



AMNESTY INTERNATIONAL SUBMISSION ON THE PROPOSED CHANGES TO THE GREEK LAW ON INTERNATIONAL PROTECTION

INTRODUCTION AND NOTE ON PROCEDURE

On 16 October 2019, the Ministry of Citizen Protection submitted for public consultation the draft legislative proposal on International Protection.¹ A slightly amended version of the proposal with the title '*On International Protection and other provisions*' was submitted for discussion at the Greek Parliament on 21 October and it is currently being debated by the competent Parliamentary Committee.² The proposal has a wide-ranging scope and seeks to achieve a unified regulation and reform of different aspects of the Greek asylum system. The proposed amendments affect among other aspects the rules regulating asylum procedures, the rights and obligations of asylum seekers, reception and detention, access to integration activities and economic social and cultural rights.

Despite the Government's explicit acknowledgement of the importance of this long-announced proposal, Amnesty International regrets to note that the disproportionately short timeframe granted for the consultation, closing on Monday 21 October 2019, has prevented it in practice to contribute to this process to the extent and in the level of detail it would have deserved. Amnesty objects that this mode of operation fails to consider the complex nature of the rights and interests at stake in this process and is creating substantive obstacles to external actors' meaningful review of the bill and a reasoned assessment of its implications, in clear breach of the principles that should inform a public consultation process.

Taking good note of the above, the following submission provides Amnesty International's initial analysis of some of the proposed articles, with respect to their impact on the human rights of asylum-seekers. This note should not be considered as an exhaustive review of the issues raised by the proposed bill, which has been made unfeasible due to the unreasonably tight deadline imposed for the discussion of the proposal.

¹ <http://www.opengov.gr/yptp/?p=2235>

² <https://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/11112719.pdf>.



KEY AREAS OF CONCERN AND RELEVANT PROVISIONS

1. ASYLUM PROCEDURES

a. CHANGES AFFECTING APPLICANTS' EFFECTIVE ACCESS TO ASYLUM PROCEDURES AND RELEVANT SAFEGUARDS

i. **Changes to the requirements for registering applications**

The new Article 65 replaces Article 36 of Law 4375/2016 in regulating access to asylum procedures in Greece and aims to implement Article 6 and 7 of EU Directive 2013/32 (hereinafter, the 'APD'). Amnesty is concerned to note that in regulating the requirements for registering asylum applications in Greece, the proposal introduces more stringent requirements for the information to be provided, requiring among other things '*complete reference to the reasons why the applicant is seeking international protection*'. These changes constitute an unwarranted setback from the requirements of Article 36.1 of the 2016 Law which required only a '*brief reference to the reasons*' for claiming asylum.

Amnesty notes that the article sets more onerous requirements upon applicants and is generally at odds with the principle whereby registration of claims should be accessible and '*not be subject to restrictions based on eligibility for refugee status*'.³ Amnesty calls on the Greek authorities to recall the amendment and restate the original formulation, insofar as the requirement to provide information on the reasons for the application is concerned.

ii. **vulnerable categories**

Article 14.8 of Law 4375/2016, currently in force, defined groups considered 'vulnerable' for the purposes of asylum procedures, reception and assistance. In addition to the categories recognised under the APD, the Article notably specified the sub-group under letter (f), including '*persons with a post-traumatic disorder, in particular survivors and relatives of victims of ship-wrecks*'. Crucially, the provision expanded the standard definitions of vulnerability, reflecting the incidence of PTSD among asylum seekers and giving formal recognition to the implication of harsh migration journeys on individuals' health.

Amnesty regrets to note that in the proposed bill, the new Article 58 removes the explicit reference to this category, as well as to traumas related to or resulting from the migration experience. While the new formulation implements almost verbatim the provisions under of Article 21 of EU Directive 2013/33 (hereinafter, the 'RCD'), Amnesty must recall that EU law provides for the possibility for States to afford more favourable conditions in their domestic law (among others Article 5 of the APD), and hence contests the significant negative impact that this proposal would produce on individual situations.

Amnesty considers that by removing the reference to PTSD cases, the new provision risks excluding from the more protective standards provided under EU law a significant group of asylum seekers, and hence recommends that this is reinstated.

