicant's submitted police document and is in any case binding for our Service in relation to its ability to send a take charge request of the asylum seeker's application for international protection to another European state on the basis of the European Union Council's Decisions 1523/2015 and 1601/2015. Consequently, the case was correctly referred to the national procedure."* (!) Subsequently, we mentioned all the above to the Central Asylum Service by a written document. Furthermore, in the beginning of December we filed a request to the Lesvos Police Directorate asking the correction of the Eurodac registration or the addition of a relevant note. In their response, they mention that they cannot correct the aforementioned registration because his fingerprints were taken on the 23rd of March 2016.

Two Syrian sisters came to our organization complaining that they were deprived of their right to be included in the relocation program. They had at their disposal two different decisions of the Police Directorate of Lesvos; the one dated 19 March 2016 mentioned that they entered in the country on the same day and the other, dated 25 March 2016, mentioned that they entered in Greece on the 22 March 2016 (!). We included this case and the one about the Syrian national described above in a communication to the Lesvos Police Directorate where we underlined the existence of two contradictory decisions of the same authority and requested the correction of the specific Eurodac registrations or the addition of a relevant note. The Lesvos Police Directorate answered that the correction of the registration was not possible, because their

fingerprints were taken on the 23 rd of March 2016.
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Legal assistance and information

a. Relevant provisions

According to Article 44 par. 2 of L. 4375/2016:

“Applicants, following a relevant request, and in the context of the procedures in Chapter C, shall be provided with legal and procedural information free of charge on the procedure concerning their case. Besides the provision of information set in the previous sentence, in the event of a negative decision on an application at first instance, applicants, following a relevant request, shall be provided with a specific updating on the reasons for such decision and the possibility to appeal against it. The information and updating of the previous sentences may be provided by organizations of the civil society.

3. In procedures before the Appeals’ Authority, applicants shall be provided with free legal assistance under the terms and conditions set in the ministerial decision provided for in article 7, paragraph 8 above. In the cases of an application before a court, applicants may receive free legal assistance under the terms and conditions set in law 3226/2004 (OG’ A’ 24), which shall apply accordingly.”

b. Findings

A lack in the provision of legal information is observed both at the islands and the mainland.

Furthermore, the legal assistance provided at the first instance examination of the asylum applications is extremely limited and it is provided only by civil society organizations. Here, we would like to point out that the EU Directives do not impose upon member states the obligation to

ensure legal assistance to asylum seekers at the first instance procedure. However, these Directives only determine the minimum requirements, leaving the option of ensuring legal assistance to the discretion of each member state. Unfortunately, the Greek legislation does not contain a relevant provision. This is in our opinion highly problematic, if one takes into consideration also the amendments to the second instance examination of asylum claims legal framework; these amendments led to an examination of the asylum application on the basis of the evidence of the administrative file, which does not provide sufficient guarantees of an adequate examination.

Finally, in relation to the legal assistance provided at second instance, despite that the state provided system of pro bono legal assistance has not yet been organized, this gap is filled by a UNHCR project implemented by the Greek organizations Metadrasi and Greek Council for Refugees.

In October 2016, twelve organizations operating in Greece (most of them international) described in detail the problems that arise in their [Joint Policy Brief on the Situation for Displaced Persons in Greece, entitled “More Than Six Months Stranded - What Now?”](#)²⁴:

*“(...) however, in Greece there is a severe lack of coordinated legal service provision. Thousands of people have to navigate a complicated legal asylum system in languages they are not familiar with, starting from police notes upon arrival to an actual interview many months later. With a lack of specialized legal staff, it means that people receive the wrong information, listen to rumors, and at times make harmful decisions for themselves and their families as they are unaware of consequences. While there is existing information provided by the GoG, the European Commission and UNHCR, this is often not answering the actual questions people have which is evidenced by the continuous daily questions humanitarian staff receive*²⁵. (...) he sites—and leading

²⁴ ECRE, Joint Policy Brief on the Situation for Displaced Persons in Greece, entitled “More Than Six Months Stranded - What Now?”, available in English at: <http://reliefweb.int/report/greece/more-six-months-stranded-what-now-joint-policy-brief-situation-displaced-persons>

²⁵ *Ibid*, p. 8

people to take risks in search of a better life, often through the use of smugglers. Another challenge is the lack of coordination around the release of new information. Often humanitarian organizations receive different information from different stakeholders about these policies and the procedures employed to uphold them. Without access to timely and reliable information in languages they understand, people are less able to access services or make decisions for themselves, their families and their communities.²⁶

There remains a significant need for: first instance preparation; individual counselling in preparation for admissibility as well as asylum interviews; legal information to ensure that rumors and misconceptions are avoided allowing people to make informed decisions; counseling and representation in the court; appeals against age assessment; appeals against prolonged detention exceeding 25 days; and civil documentation procedures including death and birth certificates. Legal assistance offered by NGOs should not be considered fulfillment of the GoG's responsibility to provide this."²⁷

Our experience confirms the above as well. The asylum seekers asking for our assistance are often inadequately informed about the relevant procedures. They usually think they have been included in the relocation program or in a family reunification procedure, while they are not. They have rarely managed to consult with a legal officer before their registration or the examination of their application and in many cases, they confuse the procedure for the lodging of their asylum application with the interview for the examination of their application; in general, they don't appear to have understood neither the meaning of each procedural act nor the meaning of the interview itself.

b.1. Provision of legal information and legal assistance at the islands

At first instance, a lack in the provision of legal information and legal assistance is noticed at the islands. Legal information is provided by UNHCR, which has a permanent presence at the

²⁶ *ibid*, p. 11

²⁷ *ibid*, p. 9

Reception and Identification Centers; the possibility, however, of personalized assistance and legal consulting is very limited. This insufficiency combined with the procedural complexity of the asylum system causes confusion to the asylum seekers regarding their cases and exacerbates their agony.

The organizations that operate at the islands provide legal assistance at second instance (the preparation and submission of appeals), while at the same time taking up some first instance cases – in a limited extent and depending on their capabilities – especially cases of vulnerable persons. In consequence, the largest majority of asylum seekers, even the vulnerable ones, do not manage to consult a legal officer before the examination of their application, neither have a legal representative during their interview.

In the relevant report of six organizations, published on 5 December 2016 regarding the *Implementation of the Hotspots in Greece and Italy*²⁸, it is mentioned that *“there is legal uncertainty with certain aspects of the hotspot function, particularly regarding the role of the different actors, especially EU agencies in relation to national authorities”*.²⁹

“The complexity of the procedures and the fact that practices followed by the authorities change quite often renders the provision of accurate and concrete legal information rather difficult. The multiplication of organizations and different actors present in the camps, who are only loosely coordinated and are involved in the provision of information has been making this even more challenging. There is substantial confusion, lack of information and guidance to the camp residents about the procedures, as well as lack of clarity about the duration of their stay and their prospects”.³⁰

²⁸ European Council on Refugees and Exiles, The implementation of the hotspots in Italy and Greece - A study, December 2016, available at: <http://www.refworld.org/docid/584ad1734.html>

²⁹ *ibid*, p. 12

³⁰ *ibid*, p. 44

According to **Elpida Kyrbassi**, lawyer of the Greek Council for Refugees³¹, *“the asylum seekers, especially if they don’t have adequate education, or even some general information, have a hard time fully understanding the procedure, (...). They cannot understand the EU-Turkey Statement, since they cannot understand how Turkey can be considered a safe country for them. In addition, they exchange information among them, which sometimes creates false impressions”*

Dimitra Ippeiatis³² underlines that: *“The asylum seekers are not informed on the procedure. We inform them that this procedure takes time. They are prepared for the fact that they have to wait for one or one and a half years, but they have been through enormous challenges and they do not see light at the end of the tunnel”.*

According to **Eleni Velivassaki**³³: *“The needs in legal assistance are not met. The legal assistance services have definitely increased in number in comparison to March and April 2016. However, the available NGO lawyers of providing assistance are not enough. International organizations also intervene, but their lawyers -without a professional license in Greece and without knowledge of the Greek language and legislation - cannot participate in all the procedures - but only in the EASO procedures - and thus there is no comprehensive legal assistance. (...) Many asylum seekers, even the vulnerable ones, are left without legal support”.*

In a recent Information Note issued by the organizations **International Rescue Committee (IRC)**, **Norwegian Refugee Council (NRC)** and **Oxfam**³⁴ it is pointed out that:

“The indisputable need for legal counselling and assistance at the islands becomes more acute. Access to reliable information is extremely limited and the few lawyers that are available to support them have an excessive case load. The asylum seekers need help and legal counselling in

³¹ Interview conducted with Elpida Kyrbassi, lawyer of the Greek Council for Refugees on the 17th of November 2016 at the island of Rhodes

³² Interview of 30 November 2016, supra note 6

³³ Interview of 1st December 2016, supra note 4

³⁴ International Rescue Committee (IRC), Norwegian Refugee Council (NRC) και Oxfam, Joint Agency Briefing Note: The Reality of the EU-Turkey Statement, 16/3/2017. <https://www.rescue-uk.org/sites/default/files/document/1359/jointagencybriefingnote-eu-turkeystatement-final16march-newtitle.pdf>

the preparation and in view of the examination of their application at first instance, as they have limited or no information at all on the way interviews are conducted, on what evidence they have to submit or even on the purpose of the interview alone. For example, sometimes they do not understand that the admissibility evaluation of their application means that they will not be asked the reason for which they left their country of origin but only the period of time they spent in Turkey. The legal advice at the second instance procedure, at the stage of the appeal, is often provided too late, although it is the only form the legislation envisages. We were told of cases of people with well-founded reasons to be granted asylum because of the persecution they suffered, but their applications were rejected because they didn't understand how important it was to talk about some of their experiences. Unfortunately, even when lawyers are available, some applicants are informed about their interviews in such short notice that they don't have enough time to get advice and assistance. Others appearing on time for their scheduled interviews are finally informed that their appointments will be postponed due to the lack of interpreters, unless they choose to proceed in a non-native language. They often agree solely because they fear that they will have to wait for many months in substandard conditions until their next opportunity comes along. "

Provision of services to asylum seekers and their lawyers by the Asylum Offices – Procedural Issues

a. Relevant provisions

Article 41 of L. 4375/2016 (Article 12 of the Directive 2013/32/EC) titled "Guarantees for applicants" provides:

"1. Applicants, when the provisions of chapters C and D below apply, have the following rights:

a. They shall be informed, in a language which they understand, on the procedure to be followed, their rights and obligations, the authorities' obligation to confidentiality and the fact that the information they provide to the authorities during the examination of their application shall not be

revealed to the alleged actors of persecution or of serious harm, the consequences of not complying with their obligations and not cooperating with the authorities, as well as the consequences of the explicit or implicit withdrawal of their application. They shall also be informed of the time limits as well as the means at their disposal for fulfilling the obligation to submit the necessary data for substantiating their claims. The information shall be given in time to enable them to exercise the rights and to comply with the obligations as described in Article 42. This information may be provided by telephone or in an automated manner.”

