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THE STATE OF THE BORDER PROCEDURE ON THE GREEK ISLANDS

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TABLE OF CONTENTS

Glossary	1
List of abbreviations	2
Table of legislation	3
Executive summary	4
Introduction	8
Methodology	9
1. Processing times	11
Legal framework & implementation	11
Findings	11
2. Registration form	12
Legal framework & implementation	12
Findings	13
3. Scope of the border procedure	13
Legal framework & implementation	13
Findings	14
4. Special procedural guarantees	15
Legal framework & implementation	15
Findings	17
5. Safe third country concept	19
Legal framework & implementation	19
Findings	23
6. Subsequent applications	25
Legal framework & implementation	25
Findings	26
7. COVID-19 measures	27
Legal framework & implementation	27
Findings	29
8. Immigration detention	31
Legal framework & implementation	31
Findings	31
Recommendations	32

Glossary

Asylum Code	Greek Law 4939/2022 ratifying the Code on reception, international protection of third-country nationals and stateless persons, and temporary protection in cases of mass influx of displaced persons
Asylum Procedures Directive	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
Closed Controlled Access Centres	Reception facilities where reception and identification procedures are carried out and asylum seekers are accommodated. Closed Controlled Access Centres currently operate on Samos, Leros and Kos
Connection criterion	Criterion determining the existence of a sufficient connection between an asylum seeker and a safe third country, rendering transfer thereto reasonable
EU-Turkey Statement	Statement of the Members of the European Council and of their Turkish counterpart of 18 March 2016 on measures to tackle irregular migration
Fast-track border procedure	Expedient version of the border procedure, set out in Article 95(3) of the Asylum Code and applicable in cases of mass arrivals, following the issuance of a joint ministerial decision.
Geographical restriction	Restriction on freedom of movement applied to asylum seekers arriving on the islands of Lesbos, Chios, Samos, Leros, Kos and Rhodes. The restriction consists in a prohibition on leaving the island
(Joint) Ministerial Decision	Greek secondary legislation akin to government decree, adopted on the basis of an authorisation provision in primary legislation
New substantial element	Claims, documents or other elements, which, through no fault of the asylum applicants, have not already been submitted by them during the examination of their initial/previous application for international protection, at first or second instance, and which could affect the Authorities' judgment on the latter under Article 94(2) of the Asylum Code.
Preliminary admissibility assessment	Examination of whether an application for international protection may be rejected as inadmissible under Article 89 of the Asylum Code (i.e. application of safe country of origin/safe third country concept, subsequent applications), without an assessment on the merits of the case.
Reception and identification procedure	Screening procedure applied to people irregularly arriving on Greek territory under Articles 38 et seq. of the Asylum Code. This is the precursor of the EU-wide screening procedure proposed by the European Commission proposal for a Screening Regulation, COM(2020) 612, 23 September 2020

Reception Conditions Directive	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
Return Directive	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
Safe third country	Ground for dismissing an asylum application as inadmissible without an assessment on the merits due to the possibility for the applicant to request protection in a non-EU country fulfilling safety and connection criteria set out in Article 38 of the Asylum Procedures Directive
Subsequent application	Asylum application lodged following a final rejection of the initial application. Subsequent applications are governed by Article 40 of the Asylum Procedures Directive

List of abbreviations

AAU	Autonomous Asylum Unit
AIDA	Asylum Information Database
CAT	Convention Against Torture
CEAS	Common European Asylum System
CJEU	Court of Justice of the European Union
DG HOME	Directorate-General for Migration and Home Affairs
DRC	Danish Refugee Council
EASO	European Asylum Support Office
ECHR	European Convention on Human Rights
ECRE	European Council on Refugees and Exiles
EU	European Union
EUAA	European Union Agency for Asylum
GCR	Greek Council for Refugees
ICCPR	International Covenant on Civil and Political Rights
IPA	International Protection Act
JMD	Joint Ministerial Decision
L	Law
MD	Ministerial Decision
MSF	Médecins Sans Frontières
PRDC	Pre-Removal Detention Centre
RAO	Regional Asylum Office
RIC	Reception and Identification Centre
RIS	Reception and Identification Service
RSA	Refugee Support Aegean
SGBV	Sexual and Gender-Based Violence
UN	United Nations
UNHCR	United Nations High Commissioner for Refugees

Table of legislation

EU law provision	Domestic provision	Main contents
Art 6 Asylum Procedures Directive	Art 69 Asylum Code	Access to the procedure
Art 9 Asylum Procedures Directive	Art 73 Asylum Code	Right to remain during the asylum procedure
Art 15 Asylum Procedures Directive	Art 82 Asylum Code	Personal interview
Art 24 Asylum Procedures Directive	Art 72 Asylum Code	Special procedural guarantees
Art 31 Asylum Procedures Directive	Art 88 Asylum Code	Duration of the procedure
Art 38 Asylum Procedures Directive	Art 91 Asylum Code	Safe third country
	JMD 42799/2021	List of safe third countries
	JMD 458568/2021	List of safe third countries
Art 40 Asylum Procedures Directive	Art 94 Asylum Code	Subsequent applications
	Art 23 L 4825/2021	Fee for second subsequent applications
	JMD 472687/2021	
Art 43 Asylum Procedures Directive	Art 95 Asylum Code	Border procedures
Art 46 Asylum Procedures Directive	Art 97-113 Asylum Code	Asylum appeals
Art 6 Reception Conditions Directive	Art 75 Asylum Code	Asylum seeker document
Art 7 Reception Conditions Directive	MD 1140/2019	Geographical restriction
Art 8 Reception Conditions Directive	Art 50 Asylum Code	Asylum detention
Art 13 Reception Conditions Directive	Art 77 Asylum Code	Medical examination
Art 20 Reception Conditions Directive	Art 61 Asylum Code	Reduction and withdrawal of reception conditions
Art 22 Reception Conditions Directive	Art 62 Asylum Code	Special reception needs
Art 25 Reception Conditions Directive	Art 67 Asylum Code	Victims of torture and violence
Art 15 Return Directive	Art 30 L 3907/2011	Pre-removal detention
Art 9 Eurodac Regulation	-	Fingerprinting of asylum seekers ("Category 1")
Art 24 Eurodac Regulation		Transmission of fingerprints
-	Art 38 Asylum Code	Reception and identification procedure
-	Art 83 L 3386/2005	Criminalisation of irregular entry
-	Art 285 Criminal Code	Criminalisation of breach of epidemic prevention measures
-	JMD 43319/2021	COVID-19 prevention measures
	JMD 48010/2021	
	Δ1α/Γ.Π.οικ.	
	Δ1α/Γ.Π.οικ.	

Executive summary

The “fast-track border procedure” on the Greek islands of Lesbos, Chios, Samos, Leros and Kos, initially framed as a derogation from standard procedural rules reserved for exceptional circumstances of “mass arrivals” and set up with a view to implementing the EU-Turkey Statement, ran uninterrupted from spring 2016 to the end of 2021. It has accounted for almost half of the country’s asylum caseload, far above any country applying border procedures in the EU.

This report examines the workings of border procedures implemented on the Greek islands over the past year (June 2021 – June 2022), revealing new concerns tied to poor quality of asylum procedures and to breaches of fundamental rights. These add to an abundant body of international criticism of the Greek asylum system and merit close scrutiny, not least in the context of ongoing EU-level negotiations on the reform of the Common European Asylum System.

Border procedures may normally only be applied to asylum claims made at the borders and in transit zones. The termination of the “fast-track border procedure” at the end of 2021 means that from 2022 onwards only the regular border procedure is applicable at borders and in transit zones, and no longer in Reception and Identification Centres (RIC). Although, technically the stricter “fast-track border procedure” time frames for the conclusion of the examination of applications for international protection, provided by law, stopped being applicable as of January 2022, in most cases the authorities did not comply with these provisions anyway. At the same time, deadlines for asylum seekers did not change even under regular border procedure, in comparison to the fast-track procedure previously applied. Therefore, during the period examined in the present report, for most cases processed under the border procedure over the past year, the average time between arrival and registration of the asylum application has been 10-15 days, while a considerable number of claims have been registered in approximately a week or less after arrival, especially on Lesbos. Registrations seemed to take longer on Chios. In most cases, summons for interviews were delivered to the applicants on the day of registration, while the length of time between the summons and interview taking place ranged from 5-10 days. However, in several cases applicants were invited to have their interviews only a day after being summoned. First instance decisions have generally been issued by the Asylum Service within the time frame of 7 days provided by the Asylum Code for the fast-track border procedure.

Severe delays persist when it comes to conducting vulnerability assessments even after the reception and identification procedure formally ends: The time delay ranges from ten days to longer than three months in some cases. Yet, the Asylum Service and EUAA continue to process asylum claims before individuals have undergone a vulnerability assessment, and routinely disregard or deny special procedural guarantees afforded by EU law, even where they are specifically requested by the applicants in writing and/or orally prior to the interview. They instead insist on completing the interview under the border procedure. The medical cards issued to people undergoing reception and identification procedure do not clearly indicate whether and when a vulnerability assessment was conducted.

In June 2021, the safe third country concept became the rule throughout the Greek territory for all asylum seekers originating from Syria, Afghanistan, Somalia, Pakistan and Bangladesh, after the issuance of a Joint Ministerial Decision (JMD) setting out a “national list of safe third countries” including Turkey. The list provides no reasoning as to why and on the basis of which information Turkey was designated a safe third country for the five nationalities. Instead, it refers to an unpublished “Opinion” of the Head of the Asylum Service. Given that Turkey has unilaterally suspended the Greece-

Turkey Bilateral Protocol since 2018 and has not accepted any readmissions from Greece under the EU-Turkey deal since March 2020 and return operations have ceased, asylum seekers rejected on safe third country grounds are left in a legal limbo. In fact, the Greek authorities have stopped sending requests for readmission of asylum seekers to Turkey altogether. Nevertheless, even in the cases where asylum seekers specifically request an examination of their case based on its merits in line with EU law, this is disregarded.

Subsequent applications lodged after a rejection of the initial claim based on the safe third country concept have been rejected on the grounds that they lack new elements, even in cases where the lack of prospect of readmission to Turkey was explicitly invoked. The authorities have deemed this argument does not constitute *per se* a new element that could render the subsequent application admissible and restart the asylum procedure. Furthermore, the Asylum Service breaches EU law by dismissing subsequent applications as inadmissible on the grounds that they lack new and substantial elements, even though it is not provided by the law that in this case they can assess the merits of those submitted elements. In other cases, asylum authorities dismiss elements relating to the applicants' state of health and/or exposure to torture or violence in the country of origin as falling short of the "new substantial elements" threshold. As of September 2021, asylum seekers are obliged to pay a fee of 100 € per person, in order to make a second and further subsequent application, a measure that has received criticism at national and EU level and has been challenged before the Greek Council of State.

COVID-19 prevention measures have had a particular impact on asylum seekers on the islands. Quarantine policy on the islands has raised issues of compliance with national and EU law. Whereas people arriving in Greece expressed their intention to apply for asylum, no registration document was issued to them within the timeframes set out in EU law. Asylum seekers have been confined in quarantine facilities for periods of 14 days or more. In addition, 5,000 € fines have been issued by the Chios Coast Guard to asylum seekers for entering the country in contravention of COVID-19 protocols. Domestic courts have suspended the fines in some cases, but in others they have maintained them.

Immigration detention has mainly been applied on Kos which implemented a policy of automatic detention of all asylum seekers upon arrival from January 2020 to August 2021. From September 2021, the practice of automatic detention upon arrival stopped and instead the people who arrived were placed in the RIC and underwent reception and identification procedures, after the end of their quarantine. Pre-removal detention continues to be imposed to asylum seekers arriving on Kos with a view to carrying out readmission procedures to Turkey, even though there is a clear lack of prospects they will be returned thereto.

