

# **RSA Comments on the International Protection Bill**

Provisions on the qualification and status of third-country nationals or stateless persons as beneficiaries of international protection, on a uniform status for refugees or persons eligible for subsidiary protection and on the content of protection granted, consolidation of provisions on the reception of applicants for international protection, the procedure for granting and withdrawing international protection status, restructuring of judicial protection of asylum seekers and other provisions.

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## Introduction

The Ministry of Citizen Protection published on 15 October 2019 the International Protection Bill and submitted it to public consultation until 21 October 2019.<sup>1</sup>

The Greek Government had announced on 30 September 2019 its intention to present a bill with a view to reforming asylum legislation. According to the press release, the bill would expressly aim at “restricting the framework for requesting and granting asylum”, “ending anarchy”, remedying the “unstructured Greek asylum system” and eradicating the consequences of legislation adopted by the previous government.<sup>2</sup>

However, bearing in mind at least four substantial and insufficiently evaluated reforms of asylum legislation bringing about several restrictions on procedural guarantees in asylum procedures from April 2016 to date (L 4375/2016, L 4399/2016, L 4461/2017, L 4540/2018), the of further restrictive measures appears to affirm a continuation of previous Greek migration policy. Presenting a lengthy legislative proposal without prior evaluation of the existing legal framework and of the consequences of multiple amendments in the past 3.5 years indicates, yet again, an attempt of hasty adoption of negative measures. These are liable to restrict the rights of asylum seekers and beneficiaries of international protection and to impose significant burden on administrative authorities. The bill *inter alia* reduces several provisions on asylum seekers' and status holders' rights to the minimum standards set out in EU law, despite the express power conferred on Greece to opt for more favourable standards upon transposition of EU Directives.

Against this backdrop, the Government should conduct an evaluation of the existing legal framework and an in-depth consultation on the various measures set out in the bill in order to avoid such consequences, to improve the efficiency of the asylum procedure and to fully align Greek legislation with international and EU law standards. Refugee Support Aegean (RSA) notes that a detailed analysis of the text and a meaningful contribution from stakeholders are rendered highly difficult by the extremely short deadline – below six days – for comments on the bill.

The basis and objectives of the bill lack adequate justification. According to the press release of 30 September 2019, “based on analysis of statistics on nationalities of persons arriving in the country, it is our common understanding that this is a migration, not a refugee, issue.”<sup>3</sup> A press release of the Ministry of Citizen Protection adds that “the refugee issue – of Syrians and Iraqis – has shifted to a migration issue of Afghans and

<sup>1</sup> Ministry of Citizen Protection, *International Protection Bill*, 15 October 2019, available at: <https://bit.ly/2oO9ipb>.

<sup>2</sup> General Secretariat of Information and Communication, ‘Ο Στ. Πέτσας για τις αποφάσεις του υπουργικού συμβουλίου’, 30 September 2019, available at: <https://bit.ly/2nZ9cKU>. See also Efsyn, ‘Δόγμα «βίου αβιώτου» από την κυβέρνηση για τους πρόσφυγες’, 30 September 2019, available at: <https://bit.ly/2nQkNf4>, Kathimerini, ‘Οι αλλαγές στο σύστημα ασύλου’, 1 October 2019, available at: <https://bit.ly/2o8pkJM>.

<sup>3</sup> General Secretariat of Information and Communication, ‘Ο Στ. Πέτσας για τις αποφάσεις του υπουργικού συμβουλίου’, 30 September 2019.

sub-Saharanians.”<sup>4</sup> Afghanistan is the top country of origin of asylum seekers in Greece, with 10,104 of a total of 41,643 applications lodged from January to August 2019 concerning Afghan nationals.<sup>5</sup>

The position of the Government calls into question the independence of the asylum procedure under the responsibility of a dedicated Asylum Service and the fundamental principle of individualised assessment of asylum applications. It is also unfounded given that, according to the latest available data of the Asylum Service, the first instance recognition rate for Afghan nationals was 71.9% during the first eight months of 2019.<sup>6</sup> It should be noted that first instance recognition rates for asylum seekers from Afghanistan were 95.3% in Switzerland<sup>7</sup> and 63.3% in Germany during the same period.<sup>8</sup> More specifically, the rate in Germany rose from 49.4% in August 2018 to 63.3% in August 2019. The assumption of the Government that Greece is no longer facing refugee flows is therefore not substantiated by data. On the contrary, statistics clearly demonstrate that the majority of persons entering the country in search of asylum continue to be in need of international protection.