Article 44 of the same law (Articles 19 and 23 of the above Directive) titled “Provision of information - Legal representation and assistance”

“4. Lawyers who represent applicants shall have access to the information of their file, on the basis of which the decision is being taken or will be taken, without prejudice to Article 41 par. (1) case (e), third sentence of the present part. Other counsellors, who provide assistance to applicants, shall have access to their files’ data, if these are relevant to the assistance provided. The Head of the competent Receiving Authority may, with a reasoned decision, prohibit the disclosure of information or its sources, if he/she considers that their disclosure may compromise national security, the safety of organizations who provide this information, or the safety of the persons whom this information concern or the country’s international relations. The aforementioned prohibition must not disproportionately restrict the right of the applicant to representation, legal support and defense. Access to this confidential information or sources is, in any case, permitted to the Appeals’ Authority, in the context of the examination of an appeal, and to Courts of law competent for the examination of applications for annulment, as provided in Article 64.

5. Lawyers who represent and counsellors who assist applicants shall have access to the Regional Reception and Identification services under the special conditions of the General Operation Regulation of the Reception and Identification Service. Furthermore, they shall have access to detention facilities and transit zones, in order to communicate with the applicants in a specially arranged area. The access of the aforementioned persons in these areas shall be limited, when this is deemed objectively necessary by the competent authorities for the security, public order or

administrative management of the area or the safety of the applicants, provided that the applicant's right to representation and legal assistance is not restricted or impeded, in particular when lawyers' and counsellors' access is excessively restricted or rendered impossible."

b. Findings

Despite the efforts of the Asylum Service's staff to respond to the asylum seekers' needs, sometimes under very difficult circumstances³⁵, in general the provision of services to asylum seekers and their lawyers presents problems. This is due to several factors, such as the procedural complexity, the frequent changes in the practices of the competent authorities, the lack of personnel, the insufficient training of the existing personnel, the structural deficiencies. The problems are even more acute at the islands where, apart from the above, certain asylum offices have been forced to close because of the violent incidents that occur in the Reception and Identification Centers.

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

b. 1. Provision of services to asylum seekers and their lawyers at the islands

With regard to the islands, the Asylum Units and Regional Asylum Offices are established inside the Reception and Identification Centers in a fenced space guarded by a private security company. At the same time, EASO staff can be found at the entrance controlling who enters the service.

³⁵ Efimerida ton Syntakton, Continuing strike of the Asylum Service's staff under provisional contracts (in Greek), 5 April 2017, <https://www.efsyn.gr/arthro/apergias-syneheia-gia-toys-symvasioyhoys-tis-ypiresias-asyloy>

b.1.1.1. Provision of services to asylum seekers at the islands

Our understanding based on our visits to the asylum offices and the interviews we conducted, was one of asylum seekers being in many cases forced to wait for hours, exposed to weather conditions, without being provided with a proper waiting room and without any guarantee that they would in fact get served. In many occasions, they are not allowed to enter the Asylum Service, even when their presence is needed for a certain procedural act concerning their application.

“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.” 17 years old Syrian national, Souda Chios, 4-11-2016

In late January 2017, we addressed the Regional Asylum Office of Samos in order to get information about the case of an Eritrean national, who had been waiting for many months for the examination of her application. The Asylum Service’s officer asked us where she was, given that her asylum seeker’s card had already expired in mid-January and she had to report to the Asylum Service in order to get an interview date. At this point, we note that she was staying in the Reception and Identification Center since her arrival in Greece. She had declared that during her registration and, before our intervention to the Samos Asylum Office, she had tried to renew her card. However, the EASO personnel controlling the Service entrance, hadn’t allowed her to enter while telling her that she had to wait until her name was written in the lists posted outside the Asylum Office. These lists include the asylum seekers that are called to report to the asylum office. (Indeed there are lists on the service’s fence either calling the persons that have expressed the will to apply for asylum to get registered, or calling the persons for whom there is new information about their cases). Despite the fact that we pointed out to the EASO officer that her entry should not be impeded, nevertheless he repeated that she should have to wait, since there were people whose cards had expired before hers. Subsequently, the Samos Asylum Office was

informed about the fact that it was not the applicant's fault that she had not appeared, and then her name was put on the list so that her entry in the service would be guaranteed.

Eleni Velivasaki³⁶ characteristically mentions in December 2016 that: *“Some may have a scheduled appointment, they might have been waiting since early in the morning and not being allowed to enter the Asylum Service. The asylum office’s personnel might not even find out that these persons have an appointment at the service that very day. There is no entry control, no reception system. (...) There is always a problem with access to the service. (...) It is very hard for the asylum seekers to get served without being escorted by a lawyer. Sometimes it is a matter of luck to get inside. One may have an interview and not be able to go in”. She furthermore underlines that: “There is always an interpreter present during an Asylum Service's procedural act. Often, though, there is not enough time to make sure that the asylum seeker has understood the meaning of those acts. Many times the EASO interpreter doesn’t know Greek in order to understand the content of each document and just interpreters whatever the asylum officer tells him/her. It is not even certified that the asylum officers conducting the interviews know English well enough. Cases have been documented where asylum seekers signed documents which were not adequately translated to them”.*

“Huge queues are formed outside the Asylum Service. The asylum seekers, having waited for hours, are told to go because the service is closing. (...) Once, a person went to the Asylum Service to renew his/her card and wasn’t allowed in. They told him that he/she should report again this time with his/her lawyer”, **Dimitra Ippeiotis** points out³⁷.

In relation to the information provided by the Asylum Service, **Vasiliki Tsipoura**, UNHCR’s officer at the island of Kos³⁸, mentions that: *“The Asylum Service provides information in the*

³⁶ Interview of 1 December 2016, supra note 4

³⁷ Interview of 30 November 2016, supra note 6

³⁸ Interview conducted with Vasiliki Tsipoura, UNHCR’s officer at the island of Kos, on 15 November 2016

context of a particular procedural act, such as the delivery of a decision, but general information concerning the rights and obligations of the newly arriving, including the asylum procedure, are provided by the UNHCR officers in individual and group sessions”

b.1.2. Provision of services to the asylum seekers’ lawyers by the asylum offices at the islands

The provision of services to lawyers was found to be problematic as well.

On the 1st of December 2016, the provision of information to our lawyers concerning the course of certain cases by the R.A.O of Lesvos was impossible, since, due to recent previous violent incidents at the R.I.C. of Moria, the registry was destroyed, as an asylum officer informed us. We, thus, had to address the R.A.O of Attica in order to get information about the case of a Palestinian asylum seeker.

It is very illustrative of the current situation that often lawyers themselves have difficulty in accessing the Asylum Service and understanding at which procedural stage a given case is pending.

“Once I had an interview to attend and they wouldn’t let me in the Vial space, where the Asylum Service has its offices. There is a problem with the provision of services because there are no clear instructions, the circumstances change very often, especially for security reasons. Sometimes I have difficulty understanding the procedure that will be followed for a given asylum application, if for example someone has an interview and when, if he/she is registered (...)” **Natassa Strachini** told us³⁹.

“Before the EU-Turkey Statement there was no problem with the access of lawyers (to the Asylum Service). However, after that, both the cases and the lawyers increased in number. (...) An EASO officer once had requested a (written) power of attorney from a lawyer so that he/she could attend the interview. They probably don't have legal background. Many times one has to explain

³⁹ Interview of the 4th November 2016, supra note 5. In a more recent communication she informed us that the reception has been systemized by now to a large extent.

the reason of his/her visit to the guards of the private security company G4S⁴⁰, who, we must note, are contractors of EASO and not of the Asylum Service” Eleni Velivasaki remarks⁴¹.

In relation to other organizational issues, it is important to mention that because of the current situation, the regional asylum offices and units do not know where the applicants are. Typical of this situation is the aforementioned case of the Eritrean national who in spite of residing in the RIC of Samos, was not allowed to enter the asylum office and the officers did not know where she was.

“A girl was referred to me for legal assistance and I couldn’t find her. There are problems with the mapping. The authorities are not aware where each asylum seeker resides. They were supposed to start the mapping now. Many people move from VIAL to Souda, back and forth. The situation is uncontrollable. Some minors go back to Souda because they feel safer there”, **Natassa Strachini** mentions⁴².

