

The asylum procedure in figures: most asylum seekers continue to qualify for international protection in 2021

This Refugee Support Aegean (RSA) policy note analyses the main trends and developments in the Greek asylum procedure through statistics provided by national authorities in response to parliamentary questions¹ and in monthly reports of the Ministry of Migration and Asylum.² It formulates observations and recommendations for filling existing gaps in the quality of data published by the administration.

Key figures

Asylum applications

- ❖ Out of a total of 28,360 applicants lodging asylum claims in Greece, 43% were registered in Attica and only 22% on the Eastern Aegean islands.
- ❖ The number of subsequent applications was 5,802, more than double the number registered in 2020. One in five claims was a subsequent application.

First-instance procedure

- ❖ The (in-merit) recognition rate at first instance remains at 60%, similar to 2020 levels.
- ❖ Inadmissibility decisions (12,332) exceeded rejections on the merits (10,991) at first instance.
- ❖ The national list of safe third countries laid down in JMD 42799/2021 directly resulted in a sharp increase in inadmissibility decisions based on the "safe third country" concept, from 2,839 in 2020 to 6,424 in 2021. Of those, 5,922 (92%) were issued under JMD 42799/2021. The overwhelming majority concern the mainland, as only 979 such decisions were taken in the border procedure.
- ❖ The Asylum Service issued almost 30,000 formal decision at first instance, i.e. suspensions, withdrawals of applications and terminations.
- ❖ The first-instance recognition rate in the border procedure of Article 90(3) IPA reached 68.6%. 1,569 applications were exempted from the procedure and referred to the regular procedure on grounds of vulnerability.

Appeals

- ❖ A total of 17,470 appeals were lodged with the Appeals Committees. Only in 11,045 (63%) cases, however, did appellants request legal aid.
- ❖ The overall second-instance recognition rate at the Appeals Committee level doubled from 5.2% in 2020 to 10.6% in 2021.

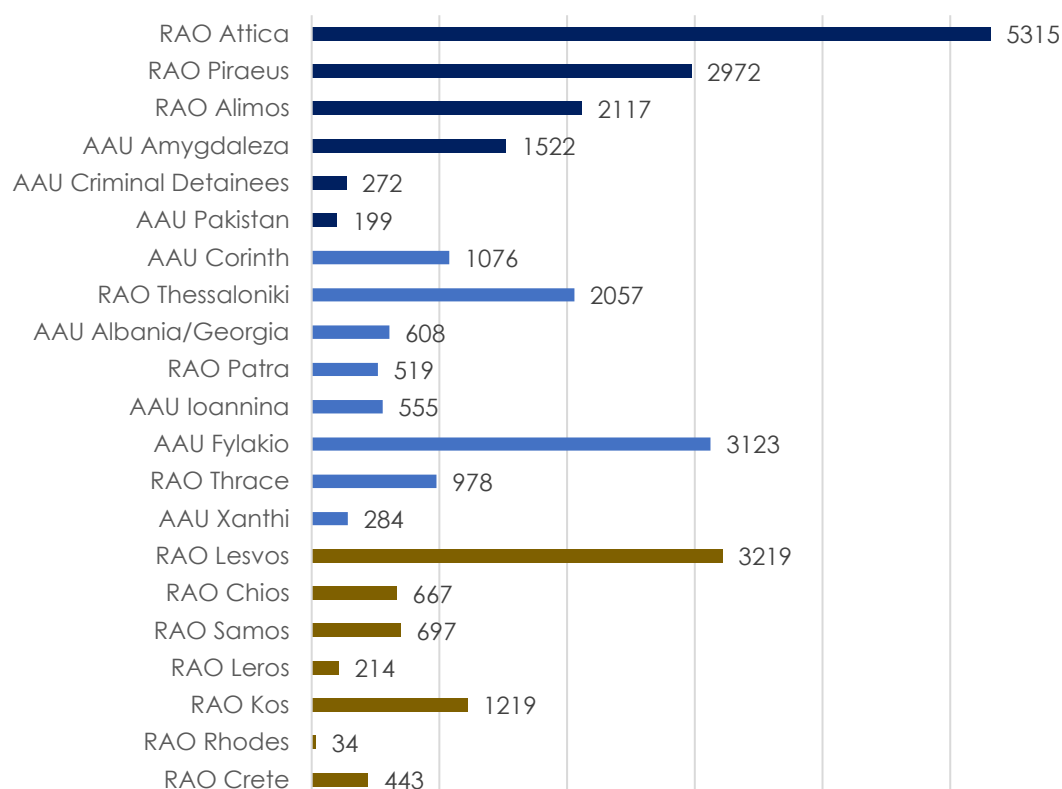
¹ Ministry of Migration and Asylum, Reply to parliamentary question by KINAL, 97157/2022, 17 February 2022, available at: <https://bit.ly/3HiYIsF>.

