



Up Against the Clock

Rights Violations as a Result of the Border Procedures on the Eastern Aegean Islands



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Introduction

In Greece, there are two different types of asylum procedures under which an asylum application can be examined, the 'regular procedure' and the 'border procedure'.¹ Asylum seekers arriving at border or transit zones, including ports and airports in Greece, will likely be subjected to the border procedure, instead of the regular procedure. All asylum seekers arriving on the five Eastern Aegean Islands are subjected to the border procedure, with few exceptions.²

The border procedure, initially designated as the 'fast-track procedure', was implemented in Greek legislation by Law 4375/2016.³ When it was first introduced, it was understood as a temporary and exceptional measure to respond to the increase in the number of arrivals and to the implementation of the EU-Turkey Statement in 2016. However, with its continuation under Law 4636/2019, this accelerated procedure can no longer be considered as the exception and a temporary measure, instead becoming the rule and a permanent procedure.

In light of the challenges faced by Fenix Humanitarian Legal Aid (Fenix) teams due to the timelines imposed by the border procedure on Lesbos, Fenix is issuing this policy note to (1) highlight some of the most prominent problems observed during the first instance asylum procedures through the course of our work on Lesbos, and (2) offer our recommendations seeking to address these problems.

I. An Overview of the Border Procedures

The asylum process under the border procedure is characterised by accelerated timelines. Each stage of the asylum process under these procedures must be concluded within a very

¹ Article 90 of Law 4636/2019 (Articles 31(8) and 43 Directive of 2013/32/EU)

² Articles 64(3) and 90(4) of Law 4636/2019 (Articles 24(3) and 25(6)(a)(b) of Directive 2013/32/EU). The Eastern Aegean Islands refers to Lesbos, Chios, Samos, Leros, and Kos.

³ Article 60 of Law 4375/2016

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short period of time, for example a first instance decision must be issued within seven days.⁴ The right to asylum enshrined within the 1951 Geneva Convention has since been recognised by international conventions and is protected under the laws of the European Union.⁵ However, the extremely short timelines under the border procedures can ultimately serve to compromise the realisation of the right to asylum in practice, and to hinder access to guarantees available under the EU asylum acquis.

The required steps to be taken after the arrival of an asylum seeker to Greek territory is laid down in Article 39 of Law 4636/2019, transposed from the provisions of Chapter II of EU Directive 2013/33. Article 39 sets out the five stages of the reception and identification procedure as follows: information stage, submission stage, recording and medical examination stage, referral to international protection stage, and further referral and transfer stage.⁶ In practice, applicants are firstly registered with the Reception and Identification Centre (RIC) authorities, following an initial quarantine period during which applicants have no access to information or services. At this stage, the applicants are identified, their will to apply for asylum is registered, and they are issued their first identification document (known informally as ‘police paper’ and used for allocating housing and other practical needs). This step is followed by the registration of the asylum application with the Regional Asylum Office (RAO), where their personal information is collected, along with a brief explanation of why they left their country of origin (or the “safe third country”, if relevant in their case), and what would happen to them if they went back. At this point, applicants are informed of the date of their asylum interview (also known informally as the ‘big interview’). Currently, both of these registrations occur on the same day.

Article 90(3)(c) requires that a first instance decision on the asylum application must be issued within seven days. This means that the personal interview typically takes place two or three days after the registration with RAO. This extremely short period between registration and interview translates to many challenges. Asylum seekers, who frequently have not had time to process the difficulties they faced in their countries of origin and in transit, do not

⁴ Under Article 90(3)(c) the national competent authorities must: (i) issue a first instance decision within seven days, (ii) receive an appeal within ten days, (iii) examine the appeal within four days and inform the appeal within one day to appear for a hearing before the Committee of Appeals or to submit supplementary evidence, and (iv) issue a second instance decision within 7 days.

⁵ The right to asylum is contained in the 1951 Geneva Convention, Article 14 of the Universal Declaration of Human Rights, and Article 18 of the EU Charter of Fundamental Rights, as well as the EU asylum acquis.

⁶ Article 39 of Law 4636/2019.

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have time to understand the process they are facing, nor to mentally prepare for how best to articulate their claim. The importance of the personal interview cannot be overstated. This is the applicant's opportunity to explain why they are in need of protection, and why they fit within the definition of refugee.⁷ However, due to a lack of time, many are forced to undergo their interview without adequate understanding, preparation, or evidence.