Another limitation to the rights of vulnerable categories is imposed by way of the proposed Article 61, declaredly transposing Article 25 of RCD. This provision requires that victims of torture, rape or other serious acts of violence be '*certified by medical expertise from a public hospital, a military hospital or properly trained physicians in public health care providers*'. This provision unduly exceeds the scope of the Directive, which limits itself to stating that people in such categories must have access to appropriate medical and psychological treatment or care, at the hand of trained professionals, without referring to the public or private nature of this care. The amendment is deeply problematic in that it puts excessive burden of proof on the victims and might prevent them from accessing the necessary services. This could also prevent people from seeking-asylum in the first place in sensitive cases, such as those involving sexual violence, where people may not want to undergo a medical certification. 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

³ <https://www.unhcr.org/registration-guidance/chapter3/access-to-registration/>



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, is very difficult due to limited resources including complete lack of or insufficient number of interpreters available.

As of 2018, there were no public health structures specialised in identifying or assisting torture survivors on mainland Greece⁴ and the relevant functions in terms of certification and assistance were exercised by NGOs, in some cases with significant discontinuity. According to METAdrasi, the organisation in charge of certifying cases of torture⁵ in mainland Greece, between 2011 and June 2019, 1,240 people have been found to be victims of torture. The proposed amendment reintroduces a provision already proposed in 2018, eventually not implemented, which had been accompanied by similar concerns as the ones expressed above.

As a result, this proposal can lead to victims of torture, rape and other serious acts of violence not being identified as such due to not being able to obtain necessary certifications from public hospitals. This would in turn lead to them not having access to specialized services they are entitled to as per some of the proposed amendments, including specialised care, the prioritisation of the examination of applications by vulnerable persons as well as consideration of vulnerabilities when deciding on detention or prolongation of detention of applicants.

Amnesty recommends 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.

iii. Accelerated and border procedures (‘Special procedures’)

Accelerated and border procedures are often implemented under the declared objective of enhancing the efficiency of the asylum system. However, in practice, the shorter timeframe and more cursory assessment of the claims that they entail can expose applicants to the risk of not having their claims properly examined.⁶

The proposed bill, apparently following the logic behind the 2016 Proposals to reform the Common European Asylum System (not currently in force),⁷ expands the use of special asylum procedures and introduces a differentiation between accelerated (Article 83.4 and 83.9) and priority procedures (Article 83.7). Concerningly, Article 83.9 provides that applicants considered vulnerable are also subjected to accelerated procedures as a rule, and their cases should only be transferred to the ordinary procedure where it is not possible to afford them adequate support. This possibility, while allowed under EU law, has been criticised by refugee organisations.⁸

⁴ AIDA 2018 Country Report on Greece, March 2019, p 91, at: https://www.asylumineurope.org/sites/default/files/report-download/aida_gr_2018update.pdf

⁵ Amnesty International, Greece: Note on Legal Changes Proposed by the Greek Government on 19 April 2018 to Greece’s Reception and Asylum System, Public Statement of 4 May 2018, AI Index: EUR 25/8362/2018 at: <https://www.amnesty.org/en/documents/eur25/8362/2018/en/> and <https://metadrasi.org/en/campaigns/certification-of-torture-victims/>

⁶ See ECRE Comments on the proposal for an Asylum Procedures Regulation, November 2016, p. 47 at: <http://www.ecre.org/ecre-comments-on-the-proposal-for-an-asylum-procedures-regulation/>

⁷ <https://www.consilium.europa.eu/en/policies/ceas-reform/>

⁸ See ECRE Comments on the proposal for an Asylum Procedures Regulation, November 2016, on children in accelerated procedures, p. 49-50, at: <http://www.ecre.org/ecre-comments-on-the-proposal-for-an-asylum-procedures-regulation/> and UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the European Commission’s Proposal for an Asylum Procedures Regulation, April 2019, COM (2016) 467, at: <https://www.refworld.org/docid/5cb597a27.html> p. 35.



