

SEPTEMBER  
2022

# THE STATE OF THE BORDER PROCEDURE ON THE GREEK ISLANDS

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## Executive summary

The “fast-track border procedure” on the Greek islands of Lesbos, Chios, Samos, Leros and Kos, initially framed as a derogation from standard procedural rules reserved for exceptional circumstances of “mass arrivals” and set up with a view to implementing the EU-Turkey Statement, ran uninterrupted from spring 2016 to the end of 2021. It has accounted for almost half of the country’s asylum caseload, far above any country applying border procedures in the EU.

This report examines the workings of border procedures implemented on the Greek islands over the past year (June 2021 – June 2022), revealing new concerns tied to poor quality of asylum procedures and to breaches of fundamental rights. These add to an abundant body of international criticism of the Greek asylum system and merit close scrutiny, not least in the context of ongoing EU-level negotiations on the reform of the Common European Asylum System.

Border procedures may normally only be applied to asylum claims made at the borders and in transit zones. The termination of the “fast-track border procedure” at the end of 2021 means that from 2022 onwards only the regular border procedure is applicable at borders and in transit zones, and no longer in Reception and Identification Centres (RIC). Although, technically the stricter “fast-track border procedure” time frames for the conclusion of the examination of applications for international protection, provided by law, stopped being applicable as of January 2022, in most cases the authorities did not comply with these provisions anyway. At the same time, deadlines for asylum seekers did not change even under regular border procedure, in comparison to the fast-track procedure previously applied. Therefore, during the period examined in the present report, for most cases processed under the border procedure over the past year, the average time between arrival and registration of the asylum application has been 10-15 days, while a considerable number of claims have been registered in approximately a week or less after arrival, especially on Lesbos. Registrations seemed to take longer on Chios. In most cases, summons for interviews were delivered to the applicants on the day of registration, while the length of time between the summons and interview taking place ranged from 5-10 days. However, in several cases applicants were invited to have their interviews only a day after being summoned. First instance decisions have generally been issued by the Asylum Service within the time frame of 7 days provided by the Asylum Code for the fast-track border procedure.

Severe delays persist when it comes to conducting vulnerability assessments even after the reception and identification procedure formally ends: The time delay ranges from ten days to longer than three months in some cases. Yet, the Asylum Service and EUAA continue to process asylum claims before individuals have undergone a vulnerability assessment, and routinely disregard or deny special procedural guarantees afforded by EU law, even where they are specifically requested by the applicants in writing and/or orally prior to the interview. They instead insist on completing the interview under the border procedure. The medical cards issued to people undergoing reception and identification procedure do not clearly indicate whether and when a vulnerability assessment was conducted.

In June 2021, the safe third country concept became the rule throughout the Greek territory for all asylum seekers originating from Syria, Afghanistan, Somalia, Pakistan and Bangladesh, after the issuance of a Joint Ministerial Decision (JMD) setting out a “national list of safe third countries” including Turkey. The list provides no reasoning as to why and on the basis of which information Turkey was designated a safe third country for the five nationalities. Instead, it refers to an unpublished “Opinion” of the Head of the Asylum Service. Given that Turkey has unilaterally suspended the Greece-

Turkey Bilateral Protocol since 2018 and has not accepted any readmissions from Greece under the EU-Turkey deal since March 2020 and return operations have ceased, asylum seekers rejected on safe third country grounds are left in a legal limbo. In fact, the Greek authorities have stopped sending requests for readmission of asylum seekers to Turkey altogether. Nevertheless, even in the cases where asylum seekers specifically request an examination of their case based on its merits in line with EU law, this is disregarded.

Subsequent applications lodged after a rejection of the initial claim based on the safe third country concept have been rejected on the grounds that they lack new elements, even in cases where the lack of prospect of readmission to Turkey was explicitly invoked. The authorities have deemed this argument does not constitute *per se* a new element that could render the subsequent application admissible and restart the asylum procedure. Furthermore, the Asylum Service breaches EU law by dismissing subsequent applications as inadmissible on the grounds that they lack new and substantial elements, even though it is not provided by the law that in this case they can assess the merits of those submitted elements. In other cases, asylum authorities dismiss elements relating to the applicants' state of health and/or exposure to torture or violence in the country of origin as falling short of the "new substantial elements" threshold. As of September 2021, asylum seekers are obliged to pay a fee of 100 € per person, in order to make a second and further subsequent application, a measure that has received criticism at national and EU level and has been challenged before the Greek Council of State.