According to Law 4636/2019, there are other procedural steps required during these initial stages of the asylum procedure. After the registration with RIS and before the registration with RAO, a medical screening and vulnerability assessment is required to take place.⁸ Article 24 of EU Directive 2013/32 requires that the Greek authorities must assess whether an applicant is in need of special procedural guarantees "within a reasonable period of time after an application for international protection is made." In practice, it has been observed that vulnerability assessments are not taking place in time for the interview in the context of the border procedures, or if they are taking place they are of inadequate quality.⁹

The provision of legal information regarding the asylum process and the possibility for legal representation are provided for under Articles 18 to 23 of EU Directive 2013/32. In practice, it has been observed that many applicants undergo their registration or even the first asylum interview without access to legal information, advice, or representation, especially in the context of large groups of arrivals. Additionally, under Article 39(3), the authorities are required to provide eight categories of general information to applicants regarding the asylum process and reception conditions (including the applicant's rights and obligations throughout the international protection application process). In the context of rushed timelines and large groups of arrivals, the likelihood that this requirement may not be fully complied with increases.

⁷ For applicants from Syria, Afghanistan, Somalia, Pakistan, and Bangladesh, they will firstly need to explain why Turkey is not a safe place for them in an "admissibility interview", and if successful, they will have a second interview called the "eligibility interview", at which point they will get the chance to further articulate why they are in need of international protection. This process has been in place since the introduction of Joint Ministerial Decision 42799/2021, which designated Turkey a "safe third country" for applicants of the above-mentioned nationalities.

⁸ Article 39 of Law 4636/2019.

⁹ Even if there were no long delays between the arrival and the vulnerability assessment, the low quality of the process of medical and psychosocial screening remained a source of serious concern. Until now, alarming reports indicate that vulnerabilities are often missed, with individuals going through the asylum procedure without having their vulnerability assessment completed first. AIDA (30/05/2022), *Country Report: Identification*, Available at: <https://asylumineurope.org/reports/country/greece/asylum-procedure/guarantees-vulnerable-groups/identification/>.

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The problems with the lack of adequate information and the lack of adequate vulnerability assessments when combined with very short timelines are numerous and have a severe impact on asylum seekers. On arrival, the immediate needs are securing housing, food, and other essential living items, and registration of the claim. However, asylum seekers have frequently faced severe incidents of trauma and persecution, either in their home countries or in transit, prior to arrival on Lesbos, which may have resulted in serious medical needs or psychological needs. It should be an imminent priority to address these needs. However, under the context of the border procedures, these first few days on Lesbos are also the only available time for interview preparation. With so many needs competing for attention in the same few days, the inevitable result is that some of the needs will not be addressed within that time frame.

II. Harms Caused by Accelerated Timelines

1. *Impact on access to mental health and protection services*

A significant impact of the border procedures is the impact on mental health. Ideally, the appropriate process would be for the individual to build a relationship of trust with practitioners in order to disclose and discuss a potential condition, and obtain a diagnosis, treatment and documentation. Adequate time would also allow for the individual to understand what happened or is still happening to them. To attempt to fit all these aims into two or three days is an impossible mission, particularly taking into consideration the availability of services on Lesbos, for example, services to cover the needs of children with developmental conditions on the island is limited, and the sole child psychiatrist serves the needs of both the local and refugee population, resulting in long waiting times and delays in assessments.¹⁰

¹⁰ Fenix and others, POLICY NOTE: For refugees and asylum seekers residing on Lesbos, mental health remains an invisible vulnerability (24 May 2022), Available at: <https://www.fenixaid.org/articles/for-refugees-and-asylum-seekers-residing-on-lesvos-mental-health-remains-an-invisible-vulnerability>.

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For a protection standpoint, there are similar issues. Two or three days is often insufficient time for individuals to disclose instances of trauma they may have experienced, for example, female genital mutilation, torture, trafficking or incidents of sexual violence. Even if a trusting relationship is established leading to a disclosure of the traumatic incident, it is extremely difficult to arrange the necessary assessments and receive certifications and documentation to evidence relevant scars or medical conditions, ahead of the interview taking place. Obtaining tests, scans, lab results, prescriptions, etc. in time for the asylum interview is also extremely difficult if not impossible, resulting in individuals attending their interviews who are often in a poor physical and mental state. As one example of how this might impact a claim, having a medical condition and not being able to access medical care in Turkey would be of great relevance to arguing that Turkey is not safe for the applicant, and may ultimately change the outcome of the decision.

