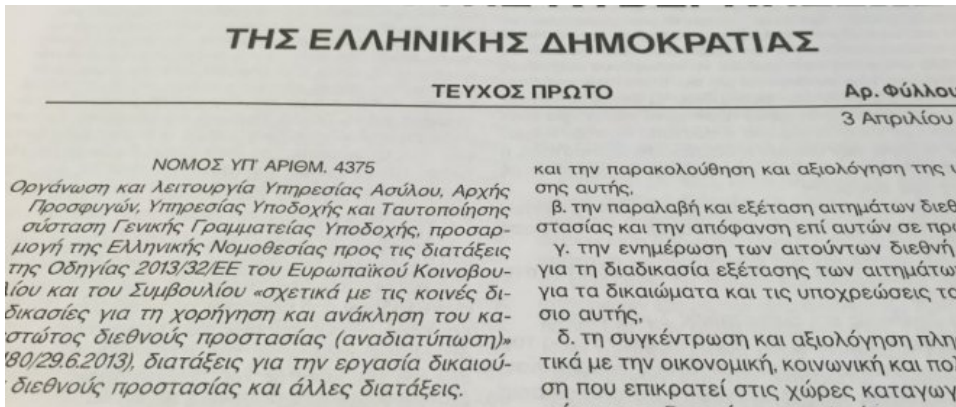


# GREECE: ASYLUM REFORM IN THE WAKE OF THE EU-TURKEY DEAL



4/04/16

Greek Law 4375/2016 ([/sites/default/files/resources/nomos\\_4375-2016.pdf](/sites/default/files/resources/nomos_4375-2016.pdf)) was adopted under urgent procedure on Friday and entered into force yesterday, amid debate and speculation around the legal reforms needed for the implementation of the EU-Turkey deal (<http://www.consilium.europa.eu/en/press/press-releases/2016/03/18-eu-turkey-statement/>) of 18 March. The Law introduces a considerable number of changes to the institutional framework, the first reception procedures, the asylum procedure, the labour rights of beneficiaries of international protection, as well as the management of refugee flows in Greece.

The asylum procedure, governed by a twofold legal framework under Presidential Decree 114/2010 (<http://www.refworld.org/docid/4cfdadf2.html>) for claims lodged before 7 June 2013 ("old procedure") and Presidential Decree 113/2013 (<http://www.refworld.org/docid/525e84ae4.html>) for applications filed after that date ("new procedure"), has undergone a number of significant changes. Several elements of the reformed procedure are discussed below:

## Resolution of the backlog of cases under the "old procedure"

**Article 22:** Applicants for international protection who have lodged a claim for over five years, have a pending appeal and possess a valid asylum seeker permit, are automatically entitled to a residence permit on humanitarian grounds, unless they pose a threat to national security or society, arising from a final conviction for a serious crime. The permit is granted for a period of 2 years and can be renewed.

The old procedure therefore ceases, unless the person appeals before the Appeals Authority within 2 months from the decision to grant a permit on humanitarian grounds, asking to have his or her appeal examined. In that case, the procedure continues as previously.

**Article 23:** Persons with pending appeals under the old procedure who have not appeared before the authorities to renew their asylum seeker permit until 31 August 2015 are considered to have implicitly withdrawn their applications, and their procedures are thereby discontinued.

These provisions establish a welcome regularisation process for thousands of asylum seekers affected by the longstanding backlog of claims under the “old procedure” handled by the police. The Greek Forum of Refugees (<http://refugees.gr/2016/02/29/%CE%BF%CE%B9-%CE%BE%CE%B5%CF%87%CE%B1%CF%83%CE%BC%CE%B5%CE%BD%CE%BF%CE%B9-%CF%84%CE%BF%CF%85-%CE%B1%CF%83%CF%85%CE%BB%CE%BF%CF%85-%CF%87%CF%81%CE%BF%CE%BD%CE%B9%CE%B1-%CE%B1%CF%83%CF%84%CE%B1/>) has detailed an array of severe obstacles faced namely by Afghan asylum seekers, often waiting for over 7 or even 13 years for a decision on their appeal. According to official statistics provided in the Explanatory Report (<http://www.hellenicparliament.gr/UserFiles/2f026f42-950c-4efc-b950-340c4fb76a24/o-prosf-eis-olo.pdf>) to the new law, the backlog of appeals under the “old procedure” currently stands at 18,500 cases, 7,800 of which will automatically be eligible a residence permit on humanitarian grounds. The remainder is expected to be examined by the Appeals Committees or be granted residence permits on humanitarian grounds as soon as claims reach the 5-year wait threshold.