² Ministry of Migration and Asylum, Reports, available at: <https://bit.ly/3HJyKhY>.

Registration of asylum applicants

The Asylum Service registered a total of 28,360 asylum seekers in the previous year. The number of pre-registrations of asylum applications was no higher than 18,944. Most of those were carried out by the Hellenic Police (8,305), followed by the Reception and Identification Service (5,817). Only 4,822 were pre-registered by the Asylum Service through the Skype platform which no longer serves as a channel to access to the asylum procedure for new applicants as of November 2021.³

Registration of asylum applicants by RAO/AAU: 2021



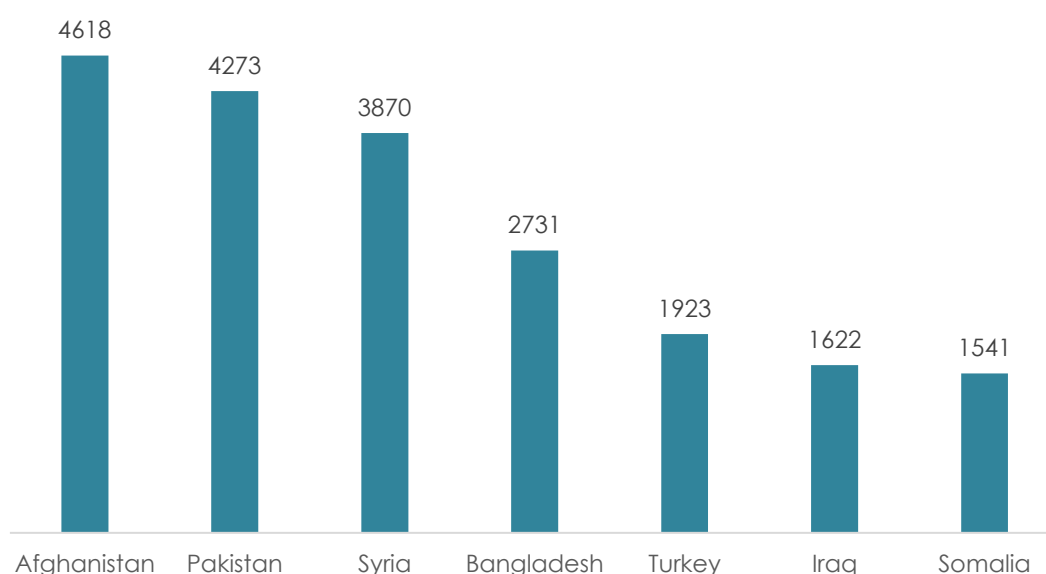
43% of the total number of asylum applicants (12,397) lodged applications in Attica.

An important shift occurred in the Eastern Aegean, as only 22% of the total number of claims (6,320) were lodged on the islands. Lesvos accounted for most new applicants (3,219), followed by Kos (1,219), Samos (967) and Chios (667). 3,123 asylum seekers were registered in Fylakio, Evros.

The main nationalities of asylum seekers lodging applications in 2021 were as follows:

³ Efsyn, 'Μόνο σε νησιά και Έβρο τα νέα αιτήματα ασύλου', 24 November 2021, available at: <https://bit.ly/3HqcnOM>.

