

AMNESTY INTERNATIONAL PUBLIC STATEMENT

4 May 2020 EUR 25/2259/2020

GREECE: WORRYING LEGAL DEVELOPMENTS FOR ASYLUM-SEEKERS AND NGOS

PROPOSED REFORMS OF THE LAW ON INTERNATIONAL PROTECTION AND OTHER PROVISIONS

In the midst of the Covid-19 crisis, which is putting many sectors to test across Europe and the world, in the first two weeks of April the Greek Government put forward two measures which are likely to significantly affect the rights of asylum-seekers and impact the operation of Non-Governmental Organisations (NGOs) across the country.

On 10 April 2020, the Greek Minister for Immigration and Asylum announced a draft legislative proposal amending various areas of the Greek legislation on international protection, returns and other areas of migration (titled “*Improvement of migration law*”, hereinafter “the bill”).¹ The proposal focuses on five main areas: the acceleration of international protection procedures, the establishment and rules of operation of the new closed centres set to replace open camps on the islands, the appointment of the Special Secretariat for unaccompanied minors under the Ministry of Migration and Asylum as the competent authority on the issue and the definition of its competences, the increased use of IT in asylum procedures with a view to improving efficiency, and the structural reform of some functions within the Ministry’s office.² A bill was tabled for voting in the Greek Parliament on 30 April 2020. Subsequently, an amended version of the proposal was submitted on 30 April 2020, with the Parliamentary discussion being expected to open on 5 May 2020.

In parallel, on 14 April, a Ministerial Decision was adopted to regulate the operation of Greek as well as foreign NGOs through rules on the registration of NGOs and members.³

Amnesty International is seriously concerned that both the proposed reform and the Ministerial Decision have the potential to negatively impact the rights of asylum-seekers and migrants and the operation of NGOs members across Greece, with especially serious consequences in view of the state of prevailing uncertainty and disruption caused by Covid-19. Specifically, some of the changes proposed are liable to further restrict asylum-seekers and migrants’ rights in terms of personal liberty and security and freedom of movement and are, as such, particularly problematic in sight of the higher risks posed by the Covid-19 pandemic for people who are in detention or otherwise held in conditions which make them unable to enjoy sufficient personal space. While in this statement the organization provides an analysis of its six principal areas of concern regarding the proposed reform of the asylum and migration legislation, a separate assessment of the Ministerial Decision on NGOs and their members will also be published in due course.

Already in October 2019, Amnesty International had warned Greece of the potential risks ensuing from the formulation of the new Law on International Protection, highlighting the obstacles that it created to individuals’ access to protection procedures, the lowering of safeguards for vulnerable categories, the increased use of accelerated and special asylum procedures, to the detriment of procedural rights, and the new hurdles imposed in terms of access to labour market and education.⁴ Far from correcting the identified shortcomings, the new bill perseveres in reducing procedural guarantees for individuals across the asylum process, significantly deteriorating the rules around detention, and lowers the safeguards afforded to certain vulnerable categories, including children.

Below is a non-exhaustive overview of Amnesty International’s main concerns regarding the bill.⁵

¹ Draft Law of Migration and Asylum Ministry, “Improvement of immigration legislation, amendment of provisions of Laws 4636/2019 (A’ 169), 4375/2016 (A’ 51), 4251/2014 (A’ 80) and other provisions”, 10 April 2020, at: <https://bit.ly/3avxYVe>.

² Announcement on the website of the Minister for Immigration and Asylum (in Greek), on 10 April 2020, at: <https://www.mitarakis.gr/gov/migration/1990-sxedio-nomou>

³ Ministerial Decision No. 3063 on the operation of the “Register of Greek and Foreign Non-Governmental Organizations (NGO)” and the “Register of NGOs members”, 14 April 2020, available in Greek at: <https://bit.ly/3eLV3GS>

⁴ Press release on Amnesty International comments to the law and detailed submission, 24 October 2019, available at: <https://www.amnesty.org/download/Documents/EUR2512782019ENGLISH.pdf> and full submission available at: <https://www.amnesty.org/en/documents/eur25/1280/2019/en/>

⁵ As part of the consultation process, NGOs and specialized organizations working on migration and asylum also submitted their comments to the law which largely resonate with the present analysis, but in some cases also address changes which, while not