The announcement of an increase in returns “from 1,806 in the 4.5 years of SYRIZA governance to 10,000 until the end of 2020” appears to be equally unfounded. According to official Eurostat data, Greece carried out 14,390 forcible returns of third-country nationals in 2015, 19,055 in 2016, 18,060 in 2017 and 12,465 in 2018.<sup>9</sup> As regards the EU-Turkey statement in particular, which was launched 3.5 years ago, 1,913 returns to Turkey have been implemented as of the end of September 2019.<sup>10</sup>

Due to the limitations posed by the deadline for submissions to the public consultation, this note focuses on the main RSA observations on selected provisions of the bill. A more detailed analysis of RSA’s positions, including proposed amendments, is available in Greek.

## Summary of positions on key provisions

1. **Codification of asylum legislation:** RSA welcomes the intended codification of legislation on asylum procedures, reception and qualification. The enactment of an integrated International Protection Act (IPA) presents a valuable opportunity for Greece to adjust several provisions already in force and to correctly transpose EU legislation. Accordingly, sufficient time for consultation and assessment of the bill is essential.

<sup>4</sup> Ministry of Citizen Protection, ‘Απάντηση σε Ανακοίνωση του Γραφείου Τύπου του ΣΥΡΙΖΑ’, 30 September 2019, available at: <https://bit.ly/2nW7vO7>.

<sup>5</sup> Asylum Service, *Στατιστικά Στοιχεία Υπηρεσίας Ασύλου*, 31 August 2019, 2, available at: <https://bit.ly/2nWbOJg>.

<sup>6</sup> *Ibid*, 4.

<sup>7</sup> Swiss State Secretariat for Migration (SEM), *Statistiques en matière d’asile*, 31 August 2019, available: <https://bit.ly/2j05MnE>.

<sup>8</sup> German Federal Office for Migration and Refugees (BAMF), *Aktuelle Zahlen zu Asyl*, 31 August 2019, available at: <https://bit.ly/1KoTPK6>.

<sup>9</sup> Eurostat, *Third country nationals returned following an order to leave*, migr\_eirtn, available at: <https://bit.ly/2NCAJNr>.

<sup>10</sup> Turkish Directorate General for Migration Management (DGMM), *Geri alim*, 30 September 2019, available at: <https://www.goc.gov.tr/geri-alim>.

2. **Article 67 – Special procedural guarantees:** The terms “special procedural guarantees” and “adequate protection” should be further defined in order to ensure full compliance of Greek legislation with Recital 29 and Article 24(3) of the Asylum Procedures Directive and to provide appropriate guidance to the authorities as regards their implementation in practice. Moreover, RSA recommends the reintroduction of the current provision which exempts persons in need of special procedural guarantees from accelerated and border procedures.
3. **Article 75 – Unaccompanied children:** The bill omits the transposition of Article 25(6) of the Asylum Procedures Directive relating to the exemption of unaccompanied children from accelerated and border procedures. This represents an infringement of EU law and a lowering of standards compared to current legislation, which expressly provides that claims by unaccompanied children are processed in the regular procedure.
4. **Article 61 – Victims of torture:** RSA recommends the deletion of the provision on mandatory certification of victims of torture by public health care institutions. Such a limitation on the actors responsible for issuing medical reports does not stem from the Reception Conditions Directive, nor from the Istanbul Protocol.
5. **Article 81 – Implicit withdrawal of asylum applications:** RSA recommends the deletion of the presumption of implicit withdrawal in cases where the applicant refuses to be transferred to a specific reception facility, as it contravenes the Asylum Procedures Directive.
6. **Article 83(9) – Accelerated procedure:** Several proposed grounds for applying the accelerated procedure, such as an applicant coming from a specific country of origin or a set time limit for the examination of the claim, are contrary to the Asylum Procedures Directive and should be deleted.
7. **Article 90 – Border procedure:** Full alignment of the scope of the border procedure with the Asylum Procedures Directive is necessary. Accordingly, Article 90(1) should strictly limit the possibility to conduct an in-merit examination of asylum applications in the border procedure to cases where one of the grounds of Article 31(8) of the Asylum Procedures Directive are applicable. In addition, RSA recommends deletion of the extremely short three-day deadline for appeals in the fast-track border procedure.
8. **Article 86 – Safe third country:** RSA highlights that the “safe third country” concept has been incorrectly applied to date, due to the non-transposition of Article 38(2) of the Asylum Procedures Directive on the methodology to be followed by the authorities when assessing whether the safety criteria are fulfilled in the individual circumstances of an applicant.