Main nationalities of asylum seekers: 2021



Under JMD 42799/2021 adopted in June 2021, Greece designates Turkey as a “safe third country” for all asylum seekers originating from Afghanistan, Syria, Somalia, Pakistan and Bangladesh.⁴ This covers three out of five people seeking international protection last year.

The implementation of the “safe third country” concept is analysed below. Nevertheless, the administration’s insistence on arbitrary application of the concept has had wider repercussions, given that **one in five asylum applications registered last year was a subsequent application**. A total of **5,802 subsequent applications were lodged, more than double the number lodged in 2020** (2,700).

First-instance procedure

The Asylum Service took 16,588 positive decisions on asylum applications last year. The majority of those, 13,051 (78.7%), granted refugee status, while 3,537 (21.3%) granted subsidiary protection mostly to nationals of Afghanistan. For instance, 709 of the 1,015 subsidiary protection decisions issued in the border procedure (69.9%) concerned Afghan applicants.

10,991 applications were rejected on the merits, of which 5,852 in the accelerated procedure and 26 on exclusion grounds. Crucially, first-instance inadmissibility decisions (12,332) – without an assessment of the merits – exceeded rejections on the merits (10,991) in 2021. The majority of inadmissibility decisions (6,424) were issued based on the “safe third country” concept.

As previously highlighted by RSA, recognition rates should be calculated on the basis of decisions on the merits. Otherwise, decisions finding that the applicant does not qualify for international protection are conflated with inadmissibility decisions which do

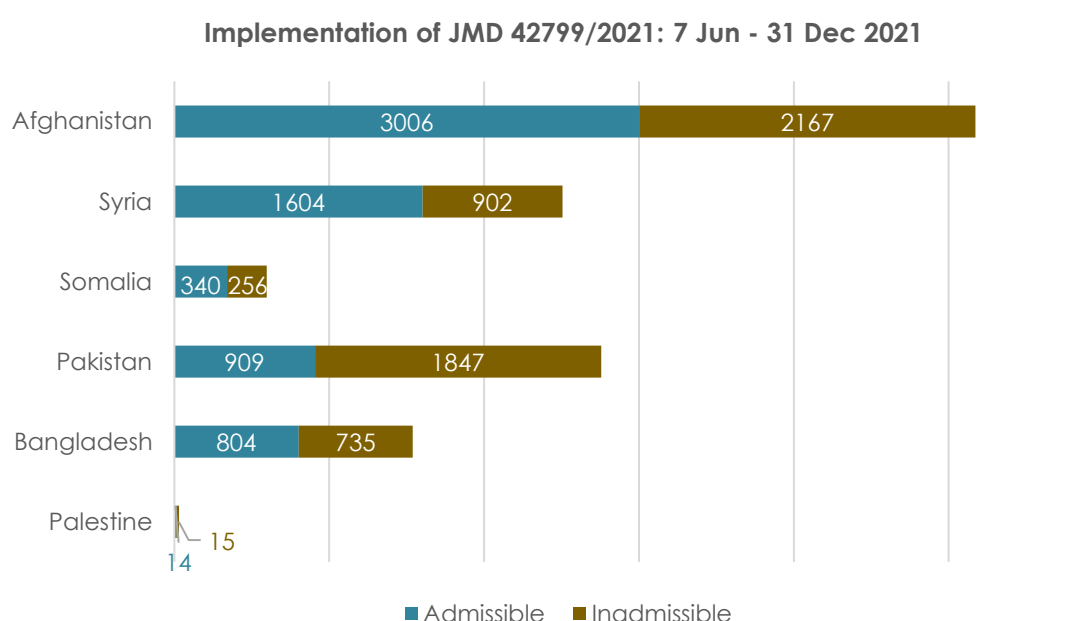
⁴ RSA, ‘6 Questions & Answers on the unlawful Greek “safe third country” list’, 8 September 2021, available at: <https://bit.ly/3sluCur>.

not assess qualification for international protection.⁵ Based on the above figures, **the overall recognition rate at first instance remains at 60%. This demonstrates that the majority of applications assessed on the merits by the administration are well-founded.**

“Safe third country” as an inadmissibility ground

The number of dismissals of asylum applications as inadmissible based on the “safe third country” concept has starkly increased as a direct result of the enactment of a national safe third country list. Accordingly, whereas the in-merit recognition rate remains at the level of the year before (60%),⁶ the number of “safe third country” decisions skyrocketed from 2,839 in 2020 to 6,424 in 2021.