The same problem is highlighted by **Dimitra Ippeiotis**⁴³ as well: “The Asylum Service doesn’t have a land line. They do not have communication in order to find where the applicants are. How do they call them for an interview if they don’t know where they are? The asylum seekers are missing their interviews 2 or 3 times and their cases are closed. We call the asylum officers at their mobile numbers, we communicate with UNHCR, we give them our telephone number in order to notify the asylum seekers. They often call the asylum seekers and talk to them in English and they do not understand what they are being told”.

⁴⁰ The private security company G4S is one of the largest multinational security companies worldwide.

⁴¹ Interview of the 1st December 2016, supra note 4.

⁴² Interview of the 4th November 2016, supra note 5. In our latest communication she informed us that the mapping is now complete.

⁴³ Interview of the 30th November 2016, PIKPA, supra note 6

b.2. Provision of services to asylum seekers and their lawyers by the asylum offices at the mainland

Problems are observed concerning the provision of asylum seekers and their lawyers in the mainland as well.

Good practices are noticed at the Regional Asylum Office of Attica, regularly visited by our organization's lawyers, by the Dublin Department and by the Department for the vulnerable asylum seekers (see below relevant chapters); however, some serious problems are observed as well.

Lawyers, but especially the asylum seekers, have to wait for many hours at the yard outside the Asylum Service's offices. Needless to say that in many cases the high or low temperatures make the long waiting unbearable, even more so when they are eventually not serviced. We should note at this point that very vulnerable asylum seekers (such as victims of torture, families etc.) are submitted to the above hardship, also considering that some of them are coming from the distant camps of Lavrio or Malakasa.⁴⁴

b.2.1. Provision of services to asylum seekers by the asylum offices at the mainland

With regard to the provision of services to asylum seekers by the Attica Regional Asylum Office, it is pointed out that the service's entrance is crowded with large numbers of applicants; the entry control, however, is carried out by a private security guards instead of by asylum officers. It is therefore common that even vulnerable asylum seekers such as ill people and families have to wait at the entrance for a long time.

As mentioned above, in many cases the asylum seekers do not manage to get serviced, e.g. for the lodging of an appeal or the submission of a memorandum.

⁴⁴ Rather explanatory is the testimony of Spyros Koulocheris, lawyer of GCR, edited by Dimitris Aggelidis in his article published in the Efimerida ton Syntakton on 21 December 2016, titled "Incredible inconvenience at the Asylum Service" (in Greek) <http://www.efsyn.gr/arthro/apisteyti-talaiporiastin-ypiresia-asyloy>

We report as a typical example the case of a Côte d'Ivoire national, to whom a negative first-instance decision was delivered in early March 2017, with the reminder to file an appeal one day prior to the expiration of the 30-days deadline. One of our lawyers intervened so that he could file the appeal the following day and could be provided again with an asylum seeker's card. Apart from the fact that this was his right anyway, we note that he was also a vulnerable person in need of hospitalization for which the asylum seeker's card was necessary.

Similar problems are observed in relation to the provision of services to asylum seekers at the Regional Asylum Office of Thessaloniki: *"(...) The day the asylum seekers go to the Asylum Service for the lodging of their asylum applications, 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 winter time, 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 someone might call them 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** mention.⁴⁵

We note that the majority of the asylum seekers stay in camps or hotels outside the city center, far away from the asylum offices, hospitals and the other various institutions in the city, which makes them completely dependent on the UNHCR for their transportation.

Lastly, we would like to underline that people who have lost their asylum seeker's card have difficulty entering the Asylum Service because they do not have any document to show to the private security guard at the entrance. The re-issuing of the asylum seeker's card after loss takes at least two months⁴⁶, while the re-issuing of the recognized refugee identity card requires

⁴⁵ Interview conducted with the volunteer lawyers of the Advocates Abroad Organization, Laure Paradis, Melissa Martinelli και Ana-Maria Enache, on 2 March 2017 at Thessaloniki

⁴⁶ see Asylum Service Official Website, http://asylo.gov.gr/?page_id=329: *"After receiving a certified copy of the declaration of loss, you should show the Asylum Service and apply for issuance of a new card. **Not issued new card before the expiry of at least two months**"*

five months. During this period of time, the asylum seekers and / or the recognized refugees possess only a certificate from the Asylum Service and, thus, the exercise of their fundamental rights becomes difficult.

We mention as typical examples:

- the case of an Iraqi citizen, who lost his own asylum seeker's card as well as his child's. He was accompanied by one of our lawyers to the Attica R.A.O. in early February 2017 in order to declare the loss, where he was informed that the replacement of the card requires at least two months.
- the case of a recognized refugee, a national of Eritrea, who lost her residence permit. At the end of January 2017, he/she went to the Attica R.A.O. to declare the loss, where he/she was informed that the replacement of the residence permit required a period of at least five months.

In our document as of 1 February 2017 to the Regional Asylum Office of Attica we underlined that: *"This long delay in replacing the lost documents (...) deprives considerably the asylum seekers and the refugees of the unimpeded exercise of the rights conferred to them by the possession of the corresponding document (...). It exposes them to the risk of arrest by the police authorities, and detention, even temporarily, until the verification of their personal information is completed. Moreover, (...) it makes their access to hospitalization and health care more difficult, as well as their access to the labor market. "*

b.2.2. Provision of services to the asylum seekers' lawyers by the asylum offices at the mainland

More specifically, **with regard to the provision of services to the asylum seekers' lawyers**, we remarked anew with our document as of 13 September 2016 to the Asylum Service, entitled "Problems in the provision of information to lawyers", (initially mentioned in our letter to the Asylum Service dated 22 July 2016) the difficult access of lawyers to their clients' files at the Attica R.A.O. and in particular that: *"Our information on the course of the cases of the asylum seekers we*

support is only gathered through the “Info” office⁴⁷. Given the crowded conditions and the fact that both asylum seekers and lawyers are informed only through the “Info”, there is no possibility for the briefing on many cases. Apart from that, the information provided is very brief and only through an electronic system, without the possibility of complete information and thorough investigation of the cases being given to us”.

Usually, due to the overcrowded circumstances and the fact that the Asylum Service’s employees are behind a protective glass, it is very difficult for the person concerned to clearly hear the employee. The family reunification cases set aside, for which information is actually provided by the competent office, in all the other cases we are not referred to a competent office for fuller information.

Furthermore, at the Attica Regional Asylum Office we are not given the opportunity to become aware of the full content of our beneficiaries’ files and investigate the documents included in them. Still we are requested to submit a detailed application for copies, referring in particular to each and every document we wish to receive in copies, despite not having access to the full content of the file in order to know all the documents that are of interest to us. This practice effectively obstructs the exercise of the right of access to documents (the possibility of on-site investigation of the administrative file and the provision of copies) and, consequently, the effective exercise of the lawyers’ work.

As evidenced from the above, sometimes even a simple procedural act becomes extremely time-consuming due to problematic practices and technical weaknesses, especially if one considers that on several occasions we have had to return to the Service because the system was crashing. We report as a typical example one case where a lawyer of our organization accompanied an applicant for the filing of an application. They entered the Asylum Service at 9.00 in the morning and the filing of the application was completed at 17.00.

⁴⁷ “Info” refers to the so-called information/briefing office, located at the entrance of the R.A.O of Attica, which is designated as the relevant office for the reception and management of asylum seekers.

Penny Mylona, Legal Service Coordinator of the Ecumenical Refugee Program⁴⁸, told us that apart from the problems encountered in the provision of copies, the cooperation with the Attica R.A.O is generally good. However, at the Asylum Units of Alimos and Piraeus, procedural issues often arise, requiring a long time before service can be provided. She states characteristically that at the Alimos Asylum Unit: *"every time we ask for copies, we are requested to explain why we want the copies and why we do not ask the applicants themselves. (...) They invoke a lack of consumables or refer us to a supervisor, resulting in the waiting for 2-4 hours just for the processing of a simple action"*.

Regarding the provision of services by the Thessaloniki R.A.O., the following were mentioned to us:

"There is usually only one person in charge of providing information, who, alongside the service of the public, also answers the phone. Both us and the refugees may have to queue for an hour to get the information we need" the volunteer lawyers of [Advocates Abroad](#) reported⁴⁹.

Moreover, according to [Giorgos Tsiakalos](#), member of the ["Pedagogues of Solidarity" group](#)⁵⁰: *"It is impossible to learn the course of a family reunification application either by phone or by visiting the Asylum Service. Lawyers are prioritized in all public services, but at the Asylum Service they have to stay out in the rain until their turn comes"*.

Family Reunification Cases

c. Findings

⁴⁸ Interview conducted with Penny Milona, Legal Service Coordinator of the Universal Refugee Program on the 20th February 2017.

⁴⁹ Interview of 2 March 2017, supra note 42.

⁵⁰ Giorgos Tsiakalos, Pedagogy Teacher at Aristotle University of Thessaloniki and member of the ["Pedagogues of Solidarity" group](#); interview at Kozani TV on 17 February 2017.

The fast processing of the family reunification cases under the Regulation 604/2013 (Dublin III) could lead to the asylum seekers' transfer to the responsible Member State for the examination of their applications in a timeframe of few months. This would contribute to the alleviation of the pressure on the reception conditions, to the decongestion of the accommodation centers at the mainland, the reunion of the persons concerned with their family members and the non-extension of their stay in Greece under rudimentary conditions which endanger their health and their lives. Unfortunately, this didn't constitute a priority for the Greek state.

