



Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Spyros Papalexis

**The EU Charter of fundamental rights provisions in
relation to asylum and immigration**

TRALIM 3 Athens, 8 November 2024



Co-funded the European Union

The Charter of Fundamental Rights of the European Union

- 1st Chapter, “**Dignity**”: the right to life and prohibition of torture, slavery, the death penalty, eugenic practices and human cloning.
- 2nd Chapter, “**Freedom**”: the right to liberty and security, respect for private and family life, freedom of thought, conscience and religion, freedom of expression and information and personal integrity, privacy and the right to asylum.
- 3rd Chapter, “**Equality**”: contains the right to equality before the law, the prohibition of all discrimination (sex, race, ethnic or social origin and political or any other opinion), the rights of the child and the rights of the elderly.

The Charter of Fundamental Rights of the European Union

- 4th Chapter, **“Solidarity”**: social and workers’ rights including the right to fair working conditions, protection against unjustified dismissal, and access to health care, social and housing assistance.
- 5th Chapter, **“Citizens Rights”**: several administrative rights such as the right to good administration and the right of access to documents.
- 6th Chapter, **“Justice”**: the right to an effective remedy and to a fair trial, the presumption of innocence and right of defense, as well as the principles of legality, and proportionality of criminal offences and penalties.
- 7th Chapter, Interpretation and application of the Charter.

The Charter of Fundamental Rights of the European Union

Article 18: “Right to asylum”

“The right to asylum shall be guaranteed with due respect for the rules of the Geneva Convention of 28 July 1951 and the Protocol of 31 January 1967 relating to the status of refugees and in accordance with the Treaty establishing the European Community.”

The Charter of Fundamental Rights of the European Union

Article 19 “Protection in the event of removal, expulsion or extradition”

“1. Collective expulsions are prohibited.

2. No one may be removed, expelled or extradited to a State where there is a serious risk that he or she would be subjected to the death penalty, torture or other inhuman or degrading treatment or punishment.”

ASYLUM

1. Access to the territory and to the asylum procedure

Access to the territory

- * Article 18 “Right to asylum”
- * Article 19 (1) “Prohibition of collective expulsions”
- * Article 19 (2) “The prohibition of refoulement”
- * Article 4 “The prohibition of torture and inhuman or degrading treatment or punishment”
- * The right to good administration
- * Article 47: The right to an effective remedy and to a fair trial

ASYLUM

1. Access to the territory and to the asylum procedure

Access to the Asylum Procedure

- * Principle of effectiveness
- * The right to good administration

ASYLUM

2. The right to remain on the territory of an EU Member State

The right to remain:

- a) during the examination of the asylum claim
- b) during the time necessary to lodge the appeal
- c) during the appeal phase

* Article 47: The EU right to an effective remedy

* Principle of effectiveness

ASYLUM

3. The right to legal assistance, legal representation and legal aid

- * Article 47: The EU right to a fair trial
- * The principle of effective judicial protection
- * Article 47: The EU right to an effective remedy

ASYLUM

4. The right to a personal interview

The right to a personal interview

Language of the interview and the right to a free and competent interpreter

The right to an oral hearing before the court or tribunal

The right to (comment on) a written report of the interview

- * The EU right to be heard
- * The principle of effectiveness
- * The EU right to be heard and the right of access to the file
- * Article 47

ASYLUM

5. Time-limits in the asylum procedure

Short time-limits in first instance asylum & appeal procedures

- * Article 47: The EU right to an effective remedy
- * The principle of effectiveness

Lengthy asylum procedures

- * The right to good administration
- * Article 47: The EU right to an effective remedy

ASYLUM

6 The standard and burden of proof

The standard of proof

- * The principle of effectiveness

Burden of proof

- * Article 41: The right to good administration
- * The principle of effectiveness

The use of Presumptions

- * The right to an effective remedy
- * The principle of effectiveness

ASYLUM

7 Evidentiary Assessment

Evidentiary assessment

Country of origin information

Medical reports

* The principle of effectiveness

ASYLUM

8 The right to an appeal of an asylum decision

- a) the right of access to a court or tribunal
- b) the right to an appeal before a court or tribunal
- c) the right to adversarial proceedings
- d) the right to equality of arms
- e) the right to a reasoned judgment

* Article 47: The EU right to an effective remedy and a fair trial

ASYLUM

9 The examination of new elements and findings in appeal proceedings and subsequent asylum applications

- * The Principle of effectiveness

IMMIGRATION

All rights within the Charter also apply to irregular migrants, unless explicitly stated otherwise

- * Labor rights
- * Social and Economic rights
- * The right to an effective remedy and to a fair trial



Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Minos Mouzourakis

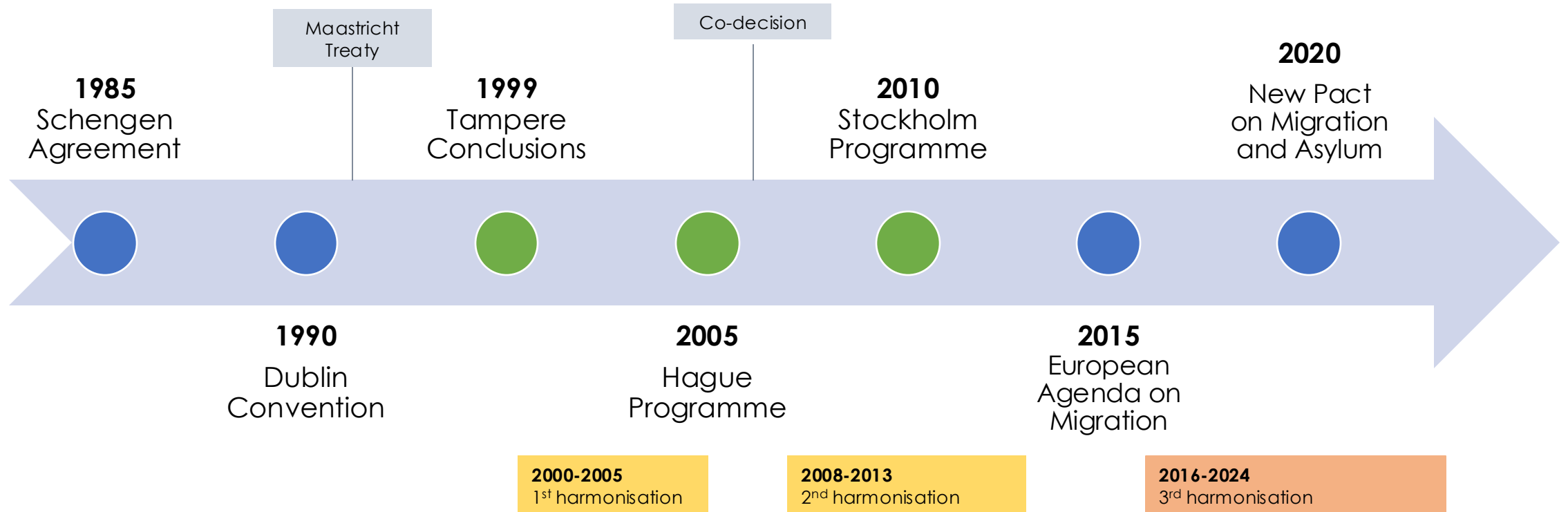
**The European Union legal system regulating asylum
and immigration: instruments and case law**