Out of a total of 6,424 inadmissibility decisions based on the concept, 5,922 (92%) were issued in application of JMD 42799/2021. The number of asylum claims deemed admissible based on the JMD was 6,677.



The systematic application of the “safe third country” concept remains arbitrary and contrary to international and EU law. This is namely due to the manifest lack of prospects of readmission to Turkey in light of the suspension of the Greece-Turkey Bilateral Readmission Protocol since 2018 and the suspension of readmissions under the EU-Turkey Statement since March 2020.⁷ It is worth highlighting that the overwhelming majority of “safe third country” decisions (85%) concern the mainland, as only 979 out of 6,424 were taken in the border procedure on the Eastern Aegean islands.

The above practice is inextricably linked to an over 100% increase in subsequent applications on 2020, as described above. The number of subsequent applications

⁵ RSA, Στατιστικά στοιχεία για μία πληρέστερη εικόνα του ασύλου, June 2020, available at: <https://bit.ly/3t4vSHn>.

⁶ RSA, ‘Asylum statistics for 2020 A need for regular and transparent official information’, 11 February 2021, available at: <https://bit.ly/3tz24mv>.

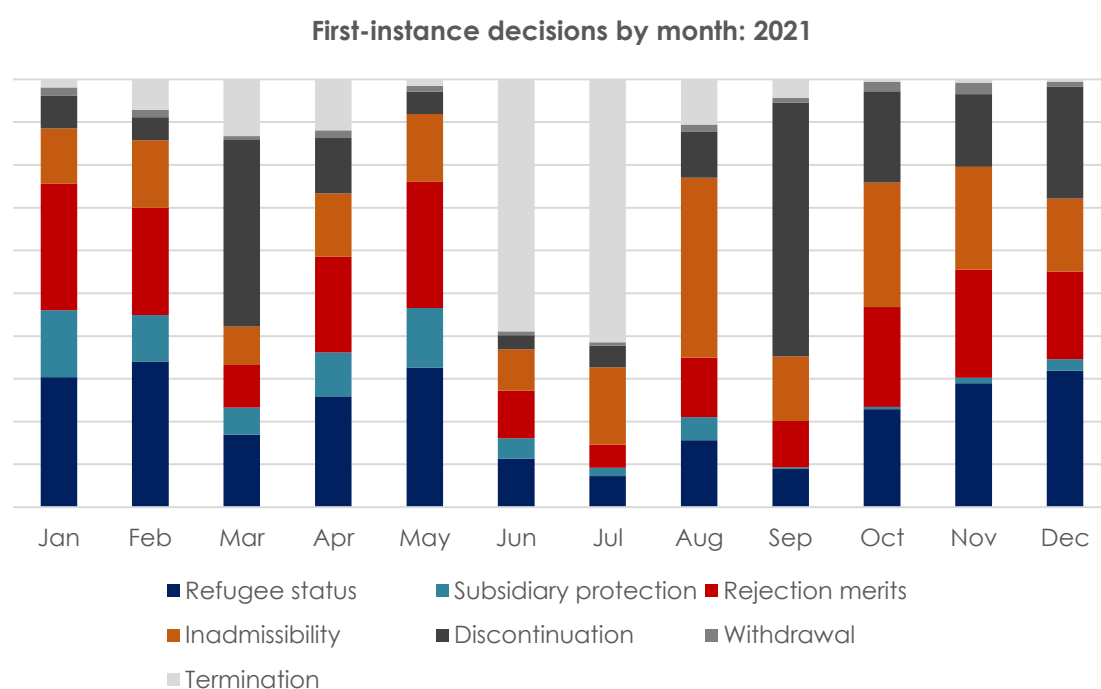
⁷ RSA & PRO ASYL, *Greece arbitrarily deems Turkey a “safe third country” in flagrant violation of rights*, February 2022, available at: <https://bit.ly/3IK9hX3>.

lodged following the dismissal of the initial claim based on the “safe third country” concept. However, the number of subsequent claims lodged after the dismissal of the initial claim based on JMD 42799/2021 had reached 80 by the end of 2021.