COVID-19 prevention measures have had a particular impact on asylum seekers on the islands. Quarantine policy on the islands has raised issues of compliance with national and EU law. Whereas people arriving in Greece expressed their intention to apply for asylum, no registration document was issued to them within the timeframes set out in EU law. Asylum seekers have been confined in quarantine facilities for periods of 14 days or more. In addition, 5,000 € fines have been issued by the Chios Coast Guard to asylum seekers for entering the country in contravention of COVID-19 protocols. Domestic courts have suspended the fines in some cases, but in others they have maintained them.

Immigration detention has mainly been applied on Kos which implemented a policy of automatic detention of all asylum seekers upon arrival from January 2020 to August 2021. From September 2021, the practice of automatic detention upon arrival stopped and instead the people who arrived were placed in the RIC and underwent reception and identification procedures, after the end of their quarantine. Pre-removal detention continues to be imposed to asylum seekers arriving on Kos with a view to carrying out readmission procedures to Turkey, even though there is a clear lack of prospects they will be returned thereto.

Overall, this report highlights that core aspects of the asylum procedures in Greece fall short of ensuring that asylum seekers access their rights under EU and domestic law. In order to address these issues and drawing on the above findings, the Danish Refugee Council (DRC), Equal Rights Beyond Borders, HIAS Greece, Refugee Support Aegean (RSA) and PRO ASYL put forward the following recommendations:

#### **Ministry of Migration and Asylum**

- ❖ Repeal Article 94(10) of the Asylum Code and JMD 472687/2021 on the fee for subsequent applications;
- ❖ Repeal JMD 42799/2021 on the national list of safe third countries and phase out the application of the safe third country concept;

### **Reception and Identification Service**

- ❖ Ensure that the details of asylum seekers, including date of arrival, are correctly and accurately recorded in asylum application lodging forms;
- ❖ Ensure that medical and vulnerability assessments are completed prior to the referral of the case to the asylum authorities;
- ❖ Clearly indicate whether medical and vulnerability assessments have been concluded or are pending when issuing referrals of cases to the Asylum Service;
- ❖ Clearly indicate the date of vulnerability assessments in the Foreigner's Medical Card or other documentation;
- ❖ Clarify the legal status of people subject to COVID-19 quarantine and observe the requirements of necessity, proportionality and procedural safeguards attached to deprivation of liberty;

### **Asylum Service & Appeals Authority**

- ❖ Cease the use of the border procedure to asylum seekers applying for international protection in reception and identification centres, given that they fall outside the scope of Article 43(1) of the Asylum Procedures Directive;
- ❖ Exempt from the border procedure all cases that should not be examined on the grounds of admissibility and do not meet any of the criteria of Article 31(8) of the Asylum Procedures Directive;
- ❖ Ensure that asylum interviews are not conducted before medical and vulnerability assessments have been concluded in reception and identification procedures;
- ❖ Provide special procedural guarantees under Article 24 of the Asylum Procedures Directive *ex officio* and upon request, and exempt from the border procedure asylum seekers in need thereof e.g. survivors of torture, rape or other serious forms of psychological, physical or sexual violence, since they cannot benefit from adequate support in truncated procedures;
- ❖ Cease the use of the safe third country concept vis-à-vis Turkey given that it does not comply with Article 38(4) of the Asylum Procedures Directive;
- ❖ Publish the Opinion of the Director of the Asylum Service on the designation of Turkey, Albania and North Macedonia as safe third countries;
- ❖ Refrain from classifying applications made after the rejection of the initial claim based on the safe third country concept as "subsequent applications" and refrain from applying a preliminary admissibility assessment on new elements;
- ❖ Ensure that the preliminary admissibility assessment of subsequent applications is limited to the establishment of new substantial elements and that the merits of those elements are not examined at that stage;

### **Hellenic Police**

- ❖ Refrain from issuing pre-removal detention orders to asylum seekers, including people who have made an asylum application and are awaiting registration;
- ❖ Cease ordering detention of asylum seekers with a view to removal to Turkey, given the applicability of Article 15(4) of the Return Directive;

### **European Commission (DG HOME)**

- ❖ Urgently launch infringement proceedings against Greece regarding incorrect transposition and implementation of the Asylum Procedures Directive, the Reception Conditions Directive and the Return Directive, stemming *inter alia* from the requirement of fees for subsequent applications, the arbitrary application of the safe third country concept, and refusal to afford special procedural guarantees in border procedures
- ❖ Provide detailed, publicly accessible information on the procedures through which the Task Force Migration Management addresses issues of non-compliance in transposition and implementation of the EU asylum *acquis*, and on follow up measures taken with the Greek authorities where non-compliance

persists e.g. on the safe third country concept or fees for subsequent applications;

- ❖ Thoroughly assess all elements raised in complaints on violations of the EU asylum *acquis* by Greece and provide adequate reasoning where the Commission decides not to pursue infringement proceedings.