TRALIM 3 Athens, 8 November 2024



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Common European Asylum System (CEAS): A timeline



Common European Asylum System (CEAS): Contents

Legal basis: Art 78 TFEU – in line with the 1951 Refugee Convention and other relevant treaties e.g. ECHR, Istanbul Convention, CEDAW: [CJEU C-608/22 Bundesamt für Fremdenwesen und Asyl, para 33 \(2024\)](#); [C-646/21 Staatssecretaris van Justitie en Veiligheid, para 36 \(2024\)](#); [C-621/21 Intervyuirasht organ na DAB pri MS, paras 37, 44-47 \(2024\)](#)

Contents: Legislative standards for all EU countries* on:

1. **Qualification:** who is a refugee and what are their rights? [Regulation \(EU\) 2024/1347 \(QR\)](#)
2. **Asylum procedures:** how to process an asylum claim? [Regulations \(EU\) 2024/1348 \(APR\), 2024/1349 \(RBPR\)](#)
3. **Reception conditions:** shelter, health, employment until a decision is made: [Directive \(EU\) 2024/1346 \(RCD\)](#)
4. **Dublin & Eurodac:** which country is responsible? [Regulations \(EU\) 2024/1351 \(AMMR\), 2024/1358 \(Eurodac\)](#)
5. **Temporary protection:** in mass influx: [Directive 2001/55/EC \(TPD\)](#)
6. **Crisis:** when can states derogate from asylum rules? [Regulation \(EU\) 2024/1359 \(Crisis Regulation\)](#)
7. **Resettlement:** how to do it if countries wish to use it? [Regulation \(EU\) 2024/1350 \(URF\)](#)
8. **EU Asylum Agency** to support national asylum systems: [Regulation \(EU\) 2021/2303 \(EUAA Regulation\)](#)
9. **Screening:** identification of people arriving or staying irregularly: [Regulation \(EU\) 2024/1356 \(Screening Regulation\)](#)

The 3rd iteration of CEAS: Main tenets

Legislation applicable in Member States starting Jun 2026.

Implementation plans to be tabled by Dec 2024: [Art 75 APR](#); [Article 84 AMMR](#)

Regression of standards, in breach of the 1951 Refugee Convention and “other relevant treaties”

- ❖ Weakened requirements for designation of “safe countries of origin” and “safe third countries”: [Art 59, 61 APR](#)
- ❖ Expanded border procedures, mandatory for certain cases: [Art 45 APR](#)
- ❖ “Fiction of non-entry” in border procedures leading to arbitrary, mass deprivation of liberty: [Art 43\(2\) SR](#); [Art 6 SR](#)
- ❖ Rejection without an interview when protection has been offered by another EU country: [Art 13\(11\)\(e\) APR](#)
- ❖ Restriction of appeal grounds against transfer decisions in Dublin procedures: [Art 43\(1\) AMMR](#)

Unclear, permissive rules defeating legal certainty and harmonisation objectives

- ❖ Obscure rules on what claims may be processed in border procedures: [Art 44\(1\)\(b\) APR](#); [Art 11 CR](#)
- ❖ Overly complex, inconsistent rules on the right to remain on EU soil pending asylum appeals: [Art 68\(3\) APR](#)
- ❖ 10 different, conflated ‘exceptional’ circumstances triggering derogations from standard rules: [APR](#); [RCD](#); [AMMR](#); [CR](#)

Recent CJEU case law: Adjudication of asylum claims

“Refugee” definition

Accumulation of discriminatory measures against women (forced marriage, violence, ban on education, exclusion from public life etc.) amounts to persecution: [CJEU C-608/22 Bundesamt für Fremdenwesen und Asyl, para 46 \(2024\)](#)

Women identifying with gender equality in their country may be classified as a particular social group: [CJEU, C-646/21 Staatssecretaris van Justitie en Veiligheid, para 64 \(2024\)](#)

Safe country concepts

Designation of a “safe country of origin” does not allow for territorial or personal exceptions: [CJEU, C-406/22 Ministerstvo vnitra České republiky, para 83 \(2024\)](#)

An application cannot be dismissed as inadmissible and examination cannot be delayed where it is established that a “safe third country” does not readmit asylum seekers: [C-134/23 Elliniko Symvoulío gia tous Prosfyges, para 54 \(2024\)](#)

Asylum grant in another EU Member State

No mutual recognition of another Member State’s asylum decision but duty of sincere cooperation and consideration of that decision: [CJEU, C-753/22 Bundesrepublik Deutschland, paras 78-80 \(2024\)](#); [C-352/22 Generalstaatsanwaltschaft Hamm, para 68 \(2024\)](#)

Recent CJEU case law: Procedural safeguards

Access to procedure

“Making” an asylum claim is subject to no administrative formality: [CJEU C-823/21 *Commission v Hungary*, para 43 \(2023\)](#); [C-72/22 PPU *Valstybės sienos apsaugos tarnyba*, para 57 \(2022\)](#); [C-808/18 *Commission v Hungary*, para 97 \(2020\)](#); [C-36/20 PPU *Ministerio Fiscal*, para 93 \(2020\)](#)

Appeals

Automatic suspensive effect where the rejection of the asylum claim is accompanied by a removal order: [CJEU C-156/23 *Ararat*, para 48 \(2024\)](#); [C-233/19 *CPAS Liège*, para 45 \(2020\)](#); [C-181/16 *Gnandi*, para 54 \(2018\)](#)

Deadlines must allow effective exercise of procedural rights e.g. information, access to the file: [CJEU C-58/23 *Abboudnam*, paras 31-32 \(2023\)](#); [C-651/19 *Commissaire général aux réfugiés et aux apatrides*, paras 61-62 \(2020\)](#)

Non-refoulement check

Duty of *ex officio* review of a ‘revived’ prior return decision: [CJEU, C-156/23 *Ararat*, para 52 \(2024\)](#)



Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Marina Kanta

Legal assistance to immigrants and asylum seekers

TRALIM 3 Athens, 8 November 2024



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STRUCTURE OF THIS PRESENTATION

- ▶ NAVIGATE THROUGH THE ASYLUM PROCEDURE IN GREECE
- ▶ IDENTIFY THE CHALLENGES
- ▶ INDICATE THE IMPORTANCE OF FREE LEGAL ASSISTANCE IN THE PROCESS



GREECE: A GATEWAY TO EUROPE

Is Greece a transit or a destination country?

