

**Legal Aid (Individual Legal Representation in Asylum/Refugee Context)
for Migrants, Asylum Seekers and Refugees in Greece:
Challenges and Barriers
Legal Aid Actors Task Force
January 2018**

Greece has been the second refugee population receiving country in the EU since September 2015. More than 51.000 people are stranded around Greece (according to data published by the Greek Government¹). The majority have applied for asylum while others wait for relocation or family reunification applications to be decided so that they can move on to other member states. Applicants for all processes require legal assistance: to ensure the appropriate asylum procedure is pursued, vulnerabilities are detected, deadlines met, the process is fair and that basic human needs are fulfilled, and rights are respected.

However, in reality, provision of legal aid is patchy due to numerous administrative, legislative and practical obstacles². Applicants are most often left to navigate the complicated asylum system themselves often without sufficient information, with linguistic barriers whilst facing multiple other adversities as they try to rebuild their lives in their new surroundings and realise the right to seek asylum, security, health care, education and employment. In the evolving and constantly changing Greek asylum procedures³ legal assistance is necessary not only in the process of examination of asylum claims but also to ensure respect of rights connected to basic needs. The following observations are drawn from the experience of organisations assisting asylum seekers on the ground.

Legal aid services are required particularly at the following junctures:

- **Registration of asylum seekers by the police authorities** (upon arrival on the islands of Eastern Aegean): asylum seekers should be fully informed⁴ of their rights and about the process at the earliest stage possible to ensure fair and efficient processing of their claim and ensure the early identification of vulnerabilities (e.g. torture, sexual and physical violence, mental health illnesses, minors)
- **Vulnerability assessment:** As vulnerability can be assessed at any stage of the procedure, legal aid should be available to the applicants in order to access information and get assistance in elaborating and supporting their vulnerability claim (submitting the request, medical records etc) as well as challenging possible negative previous decisions on vulnerability⁵.

¹ <https://goo.gl/vrGupP>

² DRC, Fundamental Rights and the EU Hotspot Approach, October 2017, p. 16 on the challenges of providing sufficient free legal aid services on Lesbos (https://drc.ngo/media/4051855/fundamental-rights_web.pdf), International Bar Association, The refugee crisis: Desperation on the Greek islands – ‘There are children everywhere’, 19.12.2017 (available at: <https://www.ibanet.org/Article/NewDetail.aspx?ArticleUid=645E83D0-7F4A-4585-B434-71D438538805>).

³ Kathimerini, Bid to accelerate migrant asylum applications and returns, 17.12.2017, <http://www.ekathimerini.com/224231/article/ekathimerini/news/bid-to-accelerate-migrant-asylum-applications-and-returns>

⁴ DRC, Fundamental Rights and the EU Hotspot Approach, October 2017, p. 16 on the gaps in interpretation as observed by DRC and FRA (https://drc.ngo/media/4051855/fundamental-rights_web.pdf), [Report of the fact-finding mission by Ambassador Tomáš Boček Special Representative of the Secretary General on migration and refugees to Greece and “the former Yugoslav Republic of Macedonia” 7-11 March 2016, 26.4.2016, Interpretation and psycho-social services \(report available at: <https://reliefweb.int/report/greece/report-fact-finding-mission-ambassador-tom-bo-ek-special-representative-secretary>\)](#).

⁵ DRC, Fundamental Rights and the EU Hotspot Approach, October 2017, p. 18 on the delays of vulnerability

- **Submitting applications:** Legal assistance is also required in filing various applications before the Asylum Service, including full registration, applications for the continuation of the examination of asylum claims closed under the “filing system” (interruption of the examination), applications for recognition of vulnerability, application for expediting the interview date etc⁶.
- **Asylum interview:** legal aid and representation during the first interview is essential. This is the applicants’ first and main chance to talk about their story and prove the admissibility and eligibility of their application for international protection. It is also their chance to elaborate on possible vulnerability elements that might have gone unnoticed in previous stages. Applicants need to be prepared beforehand in order to be able to articulate their claim truthfully and consistently. During the interview, a lawyer should be present in order to ensure the legality and fairness of the procedure, ask additional questions and make necessary remarks and observations, especially, when the facts of the case do not appear to be clear. Moreover, the lawyer can submit a memo and additional documents afterwards, elaborating on the claim and providing legal reasoning. Taking into consideration that that appeal procedure is, in principle, in writing and does not include an oral hearing, a complete case file and a well-represented case in the first instance could be invaluable⁷.
- **‘Dublin procedure’ application** (family reunification and take charge/back requests and re-examination/appeal): which often involves the interaction of multiple member states, complex legal provisions (without uniform interpretation by all stakeholders) and strict deadlines, and a change in state assistance (in terms of living conditions etc.) as the applicant goes through the procedure and, in the case of family reunification, the cooperation of family members, potentially their lawyers and an extra evidential burden (to prove the relationship). The immediate information provision to applicants, regarding their right to seek for family reunification under Dublin Regulation, is crucial, in order not to exceed the relevant time limits, risking the rejection of their application by other EU countries as inadmissible.
- **Appeal before the Appeals Committees:** since the procedure is, in principle, in writing, legal aid provision is required in order to submit necessary documents that will include the reasons for appealing the negative decision and the shortcomings of the procedure (memo, additional evidence, medical records etc). Although there is a state run legal aid scheme, currently it does not cover the needs, as only 23 lawyers were recruited by the Asylum Service to provide legal services to 17.633 asylum seekers who have challenged the first instance decisions⁸ since 2016⁹.
- **Application for annulment before the Administrative Appeals Court:** only lawyers have rights of audience in Greek courts therefore legal assistance is required at this stage in order to prepare the case file, represent the case and help the applicant navigate the Greek judicial

assessments and its consequences on the examination of the asylum claims (https://drc.ngo/media/4051855/fundamental-rights_web.pdf).