Overall, this report highlights that core aspects of the asylum procedures in Greece fall short of ensuring that asylum seekers access their rights under EU and domestic law. In order to address these issues and drawing on the above findings, the Danish Refugee Council (DRC), Equal Rights Beyond Borders, HIAS Greece, Refugee Support Aegean (RSA) and PRO ASYL put forward the following recommendations:

Ministry of Migration and Asylum

- ❖ Repeal Article 94(10) of the Asylum Code and JMD 472687/2021 on the fee for subsequent applications;
- ❖ Repeal JMD 42799/2021 on the national list of safe third countries and phase out the application of the safe third country concept;

Reception and Identification Service

- ❖ Ensure that the details of asylum seekers, including date of arrival, are correctly and accurately recorded in asylum application lodging forms;
- ❖ Ensure that medical and vulnerability assessments are completed prior to the referral of the case to the asylum authorities;
- ❖ Clearly indicate whether medical and vulnerability assessments have been concluded or are pending when issuing referrals of cases to the Asylum Service;
- ❖ Clearly indicate the date of vulnerability assessments in the Foreigner's Medical Card or other documentation;
- ❖ Clarify the legal status of people subject to COVID-19 quarantine and observe the requirements of necessity, proportionality and procedural safeguards attached to deprivation of liberty;

Asylum Service & Appeals Authority

- ❖ Cease the use of the border procedure to asylum seekers applying for international protection in reception and identification centres, given that they fall outside the scope of Article 43(1) of the Asylum Procedures Directive;
- ❖ Exempt from the border procedure all cases that should not be examined on the grounds of admissibility and do not meet any of the criteria of Article 31(8) of the Asylum Procedures Directive;
- ❖ Ensure that asylum interviews are not conducted before medical and vulnerability assessments have been concluded in reception and identification procedures;
- ❖ Provide special procedural guarantees under Article 24 of the Asylum Procedures Directive *ex officio* and upon request, and exempt from the border procedure asylum seekers in need thereof e.g. survivors of torture, rape or other serious forms of psychological, physical or sexual violence, since they cannot benefit from adequate support in truncated procedures;
- ❖ Cease the use of the safe third country concept vis-à-vis Turkey given that it does not comply with Article 38(4) of the Asylum Procedures Directive;
- ❖ Publish the Opinion of the Director of the Asylum Service on the designation of Turkey, Albania and North Macedonia as safe third countries;
- ❖ Refrain from classifying applications made after the rejection of the initial claim based on the safe third country concept as "subsequent applications" and refrain from applying a preliminary admissibility assessment on new elements;
- ❖ Ensure that the preliminary admissibility assessment of subsequent applications is limited to the establishment of new substantial elements and that the merits of those elements are not examined at that stage;

Hellenic Police

- ❖ Refrain from issuing pre-removal detention orders to asylum seekers, including people who have made an asylum application and are awaiting registration;
- ❖ Cease ordering detention of asylum seekers with a view to removal to Turkey, given the applicability of Article 15(4) of the Return Directive;

European Commission (DG HOME)

- ❖ Urgently launch infringement proceedings against Greece regarding incorrect transposition and implementation of the Asylum Procedures Directive, the Reception Conditions Directive and the Return Directive, stemming *inter alia* from the requirement of fees for subsequent applications, the arbitrary application of the safe third country concept, and refusal to afford special procedural guarantees in border procedures
- ❖ Provide detailed, publicly accessible information on the procedures through which the Task Force Migration Management addresses issues of non-compliance in transposition and implementation of the EU asylum *acquis*, and on follow up measures taken with the Greek authorities where non-compliance

persists e.g. on the safe third country concept or fees for subsequent applications;

- ❖ Thoroughly assess all elements raised in complaints on violations of the EU asylum *acquis* by Greece and provide adequate reasoning where the Commission decides not to pursue infringement proceedings.

Introduction

The “fast-track border procedure”¹ on the Greek islands of Lesbos, Chios, Samos, Leros and Kos, initially framed as a derogation from standard procedural rules reserved for exceptional circumstances of “mass arrivals” and set up with a view to implementing the EU-Turkey Statement, ran uninterrupted from spring 2016 to the end of 2021 and was applied to more than 155,000 people seeking refuge in Greece.² It has accounted for almost half of the country’s asylum caseload, far above any country applying border procedures in the European Union (EU).³ The confinement of asylum seekers within the islands on which they arrived under a “geographical restriction” ran as an adjunct to the fast-track border procedure.⁴ As of 2022, the fast-track border procedure has been phased out, but border procedures in the meaning of Article 43(1) of the Asylum Procedures Directive remain in effect on the Greek islands.

It thus comes as no surprise that ongoing EU legislative proposals to reform the Common European Asylum System (CEAS), tabled in 2016, 2020 and 2021 and still under discussion, envision the generalised use of border procedures and confinement of refugees at points of arrival, largely drawing inspiration from Greek practice.⁵ While EU co-legislators continue to debate an increasingly complex set of legislative files, the Greek border procedure is constantly evolving, partly in the direction tentatively given by the reform. New concerns tied to poor quality of asylum procedures and to breaches of fundamental rights add to an abundant body of international criticism of the Greek asylum system and merit close scrutiny.

In this report, we examine the workings of border procedures implemented on the Greek islands over the past year (June 2021 – June 2022). The report tracks the full range of administrative processes carried out by Greek authorities and the European Union Agency for Asylum (EUAA) – formerly European Asylum Support Office (EASO) – vis-à-vis people seeking asylum on the islands, from arrival to registration and decision-making. It pays due regard to special measures imposed on account of the COVID-19 pandemic e.g. quarantine and fines, and to immigration detention.

The start of our reference period is set at June 2021, coinciding with a turning point in the country’s asylum policy marked by the adoption of a “national list of safe third countries”, currently covering Turkey for nationals of Syria, Afghanistan, Somalia, Pakistan and Bangladesh, Albania and North Macedonia for all nationalities. More than 7,000 people have sought asylum on the islands of Lesbos, Chios, Samos, Leros and Kos between June 2021 and June 2022:

¹ Based on Article 43(3) Asylum Procedures Directive, as transposed in domestic legislation. The procedure was activated through legislative and regulatory acts. According to the last relevant JMD (15996/2020, Gov. Gazette B’ 5948/31-12-2020) issued under L. 4636/2019, the fast-track border procedure was to be applied until 31-12-2021, and has not been extended since.

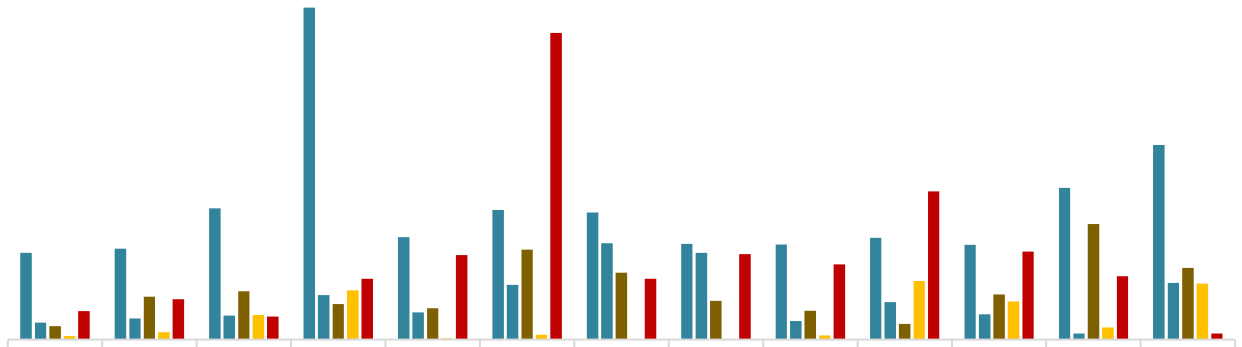
² RSA, *EU-Turkey deal: Rule of law capture by a Statement*, March 2021, 3-4, available at: <https://bit.ly/3nsMc2i>.

³ European Parliament Research Service, *Asylum procedures at the border: European Implementation Assessment*, PE654.201, November 2020, available at: <https://bit.ly/3DrPOGb>.

⁴ MD 1140/2019, Gov. Gazette B’ 4736/20.12.2019.

⁵ DRC et al., *The Workings of the Screening Regulation*, January 2021, available at: <https://bit.ly/3H0N0DN>.

New asylum applicants on the Lesvos, Chios, Samos, Leros & Kos



	Jun-21	Jul-21	Aug-21	Sep-21	Oct-21	Nov-21	Dec-21	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22
■ Lesvos	144	151	218	551	170	215	211	159	158	169	157	252	323
■ Chios	28	35	40	74	45	91	160	144	31	62	42	10	94
■ Samos	22	71	80	59	52	149	111	64	48	26	75	192	119
■ Leros	6	12	41	82	2	8	1	1	7	97	63	20	93
■ Kos	47	67	38	101	140	509	101	142	125	246	146	105	10

■ Lesvos ■ Chios ■ Samos ■ Leros ■ Kos

Methodology

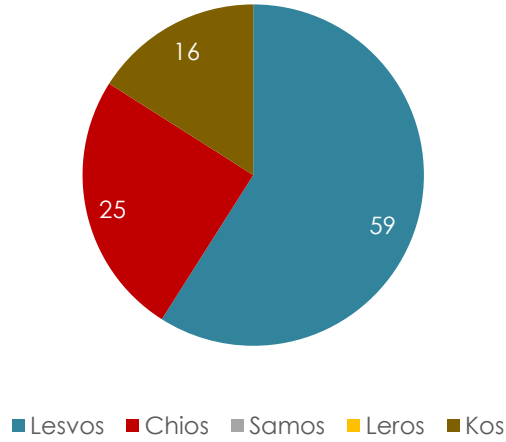
Research conducted for the purposes of this report draws on the methods below:

1. **Desk research**, drawing on relevant statistics, case law, official and civil society reports, complaints lodged by our organisations and others before domestic and international monitoring bodies, and parliamentary questions. Specific reference is made to direct complaints lodged with the Directorate-General for Migration and Home Affairs (DG HOME) of the European Commission and to documents recently obtained therefrom through public access requests.⁶
2. **Analysis of a sample of 100 asylum case files** selected by our organisations in the context of our casework, relating to asylum procedures carried out on the islands of Lesvos, Chios and Kos in the period June 2021 to June 2022. Selected files may involve procedures of people who arrived in Greece prior to the reference period, but whose subsequent applications occurred within the aforementioned time period.

The sample of cases is geographically distributed across the islands as follows:

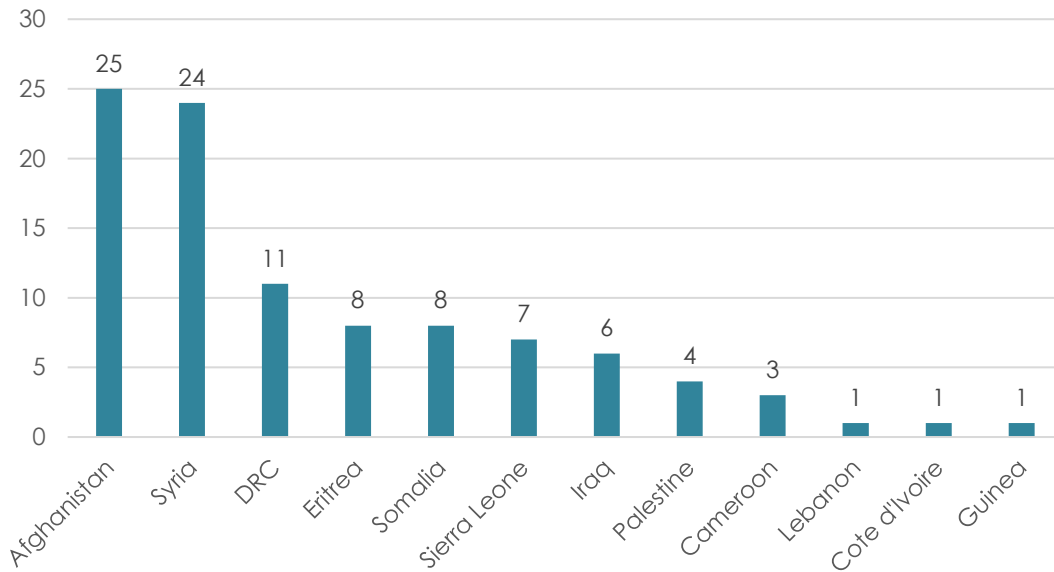
⁶ GESTDEM 2022/2217, requesting access to "All documents, including but not limited to reports, emails, meeting reports, operational conclusions, relating to the assessment of transposition and implementation of the Asylum Procedures Directive 2013/32/EU, the Reception Conditions Directive 2013/33/EU, the Qualification Directive 2011/95/EU and the Return Directive 2008/115/EC in Greece, exchanged by the Commission's Task Force for Migration Management." The request was replied to on 22 June 2022 and 22 documents were granted.