Formal decisions

The Asylum Service issued almost 30,000 “formal decisions” in 2021, i.e. decisions suspending the examination of the application (14,075), withdrawals of asylum applications (918) and terminations of cases (14,879). The sharp rise in such decisions at particular points in time is notable. As many as 3,398 suspensions were issued in March, 6,168 in September and 1,298 in December, while 5,574 terminations were issued in June and 7,445 in July.

In light of these trends, the majority of decisions taken by the Asylum Service in March, June, July and September 2021 were “formal decisions” with no bearing on the admissibility or the merits of asylum applications:



Fast-track border procedure

Greece maintained the use of the fast-track border procedure under the derogation provisions of Article 90(3) IPA throughout 2021.⁸ 6,050 new applicants were channelled into the procedure in 2021. The Asylum Service issued a total of 6,945 inadmissibility and in-merit decisions:

⁸ JMD 15596/2020, Gov. Gazette B' 5948/31.12.2020.

Implementation of the fast-track border procedure: 2021					
	Refugee status	Subsidiary protection	In-merit rejection	Safe third country	Inadmissible subsequent
Afghanistan	796	709	309	75	310
Syria	238	0	1	751	67
Somalia	418	190	255	140	34
DRC	133	37	411	-	115
Iraq	131	19	109	-	52
Palestine	193	8	1	6	1
Others	378	52	425	7	210
Total	2,287	1,015	1,511	979	789

The first-instance recognition rate in the fast-track border procedure rose to 68.6%, i.e. higher compared to the mainland.

1,569 asylum applications were exempted from the fast-track border procedure and referred to the regular procedure for reasons of vulnerability and inability to access adequate support, pursuant to Article 67(3) IPA. The majority of those concerned nationals of Syria (525), Afghanistan (453) and DRC (227).

Second-instance procedure

A total of 17,470 appeals were lodged against Asylum Service decisions throughout 2021. Of those, 12,346 were lodged on the mainland (71%) and 5,124 on the islands (29%). The Ministry of Migration and Asylum states that **legal aid was requested by 11,045 persons, i.e. only 63% of appellants**. All legal aid requests were met.

Appeals Committees took 730 refugee status decisions, 1,131 subsidiary protection decisions and 15,644 negative decisions on admissibility or merits. Based on these figures, **the rate of positive decisions at second instance doubled from 5.2% in 2020 to 10.6% in 2021**. Importantly, the only time a higher rate of positive decisions was recorded since the reform of the composition of the Appeals Committees under L 4399/2016 was 2019 (12.1%). This, however, included referrals for humanitarian protection, an option repealed by L 4686/2020.

As regards the type of international protection granted, however, **Appeals Committees did not follow the same trend as the Asylum Service, as they granted subsidiary protection (1,131) more often than refugee status (730)**.

In relation to the "safe third country" concept, Ministry of Migration and Asylum data refer to 314 Appeals Committee decisions which applied Article 86(5) IPA on the assessment of the application on the merits due to a refusal of the third country to admit the applicant on its territory.