In its comments to the 2016 Proposals to reform the APD, the UNHCR addressed the expanded use of accelerated examination procedures, saying that acceleration 'should not be used as a punitive measure in case the applicant does not comply with obligations, but used solely as an efficiency tool ensuring expedient access to international protection for those in need of it, and quick negative decisions for those who are not'. It adds that 'some persons with specific needs may not be well-served by accelerated timelines that do not allow them sufficient time to understand the process and present their claim'.⁹

UNHCR also provided indications to amend the EU proposal to ensure that the use of accelerated procedures is compliant with the rights of applicants and takes stock of the different factors affecting the applicant's behaviour. Furthermore, it is UNHCR's view that accelerated procedures should not apply to 'Unaccompanied and Separated Children (UASC) nor to vulnerable persons who are in need of specific procedural guarantees', indicating instead that their case may instead be treated with priority.¹⁰

While a full analysis of the implications of accelerated and border procedures is beyond the scope of this submission, Amnesty urges the Greek authorities to reconsider the proposal to expand the use of such instruments and ensure that recourse to special procedures does not infringe upon individuals' right to have their claim properly assessed. The Greek authorities must further ensure that claims from asylum-seekers with specific vulnerabilities are not processed under these accelerated procedures and that such groups are always afforded the specialised care and guarantees that they are entitled to.

iv. 'Safe Third Country' (STC) and 'First Country of Asylum' (FCA)

The proposed bill also elaborates the provisions on the use of 'Safe Third Country' (STC) and 'First Country of Asylum' (FCA) concepts, regulated under proposed Articles 85 and 86.

In relation to Article 85, regulating the FCA concept, Amnesty is concerned to note that the proposed provision, (set to implement Article 35 APD) demotes the level of protection afforded in the 4375/2016 Law, establishing that – among other things – a country shall be considered as a FCA for the applicant if he or she enjoys 'sufficient' protection there, hence moving away from the previous requirement of 'effective' protection in the third country. While the provision is formally in line with the minimum standards required by the APD, Amnesty opposes the use of the notion of 'sufficient protection' as it risks deflecting protection responsibility for refugees to countries granting protection that is not anchored in the obligations deriving from the Geneva Convention.

As such, Amnesty regrets to note Greece's retrogression from the previously more favourable standards and urges the authorities to reject the amendment.

The proposed bill regulates STC concepts, as per Article 38 of the APD, under Article 86. In reform of Article 56 of Law 4375/2016 previously regulating the issue, the new provision introduces a series of criteria to assess the quality of the applicant's connection to the third country, to be considered in combination with the element of transit through such country. These include the amount of time spent in the country, the social links there, previous visits, knowledge of the language and geographical proximity to the country of origin, among others. The provision worryingly provides that an exception to the case-by-case assessment of the existence of the above elements will be possible where the Third Country under consideration has been designated as generally safe and is included in the national list of safe third countries (86.2). Such interpretation is inconsistent with the APD. While the APD does provide for the possibility to establish national STC lists (Article 37), the fact that a country features in such list does not exempt a Member States from conducting an individual assessment of whether

⁹ UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation, April 2019, COM (2016) 467, at: <https://www.refworld.org/docid/5cb597a27.html> also UN High Commissioner for Refugees (UNHCR), Improving Asylum Procedures: Comparative Analysis and Recommendations for Law and Practice - Key Findings and Recommendations, March 2010, available at: <https://www.refworld.org/docid/4bab55752.html>, page 224/225

¹⁰ UN High Commissioner for Refugees (UNHCR), UNHCR Comments on the European Commission's Proposal for an Asylum Procedures Regulation, April 2019, COM (2016) 467, at: <https://www.refworld.org/docid/5cb597a27.html>, p. 35.



the country would be safe for the particular individual.

The concepts of STC and FCA have been object of critique by human rights groups and organisations for many years. UNHCR notes the 'difficulties in applying the concept' especially in relation to the use of transit as a sufficient 'connection' and to the assessment of the safety in the country.¹¹ The Council of Europe also provides for criteria to ensure that the application of these concepts is compliant with human rights.¹²

The 2016 EU proposal to reform the APD, which also had a focus on increasing the use of STC and FCA concepts, among other things, also received critiques in this sense.¹³ The proposed listing of elements that should indicate the existence of a connection also includes elements long-considered problematic, such as the issue of transit. On this issue, it should be noted that UNHCR states that for asylum-seekers who merely transited through a previous state which does not have established national asylum procedures or where it cannot be demonstrated that international protection would be available, the current state (in the present case Greece) would need to admit the applicant to the asylum procedure and assess their claim on its merits.¹⁴ Furthermore, in the very case of a review of Greece's practices, transit has been described by UNHCR as 'not a 'sufficient' connection or meaningful link' and in fact, 'often the result of fortuitous circumstances and does not necessarily imply the existence of any meaningful link or connection. Neither does a simple entitlement to entry without actual presence constitute a meaningful link'.¹⁵