### **Transposition of the recast Asylum Procedures Directive in the “new procedure”**

The Law sets out the rules and principles applicable to the “new procedure” in line with the recast Asylum Procedures Directive (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32013L0032>). These will repeal the related provisions of Presidential Decree 113/2013 in two months, with the exception of Article 60(4), which has already entered into force. Main elements of the reform concern the following areas:

#### **Free legal assistance**

Article 44(3): Free legal aid will be granted for appeals before the Appeals Authority. A Ministerial Decision will be adopted to spell out the modalities of legal assistance in that regard. For onward appeals against decisions of the Appeals Authority before a court, legal assistance remains governed by general administrative law.

#### **Detention of asylum seekers and the case of Reception and Identification Centres**

Article 46: The Law only allows for asylum seekers who have already been detained for immigration reasons to *remain* in detention under exceptional circumstances, subject to an individualised assessment, necessity and consideration of alternatives to detention, for one of the following grounds: (a) to establish their identity or origin; (b) to examine main elements of the claim where there is a risk of absconding; (c) when the person had the opportunity to seek protection and applies solely to avoid deportation; (d) when the person poses a threat to national security or public order; and (e) to conduct a Dublin transfer where there is a significant risk of absconding.

The same provision also reduces the maximum duration of detention. In cases related to the establishment of identity or origin, main elements of the claim, or the filing of an asylum application solely to avoid deportation, detention may only last 45 days and can be renewed by a further 45 days if the Asylum Service does not withdraw its recommendation for detention. In cases relating to public order or a Dublin transfer, detention cannot exceed 3 months. Detention of unaccompanied children pending their referral to a dedicated reception facility has also been curtailed by a maximum time-limit of 25 days, which can be prolonged by a further 20 days if the child cannot be transferred to such a facility due to exceptional circumstances, such as a large number of arrivals of unaccompanied children.

This Article appears to bring Greek law in line with the grounds for detention set out in Article 8 of the recast Reception Conditions Directive (<http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex:32013L0033>).

However, a risk of detention arises in the case of persons arriving in Reception and Identification Centres on the “hotspots” or in the mainland. According to Article 14 of Law 4375/2016, new arrivals are subject to a restriction on freedom of movement within the premises of the Centres during the reception and identification procedure; as far as asylum seekers are concerned, their entire asylum procedure can be conducted within the Centre. While the provision does not refer to detention, evidence from the conditions in such facilities

in Evros (</sites/default/files/resources/eu-greece-ecre-evros.pdf>), and more recently on the Aegean islands (<http://www.unhcr.org/56fe31ca9.html>), confirms that those staying in Reception and Identification Centres are deprived of their liberty in practice.

Such a general rule leading to systematic detention of migrants and asylum seekers contravenes human rights standards and the EU asylum *acquis*, all the more so since the ground provided in Article 8(3)(c) of that Directive, relating to detention during a border procedure for the purpose of deciding on an applicant's right to enter the territory, has not been transposed into [Article 46](#) of Law 4375/2016.

### **Inadmissible applications, "first country of asylum" and "safe third country"**

[Article 54](#): As was the case under Presidential Decree 113/2013, an application is considered inadmissible for a number of reasons, including the existence of a "first country of asylum" or a "safe third country". The definition of "safe third country" in [Article 56](#) has remained intact and no reference is made to the designation of specific countries as safe.