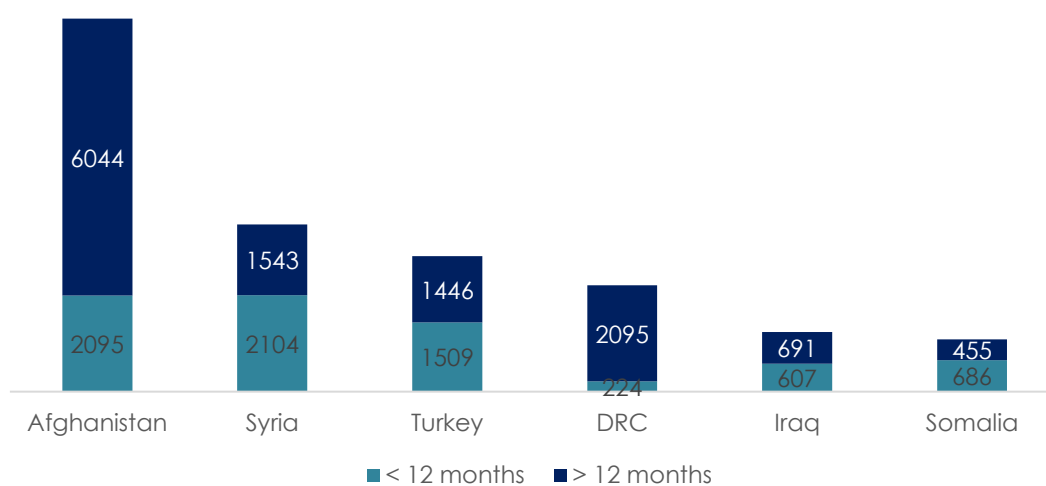
Finally, Appeals Committees applied Article 97(2) IPA in 532 cases in 2021, meaning that they dismissed appeals due to failure on the part of the appellant to appear in person or to submit a valid residence certificate in line with Article 78(3) IPA.

Pending applications

The total number of cases pending at the end of 2021 was 40,114. Of those, 3,069 were claims pending lodging, 31,787 were pending at first instance and 5,258 at second instance.

Out of 31,787 cases pending at first instance, 18,463 were pending for over a year and 13,324 for less than one year:

Main nationalities of pending applications: 31 Dec 2021



In 14,390 of those, the personal interview had not yet taken place at the end of 2021:

Schedule of pending interviews at first instance: 31 Dec 2021				
	Within 2022	Within 2023	2024 or later	Total
Afghanistan	1,294	273	1	1,568
Syria	1,278	313	8	1,599
Turkey	1,135	411	415	1,961
DRC	645	575	109	1,329
Iraq	426	12	0	438
Somalia	369	156	69	594
Others	5,221	1,571	109	6,901
Total	10,368	3,311	711	14,390

The above statistics indicate a significant decrease⁹ in pending interviews from 26,599 on 30 June 2021 to 14,390 on 31 December 2021. Specifically, the number of interviews scheduled for 2023 or later dropped from 6,156 to 4,022. Yet, it is crucial to note that many of the interviews conducted throughout the country after the enactment of JMD 42799/2021 solely concerned the admissibility of asylum applications. Persons whose

⁹ RSA, 'The Greek asylum in the first half of 2021: The asylum procedure in numbers', 30 August 2021, available at: <https://bit.ly/3Mprplg>.

claims are deemed admissible are likely to be called for a new interview for the assessment of the merits of their case.

Gaps in quality of asylum statistics

Inconsistencies between national and Eurostat data

- **Accelerated procedure:** According to the figures submitted by Greece to Eurostat (migr_asyaccm), the number of applications channelled into the accelerated procedure pursuant to Article 31(8) of the Asylum Procedures Directive remains zero. However, the Asylum Service regularly applies the accelerated procedure to processes the cases falling within the national list of "safe countries of origin".¹⁰ According to official figures of the Ministry of Migration and Asylum, 5,852 applications were rejected in the accelerated procedure last year, of which 114 in the framework of the fast-track border procedure.
- **Withdrawals of international protection:** In a written reply to RSA on 10 January 2022, the Databases & Statistics Analysis Unit of the Ministry of Migration and Asylum noted that figures on withdrawals for the first three quarters of 2021 have been supplied to Eurostat. However, the number of withdrawals of international protection on Eurostat remains zero, even though the Asylum Service has issued withdrawal decisions in practice. According to the data shared by the Ministry in response to parliamentary questions, 19 such decisions were taken in 2021.