2. Impact on access to legal aid

Article 22 of EU Directive 2013/32 requires Member States to allow applicants the opportunity to consult a legal adviser at all stages of the procedure. However, it is extremely difficult for legal aid actors to detect and identify possible cases and conduct outreach activities, as there is such limited time between individuals exiting quarantine and their interviews.

Moreover, in cases where such identification is possible, once again there is insufficient time to build a relationship of trust with the client. Feeling comfortable with their legal representative is fundamental for individuals to disclose past experiences of trauma. A lack of disclosure can mean that important pieces of information relevant to the asylum claim are not disclosed until during the asylum interview, or are not disclosed at all, and therefore do not get examined by the Greek Asylum Service (GAS), as the applicant does not understand the importance of mentioning them. Understanding a client's full story is essential for deciding the strategy that will be most likely to achieve a successful outcome. Research and preparation of the written memorandums outlining their claim is also compromised, for example obtaining sufficient country of origin information or documentation which supports the claim. As an example of these challenges, a client may disclose country of origin information but not feel comfortable disclosing the fact that they

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suffered sexual violence in Turkey prior to arriving on Lesbos, which would have been relevant for claiming that Turkey is not a safe place for them and more likely to lead to a successful outcome.

3. Impact on the examination of the asylum claim

One of the most glaring issues from the perspective of the legal procedure is with respect to cases of vulnerable asylum seekers needing special procedural guarantees. Under Article 67(1) of Law 4636/2019 (transposition of Article 24 of Directive 2013/32/EU), the receiving authorities have the responsibility to assess whether the applicant requires specific procedural guarantees. Article 67(3) of Law 4636/2019 states that if vulnerable persons needing specific procedural guarantees cannot be accommodated appropriately within the border procedures, an exemption should be granted and they should be referred to the regular procedure.

When an applicant is identified as vulnerable during the reception and identification procedures, this should lead to a suspension of the asylum interview until certain assessments are complete. These include a full assessment of vulnerabilities, the existence of special needs, and whether the border procedures are appropriate or not. When medical and vulnerability assessments were not conducted at all or were only partially conducted, the asylum interview should be suspended until the assessments are complete. Finally, in cases where a vulnerability is not mentioned until during the personal interview, the caseworker is responsible for postponing the interview until the reception and identification procedures are completed, and for ordering the above-mentioned assessments.

Legal representatives of Fenix have requested the suspension of interviews on behalf of several clients; nevertheless, Fenix has observed that the request is typically rejected by the authorities without explanation. This results in decisions being issued following the interview, despite the lack of such assessments. In cases of vulnerable applicants for whom the regular procedure is more appropriate, without a vulnerability assessment and certification of the relevant condition, their entire asylum procedure could be impacted.

4. Impact on family reunification

Another problem with respect to the appropriate legal procedure is with respect to family reunification (FR) procedures under the Dublin III Regulation.¹¹ The Dublin III Regulation contains criteria for determining the Member State responsible for examining an applicant's asylum claim. When an asylum seeker has a direct family member who legally resides in another Member State, that Member State should be responsible for examining the asylum application. This regulation is based on recognition of the fundamental principles of the best interests of the child, and the importance of family unity.¹² The requesting Member State must submit a request (known as a 'Take Charge Request') to the receiving Member State before the examination of the asylum claim and the scheduling of the asylum interview in the first country. Although the system was designed to be quick and straightforward, it is riddled with issues and complications, particularly where border procedures are in place.

When viewed against the backdrop of the border procedures currently applied to applicants on Lesbos, the problems with respect to potential FR procedures are numerous. As applicants under FR procedures go through an entirely different procedure, the Greek asylum procedure should be suspended pending the outcome of the FR application. However, the issuance of a decision by the Greek Asylum Service renders the applicant ineligible for the FR procedures, resulting in Greece being the appropriate Member State to examine the application and an opportunity for family reunification lost. It is therefore crucial that potential cases for FR are detected. Given the speed at which decisions are issued in the context of the border arrivals, it is a race against the clock to ensure an applicant who may be eligible for FR is not notified of their decision following an interview, requiring the intervention of lawyers. On a practical level, new arrivals often don't have access to information about the FR procedures or the importance of sharing with the authorities that they have family members in other Member States as soon as possible. Often they don't

¹¹ Regulation (EU) No. 604/2013, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604>.

