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Note on legal changes proposed by the Greek Government on 19 April 2018 to Greece's reception and asylum system

On 19 April 2018, the Greek Government tabled a bill at the Greek Parliament that aims to transpose the Reception Conditions Directive (2013/33/EU) into Greek law and makes amendments to existing asylum procedures.[1]

This note provides Amnesty International's initial analysis of some of the proposed articles with respect to their impact on the human rights of asylum-seekers.

Freedom of movement

Article 7 of the proposal allows Greek authorities to restrict the freedom of movement of international protection applicants to a specific part of the Greek territory through a regulatory decision of the director of the Greek Asylum Service (Article 7(1)). Proposed Article 7(1) provides that a restriction of movement within a specified area shall not impact private life and prevent access to the rights provided otherwise within the law. Article 7(2) allows for the restriction of freedom of movement when it is "necessary for the prompt processing and effective monitoring of applications for international protection."

Amnesty International opposes blanket restrictions on freedom of movement of asylum-seekers within a specified area of the territory of the state where they seek international protection, as in practice such restrictions have hindered asylum-seekers' access to other rights and entitlements as in the case of those stranded on the Greek islands.[2]

Additionally, proposed article does not meet requirements of international law as it lacks clarity on safeguards against arbitrary infringement of freedom of movement of asylum-

[1] Proposed amendments can be found on the Greek Parliament website at https://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/10681819.pdf.

[2] See for example, Amnesty International, *A blueprint for despair: human rights impact of the EU-Turkey deal,* 14 February 2017. Also see, Amnesty International, *Fear and fences: Europe's approach to keeping refugees at bay,* 17 November 2015 for impact of Spain's containment of asylum-seekers in the two Spanish enclaves of Ceuta and Melilla.

seekers. Specifically:

Article 12 (1) of the International Covenant on Civil and Political Rights (ICCPR) states that "everyone lawfully within the territory of a State shall, within that territory, have the right to liberty of movement and freedom to choose his residence." According to the UN Human Rights Committee "an alien who entered the State illegally, but whose status has been regularized, must be considered to be lawfully within the territory for the purposes of article 12."[3]

Article 26 of the 1951 Refugee Convention also obliges contracting states to provide refugees lawfully present in their territory the right to freedom of movement and to choose their place of residence. Due to the declaratory nature of the refugee status, individuals seeking asylum are considered to be "lawfully" present in the territory even if they have entered it irregularly, once they regularize their status by applying for international protection.

There may be situations in which states may lawfully infringe upon freedom of movement. However, any restrictions on this right must be prescribed by law and be subject to safeguards. Article 12 (3) of ICCPR only allows for restrictions where this is "necessary to protect national security, public order, public health or morals or the rights and freedoms of others." The UN Human Rights Committee held that restrictions on freedom of movement "must be based on clear legal grounds and meet the test of necessity and the requirements of proportionality," in any individual case.[4] The Office of the UN High Commissioner for Human Rights has said that: "Restrictions and other quotas on where such non-citizens can settle in a State—especially those restrictions and quotas that might involve an element of compulsion—may violate their right to liberty of movement."[5]

Regardless of whether "prompt processing and effective monitoring of applications for international protection" would fall under one of the permissible grounds listed in ICCPR 12(3), the director of the Greek Asylum Service must establish that the restriction on the freedom of movement does not only serve this purpose; but that it must also be necessary to it.[6] Furthermore, this assessment must be done on an individual basis in order to conform to international law.

Finally, proposed article lacks a maximum duration for which the restriction might apply and provides for neither a periodic review of the necessity and the proportionality of the measure nor a remedy against a decision that restricts freedom of movement.

As such, Amnesty International urges that the proposed article 7 is either rejected or its wording is changed to ensure that any decision to infringe an asylum-seeker's freedom of

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[3] CCPR General Comment No. 27: Article 12 (Freedom of Movement).

[4] Ibid. paragraph 16.

[5] http://www.ohchr.org/documents/publications/noncitizensen.pdf, p. 17

[6] Ibid.

movement is based on an individual decision including a necessity and proportionality test.

Observations on 20 April 2018 dated regulatory decision of the director of the Greek Asylum Service

In the context of restrictions imposed on the freedom of movement of asylum-seekers, Amnesty International raises concerns over the regulatory decision by the director of the Greek Asylum Service issued on 20 April 2018 as it does not meet requirements of international law outlined above.

On 17 April, the Greek Council of State found that asylum-seekers' freedom of movement can be restricted if the measure serves public interest and respects the principle of proportionality. It ruled that the Greek Asylum Service's regulatory decision to contain asylum-seekers arriving on the six Greek islands since 20 March 2016 lacked any justification for the Court to be able to make an assessment of whether the decision was reasoned by public interest and whether it was proportional.

