Hellenic League for Human Rights

Athens/Thessaloniki, 21 April 2016

Comments – critical observations on the provisions and the implementation of law 4375/2016 (On the organization and operation of an Asylum Service, an Appeals Committee Authority, a Reception and Identification Service, the creation of a General Reception Secretariat, the adjustment of Greek legislation to Directive 2013/32/EU of the European Parliament and of the Council "on common procedures for granting and withdrawing international protection (recast) – Official Gazette, A 51).

This text has been drafted to provide a critical understanding of the new regulatory framework on the reception and the procedures which apply to asylum and relevant issues. It mainly examines those provisions which aim to implement the informal EU-Turkey agreement of 18 March 2016. Therefore, this text will focus on the procedures and rules which regulate readmissions to Turkey.

The new law[1] on one hand transposes into the Greek legal order the provisions of Directive 2013/32/EU on the granting of international protection and on the other hand, it aims at dealing with the pressing problems that are caused by the latest developments in the refugee crisis. The law moves on these two parallel levels, thus creating a complex system for the examination of asylum applications and the treatment of asylum seekers.

The law's positive points include provisions for the –generally- unrestrained stay of asylum applicants in reception centres, the regulation of issues pertaining to unaccompanied minors (although a presidential decree which will regulate issues regarding the appointment of guardians or representatives has not been issued yet), the establishment of a regular procedure for the examination of asylum applications and dealing with the backlog of pending asylum applications by granting a leave to remain in the country on humanitarian grounds[2].

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[1] http://www.forin.gr/laws/law/3464/nomos-4375-2016#!/?q=συμφωνία επανεισδοχης&p=1&article=23133,23147,23148,23151

[2] See article 22. It provides for granting a leave to remain in the country on humanitarian grounds to those who have applied for asylum up to five years before the law enters into force and whose examination in second instance is pending. However an issue of interpretation of this particular provision arises, since the law's statement of reasons stipulates that "leaves to remain in the country on humanitarian grounds are granted to applicants of international protection who remain in the country under the status of an applicant for a time period from 5 to 15 years, and their application

However, the law's positive provisions are undermined either by the need to issue regulatory administrative acts in order for them to be implemented, or by the existence of special and transitional provisions which in practice overturn them.

In detail:

A) Asylum applications

In practice, there are three procedures of asylum applications examination in force at the same time:
a) The normal procedure provides for "lavish" examination procedures with an interview, generous deadlines to appeal, a short 25-day detention period in Reception and Identification Centres (RICs) and open reception centres.

b) The fast-track procedure applies to manifestly unfounded or abusive applications, or applications by people who either come from a safe country or are misleading the authorities etc. This procedure provides for somewhat shorter deadlines.

c) The derogation procedure applies to massive arrivals to ports etc. In practice, in this case we have a 10-14 day procedure in both instances.

B) Detention

As a rule, asylum applicants are granted accommodation without restrictions to their freedom. However, at the same time there is the possibility to detain recently arrived third-country nationals in RICs, initially for a maximum of 25 days (article 14). This detention ("deprivation of freedom" according to the terminology used in the law) can be ordered by a decision by the RIC commander in order to complete the identification process. A de facto detention of up to three days is allowed in order for the initial identification process to be completed, so that the freedom restriction decision can be personalised. Taking into account that RICs are established by a Joint Ministerial Decision (article 10), a practical issue arises, as to who is competent to issue the "freedom restriction" decisions, in

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for international protection has not been definitely examined or who appertain to the status of remaining on humanitarian grounds.

Under par. 1A of the proposed article 23 of this bill on the basis of the aforementioned established objective situation and in order to speed up the examination of pending applications for international protection in second instance in the framework of a fair procedure, there is a provision under which leaves to stay in the country on humanitarian grounds will be granted to applicants of international protection who dispose of a valid applicant card and whose application had been submitted up to at least 5 years before the entry into force of this law, and its examination in second instance is pending and therefore they have established a right of protection of their private and/or family life without a prior individual interview in second instance for the examination/ascertainment of the reasons for international protection". It remains to be clarified in practice whether the aforementioned provision applies to those who had filed an application *at least* 5 years ago or *up to* 5 years ago.

cases in which former hot spots are converted into RICs (namely into closed centres), that is when a Joint Ministerial Decision for the RIC's establishment has not yet been issued (which may well be the case for every RIC) and therefore there is no legally appointed commander in charge[3].

According to article 46 (which transposes articles 8 to 11 of Directive 2013/33), if an asylum application is submitted at a time when the foreign national is detained, a detention decision can (exceptionally) be issued by the competent police director on specific grounds (determining identity details, danger of escape, danger to the public order etc.) up to the maximum time of 18 months that is already provided for[4]. It goes without saying that detention within the RIC should also be taken into account in the expiration of maximum time limits.