DETENTION PENDING EXPULSION BECOMES SYSTEMATIC

The new bill causes a significant deterioration of the rules around the detention of asylum-seekers and migrants in return procedures. Specifically, the bill makes the use of detention systematic in return procedures, removing the crucial caveat whereby its use should be conditional upon the inapplicability of “other sufficient but less coercive measures”.⁶ This caveat, in force in the current legislation, ensures the compliance of Greek law with EU standards, namely Article 15 of the Returns Directive, which clearly stipulates the detention should not be used as a rule in return procedures.⁷ The bill wholly inverts the very logic of the EU norm, providing that less coercive alternatives can only be applied where the competent police authority ascertains the absence of certain factors (such as the risk that the returnee absconds, hampers the preparation of the return or poses risks for national security). Conversely, in the corresponding EU Directive, the existence of one of these elements is indicated as a reason that *may* justify the use of detention.

Amnesty International strongly opposes the proposed change, insofar as it legitimizes the systematic use of detention of individuals in return procedures, in clear violation of well-established international and European principles which require a presumption of liberty and the exploration of available, less-invasive alternatives prior to considering detention.⁸

The impact of the present change should also be considered in the light of the fact that failed asylum-seekers in Greece risk finding themselves in detention for prolonged periods of time. The maximum period of detention of a third-country national for the purposes of return can last up to six months, with the possibility of a further extension of maximum of 12 months in presence of certain conditions.⁹ For failed asylum-seekers, however, this period of detention can come on top of potentially long periods spent in detention during the asylum procedure, as pre-return and asylum detention are counted separately for the purposes of calculating the maximum period of detention allowed.¹⁰ The provision establishing this possibility, introduced with the 2019 law of international protection under Article 46.5.b, was criticized by Amnesty International.¹¹ Separate rules apply to the restrictions of liberty applicable to unaccompanied minors.¹²

Furthermore, it is Amnesty International’s view that in the context the Covid-19 public health crisis, the use of detention solely for migration-related reasons cannot generally be considered a necessary or proportionate restriction on the right to liberty. In contrast with the bill’s attempt to systematize the use of migration detention in return procedures, it is our view that the present healthcare emergency should prompt states to assess the necessity and proportionality of detention in individual cases even more stringently. For these reasons, wherever feasible and where alternative accommodation facilities are available, Greece should consider releasing asylum-seekers from migration detention and place them in adequate

currently covered by Amnesty International, are also liable to cause significant changes to procedural rights in asylum and detention procedures. See among others: Refugee Support Aegean (RSA), Comments on the Reform of the International Protection Act, at: https://rsaegean.org/wp-content/uploads/2020/04/RSA_Comments_IPA_amendment-1.pdf; Greek Council for Refugees (GCR), <https://www.gcr.gr/el/news/press-releases-announcements/item/1434-sxolia-tou-esp-epi-tou-neou-sxediou-nomou-gia-tin-tropopoiisi-tis-nomothesias-gia-to-asylo>;

⁶ Article 50 amending article 30 of law 3907/2011

⁷ Directive 2008/115/EC of the European Parliament and of the Council of 16 December 2008 on common standards and procedures in Member States for returning illegally staying third-country nationals, Article 15 para. 1: “Unless other sufficient but less coercive measures can be applied effectively in a specific case, Member States may only keep in detention a third-country national who is the subject of return procedures in order to prepare the return and/or carry out the removal process [...]”.

⁸ See among others: Directive 2013/33/EU of the European Parliament and of the Council of 26 June 2013 laying down standards for the reception of applicants for international protection, Recital no. 20 and Article 8; Council of Europe: Committee of Ministers, Twenty Guidelines on Forced Return, 4 May 2005, Guideline no. 6, available at: <https://www.refworld.org/docid/42ef32984.htm>; UN High Commissioner for Refugees (UNHCR), *Guidelines on the Applicable Criteria and Standards relating to the Detention of Asylum-Seekers and Alternatives to Detention*, 2012, available at: <https://www.refworld.org/docid/503489533b8.html>; Council of Europe, Human Rights and Migration, Legal and practical aspects of effective alternatives to detention in the context of migration, Analysis of the Steering Committee for Human Rights (CDDH) Adopted on 7 December 2017, p.18 citing the above, at: <https://rm.coe.int/legal-and-practical-aspects-of-effective-alternatives-to-detention-in-/16808f699f>.