Sample geographical distribution



The countries of origin of asylum seekers covered by the sample are reflected as follows:

Sample breakdown by nationality

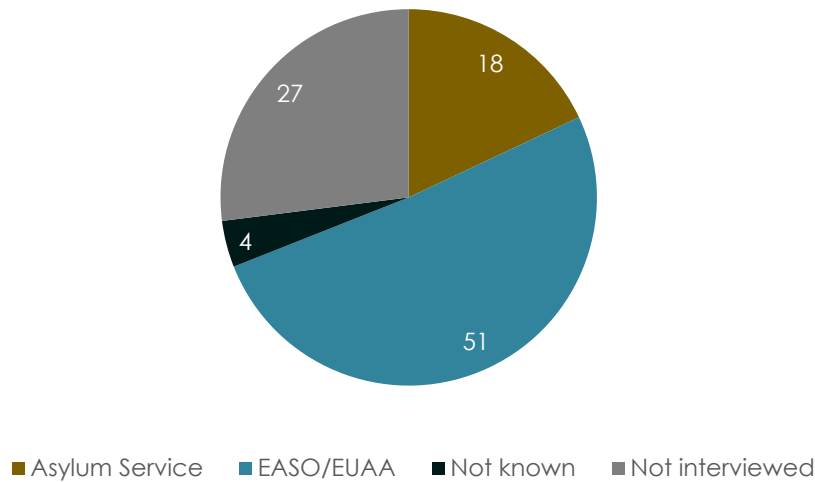


55 of the 100 cases are first/initial asylum applications (26 at RAO Lesvos, 17 at RAO Chios and 12 at RAO Kos), 41 of them are subsequent applications (33 at RAO Lesvos and 8 at RAO Chios) and 4 of them are second subsequent applications (RAO Kos), after the entry into force of Article 23 L 4825/2021,⁷ imposing a 100 € fee on the submission of every second and further subsequent application.

73 of the 100 cases involved a personal interview. In the majority of cases, the interview was conducted by EASO/EUAA personnel:

⁷ L 4825/2021, Gov. Gazette A' 147/04.09.2021.

Sample breakdown by interviewing authority



1. Processing times

Legal framework & implementation

Although Article 95(3) of the Greek Asylum Code⁸ foresees an accelerated timeline for processing asylum applications at the borders in the “fast-track border procedure”, as well as shorter deadlines for the asylum seekers within border procedures in general (both the regular border procedure and the fast-track border procedure), more often than not, the competent authorities did not follow the time frame provided by law.⁹ Still, processing times remained considerably faster compared to procedures conducted in the mainland.

Reception and identification procedures, however, namely medical examination and vulnerability assessment of the applicants, were usually not completed before the lodging of the asylum application, or even before the conduct of the interview, even though the Asylum Code provides that the stage of medical examination precedes the referral to the procedure for determination of international protection status.¹⁰

Findings

Out of a total of 100 cases studied in the present report, 55 consisted of first/initial applications for international protection (26 at RAO Lesvos, 17 at RAO Chios and 12 at RAO Kos).

⁸ L 4939/2022, Gov. Gazette A' 111/10.06.2022, repealing the International Protection Act, L 4636/2019, Gov. Gazette A' 169/01.11.2019.

⁹ According to Article 95(3) Asylum Code, the first instance decision must be issued within seven days. The appeal must be lodged within a deadline of ten days and its examination must take place within four days. In case the applicant is invited to an oral hearing, the deadline for the notification of the invitation before the interview and the submission of a memorandum after it, shall be of one day. The decision on the appeal must be issued within seven days from its examination.

¹⁰ Article 38(2) of the Asylum Code foresees the following stages for reception and identification procedures: a) Provision of information, b) Submission, c) Registration and medical examination, d) Referral to the procedure for determination of international protection status, e) Further referral and movement. Article 62(2) Asylum Code foresees that the vulnerability assessment takes place during the medical examination foreseen under reception and identification procedures.

In most cases, the average time between arrival and registration of the application has been 10-15 days, while a considerable number of applications, especially at RAO Lesvos, have been registered in approximately a week or less after arrival. Registrations seemed to delay more at RAO Chios (approximately 20 days after arrival), in some cases possibly exceeding the maximum time of 15 working days within which lodging is supposed to be conducted according to Article 69 of the Asylum Code (if considered that the applicants' will to submit an application for international protection was expressed upon arrival).

Regarding subsequent applications, no safe conclusions can be drawn regarding the time lapse between the applicants' expression of relevant intention and the actual lodging of the application, since the expression of intention is not officially registered as in first/initial applications and there are different and non-consistent practices in place between RAOs (see details in [Section 6](#)).

It has almost been the rule, for all the RAOs studied in the present report, that summons for interviews were delivered to the applicants on the day of registration of their application. In most cases, 5-10 days were provided between notification of interview summons and conduct of the interview, for the preparation of the applicants. However, in nine cases (HLES5, HLES16, HLES18, RLES1, EKOS9, EKOS12, EKOS13, EKOS14, EKOS15), the applicants were invited to pass their interviews only a day after being summoned.

In general, first instance decisions have been issued within the time frame of 7 days provided by the Asylum Code. In most cases that this time frame has not been followed, they were issued within an average of 10-20 days, with very few exceptions that issuance of decision was delayed for a month or more. This does not seem to be the case for second instance decisions, as it appears that procedures at second instance take at least 2 months, or more, between the submission of the appeal and the issuance of the decision of the Appeals' Committees.

2. Registration form

Legal framework & implementation

The "lodging" (*κατάθεση*)¹¹ of asylum applications made during screening ("reception and identification procedures") is no longer done by the Asylum Service. On most islands, lodging is conducted directly by the Reception and Identification Service (RIS)¹² through form "ΥΠΥ01.0", titled "Additional personal data registration form" (*Φόρμα καταγραφής συμπληρωματικών προσωπικών στοιχείων*), where all personal details and the reasons for seeking international protection are recorded.¹³ The person is fingerprinted as an applicant for international protection ("Category 1") in the Eurodac database at that same point.¹⁴ The "ΥΠΥ01.0" template is used both for cases falling under the scope of the safe third country list and for other cases (see [Section 5](#)).

Lesvos was the only island where asylum claims continued to be lodged by the Asylum Service through the "Form for Lodging an application for international protection"

¹¹ Article 6(4) Asylum Procedures Directive; Article 69(1) Asylum Code. "Lodging" differs from "registration", i.e. the recording of the intention to seek asylum.

¹² Article 1(o) Asylum Code.

¹³ The form has been used since the end of 2020 on Chios: DRC et al., *The Workings of the Screening Regulation*, January 2021, 24-25.

¹⁴ Articles 9(1) and 24(4) Eurodac Regulation.

(Φόρμα καταγραφής αίτησης διεθνούς προστασίας) until recently.¹⁵ Different forms were used depending on whether the case falls within the scope of the safe third country list: (a) an Admissibility lodging form is used for nationals of Syria, Afghanistan, Somalia, Pakistan and Bangladesh; (b) an Eligibility lodging form for other nationalities. However, as of the summer of 2022, the “ΥΠΥ01.0” form is also used on Lesbos for first asylum applications.

Findings

Our analysis of cases confirms a frequent, if standard, practice of incorrect recording of asylum seekers' date of arrival in the “ΥΠΥ01.0” form on Kos and Chios. Under “Date & point of entry in Greece”, the RIC of Chios and Kos enter the date of conduct of the reception and identification procedure, not the date of the person's arrival in the country.¹⁶ This has led to significant disparities between actual arrival and recorded date of arrival, reaching 14 days (ECHI9, ECHI10, ECHI11, ECHI13, ECHI14, RCHI1, RCHI2, RCHI3), 15 days (ECHI10), 16 days (RCHI8, RCHI9, RCHI10), 17 days (EKOS4) 18 days (EKOS1) or even 22 days (EKOS9, EKOS12), not least due to quarantine measures applied in light of the COVID-19 pandemic (see [Section 7](#)).

Furthermore, there have been cases where the Asylum Service deems the claim to be lodged much later than the completion of the “ΥΠΥ01.0” form and “Category 1” fingerprinting in Eurodac. In RKOS1, the applicant lodged his claim as above in early March 2022 in the RIC of Kos and was sent to pre-removal detention immediately after. The RAO of Kos only considered his claim as lodged in April 2022, more than one month later. Due to this, the applicant not only remained in arbitrary pre-removal detention for over a month but also remained in a border procedure in contravention of Article 43(2) of the Asylum Procedures Directive and Article 95(2) of the Asylum Code, per which asylum seekers must be exempted from the border procedure if no first instance decision has been issued on their claim within 28 days of lodging. This point was raised by the applicant through written objections (*ενστάσεις επί της διαδικασίας*)¹⁷ which were, however, entirely disregarded by the Asylum Service.

3. Scope of the border procedure

Legal framework & implementation

Material scope: Article 43(1) of the Asylum Procedures Directive and Article 95(1) of the Greek Asylum Code set express boundaries on the permissible assessments of asylum cases in border procedures.¹⁸ Border procedures may only be used to assess the merits of an application if the claim raises one or more grounds for applying accelerated procedures under Article 31(8) of the Asylum Procedures Directive and Article 88(9) of the Asylum Code e.g. the applicant comes from a designated “safe country of origin”, only raises issues unrelated to international protection, or presents a threat to national security or public order. Contrary to those rules, however, both the Asylum Service and EASO/EUAA systematically examine asylum claims on their merits in the border procedure even in the absence of grounds for applying accelerated procedures.¹⁹

¹⁵ The use of the “ΥΠΥ01.0” form on Lesbos began on 25 May 2022, according to a 30 August 2022 reply of the Director of the RIC of Lesbos to a request for information submitted on 1 July 2022 by members of the Legal Aid Sub-Working Group of Lesbos.

¹⁶ The Ombudsman highlighted similar issues on Lesbos in 2020: Ombudsman, No 278330/1, 28 May 2020.

¹⁷ Article 14(10) Asylum Service Regulation, Ministerial Decision 3385/2018.

¹⁸ Cases may only be processed on the merits where one or more the grounds for applying accelerated procedures are established under Article 31(8) of the Directive.

¹⁹ This is a recurring concern: ECRE, *The role of EASO Operations in national asylum systems*, November 2019, 27, available at: <https://bit.ly/3PEUuQQ>.

Out of a total of 4,813 in-merit decisions taken at first instance in the fast-track border procedure in 2021, only 114 concerned cases for which acceleration grounds applied. As for the first half of 2022, only 74 out of 1,824 in-merit decisions concerned acceleration grounds. This means that Article 43(1) of the Directive was breached in as many as 6,449 cases in that 18-month period. Appeal bodies have also disregarded wrongful assessments of applications in the border procedure and have gone as far as maintaining that regular and border procedures offer the same standards.²⁰

The phasing out of the fast-track border procedure at the end of 2021 has had no effect on the practice, though the RAO of Lesbos has noted in response to individual requests that “in view of the termination of application of [Article 95(3) of the Asylum Code] the act of referral to the regular procedure has been abolished, as it does not substantively serve the activities of the RAO/AAU.”²¹ The Greek Ombudsman has requested clarifications from the Asylum Service as to the basis and legality of this practice.²²

In June 2021, the European Commission received complaint CHAP(2021)02265 alleging *inter alia* breach of Article 43(1) of the Asylum Procedures Directive on account of the above practice. The Commission closed the complaint in March 2022, stating that “issues relating to bad implementation of the Asylum Procedures Directive are being addressed in the ongoing dialogue between the Commission’s Task Force for Migration Management and the Greek authorities.”²³ Yet, Task Force documents obtained in June 2022 further to a public access to documents request include no mention of the issue whatsoever.²⁴

Territorial scope: Border procedures may normally only be applied to “applications for international protection made at the borders and in transit zones of ports or airports”.²⁵ Greece designates *inter alia* the Ports of Petra Lesbos, Chios, Karlovassi Samos, Agia Marina Leros and Kos as sea border-crossing points.²⁶ By way of derogation, they may only be implemented in proximity to border areas to people “for as long as they remain in Reception and Identification Centres or Closed Controlled Access Centres” in case of “mass arrivals”.²⁷ The termination of the fast-track border procedure at the end of 2021 and corollary use of the regular border procedure from 2022 onwards thereby means that the procedure is only applicable at borders and in transit zones. Therefore, people making an asylum claim during reception and identification procedures do *not* fall within the scope of the border procedure and should automatically be channelled into the regular procedure. Yet, neither the Greek authorities nor the EUAA have brought their practice in line with EU and national law.

Findings

At least 53 of the 100 analysed cases were examined on the merits in the context of the border procedure. In at least five cases (RLES20, RLES27, RLES30, RCHI5, RKOS1), the applicants objected to the examination of the merits of their claim in the border

²⁰ 3rd Appeals Committee, No 40778/2022, 24 January 2022, para 5.

