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## GREECE: PRELIMINARY COMMENTS ON THE ASYLUM-DETERMINATION PROCEDURE REFORMS

### Introduction

On 22 November 2010, Presidential Decree 114/2010 (PD 114/2010), entitled “Establishment of a unified refugee and subsidiary protection determination procedure for aliens and stateless persons”, entered into force.<sup>1</sup> The Decree replaces PD 90/2008 and abolishes PD 81/2009. The latter had deprived international protection applicants, including asylum-seekers, of their right to an effective remedy by abolishing first-instance appeals against rejection of asylum and other international protection claims.<sup>2</sup> The new decree will apply until the establishment of an Asylum Service as this is provided in recently presented draft legislation.

### Background

The decree reintroduces first-instance appeals in asylum and other international protection cases by providing for the establishment of one or more Refugee Committees and endowing them with decision-making power.<sup>3</sup> Each Committee will have a civil servant, either from the Ministry of Interior, Decentralization and Electronic Governance or the Ministry of Justice, Transparency and Human Rights as its president; s/he will hear appeals together with a representative of the United Nations Refugee Agency (UNHCR) and a refugee or human rights lawyer. Amnesty International understands that the Committees will make their own decisions on initial refusals of asylum claims considering both the facts and the law. The decree also introduces transitional provisions for dealing with the heavy backlog of appeals against initial decisions rejecting protection claims.<sup>4</sup> It does so by providing for the establishment of Special Committee/s whose membership is similar to that of the Refugee Appeal Committee/s.

The decree also introduces a six-month time limit for initial decisions on asylum claims examined under an ordinary procedure, and a three-month time limit for decisions on claims considered under an accelerated procedure.<sup>5</sup>

The decree retains the police as the competent authority for the initial examination of asylum claims, mandating 13 Police Authorities around the country with this task. Accordingly, a police officer conducts

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1 The decree is entitled “Establishment of a unified refugee and subsidiary protection determination procedure for aliens and stateless persons in harmonization with Council Directive 2005/85/EC on minimum standards on procedures in Member States for granting and withdrawing refugee status” (L 326/13.12.2005).

2 Decree PD 81/2009 was incompatible with the principle of *non-refoulement* because its implementation could have resulted in individuals being removed to a country where they would face a real risk of persecution or serious harm.

3 Articles 25 and 26 of PD 114/2010.

4 See Article 32 of PD 114/2010. Under this provision, the Special Committees are also tasked with examining applications for international protection following Council of State’s referrals. The latter annuls asylum decisions when it holds that they lack legality and refers those cases back to the competent administrative authorities to issue a new decision.

5 According to the decree, asylum applications are examined in fast-track procedures when they are “manifestly ill-founded” or when the applicant is from a “safe country of origin” or a “safe third country”. Furthermore, applications shall be considered as “manifestly ill-founded” in case of “abusive applications” or applications with the intention of “misleading” the authorities. In cases where the examination of the asylum application lasts longer than the set limits of three or six-months, an asylum-seeker has the right to ask for information from the competent examining authorities regarding the anticipated date of the decision (Article 17 (3) of PD 114/2010). According to the decree, the provision of such information does not oblige the competent authorities to make a decision within a set deadline (Article 17 (2) of PD 114/2010).

asylum interviews.<sup>6</sup> The Secretary General for Public Order of the Ministry of Citizens' Protection is the determining authority for asylum claims examined within the six-month time limit, whilst the Police Directors of the designated Police Directorates are the determining authorities for claims processed within three months, i.e. under the accelerated, so-called fast-track, procedure.

### **Preliminary comments on the Decree no. 114/2010**

Amnesty International wishes to make the following preliminary comments on the decree and may make further comments as the transitional arrangements are implemented.

Amnesty International welcomes the fact that, notwithstanding regrettable delays, the transitional Decree has come into force.

The organization notes the reintroduction of first-instance appeals through the establishment of the Refugee Committees. Amnesty International also notes the introduction of provisions aiming to reduce the existing backlog.