Statistics from the Ministry on Migration and Asylum (Dec. 2023)

768.866 Documented

248.344 EU citizens

468.038 Third Country Nationals

52.484 Recognised refugees

<https://shorturl.at/notwF>.



2023 TRENDS

In 2023 Greece saw a significant number of new arrivals via the Aegean islands and the Evros land border, with the Reception and Identification Service registering many people in reception procedures (https://migrant-integration.ec.europa.eu/library-document/greece-asylum-procedure-statistics-2023_en):

40.365 arrivals:

- ▶ 7.079 via the Evros land border;
- ▶ 39.016 via the Aegean islands;
- ▶ 2.370 via other entry points.

2024 ACCEPTANCE RATE STATISTICS

From 01/01/2024- 30/09/2024

(https://migration.gov.gr/wp-content/uploads/2024/10/Σεπτέμβριος-2024_YMA-GR-Ενημερωτικό-ΔΙΕΘΝΗ-ΠΡΟΣΤΑΣΙΑ_ΝΕΟ.pdf) :

61.923 - 1st instance decisions have been issued:

-48,4% positive

-25,4 % negative

-26,2 % other administrative actions

10.190 - 2nd instance decisions have been issued:

-5% positive

-92 % negative

-3 % other administrative actions

ASYLUM PROCEDURES DIRECTIVE ON FREE LEGAL AID

FIRST INSTANCE

ARTICLE 19

Provision of **legal and procedural information** free of charge in procedures at first instance

SECOND INSTANCE

ARTICLE 20

Free **legal assistance and representation** in appeals procedures - **BUT** par. 3 "not be granted where the applicant's appeal is considered to have **no tangible prospect of success**" - "**merits testing**".

NEW PACT -ASYLUM PROCEDURES REGULATION ON FREE LEGAL AID

ADMINISTRATIVE

PROCEDURE

ARTICLE 16

Provision of free **legal counselling** in the administrative procedure.

SECOND INSTANCE

ARTICLE 17

Free **legal assistance and representation** in appeal procedure.

APR- ARTICLE 16 LEGAL COUNSELLING

For the purposes of the administrative procedure, free legal counselling shall include the provision of:

- (a) **guidance** on and an **explanation** of the administrative procedure including information on rights and obligations during that procedure;
- (b) **assistance on the lodging of the application** and guidance on:
 - (i) the different procedures under which the application may be examined and the reasons for the application of those procedures;
 - (ii) the rules related to the admissibility of an application;
 - (iii) legal issues arising in the course of the procedure, including information on how to challenge a decision rejecting an application in accordance with Articles 67, 68 and 69.

APR- ARTICLE 17 PAR. 2 EXCLUSIONS FROM LEGAL AID IN THE 2ND INSTANCE

2. The provision of free legal assistance and representation in the appeal procedure may be excluded by the Member States where:

(b) it is considered that the appeal has **no tangible prospect of success** or is **abusive**;

Article 17(2)(b) of the APR maintains **merits testing (no tangible prospect of success)** and exp.
ands it to include **abusive** appeals.

DANGER Maintaining the merits test at it leaves extensive scope for Member States to deprive applicants of the right to free legal assistance, thus deprive asylum applicants of an essential procedural guarantee and increase the risk of refoulement.

RAMM- ARTICLE 21-RIGHT TO LEGAL COUNSELLING

1. Applicants shall **have the right to consult, in an effective manner, a legal adviser** or other counsellor,at all stages of the procedure for determining the Member State responsible provided for in this Regulation.
2. Without prejudice to the applicant's right to choose his or her own legal adviser or other counsellor at his or her own cost, **an applicant may request free legal counselling in the procedure for determining the Member State responsible.**

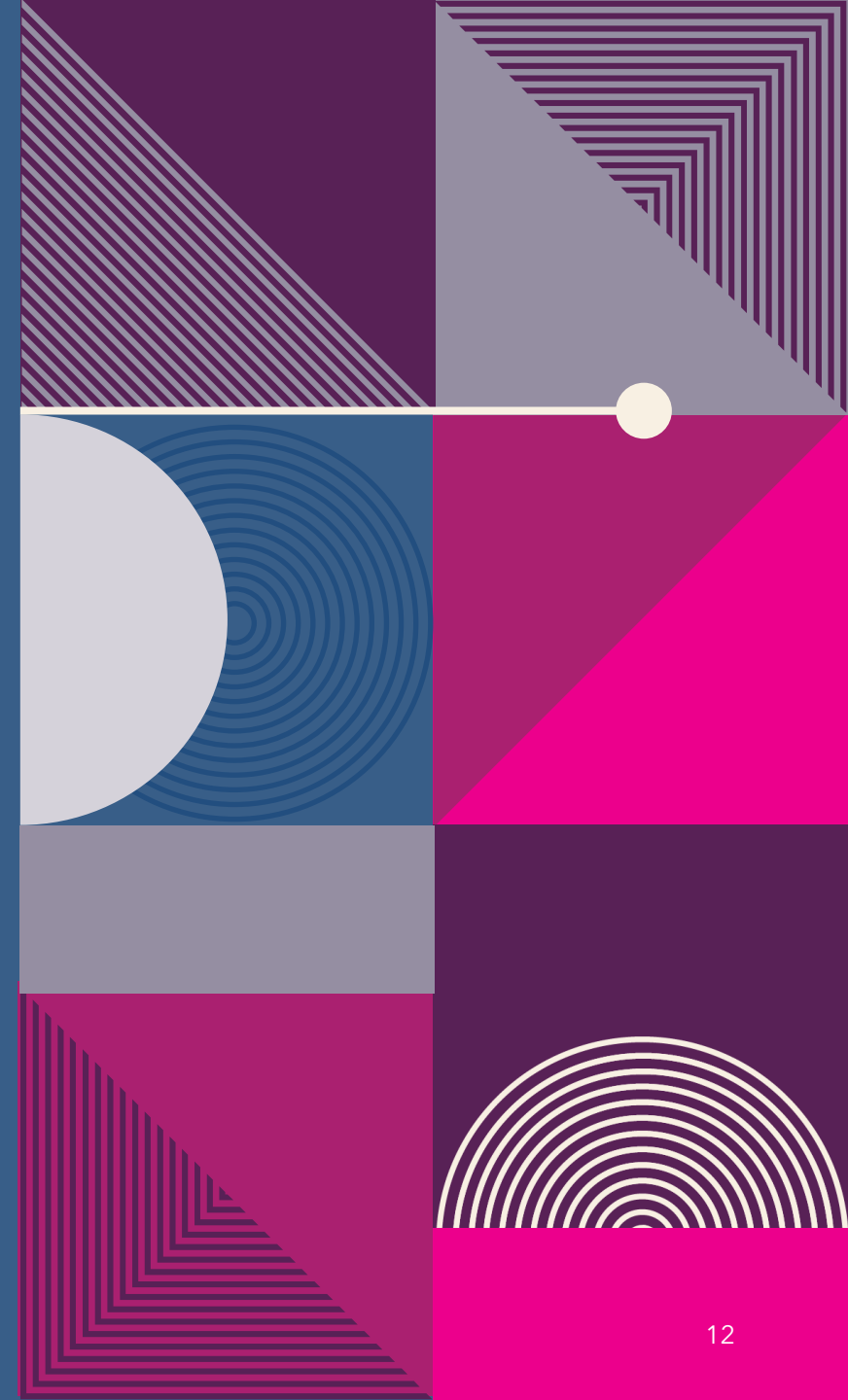
Free legal counselling shall include the provision of **guidance on and explanations** of the criteria and procedures for **determining the Member State responsible**