Giorgos Tsiakalos⁵¹ told us that: *"The state says we are struggling to find hotels, bearing in silence the fact that by hiring more staff for the Asylum Service more families would be able to leave and reunite with their relatives."*

In addition, we would like to point out a major problem caused by Article 60 of Law 4375/2016 on border procedures as it provided for different treatment of the family reunification cases depending on which article of the 604/2013 Regulation they fall under. In particular, while this article excludes from the border procedure the "compulsory" family reunification cases for Member States (such as cases of unaccompanied minors, of spouses, of parents with minor children), this is not the case for the ones falling at the discretion of Member States and especially the ones falling under the humanitarian clause. This, in our view, ends up to a discrimination against applicants seeking reunification on the basis of the humanitarian clause, as they are submitted to the restriction of residence on the islands.

a. 1. Delays in the inclusion of asylum seekers in the family reunification procedure as a result of the delayed lodging of their asylum application

As mentioned earlier (in the chapter about access to the asylum procedure), for a long time the asylum applications at the islands were not lodged on the basis of the date of arrival in Greece

⁵¹ Interview conducted on the 1st March 2017 at Thessaloniki, supra note 50

and the date of expression of the will to apply for international protection, but instead on the basis of the prioritization of specific nationalities. Due to these delays in the asylum applications' lodging at the islands and the authorities' decision to apply the pre-registration procedure⁵² at the mainland, persons that could be transferred to another Member State under the Dublin III Regulation had to wait for several months until their asylum application was lodged and, subsequently, until the sending of a take charge request by the Greek authorities to the Member State responsible for the examination of the application, even in cases of vulnerable persons.⁵³

Specifically, regarding delays in the lodging of family reunification applications at the islands:

Penny Mylona⁵⁴ mentioned that: *"We have not observed any particular prioritization of the family reunification cases at the islands. In one of our cases, an Afghan asylum seeker accompanying her four minor children and her sister's child as well, who entered Greece after 20 March 2016 and expressed her will to apply for asylum at the end of March, got registered in early June. She came to Athens in mid-September, after having stayed on the island for six months without the lodging of her application, which took place only after a scheduled appointment at the Attica Regional Asylum Office at the beginning of 2017. The case was delayed, as she said, because the procedure at the Prosecutor's Office for the appointment of the aunt as a temporary legal guardian of the minor had not taken place and its registration was not therefore possible. This never occurred at the island and we pursued this procedure at the Youth Prosecutor's Office of Athens; the latter refused to accept it and chose to appoint one of our lawyers to represent the minor".*

⁵² The family reunification procedure is not mentioned as a relevant factor in the Asylum Service's document concerning the parameters taken into account for the shortest possible scheduling of registration dates. See above Asylum Service's document entitled "Frequently Asked Questions and Answers", October 2016, , http://asylo.gov.gr/wp-content/uploads/2016/11/Qandanswers_ENG_OCT_V4a--25-10-2016-Greek_V2.pdf, p.4, Q14.

⁵³ Case of a family reunification application of a 16 year old boy from Kobani, detained in a cell for two months who went on a hunger strike (in greek): , <http://www.rodiki.gr/article/348594/enas-16-xronos-prosfygas-liwnei-sta-kraththria>, <http://www.rodiki.gr/article/346323/kollhsa-pswra-ekana-apergia-peinas-alla-eimai-akoma-edw>

⁵⁴ Interview of 20 February 2017, supra note 45.

"The EU-Turkey Statement was disastrous. There are traumatized people being submitted to the humiliation of the Moria camp. (...) In PIKPA, there is a mother with three children; one of them, 8 years old, is autistic, and her husband is in Germany. She expressed the will to apply for asylum in early April 2016 and she is still waiting for a response from the Asylum Service" Dimitra Ippeliotis⁵⁵ says.

According to Eleni Velivasaki⁵⁶ : *"The family reunification cases are not prioritized at registration. Rather, the opposite is the case. They are waiting. An Afghan woman, who is all alone, was registered in mid-July 2016 by the Reception and Identification Service and she is still waiting until today (1st December 2016) for the lodging of her application by the Asylum Service so that she can apply for family reunification with her husband and children in Germany".*

a.2. Provision of information to asylum seekers and their lawyers about the processing of family reunification cases

During the early days of our project, we faced serious problems in the provision of information by the Dublin Unit and for this reason we sent a letter to the Asylum Service on 13 September 2016, in which we stressed that:

"Despite our repeated visits to the Service and our telephone communications, it has not been possible to get confirmation about the sending of take charge requests by the Dublin Unit, and therefore we cannot follow up on our organization's cases and inform the persons concerned accordingly".

The increase of the capacity of both the Dublin Unit and the competent department of the Attica Regional Asylum Office has significantly improved the situation, and as of November 2016 our cooperation has been very satisfactory.

⁵⁵ Interview of 30 November 2016, supra note 6.

⁵⁶ Interview of 1st December 2016, supra note 4.

However, there are still considerable delays in the updating of the electronic system concerning the acceptance of take charge requests, as well as in the delivery to the applicants of the relevant decision. The delay in informing the applicants of the acceptance of the take charge requests by another member state and in delivering the corresponding decision is approximately three months.

Penny Mylona⁵⁷ points out that: *"Due to the delayed updating of the Dublin Unit's system, we are not informed on time about the course of the cases and cannot get accurate information. We have to try two and three times for one case until we find out at which procedural stage it is pending. We waste time trying to find out what has happened, so we cannot handle the case efficiently"*.

a.3. Meeting the costs of the asylum seekers' transfers

According to Article 30 of the EU Regulation 604/2013 (Dublin III) concerning the costs of the transfers:

"1. The costs necessary to transfer an applicant or another person as referred to in Article 18(1)(c) or (d) to the Member State responsible shall be met by the transferring Member State.

3. Persons to be transferred pursuant to this Regulation shall not be required to meet the costs of such transfers.

For most of the duration of our project, notwithstanding the above provisions, most of the people seeking assistance from our organization told us that they met the costs of their transfer to another Member State in the context of the family reunification procedure.

⁵⁷ Interview of 20 February 2017, supra note 45.

A similar finding is also included in the latest country report edited by the Greek Council for Refugees report for the Asylum Information Database (AIDA)⁵⁸, which states that:

“Due to the lack of relevant funding, applicants under the Dublin Regulation are expected to cover their own travel expenses NGOs endeavor to find sponsors or donors, since there are many cases where people cannot afford the transfer.”

Since early March 2017, we have been informed about a two-month program implemented by the Ecumenical Refugee Program and funded by UNHCR which covers the asylum seekers' transfer costs. However, it is not yet known whether after the elapse of this two-month period, another similar program will be conducted.

First instance examination of asylum applications

d. Relevant provisions of L. 4375/2016

Article 39 (Article 10 of the Directive) Requirements for the examination of the application

“3. Decisions on applications shall be taken on an individual basis, following a comprehensive, objective and impartial examination. To that end the Central Asylum Service: (...) a. a. Shall search, collect, assess and maintain precise and accurate information on the political, social, economic and general situation which prevails in the applicants' countries of provenance (...) b. Shall ensure that the personnel, which examines the applications and decides upon them or makes recommendations for decisions, has knowledge of the national and international legislation and case law on international protection”

Article 51 (Article 31 of the Directive) Examination procedure

⁵⁸ Asylum Information Database (Aida), Country Report: Greece, 2016
http://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2016update.pdf, pag. 51.

“2. The examination of the applications shall be concluded the soonest possible and, in any case, within six (6) months, where the regular procedure is applied, or three (3) in the cases of an accelerated procedure. Where an application is subject to the procedure laid down in Regulation (EU) No 604/2013, the time limit shall count from the moment Greece is determined as the state responsible for its examination in accordance with that Regulation, the applicant is on the territory of the country and his/her application for international protection has been taken up by the Asylum Service.

3. The above time limits may be extended for a period not exceeding a further 9 (nine) months, where:

a. Complex issues of fact and/or law are involved

b. A large number of aliens or stateless persons simultaneously apply for international protection, making it very difficult in practice to conclude the procedure within the six-month (6) time limit;

c. The delay can clearly be attributed to the failure of the applicant to comply with his/her obligations under Article 42 above.

4. By way of exception, the above time limits may be extended for a further period not exceeding three (3) months, where necessary due to exceptional circumstances and in order to ensure an adequate and complete examination of the application for international protection.

5. In cases where the examination exceeds the maximum time limit set in each case, the applicant has the right to request information by the competent Receiving Authorities concerning the timeframe within which the decision on the application is to be expected. Such provision of information shall not constitute an obligation for the above authorities to make a decision within a specific timeframe”

e. Findings

The first instance examination is particularly important taking into consideration that a positive decision leads to a quicker completion of the asylum procedure, and that even a negative decision can provide the necessary evidence for the second instance examination of the asylum application. The relevance of the first instance procedure became even greater since the second instance examination assumed a procedural character, which excludes the possibility of a personal interview and is based on the content of the administrative file.

However, since the establishment of the Asylum Service, we noticed some interviews and decisions, which, in our view, suggested a superficial approach to the corresponding cases and presented serious shortcomings. We still observe this problem.

On the other hand, in other cases we observed that the procedural guarantees for the examination of the application were fully respected and that the decisions issued were thorough.

It is a matter of concern that the Asylum Service has failed to ensure a uniform level for the examination of the applications and that in certain categories of cases (such as those relating to violence against women) the same shortcomings are still observed.

Still, the most serious problems we identified during our project are undoubtedly related to the examination procedure of the asylum applications at the islands under the framework of the EU-Turkey Statement. The implementation of the EU-Turkey Statement resulted in limiting the asylum procedure at the islands to an admissibility evaluation of the applications on the basis of whether Turkey represents a safe country; the latter was found to be the case for almost 2/3 of the cases examined. Highly illustrative 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.

The report "[The implementation of the Hot-Spots in Italy and Greece](#)" ([European Council on Refugees and Exiles, Refugee Councils in the Netherlands, Italy and Greece](#))⁵⁹, taking into account the fact that the highest percentage of asylum applications were considered as inadmissible, highlights very aptly the sudden transformation of the procedure following the enactment of the EU-Turkey Statement.