²¹ RAO Lesbos, No 276198, 17 May 2022.

²² Ombudsman, No 311675/31150/2022, 7 June 2022.

²³ European Commission, Closure Letter of Complaint CHAP(2021)02265, Ares(2022)1620916, 4 March 2022.

²⁴ European Commission, Reply to Request GESTDEM 2022/2217, Ares(2022)4581235, 22 June 2022 and enclosed documents.

²⁵ Article 43(1) Asylum Procedures Directive; Article 95(1) Asylum Code.

²⁶ Update of the list of border crossing points as referred to in Article 2(8) of Regulation (EU) 2016/399 of the European Parliament and of the Council on a Union Code on the rules governing the movement of persons across borders (Schengen Borders Code) [2018] OJ C261/6.

²⁷ Article 95(3) Asylum Code. See also Article 43(3) Asylum Procedures Directive.

procedure both in writing and/or orally at the start of their personal interview. In none of the cases were those objections accepted, however:

- **RLES20:** The applicant raised oral objections on the day of the interview. The EASO caseworker asked the team leader for instructions and “the team leader stated that the interview has to continue as scheduled.” The interview was carried out in the border procedure.²⁸
- **RLES27:** The applicant raised written and oral objections on the day of the interview. The EASO caseworker consulted with the team leader and stated that “the border procedure does not differ from the regular procedure and a longer deadline of 3 days will be given to the lawyer in order to submit a memo.” The interview was carried out in the border procedure.²⁹
- **RLES30:** The applicant raised written and oral objections on the day of the interview. The EUAA caseworker fully disregarded the objections and proceeded with the interview in the border procedure.
- **RCHI5:** The applicant submitted written objections almost one month prior to the interview. The EASO caseworker fully disregarded the objections and proceeded with the interview in the border procedure.
- **RKOS1:** The applicant submitted written objections three days prior to the interview. During the interview, the Asylum Service caseworker asked the applicant why he requested a referral to the regular procedure in the middle of the interview and then carried on with further questions on the claim.

Practice seems to have recently shifted at least on Lesbos. In five applications (RLES31, RLES34, RLES35, RLES36, RLES39) decided upon at first instance in May 2022, negative decisions indicate the appeal deadlines applicable to the regular procedure were followed and not those of the border procedure. However, given that no act has been issued to refer the cases concerned from the border procedure to the regular procedure and no mention of such a referral is made in the rejection decisions, it remains unclear why this shift has taken place in the RAO of Lesbos. The trend seems to be unrelated to the aforementioned limitations on the scope of permissible in-merit examinations, as it includes “safe third country” cases (e.g. RLES36) which may lawfully be processed in border procedures. Additionally, upon filing an appeal in said cases, the people signed the border procedure template form, titled “‘Appeal and proof of submission’, art. 90, par. 3”. The form refers to border procedure deadlines for key steps in the process, not to those applicable in the regular procedure.

Territorial scope: Our analysis of cases confirms that people seeking asylum on the islands in 2022 are unlawfully channelled into the border procedure, even though they remain in RIC well within the Greek territory and not “at the borders or in transit zones”. In RKOS1, the asylum seeker raised the point and requested to be referred to the regular procedure through written objections three days before his interview. These were fully disregarded by the Asylum Service.

4. Special procedural guarantees

Legal framework & implementation

Asylum processing prior to a vulnerability assessment: Identification of vulnerability remains a core deficiency of the Greek asylum system. As discussed elsewhere, the Greek authorities tend to consider reception and identification procedures “as concluded before the individual has undergone a medical check and vulnerability

²⁸ The application was only exempted from the fast-track border procedure and referred to the regular procedure after the applicant had been transferred to the mainland, without a new interview being conducted.

²⁹ *Ibid.*

assessment, partly due to delays and capacity gaps in the conduct thereof.”³⁰ On the one hand, the RIS consistently issues referrals of the individuals concerned to the competent authorities (i.e. the Asylum Service and Hellenic Police) stating that the reception and identification procedure has been completed without a finding of vulnerability. On the other hand, the exact date of the medical check and vulnerability assessment is not marked in the case file of the person. The Foreigner’s Medical Card (Κάρτα Υγείας Αλλοδαπού) issued on the day the reception and identification procedure takes place automatically carries that same date. The card may be amended following an assessment, in which case a re-issuance date is indicated. However, this is not necessarily the date on which the vulnerability assessment takes place. This means that asylum seekers are referred to the Asylum Service with a Medical Card which in most cases precedes the actual medical check and vulnerability assessment.

Refusal to afford special procedural guarantees and exemption from the border procedure: According to the Ministry of Migration and Asylum, 1,569 asylum claims were exempted from the fast-track border procedure and referred to the regular procedure in 2021 on vulnerability grounds.³¹ However, Asylum Service and EASO/EUAA caseworkers continue to routinely disregard requests for exemption from the border procedure due to the lack of special procedural guarantees and “adequate support”,³² namely in the form of sufficient time to prepare for interviews, referral for medical examinations³³ or certification for victims of torture.³⁴ For their part, appeal bodies systematically dismiss submissions of unlawful denial of special procedural guarantees in the border procedure, either as irrelevant to the asylum application (αλυσιτελείς) or as unfounded (αβάσιμοι) for want of procedural harm (δικονομική βλάβη) sustained by the applicant.³⁵ The practice persists in dereliction of Greek courts’ case law³⁶ and in contravention of Article 24(3) of the Asylum Procedures Directive and Article 72(3) of the Asylum Code.

In the summer of 2021, the European Commission received complaints CHAP(2021)02261, CHAP(2021)02265, CHAP(2021)02274 and CHAP(2021)02994, alleging *inter alia* infringements of Article 24(3) of the Asylum Procedures Directive on account of systemic breaches of the duty to provide special procedural guarantees in border procedures on the islands. All four complaints were closed via standardised decisions in early 2022, indicating that “issues relating to bad implementation of the Asylum Procedures Directive are being addressed in the ongoing dialogue between the Commission’s Task Force for Migration Management and the Greek authorities.” However, Task Force documents obtained in June 2022 include no assessment of or exchange on of the practice. Only an October 2021 Task Force mission report includes a succinct reference by the Greek authorities to the fact that “Many Syrians are

³⁰ DRC et al., *The Workings of the Screening Regulation*, January 2021, 2, 13 et seq.

³¹ RSA, *The asylum procedure in figures: most asylum seekers continue to qualify for international protection in 2021*, March 2022, 6, available at: <https://bit.ly/3osEjud>.

³² RSA, PRO ASYL & MSF, ‘Border procedures on the Greek islands violate asylum seekers’ right to special procedural guarantees’, 15 February 2021, available at: <https://bit.ly/3OsSctd>.

³³ Article 77(3) Asylum Code.

³⁴ Article 67(1) Asylum Code. The provision remains ‘dead letter’ to date: DRC et al., *The Workings of the Screening Regulation*, January 2021, 16-18.

³⁵ RSA, *Ειδικές διαδικαστικές εγγυήσεις στη διαδικασία ασύλου: Παρατηρήσεις επί της νομολογίας*, June 2022, available at: <https://bit.ly/3zrXpW>.

³⁶ Namely, Administrative Court of Appeal of Piraeus, No A94/2021, 25 May 2021, paras 8-9; No A54/2021, 11 February 2021, para 9; No A106/2020, 21 February 2020, paras 6-7; Administrative Court of Athens, No 552/2022, 13 April 2022, para 8. Note in particular No A94/2021, affirming that the Asylum Service must conduct a new interview in line with the “enhanced safeguards” of the regular procedure even where the case has been exempted from the border procedure on grounds of vulnerability.

transferred to the regular procedure on the grounds that they need special procedural guarantees”, without further discussion.³⁷ Similar breaches have been raised in complaint CHAP(2022)00677, pending before the Commission.

As mentioned in [Section 3](#), the RAO of Lesvos declared in May 2022 that it has stopped referrals of asylum applications to the regular procedure after the end of the fast-track border procedure, as they do “not substantively serve the activities of the RAO/AAU.” Statistics seem to corroborate such a shift, as only seven cases were exempted from the border procedure on vulnerability grounds in the first half of 2022.³⁸ This raises critical questions of compliance with Article 24(3) of the Asylum Procedures Directive.

Findings

Asylum processing prior to a vulnerability assessment: Our analysis corroborates concerns relating to severe delays in the conduct of vulnerability assessments despite the perceived completion of the reception and identification procedure, reaching about ten days (RCHI5, EKOS4) or two weeks (EKOS9, EKOS14, EKOS15, RLES20, RLES29) to over one month (RKOS1, RLES9) and even exceeding three months in some cases (RLES1, RLES2, RLES17, RLES28). In a similar vein, the persisting tendency to process asylum claims before individuals have undergone a vulnerability assessment is supported by our case analysis. In 12 out of 14 cases for which relevant data are available, the caseworker conducted the personal interview before a vulnerability assessment was made by the RIS.³⁹ In four of those cases, the interview was held on the very next day of the lodging of the asylum application. In light of the above, it is not uncommon for asylum seekers to have their applications already rejected by the time they are able to undergo a vulnerability assessment.

Disregard of requests for special procedural guarantees: Our analysis of cases confirms that special procedural guarantees are routinely disregarded or denied by Asylum Service and EASO/EUAA caseworkers even where they are specifically requested by the applicants in writing and/or orally prior to the interview. Caseworkers instead insist on completing the interview under the border procedure:

- **HLES18** concerns an extremely vulnerable family with a minor child who were never subjected to medical examination and vulnerability assessment and were summoned to an interview the day after the registration of their asylum application. Had reception and identification procedures been conducted as the law provides, it would have been clear that it was impossible to interview the family because of their condition: the family comprised of an 83-year-old man with symptoms of dementia and hearing loss, and a 61-year-old woman in a wheelchair, unable to speak or support herself. According to their 15-year-old daughter, who was herself a survivor of sexual violence, her mother had survived beatings by the Taliban, two strokes, and suffered from quadriplegia, while her father had been imprisoned for 18 months by the Taliban and was released only after paying a ransom. Despite the above, the condition of the family which had no legal, or any other kind of assistance throughout first instance asylum procedures was overlooked. Their application was rejected on the grounds that they had an adult son, also an asylum applicant, being interviewed on the same day, who, according to the first instance decision, could support them upon return to Turkey, presuming that he would also receive a negative decision. The family only received legal, medical and

³⁷ European Commission, *Task Force for Migration Management Mission Report: Mission to Athens 25-27 October 2021*, Ares(2021)6697895, 29 October 2021.

³⁸ Ministry of Migration and Asylum, Reply to parliamentary question, 484163/2022, 22 August 2022, available at: <https://bit.ly/3Kg0628>.

³⁹ EASO/EUAA caseworker in seven cases, Asylum Service caseworker in five cases.

psychological assistance at the stage of appeal submission. Several fruitless applications were submitted before Lesvos RIC to refer the case to medical actors, to find a proper shelter for them and to lift their geographical restriction and transfer them to the mainland. Their legal, medical and psychosocial needs were finally covered by HIAS Greece. The Appeals Committee overturned the first instance decision, judging that the safe third country concept was not applicable,⁴⁰ and issued a decision on the merits of the case, after inviting the family to an interview. It is particularly interesting that the second instance decision literally reversed the reasoning of the first instance one; not only the family was exempted from the application of the safe third country concept and received refugee status, but also their adult son and his family received the same status, as it was judged that he was the caretaker of his vulnerable parents and sister and therefore could not be returned to Turkey. It is also worth mentioning that the vulnerable family suffered the living conditions of RIC Lesvos and was not transferred to a proper shelter or in the mainland, until their residence permit and travel documents were issued, allowing them to leave Lesvos.