THE IMPORTANCE OF FREE LEGAL AID DURING THE ENTIRE PROCEDURE

While Greek law provides for free legal assistance, this is primarily available **only at the appeal (second) stage**, limiting initial support and placing additional procedural barriers on applicants. The limited availability of legal aid often means that applicants may not have adequate support during critical stages of their asylum process, impacting the fairness of initial decisions.

CHALLENGES WITH BORDER PROCEDURE AND THE EU-TURKEY STATEMENT

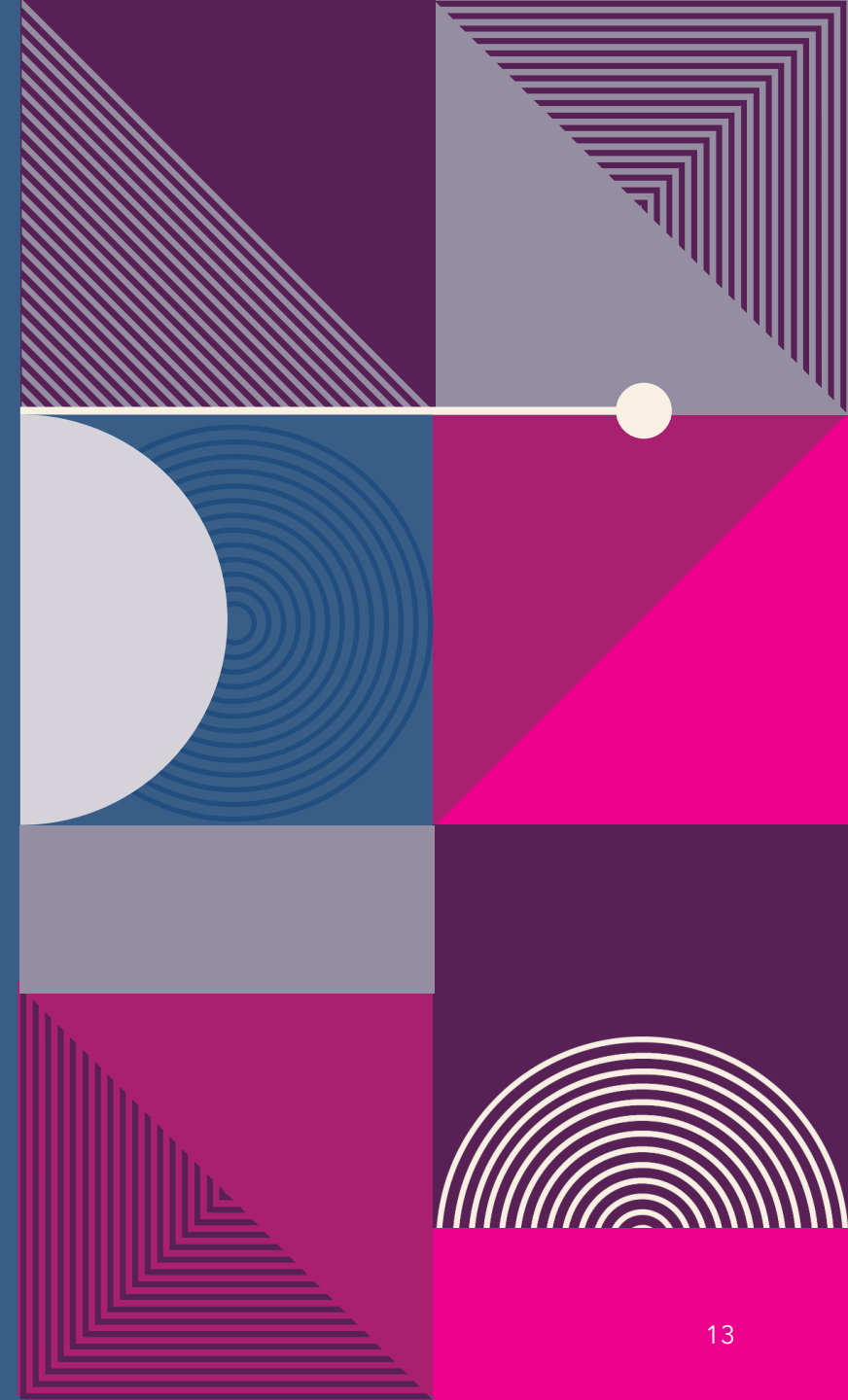
- ❑ March 2016, the adoption EU-Türkiye Statement brought a transformation of the so-called hotspots on the Aegean islands.
- ❑ It was replaced by a practice of systematic geographical restriction on the island.
- ❑ The system of Closed Controlled Access Centres on the islands (Lesvos, Chios, Samos, Leros Kos) does not provide for a blanket prohibition of exit, yet the regime of de facto detention has been reintroduced in practice since the implementation of the CCAC.
- ❑ Reception and Identification Centers in two mainland spots
Malakasa Diavata



CHALLENGES WITH BORDER PROCEDURE AND THE EU-TURKEY STATEMENT

As per Greek law (Art. 40, 4939/2022) persons undergoing reception and identification procedures are subject to a **restriction of liberty** for an initial period of five days, which may be extended to a total of 25 days by decision of the Director of the RIC.

Thus , upon arrival, newcomers are placed under arbitrary restriction of liberty **until their registration by the RIS is concluded.** Until then, people are denied exit from the CCAC.



THE EVROS BORDER PROCEDURE

- ❑ Individuals entering Greece through the Greek-Turkish land border in Evros are not subject to:
 - the EU-Türkiye statement,
 - The fast-track border procedure and
 - there is no geographical restriction imposed on them.
- ❑ **However**, they are subjected to reception and identification procedures at the (RIC) in Fylakio, Orestiada, operating as a closed facility. People transferred to the RIC in Fylakio are also subjected to a “restriction of freedom of movement” applied as a de facto detention measure.