The other criteria under Art. 86, are also not reflected in the Directive and do not necessarily indicate the existence of meaningful connection with that country, justifying return. In the absence of an established practice or common standards in this sense, the introduction of such criteria risks exposing asylum seekers to serious violations of their rights both in terms of their right to seek asylum through the effective access to asylum procedures and in terms of the right to protection from *non-refoulement*: to not be returned to a situation where they would face a real risks of serious human rights violations.

B. PROVISIONS AFFECTING THE CONTENT OF PROTECTION

The Greek government is proposing to differentiate the length of the residence permit for subsidiary protection beneficiaries, bringing it from 3 to 1 years (Article 24.1). Amnesty urges the rejection of this provision, which seems oriented at downgrading the level of protection of beneficiaries of international protection.

Similar considerations apply to the provisions under Article 70 of the Bill, which reduce the length of validity of the asylum card from one year to 6 months and introduces arbitrary changes to the validity of cards awarded to asylum seekers belonging to nationalities with recognition rates of under 35% (a further restriction compared to the current threshold of 25%) or whose asylum application was processed through 'special' procedures.

C. INDIVIDUAL RIGHTS IN ASYLUM AND APPEAL PROCEDURES, CHANGES IN THE COMPOSITION OF APPEAL BODIES AND IMPARTIALITY OF AUTHORITIES INVOLVED IN PROCEDURES

Amnesty also wishes to draw attention to the significant impact the proposed bill would have on applicants' procedural rights, in terms of legal assistance and representation, right to information and rights connected to the filing of appeals. We note that

¹¹ <https://www.unhcr.org/excom/scip/3ae68ccec/background-note-safe-country-concept-refugee-status.html>

¹² <https://book.coe.int/en/root/759-guidelines-on-the-application-of-the-safe-third-country-concept-recommendation-no-r-97-22-and-explanatory-memorandum.html>

¹³ See ECRE Comments on the proposal for an Asylum Procedures Regulation, November 2016, p. 51 <http://www.ecre.org/ecre-comments-on-the-proposal-for-an-asylum-procedures-regulation/>

¹⁴ <https://www.refworld.org/docid/5d8a255d4.html>

¹⁵ <https://www.unhcr.org/56f3ec5a9.pdf>



Article 71, implementing Articles 19 to 23 of the APD, introduces the requirement of proof of authenticity of the applicant's signature, for him/her to be validly represented by a lawyer. Such a requirement is absent in the corresponding EU provisions and has the effect of imposing further burdens on the applicant in the exercise of his/her rights.

Furthermore, the new formulation seems to indicate that full **access to the reasons for negative decisions** in the first instance as well as to the possibility to file an appeal are only granted upon the applicant's request. This provision is in clear breach of the broader right to an effective remedy, as provided specifically for asylum appeals under Article 46 APD, which provides that '*Member States shall ensure that applicants have the right to an effective remedy before a court or tribunal*' against negative decisions on their asylum application. By making the provision of information on the possibility to appeal a decision conditional upon the applicants' request, the Greek authorities are acting in clear violation of the basic principles underlying this right in international law, and in clear disregard of Article 11.2 of the EU APD which requires that '*2. Member States shall also ensure that, where an application is rejected with regard to refugee status and/or subsidiary protection status, the reasons in fact and in law are stated in the decision and information on how to challenge a negative decision is given in writing*'.

Amnesty also notes that the new bill amends the provisions on the **right to remain in the country** (Article 104.2) during the second instance procedure in cases where, among other cases, the asylum application is dealt with under admissibility procedures (is rejected as manifestly ill-founded or not assessed on the merits owing to a third country being considered as a STC or FCA). A separate request indicating the reasons for the applicant's interest in remaining in the country must be filed separately.