Deficient presentation of judicial review data in monthly report

The way in which Ministry of Migration and Asylum monthly reports present data on judicial review of asylum decisions by administrative courts raises several concerns:

- **Incorrect presentation of pending cases and decisions by year:** According to good statistical practice and to Eurostat technical guidelines,¹¹ stock statistics refer to decisions issued during a reference period e.g. year, regardless of the time of submission of an application. For example, a decision issued in 2021 on a judicial review application lodged in 2019 should be reported in 2021 statistics, not in 2019 statistics. Otherwise, any effort of state authorities to collect official and accurate statistics even on an annual basis would prove impossible, since the data would have to be constantly revised.

In light of this, the monthly reports of the Ministry make errors in the presentation the data on pending and issued judicial review decisions of administrative courts. For example, the number of positive decisions on judicial review applications in 2020 is reported at 2 in the March 2021 report and at 3 in the December 2021 report. Both versions are incorrect, since at least 8 positive

¹⁰ JMD 78391/2022, Gov. Gazette B' 667/15.02.2022. The list currently covers 17 countries.

¹¹ Eurostat, *Technical guidelines for the data collection under Art 4.1-4.3 of Regulation 862/2007 – Statistics on asylum*, December 2020, available at: <https://bit.ly/3trbjFc>.

decisions have been issued in 2020.¹² Furthermore, the latest annual report of the Ministry refers to zero positive decisions in judicial review cases in 2021. However, at least four positive decisions have been made public.¹³

- **Unjustified contradictions between Ministry reports:** Even in the event the above statistical practice is followed, there are serious inconsistencies in the data covering the same reference period (2016-2020) between the March 2021 and the December 2021 reports. The former refers to 132 negative decisions and withdrawals; these are wrongly conflated, as explained below. In the latter, however, the number of negative decisions and withdrawals almost doubles to 235, whereas pending cases are only reduced by 10.
- **Conflating rejections and withdrawals:** Whereas the December 2020 report refers to 109 negative decisions on judicial review applications, the March 2021 and December 2021 monthly reports conflate negative decisions with withdrawals of judicial review applications, without motivation. Neither Eurostat nor the Ministry follow this bad practice as regards asylum statistics at first instance.

Recommendations

Regular parliamentary requests for asylum statistics are promptly and adequately responded to by the administration. They nevertheless point to a need to restore transparent and regular information on the implementation of Greek asylum policy, constantly voiced by MPs and civil society. In this respect, RSA sets out the following recommendations for enhancing the quality of statistics released on a monthly basis by the Ministry of Migration and Asylum:

1. Rejections on the merits should be distinguished from inadmissibility decisions. Inadmissibility decisions should be disaggregated by ground, i.e. “safe third country”, Dublin, subsequent application, protection in another Member State etc.
2. Decisions at first and second instance should be disaggregated by country of origin.
3. Statistics submitted to Eurostat on the accelerated procedure should mirror the data of the Ministry.
4. Statistics submitted to Eurostat on withdrawals of international protection should mirror the data of the Ministry.

¹² Administrative Court of Appeal of Athens, 215/2020; 1726/2020; Administrative Court of Appeal of Piraeus, A106/2020; A237/2020; A252/2020; Administrative Court of Appeal of Komotini, A111/2020; Administrative Court of Thessaloniki, 244/2020; AΔ300/2020.

¹³ Administrative Court of Appeal of Piraeus, A25/2021; A54/2021; A94/2021; A146/2021. See further GCR, HIAS & RSA, *Greek Asylum Case Law Report*, 1/2021, December 2021, available at: <https://bit.ly/3lfHcGW>.

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5. Judicial review statistics should follow established statistical practice. Decisions should be recorded by year of decision, regardless of the year of submission of the application.
 6. Negative court decisions on judicial review should be distinguished from withdrawals of judicial review applications.
 7. Dissemination of statistics on the application of the Dublin Regulation should be restored.



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