DETENTION

- ❑ Law 4939/2022 (Asylum Code) foresees extensive provisions on the detention of asylum seekers and significantly less guarantees during the imposition of detention measures against asylum applicants.
- ❑ No state provision for free legal assistance during detention



ACCESS TO THE ASYLUM PROCEDURE IN THE MAINLAND -1

- ❑ Ambiguities with respect to **making** and registering and **lodging** of applications that exist in Article 6 of the APD and in Member States' practice.
- ❑ APR also complicates the process of accessing the asylum procedure **by formalising** the three stages before an application is considered lodged.



ACCESS TO THE ASYLUM PROCEDURE IN THE MAINLAND -2

On 13 July 2022, the Asylum Service launched a new registration platform, through which any appointment for lodging an asylum application in the mainland, even for vulnerable asylum seekers, needs to be booked.

Applicants staying in Southern Greece to register in the facility of Malakasa (Athens), those in Northern Greece to register in the facility of Diavata (Thessaloniki).

CHALLENGES IN ACCESSING ASYLUM -1

1. Is the request to schedule an appointment **equivalent to "making" an asylum application** under EU and Greek legislation in force (Art. 6, 2013/32/EU; Art. 1(c), 69(8), 4939/2022)? Greek authorities maintain that persons who have applied for an appointment via the platform do not qualify as applicants for international protection and this status is only acquired upon their registration within a RIC. Thus applicants with registration appointments are often **arbitrarily arrested and detained**.



CHALLENGES IN ACCESSING ASYLUM -2

2. Lack of information on the procedure
3. Appointment delays and unavailability
4. Inaccessibility of the online platform-
technical failures
5. Barriers to accessing the mainland RICs
6. Access to the procedure for vulnerable
people

An abstract geometric design on the left side of the slide. It features a grid of colored squares: a bright pink square at the top left, a grey square below it, a dark purple square at the bottom left, and a blue square at the bottom center. Overlapping these are various patterns: concentric white circles in the pink and purple squares, a series of white lines forming a triangle in the top right, a series of white lines forming a triangle in the middle right, and a series of white lines forming a triangle in the bottom right. A white horizontal line with a white circle at its end extends from the top left towards the center.

REGISTRATION INTERVIEW- THE IMPORTANCE OF HAVING LEGAL ASSISTANCE

VULNERABILITY ASSESSMENT - 1

Article 41 of Greek law 4939/2022 foresees detection of vulnerabilities and the provision of necessary specialised treatment or support as a core stage of the reception and identification procedure.

Overall, 71% of respondents who underwent screening in a RIC without being represented by a lawyer said that they were not asked during the screening process if they had a vulnerability.

(Report of Mobile Info Team and Refugee Legal Support November 2023

<https://static1.squarespace.com/static/597473fe9de4bb2cc35c376a/t/6555e476024c6b1f747d3668/1700127869016/RIC+report+Nov+2023.pdf>)

VULNERABILITY ASSESSMENT - 2

In many cases, **asylum claims are being examined before vulnerability assessments are carried out**, and, in any case, the **outcome** of the latter are **often not communicated** to the Asylum Service before it issues its decision on the application.



ADMISSIBILITY CONSIDERATIONS: DUBLIN PROCEDURE

The Asylum Service is also competent for applying the Dublin procedure, to assess the MS responsible for the examination of the international protection application of the applicant with most requests and transfers concerning family reunification in other Member States (see also Romania and Cyprus visa cases).

ADMISSIBILITY CONSIDERATIONS: SAFE 3RD COUNTRY

- ❑ Turkey considered safe for all applicants originating from Syria, Afghanistan, Somalia, Pakistan and Bangladesh, applying for international protection throughout the Greek territory.
- ❑ December 2021, the JMD was amended to include Albania and North Macedonia in the list of safe third countries.



CHALLENGES REGARDING SAFE 3RD COUNTRY CONCEPT

Turkey 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.



THE CJEU HAS RULED ON THE QUESTIONS REFERRED FOR A PRELIMINARY RULING BY THE PLENARY SESSION OF THE COUNCIL OF STATE (COS) IN ITS JUDGMENT WITH NO. 177/2023 FOLLOWING AN APPLICATION FOR ANNULMENT BY THE GREEK COUNCIL FOR REFUGEES (GCR) AND REFUGEE SUPPORT AEGEAN (RSA) AGAINST THE JOINT MINISTERIAL DECISION 42799/2021 :



CJEU ruled that:

- ❑ Member States **cannot issue a decision** rejecting an asylum application as inadmissible on the basis of the concept of a “safe third country” in cases where they have established that the asylum seeker **will not be allowed to enter** the territory of a country designated as safe.
- ❑ The Court accepted, **however, that a country may be listed as a safe third country even if**, despite its legal obligation, that third country has, in general and without any prospect of a contrary development, suspended the admission or readmission of those applicants to its territory.

CHALLENGES REGARDING ASYLUM INTERVIEW - 1

1. Accelerated procedure ► Lack of actors present within the facility to assist with their asylum case ► issues relating to accessing information and legal support prior to their interview ► exacerbated by their de facto detention within the RIC
2. Accelerated procedure 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.

CHALLENGES REGARDING ASYLUM INTERVIEW - 2

3. Access of lawyers ▶ Article 34 of the Greek Lawyers Code guarantees unrestricted access to public facilities for lawyers upon presentation of their professional ID. A December 2022 opinion of the Bar Association of Athens clarified that lawyers are permitted free access to facilities accommodating refugees and asylum seekers without prior notification of camp management.

The authorities impose unlawful restrictions on lawyers' access to Greek reception facilities ▶ submit access requests, ▶ to be approved by the camp management prior to entry.

CHALLENGES REGARDING ASYLUM INTERVIEW - 3

4. The RICs in the mainland are in remote areas
5. Certified authorisation from clients who need to authenticate their signature when they have no legal documents.
6. Interview preparation difficult- lawyer to build a relationship of trust, to elevate the person and empower them and avoid secondary trauma
7. Remote interview, transcripts to be provided as soon as possible, language of transcripts, audio recording.
6. Culture of disbelief
7. Safe country of origin catalogue ► rejected as manifestly unfounded ► overturn the presumption

THE APPEALS PROCEDURE - 1

First instance decisions of the Asylum Service are appealed before the Independent Appeals Committees under the Appeals Authority:

-To be lodged within:

- ▶ **30** days in the **regular** procedure,
- ▶ **20** days in the **accelerated** procedure, in case of an **inadmissibility decision** or if the applicant is **detained**,
- ▶ **15** days in the **Dublin procedure**,
- ▶ **10** days in the **border procedure** and in **the fast-track border** procedure and
- ▶ **5** days in the case of an **inadmissibility decision on a subsequent application**.

THE APPEALS PROCEDURE -2

Appeals submitted against decisions rejecting applications in the accelerated procedure or dismissed as inadmissible on certain grounds do not have an automatic suspensive effect.

The procedure before the Appeals Committees is written.