While this interpretation is generally compatible with Article 46(5) and (6), it does not give sufficient consideration to the relevance, highlighted in CJEU jurisprudence in the case of *Tall*, of the interrelation between asylum appeals without suspensive effects and the rights under Article 47 and 19(2) of the EU Charter of fundamental rights. Namely, it fails to consider exceptions for cases where the decision to withdraw the right to remain in the country would result in the applicant being exposed to risks of serious human rights violations, which would be in violation of the international principle of non-*refoulement*. In these cases, according to *Tall*,¹⁶ which is binding upon Greece, the CJEU provides that '*an appeal must necessarily have suspensory effect when it is brought against a return decision whose enforcement may expose the third-country national concerned to a serious risk of being subjected to the death penalty, torture or other inhuman or degrading treatment or punishment...*'¹⁷

Withdrawal of appeal for failure to be present at the hearing: Furthermore, Amnesty is concerned on the qualification of the applicant's failure to appear for the hearing of the appeal as an indication of the 'abusive' nature of the appeal, (Article 97.2) resulting in the action being dismissed as manifestly unfounded, unless the applicant can prove the existence of good cause (Article 78.3). Such a provision is not explicitly provided for by the Directive and appears to be an undue interpretation of the applicant's conduct, producing potentially irreversible consequences for his/her case. Amnesty calls on the Greek authorities to ensure that the provisions regulating consequences for failure to appear do not infringe on the applicants' rights to an effective remedy and urge them to reformulate this provision accordingly.

Finally, Amnesty notes the **change in the composition of Asylum Appeals Committee**, which removes the requirement for a UNHCR appointed officer to be involved, in favour of a 3-Administrative Courts judges panel and introduces the possibility of a single-judge procedure (Art 116). The training of the members of the Independent Appeals Committees is also reserved to the Asylum Service and the Authority and EASO, inter alia, while cooperation with UNHCR is only confined to training aspects.

Amnesty considers this development deeply concerning, insofar as the proposed composition and rules are insufficient to ensure the necessary level of expertise and the composition of the Committees and single-judge procedure could be found to be not compatible with the Greek Constitution.¹⁸

¹⁶ CJEU, Case C-239/14 of 17 December 2015, Abdoulaye Amadou Tall v Centre public d'action sociale de Huy (CPAS de Huy), para 58 at <http://curia.europa.eu/juris/celex.jsf?celex=62014CJ0239&lang1=en&type=TXT&ancre=>

¹⁷ Ibid and Re-Jus Casebook – Effective Justice in Asylum and Immigration, p. 180, at: https://www.rejus.eu/sites/default/files/content/materials/rejus_casebook_effective_justice_in_asylum_and_immigration.pdf

¹⁸ According to the Council of State (Decision No. 2980/2010, point 5), it is unconstitutional to have a one-person administrative body with judge.



Impartiality of the examining authority: Article 77.1 of the Bill allows for the possibility of the conduct of the admissibility interview by members of the police or the Greek army. Amnesty considers this a serious backward step that, if implemented, will compromise the impartiality of the asylum procedure.

Reference should be made in this sense to the UNHCR comments on the APD (non-recast) and similar comments on the draft asylum legislation in Estonia in 2016. The Agency underlined that it did not '[...] consider that the role of single determining authority should be performed by the police, border officials or other law enforcement authorities' and that 'Police authorities in general are not trained, equipped or resourced to conduct the personal interview and examine applications for international protection. Placing police in this role may undermine the perception of confidentiality and impartiality which is crucial for creating the conditions conducive to the complete disclosure of facts by applicants during the personal interview'.¹⁹ Amnesty urges the Greek authorities to repeal the relevant part of the provision.

2. INDEPENDENCE OF NGOS IN GREECE

Amnesty is deeply concerned by the amendment introduced by way of Article 66 which concerns the rights of access to reception and detention places for NGOs assisting or representing asylum seekers and migrants, implementing Article 8 of Directive 2013/32. According to Article 66, individuals who are in detention or at border-crossing centers, who have a right to be informed about the possibility of applying for international protection and have such a right fulfilled through the action of the Greek '*Asylum Service in cooperation with the authorities operating in these points or with accredited organizations*', which are responsible for providing such information.