- **RLES27** involves a victim of sexual violence and trafficking who survived a shipwreck. Four days prior to the interview, she requested in writing a female caseworker and interpreter, though she had not indicated such a preference in her lodging form. On the day of the interview, she requested in writing the referral of her case to the regular procedure on account of her need for special procedural guarantees, as well as a referral to a medical examination given her condition as a victim of sexual violence and trafficking and a survivor of a shipwreck. The above were also orally highlighted at the start of the interview. Following the objections, the EASO caseworker received instructions from the team leader, then stated that “the border procedure does not differ from the regular procedure” and carried on with the interview. The caseworker added that efforts had been made to secure a female caseworker but that it was not possible for the request to be met, given that the applicant had not specified her preference in her lodging form. The applicant's lawyer requested the explicit inclusion of the refusal to meet this special procedural guarantee on the interview transcript.
- **RLES20** concerns a victim of violence who lost his child in a shipwreck. On the day of the interview, the applicant requested the referral of his case to the regular procedure on account of his need for special procedural guarantees, as well as referral for a medical examination. The caseworker requested instructions from the team leader who then advised that the interview take place as scheduled. The negative first instance decision in this case included a standardised reference to the effect that “adequate support was provided to the applicant” and that he “had effective access to the procedures”, without specifying the gender of the applicant (*αιτών/αιτούσα*), but rejected the claim on the ground that the applicant's statements in the interview were not credible. The RAO of Lesvos initially issued a negative decision under the fast-track border procedure, though at that time the applicant had travelled to the mainland following the lifting of his geographical restriction. It subsequently withdrew it, referred him the regular procedure and reissued a negative decision. The appeal body also dismissed the view that special procedural guarantees had not been observed on the ground that the case was ultimately referred to the regular procedure, even though no new interview had been conducted.⁴¹

⁴⁰ 5th Appeals Committee, No 202299/2021, 25 August 2021, para 21.

⁴¹ 14th Appeals Committee, No 194088/2022, 6 April 2022, 8.

- **RCH15** involves an asylum seeker suffering from a mental health condition. The applicant requested a postponement of his interview and the provision of special procedural guarantees in writing. A new interview appointment was scheduled for almost a month later, during which he reiterated objections against the use of the border procedure in his case given that he had not received the necessary psychiatric assistance and thereby lacked adequate support. At that time, the Asylum Service had already received information on the applicant's vulnerability from the RIC of Chios on the applicant's mental condition. The EASO caseworker nevertheless conducted the interview the border procedure.
- **HLES9** concerns an elderly woman suffering from health issues. She had already been characterised vulnerable since September 2018, her geographical restriction had been lifted on the same day and her case had been referred to the regular procedure. However, the applicant was never transferred to the mainland, as she was dependent on her two adult sons, who were denied a lift of their geographical restriction. As transfer was pending, the RAO of Lesbos did not conduct the applicant's interview for three years, requesting that the applicant move to the mainland and receive an interview appointment at the RAO of her new place of residence. In June 2021, after the issuance of the JMD designating Turkey as a safe third country for Afghan nationals, the RAO of Lesbos invited the applicant to an admissibility interview, disregarding the fact that, based on the above, she should have already been interviewed on the merits under the previous legal framework. The interview itself was conducted without respect to the applicant's vulnerability. She was denied a break and was met with harassing behaviour on the part of the EASO caseworker.

5. Safe third country concept

Legal framework & implementation

The safe third country concept, exceptionally applied only in the cases of Syrian nationals undergoing border procedures on the Greek islands since the entry into force of the EU-Turkey Statement,⁴² became the rule for all applicants originating from Syria, Afghanistan, Somalia, Pakistan and Bangladesh, applying for international protection throughout the Greek territory, after the issuance of the "national list of safe third countries".⁴³ More specifically, despite the fact that the procedure for determining whether Turkey is a safe third country had already received wide criticism for not meeting the standards of the rule of law and European, International and Human Rights Law, and despite the continuing refusal of Turkey to readmit applicants from Greece since March 2020, the Greek government issued on 7 June 2021 the Joint Ministerial Decision (JMD) 42799/07-06-2021, later amended by JMD 458568/16-12-2021, that enshrined into law the designation of Turkey as a safe third country for Syrian nationals and further extended the application of the concept to four additional nationalities (Afghan, Somali, Pakistan and Bangladesh nationals), without providing any legal reasoning. One year on, the Asylum Service had dismissed a total of 7,005 asylum claims as inadmissible based on the JMD. Aside from serious concerns regarding the legality of the designation of Turkey as a safe third country,⁴⁴ the aforementioned

⁴² European Council, *EU-Turkey Statement*, 18 March 2016, available at: <https://bit.ly/3vACj6S>, providing inter alia that "all new irregular migrants crossing from Turkey into Greek islands as from 20 March 2016 will be returned to Turkey... and Turkey will take any necessary measures to prevent new sea or land routes for illegal migration".

⁴³ JMD 42799/2021, Gov. Gazette B' 2425/07.06.2021.

⁴⁴ See RSA et al., 'Greece deems Turkey "safe" but refugees are not. Common statement', 14 June 2021, available at: <https://bit.ly/3zTCOf2>; RSA, 'The dismantling of the Greek

JMD meant a vast increase in the number of asylum seekers in legal limbo, as has been the case for Syrian nationals at the Greek islands since March 2020. The JMD is currently pending judicial review before the Council of State.⁴⁵

No reasoning behind the designation of Turkey as a safe third country: The JMD provides no reasoning as to why and on the basis of which information Turkey was designated as a safe third country for the five nationalities. Instead, it refers to an "Opinion" issued by the Head of the Asylum Service, which is, however, not public. This is in contravention of Articles 12(1)(d) and 38(2)(c) of the Asylum Procedures Directive and of Article 91(3) of the Asylum Code, provides that a JMD designating a country as a "safe third country" must take into account "information (domestic legislative status quo of the third country, bilateral or multilateral inter-governmental agreements or agreements of the third country with the European Union, as well as internal practice)" and that this information must be "up to date and come from credible sources of information, in particular from official domestic and foreign diplomatic sources, EASO, the legislation of the other Member States in relation to the concept of safe third countries, the Council of Europe, and UNHCR." The European Commission has expressly stated that the "Opinion" should be available to applicants insofar as asylum authorities rely thereon to decide on the admissibility of asylum applications.⁴⁶

In mid-June 2021, both HIAS Greece and Equal Rights Beyond Borders submitted "access to documents applications", asking for a copy of the "Opinion" of the Head of the Asylum Service on behalf of their clients who were awaiting safe third country interviews. Both applications were rejected by the Head of the Asylum Service, on the basis that their clients had no legitimate interest to know why Turkey was designated as a safe third country for applicants of their nationality. Subsequently, HIAS Greece filed another application for access to documents on behalf of a family of Afghan asylum seekers rejected on safe third country grounds. Again, the Head of the Asylum Service refused to provide the applicants with a copy of the "Opinion", arguing that they had no legitimate interest to know its content. Finally, on 15 July 2021, HIAS Greece obtained an Order by the Public Prosecutor of Athens, recognising its clients' legitimate interest to access the "Opinion" and enjoining the Asylum Service to provide them with a copy of the document. On 17 July 2021, HIAS Greece received a copy of the "Opinion". Contrary to Article 91(3) of the Asylum Code, the Opinion was simply a compilation of sources of information about Turkey and contains no legal reasoning as to why this information leads to the conclusion that Turkey is a safe third country for asylum seekers from the five countries concerned. In fact, the sources mentioned in the "Opinion" seem to rather substantiate the opposite conclusion.⁴⁷ Finally, it should be mentioned that the "Opinion" has still not been published by the authorities nor is it included as part of the applicants' file in the inadmissibility decisions. When JMD 42799/2021 was amended, in December 2021, by JMD 458568/16-12-2021, a reference was made to a new "Opinion" of the Head of the Asylum Service, "regarding the designation of Turkey, Albania and North Macedonia as Safe Third Countries", which was again not made public.

asylum system 6 Questions & Answers on the unlawful Greek "safe third country list", 8 September 2021, available at: <https://bit.ly/3d3eKxa>.

⁴⁵ RSA & GCR, 'Decision declaring Turkey a "safe third country" brought before Greek Council of State', 8 October 2021, available at: <https://bit.ly/3oOIWA0>.

⁴⁶ European Commission, Reply to parliamentary question E-3532/2021, 4 October 2021, available at: <https://bit.ly/3Q7dFTJ>.

⁴⁷ HIAS Greece and Equal Rights Beyond Borders Press Release, 'The Greek Asylum Service Finally Shares the "Opinion" On the Basis of which Turkey was Designated as a Safe Third Country - And it only seems to be Saying the Contrary', 22 July 2021, available at: <https://bit.ly/3SyeBC8>.

Refusal of readmission to Turkey: Provided that Turkey has unilaterally suspended the Greece-Turkey Bilateral Protocol since 2018 and has not accepted any readmissions from Greece under the EU-Turkey deal since March 2020 and return operations have ceased, asylum seekers rejected on safe third country grounds are left in a legal limbo situation. In fact, it has been documented that the Greek authorities have stopped sending requests for readmission of specific applicants to Turkey altogether.⁴⁸ Turkey no longer uses COVID-19 as a pretext for refusing returns, as it has explicitly stated that no return shall be carried out until Greece stops push backs and revokes its national list of safe third countries.⁴⁹

Despite the fact that asylum applicants rejected on safe third country grounds cannot be readmitted to Turkey, the Asylum Service refuses to apply Article 91 (5) of the Asylum Code, transposing Article 38(4) of the Asylum Procedures Directive and providing that, "where the third country in question does not allow the applicant to enter its territory, his application shall be examined on the merits by the Competent Examination Authorities." Nevertheless, the Greek State has so far refused to examine the merits of the asylum applications rejected on safe third country grounds in most cases.⁵⁰ The issue has been raised by civil society organisations through letters⁵¹ and complaints CHAP(2021)02994 and CHAP(2022)00677 before the European Commission, as well as by the European Parliament.⁵²

The European Commission has clarified, on the one hand, that the conditions set by Article 38(4) of the Asylum Procedures Directive are met where a third country has unilaterally suspended a readmission agreement or does not reply to readmission requests.⁵³ This dispels the incorrect view of the Greek government that the provision requires there to be an explicit refusal of an individual readmission request by the third country.⁵⁴ On the other hand, it has noted that, if the third country does not permit the applicant to enter its territory, Member States shall ensure that access to a procedure is given "and therefore shall not reject the subsequent application as inadmissible on the basis of the safe third country concept".⁵⁵

Asylum seekers rejected on these grounds are either summarily detained for readmission purposes (see [Section 8](#)) or ordered to leave the country voluntarily within a deadline of up to 30 days ("voluntary departure" decision). However, as no readmissions to Turkey have taken place since March 2020, their detention "in view of readmission" lacks legal basis. As to the decision for voluntary departure, the rejected asylum seekers often cannot return to their country of origin, due to ongoing armed

⁴⁸ RSA, *Greece arbitrarily deems Turkey a "safe third country" in flagrant violation of rights*, February 2022, available at: <https://bit.ly/3JG0l9L>; Fenix, 'Fenix calls the Greek authorities to examine the merits of asylum applications rejected on admissibility', 6 December 2021, available at: <https://bit.ly/3BCDXc9>.

⁴⁹ European Commission, *Sixth Annual Report on the Facility for Refugees in Turkey*, COM(2022) 243, 24 May 2022, 3.

⁵⁰ For exceptions, 3rd Appeals Committee, No 345521/2022, 18 June 2022; 21st Appeals Committee, No 364000/2021, 4 November 2021; No 115795/2022, 28 February 2022.

⁵¹ RSA et al., *Joint Civil Society Letter: Implementation of the safe third country concept in Greece*, 8 March 2022, available at: <https://bit.ly/3BLKVvI>.

⁵² European Parliament, Questions for written answer P-604/2021, 1 February 2021; E-4131/2021, 8 September 2021; E-5103/2021, 12 November 2021; E-1347/2022, 5 April 2022.

⁵³ European Commission, Reply to parliamentary question E-1347/2022, 22 June 2022, available at: <https://bit.ly/3oZYlqU>. See in this direction 19th Appeals Committee, No 441361/2021, 8 December 2021.

⁵⁴ Ministry of Migration and Asylum, Reply to parliamentary question, 224141/2022, 19 April 2022, available at: <https://bit.ly/3SsRbyI>.

⁵⁵ European Commission, Reply to parliamentary question E-5103/2021, 25 January 2022, available at: <https://bit.ly/3Q3NugU>. See also European Commission, Email of the Head of the Task Force Migration Management to the General Secretaries for Migration Policy and Reception of Asylum Seekers, Ares(2022)2235456, 27 March 2022.

conflicts and individual persecution, while they also lack legal documents to enter and stay in another country. Therefore, the decision to leave voluntarily is contrary to Articles 3 and 13 ECHR (to the extent that their fear of return to their country of origin has never been assessed by the Greek authorities), Article 3 CAT and Article 7 ICCPR. Furthermore, although the decision for voluntary departure practically allows rejected asylum seekers to depart from the Eastern Aegean islands,⁵⁶ RAOs in the mainland were nevertheless refusing to register their subsequent applications until 7 June 2021. Following a complaint submitted by HIAS Greece, the Ombudsman sent a letter to the Asylum Service, requesting the relevant Asylum Offices to immediately register the subsequent applications, as these cases had been in limbo for months and special reception conditions had to be provided to them.⁵⁷ Nevertheless, the Asylum Service disregarded the Ombudsman's intervention.