"(...)It is remarkable, that the "safe third country" concept was never used by the Asylum Service or the Appeals Committees for Turkey until the 20th of March 2016; it is difficult to see how Turkey could be considered a "safe third country" for those having entered after the 20th of March and not for those having entered the day before".

EASO staff has been largely involved in this procedure at the islands by conducting interviews and giving opinions to the Asylum Service. This involvement could also be described as an illustration of the future of this EU Agency envisaged by the European Commission (see also EASO new draft Regulation), however it raises issues of excess of competence in relation to the current Regulation. Nevertheless, the Greek legislation contains a relevant provision, introduced by amendment of Law 4375/2016.

b.1. Islands

The EU-Turkey Statement created a context that puts pressure for the rapid admissibility examination of the asylum applications⁶⁰ at the islands, which in turn undermines the quality of the procedure.

The [Greek Ombudsman's Report for 2016](#)⁶¹ points out in this regard that:

⁵⁹ ECRE, "The implementation...", p.39.

⁶⁰ ECRE, "The implementation...", p. 26

⁶¹ The Greek Ombudsman, Report for 2016, p. 32

*"(...) the implementation of the EU-Turkey Statement of 18 March transfers to the asylum offices at first instance and, then, to the Appeals' Authority at second instance the responsibility to evaluate the readmission to Turkey not only of Syrian nationals, by rejecting their asylum applications in Greece as inadmissible, but of other third-country nationals as well, on the grounds of Turkey being a safe third country to apply of asylum **As far as the asylum procedure is concerned, there is great pressure for the rapid processing at 2nd instance of the asylum applications submitted at the hotspots, so that the EU-Turkey Statement will be effectively implemented.** This is also illustrated in the letter of the Head of the European Commission's Directorate General for Migration and Home Affairs to the Ministry of Interior (competent authority at that time), dated 5.5.2016, regarding the safeguards provided by Turkey's legal framework for the protection of Syrian and other third-country nationals in relation to the Geneva Convention for Refugees. The Greek Ombudsman pointed out the relevant case-law of the European Court of Human Rights (Tarakhel v. Switzerland judgment of 4.11.2014,), **according to which there shall be an individualized assessment and provision of specific and detailed guarantees regarding the reception/accommodation conditions and the maintenance of family unity in the third country**".*

b.1.1. EASO involvement

I. Legislation

The European Asylum Support Office (EASO) was established by the Regulation 439/2010 of the European Parliament and the Council of the EU.

Article 2 par. 6 provides that: *"The Support Office shall have no powers in relation to the taking of decisions by Member States' asylum authorities on individual applications for international protection."*

According to Article 10: *"At the request of the Member States concerned, the Support Office shall coordinate actions to support Member States subject to particular pressure on their asylum and reception systems, including coordinating: **(a) action to help Member States subject to***

particular pressure to facilitate an initial analysis of asylum applications under examination by the competent national authorities;

With regard to the Support Office's members' civil liability, Article 21 par. 1 provides that: *"Where members of an asylum support team are operating in a host Member State, that Member State shall be liable in accordance with its national law for any damage caused by them during their operations. (..)"*

According to Article 2 par. 7 of L. 4375/2016: *"Should the need defined in the first indent arise, the United Nations High Commissioner for Refugees and the European Asylum Support Office may provide any relevant assistance, such as handling specific procedures, depending on the mandate and the responsibilities of each institution. Details of this cooperation shall be regulated by memoranda to be concluded between the Asylum Service and the aforementioned institutions."*

Article 60 par. 4 (b) of the aforementioned law provides: *"In the implementation of procedures under (a) above, the Asylum Service may be assisted, in the conduct of interviews with applicants for international protection as well as any other procedure, by staff and interpreters deployed by the European Asylum Support Office."*

Subsequently, element b) of the aforementioned article was amended by virtue of Article 86 par. 13 of L. 4399/2016 as follows: ***"The interview with applicants for international protection may also be carried out by staff of the European Asylum Support Office."***

II. Competence, liability and procedural issues

The problematic nature of EASO's involvement in the asylum procedure at the islands has been highlighted by the relevant scientific literature.

An article published in the [EU Immigration and Asylum Law and Policy](#)⁶² website, points out that:

“EASO-deployed experts at hotspots in Greece are independently conducting a part of the asylum process that entails discretion. They conduct the asylum admissibility interviews on behalf of the Greek Asylum Service, at least in the majority of cases, then submit their findings, on the basis of which the Service issues the final admissibility decision. Inherent parts of this process are assessing the credibility of the applicants, detecting vulnerability, and making a finding on the safety of third countries; all of these entail elements of discretion. The administrative reality is that this moves beyond assisted processing, to the realm of common processing. In terms of EU administrative law then, there is already an emergence of a variant of procedures that could be understood as de facto composite, or mixed, administrative procedures. These operations at hotspots arguably give ‘powers in relation to the taking of decisions on individual applications’, in the very least indirect powers. In this sense, they exceed the legal limits under the EASO Regulation (...) This operational involvement of the EU also poses subsequent procedural questions. Notably, what rights do applicants enjoy during this interview with deployed experts, which is a crucial part of the asylum procedure? Normally, this process being a part of the asylum procedure, applicants should enjoy the full array of rights foreseen by the recast Asylum Procedures Directive and the Greek national law no matter who is conducting the interview; the fact that the EU level is operational should not lead to a diminution of procedural rights. However, on the ground there is uncertainty as to the procedural rights available”.

In addition, it is underlined⁶³ that:

⁶² EU Immigration and Asylum Law and Policy, LilianTsourdi, "Hot spots and EU Agencies: Towards an integrated European administration?", 26/1/2017, <http://eumigrationlawblog.eu/hotspots-and-eu/>

⁶³ EU Immigration and Asylum Law and Policy, [Catharina Ziebritzki](#), "Chaos in Chios: Legal questions regarding the administrative procedure in the Greek Hotspots", 26/7/2016 <http://eumigrationlawblog.eu/chaos-in-chios-legal-questions-regarding-the-administrative-procedure-in-the-greek-hotspots/>

“Even leaving aside the crucial question of competence arising with regard to article 2(6) of the EASO Regulation, this leads to uncertainty regarding the procedural rights during the interview. Neither the EASO Regulation nor the “rules of conduct” of the Operating Plans contain procedural rights. Article 52 (2) to (7) of Law 4375 grant the right to translation, the right to be interviewed by a female officer if needed, the right to be given an adequate opportunity to explain etc. These rights coincide with information given by the Asylum Service upon request. It is unclear whether the view of the Asylum Service is that national procedural rules have to be respected by EASO staff. According to the view of EASO Chios, Greek Law is not applied by EASO – indeed, Law 4375 is considered by some EASO officers a “side issue” which is basically not needed since all staff are “very experienced asylum experts”. The question remains legally unresolved.”

In the [European Council’s on Refugees and Exiles Report](#)⁶⁴, it is mentioned that:

“There is legal uncertainty with certain aspects of the hotspot function, particularly regarding the role of the different actors, especially EU agencies in relation to national authorities. While executive powers rest with the Member States, and EASO has no power in decision making on individual applications or Frontex on the screening, registration and identification, both agencies increasingly interfere with national procedures through their operations on the ground. Increased involvement in individual decision-making processes through such operations generates greater accountability and liability for human rights violations.”

The same report⁶⁵ mentions that the admissibility interview is not conducted in the country’s official language, but in English; similarly, the minutes of the interview are also kept in English. In particular: *“Apart from practical difficulties in reviewing the procedure and decisions, this raises issues of competence, relating to Article 2 (6) of the EASO Regulation. The EASO Regulation and the Operating Plans between EASO and Greece do not include any procedural rights in this regard. While procedural safeguards provided in the Greek legislation(L.4375/2016*

⁶⁴ ECRE, "The implementation ...", p. 12

⁶⁵ *Ibid*, p. 38

Ar.52 para 2 to 7) should be applied regardless of who is conducting the interview, including EASO experts, cases have been reported where, in practice, EASO experts have disregarded such safeguards (such as the right to a lawyer's applicant to be present during the interview)".

b.1.2. Quality issues of the admissibility procedure and decisions

In the present report, we are not going to provide argumentation on the fact that the effort to establish Turkey as a safe country of asylum is contrary to international, European and national law, since this has been documented in a multitude of reports as well as in second instance decisions of the Appeals' Committees under P.D. 114/2010.

We quote as an illustrative example the [European Council's on Refugees and Exiles Report](#)⁶⁶, which stresses that:

"In Greece, in the context of the EU-Turkey deal, the systematic use of the safe third country (STC) concept in the admissibility procedure risks undermining the effectiveness of procedural safeguards and access to the asylum procedure. National authorities (and EASO) are under a lot of pressure to conclude the examination of applications as swiftly as possible. The expedited nature of the procedure further adds to the disadvantaged position of applicants resulting from an increased burden of proof to rebut presumptions of safety. However, in light of the current human rights situation in Turkey and the gaps in the national asylum framework, the country cannot be considered safe. Evidence by human rights organizations has shown that those returned face detention in places where lawyers, UNHCR and NGOs have no access, and some have been taken to the Syrian-Turkish border in order to be returned to Syria."

"(...)Moreover, according to GCR, the majority of first instance decisions issued seem to have an identical, short and unjustified reasoning, rejecting the applications as inadmissible, considering Turkey as a "safe third country"⁶⁷.

⁶⁶ *ibid*, p. 26

The above are reflected in the quality of the examination procedure and the decisions issued.