REGISTRY OF FREE LEGAL AID AT THE SECOND INSTANCE

CHALLENGES

-delays in payments

-assignments the previous day

-not enough time to meet the applicant

-interpretation problems

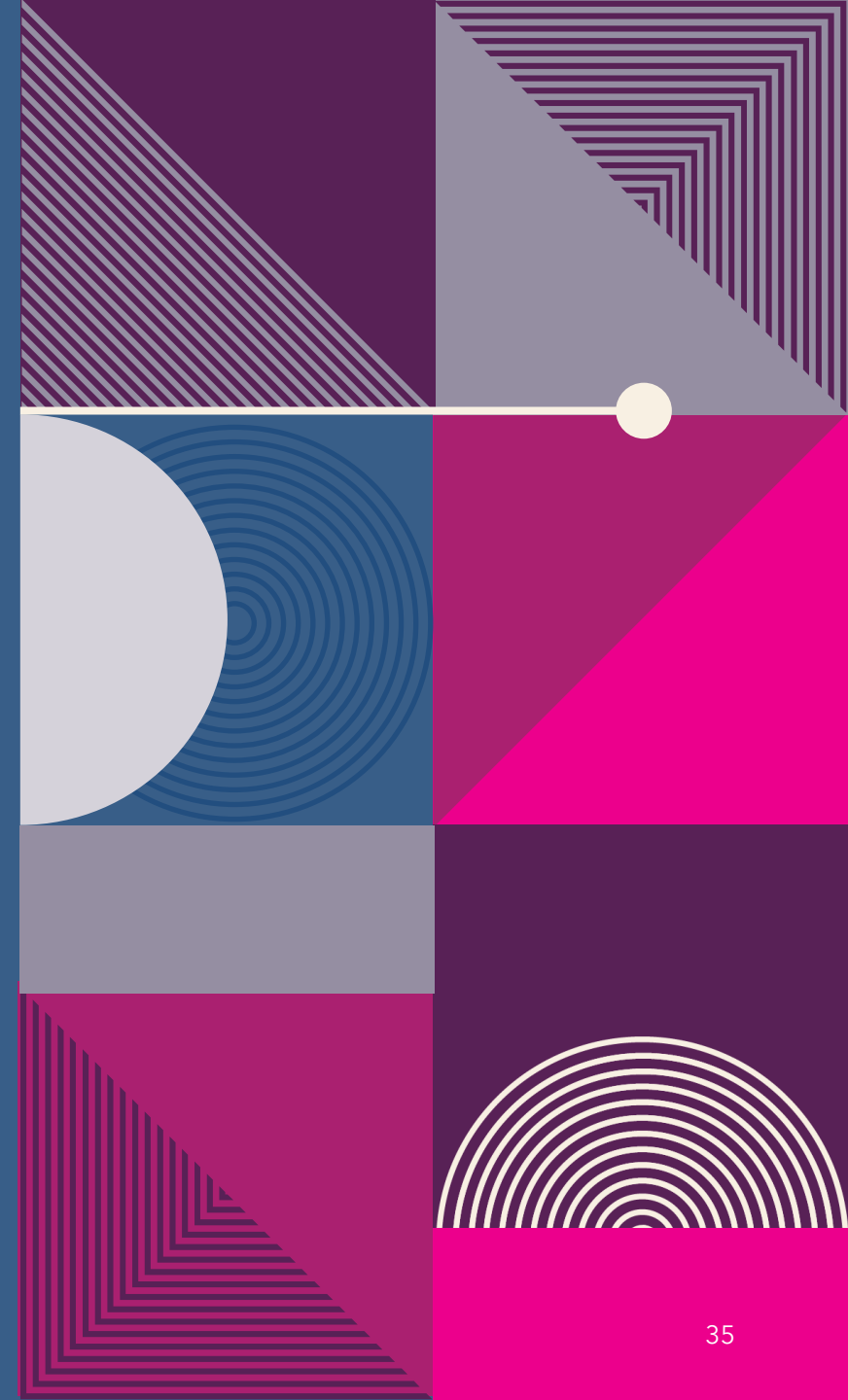
In 2023, 10,973 appeals were submitted , of which 6,892 obtained free legal assistance from the Registry of Lawyers of the Asylum Service (<https://rsaegean.org/en/greek-asylum-stats-2023/>).

CASE STUDY OF A

THE SUBSEQUENT APPLICATION CHALLENGES -

NEW and MATERIAL ELEMENTS must be invoked.

- ▶ However, elements relating to the personal circumstances of the asylum seeker, 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 as immaterial.



THE ADMINISTRATIVE COURT – FREE LEGAL AID

An Application for Annulment against a negative second instance decision can be filed before the First Instance Administrative Court of Athens or Thessaloniki within 30 days from the notification. ► No automatic suspensive effect is provided.

Article 76 para. 3 of Law 4939/2022 stipulates that: "[...] In the event of an appeal before a court, applicants (for international protection) may receive free legal aid, under the terms and conditions of the provisions of Law No. 3226/2004, which shall apply accordingly. Free legal aid and assistance shall be provided to applicants who are demonstrably present in the territory of the country."

FRAMEWORK FOR UNACCOMPANIED MINORS

In February 2020, the **Special Secretariat for the Protection of Unaccompanied Minors** (UaM) was established within the Ministry of Migration and Asylum, the national authority for the overall protection, guardianship, and housing of third-country national or stateless unaccompanied and separated minors, deprived of parental care while in Greece.

Today: **General Secretariat for Vulnerable Persons and Institutional Protection**

The **National strategy for the protection of UAMs** in Greece, 2022 - four core pillars of action:

- enhancing reception and safeguarding children's rights
- identifying and implementing durable solutions
- ensuring protection from all forms of violence, abuse and exploitation
- improving data collection

Law 4960/2022 (as amended) revised the national guardianship system for unaccompanied children.



CHALLENGES FACED BY RECOGNIZED REFUGEES - 1

- ▶ The provision, either issuance or renewal, of a residence permit (*ADET*) is obstructed by an array of administrative barriers, and time-consuming procedures which may exceed one year. Without a valid *ADET*, refugees cannot access social benefits, health care, the labour market, or even authorise a legal representative.



CHALLENGES FACED BY RECOGNIZED REFUGEES IN ACCESSING BENEFITS -2

- ▶ Beneficiaries of international protection are **de facto** excluded from access to benefits, to which Greek citizens do have access, as these benefits are subject to **lengthy residence requirements** and do not take into account the particular situation of refugees.



CHALLENGES FACED BY REFUGEES IN ACCESSING BENEFITS - 3

- ▶ **Housing allowance** - 5 years of legal stay prior to applying.
- ▶ **One-off child-birth allowance** - 12 years of permanent and uninterrupted stay in Greece.
- ▶ **Monthly child support allowance** - 5 years
- ▶ **Uninsured retiree benefit**- 15 years

THE NEW IMMIGRATION LAW - MARCH 2023

Law 5038/23 Article 161 (c):

The ten-year residence permit for adults who came to Greece as unaccompanied minors and have completed 3 years of school before turning 23.