Interpretation of the "connection criterion": Since October 2021, the Asylum Service applies a differentiated treatment for subsequent applications of asylum applicants rejected on safe third country grounds, that have remained in Greece for more than a year. In these cases, it is generally judged that the precondition of an existing link to the safe third country is no longer fulfilled, due to the lapse of a long time period since the applicant crossed through Turkey.⁵⁸ This remains an unpublished instruction of the Asylum Service and has not been incorporated in the "connection criterion" definition of Article 91(1)(f) of the Asylum Code.⁵⁹

Subsequent application after a safe third country decision: On 6 July 2021, the Ministry of Migration and Asylum issued a Circular as per which, "Specifically, for those applicants entering from Turkey, the invocation of new and substantial elements must relate exclusively as foreseen in the law and the EU-Turkey Joint Statement, to the finding on the initial application as to whether Turkey – as the country of transit of the applicant – is safe or not for them in accordance with the national and European legislation. In the absence of any new and substantial elements as provided above, the subsequent application shall be rejected by the competent examination authorities as inadmissible, in accordance with [Article 94(4) of the Asylum Code]."⁶⁰ According to the above Circular, the fact that readmissions to Turkey have been suspended since March 2020 is not considered as a new and substantial element.

This circular is at odds with Article 40(2) of the Asylum Procedures on subsequent applications, which states that the preliminary admissibility assessment relates to elements "which relate to the examination of whether the applicant qualifies as a beneficiary of international protection by virtue of Directive 2011/95/EU." As it transpires from the above, the "new elements or findings" requirement is only applicable in cases where the first application has been rejected on the merits and not on safe third country grounds.

⁵⁶ Asylum seekers subject to the EU-Turkey statement are issued a geographical restriction, ordering them not to leave the respective island until the end of the asylum procedure: MD 1140/2019, Gov. Gazette B' 4736/20.12.2019.

⁵⁷ Ombudsman, No 290565/41170/2021, 23 July 2021.

⁵⁸ European Commission, Letter to the LIBE Committee, Ares(2022)1942801, 16 March 2022.

⁵⁹ Note that Standard Operating Procedures offering guidance to Asylum Service caseworkers, last updated in March 2022, are also not accessible to applicants and their legal representatives.

⁶⁰ Circular No 112808/2021 of the Ministry of Migration and Asylum on Submission to Regional Asylum Offices and Independent Asylum Units of the mainland of subsequent applications by third-country nationals or stateless persons, whose previous application for international protection has been examined under the procedure of Art. 90 of Law 4636/2019 and has been rejected finally as inadmissible under Art. 84 par. 1 par. (d), available at: <https://bit.ly/3JAZQKW>.

Additionally, first instance inadmissibility decisions on subsequent applications rejected based on this Circular indiscriminately conclude the examination by mentioning that these applications have been submitted only in order to impede or delay deportation procedures. According to the Asylum Code, such a determination may have the following legal consequences, beyond those already provided for subsequent applications:⁶¹ (a) Applicants may be detained or remain in detention, despite the submission of the subsequent application;⁶² (b) The examination of the subsequent application at the preliminary admissibility stage does not have an automatic suspensive effect⁶³ and the applicants are subject to removal, unless the competent Appeals' Committees issue a decision, following an application for suspensive effect, that allows them to remain in the country.⁶⁴ The aforementioned determination completely disregards the fact that the Asylum Service also has an obligation to examine on its own initiative whether the readmission to the third country is possible and, if not, to examine the asylum application on its merits, as discussed above.

Findings

Refusal of readmission to Turkey: Asylum applicants are generally unaware of the aforementioned legal framework, based on which they could request their applications to be examined in the merits, according to Article 91(5) of the Asylum Code. Therefore, they do not make a relevant request, unless they are assisted by a lawyer during first instance procedures at their first/initial applications for international protection. However, even in the cases where they had legal assistance and a request for examination on the merits was submitted, it was disregarded in 3 out of 4 such cases of first/initial applications studied in the present report (EKOS4, EKOS7, HLES9, RLES15). In terms of subsequent applications, where a similar request has been submitted, cases seem to be concluded with a positive result overall. However, it appears that this has more to do with the submission of elements that can be considered as new and substantial under the aforementioned Circular, rather than the refusal of readmissions to Turkey. As for the appeal stage, submissions relating to Article 91(5) of the Asylum Code are either disregarded completely (RLES4, RLES5, RLES6, RLES9, HLES8, HLES18) or deemed as unfounded (RLES15, RLES33).

Interpretation of the "connection criterion": Based on this criterion, the Asylum Service assessed as admissible the cases of asylum applicants having entered Greece more than a year earlier, deeming that their connection to Turkey was no longer established due to lapse of time and therefore the safe third country concept was not applicable. However, even this criterion has not been consistently applied, neither by the Asylum Service, nor by the Appeals Authority (HLES8).⁶⁵

Subsequent application after a safe third country decision: A number of cases have been rejected at the stage of the preliminary examination of admissibility of the subsequent application, even in cases that Article 91(5) of the Asylum Code was explicitly invoked, judging that this submission did not per se constitute a new element that could render the subsequent application admissible and reinstate asylum procedures. In these cases, the applicants were expected to provide new and

⁶¹ Subsequent applications are already subject to a stricter framework compared to initial ones. Besides the fact that they undergo a preliminary admissibility examination without an interview (Article 94(2) Asylum Code), they may lead to a reduction or withdrawal of reception conditions (Article 61(1)(c) Asylum Code) and the deadline to appeal a decision is much shorter (Article 97(1)(d) Asylum Code). Also, second and further subsequent applications, the applicants are subject to a 100 € fee (Article 94(10) Asylum Code).

⁶² Article 50(2)-(3) Asylum Code.

⁶³ Articles 73, 94(9) and 97(4) Asylum Code.

⁶⁴ Article 110(2) Asylum Code.

⁶⁵ 3rd Appeals Committee, No 8620/2022, 7 January 2022, para IV.4.

substantial elements as to why Turkey could not be considered a safe third country for them, albeit in the end, once the application was found admissible based on the new elements provided, the final judgment of the Asylum Service invoked the lapse of the one-year period as the basis on which the admissibility of the request was judged, in terms of the application of the safe third country concept. The above findings are made apparent when comparing the following cases:

- **HLES1-HLES2** and **HLES3-HLES4** (linked cases, family where the mother was a minor under her husband's custody): The case consists of a family of Syrian nationality that submitted a subsequent asylum application, more than a year after entering Greece. Upon registration, the mother submitted a medical diagnosis, issued after the conclusion of the examination of the family's initial application, according to which she had serious indications for cancer and needed to be subjected to further medical examination in Athens. The admissibility decisions issued, both on hers and the father's subsequent application, stated that the aforementioned medical diagnosis constituted a new and substantial element, that could reinstate asylum procedures. They were both subjected to an admissibility interview, followed by a positive admissibility decision by the RAO of Lesbos, judging that, since they had both entered Greece more than a year ago, a connection to Turkey could no longer be established.
- **HLES8**: The case concerned a single man of Syrian nationality, who entered Greece in September 2019 and submitted an initial/first asylum request. After having received a final rejection, on the grounds of safe third country, he submitted a subsequent asylum application on 20 October 2021. His subsequent request underwent a preliminary admissibility examination and was rejected at first instance due to the lack of new elements, despite the fact that he had requested the application of Article 91(5) of the Asylum Code. The same request was also submitted with his appeal, at second instance. He received a final rejection from the Appeals' Committee, which concluded that the applicant's claim that his readmission to Turkey is a new but not substantial element as it is not a reason that could lead to recognition of international protection status. More specifically, the claim was deemed unfounded, as, according to the Committee, the legal framework on which the applicant was supposed to be readmitted was still in force. Furthermore, the Committee did not consider the lapse of more than two years since the applicants' entrance in Greece as a substantial element that could overturn the initial judgment regarding the establishment of his connection to Turkey as a safe third country.⁶⁶
- **RLES3-RLES4**: The applicant's initial asylum claim was rejected at second instance on safe third country grounds in September 2021. He filed a subsequent application in which he submitted new medical documents and invoked the applicability of Article 91(5) of the Asylum Code. However, the claim was deemed inadmissible due to a lack of new substantial elements. The appeal body fully disregarded the allegation regarding Article 91(5) of the Asylum Code, even though the applicant had produced a written reply by the Hellenic Police, stating that no readmission request would be sent in his case given the suspension of readmissions to Turkey.⁶⁷
- A different interpretation was made by the same Appeals Committee as above in **RLES32-RLES33**, regarding a Somali asylum seeker. Contrary to earlier examples, the appeal body considered that the rejection of her initial application on safe third country grounds did not constitute a "final decision"

⁶⁶ 3rd Appeals Committee, No 8620/2022, 7 January 2022, para IV.4.

⁶⁷ 4th Appeals Committee, No 81259/2022, 11 February 2022.

given that it had not examined the merits of her claim. Accordingly, the new application filed by her did not amount to a “subsequent application” in the meaning of Article 40 of the Asylum Procedures Directive and Article 94 of the Asylum Code. Yet, the Committee found that the application had been filed with the sole aim of preventing the execution of a return decision, and thereby dismissed it as manifestly unfounded. Her submission relating to the lack of readmission prospects to Turkey was rejected.⁶⁸

6. Subsequent applications

Legal framework & implementation

Impermissible examination of merits at the preliminary admissibility stage: The submission of new evidence that affects the decision on the application for international protection, which the applicant was unable to invoke during the examination of the previous application or appeal through no fault of their own, constitute the sole admissibility criteria for subsequent applications.⁶⁹ The credibility of new submitted elements shall not be assessed at the preliminary admissibility stage but only in an in-merit procedure.⁷⁰ However, the asylum authorities misapply the rules governing the preliminary assessment of subsequent applications on several occasions. Instead of limiting the assessment to a check of new substantial elements, the authorities regularly reject subsequent applications as inadmissible after having examined the asylum claim on its merits.

Wrong interpretation of “new substantial elements”: As stated above, a subsequent application is admissible, provided that the documents or facts submitted are new and may influence the decision on whether the applicant qualifies for international protection.⁷¹ However, elements relating to the personal circumstances of the asylum seeker in the meaning of Article 4(3) of the Qualification Directive, such as health- or vulnerability-related considerations, are routinely dismissed as non-substantial elements. In other cases, asylum authorities disregard new documents submitted by applicants. In addition, in safe third country cases, the person's inability to be readmitted to Turkey and corollary applicability of Article 91(5) of the Asylum Code is routinely dismissed as a new element (see [Section 5](#)).

Fee for second subsequent applications: As of September 2021, Greek law imposes a 100 € fee per person for the “making” (*υποβολή*) of a second or further subsequent application.⁷² Directly after this amendment, the RAO of Lesbos and other Offices informally suspended the registration of second and further subsequent applications, contrary to Article 6(1) of the Asylum Procedures Directive.⁷³ Registration of such claims did not resume until a few weeks following the issuance of the relevant JMD 472687/2021. A total of 627 subsequent applications had been subjected to the 100 € fee in the first six months of the policy. The Greek government submits that the fee is

⁶⁸ 4th Appeals Committee, No 157571/2022, 18 March 2022, para B2.

⁶⁹ Article 40(2) Asylum Procedures Directive; Article 94(2) Asylum Code.

⁷⁰ CJEU, Case C-921/19 *LH v Staatssecretaris van Justitie en Veiligheid*, 10 June 2021, paras 44-45.

⁷¹ *Ibid*, para 44. See also Administrative Court of Thessaloniki, No 46/2022, 3 February 2022, para 10.

⁷² Article 94(10) Asylum Code; JMD 472687/2021, Gov. Gazette B' 6246/27.12.2021. Secondary legislation is pending judicial review before the Council of State.