Here are some issues that arise:

- **Telephone interpretation:** Notwithstanding the issue of the language in which the procedure is conducted, mentioned earlier, and the arising unconstitutionality and procedural issues, the quality of the procedure is undermined by the use of telephone interpretation as well. In our view, telephone interpretation is problematic because, on the one hand, misunderstandings and mistakes are very easy to occur and, on the other, the absence of an interpreter during the interview causes further stress to the asylum seekers.
- **Lack of consideration of the asylum seekers' vulnerability:** Sometimes the asylum seekers' vulnerability is not taken into account, as documented in the [Greek Ombudsman's Report for 2016](#)⁶⁸: *"In first instance asylum interviews conducted by EASO staff, elements of vulnerability (such as serious injury or torture) were not taken into account, despite having being identified by the {first} reception services, something which raises questions about the adequate coordination of the hotspots' services and the human rights safeguards of the persons involved."*
- **Inappropriate conduct of interviews:** We noticed the practice of interviewers to ask repeatedly questions as to whether Turkey is a safe country, even in cases where the asylum seekers have already mentioned serious violations of their rights in Turkey.
- **Decision-making quality:** The Asylum Offices' admissibility decisions are often identical, they are limited to mentioning the relevant provisions of Articles 54-56 of Law 4375/2016 and "substantiate" the application's rejection exclusively on references from the Turkish Ministry of Interior. In some decisions there was evidently no evaluation of the asylum seekers' claims and the "safe" status of Turkey was presumed by the applicants' Syrian nationality, the

⁶⁷ *Ibid*, p. 38-39

⁶⁸ The Greek Ombudsman, Annual Report, p. 32

possibility of being granted temporary protection and the assumption that they will be re-admitted to Turkey on the basis of the EU-Turkey Statement. As pointed out by the Campaign for the Access to Asylum⁶⁹: *"For the determination of a third country as safe, there applies Article 10 of the Directive "on common procedures for granting and withdrawing international protection (recast)". Article 10 sets upon national authorities the obligation to take a decision after an appropriate examination of the application, which includes an individual, objective and impartial evaluation. According to the European Court of Human Rights (ECtHR) case law, the individualized assessment of safety and enjoyment of effective protection in a third country should include the evaluation of the practice in the country concerned and cannot be limited to a mere review of the legal provisions in national law or adherence to international human rights treaties".*

Lawyers of field-based organizations operating at the islands highlighted the following:

According to **Natassa Strachini**, lawyer⁷⁰: *"At the admissibility 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 of the legal framework and of the reality there. EASO staff focuses 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 EU-Turkey Statement. They want to reject the applications as inadmissible and take the asylum seekers out of the procedure. The opinions of the EASO staff are endorsed by the Asylum Service in the majority of cases. The competent asylum officers issue the decision without having ever seen the asylum seeker. The procedure is largely automated. (...) it is based on a document edited in English by a person that is not a member of the Asylum Service in violation of the procedural requirements and they are all going around it"*

⁶⁹ Campaign for the Access to Asylum, Press Release, 9 March 2017 (in Greek), <http://aitima.gr/images/pdf/deltiotypouqr.pdf>

⁷⁰ Interview of 4 November 2016, supra note 5

According to **Eleni Velivassaki**⁷¹, "We often have complaints about the quality of the asylum applications' examination. There is a problem with how someone is found to be non-credible. Some issues are not clarified and then the burden of proof is shifted to the applicant.

The inadmissibility decisions for the Syrians are identical with the same wording. The same documents are invoked. (Reports from the Turkish Ministry of Interior, letters of a UNHCR Turkish Ambassador.) Even the applications submitted by Kurdish people are considered inadmissible at first instance ".

Elpida Kirbassi⁷² states that "After the EU-Turkey Statement, we see a bureaucratic processing of the asylum cases, focused on admissibility. The decisions are identical, clear instructions are being followed. There is a great generalization that is contrary to the basic principles of asylum. If there are no grounds of manifest vulnerability, the applications are found inadmissible with a brief stereotypical justification". When it comes to the applications' examination by the Regional Asylum Office of Rhodes, she notes that the interviews are in general thorough; however, there was an interview she attended which was conducted by telephone. "There was an interview I happened to attend with an asylum officer of the Attica Regional Asylum Office conducted by telephone. It is wrong to conduct the interviews by the phone as there is no personal contact and the officer conducting the interview is not given the opportunity to examine the physical, non-verbal reactions of the applicant, often evidencing his/her credibility, or post-traumatic stress disorder".

Relevant Cases

A Syrian national, during the admissibility examination of her asylum application by an EASO expert, mentioned that she had been returned 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

⁷¹ Interview of 1 December 2016, supra note 4

⁷² Interview of 17 November 2016, supra note 29

been sexually assaulted 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.*” As can be evidenced from the above quotation, the EASO expert found that three incidents of attempted sexual assault were not sufficient to establish a danger of serious harm of the applicant. Furthermore, with regard to her return by the Turkish authorities to Syria, it is found that, since Turkey agreed with the EU that it would respect the *non-refoulement principle*, the Syrian nationals’ fears of being returned and the serious and multiple relevant allegations cannot in any case establish a well-founded fear of *refoulement*⁷³. With regard to the Asylum Service’s decision, the asylum seeker’s claim about the three incidents of attempted sexual assault against her during her stay in Turkey is not mentioned at all in the decision and is not, therefore, taken into consideration. Finally, her fear that she would be returned to Syria is mentioned in the decision, but not evaluated neither taken seriously into account, because it is considered in all probability dismissed in light of the Turkish authorities’ reassurances; it is therefore not deemed necessary to be evaluated.

A Syrian national and his wife mentioned during the admissibility examination of their applications, that they had been assaulted in Turkey, in their efforts to explain that Turkey is by

⁷³ Amnesty International, “Turkey: Illegal mass turns of Syrian refugees expose fatal flaws in EU-Turkey deal”, 1/4/2016, <https://www.amnesty.org/en/press-releases/2016/04/turkey-illegal-mass-returns-of-syrian-refugees-expose-fatal-flaws-in-eu-turkey-deal/>

no means safe for them.

Specifically, the aforementioned Syrian woman stated during her admissibility interview that she had no access to medical care, and that she and her family had been assaulted with wooden sticks by a group of people telling them to return to Syria and to fight for their country, while the police did nothing to protect them. Having said the above, she is asked why she doesn't want to stay in Turkey and she replies that she left her country in search of safety and that there is no safety in Turkey. She is then asked if she had , worked and whether she has relatives in Turkey and, again, why she left Turkey although she had already replied. She answers *"in Turkey people were treating us badly"*; she is asked again what she means by saying they were being treated badly. Having responded by giving more details about the discrimination suffered by the Syrians in Turkey, the EASO expert then asks:

"Can you return to Turkey?"

- *"No",*

"Why can't you return to Turkey?"

- *"If I could live in Turkey I would stay there and I would not risk my life in a rubber boat."*

"Is there anything specific that you are afraid of in Turkey?"

In the husband's case, he described the assault they suffered in Turkey in detail, as can be evidenced from the copy of his interview, pointing out that the police officers present at the scene did nothing to help them. Although he was not asked to provide further information on the police officers' attitude, the EASO expert's opinion states that: *"he mentioned in general terms the insufficient protection of the police and did not provide any evidence that the Turkish authorities could not protect him (...) the current security situation in Turkey is not considered to be unsafe and his fears are largely based on stories and hearsay"*.

The decision issued for both is a standard one without a specific and detailed reasoning nor an individualized assessment. The assessment of their claims is based on a summary of the EASO expert's opinions: *"they expressed a general fear of being returned to Turkey by describing a violent incident that the family suffered by a group of Turkish citizens. However, their fear is based on stories of third persons. There is no evidence from the minutes of the interviews indicating their individualized targeting in Turkey"*. In the decision's section for the legal assessment of the case of law, there is a simple copy of the pertinent provisions of Law 4375/2016 and at the end of the decision references of the Turkish Ministry of Interior are annexed without any further analysis. The only comment that can be found in the above references is the following: *"In spite of isolated incidents that have been reported regarding the involuntary return of Syrian nationals from Turkey to Syria, which have been denied by the Turkish authorities (certain reports on this issue are cited), there is no indication that Syrian applicants who are returned from Greece to Turkey will be returned to Syria"*.

In the case of another Syrian national, the EASO expert who conducted his interview found that Turkey was not a safe country for the applicant, accepting the evidence he presented during his examination, and that his life and physical integrity would be endangered in the event of his return to Turkey on Geneva Convention related grounds. In the Asylum Service's decision, and particularly in the part where the applicant's statements are assessed, it is noted expressly that *"All the claims of the applicant, as stated during the interview and evaluated in the concluding remarks, are accepted."* Therefore, his claims, inter alia, about working illegally in conditions similar to slavery, being beaten many times because of his nationality, being assaulted by his employer and being unable to access health care were accepted. However, the decision makes no reference to these allegations and has no individualized and detailed judgment.

Subsequently, in the decision's section for the legal assessment of the case, the decision is limited to referencing the provisions of Articles 54 and 55 of Law 4375/2016, stating that: *"from the fact that the applicant had the opportunity to apply for international protection, but also*

from the fact that documents (Kimlik) had already been granted to the applicant, so that he lawfully resided in Turkey, that he worked there for a year, but also that he has family members who live for many years there, it is concluded that the applicant has a link with the country. (...) and solely by the fact that the applicant has Syrian nationality, it is evident that he enjoys effective temporary protection in Turkey, benefiting, inter alia, from the principle of non-refoulement. Furthermore, as can be considered on the basis of the EU-Turkey Statement of 18/03/2016, the applicant will be accepted again in that country. Consequently, the application should be rejected as inadmissible (...)."The standard references to the Turkish Ministry of Interior reports are cited in the decision.

b.2. Quality issues of the procedure and first instance decisions at the mainland

The Asylum Service has not managed to establish a satisfactory level of examination for all asylum applications, and therefore the quality of examination presents significant deviations. Thus, one can identify cases of thorough interviews, but substantially insufficient ones as well.