Amnesty International considers as positive the decree's provision allowing for the presence during asylum interviews of either a representative of the UNHCR or a representative of a non-governmental organization cooperating with the UNHCR, and the possibility of their asking questions.<sup>7</sup>

Furthermore, the organization considers as positive the provision according to which the recommendation of the examining police authority on the merits of an asylum claim will be complemented by an advisory opinion of the UNHCR representative or by the representative of the NGO in cases where one or the other have been present. In this regard, Amnesty International also welcomes the fact that, in all instances in which the examining police authority recommends to reject the asylum claim while the advisory opinion is that protection should be granted, the police will be required to provide detailed reasons for its decision.<sup>8</sup>

### **Non-refoulement**

Amnesty International is concerned that the decree provides insufficient protection against *refoulement*. This is because the filing of an appeal by the asylum-seeker to the Council of State continues not to have an automatic suspensive effect on removal of the applicant from the country. Removal is only suspended pending the expiry of the deadline within which a first instance appeal may be lodged; further, removal is stayed pending a decision of the Refugee Committee.<sup>9</sup> If an asylum-seeker's appeal is dismissed by the Refugee Committee, and the asylum applicant seeks to appeal to the Council of State, s/he will be removed unless s/he also applies for and is granted a suspension of the removal order and a provisional order suspending the implementation of the removal order. Delays in delivering provisional orders suspending removals (issued between 10 and four months after application) place asylum-seekers at risk of arrest, detention and expulsion. As such they also ultimately place asylum-seekers at real risk of persecution or serious harm as people may be forcibly removed in contravention of the principle of *non-refoulement*. Amnesty International considers that removal should be automatically suspended pending all stages of appeal.

Furthermore, the decree fails to provide adequate solutions to the widely documented difficulties that asylum-seekers face to date in gaining access to the Attika Aliens' Police Directorate for those who are required to renew documentation attesting their status ("pink card") to this directorate.

The current provisions stipulate that the "pink card" is provided to asylum-seekers upon registration of their claim. The card will be renewed following the initial asylum interview with a validity period of up to six months for claims considered under the ordinary procedure and up to three months for claims examined under the accelerated procedure.<sup>10</sup> Furthermore, the decree provides for the "pink cards" to be destroyed the moment asylum-seekers are handed initial decisions rejecting their claims and

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<sup>6</sup> Article 2 of PD 114/2010.

<sup>7</sup> Article 10 (1) of PD 114/2010.

<sup>8</sup> Article 10 (3) of PD 114/2010.

<sup>9</sup> Article 25 (2) of PD 114/2010.

<sup>10</sup> Article 8 (1) (d) of PD 114/2010.

subsequently renewed in cases where the asylum-seekers lodge a first instance appeal. Even though asylum-seekers may not be deported pursuant to PD 114/2010 during the deadline for lodging a first instance appeal, in practice they have no way of proving their status during that period. In turn, the situation may expose them to *refoulement*.

### **Independence of Determining Authorities**

Amnesty International is concerned about the lack of independence of the Refugee Committees and the Special Committees since they are under the jurisdiction of the Ministry of Citizens' Protection, hence, the same ministry superior to the police authorities tasked with examining asylum applications at first instance.

In view of the organization's long standing call that Greece should establish a system for determining asylum claims which is independent of the police, Amnesty International considers as a positive step the provision in recently presented draft legislation establishing an Asylum Service that is staffed by civilian personnel and tasked with, *inter alia*, receipt, examination and determination of initial asylum applications.

### **Detention of asylum-seekers**

Amnesty International notes the provision stipulating that the detention of asylum-seekers in an "appropriate area" is permitted "exceptionally" and when no alternative measures would suffice. The grounds for which detention may be permitted "exceptionally" by the new decree are the following:

- a. when the authorities claim that it is necessary to ascertain the applicant's identity, his/her conditions of entry into the Greek territory and the actual country of origin when s/he is not in possession of or has damaged his/her identity documents, in particular in cases of "irregular aliens" *en masse* arrivals;
- b. when the authorities claim that the asylum-seeker poses a danger to national security or public order as set out in the decision to detain; and
- c. when the authorities consider detention necessary for the "speedy" and "effective" examination of the asylum application.<sup>11</sup>

The organization is concerned that the detention of asylum-seekers may be admissible when it is deemed expedient for the "effective" and "speedy" processing of their asylum claims.