⁷³ ECRE, *AIDA Country Report Greece, 2021 Update*, May 2022, 134, available at: <https://bit.ly/3bM9fTs>. The informal suspension of registration of subsequent applications is not an unusual practice. In June 2022, the RAO of Lesbos had suspended such registrations for about three weeks, citing capacity issues due to a rise in arrivals.

proportionate and compliant with international law, on the one hand,⁷⁴ and that no exemption from the fee is possible on the other. However, the European Commission has clarified that “the unconditional application of a EUR 100 fee for second subsequent applications raises issues in terms of effective access to the asylum procedure”.⁷⁵ It has also “signalled that the fee introduced for second subsequent applications was not supported”⁷⁶ and has since “reiterated its concerns on the introduction of the fee at political level”.⁷⁷ Related breaches of EU law on account of the policy have been raised in complaint CHAP(2022)00677, pending before the Commission. JMD 472687/2021 regulating specific issues regarding the subsequent applications’ fee has been challenged before the Greek Council of State by a number of civil society organisations. The case, initially set for hearing in June 2022, is due to be heard in December 2022.

Findings

Impermissible examination of merits at the preliminary admissibility stage: Cases analysed confirm that the Asylum Service dismisses subsequent applications as inadmissible on the ground that no new and substantial elements and claims have been presented, even though it goes into an assessment of the merits of submitted elements:

- **RLES23** relates to a survivor of sexual violence suffering from a mental health condition. The Asylum Service dismissed the application in October 2021 on the ground that the alleged threats against the applicant in the country of origin were “new elements” but were not sufficiently motivated so as to qualify as “substantial”.
- **RLES38** concerns a family which lodged a subsequent application in December 2021, in which they submitted a new document – issued after the rejection of the initial claim – referring to the killing of the lead applicant’s parent by their alleged persecutor. The Asylum Service held that the document was not a “new element” since it related to a statement already examined and found to be non-credible in the context of the initial application. It therefore dismissed the application as inadmissible.

Wrong interpretation of “new substantial elements”: In several of the cases analysed, applicants have brought forward elements relating to their state of health and/or exposure to torture or violence in the country of origin upon lodging subsequent applications. Asylum authorities, however, dismiss such elements as failing to meet the “new substantial elements” threshold:

- In **RLES23**, cited above, the applicant was recognised as a victim of torture or violence in December 2021 after the issuance of the first instance decision on the subsequent application. However, the appeal body upheld the inadmissibility decision in April 2022, finding that the elements raised in the subsequent application were new but not substantial. The Appeals Committee erred not only in deeming the applicant’s classification as a vulnerable person as irrelevant to the claim but also by ruling – in a preliminary admissibility

⁷⁴ Ministry of Migration and Asylum, Reply to parliamentary question, 224141/2022, 19 April 2022, available at: <https://bit.ly/3SsRbyi>.

⁷⁵ European Commission, Reply to parliamentary question E-5103/2021, 25 January 2022.

⁷⁶ European Commission, *Task Force Migration Management Mission Report – Mission to Athens 25-27 October 2021*, Ares(2021)6697895, 29 October 2021, 1.

⁷⁷ European Commission, *Task Force Migration Management Mission Report – Greece – Jan/Feb 2022*, Ares(2022)1024324, 11 February 2022, 3.

assessment – that his depression and the loss of his spouse would not hinder his ability to relocate to the capital of his country of origin.⁷⁸

- **RLES24** concerns a survivor of torture and sexual violence who was recognised by the RIS as a victim of torture or violence after the rejection of the initial claim. His subsequent application was dismissed as inadmissible at first instance on the basis that no “new elements” had been submitted. On appeal, the applicant submitted the medical certificates attesting his post-traumatic stress disorder. However, the Appeals Committee found in April 2022 that elements relating to vulnerability do not qualify as “new substantial elements”, since they do not constitute facts causing a well-founded fear of persecution or serious harm.⁷⁹
- **RLES25** relates to a survivor of trafficking and sexual violence who had never been identified as such during her initial asylum claim. In March 2022, the appeal body affirmed the inadmissibility decision of the Asylum Service and held that the recognition of her vulnerability did not qualify as a “new substantial element” since does not relate to qualification for international protection.⁸⁰

7. COVID-19 measures

Legal framework & implementation

Quarantine policy: Greek authorities maintained a quarantine policy for asylum seekers arriving at the Eastern Aegean islands in order to prevent the potential spread of coronavirus, under which asylum seekers were automatically placed in quarantine, regardless of vaccination or COVID-19 infection status. No asylum seeker placed in quarantine was issued an administrative order indicating the duration and place of the health restriction, as set out in the relevant Emergency Decree.⁸¹ On Kos, containers within the Pre-Removal Detention Centre (PRDC) were used to quarantine asylum seekers, while a dedicated facility in Lefkonía district was used on Chios and one in Megala Therna on Lesbos.

Throughout this time, there was no official record outlining which authority was implementing the quarantine, nor an explanation of the factual and legal basis for the implementation of the quarantine as applied to each individual person. Although the Chios RIC Director argued in a letter to Equal Rights Beyond Borders Chios office that the quarantine was implemented under extraordinary measures to protect public health from the risk of further spread of the coronavirus,⁸² the wording of the provision cited never mentioned a quarantine, let alone a 14-day quarantine. Furthermore, the RIS has stated that no individual orders are issued given that quarantine does not amount to detention.⁸³ The placement in quarantine further led to a breach of Article 38(1) of the Asylum Code, per which all third-country nationals who unofficially enter Greece must immediately be subjected to reception and identification procedures. Insofar as they were held in *de facto* detention in quarantine areas without legal basis or an individualised order underpinning the quarantine, asylum seekers were left with no procedural safeguards such as a legal avenue to challenge improper quarantine

⁷⁸ 2nd Appeals Committee, No 189836/2022, 4 April 2022, 7.

⁷⁹ 8th Appeals Committee, No 412681/2021, 25 November 2021, 4-5.

⁸⁰ 9th Appeals Committee, No 122040/2022, 2 March 2022, 9.

⁸¹ Article 1 Emergency Decree of 25.2.2020 Urgent measures to prevent and limit the spread of coronavirus, Gov. Gazette A' 42/25.2.2020.

⁸² JMD Δ1α/Γ.Π.οικ. 43319/2021, Gov. Gazette B' 3066/09.07.2021. See RIC of Chios, Reply to Equal Rights Beyond Borders, 148456/2021, 23 July 2021, 1.

⁸³ RIS, Reply to individual request, 25.3.1/2539, 19 April 2021, 1.

procedures or conditions. These issues were also highlighted in a recent submission to the UN Special Rapporteur on the Human Rights of Migrants.⁸⁴

Those quarantined never received information on the procedure and their respective rights and could not communicate with the outside world, as their phones had been confiscated upon arrival on Chios and Kos. Therefore, as the lawyers' access to the quarantine areas was not allowed under the pretext of COVID-19 measures,⁸⁵ it was impossible for asylum seekers to access legal advice in order to prepare for their upcoming asylum interviews, in contravention of Articles 12, 21 and 22 of the Asylum Procedures Directive. The Ombudsman acknowledged the weight of the issue in letters to the Chios and Kos competent authorities, emphasising asylum seekers' rights to communicate with the outside world, especially with legal aid providers.⁸⁶ EU and Greek law dictate that the detention of asylum seekers must provide separate accommodation for unaccompanied minors, women, and families. Newly arrived asylum seekers on Kos were regularly quarantined together in the RIC without a designated safe space for unaccompanied minors and with mixed-gender accommodation in quarantine.

Fines and criminal prosecution for breach of COVID-19 restrictions: Administrative fines of 5,000 € were regularly imposed against new arrivals on Chios and Kos islands during the reporting period. The practice was first noticed on Kos in November 2020 and was stopped thereafter. To our knowledge, the Coast Guard of Chios fined asylum seekers for violating the COVID-19 entry protocol at least since August 2021, based on COVID-19 regulations.⁸⁷ The imposition of such fines is considered at first hand as arbitrary, as depends upon the island on which an asylum seeker arrives or the conditions of arrival thereto.⁸⁸

Article 31(1) of the 1951 Refugee Convention prohibits penalisation of refugees for irregular entry into a country so long as they "present themselves without delay to the authorities and show good cause for their illegal entry or presence." While the aforementioned COVID-19 entry protocol provides for the imposition of a 5,000 € administrative fine against travellers who violate the protocol, asylum seekers are not considered as travellers and fall thus outside the domain of this penalty. This was reiterated by the Ombudsman in a letter to the Coast Guard of Chios, following the submission of a written complaint by Equal Rights Beyond Borders⁸⁹. Importantly, while the Ministry of Migration and Asylum noted in response to a parliamentary question that people in need of international protection are exempted from travel restrictions to the EU,⁹⁰ the Hellenic Coast Guard claimed in reply to the same question that those restrictions apply to all arrivals in the country.⁹¹

⁸⁴ Equal Rights Beyond Borders, *Submission to the United Nations Special Rapporteur on the Human Rights of Migrants regarding the human rights impact of COVID-19 protocols on asylum seekers arriving to Kos and Chios*, 10 March 2022, available at: <https://bit.ly/3JjX2BB>.

⁸⁵ Efsyn, 'Asylum seekers without rights "because of coronavirus"', 13 July 2021, available at: <https://bit.ly/3oNGPLu>.

⁸⁶ Ombudsman, 301878/42111/2021, 28 July 2021, Ombudsman 302653/43446/2021, 8 August 2021.

⁸⁷ JMD Δ1α/Γ.Π.οικ. 48010/2021, Gov. Gazette B' 3428/28.07.2021 and subsequent decisions.

⁸⁸ The imposition of the fines depended in many cases on the circumstances of arrival. Additionally, while on other Aegean islands the fines were imposed either only at the beginning of the imposition of emergency measures or not at all, the Coast Guard of Chios was the only authority to systematically impose them up until 1 May 2022.

⁸⁹ Ombudsman, 304968/52615/2021 28 September 2021, 4.

⁹⁰ Ministry of Migration and Asylum, Reply to parliamentary question, 224175/2022, 19 April 2022, available at: <https://bit.ly/3zPCJJj>.

⁹¹ Hellenic Coast Guard, Reply to parliamentary question, 1500.1/24075/2022/82, 5 April 2022, available at: <https://bit.ly/3ShYBUQ>.

During the same period, the Public Prosecutor of Chios pursued penal prosecution against newly arrived asylum seekers on Chios (ECHI10, ECHI13). According to the criminal file of the two cases, the criminal charges included illegal entry and exit from the country,⁹² and violation of epidemic prevention measures.⁹³ The mobile phones of the accused in the present study were seized as a part of the criminal case for possible future laboratory testing.

Remote interviews: Asylum Offices throughout the territory have resorted to standard use of remote interviews of asylum seekers via videoconference (Microsoft Teams) or even phone, often with EASO/EUAA and Asylum Service caseworkers located on a different island or part of Greece. No information is provided to applicants regarding the processing and storage of their personal data in remote interviews, and compliance with the principle of confidentiality.⁹⁴

Findings

Quarantine policy: This emergency measure did not meet the registration requirements and raised issues of compliance with national and EU secondary law. All cases analysed for the purposes of the present report had expressed their intention to apply for asylum, but no registration document was issued within three days of the making of the application, in breach of Article 6(1) of the Reception Conditions Directive. Indicatively for Chios, in his response to a letter addressed among others to the Ombudsman and RIS, the Chios RIC Director mentioned explicitly that the quarantined people had acquired the status of “asylum seeker” upon the expression of their intention to seek asylum and that formal registration would be conducted following the completion of the 14-day quarantine.⁹⁵ In over 15 cases (ECHI9, ECHI10, ECHI11, ECHI13, ECHI14, RCHI1, RCHI2, RCHI3, RCHI5, RCHI7, RLES2, RLES3, RLES5, RLES9, RLES15, RLES29), asylum seekers stayed for 14 days in quarantine, another four (RCHI8, RCHI9, RCHI10, RCHI11) stayed for 16 days and another five between 18 and 22 days (EKOS1, EKOS4, EKOS9, EKOS12, EKOS13).

- **EKOS1** arrived on 30 October 2021 on the island of Kos and expressed his intention to apply for asylum on the day of arrival and placement in quarantine. His asylum application was registered on 21 November 2021, after for a quarantine of 18 days. His initial age assessment was wrong and his age was changed back to minor following the submission of original documents.
- **EKOS13** arrived on 30 October 2021 on the island of Kos and expressed his intention to apply for asylum on the day of his arrival and placement in quarantine. His asylum application was registered on 22 November 2021, after a quarantine of 22 days.
- **EKOS9** concerns an SGBV survivor who arrived on 30 October 2021 on the island of Kos with her three minor children and expressed her intention to apply for asylum on the day of their arrival and placement in quarantine. Her asylum application was registered on 22.11.2021, after a quarantine of 22 days. The applicant had repeatedly requested legal aid support but was not allowed to talk to anyone and had her phone confiscated by the Police.