Amnesty is concerned that the introduction of a requirement of certification for organizations operating in such context risks unduly interfering in civil society's organizations work and, in turn, undermines individuals' rights to receive information about asylum, therefore affecting the effectiveness of access to procedures. In the previous version of the law, limits to access to detention or border crossing points were only justified on grounds of national security or public order or concerning the administrative management of the crossing point and could not be used to the point of rendering access to rights-holders 'impossible'.

Effectively, by imposing the requirement of certification (Article 66.3) whose functioning in practice is determined by the Ministry of Citizen Protection, the amendment proposed is imposing a further obstacle to NGOs and individuals' access, which finds no express justification in EU law and should hence be removed.

3. DETENTION OF ASYLUM SEEKERS

Article 46 of the bill removes the automatic judicial review of detention orders, provided under Article 46 (5) of Law 4375 /2016. While problematic in its operation,²⁰ the introduction of this feature had been the result of calls by international bodies such as the Special Rapporteur on the rights of migrants.²¹ Its removal is hence a serious and unjustified setback for the protection of asylum seekers in Greece. Amnesty requests that the previous automatic review of detention is reinstated and that Greek authorities take measures to ensure its effectiveness in practice.

The extension of the maximum detention period that asylum-seekers can be held for from 45 to 50 days (also applied to extension orders) under Article 46 is also problematic. However, what is most concerning is the provision establishing that pre-removal and asylum detention be counted separately for the purposes of calculating the maximum detention period (Article 46.5.b). While in principle compatible with EU law, if considered in combination with the lower safeguards applying to asylum detention and the extension of detention periods, asylum seekers risk finding themselves in detention in Greece for prolonged periods of time and with more limited remedies. Amnesty urges the Greek authorities to ensure that the extension of

¹⁹ <https://www.refworld.org/pdfid/58232e3a4.pdf> and <https://www.refworld.org/pdfid/58232e3a4.pdf>

²⁰ <http://www.asylumineurope.org/reports/country/greece/detention-asylum-seekers/procedural-safeguards/judicial-review-detention>

²¹ UN Human Rights Council, Report of the Special Rapporteur on the human rights of migrants, Addendum : Mission to Greece, 18 April 2013, A/HRC/23/46/Add.4, available at: <https://www.refworld.org/docid/51b983ab4.html> para 57;



detention periods be rejected and that the new legislation is applied with due regard to the generally recognised principle whereby asylum seekers should not, as a rule, be detained, and that detention should only be considered as a last resort and having considered less invasive alternatives.

4. OBLIGATIONS OF ASYLUM SEEKERS AND DISPROPORTIONATE CONSEQUENCES FOR NON-COMPLIANCE

Article 57 now regulates the State's right to limit or interrupt the provision of material reception conditions. While the proposed article's declared aim is to transpose the provisions of Article 20 RCD, the wording of paragraph 2 is at odds with the Directive in that it mandates ('Competent Authorities *shall*') rather than providing for the mere possibility to reduce material reception conditions when it is believed that the applicant, *'for no justifiable reason, has not lodged an application for international protection as soon as reasonably practicable after arrival in that Member State'*. The same approach is adopted also in the case where the applicant is found to have concealed financial resources. In this case too, the possibility to reduce material reception conditions, provided for by the RCD, has been made into a mandatory provision (57.3)

Paragraph 4 also introduces the element of the immediate notice of problematic behaviour to the competent Police Force, to determine the applicability in the given case of detention measures owing to the individual constituting a 'risk to national security or public policy'. This provision constitutes an unwarranted expansion of the provisions in the RCD and has no basis in EU law. The reduction of withdrawal of material reception conditions under the proposed Article also applies, with different safeguards, to cases involving unaccompanied minors. The proposed Article, under paragraph 5, also omits the requirement for decisions to restrict or reduce conditions to be informed by the principle of proportionality.

Amnesty opposes the punitive approach adopted through the suggested proposal and calls for Article 57 to be either rejected in whole or at a minimum in its parts which divert from EU law and that the remainder is changed to ensure compliance with EU law and international standards.

- **Applicants' obligations during the asylum procedure**

The same tendency to attach greater significance to applicants' obligations throughout the asylum procedures and exacerbate the consequences of non-compliance is present in the proposed Article 78. Amnesty is concerned to note that the proposed Article imposes upon asylum seekers an obligation to cooperate to other aspects of the processing of the application (Article 78.2), something that was provided as a mere possibility (Member States may impose ...other obligations to cooperate) under EU law.