⁹ In cases where, despite the authorities’ reasonable attempts, removal procedures can last longer because the third-country national subject to removal procedures refuses to cooperate or there is a delay in receiving the necessary documents from the third-country (Article 30 (5) and (6) of Law 3907/2011).

¹⁰ Asylum-seekers can be detained for a maximum period of 50 days that can be extended for a further 50 days with the justified decision of the bodies that issued the detention order (Article 46 (5) (b) of Law 4636/2019). The maximum period of extension of detention cannot exceed the maximum period provided in Article 30 of Law 3907/2011 ((18 months).

¹¹ <https://www.amnesty.org/download/Documents/EUR2512802019ENGLISH.PDF>

¹² Unaccompanied children can be held in exceptional circumstances for a maximum period of 25 days that can be extended for a maximum of 20 days (Article 48 (1) of Law 4636/2019). Article 60 of the Bill repeals the period of the extension of 20 days. Unaccompanied children can also be held in so-called “protective custody” until a shelter is found for them.

shelters. Specifically, detainees should be released and granted access to basic services where their right to health cannot be upheld while in detention or when deportations cannot be carried out promptly.

Similar considerations apply to the amendments of the rules on detention of asylum-seekers whose appeal is rejected, which is similarly made systematic, with the exception of cases involving unaccompanied minors, until the return is completed or the decision on their claim becomes final.¹³

RESTRICTIONS IN ACCESS TO INFORMATION IN ASYLUM PROCEDURES AND LINGUISTIC ASSISTANCE

The legislative proposal affects applicants' right to receive information in the course of the asylum procedure. The bill creates a requirement for asylum-seekers to declare -upon registration of their asylum application- the language they wish to be used in the examination of their claim.¹⁴ At the same time, it is provided that, should it prove impossible to provide interpretation in the language of choice, it will be provided in the language of the applicant's country of origin or in a language that he/she is reasonably supposed to understand.¹⁵ This clause generally lowers the level of safeguards provided under EU law (among others, Article 12 para 1(a) of the "Procedures Directive"),¹⁶ whereby information about the asylum procedure should be given "in a language which [the applicants] understand or are reasonably supposed to understand", and does not provide for the dangerous assumption that the applicant is able to communicate and understand the official language of his/her country of origin, which might well not be the case in practice. It also remains unclear, from the formulation of the law, based on what type of assessment the choice of the language for the purposes of interpretation (the language of the applicant's country of origin or the language that he/she is reasonably supposed to understand) will be made in practice.

This provision is particularly problematic as it risks undermining the individual's ability to effectively express his/her protection needs and understand the information received. While it is welcome that the legislative proposal includes an explicit requirement for the interpreter chosen in the crucial phase of the asylum interview to be able "to secure the necessary communication in a language [the applicant] understands or which is reasonably supposed to be understood by the applicant",¹⁷ reflecting the above amendments, concerns remain as to the applicants' rights to receive information effectively when submitting the asylum application. Amnesty International therefore recommends removing, as a minimum, the reference to the possibility to provide interpretation in a language of the applicant's country of origin in the phase referred to in Article 7 of the bill (amending article 69 of law 4636/2019), in the absence of elements confirming that he/she effectively understands such language.

BETTER PROTECTION STILL NEEDED FOR VULNERABLE CATEGORIES AND UNACCOMPANIED CHILDREN IN ASYLUM PROCEDURES

The 2019 Asylum Law struck a blow to the rights of asylum-seekers considered "vulnerable" for the purposes of asylum procedures, reception and assistance.¹⁸ While Amnesty International welcomes the new bill's removal of the rule allowing for the standard processing of vulnerable cases through accelerated procedures,¹⁹ we take issue in the proposal to eliminate the prioritized examination of vulnerable cases.²⁰ Amnesty International also regrets that the bill fails to explicitly exclude the processing of unaccompanied children's cases through accelerated procedures.²¹

REMOVAL OF THE POSSIBILITY TO REFER FAILED ASYLUM-SEEKERS FOR HUMANITARIAN PROTECTION

The bill repeals Article 67 of the Greek law no 4375/2016,²² which provided for the possibility to refer a third-country national or stateless person to be considered for a right to remain on humanitarian grounds "in case the application for international protection [...] is rejected by a final decision and the competent deciding authority considers that he/she may fulfil the