Amnesty International is also concerned over the length of detention allowed by the recent decree, namely up to 90 days; or up to a total of 180 days when the applicant has been previously detained under administrative powers pending removal.<sup>12</sup>

The organization considers that detaining asylum applicants for up to 90 or 180 days respectively, purportedly to establish their identity or because it is deemed expedient for the examination of their claim, is inconsistent with international human rights and refugee law, including the right to liberty and the principle that those presumptively eligible for international protection should not be detained at all given their inherent vulnerability.

Amnesty International is concerned that the decree does not introduce a statutory prohibition on the detention of vulnerable asylum-seekers, including: torture survivors, pregnant women, those with serious medical conditions, the mentally ill and elderly persons. The organization also strongly urges for a statutory prohibition on the detention of asylum-seeking children, including when they are unaccompanied.<sup>13</sup>

The organization is also concerned that neither the decree nor pre-existing legislation provide free legal assistance to asylum-seekers who wish to challenge their detention.

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<sup>11</sup> Article 13 (2) of PD 114/2010.

<sup>12</sup> Article 13 (4) of PD 114/2010.

<sup>13</sup> See Article 13 (6) of PD 114/2010.

### **Access to the asylum-determination procedure**

In addition, the decree designates specific police departments and sub-directorates as the authorities responsible for receiving asylum applications. This remains a cause for concern, in particular in circumstances where asylum-seekers lack immediate access to the designated authorities, for example when asylum-seekers arrive on small islands, where none of the competent authorities are present.

In view of the reported administrative barriers that asylum-seekers living in reception centres face regarding the issuance and renewal of their “pink cards”, Amnesty International calls on the Ministry of Citizens’ Protection to issue a circular clarifying that the term “residence address” includes also reception centres for asylum-seekers and that the competent authorities will accept the address of such reception centres as the address of the asylum-seekers living there.

### **Notification of rights**

Amnesty International is also concerned that the decree continues to stipulate that the asylum procedure will be explained to the individuals concerned and that they will be notified of their rights and obligations in a language that the authorities “may reasonably suppose” the asylum-seeker concerned will understand. The organization is concerned that the formulation of this provision undermines the right to seek and enjoy asylum.<sup>14</sup>

### **Access to free legal assistance**

Furthermore, Amnesty International remains profoundly concerned that access to free, independent and competent legal assistance will not be made available to asylum-seekers at all stages of the asylum process.<sup>15</sup> Instead, the decree maintains the status quo according to which free legal assistance is only available to asylum-seekers who file an appeal (application for annulment) to the Council of State.<sup>16</sup> It is to be noted that the provision of legal aid for such applications is not ensured as a right but is subject to the decision of the Council of State judge in charge of the case. Furthermore, access to free legal assistance is further obstructed due to the fact that lawyers are usually reluctant to feature on the lists for free legal assistance kept at the Bar Associations due to the length of Council of State proceedings and delays in the payment of fees due. In addition, the annulment procedure is expensive, making it unlikely that asylum-seekers who are not in receipt of legal aid would be able to foot the bill.

### **Unaccompanied minors**

Given the well-documented ineffectiveness of the system of guardianship for unaccompanied children, Amnesty International is concerned that the decree does not include a requirement for the guardians of those asylum-seeking children to be present during the asylum interview. Instead, the current decree stipulates that the guardian is invited and can be present during the asylum interview of the minor.<sup>17</sup>

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14 Article 8 (1) (a) of PD 114/2010.

15 Article 11 (1) of PD 114/2010.

16 Article 11 (2) of PD 114/2010.

17 Article 12 (1) of PD 114/2010.