What is of concern are the consequences for asylum seekers if they fail to comply with Article 78.2. While asylum-seekers are obliged to cooperate with authorities, procedures should also facilitate or support asylum seekers to meet these obligations. For example, Article 78 (3) makes it obligatory - with some exceptions - for a person to represent himself in the proceedings before the Appeals Committees. It also considers the failure of the applicants' excluded from the requirement of self-representation to provide the required certification as a basis to infer that the action was only submitted to delay or prevent the execution of an earlier or imminent expulsion [...], leading to it being dismissed as manifestly unfounded in accordance with Article 88 (2).

According to the formulation of Article 78.9, (unofficial translation) 'the breach of the duty of cooperation with the competent authorities...which entails obstructing the smooth completion of an application for international protection, shall be followed by the examination of the application for international protection or of the appeal pursuant to Article 88.2 [i.e: as manifestly unfounded applications]'

It should be noted that generally, unfounded claims are identified as clearly fraudulent, or not relating to any criteria for granting international protection. According to UNHCR 'Whether a case is deemed "manifestly unfounded" or not will depend upon the degree of linkage between the stated reasons for departure and the refugee definition'.²² However in any case

²² <https://www.unhcr.org/uk/protection/globalconsult/3b389254a/asylum-processes-fair-efficient-asylum-procedures.html>,



whatever the presumed reason for an “unfounded claim” there needs to still be an individual assessment of the claim in order to support or rebut the presumption of an unfounded claim. Harsher consequences for failure to cooperate had been proposed in the EU CEAS reform proposals of 2016 but they received critical comments by human rights organisations.²³

Amnesty considers that treating an asylum application as unfounded on the above basis is unjustified as there may be genuine reasons/ good cause for the applicant failing to appear before the Appeals Authority or failing to cooperate otherwise. This cannot be used as a reason to deny access to asylum procedures and to adequately assess the individual circumstances. This interpretation or application of the concept of ‘manifestly unfounded’ would undermine the institute of international protection and risks causing violations of asylum seekers’ procedural rights to have their claim duly assessed. Amnesty hence urges the Greek authorities to reject the amendment.

- **Implicit withdrawal of an asylum claim**

Based on similar considerations, Amnesty rejects as illegitimate and in any case disproportionate possibility to consider an asylum application implicitly withdrawn (Article 81) based on failure to comply with conditions such as being present in person during the appeal hearing or departure from a reception place without requesting the permission of the competent authority as these have no bearing on the well-founded of the applicant’s asylum claim, and have the effect of depriving him/her from the participation and providing input to the examination of the claim.

The provision also fails to regulate cases where the applicant reports again to the competent authority after the adoption of a decision to discontinue, including the right to request for the case to be reopened (Article 28 APD) or the express protection from *refoulement* for individuals falling under this category, both expressly regulated under EU law.

5. ECONOMIC SOCIAL AND CULTURAL RIGHTS: ACCESS TO HEALTH, LABOUR MARKET AND EDUCATION

The proposed amendments have significant implications for asylum seekers’ rights to the full enjoyment of their economic social and cultural rights in Greece, in the areas of employment, education and medical care.

According to Article 51, implementing Article 14 of the RCD, asylum seeking children must enrol in primary and secondary education on conditions ‘similar’ to those applicable to Greek citizens. According to paragraph 2, if, despite the availability of school structures, the applicant does not comply with this provision, Article 57 applies and material conditions of reception will be limited, not only for the minor but for the adult members of his/her family.

This provision is an undue expansion of the grounds provided under EU law for the legitimate restriction of material reception conditions. It is not supported in EU or international law and fundamentally infringes with the spirit and purpose of children’s right to education, as per Article 28 of the UN CRC, by creating an unwarranted dependence between this right and the child’s right to an adequate standard of living (Article 27 UN CRC). Concerns also arise as the new provision is a backward step to the current that allows access to education to children irrespective of their legal status.