⁶ Law 4375/2016, Article 44 (available in English, at: <http://www.refworld.org/docid/573ad4cb4.html>). AITIMA, Asylum Seekers on Hold, Aspects of the Asylum Procedure in Greece, April 2017, p. 37 “A lack in the provision of legal information is observed both at the islands and the mainland” (available at: <http://aitima.gr/images/pdf/onholdenglishreport.pdf>) and Ombudsman’s Special Report on migration flows and refugee protection, April 2017, p. 32” Skype: a technical solution that has become part of the problem of access to asylum” (available at: https://www.synigoros.gr/resources/docs/greek_ombudsman_migrants_refugees_2017_en.pdf).

⁷ ECRE/ELENA, Legal Note on Access to Legal Aid in Europe, November 2017, page 5, <https://www.ecre.org/wp-content/uploads/2017/11/Legal-Note-2.pdf>

⁸ Ibid, page 6, footnote 35

⁹ http://asylo.gov.gr/en/wp-content/uploads/2017/12/Greek_Asylum_Service_Statistical_Data_EN.pdf

process, for the additional reason of the imposition of high legal fees. Legal aid is not always available for human rights cases such as these.

- **Detention:** personal liberty is a fundamental right and it should be ensured that detention is used as a last resort. Detainees should have access to legal aid and representation during their asylum procedure as well as to challenge the detention decision and their possible deportation/ readmission decision. Lawyers are essential to guarantee the procedural guarantees of detainees and the right to be brought before the competent authorities in due course¹⁰.
- **Civil registry acts:** there are various deficiencies in such assistance for refugees (e.g. lack of right to an interpreter). For newborn registration, legal assistance would aid the proper collection of data as required by the Birth Registration Act (e.g. names of parents and their [marital] status).
- **Social benefits:** access to health, social security, welfare allowances have been problematic without legal aid assistance. The law is poorly codified and based mainly on various Government circulars which are not clear on the relevant procedure.
- **Access to justice:**
 - **Civil courts:** asylum seekers often cannot meet the formalities to obtain civil legal aid assistance (e.g. tax declaration to show they are destitute). Legal assistance would be desirable in many cases especially guardianship, and correction of data registered in civil registry acts.
 - **Criminal courts:** Greek legislation provides for free legal aid but in practice courts will only appoint lawyers for very serious crimes (felonies). Countless others must navigate the criminal justice system alone and are sometimes also left without interpreters.
- **Right to shelter/accommodation/reception conditions and the right to legal aid assistance¹¹:**
 - The deploring reception conditions in detention centers and RICs, as well as in refugee camps, undermine the applicants' capacity to support their claims and communicate adequately with their lawyers.

RECOMMENDATIONS

To the Greek Government:

- ensure that sufficient legal aid is provided to persons of concern in all stages of the asylum procedure by the Greek state or legal aid actors appointed by the Greek state with adequate expertise and staff
- in all the stages of the asylum procedure, increase the capacity of the national free legal aid system, including the one offered by the Asylum Service, and provide further support

¹⁰ For the gaps in legal assistance and interpretation in 2016, Council of Europe, CPT, Report to the Greek Government on the visits to Greece carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 13 to 18 April and 19 to 25 July 2016, 26.9.2017, pages 17 to 19, 24 and 29 (available at: <https://rm.coe.int/pdf/168074f85d>), "Transitioning to a government run-refugee and migrant response in Greece". December 2017, p. 7 (available at: <https://drc.ngo/media/4154531/joint-ngo-roadmap-12122017.pdf>),

¹¹ Council of Europe, Parliamentary Assembly, Refugees at risk in Greece, 20.6.2016 (https://www.ecoi.net/file_upload/1226_1466498541_document-1.pdf), Human rights implications of the European response to transit migration across the Mediterranean, 12.6.2017 and 20.6.2017 (<http://assembly.coe.int/nw/xml/XRef/Xref-XML2HTML-en.asp?fileid=23777&lang=en>), DRC, Fundamental Rights and the EU Hotspot Approach, October 2017, pages 8 and 9 on poor and inadequate the reception conditions (https://drc.ngo/media/4051855/fundamental-rights_web.pdf)

- through interpretation services to respond to the needs
- simplify procedures for the appointment of lawyers before the civil, criminal and administrative Courts
- simplify the procedures for, and codify the provisions relating to, social benefits of asylum seekers and beneficiaries of international protection and provide information in native languages
- publish the Standard Operating Procedures of Asylum Service and Reception and Identification Service
- ensure interpreter services at all relevant stages before the administrative authorities and the Court
- take any necessary measure for the accommodation of asylum applicants and refugees in dignified conditions.

To the European Institutions

- Support the Greek government in guaranteeing a sustainable national free legal aid system through additional funding (funding cycles for humanitarian aid and non-governmental actors are not long term and lack security while administrative and judicial procedures can extend beyond several years), in particular taking into consideration the difficulties of proper access of asylum seekers to the state run legal aid scheme (such as the non-implementation of legal aid legislation to low income citizens in the case of refugees).

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