¹³ Article 20 (2) of the Bill amending article 92 of law 4636/2019

¹⁴ Article 6 of the Bill, amending Article 65 of law 4636/2019

¹⁵ Article 7 of the Bill, amending Article 69 of law 4636/2019

¹⁶ European Union: Council of the European Union, Directive 2013/32/EU of the European Parliament and of the Council of 26 June 2013 on common procedures for granting and withdrawing international protection (recast), 29 June 2013, OJ L. 180/60 - 180/95; 29.6.2013, 2013/32/EU, Article 12 para. 1(a) (hereinafter the "Procedures Directive") available at: <https://bit.ly/3fcsu5n>.

¹⁷ Article 10 of the Bill amending Article 77 of Law 4636/2019.

¹⁸ Article 83.9(l) of Law 4636/2019

¹⁹ Article 60 of the Bill, providing for the repeal, among other provisions, of Article 83 para. 9(l) of law 4636/2019.

²⁰ Article 15 of the Bill amending Article 83 (7) of Law 4636/2019.

²¹ Article 83 (10) of Law 4636/2019.

²² Greece: Law No. 4375 of 2016 on the organization and operation of the Asylum Service, the Appeals Authority, the Reception and Identification Service, the establishment of the General Secretariat for Reception, the transposition into Greek legislation of the provisions of Directive 2013/32/EC, 3 April 2016, at: <https://www.refworld.org/docid/573ad4cb4.html>

[relevant] conditions”. Through this instrument, the deciding authority, the Independent Appeals Committees, have the possibility to refer asylum cases rejected by a final decision to the Directorate of Immigration Policy – under the Ministry of Immigration and Asylum (and prior to its re-establishment to the Ministry of Interior) - who could consider granting the individual a 1-year renewable permit of residence to individuals facing specific risks, including the impossibility of returning the individual to the country of origin or habitual residence “for reasons of force majeure”, for instance due to serious health risks, or if the non-*refoulement* principle applies to the individual concerned, as is guaranteed in Article 3 of the ECHR and of the relevant provisions of the UN Convention against torture.²³ The amendment removes the possibility to consider the granting of humanitarian protection retroactively to all decisions issued from 1 January 2020.²⁴

In the absence of the possibility to refer a failed asylum-seeker for humanitarian protection, Appeals’ Committees are only left with the possibility to grant the individual a ‘certificate of non-return for humanitarian reasons’ under Article 104 para. 4 of the 2019 Law on international protection, Such instrument grants the individual “the same rights and obligations stemming from the return postponement certificate”, a remedy provided for under the Greek law implementing the EU Returns directive (Law 3907/2011, Articles 37 and 24) to protect the individual in certain cases where a return decision cannot be temporarily carried out.²⁵ As duly noted in an extensive analysis carried out by Vassilis Papadopoulos, President of the Board of Directors of the Greek Council for Refugees, the abolition of the humanitarian protection referral pathway is not remedied by the existence of this alternative measure, insofar as the postponement of the removal decision affords individuals, in several respects, a lower level of protection.²⁶

While regretting to observe that this proposal deprives the Greek legal system of a core referral mechanism for people in situations of risk, Amnesty International remarks that the present changes shall not be construed as relieving Greece from its fundamental obligations under international and European instruments, including the prohibition of *refoulement*, not to expose individuals to risks of serious violations of their rights upon return.