Certain cases have come to our attention where the asylum officers conducting the interviews fail to clarify certain parts which then works to the detriment of the applicants, who are found summarily to be non-credible, which in turn, then, leads to the application's rejection at first instance.

It must be noted that creating an atmosphere of confidence and trust, clarifying all aspects of the asylum application and not having any unanswered questions at the end of the interview is an obligation of the officer conducting the interview.⁷⁴ It should be stressed, at this point, that the completeness and quality of the first instance procedure is of major importance, as the second instance procedure is based on the evidence of the administrative file and, therefore, the

⁷⁴ UN High Commissioner for Refugees (UNHCR), RLD4 - Interviewing Applicants for Refugee Status, 1995, RLD4, available at: <http://www.refworld.org/docid/3ccea3304.html>

applicant is not invited to clarify and fill in any gaps or contradictions that led to the first instance rejection of the application.

Furthermore, there are decisions with inadequate reasoning and standard expressions such as *"gaps and contradictions can be found (...)".* In this way some asylum seekers are found to be non-credible and the examination of the other grounds of the Geneva Convention's Article 1 is omitted. Some decisions do not specify where the gaps and contradictions can be found; claims that are considered contradictory could often be explained if the officer conducting the interview had fulfilled the aforementioned duty of clarifying all aspects of the story.

In the light of the above, in some cases it is evidently not taken into account that *"(...) due to time lapse or the intensity of past events, the applicant may not be able to remember all factual details or to recount them accurately or may confuse them (...) Given that in refugee claims, there is no necessity for the applicant to prove all facts to such a standard that the adjudicator is fully convinced that all factual assertions are true, there would normally be an element of doubt in the mind of the adjudicator as regards the facts asserted by the applicant. Where the adjudicator considers that the applicant's story is on the whole coherent and plausible, any element of doubt should not prejudice the applicant's claim; that is, the applicant should be given the "benefit of the doubt".*⁷⁵

In any case, the competent officers for the issuing of the decision should always take into consideration that: *"given that the consequences of an erroneous negative decision can be extremely serious for refugees, and because of the unavailability or inaccessibility of objective evidence in many refugee situations, the burden of proof should be approached flexibly".*⁷⁶

According to Aliko Karavia, lawyer and coordinator of the GCR legal team FLA of Northern Greece:

⁷⁵ UN High Commissioner for Refugees (UNHCR), Note on Burden and Standard of Proof in Refugee Claims, 16 December 1998, available at: <http://www.refworld.org/docid/3ae6b3338.html>

⁷⁶ UNHCR, RLD4 - Interviewing Applicants for Refugee Status

“The interviews take place by telephone interpretation. The whole procedure when it comes to unaccompanied minors is mostly automated” (...) Lately certain decisions of the Asylum Unit of Fylakio are issued 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 to be non-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.”

Relevant Cases

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 of committing suicide, that she lived in fear and psychologically traumatized. The decision rejects her application 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 her as a victim of torture.

A Guinean national submitted an asylum application in mid-April 2016, which was rejected a month later by virtue of the Attica Regional Asylum Service's decision. The decision reiterated the stereotypical phrasing *"gaps are found in his description, his story is inconsistent and several times contradictory"*; it did not accept that the asylum seeker experienced the events he claimed. However, as noted in the supplementary memorandum submitted during his appeal, *"it is evident from the copy of the interview that the service failed to examine and evaluate specific facts the applicant attempted to mention."* Although he mentioned that his father and his brother were murdered, while he was arrested along with his mother and his sister in a camp, where they were detained for 5 months, the asylum officer conducting the interview did not ask him any further questions about the incident, nor did he/she pose any clarifying questions, when the applicant stated that he had been tortured during his detention. The applicant was examined by the Greek department of the organization "Médecins Sans Frontiers" (MSF) which provided him with a certification stating that *"he had scars all over his body, that the patient's psychological symptoms refer to Post Traumatic Stress Disorder and taking into account that the traumatic events occurred at an early age (12 years old) it was considered appropriate to be treated and supported by a psychologist"*

An Afghan national's application for international protection was rejected as inadmissible by a decision of the Attica Regional Asylum Office. Although he claimed during his interview that he had been receiving threats from the Taliban because of his commercial activity and good financial situation, this allegation was not evaluated at all, as evidenced from the above decision of the Attica Regional Asylum Office; his application was, thus, rejected at first instance. However, UNHCR includes the entrepreneurs or, in general, members of affluent families who are being extorted for money among the social groups facing a potential risk of persecution in Afghanistan, and relevant guidelines particularly state that whoever is in danger to be kidnapped for ransom, can be considered a member of a particular social group and,

depending on the particular circumstances, be in need of international protection.
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Second instance examination of asylum applications

f. General findings

In 2010 the Appeals' Committees of the P.D. 114/2010 were established and the appellants were invited to have an interview for the examination of their asylum application at second instance. The establishment of these Committees constituted a very positive development, as it provided the framework for a detailed examination of the appeals.

However, the examination procedure of the asylum applications at second instance gradually transformed from an oral to a written one, with the possibility of an oral examination by interview being gradually minimized.

It goes without saying that the hearing of the appellant is an important procedural safeguard for the completeness of the appeal's examination procedure, as this gives the possibility of a detailed presentation of the case to the applicant and of a thorough examination to the evaluating body. In this respect, our organization considers that the transformation of the second instance procedure into a written one does not provide the necessary guarantees of an in-depth assessment. This view is further strengthened in light of the above mentioned quality issues of the first instance procedure.

At the same time, the repeated and successive amendments of the legal framework and function of the Committees of the Appeals' Authority from September 2015 until today resulted in the non-functioning or sub-functioning of these committees for significant periods of time.

In addition, these modifications have created operational problems in some cases to the Appeals' Committees of the P.D. 114/10, due to their being charged with the examination of cases falling within the competence of the Appeals' Authority.

This situation has severely affected the asylum seekers who have submitted appeals.

Finally, we note that the latest amendments in the composition of the Appeals' Authority Committees were being contested regarding their constitutionality before the Council of State, which rejected the applications for annulment submitted⁷⁷.

g. Specific findings

b.1. Transformation of the oral procedure into a written one

Since 2010, when the Appeal Committees under the Presidential Decree 114/2010 were established, the examination procedure of asylum applications at second instance has been transformed from an oral one into a written one, with the possibility of an oral examination by interview being gradually minimized.

The Appeals' Committees of P.D. 114/2010 examined at second instance the asylum applications submitted at that time at the police authorities. According to Article 26 par. 5 of the aforementioned Presidential Decree the examination procedure of the appeal was oral and in particular: *"Each Board shall summon the appellant, (...) to state orally, with the assistance of an interpreter, his/her arguments and to give clarifications or present any additional elements."*

These Committees were tasked with the examination of the thousands of appeals submitted in accordance with the provisions of Presidential Decree No. 61/1999 (A' 63) or Presidential Decree 90/2008 and were still pending at the enactment of the P.D. 114/2010.

Subsequently, under Article 3 par. 1 of Law 3907/2011, the Appeals' Authority was established within the Ministry of Citizen Protection to examine asylum seekers' appeals against the Asylum Service's decisions, lodged after 7 June 2013; the Asylum Service was also established

⁷⁷ At the time of the Report first release (19 April 2017) the decision was still pending; however, it was issued in the meantime.

under Article 1 of Law 3907/2011. Appeals lodged before that date continued to be examined by the Committees of the P.D. 114/2010. (Article 34 par 1 of P.D. 113/2013).

The examination procedure under the new framework of the Appeals' Authority was principally written, with the possibility, however, of the appellant's oral examination under certain preconditions. More specifically, according to Article 26 par. 4 of P.D. 113/2013 *"The procedure before the Appeals Committee shall be in written and the examination of the appeals shall be performed based on data from the case file. The Appeals Committee may invite the appellant to an oral hearing (...)"*

The subsequent amendments under Article 3 of the P.D. 167/2014, Article 4 par. 1 of Law 4375/3-4-2016 and, finally, under the provisions of Law 4399/22-6-2016 minimized the possibility of an oral examination of the appellants.

b.2. Functioning problems of the Appeals Committees

According to Article 3 of L. 3907/2011, which established the Appeals' Authority:

"1. It is hereby established an Appeals' Authority within the Ministry of Citizen Protection; its mission shall be to adjudicate, in accordance with article 5 paragraph 5 below, on appeals lodged by applicants for international protection against decisions issued by the Asylum Service.

2. The Appeals' Authority shall be directly under the authority of the Minister of Citizen Protection. Within this Authority, shall operate one or more three-member Appeals' Committees, set up in accordance with the number of appeals lodged, by decision of the Minister of Citizen Protection for a two-year mandate which can be renewed. The same decision shall determine their territorial competence.

3. The Appeals' Committees shall be composed by a chairman, who shall be a renowned personality with specialization or experience in refugee, human rights or international law, a person, of Greek nationality, indicated by the United Nations High Commissioner for Refugees and

a person holding a university degree in Law, Political or Social Sciences with specialization in international protection or human rights issues, as members, as well as their alternates. The chairman and the third member of the Committee, as well as their alternates shall be appointed by the Minister of Citizen Protection from among a list drawn up by the National Commission for Human Rights according to its Rules of Procedure”.

The two-year term of Appeals’ Authority Committees, established by Law 3907/11, expired on 29 September 2015 and was not renewed due to issues that were raised regarding the selection of members indicated by the UNCHR. As a result, a large number of pending appeals was accumulated and added to the already pending ones.