The foreign national has the right to objection both during the initial 25-day detention period and afterwards. The detention decision, as well as the extension decision must be submitted for approval to the competent judge of the Administrative Court of First Instance (article 46 paragraph 5). It is not clear whether this obligation to file the detention decision with the competent administrative court also applies to the "freedom restriction" decision issued by the RIC commander under article 14, since this article cites to a mutatis mutandis application of article 46.

C) The derogation procedure in detail

The provisions of part C of law 4375/2016, namely the provisions which transpose Directive 2013/32/EU, enter into force two months after the law's publication in the Government Gazette (i.e. as of 3.6.2016). On the other hand, the derogation procedure under article 60 par. 4 enters into force immediately on its publication.[5]

<u>This procedure will be in force for a period of 6 months as per law, which can be extended for another 3 months by ministerial decision</u> (*the initial bill called for*

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[3] This issue has already arisen in Chios and has resulted in people being under de facto detention without any administrative act.

[4] It could be argued that article 46 par. 4d of law 4375/2016 refers to the "maximum time of detention" of article 30 of law 3907/2011. It only refers to the maximum time limit of six months and not to the possibility of a 12-month extension of the latter, since this is not explicitly stipulated and the interpretation of detention provisions which are extraordinary can only be narrow.

[5] Article 60 par. 4 calls for the issue of a joint ministerial decision. It could be argued that this decision is necessary for the entry into force of the derogation procedure. However, in practice, implementation of this procedure started without a joint ministerial decision having been issued.

***3+2 months: obviously, this time was deemed insufficiently short for the reduction of the immigration flows*)**. **Vulnerable groups are exempted from this procedure.**

Let's explore in detail how the derogation procedure works:

1st step: A massive number of people arrive in ports etc (*it is noteworthy that the term "massive" is not defined. For example: how many people must arrive for the arrival to be considered massive? Should they arrive in Greek territory aboard the same boat or just on the same day? The law draws on the last months' experience, which means that an important reduction in the number of new arrivals should make the provision redundant*).

2nd step: New arrivals are transported to RICs (former hot spots), which are closed centres. Their registration and identification begins immediately. Obviously, when this procedure is completed, a detention decision by the RIC commander is issued, otherwise, within three days at the latest (*until a detention decision is issued, they are detained without any decision*). They can be detained for up to 25 days in RICs and they can be transported to other RICs to be established in other parts of the country.

3rd step: Some of them apply for asylum and others don't. Those who do not apply will be directly handed to the police for "return, deportation or readmission", as the provision stipulates (more details on readmission under E). Police detention centres can be set up within the RICs (article 16, paragraph 6).

4th step: Those who wish to file an asylum application, do so either with the reception authorities or with the detention service or the Reception and Identification Service, if they are under detention (article 36). In practice, since part C [Γ] of the law <u>will enter into force two months after the law's entry into force (namely in the beginning of June)</u>, until then, applications are filed exclusively with the detention authorities, namely the police, the coast guard, the military or the Reception and Identification Service personnel within the RICs.

5th step: The competent official at the Asylum Service's regional office or mobile unit will examine the application. The applicant is given a 1-day deadline to prepare for the interview and on the next day at the latest, the decision is issued, which will be served no later than on the following day (in practice, the procedure can be completed on the day following the applicant's registration at the RIC. This means that if the foreign national files the application on Monday morning, he or she will be called for an interview on Tuesday at noon and a rejection decision will be immediately issued and served to him or her).

6th step: After the application has been (naturally) rejected, the applicant has a 5-day deadline to appeal (article 61 paragraph 1d). During this time, all return measures etc are suspended (article 61 par. 4). The appeal is examined by the appeals committees established under article 26 of presidential decree 114/2010, since no presidential decree establishing an appeals committee (article 80 par. 27) has been issued yet (*and not by the committees of article 3 of law 3907/11 which are reestablished under article 80 par. 2*).

7th step: The procedure is mainly conducted in writing. The appeal is examined within 3 days from its submission. The applicant can file an application for an oral interview until the day following his request (article 62 par. 1e). The applicant can also submit a statement one day before his or her application is examined or on

the following day. The decision is issued within 2 days from the examination or the submission of a statement and is served on the next day. The procedure in second instance can last 8 to 10 days.

8th step: The asylum application is rejected in second instance. From that point on, the applicant is allowed to appeal to the competent Administrative Court of First Instance (of Piraeus, if the asylum application has been submitted on an Aegean island), while on the other hand, the return or deportation procedure is being implemented.