TRANSFER OF A SIGNIFICANT SHARE OF ASYLUM APPEALS TO THE EXCEPTIONAL SINGLE-JUDGE PROCEDURE

In its submission on the new Greek Law on International Protection (Law 4636/2019), in October 2019, Amnesty International had expressed its concerns over the change of the composition of the Appeals Committee to that of three Administrative judges, with the possibility in certain cases to employ a single-judge procedure. In the same submission, the organisation observed that the single-judge procedure could be found to be not compatible with the Greek Constitution.²⁷ Serious concerns now arise with the amendment introduced by the current bill that transfers under the competence of a single-judge procedure all the appeals filed, among other cases, by the thousands of asylum-seekers residing on the Aegean islands (Samos, Chios, Lesbos, Leros and Kos).²⁸ The amendment provides that the Appeals Committee will operate in a single-member composition, among other cases, when rendering appeals against decisions issued under accelerated procedures (as per Article 83 para. 9 of Law 4636/2019); in appeals against decisions issued under the border procedures as well as in appeals of those being under reception and identification procedures and of those in detention; and appeals submitted until 20 July 2016.²⁹ This amendment in essence places the examination of a significant proportion of appeals under a procedure that, under the law, is meant to be used as an exception and is likely to reduced significantly safeguards for the applicants. Concerningly, the amendment also provides for the possibility to generally use the single-judge composition for appeals filed by people who are simply “residing” on the islands of Samos, Chios, Lesbos, Leros and Kos, without specifying whether the relevant asylum decision adopted in their case falls under one of the cases listed above.³⁰

THE REPLACEMENT OF OPEN CAMPS WITH CLOSED CONTROLLED CENTRES ON THE AGEAN ISLANDS

Finally, the law formalizes the creation of the closed controlled centres to be established on the islands, in substitution of the existing camps, and lays out their internal arrangements and functions. Consistently with the Government’s declared intention to create these centres as “multi-functional” facilities, it is set out that the new centres will include areas devoted

²³ According to Article 19A(f) of Law 4251/2014

²⁴ Article 60 amending Article 67 of Law 4375/2016

²⁵ Article by the President of GCR on the residence permit for humanitarian reasons, at: <https://bit.ly/3bZTONt>.

²⁶ Ibid.

²⁷ Press release on Amnesty International comments to the law and detailed submission, 24 October 2019, available at: <https://www.amnesty.org/download/Documents/EUR2512782019ENGLISH.pdf> and full submission, page 6, citing the Greek Council of State Decision in this sense (Decision No. 2980/2010, point 5), at: <https://www.amnesty.org/en/documents/eur25/1280/2019/en/>.

²⁸ Article 30.2 of the Bill amending Article 5 para. 7 of Law 4375/2016

²⁹ Article 30.2 letters a-g of the Bill amending Article 5 para. 7 of Law 4375/2016.

³⁰ Article 30.2 letter g, as above.

to reception and identification services, closed structures for temporary protection as well as pre-return detention facilities (“PROKEKA”).³¹ Already upon the initial announcement of the plan to create closed centres, Amnesty International expressed its concerns around the proposal.³² The Council of Europe Commissioner for Human Rights had requested clarification about the Government’s choice to replace open camps with facilities marked by a more generalized restriction of applicants’ movements, asking about the safeguards envisaged to ensure compliance with human rights norms.³³ At the time, the Greek Government had clarified that closed structures were to operate in parallel with existing camps.³⁴ While it has since become clear that the Government has changed its mind and intends to wholly substitute camps with closed structures, it remains unclear how it intends to ensure that the new centres will have sufficient accommodation capacity to host the refugee population in Greece, nor how the very idea of placing asylum-seekers in closed facilities can be reconciled with the principles regulating the deprivation of liberty and the restriction of movement of people seeking safety under international and European law. The choice to pursue the implementation of this new reception system appears particularly unadvisable during the Covid-19 health emergency, which might particularly impact those who are forced to live in close proximity with others without access to adequate preventive measures, as might be the case for people living in overcrowded and/or closed facilities. In this sense, smaller-scale accommodation allowing individuals to implement preventive measures effectively, should be favoured at this time. While reiterating its serious concerns on the choice to implement a reception system underpinned by a generalised restriction of people’s movement, especially during the Covid-19 emergency, Amnesty International urges the Greek Government to provide details on the operating procedures for the closed centres at the earliest opportunity.

³¹ Article 30 (4) of the bill amending article 8 para. 4 of law 4375/2016,

³² <https://twitter.com/AmnestyEU/status/1197180538223771648> and <https://www.theguardian.com/world/2019/nov/25/aid-groups-condemn-greece-over-prison-camps-for-migrants>.

³³ <https://rm.coe.int/letter-to-the-greek-minister-of-citizen-protection-and-the-alternate-m/168098efe3>

³⁴ <https://rm.coe.int/reply-of-greek-minister-of-citizen-s-protection-en/1680990be7>