The proposed Article 86(2) seems to derogate from the duty to carry out an individualised assessment of the safety criteria where the applicant comes from a country included in the list of “safe third countries”, contrary to the Directive and to international law. Even where a country has been designated as generally safe, the authorities should conduct an individualised examination of

the fulfilment of the safety criteria in the circumstances of the asylum seekers. Moreover, there should be a possibility to challenge both the general designation of a country as safe and the application of the concept in an individual case.

The provision foreseeing the adoption of a list of “safe third countries” should be deleted. The adoption of such a list creates a risk of automatic application of the concept without sufficient assessment of the individual circumstances of the applicant. Moreover, the Government erroneously refers to lists of “safe third countries” as an established practice in several European countries.

In addition, several of the proposed criteria for the determination of a connection between an applicant and a third country, such as the subjective and objective possibility of contact with the authorities and geographical proximity to the country of origin, are not indicative of an individual connection. Criteria such as language affinity are insufficient *per se* or in conjunction with transit to substantiate a connection.

RSA urges the authorities to launch a consultation on the requirements for a faithful transposition of Article 38(2) of the Asylum Procedures Directive.

9. **Article 93 – Content of appeals:** RSA calls for the deletion of Article 93 on the requirement of an application stating the full grounds of the appeal for challenging a negative decision, given the persisting gaps in the effective provision of legal aid across the territory and the particularly truncated deadlines for lodging appeals in certain procedures e.g. border procedure, subsequent applications.
10. **Article 104 – Right to remain on the territory:** Automatic suspensive effect of appeals should be maintained in all procedures so as to guarantee applicants' access to an effective remedy and to avoid additional administrative burden on Appeals Committees.
11. **Article 116(3) – Composition of Appeals Committees:** RSA recalls that the selection and appointment of members of Appeals Committees, the involvement of the Ministry of Citizen Protection in the increase or decrease of the number of Committees, as well as the duration of terms of Committee members, reflect that lack of independence and impartiality of the Appeals Committees. In light of this, the Committees do not function as “quasi-judicial bodies”. Reinforcing the independence and impartiality of Appeals Committees and strengthening fair and effective remedies in the asylum procedure are essential to bolster the quality of the second instance procedure. In that respect, RSA highlights the need for an evaluation of the work of the Appeals Committees and for a substantive consultation towards the design of independent, impartial and quantitatively and qualitatively efficient Committees.
12. **Article 46 – Detention of asylum seekers:** The range of amendments to Article 46 e.g. power to place in detention persons who have applied for asylum at liberty, extension of the maximum duration of detention, abolition of *ex officio*

review, exacerbate the risk of further systematic use of detention, in dereliction of the State's duty to avoid deprivation of liberty of asylum seekers. RSA urges for return to the text of Article 46 L 4375/2016 as a minimum condition to enable Greece to comply with its obligations under the Reception Conditions Directive and the Charter of Fundamental Rights.

13. **Articles 53 and 116(14) – Access to the labour market:** RSA recommends maintaining the provision currently in force. Access to the labour market should be granted upon lodging of the asylum application. This facilitates asylum seekers' self-sufficiency and reduces prolonged dependency on the already strained and insufficient capacity of the reception system.
  
14. **Article 24 – Residence permits:** RSA recommends reintroducing the provision currently in force, which foresees three-year residence permits for beneficiaries of international protection, since the differentiation of the rights granted to the two statuses of international protection finds no objective basis and will likely create undue workload for the Asylum Service.
  
15. **Articles 113 and 114 – Immediate measures:** RSA urges for the deletion of Articles 113 and 114, through which the Ministry of Citizen Protection attempts particularly severe blanket measures to reduce the backlog of pending asylum cases and the shortages in reception centres, without introducing or examining measures to safeguard applicants for and beneficiaries of international protection from inhuman conditions or *refoulement*.



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