Article 193 of Law 5078/2023, establishes an ad hoc procedure for granting residence permits that provides access to dependent work and the provision of services or projects for citizens third countries, who:

- a) have a job offer letter from an employer in Greece for the
- b) resided in Greece until November 30, 2023, without a residence permit and continue to reside in Greece and
- c) complete at least three (3) consecutive years of residence in Greece ► to be proven

PROPOSALS

- ▶ Ensure efficiency of the asylum procedure, trust in the system -access to information regarding their situation and rights in a language that they understand
- ▶ Ensure that the deprivation of liberty or use of detention for asylum seekers is only used as a measure of last resort.
- ▶ Legislative amendments aiming to improve the provision of legal aid to asylum applicants
- ▶ Access to legal aid at an early stage of the procedure, in a holistic manner.
- ▶ Continuous training of legal practitioners, publication of guidelines, specialisation of lawyers who provide legal aid.



PROPOSALS

- ▶ Guarantee civil society organisations open access to RICs with the possibility to provide legal support.
- ▶ Ensure that vulnerability assessments are carried out consistently and by qualified professionals with the support of a translator .
- ▶ States to prioritise the protection of human rights and the rule of law when managing legal issues regarding migration, rather than their political mandates and priorities.





Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Natacha Fauveau Ivanovic

Legal framework on asylum and immigration in France

TRALIM 3 Athens, 8 November 2024



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France Legal Framework

**Law on Entry and Stay of Foreigners in France and
Asylum Law**

European Regulations and Directives

Law on Relationship between Public and Administration

Law on Administrative Justice

Asylum Request Introduction (Law in Force)

Prefecture Appointment

Fingerprints

Interview : personal data and itinerary (no question on asylum request reasons)

Determination: Dublin procedure / French procedure

The Prefecture delivers Asylum certificate which autorises asylum seeker to stay on French territory and asylum file

OFII Appointment

Interview (means and vulnerability)

OFII grants / refuses Reception conditions

OFII delivers Payment Card

Asylum Request Recording (Law in Force)

The Asylum request is recorded by OFPRA (protection administration)

The asylum seeker has 21 days after he received Asylum certificate to send his file to OFPRA

The asylum request comprises asylum request form (personal data, including ethnicity and confession, family data and itinerary) and written statement relating reasons for asylum request

New Asylum procedure (1st August 2024)

(Not yet fully applied)

Introduction and Recording

Prefecture appointment

OFII (Reception conditions) appointment

OFPRA (Protection administration) appointment – the administration officer will take the first statement from the asylum seeker

Asylum Seekers Right to Stay in France

- **until the date of the Cour decision (if the asylum seekers files an appeal against the Administration decision)**
- **until the notification of the Administration decision (if no appeal)**
- **until the date of the Administration decision (if the request was inadmissible ; the seeker is from safe country; his presence in France constitutes a threat to public order; the seeker is in retention; or the request is withdrawn)**

Reception Conditions

All asylum seekers aged 18 years or more if they have no financial means and if they accept terms of the offer

- Problem of **underage children** who are with their parents (cases of FGM in which only the child is asylum seeker)

Restriction of Reception Condition

Refusal

For new asylum seekers if the administration defines that they have no right to reception conditions or if the asylum seeker declines the offer

At the beginning of the procedure

Withdrawal

For the persons who benefit from reception condition but the administration decides to put an end to material condition

At any stage of the procedure after the reception condition were granted to asylum seeker

Restriction of Reception Conditions

Any restriction of reception conditions must take into account the vulnerability of the asylum seeker

The vulnerability definition in French law is identical to article 21 of the Directive 2013/33/EU

Member States shall take into account the specific situation of vulnerable persons such as minors, unaccompanied minors, disabled people, elderly people, pregnant women, single parents with minor children, victims of human trafficking, persons with serious illnesses, persons with mental disorders and persons who have been subjected to torture, rape or other serious forms of psychological, physical or sexual violence, such as victims of female genital mutilation, in the national law implementing this Directive.

Refusal of reception conditions

The OFII refuses the reception conditions:

The late asylum request (90 days after the entry of the asylum seeker into France);

The reexam;

The asylum seeker refuses regional orientation / proposed accomodation

Withdrawal of reception conditions

The OFII withdraws the reception conditions:

The asylum seeker left the region / accomodation;

The asylum seeker did not respect the administration rules and requests

The asylum seeker gave false information

The asylum seeker introduced several asylum requests under different identity

Reception Conditions

Litigation (New Law – from 1 August 2024)

Specific urgent procedure, unique for refusal and withdrawal of reception conditions

Appeal shall be filed within 7 days

Tribunal shall pronounce its decision within 15 days

Asylum request exam

Personal Interview conducted by OFPRA in language chosen by asylum seeker

The Asylum seeker can ask for:

Lawyer;

Psychologist / psychiatrist ;

A member of an association;

Administration Decision

No time framework in which the administration shall render its decision

The period varies

The decision is notified electronically or by recorded letter

Court Procedure

The appeal shall be filed within one month from the notification of the decision

Legal aid is automatically granted when requested and legal aid request suspend the appeal period

In some cases (the case obviously without interest) the Court can render its decision without hearing the applicant

In all other cases a hearing is conducted by 3 judges (normal procedure) or 1 judge (accelerated procedure)

Border Procedure

The asylum seeker can be placed in waiting zone if there is doubt:

His / her asylum request shall be examined by another EU country according to Dublin Regulation;

His/ her asylum request is inadmissible;

His/ her asylum request is manifestly unfounded

Decision is taken by administrative authority (Prefecture)

Waiting Zone

The foreigner can be placed into Waiting Zone for 4 days

The 4-day period can be extended by Judge decision for 8 days

The 12-day period can be exceptionally extended for 8 days.