Amnesty urges to reject the proposed amendment and ensure that children’s right to education and right to adequate standards of living are independently protected and fulfilled and that State’s actions and policies are geared towards promoting and facilitating participation in education, rather than focussing on sanctioning failures to do so. The organization also urges the Greek authorities to ensure access to education for children of families with irregular status.²⁴

para.28 and 30

²³ See ECRE Comments on the proposal for an Asylum Procedures Regulation, November 2016, p. 10 at <http://www.ecre.org/ecre-comments-on-the-proposal-for-an-asylum-procedures-regulation/>

²⁴ The Committee on Economic, Social and Cultural Rights (CESCR) has confirmed that the right to education extends to all persons of school age residing in the territory. See CESCR (1999) General Comment No. 13: The right to education (Article 13), 8 December 1999, paragraph 34.



The proposal also introduces changes to asylum seekers' right to work during their stay in Greece. Specifically, Article 53.1 establishes that applicants' will no longer have immediate access to the labour market upon the registration of their claim (as per Article 71 of Law 4375/2016 and Article 15 of Law 4540/2018), but this will only be granted after 6 months. Furthermore, where a negative decision with no suspensive effect is adopted on the applicant's asylum claim, the right to work will be revoked automatically (Art. 53.2).

This amendment risks to produce a serious deterioration of asylum seekers and refugees' already precarious economic condition in the harsh Greek economic system. In 2018, it was reported that 'access to the labour market is seriously hampered by the economic conditions prevailing in [the country]',²⁵ made worse by the bureaucratic obstacles of the system. Such difficulties are widely recorded, including by the Council of Europe Commissioner for Human Rights, who had noted the obstacles affecting asylum seekers' effective access to the labour market.²⁶

In view of the already existing difficulties affecting asylum seekers' enjoyment of employment rights, Amnesty urges to reject the proposed amendment and reinstate the original provision.

Finally, Amnesty has separately expressed serious concerns over asylum seekers' access to public health facilities and medicines in Greece calling for measures to ensure compliance with Article 33 of Law 4368/2016 and criticising the failure to implement the plan to issue Foreigner Health Care Card ('K.Y.P.A), and the withdrawal of a Circular regulating the issuance of AMKA for non-nationals, the regulation of which has been undefinedly postponed by means of the 1 October Circular.²⁷ Amnesty reiterates that this state of things is inconsistent with Greece's obligations under the national legislation and with the country's obligations under International and EU law (Article 19 RCD).

Article 55 proposes to regulate applicant's access to medical care, providing that this should be ensured through the granting of K.Y.P.A., until they have the right to employment (also Article 118). This shall be issued by the Asylum Service and its duration corresponds to the applicant's asylum card duration. Amnesty notes that the provision in question falls short of the requirements of Law 4385/2016, in that it provides access to public health facilities only to those asylum seekers who have completed registration of their claims and have been issued an asylum card, whereas Article 33 of the 2016 Law guarantees such access to asylum-seekers from the day they have expressed their will before the competent authorities to submit an asylum claim. Concerns also remain as children of irregular migrants will continue not to have free access to the public health system.

Furthermore, with the proposed Bill entering into force on 1 January 2020, the situation of asylum seekers who are currently not able to register for AMKA or K.Y.P.A. would be unduly protracted unless measures are taken with urgency to ensure that their situation is regulated even prior to the entry into force of the new law.

FINAL NOTE ON OPERATIONAL PROVISIONS

Amnesty would like to finally urge the Greek authorities to remove Article 114 from the proposed bill, which requires beneficiaries of international protection to leave reception facilities after 2 months from the publication of the new law. In view of the implications of such provision and of the complex operational aspects of the relevant process, including the need for it to be in compliance with the special needs of vulnerable categories, we urge the Government to address this issue separately and in detail.

²⁵ <https://www.asylumineurope.org/reports/country/greece/reception-conditions/employment-and-education/access-labour-market>

²⁶ Ibid citing Council of Europe, Report of the Commissioner for Human Rights of the Council of Europe Dunja Mijatović following her visit to Greece from 25 to 29 June 2018, CommDH(2018)24, 6 November 2018, available at: <https://bit.ly/2lwG4EG>, paras 54-55

²⁷ Amnesty International, Greece must immediately ensure that asylum seekers, unaccompanied children and children of irregular migrants have free access to the public health system, Public Statement of 14 October 2019, AI Index: 25/2013/2019 at: <https://www.amnesty.org/en/documents/eur25/1213/2019/en/>



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