By Law 4375/2016, the Appeals’ Authority reorganization and the rapid examination of the pending appeals were attempted. On the one hand, a transitional provision was introduced (Article 80 par. 1 and 2 of Law 4375/2016) providing that, until the composition of the new Appeals’ Committees, the appeals submitted after the enactment of this law would be examined by the previous Appeals’ Committees established under the P.D. 114/2010. On the other hand, the Joint Ministerial Decision 10658/11-7-2016 constituted a three-member Appeal Committee tasked with the examination of appeals pending up to 3 April 2016. This Committee’s term expired as well on 31 December 2016. During its term, it examined 400 cases out of the 3.500 appeals pending due to the non-functioning of the Committees of Law 3907/2011, from 25 September 2015 to 3 April 2016. We note that the 3.100 appeals are still pending to this date. In the case of appeal against the rejection of a subsequent application for asylum, the applicants are not provided with an asylum seekers’ card and are therefore deprived of any legal documents.

The hastened amendment introduced by Law 4399/16 further complicated the situation, as it provided for a different composition of the Appeals’ Authority Committees. A new transitional provision once again provided that, until the constitution of the new Appeal Committees, appeals submitted after the enactment of this particular law would be examined by the Appeals Committees of P.D. 114/2010.

b.3. The hasty amendment of Law 4375/2016 – Constitutionality issues before the Council of State

While in April 2016 Law 4375/16 provided for the reorganization of the Appeals' Authority, only two months later, a new amendment concerning the composition of the Appeals' Authority Committees was introduced raising unconstitutionality issues.

The "Independent Appeals Committees" are composed of two judges of the Administrative Courts, designated upon their request, by the General Commissioner of the General Commission and a member designated by the UNHCR (Article 5 par. 3 of Law 4375/2016, as amended by article 86 par. 3 of Law 4399/2016).

We note, at this point, that 18 members of the P.D. 114/10 Appeals Committees complained in a written statement that interventions had been attempted in the Appeals Committees' independence.⁷⁸ These members had initially examined and accepted asylum seekers' appeals against first instance decisions finding their asylum applications inadmissible on the grounds of Turkey being a safe country.

Furthermore, as stated in the [Campaign's on the Access to Asylum Press Release](#)⁷⁹ published in support of the relevant annulment applications submitted by the Greek organizations Group of Lawyers for the Rights of Migrants and Refugees, Greek Council for Refugees and other human rights lawyers, which are still pending before the Council of State:

⁷⁸ The Press Project, "Letter by Committee Members about the Mouzala's Amendment", 18 June 2016, (in Greek), <https://www.thepressproject.gr/article/96546/Epistoli-melon-Epitropis-Prosflugon>

⁷⁹ Campaign for the Access to Asylum, Press release in light of the Council of State's Grand Chamber hearing about the applications for annulment of the legal provisions concerning the Independent Appeals' Committees' composition and the rejection of applications for international protection on the grounds of Turkey's consideration as a safe third country, 9/3/2017, <http://asylum-campaign.blogspot.gr/2017/03/09032017.html>

“It is recalled that the Independent Appeals Committees under their present composition were provided for by an accelerated amendment to the recently at the time enacted Law 4375/2016, which "coincided" with the decisions of the Appeals Committees of Presidential Decree No.114 / 2010, the latter finding within their scope of competence, that Turkey is not a safe third country for the return of Syrian refugees and hence contradicted the opposite assumptions underpinning the EU-Turkey Statement.

The circumvention of an institution’s competence by its direct replacement was accompanied by provisions that are in clear contravention to the Constitution and by a series of irregularities that violate the basic safeguards of the international protection accessibility in Greece.”

b.4. Pending appeals due to the Appeals’ Authority non-functioning for the period of September 2015 – April 2016

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 expedition of his appeal’s examination on the grounds that: a) he is a victim of torture, as certified by the Greek NGO Metadrasi , b) he does not possess an asylum seeker card (as this card is not granted to persons filing appeals against the negative decisions of subsequent applications for international protection).

This significantly vulnerable asylum seeker does not possess an asylum seeker’s card for all this period of time. Therefore, he cannot exercise his fundamental rights and he is constantly in danger of being arrested.

b.5. Problems in the examination of cases of the Appeals Authority which were referred to the P.D. 114/2010 Appeals Committees

By our letter of 19 October 2016 to the P.D. 114/2010 Appeals' Committees' Coordinator on "Rescheduling the examination date of asylum applications' appeals", we mentioned that during the period of time of non-functioning of the Appeals' Committees under P.D. 114/2010, the Asylum Service scheduled a large number of appeals for examination in December 2016. In September and October 2016, the Appeals' Committees under P.D. 114/2010 started rescheduling the appeals' examination for earlier dates and informing the appellants just few days in advance, therefore taking them by surprise, given that there was not sufficient time for them to seek and find legal assistance within these tight timeframes. Furthermore, we also noted in the aforementioned letter that *the majority of those informed by telephone about the examination of their appeal and addressed our organization, had not understood the importance of the call, which body would examine their appeal, where they had to go and what exactly their rights and obligations were.*

A short postponement was requested and, finally, granted by the Appeals' Committees' Secretariat for such cases falling to our attention. However, we estimate that there would be many cases of appellants without similar legal support, who wouldn't manage to submit sufficient evidence substantiating their allegations.

A typical case of the problems at the first instance and second instance procedure and of the asylum seekers' unjustified suffering

Closing this report, we chose to present the case of a Kenyan asylum seeker highlighting the issues we've so far raised concerning the first instance and second instance procedures.

This person left her country of origin, Kenya, in order to avoid being subjected to female genital mutilation. She lodged an asylum application in Greece in 2015, which was rejected by the Asylum Service at first instance and by an Appeals' Authority Committee at second instance, without being invited for an interview during the examination of her appeal. She was

subsequently arrested and detained at the Elliniko Detention Center from late June 2015 until mid-November 2015 for being undocumented. We met her there during one of our on-site visits to the above detention center. She told us about her case and we advised her to express the will for a subsequent asylum application. She was then released. However, her subsequent application was rejected as inadmissible. The appeal she submitted against this negative decision in February 2016 has not yet been examined due to the expiration of the Appeals' Committees under Law 3907/2011 term⁸⁰. Given that the asylum seekers' card is not provided to asylum seekers with subsequent applications, she has been undocumented for one year and she is, therefore, deprived of the fundamental rights exercised only with the possession of an asylum seeker's card.

The rejection of her application demonstrates that, in some cases, the evaluation of the available sources is inappropriate.

While the first instance decision accepted her allegations regarding the reasons that forced her to leave her country of origin, it was then concluded that the Kenyan authorities have started to protect women from female genital mutilation.

However, according to available international reports, the practice of female genital mutilation is still widespread in Kenya. In addition, the UNHCR guidelines⁸¹ state that under no circumstances does the criminalization of this practice mean that the relevant legislation is implemented and that the practice has been completely eliminated.

Here, we would like to point out that in another similar case of a Kenyan woman that our organization handled, the Asylum Service granted her refugee status. There was, however, a significant difference: the applicant was assisted by our organization already from the stage of the application submission. Unfortunately, many asylum seekers, as noted above, do not have access

⁸⁰ see above chapter 8.b.1

⁸¹ UN High Commissioner for Refugees (UNHCR), *Guidance Note on Refugee Claims relating to Female Genital Mutilation*, May 2009, available at: <http://www.refworld.org/docid/4a0c28492.htm>,

to legal assistance.⁸² It should, also, be borne in mind that in many cases women are not aware of the importance of mentioning their genital mutilation during their application's examination. Even if they are told, however, that this is a crucial factor in their application's evaluation, they find it difficult to refer it to the authorities, as it constitutes a particularly traumatic experience and a very sensitive personal information.

Notwithstanding the above, we have noticed that asylum officers do not even pose a relevant question to asylum seekers originating from countries where the practice of genital mutilation takes place.

For all these reasons, the issues raised above, including the creation of an atmosphere of confidence and trust during the interview, the clarification of all the aspects of the applicants' story, the appropriate evaluation of the claims, the appropriate treatment of individuals requiring specific procedural safeguards and the oral procedure at second instance, are crucial to a fair and effective procedure that takes into account the serious consequences of an erroneous decision on the lives of refugees.

For the aforementioned asylum seeker's testimony, we refer to an article published in the newspaper ETHNOS.⁸³

"Without documents you do not exist. You cannot find a job, you cannot move (...) I'm in constant fear of being locked up again. When I see a police officer, I run to the opposite direction"

(...) I am a member of the Kikuyu tribe. The Mungiki organization forces the women of my race to have female circumcision. They were threatening us and we left for Mombasa (...) we are obliged (to be subjected to female circumcision). If you want to get married, to have a family, you have no choice. I was afraid. The procedure is not performed in a hospital. They can do it in the woods, anywhere, with no hygiene rules ... I decided to leave and not to come back.

⁸² see above chapter 4.b

⁸³ Ethnos Sunday, "In "limbo" 3.100 applications", 2 April 2017, (in Greek) <http://aitima.gr/images/pdf/PDFarticle2.pdf>

(...) I went to Katehaki and applied for asylum. They rejected it and they told me to find a lawyer and submit an appeal. (...) I thought I had found peace and quiet. My dream was killed on that very day."

(...) They captured me on 25/06/2015 and they let me go on 14/11/2015. I didn't know that they can detain you for so long for being undocumented. I mean, if you do something very bad, how long will you jailed? (...) The stuff for our personal hygiene was not enough for everyone, nor the food. If you are in pain, they do not have a painkiller. They take you to the hospital only if you are in coma. During the winter there was no hot water. The blankets were itching us. We were no use to them (...) In a place like that without knowing when you will get out, all the problems get bigger. And we were fighting every day (...)

(The police officers) were looking at us as if we had killed someone. We were locked up for being undocumented. Nothing more.

(...) When I see a policeman on the street, I run and hide not to get arrested. But no one gets that I would not accept being detained for so long, if I actually did not fear persecution in Kenya".

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