



## **Border procedures on the Greek islands violate asylum seekers' right to special procedural guarantees**

The fast-track border procedure as applied on the Greek Islands continues to violate safeguards that are meant to provide additional protections for vulnerable asylum seekers. RSA, PRO ASYL and MSF raise their concerns after several vulnerable asylum seekers supported by the organisations were placed in the border procedure despite being survivors of violence and the significant concerns related to their wellbeing and health.

The examination of vulnerable asylum seekers' claims within the fast-track border procedure effectively renders legal standards aimed at protecting vulnerable refugees and at ensuring a fair asylum procedure an 'empty shell'. Not only does such an examination constitute a violation of Greek and European Union (EU) law, it also risks infringing the absolute obligation to comply with the principle of *non-refoulement*. The authorities' insistence on imposing an accelerated procedure on vulnerable applicants, in particular survivors of violence and torture, significantly increases dangers of re-traumatisation and puts their fragile physical and mental health at further risk.

States' obligation to promptly identify and adequately protect asylum seekers in need of special procedural guarantees is enshrined in both Greek and EU asylum legislation. Asylum authorities are required to assess, after an application is made and at any stage of the procedure, whether asylum seekers need special procedural guarantees and tailored procedures, *inter alia* due to mental disorders or exposure to torture, rape or other forms of violence.<sup>1</sup> Authorities must offer "adequate support" to ensure vulnerable applicants the possibility to exercise their rights and comply with their obligations in the asylum process.<sup>2</sup> Beyond an explicit duty under international law to promptly identify and to prevent the return of survivors of violence and torture to countries where they may face torture and/or ill-treatment, states must avoid the re-traumatisation of those persons with any means.

The provision of adequate support is paramount to a fair asylum process. It cannot be offered in the border procedure, where truncated deadlines and restrictions on procedural safeguards apply. Following the repeal of the unequivocal exemption of vulnerable applicants from the border procedure<sup>3</sup> after the International Protection Act (IPA) came into effect at the beginning of 2020, vulnerable persons' asylum applications have been systematically channelled into the border procedure, even though the notion of adequate support is emphatically highlighted in the law. The processing of asylum applications in the border procedure is not permitted where such support cannot be offered.<sup>4</sup> Accordingly, as affirmed in Court of Justice of the European Union (CJEU) case law, the border procedure cannot be used without a prior assessment of whether or not adequate support can be offered to a particular applicant.<sup>5</sup>

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<sup>1</sup> Article 67(1) IPA; Article 24(1) and (4) Asylum Procedures Directive.

<sup>2</sup> Article 67(2) IPA; Article 24(3) and Recital 29 Asylum Procedures Directive.

<sup>3</sup> Article 60(4)(f) L 4375/2016.

<sup>4</sup> Article 67(3) IPA; Article 24(3) Asylum Procedures Directive.

<sup>5</sup> CJEU, Case C-808/18 *Commission v Hungary*, 17 December 2020, para 199.

The gravity of non-compliance of the Greek authorities with the above obligations is reflected in the case of a particularly vulnerable asylum seeker, survivor of serious and repeated violence. Despite having been recognised by the Reception and Identification Service (RIS) as a survivor of torture, rape or other form of violence, the applicant was repeatedly summoned to conduct the asylum interview within the border procedure. The authorities' indifference to his already fragile psychological state led to systematic re-traumatisation on four different occasions ending up to repeated urgent transfers from the Asylum Service offices to the hospital's emergency ward culminating to the deterioration of his mental health condition.

The Asylum Service at no point assessed whether the applicant was in need of special procedural guarantees on account of his health condition, and whether or not adequate support could be provided in his case, despite the prior submission of medical documents from the public hospital, documents attesting the person's inability to follow the demanding process of the asylum interview and recount extremely traumatic experiences, as well as documents highlighting the deterioration of his health condition stemming from the interview process. As a result, his case was not exempted from the border procedure as required by the law, even though the competent authorities were fully aware of the state of his health.

Importantly, and despite having suffered several incidents in the presence of asylum officers, the Asylum Service insisted on repeatedly serving new summons for interviews within extremely tight timeframes. On one occasion, the Asylum Service attempted to serve a notification with the applicant inside the ambulance that was called in to urgently transfer him to the hospital. The patient's mental condition has been significantly impacted as a result of these multiple traumatic events.

The persistence of the Asylum Service on conducting the asylum interview in the fast-track procedure at a time when the applicant was clearly unable to participate illustrates the complete absence of support measures for vulnerable people and carries risks for the asylum seekers' health.

An illustrative example of the deficiencies in the coordination between the different branches of the administration<sup>6</sup> is that, even though the applicant had been recognised as vulnerable by the RIS several months prior to the interview summons, the Asylum Service was never informed of the aforementioned recognition. In addition, contrary to the legal obligation of the RIS to lift geographical restrictions for vulnerable persons who cannot receive adequate support on the Eastern Aegean islands,<sup>7</sup> a decision lifting the person's geographical restriction was issued a year after the recognition of his vulnerability. The decision was issued after his asylum application had been subjected to an inappropriate and harmful process within the border procedure. Yet, this in no way relieves the Asylum Service of its duty to examine *ex officio* at any point of the process whether the use of the procedure is compatible with the special procedural needs of the asylum seekers.

RSA, PRO ASYL and MSF call on Greek and EU authorities to refrain from applying border procedures. They do not ensure a fair examination of an applicant's need for international protection. Applications made at the border should be processed in a regular procedure with the range of procedural guarantees required under national, European and international law.

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<sup>6</sup> Notably due to the lack of coordinated access to the "Alkyoni" asylum database: Refugee Support Aegean et al., *The workings of the Screening Regulation: Juxtaposing proposed EU rules with the Greek reception and identification procedure*, January 2021, 23-24, available at: <https://bit.ly/36ix4HQ>.

<sup>7</sup> Article 2(d) Ministry of Citizen Protection Decision 1140/2019, Gov. Gazette B' 4736/20.12.2019.

Greek authorities should stop violating asylum seekers' rights to special procedural guarantees and take the necessary measures in compliance with Greek and EU law in the asylum procedure, in particular by:

1. Implementing appropriate procedures which comply with the treatment of vulnerable persons and do not endanger their health;
2. Immediately lifting the geographical restriction in the case of vulnerable applicants, who cannot access adequate support on the Eastern Aegean islands;
3. Immediately notifying RIS decisions recognising applicants as vulnerable to the Asylum Service, with a view to immediate referral of their applications to the regular procedure;
4. Ensuring that the 'do no harm principle' applies to all asylum procedures and promptly taking measures to avoid risks of re-traumatisation, for all applicants and especially for survivors of torture, ill treatment and other serious forms of violence