However, the guarantees applicable to the "first country of asylum" concept have been lowered by the new law. While Article 19(2) of Presidential Decree 113/2013 required the Asylum Service to take into account the safety criteria of the "safe third country" notion when examining whether a country qualifies as a "first country of asylum", this requirement has been dropped in [Article 55](#) of Law 4375/2016. This means, for instance, that asylum applications by persons who benefit from temporary protection in Turkey can be dismissed as inadmissible even if the country does not satisfy the criteria of a "safe third country".

### **Border procedure**

[Article 60](#): The main elements of the border procedure resemble the previous procedure governed by Article 24 of Presidential Decree 113/2013, which was applied at the airport. However, the law does not limit the applicability of the border procedure to admissibility or to the substance of claims processed under an accelerated procedure, as required by Article 43 of the recast Asylum Procedures Directive. Under the terms of Article 60, the merits of any asylum application could be examined at the border.

A new element to the border procedure is brought about by Article 60(4), which has already entered into force. This clause enables the Ministers of Interior and Defence to adopt exceptional measures in case of large numbers of arrivals lodging asylum applications at the border or while staying in Reception and Identification Centres. These measures include the possibility for EASO officials and interpreters to support the national authorities in registration and the conduct of interviews, a deadline of one day for applicants to prepare for the interview, and a maximum time-limit of 3 days for deciding on appeals. However, they may not be applied to vulnerable groups or persons falling within the family provisions of the Dublin III Regulation (<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:32013R0604>).

These truncated time-limits undoubtedly affect the procedural guarantees available to asylum seekers subject to a border procedure. It should be highlighted that Article 43 of the recast Asylum Procedures Directive does not permit restrictions to the procedural rights available in a border procedure on for reasons related to large numbers of arrivals.

### **Appeals**

[Article 61](#): The law has introduced slight improvements to the time-limits for appealing a negative decision for applicants in detention, at the border or in a Reception and Identification Centre. The deadline for appealing a decision from detention has been increased from 10 days to 15 days, while the one for appeals submitted in a border procedure or in a reception and identification procedure has been extended from 3 to 5 days.

The same Article states that all appeals have automatic suspensive effect against return orders. However, an opaque derogation to this rule is carved by [Article 60\(3\)](#), applicable to the border procedure. That paragraph provides that the applicant has the right to remain on the territory when the execution of a return order has been suspended following a related judicial decision («με σχετική δικαστική απόφαση»). This exception from the rule of automatic

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suspensive effect was introduced during the plenary debate in the Greek Parliament, whereas the original version (<http://www.hellenicparliament.gr/UserFiles/c8827c35-4399-4fbb-8ea6-aebdc768f4f7/9538243.pdf>) of Article 60(3) referred to a right to remain following the suspension of the return order by the exercise of appeal rights («λόγω άσκησης ένδικων μέσων»).

Article 60(3) raises critical questions of compatibility with the right to an effective remedy enshrined in Article 46 of the recast Asylum Procedures Directive. Firstly, Article 46(6) of the Directive allows a derogation from automatic suspensive effect in circumscribed cases, which include the “first country of asylum” concept but not the “safe third country” rule. Accordingly, automatic suspensive effect cannot lawfully be withdrawn as a general rule, as intended by L 4375/2016. Secondly, Article 46(7) of the Directive requires a minimum time-limit of one week for the lodging of appeals in cases where suspensive effect is not automatic. In light of this, the 5-day deadline for filing an appeal – with no automatic suspensive effect – at the border or in a Reception and Identification Centre contravenes those terms.

For more information, see:

- Greek Council for Refugees, Comment on Law 4375/2016 ([http://gcr.gr/index.php/en/news/press-releases-announcements/item/download/249\\_1e5cc5aaa9cd494b98247b3a2c84b009](http://gcr.gr/index.php/en/news/press-releases-announcements/item/download/249_1e5cc5aaa9cd494b98247b3a2c84b009)), 8 April 2016, available in Greek.
- Greek Council for Refugees, Critical situation on the islands (<http://gcr.gr/index.php/en/news/press-releases-announcements/item/546-deltio-typou-3-4-2016>), 1 April 2016, available in Greek.
- AIDA Country Report Greece: Fourth Update (/sites/default/files/report-download/aida\_gr\_update.iv\_.pdf), November 2015.

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