9th step: Removal from the country. Until 31 May 2016, removals will be conducted based on the readmission agreement between Greece and Turkey and from 1 June 2016, based on the EU-Turkey Readmission Agreement. This is implied by the Factsheet published by the European Commission press office[6].

D) On which legal basis are asylum applications rejected?

The urgent voting of law 4375/2016 and the establishment of a derogation procedure are inextricably related to developments within the European Union and to the agreement with Turkey on the activation of the readmission procedure. In view of this fact, there is no doubt that what is orchestrated is the systematic rejection as inadmissible, at least in the first instance, of all asylum applications filed according to the derogation procedure under articles 55, 56 and 57 of the law (articles 35-38 of directive 2013/32 and articles 24 to 27 of directive 2005/85, which will still be in force during the two months after the publication of law 4375/2016):

1) Applicants coming from countries where there is no active war conflict will be deemed to come from a safe country of origin (namely from the countries designated in the relevant EU or national list). The applicant can refute the safe country of origin presumption by invoking personal circumstances which render this country unsafe.

2) Applications filed by Syrians (and, possibly, Afghans etc.) will be rejected as inadmissible, because these people have passed through a first country of asylum or they have passed through a safe third country, namely Turkey. In practice, Turkey does not grant asylum, but it can be regarded as a country where the applicant "otherwise enjoys sufficient protection…. including benefiting from the principle of non-refoulement". Or it can be regarded as a safe third country, namely one which cumulatively satisfies the following criteria: a) life and liberty are not threatened on account of race, gender etc., b) the principle of non-refoulement in accordance with the Geneva

[6] http://europa.eu/rapid/press-release_MEMO-16-963_en.htm

Convention is respected, c) there is no danger of serious damage (threat of life or torture etc.), d) the prohibition of removal, in violation of the right to freedom from torture is respected and e) there is a connection to this third country.

Regarding Turkey as a safe third country is problematic on many levels, especially if one takes into account information that has surfaced of readmission agreements between Turkey and countries of origin such as Afghanistan, Iran and even Syria. Furthermore, no asylum based on the Geneva Convention is granted in Turkey and asylum seekers are routinely jailed.[7]

Since the first days of the derogation procedure implementation, we have witnessed that *in practice the EASO expert has delivered the opinion that Turkey is a safe third country*, in relation to the first asylum applications examined. Furthermore, the expert in practice *conducted* the interview, which is not what is stipulated by the law. This opinion, insofar it is a standardized text which is repeated in each application rejection, is worrying, as it essentially annuls the required case by case judgment. What is even worse, it conveys the burden to prove that Turkey is not a safe third country to the applicant, in a clear reversal of the directive provisions' rationale. The terse rejection decisions issued in these first cases are *unjustified*. Legal aid by the state has not been granted. In the appeals procedure, in the few cases that have been examined, applicants were interviewed by phone and not in person.

E) How will the readmission legally and practically work?

The EU-Turkey readmission agreement which had already been signed on 16 October 2013 and which will enter into force as of 1 June 2016 (there is an ambiguity concerning its entry in force date), under article 4 stipulates that Turkey is obliged to accept in its territory, among others, those who are in a member state territory and who have entered irregularly and directly to the member states' territory after residing or passing through Turkish territory.

The stipulated procedure is relatively simple: for the transfer of a foreign national, Greece has to submit a readmission application, unless the person to be readmitted disposes of a valid stay permit or visa for Turkey, in which case not even an application is needed. If the person has been arrested at the border area, the application can be submitted within 3 working days from the date of arrest

[7] The United Nations High Commissioner for Refugees has expressed worries over the designation of Turkey as a safe third country. See http://www.refworld.org/docid/56f3ee3f4.html

(this is the fast procedure that will most likely be the one to be applied in practice). In any case, the application must be filed within 6 months from the arrest or from the entry of the agreement into force. It is not yet defined whether the readmission of every foreign national who has passed through Turkey before entering Greece can be requested, in which case readmissions would apply to those Syrians etc. are in Idomeni or in reception centers.

There is a special readmission application document which includes specific information. It can be submitted electronically and the answer (in the fast procedure) is given in writing, within 5 working days. If no answer is given, the transfer is considered to have been tacitly approved. Turkey has to be notified on where and how the transfer will take place 48 hours in advance *(total time 8 working days from the arrest plus 48 hours, that is 12-14 days, which is the time provided for in the derogation procedure under article 60 par. 4)*.

In practice, the activation of the EU-Turkey readmission procedure (and of the Greece-Turkey agreement) seems to implement mass deportations and therefore mass refoulements, since Turkey is considered as a safe country from the onset, without a case by case examination. This is a crucial point which has to be investigated during the agreement's implementation.