¹² These principles are contained within the 1989 United Nations Convention on the Rights of the Child, the Charter of Fundamental Rights of the European Union, the European Convention for the Protection of Human Rights and Fundamental Freedoms, and the Charter of Fundamental Rights of the European Union, and are contained within the background information at the beginning of the Dublin III Regulations, available at: <https://eur-lex.europa.eu/legal-content/en/ALL/?uri=celex%3A32013R0604>.

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mention that they have family members in the EU during registration, or they mention it when it is too late and a decision has already been issued.

If eligible under the FR procedures, the applicant should not even be having a personal interview, as the Greek asylum process is suspended pending the outcome of the FR procedure. Even when applicants disclose the existence of family members in the EU during their registration or during their asylum interview, the consequences of such a disclosure are inconsistent. At times, no separate FR procedure is initiated by the authorities. Even when a FR procedure is initiated, applicants have only 3 to 5 days to collect documentation that proves family links or obtain other relevant documents, which is completely insufficient.

III. The Impact on Asylum Seekers

From the perspective of asylum seekers, the accelerated process leads to many difficulties. Arriving to Lesbos is typically a difficult journey, and people have often fled from a crisis situation or from persecution and may have experienced further trauma in transit. Once they arrive, their mindset is still in “survival” mode, therefore their primary concern is their day-to-day needs such as housing and access to food and other essential items. To switch to interview preparation mode in such a short space of time is a difficult ask. People are often not ready to mentally process the information being given to them. Moreover, without adequate information, applicants may not be aware of what parts of their story are relevant to mention in their interviews and how to properly articulate their claim. To go through these initial stages of the asylum procedure in this manner is an entirely disempowering process, and leads to a higher chance of a rejection decision.

This disempowerment is compounded in the case of vulnerable individuals, who may not feel comfortable disclosing their vulnerabilities or past traumatic experiences in time for their interview. They are then in a situation where they are not receiving treatment for the condition and are bearing the suffering alone, while facing conditions of containment within a camp setting which may exacerbate their symptoms, as well as the fact that their condition has not been taken into account as part of their asylum claim. Without quality vulnerability assessments, the border procedures serve to compound the issues faced by individuals with health needs and vulnerabilities, leading to a deterioration of physical and mental health,

as well as an increased likelihood of rejection. A lack of recognition of medical conditions or other vulnerabilities serves to perpetuate the harm experienced by these individuals.

IV. Conclusions and Recommendations

As can be seen, the issues associated with the accelerated procedures are hugely problematic for asylum seekers and from the perspective of legal aid, protection and mental health actors, but also from the perspective of the Greek authorities. Resources within a busy asylum system are being used unnecessarily by conducting interviews with those who shouldn't have their interview until vulnerability assessments are done, or with those who should instead be going through the FR procedure. The FR procedure offers further opportunity for alleviation of resources, as often the responsibility for assessing the claim will fall to a different Member State. Furthermore, the current practice also increases the number of appeals and raises the number of people being left in a legal limbo, especially where applicants had their asylum claim examined on admissibility only.

Although the border procedures contained in Law 4636/2019 and in Directive 2013/32/EU allow for accelerated timelines, this does not exempt the Greek authorities from their obligations pertaining to the registration, identification, and reception of asylum seekers. Ultimately, what is at stake is an individual's ability to fully present their case for asylum and the possibility of securing safety from the persecution they have faced and, therefore, to fully access their fundamental right to seek asylum. Fenix calls on the Greek authorities to respect the rights guaranteed by the asylum process, and urges the authorities to amend the current legislation appropriately to build more time into the procedure, allowing a better chance for the following recommendations to be met:

1. Ensure asylum seekers are provided with adequate time between the registration of their asylum claim and their asylum interview.
2. Ensure asylum seekers are provided adequate information about their rights and the procedure they are facing in a manner they understand, encouraging collaboration with legal aid and medical actors.

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3. Provide appropriate vulnerability and medical assessments and certifications, and if needed appropriate reception conditions and referral to the regular procedure for vulnerable applicants.
4. In the case of vulnerable individuals, ensure the possibility exists to postpone the personal interview pending assessments (including for example vulnerability assessments, medical assessments, and age assessments), and pending the result of applications for referral to the regular procedure.
5. Ensure asylum seekers are provided adequate information regarding the family reunification procedure and sufficient opportunity for the disclosure of relevant family ties. Where relevant, ensure the asylum procedure is suspended in a timely manner pending the assessment of the FR case.