Retention Procedure

Person placed in Retention can ask for asylum within 5 days upon his placement into retention



Training of lawyers on EU Asylum and Immigration Law 3 (TRALIM 3)

Jose M^a Pey González

Legal framework on asylum and immigration in Spain

TRALIM 3 Athens, 8 November 2024



Co-funded the European Union

SPANISH'S LEGAL FRAMEWORK



- **UNION CITIZEN REGIME** ⇔ RD 240/2007
- **INTERNATIONAL PROTECTION** ⇔ L 12/2009 + RD 203/1995
- **STATELESS PERSONS** ⇔ RD 865/2001
- **DISPLACED PERSONS** ⇔ RD 1325/2003
- **IMMIGRATION REGIME** ⇔ L 4/2000 + RD 557/2011

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EU LEGAL FRAMEWORK

- **DIRECTIVE 38/2004 - UE Citizens**
- **DIRECTIVES**
 - 95/2011 – Requirements
 - 32 & 33/2013 – Procedures & Reception
- **DIRECTIVE 55/2001 - DISPLACED**
- **DIRECTIVES**
 - 86/2003 – Family reunification
 - 109/2003 – Long-term resident status
 - 115/2008 - Return

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THE MAIN ADMINISTRATIVE SITUATIONS FOR FOREIGNERS IN SPAIN

UNION CITIZEN REGIME

- STAY (< 90 d)
- RESIDENCE
 - TEMPORARY (> 90 d)
 - PERMANENT (5 y)

IMMIGRATION REGIME

- STAY (< 90 d)
- RESIDENCE
 - TEMPORARY (> 90 d < 5 y)
 - LONG-TERM (5 y)

IMMIGRANTS IN AN ADMINISTRATIVE SITUATION OF *IRREGULARITY*

- RESIDENCE AUTHORIZATION DUE TO EXCEPTIONAL CIRCUMSTANCES
 - **ROOTS IN SPAIN**
 - LABOR OR EMPLOYMENT ROOTS ⇔ COLLABORATION
 - SOCIAL ROOTS
 - FAMILY ROOTS
 - ROOTING FOR TRAINING
- RESIDENCE AUTHORIZATION FOR HUMANITARIAN REASONS
- RESIDENCE AUTHORIZATION DUE TO INTERNATIONAL PROTECTION

IMMIGRANTS IN AN ADMINISTRATIVE SITUATION OF *IRREGULARITY*

- RESIDENCE AUTHORIZATION DUE TO COLLABORATION
 - WITH POLICE, PROSECUTOR, JUDICIAL OR NATIONAL SECURITY AUTHORITIES.
 - WITH ADMINISTRATIVE AUTHORITIES OR PUBLIC INTEREST.
- RESIDENCE AUTHORIZATION FOR VICTIMS
 - OF HUMAN TRAFFICKING
 - OF GENDER OR SEXUAL VIOLENCE

SOCIAL ROOTS

IT'S A TEMPORARY RESIDENCE AUTHORIZATION DUE TO EXCEPTIONAL CIRCUMSTANCES THAT MAY BE GRANTED TO FOREIGN CITIZENS WHO ARE IN SPAIN FOR A MINIMUM PERIOD OF **3 YEARS AND HAVE AN **EMPLOYMENT CONTRACT/S** AND EITHER HAVE **FAMILY TIES IN SPAIN OR ARE SOCIALLY INTEGRATED.****

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FAMILY ROOTS

IT'S A TEMPORARY RESIDENCE AUTHORIZATION DUE TO EXCEPTIONAL CIRCUMSTANCES THAT MAY BE GRANTED IN THE FOLLOWING CASES:

- **WHEN IT IS A FATHER/MOTHER OR GUARDIAN OF A MINOR OF SPANISH NATIONALITY, OR IT'S A PERSON WHO PROVIDES SUPPORT TO A SPANISH CITIZEN WITH DISABILITY.**
- **IN THE CASE OS THE SPOUSE OR ACCREDITED DE FACTO PARTNER OF A SPANISH CITIZEN, ANCESTOR OVER 65 YEARS OF AGE OR UNDER THAT AGE DEPENDENT, DESCENDANT UNDER 21 YEARS OF AGE OR OVER THAT AGE DEPENDENT OF SPANISH CITIZEN OR HIS/HER SPOUSE OR PARTNER.**
- **IN THE CASE OF CHILDREM OF A FATHER/MOTHER WHO HAD ORIGINALLY SPANISH NATIONALITY**



LABOR OR EMPLOYMENT ROOTS

**IT'S A TEMPORARY RESIDENCE
AUTHORIZATION DUE TO EXCEP-
TIONAL CIRCUMSTANCES THAT MAY
BE GRANTED TO FOREIGN CITIZENS
WHO ARE **IRREGULARLY** IN SPAIN
AND HAVE HAD RELATIONSHIPS FOR
A MINIMUM OF **6 MONTHS**.**

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**FOR COLLABORATION WITH ADMI-
NISTRATIVE AUTHORITIES OR FOR
PUBLIC INTEREST.**

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ROOTING FOR TRAINING

IT'S A TEMPORARY RESIDENCE AUTHORIZATION DUE TO EXCEPTIONAL CIRCUMSTANCES THAT MAY BE GRANTED TO FOREIGN CITIZENS WHO ARE IN SPAIN AND HAVE REMAINED CONTINUOUSLY FOR **2 YEARS, ALLOWING THE OBTAINING OF AN AUTHORIZATION TO CARRY OUT TRAINING, MAKING OBTAINING THE AUTHORIZATION CONDITIONAL OF RESIDENCE AND WORK UPON PASSING THIS AND PRESENTING AN EMPLOYMENT CONTRACT**

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RESIDENCE AUTHORIZATION DUE TO COLLABORATION

**IT'S A TEMPORARY RESIDENCE
AUTHORIZATION DUE TO EXCEPTIONAL
CIRCUMSTANCES THAT MAY BE
GRANTED THROUGH COLLABORATION
WITH:**

- **POLICE, PROSECUTOR, JUDICIAL OR
NATIONAL SECURITY AUTHORITIES
(AGAINST ORGANIZED NETWORKS).**
- **NON-POLICE ADMINISTRATIVE
AUTHORITIES AGAINST ORGANIZED
NETWORKS.**



INTERNATIONAL PROTECTION

**IT IS A TEMPORARY RESI-
DENCE AUTHORIZATION
DUE TO EXCEPTIONAL
CIRCUMSTANCES THAT
MAY BE GRANTED FOR
REASONS OF *INTERNA-
TIONAL PROTECTION***



HUMANITARIAN REASONS

**IT'S A TEMPORARY RESI-
DENCE AUTHORIZATION FOR
EXCEPTIONAL CIR-
CUMSTANCES THAT MAY BE
GRANTED FOR HUMANI-
TARIAN REASONS.**

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VICTIMS

IT'S A RESIDENCE & WORK AUTHORIZATION FOR EXCEPTIONAL CIRCUMSTANCES THAT:

- **FOREIGNERS WHO ARE VICTIMS OF HUMAN TRAFFICKING CAN OBTAIN.**
- **FOREIGN WOMEN WHO ARE VICTIMS OF GENDER OR SEXUAL VIOLENCE WHO ARE IN SPAIN CAN OBTAIN.**



INTERNATIONAL MOBILITY

OUR LAW INTEND TO FACILITATE
THE ENTRY AND/OR STAY IN SPAIN
TO FOREIGNERS FOR **ECONOMIC
INTEREST**:

- ***INVESTORS***
- ***ENTREPRENEURS***
- ***HIGLY QUALIFIED PROFESSIONALS***
- ***RESEARCHERS***
- ***WORKERS WHO CARRY OUT
INTRA-COMPANY MOVEMENTS
WITH THE SAME COMPANY OR
GROUPS OF COMPANIES***
- ***TELEWORKERS***