⁹² Article 83(1)(a) L 3386/2005.

⁹³ Article 285(1)(b) Criminal Code.

⁹⁴ Article 15(2) Asylum Procedures Directive; Article 82(11) Asylum Code.

⁹⁵ RIC of Chios, Reply to Equal Rights Beyond Borders, 148456/2021, 23 July 2021, 3.

- **ECHI11** arrived on 28 December 2021 on the island of Chios and expressed her intention to apply for asylum on the day of her arrival and placement in quarantine. Her asylum application was registered on 10 January 2022, after a quarantine of 14 days. While in quarantine, she did not receive any information as to where, for how long and why she was held there.
- **ECHI9** arrived on 18 August 2021 on the island of Chios and expressed her intention to apply for asylum on the day of her arrival and placement in quarantine. Her asylum application was registered on 1 September 2021, after for a quarantine of 14 days in an overcrowded room with seven other people. She was not allowed to go outdoors to have recreational time. She was only able to reach legal assistance after her release from the quarantine facility in Lefkonía.

Fines and criminal prosecution for breach of COVID-19 restrictions: Our analysis of cases illustrates the aforementioned concerns as follows:

- **ECHI14** concerns a recognised refugee from Sierra Leone, who was quarantined on the island of Chios upon entry on 08.01.2022 and was fined 5,000 € for violating COVID-19 restrictions. The Coast Guard fine was challenged through objections before the Coast Guard by Equal Rights Beyond Borders representatives. However, objections were rejected on the ground that the asylum seeker is not excluded from travel restrictions to Greece, arguing *inter alia* that the asylum seeker “is not coming directly from a territory where his life or freedom was threatened”. Following the rejection of the objections, an appeal was submitted along with a request for suspensive effect before the Administrative Court of Mytilene, territorially competent for the island of Chios (*μεταβατική έδρα*). The Court granted an interim order and suspended the application of the fine.⁹⁶
- **RCHI1, RCHI2, RCHI3, RCHI4, RCHI5** and **RCHI6** concern Eritrean refugees who arrived on Chios at the end of October 2021. Upon the end of their quarantine in early November 2021, they were also issued 5,000 € fines for violating COVID-19 entry restrictions. Objections before the Coast Guard were dismissed based on similar reasoning as above. An appeal and a request for suspensive effect were lodged before the Administrative Court of Mytilene. In this case, however, the Court did not provide interim relief, arguing that “the imposition of the contested penalties serves the safeguard of extraordinarily urgent public interest” and that “regardless of the nature and scale of harm of the applicants... urgent public interest grounds require the immediate and timely execution of the contested decisions.”⁹⁷
- **ECHI10** concerns a recognised refugee who entered Chios island in July 2021 and got registered on 27 July 2021, after being quarantined for 14 days. Criminal proceedings were brought against her for illegal entry and for violation of epidemic prevention measures.

Remote interviews: Out of 73 interviews in the cases analysed during the period June 2021 to June 2022, at least 18 were conducted remotely (e.g. RLES2, RLES3, RLES5, RLES10). This confirms that the Asylum Service and EASO/EUAA conducted both in-person and remote asylum interviews during the same period, despite citing the COVID-19 pandemic as a barrier to interviewing applicants in person. Transcripts of remote interviews include the following mention: “The interview will be conducted

⁹⁶ Administrative Court of Mytilene, Nos 25/2022 and 26/2022, 26 August 2022.

⁹⁷ Administrative Court of Mytilene, No 12/2022, 15 March 2022, para 7.

remotely due to the precautionary measures for the prevention of the spread of Covid-19. The remote personal interview does not differ from the interview with physical presence since all the procedural guarantees are being followed."

8. Immigration detention

Legal framework & implementation

Systematic detention: Kos is the only hotspot in Greece that also hosts a PRDC in operation, after Lesbos PRDC was destroyed by the fire at the Moria hotspot in September 2020. A total of 1,070 detention orders were issued on Kos in the course of 2021.⁹⁸ Following the enactment of the International Protection Act (IPA) in November 2019 – the predecessor of the Asylum Code – which widely expanded the grounds for detaining asylum seekers, administrative practices regarding detention on Kos changed. From January 2020 until April 2021, all new arrivals on Kos were detained regardless of whether they presented any vulnerability. In April 2021, all families with minor children were released from the Kos PRDC. From September 2021 until December 2021, the maximum detention period was reduced from 18 months to 12 months. In January 2022, it was further reduced to 6 months. From January 2020 to August 2021 the practice pertained to automatic detention of all asylum seekers upon arrival with some limited exceptions (unaccompanied minors and pregnant women). Starting in September 2021, the practice of automatic detention upon arrival stopped and instead the people who arrived were placed in the RIC and underwent reception and identification procedures, after the end of their quarantine. Currently, the only asylum seekers in detention are people who are detained and charged with illegal stay rather than illegal entry and a limited number of people upon arrival for reasons likely connected to criminal history or public order.

On the islands, the Hellenic Police systematically issues deportation decisions to asylum seekers upon arrival, contrary to the EU *acquis* and in unlawful derogation from the Return Directive.⁹⁹ Regardless of the procedure a person was subject to upon arrival, as soon as they received a negative second instance decision, the initial deportation decision of the police was 'reactivated' and the police issued a new detention order, this time under L 3907/2011 transposing the Return Directive. On Kos, the interplay of both legal frameworks (IPA and L 3907/2011) resulted in individuals often being detained for prolonged periods, in many cases for over one year.

No prospect of removal: Contrary to well-established EU standards, under which detention shall cease immediately where there is no reasonable prospect of removal,¹⁰⁰ detention with a view to removal to Turkey continues to be implemented despite a suspension of readmissions to Turkey since March 2020 (see [Section 5](#)).

Findings

No prospect of removal: In light of the lack of prospects of readmission to Turkey from March 2020 to present, the Ombudsman has called for a reassessment of the detention

⁹⁸ RSA, *Persisting systematic detention of asylum seekers in Greece*, June 2022, 3, available at: <https://bit.ly/3vwri6U>.

⁹⁹ RSA, *Comments on the proposal for an Instrumentalisation Regulation*, January 2022, 9-11, available at: <https://bit.ly/3Pj4vm9>.

¹⁰⁰ Article 15(4) Return Directive.

orders of 19 people who were unlawfully detained in Kos PRDC.¹⁰¹ The Administrative Court of Rhodes has also found detention orders to be unlawful in related cases.¹⁰²

- **EKOS3** concerns an asylum seeker who arrived on Kos in 2018. Following the issuance of his second instance rejection, he was arrested and placed in Kos PRDC on 9 October 2021, due to risk of absconding. The detention order mentions the “reactivation” of his initial detention order. His detention was renewed on 9 February 2022 due to a risk of absconding and refusal of cooperation, without alternative measures being considered. The risk of absconding is once again motivated on the absence of travel documents, the lack of permanent accommodation and the rejection of his asylum application. Both decisions state that his removal was not possible, despite relevant efforts.

Detention based on wrong legal basis: We have also observed that a few detention decisions have been based on wrong legal provisions, namely on pre-removal grounds even though the applicant was still an asylum seeker or vice versa, based on the Asylum Code, whereas the application had been rejected by a final decision:

- **EKOS15** concerns an asylum seeker who arrived on Kos on 14 July 2021 and was detained upon arrival. The person should have been subject to asylum detention in order to determine the elements of the asylum claim under Article 50(3)(b) of the Asylum Code, based on an information note from the Asylum Service. However, the detention order issued on the same day was based on the pre-removal framework, citing a risk of absconding.
- **RKOS1**, cited in [Section 2](#), concerns an asylum seeker whose claim was lodged in early March 2022. However, due to deficiencies relating to the coordination between the RIS and the Asylum Service vis-à-vis the lodging of asylum applications, the applicant remained in pre-removal detention for over one month until the Asylum Service considered his claim to be lodged in April 2022.

Recommendations

This report has provided an analysis of the current workings of the border procedure implemented on the Greek islands of Lesbos, Chios, Samos, Leros and Kos over the past year. Deficient implementation and breach of core procedural and reception standards has persisted in parallel to, if despite, a sharp reduction in the caseload handled by the Greek asylum authorities and the EUAA on the islands. This demonstrates that Greece’s systemic non-compliance with international and EU refugee law and human rights is owed to policy choices, not to resource or capacity constraints. It should therefore be treated as such by both co-legislators and monitoring and enforcement institutions at EU level.

Drawing on the above findings, the Danish Refugee Council (DRC), Equal Rights Beyond Borders, HIAS Greece, Refugee Support Aegean (RSA) and PRO ASYL put forward the following recommendations:

Ministry of Migration and Asylum

- ❖ Repeal Article 94(10) of the Asylum Code and JMD 472687/2021 on the fee for subsequent applications;

¹⁰¹ Equal Rights Beyond Borders, ‘Greek Ombudsman calls for Release of 19 Persons who are Unlawfully Detained in the Pre-Removal Detention Centre on Kos’, 3 August 2021, available at: <https://bit.ly/3zIAf43>.

¹⁰² Administrative Court of Rhodes, Nos AP78/2022 and AP79/2022, 21 June 2022, para 3; No AP72/2022, 25 May 2022, para 4.

- ❖ Repeal JMD 42799/2021 on the national list of safe third countries and phase out the application of the safe third country concept;

Reception and Identification Service

- ❖ Ensure that the details of asylum seekers, including date of arrival, are correctly and accurately recorded in asylum application lodging forms;
- ❖ Ensure that medical and vulnerability assessments are completed prior to the referral of the case to the asylum authorities;
- ❖ Clearly indicate whether medical and vulnerability assessments have been concluded or are pending when issuing referrals of cases to the Asylum Service;
- ❖ Clearly indicate the date of vulnerability assessments in the Foreigner's Medical Card or other documentation;
- ❖ Clarify the legal status of people subject to COVID-19 quarantine and observe the requirements of necessity, proportionality and procedural safeguards attached to deprivation of liberty;

Asylum Service & Appeals Authority

- ❖ Cease the use of the border procedure to asylum seekers applying for international protection in reception and identification centres, given that they fall outside the scope of Article 43(1) of the Asylum Procedures Directive;
- ❖ Exempt from the border procedure all cases that should not be examined on the grounds of admissibility and do not meet any of the criteria of Article 31(8) of the Asylum Procedures Directive;
- ❖ Ensure that asylum interviews are not conducted before medical and vulnerability assessments have been concluded in reception and identification procedures;
- ❖ Provide special procedural guarantees under Article 24 of the Asylum Procedures Directive *ex officio* and upon request, and exempt from the border procedure asylum seekers in need thereof e.g. survivors of torture, rape or other serious forms of psychological, physical or sexual violence, since they cannot benefit from adequate support in truncated procedures;
- ❖ Cease the use of the safe third country concept vis-à-vis Turkey given that it does not comply with Article 38(4) of the Asylum Procedures Directive;
- ❖ Publish the Opinion of the Director of the Asylum Service on the designation of Turkey, Albania and North Macedonia as safe third countries;
- ❖ Refrain from classifying applications made after the rejection of the initial claim based on the safe third country concept as "subsequent applications" and refrain from applying a preliminary admissibility assessment on new elements;
- ❖ Ensure that the preliminary admissibility assessment of subsequent applications is limited to the establishment of new substantial elements and that the merits of those elements are not examined at that stage;

Hellenic Police

- ❖ Refrain from issuing pre-removal detention orders to asylum seekers, including people who have made an asylum application and are awaiting registration;
- ❖ Cease ordering detention of asylum seekers with a view to removal to Turkey, given the applicability of Article 15(4) of the Return Directive;

European Commission (DG HOME)

- ❖ Urgently launch infringement proceedings against Greece regarding incorrect transposition and implementation of the Asylum Procedures Directive, the Reception Conditions Directive and the Return Directive, stemming *inter alia* from the requirement of fees for subsequent applications, the arbitrary application of the safe third country concept, and refusal to afford special procedural guarantees in border procedures

- ❖ Provide detailed, publicly accessible information on the procedures through which the Task Force Migration Management addresses issues of non-compliance in transposition and implementation of the EU asylum *acquis*, and on follow up measures taken with the Greek authorities where non-compliance persists e.g. on the safe third country concept or fees for subsequent applications;
- ❖ Thoroughly assess all elements raised in complaints on violations of the EU asylum *acquis* by Greece and provide adequate reasoning where the Commission decides not to pursue infringement proceedings.