As such, it ordered the annulment of the regulatory decision imposing the restrictions. In response to this, the director of the Greek Asylum Service issued a new regulatory decision on 20 April 2018, reinstating the policy of containment of applicants on the islands of Lesvos, Rhodes, Samos, Kos, Leros and Chios on the grounds that:

- Turkey does not accept returns of rejected asylum-seekers who do not stay on the islands in the context of the implementation of the EU-Turkey Statement
- There are serious and compelling reasons of public interest and reasons of service of the country's immigration policy, that is:
    - Fast processing and efficient monitoring of applications for international protection
    - The management of the population of applicants within the Greek territory and
    - The implementation of the EU-Turkey Statement, which makes it necessary to impose the restrictive measure on the freedom of movement of international protection applicants who have arrived in Greece after 20 March 2016

The regulatory decision states that the restriction does not interfere with private life and does not limit access of applicants for international protection to rights provided by national, European and international law.

However, implementation of this policy for over two years since the announcement of the EU-Turkey migration deal, has shown that the restriction on freedom of movement on asylum-seekers on the islands of the eastern Aegean *does* infringe upon the basic rights of asylum-seekers in relation to access to adequate reception conditions, from basic shelter that ensures their safety and security, to services such as health care and education. Additionally, there is no proof provided by the Greek Asylum Service that the infringement on the asylum-seekers' freedom of movement does indeed serve any of the stated aims or that other less restrictive measures cannot fulfil them. As such, the justifications put

forward by the Greek Asylum Service to infringe on asylum seekers' right to freedom of movement can neither be considered necessary nor proportionate.

Vulnerable applicants

Proposed Article 20(1) expands list of vulnerable individuals to have access to special reception conditions by adding to the list minors and separated minors (in addition to unaccompanied minors already under Article 14(8) of the Law 4375/2016) as well as victims of genital mutilation.

Proposed Article 23 transposes Article 25 of the Reception Conditions Directive (RCD) that obliges member states to "ensure that person who have been subjected to torture, rape or other serious acts of violence receive the necessary treatment for the damage caused by such acts, in particular access to appropriate medical and psychological treatment or care." However, the proposal adds to this that "[v]ictims of torture, rape or other serious acts of violence shall be certified by a medical opinion from a public hospital." This provision is problematic, as it puts excessive burden of proof on the victims and might prevent them from accessing the necessary services.

This part of the amendment risks being interpreted as an evidentiary requirement for asylum-seekers to establish that they are victims of torture, rape or other serious acts of violence. However, not all types of violence can be medically certified. Additionally, scars or other marks from violence may disappear over time. Furthermore, accessing specialized services in public hospitals for asylum-seekers in Greece, in particular in the main arrival islands in the eastern Aegean sea, is very difficult due to limited resources including complete lack of or insufficient number of interpreters available.

As a result, this proposal can lead to victims of torture, rape and other serious acts of violence not being identified as such as a result of not being able to obtain necessary certifications from public hospitals. This would in return lead to them not having access to specialized services they are entitled to as per some of the proposed amendments and under the Law 4375/2016. These would also include, for example, prioritization of the examination of applications by vulnerable persons under article 51(6) of the Law 4375/2016 as well as consideration of vulnerabilities when deciding on detention or prolongation of detention of applicants (article 46(8) of Law 4375/2016). It would also risk that those who are not able to certify their status in public hospitals as survivors of torture, rape or other serious acts of violence are no longer exempted from the fast-track border procedures as required by Article 60(4)f of the Law 4375/2016.

We recommend that the part of this provision related to the certification in public hospitals of status as "victim of torture, rape or other serious acts of violence" is removed from the proposal to allow for greater flexibility to determine such status, including through statements from NGOs or other professionals providing services to victims.

Notification of negative first instance decisions

The bill proposes a new paragraph to be added to Article 62 of Law 4375/2016 to allow for the authorities to notify of a negative decision on appeal the manager of the Reception and Identification Centre or the Temporary Accommodation Facility where the applicant declared to reside (Article 28 paragraph 20(b)). The proposal further allows a negative decision to be considered served by being uploaded on a specific website ((Article 28 paragraph 20(c)). As such, authorities are not under obligation to directly inform the applicants or their legal representatives of these decisions.

These modifications can hamper applicants' access to legal remedies against negative appeal decisions, as relevant deadlines may expire without an applicant being actually informed of a negative decision.

Negative decisions should be served through means that can ensure that the applicant or their legal representative is notified, "either through service in person or by recorded delivery signed for by the applicant or legal representative."[7]

Employment of applicants

According to current legislation, applicants can access lawful employment once their registration is completed (Article 71 of Law 4375/2016) and they obtained their international protection applicant card. It is positive that this right is not withdrawn during appeal proceedings until notification of a negative decision on appeal (Proposed Article 15(2)). However, the fact that access to employment is only possible after completion of registration and lack of a deadline to ensure access to employment in case of serious delays in the completion of the registration procedure may prevent asylum seekers from accessing this right in case of such delays.

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[7] UNHCR, *Detailed Research on Key Asylum Procedures Directive Provisions,* March 2010, available at: http://www.unhcr.org/4c7b71039.pdf